

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SANDY JUDD and TARA HERIVEL,

Complainants,

v.

**AT&T COMMUNICATIONS OF THE
PACIFIC NORTHWEST, INC. and T-
NETIX, INC.,**

Respondents.

Docket No. UT-042022

**RESPONDENT AT&T'S
MEMORANDUM REGARDING
DISCOVERY**

1. Pursuant to Administrative Law Judge Russell's Order No. 08 in the above-captioned docket, AT&T Communications of the Pacific Northwest, Inc. ("AT&T") respectfully submits this memorandum regarding the continuation of discovery in connection with AT&T's pending motion for summary determination.

The August 21, 2008 Conference

2. At the August 21, 2008 conference, the parties discussed, but could not agree upon, how discovery should proceed in this matter. That said, however, no one offered any reason that discovery should not proceed where it left off, according to the same time-table that the parties previously agreed upon and that then-presiding ALJ Rendahl ordered. A copy of Order No. 1, the February 22, 2005 Prehearing Conference Order ("Order No. 1"), Appendix B of which is that procedural schedule, is attached to this memorandum as **Exhibit 1**. Nothing has happened since T-Netix, Inc. ("T-Netix") sought to move this matter back to the King County Superior Court to make that original agreed-upon schedule unworkable or otherwise inapplicable.

The Original Agreed-Upon Discovery Schedule

3. This matter was referred to the WUTC under the doctrine of primary jurisdiction to determine whether AT&T or T-Netix is “considered by the agency to be an OSP under the contracts at issue and if so, if the [WUTC] regulations have been violated.” This referral necessarily defines and limits the scope of discovery. At the outset of the WUTC proceeding, AT&T moved for summary determination as to those two questions on the ground that AT&T has never been an OSP to any Washington state prison or correctional facility and, therefore, has never violated the relevant WUTC regulations. ALJ Rendahl, who presided over the WUTC proceeding at that time, entered Order No. 1 setting a discovery schedule agreed upon by the parties that would culminate in the hearing and determination of AT&T’s motion.

4. Discovery ensued, which included data requests propounded by Plaintiffs and T-Netix, to which AT&T responded on April 4, 2005 and provided supplemental responses to Plaintiffs’ data requests on July 26, 2005. No depositions had been taken at the time that the WUTC proceeding was interrupted by T-Netix’s motion for summary determination on the issue of standing, which ultimately shifted the case back to the King County Superior Court and up the appellate ladder.

5. Now that the case has returned to the WUTC on the Superior Court’s reinstatement of the primary jurisdiction referral, the discovery schedule should pick up where it left off and the ALJ should ultimately hear and decide AT&T’s motion for summary determination, which is still pending. According to Order No. 1: (a) to the extent depositions are necessary to address AT&T’s motion for summary determination, they must be taken within a 60-day window and must comport with the relevant sections of the Washington Administrative Code (WAC 480-07-410 for depositions), (b) answers to AT&T’s motion must be filed 28 days after the deposition deadline, (c) AT&T must complete its reply discovery 57 days after the filing

of any answers, and (d) AT&T must file its reply 21 days after that. AT&T has submitted a proposed procedural schedule (attached to this Memorandum as **Exhibit 2**) that follows and applies the timeline set by Order No. 1, with slight adjustments to account for the Thanksgiving and winter holidays.

6. AT&T seeks resolution of its currently pending motion for summary determination and the related discovery matters in an efficient manner based on the previously agreed-upon schedule entered in Order No. 1. That schedule served the parties well at the time it was developed, entered, and followed, and there is nothing in the record now indicating that it would not function equally as well now and going forward. Accordingly, AT&T respectfully suggests that ALJ Russell should adopt and reinstitute that schedule, as updated in **Exhibit 2** attached to this Memorandum.

Dated: September 4, 2008

**AT&T COMMUNICATIONS OF
THE PACIFIC NORTHWEST, INC.**

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EXHIBIT 1

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

SANDY JUDD AND TARA)	
HERIVEL,	)	DOCKET NO. UT-042022
)	
Complainants,	)	ORDER NO. 01
)	
v.	)	PREHEARING CONFERENCE
	)	ORDER; NOTICE OF ORAL
AT&T COMMUNICATIONS OF	)	ARGUMENT
THE PACIFIC NORTHWEST, INC.,	)	(Thursday, September 22, 2005, at
AND T-NETIX, INC.,	)	9:30 a.m.); NOTICE OF
	)	PREHEARING CONFERENCE
Respondents.	)	(Tuesday, October 11, 2005, at
	)	9:30 a.m.)
.....)	

1 **NATURE OF PROCEEDING.** Docket No. UT-042022 is a complaint filed by recipients of inmate-initiated calls against AT&T Communications of the Pacific Northwest, Inc. (AT&T) and T-Netix, Inc. (T-Netix), alleging that AT&T and T-Netix failed to disclose rate for the calls, violating the Commission’s rules governing disclosure. The complaint was filed with the Commission after the King County Superior Court referred the matter to the Commission under the doctrine of primary jurisdiction to allow the Commission to complete an adjudication into the matters alleged.

2 **CONFERENCE.** The Washington Utilities and Transportation Commission (Commission) convened a prehearing conference in this docket at Olympia, Washington on February 16, 2005, before Administrative Law Judge Ann E. Rendahl.

- 3 **APPEARANCES.** Jonathan P. Meier, Sirianni Youtz Meier & Spoonemore, Seattle, Washington, represents Tara Herivel and Sandy Judd, Complainants. Letty Friesen, AT&T Law Department, Austin, Texas, and Charles Peters, Schiff Hardin, LLP, Chicago, Illinois, represent AT&T. Arthur A. Butler, Ater Wynne LLP, Seattle, Washington, and Stephanie Joyce, Kelley Drye & Warren LLP, Washington, D.C., represent T-Netix. Contact information provided at the conference for the parties' representatives is attached as Appendix A to this order.
- 4 **DISCOVERY.** Discovery will be conducted pursuant to the Commission's discovery rules, WAC 480-07-400 – 425. The Commission urges the parties to work cooperatively together to avoid having to bring discovery matters forward for formal resolution.
- 5 **PROTECTIVE ORDER.** The parties request that the Commission enter a protective order in this docket pursuant to RCW 34.05.446, RCW 80.04.095, WAC 480-07-420, and WAC 480-07-423, to protect the confidentiality of proprietary information as well as highly confidential information. The request was granted, and a protective order will be entered.
- 6 **PROCEDURAL SCHEDULE.** The parties agreed upon a procedural schedule during the conference. The Commission adopts this procedural schedule, which is attached to this Order as Appendix B, and incorporated into the body of this Order by this reference.
- 7 **NOTICE OF ORAL ARGUMENT.** The Commission will hear oral argument on the issues raised in AT&T's Motion for Summary Determination and responses in this matter on **Thursday, September 22, 2005, at 9:30 a.m.** in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.

- 8 **NOTICE OF PREHEARING CONFERENCE.** The Commission convenes a prehearing conference in this matter, to address the remaining procedural schedule in the proceeding following resolution of AT&T's Motion for Summary Determination. **The conference will be held on Tuesday, October 11, 2005, at 9:30 a.m. in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S. W., Olympia, Washington.** Persons who cannot attend in person may participate via the Commission's teleconference bridge line **360-664-3846**. Persons desiring to participate via the bridge line must make advance reservations, by calling Kippi Walker at 360-664-1139, no later than Noon on Monday, October 10, 2005.
- 9 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file with the Commission an original plus 2 copies of all pleadings, motions, briefs, and other prefiled materials. Paper copies of these materials are required to conform to the format and publication guidelines set forth in WAC 480-07-395 and 480-07-460, and must be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.
- 10 All filings must be mailed or delivered to the Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.
- 11 An electronic copy of all filings must be provided by e-mail delivery to records@wutc.wa.gov. Alternatively, Parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette including the filed document(s). The Commission prefers that parties furnish electronic copies in .pdf (Adobe Acrobat) format, supplemented by a separate file in MS Word 6.0 (or later), or WordPerfect 5.1 (or later) format. Parties are

required to organize and identify electronic files as specified in WAC 480-07-140(5).

- 12 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Pursuant to WAC 480-07-145(6), the presiding officer grants parties a one-day extension of the paper-filing requirement, allowing electronic submission of documents with the Commission on the filing deadline. Parties may submit documents electronically with the Commission by e-mailing the document to records@wutc.wa.gov, and must file an original, plus 2 paper copies, of the document with the Commission by the following business day
- 13 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission does have limited ability to provide dispute resolution services; if you wish to explore those services, please call the Director, Administrative Law Division, at 360-664-1142.
- 14 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective this 22nd day of February, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

APPENDIX A

**PARTIES' REPRESENTATIVES
DOCKET NO. UT-042022**

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
Complainants	JONATHAN P. MEIER Sirianni Youtz Meier & Spoonemore 719 Second Ave. – Ste 1100 Seattle, WA 98104	(206) 223-0303	(206) 223-0246	jon@svlaw.com
AT&T	LETTY FRIESEN AT&T Communications of the Pacific Northwest 919 Congress Ave., Ste 900 Austin, TX 78701-2444	(303) 298-6475	(303) 298-6301	lsfriesen@att.com
	CHARLES PETERS Schiff Hardin, L.L.P. 6600 Sears Tower Chicago, IL 60606	(312) 258-5500	(312) 258-5600	cpeters@schiffhardin.com
T-Netix	ARTHUR A. BUTLER Ater Wynne LLP 601 Union St. – Ste 5450 Seattle, WA 98101-2327	(206) 623-4711	(206) 467-8406	aab@aterwynne.com
	STEPHANIE A. JOYCE GLENN B. MANISHIN Kelley Drye & Warren LLP 1200 19th St, NW – Ste 500 Washington, D.C. 20036	(202) 955-9890	(202) 955-9792	sjoyce@kelleydrye.com
Presiding Administrative Law Judge	ANN E. RENDAHL 1300 S. Evergreen Park Dr. SW P.O. Box 47250 Olympia, WA 98504-7250	(360) 664-1144	(360) 664-2654 [ALD fax only – do not use to file]	arendahl@wutc.wa.gov

APPENDIX B
PROCEDURAL SCHEDULE
DOCKET NO. UT-042022

EVENT	DATE	INTERVAL
Written Discovery Cutoff	Monday, March 7, 2005	-
Responses to Data Requests Due	Monday, April 4, 2005	28 Days
Depositions Complete	Friday, June 3, 2005	60 Days
Answers to AT&T's Motion for Summary Determination	Thursday, June 30, 2005	27 Days
Reply Discovery Cutoff	Thursday, July 28, 2005	28 Days
Responses to Reply Discovery Due	Friday, August 26, 2005	29 Days
AT&T Reply Brief Due	Friday, September 16, 2005	21 Days
Oral Argument	Thursday, September 22, 2005	6 Days
Prehearing Conference	Tuesday, October 11, 2005	19 Days

EXHIBIT 2

PROCEDURAL SCHEDULE
DOCKET NO. UT-042022

EVENT	DATE	INTERVAL
Discovery Resumes	Thursday, September 11, 2008	–
Depositions Complete	Thursday, November 13, 2008	63 Days
Answers to AT&T's Motion for Summary Determination	Thursday, December 18, 2008	35 Days
Reply Discovery Cutoff	Thursday, January 22, 2009	35 Days
Responses to Reply Discovery Due	Thursday, February 26, 2009	35 Days
AT&T Reply Brief Due	Thursday, March 19, 2009	21 Days
Oral Argument	Thursday, March 26, 2009	6 Days
Prehearing Conference	Thursday April 16, 2009	19 Days

CERTIFICATE OF SERVICE

Pursuant to WAC 480-07-150, I hereby certify that I have this day, September 4, 2008, served this document upon all parties of record by e-mail and Federal Express overnight delivery at the e-mail addresses and mailing addresses listed below:

Glenn B. Manishin
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Pursuant to WAC 480-07-145, I further certify that I have this day, September 4, 2008, filed MS Word and PDF versions of this document by e-mail, and the original and four copies of this document by Federal Express, with the WUTC at the e-mail address and mailing address listed below:

Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
PO Box 47250
Olympia, WA 98504-7250
records@utc.wa.gov

Pursuant to the Prehearing Conference Order 08, I further certify that I have this day, September 4, 2008, provided a courtesy copy of this document, in MS Word, to ALJ Russell by e-mail at the following e-mail address: mrussell@utc.wa.gov.

Dated: September 4, 2008

/s/ David C. Scott
David C. Scott