

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

SANDRA JUDD AND TARA)	
HERIVEL,)	DOCKET NO. UT-042022
)	
Complainants,)	ORDER NO. 07
)	
v.)	
)	ORDER GRANTING T-NETIX'S
AT&T COMMUNICATIONS OF)	MOTION TO DISMISS;
THE PACIFIC NORTHWEST, INC.,)	DISMISSING COMPLAINANTS'
AND T-NETIX, INC.,)	ACTION
)	
Respondents.)	
.....)	

1 **SYNOPSIS.** *The Commission grants T-Netix's Motion to Dismiss as there is no longer a basis for Commission jurisdiction over this proceeding: The King County Superior Court has entered orders finding that Complainant's have no standing to bring claims against T-Netix or AT&T, and rescinding the primary jurisdiction referral to this Commission.*

2 **NATURE OF PROCEEDING.** Docket No. UT-042022 concerns a complaint filed in King County Superior Court by recipients of inmate-initiated calls against AT&T Communications of the Pacific Northwest, Inc. (AT&T), and T-Netix, Inc. (T-Netix), alleging that AT&T and T-Netix failed to disclose rates for the calls, violating the Washington Utilities and Transportation Commission's (Commission) rules governing disclosure. The matter was filed with the Commission after the King County Superior Court referred certain issues of fact and law to the Commission under the doctrine of primary jurisdiction.

- 3 **PROCEDURAL HISTORY.** The Complainants initiated this proceeding on November 17, 2004, requesting the Commission resolve the issues referred by the King County Superior Court.
- 4 On April 21, 2005, T-Netix filed with the Commission a Motion for Summary Determination and Motion to Stay Discovery, requesting the Commission dismiss the Complainants' claims against T-Netix for lack of standing. AT&T joined in T-Netix's motions.
- 5 After reviewing the parties' numerous pleadings, motions, affidavits and declarations, and hearing oral argument, Administrative Law Judge Ann E. Rendahl entered Order No. 05, denying T-Netix's motions, and finding that the Commission lacks authority to dismiss for lack of standing issues raised in a primary jurisdiction referral.
- 6 On July 27, 2005, T-Netix filed with the King County Superior Court a Motion to Lift the Stay of Proceedings to allow the court to address certain issues of fact and law, and a Motion for Summary Judgment concerning the issue of Complainants' standing.
- 7 On July 28, 2005, T-Netix filed a Petition for Administrative Review and Motion for Stay, seeking interlocutory review of Order No. 05 and requesting the Commission stay further proceedings in the docket, including discovery, until the Commission resolves T-Netix's petition. T-Netix also filed with the Commission a Motion for Summary Determination. Complainants filed with the Commission a response to T-Netix's petition and motion.
- 8 On August 18, 2005, the Commission entered Order No. 06 in this proceeding, accepting T-Netix's request for interlocutory review, granting a stay of the procedural schedule while the King County Superior Court considers the issue of

the Complainants' standing, and denying the petition on the question of Commission authority in a primary jurisdiction referral.

- 9 King County Superior Court Judge Ramsdell entered an Order Lifting Stay on August 16, 2005, and entered an order granting T-Netix's Motion for Summary Judgment on September 7, 2005.
- 10 On September 7, 2005, T-Netix filed a Motion to Dismiss the proceeding before this Commission, asserting that the effect of the Court's Order is to terminate the primary jurisdiction referral to the WUTC.
- 11 The Commission requested responses to T-Netix's motion by September 19, 2005.
- 12 Complainants and AT&T filed responses to T-Netix's motion. Complainants assert that dismissal is premature as the Court's September 7, 2005, order is not clear as to AT&T's status or whether the primary jurisdiction referral has been rescinded. AT&T advised the Commission it would ask the Court to clarify whether AT&T was also entitled to summary judgment.
- 13 On September 19, 2005, T-Netix filed a Motion for Clarification of Order with the King County Superior Court to clarify the status of the Court's primary jurisdiction referral. On September 22, 2005, AT&T filed a motion with the King County Superior Court to clarify the effect of the Court's order granting T-Netix's motion for summary judgment.
- 14 King County Superior Court Judge Jeffrey Ramsdell granted AT&T's motion for clarification on October 4, 2005, finding that Complainants lack standing to bring a complaint against AT&T and dismissing all claims against AT&T.
- 15 On October 17, 2005, Judge Ramsdell granted T-Netix's Motion for Clarification of Order, rescinding the primary jurisdiction referral to the Commission.

16 **APPEARANCES.** Jonathan P. Meier, Sirianni Youtz Meier & Spoonemore, Seattle, Washington, represents Sandra Judd and Tara Herivel (Complainants). Letty Friesen, AT&T Law Department, Austin, Texas, and Charles H. R. Peters and David C. Scott, Schiff Hardin, LLP, Chicago, Illinois, represent AT&T. Arthur A. Butler, Ater Wynne LLP, Seattle, Washington, and Glenn B. Manishin and Stephanie Joyce, Kelley Drye & Warren LLP, Washington, D.C., represent T-Netix.

MEMORANDUM

17 The Complainants initiated this matter before the Commission based upon a primary jurisdiction referral from the King County Superior Court, under which the Commission was asked to determine whether AT&T was an operator service provider under Commission rules, and whether T-Netix had violated Commission rules governing operator service providers.

18 T-Netix moves to dismiss the proceeding on the basis of Judge Ramsdell's decision that Complainants lack standing to bring a claim against T-Netix and dismissing all claims. Complainants assert that dismissal is premature, asserting that the Court's September 7, 2005, Order addresses only Complainants' claims against T-Netix, and that the status of its claims against AT&T and the continuing nature of the primary jurisdiction referral are not clear. Complainants also assert that the Commission should deny the motion to dismiss and merely stay the action, asserting that Complainants intend to appeal the Court's order.

19 By orders dated September 7, October 4, and October 17, 2005, Judge Ramsdell clarified the remaining issues in this proceeding, finding that Complainants lack standing to bring claims against both T-Netix and AT&T, and rescinding the primary jurisdiction referral to the Commission. As we found in Order No. 06 in

this proceeding, a primary jurisdiction referral does not invoke an agency's independent jurisdiction, but is derivative of that of the court in which the matter is pending. *International Ass'n of Heat & Frost Insulators and Asbestos Workers v. United Contractors Ass'n, Inc.*, 483 F.2d 384, 401 (3d Cir. 1973). Where the Court has found no jurisdiction due to Complainants' lack of standing and has rescinded the primary jurisdiction referral to the Commission, there is no basis upon which the Commission can justify jurisdiction in this proceeding. We grant T-Netix's motion to dismiss and dismiss Complainants' claims against T-Netix and AT&T before the Commission in Docket No. UT-042022.

FINDINGS OF FACT

- 20 (1) On November 8, 2000, in a complaint filed by Complainants against T-Netix, AT&T and others, King County Superior Court Judge Learned ordered several issues of fact and law to be considered by the Washington Utilities and Transportation Commission through a primary jurisdiction referral.
- 21 (2) In orders dated September 7, 2005, and October 4, 2005, King County Superior Court Judge Ramsdell granted T-Netix's motion for summary judgment and found that Complainants lacked standing to bring claims against T-Netix and AT&T.
- 22 (3) By order dated October 17, 2005, Judge Ramsdell rescinded the primary jurisdiction referral to the Commission.

CONCLUSIONS OF LAW

- 23 (1) A primary jurisdiction referral does not invoke an agency's independent jurisdiction: The agency's jurisdiction is derivative of that of the court in which the matter is pending. *United Contractors Ass'n, Inc.*, 483 F.2d at 401.

- 24 (2) Where the Commission's jurisdiction in this matter was based upon a primary jurisdiction referral from the King County Superior Court, and the Court has rescinded the referral, the Commission lacks jurisdiction over the proceeding.

ORDER

THE COMMISSION ORDERS:

- 25 (1) T-Netix, Inc.'s, Motion to Dismiss is granted.
- 26 (2) The action in Docket No. UT-042022 brought by Complainants Sandy Judd and Tara Herivel against T-Netix, Inc., and AT&T Communications of the Pacific Northwest, Inc., is dismissed.

Dated at Olympia, Washington, and effective this 28th day of October, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.