

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

SANDY JUDD AND TARA)	DOCKET UT-042022
HERIVEL,)	
)	
Complainant,)	ORDER 15
)	
v.)	ORDER GRANTING MOTION TO
)	AMEND SCHEDULING ORDER
AT&T COMMUNICATIONS OF THE)	
PACIFIC NORTHWEST, INC., AND)	
T-NETIX, INC.,)	
)	
Respondents.)	
)	
.....)	

MEMORANDUM

- 1 **SYNOPSIS.** *This Order grants Complainants’ motion to amend the scheduling order and revises the procedural schedule as follows: T-Netix’s responses to AT&T’s and Complainants’ data requests are due by February 13, 2009; all depositions must be completed by March 13, 2009; and responses to AT&T’s and T-Netix’s motions for summary determination are due by March 27, 2009.*

- 2 **NATURE OF PROCEEDING.** Docket UT-042022 involves a formal complaint filed with the Washington Utilities and Transportation Commission (Commission) by Sandy Judd and Tara Herivel (Complainants) against AT&T Communications of the Pacific Northwest, Inc. (AT&T), and T-Netix, Inc. (T-Netix or the Company), requesting that the Commission resolve certain issues of fact and law under the doctrine of primary jurisdiction and referred by the Superior Court of Washington for King County.

3 **APPEARANCES.** Chris R. Youtz, Sirianni Youtz Meier & Spoonemore, Seattle,
Washington, represents Complainants (collectively with AT&T and T-Netix,
“Parties”). Letty Friesen, AT&T Law Department, Austin, Texas, and Charles H.
R. Peters, Schiff Hardin, LLP, Chicago, Illinois, represent AT&T. Arthur A.
Butler, Ater Wynne LLP, Seattle, Washington, Joseph S. Ferretti, Duane Morris,
LLP, Washington, D.C., and Glenn B. Manishin, Kelley Drye & Warren LLP,
Washington, D.C., represent T-Netix.

4 **PROCEDURAL HISTORY.** On November 17, 2004, Complainants filed a
formal complaint with the Commission against T-Netix and AT&T under the
court’s referral.¹

5 On January 9, 2009, the Commission entered Order 14, granting in part and denying
in part Complainants’ motion to compel discovery from T-Netix, granting in part and
denying in part AT&T’s motion to compel T-Netix to respond fully to AT&T’s data
requests, and denying T-Netix’s motion for a protective order.

6 **REQUEST TO AMEND PROCEDURAL SCHEDULE.** On January 13, 2009,
Complainants filed a motion to amend the procedural schedule (Complainants’
Motion) in this matter.² Specifically, Complainants request that the Commission
direct T-Netix to produce its responses to AT&T’s and Complainants’ data requests,
as mandated in Order 14, by a date certain; allow the parties 30 days from the
deadline for T-Netix’s responses to complete depositions; and adjust the remainder of
the procedural schedule accordingly.³

¹ The procedural history in this matter is described more fully in Order 09 and Order 14 in this docket and is not repeated here.

²The procedural schedule at the time Complainants filed their motion required depositions to be completed by January 28, 2009, and responses to T-Netix’s and AT&T’s motions for summary determination to be filed with the Commission by February 11, 2009.

³*Complainants’ Motion*, at 2, ¶ 5. Complainants have requested that the Commission impose sanctions against the Company if T-Netix does not produce its responses to the data requests by the deadline. The Commission finds that such a request is not ripe. If Complainants or AT&T do not receive responses to their data requests from T-Netix by the deadline set forth in this order, either Complainants or AT&T may notify the Commission at that time.

7 Complainants state that they need T-Netix's data request responses prior to taking the depositions of both T-Netix's and AT&T's witnesses.⁴ Complainants assert that it is imperative that they "have all of the requested information before incurring the time and expense of depositions, which will probably occur at different locations around the country."⁵

8 On January 14, 2009, AT&T filed its Joinder in Complainants' Motion (AT&T's Joinder). AT&T states that it needs additional time to receive and review T-Netix's responses before taking depositions as well.⁶

9 On January 14, 2009, T-Netix filed its Joinder in Complainants' Motion (T-Netix's Joinder). T-Netix proposes that the Commission set February 13, 2009, as the deadline for its responses to the data requests, that depositions be completed by March 13, 2009, and that responses to AT&T's and T-Netix's motions for summary determination be due by March 27, 2009.⁷ T-Netix asserts that its proposed schedule allows the Company four weeks to search its records for information which is responsive to the data requests it was directed to answer in Order 14.

10 ***Discussion and decision.*** The Commission strongly encourages full and complete responses to data requests in the interest of avoiding discovery disputes. T-Netix has argued that it would take at least three weeks for the Company to identify potentially relevant documents that would address AT&T's and Complainants' data requests.⁸ Complainants speculate that the amount of time necessary to locate the requested information is closer to four to six weeks, based on T-Netix's own statements.⁹ Complainants do not, however, suggest a specific date for the deadline. The Commission finds that T-Netix's suggested deadline of February 13, 2009, for the

⁴*Id.*, at 2, ¶ 3.

⁵*Id.*, at 2, ¶ 6.

⁶*AT&T's Joinder*, at 1.

⁷*T-Netix's Joinder*, at 2, ¶ 2. T-Netix objects to Complainants' allegations and argue that "Complainants misstate the facts and have no factual basis to suggest either foul play or sanctions." *Id.*, at 2, ¶ 5. As stated in footnote 3 above, any assertions that the Company has not complied with document and information production relevant to Order 14 are premature at this time.

⁸T-Netix's reply brief in support of its motion for protective order, at 8, ¶ 21 and T-Netix's opposition to AT&T's motion to compel, at 3-4, ¶¶ 6-7.

⁹*Complainants' Motion*, at 1, ¶ 1.

production of documents responsive to AT&T's and Complainants' data requests is reasonable since it allows the Company five weeks from the issuance of Order 14 to conduct a thorough, good faith search for the responsive documents.

- 11 With regard to Complainants' continuance request, the Commission will grant a continuance if the requesting party demonstrates good cause for the continuance, and the continuance will not prejudice any party or the Commission.¹⁰ Complainants are correct that, establishing the February 13, 2009, deadline for T-Netix's production of documents, necessitates continuing the January 28, 2009, deadline for taking depositions and the February 11, 2009, deadline for responses to AT&T's and T-Netix's motions for summary determination. The Commission finds that good cause exists to continue the procedural schedule.
- 12 Complainants' Motion is supported by both AT&T and T-Netix. T-Netix agrees with Complainants that the deadline for completing depositions should be continued and proposes March 13, 2009, or four weeks after the Company's responsive deadline. T-Netix also supports Complainants' request that the Commission extend the remaining deadline for filing responses to AT&T's and T-Netix's motions for summary determination and has suggested March 27, 2009, or two weeks after the deadline to complete depositions.
- 13 The Commission finds and concludes that it should grant the relief requested and amend the procedural schedule, as set forth below and in Appendix A.

Responses to data requests (T-Netix)	February 13, 2009
Depositions completed (all parties)	March 13, 2009
Responses to motions for summary determination (all parties)	March 27, 2009

¹⁰WAC 480-07-385(2).

ORDER

14 **THE COMMISSION ORDERS That** Complainants' Motion to Amend the Scheduling Order is granted. The procedural schedule, set forth in paragraph 13 above and attached as Appendix A to this order, is adopted.

Dated at Olympia, Washington, and effective January 21, 2009.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

APPENDIX A
PROCEDURAL SCHEDULE
DOCKET UT-042022

EVENT	PREVIOUS DATE	MODIFIED DATE
T-Netix Responds to Data Requests Pursuant to Order 14	None	Friday, February 13, 2009
Depositions Completed (all parties)	Wednesday, January 28, 2009	Friday, March 13, 2009
Responses to Motions for Summary Determination (all parties)	Wednesday, February 11, 2009	Friday, March 27, 2009