

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SANDY JUDD, et al.,

Complainant,

v.

**AT&T Communications of the Pacific Northwest,
Inc. and T-Netix, Inc.**

Respondents

Docket No. UT-042022

NOTICE OF FILING

TO: Counsel of Record Listed on Certificate of Service

PLEASE TAKE NOTICE that on Monday, May 9, 2005, AT&T caused to be filed with the Executive Secretary of the Washington Utilities and Transportation Commission, AT&T's Reply in Support of Its Objection to Complainants' Expert Designation in the above-referenced proceeding, a copy of which is attached hereto and served upon you.

Dated: May 9, 2005

**AT&T COMMUNICATIONS OF
THE PACIFIC NORTHWEST, INC.**

By: /s/ Letty S.D. Friesen (by David C. Scott)

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**AT&T'S REPLY IN SUPPORT OF ITS OBJECTION
TO COMPLAINANTS' EXPERT DESIGNATION**

1. Respondent AT&T Communications of the Pacific Northwest, Inc. ("AT&T") objects to Complainants' designation of Kenneth L. Wilson ("Mr. Wilson") as their expert in this proceeding. Until 1998, Mr. Wilson was an employee of AT&T, and after 1998, Mr. Wilson served as a consultant to AT&T on several matters, including proceedings before this Commission. AT&T objects to the designation of Mr. Wilson as Complainants' expert on the grounds that, (a) during his employment, Mr. Wilson had access to AT&T's confidential and trade secret information and is obligated to preserve its integrity; and (b) during his consulting work, Mr. Wilson also had access to confidential and trade secret information regarding AT&T and its competitors that he was and is not to use or disclose for any other purpose than that set out in the particular proceeding's confidentiality orders and his consulting contract. AT&T does not seek to prevent Mr. Wilson from utilizing his *general knowledge and experience* as an engineer. Rather, AT&T hopes to stop Mr. Wilson from improperly disclosing AT&T's *confidential and trade secret information* in violation of his obligations to maintain its secrecy. In this proceeding, Mr. Wilson cannot provide an expert opinion without violating these obligations.

2. Complainants and Mr. Wilson readily concede that, through his past experience with AT&T, Mr. Wilson gained access to AT&T's confidential and trade secret information. Complainants' Response to AT&T's Objection to Designation of Expert ("Compls.' Resp.") at ¶¶ 5-6; Declaration of Kenneth L. Wilson Re: Confidentiality ("Wilson Decl. Re: Confidentiality") at ¶¶ 3-4, 6.

3. Moreover, Complainants and Mr. Wilson concede that Mr. Wilson is bound by a Nondisclosure Agreement, which prohibits him from disclosing, using, or permitting others to use AT&T's confidential and trade secret information, including unwritten knowledge, without AT&T's consent. Ex. A at ¶¶ 1-2.¹ The obligations imposed upon Mr. Wilson by the Nondisclosure Agreement are ongoing, a point Complainants and Mr. Wilson do not, and cannot, dispute. Ex. A at ¶ 12.

4. Complainants' only response is to argue that the confidential and trade secret information to which Mr. Wilson gained access is not "relevant to this proceeding" because it did not relate specifically to "phone calls from prisons." Compls.' Resp. at ¶¶ 5-7; Mr. Wilson Decl. Re: Confidentiality at ¶¶ 3, 6, 9.

5. However, Complainants' own filings belie the narrow characterization of this proceeding set forth in Complainants' response brief. First, Mr. Wilson has already submitted a declaration in support of Complainants' response to T-Netix's motion for summary determination that involves information regarding AT&T's and other companies' network

¹ A copy of the Nondisclosure Agreement is attached hereto as Exhibit A. The Nondisclosure Agreement was also incorporated into the Services Agreement between Mr. Wilson's consulting company and AT&T, a copy of which is attached hereto as Exhibit B. *See* Ex. B at 4, Section 12.

structure and interconnections. *See* Ex. C at ¶ 7.² In this declaration, Mr. Wilson provides a detailed analysis of the “call flow from a prison inmate to the person they are calling.” *Id.* His analysis describes the networks, connections, switches, and other technical aspects of the telecommunications infrastructure. *Id.*

6. Second, Complainants’ own data requests make it apparent that they intend to discover and use information about AT&T’s network structure. *See, e.g.,* Ex. D at 5-6, Nos. 10-13.³ For example, in Data Request No. 10, Complainants state:

Please describe in detail and in sequence every step and link in how inmate-initiated calls are routed from the inmate to the called party, including: the local exchange and interexchange lines, switches, call control and billing hardware and software, signaling and switching systems and protocols, and every other facility used to validate, complete, and bill a call.

- (a) If there are different processes or paths for different types of calls, identify the different types of calls and provide the same detail for each type of call.
- (b) If the process or paths have changed during the time periods in which inmate-initiated calls have been placed, please identify the different processes or paths for each discrete time period.

Ex. D at 5. And in Data Request No. 11, Complainants ask for all documents related to the broad inquiry in Data Request No. 10. *Id.* In addition, Data Request No. 12 instructs, “[f]or each facility identified in the data request no. [10], identify what entity owns or operates the facility and describe in detail your financial, billing, practice or other arrangement with the entity”⁴ and Data Request No. 13 seeks all documents related to this broad inquiry. Ex. D at 6.

² A copy of the Declaration of Kenneth L. Wilson in Support of Complainants’ Response to T-Netix, Inc.’s Motion for Summary Determination is attached hereto as Exhibit C.

³ A copy of the relevant pages of Complainants’ First Data Requests to AT&T Communications of the Pacific Northwest, Inc. is attached hereto as Exhibit D.

⁴ Complainants’ counsel explained in a phone conversation that Data Request No. 12 contains a typographical error: “no. 13” should be “no. 10.”

7. Mr. Wilson's declaration and Complainants' data requests demonstrate that Complainants seek to raise issues and use information in this proceeding going well beyond "phone calls from prisons" and implicating AT&T's network structure and interconnections.

8. Complainants and Mr. Wilson concede that Mr. Wilson gained access to AT&T's confidential information as an employee of and a consultant to AT&T. Compls.' Resp. at ¶¶ 5-6; Wilson Decl. Re: Confidentiality at ¶¶ 3-4, 6. While employed at AT&T as an electrical engineer, Mr. Wilson held leadership positions, worked on AT&T's network infrastructure, and worked in AT&T's Western Region. *See* Curriculum Vitae, attached to Wilson Decl. Re: Confidentiality. Moreover, as a consultant to AT&T, Mr. Wilson worked on several matters in Washington, including two proceedings before the WUTC. Wilson Decl. Re: Confidentiality at ¶ 7; Table of Expert Experience, attached to Wilson Decl. Re: Confidentiality.

9. Complainants have raised issues and sought information that relates directly to AT&T's network structure and interconnections. AT&T provided Mr. Wilson with extensive access to confidential information about its network and interconnections, which he is prohibited from disclosing, using, or permitting others to use. As a result, he cannot provide an expert opinion in this proceeding without violating his obligation to preserve the integrity of AT&T's confidential information. He holds within his brain the information he cannot disclose or reasonably be expected to ignore in analyzing the issues in this case. *See, e.g., Solutec Corp., Inc. v. Agnew*, No. 16105-6-III, 1997 WL 794496, at *8-9 (Wash. Ct. App. Dec. 30, 1997) (upholding injunction prohibiting threatened misappropriation of trade secret under inevitable disclosure doctrine) (citing *Pepsico, Inc. v. Redmond*, 54 F.3d 1262, 1268 (7th Cir. 1995) (seminal case on inevitable disclosure doctrine)). Courts routinely prohibit former employees from testifying as expert witnesses against their former employers where there are risks that the

former employees will disclose confidential information and violate their duty to maintain its integrity. *See, e.g., Wang Labs., Inc. v. CFR Assocs., Inc.*, 125 F.R.D. 10, 13 (D. Mass. 1989); *Uniroyal Goodrich Tire Co. v. Hudson*, 873 F. Supp. 1037, (E.D. Mich. 1994), *aff'd by* 97 F.3d 1452, 1048 (6th Cir. 1996).

10. Finally, Mr. Wilson in his efforts on AT&T's behalf in this State and others in previous cases gained access to and knowledge of AT&T's competitors' networks (e.g., Qwest Corporation). Because this proceeding implicates and the discovery demands an analysis of the interconnection of various carriers' networks, including AT&T's and Qwest's, it is likewise difficult to determine how this Commission could police Mr. Wilson's nondisclosure of such information and continued compliance with the relevant confidentiality orders.

11. Accordingly, the Commission should sustain AT&T's objection to Complainants' designation of Mr. Wilson as an expert in this proceeding.

Dated: May 9, 2005

**AT&T COMMUNICATIONS OF
THE PACIFIC NORTHWEST, INC.**

By: /s/ Letty S.D. Friesen (by David C. Scott)

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on May 9, 2005, he served the true and correct original, along with the correct number of copies, of the foregoing document upon the WUTC via email and Express Mail (Monday delivery), properly addressed as follows:

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The undersigned, an attorney, further certifies that on May 9, 2005, he served a true and correct copy of the foregoing document upon counsel of record via email and Federal Express (for Monday delivery), properly addressed as follows:

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