

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 REPLY IN
SUPPORT OF MOTION TO STAY
DISCOVERY AND RESPONSE TO
COMPLAINANTS' CONDITIONAL
MOTION TO POSTPONE AND
GRANT NEW DISCOVERY**

1. Respondent T-NETIX, Inc. ("T-NETIX"), through counsel, hereby replies to Complainants' Response to its Motion for Stay of Discovery and Conditional Motion to Postpone Consideration of T-NETIX's Motion for Summary Determination Until Complainants Have Been Permitted Additional Discovery ("Response"). Complainants require no additional discovery in order to respond to T-NETIX's Motion for Summary Determination, as its own Response to that Motion demonstrates, because it raises a question of justiciability quite apart from the merits discovery in which T-NETIX has participated. Accordingly, the Commission should stay all discovery until it resolves T-NETIX's Motion for Summary Determination, and reject any request for new discovery in addition to that presently ongoing.

**I. COMPLAINANTS MISCHARACTERIZE T-NETIX'S
CONDUCT IN DISCOVERY AND IMPROPERLY HAVE USED
THEIR RESPONSE AS A PREMATURE MOTION TO COMPEL**

2. T-NETIX has not been uncooperative in discovery. As explained in the attached Affidavit of Stephanie Joyce (dated May 9, 2005), T-NETIX provided a response to each of the 66 Data Requests that Complainants propounded, many with subparts, and produced approximately 700 pages of responsive documents. Joyce Aff. ¶ 5. This production was provided on April 18, 2005, which represents a two-week extension that T-NETIX requested from Complainants' counsel on March 30, 2005. *Id.* ¶ 4.

3. The extension was necessitated principally by the facts that all personnel of T-NETIX changed office buildings in late March 2005. *Id.* T-NETIX counsel was not aware of this fact at the February 16, 2005 Scheduling Conference. *Id.* The change of offices, plus the fact that many of the T-NETIX personnel involved in its Washington operations had left the company (as Ms. Joyce stated during the Scheduling Conference), necessitated the extension.

4. On April 20, 2005, Complainants' counsel requested a discovery conference to discuss unspecified perceived deficiencies in T-NETIX's production. Counsel did not provide, to any degree, an explanation of these deficiencies. Joyce Aff. ¶ 6.

5. On April 21, 2005, T-NETIX filed its Motion for Summary Determination on the sole issue of standing. This Motion raises an issue of justiciability that requires no discovery, but rather rests on several facts that are either the law of this case or undisputed. For this reason, T-NETIX filed the instant Motion for Stay contemporaneously with the Motion for Summary Determination.

6. On April 25, 2005, Mr. Meier contacted T-NETIX counsel again to request a discovery conference. Ms. Joyce explained that the pending motions did not require such a conference but that T-NETIX would consider Complainants' position on which items required, in their estimation, further responses. *See* Joyce Aff. Attachment A. Ms. Joyce explained that if Complainants' position were set out in writing, the conference would be more productive and

efficient. Mr. Meier repeatedly refused to provide their position, but requested that all counsel attend a conference call of as long as 90 minutes to discuss discovery. Joyce Aff. ¶ 7 and Attachment A thereto. The first time that Complainants' counsel articulated their discovery position was in response to T-NETIX's Motion for Stay. *Id.* ¶ 8; Response ¶¶ 5-9.

7. The bulk of the Response – 11 of 18 paragraphs – regards Complainants' position on defendants' conduct in discovery and their purportedly improper responses. T-NETIX is not prepared to respond substantively to these positions, principally because those positions are at this time premature and may be brought only in a Motion to Compel. It is moreover improper for Complainants to raise these arguments (and misstatements) in the context of the Motion for Stay, which appear to be more an effort to denigrate T-NETIX's counsel than to resolve legitimate discovery disputes.¹ T-NETIX will treat that portion of the Response as an invitation to meet and confer and, now that Complainants' counsel has at last indicated which discovery he believes is deficient, will separately and promptly respond to Complainants' concerns.

II. COMPLAINANTS DO NOT REQUIRE ADDITIONAL DISCOVERY TO RESPOND TO THE MOTION FOR SUMMARY DETERMINATION

8. The Motion for Summary Determination rests on facts that are indisputable. Complainants have not attempted to refute any of them, including: (a) that all inmate calls that Judd and Herivel received were local or intraLATA; (b) that GTE, PTI or US West carried the entire call; (c) that T-NETIX carried provided none of the transmission for the calls from the correctional facilities identified by Complainants; and (d) that none of these carriers were required to disclose their rates under WAC 480-120-121, by operation of both an express rule exemption and long-term waivers. Motion for Summary Determination ¶¶ 16-21.

9. The sole question presented is whether Judd or Herivel suffered a legally cognizable injury. The undisputed facts of record set forth in the Motion demonstrate that they

¹ For these reasons, T-NETIX also moves separately to strike Paragraphs 1 through 9 of the Response.

did not. As such, Complainants have no standing. Lack of standing precludes the Commission as a matter of law from going forward in this matter. *Id.* ¶¶ 13, 24-30.

10. Complainants' opposition to the Motion relies on substantive facts that reach far beyond the question of injury. Complainants argue that if T-NETIX were the operator service provider for Judd's and Herivel's calls, then the case cannot be dismissed. Response ¶ 17. From this incorrect basis, Complainants argue that they require additional discovery from T-NETIX. *Id.*

11. Complainants do not require any further discovery to respond to the Motion, and the Commission does not need any further factual information to decide it. Lack of injury mandates dismissal of this matter. Judd and Herivel suffered no injury; they had no cognizable right to audible disclosure of the rates of GTE, PTI, or US West for the calls for which they seek relief. No further investigation into the conduct of T-NETIX, or the services it provided to the facilities at issue, is required. No matter what T-NETIX did or did not do, none of the calls in question was subject to the rate disclosure obligation that Complainants contend was violated.

12. Complainants therefore do not need any additional time to pursue the substantial discovery already propounded. Nor should they be granted leave to propound still more discovery. The T-NETIX Motion for Summary Determination raises an issue of justiciability, not merits, and it is only the facts related to Complainant themselves (when and from where inmate calls were received) that warrants factual investigation. The burden of providing those facts, and indeed of establishing standing, rests on Complainants and not T-NETIX. That Complainants have failed to do so – and in fact have conceded the accuracy of T-NETIX's assertions as to their conduct – does not warrant further discovery. Certainly discovery is not warranted in order to enable Complainants to persist in arguing the merits as a response to a preliminary motion regarding justiciability.

13. Finally, Complainants should not be permitted new discovery in order to substantiate the purported claims of the two new declarants, Suzanne Elliott and Maureen Janega.

As explained in the accompanying Motion to Strike and Reply in Support of Motion for Summary Determination, these declarations are improper and unfairly prejudicial to defendants. Complainants should not be rewarded for introducing this extra-record evidence at this stage. Thus, in the event that the Motion for Summary Determination is denied, the parties should continue to pursue the discovery previously propounded regarding Judd's and Herivel's claims, and no leave for new discovery of any kind should be granted until the pending AT&T Motion for Summary Determination is decided.

III. CONCLUSION

14. For all these reasons, the Commission should stay all discovery in this matter unless and until it denies the T-NETIX Motion for Summary Determination, and should not permit additional discovery until the AT&T Motion for Summary Determination is resolved.

DATED this 10th day of May, 2005.

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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:

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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:

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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.


