

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
T-NETIX'S EMERGENCY MOTION
AND MOTION TO STRIKE**

**I. MR. WILSON WAS UNABLE TO REVIEW CONFIDENTIAL
DOCUMENTS UNTIL THE COMMISSION RULED ON HIS STATUS.**

1. T-Netix responds to Complainants' motion for leave to file a supplemental declaration by arguing that Mr. Wilson was free to review T-Netix confidential information before Complainants filed their response to T-Netix's motion for summary determination. Specifically, T-Netix asserts that because T-Netix did not object to Mr. Wilson's "appearance" within three business days, Mr. Wilson was free to review confidential information produced by T-Netix (but not AT&T) as early as May 5th. T-Netix Emergency Motion, ¶¶ 5-6.

2. Initially, T-Netix appears to be confused about the timelines in the Protective Order. Objections to Mr. Wilson were due on April 29, 2005, ten days after Complainants disclosed him as an expert (not three days after his "appearance"). Protective Order, ¶ 6 (attached hereto). That is when AT&T objected.

3. More importantly, once AT&T objected, Mr. Wilson was forbidden from reviewing *any* confidential documents. As long as an objection has been lodged, the Protective Order requires that the expert refrain from reviewing any and all confidential documents:

At least ten (10) days prior to disclosing any Confidential or Highly Confidential Information to any outside expert pursuant to an Exhibit B or Exhibit C Agreement attached to this Order, the disclosing party shall notify the other parties of the name, address and business affiliation of the proposed expert. During that ten-day period, any party may object in writing to the designation of any outside expert *as a person who may review Confidential or Highly Confidential Information*. Written response to any objection must be filed within five (5) days after receipt of the objection. For good cause shown, the Commission may order that the information not be disclosed. *While any objection is pending, no Confidential or Highly Confidential Information may be shown to the proposed expert*. Each party is prohibited from discussing the subject matter of this case with any outside expert that any other party has identified pursuant to this paragraph and contacted in good faith with the intent to disclose Confidential or Highly Confidential Information, unless the disclosing party has consented in writing to such discussion.

Protective Order, ¶ 6.

4. The Protective Order could have been drafted to permit an expert to review confidential documents of non-objecting parties. For example, it could have read: "While any objection is pending, no Confidential or Highly Confidential Information *produced by the objecting party* may be shown to the proposed expert." The language approved by the Commission reflects a different intent.

5. Mr. Wilson took pains to avoid any review of confidential information before the Commission ruled on his status on May 20, 2005. Under the Protective Order, Mr. Wilson was able to offer an opinion on T-Netix confidential information

only after the Commission ruled that he could review confidential information on May 20th.

**II. T-NETIX MAY RESPOND TO THE MERITS OF COMPLAINANTS'
MOTION TO SUPPLEMENT IN THE ORDINARY COURSE:
BY JUNE 6, 2005.**

6. T-Netix says that it is owed the "right of reply" and that it should "be permitted to provide a declaration on the subject" of its technical manual. T-Netix Emergency Motion, ¶ 10. We agree. Assuming any such declaration is admissible, Complainants have no objection.

7. T-Netix argues that a continuance of the June 7th hearing date is necessary and suggests that it be given 10 days to respond to Complainants' motion (10 days after the Commission rules on T-Netix's emergency motion). We do not agree.

8. T-Netix's response to Complainants' motion to supplement the record is due "within five business days after the motion is served." WAC 480-07-375(4). Complainants served their motion on T-Netix on May 27, 2005, when they deposited the motion in the United States mail and emailed it to T-Netix's counsel. WAC 480-07-150(8)(a) ("Service by mail is complete when a copy of the document is properly addressed, stamped, and deposited in the United States mail."). Not counting the Memorial Day holiday, T-Netix's response is due on Monday, June 6th.

9. T-Netix states that it did not expect Complainants' motion. But it identifies no exigent circumstances warranting either a continuance of the hearing or a delay in the normal briefing deadlines set by Commission rules. Mr. Wilson did not

delay in reviewing documents or in providing an opinion for the Commission's consideration. The information necessary to respond to Mr. Wilson's declaration is presumably within T-Netix's control. There is no reason to depart from routine briefing schedules, much less move a hearing date set several weeks ago.

10. Complainants respectfully request that the Commission (a) deny T-Netix's motion to strike and (b) deny its motion to postpone a response and continue the June 7 hearing.

DATED: May 31, 2005.

SIRIANNI YOUTZ
MEIER & SPOONEMORE



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

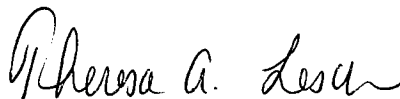
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CERTIFICATE OF SERVICE

I certify, under penalty of perjury and in accordance with the laws of the State of Washington, that on May 31, 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	<input checked="" type="checkbox"/>	By Email
SCHIFF HARDIN LLP	<input checked="" type="checkbox"/>	By United States Mail
6600 Sears Tower	<input type="checkbox"/>	By Legal Messenger
Chicago, IL 60606-6473	<input type="checkbox"/>	By Federal Express
Attorneys for Respondent AT&T	<input type="checkbox"/>	By Facsimile
Letty S.D. Friesen	<input checked="" type="checkbox"/>	By Email
AT&T	<input checked="" type="checkbox"/>	By United States Mail
919 Congress Avenue, Suite 900	<input type="checkbox"/>	By Legal Messenger
Austin, TX 78701-2444	<input type="checkbox"/>	By Federal Express
Attorneys for Respondent AT&T	<input type="checkbox"/>	By Facsimile
Laura Kaster	<input checked="" type="checkbox"/>	By Email
AT&T	<input checked="" type="checkbox"/>	By United States Mail
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Bedminster, NJ 07921	<input type="checkbox"/>	By Federal Express
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Arthur A. Butler	<input checked="" type="checkbox"/>	By Email
ATER WYNNE LLP	<input checked="" type="checkbox"/>	By United States Mail
601 Union Street, Suite 5450	<input type="checkbox"/>	By Legal Messenger
Seattle, WA 98101-2327	<input type="checkbox"/>	By Federal Express
Attorneys for Respondent T-NETIX, Inc.	<input type="checkbox"/>	By Facsimile
Stephanie A. Joyce	<input checked="" type="checkbox"/>	By Email
Glenn B. Manishin	<input checked="" type="checkbox"/>	By United States Mail
KELLEY DRYE & WARREN LLP	<input type="checkbox"/>	By Legal Messenger
1200 19 th Street, NW, Suite 500	<input type="checkbox"/>	By Federal Express
Washington, DC 20036	<input type="checkbox"/>	By Facsimile
Attorneys for Respondent T-NETIX, Inc.		

DATED: May 31, 2005, at Seattle, Washington.



Theresa A. Lesca

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

SANDY JUDD AND TARA)	
HERIVEL,)	DOCKET NO. UT-042022
)	
Complainants,)	ORDER NO. 02
)	
v.)	
)	PROTECTIVE ORDER
AT&T COMMUNICATIONS OF)	
THE PACIFIC NORTHWEST, INC.,)	
AND T-NETIX, INC.,)	
)	
Respondents.)	
.....)	

1 The Washington Utilities and Transportation Commission (Commission) finds that a protective order to govern disclosure of proprietary and confidential information is necessary in this proceeding. The Commission provided the parties an opportunity to comment on the need for a protective order, considered their comments, and finds as follows:

- a. This proceeding involves telephone calls made by inmates at Washington State prisons;
- b. The telephone systems used in Washington State prisons generally contain certain security features that are intended to prevent inmates from using the telephones for an improper or unlawful purpose;
- c. It is likely that confidential competitive information and highly confidential security information will be required to resolve the issues in this proceeding;

- d. Absent a protective order, a significant risk exists that highly confidential information might become available to persons who have no legitimate need for such information and that injury to the information provider or third parties could result;
- e. In accordance with WAC 480-07-420(2), the Commission finds that it is necessary to protect the confidentiality of certain information asserted by parties to be highly confidential. This is consistent with the Commission's practice in prior cases involving contentions that certain documents require heightened protection to facilitate discovery, and is consistent with the requirements of WAC 480-07-423.

2 Accordingly, the Commission enters this Protective Order pursuant to RCW 35.05.446 to govern the discovery and use of confidential and highly confidential information in this proceeding:

ORDER

A. General Provisions

3 **Confidential and Highly Confidential Information.** All access, review, use, and disclosure of any material designated by a party to this proceeding as confidential (referred to in this Order as "Confidential Information") or highly confidential (referred to in this Order as "Highly Confidential Information") is governed by this Order and by WAC 480-07-160. Confidential Information is information that (1) might compromise a party's ability to compete fairly or that otherwise might impose a business risk if disseminated without the protections provided in this Order, or (2) reflect Customer Proprietary Network Information, as defined by 47 U.S.C. § 222. Highly Confidential Information includes network, security and anti-fraud information.

- 4 The Commission requires parties to provide complete confidential and redacted versions of pre-filed testimony, exhibits, briefs, and all other documents filed with the Commission in the manner described below. The Commission requires the parties to redact Confidential and Highly Confidential Information from all public versions of documents filed with the Commission. The Commission may reject a filing or any other submission that fails to segregate Confidential and Highly Confidential Information, or categorizes public information as highly confidential.
- 5 **Non-disclosure Agreement.** Before being allowed access to any Confidential or Highly Confidential Information designated for this docket, each counsel, expert, or member of their respective administrative staffs who is to be provided access to Confidential or Highly Confidential Information must agree to comply with and be bound by this Order on the form of Exhibit A (Attorneys), Exhibit B (Experts), or Exhibit C (Highly Confidential Information) attached to this Order. Counsel for the party seeking access to the Confidential or Highly Confidential Information must deliver to counsel for the party producing Confidential or Highly Confidential Information a copy of each signed agreement, which must show each signatory's full name, employer, position and responsibilities, permanent address, and the party with whom the signatory is associated. The party seeking access must also send a copy of the agreement to the Commission.
- 6 At least ten (10) days prior to disclosing any Confidential or Highly Confidential Information to any outside expert pursuant to an Exhibit B or Exhibit C Agreement attached to this Order, the disclosing party shall notify the other parties of the name, address and business affiliation of the proposed expert. During that ten-day period, any party may object in writing to the designation of any outside expert as a person who may review Confidential or Highly Confidential Information. Written response to any objection must be filed within five (5) days after receipt of the objection. For good cause shown, the Commission may order that the information not be disclosed. While any

objection is pending, no Confidential or Highly Confidential Information may be shown to the proposed expert. Each party is prohibited from discussing the subject matter of this case with any outside expert that any other party has identified pursuant to this paragraph and contacted in good faith with the intent to disclose Confidential or Highly Confidential Information, unless the disclosing party has consented in writing to such discussion.

7 **Admission of Confidential and Highly Confidential Information Under Seal.**

The portions of the record of this proceeding and the underlying litigation, *Sandra Judd et al. v. AT&T et al.*, King County Superior Court No. 00-2-17565-5 SEA, including any appeals from that litigation, containing Confidential or Highly Confidential information will be sealed for all purposes, including administrative and judicial review, and must not be examined by any person except under conditions that continue to preserve the confidentiality of the information, unless such Confidential and Highly Confidential information is released from the restrictions of this Order, either through the agreement of the parties or pursuant to a lawful order of the Commission or of a court having jurisdiction to do so.

8 **Right to Challenge Admissibility.** Nothing in this Order may be construed to restrict any party's right to challenge the admissibility or use of any Confidential or Highly Confidential information on any ground other than confidentiality, including but not limited to competence, relevance, or privilege.

9 **Right to Challenge Confidentiality.** Any party may challenge another party's contention that information should be entitled to protection under this Order. The burden of proof to show that such information is properly classified as confidential is on the party asserting confidentiality. The presiding officer will conduct an *in camera* hearing to determine whether the information shall be accorded protection under the terms of this Order. Pending determination, the