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ROBERT JOHNSTON

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Direct Examination by Ms. Watson

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

2 JUDGE BERG: We'll be on the record. This is  
3 a prehearing conference in Docket No. UT-010785. This  
4 prehearing conference is being conducted pursuant to  
5 notice that was served on all parties, service date  
6 June 6th, 2002, in the pleading that was captioned,  
7 Complaint and Notice of Prehearing Conference. This  
8 case is captioned, Washington Utilities and  
9 Transportation Commission versus 123 separately-named  
10 telecommunication companies.

11 My name is Lawrence Berg. I'm the  
12 administrative law judge that has been assigned to this  
13 proceeding. Today's date is July 15th, 2002, and the  
14 prehearing conference is being convened at the  
15 Commission's headquarters in Olympia, Washington. At  
16 this point in time, we will take appearances of parties  
17 present.

18 MS. WATSON: Good morning. My name is Lisa  
19 Watson. I'm an assistant attorney general representing  
20 Commission staff. My address is 1400 South Evergreen  
21 Park Drive Southwest, P.O. Box 40128, Olympia,  
22 Washington, 98504. My telephone number is  
23 (360)664-1186. My fax number is (360)586-5522; and my  
24 e-mail is lwatson@wutc.wa.gov.

25 JUDGE BERG: Thank you, Ms. Watson. Are

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1 there any other parties present who wish to enter an  
2 appearance? Let the record reflect there was no  
3 response.

4 I will take note that as part of the Notice  
5 of Prehearing Conference, the following notice was  
6 provided to parties: Notice is further given that any  
7 party who fails to attend or participate in the hearing  
8 set herein or other stage of this proceeding may be  
9 held in default in accordance with the terms  
10 of RCW 34.05.440. The parties are further advised that  
11 the sanction provisions of WAC 480-09-700(4) are  
12 specifically invoked.

13 Ms. Watson, I note that Commission staff is  
14 the complainant in this proceeding; is that correct?

15 MS. WATSON: That's right.

16 JUDGE BERG: Are you accompanied by a member  
17 of Commission staff here this morning?

18 MS. WATSON: Yes, I am. Robert Johnston is  
19 here with me.

20 JUDGE BERG: Mr. Johnston, what is your title  
21 with Commission staff?

22 MR. JOHNSTON: My title is compliance  
23 specialist.

24 JUDGE BERG: Ms. Watson, insofar as other  
25 parties have not appeared and are subject to default, I

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1 would like Staff to do a short presentation with  
2 regards to the statutory basis for the Complaint that  
3 has been filed as well as for a factual basis for the  
4 Complaint.

5 MS. WATSON: I have a quick question for you.  
6 I do have a Declaration of Service. Would you like  
7 that to be entered?

8 JUDGE BERG: Yes, I would.

9 MS. WATSON: How many copies of the  
10 declaration would you like?

11 JUDGE BERG: If you have two copies, I would  
12 appreciate that.

13 MS. WATSON: I do.

14 JUDGE BERG: Let me just indicate for the  
15 record that I've received a Declaration of Service in  
16 Docket No. UT-010785, and I'm going to mark and admit  
17 the Declaration of Service as Exhibit 1.

18 Let me also just note for the record that  
19 subsequent to the initial service of the Complaint and  
20 Notice of Prehearing Conference, the Commission  
21 discovered that one company name was misspelled. That  
22 company is Integrated Teletechnologies, Inc.  
23 Subsequently, the spelling of that company's name in  
24 the Complaint and attachments was corrected and was  
25 specifically served to the party on June 13th, 2002,

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1 and is reflected by an Amended Complaint and Notice of  
2 Prehearing Conference served June 13th, 2002, to that  
3 party.

4 I'll also indicate that on June 27th, 2002,  
5 the Commission received correspondence that one  
6 company, Rapid Link Communications, had filed for  
7 bankruptcy protection under the federal bankruptcy  
8 statutes and was dissolved as of September 13th, 2001.  
9 The Commission will proceed as though Rapid Link  
10 Communications is a defaulting party in this  
11 proceeding. Thank you, Ms. Watson.

12 MS. WATSON: There is one preliminary matter  
13 that we should probably get to before going through the  
14 offer of proof. There is a number of companies that  
15 should be dismissed from the proceeding. They've  
16 either filed a request to cease doing business in the  
17 State of Washington or they've complied with the  
18 requirements.

19 JUDGE BERG: One moment, please. Why don't  
20 you provide me with the identities of those companies  
21 and also please indicate for my benefit whether they  
22 filed a request to cease doing business or complied.

23 MS. WATSON: The first set of companies will  
24 be companies that filed a request to cease doing  
25 business. The first one is Winstar Wireless,

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1 Incorporated, and I do have exhibits that show these  
2 companies as well, if you would like to receive those.

3 JUDGE BERG: Certainly.

4 MS. WATSON: There is two sets there, and  
5 they are all one-page exhibits.

6 JUDGE BERG: So what you've handed me first  
7 are two sets of exhibits for companies who have all  
8 requested to cease doing business; is that correct?

9 MS. WATSON: Right.

10 JUDGE BERG: We are going to collectively  
11 treat this as one exhibit, and that will be Exhibit  
12 No. 2, and let's go ahead and go over those names.

13 MS. WATSON: The first company is Winstar  
14 Wireless, Incorporated. The next company is Cointel,  
15 Incorporated; Lawrence Smith, Incorporated; Pacific  
16 Fiber Link, LLC; PNV.net, Incorporated; U.S. Network  
17 Services, Incorporated, and Unicomm.

18 JUDGE BERG: Thank you.

19 MS. WATSON: There are two additional  
20 companies that have filed a request to cease doing  
21 business in Washington, and they will be part of the  
22 no-action agenda at the July 26th, 2002, open meeting,  
23 so those two should also be dismissed from the  
24 proceeding.

25 JUDGE BERG: Their identities?

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1 MS. WATSON: I just handed you an exhibit  
2 showing the two companies, the first being Stellar  
3 Telecommunications Services, Incorporated, and the  
4 second is Net.world, Incorporated.

5 JUDGE BERG: Have the previous companies been  
6 the subject of open meeting no-action agendas in the  
7 past?

8 MS. WATSON: Yes, that's correct, so the  
9 companies in the first set have been canceled.

10 JUDGE BERG: This list, the two-page document  
11 referring to Stellar and Net.world, will be marked as  
12 Exhibit 3 and admitted, and Exhibit 2 is also admitted  
13 if I did not previously do so. One moment please,  
14 Ms. Watson. All right.

15 MS. WATSON: I'm handing you another set of  
16 exhibits showing companies that have complied. There  
17 are three on this list.

18 JUDGE BERG: That document will be marked as  
19 Exhibit 4, and it is admitted. Would you give me the  
20 names of those companies?

21 MS. WATSON: The names of those companies are  
22 U.S. South Communications, Incorporated; NeTel,  
23 Incorporated, and the last one is DialTek, LLC. With  
24 those corrections, Commission staff is ready to proceed  
25 with the evidentiary part of the hearing if you are

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1 also ready.

2 JUDGE BERG: I'm ready.

3 MS. WATSON: At this time, I would like to  
4 call Mr. Johnston as a witness.

5 JUDGE BERG: Mr. Johnston, if you will raise  
6 your right hand.

7 (Witness sworn.)

8 JUDGE BERG: Ms. Watson, let me just indicate  
9 that you are free to proceed in a question-and-answer  
10 approach if you wish. Also, if it works with your  
11 presentation, Mr. Johnston is welcome to present his  
12 testimony in the way of a statement.

13 MS. WATSON: I guess I would like to proceed  
14 with the question answer, and then if there is further  
15 information, we can go from there.

16 JUDGE BERG: All right.

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19 D I R E C T E X A M I N A T I O N

20 BY MS. WATSON:

21 Q. Mr. Johnston, please state your name spelling  
22 your last name.

23 A. My name is Robert N. Johnston,  
24 J-o-h-n-s-t-o-n.

25 Q. You're employed by the WUTC as a compliance

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1 specialist?

2 A. Yes.

3 Q. Please explain your involvement in the  
4 current proceeding.

5 A. I was given the project to identify telecom  
6 companies that were not filing annual reports or paying  
7 regulatory fees, and after identifying them, to take  
8 action which will either result in compliance with the  
9 rules or revocation of the registration.

10 Q. Did you conduct a search of the Commission's  
11 records?

12 A. Yes, I did.

13 Q. For what periods did you search?

14 A. The search period was the calendar years of  
15 1997, 1998, 1999 and 2000.

16 Q. Could you explain what you did in order to  
17 conduct your search?

18 A. Yes. The Commission has a few databases.  
19 One of them is operated by the financial services, and  
20 that is called the annual report tracking system. That  
21 system keeps information on all companies that have  
22 filed annual reports and have paid regulatory fees, and  
23 it lists the amount of regulatory fees that each  
24 company has paid in each of those years.

25 I inspected this database for the years 1997

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1 through 2000 and identified companies that were not  
2 recorded as having paid regulatory fees or filed annual  
3 reports. The records center for the Commission  
4 operates a database, RMS, Records Management System.  
5 That database keeps information on filings by companies  
6 and whether the company is active or canceled.

7 I reviewed that also to determine companies  
8 that should have paid regulatory fees and filed annual  
9 reports, and I did that also for the same years, 1997  
10 through 2000, and determined if companies that were  
11 listed on the attachments are all active companies  
12 according to the Commission.

13 Q. Are annual report and regulatory fee forms  
14 made available to telecommunication companies having  
15 the authority to provide services in Washington?

16 A. Yes, they are. The annual report is mailed  
17 to each company at the last known physical address. A  
18 copy of the annual report is also found in the  
19 Commission's Web Site and can be downloaded, completed  
20 and forwarded to the Commission.

21 Q. What is the due date for companies to file an  
22 annual report and pay regulatory fees with the  
23 Commission?

24 A. The due date is May 1st of the year following  
25 the time period, so as an example, if the 2000 annual

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1 report covers the calendar year 2000, it is due May  
2 1st, 2001.

3 Q. With respect to the companies listed in this  
4 docket, what did you find, generally?

5 A. I found that the companies listed on the  
6 attachment either did not file an annual report or pay  
7 a regulatory fee.

8 Q. Mr. Johnston, could you please explain  
9 Attachment B to the Notice of Prehearing Conference?

10 A. It is a three-page list of companies, and  
11 Attachment B is for annual reports. It shows those  
12 companies that have not filed annual reports, and it  
13 has columns for the four years that we identified. If  
14 there is an 'X' in that column directly across from  
15 that company name, it shows that an annual report has  
16 not been received by the Commission.

17 Q. Has the information in Attachment B been  
18 updated?

19 A. Yes, it has. The most recent update was this  
20 morning. I reviewed all the companies to verify,  
21 reviewed through inspection of the databases that the  
22 companies had not complied and filed. There is one  
23 correction that should be made on Attachment B. There  
24 is a company that's on the third page. The company's  
25 name is Western Communications Network. Whereas it

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1 shows an 'X' in the block for 2000, 1999, and 1998, it  
2 should also show in 1997 that an annual report was not  
3 received.

4 Q. Were you present earlier when certain  
5 companies were dismissed from the proceeding?

6 A. Yes, I was.

7 Q. With the dismissal of the companies named  
8 earlier --

9 JUDGE BERG: Ms. Watson, let me indicate I  
10 have not dismissed those parties yet, but I was reading  
11 the Notice that indicated that by not appearing, they  
12 were subject to dismissal.

13 Q. Let me ask it this way. Is the information  
14 as updated in Attachment B correct to your knowledge?

15 A. With the exception of one company, yes.

16 Q. What company is that?

17 A. The company listed is Metromedia  
18 Communications Corporation. That should be removed  
19 from this action.

20 Q. Why is that?

21 A. This company was listed as an active company  
22 in the databases, and it had not been filing the  
23 required reports, but as we went through it at a later  
24 time, we identified documents showing that this company  
25 had changed its name and under the new name had been

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1 filing reports. So the records center and I  
2 deactivated this name, and it should not appear.

3 Q. Does Metromedia Communications also appear in  
4 Attachment C?

5 A. Yes, it does. It should be removed from  
6 Attachment C also.

7 Q. For the same reasons?

8 A. Yes.

9 Q. Mr. Johnston, can you please explain  
10 Attachment C?

11 A. Attachment C is those companies that did not  
12 pay regulatory fees. It's similar to Attachment B, the  
13 same format with the same years listed, and it's almost  
14 identical showing the name of the company and an 'X' in  
15 the block beside those years that regulatory fees were  
16 not paid.

17 There is only one difference between  
18 Attachment B and Attachment C. On Attachment B showing  
19 the annual reports, there is a company by the name of  
20 Maxxis Communications, Incorporated. The company did  
21 not file annual reports, but they did submit regulatory  
22 fees.

23 JUDGE BERG: Would you provide the name of  
24 that company once more?

25 THE WITNESS: Maxxis, M-a-x-x-i-s.

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1                   JUDGE BERG: Thank you. Mr. Johnston, do you  
2 recall the amount of regulatory fees submitted by  
3 Maxxis?

4                   THE WITNESS: I recall one of the years.  
5 They sent in \$50.

6                   JUDGE BERG: Thank you.

7           Q.       (By Ms. Watson) Has the information in  
8 Attachment C been updated?

9           A.       Yes, it has. I also reviewed the databases  
10 this morning and updated the information on it to  
11 verify that it was accurate.

12          Q.       As updated, is the information contained in  
13 Attachment C correct to your knowledge?

14          A.       Yes.

15                  MS. WATSON: I have no further questions,  
16 Mr. Johnston is now available for any questions the  
17 Judge may have.

18                  JUDGE BERG: I think what we will do is we  
19 will mark Attachment A to the Complaint as Exhibit 5,  
20 Attachment B as Exhibit 6, and Attachment C as Exhibit  
21 7, and Exhibits 5,6,7 are admitted. I have no  
22 questions for Mr. Johnston.

23                  Ms. Watson, did you want to make any  
24 statement about the applicable statutes or rules for  
25 the parties' requirements to file annual reports and

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1 regulatory fees? I know this information is laid out  
2 in the Complaint but wasn't sure whether you had  
3 intended to also refer to those during the course of  
4 this proceeding.

5 MS. WATSON: I did. Under WAC 480-121-060,  
6 the Commission may revoke a telecommunication company's  
7 registration after hearing for good cause. Good cause  
8 includes, one, the failure to file an annual report,  
9 and two, failure to pay regulatory fees, and based on  
10 Mr. Johnston's testimony, Commission staff would  
11 respectfully request that the registrations of the  
12 companies listed in Appendix A of the Complaint and  
13 Notice be revoked.

14 JUDGE BERG: Thank you very much. Anything  
15 further, Ms. Watson?

16 MS. WATSON: We have nothing further.

17 JUDGE BERG: In that case, the prehearing  
18 conference will be adjourned. Thank you very much for  
19 that well-organized presentation.

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21 (Prehearing conference adjourned at 11:30 a.m.)

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