

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

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COMPLAINANT: BRANDY L. WREATH,)	
DIRECTOR OF THE CONSUMER SERVICES)	CAUSE NO. EN 201600037
DIVISION OF THE OKLAHOMA)	
CORPORATION COMMISSION)	
)	
RESPONDENT TAG MOBILE, LLC)	ORDER NO. <u>655272</u>
)	
RELIEF REQUESTED CONTEMPT)	

HEARING: May 26, 2016, in Courtroom B
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Elizabeth A.P. Cates, Administrative Law Judge

APPEARANCES: J. David Jacobson, Attorney *representing* TAG Mobile, LLC
Michael L. Velez, Assistant General Counsel *representing* Consumer
Services Division, Oklahoma Corporation Commission

FINAL ORDER APPROVING TERM SHEET AND CLOSING CAUSE

BY THE COMMISSION:

The Corporation Commission (“Commission”) of the State of Oklahoma being regularly in session and the undersigned Commissioners present and participating, there comes on for consideration and action the Complaint of Brandy L. Wreath, Director of the Consumer Services Division (“CSD”) of the Commission (“Complainant”), seeking a finding of contempt against the Respondent, TAG Mobile, LLC (“Respondent,” or “TAG Mobile”), for violations of the mobile marketing rules and Lifeline Program Rules, as set forth in OAC 165:55-23-1 *et seq.*

I. PROCEDURAL HISTORY

1. On February 23, 2016, CSD filed a Complaint, Information, Summons, and Notice of Enforcement Citation for Contempt of Respondent (“Complaint”). On that same date, a Citation and Notice of Hearing setting the matter for a Hearing before an Administrative Law Judge (“ALJ”) on March 31, 2016. By agreement of the Parties, the Hearing was continued to May 26, 2016, and the Complaint was heard and recommended on that date.
2. The Complaint set forth alleged violations of the mobile marketing rules and Lifeline Program Rules, found in OAC 165:55-23-1 *et seq.*
3. On May 24, 2016, the Response of TAG Mobile to Complaint was filed.
4. On May 26, 2016, prior to the Hearing, Complainant and Respondent agreed to terms in an effort to settle all issues in this Cause.

5. The agreed to terms were reduced to writing and set forth on the Term Sheet (“Term Sheet”) which was admitted into evidence at the Hearing, and is attached hereto as Exhibit “1.” The following terms were agreed to by the Parties:
 - A. Respondent has demonstrated efforts to correct previous deficiencies and maintain compliance with Commission rules;
 - B. Respondent agreed to suspend new customer enrollments for ten (10) days from May 27, 2016, through June 5, 2016;
 - C. Respondent agreed to make a voluntary payment of five thousand dollars (\$5,000.00) to the Commission within forty-five (45) days of a final order adopting the terms identified in this Cause; and
 - D. Complainant agreed that the terms will settle any violations of the mobile marketing rules by TAG Mobile prior to May 26, 2016, including those listed in this Cause.
6. At the Hearing held May 26, 2016, the Term Sheet was presented and supported by CSD’s witness testimony; thereafter, it was admitted into evidence without objection. Further, the Term Sheet sets forth the actions to be taken by TAG Mobile, LLC to settle the alleged violations identified in this Cause. At the conclusion of the Hearing, based upon the testimony of CSD’s witness, statements of Counsel, and evidence presented, the ALJ recommended the Commission approve the terms set forth in the Term Sheet as resolution of this Cause.

II. SUMMARY OF ALLEGATIONS

As alleged in the Complaint filed in this Cause, Respondent is a wireless provider of telecommunications services, and was granted certification as a wireless Eligible Telecommunications Carrier (“ETC”) in the service territories of Southwestern Bell Telephone Company d/b/a AT&T Oklahoma, and Valor Telecommunications of Texas, LP d/b/a Windstream Communications Southwest in Cause No. PUD 201100084, pursuant to Order No. 592764, issued January 9, 2012. CSD further alleged that Respondent’s ETC designation was revised to designate it as an ETC in Oklahoma on both a facilities-based and resold basis in Cause No. PUD 201200198, pursuant to Order No. 603440, issued October 23, 2012.

Complainant alleged that while Respondent was in the process of mobile marketing and/or enrolling customers, CSD discovered the following violations of the mobile marketing rules, as set forth in OAC 165:55-23-1 *et seq.*:

1. Any wireless handset provided in conjunction with the LifeLine Service must clearly identify the provider of the service. OAC 165:55-23-15 (h);
2. All enrollment in any Lifeline Services from any outdoor mobile location is prohibited unless the following conditions are met:

- A. There are at least two banners identifying the name of the ETC, in print that is readable from at least thirty (30) feet away. OAC 165:55-23-16 (b)(1);
- B. The banners are at least three (3) foot by five (5) foot in size and the identification of the ETC takes up at least fifty percent (50%) of the banner. OAC 165:55-23-16 (b)(2);
- C. Employees must wear a shirt that has the ETC's d/b/a name permanently affixed to the shirt. OAC 165:55-23-16 (b)(3);
- D. The available terms, conditions and rates for the Lifeline product(s) must be prominently posted at the location where the marketing is taking place. OAC 165:55-23-16 (b)(4);
- E. The marketer must have permission from either the owner of the property where the marketing is taking place or from the individual responsible for the property. OAC 165:55-23-16 (b)(5);
- F. The marketing must be done in a manner that does not create a traffic hazard or distraction. OAC 165:55-23-16 (b)(7); and
- G. The ETC must provide the Public Utility Division ("PUD") a list of locations by email where mobile marketing is taking place, including the date, time and location, prior to the mobile marketing taking place, in a format prescribed by the Director of PUD. The carrier must also notify PUD of any changes to times or cancellations of previously scheduled events, prior to the change or cancellation. OAC 165:55-23-16 (b)(9).

Complainant alleged that Respondent's violations took place at the following locations on the following dates:

1. On August 25, 2015, at 16th and MacArthur, Oklahoma City, Oklahoma.
2. On August 28, 2015, at 1801 Belle Isle Boulevard, Oklahoma City, Oklahoma.
3. On September 3, 2015, inside the Wal-Mart Neighbor Market, located at N.W. 23rd and Pennsylvania, Oklahoma City, Oklahoma.
4. On September 24, 2015, at 6331 S. Admiral Place, Tulsa, Oklahoma.
5. On September 25, 2015, at 412 S.E. 44th Street, Oklahoma City, Oklahoma.
6. On October 6, 2015, at 412 S.E. 44th Street, Oklahoma City, Oklahoma.
7. On October 6, 2015, at 4500 S. Sunnyslane, Oklahoma City, Oklahoma.

8. On October 6, 2015, at 2112 S.W. 59th Street, Oklahoma City, Oklahoma.
9. On October 6, 2015, at 1700 N.W. 10th Street, Oklahoma City, Oklahoma.
10. On October 7, 2015, at 4500 S. Sunnyslane, Oklahoma City, Oklahoma.
11. On October 7, 2015, at 2112 S.W. 59th Street, Oklahoma City, Oklahoma.
12. On October 8, 2015, at 1700 N.W. 10th Street, Oklahoma City, Oklahoma.
13. On October 8, 2015, at 4500 S. Sunnyslane, Oklahoma City, Oklahoma.
14. On October 8, 2015, at 2112 S.W. 59th Street, Oklahoma City, Oklahoma.
15. On October 9, 2015, at 2112 S.W. 59th Street, Oklahoma City, Oklahoma.
16. On October 9, 2015, at 1700 N.W. 10th Street, Oklahoma City, Oklahoma.
17. On October 9, 2015, at 4500 S. Sunnyslane, Oklahoma City, Oklahoma.
18. On October 12, 2015, at 412 S.E. 44th Street, Oklahoma City, Oklahoma.
19. On October 24, 2015, at 412 S.E. 44th Street, Oklahoma City, Oklahoma.
20. On November 3, 2015, at 412 S.E. 44th Street, Oklahoma City, Oklahoma.

III. SUMMARY OF TESTIMONY

Brandy L. Wreath, PUD Director

Brandy L. Wreath testified on behalf of CSD. Mr. Wreath testified that he is currently employed by the Commission, as the Director of PUD, and that he has previously testified before the Commission and his qualifications were accepted at that time. Mr. Wreath stated that the Complainant and Respondent have agreed to terms in an effort to settle all issues in this Cause, and the purpose of his testimony is to present the Term Sheet which reflects that agreement. Mr. Wreath described each of the four items set forth on the Term Sheet and elaborated on each as follows:

1. ***Respondent has demonstrated efforts to correct previous deficiencies and maintain compliance with Commission rules.*** Mr. Wreath testified that as part of the investigation, Complainant reviewed Respondent's procedures; issued information requests; and had numerous conversations with Respondent's representatives. Mr. Wreath testified that based on the investigation; Respondent's efforts to correct deficiencies; and Respondent's good faith effort to comply with Commission rules; Complainant is comfortable moving forward with TAG Mobile as an ETC.

2. ***Respondent agreed to suspend new customer enrollments for ten (10) days, from May 27, 2016, through June 5, 2016.*** Mr. Wreath testified that a ten-day (10) suspension of new customer enrollments demonstrates Respondent's understanding of the seriousness of Complainant's allegations, while acknowledging Respondent's efforts to correct deficiencies and allowing it to continue business in Oklahoma.
3. ***Respondent agreed to make a voluntary payment of five thousand dollars, (\$5,000.00) to the Commission within forty-five (45) days of a final order adopting the settlement terms in this Cause.*** Mr. Wreath testified that Respondent's voluntary payment is a reasonable resolution; covers the cost to process this Cause; and reflects a reasonable amount given the magnitude of the alleged violations. He noted Respondent's immediate efforts to rectify the issues; including, but not limited to, terminating third party agents and implementing procedures to prevent similar future occurrences.
4. ***Complainant agreed that these terms resolve violations of mobile marketing rules prior to May 26, 2016, including those listed in this Cause.*** Mr. Wreath explained that this will allow Respondent to proceed with a "clean slate."

Finally, Mr. Wreath testified that it is in the public interest to approve the terms to settle all issues in this Cause.

In response to questions from the ALJ, Mr. Wreath testified that the agreement in this Cause resolves all alleged violations on all occasions related to any mobile marketing issues, including any for which enforcement has not been filed. In response to further questions from the ALJ, Mr. Wreath clarified that although Complainant sought revocation of TAG Mobile's ETC designation in its filing; that is no longer sought. In light of Respondent's good faith effort to comply with Commission rules, it should be permitted to continue business in Oklahoma.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE COMMISSION FINDS that it has jurisdiction in this Cause pursuant to Art. IX, §§ 18 and 19 of the Oklahoma Constitution, and 17 O.S. §§ 1, 2, and 9.

THE COMMISSION FURTHER FINDS that notice was proper and given as required by law and Commission rules.

THE COMMISSION FURTHER FINDS that TAG Mobile, LLC has demonstrated efforts to correct previous deficiencies and maintain compliance with Commission rules.

THE COMMISSION FURTHER FINDS that Complainant and Respondent have agreed to the provisions set forth on the Term Sheet, attached hereto as Exhibit "1," and incorporated herein by reference.

THE COMMISSION FURTHER FINDS that based upon the record, the Term Sheet is in the public interest, and should be approved and adopted by this Commission as a full, final, and complete settlement of all issues in this proceeding.

THE COMMISSION FURTHER FINDS that pursuant to the Term Sheet and as part of its settlement of this Cause, TAG Mobile has voluntarily agreed to suspend new customer enrollments for ten (10) days from May 27, 2016, through June 5, 2016, and make a payment to the Commission in the total amount of five thousand dollars, (\$5,000.00). This payment shall be made within forty-five (45) days from the issuance of a Final Order approving the Term Sheet in this Cause.

THE COMMISSION FURTHER FINDS that this cause should be closed.

IV. ORDER

THE COMMISSION THEREFORE ORDERS that the Findings of Fact and Conclusions of Law set forth above are hereby adopted.

THE COMMISSION FURTHER ORDERS that the Term Sheet, attached hereto as Exhibit "1," shall be, and the same is hereby approved and adopted by the Commission.

THE COMMISSION FURTHER ORDERS that pursuant to the provisions set forth on the Term Sheet, and as part of its settlement of this cause, TAG has voluntarily agreed to suspend new customer enrollments for ten (10) days from May 27, 2016, through June 5, 2016, and make a payment to the Commission in the total amount of five thousand dollars, (\$5,000.00). This payment shall be made within forty-five (45) days following issuance of a Final Order approving the Term Sheet in this cause.

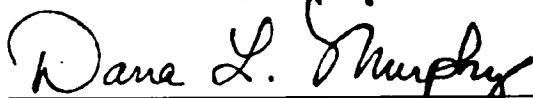
THE COMMISSION FURTHER ORDERS that this cause is hereby closed.

THIS ORDER SHALL BE EFFECTIVE immediately.

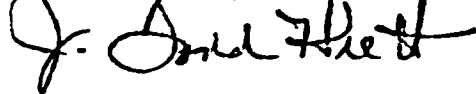
OKLAHOMA CORPORATION COMMISSION



BOB ANTHONY, Chairman



DANA L. MURPHY, Vice Chairman




J. TODD HIETT, Commissioner

CERTIFICATION

DONE AND PERFORMED by the Commissioners participating in the making of this order as shown by their signatures above this 16 day of August, 2016.

[Seal]



PEGGY MITCHELL, Secretary

REPORT OF THE ADMINISTRATIVE LAW JUDGE

The foregoing findings and order are the report and recommendation of the undersigned administrative law judge.



ELIZABETH A.P. CATES
Administrative Law Judge

8/5/16

Date

HEARING EXHIBIT: 1
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CORPORATION COMMISSION)
RESPONDENT TAG MOBILE, LLC)
RELIEF REQUESTED CONTEMPT)



MAY 26 2016

TERM SHEET

The following terms have been agreed to by the Complainant and Respondent in an effort to settle all issues in this cause.

Terms:

1. Respondent: TAG Mobile, LLC has demonstrated efforts to correct previous deficiencies and maintain compliance with OCC rules.
2. Respondent: TAG Mobile, LLC agrees to suspend new customer enrollments for 10 days from May 27, 2016 through June 5, 2016.
3. Respondent: TAG Mobile, LLC agrees to make a voluntary payment of \$5,000 to the OCC within 45 days of a final order adopting the settlement terms in this cause.
4. Complainant agrees these terms settle violations of mobile marketing prior to May 26, 2016, including those listed in this action.