

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 MOTION TO DISMISS**

T-Netix requests dismissal of this proceeding, arguing that the King County Superior Court's grant of summary judgment to T-Netix "terminate[s] the primary jurisdiction referral to the WUTC." Complainants respectfully disagree.

At this juncture, it is unclear what effect the order granting summary judgment to T-Netix has with respect to AT&T. Judge Ramsdell simply signed the order proposed by T-Netix; that order does not refer to AT&T. *See* Exhibit 3 to T-Netix Motion. Without additional clarification from the trial court or a judgment dismissing both T-Netix and AT&T, any dismissal of this proceeding would be premature. Complainants understand that AT&T will soon seek to clarify the effect of Judge Ramsdell's order on AT&T. Accordingly, the Commission should do nothing until further proceedings in the trial court clarify the procedural posture of the case.

If the trial court eventually concludes that its order applies to AT&T and judgment is entered for both AT&T and T-Netix, Complainants anticipate filing an

appeal. In that event, the wisest course of action is to stay proceedings in the Commission while the appeal is decided. A stay is currently in effect. *See* Order No. 6 (August 18, 2005). By preserving the status quo, the Commission will ensure that its resources, and those of the parties, are not wasted if and when this matter is remanded for further proceedings.

Although the Commission's jurisdiction over this proceeding resulted from a primary jurisdiction referral from Superior Court, this remains a separate, adjunct proceeding. Complainants initiated it by filing a complaint. The Commission assigned a docket number and Respondents filed formal answers. Judge Rendahl was assigned to the case and issued a number of orders. The proceeding is governed by a separate protective order and the parties have engaged in discovery and briefing pursuant to schedules authorized by Judge Rendahl. Discovery is currently pending, as are two motions for summary determination (one filed by each of the Respondents).

It makes no sense to reinvent this wheel if the Superior Court's summary judgment is reversed on appeal and the case is remanded to the Commission. Just as a prevailing party on appeal is not required to file a second complaint and start anew in the trial court, there is no reason to require Complainants to file a second complaint and start over again in the Commission. In the event of an appellate reversal, the parties (and the Commission) should be able to resume the primary jurisdiction referral without the expense and burden of replicating work that has already been done. Judge Rendahl, who has spent the better part of a year gaining familiarity with the parties and issues in the case, should continue to be assigned to the matter.

T-Netix cannot complain of any prejudice. If T-Netix prevails on appeal, nothing is lost by staying the matter until an appellate mandate issues. Conversely, if Complainants prevail on appeal, T-Netix is not prejudiced by a stay. The parties can resume where they left off, or, if any party desires to withdraw pending motions or has new ideas about how the Commission should proceed, can articulate those concerns at the time. In either situation, no one is prejudiced.

For all of these reasons, Complainants respectfully request that the Commission deny T-Netix's motion to dismiss. At the very least, the Commission should refrain from acting until additional proceedings in the trial court clarify the effect of the summary judgment order on AT&T. If judgment is eventually entered for both T-Netix and AT&T in the trial court, Complainants request that the Commission stay proceedings until an appellate mandate issues.

DATED: September 16, 2005.

SIRIANNI YOUTZ  
MEIER & SPOONEMORE



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

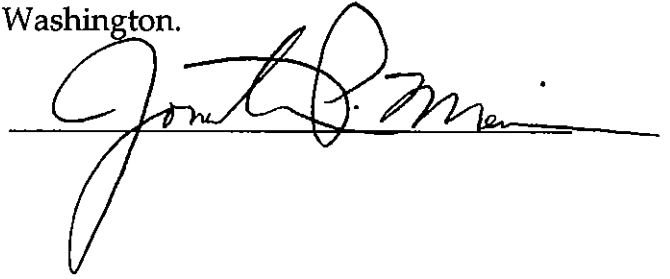
1100 Millennium Tower  
719 Second Avenue  
Seattle, WA 98104  
Tel.: (206) 223-0303  
Fax: (206) 223-0246

## CERTIFICATE OF SERVICE

I certify, under penalty of perjury and in accordance with the laws of the State of Washington, that on September 16, 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 SCHIFF HARDIN LLP 6600 Sears Tower Chicago, IL 60606-6473 Attorneys for Respondent AT&T	<input checked="" type="checkbox"/> By Email <a href="mailto:cpeters@schiffhardin.com">cpeters@schiffhardin.com</a> <input checked="" type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Federal Express <input type="checkbox"/> By Facsimile
Letty S.D. Friesen AT&T 919 Congress Avenue, Suite 900 Austin, TX 78701-2444 Attorneys for Respondent AT&T	<input checked="" type="checkbox"/> By Email <a href="mailto:lsfriesen@att.com">lsfriesen@att.com</a> <input checked="" type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Federal Express <input type="checkbox"/> By Facsimile
Laura Kaster AT&T One AT&T Way, Room 3A213 Bedminster, NJ 07921 Attorneys for Respondent AT&T	<input checked="" type="checkbox"/> By Email <a href="mailto:lkaster@att.com">lkaster@att.com</a> <input checked="" type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Federal Express <input type="checkbox"/> By Facsimile
Arthur A. Butler ATER WYNNE LLP 601 Union Street, Suite 5450 Seattle, WA 98101-2327 Attorneys for Respondent T-NETIX, Inc.	<input checked="" type="checkbox"/> By Email <a href="mailto:aab@aterwynne.com">aab@aterwynne.com</a> <input type="checkbox"/> By United States Mail <input checked="" type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Federal Express <input type="checkbox"/> By Facsimile
Donald H. Mullins Sandrin B. Rasmussen BADGLEY-MULLINS LAW GROUP PLLC 701 Fifth Avenue, Suite 4750 Seattle, WA 98104 Attorneys for Respondent T-NETIX, Inc.	<input checked="" type="checkbox"/> By Email <a href="mailto:donmullins@badgleymullins.com">donmullins@badgleymullins.com</a> <a href="mailto:sbrasmussen@badgleymullins.com">sbrasmussen@badgleymullins.com</a> <input checked="" type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Federal Express <input type="checkbox"/> By Facsimile
Stephanie A. Joyce Glenn B. Manishin KELLEY DRYE & WARREN LLP 1200 19 <sup>th</sup> Street, NW, Suite 500 Washington, DC 20036 Attorneys for Respondent T-NETIX, Inc.	<input checked="" type="checkbox"/> By Email <a href="mailto:sjoyce@kelleydrye.com">sjoyce@kelleydrye.com</a> <a href="mailto:gmanishin@kelleydrye.com">gmanishin@kelleydrye.com</a> <input checked="" type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Federal Express <input type="checkbox"/> By Facsimile

DATED: September 16, 2005, at Seattle, Washington.

A handwritten signature in black ink, appearing to read "Jonathan J. Merri", is written over a horizontal line. The signature is highly stylized and cursive.