

HON. JEFFREY RAMSDELL

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SANDY JUDD, TARA HERIVEL and  
ZURAYA WRIGHT, for themselves, and  
on behalf of all similarly situated persons,

Plaintiffs,

v.

AMERICAN TELEPHONE AND  
TELEGRAPH COMPANY; GTE  
NORTHWEST INC.; CENTURYTEL  
TELEPHONE UTILITIES, INC.; NORTH-  
WEST TELECOMMUNICATIONS, INC.,  
d/b/a PTI COMMUNICATIONS, INC.;  
U.S. WEST COMMUNICATIONS, INC.;  
T-NETIX, INC.,

Defendants.

NO. 00-2-17565-5 SEA

PLAINTIFFS' RESPONSE TO  
T-NETIX'S MOTION FOR  
CLARIFICATION OF ORDER

Soon after this Court entered its order granting T-Netix's motion for summary judgment, T-Netix filed a motion to dismiss the adjunct proceeding in the Washington Utilities & Transportation Commission (WUTC). Plaintiffs have opposed that request on the following grounds (a copy of the opposition brief is attached):

- The WUTC should do nothing until this Court clarifies the effect of its summary judgment vis-à-vis AT&T. The order signed by the Court does not address AT&T. AT&T has announced, in papers filed with

1 the WUTC, that it intends to clarify the effect of the Court's order by  
2 filing a motion with the Court.

- 3 • If the Court concludes that its order applies to AT&T and judgment is  
4 entered for both AT&T and T-Netix, Plaintiffs anticipate filing an  
5 appeal. In that event, the wisest course of action is to stay  
6 proceedings in the WUTC while the appeal is decided. A stay of  
7 agency proceedings is currently in effect. By preserving the status  
8 quo, the WUTC will ensure that its resources, and those of the parties,  
9 are not wasted if and when this matter is remanded for further  
10 proceedings.
- 11 • If an appeal is taken and a trial court judgment is affirmed, the WUTC  
12 proceedings may be dismissed when the appellate mandate issues. If  
13 an appellate court reverses, the stay of WUTC proceedings can be  
14 lifted. The parties (and the Commission) should be able to resume the  
15 primary jurisdiction referral without the expense and burden of  
16 replicating work that has already been done. By staying rather than  
17 dismissing the agency proceeding, the WUTC will ensure that the  
18 primary jurisdiction referral is handled efficiently without prejudicing  
19 any party.

20 T-Netix fails to acknowledge this efficiency argument, and instead  
21 contends that by terminating the primary jurisdiction referral, this Court will prevent  
22 the WUTC from "requir[ing] T-Netix to adjudicate this matter fully, undergoing  
23 extensive written and deposition discovery, to resolve a regulatory question in a  
24 dispute that cannot be tried." T-Netix Motion to Clarify, p. 2. It even suggests that  
25 Judge Rendahl intends to do so. *Id.* at 2-3 ("Indeed, Judge Rendahl previously has  
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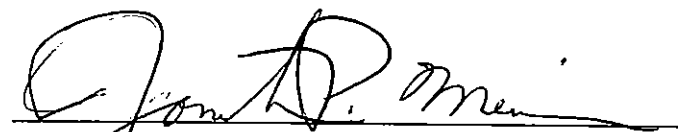
1 stated that she intends to resolve the Court's referral fully, and leave it to the parties to  
2 return to this Court and ask for dismissal.").

3 That is not going to happen. No one is asking the WUTC to proceed  
4 headlong with discovery in the face of this Court's current order. Plaintiffs are simply  
5 asking the WUTC to *stay* agency proceedings so that if and when this matter is  
6 remanded by an appellate court, plaintiffs need not file a new complaint or otherwise  
7 reinvent a wheel that has taken the better part of a year to build.

8 In short, this Court should clarify that the WUTC may stay its  
9 proceedings until the question of plaintiffs' standing is resolved by an appellate court.  
10 If an appellate court agrees that plaintiffs have no standing, then the agency may  
11 dismiss the matter and a stay will have simply suspended proceedings during the  
12 pendency of the appeal. If plaintiffs do have standing, it is more efficient to stay  
13 proceedings in the agency and resume the referral after the appellate process is  
14 completed. There is no prejudice to T-Netix or AT&T that would result from this  
15 course of action.

16 DATED: September 21, 2005.

17 SIRIANNI YOUTZ  
18 MEIER & SPOONEMORE

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20 Jonathan P. Meier (WSBA #19991)  
21 Attorneys for Plaintiffs  
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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 September 21, 2005, I served a copy of the foregoing document on all counsel of record as indicated below:

Michael P. McGinn  
STOKES LAWRENCE, P.S.  
800 Fifth Avenue, Suite 4000  
Seattle, WA 98104  
Attorneys for Defendant AT&T

[x] By Legal Messenger

Charles H.R. Peters  
SCHIFF HARDIN LLP  
6600 Sears Tower  
Chicago, IL 60606-6473  
Attorneys for Defendant AT&T

[x] By United States Mail

Letty S.D. Friesen  
AT&T  
919 Congress Avenue, Suite 900  
Austin, TX 78701-2444  
Attorneys for Defendant AT&T

[x] By United States Mail

Laura Kaster  
AT&T  
One AT&T Way, Room 3A213  
Bedminster, NJ 07921  
Attorneys for Defendant AT&T

[x] By United States Mail

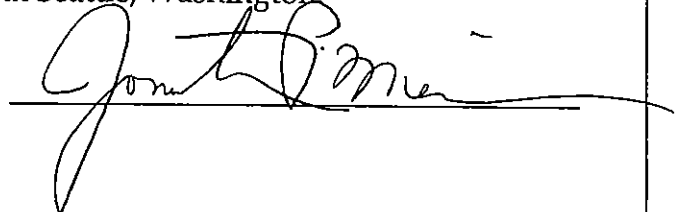
Donald H. Mullins  
Sandrin B. Rasmussen  
BADGLEY-MULLINS LAW GROUP PLLC  
701 Fifth Avenue, Suite 4750  
Seattle, WA 98104  
Attorneys for Defendant T-NETIX, Inc.

[x] By Legal Messenger

Stephanie A. Joyce  
Glenn B. Manishin  
KELLEY DRYE & WARREN LLP  
1200 19<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20036  
Attorneys for Defendant T-NETIX, Inc.

[x] By United States Mail

DATED: September 21, 2005, at Seattle, Washington



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

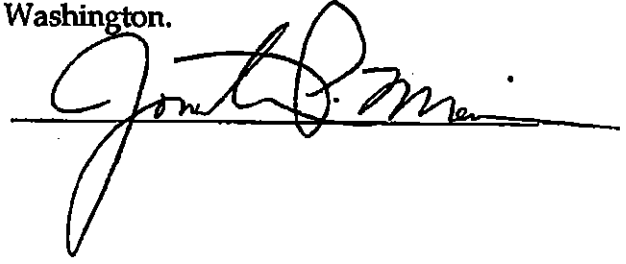
## CERTIFICATE OF SERVICE

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 S. Man", is written over a horizontal line. The signature is stylized and cursive.