

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

| | | |
|--|---|--|
| In the Matter of |) | |
| |) | |
| Verizon New York, Inc., |) | File No.: EB-IHD-13-00010704, EB-IHD-13- |
| |) | 00010706 ¹ |
| Verizon Network Integration Corp., and |) | |
| |) | Acct. No.: 201732080007 |
| Verizon Select Services, Inc. |) | |
| |) | FRN: 0003469442 |
| |) | 0012254207 |
| |) | 0004997375 |

ORDER

Adopted: May 25, 2017

Released: October 17, 2017

By the Commission: Chairman Pai issuing a statement; Commissioner Clyburn dissenting and issuing a statement.

1. The Federal Communications Commission (Commission) has entered into a Consent Decree with Verizon New York, Inc., Verizon Network Integration Corp., and Verizon Select Services, Inc. (Verizon or the Company) to resolve an investigation by the Enforcement Bureau’s (Bureau) USF Strike Force into whether Verizon violated the rules of the E-rate program.

2. Verizon provides services eligible for funding through the E-rate program to various school districts, including the New York City Department of Education (NYC DOE). The Bureau’s USF Strike Force conducted an extensive investigation into Verizon’s compliance with the Commission’s rules (Rules) pertaining to E-rate fundable services provided to the NYC DOE.² As a result of the investigation, Verizon has taken steps to ensure greater compliance with the Rules. To settle this matter, Verizon will implement a compliance plan, and will return a sum of \$17,325,000 to the E-rate program. Verizon also agrees: (i) to withdraw and not pursue any and all pending appeals and motions presently before USAC or the Commission concerning NYC DOE, including, but not limited to its Petition for Reconsideration or, in the Alternative, Clarification of the NYC DOE Adopting Order and Consent Decree dated January 27, 2016; (ii) to surrender all appeal rights with USAC or the Commission that Verizon might otherwise have for seeking E-rate support for the products or services provided to NYC DOE for the period of FY2002-FY2013 for which USAC or the Commission has denied the corresponding request for E-rate support or NYC DOE has withdrawn its request for E-rate support; and

¹ The investigation into EB-IHD-13-00010704 began with legacy file number EB-13-IH-1315. Similarly, the investigation into EB-IHD-13-00010706 was initially assigned legacy file number EB-13-IH-1316. Any future correspondence with the Commission concerning this matter should reflect both new case file numbers EB-IHD-13-00010704 and EB-IHD-13-00010706. These cases are collectively administered under master case file number EB-MC-16-00000016.

² Contemporaneous with the release of this Consent Decree, Verizon entered into a Stipulation and Order of Settlement and Dismissal with the United States to resolve a parallel investigation conducted by the Department of Justice.

(iii) not to initiate any additional actions or proceedings, including before any court or tribunal, seeking E-rate support for the products or services provided to NYC DOE for the period of FY2002-FY2013 for which USAC or the Commission has denied the corresponding request for E-rate support or NYC DOE has withdrawn its request for E-rate support.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding Verizon's compliance with Section 254(h) of the Communications Act of 1934, as amended (Act)³, and Sections 54.500–54.523 and 54.8 of the Rules⁴ pertaining to the E-rate program.

4. Our authority to adopt such a consent decree stems from our authority under Section 4(i) of the Communications Act to “perform any and all acts . . . and issue such orders . . . as may be necessary in the execution of [the Commission's] functions.”⁵ We affirmatively find it necessary to adopt a consent decree to execute our function of enforcing violations of the Communications Act and our Rules. We make clear that, as the resolution of a particular dispute with the consent of both parties, this consent decree has no precedential effect on third parties.

5. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Verizon's basic qualifications to hold or obtain any Commission license or authorization.⁶

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) and 503(b) of the Act⁷ and the authority delegated by Sections 0.111 and 0.311 of the Rules,⁸ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

7. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Chris Miller, Vice President & Associate General Counsel, Verizon, 1300 I Street, NW, Suite 500 East, Washington, DC 20005, Patrick Fitzgerald, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, 155 North Wacker Drive, Chicago, IL 60606, and Charles Wm. McIntyre, Esq., McGuire Woods LLP, 2001 K Street, NW, Suite 400, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³ 47 U.S.C. § 254(h).

⁴ 47 CFR §§ 54.500–54.523, 54.8.

⁵ 47 U.S.C. § 154(i).

⁶ See 47 CFR § 1.93(b).

⁷ 47 U.S.C. §§ 154(i), 503(b).

⁸ 47 CFR §§ 0.111, 0.311.

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| |) | FRN: 0003469442 |
| |) | 0012254207 |
| |) | 0004997375 |

CONSENT DECREE

1. The Federal Communications Commission (Commission or FCC) and Verizon, by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of terminating an investigation by the Commission’s Enforcement Bureau (Bureau) into whether Verizon and its Affiliates violated the Commission’s Universal Service Fund (USF or Fund) rules in connection with the Federal Universal Service Schools and Libraries Program, commonly known as E-rate, and in particular with respect to their competition and efforts to provide, and actual provision of, E-rate eligible products and services to the Board of Education of the City School District of the City of New York, known as the New York City Department of Education (NYC DOE), during Funding Years 2002 through 2015.

2. Contemporaneous with this Consent Decree, Verizon entered into a Stipulation and Order of Settlement and Dismissal with the United States resolving the United States’ investigation and subsequent Complaint alleging competitive bidding violations and associated miscategorized eligible services associated with NYC DOE’s Project Connect.

I. DEFINITIONS

3. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended.²
 - (b) “Adopting Order” means an order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.

¹ The investigation into EB-IHD-13-00010704 began with legacy file number EB-13-IH-1315. Similarly, the investigation into EB-IHD-13-00010706 was initially assigned legacy file number EB-13-IH-1316. Any future correspondence with the Commission concerning this matter should reflect both new case file numbers EB-IHD-13-00010704 and EB-IHD-13-00010706. These cases are collectively administered under master case file number EB-MC-16-00000016.

² 47 U.S.C. § 151 *et seq.*

- (e) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Verizon is subject by virtue of its business activities, including but not limited to the E-rate Rules.
- (f) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 24.
- (g) “Covered Employees” means all employees of Verizon who perform, or supervise, oversee, or manage the performance of duties that directly relate to Verizon’s responsibilities under the E-rate Rules.
- (h) “Effective Date” means the date by which all of the following have been accomplished: (i) the Bureau and Verizon have signed the Consent Decree; and (ii) release by the Commission of the Adopting Order adopting this Consent Decree.
- (i) “E-rate Rules” means Section 254(h) of the Communications Act, 47 U.S.C. § 254(h), Sections 54.500-54.523 and 54.8 of the FCC’s Rules, 47 CFR §§ 54.500-54.523, 54.8, and Commission rulemaking orders related to the E-rate Program adopting requirements of general applicability—not including adjudicatory matters to which Verizon is not a party.
- (j) “Investigation” means the investigation commenced by the Bureau in EB-IHD-13-00010704, EB-IHD-13-00010706, EB-13-IH-1315, EB-13-IH-1316, and EB-MC-16-00000016 regarding whether Verizon and its Affiliates violated Section 254(h) of the Communications Act, 47 U.S.C. § 254(h), the E-rate Rules, and Commission orders related to the E-rate Program interpreting these provisions with respect to competing for the opportunity to provide, or the actual provision of, E-rate eligible products and services to the NYC DOE during Funding Years 2002 through 2015.
- (k) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Verizon to implement the Compliance Plan.
- (l) “Parties” means Verizon and the Commission, each of which is a “Party.”
- (m) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (n) The “Stipulation and Order of Settlement and Dismissal” means contemporaneous with this Consent Decree, Stipulation and Order of Settlement and Dismissal between the United States and Verizon, resolving the United States’ investigation and subsequent Complaint alleging competitive bidding violations and associated miscategorized eligible services associated with NYC DOE’s Project Connect.
- (o) “Verizon” means Verizon New York, Inc., Verizon Network Integration Corp., and Verizon Select Services Inc.
- (p) “Verizon and its Affiliates” means Verizon Communications Inc., and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest, including any direct or indirect wholly owned subsidiary of, or entity otherwise controlled by, Verizon Communications Inc.

II. BACKGROUND

4. The E-rate program provides subsidies for telecommunications, Internet access, internal connections and managed internal broadband services for schools and libraries, and is designed to bring modern telecommunications capabilities to students and library patrons. Applicants for E-rate funding are required to seek competitive bids from prospective service providers, and are required to treat the price of E-rate eligible goods and services as the primary factor when selecting amongst competing service

providers. As set forth in FCC reports and orders, these rules are the cornerstone of the E-rate program, as, without competitive bidding, “prices charged to schools and libraries may be needlessly high, with the result that fewer eligible schools and libraries would be able to participate in the program.”³

5. E-rate funds are divided into two primary categories, Priority 1 and Priority 2. Priority 1 funds cover telecom carrier and fiber broadband services, as well as Internet access. Priority 2 funds cover discounts on services related to internal connections, e.g., cabling, and basic maintenance of those connections. Typically, all Priority 1 requests from schools and libraries are funded first, and any remaining funds are provided to Priority 2 requests, beginning with the most economically disadvantaged districts, as determined by the percentage of students who receive free and reduced price lunches.

6. The New York City Department of Education (NYC DOE) is the largest school district in the United States, serving approximately 1.1 million students in over 1,800 schools. Since 1998, NYC DOE has received approximately \$1.3 billion in E-rate program disbursements. Verizon has participated in the E-rate program since 1998. Verizon provided certain services to the NYC DOE during the relevant period, including as part of the NYC DOE’s Project Connect, that are regulated by the Commission. Verizon provided NYC DOE with both Priority 1 data and voice telecommunications services and Priority 2 structured cabling and integration services. Verizon used various subcontractors to complete the structured cabling and integration work.

7. In May 2006, the Office of the Special Commissioner of Investigation for the New York City School District (SCI) began an investigation of allegations that Willard “Ross” Lanham (Lanham), a NYC DOE consultant who served as the Project Manager for Project Connect, was receiving illegal kickbacks.

8. In April 2011, SCI issued a report (SCI Report) concluding that Lanham had orchestrated a massive fraud from 2002 to 2008. According to the SCI Report, Lanham created a subcontracting scheme through which Lanham billed millions of dollars to the NYC DOE for consultants he employed through a company (Lanham Enterprises) that he owned, thereby misappropriating money from NYC DOE, without NYC DOE’s or Verizon’s knowledge or agreement, to him profiting from the markup on the consultants’ time.

9. The SCI Report concluded that Lanham was able to accomplish his scheme and conceal the employment of the consultants by using pass-through entities, including vendors that provided services for NYC DOE, such as Verizon and IBM.

10. The NYC DOE designated Lanham as its “Single Point of Contact” to handle coordination and facilitation of its contracts, including with Verizon. Among other things, Lanham directed Verizon to utilize his preferred subcontractor for cabling work. The SCI Report described one instance in 2006 when Lanham told Verizon that he would steer a major cabling and integration initiative elsewhere unless Verizon continued to use Lanham’s preferred subcontractor (telling a Verizon employee “I want you to use [his preferred subcontractor], and if you don’t use them for the cabling integration jobs then I’m giving it to IBM”). Verizon complied with Lanham’s request. Verizon was awarded the project.

11. At Lanham’s direction, Verizon processed invoices ultimately submitted to NYC DOE that contained consultant charges with Verizon’s standard margin applied on top. Pursuant to Lanham’s instructions, rather than identifying a particular school associated with the work, the school identification for the consultant charges would state “various” or “multiple,” and the charges were described with a general reference to the project, rather than being listed specifically as consulting charges.

12. When a Verizon project manager questioned Lanham about the consultant charges,

³ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9209, para. 480 (1997); *see also Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District*, Order, 18 FCC Rcd 26407, 26417, para. 22 (2003) (“Competitive bidding for services eligible for discount is a cornerstone of the E-rate program...”).

Lanham advised the project manager that he was aware of these charges, knew what they were, that the consultants were working on the cabling projects, and they were proper. Lanham instructed Verizon not to submit consultant charges for E-rate reimbursement.

13. The consultants were not, in fact, working on cabling projects.

14. Beginning in 2004, Verizon notified the Universal Service Administrative Company (USAC) that certain Priority 1 funds had been disbursed in error for Priority 2 work because the services were incorrectly identified by NYC DOE as Priority 1 rather than Priority 2 services. Verizon, at that time, offered to return the funds associated with these incorrectly identified services.

15. Based upon representations of future work from Lanham, Verizon cut its own margins to remain within the project budget after certain costs, including cabling materials, experienced unanticipated increases.

16. Lanham left the NYC DOE in late 2008.

17. After the SCI Report was released in 2011, Lanham was indicted by a grand jury in the Southern District of New York. He was subsequently convicted and his conviction was upheld on appeal. Verizon and its employees cooperated in the government's prosecution. On appeal, the government told the court that Lanham "misl[e]d a Verizon employee and thereby manipulated bills Verizon sent to the DOE for the Cable Project."

18. Since the conduct involving Lanham's fraudulent scheme ended in 2008, Verizon has made adjustments, as appropriate, to policies, procedures, and practices.

III. TERMS OF AGREEMENT

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

20. **Jurisdiction.** Verizon agrees that the Commission has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

21. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

22. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation of Verizon and its Affiliates in EB-IHD-13-00010704, EB-IHD-13-00010706, EB-13-IH-1315, EB-13-IH-1316, and EB-MC-16-00000016. In consideration for the termination of the Investigation, Verizon agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Verizon and its Affiliates, concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of Verizon's and its Affiliates' qualifications to be a Commission licensee or hold Commission licenses or authorizations.⁴ The Bureau reserves all rights to use the materials gathered in the Investigation, including but not limited to the documents and information obtained from Verizon, against other service providers that previously provided or currently provide E-rate eligible products and services to NYC DOE. This Consent Decree is contingent upon the approval of the Stipulation and Order of Settlement and Dismissal between Verizon

⁴ See 47 CFR § 1.93(b).

and the United States, but otherwise does not terminate any other investigations that have been or might be conducted by other law enforcement agencies or offices.

23. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Verizon shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Verizon complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws that are necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the E-rate Rules prior to assuming his or her duties and shall be a senior corporate manager of Verizon.

24. **Compliance Plan.** For purposes of settling the matters set forth herein, Verizon agrees that it shall develop and implement a Compliance Plan designed to help ensure compliance with the E-rate Rules and the terms and conditions of this Consent Decree. With respect to the E-rate Rules, Verizon will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, Verizon shall establish Operating Procedures that all Covered Employees must follow to help ensure Verizon compliance with the E-rate Rules. Verizon Operating Procedures shall include internal procedures and policies specifically designed to help ensure that Verizon complies with the E-rate Rules.
- (b) **Compliance Manual.** Within ninety (90) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the E-rate Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Verizon compliance with the E-rate Rules. Verizon shall periodically review and revise the Compliance Manual as necessary to help ensure that the information set forth therein remains current and accurate. Verizon shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Verizon shall establish, implement, and maintain a Compliance Training Program on compliance with the E-rate Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Verizon's obligation to report any material noncompliance with the E-rate Rules under paragraph 25 (Reporting Noncompliance) of this Consent Decree and shall be instructed on how to disclose such noncompliance to the Compliance Officer. Verizon shall require all Covered Employees to be trained, in a manner commensurate with the scope of their duties and responsibilities, pursuant to the Compliance Training Program, within one hundred and twenty (120) calendar days after the Effective Date, except that Verizon shall require any person who becomes a Covered Employee at any time after the initial Compliance Training Program to complete the Compliance Training Program within sixty (60) calendar days after the date such person becomes a Covered Employee. Verizon shall repeat compliance training pursuant to the Compliance Training Program on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to help ensure that it remains current and complete and to enhance its effectiveness.

25. **Reporting Noncompliance.** Verizon shall report any material noncompliance with the E-rate Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of material noncompliance; (ii) the steps that Verizon has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Verizon has taken or will take designed to prevent the recurrence of any such noncompliance. All reports

of such noncompliance shall be submitted to Loyaan Egal, Director, USF Strike Force, Enforcement Bureau, Federal Communications Commission, Room 3-C362, 445 12th Street, SW, Washington, DC 20554, or his successor or designee, with a copy submitted electronically to Loyaan Egal at Loyaan.Egal@fcc.gov, Rakesh Patel at Rakesh.Patel@fcc.gov, and Romanda Williams at Romanda.Williams@fcc.gov.

26. **Compliance Reports.** Verizon shall file compliance reports with the Commission one hundred twenty (120) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six months (36) after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Verizon's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the E-rate Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Verizon, stating that the Compliance Officer has personal knowledge that Verizon: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of material noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 25 (REPORTING NONCOMPLIANCE) of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.⁵
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Verizon, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of material noncompliance; (ii) the steps that Verizon has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Verizon has taken or will take designed to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to Loyaan Egal, Director, USF Strike Force, Enforcement Bureau, Federal Communications Commission, Room 3-C362, 445 12th Street, SW, Washington, DC 20554, or his successor or designee, with a copy submitted electronically to Loyaan Egal at Loyaan.Egal@fcc.gov, Rakesh Patel at Rakesh.Patel@fcc.gov, and Romanda Williams at Romanda.Williams@fcc.gov.

27. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 23 (COMPLIANCE OFFICER) through 26 (COMPLIANCE REPORTS) of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

28. **Repayment to the Universal Service Fund.** Verizon will return \$17,325,000 to the E-rate Program within thirty (30) calendar days of the Effective Date as a final settlement of this matter. Verizon shall send electronic notification of payment to Loyaan Egal at Loyaan.Egal@fcc.gov, Rakesh Patel at Rakesh.Patel@fcc.gov, and Romanda Williams at Romanda.Williams@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN 0012254207. To make a payment to the Fund, please send payment to USAC using one of the methods listed below. Make all checks payable to USAC. A copy of the consent decree should also be included with your payment.

⁵ 47 CFR § 1.16.

U.S. Postal Service and Standard Mail for Payments:

USAC
PO Box 105056
Atlanta, GA 30348-5056

Courier and Overnight Packages:

USAC
Lockbox 105056
1075 Loop Road
Atlanta, GA 30337
(404) 209-6377

ACH payments:

USAC requests that all ACH payment be sent in CCD+ format to:
For USAC banking account and routing numbers, please call USAC Customer Operations at (888) 641-8722.

Wire Transfers:

Bank Name: Bank of America
Location: 100 West 33rd Street, New York, NY 10001
Account Type: DDA
Account Name: UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
For USAC banking account and routing numbers, please call USAC Customer Operations at (888) 641-8722.

29. **Waivers.** As of the Effective Date, Verizon waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. Verizon shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Verizon nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Verizon shall waive any statutory right to a trial *de novo*. Verizon hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act⁶ relating to the matters addressed in this Consent Decree.

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

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

32. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order

⁶ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

specifically intended to revise the terms of this Consent Decree to which Verizon does not expressly consent) that provision will be superseded by such Rule or Order.

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

34. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. This Consent Decree is intended to be for the benefit of the Parties only. In furtherance of settlement, and subject to the other terms of this Consent Decree, the Parties agree as follows:

- (a) This Consent Decree is contingent upon the approval of the Stipulation and Order of Settlement and Dismissal between Verizon and the United States, but, otherwise, does not settle any other investigations that have been or might be conducted by other law enforcement agencies or offices.
- (b) Verizon and its Affiliates: (i) agree to withdraw and not pursue any and all pending appeals and motions presently before USAC or the Commission concerning NYC DOE, including, but not limited to their Petition for Reconsideration or, in the Alternative, Clarification dated January 27, 2016; (ii) agree to surrender all appeal rights with USAC or the Commission that Verizon might otherwise have for seeking E-rate support for the products or services provided to NYC DOE for the period of FY2002-FY2013 for which USAC or the Commission has denied the corresponding request for E-rate support or NYC DOE has withdrawn its request for E-rate support; and (iii) agree not to initiate any additional actions or proceedings, including before any court or tribunal, seeking E-rate support for the products or services provided to NYC DOE for the period of FY2002-FY2013 for which USAC or the Commission has denied the corresponding request for E-rate support or NYC DOE has withdrawn its request for E-rate support. Verizon may seek E-rate support for other products and services it may provide (or has provided) to NYC DOE for which NYC DOE requests E-rate support and/or for which USAC or the Commission approves E-rate funding beginning with FY2014 and going forward.

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

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

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

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

Rosemary C. Harold
Chief
Enforcement Bureau

Date

Craig L. Silliman
Executive Vice President & General Counsel
On behalf of Verizon

Date

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Verizon New York et al.*, File No.: EB-IHD-1300010704

Under the terms of this consent decree, Verizon will pay more than \$17 million into the Universal Service Fund. It will also forfeit any legal rights it might have to obtain hundreds of millions of dollars in E-rate subsidies. This is an important measure that both enforces our rules and restores critical taxpayer dollars to the Universal Service Fund.

But you can glean all that from the item itself and accompanying Commission press release. I write separately to address the dissent from my colleague, Commissioner Clyburn. What is significant is the dog that doesn't bark—that is, the facts not mentioned in the dissent. Two facts of note: first, the consent decree in this case was negotiated by the Enforcement Bureau under the *prior* Chairman. Second, in 2016, the prior Chairman's office briefed each Commissioner's office on this agreement. Commissioner Clyburn's office expressed no concerns whatsoever about the agreement at that time—and there is contemporaneous written evidence of this.

If the terms of a settlement that were just fine under a Democratic chair are now unacceptable under a Republican chair, FCC enforcement becomes little more than political caprice. I hope that that's not the case going forward.

**DISSENTING STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Verizon New York et al.*, File No.: EB-IHD-1300010704

For the past several years, the Chairman has waxed eloquent about how Lifeline fraud is an incredible threat to the integrity of the universal service fund. But, when faced with an egregious set of facts that causes over \$50 million of harm to the universal service fund, the Commission is content to settle for a fraction of that harm and imposes no penalty whatsoever.

Indeed, in the *Total Call Mobile NAL*, the Commission proposed a forfeiture of \$51 million based on a loss to the Fund of \$9.7 million. Chairman Pai and I both believed the proposed forfeiture should have been higher. In the twelve Lifeline duplicate NALs issued in 2013-2014, the Commission proposed combined forfeitures of over \$94 million for duplicate benefits totaling around \$340,000. Yet here the Commission says for over \$50 million in harm to the Fund, we do not even want all of our money back—just 34 cents on the dollar. Will the Commission settle all twelve Lifeline NALs for just \$115,000? Not likely.

The timing is particularly concerning since we recently received a letter from Congress expressing “concern about the lack of sufficient resources in the reformed High-Cost mechanism.” If we had just said “we want our money back,” much less assessed a penalty for improper conduct, we could have used the returned money to fund over 11,000 high cost rate-of-return locations for a year. This is a missed opportunity and a waste of consumer dollars.

For all of these reasons, I must respectfully dissent.