EXHIBIT A

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SANDY JUDD, and TARA HERIVEL, **Complainants,** **v.** **AT&T COMMUNICATION OF THE PACIFIC NORTHWEST, INC., and T-NETIX, INC.,** **Respondents.**	**Docket No. UT-042022**

AT&T'S SURREPLY REGARDING BENCH REQUEST NO. 12

Both Complainants and T-Netix attempt to suggest in their replies regarding Bench Request No.12 that AT&T should be deemed the OSP because it entered into a general contract with the DOC. That analysis defies logic because the bulk of the calls at issue were intra-LATA, not inter-LATA calls. Under their proposed analysis, AT&T would be deemed the OSP for calls that never touched its network, that it played no role in transmitting and for which it received no revenue. That analysis utterly re-writes the Commission's OSP regulation. The inquiry here, under the regulation as written, is who provided the requisite "connection." Despite that inescapable fact, the discussion continues to drift to various services other than the provision of the requisite "connection." To be sure, the discussion of these other services is extraneous to the core issue at bar. Nonetheless, because certain misconceptions regarding these collateral services have surfaced as part of Complainants' and T-Netix' misstatements and assertions, AT&T is compelled to set the record straight.

Most significantly, in their respective replies to AT&T's response to Bench Request No. 12, Complainants and T-Netix have misconstrued the effect of Amendment No. 2 to the DOC contract. The DOC contractual arrangement allocated responsibilities very specifically among

AT&T and the LECs, or entities – such as T-Netix – retained by them. AT&T was responsible for providing interLATA and international service to the DOC facilities, and the LECs were responsible for providing provide call monitoring, call blocking, local, intraLATA, **and operator service**. (Tab 20 to AT&T's Petition for Administrative Review at ¶¶ 3-4.)[1] Amendment Number 2 did nothing to change that contractual arrangement. Instead, it simply called for the addition of "certain call control features" and a modification in the commissions that the DOC was to collect. It did not change who was to provide the already-existing call monitoring or call blocking services. Nor did it change who was to provide operator service. Those responsibilities remained with the LECs, which they fulfilled through T-Netix. (*See* T-Netix's Response to Second Data Request No. 7 (attached as Exhibit A to AT&T's Responses) (T-Netix's P-III Premise platform operated at each of the prisons at issue for the entire relevant time period).)

Accordingly, Complainants are wrong to suggest that Amendment No. 2 made AT&T "responsible for providing the operator services to complete collect calls from inmates." (Complainants' Reply Regarding Bench Request No. 12 at ¶ 4.) That argument reads too much into Amendment No. 2 and ignores the already-existing allocation of responsibilities contained in the March 16, 1992 agreement., When Ms. Friesen, AT&T's lawyer, told the Commission that there was only one contract with the DOC, she did not, and could not, alter the allocation of responsibilities specified in that contract. The contract is clear that each of the LECs or their subcontractors such as T-Netix was obligated to "provide local and intraLATA telephone service

[1] Importantly, the LECs were also allocated responsibility for delivering interLATA traffic from the DOC institutions to AT&T's point of presence. (*See, e.g.*, Tab 21 at ¶3(b) (March 16, 1992 Agreement between GTE and AT&T).) In other words, AT&T did not touch calls until they were delivered to its point of presence, which is consistent with the ALJ's finding and conclusion that the P-III Premise platform provided the requisite "connection" under the Commission's OSP regulation.

and operator service" to their designated prisons. (Tab 20 to AT&T's Petition for Administrative Review at ¶ 4 (emphasis added).)

T-Netix misconstrues Amendment No. 2 in a more fundamental way. The Amendment is dated June 16, 1995. T-Netix claims that it "was chosen in 1995 'to provide a computerized platform at the correctional facilities.'" (T-Netix's Reply Regarding Bench Request No. 12 at p. 3.) If T-Netix is not directly asserting that it "was chosen in 1995" in response to Amendment No. 2, at the very least T-Netix intends for that inference to be drawn. T-Netix's claim is flatly contradicted by its earlier admissions that it installed its P-III Premise platform at Airway Heights Correctional Center at least as early as November 8, 1994 and at McNeil Island Corrections on March 27, 1995. (T-Netix's Second Supplemental Response to Second Data Request No. 7 (attached as Exhibit A to AT&T's Responses to November 30, 2010 Bench Requests).)[2] In other words, T-Netix was already operating within DOC facilities, including using its P-III Premise platform — which the ALJ found and concluded connected calls and provided call control services such as call screening and blocking (Order No. 23, Initial Order, at ¶ 135, Finding of Fact No. 5) — *before* Amendment No. 2. T-Netix's claim that it "was chosen in 1995" is misleading, at the very least.

T-Netix's other arguments regarding Bench Request No. 12 similarly require a response because they take isolated language out of context. T-Netix's reliance on the General Agreement to claim that AT&T purchased the P-III Premise platform (T-Netix Reply at p. 4) is simply wrong. T-Netix's ownership of the platform is the very issue before the Commission on AT&T's Petition for Administrative Review. As explained in AT&T's Petition, paragraph 20 of the General Agreement only established general terms governing AT&T's relationship with T-

[2] The record is silent as to what equipment T-Netix used at the Washington prisons before installing the P-III platform.

Netix. Before AT&T purchased any equipment from T-Netix, it had to place a separate purchase order. (Tab 19 to AT&T's Petition for Administrative Review at p. 4 (A000078).) That AT&T never did so is undisputed. (*See* AT&T's Petition for Administrative Review at ¶ 20; AT&T's Reply in Support of its Petition for Administrative review at ¶¶ 42-44.) T-Netix has already admitted that it owned the P-III platform, which provided the requisite "connection" under the Commission's OSP regulation.

T-Netix also takes out of context the letter from AT&T to T-Netix marked Confidential Exhibit C-4. T-Netix's suggestion that, through this letter, AT&T "directed the operation of the calling platform" could not be further from the truth. In reality, the letter demonstrates just the opposite. It makes clear that when AT&T insisted that T-Netix comply with the Commission's regulations, T-Netix refused. Despite T-Netix's contractual obligation to [redacted] (Tab 19 to AT&T's Petition for Administrative Review at p. 23 (A000097)), T-Netix only agreed to modify its software and hardware to comply with the Commission's regulations when AT&T acceded to T-Netix's demand for more money. T-Netix officers and employees have already admitted that AT&T had no control over how T-Netix operated the P-III Premise platform. (AT&T's Petition for Administrative Review at ¶¶ 32-36; AT&T's Reply in Support of its Amended Motion for Summary Determination at ¶¶ 24-30.) It was T-Netix that determined how the voice prompts at issue in this proceeding were to be made, when and how they should be changed, and who had access to the relevant equipment. Because, throughout the relevant time period, T-Netix connected calls from each of the four DOC institutions at issue to local or long distance service providers, T-Netix is the OSP.

Dated: December 20, 2010

SUBMITTED BY:

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.

By: /s/ Charles H.R. Peters

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CERTIFICATE OF SERVICE

Pursuant to WAC 480-07-150, I hereby certify that I have this day, December 20, 2010, served this document upon all parties of record by e-mail and Federal Express overnight delivery at the e-mail addresses and mailing addresses listed below:

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Pursuant to WAC 480-07-145, I further certify that I have this day, December 20, 2010, filed MS Word and PDF versions of this document by e-mail, and six copies of this document by Federal Express, with the WUTC at the e-mail address and mailing address listed below:

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Pursuant to the Prehearing Conference Order 08 and Bench Request Nos. 5 & 6, I further certify that I have this day, December 20, 2010, provided a courtesy copy of this document, in MS Word, to ALJ Friedlander by e-mail at the following e-mail address: mfriedla@utc.wa.gov.

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