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IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

SANDY JUDD, TARA HERIVEL and
COLUMBIA LEGAL SERVICES, for
themselves, and on behalf of all similarly
situated persons,

Plaintiff,

v.

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY; GTE
NORTHWEST INC.; CENTURYTEL
TELEPHONE UTILITIES, INC;
NORTHWEST TELECOMMUNICATIONS,
INC., d/b/a PTI COMMUNICATIONS, INC.;;
U.S. WEST COMMUNICATIONS, INC.; T-
NETIX, INC.,

Defendants.


Case No.: 00-2-17565-5 SEA

AT&T'S APRIL 2, 2013 LETTER TO
THE COURT

Attached for the court file is a copy of the April 2, 2013 letter from AT&T to the Court.

1 DATED this 2nd day of April, 2013.

2 STOKES LAWRENCE, P.S.

3
4 By: 
5 Bradford J. Axel (WSBA #29269)
6 1420 Fifth Avenue, Suite 3000
7 Seattle, WA 98101
8 Telephone: (206) 626-6000
9 Fax: (206) 464-1496

10 Attorneys for Defendant AT&T Corp.

1 DECLARATION OF SERVICE

2 I do hereby certify that on this 2nd day of April, 2013, I caused to be served a true and
3 correct copy of the foregoing AT&T's April 2, 2013 Letter to the Court by the method indicated
4 below and addressed to the following:

5
6 *Via Email*
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18 I declare under penalty of perjury under the laws of the State of Washington that the
19 foregoing is true and correct.

20 EXECUTED at Seattle, King County, Washington, this 2nd day of April, 2013.

21
22 
23 _____
24 Bradford J. Axel

April 2, 2013

Via Messenger

Honorable Beth M. Andrus
King County Superior Court
516 Third Avenue, Court Room W-719
Seattle, Washington 98104

Re: *Judd v. AT&T, et al.*, Case No. 00-2-17565-5 SEA

Dear Judge Andrus:

Enclosed is a copy of AT&T's *Motion for Clarification of the Court's Order of March 21, 2013 or, in the Alternative, for Modification of the Order to Permit Approval of a Settlement by the King County Superior Court*, which AT&T filed yesterday with the Court of Appeals.

Sincerely,

STOKES LAWRENCE, P.S.



Bradford J. Axel

cc: All Counsel of Record (via email)

01000-006 \ 715355.docx

Stokes Lawrence, P.S.

No. 42966-7

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.,
Appellant,
v.
WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION,
Respondent,
and
SANDY JUDD and TARA HERIVEL,
Intervenors/Respondents,
and
T-NETIX, INC.,
Interested Party.

APPELLANT'S MOTION FOR CLARIFICATION OF THE COURT'S
ORDER OF MARCH 21, 2013 OR, IN THE ALTERNATIVE, FOR
MODIFICATION OF THE ORDER TO PERMIT APPROVAL OF A
SETTLEMENT BY THE KING COUNTY SUPERIOR COURT

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Appellant AT&T Corp. respectfully moves for a determination whether the Court's March 21, 2013 Order and RAP 7.2 permit the King County trial court to approve a settlement between plaintiffs and AT&T in the underlying litigation.

In the Court's March 21, 2013 Order, it stayed the King County trial court's February 24, 2012 Order that vacated the primary jurisdiction referral to the WUTC of the second question that had previously been referred to it. This second referred question was whether the WUTC's rate disclosure regulations had been violated by whichever entity was the Operator Service Provider ("OSP").

AT&T's sole objective in this motion is to determine whether the King County Superior Court may now proceed to approve a settlement entered between the plaintiffs and AT&T in the underlying litigation. This settlement moots the second referred question -- which is not now being litigated. By contrast, the King County Court's approval of the settlements will have no effect on this Court's review of the only question raised in AT&T's pending appeal: the lawfulness of the WUTC's determination that AT&T was the OSP. That was the first question referred to the WUTC, and the answer to that question is central to the determination of the indemnification dispute between AT&T and T-Netix,

which has not been settled and which will require decision by this Court in all events.

AT&T provided a detailed summary of the background to the King County trial court's February 24, 2012 order and of the subsequent proceedings in that court in the supplemental brief that it has simultaneously filed today in response to the Court's separate Order of March 22, 2013. But to summarize the key point in that filing, AT&T's respect for this Court's jurisdiction is absolute. Prior to February 2012, AT&T had moved to stay *all* proceedings in the King County Superior Court until the appeals from the WUTC's Final Order were concluded. The King County trial court denied that motion because of its concerns about the lengthy delays in the underlying litigation, and when the King County court later suggested the withdrawal of the primary jurisdiction referral of the second question, AT&T filed a motion seeking that withdrawal on February 14, 2012. AT&T proceeded in good faith. It did not believe that withdrawal of the referral of this question was inconsistent with RAP 7.2. Similarly, while plaintiffs opposed AT&T's motion, neither plaintiffs nor any other party to the case raised an issue under RAP 7.2, much less argued that RAP 7.2 would bar the King County court from granting the motion in the absence of this Court's prior permission.

AT&T's counsel has understood that RAP 7.2 applied only when trial court action could affect judgments that are currently being reviewed by appellate courts. Because no party had appealed the Thurston County court decision that remanded the second question to the WUTC on procedural grounds, AT&T believed that both the terms and purposes of RAP 7.2 were inapplicable. AT&T also did not believe that RAP 7.2 would restrict a King County trial court from acting in a case when no decision of that court was being reviewed by this Court. AT&T would not have proceeded in the way it did if it had recognized that this Court might later conclude that this violated RAP 7.2.

And now that Commissioner Schmidt has provisionally so ruled and stayed the February 24, 2012 Order of the King County trial court, AT&T wants to assure that there are no further violations of this Court's interpretation of RAP 7.2 and no violation of the Court's stay order. AT&T files the instant motion because there is now pending before the King County trial court a motion for preliminary approval of a settlement between the plaintiffs in the underlying action and AT&T. Although this motion was filed by plaintiffs – and not AT&T – the motion obviously affects an agreement to which AT&T is a party, and AT&T wants to be certain that the King County trial court's decision on this motion does not violate the Court's Order or its interpretation of RAP 7.2. AT&T believes

that there are two grounds on which the King County court can be authorized to proceed.

First, it is not clear whether the King County court's decision granting the motion for approval would in fact violate the Court's stay order, and AT&T moves for clarification whether the Order bars this approval. Specifically, the Court's March 21, 2013 Order stays only the February 24, 2012 Order of the King County court that vacated the referral to the WUTC of the question whether the WUTC's rate disclosure rules had been violated by whichever parties were the OSPs on long distance intrastate inmate collect calls completed in Washington between June 20, 1996 and December 31, 2000. To be sure, it would be inconsistent with the stay if the court were now to litigate that issue.

However, the King County court is not doing so. It previously determined that the rate disclosure rules were violated, and while AT&T has substantial claims that this determination was incorrect, those claims have been compromised in the settlement with plaintiffs. Further, the parties could have entered into a settlement in the absence of any litigation of these issues. Therefore, there appears to be grounds for a conclusion that approval of the settlement would not violate the stay order, and if this Court agrees, AT&T respectfully requests that the Court enter an order clarifying that the King County Court may approve the settlement.

Second, if the Court concludes that the stay order would prohibit approval of the settlement agreement – or if the Court concludes that RAP 7.2(e) requires its permission before the settlement agreement may be approved – the Court could, in the alternative, modify the stay order and grant the King County trial court permission to rule upon the motion for preliminary approval of the settlement.

By its terms, RAP 7.2(e) authorizes appellate courts to grant permission to trial courts to address issues in cases that are also pending on appeal. This appears to be an appropriate circumstance for the Court to grant this permission. The only issue that any aggrieved party has appealed – and the only issue addressed in the opening and reply briefs – is whether the WUTC correctly held that AT&T is the OSP on the calls in question, and courts hold that the only issues that they will decide are those that were appealed by a party. If the King County trial court now approves the settlement between plaintiffs and AT&T, the issue of the identity of the OSP will still be required to be decided and will be in precisely the same posture, both procedurally and substantively, as it would have been if there were no settlement. Thus, granting the requested permission to the King County court will not present the evil that RAP 7.2 was designed to prevent, for this is not a case in which a trial court's

action will in any way alter an issue that has been properly appealed and that the appellate court has invested resources in addressing.

To be sure, it is legitimate for the Court to consider the WUTC's decision on the second referred question in determining whether the WUTC committed reversible error in its resolution of the first referred question. As AT&T has demonstrated in its brief filed today, the decision on the second referred question (like the decision on the first referred question on the identify of the OSP) reflects a determination to impose liability on AT&T and a disregard of settled principles. But the approval of the settlement will not affect the Court's ability to consider the WUTC's Order as a whole in connection with its determination whether the only issue appealed – the OSP issue – was lawfully decided.

A final practical consideration is that the violation of RAP 7.2 that the Court has found was a result of a good faith belief that the rule did not apply. No party to the case even argued otherwise in February 2012, and the parties conducted extensive further proceedings in the King County Superior Court based on the good faith belief that the referral of the second question had been vacated. In addition, they have now entered into settlements that could have been agreed to even if none of these proceedings had occurred. Because the law encourages settlements and because approval of the settlement will not affect the only issue that has

been appealed and fully briefed in this Court, there are substantial grounds for granting the King County trial court permission to approve the settlement if the Court determines that its approval is required.

CONCLUSION

For the foregoing reasons, AT&T respectfully requests that the Court consider either (1) clarifying that its permission is not required for the King County trial court to approve the settlement between plaintiffs and AT&T or (2) granting this permission to the King County trial court.

Dated: April 1, 2013

Respectfully submitted,



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CERTIFICATE OF SERVICE

I do hereby certify that on this 1st day of April, 2013, I caused to be served a true and correct copy of the foregoing as follows:

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

EXECUTED at Seattle, King County, Washington, this 1st day of April,
2013.



Bradford J. Axel