

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

In the Matter of)	File No.: EB-IHD-13-00011166 ¹
)	
Five9, Inc.)	Acct. No: 201532080015
)	
)	FRN: 0022289409

ORDER

Adopted: June 15, 2015

Released: June 15, 2015

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has resolved its investigation into whether Five9, Inc. (Five9) complied with its obligations as a telecommunications services provider to: (i) register with the Commission before providing interstate telecommunications services; (ii) obtain Commission authorization prior to providing international telecommunications services; (iii) make required payments to the Universal Service Fund (USF), the Telecommunications Relay Service (TRS) Fund; the Local Number Portability (LNP) and the North American Numbering Plan (NANP) cost recovery mechanisms; (iv) pay required regulatory fees; and (v) file Telecommunications Reporting Worksheets, international traffic and revenue reports, and reports certifying its compliance with the Commission's customer proprietary network information (CPNI) rules. These obligations are essential safeguards and support mechanisms that Congress and the Commission established to help ensure accessible, efficient, and reasonably priced communications for all Americans, the protection of competition, and the protection of consumer privacy.

2. Five9 admits that it failed to comply with the obligations listed above from 2003 until December 17, 2012. To resolve this investigation, Five9 will pay a civil penalty of \$2,000,000 and implement a long-term compliance plan to ensure future compliance with the Commission's rules (Rules).

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 into Five9's compliance with Sections 214, 222, 251(e)(2), and 254(d) of the Communications Act of 1934, as amended (Act), and Sections 1.1154, 1.1157, 43.61 52.17, 52.32, 54.706, 54.711, 63.18, 64.604, 64.1195, and 64.2009(e) of the Rules pertaining to the federal registration, authorization, contribution, and reporting requirements.²

4. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Five9's basic qualifications to hold or obtain any Commission license or authorization.³

¹ This investigation, initiated under File No. EB-12-IH-1676, was subsequently assigned File No. EB-IHD-13-00011166.

² 47 U.S.C. §§ 214, 222, 251(e)(2), 254(d); 47 C.F.R. §§ 1.1154, 1.1157, 43.61, 52.17, 52.32, 54.706, 54.711, 63.18, 64.604, 64.1195, 64.2009(e).

³ See 47 CFR 1.93(b).

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b) of the Act,⁴ and Sections 0.111 and 0.311 of the Rules,⁵ the Consent Decree attached to this Order **IS ADOPTED**.

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

7. **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 Five9's counsel, Bruce A. Olcott, Esq., Jones Day, 51 Louisiana Ave., N.W., Washington, DC 20001.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

⁴ 47 U.S.C. §§ 154(i), 154(j), 503(b).

⁵ 47 C.F.R. §§ 0.111, 0.311.

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Five9, Inc.)	Acct. No.: 201532080015
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)	FRN: 0022289409

CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Five9, Inc. (Five9 or Company), by their authorized representatives, hereby enter into this Consent Decree for purposes of terminating the Bureau’s investigation into whether Five9 complied with its obligations as a telecommunications services provider to: (i) register with the Commission before providing interstate telecommunications services; (ii) obtain Commission authorization prior to providing international telecommunications services; (iii) make required payments to the Universal Service Fund (USF), the Telecommunications Relay Service (TRS) Fund; and the Local Number Portability (LNP) and the North American Numbering Plan (NANP) cost recovery mechanisms; (iv) pay required regulatory fees; and (v) file Telecommunications Reporting Worksheets, international traffic and revenue reports, and reports certifying its compliance with the Commission’s customer proprietary network information (CPNI) rules.

I. DEFINITIONS

1. For purposes of this Consent Decree, the following definitions shall apply:
 - (a) “Act” or “Communications Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an Order of the Bureau 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.”
 - (e) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Five9 is subject to by virtue of its activities, including but not limited to the Federal Regulatory Reporting and Contribution Rules, the CPNI Rules, and the International Section 214 Rules.
 - (f) “Compliance Plan” means the compliance obligations, programs, and procedures described in this Consent Decree at paragraph 15.
 - (g) “Covered Employees” means all employees and agents of Five9 who perform, or supervise or oversee, or manage the performance of duties that relate to Five9’s responsibilities under the Act and the Rules.
 - (h) “CPNI Rules” means Section 222 of the Act, 47 U.S.C. § 222, and Sections 64.2001–64.2011 of the Rules, 47 C.F.R. § 64.2001–64.2011.
 - (i) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (j) “Federal Regulatory Reporting and Contribution Rules” or “Rules” mean Sections 251(e)(2) and 254(d) of the Act, 47 C.F.R. §§ 251(e)(2), 254(d), and Sections 1.1154, 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195 of the Rules, 47 C.F.R. §§ 1.1154, 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, 64.1195, and other provisions of

the Act, the Rules, and Commission orders governing related federal regulatory reporting and contribution obligations.

- (k) “Five9” means Five9, Inc.
- (l) “International Section 214 Rules” means Section 214 of the Act, 47 U.S.C. § 214, and Sections 43.61 and 63.18 of the Rules, 47 C.F.R. §§ 43.61, 63.18.
- (m) “Investigation” means the investigation commenced by the Bureau’s letter of inquiry,¹ following Five9’s voluntary disclosure to the Bureau of possible violations of Sections 214, 222, 251(e)(2) and 254(d) of the Act² and Sections 1.1154, 1.1157, 43.62, 52.17, 52.32, 54.706, 54.711, 63.18, 64.604, 64.1195, and 64.2009(e) of the Rules.³
- (n) “LNP” means Local Number Portability.
- (o) “NANP” means the North American Numbering Plan.
- (p) “Operating Procedures” mean the standard, internal operating procedures, and compliance policies established by Five9 to implement the Compliance Plan.
- (q) “Parties” means Five9 and the Bureau, each of which is a “Party.”
- (r) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (s) “Telecommunications,” “Telecommunications Carrier,” “Telecommunications Service” have the meanings set forth respectively in Sections 3(50), 3(51), and 3(53) of the Act, 47 U.S.C. §§ 153(50), 153(51), 153(53).
- (t) “TRS Fund” means the Telecommunications Relay Services Fund.
- (u) “USF” means the Universal Service Fund.

II. BACKGROUND

2. The Act and the Rules require telecommunications carriers to meet certain registration, authorization, contribution, and reporting requirements. Telecommunications carriers that provide interstate telecommunications services are required to file registration information in accordance with the instructions on the FCC Form 499-A and to file annual Telecommunications Reporting Worksheets (FCC Forms 499-A) and quarterly Telecommunications Reporting Worksheets (FCC Forms 499-Q).⁴ Providers of interstate telecommunications services also must contribute to the USF, the TRS Fund, and the LNP and NANP cost recovery mechanisms, and pay regulatory fees.⁵

3. The Act prohibits any carrier from constructing, extending, acquiring, or operating any line, and from engaging in transmission through any such line, without first obtaining a certification of authorization from the Commission.⁶ Although the Commission has granted “blanket” authority to carriers providing domestic service, meaning that such carriers need not apply to the Commission for such

¹ Letter from Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Delbert D. Smith, Esq., Counsel to Five9, Inc. (Dec. 21, 2012) (on file in EB-IHD-13-00011166) (LOI). This investigation, initiated under File No. EB-12-IH-1676, was subsequently assigned File No. EB-IHD-13-00011166.

² 47 U.S.C. §§ 214, 222, 251(e)(2), 254(d).

³ 47 C.F.R. §§ 1.1154, 1.1157, 43.61, 52.17, 52.32, 54.706, 54.711, 63.18, 64.604, 64.1195, 64.2009(e).

⁴ See 47 C.F.R. §§ 54.706, 54.711.

⁵ See 47 U.S.C. §§ 251(e), 254(d); 47 C.F.R. §§ 1.1154, 1.1157, 52.17, 52.32, 64.604, 64.1195.

⁶ See 47 U.S.C. § 214(a).

authority before providing domestic service,⁷ the Commission has not granted the same authority for providers of international telecommunications services.⁸ Instead, a carrier must seek and obtain Section 214 authority from the Commission prior to providing international telecommunications services.⁹ In addition, the Rules require international telecommunications services providers to file reports with the Commission containing data on overseas traffic.¹⁰

4. The Act imposes the general duty on all telecommunications carriers to protect the confidentiality of their subscribers' proprietary information.¹¹ The Rules require that carriers establish and maintain systems designed to ensure that they adequately protect their CPNI and file with the Commission annually, on or before March 1, a certification of their compliance with the CPNI Rules.¹²

5. Founded in 2001, Five9 is a California-based corporation that is incorporated in Delaware.¹³ Five9 provides a cloud-based call center software solution to its customers.¹⁴ As part of this offering, Five9 has resold interstate and international telecommunications services since 2003.¹⁵

6. In November 2012, Five9 disclosed to the Bureau that, on the advice of prior legal counsel, it had treated its customer offerings as information services, rather than telecommunications services, and hence did not comply with the Federal Regulatory Reporting and Contribution Rules, the CPNI Rules, and the International Section 214 Rules applicable to telecommunications service providers.¹⁶ Five9 also states that it had believed it was an end-user, rather than a provider, of telecommunications services.¹⁷ Upon receiving contrary advice from subsequent legal counsel, Five9 took immediate steps to satisfy the requirement of a telecommunications service provider. For example, Five9 filed overdue FCC Forms 499 (Form 499-A and Form 499-Q) and an explanatory letter with

⁷ See 47 C.F.R. § 63.01(a) (authorizing “[a]ny party that would be a domestic interstate communications common carrier . . . to provide domestic, interstate services to any domestic point and to construct or operate any domestic transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies”).

⁸ See *Implementation of Section 402(b)(2)(A) of the Telecom. Act of 1996*, Report and Order in CC Docket No. 97-11, Second Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11364, 11365–66, para. 2 & n.8 (1999) (limiting grant of blanket authority to domestic services).

⁹ See 47 C.F.R. § 63.18; see also *1998 Biennial Regulatory Review – Review of International Common Carrier Regulations*, Report and Order, 14 FCC Rcd 4909, 4912–17, paras. 8–18 (1999) (*1998 International Biennial Review Order*) (streamlining authorization process to provide international services).

¹⁰ 47 C.F.R. § 43.61(a).

¹¹ See 47 U.S.C § 222.

¹² 47 C.F.R. § 64.2009(e); see also *Enforcement Advisory No. 2011-02, Telecommunications Carriers and Interconnected VoIP Providers Reminded of Requirement to File Annual Reports Certifying Compliance with Commission Rules Protecting Customer Proprietary Network Information*, Public Notice, 26 FCC Rcd 650 (Enf. Bur. 2011).

¹³ See *Five9 Is the Cloud Contact Center Software Leader*, <http://www.five9.com/about> (last viewed Nov. 24, 2014); Letter from Delbert D. Smith, Esq., Counsel to Five9, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (Jan. 22, 2013) (on file in EB-IHD-13-00011166) (LOI Response).

¹⁴ See *id.* at 6, 9.

¹⁵ See *id.* at 9-10.

¹⁶ See *id.* at 12.

¹⁷ See *id.* at 12.

Universal Service Administrative Company (USAC) on December 17, 2012.¹⁸ Five9 also applied for international Section 214 authority on January 19, 2013,¹⁹ and filed a request for Special Temporary Authority (STA) to operate as a reseller of international common carrier services on January 20, 2013.²⁰ In the STA request, Five9 disclosed that it had been providing international telecommunications services for several years, but as a result of a “good faith reliance on previous legal advice, [had been] unaware of its need to register with the Federal Communications Commission or to secure Section 214 authorization.”²¹ On June 9, 2015, the International Bureau granted Five9’s International Section 214 application.²²

7. On December 21, 2012, the Bureau’s Investigations and Hearings Division sent a Letter of Inquiry (LOI) to Five9, directing it to submit a sworn written response to a series of questions relating to Five9’s violations of the Federal Regulatory Reporting and Contribution Rules, the CPNI Rules, and the International Section 214 Rules.²³ On January 22, 2013, Five9 submitted its response to the LOI.²⁴ Five9 also met with the Bureau on several occasions and submitted supplemental materials as requested by the Bureau.²⁵

8. As of the Effective Date of this Consent Decree, Five9 has entered into a payment plan with USAC for overdue USF contributions, is complying with the FCC Forms 499 filing requirements, and is paying current required USF contributions.²⁶ Five9 has also paid all invoiced amounts to the TRS Fund, the LNP and NANP cost recovery mechanisms, and all invoiced regulatory fees. Five9 has also filed all of its required international traffic reports and CPNI certifications

III. TERMS OF AGREEMENT

9. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order without change, addition, deletion, or modification.

10. **Jurisdiction.** Five9 agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

11. **Admission of Liability.** Five9 admits, solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraphs 13 and 28 of this Consent Decree, that, as a result of advice of prior legal counsel that it was a provider of information services rather than telecommunications services, it violated the Federal Regulatory Reporting and Contribution Rules, the CPNI Rules, and the International Section 214 Rules.

¹⁸ See *id.* at 12; Letter from Delbert D. Smith, Esq., Counsel to Five9, Inc., to Kristin Berkland, Esq., Deputy General Counsel, Universal Service Administrative Company (Dec. 17, 2012). USAC is administrator of the federal USF. 47 C.F.R. § 54.701.

¹⁹ See LOI Response at 11; File No. ITC-214-20130119-0017, Attachment 1.

²⁰ See LOI Response at 11; File No. ITC-STA-20130120-00016.

²¹ See File No. ITC-STA-20130120-00016, Attachment 1.

²² See *International Authorizations Granted*, Public Notice, Rep. No. TEL-01737, DA No. 15-690 (rel. Jun. 11, 2015).

²³ See LOI.

²⁴ See LOI Response.

²⁵ See Letter from Delbert D. Smith, Esq., Counsel to Five9, Inc., to Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission (Aug. 14, 2013) (on file in EB-IHD-13-00011166) (LOI Response Supplement).

²⁶ See LOI Response Supplement at 1–2.

12. **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 Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

13. **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. In consideration for the termination of the Investigation, Five9 agrees to the terms, conditions, and procedures contained in this Consent Decree. The Bureau further agrees that, in the absence of new material evidence, the Bureau 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 Five9 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 take any action on its own motion against the Company with respect to its basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission licenses or authorizations.

14. **Compliance Officer.** Within thirty (30) days after the Effective Date, Five9 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 Five9 complies with the terms and conditions of the Compliance Plan and this Consent Decree. The Compliance Officer will use the resources of outside legal counsel, and/or rely on a Compliance Manager, if one is designated--both with specific knowledge of the Federal Regulatory Reporting and Contribution Rules, the CPNI Rules, and the International Section 214 Rules--to supplement his or her general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree.

15. **Compliance Plan.** For purposes of settling the matters set forth in this Consent Decree, Five9 agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Federal Regulatory Reporting and Contribution Rules, the CPNI Rules, and the International Section 214 Rules, Five9 shall implement the following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, Five9 shall establish Operating Procedures that all Covered Employees shall follow to help ensure the Company's compliance with the Federal Regulatory Reporting and Contribution Rules, the CPNI Rules, and the International Section 214 Rules. Five9's Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Company complies with the Federal Regulatory Reporting and Contribution Rules, the CPNI Rules, and the International Section 214 Rules. The Company shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Federal Regulatory Reporting and Contribution Rules, the CPNI Rules, and the International Section 214 Rules.
- (b) **Compliance Manual.** Within sixty (60) 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 Federal Regulatory Reporting and Contribution Rules, the CPNI Rules, and the International Section 214 Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure the Five9's compliance with the Federal Regulatory Reporting and Contribution Rules, the CPNI

Rules, and the International Section 214 Rules. Five9 shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth in it remains current and complete. Five9 shall distribute any revisions to the Compliance Manual promptly to Covered Employees.

- (c) **Compliance Training Program.** Five9 shall establish and implement a Compliance Training Program on compliance with the Communications Laws, the Federal Regulatory Reporting and Contribution Rules, the CPNI Rules, and the International Section 214 Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Five9's obligation to report any noncompliance with the Federal Regulatory Reporting and Contribution Rules, the CPNI Rules, and the International Section 214 Rules under paragraph 16 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date. A person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Five9 shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

16. **Reporting Noncompliance.** Five9 shall report any noncompliance with (i) the Federal Regulatory Reporting and Contribution Rules, the CPNI Rules, and the International Section 214 Rules and (ii) 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 noncompliance; (ii) the steps that Five9 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 the Five9 has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-C224, Washington, DC 20554, with a copy submitted electronically to Jeffrey Gee at Jeffrey.Gee@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, and Pam Slipakoff at Pam.Slipakoff@fcc.gov.

17. **Compliance Reports.** Five9 shall file Compliance Reports with the Commission three (3) months after the Effective Date, twelve (12) months after the effective date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the effective date.

- (a) Each Compliance Report shall include a detailed description of Five9's efforts during the relevant period to comply with the terms and conditions of this Consent Decree. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Five9, stating that the Compliance Officer has personal knowledge that Five9: (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 noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 16 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 in Section 1.16.²⁷

²⁷ 47 C.F.R. § 1.16.

- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of the Five9, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that Five9 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 Five9 has taken or will take 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 the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-C224, Washington, DC 20554, with a copy submitted electronically to Jeffrey Gee at Jeffrey.Gee@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, and Pam Slipakoff at Pam.Slipakoff@fcc.gov.

18. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 14-17 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

19. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act against Five9 or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place.²⁸ The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Five9 with the Communications Laws.

20. **Civil Penalties.** Five9 agrees that it will pay civil penalties to the United States Treasury in the amount of two million dollars (\$2,000,000) (Civil Penalties); such Civil Penalties to be made in twelve (12) installments (each, an Installment Payment). The first Installment Payment in the amount of one hundred sixty six thousand six hundred seventy four (\$166,674) is due within thirty (30) calendar days after the Effective Date. Thereafter, Installment Payments in the amount of one hundred sixty six thousand six hundred sixty six (\$166,666) are due and payable quarterly on the 15th of the month starting on October 15, 2015 with a final Installment Payment on April 15, 2018. Five9 shall make the first and all subsequent Installment Payments in United States Dollars without further demand or notice by the dates specified above. Five9 acknowledges and agrees that upon execution of this Consent Decree the Civil Penalties and each Installment Payment shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1). Upon an Event of Default (as defined below), all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. Five9 shall also send electronic notification of each Installment Payment to Jeffrey Gee at Jeffrey.Gee@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, and Pam Slipakoff at Pam.Slipakoff@fcc.gov on the date said payment is made. Each Installment Payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁹ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-

²⁸ 47 U.S.C. § 208.

²⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

9000, or sent via overnight mail to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If Five9 has questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov with any questions about methods of payment.

21. **Event of Default by Nonpayment.** Five9 agrees that an Event of Default by Nonpayment shall occur upon the failure by Five9 to pay the full amount of any Installment on or before the due dates specified in this Consent Decree.

22. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Civil Penalties shall accrue interest, computed using the rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Civil Penalties, together with interest, as aforesaid, any penalties permitted and/or required by the law, including but not limited to interest and penalties permitted under 31 U.S.C. § 3717 and administrative charge(s), plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Five9.

23. **Waivers.** Five9 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, provided the Bureau issues an Adopting Order as defined in this Consent Decree. Five9 shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained in this Consent Decree. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Five9 nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Five9 shall waive any statutory right to a trial *de novo*. Five9 hereby agrees to waive any claims it may have under the Equal Access to Justice Act relating to the matters addressed in this Consent Decree.³⁰

24. **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.

25. **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.

³⁰ See 5 U.S.C. § 504; 47 C.F.R. Part 1, Subpart K.

26. **Subsequent Rule or Order.** The Parties agree that if any provision of this Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Five9 does not expressly consent), such provision will be superseded by such Rule or Commission order.

27. **Successors and Assigns.** Five9 agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

28. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties to the Investigation.

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

30. **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.

31. **Authorized Representative.** Each Party represents and warrants to the other Parties 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.

32. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by PDF or facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Travis LeBlanc
Chief
Enforcement Bureau

Date

Barry Zwarenstein
Chief Financial Officer
Five9, Inc.

Date