

**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<sup>1</sup> 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

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<sup>1</sup> 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.





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 Releasers"), 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 Releasers 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 Releasers 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  
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86 Chambers Street, Third Floor  
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TO DEFENDANTS:

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1919 M Street, N.W.  
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Email: [podonnell@hwglaw.com](mailto:podonnell@hwglaw.com)

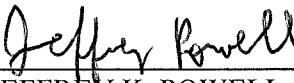
28. The effective date of this Stipulation is the date upon which the Stipulation is approved and entered by the Court (the "Effective Date").

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

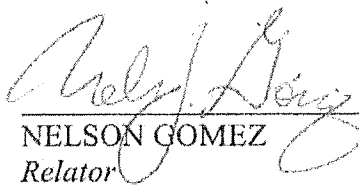
By:   
\_\_\_\_\_  
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*Attorney for the United States of America*

**RELATOR**

Dated: DEC. 16, 2016

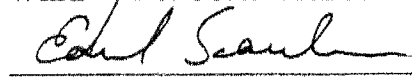
By:

  
NELSON GOMEZ  
*Relator*

Dated: Dec. 16, 2016

By:

WILLENS & SCARVALONE LLP

  
JONATHAN A. WILLENS  
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*Attorneys for Relator*

Dated: Dec. 19, 2016

**DEFENDANTS**

HARRIS WILTSHIRE & GRANNIS LLP

By: 

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BRITA STRANDBERG  
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Telephone No. (202)730-1312

KELLEY DRYE & WARREN LLP

By: \_\_\_\_\_

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

**DEFENDANTS**

Dated: Dec 19, 2016


HARRIS, WILTSHIRE & GRANNIS LLP

By: \_\_\_\_\_

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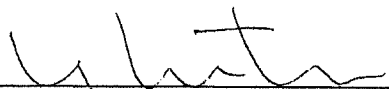
KELLEY DRYE & WARREN LLP

By: \_\_\_\_\_

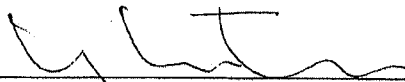
  
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*Attorneys for Defendants Total Call  
Mobile, LLC, Locus Telecommunications, LLC,  
and KDDI America, Inc.*

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

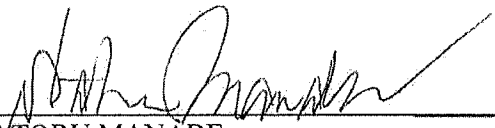
SM  
Dated: ~~12/16~~, 2016

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  
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Telephone: (212) 637-2706/2726  
Facsimile: (212) 637-2686

*Attorney for the United States of America*

**DEFENDANTS**

Dated: \_\_\_\_\_, 2016

HARRIS, WILTSHIRE & GRANNIS LLP

By:

\_\_\_\_\_  
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KELLEY DRYE & WARREN LLP

By: \_\_\_\_\_

STEVEN A. AUGUSTINO  
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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