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15 **III. NAME AND MAILING ADDRESS OF AGENCY WHOSE FINAL**
16 **ORDER IS UNDER REVIEW**

17 Washington Utilities and Transportation Commission
18 P.O. Box 47250
19 1300 S. Evergreen Park Drive SW
20 Olympia, WA 98504-7250

21 **IV. IDENTIFICATION OF THE AGENCY FINAL ORDER UNDER**
22 **REVIEW**

23 *Sandy Judd and Tara Herivel v. AT&T Communications of the Pacific Northwest,*
24 *Inc. and T-Netix, Inc.*, Docket No. UT-042022, Order 25, Final Order Affirming Order 23 in Part
25 on Other Grounds and Responding to Questions Referred from Superior Court (Mar. 31, 2011)
26 ("Final Order"). **ATTACHMENT A.**

27 **V. IDENTIFICATION OF PERSONS WHO WERE PARTIES IN**
28 **UNDERLYING ADJUDICATORY PROCEEDING**

29 Complainants: Sandra Judd and Tara Herivel

30 Respondents: T-Netix, Inc.
31 AT&T Communications of the Pacific Northwest, Inc.

32 **VI. FACTS TO DEMONSTRATE THAT T-NETIX IS ENTITLED TO**
33 **JUDICIAL REVIEW OF THE FINAL ORDER**

34 **A. The Parties**

1 Complainants Sandra Judd and Tara Herivel are, at least for the relevant period of
2 the adjudicatory period and underlying civil claims, residents of Washington. They have alleged
3 and produced telephone bills indicating that they received inmate-initiated telephone calls from
4 persons incarcerated in facilities operated by the Washington Department of Corrections
5 (“DOC”).

6 AT&T was authorized to provide and did provide, at least for the relevant period
7 of the underlying dispute,¹ inmate telecommunications services in Washington. AT&T held the
8 contract with the Washington DOC granting it the exclusive right to provide such services to
9 Washington DOC facilities. AT&T provided, rated, and billed for interLATA long-distance
10 calls placed by inmates at these facilities. AT&T subcontracted with local exchange carriers
11 (“LECs”) for the provision of local and intraLATA telecommunications services. In 1997,
12 AT&T entered into a contract with T-Netix for the purchase of equipment that was used to
13 provide inmate telecommunications in Washington DOC facilities.

14 T-Netix is authorized to provide inmate telecommunications services in
15 Washington but did not provide such services at Washington DOC facilities during the relevant
16 period of the underlying dispute. Under the 1997 contract with AT&T, T-Netix sold premise
17 equipment, along with a non-exclusive software license and maintenance services, that AT&T
18 used to provide inmate telecommunications services at Washington DOC facilities. This premise
19 equipment was branded as the “P-III” platform, a proprietary computer device that was installed
20 in each DOC facility and permitted an inmate call to be screened, validated, and sent to the
21 telecommunications network.

22 The court has jurisdiction over this petition, and venue is appropriate pursuant to
23 RCW 34.05.570(3) and RCW 34.05.514.

24
25
26 ¹ During the course of the WUTC adjudication and litigation before the Superior Court,
it has been established that the relevant period of the dispute is 1996 through 2000.

1 **B. Underlying Civil Claims**

2 On August 1, 2000, Judd and Herivel filed a putative class action in the Superior
3 Court of King County seeking damages and injunctive relief pursuant to the Washington
4 Consumer Protection Act, RCW 19.86 *et seq.*, against five (5) telecommunications companies,
5 including T-Netix and AT&T, on allegations that they failed to provide audible rate disclosures
6 for inmate-initiated collect calls in violation of a WUTC regulation, WAC 480-120-141 (1991,
7 amended 1999). First Amended Complaint – Class Action, *Judd, et. al. v. AT&T, et al.*, No. 00-
8 2-17565-SEA. **ATTACHMENT B.**

9 WAC 480-120-141 requires Operator Service Providers (“OSPs”) to disclose, on
10 every inmate-initiated, operator-assisted call, the rate or rates that will apply to the call. On
11 November 9, 2000, three of the defendants were dismissed from the action on the ground that
12 they were exempt from WAC 480-120-141.² As to AT&T and T-Netix, Judge Kathleen Learned
13 stayed the claims and issued a primary jurisdiction referral to the WUTC seeking answers to two
14 questions: (1) was AT&T or T-Netix an OSP for the service at issue in the Complaint; and (2)
15 was WAC 480-120-141 violated. **ATTACHMENT C.**

16 **C. First Phase of the WUTC Proceeding – 2004 to 2005**

17 Ms. Judd and Ms. Herivel did not commence the primary jurisdiction proceeding
18 at the WUTC until November 2004, after losing their appeal from the dismissals of GTE, US
19 West, and Century Tel. *Judd v. AT&T Co.*, 116 Wash. App. 761, 66 P.3d 1102 (Wash. Ct.
20 App.), *aff'd*, 152 Wash.2d 195, 95 P.3d 337 (2004).

21 Soon after the WUTC proceeding commenced, evidence produced by
22 Complainants demonstrated that every call they received was carried, rated, and billed by one of
23 the three LECs – GTE, US West, or CenturyTel – that had been dismissed from the civil case on
24 the ground that they were exempt from WAC 480-120-141. Specifically, evidence provided by
25

26 ² The dismissal of those three entities – GTE, USWest, and CenturyTel – cannot now be reviewed
and is not the subject of this Petition or the Final Order.

1 Complainants, namely their telephone bills, along with call research conducted by T-Netix and
2 AT&T, showed that every call Complainants received was local or intraLATA. None of those
3 calls was subject to the rate disclosure requirement of WAC 480-120-141. The 1991 version of
4 that rule exempted LECs from its rate disclosure requirements. The amended 1999 version
5 removed this exemption, but GTE, US West, and CenturyTel each obtained timely waivers from
6 the rate disclosure requirement. As such, all calls that these entities carried, which pursuant to
7 contracts with AT&T were limited to local and intraLATA calls, were exempt from WAC 480-
8 120-141. *Judd v. AT&T Co.*, 152 Wash. 2d 195, 95 P.3d 337 (2004).

9 In May 2005, T-Netix filed a Motion for Summary Determination at the WUTC
10 requesting that judgment be entered against Complainants on the ground that they could not have
11 suffered any injury and thus lacked standing. AT&T filed a concurring motion. Both motions
12 were denied by Administrative Law Judge Ann Rendahl of the WUTC in July 2005 on the
13 ground that the WUTC lacks authority to consider the issue of standing in the context of a
14 primary jurisdiction referral that was confined to the two questions set forth by Judge Learned.
15 Order No. 5, Order Denying T-Netix's Motions for Summary Determination and to Stay
16 Discovery, Denying Complainants' Conditional Motion, Denying, in Part, T-Netix's Motion to
17 Strike, Granting AT&T's Motion for Leave to File Response ¶¶ 37, 55, 71, 75 (July 18, 2005)
18 ("Order No. 5") (ATTACHMENT D).

19 In response to the T-Netix motion for summary determination, Complainants
20 attempted to file declarations of two non-parties, Suzanne Elliott and Maureen Janega, who
21 allegedly had received or were aware of long-distance inmate calls and would be added to the
22 civil case as plaintiffs. T-Netix moved to strike those affidavits on the ground that they were an
23 attempt to expand the proceeding beyond the extant civil case and thus could not be considered.
24 ALJ Rendahl agreed, finding that the WUTC lacks authority to add parties to proceedings begun
25 via primary jurisdiction referral, and excluded the Elliott and Janega declarations. Order No. 5
26 ¶¶ 37, 55, 71, 75.

1 T-Netix then returned to the King County Superior Court, in which the underlying
2 civil claims remained stayed, to seek the same relief. The Superior Court lifted the stay, and
3 permitted T-Netix to file a motion for summary judgment. On September 4, 2005, Judge Jeffrey
4 Ramsdell granted T-Netix's motion for summary judgment on the ground that Ms. Judd and Ms.
5 Herivel lack standing. He granted the same relief as to AT&T in a subsequent order.

6 The Washington Court of Appeals reversed those orders on the ground that,
7 during the course of briefing on the motions for summary judgment, a dispute of material fact
8 arose as to the possibility that Ms. Herivel had received one interLATA phone call carried by
9 AT&T that was not exempt from WAC 480-120-141. *Judd v. AT&T Co.*, 136 Wn. App. 1022,
10 2006 Wash. App. LEXIS 2741, slip op. at 6-7 (Dec. 18, 2006) (unpublished). The Washington
11 Supreme Court denied T-Netix's petition for review of the Court of Appeals' decision. *Judd v.*
12 *AT&T*, 162 Wash. 2d 1002, 175 P.3d 1092 (2007).

13 **D. Second Phase of the WUTC Proceeding – 2008 to 2011**

14 In 2008, King County Superior Court ordered the parties to return to the WUTC
15 for resolution of the two questions that Judge Learned had referred to it in 2000. March 21, 2008
16 Order (handwritten notation). Additional discovery took place in the form of interrogatories,
17 requests for production, and depositions. Discovery was limited to the allegations of Ms. Judd
18 and Ms. Herivel. Order 14, Order Granting in Part and Denying in Part Complainants' Motion to
19 Compel, Order Granting in Part and Denying in Part AT&T's Motion to Compel, and Denying
20 T-Netix's Motion for a Protective Order ¶¶ 17, 62-63 (Jan. 9, 2009) ("Order 14")
21 (**ATTACHMENT E**).

22 On April 21, 2010, Administrative Law Judge Marguerite Friedlander issued
23 Order 23, Initial Order Denying in Part AT&T's Amended Motion for Summary Determination
24 and Granting T-Netix's Motion and Amended Motion for Summary Determination (Apr. 21,
25 2010) ("Order 23") (**ATTACHMENT F**). In that Order, ALJ Friedlander held that AT&T acted
26 as the OSP for the calls at issue, because AT&T owned the equipment that it purchased from T-

1 Netix in order to provide telecommunications service at Washington DOC facilities. Order 23 ¶¶
2 134, 144. She did not reach the second question of whether WAC 480-140-121 was violated,
3 noting that “[w]e still have yet to hear evidence on whether AT&T, as the OSP, violated our
4 disclosure regulations.” *Id.* ¶ 129. Accordingly, ALJ Friedlander states in Finding of Fact No. 8
5 that “[t]he parties have not provided sufficient evidence to support a decision as to whether
6 AT&T violated the Commission’s rules governing operator service providers.” *Id.* ¶ 138. For
7 this reason, Order 23 states that the Commission would issue a subsequent procedural order to
8 “address the second question posed by the Superior Court.” *Id.* ¶ 148.

9 On May 11, 2010, AT&T filed a Petition for Administrative Review of Order 23.
10 T-Netix and Complainants opposed the Petition. During the pendency of that petition, the
11 WUTC issued several Bench Requests for additional information, including a Bench Request
12 dated November 30, 2010, as to whether Ms. Herivel had in fact received an interLATA call
13 between August 26, 1997 and January 1, 1999. **ATTACHMENTS G (dated Oct. 6, 2010), H**
14 **(dated Nov. 30, 2010)**. Both T-Netix and AT&T responded that they had no record of any
15 interLATA call to any of Ms. Herivel’s telephone numbers during that time period.

16 **ATTACHMENTS I and J.**

17 On October 10, 2010, in response to a Bench Request issued October 6, 2010,
18 Plaintiffs produced, for the first time, two telephone bills purportedly received by Columbia
19 Legal Services (“Columbia”) that were dated January 10, 2000 and February 10, 2000. Plaintiffs
20 asserted that they intended to seek relief on behalf of Columbia in the underlying civil case. T-
21 Netix moved the WUTC to strike those telephone bills on the ground that, as was the case with
22 the Elliott and Janega declarations, they are outside the scope of the WUTC proceeding. The
23 WUTC denied that motion within the Final Order and considered the Columbia telephone bills as
24 evidence of the conduct that, it found, violated WAC 480-120-141. Final Order ¶¶ 36-38.

1 **VII. REASONS FOR VACATING THE FINAL ORDER IN PART AND**
2 **REMANDING THE PROCEEDING**

3 T-Netix seeks *vacatur* of the Final Order in three respects. First, the WUTC erred
4 and exceeded its authority in accepting and considering the telephone bills of Columbia, a non-
5 party, which are outside the scope of the primary jurisdiction referral. Second, the WUTC erred
6 in stating that the equipment supplied to AT&T was not capable of complying with WAC 480-
7 120-141. Third, the WUTC erred in determining the question whether WAC 480-120-141 was
8 violated, because, as ALJ Friedlander stated, the record has not been developed on that issue.

9 These errors are reversible under RCW 34.05.570(3), which states that courts
10 should invalidate agency decisions that exceed their authority, are not supported by substantial
11 evidence, or are arbitrary and capricious.

12 **A. The WUTC Erred in Accepting and Considering Evidence**
13 **From Columbia, a Non-Party**

14 Since 2005, the WUTC has expressly constrained this case to the allegations of
15 Ms. Judd and Ms. Herivel. Columbia's telephone bills, produced in October 2010, lie far outside
16 that scope. An agency's evidentiary rulings in the context of an adjudication are reviewed by
17 courts under the arbitrary and capricious standard. *Seattle Area Plumbers v. Wash. State*
18 *Apprenticeship & Training Council*, 131 Wash. App. 862, 874-75, 129 P.3d 838, 844-45 (Wash.
19 Ct. App. 2006). Here, the WUTC was both arbitrary and capricious in denying T-Netix's motion
20 to strike the Columbia telephone bills and exceeded its statutory authority by effectively
21 permitting Complainants to add a party to the underlying civil claims. Its decision is reversible
22 for either ground. RCW 34.05.570(3)(b) & (i).

23 In 2005, in Order No. 5 (Attachment E), ALJ Rendahl struck the Elliott and
24 Janega Declarations on the grounds that they were "outside the scope of the Superior Court's
25 primary jurisdiction referral" (§ 55), and that such referrals endow the WUTC with jurisdiction
26 over "only those issues referred to the agency" (§ 35). In January 2009, ALJ Friedlander refused

1 to grant any party the right to demand documents or information that “goes beyond the scope of
2 the two Complainants’ claims.” Order 14 ¶ 17 (Attachment F). She reasoned that permitting
3 discovery of non-parties would effectively certify a class in the underlying action, “effectively
4 removing class certification from the jurisdiction of the Superior Court. *Id.* Thus, for example,
5 Complainants were not entitled to discovery regarding all DOC sites, but rather only the four
6 DOC sites relevant to Ms. Judd’s and Ms. Herivel’s telephone bills. It is telling that the WUTC
7 ignored this precedent when it accepted the Columbia telephone bills and denied T-Netix’s
8 motion to strike. *See* Final Order ¶¶ 38-39.

9 Columbia is not a party to the underlying civil claims and its allegations were
10 never, and would not have been, considered by the WUTC. It was thus error for the WUTC to
11 accept Columbia’s telephone bills into evidence when determining whether, within the scope of
12 the Complainants’ claims, AT&T or T-Netix was an OSP. In fact, it was an error in two
13 independent respects. First, the WUTC reversed its prior decisions on this point without
14 explaining or even acknowledging that change. Such action is arbitrary and capricious and
15 warrants reversal. *E.g., Saben v. Skagit County*, 136 Wash. App. 869, 878, 152 P.3d 1034, 1038
16 (Wash. Ct. App. 2006) (reversal county decision that included “a remarkable series of mind
17 changes”); *see also* RCW 34.05.570(3)(i).

18 Secondly, the WUTC exceeded its authority by effectively permitting
19 Complainants to add a party to this proceeding, thus usurping the Superior Court’s continued
20 jurisdiction over the underlying civil claims. *E.g., Chaney v. Fetterly*, 100 Wash. App. 140, 148,
21 995 P.2d 1284, 1289 (Wash. Ct. App. 2000) (primary jurisdiction referral ““does not deprive the
22 court of jurisdiction””) (quoting *City of Ellensburg v. King Videocable Co.*, 80 Wash. App. 901,
23 905, 912 P.2d 506, 508 (Wash. Ct. App. 1996)). An agency action that exceeds its authority
24 “must be declared invalid.” *Washington Indep. Tel. Ass’n v. Telecomms. Ratepayers Ass’n for*
25 *Cost-Based and Equitable Rates (TRACER)*, 75 Wash. App. 356, 363, 880 P.2d 50, 55 (Wash.
26 Ct. App. 1994) (affirming reversal of WUTC rule creating Community Calling Fund); *see also*

1 RCW 34.05.570(3)(b).

2 For these reasons, the Court should vacate Paragraphs 36 through 38 and
3 Paragraph 43 of the Final Order in which the WUTC erroneously accepted and relied upon the
4 telephone bills of non-party Columbia Legal Services.

5 **B. The WUTC Erred in Suggesting That the P-III Platform Was**
6 **Not Capable of Providing the Disclosures Required by WAC**
7 **480-120-141**

8 The Final Order lacks support for its suggestion that the P-III was not capable of
9 enabling compliance with WAC 480-120-141. It states that the P-III platform “was not able to
10 receive a consumer request and provide a rate quote” as WAC 480-120-141 required. Final
11 Order ¶ 58. Agency decisions not supported by substantial evidence should be reversed. RCW
12 34.05.570(3)(e); *see also Wilson v. Emp’t Sec. Dept. of State of Wash.*, 87 Wash. App. 197, 200-
13 201, 940 P.3d 269, 271-72 (Wash. Ct. App. 1997) (reversing denial of unemployment
14 compensation).

15 The state of the record with regard to the question whether the equipment
16 purchased by AT&T could comply with WAC 480-120-141 is decidedly incomplete. As stated
17 above, ALJ Friedlander expressly refused to reach the issue of whether and how rate disclosures
18 were made – the second of the two primary jurisdiction referral questions – because “[w]e still
19 have yet to hear evidence on whether AT&T, as the OSP, violated our disclosure regulations.”
20 Final Order ¶ 129. The Commission was to have begun a second phase of the proceeding in
21 order to “address the second question posed by the Superior Court.” *Id.* ¶ 148.

22 At this time, the stipulated record before the WUTC includes evidence that the
23 equipment T-Netix sold to AT&T under the 1997 contract was capable of providing rate quotes.
24 This evidence includes communications between T-Netix and other companies as to the P-III
25 platform’s capability. Ex. A-40 (designated Confidential).³

26 ³ All Exhibits will be supplied when the WUTC forwards the record in accordance with Court
procedure. RCW 34.05.566. T-Netix will request that the Protective Order in place in the WUTC
proceeding be equally applied in the context of this appeal. T-Netix further notes that the WUTC relied

1 The stipulated record before the WUTC also includes deposition testimony
2 demonstrating that the P-III platform is built to enable audible rate disclosures. Ex. A-21HC,
3 Deposition of Robert Rae at 221:13-222:2, 240:24-241:1, 246:19-25 (Aug. 6, 2009) (designated
4 Highly Confidential);⁴ Ex. A-23, Deposition of Scott Passe at 174:3-175:13 (Apr. 15, 2009).

5 The Final Order disregards all of these stipulated exhibits and reaches a broad
6 conclusion that is not supported by the record. It was not shown in this case that the P-III was
7 technologically incapable of complying with WAC 480-120-141. The WUTC thus erred in
8 stating that the P-III “was not able to receive a consumer request and provide a rate quote,” Final
9 Order ¶ 58, and should be reversed on that point. RCW 34.05.570(3)(e); *see also Wilson*, 87
10 Wash. App. at 200-201, 940 P.3d at 271-72.

11 **C. The WUTC Erred in Concluding That WAC 480-120-141 Was**
12 **Violated**

13 The Final Order also lacks support for its conclusion that rate disclosures were not
14 provided in violation of WAC 480-120-141. As such, it is not supported by substantial evidence
15 and should be reversed on this point. RCW 34.05.570(3)(e); *see also Wilson*, 87 Wash. App. at
16 200-201, 940 P.3d at 271-72.

17 **1. Complainants received calls for which no rate**
18 **disclosure was required.**

19 The underlying dispute began based on allegations by Ms. Judd and Ms. Herivel
20 that they received inmate-initiated collect calls and did not hear or obtain any rate disclosures. It
21 has been demonstrated, however, that neither Ms. Judd nor Ms. Herivel were entitled to hear
22 such disclosures, because all of the calls they received, for which any record exists, were exempt
23 from WAC 480-120-141. As to non-party Columbia, counsel submitted only the two telephone

24
25 upon Confidential and Highly Confidential documents in the Final Order, which is public, and in
26 describing herein the WUTC’s reliance on those documents T-Netix does not waive its request for
confidential treatment of those documents.

⁴ Mr. Rae was the former Executive Vice President of Operations for Securus
Technologies, Inc., the parent of T-Netix, until May 2009.

1 bills. Thus, there is no testimonial evidence in the record from a called party stating that
2 disclosures were not provided on calls that were subject to WAC 480-120-141.

3 **2. The record does not support a finding that rate**
4 **disclosures were not provided.**

5 The record also lacks sufficient documentary evidentiary on the question whether
6 WAC 480-120-141 was violated. In Order 23, ALJ Friedlander stated that “[t]he parties have
7 not provided sufficient evidence to support a decision as to whether AT&T violated the
8 Commission’s rules governing operator service providers.” Order 23 ¶ 138. She stated that the
9 case would proceed to a second phase “to address the second question posed by the Superior
10 Court.” *Id.* ¶ 148.⁵

11 The full WUTC inexplicably decided to both reach and decide this second
12 question despite the dearth of evidence in the record. Though additional Bench Requests were
13 issued during the WUTC’s review of Order 23, those requests did not probe the question of
14 whether or what kind of rate disclosures were made from the four DOC facilities at issue.
15 Rather, they centered on the role that T-Netix played in the provision of inmate
16 telecommunications service from those four sites, and a final showing of the calls for which Ms.
17 Judd and Ms. Herivel seek relief. Attachments G and H. In other words, the WUTC did nothing
18 to cure the fact that the record simply did not allow a determination of the question whether
19 WAC 480-120-141 was violated.

20 The Final Order nonetheless plunged forward to this question. It relied on two
21 affidavits that were filed in July and August 2005, when discovery had barely begun and which
22 were submitted on the issue of what are the functions of an OSP. Final Order ¶ 56 (citing Ex. A-
23 20HC ¶ 14 (designated Highly Confidential), Ex. A-19HC ¶ 18 (designated Highly

24 ⁵ T-Netix is aware that, as a matter of law, the findings of an ALJ do not supplant the findings of
25 the WUTC for purposes of appeal. *E.g., Valentine v. Dept. of Licensing*, 77 Wash. App. 838, 844, 894
26 P.2d 1352, 1356 (Wash. Ct. App. 1995). ALJ Friedlander’s statements, however, make clear that as
presiding officer she had not conducted the proceeding in a manner that would answer both primary
jurisdiction referral questions at once.

1 Confidential)). The first affidavit is from Alan Schott who acted as T-Netix's testifying expert.
2 The stated purpose of his affidavit was to demonstrate that T-Netix was not an OSP. Mr. Schott
3 was among the persons who invented the P-III technology. He explained how an inmate-
4 initiated call is placed, and the functions that the P-III platform performs in establishing a
5 completed call.⁶ The affidavit was submitted in support of T-Netix's motion for summary
6 determination, based on lack of standing, which was granted in amended form in the Final Order.

7 Despite the inapposite nature of the Schott Affidavit, the Final Order relies on it
8 for the proposition that "the detailed call flow" in that affidavit does not include "any indication
9 that either the inmate or the party receiving the call was notified of the ability to obtain a quote
10 of the rates or charges for that call." Final Order ¶ 56. In other words, it credits an *omission* of a
11 statement as if it were an affirmative *admission* that rate quotes were not possible. And it uses
12 an affidavit focused solely on demonstrating what is an OSP (the first primary jurisdiction
13 question) as a statement about the provision of rate quotes (the second primary jurisdiction
14 question). That misplaced reliance on the Schott Affidavit is arbitrary and capricious and should
15 be reversed. *Seattle Area Plumbers*, 131 Wash. App. at 874-75, 129 P.3d at 844-45.

16 The second affidavit on which the Final Order relies is the affidavit of
17 Complainants' testifying expert filed in August 2005 in response to the T-Netix motion. Based
18 on the Schott Affidavit from July 2005, and without having inspected any T-Netix equipment or
19 seen an expert report, Complainants' expert opined that the P-III platform was not capable of
20 providing rate quotes. That statement lacks any foundation, and the WUTC's reliance upon it
21 constitutes reversible error as an arbitrary and capricious evidentiary ruling. *Seattle Area*
22 *Plumbers*, 131 Wash. App. at 874-75, 129 P.3d at 844-45.

23 The Final Order then cites to one piece of correspondence between AT&T and T-
24 Netix that, it purports, "confirms" that rate disclosures were not being made from the four DOC
25 facilities at issue. Final Order ¶ 56 (citing Ex. C-4C (designated Confidential)). It again ignores
26

⁶ Mr. Rae adopted Mr. Schott's statements by declaration dated August 5, 2009. Ex. T-19.

1 the deposition testimony of Messrs. Rae and Passe. Exs. A-21HC and A-23. It also ignores other
2 stipulated exhibits indicating that disclosures were taking place. Bench Ex. 4 (T-Netix Response
3 to Bench Request No. 4); Ex. A-39, Deposition of Alice Clements at 231:23-232:8 (Apr. 23,
4 2009); Ex. A-40C (e-mail correspondence) (designated Confidential); Ex. A-44C (e-mail
5 correspondence) (designated Confidential).

6 The record, though entirely undeveloped, thus strongly suggests at this time that
7 WAC 480-120-141 was in fact not violated. At a minimum, the record does not prove any
8 violation. Many more documents in record support a finding of no violation than do the two
9 documents on which the Final Order relies to find a violation. Moreover, the adjudication had
10 not even reached that question yet. Final Order ¶¶ 129, 138, 145. The WUTC's conclusion is
11 simply not supported by substantial evidence as it is required to be. RCW 34.05.570(3)(e); *see*
12 *also Wilson*, 87 Wash. App. at 200-201, 940 P.3d at 271-72. The WUTC thus erred in both
13 resolving this issue without a useable record and in holding that violations of WAC 480-120-141
14 occurred.

15 For these reasons, the Court should vacate Paragraphs 53 through 60, Paragraph
16 70, and Paragraphs 78 and 79 of the Final Order and declare them invalid. In addition, the Court
17 should remand the proceeding to the WUTC for resolution of the question whether WAC 480-
18 120-141 was violated.

19 **VIII. REQUEST FOR RELIEF**

20 For the reasons stated herein, the Court should:

- 21 (1) Vacate and declare invalid Paragraphs 36 through 38 and
22 Paragraph 43 of the Final Order in which the WUTC erroneously accepted and relied
23 upon the telephone bills of non-party Columbia Legal Services;
- 24 (2) Vacate and declare invalid the statement in Paragraph 58 that the
25 P-III platform was not capable of providing the rate disclosures required by WAC 480-
26 120-141;

1 (3) Vacate and declare invalid Paragraphs 53 through 60, Paragraph
2 70, and Paragraphs 78 and 79 of the Final Order concluding that WAC 480-120-141 was
3 violated; and

4 (4) Remand this proceeding to the WUTC for resolution of the
5 question whether WAC 480-120-141 was violated as requested by the Superior Court's
6 primary jurisdiction referrals in 2000 and 2008.

7 RESPECTFULLY SUBMITTED this 29th day of April, 2011

8
9 T-NETIX, INC

10
11 By: 

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EXPEDITE
 No Hearing Set
 Hearing is Set

Date: _____
Time: _____
Judge/Calendar _____

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY**

T-NETIX, INC., a Delaware corporation

Petitioner,

No. 11-_____

v.

CERTIFICATE OF SERVICE

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Respondent

I hereby certify that I have this 29th day of April, 2011, served a true and correct copy of T-Netix, Inc. Petition for Judicial Review and Declaratory Judgment upon the parties listed below, via the methods noted below, properly addressed as follows:

Jeffrey D. Goltz
Chairman
Washington Utilities and Transportation
Commission
1300 S Evergreen Park Dr SW
Olympia WA 98504

- Hand Delivered
- U.S. Mail (first-class, postage prepaid)
- Overnight Mail (UPS)
- Facsimile
- Email (jgoltz@wutc.wa.gov)

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 29th day of April, 2011, at Seattle, Washington.

S. Carpenter