

Before the
Federal Communications Commission
Washington, D.C. 20554

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

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: April 7, 2016

Released: April 7, 2016

By the Commission: Commissioner Clyburn approving in part, concurring in part and issuing a statement; Commissioners Pai and O’Rielly approving in part, dissenting in part and issuing separate statements.

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION..... 1
II. BACKGROUND..... 7
A. Legal Framework..... 7
A. Relevant Entities ..... 12
1. Total Call Mobile, Inc. (TCM)..... 12
2. CGM, LLC ..... 15
III. THE COMMISSION’S INVESTIGATION ..... 17
A. TCM Apparently Enrolled Duplicate and Ineligible Lifeline Consumers as a Widespread Practice..... 17
1. Apparent Override of NLAD Denials of Duplicate Lifeline Consumers ..... 26
2. Apparent Enrollment of Same-Agent Duplicate Consumers ..... 29
3. Apparent Enrollment of Agent-Team Duplicate Consumers ..... 33
4. Apparent Enrollment of Ineligible Lifeline Consumers ..... 35
5. Apparent Enrollment of Phantom Consumer Resulting in Duplicate Consumers ..... 47
B. TCM Apparently Failed to Ensure Proper Consumer Certifications on Lifeline Applications..... 52
C. TCM Sales Agents Were Apparently Not Trained to Comply with Lifeline Rules ..... 57
D. TCM Apparently Filed Inflated Original Form 497s and Subsequently Filed Many Revised Form 497s ..... 60
E. TCM’s Responses to Two Commission Subpoenas Were Delayed and Incomplete..... 68
IV. DISCUSSION ..... 73
A. TCM Apparently Enrolled and Claimed Reimbursement for Many Duplicate and Ineligible Consumers and Failed to Have Adequate Policies and Procedures to Ensure Lifeline Eligibility in Violation of Lifeline Program Rules..... 74
V. PROPOSED FORFEITURE ..... 84
A. Proposed Forfeiture for TCM’s Apparent Enrollment and Claims for Reimbursement for Many Duplicate and Ineligible Consumers and for Failing to Have Adequate Policies and Procedures to Ensure Lifeline Eligibility in Violation of Lifeline Program Rules..... 86
VI. ORDERING CLAUSES..... 103

APPENDIX A – Examples of Same-Agent Duplicates

APPENDIX B – Examples of Agent-Team Duplicates

APPENDIX C – Michigan June 2014 Form 497s

APPENDIX D – Examples of Duplicates Remaining in NLAD as of April 2015

APPENDIX E – Original and Revised Form 497s

## I. INTRODUCTION

1. In 2013, 2014, 2015, and 2016, Total Call Mobile, Inc. (TCM) received millions of dollars in improper reimbursements from the Universal Service Fund (USF or Fund) for duplicate and ineligible consumers that were apparently enrolled in violation of the Commission's Rules. Disturbingly, TCM employees repeatedly and explicitly told TCM management that the manner in which certain TCM sales agents were enrolling ineligible consumers constituted fraud. Despite these warnings, TCM proceeded to request and receive reimbursements from the Fund for these ineligible consumers that were specifically identified by TCM employees. Based upon the findings and recommendations of the Enforcement Bureau (Bureau) after an extensive and comprehensive investigation (the Investigation),<sup>1</sup> we propose a forfeiture penalty of \$51,070,322. The forfeiture penalty we propose here reflects the seriousness, duration, and scope of TCM's multiple apparent violations.

2. The Investigation uncovered improper enrollment practices involving over 800 TCM sales agents, who collectively generated tens of thousands of duplicate and ineligible consumer enrollments across at least thirteen states through various deceptive practices, including surreptitiously recording consumers' identifying information, enrolling individual consumers for multiple phones without their knowledge, and falsely claiming that ineligible consumers met the requirements to participate in the Lifeline program.

3. *Duplicate Consumers.* The Investigation identified two primary methods by which TCM sales agents enrolled duplicate Lifeline consumers. Sometimes, a sales agent would enroll a consumer more than once, making slight changes to the consumer's identifying information.<sup>2</sup> Other times, a sales agent would share a consumer's information with another sales agent so that the second agent could enroll the consumer one or more additional times, again with slight changes in the consumer's identifying information.<sup>3</sup>

4. *Ineligible Consumers.* The Investigation also uncovered TCM sales agents' practice of enrolling ineligible consumers in the Lifeline program, typically through the use of temporary Supplemental Nutrition Assistance Program (SNAP) cards,<sup>4</sup> which on their face do not bear any identifying participant information.

---

<sup>1</sup> In addition to the analysis of TCM data and documents, and other investigative steps, TCM Sales Agents-A, B, C, D, and E were interviewed in connection with the Investigation. TCM Sales Agents-A, B, C, D, and E solicited and enrolled Lifeline consumers on behalf of TCM in the Mid-Atlantic, Midwest, Mountain West, Southwest, and Southeast regions of the United States in 2013 and 2014. FCC Enforcement Bureau field agents participated in the interviews of TCM Sales Agents A through E and kept notes of the interviews (on file in EB-IHD-14-00017650).

<sup>2</sup> A single TCM sales agent would enroll a Lifeline consumer with TCM, then subsequently re-enter that same consumer's information into an electronic platform with slight changes to the consumer's name, date of birth, or Social Security number, resulting in a duplicate enrollment (Same-Agent Duplicate).

<sup>3</sup> A TCM sales agent would enroll a consumer with TCM and then share that consumer's enrollment information with one or more fellow TCM sales agents, who would then re-enter that same consumer's information with slight changes to the consumer's name, date of birth, or Social Security number, also resulting in a duplicate enrollment, this time under the name of a different TCM sales agent (Agent-Team Duplicate).

<sup>4</sup> See *Supplemental Nutrition Assistance Program (SNAP)*, U.S. Department of Agriculture, Food and Nutrition Service (last published Aug. 21, 2015), available at <http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap> (last visited Apr. 5, 2016).

5. TCM requested and received Lifeline reimbursements from the Fund for duplicate and ineligible consumers through the submission of its FCC Form 497s (Form 497). TCM's own data and documents contain evidence of these improper enrollments. TCM's enrollment of duplicate and ineligible consumers also resulted in the improper activation of one or more Lifeline cellular phone(s).

6. In this Notice of Apparent Liability for Forfeiture (NAL), we continue our commitment to combat waste, fraud, and abuse in the Lifeline program by taking action and proposing monetary forfeitures against a company that has apparently ignored our Rules and exploited a program dedicated to providing low-income consumers with basic telephone service. Specifically, we find that TCM apparently willfully and repeatedly violated Sections 54.405, 54.407, 54.409, and 54.410 of the Commission's Rules<sup>5</sup> by requesting and receiving improper reimbursements from the Lifeline program for duplicate and ineligible consumers and for failing to implement policies and procedures for ensuring eligibility. As a result, we propose a forfeiture of \$51,070,322 for TCM's apparent violations of the Commission's Rules and Orders. The forfeiture we propose today reflects the gravity of what appears to have been willful and intentional misconduct persisting for multiple years. We believe that the proposed penalty will serve the Commission's enforcement efforts to ensure accountability for past misconduct, deter future violations, and promote compliance with the Commission's Rules.

## II. BACKGROUND

### A. Legal Framework

7. *Lifeline Service.* The Lifeline program is part of the USF and helps qualifying consumers obtain the opportunities and security that phone service brings, including being able to connect to jobs, family members, and emergency services.<sup>6</sup> Lifeline service is provided by Eligible Telecommunications Carriers (ETCs) designated pursuant to the Communications Act of 1934, as amended (Act).<sup>7</sup> 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.<sup>8</sup> Section 54.403(a) of the Commission's Rules specifies that an ETC may receive \$9.25 per month for each qualifying low-income consumer receiving Lifeline service,<sup>9</sup> and up to an additional \$25 per month if the qualifying low-income consumer resides on Tribal lands.<sup>10</sup> ETCs are required to pass a discount equal to the reimbursement amount along to eligible low-income consumers.<sup>11</sup>

8. The Commission's Lifeline Rules further establish explicit requirements that ETCs must meet to receive federal Lifeline reimbursement.<sup>12</sup> Section 54.407(a) of the Rules requires that Lifeline reimbursement "shall be provided directly to an eligible telecommunications carrier, based on the number

<sup>5</sup> 47 CFR §§ 54.405, 54.407, 54.409, 54.410.

<sup>6</sup> *Lifeline and Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6662–67, paras. 11–18 (2012) (*Lifeline Reform Order*); see also 47 CFR §§ 54.400–54.422.

<sup>7</sup> 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"); 47 U.S.C. § 214(e) (prescribing the method by which carriers are designated as ETCs).

<sup>8</sup> 47 CFR § 54.403(a).

<sup>9</sup> Lifeline provides a single discounted wireline or wireless phone service to each qualifying low-income consumer's household. See 47 CFR § 54.401; see also 47 CFR § 54.400(h) (defining "household" as "any individual or group of individuals who are living together at the same address as one economic unit"); *Lifeline Reform Order*, 27 FCC Rcd at 6760, para. 241 (noting that the costs of wireless handsets are not supported by the Lifeline program).

<sup>10</sup> See 47 CFR § 54.403(a). Tribal lands include any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma and Hawaiian Homelands. See 47 CFR § 54.400(e).

<sup>11</sup> See 47 CFR § 54.403(a); *Lifeline Reform Order*, 27 FCC Rcd at 6681, para. 53.

<sup>12</sup> See 47 CFR §§ 54.400–54.422.

of actual qualifying low-income consumers it serves.”<sup>13</sup> Pursuant to Section 54.407(b) of the Rules, an ETC may receive Lifeline reimbursement only for qualifying low-income consumers.<sup>14</sup> A “qualifying low-income consumer” must meet the eligibility criteria set forth in Section 54.409 of the Rules, including the requirement that he or she “must not already be receiving a Lifeline service,”<sup>15</sup> and must, pursuant to Section 54.410(d) of the Rules, certify his/her eligibility to receive Lifeline service.<sup>16</sup>

9. The Commission’s Rules prohibit an ETC from seeking reimbursement for providing Lifeline service to a consumer unless the ETC has confirmed the consumer’s eligibility.<sup>17</sup> In accordance with Section 54.410, before an ETC may seek reimbursement, it must receive a certification of eligibility from the prospective consumer that demonstrates that the consumer meets the income-based or program-based eligibility criteria for receiving Lifeline service, and that the consumer is not already receiving Lifeline service.<sup>18</sup>

10. Section 54.410(a) of the Commission’s Rules further requires ETCs to “implement policies and procedures for ensuring that their Lifeline consumers are eligible to receive Lifeline services.”<sup>19</sup> As explained above, such eligibility requires that a consumer seeking Lifeline service is not already receiving Lifeline service. This obligation therefore requires, at a minimum, that an ETC search its own internal records to ensure that it does not provide duplicate Lifeline service to any consumer (an “intra-company duplicate”).<sup>20</sup> Furthermore, ETCs are required to query the National Lifeline Accountability Database (NLAD) to determine whether a prospective consumer is currently receiving Lifeline service from another ETC, and whether anyone else living at the prospective consumer’s residential address is currently receiving Lifeline service.<sup>21</sup> If the NLAD indicates that a prospective consumer is currently receiving Lifeline service, the ETC must not seek or receive Lifeline reimbursement for that consumer.<sup>22</sup> The NLAD is administered by the Universal Service Administrative Company (USAC).

11. ETCs that provide qualifying low-income consumers with Lifeline service file a Form 497 with USAC to request reimbursement from the Fund for the service they have provided to these consumers. An ETC’s Form 497 documents the number of qualifying low-income consumers served and

---

<sup>13</sup> 47 CFR § 54.407(a).

<sup>14</sup> 47 CFR § 54.407(b). In 2011, the Commission took action to address potential waste, fraud, and abuse in the Lifeline program by preventing duplicate payments for multiple Lifeline-supported services to the same individual. *See Lifeline and Link Up Reform and Modernization*, Report and Order, 26 FCC Rcd 9022–23, 9026, para. 1 (2011) (*Lifeline Duplicates Order*); *see also Lifeline and Link Up Reform and Modernization*, Order, 28 FCC Rcd 9057 (Wir. Comp. Bur. 2013); 47 CFR § 54.410(a). Specifically, the Commission amended Sections 54.401 and 54.405 of the Rules to codify the restriction that an eligible low-income consumer cannot receive more than one Lifeline-supported service at a time. *See Lifeline Duplicates Order*, 26 FCC Rcd at 9026, para. 7. In the *Lifeline Reform Order*, this codified restriction was moved from Section 54.401(a) to revised Section 54.409(c). *See Lifeline Reform Order*, 27 FCC Rcd at 6689, para. 74, n.192. The Commission reiterated this limitation in the *Lifeline Reform Order*. *See Lifeline Reform Order*, 27 FCC Rcd at 6689, para. 74; 47 CFR § 54.405.

<sup>15</sup> 47 CFR §§ 54.400(a), 54.409(c).

<sup>16</sup> 47 CFR § 54.410(d).

<sup>17</sup> *See* 47 CFR § 54.410(b).

<sup>18</sup> *See* 47 CFR § 54.410(b), (c); *see also* 47 CFR § 54.410(d).

<sup>19</sup> 47 CFR § 54.410(a). The Commission’s Rules uses the terms “consumers” and “subscribers” interchangeably. *See* 47 CFR § 54.400, *et seq.*

<sup>20</sup> *See Lifeline Reform Order*, 27 FCC Rcd at 6691, para. 78.

<sup>21</sup> 47 CFR § 54.404(b).

<sup>22</sup> *Id.*

the total amount of Lifeline reimbursement claimed by the ETC during the specified time period. Section 54.407(d) provides that an ETC may receive reimbursement from the Fund only if it certifies as part of its reimbursement request that it is in compliance with the Lifeline Rules.<sup>23</sup> An ETC may file a revised Form 497 within 12 months after the data is submitted.<sup>24</sup>

**A. Relevant Entities**

**1. Total Call Mobile, Inc. (TCM)**

12. TCM is a Delaware corporation,<sup>25</sup> with its headquarters located in Gardena, California, that provides wireless telephone services to predominantly Lifeline consumers. TCM has been designated as an ETC to provide wireless Lifeline service in at least 19 states and territories.<sup>26</sup> TCM's parent company is KDDI Corporation (KDDI),<sup>27</sup> which is headquartered in Japan and has corporate shares that are publicly traded on the Tokyo Stock Exchange. KDDI describes itself as a "global telecommunications company that provides wireless and wireline services."<sup>28</sup>

13. 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; enrollments performed by TCM sales agents were accessible by TCM itself and TCM master agents in real time.

14. TCM represented to the Commission that it would train all sales agents and managers on compliance issues related to the solicitation and enrollment of Lifeline consumers.<sup>29</sup> Based upon

---

<sup>23</sup> See 47 CFR § 54.407(d).

<sup>24</sup> See *Lifeline Reform Order*, 27 FCC Rcd at 6788, para. 305. Subsequent revisions, however, do not vitiate violations of an ETC's duty to verify the eligibility of the consumers that are reflected on any of its previously filed Form 497s.

<sup>25</sup> See TCM-EB-000000001-9.

<sup>26</sup> See, e.g., TCM-EB000002155-2170 (granting ETC designation in Colorado); see also *In re: Petition of Total Call Mobile, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Rhode Island for the Purpose of Offering Lifeline Service to Qualified Households*, State of Rhode Island and Providence Plantations Pub. Util. Comm'n, Docket No. 4383 (Feb. 27, 2014); *In re Application for Certification as an Eligible Telecommunications Carrier for the purposes of receiving Low Income Federal Universal Service Support (Lifeline only)*, Louisiana Pub. Serv. Comm'n, Order No. S-32188 (Nov. 13, 2013); *Application of Total Call Mobile, Inc. for Designation as an Eligible Telecommunications Carrier*, Pub. Serv. Comm'n of Wisc., 8838-TI-100 (May 7, 2013) (granting ETC designation collectively).

<sup>27</sup> TCM is a wholly owned subsidiary of Total Call International, Inc., which is a wholly owned subsidiary of KDDI America, Inc. KDDI America, Inc., is a wholly owned subsidiary of KDDI. See TCM-EB000000011. Like TCM, Locus Telecommunications, Inc. (Locus), is a subsidiary of KDDI. Locus markets prepaid calling cards and provides other non-Lifeline telecommunications services. See *Locus Telecommunications*, Forfeiture Order, 30 FCC Rcd 11805, para. 2 n.3 (2015) (ordering forfeiture of \$5,000,000 arising from deceptively marketed prepaid calling cards); *Locus Telecommunications*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12818, paras. 1-2 (2011) (*Locus Telecommunications*). TCM and Locus appear to have overlapping personnel concerning the matters addressed in this Investigation, and the evidence before the Commission indicates that Locus personnel performed compliance duties and had knowledge of the issues addressed here. See, e.g., TCM-EB000939325, 949057. As a result, this NAL will refer to TCM and Locus employees as TCM employees or Company employees, interchangeably.

<sup>28</sup> TCM-EB000000011.

<sup>29</sup> See *Telecommunications Carrier Eligibility to Receive Universal Service Support, Lifeline and LinkUp Reform and Modernization, Total Call Mobile, Inc. (Compliance Plan)*, Total Call Mobile, Inc.'s Revised Compliance Plan at 5-6, 9, 15-16 (WC Docket Nos. 09-197, 11-42) (May 14, 2012).

information and spreadsheets maintained by TCM, its officers certified the accuracy of its Form 497s and TCM was consequently reimbursed from the Fund. TCM then distributed commissions to TCM master agents that, in turn, paid commissions to individual TCM sales agents.

## 2. CGM, LLC

15. TCM engaged CGM, LLC (CGM) as a third-party vendor to facilitate the enrollment of Lifeline consumers. CGM provided TCM with an electronic platform through which TCM sales agents entered Lifeline consumer information and enrolled Lifeline consumers via tablet computers in the field, as well as provided the consumer with the ability to electronically sign required enrollment forms and certifications.<sup>30</sup>

16. The consumer enrollment information entered by TCM sales agents into CGM's platform was transmitted electronically, using tablet computers, to NLAD. TCM had real-time access to all documents, information, and data entered into TCM's CGM-based system by TCM sales agents, which TCM used to process Lifeline enrollment applications.<sup>31</sup>

## III. THE COMMISSION'S INVESTIGATION

### A. TCM Apparently Enrolled Duplicate and Ineligible Lifeline Consumers as a Widespread Practice

17. The evidence shows that TCM sales agents apparently enrolled duplicate and ineligible Lifeline consumers on a large scale. USAC first identified duplicates in November 2014 when it reviewed TCM's consumer lists and notified TCM that it had identified 32,498 intra-company duplicate consumers, spanning thirteen states, over a period of approximately two years.<sup>32</sup> In a limited response to the First TCM Subpoena, TCM produced an internal spreadsheet concerning these duplicate consumers (TCM Duplicate Spreadsheet), which indicates that the 32,498 intra-company duplicates were enrolled by over 800 TCM sales agents.<sup>33</sup> Despite acknowledging reimbursement for the vast majority of the 32,498 duplicate entries, TCM claimed that it did not seek Lifeline reimbursement for [REDACTED] of the entries.<sup>34</sup> TCM also produced internal company consumer lists to support its Form 497 filings for January 2014 through October 2014.<sup>35</sup> A review of the TCM Duplicate Spreadsheet revealed which TCM sales agents processed the enrollment applications for each duplicate consumer identified by USAC.<sup>36</sup> Based on an

---

<sup>30</sup> TCM and CGM are both represented by the law firm Kelley Drye & Warren LLP in connection with the Investigation. As discussed in greater detail below, subpoenas were issued to both TCM and CGM, the former as the target of this Investigation and the latter as an entity in possession of probative documents insofar as CGM rendered services to TCM in TCM's enrollment of duplicate and ineligible Lifeline consumers. TCM failed to provide either complete or timely productions in response to these subpoenas. Similarly, CGM failed to provide complete productions in response to the subpoena.

<sup>31</sup> See Letter from Steven A. Augustino, Kelley Drye & Warren LLP, counsel to Total Call Mobile, Inc., to Dangkhua Nguyen, Investigative Counsel, FCC Enforcement Bureau, USF Strike Force at 2 (Dec. 3, 2014); TCM-EB00000869-2783; see also 47 CFR § 54.410(c)(1).

<sup>32</sup> See Letter from Ryan B. Palmer, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communication Commission to Masaaki Nakanishi, President and Chief Executive Officer, Total Call International (Nov. 13, 2014) (on file in EB-IHD-14-00017650).

<sup>33</sup> See TCM-EB-000000868. Based on an in-depth review of the data, we have reason to believe that the figure of 32,498 intra-company duplicates does not necessarily include all duplicate Lifeline consumers enrolled by TCM. Compare TCM-EB000290801-02 and TCM-EB000290865-66 with TCM-EB-000000868.

<sup>34</sup> Letter from Steven A. Augustino, Kelley Drye & Warren LLP, counsel to Total Call Mobile, Inc., to Ryan B. Palmer, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communication Commission at 4 (Dec. 18, 2014).

<sup>35</sup> See TCM-EB-000002792-2801.

<sup>36</sup> See TCM-EB-000000868.

analysis of these TCM spreadsheets, as well as further investigation, interviews with five TCM sales agents, and additional analysis of other TCM data and documents, the Bureau identified methods by which TCM sales agents apparently enrolled duplicate and ineligible consumers.

18. An analysis of TCM's data showed that more than 30 TCM sales agents each enrolled at least 200 duplicate Lifeline consumers.<sup>37</sup> More than 75 TCM sales agents each enrolled at least 100 duplicate Lifeline consumers.<sup>38</sup> More than 130 TCM sales agents each enrolled at least 50 duplicate Lifeline consumers.<sup>39</sup> More than 220 TCM sales agents each enrolled 25 or more duplicate Lifeline consumers.<sup>40</sup>

19. Certain TCM sales agents generated large numbers of duplicate enrollments. One TCM sales agent (TCM Sales Agent-O) enrolled more than 1,200 duplicate Lifeline consumers; two other TCM sales agents (TCM Sales Agent-U and TCM Sales Agent-P) each enrolled more than 900 duplicate Lifeline consumers; two additional TCM sales agents (TCM Sales Agent-M and TCM Sales Agent-Q) each enrolled more than 700 duplicate Lifeline consumers; TCM Sales Agent-L and TCM Sales Agent-S each enrolled more than 500 duplicate Lifeline consumers.<sup>41</sup> All of these findings were derived from analyzing data and documents that were in TCM's possession.

20. Evidence gathered during the Investigation shows that TCM was apparently aware of the enrollment of duplicate Lifeline consumers at least as early as November 2013, approximately one year prior to the identification of this issue by USAC. In a November 27, 2013 email, the Senior Manager for Compliance and Regulatory Matters at Locus (another subsidiary of KDDI America) stated that "[redacted]

21. The November 27, 2013 email continues to discuss two applicants who were possibly duplicates, noting that "[redacted]

[redacted]<sup>42</sup> But instead of rejecting these specific applicants, TCM had four accounts in the name of one consumer, and sought reimbursement for two accounts through January 2014 and one of those through March 2014.<sup>43</sup> TCM sought these reimbursements despite at least two instances where the consumer was enrolled by the same TCM sales agent.

22. Subsequent emails reflect the extent of TCM's knowledge about its agents enrolling

---

<sup>37</sup> See TCM-EB-000000868; TCM-EB-000002792-2801. In the case of an Agent-Team Duplicate, at least two TCM sales agents participated in the duplicate enrollment. These figures include Same-Agent Duplicates and Agent-Team Duplicates, and therefore a single TCM sales agent may be responsible only in part for an Agent-Team Duplicate where one or more other TCM sales agents were involved in that enrollment. See *supra* note 3 (defining Agent-Team Duplicate).

<sup>38</sup> See TCM-EB-000000868; TCM-EB-000002792-2801.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Email from [redacted], Senior Manager – Compliance & Regulatory, Risk Management, Locus Telecommunications, to [redacted], CGM, and [redacted], CGM, (Nov. 27, 2013, 2:57 p.m.). CGM-TCM-00000000237 (parentheses in original) (emphasis added).

<sup>43</sup> *Id.*

<sup>44</sup> See TCM-EB-000002792-2796.

duplicate Lifeline consumers. In a May 19-20, 2014 email exchange, a Total Call International database administrator and TCM compliance employee discussed a “██████████” customer report for January through May 2014, in which ██████████ duplicate consumers were identified.<sup>45</sup> In one of these emails, the two employees discussed the conduct of ██████████<sup>46</sup> In a subsequent email, the database administrator attributed “██████████” to a single TCM sales agent, and added that s/he “██████████” and “██████████”<sup>47</sup>

23. On June 16, 2014, TCM’s Product Control Manager informed TCM’s Chief Sales and Marketing Officer that there was “██████████.”<sup>48</sup> The Product Control Manager also attached a supporting spreadsheet detailing these enrollments, which were described as “██████████.”<sup>49</sup> The Commission’s Investigation found that a single TCM sales agent was responsible for all ██████████ improper enrollments, and s/he continued to enroll Lifeline consumers on behalf of TCM through at least October 31, 2014,<sup>50</sup> which is the last date of reimbursement data TCM produced.

24. The following day, TCM’s Product Control Manager sent TCM’s Chief Sales and Marketing Officer a spreadsheet with more than ██████████ duplicate enrollments from TCM sales agents where the “██████████” were identified.<sup>51</sup> These “██████████” generated 397 duplicate enrollments for TCM, as identified by USAC.<sup>52</sup> Despite the Chief Sales Officer’s response that these agents are “██████████,” TCM permitted these “██████████” to continue to enroll duplicate and ineligible Lifeline consumers for many more months, and TCM sought and received Lifeline reimbursement for these consumers.<sup>53</sup>

25. Additionally, TCM’s senior management and master agents received daily automated spreadsheet reports containing that day’s Lifeline enrollments. These spreadsheets further reflected the enrollment of duplicate consumers by TCM sales agents. For example, a report from June 2014 contains several examples of duplicates where the same sales agent enrolled an individual and then subsequently enrolled the same individual by making slight changes to that individual’s name, such as first name, middle initial, and last name in the initial enrollment, and then a first name, full middle name, and last name in a subsequent enrollment.<sup>54</sup> TCM requested and received reimbursement from the Fund for the

<sup>45</sup> TCM-EB000938884-85.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* The TCM sales agent discussed in this email chain was responsible for 127 duplicate enrollments as identified by USAC, the majority of which occurred in the months after this email discussion occurred. *See* TCM-EB00000000868.

<sup>48</sup> TCM-EB000941370-71.

<sup>49</sup> *Id.*

<sup>50</sup> *See* TCM-EB-000002797-2801.

<sup>51</sup> TCM-EB000940610-11; *see also* TCM-EB-000002792-2801.

<sup>52</sup> *See* TCM-EB-000000868.

<sup>53</sup> TCM-EB000940610-11; *see also* TCM-EB-000002797-2801.

<sup>54</sup> *See, e.g.,* TCM-EB000940411-12. For example, this daily report sent to TCM management includes the enrollment of “A ██████████ L W ██████████” and “A ██████████ L ██████████ W ██████████” by the same TCM sales agent on the same day. *Id.* Additionally, many of the duplicate enrollments contained on these daily reports were also submitted for reimbursement from the Fund and for at least five months—including the example above. *See* TCM-EB-000002792-2801.

duplicate consumers identified on these spreadsheets, including duplicate consumers in the June 2014 example report, through at least October 2014.<sup>55</sup>

### 1. Apparent Override of NLAD Denials of Duplicate Lifeline Consumers

26. CGM's software platform interacted with NLAD to identify and deny potential duplicate enrollments during the application process. However, the Investigation revealed that CGM's denial message was not final and TCM routinely overrode the denials to push through the denied enrollments.

27. TCM sales agents stated, in sum and substance, that TCM employees assisted them with overriding denials caused by intra-company duplicate consumers.<sup>56</sup> These TCM sales agents stated that they would call a TCM sales agent help line where TCM employees would "push through" the intra-company duplicates through an override function the TCM employees could remotely activate.<sup>57</sup> These statements were corroborated by USAC data. For instance, USAC records show that 99.8 percent of TCM's Lifeline enrollments nationwide during the fourth quarter of 2014 were the result of an override of third-party identification verification.<sup>58</sup> In addition, an analysis of the Denver, Colorado area demonstrates that between 96 percent and 100 percent of total TCM enrollments resulted from an override of third-party identification verification.<sup>59</sup>

28. Moreover, the TCM employees on the sales agent help line directly advised TCM sales agents on how to circumvent or disguise defective identification and eligibility documentation. For example, TCM Sales Agent-D stated, in sum and substance, that s/he was instructed by TCM employees from the agent help line to obscure information with the sales agent's finger on the consumer's identification and eligibility documents that they believed would make such documents unacceptable if visible.<sup>60</sup> This included identification documents marked "VOID," and eligibility documents that would not qualify the applicants for Lifeline. According to TCM sales agents interviewed, they were also instructed to obscure the numbers contained on improperly obtained eligibility documents used to support duplicate and ineligible consumer applications.<sup>61</sup>

### 2. Apparent Enrollment of Same-Agent Duplicate Consumers

29. Dozens of TCM sales agents apparently enrolled Same-Agent Duplicate Consumers,<sup>62</sup> often multiple times per consumer—and in certain known instances uncovered during the Investigation,

---

<sup>55</sup> See TCM-EB-000002792-2801. See also TCM-EB000940421-22. As noted elsewhere, the most recent Form 497 backup spreadsheet produced by TCM was for October 2014, despite repeated demands for spreadsheets related to subsequent months.

<sup>56</sup> See *supra* note 1.

<sup>57</sup> *Id.*

<sup>58</sup> Information on file in EB-IHD-14-00017650. There are two possible ways the overrides were taking place. First, in accord with two different sales agent interviews, TCM could have been individually "pushing through" identity verification if it failed the NLAD check. Alternatively, and more consistent with the close to 100 percent override rate observed in the fourth quarter of 2014, TCM could have set the software to automatically override all NLAD verification results, no matter the result. It is possible that TCM used both methods at different points in time or different places. Regardless of which method was used, the NLAD verification system was subverted.

<sup>59</sup> Information on file in EB-IHD-14-00017650.

<sup>60</sup> See *supra* note 1.

<sup>61</sup> *Id.*

<sup>62</sup> A single TCM sales agent would enroll a Lifeline consumer with TCM, then subsequently re-enter that same consumer's information into an electronic platform with slight changes to the consumer's name, date of birth, or Social Security number, resulting in a duplicate enrollment (Same-Agent Duplicate).

without the knowledge or participation of the consumers. To do so, TCM sales agents manipulated identifying details of TCM Lifeline consumers' information.

30. During their interviews, sales agents discussed the practice of how TCM sales agents manipulated consumer information.<sup>63</sup> Specifically, they stated, in sum and substance, that their superiors instructed them to alter the names, addresses, dates of birth, and Social Security information of consumers to cause one or more duplicate Lifeline cellular phones to be issued.<sup>64</sup> As a result, TCM sales agents obtained improperly activated Lifeline cellular phones and received additional commissions. Consequently, it would be more difficult for authorities, including law enforcement, to obtain proper subscriber information for the actual person using the Lifeline cellular phones. The TCM Duplicate Spreadsheet and other evidence obtained during the course of the Investigation corroborated the sales agents' statements and showed that TCM received improper Lifeline reimbursement for multiple months for these improper enrollments.<sup>65</sup> The table contained in Appendix A illustrates how TCM Lifeline consumer information was manipulated by TCM sales agents to generate Same-Agent Duplicates.<sup>66</sup>

31. Furthermore, a review of TCM's records reveals that TCM Sales Agent-G enrolled more than 400 Same-Agent Duplicate Consumers where s/he simply re-entered the consumer information for a second time into CGM's platform, almost exclusively on the same day as the first consumer enrollment entry.<sup>67</sup> Other TCM sales agents combined to generate thousands of Same-Agent Duplicates with the same practice, including, for example, TCM Sales Agent-O, who it appears was alone responsible for more than 1,000 Same-Agent Duplicates.<sup>68</sup>

32. Based upon the evidence uncovered as a result of the Investigation, we conclude that there was an apparent widespread practice among TCM sales agents to manipulate and misidentify details of Lifeline consumer's information in order to avoid detection of duplicate and ineligible consumers by NLAD and USAC.

### 3. Apparent Enrollment of Agent-Team Duplicate Consumers

33. TCM sales agents who were interviewed stated, in sum and substance, that they observed and/or participated in the enrollment of Agent-Team Duplicates<sup>69</sup> at the behest of their superiors within the TCM sales structure.<sup>70</sup> These sales agents stated that TCM sales agents "shared," "traded," and surreptitiously photographed the identification and/or eligibility document(s) of legitimate Lifeline consumers and electronically transmitted those documents to one or more other TCM sales agent(s) for the purpose of generating Agent-Team Duplicate enrollments for themselves and for TCM.<sup>71</sup> In other instances, only the identification document would be transmitted to the recipient TCM sales agent(s), and the recipient(s) would then use the identification document in conjunction with improperly obtained SNAP cards to serve as the eligibility-authorizing document for duplicate enrollments in the Lifeline

---

<sup>63</sup> See *supra* note 1.

<sup>64</sup> *Id.*

<sup>65</sup> See TCM-EB-000000868; TCM-EB-000002792-2801.

<sup>66</sup> See TCM-EB-000000868.

<sup>67</sup> See TCM-EB-000000868; TCM-EB-000002792-2801.

<sup>68</sup> *Id.*

<sup>69</sup> A TCM sales agent would enroll a consumer with TCM and then share that consumer's enrollment information with one or more fellow TCM sales agents, who would then re-enter that same consumer's information with slight changes to the consumer's name, date of birth, or Social Security number, also resulting in a duplicate enrollment (Agent-Team Duplicate).

<sup>70</sup> See *supra* note 1.

<sup>71</sup> *Id.*

program.<sup>72</sup> The TCM sales agent who received this information would enter this improperly obtained identification and eligibility information into CGM's platform and generate one or more duplicate Lifeline enrollments.<sup>73</sup>

34. A review of the TCM data and documents uncovered groups of TCM sales agents, ranging from couplets to groups of more than one dozen people, who enrolled Agent-Team Duplicates in 2013 and 2014.<sup>74</sup> For example, it appears that TCM Sales Agent-G and TCM Sales Agent-M formed a "team" that enrolled more than 75 Agent-Team Duplicate Consumers; TCM Sales Agent-H and TCM Sales Agent-I also formed a "team" that enrolled more than 100 Agent-Team Duplicate Lifeline Consumers.<sup>75</sup> These findings corroborated statements made by certain TCM sales agents during their interviews. As demonstrated by the table in Appendix B,<sup>76</sup> TCM sales agents manipulated TCM Lifeline consumer information to generate Agent-Team Duplicates. Each of the duplicate pairs shown in Appendix B were enrolled within a short period of time, sometimes on the same day.<sup>77</sup>

#### 4. Apparent Enrollment of Ineligible Lifeline Consumers

35. TCM apparently has inadequate policies and procedures to ensure Lifeline eligibility, resulting in the enrollment of ineligible consumers. As addressed in additional detail below, TCM knew that its sales agents, across multiple master agents and operating in numerous states, were repeatedly using single SNAP cards to enroll multiple ineligible consumers. The TCM sales agents that were interviewed discussed these practices in detail.

36. TCM sales agents that were interviewed stated, in sum and substance, that there was widespread misuse of eligibility documents that resulted in the enrollment of ineligible consumers in Lifeline by TCM at the behest of high-level managers working for TCM master agents.<sup>78</sup> In particular, the sales agents relayed management's emphasis on using temporary SNAP cards to enroll ineligible consumers because those cards frequently did not contain the SNAP recipients' names on the cards.

37. TCM sales agents, who were interviewed separately, collectively enrolled TCM consumers in the Mid-Atlantic, Midwest, Mountain West, Southwest, and Southeast regions of the United States during the relevant time period, and stated the following:<sup>79</sup>

- a. TCM Sales Agent-A was interviewed in December 2014 and stated, in sum and substance, that s/he was instructed by his/her managers to obtain and use improperly obtained SNAP cards to enroll ineligible Lifeline consumers in connection with his/her role as a TCM sales agent and stated that s/he did so. TCM Sales Agent-A further stated that s/he took photographs of improperly obtained SNAP cards and, in turn, used those photographs as eligibility documents to enroll ineligible Lifeline consumers.
- b. TCM Sales Agent-B was interviewed in March 2015 and stated, in sum and substance, that s/he saw managers for the TCM master agents with "stacks" in excess of 200 improperly-obtained SNAP cards which the managers stated they purchased

---

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *See* TCM-EB-000002792-2801.

<sup>75</sup> *Id.*

<sup>76</sup> *See* TCM-EB-0000000868.

<sup>77</sup> *Id.*

<sup>78</sup> *See supra* note 1.

<sup>79</sup> *See id.*

illegally. TCM Sales Agent-B reported further that s/he was instructed by his/her managers to purchase his/her own improperly-obtained SNAP cards to enroll ineligible TCM Lifeline consumers and to use these SNAP cards as eligibility documents. TCM Sales Agent-B further explained that s/he was instructed by his/her managers to “rotate” the use of these SNAP cards in the Lifeline enrollment process to avoid repetition of SNAP card numbers used as eligibility documents.

c. TCM Sales Agent-C was interviewed in March 2015 and stated, in sum and substance, that s/he was instructed by his/her managers to obtain improper SNAP cards to use as eligibility documents for prospective TCM consumers that did not possess eligibility documents.

d. TCM Sales Agent-D was interviewed in June 2015 and stated, in sum and substance, that s/he was instructed by his/her superiors within the TCM sales structure to purchase either temporary SNAP cards which did not contain recipients’ names or those with a SNAP recipient’s name on it. In the event TCM Sales Agent-D obtained a SNAP card with a recipient’s name, s/he was instructed to chemically remove the cardholder’s name and then use it as eligibility documentation for ineligible Lifeline consumers.

e. TCM Sales Agent-E was interviewed in June 2015 and stated, in sum and substance, that s/he observed managers of master agents in possession of temporary SNAP cards and was instructed by these managers that as long as TCM Sales Agent-E had temporary SNAP cards, ineligible consumers could be enrolled in the Lifeline program through TCM.

38. The sales agents interviewed also relayed that TCM employees who staffed the TCM field agent help line affirmatively advised sales agents to obscure numbers and other identifying information on eligibility documents so that the information would not be visible to a close inspection.<sup>80</sup>

39. The TCM sales agents’ statements were corroborated by internal TCM emails, as well as an analysis of the limited eligibility documents produced by TCM.<sup>81</sup> Beginning in April 2014, TCM employees identified instances in which multiple Lifeline enrollments were supported by the repeated use of single SNAP cards. These TCM employees described this practice by TCM sales agents as “[REDACTED]” when communicating with TCM management and supervisors.<sup>82</sup>

40. The emails of a number of such TCM personnel reflect their knowledge that TCM sales agents were improperly enrolling multiple consumers by repeatedly using a single SNAP card. In these emails, the TCM employees directly advised TCM management and supervisors that TCM has “[REDACTED]”<sup>83</sup> TCM employees advised TCM management and supervisors in May 2014 that “[REDACTED]”

<sup>84</sup> Management was explicitly alerted that TCM employees

<sup>80</sup> See *id.*

<sup>81</sup> See TCM-EB00000869-2154. As discussed in greater detail below, TCM refused to produce the eligibility records requested pursuant to two Commission subpoenas.

<sup>82</sup> TCM-EB000939080-81, 939083-84, 939089-90.

<sup>83</sup> TCM-EB000939325-27; see also TCM-EB000939071-73, 939080-81, 939083-84, 939089-90, 939091-95, 939096-98, 939173-90, 939322, 939400-01, 939635-37, 939955-56, 948950-51.

<sup>84</sup> TCM-EB000939322.



44. Similarly, on November 6, 2014, CBS's local affiliate in Denver, Colorado, aired a report that concerned TCM sales agents' interaction with a CBS producer, who posed as a prospective Lifeline consumer (CBS News Report).<sup>96</sup> In the CBS News Report, TCM sales agents apparently induced the CBS producer to improperly borrow another individual's SNAP card to serve as the eligibility document, and the TCM sales agents then provided a Lifeline cellular phone to the CBS producer.<sup>97</sup>

45. The Investigation also revealed a practice among TCM sales agents of falsely listing homeless shelter addresses for duplicate and ineligible consumers. TCM sales agents who were interviewed stated, in sum and substance, that they frequently assigned a homeless shelter as the address for TCM consumers because it would be difficult, if not impossible, to disprove that the consumer resided at a homeless shelter at the time of enrollment in Lifeline through TCM.<sup>98</sup> Of the duplicate consumers identified here, more than 600 duplicate enrollments list a single homeless shelter as the address of record.<sup>99</sup>

46. As part of the Investigation, the Bureau conducted a review of more than 100 duplicate consumer enrollments (more than 200 names and Social Security numbers) identified by USAC, and attempted to verify the validity of the last four digits of Lifeline consumers' Social Security numbers as allegedly provided to TCM sales agents at the time of enrollment. From this random sample of duplicate consumers, not one accurate Social Security number could be corroborated through a third-party identity verification process.<sup>100</sup> Additionally, dozens of these suspect enrollments from this sample listed a homeless shelter as the purported consumer's address.

### **5. Apparent Enrollment of Phantom Consumer Resulting in Duplicate Consumers**

47. The Investigation uncovered evidence that some duplicate consumers were also the result of a TCM sales agent creating a phantom consumer,<sup>101</sup> who was enrolled in Lifeline without the purported consumer's knowledge. This resulted in additional duplicate consumers, multiple cellular phones being activated and issued, and TCM apparently receiving improper Lifeline reimbursements.

48. For example, in 2014, TCM Sales Agent-N was arrested and charged with, among other things, identity theft.<sup>102</sup> At the time of TCM Sales Agent-N's arrest, s/he was in possession of the stolen wallet of another individual (Victim-A), which contained Victim-A's driver's license. TCM Sales Agent-N was also in possession of 12 TCM-issued Lifeline cellular phones at the time of his/her arrest.<sup>103</sup> According to the arrest report, TCM Sales Agent-N stated with regard to Victim-A's wallet and driver's

---

<sup>96</sup> See "Government's Free Phone Program Riddled With Abuse, Fraud," CBS4, Denver (Nov. 6, 2014), *available at* <http://denver.cbslocal.com/2014/11/06/governments-free-phone-program-riddled-with-abuse-fraud/> (last visited Apr. 5, 2016).

<sup>97</sup> *Id.*

<sup>98</sup> See *supra* note 1.

<sup>99</sup> See TCM-EB-000000868.

<sup>100</sup> These consumer data were subjected to identity verification through LexisNexis. See *Lifeline Reform Order*, 27 FCC Rcd at 6742-43.

<sup>101</sup> A "phantom consumer" describes duplicates based on an individual that was enrolled by a TCM sales agent for Lifeline without knowledge that s/he was being enrolled. A phantom consumer appeared in TCM and USAC records to be a Lifeline consumer when, in fact, that person never sought Lifeline-supported cellular phone service nor executed any of the required forms.

<sup>102</sup> Documents concerning the arrest of TCM Sales Agent-N, obtained in response to a Commission subpoena issued pursuant to 47 U.S.C. §§ 151, 403, 409 (Apr. 1, 2015) (documents and Subpoena on file in EB-IHD-14-00017650).

<sup>103</sup> *Id.*

license: “I just found it one night and, like, I was just doing those [Lifeline] phones so every once in a while I use it to get extra credits. That’s why I have so many extra phones.”<sup>104</sup>

49. Evidence of TCM Sales Agent-N’s scheme was corroborated by an analysis of TCM’s data and documents. A review of TCM data shows that over the course of approximately one month, more than 10 Lifeline cellular phones were registered and subscribed in Victim-A’s name as a TCM consumer, and that TCM Sales Agent-N was the sales agent who enrolled Victim-A in the Lifeline program and registered the cellular phones in Victim-A’s name.<sup>105</sup> TCM Sales Agent-N enrolled Victim-A in Lifeline without Victim-A’s knowledge or participation. TCM’s data and documents show that slight variations were made to Victim-A’s middle initials and Social Security information while Victim-A’s first name, last name, date of birth, and one of two addresses remained the same.<sup>106</sup>

50. Victim-A neither applied to participate in Lifeline through TCM nor did s/he know that his/her personal information had been used to create a single Lifeline consumer account, let alone more than 10 accounts over the course of a few weeks. Further analysis shows that TCM requested and received Lifeline reimbursement for multiple months for all the Lifeline cellular phones TCM Sales Agent-N subscribed in Victim-A’s name.<sup>107</sup>

51. It also appears that TCM Sales Agent-N enrolled him/herself as a Same-Agent Duplicate Consumer in Lifeline through TCM for more than a dozen cellular phones.<sup>108</sup> As with Victim-A’s enrollment in Lifeline, TCM Sales Agent-N apparently manipulated his/her own consumer information and name in a similar manner. TCM apparently requested and received Lifeline reimbursement for multiple months for TCM Sales Agent-N’s Same-Agent Duplicates of him/herself.<sup>109</sup>

#### **B. TCM Apparently Failed to Ensure Proper Consumer Certifications on Lifeline Applications**

52. The Investigation uncovered several instances in which TCM apparently failed to ensure that Lifeline consumers certified their compliance with the Lifeline Rules as required by Section 54.410(d).

53. In or about October 2014, USAC performed an audit of consumer certifications for TCM enrollments that occurred in Maryland. In response to a request for certification forms, TCM produced a series of consumer certifications where the purported consumer signature was merely a straight line or curvy line. TCM also produced a series of consumer certifications where the purported consumer signature was similar to the signature of the respective TCM sales agent who solicited the Lifeline consumers.<sup>110</sup>

54. In their interviews, TCM Sales Agents-A, B, C, D, and E all stated, in sum and substance, that it was the common, if not exclusive, practice of TCM sales agents to sign the consumer certification instead of the consumer.<sup>111</sup> TCM Sales Agents-A, B, C, D, and E all further stated, in sum

---

<sup>104</sup> *Id.*

<sup>105</sup> *See* TCM-EB-000002792-2801.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *See* Letter from Wayne M. Scott, Vice President of Internal Audit Division, USAC to Travis LeBlanc, Bureau Chief, FCC Enforcement Bureau (Feb. 6, 2015) (on file in EB-IHD-14-00017650).

<sup>111</sup> *See supra* note 1.

and substance, that TCM sales agents did so without ever confirming the accuracy of the certification with the consumer, or ever even advising the consumer of the content of the certifications.<sup>112</sup>

55. TCM Sales Agent-D stated, in sum and substance, that, despite his/her many months working full-time as a TCM sales agent, s/he did not know the contents of the consumer certification, never once read the certification to a consumer prior to signing on behalf of the consumer, and had not even read the consumer certification him/herself. TCM Sales Agent-D also discussed his/her confusion regarding the execution of consumer certifications on the Lifeline enrollment forms. Specifically, TCM Sales Agent-D mistakenly believed that s/he was supposed to sign the consumer certification instead of the consumer. In fact, TCM Sales Agent-D stated that s/he signed his/her own name in the consumer signature block in excess of 1,000 times during his/her affiliation with TCM. Based on a review of a sample of consumer application documents provided by TCM, that statement has been corroborated. TCM records also indicate that Lifeline cellular phones were activated where TCM Sales Agent-D signed his/her name in the consumer signature block for the consumer certification, and that TCM then requested and received Lifeline reimbursement in connection with these consumers.<sup>113</sup>

56. This problem was not limited to TCM Sales Agent-D. Several other TCM sales agents signed their own names in the consumer signature block on the Lifeline certification portion of the TCM enrollment application, as well as the TCM sales agent signature block. Upon reviewing a sample of these TCM sales agents' applications, every application contained the respective TCM sales agent's signatures in both the agent and consumer signature blocks.

### **C. TCM Sales Agents Were Apparently Not Trained to Comply with Lifeline Rules**

57. TCM Sales Agents-A, B, C, D, and E all stated, in sum and substance, that they never underwent any training concerning compliance with the Commission's Rules in the solicitation and enrollment of Lifeline consumers.<sup>114</sup> They all reported that the extent of their training concerned the mechanics of how to enter consumer data into CGM's platform. Each of the five TCM sales agents denied receiving any formal, classroom, or PowerPoint-based training concerning the enrollment or solicitation of Lifeline consumers, despite TCM's production of original and revised PowerPoint presentations that were purportedly given to its sales agents concerning compliance issues in the enrollment of Lifeline consumers.<sup>115</sup> In response to the First TCM Subpoena, TCM did not provide records that would demonstrate the training TCM sales agents underwent, such as sign-in and sign-out sheets.<sup>116</sup> TCM continued to fail to provide the subpoenaed documents even after specific, written follow-up requests by the Bureau.<sup>117</sup>

58. This lack of training also apparently violated TCM's Compliance Plan. In the Compliance Plan it presented to the Commission, TCM represented that its personnel will be "fully trained in Lifeline requirements" to the extent that such TCM personnel will be equipped to "conduct an

---

<sup>112</sup> *Id.*

<sup>113</sup> *See* TCM-EB-000002792-2801.

<sup>114</sup> *See supra* note 1.

<sup>115</sup> *See, e.g.*, TCM-EB000000063-180, 259-375, 380-422, 431-87.

<sup>116</sup> TCM produced a spreadsheet that purports to show re-certification for the managers of TCM's master agents in November 2014 after TCM was notified about the duplicates identified here. *See* TCM-EB0000000849. However, TCM did not produce any similar document concerning the training or re-training of individual sales agents, nor any other documents concerning the training of individual sales agents except the TCM sales agents at issue in the CBS News Report.

<sup>117</sup> *See* Letter from David M. Sobotkin, Investigative Counsel, FCC Enforcement Bureau, USF Strike Force to Steven A. Augustino, counsel for TCM, Kelley Drye & Warren LLP (Apr. 13, 2015) (on file in EB-IHD-14-00017650).

interview” of prospective Lifeline applicants to “ensur[e] that the potential consumer does not already receive a Lifeline subsidy; that TCM “personnel will be trained on acceptable documentation required to establish income-based and program-based eligibility; and that company “personnel will be trained to answer questions about Lifeline eligibility, and will review required documentation to determine whether it satisfies the *Lifeline Reform Order* and state-specific eligibility requirements using state-specific checklists.”<sup>118</sup>

59. Based on the findings of the Investigation, TCM apparently violated the representations contained in its Compliance Plan.

**D. TCM Apparently Filed Inflated Original Form 497s and Subsequently Filed Many Revised Form 497s**

60. In order to receive Lifeline reimbursements from the Fund, TCM submitted Form 497s in which it identified the number of active consumers it enrolled in particular states/territories and for particular months. Beginning in January 2013, TCM submitted monthly Form 497s for California, Michigan, Maryland, West Virginia, Louisiana, Ohio, Wisconsin, Missouri, Iowa, Texas, Arizona, Colorado, Utah, Washington, Nevada, Kentucky, Kansas, Hawaii, and Puerto Rico. In each original and revised Form 497, TCM reported the total number of non-tribal and tribal low-income consumers receiving Lifeline support multiplied by the applicable support amount, and submitted a total Lifeline reimbursement claim. TCM maintained information for each consumer in Form 497 backup spreadsheets,<sup>119</sup> and used this data to determine the total number of consumers for whom to claim Lifeline reimbursements.

61. In connection with each original and revised Form 497 filed by TCM, a TCM officer certified, in pertinent part, as follows:

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 [consumer] 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.

[. . .]

Persons willfully making false statements on this form can be punished by fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001.<sup>120</sup>

62. TCM’s Chief Operating Officer and Chief Administrative Officer/Chief Legal Officer/Corporate Secretary, respectively, certified the original and revised forms.

63. In total, TCM submitted 542 original and 729 revised Form 497s from January 2013 through March 2016 for each of the 19 states and territories across the country in which TCM claimed Lifeline reimbursements.<sup>121</sup> After being notified in November 2014 of the USAC review finding of more than 32,000 intracompany duplicate consumers, TCM filed hundreds of revised Form 497s. Many of the Form 497s had four separate revisions, often being filed over the course of long periods. For example, a Form 497 for the February 2014 data month was revised four times: in May 2014, September 2014,

<sup>118</sup> TCM Compliance Plan at 5, 9.

<sup>119</sup> See, e.g., TCM-EB-000002792-2801.

<sup>120</sup> See generally TCM-EB000002241-2783 (FCC Form 497, April 2012 Edition).

<sup>121</sup> Information on file in EB-IHD-14-00017650.

February 2015, and July 2015. Although TCM made downward revisions in most of its revised Form 497s, TCM also submitted revisions that claimed a greater number of Lifeline consumers and for which TCM requested and received a greater reimbursement from the Fund.<sup>122</sup>

64. An analysis of the Michigan Form 497s is instructive. Approximately [REDACTED] percent of the total duplicate consumers identified by USAC occurred in Michigan.<sup>123</sup> Fully [REDACTED] percent of TCM's total Michigan enrollments were duplicates.<sup>124</sup> USAC identified 3,141 duplicates initially enrolled in Michigan in June 2014 alone.<sup>125</sup>

65. Despite USAC's identification of these duplicate consumers, it appears that TCM claimed reimbursements for even more consumers than the original June 2014 Form 497 through its various revised Form 497s. The consumer count and funds requested by TCM, as well as the differences tracked through each of the Form 497s TCM filed relative to June 2014 for Michigan are outlined in a table contained in Appendix C.

66. As the table in Appendix C demonstrates, TCM, through its revised Form 497s, requested an amount from the Fund that was *greater* than the original request and claimed more consumers.<sup>126</sup> Also, in June 2014 and continuing through at least October 2014 and possibly beyond, TCM claimed reimbursements in Michigan for the dozens of duplicate enrollments stemming from the conduct described above connected to TCM Sales Agent-N and Victim-A.<sup>127</sup>

67. Well beyond Michigan, TCM consistently failed to remove improper enrollments from its Form 497 reimbursement requests, including the duplicate and ineligible consumers specifically identified by TCM employees.<sup>128</sup> Furthermore, many consumers specifically identified by USAC on the TCM Duplicate Spreadsheet in November 2014 remained active Lifeline consumers through April 2015. By comparing TCM's 2014 duplicate consumer data with 2015 NLAD data, the Bureau was able to identify 2,587 duplicate consumers that TCM failed to de-enroll as of April 2015, including most of the enrollments of TCM Sales Agent-N and Victim-A.<sup>129</sup> A sample of these duplicate enrollments identified by USAC and not de-enrolled by TCM is excerpted in the table contained in Appendix D.<sup>130</sup> As of April

---

<sup>122</sup> Compare Form 497, Ohio for June 2014 data month (submission date Jul. 8, 2014) (claiming [REDACTED] Lifeline consumers) with Form 497, Ohio for June 2014 data month (submission date Apr. 8, 2015) (claiming [REDACTED] Lifeline consumers) and Form 497, Ohio for June 2014 data month (submission date Jul. 23, 2015) (claiming [REDACTED] Lifeline consumers).

<sup>123</sup> See TCM-EB-000000868.

<sup>124</sup> Information on file in EB-IHD-14-00017650.

<sup>125</sup> See TCM-EB-000000868.

<sup>126</sup> Compare Form 497, Michigan for June 2014 data month (submission date Jul. 8, 2014) (claiming [REDACTED] Lifeline consumers) with Form 497, Michigan for June 2014 data month (submission date Apr. 8, 2015) (claiming [REDACTED] Lifeline consumers) and Form 497, Michigan for June 2014 data month (submission date Jul. 23, 2015) (claiming [REDACTED] Lifeline consumers).

<sup>127</sup> See TCM-EB-000002792-2801. As noted below, TCM failed to produce its Form 497 back up data for any month after October 2014. As such, TCM may have sought reimbursement for the impermissible enrollments of Victim-A and TCM Sales Agent-N after October 2014, as well. However, due to TCM's failure to produce data that support its Form 497 filings after October 2014 despite specific and repeated demands for those documents, the Commission is unable to determine whether TCM claimed reimbursement for the enrollments of Victim-A and TCM Sales Agent-N after October 2014.

<sup>128</sup> See *supra* Sections III.A, III.D.

<sup>129</sup> Information on file in EB-IHD-14-00017650.

<sup>130</sup> Information on file in EB-IHD-14-00017650; see also TCM-EB-000000868.

26, 2015, the duplicate enrollments in the names of each of these consumers remained active in NLAD under the same TCM phone number assigned in 2014.<sup>131</sup>

**E. TCM's Responses to Two Commission Subpoenas Were Delayed and Incomplete**

68. On November 10, 2014 and May 19, 2015, the Commission, through the Enforcement Bureau, issued subpoenas to TCM.<sup>132</sup> In response, counsel for TCM served its objections and responses.<sup>133</sup> In response to the first subpoena, TCM produced a limited set of documents; in response to the second subpoena, no further documents were produced. The second subpoena generally sought additional documents not in existence at the time of the first subpoena.<sup>134</sup> Through discussions and correspondence, the Bureau notified TCM that its productions were deficient.<sup>135</sup> In partial response to the November 2014 subpoena, TCM made an additional document production on December 22, 2015.

69. One of the most important requests was for “eligibility documentation for the Company’s new Lifeline consumers.”<sup>136</sup> Eligibility documentation would include copies of the particular document the consumer supposedly used to show that he or she was eligible for Lifeline, such as a SNAP card or Medicaid card. If TCM sales agents enrolled consumers using temporary SNAP cards, and these same cards were used repeatedly for multiple consumers, the evidence of this use (or misuse) would be in the copies of the consumer’s eligibility documents collected by TCM in support of a particular Lifeline enrollment application and stored by CGM. There is no other way to acquire this data, as it is not collected, received, or retained by USAC or any other entity.

70. With the exception of one production limited in time and to one state (Colorado) and a handful of emails, TCM failed to provide copies of eligibility documents. TCM admitted that it had “[REDACTED]”<sup>137</sup> and TCM also maintained select eligibility

---

<sup>131</sup> See *id.*

<sup>132</sup> Subpoena issued pursuant to 47 U.S.C. §§ 151, 403, 409 (Nov. 10, 2014) (First TCM Subpoena); subpoena issued pursuant to 47 U.S.C. §§ 151, 403, 409 (May 19, 2015) (Second TCM Subpoena) (on file in EB-IHD-14-00017650).

<sup>133</sup> “Objections and Responses to Subpoena of the Office of the Inspector General for the Federal Communications Commission [*sic*]” (Nov. 21, 2014); “Objections and Responses to Subpoena of the Office of the Inspector General for the Federal Communications Commission [*sic*]” (June 2, 2015).

<sup>134</sup> For instance, the second subpoena requested updated Lifeline enrollment spreadsheets for the months of November 2014 through April 2015 that served to support TCM’s Form 497s. This would be an update to the produced spreadsheets at TCM-EB-000002792-2801.

<sup>135</sup> See Letter from Dangkhua Nguyen, Investigative Counsel, FCC Enforcement Bureau, USF Strike Force to Steven A. Augustino, counsel for TCM, Kelley Drye & Warren LLP (Nov. 28, 2014) (on file in EB-IHD-14-00017650); Letter from Steven A. Augustino, counsel for TCM, Kelley Drye & Warren LLP to Dangkhua Nguyen, Investigative Counsel, FCC Enforcement Bureau, USF Strike Force (Dec. 3, 2014) (on file in EB-IHD-14-00017650); Letter from Dangkhua Nguyen, Investigative Counsel, FCC Enforcement Bureau, USF Strike Force to Steven A. Augustino, counsel for TCM, Kelley Drye & Warren LLP (Dec. 31, 2014) (on file in EB-IHD-14-00017650); Letter from David M. Sobotkin, Investigative Counsel, FCC Enforcement Bureau, USF Strike Force to Steven A. Augustino, counsel for TCM, Kelley Drye & Warren LLP (Apr. 13, 2015) (on file in EB-IHD-14-00017650)

<sup>136</sup> First Subpoena, Attachment A, para. 8; Second Subpoena, Attachment A, para. 2(e).

<sup>137</sup> Letter from Steven A. Augustino, counsel for TCM, Kelley Drye & Warren LLP to Dangkhua Nguyen, Investigative Counsel, FCC Enforcement Bureau, USF Strike Force at 2 (Dec. 3, 2014) (on file in EB-IHD-14-00017650).

documents that were attached to or contained in company emails.<sup>138</sup> Despite having access to the documents, TCM refused to produce them.<sup>139</sup>

71. TCM's only significant production of eligibility data was for Colorado for a six-week period during the fall of 2014, and included identification and eligibility documents for approximately [REDACTED] consumers.<sup>140</sup> Analysis of the Colorado eligibility data was consistent with other evidence produced in the Bureau's Investigation: it showed that TCM sales agents frequently and repeatedly used the same SNAP cards to support Lifeline enrollments for different consumers, and SNAP cards constituted the majority of the eligibility documents used in TCM's enrollment process. TCM admitted that of the [REDACTED] applications in the Colorado eligibility data, [REDACTED] used SNAP to demonstrate eligibility and [REDACTED] SNAP cards were presented more than once in that same data set.<sup>141</sup> These findings were further corroborated by TCM emails that reflect TCM's knowledge, as early as April 2014, that its sales agents were using the same SNAP cards multiple times to enroll consumers, and did so for hundreds of enrollments.<sup>142</sup> The Bureau believes that if a full set of eligibility documentation had been produced, it would have shown TCM enrolled, and improperly claimed reimbursement for, additional ineligible and duplicate consumers.

72. In addition to the eligibility data, TCM failed to timely produce other documents. TCM also failed to produce documents related to the hiring of sales agents,<sup>143</sup> background check forms,<sup>144</sup> and confidentiality agreements with the exception of the four sales agents in the CBS News Report and a handful of other agents.<sup>145</sup> Furthermore, TCM has not produced any additional documents with respect to the Second TCM Subpoena, including its consumer lists to support its Form 497 filings for the months between the two subpoenas,<sup>146</sup> despite its production of those consumer lists for January through October 2014.<sup>147</sup>

#### IV. DISCUSSION

73. Based on the evidence developed in this Investigation, we conclude that TCM apparently willfully and repeatedly violated Sections 54.405, 54.407, 54.409, and 54.410<sup>148</sup> of the Commission's Rules by requesting and receiving Lifeline reimbursement for duplicate and ineligible consumers and for failing to have adequate policies and procedures to ensure Lifeline eligibility.<sup>149</sup> Based on the facts and

---

<sup>138</sup> See, e.g., TCM-EB000939173-90, 939325-26.

<sup>139</sup> TCM argued that the Commission Rules prohibit retention of eligibility documents, pointing to 47 CFR § 54.410(c)(1)(i)-(ii). However, TCM has never offered any explanation as to how its admitted routine retention of the documents for 30 days complied with that interpretation of the Commission Rules.

<sup>140</sup> See TCM-EB000000869-2154.

<sup>141</sup> See *Total Call Mobile, Inc., FCC Enforcement Bureau Meeting* at 5 (Apr. 28, 2015) (on file in EB-IHD-14-00017650) (TCM Presentation).

<sup>142</sup> See *supra* Section III.A.4.

<sup>143</sup> First Subpoena, Attachment A, para. 5; Second Subpoena, Attachment A, para. 1(b).

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> Second Subpoena, Attachment A, para. 2(f).

<sup>147</sup> See TCM-EB-000002792-2801.

<sup>148</sup> 47 CFR §§ 54.407, 54.409, 54.410. See also *supra* paras. 7-11 (discussing these Rules and observing that when an ETC seeks Lifeline service support reimbursement for a low-income consumer who already receives Lifeline service from that ETC, that ETC has failed in its obligation to confirm the consumer's eligibility for Lifeline service in violation of the Rules).

<sup>149</sup> Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any]

circumstances before us, and pursuant to Section 503(b)(1)(B) of the Act and Section 1.80 of the Commission's Rules, we therefore conclude that TCM is apparently liable for forfeiture penalties totaling \$51,070,322.

**A. TCM Apparently Enrolled and Claimed Reimbursement for Many Duplicate and Ineligible Consumers and Failed to Have Adequate Policies and Procedures to Ensure Lifeline Eligibility in Violation of Lifeline Program Rules**

74. Based on the evidence uncovered in the Investigation, TCM apparently enrolled and claimed reimbursement for many duplicate and ineligible consumers in the Lifeline program. Moreover, TCM apparently continued to improperly claim reimbursements for hundreds of duplicate and ineligible consumers even after TCM employees identified and reported specific duplicate and ineligible consumers to TCM managers and supervisors; these improper enrollments continued to appear in TCM's Form 497 backup spreadsheets for at least six months even after they were explicitly identified by TCM employees and described as "[REDACTED]." In addition, TCM apparently failed to implement policies and procedures to ensure that its consumers were eligible to receive Lifeline services.

75. TCM sales agents, whom TCM did not train regarding compliance with the Commission's Rules in apparent violation of its Compliance Plan, abused the Lifeline enrollment process by: manipulating consumer information to generate enrollments; using false and stolen identification and eligibility documents; sharing consumer information to enable other sales agents to generate additional duplicate enrollments; tampering with identification and eligibility documents to conceal their false nature; and coaching sales agents to engage in these same practices. When these practices resulted in an enrollment being denied by NLAD, TCM employees who staffed the TCM sales agent help line assisted sales agents in "pushing through" the enrollment through the use of an override function which the TCM helpline employees could remotely activate. TCM sales agent help line employees also directly advised TCM sales agents on how to circumvent or disguise defective identification and eligibility documentation so that the documentation would not disqualify an enrollment. Even after TCM employees identified what they described as the "[REDACTED]," TCM permitted these "[REDACTED]" to continue to enroll duplicate and ineligible Lifeline consumers for many more months, and TCM sought and received Lifeline reimbursement for these consumers.<sup>150</sup> Similarly, those sales agents identified by TCM employees as having submitted multiple enrollments supported by the same SNAP card were permitted to

(Continued from previous page) \_\_\_\_\_

act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, and the Commission has so interpreted the term in the Section 503(b) context. *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982); *So. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992) (*Southern California Broadcasting*). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001). "Repeated" means that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting*, 6 FCC Rcd at 4388, para. 5. To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed. *See* 47 U.S.C. § 503(b)(4); 47 CFR § 1.80(f). The Commission will then issue a forfeiture if it finds, based on the evidence, that the person has violated the Act, or a Commission rule or Order. *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002). Under Section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty. *See* 47 U.S.C. § 503(b)(1)(B); 47 CFR § 1.80(a)(1).

<sup>150</sup> TCM-EB000940610-11; *see also* TCM-EB-000002792-2801.

continue to enroll Lifeline consumers on behalf of TCM for subsequent months, and during those subsequent months enrolled duplicate and ineligible consumers.<sup>151</sup>

76. The misconduct appears to be widespread. USAC found over 32,000 duplicate consumers in 13 states. The Bureau's analysis of TCM documents and data indicates that these duplicate consumers were enrolled by more than 800 separate TCM sales agents under multiple master agents. The Investigation included evidence from interviews with former TCM sales agents from the Mid-Atlantic, Midwest, Mountain West, Southwest, and Southeast regions of the United States. TCM also admitted [REDACTED], and purportedly [REDACTED].<sup>152</sup> However, as evidenced by the Form 497s for June 2014 for Michigan and duplicates that remain on TCM's rolls, it remains unclear if in fact TCM has de-enrolled the identified duplicates.

77. TCM apparently has failed to implement policies and procedures to ensure eligibility of its Lifeline consumers. The training of its sales agents, to the extent it ever occurred, was inadequate at best. Sales agents apparently did not require applicants to certify their eligibility and signed the forms on their behalf without the consumer's knowledge. While no less than 182 ineligible consumers were specifically identified by TCM employees, the repeated use of the same SNAP card for multiple applicants resulted in an unknown number of ineligible TCM consumers being enrolled in Lifeline.<sup>153</sup> The Investigation's ability to identify additional ineligible consumers was negatively impacted by TCM's failure to fully and timely respond to two Commission subpoenas.

78. TCM argues that it took corrective measures after it was notified of USAC's finding of duplicates.<sup>154</sup> It banned [REDACTED], and retrained [REDACTED] field agents; it created a "[REDACTED]".<sup>155</sup> Between December 2014 and April 2015, TCM de-enrolled around [REDACTED] consumers, based on both the USAC analysis and its own investigation.<sup>156</sup> The Commission is not aware of the basis for all the de-enrollments TCM decided to make.

79. These seemingly corrective measures appear woefully inadequate to cure the deficiencies identified in the Investigation. The enrollment of tens of thousands of duplicate and ineligible consumers, across many states and many years, was not the result of a few individual bad actors. While TCM claims to have retrained [REDACTED] agents, it has provided no evidence to prove this training occurred or that it was comprehensive or effective. TCM previously promised to do such training in accordance with its Compliance Plan, a promise that turned out to be hollow.

80. Moreover, even when TCM employees identified what they described as "[REDACTED]" and recommended that TCM "[REDACTED]" these individuals, TCM compliance personnel did not immediately do so and, as a result, these "[REDACTED]" continued to enroll duplicate and ineligible consumers on behalf of TCM for multiple months.<sup>157</sup> Similarly, TCM took no action in terminating problematic sales agents, including agents that regularly enrolled duplicate consumers such as the agent who enrolled one

---

<sup>151</sup> See TCM-EB000939071-73, 939080-81, 939083-84, 939089-90, 939091-95, 939096-98, 939173-90, 939325-27, 939400-01, 939635-37, 939955-56; see also TCM-EB-000002792-2801.

<sup>152</sup> See TCM Presentation at 5.

<sup>153</sup> See TCM-EB000939071-73, 939080-81, 939083-84, 939089-90, 939091-95, 939096-98, 939173-90, 939325-27, 939400-01, 939635-37, 939955-56.

<sup>154</sup> See TCM Presentation at 13-16.

<sup>155</sup> *Id.* at 6, 13-16.

<sup>156</sup> *Id.*

<sup>157</sup> TCM-EB000940610-11; see also TCM-EB-000002792-2801.

individual for nine phones in a single month,<sup>158</sup> and agents that regularly enrolled multiple consumers based upon a single SNAP card, which allowed them to enroll duplicate and ineligible consumers for many more months.<sup>159</sup> The improper policies, procedures and actions described herein represent a systemic failure at TCM to comply with the Lifeline Rules.

81. This NAL finds apparent violations of Sections 54.405, 54.407, 54.409, and 54.410 of the Commission's Rules. We find TCM improperly requested reimbursement for duplicate and ineligible consumers in the thirteen states where USAC identified duplicates.<sup>160</sup> We find an apparent violation for each of the original 130 Form 497s requesting duplicate support, and that the apparent violation continues until it is corrected.<sup>161</sup> While some forms may have been corrected, others, such as June 2014 for Michigan, do not yet appear to be corrected. The exact number of these duplicates is unknown. While USAC found over 32,000 duplicates, it also credited TCM with one of each duplicate "pair," thus assuming that one of the duplicates was a valid and eligible Lifeline consumer. We further find support for this violation based on the limited eligibility documents provided by TCM. For Colorado, TCM admits that in a sample it analyzed, [REDACTED] SNAP cards were used more than once as a basis for eligibility between [REDACTED] and [REDACTED], representing [REDACTED] percent of the applicants. This resulted in ineligible consumers being claimed on the Form 497s for Colorado for [REDACTED] and [REDACTED] 2014. TCM received reimbursement for those claims and the apparent violations continue until these forms are corrected.<sup>162</sup>

82. Additionally, in its belated December 22, 2015 production of documents, internal TCM emails show that TCM apparently knew, as early as April 2014, that its sales agents were enrolling multiple ineligible consumers in Lifeline using the same SNAP card as the eligibility document. These ineligible consumers were at least enrolled in Arizona, Michigan and Nevada. As noted above, TCM continued to seek support from the Fund for these specifically identified suspect consumers for no less than six months after TCM employees flagged these issues for their supervisors, and described the TCM sales agents as engaging in "[REDACTED]".<sup>163</sup>

83. Finally, we find an apparent and continuing<sup>164</sup> violation of Section 54.410(a)'s requirement that TCM must implement policies and procedures to ensure the eligibility of its Lifeline consumers. Based on the evidence presented in response to the Investigation, TCM does not have such policies and procedures at this time, and has not had them for at least the year preceding this NAL. To the extent TCM wishes to argue that its corrective measures taken in 2014-2015 after receiving the USAC audit brought it into compliance, it may do so in response to the NAL.

---

<sup>158</sup> See *supra* Section III.A.

<sup>159</sup> See *id.*; see also TCM-EB-000002792-2801.

<sup>160</sup> While TCM's conduct may extend to all 19 states and territories in which it provides Lifeline service, we conservatively limit our finding of an apparent violation to the thirteen states identified by USAC. Some of the other six states and territories have separate administrators and might not be implicated by the conduct related to the NLAD.

<sup>161</sup> See Appendix E; see also *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892 (2015) (*Purple*); *VCI Company*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 15933, 15940 para. 20 (2007) (*VCI*); *Purple Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5491, 5506, n.87 (2014) (*Purple NAL*).

<sup>162</sup> Revised forms for [REDACTED] and [REDACTED] 2014 were last submitted on July 23, 2015. See Appendix E.

<sup>163</sup> See TCM-EB000939325, 939400, 948950.

<sup>164</sup> Of the 32,498 duplicate TCM enrollments initially identified by USAC, 2,587 remained in NLAD into April 2015, approximately five months after TCM was alerted to these specific duplicate consumers. See *supra* Section III.D.

## V. PROPOSED FORFEITURE

84. For the violations at issue here, Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture against a telecommunications carrier of up to \$160,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,575,000 for a single act or failure to act.<sup>165</sup> The Commission retains the discretion to issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. In determining the appropriate forfeiture amount, we consider the factors enumerated in Section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require,”<sup>166</sup> as well as our forfeiture guidelines.<sup>167</sup>

85. Based on the facts and record before us, we have determined that the categories of TCM’s apparent violations involve: (i) the filing of and failure to correct improper Form 497s; (ii) the lack of policies and procedures to ensure consumer eligibility; and (iii) the enrollment of 2,587 duplicate consumers for several months after USAC specifically alerted TCM to these improper enrollments. Together, these categories involve the apparently willful and repeated violations of Sections 54.405, 54.407, 54.409, and 54.410 of the Commission’s Rules.<sup>168</sup> We find that these apparent violations occurred, at a minimum, beginning in January 2014, continued through TCM’s subsequent Form 497 revisions for the relevant states, and continued for at least 2,587 duplicate TCM consumers that remained in NLAD as of the April 2015 data month. We propose a forfeiture for these apparent violations of \$51,070,322.<sup>169</sup>

### A. Proposed Forfeiture for TCM’s Apparent Enrollment and Claims for Reimbursement for Many Duplicate and Ineligible Consumers and for Failing to Have Adequate Policies and Procedures to Ensure Lifeline Eligibility in Violation of Lifeline Program Rules

86. In this NAL, we address the harm that TCM’s apparent conduct has caused to the Universal Service Fund. In particular, the Commission in recent years has increased its emphasis on ETCs’ responsibilities for preventing waste, fraud, and abuse in the Lifeline program.<sup>170</sup> When an ETC

<sup>165</sup> See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(B) (\$100,000 per violation or per day of a continuing violation and \$1,000,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires the Commission to adjust its forfeiture penalties periodically for inflation. See 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2013. See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, DA 13-1615, 2013 WL 3963800 (Enf. Bur. 2013); see also *Inflation Adjustment of Monetary Penalties*, 78 Fed. Reg. 49,370-01 (Aug. 14, 2013) (setting Sept. 13, 2013, as the effective date for the increases). However, because the DCIA specifies that any inflationary adjustment “shall apply only to violations which occur after the date the increase takes effect,” we apply the forfeiture penalties in effect at the time the violation took place. 28 U.S.C. § 2461 note (6). Here, because the violations at issue occurred before September 13, 2013, the applicable maximum penalties are based on the Commission’s previous inflation adjustment that became effective on September 2, 2008. See *Inflation Adjustment of Maximum Forfeiture Penalties*, 73 Fed. Reg. 44,663, 44,664 (July 31, 2008).

<sup>166</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>167</sup> See 47 CFR § 1.80(b)(8); Note to Paragraph (b)(8): Guidelines for Assessing Forfeitures.

<sup>168</sup> 47 U.S.C. § 503(b)(1)(D); 47 CFR §§ 1.80(a)(5), 54.405, 54.407, 54.409, 54.410.

<sup>169</sup> This forfeiture is less than the statutory maximum allowed for the continuing violations cited in this NAL.

<sup>170</sup> See, e.g., *Easy Tel. Servs.*, 28 FCC Rcd 14433 (2013).

submits a request for Lifeline reimbursement that it knew or should have known includes ineligible consumers, it receives more reimbursement from the Fund than the amount to which it is properly entitled, undermining the low-income support reimbursement mechanism. The Commission believes that the imposition of a significant forfeiture amount is a necessary response to Lifeline over-collection violations.<sup>171</sup> Lifeline ETCs must expend the necessary company resources to ensure compliance with the Commission's Lifeline Rules, especially the Rules and procedures requiring that providers request and/or receive federal universal service support only for service provided to eligible consumers. Imposing a significant forfeiture on such rule violators should deter those service providers that fail to devote sufficient resources to ferreting out company practices resulting in over-collection violations. In addition, a significant forfeiture should achieve broader industry compliance with Lifeline Rules that are critically important to the effective functioning of the Fund.

87. In this case, while we find apparent violations tied to the submission of specific forms requesting improper reimbursement,<sup>172</sup> our consideration of an appropriate forfeiture must encompass a broader scope. The character of TCM's misconduct is even more egregious than non-compliance with the Commission's Rules or over-collection. TCM has demonstrated no regard for the truthfulness of its representations to USAC and the Commission. Several TCM employees on multiple occasions raised the issue of sales agents enrolling several Lifeline consumers with the same SNAP card. TCM employees identified and reported improperly enrolled consumer names to management, while also repeatedly describing the conduct of relevant sales agents as "[REDACTED]" in emails. No less than 182 TCM Lifeline consumers were specifically identified by TCM employees as having been enrolled through the misuse of eligibility documents. In response, TCM management took no immediate steps to de-enroll the ineligible consumers but instead submitted Form 497 reimbursement requests to USAC for the very same consumers they had been told were ineligible for Lifeline enrollment, then certified on the Form 497 to the truthfulness of their false representation, and failed to de-enroll more than 2,500 of the duplicate consumers specifically identified by USAC. Furthermore, we look to the specific causes of the improper claims, which appear to be a widespread pattern of deliberate disregard for the Lifeline eligibility Rules.<sup>173</sup> The very nature of this widespread conduct, concerning both duplicates and ineligible consumers, makes it nearly impossible for the Commission to identify and ferret out every duplicate or ineligible consumer.<sup>174</sup> The Commission should not be required to re-check and re-verify every consumer, when it is the carrier's unique responsibility to do so in the first place, a responsibility that has been apparently abandoned by TCM.<sup>175</sup> Rather, in proposing a forfeiture the Commission is entitled to make reasonable estimates of the likely effects of the improper practices in the Commission's substantial discretion in imposing forfeitures.<sup>176</sup>

88. In developing an appropriate forfeiture based on the specifics of this case, we draw on prior proposed forfeitures for apparent Lifeline violations. In the Lifeline In-Depth Validation (IDV) NALs, the Commission proposed (but has not adopted) forfeitures applying a three-part forfeiture methodology: (1) a base forfeiture of \$20,000 for each instance in which an ETC files a Form 497 that includes ineligible or duplicate consumers in the line count; (2) a base forfeiture of \$5,000 for each ineligible or duplicate consumer for whom the ETC requests and/or receives support from the USF; and (3) an upward adjustment of the base forfeiture equal to three times the reimbursement requested and/or

---

<sup>171</sup> *Id.*

<sup>172</sup> *See supra* Sections III.A, III.B, III.D, IV.A.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *See supra* Sections II.B.1, III.A, III.B, III.D, IV.A.

<sup>176</sup> *See, e.g., InPhonic, Inc., Order of Forfeiture and Further Notice of Apparent Liability for Forfeiture*, 22 FCC Rcd 8689, 8699, para. 24 (2007); *Globcom, Inc. Order of Forfeiture*, 21 FCC Rcd 4710, 4723–24, paras. 36–37 (2006).

received by the ETC for ineligible or duplicate consumers.<sup>177</sup> These proposed forfeitures were based on the USAC IDV audits, which investigated potential duplicate consumers, often for a single month, and which pre-dated the NLAD. Each USAC audit identified the specific duplicate consumers.

89. We retain the IDV proposal of \$20,000 per Form 497 that sought reimbursement for duplicate or ineligible consumers. We apply this to each original Form 497,<sup>178</sup> each of which is a separate and continuing violation, for each state where USAC found duplicates, including Arizona, Hawaii, Michigan, Louisiana, Ohio, Kansas, Missouri, Iowa, Colorado, Utah, Washington State, Nevada, and Wisconsin.<sup>179</sup> This totals 126 forms for a proposed base forfeiture of \$2,520,000.

90. We retain the IDV proposal of \$5,000 for each ineligible or duplicate consumer for whom the ETC requests and/or received support from the USF, which applied to each such consumer that could be identified in the prior year. We apply this to each of the 2,587 duplicate consumers TCM failed to de-enroll as of April 26, 2015, for an additional forfeiture of \$12,935,000.

91. We retain the IDV proposal of an upward adjustment totaling three times the harm suffered by the Fund. However, because of the nature of the apparent violations, and TCM's failure to timely and completely produce eligibility documentation that would have assisted in further identifying and focusing with greater particularity the number of improperly enrolled ineligible consumers, we must approximate the harm. We are faced with multiple apparent violations that can in many cases overlap.<sup>180</sup> A duplicate consumer could also be ineligible based on use of inappropriate eligibility documents.<sup>181</sup> The same inappropriate eligibility document – such as a SNAP card – could be used for multiple, separate consumers which are not duplicates, but have not demonstrated eligibility.<sup>182</sup> A phantom consumer may or may not qualify as eligible, but the person has not sought participation in the program and the consumer certification has been falsified.<sup>183</sup> To arrive at an estimate of the harm, we consider all the evidence presented in this NAL and specifically note the following factors.

92. In the fourth quarter of 2014, almost 100 percent of TCM's enrollments were the result of an override of the third-party identification verification system.<sup>184</sup> Thus, one could assume that none of TCM's consumers as of that time had been properly verified, and thus the Fund should not have reimbursed TCM for any of those consumers. It is likely, however, that at least some of TCM's consumers were eligible and not duplicates, and that their identity could have been verified if TCM had not overridden the system. We decline to assume that 100 percent of TCM's reimbursements were unwarranted.

93. In the sample of Colorado eligibility data, SNAP cards were used to show eligibility for ■ percent of applicants.<sup>185</sup> Five separate TCM sales agents from different geographic regions described how SNAP cards were improperly used to show eligibility.<sup>186</sup> Sales agents described seeing managers

<sup>177</sup> See, e.g., *Budget Prepay, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 2508 (2014).

<sup>178</sup> See Appendix E.

<sup>179</sup> We do not propose a forfeiture for each Form 497 wherein TCM made revisions. To do so would discourage companies from revising their forms, because the penalty per incorrect form would often exceed the amount of any correction.

<sup>180</sup> See *supra* Sections III.A, III.B, III.D, IV.A.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> See *supra* Sections III.A.1, IV.A.

<sup>185</sup> See *supra* Sections III.A.4, IV.A.

<sup>186</sup> *Id.*

possessing “stacks” of SNAP cards to serve as false eligibility documents, and how SNAP cards were purchased by agents to use for eligibility.<sup>187</sup> Furthermore, a TCM sales agent directly told an undercover Commission employee that s/he did not need to show eligibility, because that sales agent had extra SNAP cards.<sup>188</sup> Thus, one could assume that all eligibility demonstrated by SNAP cards was improper, and based on the Colorado eligibility documents, █ percent of TCM’s enrollments could have false eligibility documents. However, it is likely that at least some use of SNAP cards was valid, and thus we decline to assume that █ percent of TCM’s reimbursements were unwarranted.

94. █ percent of the SNAP cards in the Colorado data sample were used more than once.<sup>189</sup> These uses appear clearly improper. However, identifying duplicate SNAP cards does not take into account the use of false SNAP cards. For instance, a sales agent with a stack of 200 SNAP cards could use each one only once, for 200 separate consumers, and it would never appear as a duplicate eligibility document.<sup>190</sup> Thus, to assume that only █ percent of TCM’s enrollments were ineligible would be a conservative assumption.

95. Turning to duplicates, we note that █ percent of TCM’s enrollments in Michigan during 2013-2014 were duplicates, which is the highest percentage of any state.<sup>191</sup> Fully █ percent of TCM’s consumers across 13 states were identified by USAC as duplicates.<sup>192</sup> However, even after USAC concretely identified each duplicate for TCM and gave it an opportunity to correct its enrollments, TCM was unwilling or unable to do so.<sup>193</sup> For Michigan for June 2014, TCM has increased, rather than decreased, its request for reimbursement, despite that fact that USAC found over 3,000 duplicates enrolled initially in June 2014 alone.<sup>194</sup> Additionally, 2,587 duplicate TCM consumers remained in NLAD at least five months after TCM was alerted to these specific duplicate consumers by USAC.<sup>195</sup> TCM’s lack of policies and procedures concerning duplicates gives the Commission little confidence that TCM does not still have large numbers of duplicates, even beyond the 32,498 that USAC found in November 2014.

96. Beyond these specific issues, TCM’s apparent lack of eligibility policies and procedures, including its apparent violation of its own Compliance Plan, damaged the Fund nationwide, because it decreased the overall integrity of the program, and allowed additional improper enrollments.<sup>196</sup> An example of this is TCM Sales Agent-N, who apparently had enrolled Victim-A (whose identity s/he had stolen) in the Lifeline program 10 separate times, and in addition, enrolled him/herself, at least 12 times.<sup>197</sup>

97. Based on the total record before us, we find it reasonable to conclude that the Fund has been harmed by an amount equal to at least 16 percent of TCM’s requests for reimbursement from the Fund from 2014 through March 2016. This assumes that █ percent of TCM’s consumer base were

---

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *See supra* Sections III.E, IV.A.

<sup>190</sup> *See supra* Sections III.A.4, IV.A.

<sup>191</sup> *See supra* Sections III.A, III.D, IV.A.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *See supra* Sections II.B.1, III.A, III.B, III.C, IV.A.

<sup>197</sup> *See supra* Sections III.B.5, IV.A.

duplicates and that an additional █ percent had false eligibility documents, which are conservative estimates as described above. While these percentages are derived from specific data sets that do not cover all 19 states and territories where TCM operates, TCM's failure to implement adequate policies and procedures nationwide, as well as the inherent difficulties with identifying phantom consumers and other eligibility issues, makes this a reasonable estimation. Should TCM choose to contest this NAL, it may respond with detailed evidence rebutting this estimate.

98. From January 2014 through March 2016, TCM received a total of \$60,865,254 in reimbursements from the Fund.<sup>198</sup> Based on a loss to the Fund of \$9,738,440.64 (16 percent of the total), we propose an upward adjustment of \$29,215,322, which is three times that amount.

99. We propose upward adjustments under the factors set forth in Section 503(b) of the Act and Section 1.80(b) of the Rules, which provide that we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator. We propose an additional upward adjustment for TCM's apparent failure to meet its obligations under its Compliance Plan. As a condition for receiving Lifeline reimbursements in connection with the Lifeline program, TCM submitted its Compliance Plan to the Commission in or about May 2012, which the Commission later approved. Based on the Investigation and findings above, TCM has apparently failed to comply with its obligations under its own Compliance Plan.<sup>199</sup> Therefore, we propose an additional upward adjustment of \$100,000.

100. We propose a further upward adjustment of \$6,300,000 in light of TCM's egregious conduct related to two upward revisions of its Form 497s for Michigan and two upward revisions of its Form 497s for Ohio for the June 2014 data month.<sup>200</sup> TCM made these four upward revisions even after it was alerted as to the existence of significant numbers of duplicate enrollments in Michigan and Ohio for that month. As such, despite this notice, TCM claimed more consumers and requested more USF funds than it had in its original Form 497s. Therefore, we propose an additional upward adjustment to the statutory maximum of \$1,575,000 for each of those four revised Form 497s.

101. This forfeiture structure for apparent Lifeline violations will in no way foreclose the Commission or any other governmental entity from taking additional enforcement action and imposing additional forfeitures for other apparent violations of the Lifeline Rules. Moreover, the Commission clarifies that the penalties that result from this forfeiture structure are separate from any amounts that an ETC may be required to refund to USAC in order to make the Fund whole.

102. In addition, in light of TCM's egregious misconduct and the demonstrated harm to the Fund from the apparent violations, we order TCM to submit a report and explain why the Commission should not (1) order USAC to suspend all Lifeline reimbursements to TCM; (2) revoke approval of TCM's ETC compliance plan; and (3) initiate proceedings against TCM to revoke its Commission authorizations. TCM shall have 30 days to respond to this request.

## VI. ORDERING CLAUSES

103. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and 1.80 of the Rules,<sup>201</sup> Total Call Mobile, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A**

---

<sup>198</sup> Some of the requests have not been paid by USAC because the Commission directed USAC to withhold funding from TCM. TCM may offset any withheld funds against the total forfeiture.

<sup>199</sup> See *supra* Sections III.C, IV.A.

<sup>200</sup> See Appendix E.

<sup>201</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

**TOTAL FORFEITURE** in the amount of \$51,070,322 for apparently willfully and repeatedly violating Sections 54.405, 54.407, 54.409, and 54.410 of the Rules.<sup>202</sup>

104. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,<sup>203</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, TCM **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraphs 106 and 107 below.

105. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. TCM shall also send electronic notification of payment to Loyaan Egal at [Loyaan.Egal@fcc.gov](mailto:Loyaan.Egal@fcc.gov), to Rakesh Patel at [Rakesh.Patel@fcc.gov](mailto:Rakesh.Patel@fcc.gov), and to David M. Sobotkin at [David.Sobotkin@fcc.gov](mailto:David.Sobotkin@fcc.gov) on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>204</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>205</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

106. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.<sup>206</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau, Federal Communications Commission and must include the NAL/Acct. No.

<sup>202</sup> 47 CFR §§ 54.407, 54.409, 54.410.

<sup>203</sup> 47 CFR § 1.80.

<sup>204</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>205</sup> See 47 CFR § 1.1914.

<sup>206</sup> 47 CFR §§ 1.16, 1.80(f)(3).

referenced in the caption. The written statement shall also be emailed to Loyaan.Egal@fcc.gov, Rakesh.Patel@fcc.gov, and David.Sobotkin@fcc.gov.

107. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

108. **IT IS FURTHER ORDERED** that TCM shall respond to the request in paragraph 102 within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

109. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by certified mail, return receipt requested, and first class mail to Satoru Manabe, Chief Executive Officer, Total Call Mobile, Inc., 1411 W. 190th Street, Gardena, CA 90248.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A**

**Examples of Same-Agent Duplicates**

LAST NAME	FIRST NAME	SSN	DOB	ADDRESS	CITY	STATE	SALES AGENT
E [REDACTED]	F [REDACTED]	[Different SSN]	[Same DOB]	[Same address]	[Same city]	AZ	[Same sales agent]
E [REDACTED] Jr.	F [REDACTED]						
W [REDACTED]	C [REDACTED]	[Different SSN]	[Same DOB]	[Different address]	[Same city]	NV	[Same sales agent]
W [REDACTED]	C [REDACTED]						
F [REDACTED] Jr	R [REDACTED]	[Same SSN]	[Same DOB]	[Same address]	[Same city]	AZ	[Same sales agent]
F [REDACTED]	R [REDACTED]						
T [REDACTED] L J [REDACTED]	G [REDACTED]	[Different SSN]	[Same DOB]	[Same address]	[Same city]	MI	[Same sales agent]
T J [REDACTED]	G [REDACTED]						
Y [REDACTED]	W [REDACTED]	[Different SSN]	[Same DOB]	[Same address]	[Same city]	NV	[Same sales agent]
Y [REDACTED]	M [REDACTED]						
Y [REDACTED]	W [REDACTED]						
Y [REDACTED]	M [REDACTED]						

**APPENDIX B**

**Examples of Agent-Team Duplicates**

LAST NAME	FIRST NAME	SSN	DOB	ADDRESS	CITY	STATE	SALES AGENT
A [REDACTED]	L [REDACTED] I [REDACTED]	[Different SSN]	[Same DOB]	[Different address]	[Different city]	NV	[Different sales agents]
A [REDACTED]	M [REDACTED] I [REDACTED]						
J [REDACTED]	R [REDACTED]	[Different SSN]	[Same DOB]	[Different address]	[Different city]	CO	[Different sales agent]
D [REDACTED] J [REDACTED]	R [REDACTED]						
P [REDACTED]	N [REDACTED] N	[Different SSN]	[Same DOB]	[Same address]	[Same city]	WA	[Different sales agent]
N P [REDACTED]	N [REDACTED]						

**APPENDIX C****Michigan June 2014 Form 497s**

	<b>Original (date filed)</b>	<b>Revision 1 (date filed)</b>	<b>Revision 2 (date filed)</b>	<b>Revision 3 (date filed)</b>	<b>Revision 4 (date filed)</b>	<b>Net effect</b>
Michigan June 2014	\$ [REDACTED] consumers (7/8/14)	\$ [REDACTED] consumers (8/26/14)	\$ [REDACTED] consumers (2/20/15)	\$ [REDACTED] consumers (4/8/15)	\$ [REDACTED] consumers (7/23/15)	+\$4135 +447 consumers
<b>Difference vs. prior filing</b>		+\$43262 +4677 consumers	-\$59607 -6444 consumers	+\$31284 +3382 consumers	-\$10804 -1168 consumers	

**APPENDIX D**

**Examples of Duplicates Remaining in NLAD as of April 2015**

LAST NAME	FIRST NAME	SSN	DOB	ADDRESS	CITY	STATE
E [REDACTED]	J [REDACTED]	[Different SSN]	[Same DOB]	[Different address]	[Same city]	AZ
E [REDACTED]	J [REDACTED]					AZ
C [REDACTED] J [REDACTED]	A [REDACTED]	[Same SSN]	[Same DOB]	[Different address]	[Different city]	MI
J [REDACTED]	A [REDACTED]					MI
J S [REDACTED]	B [REDACTED]	[Same SSN]	[Same DOB]	[Different address]	[Different city]	MI
S [REDACTED]	B [REDACTED]					MI
S [REDACTED] J [REDACTED]	C [REDACTED]	[Same SSN]	[Same DOB]	[Different address]	[Different city]	MI
J [REDACTED]	C [REDACTED]					MI
F [REDACTED]	K [REDACTED]	[Same SSN]	[Different DOB]	[Same address]	[Same city]	MI
F V [REDACTED]	K [REDACTED]					MI
T C [REDACTED]	D [REDACTED]	[SSN Off By One Digit]	[Same DOB]	[Same address]	[Same city]	MI
T C [REDACTED]	D [REDACTED]					MI

**APPENDIX E****Original and Revised Form 497s**

<b>State</b> (No. of Original Forms)	<b>Data Months</b> (Dates of Original and Revised Form 497s)
Arizona (9)	Mar. 2014 (original 4/8/14; revised 9/17/14, 2/20/15, 4/8/15, 7/13/15) Apr. 2014 (original 5/8/14; revised 2/20/15, 4/8/15, 7/13/15) May 2014 (original 6/6/14; revised 2/20/15, 4/8/15, 7/23/15) Jun. 2014 (original 7/8/14; revised 2/20/15, 4/8/15, 7/23/15) Jul. 2014 (original 8/7/14; revised 2/20/15, 4/8/15, 7/23/15) Aug. 2014 (original 9/8/14; revised 2/20/15, 4/24/15, 7/23/15) Sept. 2014 (original 10/7/14; revised 2/20/15, 4/24/15, 7/23/15) Oct. 2014 (original 11/7/14; revised 4/24/15, 7/23/15) Nov. 2014 (original 12/8/14; revised 4/24/15, 7/23/15)
Colorado (11)	Jan. 2014 (original 2/10/14; revised 5/5/14, 9/12/14, 2/20/15, 4/7/15, 7/13/15) Feb. 2014 (original 3/7/14; revised 5/5/14, 9/12/14, 2/20/15, 4/7/15, 7/13/15) Mar. 2014 (original 4/8/14; revised 9/17/14, 2/20/15, 4/8/15, 7/13/15) Apr. 2014 (original 5/8/14; revised 2/20/15, 4/8/15, 7/13/15) May 2014 (original 6/6/14; revised 2/20/15, 4/8/15, 7/15/15) Jun. 2014 (original 7/8/14; revised 8/26/14, 2/20/15, 4/8/15, 7/23/15) Jul. 2014 (original 8/7/14; revised 2/20/15, 4/8/15, 7/23/15) Aug. 2014 (original 9/8/14; revised 2/20/15, 4/24/15, 7/23/15) Sept. 2014 (original 10/7/14; revised 2/20/15, 4/24/15, 7/23/15) Oct. 2014 (original 11/7/14; revised 2/20/15, 4/24/15, 7/23/15) Nov. 2014 (original 12/8/14; revised 4/24/15, 7/23/15)
Hawaii (10)	Feb. 2014 (original 3/7/14; revised 5/5/14, 10/1/14, 4/7/15) Mar. 2014 (original 4/8/14; revised 10/1/14, 4/8/15, 7/13/15) Apr. 2014 (original 5/8/14; revised 4/8/15, 7/13/15) May 2014 (original 6/6/14; revised 4/8/15, 7/15/15) Jun. 2014 (original 7/8/14; revised 4/8/15, 7/23/15) Jul. 2014 (original 8/7/14; revised 2/20/15, 4/8/15, 7/23/15) Aug. 2014 (original 9/8/14; revised 2/20/15, 4/24/15, 7/23/15) Sept. 2014 (original 10/7/14; revised 2/20/15, 4/24/15, 7/23/15) Oct. 2014 (original 11/7/14; revised 2/20/15, 4/24/15, 7/23/15) Nov. 2014 (original 12/8/14; revised 4/24/15, 7/23/15)

<b>State</b> (No. of Original Forms)	<b>Data Months</b> (Dates of Original and Revised Form 497s)
Iowa (7)	May 2014 (original 6/4/14; revised 2/2/15, 4/8/15) Jun. 2014 (original 7/8/14; revised 8/26/14, 2/20/15, 4/8/15, 7/23/15) Jul. 2014 (original 8/7/14; revised 2/20/15, 4/8/15, 7/23/15) Aug. 2014 (original 9/8/14; revised 2/20/15, 4/24/15, 7/23/15) Sept. 2014 (original 10/7/14; revised 2/20/15, 4/24/15, 7/23/15) Oct. 2014 (original 11/7/14; revised 4/24/15, 7/23/15) Nov. 2014 (original 12/8/14; revised 4/24/15, 7/23/15)
Kansas (10)	Jan. 2014 (original 2/10/14; revised 5/5/14, 2/13/15, 7/13/15) Feb. 2014 (original 3/7/14; revised 5/5/14, 9/12/14, 2/20/15, 4/7/15, 7/13/15) Mar. 2014 (original 4/8/14; revised 9/17/14, 2/20/15, 7/13/15) Apr. 2014 (original 5/8/14; revised 2/20/15, 4/8/15, 7/13/15) May 2014 (original 6/6/14; revised 2/20/15, 4/8/15, 7/23/15) Jun. 2014 (original 7/8/14; revised 2/20/15, 4/8/15, 7/23/15) Jul. 2014 (original 8/7/14; revised 2/20/15, 4/8/15, 7/23/15) Aug. 2014 (original 9/8/14; revised 2/20/15, 4/24/15, 7/23/15) Sept. 2014 (original 10/7/14; revised 2/20/15, 4/24/15, 7/23/15) Oct. 2014 (original 11/7/14; revised 2/20/15, 4/24/15, 7/23/15)
Louisiana (10)	Feb. 2014 (original 3/5/14; revised 9/12/14, 2/20/15, 7/13/15) Mar. 2014 (original 4/8/14; revised 9/17/14, 2/20/15, 4/8/15, 7/13/15) Apr. 2014 (original 5/8/14; revised 2/20/15, 4/8/15, 7/13/15) May 2014 (original 6/6/14; revised 2/20/15, 4/8/15, 7/15/15) Jun. 2014 (original 7/8/14; revised 2/20/15, 4/8/15, 7/23/15) Jul. 2014 (original 8/7/14; revised 2/20/15, 4/8/15, 7/23/15) Aug. 2014 (original 9/8/14; revised 2/20/15, 4/24/15, 7/23/15) Sept. 2014 (original 10/7/14; revised 2/20/15, 4/24/15, 7/23/15) Oct. 2014 (original 11/7/14; revised 4/24/15, 7/23/15) Nov. 2014 (original 12/8/14; revised 12/16/14, 4/24/15, 7/23/15)

State (No. of Original Forms)	Data Months (Dates of Original and Revised Form 497s)
Michigan (16)	Jan. 2014 (original 2/10/14; revised 5/5/14, 2/13/15, 7/13/15) Feb. 2014 (original 3/7/14; revised 5/5/14, 9/12/14, 2/20/15, 7/13/15) Mar. 2014 (original 4/8/14; revised 9/17/14, 2/20/15, 4/8/15, 7/13/15) Apr. 2014 (original 5/8/14; revised 2/20/15, 4/8/15, 7/13/15) May 2014 (original 6/6/14; revised 2/20/15, 4/8/15, 7/15/15) Jun. 2014 (original 7/8/14; revised 8/26/14, 2/20/15, 4/8/15, 7/23/15) Jul. 2014 (original 8/7/14; revised 2/20/15, 4/8/15, 7/23/15) Aug. 2014 (original 9/8/14; revised 2/20/15, 4/24/15, 7/23/15) Sept. 2014 (original 10/7/14; revised 2/20/15, 4/24/15, 7/23/15) Oct. 2014 (original 11/7/14; revised 2/20/15, 4/24/15, 7/23/15) Nov. 2014 (original 12/8/14; revised 4/24/15, 7/23/15) Dec. 2014 (original 1/8/15; revised 4/24/15, 7/23/15) Jan. 2015 (original 2/9/15; revised 4/24/15, 7/23/15) Feb. 2015 (original 3/9/15; revised 7/23/15) Mar. 2015 (original 4/8/15; revised 7/23/15) Apr. 2015 (original 5/8/15)
Missouri (10)	Feb. 2014 (original 3/7/14; revised 9/12/14, 2/20/15, 4/7/15) Mar. 2014 (original 4/8/14; revised 9/17/14, 2/20/15, 4/8/15, 7/13/15) Apr. 2014 (original 5/8/14; revised 2/20/15, 4/8/15, 7/13/15) May 2014 (original 6/6/14; revised 2/20/15, 4/8/15, 7/15/15) Jun. 2014 (original 7/8/14; revised 8/26/14, 2/20/15, 4/8/15, 7/23/15) Jul. 2014 (original 8/7/14; revised 2/20/15, 4/8/15, 7/23/15) Aug. 2014 (original 9/8/14; revised 2/20/15, 4/24/15, 7/23/15) Sept. 2014 (original 10/7/14; revised 2/20/15, 4/24/15, 7/13/15) Oct. 2014 (original 11/7/14; revised 2/20/15, 4/24/15, 7/23/15) Nov. 2014 (original 12/8/14; revised 4/24/15, 7/23/15)
Nevada (11)	Jan. 2014 (original 2/10/14; revised 5/5/14, 2/13/15, 4/7/15, 7/13/15) Feb. 2014 (original 3/7/14; revised 9/12/14, 5/5/14, 2/20/15, 4/7/15, 7/13/15) Mar. 2014 (original 4/8/14; revised 9/17/14, 2/20/15, 4/8/15, 7/13/15) Apr. 2014 (original 5/8/14; revised 2/20/15, 4/8/15, 7/13/15) May 2014 (original 6/6/14; revised 2/20/15, 4/8/15, 7/15/15) Jun. 2014 (original 7/8/14; revised 2/20/15, 4/8/15, 7/23/15) Jul. 2014 (original 8/7/14; revised 2/20/15, 4/8/15, 7/23/15) Aug. 2014 (original 9/8/14; revised 2/20/15, 4/24/15, 7/23/15) Sept. 2014 (original 10/7/14; revised 2/20/15, 4/24/15, 7/23/15) Oct. 2014 (original 11/7/14; revised 2/20/15, 4/24/15, 7/23/15) Nov. 2014 (original 12/8/14; revised 4/24/15, 7/23/15)

State (No. of Original Forms)	Data Months (Dates of Original and Revised Form 497s)
Ohio (11)	Jan. 2014 (original 2/10/14; revised 5/5/14, 2/13/15, 4/7/15) Feb. 2014 (original 3/7/14; revised 2/20/15, 4/15/15, 7/13/15) Mar. 2014 (original 4/8/14; revised 9/17/14, 2/20/15, 4/8/15, 7/13/15) Apr. 2014 (original 5/8/14; revised 2/20/15, 4/8/15, 7/13/15) May 2014 (original 6/6/14; revised 2/20/15, 4/8/15, 7/15/15) Jun. 2014 (original 7/8/14; revised 8/26/14, 2/20/15, 4/8/15, 7/23/15) Jul. 2014 (original 8/7/14; revised 2/20/15, 4/8/15, 7/23/15) Aug. 2014 (original 9/8/14; revised 2/20/15, 4/24/15, 7/23/15) Sept. 2014 (original 10/7/14; revised 2/20/15, 4/24/15, 7/23/15) Oct. 2014 (original 11/7/14; revised 2/20/15, 4/24/15, 7/23/15) Nov. 2014 (original 12/8/14; revised 4/24/15, 7/13/15)
Utah (10)	Feb. 2014 (original 3/7/14; revised 5/5/14, 9/12/14, 2/20/15, 4/7/15) Mar. 2014 (original 4/8/14; revised 9/17/14, 2/20/15, 4/8/15, 7/13/15) Apr. 2014 (original 5/8/14; revised 8/7/14, 2/20/15, 4/8/15, 7/13/15) May 2014 (original 6/6/14; revised 2/20/15, 4/8/15, 7/15/15) Jun. 2014 (original 7/8/14; revised 2/20/15, 4/8/15, 7/23/15) Jul. 2014 (original 8/7/14; revised 2/20/15, 4/8/15, 7/23/15) Aug. 2014 (original 9/8/14; revised 2/20/15, 4/24/15, 7/23/15) Sept. 2014 (original 10/7/14; revised 2/20/15, 4/24/15, 7/23/15) Oct. 2014 (original 11/7/14; revised 2/20/15, 4/24/15, 7/23/15) Nov. 2014 (original 12/8/14; revised 4/24/15, 7/23/15)
Washington (6)	Jun. 2014 (original 8/6/14; revised 7/23/15) Jul. 2014 (original 8/6/14; revised 4/8/15, 7/23/15) Aug. 2014 (original 9/8/14; revised 2/20/15, 4/24/15, 7/23/15) Sept. 2014 (original 10/7/14; revised 2/20/15, 4/24/15, 7/23/15) Oct. 2014 (original 11/7/14; revised 4/24/15, 7/23/15) Nov. 2014 (original 12/8/14; revised 4/24/15, 7/23/15)
Wisconsin (9)	Feb. 2014 (original 3/7/14; revised 5/5/14, 10/1/14, 2/20/15, 4/7/15) Mar. 2014 (original 4/8/14; revised 10/1/14, 2/20/15, 4/8/15, 7/13/15) Apr. 2014 (original 5/8/14; revised 10/1/14, 2/20/15, 4/8/15, 7/13/15) May 2014 (original 6/6/14; revised 10/1/14, 2/20/15, 4/8/15, 7/15/15) Jun. 2014 (original 7/8/14; revised 8/26/14, 10/1/14, 2/20/15, 4/8/15, 7/23/15) Jul. 2014 (original 8/7/14; revised 10/1/14, 2/20/15, 4/8/15, 7/23/15) Aug. 2014 (original 9/8/14; revised 2/20/15, 4/24/15, 7/23/15) Sept. 2014 (original 10/7/14; revised 2/20/15, 4/24/15, 7/23/15) Oct. 2014 (original 11/7/14; revised 2/20/15, 4/24/15, 7/23/15)

**STATEMENT OF COMMISSIONER MIGNON CLYBURN  
APPROVING IN PART AND CONCURRING IN PART**

Re: *Total Call Mobile, Inc.* File No.: EB-IHD-14-00017650

Total Call Mobile's actions were, in a word, reprehensible, which is why I support taking decisive enforcement action. This provider has not only violated our rules but also the trust of American consumers who contribute to the universal service fund. Today's Notice of Apparent Liability finds that Total Call Mobile enrolled the same consumers multiple times, without the customers' knowledge, by making slight changes to each consumer's identifying information. This is fraud, plain and simple and represents the very reason why the Commission just voted to eliminate Lifeline providers from determining a customer's eligibility. Preventing any provider from ever doing this again is why I advocated for the establishment of a neutral third party verifier to prevent such fraud in the future.

Providers that show such blatant disregard for our rules should not be part of the Lifeline program. I therefore support the decision to require Total Call Mobile submit a report and explain why the Commission should not revoke Total Call Mobile's compliance plan and suspend any future Lifeline payments to this company.

Given the egregious nature of the alleged conduct, I believe a more significant forfeiture would have been appropriate. The Commission cannot tolerate such abuse and must send a strong signal that providers that violate our rules will face significant consequences. I therefore vote to approve in part and concur in part.

**STATEMENT OF COMMISSIONER AJIT PAI,  
APPROVING IN PART AND DISSENTING IN PART**

Re: *Total Call Mobile, Inc.*, File No.: EB-IHD-14-00017650, NAL/Acct. No. 201632080004.

Beth, Alan, and David were sales agents for Total Call Mobile.<sup>1</sup> Beth specialized in signing up ineligible consumers using false credentials.<sup>2</sup> Her supervisor told her to get a blank food stamp card, i.e., a temporary Supplemental Nutrition Assistance Program (SNAP) card, to use as eligibility documentation for applicants already in the system.<sup>3</sup> Her supervisors had stacks in excess of 200 SNAP cards that the managers had purchased on the street. She was told to rotate the use of temporary SNAP cards to ensure that applicants could repeatedly sign up for phones. She also worked side by side with other Lifeline carriers to increase the number of applicants each sales agent could sign up.

Alan specialized in manipulating the application process.<sup>4</sup> He took photos of an applicant's SNAP card and used that information to activate numerous customers, changing only the last four digits of the applicant's Social Security number. His supervisor used an app to generate legitimate Social Security numbers to aid the process, and Total Call Mobile's back-end staff would verify the application even if the name on the SNAP card was not the applicant's name. Alan also knew that the system would approve a customer for multiple Lifeline subsidies so long as he entered the information on different devices within a 15-minute window—and he coordinated with the sales agents of other Lifeline carriers to sign up applicants up to four times.

David specialized in getting customers multiple phones.<sup>5</sup> His supervisor told him to change an applicant's last name if it came back duplicate and keep changing it until it's accepted. He filled out applications, checking off the boxes he knew applicants needed to check to enroll. He signed on their behalf; his supervisor told him to match the signature on the applicant's identification as closely as possible. Another supervisor showed him how to sign up applicants for three phones apiece and how to use nail polish remover to remove identification information from a SNAP card. Total Call Mobile's back-end staff facilitated David's work, explaining how to cover expiration dates on eligibility documentation or alter a person's name to get through the review process.

Beth, Alan, and David were not alone. Nathan used his own identification as well as a stolen driver's license to sign up for service at least 22 times.<sup>6</sup> Fred enrolled an undercover FCC employee in the program even though the FCC employee had no identification or eligibility documentation.<sup>7</sup> Other sales agents used the address of a local homeless shelter to enroll hundreds of applicants multiple times.<sup>8</sup> In November 2014, the Universal Service Administrative Company was able to identify 32,498 intra-company duplicate subscribers enrolled by over 800 Total Call Mobile sales agents.<sup>9</sup> And during that same quarter, Total Call Mobile bypassed the National Lifeline Accountability Database's internal

---

<sup>1</sup> The names of all sales agents have been changed to protect their identity.

<sup>2</sup> See Sales Agent B Exhibit; *Notice of Apparent Liability* at para. 37.

<sup>3</sup> Temporary SNAP cards lack information identifying the cardholder.

<sup>4</sup> See Sales Agent A Exhibit.

<sup>5</sup> See Sales Agent D Exhibit.

<sup>6</sup> See *Notice of Apparent Liability* at paras. 48–51, 96.

<sup>7</sup> See *Notice of Apparent Liability* at para. 43.

<sup>8</sup> See *Notice of Apparent Liability* at para. 45.

<sup>9</sup> See *Notice of Apparent Liability* at para. 17; TCM-EB-000000868.

safeguards for 99.8% of its newly enrolled subscribers.<sup>10</sup> No wonder that Total Call Mobile's own employees described the company's practices as fraud.

I agree with my colleagues that Total Call Mobile apparently and repeatedly violated federal law. And I appreciate that my colleagues acceded to my request that we order Total Call Mobile to explain why we should not suspend all Lifeline payments to the company, revoke its ability to participate in the Lifeline program, and end its authorization to offer telephone service entirely.<sup>11</sup>

But I am disappointed that we do not—and to some extent cannot—sanction Total Call Mobile for all of its wrongful conduct. Even though USAC identified 32,498 intra-company duplicates, we pursue only 2,587.<sup>12</sup> Even though we have evidence that Total Call Mobile bypassed federal safeguards to enroll 99.8% of its subscribers, we hold the company liable for only 16%.<sup>13</sup> Under these circumstances, our precedent suggests that a forfeiture of at least \$84,295,910 would have been appropriate.<sup>14</sup> Yet the Commission settles for something much less.

One reason: Even though USAC discovered the intra-company duplicates in November 2014 and even though our investigation had largely concluded by mid-2015, the Chairman's office kept this *Notice of Apparent Liability* on hold until March 2016—long after the one-year statute of limitations had passed for most of those apparent violations. Even then, Commissioners were told that the *Notice of Apparent Liability* could not be released or publicly discussed until April 1, 2016, conveniently one day after the Commission was scheduled to expand the Lifeline program to broadband. That's not right.

Another: The *Notice of Apparent Liability* repeatedly gives Total Call Mobile the benefit of the doubt. For example, it treats less than 10% of Total Call Mobile's subscribers as likely ineligible when we have evidence that up to 99.8% were. Using that metric of likely ineligibility (one Total Call Mobile refused to rebut by withholding information in response to Commission subpoenas<sup>15</sup>) would yield a forfeiture amount of roughly \$84 million, in line with what we should have proposed two years ago.

Instead, the Commission proposes a forfeiture of only \$51,070,322,<sup>16</sup> which is not even a third more than the \$38,933,139 that Total Call Mobile has collected from the Universal Service Fund since its misdeeds were exposed by USAC. That's hardly the type of justice the American people deserve given the sheer magnitude of misconduct at issue, and I accordingly dissent in part.

---

<sup>10</sup> See *Notice of Apparent Liability* at para. 27; Information on file in EB-IHD-14-00017650.

<sup>11</sup> See *Notice of Apparent Liability* at para. 102.

<sup>12</sup> See *Notice of Apparent Liability* at para. 95.

<sup>13</sup> See *Notice of Apparent Liability* at para. 97.

<sup>14</sup> Conservatively assuming that one out of every two intra-company duplicates was an eligible, non-duplicate subscriber, the forfeiture would be at least  $16,249 \times \$5,000 + 16,249 \times \$9.25 \times 3 + 130 \times \$20,000 = \$84,295,910$ .

<sup>15</sup> *Notice of Apparent Liability* at para. 68.

<sup>16</sup> *Notice of Apparent Liability* at para. 103.

**STATEMENT OF COMMISSIONER MICHAEL O'RIELLY  
APPROVING IN PART AND DISSENTING IN PART**

*Re: Total Call Mobile, Inc., File No.: EB-IHD-14-00017650*

I support initiating a Notice of Apparent Liability against Total Call Mobile because I am greatly troubled by what appears to be an intentional and widespread effort to enroll duplicate and ineligible consumers into the Lifeline program. I am particularly concerned that the company was allegedly able to use temporary Supplemental Nutrition Assistance Program (SNAP) cards to enroll consumers that were not actually eligible for subsidies. The item notes that agents purchased and managers possessed “stacks” of SNAP cards to serve as false eligibility documents. This is deeply disturbing.

According, while not the subject of this item, I must once again lodge my extreme frustration that the Commission continues to rely on SNAP as an entry point in the Lifeline program, and has the gall to claim that it is a highly accountable program, when it is painfully obvious to anyone paying attention that SNAP is riddled with waste, fraud, and abuse. Some have claimed that moving to a National Lifeline Eligibility Verifier will help clean up fraud in the Lifeline program. However, it will be years before the National Verifier is operational and, even then, the Lifeline program will continue to be marred by underlying fraud in the SNAP program. At best, we will be throwing good money after bad.

I dissent in part because, once again, the Commission goes down the path of proposing a very large fine that does not appear to be fully supported by the law and Commission precedent. In particular, I have questions about whether all of the conduct falls within the statute of limitations period. Perhaps it eases the conscience of a Commission that is in the process of greatly expanding the size of the Lifeline program to be able to point to aggressive enforcement actions and hefty fines. But if everything alleged in this document is true, than an FCC fine of any amount should be the least of the company's concerns. Let's just stick to the law and facts.