

REDACTED HIGHLY CONFIDENTIAL AND 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'S PETITION FOR
ADMINISTRATIVE REVIEW AND
MOTION FOR STAY**

ATTACHMENTS

With Index

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Attachments To:

COMPLAINANTS' RESPONSE TO T-NETIX'S PETITION FOR ADMINISTRATIVE REVIEW AND MOTION FOR STAY

Exhibit	Description	Date Filed
A.	Complainants' Response to T-Netix, Inc.'s Motion for Summary Determination	5/6/05
B.	Declaration of Paul Wright in Support of Complainants' Response to T-Netix, Inc.'s Motion for Summary Determination	5/6/05
C.	Declaration of Kenneth L. Wilson in Support of Complainants' Response to T-Netix, Inc.'s Motion for Summary Determination	5/6/05
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CERTIFICATE OF SERVICE

I certify, under penalty of perjury and in accordance with the laws of the State of Washington, that on August 12, 2005, I served a copy of the foregoing document on all counsel of record in the manner shown and at the addresses listed below:

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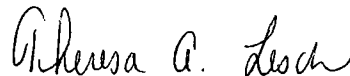


EXHIBIT A

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

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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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 regulation¹, 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

¹ 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"² 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:

² The regulation defines an OSP as follows:

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 period³, 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

³ 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.”

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.

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.

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

⁴ (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

(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.

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 (4th 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 PTT/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

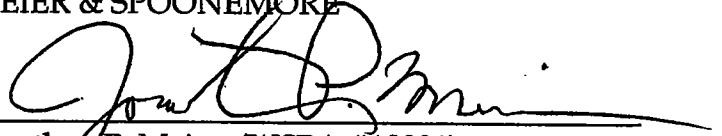
recall hearing any rate disclosure on these calls. *Id.*, ¶ 8. T-Netix does not dispute that it provided services at these facilities. *See* T-Netix Motion, Exh. 8.

Conclusion

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

DATED: May 6, 2005.

SIRIANNI YOUTZ
MEIER & SPOONEMORE



Jonathan P. Meier (WSBA #19991)
Richard E. Spoonemore (WSBA #21833)
Eleanor Hamburger (WSBA # 26478)

Attorneys for Complainants

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EXHIBIT B

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

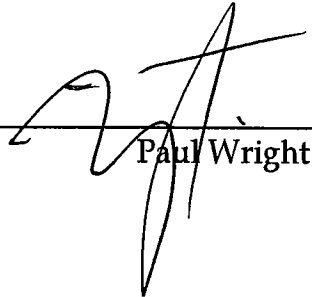
DECLARATION OF PAUL WRIGHT
IN SUPPORT OF COMPLAINANTS'
RESPONSE TO T-NETIX, INC.'S
MOTION FOR SUMMARY
DETERMINATION

I, PAUL WRIGHT, hereby declare that:

1. I am a former inmate who served time in many different Washington state prisons. I am the former spouse of Complainant Sandy Judd and I worked and communicated with Complainant Tara Herivel while incarcerated.

2. From 1992 to 2000, I was incarcerated in the Washington State Reformatory Unit of the Monroe Correctional Complex in Monroe, Washington. I made many telephone calls to both Sandy Judd and Tara Herivel while incarcerated there.

Signed this 5th day of May, 2005, at Brattleboro, Vermont.



Paul Wright

EXHIBIT C

5-2-05
for
5-6-05

FILE COPY

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

DECLARATION OF KENNETH L.
WILSON IN SUPPORT OF
COMPLAINANTS' RESPONSE TO
T-NETIX, INC.'S MOTION FOR
SUMMARY DETERMINATION

I, KENNETH L. WILSON, hereby declare that:

1. I have been retained as an expert by complainants Sandy Judd and Tara Herivel in the above-captioned matter. I am personally familiar with the facts set forth in this declaration. If called to testify about any of these matters, I could and would competently testify thereto.

2. I am a senior consultant and Member of Boulder Telecommunications Consultants, LLC in Boulder, Colorado. My office address is 970 11th Street, Boulder, Colorado 80302.

3. I received a BS in Electrical Engineering from Oklahoma State University in 1972, a MS in Electrical Engineering from the University of Illinois in 1974, and I completed all of the coursework for a Ph.D. in Electrical Engineering at the University of Illinois in 1976.

4. I have worked in the telecommunications industry for 25 years. For fifteen of those years I worked as a Member of the Technical Staff at Bell Labs in New Jersey. My work at Bell Labs included responsibilities for network design and performance evaluation, asset utilization planning, and business case analysis. In 1995 I moved to Denver to work in the AT&T Local Services Division, helping AT&T to enter the local telephony market in the U S WEST (now Qwest) region.

5. Since the spring of 1998, I have worked as a telecommunications consultant and expert. As a consultant and expert I have evaluated disputes between various telecommunications companies. The technical and business issues that I addressed in those cases are similar in nature to those I reviewed in this case.

6. I have spent approximately 20 hours reviewing material in this case, analyzing information, and studying the facts surrounding the issues in question. I am basing the statements made below on my review of the material that was given to me. I have no specific knowledge regarding the facts of this case other than that which I gleaned from the documents I reviewed. I do not possess, nor have I ever possessed any AT&T confidential information relevant to this case. I have not reviewed any confidential information from either T-Netix or AT&T in this matter, as I understand that AT&T is objecting to my services as an expert. Moreover, discovery is still in a very early stage and depositions have yet to commence. Finally, I understand that T-Netix and AT&T have both refused to participate in any further discovery while T-Netix's motion is pending.

7. Based on the discovery provided to date, my analysis reveals the following call flow from a prison inmate to the party they are calling. The inmate picks up a designated phone, from which only collect calls can be made. The inmate dials a 0+ telephone number and a unique inmate identifier and passcode. The telephone is connected to a special call processor and inmate call control platform designed to provide operator services functions. The inmate operator services platform (platform) has software and hardware that control the call and provide services to the inmate and the person the inmate is calling. After the dialed digits have been completed, the platform screens the dialed number against a list of prohibited numbers. If the number dialed is not prohibited, the platform connects the call to either a LEC switch or an IXC switch by launching a call with the same ten digit dialed number, prefixed with 1+ instead of 0+. The platform will ask the inmate to state his or her name. The call is completed to the dialed telephone by one or more LEC and/or IXC switches. The routing to the IXC may be done through the LEC or may be done directly to an IXC switch by the platform, if appropriate trunking has been provided. When the called party answers the telephone, the platform will play a prerecorded message stating that they have a call from the inmate and by playing the inmate's recording. The platform then gives the person an option of accepting the call or rejecting the call by pressing a number on the keypad of their phone. It is at this time that the platform should play a prerecorded rate announcement and give the called party an opportunity to hear a message regarding the rates associated with the call. If the person accepts the call, the call proceeds, as would a normal call. If the

called party rejects the call, the platform disconnects the call. The platform keeps a record of the call, including the date, time, originating phone number, terminating phone number, length of call and distance of call. Each carrier's switch also keeps the same type of billing record of each call.

8. Historically, operator services have provided callers with the ability to access special billing and call handling features that are not available with a regular 1+ dialed call. Newton's Telecom Dictionary defines Operator Services as:

Any of a variety of telephone services which need the assistance of an operator or an automated "operator" (i.e. using interactive voice response technology and speech recognition). Such services include collect calls, third party billed calls and person-to-person calls.¹

This definition is consistent with the definition provided by the WUTC:

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.²

9. The T-Netix platform appears to be performing all of the functions of the call platform for correctional institutions described in paragraph 7 above. Further, the

¹ Newton's Telecom Dictionary, 18th Edition, Harry Newton, CMP Books, 2002.

² WAC 480-120-021 (1999)

T-Netix platform appears to be providing automated operator services functions that are consistent with the definitions of operator services described in paragraph 8 above. 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.

10. 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.

11. For DOC locations where a T-Netix platform is located, a LEC may "carry" the call—it can provide transport and switching of the calls that are sent to it from the T-Netix platform. The LEC does not appear to provide operator services functionality in locations served by T-Netix platforms. Critically, transport of a call is not associated with operator services functions.

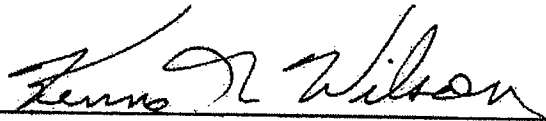
12. T-Netix should have upgraded its platforms to provide rate notification when the regulations required disclosure. T-Netix started upgrading its inmate operator services platforms in more than 1400 locations at correctional facilities across the country starting in 1999 to accept remote programming and to provide precise rate quotes. In February 2002, T-Netix asked the FCC for additional time to complete

upgrades that would allow its platforms to give precise rate quotations when connecting calls from inmates.³

13. T-Netix appears to provide platforms at all DOC locations in Washington where T-Netix provides local service. Furthermore, based on the limited number of documents I have reviewed to date, there is reason to believe that T-Netix is also providing platforms at other DOC locations in Washington. It is difficult to discern exactly where T-Netix had its platforms, as I understand that T-Netix and AT&T are now refusing to provide any discovery while T-Netix's motion is pending. This much is clear, however: All of the T-Netix platforms, no matter where they are located, are performing operator services functions as defined by the WUTC. Additional discovery is required to identify the locations of all T-Netix platforms.

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

Signed this 2nd day of May, 2005, at Boulder, Colorado.



Kenneth L. Wilson

³ T-Netix, Inc. Petition for Clarification and Waiver, FCC Docket No. 92-77 with attached Affidavit of Richard E. Cree in Support Of T-Netix Petition for Clarification and Waiver.

EXHIBIT D

REDACTED

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

**DECLARATION OF JONATHAN P.
MEIER IN SUPPORT OF**

**COMPLAINANT'S RESPONSE TO T-
NETIX'S MOTION FOR SUMMARY
DETERMINATION**

-AND-

**COMPLAINANTS' RESPONSE TO T-
NETIX'S MOTION TO STAY
DISCOVERY**

-AND-

**COMPLAINANTS' CONDITIONAL
MOTION TO POSTPONE
CONSIDERATION OF T-NETIX'S
MOTION FOR SUMMARY
DETERMINATION UNTIL
COMPLAINANTS HAVE BEEN
PERMITTED ADDITIONAL
DISCOVERY**

Jonathan P. Meier declares, under penalty of perjury and in accordance with the laws of the state of Washington, that:

1. I am one of the attorneys representing the complainants Sandra Judd, Tara Herivel, and the putative class they represent in this matter. The facts stated in this declaration are based upon my personal knowledge.

2. On April 18, after T-Netix obtained a two-week extension to respond to Complainants' data requests, we were served with T-Netix's responses. T-Netix produced a limited set of documents the next day.

3. T-Netix objected to virtually all of Complainants' data requests, refused to provide a substantive response to many of the requests (including virtually all requests focusing on operator services), and answered a number of requests by stating that "responsive documents will be produced as soon as practicable." A representative sampling of T-Netix's responses in which T-Netix either refused to respond or failed to answer a direct question is attached as Exhibit A. A sampling of responses where T-Netix stated it would produce documents as soon as practicable is attached as Exhibit B.

4. On April 20, I telephoned Art Butler, counsel for T-Netix, and requested a telephone conference to hash out problems with T-Netix's discovery responses. I suggested a conference call date of April 25.

5. On April 25, Mr. Butler informed me that Stephanie Joyce, counsel for T-Netix, wanted to put off the conference until T-Netix's pending motions were decided. Ms. Joyce then explained, via email, that Complainants' lack of standing rendered discovery unnecessary.

6. I wrote back and disagreed, explaining that the Commission had not ordered a stay of discovery and that the discovery we sought was directly relevant to T-Netix's motion (as well as AT&T's pending motion).

7. I continued to exchange emails with Ms. Joyce, explaining that: (a) we believed the question of whether T-Netix provided operator services was highly relevant to the standing issue raised by T-Netix; (b) T-Netix's position that Complainants lacked standing because entities other than T-Netix carried a call was erroneous; (c) T-Netix did not have the right to shut down discovery before obtaining an order actually staying discovery; and (d) T-Netix's discovery responses were relevant to AT&T's pending motion, and we were losing valuable time to obtain discovery, prepare and take depositions, and respond to that motion. I also explained that a simple telephone call would be the most efficient way to discuss, in some depth, the various issues we had with T-Netix's failure to respond to data requests.

8. Ms. Joyce disagreed and would not make herself available for a telephone call. Instead, she suggested that I write and explain, in more detail, what the problems were with T-Netix's data requests.

9. T-Netix has not produced additional documents, nor has it supplemented its earlier responses to Complainants' data requests.

10. Obtaining discovery from AT&T has also been problematic. AT&T responded to Complainants' data requests in early April. It objected to many of the requests and did not produce any documents. AT&T had earlier (in January)

produced a very limited set of documents, almost all of which were already in Complainants' possession because they were part of the Superior Court record.

11. On April 20, I had a productive conference call with Chip Peters and Dave Scott, counsel for AT&T. I outlined, data request by data request, the problems that Complainants perceived with AT&T's responses. Mr. Peters and Mr. Scott indicated that AT&T would be producing additional relevant documents on April 25. With respect to other issues discussed on the call, they indicated they would consult with their client and get back to me. I emphasized the desirability of a prompt response.

12. On April 25, I received a letter from Dave Scott informing me that AT&T would not be producing the documents it had agreed to produce because of T-Netix's pending Motion to Stay Discovery. A copy of this letter is attached as Exhibit C.

13. I immediately left a voice mail with Chip Peters questioning the basis for the withholding of documents that he had already agreed were relevant and would be produced. Mr. Peters left a voice mail stating that he wanted to check with T-Netix's counsel before producing documents. After more time passed without any response to further queries, I wrote to Mr. Peters on April 29 and asked what was going on. A copy of this letter is attached as Exhibit D.

14. Mr. Peters wrote back on May 3, stating that AT&T was "holding off" on producing documents "because of T-Netix's concerns about disclosing highly-sensitive commercial and security information." It is also "holding off" on addressing other discovery issues. A copy of this letter is attached as Exhibit E.

15. If the Commission concludes that a continuance of T-Netix's motion is appropriate in order to permit Complainants to obtain discovery relevant to that motion, it would be important to obtain discovery on the following subjects: (a) whether T-Netix or AT&T provided operator services; (b) where such services were provided (specific correctional facilities); (c) when such services were provided, with respect to each facility; (d) whether rate disclosure occurred in connection with the provision of operator services; and (e) if so, how it occurred.

16. Attached as Exhibit F is a true and correct copy of excerpts from an October 22, 2002 T-Netix electronic filing with the WUTC that was downloaded from the Commission's website.

17. Attached as Exhibit G is a true and correct copy of excerpts from a document produced by T-Netix in this proceeding and labeled "Price List."

18. Attached as Exhibit H is a true and correct copy of excerpts from an Agreement between T-Netix and AT&T dated June 16, 2004, produced by T-Netix in this proceeding.

Signed this 6th day of May, 2005, at Seattle, Washington.



Jonathan P. Meier

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MEIER & SPOONEMORE
1100 Millennium Tower
719 Second Avenue
Seattle, WA 98104
Tel.: (206) 223-0303
Fax: (206) 223-0246
Attorneys for Complainants

Exhibit A

[SERVICE DATE: APRIL 18, 2005]

BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

SANDY JUDD and TARA HERIVEL,

Complainants,

v.

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

Respondents.

Docket No. UT-042022

**T-NETIX, INC.'S RESPONSES TO
COMPLAINANTS' FIRST SET OF
DATA REQUESTS**

Respondent T-NETIX, Inc. (T-NETIX), through counsel, hereby responds to the
Complainants' First Set of Data Requests.

GENERAL OBJECTIONS

1. T-NETIX objects to each and every Request to the extent that it is not relevant or reasonably calculated to lead to the discovery of admissible evidence.
2. T-NETIX objects to each and every Request to the extent that it calls for information that is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or other applicable privilege.

T-NETIX, INC.'S RESPONSES TO COMPLAINANTS'
FIRST DATA REQUESTS (UT-042022) - Page 1

280174/1

ATER WYNNE LLP
Lawyers
601 Union Street, Suite 5450
Seattle, Washington 98101-2327
(206) 623-4711

WASHINGTON UTILITIES & TRANSPORTATION COMMISSION
RESPONSE TO DATA REQUEST

Response Date: April 18, 2005
Docket No.: UT-042022
Requestor: Complainants
Respondent: T-Netix, Inc.
Prepared by: Arthur A. Butler, 206-623-4711

COMPLAINANTS' DATA REQUEST NO. 18: Were you contractually responsible for providing operator services for inmate-initiated calls from T-Netix institutions?

- (a) If so, please identify the relevant contractual language.
- (b) If not, please identify:
 - (i) which entity(ies) was responsible for this service; and
 - (ii) the contractual language making that entity(ies) responsible for providing operator services for inmate-initiated calls from T-Netix institutions.

T-NETIX'S RESPONSE TO DATA REQUEST NO. 18:

T-NETIX objects to this Request, including all subparts, on the ground that it calls for a legal conclusion as to "contractual obligations," and as to "operator services," which is a term defined by WAC 480-120-021. T-NETIX also objects on the ground that the definition of "T-NETIX institutions" is overly broad and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. T-NETIX further objects that the documents in Complainants' possession, including those produced herewith, speak for themselves.

**WASHINGTON UTILITIES & TRANSPORTATION COMMISSION
RESPONSE TO DATA REQUEST**

Response Date: April 18, 2005
Docket No.: UT-042022
Requestor: Complainants
Respondent: T-Netix, Inc.
Prepared by: Arthur A. Butler, 206-623-4711

COMPLAINANTS' DATA REQUEST NO. 28: Amendment No. 4 to the contract (Exhibit 7) states that Contractor will pay commissions of 45% "from operator-assisted intraLATA and interLATA calls" made from institutions in CenturyTel territory.

- (a) Did you provide operator services for these calls?
- (b) If not, which company did?

T-NETIX'S RESPONSE TO DATA REQUEST NO. 28:

T-NETIX objects to this Request on the ground that "operator services" is a term defined by WAC 480-120-021 and thus it seeks a legal conclusion. T-NETIX also objects on the ground that "Contractor" is defined as an entity that is not T-NETIX, and thus the Request calls for information not in the possession, custody or control of T-NETIX. T-NETIX cannot provide a response.

**WASHINGTON UTILITIES & TRANSPORTATION COMMISSION
RESPONSE TO DATA REQUEST**

Response Date: April 18, 2005
Docket No.: UT-042022
Requestor: Complainants
Respondent: T-Netix, Inc.
Prepared by: Arthur A. Butler, 206-623-4711

COMPLAINANTS' DATA REQUEST NO. 35: Do you contend that AT&T provided operator services for inmate-initiated calls from T-Netix institutions? If so, please identify language, if any, in Exhibit 7, that supports your position. Please explain why this language supports your position.

T-NETIX'S RESPONSE TO DATA REQUEST NO. 35:

T-NETIX also objects on the ground that the definition of "T-NETIX institutions" is overly broad and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. T-NETIX objects to this Request on the ground that "operator services" is a term defined by WAC 480-120-021 and thus it seeks a legal conclusion.

**WASHINGTON UTILITIES & TRANSPORTATION COMMISSION -
RESPONSE TO DATA REQUEST**

Response Date: April 18, 2005
Docket No.: UT-042022
Requestor: Complainants
Respondent: T-Netix, Inc.
Prepared by: Arthur A. Butler, 206-623-4711

COMPLAINANTS' DATA REQUEST NO. 37: Exhibit 10, page 2, states that "AT&T agrees to carry and pay commissions on all operator-assisted and sent-paid intraLATA calls originating from correctional institutions located in PTI territory in the State of Washington."

- (a) Does this language require AT&T to provide operator services for inmate-initiated calls?
- (b) Why or why not?

T-NETIX'S RESPONSE TO DATA REQUEST NO. 37:

T-NETIX objects to this Request on the ground that "operator services" is a term defined by WAC 480-120-021 and thus it seeks a legal conclusion.

WASHINGTON UTILITIES & TRANSPORTATION COMMISSION
RESPONSE TO DATA REQUEST

Response Date: April 18, 2005
Docket No.: UT-042022
Requestor: Complainants
Respondent: T-Netix, Inc.
Prepared by: Arthur A. Butler, 206-623-4711

COMPLAINANTS' DATA REQUEST NO. 38: Exhibit 10, page 2, requires the subcontractor to provide the following service: "Delivery of intraLATA and interLATA traffic originating from the Public Pay Telephones to AT&T's Point of Presence over switched access facilities." Did this language require the subcontractor to provide operator services for inmate-initiated calls from institutions covered by the subcontract? State the basis for your answer.

T-NETIX'S RESPONSE TO DATA REQUEST NO. 38:

T-NETIX objects to this Request on the ground that "operator services" is a term defined by WAC 480-120-021 and thus it seeks a legal conclusion.

**WASHINGTON UTILITIES & TRANSPORTATION COMMISSION
RESPONSE TO DATA REQUEST**

Response Date: April 18, 2005
Docket No.: UT-042022
Requestor: Complainants
Respondent: T-Netix, Inc.
Prepared by: Arthur A. Butler, 206-623-4711

COMPLAINANTS' DATA REQUEST NO. 42: Exhibit 12 states that T-Netix is to perform "administrative services required on behalf of AT&T."

- (a) Please describe the components of this responsibility.
- (b) Did this responsibility include the provisioning of operator services for inmate-initiated calls from T-Netix institutions? State the basis for your position.

T-NETIX'S RESPONSE TO DATA REQUEST NO. 42:

T-NETIX objects to subpart (b) of this Request on the ground that "operator services" is a term defined by WAC 480-120-021 and thus it seeks a legal conclusion. Subject to and without waiving any objection stated herein, T-NETIX states that "administrative services" included CDR management, deriving the charges for calls based on the carrier's rates, and collecting payment.

**WASHINGTON UTILITIES & TRANSPORTATION COMMISSION
RESPONSE TO DATA REQUEST**

Response Date: April 18, 2005
Docket No.: UT-042022
Requestor: Complainants
Respondent: T-Netix, Inc.
Prepared by: Arthur A. Butler, 206-623-4711

COMPLAINANTS' DATA REQUEST NO. 48: With respect to inmate-initiated calls from T-Netix institutions, did you "verbally advise" consumers how to receive a rate quote pursuant to WAC 480-120-141(2)(b) (1999)?

- (a) If you provided this service during part of the time period that WAC 480-120-141(2)(b) (1999) was in effect, please identify which time periods you did and did not provide this service.
- (b) If you did not provide this service at all, please identify which company or entity, if any, provided this service for inmate-initiated calls from T-Netix institutions.

T-NETIX'S RESPONSE TO DATA REQUEST NO. 48:

T-NETIX objects to this Request, including all subparts, on the ground that the definition of "T-NETIX institutions" is overly broad and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. T-NETIX objects to this Request on the ground that it calls for a legal conclusion and for disclosure of privileged attorney work product. T-NETIX further objects to this Request, including all subparts, on the ground that it is not relevant to the Motion for Summary Determination filed by AT&T in this proceeding.

Exhibit B

[SERVICE DATE: APRIL 18, 2005]

BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

SANDY JUDD and TARA HERIVEL,

Complainants,

v.

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

Respondents.

Docket No. UT-042022

**T-NETIX, INC.'S RESPONSES TO
COMPLAINANTS' FIRST SET OF
DATA REQUESTS**

Respondent T-NETIX, Inc. (T-NETIX), through counsel, hereby responds to the
Complainants' First Set of Data Requests.

GENERAL OBJECTIONS

1. T-NETIX objects to each and every Request to the extent that it is not relevant or reasonably calculated to lead to the discovery of admissible evidence.
2. T-NETIX objects to each and every Request to the extent that it calls for information that is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or other applicable privilege.

T-NETIX, INC.'S RESPONSES TO COMPLAINANTS'
FIRST DATA REQUESTS (UT-042022) - Page 1

280174/1

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**WASHINGTON UTILITIES & TRANSPORTATION COMMISSION
RESPONSE TO DATA REQUEST**

Response Date: April 18, 2005
Docket No.: UT-042022
Requestor: Complainants
Respondent: T-Netix, Inc.
Prepared by: Arthur A. Butler, 206-623-4711

COMPLAINANTS' DATA REQUEST NO. 2 Please produce all documents that relate to the negotiation, interpretation, implementation, or performance of the contracts between T-Netix and AT&T relating to the provision of inmate telephone services in Washington State.

T-NETIX'S RESPONSE TO DATA REQUEST NO. 2:

T-NETIX objects to this Request on the ground that it seek "all documents" and is therefore overly broad, unduly burdensome, and oppressive. T-NETIX further objects on the ground that this Request regards "services in Washington State," rather than services in Washington Department of Corrections facilities, and therefore seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. T-NETIX further objects on the ground that many, if not all, responsive documents are in the possession of complainants. Subject to and without waiving all objections stated herein, T-NETIX states that its search for responsive documents is ongoing and all non-privileged, responsive documents will be produced as soon as practicable.

**WASHINGTON UTILITIES & TRANSPORTATION COMMISSION
RESPONSE TO DATA REQUEST**

Response Date: April 18, 2005
Docket No.: UT-042022
Requestor: Complainants
Respondent: T-Netix, Inc.
Prepared by: Arthur A. Butler, 206-623-4711

COMPLAINANTS' DATA REQUEST NO. 3: Please produce any signed versions of Exhibit 12.

T-NETIX'S RESPONSE TO DATA REQUEST NO. 3:

T-NETIX notes that Exhibit 12 was signed by T-NETIX. T-NETIX objects to this Request to the extent that it requires T-NETIX to produce documents not in its possession, custody or control. Subject to and without waiving all objections stated herein, T-NETIX states that it has conducted a diligent search for responsive documents and has found none. T-NETIX further states that its search for responsive documents is ongoing and all non-privileged, responsive documents will be produced as soon as practicable.

WASHINGTON UTILITIES & TRANSPORTATION COMMISSION
RESPONSE TO DATA REQUEST

Response Date: April 18, 2005
Docket No.: UT-042022
Requestor: Complainants
Respondent: T-Netix, Inc.
Prepared by: Arthur A. Butler, 206-623-4711

COMPLAINANTS' DATA REQUEST NO. 4: Please produce copies of any filings with the WUTC, with other state regulatory bodies, or with the FCC, in which you have asserted that you provide operator services for inmate telephone calls (not just "inmate-initiated calls").

T-NETIX'S RESPONSE TO DATA REQUEST NO. 4:

T-NETIX objects to this Request on the ground that it seeks "any filings" and is therefore overly broad, unduly burdensome, and oppressive. T-NETIX further objects on the ground that this Request seeks documents regarding "other state regulatory bodies, or with the FCC," and therefore seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this case regarding intrastate calls placed from correctional facilities operated by the Washington Department of Corrections. T-NETIX objects to this Request on the ground that "operator services" is a term defined by WAC 480-120-021 and thus it seeks a legal conclusion. T-NETIX further objects on the ground that these documents are public filings to which complainants have access. Subject to and without waiving all objections stated herein, T-NETIX states that its search for responsive documents is ongoing and all non-privileged, responsive documents will be produced as soon as practicable.

WASHINGTON UTILITIES & TRANSPORTATION COMMISSION
RESPONSE TO DATA REQUEST

Response Date: April 18, 2005
Docket No.: UT-042022
Requestor: Complainants
Respondent: T-Netix, Inc.
Prepared by: Arthur A. Butler, 206-623-4711

COMPLAINANTS' DATA REQUEST NO. 5: Please produce any orders, waivers, responses, replies, or other documents that directly relate to the filings described in the preceding data request.

T-NETIX'S RESPONSE TO DATA REQUEST NO. 5:

T-NETIX objects to this Request on the ground that it seek "any orders ... or other documents" and is therefore overly broad, unduly burdensome, and oppressive. T-NETIX further objects on the ground that this Request seeks documents regarding "other state regulatory bodies, or with the FCC," and therefore seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. T-NETIX further objects on the ground that these documents are public filings to which complainants have access. Subject to and without waiving all objections stated herein, T-NETIX states that its search for responsive documents is ongoing and all non-privileged, responsive documents will be produced as soon as practicable.

Exhibit C



6600 SEARS TOWER
CHICAGO, ILLINOIS 60606
t 312.258.5500
f 312.258.5600
www.schiffhardin.com

David C. Scott
312.258.5575
Email: dscott@schiffhardin.com

RECEIVED

APR 28 2005

LAW OFFICE OF
SIRIANNI YOUTZ
MEIER & SPOONEMORE

April 25, 2005

VIA EMAIL AND FIRST-CLASS MAIL

Jonathan P. Meier
SIRIANNI YOUTZ MEIER & SPOONEMORE
719 Second Avenue, Suite 1100
Seattle, Washington 98104

Re: *Judd, et al. v. AT&T, et al.*
WUTC Docket No. UT-042022

Dear Jon:

After our telephone conversation on April 20, 2005 regarding Plaintiffs' data requests, T-Netix, Inc. filed its Motion to Stay Discovery, dated April 21, 2005. In light of T-Netix's motion, AT&T will not be producing documents to Plaintiffs today as we discussed during our April 20 conversation, but will wait to do so until after the Motion to Stay Discovery is ruled upon by the WUTC.

Very truly yours,

David C. Scott

cc: Charles H.R. Peters (by email)
Letty S.D. Friesen (by email)
Laura Kaster (by email)
Arthur A. Butler (by email and first-class mail)
Glenn B. Manishin (by email and first-class mail)
Stephanie A. Joyce (by email and first-class mail)

Exhibit D

**SIRIANNI YOUTZ
MEIER & SPOONEMORE**

April 29, 2005

BY FACSIMILE & FIRST-CLASS MAIL
Fax No. 312.258.5600

Charles H.R. Peters
SCHIFF HARDIN LLP
6600 Sears Tower
Chicago, IL 60606

RE: Judd, et al., v. AT&T, et al.
WUTC Docket No. UT-042022

Dear Chip:

I am writing to request a response to my queries regarding the status of the discovery issues we first raised with you and David Scott on April 20. During our one-hour-plus conference call on that date, I addressed numerous deficiencies in your responses to our data requests, including AT&T's failure to produce relevant documents. You stated that you would speak with your client and would respond to the issues we raised. You also indicated you would produce documents, which were originally due on April 4 and then extended by Commission order to April 18, on April 25. Later that day (April 20), I asked you in an email when I could expect responses to the issues I raised. On April 22, having heard nothing, I left you a voice mail asking when I could expect a response.

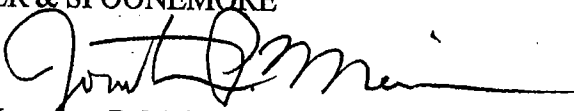
On April 25, I received a letter from your colleague, David Scott, explaining that AT&T would not be producing the documents it had agreed to produce because T-Netix had filed a motion to stay discovery. I left another voice mail that same day asking why you believed AT&T could postpone its production of documents. You responded with a voice mail to me on April 26 stating that you believed that T-Netix could have concerns about confidential documents produced by AT&T and you wanted to check with T-Netix's counsel first. You stated you would contact me after doing so. On April 28, not having heard from you, I left another voice mail.

It is April 29 and I have still have not heard from you, nine full days after our initial conference call.

Please let me know the status of AT&T's discovery efforts.

Very truly yours,

**SIRIANNI YOUTZ
MEIER & SPOONEMORE**


Jonathan P. Meier

JPM:tr
cc: Clients

Exhibit E

RECEIVED

MAY 6 2005

LAW OFFICE OF
SIRIANNI YOUTZ
MEIER & SPOONEMORE
6600 SEASTAR BLVD
CHICAGO, IL 60630
t 312.258.5500
f 312.258.5600
www.schiffhardin.com



Charles H.R. Peters
312.258.5683
Email: cpeters@schiffhardin.com

May 3, 2005

VIA EMAIL AND FIRST-CLASS MAIL

Jonathan P. Meier
SIRIANNI YOUTZ MEIER & SPOONEMORE
719 Second Avenue, Suite 1100
Seattle, Washington 98104

Re: *Judd, et al. v. AT&T, et al.*
WUTC Docket No. UT-042022

Dear Jon:

As I explained during our telephone conversation yesterday, although AT&T is holding off on producing documents while T-Netix's Motion to Stay Discovery is pending because of T-Netix's concerns about disclosing highly-sensitive commercial and security information, if the Commission denies the motion to stay, AT&T should be in a position to produce responsive documents and follow up on your further inquiries regarding Complainants' Data Requests promptly thereafter.

Very truly yours,

Charles H.R. Peters DCS

Charles H.R. Peters

cc: Letty S.D. Friesen (by email)
Laura Kaster (by email)
Glenn B. Manishin (by email and first-class mail)
Stephanie A. Joyce (by email and first-class mail)
Arthur A. Butler (by email and first-class mail)

Exhibit F

October 22, 2002
Via Electronic Filing

Ms. Carol J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive, S.W.
Olympia, Washington 98504-7250

RE: Application to Register as a Telecommunications Provider on Behalf of
T-NETIX, Inc.

Dear Ms. Washburn:

Enclosed for filing are the registration and Price List for T-NETIX, Inc. A hard copy of T-NETIX' current balance sheet will be sent via overnight delivery. T-NETIX' authority to provide collect only calling services for inmates in confinement institutions was granted in UT-931580 by Order issued January 26, 1994. The purpose of this registration is to request competitive classification for T-NETIX, thus making the company eligible for waiver of the regulatory requirements set forth in WAC 480-121-063(1).

Any questions you may have regarding this filing should be directed to me at (407) 740-3004. Thank you for your assistance in this matter.

Sincerely,

Robin Norton
Consultant to T-NETIX, Inc.

RN/bt

Enclosures

cc: Kendall Hollon, T-NETIX, Inc.
file: T-NETIX, Inc.- WA
tms: WAn0200

T-NETIX, Inc.

PRICE LIST
Original Page 1

T-NETIX, Inc.
1544 Valwood Parkway
Suite 102
Carrollton, Texas 75006

Regulatory Contact: Kendall Hollon, Regulatory Manager
Phone: 972-236-6945
Fax Number: 972-236-6974
E-Mail: kendall.euler@t-netix.com

A complete Copy of the Company's Price List is Available at This Website Address: www.t-netix.com

Place the service(s) will be provided: T-NETIX, Inc. ("TNI") is a common carrier providing collect-only operator assisted intrastate resale common carrier communications service by T-NETIX, Inc. ("Carrier") between various locations within the State of Washington. Service is provided only to correctional institutions.

WUTC should refer requests for information regarding consumer questions and/or complaints to the following company representative:

Name: Kendall Hollon

Title: Regulatory Manager

Phone Number 972-236-6945

Fax Number: 972-236-6974

E-Mail: kendall.euler@t-netix.com

PRICE LIST
Original Page 2

TELECOMMUNICATIONS SERVICES THAT WILL BE PROVIDED:

- | | | | |
|-------------------------------------|-----------------------------|---------------------------------------|-----------------------|
| <input type="checkbox"/> | Local Exchange Service | <input type="checkbox"/> | Data Services |
| <input type="checkbox"/> | Calling Cards | <input type="checkbox"/> | Prepaid Calling Cards |
| <input checked="" type="checkbox"/> | Alternate Operator Services | <input type="checkbox"/> | Directory Assistance |
| <input checked="" type="checkbox"/> | Long Distance Interlata | <input type="checkbox"/> | WATS (800/888) |
| <input checked="" type="checkbox"/> | Long Distance Intralata | | |
| <input checked="" type="checkbox"/> | Other, please specify | <u>Inmate Communications Services</u> | |
-

Indicate limitations, terms, or conditions and all rates, charges, or prices for the services being offered.

The Definitions (Section 1) are identical to the Definitions provided by the Commission except as follows:

The Definitions in Section 1 have been expanded.

Exhibit G

ORIGINAL SHEET 1

PRICE LIST - 1

T-NETIX TELECOMMUNICATIONS SERVICES, INC.

T-NETIX TELECOMMUNICATIONS SERVICES, INC.
1544 Valwood Parkway
Suite 102
Carrollton, Texas 75006

NAMING RATES FOR

RESALE COMMON CARRIER SERVICE

AS

VALUE ADDED COMMON CARRIER

Applying to Intrastate Resale Common Carrier
Communications Services Between Points
in the State of Washington

And

CONTAINING RULES AND REGULATIONS

GOVERNING SERVICE

Issued: January 10, 2001

Effective: January 20, 2001

Issued by: T-NETIX Telecommunications Services, Inc.

By: Richard Cree
President & CEO

TNXWA 00599

PRICE LIST - 1

T-NETIX TELECOMMUNICATIONS SERVICES, INC.

REGULATIONS

1. DESCRIPTION OF SERVICE

- A. T-NETIX Telecommunications Services, Inc. is a resale common carrier providing intrastate communications long distance message toll telephone service, through automated operator assisted collect calling, to inmates of correctional institutions for the transmission and reception of communications.
- B. The Consumer's charges for Carrier's service are based upon the total time the Consumer actually uses the service.

Issued: January 10, 2001

Effective: January 20, 2001

Issued by: T-NETIX Telecommunications Services, Inc.

By: Richard Cree
President & CEO

TNXWA 00606

T-NETIX TELECOMMUNICATIONS SERVICES, INC.

REGULATIONS (continued)

2. LOCATIONS OF SERVICE

Communications may originate from any correctional institution within the State of Washington. Communications may terminate in any area within the State of Washington.

3. LIMITATIONS OF SERVICE

- A. Service is offered subject to the availability of the necessary facilities and/or equipment and subject to the provisions of this Price List. The Carrier reserves the right not to provide service to or from a location where the necessary facilities or equipment are not available.
- B. The Carrier reserves the right to discontinue service upon written notice, when necessitated by conditions beyond its control or when the Customer or Consumer is using the service in violation of the provisions of this Price List, or in violation of the law. Specific rules for the discontinuance of service may be found in WAC 480-120-081.
- C. Title to all facilities provided by Carrier under these regulations remains in the Carrier.
- D. T-NETIX Telecommunications Services, Inc. service provides automated collect calling capabilities to inmates of correctional institutions only. No other call type is processed or completed by the Company.

Issued: January 10, 2001

Effective: January 20, 2001

Issued by: T-NETIX Telecommunications Services, Inc.

By: Richard Cree
President & CEO

PRICE LIST - 1

T-NETIX TELECOMMUNICATIONS SERVICES, INC.

REGULATIONS (continued)

3. LIMITATIONS OF SERVICE, continued

- E. In order to prevent fraudulent use, inmates are not allowed to reach an alternate carrier by any dialing means.
- F. Directory assistance and emergency calling are not available to inmates.
- G. At the request of the facility, collect calls to specific numbers may be screened and denied to prevent harassing telephone calls.
- H. Calls are branded and the billed party is notified that the carrier is T-NETIX Telecommunications Services, Inc.
- I. Calls to all 800, 900, and 976 telephone numbers are blocked unless specifically requested otherwise by the correctional institution.
- J. Service availability may be determined by the correctional institution such that either the allowable duration of calls, or the time of day that service is available is limited.
- K. Due to the restricted nature of its service, T-NETIX does not require its Customers (correctional institutions) to post notice regarding access to other carriers, dialing instructions to the reach local exchange company operator etc. as such notice is inappropriate.

Issued: January 10, 2001

Effective: January 20, 2001

Issued by: T-NETIX Telecommunications Services, Inc.

By: Richard Cree
President & CEO

TNXWA 00608

ORIGINAL SHEET 18

PRICE LIST - 1

T-NETIX TELECOMMUNICATIONS SERVICES, INC.

REGULATIONS (continued)

13. CARRIER IDENTIFICATION

- A. The Carrier's automated operators will inform the Consumer and the called party that they are using T-NETIX Telecommunications Services, Inc.'s automated Operator service at the start of each call.

- B. All local exchange companies and authorized billing agents will be provided with the proper information, such as the Carrier's address and toll free number in addition to the Carrier's name. This allows the billed party to contact T-NETIX Telecommunications Services, Inc. for billing inquiries.

Issued: January 10, 2001

Effective: January 20, 2001

Issued by: T-NETIX Telecommunications Services, Inc.

By: Richard Cree
President & CEO

TNXWA 00616

Exhibit H

CONFIDENTIAL PER
PROTECTIVE ORDER IN WUTC
DOCKET NO. UT-042022

TNXWA 00716

CONFIDENTIAL PER
PROTECTIVE ORDER IN WUTC
DOCKET NO. UT-042022

TNXWA 00694

EXHIBIT E

FILE COPY

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' REPLY TO
AT&T'S RESPONSE JOINING IN
T-NETIX'S MOTIONS**

AT&T's "Joinder" is a Separate Motion for Summary Determination

1. On Friday, May 6th, AT&T filed a document that it styles as a "response joining in" T-Netix's pending motion for summary determination. AT&T's filing is not a "joinder" in the usual sense. AT&T goes well beyond the issues raised and relief sought in T-Netix's motion and instead seeks affirmative relief (dismissal) for itself. In doing so, it urges the Commission to "apply" T-Netix's evidence to AT&T and reargues evidence it submitted earlier. AT&T's "joinder" is an attempt to accelerate its own motion for summary determination, and pretermite discovery that was deemed appropriate and necessary by the Commission when it ordered that "discovery will be conducted" on AT&T's pending motion. Prehearing Conference Order dated February 22, 2005.

AT&T Highlights Why Discovery Is Necessary

2. The bulk of AT&T's filing repeats arguments it made in its earlier motion for summary determination and in T-Netix's separate motion. But AT&T makes one assertion that bears scrutiny because it illustrates why AT&T and T-Netix should be participating in discovery right now to determine who provided operator services and when and where those services were provided.

3. T-Netix has assumed, for purposes of its motion for summary determination and its standing argument, that the only calls "involving" T-Netix are calls that took place after it entered into a subcontract with AT&T in 1997. *See* T-Netix Motion for Summary Determination, ¶ 14; *see also* Exh. 3 to T-Netix Motion (subcontract). Thus, T-Netix claims that it is absolved of responsibility for a call that Ms. Judd received from the Clallam Bay Corrections Center in July 1996 because "PTI was the local and intraLATA carrier" for that call. T-Netix Motion, ¶ 18 n.2.

4. AT&T has now thrown T-Netix's claim that it was not involved in calls before its 1997 subcontract with AT&T into doubt:

AT&T disagrees with T-Netix's assertion that "neither Judd nor Herivel 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.*

AT&T Joinder at 5 n.4 (quoting T-Netix's Motion for Summary Determination at ¶ 14) (emphasis added).

5. AT&T's allegation that T-Netix was providing "services related to prison calls" *before* its 1997 subcontract with AT&T raises a number of questions: What was

T-Netix doing before 1997? If it was an operator services provider, when and where was it providing these services? Did it provide OSP services at Clallam Bay in July 1996? Were Judd and Herivel (and many others) injured because it was not disclosing rates? These are questions that go to the heart of the questions referred to the Commission.

6. They are also directly relevant to AT&T's and T-Netix's "standing" argument. If T-Netix was providing operator services before assuming the contractual obligations of PTI in 1997, it would trigger disclosure obligations under WAC 480-120-141(5)(iii)(a) (1991). Whether T-Netix was the operator service provider on calls received by Complainants is a fact question that T-Netix has avoided in discovery and is a live issue based on AT&T's assertion that T-Netix was providing services before 1997. AT&T's suggestion that T-Netix could have injured Complainants conflicts with T-Netix's position on the facts and precludes summary determination for both T-Netix and AT&T.

Contrary to the Factual Allegations of Both AT&T and T-Netix, Ms. Herivel Did Receive an InterLATA Call For Which No Rate Disclosure Occurred

7. Both AT&T and T-Netix contend, repeatedly, that "[a]ll of the prison calls at issue were local or intraLATA calls." AT&T Joinder, ¶ 6 (citing T-Netix Motion, ¶¶ 18-19 and charts). AT&T relies on this allegation when it asserts that dismissal is warranted because the evidence shows that calls received by Ms. Judd and Ms. Herivel "never touched" AT&T's network and that "AT&T cannot be the OSP."

AT&T Joinder, ¶¶ 8, 12. The only calls that traversed its network, AT&T argues, were interLATA calls. AT&T Joinder, ¶¶ 10-11.

8. AT&T and T-Netix have possessed information since early April indicating that Ms. Herivel did receive an interLATA call. As Exhibit 10 to T-Netix's Motion makes clear, Ms Herivel responded to a T-Netix data request by stating that she received a call from Airway Heights Correctional Center. Airway Heights is located approximately 10 miles from Spokane. It is in the Eastern Washington LATA. See UTC News & Views (Winter 2002) (describing three LATAs in Washington, one of which covers virtually all of Eastern Washington, and one of which covers virtually all of Western Washington). In 1998, while living in Seattle, Ms. Herivel received a phone call from an inmate at Airway Heights. Herivel Decl. She does not recall hearing any rate disclosure on this call. *Id.* Because this call was between two LATAs, Ms. Herivel received an inmate-initiated, interLATA call.

9. T-Netix apparently missed this because it focused only on the *phone bills produced by* Ms. Judd and Ms. Herivel. See Lee Aff., ¶¶ 3-4 (Exh. 11 to T-Netix Motion). The universe of inmate-initiated calls actually received by Complainants is larger than the universe of calls listed on the limited set of phone bills that were in the possession of Complainants and produced by them. Ms. Herivel did not produce phone bills from 1998 because she does not have any and could not obtain the bills from Qwest. Herivel Decl.

10. Ms. Herivel's receipt of an interLATA call undermines the factual basis for AT&T's joinder, as well as the basis for T-Netix's motion. A fact issue exists with

respect to whether AT&T or T-Netix provided operator services for interLATA calls. AT&T indicates, in sworn testimony, that T-Netix provides "the operator interface between the called party and the collect call announcement or the access to rate quotes." Gutierrez Aff., ¶ 9 (Exh. 4 to T-Netix Motion). If AT&T is correct, then Complainants have standing, even if one assumes that the legal analysis of AT&T and T-Netix is correct on the standing issue, because a fact issue exists with respect to T-Netix's (and AT&T's) involvement in interLATA calls.

11. Ultimately, the role that AT&T and T-Netix played in all types of calls must be answered in discovery, regardless of what AT&T or T-Netix may allege at this stage of the proceedings. The Commission ordered discovery so that the parties could review documents, analyze responses to data requests, and depose witnesses to determine precisely who provided what type of service, and where and when those services were provided. The record is not nearly complete enough to answer these questions now.

**AT&T's "Standing" Argument, Like That of T-Netix, Is Based on
a Misreading of the Statute and Regulations**

12. Like T-Netix's motion, AT&T's standing argument depends on an erroneous reading of the statute and regulations. AT&T repeats T-Netix's error when it focuses on entities that "carried" a call (AT&T Joinder, ¶ 1) or were "responsible for providing service" (*id.*, ¶ 6). The key question on standing is: Who provided operator service and at which correctional facilities? Complainants were harmed if T-Netix or AT&T, while serving as an OSP, failed to provide rate disclosure on calls that

Complainants received. That is why the merits of this case cannot be divorced from the standing issue. See Complainants' Response to T-Netix Motion, ¶¶ 17-22.

13. If the Commission determines it has the authority to reach the standing issue, it is Complainants' claims in the trial court that must define the scope of the inquiry. As plaintiffs in the trial court, Complainants assert that T-Netix and AT&T are liable under the Consumer Protection Act by virtue of RCW 80.36.530, which states that a "violation" of RCW 80.36.510 and .520 "constitutes an unfair or deceptive act in trade or commerce in violation of chapter 19.86 RCW, the consumer protection act . . ." RCW 80.36.520, in turn, provides that:

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.

14. In 1991, the WUTC began requiring alternate operator services 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). The operator was required to provide "a quote of the rates or charges for the call, including any surcharge." *Id.* The disclosure obligation applies specifically to alternate operator services companies, *id.*, which are defined as "any 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." WAC 480-120-021 (1991) (emphasis added).

15. In 1999, the WUTC amended its regulations. It began using the term "operator service provider," or OSP, instead of "alternate operator services company," or AOSC. WAC 480-120-021 (1999). The definition remained the same, with one important exception: the exemption for local exchange companies was eliminated. *Id.* New disclosure obligations were put into effect. OSPs were required to "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." WAC 480-120-141(2)(b) (1999).

16. Based on these regulations, AT&T and T-Netix are liable under the Consumer Protection Act if, with respect to inmate-initiated calls, they:

- were an AOSC (under the 1991 regulations) or an OSP (under the 1999 regulations); *OR*
- "contracted with" an AOSC or OSP; *AND*
- either failed to make rate disclosure as prescribed by the regulations or contracted with an AOSC or OSP that failed to make such disclosure.

17. The "contracting with" basis for liability derives directly from the statute, which unambiguously states that "any telecommunications company, operating as *or contracting with* an alternate operator services company," must "assure appropriate disclosure." RCW 80.36.520. The regulations are silent with respect to the "contracting with" basis for liability. They cannot contradict the statute, however, and must be harmonized with it. *Caritas Serv., Inc. v. Department of Social &*

Health Serv., 123 Wn.2d 391, 415, 869 P.2d 28 (1994). The only interpretation of the regulations that is consistent with the statute is a reading that makes entities "contracting with" an AOSC or OSP liable if there is no rate disclosure.

18. The Commission is charged, in this primary jurisdiction referral, with determining whether T-Netix or AT&T were OSPs (post-1999) or AOSCs (pre-1999). It must also determine whether T-Netix or AT&T violated the regulations, either because they failed to make rate disclosure as an OSP or AOSC or because they contracted with an OSP or AOSC that failed to make rate disclosure. Because the Commission has been asked whether T-Netix or AT&T violated its regulations, it must necessarily determine whether those regulations were violated because either entity contracted with an OSP that failed to make rate disclosure.

19. Neither AT&T nor T-Netix focus on the proper questions. AT&T adopts T-Netix's standing analysis, which focuses on who "carried" the call or who owned the "transmission path" for the call. T-Netix Motion, ¶ 2, 15; T-Netix Reply, ¶ 6. The regulations, however, do not require the "carrier" of the call or the "owner of the transmission path" to disclose rates. Those obligations are placed squarely on the shoulders of the OSP. See WAC 480-120-141(2)(b) (1999) ("*the OSP* must verbally advise the consumer how to receive a rate quote . . .") (emphasis added); WAC 480-120-141(5)(iii)(a) (1991) ("*The alternate operator services company shall: . . . immediately, upon request, and at no charge to the consumer, disclose to the consumer: a quote of the rate or charges for the call, including any surcharge*") (emphasis added).

20. Accordingly, the appropriate questions for standing are: Did Complainants receive any calls for which either T-Netix or AT&T were the OSP? Alternatively, did Complainants receive any calls for which rate disclosure did not occur and for which T-Netix or AT&T contracted with an OSP?

21. AT&T ignores these questions. Instead, it states that the LECs agreed to be responsible for providing operator service at various facilities. AT&T Joinder, ¶ 9. Even if they did, it does not necessarily follow that the LECs actually functioned as OSPs. They may have subcontracted this function to an OSP like T-Netix. Regardless of whether another entity assumed responsibility, the regulations required OSPs to disclose rates.

22. On this record, fact questions exist with regard to whether AT&T (or T-Netix) was an OSP on calls received by Complainants. AT&T admits it provided service on interLATA calls. The question is whether it or T-Netix provided the "connection to intrastate or interstate long-distance or to local services" that triggers OSP status and therefore triggers disclosure obligations under the regulation. WAC 480-120-021 (1999).

23. We know that T-Netix was an OSP. See Complainants' Response to T-Netix Motion, ¶¶ 12-14. The only question is whether it was an OSP on calls received by Complainants. T-Netix documents suggest the answer is "yes," because those documents show that T-Netix was providing "Inmate Calling Services" (its operator platform) at the Washington State Reformatory and McNeil Island, facilities from which Sandy Judd and Tara Herivel received calls. See Complainants' Response to T-

Netix Motion, ¶¶ 22-26. If T-Netix or AT&T provided operator services, they are liable regardless of whether another entity might have “carried” the call or was “responsible” for it.

24. Moreover, fact questions exist with respect to whether AT&T or T-Netix contracted with an OSP that failed to make rate disclosure. If Complainants received any such calls, they have standing. Neither AT&T nor T-Netix have addressed this issue.

**The Commission Should Refrain from Reaching the Standing Issue
in this Primary Jurisdiction Referral**

25. AT&T’s attempt to seek a ruling on standing grounds may also be rejected because it is directed to the wrong forum. *See* Complainants’ Response to T-Netix Motion, ¶¶ 27-35. The Commission has no authority to “dismiss” any party in a primary jurisdiction referral. Moreover, standing is an issue for the trial court, which can expeditiously deal with it under the civil rules. *Id.*, ¶¶ 36-37.

**If the Commission Concludes that AT&T’s Standing Argument Has Merits,
It Should Permit Amendment of the Complaint**

26. While AT&T’s joinder can and should be rejected on any of the grounds above, Complainants have identified a person who indisputably received multiple calls for which AT&T provided service, and on which no rate disclosure occurred. *See* Elliott Decl. re AT&T Joinder. Ms. Elliott’s declaration is relevant only if the Commission (a) does not reject AT&T’s joinder on the merits; and (b) concludes that it has the power to “dismiss” AT&T on standing grounds despite the primary jurisdiction referral. If that occurs, the Commission should do what a trial court

would do in the same circumstances: permit amendment of the complaint. See Complainants' Response to T-Netix Motion, ¶¶ 36-39.

Discovery Should Not Be Stayed

27. AT&T's joinder in T-Netix's motion to stay, like its joinder on standing, seeks affirmative relief not sought by T-Netix. Specifically, AT&T seeks "an order staying discovery until the Commission resolves AT&T's and T-Netix's respective Motions for Summary Determination." AT&T Joinder, ¶ 15 (emphasis added). AT&T thus makes it crystal clear that it seeks to overturn this Commission's earlier decision (and AT&T's previous position) that discovery is warranted on AT&T's pending motion for summary determination.

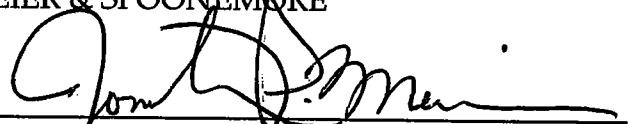
28. As noted in connection with T-Netix's motion, AT&T has usurped the role of the Commission and granted itself a stay while the motion to stay is pending. See Complainants' Response to T-Netix Motion to Stay Discovery; Meier Decl., ¶¶ 10-14. That conduct flaunts the Commission's order that "discovery will be conducted" and it flaunts WAC 480-07-380(2)(d), which provides that a pending motion will not stay discovery by itself. AT&T complains about the burden of producing confidential information, but it has yet to produce a single confidential document. Meier Decl., ¶¶ 10-14. We are a few weeks away from the discovery cut-off ordered by the Commission. AT&T's decision to grind discovery to a halt on its own motion for summary determination is improper and it should be ordered to cooperate in discovery immediately.

Conclusion

29. Complainants respectfully request that the Commission deny AT&T's attempt to stay all discovery and obtain dismissal of this proceeding.

DATED: May 13, 2005.

SIRIANNI YOUTZ
MEIER & SPOONEMORE



Jonathan P. Meier (WSBA #19991)
Richard E. Spoonemore (WSBA #21833)
Eleanor Hamburger (WSBA # 26478)

Attorneys for Complainants

1100 Millennium Tower
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Tel.: (206) 223-0303
Fax: (206) 223-0246

EXHIBIT F

5-11-05
for
5-13-05

FILE COPY

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

DECLARATION OF TARA HERIVEL
IN SUPPORT OF COMPLAINANTS'
RESPONSE TO AT&T'S RESPONSE
JOINING T-NETIX'S MOTION FOR
SUMMARY DETERMINATION

I, TARA HERIVEL, hereby declare that:

1. I am personally familiar with the facts set forth in this declaration. If called to testify about any of these matters, I could and would competently testify thereto.

2. In October to December 1998, I received at least one inmate-initiated telephone call from Airway Heights Corrections Center, near Spokane, Washington. I received the call in my home in Seattle, Washington.

3. I have been unable to find a copy of my telephone bill for that time period, and I have been told that Qwest/US West does not provide copies for bills that far in the past.

4. Based upon my conversation with the inmate, I published an article in the Free Press, issue January-February, 1999, which leads me to believe that the

inmate-initiated telephone call occurred sometime between October to December 1998, while I was working on the article.

5. I do not recall hearing any rate disclosure information before I accepted the inmate-initiated telephone call.

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

Signed this 11th day of May, 2005, at Seattle, Washington.


TARA HERIVEL

EXHIBIT G

5/27/05

**REDACTED HIGHLY 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

**SUPPLEMENTAL DECLARATION
OF KENNETH L. WILSON IN
SUPPORT OF:**

- (1) COMPLAINANTS' RESPONSE TO T-NETIX, INC.'S MOTION FOR SUMMARY DETERMINATION; AND**
- (2) COMPLAINANTS' REPLY TO AT&T'S RESPONSE JOINING IN T-NETIX'S MOTIONS**

I, KENNETH L. WILSON, hereby declare that:

1. I have been retained as an expert by complainants Sandy Judd and Tara Herivel in the above-captioned matter. I am personally familiar with the facts set forth in this declaration. If called to testify about any of these matters, I could and would competently testify thereto.

2. I am the same Kenneth L. Wilson who previously filed a declaration dated May 2, 2005 and filed in support of Complainants' Response to T-Netix, Inc.'s Motion for Summary Determination.

3. At the time I wrote my initial declaration in this case, I was unable to review confidential and highly confidential information due to an objection by AT&T

regarding my status in the case. Subsequent to the Commission's order dated May 20, 2005 denying AT&T's objection, I have reviewed documents provided by T-Netix that were so marked. The T-Netix documents contain material that bears on the issues and opinions that I expressed in my initial declaration, requiring me to file this supplemental declaration. While the new documents do not contradict anything I said in my initial declaration, there are some additions and clarifications that need to be made.

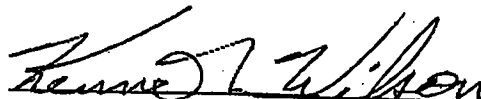
REDACTED

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REDACTED

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

Signed this 27th day of May, 2005, at Boulder, Colorado.


Kenneth L. Wilson

REDACTED

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

Exhibit 1

REDACTED

REDACTED

**HIGHLY CONFIDENTIAL PER
PROTECTIVE ORDER IN WUTC
DOCKET NO. UT-042022**

TNXWA 00218

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REDACTED

HIGHLY CONFIDENTIAL PER
PROTECTIVE ORDER IN WUTC
DOCKET NO. UT-042022

TNXWA 00220

REDACTED

HIGHLY CONFIDENTIAL PER
PROTECTIVE ORDER IN WUTC
DOCKET NO. UT-042022

TNXWA 00224

Exhibit 2

REDACTED

HIGHLY CONFIDENTIAL PER
PROTECTIVE ORDER IN WUTC
DOCKET NO. UT-042022

TNXWA 00225

Exhibit 3

REDACTED

HIGHLY CONFIDENTIAL PER
PROTECTIVE ORDER IN WUTC
DOCKET NO. UT-042022

TNXWA 00226

Exhibit 4

REDACTED

EXHIBIT H

FILE COPY

6/29/05

**REDACTED HIGHLY 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
AT&T'S MOTION FOR LEAVE TO
FILE ITS RESPONSE TO THE
SUPPLEMENTAL DECLARATION
OF KENNETH L. WILSON**

1. Complainants do not object to AT&T's motion for leave to file a response to the Supplemental Declaration of Kenneth L. Wilson.

REDACTED

REDACTED

REDACTED

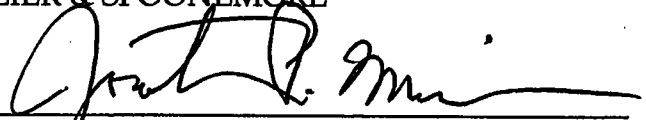
7. The remainder of AT&T's submission largely repeats arguments it first made in its December 2004 motion for summary determination. Thus, AT&T argues that the various contracts make it "clear" that other entities "connected" calls to AT&T's point of presence or "handled" or "provided" local and intraLATA service. AT&T Response, ¶¶ 2, 4. These arguments are misplaced—the question of Complainants' "standing" can only be answered by focusing on whether AT&T and/or T-Netix were operator services providers.

8. In any event, the Commission determined months ago that full discovery was appropriate on the issues raised by AT&T's December 2004 motion. That discovery has not occurred.

9. Amid all the briefing and declarations filed in this matter, it is easy to lose sight of the threshold issue facing the Commission: Does the Commission have the authority to reach Respondents' standing arguments and "dismiss" Complainants when this matter comes to the Commission on a primary jurisdiction referral? Complainants respectfully submit that the answer to that question is no.

DATED: June 20, 2005.

SIRIANNI YOUTZ
MEIER & SPOONEMORE



Jonathan P. Meier (WSBA #19991)
Attorneys for Complainants

1100 Millennium Tower
719 Second Avenue
Seattle, WA 98104
Tel.: (206) 223-0303
Fax: (206) 223-0246

CERTIFICATE OF SERVICE

I certify, under penalty of perjury and in accordance with the laws of the State of Washington, that on June 20, 2005, I served a copy of the foregoing document on all counsel of record in the manner shown and at the addresses listed below:

Charles H.R. Peters	<input checked="" type="checkbox"/>	By Email
SCHIFF HARDIN LLP	<input checked="" type="checkbox"/>	By United States Mail
6600 Sears Tower	<input type="checkbox"/>	By Legal Messenger
Chicago, IL 60606-6473	<input type="checkbox"/>	By Federal Express
Attorneys for Respondent AT&T	<input type="checkbox"/>	By Facsimile
Letty S.D. Friesen	<input checked="" type="checkbox"/>	By Email
AT&T	<input checked="" type="checkbox"/>	By United States Mail
919 Congress Avenue, Suite 900	<input type="checkbox"/>	By Legal Messenger
Austin, TX 78701-2444	<input type="checkbox"/>	By Federal Express
Attorneys for Respondent AT&T	<input type="checkbox"/>	By Facsimile
Laura Kaster	<input checked="" type="checkbox"/>	By Email
AT&T	<input checked="" type="checkbox"/>	By United States Mail
One AT&T Way, Room 3A213	<input type="checkbox"/>	By Legal Messenger
Bedminster, NJ 07921	<input type="checkbox"/>	By Federal Express
Attorneys for Respondent AT&T	<input type="checkbox"/>	By Facsimile
Arthur A. Butler	<input checked="" type="checkbox"/>	By Email
ATER WYNNE LLP	<input checked="" type="checkbox"/>	By United States Mail
601 Union Street, Suite 5450	<input type="checkbox"/>	By Legal Messenger
Seattle, WA 98101-2327	<input type="checkbox"/>	By Federal Express
Attorneys for Respondent T-NETIX, Inc.	<input type="checkbox"/>	By Facsimile
Stephanie A. Joyce	<input checked="" type="checkbox"/>	By Email
Glenn B. Manishin	<input checked="" type="checkbox"/>	By United States Mail
KELLEY DRYE & WARREN LLP	<input type="checkbox"/>	By Legal Messenger
1200 19 th Street, NW, Suite 500	<input type="checkbox"/>	By Federal Express
Washington, DC 20036	<input type="checkbox"/>	By Facsimile
Attorneys for Respondent T-NETIX, Inc.		

DATED: June 20, 2005, at Seattle, Washington.




EXHIBIT I

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JUL 27 2005

LAW OFFICE OF
SIRIANNI YOUTZ
MEIER & SPOONEMORE

The Honorable Kathleen Learned
Hearing Date: August 3, 2005
Hearing Time: 1:30 p.m.

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

SANDY JUDD, TARA HERIVEL and
ZURAYA WRIGHT, for themselves, and on
behalf of all similarly situated persons,¹

Plaintiffs,

v.

AMERICAN TELEPHONE AND TELEGRAPH
COMPANY; GTE NORTHWEST INC.;
CENTURYTEL TELEPHONE UTILITIES,
INC.; NORTHWEST
TELECOMMUNICATIONS, INC., d/b/a/ PTI
COMMUNICATIONS, INC.; U.S. WEST
COMMUNICATIONS, INC.; T-NETIX, INC.,

Defendants.

No. 00-2-17565-5 SEA

**DEFENDANT T-NETIX, INC.'S
MOTION TO LIFT STAY**

I. RELIEF REQUESTED

Pursuant to Civil Rule 7(b) and Local Rule 7(b), Defendant T-NETIX, Inc. ("T-NETIX") hereby moves this Court to lift the stay imposed in this case on November 9, 2004. That stay was prescribed to allow for the referral of questions of administrative law to the Washington Utilities and Transportation Commission ("WUTC"). Proceedings before that agency have resulted in discovery conclusively demonstrating that neither of the named Plaintiffs, Sandra Judd nor Tara Herivel (collectively "plaintiffs"), has standing to pursue her

¹ As Ms. Wright is not a party to that proceeding, Plaintiffs have waived their right to obtain a ruling from the WUTC to support Ms. Wright's claims in this Court. As such, the Court is and would be unable to try Ms. Wright's claims.

DEFENDANT T-NETIX, INC.'S
MOTION TO LIFT STAY - 1

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COPY

1 claims, requiring that this case be dismissed. Accordingly, T-NETIX moves that the stay in
2 this case be lifted for the purpose of reviewing T-NETIX's Motion for Summary Judgment,
3 filed herewith.

4 **II. STATEMENT OF FACTS**

5 Plaintiffs filed this case on August 1, 2000, claiming violations of the Washington
6 Consumer Protection Act, RCW § 19.86 *et seq.* ("CPA"), through alleged failures to disclose
7 the rates applied to collect calls placed by inmates at Washington state correctional facilities
8 as required by RCW § 80.36.520.

9 Prior to imposing the stay in this case, Judge Kathleen Learned dismissed several
10 local exchange carrier ("LEC") defendants — GTE, CenturyTel, Northwest
11 Telecommunications (d/b/a PTI), and US West — on the ground that they were exempt from
12 the disclosure requirements of RCW § 80.36.520 during the relevant period of the case. The
13 dismissals were affirmed by both the Court of Appeals and the Supreme Court. *Judd v.*
14 *AT&T Co.*, 116 Wn. App. 716, 66 P.3d 1102 (Div. I, 2003), *aff'd* 152 Wn.2d 195, 95 P.3d
15 337 (2004).

16 Upon issuing the stay, the case went before Administrative Law Judge Ann E.
17 Rendahl of the WUTC upon the filing of Plaintiffs' Complaint with only T-NETIX and
18 AT&T Communications of the Pacific Northwest, Inc. ("AT&T") as respondents. That
19 proceeding resulted in discovery of information that demonstrates that neither of the
20 plaintiffs have suffered any injury. All of the calls of which plaintiffs complain were actually
21 carried by GTE, Qwest (US West's successor) or another LEC, all of which were exempt
22 from the rate disclosure requirement. Thus, because none of the alleged actions of T-NETIX
23 as to these calls could cause any legally cognizable harm to plaintiffs, the calls were not ones
24 for which rate disclosures were required, as a matter of law, in the first instance. Therefore,
25
26

DEFENDANT T-NETIX, INC.'S
MOTION TO LIFT STAY - 2

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1 on April 21, 2005, T-NETIX moved for summary determination and dismissal of the case.
2 AT&T joined in that motion on May 6, 2005.

3 On June 28, 2005, after hearing oral argument, ALJ Rendahl denied T-NETIX's
4 motion primarily on the ground that the jurisdiction to dismiss Plaintiffs' claim for lack of
5 standing rests only with the Superior Court:

6 JUDGE RENDAHL: What's the difference in Stevens and
7 U&ICAN is that those were issues and complaints filed
8 directly with the Commission, not based on a primary
9 jurisdiction referral, and isn't there an issue there as to whether
10 we have the primary jurisdiction as the Commission to dismiss
11 the case for standing or not reach the questions that was posed
12 to us, and send it back to say, No, we don't think they have
13 standing. Doesn't that raise an issue that they might send it
14 back to us and say, But you didn't answer the question.

15 Declaration of Sandrin B. Rasmussen, Exhibit K, pp. 60-61.

16 JUDGE RENDAHL: [L]ooking at the law on primary
17 jurisdiction and the cases the parties have cited, I just do not
18 feel comfortable in the Commission's role on a referral in
19 primary jurisdiction in telling the Superior Court that this
20 should be dismissed on that basis. It may be a valid point to
21 raise to the Superior Court when the Commission reaches the
22 issues that the Superior Court has asked us to raise, and I think
23 you are all correct that it is an important consideration for
24 Judge Learned in deciding what to do with this case when it
25 comes back to her, but it is not the Commission's role to
26 dismiss this case.

We do not give advisory opinions, but a referral from the King
County Superior Court is a request for an opinion on the law
and the facts that are presented in the case. So I'm denying T-
Netix's motion for summary determination first on the primary
jurisdiction issue,

...
You have all focused the issue. You have worked to some
degree to focus what the issues are. I think there is an issue
that we need to look into. We need to be responsible to Judge
Learned and say, T-Netix in violation. Is AT&T in violation of
the rule, and even if they were an OSP and even if both parties

DEFENDANT T-NETIX, INC.'S
MOTION TO LIFT STAY - 3

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1 are OSP's in violation of some rule, which also, is there
2 standing for Judd and Herivel, that's an issue for Judge
Learned to decide.

3 I can raise the issue or the Commission can point out, Well, the
4 parties have raised this issue and there is some question, and
5 that's an issue that I'm sure you all would address very first
6 when going back to Judge Learned and saying, We don't think
7 there is standing, even if we were in violation hypothetically as

8 to these parties. That's an issue for the King County Superior
9 Court to deal with. Our role is really to resolve the issue that's
10 been posed to us.

11 Declaration of Sandrin B. Rasmussen, Exhibit K, pp. 66-69.

12 In her written order, at paragraphs 36 and 37, Judge Rendahl stated:

13 36. In this proceeding, King County Superior Court Judge
14 Learned referred to the Commission under the primary
15 jurisdiction doctrine the issues of (1) 'whether or not [AT&T
16 is] considered by the agency to be an OSP under the contracts
17 at issue herein and if so if the regulations have been violated,'
18 and (2) 'to determine if T-Netix has violated WUTC
19 regulations.' Judge Learned stayed resolution of Complainants'
20 Consumer Protection Act claims and any award of monetary
21 damages pending the Commission's action on the issues.

22 37. The issue of Complainants' standing to bring a complaint
23 before the Commission is not within the issues referred to the
24 Commission for consideration: Judge Learned reserved
25 jurisdiction to resolve all other issues in the dispute. As this
26 matter is on referral from the Superior Court and not a
complaint filed initially with the Commission, the Commission
does not have jurisdiction to decide the issue of standing.
While resolving the issue of standing may avoid a waste of
resources, as T-Netix asserts, it would be inappropriate for the
Commission not to address the questions referred by the
Superior Court.

Declaration of Sandrin B. Rasmussen, Exhibit L (footnotes omitted), pp. 66-69.

DEFENDANT T-NETIX, INC.'S
MOTION TO LIFT STAY - 4

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III. EVIDENCE RELIED UPON

This motion is based upon the Declaration of Sandrin B. Rasmussen and the exhibits attached thereto, filed in support of this Motion to Lift Stay and T-NETIX' Motion for Summary Judgment, and the files and records herein.

IV. DISCUSSION

The undisputed facts of record, as revealed before the WUTC, show conclusively that neither of the plaintiffs in this case has standing to seek relief under the CPA. All of the documented calls that plaintiffs received were exempt from rate disclosures under WUTC rules; both the Court of Appeals and the Washington Supreme Court held that those rules are valid. *Judd*, 116 Wn. App. 716, *aff'd* 152 Wn.2d 195. As such, plaintiffs have no "protectable interest" that this Court may redress, *Orion Corp. v. State*, 103 Wn.2d 441, 693 P.2d 1369 (1985), and fail the requisite test for standing. *Save a Valuable Environment (SAVE) v. City of Bothell*, 89 Wn.2d 862, 576 P.2d 401, 403-404 (1978). Plaintiffs' claims should therefore be dismissed.

ALJ Rendahl feels constrained, however, to satisfy fully this Court's November 2000 referral. Therefore, she has ordered the parties to continue adjudicating to completion the questions referred by this Court. That will involve extensive discovery and briefing by the parties and consideration by the WUTC. The work burdens both the parties and the WUTC, despite that the Plaintiffs are without a cognizable claim. Raising the issue of standing later, when the matter is referred back to the Superior Court by the WUTC, will result in the expenditure of time and money as a needless exercise.

The question is one of justiciability, and it needs to be determined before reaching the merits of the case. If the Plaintiffs have no standing, then the WUTC effectively has no task to complete as it becomes moot. Relief from the stay is, therefore, required to allow the Court to consider this fundamental jurisdictional issue.

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V. CONCLUSION

For the reasons stated above, T-NETIX asks this Court to lift the stay and consider and determine T-NETIX's Motion for Summary Judgment filed herewith.

DATED this 26th day of July, 2005.

BADGLEY ~ MULLINS LAW GROUP



Donald H. Mullins WSBA #4966
Sandrin B. Rasmussen WSBA #11735

Of Counsel:
Glenn B. Manishin
Stephanie A. Joyce
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036

Counsel for Defendant T-NETIX, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of July, 2005, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

On Behalf Of AT&T:

Letty S. Friesen
AT&T Communications of the Pacific
Northwest
Law Department
919 Congress Avenue, Suite 900
Austin TX 78701-2444

Hand Delivered
U.S. Mail (first-class, postage
X prepaid)
Overnight Mail (UPS)
Facsimile (303) 298-6301
X Email (lsfriesen@att.com)

On Behalf Of Judd & Herivel:

Jonathan P. Meier
Sirianni Youtz Meier & Spoonemore
719 Second Avenue, Suite 1100
Seattle WA 98104

Hand Delivered
U.S. Mail (first-class, postage
X prepaid)
Overnight Mail (UPS)
Facsimile (206) 223-0246
X Email (jon@syllaw.com)

On Behalf Of AT&T:

Charles H. Peters
Schiff Hardin LLP
233 South Wacker Drive
6600 Sears Tower
Chicago IL 60606

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X prepaid)
Overnight Mail (UPS)
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X Email (cpeters@schiffhardin.com)

***On Behalf Of The Washington Utilities and
Transportation Commission:***

Judge Ann E. Rendahl
Washington Utilities and Transportation
Commission
1300 S. Evergreen Park Drive, S.W.
P.O. Box 47250
Olympia, WA 98504-7250

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X prepaid)
Overnight Mail (UPS)
Facsimile (312) 258-5600
X Email (arendahl@wutc.wa.gov)

Christina Limon

Christina Limon

DEFENDANT T-NETIX, INC.'S
MOTION TO LIFT STAY - 7

BADGLEY ~ MULLINS

LAW GROUP

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EXHIBIT 1

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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

SANDY JUDD, TARA HERIVEL and
ZURAYA WRIGHT, for themselves, and on
behalf of all similarly situated persons,

Plaintiffs,

v.

AMERICAN TELEPHONE AND TELEGRAPH
COMPANY; GTE NORTHWEST INC.;
CENTURYTEL TELEPHONE UTILITIES,
INC.; NORTHWEST
TELECOMMUNICATIONS, INC., d/b/a/ PTI
COMMUNICATIONS, INC.; U.S. WEST
COMMUNICATIONS, INC.; T-NETIX, INC.,

Defendants.

No. 00-2-17565-5 SEA

**ORDER LIFTING STAY
(proposed)**

ORDER LIFTING STAY

THIS MATTER having come on for hearing before this Court on the motion of Defendant T-NETIX, Inc., seeking an order lifting the stay that was issued herein on or about November 9, 2004, the Court having reviewed the Motion to Lift Stay and the Declaration of Sandrin B. Rasmussen in support thereof, and the exhibits attached thereto, all filings of other defendants joining or opposing the Motion to Lift Stay, if any, and all responsive documents filed by plaintiffs herein, if any, and the reply documents filed by T-NETIX, if any; and the Court having heard oral argument of counsel for the parties, it is now hereby

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ORDERED that T-NETIX, Inc.'s Motion to Lift Stay is GRANTED.
DONE IN OPEN COURT this day of August, 2005.

The Honorable Dean S. Lum

Presented by:
BADGLEY~MULLINS LAW GROUP

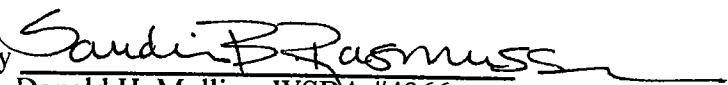
By 
Donald H. Mullins WSBA #4966
Sandrin B. Rasmussen WSBA #11735
Attorneys for Defendant T-NETIX, Inc.

EXHIBIT J

RECEIVED

JUL 27 2005

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SIRIANNI YOUTZ
MEIER & SPOONEMORE

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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

SANDY JUDD, TARA HERIVEL and
ZURAYA WRIGHT, for themselves, and on
behalf of all similarly situated persons,¹

Plaintiffs,

v.

AMERICAN TELEPHONE AND TELEGRAPH
COMPANY; GTE NORTHWEST INC.;
CENTURYTEL TELEPHONE UTILITIES,
INC.; NORTHWEST
TELECOMMUNICATIONS, INC., d/b/a/ PTI
COMMUNICATIONS, INC.; U.S. WEST
COMMUNICATIONS, INC.; T-NETIX, INC.,

Defendants.

No. 00-2-17565-5 SEA

**DEFENDANT T-NETIX, INC.'S
MOTION FOR SUMMARY
JUDGMENT**

I. RELIEF REQUESTED

T-NETIX, Inc. ("T-NETIX"), by its attorneys and pursuant to Wash. R.C.P. and
Local Rule 56, hereby moves for summary judgment against Plaintiffs on the ground that
they have suffered no injury and thus lack standing.

II. BACKGROUND

T-NETIX has discovered conclusive evidence that neither of the Plaintiffs herein, Ms.

¹ As Ms. Wright is not a party to that proceeding, Plaintiffs have waived their right to obtain
a ruling from the WUTC to support Ms. Wright's claims in this Court. As such, the Court is
and would be unable to try Ms. Wright's claims.

1 Judd nor Ms. Herivel, have suffered any injury in this case because all of the inmate-initiated
2 calls that they received were exempt from the rate disclosure requirements they claim were
3 violated. Being outside the zone of interest of those rate disclosure requirements, Plaintiffs
4 have no claim under the Washington Consumer Protection Act, RCW § 19.86 *et seq.*, and
5 their case should accordingly be dismissed.

6 T-NETIX brought this evidence before the Washington Utilities and Transportation
7 Commission, but their motion was denied for jurisdictional reasons. *See* Motion to Lift the
8 Stay and the Declaration of Sandrin B. Rasmussen filed in support thereof. Having been
9 denied the appropriate relief – dismissal – by the WUTC, T-NETIX respectfully requests that
10 this Court resume consideration of this case in order to affect this result.

11 ALJ Ann E. Rendahl of the WUTC has denied T-NETIX's request for dismissal on
12 the ground that the "role of T-NETIX" in the inmate calls has not been adjudicated. Yet this
13 question goes beyond the threshold issue of whether Plaintiffs' case is justiciable in the first
14 instance. Rather, the question of T-NETIX's "role" is the one this Court referred in
15 November 2000, and it goes to the merits of Plaintiffs' claim – it regards who is liable for
16 Plaintiffs' alleged injury. Yet there is no injury here as a matter of law, leaving no claim to
17 adjudicate and no reason to assign "roles." Accordingly, no further review of this case is
18 required in either the WUTC or this Court.

19 Moreover, both the hearing transcript and ALJ Rendahl's written order indicate that
20 her decision rests more on the notion that standing is not a valid concern in this case rather
21 than a substantive ruling on the evidence. This premise is, of course, false and contravenes
22 the most fundamental principles governing justiciability. The Court's intervention is,
23 therefore, required to ensure that neither it, nor the WUTC, nor the parties endure the
24 expense of litigation for claims that do not, as a matter of law, warrant any relief.

1 **III. EVIDENCE RELIED UPON**

2 T-NETIX relies upon the following evidence in this motion:

- 3 1. Order Denying in Part Defendant T-NETIX, Inc.'s Motion to Dismiss First Amended
4 Complaint – Class Action and Granting in Part and Referring to WUTC, 11/8/00 (“T-
5 NETIX Referral Order”);
- 6 2. Order Granting AT&T Corp.'s Motion to Dismiss, 11/8/00 (“AT&T Referral Order”);
- 7 3. T-NETIX Motion for Summary Determination, WUTC Docket No. 042022 4/21/05 (“T-
8 NETIX Motion”);²
- 9 4. Affidavit of Nancy Lee, Senior Vice President of Billing Services, T-NETIX, Inc., 4/20/
10 05 (“Lee April 20 Aff.”);
- 11 5. Complainants’ Opposition to Motion for Summary Determination, 5/6/05 (“Opp. to T-
12 NETIX”);
- 13 6. T-NETIX Reply in Support of Motion for Summary Determination, 5/10/05 (“T-NETIX
14 Reply”);
- 15 7. AT&T Response Joining in T-NETIX’s Motions for Summary Determination and to Stay
16 Discovery, 5/6/05 (“AT&T Joinder”);
- 17 8. Complainants’ Reply to AT&T’s Response Joining in T-NETIX’s Motions, 5/13/05
18 (“Opp. to Joinder”);
- 19 9. Declaration of Tara Herivel in Support of Complainants’ Response to AT&T’s Response
20 Joining T-NETIX’s Motion for Summary Determination, 5/11/05 (“Herivel Decl.”);
- 21 10. Supplemental Affidavit of Nancy Lee, 6/27/05 (“Lee June 27 Aff.”);
- 22 11. Transcript, 6/28/05 (“Tr.”);
- 23 12. Order of ALJ Rendahl, Docket No. UT-042022, 7/18/05 (“Order”);
- 24 13. T-NETIX Motion to Stay Discovery;
- 25 14. Complainants’ Response to T-NETIX Motion to Stay;

26 attached as Exhibits A-N respectively to the Declaration of Sandrin B. Rasmussen filed
herewith.

² All documents listed herein were filed within the WUTC proceeding, Docket No. 042022,
unless otherwise indicated.

1 **IV. DISCUSSION**

2 **A. Procedural Background**

3 This case was filed on August 1, 2000, claiming that several entities – AT&T, GTE,
4 CenturyTel, Northwest Telecommunications (d/b/a PTI), US West and T-NETIX – were
5 liable under The Washington Consumer Protection Act, RCW § 19.86 *et seq.*, for allegedly
6 failing to disclose the rates applied to calls placed from prisons in the state of Washington as
7 required by RCW § 80.36.520. All defendants moved to dismiss the complaint.

8 This Court dismissed GTE (which became Verizon), US West (which became
9 Qwest), CenturyTel, and PTI with prejudice on the ground that they were exempt from RCW
10 § 80.36.520 during the relevant period of this case.³ That is, the Commission’s rule
11 implementing that statute, WAC 480-120-141, expressly exempted all local exchange
12 carriers (“LECs”), which necessarily included these defendants, until the rule’s amendment
13 in 1999 deleting the LEC exemption. After amendment, these defendants petitioned for and
14 obtained waivers from WAC 480-120-141 lasting through December 2000. The Commission
15 held that these waivers precluded liability against GTE, CenturyTel, US West and PTI; the
16 Court of Appeals and the Supreme Court of Washington affirmed that decision. *Judd v.*
17 *AT&T Co.*, 116 Wn. App. 716, 66 P.3d 1102 (2003), *aff’d* 152 Wn.2d 195, 95 P.3d 337
18 (2004).

19 By orders dated November 8, 2000, this Court stayed all claims against AT&T and T-
20 NETIX pending a referral to the WUTC on the question of whether these entities were
21 subject to RCW § 80.36.520, and if so whether these entities failed to comply with the rate
22 disclosure requirement in that statute.

23 Plaintiffs activated the primary jurisdiction referral through a complaint filed with the
24 WUTC on November 14, 2004. On December 15, 2004, AT&T filed a Motion for Summary
25

26 ³ The relevant period is August 1, 1996 to August 1, 2000 by operation of RCW § 19.86.120.

1 Determination, seeking dismissal of the primary jurisdiction referral on the ground that
2 AT&T is not an operator service provider (“OSP”) and is thus not bound by the rate
3 disclosure obligation of WAC 480-120-141 or RCW § 80.36.520. Plaintiffs requested
4 discovery in order to respond to that motion, and presiding Administrative Law Judge Ann
5 Rendahl issued, after a conference with the parties, a Scheduling Order authorizing the
6 initiation of discovery.

7 T-NETIX propounded a limited set of Data Requests to Plaintiffs pursuant to that
8 order, in response to which Plaintiffs produced all available phone bills listing inmate calls
9 alleged to have violated rate disclosure requirements, as well as the persons who placed the
10 calls and the correctional facilities in which they were housed. *See* Declaration of Sandrin
11 Rasmussen (“Rasmussen Declaration”), Attachments to Exhibit C. Analysis of the
12 information and documents produced revealed that Plaintiffs do not have standing to pursue
13 their claims, as all disputed calls were rated, provided and billed by GTE, CenturyTel or PTI
14 – LECs that were exempt from rate disclosure under waivers deemed valid by both the Court
15 of Appeals and the Supreme Court.

16 On April 21, 2005, T-NETIX filed a Motion for Summary Determination requesting
17 that the Complaint be dismissed for lack of standing, along with a Motion to Stay Discovery.
18 *See* Rasmussen Declaration, Exhibits C and M. AT&T joined in those motions by a separate
19 filing on May 6, 2005. *See* Rasmussen Declaration, Exhibit G. Plaintiffs opposed all
20 motions. *See* Rasmussen Declaration, Exhibits E and N.

21 Oral argument was heard June 28, 2005, at the close of which ALJ Rendahl ruled
22 from the bench and denied T-NETIX’s motion primarily on the ground that “I just do not feel
23 comfortable in the Commission’s role on a referral in primary jurisdiction in telling the
24 Superior Court this should be dismissed on that basis.” *See* Rasmussen Declaration, Exhibit
25 K, at 66:14-68:1. The subsequent written order states that the motion was denied on the
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DEFENDANT T-NETIX, INC.’S
MOTION FOR SUMMARY JUDGMENT - 5

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1 ground that (1) there are “questions as to the role of T-Netix,” and (2) the Commission
2 cannot dismiss a case that it had received *via* primary jurisdiction from this Court. *See*
3 Rasmussen Declaration, Exhibit L, ¶¶ 34-35. ALJ Rendahl further ordered that discovery
4 resume on the merits of Plaintiffs’ allegations. *See* Rasmussen Declaration, Exhibit K, at
5 69:11–70:2.

6 **B. Factual Background**

7 Inmate telephone services in correctional facilities operated by the Washington
8 Department of Corrections (“DOC”) are provided pursuant to exclusive contracts between
9 the state and a certificated service provider awarded pursuant to a public bidding process.
10 RCW § 39.04.210 - .220 (governing public works contracts for correctional facilities). The
11 public bidding process is administered by the DOC under the supervision of the Washington
12 Department of General Administration. RCW § 39.04.210(1).

13 The DOC has established a detailed set of policy guidelines for inmate telephone
14 service. Washington State Department of Corrections, Telecommunications Infrastructure
15 Distribution Standards (Ed. 5.2) (June 15, 2005) available at:

16 <http://www.doc.wa.gov/general/WSDOC%20TDIS%20V5.2.pdf>

17 These guidelines cover all aspects of inmate service, including hardware configuration,
18 voltage requirements, and installation restrictions. Above all, these guidelines seek to ensure
19 that the inmate telephone system “[c]omplies with security requirements at all agency
20 locations.” Standards, at 7.

21 AT&T holds an exclusive contract with the DOC to provide interLATA and
22 international services to several DOC facilities. *See* Rasmussen Declaration, Exhibit C, ¶ 9
23 and the relevant attachments thereto. AT&T is authorized to take on subcontractors to assist
24 in providing services to DOC facilities. *See* Rasmussen Declaration, Exhibit G, ¶ 9 and the
25 relevant attachments thereto. T-NETIX is a subcontractor to AT&T. *See* Rasmussen
26

1 Declaration, Exhibit C, ¶ 9 and the relevant attachments thereto. T-NETIX executed a
2 subcontract with AT&T by which it has provided software used for screening, validating and
3 monitoring inmate calls to AT&T. *Id.*

4 GTE (now Verizon) and US West (now Qwest) are subcontractors to AT&T for the
5 provision of local and intraLATA calls made from certain DOC facilities. Specifically, GTE
6 contracted to serve the Twin Rivers Corrections Center, the Washington State Reformatory
7 in Monroe, the Indian Ridge Corrections Center in Arlington, and the Special Offender
8 Center in Monroe. *See* Rasmussen Declaration, Exhibit C, ¶ 9 and the relevant attachments
9 thereto. US West contracted to serve the Washington Corrections Center in Shelton, the
10 McNeil Island Penitentiary, the Washington State Penitentiary in Walla Walla, Airway
11 Heights, Tacoma Pre-Release, Cedar Creek Corrections Center and Larch Corrections
12 Center. *Id.*

13 Prior to 1998, PTI (later known as CenturyTel) was also an AT&T subcontractor. *See*
14 Rasmussen Declaration, Exhibit C, ¶ 10. PTI served several facilities, including the Clallam
15 Bay Corrections Center. *Id.* In March 1998, T-NETIX assumed only the local traffic under
16 the PTI contract. *Id.*

17 On April 4, 2005, Complainant Judd stated in verified responses to discovery that she
18 received calls from the Washington State Reformatory in Monroe and the McNeil Island
19 Detention Center. *See* Rasmussen Declaration, Exhibit C, ¶ 11. Complainant Herivel stated
20 in verified responses to discovery that she received calls from the Washington State
21 Reformatory in Monroe and Airway Heights Correctional Center. *Id.* Complainants'
22 discovery responses mark the first time that T-NETIX learned the origin of the calls at issue
23 in Complainants' claim, either in court or before the WUTC.

24 These facilities were served by GTE and US West. GTE and US West were each
25 exempt from complying with the rate disclosure requirements with respect to calls placed by
26

1 inmates, as was PTI. Under the version of WAC 480-120-141 in place from 1991 to 1999,
2 all local exchange carriers (“LECs”) were expressly exempted from these requirements. In
3 addition, when the rule was amended in 1999 to include LECs, US West, GTE and PTI
4 obtained waivers of the rule from the Commission that extended through the fourth quarter of
5 2000. *Judd*, 116 Wn. App. at 769, 66 P.3d at 1106-07 & n.8. It was for these reasons that
6 this Court dismissed US West, GTE and PTI from this case. *Id.*, at 770.

7 **V. STANDARD OF REVIEW**

8 Summary judgment will be granted “if the pleadings, depositions, and admissions on
9 file, together with the affidavits, if any, show that there is no genuine issue as to any material
10 fact and that the moving party is entitled to a judgment as a matter of law.” *E.g., Blenheim v.*
11 *Dawson & Hall Ltd.*, 35 Wn. App. 435, 439, 667 P.2d 125, 128 (1983). “The court must
12 consider all facts submitted and all reasonable inferences from the facts in the light most
13 favorable to the nonmoving party.” *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030
14 (1982). Further, “[a] party may not avoid an opponent’s motion for summary judgment by
15 resting on mere allegations of its complaint but must set forth specific facts showing that
16 there is a genuine issue of material fact.” *129 Retail Store Employees Local 631 v. Totem*
17 *Sales, Inc.*, 20 Wn. App. 278, 281, 579 P.2d 1019 (1978).

18 **VI. ARGUMENT**

19 **A. Standing is a Threshold Issue of Justiciability in All CPA Cases**

20 Persons must have standing to pursue claims under the Consumer Protection Act.
21 Indeed, the statute itself states that “[a]ny person who is injured in his business or property”
22 may seek relief under the CPA. RCW § 19.86.090. For this reason, the Supreme Court of
23 Washington established in 1986 that all private CPA plaintiffs must show “injury to plaintiff
24 in his or her business or property” as an element of any claim. *Hangman Ridge Training*
25 *Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778, 785, 719 P.2d 531 (1986). The
26

1 purpose of this element is “to establish that he or she has suffered harm.” *Id.*, 105 Wn.2d, at
2 792. The Court further explained that “the injury involved need not be great, but it must be
3 established.” *Id.* This injury requirement acts as the test for standing under the CPA.
4 *Washington State Physicians Ins. & Exch. Ass’n v. Fisons Corp.*, 122 Wn.2d 299, 311-12,
5 858 P.2d 1054 (1993) (holding that doctors have standing to sue drug manufacturer when
6 prescribed drug harms their patients).

7 This injury requirement essentially adopts for CPA claims what bedrock standing
8 doctrine already requires: “In essence the question of standing is whether the litigant is
9 entitled to have the court decide the merits of the dispute or of particular issues.” *Warth v.*
10 *Seldin*, 422 U.S. 490, 498 (1975). Or, according to the Washington Supreme Court, “[t]o
11 have standing, one must have some protectable interest that has been invaded or is about to
12 be invaded.” *Orion Corp. v. State*, 103 Wn.2d 441, 693 P.2d 1369 (1985).

13 Plaintiffs bear the burden of establishing their standing to seek relief. *Allan v. Univ.*
14 *of Wash.*, 140 Wash.2d 323, 329, 997 P.2d 360, 363 (2000) (citing *Lujan v. Defenders of*
15 *Wildlife*, 504 U.S. 555, 566 (1992)). This burden includes “a factual showing of perceptible
16 harm.” *Id.* (holding that wife of professor lacked standing to challenge amendments to the
17 University of Washington faculty disciplinary code). Ms. Judd and Ms. Herivel are thus
18 required to produce evidence demonstrating that they have suffered harm as a result of T-
19 NETIX’s conduct. They have been unable to do so.

20 Standing is not an optional consideration in Washington courts, *Orion*, 103 Wn.2d
21 441, 455 693 P.2d 1369, 1377 (1985), and Plaintiffs are required to demonstrate their right to
22 seek relief in order to have their claims heard. *Allan*, 140 Wn.2d at 329, 997 P.2d at 363. As
23 T-NETIX demonstrates below, Plaintiffs have not made this demonstration.

1 **B. The WUTC Refused to Address Whether Plaintiffs Have Standing**

2 T-NETIX returns to this Court to resolve the threshold question of standing that the
3 WUTC would not address. Analysis of ALJ Rendahl's reasoning in denying T-NETIX's
4 motion reveals that the denial was borne not out of analysis of standing, but rather a
5 reluctance to decide the issue at all. As such, the parties are presently litigating issues of
6 substantive merit before that agency on behalf of persons who lack standing and to whom the
7 Court cannot grant relief. *Hangman Ridge*, 105 Wn.2d at 792; *Fisons Corp.*, 122 Wn.2d at
8 311-12.

9 ALJ Rendahl does not dispute that Plaintiffs' standing is questionable. Nor does she
10 dispute the fact that the WUTC, under its own precedent governing standing requirements,
11 "do[es] not give advisory opinions." See Rasmussen Declaration, Exhibit K, at 67:6. Rather,
12 she "do[es] not feel comfortable in the Commission's role on a referral in primary
13 jurisdiction in telling the Superior Court that this should be dismissed on that basis." See
14 Rasmussen Declaration, Exhibit K, at 66:20-23. She thus instructed the parties that standing
15 "**may be a valid point to raise to the Superior Court ... and I think you are all correct that**
16 **it is an important consideration for Judge Learned** in deciding what to do with this case
17 when it comes back to her[.]" See Rasmussen Declaration, Exhibit K, at 66:23-67:4. But
18 ALJ Rendahl denied T-NETIX's Motion on the ground that "it is not the Commission's role
19 to dismiss this case." See Rasmussen Declaration, Exhibit K, at 67:4-5.

20 ALJ Rendahl reiterated this refusal in her subsequent *Order*, stating that "it would be
21 inappropriate for the Commission not to address the questions referred by the Superior
22 Court." See Rasmussen Declaration, Exhibit L, ¶ 37. In fact, she went so far as to hold that
23 "**the Commission does not have jurisdiction to decide the issue of standing.**" *Id.* In plain
24 terms, she refused to decide the question of standing at all.

1 ALJ Rendahl also stated in the subsequent *Order* that "Complainant's affidavits and
2 pleadings raise questions as to the role of T-Netix and AT&T in connecting the calls between
3 the correctional institutions and the Complainants." See Rasmussen Declaration, Exhibit L, ¶
4 34. These "questions," she reasoned created a disputed material facts that prevented her from
5 dismissing the case. *Id.* Yet as T-NETIX had argued in its moving papers, the question of T-
6 NETIX's "role" is immaterial where Plaintiffs have no injury in the first instance. See
7 Rasmussen Declaration, Exhibit F, ¶ 6. See also Rasmussen Declaration, Exhibit K, at 30:3-
8 9. Delving into the "role" of T-NETIX and AT&T by its nature assumes that injury exists,
9 and some entity must provide relief. As such, the question for which ALJ Rendahl demands
10 an answer is a core merits issue, and one that no tribunal should reach when the parties
11 before it have no justiciable claim.

12 Moreover, ALJ Rendahl's concern over these questions is analytically no different
13 than her reluctance to dismiss the proceeding. The "role" T-NETIX and AT&T played in the
14 challenged inmate calls is the very question this Court referred to the WUTC:

- 15
- 16 (1) "[W]hether or not [AT&T is] considered by the agency to
17 be an OSP under the contracts at issue herein, and if so if
18 the regulations have been violated." Rasmussen
19 Declaration, Exhibit B.
- 20 (2) "[T]he matter is referred to the [WUTC] for further
21 proceeding to determine if T-Netix has violated WUTC
22 regulations." Rasmussen Declaration, Exhibit A.

22 Thus, the "questions as to the role of T-NETIX and AT&T in connecting the calls,"
23 Rasmussen Declaration, Exhibit L, at ¶ 34, are in fact the primary jurisdiction questions. In
24 demanding an answer to them, ALJ Rendahl is effectively reiterating her belief that "it would
25 be inappropriate" not to answer the Court's questions. Rasmussen Declaration, Exhibit L, at
26 ¶ 37. Her decision on standing is actually not to decide.

DEFENDANT T-NETIX, INC.'S
MOTION FOR SUMMARY JUDGMENT - 11

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1 T-NETIX, therefore, requests that the Court resume control of this case in order to do
2 what the WUTC felt it could not: apply fundamental standing doctrine to the facts of this
3 case and dismiss Plaintiffs' claims.

4
5 **C. This Proceeding Should Be Dismissed Because**
6 **Neither Complainant has Standing**

7 The plain facts of this case demonstrate that Plaintiffs do not have standing under the
8 CPA. Washington Courts apply a two-part test to determine whether a complainant has
9 standing: (1) complainant must demonstrate injury, financial or otherwise ("injury in fact");
10 and (2) complainant must have an interest that is within the "zone of interest" of the type that
11 the Commission regulation is designed to protect. *Save a Valuable Environment (SAVE) v.*
12 *City of Bothell*, 89 Wn.2d 862, 865-868, 576 P.2d 401, 403-404 (1978)). In any case, both
13 the injury in fact and the zone of interest are defined by the statute sought to be enforced.
14 *See id.*

15 In this case, the standing criteria articulated by the Supreme Court are defined by the
16 relevant statute, RCW § 80.36.520. That statute requires the WUTC to adopt rules that
17 "assure appropriate disclosure to consumers of the provision and the rate, charge or fee of
18 services provided by an alternate operator services company." *Id.* As explained above, the
19 WUTC's rule implementing this statute, WAC 480-120-021, specifically exempted all LECs
20 until 1999, and from 1999 through 2000 these LECs – GTE, US West and PTI – operated
21 under WUTC waivers of the implementing rule. The effect of these waivers was that the
22 rates that these carriers charged for inmate calls were not subject, during the relevant period
23 of this case, to the disclosure requirements of RCW § 80.36.520. As such, Complainants
24 Judd and Herivel could not have suffered any injury or been within the zone of interest of the
25 statute they seek to enforce, and thus are unable to demonstrate "injury ... in his or her
26 business or property" as the CPA requires. *Hangman Ridge*, 105 Wn.2d at 785.

1 1. Neither Complainant Has Suffered Injury in Fact

2 In order to have standing to pursue any claim against T-NETIX, Complainants Judd
3 and Herivel must allege that they received a call that involved T-NETIX and were in some
4 way injured by it. *Fisons Corp.*, 122 Wn.2d at 311-12; *SAVE*, 89 Wn.2d at 865-868. But
5 neither Judd nor Herivel could have been injured by the calls they received from inmates that
6 involved T-NETIX.

7 The material facts of this matter are not subject to dispute. First, Complainants'
8 phone bills indicate that all of the inmate-initiated calls they received were intraLATA calls.
9 *See* Rasmussen Declaration, Exhibit K, at 40:18-41:3; *See* Rasmussen Declaration, Exhibit
10 C, at ¶¶ 8-9; *see* Rasmussen Declaration, Exhibit E, at ¶¶ 17-18. Second, all of these calls
11 were carried by PTI, US West or GTE. *Id.* Third, each of these carriers was exempt from or
12 had received waivers from the rate disclosure requirements of Commission Rule 480-120-
13 141. *See* Rasmussen Declaration, Exhibit C, at ¶¶ 15, 23; *see* Rasmussen Declaration,
14 Exhibit E, at ¶ 19. These calls were not required to include rate disclosures. Thus, as a
15 matter of law, Judd and Herivel are owed no relief for these calls.

16 2. It is Undisputed That PTI, US West or GTE Carried All Documented Calls

17 Complainants do not dispute that their written responses to discovery identify the
18 correctional facilities from which the allegedly non-compliant calls originated. Rasmussen
19 Declaration, Exhibit E, at ¶¶ 17-18. Ms. Judd identified the Washington State Reformatory
20 in Monroe and the McNeil Island Detention Center. *See* Rasmussen Declaration, Exhibit C,
21 at ¶ 11. Complainant Herivel stated that she received calls from the Washington State
22 Reformatory in Monroe and Airway Heights Correctional Center. *Id.*

23 Contracts filed in this record by both Complainants and AT&T identify the facilities
24 that GTE served for purposes of local and intraLATA calls. They include the Washington
25 State Reformatory in Monroe. *See* Rasmussen Declaration, Exhibit C, at ¶ 9. US West
26

1 served McNeil Island and Airway Heights for both local and intraLATA calls. *Id.* Thus, as
2 an initial matter, it is not subject to dispute that US West and GTE carried the local and
3 intraLATA traffic from the three correctional facilities identified by Complainants as
4 comprising the scope of their claims.

5 3. It is Undisputed That All Inmate Calls Documented by Complainants
6 Were Local or IntraLATA

7 In order to verify that, as Complainants have stated, every inmate call that they
8 received from these three facilities belonged to either US West or GTE, T-NETIX has
9 researched all of the considerable number of phone bills that Complainants have produced.
10 This research entails entering originating and terminating phone numbers into a database to
11 learn whether a call is local, intraLATA, or interLATA. The attached affidavit of Nancy
12 Lee, T-NETIX Senior Vice President of Billing Services, describes and verifies this research.
13 *See* Rasmussen Declaration, Exhibit D, at ¶ 3. Plaintiffs concede that this research is correct.
14 *See* Rasmussen Declaration, Exhibit K, at 40:18-41:3.

15 4. T-NETIX Has No Record of Any InterLATA Calls to Plaintiff Herivel

16 After the close of briefing on the T-NETIX Motion at the Commission, Plaintiff Tara
17 Herivel alleged that she had received an interLATA call from Airway Heights Correctional
18 Center, near Spokane, at some time between October 1 and December 31, 1998. *See*
19 Rasmussen Declaration, Exhibit I, at ¶ 4. This one interLATA call, counsel contended,
20 establishes that not all calls at issue in this case were covered by the LEC exemptions and
21 waivers to RCW 80.36.520. On this ground, Ms. Herivel argues that she in fact has standing
22 to pursue this case.

23 None of the months of phone bills that Ms. Herivel produced include reference to a
24 call from Airway Heights, as she concedes. *See* Rasmussen Declaration, Exhibit H, at ¶¶ 8-
25 9. Ms. Herivel conceded that she has no corroborating evidence of that call, because
26 "Qwest/US West does not provide copies for bills that far in the past." *See* Rasmussen

1 Declaration, Exhibit I, at ¶ 3. In addition, T-NETIX has no record of Ms. Herivel receiving
2 any calls from Airway Heights. See Rasmussen Declaration, Exhibit J, at ¶ 3. Thus, there is
3 no evidence that Ms. Herivel in fact received this call. As such, Ms. Herivel has failed to
4 satisfy her burden to make “a factual showing of perceptible harm” as the doctrine of
5 standing requires her to do. *Allan*, 140 Wn.2d at 329.

6 **5. All Inmate Calls Received By Complainants Were Exempt From RCW § 80.36.520**

7 The record demonstrates that all of the calls received by Judd and Herivel were
8 carried by US West, PTI or GTE. In addition, as explained above, it is not subject to dispute
9 that US West, PTI and GTE were exempt from all rate disclosure rule for inmate-initiated
10 local and intraLATA calls through 2000. *Judd*, 116 Wn. App. at 769, 66 P.3d at 1106-07 &
11 n.8. Thus, if Complainants received no rate disclosure information for these calls, as they
12 allege, that omission was permitted by this Commission.

13 The undisputed facts of this matter demonstrate that T-NETIX is entitled to judgment
14 as a matter of law. *Blenheim*, 35 Wn. App. at 439, 667 P.2d at 128. They show that
15 Complainants were not entitled to receive rate disclosure information for any inmate-initiated
16 calls they received. Accordingly, they have suffered no injury. And having suffered no
17 injury, Complainants Judd and Herivel lack standing to pursue their claims, requiring
18 dismissal of this matter. *SAVE*, 89 Wn.2d at 865-868, 576 P.2d at 403-404.

19 **D. Neither Complainant is in The Zone of Interest**

20 Plaintiffs must demonstrate that they were owed a duty under RCW 80.36.520 in
21 order to bring their CPA claim. *Fisons Corp.*, 122 Wn.2d at 311-12, 858 P.2d at 1060-61;
22 *SAVE*, 89 Wn.2d at 865-868, 576 P.2d at 403-404. That duty attaches if the rates of the
23 inmate calls Plaintiffs received were subject to RCW 80.36.520.

24 PTI, GTE and US West were all exempt from Commission Rule 480-120-141, and
25 thus from RCW 80.36.520. *Judd*, 116 Wn. App. at 769, 66 P.3d at 1106-07 & n.8. These
26

1 carriers owed no duty to Judd or Herivel under that rule. Accordingly, neither Judd nor
2 Herivel are within the zone of interest of RCW § 480-120-021, and they lack standing to
3 enforce it. Their claim should be dismissed. See *SAVE*, 89 Wn.2d at 865-868, 576 P.2d at
4 403-404.

5 **E. The Court Should Rescind its Primary Jurisdiction Referral to the WUTC**

6 Neither Judd nor Herivel may pursue their claim before this Court, because the
7 material facts of this case demonstrate that they have no protectable interest in rate
8 disclosures. See *Orion*, 103 Wn.2d at 454, 693 P.2d at 1377. There is no controversy that
9 this Court can adjudicate; dismissal is therefore required. Dismissal of this case thus relieves
10 the WUTC of its duty to comply with this Court's primary jurisdiction referral, and as such
11 the Court should withdraw its request.

12 The doctrine of primary jurisdiction instructs that courts, when presented with a claim
13 against a regulated entity, should defer consideration of that claim in order to obtain the
14 expert opinion of the regulating agency regarding the defendant's conduct. The Supreme
15 Court of Washington has followed this doctrine through strict adherence to the precedent of
16 the United States Supreme Court. *In re Real Estate Brokerage Antitr. Litig.*, 95 Wn.2d 297,
17 302-04, 622 P.2d 1185, 1188-89 (1980); *Schmidt v. Old Union Stockyards Co.*, 58 Wn.2d
18 478, 482-84, 364 P.2d 23, 26-27 (1961). The Washington Supreme Court has emulated that
19 Court's description of the doctrine, stating that primary jurisdiction "comes into play
20 whenever enforcement of the claim *requires resolution* of issues which, under a regulatory
21 scheme, have been placed within the special competence of an administrative body[.]"
22 *Schmidt*, 58 Wn.2d at 484, 364 P.2d at 27 (quoting *United States v. Western Pac. R.R. Co.*,
23 352 U.S. 59 (1956)) (emphasis added).

24 The Supreme Court has since developed a three-part test for determining whether a
25 referral to an agency under primary jurisdiction is appropriate: (1) the agency would have the
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1 authority to resolve the issue had complainants brought the claim there; (2) the agency has
2 “special competence” over the controversy that renders it more capable of resolving the
3 dispute than the court; and (3) the claim must involve issues that are subject to “a pervasive
4 regulatory scheme” such that “the danger exists that judicial action would conflict with the
5 regulatory scheme.” *Vogt v. Seattle-First National Bank*, 117 Wn.2d 541, 553-55, 817 P.2d
6 1364, 1371-72 (1991) (citing *In re Real Estate*, 95 Wn.2d at 302-303).

7 This test makes clear that the purpose of a primary jurisdiction referral is to assist the
8 court in resolving only the case or controversy brought in a civil lawsuit. It is a narrow
9 inquiry that, in essence, asks “what relief would the agency provide to this plaintiff?” In this
10 lawsuit here, Judd and Herivel seek damages under RCW 19.86 based on alleged failures to
11 provide rate information for inmate-initiated collect calls. As reflected in the Court’s
12 November 8, 2000 Orders, this Court found that the necessary predicate to Judd’s and
13 Herivel’s claim is a violation of Commission Rule 480-120-141.


14 This Court’s referral to the WUTC requested a determination of whether T-NETIX
15 and AT&T are operator service providers within the meaning of RCW 80.36.520, and if so
16 whether they had violated that statute by virtue of failing to comply with Commission Rule
17 480-120-021. This referral was of course predicated on the belief that Judd’s and Herivel’s
18 claims may go forward. With all evidence demonstrating that these plaintiffs in fact have no
19 viable claims, this Court has no need of the WUTC’s assistance. Accordingly, this Court
20 does not ‘require resolution’ of any regulatory issue within the WUTC’s expertise, *Schmidt*,
21 58 Wn.2d at 484-85, 364 P.2d at 27, warranting rescission of the Court’s primary jurisdiction
22 referral.

23 Absent this relief, the WUTC will require T-NETIX to adjudicate this matter fully,
24 undergoing extension written and deposition discovery, to resolve a regulatory question in a
25 dispute that cannot be tried. ALJ Rendahl has stated that she intends to resolve the Court’s
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1 referral fully, and leave it to the parties to return to this Court and ask for dismissal. T-
2 NETIX therefore respectfully requests that this Court relieve both the parties and the WUTC
3 of this burden by closing this case and withdrawing the referral.

4 DATED this 26th day of July, 2005.

5 BADGLEY~MULLINS LAW GROUP

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8 
9 Donald H. Mullins WSBA #4966
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16 Attorneys for Defendant T-NETIX, Inc.

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CERTIFICATE OF SERVICE

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I hereby certify that I have this 26th day of July, 2005, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

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***On Behalf Of The Washington Utilities and
Transportation Commission:***

Judge Ann E. Rendahl
Washington Utilities and Transportation
Commission
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Christina Limon

Exhibit 1

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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

SANDY JUDD, TARA HERIVEL and
ZURAYA WRIGHT, for themselves, and on
behalf of all similarly situated persons,

Plaintiffs,

v.

AMERICAN TELEPHONE AND TELEGRAPH
COMPANY; GTE NORTHWEST INC.;
CENTURYTEL TELEPHONE UTILITIES,
INC.; NORTHWEST
TELECOMMUNICATIONS, INC., d/b/a/ PTI
COMMUNICATIONS, INC.; U.S. WEST
COMMUNICATIONS, INC.; T-NETIX, INC.,

Defendants.

No. 00-2-17565-5 SEA

**ORDER GRANTING
DEFENDANT T-NETIX'
MOTION FOR
SUMMARY JUDGMENT
(proposed)**

**ORDER GRANTING T-NETIX INC.'S
MOTION FOR SUMMARY JUDGMENT**

THIS MATTER having come on for hearing before this Court on the Motion of Defendant T-NETIX, Inc. for Summary Judgment, the Court having reviewed the Motion and the Declaration of Sandrin B. Rasmussen in support thereof, and the exhibits attached thereto, all filing of other defendants joining or opposing the Motion for Summary Judgment, if any, and all responsive documents filed by plaintiffs herein, if any, and the reply

**ORDER GRANTING DEFENDANT T-NETIX'
MOTION FOR SUMMARY JUDGMENT - 1**

BADGLEY ~ MULLINS
LAW GROUP
Bank of America Tower
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Seattle, Washington 98104
Telephone: (206) 621-6566
Fax: (206) 621-9686

1 documents filed by T-NETIX, if any; and the Court having heard oral argument of counsel
2 for the parties, it is now hereby

3 ORDERED, ADJUDGED AND DECREED that T-NETIX' Motion for Summary
4 Judgment is GRANTED.

5 DONE IN OPEN COURT this day of August, 2005.

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8 The Honorable Dean S. Lum

9
10 Presented by:

11 BADGLEY~MULLINS LAW GROUP

12
13 By Sandrin B. Rasmussen

14 Donald H. Mullins WSBA #4966

15 Sandrin B. Rasmussen WSBA #11735

16 Attorneys for Defendant T-NETIX, Inc.

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**ORDER GRANTING DEFENDANT T-NETIX'
MOTION FOR SUMMARY JUDGMENT - 2**

BADGLEY ~ MULLINS

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EXHIBIT K

ORIGINAL

I certify under penalty of perjury under the laws of the State of Washington that on August 1, 2000, I served a copy of this document on all counsel of record in the manner shown at the addresses listed on the attached Service List.

RECEIVED

Signed: Theresa A. Ash 00 AUG -1 PM 3:17

00 AUG -1 PH 2:25

KING COUNTY SUPERIOR COURT CLERK SEATTLE, WA.

HON. J. KATHLEEN LEARNED KING COUNTY SUPERIOR COURT CLERK SEATTLE, WA

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SANDY JUDD, TARA HERIVEL and ZURAYA WRIGHT, for themselves, and on behalf of all similarly situated persons,

NO. 00-2-17565-5 SEA

Plaintiffs,

FIRST AMENDED COMPLAINT - CLASS ACTION

v.

AMERICAN TELEPHONE AND TELEGRAPH COMPANY; GTE NORTHWEST INC.; CENTURYTEL TELEPHONE UTILITIES, INC.; NORTHWEST TELECOMMUNICATIONS, INC., d/b/a PTI COMMUNICATIONS, INC.; U.S. WEST COMMUNICATIONS, INC.; T-NETIX, INC.,

Defendants.

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiff Sandy Judd is a resident of Snohomish County, Washington. She has received and paid for intrastate long-distance collect calls from Washington State prison inmates.

2. Plaintiff Tara Herivel is a resident of King County, Washington. She has received and continues to receive and pay for intrastate long-distance collect calls from Washington State prison inmates.

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3. Plaintiff Zuraya Wright is a resident of Lake Worth, Florida. She received and paid for interstate long-distance collect calls from a Washington State prison inmate before rate disclosure was first offered to her in November of 1999.

4. Jurisdiction is appropriate in this court because the defendants do business in the state of Washington, and because the amount in controversy exceeds \$300.00. Venue is proper because the non-resident defendants have been served in King County, Washington.

II. NATURE OF CASE

5. Since at least 1992, the Washington State Department of Corrections has contracted with private "operator service providers," also known as "alternate operator services companies," to provide "0+" operator services on the payphones used by prison inmates incarcerated in the State of Washington. Prison 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.

6. Since at least 1988, telecommunications companies acting as or contracting with operator service providers have been required by state law to assure appropriate disclosure of rates charged to consumers for services provided while connecting both intrastate and interstate long-distance telephone calls. However, the defendants, all telecommunications companies and operator service providers, have failed to assure appropriate disclosure of rates to the plaintiffs and others similarly situated, and continue to fail to do so for intrastate long-distance telephone calls. The defendants have provided disclosure of rates for at least some interstate calls from Washington prison inmates only since November of 1999.

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III. CLASS ACTION ALLEGATIONS

7. *Definition of Class.* The class consists of all individuals who have received or will receive one or more long-distance intrastate or interstate collect calls from one or more Washington State prison inmates since June 20, 1996, except for those individuals who have received only interstate collect calls from Washington State prison inmates after November of 1999, and to whom timely disclosure of rates was offered.

8. *Class Representatives.* Named plaintiff Sandy Judd has received and paid for intrastate long-distance collect calls from Washington State prison inmates. Named plaintiff Tara Herivel has received and continues to receive and pay for intrastate long-distance collect calls from Washington State prison inmates. Named plaintiff Zuraya Wright received and paid for interstate collect calls from a Washington State prison inmate between June 20, 1996 and November of 1999.

9. *Size of Class.* There are approximately 14,000 prison inmates currently incarcerated in the State of Washington. Inmate are generally allowed access to prison payphones during daytime hours. Every person who is or has been called by any incarcerated person since July 20, 1996 is a potential class member, including family, friends, attorneys and news organizations. The class is expected to number in the tens or hundreds of thousands and is so large that joinder of all members is impracticable.

10. *Common Questions of Law and Fact.* This action requires a determination of whether the defendants have assured appropriate rate disclosure to the class member recipients of inmate-initiated intrastate and interstate long-distance collect telephone calls as required by RCW §80.36.520 and RCW §80.36.530.

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11. ***Defendants Have Acted On Grounds Generally Applicable to the Class.*** The defendants complete inmate-initiated collect telephone calls to call recipients, and have consistently failed to make proper disclosures. The defendants have acted on grounds generally applicable to the class. Certification is therefore proper under CR 23(b)(2).

12. ***Questions of Law and Fact Common to the Class Predominate Over Individual Issues.*** The claims of many individual class members are too small to justify filing and prosecuting the claims separately. Thus, any interest that individual members of the class may have in individually controlling the prosecution of separate actions is outweighed by the efficiency of the class action mechanism. This action can be most efficiently prosecuted as a class action in King County Superior Court, where the defendants do business. Issues as to the defendants' conduct towards members of the class predominate over questions, if any, unique to members of the class. Certification is therefore additionally proper under CR 23(b)(3).

13. ***Class Counsel.*** Plaintiffs have retained experienced and competent class counsel.

IV. FACTUAL BACKGROUND

14. The defendants are telecommunications companies. On March 16, 1992, all of the defendants except for T-Netix, Inc. contracted with the Washington Department of Corrections to provide operator services for inmate payphones. The parties have extended this contract through four amendments. The fourth amendment, which went into effect in March of 1999, adds T-Netix, Inc. as an operator service provider at some facilities.

15. Throughout the Class period, family members, attorneys and other persons have been unable to speak to Washington State prison inmates by

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telephone, except as recipients of operator-assisted collect calls. Recipients are billed for these calls by the operator service provider assigned by contract to the prison from which the call originates.

16. Rates for intrastate long-distance collect calls are not made available to recipients over the phone prior to the receipt of an inmate-initiated call, nor are recipients given a separate number to call in order to learn the rates charged.

17. Rates for at least some interstate calls have been made available over the phone starting sometime in November of 1999. Prior to that time, recipients of inmate-initiated interstate calls could not access rates prior to receipt of the call, and also were not provided with any information on how to obtain the applicable rates.

V. CLAIMS FOR RELIEF

FIRST CLAIM—VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT, RCW 19.86 et seq.

18. Plaintiffs re-allege paragraphs 1 through 16, above.

19. The defendants' repeated violations of RCW §80.36.520 constitute per se violations of the Washington Consumer Protection Act, RCW §19.86 et seq., pursuant to RCW §80.36.530. The defendants have engaged in, and continue to engage in, unfair or deceptive acts or practices in trade or commerce in violation of the Washington State Consumer Protection Act. Such conduct affects the public interest, and has caused injury to the named plaintiffs and the plaintiffs' class.

20. Plaintiffs and the plaintiff class are entitled to damages as defined in RCW §80.36.530, and treble damages under RCW §19.86.090, along with costs of suit and attorney fees.

SECOND CLAIM—INJUNCTIVE RELIEF

21. Plaintiffs re-allege paragraphs 1 through 19, above.

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22. Plaintiffs and the plaintiff class are entitled to an injunction under RCW §19.86.090, under the common law, and under any other applicable laws, to enjoin further violations of RCW §80.36.520.


VI. DEMAND FOR RELIEF

WHEREFORE, plaintiffs request that this Court:

- 1. Enter judgment in favor of plaintiffs and the plaintiff class for damages in an amount to be proven at trial due to the defendants' failure to assure appropriate disclosure of rates charged under RCW §80.36 et seq. and RCW §19.86 et seq., including presumed damages under RCW §80.36.530 for each violation, and treble damages up to \$10,000 to each class member for each violation;
- 2. Enter judgment in favor of plaintiffs and the plaintiff class, and against the defendants, enjoining the defendants from further violations of RCW §80.36.520;
- 3. Award plaintiffs and the plaintiff class their attorney fees; and
- 4. Award such other relief as is just and proper.

DATED: August 1, 2000.

SIRIANNI & YOUTZ



Chris R. Youtz (WSBA #7786)
Jonathan P. Meier (WSBA #19991)
Marie E. Gryphon (WSBA #29242)
Attorneys for Plaintiffs

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SERVICE LIST

Judd, et al. v. American Telephone and Telegraph Company, et al.
King County Superior Court Cause No. 00-2-17565-5 SEA

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Timothy J. O'Connell STOEL RIVES LLP 600 University Street, Suite 3600 Seattle, WA 98101-4109 Attorneys for Defendant GTE Northwest, Inc.	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	By United States Mail By Legal Messenger By Federal Express By Facsimile Fax: (206) 386-7500 Phone: (206) 624-0900
Robert B. Mitchell Carol S. Arnold Athan E. Tramountanas PRESTON GATES & ELLIS LLP 701 Fifth Ave., Suite 5000 Seattle, WA 98104-7078 Attorneys for Defendants CenturyTel Telephone Utilities, Inc. and Northwest Telecommunications, Inc.	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	By United States Mail By Legal Messenger By Federal Express By Facsimile Fax: (206) 623-7022 Phone: (206) 623-7580
Julia L. Parsons PERKINS COIE LLP 1201 Third Ave., Suite 4800 Seattle, WA 98101-3099 Attorneys for Defendant U.S. WEST Communications, Inc.	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	By United States Mail By Legal Messenger By Federal Express By Facsimile Fax: (206) 583-8500 Phone: (206) 583-8888
Teresa Williams Gillespie U S WEST COMMUNICATIONS, INC. 1600 Seventh Ave., Room 3208 Seattle, WA 98191 Attorneys for Defendant U.S. WEST Communications, Inc.	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	By United States Mail By Legal Messenger By Federal Express By Facsimile Fax: (206) Phone: (206) 398-2503
T-Netix, Inc. co/CT Corporation System 520 Pike Street Seattle, WA 98101	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	By United States Mail By Legal Messenger By Federal Express By Facsimile Fax: Phone: