

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' MEMORANDUM
IN OPPOSITION TO T-NETIX'
MOTION FOR A PROTECTIVE
ORDER

Introduction

1. This memorandum is submitted in opposition to T-Netix' motion for a protective order, which seeks to limit the information that T-Netix must provide for consideration by the Commission in evaluating whether T-Netix violated regulations issued by the Commission requiring rate disclosure.

The Motion for a Protective Order Should be Denied

2. T-Netix refuses to produce documents or information for any Washington facility for which it handles collect calls from inmates, other than four specific institutions from which Ms. Judd and Ms. Herivel received calls. In essence, T-Netix asserts that the Commission may not consider evidence on whether its regulations were violated for these additional institutions.

3. T-Netix claims that the information for the other institutions should not be provided because the claimants have not filed a motion to certify the class in this case

and the information being sought is “class discovery” to support a future motion for class certification rather than for use in connection with the referral from the court. *See* T-Netix motion at 5 and 14, ¶12 and ¶36.

4. T-Netix’ premise is wrong. A motion for class certification was filed on August 25, 2000, and is still pending before the court. Youtz Dec., Ex. A. The court chose to stay consideration of that motion and first refer the question of liability to the Commission. *See* T-Netix motion, Ex. 5.

5. When Judge Learned referred this matter for “further proceedings” to the WUTC, she did not limit the scope of the Commission’s review to the specific institutions that Ms. Judd and Ms Herivel received calls from. *Id.* Nor would it have made sense to do so. It makes sense for the Commission to determine whether T-Netix violated the disclosure regulations for each of the institutions serviced by T-Netix in a single proceeding. Apparently T-Netix wants the Commission to determine whether the regulations for the calls it handled for these four institutions were violated then go back to court for class certification then return to the Commission to determine whether T-Netix violated regulations for the remaining institutions. This would be inefficient and further delay resolution of this case.

6. Further, T-Netix does not explain how the information sought goes to the issue of “class discovery” rather than to the issue of whether T-Netix violated the rate disclosure regulations. The motion for class certification that has been filed demonstrates that the elements of a class action have been met; the information requested in our data requests goes to the heart of whether T-Netix is an OSP and

whether it failed to comply with the regulations. Thus, the cases cited by T-Netix dealing with “class discovery” are irrelevant. Our discovery does not seek the names of additional class members or similar information. T-Netix admits that it provided the same services and equipment at each of the institutions it served (T-Netix motion at 19, ¶48) so its citation to *Tracy v. Dean Witter Reynolds*, 185 F.R.D. 303 (D. Co. 1998), is not applicable. (In *Tracy*, the issue was whether discovery was allowed to show that other Dean Witter offices had a practice of not paying overtime to certain employees).

7. T-Netix also claims that it would be unduly burdensome to produce information for these additional sites. In order to obtain any form of protective order, the moving party must present a factual showing of a particular and specific need for the protective order. *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002); *see also Beckman Indus. v. International Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (“Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test”). Throughout its 21 page memorandum, T-Netix simply claims that it is “burdensome” to provide this information. It does not provide a single example of why it is burdensome. It does not describe the files it might have to review, the location of the records, etc. In fact, since T-Netix has yet to produce a single document that is specific to any of the four institutions it acknowledges are relevant, there is no basis for judging how many documents are responsive to requests to specific institutions. *See Complainants’ Motion to Compel* at 4.

8. T-Netix then states that if the Commission finds that it violated the regulations for the four institutions from which Ms. Judd and Ms. Herivel received calls

that this finding “would as a factual matter likely be determinative of T-Netix’s status with respect to other Washington state correctional institutions.” T-Netix motion at 19, ¶48. T-Netix explains that this is because it “provided the same equipment, software, and services at all institutions...” Id.

9. Although T-Netix makes this statement to argue that it should not provide information from the other institutions, this revelation provides further support for requiring the information to be produced. Documents and comments regarding the equipment and rate disclosures at these additional institutions would be relevant to the equipment and services at the four institutions that T-Netix claims are at issue, or, at a minimum, could lead to the discovery of admissible evidence. From the production we have received to date, we are concerned that many files have simply not been reviewed by T-Netix for information. It is very possible that the files from these additional institutions could contain memos or other documents regarding the platforms and rate disclosure that are missing from the files of the four institutions for which T-Netix says it will produce documents.

10. As noted in earlier submissions, our first data requests also requested information for all institutions that T-Netix was responsible for providing services in connection with inmate-initiated calls. T-Netix did not complain to the Commission that the first data requests were too broad.

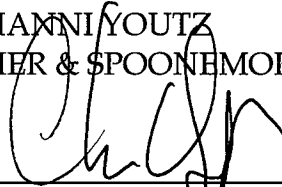
11. As it has done in other, recent submissions, T-Netix is now attempting to limit the information that will be available to the Commission by arguing that this referral is only about calls made by Ms. Judd and Ms. Herivel. These individuals

brought this class action in King County Superior Court on behalf of persons who were not provided proper rate disclosures when they received collect calls from prison inmates. The Court of Appeals resolved T-Netix' attack on their standing to bring these claims. T-Netix, however, wants the Commission to treat this matter as though these individuals had filed personal claims in this forum. This is not an original action filed by the complainants seeking relief for only themselves, as T-Netix suggests. This is a referral from a court asking the Commission to apply its expertise to determine whether AT&T and T-Netix are OSPs and, if so, whether they complied with the disclosure requirements contained in the regulations. The Commission is not being asked to determine the scope of relief that may flow from that decision or whether the plaintiffs are appropriate representatives of the class of persons who received collect telephone calls from inmates. Those issues are for the court to address once the Commission responds to the court's inquiry.

12. For the reasons stated above, and in our motion to compel, we request that T-Netix' motion for a protective order be denied.

DATED: December 12, 2008.

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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 December 12, 2008, I served a copy of the foregoing document on all counsel of record in the manner shown and at the addresses listed below:

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DATED: December 12, 2008, at Seattle, Washington.

