

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

Re: *Network Services Solutions, LLC, Scott Madison*, File No.: EB-IHD-15-0001913.

Fabricating documents.¹ Doctoring evidence to conceal unfair bidding practices.² Offering a “bribe in order to get the customer to sign.”³ Fixing competitive bidding processes to boost federal subsidies.⁴ These are things Network Services Solutions (NSS) allegedly did in what appears to be an ongoing criminal enterprise designed to rob taxpayers of millions of dollars through the Universal Service Fund’s rural healthcare program.

I agree completely with my colleagues that it appears that NSS willfully and repeatedly violated our rules and that we must recover the taxpayer funds that NSS unlawfully siphoned.

I also agree that NSS should be barred from getting any further federal subsidies from the Universal Service Fund. Indeed, I was distressed that the Chairman’s initial draft would have allowed NSS to continue to profit from its apparently fraudulent activities. I’m accordingly grateful to my colleagues for supporting my call to turn off the spigot.⁵

And I agree with my colleagues that NSS’s conduct merits a hefty fine. But the *NAL* fatally compromises our ability to impose a lawful forfeiture of more than \$189,361 upon the carrier.⁶ Specifically, the *NAL* ties the proposed forfeiture to forms submitted on or before June 30, 2015⁷—which is at least 127 days beyond the Act’s one-year statute of limitations.⁸ It then claims NSS’s “apparent violations . . . continued through the present as a result of NSS’s failure to take actions that would have corrected the forms that were filed in connection with these activities.”⁹

This legal theory cannot be right. *For one*, it “stretches the concept of a continuing violation past the breaking point.”¹⁰ For example, under this theory, the statute-of-limitations clock might never commence for an inaccurately filed form and the Commission could issue forfeitures for conduct that

¹ See *NAL* at paras. 74–78.

² See *NAL* at paras. 38–44.

³ See *NAL* at para. 48 (quoting Email from ██████████, Billing Manager, NSS, to Scott Madison, President, NSS, and ██████████, Controller/Office Manager, FW: Sales Order – Texoma – Network Services Signed Service Agreements (Nov. 25, 2013, 5:59 p.m.)).

⁴ See *NAL* at paras. 55–69.

⁵ See *NAL* at paras. 146–47.

⁶ I agree with the proposed forfeiture of \$189,361 for the one count of wire fraud within the Act’s one-year statute of limitations. See *NAL* at para. 141.

⁷ See *NAL* at paras. 133–40 (relying on 175 Forms 466, the most recent of which appears to have been submitted on June 30, 2015).

⁸ Communications Act § 503(b)(6)(B) (“No forfeiture penalty shall be determined or imposed against any person under this subsection if . . . the violation charged occurred more than 1 year prior to the date of the issues of the required . . . notice of apparent liability.”).

⁹ *NAL* at para. 129.

¹⁰ See *BellSouth Telecommunications, LLC, d/b/a AT&T Southeast*, File No.: EB-IHD-14-00017954, *NAL*/Acct. No.: 201632080007, Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 8501, 8528–29 (2016) (Dissenting Statement of Commissioner Ajit Pai) (quoting *Intelsat License LLC f/k/a Intelsat North America, LLC*, File No. EB-11-IH-1376; *NAL*/Acct. No. 201432080001; FRN 0009308008, Notice of Apparent Liability, 28 FCC Rcd 17183, 17194 (2013) (Statement of Commissioner Ajit Pai, Dissenting)).

occurred more than a decade ago. *For another*, NSS did not sign, certify, nor even submit the forms at issue here.¹¹ I cannot discern any rule, any precedent, or any legal theory (nor does the *NAL* proffer one) that imposes the continuing obligation that the *NAL* seems to contemplate.¹²

For what it's worth, we easily could have avoided this legal pitfall. Over the last year, NSS itself submitted 463 separate requests for payment in connection with its apparently illegal activities.¹³ I accordingly proposed to my colleagues to rely on these submissions for our forfeiture calculation—an approach that was on solid legal footing and that could have sustained an even larger forfeiture. But as happens all too often at this agency, my efforts at compromise were rebuffed.

For these reasons, I must dissent in part.

¹¹ Instead, it appears NSS's customers signed, certified, and submitted these forms as required by our rules.

¹² Notably, the *NAL* cites instances in which the FCC hypothesized a continuing obligation on carriers to correct forms they signed and submitted, *NAL* at note 321, but not one where the obligation was to correct a form submitted by another entity.

¹³ The first such request was filed November 4, 2015, for funding request number (FRN) 14666561 and the last such set of requests was filed July 1, 2016 for the following FRNs: 15676601, 15679561, 15679571, 15679581, 15681561, 15681611, 15681621, 15681631, 15681641, 15681651, 15681661, 15681671, 15681681, 15681691, 15681701, 15681711, 15681731, 15681741, 15681761, 15681771, 15681781, 15681791, 15681801, 15681811, 15681831, 15681841, 15681851, 15681861, 15681901, 15682031, 15691441, 15698431, 15698461, 15702821, 15702901, 15704151, 15706211, 15706221, 15706231, 15706241, 15706251, 15706261, 15708521, 15708531, 15708541, 15708551, 15708561, 15708571, 15708581, 15708591, 15708601, 15708611, 15709361, 15709931, 15741631.