

[Service date: *November 26, 2008*]

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

**MOTION OF T-NETIX, INC. FOR A
PROTECTIVE ORDER**

INTRODUCTION & REQUESTED RELIEF

1. Respondent T-Netix, Inc. (“T-Netix”), through counsel and pursuant to WAC 480-07-420, hereby moves the Commission to enter a protective order to appropriately limit the scope of discovery. As more fully explained below, the Amended Second Data Requests propounded by Complainants Sandy Judd and Tara Herivel (“Complainants”) are overbroad, seek information that is wholly irrelevant and not within the bounds of the issues which the King County Superior Court (the “Court” or “trial court”) referred to the Commission in this matter under the doctrine of primary jurisdiction, and impose a plainly undue burden on T-Netix relative to the claims asserted and the unlikely probative value of the information requested.

2. Specifically, T-Netix requests that the Commission prevent Complainants from seeking written or deposition discovery on all Washington state correctional institutions, and

instead, appropriately limit their discovery to information on the four institutions from which the Complainants allegedly received inmate-initiated calls in this matter. T-Netix requests that the Commission also prevent the Complainants from seeking information on inmate-initiated calls that occurred after December 31, 2000¹. It is undisputed that Complainants' received no inmate-initiated calls after this date.

STATEMENT OF ISSUES

3. Complainants' irrelevant and inappropriate data requests – which seek discovery about Washington state correctional institutions from which they have do not allege to have received inmate-initiated calls and discovery on inmate-initiated calls received by others – are solely designed as a “fishing expedition” intended to obtain information for the purposes of attaining class certification, if and when this matter returns to the Superior Court. The Superior Court stayed the judicial proceedings without having certified a class and referred the matter to this Commission under the doctrine of primary jurisdiction, requesting that the Commission answer two specific questions: (a) whether T-Netix or AT&T were operator service providers (“OSPs”) under the Commission’s regulations and, if so, (b) whether T-Netix or AT&T violated those regulations. Because the Court retained jurisdiction over class action issues without having certified a class, discovery about claims that putative class members – but **not** Complainants – might assert have no bearing on this primary jurisdiction matter.

¹ According to telephone records produced by Complainants, the latest month during which Complainants received inmate collect calls for which they allege no verbal rate disclosure was provided is November 2000. Complainants indicated in their Responses to T-Netix’s Second Data Requests that they received applicable inmate-initiated collect calls “through some point in 2000.” See, Compl. Herivel Resp. to T-Netix Second Data Req. No. 1, Exh. 1; Compl. Judd Resp. to T-Netix Second Data Req. No. 1, Exh. 2. In its responses to Complainants’ Amended Second Data Requests, T-Netix objected to providing information relating to inmate-initiated collect calls received after December 31, 2000.

4. The Complainants should not be permitted to use the administrative discovery to obtain documents or information that are irrelevant to this proceeding, not authorized subjects of discovery under Superior Court rules, and intended solely for class certification purposes in the Superior Court action. Such discovery is unduly burdensome for T-Netix, especially because the information sought is irrelevant to Complainants' own claims and sought for an improper purpose. More importantly, it exceeds the Commission's authority in a primary jurisdiction case, in which Complainants have presented the Commission with no administrative complaint or other independent source of regulatory jurisdiction, to permit discovery into matters related only to class liability issues that have not been referred to this agency. Because the agency's jurisdiction is "only derivative" from that of the trial court, as the Commission has previously held in this very case,² the Commission has no basis on which to permit discovery into matters, like class certification and class-related discovery, over which the Superior Court expressly retained jurisdiction.

STATEMENT OF FACTS

5. The Complainants filed a civil damages suit, arising under the Washington Consumer Protection Act, in the Superior Court in June 2000. The complaint was styled as a putative class action against five telephone companies. Complainants alleged they were recipients of inmate-initiated calls and that the telephone company defendants failed to provide oral disclosure of the applicable rates for those calls, upon request, as required by Commission rules.

6. Three of the five defendants were dismissed from the lawsuit due to waivers or exemptions earlier granted by the Commission from the rate-disclosure regulations.

² See Order 09 at 7 and ¶ 9 below.

Respondents AT&T Communications of the Pacific Northwest, Inc. (“AT&T”) and T-Netix remain in the case.

7. The Superior Court has referred two issues to this Commission under the doctrine of primary jurisdiction: (1) whether T-Netix or AT&T were operator service providers (“OSPs”) under the Commission’s regulations and, if so, (2) whether T-Netix or AT&T violated the applicable regulations.³ In its referrals to the Commission in November 2000, the Superior Court specifically emphasized that “CPA [Consumer Protection Act], class and damages issues are stayed pending WUTC action” on the referred questions. See King County Superior Court Orders (Learned, J), November 9, 2000, Exhs. 4 & 5.

8. This case has undergone a circuitous procedural history over the past eight years, summarized at length in this Commission’s Order 09. This history included the Superior Court’s revocation, on September 6, 2005, of its referral to the Commission in connection with its grant of summary judgment to T-Netix finding that Complainants suffered no injury and lacked standing to bring the action.

9. Following the Superior Court’s revocation of its referral, T-Netix filed a Motion to Dismiss with the Commission which the Commission granted on October 28, 2005 as to both AT&T and T-Netix. In granting the motion to dismiss, the Commission noted the following regarding its jurisdiction: “a primary jurisdiction referral does not invoke an agency’s independent jurisdiction, but is derivative of that court in which the matter is pending.” See Order 09 at 7.

³ The Superior Court referred two questions to the Commission with regard to AT&T, but referred only one question, whether T-Netix has violated the Commission’s regulations and specifically WAC 480-120-141, to the Commission with regard to T-Netix. However, in the Superior Court’s March 21, 2008 Order reinstating the referral, the Commission was asked to decide both questions as to both respondents. See King County Superior Court Order, dated March 21, 2008, Exh. 3.

10. The Washington Court of Appeals, Division One (“Court of Appeals”) reversed the lower court determination on T-Netix’s summary judgment motion and remanded the case to the Superior Court. On December 4, 2007, the Supreme Court of Washington denied T-Netix’s petition for review of the Court of Appeals decision.

11. Following the appellate court decisions, on March 21, 2008, the Superior Court reinstated the referral to the Commission on the same specific questions which it previously had referred to the Commission, which were “(1) whether AT&T and T-Netix are OSPs and (2) if so, whether AT&T and T-Netix violated the Commission’s rate disclosure regulations.” See King County Superior Court Order (Ramsdell, J), dated March 21, 2008, Exh. 3.

12. The Superior Court has never certified a class of plaintiffs in this action. Complainants never even moved for certification of a class and have never requested leave to conduct, or sought to promulgate, discovery in support of a class. No class was certified at any point before either the November 2000 or March 2008 Superior Court referrals to this Commission. In fact, the Superior Court emphasized in its initial referrals in November 2000 that class issues as well as Consumer Protection Act and money damages issues were stayed in the Superior Court and thus not referred to this Commission either for resolution or pre-trial case management.

Discovery History

13. Complainants served data requests on March 4, 2005. T-Netix responded to this first set of data requests on April 18, 2005. T-Netix served supplemental responses on July 25, 2005 and August 8, 2005. Complainants propounded a second set of data requests on August 12, 2005. Netix did not answer these requests because the entire proceeding was stayed by the Commission the following week. The matter before the Commission was then dismissed on October 28, 2005.

14. After appeal and reinstatement of the referral to the Commissions, the Commission requested that the parties submit briefs on the issues surrounding discovery in this matter. The parties submitted briefs on September 4 and September 11, 2008. In its briefs, T-Netix noted that Complainants second data requests were overly broad and expansive and constituted a “fishing expedition.” The Administrative Law Judge did not disagree with T-Netix’s points but noted that these arguments were better addressed between the parties and then, if necessary, by motions to compel. The ALJ adopted a discovery schedule which contemplated motions to compel on this issue. See Order 09.

15. Complainants served Amended Second Data Requests to T-Netix on October 15, 2008. T-Netix responded to the Amended Second Data Requests on November 17, 2008. In its responses to the Amended Second Data Requests, T-Netix objected to data requests that sought information relating to all Washington correctional institutions rather than the three institutions from which the Complainants had previously alleged that they actually received inmate-initiated calls. T-Netix also objected to data requests that sought information regarding inmate-initiated calls from “June 20, 1996 to the present” rather than from June 20, 1996 through December 31, 2000, because Complainants had not alleged any calls later than in the year 2000.

16. T-Netix also served Second Data Requests on October 15, 2008. Complainants responded to the Second Data Requests on November 17, 2008. In their responses, the Complainants identified only four institutions (adding one more to their previous list of institutions) from which they allege they received inmate-initiated calls: McNeil Island Corrections Center, Washington State Reformatory (a.k.a. Monroe Correctional Complex), Clallam Bay, and Airway Heights. See, Compl. Herivel Resp. to T-Netix Second Data Req. No. 5, Exh. 1 at 6; Compl. Judd Resp. to T-Netix Second Data Req. No. 5, Exh. 2 at 6. Complainants do not dispute that all inmate-initiated calls which they allege having received from these four institutions occurred on or before December 31, 2000. See, Compl. Herivel Resp. to T-Netix

Second Data Req. No. 1, Exh. 1 at 2; Compl. Judd Resp. to T-Netix Second Data Req. No. 1, Exh. 2 at 2.

17. Counsel for T-Netix and counsel for Complainants met and conferred telephonically regarding objections raised in the responses to data requests. T-Netix agreed to supplement its responses to include responsive information relating the additional institution that Complainants added in their recent responses to data requests. Complainants intend to file a motion to compel and to persist in their efforts to obtain irrelevant and inappropriate discovery. T-Netix now seeks a protective order from the Commission to end these abusive discovery practices for both written discovery and deposition discovery.

EVIDENCE RELIED UPON

18. T-Netix relies upon the following evidence in this Motion that has either been filed with the Commission in this docket or has been produced in this docket:

- a. Complainant Herivel's Responses to T-Netix's Second Data Request Nos. 1 and 5. Exh. 1.
- b. Complainant Judd's Responses to T-Netix's Second Data Request Nos. 1 and 5. Exh. 2.
- c. King County Superior Court Order (Ramsdell, J), dated March 21, 2008. Exh. 3.
- d. King County Superior Court Order (Learned, J), Referral of AT&T matter to WUTC, dated November 9, 2000. Exh. 4.
- e. King County Superior Court Order (Learned, J), Referral of T-Netix matter to WUTC, dated November 9, 2000. Exh. 5.
- f. Complainants' Amended Second Data Requests to T-Netix. Exh 6.

g. AT&T/WDOC Contract, dated March 16, 1992, attached as Exh. 7 to AT&T's pending Motion for Summary Determination.

DISCUSSION

19. This Commission has the authority to fashion a protective order pursuant to WAC 480-07-420, which provides, in pertinent part:

(3) Special order. Upon motion by a party or by the person from whom discovery is sought that establishes a need to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, the presiding officer may make any order, including one or more of the following, that:

. . . (d) Certain matters may not be inquired into, or that the scope of the discovery will be limited to certain matters . . .

20. Here, T-Netix requests that the Commission limit the scope of discovery to the four institutions from which the Complainants received inmate-initiated calls and to the time period during which Complainants allege they received inmate-initiated calls. Complainants' data requests seek discovery well beyond these parameters. Such discovery is wholly irrelevant to this proceeding. T-Netix has objected to this discovery but believes Complainant's pursuit of discovery relative to these issues will continue to plague the discovery process without an appropriate order from the Commission.

21. As is customary in civil proceedings in the United States, the regulation governing the scope of discovery that may be sought by data requests in proceedings before the Commission, WAC 480-07-400(3), provides:

Data requests must seek only information that is relevant to the issue in the adjudicative proceeding or that may lead to the production of information that is relevant.

22. It is settled that relevant information must at least be "reasonably calculated to lead to the discovery of admissible evidence." WAC 480-07-400(3); see In the Matter of the

Petition of Level 3 Communications, LLC, 2006 Wash. UTC LEXIS 179 at *6 (WUTC April 25, 2006) (Docket UT-063006; Order 04) (Rendahl, ALJ) (denying motion to compel under WUTC discovery rules where information sought was overly broad and deemed irrelevant).

23. The Federal Rules of Civil Procedure contains identical language. “Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). Consequently, the federal courts routinely reject discovery requests and grant protective orders where parties engage in fishing expeditions. See, e.g., Collens v. City of New York, 222 F.R.D. 249, 253 (S.D.N.Y. 2004) (“courts should not grant discovery requests based on pure speculation that amount to nothing more than a ‘fishing expedition’ into actions or past wrongdoing not related to the alleged claims or defenses”).

24. Washington courts have held similarly in deciding discovery issues under state and federal rules of civil procedure. See T.S. v. Boy Scouts of America, 138 P.3d 1053, 1060 (Wash. 2006) (relevant information is information that is “reasonably calculated to lead to the discovery of admissible evidence”); Garner Construction, Inc. v. International Union of Operating Engineers, 2007 U.S. Dist. LEXIS 92522 at *5 (W.D. Wash. December 4, 2007) (“the party seeking information may obtain discovery regarding any matter, not privileged, that is relevant, i.e. reasonably calculated to lead to the discovery of admissible evidence”).

25. The Complainants have alleged that they received inmate-initiated calls without proper disclosures from only four institutions – McNeil Island Corrections Center, Washington State Reformatory (a.k.a. Monroe Correctional Complex), Clallam Bay, and Airway Heights. Exh. 1 at 6 and Exh. 2 at 6. Further, they have alleged that they received those calls only “through some point in 2000.” Exh. 1 at 2 and Exh. 2 at 2. Yet Complainants nonetheless seek information relating to all Washington state correctional institutions at which T-Netix provided equipment or services and information relating to all intrastate, long-distance telephone calls

initiated by Washington state inmates from June 20, 1996 to the present. Since neither Ms. Judd nor Ms. Herivel has (or can) claim she received an inmate-initiated call even arguably in violation of Commission regulations from other correctional institutions or after 2000, this discovery is not at all relevant to their claims, and rather can be intended only to support a later motion to the Superior Court for class certification.

26. The Superior Court never certified a class in this matter, and it specifically stayed all class action and damages issues pending the decision from the Commission on the primary jurisdiction referral. Exhs. 4 and 5. Therefore, the primary jurisdiction referral pertains only to issues relating to the Complainants and not to any putative class members or class action related issues because the Superior Court specifically retained jurisdiction over those class action issues. Thus, the referral is limited, in the first instance, to whether T-Netix or AT&T were OSPs with respect to calls accepted and paid for by *only the Complainants* and no other potential class plaintiffs. Had the trial court intended to permit Complainants to engage in discovery in support of class certification, it would of course not have retained jurisdiction over that issue and would, instead, have referred it to this Commission. Accordingly, there is nothing in the Superior Court's primary jurisdiction referral, which established the scope of the Commission's jurisdiction in this proceeding, that gives the Commission jurisdiction to permit or supervise class-related discovery that is by definition not relevant at all to resolution of the claims alleged by Ms. Judd and Ms. Herivel.

Complainants' Data Requests Seek Irrelevant Information and Exceed the Scope of the Primary Jurisdiction Referral.

27. Complainants have abused the discovery process by continually seeking information that is plainly irrelevant to this proceeding. Complainants persist on seeking information in their data requests for all Washington state correctional institutions at which T-Netix provided any services or equipment, rather than for only those correctional institutions from which calls were allegedly placed to the Complainants. Such matters are beyond the scope

of the issues referred by the Superior Court and outside the Commission's power to address in this primary jurisdiction referral.

28. Request No. 4 of Complainants' Amended Second Data Requests to T-Netix is an example of the Complainants' overreaching requests. See, Exh. 6 at 5. It provides:

Please produce all DOCUMENTS that describe or relate to the management responsibilities of T-NETIX and any other CARRIERS or providers of OPERATOR SERVICES for INMATE-INITIATED CALLS for each T-NETIX INSTITUTION.

Exh. 6 at 5.

29. The Complainants explicitly define the term "T-NETIX INSTITUTION" as:

all Washington Department of Corrections correctional institutions for which T-Netix (as the term is defined above) (a) was contractually responsible for providing services or equipment in connection with inmate-initiated calls; or (b) actually provided some type of service or equipment.

Exh. 6 at 2.

30. The Complainants explicitly define the term "INMATE-INITIATED CALLS" as "all intrastate, long-distance telephone calls initiated by Washington state inmates from June 20, 1996 to the present" Exh. 6 at 2.

31. These defined terms, which are used in many of the Complainants' data requests, make Complainants' discovery applicable to all of the correctional institutions in the state of Washington, even though the Complainants have indisputably identified only four correctional institutions as originating the inmate-initiated calls at issue in this proceeding. The terms also extend the reach of the data requests to the present; that is, about 8 years later than the time period during which the Complainants received inmate-initiated calls. In essence, Complainants seek discovery to expand the applicable 4.5 year period into a 12.5 year period. This Request, and the several other requests which share these definitions, blatantly exceeds the scope of the

issues referred to this Commission by the Superior Court and is not reasonably calculated to lead to the discovery of admissible evidence in this primary jurisdiction proceeding.

32. The Commission has previously ordered that discovery not be had under the Commission's discovery rules where parties have sought information that is irrelevant and not "reasonably calculated to lead to the discovery of admissible evidence." See Level 3 Communications, 2006 Wash. UTC LEXIS 179 at *8-9 (in matter involving a petition to arbitrate an interconnection agreement, party argued that data requests seeking information about company's physical presence in states outside of Washington and the services it might or might not perform out of state were irrelevant to arbitrating an agreement in Washington; Commission did not allow discovery on the requests); In the Matter of the Petition of Intelligent Community Services, Inc., 2008 Wash. UTC LEXIS 660 at *21 (WUTC August 27, 2008) (Docket UT-053041; Order 06) (Russell, ALJ) (finding that data request which sought information regarding policies and agreements of individual members of a telephone company association was overly broad and not reasonably calculated to lead to the discovery of admissible evidence).

33. Complainants seek to improperly broaden the scope of discovery to correctional facilities from which they have no connection whatsoever and to inmate initiated calls that were not placed to them. Similar fishing expeditions are routinely rejected by courts. For instance, in Tracy v. Dean Witter Reynolds, Inc., 185 F.R.D. 303, 305 (D. Colo. 1998), the court refused to permit plaintiffs to obtain discovery from all of the defendant's national offices when the named plaintiff had submitted evidence regarding only one office which did not reflect a class-wide injury. And in Haraco, Inc. v. American National Bank and Trust Co. of Chicago, 38 F.3d 1429, 1439 (7th Cir. 1994), the Seventh Circuit affirmed the district court's rejection of plaintiffs' proposed discovery of documents from the London branch of an American bank where the plaintiffs' claims arose out of loans dealing with the American bank's domestic prime rate. The Court determined that "[b]ecause the London branch made loans only in foreign currency, based on foreign rates, to foreign borrowers, documents and information from that branch concerning

those loans are not relevant to this case, which deals with an American bank's domestic prime rate." Id. Like the plaintiffs in Tracy and Heraco, Complainants seek information that, although similar, is foreign to their own claims and, in this matter, is foreign to the issues to be resolved by the Commission.

34. Complainants defined overly-broad terms in their data requests that extend the scope of discovery to information that is irrelevant to this proceeding and thereby render the requests inappropriate, even under the Commission's own discovery rules. More importantly, the data requests exceed the scope of the Superior Court's referral because they plainly seek information that goes beyond the questions of whether T-Netix or AT&T are OSPs with respect to calls accepted and paid for by the Complainants and whether T-Netix or AT&T violated applicable regulations. This is because the data requests seek information on correctional institutions from which the Complainants never received inmate-initiated calls and seek information on inmate-initiated calls that occurred after the last date that Complainants received such calls. Such information will not aid in answering the questions that the Superior Court referred to the Commission, but instead is relevant only to issues of class certification and class-wide liability that have **not** been referred to this agency.

Complainants' Discovery is for an Improper Purpose and Presents an Undue Burden

35. WAC 480-07-400(3) provides, in part, that

A discovery request is inappropriate when . . . the discovery is unduly burdensome, taking into account the needs of the adjudicative proceeding . . . and the importance of the issues at stake in the adjudicative proceeding. Discovery through data request or otherwise must not be used for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation.

36. The Complainants' intent in persisting on obtaining this irrelevant discovery could not be clearer. Complainants seek to discover information on other potential plaintiffs and

other inmate-initiated calls, rather than just those calls accepted and paid for by Complainants. Beginning with their first set of data requests to T-Netix, Complainants have been conducting a fishing expedition designed solely to obtain evidence to support their factually uncorroborated claims and to justify a motion (not even yet made) for certification of a class in Superior Court. Such information is intended only for the putative class action in Superior Court, not the Commission's far narrower responsibilities in this primary jurisdiction proceeding. Those class action matters have not been referred to this Commission for decision and the trial court has retained jurisdiction. As a matter of both law and comity, it is therefore entirely inappropriate for the Complainants to exploit the Commission's discovery process to obtain information on those issues.

37. T-Netix finds that since Complainants persist in demanding this irrelevant and burdensome discovery, it must seek protection from this Commission to prevent these abusive practices.

38. The Complainants' use of this proceeding to obtain discovery for the Superior Court action wastes the Commission's and T-Netix's time and resources and constitutes an improper purpose for seeking discovery in this proceeding. Complainants' persistence on this strategy serves only to plague the discovery process and drives up the cost of this litigation. Further, considering the total lack of relevance of the information sought by the Complainants to the narrow issues in this proceeding, the burden put on T-Netix to locate and produce information on all Washington state correctional institutions where it performs or has performed any services or has provided equipment is completely unreasonable and unnecessary.

39. Complainants should not be permitted to use this primary jurisdiction proceeding as a means for obtaining evidence they ought to have assembled before initiating their lawsuit. These Complainants have spent eight years claiming that the proper disclosures were not provided on inmate-initiated calls they received in Washington. To date, however, they have

identified only a single purported intrastate interLATA call, and, as a result of their failure in diligence at the outset of this litigation, they now seek to use the discovery process before the Commission to find the evidence they failed to gather at the start of this lawsuit.

Class-wide Discovery is Not Authorized or Permissible at this Stage

40. Even if the Commission were to believe that the Superior Court's referral authorized it to adjudicated class-related discovery issues, the applicable discovery rules relating to class actions do not permit Complainants at this point to seek discovery on a class-wide basis.

41. Rule 23(c)(1) of the Washington Rules of Civil Procedure, much like its federal counterpart Fed. R. Civ. P. 23(c)(1)⁴, provides that:

As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained.

Moreover, in order to determine whether a class action may be maintained under Rule 23, the Court has discretion to determine the scope of discovery in class action suits. See, e.g., Washington v. Brown & Williamson Tobacco Corp., 959 F.2d 1566, 1570-71 (11th Cir.1992) (district court did not abuse its discretion in placing restrictions on class-wide discovery which plaintiffs sought for the purposes of obtaining class certification on a claim for employer discrimination); See Nat'l Org. for Women v. Sperry Rand Corp., 88 F.R.D. 272, 277 (D. Conn. 1980) ("The recognized need for pre-certification discovery is subject to limitations imposed by the Court"). A court's discretion on class action discovery includes the ability to bifurcate discovery between that supporting for class certification and discovery for the merits. See

⁴ Fed. R. Civ. P. 23(c)(1) provides: "(A) Time to Issue. At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action." Prior to an amendment to the text of Fed. R. Civ. P. 23(c)(1), which became effective in 2003, it read exactly as Rule CR 23(c)(1).

Brown & Williamson Tobacco Corp., 959 F.2d at 1570-71 (“To make early class determination practicable and to best serve the ends of fairness and efficiency, courts may allow classwide discovery on the certification issue and postpone classwide discovery on the merits”).

42. Courts do not grant class-wide discovery without making an initial determination that the matter meets the preliminary factual basis required to allow broad, expansive discovery. “Before classwide discovery is allowed, plaintiffs must demonstrate that ‘there is some factual basis for plaintiffs’ claims of classwide discrimination” See Tracy v. Dean Witter Reynolds, Inc., 185 F.R.D. 303, 305 (D. Colo. 1998) (quoting Severtson v. Philip Beverage Company, 137 F.R.D. 264, 267 (D. Minn. 1991)). As noted above, in Tracy, the court denied the request for such class-wide discovery because the named plaintiffs submitted only the testimony of a few individuals, mostly from one office, who claimed to be injured by the defendant’s overtime policy. See id. at 313. The court found that this evidence from a few individuals did not reflect a national policy which violated the FLSA and did not warrant the court’s issuance of a mandate to plaintiffs to obtain class-wide discovery from all of the defendant’s national offices. See id.

43. As the Tracy court held, before a court allows free rein to obtain class-wide discovery, the plaintiff “bears the burden of advancing a prima facie showing that the class action requirements of Fed. R. Civ. P. 23 are satisfied, or that discovery is likely to produce substantiation of the class allegations.” Id. at 305; see Telco Group, Inc. v. Ameritrade, Inc., 2006 U.S. Dist. LEXIS 13264 at *22 (D. Neb. March 6, 2006) (in an action by putative class members who were customers of a brokerage firm, the court denied the request by plaintiffs to seek extended discovery on the accounts of all customers during a particular period, limiting the discovery to just the named plaintiffs’ accounts and the three trades at issue in the case, because plaintiffs submitted no support that broader discovery would yield support for class allegations).

44. The bar against unrestricted class-wide discovery is necessary in order for a court to efficiently manage its cases. In Severtson, 137 F.R.D. at 267, the Court reversed a magistrate's order granting a motion to compel discovery on the names and addresses of people who fell into the plaintiff's proposed class. In doing so, the court held that the limited evidence presented by the named plaintiffs did not warrant a basis for the court to issue notification to a class of plaintiffs under Rule 23:

These allegations, standing alone, are an insufficient basis for determining whether sending court-authorized notice is appropriate. In seeking court-authorized notice, plaintiffs are in effect asking this court to assist in their efforts to locate potential plaintiffs and thereby expand the scope of this litigation. As a matter of sound case management, a court should, before offering such assistance, make a preliminary inquiry as to whether a manageable class exists.

Id.

45. These decisions reflect that before allowing class-wide discovery against a party, a court must make a pre-determination that the evidence submitted supports a *prima facie* claim that a class-wide injury may exist. Without such protection, a party would have to submit to expansive and potentially burdensome discovery, which the Court might later determine, after much time and expense have been expended, does not support class certification.

46. Here, the Complainants have only submitted evidence with respect to an exceedingly small number of calls (and only one interLATA call) they have received from four correctional institutions, all of which occurred prior to December 31, 2000, and only as to one of which no waiver of the regulations would apply. Yet they seek discovery from all Washington state correctional institutions from June 1996 to the present. Without more evidence of a class-wide injury, the Complainants have not met their burden of making a *prima facie* case for class certification and, were this proceeding in a court, would not be allowed to pursue discovery in

support of class certification. Thus, it goes doubly in this primary jurisdiction referral that Complainants should not be entitled to open up the floodgates and receive broad discovery on all correctional institutions over such an extended period of time. Allowing discovery on all correctional institutions in Washington would be inefficient at this juncture where Complainants have submitted scant evidence to support their own injury, let alone to support the potential for an injury to an entire class.

47. Moreover, the determination of whether to order class-wide discovery for class certification purposes is committed to the discretion of the court and constitutes a significant decision in the framework of discovery and ultimately, whether to certify a class. It would follow, therefore, that the Superior Court would have made some reference to discovery on class issues in its referral to this Commission if it had intended the Commission to permit discovery for the purposes of determining class certification. The Superior Court, however, made no such reference to discovery in its referral to this Commission. In fact, the only mention of class action related issues is the language in the Superior Court's referral orders which note that class action issues are stayed until after the Commission has acted on the questions referred to it. Therefore, not only is class-wide certification not authorized under the discovery rules by the evidence submitted by the plaintiffs to this point, it is clearly a decision which the Superior Court reserved for itself and did not refer to this Commission.

The Commission's Determination of OSP Status on the Four Institutions is Sufficient

48. In addition to being inappropriate for the reasons described above, the Complainants' attempt to use discovery to obtain information on all Washington state correctional institutions is unnecessary because the Commission's determination whether T-Netix was an OSP, and whether T-Netix violated the Commission's regulations, for calls

originating from these four institutions would as a factual matter likely be determinative of T-Netix's status with respect to other Washington state correctional institutions. This is true because T-Netix provided the same equipment, software, and services at all institutions, solely as a subcontractor to AT&T – which was the designated common carrier for all of the calls at issue – under the contracts in effect at the time.

49. AT&T contracted with the Washington Department of Corrections for the “installation and operation of an inmate telephone system at state correctional institutions and work release facilities.” See, AT&T/WDOC Contract, dated March 16, 1992, Exh. 7 to AT&T's pending Motion for Summary Determination. Under that contract, AT&T was the telecommunications carrier responsible for provision of inmate-initiated calling services and for rating, pricing, and billing of all such calls. InterLATA calls, those solely at issue now in this proceeding, were “branded” as AT&T calls (AT&T was the carrier identified to every called party at the outset of each call) and were billed at AT&T rates. AT&T of course subcontracted with various companies to perform certain aspects of its obligations, including with T-Netix to provide to AT&T equipment and services to be used to meet AT&T's obligations at the Washington state correctional institutions. But T-Netix had no relationship with the institutions or AT&T customers (whether the WDOC or the parties accepting collect calls) and, if any rates were required to be disclosed under the Commission's regulations, they were AT&T's inmate and/or collect calling rates.

50. Much of the Complainants' requested discovery pertains to the technical arrangements, such as platform equipment and trunking arrangements, deployed at other Washington state correctional institutions. Yet Complainants have failed to articulate a reason why these issues are relevant. Regardless of the technology deployed, AT&T and T-Netix stood in the same roles and performed the same functionalities with respect to interLATA calls at every Washington state correctional institution served by AT&T. Whether or not those activities made AT&T (or according to AT&T's odd and unsubstantiated interpretation of the

Commission's rules, T-Netix) an OSP is a question that does not appear to differ by the type of platform or trunking facilities deployed.

51. Therefore, written and deposition discovery on the four institutions from which Complainants actually received inmate-initiated calls will likely provide Complainants with all the evidence they need to try to prove their claims. At the very least, given the non-existent or limited probative value of discovery as to other correctional institutions, other platforms, and other calls, Complainants should be required to demonstrate why the costs and burdens of this expansive class-wide discovery do not outweigh its utility, if any, in this proceeding. If their answer is that they need this information to determine the scope of alleged wrongdoing by T-Netix and/or AT&T, or that they require identification of all calls to know whether or not rate quotes were made available from other correctional institutions, then the Commission will know that Complainants cannot meet the applicable standard for discovery in support of class certification and are engaged in the very fishing expedition of which T-Netix unapologetically accuses them in this motion.

CONCLUSION

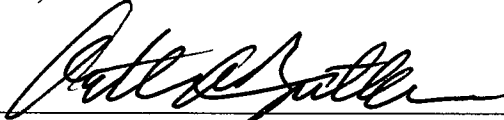
52. For the reasons stated above, T-Netix respectfully requests that the Commission grant T-Netix's motion and order that (a) Complainants shall not seek discovery, either written or by deposition, on all Washington state correctional institutions, and instead, may seek discovery only with respect to the four institutions from which the Complainants allegedly received inmate-initiated calls in this matter and (b) Complainants shall not seek discovery, either written or by deposition, related to any inmate-initiated calls that occurred after December 31, 2000.

//

//

RESPECTFULLY SUBMITTED this 26th day of November, 2008.

T-NETIX, INC.

By: 

Arthur A. Butler, WSBA # 04678
ATER WYNNE LLP
601 Union Street, Suite 1501
Seattle, WA 98101-3981
(206) 623-4711
(206) 467-8406 (fax)

Glenn B. Manishin
DUANE MORRIS LLP
505 9th Street, N.W., Suite 1000
Washington, DC 20004-2166
(202) 776.7863
(202) 256.4600 (fax)

Joseph S. Ferretti
DUANE MORRIS LLP
505 9th Street, N.W., Suite 1000
Washington, DC 20004-2166
(202) 776.7863
(202) 478.2811 (fax)

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of November, 2008, served via e-filing a true and correct copy of the foregoing, with the WUTC Records Center. The original, along with the correct number of copies (4), of the foregoing document will be delivered to the WUTC, via the method(s) noted below, properly addressed as follows:

David Danner	<input type="checkbox"/>	Hand Delivered
Washington Utilities and Transportation	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
Commission	<input checked="" type="checkbox"/>	Overnight Mail (UPS)
1300 S Evergreen Park Drive SW	<input type="checkbox"/>	Facsimile (360) 586-1150
Olympia, WA 98504-7250	<input checked="" type="checkbox"/>	Email (records@wutc.wa.gov)

I hereby certify that I have this 26th day of November, 2008, 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 Communications

Letty S.D. Friesen	<input type="checkbox"/>	Hand Delivered
AT&T Communications	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
Law Department	<input checked="" type="checkbox"/>	Overnight Mail (UPS)
919 Congress Avenue, Suite 900	<input type="checkbox"/>	Facsimile
Austin TX 78701-2444	<input checked="" type="checkbox"/>	Email (lsfriesen@att.com)

Confidentiality Status:

On Behalf Of AT&T Communications:

Charles H.R. Peters	<input type="checkbox"/>	Hand Delivered
Schiff Hardin LLP	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
233 South Wacker Drive	<input checked="" type="checkbox"/>	Overnight Mail (UPS)
6600 Sears Tower	<input type="checkbox"/>	Facsimile (312) 258-5600
Chicago IL 60606	<input checked="" type="checkbox"/>	Email (cpeters@schiffhardin.com)

Confidentiality Status:

On Behalf Of T-Netix:

Glenn B. Manishin	<input type="checkbox"/>	Hand Delivered
Duane Morris LLP	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
Suite 1000	<input checked="" type="checkbox"/>	Overnight Mail (UPS)
505 9th Street NW	<input type="checkbox"/>	Facsimile (202) 478-2875
Washington DC 20004-2166	<input checked="" type="checkbox"/>	Email (gbmanishin@duanemorris.com)

Confidentiality Status:

On Behalf Of Complainants :

Chris R. Youtz
Sirianni Youtz Meier & Spoonemore
Suite 1100
719 Second Avenue
Seattle WA 98104

Confidentiality Status:

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 Overnight Mail (UPS)
 Facsimile (206) 223-0246
 Email (cyoutz@sylaw.com)

On Behalf Of Complainants :

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Sirianni Youtz Meier & Spoonemore
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Seattle WA 98104

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Washington Utilities and Transportation
Commission
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(mrussell@utc.wa.gov)



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

**DECLARATION OF
ARTHUR A. BUTLER**

Arthur A. Butler, under penalty of perjury, states and declares as follows:

1. I am one of the attorneys of record for Respondent T-Netix, Inc. in the above-captioned action. I make this declaration on the basis of my personal knowledge, and I am fully competent to testify to the matters stated herein.

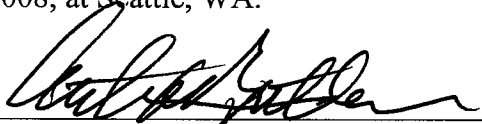
2. Attached as exhibits to T-Netix's Motion for Protective Order, filed simultaneously with this Declaration, are true copies of the following documents:

- Exhibit 1: Complainant Herivel's Responses to T-Netix's Second Data Request Nos. 1 and 5.
- Exhibit 2: Complainant Judd's Responses to T-Netix's Second Data Request Nos. 1 and 5.

- Exhibit 3: King County Superior Court Order (Ramsdell, J), dated March 21, 2008.
- Exhibit 4: King County Superior Court Order (Learned, J), Referral of AT&T matter to WUTC, dated November 9, 2000.
- Exhibit 5: King County Superior Court Order (Learned, J), Referral of T-Netix matter to WUTC, dated November 9, 2000.
- Exhibit 6: Complainants' Amended Second Data Requests to T-Netix.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT.

EXECUTED on this 26th day of November 2008, at Seattle, WA.



Arthur A. Butler

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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.

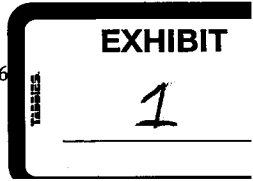
DOCKET NO. UT-042022

**RESPONSES TO
T-NETIX, INC.'S SECOND SET OF
DATA REQUESTS TO TARA
HERIVEL**

I. GENERAL OBJECTIONS

The complainants object to these Requests to the extent that they call for information that is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or because the requests call for the mental impressions, legal theories, or litigation strategy of counsel. Complaints further object to providing information or documents that have already been provided to respondents in response to previous discovery requests.

All answers below were prepared by Chris Youtz, counsel for the complainants, using information provided by discovery obtained to date and information provided by the complainants.



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T-NETIX DATA REQUEST NO. 1:

Identify the time period during which you received Applicable Inmate Collect Calls (as defined above). If different in any respect whatever, identify the time period in which you allege, for purposes of the Amended Complaint, that T-Netix violated Commission regulations governing the provision of rate quotes in connection with inmate collect calls in Washington State.

RESPONSE: Ms. Herivel received these telephone calls from autumn, 1997, through some point in 2000.

1 **T-NETIX DATA REQUEST NO. 5:**

2 For each prison, jail or other correctional facility in Washington State
3 identified in response to Data Request No. 5 (above), state whether you or
4 Complainant Judd received a call from such prison, jail or other correctional
5 facility and, if so, how many calls you and Complainant Herivel received from
6 each such prison, jail or other correctional facility in Washington State during the
7 time period applicable to the Amended Complaint.
8

9 RESPONSE: Ms. Herivel began receiving long-distance collect telephone
10 calls from Paul Wright in the autumn of 1997, and continued to receive and pay
11 for telephone calls from Mr. Wright about once a week. She also received calls
12 from other Washington prisoners during 1997-200 in connection with other articles
13 that she wrote. Ms. Herivel remembers receiving calls from the Washington State
14 Reformatory and Airway Heights correctional facilities. She cannot remember
15 how many calls she received from each prison. She may have received calls from
16 other facilities. Ms. Judd received numerous telephone calls from Paul Wright,
17 who she was once married to, from 1992 through 2000. She remembers receiving
18 calls from Monroe Correctional Complex, Clallam Bay, and McNeil Island
19 Corrections Center. She may have received calls from other facilities. She cannot
20 remember how many calls she received from each prison.
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SIRIANNI YOUTZ
MEIER & SPOONEMORE

/s/ CHRIS R. YOUTZ
Chris R. Youtz (WSBA #7786)
Attorneys for Complainants

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Email: chris@sylaw.com

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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.

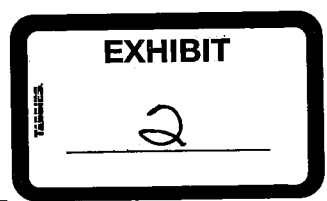
DOCKET NO. UT-042022

**RESPONSES TO
T-NETIX, INC.'S SECOND SET OF
DATA REQUESTS TO SANDRA
JUDD**

I. GENERAL OBJECTIONS

The complainants object to these Requests to the extent that they call for information that is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or because the requests call for the mental impressions, legal theories, or litigation strategy of counsel. Complaints further object to providing information or documents that have already been provided to respondents in response to previous discovery requests.

All answers below were prepared by Chris Youtz, counsel for the complainants, using information provided by discovery obtained to date and information provided by the complainants.



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T-NETIX DATA REQUEST NO. 1:

Identify the time period during which you received Applicable Inmate Collect Calls (as defined above). If different in any respect whatever, identify the time period in which you allege, for purposes of the Amended Complaint, that T-Netix violated Commission regulations governing the provision of rate quotes in connection with inmate collect calls in Washington State.

RESPONSE: Ms. Judd received these telephone calls from at least 1992 through some point in 2000.

1 **T-NETIX DATA REQUEST NO. 5:**

2 For each prison, jail or other correctional facility in Washington State
3 identified in response to Data Request No. 5 (above), state whether you or
4 Complainant Herivel received a call from such prison, jail or other correctional
5 facility and, if so, how many calls you and Complainant Herivel received from
6 each such prison, jail or other correctional facility in Washington State during the
7 time period applicable to the Amended Complaint.
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9 RESPONSE: Ms. Herivel began receiving long-distance collect telephone
10 calls from Paul Wright in the autumn of 1997, and continued to receive and pay
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SIRIANNI YOUTZ
MEIER & SPOONEMORE

/s/ CHRIS R. YOUTZ
Chris R. Youtz (WSBA #7786)
Attorneys for Complainants

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RECEIVED
MAR 27 2008
JUDGE JEFFREY RAMSDELL

HON. JEFFREY RAMSDELL
Noted for Consideration: March 17, 2008
Without Oral Argument

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IN THE SUPERIOR COURT OF WASHINGTON 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.; NORTH-
WEST TELECOMMUNICATIONS, INC.,
d/b/a PTI COMMUNICATIONS, INC.;
U.S. WEST COMMUNICATIONS, INC.;
T-NETIX, INC.,

Defendants.

NO. 00-2-17565-5 SEA

(gmr)
~~[PROPOSED]~~ Denying
ORDER GRANTING PLAINTIFFS'
MOTION TO VACATE ORDERS
GRANTING DEFENDANTS'
MOTIONS FOR SUMMARY
JUDGMENT AND TO REINSTATE
REFERRAL TO WUTC

Granting *(gmr)*
Motion

Plaintiffs have moved to vacate the Court's Order granting defendants' motion for summary judgment and to reinstate the primary jurisdiction referral based on the decision issued by the Court of Appeals on December 18, 2006, and the Washington Supreme Court's denial of T-Netix' petition for review. After consideration, it is

ORDERED that ~~plaintiffs' motion is GRANTED.~~ *(gmr)*

EXHIBIT
3

ORDER VACATING ORDERS FOR SUMMARY JUDGMENT
AND REINSTATING REFERRAL TO WUTC - 1

SIRIANNI YOUTZ
MEIER & SPOONEMORE
719 SECOND AVENUE, SUITE 1100
SEATTLE, WASHINGTON 98104
TEL. (206) 223-0303 FAX (206) 223-0246

ORIGINAL

(gmr)


Plaintiff's motion to vacate this Court's prior orders:

1 The Court's (1) Order Granting T-Netix' Motion for Summary Judgment,
2 filed September 6, 2005, (2) Order Granting AT&T's Motion for Clarification of the
3 September 7, 2005 Order Granting T-Netix's Motion for Summary Judgment, dated
4 September 4 [sic], 2005, and (3) Order Granting T-Netix, Inc.'s. Motion for Clarification
5 of Order, dated October 17, 2005, are ~~VACATED~~. Denied. (gmr)

6 The primary jurisdiction referral of this matter to the Washington Utilities
7 & Transportation Commission is REINSTATED for determination of the issues
8 originally before it in Docket No. UT-042022: (1) whether AT&T or T-Netix were OSPs
9 and (2) whether they violated the WUTC disclosure regulations. This motion is

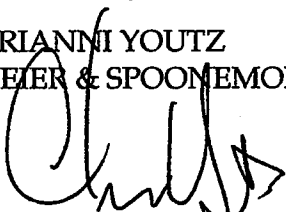
10 DATED: March 21st, 2008 (gmr)

11 granted consistent with the express and unambiguous
12 decision of the Court
13 of Appeals.

(gmr)

Jeffrey Ramsdell
Superior Court Judge

15 Presented by:

16 SIRIANNI YOUTZ
17 MEIER & SPOONEMORE

18 
19 Chris R. Youtz (WSBA #7786)
20 Attorneys for Plaintiffs (gmr)

* Plaintiff's assertion that vacation
is warranted because "non-vacation
of those orders will only serve to
create confusion in this complex case
involving numerous judicial and
administrative decision makers" provides
no substantive justification for the
relief requested. Vacation of
prior orders simply based on
the complexity of the case would be
the functional equivalent of erasing
complex appellate court decisions
from the appellate reporters if the
Supreme Court reverses their decision.
The risk of confusion is offset by need
for historical context.

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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 March 7, 2008, I served a copy of the foregoing document on all counsel of record as indicated below:

Carl J. Marquardt [x] By Legal Messenger
STOKES LAWRENCE, P.S.
800 Fifth Avenue, Suite 4000
Seattle, WA 98104
Attorneys for AT&T Corp.

Charles H.R. Peters [x] By United States Mail
David C. Scott
SCHIFF HARDIN LLP
6600 Sears Tower
Chicago, IL 60606
Attorneys for AT&T Corp.

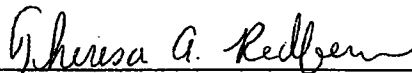
Lawrence J. Lafaro [x] By United States Mail
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Bedminster, NJ 07921
Attorneys for AT&T

Letty S. Friesen [x] By United States Mail
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Sandrin B. Rasmussen
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Attorneys for T-NETIX

Stephanie A. Joyce [x] By United States Mail
Glenn B. Manishin
KELLEY DRYE & WARREN LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
Attorneys for T-NETIX

DATED: March 7, 2008, at Seattle, Washington.



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JUDGES MAIL ROOM

2000 AUG 25 PM 4: 27

KING COUNTY
SUPERIOR COURT

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

HONORABLE J. KATHLEEN LEARNED
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7:33 2 8 2000

JUDGE
J. KATHLEEN LEARNED

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.

Case No.: 00-2-17565-5 SEA

~~PROPOSED~~ ORDER GRANTING AT&T
CORP.'S MOTION TO DISMISS

FILED

KING COUNTY, WASHINGTON

NOV 0 9 2000

SUPERIOR COURT CLERK
BY VICTOR A. DIGORNA
DEPUTY

THIS MATTER came on for hearing before the Court on October 6, 2000. Having heard
argument of counsel and having considered the written submissions of the parties and all other
documents on file in this matter. NOW THEREFORE:

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs' First Amended Complaint is
~~hereby dismissed without prejudice for failure to state a claim. Plaintiffs shall have~~ days from the
~~date of entry of this Order to file an amended complaint.~~

Furthermore, Plaintiffs' claims against Defendant AT&T Corp. ("AT&T") for damages
premised on nondisclosure of interstate long distance rates are hereby dismissed with prejudice under
the filed tariff doctrine.

[PROPOSED] ORDER GRANTING AT&T CORP.'S MOTION TO
DISMISS - 1
01000-006130564.doc
Page 407

ORIGINAL

STOKES LA Page 407.
800 FIFTH AVENUE, SUITE 400
SEATTLE, WASHINGTON 98104-3179
(206) 464-6100

EXHIBIT

4

1 Furthermore, Plaintiffs' claims against AT&T premised on nondisclosure of intrastate long
2 distance rates ~~are hereby dismissed without prejudice and~~ are referred to the Washington Utilities and
3 Transportation Commission under the primary jurisdiction doctrine for resolution in the first instance,
4 *of whether or not they are considered by the Agency to be an*

5 DATED this 5th day of December, 2000. *DSP under the contracts at*
6 *issue herein, and if so*
7 *of the regulations have been violated*
8 *CPA, class & damage issues are stayed pending WUTC action.*

9 *J. Kathleen Learned*
10 THE HONORABLE J. KATHLEEN LEARNED
11 KING COUNTY SUPERIOR COURT JUDGE

12 Presented by:
13 STOKES LAWRENCE, P.S.

14 By: *Kelly Twiss Noonan*
15 Kelly Twiss Noonan (WSBA #19096)
16 Laura J. Buckland (WSBA #16141)
17 Attorneys for Defendant AT&T Corp.

Honorable J. Kathleen Learned

FILED
KING COUNTY, WASHINGTON
NOV 09 2000
SUPERIOR COURT CLERK
KATHLEEN A. LEARNED
SECURITY

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

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

Plaintiffs,

v.

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY, et al.

Defendants.

No. 00-2-17565-5-SEA

Damages in Part
ORDER ~~GRANTING~~ DEFENDANT
T-NETIX, INC.'S MOTION TO DISMISS
FIRST AMENDED COMPLAINT - CLASS
ACTION *and Granting in Part*
and Referring to WOTC
~~(PROPOSED)~~

THIS MATTER having come before the undersigned judge of the above-entitled Court, and the Court having reviewed the Motion to Dismiss Complaint brought by Defendant T-Netix, Inc., and *response, reply and Supplemental Memoranda of the parties* the pleadings and records in this action, and the Court having heard oral argument of counsel and being otherwise fully informed with respect to this matter,

IT IS HEREBY ORDERED that Defendant T-Netix' Motion to Dismiss *is granted in Part only and the 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 action.* is hereby ~~GRANTED~~ ~~the First Amended Complaint - Class Action is hereby DISMISSED with prejudice.~~

ORDER OF DISMISSAL - 1

BADGLEY ~ MULLINS

LAW GROUP
5100 Washington Mutual Tower
1201 Third Avenue
Seattle, WA
Telephone: **Page 409**
Fax: (206) 421-7000

Further, T-Netix's motion to dismiss claims related to interstate & intrastate are dismissed with prejudice. Federal pre-emption, class action issues are stayed pending WUTC action.

DONE IN OPEN COURT this 6 day of August, 2000.
November

J. Kathleen Learned
The Honorable J. Kathleen Learned

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Presented by:

BADGLEY ~ MULLINS LAW GROUP

PATTON BOGGS LLP

By *Diana P. Danzberger*
Donald H. Mullins, WSBA #4966
Diana P. Danzberger, WSBA # 24818
Attorneys for Defendant T-Netix, Inc.

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ORDER OF DISMISSAL - 2.

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Attorneys for Defendant Verizon (formerly GTE).

PRESTON GATES & ELLIS LLP

By Carol S. Arnold, WSBA 18474
Attorneys for Defendants
CenturyTel of Washington, Inc.,
d/b/a/ Centurytel, on behalf of named defendants
CenturyTel Telephone Utilities, Inc. and
North-West Communications, Inc.

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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' AMENDED
SECOND DATA REQUESTS TO
T-NETIX, INC.

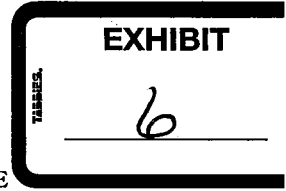
TO: T-NETIX, INC.

Pursuant to WAC 480-07-400, Complainants request that YOU provide responses to the following data requests to the undersigned by October 29, 2008, as required by the Order Establishing Discovery and Briefing Schedules (WUTC Order 09).

DEFINITIONS

As used herein, the following terms have the meaning set forth below:

1. The terms "T-Netix," "you," and "your" shall include T-Netix, Inc., T-Netix Telecommunications Services, Inc. and its attorneys, employees, servants, agents and representatives, and any person acting on its behalf for any purpose, as well as any subsidiaries or corporate predecessors to T-Netix or T-Netix Telecommunications Services, Inc., including without limitation Gateway Technologies, Inc. and Tele-Matic Corporation.



1 2. The term "Exhibit" refers to exhibits attached to AT&T's Motion for
2 Summary Determination, filed on or about December 15, 2004.

3 3. The term "inmate-initiated calls" means all intrastate, long-distance
4 telephone calls initiated by Washington state inmates from June 20, 1996 to the present,
5 using "Inmate Public Telephones" as that term is defined in Exhibit 7, page 2 to AT&T's
6 Motion for Summary Determination, filed on or about December 15, 2004.

7 4. The term "institution" or "institutions" means all Washington correctional
8 institutions covered by Exhibit 7, page 2 to AT&T's Motion for Summary Determination,
9 filed on or about December 15, 2004, and any amendments thereto.

10 5. The term "T-Netix institutions" means all Washington Department of
11 Corrections correctional institutions for which T-Netix (as that term is defined above) (a)
12 was contractually responsible for providing services or equipment in connection with
13 inmate-initiated calls; or (b) actually provided some type of service or equipment.

14 6. The term "contract" or "contracts" or "subcontract" or "subcontracts"
15 means all contractual agreements governing the provision of inmate-initiated calls,
16 including contracts with entities other than AT&T.

17 7. The term "operator services" or "operator services provider" or "alternate
18 operator services company" is to be construed identically to the definitions of those terms
19 in WAC 480-120-021 (1991), WAC 480-120-021 (1999), and WAC 480-120-262
20 (2003).

21 8. The term "consumer" or "consumers" is to be construed identically to the
22 definition of "consumer" in WAC 480-120-021 (1991), WAC 480-120-021 (1999), and
23 WAC 480-120-262 (2003).
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1 9. The term "CenturyTel" means CenturyTel of Washington, Inc., CenturyTel
2 Telephone Utilities, Inc., Northwest Telecommunications, Inc., or PTI Communications,
3 Inc.

4 10. The term "platform" means equipment used for inmate initiated calls at an
5 institution. The platform may include, but is not limited to, any or all of the following
6 components: (a) inmate phones; (b) switched access or special access trunking; (c) any
7 T-Netix equipment including, but not limited to, P-III; NS-1 or AS-1; (d) all software
8 contained in such equipment; (e) all adjunct equipment connected to such equipment; (f)
9 equipment provided by AT&T that supports T-Netix equipment (such as the 5ESS); (g)
10 any cabling, trunking or other special connection connecting pieces of the platform
11 together, and (h) any other telecommunications equipment used in providing services to an
12 institution.

13 11. The terms "document" or "documents" means any writing of any
14 description including without limitation paper, electronic, digital and other forms of
15 recording, email and other electronic documents that may reside on hard drives, servers or
16 other storage media of any description that are under the control of or within the power of
17 T-Netix, Inc. to gain access.
18

19 12. The term "identify," when used with reference to a person, means to state
20 his or her full name, present or last known address, present or last known telephone
21 number, present or last known place of employment, position or business affiliation, his or
22 her position or business affiliation at the time in question, and a general description of the
23 business in which he or she is engaged.
24

25 13. The term "state the basis" for an allegation, contention, conclusion, position
26 or answer means: (a) identify and specify the sources therefore; (b) identify and specify all

1 facts on which you rely or intend to rely in support of the allegation, contention,
2 conclusion, position or answer; and (c) set forth and explain the nature and application to
3 the relevant facts of all pertinent legal theories upon which you rely for your knowledge,
4 information and/or belief that there are good grounds to support such allegation,
5 contention, conclusion, position or answer.

6 14. The term "carrier" means any provider of telecommunications services.

7
8 **INSTRUCTIONS**

9 A. When a word or term in a data request appears in all capital letters, the word
10 or term is to be construed pursuant to the definitions above.

11 B. "Each data response must state the date the response is produced, the name
12 of the person who prepared the response, and the name of any witness who is
13 knowledgeable about and can respond to questions concerning the response." WAC 480-
14 07-405(7)(c).

15 C. These data requests shall be deemed to be continuing. You are required to
16 "immediately supplement any response to a data request, record requisition, or bench
17 request upon learning that the prior response was incorrect or incomplete when made or
18 upon learning that a response, correct and complete when made, is no longer correct or
19 complete." WAC 480-07-405(8).

20 D. If you find the "meaning or scope of a request to be unclear," you "must
21 immediately initiate a clarification call" to complainant's counsel. "Lack of clarity is not a
22 basis for objection to a data request unless the responding party has made a good faith
23 effort to obtain clarification." WAC 480-07-405(5).

1 E. If you object to any part of a request, answer all parts of such requests to
2 which you do not object, and as to each part to which you do object, separately set forth
3 the specific basis for the objection.

4 DATA REQUESTS

5 1. Please identify each T-NETIX INSTITUTION and with regard to each,
6 identify when T-NETIX began providing equipment or services at the T-NETIX
7 INSTITUTION, whether T-NETIX continues to provide equipment or services to the T-
8 NETIX INSTITUTION, and if it no longer provides equipment or services, when T-
9 NETIX stopped providing equipment or services at the T-NETIX INSTITUTION.

10 2. To the extent YOU have not already produced such DOCUMENTS, please
11 produce all DOCUMENTS that describe or relate to PLATFORMS or other equipment or
12 services that T-NETIX provided with regard to each T-NETIX INSTITUTION, including
13 without limitation system drawings, trunking diagrams, trunking lists, configuration
14 diagrams, systems engineering documents, systems specification documents, white papers,
15 performance specification documents, performance analysis documents, systems
16 architecture documents, marketing documents, and any other DOCUMENTS that describe
17 or relate to the equipment or services that T-NETIX provided with regard to each T-
18 NETIX INSTITUTION.

19 3. For each T-NETIX INSTITUTION, please produce all DOCUMENTS that
20 describe or relate to the PLATFORM (including, but not limited to, Adjunct (TNXWA
21 00224), POP (TNXWA 00225) and Premise (TNXWA 00226)) used in that T-NETIX
22 INSTITUTION, including all DOCUMENTS that show where the main components of the
23 PLATFORM were located, how trunking was configured from the T-NETIX
24 INSTITUTION to the PLATFORM location, how trunking was configured from the
25 PLATFORM to the LEC or IXC switch, and, if the Adjunct configuration was used, which
26 AT&T 5ESS was used, where it was located, and how trunking involving that switch was
configured.

4. Please produce all DOCUMENTS that describe or relate to the management
responsibilities of T-NETIX and any other CARRIERS or providers of OPERATOR
SERVICES for INMATE-INITIATED CALLS for each T-NETIX INSTITUTION. Please
include all DOCUMENTS identifying, describing, detailing, or relating to the entities or
persons that were responsible for (a) managing equipment or software, (b) installing
equipment or software, (c) upgrading equipment, (d) updating software, (e) maintaining or
repairing equipment or software, (f) developing the messages or text for use on calls, and
(g) recording messages for use on calls.

5. Please produce all DOCUMENTS in which T-NETIX uses the phrase
“operator service” or “operator services” or “alternate operator services” or “automated

1 operator” to describe any part of the services that it has provided, is providing, or will
2 provide. This request for DOCUMENTS is not limited to T-NETIX INSTITUTIONS.

3 6. With regard to each T-NETIX INSTITUTION, and with regard to each call
4 type (local, intraLATA, interLATA), please identify the specific company or entity that
5 served as the OPERATOR SERVICE PROVIDER or ALTERNATIVE OPERATOR
6 SERVICES COMPANY for INMATE-INITIATED CALLS. If the entity serving as the
7 OPERATOR SERVICE PROVIDER or ALTERNATIVE OPERATOR SERVICES
8 COMPANY has changed during this time period, please indicate the beginning and ending
9 dates for which the particular company or entity served as the OPERATOR SERVICE
10 PROVIDER or ALTERNATIVE OPERATOR SERVICES COMPANY with regard to
11 each T-NETIX INSTITUTION.

12 7. Please produce all T-NETIX annual reports from 1996 to the present.

13 8. If YOU “verbally advise[d]” CONSUMERS how to receive a rate quote
14 pursuant to WAC 480-120-141(2)(b) (1999) with respect to any INMATE-INITIATED
15 CALLS from T-NETIX INSTITUTIONS, whether by live operators, recorded or
16 synthesized voice, or any other method, please (a) identify when you began providing this
17 service with respect to each INSTITUTION, (b) describe what PLATFORM was used to
18 provide the message and the rate quote, and (c) identify each person currently or formerly
19 employed by YOU who has knowledge regarding these facts and describe that person’s
20 role.

21 9. If YOU did not “verbally advise” CONSUMERS how to receive a rate
22 quote pursuant to WAC 480-120-141(2)(b) (1999) with respect to any INMATE-
23 INITIATED CALLS from T-NETIX INSTITUTIONS, whether by live operators, recorded
24 or synthesized voice, or any other method, please (a) identify, by their corporate name, the
25 entities that did so, if any, with respect to each INSTITUTION, (b) the time periods that
26 the messages/quotes were provided by that entity, and (c) the PLATFORM used to provide
the messages/quotes.

10. With respect to INMATE-INITIATED CALLS from T-NETIX
INSTITUTIONS, did YOU disclose rates for a particular call “immediately, upon request,
and at no charge to the consumer”? If so, please (a) identify when you began providing
this service with respect to each INSTITUTION, (b) describe what PLATFORM was used
to provide the message and the rate quote, and (c) identify each person currently or
formerly employed by YOU who has knowledge regarding these facts and describe that
person’s role.

11. If YOU did not disclose rates for a particular call “immediately, upon
request, and at no charge to the consumer” pursuant to WAC 480-120-141(5)(iii)(a) (1991)
with respect to INMATE-INITIATED CALLS from T-NETIX INSTITUTIONS, please
(a) identify, by their corporate name, the entities that did so, if any, with respect to each
INSTITUTION, (b) the time periods that the messages/quotes were provided by that entity,
and (c) the PLATFORM used to provide the messages/quotes.

1 12. With respect to INMATE-INITIATED CALLS from T-NETIX
2 INSTITUTIONS, did YOU disclose rates pursuant to WAC 480-120-262(3) (2003)? If so,
3 please (a) identify when you began providing this service with respect to each
4 INSTITUTION, (b) describe what PLATFORM was used to provide the message and the
rate quote, and (c) identify each person currently or formerly employed by YOU who has
knowledge regarding these facts and describe that person's role.

5 13. If YOU did not disclose rates pursuant to WAC 480-120-262(3) (2003) with
6 respect to INMATE-INITIATED CALLS from T-NETIX INSTITUTIONS, please (a)
7 identify, by their corporate name, the entities that did so, if any, with respect to each
INSTITUTION, (b) the time periods that the messages/quotes were provided by that entity,
and (c) the PLATFORM used to provide the messages/quotes.

8 14. Please produce all documents relating to any waivers from regulatory
9 requirements governing the provision of telephone calls made by inmates that T-NETIX
has sought from the WUTC or the FCC.

10 15. Please produce all CONTRACTS and SUBCONTRACTS in which T-
11 NETIX is a party and which relate to INMATE-INITIATED CALLS.

12 16. Please produce all documents that relate to the negotiation, interpretation,
13 implementation, or performance of any CONTRACTS or SUBCONTRACTS in which T-
NETIX is a party and which relate to INMATE-INITIATED CALLS.

14 17. Which entity, AT&T or T-NETIX, or both, is responsible for "platform
15 compliance" described in TNXWA 00785?

16 18. With respect to the scripts described at TNXWA 00786-87, did AT&T or T-
17 NETIX, or both, determine the final versions of the text that was actually used in
connection with INMATE-INITIATED CALLS from T-NETIX INSTITUTIONS?

18 19. Describe T-NETIX's role in creating, editing, requesting, reviewing,
19 approving, or any other actions or responsibilities it undertook with respect to the scripts
for providing rate quotes in connection with INMATE-INITIATED CALLS.

20 20. With respect to the scripts described at TNXWA 00786-87, or any other
21 scripts involving rate disclosure that were used in connection with INMATE-INITIATED
22 CALLS from T-NETIX INSTITUTIONS, did T-NETIX, AT&T, or some other entity
actually record the voice or create the voice synthesis used for the scripts?

23 21. Please produce all DOCUMENTS relating to the "Project" referred to in
A000108-09, paragraph (b), and the subject matter of TNXWA 00785-87.

24 22. If the "Project" referred to in A000108-09, paragraph (b), resulted in
25 changes to the T-NETIX platform at any T-NETIX INSTITUTIONS, please identify those
26 T-NETIX INSTITUTIONS and state when the "Project" was completed with respect to
each T-NETIX INSTITUTION.

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23. Please IDENTIFY YOUR employee or agent with the most knowledge relating to rate disclosure announcements made by T-NETIX for INMATE-INITIATED CALLS.

24. Please IDENTIFY any former employees or agents of T-NETIX with knowledge relating to rate disclosure announcements made by T-NETIX for INMATE-INITIATED CALLS.

25. Please IDENTIFY any employees or agents, or former employees or agents of AT&T with knowledge relating to rate disclosure announcements made by T-NETIX for INMATE-INITIATED CALLS.

DATED: November 26, 2008.

SIRIANNI YOUTZ
MEIER & SPOONEMORE

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Attorneys for Complainants

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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 November 26, 2008, I served a copy of the foregoing document on all counsel of record in the manner shown and at the addresses listed below:

Letty S. D. Friesen [x] By Email
AT&T COMMUNICATIONS lsfriesen@att.com
OF THE PACIFIC NORTHWEST [x] By United States Mail
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Attorneys for Respondent T-NETIX, Inc.

DATED: November 26, 2008, at Seattle, Washington.