

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Sandy Judd, *et al.*,

Complainants,

v.

AT&T Communications of the Pacific Northwest
and T-NETIX, Inc.,

Respondents.

Docket No. UT-042022

RESPONSE TO FORMAL COMPLAINT

T-NETIX, Inc. (“T-NETIX”), through counsel, hereby responds to the Formal Complaint lodged by Sandy Judd *et al.* (“Complainants”) with the Washington Utilities and Transportation Commission (“Commission” or “WUTC”) on November 16, 2004 (“Complaint”).

BACKGROUND

Complainants seek the Commission’s ruling on several issues related to the provision of inmate telephone service. Specifically as to T-NETIX, they seek a ruling as to (1) whether T-NETIX is an “operator services provider” (“OSP”) within the meaning of Commission Rule WAC 480-120-141, and (2) whether T-NETIX violated Rule WAC 480-120-141, which provides that an “OSP must verbally advise the customer how to receive a rate quote,” which “must precede any further verbal information advising the consumer how to complete the call.” WAC 480-120-141(2)(b). Complaint at 2. As Complainants state, these issues “arise solely out of intrastate calls.” *Id.*

Complainants do not state the number of calls that they received from Washington state correctional facilities, nor do they state the time period in which the alleged unlawful

conduct occurred. Nor have Complainants identified the phone numbers to which inmate telephone calls have been placed. T-NETIX accordingly is unable to investigate the allegations brought to the Commission.

DISCUSSION

1. The Inmate Telephone Service Industry

Inmate telephone services are provided pursuant to exclusive contracts awarded by Washington correctional facilities after a public bidding process. *E.g.*, Complaint Exh. C (“AT&T Contract”). For state correctional facilities, the Secretary of the Department of Corrections is authorized to execute such contracts. RCW 72.09.050.

The provision of inmate telephone service involves complex issues of security for both the public and the facility, and hence operates in “an exceptional set of circumstances.” *Policies and Rules Concerning Operator Service Providers*, 6 FCC Rcd. 2744, 2752 (1991). Inmate service equipment must include, as stated in the contract submitted by AT&T in the underlying state court action, features to enable call timing, call blocking, and call recording and monitoring. AT&T Contract at p. 3. These equipment features both prevent inmates from engaging in unlawful activity via prison telephones, and help correctional officials track and monitor inmate conduct, the most grave example of which is finding escaped prisoners.

2. T-NETIX Services in Washington DOC Facilities

T-NETIX is a subcontractor to AT&T at state correctional facilities in Washington. Complaint at 2. As stated in the AT&T Contract, the duties of such subcontractors are to “install and maintain public telephone sets, all associated equipment” and all equipment that provides the call blocking and other features that correctional facilities require. AT&T

Contract at p. 3. Thus, T-NETIX is a vendor to AT&T that provides the equipment necessary for inmates at DOC facilities to use AT&T telephone service.

As AT&T states, the long distance calls (“O+ and international service”) are carried by AT&T. Complaint Exh. C (page 398). Accordingly, the rates that are charged for inmate calls are set and collected by AT&T. AT&T has the service and billing relationship with the persons who receive inmate collect calls from Washington DOC facilities.

AFFIRMATIVE DEFENSES

T-NETIX sets forth below its affirmative defenses. By setting forth these affirmative defenses, T-NETIX does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to complainants. Nothing stated herein is intended or shall be construed as an acknowledgement that any particular issue or subject matter necessarily is relevant to Complainants’ allegations.

First Affirmative Defense

(Failure to State a Cause of Action)

1. The Complaint fails to state facts sufficient to constitute a cause of action.

Second Affirmative Defense

(No Harm)

2. Complainants have not suffered harm as a result of the conduct alleged for which relief may be granted.

Third Affirmative Defense

(Filed Tariff Doctrine)

3. The Complaint, and each claim for relief contained therein, is barred or strictly limited by the applicable tariffs filed with the Washington Utility and Transportation Commission and/or the Federal Communications Commission.

Fourth Affirmative Defense

(Release)

4. This action is barred, in whole or in part, to the extent Complainants have given T-NETIX a release.

Fifth Affirmative Defense

(Laches)

5. This action is barred, in whole or in part, by the doctrine of laches.

Sixth Affirmative Defense

(Damages Caused by Complainants)

6. Any damages to which Complainants are found to be entitled must be decreased by the extent to which their own acts and omissions, or the acts or omissions of persons or entities acting for them or on their behalf or for whom or which they are responsible, were a cause of said damages, if any.

Seventh Affirmative Defense

(Damages Caused by Other Causes)

7. To the extent that Complainants suffered any damages, such damages were proximately caused by persons, entities, and/or factors or events other than T-NETIX and for which T-NETIX was and is not responsible.

Eighth Affirmative Defense

(Remote and Speculative Damages)

8. Complainants cannot recover any damages because those claimed are too speculative and/or remote to be recoverable by law.

Ninth Affirmative Defense

(Failure to Mitigate)

9. Without admitting any wrongful conduct on the part of T-NETIX, and without admitting that Complainants or any putative class members have suffered any loss, damage or other injury, T-NETIX states that recovery for any such loss, damage, or injury is barred, in

whole or in part, because Complainants failed to mitigate such loss, damage, or injury.

Tenth Affirmative Defense

(Lack of Proximate Cause/Superceding Cause)

10. Without admitting any wrongful conduct on the part of T-NETIX, and without admitting that Complainants or the putative class members have suffered any loss, damage or injury, T-NETIX states that recovery for any such loss, damage or injury is barred, in whole or in part, because such loss, damage, or injury was not proximately caused by any acts or omissions of T-NETIX. Instead, acts or omissions by other parties were superseding causes of Complainants' and the putative class members' damages, if any.

Eleventh Affirmative Defense

(Limitation of Liability in Tariff)

11. The Complaint, and each claim for relief contained therein, is barred or strictly limited by the applicable limitation of liability in the relevant tariff(s) filed with the Washington Utility and Transportation Commission and/or the Federal Communications Commission.

Twelfth Affirmative Defense

(Impact on Washington Residents)

12. The Complaint is barred to the extent that any of the events alleged took place outside of the state of Washington without impact on Washington residents.

Thirteenth Affirmative Defense

(Agency)

13. Without admitting that Complainants have suffered any harm or impact as a result of the allegations in the Complaint, T-NETIX states that is not subject to liability because it acted as the agent of another entity.

Fourteenth Affirmative Defense

(Standing)

14. Complainants lack standing to bring some or all of the claims alleged in the Complaint.

SUGGESTION FOR MEDIATION

T-NETIX suggests that the Commission's alternative of mediation may be an appropriate procedure to address Complainants' case. *See* WAC 480-07-700, *et seq.* Given that no discovery had taken place in the underlying action, and that Complainants' harm may have occurred more than four years ago, the Complaint may be resolved more efficiently if the parties are afforded the opportunity for mutual cooperation and investigation.

Respectfully submitted,

BADGLEY-MULLINS LAW GROUP

By: _____
Donald H. Mullins, WSBA # 4966

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

Attorneys for T-NETIX, Inc.