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1 P R O C E E D I N G S

2 JUDGE RENDAHL: Okay. Well, good afternoon,
3 let's be on the record. I'm Ann Rendahl the
4 Administrative Law Judge presiding over this proceeding.
5 We're here before the Washington Utilities and
6 Transportation Commission on Friday, July 29th, 2005 for a
7 scheduling conference in docket number UT-042022 involving
8 issues under a primary jurisdiction referral from the King
9 County Superior Court.

10 The purpose of our conference today is to take
11 appearances of the parties and discuss a revised schedule
12 for discovery in consideration of AT&T's motion for
13 summary determination as well as T-Netix -- spelled, T,
14 dash, N-E-T-I-X -- recently filed motion for summary
15 determination.

16 Before we go any farther, I'll take appearances
17 from the parties, and I understand that all the parties
18 are appearing today via the Commission's conference
19 bridge. For the Complainants.

20 MR. MEIER: John Meier.

21 JUDGE RENDAHL: And for AT&T.

22 MR. PETERS: Charles Peters.

23 JUDGE RENDAHL: And for T-Netix.

24 MS. JOYCE: Stephanie Joyce.

25 MR. BUTLER: And Arthur A. Butler.

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1 JUDGE RENDAHL: Okay, thank you. And you all
2 have made full appearances before the Commission. Before
3 we go ahead and discuss scheduling, I just want to put on
4 the record my understanding of our current procedural
5 stature.

6 First, since the oral argument that was held on
7 June 28th, I entered Order Number 5 in this proceeding
8 denying T-Netix motions, and T-Netix has filed a motion
9 for stay and a motion for summary determination in King
10 County Superior Court, which is currently scheduled to be
11 heard before Judge Learned on August 3rd, 2005.

12 Second, T-Netix has filed for interlocutory
13 review of Order Number 5, and moved to stay further
14 proceedings until the petition is resolved. And T-Netix
15 has filed a motion for summary determination with the
16 Commission consistent with discussion during the oral
17 argument.

18 So I understand while we were off the record from
19 Ms. Joyce that the parties have discussed some proposal or
20 scheduling. So I guess I'll hear from the parties on
21 that, and then I have some questions, if they're not
22 answered by what you have to say.

23 MS. JOYCE: Your Honor, this is Stephanie Joyce,
24 just to clarify the record, the papers that are on file
25 with the Superior Court -- there have been a lot of

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1 activity, Judge Learned actually retired in 2002. Judge
2 Lung, the chief civil judge, was going to take up the
3 case. About three hours ago -- or no, half an hour ago --
4 he recused himself, and we are now in search of a judge.
5 And so most likely that August 3rd date will not stick as
6 it were. That date was only for argument on motion to
7 lift the stay. There was going to be a longer briefing
8 schedule on the motion for summary judgment initially set
9 to be heard August 28th. I don't know if that date is
10 going to prevail. But that's just so you know the very
11 latest on the case.

12 JUDGE RENDAHL: Okay. Well, I guess that ties
13 into one of the questions I have, which is, are you
14 wishing for this Commission to resolve the petition for
15 interlocutory review before King County makes its decision
16 or vice versa.

17 MS. JOYCE: I think they stand each on their own
18 merit, and each warrant consideration at this time.

19 JUDGE RENDAHL: Okay. So they're not contingent
20 one on the other?

21 MS. JOYCE: They are not.

22 JUDGE RENDAHL: Okay. And so have you discussed
23 a proposed schedule?

24 MS. JOYCE: We have as to discovery on the two
25 motions for summary determinations before your Honor.

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1 JUDGE RENDAHL: Okay. Well, before we go there,
2 let's talk about the petition for interlocutory review.
3 Under the deadlines in the rule WAC 48007810, the parties
4 would need to file a response to the petition for
5 interlocutory review by August 8th. My reading is ten
6 days after the petition, and that would be August 8th.

7 Given the Commissioners schedules it's unlikely I
8 can get an order out from the Commission on this before
9 the end of August, and very likely that first week of
10 September, they are -- it's possible we can get two
11 Commissioners on an order, but their schedules are
12 sporadic.

13 So do you all want to extend the deadline for the
14 8th, or do you want to keep the response date for the
15 8th?

16 MS. JOYCE: T-Netix has requested that the
17 briefing schedule be in accordance with the rules. But --

18 MR. MEIER: More time is always better. From our
19 perspective --

20 COURT REPORTER: Who is this?

21 JUDGE RENDAHL: Is this Mr. Meier?

22 MR. MEIER: Yes.

23 JUDGE RENDAHL: You'll have to identify
24 yourselves, I'm sorry, I should have said that.

25 MR. MEIER: I'm sorry. You know, I would -- it's

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1 a fairly quick turnaround on the 8th, particularly when we
2 actually need to file something on the 5th, which is a
3 Friday, in order to get something, you know, filed on the
4 8th.

5 I would think if we had another week to respond
6 to that, we could address it more thoroughly or in a more
7 quality fashion. If that, you know, doesn't disrupt any
8 Commission schedules.

9 JUDGE RENDAHL: No, because frankly, one or more
10 Commissioners are on vacation from the 8th through the
11 31st. So as I said, it will be catch as catch can in
12 terms of getting the Commissioners together to decide
13 this. So deferring it to the 15th is not going to create
14 any problem.

15 MR. MEIER: Okay.

16 JUDGE RENDAHL: Okay. So why don't we set a
17 response date for the 15th. Generally usually there are
18 no reply dates for these, and so we'll just take -- and
19 given all the pleadings in this matter, I don't believe
20 it's necessary -- so we'll have a response on the 15th,
21 and the Commission will endeavor to get an order out by
22 the 9th at the very latest of September. And I'm hoping
23 that I'll be able to round them up and have them produce
24 an order before that time.

25 MR. MEIER: The date you're expecting the

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1 Commission decision again was the 9th?

2 JUDGE RENDAHL: I would say the latest would be
3 September 9th.

4 MR. MEIER: Okay.

5 JUDGE RENDAHL: And I can't commit to any earlier
6 time, it just depends on --

7 MR. MEIER: Yes. I wanted to get the right date
8 down.

9 JUDGE RENDAHL: Right. So that would be on the
10 petition or intervention and --

11 MR. PETERS: For interlocutory review?

12 JUDGE RENDAHL: Yes, thank you. Petition for
13 interlocutory review. The brain doesn't write down what
14 the -- the hand doesn't always write down what the brain
15 meant.

16 MS. JOYCE: Your Honor, does AT&T have a right to
17 respond to that petition as well?

18 JUDGE RENDAHL: Yes.

19 MS. JOYCE: I wasn't sure how that worked.

20 JUDGE RENDAHL: I think any party who's in --
21 well, I mean if they chose to, yes, they can.

22 MR. MEIER: Okay.

23 JUDGE RENDAHL: So the responding date will be
24 the 15th, and then the Commission will enter an order on
25 the petition for interlocutory review and/or the motion

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1 for stay by the 9th. And it may be that the Commission
2 will enter an order on the stay earlier, I don't know. So
3 that's that matter.

4 And then the other is the joint AT&T -- well, not
5 joint, but the motions for summary determination filed by
6 AT&T and T-Netix. And so why don't you let me know your
7 proposed schedule on that.

8 MR. PETERS: Well -- this is Charles Peters --
9 what we had talked about is -- well, as I understand the
10 complainants contemplate serving additional data requests
11 related to -- or prompted by the T-Netix motion for
12 summary for determination.

13 I think T-Netix has some concerns, and I have
14 some concerns as well about those additional data
15 requests. But assuming that those -- what we've talked
16 about is that what we would try to work out amongst
17 ourselves are issues about the discovery of those data
18 requests --

19 JUDGE RENDAHL: Right.

20 MR. PETERS: -- but the feeling is that assuming
21 we can work out those scope issues the data request will
22 be served August 12th.

23 JUDGE RENDAHL: Okay. So you would have a
24 written discovery cutoff of August 12th?

25 MR. PETERS: For them to be served, correct.

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1 JUDGE RENDAHL: Okay.

2 MR. PETERS: A deadline to respond to those
3 written data requests of September 16th, and then the hope
4 would be to take complete depositions on both AT&T's and
5 T-Netix motions for summary determination by November
6 18th. I think I got that right, I'm not sure.

7 JUDGE RENDAHL: Okay. So that's fairly
8 consistent with the timing of the prior schedule.

9 MR. PETERS: Right, it is.

10 JUDGE RENDAHL: Okay. All right.

11 MR. MEIER: And that's assuming no stay?

12 MR. PETERS: Correct.

13 JUDGE RENDAHL: That's assuming no stay from King
14 County and no stay from this Commission?

15 MR. BUTLER: Well, King County the motion was to
16 lift the stay there.

17 JUDGE RENDAHL: Oh, correct.

18 MS. JOYCE: Nor can the Court reach the issue of
19 standing.

20 MR. BUTLER: The standing issue.

21 JUDGE RENDAHL: Right. So if the Court reaches
22 the issue of standing, then all this could go away.

23 MS. JOYCE: Yes.

24 MR. PETERS: Yes.

25 JUDGE RENDAHL: As least as to T-Netix. Now, is

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1 AT&T weighing in in that matter as well?

2 MR. PETERS: I think that we probably will.

3 JUDGE RENDAHL: Okay. Well, then I just -- as I
4 noted in my Email to all of you, in consultation with the
5 Attorney General's Office, the Commission will not be
6 appearing in any of the proceedings before King County.

7 MR. MEIER: Okay.

8 JUDGE RENDAHL: The Attorney General's Office
9 hasn't appeared in this matter so Staff doesn't have a
10 position, and there is no Commission order as of yet, it's
11 just my order. So at this point there will be no
12 appearance from the Commission.

13 Okay. So assuming that we continue with the
14 schedule, and the depositions are completed on November
15 18th, when are answers to AT&T's and T-Netix's motions for
16 summary determination due?

17 MR. MEIER: Well, we didn't -- this is John
18 Meier -- we did not actually discuss a particular date for
19 that. I think we had built in about 30 days in the
20 original schedule.

21 JUDGE RENDAHL: Yes.

22 MR. MEIER: One new concern that I raised with
23 counsel in the call before this is we foresee a
24 possibility, perhaps a probability, that at the end of
25 discovery we would want to file our own dispositive motion

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1 or perhaps a partially dispositive motion at the same time
2 that we would be filing responses to the AT&T and T-Netix
3 motion for summary determination. And AT&T and T-Netix
4 raised the concern that they may want to do some discovery
5 related to issues that we might raise at that time. The
6 original schedule that we had agreed to built in some
7 reply discovery time --

8 JUDGE RENDAHL: Right.

9 MR. MEIER: -- and it seems to me that that would
10 be a fruitful time to use for discovery on any issues
11 raised by any motions that we might file as well.

12 So those are my thoughts. We didn't actually
13 come up with specific dates, we kind of ran out of time.

14 JUDGE RENDAHL: Okay. Well, looking at my
15 calendar 30 days from November 18, essentially four weeks,
16 would be December 9th. So maybe I'm counting wrong? No,
17 the 16th, sorry, December 16th. And then the timing for
18 the replied discovery previously was about four weeks.
19 Now, considering that you'd be raising additional issues,
20 would you be proposing extending that discovery cutoff
21 time?

22 MR. MEIER: I could live with a modest
23 extension.

24 MR. PETERS: My bigger concern is not just a
25 raising of issues, but also that we're getting into the

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1 holiday scheduling difficulties with the opposition
2 there.

3 MR. MEIER: Yes, that's a good point.

4 JUDGE RENDAHL: Well, you'd have to build in time
5 because of the holidays.

6 MR. PETERS: Yes.

7 JUDGE RENDAHL: So would you all be amenable to
8 say the end of January?

9 MR. PETERS: That would work for us, but of
10 course it's --

11 JUDGE RENDAHL: It's more of an issue for you --

12 MR. PETERS: -- my only concern is I think we had
13 contemplated 30 days for replied discovery before --

14 JUDGE RENDAHL: Right. So this is six weeks.

15 MR. PETERS: And I'm assuming from a practical
16 standpoint that we guess at the opposition brief on
17 September 16th, it's going to be difficult to get really
18 anything done until people get back in January. I would
19 suggest a little bit longer into the beginning of February
20 if that's not too much of a problem.

21 JUDGE RENDAHL: Of February 3rd, is that what
22 you're thinking?

23 MR. PETERS: I don't even have the -- February --
24 February 3rd or February 10th.

25 MS. JOYCE: So this would be responses to written

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1 discoveries would be due February 3rd as well as any
2 depositions would have to be taken?

3 JUDGE RENDAHL: No, no, no. This is the cutoff
4 for propounding discovery.

5 MR. MEIER: Oh, this is just for propounding --
6 this is for propounding --

7 JUDGE RENDAHL: This is just for propounding
8 written discovery.

9 MR. PETERS: Oh, it doesn't have to go that far
10 then if we're just talking about -- I thought that we were
11 having a hold date for the reply discovery.

12 JUDGE RENDAHL: No.

13 MR. PETERS: Well, it can be shorter then, it
14 doesn't have to go all the way to February to propound.

15 JUDGE RENDAHL: So January 20, January 27?

16 MR. PETERS: Yes, I'd say January 20 -- let's say
17 January 20 just to get the stuff.

18 JUDGE RENDAHL: Okay. So January 20th would be
19 the cutoff for replied discovery or discovery on the
20 T-Netix motion.

21 MR. PETERS: For written discovery, right?

22 JUDGE RENDAHL: For written discovery. And then
23 we didn't build in any depositions in the previous
24 calendar, so I don't see why we can't build it in now. So
25 then the responses for the written discovery would be

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1 when?

2 MR. PETERS: I wouldn't think it would take --

3 JUDGE RENDAHL: 28 days is what we built into the
4 prior --

5 MR. PETERS: Yes. I don't think there's going to
6 be much written discovery frankly of complainants. I
7 mean, I could be wrong, but -- and therefore I don't think
8 it would take that long to respond to it. I would think
9 three weeks would be plenty sufficient.

10 JUDGE RENDAHL: So you could respond by February
11 the 10th?

12 MR. PETERS: Sure.

13 JUDGE RENDAHL: Okay. And then do you want to
14 build in time for depositions?

15 MR. MEIER: Yes.

16 JUDGE RENDAHL: And how much time do you need?

17 MR. MEIER: I think we can do that in 30 days.

18 JUDGE RENDAHL: So by March 10th?

19 MR. MEIER: Yes.

20 MS. JOYCE: Now, Mr. Meier, I just want to
21 confirm that any dispositive motion you file will file on
22 the same day that you oppose the AT&T and the T-Netix
23 motion?

24 MR. MEIER: Correct, December 16th, is what we're
25 talking about.

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1 JUDGE RENDAHL: Okay. And then the replied
2 brief -- let's see, this will get interesting -- it would
3 be AT&T and T-Netix reply brief.

4 MR. MEIER: Correct.

5 JUDGE RENDAHL: And T-Netix as well as answers to
6 T-Netix's motion.

7 MS. JOYCE: Those will be filed on the 16th.

8 JUDGE RENDAHL: No, no, no. AT&T and T-Netix
9 reply to T-Netix's answers to your motions for summary
10 determination as well as any answers you have to T-Netix's
11 motion filed on the 16th.

12 MR. MEIER: Right. So it will our reply brief on
13 our summary for determination and our response or
14 opposition to the plaintiff's motion for summary
15 determination.

16 MR. PETERS: Correct.

17 JUDGE RENDAHL: So how much time past February
18 10th do AT&T and T-Netix need for that?

19 MR. PETERS: Well, it will be past --

20 JUDGE RENDAHL: Past March 10th, I'm sorry.

21 MR. PETERS: Exactly, whatever date in March we
22 agreed to for depositions.

23 JUDGE RENDAHL: We had previously scheduled three
24 weeks for that, but I leave it open to all of you.

25 MR. PETERS: I think it's going to be longer than

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1 that. We've got -- significantly more -- I would say 60
2 days.

3 MR. MEIER: That strikes me as overly long. I
4 think three weeks, four weeks, should be sufficient.

5 MR. PETERS: This is Charles Peters, again. We
6 had talked about three weeks just to file the reply brief,
7 and now we're filing the opposition to their motion for
8 summary determination as well.

9 MS. JOYCE: Yes.

10 JUDGE RENDAHL: Well, let's see, five weeks is
11 April 14th, six weeks is April the 21st. Seems to me six
12 weeks is sufficient time.

13 MR. PETERS: We can do that.

14 JUDGE RENDAHL: So I would say by April 21st.
15 Now, we had built in time for oral argument before, and
16 frankly I'm not sure it's necessary.

17 MR. PETERS: I leave that to you in terms of
18 whether you think there's value to it.

19 JUDGE RENDAHL: So at this point I'm not going to
20 schedule, but if I find the need, I'll schedule one.

21 MR. MEIER: We still have one more briefing
22 deadline to consider, which is --

23 JUDGE RENDAHL: Right, your reply.

24 MR. MEIER: Complainant's reply.

25 JUDGE RENDAHL: How much time do you feel is

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1 appropriate, three weeks?

2 MR. PETERS: Three weeks would be fine.

3 JUDGE RENDAHL: Okay. So that brings us to May
4 12th. Now, all of these dates are basically Fridays; is
5 that creating a problem for anyone?

6 MS. JOYCE: For me it's preferable.

7 MR. PETERS: It's fine for AT&T as well.

8 MR. MEIER: It's fine.

9 JUDGE RENDAHL: Okay. So then we're looking at a
10 decision from my sake on the motions. And I'll say I will
11 have an order out by June 9th at the latest. And I'm not
12 going to schedule a prehearing conference date at this
13 point because there's so many ifs already in this
14 schedule.

15 So why don't we just stick with this schedule at
16 this point. I'm going to repeat the dates just to make
17 sure that we have it correct.

18 Parties will file a response to T-Netix's
19 petition for interlocutory review by August 15th, which is
20 a Monday. And the Commission will endeavor to enter an
21 order by September 9th, which is a Friday, at the very
22 latest.

23 In terms of the schedule for AT&T and T-Netix
24 motions for summary determination, written discovery
25 propounded by T-Netix will be propounded by August 31st.

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1 So that's the written discovery cutoff. Responses to --
2 did I say T-Netix?

3 MR. MEIER: Yes.

4 MR. PETERS: Yes, I think you did at one point.

5 MR. BUTLER: Yes.

6 JUDGE RENDAHL: Sorry, the complainants written
7 discovery cutoff is August 31st, and any responses by
8 T-Netix and AT&T to those data requests are due on
9 September 16th.

10 MR. MEIER: Can I just interrupt here because we
11 got a --

12 MR. PETERS: 12th?

13 MR. MEIER: Yes, the first date should be August
14 12th.

15 JUDGE RENDAHL: I thought I heard August 31st?

16 MR. MEIER: No.

17 JUDGE RENDAHL: All right. So August 12th.
18 Thank you, that's why we're going over this. So responses
19 to those data requests will be due on September 16th. Any
20 depositions on AT&T's and T-Netix's motions will be
21 completed by November 18th. Answers to AT&T and T-Netix
22 motions by the complainants and the complainants motion
23 for summary determination would be filed by December the
24 16th. Any discovery on the answer for T-Netix -- I'm
25 sorry -- complainants own motion would be filed --

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1 propounded by -- not filed, but propounded because no
2 discovery should be filed by the Commission.

3 Any discoveries propounded by January the 20th,
4 2006 -- any responses to that discovery would be due by
5 February the 10th. Any depositions on complainant's
6 motion or the answers must be completed by March 10th.
7 AT&T, and T-Netix reply brief, and their answers to the
8 complainant's motion for summary determination are due by
9 April 21st, and the Complainant's reply would be due on
10 May 12th with the decision on the motions due by June
11 9th. Does that corroborate with what you've written
12 down?

13 MR. MEIER: Yes.

14 MS. JOYCE: Yes.

15 JUDGE RENDAHL: Okay. Is there anything further
16 we need to talk about this afternoon? Okay. Does anyone
17 wish to order the transcript of this afternoon?

18 MS. JOYCE: Stephanie Joyce, I would like to
19 order one. It may be easier for Arthur Butler to do so
20 since he's more frequently before the Commission.

21 MR. BUTLER: Yes.

22 JUDGE RENDAHL: So Art, you would like to --

23 MR. BUTLER: Yes, yes, that's fine.

24 JUDGE RENDAHL: All right. And anybody else who
25 would like to order a copy of the transcript?

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1 MR. MEIER: You expect to issue an order with
2 these dates?

3 JUDGE RENDAHL: I will. I will be sending out --
4 it will be a notice with the revised schedule, and I'll do
5 that early next week.

6 MR. PETERS: I don't need a transcript then.

7 JUDGE RENDAHL: Okay. I will advise all of you,
8 I will be away on vacation from the 4th of August through
9 the 12th. So if you do have any disputes over the scope,
10 you can either wait until I get back on the 15th, or you
11 can bring them up with someone in our office. Bob Wallis
12 may also be away during that time. So you can always call
13 Kippi Walker or Margaret Heck, who are our assistants to
14 see who might be available to assist you.

15 Okay. With that this scheduling conference is
16 adjourned. Thank you very much for calling in and enjoy
17 the rest of your day.

18 (Hearing adjourned at 1:20 p.m.)

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