

**BEFORE THE PUBLIC SERVICE
COMMISSION OF THE STATE OF MISSOURI**

The Staff of the Missouri Public)	
Service Commission,)	
)	
Complainant,)	
)	
v.)	<u>File No. RC-2012-0421</u>
)	
Cintex Wireless, LLC,)	
)	
Respondent.)	

UNANIMOUS STIPULATION AND AGREEMENT

COME NOW the Staff of the Missouri Public Service Commission (“Staff”) and Cintex Wireless, LLC (“Cintex” or “the Company”), collectively referred to hereafter as “Parties” and respectfully state to the Missouri Public Service Commission (“Commission”) that, as a result of negotiations, the Parties have reached the stipulations and agreements contained herein:

THE PARTIES

Complainant

1. Complainant is the Staff of the Missouri Public Service Commission (the Staff), acting through the Chief Staff Counsel, as authorized by 4 CSR 240-2.070(1) and 4 CSR 3.570 (5)(D) and Sections 386.240 and 386.390.

Respondent

2. Cintex Wireless, LLC is a Delaware limited liability company, formed on January 29, 2007. Its principal offices are at 1800 I Rockville Pike, Rockville, Maryland 20852. Cintex registered to do business in the State of Missouri on August 23, 2011.

STIPULATED FACTS

3. On September 9, 2011, Cintex Wireless, LLC (“Cintex”) filed an application with the Missouri Public Service Commission seeking designation as an Eligible Telecommunications Carrier (“ETC”) for the purpose of receiving federal universal service fund support for low income customers through the Lifeline program as a wireless carrier in the State of Missouri. On December 16, 2011, the Staff recommended that Cintex be granted ETC status.

4. On December 21, 2011, the Commission issued its Order Granting Application for Designation as an Eligible Telecommunications Carrier, to become effective on December 31, 2011.

5. On December 23, 2011, the Federal Communications Commission (“FCC”) affirmed that only [facilities-based carriers] will be deemed to meet the requirements of section 214(e)(1).¹ Those designated as ETCs prior to December 29, 2011 were given until July 1, 2012 to take such action.² As Cintex was not granted ETC status until December 31, in order to receive the necessary forbearance as a non-facilities based carrier, Cintex must have an FCC-approved compliance plan in place before it may receive support from the federal Universal Service Fund for Lifeline service it provides residents of Missouri. Although this was part of the first USF/ICC Transformation Order, the requirement for designation prior to December 29 in order to receive funding while a proposed compliance plan was pending before the FCC was not very clear until the FCC restated it in the Lifeline Reform Order on February 6, 2012. Between February and early May 2012, Cintex marketed its services in Missouri, believing that

¹ To be in compliance with the rules, Lifeline-only carriers that seek ETC designation after December 29, 2011... must either use their own facilities, in whole or in part, to provide the supported ‘voice telephony service,’ or obtain forbearance from the ‘own facilities’ requirement from the [FCC].” Lifeline Reform Order, *Infra*.

² See the *Lifeline and Link Up Reform and Modernization Report and Order and FNPRM* (“Lifeline Reform Order”), FCC 12-11 at ¶366, referring to the *USF/ICC Transformation Order and FNPRM*, FCC 11-161.

the services were eligible for USF support. Since then, when it was informed that it would receive no support until its compliance plan is approved by the FCC, it ceased marketing efforts.³

6. On June 14, 2012, the Staff filed its *Staff Complaint and Motion for Order to Show Cause Why the ETC Designation of Cintex Wireless, LLC Should Not Be Provisionally Revoked*, to which the Staff added on July 10, 2012.

7. On July 16, 2012, Cintex Responded to the Commission's Show Cause Order and filed its *Cintex Wireless, LLC's Answer and Affirmative Defenses to Staff's Complaint*, to which it added on July 26, 2012.

8. On August 8, 2012, based on Cintex's undertakings, the Staff withdrew its request for provisional revocation.

AGREEMENTS

9. To prevent inadvertent marketing beyond Cintex's authorized service area, Cintex will, using the exchange boundary maps on file with the Commission, convert its list of authorized exchanges in Missouri, attached as Exhibit B to its Application for Designation as an Eligible Telecommunications Carrier, into zip codes and will not market or accept new customers who reside in zip codes that are not located within the boundaries of Cintex's authorized service area.

10. Cintex agrees to provide all marketing materials and/or advertising to Staff at least one business day prior to their use in Missouri. Cintex and Staff will use best efforts to promptly address any issues Staff may identify with the materials.

³ In an email exchange with the FCC, Cintex stated, "Moreover, the order designating Cintex an ETC was issued on December 21st, with an effective date of December 31st. Accordingly, Cintex believed that its petition was "granted" December 21st, with an effective date of December 31st."

11. Cintex will refrain from any direct-mail campaigns in Missouri until it discusses with the Staff the particulars of any such campaign, including providing a copy of the customer list and addresses of direct-mail recipients. Cintex and Staff will use best efforts to promptly address any issues Staff may identify with the materials.

12. Cintex agrees to not use in Missouri any advertisement, envelope, or other document that states or infers that the consumer has been “selected” or “pre-selected” to receive the advertisement.

13. Cintex agrees to notify Staff within 30 days of any matter brought by any state or federal regulatory or law enforcement agency against the ETC, any person or entity that currently holds, directly or indirectly, more than a 10% ownership interest in, or is a manager, officer or director of the ETC, or any affiliated company (defined as any company under common management ownership or control or that, by contract or other agreement, performs any of the functions necessary to the ETC’s Lifeline Service) that involves any aspect of the provision of Lifeline Service or any aspect involving the ETC’s use of state or federal Universal Service funds (“USF”), or any non-frivolous matter brought in state or federal courts alleging claims for involving fraud, deceit, perjury, stealing or the omission or misstatement of material fact in connection with a commercial transaction. Such matters include formal or informal notices of investigation, indictment, the filing of a complaint, a civil lawsuit, revocation or suspension proceeding, action for civil penalties or damages of at least \$250,000, or criminal charges. Such details include, but are not limited to, copies of complaints or other such pleadings and the filed responses thereto, as well as any orders, decisions or other determinations of culpability, including those that exonerate the subject of any wrongdoing.

14. Cintex agrees to notify the Staff of matters as described in paragraph 13 beginning immediately after the effective date of the Commission’s order approving the joint

stipulation between Cintex and Staff that resolves this case. Should substantially similar commitments as the Company makes in paragraph 13 not be imposed on all ETCs in the State of Missouri within one-year from the effective date of that order by a duly promulgated Commission rule, the Company may ask the Commission to issue an order suspending the commitments the Company makes in paragraph 13 until such time as substantially similar commitments are imposed on all ETCs in the State of Missouri. If the Company requests a stay following the one-year timeframe, the Staff may oppose or support the granting of that request.

15. Cintex agrees to never seek reimbursement from USAC for those customers that Staff has identified as residing outside of Cintex's authorized service area.

16. Cintex agrees to never seek reimbursement from USAC for service provided to the subscriber who identified a company other than Cintex as her local voice provider on her Lifeline application.

17. Cintex agrees to not seek retroactive payments from USAC for any of its current Missouri customers.

18. Cintex agrees to work with the Staff to confirm that certain applications referred to in the complaint were properly verified, and will not seek reimbursement for those applications from USAC until such confirmation is complete.

19. Cintex will not offer or provide Lifeline service in Missouri under any name other than its Commission-approved ETC designated name.

20. Cintex agrees to ensure all applications are complete.

21. Cintex agrees to properly verify all applications.

22. Cintex agrees that every month for 24 months after the effective date of the Commission's order approving the joint stipulation between Cintex and Staff that resolves this

case, Cintex will submit a customer list with address of all MO customers signed up the previous month to Staff for review.

23. Although Staff periodically reviews customer applications, for purposes of this agreement, Cintex agrees to provide copies of customer applications to Staff for review, every six months for 36 months after the effective date of the Commission's order approving the joint stipulation between Cintex and Staff that resolves this case, based on a random selection process to be defined by Staff.

24. Cintex agrees to destroy customer-specific information on identified applications.

25. Cintex has not in the past, and agrees not to in the future, use contract employees in Missouri.

26. Cintex agrees it will provide to Staff, for 5 years after the effective date of the Commission's order approving the joint stipulation between Cintex and Staff that resolves this case, any changes in its ETC/Lifeline processes within 30 days of the change.

27. Cintex agrees that its marketing materials or other information will not suggest the MoPSC endorses, authorizes, or approves Cintex service offerings or programs.

28. Cintex agrees that Brandt Mensh, President of Cintex, will be acting independently as the primary decision maker and shall be fully autonomous in his responsibility for the day-to-day Cintex Lifeline operations in Missouri. Should Mr. Mensh leave his employment with Cintex, Cintex agrees to inform Staff of that fact and of the identity of the employee appointed to be the primary decision maker, who has full autonomy in his/her responsibilities for day-to-day Cintex Lifeline operations in Missouri.

29. Cintex agrees that if Cintex is audited by USAC regarding Missouri, Cintex will provide to Staff its responses to the audit, as well as USAC's findings.

30. The Staff agrees that it will notify the Company of any concerns that might become the subject of a future complaint, so that Cintex has an opportunity to address the concern prior to the Staff filing a complaint. If Cintex and Staff cannot resolve those issues within sixty (60) days of Staff's notification to the Company, Staff may at that time initiate a formal complaint against the Company, pursuant to 4 CSR 240-2.070. Cintex and Staff agree that the Company's ETC designation may not be permanently revoked prior to a formal hearing that follows the procedure set out in 4 CSR 240-2.110, unless the Commission promulgates a rule that specifically addresses revocation of ETC designation. The Staff agrees that it will abide by the Commission's duly promulgated rules, and agrees that any attempt to permanently revoke an ETC designation requires an opportunity for a formal hearing prior to such revocation. Provided however, if Cintex violates the provisions of paragraphs 10-12 and 15-29, the Commission may revoke Cintex's ETC designation automatically, without a hearing. If Cintex contests an allegation of a violation to which this automatic suspension applies, the Staff would ask that the Commission hold a hearing to determine whether the alleged violation occurred. Cintex and the Staff agree that nothing in this provision is intended to limit the Commission's authority to provisionally revoke an ETC designation.

31. Neither this Stipulation and Agreement, nor any terms, agreements or provisions herein, constitute an admission that Cintex has engaged in any activity alleged in the complaint or has violated any Commission rule, order or decision.

32. Cintex agrees that it will comply with all Commission rules, as amended, concerning the provision of Lifeline service in Missouri, as well as any properly promulgated rules of the FCC concerning Universal Service Funding for low-income subscribers as well as any applicable state or federal law. The Staff may conduct follow-up reviews of the Company's

operations to ensure that the Company has complied with the provision of this Stipulation and Agreement.

33. The Staff may file a formal complaint against the Company, if the Company does not comply with the provisions of this Stipulation and Agreement, subject to the restrictions set forth in paragraph 30 above.

34. Both Parties agree that they have read this Stipulation and Agreement, that the facts stated therein are true and accurate to the best of the Parties' knowledge and belief; that the foregoing conditions accurately reflect the agreement reached between them and that each individual Party freely and voluntarily enters into this Stipulation and Agreement.

35. The Company acknowledges that the Staff will be filing this Stipulation and Agreement. If the Commission approves this Stipulation and Agreement, the Staff agrees that it will withdraw its Complaint with prejudice.

36. Cintex agrees that, subject to the rules governing practice before the Commission, the Staff shall have the right to provide whatever verbal explanation the Commission may request regarding this Stipulation and Agreement at any agenda meeting. Staff agrees to provide to Cintex notice of and an opportunity to be present during such communications with the Commission.

37. As a result of this Stipulation and Agreement, the Parties request that the previously ordered procedural schedule be suspended and the Parties relieved of adherence to the procedural schedule at this time.

Respectfully submitted,



Colleen M. Dale, MoBar 31624
Tanya Alm, MoBar 62721
Meghan McClowry MoBar 63070
Attorneys for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-4255 (Telephone)
cully.dale@psc.mo.gov
tanya.alm@psc.mo.gov
meghan.mcclowry@psc.mo.gov

/s/ Mark Johnson

Mark Johnson MBN 30740
Lisa A. Gilbreath MBN 62271
M. Shaun Stallworth MBN 60764
SNR Denton US LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
(816) 460-2400
(816) 531-7545 (fax)
mark.johnson@snrdenton.com
lisa.gilbreath@snrdenton.com
shaun.stallworth@snrdenton.com
Attorneys for Cintex Wireless, LLC

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 6th day of December, 2012.

