

**Confidential Per Protective Order in WUTC Docket No. UT-042022**

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SANDRA JUDD, et al.,

Complainants,

v.

AT&T COMMUNICATIONS OF THE  
PACIFIC NORTHWEST, INC.; and  
T-NETIX, INC.,

Respondents.

DOCKET NO. UT-042022

**COMPLAINANTS' RESPONSE TO  
T-NETIX, INC.'S MOTION FOR  
SUMMARY DETERMINATION**

**Introduction and Summary**

1. T-Netix's standing argument is predicated on two erroneous assumptions. First, T-Netix assumes that a telephone call is not subject to WUTC rate disclosure requirements as long as an entity that "carried" the call was exempt or obtained a waiver from disclosure requirements. The dispositive question, however, is not who "carried" a call, but rather who provided operator services. If T-Netix was an operator service provider—and the evidence clearly shows that it was, with only the extent of those services in question—then it was required to disclose rates regardless of whether a different company "carried" the call. The regulatory exemption, and any waivers obtained from the Commission, applied only to specific companies. T-Netix cannot "piggyback" on the waivers or exemptions of other

companies by claiming that simply because an exempt company carried a particular call, then all entities involved in the call are exempt.

2. This conclusion flows ineluctably from the regulations that the Commission is charged with interpreting and applying in this proceeding. One of the regulations requires operator service providers to provide real-time rate disclosure to recipients of operator-assisted, collect calls. WAC 480-120-141(2)(b) (1999). Another defines operator service provider as any company that “provid[es] a connection to intrastate or interstate long-distance or to local services from locations of call aggregators” (like prisons). WAC 480-120-021 (1999). T-Netix is and was an operator service provider and does not contend otherwise. It never obtained an exemption or waiver. Under a plain reading of the regulations, it does not matter whether another company was exempt or obtained a waiver as long as T-Netix was providing operator services. What matters is that T-Netix did so and failed to provide rate disclosure until very late in the game – a decade or so after the regulation went into effect.

3. T-Netix’s second erroneous assumption concerns the authority of the Commission to address standing, an issue that has been reserved by the Superior Court. This proceeding was initiated as a result of a primary jurisdiction referral. The Superior Court retained jurisdiction over all issues except the specific, substantive questions it referred to the Commission. The Commission’s jurisdiction in this proceeding is derivative of that of the court. As a matter of law, the Commission cannot reach standing issues that are properly retained by, directed to, and determined by the trial court.

4. Although T-Netix purports to raise standing issues, its motion is more properly characterized as a motion for summary determination on the merits—and a premature one at that. By premising its argument on the mistaken notion that the dispositive issue is who “carried” the calls received by Ms. Judd and Ms. Herivel, T-Netix has staked out a position on the merits. T-Netix ignores the real issues in this proceeding—whether it and/or AT&T provide operator services and whether either failed to provide legally required rate disclosure—and instead has constructed a procedural argument about an issue that is irrelevant to the question referred by the trial court. Put differently, T-Netix’s “standing” theory necessarily assumes that Complainants suffered no injury because T-Netix did not “carry” their inmate calls. Because that premise is based on a mistaken view of the law and how the merits of this case are to be resolved, Complainants’ response begins with a discussion of the merits.

5. Complainants believe that T-Netix’s motion can be disposed of without oral argument.

#### **The Outcome of this Motion**

6. T-Netix’s motion should be denied because its fundamental premise is wrong. The operative question, and the question referred by the trial court, is whether T-Netix provided operator services. Although discovery is in its infancy, the evidence shows clearly that it did. The only question is the extent of those services and the extent of T-Netix’s violation of the regulations.

7. Alternatively, the Commission may either deny or continue T-Netix's motion on the ground that fact questions exist with respect to whether Ms. Judd or Ms. Herivel received calls for which T-Netix provided operator services. *See* Complainants' Response to T-Netix's Motion to Stay Discovery and Complainants' Motion, In the Alternative, for Continuance of T-Netix Motion for Summary Determination. The evidence shows that Ms. Judd and Ms. Herivel received calls from a prison where T-Netix is the operator service provider. Other evidence—and T-Netix's refusal to respond to discovery—raises a multitude of fact questions with respect to when and where T-Netix provided operator services.

8. If the Commission treats T-Netix's motion as raising a pure standing issue, it should decline to reach the issue. Under the primary jurisdiction doctrine, the Commission is limited to answering the questions referred to it. Standing is an issue clearly retained by the trial court.

9. Finally, if the Commission treats T-Netix's motion as raising a pure standing issue *and* it is inclined to reach the merits of that issue *and* it determines that Complainants lack standing, it should permit Complainants to amend their complaint in this proceeding. We submit the declaration of one person who, should the need arise, is ready and willing to serve as a Complainant, and who has been the recipient of dozens of inmate-initiated calls since 1996 from facilities where T-Netix was the operator service provider.

## Statement of Facts

### A. Procedural Background

10. Since at least 1992, private operator service providers (“OSPs”) have provided “0+” operator services on the payphones used by prison inmates incarcerated in Washington. Inmates are required to use the “0+” operator service provider that services the prison from which the call is placed, and may place only collect calls. By statute and regulation<sup>1</sup>, OSPs are required to provide certain disclosures concerning the rates charged on these calls. *See* RCW 80.36.510-30; WAC 480-120-141 (1999). Failure to comply with these laws gives rise to a claim under the Consumer Protection Act, with damages presumed to be \$200 per call plus the cost of the service. RCW 80.36.530.

11. Sandy Judd and Tara Herivel, who received collect calls from prisoners, brought a putative class action in King County Superior Court against T-Netix, AT&T, and others alleging CPA violations arising out of the failure to supply rate disclosures. T-Netix, along with other phone company defendants, argued that the WUTC should

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<sup>1</sup> The relevant regulations have gone through four revisions. The first regulation was issued in 1989. WAC 480-120-141 (1989). It was last amended in 2002 with a 2003 effective date. WAC 480-120-262 (2003). The 1991 regulation was the first to require immediate, real-time rate disclosure by operator service providers. WAC 480-120-141(5)(iii)(a) (1991). Although the 1991 regulation refers to “alternate operator services companies” rather than “operator service providers,” WAC 480-120-021 (1991), the definition of operator services provider has remained the same throughout the relevant time period. The 1999 regulation required automatic rate disclosure activated by pressing keys on the telephone keypad. WAC 480-120-141(2)(b) (1999). The 2003 regulation requires either oral rate disclosure or keypad-activated disclosure, depending on whether the rate exceeds a benchmark. WAC 480-120-262(3).

determine, in the first instance, whether violations of its regulations occurred. The court agreed. Invoking the primary jurisdiction doctrine, the court stayed plaintiffs' CPA claims against T-Netix and AT&T and requested the WUTC to answer specific questions. With respect to T-Netix, the court's referral order stated:

[T]he matter is referred to the Washington Utilities and Transportation Commission (WUTC) for further proceedings to determine if T-Netix has violated WUTC regulations. CPA claims and any award of monetary damages are stayed pending WUTC actions.

\* \* \*

Class action issues are stayed pending WUTC action.

T-Netix Motion, Exh. 1.

**B. T-Netix Provided Operator Services for Inmate Calls.**

12. A telephone call made by an inmate is generally routed as follows:

- An inmate, who may only make a collect call, dials a 0+ telephone number and a unique inmate identifier and passcode. Declaration of Kenneth L. Wilson, ¶ 7.

- The call is connected to a special call processor and inmate call control platform. This platform is designed to provide operator services functions. *Id.*

- The platform performs a variety of functions including: (1) screening the dialed number against a list of prohibited numbers; (2) connecting the call to a LEC or IXC switch by launching a call with the same ten digit dialed number, prefixed with 1+ instead of 0+; (3) asking the inmate to state his or her name; (4) completing the call to the dialed telephone by one or more LEC and/or IXC switches; (5) playing a prerecorded message to a call recipient

stating that they have a call from the inmate and by playing the inmate's recording; (6) giving the recipient of the call the option of either accepting or rejecting the call by pressing a number on the keypad of their phone; (7) connecting the call if accepted by the recipient, or disconnecting the call if rejected; and (8) recording the date, time, originating phone number, terminating phone number, length of call, and distance of call. *Id.*

13. T-Netix provides this inmate operator services platform at certain facilities. The platform provides a "connection"<sup>2</sup> as that term is used in WAC 480-120-021 (1999):

The T-Netix platform provides part of the transmission path for every telephone call made by an inmate. The T-Netix platform provides connection to intrastate and interstate long-distance providers and to local service providers from all correctional facilities where the T-Netix platforms are located. Calls from inmates in correctional institutions can not be made without going through the T-Netix platform. Calls are not connected, except by the platform.

Wilson Decl., ¶ 10. This platform constitutes operator services:

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<sup>2</sup> The regulation defines an OSP as follows:

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Operator Service Provider (OSP) – *any corporation, company, partnership, or person providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators.* The term "operator services" in this rule means *any intrastate telecommunications service provided to a call aggregator location that includes as a component any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telephone call through a method other than (1) automatic completion with billing to the telephone from which the call originated, or (2) completion through an access code used by the consumer with billing to an account previously established by the consumer with the carrier.*

WAC 480-120-021 (1999) (emphasis added).

The T-Netix platform performs operator services functions on each call dialed by an inmate. Specifically, the platform provides automatic assistance to a consumer to arrange for billing and completion of an intrastate telephone call, as specified in the WUTC definition of operator services.

*Id.*, ¶ 9.

14. During the relevant time period<sup>3</sup>, the T-Netix platform did not provide rate disclosures required by statute and regulation. See T-Netix Motion, Exh. 2 (Complaint); Declaration of Maureen Janega; Declaration of Suzanne Elliott. Indeed, T-Netix has never argued that it *did* provide these disclosures.

#### **Statement of Issues**

15. (a) Since 1991, WUTC regulations have required operator service providers to immediately disclose rates to recipients of operator-assisted, collect calls. A company may provide operator services and yet not “carry” the telephone call. Has T-Netix established that Complainants suffered no injuries merely because the calls they received were “carried” by a company other than T-Netix?

(b) Evidence shows that T-Netix provided operator services and failed to disclose rates to consumers of inmate-initiated calls. T-Netix has failed to answer discovery relating to whether, when and where it provided operator services, but evidence indicates that it may have provided operator services on calls received by Complainants. Has T-Netix failed to carry its burden on this motion because issues of

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<sup>3</sup> This lawsuit seeks damages dating back to calls made in 1996. Although recipients of inmate-initiated calls are now receiving rate disclosure, the question of when rate disclosure began is a fact question to be determined in this proceeding.



fact exist with respect to whether Complainants were injured by T-Netix's failure to disclose rates?

(c) Under the primary jurisdiction doctrine, an agency may adjudicate only those questions referred to it by the trial court and may not adjudicate issues that implicate the trial court's jurisdiction. The trial court retains the final say on all issues. Should the Commission entertain T-Netix's standing argument and "dismiss" it on this ground?

### **Evidence Relied Upon**

16. Declaration of Kenneth L. Wilson; Declaration of Maureen Janega; Declaration of Suzanne Elliott; Declaration of Paul Wright; Declaration of Jonathan P. Meier; all exhibits attached to T-Netix's Motion for Summary Determination.

### **Argument**

**A. The relevant question is whether T-Netix "provided a connection," not whether an exempt LEC "carried" a call.**

17. T-Netix assumes that if an entity that "carried" a call or was involved in a specific call is exempt from providing disclosure, then all entities involved in the call may piggyback on that exemption. T-Netix Motion, ¶ 2. In other words, it assumes that specific "calls," rather than the specific entities involved in the call, are exempt from disclosure requirements.

18. From this premise, T-Netix argues that neither complainant suffered an injury in fact. *Id.*, ¶¶ 14-15. Why? Because, it asserts, "[t]hese calls were not required to include rate disclosures." *Id.*, ¶ 15. It makes a similar argument in asserting that

complainants are not “within the zone of interest of WAC 480-120-141” because PTI, GTE and US West “owed no duty to Judd or Herivel under that rule.” *Id.*, ¶ 23.

19. T-Netix asks the wrong questions. The issue is whether T-Netix, not PTI, GTE or US West, owed a duty to Ms. Judd or Ms. Herivel to provide rate disclosures. If the regulations required T-Netix to provide such a disclosure, and it failed to do so, then Complainants have been injured. Indeed, failure to disclose is a *per se* violation of the Consumer Protection Act. *See* RCW 80.36.530.

20. The question of T-Netix’s duty is answered by the regulations. If T-Netix is an OSP, then it was required to provide rate disclosures. WAC 480-120-141(2)(b) (1999). The issue is not who carried the call, but whether T-Netix was an OSP on any of the calls received by Sandy Judd or Tara Herivel. If T-Netix “provided a connection to intrastate or interstate long distance services,” WAC 480-120-021 (1999), then it was obligated to provide the disclosures required by WAC 480-120-141 (1999). Not surprisingly, the question referred to the Commission by the trial court— Did T-Netix violate the regulation?— requires the Commission to determine whether T-Netix was an OSP, not whether calls that Complainants received were “exempt.”

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21. If any of Complainants’ calls were routed through T-Netix’s platform, then T-Netix was the OSP for the call. Wilson Decl., ¶¶ 9-11. As an OSP, T-Netix has an independent obligation to comply with the disclosure regulations.

22. Significantly, *T-Netix never argues that it did not provide operator services for any of the Complainants’ calls.* Although the dispositive question is whether T-Netix provided such services, T-Netix is strikingly silent on this issue,

choosing not to provide a single declaration explaining what it actually did. T-Netix's Senior Vice President for Billing Services has nothing to say on this issue. See Lee Affidavit (Exh. 11 to T-Netix Motion). But an affidavit from an AT&T employee, which T-Netix attaches to its motion, states that T-Netix provided the "operator interface between the called party and the collect call announcement." Gutierrez Aff., ¶ 9 (Exh. 4 to T-Netix Motion).

23. In filings with the WUTC, T-Netix indicates that it was providing "Alternative Operator Services" to correctional institutions. Meier Decl., Exh. F. It describes its services as follows: "T-NETIX Telecommunications Services, Inc. is a resale common carrier providing intrastate communications long distance message toll telephone services, through *automated operator assisted collect calling*, to inmates of correctional institutions for the transmission and reception of communications." *Id.*, Exh. G at TNXWA00606 (emphasis added). It further notes that these "[c]ommunications may originate from any correctional institution within the State of Washington." *Id.* at TNXWA00607.

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The evidence produced to date indicates that T-Netix not only provided a connection to at least five of the facilities where it also provided local service, but it also provided connections in multiple other facilities serviced by LECs. Wilson Decl., ¶ 13.

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25. Paul Wright made numerous calls to both Ms. Judd and Ms. Herivel from the Washington State Reformatory while incarcerated there between 1992 and 2000. Wright Decl., ¶ 2. In addition, Ms. Judd received calls from McNeil Island. T-Netix Motion, Exh. 9. If any of these calls passed through T-Netix's inmate platform, then it breached its duty to Complainants and is liable for damages.

26. Because T-Netix makes no showing that it did not provide operator services for calls received by Complainants, it has failed to carry its burden in this motion. Equally telling is the fact that T-Netix has unilaterally shut down discovery on this, and all other, topics. Meier Decl., ¶¶ 3-9. T-Netix's motion should be denied, and T-Netix should be ordered to cooperate with Complainants' counsel in providing responsive discovery.

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**B. Under the primary jurisdiction doctrine, the Superior Court retained jurisdiction over all issues other than the specific issues referred to the Commission, including standing.**

27. This case came to the Commission as a referral from King County Superior Court under the doctrine of primary jurisdiction. In referring the question of

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<sup>4</sup> (Confidential Per Protective Order in WUTC Docket No. UT-042022)

(continued)

whether T-Netix violated WUTC regulations, the trial court did not relinquish jurisdiction. *Chaney v. Fetterly*, 100 Wn. App. 140, 148, 995 P.2d 1284 (2000). Rather, it stayed proceedings before it, retained jurisdiction over class certification, CPA claims, and damages issues, and referred specific issues to the Commission so that it could avail itself of the agency's expertise. Primary jurisdiction "does not displace the jurisdiction of a court, but merely allocates power between courts and agencies to make *initial* determinations; the court normally retains power to make the *final* decision." *Jaramillo v. Morris*, 50 Wn. App. 822, 828, 750 P.2d 1301 (1988) (emphasis in the original).

28. Those initial determinations are strictly limited to the questions referred to the Commission. See *Dioxin/Organochlorine Center v. Department of Ecology*, 119 Wn.2d 761, 775, 837 P.2d 1007 (1992) (agency's role is to determine "some question or some aspect of some question arising in the proceeding before the court"). This is true even where a party raises a separate issue would normally result in dismissal if the matter had been initiated in the agency. See *International Ass'n of Heat & Frost Insulators and Asbestos Workers v. United Contractors Ass'n, Inc.*, 483 F.2d 384 (3d Cir. 1973). In *United Contractors Association*, the court observed that a primary jurisdiction referral does not invoke the independent jurisdiction of the agency. *Id.* at 401. The

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(continuation)

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lack of an independent jurisdictional base precludes the agency from deciding issues outside the scope of the referral:

A corollary thesis under the doctrine of primary jurisdiction is that the relevant agency's statute of limitation is not applicable in such a judicial certification. This results from the fact that the independent jurisdiction of the agency is not invoked. Rather, *jurisdiction in a referral is derivative from that of the court in which the action is pending. The agency has no power to enter a binding order against the parties because it never acquires independent statutory jurisdiction over the parties.* Consequently, the application of the doctrine is not foreclosed here, even though the Unions did not file this action until the Board's limitation period had possibly expired.

*Id.* (citations omitted) (emphasis added). The situation is analogous to a federal court's certification of a question of state law to the Washington Supreme Court. In that circumstance, the jurisdiction of the Supreme Court is strictly limited to consideration of the question certified. *See Kitsap County v. Allstate Ins. Co.*, 136 Wn.2d 567, 577, 964 P.2d 1173 (1998) (“[T]his court answers only the discrete question that is certified and lacks jurisdiction to go beyond the question presented.”).

29. The derivative nature of an agency's authority under the primary jurisdiction doctrine means that an agency may not determine a question that implicates the trial court's jurisdiction. Standing is one such issue. *See High Tide Seafoods v. State*, 106 Wn.2d 695, 702, 725 P.2d 411 (1986) (“If a plaintiff lacks standing to bring a suit, courts lack jurisdiction to consider it.”). By requesting the Commission to dismiss T-Netix on the ground that Complainants lack standing, T-Netix asks the Commission to decide a question that is necessarily and inextricably bound up in the

trial court's jurisdiction and therefore outside the scope of the primary jurisdiction referral.

30. T-Netix misstates the facts and the law in urging the Commission to act outside its jurisdiction. It gets the facts wrong when it asserts that the trial court "dismissed Complainants' claims against both T-Netix and AT&T" pending a referral to the Commission. T-Netix Motion, ¶ 7. As Exhibit 1 to T-Netix's motion makes clear, the court did not dismiss the action—it stayed plaintiffs' CPA claims, retaining jurisdiction over damages and class action issues.

31. It gets the law wrong when it asserts that, unless the Commission finds that T-Netix violated WUTC regulations, the trial court "will not adjudicate" Complainants' claims against T-Netix. T-Netix Motion, ¶ 24. The Commission's findings and conclusions are not binding on the trial court. *See Jaramillo*, 50 Wn. App. at 828 (trial court retains power to make final determinations). Here, the question of whether T-Netix violated the regulations is merely one theory advanced by Complainants to establish that T-Netix is liable under the Consumer Protection Act—a claim that the trial court expressly reserved for its own determination. *See T-Netix Motion, Exh. 1.*

32. T-Netix further misstates the law when it asserts, without citation, that the Commission's role is to ask: "What relief would the agency provide to this plaintiff?" T-Netix Motion, ¶ 27. In fact, the relief to be given Ms. Judd and Ms. Herivel (and the class they represent once class certification is granted) is an issue to

be determined exclusively by the trial court. The Commission may not “dismiss” T-Netix.

33. T-Netix is correct, of course, when it asserts that the trial court cannot hear a claim for which the plaintiff lacks standing, but it ignores the fact that the trial court necessarily found that the Commission has the authority to consider the question referred to it. *See Jaramillo*, 50 Wn. App. at 828 (trial court must find that agency “has the authority to resolve the issues that would be referred to it by the court” to make primary jurisdiction referral). Under the primary jurisdiction doctrine, an agency may be referred a particular question if it has the statutory authority to resolve the type of question put to it. *See id.* at 830-31. In other words, the Commission has the authority to resolve the question of whether T-Netix violated WUTC regulations because it has adjudicatory powers and because the regulations at issue fall within its statutory authority. *See id.* But that is a different question than whether Complainants have standing to pursue their Consumer Protection Act claim, an issue that necessarily implicates the trial court’s jurisdiction.

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34. T-Netix’s reliance on WUTC orders in the *Stevens* and *United & Informed Citizen Advocates Network* cases (T-Netix Motion, ¶ 13) is misplaced. Neither case involved a primary jurisdiction referral. When the Commission *does* receive such a referral, it has hewed closely to the questions presented. *See, e.g., Washington Exchange Carrier Ass’n v. Localdial Corp.*, WUTC Docket No. UT-031472, Final Order Granting Motions for Summary Determination ¶¶ 1, 13 (June 11, 2004) (sticking to questions



referred by federal district court while expressly declining to address broader legal and policy issues).

35. To the extent T-Netix has a viable standing argument, that argument may be addressed by the trial court when the case resumes there.

**C. Any problems relating to Plaintiffs' standing can be addressed in Superior Court by simple amendment of Plaintiffs' Complaint.**

36. When a standing issue is raised in Superior Court, particularly in the class action context, it typically does not present an insuperable barrier to maintaining the action. Washington courts are empowered to take steps to ensure that class treatment is appropriately rendered in cases seeking class certification. See 3A Lewis H. Orland & Karl B. Tegland, *Washington Practice* at 538 (4<sup>th</sup> ed. 1992). The court can order the creation of subclasses, each with adequate representation, propose an alternative definition of the class such that it would be adequately represented, or permit the plaintiffs to amend their complaint by adding additional class representatives. *Id.* at 366, 538; see *Larson v. Union Inv. & Loan Co.*, 168 Wn. 5, 7, 10 P.2d 557 (1932) (trial court did not err when it permitted plaintiff to amend complaint to add additional plaintiff); *Sokolski v. Trans Union Corp.*, 178 F.R.D. 393, 398 (E.D.N.Y. 1998) (amendment of complaint to include class action was proper under FRCP 15); *Selby v. Principal Mut. Life Ins. Co.*, 197 F.R.D. 48, 64 (S.D.N.Y. 2000) (plaintiffs permitted to amend class action complaint to include additional class representatives).

37. There is no reason for the Commission to interject itself into class action standing issues that are properly resolved at the trial court level.

**D. Even if the Commission were to decide that it had the authority to address Complainants' standing, Complainants are ready and willing to amend their Complaint to cure any such problem.**

38. Although standing issues can and should be addressed by the trial court, Complainants stand ready and willing, if deemed necessary by the Commission, to amend their Complaint in this proceeding by adding a Complainant who is aggrieved by T-Netix's failure to provide rate disclosure. Although T-Netix has carefully avoided saying anything about whether it provided operator services (in either discovery or this motion), the underlying premise of its motion appears to be that if Sandy Judd or Tara Herivel had received calls from one of the prisons that fell under the PTI/CenturyTel contract that T-Netix assumed in 1997, then they would have standing. T-Netix acknowledges it "carried" calls at these facilities. T-Netix Motion, ¶ 10. The facilities are identified in Exhibit 3 (page 1) and Exhibit 8 to T-Netix's Motion. More importantly, T-Netix appears to have been the operator service provider for these facilities. *See* T-Netix Motion, Exh. 4, ¶¶ 9, 11; Wilson Decl., ¶ 13.

39. There is no shortage of people who received inmate calls from these institutions. *See* Janega Decl. (detailing hundreds of calls received from prisons or correctional facilities that T-Netix has acknowledged it serviced). Indeed, one such person has already declared her willingness to serve as an additional Complainant in this proceeding, should the Commission find that necessary. *See* Declaration of Suzanne Elliott. Ms. Elliott explains that, since 1996, she has received dozens of inmate-initiated calls originating from Clallam Bay and the Washington Women's Correctional facilities. *Id.*, ¶¶ 5-7. She notes that, until the last few years, she cannot

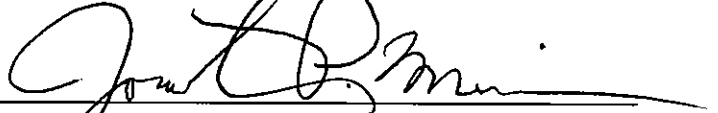
recall hearing any rate disclosure on these calls. *Id.*, ¶ 8. T-Netix does not dispute that it provided services at these facilities. *See* T-Netix Motion, Exh. 8.

**Conclusion**

40. Complainants respectfully request that the Commission deny T-Netix's Motion for Summary Determination.

DATED: May 6, 2005.

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