

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](mailto:Jeffrey.Powell@usdoj.gov)  
[Jessica.Hu@usdoj.gov](mailto: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:

<u>Last Name</u>	<u>First Name</u>
currelley	roy
currelley	roy
currelly	roy
currelleey	roy
Currelley	Roy
currelley	roy
currelley	roy
currelley	roy
currelleyt	roy
curelly	Roy
crurelly	Roy
currelley	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.<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup>

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 recertification 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

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<sup>2</sup> 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 <sup>22</sup>~~19~~, 2016 *J.K.P.*  
New York, New York

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  
Email: [Jeffrey.Powell@usdoj.gov](mailto:Jeffrey.Powell@usdoj.gov)  
[Jessica.Hu@usdoj.gov](mailto:Jessica.Hu@usdoj.gov)

*Attorney for the United States of America*