

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 AT&T's OBJECTION TO
DESIGNATION OF EXPERT**

Alleged Basis for Objection

1. Complainants disclosed Ken Wilson, of Boulder Telecommunications Consultants LLC, as an expert on April 19, 2005. Mr. Wilson's curriculum vitae is attached to his declaration, which is filed concurrently herewith. On April 29, 2005, Mr. Wilson signed, and Complainants served and filed, an Exhibit B and C to the Protective Order, obligating Mr. Wilson to comply with the non-disclosure provisions of the Order. Mr. Wilson has not reviewed any documents designated as confidential in this proceeding.

2. On April 29, 2005, AT&T faxed a letter to Complainants' counsel and objected to the designation by Complainants of Ken Wilson as an expert who may

review Confidential or Highly Confidential Information. The letter is attached as Exhibit A. T-Netix has not objected to Mr. Wilson.

3. AT&T states that Mr. Wilson should be barred from reviewing Confidential or Highly Confidential information because “[a]ny expert opinion provided by Mr. Wilson inevitably will result in the disclosure or improper use of the proprietary and confidential information to which Mr. Wilson was granted access, in confidence, as an employee of and consultant to AT&T.” Exh. A. AT&T notes that Mr. Wilson was a former employee of AT&T and that, after leaving AT&T, he performed consulting work for it. It further states that he had access to proprietary and confidential information and “assumed obligations not to disclose or improperly use such information.” *Id.*

Argument

4. The Protective Order 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. Protective Order, ¶ 6. The objection will be denied unless the objecting party demonstrates “good cause” for barring the expert from access to confidential information. *Id.* Because the Protective Order is designed to minimize the risk that confidential information might become available to persons who have no legitimate need for such information and to prevent competitive injury, *id.*, ¶ 1.d., “good cause” necessarily requires AT&T to identify some concrete, competitive harm that will result from showing confidential information to Mr. Wilson.

5. AT&T has not begun to shoulder its burden. As explained by Mr. Wilson in the accompanying declaration, he worked for Bell Labs and then AT&T's Local Services Division, but never had access to confidential information regarding phone calls from prisons. Wilson Decl., ¶ 3. When he retired from AT&T in 1998, he returned all confidential information. *Id.*, ¶ 4. He is not aware of any agreement arising out of his AT&T employment that would prohibit him from rendering an expert opinion in this proceeding. *Id.*

6. Mr. Wilson's consulting work for AT&T did not involve confidential information that would be relevant to this proceeding. *Id.*, ¶ 6. He was exposed to very little AT&T confidential information, as the work he performed was not subject to the attorney-client privilege. *Id.* The two WUTC proceedings in which he was involved as an AT&T consultant did not involve information relevant to this proceeding. *Id.*, ¶ 8.

7. Mr. Wilson's consulting agreement with AT&T included a non-competition provision and a non-disclosure provision. *Id.*, ¶¶ 5-6. The non-compete has expired, and would not have prevented him from serving as an expert in this proceeding anyway. *Id.*, ¶ 5. The non-disclosure provision is not applicable here because the proprietary information to which Mr. Wilson had access as a consultant is not information that would be relevant to this proceeding. *Id.*, ¶ 6.

8. AT&T has not shown how Mr. Wilson's review of confidential information will present any risk of competitive injury. He has already signed Exhibits B and C to the Protective Order, which will obligate him to refrain from

disclosing confidential information outside this proceeding. As Complainants' expert, he has a legitimate need to review confidential information.

9. Even if Mr. Wilson possessed confidential information relevant to this proceeding—and he denies this—AT&T has not demonstrated why the mere possession of such information will result in competitive injury or some other harm. The Protective Order focuses on harm that may occur *as a result* of exposure to confidential documents in this proceeding, not on an expert's knowledge of confidential information that he *brings* to a proceeding. Vague allegations of "improper use" of confidential information do not meet a "good cause" standard.

10. Ironically, AT&T has produced no confidential documents in this proceeding and refuses to do so while T-Netix's motions are pending. But Complainants have received confidential documents from T-Netix. A number of these documents are relevant to T-Netix's pending motion for summary determination. AT&T's objection has prevented Mr. Wilson from reviewing these documents. While the Protective Order grants AT&T the right to object, the lack of any detailed foundation or explanation for the objection calls into question AT&T's good faith.

11. Complaints respectfully request that the Commission deny AT&T's objection.

DATED: May 4, 2005.

SIRIANNI YOUTZ
MEIER & SPOONEMORE

/s/ Jonathan P. Meier

Jonathan P. Meier (WSBA #19991)
Attorneys for Complainants

1100 Millennium Tower
719 Second Avenue
Seattle, WA 98104
Tel.: (206) 223-0303
Fax: (206) 223-0246

CERTIFICATE OF SERVICE

I certify, under penalty of perjury and in accordance with the laws of the State of Washington, that on May 4, 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

By United States Mail
 By Legal Messenger
 By Federal Express
 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

By United States Mail
 By Legal Messenger
 By Federal Express
 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

By United States Mail
 By Legal Messenger
 By Federal Express
 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.

By United States Mail
 By Legal Messenger
 By Federal Express
 By Facsimile
Fax: (206) 467-8406
Phone: (206) 623-4711

Stephanie A. Joyce
Glenn B. Manishin
KELLEY DRYE & WARREN LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
Attorneys for Respondent T-NETIX, Inc.

By United States Mail
 By Legal Messenger
 By Federal Express
 By Facsimile
Fax: (202) 955-9792
Phone: (202) 955-9890

DATED: May 4, 2005, at Seattle, Washington.

_____/s/ Jean Fallow

EXHIBIT A



6600 SEARS TOWER
CHICAGO, ILLINOIS 60606
t 312.258.5500
f 312.258.5600
www.schiffhardin.com

Charles H.R. Peters
312.258.5683
Email: cpeters@schiffhardin.com

April 29, 2005

VIA FACSIMILE

Jonathan P. Meier
SIRIANNI YOUTZ MEIER & SPOONEMORE
719 Second Avenue, Suite 1100
Seattle, Washington 98104
Fax No. (206) 223-0246

Glenn B. Manishin
KELLEY DRYE & WARREN LLP
8000 Towers Crescent Drive, Suite 1200
Vienna, Virginia 22182
Fax No. (703) 918-2450

Arthur A. Butler
ATER WYNNE LLP
601 Union Street, Suite 5450
Seattle, Washington, 98101
Fax No. (206) 467-8406

Stephanie A. Joyce
KELLEY DRYE & WARREN LLP
1200 19th Street, NW, Suite 500
Washington, D.C. 20036
Fax No. (202) 955-9792

**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 Ken Wilson as an outside expert who may review Confidential or Highly Confidential Information. AT&T objects on the ground that Mr. Wilson is a former employee of AT&T and that, after leaving AT&T, he and Boulder Telecommunications Consultants, LLC provided consulting services to AT&T. As part of his past relationship with AT&T, Mr. Wilson gained access to AT&T's proprietary and confidential information and assumed obligations not to disclose or improperly use such information. Any expert opinion provided by Mr. Wilson inevitably will result in the disclosure or improper use of the proprietary and confidential information to which Mr. Wilson was granted access, in confidence, as an employee of and consultant to AT&T.

Very truly yours,

A handwritten signature in black ink, appearing to read 'CHP', written over a horizontal line.

Charles H.R. Peters

cc: Letty S.D. Friesen
Laura Kaster