

### Semi-Annual Audit Recovery Report

In the *Schools and Libraries Fifth Report and Order*,<sup>1</sup> the Federal Communications Commission (FCC or 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.”<sup>2</sup> This submission summarizes outstanding audit-related recoveries as of August 31, 2021, and consists of this report 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. Generally, within ninety (90) days of an audit report being deemed 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 sixty (60) days of the date the letter is sent, USAC issues the First Demand Payment Letter on the 61<sup>st</sup> day and notifies the applicant and/or service provider (whichever party is 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 debt within thirty (30) days of the date of the First Demand Payment Letter, a Second Demand Payment Letter is issued and the Red Light rule is activated for that applicant and/or service provider.<sup>3</sup> The

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

<sup>2</sup> *Id.* at 15834, para. 77.

<sup>3</sup> In the *Schools and Libraries Fifth Report and 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 15821-22, para. 42.

Commission allows applicants and/or service providers to enter into payment plan arrangements with USAC to pay the recovery amount.<sup>4</sup> 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 thirty (30) days of the date of the Second Demand Payment Letter, USAC will issue a Notice of Dismissal Letter for any pending FCC Form 471 applications, which informs applicants that if proper actions are not taken within 30 days (e.g., FCC Appeal, payment of the debt) applications may be dismissed. USAC will also advise the Commission of the party's failure to repay this debt and will transfer the debt to the U.S. Department of Treasury (U.S. Treasury) for collection in accordance with the Debt Collection Improvement Act (DCIA).<sup>5</sup>

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 paused 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 notification to the Commission of the party's failure to repay the debt is approximately five (5) 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 four categories:

- One beneficiary audit is older than six months with a potential recovery of \$11,209,646 for which a Notification Letter has not been issued. The Notification Letter has not yet been sent because USAC is waiting for guidance from the Commission. All other audit findings older than six months have either been cleared or have resulted in the issuance of a Notification Letter to the applicant and/or service provider, as appropriate, and as explained in further detail below.
- For certain audit findings, the recovery process has continued for more than six months because the applicant and/or service provider appealed the recovery determination to USAC and/or requested a waiver regarding USAC's recovery determination to the Commission. The recovery process is held in abeyance pending USAC's and/or the Commission's decision of the following appeals:
  - The recovery process is held in abeyance for 13 beneficiary audits with a potential recovery amount of \$8,769,181 because the applicant and/or service provider has appealed USAC's recovery determination to USAC.

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<sup>4</sup> *Id.*

<sup>5</sup> 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.*). See also 31 C.F.R. § 285.1, *et seq.* (Treasury's regulations); 31 C.F.R. § 900.1, *et seq.* (Federal Claims Collection Standards); 47 C.F.R. § 1.1901 *et seq.*, (FCC's debt collection regulations); OMD Circular No. A129, "Policies for Federal Credit Programs and Non-Tax Receivables;" and Treasury Financial Manual, Volume 1, Part 4, Chapter 4000, "Debt Management Services Collection of Delinquent Non-Tax Debt," (Oct. 18, 2011).

- The recovery process is held in abeyance for 69 beneficiary audits with a potential recovery amount of \$18,952,802 because the applicant and/or service provider appealed and/or requested a waiver regarding USAC's recovery determination to the Commission.
- To date, USAC has transferred \$11,185,207 relating to 45 audits to the U.S. Department of Treasury pursuant to the DCIA because neither the applicant nor the service provider has repaid the funds to USAC, or made satisfactory arrangements for payment of the debt.
- The audit performed consistent with the Commission's *Puerto Rico Department of Education Order*<sup>6</sup> covering Funding Years 1998 through 2002 was approved by USAC's Board of Directors and provided to Commission staff. In that Order, the Commission stated that it, rather than USAC, would review the results of the audit to determine any appropriate recovery actions.<sup>7</sup> Because the Commission's review is underway, although the audit was deemed final for more than six months, recovery activities are not finalized and therefore, the associated recovery amounts are not included on the attached spreadsheet.

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<sup>6</sup> *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*).

<sup>7</sup> *See id.* at 25417, 25426-27, paras. 2, 25.