

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 31, 2006

IN RE:

**ALLEGED VIOLATIONS OF TENN. CODE ANN.
§ 65-4-501 *et seq.***

FIRST CHOICEHEALTHCARE, LLC.

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**DOCKET NO.
06-00197**

ORDER APPROVING SETTLEMENT AGREEMENT

This matter came before Chairman Sara Kyle, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel¹ assigned to this docket at the regularly scheduled Authority Conference held on August 23, 2006 for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (“CSD”) and First Choice Healthcare, LLC (“First Choice”), for alleged violations of Tenn. Code Ann. § 65-4-501 *et seq.* (“Do-Not-Fax Law”). The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann. § 65-4-502(a) prohibits persons from transmitting or causing another person to transmit an unsolicited facsimile advertisement. Tenn. Code Ann. § 65-4-504(a) authorizes the TRA to assess penalties for violations of the above statute, including the issuance

¹ The original panel consisted of Chairman Sara Kyle, Director Eddie Roberson and Director Pat Miller. On August 10, 2006, Director Roberson filed a memorandum recusing himself from the panel and on August 16, 2006, this docket was reassigned to Chairman Sara Kyle, Director Pat Miller and Director Ron Jones.

of a cease and desist order and/or the imposition of a civil penalty of up to a maximum of \$2,000 for each violation.

From April 8, 2004 to January 25, 2006, the CSD received ninety-five consumer complaints alleging the receipt of unsolicited facsimile advertisements from First Choice. The CSD provided First Choice with Notices of Violation and began an investigation. On December 5, 2005, the CSD issued a subpoena requiring identifying information from Bullseye Telecom Enterprise Data and Voice Solutions ("Bullseye") in Oak Park, Michigan. Bullseye's response, received on December 13, 2005 established that certain facsimile numbers cited in the complaints belonged to First Choice and provided the addresses of First Choice's locations from where these facsimiles originated.

On December 20, 2005, First Choice contacted the TRA, apologized for its conduct and promised to cease and desist. After receiving additional complaints in January 2006, the CSD notified First Choice that the TRA was undertaking formal enforcement action against it. First Choice expressed an interest in resolving these alleged violations and entered into settlement negotiations.

In negotiating this Settlement Agreement, the CSD considered certain factors set forth in Tenn. Code Ann. § 65-4-116(b), including the Company's size (which was very small), financial status (it has gone out of business due to financial constraints), good faith (which it has exhibited to date), the gravity of the violations and the fact that First Choice has ceased operations.

Settlement Agreement

The proposed Settlement Agreement between the CSD and First Choice was filed with the Authority on August 2, 2006. The Settlement Agreement provides that First Choice must comply with provisions of Tennessee Do-Not-Call and Do-Not-Fax Laws and desist from any

facsimile or telephone advertising in the State of Tennessee for a period of 1 year.

The Settlement Agreement also stipulates that First Choice remit \$20,000 to the TRA over a period of eight (8) months, with the first payment of \$4000 due on June 27, 2006, a second payment of \$4000 due on July 27, 2006 and six (6) \$2000 monthly payments due on the 27th of each month thereafter. While returning a signed Settlement Agreement to the CSD for filing, First Choice made the June and July payments in the good faith belief that the agreement was already in effect.

August 23, 2006 Authority Conference

At the regularly scheduled Authority Conference held on August 23, 2006, the panel considered and unanimously voted to approve this Settlement Agreement. The Panel also acknowledged June and July payments as a part of the settlement.

In granting this approval, the panel considered the following facts: no additional consumer complaints against First Choice have been received by the CSD since the beginning of negotiations, First Choice has ceased operations and demonstrated good faith by making the initial two (2) payments required by this Settlement Agreement, on schedule.

IT IS THEREFORE ORDERED THAT:

1. The Settlement Agreement, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.
2. First Choice shall comply with provisions of Tennessee Do-Not-Call and Do-Not-Fax Laws and desist from facsimile or telephone advertising in the State of Tennessee for a period of 1 year.

3. In addition to the \$8000 already remitted, beginning August, 2006, First Choice shall remit 6 payments of \$2000 monthly due on the 27th of each month for a total of \$20,000 to the TRA.

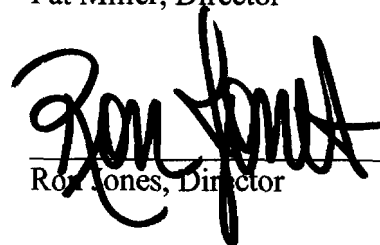
4. Upon payment of the total amount of \$20,000, First Choice is excused from further proceedings in this matter.

5. In the event that First Choice fails to comply with the terms and conditions of this Agreement, the TRA reserves the right to revisit this docket.

6. Any violation of Tennessee's Do-Not-Fax Law by First Choice after the date of this Settlement Agreement shall be treated as a new and separate violation.


Sara Kyle, Chairman


Pat Miller, Director


Ron Jones, Director

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:

ALLEGED VIOLATIONS OF TENN. CODE ANN.
§ 65-4-501 *et seq.*

FIRST CHOICE HEALTHCARE, LLC.

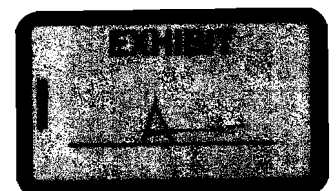
DOCKET NO.

PAID T.R.A.	
Chk #	<u>2201</u>
Amount	<u>\$4,000.00</u>
Rcvd By	<u>R.A.</u>
Date	<u>6/27/06</u>

SETTLEMENT AGREEMENT

This proposed Settlement "Agreement" has been entered into between the Consumer Services and External Affairs Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and First Choice Healthcare, LLC ("First Choice"). This Agreement pertains to ninety-five complaints received by the CSD alleging violations of Tenn. Code Ann. § 65-4-501 *et seq.* ("Do-Not-Fax Law").

From April 8, 2004 to January 25, 2006, the CSD received these complaints alleging the receipt of unsolicited facsimile advertisements from First Choice. The CSD provided First Choice with Notices of Violation and began an investigation. On December 5, 2005, the CSD issued a subpoena requiring identifying information from Bullseye Telecom Enterprise Data and Voice Solutions ("Bullseye") in Oak Park, Michigan. Bullseye's response, received on December 13, 2005, revealed the physical address where several facsimile numbers assigned to First Choice Healthcare were located and verified that the complaints concerning the facsimile



numbers were connected to First Choice Healthcare. On December 20, 2005, First Choice contacted the TRA, apologized for its conduct and promised to cease and desist. On February 28, 2006, the FCC issued a Notice of apparent liability for forfeiture in the amount of \$776, 500 against First Choice.

On April 4, 2006, the CSD notified First Choice that the TRA was undertaking formal enforcement action against it and invited First Choice to a meeting. First Choice responded by contacting the CSD and expressed an interest in resolving these alleged violations, as well as any additional complaints, whether presently known or unknown by the CSD.

Tenn. Code Ann. § 65-4-502(a) prohibits persons from transmitting or causing another person to transmit an unsolicited facsimile advertisement. Tenn. Code Ann. § 65-4-504(a) authorizes the TRA to assess penalties for violations of Tennessee's Do-Not-Fax Law, including the issuance of a cease and desist order and/or the imposition of a civil penalty of up to a maximum of \$2,000 for each violation.

In negotiating this proposed Settlement Agreement, the CSD relied upon the factors stated in Tenn. Code Ann. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violation. First Choice is a small company located in San Diego, California. As of May 8, 2006, First Choice has notified the TRA staff that it has gone out of business, due to financial constraints. The CSD and First Choice agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

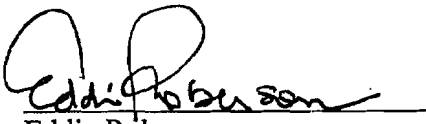
1. First Choice neither admits nor denies that the ninety-five complaints against it are true and valid complaints.

2. After receiving notice of the impending enforcement action, First Choice contacted the CSD and expressed an interest in resolving this matter.
3. First Choice agrees to pay \$20,000 in full settlement of these complaints, the first installment of \$4,000 to be remitted to the Office of the Chairman of the TRA no later than June 27, 2006, a second installment of \$4,000 on July 27, 2006 and the balance in six \$2000 monthly installments, thereafter, due on the 27th of each month. ¹
4. A representative of First Choice will participate telephonically in the Authority Conference during which the Directors consider this Agreement.
5. Upon completion of the terms and conditions of this Agreement, First Choice is excused from further proceedings in this matter.
6. In the event that First Choice fails to comply with the terms and conditions of this Agreement, the TRA reserves the right to revisit this docket. First Choice shall pay any and all costs incurred in enforcing the Agreement.
7. First Choice agrees not to engage in any fax or telephone advertising in the State of Tennessee for a period of 1 year. Subsequently, First Choice agrees to comply with all provisions of Tennessee's Do-Not-Fax Law, Tenn. Code Ann. § 65-4-501 *et seq* and Tennessee's Do-Not-Call Law, Tenn. Code Ann. § 65-4-401 *et seq*.
8. Any violation of Tennessee's Do-Not-Fax Law by First Choice after the date of this Settlement Agreement shall be treated as a new and separate violation.
9. If any clause, provision or section of this Agreement is held to be illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Agreement, and this Agreement shall

¹ The payments may be made in the form of a check, payable to the Tennessee Regulatory Authority, referencing the above TRA Docket No.

be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

10. This proposed Agreement represents the entire agreement between the Parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the Parties relating to the subject matter of this Agreement which are not fully expressed herein or attached hereto.




Eddie Roberson
Chief, Consumer Services and External Affairs Division,
Tennessee Regulatory Authority.

Date


Matt Flint

First Choice Healthcare, LLC.

5/16/06
Date


Tom Dubiel CEO