

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

Staff of the Missouri Public Service Commission)	
)	
)	
Complainant,)	
)	
v.)	
)	
Cintex Wireless, LLC,)	
)	
Respondent.)	

File No. RC-2012-

**STAFF COMPLAINT AND
MOTION FOR ORDER TO SHOW CAUSE WHY THE ETC
DESIGNATION OF CINTEX WIRELESS, LLC
SHOULD NOT BE PROVISIONALLY REVOKED**

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) and for its Complaint and Motion for Order to Show Cause, states as follows:

COMPLAINT

Introduction

1. This matter concerns the propriety of continuing to designate the Respondent, Cintex Wireless, LLC (“Cintex”), as an eligible telecommunications carrier (“ETC”) in Missouri. The Staff asserts that Cintex omitted material facts in its application for designation or in its responses to Data Requests, marketed to customers outside the area of its designation, engaged in misleading marketing, falsely responded to a properly propounded Data Request from the Staff, and engaged in other acts or practices that should disqualify it from ETC designation in Missouri. The Staff files the Complaint to have Cintex’s ETC designation terminated and moves the Commission to issue a Show Cause Order as to why

the Commission should not provisionally revoke Cintex's ETC designation during the pendency of this proceeding.

The Parties

Complainant

2. 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 30.570 (5)(D) and Sections 386.240 and 386.390.

Respondent

3. Cintex is a Delaware limited liability company, formed on January 29, 2007. Its principal offices are at 11910 Parklawn Drive, Suite U, Rockville, Maryland 20852. Cintex registered to do business in the State of Missouri on August 23, 2011.

Jurisdiction

4. This matter concerns the federal Universal Service Fund ("USF") and disbursements from that federal fund to a commercial mobile radio service (referred to as "cell phone" or "wireless" service) carrier, a category of carrier specifically excepted from the definition of telecommunications company and therefore, from the Commission's regulatory jurisdiction. However, in the Telecommunications Act of 1996 amendment to the Communications Act of 1934 (47 USC §151, et seq.), Congress delegated authority to the states in several areas, one of which was the designation of ETCs to receive funds from the USF. In response, the Missouri legislature passed §392.248, creating the Missouri Universal Service Board, giving the Commission the authority to promulgate and enforce rules to establish and maintain the procedures and requirements of the

Missouri Universal Fund, but also to accept such delegated authority to designate ETCs for the federal USF, and to regulate their participation in the USF. Specifically, 4 CSR 240-3.570 contemplates the designation of wireless ETCs for the USF and “an application for ETC designation shall be deemed to be acceptance of Missouri Public Service Commission jurisdiction over any issues related to ETC designation and status and USF funding and acceptance of additional rules made applicable to that ETC. (4 CSR240-3.570(5)(F)). Subparagraph (5)(D) gives the Staff the authority to file a Complaint concerning such matters and specifies that the Commission may revoke the ETC’s designation.¹

Facts Common to All Counts

5. On September 9, 2011, Cintex filed an application with the Missouri Public Service Commission seeking designation as an ETC for the purpose of receiving federal USF support for low income customers through the Lifeline program as a wireless carrier in Missouri.

6. On December 16, 2011, in reliance upon the representations made by Cintex in its application, the Staff recommended that Cintex be granted ETC status.

7. 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.

¹ (D) Allegations of failure to comply with this rule shall be filed with the commission in the form of a formal complaint pursuant to 4 CSR 240-2.070. Resolution of the complaint may result in revocation of the ETC designation.

8. On December 23, 2011, the Federal Communications Commission (“FCC”) affirmed that only [facilities-based carriers] will be deemed to meet the requirements of § 214(e)(1).² Those non-facilities-based carriers designated as ETCs prior to December 29, 2011, were given until July 1, 2012, to become compliant.³ 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 USF. 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 December 31, 2011, and early May 2012, Cintex marketed its services in Missouri under the belief that the services were eligible for USF support. Since it was informed that it would receive no support until its compliance plan is approved by the FCC, it has ceased marketing efforts.⁴

Count I – Marketing in Areas of Missouri Without ETC Designation

9. The Staff hereby realleges the allegations set out in Paragraphs 1 through 8, above.

² 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*.

³ 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.

⁴ 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.”

10. In March, 2012, Cintex obtained a list of low-income households from Infogroup, Inc., and contracted with BeQuick to convert the exchange numbers in its authorized service territory into zip codes so that Cintex would not send mailings to potential customers in exchanges in which Cintex was not authorized to do business.⁵ Cintex mailed approximately 515,000⁶ packets of information to potential customers across the state.

11. The packet was mailed to at least two Commission employees who live in the CenturyLink exchange of Columbia, Missouri, an area in which Cintex does not have an ETC designation.⁷ In addition, in review of the first sample of 100 Lifeline application forms submitted pursuant to the Staff's request, at least nine customers presently receiving service are not located within Cintex's stated service territory.

Count II – Misleading Marketing

12. The Staff hereby realleges the allegations set out in Paragraphs 1 through 11, above.

13. The return address of the envelope in which the packets referred to in Paragraphs 10 and 11, above, were sent is "Link-Up-America," an entity that is not registered with the Missouri Secretary of State, either as a stand-alone company or as a fictitious name registered to Cintex. The business reply envelopes provided in the packet are also addressed to "Link-Up-America."

⁵ Cintex *Application* in File No. RA-2012-0076, filed September 9, 2011, on page 1.

⁶ According to Robert N. Felgar, Cintex's General Counsel on a conference call with the Staff on May 25, 2012.

⁷ See File No. RA-2012-0076, *Order Granting Application as an Eligible Telecommunications Carrier*, EFIS item no. 6, December 21, 2011.

14. In the lower left corner of the envelope, the words “**YOU HAVE BEEN PRE-SELECTED!**” are printed in what appears to be bold, red 16-point font. The cover letter enclosed in the packet also notes the recipient has been “selected to receive a special offer for a **FREE WIRELESS PHONE ...**” It also says, “Cintex has been authorized by the Missouri Public Service Commission to offer this service which helps people in need receive telephone service.” Although the materials go on to explain what is actually required to receive service from Cintex, at least some of the recipients were misled by the materials as a whole, to mistakenly infer that the Commission had authorized Cintex to offer free phone service to them specifically, as a qualified recipient.

Count III – Misstatements to Regulators

15. The Staff hereby realleges the allegations set out in Paragraphs 1 through 14, above.

16. In a May 14, 2012, e-mail to the FCC, Mr. Robert Felgar, an employee of Cintex, said,

Cintex, however, would greatly appreciate some flexibility on this issue since it has almost 10,000 Lifeline customers who, as I indicated previously, have provided both proof of eligibility and have been scrubbed against CGM’s external database. I cannot imagine that it is in the public’s interest for their service to be deactivated. Cintex has been providing service to these customers in good faith and believed that it had the requisite authority to do so.

17. On May 24, 2012, counsel for Cintex stated in an e-mail to Staff Counsel:

Cintex has received close to 10,000 applications but only approximately 1,300 applicants have become Missouri customers. Your letter requests "a copy of each customer enrollment form for each of your Missouri customers." As Cintex only has about 1,300 Missouri customers, I read your letter as requesting those 1,300 forms.

18. On May 25, 2012, during a telephone call between Cintex and Staff, Mr. Felgar stated that the 10,000 number was incorrect, due to a miscommunication, and that Cintex had only 1,300 Missouri customers, which the company continued to serve without USF support. When asked whether Cintex had contacted the FCC to correct its misstatement about the number of Missouri customers, Mr. Felgar replied that it had not.

19. On October 5, 2011, in response to the set of data requests propounded by the Staff, Cintex stated that Cintex Wireless, LLC, is wholly owned by Paul V. Greene, its CEO. Cintex further asserted,

Affiliated companies are Cintex Group, LLC and Cozak Wireless, LLC. Cintex Group provides telecommunications services to wholesale customers. Cozak Wireless owns certain assets, such as computer equipment, used by Cintex Wireless and Cintex Group. There are no affiliated companies or companies with any common ownership or management with Cintex Wireless, that perform administrative or sales functions for Cintex Wireless.

20. On January 25, 2012, the United States Securities and Exchange Commission ("SEC") filed a Complaint in the U.S. District Court for the District of Columbia against Mr. Green and another Defendant, in which it asserts, in Paragraph 10, that Mr. Greene is the CEO of three cellular telephone companies, including Liberty Wireless and Movida, in addition to Cintex Wireless, neither of which are mentioned in response to the Staff's data request concerning common ownership or management.

Count IV – Unsuitable Leadership

21. The Staff hereby realleges the allegations set out in Paragraphs 1 through 20, above.

22. The SEC Complaint charges that Mr. Greene, in concert with another person, arranged a fraudulent scheme called a “Round-Trip” scheme, whereby the earnings of a publicly-traded company were artificially inflated, and whereby Mr. Greene personally profited, all in violation of the Securities Exchange Act of 1934 (15 USC §78). The scheme itself involved the falsification of records involving the supply and repair of cellphone handsets.

23. Mr. Greene has moved to dismiss and will not answer the Complaint unless and until that motion is denied.

24. Cintex never disclosed the existence of the Complaint in its Missouri ETC application. It was mentioned in a television news story about fraud problems with the Lifeline program and the FCC’s attempts to reform the Universal Service Fund. The Complaint was then found on the SEC’s web site by the Staff.

25. Mr. Greene and, by extension, Cintex, knew of Mr. Greene’s activities, yet failed to advise the Staff of either the underlying activities or the SEC’s complaint, both of which the Staff believes the Commission would find material to its decision to grant an ETC designation to a company wholly owned by Mr. Greene.

WHEREFORE, on account of all the foregoing, the Staff prays that the Commission will, after notice and a hearing, find that Cintex's ETC designation is not in the public interest and therefore revoke the same; and will grant such other and further relief as the Commission deems just in the premises.

MOTION FOR ORDER TO SHOW CAUSE

26. The Staff hereby realleges the allegations set out in Paragraphs 1 through 25, above.

27. At the present time, Cintex is not receiving USF support for its 1,300⁸ Missouri Lifeline customers, as discussed in Paragraph 18 above.

28. Taken as a whole, the behavior and activities set forth in Paragraphs 1 through 25, above, cause the Staff to question whether it was in the public interest to grant Cintex ETC status and whether it is in the public interest to allow it to continue to be designated as an ETC.

29. Cintex presently has customers in Missouri and, if the FCC approves Cintex's compliance plan, will continue to offer services and will receive support from the USF.

30. Contrary to the wording of the order granting ETC status issued by the Commission on December 21, 2011, in which it states that the Commission "must grant ETC status to Cintex if the company offers the services set out in Section 254 of the Act and if it advertises the availability of those services using media of general distribution (citing 47 USC §214 (e)(1) and (2))", the Commission was not required to grant ETC status to Cintex and is not required to designate any more ETCs. As the Staff has stated in prior pleadings, ETC applications are filed pursuant to 47 USC §214(e).⁹ That section requires that, as

⁸ This figure was given to the Staff by Cintex's counsel and supported verbally by Mr. Felgar.

⁹ 47 USC §214 (e), Provision of universal service:

(1) Eligible telecommunications carriers A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received—

to non-rural areas such as are described in the applications referred to above, the State Commission is required to designate at least two eligible telecommunications carriers. Having done so, the Commission is under no obligation to grant ETC status to other applicants, even if they meet all of the established criteria, because the Commission must find that each designation of an additional ETC is in the public interest. In addition, neither the federal statutes nor the regulations (47 CFR §§54.201 et seq.) set any time limit on the Commission's deliberation as to whether the grant of ETC status is proper and in the public interest.

31. The Staff believes that the public interest standard embedded in the delegated authority to designate additional ETCs in a service area inherently includes and extends to the authority to revoke ETC status when the designation is no longer in the public interest or, as here, where it was never in the public interest and the designation was obtained improperly. In addition, the Commission's rules, recited above, specifically provide for a revocation complaint.

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) Designation of eligible telecommunications carriers A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest. [emphasis added]

32. If the Commission does decide to provisionally revoke Cintex's ETC designation, the Staff will advise the FCC of the provisional revocation, so that should the FCC approve Cintex's compliance plan while this matter is pending, it will so advise the Commission which will then notify the USF Administrator that Cintex's ETC designation has been provisionally revoked and to withhold support. If the matter is resolved in Cintex's favor, then the Commission shall ask that all properly due support be paid to Cintex from the time of the FCC's approval of the compliance plan.

WHEREFORE, on account of all the foregoing, the Staff urges the Commission to order Cintex to show cause, if any it has, why its ETC designation should not be immediately provisionally revoked pending further proceedings; and Staff prays the Commission will order Cintex to continue to serve the Missouri customers it currently has until they can be migrated to another ETC; and, as to those customers Cintex is presently serving that are not within its authorized service area, Staff prays that the Commission will order Cintex to migrate those customers to another ETC within a specified period of time; and that the Commission will grant such other and further relief as the Commission deems just in the premises.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', with a stylized, cursive script.

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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 14th day of June, 2012.

A handwritten signature in black ink, appearing to read "Cully Dale", is positioned below the text of the certificate.