

**BEFORE THE  
MISSOURI PUBLIC SERVICE COMMISSION**

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

**CINTEX WIRELESS, LLC’S RESPONSE,  
ANSWER, AND AFFIRMATIVE DEFENSES  
TO STAFF’S ADDENDUM**

Respondent Cintex Wireless, LLC (“Cintex” or “Respondent”), pursuant to 4 CSR 240-2.070(9), 4 CSR 2.080(18), the Missouri Public Service Commission’s (“Commission”) June 20, 2012 Order Directing Cintex Wireless to Show Cause Why Its ETC Designation Should Not Be Provisionally Revoked, and the Commission’s July 17, 2012 Order Granting Additional Time To Respond, respectfully submits this Response, Answer, and Affirmative Defenses to the Addendum To Staff Complaint And Motion For Order To Show Cause Why The ETC Designation Of Cintex Wireless, LLC Should Not Be Provisionally Revoked (“Addendum”) filed by the Staff of the Commission (“Staff”) and moves for a hearing regarding this matter. In support of its Response, Answer, and Affirmative Defenses to the Addendum, Respondent states as follows:

**RESPONSE**

The Addendum contains a number of claims regarding alleged errors in the applications received by Cintex from Missouri consumers. While the Addendum does not identify the applications to which it refers, Cintex issued data requests to Staff on July 24, 2012 asking for such information. As a result, Cintex is without knowledge or information sufficient to form a

belief as to the truth of the allegations contained in the Addendum, and states that it may amend its Answer in light of Staff's responses to Cintex's data requests.

**I. 4 CSR 240-31.050 Does Not Apply to the Service Cintex is Currently Providing in Missouri.**

Cintex can affirmatively state, however, that while the Addendum asserts that applications received by Cintex's Missouri customers violate the Commission's Lifeline rules, the Commission's Lifeline rules do not currently apply to the service provided by Cintex in Missouri. As discussed in Cintex's July 16, 2012 Response, the Lifeline program is inexorably connected to federal government support.<sup>1</sup> A carrier is not providing Lifeline service if it is not receiving support through the universal Service Company ("USAC"). Since Cintex has not received any government support, Cintex is not currently providing Lifeline service in Missouri, and 4 CSR 240-31.050 does not currently apply, if it applies to wireless carriers at all. Stated differently, since Cintex never used the applications as a basis to receive government support, whether the applications are defective or not is irrelevant. The Commission's entire and sole interest in the applications is the fact that they are used as the basis for government reimbursement. Currently, Cintex is simply offering a free non-Lifeline service in Missouri at Cintex's sole expense.

That this is the case is demonstrated conclusively by the fact that in Staff's Motion For Order To Show Cause Why The ETC Designation Of Cintex Wireless, LLC Should Not Be Provisionally Revoked ("Show Cause Motion"), Staff asks the Commission to "order" Cintex to continue to provide service to its Missouri Customers even *after* the Commission has revoked

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<sup>1</sup> See Cintex Wireless, LLC's Response To The Commission's Order Directing Cintex To Show Cause Why Its ETC Designation Should Not Be Provisionally Revoked at 8-9 ("Cintex Response").

Cintex's eligible telecommunications carrier ("ETC") designation.<sup>2</sup> Thus, by Staff's own admission, Cintex can provide the service it is currently providing in Missouri without an ETC designation. Cintex is simply providing free wireless service at Cintex's expense; it is not providing Lifeline service because it is not being reimbursed by USAC.

## **II. Staff's Assertions that Cintex Failed to Comply with 4 CSR 240-31.050 are Trivial and In Some Cases, Factually Incorrect.**

Furthermore, Cintex can affirmatively state that, far from bolstering Staff's Complaint, Addendum Count V highlights the trivial nature of Staff's allegations. Staff closely reviewed approximately 1,300 applications and concluded (in some cases incorrectly) that one and four tenths percent of the applications were not verified by Cintex, four and four tenths percent of applications have no program identified that qualifies for support, three tenths of one percent of applications contained customer specific information, eight hundredths of one percent are duplicates and eight hundredths of one percent were accepted despite an invalid address.<sup>3</sup> *In other words, by Staff's own admission, the **large** majority of the applications comply with the Commission's rules.* Those alleged to be in some way defective, are not alleged to have been fraudulent.

No ETC can operate a Lifeline program without any errors whatsoever. Perfection does not exist, and holding Cintex to an impossible standard is not reasonable and is in fact unlawful.<sup>4</sup> As discussed in Cintex's July 16, 2012 Response, this is exactly why the Federal Communications Commission ("FCC") revokes ETC designations only for egregious violations

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<sup>2</sup> Show Cause Motion at ¶ 32.

<sup>3</sup> Addendum at ¶ 2. The Addendum also provides that 870 applications are signed by a Cintex representative but not dated. Addendum at ¶ 2. There is no Commission rule, however, that requires Cintex employees to sign, let alone date, the applications. Accordingly, such applications are not defective.

<sup>4</sup> See e.g., *Missouri National Education Association, et al. v. Missouri State Board of Education, et al.*, 34 S.W.3d 266, 281 (Mo. App. W.D. 2000) (Missouri agencies are required to satisfy basic standards of due process and are prohibited from making decisions that are arbitrary, unreasonable or capricious).

of Lifeline rules. Similarly, USAC performs numerous audits of ETCs and frequently concludes that applicable rules have been violated. Indeed, USAC routinely makes ETCs aware of its audit findings so that ETCs can take corrective action. Attached as Exhibit 1 are a number of USAC news releases discussing audit findings. The releases emphasize that a number of the findings are “common.” Indeed, one “common” finding is carrier acceptance of “incomplete customer applications.”

In any event, some of Staff’s allegations in its Addendum regarding defective applications are incorrect. For example, while fifty five applications allegedly have no program identified that qualifies for support, those applicants provided proof, such as a Medicaid card or Food Stamp card, of their participation in a qualifying program. Thus, while the customer forgot to check the box on the application form, it did “identify the program or programs from which that individual receives benefits,” as required by 4 CSR 240-31.050(3)(D)(1). In fact, Cintex employees write numbers that correspond to the type of documentation provided at the bottom of applications.

In addition, while eighteen applications allegedly contain no Cintex employee signature, the applications were properly verified. Indeed, Cintex’s systems and processes are designed so that an application cannot be accepted and fulfilled unless the applicant’s information is inputted into Cintex’s back-end systems. If required information is not inputted, or the applicant is already a Lifeline customer, the application will be rejected. Thus, Staff’s assertion that applications without a Cintex employee signature or date are not verified by Cintex, is incorrect.<sup>5</sup> Moreover, there is no Commission rule that requires a Cintex employee to sign and/or date applications.

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<sup>5</sup> Addendum at ¶ 2.

In its Addendum, Staff alleges that four applications (approximately three tenths of one percent of all accepted applications) contained customer specific information.<sup>6</sup> That may be correct; however, Cintex presumes that is because the customer wrote or copied the information directly onto the application. FCC rule 47 C.F.R. § 54.417(a) requires Cintex to maintain the application for as long as the customer receives Lifeline service from Cintex.

Staff alleges that there is one application with the notation “invalid address.”<sup>7</sup> Cintex believes that it has identified the application referred to by Staff. The address, however, appears to be valid and the customer is using the phone. The Cintex employee who made the notation is no longer with the company. But one can surmise that the employee may have made a mistake (perhaps a spelling mistake) when she first attempted to enter the address into the system. The address may have therefore been rejected. The address, however, may have been corrected later after some additional research.

Staff further alleges that “one application appears to indicate customer already receives Lifeline service from another provider.”<sup>8</sup> Cintex assumes that the application referred to in this instance is one in which the applicant appears to identify the Pager Company as a carrier from which it receives local voice service. First, as stated in Cintex’s July 16, 2012 Response, Cintex goes beyond what is required by the Commission’s or FCC’s rules by checking for duplicates not only in Cintex’s own customer base, but in the customer base of CGM’s other ETC clients, as well.<sup>9</sup> Second, because many ETCs also provide non-lifeline service—AT&T is an example—an applicant may identify on its application a provider of non-Lifeline service that is also an ETC.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Cintex Response at 27.

There is no federal database against which Cintex could check which customers are receiving Lifeline service from which carriers. Thus, no ETC at this time can check wither The Pager Company is providing Lifeline or non-Lifeline service to this particular applicant. Moreover, the applicant certified that she does not receive Lifeline service from any other carrier, including The Pager Company.

The significant care and rigor with which Cintex reviewed the Missouri applications is undisputable. Cintex received approximately 10,000 applications and rejected the large majority of them. Some were rejected because they were duplicates, others because the applications were incomplete or in some way defective, and still others because the proof of eligibility was inadequate. Cintex's behavior was responsible and conscientious. Under no reasonable interpretation of the facts can it be described as egregious or fraudulent.

Staff's Addendum does not rescue its deficient Complaint. Quite the opposite: it highlights that Staff's allegations are thin at best. Staff reviewed approximately 1,300 applications and failed to identify more than a small percentage that are allegedly imperfect. And most of those actually comply with the Commission's rules. In any event, if those rules apply to a wireless carrier at all, they only apply if Cintex is reimbursed by USAC, which Cintex was not.

For these reasons, the Commission should dismiss Staff's Complaint and Addendum with prejudice and should not provisionally revoke Cintex's ETC designation in Missouri during the pendency of this case.

## **ANSWER**

Except as specifically admitted herein, Respondent denies each and every allegation, averment, and statement in the Addendum, and specifically denies that its actions were unlawful or unreasonable as alleged in the Addendum.

### *Count I*

1. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Addendum and, therefore, denies the same.

### *Count V*

2. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Addendum, which adds Paragraphs 26 through 29 to the Complaint, and, therefore, denies the same.

Respondent specifically denies Staff is entitled to the relief requested in its Addendum and asks that all Counts be dismissed in their entirety, along with any further relief deemed appropriate by the Commission.

## **AFFIRMATIVE DEFENSES**

1. Respondent denies each and every allegation contained in Staff's Addendum, unless specifically admitted herein, and incorporates by reference each and every answer set forth above in response to Staff's allegations in Addendum Paragraphs 1 through 2.

2. Staff's Addendum, and each Count thereof, fails to state a claim upon which relief can be granted.

3. Count I sets forth no claim for relief and constitutes only a general statement of allegations. It should, therefore, be dismissed.

4. Count V sets forth no claim for relief and constitutes only a general statement of allegations. It should, therefore, be dismissed.

5. Count V alleges violations of the Commission's Lifeline rules, which do not apply to the service currently provided by Respondent in Missouri. It should, therefore, be dismissed.

6. Count V alleges violations of Chapter 31 of the Commission's rules, which do not apply to wireless carriers such as Respondent. It should, therefore, be dismissed.

WHEREFORE, Respondent respectfully requests that the Commission dismiss Staff's Complaint and Addendum with prejudice, and award Respondent all just and proper relief.

Respectfully submitted,

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**Certificate of Service**

A copy of the foregoing has been emailed this 27th day of July 2012 to all counsel of record.

/s/ Mark Johnson  
Attorney for Cintex Wireless, LLC