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BEFORE THE ARIZONA CORPORATION COMMISSION

2013 JAN 25 A 11:59

COMMISSIONERS

BOB STUMP, Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

AZ CORP COMMISSION  
DOCKET CONTROL

In the matter of: )  
 JOSEPH COSENZA and ANDREA BENSON, )  
 husband and wife; )  
 U.S. MEDIA TEAM, LLC, an Arizona limited )  
 liability company; )  
 THOMAS BRANDON and DIANE M. )  
 BRANDON, husband and wife; )  
 CELL WIRELESS CORPORATION, Nevada )  
 corporation, formerly known as U.S. SOCIAL )  
 SCENE; )  
 DAVID SHOREY and MARY JANE SHOREY, )  
 husband and wife; )  
 Respondents. )

DOCKET NO. S-20763A-10-0430

**SECURITIES DIVISION'S RESPONSE  
TO RESPONDENTS DAVID SHOREY  
AND MARY JANE SHOREY MOTION  
FOR AWARD OF COSTS AND  
ATTORNEYS FEES**

(Assigned to Administrative Law Judge Stern)

Arizona Corporation Commission

**DOCKETED**

JAN 25 2013

DOCKETED BY	
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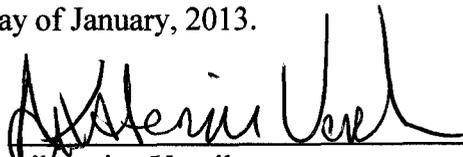
On January 18, 2013 Respondents David Shorey and Mary Jane Shorey ("Respondents") filed a request that they be awarded their attorneys' fees in this case. However, such a request is premature. In order to be awarded attorneys' fees, Respondents must first prevail in this case. That has not occurred. Prior to entry of a final order, the Commissioners must first decide at Open Meeting whether to accept the proposed Recommended Opinion and Order and second, whether to accept the Securities Division's exceptions. If, at the Open Meeting, the Commission decides in favor of Respondents, it would then be appropriate for the Respondents to request attorneys' fees. However, until the Commission decides on the merits of this case, Respondents' request is premature.

1 If the Commission decides in favor of Respondents, the Motion is then appropriately  
2 considered by the Administrative Law Judge. A.R.S. § 41-1007(A), relied upon by Respondents,  
3 states in relevant part, “. . . a hearing officer or administrative law judge shall award fees and  
4 other costs to any prevailing party in a contested case or appealable agency action brought  
5 pursuant to any state administrative agency authority.” Furthermore, a Respondent is considered  
6 to be a “prevailing party” only if both (1) “the agency position was not substantially justified”  
7 and (2) “the person prevails as to the most significant issue or set of issues.” *Id.*

8 Therefore, if the Commission decides in favor of Respondents, the request would  
9 appropriately be considered by the Administrative Law Judge. The Securities Division reserves  
10 the right to discuss the merits of the request at that time.

11 RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of January, 2013.

12  
13 By:



14 Katherine Vervilos  
15 Staff Attorney for the Securities Division of  
16 the Arizona Corporation Commission

17 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing  
18 filed this 25<sup>th</sup> day of January 18, 2013, with

19 Docket Control  
20 Arizona Corporation Commission  
21 1200 West Washington  
22 Phoenix, AZ 85007

23 COPY of the foregoing hand-delivered this  
24 25<sup>th</sup> day of January, 2013, to:

25 Administrative Law Judge Marc Stern  
26 Arizona Corporation Commission/Hearing Division  
1200 West Washington  
Phoenix, AZ 85007

1 COPY of the foregoing mailed  
this 25<sup>th</sup> day of January, 2013, to:

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11 By: *Kara Honke*  
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