

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' MOTION RE  
SCHEDULE AND DEPOSITIONS

**I. INTRODUCTION**

1. The Commission recently issued Order 16, which amended the scheduling order and revised the procedural schedule. That schedule adjusted the completion date for depositions and the submission of responses to the motions for summary determination because of a delay in receiving discovery from T-Netix.

2. A portion of the discovery provided by T-Netix included emails that the Commission had ordered to be produced in response to the motions to compel. Those emails contained the names of T-Netix employees who were not previously identified but who apparently were directly involved with T-Netix' response to the rate disclosure requirements, which are the subject of this referral from the superior court.

3. Following a review of the documents, the parties conferred by telephone to exchange lists of deposition witnesses. The parties agreed to check on the availability of former employees and make arrangements with them to attend depositions at locations that were convenient to the witnesses. A conference call was scheduled for Monday, March 16, to finalize the schedule. It was during that call that T-Netix took

the position that it was only required to produce witnesses for depositions who it intended to call at the hearing. T-Netix stated that since many of the witnesses requested by Complainants and AT&T were not going to be called by T-Netix, that T-Netix would not make those witnesses available for deposition. (AT&T, however, had contacted its former employees to make them available as agreed).

4. T-Netix' decision not to these witnesses available led to a conference call with the Commission last Friday. As explained in the conference call, T-Netix' unwillingness to make these witnesses available means that they would have to be subpoenaed to appear for a deposition. Since all of these T-Netix witnesses appear to be located out of the state of Washington, it will be necessary to obtain subpoenas from the state courts having jurisdiction over the witnesses, which will add substantial time (and expense) to the effort to obtain testimony from these persons.

5. This issue also raised concerns with the existing schedule for depositions and responses to the motions for summary determination. In addition, as discussed in the conference call, some parties expressed a concern that depositions of experts may be premature since their opinions may depend on facts obtained from the deposition witnesses.

6. During the conference call, the Commission suggested that these concerns be addressed in a motion. Accordingly, complainants have filed this motion to address these discovery and scheduling issues.

## II. COMPELLING WITNESSES FOR DEPOSITIONS

7. Depositions are authorized under both the Commission's rules of procedure for adjudicative proceedings (WAC 480-07-410) and the Washington Administrative Procedure Act (RCW 34.05.446). Further, depositions are also authorized by the Civil Rules through the underlying proceeding in King County Superior Court.

8. The Commission's regulations require that:

Each party will be responsible for the attendance of any of its prospective witnesses, *or any of its employees*, who have been scheduled for deposition.

WAC 480-07-410(3) (quoted in part, emphasis added). Thus, T-Netix must make available its current employees for depositions, even if it does not intend to call them as witnesses at the hearing. Further, some of the witnesses requested by the Complainants and AT&T are listed on T-Netix' list of witnesses that it may call at the hearing. This includes including Alan Schott and Nancy Lee, who T-Netix now refuses to make available. A copy of the T-Netix witness list is attached as Exhibit A.

9. Some of the deposition witnesses identified from the recent document discovery are former T-Netix employees who are not on T-Netix' witness list and who T-Netix does not intend to call as witnesses. All of these witnesses appear to live outside the state of Washington.

10. Although the spirit of WAC 480-07-410(3) suggests that a party should produce former as well as current employees for depositions, or at least make an effort to obtain their appearance, the rule does not explicitly require T-Netix to do so.

Further, both the Civil Rules and the Administrative Procedure Act limit the reach of a subpoena issued by the commission to within the state of Washington. *See* RCW 34.05.446.<sup>1</sup> Thus, in order to compel depositions of former employees of T-Netix to give depositions, it appears that Complainants and AT&T will have to obtain subpoenas from courts in other parts of the country. This is usually accomplished by obtaining a commission from a court in this state that is provided to a court where the witness is located, although the procedure will vary from state to state.

11. Accordingly, the Complainants request: 1) that T-Netix be directed to make available for depositions the witnesses requested by Complainants and AT&T who are either (a) current employees or (b) former employees identified in T-Netix' witness list; and 2) that the Commission authorize the parties to seek commissions from the King County Superior Court, if necessary, as an aid to obtaining subpoenas in other jurisdictions for depositions.

### **III. DEPOSITION PROTOCOL**

12. The Commission's regulations regarding depositions state that they are to be conducted with CR 30 "as a guide." WAC 480-07-410(3). Under CR 30, objections should be made only to the form of the question, as substantive objections are reserved unto time of trial. In Washington, the courts have made an effort to ensure that depositions are conducted properly, without unnecessary intervention or coaching by

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<sup>1</sup> Of course, the U. S. Constitution also limits the right of a court in this state to assert jurisdiction over a citizen of another state.

counsel. The District Courts in the Western District of Washington generally issue a deposition protocol setting standards for conducting depositions. An example of such an order is attached as Exhibit B. Complainants request that a similar order be entered for this case and have included suggested language at the end of this motion. Hopefully, this will eliminate problems before they occur so as not to further delay the proceedings.

#### **IV. EXPERT DISCOVERY**

13. T-Netix suggested during the conference call that the depositions of the experts occur after fact discovery is complete. AT&T also favored such an approach. This will allow the experts to digest information received from the fact witnesses in reaching their opinions. Complainants agree that this approach makes sense.

#### **V. SUSPENSION OF SCHEDULE**

14. Complainants request that the Commission suspend the briefing schedule for the motions for summary determination. Because it is now necessary to seek subpoenas in other states to compel depositions, it is unclear how long it will take to obtain the testimony of some of the fact witnesses. Further, if the Commission agrees that expert depositions should be taken after fact witnesses are complete, the responses should not be filed until after the expert depositions are finished since the motions are based in part on the conclusions of experts from AT&T and T-Netix. Complainants are willing to provide status reports to the Commission regarding discovery so that a new date for responses can be set as soon as possible.

## VI. CONCLUSION

15. Complainants request that the Commission issue an order: 1) that T-Netix be directed to make available for depositions the witnesses requested by Complainants and AT&T who are either (a) current employees or (b) former employees identified in T-Netix' witness list; 2) that the Commission authorize the parties to seek commissions from the King County Superior Court, if necessary, as an aid to obtaining subpoenas in other jurisdictions for depositions; 3) that the Commission establish a deposition protocol substantially in the form proposed in the addendum on pages 7-8 of this motion; 4) provide that expert depositions be taken following the completion of depositions of fact witnesses; and 5) that the Commission suspend the current briefing schedule for filing responses to the motions for summary determination.

DATED: March 24, 2009.

SIRIANNI YOUTZ  
MEIER & SPOONEMORE

/s/ Chris R. Youtz

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## ADDENDUM

### DEPOSITION PROTOCOL

Depositions will be conducted in compliance with the following rules:

(a) **Examination.** If there are multiple parties, each side should ordinarily designate one attorney to conduct the main examination of the deponent, and any questioning by other counsel on that side should be limited to matters not previously covered.

(b) **Objections.** The only objections that should be raised at the deposition are those involving a privilege against disclosure, or some matter that may be remedied if presented at the time (such as the form of the question or the responsiveness of the answer), or that the question seeks information beyond the scope of discovery. Objections on other grounds are unnecessary and should be avoided. All objections should be concise and must not suggest answers to, or otherwise coach, the deponent.

Argumentative interruptions will not be permitted.

(c) **Directions Not to Answer.** Directions to the deponent not to answer are improper. Advice not to answer may be appropriate on the ground of privilege or to enable a party or deponent to present a motion to the court or special master for termination of the deposition on the ground that it is being conducted in bad faith or in such a manner as unreasonably to annoy, embarrass or oppress the party or the deponent, or for appropriate limitations upon the scope of the deposition (e.g., on the ground that the line or inquiry is not relevant nor reasonably calculated to lead to the discovery of admissible evidence).

When a privilege is claimed, the witness should nevertheless answer questions relevant to the existence, extent or waiver of the privilege, such as the date of the communication,

who made the statement in question, to whom and in whose presence the statement was made, other persons to whom the contents of the statement have been disclosed, and the general subject matter of the statement.

(d) **Responsiveness.** Witnesses will be expected to answer all questions directly and without evasion, to the extent of their testimonial knowledge, unless they choose to follow the advice of counsel not to answer.

(e) **Private Consultation.** Private conferences between deponents and their attorneys during the actual taking of the deposition are improper, except for the purpose of determining whether a privilege should be asserted. Unless prohibited by the Commission for good cause shown, such conferences may, however, be held during normal recesses and adjournments.

(f) **Conduct of Examining Counsel.** Examining counsel will refrain from asking questions he or she knows to be beyond the legitimate scope of discovery, and from undue repetition.

(g) **Courtroom Standard.** All counsel and parties should conduct themselves in depositions with the same courtesy and respect for the rules that are required in a courtroom during trial.



## CERTIFICATE OF SERVICE

Pursuant to WAC 480-07-150, I certify that on March 24, 2009, I served a copy of the foregoing document on all counsel of record by e-mail and U.S. Mail at the addresses listed below:

Attorneys for AT&T

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AT&T COMMUNICATIONS  
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Pursuant to WAC 480-07-145, I further certify that on March 24, 2009, I 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 address listed below:

David Danner  
Secretary and Executive Director  
WASHINGTON STATE UTILITIES AND  
TRANSPORTATION COMMISSION  
1300 S. Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250  
[records@utc.wa.gov](mailto:records@utc.wa.gov)

Pursuant to the Prehearing Conference Order 08, I further certify that on March 24, 2009, I provided a courtesy copy of this document, in MS Word, to Administrative Law Judge Marguerite E. Friedlander by e-mail to [mrussell@utc.wa.gov](mailto:mrussell@utc.wa.gov).

DATED: March 24, 2009, at Seattle, Washington.

/s/ Theresa A. Redfern

Theresa A. Redfern

# **Exhibit A**

[Service date: December 18, 2008 ]

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

**T-NETIX, INC.'S PROPOSED  
WITNESS LIST**

1. T-Netix, Inc. ("T-Netix"), through counsel and pursuant to Order No. 10, states that it may call the following witnesses to appear in person or by deposition at the hearing in this proceeding:

Dave Albright

Karen Casciotta

Katja Christensen

Alice Clements

Chris Conroy

Shannon Fenimore

Laurie Fox

Phil Gaito

John Giannaula  
James Golden  
Seth Gross  
Frances Gutierrez  
Tara Herivel  
Sandra Hornung  
Wayne Jackson  
Wayne Johnson  
Sandy Judd  
Willy Kitson  
Layne Kopas  
Kip Kovel  
Tom Larkin  
Nancy Lee  
Liz Lundeen  
Patricia Maitland  
Luann McDermott  
Fred Meyer  
Don Miniken  
Karen Moglia-Vitale  
Sandra Mulrain  
Tom Pallis  
Scott Passe  
Mark C. Pollman  
John Poss

John Powell and/or Tom Powell

Robert Rae

Andrea Robinson

Ken Rose

John Schell

Alvyn Schopp

Alan Schott

Dorothy Sharko

Gary Skinner

Ken Stibler

Tom Sweeney

Priscilla Taylor

Howard Tharp

Brian Timmis

Russ Vitale

Paul Wright

Zuraya Wright

2. T-Netix reserves the right to supplement and/or modify its Proposed Witness List at any time. In addition, T-Netix reserves the right to call any witness designated by any other party to this proceeding, as if such witnesses were designated herein.


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RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of December, 2008.

T-NETIX, INC.

By: 

Joseph S. Ferretti  
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(202) 256.4600 (fax)

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 18th day of December, 2008, served via e-filing a true and correct copy of the foregoing, with the WUTC Records Center. The original, along with the correct number of copies (4), of the foregoing document will be delivered to the WUTC, via the method(s) noted below, properly addressed as follows:

David Danner	<input type="checkbox"/>	Hand Delivered
Washington Utilities and Transportation	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
Commission	<input checked="" type="checkbox"/>	Overnight Mail (FedEx)
1300 S Evergreen Park Drive SW	<input type="checkbox"/>	Facsimile (360) 586-1150
Olympia, WA 98504-7250	<input checked="" type="checkbox"/>	Email (records@wutc.wa.gov)

I hereby certify that I have this 18th day of December, 2008, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

***On Behalf Of AT&T Communications***

Letty S.D. Friesen	<input type="checkbox"/>	Hand Delivered
AT&T Communications	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
Law Department	<input checked="" type="checkbox"/>	Overnight Mail (FedEx)
919 Congress Avenue, Suite 900	<input type="checkbox"/>	Facsimile
Austin TX 78701-2444	<input checked="" type="checkbox"/>	Email (lfriesen@att.com)

*Confidentiality Status:*

***On Behalf Of AT&T Communications:***

Charles H.R. Peters	<input type="checkbox"/>	Hand Delivered
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Chicago IL 60606	<input checked="" type="checkbox"/>	Email (cpeters@schiffhardin.com)

*Confidentiality Status:*

***On Behalf Of Complainants :***

Chris R. Youtz	<input type="checkbox"/>	Hand Delivered
Sirianni Youtz Meier & Spoonemore	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
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***On Behalf Of Complainants :***

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***On Behalf Of Commission:***

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 (mrussell@utc.wa.gov)

  
\_\_\_\_\_  
Cheryl Duncan



# **Exhibit B**

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LISA C NEAL, et al.,  
Plaintiff(s),

v.

STEWART TITLE GUARANTY  
COMPANY,  
Defendant(s).

Case No. 3:08-cv-05576-BHS

MINUTE ORDER  
REGARDING DISCOVERY  
AND DEPOSITIONS

NOW, on September 25, 2008, the Court directs the Clerk to enter the following Minute Order:

1. **DISCOVERY.** All discovery matters should be resolved by agreement if possible. If a ruling is needed on any discovery question, and counsel wish to avoid the time and expense of a written motion, they may obtain an expedited ruling through a telephone conference call to the Court at (253) 882-3850.

2. **DEPOSITIONS.** Depositions will be conducted in compliance with the following rules:

(a) **Examination.** If there are multiple parties, each side should ordinarily designate one attorney to conduct the main examination of the

1 deponent, and any questioning by other counsel on that side should be limited  
2 to matters not previously covered.

3       **(b) Objections.** The only objections that should be raised at the  
4 deposition are those involving a privilege against disclosure, or some matter  
5 that may be remedied if presented at the time (such as the form of the  
6 question or the responsiveness of the answer), or that the question seeks  
7 information beyond the scope of discovery. Objections on other grounds are  
8 unnecessary and should be avoided. All objections should be concise and must  
9 not suggest answers to, or otherwise coach, the deponent. Argumentative  
10 interruptions will not be permitted.

11  
12       **(c) Directions Not to Answer.** Directions to the deponent not to  
13 answer are improper. Advice not to answer may be appropriate on the ground of  
14 privilege or to enable a party or deponent to present a motion to the Court or  
15 special master for termination of the deposition on the ground that it is being  
16 conducted in bad faith or in such a manner as unreasonably to annoy, embarrass  
17 or oppress the party or the deponent, or for appropriate limitations upon the  
18 scope of the deposition (e.g., on the ground that the line or inquiry is not  
19 relevant nor reasonably calculated to lead to the discovery of admissible  
20 evidence). When a privilege is claimed, the witness should nevertheless answer  
21 questions relevant to the existence, extent or waiver of the privilege, such as  
22 the date of the communication, who made the statement in question, to whom and  
23 in whose presence the statement was made, other persons to whom the contents of  
24 the statement have been disclosed, and the general subject matter of the statement.  
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26       **(d) Responsiveness.** Witnesses will be expected to answer all questions

1 directly and without evasion, to the extent of their testimonial knowledge,  
2 unless they choose to follow the advice of counsel not to answer.

3  
4 (e) **Private Consultation.** Private conferences between deponents  
5 and their attorneys during the actual taking of the deposition are improper, except  
6 for the purpose of determining whether a privilege should be asserted. Unless  
7 prohibited by the Court for good cause shown, such conferences may, however,  
8 be held during normal recesses and adjournments.

9 (f) **Conduct of Examining Counsel.** Examining counsel will refrain  
10 from asking questions he or she knows to be beyond the legitimate scope  
11 of discovery, and from undue repetition.

12 (g) **Courtroom Standard.** All counsel and parties should conduct  
13 themselves in depositions with the same courtesy and respect for the rules that  
14 are required in the courtroom during trial.

15  
16 **3. RESPONSIBILITY OF PLAINTIFF'S COUNSEL.** This order  
17 is issued at the outset of the case, and a copy is delivered by the clerk to counsel  
18 for Plaintiff. Plaintiff's counsel (or Plaintiff, if pro se) is directed to deliver  
19 a copy of this order to each other party within ten (10) days after receiving notice  
20 of that party's appearance.

21 The foregoing Minute Order was authorized by the THE HONORABLE  
22 BENJAMIN H. SETTLE, UNITED STATES DISTRICT JUDGE.

23  
24  
25 /s/Trish Graham  
26 Trish Graham  
Judicial Assistant