

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 In the Matter of the Application)
4 of)
5 DESTINY TELECOMM INTERNATIONAL,) DOCKET NO. UT-961404
INC.,) Volume 1
6) Pages 1 - 20
7 for an Order Authorizing the)
8 Registration of Applicant as)
a Telecommunications Company.)
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9 A pre-hearing conference in the above matter
10 was held on February 4, 1997 at 9:35 a.m. at 1300
11 South Evergreen Park Drive Southwest, Olympia,
12 Washington, before Administrative Law Judge JOHN
13 PRUSIA.

14
15 The parties were present as follows:

16 THE WASHINGTON UTILITIES AND TRANSPORTATION
17 COMMISSION STAFF, by SALLY G. JOHNSTON, Assistant
18 Attorney General, 1400 South Evergreen Park Drive
Southwest, Olympia, Washington 98504

19 DESTINY TELECOMM INTERNATIONAL, INC., (via
20 bridge) by MICHAEL MLINAR, Attorney at Law, 1374
Danielson Road, Santa Barbara, California 93108.

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23
24 Cheryl Macdonald, CSR
25 Court Reporter

1 P R O C E E D I N G S

2 JUDGE PRUSIA: Let's be on the record.

3 This is a pre-hearing conference in docket No.
4 UT-961404 in the matter of the application of Destiny
5 Telecomm International, Inc., for an order authorizing
6 the registration of applicant as a telecommunications
7 company. RCW 80.36.350 requires the Commission to
8 approve an application for registration or to set the
9 matter for hearing. The Commission has notified the
10 applicant that it has deemed it appropriate that this
11 application be made a matter of a public hearing for
12 the purpose of determining whether registration is
13 consistent with the public interest.

14 The issues before us in this proceeding
15 will be whether the applicant meets the prerequisites
16 of registration contained in RCW 80.36.350 and whether
17 the granting of the application will be consistent
18 with the public interest. The burden of proof to show
19 the above would be on the applicant.

20 The Commission set this pre-hearing
21 conference by notice served January 8, 1997. Today's
22 date is February 4, 1997. We're convened at
23 Commission headquarters in Olympia, Washington. I
24 will note for the record that the company is appearing
25 through Mr. Michael Mlinar, spelled M L I N A R, and

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1 he is appearing over the Commission's conference
2 bridge line.

3 My name is John Prusia. I'm the
4 administrative law judge assigned to this proceeding.
5 As is indicated in the notice of pre-hearing
6 conference, we'll be taking appearances this morning,
7 formulating issues, considering any petitions to
8 intervene, setting evidentiary hearings and dealing
9 with discovery and other preliminary matters. The
10 notice of pre-hearing conference also provides in this
11 case that the applicant will be expected to have
12 available at this time for distribution to all parties
13 copies of the direct testimony and exhibits that it
14 proposes to present. The notice provides that those
15 documents will be marked as exhibits at the time of
16 this pre-hearing conference.

17 I will take appearances at this time.
18 We'll begin with the company Destiny Telecomm, please,
19 Mr. Mlinar.

20 MR. MLINAR: Yes, this is Michael W.
21 Mlinar, regulatory counsel/consultant to Destiny
22 Telecomm, and I reside at 1374 Danielson Road, Santa
23 Barbara, California 93108.

24 JUDGE PRUSIA: Will you please spell your
25 last name.

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1 MR. MLINAR: Last name is spelled M L I N A
2 R.

3 JUDGE PRUSIA: And would you give us your
4 regular telephone number and also your fax number,
5 please.

6 MR. MLINAR: Yes. The regular phone number
7 and fax are the same. It is area code 805-565-3338.

8 JUDGE PRUSIA: Thank you. And for
9 Commission staff, Ms. Johnston.

10 MS. JOHNSTON: Sally G. Johnston, assistant
11 attorney general. My address is Heritage Plaza
12 Building, 1400 South Evergreen Park Drive
13 Southwest, Olympia, Washington 98504.

14 JUDGE PRUSIA: Your fax number, please, for
15 the record.

16 MS. JOHNSTON: I believe it's area code
17 360-586-5522. My telephone number is area code
18 360-664-9598.

19 JUDGE PRUSIA: Ms. Johnston, will public
20 counsel be appearing?

21 MS. JOHNSTON: I received a voice mail
22 message from Mr. Manifold to the effect that he will
23 not be appearing this morning and does not intend to
24 appear in the proceeding.

25 JUDGE PRUSIA: Is there anyone else present

1 in the room this morning who intends to file a
2 petition or make a motion to intervene in this
3 proceeding? Let the record reflect that there is no
4 response. I want to confirm that the individuals Ms.
5 Johnston and Mr. Mlinar will be the contact persons
6 for distributions of all documents in this proceeding.
7 The Commission prefers that there would be one person
8 for distributions, and if any party wishes to have
9 more than one person receive a distribution then it's
10 up to that contact person to make and distribute
11 copies. The Commission and other parties will only
12 distribute one copy to each party.

13 We'll now set the discovery rules and we'll
14 set a discovery schedule if necessary later. Do the
15 parties want the Commission's rule relating to methods
16 for obtaining data in adjudicative proceedings to be
17 invoked? That is WAC 480-09-480. Does anyone so
18 move?

19 MS. JOHNSTON: Commission staff so moves.

20 JUDGE PRUSIA: Mr. Mlinar, do you have any
21 comment on the motion to invoke the discovery rule?

22 MR. MLINAR: No, I do not.

23 JUDGE PRUSIA: That motion will be granted.
24 The methods for obtaining data provided in WAC
25 480-09-480 will be available in this proceeding.

1 The parties are also encouraged to use
2 informal discovery to the extent that that might be
3 appropriate. I need to advise you, Mr. Mlinar, that
4 responses to discovery requests need to be sent
5 directly to counsel for the Commission, Ms. Johnston.
6 You should not send any of those materials through the
7 Commission secretary. Do you understand?

8 MR. MLINAR: Yes, I do.

9 JUDGE PRUSIA: Is there any party who
10 wishes to request a protective order in this matter?
11 Mr. Mlinar.

12 MR. MLINAR: No.

13 JUDGE PRUSIA: Ms. Johnston.

14 MS. JOHNSTON: No.

15 JUDGE PRUSIA: Very well. The next matter
16 would be scheduling. Have the parties discussed
17 scheduling?

18 MR. MLINAR: No, we have not.

19 MS. JOHNSTON: No, we have not. Well, Your
20 Honor, this morning I have devised a hearing schedule.
21 I suggest that staff be required to prefile its direct
22 testimony March 5, that the company be required to
23 prefile its rebuttal testimony April 4, and that we
24 convene for cross-examination of all witnesses on
25 April 22nd.

1 JUDGE PRUSIA: Let me ask you a couple of
2 questions first. Do we have any time restrictions in
3 this matter that you're aware of, Ms. Johnston?

4 MS. JOHNSTON: No, we do not.

5 JUDGE PRUSIA: In some Commission
6 proceedings we do have time restrictions. Ms.
7 Johnston, would this build in time for possible
8 dispositive motions?

9 MS. JOHNSTON: I believe it does, Your
10 Honor.

11 JUDGE PRUSIA: Very well. Mr. Mlinar, did
12 you hear the schedule --

13 MR. MLINAR: Yes, I did.

14 JUDGE PRUSIA: -- that she proposed? How
15 does that sound to you?

16 MR. MLINAR: Well, I will, of course,
17 discuss it with my client. At this point I don't have
18 any objections to that.

19 MS. JOHNSTON: When would you be able to
20 discuss it with your client, Mr. Mlinar?

21 MR. MLINAR: Today.

22 MS. JOHNSTON: So will you be able to
23 notify me or the administrative law judge by the close
24 of business today as to whether or not the schedule is
25 acceptable to you?

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1 MR. MLINAR: That is my plan, yes.

2 MS. JOHNSTON: Thank you.

3 MS. PHIPPS: Excuse me, Your Honor.

4 JUDGE PRUSIA: Who is this?

5 MS. PHIPPS: Jennifer Phipps from Destiny
6 legal department.

7 JUDGE PRUSIA: Please speak up.

8 MS. PHIPPS: I have Randy Jeffers,
9 president of Destiny Telecomm.

10 MR. JEFFERS: Good morning, Your Honor.

11 JUDGE PRUSIA: Good morning, Mr. Jeffers.

12 MS. PHIPPS: And also with me is Darrell
13 Evans, our chief financial officer.

14 MR. EVANS: Good morning.

15 JUDGE PRUSIA: Where are you at this point?
16 Where are you speaking from?

17 MR. JEFFERS: We're at Destiny headquarters
18 in Oakland, California.

19 MS. JOHNSTON: Excuse me, Your Honor. I
20 didn't catch the names.

21 MR. JEFFERS: Randy Jeffers and Darrell
22 Evans.

23 MS. JOHNSTON: Darrell Evans, did you say?

24 MR. EVANS: Yes.

25 MS. JOHNSTON: What is his position?

1 MR. JEFFERS: Chief financial officer.

2 MS. JOHNSTON: And the woman who spoke?

3 MR. JEFFERS: Jennifer Phipps.

4 MS. JOHNSTON: And her position?

5 MR. JEFFERS: She's in our legal
6 department.

7 JUDGE PRUSIA: I assume the three of you
8 also heard the proposed schedule that Ms. Johnston
9 proposed.

10 MR. JEFFERS: Yes, and we have no objection
11 to that.

12 JUDGE PRUSIA: Mr. Mlinar, does that fit
13 into your schedule?

14 MR. MLINAR: That's fine with me.

15 JUDGE PRUSIA: Would there be any problem
16 with us agreeing on that schedule?

17 MR. MLINAR: I see no problem with that.

18 JUDGE PRUSIA: Very well, then. The
19 schedule as far as prefilings and hearings, the
20 applicant's prefiling deadline is today according to
21 the notice of pre-hearing conference. The staff will
22 prefile its testimony by March, the testimony and
23 supporting documents, by March 5. The company will
24 file rebuttal if any by April 4th and we will have a
25 hearing for cross of all testimony on April 22nd,

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1 1997.

2 MS. JOHNSTON: Your Honor, there's another
3 matter I would like to bring up.

4 JUDGE PRUSIA: Ms. Johnston.

5 MS. JOHNSTON: It seems to me that the
6 prefiled direct testimony -- I would put that in
7 quotation marks -- filed yesterday is little more than
8 a motion for an extension of time within which Destiny
9 may actually prefile its direct testimony and
10 exhibits. Throughout the testimony you find
11 references to the company's willingness to provide
12 certain documents and information in the future. So
13 at this point on the record I would like Mr. Mlinar to
14 make a representation as to when precisely the
15 additional requested information or whatever it is
16 he's referring to that he intends to file with the
17 Commission will actually be filed.

18 MR. MLINAR: Well, for the record, the bond
19 information that was requested by staff has been filed
20 and as far as the additional tariff information,
21 that's a matter of getting from Tony Cook of the
22 Commission staff the exact changes he wants to see in
23 the tariff. We had discussed a number of matters
24 generally but had put off making any changes because
25 the bond was the imperative factor, and the bond was

1 actually obtained by the company after the time in
2 which the Commission set the hearing schedule, so if
3 indeed there are additional tariff changes and
4 application changes, there's new information the staff
5 needs, I can work with Tony Cook at any time and have
6 that in very short order.

7 MS. JOHNSTON: I would like to make a
8 record, Your Honor, to the effect that this particular
9 filing came in as early as November 5 of 1996. This
10 matter was set over three times by the Commission.
11 Mr. Mlinar admitted to me last week that he had had a
12 minimum of 20 telephone conversations with Commission
13 staff concerning this filing. In my letter or, I
14 should say, in the Commission's letter of January 15
15 any questions concerning the pre-hearing conference
16 Mr. Mlinar was instructed that those questions should
17 be directed to me.

18 Mr. Mlinar and Destiny, they were provided
19 with copies of all relevant statutes, rules. Just for
20 the record I would like to point out what some of
21 those are. The company was provided with chapter
22 480.121 WAC concerning registration of
23 telecommunications companies, chapter 480-80 WAC
24 concerning tariffs, chapter 480.09 WAC concerning
25 Commission practice and procedure, chapter 480.120 WAC

1 concerning telephone companies, and this registration
2 packet also included a sample tariff.

3 In short, I believe staff has done
4 everything that it should be required to do as far as
5 facilitating this company's registration in this
6 state. So at this point I guess that I just would
7 reiterate my request that Mr. Mlinar give me a date
8 certain on which he thinks he can complete this
9 filing because, frankly, I have other things that I
10 would like to do and I intend to file a motion for
11 summary determination in this matter.

12 JUDGE PRUSIA: Mr. Mlinar, do you have any
13 response?

14 MR. MLINAR: I didn't realize this was
15 going to be such a heated discussion today. I didn't
16 realize that the deficiencies were so great. Never in
17 all of the conversations with Tony Cook or anyone else
18 had I been advised in this fashion that it was so
19 deficient. If counsel for the attorney general of
20 Washington wants this thing apparently refiled she
21 will have it by the 7th of February this year.

22 MS. JOHNSTON: Thank you.

23 MR. MLINAR: You're welcome.

24 JUDGE PRUSIA: Very well. The notice of
25 pre-hearing conference did set today as a deadline for

1 the prefiling of direct testimony and exhibits. Do I
2 take this, then, as a request for extension of time
3 for the company to complete that process?

4 MR. MLINAR: I would like to request that,
5 yes.

6 JUDGE PRUSIA: Do you have any objection to
7 that, Ms. Johnston?

8 MS. JOHNSTON: I have no objection provided
9 that the final filing will occur on February 7th,
10 1997.

11 JUDGE PRUSIA: Very well, then. We will
12 set that as an additional deadline. The company will
13 have through February 7, 1997 to complete the filing
14 of its direct testimony and supporting exhibits, and
15 that will be the deadline. Do we need to set a
16 deadline for the filing of dispositive motions? The
17 hearing is the 22nd of April.

18 MS. JOHNSTON: I believe the rule
19 concerning --

20 JUDGE PRUSIA: They would have to be at
21 least 30 days before.

22 MS. JOHNSTON: Yes.

23 MR. JEFFERS: So would that be March 22nd
24 or thereabouts?

25 MS. JOHNSTON: Just to give us sufficient

1 time, the staff will have filed its testimony by March
2 the 5th. How about March the 14th as a deadline for
3 filing dispositive motions in the proceeding?

4 MR. JEFFERS: That's fine.

5 JUDGE PRUSIA: The deadline for filing
6 dispositive motions would be Friday March the 14th,
7 1997. Do the parties anticipate engaging in any
8 discovery?

9 MS. JOHNSTON: Yes, Your Honor.

10 JUDGE PRUSIA: Perhaps we should have
11 discovery deadlines as well. Did the company
12 anticipate in engaging in any discovery?

13 MR. MLINAR: No.

14 JUDGE PRUSIA: Ms. Johnston, what would you
15 suggest as a deadline for the cutoff of discovery?

16 MS. JOHNSTON: Well, we don't anticipate
17 extensive discovery in this matter. We will probably
18 issue several sets of data requests, but -- well,
19 perhaps we should find out if Mr. Mlinar and Destiny
20 is concerned about a discovery cutoff date being
21 necessary. Do you believe a discovery cutoff date is
22 necessary or desirable in this case?

23 MR. MLINAR: Yes.

24 MS. JOHNSTON: Well, then, I propose given
25 that the discovery rule 480-09-480 has a 10-day

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1 turnaround time for responses to data requests, I
2 propose March 7th.

3 JUDGE PRUSIA: Mr. Mlinar, does that sound
4 all right to you?

5 MR. MLINAR: That's fine.

6 JUDGE PRUSIA: Very well, then. The
7 discovery cutoff date will be March 7th, 1997. And
8 how about a briefing schedule? Do the parties
9 anticipate a need to file briefs after the hearing?

10 MR. MLINAR: I believe we should set one.

11 JUDGE PRUSIA: The hearing is set for the
12 22nd of April. How about 30 days after that? Would
13 that be sufficient time?

14 MR. MLINAR: That's fine.

15 MS. JOHNSTON: That's more than enough
16 time.

17 JUDGE PRUSIA: Would you like to make it a
18 shorter time then?

19 MR. MLINAR: 30 days.

20 MS. JOHNSTON: 30 days is fine.

21 JUDGE PRUSIA: Let me check my calendar.
22 All right, then. We'll have simultaneous briefs due,
23 or did people want to file -- have an opportunity also
24 for responsive briefs?

25 MS. JOHNSTON: Simultaneous briefing is

1 acceptable to staff.

2 JUDGE PRUSIA: How about you, Mr. Mlinar?

3 Is simultaneous briefing --

4 MR. MLINAR: As long as there's the ability
5 to have responsive briefs if necessary after that.

6 MS. JOHNSTON: Then we better have
7 staggered briefing schedule. Destiny has the burden
8 in this case.

9 JUDGE PRUSIA: Right.

10 MS. JOHNSTON: So I don't know how much
11 time we would need in between. I would ask that
12 Commission staff have three weeks after the filing of
13 Destiny's closing brief to prepare its brief and then
14 perhaps Destiny could have two weeks to file its
15 reply.

16 JUDGE PRUSIA: Did you hear that, Mr.
17 Mlinar?

18 MR. MLINAR: Yes, I did. I don't know why
19 we can't have initial simultaneous filings and then
20 rebuttal filings or subsequent filings if necessary.

21 JUDGE PRUSIA: Ms. Johnston.

22 MS. JOHNSTON: I would prefer just to use
23 the traditional briefing schedule in these matters so
24 that I have an opportunity to see what Destiny's
25 closing arguments are, and then I will file my

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1 response, and then you will have rebuttal or reply
2 opportunity.

3 MR. MLINAR: Fine. Let's do the 30-day
4 simultaneous briefing.

5 JUDGE PRUSIA: With no opportunity for
6 response?

7 MR. MLINAR: Yes.

8 MS. JOHNSTON: That's acceptable, Your
9 Honor.

10 JUDGE PRUSIA: Very well, then. May 22nd?

11 MR. MLINAR: That's fine with me.

12 JUDGE PRUSIA: I sometimes find responsive
13 briefs helpful to me.

14 MS. JOHNSTON: Well, Your Honor, Commission
15 staff will defer to you on this.

16 MR. MLINAR: I just think it's helpful for
17 all parties if there's an opportunity to respond, not
18 necessarily that there will be a response.

19 JUDGE PRUSIA: How about simultaneous
20 briefs and then an opportunity for either to file
21 responsive brief, say, 10 days after that?

22 MS. JOHNSTON: That would be acceptable.

23 MR. MLINAR: Very good, Your Honor.

24 JUDGE PRUSIA: Very well. We will have
25 simultaneous briefs due on May the 22nd and an

1 opportunity to file responsive briefs. Those would be
2 due by June 2nd, which is a Monday. I usually have a
3 practice of getting an initial order out 30 days after
4 the last briefs and then the Commission generally
5 requires at least 90 days after that to review any
6 petitions for review and to issue their final order.

7 I think the last thing we had was the
8 premarking of prefiled exhibits. The pre-hearing
9 conference order did indicate that those would be
10 marked at this time, so we need to determine what will
11 be exhibits and give them -- assign them numbers.

12 MS. JOHNSTON: Then, Your Honor, on
13 February 7th, would the February 7th filing just serve
14 as substitute prefiled testimony and exhibits?

15 JUDGE PRUSIA: Since we've granted an
16 extension of time it seems to me it would be easier if
17 we waited to premark exhibits until we received
18 whatever is going to be received by that date and Mr.
19 Mlinar could indicate with a submission which document
20 he wishes to have entered as exhibits. Generally --
21 for example, he can indicate whether he wants
22 something attached to another document as part of the
23 same exhibit or if he wants them to be separate
24 exhibits.

25 What we generally do is if there are

1 exhibits to testimony those are usually separate
2 exhibits and they're given a number like LDJ-1 rather
3 than having the party assign them an exhibit number,
4 and then I would assign the actual exhibit number. So
5 if it's all right with you, Mr. Jeffers, we will wait
6 until you submit your final pre-filing on the 7th and
7 you can indicate at that point what you wish to have
8 admitted as exhibits.

9 MR. MLINAR: That's fine, Your Honor.

10 JUDGE PRUSIA: And those then will be
11 identified and given an exhibit number.

12 MR. JEFFERS: That's fine.

13 JUDGE PRUSIA: Is there anything else we
14 need to cover this morning then?

15 MS. JOHNSTON: I don't believe so.

16 JUDGE PRUSIA: Mr. Mlinar?

17 MR. MLINAR: No, I don't believe so.

18 JUDGE PRUSIA: I will issue a pre-hearing
19 conference order after today's pre-hearing conference.
20 Our pre-hearing order rule states that if you do not
21 object to a portion of the order within ten days then
22 the rules set out in the order are the rules that we
23 will proceed under in the case. There being nothing
24 further I will adjourn this morning's pre-hearing
25 conference.

1 MR. MLINAR: Thank you.

2 MS. JOHNSTON: Thank you.

3 (Hearing adjourned at 10:00 a.m.)

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