

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

In the Matter of)
)
Amendment of Parts 0 and 54 of the)
Commission's Rules) CC Docket 96-45

ORDER

Adopted: October 17, 2012

Released: October 19, 2012

By the Commission:

1. By this Order, we amend our rules to reassign to the Office of Managing Director (OMD) certain audit activities formerly assigned to the Office of Inspector General (OIG). The activities concern oversight of the annual audit of the Universal Service Administrative Corporation (USAC) required by Part 54 (47 C.F.R. Part 54) of the Commission’s rules.

2. Section 54.717 of the Commission’s rules requires USAC “to obtain and pay for an annual audit conducted by an independent auditor to examine its operations and books of account to determine, among other things, whether ... [USAC] is properly administering the universal service support mechanisms to prevent fraud, waste, and abuse.”¹ Since 2006, OIG has been the staff unit responsible for overseeing the conduct of the Part 54 audit.² The purpose of this annual audit has been to oversee the operations of the USF Administrator and to safeguard the USF from potential waste, fraud, and abuse.

3. We amend section 54.717 of our rules to substitute OMD as the staff unit responsible for overseeing the Part 54 USAC audit.³ In 2010, OMD instructed USAC that OIG would no longer directly conduct or oversee the universal service fund beneficiary and contributor audit plan (BCAP), an audit separate from the Part 54 USAC audit. This change was in furtherance of OIG’s understanding of its responsibilities consistent with the Inspector General Act of 1978, as amended (IG Act).⁴ As a result, OMD assumed from OIG the responsibility for directing and overseeing USAC’s implementation of the

¹ 47 C.F.R. § 54.717; *see also In the Matter of Amendment of Part 54 of the Commission’s Rules*, Order, 21 FCC Rcd 7422 (2006) (2006 Part 54 Transition Order) (assigning oversight of the annual Part 54 audit to the OIG).

² *See id.*

³ *See* Appendix. Consistent with this Order, the Office of Managing Director plans to amend the Memorandum of Understanding with the Universal Service Administrative Company to reflect the revised role concerning Part 54 duties and other audit related responsibilities.

⁴ Inspector General Act of 1978, 5 U.S.C. App. 3.

BCAP program.⁵ Consistent with OIG's request that the Part 54 audit function be transferred back to an appropriate Bureau or Office, and because we find that OMD now oversees the universal service fund contributor and beneficiary audits (BCAP audits) and has in place the resources and expertise needed to oversee the Part 54 audit as well, we transfer Part 54 oversight authority to OMD.

4. Given this augmentation of OMD's role in audit oversight, we also find it appropriate to delegate limited authority to OMD, upon receiving approval from the Office of General Counsel, to issue subpoenas that directly relate to OMD'S oversight of audits of the USF programs and OMD's review and evaluation of the interstate telecommunications relay services fund, the North American numbering plan, regulatory fee collection, FCC operating expenses, and debt collection.⁶ By granting OMD with this specific, limited and discreet subpoena authority, we will ensure that OMD has the necessary tools to obtain all relevant documentation in a timely manner to complete audit findings and implement corrective actions for all of these programs. Absent this delegation, there is the potential that an audited entity in a particular FCC program may resist providing essential data to OMD to confirm that entity is operating consistent with program rules. Providing OMD with this specific, limited and discreet subpoena authority, therefore strengthens OMD's ability to effectively review and evaluate the aforementioned FCC programs in a timely manner and further protect these programs against waste, fraud, and abuse.

5. The rule amendments adopted in this Order involve rules of agency organization, procedure, or practice. The notice and comment and effective date provisions of the Administrative Procedure Act are therefore inapplicable.⁷

6. ACCORDINGLY, IT IS ORDERED, that pursuant to sections 4(i), 4(j), 5(c), 303(r), 47 U.S.C. §§ 154(i), 154(j), 155(c), 303(r) of the Communications Act of 1934, as amended, 47 C.F.R. Part 54 IS AMENDED, as set forth below, effective upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵See Letter from Steven Van Roekel, Federal Communications Commission, to Scott Barash, Universal Service Administrative Company, dated Feb. 12, 2010 (OMD/OIG USF Audit Transition Letter), available at, <http://www.fcc.gov/encyclopedia/universal-service-fund-general-management-and-oversight>.

⁶ 47 C.F.R. § 0.11(4). See Appendix.

⁷ 5 U.S.C. § 553(b)(3)(A).

APPENDIX

PART 0 – COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Amend § 0.231 by adding paragraph (l) as follows:

§ 0.231 Authority delegated

* * * * *

(l) *Subpoena authority.* The Managing Director is delegated authority to issue subpoenas for the Office of Managing Director’s oversight of audits of the USF programs and the Office of Managing Director’s review and evaluation of the interstate telecommunications relay services fund, the North American numbering plan, regulatory fee collection, FCC operating expenses, and debt collection. Before issuing a subpoena, the Office of Managing Director shall obtain the approval of the Office of General Counsel.

PART 54—UNIVERSAL SERVICE

3. The authority citation for part 54 is revised to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

4. Section 54.717 is amended by revising subsections (a), (b), (c), (d), (e)(1), (e)(2), (f), (g), (h), and (i) by replacing “Office of Inspector General” with “Office of Managing Director” and by revising subsection (k) by replacing “Inspector General” with “Managing Director.”