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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. COMTEX CORPORATION, Respondent.	)Docket No. UT-001820)Volume I)Pages 1-11

A hearing in the above matter was held on October 25, 2001, at 9:33 a.m., at 1300 Evergreen Park Drive Southwest, Olympia, Washington, before Administrative Law Judge KAREN CAILLE.

The parties were present as follows:

THE COMMISSION, by Lisa Watson, Rule Nine Intern, and Shannon Smith, Assistant Attorney General, 1400 Evergreen Park Drive, S.W., P.O. Box 40128, Olympia, Washington 98504-0128.

Barbara L. Nelson, CSR
Court Reporter

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JUDGE CAILLE: We are here today for the first prehearing conference in the proceeding docketed UT-001820, Washington Utilities and Transportation Commission versus Comtex Corporation. This is a complaint brought by the Commission to consider whether Comtex has failed to comply with applicable orders of the Commission, to consider whether the Commission should issue additional penalties for Comtex's violation of Commission rules identified by Staff during its investigation, and to consider whether the Commission should revoke Comtex's registration pursuant to WAC 480-121-060.

My name is Karen Caille, and I'm the presiding Administrative Law Judge in this proceeding. Today is Thursday, October the 25th, and we're convened in the hearing room at the Commission's offices in Olympia, Washington. I'd like to begin this morning by taking appearances. Will you please, for the record, state your name, spelling your last name, who you represent, your street address, mailing address, telephone number, fax number, and e-mail address. And let's begin with counsel for Commission Staff.

MS. WATSON: Good morning. My name is Lisa Watson. I'm a Rule Nine intern and --

JUDGE CAILLE: Excuse me, Ms. Watson, would you please pull the microphone close to you. And this is -- this is just an idiosyncrasy of this hearing room. The microphone has to be close to you in order for everybody to hear, so --

MS. WATSON: Can you hear me now?

JUDGE CAILLE: That's fine.

MS. WATSON: Okay. My name is Lisa Watson, W-a-t-s-o-n. I'm a Rule Nine intern. Shannon Smith, AAG, is also here with me, and we represent Commission Staff. My mailing address is P.O. Box 40128, Olympia, Washington, 98504. The street address is 1400 South Evergreen Park Drive, S.W., Olympia, Washington, 98504. My phone number is area code 360-664-1186. The fax number is 360-586-5522. My e-mail address is lisaw4@atg.wa.gov.

JUDGE CAILLE: All right. Thank you. And are you going to enter an appearance, as well, Ms. Smith?

MS. SMITH: I am not. Thank you.

JUDGE CAILLE: And is there anyone here for Comtex Corporation? I, before coming into the hearing room this morning, checked with the Records Center to see whether the notice that we sent out -- excuse me just a moment -- whether the notice that we

served on October the 4th had been -- and we served this certified mail -- whether it had been accepted. And the certified mail was returned, and I believe the notation was that it was undeliverable. The person -- the company had moved or the person had moved.

So at this point I'm going to ask Ms. Watson how you feel we can proceed. You know, it's possible that this could be handled as a default. Oh, I also want to recognize that you sent me a letter asking that this be converted to a brief adjudicative proceeding, and I did not act on that largely because I wanted to see if the Complainant -- I mean the Respondent would be here today. And my concern was to make sure that the Respondent got a full and fair hearing and with all the bells and whistles in order that the company could feel it had complete due process.

But now I looked at the default statute and it seemed -- it would seem to me that it would be appropriate, that it would be an appropriate way to go, but I also believe that we probably have to have some evidence in the record in order for me to write an order.

MS. WATSON: Right, and we do agree with

that, the default is the more appropriate way to deal with this case. I did a little bit of research on service, and under RCW 34.05.010 and WAC 480-09-120(2)(c), service by mail is complete upon deposit in the United States mail. The WAC does elaborate a little bit more on that by saying service is complete when a copy of the document properly addressed and stamped is deposited in the United States mail with first class postage affixed.

In this case, I do have a declaration from Mike Sommerville stating that the notice of prehearing conference was mailed on October 4th, both certified and regular mail. And so, based on that, based on the fact that service was properly completed and that Comtex has failed to appear, we would suggest that it proceed in default under 34.05.440(2).

JUDGE CAILLE: Would you like to offer that declaration --

MS. WATSON: Yes, I would.

JUDGE CAILLE: -- as an exhibit? All right. I'm going to read into the record -- well, first of all, I will mark -- this exhibit has been marked as Exhibit 1, and I will admit it into the record. And I'm going to read number four of this

exhibit into the record. I think that this satisfies the notice provisions in the WAC and the RCW, as Ms. Watson has stated.

Number four reads as follows: On October 4th, 2001, the Commission sent a notice of prehearing conference to Comtex Corporation by certified and regular mail to the address on record with the Commission. On October 16th, 2001, the certified mailing was returned to Commission as, quote, "Moved, left no address, unable to forward, return to sender," unquote.

On October 11th, 2001, the U.S. Postal Service labeled the regular mailing as, quote, "Moved, left no address, unable to forward, return to sender," unquote, and returned the mailing to the Commission Records Center on October the 15th, 2001.

Now, do you have any recommendations under the default statute, Ms. Watson, on how to proceed?

MS. WATSON: Well, Commission Staff is ready to present the case on revocation of Comtex's registration if you'd like to hear that now.

JUDGE CAILLE: That would be great.

MS. WATSON: Okay. Under WAC 480-121-060, the Commission may revoke a registration after a hearing for good cause. In this case, there are four

areas of good cause that exist. The first two are that Comtex failed to file an annual report and pay regulatory fees. The Commission requires telecommunication companies to file an annual report and pay regulatory fees by May 1st of each year. I have a declaration from Lisa Lloyd stating that Comtex failed to file the annual report, and I have a declaration from Kim Rogers stating that Comtex failed to pay the regulatory fees, and I'd like to move that those declarations be admitted into the record at this time.

JUDGE CAILLE: All right. And are those marked as Exhibits 2 and 3, respectively?

MS. WATSON: Yes, they are.

JUDGE CAILLE: Those are admitted into the record.

MS. WATSON: Okay. The third reason that good cause exists in this case is that Comtex failed to comply with applicable state telecommunications and business regulations. The Commission initiated an investigation to determine whether or not Comtex had engaged in selling prepaid phone cards without first complying with WAC 480-121-040. On two occasions, the Commission issued an order requesting that Comtex provide certain information that would be

helpful in that investigation, and on both times Comtex failed to comply with those orders. Additionally, the Commission assessed penalties based on Comtex's failure to provide information and Comtex failed to pay that penalty.

I have declarations from Lisa Lloyd and Kim Rogers describing Comtex's failure to comply with the Commission order. And the declaration by Lisa Lloyd is marked Exhibit 4, the declaration from Kim Rogers is marked Exhibit 5, and I'd like to move that those be admitted to the record, as well.

JUDGE CAILLE: Exhibits 4 and 5, declarations by Lisa Lloyd and Kim Rogers, are admitted into the record.

MS. WATSON: Okay. The fourth reason that good cause exists in this case is that Comtex is no longer conducting business in Washington. The Commission conducted an investigation in which investigator Dennis Shutler went to Comtex's physical location only to find that Comtex no longer was in that location. I have a declaration from Dennis Shutler marked Exhibit 6 that I'd like to admit into the record.

JUDGE CAILLE: The declaration of Dennis Shutler is admitted as Exhibit 6 into the record.

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MS. WATSON: And also in support of -- the fourth reason of good cause, I have a printout from the Secretary of State website stating that Comtex is an inactive corporation and that its license has expired, and that is marked as Exhibit 7, and I'd like that to be -- or I would move to introduce that into the record, as well.

JUDGE CAILLE: Exhibit 7 is admitted into the record.

MS. WATSON: Based on the above reasons, good cause exists, and the Commission Staff would respectfully request that Comtex's registration be revoked.

JUDGE CAILLE: Okay. Let me just look at this for just a second. For the record, I'm looking over the exhibits that have been submitted just to see whether I have any questions.

MS. WATSON: Your Honor, would you like the other two, as well?

JUDGE CAILLE: Oh, yes. All right. I think everything is in order here for me to issue a default order and include in that order that the registration for Comtex is revoked, so that is what I will do. I may need to wait until I get the transcript, because I didn't take notes -- couldn't

take notes quickly enough. So is there any urgency in the matter?

MS. WATSON: I don't believe so. And also, Commission Staff would like to waive the initial order.

JUDGE CAILLE: All right. That's accepted, and I will prepare a final order, then, for the Commissioners' signature. All right. Is there anything more to come before the Commission today?

MS. WATSON: No, Your Honor.

JUDGE CAILLE: All right. Thank you.

(Proceedings adjourned at 9:48 a.m.)