

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SANDY JUDD, et al.,
Complainant,

v.

AT&T Communication of the Pacific Northwest,
Inc. and T-Netix, Inc.

Respondents

Docket No. UT-042022

Oral Argument Requested

NOTICE OF FILING

TO: Counsel of Record Listed on Certificate of Service

PLEASE TAKE NOTICE that on Friday, May 6, 2005, AT&T caused to be filed with the Executive Secretary of the Washington Utilities and Transportation Commission, AT&T's Response Joining in T-Netix's Motions for Summary Determination and to Stay Discovery in the above-referenced proceeding, a copy of which is attached hereto and served upon you.

Dated: May 6, 2005

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

By: /s/ Letty S.D. Friesen (by David C. Scott)

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**AT&T'S RESPONSE JOINING IN T-NETIX'S MOTIONS
FOR SUMMARY DETERMINATION AND TO STAY DISCOVERY**

1. Respondent AT&T Communications of the Pacific Northwest, Inc. ("AT&T"), pursuant to the Notice of Opportunity to Respond issued by the Commission on April 25, 2005, hereby joins in the Motion for Summary Determination and the Motion to Stay Discovery filed by Respondent T-Netix, Inc. ("T-Netix").

Introduction

2. In its Motion for Summary Determination, T-Netix demonstrates that Complainants have no standing to pursue their claims before this Commission. Complainants' lack of standing is even more striking and the basis for dismissal even more powerful when the data compiled by T-Netix is applied to Complainants' claims against AT&T. In addition to T-Netix's argument that all of the prison calls complained of were carried by local exchange carriers ("LECs") that had obtained waivers or exemptions precluding liability, all of these calls were local or intraLATA calls, which cannot form the basis for a claim against AT&T because the contracts at issue explicitly make such calls the responsibility of entities other than AT&T and because such calls never even touched AT&T's network or implicated AT&T's rates. Accordingly, the Commission should find that Complainants lack standing to pursue a claim against AT&T.

3. Similarly, the reasons for staying discovery in light of Complainants' lack of standing, as laid out in T-Netix's Motion to Stay Discovery, also apply even more forcefully to AT&T's situation.

Argument

T-Netix's Motion for Summary Determination

4. This proceeding arises from Complainants' allegations that several telecommunications companies failed to provide the required rate information to individuals receiving calls from Washington state prisons since June 20, 1996. *See* AT&T's Mot. for Summ. Determ., Ex. 1.¹ The specific issue before the Commission is whether AT&T is "considered by the agency to be an [Operator Service Provider ("OSP")] under the contracts at issue and if so, if the regulations have been violated." AT&T's Mot. for Summ. Determ., Ex. 2. An OSP is defined as the party "providing the connection to intrastate or interstate long-distance or local service from locations of call aggregators." *See* AT&T's Mot. for Summ. Determ. at ¶¶ 5-8.

5. Complainants lack standing to pursue their claims unless they can establish (1) that they have suffered an injury in fact or (2) that they fall within the zone of interest of the regulation at issue in this proceeding. *Stevens v. Rosario Utils.*, WUTC Docket No. UW-011320, Third Supp. Order at 19, 2002 WL 31730489, at *13 (July 12, 2002). Complainants cannot satisfy either requirement with respect to their claims against AT&T.

6. As demonstrated in T-Netix's Motion for Summary Determination, Complainants have not suffered an injury in fact — certainly no injury arising from any conduct by AT&T:

¹ Indeed, the data compiled by T-Netix reinforces the arguments AT&T asserted in its own Motion for Summary Determination that AT&T is not an Operator Service Provider ("OSP"), which is also pending before the Commission. In addition to joining in T-Netix's motions, AT&T incorporates and reasserts the arguments from its own motion as an independent basis for dismissing Complainants' claims against AT&T.

- All of the prison calls at issue originated from McNeil Island Detention Center, Airway Heights Correctional Center, and Washington State Reformatory in Monroe. *See* T-Netix’s Mot. for Summ. Determin. at ¶ 16.
 - In addition, all of the prison calls at issue were local or intraLATA calls. *See id.* at ¶¶ 18-19 (and charts).
 - Under the contracts governing the prison calls at issue in this proceeding, US West Communications, n.k.a. Qwest Corporation (“US West”) was responsible for providing service to McNeil Island Detention Center and Airway Heights Correctional Center and GTE Northwest Inc., n.k.a. Verizon Northwest Inc. (“GTE”) was responsible for providing service to Washington State Reformatory in Monroe. *See id.* at ¶ 17.
 - Therefore, all of the prison calls at issue were the responsibility of US West and GTE. *See id.* at ¶ 20.
 - US West and GTE obtained waivers or exemptions from the required rate disclosure for prison calls. *See id.*
 - Accordingly, Complainants were not entitled to rate information for the prison calls at issue, and as a result they suffered no injury in fact. *See id.* at ¶¶ 20-21.²
7. By the same token, Complainants do not fall within the zone of interest of the

regulation at issue because they were owed no duty of rate disclosure. *See id.* at ¶¶ 22-23.

8. The logic of T-Netix’s Motion for Summary Determination applies equally, if not more forcefully, to Complainants’ claims against AT&T because the contracts at issue explicitly make local and intraLATA prison calls the responsibility of entities other than AT&T and because such calls never touched AT&T’s network.

9. First, AT&T’s contract with the Washington Department of Corrections explicitly provides that the three LECs — US West, GTE, and PTI — “shall . . . provide local and intraLATA telephone service and operator service” at the specified prisons. AT&T’s Mot. for

² T-Netix also identified intraLATA prison calls that originated from a phone at Clallam Bay Corrections Center in July of 1996, during which time Telephone Utilities of Washington, Inc., d.b.a. PTI Communications (“PTI”) was responsible for providing service at that prison. *See* T-Netix’s Mot. for Summ. Determin. at 8 n.2. Because PTI, like US West and GTE, had obtained a waiver or exemption from the required rate disclosure, Complainants were not entitled to rate information for calls originating from Clallam Bay Corrections Center either, and therefore they suffered no injury in fact related to these prison calls. *See id.* at ¶¶ 20-21.

Summ. Determ., Ex. 7 at 2-4. In addition, AT&T's contracts with US West and GTE each explicitly provide that the LEC shall provide the following services: "[d]elivery of interLATA traffic . . . to AT&T's Point of Presence" and "[c]ompletion of all '0+' local and intraLATA calls . . . and all '1+' local and intraLATA calls." *Id.*, Ex. 8 at 2 & Ex. 9 at 2.³

10. Second, the calls originating from the three prisons identified by Complainants never even touched AT&T's network.

AT&T did not and does not own the LEC facilities that connect and transport inmate traffic to AT&T's network. Rather, the LECs carry the traffic, on their own facilities, from the various DOC premises. So, for example, where Ms. Judd . . . received calls at her home in Snohomish from her husband incarcerated at the Washington State Reformatory at Monroe, the calls would only have traversed GTE's network to travel between the Monroe to Snohomish exchanges. Because her calls are intraLATA calls, they were all completed entirely on the LEC network and never touched AT&T's own network.

AT&T's Mot. for Summ. Determ., Ex. 13, Affidavit of Frances M. Gutierrez at ¶ 8.

11. Accordingly, Complainants have no standing to complain about AT&T's conduct because they never received, nor were entitled to receive, any service from AT&T. They received only local and intraLATA calls, while AT&T only provided interLATA service.

12. Although it is clear that Complainants do not have standing to pursue their claims against AT&T, even if they had standing, the data compiled by T-Netix demonstrates that AT&T cannot be the OSP. *See generally* AT&T's Mot. for Summ. Determ. T-Netix's research shows that all of the prison calls at issue were intraLATA or local calls, that never even touched AT&T's network. An OSP is defined as the party "providing the connection to intrastate or interstate long-distance or local service from locations of call aggregators." *See id.* at ¶¶ 5-8.

³ To the extent that calls originating from prisons under PTI's responsibility are at issue here (*see* n.2, *supra*; T-Netix's Mot. for Summ. Determ. at 8 n.2), AT&T's contract with PTI similarly provides that PTI shall provide the following services: "[d]elivery of intraLATA and interLATA traffic . . . to AT&T's Point of Presence" and "[c]ompletion of all '0+' local calls and all sent-paid local calls." AT&T's Mot. for Summ. Determ., Ex. 10 at 2.

AT&T cannot provide that connection if the calls never even make it to AT&T's facilities. Moreover, since these calls never reached AT&T's network, AT&T's rate information never would have even come into play, meaning Complainants' had no reason to expect its disclosure in the first place.

13. For the reasons stated in this Response, AT&T's Motion for Summary Determination, and T-Netix's Motion for Summary Determination, in which AT&T joins,⁴ the Commission should dismiss Complainants' claims against AT&T.

T-Netix's Motion to Stay Discovery

14. As with T-Netix's Motion for Summary Determination, the reasons for staying discovery set forth in T-Netix's Motion to Stay Discovery are even more compelling when applied to AT&T. The burdens of unnecessary discovery are just as real for AT&T as for T-Netix. *See* T-Netix's Mot. to Stay Disc. at ¶ 4. Moreover, as described above, Complainants' lack of standing is even more striking and the basis for dismissal even more powerful when the data compiled by T-Netix is applied to Complainants' claims against AT&T. Moreover, AT&T should not be forced to reveal, unnecessarily, confidential information sought in discovery where the underlying claims that are the basis for the discovery are not legally cognizable claims against AT&T.

15. For the reasons stated herein and in T-Netix's Motion to Stay Discovery, in which AT&T joins, the Commission should issue an order staying discovery until the Commission resolves AT&T's and T-Netix's respective Motions for Summary Determination.

⁴ AT&T disagrees with T-Netix's assertion that "neither Judd nor Herval could have been injured by the calls they received from inmates that involved T-Netix (which could have occurred only during the period of the AT&T/T-Netix subcontract)" because T-Netix provided services related to prison calls prior to its replacement of PTI. T-Netix's Mot. for Summ. Determ. at ¶ 14.

Dated: May 6, 2005

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

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on May 6, 2005, he served the true and correct original, along with the correct number of copies, of the foregoing document upon the WUTC via email and Express Mail (Monday delivery), properly addressed as follows:

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The undersigned, an attorney, further certifies that on May 6, 2005, he served a true and correct copy of the foregoing document upon counsel of record via email and Federal Express (for Monday delivery), properly addressed as follows:

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Dated: May 6, 2005

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