

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

APPLICANT: BRANDY L. WREATH,
DIRECTOR, PUBLIC UTILITY DIVISION
OKLAHOMA CORPORATION COMMISSION

JLM
Epc

RESPONDENT: TAG MOBILE, LLC

RELIEF REQUESTED: CONTEMPT) CAUSE NO. EN 201300116
)
) ORDER NO. **634298**

HEARING: September 25, 2014, in Courtroom B
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before James L. Myles, Administrative Law Judge

APPEARANCE: J. David Jacobson, Attorney *representing* TAG Mobile, LLC
Matt A. Mullins, Assistant General Counsel *representing* Public Utility
Division, Oklahoma Corporation Commission
Jerry J. Sanger, Tessa L. Hager, Assistant Attorneys General *representing*
the Office of the Attorney General of the State of Oklahoma

**FINAL ORDER APPROVING JOINT STIPULATION
AND SETTLEMENT AGREEMENT**

The Oklahoma Corporation Commission ("Commission") being regularly in session and the undersigned Commissioners being present and participating, there comes on for consideration and action the above Cause for an Order of the Commission.

I. PROCEDURAL HISTORY

On December 3, 2013, Brandy L. Wreath, Director of the Commission's Public Utility Division ("Applicant"), initiated this Cause by filing a Complaint, Information, Summons, and Notice of Citation for Contempt.

On December 4, 2013, Applicant filed an Amended Complaint, Information, Summons, and Notice of Citation for Contempt ("Complaint"). The Complaint directed TAG Mobile, LLC ("TAG Mobile" or "Company") to appear at the Commission on January 15, 2014, before an Administrative Law Judge ("ALJ").

On January 9, 2014, TAG Mobile filed a Motion for Protective Order. The motion was set for hearing before the ALJ on January 16, 2014, and heard on that date. The Commission granted the motion by Order No. 620765 issued on January 23, 2014.

On January 15, 2014, by agreement of the parties, the initial hearing was continued to January 22, 2014.

At the initial hearing on January 22, 2014, TAG Mobile made an oral motion to establish a procedural schedule that was accepted and recommended by the ALJ.

On March 6, 2014, the Commission issued its Order Establishing Procedural Schedule, Order No. 622303, in which the hearing on the merits was set to commence on June 11, 2014, at 9:30 a.m. before the ALJ.

On April 17, 2014, an amended procedural schedule, as agreed to by the parties, was recommended by the ALJ. On April 24, 2014, the Commission issued its Order Amending Procedural Schedule, Order No. 624447, in which the hearing on the merits was scheduled to commence on August 21, 2014, at 9:30 a.m. before the ALJ.

On August 21, 2014, by agreement of the parties, the hearing on the merits was continued to September 25, 2014.

On September 16, 2014, the Attorney General filed his Entry of Appearance.

On September 23, 2014, Mark Argenbright filed Direct Testimony on behalf of the Applicant.

On September 23, 2014, a Joint Stipulation and Settlement Agreement (the "Stipulation") was filed as Exhibit MA-2 to Mr. Argenbright's Direct Testimony. The Stipulation was executed by the Applicant and TAG Mobile (collectively, the "Stipulating Parties") and detailed the settlement of all issues in this Cause. The Stipulation is attached to this Final Order as Exhibit "A."

On September 25, 2014, the record was opened at the hearing on the merits by the ALJ. The ALJ took evidence in support of the Stipulation and entered Mr. Argenbright's pre-filed Direct Testimony into the record.

At the close of the hearing, the ALJ recommended that the Commission approve the Stipulation.

II. SUMMARY OF ALLEGATIONS

This Cause involves the Complaint filed by the Applicant alleging that TAG Mobile provided telecommunication services to a significant number of subscribers who appeared to be outside of its authorized service exchange area, and subsequently submitted requests for and did receive federal Lifeline funding for the aforementioned subscribers.

Applicant alleged that TAG Mobile is a wireless provider of telecommunications services and was granted certification as a wireless Eligible Telecommunications Carrier ("ETC") in Cause No. PUD 201100084 pursuant to Order No. 592764, issued January 9, 2012, for the

purpose of providing "non-rural incumbent local exchange" service in the exchanges of Southwestern Bell Telephone, LP, doing business as AT&T Oklahoma ("AT&T Oklahoma"), and Valor Telecommunications of Texas, LP doing business as Windstream Communications Southwest ("Windstream of the Southwest").

Applicant further alleged that a review of certain subscriber lists provided to the Commission's Public Utility Division ("PUD") by TAG Mobile indicated that TAG Mobile provided telecommunication services to a significant number of subscribers who appeared to be outside of its authorized service exchange area, and that TAG Mobile subsequently submitted requests for and received federal Lifeline funding for the aforementioned subscribers.

Applicant further alleged that while TAG Mobile could provide wireless phone service anywhere within the State of Oklahoma, it was only authorized to receive federal Lifeline support for customers located within the service areas for which it was designated as an ETC, by Commission Order No. 592764. Accordingly, receiving federal Lifeline support for any customers located outside the service exchange areas of AT&T Oklahoma and Windstream of the Southwest was a violation of Order No. 592764.

Applicant further alleged that the unauthorized service by TAG Mobile constituted a direct violation of both Commission Order 592764 and Commission rules. *See*, 17 O.S. § 131; OAC 165:55-23-1 and 165:55-23-15.

III. SUMMARY OF EVIDENCE

Public Utility Division

On September 23, 2014, Mark Argenbright filed Direct Testimony on behalf of Applicant. Therein, he testified that he is employed by PUD as the Telecom Coordinator. He testified to describe the circumstances that resulted in the filing of the Complaint and to provide support for the Stipulation.

Specifically, he testified that TAG Mobile was granted wireless ETC designation in Oklahoma in Cause No. PUD 201100084, Order No. 592764, issued on January 9, 2012, for purposes of providing Lifeline service in Oklahoma within the service areas of Southwestern Bell Telephone Company d/b/a AT&T Oklahoma and Valor Telecommunications of Texas, LP d/b/a Windstream Communications Southwest, and for receiving Federal Low Income Universal Service support for the provision of such Lifeline service. He also testified that on June 23, 2012, in Cause No. PUD 201200198, Order No. 603440, TAG's ETC designation was revised to allow TAG to provision its Lifeline service on a resale basis in addition to a facilities-based basis.

In response to a question about the purpose of specifying the service territory within which an ETC can offer its Lifeline services, Mr. Argenbright testified that 47 U.S. Code §214(e)(2) specifies that an ETC designation will be associated with a service area designated by the State commission. A service area is required because the ETC, once designated, is obligated

to provide service throughout that service area. Additionally, ETC designation in areas served by rural telephone companies requires an additional public interest finding.

In response to a question regarding whether TAG Mobile, at the time of its application for ETC designation and issuance of the order granting such designation, understood the service territory for which the designation applied, Mr. Argenbright testified that Mr. Frank Del Col, CEO of TAG Mobile, filed written testimony on September 2, 2011, stating that TAG Mobile would limit services to "the service territories ... of Southwestern Bell Telephone, LP, d/b/a AT&T Oklahoma and Valor Telecommunications of Texas, LP d/b/a Windstream Communications Southwest."

Mr. Argenbright further testified regarding the circumstances that were observed that led to the filing of the Complaint. After becoming aware of the existence of a TAG Mobile marketing tent being operated at a location outside of TAG Mobile's designated service area, PUD Staff reviewed the addresses associated with TAG Mobile's Lifeline subscribers contained in customer lists provided in response to data requests in another cause. From this review it was determined that a considerable number of addresses appeared to be located outside the authorized service territory for TAG Mobile.

Mr. Argenbright further testified that after the initial review of TAG Mobile's subscriber lists for June and July 2014, PUD reviewed service addresses associated with TAG Mobile's subscribers for the month of November 2013 to identify those addresses that contained a city name that matched the name of a telephone exchange that was located outside of TAG Mobile's designated service area. The logic being that such "suspect" addresses would have a high likelihood of being out-of-area. A sample of these addresses was taken and compared to study area boundaries (with such boundaries being the geographic definition of the "service area" for rural telephone companies for which TAG Mobile does not have ETC designation) via the use of Google Earth.

Mr. Argenbright further testified that it was confirmed that a significant number of the "suspect" addresses were actually located outside of TAG's designated service area. Specifically, of the total subscribers in the month of November 2013, forty-three percent (43%) had "suspect" addresses. A sample of these subscribers was compared via the Google Earth process and, of that sample, one hundred percent (100%) were found to be located outside of TAG Mobile's designated service area

Mr. Argenbright further testified about the steps PUD took to implement corrective actions. Mr. Argenbright testified that Cause No. EN 201300116 was filed in order to perform further analysis and to seek additional data from TAG Mobile as to their procedures for guarding against the collection of federal Lifeline support for customers who live outside of their designated service area. This included direct meetings with TAG Mobile's executive management.

Mr. Argenbright further testified that TAG Mobile took immediate steps to educate its sales force with regard to the service area restrictions and established a process to verify that an applicant's address was within TAG Mobile's authorized service territory prior to establishing

service. TAG Mobile also voluntarily agreed to neither enroll any new Lifeline subscribers nor seek reimbursement from the federal universal service fund for any existing customers that were potentially located at addresses in questionable zip code areas until such addresses could be checked against the study area boundary / Google Earth mapping process developed by PUD.

Mr. Argenbright further testified that after identifying those subscribers located outside TAG Mobile's service area, TAG Mobile provided notice, via both text and letters, to each such subscriber indicating that they could no longer receive Lifeline service from TAG Mobile and they would need to either find another Lifeline provider or move to an unsubsidized TAG Mobile wireless service. Customers were given thirty (30) days notice and then were disconnected or moved to a different service. TAG Mobile worked with PUD on the wording and timing of the notice.

Mr. Argenbright further testified that in order to test the effectiveness of the actions taken by TAG Mobile, PUD reviewed TAG Mobile's January 2014 subscriber list (this represented the state of the subscriber list two (2) months after the issue was raised with TAG Mobile). This review showed that there was a significant reduction in the number of "suspect" addresses found in TAG Mobile's subscriber list. Utilizing the same review as used for the November 2013 subscriber list, of the total number of subscribers in January 2014, 0.45% were found to be "suspect" addresses.

Mr. Argenbright further testified that the before and after comparison of the subscriber data from November 2013 and January 2014 demonstrates a significant correction to the problem. PUD believes that the efforts extended by TAG Mobile and the results achieved are reasonable and adequate to ensure that compliance with the service area boundaries will be achieved going forward. Given that compliance has been achieved, PUD entered into settlement discussions with TAG Mobile in order to resolve the complaint. Those discussions resulted in the Stipulation.

Mr. Argenbright further testified that the Stipulation provides that TAG Mobile agrees to process all new enrollment applications through a third-party vendor which performs a check against a database of authorized area codes. New enrollments will only be accepted from zip codes which are entirely associated with TAG Mobile's designated service area. Further, prior to approval, TAG Mobile agrees to utilize a back office review process for applications that have been approved by their third-party vendor and perform additional verification of the applicant's identification and then cross check with the data provided on the application, to include the subscriber's address. This includes a check against TAG Mobile's internal database for duplicates. The Stipulation also notes that TAG Mobile, as required, participates in the National Lifeline Accountability Database.

Mr. Argenbright further testified that in order to address the out-of-area problems initially identified, TAG Mobile has agreed to pay the Commission a fine in the total amount of ten thousand dollars (\$10,000) for providing Lifeline service to subscribers that were identified as having an address located in a city associated with a location outside of TAG Mobile's designated service area. The Stipulation provides that TAG Mobile will pay this fine in three (3) equal monthly payments beginning not less than thirty (30) days following the Commission's

issuance of a Final Order Approving the Joint Stipulation and Settlement Agreement in this cause.

Mr. Argenbright further testified that it is PUD's recommendation that the Stipulation be approved. TAG Mobile has taken appropriate steps to resolve this issue going forward and has agreed to pay a fine in conjunction with the original out-of-area subscribers. PUD believes these steps are a reasonable resolution of the issues raised in the complaint and achieve compliance with the service area requirements, and that the Stipulation is fair, just, reasonable and in the public interest.

In response to questions from the ALJ, Mr. Argenbright testified that the goal of this enforcement action is compliance. He further testified that the significant reduction, from November 2013 to January 2014, in TAG Mobile subscribers located outside of its designated service area resulted from the Company's de-enrollment of out-of-area subscribers and new enrollment process designed to prevent out-of-area subscribers from signing up for TAG Mobile's services. Mr. Argenbright testified that the Company has been cooperative throughout the enforcement action and as detailed in the Stipulation, has agreed to pay a fine of ten thousand dollars (\$10,000) for providing Lifeline service to subscribers that were identified as having an address located in a city associated with a location outside of TAG Mobile's designated service area.

TAG Mobile

Counsel for TAG Mobile stated that pursuant to the terms of the Stipulation, the Company will pay the ten thousand dollar (\$10,000) fine in three (3) equal monthly payments, with the first payment being not less than thirty (30) days following the issuance of a Final Order in this Cause.

At the conclusion of the hearing, the ALJ expressed his satisfaction with the resolution of the issues herein through compliance, and recommended the Commission approve the Stipulation.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE COMMISSION FINDS that it is vested with jurisdiction in this Cause pursuant to Article IX, § 19 of the Oklahoma Constitution and 17 O.S. §§ 1, 2, and 9.

THE COMMISSION FURTHER FINDS that the Stipulating Parties executed a Joint Stipulation and Settlement Agreement, attached hereto as Exhibit "A," and incorporated herein by reference.

THE COMMISSION FURTHER FINDS that the Joint Stipulation and Settlement Agreement reflects a full, final, and complete settlement of all issues in this proceeding.

THE COMMISSION FURTHER FINDS that based upon the record, the Joint Stipulation and Settlement Agreement is in the public interest and should be adopted as the order of this Commission.

THE COMMISSION FURTHER FINDS that pursuant to the terms of the Joint Stipulation and Settlement Agreement, TAG Mobile will pay a ten thousand dollar (\$10,000) fine in three (3) equal monthly payments, with the first payment not less than thirty (30) days following the issuance of a Final Order in this cause.

THE COMMISSION FURTHER FINDS that this Cause should be closed.

V. ORDER

THE COMMISSION THEREFORE ORDERS that the findings of fact and conclusions of law herein, are hereby adopted as the findings of fact and conclusions of law of the Commission.

THE COMMISSION FURTHER ORDERS that the Joint Stipulation and Settlement Agreement, attached hereto as Exhibit "A," shall be and the same is hereby approved and adopted by the Commission.

THE COMMISSION FURTHER ORDERS that pursuant to the terms of the Joint Stipulation and Settlement Agreement, TAG Mobile shall pay a ten thousand dollar (\$10,000) fine in three (3) equal monthly payments, with the first payment not less than thirty (30) days following the issuance of a Final Order in this cause.

THE COMMISSION FURTHER ORDERS that this Cause is hereby closed.

THIS ORDER SHALL BE EFFECTIVE immediately.

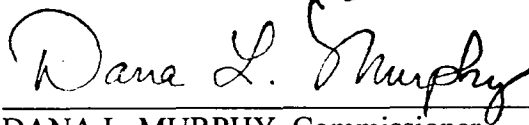
CORPORATION COMMISSION OF OKLAHOMA



BOB ANTHONY, Chairman



PATRICE DOUGLAS, Vice Chairman

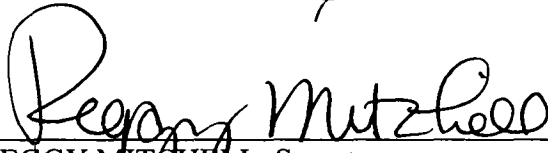


DANA L. MURPHY, Commissioner

CERTIFICATION


DONE AND PERFORMED by the Commissioners participating in the making of this Order, as shown by their signatures above, this 18 day of December, 2014.

[Seal]


PEGGY MITCHELL, Secretary

REPORT OF THE ADMINISTRATIVE LAW JUDGE

The foregoing findings, conclusions and order are the report and recommendations of the undersigned administrative law judge.


JAMES L. MYLES
Administrative Law Judge

December 8, 2014
Date

construed as agreement or acquiescence by any one, or all, of the parties to any particular calculation or issue.

Additionally, as a part of the internal review conducted by PUD Staff in this matter, a thorough and complete analysis was performed of TAG Mobile's marketing of Lifeline service as such marketing relates to TAG Mobile's authorized service territory. TAG Mobile was founded to help low-income consumers obtain access to communications services. To that end, TAG Mobile was designated as a wireless Eligible Telecommunications Carrier ("ETC") in Oklahoma. As a wireless ETC in Oklahoma, TAG Mobile's authorized geographic Lifeline service area is limited to the service territories of Southwestern Bell Telephone, LP d/b/a AT&T Oklahoma ("AT&T Oklahoma") and Valor Telecommunications of Texas, LP d/b/a Windstream Communications of the Southwest ("Windstream Southwest"). Accordingly, while TAG Mobile may provide wireless telephone service anywhere within the State of Oklahoma, it is only authorized to receive federal Lifeline support for consumers located within the service areas for which it was designated as a wireless ETC.

In 2013, it came to the attention of the PUD Staff that TAG Mobile was marketing its Lifeline services to consumers located outside the service territories of AT&T Oklahoma and Windstream Southwest. Upon subsequent analysis by the PUD Staff in this Contempt Action, it was determined that TAG Mobile provided Lifeline service to, and received federal Lifeline support for, a number of consumers with addresses outside of TAG Mobile's authorized service area for Lifeline service. Each of the consumers in the unauthorized area was eligible to receive Lifeline service. However, because the consumers were located outside TAG Mobile's authorized service area, TAG Mobile was not authorized to receive federal Lifeline support for such consumers. Upon notification that the consumers were not within its authorized service territory, TAG Mobile immediately took steps to rectify the situation. TAG Mobile revised its marketing of Lifeline service in Oklahoma to ensure that only consumers with addresses located within its authorized territory were enrolled in Lifeline service. TAG Mobile further agreed to decline to enroll any new consumers in its Lifeline service in Oklahoma and agreed not to seek reimbursement from the Universal Service Fund ("USF") for any existing Oklahoma consumers whose addresses were determined to be potentially located in questionable ZIP codes until such time as the addresses for such consumers were checked and verified against an FCC LEC Exchange/Google Earth mapping program approved by the PUD Staff. As a result, the undersigned parties stipulate and agree to the following:

1. The PUD Staff fully reviewed and approves of the processes TAG Mobile will use to determine whether potential consumers are located within TAG Mobile's authorized service area for the provision of Lifeline service.
2. TAG Mobile has agreed to utilize these processes, which consist of the following:

- All new enrollments/activations of Lifeline service in Oklahoma shall be submitted through a CGM application (in use since November 2013), which identifies authorized ZIP codes and their corresponding geographic locations for marketing/enrollment purposes. The CGM application restricts activation of new enrollments to approved ZIP codes.

At TAG Mobile's direction, CGM removed all questionable/partial ZIP codes from the approved list of areas appropriate for marketing/enrollment in order to ensure compliance and eliminate the possibility of marketing in unauthorized areas. As a result, only applications from within approved ZIP codes (i.e., ZIP codes that are completely and solely within the authorized service area of TAG Mobile in Oklahoma) will be submitted and processed for enrollment in TAG Mobile's Lifeline service.

- At the end of each month, TAG Mobile will run a report to make sure that no Lifeline services are active outside of approved ZIP codes (due, for example, to address changes post activation), and, if any occur, these accounts are removed from the Lifeline support filing for the following month.
3. TAG Mobile further has agreed to utilize a back office process for additional review of submitted applications. The back office review requires:
- All applications for Lifeline service are processed through CGM as TAG Mobile's approved 3rd party verification provider.
 - After TAG Mobile receives an application, the application is processed through CGM for 3rd party verification. From CGM, the application is received by TAG Mobile where the applicant's ID is further verified and used to ensure that the applicant information is the same on the application (DOB, Name & Address), proof of eligibility documentation is reviewed to ensure validity, and that it is sufficient to verify the subsidy by which the applicant has indicated on the application as the reason the applicant qualifies for Lifeline support.
 - The application is re-checked against the current internal TAG Mobile database for duplicates. If the application passes all checks, the account is approved.
 - In addition, beginning February 28, 2014, NLAD was implemented in the state of Oklahoma, and all TAG Mobile

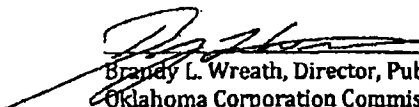
applications are additionally enrolled through NLAD. If an application fails to pass internal review after the CGM/NLAD enrollment review process due to missing documentation or some other discrepancy, the account is flagged. TAG Mobile suspends the account and contacts the customer to resolve issue. If the issue is not resolved within 30 days of the date of the application, the account is rejected/closed.

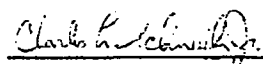
- Such accounts are not included on TAG Mobile's 497 filing for reimbursement until all issues have been resolved and the account is approved.
4. TAG Mobile has agreed to pay to the Commission a fine in the total amount of \$10,000 for obtaining federal Lifeline support for customers located outside TAG Mobile's authorized service territory. The total amount of the fine being \$10,000, shall be payable in three (3) equal monthly payments, with the first payment not less than thirty (30) days following the issuance of a Final Order of the Commission in this cause.
 5. The Stipulating Parties agree that the provisions of this Agreement are the result of extensive consultation and collaboration, and that the terms and conditions of the Agreement are interdependent. The Stipulating Parties agree that this Agreement is in the public interest and, for that reason, they have entered into this Agreement to settle among themselves the issues in this Agreement. This Agreement shall not constitute nor be cited a precedent, nor deemed an admission by any Stipulating Party in any other proceeding, including but not limited to, any future OUSF Lifeline requests or contempt actions or show cause proceedings, except as necessary to enforce its terms before the Commission or any court of competent jurisdiction. The Commission's decision, if it enters an order consistent with this Agreement and ultimately closes this Contempt Action, will be binding as to the matter decided regarding the issues described in this Agreement, but the decision will not be binding with respect to similar issues that might arise in other proceedings. A Stipulating Party's support of this Agreement may differ from its position of testimony in other causes. To the extent there is a difference, the Stipulating Parties do not waive their positions in other causes. Because this is a stipulated agreement, the Stipulating Parties are under no obligation to take the same position as set out in this Agreement in other dockets.

Non-Severability

The Stipulating Parties stipulate and agree that the agreements contained in this Agreement have resulted from negotiations among the Stipulating Parties and are interrelated and interdependent. The Stipulating Parties hereto specifically state and recognize that this Agreement represents a balancing of positions of each of the Stipulating Parties in connection therewith. Therefore, in the event that the Commission does not approve and adopt the terms of this Agreement in total and without modification or condition (provided, however, that the affected party or parties may consent to such modification or conditions), this Agreement shall be void and of no force and effect, and no Stipulating Party shall be bound by the agreements or provisions contained herein. The Stipulating Parties agree that neither this Agreement, nor any of the provisions hereof shall become effective unless and until the Commission shall have entered an Order approving all of the terms and provisions as agreed by the parties to this Agreement and such Order becomes final and this Contempt Action likewise dismissed.

WHEREFORE, the undersigned Stipulating Parties submit this Joint Stipulation and Settlement Agreement as their negotiated settlement of the issues in the above styled cause, and respectfully request the Commission to approve this Joint Stipulation and Settlement Agreement without change and issue an Order closing this Contempt Action.


Brandy L. Wreath, Director, Public Utility Division
Oklahoma Corporation Commission


Charles L. Schneider, Jr. President and CEO
TAG Mobile, LLC