

BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

SANDY JUDD and TARA HERIVEL,

Complainants,

v.

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

Respondents.

Docket No. UT-042022

**AFFIDAVIT OF STEPHANIE
JOYCE IN SUPPORT OF T-NETIX,
INC.'S MOTION FOR STAY OF
DISCOVERY**

I, Stephanie Joyce, do hereby affirm the following:

1. My business address is 1200 19th Street, NW, Suite 500, Washington, DC 20036. I am over 18 years of age and could testify competently to the matters addressed herein if required.
2. I am making this Affidavit in response to the assertions contained in the Declaration of Jonathan P. Meier filed May 6, 2005, in this proceeding. These assertions regard the conduct of discovery.
3. Complainants propounded 66 Data Requests, more than half of which contained three or more subparts. Through Mr. Meier stated during the February 16, 2005 Scheduling Conference ("Conference") that the requests had already been written and perhaps could be propounded within days, T-NETIX received them on March 7, 2005, the deadline for propounding discovery.
4. The entire personnel of T-NETIX changed office buildings in March 2005. I was not aware of this fact prior to the Conference. In addition, as I explained at the Conference,

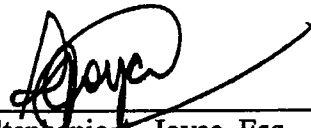
many of the personnel familiar with T-NETIX's Washington operations had left the company. For these reasons, and due to the numerosity of the Data Requests, I was unable to compile either the documents or the factual information necessary to respond by the April 4, 2005, deadline. On March 30, 2005, T-NETIX requested and was granted an extension through April 18, 2005, to respond with both narrative responses and documents.

5. T-NETIX produced its responses timely on April 18, 2005, including approximately 700 pages of Bates-labeled documents. Three days later, on April 21, 2005, T-NETIX filed its Motion for Summary Determination ("Motion").
6. On April 20, 2005, Complainants' counsel Jonathan Meier contacted T-NETIX counsel Arthur Butler to arrange a call to discuss T-NETIX's responses. Mr. Meier did not identify any items for which Complainants sought additional responses, nor did he explain generally the deficiencies he perceived. On Monday, April 25, Mr. Butler stated that T-NETIX did not find that a discovery conference was appropriate in light of the Motion.
7. Later that day — after ALJ Rendahl had set a briefing schedule for the Motion — Mr. Meier contacted me via electronic mail to ask whether a discovery conference could take place. **See Attachment A** (E-mail correspondence between Ms. Joyce and Mr. Meier). Mr. Meier stated that Complainants required responses to discovery in addition to those already provided in order to respond to the Motion. I responded that the issue of standing is a question of law, based on grounds documented in the Motion. I suggested, however, that Mr. Meier explain whatever deficiencies he perceived in T-NETIX's discovery in


order to "crystallize" the issues, see Attachment A, rather than engage in a lengthy conference call for which neither side would be properly prepared. Mr. Meier refused.

8. T-NETIX has now, by virtue of Complainants' Response to the Motion for Stay, learned of some of the items for which Plaintiffs seek further responses. T-NETIX will respond to Complainants regarding these issues in writing separately.

I affirm, in accordance with the laws of perjury in Washington, D.C., that the foregoing is true and correct.


Stephanie A. Joyce, Esq.

SUBSCRIBED AND SWORN TO BEFORE ME this 9th day of May, 2005.


NOTARY PUBLIC
Karen L. Butler

My Commission Expires: 6/30/2009

CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of May, 2005, served the true and correct original, along with the correct number of copies, of the foregoing document upon the WUTC, via the method(s) noted below, properly addressed as follows:

Carole Washburn
Executive Secretary
Washington Utilities and Transportation
Commission
1300 S Evergreen Park Drive SW
Olympia, WA 98504-7250

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail (UPS)
 Facsimile (360) 586-1150
 Email (records@wutc.wa.gov)

I hereby certify that I have this 10th day of May, 2005, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

On Behalf Of AT&T:

Ms. Letty S. Friesen
AT&T Communications of the Pacific
Northwest
Law Department
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Austin TX 78701-2444

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 Facsimile (303) 298-6301
 Email (lsfriesen@att.com)

Confidentiality Status: Highly Confidential

On Behalf Of T-Netix:

Stephanie A. Joyce
Kelley Drye & Warren LLP
1200 19th Street NW, Suite 500
Washington DC 20036-2423

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail (UPS)
 Facsimile (202) 955-9792
 Email (sjoyce@kelleydrye.com)

Confidentiality Status: Highly Confidential

On Behalf Of T-Netix:

Glenn B. Manishin
Kelley Drye & Warren LLP
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Confidentiality Status: Public

On Behalf Of Judd & Herivel:

Jonathan P. Meier
Sirianni Youtz Meier & Spoonemore
719 Second Avenue, Suite 1100
Seattle WA 98104

Confidentiality Status: Highly Confidential

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- Email (jon@sylaw.com)

On Behalf Of AT&T:

Charles H. Peters
Schiff Hardin LLP
233 South Wacker Drive
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Chicago IL 60606

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On Behalf Of Commission:

Ann E. Rendahl ALJ
Washington Utilities and Transportation
Commission
1300 S Evergreen Park Drive SW
PO Box 47250
Olympia WA 98504-7250

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- Facsimile (360) 586-8203
- Email (arendahl@wutc.wa.gov)

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

DATED this 10th day of May, 2005, at Seattle, Washington.



ATTACHMENT A

Joyce, Stephanie

From: Joyce, Stephanie
Sent: Monday, April 25, 2005 5:53 PM
To: 'Jon@sylaw.com'
Subject: Re: discovery conference

I agree that this exchange has been lengthy. I still have no idea the scope of what is the deficiency in T-NETIX's production. It strikes me as odd that you are unwilling to provide any clarity here. It seems unfair that my client should expend resources on a lengthy call when the party seeking information is not willing to expend resources to explain its needs. Don't you think framing the issues helps the meet-and-confer process?

Stephanie A. Joyce
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
202.955.9600
202.955.9792 fax

-----Original Message-----

From: Jon Meier <Jon@sylaw.com>
To: Joyce, Stephanie <SJoyce@KelleyDrye.com>
Sent: Mon Apr 25 17:46:12 2005
Subject: RE: discovery conference

Stephanie:

It is unnecessary to send a separate and lengthy letter to you after this rather voluminous and time-consuming e-mail exchange. I had a productive one hour-plus discovery conference with AT&T last week without any similar lengthy letter. If you are truly willing to participate "in whatever exercise is warranted," please indicate when we may engage in a telephone discovery conference this week.

Jon

-----Original Message-----

From: Joyce, Stephanie [mailto:SJoyce@KelleyDrye.com]
Sent: Monday, April 25, 2005 2:31 PM
To: Jon Meier
Subject: Re: discovery conference

I have not received a letter or other correspondence explaining the deficiencies. If it was sent to me, I apologize. If it was not sent, I do not understand why. It would greatly assist all parties to crystallize the points for discussion. An hour and a half is not an insubstantial call. I am in the office every day this week. I will participate in whatever exercise is warranted. Again, I believe that T-NETIX has demonstrated its intent to adhere to its obligations in this case.

Stephanie A. Joyce
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Suite 500
Washington, D.C. 20036
202.955.9600
202.955.9792 fax

-----Original Message-----

From: Jon Meier <Jon@sylaw.com>
To: Joyce, Stephanie <SJoyce@KelleyDrye.com>
Sent: Mon Apr 25 17:24:25 2005
Subject: RE: discovery conference

I already have. It is now time to talk through our issues by engaging in a telephone conference so that we may discuss individual T-Netix responses to our data requests and either resolve the issues or agree to disagree. This is certainly more efficient than doing the same thing in writing. I estimate the conference will take an hour to an hour and a half. Will you make yourself available, and if so, when?

Jon

-----Original Message-----

From: Joyce, Stephanie [mailto:SJoyce@KelleyDrye.com]
Sent: Monday, April 25, 2005 2:16 PM
To: Jon Meier
Subject: RE: discovery conference

Are you willing to put your concerns in writing?

Stephanie

Stephanie A. Joyce
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
202.955.9600
202.955.9792 fax

-----Original Message-----

From: Jon Meier [mailto:Jon@sylaw.com]

Sent: Monday, April 25, 2005 5:11 PM
To: Joyce, Stephanie
Subject: RE: discovery conference

Stephanie:

The whole purpose of a discovery conference is to discuss with specificity, and in a much more efficient process than trading e-mails, precisely what our issues are with T-Netix's objections to discovery. I believe that a good faith effort to resolve disputes requires at least a willingness to talk on the telephone.

T-Netix contends that the standing issue is governed completely by its assertion that Complainants received only calls that were local or intraLATA and were billed or carried by companies with exemptions or waivers. We do not agree, and believe that whether T-Netix provided operator services bears directly on the standing question, regardless of who billed or carried the calls. This issue will be litigated. But that does not provide T-Netix with a right or reason to avoid good faith efforts to resolve discovery disputes, particularly when (a) discovery is not stayed; and (b) T-Netix's discovery is relevant to whether AT&T provided operator services, and discovery deadlines on AT&T's motion are ticking away. If T-Netix refuses to have a substantive discussion concerning its responses to data requests, it is essentially attempting to grant itself a unilateral stay of discovery without any ruling on this issue by Judge Rendahl.

Suffice it to say that we believe T-Netix is required to respond to data requests that go to the issue of whether T-Netix provided (or AT&T provided) operator services, most of which T-Netix has objected to without providing any substantive response.

I will therefore ask one last time: Are you willing to participate in a telephone discovery conference?

Jon

-----Original Message-----

From: Joyce, Stephanie [mailto:SJoyce@KelleyDrye.com]

Sent: Monday, April 25, 2005 1:45 PM

To: Jon Meier

Cc: Art Butler

Subject: RE: discovery conference

Jon:

If by your email you intended to characterize T-NETIX's conduct as improper, I must lodge an objection. "I" am not trying to "shut down" discovery. T-NETIX has timely responded to each of Complainants' 66 data requests, and all subparts, though a 2-week extension had been requested and graciously permitted by you.

T-NETIX has availed itself of the procedures afforded it under the Commission's rules; a Motion to Stay is on file. I appreciate that you disagree with the grounds of that motion, and today you were afforded an opportunity to respond to it.

Again, lack of standing precludes reaching the merits of Complainants' claim in any way. In my estimation, AT&T's motion goes to the merits of Complainants' claim. The question whether T-NETIX, or AT&T for that matter, is an operator services provider in the State of Washington is irrelevant as regards two Complainants whose calls were all local or intraLATA and were all carried and billed by entities operating under waivers or exemptions from rate disclosure rules.

I am nonplussed by your reaction, specifically that you wish to engage in a meet-and-confer without having expressed your concerns as to T-NETIX's production with any specificity. Indeed, you have not even stated whether you find deficient the narrative responses, the document production, or both. Nor have you identified the requests that you believe were inadequately answered. As such, it is not clear what would be accomplished by a discovery conference or whether that aim is a proper one at this time.

T-NETIX has demonstrated that its aim is not to "stonewall" discovery. But T-NETIX will not continue to expend

resources to adjudicate the merits of a claim brought by persons that have no standing to pursue it.

Stephanie

Stephanie A. Joyce
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
202.955.9600
202.955.9792 fax

-----Original Message-----

From: Jon Meier [mailto:Jon@sylaw.com]

Sent: Monday, April 25, 2005 4:30 PM
To: Joyce, Stephanie
Subject: RE: discovery conference

Stephanie:

Again, I disagree. Whether T-Netix provided operator services is relevant to whether it had a duty to complainants. Simply because you characterize the issue raised by your motion as one of law does not mean you get to shut down discovery. And T-Netix's discovery is relevant to the AT&T motion. We can certainly have a better discussion in a conference call. So I ask again, are you willing to participate in a discovery conference, or not?

Jon

-----Original Message-----

From: Joyce, Stephanie [mailto:SJoyce@KelleyDrye.com]

Sent: Monday, April 25, 2005 12:47 PM
To: Jon Meier; Art Butler
Subject: RE: discovery conference

Jon:

What information is it that is missing, in your opinion? I do not have a sense of the deficiencies you perceive. Accordingly, any discovery conference would be somewhat stilted by that dearth of information.

T-NETIX's motion is clear as to its grounds, and it is overwhelmingly a question of law. Further discovery is not necessary for Complainants to respond.

Stephanie

Stephanie A. Joyce
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
202.955.9600

202.955.9792 fax

-----Original Message-----

From: Jon Meier [mailto:Jon@sylaw.com]

Sent: Monday, April 25, 2005 3:41 PM

To: Joyce, Stephanie; Art Butler

Subject: RE: discovery conference

Stephanie:

We obviously disagree on the standing issue. We stand by our position that the information we have sought, but not obtained, from T-Netix in our data requests is relevant to T-Netix's motion for summary determination, as well as AT&T's pending motion. A refusal to attempt to resolve outstanding discovery issues will prejudice our ability to respond to both motions. While we agree that the agency has indicated it will resolve your motions expeditiously, that does not solve either of the above problems.

Are you refusing to participate in a discovery conference?

Jon Meier

-----Original Message-----

From: Joyce, Stephanie [mailto:SJoyce@KelleyDrye.com]

Sent: Monday, April 25, 2005 12:19 PM

To: Jon Meier; Art Butler

Subject: RE: discovery conference

Jon:

As our pleading states, Complainants do not have standing to pursue this claim. Indeed, this lack of standing was clear at the outset, when the LEC waivers were made known. Lack of standing is preclusive to any claim, rendering discovery unnecessary.

The agency has indicated that it will act on T-NETIX's motion expeditiously, perhaps the week of May 9.

If you have concerns about the sufficiency of T-NETIX's production, you may provide them in writing. That step will substantially advance the furtherance of discovery in the event that T-NETIX's motions are denied.

Best regards,
Stephanie

Stephanie A. Joyce
Kelley Drye & Warren LLP
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Washington, D.C. 20036
202.955.9600

202.955.9792 fax

-----Original Message-----

From: Jon Meier [mailto:Jon@sylaw.com]

Sent: Monday, April 25, 2005 3:14 PM

To: Art Butler; Joyce, Stephanie

Subject: RE: discovery conference

Art and Stephanie:

I respectfully but strongly disagree. In my view, the discovery we seek and have not been provided by T-Netix is directly relevant to T-Netix's motion for summary determination. In addition, there is no stay on discovery at present and we are on a tight schedule with regard to responding to AT&T's motion for summary determination. As you know, the discovery cut-off for depositions is June 3rd. Unless we obtain the discovery to which we are entitled from T-Netix (and AT&T) fairly soon, our preparation for and ability to take necessary depositions is likely to be prejudiced. I suggest we schedule a discovery conference as soon as possible so that we may get these issues resolved sooner rather than later.

-----Original Message-----

From: Art Butler [mailto:Aab@aterwynne.com]

Sent: Monday, April 25, 2005 11:44 AM

To: Jon Meier

Subject: Re: discovery conference

Given the ALJ's Notice of Opportunity to Respond to T-NETIX's motion to stay discovery, Stephanie would like to put off any discovery conference until the ALJ rules on the motion.

Thank You.

Art Butler
Ater Wynne LLP
601 Union St., #5450
Seattle, WA 98101
206.623.4711 phone
206.467.8406 fax
aab@aterwynne.com

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>>> "Jon Meier" <Jon@sylaw.com> 04/22/05 11:45AM >>>

Art:

Have you reached Stephanie with regard to our proposed discovery conference for 1 pm Monday?

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