



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

IN REPLY PLEASE
REFER TO OUR FILE

April 25, 2006

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

Preston B. Pfeifly, AK-7971, *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 ALL PARTIES OF RECORD:

On April 6, 2006, the Initial Decision of Administrative Law Judge Louis G. Cocheres issued in the above-captioned proceeding. Pursuant to 52 Pa. Code § 5.533, Participants may file exceptions to the Initial Decision within twenty (20) days of issuance. In this matter, exceptions would be due on or before April 26, 2006. On Friday, April 21, 2006, Counsel for T-Netix, Inc. and T-Netix Telecommunications Services, Inc. contacted the Pennsylvania Public Utility Commission to request a one-week extension of time in which to file exceptions to the Initial Decision due to the press of business caused by multiple proceedings before this Commission.

For good cause shown, a one-week extension of time in which to file exceptions to the Initial Decision is granted. Exceptions to the April 6, 2006 Initial Decision shall be filed on or before May 3, 2006.

Please refer any questions regarding this matter to Kathryn G. Sophy, Office of Special Assistants, at (717) 787-8108.

Very truly yours,

James J. McNulty
Secretary
Secretary

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FOLDER

DOCKETED
MAY 8 - 2006

ORIGINAL
May 3, 2006

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May 3, 2006

Via Federal Express

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

**DOCUMENT
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

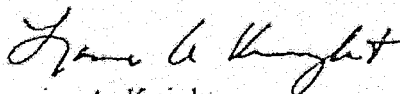
Dear Secretary McNulty:

Enclosed for filing please find an original and nine (9) copies of the Exceptions on behalf of T-Netix, Inc. and T-Netix Telecommunications Services, Inc. in the above-referenced matter.

Please date-stamp the extra copy and return with our messenger service.

If you have any questions concerning this letter, please feel free to contact me.

Very truly yours,


Louise A. Knight

c Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Preston B. Pfeifly, AK7971, et al.,
Complainants

v.

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

Respondents

Docket No. C-20042802, et al.

DOCUMENT
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EXCEPTIONS OF T-NETIX, INC. AND
T-NETIX TELECOMMUNICATIONS SERVICES, INC.
TO THE INITIAL DECISION OF ADMINISTRATIVE
LAW JUDGE LOUIS B. COCHERES ISSUED APRIL 6, 2006

DOCKETED
MAY 16 2006

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PA PUBLIC UTILITY COMMISSION
GEORGETOWN DEPT. OF REVENUE

Dated: May 3, 2006

Counsel for T-Netix, Inc. and T-Netix
Telecommunications Services, Inc.

T-Netix, Inc. and T-Netix Telecommunications Services, Inc. (collectively "T-Netix") hereby except to portions of the Initial Decision (I.D.) issued in the above-captioned matter by Administrative Law Judge Louis B. Cocheres ("ALJ Cocheres") on April 6, 2006.¹ The Exceptions are set forth below.

I. T-Netix Excepts To ALJ Cocheres' Finding That It Is A Regulated Entity Rendering Jurisdictional Public Utility Service When It Acts Only As An Equipment Subcontractor To Verizon. (I.D., pp 66-68).

Background

On pages 66-68 of the I.D., ALJ Cocheres determined that, while Verizon Pennsylvania, Inc. ("VZ-PA") was the telecommunications provider to State Correctional Institution - Huntingdon ("SCI-Huntingdon") during the period covered in the complaint (that is post-August 2003),² T-Netix nonetheless continued to render public utility service at SCI-Huntingdon after August 2003 because it owns equipment and renders some administrative and technical support services as a subcontractor to VZ-PA. T-Netix excepts to that determination and Conclusion of Law No. 15.

By way of background, the 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 services 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

¹ By letter dated April 24, 2006, the Commission granted an extension of 7 days, (i.e., from April 26, 2006 to May 3, 2006) for the filing of Exceptions.

² ALJ Cocheres accepted the fact that T-Netix stopped conveying or transmitting messages from the inmates to their friends and family throughout Pennsylvania, the United States and to other countries in August 2003. *Slip Op.* at 66.

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 services or make collect calls. (I.D. at 9).

ALJ Cocheres concluded that T-Netix was functioning as a regulated utility despite its status as a subcontractor to VZ-PA, because it continued to own certain hardware and software and to use that equipment to provide service to inmates as a subcontractor to VZ-PA. In support of his conclusion, he quoted the definition of public utility,³ as well the definition of "service."⁴ He concluded that:

[G]iven 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 in 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 67).

³ Sections 102 of the Public Utility Code, 66 Pa. C.S. §102, defines "public utility" in pertinent part as:

(1) Any person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for:

(vi) conveying or transmitting messages or communications... by telephone... for the public for compensation.

⁴ Section 102 of the Public Utility Code, 66 Pa. C.S. §102, also provides in pertinent part:

"Service." Used in its broadest and most inclusive sense includes any and all acts done, rendered, or performed and any all things furnished or supplied and, any all facilities used, furnished, or supplied by the public utilities, or contractor carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public...

ALJ Cocheres then observed that the Commission recently had dismissed a series of complaints based on preliminary motions, which, in turn, were based on pleadings which disclosed that T-Netix had stopped providing telecommunications services in August 2003, but which also acknowledged that it continued to provide "ancillary and technical support services" as a subcontractor.⁵ He opined that these cases were decided without benefit of the record in the instant matter which established that "inmates were still using T-Netix equipment to make calls." (I.D. at 68). He cited to the facts that: (1) T-Netix equipment actually disconnected calls when it detected three-way calling; (2) T-Netix was the billing agent for VSSI; (3) T-Netix placed collect call blocks on behalf of VSSI on numbers dialed by inmates; and, (4) it is possible to credit refunds to inmate accounts (I.D. at 68). Finally, the ALJ concluded that the DOC was not the customer despite its contracting with VZ-PA; but rather he found the inmates to be the customers. He, therefore, determined that the Commission erred when it dismissed the complaints filed against T-Netix identified in Footnote 5, below, on the basis of lack of jurisdiction.

EXCEPTIONS

T-Netix excepts to ALJ Cocheres' conclusion that T-Netix continued to engage in regulated utility activities by acting as a subcontractor to VZ-PA for three reasons. The first reason is the Commission has already dismissed cases on that basis. Regardless of ALJ

⁵ See *Darrin White v. T-Netix, Inc. and T-Netix Telecommunications Services Inc.*, Order entered January 18, 2006, at Docket No. C-20054558, adopting the Initial Decision of Chief Administrative Law Judge Veronica A. Smith dated October 5, 2005 (Slip Op.), *Darvey Johnson (CZ-6364) v. T-Netix and T-Netix Telecommunications Services, Inc.*, Order, entered February 22, 2006, at Docket No. C-20055329, adopting the Initial Decision of Chief Administrative Law Judge Veronica A. Smith dated November 4, 2005 (Slip Op.); and *Howard Andrews, Sr. (CL-9549) v. T-Netix and T-Netix Telecommunications Services, Inc.*, Order, entered February 22, 2006, at Docket No. C-20055332, adopting Initial Decision of Chief Administrative Law Judge Veronica A. Smith dated November 7, 2005 (Slip Op.).

Cocheres' second-guessing, ample precedent exists to reverse ALJ Cocheres' conclusion regarding the Commission's jurisdiction over T-Netix after August 2003.

Second, the definitions cited by ALJ Cocheres were inalterably modified in the telecommunications industry by regulatory actions after the divestiture of AT&T in 1984. The divestiture led to the segmentation of the formerly unified telephone system, both in terms of bifurcating local and long distance service, but also segregating utility-owned facility from private-owned facilities. In its Order at Docket No. I-840386, *Re: Detariffing of Inside Wire*⁶, the Commission acted in the post-divestiture environment to separate ownership of inside wire from outside wire. Subsequent to that Order, facilities on the customer's side of the demarcation point⁷ were owned by the customer and, therefore, were no longer subject to Commission jurisdiction. This policy was affirmed in numerous cases since 1986. In the case of *Elisabeth Ellenbogen v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00945769, 1994 Pa. PUC LEXIS 89, the Commission stated "[i]t has no authority to regulate the use of private property [inside customer premise equipment]." It also acknowledged that facilities on the customer side of the demarcation point are private property. *Id.* at *28.

So, it is accepted that ownership of some facilities used in transmitting messages are not imbued with public character such that their owner would be deemed a regulated entity. The interpretation of the definition of "public utility" thereby has been restricted.

The Commission recently entertained another case⁸ involving prison telecommunications service and, in it, appears to have acknowledged (a) that T-Netix' equipment (equipment that

⁶ 62 Pa.PUC 511 (1986); 1986 PaPUC LEXIS 20.

⁷ The "demarcation point" is not a standard point in a building or premise and may appear at different physical locations. But wherever it is, it legally signifies the point where ownership changes.

⁸ *Sandra and George Feigley v. Verizon Select Services, Inc.*; Department of Corrections; and Robert Shannon, Docket No. C-20043621 (Order entered April 24, 2006). (*Feigley II*)

provides for the functionality of restrictions and conditions imposed by the DOC) is located on the customer side of the demarcation point,⁹ (b) that the equipment is intended to control inmate behavior pursuant to the contract between VZ-PA and the DOC, and (c) that the equipment lacks "public" character because it is on the customer side of the demarcation point. In *Feigley II*, the Commission said, on one hand, that it found VZ-PA's arguments that the Commission does not have jurisdiction over the telephone equipment in the prison persuasive. However, in the discussion, it stated that its conclusion was not without qualification. *Slip Op.* at 15. However, what the Commission absolutely did not say was that it would exercise jurisdiction over T-Netix even if it were to exercise some control over the inside equipment. In fact, in *Feigley II*, the Commission directs its discussion to the service provider (VZ-PA) and not T-Netix.

In conclusion, 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 regulating authority to VZ-PA.

Third, it is undisputed in this case that VZ-PA is the provider of dial tone line and local and intraLATA services at SCI-Huntingdon. The Commission has regulatory authority over VZ-PA as a public utility rendering telecommunications service to assure that it renders safe, adequate, and reasonable service to any location to which it provides service.

T-Netix is a subcontractor to VZ-PA. (N.T. 56; 127-128) As described above, it provides security-related equipment located on the customer premise side of the demarcation point. VZ-PA must obtain this equipment in order to satisfy its contract with DOC. Conversely, T-Netix was not providing telecommunications service to the DOC locations at issue. The

⁹ *Sandra Feigley v. ATT Communications of PA*, Docket No. C-00981434 (Opinion and Order entered April 21, 2001) ("*Feigley I*").

T-Netix equipment does not facilitate telecommunications service when it implements security measures to DOC requirements.¹⁰

The correct analysis of this situation is that the Commission has regulatory authority over VZ-PA and only VZ-PA, the undisputed provider of dial-tone line and local and intraLATA service at SCI-Huntingdon. T-Netix is answerable to VZ-PA pursuant to their contract. But there is simply no reason why the Commission would or should assert jurisdiction over T-Netix when the Commission controls the actual jurisdictional service provider VZ-PA.

This analysis is supported by a series of cases starting with the *Bermex* case.¹¹ That case involved The Peoples Natural Gas Company's use of a subcontractor Bermex to read meters. When a Bermex employee was accused of perpetuating various felonies in the course of his meter reading duties, the Commission held hearings to consider whether Peoples violated the law or Commission regulations as well as other appropriate responses. The Commission did not assert jurisdiction over Bermex; in fact, Bermex refused to participate in the hearings, without consequence. At the conclusion, of the proceeding, the Commission held that Peoples, as the public utility, had the responsibility to ensure adequate and safe service. It continued that "Peoples cannot delegate its responsibility to another party, by any device whatsoever." 1996 PaPUC LEXIS 143, at *10. Similar results were obtained in *Gaige v. AT&T Communications of Pennsylvania, Inc.*, Docket No. C-00981211 (1999 Pa PUC LEXIS 43 at *19) (AT&T "cannot disassociate itself from the actions of its employees and its vendors") and *Service Employees*

¹⁰ In reaching this conclusion, ALJ Cocheres invests particular significance into the fact that T-Netix possesses certificates of public convenience (Docket Nos. A-310631 and A-310118). T-Netix' certificates of public convenience authorizes the companies to provide reseller interexchange telecommunications services in the Commonwealth. In the instant case, the facts are that T-Netix is not providing telecommunications to SCI-Huntingdon during the period in question since T-Netix stopped providing those services in August 2003. (I.D. at 7; N.T. 123-127).

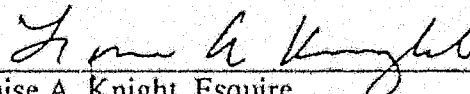
¹¹ Re: *The Contracting for Service with Bermex, Inc.*, Docket No. M-00960801 (1996 Pa PUC LEXIS 143)

International Union, Local 69, AFL-CIO v. The Peoples Natural Gas Company d/b/a Dominion Peoples, Docket No. C-20028539 (2003 Pa. PUC LEXIS 60, at *14) (holding that, with respect to contractor meter reading, Dominion Peoples “maintains full responsibility for the service provided and must ensure that service meets all the requirements of the Code and our Regulations.” (Emphasis added).

In conclusion, if the Commission is not disposed to completely cede its jurisdiction of T-Netix’ equipment on the customer side of the demarcation point, even though it only implements DOC security-related measures, then consistent with the case described above, it should at least confine its regulatory authority to VZ-PA.

WHEREFORE, T-Netix hereby respectfully requests that ALJ Cocheres’ holding that it is subject to Commission regulatory authority when it acts as a subcontractor to Verizon PA and in that capacity supplies equipment and ancillary and technical support services.

Respectfully submitted,



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Saul Ewing LLP
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Dated: May 3, 2006

Counsel for T. Netix

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant).

FIRST CLASS MAIL

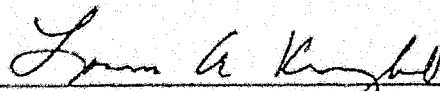
Honorable Louis G. Cocheres
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Dated: May 3, 2006



Louise A. Knight

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MAY 03 2006

PA PUBLIC UTILITY COMMISSION
SECRETARIAT'S BUHLAU

DATE: June 1, 2006

SUBJECT: C-20042802 et al

DOCKETED
JUN 07 2006

TO: Cheryl W. Davis, Director
Office of Special Assistants

FROM: James J. McNulty
Secretary
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PRESTON B. PFEIFLY, AK-7971, ET AL
V. T-NETIX INC., T-NETIX TELECOMMUNICATIONS SERVICES, INC.
AND VERIZON SELECT SERVICES, INC. ET AL

Copies of the Initial Decision have been served upon all parties of interest.

Exceptions have been filed by:

T-NETIX INC & T-NETIX TELECOMMUNICATIONS SERVICES INC

Reply Exceptions have been received from:

cc: Susan Hoffner