

**REDACTED HIGHLY CONFIDENTIAL AND CONFIDENTIAL PER
PROTECTIVE ORDER IN WUTC DOCKET NO. UT-042022**

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

**REDACTED FOR PUBLIC FILING
DECLARATION OF KENNETH L.
WILSON IN OPPOSITION TO
T-NETIX' MOTION FOR SUMMARY
DETERMINATION AND AT&T'S
MOTION FOR SUMMARY
DETERMINATION**

I, KENNETH L. WILSON, hereby declare that:

1. I have been retained as an expert by complainants Sandy Judd and Tara Herivel in the above-captioned matter. I am personally familiar with the facts set forth in this declaration. If called to testify about any of these matters, I could and would competently testify thereto.
2. I am a senior consultant and Member of Boulder Telecommunications Consultants, LLC in Boulder, Colorado. My office address is 970 11th Street, Boulder, Colorado 80302.
3. I received a BS in Electrical Engineering from Oklahoma State University in 1972, a MS in Electrical Engineering from the University of Illinois in 1974, and I completed all of the coursework for a Ph.D. in Electrical Engineering at the University of Illinois in 1976.

4. I have worked in the telecommunications industry for 30 years. For fifteen of those years I worked as a Member of the Technical Staff at Bell Labs in New Jersey. My work at Bell Labs included responsibilities for network design and performance evaluation, asset utilization planning, and business case analysis. In 1995 I moved to Denver to work in the AT&T Local Services Division, helping AT&T to enter the local telephony market in the U S WEST (now Qwest) region.

5. Since the spring of 1998, I have worked as a telecommunications consultant and expert. As a consultant and expert I have evaluated disputes between various telecommunications companies. The technical and business issues that I addressed in those cases are similar in nature to those I reviewed in this case.

6. I have spent approximately 100 hours reviewing materials in this case, analyzing information, and studying the facts surrounding the issues in question. I have reviewed all of the documents produced by T-Netix and AT&T in this matter consisting of several thousand pages of technical documents and manuals, schematic diagrams, emails, and numerous other materials, the declarations of the witnesses submitted in the proceedings to date, and the depositions of T-Netix employees Scott Passe, Alice Clements, Gary Skinner, and Dan Gross. I have also reviewed the WUTC regulations.

7. In this declaration I address one of the questions referred to the WUTC by King County Superior Court: whether T-Netix and/or AT&T were Operator Service Providers for collect inmate calls from Department of Correction (DOC) locations in the State of Washington. My opinions were provided in written form to

counsel for my deposition so that they could question me on them. Those opinions are summarized at the end of this declaration. This declaration expands on those opinions and the information I gathered.

8. Historically, operator services have provided callers with the ability to access special billing and call handling features that are not available with a regular 1+ dialed call. Newton's Telecom Dictionary defines Operator Services as:

Any of a variety of telephone services which need the assistance of an operator or an automated "operator" (i.e. using interactive voice response technology and speech recognition). Such services include collect calls, third party billed calls and person-to-person calls.¹

This definition is consistent with the definition provided by the WUTC:

Operator Service Provider (OSP) – any corporation, company partnership, or person providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators. The term "operator services" in this rule means any intrastate telecommunications service provided to a call aggregator location that includes as a component any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telephone call through a method other than (1) automatic completion with billing to the telephone from which the call originated, or (2) completion through an access code used by the consumer with billing to an account previously established by the consumer with the carrier.²

9. Live, human operators were once used to provide operator services for collect calls, including calls from inmates. An operator receiving a request to complete a collect phone call would use another line to contact the recipient of the call to ask if

¹ Newton's Telecom Dictionary, 18th Edition, Harry Newton, CMP Books, 2002.

² WAC 480-120-021 (1999).

the called party would pay for the call. After it was established that the call would be paid for, the operator connected the two parties by plugging them together, completing the call. This constituted the "connection" referenced by the statute and the regulation. Automated operator services platforms are now used to provide all of the functionality that human operators provided in the past.

10. The T-Netix platform provided automated operator services functions that satisfy the definitions of operator services described in paragraph 8 above. The T-Netix platform performs operator services functions on each call dialed by an inmate, whether the call is local, intraLATA or interLATA. Specifically, the platform provides automatic assistance to a consumer to arrange for billing and completion of an intrastate telephone call, as specified in the WUTC definition of operator services.

11. Since all calls from inmates at the DOC locations were collect calls, and collect calls require operator services for completion, operator services were provided on every call that inmates made.

12. The plaintiffs in this case received collect calls from the facilities involved in this case, which included local, intraLATA, and interLATA intrastate calls.

13. Based on the discovery, affidavits, and documents produced in this case, my analysis reveals the following call flow from a prison inmate to the party they are calling, The inmate picks up a designated inmate
phone, from which only collect calls can be made.

the platform and dials a 0+ telephone number and a unique inmate identifier and passcode.

The inmate operator services platform has software and hardware that control the call and provide services to the inmate and the person the inmate is calling. After the dialed digits have been completed, the platform screens the dialed number against a list of prohibited numbers

If the number dialed is not prohibited, the platform prompts the inmate to record his/her name. For a valid call, the platform will output the destination number as a 1+ call. The LEC end office switch will then route the call to either an IXC switch or to a LEC switch, depending on the jurisdictional nature of the call and which carrier is the designated telecommunications provider for the type of call being made. When the telephone is answered, the platform will play a prerecorded message stating that the person answering has a call from an inmate and by playing the inmate's recording. It is at this time that the platform should have first allowed the called party to hear the rates for the call by pressing no more than two keystrokes. The platform then should give the person an option of accepting the call or rejecting the call

Before rates were correctly provided by the T-Netix platform in this fashion, the platform sometimes simply gave the called party the option to accept the call

While this interaction is proceeding, the platform does not make a connection for the complete audio talk path between the inmate and the called party. If the person accepts the call, the platform will complete the audio path and the call proceeds, as would a normal call. If the called party rejects

the call, the platform disconnects the call. The platform keeps a record of the call, including the date, time, originating phone number, terminating phone number, duration of call and the jurisdiction of the call (local, intraLATA or interLATA). Call detail records for each call are periodically downloaded from the platform to a centralized T-Netix data center where it is formatted and sent to the LEC or IXC that owns the traffic.

14. The T-Netix platform provides part of the transmission path for every telephone call made by an inmate. The T-Netix platform provides a connection to intrastate and interstate long-distance providers and to local service providers from all correctional facilities where the T-Netix platforms are located. Calls from inmates in correctional institutions cannot be made without going through the T-Netix platform. Calls are not connected, except by, and through the platform.

15. The T-Netix platform regularly makes inquiries of _____ is a database that includes information on all phone lines for every phone in the region. Historically, operator services personnel used _____ to look up phone numbers to see if the number being called was a number that was approved to receive collect calls. This step is used to make sure the number being called is not a pay phone or other phone type that should not receive collect calls. The T-Netix Manual produced in discovery states:

is definitely an operator services function. The T-Netix platform makes as a normal course of its operation.

16. The T-Netix platform, as part of its operator services function, makes voice prompts and announcements during call progress. The platform is the place where rate disclosure should have been made and is in fact the only place such disclosures could have been made.

17. The T-Netix platform is an integral part of the billing for inmate, collect calling:

18. For DOC locations where a T-Netix platform is located, a LEC may “carry” the call—it can provide transport and switching of the calls that are sent to it from the T-Netix platform. The LEC does not provide operator services functionality in locations served by T-Netix platforms. Critically, transport of a call is not associated with operator services functions.

19. T-Netix should have upgraded its platforms to provide rate notification when the regulations required disclosure. In 1999, T-Netix began upgrading its inmate operator services platforms in more than 1400 locations at correctional facilities across the country to accept remote programming and to provide precise rate quotes. In February 2002, T-Netix asked the FCC for additional time to complete upgrades that would allow its platforms to give precise rate quotations when connecting calls from inmates.⁴

20. I understand that T-Netix contends that it was merely an equipment provider for operator services. However, T-Netix is much more than a mere equipment provider. Based on Mr. Schott's affidavit and other documents provided by T-Netix, T-Netix was responsible, at a minimum, for the following functions:

It is

clear to me that T-Netix was providing a service, not merely equipment. Part of the service they were providing was operator service.

⁴ T-Netix, Inc. Petition for Clarification and Waiver, FCC Docket No. 92-77 with attached Affidavit of Richard E. Cree in Support Of T-Netix Petition for Clarification and Waiver.

21. Based on my review of documents, declarations, responses to data requests, WUTC regulations, and depositions and the analysis above, I have reached the following conclusions:

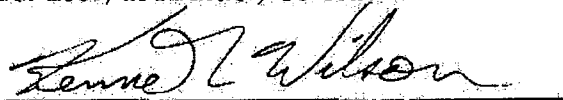
- a. The T-Netix P-III platform was used at McNeil Island, Clallam Bay, Monroe Reformatory, and Airway Heights, as well as other correctional institutions operated by the Washington Department of Corrections.
- b. The P-III platform provided the automated operator services functions to inmate phones in the form of call screening, collect call setup and associated called party interactions, and billing functionality for all inmate calls at the designated institutions.
- c. The P-III platform made the connection to the network for each call from an inmate. As described above, the salient point is that the P-III device made the final connection for the call. Thus prisoners could not talk to the parties they were calling until the P-III device made those final connections.
- d. The P-III platform was accumulating billing information on each call placed by an inmate and periodically downloading that information to T-Netix's billing processing center. This is significant because collecting billing information is an important part of operator services.

- e. T-Netix was providing a service to AT&T, not just leasing equipment. These services included programming the platforms, maintaining the equipment, and providing personnel to support the platforms.
- f. T-Netix was an operator service provider for all inmate calls in the designated institutions. This conclusion flows from the opinions above and the substantial amount of documents and testimony I reviewed to arrive at those conclusions.
- g. The local exchange companies (LECs) did not provide operator services for inmate calls from the designated institutions. Based on my detailed understanding of the call flow for calls made by inmates at these facilities, the local exchange companies did not have a role in providing operator services functions for these calls; the LECs simply provided a standard and routine switching function.
- h. T-Netix should have upgraded its P-III platform to meet the rate quote requirements set by the WUTC in 1991.
- i. I've seen no evidence that T-Netix upgraded their platforms at these institutions to give correct rate quotes for interLATA intrastate calls until early in 2001.
- j. AT&T had technical oversight responsibility for the services being provided. T-Netix was a subcontractor who provided services for AT&T. From my employment with AT&T and from my experience in this industry, AT&T had oversight responsibility for the subcontractors

it retained to support the contract it had with the DOC. Although the actual operator services may have been performed by the T-Netix platform, thus making T-Netix an OSP, AT&T still carried responsibility for assuring that those services were provided in accordance with the WUTC regulations.

I declare under penalty of perjury and in accordance with the laws of the State of Washington that the foregoing is true and correct. .

Signed this 10th day of September 2009, at Boulder, Colorado.



Kenneth L. Wilson