

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SANDRA JUDD, et al.,

Complainants,

v.

AT&T COMMUNICATIONS OF THE
PACIFIC NORTHWEST, INC.; and
T-NETIX, INC.,

Respondents.

DOCKET NO. UT-042022

**COMPLAINANTS' RESPONSE TO RESPONDENTS' OBJECTIONS TO
DESIGNATION OF EXPERT**

1. On April 5, 2005, AT&T faxed a letter to Complainants' counsel and objected to the designation by Complainants of Brooks Harlow as an expert who may review Confidential or Highly Confidential Information. The letter is attached as Exhibit A. T-Netix faxed a similar objection on April 6, 2005. *See* Exhibit B.

2. The Protective Order (paragraph 6) entered in this matter provides that any party may object to the designation of an expert as a person who may review Confidential or Highly Confidential Information. After receiving a written response, the Commission may order that the information not be disclosed to the proposed expert, for "good cause shown."

3. Complainants disclosed Brooks Harlow as an expert on March 25, 2005. Mr. Harlow signed, and Complainants served and filed, an Exhibit B and C to the

Protective Order, obligating Mr. Harlow to comply with the non-disclosure provisions of the Order.

4. The objections of AT&T and T-Netix to Mr. Harlow are virtually identical. Both contend that he: (1) "would have little, if any, expertise relevant to the issues in this proceeding"; and (2) represents competitors of the Respondents.

5. The objections do not meet a "good cause shown" standard. Mr. Harlow is an attorney with many years of experience in telecommunications law. Respondents' cursory letters do not articulate any basis for their suggestion that Mr. Harlow lacks expertise in the issues raised in this proceeding, aside from conclusory speculation that Mr. Harlow will not bring any non-legal expertise to the table. Any attempt to disqualify Mr. Harlow on competence grounds is premature, as neither AT&T nor T-Netix has produced documents to Complainants (aside from certain contract documents that were already in the possession of Complainants). Speculation concerning Mr. Harlow's inability to assist Complainants in an expert capacity is premature, lacks foundation, and fails to meet a good cause standard.

6. It appears that the real thrust of the Protective Order's provision for disqualifying an expert for purposes of reviewing Confidential or Highly Confidential Information is competition-related concerns. In this regard, neither Respondent has demonstrated that Mr. Harlow is incapable of adhering to the confidentiality provisions of the Order. Nor has either Respondent explained why any competitive harm is likely to result from Mr. Harlow's review of documents. Indeed, no one has even asserted that such harm is likely to occur. We are simply left with the assertion

that Mr. Harlow represents competitors. Respondents have not met their burden of demonstrating "good cause" for disqualification.

7. Complainants expect to receive documents responsive to their data requests shortly. Complainants respectfully request that the Commission find that Respondents have failed to meet their burden of demonstrating good cause and conclude that Mr. Harlow may review such documents.

DATED: April 11, 2005.

SIRIANNI YOUTZ
MEIER & SPOONEMORE



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CERTIFICATE OF SERVICE

I certify, under penalty of perjury and in accordance with the laws of the State of Washington, that on April 11, 2005, I served a copy of the foregoing document on all counsel of record in the manner shown and at the addresses listed below:

Charles H.R. Peters SCHIFF HARDIN LLP 6600 Sears Tower Chicago, IL 60606-6473 Attorneys for Respondent AT&T	<input checked="" type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Federal Express <input checked="" type="checkbox"/> By Facsimile Fax: (312) 258-5600 Phone: (312) 258-5500
Letty S.D. Friesen AT&T 919 Congress Avenue, Suite 900 Austin, TX 78701-2444 Attorneys for Respondent AT&T	<input checked="" type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Federal Express <input checked="" type="checkbox"/> By Facsimile Fax: (303) 298-6301 Phone: (303) 298-6475
Laura Kaster AT&T One AT&T Way, Room 3A213 Bedminster, NJ 07921 Attorneys for Respondent AT&T	<input checked="" type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Federal Express <input checked="" type="checkbox"/> By Facsimile Fax: (832) 213-0130 Phone: (908) 532-1888
Arthur A. Butler ATER WYNNE LLP 601 Union Street, Suite 5450 Seattle, WA 98101-2327 Attorneys for Respondent T-NETIX, Inc.	<input checked="" type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Federal Express <input checked="" type="checkbox"/> By Facsimile Fax: (206) 467-8406 Phone: (206) 623-4711
Stephanie A. Joyce Glenn B. Manishin KELLEY DRYE & WARREN LLP 1200 19 th Street, NW, Suite 500 Washington, DC 20036 Attorneys for Respondent T-NETIX, Inc.	<input checked="" type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Federal Express <input checked="" type="checkbox"/> By Facsimile Fax: (202) 955-9792 Phone: (202) 955-9890

DATED: April 11, 2005, at Seattle, Washington.

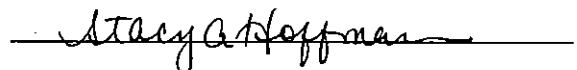


EXHIBIT A



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April 5, 2005

VIA FACSIMILE

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**Re: Judd, et al. v. AT&T and T-Netix
WUTC Docket No. UT-042022**

Dear Counsel:

Pursuant to paragraph 6 of the Protective Order entered in the above-referenced proceeding, please be advised that Respondent AT&T Communications of the Pacific Northwest, Inc. ("AT&T") objects to the designation by Complainants of Brooks Harlow as an outside expert who may review Confidential or Highly Confidential Information. AT&T objects on the ground that Mr. Harlow is an attorney who, outside of legal expertise, would have little, if any, expertise relevant to the issues in this proceeding. AT&T further objects on the ground that Mr. Harlow frequently represents competitors of AT&T.

Very truly yours,

Charles H.R. Peters by *David C. Scott*
Charles H.R. Peters

cc: Letty S.D. Friesen
Laura Kaster

EXHIBIT B

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April 6, 2005

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Re: Judd, et al. v. AT&T and T-Netix
WUTC Docket No. UT-042022

Dear Dear Counsel:

Pursuant to paragraph 6 of the Protective Order in this proceeding, please be advised that Respondent T-Netix objects to the designation by Complainants of Brooks Harlow as an outside "expert" entitled to review Confidential or Highly Confidential Information. T-Netix, like AT&T, objects on the grounds that Mr. Harlow is an attorney who, apart from legal expertise, would have little, if any, expertise relevant to the issues in this proceeding. Also, Mr. Harlow regularly represents competitors of T-Netix, including the Northwest Payphone Association.

Very truly yours,

ATER WYNNE LLP



Arthur A. Butler

cc: Stephanie A. Joyce
Glenn B. Manishin