

**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 REPLY  
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 reply regarding the continuation of discovery in connection with AT&T's pending motion for summary determination.

2. All parties agree that discovery in this proceeding was initiated as a result of, and defined and limited by, AT&T's motion for summary determination. Complainants and AT&T agree that AT&T's motion remains pending and discovery should pick up where it left off pursuant to ALJ Rendahl's scheduling order and be completed, at which point AT&T's motion must be decided. T-Netix, however, suggests that AT&T's motion is no longer pending, and therefore the prior discovery schedule should be ignored. (*See, e.g.*, Initial Brief of T-Netix, Inc. on Discovery ("T-Netix's Brief") at ¶¶ 24, 28-29.) T-Netix is incorrect.

3. ALJ Rendahl, who formerly presided over this proceeding, never had the opportunity to rule on AT&T's motion. While the parties were proceeding with discovery on AT&T's motion, T-Netix filed its own motion for summary determination on standing, which side-tracked the proceeding, shifted the case back to the Superior Court and up the appellate

ladder, and ultimately prevented the parties from completing discovery on AT&T's motion and ALJ Rendahl from deciding it.

4. Order No. 07, which dismissed this proceeding in its entirety when the Superior Court rescinded its primary jurisdiction referral, did not dispose of AT&T's motion for summary determination, as T-Netix claims. (*Id.* at ¶ 28.) Order No. 7 was premised solely on the fact that the Superior Court had revoked its primary jurisdiction referral. The Superior Court subsequently "reversed the effects" (*id.*) of that order when it reinstated the primary jurisdiction referral on March 21, 2008. This matter is now proceeding under the same original docket number and in accordance with the prior pleadings and orders — *e.g.*, proceeding on the same Formal Complaint that Complainants filed with the Commission on November 17, 2004 and following the same protective order already agreed upon and entered. There is no basis to conclude that Order No. 7 somehow addressed AT&T's motion.

5. T-Netix is equally incorrect when it asserts that the Court of Appeals resolved AT&T's motion. It did not. The Court of Appeals addressed the appeal of the Superior Court's order granting *T-Netix's* motion for summary judgment based on *standing*. AT&T's motion for summary determination was never even pending in the Superior Court or in the Court of Appeals. Rather, AT&T's motion remains pending in this proceeding. If anything, the Court of Appeals acknowledged that the question of whether AT&T was the OSP should be resolved after appropriate discovery is taken in the WUTC. In other words, the proper course is to pick up discovery where it left off, complete it, and then answer the question whether AT&T was the OSP. AT&T respectfully suggests that ALJ Russell should adopt and reinstitute the schedule attached as **Exhibit 2** to AT&T's opening memorandum.

Dated: September 11, 2008

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

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**CERTIFICATE OF SERVICE**

Pursuant to WAC 480-07-150, I hereby certify that I have this day, September 11, 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:

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Pursuant to WAC 480-07-145, I further certify that I have this day, September 11, 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:

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Pursuant to the Prehearing Conference Order 08, I further certify that I have this day, September 11, 2008, provided a courtesy copy of this document, in MS Word, to ALJ Russell by e-mail at the following e-mail address: mruddell@utc.wa.gov.

Dated: September 11, 2008

/s/ David C. Scott  
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