

FCC Issues First Commission-level Consent Decree Order Since Removing Authority from Enforcement Bureau

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On February 15, 2017, the Federal Communications Commission (FCC) issued its first Commission-level consent decree since Chairman Pai's process reform measure, discussed in our earlier [blog post](#), which removed the Enforcement Bureau's (Bureau) power to settle monetary enforcement actions originally issued by the FCC. Settlement of this matter had been in the works for some time so one should not draw too many conclusions about what the FCC's priorities will be going forward. There are, however, some differences in this Consent Decree when compared with the Bureau's approach under the leadership of Travis LeBlanc that are worthy of note.

The Consent Decree resolves enforcement matters involving Purple Communications, Inc. (Purple), CSDVRS, LLC (CSDVRS) and their parent company, ZVRS Holding Company for failing to properly verify telecommunications relay service (TRS) customers and submitting improper bills for reimbursement from the TRS fund. Specifically, the consent decree resolved an \$11.9 million notice of apparent liability (NAL) against Purple and letters of inquiry against Purple and CSDVRS with a \$9.1 million settlement and a 5-year compliance plan. The monetary penalty includes a reimbursement to the TRS fund of \$6.1 million and a civil penalty in the amount of \$3 million.

Items of note include:

- Unlike previous consent decrees, the settlement included no admission of liability. The settlement appeared to revert to the practice of previous Enforcement Bureaus where the factual or legal admissions were not included. This Order, unlike some orders from the previous administration, omitted entirely the paragraph addressing admissions.
- As has been customary for many years, the Consent Decree requires a compliance plan and the appointment of a compliance officer. However, the compliance officer was specified as ZVRS's general counsel whereas earlier consent decrees typically just required company to designate an officer with the appropriate authority to the role.
- Although many aspects of the Consent Decree are specific to TRS (and thus may have limited applicability to other contexts), one provision regarding compensation may signal a change in emphasis. The compliance plan includes a provision that requires ZVRS to review the compensation plans for Purple and CSDVRS and ensure that all compensation, bonus or incentive plans that link billable reimbursable minutes to covered personnel are eliminated. It is not clear whether the FCC will view other commission-based compensation plans similarly.
- The Consent Decree contains more explicit language concerning the FCC's authority to enter into settlements. In the adopting order, the FCC states that its statutory authority lies in Section

4(i) of the Communications Act. This paragraph is likely responsive to concerns of Commissioner Michael O’Rielly who issued a separate statement on the authority for the settlement. Despite voting to approve the consent decree, Commissioner O’Rielly expressed uncertainty that Section 4(i) “provides direct authority” and stated that “[a]s Congress looks at potential improvements to the Communications Act, I respectfully offer this as an area where further clarity would be welcome and appreciated.”

- Finally, the Order limits the precedential value of the settlement. The FCC explains: “[w]e 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.” This provision likely is in response to prior criticisms by Chairman Pai and Commissioner O’Rielly that enforcement actions were substituting for rulemakings of general applicability.