

E-rate Program

Post-Commitment Issues

May 10, 2012 - Atlanta | May 15, 2012 - Los Angeles

Overview

- The Commitment Adjustment Process
- Red Light Process
- SPIN Changes
- Expiring State Master Contracts

Post-Commitment Issues

Commitment Adjustments

Commitment Adjustments (COMAD)

- When USAC discovers that funds were committed in error, FCC rules require that USAC rescind the commitments and recover funds that were improperly disbursed.
 - Post-commitment reviews can result from audits, appeal reviews, and other investigations such as whistleblower alerts.

Commitment Adjustment

- When USAC discovers a problem with a commitment, we will issue a COMAD.
 - Example:
 - During a whistleblower review, USAC discovers that the service provider prepared the applicant's FCC Form 470, which is not allowable under FCC rules. Since the applicant's funding request was previously committed in full, USAC will issue a COMAD reducing the commitment to zero. If any funds were disbursed, USAC will also seek recovery of those funds.

Rescissions and Recovery

- Adjusted Commitment Amount
 - A new commitment amount is calculated based on the new funding determination given the violation.
 - If no funds have been disbursed to date, then no further action is taken once commitment has been lowered.
 - If the funds disbursed to date exceed the newly adjusted committed amount, cash recovery will be necessary.

Recovery of Improperly Disbursed Funds (RIDF)

- When USAC discovers a problem with a disbursement, but not with the commitment, we will issue a RIDF.
 - Example: During an audit, USAC discovers that \$700 worth of Internet Access was delivered outside the fund year. The \$700 was billed and paid by USAC. Since the commitment is still correct, USAC will seek to recover the \$700 of improperly disbursed funds but will not adjust the commitment itself since the services are eligible when delivered during the funding year. USAC could still be invoiced for any eligible services.

Responsible Party

- If funds need to be recovered, USAC will generally seek recovery from the responsible party based on the issue.

Sample Violation	Responsible Party
Competitive bidding violations	Applicant/Both
Services not delivered but invoiced on SPI	Service Provider
Non-compliance with CIPA	Applicant
SP waives or pays applicant's non-discount share	Service Provider
Incorrect discount rate	Applicant
Applicant and Service Provider collude	Both
Services delivered outside the funding year	Service Provider

Notifications

- The recovery letter is addressed to the responsible party and a copy is sent to the other:
 - Commitment Adjustment Letter (CAL)/ RIDF Letter
 - Provides notice of adjustment/recovery & appeal rights
 - Demand Payment Letter (DPL)
 - 1st Demand Payment Letter (DPL) is the actual invoice from USAC if funds are due.
 - 2nd DPL is the second notice. Debt is transferred to FCC if not paid within 30 days of the 2nd DPL letter date. (Effective June 1, 2012 – debt transferred to US Treasury.)

If You Disagree

- Once the CAL/RIDF letter is issued, any aggrieved party can appeal the decision to USAC or the FCC, but may not appeal to both simultaneously.
- Demand Payment letters must be appealed directly to the FCC.
- Do not ignore the USAC letters. Failure to take action can result in being placed on Red Light.
 - USAC debtors can request a written payment plan to pay the full amount of the debt, though that may result in additional interest and fees.

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Red Light

Red Light Rule

- If an entity has an outstanding debt owed to the FCC or USAC, the Red Light is turned on for that Taxpayer Identification Number (TIN) – that entity and any other entities that share that number are ineligible to receive benefits until the delinquent balance is paid.
- Red Lighted entities receive specific communication from USAC regarding their Red Light status.
- Entities can check their own Red Light status on the FCC's [Red Light Display System](#).

USAC may Red Light delinquencies in the following areas:

- Schools & Libraries Recovery
 - When funds were committed or paid in error due to a Program Rule violation, resulting in a COMAD/RIDF.
- Contributors
 - Contributions owed to the Universal Service Fund based on FCC Form 499-A and 499-Q.
- Other Program Recoveries
 - Including true-ups, revised data submissions, audits, etc.

The FCC may Red Light delinquencies in the following areas:

- Unpaid or underpaid amounts due, including:
 - Regulatory and application fees
 - FOIA search and duplication fees
 - Installment agreements
 - Action rule penalties
 - Debts owed to the USF and other debts that are overdue and have been transferred to the FCC for collection

Getting back to Green Light

- Red Lights are turned off when:
 - Debt has been satisfied
 - Payment Plan is in effect
 - Appeal has been filed
 - If the applicant or service provider appeals to the FCC after the debt is transferred to the US Treasury under the Debt Collection Improvement Act (DCIA), USAC stops the applicant's Red Light but not the collection process.

Disbursements and Red Light

- USF program support will not be disbursed when the SP is on Red Light for either FCC or USAC debt.
- If an SL applicant has a Red Light, BEARs will be held and SPIs will be paid for FRNs featuring that applicant's BEN.
- For delinquent contributions to the USF, disbursements will be netted against the delinquency until it is fully satisfied.
- For delinquent payments to the FCC, the disbursements will be held until the debts are fully paid.

Applicants on Red Light

- Commitments cannot be made for pending applications and appeals when the applicant's Red Light is turned on.
- Applicants that do not resolve their Red Light within 30 days will have their pending applications and appeals denied.
- Funding is not restored when the debt is paid after 30 days.

Post-Commitment Issues

SPIN Changes

Types of SPIN Changes

- Corrective
 - Applicant is not actually changing provider, just correcting the listing
- Operational
 - Applicant is changing from one provider to another
- Global
 - Service provider has undergone merger or acquisition for all of its customers

Corrective SPIN Change

- Results from:
 - Data entry errors on the FCC Form 471
 - Ministerial and Clerical errors on the FCC Form 471
 - Incorrect SPIN listed from a company with multiple SPINs
 - Company has undergone merger/acquisition for some of its customers
- Changes can be made either pre- or post-commitment
- Must be requested by applicant

Operational SPIN Changes

- Applicant wants to change the provider from the one selected during the competitive bidding (CB) process.
- Additional requirements are in effect starting with funding requests for FY 2011 and beyond.
- Funding is capped at the prices of the original services.

Operational SPIN Changes

- 6th R&O requires a “legitimate reason to change”
 - ✓ Breach of Contract – OK
 - ✓ Service provider unable to perform – OK
 - ✓ Unhappy with service quality – conditionally OK
 - Have to start service and not circumvent CB process
 - Have to show why the change is necessary and what is wrong with the current service.
 - ✗ Cheaper price elsewhere – NOT OK
 - ✗ Wish to do business with someone else – NOT OK

Operational SPIN Changes

- Additional requirements:
 - Change must be allowable under state and local procurement rules.
 - Change must be allowable under terms of the contract.
 - Applicant has notified original provider of its intent.
 - Legitimate reason to change.
 - Newly selected service provider must have received second highest point value in original bid evaluation.
 - If no or one bid received, can select different provider.

Additional Considerations

- Applicants must file SPIN changes no later than last date to submit an invoice.
- Additional changes may be needed:
 - Applicant may also need to submit a [Service Substitution Request](#) if services provided also change.
 - Applicants may need to extend a contract and notify USAC of a contract extension on the FCC Form 500.
- SPIN changes approved late in the funding year will get automatic extensions to file invoices.

Global SPIN Changes

- When companies acquire or sell all of their customer base, they can request a Global SPIN change on behalf of their customers.
- Service providers work with USAC Financial Operations to update/change SPIN contact information and/or to deactivate SPIN(s).
- USAC will then change all of the funding requests associated with the old SPIN to the new SPIN.
- Note: If some but not all of the FRNs with the old SPIN will change, the affected applicants must request the change.

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Expiring State Contracts

State Replacement Contracts

- State Master Contracts are a procurement vehicle available to many applicants which facilitate better pricing through aggregation of demand.
- Some states choose to file FCC Forms 470 for these contracts, to help streamline the application process for their schools and libraries.
- State Contract procurement schedules and contract terms may not dovetail with E-rate filing deadlines and timeframes.

State Replacement Contracts

- If the state has filed an FCC Form 470 for both the expiring and the replacement contract, applicants can use the [State Replacement Contract](#) process.
- Process is limited to:
 - Contracts entered into by a State (not local) agency.
 - State must comply with FCC competitive bidding rules.
 - Funding is capped to prices in expiring contract.
 - Non-recurring services eligible only if they were also included in the expiring contract.

State Replacement Contracts

- Scenario A: Contract expires prior to start of funding year
 - Use FCC Form 470 posted for expiring contract.
 - During window, applicant uses State Replacement Contract SPIN (143999999).
 - Applicant enters “SRC-” as prefix to expiring contract number in FRN.
 - Contract Award Date = Day after expiration of expiring contract.
 - Contract Expiration Date = End of funding year.

State Replacement Contracts

- Scenario B: Contract expires during the funding year
 - Applicant files two FRNs – one for the expiring contract, and one for the replacement contract.
 - Expiring contract FRN = file as usual
 - Replacement contract FRN = file same as Scenario A
 - Both FRNs cannot exceed 12 months of service.

State Replacement Contract SPIN Change

- Once new contract has been awarded, applicants must submit a SPIN change request to change from SRC SPIN to actual service provider.
- Applicants will provide:
 - FCC Form 470 posted for the Replacement Contract
 - Actual Contract Award and Expiration Dates
 - Actual Service Start and Service End Dates
 - Actual Funding (cannot exceed old contract prices)
- Multiple Award Schedules still require mini-bid.

Questions?