**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**
**DIVISION OF FINANCE AND CORPORATE SECURITIES**
**SECURITIES SECTION**
**BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**
**STATE OF OREGON**

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| **In the matter of: AMERICAN WIRELESS SYSTEMS, INC.; DEXTER SELWYN COHEN; JEFFREY DANE HOWES; STEVEN GAIL JOHNSON, Respondents.** | **O-95-0012** **FINAL ORDER** |

On April 11, 1995, the Director of the Department of Consumer and Business Services for the State of Oregon issued an Order containing Findings of Fact, Conclusions of Law, and an Order to Cease and Desist and Assessing Civil Penalties. In the Order, Respondents AMERICAN WIRELESS SYSTEMS, INC. (hereinafter "AMERICAN WIRELESS"), DEXTER SELWYN COHEN (hereinafter "COHEN"), JEFFREY DANE HOWES (hereinafter "HOWES"), and STEVEN GAIL JOHNSON (hereinafter "JOHNSON"), were advised of their right to a hearing, and that a hearing would be held if a demand for such hearing was filed within 20 days after service of the Order.

All Respondents were duly served with copies of the Order. Service was effected by mailing a copy to each Respondent at their address by both certified and regular mail. The certified mail receipts for AMERICAN WIRELESS, HOWES, and JOHNSON, were returned with a signature affixed to each, showing that the Orders were received by each Respondent. The receipt for AMERICAN WIRELESS was signed on April 25, 1995, the receipt for HOWES was signed on April

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21, 1995, and the receipt for JOHNSON was signed on May 1, 1995. The certified letter and receipt for COHEN was returned indicating that it was "unclaimed", and the regular mailing has not been returned. On May 1, 1995, counsel for all of the Respondents contacted this office, and requested an administrative hearing for all respondents. Thereafter, in a letter dated July 24, 1995, counsel advised the Director that Respondents were withdrawing their previous request for a hearing.

Therefore, based on the investigative report of James M. Hanson, Jr. and the evidence contained in the investigation file in this matter, the Director finds the following:

**FINDINGS OF FACT**

The Director **FINDS** that:

The Respondents:

1. At all times material herein, Respondent AMERICAN WIRELESS SYSTEMS, INC. (hereinafter "AWS") was a California corporation. AWS's last known address was 11811 N. Tatum Rd., Suite 1100 Phoenix, Arizona 85028.

2. At all times material herein, Respondent DEXTER S. COHEN (hereinafter "COHEN") was the Chief Executive Officer of Respondent AWS, and whose last known mailing address was 2900 Park Newport, #225, Newport Beach, California 92660.

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3. At all times material herein, Respondent JEFFREY D. HOWES (hereinafter "HOWES") was the president of Respondent AWS, and whose last known mailing address was 54 Biltmore Estates Dr., Phoenix, Arizona 85016.

4. At all times material herein, Respondent STEVEN G. JOHNSON (hereinafter "JOHNSON") was the Chief Operating Officer of Respondent AWS, and whose last known mailing address was 10800 E. Cactus Rd. #27, Scottsdale, Arizona 85259.

The Program:

5. Between January 9, 1991 and November 9, 1992, Respondents offered and sold to ten Oregon residents, so-called "general partnership interests" in three ventures to construct, equip, and operate commercial television stations at three separate locations in the United States. Investment by the ten Oregonians totaled $168,750. The stations were to be licensed by the Federal Communications Commission ("FCC") to broadcast programming using certain frequencies in the microwave ranges. This form of television broadcasting is called Multi-channel, Multipoint, Distribution Service ("MMDS"), and is known as "wireless cable" television.

6. The partnerships were devised, offered, and sold by or at the direction of Respondents. The funds from the sales were received by Respondents. Respondents disbursed

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all monies received from investors.

7. Respondents used certain offering materials in selling the investments in the ventures to Oregon investors. These materials promoted the investment as having a high return on investment, to-wit: a projected return on investment over a four year period of 500%. The materials did not state a basis for the projections. Further, the offering materials did not fully disclose the use of the proceeds from investors, and did not disclose the risks inherent to the venture.

8. At no time material herein were the so-called g general partnership interests registered with the State of Oregon Department of Consumer and Business Services (then the Department of Insurance and Finance), Division of Finance and Corporate Securities, Securities Section ("Securities Section") for sale in Oregon as a security.

9. At no time material herein were Respondents COHEN, HOWES, or JOHNSON licensed by the Securities Section to sell securities in Oregon.

10. At no time material herein did Respondent AWS license Respondents COHEN, HOWES, or JOHNSON as issuer salespersons in Oregon with the Securities Section.

11. As a part of the offer and sale of the general partnership interests to Oregon residents, Respondents omitted to state certain information about the investment,

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including but not limited to:

(1) The actual amount of the proceeds which would be used for expenses not directly associated with the construction, equipping, and operation of the station;

(2) The risks inherent in the operation of the station;

(3) That the projected return on investment was not based in fact;

(4) That the offer and sale of the general partnership interests may involve the sale of a security;

(5) That other states had taken administrative action a against Respondents for violations of state securities laws.

## CONCLUSIONS OF LAW

The Director **CONCLUDES** that:

1. The investments offered and sold by Respondents as set forth in the Findings of Fact above were investment contracts, and, as such were securities under ORS 59.015(17)(a).

2. Respondents, by offering and selling the investments as set forth above, offered and sold securities which were not registered in Oregon, in violation of ORS 59.055.

4. Respondent AWS, by employing others to offer and sell the investments as set forth above, when those others were not licensed to AWS as issuer salespersons, violated ORS 59.165(3).

5. Respondents COHEN, HOWES, and JOHNSON, by and through their activities in promoting the general partnerships, offered and sold securities in violation of

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ORS 59.165(1).

6. Respondents offered and sold investments without providing the disclosures and information as set forth in Finding of Fact # 11 above, and, therefore, omitted material facts in connection with sales of securities, in violation of ORS 59.135(2).

7. Respondent HOWES, as president of Respondent AWS, is responsible for the acts and omissions of others in connection with the offer and sale of general partnerships by and on behalf of Respondent AWS, pursuant to ORS 59.115(3).

8. Respondent HOWES, as president of Respondent AWS, is responsible for the a acts and omissions of others in connection with the offer and sale of general partnerships by and on behalf of Respondent AWS, under the common-law doctrine of Agency.

9. Respondent COHEN, as Chief Executive Officer of Respondent AWS, is responsible for the acts and omissions of others in connection with the offer and sale of general partnerships by and on behalf of Respondent AWS, pursuant to ORS 59.115(3).

10. Respondent COHEN, as Chief Executive Officer of Respondent AWS, is responsible for the acts and omissions of others in connection with the offer and sale of general partnerships by and on behalf of Respondent AWS, under the common-law doctrine of Agency.

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**ORDER**

The Director, pursuant to ORS 59.245 hereby **ORDERS** that Respondents AWS, COHEN, HOWES, and JOHNSON shall **CEASE AND DESIST** from:

1. Transacting business in the State of Oregon in violation of ORS 59.055.

2. Transacting business in the State of Oregon in violation of ORS 59.165.

3. Transacting business in the State of Oregon in violation of ORS 59.135(2).

4. Violating any of the provisions of ORS Chapter 59.

The Director, pursuant to ORS 59.045, hereby **DENIES THE USE OF ANY EXEMPTIONS** to Respondents AWS, COHEN, HOWES, and JOHNSON which would otherwise be available under ORS Chapter 59.

The Director, pursuant to ORS 59.995, hereby imposes **CIVIL PENALTIES** against Respondents as follows:

Respondents are hereby ordered to pay, jointly and severally, a total civil penalty of $20,000, as follows:

(1) $7,500 for violations of ORS 59.055;

(2) $5,000 for violations of ORS 59.165;

(3) $7,500 for violations of ORS 59.135.

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