

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

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

1. T-Netix, Inc. ("T-Netix"), through counsel, hereby opposes AT&T's Motion to Compel T-Netix to Respond Fully to AT&T's Second Set of Data Requests.

2. Respondent AT&T Communications of the Pacific Northwest, Inc. ("AT&T") seeks to compel supplementation of discovery provided by T-Netix pursuant to AT&T's Second Data Requests, contending that T-Netix has failed to respond fully. AT&T's motion is unnecessary because, as AT&T admits, counsel had reached agreement that (a) issues related to the scope of discovery in this proceeding would be governed by the ALJ's ruling on the parallel motions to compel and for a protective order between T-Netix and Complainants, and (b) if additional responsive information was available, T-Netix's responses would be supplemented voluntarily before that decision. As demonstrated below, however, the specific information

AT&T now prematurely seeks to compel is either irrelevant to this proceeding or not within the present knowledge or possession of T-Netix.

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

3. AT&T seeks the identification of, and documents relating to, all equipment and services that T-Netix provided at each specific Washington state correctional institution. The equipment provided at each institution bears no relationship at all to which party, if any, served as an OSP within the meaning of the Commission's rules for interLATA calls placed from the correctional facilities at issue. Nevertheless, T-Netix provided information and documents responsive to the Data Requests, including information and documents relating to the PIII platform that T-Netix made available to AT&T at the four institutions relevant to this matter. AT&T contends that the information provided is too general and that documents relating to specific equipment at each individual facility could somehow resolve this issue. This is incorrect.

4. As explained in the accompanying Declaration of Robert Rae, the number of trunks or lines, the specifications of equipment deployed, and the type of transport and/or switching connectivity to the inmate call processing platform at an institution have no bearing on the functions performed by the various entities. See Exhibit B to T-Netix Opp. to Compl. Mot. to Compel (filed simultaneously herewith). It is the function of the carriers and other entities rather than the design or configuration of their network(s) and equipment that determines their regulatory status as common carriers, telecommunications service providers, OSPs, equipment vendors or otherwise under the Commission's regulations. The call flow for intrastate interLATA inmate collect calls (the type of traffic at issue in this proceeding) from each Washington state correctional institution was exactly the same. See id. at ¶ 7, citing Schott Supp. Aff., ¶¶ 15-21 & Fig. 1. Therefore, documents relating to the network and equipment configurations at any one or more institutions are not relevant to the issues referred to this Commission and are not likely to lead to the discovery of admissible evidence.

5. AT&T offers nothing more than conclusory statements concerning the relevance of such information and documents. For example, AT&T contends generally that the “information 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.” AT&T Mot. to Compel at ¶ 9. Yet AT&T fails to explain how engineering documents might in fact reveal whether, for purposes of the Commission’s rules, it was T-Netix, AT&T, or the LEC that “connected” interLATA inmate calls to AT&T’s long-distance services, or how any networking configuration documents could resolve the question of whether correctional facilities are aggregator locations for purposes of those regulations. Instead, AT&T merely asserts that the “information directly relates to and bears on issues before the WUTC in this proceeding.” To the contrary, as explained in the Declaration of Robert Rae, such information is not at all relevant to the questions before this Commission. See Exh. B to T-Netix Opp. to Compl. Mot. to Compel at ¶¶ 5-11.

**Data Request Nos. 11, 12, 18, and 19**

6. AT&T appears to argue that the additional information it seeks responsive to Data Request Nos. 11, 12, 18, and 19 is relevant. T-Netix did not, however, object to these requests on relevance grounds (except with respect to the scope of the question with regard to the facilities and timeframe involved, as to which the ALJ’s ruling will govern). Rather, T-Netix’s responses are appropriate and fully adequate because T-Netix provided complete answers based upon all available information in its possession.

7. Any claimed failure to respond fully presumes, without evidence, that T-Netix in fact has more information responsive to these requests. Yet this proceeding is now more than eight (8) years old and arises from calls taking place between 1996 and 2000, while in the interim T-Netix has been the subject of a series of corporate mergers and reorganizations. It is unfortunate but understandable, for T-Netix as well, that after such a long delay in a rapidly changing telecom market T-Netix no longer has employees with significant first-hand knowledge

of these matters, or documentary records beyond what have already been produced, but that is in fact the case. Therefore, because there does not exist any additional responsive information in T-Netix's present custody or control, there has been no cognizable "failure" and the motion should be denied as to these Data Requests.

#### **Data Request No. 15**

8. T-Netix stated in response to Request No. 15 that it lacks sufficient information at this time to determine whether any equipment was "transferred" from T-Netix to AT&T. Yet even if T-Netix were aware of such transfers, documents relating thereto would not be relevant to a determination of whether T-Netix or AT&T was an OSP within the meaning of the Commission's regulations. AT&T has not explained why it believes such documents would be relevant; however, it appears from other arguments raised in the that AT&T contends that if T-Netix retained ownership of the equipment during the relevant timeframe, then T-Netix was an OSP because it provided a "connection," as that term is used in the applicable regulations.

9. Such an argument is incorrect as a matter of law and, like the question of networking configurations addressed in the Declaration of Robert Rae, attached as Exhibit B to T-Netix's Opposition to Complainants' Motion to Compel, immaterial to the matters at issue in this proceeding. The T-Netix platform(s) functioned the same regardless of trunking configurations or legal ownership; the relation between T-Netix and AT&T, the Department of Corrections ("DOC") franchisee and carrier for all interLATA calls from these facilities, was also the same and governed by the parties' contract. Therefore, it is undisputed that, whether or not T-Netix transferred ownership of any equipment, T-Netix provided the equipment to AT&T, pursuant to its contract with AT&T, and never provided services or equipment to any correctional institution or end user (called party) in Washington. It makes no difference whether T-Netix owned the equipment, whether it leased, sold, or transferred the equipment from AT&T or to AT&T, whether it leased the equipment from or to a third-party, or had any other arrangement to provide the equipment under its contract with AT&T.

10. Simply stated, AT&T contracted with the Washington DOC to serve as an interexchange carrier and OSP but seeks to thrust its regulatory duties upon an equipment vendor with which it subcontracted. Thus, documents such as bills of sale, transfers of title, or sales receipts, even if they could be found, are irrelevant. T-Netix in any event does not know and cannot determine which party held legal title to the equipment in question, so AT&T's motion is moot as to this Data Request.

### **CONCLUSION**

11. For the reasons stated above, T-Netix respectfully requests that the Commission deny AT&T's motion.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of December, 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 12th day of December, 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 Commission	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
1300 S Evergreen Park Drive SW	<input checked="" type="checkbox"/>	Overnight Mail (UPS)
Olympia, WA 98504-7250	<input type="checkbox"/>	Facsimile (360) 586-1150
	<input checked="" type="checkbox"/>	Email (records@wutc.wa.gov)

I hereby certify that I have this 12th day of December, 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 Complainants :***

Chris R. Youtz	<input type="checkbox"/>	Hand Delivered
Sirianni Youtz Meier & Spoonemore	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
Suite 1100	<input checked="" type="checkbox"/>	Overnight Mail (UPS)
719 Second Avenue	<input type="checkbox"/>	Facsimile (206) 223-0246
Seattle WA 98104	<input checked="" type="checkbox"/>	Email (cyoutz@sylaw.com)

*Confidentiality Status:*

***On Behalf Of Complainants :***

Richard E. Spoonemore  
Sirianni Youtz Meier & Spoonemore  
Suite 1100  
719 Second Avenue  
Seattle WA 98104

*Confidentiality Status:*

Hand Delivered  
 U.S. Mail (first-class, postage prepaid)  
 Overnight Mail (UPS)  
 Facsimile (206) 223-0246  
 Email (rspoonemore@sylaw.com)

***On Behalf Of Commission:***

Marguerite Russell  
Washington Utilities and Transportation  
Commission  
1300 S Evergreen Park Drive SW  
PO Box 47250  
Olympia WA 98504-7250

*Confidentiality Status:*

Hand Delivered  
 U.S. Mail (first-class, postage prepaid)  
 Overnight Mail (UPS)  
 Facsimile (360) 586-8203  
 Email (Word version)  
 (mrussell@utc.wa.gov)

Susan Arellano

---