

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

SANDY JUDD AND TARA)	DOCKET UT-042022
HERIVEL,)	
)	ORDER 18
Complainants,)	
)	
v.)	ORDER GRANTING PARTIES’
)	JOINT PROCEDURAL SCHEDULE
AT&T COMMUNICATIONS OF THE)	PROPOSAL; GRANTING REQUEST
PACIFIC NORTHWEST, INC., AND)	TO FILE REPLIES; AND DENYING
T-NETIX, INC.,)	PARTIES’ REQUEST FOR
)	ADDITIONAL DISCOVERY
Respondents.)	LANGUAGE IN ORDER
.....)	

MEMORANDUM

- 1 **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), 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.

- 2 **APPEARANCES.** Chris R. Youtz, Sirianni Youtz Meier & Spoonemore, Seattle, Washington, represents Complainants. 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.

- 3 **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 Complainants allege that Respondents violated the Commission's rule² requiring operator service providers (OSPs) to make verbal rate disclosures for inmate-initiated collect calls, and thus that Respondents committed *per se* violations of the Washington Consumer Protection Act.³

4 After an extensive procedural journey whereby this matter wound its way through the King County Superior Court, Division I of the Washington Court of Appeals, and the Supreme Court of Washington, the King County Superior Court reinstated its referral to the Commission on March 21, 2008. Specifically, the King County Superior Court referred two questions to the Commission: 1) whether AT&T and T-Netix are OSPs, and 2) if so, whether AT&T and T-Netix violated the Commission's rate disclosure regulations.

5 On October 2, 2008, the Commission entered Order 09 which found that AT&T's Motion for Summary Determination⁴ and T-Netix's Motion for Summary Determination⁵ are still pending and established a procedural schedule for the parties to conduct discovery, take depositions, and file responses to the motions.⁶

6 On March 25, 2009, Complainants filed a motion regarding the procedural schedule and depositions (Complainants' Motion). Specifically, Complainants requested that: 1) the Commission direct T-Netix to make available for deposition the witnesses requested by Complainants and AT&T who are either current employees or former

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.

²Former WAC 480-120-141(1999), which provided that:

[b]efore an operator-assisted call from an aggregator location may be connected by a presubscribed OSP, the OSP must verbally advise the consumer how to receive a rate quote, such as by pressing a specific key or keys, but no more than two keys, or by staying on the line. This message must precede any further verbal information advising the consumer how to complete the call, such as to enter the consumer's calling card number.

³*See*, RCW 80.36.530.

⁴AT&T's Motion was filed with the Commission on December 15, 2004, and the parties have not yet had an opportunity to respond to it.

⁵T-Netix filed its motion with the Commission on July 28, 2005, and the parties have likewise not had an opportunity to respond to it yet.

⁶Following numerous requests by all of the parties for modifications of the procedural schedule established in Order 09, the Commission directed the parties to complete depositions by March 27, 2009, and gave the parties until April 10, 2009, to respond to the motions in Order 16.

employees identified in T-Netix's witness list; 2) 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) the Commission establish a deposition protocol substantially similar to a sample attached to Complainants' Motion; and 4) the Commission direct that expert depositions shall be taken after the completion of depositions of fact-based witnesses.⁷

7 On April 10, 2009, the Commission granted in part Complainants' request and directed T-Netix to make available for deposition its current employees and any former employees T-Netix intends to call as witnesses or whose affidavits T-Netix intends to rely upon, including Alan Schott and Nancy Lee; established a deposition protocol identical to the protocol Complainants included in their motion; and directed that expert witness depositions should be taken after the completion of fact-based witness depositions.⁸ The Commission ordered the parties to file an agreed adjustment to the procedural schedule based on the rulings in Order 17 by May 1, 2009.⁹ If the parties did not file the adjustment to the procedural schedule, the Commission would institute one for the parties.¹⁰

8 **PARTIES' JOINT PROCEDURAL SCHEDULE.** On April 30, 2009, the parties filed a Joint Proposal Regarding the Discovery Schedule and Responses to Motions (Joint Proposal). In the Joint Proposal, the parties propose the following procedural schedule adjustment in response to the Commission's directive in Order 17:

End of fact-based discovery	June 10, 2009
End of expert discovery	July 1, 2009
Responses due to summary determination motions	July 21, 2009

⁷*Complainants' Motion* at 6. Complainants also requested that the Commission suspend the briefing schedule for AT&T's Motion for Summary Determination and T-Netix's Motion for Summary Determination. The Commission did so in the Notice Suspending Procedural Schedule issued on March 31, 2009.

⁸Order 17 also denied Complainants' request to direct T-Netix to make available for deposition individuals T-Netix listed on its prospective witness list since T-Netix modified that document and does not intend to call some of its original witnesses and denied Complainants' request that the Commission authorize the parties to seek commissions from the King County Superior Court as an aid to obtaining subpoenas to depose witnesses in other jurisdictions.

⁹*Judd, et al., v. AT&T Communications of the Pacific Northwest, Inc., et al.*, Order 17, April 10, 2009, p. 9.

¹⁰*Id.*

Replies to motions for summary determination

August 4, 2009

9 The parties also request that the Commission authorize the parties to file replies to the responses to the motions for summary determination.¹¹ Such filings are not specifically provided for in the Commission's rules of procedure.¹² Finally, the parties ask that the Commission include a provision in the scheduling order such that:

A deposition may be taken after the deadlines stated in this order if either: (1) a showing of good cause is made to the Commission for the deposition to occur, or (2) without a motion if all parties agree that the deposition may be taken.¹³

The parties theorize that this provision "should accommodate situations where a witness is not available until after a cut-off date or there is some other logistical reason the deposition cannot occur before the cut-off date."¹⁴

10 **DECISION.** The Commission finds that the parties' agreed request for approval of the modified procedural schedule is in the public interest and is consistent with the Commission's administrative needs. With regard to the parties' request for authorization to file replies, the parties are correct that the Commission's procedural rules do not specifically provide for such a filing. However, under WAC 480-07-370(1), the Commission may allow the filing of pleadings, other than those listed in the regulation, upon written motion or on the Commission's own motion.

11 With the understanding that these replies are for the benefit of the Commission's decision-making process and that said replies cannot and will not repeat arguments previously expressed in the motions for summary determination or the subsequent responses, but will only respond to arguments made in the responses, the Commission finds good cause to permit the parties to file replies in this instance. The parties must file these replies in accordance with this paragraph and by the close of business on August 4, 2009.

¹¹Parties' Joint Proposal, p. 1.

¹²*Id.*

¹³*Id.*, p. 2.

¹⁴*Id.*

12 As to the parties' requested language allowing depositions after the discovery deadlines have run, the Commission recognizes that many of the individuals the parties have identified as potential deposition witnesses are out-of-state residents and that this may lead to some delay in the taking of depositions. That being said, this proceeding has already experienced numerous delays and procedural modifications, and the Commission does not see the necessity in adopting the parties' proposed language. From the issuance of Order 17 on April 10, 2009, directing that witnesses be made available for depositions, until the parties' own agreed-to deadline for the end of discovery,¹⁵ the parties will have had almost three months in which to finalize discovery and take depositions. At some point, the parties have to put on their cases with regard to the outstanding motions and additional discovery will be forestalled; that point is July 1, 2009. The parties have not demonstrated a need for this additional language, and therefore, the parties' request is denied.

ORDER

THE COMMISSION ORDERS That:

- 13 (1) Complainants', AT&T Communications of the Pacific Northwest, Inc.'s, and T-Netix, Inc.'s Joint Proposal Regarding Discovery Schedule and Responses to Motions is granted in part and denied in part in accordance with paragraphs 10 to 12, above.
- 14 (2) The procedural schedule, set forth in paragraph 8 above, is adopted.

Dated at Olympia, Washington, and effective May 6, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

¹⁵This deadline is July 1, 2009.