

1 JASON M. FRIERSON
 United States Attorney
 2 District of Nevada
 Nevada Bar No. 7709
 3 LINDSAY AGER
 Assistant United States Attorney
 4 Nevada Bar No. 11985
 United States Attorney's Office
 5 501 Las Vegas Blvd. So., Suite 1100
 Las Vegas, Nevada 89101
 6 (702) 388-6336
 Lindsay.Ager@usdoj.gov
 7 *Attorneys for the United States*

8 **UNITED STATES DISTRICT COURT**
 9 **DISTRICT OF NEVADA**

10 United States of America,
 11 Plaintiff,
 12 v.
 13 Consumer Telcom, Inc.,
 14 Defendant.

Case No. 2:23-cv-00161-JCM-NJK
Consent Judgment

16 Whereas, Plaintiff United States of America, on behalf of the Federal
 17 Communications Commission ("FCC"), initiated this action against Defendant Consumer
 18 Telcom, Inc. ("CTI") (collectively, "the Parties") to recover penalties related to violations of
 19 the Communications Act of 1934, as amended ("the Act"), 47 U.S.C. § 151 *et seq.*, and the
 20 FCC's regulations. In particular, numerous consumers complained that CTI engaged in
 21 unlawful practices, including changing their choice of telephone service provider without
 22 their knowledge or permission, in violation of 47 U.S.C. § 258(a) and 47 C.F.R. § 64.1120,
 23 placing unauthorized charges on their telephone bills, in violation of 47 U.S.C. § 201(b), and
 24 issuing insufficiently specific telephone bills, in violation of 47 C.F.R. § 64.2401;

25 Whereas, the FCC is an independent federal regulatory agency created by Congress
 26 that regulates providers of telecommunications services pursuant to the Act and imposes
 27 penalties for failure to comply with it. 47 U.S.C. § 503(b). Pursuant to that authority, the
 28 FCC issued a forfeiture order on September 15, 2016, against CTI based upon these

1 allegations. FCC 16-124. These penalties are recoverable in a civil action by the United
2 States. 47 U.S.C. § 504(a);

3 Whereas, CTI is a Nevada corporation with its principal place of business in Las
4 Vegas, Nevada.

5 Whereas, the Parties have agreed that settlement of the claims alleged in the United
6 States' complaint and entry of this Consent Judgment with the Terms and Conditions set
7 forth herein without further litigation is the most appropriate way to resolve this action;

8 Whereas, this Consent Judgment is neither an admission of liability by CTI nor a
9 concession by the United States that its claims are not well founded;

10 Accordingly, by the consent of the parties, the Court finds that:

11 1. This Court has subject matter jurisdiction over this civil action under 28
12 U.S.C. §§ 1331, 1345, and 1355.

13 2. Venue is proper in the District of Nevada under 28 U.S.C. §§ 1355(b)(1),
14 1391(b), and 1395(a), and 47 U.S.C. § 504(a), because at all relevant times CTI had offices
15 located within this District, and a substantial part of the acts or omissions on which this
16 action is based occurred within this District.

17 3. The United States' complaint states a claim upon which relief may be granted
18 against CTI. By its signature at the end of this Consent Judgment, CTI consents to and
19 shall not challenge entry of this Consent Judgment or this Court's jurisdiction to enter or
20 enforce this Consent Judgment.

21 IT IS ORDERED that the parties must adhere to the following terms and conditions:

22 1. **Term.** CTI shall adhere to the terms and conditions set forth herein for a
23 period of three years, which shall begin on the date this Consent Judgment is entered by the
24 Court (the "Effective Date").

25 2. **Compliance Officer.** On or before 30 days after the Effective Date, CTI shall
26 designate a senior manager to serve as "Compliance Officer" responsible for implementing
27 the terms and conditions set forth herein on behalf of CTI. The person designated as the
28 Compliance Officer shall be responsible for developing, implementing, and administering

1 the Compliance Plan, discussed in paragraph 3 below, and ensuring that CTI complies with
2 the terms and conditions of the Compliance Plan and this Consent Judgment.

3 **3. Compliance Plan.** CTI shall, on or before 90 days after the Effective Date,
4 establish a “Compliance Plan” designed to ensure future compliance with the
5 Communications Laws and with the terms and conditions of this Consent Judgment.

6 “Communications Laws” means, collectively, the Act, the regulations found in Title 47 of
7 the Code of Federal Regulations, and the published and promulgated orders and decisions
8 of the FCC to which CTI is subject by virtue of its business activities, including but not
9 limited to Sections 201 and 258 of the Act, 47 C.F.R. §§ 64.1100 through 64.1195, and 47
10 C.F.R. § 64.2401. The Compliance Plan shall include, at a minimum, the following
11 components:

12 a. **Operating Procedures.** On or before 90 days after the Effective Date, CTI
13 shall establish Operating Procedures that the Compliance Officer and all
14 Covered Personnel must follow to help ensure CTI’s compliance with this
15 Consent Judgment and the Communications Laws. “Covered Personnel”
16 means all employees and agents of CTI who perform, or supervise, oversee,
17 or manage the performance of duties that relate to CTI’s responsibilities under
18 the Communications Laws.

19 b. **Compliance Manual.** On or before 90 days after the Effective Date, CTI shall
20 develop, use, and maintain a Compliance Manual, and distribute the same to
21 all Covered Personnel. For any person who becomes Covered Personnel more
22 than 90 days after the Effective Date, CTI shall distribute the Compliance
23 Manual to that person within 30 days and prior to such person engaging with
24 consumers. The Compliance Manual shall explain the requirements of this
25 Consent Judgment and shall instruct Covered Personnel to consult and follow
26 the Operating Procedures to ensure CTI’s compliance with the
27 Communications Laws and this Consent Judgment. CTI shall periodically
28 review and revise the Compliance Manual to ensure that the information set

1 forth therein remains current and complete. CTI shall distribute a revised
2 Compliance Manual to all Covered Personnel within 30 days of making such
3 revisions.

4 c. **Compliance Training Program.** CTI shall establish and implement a
5 Compliance Training Program. As part of the Compliance Training Program,
6 Covered Personnel shall be trained on the information in the Operating
7 Procedures and Compliance Manual, shall be advised on CTI's obligation to
8 report any noncompliance with this Consent Judgment as described in
9 paragraph 4 below, and shall be instructed on how to disclose noncompliance
10 to the Compliance Officer. All Covered Personnel shall be trained pursuant to
11 the Compliance Training Program on or before 90 days after the Effective
12 Date, except that any person who becomes Covered Personnel after the initial
13 Compliance Training shall be trained within 30 days after the date such
14 person becomes Covered Personnel and prior to such person engaging with
15 consumers. CTI shall repeat Compliance Training on an annual basis and
16 shall periodically review and revise the Compliance Training Program as
17 necessary to ensure that it remains current and complete.

18 4. **Reporting Noncompliance.** CTI shall report any noncompliance with Section
19 201(b) of the Act, 47 U.S.C. § 201(b), Section 258 of the Act, 47 U.S.C. § 258, the Changes
20 in Preferred Telecommunications Service Provider regulations, 47 C.F.R. §§ 64.1100 –
21 64.1195, the Truth-in-Billing regulations, 47 C.F.R. § 64.2401, and with the terms and
22 conditions of this Consent Judgment within 15 days after discovery of such noncompliance.

23 a. Such reports shall include a detailed explanation of: (1) each instance
24 of noncompliance; (2) the steps that CTI has taken or will take to
25 remedy such noncompliance, including the schedule on which such
26 remedial actions will be taken; and (3) the steps that CTI has taken or
27 will take to prevent the recurrence of any such noncompliance. All
28 reports of noncompliance shall be submitted to the Chief,

1 Telecommunications Consumers Division, Enforcement Bureau,
2 Federal Communications Commission, 45 L Street, NE, Washington,
3 DC 20554, with a copy submitted electronically to
4 Michael.Epshteyn@fcc.gov and Shana.Yates@fcc.gov.

- 5 b. To the extent CTI believes any noncompliance action is not material,
6 it may: (1) identify such action and explain to the FCC in its reporting
7 why such action is not material; or (2) or contact the Chief,
8 Telecommunications Consumers Division, Enforcement Bureau,
9 Federal Communications Commission, with a copy submitted
10 electronically to Michael.Epshteyn@fcc.gov and
11 Shana.Yates@fcc.gov, regarding such action, explain why such action
12 is not material, and seek express permission to exclude such action
13 from its reporting.

14 5. **Compliance Reports.** CTI shall file “Compliance Reports” with the FCC at
15 6, 12, 18, 24, and 36 months following the Effective Date.

- 16 a. Each Compliance Report shall include a detailed description of CTI’s
17 efforts during the relevant period to comply with the terms of this
18 Consent Decree.
- 19 b. Each Compliance Report shall include a certification by the
20 Compliance Officer, as an agent of and on behalf of CTI, stating that
21 the Compliance Officer has personal knowledge that CTI: (1) has
22 established and implemented the Compliance Plan; and (2) is not
23 aware of any instances of noncompliance with the terms and
24 conditions of this Consent Decree, including the reporting obligations
25 set forth in paragraph 4 of this Consent Judgment.
- 26 c. The Compliance Officer’s certification shall be accompanied by a
27 statement explaining the basis for such certification and shall comply
28 with 47 C.F.R. § 1.16 and be subscribed to as true under penalty of

1 perjury in substantially the form set forth therein.

2 d. If the Compliance Officer cannot provide the requisite certification, the
3 Compliance Officer, as an agent of and on behalf of CTI, shall provide
4 the Commission with a detailed explanation of the reason(s) why and
5 describe fully: (1) each instance of noncompliance; (2) the steps CTI
6 has taken or will take to remedy such noncompliance, including the
7 schedule on which proposed remedial actions will be taken; and (3) the
8 steps that CTI has taken or will take to prevent the recurrence of any
9 such noncompliance, including the schedule on which such preventive
10 action will be taken.

11 e. All Compliance Reports shall be submitted to the Chief,
12 Telecommunications Consumers Division, Enforcement Bureau,
13 Federal Communications Commission, 45 L Street, NE, Washington,
14 DC 20554, with copies submitted electronically to
15 Michael.Epshteyn@fcc.gov and Shana.Yates@fcc.gov.

16 6. **Consumer Complaint Handling Procedure.** Beginning on or before 90 days
17 after the Effective Date, CTI will implement and comply with complaint-handling
18 procedures to address consumer complaints. The Compliance Officer will be responsible for
19 ensuring that all complaints are addressed in accordance with the complaint-handling
20 procedures, including:

21 a. CTI must investigate any consumer complaint within four business
22 days, including attempting to contact the consumer to engage in good
23 faith discussions to resolve the complaint to the consumer's
24 satisfaction.

25 b. CTI must cease collection activity if a consumer has filed a complaint
26 until that complaint is resolved.

27 c. If CTI intends to deny a refund of complained-of-charges, it must
28 (1) notify the FCC within five business days and present the evidence

1 upon which it has overcome a rebuttable presumption that
2 complained-of-charges will be refunded, and (2) provide such evidence
3 to the consumer who complained of the charge and grant that
4 consumer a reasonable opportunity to respond to the denial.

5 d. CTI will forward all complaint-related documents to the FCC within
6 30 days of receiving a complaint and will retain all complaint-related
7 documents for two years after receiving a complaint.

8 e. CTI agrees to refund all charges if a customer complains within two
9 billing cycles of receiving the first bill. For complaints received after
10 two billing cycles, CTI will refund all charges if it determines the
11 complaint has merit. In conducting such investigation, CTI shall
12 comply with complaint-handling procedures described above.

13 **7. Redress for Prior Complaints.** CTI shall take the following actions:

14 a. Within 90 days, CTI will certify that it provided full refunds to
15 consumers who complained in this case to the extent full refunds were
16 not already provided. Such certification shall be submitted to the
17 Chief, Telecommunications Consumers Division, Enforcement
18 Bureau, Federal Communications Commission, 45 L Street, NE,
19 Washington, DC 20554, with copies submitted electronically to
20 Michael.Epshteyn@fcc.gov and Shana.Yates@fcc.gov. To the extent
21 any consumer who complained in this case claims that they were not
22 refunded, CTI shall provide a refund to such complainant as to the
23 amount claimed, up to \$100, unless CTI is able to provide proof of
24 prior refund.

25 b. Within 120 days, CTI will review any complaints it received during
26 the previous two years consistent with the complaint-handling
27 procedures identified above, including the rebuttable presumption of a
28 refund for complained-of charges. Consistent with those procedures,

1 CTI will refund all charges if it determines the complaint has merit. If
2 CTI intends to deny a refund of complained-of-charges, it must
3 (1) notify the FCC and present the evidence upon which it has
4 overcome the presumption that complained-of-charges will be
5 refunded, and (2) provide such evidence to the consumer who
6 complained of the charge and grant that consumer a reasonable
7 opportunity to respond. If the FCC disagrees with CTI's denial of any
8 refunds, it will notify CTI and allow it to voluntarily provide a refund.
9 The FCC may take action regarding any denied refunds within 90 days
10 of receiving notice from CTI that it intends to deny a refund, and the
11 Parties agree that such action by the FCC shall be deemed timely.

12 8. **Telemarketing Cessation.** CTI, including any person or entity acting on
13 behalf of CTI, agrees to cease all outbound telemarketing activity.

14 9. **Truth-in-Billing.** CTI shall comply with the FCC's Truth-in-Billing
15 regulations, 47 C.F.R. § 64.2401.

16 10. **Enhanced TPV Procedures.** CTI shall comply with the FCC's third-party
17 verification requirements, 47 C.F.R. § 64.1120.

18 11. **Judgment Amount.** Judgment shall enter against CTI in the amount of
19 \$53,320, payment of which constitutes full and final settlement of the claims set forth in this
20 action. CTI shall make payment in accordance with written instructions to be provided by
21 the Department of Justice. Payment shall be made no later than 14 days after the Effective
22 Date. If full payment is not made by this deadline, interest shall accrue at the legal rate of
23 interest pursuant to 28 U.S.C. § 1961.

24 12. **Nondischargeability.** For the avoidance of doubt, the Parties agree that this
25 Consent Judgment resolves claims arising from allegations of fraud, and payments
26 hereunder, including the Judgment Amount, shall be nondischargeable under 11 U.S.C.
27 §§ 523(a)(2)(A) and 1141(d)(6).

28 13. **Final Resolution.** This Consent Judgment shall resolve the claims set forth in

1 this action in their entirety with prejudice. Each Party shall bear its own fees, costs, and
2 expenses.

3 14. **Successors and Assigns.** CTI agrees that the provisions of this Consent
4 Judgment shall be binding on its successors, assigns, and transferees.

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

10 16. **Severability.** If any part of this Consent Judgment shall for any reason be
11 found or held invalid or unenforceable by any court of competent jurisdiction, such
12 invalidity or unenforceability shall not render the entire Consent Judgment unenforceable,
13 but rather the Consent Judgment shall survive and be construed as if such invalid or
14 unenforceable part had not been contained herein.

15 17. **Counterparts.** This Consent Judgment may be signed in counterpart
16 (including electronically or by facsimile). Each counterpart shall be an original, and all
17 counterparts together shall constitute one and the same fully executed instrument.

18 18. **Integration.** This Consent Judgment constitutes the entire agreement of the
19 Parties with respect to the subject matter hereof and supersedes all prior agreements and
20 understanding relating to the subject matter hereof. There are no other representations,
21 agreements, or understandings between CTI and the United States that are not stated in
22 writing herein.

23 19. **Amendment.** This Consent Judgment may be amended solely by written
24 agreement signed by all Parties.

20. **Retained Jurisdiction.** The district court will retain jurisdiction over this matter for three years from the Effective Date for purposes of addressing any claims arising from the Consent Judgment.

APPROVED AND ENTERED ON THIS ____ DAY OF _____, 2023.

United States District Judge

For the Defendant:

James Sun
Counsel for Defendant Consumer Telcom, Inc.

Dated: _____

Joseph Nicotra, President
Defendant Consumer Telcom, Inc.

Dated: _____

For the United States:

JASON M. FRIERSON
United States Attorney

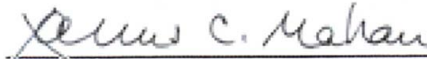
Lindsay Ager
Digitally signed by
LINDSAY AGER
Date: 2023.02.13 19:34:19
-08'00'

Dated: _____

Lindsay Ager
Assistant United States Attorney

1 20. **Retained Jurisdiction.** The district court will retain jurisdiction over this
2 matter for three years from the Effective Date for purposes of addressing any claims arising
3 from the Consent Judgment.

4
5 APPROVED AND ENTERED March 7, 2023.

6
7
8 
9 United States District Judge

10 **For the Defendant:**

11
12 
13 _____
14 James Sun
15 Counsel for Defendant Consumer Telcom, Inc.

Dated: 2/10/23

16 
17 _____
18 Joseph Nicotra, President
19 Defendant Consumer Telcom, Inc.

Dated: 2/4/23

20 **For the United States:**

21 JASON M. FRIERSON
22 United States Attorney

23 _____
24 Lindsay Ager
25 Assistant United States Attorney

Dated: _____