

# Exhibit 5

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2 COMMISSION

3 CASE NO. UT-042022  
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5 DEPOSITION OF KENNETH L. WILSON

6 August 7, 2009  
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8 SANDRA JUDD, et al.,

9 Complainants,

10 vs.

11 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.;

12 and T-NETIX, INC.,

13 Respondents.  
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15 APPEARANCES:

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23 Appearing on behalf of Respondent AT&T.  
24

25 Job No: 211473

1 those up then and then threw away the notes. That's  
2 why I don't have the notes, but I do have a set of  
3 opinions. Generally those would have been in an  
4 expert report, but since we didn't do expert  
5 reports, I just wrote up a set of opinions.

6 Q Good. This actually is helpful.

7 A Great.

8 MR. PETERS: Let's mark this as Exhibit  
9 77.

10 (Exhibit 77 was marked.)

11 Q (By Mr. Peters) Exhibit 77 is the -- is  
12 that a listing of your opinions?

13 A Yes, as I have them today.

14 Q Okay. And I'm going to go through each of  
15 these at least at some level, but am I correct in  
16 terms of Item No. 6 -- I'm sorry -- yeah, Item No. 6  
17 -- it's your view as you sit here right now that  
18 T-Netix was the operator service provider for all  
19 inmate calls from the designated institutions  
20 between 1996 and 2000?

21 A Yes, certainly during that period.

22 Q Do you have any opinion as to whether or  
23 not more than one entity could serve as the OSP or  
24 the operator service provider at the same time?

25 A Aside from a legal question as to contract

1 or subcontractor, the actual physical providing of  
2 the operator service's functions either by a live  
3 operator or by an automated operator -- a box that  
4 does the automated operator function, that that  
5 function would be provided by a single party.

6 Q Okay. And I understand that and  
7 appreciate that; but I want to know, though, whether  
8 in your view for purposes -- whether you're  
9 rendering an opinion as to whether or not for  
10 purposes of the Washington Utility and  
11 Transportation Commission rules, one entity would  
12 serve as the operator service provider or could  
13 multiple entities serve as the operator service  
14 provider?

15 A Technically the function is provided by a  
16 single provider.

17 Q And I take it your view as to who served  
18 as the OSP would be the same for both interLATA and  
19 intraLATA calls, correct?

20 A In this instance, that's correct.

21 Q What's the basis for that view?

22 A The configuration of equipment, where the  
23 functions were being provided, all the details of  
24 the -- the information that I have had available  
25 would point to a single provider.

1 information that's been available in the course of  
2 the case.

3 Q Item No. 6 is that T-Netix was the  
4 operator service provider for all inmate calls in  
5 the designated institutions. Did I read that  
6 correctly?

7 A Yes.

8 Q Could you explain to us the basis for that  
9 opinion?

10 A Well, it's really putting Opinion 4 and 5  
11 together in a logical way. Inasmuch as T-Netix was  
12 providing the P-III platform, they had the personnel  
13 supporting that platform. The P-III platform was  
14 providing the operator service -- the automated  
15 operator service function -- so with the --  
16 providing the platform with that function plus  
17 providing all of the servicing of that platform, I  
18 come to the conclusion that T-Netix was the operator  
19 service provider.

20 Q You said it was putting Opinions 4 and 5  
21 together. Is there any reason why your Opinions 1,  
22 2, and 3 don't relate to 6 as well?

23 A Actually, that's correct. It's really --  
24 6 is kind of a logical conclusion of 1, 2, 3, and 4,  
25 and 5.

1 2005 time frame.

2 Q (By Mr. Peters) Do you believe, as you  
3 sit here right now, that the WUTC would have  
4 expected a call to be branded to an entity that  
5 played no role in the transmission of the call?

6 A I honestly don't know how to answer that  
7 question.

8 Q Why is that?

9 A Can you ask it again?

10 Q Yeah, and I will even try to rephrase it a  
11 little bit.

12 Do you believe, as you sit here right now,  
13 that the WUTC would have expected a call to be  
14 branded to an entity that played absolutely no role  
15 in the transmission of that call?

16 A I would not be so bold as to speculate on  
17 what the WUTC wanted in that regard.

18 Q Would it be consistent with your  
19 understanding of the -- of an operator service  
20 provider to require a call to be branded to an  
21 entity that never played any role in the  
22 transmission of the call?

23 A Well, it was common practice in the time  
24 frame of this case for many telecommunications  
25 providers to hire outside operator services firms,

1 and they all wanted branding for their calls.

2           Beyond that, I'm not sure I can answer  
3 that.

4           Q     Right, but back in the situation that  
5 you're talking about, they would have been involved  
6 in transporting or billing the call, correct?

7           A     Which party?

8           Q     The party that you're saying -- the  
9 branded -- the party to which it's branding.

10          A     Yes.

11          Q     Okay. If the entity played no role in the  
12 call, meaning they didn't transport the call and  
13 they didn't physically provide any functionality as  
14 the operator service provider, can you think of any  
15 logical reason why a call should be branded to that  
16 entity?

17                 MR. MANISHIN: Objection to the extent  
18 that you appear to be asking him a hypothetical  
19 question, which is permissible, but I'm not sure  
20 you've identified it as -- the assumptions  
21 underlying the hypothetical.

22          Q     (By Mr. Peters) You can answer the  
23 question.

24          A     Well, I could imagine a case where a third  
25 party leased or contracted multiple providers to

1 provide a service that they had no part in any of it  
2 and that yet they wanted it branded with their  
3 brand. I mean, there's examples of that that we can  
4 probably figure out.

5 Q But if the scenario was that the -- the  
6 scenario wasn't that scenario, it's a scenario where  
7 the entity wasn't transporting the call, it was not  
8 leasing the lines that were transporting the call,  
9 and it was not providing any of the operator service  
10 functionality, can you think of any reason why that  
11 call should be branded to that entity?

12 MR. MANISHIN: Same objection. There's no  
13 facts in the records supporting that.

14 A In the -- hypothetically, I could imagine  
15 that that could be done; and similar to the  
16 circumstance of my hypothetical, that if a company  
17 was contracting others to provide all of the  
18 telecommunications and the operator function and yet  
19 they were the overall contractor, they could -- you  
20 know, Ken Wilson, Inc., could set up a phone service  
21 without having any of the facilities or the people  
22 and still brand it Ken Wilson Telephone.

23 Q (By Mr. Peters) Yeah, and you would  
24 expect that call to be billed as a Ken Wilson  
25 Telephone call, correct?



1 provide rate quotes, that you provide notice of that  
2 to us.

3 A Certainly.

4 Q Is that fair?

5 A I believe it is.

6 Q Okay. Thank you.

7 For the rate quotes that T-Netix failed to  
8 provide, looking at No. 9, using the term you used  
9 there, interstate -- interLATA intrastate calls,  
10 whose rates were to have been disclosed?

11 A That would be AT&T's rates.

12 Q And why should AT&T's rates have been  
13 disclosed?

14 A AT&T was the carrier for the calls.

15 Q What do you understand "carrier" to mean  
16 in the context of the telecommunications industry?  
17 I'm using "industry" there as differentiated from  
18 "regulation."

19 A AT&T was providing a critical part of the  
20 end-to-end connectivity for those calls and was the  
21 carrier that was selected by the institution in this  
22 case which was making the calls.

23 Q Now, you testified before in response to  
24 one of my questions that you were familiar with the  
25 concept of resale.

1 MR. SPOONEMORE: Well, I'm not sure that  
2 that summary is correct. You're certainly trying to  
3 ask for other information, but his answer stands,  
4 and I think it's pretty clear at this point.

5 Q (By Mr. Manishin) You described Exhibit  
6 77 as -- the record will reflect this -- quote, My  
7 opinion as to who was providing the operator  
8 services function.

9 A Sorry. Redirect me again.

10 Q I'm reading what I wrote down you  
11 testified word for word. My opinion as to who was  
12 providing the operator services function.

13 A Yes.

14 Q Okay. Is there a difference between  
15 operator service functions and operator services in  
16 your opinion, sir?

17 A In this context, no difference.

18 Q And what do you mean by "in this context"?

19 A Well, we have operator service functions,  
20 which I went over earlier today. Operator service  
21 provider, which is a Washington State definition,  
22 and I've said that it's consistent with the  
23 functions that the T-Netix P-III was providing, plus  
24 the personnel that supported it, and then operator  
25 services in general, which I think part of your

1 question got to.

2 Q Is "operator service provider" and  
3 "operator service functions" synonymous in your view  
4 in the context of this case?

5 MR. SPOONEMORE: Objection. Asked and  
6 answered. He gave a pretty clear answer on that  
7 one.

8 A Let me just maybe clarify it a little bit  
9 more. The combination of the functions that the  
10 P-III was providing plus the supporting personnel  
11 that were managing that platform would constitute  
12 the total operator services provider.

13 So if we wanted to really cut that in the  
14 way that I see it, the functions are the technical  
15 part; the services are the technical part plus the  
16 management by people of the technology.

17 Q (By Mr. Manishin) Are the services the  
18 technical functionality or a service offered to the  
19 end user under the Washington regulations?

20 A Well, when you add "under the Washington  
21 regulations," I want to look at -- I want to have  
22 that in front of me while I was answering it.

23 Q Why don't we look at that. We can look at  
24 any of your declarations. Why don't we take No. 79.  
25 I think that's your most recent one, your August

1 provide operator services with real people, who  
2 would be providing the operator services? It would  
3 be the company they were providing, and that -- that  
4 was providing the service, and that was common  
5 before these automated operator services devices.

6 Q (By Mr. Manishin) Under the Washington  
7 regulations, is it correct that the OSP is required  
8 to brand calls using its own trade name?

9 A I didn't look at the branding regulation.

10 Q That's common practice in the industry, is  
11 it not?

12 A It's --

13 MR. PETERS: Objection, form.

14 A It's common practice -- well, it's common  
15 practice for whoever is getting paid by whomever to  
16 brand whatever they want. There is no common  
17 practice there.

18 Q (By Mr. Manishin) How were these calls  
19 branded?

20 A Best of my knowledge, they were branded  
21 AT&T.

22 Q So is -- would it be also correct, then,  
23 in your opinion that if T-Netix was the OSP, that it  
24 violated the regulations by branding the calls in  
25 the name of AT&T?

1 or interstate long distance"?

2 MR. PETERS: Objection, asked and  
3 answered.

4 MR. SPOONEMORE: Same objection.

5 A Right. I did answer this earlier, but  
6 again, the T-Netix P-III platform, it makes the  
7 connection that completes the call between the  
8 inmate and the party they're calling.

9 Q (By Mr. Manishin) You also said in  
10 response to Mr. Peters that you have discussed this  
11 with your counsel what "connections" means in the  
12 course of this case, and that you concluded it was  
13 finally made when a call is completed from end to  
14 end.

15 Did I accurately summarize your prior  
16 statements?

17 A I think that's approximately what I said.

18 Q Did T-Netix complete the call from end to  
19 end?

20 A T-Netix provided the last part of the  
21 end-to-end connection. So in that sense, very  
22 definitely they are providing a connection, yes.

23 Q Wouldn't it be more fair to say that  
24 T-Netix provided the first part of the connection,  
25 not the last part?

1 Q We can rule out in this case direct  
2 trunking to an IXC switch for the reasons we  
3 previously discussed about a direct connection?

4 A Correct.

5 Q So we're dealing with a situation in which  
6 all the routing to the IXC was done through the LEC?

7 A Correct.

8 Q Was there any routing of calls performed  
9 by the P-III platform?

10 A Not in the sense that we're discussing  
11 here. The P-III was not selecting individual  
12 trunks. There was one -- one phone, one trunk.

13 Q And that trunk went from the P-III to the  
14 LEC?

15 A That's correct.

16 Q When the call -- a collect call placed  
17 from a P-III platform long distance, meaning  
18 eventually going to AT&T, reaches the LEC switch,  
19 has it been connected at that point to an intrastate  
20 long distance service?

21 A No, not completely.

22 Q When it is switched by the LEC to AT&T's  
23 access trunk and transported to AT&T's point of  
24 presence or POP, at that point, has the call been  
25 connected to a long distance intrastate service?

1       A     No.  It hasn't been -- completely been  
2 connected.

3       Q     How has it not been connected?

4       A     Well, a service is an end-to-end function  
5 -- feature.  Until you complete the call, it's not  
6 fully connected.

7       Q     Has it been -- at that point when it  
8 reaches AT&T's point of presence, has it been  
9 connected to a long distance service provider?

10      A     Well, we're starting to split hairs here,  
11 but I would -- I -- I -- all of my career I have  
12 dealt in end-to-end phone calls.  So I'm going to  
13 answer no.  No, it hasn't.  The service has to be  
14 completely connected before a connection is made.

15      Q     Okay.  And on an end-to-end basis, it  
16 would be fair to say that not only calls from these  
17 Washington DOC institutions but virtually every  
18 telephone call that traverses in part of a PSTN  
19 involves a number of carriers, frequently three or  
20 more:  an originating LEC, a long distance provider,  
21 and a terminating LEC.  Is that a fair  
22 generalization?

23      A     Well, I don't know about majority, but  
24 certainly many, many calls involve three or more  
25 carriers as part of the total end-to-end connection.

1 quote?

2 MR. PETERS: Objection, form and  
3 foundation. You're talking now outside any  
4 specified regulatory scheme and any specific time  
5 without a whole bunch of characterizations. You're  
6 really just arguing with him, Mr. Manishin.

7 MR. MANISHIN: Thank you.

8 MR. SPOONEMORE: I'll join.

9 A And there again, they could do -- they  
10 could quote AT&T's rates if they were using AT&T  
11 long distance. They could have their own rates  
12 filed. They could do a number of things; but, you  
13 know, that's -- that would depend on the State rules  
14 and a whole lot of other things that I haven't  
15 really investigated.

16 Q (By Mr. Manishin) Go on further down and  
17 I think Mr. Peters asked you about this, and there  
18 are two sentences. It says, When the called party  
19 answers the telephone, the platform plays a  
20 prerecorded message stating that they have a call  
21 from the inmate and by playing the inmate's  
22 recording, the platform then gives the person the  
23 option of accepting the call or rejecting the call  
24 by pressing a number on the keypad of their phone.

25 At the time that the message is given, the



1 option of acceptance, has the call been connected to  
2 a long distance provider or a long distance service  
3 as used in the WUTC definition of OSP?

4 A There's no end-to-end connection yet, a  
5 complete connection between the inmate and the  
6 person they were calling. So it doesn't meet my  
7 interpretation of the WUTC definition.

8 Q And you say next, "It is at this time that  
9 the platform should play a prerecorded rate  
10 announcement and give the called party an  
11 opportunity to hear a message regarding the rates  
12 associated with the call."

13 What do you mean by "it is at this time"?

14 A Actually, with what I know now, those two  
15 sentences are probably reversed. The platform  
16 should give a rate quote before giving the person  
17 the ability to complete the call. Otherwise, they  
18 may go ahead and complete the call before they had  
19 the opportunity to receive the rate quote, and that  
20 is that order of -- that sequence is spelled out in  
21 some of the WUTC rules.

22 Q Was it something that changed between the  
23 date when you filed this declaration, May of 2005  
24 and now?

25 A No.

1 connection. That's the key.

2 Q And so you interpret connect to long  
3 distance services, just to summarize, to mean in  
4 essence, connecting the call on an end-to-end basis  
5 to the called party, right?

6 A Correct. The final -- the final operation  
7 that completes the full end-to-end call.

8 Q Okay. Why don't you read Paragraph 10.  
9 And I'll preface this by saying in Paragraph 10,  
10 Mr. Rae states that your analysis leads to absurd  
11 consequences. I would like you to read that  
12 paragraph to yourself, if you would, and tell me  
13 how, if at all, you disagree with him.

14 A What's your question exactly?

15 Q He says your analysis leads to absurd  
16 consequences. How, if at all, do you disagree with  
17 him?

18 A Well, I disagree with the whole premise  
19 he's making here. The whole critical issue for the  
20 WUTC is who -- which party is providing the collect  
21 call interaction: the announcements, the billing,  
22 all of those other functions.

23 The term "connect" is a minor -- in my  
24 mind a minor part of the definition of operator  
25 service provider, and Mr. Rae is making a

1 presumption that I was basing my whole opinion on  
2 this term "connect." I'm not.

3           That's -- I'm trying to explain how I  
4 think that term fits in with the definition, but the  
5 main premise and if you look at my statements 1  
6 through 6, you can see that the main thrust of my  
7 opinions is on the more generally accepted operator  
8 services functions that the P-III was providing.

9           Q     I just want to make sure I understand you  
10 correctly. Did you just tell me that in your  
11 opinion the use of connect in the definition  
12 provided by the WUTC is a minor issue in deciding  
13 who is the OSP in this case?

14           MR. PETERS: Objection, form.

15           A     It is one element of it; but it's not, to  
16 me, the major element. The major elements are the  
17 providing of the interaction -- the collect call  
18 interaction that is going on as the call is set up.

19           Q     (By Mr. Manishin) And you draw that all  
20 from your experience or from something that we  
21 haven't read from the WUTC or what, sir?

22           A     It's in the WUTC definition, and it  
23 certainly is what I would be looking for in an  
24 operator services provider, would be the  
25 interactions with the customer on both ends and the