BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SANDY JUDD, et al.,

Docket No. UT-042022

Complainant,

v.

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

Respondents

AT&T'S ANSWER TO FORMAL COMPLAINT

AT&T Communications of the Pacific Northwest, Inc. ("AT&T") answers the Formal Complaint as follows:

Paragraph 1: This case is a putative class action under Washington's Consumer Protection Act. The lawsuit seeks damages on behalf of a class of persons who accepted collect telephone calls from inmates incarcerated in Washington state prisons. In particular, plaintiffs contend that American Telephone & Telegraph Company (AT&T) and T-Netix, Inc. failed to disclose rates to the recipients of inmate-initiated collect calls, thereby violating WUTC regulations requiring such disclosure. Under state law, a violation of these regulations amounts to a *per se* violation of the Consumer Protection Act.

Answer to Paragraph 1: AT&T denies that any entity known as American Telephone & Telegraph Company currently exists. That entity is now known as AT&T Corp. AT&T admits that Plaintiffs purport to assert a putative class action seeking damages as alleged and other relief, but denies that any valid claim exists. The remaining allegations contained in Paragraph 1 constitute legal conclusions to which no further response is required. To the extent a further answer is required, RCW 80.36.530 speaks for itself.

Paragraph 2: Plaintiffs filed this action in King County Superior Court in the summer of 2000 against five telecommunications companies: GTE Northwest (now Verizon), US West (now Qwest), Centurytel Telephone Utilities, Inc., T-Netix, and AT&T. $E \times h$. \mathcal{A} (First Amended Complaint). All five defendants immediately moved to dismiss the complaint, or, in the alternative, to stay the matter while the WUTC determined whether the companies violated the

Commissions regulations related to rate disclosure. Judge Kathleen Learned dismissed outright three of the five defendants (Verizon, Qwest, and Centurytel).

Answer to Paragraph 2: AT&T admits the allegations contained in Paragraph 2. In further response, AT&T states that Verizon, Qwest and Centurytel delivered traffic from Washington state correctional facilities to AT&T's point of presence. Verizon, Qwest and Centurytel all argued that they should be dismissed because, as local exchange carriers, they were exempt from disclosure obligations until 1999. Verizon and Qwest also argued that the WUTC had waived their obligation to comply with disclosure regulations after 1999, and Centurytel argued that before 1999, it stopped providing service to Washington state prisons when it was replaced by T-Netix. Although AT&T is a registered local exchange carrier in Washington, it did not raise this issue in the state court.

Paragraph 3: Plaintiffs appealed the dismissal of Verizon, Qwest and Centurytel. In the spring of 2003, Division One of the Washington Court of Appeals affirmed the trial court's dismissals. The Washington Supreme Court granted review and, in an opinion issued on July 29, 2004, affirmed the dismissals. *Exh. B.* These three defendants are now completely out of the case.

Answer to Paragraph 3: AT&T admits the allegations contained in Paragraph 3.

Paragraph 4: The two other defendants-AT&T and T-Netix-remain in the case. The trial court invoked the doctrine of primary jurisdiction, referring certain issues to the WUTC and staying further proceedings until the WUTC completes an adjudicative proceeding. The issues are described in detail below and arise solely out of intrastate calls.

Answer to Paragraph 4: AT&T denies that the balance of Plaintiff's Formal Complaint accurately describes the issues, but admits the remaining allegations contained in Paragraph 4.

Paragraph 5: Since at least 1992, the Washington State Department of Corrections has contracted with private operator service providers (OSPs) to provide "0+" operator services on the payphones used by prison inmates. Inmates are required to use the "0+" operator service provider assigned by contract to the prison from which the call is placed, and may place only collect calls.

Answer to Paragraph 5: AT&T admits that since at least 1992, the Washington State Department of Corrections has contracted with private parties to provide telecommunications services including "0+" services on payphones used by inmates. AT&T further admits that inmates are required to use the telecommunications service provider selected or approved by the Department of Corrections and may place only collect calls. Except to the extent admitted, AT&T denies the remaining allegations contained in Paragraph 5.

Paragraph 6: At all times pertinent to this lawsuit, AT&T held an exclusive contract to provide long-distance and operator services to Washington State prisons. *Exh. C (copy* of contract and addenda). AT&T hired various subcontractors to help it carry out its contractual obligations to the Department of Corrections at various prisons. One of these subcontractors was T-Netix.

Answer to Paragraph 6: AT&T admits that at all times pertinent to this lawsuit, AT&T held an exclusive contract to provide certain long distance services to Washington State prisons and that AT&T contracted with other parties, including T-Netix, to carry out its contractual obligations. Except to the extent admitted, AT&T denies the remaining allegations contained in Paragraph 6.

Paragraph 7: Plaintiff Sandy Judd received and paid for many intrastate long-distance collect calls from Washington State prison inmates, most often from her husband, Paul Wright, who was incarcerated in the Washington State Reformatory at Monroe and other Washington prisons.

Answer to Paragraph 7: AT&T is without sufficient information to admit or deny the allegations contained in Paragraph 7.

Paragraph 8: Plaintiff Tara Herivel received and paid for intrastate long-distance collect calls from Washington State prison inmates. Specifically, Ms. Herivel received and paid for phone calls from Paul Wright in connection with articles she published about the prison system.

Answer to Paragraph 8: AT&T is without sufficient information to admit or deny the allegations contained in Paragraph 8.

Paragraph 9: Plaintiffs' claims are based on statutes enacted in 1988 that require companies providing long-distance operator services at public telephones to disclose rates to consumers. RCW 80.36.520 directed the WUTC to issue regulations requiring any company operating as or contracting with an "alternate operator service company" to disclose its identity and the rate charged to a consumer:

The utilities and transportation commission shall by rule require, at a minimum, that any telecommunications company, operating as or contracting with an alternate operator services company, assure appropriate disclosure to consumers of the provision and the rate, charge or fee of services provided by an alternate operator services company.

Answer to Paragraph 9: AT&T admits that Plaintiff's claims rely, in part, on statutes enacted in 1988, but based on the October 10, 2000 Partial Decision on Summary Judgment and Order for Further Briefing of the King County, Washington Superior Court that a cause of action exists only "for violations of the regulations promulgated by the Washington Utilities and Transportation Commission and did not create a cause of action for violations beyond or outside of the regulations," denies that the claims may be "based" on such statutes. The language of RCW 80.36.520 speaks for itself and plaintiffs' characterization of that language constitutes a legal conclusion to which no further response is required. To the extent further response is required, AT&T denies that RCW 80.36.520 directed the WUTC to issue regulations "requiring any company operating as or contracting with an 'alternate operator service company' to disclose its identity and the rate charged to a consumer." Except to the extent admitted, AT&T denies any remaining allegations contained in Paragraph 9.

Paragraph 10: The statute defines "alternate operator services company" (AOS company) to mean "a person providing a connection to intrastate or interstate long-distance services from places including, but not limited to, hotels, motels, hospitals, and customer-owned pay telephones." RCW 80.36.520 (Exh. D). Prisons are among the places covered by the statute. See WAC 480-120-141(2)(b) (1991).

Answer to Paragraph 10: Paragraph 10 contains legal conclusions to which no further response is required. To the extent a further response is required, RCW 80.36.520 and WAC 480-120-141(2)(b), as they existed throughout the relevant time period, speak for themselves.

Paragraph 11: The Legislature sought to give the statute some teeth by making a violation of these provisions a *per se* violation of the Consumer Protection Act. RCW 80.36.530 (Exh. D). Damages are presumed to be \$200 per call plus the cost of the service. Id.

Answer to Paragraph 11: The language of RCW 80.36.530 speaks for itself. AT&T is without sufficient information to admit or deny the remaining allegations contained in Paragraph 11.

Paragraph 12: In 1991, the WUTC issued regulations implementing the disclosure requirements. See WAC 480-120-141 (1991). The regulations contained a slightly different definition of AOS company:

[A]ny corporation, company, partnership or person other than a local exchange company 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 use by the consumer with billing to an account previously established by the consumer with the carrier.

WAC 480-120-021 (1991) (Exh. E).

Answer to Paragraph 12: AT&T admits that in 1991, the WUTC amended WAC 480-120-021 and 480-120-141. The language of 480-120-021, as amended in 1991, speaks for itself. The remaining allegations contained in Paragraph 12 constitute legal conclusions to which no further response is required, but to the extent an additional response is required, AT&T denies the remaining allegations.

Paragraph 13: Consistent with the statute, the regulations required AOS companies to disclose rates for a particular call "immediately, upon request, and at no charge to the consumer." WAC 480-120-141(5)(iii)(a) (1991) (Exh. E). The operator was required to provide "a quote of the rates or charges for the call, including any surcharge." Id.

Answer to Paragraph 13: The language of WAC 480-120-141 speaks for itself. The remaining allegations of Paragraph 13 constitute legal conclusions to which no further response is required.

Paragraph 14: In 1999, the WUTC amended the regulations. Rather than use the term "alternate operator services company," the new regulation tracked federal law and replaced the term AOS company with the term "operator services provider" or OSP. See WAC 480-120-021 (1999) (Exh. F). The substantive definition, however, remained unchanged.

Answer to Paragraph 14: AT&T admits that in 1999, the WUTC amended WAC 480-120-021 and 480-120-141. The language of WAC 480-120-021, as amended in 1999, speaks for itself. The remaining allegations contained in Paragraph 14 constitute legal conclusions to which no further response is required.

Paragraph 15: Disclosure requirements were strengthened in the 1999 regulation. The 1999 rules required automatic rate disclosure that is activated by pressing keys on the telephone keypad:

Before an operator-assisted call from an aggregator location may be connected by a presubscribed OSP, the OSP must verbally advise the consumer how to receive a rate quote, such as by pressing a specific key or keys, but no more than two keys, or by staying on the line ... This rule applies to all calls from pay phones or other aggregator locations, including prison phones

WAC 480-120-141(2)(b) (1999) (Exh. G)

Answer to Paragraph 15: AT&T admits that in 1999, the WUTC amended WAC 480-120-141. The language of 480-120-141, as amended in 1999, speaks for itself. The remaining allegations contained in Paragraph 15 constitute legal conclusions to which no further response is required.

Paragraph 16: The 1999 regulation deleted the exception for "local exchange carriers" in the 1991 regulation. That change should have no effect on issues relating to AT&T or T-Netix, as neither is a local exchange carrier.

Answer to Paragraph 16. AT&T admits that in 1999, the WUTC amended WAC 480-120-141. The language of 480-120-141, as amended in 1999 speaks for itself. AT&T denies that it is not a local exchange carrier. AT&T is without sufficient information to admit or deny whether T-Netix is local exchange carrier. The remaining allegations contained in Paragraph 16 constitute a legal conclusion to which no further response is required.

Paragraph 17: Both the 1991 and 1999 regulations are pertinent to the lawsuit because plaintiffs seek to recover damages for disclosure failures dating back to 1996.

Answer to Paragraph 17: AT&T admits the plaintiffs seek to recover damages and other relief for alleged disclosure failures dating back to 1996, but denies that they are entitled to such relief. The remaining allegations contained in Paragraph 17 constitute legal conclusions to which no further response is required.

Paragraph 18: With regard to AT&T, the specific question to be determined by the WUTC is this: "[W]hether or not they [AT&T] are considered by the agency to be an OSP under the contracts at issue herein and if so if the regulations have been violated." *Exh. H.* In its order referring this issue to the WUTC, the trial court added that it retained jurisdiction over plaintiffs' Consumer Protection Act claim and that "class and damages issues" were stayed pending a decision from the WUTC. Id.

Answer to Paragraph 18: AT&T admits that in its November 8, 2000 Order, the court dismissed the claims against AT&T premised on nondisclosure of interstate long distance rates and referred Plaintiffs' claims against AT&T "premised on nondisclosure of intrastate long distance rates . . . to the Washington Utilities and Transportation Commission under the primary jurisdiction doctrine for resolution in the first instance, of whether or not they are considered by the agency to be an OSP under the contracts at issue herein and if so if the regulations have been

violated. CPA, class and damage issues are stayed pending WUTC action." Except to the extent admitted, AT&T denies the remaining allegations contained in Paragraph 18.

Paragraph 19: With regard to T-Netix, the court asked the WUTC "to determine if T-Netix has violated WUTC regulations." *Exh. I.* As with AT&T, the court stayed plaintiffs' Consumer Protection Act claims and class and damages issues. *Id.* While the court's request that the WUTC determine whether T-Netix has "violated WUTC regulations" appears vague on its face, the context is similar to the AT&T issue: - in order to determine whether T-Netix violated WUTC regulations, the agency must determine whether T-Netix acted as an "operator service provider."

Answer to Paragraph 19: AT&T admits that in its November 8, 2000 order the court "referred to the Washington Utilities and Transportation Commission (WUTC) for further proceedings to determine if T-Netix violated WUTC regulations" and stayed class action issues, "CPA claims and any award of monetary damages," pending WUTC action. Except to the extent admitted, AT&T denies the remaining allegations contained in Paragraph 19.

Paragraph 20: This is clear when one reviews the arguments of AT&T and T-Netix leading up to the court's referral of issues to the agency. Both companies argued that they should be dismissed from the lawsuit because they did not provide operator services. Exh. I (page 398); Exh. K (page 315 fn.4). Both companies also argued that the trial court should refer issues relating to intrastate telephone service to the WUTC. Id. at 400; id. at 321.

Answer to Paragraph 20: AT&T admits that it has consistently taken the position that it did not serve as an OSP to the Washington DOC correctional facilities and asked the court to refer the question of whether it served as an OSP for claims related to intrastate calls to the WUTC under the doctrine of primary jurisdiction if the court considered the question to be anything other than a pure question of law. AT&T also admits that T-Netix argued that it was not an OSP and asked the court to refer the issue to the Commission. Except to the extent admitted, AT&T denies the remaining allegations contained in Paragraph 20.

Paragraph 21: If the WUTC concludes that AT&T and/or T-Netix acted as an "operator services provider" for inmate calls, it must then determine whether these companies violated agency regulations by failing to disclose rate

information. With respect to the 1991 regulation (in effect until January 1999), the agency would be required to determine whether recipients of inmate-initiated telephone calls handled by AT&T and/or T-Netix were able to obtain rate information "immediately, upon request, and at no charge to the consumer." WAC 480-120-141(5)(iii)(a) (1991) (Exh. E). Under the regulations, operators were required to provide "a quote of the rates or charges for the call, including any surcharge." *Id.* If the services were not available, the 1991 regulation was violated.

Answer to Paragraph 21: The allegations contained in Paragraph 21 constitute legal conclusions to which no further response is required.

Paragraph 22: With respect to the 1999 regulation, the agency would be required to determine whether AT&T and/or T-Netix "verbally advised[d] the consumer how to receive a rate quote, such as by pressing a specific key or keys, but no more than two keys, or by staying on the line." WAC 480-120-141(2)(b) (1999) (Exh. F). If these services were not available, the 1999 regulation was violated.

Answer to Paragraph 22: The allegations contained in Paragraph 22 constitute legal conclusions to which no further response is required.

ADDITIONAL DEFENSES

- 1. At all relevant periods of time, entities other than AT&T connected calls from phones at Washington state correctional facilities to long-distance and local service and as a result, AT&T was not an Operator Service Provider or Alternate Operator Service Provider and could not have violated any WUTC regulation related to the disclosure of rate information.
- 2. AT&T is exempt from rate disclosure obligations between 1997 and 1999 because in January of 1997, the Commission granted AT&T authority as a competitive local exchange carrier ("CLEC") in the State of Washington.
- 3. Judd lacks standing to assert any claims against AT&T because the calls that she received from Washington state correctional facilities were intraLATA calls carried solely on Verizon's network and AT&T never provided any service for such calls.

4. The Commission has treated entities other than AT&T, including Verizon Northwest and Qwest, as Operator Service Providers when it granted them waivers from the same rules at issue in this proceeding, and as a result, the Commission is now precluded from ruling that AT&T was also an OSP at those same facilities.

5. Because the Commission has already treated Verizon Northwest and Qwest as Operator Service Providers at facilities where those entities provided local and intraLATA service, this proceeding is properly limited to calls originating from facilities other than those served by Verizon Northwest and Qwest.

6. Plaintiffs' claims are barred by the doctrine of laches due to their delay in initiating this proceeding.

AT&T Communications of the Pacific Northwest, Inc.

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