

Semi-Annual Audit Recovery Report

In the *Schools and Libraries Fifth Order*,¹ the Federal Communications Commission (FCC or the Commission), directed the Universal Service Administrative Company (USAC) to “submit a report to the Commission on a semi-annual basis summarizing the status of all outstanding audit findings. To the extent findings cannot be resolved within six months; USAC shall describe the status of its efforts, and provide a projected timeframe for completion.”² This report summarizes outstanding audit-related recoveries as of August 31, 2010 and consists of this three-page descriptive narrative and the attached spreadsheet.

Process for Seeking Recovery of Funds

The process for seeking recovery based on audit finding(s) is comprised of the following stages:

1. After reviewing an audit report, USAC management may determine that additional outreach is necessary and may contact the applicant and/or service provider, depending on the nature of the audit findings. In general, USAC management will only contact the applicant and/or service provider if: (1) the party responsible for the rule violation was not given an opportunity to respond to findings during the audit or did not have adequate time to respond to the findings, (2) the findings are complex and further explanation is warranted, or (3) it is unclear whether program rules have been violated. If contacted, the applicant and/or service provider may submit written documentation or provide a verbal response, depending on what information is needed.
2. Within 30 days of the USAC Board of Directors deeming an audit report final or USAC completing any additional outreach, USAC issues a Notification of Commitment Adjustment Letter or Notification of Recovery of Improperly Disbursed Funds Letter (collectively, “Notification Letter”), to the applicant and/or service provider, as appropriate.
3. If the applicant and/or service provider does not appeal the Notification Letter within 60 days of the date of the letter, USAC issues the First Demand Payment Letter on the 61st day and notifies the applicant and/or service provider (whichever party(ies) is/are determined to be responsible for the rule violations) that USAC intends to seek recovery.
4. If the applicant and/or service provider does not respond to the First Demand Payment Letter, or does not make satisfactory arrangements to repay the funds within 30 days of the date of the First Demand Payment Letter, a Second Demand Payment Letter is sent and the Red Light rule is activated for that applicant and/or service provider.³ The Commission allows applicants and/or service providers to enter into payment plan arrangements with USAC to pay the

¹ See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order, 19 FCC Rcd 15808 (2004) (*Schools and Libraries Fifth Order*).

² *Id.* at ¶ 77.

³ In the *Schools and Libraries Fifth Order*, the Commission amended its rules “to bring all E-rate beneficiaries and service providers within the ambit of the red light rule.” *Id.* at ¶ 42.

Semi-Annual Audit Recovery Report

recovery amount.⁴ If the applicant and/or service provider does not respond to the Second Demand Payment Letter, or does not make satisfactory arrangements to repay the funds within 60 days of the date of the Second Demand Payment Letter, USAC will advise the Commission of that fact, and the debt will be transferred to the Commission under the provisions of the Debt Collection Improvement Act (DCIA).⁵

5. If an appeal is filed with USAC or an appeal and/or request for waiver is filed with the Commission, the recovery process is held in abeyance pending resolution of the appeal/waiver request.

In the absence of an appeal, request for waiver or direction from the Commission to hold the process in abeyance, the total elapsed time from issuance of the Notification Letter to final collection by USAC or transfer of the debt to the Commission is approximately five months.

Description of Audit Findings Outstanding for More Than Six Months

The recoveries based on audit findings that have been outstanding for more than six months fall into the following six categories:

- At this time, there are 60 beneficiary audits older than six months with a potential recovery amount of \$5,193,340. Notification Letters have not been issued for these audits because USAC is in the process of reviewing the audit reports and/or is conducting additional outreach to determine whether Commission rules were violated based on the guidance received from the Commission on January 16, 2009. In addition, there are 33 beneficiary audits older than six months with a potential recovery of \$12,951,903 for which Notification Letters have not been issued because USAC is working with Commission staff to determine whether the rule violations warrant recovery of funds consistent with the *Schools and Libraries Fifth Order*. All other audit findings older than six months have either been cleared or have resulted in the issuance of a Notification Letter to either the applicant and/or service provider, as appropriate, and as explained in further detail below.
- For certain audit findings the recovery process has been ongoing for more than six months because the applicant and/or service provider appealed the recovery determination to USAC and/or requested a waiver of the recovery request to the Commission. The recovery process was held in abeyance pending USAC and/or the Commission's decision on the appeal. USAC and/or the Commission have since decided the appeal, and so the recovery process has resumed.

⁴ *Id.*

⁵ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996) (codified at 31 U.S.C. §§ 3701 *et seq.*).

Semi-Annual Audit Recovery Report

- The recovery process is being held in abeyance for 9 beneficiary audits with a potential recovery amount of \$3,468,203 because the applicant and/or service provider has appealed USAC's recovery determination to USAC.
- The recovery process is being held in abeyance for 71 beneficiary audits with a potential recovery amount of \$29,282,187 because the applicant and/or service provider has appealed and/or requested wavier regarding USAC's recovery determination to the Commission.
- To date, USAC has transferred \$7,355,434 relating to 27 audits to the Commission pursuant to the DCIA because neither the applicant, nor the service provider has paid the funds to USAC or made satisfactory arrangements for payment of the funds.
- The audit performed consistent with the Commission's *Puerto Rico Department of Education Order*⁶ covering Funding Years 1998 through 2000 was approved by the USAC Board of Directors and provided to Commission staff. In that Order, the Commission stated that it – rather than USAC – would review the results of that audit to determine any appropriate recovery actions.⁷ Consequently, although the audit has been deemed final for more than six months, recovery amounts that may be associated with this audit's results are not included on the attached spreadsheet.

⁶ *Federal-State Joint Board on Universal Service, Petition of the Puerto Rico Department of Education to Release Funds Associated with the Schools and Libraries Universal Service Support Mechanism for Years 2001 and 2002*, CC Docket No. 02-06, Order, 18 FCC Rcd 25417 (2003)(*Puerto Rico Department of Education Order*).

⁷ *See id.* at ¶¶ 2, 25.