

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' OPPOSITION TO  
AT&T'S MOTION FOR LEAVE TO  
FILE A REPLY TO COMPLAINANTS'  
RESPONSE TO T-NETIX' MOTION TO  
STRIKE

1. The complainants provided their response to Bench Request Number 7 on October 20, 2010. The Commission allowed the parties to respond to any other party's responses by October 27, 2010. AT&T submitted a six page response on that date to the complainants' response and had the full opportunity to raise whatever objections it felt were appropriate. T-Netix chose to respond to complainants' response by submitting a motion to strike. AT&T now seeks to add additional objections to complainants' response by submitting a "reply" to T-Netix' motion.

2. The additional response by AT&T to complainants' response to the bench request is untimely. The Commission specifically ordered that responses to the bench requests be made by October 27, 2010. Further, the procedural rules provide that "[a] party may raise an objection based on the content of a bench request response within

five days after distribution of the response," which would also be October 27. *See*, WAC 480-07-405(6)(c).

3. Thus, whether treated as a "response" or "objection," AT&T's submission is untimely.

4. AT&T attempts to get around these time limitations by labeling its further response as a "reply" in support of a motion that it did not bring. The motion to strike was filed by T-Netix, who has also brought a motion to file a reply to the complainants' opposition to that motion. AT&T has no standing to file a reply in support of a motion that it did not bring.

5. In addition, reply memoranda are not generally permitted under the Commission's rules and require justification before they are allowed. The only justification offered by AT&T to throw yet another memorandum into the mix arising from the bench requests is that the motion and the complainants' response to that motion "implicate and affect AT&T's interests." AT&T motion, paragraph 2. There is no showing regarding why this "reply" is necessary, especially given the extensive response submitted on October 27 by AT&T regarding the document that is the subject of the motion to strike.

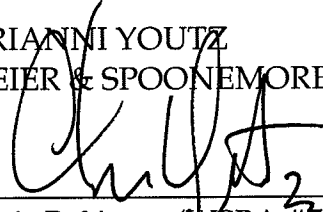
6. Further, reply memoranda are not permitted to raise new arguments. "An issue raised and argued for the first time in a reply brief is too late to warrant consideration." *Cowiche Canyon Conservancy v. Bosley*, 118 Wash. 2d 801, 809, 828 P.2d 549, 553 (1992). AT&T submits new arguments in its proposed reply suggesting that the bills from CLS may not be relevant because CLS "may" have purchased service "which

may have been provided" under a tariff that AT&T claims may not be subject to the rate disclosure requirements (although AT&T does not explain why collect telephone calls made under the unnamed tariff that it describes would not be subject to rate disclosure requirements). This is a new argument should not be permitted to be made without an opportunity for the complainants to respond.

7. Accordingly, AT&T's motion for leave to file a reply brief should be denied.

DATED: November 17, 2010.

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## SERVICE LIST

Pursuant to WAC 480-07-150, I certify that on November 17, 2010, I served a copy of the foregoing on all counsel of record by e-mail and U.S. Mail at the below addresses:

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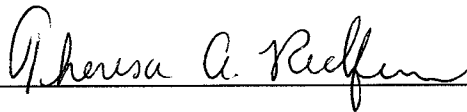
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Pursuant to WAC 480-07-145, I further certify that on November 17, 2010, I filed MS Word and PDF versions of the listed documents by e-mail, and the original and 12 copies of the listed documents by overnight delivery (Federal Express or UPS), with the WUTC at the below address:

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Pursuant to the Prehearing Conference Order 08, I further certify that on November 17, 2010, I provided a courtesy copy of the listed documents, in MS Word, to Administrative Law Judge Marguerite E. Friedlander by e-mail to [mfriedla@utc.wa.gov](mailto:mfriedla@utc.wa.gov).

DATED: November 17, 2010, at Seattle, Washington.

  
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