FCC MAIL SECTION

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

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In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors for the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6

ORDER ON RECONSIDERATION AND FOURTH REPORT AND ORDER

Adopted: July 23, 2004 **Released: July 30, 2004**

By the Commission:

I. INTRODUCTION

1. In this order, we address pending petitions for reconsideration filed by Sprint Corporation (Sprint), United States Telecom Association, Inc. (USTA), and MCI Worldcom, Inc. (MCI).[1] Petitioners seek reconsideration of an order which, among other things, directed the Universal Service Administrative Company (Administrator or USAC) to cancel any funding commitments under the schools and libraries support mechanism that were made in violation of the Communications Act, as amended (the Act), and to recover from the service providers any funds that had already been distributed pursuant to an unlawful funding decision.[2] For the reasons discussed below, we agree with petitioners that we should seek recovery from schools and libraries in certain instances, and therefore grant their petitions in part. We also resolve the limited question raised in the *Second Further Notice* in CC Docket No. 02-06 of from whom we will seek recovery of schools and libraries funds disbursed in violation of the statute or a rule.[3] We modify our requirements in this area so that recovery is directed at whichever party or parties has committed the statutory or rule violation.

II. BACKGROUND

2. Under section 254(h)(1)(B) of the Act, "[a]ll telecommunications carriers serving a geographic area shall, upon a bona fide request for any of [their] services that are within the definition of

[1] Petition for Reconsideration of Commitment Adjustment Order by United States Telecom Association, CC Docket Nos. 96-45 and 97-21, filed November 8, 1999 (USTA Petition); Request for Reconsideration of Adjustment Order by Sprint Corporation, CC Docket Nos. 96-45 and 97-21, filed November 8, 1999 (Sprint Petition); Petition for Reconsideration of Adjustment Order by MCI-Worldcom, Inc., CC Docket Nos. 96-45 and 97-21, filed November 8, 1999 (MCI Petition).

[2] *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 97-21 and 96-45, Order, FCC 99-291 (rel. Oct. 8, 1999) (*Commitment Adjustment Order*).

[3] *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912 (2003) (*Second Further Notice*). We will address other issues raised in the *Second Further Notice* in one or more later decisions.

universal service under subsection (c)(3) of this section, provide such services to elementary schools, secondary schools, and libraries for educational purposes" at discounted rates.[4] Under section 254(h)(1)(B)(ii), carriers providing discounted service pursuant to 254(h)(1)(B) are entitled to receive reimbursement from the universal service support fund.[5] In the *Universal Service Order* and subsequent implementing orders, the Commission implemented this statutory mandate by establishing the schools and libraries universal service support mechanism and assigning the day-to-day tasks of running the program to the Administrator.[6] Under this program, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply to the Administrator for discounts on eligible telecommunications services, Internet access, and internal connections.[7] After an applicant is approved for discounted service, the Administrator reimburses the provider out of the universal service fund for the discounted services.[8]

3. In the *Commitment Adjustment Order*, the Commission noted that the Administrator, through standard audit and review processes, had discovered that it had committed funding for discounts to a small number of applicants in violation of certain requirements of the Act in the first year of the schools and libraries universal service program.[9] The Act states that only those services within the definition of "universal service" as developed by the Commission will be supported by the universal service mechanisms.[10] The Act also requires that telecommunications services provided at discounted rates to schools and libraries shall be provided only by telecommunications carriers.[11]

4. The Administrator discovered two categories of commitments that violated these requirements: (1) commitments seeking discounts for ineligible services; and (2) commitments seeking discounts for services to be provided by non-telecommunications carriers.[12] Upon discovery of these

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[4] 47 U.S.C. § 254(h)(1)(B).

[5] 47 U.S.C. § 254(h)(1)(B)(ii).

[6] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000). *See also Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998) (*Eighth Order on Reconsideration*) (naming USAC as permanent Administrator of the universal service fund).

[7] 47 C.F.R. §§ 54.502, 54.503.

[8] *Universal Service Order*, 12 FCC Rcd at 9026-27, 9082-83.

[9] Funding Year 1998 (previously known as Funding Year 1) of the universal service support mechanism for schools and libraries began on January 1, 1998, and ended on June 30, 1999. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915, 14916 (1998).

[10] 47 U.S.C. § 254(h)(1)(B).

[11] 47 U.S.C. § 254(h)(1)(B). In the *Universal Service Order*, the Commission determined that the term "telecommunications services" encompasses only telecommunications provided on a common carrier basis. 12 FCC Rcd at 9177-78.

[12] *Commitment Adjustment Order*, para. 4.

violations, the Administrator requested guidance from the Commission on how to proceed.[13]

5. In the *Commitment Adjustment Order*, the Commission concluded that the law required it to seek repayment of these unlawfully distributed funds.[14] It noted that in *OPM v. City of Richmond*, the Supreme Court held that, under the Appropriations Clause of the U.S. Constitution, no funds could be disbursed from the Treasury without express Congressional authorization.[15] The Commission found that, even though the schools and libraries program did not involve monies drawn from the Treasury, the principle that a federal agency could not "'grant . . . a money remedy that Congress has not authorized'" compelled the Commission to seek repayment of any funds distributed in violation of the Act.[16] It further noted that because disbursements in violation of the Act created a Government "claim," the Debt Collection Act (hereinafter "DCA") required it to seek repayment.[17]

6. The Commission stated that it would seek repayment from service providers rather than schools and libraries because the providers "actually receive disbursements of funds from the universal service support mechanism."[18] It therefore directed the Administrator to (1) cancel all or any part of a commitment to fund discounts for ineligible services or the provision of telecommunications services by non-telecommunications carriers; and (2) deny payment of any requests by providers for compensation for discounts provided on such services.[19] It further directed the Administrator to seek repayment from the service provider of any unlawful funding that had already been distributed.[20] Finally, the Commission directed the Administrator to present an implementation plan for Commission approval identifying the specific amounts of funds that were wrongfully disbursed and proposing methods of collection including administrative offset where practical.[21]

7. USTA, MCI WorldCom, and Sprint filed Petitions for Reconsideration of the *Commitment Adjustment Order*.[22] The main objection raised on reconsideration was that the Commission should seek repayment from the schools and libraries rather than service providers.[23] USTA also argued that the legal authorities relied upon by the Commission in seeking repayment are inapplicable and provide no support the Commission's decision to recover funds, and that it would violate due process for the Commission or USAC to recover alleged unlawful payments when the Commission has established

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[13] *Id.* at para. 2.

[14] *Id.* at para. 7.

[15] *Id.* (citing *OPM v. City of Richmond*, 496 U.S. 414, 424 (1990)).

[16] *Id.* (quoting *OPM*, 496 U.S. at 415).

[17] *Id.* at para. 10. In the *Commitment Adjustment Order*, the Commission referred to this statute as the Debt Collection Improvement Act ("DCIA"). However, the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996), merely amended the underlying statute, the Debt Collection Act of 1982, Pub. L. No. 97-365, 96 Stat. 1749 (codified as amended at 31 U.S.C. §§ 3701 *et seq.*) ("DCA"), which itself constituted an amendment to the Federal Claims Collection Act of 1966. We hereinafter refer to the statute as the DCA.

[18] *Id.* at para. 8.

[19] *Id.*

[20] *Id.* at para. 9.

[21] *Id.* at para. 11.

[22] *Public Notice, Correction*, Report No. 2425, released July 13, 2000; erratum released July 24, 2000, 2000 WL 963967 (F.C.C.). Comments in support of the petitions for reconsideration were filed by Nextel Communications, Inc. and AT&T Corp.

[23] *See, e.g.*, MCI WorldCom Petition at 3-6; Sprint Petition at 2-3; USTA Petition at 7.

no rules providing for the recovery of alleged unlawful payments.[24]

8. Pursuant to the *Commitment Adjustment Order*, USAC submitted to the Commission its plan to collect universal service funds that were disbursed in violation of the statute or a rule.[25] Subsequently, in 2000, a group of service providers (which included petitioners) proposed an alternate plan of recovery.[26] The principal feature of the service providers' proposed plan was that in all cases of wrongful funding, except where funding was issued for work done by an ineligible provider, the service provider would be reimbursed for any discounted service performed prior to notice of funding adjustment, and the Administrator would recover funding from the schools or libraries directly. Later in 2000, the Commission adopted with minor modifications USAC's plan to implement the requirements of the *Commitment Adjustment Order*.[27]

9. Since then, USAC has pursued recovery for both statutory and rule violations from service providers consistent with the requirements of the *Commitment Adjustment Order* and the *Commitment Adjustment Implementation Order*. In 2003, the Commission sought comment generally in the *Schools and Libraries Second Further Notice* whether additional safeguards or procedures are needed to address the matter of funds disbursed in violation of the statute or a rule. Among other things, we specifically sought comment on whether to modify our current requirement that recovery be directed at service providers.[28]

III. DISCUSSION

10. Based on the more fully developed record now before us, we conclude that recovery actions should be directed to the party or parties that committed the rule or statutory violation in question.[29] We do so recognizing that in many instances, this will likely be the school or library, rather than the service provider. We thus grant the petitions for reconsideration in part, and deny the petitions to the extent they argue that recovery should always be directed at the school or library. This revised recovery approach shall apply on a going forward basis to all matters for which USAC has not yet issued a demand letter as of the effective date of this order, and to all recovery actions currently under appeal to either USAC or this agency. We do not intend to modify any recovery action in which the service provider has satisfied the outstanding obligation or for which USAC has already issued an initial demand letter.[30]

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[24] USTA Petition.

[25] *See* Letter from D. Scott Barash, Vice President and General Counsel, USAC, to Magalie Roman Salas, Secretary, Federal Communications Commission, dated October 1, 1999.

[26] *Ex Parte Letter*, from AT&T Corp., CommNet Cellular, Inc., the Competitive Telecommunications Association, MCI WorldCom, Inc., Nextel Communications, Sprint Corporation, and the United States Telecom Association, CC Dockets No. 97-21 and 96-45, filed February 1, 2000 (*Ex Parte Letter*).

[27] *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, 15 FCC Rcd 22975 (2000) (*Commitment Adjustment Implementation Order*), *petition for review pending sub. nom. United States Telecom Ass'n v. FCC*, Case Nos. 00-1501, 00-1501 (D.C. Cir. filed Nov. 27, 2000).

[28] *Second Further Notice*, 18 FCC Rcd at 26947.

[29] USTA Petition at 5; Sprint Petition at 1; MCI Petition at 2. Numerous parties that filed comments on this issue in the rulemaking docket support this change. *See* Bellsouth Comments at 4; Cox Comments at 9; GCI Comments at 5; Qwest Comments at 10; SBC Comments at 5; Sprint Comments at 7-8; Verizon Comments at 4-5; Hayes Reply at 5; IBM Reply at 7; Nextel Reply at 2.

[30] We note, however, that any service provider is free to challenge a recovery action directed to it if the time frame for seeking an appeal from USAC or the Commission has not yet run.

11. We now recognize that the beneficiary in many situations is the party in the best position to ensure compliance with the statute and our schools and libraries support mechanism rules. At the time the Commission adopted the *Commitment Adjustment Order,* USAC had been distributing funds through the schools and libraries mechanism for only one year. The Commission and USAC then faced a limited range of situations in which statutory or rule violations had occurred requiring the recovery of funds.[31] Thus, the Commission lacked a full appreciation for the wide variety of situations that could give rise to recovery actions in which the school or library would be the party most culpable. The school or library is the entity that undertakes the various necessary steps in the application process, and receives the direct benefit of any services rendered. The school or library submits to USAC a completed FCC Form 470, setting forth its technological needs and the services for which it seeks discounts. The school or library is required to comply with the Commission's competitive bidding requirements as set forth in sections 54.504 and 54.511(a) of our rules and related orders. The school or library is the entity that submits FCC Form 471, notifying the Administrator of the services that have been ordered, the service providers with whom it has entered into agreements, and an estimate of the funds needed to cover the discounts to be provided on eligible services.

12. To be sure, service providers have various obligations under the statute and our rules as well. Among other things, the service provider is the entity that provides the supported service, and as such, must provide the services approved for funding within the relevant funding year. The service provider is required under our rules to provide beneficiaries a choice of payment method, and, when the beneficiary has made full payment for services, to remit discount amounts to the beneficiary within twenty days of receipt of the reimbursement check. But in many situations, the service provider simply is not in a position to ensure that all applicable statutory and regulatory requirements have been met.[32] Indeed, in many instances, a service provider may well be totally unaware of any violation. In such cases, we are now convinced that it is both unrealistic and inequitable to seek recovery solely from the service provider.

13. We conclude that recovering disbursed funds from the party or parties that violated the statute or a Commission rule will further our goals of minimizing waste, fraud and abuse in the schools and libraries support mechanism. We are concerned that the current recovery requirements that are subject to petitions for reconsideration do not place sufficient incentive on beneficiaries to ensure compliance with all relevant statutory requirements and our implementing rules. Indeed, some parties note that under our current recovery procedures beneficiaries often do not directly bear the consequence of any failure to comply with our rules.[33] We conclude that directing recovery actions to beneficiaries in those situations where the beneficiary bears responsibility for the rule or statutory violation will promote greater accountability and care on the part of such beneficiaries.

14. We believe that recovering disbursed funds from the party or parties that violated the statute or rule sufficiently addresses USTA's concern that our prior holding in the *Commitment*

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[31] As noted above, the *Commitment Adjustment Order* provided two examples of fund disbursements resulting in statutory violation requiring recovery: (1) funding committed for ineligible services, and (2) funding for telecommunications services provided by non-telecommunications carriers. *Commitment Adjustment Order* at para. 4.

[32] See, e.g., MCI Petition at 3 (service provider does not have authority or ability to review the eligibility of requested services); USTA Petition at 7 (service provider does not provide data contained in funding application); GCI Comments at 6 (service provider may be totally unaware that applicant not in compliance with rules); Qwest Comments at 10 (service provider has limited ability to monitor how applicant uses service).

[33] We note that a number of parties argue that it is often difficult for a service provider to recover funds disbursed in violation of the statute or a rule from a school or library, because such entities may not have monies available in their budgets to make such repayments, and service providers are reluctant to jeopardize their good will with the beneficiary. *See, e.g.*, Cox Comments at 9; Hayes Reply at 3-4.

Adjustment Order was inequitable. We note, however, that contrary to USTA's claim that we had no rules providing the recovery of funds disbursed in violation of the statute or a rule, our debt collection rules have been in place for some time.[34] And, as explained below, those rules are applicable to the situation presented here.[35]

15. We direct USAC to make the determination, in the first instance, to whom recovery should be directed in individual cases. In determining to which party recovery should be directed, USAC shall consider which party was in a better position to prevent the statutory or rule violation, and which party committed the act or omission that forms the basis for the statutory or rule violation. For instance, the school or library is likely to be the entity that commits an act or omission that violates our competitive bidding requirements, our requirement to have necessary resources to make use of the supported services, the obligation to calculate properly the discount rate, and the obligation to pay the appropriate non-discounted share. On the other hand, the service provider is likely to be the entity that fails to deliver supported services within the relevant funding year, fails to properly bill for supported services, or delivers services that were not approved for funding under the governing FCC Form 471. We recognize that in some instances, both the beneficiary and the service provider may share responsibility for a statutory or rule violation. In such situations, USAC may initiate recovery action against both parties, and shall pursue such claims until the amount is satisfied by one of the parties. Pursuant to section 54.719(c) of the Commission's rules, any person aggrieved by the action taken by a division of the Administrator may seek review from the Commission.[36]

16. We note that USAC's determination concerning which party should be the recipient of the demand letter does not limit the Enforcement Bureau's ability to take enforcement action for any statutory or rule violation pursuant to section 503 of the Act.[37] Any recipient of the demand letter is obligated to repay the recovery amount by the deadlines described in the *Commitment Adjustment Implementation Order*. Failure to do so may subject such recipients to enforcement action by the Commission in addition to any collection action.[38]

17. We also specifically address the issue of whether a service provider should be subject to a recovery action in situations where it is serving as a Good Samaritan.[39] In light of our decision today, we

[34] *See* 47 C.F.R. § 1.1901 *et seq.*

[35] In its comments to the Commission, but not its Petition, USTA cites to *Eastern Enterprises v. Apfel*, 524 US 498 (1998), for the proposition that the *Commitment Adjustment Order* is so unfair that it violates the takings and due process clauses of the Fifth Amendment. We note, however, that with this Order, we will no longer seek repayment only from service providers. We believe that *Eastern Enterprises* was never relevant to this decision, but even if it was, our decision today would end its relevance. In *Eastern Enterprises*, the Court found the federal statute to be unconstitutional as applied to a coal company that had ceased mining over 25 years before enactment of the statute and had never signed the agreement that formed the basis of the statutory obligation. Here, the providers have or had a direct relationship to the customer benefiting from the discount paid, and the providers received the discount payment from the fund. They also provided the discounted service in close approximation to the time recovery was sought by the Commission. These factual distinctions also show that there is no constitutional due process violation.

[36] 47 C.F.R. § 54.719. The standard of review such an appeal is *de novo*. 47 C.F.R. § 54.723.

[37] 47 U.S.C. § 503.

[38] *See Commitment Adjustment Implementation Order*, 15 FCC Rcd at 22980-81.

[39] *See, e.g.*, Bellsouth Comments at 5-6; Cox Reply at 10. The Good Samaritan policy is a procedure that USAC has implemented to address specific situations in which a funding commitment has been approved, services have been rendered and paid for by the applicant at the undiscounted rate during a particular funding year, but the Billed Entity Applicant Reimbursement (BEAR) cannot be processed for various reasons, such as the service provider originally selected by the applicant has gone out of business, or filed for bankruptcy protection before receiving BEAR payment(s) for the applicant. Under those circumstances, USAC permits the applicant to obtain BEAR payments through a substitute service provider, known as Good Samaritan. See USAC's website,

(continued....)

anticipate that recovery would be directed in most instances to the school or library. We conclude that Good Samaritans should not be subject to recovery actions except in those situations where the Good Samaritan itself has committed the act or omission that violates our rules or the governing statute.

18. We briefly address petitioners' remaining arguments. First, USTA argues that the authorities on which the Commission relied, chiefly the *OPM* decision and the DCA, are inapplicable to the funds at issue and thus offer no support for our determination to seek repayment of funds disbursed to providers in violation of the Act.[40] We cannot agree. The authority, as well as the responsibility, of the Government to seek repayment of wrongfully distributed funds is well established as a matter of federal law.[41]

19. Although parties assert that the *OPM* decision is limited in its holding to funds disbursed from the general Treasury, and is therefore not relevant here because universal service funds are taken from a special fund that is not deposited in the Treasury,[42] that is too narrow a reading of the principle found in *OPM*. Rather, the principle to be drawn from *OPM* is that the Commission cannot disburse funds in the absence of statutory authority. It is "'central to the real meaning of the rule of law, [and] not particularly controversial' that a federal agency does not have the power to act unless Congress, by statute, has empowered it to do so."[43] Thus, contrary to petitioners' argument, we are bound by statutory restrictions in the disbursement of the universal service fund regardless of whether such funds are drawn from the Treasury.

20. Moreover, the Commission's disbursement of funds in violation of the statute or a rule gives rise to a claim for recoupment. As the Commission stated in the *Commitment Adjustment Order*, the DCA imposes a duty on agencies to attempt to collect on such claims. Specifically, the DCA requires that "[t]he head of an executive, judicial, or legislative agency . . . shall try to collect a claim of the United States Government for money or property arising out of the activities of, or referred to, the agency."[44] Here, we find that the disbursement of funds in violation of the statute or a rule gives rise to claims that "arise out of the activities" of the Commission, *i.e.*, the activity of ensuring that schools and libraries received discounts for telecommunications services, voice mail, Internet access, and internal connections pursuant to section 254(h). Therefore, we are obligated by law to seek recoupment of funds that were disbursed in violation of our statutory authority. In addition, parties' assertions that the collection mandate of the DCA is inapplicable to the schools and libraries universal service program because its direct application is limited to claims for money owing to the United States Treasury, is inaccurate. By its terms, the DCA is not limited to funds that are owed to the Treasury. The DCA defines "debt or claim" as funds which are "owed to the United States," not merely those which are "owed to the U.S.

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http://www.sl/univeresalservice.org/reference/goodsam.asp. The role of the Good Samaritan is simply to receive the BEAR payment from USAC and pass the reimbursement through to the applicant.

[40] USTA Petition.

[41] *See United States v. Wurts*, 303 US 414. 415 (1938); *Old Republic Insurance Co. v. Federal Crop Insurance Corp.*, 947 F.2d 269, 275 (7th Cir. 1991); *LTV Education Systems, Inc. v. T.H. Bell* 862 F.2d 1168, 1175 (5th Cir. 1989 ("the government, without the aid of a statute, may recover money it mistakenly, erroneously, or illegally paid from a party that received the funds without right."); *California Dept. of Educ. V. Bennett*, 829 F.2d 795, 798-99 (9th Cir. 1987).

[42] USTA Petition at 3; Nextel Comments at 4; *Ex Parte Letter* at 6, n.9.

[43] *Transohio Savings Bank v. Director, Office of Thrift Supervision*, 967 F.2d 598, 621 (D.C. Cir. 1992)(citation and internal quotation omitted).

[44] 31 USC § 3711(a)(1).

Treasury."[45] In fact, the DCA defines a "claim" to include overpayments from an agency-administered program, such as the federal universal service program.[46]

21. We therefore reject the Petitioners' argument that the authorities on which we relied in the *Commitment Adjustment Order* are inapplicable. We conclude that under these authorities, the Commission has an obligation to seek recovery of universal service funds disbursed in violation of the statute or a rule.

22. USTA argues that we unlawfully delegated our authority to recoup universal service funds disbursed in violation of the statute or a rule to the Administrator because this duty is not found in sections 54.702 or 54.705 of the Commission's rules.[47] We reject this argument. The Administrator oversees the administration of the schools and libraries support mechanism, including the administration of disbursing schools and libraries funds consistent with, and under the direction of, the Commission's rules and precedent. If the Administrator allows funds to be disbursed in violation of the statute or a rule, it is within the ambit of its administration and disbursement duties to seek recoupment in the first instance. Moreover, we note that the Commission retains its authority to seek final payment of its claim.[48] Thus, we have not unlawfully delegated the Commission's authority to seek recoupment of funds disbursed in violation of the statute or a rule.[49]

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

23. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

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[45] 31 USC § 3701(b)(1). The Commission's regulations implementing the DCA provide:

The terms "claim" and "debt" are deemed synonymous and interchangeable. They refer to an amount of money, funds, or property that has been determined by an agency official to be due to the United States from any person, organization, or entity, except another federal agency. For purposes of administrative offset under 31 U.S.C. 3716, the terms "claim" and "debt" include an amount of money, funds, or property owed by a person to a State, the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico. "Claim" and "debt" include amounts owed to the United States on account of extension of credit or loans made by, insured or guaranteed by the United States and all other amounts due the Untied States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, taxes, and forfeitures issued after a notice of apparent liability that have been partially paid or for which a court of competent jurisdiction has order payment and such order is final (except those arising under the Uniform Code of Military Justice), and other similar sources. 47 CFR § 1.1901(e).

[46] 31 USC § 3701(b)(1)(C).

[47] 47 CFR §§ 54.702, 54.705 (rules delineating the Administrator's functions and responsibilities).

[48] *Commitment Adjustment Implementation Order*, 15 FCC Rcd 22975.

[49] To the extent USTA suggests that the Commission adopted new recovery rules without notice and comment in the *Commitment Adjustment Order*, we disagree. The Commission found that certain entities received universal service funds erroneously. The Commission has a duty to seek recoupment under several lines of authority, including the DCA. As such, the Commission simply applied its debt collection rules to an outstanding debt. 47 CFR §§ 1.1901 *et seq.*

B. Final Regulatory Flexibility Certification

24. The Regulatory Flexibility Act of 1980, as amended (RFA),[50] requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[51] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[52] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[53] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[54]

25. An initial regulatory flexibility analysis (IRFA) was incorporated in the *Second Further Notice*.[55] The Commission sought written public comment on the proposals in the *Second Further Notice*, including comment on the IRFA. No comments were received to the *Second Further Notice* or IRFA that specifically raised the issue of the impact of the proposed rules on small entities.

26. In this order, we now direct that recovery of funds disbursed to schools and libraries in violation of the Communications Act, or of a program rule, be sought from whichever party or parties have committed the violation. This[56] has no effect on any parties who have not violated our rules, except to make more money available for them to obtain through the schools and libraries support program. It only imposes a minimal burden on small entities that have violated our rules by requiring them to return funds they received in violation of our rules. We believe that the vast majority of entities, small and large, are in compliance with our rules and thus will not be subject to efforts to any recover improperly disbursed funds.

27. Therefore, we certify that the requirements of the order will not have a significant economic impact on a substantial number of small entities.

28. In addition, the order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.[57]

V. ORDERING CLAUSES

29. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), and 254 of the Communications Act of 1934, as amended that this Order on Reconsideration

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[50] The RFA, *see* 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[51] 5 U.S.C. § 605(b).

[52] 5 U.S.C. § 601(6).

[53] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[54] 15 U.S.C. § 632.

[55] *Second Further Notice*, 18 FCC Rcd at 26963-67.

[56] *See supra* paras. 13 & 15.

[57] *See* 5 U.S.C. § 605(b).

and Fourth Report and Order in CC Docket No. 02-06 IS ADOPTED.

30. IT IS FURTHER ORDERED that the Petitions for Reconsideration filed by MCI WorldCom, Inc., United States Telecom Association, and Sprint on November 8, 1999 are granted to the extent provided herein.

31. IT IS FURTHER ORDERED that the terms of this Order on Reconsideration and Fourth Report and Order are effective thirty (30) days after publication in the federal register.

32. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order on Reconsideration and Fourth Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary