

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION,	)	DOCKET NO. UT-001820
	)	
Complainant,	)	
	)	
v.	)	ORDER REVOKING
	)	REGISTRATION AS A
COMTEX CORPORATION,	)	TELECOMMUNICATIONS
	)	COMPANY
Respondent	)	
.....	)	

**I. SYNOPSIS**

1     The Commission revokes Comtex Corporation’s registration as a telecommunications company for failing to comply with Commission orders.

**II. MEMORANDUM**

2     **Background.** On September 8, 1998, Comtex Corporation (Comtex) filed an application for registration as a telecommunications company pursuant to RCW 80.36.350. The Washington Utilities and Transportation Commission (Commission) issued an order in Docket No. UT-981174, effective September 30, 1998, approving Comtex’s registration as a telecommunications company. The order specifically required Comtex to establish that it had a satisfactory arrangement to protect customer monies as a precondition to collecting advance payments or deposits.

3     In late 2000, Commission Staff began an investigation of Comtex based on consumer complaints to determine if the company had engaged in selling prepaid calling cards without first showing that it had a satisfactory arrangement to protect customer monies as stated in WAC 480-121-040, and as specifically required by the Commission’s order in Docket No. UT-981174.

4     On December 26, 2000, Commission Staff requested Comtex to produce records related to the Staff investigation. Comtex did not respond.

5     On January 26, 2001, the Commission issued an Order to Produce Records in Docket No. UT-001820. The Commission directed, within this Order, that Comtex produce the records by February 16, 2001. Comtex did not respond to the Order.

- 6 On May 1, 2001, the Commission served Comtex with a Notice of Penalties in the amount of \$1,750.00. Comtex did not respond to the Notice of Penalties.
- 7 On September 7, 2001, the Commission, on its own motion, instituted this proceeding to determine (1) whether Comtex should be assessed additional monetary penalties for failing to comply with Commission orders and (2) whether the Commission should revoke Comtex's registration as a telecommunications company pursuant to WAC 480-121-060.
- 8 On October 4, 2001, the Commission issued a Notice of Prehearing Conference for 9:30 a.m. on October 25, 2001. The Notice provided that "any party who fails to attend or participate in the hearing. . . may be held in default in accordance with the terms of *RCW 34.05.440*."
- 9 Commission Staff, represented by Lisa Watson, Assistant Attorney General, appeared before Administrative Law Judge (ALJ) Karen Caillé at 9:30 a.m. on October 25, 2001, at the Commission offices in Olympia, Washington. No representatives of Comtex appeared at that time, nor did Comtex contact the Commission to attempt to reschedule the proceeding or to explain its absence.
- 10 **Default proceeding.** Commission Staff suggested that the case proceed in default under *RCW 34.05.440(2)* which provides that "[if] a party fails to attend or participate in a hearing, the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order."
- 11 In support of its proposal to proceed in default, Staff offered into evidence Exhibit 1, a declaration from Mike Sommerville, a Customer Service Specialist 2 in the Commission's Record Center. Mr. Sommerville declares that the notice of prehearing conference was mailed on October 4, 2001, to Comtex by certified and regular mail. According to the declaration, both the certified mailing and the regular mailing were returned to the Commission labeled "Moved; Left no address; Unable to forward; Return to sender."
- 12 Based on the fact that service was properly completed under *RCW 34.05.010* and *WAC 480-09-120(2)(c)*, the ALJ granted Staff's request to proceed in default. Staff presented the following evidence in support of the revocation of Comtex's registration:
- Exhibit 2, a declaration from Lisa Lloyd, Forms and Records Analyst 3 in the Commission's Record Center, stating that Comtex failed to file its annual report in 2001 based on its 2000 operations in violation of *RCW 80.04.010*,

- Exhibit 3, a declaration from Kim Rogers, an Accountant 3 in the Commission's Financial Services Section, stating that Comtex failed to pay its regulatory fees in 2001 based on its 2000 operations in violation of *RCW 80-24-010*,
- Exhibit 4 and Exhibit 5, declarations of Lisa Lloyd and Kim Rogers, respectively, stating that Comtex failed to comply with the Commission's order to produce, and failed to respond to the Commission Notice of Penalties, *RCW 80.04.380*,
- Exhibit 6, a declaration from Dennis D. Shutler, a Compliance Specialist in the Commission's Business Practices Investigations Section, stating that he visited Comtex's physical location and found that Comtex had vacated the premises, and
- Exhibit 7, a printout from the Secretary of State website stating the Comtex is an inactive corporation and that its license has expired.

13 Commission Staff waived the initial order.

14 Discussion and Conclusion. Comtex failed to appear at the time and place designated in the Notice of Prehearing Conference. The evidence presented by Commission Staff establishes that Comtex was properly served with Notice of the Prehearing Conference. Under circumstances such as these, the Administrative Procedure Act (*RCW 34.05.440*) and the Commission's rules (*WAC 480-09-700*) allow the presiding officer to proceed to resolve the case without further notice to, or hearing for the benefit of, the party in default. *RCW 34.05.440*.

15 The Commission may revoke a registration after hearing and for good cause. *WAC 480-121-060*. Good cause "includes, but is not limited to, failure to (1) File an annual report; (2) Pay regulatory fees; (3) Comply with the requirements of *WAC 480-120-058*. . .<sup>1</sup>" *Id.*

16 The un rebutted evidence presented by Commission Staff shows that Comtex violated Washington State Law, the Commission's rules, and the terms of the Commission's approval of Comtex's application for registration in Docket No. UT-981174. Therefore, Comtex's registration as a telecommunications company in the state of Washington should be revoked.

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<sup>1</sup> *WAC 480-120-058* provides that telecommunications companies that offer prepaid calling card services must maintain a performance bond and submit to the Commission a report within fifteen days after the end of each calendar quarter.

### III. FINDINGS OF FACT

- 17 (1) The Washington Utilities and Transportation Commission is an agency of the state of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, accounts, securities, and transfers of public service companies, including telecommunications companies.
- 18 (2) On September 8, 1992, Comtex Corporation filed an application for registration as a telecommunications company pursuant to RCW 80.36.350, which the Washington Utilities and Transportation Commission approved in Docket No. UT-981174, effective September 30, 1998.
- 19 (3) Comtex Corporation failed to file an annual report for 2000, failed to submit calculations and pay its regulatory fees for 2000, failed to comply with the terms of the Commission's order approving Comtex's registration as a telecommunications company, failed to respond to a Commission order requesting information on the company's compliance with WAC 480-120-040, and failed to respond to a Commission order assessing penalties.

### IV. CONCLUSIONS OF LAW

- 20 (1) The Washington Utilities and Transportation has jurisdiction over the subject matter of this proceeding and all parties to this proceeding.
- 21 (2) Good cause exists under WAC 480-121-060 to revoke the registration of Comtex Corporation's registration as a telecommunications company in the state of Washington.

### V. ORDER

THE COMMISSION ORDERS That

- 22 The registration of Comtex Corporation as a telecommunications company in the state of Washington, which was granted by the Washington Utilities and Transportation Commission in Docket No. UT-981174, is revoked.

DATED at Olympia, Washington, and effective this        day of April, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

**NOTICE TO PARTIES:**

**This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).**