

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 3rd day of
January, 2013.

The Staff of the Missouri Public
Service Commission,)
)
)
Complainant,)
)
)
v.)
)
Cintex Wireless, L.L.C.,)
)
)
Respondent.)

File No. RC-2012-0421

ORDER REGARDING STIPULATION AND AGREEMENT

Issue Date: January 3, 2013

Effective Date: January 13, 2013

On June 14, 2012, the Commission's Staff filed a complaint against Cintex Wireless,
L.L.C. Staff alleged that:

- 1.) Cintex intentionally marketed in areas without an Eligible Telecommunications Carrier ("ETC") designation, because some (9 out of 100 checked) application forms were mailed to potential customers in exchanges where Cintex is not authorized to do business.
- 2.) Cintex engaged in misleading marketing, because its advertising could cause customers to infer that the Commission authorized Cintex to offer free phone service to them.
- 3.) Cintex made misstatements to regulators. Specifically that it misrepresented the number of its customers to the FCC, and it failed to disclose that Liberty Wireless and Movida (other cell phone companies) have a common interest with Cintex.
- 4.) Cintex has unsuitable leadership because of pending Securities and Exchange Commission ("SEC") allegations against its Chief Executive Officer ("CEO"). Those allegations claim the CEO was involved in a scheme to artificially inflate the earnings of a publicly-traded company for personal profit.

Cintex answered stating:

- 1.) Staff has alleged no violation of a Commission rule, statute, tariff provision or Commission order as required by Section 386.390 in order to prosecute a complaint.
- 2.) Cintex's vendor provided it with zip codes in error resulting in unintentional mailings to areas outside of its ETC designation. The problem was corrected once discovered, and no services are being provided to customers outside of its ETC designation. No Universal Service support will be provided for customers outside of its ETC designation area.
- 3.) Cintex did not engage in any misleading advertising. The language in its advertising explained all eligibility requirements. The advertisement was included with its ETC application, which the Commission approved.
- 4.) Cintex maintains it held multiple conference calls with Staff and corrected the misstatement regarding the number of its customers. Cintex also claims that Liberty Wireless and Movida are not corporate entities but are registered service marks with the US Patent and Trademark Office and are used as trade names for non-Lifeline customers. Cintex also claims that in discussions with Staff, Staff informed it that no further information was required by it.
- 5.) The pending SEC allegations against Cintex's CEO are unproven allegations and no adjudication has occurred rendering a decision on those allegations. The allegations are civil in nature and do not involve interactions with any government entity; the CEO denies the allegations. Cintex has extensive processes and procedures to prevent fraud, waste and abuse. (The SEC complaint was filed after the Commission granted Cintex ETC designation so Cintex could not disclose this to Staff at the time its ETC application was filed).
- 6.) Cintex further maintains that currently, it is offering only a free non-Lifeline service in Missouri at its sole expense.

An evidentiary hearing was set to be held on November 29 and 30, 2012. However, on September 21, 2012, the parties filed a Unanimous Stipulation and Agreement ("Agreement") purporting to resolve all issues in this matter. On November 15, 2012, the Commission convened an on-the-record proceeding to direct questions to the parties regarding the Agreement. At that proceeding the Commissioners expressed various

concerns to the parties regarding specific provisions to the Agreement.¹ Consequently, the parties were directed to file a revised agreement addressing those concerns.

On December 6, 2012, the parties jointly filed a revised Unanimous Stipulation and Agreement (Revised Agreement) with an explanation of the revisions. After reviewing the Revised Agreement, the Commission finds that it adequately addresses its concerns.

This is a contested case² pursuant to Section 386.390, RSMo 2000, although the statutes and Commission regulations allow for a decision without a hearing.³ The Revised Agreement waives any procedural requirements that would otherwise be necessary before final decision.⁴ Also, because the settlement disposes of this action, the Commission need not separately state its findings of fact.⁵

Based on the Commission's independent and impartial review of the Revised Agreement, the Commission finds that it is consistent with the public interest and shall approve it. Therefore, the Commission incorporates the terms of the Revised Agreement into this order.

THE COMMISSION ORDERS THAT:

1. The provisions of the Unanimous Stipulation and Agreement filed on December 6, 2012 are approved and incorporated into this order as if fully set forth. The Signatories shall comply with the terms of the Unanimous Stipulation and Agreement. A copy of the Unanimous Stipulation and Agreement is attached to this order as Appendix A.

¹ EFIS Docket Entry Number 35, Transcript, Volume 2. EFIS is the Commission's Electronic Information and Filing System.

² A "[c]ontested case' means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing." Section 536.010.4, RSMo Cum. Supp. 2008.

³ Sections 536.060 and 536.063, RSMo 2000; Commission Rule 4 CSR 240-2.115.

⁴ Section 536.060, RSMo 2000.

⁵ Section 536.090, RSMo 2000.

2. This order shall become effective on January 13, 2013.
3. This file shall be closed on January 14, 2013.

BY THE COMMISSION

(S E A L)



Shelley Brueggemann
Acting Secretary

Gunn, Chm., Jarrett, Kenney, and
Stoll, CC., concur.

Stearley, Deputy Chief Regulatory Law Judge