

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'  
BRIEF RE: DISCOVERY  
PROCEDURES

**Introduction**

1. The Commission requested the parties to submit briefs discussing the status of discovery and suggestions for procedures for further discovery in this matter. This submission is made on behalf of the Complainants. At the Prehearing Conference, T-Netix suggested that future discovery proceed as though this was a rate proceeding and the Complainants were asking for a rate increase. This matter is not a rate proceeding. It is a referral from the King County Superior Court requesting a determination of whether AT&T and T-Netix were operator service providers and, if so, whether they failed to comply with certain disclosure requirements for collect telephone calls. Unlike a rate proceeding where the utility possesses the studies and information to support its request for a rate, it is the respondents who have much of the information needed to show that they were Operator Service Providers. That information should be

made available to the Commission to make an informed decision on the referral from the King County Superior Court.

### **The history of the discovery in this case**

2. Shortly after this matter was referred to the Commission, AT&T filed a motion for summary determination on the issue of whether it was an operator service provider (“OSP”)—the principal issue in this matter. The question of whether AT&T is an OSP depends, of course, on its role in handling the collect telephone calls at issue in this matter. Answering that question requires discovery from AT&T, since it would be the primary source for that information. The same is true with respect to T-Netix.

3. At the first pre-hearing conference in this matter, there was agreement by the parties that a full range of discovery should be available.

4. Accordingly, the Commission issued a discovery schedule as part of its Pre-hearing Conference Order of February 22, 2005. *See* Appendix B to Order No. 01. That Order provided for depositions as well as written discovery.

5. To facilitate discovery, a Protective Order was issued by the Commission on March 18, 2005. *See* Order No. 02.

6. In April 2005, T-Netix filed a motion for summary determination on the issue of standing. It also filed a motion to stay discovery.

7. The respondents essentially treated the motion to stay discovery as though the order had already been granted. The declaration from Jonathan P. Meier, counsel for complainants, submitted in opposition to the motion to stay, describes the lack of discovery received from the respondents. *See*

<http://www.wutc.wa.gov/rms2.nsf/177d98baa5918c7388256a550064a61e/31dc9f8a857>

[3991888256ffc007d0fdd!OpenDocument](#) . Indeed, counsel for AT&T acknowledged that

“we have not fully complied with all of the outstanding discovery requests.” June 28, 2005, Transcript at p. 51.

8. At a pre-hearing conference on June 28, 2005, to address T-Netix’s motions for summary determination and for stay of discovery, Judge Rendahl denied the motion to stay and addressed the need for discovery:

Let’s discover the facts and be clear and have it be clear that, in fact, T-Netix and AT&T don’t bear responsibility. So we need to go back to the position we were prior to the T-Netix motion, and let’s get the underlying facts set up. Let’s have some depositions. Let’s test the issues that were addressed in this affidavit.

Transcript at p. 68.

9. Judge Rendahl noted that discovery had been “effectively stayed” and stated that “we need to establish a schedule that is going to get us the discovery.”

Transcript at pp. 67, 69.

10. The written Order issued from this hearing summarizes the status of discovery at that time:

A matter of concern, however, is T-Netix’s and AT&T’s actions in ceasing discussions with complainants over outstanding data requests and refusing to provide answers to pending data requests until the Commission resolved the pending motions. Filing a motion to stay discovery does not allow the parties to stay discovery. T-Netix and AT&T did not wait for the Commission to resolve either motion before staying discovery on their own. Such conduct is not acceptable. The Commission expects the parties to follow the procedural rules in Chapter 480-07 WAC and will not tolerate such flagrant violations. The parties must meaningfully respond to complainants’ discovery requests. If T-Netix and AT&T are correct that they are not OSPs and had no role in the inmate-

initiated calls in question, they should be willing to disclose in discovery all relevant information in the proceeding.

Order No. 05 at p. 14, ¶ 46.

11. T-Netix then sought review of this Order by the full Commission, and, in addition, filed a motion in King County Superior Court to dismiss the case for lack of standing.

12. On July 27, 2005, T-Netix filed a motion for summary judgment in King County Superior Court to dismiss the claims for lack of standing. On July 28, T-Netix filed a petition for review by the full Commission of Order No. 05 and included a motion to stay discovery. On that date, T-Netix also filed a motion for summary determination with the Commission.

13. On July 29, a scheduling conference was held where a revised procedural schedule was set. A date of August 12 was set for the complainants to submit additional data requests to the respondents. Those requests were served on T-Netix and AT&T on August 12. Those requests were never responded to because on August 18, the Commission stayed discovery pending a ruling from the King County Superior Court on the standing issue. *See* Order No. 06 at p. 7, ¶ 26. The King County Superior Court ultimately granted the motion to dismiss the claims. That decision was reversed by the Court of Appeals, and the case was referred back to the Commission after being remanded by the Court of Appeals (after the Washington Supreme Court denied the respondents' petition for review).

14. T-Netix served supplemental responses to the first set of data requests on July 25, 2005, and August 9, 2005. AT&T served supplemental responses and objections on July 27, 2005.

15. While these responses provided substantially more information that had been disclosed prior to the June hearing, We believe that the respondents have not fully answered the complainants' first data requests. For example, the responses often simply state that the party "is searching" for additional documents. See T-Netix's Second Supplemental Response to Data Request No. 6 (*Exh. A* to Youtz Decl.) and AT&T's Response to Data Request No. 3 (*Exh. B* to Youtz Decl.).

16. Thus, respondents have apparently not produced all responsive documents. Further, we believe that the answers to other data request are incomplete. As discussed below, we propose that the parties confer regarding these initial requests and that a date be set for filing a motion to compel if these disputes are not resolved informally.

17. Further, there has been no response to complainants' second data requests since discovery was stayed prior to the due date for those requests. As part of the proposed schedule discussed below, we request that the prior schedule be adapted to require the respondents to respond to those requests.

#### **PROPOSED PROCEDURES FOR FURTHER DISCOVERY**

18. No party had objected to the general approach and procedures used for discovery prior to the dismissal of this matter. We believe that it is appropriate to pick up where we left off before discovery was stayed, and we request that the Commission

adopt a schedule similar to Appendix B to the original Pre-hearing Conference Order (Order No. 01) that was issued in this matter. Thus, we request that the Commission issue an order that requires the parties to confer within two weeks of the issuance of the discovery order in this case regarding any disputes regarding the complainants' initial discovery requests. Second, we request that the complainants be required to file any motion to compel further responses to complainants' first data requests within 28 days of the issuance of the discovery order. We also request that respondents answer complainants' second data requests within 28 days of the issuance of the discovery order.

19. Thus, we propose the following schedule:

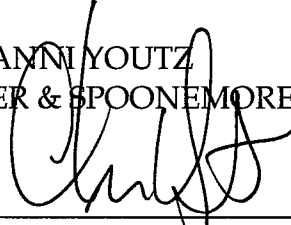
<i>EVENT</i>	<i>DATE</i>	<i>INTERVAL</i>
Parties to confer on Complainants' First Data Requests by this Date	September 25, 2008	
Responses to Complainants' Second Data Requests Due	October 16, 2008	28 Days
Complainants to File Motion to Compel re First Data Requests If Necessary By This Date	October 16, 2008	28 Days
Depositions re: AT&T / T-Netix Motions Complete	December 19, 2008	63 Days

### **CONCLUSION**

20. For the reasons stated above, the complainants request that the parties complete the discovery propounded to date, and that the Commission issue a scheduling order consistent with the order proposed by complainants.

DATED: September 4, 2008.

SIRIANNI YOUTZ  
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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 4, 2008, I served a copy of the foregoing document on all counsel of record in the manner shown and at the addresses listed below:

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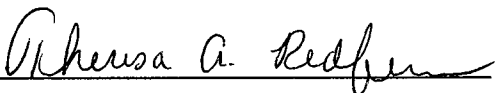
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