

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

SANDY JUDD AND TARA	)	DOCKET UT-042022
HERIVEL,	)	
	)	ORDER 21
Complainant,	)	
	)	ORDER GRANTING AT&T’S AND
v.	)	T-NETIX’S MOTIONS TO AMEND
	)	PLEADINGS AND DIRECTING
AT&T COMMUNICATIONS OF THE	)	T-NETIX TO FILE ITS AMENDED
PACIFIC NORTHWEST, INC., AND	)	MOTION FOR SUMMARY
T-NETIX, INC.,	)	DETERMINATION
	)	<b>(Due by 5:00 p.m., Tuesday,</b>
Respondents.	)	<b>September 1, 2009);</b>
.....	)	

**MEMORANDUM**

- 1 **SYNOPSIS.** *This order grants AT&T’s Unopposed Motion for Leave to File its Amended Motion for Summary Determination and T-Netix’s Motion for Leave to Amend its Motion for Summary Determination. This order also establishes the deadline for filing responses to both amended motions for summary determination as September 10, 2009, and the deadline for replies as September 24, 2009. This order directs T-Netix to file its Amended Motion for Summary Determination with the Commission and serve it upon all parties by 5:00 p.m., Tuesday, September 1, 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), 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> On December 15, 2004, AT&T filed a Motion for Summary Determination, requesting that the Commission determine that AT&T has not served as an operator service provider (OSP) or an alternative operator service provider (AOS provider) to any Washington state prison or correctional facility since June 20, 1996, and that AT&T has not violated any of the Commission's regulations applicable to OSPs or AOS providers at those prisons or correctional facilities since June 20, 1996. T-Netix filed a Motion for Summary Determination on July 28, 2005, requesting that the Commission find that T-Netix is not an OSP, is not bound by WAC 480-120-141, and that the exemptions and waivers granted to various local exchange carriers exempted all documented calls from the rule, precluding liability for T-Netix.

5 On July 11, 2008, the Commission assigned Administrative Law Judge Marguerite E. Friedlander (ALJ) to the matter after the Superior Court of Washington for King County reinstated its referral to the Commission.

6 On May 27, 2009, AT&T filed a motion to extend the procedural schedule. The company stated that counsel for AT&T, Charles H. R. Peters, had emergency eye surgery to repair a detached retina which prevents counsel from flying to attend out-of-state depositions for approximately four weeks. While AT&T asserted that Mr. Peter's co-counsel would be handling a few of the depositions currently scheduled, Mr. Peter's has represented AT&T in this matter from the beginning and had worked with some of AT&T's former employees scheduled to be deposed. AT&T

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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.

represented that Complainants and T-Netix do not oppose the motion. AT&T requested 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

7 The Commission entered Order 19, granting the request due to the severity of Mr. Peter's physical infirmity and the fact that the other parties did not oppose the motion. However, the Commission informed all that there have been no less than seven requests to extend the procedural schedule in the prior seven months. Not only had these continuances resulted in delaying the progression of this case, but each of the schedule revisions drained the Commission's and the parties' administrative resources by requiring additional procedural orders and telephonic conferences. The Commission reminded the parties' representatives that these situations are the very reason attorneys associate with co-counsel. The parties were admonished that the Commission would turn a very critical eye to any subsequent requests for delaying the proceedings, and the parties' representatives were advised to bring co-counsel up to speed on the case now, since further delays would not be tolerated.

8 **REQUEST FOR LEAVE TO FILE AMENDED MOTIONS.** Late in the day on August 24, 2009, AT&T filed an Amended Motion for Summary Determination (AT&T's Amended Motion). AT&T's filing was served a mere two days before responses were due to its original motion for summary determination. The company did not file a request for leave from the Commission to amend its pleading and gave no rationale for the amendment or its lateness.

9 On August 25, 2009, the ALJ convened a telephonic conference call between the parties. Counsel for AT&T indicated that he was unaware of the Commission's rule, WAC 480-07-395(5), which gives the Commission discretion to allow amendments to motions. Counsel further stated that, following the completion of discovery in early August, Mr. Peters had a second eye surgery which prevented him from filing AT&T's Amended Motion until August 24<sup>th</sup>.

- 10 Counsel for Complainants and T-Netix stated that they would not oppose an AT&T request for leave to file an amended motion as long as the procedural schedule was extended to reasonably accommodate the suddenness of the filing. The ALJ verbally suspended the procedural schedule, and imposed the deadline of August 27, 2009, for AT&T to file such a request. Since T-Netix filed a motion for summary determination years ago when this case was first referred to the Commission, with several years and much discovery occurring in the interim, the ALJ extended the invitation to T-Netix to file a motion for leave to amend its original motion for summary determination.
- 11 Complainants, AT&T, and T-Netix verbally proposed a revised procedural schedule whereby responses to the motions for summary determination would be due Thursday, September 10, 2009, and replies would be due Thursday, September 24, 2009.
- 12 On August 27, 2009, both AT&T and T-Netix filed motions for leave to amend their original pleadings and requesting a modification in the procedural schedule. Each stated that significant time had elapsed since they filed their motions in 2004 and 2005, respectively. AT&T and T-Netix indicate that substantial discovery since their original filings has resulted in the detection of additional, relevant information which could prove useful to the Commission.
- 13 The Commission has admonished the parties to associate with co-counsel in order to avoid the repeated and frequent delays in the procedural schedule that have resulted. Counsel for AT&T has personally been directed to do so on at least one occasion prior to AT&T's Motion. The Commission does not intend for other foreseeable complications on behalf of any party to delay this case further and will not entertain further motions for extensions of the schedule when co-counsel could and should have been utilized.
- 14 That being said, a sufficient time has elapsed and extensive discovery conducted since both the AT&T and T-Netix Motions for Summary Determination were filed. The Commission finds and concludes that granting AT&T's and T-Netix's requests to file amended motions will promote fair and just results. T-Netix did not attach its Amended Motion for Summary Determination (T-Netix's Amended Motion) to its

Motion for Leave to Amend its Motion for Summary Determination. In order to give Complainants and AT&T sufficient time to review T-Netix's Amended Motion, T-Netix is directed to file its Amended Motion with the Commission and to serve it upon all parties by 5:00 p.m., Tuesday, September 1, 2009.

**ORDER**

**THE COMMISSION ORDERS That:**

- 15 (1) AT&T's Unopposed Motion for Leave to File its Amended Motion for  
Summary Determination and T-Netix's Motion for Leave to Amend its Motion  
for Summary Determination are granted.
- 16 (2) T-Netix shall file its Amended Motion for Summary Determination by 5:00  
p.m., Tuesday, September 1, 2009.
- 17 (3) The procedural schedule, set forth in paragraph 18 above is adopted.

Dated at Olympia, Washington, and effective August 28, 2009.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER  
Administrative Law Judge