

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

Total Call Mobile, Inc.

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File No.: EB-IHD-14-00017650
Acct. No.: 201632080004
FRN: 0017274911

ORDER

Adopted: December 22, 2016

Released: December 22, 2016

By the Chief, Enforcement Bureau:

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

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

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

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

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

4 See 47 CFR §§ 54.400-54.422.

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

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

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

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

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

⁶ *TCM NAL*.

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

7. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), and 503(b) of the Act⁸ and the authority delegated by Sections 0.111 and 0.311 of the Rules,⁹ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

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

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

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

⁸ 47 U.S.C. §§ 154(i), 503(b).

⁹ 47 CFR §§ 0.111, 0.311.

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

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

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

I. DEFINITIONS

- 3. For the purposes of this Consent Decree, the following definitions shall apply:
(a) “Act” means the Communications Act of 1934, as amended.
(b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
(c) “Basic Support” means Lifeline support of \$9.25 per month for eligible Lifeline consumers.

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

2 See 47 CFR §§ 54.405, 54.407, 54.409, 54.410.

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

4 47 U.S.C. § 151, et seq.

- (d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
- (f) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which TCM is subject by virtue of its business activities, including but not limited to the Lifeline Rules.
- (g) “SDNY” means the United States Attorney’s Office for the Southern District of New York.
- (h) “Effective Date” means the date by which both the Bureau and TCM have signed the Consent Decree and the U.S. District Court for the Southern District of New York has approved the proposed Stipulation and Order of Dismissal, whichever is later.
- (i) “ETC” means an eligible telecommunications carrier designated under, or operating pursuant to, Section 214(e) of the Communications Act, as amended, 47 U.S.C. § 214(e), as eligible to offer and receive support for one or more services that are supported by the federal universal support mechanisms.
- (j) “Investigation” means the investigation commenced by the Bureau in File No. EB-IHD-14-00017650, and in *Total Call Mobile, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 31 FCC Rcd. 4191 (2016) (*TCM NAL*) regarding whether TCM violated the Lifeline Rules.
- (k) “Lifeline Rules” means Title 47, Code of Federal Regulations, Sections 54.400-54.422, Section 254 of the Act, and Commission orders related to the provision of Lifeline service.
- (l) “Monies Held” means the Lifeline support payments to Total Call Mobile temporarily held by USAC pursuant to the notice provided to the company on April 8, 2016, and order issued by the Wireline Competition Bureau dated June 22, 2016 (DA 16-708).
- (m) “NLAD” means the National Lifeline Accountability Database that ETCs are required to use, unless otherwise provided, pursuant to 47 CFR § 54.404. NLAD is a third-party independent verification system used by the Universal Service Administrative Company that was designed to identify and deny the enrollment of any potential intra-company duplicate Lifeline consumers.
- (n) “Parties” means TCM and the Bureau, each of which is a “Party.”
- (o) “Person” shall have the same meaning defined in Section 153(39) of the Communications Act, as amended, 47 U.S.C. § 153(39).

- (p) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (q) “TCM” or “Company” means Total Call Mobile, LLC, and its predecessors in interest and successors in interest, including Total Call Mobile, Inc.
- (r) “USAC” means the Universal Service Administrative Company, which serves as the administrator for the federal Universal Service Fund.⁵

II. BACKGROUND

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

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

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

⁵ See 47 CFR § 54.701.

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

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

⁸ See 47 CFR § 54.403(a).

⁹ See 47 CFR §§ 54.400–54.422.

¹⁰ See 47 CFR § 54.407(a).

¹¹ See 47 CFR § 54.410(b), (c).

requires ETCs to “implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services.”¹²

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

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

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

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

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

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

¹² See 47 CFR § 54.410(a).

¹³ See 47 CFR § 54.407(d).

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

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

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

13. Hundreds of TCM field agents engaged in fraudulent practices to enroll consumers who were duplicate subscribers¹⁵ or who were otherwise not eligible for the Lifeline program. For example:

- a. Certain field agents repeatedly used the same benefit program eligibility proof to enroll multiple consumers. Agents frequently enrolled several different individuals by submitting an image of the same improperly obtained program eligibility card or, in some instances, a fake program eligibility card. Field agents relied on temporary SNAP cards to enroll consumers because these cards did not include the actual benefit recipient's name. Although TCM and Locus managers received numerous reports that field agents were relying on the same program eligibility card repeatedly, they failed to put in place adequate systems and procedures to prevent this practice for much of the time from September 2012 to May 2016.
- b. Certain field agents slightly altered the way in which a subscriber's demographic information was input to avoid having TCM identify the application as a duplicate. TCM knew that field agents developed ways to manipulate the consumer's data to bypass the limited automated duplicate checks in place, and failed to put in place an adequate system for screening out duplicate subscribers. TCM enhanced its duplicate check system during the latter portion of the time from September 2012 to May 2016, but some duplicate subscribers continued to be enrolled.
- c. Certain field agents tampered with identification or program eligibility cards, and intentionally transmitted blurry or partial images of the documentation, to try to conceal the fact that the information on the documentation did not match the subscriber's actual name or the other information on the Lifeline application. TCM enrolled individuals in the Lifeline program and sought reimbursement for discounts provided to them notwithstanding clear legibility issues with the proof submitted.

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

- d. Certain field agents provided their own signature, printed their own name, or wrote a straight or curvy line where the prospective subscriber's signature was supposed to appear on Lifeline applications. TCM enrolled individuals in the Lifeline program and sought reimbursement for discounts provided to them even though the field agents had completed the required customer certification instead of the actual consumer.
- e. Certain field agents submitted false consumer addresses and social security numbers to enroll duplicate or otherwise ineligible subscribers. TCM failed to take sufficient actions to identify this false information during its review, and enrolled these individuals in the Lifeline program and sought reimbursement for discounts provided to them.

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

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

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

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

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

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

19. On June 22, 2016, the Wireline Competition Bureau issued a temporary suspension of TCM's USF reimbursements, pending its review of TCM's responses to the WCB's request(s) for information (*WCB Temporary Hold Order*).²⁰ On July 22, 2016, TCM filed a Petition for Reconsideration of the *WCB Temporary Hold Order*, which remains pending. TCM responded to the *TCM NAL* on July 5, 2016.²¹

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

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

III. TERMS OF AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

²² See 47 CFR §§ 54.405, 54.407, 54.409, 54.410.

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

28. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act²³ against TCM or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by TCM with the Communications Laws.

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

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

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

²³ 47 U.S.C. § 208.

agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²⁴ relating to the matters addressed in this Consent Decree.

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

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

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

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

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

- a. This Consent Decree is contingent upon court approval of the SDNY Settlement, but, otherwise, does not settle any other investigations that have been or might be conducted by other law enforcement agencies or offices;
- b. TCM will withdraw its Petition for Reconsideration and not pursue any other objections presently before USAC and the Commission related to claims involving the \$7,460,884 in Lifeline reimbursements held by USAC, including the Letter from Steve Augustino, Counsel for TCM, Kelley Drye & Warren, LLP, to Michelle Garber, USAC (May 9, 2016) and *Total Call Mobile, Inc.*, NAL/Acct. No. 201632080004, Response to Paragraph 102 of the Notice of Apparent Liability for Forfeiture, FCC 16-44 (2016); and
- c. TCM agrees not to initiate any additional actions or proceedings, including before any court or tribunal, seeking payments for Lifeline services that are the subject of the Investigation.

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

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

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

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

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

Travis LeBlanc
Chief
Enforcement Bureau

Date

Yasunori Matsuda
Chief Executive Officer
Total Call Mobile, LLC

Date