

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

SANDY JUDD AND TARA	)	DOCKET UT-042022
HERIVEL,	)	
	)	
Complainants,	)	ORDER 16
	)	
v.	)	ORDER GRANTING MOTION TO
	)	AMEND SCHEDULING ORDER
AT&T COMMUNICATIONS OF THE	)	
PACIFIC NORTHWEST, INC., AND	)	(T-Netix’s responses to AT&T’s and
T-NETIX, INC.,	)	Complainants’ data requests are due
	)	by February 27, 2009; depositions
Respondents.	)	shall be completed by March 27,
	)	2009; and responses to both AT&T’s
	)	and T-Netix’s motions for summary
	)	determination are due by April 10,
.....	)	2009.)

**MEMORANDUM**

1 **SYNOPSIS.** *This Order grants Complainants’ motion to amend the scheduling order and establishes a procedural schedule whereby: T-Netix, Inc.’s responses to the data requests of AT&T Communications of the Pacific Northwest, Inc., and Complainants are due by February 27, 2009, depositions are to be completed by March 27, 2009, and responses to AT&T’s and T-Netix’s motions for summary determination are due by April 10, 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, and Joseph S. Ferretti, and Glenn B. Manishin, both of Duane Morris, 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.<sup>1</sup>

5 On January 21, 2009, the Commission entered Order 15, granting Complainants’ Motion to Amend Scheduling Order. In that motion, Complainants’ argued that the Commission should set a deadline for T-Netix to respond to data requests and that the Commission should allow the Parties to complete the process of taking depositions within 30 days of receiving T-Netix’s data request responses. Both T-Netix and AT&T joined in Complainants’ motion.

6 **REQUEST TO AMEND PROCEDURAL SCHEDULE.** On February 18, 2009, Complainants filed another motion to amend the procedural schedule (Motion) in this matter.<sup>2</sup> Complainants explain that T-Netix sent them a DVD in response to Complainants’ data requests on February 13, 2009.<sup>3</sup> Complainants represent that T-Netix has indicated that it will send another DVD a little over one week later.<sup>4</sup>

7 Further, Complainants state that their counsel will be out of the country from February 19, 2009, to March 3, 2009.<sup>5</sup> According to Complainants, their counsel will not have enough time to review the discovery responses from T-Netix prior to taking

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

<sup>2</sup>The procedural schedule at the time Complainants filed their February motion required T-Netix to respond to AT&T’s and Complainants’ data requests by February 13, 2009, depositions to be completed by March 13, 2009, and responses to T-Netix’s and AT&T’s motions for summary determination to be filed with the Commission by March 27, 2009.

<sup>3</sup>*Complainants’ Motion*, at 1, ¶ 2.

<sup>4</sup>The Commission is uncertain of the exact date T-Netix will be forwarding the DVD to Complainants. In their February Motion, Complainants indicated that an additional DVD will be send on Thursday, February 20, 2009. However, February 20, 2009, is a Friday.

<sup>5</sup>*Complainants’ Motion*, at 2, ¶ 3.

depositions, which are scheduled to be completed by March 13, 2009.<sup>6</sup> Complainants request that the Commission extend the procedural schedule by two weeks.<sup>7</sup> Complainants indicate that both T-Netix and AT&T support the modification.<sup>8</sup>

8 ***Discussion and decision.*** 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.<sup>9</sup> In Order 15, the Commission agreed that the five week time period suggested by T-Netix for conducting a thorough, good faith search of its documents appeared sufficient.<sup>10</sup> The Complainants' request to modify the procedural schedule by an additional two weeks is not unreasonable given T-Netix's original statement that the search for responsive documents might take four to six weeks total.<sup>11</sup> Complainants' Motion is also supported by both AT&T and T-Netix.

9 Therefore, 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 27, 2009
Depositions completed (all parties)	March 27, 2009
Responses to motions (all parties)	April 10, 2009

10 The Commission notes that the Parties have requested modifications to the procedural schedule in this docket at least once per month since the procedural schedule was implemented in Order 09 on October 2, 2008. While each request has been granted on its own merit; viewed in their totality, these requests exhibit a troubling precedent and are contributing to further delay in the resolution of the long-standing issues in this case. In the future, the Commission will be less lenient in granting motions to amend the procedural schedule.

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<sup>6</sup>*Id.*

<sup>7</sup>*Id.*, at 2, ¶ 4.

<sup>8</sup>*Id.*

<sup>9</sup>WAC 480-07-385(2).

<sup>10</sup>*Judd, et al, v. AT&T, et al*, Docket UT-042022, Order 15 at 3-4, ¶ 10.

<sup>11</sup>*Id.*, at 3, ¶ 10. *See*, T-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.

**ORDER**

11 **THE COMMISSION ORDERS That** Complainants' Motion to Amend the Scheduling Order is granted. The procedural schedule, set forth in paragraph 9 above and attached as Appendix A to this order, is adopted.

Dated at Olympia, Washington, and effective February 20, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER  
Administrative Law Judge

**APPENDIX A**  
**PROCEDURAL SCHEDULE**  
**DOCKET UT-042022**

<b>EVENT</b>	<b>PREVIOUS DATE</b>	<b>MODIFIED DATE</b>
T-Netix Responds to Data Requests Pursuant to Order 14	February 13, 2009	February 27, 2009
Depositions Completed (all parties)	March 13, 2009	March 27, 2009
Responses to Both Motions (all parties)	March 27, 2009	April 10, 2009