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STATE OF MISSOURI

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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

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On The Record Proceeding

November 15, 2012

13

Jefferson City, Missouri

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Volume 2

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(Starting time of proceeding: 10:04 a.m.)

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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS  
On The Record Proceeding  
November 15, 2012  
Jefferson City, Missouri  
Volume 2

The Staff Of the Missouri )  
Public Service Commission, )  
)  
Complainant, )  
)  
vs. ) Case No. RC-2012-0421  
)  
Cintex Wireless, LLC, )  
)  
Respondent. )

HAROLD STEARLEY, Presiding,  
DEPUTY CHIEF REGULATORY LAW JUDGE

KEVIN D. GUNN, Chairman  
TERRY M. JARRETT,  
ROBERT S. KENNEY, (via video)  
COMMISSIONERS

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1 (Starting time of hearing: 10:04 a.m.)

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

3 JUDGE STEARLEY: All right. Good morning.

4 Today's Thursday, November 15th, 2012. Commission has set  
5 this time for an On The Record Proceeding in File No.

6 RC-2012-0421, which is captioned as The Staff of Missouri  
7 Public Service Commission versus Cintex Wireless, LLC.

8 My name is Harold Stearley. I'm the Regulatory  
9 Law Judge presiding over this proceeding. We'll begin by  
10 taking entries of appearance, starting with Cintex.

11 MR. JOHNSON: May it please the Commission, Mark  
12 Johnson of the law firm SNR Denton appearing on behalf of  
13 Cintex Wireless. My street address is 4520 Main Street,  
14 Suite 1100, Kansas City, Missouri, 64113. Appearing also  
15 on behalf of Cintex on the telephone today are the  
16 Company's President Mr. Brandt Mensch and the Company's  
17 General Counsel Mr. Robert Felgar.

18 JUDGE STEARLEY: All right. Thank you, Mr.  
19 Johnson.

20 Would the Office of the Public Counsel be on the  
21 phone?

22 MR. MENSCH: I am.

23 JUDGE STEARLEY: Is that you, Mr. Mills?

24 MR. MENSCH: This is Brandt Mensch. Yes, I'm a  
25 Republican.

1 JUDGE STEARLEY: All right. I was calling for an  
2 entry by the Office of the Public Counsel.

3 (No response.)

4 JUDGE STEARLEY: Let the record reflect they have  
5 not entered an appearance here.

6 Are you able to hear me all right on the  
7 telephone?

8 MR. MENSCH: Yes.

9 UNIDENTIFIED PERSON: Very well.

10 UNIDENTIFIED PERSON: I can hear you okay.

11 JUDGE STEARLEY: All right. Very good. If we get  
12 farther on beyond here, if you have trouble hearing any  
13 questions, please let us know.

14 Entry for the Staff of Commission, please.

15 MS. DALE: Colleen M. Dale and Tanya Alm on behalf  
16 of the Staff of the Missouri Public Service Commission,  
17 P.O. Box 360, Jefferson City, Missouri, 65102.

18 JUDGE STEARLEY: All right. Thank you, Ms. Dale.

19 Initial matter on note that our schedule of  
20 witnesses are Natelle Dietrich for Staff and Brandt Mensch  
21 for Cintex. We are going to skip over any type of opening  
22 statements at this time because the Chairman is on a tight  
23 time line this morning. We're going to jump immediately  
24 to questions.

25 Prior to doing that, though, I will have Ms.

1 Dietrich and Mr. Mensch sworn in. If you will please  
2 raise your right hand.

3 NATELLE DIETRICH and BRANDT MENSCH, witnesses, were duly  
4 sworn by the Court Reporter.

5 THE COURT: Mr. Mentsch, were you able to hear  
6 that?

7 MS. DIETRICH: Yes, I do.

8 MR. MENSCH: This is Mr. Mensch. I do.

9 JUDGE STEARLEY: All right. Thank you very much.

10 MS. DALE: Excuse me. Your Honor, before we begin  
11 with the Commissioner questions, I had an opening  
12 statement prepared, but I have printed copies of it if I  
13 could distribute it to the two Commissioners that are on  
14 the bench and to you.

15 JUDGE STEARLEY: Well, you can, but I'm going to  
16 hold on until later. We can take those statements in the  
17 record later. But we're just going to go ahead and jump  
18 right now to questioning.

19 CHAIRMAN GUNN: I apologize. I have a meeting  
20 over at the Capitol that I have to attend. If you want to  
21 put opening statements in, I'm not trying to prevent that.

22 MS. DALE: The only thing I did for my opening was  
23 to correlate the portions of the complaint with the  
24 portions of the stipulation and agreement so that it might  
25 be easier to find things for you.

1 JUDGE STEARLEY: If you want to approach and hand  
2 those out, that's fine, Ms. Dale.

3 (Whereupon, Ms. Dale complied.)

4 JUDGE STEARLEY: All right. Let's proceed. Mr.  
5 Chairman.

6 CHAIRMAN GUNN: First of all, let me apologize for  
7 my tight time frame, but I think I really have two types  
8 of questions. The first are legal questions, actually,  
9 about the settlement that maybe the lawyers can answer,  
10 and then I have some more substantive questions that  
11 really are going to be directed more towards Staff and  
12 what their understanding is. But, obviously, sometimes --  
13 there are some -- there's some language that's slightly  
14 inconsistent, and I just want to make sure that what is in  
15 the agreement is the same, there is no distinction between  
16 the words.

17 So, for example, in Paragraph 10, we use the word  
18 "commits", and in the first part of the settlement  
19 agreement, we use the word "commits", but then later on in  
20 the agreement we start moving into, like, in Paragraph 14  
21 we say "agrees". Syntax "agrees" instead of syntax  
22 "commits". So, I just want to make it clear -- or I just  
23 want to make sure that there is no difference in the  
24 parties understanding about -- about that agreement and  
25 commits are used interchangeably and synonymously in the

1 agreement, that there is no lesser commitment or agreement  
2 depending on whichever word is used.

3 MS. DALE: No. There's no difference. I think  
4 the only reason why there is a change in language is  
5 because the various drafts as submitted by Defendant  
6 people. It just happened to use different words. And  
7 we're treating them all with the same level of commitment.

8 MR. JOHNSON: And on behalf of Cintex, the  
9 Commission can consider those terms synonymously.

10 CHAIRMAN GUNN: Perfect. Thank you.

11 The language in the paragraph under the agreements  
12 which talks about what are triggering events, what  
13 triggered notice requirements, and I'm just interested why  
14 we came up with the number of \$250,000, and if we'll go  
15 from the bottom, it's one, two, three, four, five, six  
16 statements from the bottom.

17 JUDGE STEARLEY: We have Commissioner Kenney on  
18 iPad video now, so it's very impressive, actually. Good  
19 to see you.

20 CHAIRMAN GUNN: So, we have -- actually, I have  
21 two questions: Where that 250,000 came from, and I assume  
22 that \$250,000 level is in no means meant to modify that  
23 civil lawsuit language in the line directly above that.  
24 So, it's not civil lawsuits that have damages up to  
25 \$250,000, it is any civil lawsuit, even if it's, say, done



1 in adversity jurisdiction in the Federal court which is  
2 less -- lesser than the \$250,000 damage or amounted  
3 controversy.

4 But I just wanted to get the rationale where that  
5 number came from.

6 MS. DALE: I don't know that we had a specific  
7 number for non-frivolous, but we wanted to make sure we  
8 got all governmental civil actions, all criminal actions,  
9 and all -- all actions of any kind that were \$250,000 and  
10 above. So, reading that sentence in the disjunctive with  
11 "the" or "is".

12 CHAIRMAN GUNN: Right. So, the number was for the  
13 purposes of making it at least an unfrivolous --

14 MS. DALE: Yes.

15 CHAIRMAN GUNN: Right. But it is not meant to  
16 modify the other previous statements.

17 MS. DALE: Exactly, or the following which is the  
18 criminal.

19 CHAIRMAN GUNN: Right.

20 MR. JOHNSON: Same answer on behalf of syntax.

21 COMMISSIONER GUNN: Okay. Great. I'm trying to  
22 get rid of these yes and no questions at the beginning.

23 So, this is a -- this is a legal question and --  
24 but it kind of crosses the line. So, on the Paragraph 30,  
25 this says that Cintex and Staff agree that the company's

1 ETC designation may not be revoked prior to our formal  
2 hearing, the files and procedures, CSR 242.110, unless the  
3 ETC designations. I have a couple of issues with the  
4 statement.

5 First of all, I can't tell whether this is an  
6 agreement or whether it's what both of you believe the  
7 statement of the law is. The current state of law -- and,  
8 if you do that, I don't know that I agree with you on  
9 that.

10 But, secondly, I'm concerned about, if we approve  
11 this, that this language could be construed as binding  
12 other Commissions in making those determinations, which I  
13 don't know that we can do or you can do. So, I'm checking  
14 to see where -- whether that -- whether this really means  
15 that Staff will not pursue a revocation action unless  
16 there is a rule making, whether this is a statement of  
17 what you believe the current state of the law is, um, and  
18 whether you think this is binding on future Commissions.

19 So, that's really three questions in one.

20 MR. JOHNSON: Mr. Chairman, could I answer on  
21 behalf of Cintex?

22 CHAIRMAN GUNN: Sure.

23 MR. JOHNSON: That is our understanding of the  
24 law, is that the Commission does not at the moment have  
25 the power to revoke prior to ETC designation, prior to a

1 formal hearing, but we're not taking the position that the  
2 Commission cannot initiate a proceeding unless there's  
3 some new rule promulgated.

4 In other words, our position is the Commission  
5 today has the power to initiate revocation proceedings,  
6 but final revocation cannot occur until after a formal  
7 hearing has been concluded.

8 CHAIRMAN GUNN: And that was my question. You  
9 said final revocation. So, are you saying that this  
10 prohibits provisional revocation pending a formal hearing?  
11 Like Wisconsin, for example.

12 MS. DALE: It's Staff's position that it is not.  
13 In addition --

14 CHAIRMAN GUNN: That it does not?

15 MS. DALE: That it does not preclude professional  
16 revocation.

17 CHAIRMAN GUNN: But that it precludes final  
18 revocation without a formal hearing?

19 MS. DALE: Well, and I notice that later in the  
20 paragraph the actual words of an opportunity for a formal  
21 hearing are used, and that really should have been -- I  
22 mean, there's a discussion in the first sentence about an  
23 opportunity.

24 And, finally, I would like to point out that near  
25 -- let's see -- four, five lines from the bottom, there is

1 an automatic revocation if -- without a hearing, if  
2 certain violations of the provisions of the stipulation  
3 are found to exist.

4 CHAIRMAN GUNN: Which they would -- which is,  
5 essentially, consented to by -- I mean, you've consented  
6 to that.

7 MS. DALE: Right.

8 MR. JOHNSON: Yes.

9 CHAIRMAN GUNN: If certain things are violated,  
10 you would consent to an automatic revocation. And I saw  
11 that. That's not what I was concerned about. I was  
12 concerned about whether we make a determination outside of  
13 the agreement from the parties or without a specific --  
14 one of the specific allegations, whether it was the belief  
15 that provisional revocation or if the Commission  
16 determined that provisional revocation was appropriate  
17 under any certain circumstances, not just the specific  
18 allegations being violated that this -- this provision,  
19 there was nothing in this provision that would prevent us  
20 from doing that.

21 MS. DALE: No. This provision was meant only to  
22 cover permanent revocation.

23 MR. JOHNSON: That's my understanding.

24 CHAIRMAN GUNN: Your understanding. Okay. So,  
25 the parties agree to that. All right. We're making

1 progress here. We're good.

2 Now I'm going to come back to some of the more  
3 substantive agreements. So, let's go -- yes. So -- and  
4 mostly, again, this is for Staff. When we have the one-  
5 business day rule for number -- Paragraph 10, prior to  
6 their use in Missouri, is it Staff's understanding that --  
7 or is it Staff's position that that's prior to them being  
8 mailed or prior to any -- so, before they're even put into  
9 the marketing pipeline, if you will, that there's at least  
10 one business day before that happens. It's not one  
11 business day before they hit the mailboxes, it's one  
12 business day before any action is taken, to use those as  
13 marketing tools?

14 MS. ALM: That's correct. They would provide  
15 whatever they're going to do to Staff one business day  
16 before they start any other process so that we can review  
17 it and make suggestions or discuss with them any issues,  
18 which would be the next sentence in that paragraph.

19 CHAIRMAN GUNN: All right. And Staff thinks that  
20 that time frame is enough for them?

21 MS. DIETRICH: Yes, because we don't want to get  
22 involved in their day-to-day business, so to speak, but we  
23 want to review the certain things we have issues with.

24 CHAIRMAN GUNN: I understand.

25 Then, we have two terms, best efforts, to properly

1 identify both in that paragraph and Paragraph 11. Is it  
2 -- and I'll -- this goes to Cintex, as well.

3 Is it your position that Cintex is required to  
4 make modifications that Staff requests or if, ultimately,  
5 you raise a concern and Cintex says, Well, you know, we  
6 disagree with you, and you have a discussion and you sit  
7 down and you decide to do that, that, ultimately, Cintex  
8 has the ability to proceed even though those concerns are  
9 not resolved because they're -- even though you've made  
10 attempts to resolve it and they disagree, they could still  
11 -- they could still move forward?

12 MS. ALM: I would say the latter. That we would  
13 use -- we would explain our concerns, we would discuss it  
14 with them, and if they went ahead and moved forward,  
15 depending on the level of the concern, then we would go  
16 the additional steps outlined in other parts of the  
17 stipulation and agreement having further discussions with  
18 them over the time period that's laid out in here and  
19 potentially file a complaint, depending on what it is.

20 CHAIRMAN GUNN: If they ultimately move forward?

21 MS. DIETRICH: Yes.

22 CHAIRMAN GUNN: Is that Cintex's understanding as  
23 well?

24 MR. JOHNSON: Yes.

25 CHAIRMAN GUNN: Let's move to Paragraph 13 where

1 we talk about the 10 percent ownership issue.

2           So, why are we concerned or why did you decide to  
3 go with ownership percentages rather than structures of  
4 the company? For example, if I owned -- if I had 10  
5 children, all right, and I -- and I decided that I was  
6 going to own 9.95 percent of the company, and then all my  
7 kids own -- each one of those kids owned 9 percent, or,  
8 you know, 9 percent of the company, and then one other  
9 person owned a certain percentage. So, essentially, you  
10 wouldn't have any entity that would have over a 9.95  
11 percent interest of the company. So, this provision would  
12 not apply to any of those people.

13           So, you could theoretically set up an  
14 organizational structure and, yet, I would still have,  
15 based on -- based on that, I might still be involved in  
16 the day-to-day decision making process, I still may make a  
17 determination about the direction of the company, I may  
18 get all -- all the proxies from my children, so I can vote  
19 those shares, but I don't -- according to this -- don't  
20 hold more than a 10 percent ownership.

21           So, I'm just interested as to why we were  
22 concentrating on the percentage of ownership rather than  
23 controlling interest or a structure that determines who or  
24 what controls the company. Because that's the real  
25 concern, isn't it? I mean, that you have someone who we

1 don't like or we think is a bad actor for whatever reason.  
2 And when I say that, I'm not trying to imply that anybody  
3 is, but you want to make sure that they don't direct the  
4 day-to-day operations of the company rather than pure  
5 stock ownership.

6 MS. DALE: The short answer is that this comes out  
7 of the securities laws, and one of the -- the managers and  
8 officers intend to be covered in our rules. Additionally,  
9 you'll see -- or any affiliated company -- and the whole  
10 idea was to catch those people who have a signatory  
11 interest and make sure that we get the disclosures from  
12 those people, as well as managers, officers, and other  
13 affiliates.

14 CHAIRMAN GUNN: And I get -- and I understand  
15 that. I'm not sure that this language does that, because  
16 I could own 90 percent of 10 companies -- all right -- and  
17 have each one of those companies own 9-point interest in a  
18 company. So, therefore -- and I, as an individual, would  
19 only own a certain number, so I can conceive of corporate  
20 structures that would mean that no single affiliated  
21 company or no single affiliated person falls under this  
22 provision and, therefore, no disclosure requirement would  
23 be necessary.

24 So, I think -- and my guess is is that Cintex  
25 would agree that the purpose of this was similar to what



1 Staff articulated.

2 MR. JOHNSON: Well, that's where the 10 percent  
3 came from. SCC materiality, as I understand it. I  
4 believe Mr. Felgar was more directly involved in the  
5 negotiation of that.

6 And is that your understanding, Robert?

7 MR. FELGAR: If I recall, this particular  
8 provision came out of an agreement with T-Mobile and was  
9 kind cut and pasted. I'm not sure that a lot of thought  
10 was given to the 10 percent. I understand the Staff, in  
11 particular, had concern with Mr. Greene, and that issue  
12 was addressed specifically in another paragraph.

13 But, in terms of our company, from a practical  
14 point of view, Mr. Greene owns a hundred percent of Cintex  
15 Wireless, and that ownership is direct.

16 CHAIRMAN GUNN: Which is fine. I mean, but I --  
17 but what happens before a settlement agreement and what  
18 happens after a settlement agreement might be different  
19 things. And, as we are -- and part of my issue is not  
20 just Cintex Wireless. If -- I think -- I think as you  
21 correctly pointed out, in some of these that are pointed  
22 out is that this is the first or one that had bundled up  
23 to be something that the Commission is taking a look at.  
24 But what we do here does affect, how we're going to deal  
25 with other potential customers.

1           Even if we were to get this issue resolved with  
2   Cintex to our satisfaction and feel perfectly comfortable  
3   with that, moving forward there are -- there are because  
4   of the way that this is, that the ETC is run, there are  
5   plenty of companies that are coming in that are trying to  
6   achieve ETC status, and we want to make absolutely sure  
7   what we need to do.

8           So, I will just -- we don't need to deal with this  
9   right now, and even if it comes out of the SCC rules, I  
10   will tell you that I am uncomfortable with that particular  
11   language. I am telling you that I am comfortable with the  
12   concept of that, that people are trying to get to, and I  
13   believe that the company acted in good faith in agreeing  
14   to the concept that the people are coming to. I will just  
15   tell you that I think there are some loopholes in that  
16   language that we may think about clarifying or tightening  
17   up that shouldn't really be a substantive change if what  
18   you're telling me is true in terms of conceptual  
19   protections that the Company has agreed to, and that Staff  
20   wants to implement.

21           MS. DALE: When you were talking, I was scurrying  
22   around to try to find the draft of the rule, because I can  
23   see here that this does not include any officer, director,  
24   all that. Those -- that should be in the new rule, and  
25   may simply be an omission in this one. I know we talked

1 about that, but you're right. It's not in there, and it  
2 should be. Whether or not we should go back and put it in  
3 this one, it definitely should be in the rule, and I  
4 believe it is.

5 CHAIRMAN GUNN: And I will tell you -- but it's in  
6 the new rule, right?

7 MS. DALE: Right.

8 CHAIRMAN GUNN: It's not in old rule, right. And  
9 I will tell you, also, part of the reason why I ask that  
10 is, if we go to the actual ownership provisions which are  
11 on 28 where we agree that we have one person responsible  
12 for the day-to-day Lifeline operation, I'm assuming that  
13 is meant to help alleviate the concerns of the direct  
14 ownership.

15 MS. DALE: Right.

16 CHAIRMAN GUNN: And the allegations that are --  
17 that are pending at the SCC, that provision is meant to  
18 take care of that. But we don't talk about -- even though  
19 we say that Mr. Mensch is going to be responsible, it  
20 doesn't talk about day-to-day operations. You could,  
21 theoretically, under that provision and without a  
22 notification and protections of the other -- other  
23 provisions, where this could be viewed as a COO type who,  
24 Yes, I am responsible for day-to-day operations but I take  
25 my direction from a Board of Directors and a CEO who

1 doesn't have day-to-day operational control of the  
2 company, but does, you know -- and, so, I think the  
3 language -- again, I'm assuming that both parties would  
4 agree that this paragraph was meant to deal with a similar  
5 issue that was meant in the previous paragraph, but I'm  
6 not sure that the language gets you there.

7           Because I can imagine structures in which  
8 someone's job description is that they are responsible for  
9 the day-to-day operations of the company, but it doesn't  
10 say -- but doesn't say that no one else controls business  
11 decisions or policy decisions or -- this could be  
12 construed as an implementation responsibility rather than  
13 a policy formation interest.

14           And I'm assuming that both parties did not intend  
15 that.

16           MR. JOHNSON: No. And I can tell you on behalf of  
17 Cintex that Mr. Mensch is going to not only be responsible  
18 for the day-to-day operations in Missouri, but that he is  
19 going to supervise those operations as well.

20           MS. DALE: And our understanding is that he will  
21 do so with full autonomy as to -- I mean, what he says  
22 goes in Missouri.

23           CHAIRMAN GUNN: And it would make me more  
24 comfortable --

25           MR. JOHNSON: Yes.

1           CHAIRMAN GUNN:  -- if that was explicitly laid out  
2   and clarified in this, that he is responsible --  
3   autonomously responsible for day-to-day operations of the  
4   company.  I think that there, you know -- and I'm -- and,  
5   you know, we may -- if we incorporate this, we may require  
6   that in an order, but I want to make sure that, if we do  
7   that, we're not, you know -- we may not be blowing this up  
8   unnecessarily if that's everyone's understanding of this,  
9   and the concepts are agreed to.

10           MR. JOHNSON:  Well, that's certainly our  
11   understanding.  I would think, if you start putting in  
12   adverbs like autonomously and the like, it may become  
13   overly intrusive, but we --

14           CHAIRMAN GUNN:  All I'm asking for is assurance  
15   that he's acting independently.  And if there's --

16           MR. JOHNSON:  Yes.  That's my understanding what  
17   the role is going to be.

18           CHAIRMAN GUNN:  So, I don't -- I'm not wedded to  
19   language, but I want it to be made, I don't think this --  
20   I will tell you I don't think this language makes it clear  
21   that he will be operating independently.  So, I'm  
22   expressing my concern how that's worked out.  Either it  
23   can be figured out on your side of the bench or it can be  
24   figured out on our side of the bench.  So, we'll leave it  
25   at that.

1 All right. So, then I want to go to -- I want to  
2 go to the provision in 14 that talks about whether this is  
3 opposed on all ETC, that all of that stuff in 13 goes away  
4 or is suspended if we don't have a rule with substantially  
5 similar commitments.

6 The issue I have with that is that this is not  
7 always in our control. For example, we may -- this  
8 Commission may have concerns with individual companies,  
9 but if, for example, the Joint Committee on Administrative  
10 Rules decides that they don't want to have these types of  
11 controls for all ETCs, it takes away the enforcement  
12 ability or any controls that are put in 13. And I have a  
13 concern that that contingency planning which has -- relies  
14 on other people other than the Commission, in order to  
15 make that through, doesn't give -- doesn't give me  
16 sufficient comfort that these provisions which we think  
17 are necessary are going to remain in effect. And it  
18 doesn't, by the way, prevent any company from challenging  
19 it at the JCAR level or at other levels.

20 In order to make themselves -- I mean, there's --  
21 nothing's in here that would -- that would prevent -- and  
22 this is all theoretical, and I do not meant to ascribe --  
23 I will use hypothetical company A from going to court and  
24 asking the court to stay the rules because of certain  
25 issues for the specific purposes of running out the clock

1 in order for these provisions not to be done.

2 Now, do I think that happens? That's going to  
3 happen? I don't know. But what I'm concerned about is  
4 that we have an agreement that if we're going to approve  
5 an agreement that there aren't ways that people can deem  
6 the system.

7 MS. DALE: I can explain how the Staff is handling  
8 it right now. Whenever we recommend approval of an ETC  
9 designation, we insert in that a list of requirements and  
10 conditions that the ETC must meet in order to get the  
11 designation. One of those criteria is this disclosure.

12 Now, that's not all ETCs, because we have the ones  
13 that were certificated or designated prior to all this  
14 coming about. But, as we are going forward, we're not  
15 waiting on the rule. We are putting those conditions in  
16 as conditions of granting the status in our  
17 recommendations.

18 CHAIRMAN GUNN: All right. But the language here  
19 says it is not being imposed on all ETCs.

20 MS. DALE: Right.

21 CHAIRMAN GUNN: So, even under that scenario --

22 MS. DALE: Right.

23 CHAIRMAN GUNN: -- those grandfathered in triggers  
24 this one year running of this agreement. And that, to me,  
25 whether anyone's going to challenge that or not, is

1 language that is concerning.

2 MS. DIETRICH: And I would just add, for the  
3 companies that were prior to specific requirements such as  
4 this and that are operating under the old rule, we are  
5 also periodically doing audits and sending DRs. And one  
6 of the DR questions -- or several of the DR questions in  
7 our latest iterations of trying to tighten up things that  
8 we're asking include these types of provisions. Are there  
9 any lawsuits pending, are there any issues with ownership,  
10 and things like that. So, we are asking it through DRs,  
11 also.

12 CHAIRMAN GUNN: That's not requiring them to  
13 commit not to have them that's an information request?

14 MS. DIETRICH: Correct.

15 CHAIRMAN GUNN: Again, it's a concern, and you  
16 guys can address it if you want or we can address it.  
17 But I think it's -- it concerns me because it takes it out  
18 of our -- we have a grandfather issue and we also have an  
19 issue where other entities may decide to not allow some of  
20 this stuff to move forward, either through a rule or  
21 something else, and not -- and we're making independent  
22 judgments about whether this particular -- these  
23 particular provisions should be applied to this particular  
24 company. And, by this contingency, without it being  
25 tightened up, takes some of that and puts it in doubt for



1 at least a short -- a short period of time. All right.

2 Let's move to paragraph 18. And I think this is  
3 just a clarification. It says that work with Staff to  
4 confirm that certain applications refer to the complaint  
5 were properly verified. Is there a reason why that is not  
6 "all" or why it's only "certain"? I am -- I mean, I'm  
7 sure there's an explanation for that.

8 MS. DIETRICH: In the complaint, and when we went  
9 through the applications, there were different categories,  
10 and some of the complaints -- or, excuse me -- some of the  
11 applications have been taken care of through other  
12 categories. For instance, they've made commitments not to  
13 seek reimbursement for the customer that was receiving  
14 service from -- Lifeline service from another company, and  
15 that type of thing. So, there's only a subset of the  
16 applications that we reviewed that fall into the category  
17 where we could not tell that they were properly verified.

18 CHAIRMAN GUNN: All right. All right. And Cintex  
19 agrees with that?

20 MR. JOHNSON: Yes. It doesn't make any sense to  
21 go through every application that's already been properly  
22 verified to reverify that it was properly verified.

23 CHAIRMAN GUNN: I thought that was the case, and I  
24 just wanted to make sure. Thank you all for your  
25 indulgence.

1 I think you've heard what some of my concerns are.  
2 Those are the questions that I have regarding the  
3 particular items of this. I know some of the other folks  
4 might have questions, but that's what I have right now,  
5 and we'll see -- see how this plays out. But I appreciate  
6 everybody being available, and I appreciate the answers to  
7 the questions.

8 MS. DALE: I do have one question of you.

9 CHAIRMAN GUNN: Sure.

10 MS. DALE: Would you prefer that we get together  
11 and do an addendum or would you prefer that it be in your  
12 order?

13 CHAIRMAN GUNN: I would actually prefer that it  
14 goes in an addendum, because then it's coming from the  
15 parties, the parties agree to it, rather than -- rather  
16 than us ordering it.

17 What I will tell you, if it's not done through  
18 that way, we'll probably -- we'll probably have to address  
19 it in the order. But I would rather us not have to, for  
20 exactly the reason that was expressed that there might be  
21 particular language that both parties agree is either  
22 inflammatory or unnecessarily restrictive and may prevent  
23 someone from doing their day-to-day business they should  
24 be, and I would like those decisions to be made on --  
25 between the parties.

1 But we're still reserving the right that if we  
2 don't think it's sufficient, as we always do, that we can  
3 modify the order. I think it makes sense that you guys  
4 can address those concerns just like you did in the thing,  
5 that we could have a discussion and everybody could say,  
6 We agree that the language is correct, we agree on the  
7 interpretation of the language. That, I think, makes it  
8 -- makes it better for everybody.

9 MS. DALE: Okay. Thank you.

10 CHAIRMAN GUNN: Thanks. That's all the questions  
11 I have, and I appreciate you taking the time to come in  
12 and being here.

13 JUDGE STEARLEY: Mr. Chairman, I wanted to  
14 clarify, if we go ahead and conclude with the other  
15 Commissions this morning, we do not need to come back on  
16 the record?

17 CHAIRMAN GUNN: We do not. We do not.

18 JUDGE STEARLEY: All right. Okay.

19 Commissioner Jarrett.

20 COMMISSIONER JARRETT: Good morning, everyone, and  
21 I, too, share Chairman Gunn's appreciation for everybody  
22 being here today. I wanted to note that I concur in all  
23 of Chairman Gunn's concerns regarding the language in the  
24 stipulation, and I would agree that it's best addressed by  
25 the parties.

1           Obviously, if we have to take -- take this as it  
2   is and we decide that we need to place conditions on it,  
3   either side could then disagree and we would have to go to  
4   full hearing. So, I think it would be better if those  
5   things are addressed by the parties, we can get the  
6   stipulation and addendum submitted, we can consider it,  
7   and if we can approve it without conditions, that would  
8   be, obviously, I think best for everyone. So, I agree  
9   with that.

10           I had a question, first of all, going back to the  
11   stipulation agreement, kind of to expand on Chairman  
12   Gunn's concerns on 18. I'm sorry, not 18. 28. And this  
13   is the one again with Brandt Mensch. Obviously, we don't  
14   wish Mr. Mensch any ill -- ill will or bad luck or  
15   anything, but, obviously, he may not always be there. The  
16   day after we would approve an agreement, he could get  
17   fired, he could leave the company for better opportunity.

18           I'd like to see some language in there requiring  
19   the company to notify us of any changes immediately, if  
20   that happens, and that his successor, whoever that is, is  
21   held to the same standard of running the operations of the  
22   company and having that independent that we discussed  
23   earlier with Chairman Gunn. I would think that the  
24   parties would also agree that that's important.

25           MR. JOHNSON: On behalf of Cintex, yes, thank you.

1 MS. DALE: Yes. It's very important.

2 COMMISSIONER JARRETT: Thank you.

3 I wanted to talk a little bit about the complaint,  
4 and I want to say up front I understand these are  
5 allegations and, if I ask questions, I understand they're  
6 allegations and I'm not meaning to accuse or use any type  
7 of language that infers anything other than I'm just  
8 repeating maybe some of the allegations. But I especially  
9 wanted to get Staff's take on some of the fixes that we  
10 have incorporated into the stipulation. And this would be  
11 for Ms. Dietrich probably.

12 MS. DIETRICH: The count?

13 COMMISSIONER JARRETT: The Count 1 in the  
14 complaint, the allegation in marketing in areas of  
15 Missouri without ETC designation. And the fix here is the  
16 agreement to use these boundary maps based on ZIP Codes.

17 Can you tell me a little bit about how that works  
18 and how that will prevent the problems that are laid out  
19 in the allegation.

20 MS. DIETRICH: From our review, it appeared that  
21 Cintex sent their mass mailing to the entire state, or  
22 large portions of the entire state, but their application  
23 and their ETC designation is only for certain Southwest  
24 Bell exchanges. So, what they've committed to do is take  
25 those exchanges that are specifically Southwestern Bell

1 exchanges, AT&T, you know, and compare those to the ZIP  
2 Code and modify their database, if you will, of who will  
3 receive future marketing materials.

4 COMMISSIONER JARRETT: Okay. And Staff feels that  
5 that is an adequate protection?

6 MS. DIETRICH: ZIP Codes and exchanges don't match  
7 entirely, but it would be much closer than what it is  
8 under the current methodology.

9 COMMISSIONER JARRETT: Okay.

10 And, then, in Count 2, it talks about -- again,  
11 it's an allegation -- misleading marketing using the  
12 preselected, You've been preselected language. And the  
13 fix, then, is to, obviously, Staff getting the materials  
14 in advance and addressing them with best efforts on both  
15 sides. Does Staff feel that that is an adequate  
16 protection?

17 MS. DIETRICH: That's only one piece of it.  
18 There's also language in the stipulation that they will  
19 not use terms such as "preselected", "preapproved". They  
20 will not use language to imply that the Commission  
21 endorses these service offerings. They will only use  
22 their ETC-designated name, which would be Cintex, the  
23 Cintex Wireless name, as opposed to, like, in this  
24 provision under Paragraph 13 in the complaint where it  
25 says that were sent, they included the name LinkUp America

1 which was another company name that wasn't registered or  
2 didn't receive ETC designation.

3 So, there's several different provisions within  
4 the stipulation to address the, quote, misleading  
5 marketing, unquote.

6 COMMISSIONER JARRETT: Okay. Now, I know there  
7 were some -- some allegations regarding misstatements to  
8 our Staff. And, again, allegations.

9 I guess I'll just ask you, Ms. Dietrich, what is  
10 -- does Staff believe that this stipulation has adequate  
11 protections to protect against possible misstatements in  
12 the future?

13 MS. DIETRICH: I guess there's no guarantee that  
14 within the stipulation language that there would be not --  
15 there would not be misstatements, but there are provisions  
16 that tighten it up so that we have certain items that we  
17 can point to to say, This is a misstatement because you  
18 agreed to this. If that makes sense.

19 COMMISSIONER JARRETT: Right. And, again, I  
20 understand these are allegations. I'm not trying to imply  
21 one way or the other whether the allegations are true.

22 I guess I would like to get, maybe, a general  
23 sense from Cintex, and this can go -- be from the lawyer  
24 or Mr. Mensch, or whoever. And I understand these are  
25 allegations.

1 But is Cintex committing to, I guess, use their  
2 best efforts to comply with all our laws in Missouri and  
3 follow not only the letter of the law but the spirit of  
4 the law as far as, you know, being forthcoming to this  
5 Commission and to the customers of Missouri?

6 MR. JOHNSON: Absolutely.

7 MS. DIETRICH: Commissioner Jarrett, if I could  
8 add?

9 COMMISSIONER JARRETT: Yes.

10 MS. DIETRICH: Along the lines of the question  
11 that you just asked and, also, you asked about the  
12 misstatements Cully -- or Ms. Dale has just pointed out,  
13 that previously with the Chairman there was discussion  
14 about what would fall under automatic revocation, and  
15 several of the items related to the complaint if they  
16 would violate those even though we maybe wouldn't know at  
17 the time that it was a misstatement, but when we  
18 discovered it, those items fall under the automatic  
19 revocation paragraphs.

20 COMMISSIONER JARRETT: Okay. Thank you. Yeah, I  
21 -- you know, obviously, the allegations to me are very  
22 serious, and if they were to be true, it would be very  
23 troubling to me, especially the allegations of not only of  
24 misleading the Staff but misleading Missouri customers. I  
25 view my role as protecting Missouri customers very



1 seriously. So, I appreciate Cintex's commitment today to  
2 -- to be very vigilant in following our laws and  
3 regulations here in Missouri.

4 And with the concerns I've already expressed about  
5 to some of the language in this stipulation that were  
6 enumerated by Chairman Gunn, I don't have any further  
7 questions. Thank you.

8 JUDGE STEARLEY: Thank you, Commissioner Jarrett.  
9 Commissioner Kenney, do you have any questions?

10 COMMISSIONER KENNEY: No, I don't have any  
11 questions. I want to thank the parties for being here  
12 today, and also just want to thank Commissioner Jarrett  
13 and Chairman Gunn, because I think they covered virtually  
14 all the concerns that I had. So, I don't have anything  
15 additional to add.

16 I will ask a question. I think I understood that  
17 the parties will incorporate into an addendum or revised  
18 unanimous stipulation the concerns that we have  
19 articulated today?

20 MS. DALE: Yes, definitely. We'll try to get it  
21 to the Commission as quickly as possible, addressing each  
22 of the items that were brought up.

23 COMMISSIONER KENNEY: Excellent. Well, I don't  
24 think it would be frugal of me to ask any additional  
25 questions. The two Commissioners are very fair, so, thank

1 you very much for being here and thank you for  
2 accommodating me by appearing by video.

3 JUDGE STEARLEY: Thank you, Commissioner Kenney.

4 I realize we rushed straight to questioning to  
5 accommodate the Commissioners. If the parties would like  
6 to offer statements to the Commission, although they won't  
7 be opening at this point, you're certainly welcome to do  
8 so.

9 Cintex, would you --

10 MR. JOHNSON: Well, I didn't have anything  
11 prepared, but what I would say is that we believe that --  
12 Cintex believes that the stipulation and agreement  
13 responds to the allegations in the complaint, and we  
14 commit to work with Staff to respond to the concerns that  
15 have been raised this morning and prepare a document which  
16 we believe will satisfy each member of the Commission.

17 JUDGE STEARLEY: All right. Thank you very much.

18 Ms. Dale, do you have any statement from Staff?

19 MS. DALE: No, I don't. You all have my remarks  
20 that I hope were somewhat helpful, but --

21 COMMISSIONER JARRETT: Do you want these  
22 (indicating) in the record?

23 MS. DALE: It doesn't need to be. It's just meant  
24 to be a guide of which things addressed which assertions.

25 So, I don't really have anything to add to that,

1 but I thank you for the opportunity.

2 JUDGE STEARLEY: All right. I think that was not  
3 only helpful, Ms. Dale, I would suggest that if an  
4 addendum or revised stipulation's filed that you also file  
5 a suggestions paragraph in support that would follow this  
6 outline and would provide some additional explanation for  
7 any new or revised provisions that might prevent the  
8 Commissioners from having to come back for another on the  
9 record proceeding to address additional questions to the  
10 parties.

11 MR. JOHNSON: Your Honor, would you like Cintex to  
12 also provide suggestions in support, or perhaps would you  
13 look for some sort of joint --

14 JUDGE STEARLEY: I think you could file those  
15 jointly, and would assume, if you're agreeing, it could be  
16 a joint filing.

17 MR. JOHNSON: What's your schedule? How soon  
18 would you like to have something, other than as soon as  
19 possible --

20 JUDGE STEARLEY: I was going to ask you.

21 MR. JOHNSON: -- because we always need a  
22 deadline.

23 JUDGE STEARLEY: I was going to ask you, what do  
24 you think the appropriate deadline would be for this?

25 MS. DALE: What's the deadline on the transcript?

1 JUDGE STEARLEY: I'm going to set the deadline on  
2 the transcript for Monday, the 26th. I realize next week  
3 we have a holiday coming into play here. Unless, if you  
4 would like it expedited further than that, we can do so if  
5 you want to work on this quicker. I mean, I could  
6 expedite it to Monday, the 19th, but then you're only  
7 going to have a couple days before the holiday.

8 MR. JOHNSON: We'll be talking about it even  
9 before we get the transcript.

10 MS. DALE: Right.

11 MR. JOHNSON: There's no question about that.

12 MS. DALE: Why don't we make it a week after the  
13 transcript. It may be earlier, but we would want to go  
14 back and look at the transcript and make sure we hit every  
15 single thing.

16 JUDGE STEARLEY: Okay. So, if I'm looking at the  
17 calender correctly, might be looking at December 3rd for a  
18 deadline for addendum and suggestions.

19 MR. JOHNSON: Would you prefer -- let me ask you  
20 this. Would you prefer an addendum or would you prefer --  
21 and I'm not really sure I'm inviting this -- a revised or  
22 amended stipulation?

23 JUDGE STEARLEY: I think a revised or amended  
24 stipulation so it's all in one document might be  
25 preferable.

1 COMMISSIONER KENNEY: That would be my preference  
2 to say, Judge.

3 COMMISSIONER JARRETT: Me, too, Judge.

4 MR. JOHNSON: Thank you.

5 JUDGE STEARLEY: So, is that an acceptable  
6 schedule? We'll have transcripts filed on the 26th of  
7 November, the revised or amended stipulation with  
8 suggestions offering further explanation on December 3rd.

9 MS. DALE: Yes.

10 MR. JOHNSON: Yes. Thank you.

11 JUDGE STEARLEY: All right. Are there any  
12 additional matters we need to take up then at this time?

13 (No response.)

14 JUDGE STEARLEY: Well, hearing none, we will  
15 adjourn this on the record proceeding. I thank you all  
16 for your participation.

17 (Adjournment.)

18 (Whereupon, the record ended at 10:52 a.m.)

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1 C E R T I F I C A T E

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3 STATE OF MISSOURI )

4 ) ss.

5 COUNTY OF COLE )

6 I, Pamela S. Gentry, Certified Court  
7 Reporter with the firm of Midwest Litigation Services, do  
8 hereby certify that I was personally present at the  
9 proceedings had in the above-entitled cause at the time  
10 and place set forth in the caption sheet thereof; that I  
11 then and there took down in Stenotype the proceedings had;  
12 and that the foregoing is a full, true and correct  
13 transcript of such Stenotype notes so made at such time  
14 and place.

15 Given at my office in the City of  
16 Jefferson, County of Cole, State of Missouri.

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Pamela S. Gentry, CCR #426

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