☐ EXPEDITE
(if filing within 5 court days of hearing)
☑ Hearing is set:
Date: December 9, 2011
Time: 1:30 pm
Judge/Calendar: Hon. Paula Casey

IN THE SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., Petitioner, v. WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION, Respondent, and SANDY JUDD and TARA HERIVEL Intervenors, and T-NETIX, INC., Interested Party.	NO. 11-2-00992-8 and NO. 11-2-00998-7 INTERVENORS' RESPONSE TO T-NETIX'S PETITION FOR APA REVIEW
T-NETIX, INC., a Delaware corporation, Petitioner, v. WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION, Respondent.	

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I. INTRODUCTION

T-Netix appeals the Commission's finding that AT&T violated the rate disclosure regulations for collect telephone calls from Washington State Department of Correction (DOC) facilities to Washington residents. T-Netix argues that: (1) T-Netix had no opportunity to argue that intrastate rate quoting was actually provided prior to 2001, thus denying it due process; and (2) the decision was not supported by substantial evidence. In fact, T-Netix was provided an opportunity to address this issue. T-Netix submitted a memorandum responding to the complainants' argument that AT&T violated disclosure regulations. T-Netix had ample opportunity to dispute AT&T's admission that it was not quoting rates for intrastate collect calls and the other evidence showing AT&T's failure to comply with the rate disclosure regulation. Instead, T-Netix used its opportunity to try to exonerate itself, not AT&T. T-Netix argued that it had no duty, under its agreements with AT&T, "to provide or enable any rate disclosures prior to [January 1, 2001], and thus was not expected to comply with WAC 480-120-141."

The Commission's decision was supported by substantial evidence. The evidence included admissions by AT&T that it was not providing rate quotes for collect calls from DOC facilities, evidence that in late 2000 Verizon and GTE were unable to provide rate quotes from the equipment because the technology was not ready, and declarations of recipients of these calls who testified that rate quotes were not provided.

T-Netix also argues that the Commission improperly considered evidence provided by complainants in response to the Commission's bench request. This information included records of collect telephone calls made from DOC facilities to Columbia Legal Services ("CLS"). Those records reflected charges billed and collected by AT&T. Calls to CLS were similar to collect calls received by intervenor Tara Herivel from Airway Heights and by intervenor Sandy Judd from Clallam Bay, both of which were billed by AT&T. This evidence

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was properly considered along with other portions of the record showing collect calls billed by AT&T.

T-Netix's arguments provide no basis for modifying or reversing the Commission's decision, and Final Order 25 should be affirmed in full.

II. FACTUAL BACKGROUND[1]

A. Background of the Claims

In 1988, in response to the telecommunication industries' practice of failing to disclose toll rates, the legislature mandated transparency. It directed the WUTC to promulgate rules to ensure full disclosure of rates. RCW 80.36.510-.520.

The WUTC issued detailed regulations in 1991. Under those regulations, "alternate operator services" companies were required to disclose rates for a particular call "immediately, upon request, and at no charge to the consumer." WAC 480-120-141(5)(a)(iv) (1991). The operator was required to provide "a quote of the rates or charges for the call, including any surcharge." *Id.* In 1999, the WUTC amended the regulation to require automatic verbal rate disclosures triggered by a call recipient pressing the keys on the telephone keypad. WAC 480-120-141(2)(b) (1999).

The legislature made noncompliance with the WUTC regulations a *per se* violation of the Washington Consumer Protection Act. RCW 80.36.530.

B. The AT&T/DOC Contract

In 1991, when the rate disclosure regulations were being introduced, AT&T proposed to provide telephone services to the facilities managed by the DOC. AT&T was awarded the contract, which is dated March 16, 1992. *See* R000029, *et. seq.* In that contract, AT&T agreed to be responsible for the entire project and to enter into subcontracts with three

[1] T-Netix devotes much of the factual section of its brief to arguing (for the most part without any citation to the record) that complainants Judd and Herivel have no standing because they did not receive collect telephone. T-Netix won that issue in the Superior Court, but lost it in Division I. *See* below, pp. 5-6. Standing is not an issue in this appeal.

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other telephone companies that would serve as local exchange carriers for DOC facilities in their service areas.

T-Netix was a subcontractor for AT&T. It provided and programmed the specific equipment used to provide automated operator services for collect calls from DOC institutions. As the Commission determined in Order 25, the platform installed by T-Netix at AT&T's direction did not provide consumers with either a rate quote or the means to obtain a rate quote for inmate-initiated calls as required by the WUTC regulations. Complainants filed the King County litigation in 2000 to redress those violations.

C. The Underlying Litigation

The King County action was originally brought against all toll providers. All defendants brought motions to dismiss. GTE and U.S. West were dismissed because they were expressly excluded from the regulations. The Court declined to dismiss AT&T and T-Netix.

In 2000, AT&T then asked the King County court to refer two key liability issues to the WUTC under the doctrine of primary jurisdiction. *See Tenore v. AT&T Wireless Services,* 136 Wn.2d 322, 345, 962 P.2d 104, 115 (1998) (" 'Primary jurisdiction' is a doctrine which requires that issues within an agency's special expertise be decided by the appropriate agency."). *See* R000072. The King County trial court agreed. It referred the following questions to the WUTC:

(1) whether T-Netix or AT&T were operator service providers (OSPs); and

(2) if so, whether they violated WUTC regulations requiring OSPs to disclose rates to consumers. *Id.*

All further activity before the King County court was stayed. *Id.*

D. The First WUTC Proceedings and Appeal to Division I

Ms. Judd and Ms. Herivel filed a formal complaint with the WUTC against T-Netix and AT&T pursuant to the King County court's primary jurisdiction referral. Experts were retained, and extensive discovery and motions practice ensued. After five months of

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litigation, T-Netix filed a motion with the WUTC arguing that plaintiffs lacked standing. The administrative law judge ("ALJ") denied the motion. Her decision was affirmed by the full Commission.

In response, T-Netix obtained an order from the King County Superior Court lifting the stay. That allowed T-Netix to argue the same standing issue in Superior Court that it had lost before the WUTC. On September 7, 2005, Judge Ramsdell granted T-Netix's motion and revoked its referral to the WUTC. He then entered a second order applying that ruling to AT&T. This prompted the WUTC to dismiss the action pending before it. Plaintiffs appealed the King County court's orders of dismissal.

On December 18, 2006, Division I of the Court of Appeals reversed, instructing the King County Superior Court to refer the same two questions back to the WUTC. T-Netix's petition for review was denied. *Judd v. Am. Tel. & Tel. Co.,* 162 Wn.2d 1002, 175 P.3d 1092 (2007). Accordingly, the King County Superior Court reinstated the referral to the WUTC on March 21, 2008. R001919.

E. The Second WUTC Proceeding

The WUTC reopened the referral. There was extensive discovery and motion practice, including depositions in New Jersey, Vermont, Colorado, Texas, and Oregon. Finally, on April 21, 2010, the ALJ issued an initial order (Order 23) concluding that AT&T was legally required to disclose rates during the relevant time period. AT&T petitioned for review by the full Commission. The parties submitted briefs, and the Commission reopened the record, issuing bench requests for additional information. R005297-98.

On March 31, 2011, the Commission issued Order 25, a final order answering both questions referred by the King County court. The order concluded that: (1) AT&T was an operator services provider ("OSP"); and (2) AT&T violated WUTC regulations by failing to provide required rate disclosures. *Id.*, ¶¶84-85. T-Netix and AT&T appeal that decision under the judicial review provisions of the APA.

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III. T-NETIX RECEIVED DUE PROCESS BECAUSE IT RESPONDED TO COMPLAINANTS' ARGUMENT THAT AT&T VIOLATED THE REGULATIONS

T-Netix contends that the Commission violated T-Netix's right to due process, claiming "no party had the opportunity to present evidence or argument" on the issue of whether AT&T violated the rate quote regulation. T-Netix is wrong.

Shortly after this matter was first filed with the Commission, AT&T filed a motion for summary determination to resolve both of the referred questions. AT&T's motion requested that the Commission hold that: (1) it was not the OSP; and (2) it did not violate the Commission's regulations regarding rate disclosure. T-Netix later filed its own motion arguing that it was not the OSP. As described above, the underlying case was dismissed by the Superior Court for lack of standing. After the Court of Appeals reversed that decision, the referral was reinstated and discovery proceeded regarding the two referred questions. Contrary to T-Netix's argument, discovery was taken on both issues: whether T-Netix or AT&T was the OSP and whether required rate disclosures were provided. *See, e.g.,* R008138-141 (deposition examination regarding AT&T's failure to provide rate quoting in Washington).

After discovery was completed, both T-Netix and AT&T obtained permission to amend their motions for summary determination. They were permitted to update their submissions to include evidence acquired during discovery. R003170-74. AT&T's amended motion sought the same relief as its original motion: (1) a declaration that it was not the OSP for the collect calls from the DOC facilities, and (2) a declaration that it did not violate any "of the Commission's regulations applicable to an OSP or AOS company at those prisons and correctional facilities since June 20, 1996." R000121.

Complainants filed a single memorandum in opposition to both AT&T's and T-Netix's motions. R008082-8109. The memorandum addressed both issues, including the second issue raised by AT&T. Complainants presented evidence showing that rate quotes for intrastate calls were not being provided as required by the regulations. That evidence included testimony from AT&T admitting that it was not providing the required rate quoting for intrastate

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calls. *See* R008089-96; R008139-141. Complainants also submitted an August 2000 letter from AT&T to T-Netix. In it, AT&T complained that T-Netix would not implement intrastate rate quoting in Washington for AT&T without being paid to make changes to the P-III platform. R008123.

In addition, the complainants submitted declarations from Ken Wilson, a former AT&T employee and telecommunications expert, who had examined the P-III configuration maintained by T-Netix under contract with AT&T. He concluded that T-Netix needed to modify its platform at the Washington DOC facilities to provide intrastate rate quoting, but that did not occur until early 2001. R008119. That is, intrastate rate quoting was not possible during the loss period—1996-2000.

In their response to AT&T's and T-Netix's motions, complainants noted that this evidence was provided because

> AT&T's motion also asked for a declaration that it did not violate the regulations. As shown above, AT&T is liable for the failure to ensure that rate quotes were given as required by the regulations. As shown by Youtz Exhibit B, also discussed above, AT&T was aware that rate quotes were not being provided on intrastate calls from DOC facilities in Washington as required by the Commission's regulations.

R008095.

Both AT&T and T-Netix submitted replies to the complainants' response. AT&T chose not to respond to complainants' argument that rate quoting was not being provided in accordance with the regulations. AT&T chose not to address the evidence in support of the argument.[2] T-Netix, however, responded to the argument beginning in a section entitled "Complainants Improperly Argue And Describe T-Netix's Purported Violations Of WUTC

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[2] By doing so, AT&T waived its right to contest the resulting decision. Failure to submit argument on an issue that is raised does not give a party the right to delay resolution of that issue. If a party chooses to neither provide argument on the issue nor respond to others who do, then it waives its right to protest the result of its tactical decision. *See Satterfield v. Edenton-Chowan Bd. of Ed.*, 530 F.2d 567, 572 (4th Cir. 1975).

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Regulations." R003266. In this response, T-Netix observed that "Complainants contend that T-Netix did not provide rate quotes during the relevant time period and that 'it was clear that T-Netix was unwilling to do the work needed to add intrastate rate quoting unless it was paid additional money.'" R003267. Rather than produce any evidence that rate quoting was actually being provided, however, T-Netix claimed that complainants were simply trying to "tarnish" T-Netix in front of the Commission by claiming that "T-Netix refused to comply with regulatory requirements in order to extort money from a prime contractor." R003268. T-Netix then complained that as a vendor it was entitled to be paid for additional work needed to provide rate quoting. It chastised AT&T for its "attempt to shift blame for regulatory deficiencies, if any, to its subcontractor where that subcontractor merely refused to provide additional equipment or service without pay." R003269.

T-Netix could have put any evidence it wanted to in response to complainants' evidence. If the T-Netix equipment had been providing rate quoting for intrastate calls in Washington, T-Netix certainly could have obtained a declaration from its own employees or evidence from its own files to show so. Instead, it simply argued that it was not liable if rate quotes were not being provided in 1996-2000 because it was "not expected to provide or enable any rate disclosures" until January 1, 2001. R001367-368.

Despite its claim that it was denied the opportunity to present evidence regarding rate quoting, T-Netix argues that "many more documents in record support a finding of no violations than do the two documents on which the final order relies to find a violation." T-Netix brief at 15. T-Netix then points to portions of the record that it claims support an argument that rate quotes for intrastate calls were in fact being made during 1996 to 2000. (As shown in the next section, those efforts fail.)

T-Netix does not indicate what other evidence it may have that would have changed the Commission's decision. In fact, T-Netix claimed in 2008, that because of the passage of time it would be unable to shed any more light on what quoting was actually done at

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the Washington DOC sites. When asked by AT&T to identify all the services provided by T-Netix at the Washington DOC facilities, T-Netix responded:

> T-Netix responds that [it] lacks sufficient information at this time, years after the events at issue and after a number of intervening corporate and personnel changes, to determine with precision which services were provided by T-Netix to AT&T at which Washington State institution(s) at any particular period of time. T-Netix refers AT&T to TNXWA00001-599 for a list of products that would have been available for AT&T's use at any covered Washington State facility. Various Washington facilities may or may not have activated some or all of these products that were available on the T-Netix system.

R002100 (T-Netix response to AT&T Second Data Requests, Nov. 17, 2008).

Even though T-Netix does not mention what additional evidence it would submit, it claims that it is denied due process unless the Commission conducts a second proceeding to consider whether AT&T had violated the rate disclosure regulations. T-Netix does not claim that the Commission failed to follow any of its rules or procedures, but rather that it failed to provide a "fair opportunity to be heard on the merits." The Commission was not required to conduct a second proceeding when T-Netix and AT&T had the opportunity to make their arguments within the hundreds of pages of briefing and exhibits they submitted on the issues referred to the Commission. *Tobin v. Dep't of Labor & Indus.*, 145 Wn. App. 607, 619, 187 P.3d 780, 785-86 (2008) *aff'd*, 169 Wn.2d 396, 239 P.3d 544 (2010).

> Due process is a flexible concept, requiring "such procedural protections as the particular situation demands." *Mathews v. Eldridge,* 424 U.S. 319, 334, 96 S.Ct. 893, 896, 47 L.Ed.2d 18 (1976) (quoting *Morrissey v. Brewer,* 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972)); *accord Morris v. Blaker,* 118 Wash.2d 133, 144, 821 P.2d 482 (1992). The fundamental requirement of due process is notice and the opportunity to be heard. *Mathews,* 424 U.S. at 333, 96 S.Ct. at 902; *Soundgarden v. Eikenberry,* 123 Wash.2d 750, 768, 871 P.2d 1050, *cert. denied,* 513 U.S. 1056, 115 S.Ct. 663, 130 L.Ed.2d 598 (1994). So long as the party is given adequate notice and an opportunity to be heard and any alleged procedural irregularities do not undermine the

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> fundamental fairness of the proceedings, this court will not disturb the administrative decision.

Sherman v. State, 128 Wn.2d 164, 184, 905 P.2d 355, 367-68 (1995) *amended*, 61645-1, 1996 WL 137107 (Wash. Jan. 31, 1996).

> The plaintiff's citations of authority regarding the right to procedural due process in administrative hearings establish the principle that a person may not be deprived of a protected right unless he is first given notice and an opportunity to be heard. But none of them supports the proposition that a party is entitled to a hearing at every stage of the proceedings.
>
> * * *
>
> While she contends that she might have been able to sway the board, had she been given an opportunity to argue before it a second time, she does not point to any argument that could have been made that was not available to her or that was not, in fact, made at the hearing which was held.

Bowing v. Bd. of Trustees of Green River Cmty. Coll., Dist. No. X, 85 Wn.2d 300, 313, 534 P.2d 1365, 1373 (1975).[3]

From the outset in this referral, there have been two issues: (1) Is AT&T, T Netix, or both the OSP?; and (2) Did AT&T or T-Netix violate the rate disclosure regulations? Early in these proceedings, AT&T filed a motion to determine both issues. After discovery on both issues, AT&T amended its motion to add additional arguments and evidence, and retained its request that the Commission rule that it was not the OSP and to declare that it did not violate the rate disclosure regulations. As described above, the complainants' joint response to AT&T's and T-Netix's motions showed, through AT&T's own admissions, submissions by experts, and other evidence, that AT&T had violated the regulations. AT&T had the opportunity to respond to complainants' arguments and evidence, but chose not to. T-Netix also

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[3] T-Netix cites *Seattle Area Plumbers v. Washington State Apprenticeship and Training Council*, 131 Wn. App. 862 (2006). In that case a party challenging agency action had been denied discovery and was not permitted to cross-examine a witness regarding certain areas. That is far from our case. There were no restrictions placed on the briefs, and T-Netix has not suggested any area in which it was denied discovery.

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had the opportunity to respond to the argument in its reply memorandum, and did. However, it did not produce any countervailing evidence.

After the briefing was completed, the ALJ directed a bench request to T-Netix regarding the capability of the P-III system to provide rate quoting. R003483. Neither AT&T nor T-Netix objected to that request on the grounds that it was outside the scope of the proceeding. T-Netix responded to the request without objection. R007030-31.

Thus, both AT&T and T-Netix had: (1) notice that the Commission would consider whether the regulations were violated (and, AT&T, expressly asked it to do so), (2) notice of the complainants' arguments and evidence that the regulations were violated, and (3) an opportunity to respond with discovery, arguments and evidence. T-Netix received due process and is not entitled to an additional hearing. T-Netix does not seek due process. Instead, it seeks further delay of a case that has already been in the Superior Court, the Commission, the Superior Court, the Court of Appeals, the Superior Court, the Commission, and now before two Superior Courts, over the course of 11 years.[4]

IV. THE COMMISSION'S DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE

Although T-Netix complains that it did not have the opportunity to submit evidence of compliance, it nonetheless argues that there is substantial evidence in the record showing that the Commission's determination that there was no rate disclosure is wrong. T-Netix misses the mark.

T-Netix creates confusion regarding rate quoting by including materials regarding *inter*state rate quoting instead of ***intra***state rate quoting for the state of Washington. The T-Netix engineers noted that the P-III platform was configured to provide a rate quoting

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[4] T-Netix also argues that it was denied due process because it did not anticipate that the full Commission would consider the rate quoting issue and, had T-Netix so known, it would have submitted additional evidence and argument. T-Netix had no right, however, to submit any additional evidence or argument to the Commission. The purpose of the Commission's review was to make a decision based on the evidence and arguments as they existed before the ALJ and any additional evidence that the Commission subsequently requested.

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function (if turned on) for interstate telephone calls because of FCC requirements. In some states, that option was apparently being activated.[5] The presence of that option, however, did not make the system capable of providing rate quotes for ***intra***state calls. Former AT&T employee Wilson notes that the P-III platform used by the Washington DOC facilities was not configured or enabled to provide intrastate rate quoting until early 2001. R008119. A T-Netix witness noted only that in November 2000 the P-III platform was enabled for ***inter***state calls in order to meet FCC requirements. R007361. The brochure that the witness examined suggested that the platform "***may*** also be enabled for other types of calls, including local and intraLATA calls." *Id.* (emphasis added). Recipients of collect calls from DOC facilities during 1996-2000 confirmed that they did not receive rate quotes. *See* Decl. of Tara Herivel, R006196-97; Decl. of CLS paralegal Maureen Janega, R000959-59; and Decl. of Suzanne Elliott, R000955-956.

T-Netix points to the following evidence of alleged compliance with the intrastate rate quote regulation:

- **Deposition of Robert Rae at 221:13-222:2; 240:24-241:1; 246:19-25**. The referenced testimony simply mentions that the P-III platform uses voice chips to make announcements or prompts, such as a prompt for the prisoner to state his name. None of the testimony relates to rate quoting. *See* R007240-251.

- **Deposition of Scott Passé at 174:3-175:13**. The referenced testimony merely states that voice chips, installed on program chips, need to be changed as new features are added. *See* R007293. His testimony notes that voice chips are customized for a given site. R007294. The testimony does not relate to rate quoting.

- **Deposition of Alice Clements at 231:23-232:8**. The witness was asked about language used in one particular *inter*state rate quote that T-Netix gave in some unidentified location on June 14, 2000. The witness said it sounded like a general rate quote but concluded:

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[5] In February 2002, T-Netix asked for additional time to comply with the FCC requirements for interstate rate quoting. *See* R008117, ¶19.

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"I don't know." This has nothing to do with *intra*state rate quotes for Washington. Ms. Clements' testimony also indicates that she was not even sure whether the language was used on the P-III platform or a different platform sold by T-Netix and not used at DOC facilities in Washington. *See* lines 2 through 20 of page 231 of the transcript (R007360).

- **E-mail correspondence at R002207**. By referencing this single page, T-Netix risks misleading this Court into thinking that the cited page deals with Washington state rate quotes. The full e-mail chain (R002205-R002211) makes it clear that this e-mail exchange pertains to *inter*state rate quotes. AT&T was seeking to make sure that the phrase "for state to state calls" was included in the rate quotation. *See* R002209. AT&T was concerned that ***interstate*** rate quoting be implemented in ***Pennsylvania***. See R002210. One of the e-mails notes that the interstate rates were to be changed "at ALL adjunct locations and ***any premise locations where we have turned on the FCC Rate Announcement Feature***." This confirms that even the *inter*state rate quoting features were not activated for all premise sites. R002206 (emphasis added).

- **T-Netix response to Bench Request Number 4.** After briefing on the motion for summary determination was completed, the ALJ issued a bench request to T-Netix:

> Please indicate whether, from June 1996 through December 2000, the P-III premise platform was capable of: 1) providing consumers with instructions on how to receive rate quote and 2) providing consumers with rate quotes.

T-Netix carefully answered that "the P-III premise platform ***was capable*** of: (1) providing consumers with instructions on how to receive rate quote, and (2) providing consumers with rate quotes" (emphasis added). R007030-31. ***The question did not distinguish between interstate and intrastate rate quoting. Nor did it ask whether quotes were actually being provided.*** By parroting the exact phraseology of the question in its response, T-Netix avoided answering the relevant question: whether the P-III platforms used by the Washington DOC facilities were actually providing intrastate rate quoting.

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None of this "evidence" contradicts the evidence that AT&T was not providing rate quoting for intrastate calls from Washington DOC facilities. Further, it lends no support to the argument that the Commission's finding was not supported by substantial evidence.

T-Netix next complains that the Commission's decision is arbitrary and capricious and is not supported by substantial evidence because the Commission only referenced two documents in support of its conclusion (although the opinion actually refers to more). The appropriate inquiry under the judicial review section of the APA, however, is whether the factual finding is supported by the entire record, not just the evidence highlighted in the Commission's opinion. RCW 34.05.570(e).

Two documents referred to by the Commission, and that T-Netix argues are insufficient, are the declarations of T-Netix expert Allen Schott and complainants' telecommunication expert Kenneth Wilson. T-Netix claims that Mr. Schott's declaration was intended only to be used to identify the OSP. Yet, Mr. Schott was ***T-Netix's*** witness. Regardless of T-Netix's intent, Mr. Schott provided a detailed description of the prompts received by the call recipient, including the options that the call recipient had. He did not identify receiving rate quotes as an option.

Mr. Wilson also examined the P-III system. His May 2008 declaration (as well as his 2005 declaration) concluded that the call recipient did not have the option of a rate quote under the system as configured. R008114, R008119. T-Netix claims that this declaration should be stricken because it lacks foundation. However, T-Netix did not object to either of these declarations when given the opportunity to do so. R003545.[6]

T-Netix claims that the letter from AT&T to T-Netix regarding the need to implement rate quoting does not "confirm" the absence of any rate quote but, rather, "regards implementation of a particular rate quote content." T-Netix brief at 15. That is not even an

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[6] The parties had until April 12, 2010, to object to a selected group of exhibits, which included Mr. Wilson's 2008 declaration. None of the parties objected to the exhibits. *See* R003518.

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arguable reading of the letter. The letter states that AT&T and T-Netix needed to "***implement*** rate quote for intrastate calls from correctional facilities in Washington State," not change existing rate quote language. R008123 (emphasis added). Further, T-Netix does not even discuss related deposition testimony from the author of AT&T's letter, who states that the letter was sent ***because intrastate rate quoting in Washington was not being provided***. R008138-141.

There was plenty of other evidence that defendants provided no intrastate Washington rate quotes in 1996-2000. For example, the Commission also noted that as late as September 2000 it granted temporary waivers to Verizon and GTE because ***the P-III platforms at the DOC facilities were not configured to perform rate quoting***. The required rate-quoting technology was still in the process of being developed. Order 25, ¶56, R006835-36. T-Netix fails to address this evidence.

The APA only requires that factual findings be supported by substantial evidence:

> An agency's findings of fact are reviewed under a substantial evidence standard. *Hubbard v. Dep't of Ecology,* 86 Wn. App. 119, 123, 936 P.2d 27 (1997). " 'Substantial evidence is "evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premises." ' " *Heinmiller v. Dep't of Health,* 127 Wash.2d 595, 607, 903 P.2d 433, 909 P.2d 1294 (1995) (quoting *Nghiem v. State,* 73 Wn. App. 405, 412, 869 P.2d 1086 (1994)).

Motley-Motley, Inc. v. State, 127 Wn. App. 62, 77, 110 P.3d 812, 820 (2005). "This standard is highly deferential to the administrative fact finder." *Id.,* 127 Wn. App. at 72.

Clearly, if intrastate rate quoting was being provided as required, AT&T and T-Netix would quickly have brought those facts to the forefront. If intrastate rate quoting was the norm in 1996-2000, this case would be over. There would be no need to worry about whether AT&T or T-Netix was the OSP. AT&T and T-Netix would have offered evidence of rate quoting years ago.

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T-Netix notes that the ALJ failed, in her initial decision, to decide whether the rate disclosure regulations were violated. However, the initial decision expressly notes that the violation issue was raised by AT&T:

> AT&T filed an answer to the formal complaint and a Motion for Summary Determination (AT&T's Motion), requesting that the Commission find that AT&T was not an OSP during the period in question ***and that AT&T had not violated the Commission's regulations applicable to OSPs.***

Order 23, ¶5, R003540. The ALJ also noted the complainants' reference to AT&T's letter of August 25, 2000. She characterized that letter as "negotiations to implement rate disclosures for intrastate inmate telephone calls in the state of Washington." Order 23, ¶82, R003571.

The ALJ's mistake was in concluding that there was insufficient evidence to decide whether the regulations were violated. Order 23, ¶82, R003590. The full Commission disagreed. It determined that the evidence showed that rate quotes were not being provided during 1996 through 2000. It is the full Commission that has the final say:

> [T]he Legislature has made the judgment that the final authority for agency decision-making should rest with the agency head rather than with his or her subordinates, and that such final authority includes "all the decision-making power" of the hearing officer. RCW 34.05.464(4).

Tapper v. State Employment Sec. Dept., 122 Wn.2d 397, 405, 858 P.2d 494, 499 (1993). Thus, the full Commission had the right to conduct a *de novo* review and issue its own decision and fact findings from the record. T-Netix and AT&T do not dispute.

If an ALJ's findings are changed or not accepted by the Commission, they have no relevance for subsequent judicial review. *Regan v. State Dept. of Licensing*, 130 Wn. App. 39, 49, 121 P.3d 731, 737 (2005); *Valentine v. Dep't of Licensing,* 77 Wn. App. 838, 844, 894 P.2d 1352, *review denied,* 127 Wash.2d 1020, 904 P.2d 300 (1995)) ("To the extent that the Director's findings modified or replaced the ALJ's findings, we review only the Director's findings."). Thus, T-Netix's references to and reliance on the ALJ's findings must be disregarded.

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The Commission correctly determined that there was enough evidence to determine that AT&T violated regulations by failing to provide intrastate rate quoting. Its finding that AT&T violated those regulations was supported by substantial evidence. The Commission's order should be affirmed.

V. THE COMMISSION DID NOT ERR IN CONSIDERING TELEPHONE BILLS FROM CONSUMERS OTHER THAN THE COMPLAINANTS

T-Netix claims that the Commission erred in considering telephone bills to Columbia Legal Services. Those bills showed charges for collect calls from Washington DOC facilities, including Airway Heights. T-Netix claims that it was denied the opportunity to attack these bills. T-Netix, however, responded to these bills by asking the Commission to strike them. *See* T-Netix Motion to Strike and/or Exclude Exhibit A to Complainants' Response to Bench Request No. 7, R006173-178.

Both AT&T and T-Netix argued that the Commission's review of these bills was outside the scope of the referral from the King County court. This argument was rejected by the Commission:

> Nor do we find that bills to consumers other than the Complainants are irrelevant or beyond the scope of our jurisdiction pursuant to the Superior Court's referral. The Court asked the Commission to determine "whether AT&T or T-Netix were OSPs under the contracts at issue," which is a broader question than whether either company provided operator services to the Complainants. Indeed, we make no findings on the latter issue, leaving that determination to the Superior Court. Our charge is to determine whether AT&T or T-Netix was an OSP for collect calls placed during the relevant time period from the Correctional Facilities. Bills to any consumers who accepted those calls are relevant to that inquiry.

Order 25, ¶38, R006828-829.

Neither T-Netix nor AT&T objected to other evidence in the record showing that AT&T billed consumers other than the complainants for calls from Airway Heights (*see* Complainants' Response to Responses by AT&T and T-Netix to Bench Requests 11, 12, 13, 14, and 15, ¶¶6-9, R006612-614 and referenced exhibits). *See also* Ms. Judd's bills showing that

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she was billed by AT&T for operator assisted (*i.e.*, collect) calls from Clallam Bay (R005445). Even if the Commission's review of these bills somehow violated due process, T-Netix has not shown that it was prejudiced by inclusion of these bills in the record. Without showing that prejudice, the Commission's order should not be modified or vacated in any part. *Motley-Motley, Inc.,* 127 Wn. App. at 81.

T-Netix also argues that the ALJ implicitly found bills to non-complainants irrelevant when she placed certain limits on the complainants' discovery rights. The Commission, however, is not bound by the rulings made by an individual ALJ. *See* cases at pp. 16-17, *supra.* In any event, the referral order from the Superior Court asked generally whether AT&T and T-Netix were operator service providers; it did not limit that inquiry only to calls received by the plaintiffs. T-Netix and AT&T were offered the opportunity to have this issue reviewed by the trial court that made the referral to see if the Commission was wrong, but chose not to do so.[7]

The Commission properly considered the evidence of collect telephone calls received by consumers from Washington DOC facilities in identifying the OSP for those calls. The Commission's decision should not be vacated or modified because it considered this evidence.

VI. CONCLUSION

For the reasons stated above, and for reasons set forth in complainants' response to AT&T's petition for administrative review, the Commission's Final Order No. 25 should be affirmed in all respects.

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[7] T-Netix and AT&T undoubtedly realized that this argument would fail since the King County Superior Court rejected their objections and allowed the complaint to be amended to add Columbia Legal Services as a class representative.

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