

1. <u>REPORT DATE:</u> December 13, 2006	2. <u>BUREAU AGENDA NO.:</u> DEC-2006-OSA- 0374*
3. <u>BUREAU:</u> Office of Special Assistants	
4. <u>SECTION(S):</u>	5. <u>PUBLIC MEETING DATE:</u> December 21, 2006
6. <u>APPROVED BY:</u> Director: C.W. Davis 7-1827 Mgr/Spvr: K. Sophy 7-8108 Legal Review:	
7. <u>PERSONS IN CHARGE:</u> A. Arnold 7-8032	9. <u>EFFECTIVE DATE OF FILING:</u> N/A
8. <u>DOCKET NO.:</u> C-20042802; C-20042852; C-20042878; C-20042879	

**DOCUMENT
FOLDER**

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JAN 10 2007

9. (a) CAPTION (abbreviate if more than 4 lines)
 (b) Short summary of history & facts, documents & briefs
 (c) Recommendation

(a) Preston B. Pfeifly (Complainant), *et al.* v. T-Netix and T-Netix Telecommunications, Inc. (T-NETIX) and Verizon Select Services, Inc. (VSSI); Flood v. T-NETIX and VSSI; Taylor v. T-NETIX and VSSI; and Trevino v. T-NETIX and VSSI.

(b) Complainant, on behalf of himself and ten other persons incarcerated in Pennsylvania State Correctional Institutions (SCIs), filed a formal complaint against T-NETIX and VSSI alleging, *inter alia*, improper disconnection and overcharges for prison inmate telephone service. The "Pfeifly" docket was consolidated with three other formal complaints of inmates raising substantially similar allegations. Service of the complaints was made and the matter was assigned to the Office of Administrative Law Judge, per Administrative Law Judge (ALJ) Louis G. Cocheres, for such hearings as were necessary and the issuance of an Initial Decision (I.D.). On April 6, 2006, the I.D. of ALJ Cocheres was issued. ALJ Cocheres concluded that none of the inmate-Complainants met their burden of proof regarding inadequate service. On May 3, 2006, T-NETIX filed Exceptions relative to its jurisdictional status.

(c) The Office of Special Assistants recommends that the Commission adopt a proposed Opinion and Order which denies the Exceptions and adopts the Initial Decision consistent with the draft Opinion and Order.

Order Doc No. 645367

Calendar Doc No. 644704

11. MOTION BY: Commissioner Chm. Holland

Commissioner Pizzingrilli - Yes
Commissioner Fitzpatrick - Yes
Commissioner

SECONDED: Commissioner Cawley

CONTENT OF MOTION: Staff recommendation adopted.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

December 27, 2006

C-20042802
C-20042852
C-20042878
C-20042879

DOCUME
FOLDER

PRESTON B PFEIFLY ET AL
AK-7971
SCI ROCKVIEW
BOX A
BELLEFONTE PA 16823-0820

Preston B. Pfeifly, et al v. T-Netix, Inc., T-Netix Telecommunications Services, Inc.
and Verizon Select Services, Inc.

Shayne Flood, AK-7976 v. Verizon Select Services, Inc.

Kevin L. Taylor, DQ-2227 v. T-Netix, Inc., T-Netix Telecommunications Services, Inc.
and Verizon Select Services, Inc.

Felix L. Trevino, EL-6256 v. T-Netix, Inc., T-Netix Telecommunications Services, Inc.
and Verizon Select Services, Inc.

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on **December 21, 2006** adopted
an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records

Very truly yours,

James J. McNulty
Secretary

Rpb
Encls
Cert. Mail

See Attached List for Additional Parties of Record

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

Public Meeting held December 21, 2006

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Kim Pizzingrilli
Terrance J. Fitzpatrick

Preston B. Pfeifly, et al.

C-20042802

v.

T-Netix, Inc.
T-Netix Telecommunications Services, Inc.
and Verizon Select Services, Inc.

Shayne Flood, AK-7976

C-20042852

v.

Verizon Select Services, Inc.

Kevin L. Taylor, DQ-2227

C-20042878

v.

T-Netix, Inc.
T-Netix Telecommunications Services, Inc.
and Verizon Select Services, Inc.

Felix L. Trevino, EL-6256

C-20042879

v.

T-Netix, Inc.
T-Netix Telecommunications Services, Inc.
And Verizon Select Services, Inc.

OPINION AND ORDER

Before the Commission for disposition are the Exceptions filed by T-Netix, Inc. and T-Netix Telecommunications Services, Inc. (collectively T-NETIX), on May 3, 2006, to the April 6, 2006 Initial Decision (I.D.) of Administrative Law Judge (ALJ) Louis G. Cocheres.¹

These proceedings are consolidated Formal Complaints wherein the Complainants are persons incarcerated in Pennsylvania state correctional institutions (SCIs). The Respondents are providers of various components of prison inmate telephone services. In its Exceptions, T-NETIX raises the sole issue of whether it continues to render public utility service at a SCI after August 2003, because it owns equipment and renders administrative and technical support services as a subcontractor to Verizon Pennsylvania, Inc. (Verizon) for the provision of inmate telephone service. We shall deny the Exception of T-NETIX, consistent with our discussion in this Opinion and Order.

Background

As noted, these proceedings are consolidated Formal Complaints. Each of the Complainants was, at the time of the Complaints, incarcerated in a Pennsylvania SCI. The Respondents are providers of various components of prison inmate telephone services.

¹ The record also reflects that two or more Commissioners requested review of the Initial Decision according to the procedures of 66 Pa. C.S. § 332. Also, T-NETIX was granted an extension of time in which to file its Exceptions.

Mr. Pfeifly, AK-7971, is the lead Complainant at Docket No. C-20042802. The Complaints of Mr. Pfeifly and ten other inmates are considered at the "Pfeifly" lead docket, No. C-20042802, and were filed against T-NETIX and Verizon Select Services, Inc. (VSSI). *See* I.D. at 1. The other Complainants included at the Pfeifly docket are: Anthony Brown, AY-7727, Jim Cunningham, AP-7627, James Smeal AP-8040, Bruce McCaslin, AP-8941, John Ort, AK-9479, Richard Gordon, AK-4680, Stuart Simon, BP-8976, Robert Carl, AK-5493, James C. Rudolph, AK-9921 and James Kautz, AH-4561. *See* I.D. at 1, n. 1.

In his complaint, Mr. Pfeifly alleged the following: (1) that the calls disconnected; (2) that they [complaining inmates] were overcharged for service; (3) that service to certain numbers was blocked; (4) that the calls were repeatedly interrupted by taped messages; (5) that there were other noises on the system; and (6) there was a lack of service and accountability to the customers. (I.D. at 1).

On April 16, 2004, Shayne Flood, AK-7986, filed a Formal Complaint against VSSI, docketed at No. C-20042852.

On April 15, 2004, Kevin L. Taylor, DQ-2227, filed a Formal Complaint against T-NETIX and VSSI at Docket No. C-20042878.

On April 20, 2004, Felix L. Trevino, EL-6256, filed a Formal Complaint against T-NETIX and VSSI at Docket No. C-20042879.

The Flood, Taylor, and Trevino Complaints raised allegations substantially similar to those raised by Mr. Pfeifly. (I.D. at 1).

Service of the Complaints was effectuated on the Respondents in accordance with Commission procedures. On June 7, 2004, VSSI filed a Motion

to Consolidate the Pfeifly Complaint with the other three cases. VSSI filed its Answer to all the Complaints on a consolidated basis. On October 8, 2005, T-NETIX filed its Answer at the Pfeifly docket number only. VSSI's Answer denied the material allegations in the all of the Complaints. The T-NETIX Answer denied the material allegations in the Pfeifly Complaint. (I.D. at 1). By Prehearing Order dated September 24, 2004, the cases were consolidated. (I.D. at 2).

Initial hearings were scheduled as a series of video conferences on October 22, 2004. The initial hearings were held by video conferences on July 29, 2005. Further hearings were held, telephonically, on October 26, 2005.

Due to the size of the video conference facilities at the SCIs and due to the transfer of some of the inmates to other facilities during the pendency of the proceedings, the Complainants were divided into groups for hearings at different times of the day. At each hearing, the Complainants were given the opportunity to present their evidence and were cross-examined. (I.D. at 2). The Respondents presented their witnesses and exhibits at each of the hearings for each group of inmates. The inmates all had the opportunity to cross-examine each of the Respondents' witnesses. *Id.*

The record was closed on November 29, 2005. The record consists of 350 pages of transcribed testimony, three exhibits from Complainant Flood and one exhibit from VSSI. No briefs were filed. (I.D. at 2).

Exceptions were filed by T-NETIX as noted.

Discussion

A. Introduction

This Commission has had occasion to address several complaints involving the rates, terms, conditions, and quality of telephone service provided to prison inmates. Because of incarceration, inmates are subject to Pennsylvania Department of Corrections (DOC) regulations and internal prison operations policies relative to access to telephone utility services. *Sandra L. Feigley v. AT&T Communications of Pa., Inc.*, Docket No. C-00981434 (Order entered April 30, 2001) (*Feigley I*), *affirmed*, *Sandra L. Feigley, et al. v. Pa. PUC*, 794 A.2d 428 (Pa. Cmwlth. 2002), *appeal denied sub nom, C.U.R.E. of Pa. v. Pa. PUC*, 569 Pa. 723, 806 A.2d 863 (2002).

In a subsequent proceeding involving Sandra and George Feigley as complainants, we observed the following with regard to the exclusive contractual arrangement whereby inmate telephone service is provided at Pennsylvania SCIs:

The Pennsylvania Department of Corrections (DOC) is an administrative agency within the executive branch of the Commonwealth and has authority to operate Pennsylvania correctional institutions throughout the state

* * *

In *Feigley I*, we also considered whether the DOC exclusive contract for inmate-only telephone service conflicted with the statutory scheme of regulation of Chapter 30 of the Public Utility Code, 66 Pa. C.S. §§ 3001-3009, *repealed*, Act No. 183, 2004, or of the federal Telecommunications Act of 1996, 47 U.S.C. §§ 151, *et seq.* We concluded that we lacked jurisdiction to adjudicate this claim and expressed

adverse comments concerning the merits of the Feigley's claim. We noted that, "[r]easonable access to the telephone system by inmates is a matter within the discretion of prison administrators, and the DOC, subject to court review. (37 Pa. Code § 93.7). The fact that Chapter 30 and the Telecommunications Act of 1996 (TA-96) implement a new regulatory regime of competition and competitive choice among services and service providers, but that the Commonwealth contract appears to foreclose such choices, does not, in our view, present a question within the area of competence of this Commission." (Slip op. at 24).

* * *

In the present case, the inmate prison telephone system was operated by VSSI pursuant to an exclusive contract with the DOC. VSSI provides telephone service as a subcontractor under a contract between Verizon Pennsylvania Inc. (Verizon PA) and the DOC. (Fact No. 76). VSSI began to serve the Pennsylvania prison population in August 2003. (Fact No. 93).

T-NETIX (now known as SecurUS) is also a subcontractor to Verizon PA. T-NETIX provided the actual telephone system and software which monitored and recorded inmate calls. (Fact No. 77). The T-NETIX computerized telephone equipment used by the inmates is designed to: (1) allow the prison guards to monitor inmate conversations; (2) record the calls; (3) record the time and date of the calls; (4) limit the calls to a pre-approved list of call recipients; (5) limit the frequency of the inmates' calls; (6) limit the length of the calls; (7) periodically interrupt the calls with announcements which pre-empted the conversations; (8) archive the recordings of the conversations; and (9) record the reasons why conversations were disconnected. (Fact No. 60).

Sandra and George Feigley v. Verizon Select Services, Inc. and Pa. DOC, Docket No. C-20043621, (Order entered April 24, 2006) Slip op. at 3-6, notes omitted (*Feigley II*).

In *Strandberg v. T-NETIX*, Docket No. C-20039780 (Order entered February 16, 2006), we considered the Formal Complaint of Ms. Susan Strandberg. Ms. Strandberg initiated a Formal Complaint against T-NETIX based on her involvement with the utility as a result of her son's incarceration. In *Strandberg*, this Commission extensively addressed T-NETIX's status as an interexchange (IXC) reseller providing services to SCIs. In *Strandberg*, T-NETIX argued, *inter alia*, that the presiding ALJ committed error when he applied the substantive portions of our regulations found at Chapter 64, 52 Pa. Code §§ 64.1, *et seq.*, to its operations. T-NETIX asserted that it provided services as a non-dominant IXC solely for collect calls placed by incarcerated persons from prison payphones. (Slip op. at 9, citing T-NETIX Exceptions at 1-2).

In *Strandberg*, we granted the Exceptions of T-NETIX on the question of the applicability of Commission IXC regulations to its operations and its status as an IXC. This Commission concluded that the substantive portions of our regulations at Chapter 64 did not apply to T-NETIX's operations. We stated:

Since IXC resellers are subject to minimal regulations as public utilities and interexchange services have been declared competitive by Chapter 30, we conclude that the billing operations provisions of Chapter 64 are inapplicable to the operations of an IXC.

Strandberg, slip op. at 11.

We also addressed in *Strandberg* certain related arguments of T-NETIX. We considered T-NETIX's status as a sub-contractor to Verizon for the provision of inmate telephone service on an exclusive contractual basis and the T-NETIX objection that it was subjected to a standard which is now no longer warranted in light of the competitive environment of IXC regulation. *See* slip op.

at 22-23, discussing *Proposed Rulemaking for Revision of Chapter 63 of Title 52 of the Pennsylvania Code Pertaining to Regulation of Interexchange Telecommunications Carriers And Service*, Docket No. L-00050170 (Order entered March 29, 2005) (*IXC Rulemaking Order*). Those arguments were not persuasive.

In *Daniel Franks v. T-NETIX*, Docket No. C-20030123 (Order entered April 25, 2006), we addressed, for the first time from the perspective of the incarcerated-complainant, service quality issues in a Formal Complaint against T-NETIX. These service quality issues included allegations of premature disconnections of the telephone calls due to, alleged, faulty operation of the telephone equipment. (*Franks*, slip op. at 6). In *Franks*, T-NETIX additionally raised in Exceptions a consideration which is the primary focus of its Exceptions in the instant “Pfeifly” complaint cases. That is, T-NETIX argued in *Franks*, the position that it repeats in this case, that the facilities used to provide inmate telephone service are “customer premises equipment,” (CPE), the regulation of which has been preempted by the Federal Communications Commission (FCC) and outside of the Commission’s jurisdiction. *Franks*, slip op. at 9-10, citing *Computer & Comm’n Indus. Ass’n. v. FCC*, 693 F.2d 198 (D.C. Cir. 1982).

Implicit in this Commission’s disposition of *Franks* was our treatment of T-NETIX as a “public utility” subject to the provisions of the Public Utility Code, 66 Pa. C.S. §§ 101 – 3316 (Code), and, in particular, the provision of the Code mandating adequate service. 66 Pa. C.S. § 1501. In *Franks*, we concluded:

In *Strandberg*, we concluded that the provisions of Chapter 64 are not expressly applicable to the T-NETIX operations. See *Strandberg*, slip op. at 15. However, because T-NETIX is subject to regulation as

a public utility, we also concluded that it is subject to the general requirements of the Public Utility Code, Chapter 15, 66 Pa. C.S. §§ 1501, *et seq.*, pertaining adequacy of service and discontinuance of service. 66 Pa. C.S. § 1503. Under these general statutory requirements, a utility is obligated to provide "adequate" service.

Contrary to the position of T-NETIX, that there are no standards for adequacy of service promulgated for IXC's, the Public Utility Code contains sufficient standards of general applicability to utilities. We find that the three instances of dropped calls are sufficient to conclude that T-NETIX rendered inadequate service in this regard. We, therefore, conclude, similar to our findings in *Strandberg*, that the presiding ALJ had a basis on which to find T-NETIX in violation of Chapter 15 provisions for inadequate service, notwithstanding the ALJ's discussion of, and reliance on Chapter 64 of the Commission's Regulations.

Franks, slip op. at 10-11.

B. ALJ Recommendation

Presiding ALJ Cocheres reached twenty (20) Findings of Fact. These findings include several detailed sub-sections which are taken from the summaries of the evidentiary presentations of the Parties. The evidentiary proceedings spanned two hearings, which were conducted by video conference, July 29, 2005, and telephonic conference, October 25, 2006. ALJ Cocheres drew thirty-six (36) Conclusions of Law. On consideration and review of the allegations of the complaining inmates in extensive detail, ALJ Cocheres concluded that none of the Complainants met their burden of proof to establish a case for inadequate service within the strictures of the Code. We find no Exceptions addressed to this aspect of the ALJ recommendation.

Based on the foregoing, we shall adopt the ALJ recommendation with regard to the adequacy of service provided to the Complainants in these proceedings. The Formal Complaints are, therefore, dismissed consistent with our adoption of the Initial Decision.²

In Conclusion of Law No. 15, ALJ Cocheres also found as follows:

15. Given the facts that T-Netix continues to retain its Certificate of Public Convenience and continues to own the equipment and facilities used to render telephone service to the inmates and the public at the prisons across the Commonwealth, the fact that it may not have been carrying the messages is irrelevant to the continuation of Commission jurisdiction over its regulated activities.

(I.D. at 71).

It is the above-cited Conclusion of Law to which T-NETIX has excepted.

C. T-NETIX Exception

T-NETIX objects to the conclusion of presiding ALJ Cocheres that it is a regulated entity rendering jurisdictional public utility service. T-NETIX argues that it is no longer a jurisdictional entity based on its revised contractual relationship with Verizon in the provision of inmate telephone service. We take official notice that this revised contractual relationship has been found to have occurred in August 2003. *See Feigley II*; 66 Pa. C.S. § 331(g). However, as noted by ALJ Cocheres in Conclusion of Law No. 15, this Commission has no indication

² We also adopt the ALJ recommendation concerning the VSSI Motion to Strike post-record information.

that T-NETIX has filed, pursuant to Chapter 11 of the Code, 66 Pa. C.S. §§ 1100, *et seq.*, to amend its certificate to reflect its revised operations as a subcontractor with Verizon as they would affect its regulatory status as an IXC.

T-NETIX sets the background for its Exception by explaining the following relationships between T-NETIX, Verizon and VSSI in the provision of inmate phone service:

[T]he record reflects that VZ-PA held the contract to provide telecommunications services to all Department of Corrections ("DOC") facilities throughout the state from August 2003 through 2004; that VZ-PA provided dial-tone lines and local intraLATA service during the period in question; that VZ-PA subcontracted with VSSI, an affiliate for long-distance service and phone services in areas not covered by VZ-PA territory; and that VZ-PA also subcontracted with T-Netix to provide the inmate telephone system and software to run the call-control system, mandated by DOC. (I.D. at 7). The call-control system involves implementation of security measures in compliance with the DOC contract, including monitoring and recording calls, allowing inmates to dial only preapproved numbers, and preventing the called-party from using a three-way calling feature. (I.D. at 8). In order to place a call, inmates must either have prepaid for calling service or make collect calls. (I.D. at 9).

(Exc. at 1-2).

T-NETIX objects to ALJ Cocheres' Conclusion of Law No. 15 for three reasons. First, T-NETIX takes the position that this Commission has dismissed cases on the basis that it stopped providing "telecommunications" services in August 2003, but continued to provide only ancillary and technical support services as a subcontractor. In support of this contention, T-NETIX, in a

footnote, cites the following cases, each of which are Initial Decisions authored by Chief ALJ Veronica Smith and which became effective by operation of 66 Pa. C.S. § 332(h)³: *Darrin White v. T-NETIX*, Docket No. C-20054558 (Order entered January 18, 2006); *Darvey Johnson (CZ-6364) v. T-NETIX*, Docket No. C-20055329 (Order entered February 22, 2006); and *Howard Andrews, Sr. (CL-9549) v. T-NETIX*, Docket No. C-20055332 (Order entered February 22, 2006).

In *Darrin White v. T-NETIX*, Chief ALJ Smith granted the preliminary motion of T-NETIX to dismiss a Formal Complaint against it, which was filed by a prison inmate, based on the failure of the inmate-complainant to join an indispensable party. The dismissal also was based on the insufficiency of the Complaint as to T-NETIX. T-NETIX asserted, *inter alia*, that the Complainant failed to join as an indispensable party, the actual provider of telecommunications services to SCI-Somerset. T-NETIX admitted that it is certificated to provide interexchange resale services in Pennsylvania. However, T-NETIX averred that it ceased providing such services to Pennsylvania SCIs in August 2003.

As a result of the modification of the contract between T-NETIX and Verizon, T-NETIX, in *Darrin White*, supported its preliminary motion with the averments that it now only provides ancillary technical and security support services as a subcontractor to Verizon. *See Darrin White*, Initial Decision dated October 5, 2005, slip op. at 4.

³ This section states, in pertinent part, that “[a]ny party to a proceeding referred to an administrative law judge . . . may file exceptions to the decision . . . with the commission . . . The commission shall rule upon such exceptions within 90 days after filing. If no exceptions are filed, the decision shall become final, without further commission action, unless two or more commissioners within 15 days after the decision request that the commission review the decision and make such other order”

In *Darrin White*, T-NETIX admitted that it provides certain “telecommunications features” to the DOC. Those features include the technology needed to provide recorded announcement overlays on calls made by inmates and/or, the Automated Inmate Telephone System (AITS) – the system which permits, as a matter of prison security, *inter alia*, the disconnection of a call if a three-way call or other non-permitted use is detected on the line. *See Feigley II*.

In *Howard Andrews, Sr. v. T-NETIX* and *Darvey Johnson v. T-NETIX*, Chief ALJ Smith granted the preliminary motion of T-NETIX based on the substantially similar basis as in *Darrin White*. The inmate Complaints against T-NETIX were found to be insufficient based on T-NETIX’s revised contractual role in the contract between Verizon and DOC. The language of Chief ALJ Smith, taken from the Initial Decision in *Howard Andrews*, is illustrative:

Respondent avers that although it is certificated to provide interexchange resale services in Pennsylvania, it ceased providing such services to Pennsylvania state correctional institutions in August 2003. Presently, Respondent only provides ancillary technical and security support services as a subcontractor. Respondent moves to dismiss the Complaint on the basis that it fails to state a claim upon which the Commission can grant relief.

At the time the allegations raised in the Complaint occurred, Respondent was not the provider of telecommunications services at the Retreat Hunlock State Correction Institution in Hunlock Creek, Pennsylvania. Consequently, the Complaint fails to allege any act or omission committed by Respondent in violation of a statute, regulation or Commission order. Therefore, the Complaint fails to meet the minimum requirement for legal sufficiency and Respondent’s Motion to Dismiss must be granted.

Howard Andrews, Initial Decision dated November 7, 2005, slip op. at 4.

The second reason for T-NETIX's Exceptions is its argument that the definitions of "public utility" cited by presiding ALJ Cocheres were modified by regulatory action after the divestiture of AT&T in 1984. (*See* Exc. at 4). T-NETIX explains that, in response to the AT&T divestiture, the Commission bifurcated local and long-distance service and also segregated utility-owned facilities from private-owned facilities. (*See* Exc. at 4, citing *Re: Detariffing of Inside Wire*, 62 PAPUC 511 (1986)). As a result, facilities on the customer's side of the demarcation point were owned by the customer and are no longer subject to Commission jurisdiction. *Id.*, citing *Elisabeth Ellenbogen v. Bell Atlantic-Pa., Inc.*, Docket No. C-00945769 (Order entered November 4, 1994); 1994 Pa. PUC LEXIS 89.

T-NETIX, in conjunction with the second reason, discusses *Feigley II* and opines that this Commission has held that the AITS equipment is on the customer's side of the demarcation point, that this equipment is intended to control inmate behavior pursuant to the contract between Verizon and DOC, and that the AITS equipment lacks the "public" character because it is on the customer's side of the demarcation point. (Exc. at 5).

In concluding argument on its second reason, T-NETIX states "if the Commission is not disposed to completely forego its jurisdiction of T-Netix' equipment on the customer side of the demarcation point, even though that equipment only implements DOC security-related measures, consistent with the case described above and, as is discussed in more detail below, it should at least confine its regulatory authority to VZ-PA." (Exc. at 5).

In its third reason, T-NETIX repeats that it provides security-related equipment located on the customer-premises side of the demarcation point. It argues that VZ-PA must obtain this equipment in order to satisfy its contract with DOC. However, argues T-NETIX, the equipment it provides does not facilitate telecommunications service when it implements security measures to DOC requirements. (Exc. at 5-6). In sum, T-NETIX asserts that the correct regulatory analysis is that the Commission has regulatory authority over Verizon and that it is Verizon, as the provider of dial-tone line and local intraLATA service, over whom jurisdiction should be asserted. See Exc. at 6-7, citing *Re: The Contracting for Services with Bermex, Inc.*, Docket No. M-00960801 (Order entered September 18, 1996); see also *Gaige v. AT&T Communications of Pa., Inc.*, Docket No. C-00981211 (Order entered November 13, 1988) and *Service Employees International Union, Local 69, AFL-CIO v. The Peoples Natural Gas Co. . . .*, Docket No. C-20028539 (Order entered December 19, 2003).

C. Disposition

On consideration of the Exception of T-NETIX, it shall be denied.⁴ We, hereby, adopt the recommendation and reasoning of presiding ALJ Cocheres, consistent with the following discussion.

As a threshold consideration, the arguments of T-NETIX may be rejected, out of hand, based on the retention of its certificate of public convenience as an interexchange reseller. See Finding of Fact No. 15. In *Franks, Strandberg*, and other proceedings involving cognizable inmate complaints regarding

⁴ Any issue or Exception that we do not specifically address has been duly considered and will be deemed denied without further discussion. *Consl. Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); see generally, *Univ. of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

telephone service, this Commission has expressly acknowledged T-NETIX's status as a "public utility," subject to the provisions of the Public Utility Code. Express or anecdotal references to a modified, sub-contractor relationship between T-NETIX and Verizon does not change this status.

On consideration of the cases cited by T-NETIX in its footnote, we disagree with the characterization of those cases by T-NETIX. We conclude that the cases cited therein stand for the proposition that this Commission has adopted, in its result, the dismissal of cases filed by prison inmates which are insufficient based on the consideration of the allegations. We cite the case of *Jeffery Neil Saxberg (DX-5126) v. T-NETIX*, Docket No. C-20055336 (Order entered October 23, 2006), and reaffirm that the guiding consideration in any case which dismisses the Formal Complaint of an unrepresented, lay Complainant, are the considerations established in *Richard Carlock v. The United Telephone Company of Pennsylvania* Docket No. F-00163617 (Order entered July 14, 1993), 1993 Pa. PUC LEXIS 199 (*Carlock*).

In *Jeffery Neil Saxberg*, we discussed the considerations of *Carlock* as follows:

In *Richard Carlock v. The United Telephone Company of Pennsylvania* Docket No. F-00163617 (Order entered July 14, 1993), 1993 Pa. PUC LEXIS 199 (*Carlock*), we have held that a Motion to Dismiss should not be granted against unrepresented complainants who are pursuing small claims until they have at least had an oral opportunity to explain their position. In *Carlock*, we did not rule out the possibility that pretrial motions can be granted; only that such motions should not be granted on the pleadings, and the ALJ must first develop a sufficient record.

In the present case, we observe that this Formal Complaint is one of several filed by persons incarcerated at Pennsylvania State Correctional Institutions against the applicable rates, terms, and conditions of telephone service provided by T-NETIX. On consideration of the issues decided in those cases and reviewing the allegations of the present Complaint in their most favorable light, we shall adopt the ALJ recommendation that a hearing would not be in the public interest.

Slip op. at 5-6, note omitted.

The considerations of *Carlock* remain the position of this Commission. We were able to determine, in light of our extensive recent history with inmate telephone service complaints, that a further hearing would not be in the public interest.

Finally, we reject the position of T-NETIX as inconsistent with our express consideration of the issues raised in the Exceptions considered in *Feigley II*. In *Feigley II*, we acknowledged the problematic nature of our consideration of Formal Complaints based on the functioning of the AITS security equipment used to comply with the security requirements of DOC. We expressly noted the balance between reasonable inmate access to telephones and inherent security concerns of the SCI. In *Feigley II* we stated the following:

VSSI references the arguments presented in its main brief concerning its position on the services provided by VSSI for the DOC. (R. Exc. at 2; main brief at 14). VSSI contends that the AITS equipment provided by T-NETIX is located on the customer side of the network interface. Consequently, VSSI maintains that this equipment is non-jurisdictional. It compares the operation and functionality of the AITS to that of a PBX. Thus, VSSI takes the position that the functions of the AITS are not subject to the Commission's

jurisdiction because the equipment is on the customer-side or private-line side of the network interface device (NID). *Id.*

On consideration of the Exceptions on this issue, we shall affirm the ALJ in his result. We agree with the ALJ's conclusions that, notwithstanding that the DOC is not a public utility within the meaning of the term as defined in the Public Utility Code, 66 Pa. C.S. § 102, this Commission is empowered to exercise *in personam* jurisdiction over entities in the exercise of our adjudicatory function to determine whether a violation of the Code, or other provisions which we are enabled to administer have been violated. See *Beltrami Enterprises, Inc. v. Commonwealth of PA, Dep't of Environmental Resources*, 632A.2d 989, 993 (Pa.Cmwlt. 1993). The exercise of jurisdiction over the DOC must, however, be invoked solely to the extent that our exercise of this jurisdiction (limited) is ancillary to adjudicating those issues for which this agency is authorized to address under the Public Utility Code.

Importantly, from the perspective of Commission jurisdiction in this dispute, we find the arguments of VSSI at pages 14-15 of its brief to be persuasive. Those arguments expressly reference the fact that the AITS equipment is placed on the customer side of the NID by the DOC. We find this fact significant in assessing the "public" character of the inmate-only telephone service. This fact also runs counter to position of the Feigleys that the AITS serves the public as a public telephone system. However, we additionally observe that the inmate, after being connected to the Public Switched Network (PSN) is, subsequently, disconnected from the PSN as a function of the AITS. It is this fact which leads us to not adopt, wholesale, the VSSI position. Notwithstanding, we shall affirm our determination in *Feigley I* that the jurisdictional limits of our authority would extend only to the Feigleys' dispute over the resulting rates and services of [the] service provider and not to the

conditions under which the DOC provides inmate access. (Slip op. at 21).

Based on the record in this matter, we cannot determine, without qualification, that the function of the AITS, to automatically disconnect an inmate from the PSN under certain circumstances is non-jurisdictional to this agency. It is the disconnection from the PSN, once the inmate has complied with all pertinent DOC regulations which permit access, that makes the VSSI position problematic.

Slip op. at 14-15; note omitted.

In another recent case involving inmate allegations of inadequate service against T-NETIX, this Commission expressly acknowledged the changed role of T-NETIX in the provision of inmate telephone services. T-NETIX, known as SecurUS, no longer provides interexchange service in its role as a subcontractor to Verizon. *See George and Sandra Feigley, et al. v. VSSI, et al.*, Docket No. C-20043621 (Order entered April 24, 2006), slip op. at 26.

Based on the foregoing, we shall deny T-NETIX's Exceptions, consistent with our discussion. Based on the review and considerations of inmate-Complaints, consistent with the principles of *Carlock*, we shall review Formal Complaints on a case-by-case basis to determine whether or not, in light of the allegations, *in personam* jurisdiction should be exercised over T-NETIX as the provider and operator of the AITS or similar security equipment.

CONCLUSION

The Exceptions of T-NETIX are, hereby, denied. We shall further direct that a copy of this Opinion and Order be served on the Commission's Law

Bureau for consideration of the status of the certificate of public convenience of T-NETIX. Additionally, a copy of this Order shall be served on the Office of Administrative Law Judge; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of T-Netix, Inc. and T-Netix Telecommunications Services, Inc. filed to the April 6, 2006, Initial Decision of Administrative Law Judge Louis G. Cocheres to the consolidated complaint proceedings in this matter are, hereby, denied, consistent with the discussion contained in this Opinion and Order.

2. That the Initial Decision is adopted, consistent with the discussion contained in this Opinion and Order.

3. That the Complaint of *Preston B. Pfeifly, AK-7971, et al v. T-Netix, Inc., T-Netix Telecommunications Services, Inc. and Verizon Select Services, Inc.* at Docket No. C-20042802 for Mr. Pfeifly is dismissed, and the record closed.

4. That the Complaint of *Preston B. Pfeifly, AK-7971, et al v. T-Netix, Inc., T-Netix Telecommunications Services, Inc. and Verizon Select Services, Inc.* at Docket No. C-20042802 for Anthony Brown, AY-7727, is dismissed, and the record closed.

5. That the Complaint of *Preston B. Pfeifly, AK-7971, et al v. T-Netix, Inc., T-Netix Telecommunications Services, Inc. and Verizon Select Services, Inc.* at Docket No. C-20042802 for Jim Cunningham, AP-7627, is dismissed, and the record closed.

6. That portion of the Complaint of *Preston B. Pfeifly, AK-7971, et al v. T-Netix, Inc., T-Netix Telecommunications Services, Inc. and Verizon Select Services, Inc.* at Docket No. C-20042802 dealing with call overlays for James Smeal, AP-8040, is dismissed, and the record closed.

7. That portion of the Complaint of *Preston B. Pfeifly, AK-7971, et al v. T-Netix, Inc., T-Netix Telecommunications Services, Inc. and Verizon Select Services, Inc.* at Docket No. C-20042802 dealing with equipment malfunctions for James Smeal, AP-8040, is dismissed **without prejudice**, and the record closed.

8. That portion of the Complaint of *Preston B. Pfeifly, AK-7971, et al v. T-Netix, Inc., T-Netix Telecommunications Services, Inc. and Verizon Select Services, Inc.* at Docket No. C-20042802 for Bruce McCaslin, AP-8941, is dismissed, and the record closed.

9. That portion of the Complaint of *Preston B. Pfeifly, AK-7971, et al v. T-Netix, Inc., T-Netix Telecommunications Services, Inc. and Verizon Select Services, Inc.* at Docket No. C-20042802 dealing with call overlays for John Ort, AK-9479, is dismissed, and the record closed.

10. That portion of the Complaint of *Preston B. Pfeifly, AK-7971, et al v. T-Netix, Inc., T-Netix Telecommunications Services, Inc. and Verizon Select Services, Inc.* at Docket No. C-20042802 dealing with equipment malfunctions for John Ort, AK-9479, is dismissed **without prejudice**, and the record closed.

11. That portion of the Complaint of *Preston B. Pfeifly, AK-7971, et al v. T-Netix, Inc., T-Netix Telecommunications Services, Inc. and Verizon Select Services, Inc.* at Docket No. C-20042802 for Richard Gordon, AK-4680, is dismissed, and the record closed.

12. That portion of the Complaint of *Preston B. Pfeifly, AK-7971, et al v. T-Netix, Inc., T-Netix Telecommunications Services, Inc. and Verizon Select Services, Inc.* at Docket No. C-20042802 for Stuart Simon, BP-8976, is hereby dismissed with prejudice for failure to prosecute his claim, and the record closed.

13. That portion of the Complaint of *Preston B. Pfeifly, AK-7971, et al v. T-Netix, Inc., T-Netix Telecommunications Services, Inc. and Verizon Select Services, Inc.* at Docket No. C-20042802 for Robert Carl, AK-5493, is dismissed, and the record closed.

14. That portion of the Complaint of *Preston B. Pfeifly, AK-7971, et al v. T-Netix, Inc., T-Netix Telecommunications Services, Inc. and Verizon Select Services, Inc.* at Docket No. C-20042802 for James C. Rudolph, AK-9921 is dismissed, and the record closed.

15. That portion of the Complaint of *Preston B. Pfeifly, AK-7971, et al v. T-Netix, Inc., T-Netix Telecommunications Services, Inc. and Verizon Select Services, Inc.* at Docket No. C-20042802 for James Kautz, AH-4561, is dismissed, and the record closed.

16. That the Complaint of *Shayne Flood, AK-7986 v. Verizon Select Services, Inc.* at Docket No. C-20042852, is dismissed, and the record closed.

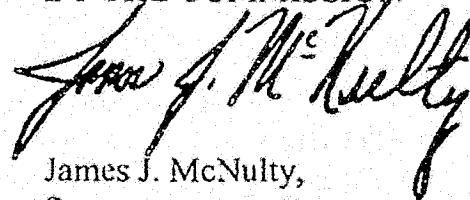
17. That the Complaint of *Kevin L. Taylor, DQ-2227 v. T-Netix, Inc., T-Netix Telecommunications Services, Inc. and Verizon Select Services, Inc.* at Docket No. C-20042878 is dismissed, and the record closed.

18. That the Complaint of *Felix L. Trevino, EL-6256 v. T-Netix, Inc., T-Netix Telecommunications Services, Inc. and Verizon Select Services, Inc.* at Docket No. C-20042879 is dismissed, and the record closed.

19. That the letter-motion to strike, dated January 23, 2006, of Verizon Select Services, Inc., regarding the contents of the letters, from Preston B. Pfeifly, AK-7971, dated December 29, 2005, to Bruce Kazee, Esquire and Louis G. Cocheres, Administrative Law Judge is hereby granted.

20. That a copy of this Opinion and Order be served on the Commission's Law Bureau for consideration of the status of the certificate of public convenience of T-NETIX. Additionally, a copy of this Order shall be served on the Office of Administrative Law Judge.

BY THE COMMISSION



James J. McNulty,
Secretary

(SEAL)

ORDER ADOPTED: December 21, 2006

ORDER ENTERED: DEC 27 2006

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FOLDER

LOUISE A. KNIGHT
E-MAIL: lknight@rrkdllaw.com

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

March 2, 2007

ORIGINAL

Re: Preston B. Pfeifly, AK7971, et al. v T-Netix, Inc. and T-Netix Telecommunications Services, Inc. and Verizon Select Services, Inc., Preston; Docket No. C-20042802;
CHANGE OF ADDRESS

Dear Mr. McNulty:

The purpose of this letter is to inform you that effective Thursday, March 1, 2007, the addresses, fax and telephone numbers for counsel to T-Netix, Inc. and T-Netix Telecommunications Services, Inc. in the above-referenced case should be changed as follows:

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If you have any questions, please do not hesitate to contact me or David at our new office (717) 233.1855.

Very truly yours,
REGER RIZZO KAVULICH & DARNALL LLP

Louise A. Knight
Louise A. Knight

cc. As Per Certificate of Service
Curtis Hopfinger

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MAR 23 2007

RECEIVED
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SECRETARY'S OFFICE

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing change of address letter for counsel to T-Netix, Inc. and T-Netix Telecommunications Services, Inc. upon the participants, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA FIRST CLASS MAIL

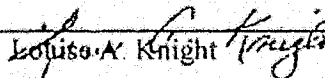
Honorable Louis G. Cocheres
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DATED: March 2, 2007


Louise A. Knight

SECRET

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