

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' MOTION
TO COMPEL DISCOVERY
FROM T-NETIX

Motion

1. Complainants request that the Commission require respondent T-Netix, Inc. to provide additional information and documents in response to the Complainants' Second Set of Data Requests to T-Netix. Problems with T-Netix's discovery responses include both the limitations that it attempts to place on the discovery it should provide and the apparent limited effort made by it to review and obtain responsive materials and information.

Limitations on the scope of production placed by T-Netix

2. T-Netix refuses to produce documents or information in connection with any Washington facility that it handles collect calls from inmates, other than three specific institutions: Washington State Reformatory, Airway Heights, and McNeil Island. The supposed justification for this limitation is that the Complainants'

telephone records reflect only personal calls from these facilities.¹ This is an improper limitation. T-Netix should not be allowed to limit its responses to three facilities.

3. First, the Superior Court's referral to this Commission did not limit the particular institutions covered. As has been stated several times, the issues to be determined by the Commission are: (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 Order 09 at 7, ¶29. Had T-Netix felt that the referral should be limited to the calls received by Ms. Herivel or Ms. Judd, it could have requested this limitation. It did not.

4. Second, the action filed in King County Superior Court is a class action. Thus, the individual Complainants bring claims not only on behalf of themselves, but others who received collect telephone calls from inmates. The First Amended Complaint, which forms the basis for the claims made in this case, defines the class as

[A]ll individuals who have received or will receive one or more long-distance intrastate or interstate collect calls from one or more Washington State prison inmates since June 20, 1996, except for those individuals who have received only interstate collect calls from Washington State prison inmates after November of 1999, and to whom timely disclosure of rates was offered.

The Complaint further notes that "every person who is or has been called by any incarcerated person" is a potential class member. First Amended Complaint at ¶9.

¹ Additional information provided by the Complainants showed that collect telephone calls were also received from the Clallam Bay facility by Ms. Judd, and T-Netix has indicated that it would not object to that facility.

5. Thus, the claims in this case extend to each facility where T-Netix was involved in collect telephone calls from inmates.

6. Third, T-Netix did not follow its own limitation when it served data requests on AT&T. For example, T-Netix's first data request to AT&T requested AT&T to "identify all inmate calling platforms used in connection with AT&T calls placed by *inmates from Washington state correction institutions since August 1, 1996.*" Youtz Dec., *Exh. A* at 5. (Emphasis added). T-Netix's second requests to AT&T asked whether AT&T instructed T-Netix to comply with the Commission's rate quote requirement (request 6) or sought a waiver of the requirements (request 7) without regard to any particular institution. *See Youtz Dec., Exh. B.*

7. T-Netix has provided us with no explanation for this limitation, other than its assertion that discovery must be limited to the institutions reflected in the telephone records provided by the two individual Complainants. T-Netix has not indicated how the addition of these additional facilities would be burdensome to it. In short, there is no justifiable excuse for not providing information for all the Washington prisons served by T-Netix.

8. As discussed further below, we have seen no documents from T-Netix that discuss the specific institutions for which it provided services. Instead, T-Netix has provided generic information regarding the platform that it claims was used at its sites in Washington.

T-Netix should produce correspondence, emails, and internal memos

9. It is apparent that T-Netix has not performed a good faith search of its files to locate records responsive to our data requests. To date, T-Netix has provided generic and general documents describing the particular platform it says was used at three facilities within the state of Washington. However, we have not been provided with any documents regarding those specific sites. It would be expected that changes made to a particular platform serving a particular institution would be reflected in a maintenance log or other documentation for that particular facility. As described in the declaration of Ken Wilson, T-Netix should have documents that provide specific information about the actual setup at each prison. Mr. Wilson notes that this information is very relevant in determining how the calls were handled and whether required rate disclosures were made. T-Netix has objected that such technical information is "totally irrelevant."

10. Also, we have received no copies of correspondence, emails, or internal memos from T-Netix managers or staff containing any discussion regarding the disclosure of rates. AT&T recently produced copies of emails and correspondence from it to T-Netix discussing T-Netix's obligations to perform the work necessary to provide rate disclosures. *See Youtz Decl., Exh. C.* These materials are significant, because they show that rate disclosure was determined to be necessary, but that it was not being provided.

11. Because these emails and letters were sent to T-Netix, T-Netix should have produced its copies of these materials and its responses or internal emails regarding these exchanges. No such information has been provided.

Specific Data Requests at Issue

12. As discussed above, there are problems with T-Netix's responses that apply to all of its responses to all the data requests. Also, there are problems with T-Netix's response to specific data requests. These responses are included in *Exhibit D* to the Youtz Declaration.

13. Data Requests Nos. 2 and 3 ask for documents regarding the platforms used by T-Netix to handle the collect calls from inmates. T-Netix claims that "the telecommunications technologies underlying any platform are completely irrelevant" and that "none of the documents described in this request is even remotely relevant." T-Netix has already produced technical information regarding its platform. The problem is that it has not produced information specifically pertaining to the platforms in use at each of the institutions for which it handled collect calls. This information is important because it shows whether the platforms actually used by T-Netix were capable of meeting the rate disclosure obligations or modified to provide for rate disclosure (and if so, when the modification occurred), and how the telephone calls from the institutions were actually handled by the platform.

14. As explained in the declaration of Kenneth Wilson, an expert who has previously provided testimony in this matter, this information is relevant not only for determining if rate disclosure took place, but also in evaluating who the OSP was for

the calls handled for a particular institution. As Mr. Wilson notes in his declaration, T-Netix would be expected to have documents pertaining to the platforms in use at the specific institutions. This documentation would describe modifications to the equipment, including changes that would permit rate disclosure information to be provided to the recipients of collect telephone calls. The Commission should order T-Netix to provide all documents responsive to Requests Nos. 2 and 3.

15. T-Netix objected to Request No. 5 on the grounds that it was too broad. In the conference with T-Netix's counsel, we agreed to limit this request to documents that contained a substantive discussion regarding operator services. With this limitation, T-Netix's counsel indicated that it would reconsider its response to our request. If T-Netix refuses to produce documents that discuss providing operator services, or, as shown by the AT&T documents provided as *Exhibit C* to the Youtz Declaration, who is responsible for performing as the OSP, then the Commission should order T-Netix to produce these documents.

16. Data Request No. 16 requested documents regarding T-Netix's performance of its agreements to provide services in connection with collect telephone calls from Washington inmates. T-Netix's performance of its contract, which AT&T alleges requires T-Netix to serve as the OSP, is certainly relevant to this litigation. The documents provided by AT&T contained in *Exhibit C* to the Youtz Declaration show that there was a dispute over the performance obligations under the contract between T-Netix and AT&T. Further, correspondence, memoranda, and emails regarding T-Netix's performance will show who had the responsibility to perform certain tasks in

handling these calls; which will determine who was the OSP for the calls. Similarly, documents regarding the negotiation and interpretation of the contracts will further reveal whether T-Netix understood and agreed that it was serving as the OSP. In short, these materials are clearly relevant and should be produced.

17. T-Netix has next refused to provide any documents in response to data Requests Nos. 21 and 22. These requests refer to a "project" referenced in documents previously provided by T-Netix. T-Netix acknowledges in its response that this reference relates to a project to replace chips as needed to comply with rate disclosure regulations issued by the FCC. It refuses to produce documents regarding this change claiming that they are irrelevant to this case.

18. It is unclear why T-Netix claims that this information is irrelevant. The replacement of a chip to allow rate disclosures to be made is relevant, whether it is done to meet a requirement imposed by the FCC or the Commission. Documents associated with this change may well provide information regarding whether this chip change could be used to satisfy both state and federal requirements for rate disclosure. The Commission should order T-Netix to respond in full to these two requests.

19. Data Request No. 23 asks T-Netix to identify the person with the most knowledge regarding the rate disclosure announcements for collect calls from inmates. Instead of directly answering this question, T-Netix simply refers us back to answers to two earlier requests, which identify a couple of individuals. T-Netix should answer the question directly and identify the person.

Conclusion

20. Accordingly, complainants request that the Commission issue an order directing T-Netix to:

(1) produce documents and provide information for all Washington institutions for which T-Netix provided services in connection with collect calls made by inmates;

(2) produce emails, correspondence, and memos that are responsive to the data requests, including materials that discuss disclosure for rates for collect calls from inmates;

(3) provide documents and information for the platforms specifically used by T-Netix at each of the institutions in responding to these data requests; and

(4) provide complete responses to data requests nos. 2, 3, 5, 16, 21, 22, and

23.

DATED: November 26, 2008.

SIRIANNI YOUTZ
MEIER & SPOONEMORE



Chris R. Youtz (WSBA #7786)
Richard E. Spoonemore (WSBA #21833)
Attorneys for Complainants

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

CERTIFICATE OF SERVICE

I certify, under penalty of perjury and in accordance with the laws of the State of Washington, that on 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 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST 2535 E. 40 th Avenue, Suite B1201 Denver, CO 80205 Attorneys for Respondent AT&T	[x] By Email lsfriesen@att.com [x] By United States Mail
Charles H.R. Peters SCHIFF HARDIN LLP 6600 Sears Tower 233 S. Wacker Drive Chicago, IL 60606 Attorneys for Respondent AT&T	[x] By Email cpeters@schiffhardin.com [x] By United States Mail
Arthur A. Butler ATER WYNNE LLP 601 Union Street, Suite 1501 Seattle, WA 98101 Attorneys for Respondent T-NETIX, Inc.	[x] By Email aab@aterwynne.com [x] By United States Mail
Glenn B. Manishin DUANE MORRIS LLP 505 - 9 th Street NW, Suite 1000 Washington, DC 20004 Attorneys for Respondent T-NETIX, Inc.	[x] By Email gmanishin@duanemorris.com [x] By United States Mail
Marguerite E. Russell Administrative Law Judge 1300 S. Evergreen Park Drive SW P.O. Box 47250 Olympia, WA 98504-7250	[x] By Email mrussell@utc.wa.gov

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

