

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

JM
NMS
COMPLAINANT: BRANDY L. WREATH,)
DIRECTOR OF THE CONSUMER SERVICES) CAUSE NO. EN 201600094
DIVISION OF THE OKLAHOMA)
CORPORATION COMMISSION) ORDER NO. **660184**
)
RESPONDENT TRUE WIRELESS, LLC)
)
RELIEF REQUESTED: CONTEMPT)

HEARING: September 22, 2016, in Courtroom B
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Jacqueline T. Miller, Administrative Law Judge

APPEARANCES: Jeff W. Kline, Assistant General Counsel, *representing* Consumer Services
Division, Oklahoma Corporation Commission
Jack G. Clark, Jr., Attorney *representing* True Wireless, LLC
Dara M. Derryberry, Assistant Attorney General *representing* Office of
Attorney General, State of Oklahoma

FINAL ORDER APPROVING JOINT STIPULATION AND SETTLEMENT AGREEMENT

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 above Cause for an Order of the Commission.

I. PROCEDURAL HISTORY

On May 6, 2016, Brandy L. Wreath, Director of the Commission’s Consumer Services Division (“CSD”) initiated this Cause by filing a Complaint, Information, Summons, and Notice of Enforcement Citation for Contempt of True Wireless, LLC, and a Citation and Notice of Hearing.

On May 10, 2016, True Wireless, LLC (“True Wireless”) filed a Motion for Continuance and a Motion to Prescribe Procedural Schedule. These Motions were set for hearing before the Administrative Law Judge (“ALJ”) on May 17, 2016, and were heard and recommended on that date.

On May 13, 2016, True Wireless filed an Answer and Response of True Wireless.

On May 16, 2016, the Attorney General of the State of Oklahoma (“AG”) filed his Entry of Appearance.

On June 8, 2016, the Commission issued an Order Granting Motion for Continuance, Order No. 653315.

On June 28, 2016, the Commission issued an Order Granting Motion to Prescribe Procedural Schedule, Order No. 653837.

On June 29, 2016, the AG filed a Notice of Withdrawal for C. Eric Davis as counsel of record for the Oklahoma Attorney General.

On July 12, 2016, the AG filed a Notice of Withdrawal for Kimberly Carnley as counsel of record for the Oklahoma Attorney General.

On September 2, 2016, the AG filed his Statement of Position.

On September 16, 2016, a Joint Stipulation and Settlement Agreement (the “Stipulation”) was filed with the Court Clerk. The Stipulation was executed by CSD, True Wireless, and the AG (collectively, the “Stipulating Parties”). The Stipulation detailed the settlement of all issues in this Cause. The Stipulation is attached to this Final Order as “Exhibit A.”

Also on September 16, 2016, CSD filed a Motion to Approve Joint Stipulation and Settlement Agreement.

On September 22, 2016, the record was opened at the hearing on the merits, and on the Motion to Approve Joint Stipulation and Settlement Agreement by the ALJ. The ALJ took evidence in support of the Stipulation. At the conclusion of the hearing, the ALJ recommended the Commission approve the Stipulation.

Proposed Findings of Fact and Conclusions of Law were submitted by the parties on December 6, 2016.

II. SUMMARY OF ALLEGATIONS

CSD alleged that during an audit of a True Wireless mobile marketing location at 6110 S. Peoria, Tulsa, Oklahoma, the CSD auditor discovered the following violations of mobile marketing rules:

1. The location was not properly set up with the required two (2) banners;
2. The banners were not at least three (3) foot by five (5) foot in size, with the name of the company taking up at least 50% of the banner;
3. The location did not have terms, conditions, and rates prominently posted;
4. The True Wireless marketer did not have permission for the location from the property owner or other responsible individual; and
5. The True Wireless marketer did not have all required City of Tulsa permits necessary for selling a service at this location.

CSD further alleged that after completing the audit, the CSD auditor informed the marketer

that he must shut down the mobile marketing location due to the alleged violations. The CSD auditor left the mobile marketing location. Shortly thereafter, the CSD auditor returned to the mobile marketing tent and allegedly found:

1. That the mobile marketing tent was still in operation;
2. That the True Wireless marketer handed a phone to a customer; and
3. The banners were not at least three (3) foot by five (5) foot in size, with the name of the company taking up at least 50% of the banner.

III. SUMMARY OF EVIDENCE

CSD Witness, Dennis Eppley

Mr. Eppley testified that he is currently employed by the Public Utility Division and CSD as the Enforcement Manager. Mr. Eppley testified that he has not previously testified before the Commission. Mr. Eppley described his qualifications and experience and requested that he be qualified as an expert witness who may testify in this matter. The ALJ accepted Mr. Eppley's qualifications and found that he is an expert witness who may testify in this matter.

Mr. Eppley testified that he was present during settlement discussions, and that he was testifying in support of the Stipulation and CSD's Motion to Approve Joint Stipulation and Settlement Agreement. Mr. Eppley testified that the Stipulation resolves all issues between the parties in this Cause. Mr. Eppley testified that the Stipulation is fair, just, reasonable, and in the public interest, and it is CSD's recommendation that the Stipulation be approved. Mr. Eppley also confirmed that True Wireless has corrected their processes and is operating within the law.

Mr. Eppley testified that the Stipulation would only become effective upon the Commission issuing a final order approving the Stipulation, without modification. Mr. Eppley described the accusations CSD alleged against True Wireless. Mr. Eppley testified that True Wireless has cooperated with CSD regarding marketing activities in connection with this Cause.

Mr. Eppley testified that as part of this settlement, True Wireless agreed that it would complete the following: 1) implement a more robust mobile marketing training procedure to ensure marketing personnel are thoroughly familiar with mobile marketing rules including, but not limited to, banner requirements, use of branded apparel, and availability of terms and conditions; 2) ensure True Wireless has appropriate permission for all locations at which mobile marketing is being conducted prior to such activities being undertaken; and 3) ensure True Wireless holds all required city or county licenses necessary for all mobile marketing locations.

Mr. Eppley further testified that True Wireless agrees to make a voluntary payment to the Commission in the total amount of \$2,500.00. This payment shall be made to the Commission within sixty (60) days following the issuance of a Final Order in this Cause.

True Wireless Witness, Michael Fina

Mr. Fina testified that he is currently employed by True Wireless as the Chief Executive Officer. Mr. Fina testified that the Stipulation would only become effective upon the Commission issuing a final order approving the Stipulation, without modification. Mr. Fina testified that he was present during settlement discussions, and that he was testifying in support of the Stipulation. Mr. Fina testified that the Stipulation resolves all issues between the parties in this Cause. Mr. Fina testified that he believes that the Stipulation is fair, just, reasonable, and in the public interest, and that the Stipulation should be approved.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE COMMISSION FINDS that it is vested with jurisdiction in this Cause, pursuant to Okla. Const. Art. IX, §§ 18 and 19, and 17 O.S. §§ 1, 2, and 9.

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

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, True Wireless agreed to a settlement of the claims presented herein for the total amount of two thousand five hundred dollars (\$2,500.00). This payment shall be made within sixty (60) 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, True Wireless is ordered to make a payment to the Commission in the total amount of two thousand five hundred dollars (\$2,500.00). This payment shall be made within sixty (60) days following the issuance of a Final Order in this Cause.

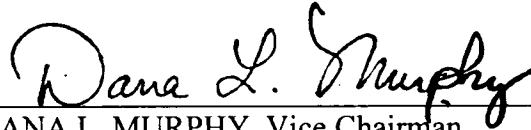
THE COMMISSION FURTHER ORDERS that this Cause is hereby closed.

THIS ORDER SHALL BE EFFECTIVE immediately.

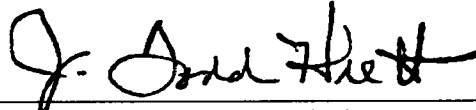
OKLAHOMA CORPORATION COMMISSION



BOB ANTHONY, Chairman



DANA L. MURPHY, Vice Chairman



J. TODD HIATT, Commissioner

CERTIFICATION

DONE AND PERFORMED by the Commissioners participating in the making of this Order, as shown by their signatures above, this 24th day of January, 2017.



PEGGY MITCHELL, Secretary

REPORT OF THE ADMINISTRATIVE LAW JUDGE

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



JACQUELINE T. MILLER
Administrative Law Judge

JANUARY 10, 2017
Date

FILED
SEP 16 2016

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

COMPLAINANT: BRANDY L. WREATH,)	COURT CLERK'S OFFICE - OKC
DIRECTOR OF THE CONSUMER SERVICES)	CORPORATION COMMISSION
DIVISION OF THE OKLAHOMA)	OF OKLAHOMA
CORPORATION COMMISSION)	CAUSE NO. EN 201600094
)	
RESPONDENT TRUE WIRELESS, LLC)	
)	
RELIEF REQUESTED: CONTEMPT)	

JOINT STIPULATION AND SETTLEMENT AGREEMENT

COME NOW the undersigned parties to the above styled proceedings: the Consumer Services Division ("CSD"), the Attorney General of the State of Oklahoma ("AG"), and True Wireless, LLC ("True Wireless") (collectively the "Stipulating Parties"), and present the following Joint Stipulation and Settlement Agreement ("Agreement") for review and approval by the Oklahoma Corporation Commission ("Commission") for the resolution of the issues presented in this proceeding.

The Stipulating Parties represent to the Commission that this Agreement represents a fair, just, and reasonable settlement of the issues contained herein, and that the terms and conditions are in the public interest. The Stipulating Parties urge the Commission to issue an order closing this Cause and approving this Agreement in its entirety.

It is hereby stipulated and agreed to by and among the Stipulating Parties as follows:

Neither this Agreement nor any of the provisions hereof shall become effective unless and until the Commission enters an order approving, without modification, the terms and provisions herein, without supplemental or additional terms, conditions and provisions, and thereby closes this Cause. The provisions of this Agreement are intended to relate only to the specific matters referred to herein, and by and through this Agreement, no party waives any claim or right which it might otherwise have with respect to any matters not expressly provided for herein. Furthermore, no party hereto admits to the correctness or appropriateness of any of the contentions of another party or third party. The Stipulating Parties state and recognize that the Agreement represents a negotiated settlement with respect to the issues presented herein. The Agreement is a balanced compromise of the positions of each party hereto in consideration for the agreements and commitments made of the position of each party hereto and other parties in connection herewith. Accordingly, the Commission shall explicitly recognize that the execution of this Agreement by each party hereto shall not be construed as agreement or acquiescence by any one, or all, of the parties to any particular calculation or issue.

True Wireless was designated as a wireless Eligible Telecommunications Carrier ("ETC") in Oklahoma in Cause No. PUD 200800389. In accordance with its current ETC designation in Oklahoma, True Wireless' 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 True Wireless 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.

On May 6, 2016, Brandy L. Wreath, Director, Consumer Services Division filed his Complaint, Information, Summons, and Notice of Enforcement Citation for Contempt of True Wireless, LLC. The Complaint alleged that on April 28, 2016, the CSD performed an audit of a True Wireless mobile marketing location at 6110 S. Peoria, Tulsa, Oklahoma. It was further alleged that during this audit, the CSD discovered the following violations of mobile marketing rules:

1. The location was not properly set up with the required two (2) banners;
2. The banners were not at least three (3) foot by five (5) foot in size, with the name of the company taking up at least 50% of the banner;
3. The location did not have terms, conditions, and rates prominently posted;
4. The True Wireless marketer did not have permission for the location from the property owner or other responsible individual; and
5. The True Wireless marketer did not have all required City of Tulsa permits necessary for selling a service at this location.

CSD further alleged that after completing the audit, the CSD auditor informed the marketer that he must shut down the mobile marketing location due to the alleged violations. The CSD auditor left the mobile marketing location. Shortly thereafter, the CSD auditor returned to the mobile marketing tent and allegedly found:

1. That the mobile marketing tent was still in operation;
2. That the True Wireless marketer handed a phone to a customer; and
3. The banners were not at least three (3) foot by five (5) foot in size, with the name of the company taking up at least 50% of the banner.

On May 13, 2016, True Wireless filed its Answer and Response, in which it denied the allegations contained in the Complaint and asserted affirmative defenses thereto reserving the right to amend and/or supplement its Answer and Response upon discovery of additional facts.

As a result, the undersigned parties stipulate and agree to the following:

1. True Wireless has cooperated with CSD regarding marketing activities in Connection with this Cause. As part of this settlement, True Wireless agrees that it has completed the following: 1) implemented more robust mobile marketing training procedures to ensure marketing personnel are thoroughly familiar with mobile marketing rules including, but not limited to, banner requirements, use of branded apparel, and availability of terms and conditions; 2) ensured True Wireless has appropriate permission for all locations at which mobile marketing is being conducted prior to such activities being undertaken; and 3) ensured True Wireless holds all required city or county licenses necessary for all mobile

marketing locations.

2. As part of its settlement of this Cause (Cause No. EN 201600094), True Wireless voluntarily agrees to make a payment to the Commission in the total amount of \$2,500.00. This payment shall be made to the Commission no later than sixty (60) days following the issuance of a Final Order of the Commission approving this Agreement.
3. The Stipulating Parties submit this Agreement to the Commission as their negotiated settlement with respect to all issues raised within this Cause filed herein, and all similar issues which could be raised regarding True Wireless, as of July 7, 2016.
4. 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 as precedent, nor deemed an admission by any Stipulating Party in any other proceeding, including but not limited to, any future Universal Service Fund Lifeline requests, show cause, state or federal enforcement actions, or other 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 closes this Cause, 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 subsequent to July 7, 2016. A Stipulating Party's support of this Agreement may differ from its position or 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 enters an order

CAUSE No. EN 201600094

approving all of the terms and provisions as agreed to by the parties to this Agreement, and such order becomes final, and this Cause is closed.

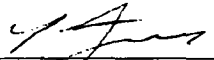
This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument.

DATED this 16th day of September, 2016.

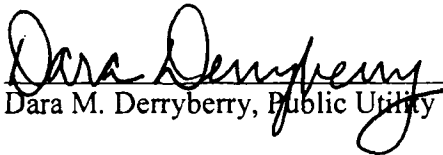
[Signature Page Follows]

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 approve this Joint Stipulation and Settlement Agreement without change, and issue an order closing this Cause.

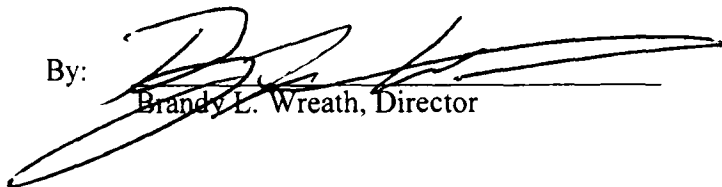
TRUE WIRELESS, LLC

By: 
Michael Fina, President

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA

By: 
Dara M. Derryberry, Public Utility Unit Chief

CONSUMER SERVICES DIVISION
CORPORATION COMMISSION OF OKLAHOMA

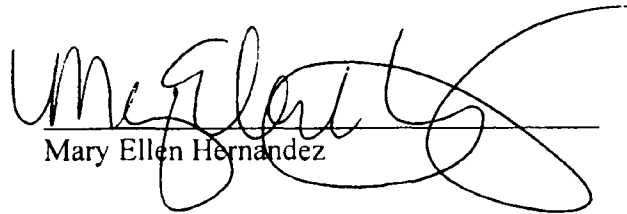
By: 
Brandy L. Wreath, Director

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 16th day of September, 2016, a true and correct copy of the above and foregoing was deposited, with postage prepaid thereon, in the U.S. Mail to:

Dara Derryberry
Victoria Korrect
Office of Attorney General
313 NE 21st Street
Oklahoma City, OK 73105
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victoria.korrect@oag.ok.gov

Jack G. "Chip" Clark, Jr.
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Oklahoma City, OK 73112
cclark@cswp-law.com



Mary Ellen Hernandez