

Agenda Date: December 12, 2013
Item Number: A2

Docket: UT-111206
Company Name: Cintex Wireless

Staff: Jing Liu, Regulatory Analyst
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Recommendation

Deny the Petition of Cintex Wireless, LLC for Designation as an Eligible Telecommunications Carrier in Washington for the limited purpose of offering wireless Lifeline and Link Up Service to qualifying households.

I. Background

On July 5, 2011, Cintex Wireless, LLC (Cintex or the company) filed a petition with the Washington Utilities and Transportation Commission (UTC or commission) requesting designation as an Eligible Telecommunications Carrier (ETC) pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the Act), and Washington Administrative Code (WAC) 480-123-030 and -040. Cintex seeks designation as an ETC only to participate in the federal Low Income support, Lifeline and Link Up programs that subsidize monthly charges and the initial connection charges for basic telephone service for qualified low-income households. Federal Lifeline and Link Up programs are part of the federal Universal Service Fund (USF).

Cintex is a Delaware limited liability company formed on January 29, 2007. It offers commercial mobile radio services by utilizing Sprint's network facilities.

The commission has jurisdiction over ETC petitions. Section 214 (e) of the Act authorizes state regulatory commissions to designate a qualified common carrier as an ETC for the purpose of receiving federal Universal Service Funds.¹ By rule, WAC 480-123-040, the commission has the authority to approve petitions from carriers requesting ETC designation.

II. Discussion

Commission staff (staff) finds that Cintex's petition has not establish its qualification for ETC designation. Pursuant to 47 U.S.C. § 214(e)(2), state commissions may designate more than one carrier as an ETC in an area if such designation is "consistent with the public interest, convenience, and necessity" and the carrier seeking designation as an ETC meets the two requirements of 47 U.S.C. § 214(e)(1):

- (A) offer the services that are supported by federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own

¹ 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201(c).

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 therefore using media of general distribution.

WAC 480-123-030 specifies contents for an ETC petition, which also include the own-facilities requirement and the advertising obligation.

Cintex does not meet the own-facilities requirement under 47 U.S.C. § 214(e)(1)(A) and WAC 480-123-030(1)(b). In its original petition, Cintex alleged that it was a facilities-based carrier offering services supported by the USF through a combination of its own facilities and the facilities of Sprint. It claimed that it could provide access, in part over its own facilities, to directory assistance and access to operator services, both of which were services supported by the USF. In November 2011, however, the FCC in its USF/ICC Transformation Order eliminated directory assistance and operator services from the list of USF-supported services.² Accordingly, Cintex can no longer credibly contend that it meets the own-facilities requirement of 47 U.S.C. § 214(e)(1)(A). It is clear that mobile virtual network operators who rely on other carriers' networks to provide wireless services now lack any valid claim that they are facility-based.

Furthermore, Cintex does not meet the conditions for forbearance from the own-facilities requirement. In its 2012 Lifeline and Link Up Reform Order,³ the FCC granted forbearance from applying the own-facilities requirement of Section 214(e)(1)(A) to any telecommunications carrier that seeks ETC designation for Lifeline support only, subject to two conditions: (1) the carrier must comply with certain 911 requirements; and (2) the carrier must file, and the FCC must approve, a compliance plan that provides specific information regarding the carrier's service offerings and outlines the measures the carrier will take to implement the obligations specified in the Lifeline and Link Up Reform Order as well as further safeguards against waste, fraud and abuse. States cannot grant any designation for Lifeline-only ETC applications and carriers cannot receive reimbursement from the Lifeline program until the FCC approves the carriers' compliance plans.⁴ The FCC has not approved Cintex's compliance plan.

Cintex's petition does not provide any details on specific measures it takes to prevent waste, fraud and abuse of the federal Lifeline program. Even though it is not explicitly required by WAC 480-123-030, staff consider this a critical part of an ETC petition because it directly links

² *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*) ¶ 78; 47 C.F.R. § 54.101.

³ *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb 6, 2012) (*"Lifeline and Link Up Reform Order"*), ¶¶ 361–391.

⁴ *Id.* at 380.

to whether granting the company ETC status will be consistent with the public interest.

In addition, Cintex seeks ETC designation for both Lifeline and Link Up support. The FCC's Lifeline and Link Up Reform Order eliminated Link Up support except for ETCs who are receiving high cost support on Tribal lands. Cintex has not updated its petition to reflect the change in the federal rule.

Cintex has not been responsive to staff inquiries. Staff sent out an informal information request on July 8, 2011. The company provided a response on August 17, 2011, and supplemented the response on August 19 and October 5, 2011. However, all staff inquiries sent afterwards were never answered. Staff requested a status update with regard to the company's compliance plan on April 9, 2012. The company did not provide the requested information. Staff contacted the company's counsel, Mr. Robert Felgar, on September 11 and October 4, 2013, by phone and by email. Mr. Felgar did not respond. In the October 4, 2013, email to the company, staff requested a response by October 15, 2013. The company has not responded to that request.

III. Conclusion

Staff believes that Cintex does not meet the federal and state rules for ETC designation in the proposed service areas. Designating Cintex as an ETC to serve low-income households will not be consistent with the public interest. Staff recommends the commission issue an order denying Cintex Wireless, LLC's petition for designation as an Eligible Telecommunications Carrier.