

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

SANDY JUDD AND TARA	)	DOCKET UT-042022
HERIVEL,	)	
	)	
Complainants,	)	ORDER 19
	)	
v.	)	
	)	
AT&T COMMUNICATIONS OF THE	)	ORDER GRANTING MOTION TO
PACIFIC NORTHWEST, INC., AND	)	AMEND PROCEDURAL SCHEDULE
T-NETIX, INC.,	)	
	)	
Respondents.	)	
.....	)	

**MEMORANDUM**

1 **SYNOPSIS.** *This order grants AT&T’s emergency unopposed motion to extend the procedural schedule and establishes a procedural schedule whereby: Fact-based discovery shall be completed by July 17, 2009; expert discovery shall be completed by August 7, 2009; responses to both AT&T’s and T-Netix’s motions for summary determination are due by August 27, 2009; and replies to both AT&T’s and T-Netix’s motions for summary determination are due by September 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. 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 October 2, 2008, the Commission entered Order 09, establishing a discovery and briefing schedule to address AT&T's and T-Netix's motions for summary determination.<sup>2</sup>
- 6 On October 20, 2008, T-Netix filed a motion to amend the scheduling order. T-Netix requested that the Commission extend the procedural deadlines established in Order 09 by two weeks due to T-Netix's lead counsel's impending nuptials. The Commission granted T-Netix's request in Order 10.
- 7 On November 12, 2008, Complainants filed a request with the Commission seeking a one week extension on the filing of motions to compel. Complainants explained that their counsel would be undergoing surgery and unable to meet the current discovery deadline. The Commission granted Complainants' request in Order 11.
- 8 On December 3, 2008, T-Netix filed an extension motion requesting that the Commission extend the deadline for filing oppositions to the motions to compel approximately one week, due to the Thanksgiving Day holiday and a conference attended by representatives of T-Netix. The Commission granted T-Netix's motion in Order 12.
- 9 On January 13, 2009, Complainants' filed a motion to amend the procedural schedule, stating that they need to receive complete data responses from T-Netix prior to conducting depositions. In response and joinder to Complainants' motion, T-Netix

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<sup>1</sup> The procedural history in this matter is described more fully in previous orders within this docket and is not repeated here.

<sup>2</sup> AT&T's and T-Netix's motions for summary determination were originally filed with the Commission in 2004 and 2005, respectively. The Commission did not have an opportunity to rule on the motions prior to the King County Superior Court's revocation of referral on September 6, 2005.

asserted that it would require four to six weeks to locate the documents and information requested by Complainants and AT&T. The Commission granted Complainants' request in Order 15.

- 10 On February 18, 2009, Complainants' filed another motion to amend the procedural schedule, asserting that T-Netix had informed Complainants that a DVD containing information responsive to Complainants' data requests was in the process of being produced. Additionally, Complainants stated that their counsel would be out of the country for approximately two weeks and would need more time to review T-Netix's responses before conducting any depositions. The Commission granted Complainants' two week extension of the procedural schedule in Order 16.
- 11 On March 25, 2009, Complainants filed a motion requesting, among other things, that the Commission establish a deposition protocol whereby fact-based witnesses would be deposed prior to expert witnesses. T-Netix filed a response to Complainants' motion and agreed to a tiered schedule for expert witnesses to be deposed after fact-based witnesses. AT&T joined in Complainants' motion and proposed a generalized deposition schedule. In Order 17, the Commission granted Complainants' request regarding the order in which witnesses should be deposed and directed the parties to file an agreed upon procedural schedule consistent with the Commission's decision by May 1, 2009, or a schedule would be formulated by the Commission.
- 12 On April 30, 2009, the parties filed a joint procedural schedule with the Commission and requested that the Commission approve the procedural schedule including an opportunity for the parties to file replies to the motions for summary determination. With the understanding that the replies would benefit the Commission in its decision-making process, the Commission entered Order 18 and granted the parties' request to file replies in this instance. Order 18 also approved the proposed procedural schedule as follows:

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

13 **REQUEST TO AMEND PROCEDURAL SCHEDULE.** On May 27, 2009, AT&T filed an Emergency Unopposed Motion to Extend the Procedural Schedule (AT&T's Motion). In AT&T's Motion, the company states that counsel for AT&T, Charles H. R. Peters, had emergency eye surgery to repair a detached retina and which prevents counsel from flying to attend out-of-state depositions for approximately four weeks.<sup>3</sup> While AT&T asserts that Mr. Peter's co-counsel will be handling a few of the depositions currently scheduled, Mr. Peter's has represented AT&T in this matter from the beginning and has worked with some of AT&T's former employees scheduled to be deposed. AT&T represents that Complainants and T-Netix do not oppose the motion. AT&T requests that the procedural schedule be modified to address Mr. Peter's recovery and inability to fly as follows:

End of fact-based discovery	July 17, 2009
End of expert discovery	August 7, 2009
Responses to motions for summary determination due	August 27, 2009
Replies to motions for summary determination due	September 10, 2009

14 **DECISION.** The Commission will grant a timely request for continuance to which all parties expressly agree unless it is inconsistent with the public interest or the Commission's administrative needs.<sup>4</sup> In Order 18, the Commission warned the parties that, "... this proceeding has already experienced numerous delays and procedural modifications...[a]t 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."<sup>5</sup>

15 The Commission, while sympathetic to Mr. Peter's condition, notes that there have been no less than seven requests to extend the procedural schedule in the last seven months. That amounts to the Commission having received one request per month since the procedural schedule was implemented in Order 09 on October 2, 2008. Not only have these continuances resulted in delaying the progression of this case, but each of the schedule revisions drains some of the Commission's and the parties' administrative resources by requiring additional procedural orders, and telephonic

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<sup>3</sup>AT&T's Motion, ¶¶ 5-6.

<sup>4</sup>WAC 480-07-385(2).

<sup>5</sup>Order 18, ¶ 12.

conferences. In some instances, the parties' representatives have simply failed to plan in advance for holidays like Thanksgiving Day, which occurs if not the same day, at least the same time, every year.

- 16 Due to the severity of Mr. Peter's physical infirmity and the fact that the other parties do not oppose the request, the Commission will grant AT&T's Motion. However, counsel for each of the parties is reminded that situations such as this are the very reason attorneys associate with co-counsel. The Commission will turn a very critical eye to any subsequent requests for delaying the proceedings. The parties' representatives would be well-advised to bring co-counsel up to speed on the case now, since further delays will not be tolerated.
- 17 The Commission finds and concludes that it should grant the relief requested and amend the procedural schedule, as set forth below.

End of fact-based discovery	July 17, 2009
End of expert discovery	August 7, 2009
Responses to motions for summary determination due	August 27, 2009
Replies to motions for summary determination due	September 10, 2009

**ORDER**

- 18 **THE COMMISSION ORDERS That** AT&T's emergency unopposed motion to extend the procedural schedule is granted. The procedural schedule, set forth in paragraph 17 above is adopted.

Dated at Olympia, Washington, and effective May 29, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER  
Administrative Law Judge