

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

**RESPONDENT AT&T'S MOTION
TO COMPEL T-NETIX TO
RESPOND FULLY TO AT&T'S
SECOND SET OF DATA REQUESTS**

AT&T'S MOTION TO COMPEL T-NETIX

Respondent AT&T Communications of the Pacific Northwest, Inc. ("AT&T"), by and through its attorneys, respectfully submits this Motion pursuant to Section 480-07-405(3) of the Washington Administrative Code for an Order compelling T-Netix, Inc. ("T-Netix") to respond fully to certain of AT&T's Second Set of Data Requests (the "Data Requests"). In support of this Motion, AT&T states the following:

Introduction

1. On October 15, 2008, pursuant to Sections 480-07-400 – 405 of the Washington Administrative Code and the October 2, 2008 Order Establishing Discovery and Briefing Schedules entered by the Washington Utilities and Transportation Commission ("WUTC"), AT&T served its Data Requests on T-Netix.

2. On November 17, 2008, T-Netix served responses to AT&T's Data Requests. A copy these responses is attached as Exhibit A.

3. T-Netix's responses to AT&T's Data Requests have prompted this motion for several reasons. First, T-Netix has limited the scope of its responses to the time period from

June 20, 1996 to December 31, 2000 and to the three Washington correctional facilities from which Complainants state they received inmate-initiated calls. While these limitations may be appropriate, plaintiffs contend that the scope of their claims is broader. If the plaintiffs are correct, then the scope of T-Netix's responses to AT&T's data requests must be broader as well. Second, T-Netix has failed to provide full responses to several of the specific Data Requests.

4. On November 24, 2008, AT&T's counsel conferred with T-Netix's counsel regarding T-Netix's responses.

5. With regard to the scope limitations of T-Netix's responses, T-Netix's counsel stated, and AT&T's counsel learned independently from Complainants' counsel, that Complainants' counsel intends to move to compel T-Netix to broaden the scope of T-Netix's responses to Complainants' data requests so that the responses cover a longer time period and all of the Washington correctional facilities addressed by the Washington Department of Corrections contracts (which are attached as exhibits to AT&T's pending Motion for Summary Determination). AT&T's counsel requested, and T-Netix's counsel agreed, that if the WUTC compels T-Netix to broaden the scope of its responses to Complainants' data requests, then T-Netix will also broaden the scope of its responses to AT&T's Data Requests to the same extent. In other words, T-Netix has agreed that the scope of its responses will be the same for AT&T's Data Requests as it is for Complainants' data requests. (Just to provide one illustrative example: If T-Netix is compelled to broaden the scope of its responses, then T-Netix would be required to supplement its response to AT&T's Data Request No. 20 by identifying the call control platform and architectural variant used at all Washington correctional facilities at issue, and not just those used at the three facilities currently covered by T-Netix's responses.) AT&T is satisfied with

that agreement and addresses the scope issue here solely for the purpose of putting it and AT&T's and T-Netix's agreement in the record.

6. With regard to T-Netix's failure to provide full responses to specific Data Requests, T-Netix's counsel explained that T-Netix lacked sufficient documents, information, or knowledge to respond fully to certain requests, that T-Netix's investigation continues to some extent and if additional documents, information, or knowledge arises, then T-Netix will supplement or amend its responses. Despite that commitment from T-Netix, given the tight discovery schedule, AT&T deems it necessary to move to compel T-Netix to provide full responses to AT&T's Data Requests as set forth below.

The Nature and Scope of This Proceeding

7. This proceeding arises from a primary jurisdiction referral requesting that the WUTC determine two issues: (1) whether AT&T or T-Netix was the Operator Services Provider ("OSP"), as that term is defined in the Commission's regulations; and (2) whether AT&T or T-Netix violated the WUTC's rate disclosure regulation.

8. AT&T moved for summary determination in this proceeding on the grounds that AT&T has never been an OSP for Washington correctional facilities, and that AT&T, therefore, did not violate the WUTC's rate disclosure regulation.

T-Netix's Failure to Provide Full Responses to Specific Data Requests

Data Request Nos. 7, 8, 9, 10, and 21

9. AT&T's Data Request Nos. 7, 8, 9, and 10 asked T-Netix to identify and describe the nature, function, and purpose of all equipment and services provided by T-Netix relating to telephone service at the Washington correctional facilities at issue during the relevant period. Similarly, AT&T's Data Request No. 21 asked T-Netix to produce all documents relating to or identifying the call control platform and architectural variant used at each facility during the

relevant period. These Data Requests seek information that would show and explain T-Netix's role with regard to inmate-initiated calls at issue, and in particular T-Netix's role in connecting and providing operator services and rate disclosures for such calls. This information directly relates to and bears on the issues before the WUTC in this proceeding. At all relevant times, the WUTC regulations defined as OSP as "any corporation, company, partnership, or person providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators." See WAC 480-120-021 (1999) and WAC 480-120-262(1) (current).

10. In its responses to these Data Requests, T-Netix generally refers to documents describing equipment and products that T-Netix provided or made available in Washington. However, T-Netix fails to provide any details such as which specific equipment and services T-Netix provided at which specific facilities during which specific time period. Moreover, T-Netix fails to describe the nature, function, and purpose of any specific equipment or services that were provided at any specific institution during any specific time period. Accordingly, T-Netix's responses to these Data Requests are inadequate.

Data Request Nos. 11 and 12

11. AT&T's Data Request Nos. 11 and 12 asked T-Netix to describe the process by which rate disclosures were made to recipients of inmate-initiated calls, and any changes or revisions to that process. These questions go directly to the issues that the WUTC must address in this proceeding. The services that T-Netix has used to make rate disclosures sheds light on whether it was actually connecting calls to a local or long distance provider and therefore, whether it served as an OSP. Moreover, it directly relates to whether T-Netix violated any rate disclosure regulations because WAC 480-120-262 specifies the procedure an OSP must follow when disclosing rates.

12. In its responses to these Data Requests, T-Netix partially describes the process, but cryptically states that “T-Netix would have been able to configure the system to provide the rate quote via a voice recording.” T-Netix fails to describe what was actually done – for example, what T-Netix actually did to configure the system and whether it did in fact provide the rate quote via a voice recording. In addition, T-Netix fails to describe any changes or revisions to the process, claiming that it is unaware of any, despite the fact that regulatory requirements changed over time and documents reflect that T-Netix made changes to the process. Accordingly, T-Netix’s responses to these Data Requests are inadequate.

Data Request No. 15

13. AT&T’s Data Request No. 15 asked T-Netix to produce all documents relating to the transfer of ownership from T-Netix to AT&T of any equipment relating to telephone service at the Washington correctional facilities at issue during the relevant period. T-Netix previously contended in this litigation that its role was only that of an equipment provider, suggesting that it merely supplied or transferred equipment to AT&T and did little to nothing beyond that. AT&T disagrees with that contention and believes that the facts will not bear it out. The documents sought in this Data Request address the merits of T-Netix’s contention. T-Netix has made this an issue, and therefore it cannot claim documents related to that issue are somehow not discoverable.

14. In its response to this Data Request, T-Netix makes several objections and states that it lacks sufficient information at this time to determine whether any equipment was transferred from T-Netix to AT&T. T-Netix has failed to produce any documents, such as bills of sale, transfers of title, or sales receipts, relating to any such transfers of equipment. To the extent it seeks to claim, in any way, that its role was limited to transferring equipment, it must be compelled to produce any documents that it believes might exist in this category. .

Data Request Nos. 18 and 19

15. AT&T's Data Request Nos. 18 and 19 asked T-Netix to describe the process by which intrastate, interLATA calls from the Washington correctional facilities at issue were processed from caller to call-recipient during the relevant period, and any changes or revisions made to that process. These Data Requests seek information that would show and explain T-Netix's role in processing, connecting, and providing operator services and rate disclosures for inmate-initiated calls. This information directly relates to and bears on the issues before the WUTC in this proceeding.

16. In its responses to these Data Requests, T-Netix provides a brief and general description of the process for intrastate, interLATA calls, but fails to state with any certainty what process actually occurred. T-Netix states that "[i]f AT&T . . . had direct circuits terminating on a separate Network Interface with which the T-Netix premise equipment was interconnected, T-Netix would route an interLATA call to the NI, from which it would [sic] connected to the dialed number by AT&T and whichever carrier(s) it utilized to provide terminating switched access." This response fails to state whether any of this was true for the facilities at issue, or to provide any other details with any certainty. In addition, T-Netix fails to describe any changes or revisions to the process, claiming that it is unaware of any. Accordingly, T-Netix's responses to these Data Requests are inadequate.

WHEREFORE, AT&T respectfully requests that the WUTC enter an Order compelling T-Netix to provide full responses to the specific Data Requests identified above, including by curing the specific deficiencies discussed above.

Dated: November 26, 2008

Respectfully submitted,

**AT&T COMMUNICATIONS OF
THE PACIFIC NORTHWEST, INC.**

By: /s/ Charles H.R. Peters

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CERTIFICATE OF SERVICE

Pursuant to WAC 480-07-150, I hereby certify that I have this day, November 26, 2008, served this document upon all parties of record by e-mail and Federal Express overnight delivery at the e-mail addresses and mailing addresses listed below:

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Pursuant to WAC 480-07-145, I further certify that I have this day, November 26, 2008, filed MS Word and PDF versions of this document by e-mail, and the original and four copies of this document by Federal Express, with the WUTC at the e-mail address and mailing address listed below:

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Pursuant to the Prehearing Conference Order 08, I further certify that I have this day, November 26, 2008, provided a courtesy copy of this document, in MS Word, to ALJ Russell by e-mail at the following e-mail address: mrussell@utc.wa.gov.

Dated: November 26, 2008

/s/ Charles H.R. Peters
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