[Service date: *December 12, 2008*]

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 COMPLAINANTS' MOTION TO COMPEL DISCOVERY FROM T-NETIX**

INTRODUCTION

1. T-Netix, Inc. ("T-Netix"), through counsel, hereby opposes Complainants' Motion to Compel Discovery from T-Netix. The Motion is in part moot and otherwise without merit and thus, as demonstrated in detail below, should be denied by the Commission.

2. Complainants Sandy Judd and Tara Herivel ("Complainants") seek to compel discovery sought through their Amended Second Data Requests propounded upon T-Netix on October 15, 2008. Complainants and T-Netix have diametrically opposing viewpoints regarding the scope of permissible discovery in this primary jurisdiction proceeding. Complainants mistakenly view this discovery process as relating to all putative class members in their lawsuit before the King County Superior Court (the "Court" or "trial court") and all Washington state correctional facilities from which any unidentified potential class members may have received inmate-initiated calls. To the contrary, however, the Court retained jurisdiction over class action

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issues and referred this matter to the Commission prior to certifying a class and prior to granting leave for Complainants to pursue discovery in support of class certification. Therefore, the Commission – whose jurisdiction is defined by and derivative of the trial court's – does not have the power or jurisdiction to cast the wide net of discovery that Complainants seek. Indeed, the trial court has not yet determined whether it is even appropriate to permit class-wide discovery in the litigation. Discovery before the Commission therefore must, absent a decision by the trial court that discovery in support of class certification is allowable, be limited to the two named Complainants.

3. As more fully explained below and in T-Netix's motion for a protective order filed November 19, 2008, Complainants' data requests are overbroad, seek information that is wholly irrelevant and not within the bounds of the issues which the trial court referred to the Commission, and impose a plainly undue burden on T-Netix relative to the claims asserted and the unlikely probative value of the information requested.

4. Because of the condensed timeframe for filing motions to compel and a surgery undergone by counsel for Complainants, the parties had a short period to meet and confer to resolve issues relating to responses to the second round of data requests. This allowed no time to serve supplemental responses prior to the filing of motions to compel. Complainants nonetheless included in their motion discovery requests as to which counsel for T-Netix had agreed to supplement its responses. As agreed among counsel. T-Netix served supplemental responses to data requests simultaneous with the filing of this opposition. These supplemental responses render certain aspects of Complainants' motion moot.

ARGUMENT

I. The Scope of Discovery May Not Extend to Putative Class Members

5. Complainants argue that they are entitled to discovery from T-Netix relating to all Washington state correctional institutions even though the Complainants alleged having received

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inmate-initiated calls from only four such facilities. See Compl. Herivel Resp. to T-Netix Second Data Req. No. 5 and Compl. Judd Resp. to T-Netix Second Data Req. No. 5, Exhs. 1 & 2 to T-Netix's Mot. For Protective Order. The Complainants' justification for this conclusion is premised solely on the fact that Complainants filed their action in the trial court in June of 2000 as a putative class action. On this basis, the Complainants contend that during this primary jurisdiction proceeding before the Commission they are entitled to class-wide, expansive discovery related to all putative class members.

6. By relying on this justification , Complainants concede that discovery beyond the four correctional institutions from which they received calls is irrelevant to their own claims and relate only to the interests of other, unidentified potential class members. However, as discussed at length in T-Netix's Motion for Protective Order, Complainants blatantly ignore two central facts: (1) the Court has never certified a class in this matter; and (2) the Court stayed all class-action issues when it referred the two specific and narrow questions that are currently before the Commission. Therefore, discovery related to putative class members, discovery in support of class certification or discovery about issues germane to recipients of inmate-initiated calls other than Complainants is not relevant to this primary jurisdiction proceeding before the Commission.

A. The Primacy Jurisdiction Referral Does Not Include Class Issues

7. In the very same orders referring questions to this Commission in November 2000, the trial court held that "CPA [Consumer Protection Act], class and damages issues are stayed pending WUTC action" on the referred questions. See King County Superior Court Orders (Learned, J), November 9, 2000, Exhs. 4 & 5 to T-Netix's Mot. for Protective Order. Moreover, not only has the Court never certified a class of plaintiffs in this action, Complainants never even moved for certification of a class and have never requested leave to conduct, or sought to promulgate, discovery in support of a class. Because the Court retained jurisdiction over class action issues without having certified a class, discovery about claims that putative

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class members – but **not** Complainants – might assert have no bearing on this primary jurisdiction matter.

8. If the Court had wanted the Commission to address class issues, it would have mentioned them in the referral orders to the Commission and would not have stayed such issues in the very same orders. Furthermore, because as this Commission has expressly recognized the Court's primary jurisdiction referral "does not invoke [the Commission]'s independent jurisdiction, but is derivative of [the Superior Court],"[1] the Commission has no basis upon which to permit discovery into matters over which the Court expressly retained jurisdiction.

9. Indeed, the Court has not even made the prerequisite determination that would allow class-wide discovery in the trial court proceeding. Trial courts do not grant class-wide discovery without making an initial determination that the matter meets the preliminary factual basis required to allow broad, expansive discovery. See Tracy v. Dean Witter Reynolds, Inc., 185 F.R..D. 303, 305 (D. Colo. 1998) (discussed, *infra*). The Court made no such determination in this case. Such a determination would not happen until after the Court lifts the stay. The scope of the referral, therefore, could not possibly include a grant of authority to the Commission to make a determination as to whether the matter is appropriate for class-wide discovery.

10. Thus, the referral is limited, in the first instance, to whether T-Netix or AT&T were OSPs with respect to calls accepted and paid for by only the Complainants and no other potential class plaintiffs. Accordingly, there is nothing in the Court's primary jurisdiction referral that gives the Commission jurisdiction to permit or supervise class-related discovery that is, concededly, not relevant at all to resolution of the claims alleged by Ms. Judd and Ms. Herivel.

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[1] See Order 09 at 7.

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B. Class-wide Discovery Is Not Warranted

11. Even if the Commission did have the authority to make a preliminary finding that leave for class-wide discovery prior to class certification should be granted (which it does not), Complainants have not submitted sufficient evidence to warrant such a finding. "Before classwide discovery is allowed, plaintiffs must demonstrate that 'there is some factual basis for plaintiffs' claims of classwide discrimination.'" See Tracy, 185 F.R.D. at 305 (quoting Severtson v. Philip Beverage Company, 137 F.R.D. 264, 267 (D. Minn. 1991)). In Tracy, the court denied the request for class-wide discovery because the named plaintiffs submitted only the testimony of a few individuals, mostly from one office, who claimed to be injured by the defendant's overtime policy. See id. at 313. The court found that this evidence from a few individuals did not reflect a national policy which violated the Fair Labor Standards Act and did not warrant the court's issuance of a mandate to plaintiffs to obtain class-wide discovery from all of the defendant's national offices. See id.

12. As the Tracy court held, before a court allows free rein to obtain class-wide discovery, the plaintiff "bears the burden of advancing a prima facie showing that the class action requirements of Fed. R. Civ. P. 23 are satisfied, or that discovery is likely to produce substantiation of the class allegations." Id. at 305; see Telco Group, Inc. v. Ameritrade, Inc., 2006 U.S. Dist. LEXIS 13264 at *22 (D. Neb. March 6, 2006) (in an action by putative class members who were customers of a brokerage firm, the court denied the request by plaintiffs to seek extended discovery on the accounts of all customers during a particular period, limiting the discovery to just the named plaintiffs' accounts and the three trades at issue in the case, because plaintiffs submitted no support that broader discovery would yield support for class allegations).

13. In sum, before allowing class-wide discovery against a party, a court must make a prior determination that the evidence submitted supports a *prima facie* claim that class-wide injury may exist. This requirement protects parties from having to submit to expansive and burdensome discovery where it is unlikely that the trial court would ever determine that the

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evidence would support class certification. Here, in sharp contrast, Complainants have submitted evidence with respect to only an exceedingly small number of calls (and only one interLATA call) that they allegedly received from four correctional institutions, all of which occurred prior to December 31, 2000. Yet they seek discovery from all Washington state correctional institutions from June 1996 to the present. Without more evidence of a class-wide injury, the Complainants have not met their burden of making a *prima facie* case for class certification. Accordingly, Complainants are not entitled to open up the floodgates and receive broad discovery on all correctional institutions over such an extended period of time, particularly when considering that discovery on class certification and related issues is not at issue in this primary jurisdiction proceeding.

C. Class-Wide Discovery Would be Unduly Burdensome

14. Complainants further argue in their Motion to Compel that T-Netix has not indicated how discovery on additional correctional institutions would be burdensome or why discovery should be limited to the institutions reflected in the telephone records provided by the two Complainants. See Compl. Mot. to Compel at ¶ 7. That is incorrect. T-Netix has discussed at length here and in its Motion for Protective Order how the discovery which Complainants seek is not only burdensome but wholly irrelevant to this proceeding.

15. In their responses to data requests, Complainants alleged that they received inmate-initiated calls without proper disclosures from only four institutions – McNeil Island Corrections Center, Washington State Reformatory (a.k.a. Monroe Correctional Complex), Clallam Bay, and Airway Heights. See Exh. 1 to T-Netix' Mot. for Protective Order at 6 and Exh. 2 to T-Netix' Mot. for Protective Order at 6. Further, they have alleged that they received those calls only "through some point in 2000." See Exh. 1 to T-Netix' Mot. for Protective Order at 2 and Exh. 2 to T-Netix' Mot. for Protective Order at 2. Yet Complainants nonetheless seek information relating to all Washington state correctional institutions at which T-Netix provided equipment or services and information relating to all intrastate, long-distance telephone calls

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initiated by Washington state inmates from June 20, 1996 to the present. Since neither Ms. Judd nor Ms. Herivel claims she received an inmate-initiated call from these other correctional institutions or after 2000, such information will not aid in answering the questions that the Court referred to the Commission, but instead is relevant only to issues of class certification and class-wide liability that have not been referred to this Commission.

16. In evaluating overbreadth, the relevance of the information sought and its probative value to the issues before the Commission must be weighed against the burden to the responding party. While information on potential class members and calls from other correctional facilities has absolutely no relevance, and thus no probative value or at best little probative value, searching for and assembling this information, if it even exists a after all these years, would be markedly intrusive and costly to T-Netix. Specifically, the discovery sought by Complainants on all correctional institutions up to the present extends the scope of discovery 8 years beyond the time period during which the Complainants received inmate-initiated calls and also to institutions from which they never received calls. In essence, Complainants seek to expand the 4.5 year period (*i.e.*, June 1996 – December 2000) applicable to the four institutions at issue in this proceeding into a 12.5 year period applicable to all Washington state correctional institutions. At the very least, given the non-existent or limited probative value of discovery as to other correctional institutions, other platforms, and other calls, Complainants should be required to demonstrate why the costs and burdens of this expansive class-wide discovery do not outweigh its utility, if any, in this proceeding.

II. Complainants Did Not Request Emails and Correspondence Regarding Rate Disclosures and In Any Event, Emails To and From Former T-Netix Employees From A Decade Or More Ago Were Not Archived

17. Complainants argue that T-Netix should have produced copies of its correspondence, emails, and internal memos regarding the disclosure of rates. See Compl. Mot. to Compel at ¶ 10. Revealingly, Complainants fail to identify in their motion a single data request seeking such documents. The fact is that Complainants did **not** request documents

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regarding disclosure of rates. Even if a data request could be liberally construed to somehow require the production of such documents, a wholesale search of responsive emails would be both unwarranted and unfruitful.

18. A general canvass of T-Netix emails, even if properly requested, is unduly burdensome and expensive in relation to the single intrastate interLATA telephone call alleged by the Complainants. This litigation began in the trial court on June 20, 2000 and relates back to alleged violations occurring as early as June 20, 1996. Since the filing of the complaint, this matter has gone up on appeal twice and has been referred and re-referred to this Commission. Now, over eight (8) years after the filing of the complaint – after hundreds of thousands of dollars in attorneys fees and costs, hundreds of man hours by T-Netix staff, and hundreds of hours spent by the courts and this Commission – Complainants have shown evidence of only **one** telephone call for which they argue they are entitled to damages. Having come up empty handed, Complainants are grasping at straws to salvage their baseless case. In addition to attempting to broaden the scope of discovery to all Washington State correctional facilities for the past twelve (12) years, Complainants now seek to require T-Netix to undergo a costly recovery, search, and review of virtually every email its company sent during a twelve (12) year period. Surely, this should not be permitted.

19. Complainants' present request is an afterthought. They did not request such documents and did not make any specific request for emails. Even if any request could be deemed to require the production of emails, none of the requests are sufficiently narrowly-tailored to conduct a meaningful search of emails. And, even if Complainants propounded requests that could reasonably be used to canvass email correspondence from servers, such a canvass would be unduly burdensome and expensive as explained above.

20. Prior to the date the parties exchanged discovery in response to the second round of discovery requests, no party had produced email correspondence. In their motion to compel,

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Complainants direct the Commission's attention to emails produced by AT&T that identify certain T-Netix employees who sent and/or received emails relating to rate quotes. For the sake of compromise, during the meet and confer with counsel for Complainants, counsel for T-Netix agreed to determine what, if any, emails might be maintained by T-Netix from or to those T-Netix employees and relating to the emails produced by AT&T. As a result of this investigation, T-Netix has determined that none of those individuals is employed by T-Netix. As explained in the Declaration of Arlin Goldberg, attached as Exhibit A, Securus Technologies, Inc. (T-Netix's parent) did not archive or retain email records for former employees during the period in question. A search of existing email archives at T-Netix revealed that the there are no electronic mailboxes of those former employees identified in the AT&T emails. Id. Therefore, a wholesale canvass of T-Netix emails is not reasonably calculated to lead to admissible evidence because the emails sent or received by the T-Netix employees involved at the time are no longer within the possession or control of T-Netix.

III. Specific Data Requests

Data Request Nos. 2 and 3

21. Complainants seek documents that describe or relate to platforms or other equipment or services that T-Netix provided at Washington state correctional institutions, "including without limitation system drawings, trunking diagrams, trunking lists, configuration diagrams, systems engineering documents, systems specification documents, white papers, performance specification documents, performance analysis documents, systems architecture documents, marketing documents." T-Netix objected to Data Request Nos. 2 and 3 because the trunking arrangements, architecture, performance specifications, and marketing of inmate calling platforms 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. Since the telecommunications technologies underlying any platform are completely irrelevant to the issue before the Commission in this primary jurisdiction proceeding, none of the documents

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described in this request is even remotely relevant. Nevertheless, T-Netix produced documents relating to the PIII platform that it provided at the four institutions relevant to this matter. Now, Complainants insist that documents relating to network configuration at each individual facility would somehow be necessary and relevant to this matter. This is incorrect.

22. As explained in the accompanying Declaration of Robert Rae, Executive Vice President-Operations of Securus, 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 Rae Decl. at ¶¶ 5-11, attached as Exhibit B. 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. See id. 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 Exh. B 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.

23. On the other hand, the Declaration of Kenneth Wilson offered by Complainants does nothing more than provide conclusory statements. For example, Mr. Wilson opines that the documents sought by Complainants "will allow us to see how T-NETIX equipment related, technically, to the Qwest and AT&T networks" and will provide "information that is highly relevant in determining who actually provided the operator services for an institution." Wilson Decl. at ¶ 8. He fails to explain how such information is actually relevant. Instead, he merely asserts that that "[h]aving the engineering diagrams and other documents for each institution will be helpful in determining who the Call Aggregator was and who the Operator Service Provider

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was for that institution." Wilson Decl. at ¶ 9. As fully explained in the declaration of Robert Rae, Mr. Wilson's conclusions are simply wrong. See Exh. B at ¶¶ 5-11.

Data Request No. 5

24. Data Request No. 5 is overly broad. With no exaggeration, this request seeks all documents created by T-Netix containing the terms "operator service," "operator services," "alternate operator services," or "automated operator" to describe any part of the services provided by T-Netix at any location and at any time. Such a request would require a substantive, page-by-page review of millions of pages of documents created over the past two decades in order to fish for documents that may or may not have anything to do with this litigation.

25. This is absurd. Such fishing for documents is never allowed by courts and should not be allowed by this Commission. If Complainants are looking for specific documents or even certain types of documents (*e.g.*, contracts) that they have a reason to believe actually exist, then they ought to have requested such documents by appropriately-tailored data requests. In fact, Complainants did propound certain more narrowly-tailored requests, such as requests for annual reports (Request No. 7), documents relating to waivers or regulatory requirements (Request No. 14), and contracts (Request No. 15). T-Netix's objection on the grounds that the request is overly broad and unduly burdensome and expensive is plainly valid, and Complainants raised no reason to justify the unreasonable breadth of its request.

26. Although counsel reached several agreements during their telephonic meet and confer conference, counsel for T-Netix respectfully disagrees with the recollection of counsel for Complainants regarding an agreement reached as to this data request. In response to the proposed limitation by counsel for Complainants, counsel for T-Netix recalls voicing a concern that any search for "substantive" records would likely be just as burdensome as the request as it is written because it would require the same substantive review of the same unlimited scope of documents. Counsel for T-Netix mentioned the possibility that responsive documents may turn

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up in its search for emails related to the emails produced by AT&T (attached as Exhibit C to the Declaration of C. Youtz). Counsel for T-Netix then tabled the discussion to revisit the issue after discussing issues as to other, more narrowly-tailored data requests. Counsel never revisited the discussion of Data Request No. 5. Nevertheless, in its Amended Responses to Complainants' Second Data Requests, T-Netix agreed to produce all responsive documents that it discovers in its search for documents responsive to other, more narrowly-tailored data requests.

Data Request No. 16

27. In addition to its general objections and its objections to the scope of the data requests (as discussed above), T-Netix objected to Data Request No. 16 on the ground that the terms "negotiation, interpretation, implementation, or performance" are overly broad and unduly burdensome. **Every** document already produced by T-Netix in this matter would arguably be responsive to this request, as phrased, because each document relates in some way to the performance or implementation of contracts with AT&T. Further, documents relating to the negotiation of contracts with AT&T are not relevant because the subjective understanding by T-Netix employees of the role of T-Netix has no bearing upon whether it was *actually* an OSP under WUTC regulations. Whether or not a party to a contract believes it should be interpreted in one way or another has no relevance to, in other words would not be a factor in determining whether it has complied with, its regulatory status and obligations. T-Netix has committed to producing non-objectionable, and non-privileged documents in response to more narrowly-tailored data requests, but none has been forthcoming from counsel for Complainants.

28. The Motion unfortunately does not address T-Netix's objections and instead focuses upon the different question of whether T-Netix's performance of its contract, which AT&T alleges requires T-Netix to serve as the OSP, is relevant to this litigation. T-Netix disagrees that *performance* of the contract – as opposed to the *terms* of the contract itself – is relevant to the litigation. Even if we assume there to be merit to Complainants' argument that some aspects of T-Netix's performance may be relevant, this request broadly refers to all aspects

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of the performance of a contract performed over the course of more than a decade. Complainants propounded more narrowly-tailored requests that adequately capture all documents relevant to this litigation WITHOUT imposing such an unnecessary burden upon T-Netix. Nevertheless, in its Amended Responses to Complainants' Second Data Requests, T-Netix agreed to produce all responsive documents that it discovers in its search for documents responsive to other, more narrowly-tailored data requests.

Data Request Nos. 21 and 22

29. Data Request Nos. 21 and 22 seek documents related to a project that T-Netix contracted with AT&T to perform to replace chips in order to comply with federal requirements for rate disclosures. Complainants argue that "[d]ocuments 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." Compl. Mot. to Compel at ¶ 18. Complainants fail to explain why there is any basis to believe that the change was intended or used to satisfy both state and federal requirements or how evidence that the project met both state and federal requirements would lead to a conclusion that state requirements were not previously satisfied. Nor do Complainants allege, here or in the trial court, that this or any other aspect of the AT&T services or T-Netix equipment that "could be used" to satisfy the Commission's rate quote requirement was not implemented.

30. More importantly, the existing evidence directly contradicts Complainants' argument. Documents produced by AT&T indicate that rate quotes were provided for intrastate calls since 1998 and that "changes" to these rate quotes were later needed to comply with federal requirements for "state to state" calls. See, e.g., Exhibit C to the Declaration of C. Youtz at A000193. The documents state that the chip change was needed to *change* the "vergiabe" for rate quotes, rather than *add* rate quotes. See id. There is no dispute that the chip change project was designed to comply with regulations for interstate calls, rather than intrastate calls. Given the scant probative value of any documents related to the chip replacement project, Complainants

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have put forth no valid basis for imposing upon T-Netix the burden of searching through records over eight (8) years old that have some relationship to this project.

Data Request No. 23

31. In response to Data Request No. 23, T-Netix offered the information in its possession that was responsive to Complainants' request. Nonetheless, Complainants now insist that T-Netix be compelled to identify the person with the "most knowledge relating to rate disclosure announcements made by T-NETIX for INMATE-INITIATED CALLS."

32. It is improper to require a party to do the impossible. In light of the passage of time and numerous corporate acquisitions and reorganizations in the intervening period, there is no one presently employed by T-Netix with any significant, first-hand knowledge of the facts or practices involved in Washington during the time period of relevance to this proceeding. Thus, as it answered, T-Netix knows that the people listed "may" have knowledge relating to rate disclosure announcements, but T-Netix cannot identify which, if any, of those individuals is "most" knowledgeable Providing a definitive response would be arbitrary. T-Netix supplemented its response to state that it does not have personal knowledge of which person has the most knowledge. Complainants' motion with respect to Data Request No. 23 is therefore moot.

CONCLUSION

33. For the reasons stated above, T-Netix respectfully requests that the Commission deny Complainants' motion to compel discovery.

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RESPECTFULLY SUBMITTED this 12th day of December, 2008.

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By: _____

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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
Washington Utilities and Transportation Commission
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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:

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[Service date: *December 12, 2008*]

BEFORE THE
WASHINGTON UTILITIES AND
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SANDY JUDD and TARA HERIVEL, Complainants, v. AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., and T-NETIX, INC., Respondents.	Docket No. UT-042022 **DECLARATION OF ARLIN GOLDBERG**

Arlin Goldberg, under penalty of perjury, states and declares as follows:

1. I am Chief Information Officer at Securus Technologies, Inc. ("Securus"), the parent company of Respondent T-Netix, Inc. ("T-Netix") in the above-captioned action. I make this declaration on the basis of my personal knowledge, information, and belief, and I am fully competent to testify to the matters stated herein.

2. As Chief Information Officer, I oversee the Information Technology Department that is responsible for the maintenance and storage of email communications for former T-Netix employees.

3. In or about September 2004, prior to my employment with Securus, T-Netix merged with Evercom Systems, Inc. under the parent company, Securus.

EXHIBIT
A

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4. At the time of the merger, all emails of then active T-Netix employees were transferred from their previous servers to online email servers (also known as an archived email store) maintained by Securus. Emails of inactive / former T-Netix employees were never transferred to the archived email store. In general, since the merger, our practice has been to maintain on the archived email store the emails of any employees who leave the company.

5. I do not know the whereabouts of the previous servers. I have inquired of my staff to determine whether any staff member has knowledge regarding the current location(s) of the previous servers, and I was unable to find any person with such knowledge.

6. I have asked my staff to search the archived email store for mailboxes of the following persons whose names I understand appeared on email communications produced by AT&T in this proceeding: Liz Lundeen, Kendall Euler, Ken Stibler, Kip Kovel, Willy Kitson, Laurie Fox, Layne Kopas, Al Schopp, Katja Christensen, and Tom Larkin. No such mailboxes were found in the archived email store. As a result of my investigation, it is my conclusion and belief that T-Netix no longer maintains and therefore cannot produce emails for these former T-Netix employees. In addition, the Securus Human Resources Department has verified that the former employees listed above were no longer employed by T-Netix / Securus at the time of the merger on or about September 2004.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

EXECUTED on this 11th day of December 2008, at Dallas, Texas.

Arlin Goldberg

Arlin Goldberg

ATER WYNNE LLP
Lawyers
601 Union Street, Suite 1501
Seattle, Washington 98101
(206) 623-4711

[Service date: *December 12, 2008*]

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 **DECLARATION OF ROBERT L. RAE**

Robert L. Rae hereby declares under penalty of perjury as follows:

1. I am personally familiar with the facts set forth in this declaration. If called to testify on any of these matters, I could and would testify to them competently.

2. I am Executive Vice President - Operations for Securus Technologies, Inc, parent company of T-Netix, Inc. My office address is 14651 Dallas Parkway, Dallas, Texas, 75254.

3. I received a Bachelor of Arts Degree in Economics, a Bachelor of Science degree in Psychology and a Masters of Business Administration Degree from the University of Pittsburgh.

4. I have worked in the telecommunications industry for over 18 years. Prior to joining Securus in 2002, I was employed by Bell Atlantic Corporation where I held various

management positions with responsibilities in the Network Operations Center (NOC), installation, maintenance, and outside construction areas. After leaving Bell Atlantic, I was employed by Fujitsu Communications, Inc where I directed the technical assistance center and the field installation and maintenance group. Additionally, I worked for EngineX Networks, Inc as the Vice President - Operations where my organization was responsible for engineering, design, implementation and maintenance of IP, optical and wireless telecommunications networks. Since joining Securus in 2002, I have had responsibility for the entire company Operations organization. This includes network management, installation, provisioning, technical software and telephony support, hardware manufacturing, field maintenance, engineering and network planning. I was the architect of several system upgrades to the company's inmate calling platforms. I currently have 19 technical Patents pending in my name.

5. Kenneth Wilson, an expert hired by Complainants, has stated that certain "system drawings, configuration diagrams, systems engineering documents, systems architecture documents and ... other engineering drawings or documents specific to each Washington institution" served by AT&T and/or T-Netix have not been produced and are needed to "evaluate who the OSP was and whether the equipment was providing automated rate quote information." Wilson Decl. ¶ 6. This is not correct. First, T-Netix has previously produced configuration diagrams for the inmate call processing system at issue in this proceeding, see TNXWA 01052 thru TNXWA 01239 and TNXWA 01528 thru TNXWA 01652, and a call flow chart prepared by expert witness Alan Schott on behalf of T-Netix is already part of the record. Supplemental Affidavit of Alan Schott in Support of T-Netix, Inc.'s Motion for Summary Determination, Fig. 1 (July 2005)

6. Second, what Mr. Wilson terms "the exact telecommunications configuration in use at each institution" has no bearing on the determination of which entity, under this Commission's regulations and definitions, provided a "connection" to local or interLATA services for inmate collect calls originating from these correctional facilities. That is because the number of trunks or lines and the type of inmate call processing platform deployed at an institution have no relevance to the functions performed by the various entities. No party claims in this proceeding, as I understand it, that rate quotes were technically infeasible for some or all of the equipment and systems deployed. Therefore, the capabilities and arrangements actually in place make no difference.

7. Third, Mr. Wilson is incorrect in asserting that it is "important from an engineering standpoint to see how that platform is connected into the Public Switched Telecommunications Network (PSTN)." None of the issues he identifies, "who the lines and/or trunks were purchased or leased from, how they were connected to the P-III Platform, [and] how many lines and/or trunks were in use," will offer any evidence as to which party provided the operator services at an institution. The call flow for intrastate interLATA inmate collect calls (the type of traffic at issue in this proceeding) from each institution was the same. Schott Supp. Aff., ¶¶ 15-21 & Fig. 1.

8. As corroborated by the Schott Supplemental Affidavit, a call was placed by an inmate, processed by the T-Netix platform (essentially holding the voice path while the call was verified and the called party queried for collect call acceptance), outpulsed to a LEC trunk and thereafter switched at the LEC central office to connect either to (a) a local or intraLATA called party, via the LEC's local or intrastate toll networks, respectively, or (b) LEC intrastate switched access services purchased by AT&T and thereafter to AT&T's point-of-presence (POP). *Id.*

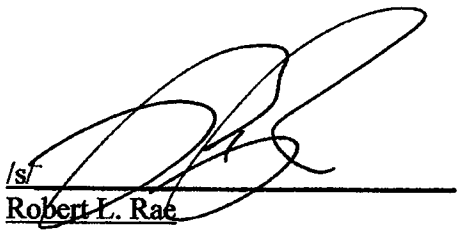
For interLATA calls, the call was then switched at the AT&T POP to connect to AT&T's long-distance network and then to a terminating LEC via the LEC's intrastate switched access service (typically at the tandem in the serving wire center) and finally switched by that terminating LEC to the called party's line. In this call flow, the entity that "connects" a collect call to local and long-distance services (WAC 99-02-020) is in every case the LEC or AT&T, so reviewing the engineering details underlying any of the T-Netix platforms, or their quantity and provider of trunks, facilitating this call flow will tell the Complainants and this Commission nothing of relevance.

9. In fact, telecommunications network configuration cannot be used to derive an answer to which party provided operator services under the Commission's regulations. That is because the word "connection" is not a term of art in the industry. A "connection" can never be be limited to a single carrier, especially in the context of inmate services, because all local loop, access line, LEC switching, long distance carrier trunks and terminating LEC access lines and loops must work in conjunction to "connect" or complete a call to the called party end user. Carriers (whether facility-based or resale) can provide access, switching and/or transport, with access broken down further into originating or terminating and switched or dedicated. Taking the inmate collect call flow described above, from a telecom engineering perspective the originating LEC, AT&T and the terminating LEC all provided a "connection" for the traffic. For interLATA traffic, the question for the Commission to resolve is whether the LEC (by "connecting" to AT&T's switched access services) or AT&T (by "connecting" to its long-distance network) connected such calls to "long-distance services." (T-Netix, in contrast, did not provide access, switching or transport for any interLATA calls, and therefore did not make a "connection" as I interpret that phrase.)

10. Indeed, literal application of the word "connection" to identify an OSP leads to absurd consequences. For instance, as noted carriers can be resellers, that is using the network(s) of a facilities-based wholesale carrier to provide service to their end users. Many if not most OSPs are resellers. If "connect" was directed, as Mr. Wilson seems to suggest, to the provider of physical connectivity for a call path, then the operator service provider under the Commission's regulations would be the wholesale carrier, not the actual service provider. That would make no sense from a regulatory perspective, in my view, because the point of telecom regulation is to ensure that the carrier serving the end user complies with pricing, disclosure, certification and related regulatory requirements. Literal application of a "connect" definition of OSP would therefore identify a party, in this example the wholesale network (switching and transport) provider, as responsible for regulatory compliance when the service, prices and customer(s) involved are actually those of its resale customer.

11. In sum, while Mr. Wilson is partially correct when he says "[a] P-III Platform for an institution would need to be connected to incoming and outgoing telephone lines or trunks," (the system does not require "incoming" access lines and will operate with only out-going access lines) the number, configuration and lessor of these lines, as well as the equipment deployed by the various carriers and providers serving any specific Washington State prison, has no significance to the matters at issue before this Commission. In fact, there is no relevance to any telecom configuration because the Commission's regulations use terms that, if applied literally, are at odds with accepted telecom parlance and lead to consequences that, in my view, are absurd and inconsistent with the purpose of telecommunications regulation.

Executed under penalty of perjury and in accordance with the laws of the State of Washington this 12th day of December 2008, at 9:38am.



/s/
Robert L. Rae