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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In the Matter of )  
4 TELECARD DISPENSING CORPORATION, )  
5 d/b/a Telecard Distributing ) Docket No. UT-000571  
6 Corporation; formerly ) Volume 1  
7 U S Digital; presently ) Pages 1 - 20  
Rock Sound Communications )  
Corporation. )  
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10 A hearing in the above matter was held on  
11 October 24, 2000, at 9:43 a.m., at 1300 South Evergreen  
12 Park Drive Southwest, Olympia, Washington, before  
13 Administrative Law Judges TRE HENDRICKS and ANN  
14 RENDAHL.

15 The parties were present as follows:

16 THE WASHINGTON UTILITIES AND TRANSPORTATION  
17 COMMISSION, by JONATHAN THOMPSON, assistant attorney  
18 general, 1400 South Evergreen Park Drive Southwest,  
19 Post Office Box 40128, Olympia, Washington 98504-0128.

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Kathryn T. Wilson, CCR  
Court Reporter

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

2 JUDGE HENDRICKS: My name is Tre Hendricks,  
3 and I will be presiding over the hearing today. This  
4 is a complaint in the matter of Telecard Dispensing  
5 Corporation in Docket UT-000571. The Washington  
6 Utilities and Transportation Commission has set this  
7 matter for hearing at the Commission's offices upon due  
8 and proper notice to all interested parties. The  
9 hearing will be held at the offices of the Washington  
10 Utilities and Transportation Commission in Olympia,  
11 Washington, today, October 24th, 2000.

12 I'll take appearances at this time beginning  
13 with Commission staff. Please state for the record  
14 your name, who you represent, your address, telephone  
15 number, fax, and e-mail, if you use one.

16 MR. THOMPSON: I'm Jonathan Thompson,  
17 assistant attorney general, representing Commission  
18 staff. My address is 1400 South Evergreen Park Drive  
19 Southwest, 98504. My telephone number is (360)  
20 664-1225. My e-mail address is jthompso@wutc.wa.gov.

21 JUDGE HENDRICKS: Thank you. Let the record  
22 show at this time that no one has appeared yet from  
23 Telecard Dispensing Corporation and that there is no  
24 one else in the hearing room. So at this time, we'll  
25 take a short 15-minute recess, allow Telecard

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1 Dispensing an opportunity to arrive, and then we will  
2 go back on the record.

3 (Recess.)

4 JUDGE HENDRICKS: We just took a 15-minute  
5 recess to allow an opportunity for Telecard Dispensing  
6 to make an appearance. Let the record show that no  
7 representatives from Telecard Dispensing have done so.  
8 Therefore, we are going to continue with the  
9 proceeding, and I'd like to ask Mr. Thompson, are you  
10 ready to make your case?

11 MR. THOMPSON: Yes. Should I call my  
12 witness?

13 JUDGE HENDRICKS: Yes.

14 MR. THOMPSON: The Staff calls witness  
15 Carlene Hughes.

16 JUDGE HENDRICKS: Ms. Hughes, if you would  
17 please raise your right hand.

18 (Witness sworn.)

19 JUDGE HENDRICKS: Proceed.

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21 DIRECT EXAMINATION

22 BY MR. THOMPSON:

23 Q. Ms. Hughes, would you state your full name  
24 for the record?

25 A. Carlene Hughes.

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1 Q. Could you give your business address too,  
2 please?

3 A. 1300 South Evergreen Park Drive Southwest,  
4 Olympia, Washington, 98504.

5 Q. You're employed by the Washington Utilities  
6 and Transportation Commission; correct?

7 A. Yes.

8 Q. What's your title?

9 A. Compliance program coordinator.

10 Q. How long have you held that position?

11 A. Three years.

12 Q. Could you just generally describe what your  
13 responsibilities are?

14 A. I investigate the operations and business  
15 practice of companies to insure they are in compliance  
16 with the Commission's rules and regulations.

17 Q. Is it correct that you've become familiar  
18 with the Commission's rules relating to  
19 telecommunications carriers in your time with the  
20 Commission?

21 A. Yes.

22 Q. Could you explain a little bit about what  
23 those rules are?

24 A. In general, telecommunication companies must  
25 register with the Commission. The registration

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1 requirements provide the company as both adequate  
2 technical competent and adequate financial resources to  
3 provide the telecommunications service in this state.

4           In the case of companies that collect  
5 customer prepayments, like prepaid calling card or  
6 debit card companies, those companies must also meet a  
7 specific corporate debt rating and maintain a  
8 performance bond or deposit funds in a trust account  
9 sufficient to protect all outstanding customer  
10 prepayments in the event the company can no longer  
11 provide the services granted in their registration.

12       Q.     Do you know the number of companies that are  
13 registered in Washington to sell prepaid calling cards?

14       A.     Currently, there are 86 companies registered.

15       Q.     You were responsible for the investigation  
16 that gave rise to this case; correct?

17       A.     Yes.

18       Q.     How did that investigation come about?

19       A.     The investigation was prompted by 15 consumer  
20 complaints received between May of 1999 and February of  
21 2000, consumers who had purchased prepaid calling  
22 services cards at retail locations in the State of  
23 Washington during approximately that same time period.

24           The prepaid cards were named under Ultracall,  
25 USA Direct, No Surcharge Anywhere, Global Call Prepaid

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1 Phone Card, Global One Prepaid Phone Card, American  
2 Card, and Unicall Phone Card. All the cards carried  
3 the name of U S Digital as the network services  
4 provider on the back of each card.

5 Q. I want to direct your attention to --

6 JUDGE HENDRICKS: If I could just interrupt  
7 here for a minute. I assume we are going to talk about  
8 Exhibit No. 1, and at this time, I'd like to just  
9 identify the exhibits that we have marked already with  
10 No. 1 through 11 off the record. So then I'll do that  
11 and then we can proceed.

12 We've marked Exhibits 1 through 11 for  
13 witness Carlene Hughes. Exhibit No. 1 consists of  
14 records of consumer complaints. Exhibit No. 2 is an  
15 October 12th, 1999, letter from Ms. Carruth to a  
16 Mr. Siegel, with return receipt. Exhibit No. 3 is a  
17 November 29th, 1999, letter again from Ms. Carruth to  
18 Mr. Siegel with return receipt. Exhibit No. 4 is an  
19 April 13, 2000, letter, once again from Ms. Carruth to  
20 Mr. Siegel with return receipt attached.

21 Exhibit No. 5 consists of a record from the  
22 Florida Public Service Commission Web Site. Exhibit  
23 No. 6 is a record from the Florida Department of  
24 Corporations. Exhibit No. 7 is a record from the Web  
25 Site for Telecard Dispensing Corporation. Exhibit No.

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1 8 consists of a Federal Court complaint against various  
2 defendants, including Telecard Dispensing Corporation.  
3 Exhibit No. 9 consists of a letter from Marie Katols,  
4 the federal bankruptcy trustee in Florida to Carlene  
5 Hughes, dated April 24th, 2000, and Exhibit No. 10 is a  
6 record from the Florida Department of Corporations,  
7 dated March 24th, and Exhibit No. 11 is a receipt from  
8 a distributor for the purchase of services or products  
9 from Telecard Dispensing Corporation.

10 Is there any objection to the admission of  
11 these exhibits? Let the record show there is no  
12 response, and the exhibits are admitted. Please  
13 continue.

14 Q. (By Mr. Thompson) Ms. Hughes, I want to  
15 direct your attention to what has now been admitted as  
16 Exhibit No. 1. Could you explain what those records  
17 are, please?

18 A. These records are the complaints from the  
19 consumers that claim that the prepaid cards they had  
20 purchased didn't work or worked only a few times or  
21 that more minutes were being subtracted from the cards  
22 than were being used. The customer service number was  
23 not being answered or the provider access number for  
24 the cards had been disconnected. When consumers  
25 attempted to contact U S Digital at the customer

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1 service number provided on the card, at first, the  
2 company actually answered the calls and promised to  
3 restore minutes to the card or add additional minutes  
4 to the time on the cards, but in later complaints, the  
5 company stated they were having technical difficulties,  
6 and finally, the calls were not being answered, and the  
7 number has been disconnected.

8 Q. What did Staff do in response to these  
9 complaints? I just want you to go through  
10 chronologically and have you lay that out on the  
11 record.

12 A. In response to those complaints, Melinda  
13 Carruth of Commission staff contacted Donna Hoskey, the  
14 customer service manager at U S Digitel, and that was  
15 on October 7th, 1999. Ms. Hoskey informed Ms. Carruth  
16 that U S Telecard Corporation, also known as Telecard  
17 Dispensing Corporation and Telecard Distributing, was  
18 the company that was actually distributing the cards.  
19 Ms. Hoskey would not disclose a contact name or number  
20 for the company she identified as the distributor of  
21 the cards, though she did provide the company's address  
22 as 1909 Tyler Street, Hollywood, Florida, 33020.

23 On October 12th of 1999, Melinda called a  
24 telephone number identified on the Internet for U S  
25 Telecard and asked to speak with a supervisor or

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1 manager. Mr. Julian Siegel took that call. Mr. Siegel  
2 admitted that the company was distributing prepaid  
3 calling cards in the State of Washington. Staff  
4 explained that companies must register with the  
5 Commission prior to offering prepaid calling service in  
6 the State of Washington.

7 Q. You might want to spell for the record  
8 Mr. Siegel's name.

9 A. Julian Siegel is J-u-l-i-a-n, S-i-e-g-e-l.

10 Q. What action did Staff take next?

11 A. Staff mailed notices to Mr. Julian Siegel of  
12 U S Telecard at the Hollywood, Florida, address by  
13 certified mail on October 12th, 1999, and November  
14 29th, 1999, informing the company of the process for  
15 registering as a telecommunications company with the  
16 State of Washington and providing the company with the  
17 necessary documents to do so.

18 Q. The two letters you identified are those that  
19 were admitted as Exhibits 2 and 3; correct?

20 A. That is correct.

21 Q. The Commission received back receipts  
22 indicating that those had been received by the company;  
23 right?

24 A. That is correct. To this date, the Telecard  
25 Dispensing Corporation has not responded to those staff

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1 requests.

2 Q. Were there any further letters to the  
3 Company?

4 A. Yes. On April 13th, 2000, I mailed a letter  
5 to Telecard Dispensing Corporation instructing the  
6 company to cease all sales and distribution of prepaid  
7 telephone cards in the State of Washington and to  
8 contact the Commission to discuss pending legal action  
9 against the company.

10 Q. That letter is included as Exhibit 4; right?

11 A. That is correct.

12 Q. I'd like you to next go through and outline  
13 the evidence that Staff has concerning the ownership or  
14 various names of the company and why we believe they  
15 are probably a single entity.

16 A. The staff investigation revealed that prior  
17 to April of 2000, U S Digital held a certificate with  
18 the Florida Public Service Commission as a  
19 facility-based carrier and prepaid debit card provider.  
20 Effective April 6th of 2000, the Florida Public Service  
21 Commission canceled U S Digital's certificate for  
22 violation of that commission's rule regarding  
23 regulatory fees.

24 Q. That's evidenced by Exhibit No. 5; right?

25 A. That is correct.

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1 Q. Actually, this might need a little additional  
2 explanation, if you could just walk us through which  
3 part shows what you were indicating.

4 A. This is under the Florida Public Service  
5 Commission in Docket No. 991774. It's a listing of the  
6 Commission actions that have taken place against U S  
7 Digital. The sixth item -- these are listed in reverse  
8 chronological order the actions that that Commission  
9 has taken, and I think the bottom one that is referred  
10 to as No. 14589-99 talks about the cancellation of the  
11 certificate, and the regulatory assessment fee is the  
12 basis for beginning the action to cancel their  
13 certificate, and the top listing in that, which is the  
14 most recent or current action taken by that Commission  
15 under No. 04248-00, is the consummating order that  
16 closes that docket.

17 Q. This record also shows an address for the  
18 company; right?

19 A. Yes. The second page of this shows the  
20 address as on record with the Florida Public Service  
21 Commission.

22 Q. It's 1909 Tyler Street, Hollywood, Florida?

23 A. That's correct.

24 Q. What other evidence do we have concerning the  
25 ownership of the company?

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1           A.     The staff investigation also included looking  
2 into the Florida Department of Corporations' records,  
3 and they reveal that the company U S Digital had  
4 changed its corporate name on November 19th, 1999, to  
5 Telecard Dispensing Corporation with the principle  
6 address of 1909 Tyler Street, Hollywood, Florida,  
7 33020.

8           Q.     Looking at Exhibit No. 6, this record has  
9 some bearing on that determination; right?

10          A.     This exhibit shows the front page of the  
11 corporate information on this company. I wasn't able  
12 to print out the fact of the name change behind this  
13 front page, but this was the date. It does show  
14 November 16th, and I did research the information  
15 behind this.

16          Q.     Did Staff do any Internet research on the  
17 company?

18          A.     Yes. Staff went out onto the Internet and  
19 researched whether or not the company was advertising  
20 as a prepaid phone card company and found that yes,  
21 they were, and they were advertising numerous prepaid  
22 calling cards, a number of which were the ones that  
23 were identified in the consumer complaints that we  
24 found in the State of Washington.

25          Q.     That's Exhibit 7.

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1 A. Yes.

2 Q. Did Staff find any other information about  
3 the company in its research?

4 A. Yes. The Staff investigation also revealed  
5 that on September 29, 1998, the Federal Trade  
6 Commission filed a complaint against Telecard  
7 Dispensing Corporation in Federal District Court for  
8 the Southern District of Florida alleging deceptive  
9 acts and practices in violation of the FTC act. The  
10 FTC complaint identified as the defendant a Florida  
11 corporation with its principle place of business at  
12 1909 Tyler Street, Fifth Floor, Hollywood, Florida,  
13 33020, that promotes and sells prepaid telephone card  
14 vending machine business ventures, including providing  
15 the purchaser, retailers, with prepaid telephone cards  
16 that will function for the purpose sold. Other  
17 defendants named in the complaint were the company's  
18 officers or managers identified as Steven I. Tashman,  
19 Steven M. Mishkin, Ernest F. Lockamy, Michael S.  
20 Dundee, and Harris M. Cohen.

21 Q. That is Exhibit 8; right?

22 A. That is correct.

23 Q. What information does Staff have concerning  
24 the current status of the company?

25 A. On April 2nd, 2000, I received a letter from

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1 the office of the court appointed Chapter 7 bankruptcy  
2 trustee, Marie Katols, indicating that Rock Sound  
3 Communications Corporation filed for bankruptcy on  
4 January 25th of 2000.

5 Q. What did Staff find out about the company  
6 Rock Sound Communications?

7 A. Staff found that Rock Sound Communications  
8 Corporation had filed for a corporate license with the  
9 Florida Department of Corporations on January 25th,  
10 2000. The address for the corporation is 1909 Tyler  
11 Street, Third Floor, Hollywood, Florida. Staff was  
12 informed by Dan Hunt, a Washington retail distributor  
13 of prepaid calling cards purchased from the respondent,  
14 that Rock Sound Communications had purchased Telecard  
15 Dispensing Corporation and then filed for bankruptcy.

16 Q. What is Exhibit 10, and can you explain that?

17 A. That's the registration for the Florida  
18 Corporations Division showing that Rock Sound  
19 Communications had now taken the place of U S Digital  
20 or Telecard Dispensing.

21 Q. Could you explain No. 11 as well, please?

22 A. No. 11 is a receipt for the purchases of  
23 prepaid calling services cards Daniel Hunt had  
24 purchased from Telecard Dispensing Corporation.

25 Q. Were companies under any of the names

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1 identified in this order, whether U S Digital, Telecard  
2 Dispensing, or Rock Sound Communications, operating in  
3 Washington on January 1st, 1985?

4 A. Neither U S Digital nor Telecard Dispensing  
5 nor Rock Sound Communications was operating under  
6 tariff in Washington on January 1st, 1985. Neither U S  
7 Digital nor Telecard Dispensing nor Rock Sound  
8 Communications has ever registered with the Commission  
9 as a telecommunications company.

10 Q. Does that conclude your testimony?

11 A. Yes.

12 MR. THOMPSON: That concludes Staff's case.

13 JUDGE HENDRICKS: Do you wish to a make a  
14 closing in light of the fact that Telecard Dispensing  
15 is not here?

16 MR. THOMPSON: I'm not sure if it's incumbent  
17 on me, but I would ask that they be held in default  
18 and that our evidence be taken on the issue of whether  
19 the company was essentially operating as a  
20 telecommunications company in Washington without first  
21 registering with the Commission to do so.

22 I would just point out that RCW 80.36.350  
23 requires telecom companies that were not operating  
24 under tariff in Washington on January 1, 1985, to  
25 register with the Commission before they began

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1 operations in the state. Because the evidence shows  
2 that the respondent failed to register before  
3 distributing prepaid calling cards in the state, that  
4 their respondent violated 80.36.350, and that based on  
5 that and on the fact that there are numerous other  
6 sellers of prepaid calling cards in the State of  
7 Washington, that it is appropriate for the Commission  
8 to order the company, the respondent, pursuant to  
9 80.04.015 to cease and desist from providing services  
10 that are within the jurisdiction of the Commission  
11 pending their full compliance with the applicable  
12 statutes and rules.

13 JUDGE HENDRICKS: Thank you, Mr. Thompson.  
14 There is one more issue that I was hoping Commission  
15 staff might be able to address on the record, and that  
16 is the automatic stay in the bankruptcy proceeding in  
17 Florida for Rock Sound Communications, and if you could  
18 just briefly describe your opinion.

19 MR. THOMPSON: What I submitted in a comment  
20 a few days ago on the issue is that there is a specific  
21 exception under the federal bankruptcy laws from the  
22 automatic stay when a government agency is acting  
23 pursuant to its police or regulatory powers, and it's  
24 our position that this type of a proceeding fits  
25 squarely within that exception and that it is not

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1 incumbent upon the Commission to seek permission from  
2 the bankruptcy court to go forward with this type of  
3 proceeding, but that we can do so, and if it becomes  
4 necessary to seek enforcement action in superior court  
5 that the superior court has jurisdiction to decide if  
6 the automatic stay applies.

7 JUDGE HENDRICKS: Thank you, Mr. Thompson.  
8 I'd also like to clarify that -- am I right that Staff  
9 is not requesting penalties in this case; that all that  
10 Staff is requesting at this time is a cease and desist  
11 order?

12 MR. THOMPSON: That's correct.

13 JUDGE HENDRICKS: If we could just go off the  
14 record briefly to discuss some procedural matters.

15 (Discussion off the record.)

16 JUDGE HENDRICKS: I should mention before I  
17 close the proceeding that I believe off the record we  
18 discussed that Commission staff would like to waive the  
19 initial order and go straight to the final order by the  
20 Commission; is that correct?

21 MR. THOMPSON: That's correct.

22 JUDGE HENDRICKS: Is there anything further  
23 to come before the Commission at this time?

24 MR. THOMPSON: Nothing further.

25 JUDGE HENDRICKS: Thank you for attending,

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1 and this hearing is adjourned.

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3 (Hearing concluded at 10:30 a.m.)

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