Description of document:	Reports of Investigation (ROI) for six (6) Federal Communications Commission (FCC) Inspector General (OIG) investigations, 2013-2017
Requested date:	04-December-2017
Released date:	18-September-2018
Posted date:	15-October-2018
Source of document:	Freedom of Information Act Request Federal Communications Commission 445 12th Street, S.W., Room 1-A836 Washington, D.C. 20554 FOIAonline

Federal Communications Commission
Washington, D.C. 20554

September 18, 2018

Re: FOIA Control No. 2018-000184

This letter responds to your Freedom of Information Act (FOIA) request for "a copy of the final report, closing report, closing memo, referral memo, referral letter, Report of Investigation, or other closing document associated with each of the following closed FCC OIG Investigation Cases:" OIG-I-12-0044, OIG-E-12-0054, OIG-AU-12-0059, OIG-I-12-0082, OIG-I-15-0007, OIG-Ll-15-0009, and OIG-I-15-0013.

With one exception, the FCC-OIG ROIs are enclosed with this letter. The exception is as follows:

1. The ROI for OIG-I-12-0044 is withheld in its entirety pursuant to FOIA Exemption 7(B). Exemption 7(B) protects "records or information compiled for law enforcement purposes [the disclosure of which] would deprive a person of a right to a fair trial or an impartial adjudication."[1] The subjects of this investigation are currently involved in administrative adjudications regarding the matters discussed in the report. As such, although OIG's investigation into this matter has closed, OIG estimates a considerable likelihood that disclosure of the report could impact the subjects' respective court proceedings in such a manner as to deprive subjects of their right to a fair trial or impartial adjudication.

With regard to the ROIs for the remaining six closed investigations, as indicated on the ROIs, certain material has been redacted pursuant to FOIA exemptions 5, 6, 7(A), 7(C) and 7(E).

FOIA Exemption 5 protects certain inter-agency and intra-agency records that are normally considered privileged in the civil discovery context. Exemption 5 encompasses a deliberative process privilege intended to "prevent injury to the quality of agency decisions."[2] To fall within the scope of this privilege the agency records must be both predecisional and deliberative.[3] Predecisional records must have been "prepared in order to assist an agency decision maker in arriving at his decision."[4] Deliberative records must be such that their disclosure "would expose

[1] 5 U.S.C. § 552(b)(7)(B).
[2] *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 151 (1975).
[3] *Id.* at 151-52.
[4] *Formaldehyde Inst. v. Dep't of Health and Human Servs.*, 889 F.2d 1118, 1122 (D.C. Cir. 1989); *see also Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980) ("In deciding whether a document should be protected by the privilege we look to whether the document is . . . generated before the adoption of an agency policy and whether . . . it reflects the give-and-take of the consultative process. The

an agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions."[5] We have determined it is reasonably foreseeable that disclosure would harm the Commission's deliberative processes, which Exemption 5 is intended to protect. Release of this information would chill deliberations within the Commission and impede the candid exchange of ideas.

FOIA Exemption 6 protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."[6] Balancing the public's right to disclosure against the individual's right to privacy, we have determined that release of this information would constitute a clearly unwarranted invasion of personal privacy. The redacted information includes the names of individuals who were the subjects of our investigations. We have determined it is reasonably foreseeable that disclosure would harm the privacy interest of the persons mentioned in these records, which Exemption 6 is intended to protect.

Records responsive to your request were withheld under Exemption 7(A), which authorizes the withholding of "records or information compiled for law enforcement purposes [the production of which] could reasonably be expected to interfere with enforcement proceedings."[7] The withheld records were compiled for a law enforcement purpose, a law enforcement proceeding is pending or prospective, and release of the information could reasonably be expected to cause some articulable harm.[8] We have determined that it is reasonably foreseeable that disclosure would harm the Commission or the Federal government's law enforcement activities, which Exemption 7 is intended to protect.

Exemption 7(C) protects "records or information compiled for law enforcement purposes [the production of which] could reasonably be expected to constitute an unwarranted invasion of personal privacy."[9] Balancing the public's right to disclosure against the individual's right to privacy, we have determined that release of this information would constitute an unwarranted invasion of personal privacy. The redacted information includes the names of individuals who were/are employed at this agency. These names were compiled during the course of our investigations and in instances such as this, the balance favors not releasing these names. We have determined it is reasonably foreseeable that disclosure would harm the Commission or the Federal government's law enforcement activities, which Exemption 7 is intended to protect.

Exemption 7(E) protects "records or information compiled for law enforcement purposes [the production of which] would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk a circumvention of the law."[10] Information redacted under this Exemption concerns specific information regarding data gathering techniques and procedures OIG investigators utilized during the course of investigating

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exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents. . . .").

[5] *Formaldehyde Inst.*, 889 F.2d at 1122 (quoting *Dudman Commc'ns Corp. v. Dep't of the Air Force*, 815 F.2d 1565, 1568 (D.C. Cir. 1987).

[6] 5 U.S.C. § 552(b)(6).

[7] 5 U.S.C. § 552(b)(7)(A).

[8] *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224 (1978).

[9] 5 U.S.C. § 552(b)(7)(C).

[10] 5 U.S.C. § 552(b)(7)(E).

that, if made public, may allow targets to avoid detection in future investigations. We have determined it is reasonably foreseeable that disclosure would harm the Commission or the Federal government's law enforcement activities, which Exemption 7(E) is intended to protect.

The FOIA requires that "any reasonably segregable portion of a record" must be released after appropriate application of the Act's exemptions.[11] However, when nonexempt information is "inextricably intertwined" with exempt information, reasonable segregation is not possible.[12] The redactions and/or withholdings made are consistent with our responsibility to determine if any segregable portions can be released. To the extent non-exempt material is not released, it is inextricably intertwined with exempt material.

We also reviewed the responsive documents to determine if discretionary release is appropriate.[13] The materials protected from disclosure under Exemption 6 are not appropriate for discretionary release in light of the personal privacy interests involved. The materials protected from disclosure under Exemption 7 are not appropriate for discretionary release in light of the law enforcement sensitivities involved.

We are required by both the FOIA and the Commission's own rules to charge requesters certain fees associated with the costs of searching for, reviewing, and duplicating the sought after information.[14] To calculate the appropriate fee, requesters are classified as: (1) commercial use requesters; (2) educational requesters, non-commercial scientific organizations, or representatives of the news media; or (3) all other requesters.[15]

Pursuant to section 0.466(a)(8) of the Commission's rules, you have been classified for fee purposes as category (3), "all other requesters."[16] As an "all other requester," the Commission assesses charges to recover the full, reasonable direct cost of searching for and reproducing records that are responsive to the request; however, you are entitled to be furnished with the first 100 pages of reproduction and the first two hours of search time without charge under section 0.470(a)(3)(i) of the Commission's rules.[17] The production did not involve more than 100 pages of duplication and took less than two hours of search time. Therefore, you will not be charged any fees.

You may seek review by filing an application for review with the Office of General Counsel. An application for review must be *received* by the Commission within 90 calendar days of the date of this letter.[18] You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 445 12th St SW, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to FOIA-Appeal@fcc.gov. Please caption the envelope (or subject line, if via e-mail) and the application itself as "Review of Freedom of Information Action."

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[11] 5 U.S.C. § 552(b) (sentence immediately following exemptions).
[12] *Mead Data Cent. Inc. v. Dep't of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977).
[13] *See* President's Memorandum for the Heads of Executive Departments and Agencies, Freedom of Information Act, 74 Fed. Reg. 4683 (2009).
[14] *See* 5 U.S.C. § 552(a)(4)(A), 47 C.F.R. § 0.470.
[15] 47 C.F.R. § 0.470.
[16] 47 C.F.R. § 0.466(a)(8).
[17] 47 C.F.R. § 0.470(a)(3)(i).
[18] 47 C.F.R. §§ 0.461(j), 1.115; 47 C.F.R. § 1.7 (documents are considered filed with the Commission upon their receipt at the location designated by the Commission).

If you would like to discuss this response before filing an application for review to attempt to resolve your dispute without going through the appeals process, you may contact the Commission's FOIA Public Liaison for assistance at:

FOIA Public Liaison
Federal Communications Commission, Office of the Managing Director, Performance Evaluation and Records Management
445 12th St SW, Washington, DC 20554
202-418-0440
FOIA-Public-Liaison@fcc.gov

If you are unable to resolve your FOIA dispute through the Commission's FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road–OGIS
College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
ogis.archives.gov

Sincerely,

Jay C. Keithley

Jay C. Keithley
Assistant Inspector General-
Investigations

Enclosures
cc: FCC FOIA Office

UNITED STATES GOVERNMENT
FEDERAL COMMUNCIATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: February 10, 2016

TO: Jay C. Keithley, Assistant Inspector General for Investigations/Counsel to the Inspector General

FROM: [redacted], [redacted]

SUBJECT: [redacted]

Introduction

In [redacted], [redacted], a former contractor for [redacted], filed a False Claims Act (FCA) case asserting that [redacted] (now known as [redacted]) (collectively, defendants) knowingly submitted or caused to be submitted false claims for payment of federal funds from the schools and libraries universal service support mechanism (e-rate program) for the time period [redacted] Specifically, Relator alleged that defendants defrauded the Universal Service Fund (USF) by violating the e-rate competitive bidding rules.[1]

The case was originally assigned to Agent [redacted] who subsequently left the Federal Communications Commission's Office of Inspector General (OIG), and the case was

[1] Relator also alleged that defendants defrauded the USF by seeking reimbursement from the USF for ineligible services and convincing schools and libraries to purchase more e-rate eligible services than they needed, i.e., gold plating. However, the investigation revealed insufficient evidence to support these claims.

reassigned to Agent [redacted].

Background

Relevant entities

[redacted] (Relator) is a resident of Texas. In [redacted] Relator began working as an independent contractor for [redacted] acting as a Project Manager and Designer.

[redacted] is a California corporation with its headquarters in San Jose, California. As relevant here, [redacted] provided equipment used by certain schools and libraries in [redacted] for the provision of e-rate supported services.

[redacted] is a New York corporation with its headquarters in Phoenix, Arizona. As relevant here, [redacted] installed a communications network, using Cisco equipment, used by certain schools and libraries in Texas for the provision of e-rate supported services.[2]

[redacted] is a Delaware limited liability company with its headquarters in Tempe, Arizona. [redacted] managed the communications network installed [redacted] in the certain schools and libraries in Texas.

Relevant FCC rules

Schools must seek competitive bids to receive e-rate support for e-rate eligible services. 47 C.F.R. § 54.504.[3] The FCC has interpreted the competitive bid rule to require that the bidding process be fair and open. *Mastermind Internet Services Inc.*, 16 FCC Rcd 4028 (2000). A fair and open bidding process prohibits undue influence over the bidding process by "an entity that also participates in the bidding process as a prospective service provider. *Approach*

[2] Relator alleged defendants defrauded the government in 40 different school districts and libraries, but the investigation focused on three – [redacted]

[3] Although the competitive bid requirements are now codified at 47 C.F.R. § 54.503, the competitive bid requirements were codified at 47 C.F.R. § 54.504 during the time period covered by the *qui tam*. A competitive bid requirement can be satisfied by schools' issuing request for proposals (RFPs). RFPs were issued by the relevant schools here.

Learning & Assessment Center, 22 FCC Rcd 5296 (2007).[4] In addition, the Universal Service Administrative Company's 2000 Vendor Manual provides that the FCC permits vendors to provide some assistance to schools and libraries, but such assistance must be "neutral. For example, RFPs may not be written in such a way that only the service provider who rendered the assistance could win the bid." USAC Vendor Manual, Chapter 5, pp 2, 4 (2000). E-rate service providers also must make various certifications designed to ensure that they have "not sought to subvert the effectiveness of the E-rate program's competitive bidding process." *Fifth Report and Order*, 19 FCC Rcd 15808 at para. 70 (2004); *see also* FCC Form 473.

Investigation

FCC OIG interviewed Relator in the [redacted] upon receipt of a draft of the *qui tam* to be filed, and again after the complaint was filed. After receiving the FCA complaint, FCC OIG conducted a survey of e-rate funded equipment at [redacted] issued subpoenas to [redacted], and interviewed numerous school officials and [redacted] former and current personnel. Finally, FCC OIG consulted with FCC Wireline Competition Bureau (WCB), the e-rate subject matter experts, on application of the FCC competitive bidding requirements to the evidence.

Based on the foregoing, the Department of Justice, represented by [redacted], and FCC OIG presented to the defendants evidence discovered during the investigation, showing there was a reasonable basis upon which to conclude defendants defrauded the USF. The evidence showed that [redacted] drafted bills of materials (BOMs), with specifically-enumerated equipment/parts numbers of a specific equipment manufacturer ([redacted]), for the school districts to use in their RFPs. In response, defendants maintained that providing the BOMs to the schools "is acceptable conduct" under the FCC's rules and USAC guidance.

[4] When the FCC re-codified its competitive bid requirements to 47 C.F.R. § 54.503, it also modified the rule to include specific examples, based on express FCC precedent, of activities that would not result in a fair and open competitive bidding process. Those examples include: " the applicant for supported services has a relationship with a service provider that would unfairly influence the outcome of a competition or would furnish the service provider with inside information; someone other than the applicant or an authorized representative of the applicant prepares, signs, and submits the FCC Form 470 and certification; a service provider representative is listed as the FCC Form 470 contact person and allows that service provider to participate in the competitive bidding process; the service provider prepares the applicant's FCC Form 470 or participates in the bid evaluation or vendor selection process in any way." 47 C.F.R. § 54.503(a).

Findings

The results of this investigation suggested defendants violated the FCC's competitive bid requirements. WCB staff opined that, [redacted]

Although the evidence suggests defendants violated the FCC's competitive bidding rules, the evidence is not as strong with regard to finding that the defendants violated the FCA. Specifically, the FCA requires defendants to "knowingly" violate the relevant prohibition.[5] There was no evidence defendants had actual knowledge that drafting BOMs violated the FCC's competitive bid requirements. To the contrary, defendants' personnel readily admitted to drafting BOMs, stating that such vendor assistance was neutral and necessary to ensure that schools' e-rate funding requests were complete and accurate. Moreover, in [redacted] [redacted] received an email from [redacted], in which [redacted] stated that providing a BOM "is completely acceptable and, theoretically, it should not raise any issues."[6]

In addition, [redacted] the FCC's precedent is ambiguous, and therefore would make it difficult, if not impossible, to find that defendants either deliberately ignored or acted in reckless disregard of the FCC's competitive bid requirements. As noted *supra*, USAC guidance provides that vendors may offer neutral assistance to schools. Moreover, a WCB decision issued in December 2011 seriously undercuts scienter with regard to the BOMs as drafted by defendants because, although it found that including vendor specific equipment in RFPs violated the competitive bid requirements, it specifically stated that "[b]ecause the Commission had not provided specific instruction on how to reference manufacturers or brands in . . . requests for proposal, applicants may have reasonably believed that it was permissible to identify desired services using a vendor's name." *Queen of Peace*, 26 FCC Rcd 16466, 16469 (TAPD, WCB 2011).[7]

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[5] The FCA defines "knowingly" to mean that a person "with respect to information – (i) has actual knowledge of the information; (ii) acts in deliberate ignorance of the truth or falsity of the information; or (iii) acts in reckless disregard of the truth or falsity of the information." 31 U.S.C. § 3729(b)(1).

[6] *See* Email from [redacted], to [redacted] re: [redacted] Policy (10/5/07 5:432pm). [redacted] is a well-known, and according to [redacted], a "well-respected" e-rate consulting organization.

[7] The decision also stated that "[w]e decline to penalize . . . applicants who may have engaged in this practice before the release of this order." Not, however, that there is tension between the holding in *Queen of Peace* and WCB's statement to DOJ and FCC OIG regarding whether defendants actions with regard to drafting BOMs violated the

Conclusion and Recommendations

(b) (5), (b) (7)(E) [redacted] Relator continued the case. Subsequently, defendants sought dismissal on the grounds that that the claims the school districts submitted to the USF are not "claims" within the meaning of the FCA because e-rate funds are not "federal funds." In 2014, the Fifth Circuit found that E-rate funds were not 'provided by the United States," and consequently, not subject to the FCA. *United States ex rel. Shupe v. Cisco Sys., Inc.*, 759 F.3d 379 (5th Cir. 2014).[8]

In light of the foregoing, we recommend (b) (5) [redacted].

competitive bid requirements in this case.

[8] However, the District court for the Eastern District of Wisconsin came to a contrary conclusion in its consideration of a motion to dismiss a FCA complaint. *United States ex rel. Heath v. Wisconsin Bell, Inc.*, No. 2:08-CV-00724-LA (E.D. Wisc, July 1, 2015).

From:	[redacted].
To:	Jay Keithley
Cc:	[redacted]; [redacted].
Subject:	Closing ROI--Maritime Communications Land Mobile/[redacted]
Date:	Monday, September 21, 2015 5:33:48 PM

On December 9, the OIG presented the case for potential criminal prosecution to the United States Attorney's Office for the District of Columbia—Civil Division ("USADC"). [redacted]

From: [redacted] (USADC) [mailto:[redacted]@usdoj.gov]
Sent: Thursday, August 13, 2015 1:04 PM
To: Jay Keithley
Cc: Sharon Diskin; [redacted]. (USADC)
Subject: Maritime Communications/Land Mobile (MCLM) Referral

Jay:

[redacted]

Thank you,
[redacted]

[redacted]
Assistant U.S. Attorney
U.S. Attorney's Office for the
District of Columbia, Civil Division
555 Fourth Street, N.W., Room [redacted]
Washington, D.C. 20530
Ph: [redacted]
Cell/Text: [redacted]
Fax: [redacted]
E-Mail: [redacted]@usdoj.gov

UNITED STATES GOVERNMENT
FEDERAL COMMUNCIATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: December 18, 2013

TO: Jay C. Keithley, Assistant Inspector General for Investigations/Counsel to the Inspector General

FROM: [redacted], Investigatory Attorney

SUBJECT: [redacted] Complaint Regarding USAC's Handling of Conflict of Interest in the Low Income (Lifeline) Program (OIG-I-12-0082)

On [redacted], Federal Communications Commission (FCC) Office of Inspector General (OIG) was contacted by [redacted] of [redacted] (COMPLAINANT), counsel to [redacted], a telecommunications provider in the Low Income Universal Service program (LIFELINE[1]). After an initial telephone interview with COMPLAINANT on October 4, 2011, [redacted] sent a written complaint on October 5, 2011 to Investigatory Attorney [redacted], alleging mismanagement and conflicts and interests by the Universal Service Administrative Company (USAC) in administration of the LIFELINE program. In particular, COMPLAINANT asked:

1. What procedures does USAC use to obtain information regarding fund beneficiaries?
2. We know that when USAC is formally auditing a beneficiary, GAGAS applies. What standards apply when USAC claims it is not conducting a formal audit?

[1] *Lifeline Service*. Lifeline is part of the USF and helps qualifying consumers have the opportunities and security that phone service brings, including being able to connect to jobs, family members, and emergency services. Lifeline and Link Up Reform and Modernization, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6662–67, paras. 11–18 (2012) (Lifeline Reform Order); see also 47 C.F.R. §§ 54.400–54.422.

3. Does USAC have the authority to demand information from fund beneficiaries outside the context of a formal audit at all? On what FCC rule or regulation does USAC base that authority? Does USAC conduct such non-audit inquiries and investigations to avoid complying with GAGAS?

4. How is USAC handling confidential information provided by fund beneficiaries? Does it have any written procedures for doing so? Why are those procedures not available on USAC's web site?

At the time of the inquiry, [redacted] was the subject of, among other enforcement-related actions, an on-going criminal investigation, and OIG viewed the inquiry as an attempt to complicate or divert attention from the investigations. Moreover, based on information known to OIG at that time, USAC's efforts to obtain information from [redacted] appeared entirely justified and reasonable.

On [redacted], a Notice of Apparent Liability for Forfeiture (NAL) was issued against [redacted], for apparently willfully and repeatedly violating Sections 54.407, 54.409, and 54.410 of the Commission's rules by requesting and/or receiving support from the Lifeline program of the Universal Service Fund (USF) for ineligible subscriber lines between the months of [redacted]. Based on the Commission's review of the facts and circumstances surrounding these apparent violations, a monetary forfeiture in the amount of [redacted] was proposed.

The issuance of the NAL supports OIG's initial approach to COMPLAINANT's inquiry, and OIG's criminal investigation remains on-going as of the date of this Report. Accordingly, we recommend that this matter be closed and no further action be taken on this case.

UNITED STATES GOVERNMENT
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

TO: David L. Hunt, Inspector General

CC: Thomas Cline, Deputy Inspector General

FROM: Jay Keithley, Assistant Inspector General for Investigations; [redacted], Attorney-Investigator; [redacted], Attorney-Investigator

SUBJECT: [redacted] Equipment Authorization Procedure

DATE: March 30, 2015

I. Basis for Investigation

In May 2014, [redacted] made a hotline complaint to the Department of Defense Office of Inspector (DOD OIG) against his employer [redacted], alleging that, among other things, a helicopter radio communications device was not compliant with FCC rules.[1] In September 2014, DOD OIG referred the matter to the FCC OIG.

In his complaint, [redacted] alleged that: [redacted] helicopter communications system created harmonic emissions that should have prevented it from receiving a certification grant in [redacted] under OET's equipment authorization program. [redacted] Complaint ([redacted]), [redacted]. Testing conducted by [redacted] in [redacted] showed that the [redacted] failed to meet the harmonic emissions requirements under 47 C.F.R. § 90.210(d). *Id.*, ¶ 13. [redacted] discovered that [redacted]'s [redacted] application for certification of the [redacted] contained

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[1] [redacted] is a [redacted]-based business unit of [redacted], a defense contractor based in the [redacted] In 2006, [redacted] operated under the name [redacted], and, thus, the 2006 certification applications were filed under the [redacted] name.

Case Number: OIG-I-15-0007	Case Title: [redacted] NONCOMPLIANT RADIOS

improperly adjusted test information that allowed it to pass the [redacted] certification process despite the harmonic emissions failures. [redacted] Specifically, the [redacted] "was improperly certified because data corrected for the test setup had been improperly adjusted by subtracting a calibration constant of [redacted]." [redacted]. [redacted] delayed disclosing the deficiencies to the FCC until [redacted], approximately one year after [redacted] brought the [redacted]'s deficiencies to his employer's attention in [redacted]. [redacted]. In [redacted]'s [redacted] disclosure to the FCC, [redacted] falsely and misleadingly stated that the discovery of the defect occurred "recently," that the [redacted]'s emissions discrepancies were "very slight," and that [redacted] believed there was no safety or customer impact with products in the field. [redacted]. According to [redacted], [redacted] could not have believed there was no safety impact "because our customer [redacted] a helicopter manufacturer[], was prohibited by the FAA from shipping helicopters to the U.S. Army due to harmonic disturbances produced by [redacted] and antenna ([redacted]) on the aircraft's navigation system during transmit." [redacted]

II. Scope of Investigation

OIG Investigators undertook this investigation to determine whether [redacted] made false statements to obtain its [redacted] certification for the [redacted] under the certification program operated by FCC's Office of Engineering and Technology (OET), and whether OET, or OET's designee, relied on false statements when it granted equipment authorization application in [redacted].

FCC OIG staff conducted interviews and reviewed and analyzed relevant materials as detailed below.

In [redacted], FCC OIG staff interviewed: (1) [redacted], [redacted] ([redacted]) OET; and (2) [redacted], Engineer, OET Laboratory Division.

FCC OIG staff reviewed: (1) [redacted]'s complaint; (2) relevant portions of the underlying application submissions for the [redacted] (under [redacted]); and (3) correspondence between [redacted] and OET concerning the [redacted]'s noncompliance with FCC rules.

III. Background

A. Authority to Regulate Devices Emitting Radio Frequency Energy

The Communications Act of 1934 grants the Federal Communications Commission (FCC) authority to "make reasonable regulations," consistent with "the public interest, convenience, and necessity," to govern "the *interference potential of devices* which in their operation are *capable of emitting radio frequency energy . . . in sufficient degree to cause* *harmful interference to radio communications*." 47 U.S.C. § 302a(a) (emphasis added). The Act also prohibits the manufacture and sale of devices that fail to comply with regulations promulgated under this authority. 47 U.S.C. § 302a(b). ("No person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section."). Acting pursuant to that statutory authority, the FCC generally prohibits the sale of radio frequency devices absent FCC authorization. *See* 47 C.F.R. § 2.803(b).

B. FCC's Equipment Authorization Program and Its Regulatory Framework

The FCC administers an equipment authorization program for radiofrequency (RF) devices under Part 2 of its rules. *See* 47 CFR Part 2, Subpart J. The FCC's Office of Engineering and Technology (OET) administers the equipment authorization program under authority delegated to it by the Commission. 47 CFR § 0.241(b); *see also* 47 C.F.R. § 0.31(a), (i), (j). The equipment authorization program "is one of the principal ways the Commission ensures that RF devices used in the United States operate effectively without causing harmful interference and otherwise comply with the Commission's rules. All RF devices subject to equipment authorization must comply with the Commission's technical requirements prior to importation or marketing."[2] "These requirements not only minimize the potential for harmful interference, but also ensure that the equipment complies with our rules that address other policy objectives – such as RF human exposure limits and hearing aid compatibility (HAC) with wireless handsets. The specific provisions of the three procedures apply to various types of devices based on their relative likelihood of harmful interference and the significance of the effects of such interference from the particular device at issue."[3]

1. Types of Equipment Authorizations

The FCC's rules generally require that equipment be authorized in accordance with one of three procedures specified in Subpart J of Part 2 of the FCC's rules: (1) "verification"; (2) "declaration of conformity"; and (3) "certification." The relevant authorization procedure here is certification, as [redacted] sought and received certification grants for the [redacted]. The FCC recently described the certification process as follows:

> **Certification,** the most rigorous process for devices with the greatest potential to cause harmful interference, is an equipment authorization issued by the Commission or grant of Certification by a recognized [Telecommunications Certification Body (TCB)] based on an application and test data submitted by the responsible party (e.g., the manufacturer or importer). The testing is done by a testing laboratory listed by the Commission as approved for

[2] FCC Report & Order, ET Docket No. 13-44, RM-11652 (Adopted Dec. 17, 2014) ("2014 FCC EA Order"), at ¶ 3 (footnotes omitted).

[3] FCC Report & Order, ET Docket No. 13-44, RM-11652 (Adopted Dec. 17, 2014) at ¶ 4.

> performing such work and the Commission or a TCB examines the test procedures and data to determine whether the testing followed appropriate protocols and the data demonstrates technical and operational compliance with all pertinent rules. Technical parameters and other descriptive information for all certified equipment submitted in an application for Certification are published in a Commission-maintained public database, regardless of whether it is approved by the Commission or a TCB. Examples of devices subject to certification include, but are not limited to, mobile phones; wireless local area networking equipment, remote control transmitters; land mobile radio transmitters; wireless medical telemetry transmitters; cordless telephones; and walkie-talkies. All certified equipment is listed in a Commission database, regardless of whether it is approved by the Commission or a TCB.[4]

2. Applications for Certification

A party seeking certification must submit a written application to the Commission and a technical report containing, among other things, the operating instructions for the user, detailed descriptions of how the device operates, and various measurements and test data to show compliance with FCC technical requirements. 47 C.F.R. § 2.1033.

3. Standards for Deciding Applications for Certification

The Commission "will grant an application for certification if it finds from an examination of the application and supporting data, or other matter which it may officially notice, that: (1) The equipment is capable of complying with pertinent technical standards of the rule part(s) under which it is to be operated; and, (2) A grant of the application would serve the public interest, convenience and necessity." 47 C.F.R. § 2.915(a). Grants must be "made in writing showing the effective date of the grant and any special condition(s) attaching to the grant." 47 C.F.R. § 2.915(b).[5]

"If the Commission is unable to make the findings specified in § 2.915(a), it will deny an application." 47 C.F.R. § 2.919. "The equipment authorization process does not permit the filing of petitions to deny an application for certification. As a practical matter, then, an application for certification is denied only when there is an issue about the performance or operation of the equipment itself." Brief for the FCC, *Transportation Intelligence, Inc. v. FCC,* No. 02-1098, 2003 WL 25586291 (D.C. Cir. 2003). A person aggrieved by an action taken on an equipment authorization application may file with the Commission a petition for reconsideration or an application for review. 47 C.F.R. § 2.923.

[4] *Id*. (internal footnotes omitted).

[5] The Rules in Subpart J of Title 47 of the CFR do not further define or reference the "special condition(s)" mentioned in 47 C.F.R. § 2.915(b).

4. Post-Grant Modifications of Equipment

Once the FCC grants an equipment authorization application, any modification in the "design, circuitry or construction" of the equipment requires a new application unless certain exceptions for minor modifications classified as "permissive changes" apply. 47 C.F.R. § 2.932(a)-(c); *see also* 47 C.F.R. § 2.1043 (changes in certified equipment).

5. Revocation of Equipment Authorization Previously Granted

The Commission "may revoke" any equipment authorization for: (1) "false statements or representations made either in the application or in materials or response submitted in connection therewith or in records required to be [the records retention rule in § 2.938]"; (2) subsequent failure of the equipment to conform to the technical requirements; (3) unauthorized changes to the equipment; or (4) conditions coming to the attention of the Commission that would have warranted denial of the original application. 47 C.F.R. § 2.939(a).

IV. Findings

A. OET Records

Around [redacted] [redacted] submitted an application for certification of the [redacted] to [redacted] a FCC recognized TCB. The testing lab that completed the test reports submitted with [redacted]'s [redacted] application was [redacted]. In [redacted], [redacted], granted the application and issued a certification grant for [redacted].[6]

On November 20, 2013, [redacted] sent confidential correspondence to [redacted] stating:

> [redacted]
>
> ***
>
> [redacted]

[6] *See* OET Equipment Authorization System records for FCC ID [redacted]. The OET Equipment Authorization System is available at https://apps.fcc.gov/oetcf/eas/reports/GenericSearch.cfm .

Case Number:	Case Title:
OIG-I-15-0007	[redacted] NONCOMPLIANT RADIOS

> [redacted].
>
> ***
>
> [redacted] . . .[7]

B. OET Staff Interview

In an interview with OIG staff, [redacted] confirmed that he had reviewed the certification history of the [redacted], including the [redacted] testing report, in advance of the interview.[8] When asked whether there were any irregularities in that history, [redacted] said he saw no irregularities, that "nothing jumped out" at him. At all relevant times, testing labs and TCBs were required to follow OET's requirements for testing devices and reviewing applications. [redacted] explained that there is standard test procedure for licensed devices that tells the tester how to set up the test – and in this case it was procedure TIA-603. Every testing lab was required to use that procedure for a device such as the [redacted]. [redacted]'s [redacted] testing report for the [redacted] stated that the testing lab used the TIA-603 procedure.

[redacted] stated that [redacted]'s statements were ambiguous as to who erred in [redacted]. [redacted] could not tell from [redacted]'s complaint whether [redacted] was implying that the test set-up error was made by [redacted] or the testing firm, or that the TCB overlooked the problem. [redacted] similarly "couldn't see what [redacted] meant," and could not understand whether what [redacted] was referring to was a mistake in the test report or at the lab. [redacted] noted that it could have also been a set up calibration error on a machine. [redacted] confirmed that he looked for, but could not find any reference to the number [redacted] in the test reports,[9] and that he "didn't know what [redacted] meant" with respect to the "test setup" described by [redacted] in [redacted] of the [redacted]'s complaint. [redacted] stated that the applicant – specifically, [redacted], acting on behalf of [redacted] – did not show its work, and that the test setup described by [redacted] was not evident from reviewing the test report submitted with the [redacted] certification application. [redacted] could not even say whether it was different interpretation of the rules or a mistake or something else.

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[7] Correspondence from [redacted] to [redacted], [redacted] ([redacted]) (confidential).

[8] Given the technical nature of the allegations, OIG staff gave [redacted] and [redacted] an opportunity to review the [redacted] complaint before OIG staff interviewed them.

[9] [redacted]'s complaint stated that [redacted]." [redacted] Complaint, [redacted]

Case Number: OIG-I-15-0007	Case Title: [redacted] NONCOMPLIANT RADIOS

With respect to the emissions requirements in 47 C.F.R. § 90.210 that [redacted] cited in his complaint at [redacted] explained that, in addition to limiting the emissions from the transmitter for the intended, operative portion of the spectrum, FCC rules also limit the amount of emissions outside of the operating spectrum portion (i.e. emissions that spill over into adjacent portions of the spectrum).

When a device is granted certification and the rules subsequently change, the device is grandfathered under the old rules – in other words, the rules in effect at the time of certification continue to apply to the device. [redacted] noted that the testing done by [redacted] in [redacted] "does not per se damn the testing done in [redacted]" – if a device was out of compliance in [redacted], it does not necessarily mean that it would have been out of compliance under the rules in effect in [redacted]. When asked whether the issues with [redacted] cited in [redacted]'s complaint at [redacted] should have put [redacted] on notice as to the problem, [redacted] responded that the fact that a device caused interference does not necessarily mean it was non-compliant with the rules.

[redacted] confirmed that [redacted] submitted correspondence to OET in [redacted], reporting [redacted] (see [redacted] Specifically, [redacted] said that [redacted] reported that the [redacted] was [redacted]." [redacted]'s [redacted] correspondence to OET further stated that [redacted]. [redacted] said that OET told [redacted] to [redacted], and later [redacted] came back and told [redacted].

[redacted] explained that, when [redacted] discovered the device was out of compliance, it should have stopped production and shipment immediately. As a practical matter, the reasonableness of how quickly a disclosure must be made depends on the seriousness of the issue, with more serious issues requiring more urgent disclosure. [redacted] acknowledged that the rules do not specify when such a disclosure must be made. According to [redacted], it appeared that [redacted] "waited a good long time," and that [redacted] was "not reasonable" in waiting over a year to disclose and then telling OET that it "just found out." Thus, even though the disclosed extent of non-compliance here was minor (less than 1dB out of limit), [redacted] waited too long.

[redacted] confirmed that, aside from the timing of the disclosure, [redacted]'s actions were standard procedure in the event that a certification holder finds an error. [redacted] added that, in these circumstances, in addition to the issue of whether to stop shipping the production, there is also the issue of whether to do anything about the product that had already been shipped out prior to the disclosure of the problem. The issue of whether to take remedial action for the product in the field depends on the seriousness of the problem. In this case, [redacted] had reported being [redacted] out of limits, which [redacted] explained was a minor non-compliance and did not warrant taking action for the products already in the field. According to [redacted], Being [redacted] out of limits "increases the potential for interference," and in the worst case it would "interfere with something in the same band or an adjacent band" depending on factors like geography, quality of equipment, and other things.

[redacted] noted that it appeared that [redacted] continued to ship old product even after it told OET that [redacted] had stopped shipment, and, although OET would not know whether [redacted] actually ceased shipment or not, it that should not be hard to find out.

V. Conclusion and Recommendation

OIG's investigation failed to substantiate findings of fraud or false statements. However, the investigation revealed possible rules violations including, among other things, the untimely disclosure of non-compliant equipment.

We recommend [redacted]

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Total Call Mobile, Inc.	)	File No.: EB-IHD-14-00017650
	)	Acct. No.: 201632080004
	)	FRN: 0017274911
	)	
	)	

ORDER

Adopted: December 22, 2016 **Released: December 22, 2016**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and Total Call Mobile, Inc. (TCM), have entered into a Consent Decree as part of a global settlement totaling $30,000,000 to fully resolve the Notice of Apparent Liability for Forfeiture and Order the Commission issued against TCM,[1] the Commission's Investigation into whether TCM violated the Commission's Lifeline program rules (Rules),[2] and the FCC's forfeiture penalty claims, as well as claims related to the Covered Conduct as defined and specified in the settlement between TCM and the U.S. Attorney's Office for the Southern District of New York (SDNY Settlement).

2. As part of the Universal Service Fund (USF), the Lifeline program assists qualified low-income consumers in obtaining the opportunities and security that phone service brings, including connecting to jobs, family members, and emergency services. The Lifeline program is administered by the Universal Service Administrative Company (USAC), which is responsible for, among other things, support calculation and disbursement payments for the Lifeline program. An ETC, like TCM, may receive $9.25 per month for each qualifying low-income consumer receiving Lifeline service (Basic Support), and up to an additional $25 per month if the qualifying low-income consumer resides on Tribal Lands.[3] Before receiving such support reimbursements, however, an ETC must meet stringent requirements under the Commission's Lifeline Rules.[4]

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[1] *Total Call Mobile, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 31 FCC Rcd. 4191 (2016) (*TCM NAL*).

[2] Investigation means the investigation commenced by the Bureau in File No. EB-IHD-14-00017650, and the *TCM NAL*.

[3] *See* 47 CFR § 54.403(a); 47 CFR § 54.400(a), (e). *See also* 47 CFR § 54.409.

[4] *See* 47 CFR §§ 54.400–54.422.

3. In response to concerns about TCM's participation in the Lifeline program, the Enforcement Bureau's USF Strike Force conducted an extensive investigation into the company's compliance with the Commission's Rules, including whether TCM enrolled duplicate and ineligible consumers in the Lifeline program through the misuse of eligibility documents such as temporary Supplemental Nutrition Assistance Program (SNAP) cards, including enrolling "phantom" consumers who were created by using the identity information of an individual without the individual's consent, and the accuracy of the consumer data TCM provided in support of its USF reimbursement requests. In addition, the Commission's Wireline Competition Bureau (WCB) directed USAC to hold Lifeline disbursements to TCM beginning with the May 2016 data month.[5]

4. On April 7, 2016, the Commission issued the *TCM NAL* against TCM alleging violations of the Commission's Rules that govern the Lifeline program.[6] To settle this matter, as well as a civil False Claims Act matter with the U.S. Attorney's Office for the Southern District of New York, TCM agrees to pay $30,000,000 in connection with this global settlement, admits that it violated the Commission's Rules governing the Lifeline program, relinquishes its federal and state Eligible Telecommunications Carrier (ETC) designations, and agrees to no longer participate or seek to participate in the Lifeline program. Pursuant to this settlement agreement, TCM will withdraw and not pursue any objections presently before USAC and the Commission related to claims involving the $7,460,884 in Lifeline reimbursements held by USAC, including the Letter from Steve Augustino, Counsel for TCM, Kelley Drye & Warren, LLP, to Michelle Garber, USAC (May 9, 2016) and Total Call Mobile, Inc., NAL/Acct. No. 201632080004, Response to Paragraph 102 of the Notice of Apparent Liability for Forfeiture, FCC 16-44 (2016). The $7,460,884 shall be deemed to be part of the global settlement amount paid by TCM.

5. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation of TCM.[7]

6. We do not set for hearing the question of TCM's basic qualifications to hold or obtain any Commission license or authorization, as TCM with this Consent Decree is agreeing to withdraw from, and not participate again in, the Lifeline program.

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[5] *Total Call Mobile, Inc.,* Order Directing Temporary Hold of Payments (DA 16-708) (June 22, 2016).

[6] *TCM NAL*.

[7] Investigation means the investigation commenced by the Bureau's USF Strike Force in File No. EB-IHD-14-00017212 and the *TCM NAL*.

7. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), and 503(b) of the Act[8] and the authority delegated by Sections 0.111 and 0.311 of the Rules,[9] the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

8. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** and the NAL and Order are **CANCELLED**.

9. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Yasunori Matsuda, Chief Executive Officer, Total Call Mobile, LLC, 1411 W. 190th Street, Gardena, CA 90248, to Patrick O'Donnell and Brita Stransberg, Harris, Wiltshire & Grannis, LLP, counsel for Total Call Mobile, Inc., 1919 M Street, NW, 8th Floor, Washington, DC. 20036, and to Steven A. Augustino, Kelley Drye & Warren LLP, Washington Harbour, Suite 400, 3050 K Street, NW, Washington, D.C. 20007.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

[8] 47 U.S.C. §§ 154(i), 503(b).

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Total Call Mobile, Inc.	)	File No.: EB-IHD-14-00017650
	)	NAL Acct. No.: 201632080004
	)	
	)	
	)	

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Total Call Mobile, LLC (TCM),[1] by their authorized representatives, hereby enter into this Consent Decree for the purposes of terminating the Bureau's Notice of Apparent Liability for Forfeiture and Order and the Bureau's investigation, as defined below, into whether TCM violated Sections 54.405, 54.407, 54.409, and 54.410 of the Commission's rules governing the provision of Lifeline service to low-income consumers,[2] from at least November 2012 through April 2016.

2. On December 19, 2016, TCM, along with affiliated entities, entered into a Stipulation and Order of Settlement and Dismissal (the "SDNY Settlement") with the United States Attorney's Office for the Southern District of New York to resolve claims that TCM engaged in certain fraudulent conduct in connection with the Lifeline program and a *qui tam* action that was filed in the United States District Court for the Southern District of New York pursuant to the False Claims Act, as amended, 31 U.S.C. § 3729 *et seq.* (FCA).[3]

I. DEFINITIONS

3. For the purposes of this Consent Decree, the following definitions shall apply:

(a) "Act" means the Communications Act of 1934, as amended.[4]

(b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.

(c) "Basic Support" means Lifeline support of $9.25 per month for eligible Lifeline consumers.

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[1] On March 31, 2015, Total Call Mobile was re-organized as a limited liability corporation under the laws of Delaware. The FCC was notified of this *pro forma* transfer of control by letter dated April 30, 2015. *See Notification, pursuant to Section 63.24(f) of the Commission's Rules, of a pro forma transfer of control of Total Call Mobile, LLC which holds international Section 214 authority et al.*, File No. ITC-ASG-20150430-00114 (Apr. 30, 2015).

[2] *See* 47 CFR §§ 54.405, 54.407, 54.409, 54.410.

[3] The scope of the releases in the SDNY Settlement are specified in that agreement.

[4] 47 U.S.C. § 151, *et seq.*

(d) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.

(e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.

(f) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which TCM is subject by virtue of its business activities, including but not limited to the Lifeline Rules.

(g) "SDNY" means the United States Attorney's Office for the Southern District of New York.

(h) "Effective Date" means the date by which both the Bureau and TCM have signed the Consent Decree and the U.S. District Court for the Southern District of New York has approved the proposed Stipulation and Order of Dismissal, whichever is later.

(i) "ETC" means an eligible telecommunications carrier designated under, or operating pursuant to, Section 214(e) of the Communications Act, as amended, 47 U.S.C. § 214(e), as eligible to offer and receive support for one or more services that are supported by the federal universal support mechanisms.

(j) "Investigation" means the investigation commenced by the Bureau in File No. EB-IHD-14-00017650, and in *Total Call Mobile, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 31 FCC Rcd. 4191 (2016) (*TCM NAL*) regarding whether TCM violated the Lifeline Rules.

(k) "Lifeline Rules" means Title 47, Code of Federal Regulations, Sections 54.400-54.422, Section 254 of the Act, and Commission orders related to the provision of Lifeline service.

(l) "Monies Held" means the Lifeline support payments to Total Call Mobile temporarily held by USAC pursuant to the notice provided to the company on April 8, 2016, and order issued by the Wireline Competition Bureau dated June 22, 2016 (DA 16-708).

(m) "NLAD" means the National Lifeline Accountability Database that ETCs are required to use, unless otherwise provided, pursuant to 47 CFR § 54.404. NLAD is a third-party independent verification system used by the Universal Service Administrative Company that was designed to identify and deny the enrollment of any potential intra-company duplicate Lifeline consumers.

(n) "Parties" means TCM and the Bureau, each of which is a "Party."

(o) "Person" shall have the same meaning defined in Section 153(39) of the Communications Act, as amended, 47 U.S.C. § 153(39).

(p) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

(q) "TCM" or "Company" means Total Call Mobile, LLC, and its predecessors in interest and successors in interest, including Total Call Mobile, Inc.

(r) "USAC" means the Universal Service Administrative Company, which serves as the administrator for the federal Universal Service Fund.[5]

II. BACKGROUND

3. Lifeline is part of the federal Universal Service Fund (USF or the Fund) and helps qualified consumers have the opportunities and security that essential communications service brings, including being able to connect to jobs, family members, and emergency services.[6] Lifeline service is provided by ETCs designated pursuant to the Act.[7] An ETC may seek and receive reimbursement from the USF for revenues it forgoes in providing the discounted services to eligible consumers in accordance with the Rules. Section 54.403(a) of the Lifeline Rules specifies that an ETC may receive $9.25 per month in Basic Support for each qualifying low-income consumer receiving Lifeline service.[8]

4. The Lifeline Rules establish explicit requirements that ETCs must meet to receive Lifeline support reimbursements.[9] Section 54.407(a) of the Lifeline Rules provides that "[u]niversal service support for providing Lifeline shall be provided to an eligible telecommunications carrier based on the number of actual qualifying low-income consumers it services[.]"[10]

5. The Lifeline Rules prohibit an ETC from seeking reimbursement for providing Lifeline service to a consumer unless the ETC has confirmed the consumer's eligibility to receive Lifeline service.[11] Section 54.410 requires an ETC to receive a certification of eligibility from a subscriber demonstrating that the consumer meets the income-based or program-based eligibility criteria for receiving Lifeline service prior to seeking reimbursement from the USF. Section 54.410(a) further

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[5] *See* 47 CFR § 54.701.

[6] *See Lifeline and Link Up Reform and Modernization et al., Report and Order and Further Notice of Proposed Rulemaking*, WC Dkt. No. 11-42 *et al.*, FCC Rcd 6656, 6662-66, paras. 11-17 (2012) (*2012 Lifeline Reform Order*); *see also* 47 CFR §§ 54.400–54.422.

[7] *See* 47 U.S.C. § 254(e) (providing that "only an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support"); *see also* 47 U.S.C. § 214(e) (prescribing the method by which carriers are designated as ETCs).

[8] *See* 47 CFR § 54.403(a).

[9] *See* 47 CFR §§ 54.400–54.422.

[10] *See* 47 CFR § 54.407(a).

[11] *See* 47 CFR § 54.410(b), (c).

requires ETCs to "implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services."[12]

6. ETCs that provide qualifying low-income consumers with Lifeline discounts file a Form 497 with USAC to request reimbursement for providing service at the discounted rates. Section 54.407(d) provides that an ETC may receive reimbursement from the Fund if the ETC certifies as part of its reimbursement request that it is in compliance with the Lifeline Rules and, to the extent required under that subpart, has obtained valid certifications for each consumer for whom the ETC seeks reimbursement.[13] An ETC may revise its Form 497 data within 12 months after the data is submitted.[14]

7. TCM is an ETC designated to provide wireless Lifeline service in at least 19 states and territories. TCM offered eligible low-income Lifeline consumers a plan that allowed it to seek reimbursements from the Fund. TCM solicited and enrolled consumers for its Lifeline-supported services by contracting with master agents, who were based throughout the United States. These TCM master agents in turn recruited individual TCM sales agents, who performed the individual Lifeline enrollments and were supervised by TCM master agents; since early 2014, enrollments performed by TCM sales agents were reviewed by TCM in real time.

8. In response to a referral made by the Commission's Wireline Competition Bureau and USAC, the Bureau's USF Strike Force (Strike Force) initiated and conducted the Investigation of TCM's Lifeline consumer enrollment practices.

9. TCM relied primarily on in-person sales events to enroll consumers in the Lifeline program. TCM solicited and enrolled consumers by contracting with several distributors based throughout the country, referred to as "master agents," who in turn hired individual "field agents" to engage in face-to-face marketing at public events and spaces. The field agents collected the consumer's information and performed individual enrollments. TCM paid the master agents based in part on the number of subscribers successfully enrolled, and the master agents in turn paid their field agents primarily or exclusively on a commission basis.

10. TCM received and reviewed the vast majority of its Lifeline applications electronically. Using tablet computers, field agents were required to enter a consumer's demographic information (*e.g.*, name, address, date of birth, last four digits of Social Security number) and capture images of the consumer's proof of identification and proof of eligibility (*e.g.*, Supplemental Nutrition Assistance Program (SNAP) card, Medicaid card). TCM had electronic access to the documentation, information, and data entered during the enrollment process, and was responsible for verifying the eligibility of Lifeline applicants.

11. For much of the time from September 2012 to May 2016, TCM failed to adequately screen and train the field agents who acted on the company's behalf. Although TCM provided training to its master agents, from September 2012 until late 2014, TCM relied on the master agents to train field

[12] *See* 47 CFR § 54.410(a).

[13] *See* 47 CFR § 54.407(d).

[14] *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6788, para. 305.

agents and did not ensure that such training was provided. TCM started to directly train field agents thereafter.

12. TCM failed to implement effective policies and procedures to ensure the eligibility of the subscribers for whom TCM requested reimbursement for Lifeline discounts, as required by Lifeline Rules. Although TCM had certain policies and procedures that improved over time, TCM did not effectively monitor compliance with these policies and procedures and failed to prevent the enrollment of ineligible individuals. For much of the time from September 2012 to May 2016, TCM allocated insufficient staff and resources to verifying the eligibility of Lifeline subscribers. For example, pursuant to TCM's 2013 business plan, one staff member was expected to review the eligibility of 6,000 prospective Lifeline customers each month.

13. Hundreds of TCM field agents engaged in fraudulent practices to enroll consumers who were duplicate subscribers[15] or who were otherwise not eligible for the Lifeline program. For example:

a. Certain field agents repeatedly used the same benefit program eligibility proof to enroll multiple consumers. Agents frequently enrolled several different individuals by submitting an image of the same improperly obtained program eligibility card or, in some instances, a fake program eligibility card. Field agents relied on temporary SNAP cards to enroll consumers because these cards did not include the actual benefit recipient's name. Although TCM and Locus managers received numerous reports that field agents were relying on the same program eligibility card repeatedly, they failed to put in place adequate systems and procedures to prevent this practice for much of the time from September 2012 to May 2016.

b. Certain field agents slightly altered the way in which a subscriber's demographic information was input to avoid having TCM identify the application as a duplicate. TCM knew that field agents developed ways to manipulate the consumer's data to bypass the limited automated duplicate checks in place, and failed to put in place an adequate system for screening out duplicate subscribers. TCM enhanced its duplicate check system during the latter portion of the time from September 2012 to May 2016, but some duplicate subscribers continued to be enrolled.

c. Certain field agents tampered with identification or program eligibility cards, and intentionally transmitted blurry or partial images of the documentation, to try to conceal the fact that the information on the documentation did not match the subscriber's actual name or the other information on the Lifeline application. TCM enrolled individuals in the Lifeline program and sought reimbursement for discounts provided to them notwithstanding clear legibility issues with the proof submitted.

[15] A "duplicate subscriber" refers to an individual enrolled to receive Lifeline services from TCM even though the individual or someone in the individual's household also received Lifeline services from TCM, in violation of the one-benefit-per-household requirement.

d. Certain field agents provided their own signature, printed their own name, or wrote a straight or curvy line where the prospective subscriber's signature was supposed to appear on Lifeline applications. TCM enrolled individuals in the Lifeline program and sought reimbursement for discounts provided to them even though the field agents had completed the required customer certification instead of the actual consumer.

e. Certain field agents submitted false consumer addresses and social security numbers to enroll duplicate or otherwise ineligible subscribers. TCM failed to take sufficient actions to identify this false information during its review, and enrolled these individuals in the Lifeline program and sought reimbursement for discounts provided to them.

14. TCM failed to put in place effective mechanisms to oversee the conduct of field agents and detect and prevent field agent abuses. Further, during much of the time from September 2012 to May 2016, even when managers learned that field agents were using the same program eligibility card repeatedly or engaging in some other type of improper practice, TCM often allowed the field agent to continue to enroll subscribers. TCM rarely took corrective actions against field agents who engaged in improper conduct until the latter portion of the time from September 2012 to May 2016, when it enhanced its oversight of field agent practices and deactivated a number of field agents.

15. During the time from September 2012 to May 2016, TCM submitted hundreds of monthly reimbursement requests on Form 497s to USAC that listed the purported total number of qualifying low-income Lifeline subscribers served and the total reimbursement claimed for the month. In each Form 497, TCM certified that the company was in compliance with all of the Lifeline rules and that it had obtained valid certification forms for each subscriber for whom TCM sought reimbursement. At the time that TCM submitted many of these Form 497s, TCM knew that its policies and procedures for reviewing Lifeline applications, verifying consumer eligibility, conducting duplicate checks, and detecting duplicate subscribers were deficient. Although TCM revised some of its Form 497s to correct errors or remove subscribers who were subsequently determined to be potentially ineligible, these revised forms still included consumers who did not meet the Lifeline eligibility criteria.

16. TCM sought and received reimbursement for tens of thousands of consumers who did not meet the Lifeline eligibility requirements.

17. On April 7, 2016, based upon these violations of the Lifeline Rules, the Commission released the *TCM NAL* charging TCM with apparently violating Sections 54.405, 54.407, 54.409, and 54.410 of the Lifeline Rules. [16]

[16] *See Total Call Mobile, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 31 FCC Rcd. 4191 paras. 6, 73, 83, 103 (2016).

18. On April 8, 2016, USAC issued a letter to TCM notifying it of the impending hold of all Lifeline Program funding to the Company in light of the evidence outlined in the *TCM NAL* and requiring the Company to provide sufficient documentation demonstrating its compliance with the Lifeline Rules.[17] On May 9, 2016, TCM submitted a response to USAC objecting to the impending hold of Lifeline funding.[18] Also on May 9, 2016, as directed in Paragraph 102 of the *TCM NAL*, TCM submitted a report explaining why the Commission should not take certain actions, including suspension of all Lifeline reimbursements to TCM.[19] On June 1, 2016, the Wireline Competition Bureau issued a letter to TCM seeking additional documentation and information relating to TCM's Paragraph 102 Response. TCM responded to that letter on June 13, 2016, June 22, 2016, and June 27, 2016. TCM responded to a supplemental letter from the Wireline Competition Bureau, dated June 30, 2016, with responses on July 6, 2016, July 8, 2016, July 13, 2016 and July 22, 2016.

19. On June 22, 2016, the Wireline Competition Bureau issued a temporary suspension of TCM's USF reimbursements, pending its review of TCM's responses to the WCB's request(s) for information (*WCB Temporary Hold Order*).[20] On July 22, 2016, TCM filed a Petition for Reconsideration of the *WCB Temporary Hold Order*, which remains pending. TCM responded to the *TCM NAL* on July 5, 2016.[21]

20. The agreed final amount of Lifeline funding held by USAC is $7,460,884. In the event that there are any additional Monies Held as a result of post-settlement filings or adjustments by TCM, TCM waives its right to the additional Monies Held.

21. The parties negotiated the following terms and conditions of settlement and hereby enter into this Consent Decree as provided below.

III. TERMS OF AGREEMENT

22. **Adopting Order**. The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

23. **Jurisdiction**. For purposes of this Consent Decree, TCM agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

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[17] *See* Letter from USAC to Mr. Hideki Kato, President, Total Call Mobile, Inc. (Apr. 8, 2015).

[18] Letter from Steve Augustino, Counsel for TCM, Kelley Drye & Warren, LLP, to Michelle Garber, USAC (May 9, 2016).

[19] *Total Call Mobile, Inc.*, NAL/Acct. No. 201632080004, Response to Paragraph 102 of the Notice of Apparent Liability for Forfeiture, FCC 16-44 (May 9, 2016) (*TCM Paragraph 102 Response*).

[20] *Total Call Mobile, Inc.*, Order Directing Temporary Hold of Payments, DA 16-708 (Wireline Comp. Bur., June 22, 2016).

[21] *See* Total Call Mobile, LLC's Response to the Notice of Apparent Liability for Forfeiture (July 5, 2016) (*TCM NAL Response*).

24. **Effective Date**. The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that the Adopting Order and this Consent Decree shall have the same force and effect as any other order adopted by the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order. If the Bureau determines that TCM made any material misrepresentation or material omission relevant to the resolution of this Investigation, the Bureau retains the right to seek modification of this Consent Decree.

25. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation and resolve the *TCM NAL*. In consideration for the termination of the Investigation, TCM agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against TCM concerning the matters that were the subject of the Investigation. This Consent Decree is contingent upon court approval of the SDNY Settlement, but otherwise does not terminate any other investigations that have been or might be conducted by other law enforcement agencies or offices.

26. **Admission of Liability**. TCM admits for the purpose of this Consent Decree and for the Commission's civil enforcement purposes, and in express reliance on the provisions of paragraph 25 herein, that its actions in paragraphs 9 through 16, and that were the subject of the *TCM NAL* violated Sections 54.405, 54.407, 54.409, and 54.410 of the Commission's Rules.[22]

27. **Relinquishment of License**. In consideration for the termination of the Investigation, and in express reliance on the provisions of paragraph 25 herein, TCM agrees to: (1) transfer its Lifeline customers and cease providing Lifeline service on or before December 31, 2016; (2) not participate in the Lifeline program after December 31, 2016; (3) no longer apply for or receive Lifeline universal service support on or after December 31, 2016; (4) relinquish its ETC designation from the Commission and all respective ETC designations TCM has received from all states and territories of the United States, and withdraw any applications TCM submitted for ETC designation, on or before December 31, 2016; and (5) not reapply for ETC designations from the Commission or any state or territory of the United States after the Effective Date of this Agreement. TCM shall submit copies of all requests to relinquish its ETC designations and withdraw its applications for ETC designation to Loyaan Egal, Director, Strike Force, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington DC 20554, with copies submitted electronically to Loyaan Egal at Loyaan.Egal@fcc.gov, to Rakesh Patel

[22] *See* 47 CFR §§ 54.405, 54.407, 54.409, 54.410.

at Rakesh.Patel@fcc.gov, to David M. Sobotkin at David.Sobotkin@fcc.gov, and to Dangkhoa Nguyen at Dangkhoa.Nguyen@fcc.gov.

28. **Section 208 Complaints; Subsequent Investigations**. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act[23] against TCM or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by TCM with the Communications Laws.

29. **Settlement Amount**. TCM agrees to a Global Settlement Amount with the FCC and SDNY with a value of $30,000,000.00 (Global Settlement Amount) to fully resolve the *TCM NAL*, the Investigation, and the FCC's forfeiture penalty claims, as well as claims related to the Covered Conduct as defined and specified in the SDNY Settlement. The Global Settlement Amount addresses the loss to the Fund. A percentage of the Global Settlement Amount will be paid to the Relator in the *qui tam* action to resolve the Relator's claim to a portion of the Global Settlement Amount pursuant to 31 U.S.C. § 3730(d)(1).

a. In furtherance of the foregoing, TCM will withdraw its Petition for Reconsideration and not pursue any objections presently before USAC and the Commission related to claims involving the $7,460,884 in Lifeline reimbursements held by USAC, including the Letter from Steve Augustino, Counsel for TCM, Kelley Drye & Warren, LLP, to Michelle Garber, USAC (May 9, 2016) and Total Call Mobile, Inc., NAL/Acct. No. 201632080004, Response to Paragraph 102 of the Notice of Apparent Liability for Forfeiture, FCC 16-44 (2016). The $7,460,884 shall be deemed to be part of the Global Settlement Amount paid by TCM and shall be deemed part of the amount repaid to the Fund.

30. **Waivers**. As of the Effective Date, TCM waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. TCM shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither TCM nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and TCM shall waive any statutory right to a trial *de novo*. TCM hereby

[23] 47 U.S.C. § 208.

agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[24] relating to the matters addressed in this Consent Decree.

31. **Severability**. The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

32. **Invalidity**. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

33. **Subsequent Rule or Order**. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which TCM does not expressly consent) that provision will be superseded by such Rule or Order.

34. **Successors and Assigns**. TCM agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

35. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. In furtherance of settlement, and subject to the other terms of this Consent Decree, the Parties agree as follows:

a. This Consent Decree is contingent upon court approval of the SDNY Settlement, but, otherwise, does not settle any other investigations that have been or might be conducted by other law enforcement agencies or offices;

b. TCM will withdraw its Petition for Reconsideration and not pursue any other objections presently before USAC and the Commission related to claims involving the $7,460,884 in Lifeline reimbursements held by USAC, including the Letter from Steve Augustino, Counsel for TCM, Kelley Drye & Warren, LLP, to Michelle Garber, USAC (May 9, 2016) and *Total Call Mobile, Inc.*, NAL/Acct. No. 201632080004, Response to Paragraph 102 of the Notice of Apparent Liability for Forfeiture, FCC 16-44 (2016); and

c. TCM agrees not to initiate any additional actions or proceedings, including before any court or tribunal, seeking payments for Lifeline services that are the subject of the Investigation.

36. **Modifications**. This Consent Decree cannot be modified without the advance written consent of both Parties.

[24] *See* 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

37. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

38. **Authorized Representative**. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

39. **Counterparts**. This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

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Travis LeBlanc

Chief

Enforcement Bureau

____

Date

____

Yasunori Matsuda

Chief Executive Officer

Total Call Mobile, LLC

____

Date

UNITED STATES GOVERNMENT
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION

DATE: May 16, 2017

TO: Jay C. Keithley, Assistant Inspector General for Investigations/Counsel to the Inspector General

FROM: [redacted], [redacted], and [redacted], Attorney-Investigators

SUBJECT: Total Call Mobile Investigation

Introduction

On September 12, 2014, the Universal Service Administrative Company (USAC) referred to our office an analysis which identified 19,844 subscribers of Total Call Mobile (TCM or the company) as likely "intra-company duplicates." On September 17, 2014, FCC-OIG issued a subpoena duces tecum to TCM which requested documents and records related to the company's provision of Lifeline services. On November 6, 2014, a local CBS affiliate in Colorado aired a story alleging TCM had violated various Lifeline program rules and its agents had engaged in fraud. Subsequently, the FCC-OIG and FCC Enforcement Bureau (EB) issued additional subpoenas to TCM.

On November 15, 2015, Nelson Gomez (Relator) filed a *qui tam* complaint against TCM and the company's affiliated entities (Total Call International, Inc., Locus Telecommunications, Inc., and KDDI America, Inc., or collectively "the Defendants") in U.S. District Court for the Southern District of New York. Gomez headed Locus's Risk

Management department since 2000. In that capacity, Relator claimed he obtained the knowledge the Defendants were defrauding the Universal Service Fund (USF), based on, among other things, written and oral communications.

The *qui tam* alleged the Defendants violated the False Claims Act (FCA) by knowingly engaging in the following misconduct:

1. TCM could not and did not comply with the compliance plan submitted to the FCC to obtain TCM's Lifeline Eligible Telecommunications Carrier (ETC) designation;
2. TCM failed to identify and remove duplicates among the company's own Lifeline subscribers (intra-company duplicates);
3. TCM pursued subscribers who had Lifeline services already provided by another Lifeline ETC (inter-company duplicates);
4. TCM enrolled subscribers without effectively reviewing subscriber eligibility; and
5. TCM hid non-compliance from USAC auditors and failed to comply with FCC-OIG's September 18, 2014 subpoena.

On December 19, 2016, after a joint investigation with the FCC-OIG, the U.S. Attorney's Office for the Southern Division of New York (SDNY) filed a Complaint-In-Intervention (Complaint) on behalf of the Government, and on December 22, 2016, Judge Jed Rakoff approved a settlement in which TCM paid $30 million to the Government to resolve federal claims under the FCA and other FCC administrative claims. Stipulation and Order of Settlement and Dismissal, *United States of America, ex rel. Nelson J. Gomez v. Total Call International et al.*, December 22, 2017 (Appended as Attachment 1)

The case was investigated by a number of FCC-OIG agents, including [redacted] (b) (6), (b) (7)(C) [redacted].

Background

Defendants

TCM is a Delaware corporation with headquarters in Gardena, California and provides wireless telephone services to Lifeline subscribers. TCM has been designated as an ETC by the FCC and a number of states. KDDI America, Inc. (KDDIA), acquired TCM and Total Call International in 2010. KDDIA is a subsidiary of KDDI Corporation, a major Japanese telecommunications provider, and KDDIA financed TCM's operations including the provision of Lifeline services. Locus, another subsidiary of KDDIA, provides wireless and calling card services. In late 2013, Locus merged operations with TCM, including operations related to TCM's Lifeline services although the two remained separate entities.

Relevant Statutory Provisions and FCC Rules

For a discussion of the relevant statutes and FCC rules, please see the Complaint-in-Intervention, *United States of America, ex. rel. Nelson J. Gomez v. Total Call Mobile, Inc. et al.*, 15 Civ. 8869, pgs. 7-11 (Appended as Attachment 2).

Investigation

As described at the outset, FCC-OIG began investigating TCM in September 2014, and received productions of numerous records and documents responsive to the subpoena from the company.

After the *qui tam* complaint was filed, FCC-OIG partnered with the SDNY to investigate TCM's conduct. After the SDNY issued Civil Investigative Demands (CIDs) to TCM, the SDNY and FCC-OIG analyzed documents, researched a number of Lifeline issues and conducted depositions and other interviews of key witnesses. FCC-OIG sought and received pertinent documents from the USAC, conducted additional legal research, and consulted with FCC Wireline Competition Bureau (WCB), the Lifeline subject matter experts, on application of the FCC Lifeline requirements to the evidence.

Most significantly, FCC-OIG expended significant resources undertaking a detailed analysis of the company's Lifeline customer data. FCC-OIG's data analysis provided irrefutable evidence of TCM's misconduct, and the SDNY identified FCC-OIG's data intensive work as critical to the successful resolution of the investigation.

Findings

TCM admitted and acknowledged misconduct related to the company's Lifeline operations. The findings made as a result of FCC-OIG's data analysis were among the most significant of the investigation, including the following:

1. In 2013, TCM employees overturned thousands of previously-denied

Lifeline applications after "re-reviewing" each applications for only a few seconds. FCC-OIG found the company claimed $1.04 million in USF funds based on these customers whose applications had been initially denied but later summarily approved.

2. For the period examined (Sept. 2012 - Apr. 2016), TCM claimed approximately $2.052M in Lifeline support for over 42,800 duplicate customers.
3. Numerous TCM field agents fraudulently enrolled customers by using and reusing eligibility documentation proofs (e.g. SNAP cards) that did not belong to the applicants. Some groups of field agents also shared eligibility documents among themselves. (b) (7)(E) [redacted] FCC-OIG found at least 128,000 customer accounts were created by field agents using fraudulent eligibility proofs, and those accounts were used by TCM to receive $9.98 million in USF claims.
4. TCM turned a blind eye to fraud by failing to terminate field agents and master agents the company knew had submitted fraudulent applications. FCC-OIG found TCM received notice that at least 373 field agents had engaged in serious misconduct (using the same eligibility proofs for different applicants, creating duplicate customers, etc.) during the relevant period. FCC-OIG treated enrollments by an agent after the company received notice of fraudulent activity by that agent as invalid. Collectively, the 373 agents enrolled over 208,000 customer accounts after the company received notice the agents were engaged in fraud, and TCM ultimately relied on those accounts to receive $13.09 million in USF claims.

Additional details regarding the Defendants' admissions and alleged misconduct are described in the settlement agreement and the Complaint. *See* Attachment 1, pgs. 5-8, and Attachment 2, pgs. 11 – 33.

Resolution

On October 20, 2016, FCC-OIG sent a memo to FCC Office of General Counsel to recommend that the FCC concur with the SDNY's request for intervention authority from the U.S. Department of Justice, and the agency adopted the recommendation. As noted at the outset, on December 22, 2016, TCM agreed to pay $30 million and to cease

Lifeline operations to settle the Government's FCA and administrative claims against the company.

Recommendation

This matter has been resolved and therefore, case number OIG-LI-15-0009 should be closed.

Case Number: OIG-LI-15-0009	Case Title: Total Call Mobile (TCM)

ATTACHMENT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.* NELSON GOMEZ,

Plaintiff,

v.

TOTAL CALL MOBILE, INC.; TOTAL CALL INTERNATIONAL, INC.; LOCUS TELECOMMUNICATIONS, INC.; and KDDI AMERICA, INC.,

Defendants.

15 Civ. 8869 (JSR)

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

TOTAL CALL MOBILE, LLC; LOCUS TELECOMMUNICATIONS, LLC; and KDDI AMERICA, INC.,

Defendants.

STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL

WHEREAS, this Stipulation and Order of Settlement and Dismissal ("Stipulation") is entered into by and among plaintiff the United States of America ("United States" or "Government"), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, Defendants Total Call Mobile, LLC ("Total Call"), Locus Telecommunications, LLC ("Locus"), and KDDI America, Inc. ("KDDI America") (collectively, "Defendants"), and Nelson Gomez ("Relator") (the United States, Defendants, and Relator are collectively referred to as "the Parties"), through their authorized representatives;

WHEREAS, on or about November 10, 2015, Relator filed a *qui tam* complaint in the United States District Court for the Southern District of New York (the "Court") pursuant to the False Claims Act, as amended, 31 U.S.C. § 3729 *et seq.* (the "FCA"), alleging, *inter alia*, that Total Call Mobile, Inc., with the knowledge and assistance of the other Defendants, defrauded the Lifeline program of the Federal Communications Commission (the "FCC") (the "Relator's Action");

WHEREAS, the Lifeline program is part of the Universal Service Fund ("USF") and was established to support the provision of discounted landline and mobile phone services to eligible low-income consumers;

WHEREAS, the Universal Service Administrative Company ("USAC") serves as the administrator for the USF;

WHEREAS, Lifeline services are provided by "eligible telecommunications carriers" ("ETCs") that are designated to offer such services;

WHEREAS, the FCC has promulgated rules establishing explicit requirements that ETCs must meet to receive reimbursements for phone service discounts offered pursuant to the Lifeline program, 47 C.F.R. §§ 54.400 - 54.422;

WHEREAS, to be eligible for the Lifeline program, a consumer must have income that is at or below 135% of the Federal Poverty Guidelines or participate in one of a number of specified federal, state, or Tribal assistance programs, 47 C.F.R. § 54.409(a);

WHEREAS, ETCs receive $9.25 per month for each qualifying low-income consumer served, and up to an additional $25.00 per month for consumers residing on Tribal lands, 47 C.F.R. § 54.403(a);

WHEREAS, ETCs are not permitted to receive payments for subscribers who are not eligible for the Lifeline program, and may not seek reimbursement for providing Lifeline discounts to a consumer unless the ETC has confirmed the consumer's eligibility, consistent with 47 C.F.R. §§ 54.410(a) - (d);

WHEREAS, ETCs may seek reimbursement for only one Lifeline discount per household, which is referred to as the "one-benefit-per-household requirement," 47 C.F.R. § 54.409(c);

WHEREAS, prior to seeking reimbursements from the USF, ETCs must obtain a certification of eligibility from prospective subscribers that verifies, among other things, that the individual meets the income-based or program-based eligibility criteria for receiving Lifeline service and that the individual's household is not already receiving a Lifeline service, 47 C.F.R. §§ 54.410(b) - (d);

WHEREAS, ETCs are required to "implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services," 47 C.F.R. § 54.410(a);

WHEREAS, on a monthly basis, ETCs file with USAC a FCC Form 497 ("497 Form") for each Study Area Code to request reimbursement for providing Lifeline discounts;

WHEREAS, the 497 Form lists the total number of qualifying low-income Lifeline subscribers who received a Lifeline discount and the total reimbursement claimed for the month;

WHEREAS, ETCs may receive reimbursement only if they certify as part of their reimbursement request that they are in compliance with all of the Lifeline rules and that they have obtained valid certification forms for each subscriber for whom the ETC seeks reimbursement, 47 C.F.R. § 54.407(d);

WHEREAS, Total Call, which is based in Gardena, California, was an ETC authorized to provide Lifeline services in 19 states and territories;

WHEREAS, Locus, which is based in Fort Lee, New Jersey, is a telecommunications company affiliated with Total Call that, starting in or around October 2013, provided administrative support, including customer services, for Total Call's Lifeline business;

WHEREAS, KDDI America, which is based in New York City, is the parent company of Total Call and Locus;

WHEREAS, contemporaneous with the filing of this Stipulation, the Government, through the Office of the United States Attorney for the Southern District of New York, intervened in the Relator's Action and filed a Complaint-In-Intervention (the "Government Complaint");

WHEREAS, the Government Complaint alleges that during the period from September 2012 to May 2016 (the "Covered Period"), Total Call, with the knowledge and involvement of the other Defendants, knowingly submitted false claims for payment to USAC by seeking reimbursement pursuant to the Lifeline program for individuals who did not meet Lifeline eligibility requirements and by submitting false certifications along with its monthly remittance requests filed with USAC (this conduct is referred to as the "Covered Conduct" for purposes of this Stipulation);

WHEREAS, the FCC's Enforcement Bureau ("FCC EB") conducted an administrative investigation into Total Call's enrollment of consumers and compliance with Lifeline rules (the "FCC EB Investigation"), and, on April 7, 2016, the FCC issued a Notice of Apparent Liability for Forfeiture and Order ("NAL") to Total Call;

WHEREAS, contemporaneously herewith, the FCC has entered into a separate written Consent Decree with Total Call to resolve the FCC EB Investigation and the NAL (the "FCC Consent Decree");

WHEREAS, the Parties have, through this Stipulation, reached a mutually agreeable resolution addressing the claims asserted against Defendants in the Government Complaint and the Relator's Action, and the amount to be paid pursuant to Paragraph 3 herein resolves the FCC EB Investigation and NAL as well;

NOW, THEREFORE, upon the Parties' agreement, IT IS HEREBY ORDERED that:

TERMS AND CONDITIONS

1. The Parties agree that this Court has subject matter jurisdiction over this action and consent to this Court's exercise of personal jurisdiction over each of them.

2. Total Call admits, acknowledges, and accepts responsibility for the following conduct:

a. Total Call relied primarily on in-person sales events to enroll consumers in the Lifeline program. Total Call solicited and enrolled consumers by contracting with several distributors based throughout the country, referred to as "master agents," who in turn hired individual "field agents" to engage in face-to-face marketing at public events and spaces. The field agents collected the consumer's information and performed individual enrollments. Total Call paid the master agents based in part on the number of subscribers successfully enrolled, and the master agents in turn paid their field agents primarily or exclusively on a commission basis.

b. Total Call received and reviewed the vast majority of its Lifeline applications electronically. Using tablet computers, field agents were required to enter a consumer's demographic information (*e.g.*, name, address, date of birth, last four digits of Social Security number) and capture images of the consumer's proof of identification and proof of eligibility (*e.g.*, Supplemental Nutrition Assistance Program ("SNAP") card, Medicaid card). Total Call had electronic access to the documentation, information, and data entered during the enrollment process, and was responsible for verifying the eligibility of Lifeline applicants.

c. For much of the Covered Period, Total Call failed to adequately screen and train the field agents who acted on the company's behalf. Although Total Call provided training to its master agents, from September 2012 until late 2014, Total Call relied on the master agents to train field agents and did not ensure that such training was provided. Total Call started to directly train field agents thereafter.

d. Total Call failed to implement effective policies and procedures to ensure the eligibility of the subscribers for whom Total Call requested reimbursement for Lifeline discounts, as required by Lifeline rules. Although Total Call had certain policies and procedures that improved over time, Total Call did not effectively monitor compliance with these policies and procedures and failed to prevent the enrollment of ineligible individuals. For much of the Covered Period, Defendants allocated insufficient staff and resources to verifying the eligibility of Lifeline subscribers. For example, pursuant to Total Call's 2013 business plan, one staff member was expected to review the eligibility of 6,000 prospective Lifeline customers each month.

e. Hundreds of Total Call field agents engaged in fraudulent practices to enroll consumers who were duplicate subscribers[1] or who were otherwise not eligible for the Lifeline program. For example:

   i. Certain field agents repeatedly used the same benefit program eligibility proof to enroll multiple consumers. Agents frequently enrolled several different individuals by submitting an image of the same improperly obtained program eligibility card or, in some instances, a fake program eligibility card. Field agents relied on temporary SNAP cards to enroll consumers because these cards did not include the actual benefit recipient's name. Although Total Call and Locus managers received numerous reports that field agents were relying on the same program eligibility card repeatedly, they failed to put in place adequate systems and procedures to prevent this practice for much of the Covered Period.

   ii. Certain field agents slightly altered the way in which a subscriber's demographic information was input to avoid having Total Call identify the application as a duplicate. Total Call knew that field agents developed ways to manipulate the consumer's data to bypass the limited automated duplicate checks in place, and failed to put in place an adequate system for screening out duplicate subscribers. Total Call enhanced its duplicate check system during the latter portion of the Covered Period, but some duplicate subscribers continued to be enrolled.

   iii. Certain field agents tampered with identification or program

[1] A "duplicate subscriber" refers to an individual enrolled to receive Lifeline services from Total Call even though the individual or someone in the individual's household also received Lifeline services from Total Call, in violation of the one-benefit-per-household requirement.

eligibility cards, and intentionally transmitted blurry or partial images of the documentation, to try to conceal the fact that the information on the documentation did not match the subscriber's actual name or the other information on the Lifeline application. Total Call enrolled individuals in the Lifeline program and sought reimbursement for discounts provided to them notwithstanding clear legibility issues with the proof submitted.

iv. Certain field agents provided their own signature, printed their own name, or wrote a straight or curvy line where the prospective subscriber's signature was supposed to appear on Lifeline applications. Total Call enrolled individuals in the Lifeline program and sought reimbursement for discounts provided to them even though the field agents had completed the required customer certification instead of the actual consumer.

v. Certain field agents submitted false consumer addresses and social security numbers to enroll duplicate or otherwise ineligible subscribers. Total Call failed to take sufficient actions to identify this false information during its review, and enrolled these individuals in the Lifeline program and sought reimbursement for discounts provided to them.

f. Total Call failed to put in place effective mechanisms to oversee the conduct of field agents and detect and prevent field agent abuses. Further, during much of the Covered Period, even when managers learned that field agents were using the same program eligibility card repeatedly or engaging in some other type of improper practice, Total Call often allowed the field agent to continue to enroll subscribers. Total Call rarely took corrective actions against field agents who engaged in improper conduct until the latter portion of the Covered Period, when it enhanced its oversight of field agent practices and deactivated a number of field agents.

g. During the Covered Period, Total Call submitted hundreds of monthly reimbursement requests on 497 Forms to USAC that listed the purported total number of qualifying low-income Lifeline subscribers served and the total reimbursement claimed for the month. In each 497 Form, Total Call certified that the company was in compliance with all of the Lifeline rules and that it had obtained valid certification forms for each subscriber for whom Total Call sought reimbursement. At the time that Total Call submitted many of these 497 Forms, Total Call knew that its policies and procedures for reviewing Lifeline applications, verifying consumer eligibility, conducting duplicate checks, and detecting duplicate subscribers were deficient. Although Total Call revised some of its 497 Forms to correct errors or remove subscribers who were subsequently determined to be potentially ineligible, these revised forms still included consumers who did not meet the Lifeline eligibility criteria.

h. Total Call sought and received reimbursement for tens of thousands of consumers who did not meet the Lifeline eligibility requirements.

3. Defendants shall pay a total settlement amount of thirty million dollars ($30,000,000.00) ("Settlement Amount") as follows:

a. The $7,460,884.00 in Lifeline reimbursements claimed by Total Call and held by USAC pursuant to the FCC's June 22, 2016 Order Directing Temporary Hold of Payments ("Monies Held") shall be retained by USAC. Total Call will withdraw and not pursue any objections presently before USAC and the FCC related to claims involving the Monies Held.

b. Defendants shall pay the sum of $22,539,116.00 to the United States within thirty (30) calendar days of the Effective Date (defined below in Paragraph 28). A payment of this total amount by any Defendant will satisfy the payment obligations of the other Defendants under this clause.

4. The payment required by Paragraph 3(b) above shall be made in accordance with instructions to be provided by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of New York.

5. Total Call will transfer its Lifeline customers and cease providing Lifeline services by December 31, 2016. Total Call will not participate in the Lifeline program after December 31, 2016.

6. Defendants agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Stipulation. Upon reasonable notice, Defendants shall encourage, and agree not to impair, the cooperation of their directors, officers, and employees, and shall use their best efforts to make available, and encourage, the cooperation

of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Defendants further agree to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in their possession, custody, or control concerning any investigation of the Covered Conduct that they have undertaken, or that has been performed by another on their behalf. Defendants shall not take any legal or adverse action against any current or former employee, contractor, or agent because of any act or assistance the individual provides or has provided in furtherance of the Government's investigation of this matter.

7. Subject to the exceptions in Paragraph 11 below (concerning excluded claims), and conditioned on Defendants' timely payment of the full Settlement Amount pursuant to Paragraph 3 above, the United States releases Defendants, together with their current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, or divisions, from any civil or administrative monetary claim that the United States has for the Covered Conduct under the FCA, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, 47 U.S.C. § 254(e) (Universal service support), and the common law theories of fraud, breach of contract, payment by mistake, and unjust enrichment.

8. Defendants fully and finally release the United States and its agencies, officers, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, employees, servants, or agents related to the Covered Conduct and the United States' investigation and prosecution thereof.

9. Conditioned on Defendants' timely payment of the full Settlement Amount pursuant to Paragraph 3 above, the Relator, for himself and his heirs, successors, attorneys, agents, and assigns, releases Defendants, together with their current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, or divisions, and all of their current and former officers, directors, employees, assigns, attorneys, and agents from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that the Relator or his heirs, successors, attorneys, agents, and assigns, has against Defendants related to or arising from the Relator's allegations; provided, however, that nothing in this Stipulation shall be deemed to preclude Relator from seeking to recover his reasonable expenses and attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d).

10. In consideration of the execution of this Stipulation by the Relator and the Relator's release as set forth in Paragraph 9 above, Defendants, together with their current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, or divisions, and all of their current and former officers, directors, employees, assigns, attorneys and agents (collectively, the "Defendant Releasors"), release the Relator and his heirs, successors, attorneys, agents, and assigns from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that Defendant Releasors have against the Relator and all of his successors, heirs, attorneys, agents, and assigns arising from the Relator's allegations and the United States' investigation and prosecution thereof; provided, however, that nothing in this Stipulation shall be deemed to preclude in any way Defendant Releasors from denying, contesting and/or defending on any basis whatsoever, against Relator's claims for reasonable expenses and attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d).

11. Notwithstanding the releases given in Paragraph 7 above, or any other term of this Stipulation, the following claims of the Government are specifically reserved and are not released by this Stipulation:

a. any liability arising under Title 26, United States Code (Internal Revenue Code);

b. any criminal liability;

c. except as explicitly stated in this Stipulation and the FCC Consent Decree, any administrative liability, including the suspension or debarment rights of any federal agency;

d. any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

e. any liability based upon obligations created by this Stipulation; and

f. any liability of individuals.

12. Defendants shall be in default of this Stipulation if Defendants fail to make the required payment set forth in Paragraph 3 above on or before the due date for such payment, or if they fail to comply materially with any other term of this Stipulation that applies to them ("Default"). The Government shall provide written notice of any Default in the manner set forth in Paragraph 27 below. Defendants shall then have an opportunity to cure the Default within ten (10) calendar days from the date of delivery of the notice of Default. In the event that a Default is not fully cured within ten (10) calendar days of the delivery of the notice of Default ("Uncured Default"), interest shall accrue at the rate of 12% per annum compounded daily on the remaining unpaid principal balance of the Settlement Amount, beginning ten (10) calendar days after mailing of the notice of Default. In the event of an Uncured Default, Defendants agree to the entry of the consent judgment attached as Exhibit A and that the Government may take action to

collect on the consent judgment. In the event of an Uncured Default, Defendants further agree that the United States, at its option, may (a) rescind this Stipulation and reinstate the claims asserted against Defendants in the Government Complaint; (b) seek specific performance of this Stipulation; (c) offset the remaining unpaid balance of the Settlement Amount from any amounts due and owing Defendants at the time of default by any department, agency, or agent of the United States; or (d) exercise any other rights granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. Defendants shall not contest any offset imposed or any collection undertaken by the Government pursuant to this Paragraph, either administratively or in any Federal or State court. In addition, Defendants shall pay the Government all reasonable costs of collection and enforcement under this Paragraph, including attorneys' fees and expenses. In the event that the United States opts to rescind this Stipulation pursuant to this Paragraph, Defendants shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that relate to the Covered Conduct, except to the extent these defenses were available on November 10, 2015.

13. The Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Stipulation and agree and confirm that the terms of this Stipulation are fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

14. Defendants waive and shall not assert any defenses Defendants may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Stipulation bars a remedy sought in such criminal prosecution or

administrative action. Nothing in this Paragraph or any other provision of this Stipulation constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

15. Defendants agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Defendants, including their present or former officers, directors, employees, shareholders and agents, in connection with:

(1) the matters covered by this Stipulation and the FCC Consent Decree;

(2) the United States' audit(s) and civil investigation(s) of matters covered by this Stipulation and the FCC Consent Decree;

(3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with matters covered by this Stipulation (including attorneys' fees) and the FCC Consent Decree;

(4) the negotiation and performance of this Stipulation and the FCC Consent Decree; and

(5) any payment Defendants make to the United States pursuant to this Stipulation and any payment Defendants may make to the Relator, including expenses, costs and attorneys' fees;

are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Defendants, and Defendants shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Stipulation, Defendants shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs (as defined in this Paragraph) included in payments previously sought by Defendants from the United States. Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously submitted requests for payment. Any payments due shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States, including the Department of Justice and/or the affected agencies, reserves their rights to audit, examine, or re-examine Defendants' books and records and to disagree with any calculation submitted by Defendants or any of their subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Defendants or any of their subsidiaries or affiliates, or the effect of any such Unallowable Costs on the amounts of such payments.

d. Nothing in this Stipulation shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

16. This Stipulation is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity except as otherwise provided herein.

17. KDDI America and Locus represent and warrant that they have reviewed their financial situation, that they are currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3)

and 548(a)(1)(B)(ii)(I), and that they reasonably believe as of the date hereof that they shall remain solvent following compliance with their obligations under this Stipulation. Further, the Parties warrant that, in evaluating whether to execute this Stipulation, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Defendants within the meaning of 11 U.S.C. § 547(c)(1); and (b) have concluded that these mutual promises, covenants, and obligations due, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Defendants were or became indebted to on or after the date of this Stipulation, within the meaning of 11 U.S.C. § 548(a)(1).

18. If Defendants commence, or a third party commences, any case, action, or other proceeding under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking an order for relief of Defendants' debts, or seeking to adjudicate Defendants as bankrupt or insolvent; or (b) seeking appointment of a trustee, custodian, or other similar official for Defendants or for all or any substantial part of Defendants' assets, Defendants agree as follows:

a. Defendants' obligations under this Stipulation may not be avoided pursuant to 11 U.S.C. § 547, and Defendants shall not argue or otherwise take the position in any such case, action, or proceeding that (i) Defendants' obligations under this Stipulation may be avoided under 11 U.S.C. § 547; (ii) Defendants were insolvent at the time this Stipulation was entered into; or (iii) the mutual promises, covenants, and obligations set forth in this Stipulation do not constitute a contemporaneous exchange for new value given to Defendants.

b. If Defendants' obligations under this Stipulation are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the Government, at its sole option, may rescind the releases in this Stipulation and reinstate the Government Complaint or bring any civil and/or administrative claim, action, or proceeding against Defendants that would otherwise be covered by the release in Paragraph 7 above. Defendants agree that (i) any such claim, action, or proceeding brought by the Government would not be subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the case, action, or proceeding described in the first clause of this Paragraph, and Defendants shall not argue or otherwise contend that the claim, action, or proceeding is subject to an automatic stay; (ii) Defendants shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any claim, action, or proceeding that is brought by the Government or the Relator within 60 calendar days of written notification that the releases in the Stipulation have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the date the Relator's Action was originally filed; and (iii) the Government has a valid claim against Defendants for the full Settlement Amount, and the Government may pursue the claim in the case, action, or proceeding described in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Defendants acknowledge that the agreements in this Paragraph are provided in exchange for valuable consideration provided in this Stipulation.

19. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation; provided, however, nothing in this Stipulation shall preclude the Relator from seeking to recover his expenses or attorneys' fees and costs from Defendants, pursuant to 31 U.S.C. § 3730(d), and nothing in this

Stipulation shall be deemed to preclude in any way Defendants and all of their current and former officers, directors, employees, assigns, attorneys, and agents from denying, contesting and/or defending against Relator's claims for reasonable expenses and attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d).

20. Any failure by the Government to insist upon the full or material performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and the Government, notwithstanding that failure, shall have the right thereafter to insist upon the full or material performance of any and all of the provisions of this Stipulation.

21. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York. For purposes of construing this Stipulation, this Stipulation shall be deemed to have been drafted by all Parties to this Stipulation and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

22. This Stipulation constitutes the complete agreement between the Parties with respect to the subject matter hereof. This Stipulation may not be amended except by written consent of the Parties.

23. The undersigned counsel and other signatories represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and the entities indicated below.

24. This Stipulation is binding on Defendants' successor entities.

25. This Stipulation is binding on the Relator's successors, transferees, heirs, and assigns.

26. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. E-mails that attach signatures in PDF form or facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

27. Any notice pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be delivered by hand, express courier, or e-mail transmission followed by postage-prepaid mail, and shall be addressed as follows:

TO THE UNITED STATES:

Jeffrey K. Powell
Jessica Jean Hu
Assistant United States Attorneys
United States Attorney's Office
Southern District of New York
86 Chambers Street, Third Floor
New York, New York 10007
Email: jeffrey.powell@usdoj.gov
jessica.hu@usdoj.gov

TO DEFENDANTS:

Patrick O'Donnell
Harris, Wiltshire & Grannis, LLP
1919 M Street, N.W.
The Eighth Floor
Washington, D.C. 20036
Email: podonnell@hwglaw.com

28. The effective date of this Stipulation is the date upon which the Stipulation is approved and entered by the Court (the "Effective Date").

Agreed to by:

THE UNITED STATES OF AMERICA

Dated: New York, New York
December 19, 2016

PREET BHARARA
United States Attorney for the
Southern District of New York

By: Jeffrey Powell
JEFFREY K. POWELL
JESSICA JEAN HU
Assistant United States Attorneys
86 Chambers Street, Third Floor
New York, New York 10007
Telephone: (212) 637-2706/2726
Facsimile: (212) 637-2686

Attorney for the United States of America

RELATOR

Dated: DEC. 16, 2016

By: ______________________
NELSON GOMEZ
Relator

Dated: Dec. 16, 2016

WILLENS & SCARVALONE LLP

By: ______________________
JONATHAN A. WILLENS
EDWARD SCARVALONE
40 Wall Street, Suite 4100
New York, New York 10005
Telephone: (646) 200-6333/34

Attorneys for Relator

Dated: Dec. 19, 2016

DEFENDANTS

HARRIS WILTSHIRE & GRANNIS LLP

By:
PATRICK O'DONNELL
BRITA STRANDBERG
1919 M Street, N.W.
The Eighth Floor
Washington, D.C. 20036
Telephone No. (202)730-1312

KELLEY DRYE & WARREN LLP

By: ______________________
STEVEN A. AUGUSTINO
Washington Harbour, Suite 400
3050 K Street, NW
Washington, D.C. 20007
Telephone No. (202) 342-8612

Attorneys for Defendants Total Call Mobile, LLC, Locus Telecommunications, LLC, and KDDI America, Inc.

DEFENDANTS

Dated: Dec 19, 2016

HARRIS, WILTSHIRE & GRANNIS LLP

By: ______________________

PATRICK O'DONNELL
BRITA STRANDBERG
1919 M Street, N.W.
The Eighth Floor
Washington, D.C. 20036
Telephone No. (202)730-1312

KELLEY DRYE & WARREN LLP

By: ______________________

STEVEN A. AUGUSTINO
Washington Harbour, Suite 400
3050 K Street, NW
Washington, D.C. 20007
Telephone No. (202) 342-8612

Attorneys for Defendants Total Call Mobile, LLC, Locus Telecommunications, LLC, and KDDI America, Inc.

Dated: Dec. 16, 2016

By: ____________________
YASUNORI MATSUDA
Chief Executive Officer
Defendant Total Call Mobile, LLC

Dated: Dec. 16, 2016

By: ____________________
YASUNORI MATSUDA
Chief Executive Officer
Defendant Locus Telecommunications, LLC

Dated: Dec. 16, 2016

By: ____________________
SATORU MANABE
President and Chief Executive Officer
Defendant KDDI America, Inc.

SO ORDERED:

____
HON. JED S. RAKOFF
UNITED STATES DISTRICT JUDGE

Dated: __________, 2016

SM
Dated: ~~12/16~~ , 2016

By: ______________________
YASUNORI MATSUDA
Chief Executive Officer
Defendant Total Call Mobile, LLC

Dated: __________, 2016

By: ______________________
YASUNORI MATSUDA
Chief Executive Officer
Defendant Locus Telecommunications, LLC

Dated: 12/16 , 2016

By: ______________________
SATORU MANABE
President and Chief Executive Officer
Defendant KDDI America, Inc.

SO ORDERED:

____
HON. JED S. RAKOFF
UNITED STATES DISTRICT JUDGE

Dated: 12/22/ , 2016

Ex. A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.* NELSON GOMEZ,

Plaintiff,

v.

TOTAL CALL MOBILE, INC.; TOTAL CALL INTERNATIONAL, INC.; LOCUS TELECOMMUNICATIONS, INC.; and KDDI AMERICA, INC.,

Defendants.

15 Civ. 8869 (JSR)

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

TOTAL CALL MOBILE, LLC; LOCUS TELECOMMUNICATIONS, LLC; and KDDI AMERICA, INC.,

Defendants.

CONSENT JUDGMENT

Upon the consent of Plaintiff the United States of America and Defendants Total Call Mobile, LLC, Locus Telecommunications, LLC, and KDDI America, Inc. (collectively, "Defendants"), it is hereby

ORDERED, ADJUDGED and DECREED: that plaintiff the United States of America is awarded judgment in the amount of $30,000,000.00 as against Defendants, as well as post-judgment interest at the rate of 12% per annum compounded daily.

Agreed to by:

THE UNITED STATES OF AMERICA

Dated: New York, New York
December __, 2016

PREET BHARARA
United States Attorney for the
Southern District of New York

By: ______________________
JEFFREY K. POWELL
JESSICA JEAN HU
Assistant United States Attorneys
86 Chambers Street, Third Floor
New York, New York 10007
Telephone: (212) 637-2706/2726
Facsimile: (212) 637-2686

Attorney for the United States of America

DEFENDANTS

Dated: __________, 2016

HARRIS, WILTSHIRE & GRANNIS LLP

By: ______________________
PATRICK O'DONNELL
BRITA STRANDBERG
1919 M Street, N.W.
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Washington, D.C. 20036
Telephone No. (202)730-1312

KELLEY DRYE & WARREN LLP

By: ______________________________
STEVEN A. AUGUSTINO
Washington Harbour, Suite 400
3050 K Street, NW
Washington, D.C. 20007
Telephone No. (202) 342-8612

Attorneys for Defendants Total Call Mobile, LLC, Locus Telecommunications, LLC, and KDDI America, Inc.

Dated: __________, 2016

By: ______________________________
YASUNORI MATSUDA
Chief Executive Officer
Defendant Total Call Mobile, LLC

Dated: __________, 2016

By: ______________________________
YASUNORI MATSUDA
Chief Executive Officer
Defendant Locus Telecommunications, LLC

Dated: __________, 2016

By: ______________________________
SATORU MANABE
President and Chief Executive Officer
Defendant KDDI America, Inc.

SO ORDERED:

____
HON. JED S. RAKOFF
UNITED STATES DISTRICT JUDGE

Dated: __________, 2016

ATTACHMENT 2

PREET BHARARA
United States Attorney for the
Southern District of New York
By: JEFFREY K. POWELL
JESSICA JEAN HU
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2706/2726
Email: Jeffrey.Powell@usdoj.gov
Jessica.Hu@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.* NELSON J. GOMEZ,

Plaintiff,

v.

TOTAL CALL MOBILE, INC.; TOTAL CALL INTERNATIONAL, INC.; LOCUS TELECOMMUNICATIONS, INC.; and KDDI AMERICA, INC.,

Defendants.

15 Civ. 8869 (JSR)

COMPLAINT-IN-INTERVENTION OF THE UNITES STATES

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

TOTAL CALL MOBILE, LLC; LOCUS TELECOMMUNICATIONS, LLC; and KDDI AMERICA, INC.,

Defendants.

The United States of America (the "United States" or the "Government"), by its attorney Preet Bharara, United States Attorney for the Southern District of New York, alleges for its Complaint-In-Intervention as follows:

PRELIMINARY STATEMENT

1. The Government brings this Complaint-In-Intervention seeking damages and penalties against Total Call Mobile, LLC ("Total Call") and other affiliated telecommunications companies under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.* (the "FCA"), and, in the alternative, under the common law for unjust enrichment and payment under mistake of fact. During the period from September 2012 to May 2016 (the "Covered Period"), Total Call, with the knowledge and involvement of Locus Telecommunications, LLC ("Locus") and their shared parent company, KDDI America, Inc. ("KDDI America") (collectively with Total Call "Defendants"), knowingly submitted false claims for federal payments by seeking reimbursement pursuant to the Lifeline program for individuals who did not meet Lifeline eligibility requirements and by submitting false certifications along with its monthly remittance requests. Lifeline is a federal program that offers subsidies to companies that provide discounted landline and mobile phone services to eligible low-income consumers.

2. Total Call enrolled tens of thousands of ineligible consumers in the Lifeline program in numerous states. As a result, Total Call submitted grossly inflated claims for reimbursement and received millions of dollars in federal payments to which it was not entitled.

3. Total Call submitted monthly remittance requests that falsely certified compliance with Lifeline program rules, which, among other things, require the implementation of policies and procedures for ensuring the eligibility of Lifeline subscribers and prohibit a household from receiving more than one Lifeline phone ("one-benefit-per-household requirement"). Defendants

were well aware that they were not effectively screening the eligibility of prospective subscribers and that Total Call sales agents were engaging in widespread fraudulent enrollment practices, including repeatedly using the same eligibility proof (*e.g.*, Supplemental Nutrition Assistance Program or "SNAP" card) to enroll multiple consumers or slightly altering the way consumer information was input so that duplicate subscribers would not be detected. Managers were notified of clearly fraudulent conduct by specific sales agents, but still allowed them to continue to enroll subscribers for whom Total Call received federal payments.

4. Defendants' senior managers knew that Total Call did not have adequate controls in place to comply with Lifeline requirements. For example, in November 2013, Total Call's General Counsel advised senior managers that Total Call was "not in compliance on several issues which have been raised for some time." Nonetheless, Total Call continued to submit remittance requests on a monthly basis, each of which falsely certified compliance with all Lifeline program rules.

5. Furthermore, during much of the Covered Period, Defendants failed to allocate sufficient resources and personnel to reviewing the eligibility of prospective subscribers and ensuring that subscribers met Lifeline program criteria. Instead, operating with deliberate disregard to Lifeline rules, Defendants focused on enrolling as many consumers as possible within a short timeframe in order to meet the aggressive sales targets established by Total Call and approved by KDDI America.

6. By failing to implement meaningful and effective procedures and systems for preventing the enrollment of duplicate or otherwise ineligible Lifeline subscribers, seeking and receiving federal reimbursement for ineligible subscribers, and submitting false certifications,

Total Call, with the knowledge and involvement of the other Defendants, violated the FCA and the common law.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the Government's FCA claims pursuant to 31 U.S.C. § 3730(a) and 28 U.S.C. §§ 1331 and 1345, and over the Government's common law claims pursuant to 28 U.S.C. § 1345.

8. This Court may exercise personal jurisdiction over Defendants, and venue is proper in this District pursuant to 31 U.S.C. § 3732(a) as well as 28 U.S.C. § 1391(b) because KDDI America resides and transacts business in this District and some of the acts giving rise to the claims occurred in this District.

PARTIES

9. Plaintiff is the United States of America. As discussed in more detail below, through the Lifeline program, the Government provides reimbursements to Eligible Telecommunications Carriers ("ETCs") that offer discounted landline and mobile phone services to eligible low-income consumers so that they are able to connect to jobs, family members, and emergency services. The Lifeline program is funded by the Universal Service Fund ("USF"), which is administered by the Universal Service Administrative Company ("USAC"), an agent of the FCC. USAC is a not-for-profit corporation that collects mandated fees paid to the USF by telecommunications providers and distributes these funds under different programs, including the Lifeline program, pursuant to FCC regulations and subject to FCC oversight. USAC audits ETCs to verify compliance with Lifeline program requirements and provides compliance reporting to the FCC.

10. Relator Nelson J. Gomez is an employee of Locus and resides in New Jersey. Relator has held various senior positions in Locus' Risk Management Department since 2000. In November 2015, Gomez filed an action under the *qui tam* provisions of the FCA, alleging, *inter alia*, that Total Call — with the knowledge and assistance of the other corporate defendants — violated the FCA by seeking and receiving reimbursement for consumers who were not eligible for the Lifeline program and by submitting false certifications of compliance with Lifeline program requirements.

11. Defendant Total Call is a Delaware corporation with its principal place of business in Gardena, California. Total Call was an ETC authorized to provide Lifeline services in 19 states and territories. Total Call recently relinquished its ETC designations.

12. Defendant Locus is a Delaware corporation with its principal place of business in Fort Lee, New Jersey. Locus is a telecommunications company that has provided a variety of products and services, including wireless phones and prepaid calling cards. In or around October 2013, many of Total Call's administrative operations, such as finance, customer service, and human resources, were subsumed into Locus' operations. At the time of this functional merger, all Total Call employees became employees of Locus.

13. Defendant KDDI America is a New York corporation with its principal place of business at 825 Third Avenue, New York, New York 10022. KDDI America is the parent company of Total Call and Locus. As a result of a restructuring in 2015, Total Call and Locus became wholly-owned subsidiaries of a newly established entity called KDDI US Holding, Inc., which is a subsidiary of KDDI America. KDDI America is in turn a wholly-owned subsidiary of KDDI Corporation, one of Asia's largest telecommunications providers.

14. KDDI America actively participated in decision-making concerning Lifeline operations and was closely involved in overseeing the financial management of the business. Locus and Total Call staff who managed the Lifeline business met in KDDI America's Manhattan offices to conduct business. Senior KDDI America executives, based in Manhattan, reviewed, commented on, and approved Total Call's Lifeline business plans. KDDI America closely tracked the revenues and profitability of the Lifeline business, and required frequent reporting. At weekly management meetings attended by KDDI America executives, Total Call provided updates on its financial performance and its efforts to obtain the necessary regulatory approvals to expand the Lifeline business into new states.

15. Moreover, KDDI America provided the financial support needed to operate Total Call's Lifeline business. For much of the Covered Period, Total Call's revenues were insufficient to support its operational costs. Total Call was entirely dependent on financing from KDDI America to maintain its Lifeline operations during this period, and KDDI America executives provided approval over such routine operational needs as the purchase of handsets.

16. There was significant overlap between the expatriates who held senior officer positions at Total Call, Locus, and KDDI America. KDDI America exercised control over the Lifeline business by placing its officers in key management positions at Total Call and Locus. For example, the CEO of Locus, to whom the COO of Total Call reported, simultaneously held a corporate position at KDDI America, and the CFO of KDDI America was for a time simultaneously the CFO of Total Call.

THE FALSE CLAIMS ACT

17. The FCA reflects Congress's objective to "enhance the Government's ability to recover losses as a result of fraud against the Government." S. Rep. No. 99-345, at 1 (1986).

18. As relevant here, the FCA establishes treble damages liability to the United States for an individual or entity that:

> i. "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval," 31 U.S.C. § 3729(a)(1)(A);
>
> ii. "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim," *id.* § 3729(a)(1)(B); or
>
> iii. "knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government," *id.* § 3729(a)(1)(G).

19. "Knowing," within the meaning of the FCA, is defined to include reckless disregard and deliberate indifference. In addition to treble damages, the FCA also provides for assessment of a civil penalty for each violation or each false claim.

FACTUAL ALLEGATIONS

I. The Lifeline Program

20. Lifeline is a federal government program that was established to support the provision of discounted landline and mobile phone services to eligible low-income consumers so that they are able to connect to jobs, family members, and emergency services. To be eligible for the program, a consumer must have income that is at or below 135% of the Federal Poverty Guidelines or participate in one of a number of specified federal, state, or Tribal assistance programs, including but not limited to Medicaid, Supplemental Nutrition Assistance Program

(*i.e.*, Food Stamp Program), Supplemental Security Income (SSI), or Federal Public Housing Assistance (Section 8). 47 C.F.R. § 54.409(a).

21. ETCs, such as Total Call, receive $9.25 per month for each qualifying low-income consumer who receives the discounted service, and up to an additional $25.00 per month for each such consumer who resides on Tribal lands. 47 C.F.R. § 54.403(a).

22. To receive reimbursements for discounts offered pursuant to the Lifeline program, an ETC must comply with the Lifeline rules and regulations established by the FCC. 47 C.F.R. §§ 54.400 - 54.422. Payments are provided to an ETC "based on the number of actual qualifying low-income consumers it serves[.]" 47 C.F.R. § 54.407(a). An ETC is not permitted to receive payments for subscribers who are not eligible for the Lifeline program, and may not seek reimbursement for providing Lifeline service to a consumer unless the ETC has confirmed the consumer's eligibility. 47 C.F.R. § 54.410(a) - (d).

23. Lifeline discounts are limited to one service per household. 47 C.F.R. § 54.409(c). A "household" is "any individual or group of individuals who are living together at the same address as one economic unit." 47 C.F.R. § 54.400(h). An "economic unit" includes "all adult individuals contributing to and sharing in the income and expenses of a household." *Id.* A consumer whose household receives no other Lifeline discount and who meets either the above-stated income requirement or is enrolled in an eligible assistance program is deemed a "qualifying low-income consumer." 47 C.F.R. § 54.400(a).

24. An ETC must obtain a certification of eligibility from prospective subscribers that verifies, among other things, that the consumer meets the income-based or program-based eligibility criteria for receiving Lifeline service and that the consumer's household is not already receiving a Lifeline service. 47 C.F.R. § 54.410(b) - (d). Throughout this Complaint-In-

Intervention, an individual who received Lifeline services from Total Call even though the individual or someone in the individual's household also received Lifeline services from Total Call is referred to as a "duplicate subscriber."

25. ETCs are required to "implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services." 47 C.F.R. § 54.410(a). This includes confirming that the consumer is not a duplicate subscriber. At a minimum, the ETC must search its own internal records to ensure that it is not already providing Lifeline services to the same consumer or another individual residing at the same address who has not specifically certified that he or she is part of an independent household. Except in states that have developed their own systems for preventing duplicate enrollments, ETCs also are required to query the National Lifeline Accountability Database ("NLAD"), which was introduced in early 2014, to determine whether a prospective subscriber, or anyone living at the prospective subscriber's address, is already receiving Lifeline service from another ETC. 47 C.F.R. § 54.404(b). USAC administers the NLAD.

26. ETCs are required to re-certify the eligibility of all Lifeline subscribers on an annual basis except where a state Lifeline administrator or other state agency is responsible for such recertification. 47 C.F.R. § 54.410(f). This may be done by querying appropriate eligibility databases, or by obtaining a signed eligibility recertification from the subscriber. 47 C.F.R § 54.410(f).

II. Lifeline Certifications and Remittance Requests

27. ETCs file with USAC a FCC Form 497 ("497 Form") for each Study Area Code ("SAC") to request reimbursement for Lifeline services provided during the course of a calendar month. The 497 Form lists the total number of qualifying low-income Lifeline subscribers who

received a Lifeline discount from the ETC and the total reimbursement that the ETC claimed for the month. Federal regulations state that an ETC may receive reimbursement only if it certifies as part of its reimbursement request that it is in compliance with all of the Lifeline rules and that it has obtained valid certification and recertification forms for each subscriber for whom the ETC seeks reimbursement. 47 C.F.R. § 54.407(d). Specifically, the 497 Form certification signed by the ETC's officer states, in pertinent part:

> I certify that my company is in compliance with all of the Lifeline program rules, and, to the extent required, have obtained valid certifications for each subscriber for whom my company seeks reimbursement. Based on the information known to me or provided to me by employees responsible for the preparation of the data being submitted, I certify under penalty of perjury that the data contained in this form has been examined and reviewed and is true, accurate, and complete.

28. ETCs also are required to file a FCC Form 555 ("555 Form") annually with USAC for each SAC where they provide Lifeline services. The 555 Form reflects the results of an ETC's annual recertification efforts, including the number of subscribers de-enrolled as a result of the re-certification process and non-usage of phones. 47 C.F.R. § 54.416(b). As part of the submission of annual recertification data, federal regulations require each ETC to again certify that it has policies and procedures in place to ensure that its subscribers are eligible to receive Lifeline services and that the ETC is in compliance with all Lifeline certification procedures. 47 C.F.R. § 54.416(a). Specifically, the 555 Form certification signed by the ETC's officer states, in pertinent part:

> I certify that the company listed above has certification procedures in place to:
>
> A) Review income and program-based eligibility documentation prior to enrolling a consumer in the Lifeline program, and that, to the best of my knowledge, the

company was presented with documentation of each consumer's household income and/or program-based eligibility prior to his or her enrollment in Lifeline; and/or

B) Confirm consumer eligibility by relying upon access to a state database and/or notice of eligibility from the state Lifeline administrator prior to enrolling a consumer in the Lifeline program.

The officer also must state that he or she certifies that the company "is in compliance with all federal Lifeline certification procedures."

III. Total Call's Representations in Its Compliance Plan

29. In February 2012, the FCC issued a Report and Order ("Lifeline Reform Order") establishing the requirements to become an ETC and a series of rules governing, among other things, Lifeline Program enrollment and eligibility criteria. *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42, 03-109, and 12-23, and CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking (2012). The Lifeline Reform Order required carriers to submit to the FCC for approval a compliance plan that outlined the carrier's service offerings and the measures it would take to implement the conditions set forth in the Lifeline Reform Order.

30. On or about March 16, 2012, Total Call submitted its Compliance Plan to the FCC in accordance with the Lifeline Reform Order. After discussions with FCC staff, Total Call submitted a revised Compliance Plan to the FCC, which was dated May 14, 2012.

31. In its revised Compliance Plan, Total Call represented that it would "comply fully with all conditions in the Lifeline Reform Order, as well as with [the FCC's] Lifeline rules and policies more generally." The Compliance Plan also included the following specific representations:

- Total Call would comply "with the uniform eligibility criteria established" in the FCC's Lifeline rules, "as well as any additional certification requirements for Lifeline eligibility in states where the Company is designated as an ETC."

- Total Call personnel would "examine supporting documentation for each Lifeline applicant" to verify eligibility for the Lifeline Program. "Where the Company personnel conclude that proffered documentation is insufficient to establish such eligibility, the Company will deny the associated application and inform the applicant of the reason for such rejection."

- Total Call would issue phones to customers "[o]nly after completing all required eligibility verifications."

- Total Call personnel would be "fully trained in Lifeline requirements" and "be trained on acceptable documentation required to establish income-based and program-based eligibility." Total Call personnel would "be trained to answer questions about Lifeline eligibility," and would "review required documentation to determine whether it satisfies the Lifeline Reform Order and state-specific eligibility requirements using state-specific checklists."

- Through its certification requirements, Total Call would "confirm that the subscriber is not already receiving a Lifeline service and no one else in the subscriber's household is subscribed to a Lifeline service."

- Total Call would implement the one-benefit-per-household requirement "through the use of its application and certification forms . . . , internal database checks and its marketing materials[.]" Total Call further stated that upon receiving an application the company would "search its own internal records to ensure that it does not already provide Lifeline-supported service to someone at the same residential address."

- Total Call would "implement measures and procedures to prevent duplicate Lifeline benefits being awarded to the same household."

- Total Call would "verify customers as described in the Compliance Plan before submitting requests for reimbursement for service provided to the subscriber."

- Total Call would "[i]mmediately de-enroll any subscriber whom the Company has a reasonable basis to believe is receiving Lifeline-supported service from another ETC or is no longer eligible[.]"

32. The FCC allowed Total Call to participate as an ETC in the Lifeline program based on the representations the company made in its Compliance Plan. As discussed below, these representations proved to be false, and Total Call did not have a system or strategy in place

to satisfy the conditions of the Lifeline Reform Order at the time it submitted its Compliance Plan in May 2012.

IV. Defendants' Aggressive Growth Strategy

A. Focus on Maximizing Lifeline Enrollments

33. KDDI America, as well as KDDI Corporation, had lofty expectations for Total Call's Lifeline business and hoped that it would allow KDDI Corporation to rapidly increase its presence in the United States market. In a presentation provided to KDDI America and KDDI Corporation executives in 2013, senior Total Call managers described the Lifeline program as "the crystal clear path for immediate growth in the U.S. for KDDI."

34. The management philosophy of KDDI America, like its Japanese-based parent, was focused on cash flow and maximizing revenues. As a result, the goal was to enroll as many Lifeline customers as possible within a short timeframe, regardless of whether these customers were properly vetted and actually eligible for the Lifeline program. KDDI America closely scrutinized the financial performance of the Lifeline business and exerted pressure on Total Call to meet its aggressive sales targets. As discussed below, Defendants prioritized maximizing enrollments and cash flow over compliance with Lifeline rules and regulations.

35. Total Call developed, and KDDI America approved, extremely aggressive business plans that called for rapid growth. Total Call initially hoped to enroll as many as 2 million subscribers by 2016. Total Call management was concerned that the potential Lifeline market would quickly become saturated, as new ETCs entered the space. In addition, management wanted to maximize enrollments before the development and introduction of NLAD, which they expected would make it more difficult to enroll and receive reimbursement for duplicate subscribers. As a result, the need to expand and grow quickly was paramount.

Total Call aimed to enroll 25,000 new subscribers each month in 2013, and was already operating in 12 states by the end of the year.

B. Distribution Network

36. Total Call relied primarily on in-person sales events to enroll consumers in the Lifeline program.

37. Total Call solicited and enrolled consumers by contracting with several distributors based throughout the country, referred to as "master agents," who in turn hired individual "field agents" to engage in face-to-face marketing at public events and spaces. The field agents were responsible for collecting the consumer's information and performing individual enrollments.

38. Total Call paid the master agents based in part on the number of subscribers successfully enrolled, and the master agents in turn paid commissions to their field agents. Total Call set aggressive sales targets for its master agents, and pressured them to meet these goals.

C. Enrollment Process and Desire to Provide "Instant Gratification" to Customers

39. An important aspect of Total Call's business model was a sales strategy that prioritized the customer's "instant gratification."

40. Under this model, in order to distinguish itself from competitors, Total Call committed to providing new Lifeline subscribers with an activated handset as part of the first sales interaction. As opposed to competitors who provided the handset days after processing the application, Total Call sought to differentiate itself by offering the consumer the ability to walk away from the sales encounter with a Lifeline phone. As discussed below, this resulted in pressure to approve applications and to approve them quickly.

41. During the very early stages of its Lifeline business, Total Call received paper Lifeline applications by mail but quickly moved to receiving and reviewing applications electronically. Total Call retained CGM, LLC ("CGM"), a Georgia-based software development firm, to facilitate the electronic enrollment process. CGM provided Total Call with an electronic platform to process and review Lifeline applications, and provided assistance with the preparation and submission of the company's 497 Forms.

42. Using CGM's electronic platform and tablet computers, Total Call field agents were expected to enter a consumer's demographic information (*e.g.*, name, address, date of birth, last four digits of Social Security number) and capture images of the consumer's proof of identification and proof of eligibility (*e.g.*, Medicaid card, SNAP card). Consumers were supposed to use the tablet to sign the customer certification required under the Lifeline rules.

43. Total Call had electronic access to the documentation, information, and data entered by its field agents during the enrollment process.

V. Total Call Regularly Sought and Received Federal Payments for Duplicate Subscribers and Subscribers Who Otherwise Did Not Meet the Eligibility Requirements of the Lifeline Program

44. Total Call, with the knowledge and involvement of the other Defendants, engaged in a widespread practice of seeking federal reimbursement for consumers who did not meet Lifeline eligibility requirements, including tens of thousands of duplicate subscribers, in violation of Lifeline rules and regulations. Defendants failed to implement effective policies, procedures, and systems to identify duplicate or otherwise ineligible subscribers. As a result, Total Call submitted 497 Forms that included grossly inflated claims for reimbursement and received millions of dollars in federal payments to which Total Call was not entitled.

45. For much of the Covered Period, Total Call turned a blind eye to the wide range of fraudulent enrollment practices employed by its field agents and ineligible consumers.

46. For example, Total Call field agents repeatedly used the same benefit program eligibility proof to fraudulently enroll multiple ineligible consumers. Field agents collected and maintained stacks of improperly obtained cards for this purpose. Numerous agents frequently enrolled several different consumers by submitting an image of the same program eligibility card or sometimes a fake card. In some instances, field agents retrieved and relied on online images of SNAP cards. In other instances, field agents obtained and used temporary SNAP cards because they did include the actual benefit recipient's name.

47. Although Total Call and Locus managers received numerous reports that field agents were using the same program eligibility card repeatedly to enroll different individuals, they failed to put in place adequate and effective systems and procedures to prevent this practice for much of the Covered Period.

48. Field agents also intentionally slightly altered the way in which a subscriber's demographic information, such a consumer's name or address, was input to avoid having the application rejected as a duplicate by the CGM platform or NLAD. Master agents and field agents were well aware of the limitations of the automated duplicate check process performed by the CGM platform and later NLAD, which typically would only flag instances where a consumer's information exactly matched the information of another previously enrolled consumer. By slightly manipulating how the individual's identifying information was input, field agents knew that they could bypass the deficient systems used by Total Call to detect duplicate subscribers.

49. Total Call enrolled and claimed federal reimbursement for tens of thousands of duplicate subscribers. As demonstrated by the company's customer database, many different Lifeline accounts were associated with what plainly appears to be the same consumer. For example, Total Call received reimbursement for 17 different "subscribers" who, according to Total Call's records, were all born on the same date, lived in Michigan in the 48203 zip code (all but one are listed as living at the same address), and had the following first and last names:

Last Name	First Name
currelley	roy
currelley	roy
currelly	roy
currelleey	roy
Currelley	Roy
currelley	roy
currelley	roy
currelley	roy
curelleyt	roy
curelly	Roy
crurelly	Roy
currerlley	roy
currelleyy	roy
Currelley	Roy
Currelley	Roy
Milton currelley	Roy
currell	milton

50. Total Call was well aware that field agents developed ways to manipulate a consumer's data to bypass the limited automated duplicate checks in place but, as discussed further below, failed for much of the Covered Period to put in place an adequate and effective system to detect and deny Lifeline applications that were clearly for duplicate subscribers. By approving these applications, and in turn requesting and receiving federal reimbursement for duplicate subscribers, Total Call failed to comply with Lifeline rules.

51. In addition, Total Call field agents tampered with identification or eligibility documentation, and intentionally transmitted blurry or partial images of the documentation, to try to conceal the fact that the information on the documentation did not match the subscriber's actual name or the other information on the Lifeline application. Total Call and Locus had access to these images but still enrolled the prospective subscriber notwithstanding clear legibility issues with the proof submitted.

52. Total Call also sought federal reimbursement for subscribers notwithstanding clear indicia that they had not signed the required certification, as mandated by Lifeline rules. Certain field agents provided their own signature, printed their own name, or wrote a straight or curvy line where the prospective subscriber's signature was supposed to appear on the Lifeline application. Once again, Total Call acted with reckless disregard to clear indications of fraud, and requested and received federal reimbursement for these accounts even though it was evident that the field agent, instead of the actual consumer, had signed the required certification.

53. Furthermore, Total Call field agents submitted false customer addresses to enroll duplicate or otherwise ineligible subscribers. Total Call and Locus approved Lifeline applications even if the address listed on the application did not match the address listed on the identification proof provided. Field agents also entered false social security numbers for Lifeline applicants.

54. The field agents who engaged in the above-referenced fraudulent conduct to generate Lifeline enrollments were acting on behalf of Total Call as its agent. Total Call was ultimately responsible for reviewing the information and documentation collected and submitted with each Lifeline application, and for complying with Lifeline eligibility rules.

VI. Defendants Failed to Implement Effective Policies and Procedures to Ensure the Eligibility of Lifeline Subscribers in Violation of Lifeline Rules

55. During much of the Covered Period, Defendants failed to implement effective policies and procedures to ensure the eligibility of the Lifeline subscribers for whom Total Call received federal reimbursement, as required by Lifeline regulations. In many instances, even a cursory review of the information and documentation submitted in support of a Lifeline application, or a straightforward search of the existing customer database, would have shown that the application was faulty and should be denied. However, to maximize enrollment figures and to meet its aggressive sales targets, Total Call approved these applications with little or no scrutiny and requested and received millions of dollars in federal payments to which it was not entitled.

56. The CGM platform performed a limited electronic vetting of the information collected by the field agent at the time of enrollment, which included an address verification and a limited duplicate check process.[1] However, Total Call was ultimately responsible for manually reviewing the customer's information and documentation to verify the consumer's eligibility.

57. The individuals assigned to review Lifeline applications — referred to as "auditors" — were supposed to confirm that the consumer had not previously enrolled with Total Call, that the information on the identification and eligibility documentation was consistent, and that the prospective subscriber met Lifeline eligibility criteria. Prior to September 2013, this compliance function was delegated to Total Call sales staff, who were most interested in meeting the enrollment targets set by management.

[1] When NLAD was rolled out in 2014, a consumer's information was transmitted via the CGM platform to NLAD for an automated duplicate screening review.

58. From the outset, Defendants allocated insufficient staff and resources to reviewing the eligibility of prospective subscribers. According to Total Call's 2013 business plan, which was vetted and approved by KDDI America, one staff member was expected to review the eligibility of 6000 prospective Lifeline customers each month, at a monthly salary of $2200. In addition, Total Call allocated just one staff member per 500,000 Lifeline subscribers for the purposes of "Regulatory Compliance."

59. Due to Defendants' "instant gratification" sales strategy, Total Call's practice in 2013 was to activate and provide phones to customers in the field without waiting until the consumer's application and supporting information had been reviewed by the assigned auditor, which was contrary to Total Call's representations in its Compliance Plan. As the number of Lifeline applications rapidly increased in the spring and summer of 2013, Total Call staff quickly became overwhelmed and could not keep up with the volume. Instead of reviewing applications promptly after their submission, staff frequently did not review them until weeks or even months after the customer's phone was activated. By that time, Total Call already had included the subscriber in its monthly federal remittance requests (*i.e.*, 497 Forms). Thus, in 2013, Total Call frequently sought federal reimbursement for a Lifeline subscriber prior to reviewing the subscriber's information to verify his or her Lifeline eligibility.

60. According to the electronic "review queue" that tracked the status of Lifeline orders, during the period January 2013 through August 2013, approximately 69% of Lifeline applications reviewed by Total Call staff were not reviewed until more than 30 days after submission, including approximately 32% that were not reviewed until more than 90 days after submission.

61. Moreover, during this period, Total Call staff never got around to reviewing the eligibility of a significant number of consumers who were approved for Lifeline services. According to the "review queue," Total Call did not review the eligibility of approximately 7,000 customers from January 2013 through August 2013, but still requested and received federal payments for these customers.

62. Where a review did occur, Total Call auditors rarely denied the prospective subscriber's application, even though many applicants did not meet Lifeline eligibility requirements. The reviews were cursory at best and failed to detect duplicate subscribers or clear deficiencies in the submitted information and documentation that called into question the consumer's eligibility for the Lifeline program.

63. KDDI America and senior Total Call management closely tracked the rate at which Lifeline applications were denied, and wanted to minimize the number of denials. As a result, even in the limited number of instances where applications were initially denied, Total Call tried to find ways to "save" these applications.

64. In October 2013, the company's Chief Sales and Marketing Officer inexplicably asked CGM to change the listed review queue status of more than 13,800 Lifeline orders from "denied" to "pending review" so that his staff could "re-audit them." These orders previously had been denied for reasons such as: the name on the application did not match the name on the proof of eligibility; the proof of eligibility was not for a qualifying program; and the order was a duplicate of a previous order. CGM found this to be an unusual request but nevertheless made the changes. Within a short time thereafter, over 97% of these denied orders were "approved" by the Chief Sales and Marketing Officer and his staff, notwithstanding the deficiencies that had been identified during the initial review. Total Call sought federal reimbursement for the vast

majority of these previously denied applications, and received over $1.2 million in federal reimbursement for these subscribers.

65. Total Call staff took great pains to do whatever they could to approve Lifeline applications and minimize the denial rate. For example, in an August 30, 2013 email to Total Call's Chief Sales and Marketing Officer, the Director of Business Development inquired if there was a "way to change the address from what is entered if its[sic] not the same" and whether he could "change the address or name that is reflected on the ID." The Chief Sales and Marketing Officer responded that they should be able to do this "during the review by the Escalation Dept."

66. In September 2013, the auditing responsibility was transferred from Total Call's sales staff to Locus' Customer Relations staff, who already were performing other unrelated customer service functions for Locus' other lines of business. They too lacked sufficient staff to conduct an effective and meaningful review of the high volume of applications being submitted.

67. Approximately 98% of the Lifeline applications submitted from September 2013 through December 2013 were ultimately approved, including applications for many duplicate or otherwise ineligible subscribers. During this period, a Total Call Associate Sales Representative was tasked with re-reviewing any applications that were initially denied by Locus staff. He overturned most of the denials. In an email to the head of Locus' Customer Relations Department, Total Call's General Counsel advised senior Total Call and Locus managers that the Associate Sales Representative "tried to remediate" applications that were initially denied "and some of them actually go through (e.g. corrects DOB on the back end). His 'repairs' should improve our final denial rate a bit." Total Call's General Counsel later acknowledged that having Total Call sales staff overturn eligibility determinations presented a conflict of interest.

68. In the beginning of 2014, Total Call adopted a "real time" approval process that required auditors to approve a consumer's application before the consumer could be enrolled by the field agent. As a result, senior Total Call managers demanded that Customer Relations staff review applications within unreasonable timeframes to avoid the risk of losing potential customers. Total Call sales staff wished to limit applicants' wait time to 1-3 minutes because applicants would be standing in front of the field agents while waiting for a response. When presented with this request by Total Call' General Counsel, the head of Locus' Customer Relations Department responded that this "might not be realistic."

69. The pressure to review applications quickly, combined with the lack of sufficient staff to handle the large volume of Lifeline applications submitted each day, undermined the eligibility review process.

70. The head of Locus' Customer Relations Department repeatedly asked for additional staff, but management was slow to respond because they wanted to keep expenses as low as possible. Disappointed in Total Call's failure to meet its revenue projections, KDDI America was reluctant to extend further financing to the cash-strapped Lifeline business.

71. In the second half of 2014, when the daily volume of applications started to regularly exceed 2000 subscribers, Locus outsourced the responsibility to review a bulk of the Lifeline applications to a firm based in the Philippines in order to reduce costs.

VII. Total Call Failed to Adequately Train and Oversee Field Agents and Knowingly Allowed Certain Agents to Continue to Engage in Fraudulent Enrollment Practices

72. Master agents, as well as the field agents they retained, were compensated in part based on their enrollment numbers. Thus, they were incentivized to enroll as many Lifeline subscribers as possible, regardless of eligibility. Total Call failed to properly vet and train its

field agents, and allowed agents who it knew were engaging in fraudulent enrollment practices to continue to enroll subscribers for whom Total Call received federal payments.

73. For much of the Covered Period, Total Call did not screen or review the credentials or backgrounds of the field agents who were tasked with performing enrollments on the company's behalf. Many of the field agents had extensive criminal histories.

74. For much of the Covered Period, Total Call's field agents frequently received little or no training and started enrolling consumers with little familiarity with Lifeline program requirements or how to verify a prospective subscriber's eligibility. Although Total Call provided training to its master agents, from September 2012 until late 2014, Total Call relied on the master agents to train field agents and did not ensure that such training was provided. Contrary to the representations in Total Call's Compliance Plan, field agents often were not "fully trained in Lifeline requirements," were not "trained to assist Lifeline applicants in determining whether they are eligible to participate based on the federal and state-specific income-based and/or program-based criteria," and were not trained "on acceptable documentation required to establish income-based and program-based eligibility."

75. Total Call failed to put in place effective mechanisms to oversee and monitor the conduct of field agents. Total Call staff rarely personally observed their field agents' conduct in the field and did not engage in monitoring practices that could have detected and prevented field agent abuses.

76. Moreover, during much of the Covered Period, even when Total Call or Locus learned that a field agent was using the same program eligibility proof repeatedly or engaging in some other type of improper conduct, they generally allowed these field agents to continue to

enroll subscribers for whom Total Call requested and received federal payments. Prior to November 2014, Total Call rarely took corrective actions against its field agents.

77. Total Call managers were well aware that various high volume field agents were engaging in blatantly fraudulent enrollment practices, but the company continued to approve and seek reimbursement for individuals enrolled by these agents. For example:

- After reviewing Lifeline applications submitted in July 2013, Total Call's Director of Business Development sent an email stating that he believed an agent was "a crook" and had used the same address to enroll several different people. That same agent enrolled approximately 1,370 Lifeline subscribers on behalf of Total Call after July 2013.

- In a June 2014 email sent to Total Call's Chief Sales and Marketing Officer, an employee identified a field agent who was responsible for the enrollment of 260 duplicate subscribers and another field agent who was responsible for the enrollment of 171 duplicate subscribers. Both of these agents continued to enroll customers on behalf of Total Call until October 2014.

78. Total Call also failed to hold master agents accountable for the fraudulent practices of their field agents. Total Call rarely, if ever, sought to recoup commissions paid to master agents for customers who were later determined to be ineligible for the Lifeline program. The company also continued to rely on master agents as key sources of enrollments well after they learned that the master agents were using field agents who had engaged in widespread fraudulent practices.

79. For example, in a September 2013 email to colleagues within Total Call's Sales Department, the Chief Sales and Marketing Officer noted that he was "very, very disappointed" with a master agent, Southern Cal Connections, Inc., for the enrollments they submitted in July 2013. He wrote: "I have never seen so many blatant ways of ripping us off. No question that these guys did not train their crew properly. . . . Fucking ridiculous guys." However, Southern

Cal Connections, Inc. continued to enroll Lifeline subscribers on behalf of Total Call, ultimately enrolling approximately 300,000 individuals.

80. In addition, Defendants continued to do business with another master agent, EB Wireless, Inc., even after it realized that the company had been responsible for a large portion of the more than 30,000 duplicate subscribers identified by USAC during a review in 2014.

VIII. Defendants Knew That A Significant Number of the Lifeline Subscribers Were Ineligible for the Program, but Total Call Still Continued to Submit Monthly Certified Reimbursement Requests for these Subscribers

81. Defendants were well aware that the processes and procedures for reviewing the eligibility of prospective Lifeline subscribers were ineffective and that Total Call was not in compliance with the Lifeline rules, including the one-benefit-per-household requirement. However, Total Call continued to submit monthly reimbursement requests certifying compliance with all Lifeline rules. In addition, Total Call knew that it had received federal reimbursements for ineligible Lifeline subscribers, but did not consistently comply with its obligation to return these improper payments. Total Call prioritized adding more subscribers and meeting their aggressive sales forecasts above the need to bring the program into compliance with FCC rules and regulations.

82. Defendants knew that the automated process used by CGM to detect duplicate subscribers was deficient, and that as a result, Total Call was routinely enrolling and requesting federal reimbursement for duplicate subscribers in violation of the Lifeline rules. As early as June 2013, Total Call's Director of Business Development reported to CGM that he was "getting hit with dups [sic]" every day. During the same month, Total Call's Chief Sales and Marketing Officer identified seven Lifeline orders for the same customer where the recorded social security

number was different each time. He forwarded the email identifying these orders to his wife, and wrote: "More fraud today beb! Some people, I tell ya!" The agent who enrolled most of these duplicate subscribers was permitted to enroll another 208 Lifeline subscribers in July 2013.

83. In November 2013, a Senior Manager in Locus' Risk Management Department advised CGM that his review of Lifeline orders led him "to believe that duplicates are getting through[.]" The same manager advised Total Call staff of a customer who had received four different Lifeline handsets "despite repeatedly furnishing the same credentials and proof of eligibility."

84. Although Total Call asked CGM to enhance its duplicate screening protocols, they remained deficient throughout much of the Covered Period. In a March 2014 email to senior Total Call and Locus managers, a Locus employee acknowledged that the "[d]up-check feature done by CGM is not that impressive." Three months later, after a meeting discussing duplicate enrollments, Total Call's Chief Sales and Marketing Officer advised CGM that the process to screen out potential duplicate enrollment remained "flawed."

85. Total Call and Locus managers were also well aware that the field agents engaged in practices designed to conceal their fraudulent enrollment conduct. For example, in an email forwarded in August 2013 to Total Call's Chief Sales and Marketing Officer and Director of Business Development, someone reported that he had seen Total Call agents giving multiple cell phones to individuals in Las Vegas:

> I started asking these individuals how they were able to get multiple phones with the same EBT card. I was told that when the customer signed up for second, or even fifth phone, that the total call agent would take a blurry picture of the EBT card and enter in the EBT # into your system with 1 digit off. They would put a 1 instead of a 7, or vice versa.

The Director of Business Development forwarded this email to the master agent in Nevada and noted that "[w]e know that this happens and we don't need this kind of notice."

86. Total Call and Locus also knew that the same program eligibility proof was being repeatedly used to enroll consumers. Locus Customer Relations staff and others regularly notified managers that the same program eligibility card was being used to enroll different subscribers, and characterized the conduct as "fraud." They forwarded emails identifying the specific eligibility cards used, as well as the specific field agents involved. Nonetheless, Total Call continued to accept Lifeline enrollments from the flagged field agents and continued to approve applications supported by the same program eligibility card.

87. The improper enrollment of duplicate and otherwise ineligible subscribers was discussed at regular weekly management meetings, which included senior staff from KDDI America, Locus, and Total Call. KDDI America's Chief Executive Officer regularly attended these meetings, and was advised that Total Call had enrolled duplicate subscribers.

88. Following the FCC's announcement of a proposed forfeiture of more than $4.5 million against another ETC for enrolling duplicate customers, Locus' Chief Financial Officer questioned whether Total Call and Locus should continue to pursue the Lifeline business. In response, Total Call's General Counsel circulated an email in November 2013 acknowledging that Total Call was "not in compliance on several issues which have been raised for quite some time," specifically noting that "more analysis and cleanup has to be done on duplicates." The Chief Operating Officers for Total Call and Locus were copied on this email, and Total Call's General Counsel mentioned that he had previously discussed with them the need to "accelerate our compliance efforts ... so we don't risk penalty or losing our license." He further noted that

Total Call had been "shorthanded" for some time, and had been asking for additional resources to address eliminating the enrollment of duplicates.

89. Notwithstanding its General Counsel's admonishment, Total Call continued to submit reimbursement requests each month, falsely certifying compliance with all Lifeline rules.

90. In early 2014, Total Call initiated a manual review of the monthly remittances it had submitted to USAC in order to determine whether the company had sought reimbursement for duplicate subscribers. Locus' Chief Operations Officer directed Total Call's General Counsel to minimize the costs of the review. Management wanted to keep the results confidential to conceal their awareness of duplicate subscribers at this time. In a January 2014 email to the Chief Operations Officers of Total Call and Locus, Total Call's General Counsel wrote:

> To make sure that we retain attorney/client work production, I am having the analysis done under the direction of the legal department and have only reported this analysis to you . . . . Basically, if we get audited and asked what we know about the problem and how to fix it ... we can assert privileges and refuse to answer. The danger is that, if we were to get audited/penalized before we repair, it would be negative if they found out we knew that we had a problem and they could criticize us more the longer it takes to fix. By making this attorney work product/attorney client privilege, we can refuse to disclose when these efforts began.

91. During the manual review, Total Call found 99,703 "duplicates," for which the company had improperly received $922,252.75 in federal payments. This represented well over 10% of the total number of subscriber remittance requests made by Total Call. The results of the review were shared with Locus and KDDI America senior executives. Total Call's General Counsel recommended that Total Call "immediately" amend its previously filed 497 Forms to return the improperly collected moneys to the USF. However, Total Call did not complete the

process of amending its 497 Form and returning the funds until October 2014. Total Call continued to enroll a significant number of duplicate subscribers during this period.

92. Only days after being informed of the results of the duplicate review project, Locus' Chief Operating Officer asked senior Locus and Total Call staff for ideas on how to cut costs to address the failure to meet financial targets. In response, Locus cut costs by outsourcing to the Philippines the responsibility for reviewing Lifeline applications.

IX. Total Call's Fraudulent Conduct Is Exposed

93. On November 6, 2014, CBS's local affiliate in Denver, Colorado, aired a story showing Total Call field agents enrolling Lifeline applicants by using SNAP cards that belonged to others. One field agent was shown using another person's SNAP card to enroll and provide a cell phone to a CBS employee posing as a prospective Lifeline subscriber.

94. Shortly thereafter, by letter dated November 13, 2014, the FCC advised Total Call that it was "concerned that Total Call Mobile may not have sufficient processes in place to verify subscriber eligibility." The FCC notified Total Call of a USAC analysis that had identified over 30,000 duplicate subscribers for whom Total Call had received payments, and the FCC's Enforcement Bureau (the "FCC EB") launched an investigation. (The FCC's Office of Inspector General (the "FCC OIG") had served its own subpoena on Total Call in September 2014 based on an earlier version of the USAC analysis.)

95. Total Call's General Counsel advised senior managers that responding to the FCC OIG subpoena would require significant resources. In response, Locus' Chief Operations Officer reminded him of "the importance of our meeting this year's financial target," and how Total Call was falling short thus far. He directed Total Call's General Counsel to "minimize the

budget" necessary to respond to the subpoena, and stated that "our financial target is, if not more, at least equally important" to gathering information in response to the FCC OIG subpoena.

96. After the CBS news story aired, the results of the USAC audit were revealed, and the FCC EB and FCC OIG initiated their investigations, Total Call began improving its policies and procedures for complying with Lifeline rules. Total Call developed a new agent compliance department, created enhanced automated processes to detect duplicates, deactivated a significant number of field agents, and required field agents to be directly trained by Total Call employees.

X. False Claims and Certifications of Compliance

97. During the Covered Period, Total Call submitted hundreds of 497 Forms to USAC that listed the purported total number of qualifying low-income Lifeline subscribers served in a given SAC and the total reimbursement claimed for the month.

98. As discussed above, FCC regulations provide that an ETC may receive reimbursement only if it certifies as part of its reimbursement request that it is in compliance with the Lifeline program rules and has obtained valid certification and re-certification forms for each of the subscribers for whom it seeks reimbursement. 47 C.F.R. § 54.407(d).

99. In each 497 Form, Total Call certified that it was "in compliance with all of the Lifeline program rules, and, to the extent required, have obtained valid certifications for each subscriber for whom" Total Call sought reimbursement.

100. The 497 Form certifications submitted by Total Call were false and fraudulent because, among other things: (a) the number of Lifeline subscribers reported included a significant number of subscribers who were not "qualifying low-income consumers" since they were duplicate subscribers or otherwise did not meet Lifeline eligibility requirements; (b) Total Call had not obtained valid certifications of eligibility from each of the subscribers for whom

Total Call sought reimbursement; and (c) Total Call was not in compliance with core Lifeline rules. USAC would not have made the monthly payments to Total Call if it had known the certifications were false and fraudulent for these reasons.[2]

101. Defendants knew that the 497 Forms sought reimbursement for individuals who did not meet Lifeline eligibility requirements, that Total Call's policies and procedures for reviewing Lifeline applications, verifying consumer eligibility, and detecting duplicate subscribers were deficient, and that Total Call was not in compliance with all Lifeline program rules, including compliance with the one-benefit-per-household requirement.

102. Total Call also filed 555 Forms with the FCC and with USAC for calendar years 2013, 2014, and 2015. The 555 Forms reflected the results of Total Call's annual recertification efforts, including the number of subscribers who were de-enrolled as a result of the re-certification process and non-usage. 47 C.F.R. § 54.416(b).

103. In each 555 Form, a Total Call officer certified that the company was in compliance with all federal Lifeline certification procedures and that it had certification procedures in place to:

> A) Review income and program-based eligibility documentation prior to enrolling a consumer in the Lifeline program, and that, to the best of my knowledge, the company was presented with documentation of

[2] Total Call revised some of its 497 Forms to correct errors or remove subscribers who were subsequently determined to be potentially ineligible. In total, during the Covered Period, Total Call returned approximately $3.9 million to USAC as a result of these amendments, a small fraction of the total payments that it had collected for ineligible subscribers. In addition, most of this money was returned after the company was advised that it was being investigated by the FCC EB and the FCC OIG. While the Lifeline rules permit ETCs to submit amended 497 Forms to correct errors later identified, an ETC is still required to examine and review 497 Forms at the time of submission to verify that the data are true, accurate, and complete. Total Call failed to satisfy this requirement. Moreover, many of the amended 497 Forms still included a significant number of subscribers who were not qualifying low-income consumers because they were duplicate subscribers or otherwise did not meet Lifeline eligibility requirements.

each consumer's household income and/or program-based eligibility prior to his or her enrollment in Lifeline; and/or

B) Confirm consumer eligibility by relying upon access to a state database and/or notice of eligibility from the state Lifeline administrator prior to enrolling a consumer in the Lifeline program.

104. The 555 Forms were false and fraudulent because, among other things, Total Call was not in compliance with Lifeline certification procedures and did not consistently confirm subscribers' income and program-based eligibility.

105. In addition, Total Call made several false representations in the revised Compliance Plan submitted to the FCC in May 2012. Specifically, Total Call falsely represented, among other things, that it would fully comply with the conditions of the Lifeline Reform Order and the Lifeline rules and policies, that it would comply with the uniform eligibility criteria established in the Lifeline rules, that it would deny applications where the proffered documentation was insufficient to establish eligibility, that it would issue phones only after completing all required eligibility verifications, that its personnel would be fully trained in Lifeline requirements, that it would confirm that prospective subscribers satisfied the one-benefit-per-household requirement, and that it would immediately de-enroll any subscriber whom the company had a reasonable basis to believe was no longer eligible for the Lifeline program.

106. The FCC relied on these false representations when approving Total Call's application to become an ETC, which qualified the company to receive support under the Lifeline program.

FIRST CLAIM

Violations of the False Claims Act: Presenting False Claims for Payment (31 U.S.C. § 3729(a)(1)(A))

107. The United States incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

108. The United States seeks relief against Defendants under 31 U.S.C. § 3729(a)(1)(A).

109. Through the acts set forth above, Defendants knowingly, or acting with deliberate ignorance or reckless disregard for the truth, presented, or caused to be presented, false or fraudulent claims to USAC, an agent of the United States, by submitting monthly reimbursement requests and certifications (*i.e.*, 497 Forms) pursuant to the Lifeline program.

110. USAC was not aware of the falsity of the claims submitted, and would not have disbursed funds to Total Call under the Lifeline program if it had known that Total Call's monthly reimbursement requests and certifications were false and that Total Call did not comply with applicable FCC rules and regulations or its Compliance Plan.

111. By reason of these false or fraudulent claims, the Government has sustained damages in a substantial amount to be determined at trial, and is entitled to treble damages plus a civil penalty for each violation.

SECOND CLAIM

Violations of the False Claims Act: Use of False Statements (31 U.S.C. § 3729(a)(1)(B))

112. The United States incorporates by reference each of the preceding paragraphs as if fully set forth herein.

113. The United States seeks relief against Defendants under 31 U.S.C. § 3729(a)(1)(B).

114. Through the acts set forth above, Defendants knowingly, or acting with deliberate ignorance or reckless disregard for the truth, made, used, and caused to be made and used, false records and statements material to false or fraudulent claims by submitting the Compliance Plan, monthly reimbursement requests and certifications (*i.e.*, 497 Forms), and annual certifications (*i.e.*, 555 Forms) to USAC and the FCC.

115. USAC was not aware of the falsity of those records and statements, and would not have disbursed funds to Total Call under the Lifeline program if it had known that the Compliance Plan, the monthly reimbursement requests and certifications, and the annual certifications were false and that Total Call did not comply with applicable FCC rules and regulations and its Compliance Plan.

116. By reason of these false records and statements, the Government has sustained damages in a substantial amount to be determined at trial, and is entitled to treble damages plus a civil penalty for each violation.

THIRD CLAIM

Violations of the False Claims Act: Failure to Repay Government Funds (31 U.S.C. § 3729(a)(1)(G))

117. The United States incorporates by reference each of the preceding paragraphs as if fully set forth herein.

118. The United States seeks relief against Defendants under 31 U.S.C. § 3729(a)(1)(G).

119. Through the acts set forth above, Total Call violated the rules and regulations of the Lifeline program and knowingly requested and received federal reimbursements for tens of

thousands of duplicate or otherwise ineligible subscribers. Defendants knowingly failed to repay to USAC the funds Total Call improperly received for ineligible subscribers, despite its obligation to do so under applicable FCC rules and regulations.

120. By reason of Defendants' failure repay these funds, the Government has sustained damages in a substantial amount to be determined at trial, and is entitled to treble damages plus a civil penalty for each violation.

FOURTH CLAIM

Payment by Mistake of Fact

121. The United States incorporates by reference each of the preceding paragraphs as if fully set forth herein.

122. The Government seeks relief against Defendants to recover monies paid under mistake of fact.

123. USAC, an agent of the United States, disbursed funds to Total Call pursuant to the Lifeline program based on the mistaken and erroneous belief that Total Call was acting in compliance with FCC rules and regulations and its Compliance Plan, and that Total Call was seeking payments only for eligible Lifeline subscribers. These erroneous beliefs were material to USAC's decision to make these payments.

124. By reason of the foregoing, the Government has sustained damages in a substantial amount to be determined at trial.

FIFTH CLAIM

Unjust Enrichment

125. The United States incorporates by reference each of the preceding paragraphs as if fully set forth herein.

126. Through the acts set forth above, Total Call has received payments pursuant to the Lifeline program to which it was not entitled and therefore was unjustly enriched. The circumstances of these payments are such that, in equity and good conscience, Total Call should not retain those payments, the amount of which is to be determined at trial.

WHEREFORE, the United States respectfully requests judgment to be entered in its favor against Defendants as follows:

a. On the First, Second, and Third Claims (FCA violations), for a sum equal to treble damages and civil penalties to the maximum amount allowed by law;

b. On the Fourth Claim (Payment by Mistake of Fact), a sum equal to the damages to be determined at trial, along with costs and interest;

c. On the Fifth Claim (Unjust Enrichment), a sum equal to the damages to be determined at trial, along with costs and interest;

d. Granting the United States such further relief as the Court may deem proper.

Dated: December ~~20~~ 27, 201~~6~~8 J.K.P.
New York, New York

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UNITED STATES GOVERNMENT
FEDERAL COMMUNCIATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: September 24, 2015

TO: David L. Hunt, Inspector General

FROM: Jay Keithley, Assistant Inspector General for Investigations, [redacted] Investigator, [redacted] Investigatory Attorney

SUBJECT: Unauthorized disclosure of information related to AT&T Notice of Apparent Liability (NAL)

Overview

On December 19, 2014, Travis LEBLANC, Bureau Chief Enforcement Bureau (EB), contacted FCC OIG regarding the unauthorized disclosure of information related to a circulation item entitled "AT&T Inc., Parent Company of New Cingular Wireless PCS, LLC and AT&T Mobility Puerto Rico, Inc., Notice of Apparent Liability for Forfeiture" (CLAS # 140219). LEBLANC advised that the circulation item was provided to legal advisors in the office of the Chairman and offices of the Commissioners at 0929 hours EST on December 17, 2014. LEBLANC further advised that, on December 18, 2014, staff in EB were contacted by [redacted], [redacted] External Affairs Regulatory, AT&T Services, Inc., regarding the circulated NAL.

Despite a comprehensive examination of email correspondence and phone records, we were unable to identify the individual or individuals who made the initial disclosure to AT&T. Since

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OIG-I-15-0013	Sprint NAL

we were unable to identify the individual or individuals who made disclosures in this matter, we were unable to determine if those disclosures were authorized or unauthorized.

Investigation

To investigate this matter, the Computer Forensics Investigator performed the following steps:

1. Obtained and examined Outlook Mailboxes and archived email from network shares for thirty-six (36) individuals working in the Office of the Chairman and the Offices of the Commissioners.

2. Obtained and examined desk phone records for thirty-seven (37) individuals working in the Office of the Chairman, Offices of the Commissioners, and Wireless Telecommunications Bureau (WTB).

3. Obtained and examined mobile phone records for thirty-seven (37) individuals working in the Office of the Chairman, Offices of the Commissioners, and WTB.

4. Developed a time line for the disclosure based on the results of the email and phone record examinations.

5. Contacted [redacted] and [redacted] and requested information related to the disclosure.

6. Interviewed Roger SHERMAN, Bureau Chief – WTB, regarding discussions with AT&T.

Legal and Regulatory Overview

The Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct), recognizes that "(p)ublic service is a public trust" and that each employee has a "responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical practices above private gain." To ensure that every citizen can have complete confidence in the integrity of the Federal Government, the Standards of Ethical Conduct set forth both general principles that government employees are required to adhere to, as well as regulations governing employee conduct in certain specified circumstances.

Section 2635.703, entitled "Use of nonpublic information," states that "(a)n employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure."

The Commission's rules and regulations are located in Title 47 of the Code of Federal Regulations (CFR). Section 19.735-203, entitled "Nonpublic information," states that "(e)xcept as authorized in writing by the Chairman pursuant to paragraph (b) of this section, or otherwise as authorized by the Commission or its rules, nonpublic information shall not be disclosed, directly or indirectly, to any person outside the Commission." And that such information includes "(t)he content of agenda items." We contacted (b) (7)(C), (b) (6) [redacted], Office of General Counsel, to obtain an understanding of the application of section 19.735-203 to the matter being investigated. Sections of (b) (5) [redacted] response are as follows:

(b) (5) [redacted]

[redacted]

[redacted]

On (b) (7)(A) [redacted], Travis LeBlanc, Chief, Enforcement Bureau, and Jonathan Sallet, General Counsel, (b) (5) [redacted] (b) (5) [redacted]

Findings

In addition to reviewing email correspondence and phone records, we contacted (b) (7)(C), (b) (6) [redacted] and requested information related to the disclosure. Through their attorney (b) (7)(C), (b) (6) [redacted] declined to respond. In addition, we interviewed Roger SHERMAN, Bureau Chief – WTB, regarding discussions with AT&T that we identified during the review of email correspondence and phone records. Based on the timing and content of the contact, we believed that the discussion was related to the AT&T NAL. SHERMAN indicated that he routinely has contact with AT&T and that the matter identified in our review was not related to the AT&T NAL.

Conclusion

Despite a comprehensive examination of email correspondence and phone records for thirty-seven (37) individuals working in the Office of the Chairman, Offices of the Commissioners, and Wireless Telecommunications Bureau (WTB), we were unable to identify the individual or individuals who made the initial disclosure to AT&T. Since we were unable to identify the individual or individuals who made disclosures in this matter, we were unable to determine if those disclosures were authorized or unauthorized.

Recommendation

No further action is recommended.

(b) (5) [redacted]

[redacted]

(b) (5) [redacted]

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(b) (5)

[redacted]

(b) (5)

[redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(b) (5) [redacted]

[redacted]

[redacted] (b) (5) [redacted]

(b) (5) [redacted]

[redacted]

[redacted]

(b) (5)

[redacted] (b) (5) [redacted]

UNITED STATES GOVERNMENT
FEDERAL COMMUNCIATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: September 24, 2015

TO: David L. Hunt, Inspector General

FROM: Jay Keithley, Assistant Insp[redacted]eneral for Investigations, [redacted] Investigator, [redacted] Attorney

SUBJECT: Unauthorized disclosure of information related to Sprint Notice of Apparent Liability (NAL)

Overview

On December 19, 2014, Travis LEBLANC, Bureau Chief – Enforcement Bureau (EB), contacted FCC OIG regarding the unauthorized disclosure of information related to a circulation item entitled "Sprint Corporation, Notice of Apparent Liability for Forfeiture" (CLAS Number 140215). LEBLANC advised that the circulation item was provided to legal advisors in the Offices of the Commissioners on December 10, 2014. LEBLANC further advised that, on December 11, 2014, staff in EB were contacted by [redacted], a Partner at [redacted] is a law firm that represents Sprint. [redacted] told EB that he heard from "a source" that there is a Notice of Apparent Liability for Forfeiture (NAL) on circulation and that he "needs more information from us [EB] to have a meaningful discussion."

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On December 15, 2014, Brendan SASSO, reporter with the National Journal, tweeted "Scoop: FCC plans massive fine for Sprint for bogus charges" and included a link to a National Journal article about the Sprint NAL. Staff in EB analyzed the article and concluded that SASSO had obtained very specific information including the facts supporting the NAL.

Investigation

To investigate this matter, the Computer Forensics Investigator performed the following steps:

1. Obtained and examined Outlook Mailboxes and archived email from network shares for thirty-six (36) individuals working in the Office of the Chairman and the Offices of the Commissioners.

2. Obtained and examined desk phone records for thirty-six (36) individuals working in the Office of the Chairman and Offices of the Commissioners.

3. Obtained and examined mobile phone records for thirty-six (36) individuals working in the Office of the Chairman and Offices of the Commissioners.

4. Developed a time line for the disclosure based on the results of the email and phone record examinations.

5. Contacted [redacted] (b) (7)(C), (b) (6) and SASSO and requested information related to the disclosures.

Legal and Regulatory Overview

The Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct), recognizes that "(p)ublic service is a public trust" and that each employee has a "responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical practices above private gain." To ensure that every citizen can have complete confidence in the integrity of the Federal Government, the Standards of Ethical Conduct set forth both general principles that government employees are required to adhere to, as well as regulations governing employee conduct in certain specified circumstances.

Section 2635.703, entitled "Use of nonpublic information," states that "(a)n employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through

Case Number:	Case Title:
OIG-I-15-0013	Sprint NAL

advice or recommendation, or by knowing unauthorized disclosure."

The Commission's rules and regulations are located in Title 47 of the Code of Federal Regulations (CFR). Section 19.735-203, entitled "Nonpublic information," states that "(e)xcept as authorized in writing by the Chairman pursuant to paragraph (b) of this section, or otherwise as authorized by the Commission or its rules, nonpublic information shall not be disclosed, directly or indirectly, to any person outside the Commission." And that such information includes "(t)he content of agenda items." We contacted (b) (7)(C), (b) (6) [redacted] Office of General Counsel, to obtain an understanding of the application of section 19.735-203 to the matter being investigated. Sections of (b) (7)(C), (b) (6) [redacted]'s response are as follows:

(b) (5) [redacted]

[redacted]

[redacted]

On (b) (5) [redacted] Travis LeBlanc, Chief, Enforcement Bureau, and Jonathan Sallet, General Counsel (b) (5) [redacted]

Case Number:	Case Title:
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[redacted]

Findings

We contacted [redacted] and requested that he provide the name of the individual who disclosed information about the NAL. [redacted] provided the following response:

> *"I contacted the Enforcement Bureau on the morning of December 11, 2014 to inquire about the status of a rumored NAL against Sprint. My call was not based on information that I received from anyone at the FCC. Other than that, however, I am not at liberty to discuss how I or my client obtained information concerning the government's investigation. Any further information I may have is protected by the attorney-client and attorney work product privileges. I must therefore decline to respond further to your inquiry."*

With respect to the disclosure to SASSO, our investigation found evidence that staff in the Offices of the Chairman and Commissioners routinely have contact with SASSO and that SASSO attempted to contact staff in the Offices of Commissioner Pai and Commissioner O'Rielly on the day that his article was published. However, we were not able to find any evidence that SASSO spoke to staff from these offices before the article was released. We contacted SASSO and requested that he provide the name of the individual who disclosed information about the NAL. SASSO provided the following response:

> *"That information was provided in confidence, and I intend to invoke any and all applicable reporter's privileges to protect my sources. If you have further questions, please contact [redacted], the general counsel of Atlantic Media, National Journal's parent company. Her email is [redacted], and she is cc'ed here."*

Conclusion

Despite a comprehensive examination of email correspondence and phone records, we were unable to identify the individual or individuals who made the initial disclosure to [redacted] Further, we were unable to identify the individual or individuals who disclosed information to SASSO. Since we were unable to identify the individual or individuals who made disclosures in this matter, we were unable to determine if those disclosures were authorized or unauthorized.

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Recommendations

No further action is recommended.

(b) (5) [redacted]

(b) (5) [redacted]

(b) (5) [redacted]

[redacted]

[redacted]

[redacted]

(b) (5) [redacted]

[redacted]

(b) (5) [redacted]

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[redacted] (b) (5) [redacted]

(b) (5) [redacted] [redacted]

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(b) (5) [redacted]

(b) (5) [redacted]

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(b) (5) [redacted]

[redacted]