

**BEFORE THE  
MISSOURI PUBLIC SERVICE COMMISSION**

The Staff of the Missouri Public	)	
Services Commission,	)	
	)	
Complainant,	)	
	)	File No. RC-2012-0421
Cintex Wireless, LLC,	)	
	)	
Respondent.	)	

**CINTEX WIRELESS, LLC’S REQUEST FOR ORAL ARGUMENT  
REGARDING STAFF’S MOTION TO SHOW CAUSE WHY ITS ETC DESIGNATION  
SHOULD NOT BE PROVISIONALLY REVOKED**

Respondent Cintex Wireless, LLC (“Cintex”), pursuant to Missouri Public Service Commission (the “Commission”) Rule 4 CSR 240-2.140, respectfully requests oral argument regarding Staff’s Motion to Show Cause Why Cintex’s Eligible Telecommunications Carrier (“ETC”) Designation Should Not Be Provisionally Revoked (the “Motion to Show Cause”). In support of its request, Cintex states as follows.

1. On June 14, 2012, Staff filed the Motion to Show Cause requesting Cintex provide justification why its ETC designation should not be provisionally revoked.<sup>1</sup>
2. To support its position, Staff argues that Cintex: (1) marketed in areas of Missouri without an ETC designation; (2) distributed misleading marketing; (3) made misstatements to regulators; and (4) has unsuitable leadership.
3. Though each of these claims is without merit and lacks any evidentiary basis in fact or law—as fully briefed in Cintex’s Response to Staff’s Motion to Show Cause (the “Response to Motion to Show Cause”)—Cintex believes a request of this magnitude and

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<sup>1</sup> On June 20, 2012, the Commission granted Staff’s request and ordered Cintex to respond to the Motion to Show Cause.

precedent requires the Commission hear the parties' oral argument on Staff's request that Cintex show cause as to why its ETC designation should not be provisionally revoked.

4. Indeed, to Cintex's knowledge, neither the Commission nor the FCC has ever provisionally revoked an ETC designation.

5. In effect, Staff's request essentially seeks a preliminary injunction. However, an injunction is an extraordinary and harsh remedy, and should not be employed where there is an adequate remedy at law. *See Harris v. Union Elec. Co.*, 766 S.W.2d 80, 86 (Mo. banc 1989). Assuming, arguendo, that the Commission has the requisite authority to grant the preliminary relief requested by Staff, it should only be granted if Staff shows that the facts and circumstances satisfy the civil court standard for granting a preliminary injunction.<sup>2</sup>

6. As discussed in the Response to the Motion to Show Cause, Staff has not met its burden and has not shown *any* underlying substantiation for the relief it is requesting or that there will be irreparable harm to consumers, or anyone else, if Cintex is allowed to continue its business in Missouri. Quite the opposite, as such extreme action would irrevocably damage Cintex's reputation, Missouri business prospects, and ability to secure additional ETC designations, and may result in a domino effect of revocations in other states.

7. Ultimately, if the Commission declined to hear oral argument on this matter, the Commission would set a dangerous precedent whereby a carrier's financial stability and ability

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<sup>2</sup> The burden of proof is on the moving party to show: (1) the movant's likelihood of success on the merits of its underlying case; (2) the threat of irreparable harm to the movant in the absence of relief; (3) the balance between this harm and the harm that the relief would cause to the other litigants; and (4) whether the issuance of an injunction is in the public interest. *State ex. Rel. Director of Revenue v. Honorable A. Rex Gabbert*, 925 S.W.2d 838, 839 (Mo. 1996).

to do business in Missouri would be obliterated, without the Commission providing the carrier a full and fair opportunity to be heard.

WHEREFORE, for the reasons stated above, Cintex respectfully request that the Commission grant its request for oral argument regarding Staff's Motion to Show Cause.

Respectfully submitted,

/s/ Mark Johnson

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**Certificate of Service**

A copy of the foregoing has been emailed this 16th day of July 2012 to all counsel of record.

/s/ Mark Johnson

Attorney for Cintex Wireless, LLC