

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

**T-NETIX, INC.'S MOTION TO
STRIKE**

1. Respondent T-NETIX, Inc. ("T-NETIX"), through counsel and pursuant to WAC 480-07-375(d), hereby moves to strike all the response papers of Complainants filed May 6, 2005, or in the alternative a portion of them, on the grounds that they were not timely filed, are irrelevant and are prejudicial to T-NETIX.

**I. NONE OF COMPLAINANTS' RESPONSE PAPERS
WERE TIMELY FILED**

2. By Notice dated April 25, 2005, ALJ Ann E. Rendahl stated that: "[a]ny party that seeks to file a written response to T-Netix's motions with the Commission should do so by **5:00 p.m.** on Friday, May 6, 2005." [Emphasis added.] A copy of the Notice is attached to the Declaration of Arthur A. Butler as Attachment A. AT&T served its response papers via electronic mail at 5:36 p.m. Eastern time, or 2:36 p.m. Pacific time. Complainants, however, did not serve any of their papers until 10:51 p.m. Eastern time, or **7:51 p.m. Pacific time**, as indicated on the

attached time-stamped electronic mail messages, copies of which are attached to the Declaration of Arthur A. Butler as Attachment B.

3. There is no indication that Complainants sought or received leave to file their response papers late. This conduct indicates an unfortunate disregard for the procedures set forth by this Commission and should not be condoned. Moreover, Complainants were given nearly two full weeks to respond to T-NETIX Motion for Summary Determination and Motion for Stay of Discovery (the "Motions"), and had not complained that this deadline was unreasonable. For these reasons, all of the response papers submitted by Complainants, including affidavits, exhibits, and memoranda, should be stricken and given no consideration.

**II. THE COMMISSION SHOULD STRIKE
PARAGRAPHS 1 THROUGH 9 OF THE RESPONSE TO
T-NETIX'S MOTION FOR STAY OF DISCOVERY, WHICH
ARE NONRESPONSIVE AND PREMATURE**

4. If the Commission declines to reject Complainants' papers *in toto* as being untimely, T-NETIX respectfully requests that it at the least strike a portion of the Complainants' Response to T-NETIX's Motion for Stay of Discovery ("Motion for Stay") as irrelevant and prejudicial.

5. Complainants "response" to the T-NETIX Motion for Stay is in the main a narration of Complainants' perception that T-NETIX's conduct in discovery has been in some way improper. Response to Motion for Stay ¶¶ 1-9. Two additional paragraphs are devoted to a similar diatribe regarding AT&T. *Id.* ¶¶ 10-11. This narration has nothing to do with the question whether discovery should proceed further, given that T-NETIX has filed a preliminary motion that likely requires dismissal of this proceeding. Indeed, Complainants provided only six paragraphs to that topic.

6. As explained in T-NETIX's Reply in Support of Motion for Stay, Complainants' characterization of T-NETIX is inaccurate. T-NETIX timely responded to all of Complainants' 66 Data Requests, including subparts, and produced responsive documents. T-NETIX was also

willing to discuss Complainants' apparent perception that these responses were inadequate, provided that their position be forwarded in writing in order to allow for a productive and efficient discussion. Complainants' inexplicable refusal to do so halted those discussions.

7. Paragraphs 1 through 9 of the Complainants' Response to T-NETIX's Motion for Stay in no way explain why the Motion for Stay should be denied. They do not help the Commission resolve the Motion for Stay. Rather, they seem an attempt to impugn T-NETIX's counsel and to raise, prematurely, grounds for Complainants' motion to compel. This conduct is prejudicial and unprofessional. For these reasons, these paragraphs of Complainants' Response to T-NETIX's Motion for Stay should be stricken and given no consideration.

**III. THE COMMISSION SHOULD STRIKE THE
DECLARATIONS OF SUZANNE ELLIOTT AND MAUREEN
JANEGA IN SUPPORT OF COMPLAINANTS' RESPONSE TO
T-NETIX'S MOTION FOR SUMMARY DETERMINATION, AS
THEY CONSTITUTE NON-PARTY TESTIMONY TO FACTS
OUTSIDE THE COMPLAINT**

8. In addition to the material described in Section II. above, T-NETIX respectfully requests that the Commission strike the declarations of Suzanne Elliott and Maureen Janega in Support of Complainants' Response to T-Netix's Motion For Summary Determination – persons who are not parties to this litigation – from this record, as they raise matters that are outside the scope of this matter and are prejudicial to T-NETIX.

9. Complainants have filed declarations of two persons who are purportedly “ready and willing” to join this case in order to cure existing Complainants' lack of standing. Defendants have never heard of these persons, or the legal aid organization that employs Maureen Janega (and may in fact be the actual new “complainant”) prior to these declarations. They are not parties to this case and, for the reasons expressed in T-NETIX's Reply in Support of Motion for Summary Determination, cannot be added as parties by the Commission.

10. It is extremely prejudicial for Complainants to raise new allegations at this time. The Complaint in this case was initially filed in August 2000, and this proceeding commenced on

November 16, 2004. Defendants cannot be required to respond to a continually changing set of claims and allegations. Nor can the Commission consider these new allegations, because they were not raised in the underlying case from which, as Complainants state, this Commission derives its jurisdiction over this matter. See Response to Motion for Summary Determination ¶¶ 28-29.

11. For similar reasons, these new declarants cannot be made parties to this action in order that their allegations may be considered. This case is before the Commission by virtue of a primary jurisdiction referral from Judge Learned at the King County Superior Court. The Commission was asked to determine whether (1) T-NETIX violated WAC 480-120-121, and (2) whether AT&T is an operator service provider for purposes of its contract with the Washington State Department of Corrections. As Complainants have argued, its purview in this matter is “strictly limited to the questions referred to the Commission.” *Id.* ¶ 28. It cannot add claims or plaintiffs to this proceeding. Rather, the Commission's expertise has been sought for the purpose of resolving a regulatory question to assist in “enforcement of the claim.” *Schmidt v. Old Union Stockyards Co.*, 58 Wn.2d 478, 364 P.2d 23, 27 (1961). In this proceeding, the “claim” being enforced can only be that of Judd and Herivel.

12. In addition, the new declarations have no relevance whatsoever to the T-NETIX Motion for Summary Determination. That motion asks only whether Complainants Judd and Herivel have suffered cognizable injury. To ask heretofore unnamed persons whether they suffered cognizable injury is irrelevant. Rather, it seems an effort to heap conclusory evidence of T-NETIX's purported violations of WAC 480-120-121, an issue that plainly goes to the merits of this case and has not been raised by T-NETIX to any degree.

13. Finally, the allegations raised by Ms. Elliott and Ms. Janega raise substantial procedural difficulties. The time to propound and to answer written discovery lapsed over a month ago. Defendants would have no opportunity to these allegations properly, being unable to investigate their origin – for example, what were the terminating phone numbers involved and

when were the calls made. Being inserted in the record after the time for discovery had lapsed, these declarations place defendants at an extreme disadvantage and are therefore improper.

14. In sum, the new declarants are not and cannot be parties to this Commission proceeding, and raise allegations that are outside the scope of this matter, have no relevance to the pending Motion for Summary Determination, and cannot be investigated. They should accordingly be stricken from the record and given no consideration.

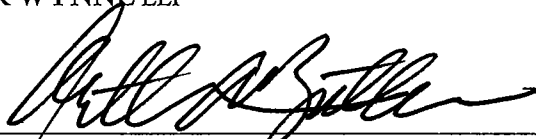
IV. CONCLUSION

15. For all these reasons, the Commission should strike all of the papers filed by Complainants on May 6, 2005, or in the alternative should strike Paragraphs 1 through 9 of Complainants' Response to the Motion for Stay of Discovery and the declarations of Maureen Janega and Suzanne Elliott.

DATED this 10th day of May, 2005.

ATER WYNNE LLP

By



Arthur A. Butler, WSBA #04678
601 Union Street, Suite 5450
Seattle, Washington 98101-2327
Tel: (206) 623-4711
Fax: (206) 467-8406
Email: aab@aterwynne.com

and

Of Counsel:
Glenn B. Manishin
Stephanie A. Joyce
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036

Attorneys for Respondent T-NETIX, Inc.

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	<input type="checkbox"/>	Hand Delivered
Executive Secretary	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
Washington Utilities and Transportation Commission	<input checked="" type="checkbox"/>	Overnight Mail (UPS)
1300 S Evergreen Park Drive SW	<input type="checkbox"/>	Facsimile (360) 586-1150
Olympia, WA 98504-7250	<input checked="" type="checkbox"/>	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	<input type="checkbox"/>	Hand Delivered
AT&T Communications of the Pacific Northwest	<input checked="" type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
Law Department	<input type="checkbox"/>	Overnight Mail (UPS)
919 Congress Avenue, Suite 900	<input type="checkbox"/>	Facsimile (303) 298-6301
Austin TX 78701-2444	<input checked="" type="checkbox"/>	Email (lsfriesen@att.com)

Confidentiality Status: Highly Confidential

On Behalf Of T-Netix:

Stephanie A. Joyce	<input type="checkbox"/>	Hand Delivered
Kelley Drye & Warren LLP	<input checked="" type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
1200 19th Street NW, Suite 500	<input type="checkbox"/>	Overnight Mail (UPS)
Washington DC 20036-2423	<input type="checkbox"/>	Facsimile (202) 955-9792
	<input checked="" type="checkbox"/>	Email (sjoyce@kelleydrye.com)

Confidentiality Status: Highly Confidential

On Behalf Of T-Netix:

Glenn B. Manishin	<input type="checkbox"/>	Hand Delivered
Kelley Drye & Warren LLP	<input checked="" type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
1200 19th Street NW, Suite 500	<input type="checkbox"/>	Overnight Mail (UPS)
Washington DC 20036-2423	<input type="checkbox"/>	Facsimile (202) 955-9792
	<input checked="" type="checkbox"/>	Email (gmanishin@kelleydrye.com)

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

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail (UPS)
 Facsimile (206) 223-0246
 Email (jon@sylaw.com)

On Behalf Of AT&T:

Charles H. Peters
Schiff Hardin LLP
233 South Wacker Drive
6600 Sears Tower
Chicago IL 60606
Confidentiality Status: Highly Confidential

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail (UPS)
 Facsimile (312) 258-5600
 Email (cpeters@schiffhardin.com)

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

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail (UPS)
 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.

