

FILED  
SUPERIOR COURT  
THURSTON COUNTY, WASH

12 FEB -2 PM 4:47

BETTY J. GOULD, CLERK

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EXPEDITE  
(if filing within 5 court days of hearing)  
 Hearing is set:  
Date: February 2, 2012  
Time: 1:30 pm.  
Judge/Calendar: Hon. Paula Casey

IN THE SUPERIOR COURT OF WASHINGTON  
FOR THURSTON COUNTY

AT&T COMMUNICATIONS OF THE  
PACIFIC NORTHWEST, INC.,

Petitioner,

v.

WASHINGTON STATE UTILITIES AND  
TRANSPORTATION COMMISSION,

Respondent,

and

SANDY JUDD and TARA HERIVEL

Intervenors,

and

T-NETIX, INC.,

Interested Party.

NO. 11-2-00992-8

and

NO. 11-2-00998-7

~~PROPOSED~~  
ORDER ON PETITIONS FOR REVIEW

T-NETIX, INC., a Delaware corporation,

Petitioner,

v.

WASHINGTON STATE UTILITIES AND  
TRANSPORTATION COMMISSION,

Respondent.

## I. BACKGROUND

1 The King County Superior Court in *Judd, et al., v. AT&T, et al.*, Case No. 00-2-17565-5  
2 (SEA) referred two questions to the Washington Utilities and Transportation Commission  
3 ("WUTC") under the doctrine of primary jurisdiction. The court requested the WUTC to  
4 determine: (1) whether AT&T and T-Netix were Operator Service Providers for inmate-initiated  
5 collect telephone calls from Washington Department of Corrections facilities ("the First  
6 Question"); and (2) If so, whether WAC 480-120-141 was violated in connection with those calls  
7 ("the Second Question").

8 The Commission answered those questions in Final Order Number 25. The Commission  
9 responded that AT&T was the Operator Service Provider and that it had violated WAC 480-120-  
10 141.

11 AT&T filed a petition in this court (No. 11-2-00992-8) to vacate both of those  
12 conclusions. T-Netix filed a petition in this court (No. 11-2-00998-7) to vacate the  
13 Commission's findings that WAC 480-120-141 had been violated, that the T-Netix equipment  
14 was not capable of providing rate quotes, and to challenge the admission into evidence of  
15 telephone bills that were considered by the Commission. Sandra Judd and Tara Herivel were  
16 permitted to intervene to oppose both petitions. T-Netix was permitted to intervene to oppose  
17 AT&T's petition on the issue of whether AT&T was an Operator Service Provider.

18 The petitions were later consolidated for consideration in one proceeding.

## 19 II. PROCEEDINGS BEFORE THIS COURT

20 This court considered the petitions filed by AT&T and T-Netix on December 9, 2011.  
21 The court received the full record of proceedings from the WUTC and considered the following  
22 submissions from the parties:

- 23 1. AT&T Petition for Judicial Review of Administrative Agency Decision and for  
24 Declaratory Relief;
- 25 2. T-Netix Petition for Judicial Review and Declaratory Judgment;
- 26

- 1           3.     AT&T's Opening Brief in Support of Its Petition for Judicial Review, including  
2 Appendix and Exhibits A-I;  
3           4.     Petitioner's Brief of T-Netix, Inc.;
- 4           5.     Intervenors' Response to AT&T's Petition for APA Review;  
5           6.     Intervenors' Response to T-Netix's Petition for APA Review;  
6           7.     Declaration of Chris R. Youtz In Opposition to Petitions for Judicial Review;  
7           8.     Washington Utilities and Transportation Commission's Combined Response Brief  
8 to Opening Briefs of AT&T and T-Netix;
- 9           9.     Intervenor's Brief of T-Netix;  
10          10.    AT&T's Reply in Support of Its Petition for Judicial Review;  
11          11.    Petitioner's Reply Brief of T-Netix, Inc.; and  
12          12.    Declaration of Arthur A. Butler In Support of Petitioner's Reply Brief of T-Netix,

13 Inc. *13. AT&T's demonstrative exhibits presented at oral argument,*

14 The court also considered the oral arguments of the parties.

### 15 III. RULING

16 ~~The Court rules that the~~ WUTC's response to the First Question, that AT&T was the  
17 Operator Service Provider, ~~and all related findings,~~ is affirmed.

18 The WUTC's conclusion that AT&T is not entitled to invoke the exemption of LECs  
19 from the definition of an Alternate Operator Services Company (the predecessor term for an  
20 Operator Service Provider) in WAC 480-120-021 (1991) for collect calls from inmates at the  
21 DOC Facilities between June 20, 1996, and December 31, 2000 is affirmed.

22 ~~The~~ With respect to the Second Question regarding whether WAC 480-120-141 was violated,  
23 the Court finds that the parties were not provided the full opportunity to present evidence on that  
24 issue and this matter is set aside and remanded to the WUTC to receive additional evidence, ~~on  
25 that issue and reconsider its response to the Second Question.~~


1 The Commission's statement in Paragraph 58 of the Final Order No. 25 that the T-Netix  
2 P-III equipment "was not able to receive a consumer request and provide a rate quote" is set  
3 aside and remanded to the WUTC.

4 The Commission's decision to admit into evidence telephone bills from Columbia Legal  
5 Services is affirmed.

6 Unless otherwise provided in this order, all findings of fact, conclusions of law, and  
7 rulings made by the Commission are affirmed.

8 No evidence outside of the record was considered in reaching this decision.

9 DATED: February 7, 2012.

10 

11 Paula Casey  
12 Superior Court Judge

13 Presented by:

14 ATER WYNNE LLP

15 /s/ Arthur A. Butler

16 Arthur A. Butler, WSBA # 04678

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24 1050 Connecticut Avenue, NW

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Attorneys for T-Netix, Inc.

\* Admitted pro hac vice by order dated June 3, 2011

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

AT&T COMMUNICATIONS OF THE  
PACIFIC NORTHWEST, INC,  
Appellant,

v.

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,  
Respondent,

SANDY JUDD and TARA HERIVAL,  
Intervenors/Repondents,

and

T-NETIX, INC.,

Interested party.

No. 42966-7-II

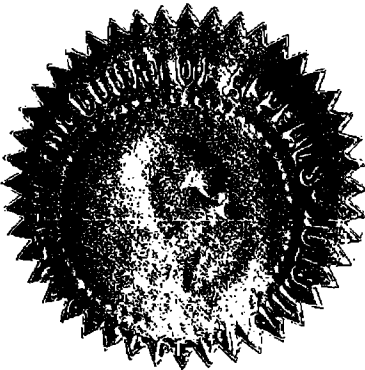
MANDATE

Thurston County Cause No.  
11-2-00992-8

FILED  
SUPERIOR COURT  
THURSTON COUNTY, WA  
2013 MAY 13 AM 9:53  
BETTY J. GOULD, CLERK

The State of Washington to: The Superior Court of the State of Washington  
in and for Thurston County

This is to certify that the Court of Appeals of the State of Washington, Division II,  
entered an Order Dismissing Appeal in the above entitled case on April 4, 2013. This Order  
became the final decision terminating review of this court on May 7, 2013. Accordingly, this  
cause is mandated to the Superior Court from which the appeal was taken for further proceedings  
in accordance with the determination of that court.



IN TESTIMONY WHEREOF, I have  
hereunto set my hand and affixed the  
seal of said Court at Tacoma, this  
10<sup>th</sup> day of May, 2013.

*[Signature]*  
Clerk of the Court of Appeals,  
State of Washington, Div. II

cc:

Judith S. Roth  
Bradford J Axel  
Charles H.R. Peters  
Leah Ward Sears  
Chris Robert Youtz  
David C. Scott  
Gregory J. Trautman  
Richard E. Spoonemore  
David W. Carpenter  
Kelly Twiss Noonan  
Arthur Allan Butler  
Joseph R. Guerra  
Duncan Calvert Turner  
Stephen J. Kennedy  
Stephanie A. Joyce

FILED  
COURT OF APPEALS  
DIVISION II

2013 APR -4 PM 4: 37

STATE OF WASHINGTON

BY Cm  
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

AT&T COMMUNICATIONS OF THE  
PACIFIC NORTHWEST, INC.,

Appellant,

v.

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Respondent,

SANDY JUDD and TARA HERIVEL,

Intervenors/Respondents, and

T-NETIX, INC.,

Interested Party.

No. 42966-7-II

ORDER DISMISSING APPEAL

On March 22, 2013, the court asked the parties to supplement their briefing to more fully address the Washington Utilities and Transportation Commission's final order. The parties submitted the requested briefing on April 2. Simultaneous to filing its supplemental brief, AT&T requested that the court grant it leave to file an Appendix, pursuant to RAP 10.3(a)(8). The court grants AT&T's request.

Having reviewed the Appendix, it is clear that the parties have agreed to settle this case in King County Superior Court. In result, there is no live case or controversy for this court to

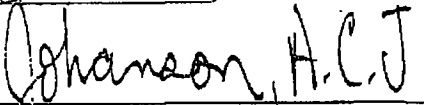
No. 42966-7-II

decide related to either Respondent in this appeal (Judd/Herivel and the WUTC). Any other matter related to the defendants in the underlying suit (AT&T and T-Netix) is not yet ripe for review. Accordingly, this matter is no longer properly before this court and we dismiss the appeal. RAP 7.3.

On April 2, T-Netix filed an emergency motion for substitution of counsel for oral argument on April 8. Having dismissed this appeal, oral argument is no longer necessary and T-Netix need not provide substitute counsel.

**IT IS SO ORDERED.**

DATED this 4<sup>th</sup> day of April, 2013.



ACTING CHIEF JUDGE



SUPERIOR COURT  
THURSTON COUNTY, WA

2014 MAR 20 AM 11:26

BETTY J. GOULD, CLERK

Court of Appeals,  
Division II  
950 Broadway, Ste 300  
Tacoma, Wa 98402  
(253) 593-2970

Date 3/19/14

Case Name QTE Communications v. WA Utilities  
and Transport Commission

COA# 42966-7-II

MANDATED: 5/10/13

Exhibits Returned to County Thurston

County Cause Number: 11-2-00992-8

Exhibit(s) Numbers Administrative Record  
3 Boxes

00176064

UPON RECEIPT OF EXHIBITS, PLEASE  
RETURN YELLOW COPY

Acknowledge Receipt [Signature]  
(County Clerks Office)

WHITE-"Customer Copy"      YELLOW-"Return Receipt"      PINK-"File Copy"