

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

Re: *LDC Telecommunications, Inc. Apparent Liability for Forfeiture*, File No. EB-TCD-12-00000420, NAL/Acct. No.: 201232170010, FRN: 0004337556, Notice of Apparent Liability for Forfeiture

I support today's action against LDC Telecommunications, Inc., which apparently substituted itself as the long-distance service provider for (or "slammed," as it is more commonly known) at least 27 consumers without proper authorization. And I thank the Enforcement Bureau staff for the diligent investigative work that led to this order. When a company evades responding to Commission inquiries,¹ consumers will be vindicated only if our staff remains vigilant in pursuing the alleged violator.

There is one aspect of today's order where I diverge from my colleagues. In my view, the forfeiture amount proposed by the Commission is simply *too low* given the egregious nature of LDC's conduct. LDC failed to provide a single verification tape showing it had authorization to switch a consumer's long-distance service provider (as required under our rules) and provided no defense whatsoever with respect to 24 of the complaints at issue.² Moreover, LDC's business appears to have been immensely profitable: Consumers who were the victims of LDC's slamming reported receiving monthly bills of \$128.67, \$189.13, \$259.51, and \$371.14 even though those same consumers' previous long-distance bills had been about \$20. As mentioned above, LDC also simply ignored our inquiries, which prompted the Commission earlier this year to follow up with a Notice of Apparent Liability. Finally, LDC's treatment of consumers who complained to them was appalling. LDC staff did not return phone calls, hung up on callers, refused to take calls, and otherwise gave consumers the run-around. If a caller somehow managed to reach a supervisor, the response was apparently "File a complaint with the FCC."³ Thankfully, more than twenty-seven of those consumers took them up on the suggestion and did in fact file complaints with the Commission. It thus became our duty to respond appropriately. Part of that duty involves finding a violation of our rules; the other part requires fixing a forfeiture amount calibrated to protect consumers' interests and deter future violations.

It is in carrying out that second aspect of our adjudicative duty where I cannot follow my colleagues' path. The Commission limits the amount of the proposed forfeiture here based upon "LDC's size and its apparent inability to pay a higher amount."⁴ The initial problem with this approach is that we don't have sufficient information to know if this is true. Moreover, the normal course—as recognized by the Commission just six paragraphs later—is that we take into account an apparent violator's (in)ability to pay a forfeiture *after* the apparent violator responds to the Notice of Apparent Liability with concrete evidence that it cannot pay.⁵ This makes sense: We can lower a proposed forfeiture that is too high, but leniency requires a factual foundation. And because the company is in the best (perhaps only) position to demonstrate its ability to pay, we need not guess at this point when the company may provide accurate information later, if and when it responds to the Notice. LDC did not take into account consumers' ability to pay when it sent expensive long-distance bills to those it had slammed, and I do not think that it is our role to make LDC's ability-to-pay argument for it at this stage of the proceeding.

¹ As today's order notes, LDC was largely unresponsive to Commission inquiries until three months *after* the Commission issued a Notice of Apparent Liability against LDC for failing to respond to our inquiries. *See* Notice of Apparent Liability for Forfeiture at para. 3; *LDC Telecommunications, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 300 (2012).

² Notice of Apparent Liability for Forfeiture at paras. 8–10.

³ *Id.* at para. 11 & notes 26–29.

⁴ *Id.* at para. 16.

⁵ Specifically, the Commission states that it "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 practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status." *Id.* at para. 22.

In sum, I agree with the Commission that LDC's conduct was "particularly egregious" and that it warrants a "significant upward adjustment" in the proposed forfeiture amount.⁶ This is not a run-of-the-mill case that warrants only a base forfeiture. Because I believe that the forfeiture amount should indeed be significantly higher, I respectfully dissent in part.

⁶ *Id.* at para. 16.