

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

**AT&T’S EMERGENCY UNOPPOSED
MOTION TO EXTEND THE
PROCEDURAL SCHEDULE**

**AT&T’S EMERGENCY UNOPPOSED MOTION
TO EXTEND THE PROCEDURAL SCHEDULE**

Respondent AT&T Communications of the Pacific Northwest, Inc. (“AT&T”), by and through its attorneys, respectfully submits this Emergency Unopposed Motion To Extend The Procedural Schedule. In support of this Motion, AT&T states the following:

1. AT&T is forced to request an extension of the procedural schedule as a result of medical emergency involving its lead counsel, as described below.

2. On May 6, 2009, ALJ Friedlander entered Order 18, which granted the parties’ agreed request to modify the procedural schedule in light of discovery developments. Order 18 set the following procedural schedule:

End of fact-based discovery	June 10, 2009
End of expert discovery	July 1, 2009
Responses to motions for summary determination	July 21, 2009
Replies to motions for summary determination	August 4, 2009

(Order 18, ¶¶ 8, 13-14.)

3. The parties have diligently engaged in deposition discovery in order to meet these deadlines. Depositions have been taken of four T-Netix witnesses and one former AT&T employee in Dallas, Texas. The parties have scheduled the deposition of Complainant Herivel in Portland, Oregon, and the deposition of a fifth T-Netix witness in Seattle, Washington, and the deposition of Complainant Judd and a witness for Complainants, Paul Wright, in Brattleboro, Vermont. These depositions will go forward as scheduled.

4. The parties had scheduled the deposition of a second former AT&T employee for today, May 27, in New Jersey, and had been working on scheduling the deposition of a third former AT&T employee in New Jersey. Due to a medical emergency involving AT&T's lead counsel, however, those depositions have had to be put on hold.

5. On Friday, May 22, 2009, AT&T's lead counsel, Charles H.R. Peters learned that he had to have emergency eye surgery. That morning, Mr. Peters had a follow-up office visit with his eye doctor, Jack Cohen, F.A.C.S., M.D. During that visit, Dr. Cohen diagnosed a retinal detachment in Mr. Peters' right eye, which required immediate treatment. In order to treat the retinal detachment, Dr. Cohen had to perform emergency surgery on Mr. Peters' eye that same afternoon. The surgery involved removing the vitreous from his right eye and replacing it with an injection of gas. As a result, there is currently a gas bubble in Mr. Peters' right eye. (*See* Declaration of Jack Cohen, F.A.C.S., M.D. attached hereto as Exhibit 1.)

6. The presence of the gas bubble in Mr. Peters' eye necessarily prevents him from flying because a change in cabin pressure during a flight could cause devastating consequences, including blindness. As a result, Mr. Peters cannot fly until the gas bubble in his right eye dissipates, which will take approximately four weeks. (*Id.*)

7. Mr. Peters is AT&T's lead counsel and has represented AT&T in this case since its inception. He is the only attorney who has worked on this case for AT&T from the outset. Mr. Peters has been in contact with the AT&T former employees who will be deposed in New Jersey for years, and he is the only attorney who has worked with these former employees. Mr. Peters is responsible for representing these former employees in their depositions. He is also responsible for handling the depositions of T-Netix's former President, Alvyn Schopp, and T-Netix's former expert witness and former employee, Alan Schott, both of which will take place in Denver, Colorado, and the depositions of the expert witnesses in this case, which AT&T expects will take place in Atlanta, Georgia (AT&T's expert), Denver or Seattle (Complainants' expert), and a third out-of-town location that has not been determined yet (possibly Dallas) for T-Netix's expert.

8. Of the five depositions that have been taken so far, Mr. Peters has represented AT&T in four of the five. David C. Scott, an associate at Mr. Peters' firm who works on this case with him, will represent AT&T in the depositions referred to in paragraph 3 above that have been scheduled in Portland, Seattle, and Vermont, so that those may go forward and so that the parties may continue with discovery to the extent possible while Mr. Peters is recovering.

9. Because Mr. Peters is responsible for the remaining fact depositions in New Jersey and Denver, as well as the expert depositions, and because he cannot fly for up to four weeks, AT&T respectfully requests that the procedural schedule be extended to accommodate Mr. Peters' medical emergency and treatment.

10. AT&T requests that the procedural schedule be extended as follows, which will give the parties approximately three weeks (including the July 4 holiday weekend) to complete fact discovery after Mr. Peters is again able to fly:

<u>Deadline</u>	<u>Old Date</u>	<u>New Date</u>
End of fact-based discovery	June 10, 2009	July 17, 2009
End of expert discovery	July 1, 2009	Aug. 7, 2009
Responses to motions for summary determination	July 21, 2009	Aug. 27, 2009
Replies to motions for summary determination	August 4, 2009	Sept. 10, 2009

This requested schedule maintains the same interim time periods between deadlines that were set in paragraph 8 of Order 18.

11. Counsel for Complainants and Respondent T-Netix, Inc. have informed AT&T that they do not oppose this Motion.

12. This Motion is brought for good cause, and not for the purposes of delay.

WHEREFORE, for the reasons set forth above, AT&T respectfully requests that the WUTC grant this Motion and, in light of AT&T's counsel's medical emergency and treatment, amend the procedural schedule set forth in paragraph 8 of Order 18 as follows:

End of fact-based discovery	July 17, 2009
End of expert discovery	Aug. 7, 2009
Responses to motions for summary determination	Aug. 27, 2009
Replies to motions for summary determination	Sept. 10, 2009

Dated: May 27, 2009

Respectfully submitted,

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

By: /s/ David C. Scott

Charles H.R. Peters

David C. Scott

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Exhibit 1

DECLARATION OF JACK COHEN, F.A.C.S., M.D.

I, Jack Cohen, F.A.C.S., M.D., declare as follows:

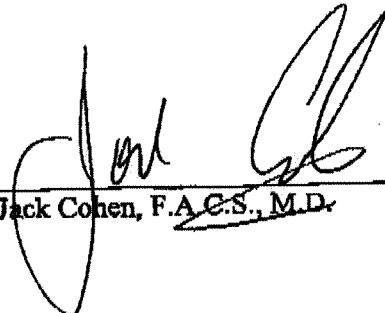
1. I am a medical doctor practicing ophthalmology with Illinois Retina Associates, S.C. I specialize in retinal surgery and ocular oncology. My office is located at 4711 West Golf Road, Suite 102, Skokie, IL 60067. My office phone number is (847) 677-1340. This declaration is based on my personal knowledge and if called to testify I could competently testify to the contents of this declaration.
2. I graduated from Rush Medical College in Chicago, Illinois. I completed my residency at Rush University Medical Center, and completed a fellowship in ocular oncology at the University of California, San Francisco and a fellowship in vitreoretinal surgery at Rush University Medical Center and Ingalls Hospital Professional Building in Harvey, Illinois. I am also an associate professor of ophthalmology at Rush Medical College and the program director of the residency program at Rush University Medical Center.
3. Charles H.R. Peters is one of my patients. On Friday, May 22, 2009, Mr. Peters came to see me for a follow-up office visit. During that visit, I diagnosed a retinal detachment in Mr. Peters' right eye, which required immediate treatment. In order to treat the retinal detachment, I performed emergency surgery on Mr. Peters' right eye that same afternoon. The surgery involved removing the vitreous from his right eye and replacing it with an injection of gas. As a result, there is currently a gas bubble in Mr. Peters' right eye.
4. The presence of the gas bubble in Mr. Peters' eye necessarily prevents him from flying. A change in cabin pressure during a flight, could cause devastating consequences, including blindness. Therefore, Mr. Peters may not fly until the gas bubble in his right eye

dissipates. Although the time it will take for the gas bubble to dissipate cannot be precisely determined, my best current approximation is that it will take four weeks.

5. As a result, Mr. Peters may not fly for four weeks from today's date, unless the gas bubble in his right eye dissipates more quickly than that.

Pursuant to 735 ILCS 5/1-1109, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 26, 2009


5/26/09

Jack Cohen, F.A.C.S., M.D.

CERTIFICATE OF SERVICE

Pursuant to WAC 480-07-150, I hereby certify that I have this day, May 27, 2009, 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, May 27, 2009, 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:

Mr. David W. Danner
Secretary and Executive Director
Washington Utilities and Transportation Commission
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Olympia, WA 98504-7250
records@utc.wa.gov

Pursuant to the Prehearing Conference Order 08, I further certify that I have this day, March 26, 2009, provided a courtesy copy of this document, in MS Word, to ALJ Friedlander by e-mail at the following e-mail address: mfriedla@utc.wa.gov.

Dated: May 27, 2009

/s/ Tiffany R. Redding
Tiffany R. Redding