Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Comprehensive Review of Universal Service Fund Management, Administration, and Oversight	)	WC Docket No. 05-195
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

COMMENTS OF UNIVERSAL
SERVICE ADMINISTRATIVE COMPANY

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EXECUTIVE SUMMARY

The Board of Directors of the Universal Service Administrative Company (USAC) is pleased to respond to the Commission's invitation to comment in this comprehensive review of Universal Service Fund (USF) management, administration, and oversight. Because USAC has served as the Administrator of the USF since its creation and because its Board of Directors is comprised of a cross-section of USF stakeholders, USAC is uniquely positioned to comment on many of the administrative issues raised in this Notice of Proposed Rulemaking (*NPRM*).

The universal service programs support provision of eligible telecommunications and other advanced services to high-cost areas, low-income consumers, rural health care providers, schools, and libraries. USAC bills, collects and disburses all universal service funds and audits contributors and beneficiaries to ensure compliance with program rules. The administrative responsibilities entrusted to USAC under the Commission's rules are comprehensive, and USAC's operations are correspondingly broad.

USAC started essentially from scratch in 1997. Since its designation as USF Administrator, USAC has collected and disbursed billions of dollars in universal service funds to service providers in every state and territory of the United States. Today, USAC bills, collects, and disburses more than $500 million monthly in USF contributions, processes and validates millions of data points submitted by program participants annually, handles thousands of customer inquiries, and makes tens of thousands of individual decisions regarding issuance of funding to program beneficiaries. In carrying out its wide-ranging mission, USAC operates pursuant to the policy direction and

oversight of the Commission and works closely with all parties interested in the success of the programs.

The *NPRM's* first major area of inquiry concerns the effectiveness and efficiency of existing universal service program administration, including USAC's performance. The Commission selected USAC as the administrator after extensive proceedings involving input from many parties, including USF contributors and recipients of funding. In turning to USAC, an independent not-for-profit corporation, and in creating a flexible oversight framework, the Commission sought to ensure that the Administrator would be able to implement program changes promptly in response to Commission directives. In addition, by requiring USAC's Board of Directors to include a broad cross-section of USF stakeholders, the Commission wanted to make certain there would be strong incentives to keep administrative costs low and performance high. The Commission also anticipated that the diversity of the Board would create checks and balances, thereby ensuring neutrality in USF administration.

Since its creation, USAC has established—and continually upgraded—systems and processes which, among many other functions, compile carrier data, calculate program demand needs and contribution factors, collect and disburse billions of dollars of support, implement Commission directives quickly and effectively, perform outreach to USF participants, conduct audits, invest monies, and pursue delinquent contributors. USAC's administrative costs are extremely low relative to the size of the USF and compare very favorably to those of similar entities. In 2004, for example, USAC spent 1.12% of the more than $5.7 billion of overall USF expenditures on administrative expenses. In addition, USAC has acted aggressively to prevent, detect, and deter waste,

fraud, and abuse in the universal service programs. Every annual audit of USAC required by Commission regulations has resulted in a "clean" opinion.

As with any organization of USAC's size and complexity, however, there are opportunities for improvement. USAC is taking steps to ensure that certain decisions are issued more quickly and that its processes for educating all USF participants on program requirements are strengthened. USAC also is working on fully integrating its internal systems and continuing its efforts to ensure program integrity. Achieving necessary improvements will require close collaboration between USAC and the Commission. USAC looks forward to the opportunity to work with the Commission to clarify mutual expectations regarding a variety of administrative matters through a memorandum of understanding or similar vehicle.

USAC anticipated and addressed many of the issues raised in the *NPRM* relating to the structure and composition of the USAC Board of Directors and other internal governance matters early in its existence. Specifically, USAC established strict ethical standards for all Board members and employees as well as strong protections against disclosure of confidential information. Detailed procedures also are in place governing the limited instances when closed sessions of the Board of Directors are appropriate.

As the Commission recognizes, effective program management requires implementation of meaningful performance measures. Clearly articulated goals and reliable performance data will allow the Commission and other stakeholders to assess the effectiveness of the USF programs and to determine whether and what changes are needed. USAC strongly supports development of additional outcome, output, and efficiency measures for USF contributions and each of the programs, as well as for the

administration of the USF. USAC suggests in these comments a wide array of performance measures in response to the specific questions raised in the *NPRM*.

The Commission poses a comprehensive set of questions regarding ways to improve the administration and operation of each of the programs as well as USF collections. As the entity responsible for the day-to-day administration of the USF, USAC provides in its comments detailed responses to the many questions posed by the Commission. The complexities of the Schools and Libraries program notwithstanding, the program contains a relatively well-established set of rules and procedures, and the Commission in a series of orders has taken many steps to strengthen program integrity and clarify program requirements. The vast majority of funding requests and invoices are properly reviewed and promptly paid.

In response to the Commission's request for suggestions regarding additional administrative improvements, USAC agrees with the Commission's tentative conclusion to adopt a multi-year application process in order to ease the administrative burden on schools and libraries as well as USAC. Moreover, USAC will continue to increase its use of technology to create efficiencies in program management by creating additional electronic filing and certification capabilities. The codification of the Eligible Services List has greatly assisted in program administration, and the Eligible Products Database pilot program shows significant promise. USAC has increased the transparency of program operations by providing more detailed status information to applicants and service providers and making more data available on its website. USAC has greatly expanded its education and communications efforts, and is in the midst of a highly

successful program to visit 1,000 schools and libraries annually which it plans to expand to the other universal service programs.

There are a number of ways in which the High Cost program could be improved as well. USAC is in the most appropriate position to perform the High Cost Loop data calculation function currently codified in Part 36 of the Commission's rules and proposes that the function be entrusted to USAC. To better ensure submission of accurate data, USAC suggests that the Commission clarify revision periods and standardize formats for certain data submissions, as well as changing a key reporting date. In the Low Income program, codification of several important administrative procedures and the addition of certifications on program forms would increase administrative efficiency and improve program integrity. The Commission has previously recognized USAC's "exemplary" efforts to increase participation in the Rural Health Care program by seeking out eligible applicants and streamlining the application process. Like the Schools and Libraries program, administration of the Rural Health Care program would benefit significantly from a multi-year application process and additional use of technology for application submission, review, and invoicing.

USAC offers numerous suggestions to improve administration of the USF contributions process. USAC urges the Commission to adopt explicit provisions on interest and penalties for contributors who are delinquent in contributing or reporting revenue. In addition, requiring contributors to provide documentation of mergers or other transactions that affect their USF obligations would help avoid unnecessary data requests and investigations, thereby reducing burdens on both contributors and USAC. Increased use of electronic filing of revenue reporting forms would enable USAC to provide

contribution base data to the Commission faster and would be customer-friendly as well. Regarding USF disbursements, USAC's experience suggests that once invoice review and data validation by each of the programs is completed, current disbursement practices appropriately serve the different needs of USF recipients. Should stakeholders comment and the Commission conclude otherwise, however, USAC will work to modify the disbursement process accordingly.

The final major area on which the Commission seeks comment in the *NPRM* is USF oversight. The Commission sets forth many creative proposals and poses important questions regarding independent audits, document retention requirements, strengthening and expanding debarment rules, and other measures to prevent, detect, and deter waste, fraud, and abuse. USAC agrees that program integrity is critical to the success of the USF, and has already initiated many steps to safeguard the programs.

Auditing program beneficiaries and USF contributors is one of the most important administrative functions entrusted to USAC under the Commission's rules. In its comments, USAC provides detailed responses to the Commission's many questions regarding independent audits of USF beneficiaries and contributors. USAC agrees with the Commission that requiring some recipients of funding to obtain an annual independent audit to evaluate program compliance could be useful, but such audits should not replace a centralized beneficiary audit program conducted by USAC. USAC is best positioned to assess program risk factors and devise audit plans each year based on that evolving assessment. In addition, although USAC agrees that auditing a significant portion of funds disbursed is an important objective, establishing firm dollar thresholds limiting the beneficiaries and contributors to be audited could create problematic

incentives, including causing program participants to alter behavior to avoid being audited.

Audits in each program, as well as of USF contributors, will also help protect the USF against waste, fraud, and abuse. USAC intends to audit samples of program beneficiaries as part of future audit programs. Selecting statistically significant samples of USF recipients will provide useful and targeted data. In addition, aggressive audits of USF contributors are vital to the integrity of the contributions process. USAC has performed such audits and intends to increase that activity.

USAC supports establishing retention requirements for important documents concerning all of the universal service support programs as well as USF contributions. Comprehensively articulated document retention requirements would improve compliance with Commission rules and enhance USAC's ability to monitor compliance. The types of records and period of time for which records must be retained necessarily depend on the needs of each program. The Commission discusses numerous other measures to attack waste, fraud, and abuse in the universal service programs, including limitations periods, recovery of funds, and strengthening and expanding the Schools and Libraries program debarment rules to cover all programs. USAC discusses the administrative implications of the Commission's proposals in depth.

The USAC Board of Directors is proud of the role USAC has played in ensuring affordable access to the nation's telecommunications infrastructure for all Americans. USAC is eager to hear from other parties that hold important stakes in the success of the USF and the programs it supports. With the benefit of their input, USAC will work with the Commission to refine the USF administrative, management, and oversight framework

in a manner that ensures that the promise of universal service embodied in section 254 of the Telecommunications Act of 1996 continues to be fulfilled.

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I. INTRODUCTION

The Universal Service Administrative Company (USAC) submits these Comments in response to the Commission's invitation in the Notice of Proposed Rulemaking (*NPRM*) in this proceeding.[1] USAC's Board of Directors is pleased to be able to participate in the Commission's comprehensive review of Universal Service Fund (USF) management, administration, and oversight. As the neutral Administrator of the USF, USAC is uniquely positioned to comment on many of the issues raised in the *NPRM*.

USAC is the private not-for-profit corporation that administers the universal service programs pursuant to the Commission's Part 54 rules.[2] These programs provide support to companies that serve high-cost areas, low-income consumers, rural health care providers, and schools and libraries.[3] USAC bills, collects and disburses all universal service funds and audits contributors and beneficiaries to ensure compliance with program rules. USAC is governed by a Board of Directors which is broadly representative of USF stakeholders.[4] Commission rules provide that USAC "may advocate positions before the Commission and its staff only on administrative matters relating to the universal service support mechanisms."[5] USAC, therefore, submits these

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[1] *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up, Changes to the Board of Directors of the National Exchange Carrier Association, Inc*., WC Docket No. 05-195, CC Docket No. 96-45, CC Docket 02-6, WC Docket No. 02-60, WC Docket No. 03-109, CC Docket No. 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 05-124, 70 FR 41658, ¶ 9 (rel. June 14, 2005) (*NPRM*).

[2] *See generally* 47 C.F.R. Part 54.

[3] There are four USF programs: High Cost, Low Income, Rural Health Care, and Schools and Libraries.

[4] *See* 47 C.F.R. § 54.703(b).

[5] 47 C.F.R. § 54.702(d).

Comments solely to address the administrative issues raised by the Commission in the *NPRM*.

The *NPRM* asks many questions about and proposes numerous changes to the manner in which the USF has been administered since enactment of section 254 of the Telecommunications Act of 1996 (the 1996 Act).[6] The *NPRM* seeks comment on two broad areas: USF management and administration (paragraphs 11-66) and USF oversight (paragraphs 67-99). In the management and administration section, the Commission seeks comment on the administrative structure created by the Commission and on USAC's performance as Administrator (paragraphs 11-23), on performance measures for the universal service programs (paragraphs 24-31), and on many issues concerning program management (paragraphs 32-66). With respect to USF oversight, the Commission seeks comment on independent audits of USF beneficiaries (paragraphs 67-82), document retention requirements (paragraphs 83-85), administrative limitations periods (paragraphs 86-88), recovery of funds (paragraph 89), and numerous measures to prevent, detect, deter and reduce waste, fraud, and abuse (paragraphs 90-99).

Before the Commission or other interested parties can evaluate the administrative efficacy of the universal service programs, however, it is important to provide context for the discussion. USAC was created with the sole purpose of serving as the independent neutral Administrator of the USF after extensive Commission proceedings following passage of the 1996 Act. As explained below, the designation of USAC as the permanent USF Administrator was the result of deliberate Commission decisions based on extensive

[6] The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat 56 (1996 Act), amended the Communications Act of 1934.

input from all parties that would be affected by the programs. In assessing the degree to which administrative changes are desirable or appropriate, awareness of why the current system was created is critical.

Moreover, the breadth of the responsibilities entrusted to USAC by the Commission under current regulations is sweeping. The detail contained in USAC's Comments and Appendix A concerning program management and oversight is testimony to that broad portfolio and to the complexities of the countless tasks performed daily to operate these multi-billion dollar programs. Because the USAC Board of Directors represents all USF stakeholders, USAC is able to operate efficiently, as measured by extremely low administrative costs relative to the size of the Fund, and is able to ensure that the programs are responsive to the needs of program participants and the Commission.

That is not to say, however, that USAC believes the current USF administrative framework is perfect. There are numerous improvements that could be made to increase efficiency and decrease the bureaucracy that has made USAC and the Commission targets of criticism from time to time. The Commission has identified many areas and has proposed numerous changes that could improve the administration of the programs. USAC agrees with many of these proposals and offers numerous suggestions of its own for consideration.

USAC is eager to hear from the many USF stakeholders—USAC's customers—who we anticipate will comment in this proceeding. With the benefit of their views, USAC will work with the Commission in any way it can to refine the USF administrative

framework in a manner that ensures the promise of universal service embodied in section 254 of the 1996 Act continues to be fulfilled.

II. THE DESIGNATION OF USAC AS USF ADMINISTRATOR

The Communications Act of 1934 first established the national policy of universal service. That policy is reflected in the very first section of the statute: "[t]o make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide and world-wide wire and radio communications service with adequate facilities at reasonable charges."[7] Before adoption of the 1996 Act, universal service was achieved largely through numerous implicit support mechanisms funded within the telephone industry.[8]

In the 1996 Act, Congress explicitly codified this federal policy of universal service by adding section 254 to the Communications Act. Section 254, which was intended to ensure that access to the communications network is affordable and ubiquitous, ratified the use of universal service funding to assist low income consumers and consumers in high cost areas in obtaining affordable telephone service.[9] It also extended universal service support to schools, libraries, and certain rural health care providers.[10]

Other than extending support to schools, libraries, and rural health care providers, the 1996 Act did not express an intent to change the basics of existing universal service

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[7] 47 U.S.C. § 151.

[8] See *NPRM*, ¶ 3 (citing *Federal-State Joint Board on Universal Service*, *Report and Order*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8784-85, ¶¶ 10-12 (1997) (*Universal Service Order*)).

[9] *See* 47 U.S.C. § 254(b), (j).

[10] *See* 47 U.S.C. § 254(h).

mechanisms.[11] As the Commission has explained, the 1996 Act built upon the foundation of the pre-existing universal service support mechanisms:

> [S]ection 254 of the Communications Act indicates that Congress recognized and, we believe, implicitly approved of the preexisting program as a valid baseline to which changes could be made…. [T]he 1996 Act demonstrates that Congress was aware of the preexisting universal service program and intended to build on that foundation, not erase it.[12]

Congress placed the regulatory details of implementing section 254 in the hands of the Commission and the Federal-State Joint Board on Universal Service (Joint Board). The statute gave broad discretion to the Commission, after consultation with the Joint Board, to implement the universal service support mechanisms outlined in the 1996 Act.[13] Congress also made clear that universal service support was not a typical government program that would be funded by annually appropriated dollars. To the contrary, funds for universal service support were to be collected by requiring that "[e]very telecommunications carrier that provides interstate telecommunications services,

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[11] *See, e.g.*, 47 U.S.C. § 254(j) (indicating that nothing in section 254 is to affect the "collection, distribution, or administration" of the Lifeline Assistance Program); *see also* S. Rep. No. 104-23, at 25 (1995) ("The language of the bill does not presume that any particular existing mechanism for universal service support must be maintained or discontinued.").

[12] *In re Intercontinental Telephone Corp.*, Memorandum Opinion and Order, 14 FCC Rcd 13635, 13657-13658, ¶ 39 (1999) (rejecting arguments that pre-existing universal service fund and Lifeline Assistance programs constituted a tax). In a different proceeding, the Commission reiterated that "Congress was aware of [the National Exchange Carrier Association's] NECA's role when it adopted section 254, which affirmed and expanded the Commission's authority to direct the administration of universal service and therefore, implicitly affirmed the Commission's authority to employ an independent entity to administer universal service. We find no indication that Congress sought to dismantle the existing administrative system, or to prohibit the Commission from using NECA, or another independent entity to administer universal service." *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., and Federal-State Joint Board on Universal Service*, Third Report and Order in CC Docket No. 97-21; 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, 25065, ¶ 14 (1998) (*USAC Reorganization Order*) (footnotes omitted).

[13] *See* 47 U.S.C. §§ 254(a), 410(c).

shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[14] Congress did not expect the Commission or any other federal agency to pay for universal service support or for administration of universal service, and did not appropriate funds for such a purpose.[15]

In 1996, the Commission, as directed by Congress, issued a Notice of Proposed Rulemaking raising a wide variety of issues and referred them to the newly constituted Joint Board for consideration.[16] Among other things, the Notice suggested that the support mechanisms could be administered (as they had been in the past) by a non-governmental entity and stated that any Administrator selected should be required to operate in an efficient, fair, and competitively neutral manner.[17]

Later that year, the Joint Board provided its recommended decision to the Commission.[18] The Joint Board recommended that the Commission, pursuant to the Federal Advisory Committee Act (FACA),[19] create a universal service advisory board to select and oversee a neutral, third party Administrator of the USF. According to the Joint Board, the advisory board should select a permanent Administrator through a competitive process. The Joint Board further recommended that the National Exchange Carrier

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[14] 47 U.S.C. § 254(d).

[15] *See* S. Rep. No. 104-23, at 94 ("There should be a coordinated Federal-State universal service system to preserve and advance universal service using specific and predictable Federal and State mechanisms administered by independent, non-governmental entities.").

[16] *See Federal-State Joint Board on Universal Service*, CC Docket 96-45, Notice of Proposed Rulemaking and Order Establishing Joint Board, 11 FCC Rcd 18092 (1996).

[17] *See id*. at 18150, ¶ 128.

[18] *See Federal-State Joint Board on Universal Service*, CC Docket 96-45, Recommended Decision, 12 FCC Rcd 87 (1996) (*Joint Board Recommended Decision*).

[19] 5 App. U.S.C. §§ 1 *et. seq.*

Association, Inc. (NECA), which until that time had been administering the predecessors to section 254's High Cost, Low Income and Lifeline programs, not automatically be appointed USF Administrator, but that NECA be permitted to act as Administrator if certain changes were made to address perceived bias. In the interim, however, the Joint Board recommended that NECA be appointed the temporary Administrator.[20]

In May 1997, the Commission adopted its final decision on universal service issues.[21] The Commission largely followed the Joint Board's recommendations regarding administration of the USF, and determined that NECA should be the temporary Administrator. It also agreed to establish a federal advisory committee to select the permanent Administrator and established various requirements intended to ensure the independence and integrity of the Administrator.

In a separate proceeding, the Commission invited comment on whether NECA should serve, and what changes might be necessary for NECA to serve, as the temporary Administrator.[22] Numerous parties expressed concern that NECA could be biased in favor of incumbent local exchange carriers (ILECs) and, therefore, recommended that the Commission take steps to ensure neutrality or choose another Administrator.[23]

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[20] *See Joint Board Recommended Decision*, 12 FCC Rcd at 251-252, ¶¶ 829-33. NECA is a not-for-profit association of incumbent local exchange carriers established in 1983 to act primarily as the interstate access tariff filing agent for incumbent local exchange carriers and administrator of interstate access charge revenue pools. Prior to the 1996 Act, NECA also administered the predecessors to the current universal service programs.

[21] *See generally Universal Service Order*, 12 FCC Rcd 8776.

[22] *Changes to the Board of Directors of the National Exchange Carrier Association,. Inc*., CC Docket No. 97-21, Notice of Proposed Rulemaking and Notice of Inquiry, 12 FCC Rcd 72 (1997) (*NECA NOI*).

[23] *See, e.g.*, Comments of the National Cable Television Association, Inc., CC Docket No. 97-21 (filed Jan. 27, 1997) (suggesting that structural changes to the NECA board could make it an acceptable candidate); Comments of MCI Communications Corporation, CC Docket No. 97-12 (filed Mar. 3, 1997) (arguing against selection of NECA as USF Administrator).

Anticipating these concerns, "NECA proposed that, once the Commission appointed NECA the temporary Administrator and authorized it to commit resources to fulfill its administrative duties, NECA would create a wholly-owned subsidiary, designated as [USAC . . . that] would have a balanced, representative Board based on Commission recommendations."[24]

In July 1997, having considered comments favoring NECA, concerns about NECA's neutrality, and NECA's proposed solution, the Commission rejected a competitive bidding model and instead instructed NECA to establish an independent subsidiary—USAC—to administer the High Cost and Low Income programs temporarily as well as to perform billing and collection functions associated with the Schools and Libraries and Rural Health Care programs.[25] The Commission found that "NECA's substantial experience in administering the existing high cost and low-income support mechanisms provides a clear benefit in terms of assuring the operational continuity of these programs."[26] The Commission also directed NECA to establish two independent corporations—the Schools and Libraries Corporation (SLC) and the Rural Health Care Corporation (RHCC)—to administer certain aspects of the support mechanisms for schools, libraries, and rural health care providers.[27]

Subsequently, the General Accounting Office (GAO) (now the Government Accountability Office) reviewed the Commission's instructions to NECA to create the

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[24] *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc, and Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18407, ¶ 11 (1997) (*USAC Appointment Order*).

[25] *See USAC Appointment Order*, 12 FCC Rcd at 18412, 18416-18417, ¶¶ 19, 27-28.

[26] *Id*. at 18417, ¶ 28.

[27] *Id*. at 18430- 18432, ¶¶ 57-60.

SLC and RHCC. In February 1998, GAO concluded that because Congress had not explicitly directed the Commission to establish the SLC and RHCC, their creation violated the Government Corporation Control Act.[28] Congress later directed the Commission to prepare a report and propose a "single entity" to administer all of the USF support mechanisms conforming to the GAO's findings.[29]

In April 1998, as part of its *Report to Congress*, the Commission proposed to consolidate SLC and RHCC into USAC and directed those three organizations to submit a plan of reorganization.[30] Given USAC's experience in administering universal support mechanisms, and in order to avoid "a midstream change [that] could be disruptive and wasteful," the Commission informed Congress of its intent to designate USAC as the permanent Administrator.[31] The Commission also reported to Congress that it no longer intended to convene an advisory committee to propose changes in the administration of universal service.[32] Receiving no objections, in November 1998, the Commission

[28] *See* Letter from the Office of General Counsel, General Accounting Office, to the Honorable Ted Stevens, United States Senate (Feb. 10, 1998). The Government Corporation Control Act, 31 U.S.C. § 9102, provides that "[a]n agency may establish or acquire a corporation to act as an agency only by or under a law of the United States specifically authorizing the action."

[29] *See* Conference Report on H.R. 3579, H.R. REP. NO. 105-504 (April 30, 1998) (directing the FCC to comply with Section 2003(b) of S. 1768).

[30] *See Report in Response to Senate Bill 1768 and Conference Report on H.R. 3579, Report to Congress*, 13 FCC Rcd 11810, 11815-16, ¶¶ 8-10 (1998) (*Report to Congress*). In early 1997, the FCC had sought guidance from GAO as to how to establish an appropriate administration for universal service. *See id.* at 11813, ¶ 5 (citing Letter from Reed E. Hundt, Chairman, FCC, to J. Dexter Park, Asst. Comptroller General, GAO (Jan. 31, 1997)).

[31] *Report to Congress*, 13 FCC Rcd at 11816, ¶ 9.

[32] *See id.* at 11817, ¶ 12 n.35.

approved the plan of reorganization submitted by the three corporations and established the regulatory framework currently applicable to USAC.[33]

In 1998, the Senate expressed the "sense of the Senate" that "[f]ederal and state universal [service] contributions are administered by an independent, non-federal entity and are not deposited into the Federal Treasury and therefore [are] not available for Federal appropriations."[34] The Senate adopted this statement as part of an act repealing a provision of the Balanced Budget Act of 1997, which would have allowed for an appropriation from the USF to be repaid later.[35] Universal service funds are designated by the Treasury Department as funds held outside the Treasury; because the funds are not in the Treasury, they are not subject to annual appropriations.[36]

In April 2000, the Office of Management and Budget (OMB) reiterated that the USF "does not constitute public money pursuant to the Miscellaneous Receipts Statute, 31 U.S.C. § 3302, and is appropriately maintained outside the Treasury by a non-

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[33] *See 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, 96-45, Third Report and Order in CC Docket No. 97-21, 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, 25064-65, ¶ 12 (1998) (*USAC Reorganization Order*).

[34] 143 CONG. REC. S8213-01, S8214 (daily ed. July 29, 1997) (statement of Sen. Gregg).

[35] The Balanced Budget Act of 1997 initially contained a provision allowing an appropriation from the USF for fiscal year (FY) 2001 to be repaid in FY 2002, although the conferees expressed concern about the precedent this provision set and "its possible impacts on universal service in the United States." *See* Balanced Budget Act of 1997, § 3006, Pub. L. No. 105-33, 111 Stat. 257, 269; H.R. REP. NO. 105-217, at 581 (1997), *reprinted in* 1997 U.S.C.C.A.N. 176, 202. This provision was repealed later in the same session, and no money was ever appropriated. *See* Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1998, § 622, Pub. L. No. 105-119, 111 Stat. 2440, 2521 (1998).

[36] *See* 143 CONG. REC. S8213-01, S8214 (daily ed. July 29, 1997) (statement of Sen. Daschle that "the Universal Service Fund is comprised of private fees" and that "there are no Federal tax dollars involved in the universal service fund."); *see also Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 426-27 (5th Cir. 1999), *cert. denied*, 120 S.Ct. 2212 (May 30, 2000) (Universal Service Funds are not federal "revenue" for purposes of Constitutional requirement that "[a]ll Bills for Raising Revenue shall originate in the House of Representatives." [art. I, § 7, cl. 1]).

governmental manager."[37] OMB also recognized that Congress intended no change in the preexisting mechanisms for administration of universal service.[38] The Commission has agreed with OMB's analysis, informing GAO that it "concur[s] with OMB's conclusion that the universal service fund is appropriately maintained outside the Treasury by a non-governmental manager, particularly in light of the legal history of the universal service fund."[39] The Commission recently reaffirmed its view that "the current USAC structure is consistent with congressional intent and conforms with congressional guidance."[40]

The foregoing history demonstrates that USAC was designated as the USF Administrator after a thorough vetting with all interested parties in the government and industry. The Commission followed Congress's directives and took advice from GAO, OMB, the Joint Board, and dozens of commenters. It considered and rejected numerous alternative approaches and, ultimately, determined that the public interest would be best served by appointing USAC as the independent, neutral Administrator of the USF.

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[37] Letter from Robert G. Damus, General Counsel, OMB, to Christopher Wright, FCC General Counsel at 3 (Apr. 28, 2000) (*April 28 OMB Letter*).

[38] *Id.* at 4.

[39] *See* Letter from William E. Kennard, FCC Chairman, to Michael R. Volpe, Assistant General Counsel, GAO at 2 (April 28, 2000).

[40] Letter from Andrew Fishel, Managing Director, FCC, to Mark Goldstein, Director, Physical Infrastructure Issues, GAO at 3 (Jan. 14, 2005) (*Fishel GAO Letter*), *reprinted in* GAO, Telecommunications: Greater Involvement Needed by FCC in the Management and Oversight of the E-Rate Program, GAO-05-151, at 58 (Washington, D.C.: Feb. 9, 2005) (*GAO 2005 E-Rate Report*).

III. DISCUSSION

Administering the universal service programs is a challenging and complex endeavor. In addition to the Commission, USAC has many stakeholders deeply invested in the success of the programs: USF contributors, recipients of funds from the four programs, state regulators, consumer advocates, Congress and, ultimately, the general public. USF stakeholders closely—and appropriately—scrutinize every aspect of USAC's operations. The breadth and depth of USAC's operations must be understood in order to grasp the challenges and complexities of administering the USF and in order to respond to the many specific questions posed by the Commission in the *NPRM*.

In responding to the Commission's questions in this wide-ranging *NPRM*, USAC necessarily touches on the wide range of its administrative activities. In Appendix A, USAC provides detailed information on USF collections and program disbursements since the inception of the program. USAC also provides an overview of each of the universal service programs and additional information concerning some of the many tasks USAC performs to administer these complex and evolving programs.[41] USAC discusses details of its work as necessary below to respond to specific questions. In order to evaluate proposed modifications to the administrative structure, it is essential to realize to the extent possible what USAC currently does to administer the USF.

A. Management and Administration of the USF

In the *NPRM*, the Commission broadly seeks comment on measures the Commission can take to improve management and administration of the USF and the

[41] *See* Appendix A, USAC Operations and Scope of Administrative Activities (Appendix A).

universal service programs.[42] USAC shares the Commission's view that the effectiveness and efficiency of the management and administration of the USF "is influenced by the organizational structure used to carry out the missions of the USF, the methods used to measure and evaluate program performance, and the program operations, including the application process, the contributions process, and the disbursement process."[43] The management and administration section of the NPRM first seeks comment on USAC's performance and numerous aspects of the administrative structure established by the Commission, then requests input on appropriate performance measures for the universal service programs and, finally, poses many questions regarding program management. USAC addresses these matters in turn below.

1. Universal Service Fund Administrator

a. USAC's Performance

Paragraph 11 of the *NPRM* specifically seeks comment on USAC's performance since the inception of the USF program. The USAC Board of Directors, which represents all USF stakeholders, believes USAC has administered the USF and the universal service programs in an efficient, effective, and competitively neutral manner since USAC was designated as Administrator. Since USAC's incorporation in 1997 and its selection as permanent USF Administrator in 1998, the Commission's goals for universal service and its expectations regarding the management of the USF and oversight of USAC have continually evolved. Because of the challenges inherent in the day-to-day administration of universal service, and because both the Commission and USAC continue to learn more

[42] *NPRM*, ¶¶ 9-66.

[43] *NPRM*, ¶ 9.

about the impact of the programs, the ebb and flow of regulatory and administrative enhancements to universal service policy and administration is to be expected and has been reasonable. One of the core strengths of USAC's structure and its relationship with the Commission is USAC's ability to evolve as needed to implement new directives with a high degree of speed and agility. Against a demanding background of changing regulation and other directives USAC has achieved a record of positive performance.

(i) USAC Has Disbursed Billions of Dollars of Universal Service Support to Eligible Entities for Eligible Purposes

In assisting the Commission in fulfilling the universal service mandate of the 1996 Act, USAC has disbursed approximately $35.7 billion dollars since 1998 in accordance with the 1996 Act and Commission rules, orders, and guidance.[44] Universal service support has touched all areas of the United States and its territories. The USAC Board of Directors is proud that USAC's efforts have contributed to increasing the availability of telecommunications services and advanced communications technology to all Americans.

(ii) USAC Has Implemented Commission Directives Impartially, Efficiently and Effectively

The universal service landscape has changed dramatically since 1997 and will no doubt continue to do so as Congress and the Commission grapple with new policy challenges. USAC has strived to be responsive to the Commission and USF stakeholders during these times of great technological and regulatory change. The current structure provides the Commission a high degree of flexibility in overseeing program

[44] Appendix A at 18. Disbursements for each program are set forth in Appendix A.

administration, the ability to implement new policies quickly, and the ability to change requirements and direct additional activity as needed. The ability simply to direct USAC to implement new policies has been important and useful as the Commission has made extensive changes to the USF programs and the administrative framework governing USAC. The Commission's decision to govern its relationship with USAC through extensive regulation and close oversight maximizes the Commission's ability to ensure accountability and to make swift decisions concerning the USF.

For example, USAC now faces an immediate challenge in implementing the numerous measures initiated by the Commission to address the effects of Hurricane Katrina.[45] In the *Katrina Order*, the Commission provides approximately $211 million in targeted USF support to consumers, schools, libraries, health care providers, and telecommunications carriers affected by Hurricane Katrina. Through the order, the Commission seeks "to ensure that victims of Hurricane Katrina continue to have access to telecommunications services and advanced telecommunications services necessary for recovery and restoration from the catastrophic damage" caused by the storm.[46] The Commission adopted a series of temporary rules, effective immediately, across all four programs. USAC has worked closely with the Commission on the Katrina-related

[45] *See Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up*, CC Docket Nos. 96-45, 02-6, WC Docket Nos. 02-60, 03-109, Order, FCC 05-178 (rel. Oct. 14, 2005) (*Katrina Order*). The Commission had previously taken steps to provide relief to parties affected by Hurricane Katrina by extending deadlines and modifying recordkeeping and other USF procedural requirements. *See Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up, Federal-State Joint Board on Universal Service*, CC Docket No. 02-6, WC Docket Nos. 02-60, 03-109, CC Docket No. 96-45, Order, DA 05-2484 (rel. Sept. 21, 2005).

[46] *Katrina Order*, FCC 05-178, ¶ 4.

directives and was prepared to move quickly to implement the provisions of the *Katrina Order* upon its release.[47]

The administrative structure established by the Commission gives it the flexibility to direct USAC to implement the Commission's policy directives without contract revisions or other red tape delays. Particularly in a time of national emergency such as the aftermath of Hurricane Katrina, this flexibility is critically important. Since its designation as USF Administrator, USAC has implemented dozens of new rules and directives—and several completely new programs—involving all aspects of universal service. Because USAC exists solely to administer the USF subject to Commission oversight, USAC works with the Commission to implement these policy decisions impartially, efficiently and in a cost-effective manner. Other important examples of USAC's implementing Commission directives quickly, efficiently and effectively are highlighted below.

A. High Cost Program Changes Successfully Implemented by USAC

USAC began administering the High Cost program in 1998 with disbursements of High Cost Loop (HCL), Local Switching Support (LSS) and Long Term Support (LTS).[48] Almost immediately, the Commission began to modify the program by adding support components and significantly altering the original parts of the High Cost program.

[47] *See* Letter from Lisa M. Zaina, Chief Executive Officer, USAC, to Kevin J. Martin, Chairman, FCC (Sept. 21, 2005).

[48] Appendix A describes USAC's administration of the High Cost program in more detail.

The first new component, in 1999, was High Cost Model (HCM) support.[49] USAC took the extensive administrative steps necessary to implement HCM support in accordance with the Commission's January 1, 2000 deadline. In May 2000, the Commission adopted the Coalition for Affordable Local and Long Distance Services (CALLS) proposal to overhaul the interstate access charge system and created a new Interstate Access Support (IAS) mechanism.[50] Among other things, the *CALLS Order* directed USAC to file with the Commission no later than June 5, 2000, a supplement to its third quarter 2000 filing revising its estimate of the universal service support requirements in light of the new IAS program.[51] IAS was up and running within two months and was operational in time for IAS payments consistent with the July 1, 2000 beginning of the first program year.

The *Rural Task Force Order* released May 23, 2001, modified the rules for providing support to rural telephone companies, beginning July 1, 2001.[52] Implementing the *Rural Task Force Order* required many administrative actions and extensive outreach and coordination efforts among all affected parties. USAC staff coordinated education

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[49] *See Federal-State Joint Board On Universal Service, Forward-Looking Mechanism For High Cost Support For Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Tenth Report and Order, 14 FCC Rcd 20156 (1999).

[50] *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service,* CC Docket Nos. 96-262, 94-1, 99-249, 96-45, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (*CALLS Order*).

[51] *Id.*, 15 FCC Rcd at 13061, ¶ 229.

[52] *Federal-State Joint Board on Universal Service, Multi Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchage Carriers,* CC Docket Nos. 00-256, 96-45, Report and Order in CC Docket No 00-256 and Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, 16 FCC Rcd 11244, 11250, ¶ 12 (2001) (*Rural Task Force Order*).

efforts undertaken for both the *Rural Task Force Order* changes and the new Interstate Common Line Support (ICLS) mechanism discussed below. In addition to the outreach regarding new disaggregation plans, USAC publicized key deadlines to carriers.[53] Again, USAC implemented an entirely new component of the High Cost program within months of the Commission's policy directive.

USAC also implemented the new Interstate Common Line Support (ICLS) program effective July 1, 2002.[54] As with the other new High Cost programs, ICLS required systems development, new forms, clarification of issues with the Commission, and outreach to affected parties. USAC began ICLS payments consistent with the program implementation date of July 1, 2002. Throughout the implementation process USAC has worked closely with the Commission to ensure ICLS program success.

The dramatic changes to the High Cost program raised many administrative issues for USAC. Every new requirement—and these Comments only touch on the major Commission orders issued during this time—requires systems development, training USAC and contractor personnel, extensive outreach to affected parties, and implementation of safeguards to protect against improper disbursement of funds. Working closely with Commission staff, USAC successfully, cost-effectively, and in a

[53] *See id.* at 11319, ¶ 191 (establishing October 1, 2001 deadline for initial Section 254(e) certifications).

[54] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers,* CC Docket Nos. 00-256, 96-45, 98-77, 98-166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166**,** 16 FCC Rcd 19613 (2001) (*MAG Order*).

competitively neutral manner, implemented complex program changes within the Commission's deadlines.

B. Low Income Program Changes Successfully Implemented by USAC

Significant changes to the Low Income program mandated by the Commission have required USAC to develop new systems, prepare new procedures, and educate program participants on multiple new requirements.[55] USAC has a record of implementing such changes successfully, on time, and at minimal cost. For example, in June 2000, the Commission amended its rules to "increase access to telecommunications services and subscribership among low-income consumers living on American Indian and Alaska Native lands."[56] This order provided residents of eligible tribal lands with additional support and expanded eligibility criteria.[57] More recently, in the *2004 Lifeline and Link-Up Order*, the FCC expanded eligibility criteria for qualifying consumers.[58] In addition, the *2004 Lifeline and Link-Up Order* instituted new certification and validation procedures designed to minimize potential abuse of the Low Income program.[59] The order also clarified recordkeeping requirements and adopted outreach guidelines for

[55] Appendix A describes USAC's administration of the Low Income program in more detail.

[56] *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12216, ¶ 13 (2000).

[57] *Id.* at 12304-05 (promulgating 47 C.F.R. §§ 54.411(a)(3) and 54.409(c)).

[58] *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302 (2004) (codified at 47 C.F.R. § 54.409(b)) (*2004 Lifeline and Link-Up Order*).

[59] *Id* at 8317-21, ¶¶ 27-36 (codified at 47 C.F.R. §§ 54.410, 47 and 54.416).

carriers.[60] USAC administers the certification and validation procedures and works closely with Eligible Telecommunications Carriers (ETCs) and state commissions to help promote understanding of these requirements.

C. Rural Health Care Program Changes Successfully Implemented by USAC

The Commission has significantly altered the Rural Health Care program since its creation, and USAC has played an important role both in implementing policy changes and in suggesting areas for improvement.[61] In 1999, at the Commission's request, USAC submitted a report recommending streamlining the application process and simplifying the rate and distance calculations used to determine levels of support. Based in part on USAC's recommendations, the Commission expanded rural health care provider participation in the program and increased the amount of support available to participants.[62]

In 2003, the Commission amended its rules to increase program participation by expanding the scope of eligible health care providers, providing discounts of 25% of the monthly cost of Internet access, modifying the manner in which discounts are calculated,

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[60] *Id.* at 8324-29, ¶¶ 37-49.

[61] Appendix A describes USAC's administration of the Rural Health Care program in more detail.

[62] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Order on Reconsideration, 14 FCC Rcd 20106, 20109-10, ¶¶ 6-7 (1999) (*Fourteenth Order on Reconsideration*) (considering USAC report indicating that Commission requirement that carriers obtain ETC status severely limited the benefits available to rural health care providers); C*hanges 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, Sixth Order on Reconsideration in CC Docket No. 97- 21 and Fifteenth Order on Reconsideration in CC Docket No. 96-45, 14 FCC Rcd 18756, ¶¶ 8-9 (1999) (*Fifteenth Order on Reconsideration*) (further changes to Rural Health Care program based in part on USAC recommendations).

and providing support for satellite services.[63] USAC anticipated this change and worked closely with the Commission so that a new FCC Form 466 (paper and electronic) was ready for the opening of that year's application window. In December 2004, the Commission again modified its rules to change the definition of "rural," expanded funding for mobile rural health care services, and established application deadlines and recordkeeping requirements.[64] USAC quickly responded to this order and, among other things, incorporated new changes such as the 50% discount on advanced telecommunications services for entirely rural entities and the inclusion of mobile clinics into the program. Under what the Commission has characterized as USAC's "exemplary" administration,[65] the Rural Health Care program has become much more user-friendly and participation has substantially increased consistent with the Commission's stated policy objectives.

D. Schools and Libraries Program Changes Successfully Implemented by USAC

USAC has responded quickly and capably to the many changes to the Schools and Libraries program since 1998.[66] For example, Congress passed the Children's Internet Protection Act (CIPA) in 2001, which requires that to be eligible for funding, schools and

[63] *See Rural Health Care Support Mechanism*, WC Docket 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546 (2003) (*RHC First Order*); 47 C.F.R. §§ 54.601, 54.603, 54.605, 54.609, 54.613, 54.619, 54.621, 54.625.

[64] *See Rural Health Care Support Mechanism*, WC Docket 02-60, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 24613 (2004) (*RHC Second Order*); 47 C.F.R. §§ 54.5, 54.601, 54.609, 54.615, 54.619, 54.621, 54.623.

[65] *RHC First Order*, 18 FCC Rcd at 24573-74, ¶¶ 53-54.

[66] Appendix A describes USAC's administration of the Schools and Libraries program in more detail.

libraries providing Internet access must institute certain Internet safety policies.[67] After CIPA was enacted, the Commission issued compliance requirements.[68] In consultation with Commission staff, USAC was well on its way to implementing the new rules when a federal court found sections of CIPA unconstitutional and enjoined the Commission from withholding funds from any public library that failed to comply with those sections.[69] The Commission quickly adopted interim measures to ensure that its implementation of CIPA complied with the court decision, which required USAC to undo many of the administrative actions it had taken.[70] The Supreme Court subsequently upheld the constitutionality of CIPA.[71] Thereafter, the Commission provided further guidance for libraries with respect to their certification obligations under CIPA, which USAC then re-implemented.[72] At each stage of this complex and challenging process, USAC has worked closely with the Commission and program participants to ensure that USAC was administering the changes effectively and appropriately.

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[67] Congress included CIPA as part of the Consolidated Appropriations Act, 2001, Pub. L. No. 106-554. Section 1721 of CIPA amended section 254(h) of the 1996 Act. Section 1721 references section 1732 of the Children's Internet Protection Act, which amends section 254 of the 1996 Act by adding a new subsection (l) at the end of section 254. CIPA is codified at 47 U.S.C. § 254(h), (l).

[68] *See Federal-State Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rule Making, 16 FCC Rcd 2808 (2001); *Federal-State Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182 (2001).

[69] *See American Library Association v. United States*, 201 F.Supp.2d 401 (E.D. Penn. 2002).

[70] *See Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Order, 17 FCC Rcd 12,443 (2002).

[71] *United States v. American Library Association*, 539 U.S. 194 (2003).

[72] *See Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Order, 18 FCC Rcd 16072 (2003).

In 2002, the Commission initiated a rulemaking proceeding in which it sought comment on numerous aspects of the Schools and Libraries program.[73] This proceeding has resulted in five Commission orders to date, each of which has made significant changes to the program. In the *Schools and Libraries First Order*, the Commission adopted a framework for funds collected from contributors for the schools and libraries program that have not been disbursed.[74] In the *Schools and Libraries Second Order*, the Commission, among other things, modified its rules regarding eligible services, directed USAC to develop a pilot program for an eligible services database, and codified USAC's administrative policy under which USAC denies funding requests in their entirety if they contain 30% or more ineligible services.[75] The Commission also adopted suspension and debarment rules.[76] In the *Schools and Libraries Third Order*, the Commission concluded that entities should not be able to receive discounts on internal connections services more than twice in every five years, prohibited schools and libraries from transferring equipment purchased with discounts for three years, and adopted a rule creating a formal process for updating the Eligible Services List.[77] The Commission also codified USAC procedures relating to allocating costs between eligible and ineligible services, the

[73] *Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 1914 (2002) (*Schools and Libraries NPRM*).

[74] *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, First Report and Order, 17 FCC Rcd 11521 (2002) (*Schools and Libraries First Order*).

[75] *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (*Schools and Libraries Second Order*).

[76] *Id.*

[77] *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) (*Schools and Libraries Third Order)*.

prohibition on provision of free services, and procedures relating to service substitutions and adopted rules pertaining to the carryover of unused funds.[78] In the *Schools and Libraries Fourth Order*, the Commission revised its approach to recovery of improperly disbursed funds and directed USAC to seek recovery of funds from the party or parties who committed the statutory or rule violation.[79] In the *Schools and Libraries Fifth Order*, the Commission, among other things, established a framework governing the recovery of funds disbursed in violation of the statute and Commission rules, announced its policy regarding the timeframe for conducting audits and other types of investigations, adopted strengthened document retention requirements, and directed USAC to submit an audit resolution plan and to make annual submissions to the Commission of its administrative procedures.[80] Notably, the Commission also announced that all participants in the Schools and Libraries program are required to obtain FCC Registration Numbers (FCC RNs).[81] FCC RNs are required for any entity doing business with the Commission and are necessary in order to comply with the requirements of the Commission's *Red Light Rule Order*.[82] USAC worked closely with the Commission to

[78] *Id.*

[79] *See Federal-State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 96-45, 97-21, 02-6, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252 (2004) (*Schools and Libraries Fourth Order*).

[80] *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 Order*).

[81] *Id.* at 15821, ¶ 41*; see also* 47 C.F.R. § 1.8001.

[82] *See Amendment of Parts 0 and 1 of the Commission's Rules; Implementation of the Debt Collection and Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, MD Docket No. 02-339, Report and Order, 19 FCC Rcd 6540, 6542, ¶ 5 (2004) (*Red Light Rule Order*).

assist participants in obtaining FCC RNs and in ensuring compliance with the Red Light Rule.

Throughout these proceedings, USAC provided information critical to the Commission's deliberations and offered numerous recommendations for successful implementation. Each of these orders required USAC to take significant administrative action to implement the changes ordered by the Commission. USAC worked with the Commission to revise program forms and change its procedures and systems to ensure that program beneficiaries complied with the requirements articulated by the Commission. USAC also conducted extensive outreach and education efforts to inform program participants of the new rules. This all occurred within the timeframes established by the Commission.

E. USF Contributions Changes Successfully Implemented by USAC

USAC's management of USF billing, collections and disbursements has taken place in a dynamic regulatory and business environment. The Commission has made significant changes to the USF contribution methodology, revised key forms, and directed USAC to implement new debt collection policies in addition to USAC's already aggressive efforts.[83] In particular, the Commission has reduced the time between current USF assessments and the revenue on which those assessments are based, moving from USF contributions based upon prior year revenue to projected collected revenue.[84] The

[83] Appendix A describes USAC's administration of USF contributions in more detail.

[84] *See Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T,* CC Docket No. 96-45, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, ¶¶ 1-2 (2001) (*Quarterly Reporting Order*) (reducing interval from 12 months to an average of six months); *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor*

Interim Contribution Methodology Order, which implemented the shift from reporting historic to projected revenue, operationally represented the largest of these shifts.[85] USAC also implemented a "circularity deduction" that was established by the Commission to provide a deduction from reported revenue for amounts that a contributor will pay into the USF.[86] Each of these changes significantly affected USAC's financial operations. USAC successfully implemented these changes, many of which required speedy alterations to systems, processes and delivery methods, significant training, and communication with contributors.

F. USF Administration Changes Successfully Implemented by USAC

Commission staff and others have reached the conclusion that the USF should be treated as "federal funds" for some, but not all, purposes.[87] The evolving nature of the treatment of the USF for accounting and auditing purposes has required USAC to implement extensive changes to its financial systems, establish close reporting ties with the Commission, and otherwise conform USF administration to many federal financial management statutes and regulations.

Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (*Interim Contribution Methodology Order*).

[85] The change to basing USF contributions on projected collected revenue became effective April 1, 2003. *See Interim Contribution Methodology Order*, 17 FCC Rcd 24952**.**

[86] *See id.* at 24971, ¶ 35.

[87] *See* e.g., *GAO 2005 E-Rate Report* at 47.

In addition to the annual independent audit of USAC mandated by 47 C.F.R. § 54.717, the USF is treated as part of the Commission's financial statement and consequently is audited annually by independent auditors at the direction of the Commission's Office of Inspector General (OIG).[88] From 1998 through 2004, USAC accounted for the financial transactions of the USF in accordance with Generally Accepted Accounting Principles (GAAP).[89] USAC's processes, procedures, and systems were fully GAAP-compliant. Extensive annual audits conducted under strict Commission oversight as required by 47 C.F.R. Part 54 have resulted in no material findings.

In October 2003, the Commission directed USAC to change USF accounting from GAAP to Generally Accepting Accounting Principles for Federal Agencies (GovGAAP) and to change its USF audit procedures from Generally Accepted Auditing Standards (GAAS) to Generally Accepted Government Auditing Standards (GAGAS).[90] The Commission stated that the purpose of moving the USF to GovGAAP was "to ensure that the Commission can maintain its obligations under federal financial management and reporting statues and directives of the Office of Management and Budget (OMB)"

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[88] OIG Annual Reports on FCC Fiscal Year Financial Statements available at http://www.fcc.gov/oig/oigreportsaudit.html and Semi-Annual Reports issued by OIG available at http://www.fcc.gov/oig/oigreportssemiannual.html**.**

[89] *See* 47 C.F.R. § 54.702(e) (2003) ("The Administrator's books of account shall be maintained in accordance with generally accepted accounting principles.").

[90] *See Application of Generally Accepted Accounting Principles for Federal Agencies and Generally Accepted Government Auditing Standards to the Universal Service Fund, Application of Generally Accepted Accounting Principles for Federal Agencies and Generally Accepted Government Auditing Standards to the Telecommunications Relay Services Fund*, CC Docket Nos. 96-45, 03-123, Order, 18 FCC Rcd 19911 (2003) (*GovGAAP Order*).

because the USF is a component of the Commission's annual financial statement.[91] The Commission gave USAC until October 1, 2004 to update its financial accounting and audit procedures for the USF in preparation for fiscal year 2005.[92]

USAC's implementation planning for the transition to GovGAAP identified numerous issues requiring clarification. Shortly before the October 1, 2004 implementation deadline, Commission staff concluded for the first time that the USF was "a permanent indefinite appropriation" and therefore subject to the Antideficiency Act (ADA).[93] The ADA prohibits any "officer or employee of the United States Government or of the District of Columbia government from "involv[ing] either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law."[94] The decision to apply the ADA to the USF had significant consequences for USAC's accounting systems and investments which USAC was required to address immediately.[95] Pending Commission review of USAC's recommended solution, USAC has initiated a financial systems redesign project to ensure the company's financial transactions and reporting are in full compliance with GovGAAP. The redesign will also address the federal government's Joint Financial Management Improvement Program (JFMIP). The JFMIP is a joint undertaking of the

[91] *Id.* at 19911, ¶ 1.

[92] *Id.* at 19913, ¶ 4.

[93] 31 U.S.C. §§ 1341-1342, 1517. *See* Letter from Jeffrey Carlisle and Andrew Fishel, FCC, to Frank Gumper, USAC (Sept. 27, 2004). GAO later agreed with the FCC's conclusion. *See GAO 2005 E-Rate Report* at 47.

[94] *See* 31 U.S.C. § 1341(a)(1)(B).

[95] To address certain issues created by application of the ADA to the Fund, in December 2004, Congress enacted the Universal Service Antideficiency Temporary Suspension Act, Pub. L. No. 108-494.

Department of the Treasury, GAO, OMB, and Office of Personnel Management (OPM).[96]

USAC's federal financial reporting obligations have dramatically increased as well. USAC reports weekly to the Commission on available funds. USAC submits a monthly report that details cash receipts and outlays that the Commission uses to prepare its monthly "224 Report" to the Treasury Department, a quarterly report on accounts receivable that the Commission uses to prepare its quarterly Treasury Report on Receivables, and quarterly financial statements. Twice a year, USAC submits a 10-year forecast to the Commission that projects cash receipts and outlays required to meet program demand and fund administrative expenses. USAC also submits many ad hoc reports related to financial operations and program activities upon request from different Commission offices and bureaus. In addition, USAC has been directed to comply with numerous other federal statutes relating to financial reporting, information technology and the like.

iii. USAC Has Continually Improved Its Operations

USAC went from the drawing board to a full-scale operation in a matter of months. Since then, USAC's tenure as Administrator has been characterized by continuous improvement of its business operations, increased efficiency, development of organizational expertise, and movement toward a full electronic commerce model for key

[96] The Federal Financial Management Improvement Act (FFMIA) of 1996, Public Law 104-208, Title VIII (31 U.S.C. § 3512) mandated that agencies implement and maintain systems that comply substantially with Federal Financial Management System Requirements (FFMSR), applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level. The FFMIA codified the JFMIP financial system requirements documents as a key benchmark that agency systems must meet to substantially comply with systems requirements provisions under FFMIA.

transactions. In addition, as described in more detail below, USAC has undertaken numerous initiatives to ensure conformity with corporate best practices regarding ethics and governance while keeping administrative costs in check.

USAC's many and significant operational improvements since 1998 are too numerous to recount in detail here, but USAC will highlight examples of these improvements in its responses to specific *NPRM* questions below. The Commission has specifically recognized USAC's improvements in the Rural Health Care program: "USAC has streamlined the application process significantly in response to the numerous comments submitted in this proceeding on this issue. . . . We believe USAC's efforts to ease the burdens of applying to the program have been exemplary, as further evidenced by the number of completed applications received by USAC in Funding Year 2003 compared to Funding Year 2002."[97] With respect to the Schools and Libraries program, GAO has recognized the administrative procedures put in place by USAC "generally appear to be sensible and represent thoughtful administration of the E-rate program" and the Commission has codified many procedures initially developed by USAC to address unanticipated situations.[98]

USAC has been audited every year since it was created pursuant to Part 54 of the Commission's rules.[99] Each audit has found that USAC's financial statements fairly present the financial position of USAC and each of the programs. In addition, the annual

[97] *RHC First Order*, 18 FCC Rcd at 24573-74, ¶¶ 53-54.

[98] *See GAO 2005 E-Rate Report* at 28.

[99] *See, e.g.*, Deloitte & Touche LLP, INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING AGREED-UPON PROCEDURES, Exhibit XXXXV (Jun. 23, 2004) (*D&T 2004 Part 54 AUP Report*) (providing AUP engagement program); Deloitte & Touche LLP, UNIVERSAL SERVICE ADMINISTRATIVE COMPANY (USAC) AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED DECEMBER 31, 2003 AND 2002 AND INDEPENDENT AUDITOR'S REPORT (June 23, 2004).

agreed upon procedures reviews of USAC's operations mandated by Part 54 have found no major concerns with the operating and internal control policies of USAC. In every case where an audit has recommended a process or system improvement, USAC either has followed the recommendation or is in the process of doing so.

USAC has creatively addressed other issues. In 2003, for example, USAC created a Task Force on Prevention of Waste, Fraud and Abuse in the Schools and Libraries program.[100] The group was comprised of representatives of a broad range of program participants, including representatives of public, private, and religious schools, libraries, consortia leaders, large and small phone companies, Internet service providers, networking equipment manufacturers, state program coordinators, and consultants. The Commission has cited the Task Force report on numerous occasions in subsequent rulemaking documents, including this *NPRM*.[101]

In addition, USAC has successfully met the challenge of defending the USF in judicial proceedings, including contributor and beneficiary bankruptcies. For example, in the *LAN Tamers* case, USAC established a far-reaching precedent that protects USF beneficiaries from misappropriation of universal service funds by bankrupt service providers or their creditors.[102] Given the high number of service provider bankruptcies in

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[100] *See* USAC, RECOMMENDATIONS OF THE TASK FORCE ON THE PREVENTION OF WASTE, FRAUD AND ABUSE, CONVENED BY THE SCHOOLS AND LIBRARIES DIVISION (filed Sept. 23, 2003) (*Task Force Recommendations)*; USAC, SCHOOLS AND LIBRARIES DIVISION INTERIM RESPONSE TO THE RECOMMENDATIONS OF THE TASK FORCE ON THE PREVENTION OF WASTE, FRAUD, AND ABUSE (filed Nov. 26, 2003) (*Task Force Response*). Both documents on file with the Commission in CC Docket No. 02-6.

[101] *See, e.g., Schools and Libraries Third Order*, 18 FCC Rcd 26912, ¶ 3; *Schools and Libraries Fifth Order*, 19 FCC Rcd at 15827, ¶ 54 n.103; *NPRM*, ¶ 7.

[102] *See In re LAN Tamers, Inc.*, 329 F.3d 204, 213 (1st Cir. 2002), *cert. denied*, 124 S. Ct. 808 (2003) ("A conclusion that the reimbursements should be distributed to the creditors would [among other things] provide a windfall to the creditors at the expense of Springfield's public schools and its students, contrary to the dictates of the statutory and regulatory text underlying the E-Rate program.").

recent years,[103] *LAN Tamers* has helped USF beneficiaries immeasurably by allowing them to receive USF reimbursements for services already paid for without becoming involved in the bankruptcy proceedings of service providers.

USAC also obtained a federal preemption ruling from a state court when a consultant to a school district sought damages from the USF based upon the consultant's failure to timely file its client's application.[104] The court ultimately held that the Commission's appeals process preempts private causes of action under state law. In consultation with Commission attorneys, USAC's litigation strategies in these and other cases have proven effective and are continually shaped by strategic considerations geared toward to protecting the integrity of the USF programs and beneficiaries.

Neither the successes described here nor the suggestions for improvements set forth elsewhere in USAC's comments could be possible without a strong organization filled with talented and dedicated people. USAC built such an organization from the ground up starting in September 1997, and the development of USAC's committed and experienced staff, overseen by an experienced Board of Directors, has been critical to USAC's success in this extremely complex and fluid endeavor.

iv. USAC Has Demonstrated a Strong Commitment to Customer Service, Education and Communication

USAC must continually communicate with USF program participants regarding important developments, train them on current and new program requirements, and provide information regarding the status of their transactions with USAC. Effective and

[103] USAC addresses its activities to protect the USF in contributor bankruptcy proceedings in Appendix A at 15-17.

[104] *See Special Sch. Dist. No. 1, Minn. Pub. Sch. v. Armstrong v. Universal Service Admin. Co.*, No. CT 03-17456, slip op. (D. Minn. Jul. 14, 2004), *appeal docketed*, Nos. A05-1227, A05-1446 (Minn. Ct. App.).

comprehensive education and training are vital and USAC strives to provide a high level of customer service and to maintain effective communication with stakeholders across all programs.

USAC operates customer support centers for each program and USF contributors. USAC staff engages in extensive communications with stakeholder groups. USAC's website—which is currently being redesigned in order to better serve customers—contains detailed information regarding all facets of the USF. USAC works with its customers to develop and publish best practices to enable program participants to provide accurate information to USAC in a timely manner and understand the consequences of not meeting deadlines or following the Commission's rules. Through education and outreach, USAC can clarify what is required from program participants and what they can expect from USAC. USAC also conducts training events and participates in stakeholder conferences.

In 2004, USAC created a new initiative to conduct approximately 1,000 site visits per year to applicants who have received Schools and Libraries program discounted services. The Site Visit Initiative has provided an important opportunity for applicants to provide feedback on the program and USAC's operations. Site visits also provide USAC an opportunity to ensure applicants are aware of program rules and to assess how USAC needs to improve its general outreach efforts. Finally, site visits provide USAC with an opportunity to observe how the services are being used in schools and libraries. The success of the Site Visit Initiative in the Schools and Libraries program has led the USAC Board of Directors to conclude that it should be expanded to the other universal service programs.

v. USAC Has Aggressively Attacked Waste, Fraud and Abuse

USAC made prevention, detection, and deterrence of waste, fraud, and abuse a high priority since its creation. USAC's approach to protect against waste, fraud, and abuse in the universal service programs is multi-faceted. USAC continually tightens its procedures to ensure commitments and disbursements are accurate and are made in compliance with program rules. Its front-end program integrity efforts in the Schools and Libraries program, for example, result in denials when applications do not comply with the Commission's rules and USAC's review processes serve as an important deterrent. USAC maintains whistleblower hotlines for each of the programs and for contributions matters, and has a fully staffed Internal Audit Division to audit program beneficiaries and USF contributors as well as USAC's internal operations. USAC established collaborative relationships with enforcement and investigative personnel, particularly the Commission's Office of Inspector General, and other law enforcement agencies, including the Department of Justice. USAC discusses its many program integrity controls throughout these comments.[105]

vi. USAC's Administrative Costs Are Low

USAC's costs to administer the universal service programs are extremely low when compared to other governmental and non-governmental not-for-profit organizations. In 2004, USAC administrative costs (*i.e.*, expenses incurred by USAC to administer the USF and the four universal service support programs) were $64.3 million, which represented 1.12% of the more than $5.7 billion of overall USF expenses,

[105] *See* below at 104-198; Appendix A.

including program disbursements. USAC's annual administrative costs for 1998 through 2004 averaged 1.08% of overall USF expenses. USAC's administrative costs by year are included in Appendix B.

Although the unique nature of USAC and the USF make direct benchmarking somewhat difficult, USAC has compared its administrative costs to large not-for-profit foundations, charitable organizations and certain government programs for which administrative expense information is obtainable.[106] When compared to the top 20 foundations in the United States, USAC's 2004 administrative expenses of 1.12% compare very favorably to the average of 9.92% for this group of foundations. In 2003, the largest foundation, disbursed approximately $1.5 billion and spent 3.7% of disbursements on administrative costs.[107] The results are virtually identical when comparing USAC to the top 20 charitable organizations. The largest charitable organizations, such as the American Red Cross and the Salvation Army, incurred administrative expenses (excluding fundraising costs) in the 5%-11% range on annual expenditures exceeding $2.5 billion.[108]

With respect to governmental organizations for which data was available, USAC's administrative expenses compare extremely favorably to those of both larger and smaller government programs. The Department of Agriculture's Rural Development program incurred administrative expenses of 4.21% on expenditures of almost $15 billion

[106] The data and sources compiled by USAC are attached to these comments as Appendix B.

[107] Appendix B at 2, citing Bill & Melinda Gates Foundation 2003 Annual Report, http:// www.gatesfoundation.org/nr/public/media/annualreports/annualreport03/flash/Gates_AR-2003.html.

[108] Appendix B at 3 (citing The Non-Profit Times (http://www.nptimes.com/Nov04 /sr_npt100.html); American Red Cross Consolidated 2004 Financial Statements, http://www.redcross.org /pubs/car04/CFS04.pdf; Salvation Army 2004 Annual Report, http://www.salvationarmyusa.org /usn/www_usn.nsf/vw-dynamic-arrays/0241BE91850B4E0885256E4B0056F94F?openDocument).

during the most recent year for which data is available. The Department of Education incurred $1.1 billion, or 1.74%, in administrative expenses on overall expenditures of $63 billion.[109]

In short, the wide range of available data discussed here and in Appendix B demonstrates that USAC's administrative expenses for the complex, constantly changing, and growing set of USF programs are at least comparable to those with the lowest administrative costs, and are significantly lower than the vast majority of potentially comparable programs and organizations. Moreover, USAC's percentage of administrative costs relative to program disbursements has remained relatively constant despite the Commission's introduction of new programs, increased complexity in USF administration, and additional audit and program integrity activities. USAC's ability to keep costs low is attributable in large part to each member of the USAC Board of Directors being a stakeholder in the USF with a strong incentive—indeed, a fiduciary obligation—to keep administrative costs low. The number of audits to which USAC is subject and the pervasive oversight of the USF by the Commission, Congress, and others further contributes to a corporate culture in which fiscal efficiency and prudence are a primary focus.

b. Opportunities for Improvement in the Administration of Universal Service

Throughout the *NPRM*, the Commission seeks comment on proposals that would alter the way USAC performs its functions and the manner in which the Commission oversees USAC and the USF. Paragraph 11 of the *NPRM* seeks comment on "any

[109] Appendix B at 4 (citing 2005 Budget of the U.S. Government, http://www.whitehouse.gov /omb/budget/fy2005/budget.html).

weaknesses in USAC's performance or areas that need improvement" as well as on "the Commission's management and oversight of USAC." Despite USAC's record of accomplishments described above, and despite the Commission's dedication to improving universal service, there are opportunities for improvement in both USAC's administration of the USF programs and the Commission's oversight of USAC and the USF.

i. Opportunities for USAC Improvement

Despite USAC's successes as USF Administrator, and notwithstanding USAC's ongoing efforts to make its processes more efficient and effective, opportunities remain for USAC to improve. In addition to the specific items discussed below—which USAC has identified and has already taken steps to address—USAC looks forward to hearing from commenters in this proceeding with additional suggestions for improvement.

A. Improving the Timeliness of Schools and Libraries Program Funding Decisions

USAC continues to seek to improve the process for timely issuance of funding commitments and certain other decisions in the Schools and Libraries program. Both the Commission and USAC must continue to streamline the program to the fullest extent possible without compromising program integrity.

While one of the goals of the program is to issue funding commitments before the July 1 start of each funding year so that schools and libraries are in a position to budget responsibly and install equipment, certain constraints have hampered USAC's ability to meet this target. For example, in Funding Year 2005 more than 38,000 applications were submitted to USAC, over half of which were filed during the final week of the filing

window.[110] This gave USAC approximately 120 days to review each of the more than 125,000 individual funding requests to meet the July 1 date.[111] Many applications require contact with program participants and service providers in order to verify eligibility and perform other checks required by Commission regulations, further slowing the process. In certain situations raising new policy issues, USAC must consult with the Commission before processing applications. The unfortunate cumulative effect of these constraints has been to delay funding commitments currently and in prior years.

USAC recognizes that the complexity of the Schools and Libraries program has created difficulties for some program participants. The fact remains, however, that USAC must find ways to render decisions more quickly. To address this situation, USAC has sought to refine its internal procedures within the scope of its administrative authority while ensuring program integrity is maintained. USAC will address some of the specific steps it has taken to improve timeliness in more detail below.[112] In addition, USAC has devoted significant resources this year to speed up review and payment of invoices. New process improvements have resulted in a 40% improvement in the number of invoices paid within 30 days between January and August 2005.

B. Improving Customer Service, Education, and Communication

Particularly in the Schools and Libraries program, USAC's Client Service Bureau (CSB) has been criticized for providing inconsistent or inaccurate information to program participants. In addition, the complexity of the Schools and Libraries program and the

[110] Appendix A at 69.

[111] *Id.*

[112] *See* below at 111-12, 119-25.

various levels of program integrity review required by USAC's procedures sometimes lead USAC to make repetitive requests for information from applicants and service providers. USAC is working diligently to address these issues. Through enhancements to its procedures, USAC has made strides to become more accurate and timely in responding to questions and consolidating information requests. Moreover, USAC is continuing to improve its communication with all USF stakeholder groups. USAC is doing more to reach small rural carriers who receive High Cost program funding, for example, and is striving to increase further participation in the Rural Health Care program. USAC has centralized its education and communications efforts, hired new staff, and plans to expand its outreach efforts further in the coming months.

Although USAC's website contains a great deal of essential information and is successfully used for many transactions, USAC recognizes it needs to be more user-friendly and is planning to release a redesigned and improved website in late 2005.

C. Developing Additional Performance Measures

As recognized by the Commission in this *NPRM* and identified by GAO, performance measures for the universal service programs and USAC's performance as Administrator need to improve.[113] USAC must also develop more meaningful measurements of its own performance as USF Administrator. This is discussed in greater detail below.[114]

[113] *See GAO E-Rate Report* at 19-26; *NPRM*, ¶¶ 24-31.

[114] *See* below at 84-101.

D. Continuing to Improve Prevention, Detection, and Deterrence of Waste, Fraud, and Abuse

Program integrity has been a key focal point since USAC was entrusted with administering the USF. Despite the best efforts of USAC and the Commission, there are those who seek to abuse the universal service programs. The numerous audits and investigations conducted by USAC and other parties, including law enforcement authorities, have revealed instances of improper use of universal service funds, including in a small number of situations intentional efforts to defraud the program.[115]

USAC and the Commission have identified numerous instances of rule violations and USAC has sought recovery of disbursed funds in each of the programs. The Commission notes:

> The recommended recovery amounts are small in comparison to the more than $31 billion in funds disbursed since 1997, demonstrating that the great majority of Schools and Libraries, High Cost, Low Income, and Rural Health Care program recipients follow the rules and have not engaged in fraud. Nonetheless, even a situation that results in 0.67 percent of our funds being recovered as improperly disbursed represents a weakness in the operation of the programs, which needs to be corrected.[116]

Robust and frequently calibrated program integrity assurance efforts at the front end of the process, a strong audit regimen, and swift enforcement actions remain the most effective deterrent to waste, fraud, and abuse, particularly with programs such as these that rely heavily on self-certification by participants. USAC recognizes its efforts to ensure program integrity are vital and that it must continue to seek opportunities to

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[115] *NPRM*, ¶ 70.

[116] *Id*. As a general point of comparison, the Centers for Medicare and Medicaid Services conducted a Medicare fee-for-service error rate testing program. In 2004, Medicare fee-for-service payments totaled $213.5 billion. The net errors amount, defined as overpayments less under payments, was $19.9 billion, or 9.3%. In 2003, Medicare fee-for-service payments totaled $199.1 billion and the net error rate was 9.8%.

improve these efforts. The many measures that USAC has implemented or is planning to detect, deter, and prevent waste, fraud, and abuse are described below in response to the Commission's specific questions.

E. Improving USAC's Internal Systems

In order for USAC to improve its performance in any of the areas described here—faster decisions, improved customer service, more meaningful performance measures, and improved program integrity—USAC must continue to improve its internal systems to ensure they are fully integrated, sophisticated enough to handle future program changes, and can communicate properly with the Commission and with program participants. This is an issue that USAC is well on its way to addressing. For example, USAC is awaiting comment from Commission staff regarding its proposal to develop a consolidated USF financial management system that will be fully compliant with GovGAAP as required by Commission rules.[117] Other operational and information technology improvements are on the drawing board. These necessary steps will enable USAC to serve all USF program participants more efficiently and effectively.

(ii) Commission Management and Oversight of the USF

USAC has a close working relationship with the Commission governed by regulations set forth in 47 C.F.R. Part 54, by an extensive framework of orders and other decisions interpreting and further codifying the legal framework for the programs and collecting contributions, and by guidance provided by Commission staff to USAC on a more informal basis as issues arise. The complexity of the programs requires constant

[117] 47 C.F.R. 54.702(n).

communication between Commission staff and USAC. The Commission seeks comment on its management and oversight of USAC and whether additional regulations are warranted.[118]

In most respects, USAC believes that the framework governing its relationship with the Commission in the current rules and orders is appropriate. As the Commission stated in the *USAC Reorganization Order*:

> The Commission retains ultimate control over the operation of the federal universal service support mechanisms through its authority to establish the rules governing the support mechanisms and through its review of administrative decisions that are appealed to the Commission. The consolidated USAC will continue to be accountable to the Commission through the procedures that currently apply to USAC, SLC, and RHCC. In fact, USAC's appointment as permanent Administrator and the expansion of its responsibilities are conditioned on its compliance with Commission rules and orders. Existing procedures to ensure accountability include the Commission's universal service rules, which provide detailed guidance on administration of the universal service support mechanisms, annual audit requirements, regular coordination with Commission staff, and quarterly filing of projected administrative expenses and estimates of support mechanism demand. In addition, the Commission will continue to oversee the structure and content of the annual independent audit that USAC is required to undertake.[119]

More than a year earlier, the Commission made a similar observation:

> In the Universal Service and NECA orders, the Commission adopted detailed rules governing the implementation and operation of the new universal service support mechanisms. As in the case of any new program, implementation of the support mechanisms will require the administering corporations to exercise judgment and discretion in interpreting the governing rules. USAC, the Schools and Libraries Corporation, or the Rural Health Care Corporation may encounter complex issues that require

[118] *See NPRM*, ¶ 11.

[119] *USAC Reorganization Order*, 13 FCC Rcd at 25067-68, ¶ 17 (footnotes omitted).

> expeditious resolution in order to avoid undue prejudice to individual applicants for support or in order to prevent delayed implementation of the universal service program generally, but with respect to which our rules do not provide specific guidance. We anticipate that USAC and the Corporations will exercise sound judgment and discretion in such circumstances, in a manner that is consistent with the Commission's overall policies and rules governing the universal service programs. Of course, acknowledging the need for such discretion in no way diminishes our commitment to the impartial allocation of funds to individual applicants by entities administering the universal service support mechanisms.[120]

Thus, the Commission contemplated there would be a line between "administrative" matters within USAC's purview, subject to Commission oversight and audits, and "policy" matters requiring specific Commission direction.[121]

USAC respectfully suggests that the Commission work with USAC in an effort to establish further clarity regarding administrative matters entrusted to USAC and policy decisions requiring Commission or staff action. In addition, USF administration would benefit from clarification of what policy matters need to be addressed by formal rules or orders and what matters rest with the Commission staff to provide guidance to USAC. This could be accomplished by articulating additional general principles and/or carving out specific areas entrusted to USAC in addition to USAC's responsibilities already set forth in current law.

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[120] *Changes to the Board of Directors of the National Exchange Carrier Association, Federal-State Joint Board on Universal Service,* Docket Nos. 97-21, 96-45, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12444, 12451-52, ¶ 17 (1997) (footnote omitted).

[121] *See, e.g.,* 47 C.F.R. §§ 54.702(c) ("The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission."); 54.704(a)(1) ("The [USAC] Chief Executive Officer shall have management responsibility for the administration of the federal universal service support mechanisms."); 54.702 (setting forth USAC's functions and responsibilities generally); 54.705 (describing functions of programmatic committees of USAC Board of Directors).

USAC also respectfully suggests that the Commission consider consolidating its USF oversight functions in some manner. As the *NPRM* notes:

> Currently, one division in the Wireline Competition Bureau ("Bureau"), the Telecommunications Access Policy Division, works with USAC to implement USF administration. Personnel from other Commission bureaus and offices such as the Office of the Managing Director ("OMD"), the Enforcement Bureau, and the Office of the Inspector General ("OIG"), also assist with managing and overseeing the USF and USAC. The Commission provides USAC with oral and written guidance, as well as regulation through its rulemaking process.[122]

This illustrates that numerous Commission offices and bureaus provide direction to USAC. To the extent the Commission can centralize USF matters, the Commission and its staff could speak with a single voice on USF administration and USAC would be able to direct inquiries to a single place. USAC can also do its part to improve the manner in which it brings policy issues to the attention of the Commission. This is an area where both USAC and the Commission can and should work closely to establish mutual expectations, clear protocols and expected turnaround times.

In short, some adjustments, either through reevaluating existing rules, initiating rule changes, or by some other means such as a memorandum of understanding between USAC and the Commission, appear to be appropriate to clarify mutual expectations.[123] USAC welcomes the opportunity to work with the Commission to address these issues.

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[122] *NPRM*, ¶ 4.

[123] *See* NPRM, ¶ 12.

c. Considerations in Assessing Whether the Public Interest Would Be Served by Fundamentally Restructuring USF Administration

The *NPRM* seeks comment on whether the Commission should replace USAC with another type of administrative structure or entity and whether using a not-for-profit corporation as the permanent Administrator of the USF has worked successfully.[124] While the decision whether to change fundamentally the manner in which the USF is administered is ultimately a policy question, there are numerous administrative ramifications to be considered.

As discussed in Part II above, the Commission's decision to turn to USAC to administer the universal service programs was based upon the agency's recognition that the 1996 Act was intended to build upon the foundation of the preexisting universal service programs. In directing the Commission to convene the Joint Board to recommend an administrative structure,[125] Congress was well aware that NECA, a private entity, had administered the predecessor to today's USF without a contract with the Commission for more than a decade when Congress passed the 1996 Act.[126]

In designating USAC as Administrator, the Commission deliberately established a relationship different in kind from those between federal agencies and government contractors. It opted to govern the relationship through extensive regulation and close oversight, maximizing the Commission's ability to ensure accountability and make swift decisions concerning the USF. In short, the Commission established a close partnership,

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[124] *NPRM* ¶¶ 12-13.

[125] 47 USC § 254(a).

[126] As the Commission has explained, "we find no indication that Congress sought to dismantle the existing administrative system, or to prohibit the Commission from using NECA, or another independent entity to administer universal service." *USAC Reorganization Order*, 13 FCC Rcd at 25066, ¶ 14.

not a typical business arrangement, with USAC. For example, the Commission desired the ability to oversee the appointment and removal of members of the USAC Board of Directors and Chief Executive Officer; through such oversight, USAC is "directly accountable to the Commission" for the performance of its duties.[127] In addition, the Commission required USAC's Board to "achieve a balance of broad industry and beneficiary representation" of USF stakeholders.[128] The Chairman's power to appoint and remove members of the USAC Board of Directors would be unavailable in an arms-length contractual relationship, as would the detailed regulations governing the composition and authority of USAC's board committees.

The degree of oversight and control of USAC exercised by the Commission is distinctly different from that inherent in a typical government contract. For instance, the Commission directed USAC to submit by-laws for approval.[129] In addition, to ensure even greater accountability and to address concerns expressed by Congress, the Commission prohibited the USF Administrator from advocating on policy matters, capped employee salaries, and required an annual report to Congress and to the Commission. None of these would be governmental concerns or areas of control in a contractual relationship.

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[127] *See USAC Appointment Order*, 12 FCC Rcd at 18424, ¶ 41.

[128] *See id.* at 18420, ¶ 34 ("Our objective is to enable USAC's Board to achieve a balance of broad industry and beneficiary representation and administrative efficiency so that the Board can implement the new support mechanisms in a neutral and efficient manner"); *id.* at 18429, ¶ 54 ("We conclude that the creation of a [High Cost and Low Income] committee comprised of Board members with expertise on the issues associated with the support mechanisms for high cost areas and low-income consumers will facilitate efficient and responsive decision making on these issues.").

[129] *See id. at* 18415, ¶ 25 (directing creation of USAC and determining size and composition of USAC Board and programmatic committees).

Moreover, in designating USAC as the permanent Administrator of the USF, the Commission expressed a strong desire for streamlined decision-making and minimal bureaucracy.[130] A contractual relationship between a USF Administrator and the Commission could adversely affect the speed and flexibility of implementing Commission-directed changes to the universal service programs. Were the Commission to contract for universal service administrative services pursuant to federal procurement laws, the contract would be subject to mandatory Federal Acquisition Regulation (FAR)[131] provisions regarding, among other things, contract changes,[132] which can be extremely costly in the world of government contracts. The Commission's flexibility to alter program administration in a cost-effective manner during a contract term could affect the Commission's ability to change course swiftly when required by circumstances such as the recently issued *Katrina Order*. The resources that would have to be devoted to contract negotiation and implementation, and management would either mean less money for universal service or a higher contribution factor. Moreover, a contractual relationship exposes the Commission to contract dispute resolution processes.[133] In short, a contractual approach would increase the bureaucratic red tape associated with administering the programs. In addition, the Commission has recognized that contracting

[130] *See, e.g., USAC Reorganization Order*, 13 FCC Rcd at 25064-65, ¶ 12 ("establishing USAC as the single administrator establishes clear lines of accountability").

[131] *See* 48 C.F.R. Chapter 1

[132] *See* 48 C.F.R. Chapter 1, Part 43.

[133] Entering into a contract for administration of the USF would also put the Commission under the provisions of the Contract Disputes Act, 41 U.S.C. § 601 *et seq.* and the mandatory implementing regulations and contract clauses of the FAR. As a result, USAC or any other universal service contractor would be entitled to assert claims against the Commission for increased costs arising out of FCC-imposed changes and other disputes arising under the relationship.

with an entity to administer the USF could require the Commission to obtain additional funds specifically appropriated for that purpose.[134]

The Commission recognized that designating USAC as the permanent Administrator and folding the functions of the SLC and RHCC into a single entity provided invaluable continuity and efficiency. Indeed, the Commission found that USAC "was uniquely qualified to assume responsibility for all the support mechanisms." The Commission also concluded that designating USAC would minimize the disruption that could occur if it were to appoint an entity not previously involved in the administration of universal service.[135] In this regard, the Commission has recognized that were it to select a permanent Administrator through a competitive bidding or other process, it could take up to two years before a new Administrator could be fully operational.[136] In light of the considerable expertise in the administration of the universal service programs USAC has developed over the past seven years, the Commission's 1998 concerns that a "midstream change" could be disruptive would appear to remain valid, particularly given the many policies and programs implemented since then.[137]

The Commission notes that it has competitively-bid contracts with the National Number Block Pooling and North American Numbering Plan Administrator and posits

[134] *See Fishel GAO Letter* at 4 ("[W]e intend to consider examining other administrative structures, including those relying on contractual arrangements. We also expect to examine the implications of alternative administrative structures, such as any need for increased appropriations to implement a contractual arrangement.").

[135] *See USAC Reorganization Order*, 13 FCC Rcd at 25064-65, ¶¶ 10-12.

[136] *See USAC Appointment Order*, 12 FCC Rcd at 18416, ¶ 27 n.95.

[137] *See Report to Congress*, 13 FCC Rcd at 11816, ¶ 9.

that such contracts have provided unspecified cost benefits.[138] While it is not clear what cost benefits have been realized, the size, scope, and complexity of the USF and the universal service programs greatly exceed the numbering and number pooling functions. The budget for numbering administration for fiscal year 2005, including disbursements and administrative expenses, was $6,903,158.[139] This is 0.12% of total 2004 USF disbursements and expenses of $5,729,559,000.[140]

It is difficult to see how outside parties could "bid" for the job of USF Administrator since the USF Administrator receives no compensation from the Commission or the federal government. USAC currently administers the USF without an annual appropriation from the federal government, collects zero profit, and, as discussed above, incurs extremely low administrative expenses. Moreover, if a competitive bidding process for the administration of the USF were to be conducted,[141] it is not clear whether USAC itself could bid on the work. USAC has no assets and no ability to recover its bidding costs; such costs would be substantial in a procurement of this magnitude.

d. Proposed Memorandum of Understanding

The Commission asks whether it should retain USAC as Administrator pursuant to a memorandum of understanding between the Commission and USAC.[142] USAC understands the Commission to be suggesting an agreement that would define in more

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[138] *NPRM*, ¶ 13.

[139] *See Proposed North American Numbering Plan Administrative Fund Size Estimate and Contribution Factor for July 2005 Through June 2006*, CC Docket No. 92-237, Public Notice, DA 05-1565 (rel. June 1, 2005).

[140] *See* Appendix A.

[141] *NPRM*, ¶ 12.

[142] *NPRM*, ¶ 12.

detail parameters of the relationship between USAC and the Commission but that would not be a FAR-based contract. In light of the unique nature of USAC's relationship with the Commission, creation of a memorandum of understanding further specifying the terms of the relationship seems appropriate at this time.[143] USAC welcomes the opportunity to work with the Commission to craft such a memorandum. The objectives of such a document should be made clear from the outset. For example, as discussed above, the parties could clarify what constitute purely administrative matters within the scope of USAC's authority versus policy matters which must be determined by the Commission and could establish mutual expectations and protocols regarding reporting, performance, requesting and providing guidance on policy issues, and numerous other matters.[144]

e. Neutrality of USF Administrator

The Commission notes in paragraph 14 of the *NPRM* that there are numerous regulatory requirements designed to ensure competitively neutral administration, and asks how proposals to change the current administrative structure would affect the independence and neutrality of USF program administration.[145] The Commission went to great lengths to structure USAC to ensure its neutrality as USF Administrator—neutrality was a central issue in USAC's creation and in the proceedings leading to USAC's designation as permanent Administrator. After considering input from many interested parties, the Commission concluded that "USAC's Board will be comprised of diverse

[143] *See GAO 2005 E-Rate Report* at 12 (suggesting that absence of memorandum of understanding between FCC and USAC is unusual as compared to other federal programs).

[144] *See* above at 41-44.

[145] *NPRM*, ¶ 14.

participants representing a wide variety of industry and beneficiary interests and, therefore can be expected to ensure that USAC will be operated in a competitively neutral and unbiased manner."[146] The Commission determined when appointing USAC permanent Administrator that "USAC fairly represents all interested parties, including a broad range of industry, consumer, and beneficiary groups."[147] Although the Commission modified the Board somewhat to address the SLC-RHCC merger, the Commission found "the USAC Board, as currently configured, generally has afforded fair representation of the diverse participants in, and competitively neutral administration of, the universal service support mechanisms."[148]

Thus, the Commission's rules provide for an experienced Board of Directors representing a balance of different interests.[149] Although a decision to alter fundamentally the composition of the USAC Board of directors is a policy matter, the board's experience has been that the current structure, which has representatives from each of the universal service support program participants and other stakeholders, contributes positively to overall program administration, as it provides a balance of views and insight into the needs of the various communities.

f. USAC Divestiture from NECA

The one-year review of USAC also included a review of whether USAC should be divested from NECA.[150] USAC suggests that, as a part of this comprehensive

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[146] *USAC Appointment Order*, 12 FCC Rcd at 18417-18, ¶ 29 (footnote omitted).

[147] *USAC Reorganization Order*, 13 FCC Rcd at 25069-70, ¶ 20 (footnote omitted).

[148] *Id.* at 25074, ¶ 29.

[149] *See* 47 C.F.R. §§ 54.703, 54.705.

[150] *See id.* at 25070, ¶ 21.

rulemaking process regarding USF administration, the Commission consider revisiting the question whether USAC should remain a technical subsidiary of NECA. NECA is prohibited by law from "participating in the functions of the Administrator." [151] Moreover, the two organizations share no business or other ties aside from the fact that NECA and its membership are stakeholders in the universal service programs and USAC currently relies on NECA to provide certain data to USAC pursuant to 47 C.F.R. Part 36. The time may be right to revisit the question whether USAC should continue to be a nominal subsidiary of NECA.

g. Issues Concerning USAC's Board of Directors

The current USAC Board of Directors structure ensures USAC's neutrality and accountability to the Commission and maximizes the Commission's control over USAC—key factors in the creation and appointment of USAC as permanent Administrator in 1998. Commission rules specify the role of the Chairman in appointing Board members, the composition of the Board, the fact that Board members are not compensated for their service, USAC's corporate structure, the duties of the Chief Executive Officer, and numerous other details of USAC's structure and functions. The *NPRM* asks several questions regarding the structure, composition, and meetings of the USAC Board of Directors, which USAC will address in turn below.[152]

[151] *See* 47 C.F.R. § 54.703(a). The relationship between USAC and NECA is arms-length. There are no common directors or shared personnel and the two companies operate in an entirely separate manner.

[152] *NPRM*, ¶ 15.

i. USAC Board Composition

As discussed above, the makeup of the Board was the product of extensive Commission proceedings that included comment from all USF stakeholders.[153] There is no evidence the existing Board composition has raised any difficulties in administering the universal service programs. On the contrary, the Board contains representatives from all types of USF contributors and beneficiaries, along with representatives of state regulators and consumer advocates, which ensures the interests of all stakeholders are considered. Although the Board believes that its broad composition has served the USF well, the Commission could, as a policy matter, assess whether revisions are appropriate to reflect changes in the marketplace and in the USF stakeholder community.

ii. USAC Board Committees

The Commission's rules require the USAC Board of Directors to have three programmatic committees: the High Cost & Low Income Committee, the Rural Health Care Committee, and the Schools & Libraries Committee.[154] The Commission seeks comment on whether additional or fewer committees would be administratively efficient and useful and whether it should revise its rules to clarify or specify the organizational structure of USAC's committees.[155]

USAC is a private, not-for-profit Delaware corporation. Detailed and sophisticated law guides USAC's corporate governance. USAC's by-laws authorize the

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[153] *See* above at 4-11.

[154] *See* 47 C.F.R. § 54.705.

[155] *NPRM*, ¶ 14.

Board of Directors to establish other committees as the Board deems appropriate.[156] Pursuant to this authority, and consistent with its fiduciary duties to the corporation and the USF, the USAC Board of Directors established an executive committee, an audit committee and an investment committee.[157] The Board also establishes *ad hoc* committees, such as nominating committees, from time to time. The composition and duties of the programmatic committees set forth in regulation are designed to ensure appropriate stakeholder representation and effective administration of the programs. Other committees—executive, audit and investment—are concerned with USAC's corporate identity and governance and hence need not be codified by regulation. Evolving standards of corporate best practices may require additional or different committees and USAC requires flexibility to allow it to respond to changes. To allow Board members to exercise their fiduciary duties properly, the authority of the Board to create new committees should be maintained regardless of whether the Commission itself adds more committees.

iii. Closed Sessions of USAC Board Meetings

USAC's structure requires and its culture encourages transparency. This benefits all USF stakeholders. The Commission seeks comment on whether the USAC Board of Directors should be permitted to enter into closed sessions in which Commission staff and members of the public are excluded.[158] The Commission recognizes that although meetings of USAC's Board of Directors are open to the public, there may be instances

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[156] *See* USAC By-laws, Art. II(8) (available at http://universalservice.org/download/usacbylaws.pdf) (*USAC By-laws*).

[157] The USAC Investment Committee contains directors and certain senior staff members.

[158] *NPRM*, ¶ 16.

where a private meeting or portion of a meeting is warranted.[159] The Commission asks whether it should adopt procedures to identify appropriate instances of when the USAC Board may hold closed sessions.[160]

The nature of the issues that come before the USAC Board and its committees require some business to be conducted in closed, or "executive" session.[161] The USAC Board of Directors implemented specific and detailed criteria and procedures regarding when closed sessions are appropriate in 2000.[162] Examples of criteria for discussing matters in closed session include: pre-decisional matters before a governmental agency (*e.g.*, the Commission) to which USAC is privy; matters subject to attorney-client privilege; USAC's contractual and procurement matters; pending enforcement actions; and internal rules and procedures concerning program administration where discussion of the matter in open session would result in disclosure of confidential information that would compromise program integrity. USAC's Audit Committee meets in closed session at least annually with both the Vice President of Internal Audit and USAC's external auditors. USAC must follow specified procedures concerning the conduct of proceedings in closed session. There must be specific grounds articulated for entering into closed session and whether to do so requires a vote. At the conclusion of a closed session, the

[159] *See USAC Appointment Order*, 12 FCC Rcd at 18438-39, ¶¶ 71, 73; 47 C.F.R. § 54.703(e); *see also USAC By-laws*, Article II(6) (approved by Commission).

[160] *NPRM*, ¶16.

[161] An "executive session" is "any meeting or part of a meeting where the proceedings are to be kept secret." *Robert's Rules of Order* at 88-89 (Modern. Ed. 1989). USAC's corporate by-laws provide for the recordation of minutes for "closed executive sessions where proprietary matters are discussed and reviewed." Actions that involve "proprietary information" must be summarized in sufficient detail to inform the public of the action taken, but without infringing upon any privacy rights. *USAC By-laws*, Article II(6).

[162] *See* USAC Board of Directors, *Approval of Criteria and Procedure for USAC Board and Committee Executive Sessions* (approved October 2000), attached hereto as Exhibit 1.

chair must report generally on the matters discussed. Meeting minutes of closed sessions are kept and posted on USAC's website.

The question of who should be allowed to attend closed sessions is a matter appropriately left to the USAC Board of Directors on a case-by-case basis in accordance with Board members' fiduciary duties. In general, unless the issue relates to a matter involving USAC's relationship with the Commission upon which the advice of counsel has been sought, Commission staff has attended closed sessions of the Board and its committees.[163] This is consistent with USAC's view of its work with the Commission as an open partnership. There are instances, however, where only directors and officers, or directors only, or even a subset of directors, are allowed to participate in discussion of certain issues. These are typically matters of corporate governance or sensitive personnel issues that are appropriately left to the discretion of the USAC Board of Directors on a case-by-case basis in accordance with its fiduciary duties, subject to the detailed standards described above.

h. USAC's Ethical Standards and Treatment of Confidential Information

The Commission seeks comment on whether it should adopt rules regarding USAC's ethics standards and treatment of confidential information.[164] As described below, USAC already has adopted comprehensive ethical standards and has policies in place regarding handling of confidential information.

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[163] Were the Commission to select a private contractor or similar entity to administer the USF, it seems unlikely as a matter of corporate governance that the Commission could require open board meetings and that such an entity would adopt the similar procedures for closed sessions described above.

[164] NPRM, ¶16.

i. USAC's Ethical Standards

USAC has had a strict code of ethical conduct applicable to all employees since 1998 and a similar ethics policy for its Board of Directors since 2000. USAC's Vice President and General Counsel serves as the company's ethics officer and regularly consults with employees and directors concerning conflict of interest and other ethics issues. In addition, USAC's ethics officer provides mandatory ethics training to all employees annually.

In addition to its corporate fiduciary duties of care and loyalty, the USAC Board of Directors adheres to a strict ethics policy contained in the *Statement of Ethical Conduct for Members of the USAC Board of Directors (USAC Director Code)*.[165] Recognizing that the USAC Board is purposely structured to ensure that the views of many differing interests are heard and considered, the Board's ethics policy states that a director, in bringing to the attention of the Board the particular sensitivities and concerns of his or her constituency, is assisting the entire Board and enhancing the Board's decision making process. The director's duty of loyalty to USAC, however, requires the director ultimately to use his or her position to represent USAC's overall interests—that is, the interests of the corporate entity—and not the interests of his or her constituency. The *USAC Director Code* explicitly forbids a director from using USAC resources for personal or business gain and from obtaining any benefit of any kind resulting from the director's relationship with USAC.

[165] *See Statement of Ethical Conduct for Members of the USAC Board of Directors* (approved January 2000) (*USAC Director Code)*, attached hereto as Exhibit 2.

Because of its unique composition, the USAC Board of Directors is acutely sensitive to actual, potential or apparent conflicts of interests. Any USAC director who is aware of a potential conflict of interest with respect to any matter coming before the Board or any committee of the Board is required to disclose the actual or potential conflict.[166] USAC management regularly consults with Board members regarding conflict of interest issues. Board members recuse themselves on matters that come before the Board relating to the company or entity with which they are associated. To assist in this process, Board members are required to submit annually a disclosure form listing all employment, consulting or director-level relationships with entities that do business with USAC in order to allow staff to identify actual, apparent or potential conflicts of interest regarding any issues that may come before the Board. In addition, before each quarterly Board of Directors meeting, USAC distributes a list of audit reports that will be presented to the Board and its committees so that each director can determine whether he or she needs to refrain from participating in consideration of specific reports.

USAC employees have been bound by strict ethical standards since October 1998.[167] The standards require at least biennial Board review to determine their adequacy, evaluate compliances, and revise to the extent necessary. The Board most recently approved USAC's ethics policy in October 2004.[168] Among other things, the

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[166] *USAC Director Code* ¶ 3.

[167] *Statement of Ethical Conduct for Employees, Definition of Gifts Prohibited, Definition of Financial Interest, and Outside Employment* (approved October 1998) (*USAC Employee Code*), attached hereto as Exhibit 3. The *USAC Employee Code* is similar in many respects to the Commission's ethics policies. *See* 47 C.F.R. § 19.735 *et. seq.*

[168] *See* Universal Service Administrative Company, October 19, 2004, Board of Directors Quarterly Meeting Minutes, Action Item a9 (available at http://universalservice.org/board/minutes/board/2004/101904.asp).

Statement of Ethical Conduct for Employees, Definition of Gifts Prohibited, Definition of Financial Interest, and Outside Employment (*USAC Employee Code*) expressly prohibits an employee from soliciting or accepting

> anything of substantial monetary value (including any gift, gratuity, favor, entertainment, loan, or any other consideration) from any person, corporation, association, or other entity which has, or is seeking, a contractual, donative, employment, financial, or other beneficial relationship with the Company, which relationship may subsequently affect or influence the Employee's performance of his or her duties to the Company or the Employee's loyalty to USAC or discharge of responsibilities with uncompromised integrity.[169]

The definition of prohibited gifts is broad.[170]

In addition, the *USAC Employee Code* provides that an employee violates his or her duties of care and loyalty to USAC if

> [h]e or she knowingly permits the Company to enter into a business transaction with himself or herself, or with any corporation, partnership, or association, in which he or she holds a position as trustee, director, partner, general manager, principal officer, or substantial shareholder or beneficial owner, without previously having informed all persons charged with approving that transaction of his or her interest or position and of any significant facts known to him or her indicating that the transaction might not be in the best interest of the Company.[171]

Moreover, "[n]o Employee may engage, directly or indirectly, in financial, business, trade, or professional transactions as a result of, or in primary reliance upon,

[169] *USAC Employee Code* ¶ 2.

[170] *See USAC Employee Code, Definition of Gifts Prohibited.*

[171] *USAC Employee Code* ¶ 7.

information obtained through his or her employment, or the discharge of his or her corporate responsibilities."[172]

USAC employees are also subject to annual financial disclosure requirements. The *USAC Employee Code* provides that

> [n]o Employee may have direct or indirect financial interests, or engage in any outside employment or activities, which conflict substantially, or have the appearance of conflicting substantially, with his or her corporate responsibilities and duties. The Company shall develop guidelines for determining such a substantial conflict or appearance of substantial conflict, with criteria based primarily on the following: the magnitude of an Employee's financial interest, the degree of policy making authority of the Employee in the Company, and the potential effect actions or inactions by the Company could have on such financial interests.[173]

USAC has developed such guidelines, approved by the Board, and requires employees to make the required disclosures within one week of their joining USAC and annually by January 31 (or upon a substantial change in circumstances) thereafter.[174]

ii. USAC's Treatment of Confidential Information

The Commission seeks comment on whether to adopt rules addressing USAC's procedures for handling confidential information, including confidential information related to the federal government.[175] USAC is aware of no instance in which a director, officer or employee has improperly disclosed confidential information. USAC directors and officers are bound by corporate duties of care and loyalty, which require them to

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[172] *USAC Employee Code* ¶ 9.

[173] *USAC Employee Code* ¶ 9, *Definition of Financial Interest*.

[174] *See USAC Form 1033 – Statement of Ethical Conduct for Employees Disclosure Form*, attached hereto as Exhibit 4.

[175] There is already a specific confidentiality provision regarding contributor revenue information which forbids USAC from disclosing such information without Commission direction. *See* 47 C.F.R. §54.711(b).

keep information confidential and to use such information only in furtherance of their corporate responsibilities. In addition, the *USAC Director Code* explicitly requires directors to "ensure that all information concerning USAC which is confidential or privileged or which is not publicly available is not disclosed inappropriately and is not used for any other purpose than to fulfill his or her responsibilities as a USAC Director," and provides further that "Directors shall ensure that all non-public information of other persons or firms acquired by USAC is treated as confidential and not disclosed."[176] USAC's policy regarding closed sessions of the Board discussed above also is designed to protect against disclosure of confidential information.[177]

Confidentiality is a part of the annual ethics training provided to all USAC employees. USAC employees are required to sign non-disclosure agreements and, in addition, the *USAC Employee Code* specifically requires information to be kept confidential, stating in relevant part that "[n]o Employee shall make use of, or permit others to make use of, any information obtained as a result of his or her relationship with the Company, which information is not generally available to the public, whether for direct personal gain or for advice to others with whom he or she has family, business, personal, financial, or professional ties."[178] Employee and Board member confidentiality obligations continue after their relationship with USAC ends. USAC has long had procedures for destruction of confidential documents that are no longer needed as well as appropriate limitations on access to confidential documents.

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[176] *USAC Director Code* at ¶ 4.

[177] *See* above at 55-57.

[178] *USAC Employee Code* ¶ 6.

The nature of USAC's relationship with the Commission is such that USAC becomes aware of confidential government information from time to time. USAC's current confidentiality policies prohibit disclosure of non-public governmental information. To the extent the Commission may be concerned that USAC's policies may not be sufficiently specific with regard to maintaining the confidentiality of information concerning the federal government, however, USAC will work with the Commission to address such concerns.

i. USAC's Procurement Practices

To administer the USF, USAC must enter into contracts with vendors. These contracts range from very small to multi-million dollar, outsourcing arrangements for program support services. The Commission seeks comment on whether USAC should apply, to the extent practicable, the policies and procedures embodied in the Federal Acquisition Regulations (FAR), Chapter 1 of Title 48 of the Code of Federal Regulations, in connection with USAC's procurement of goods and services.[179]

Since USAC's designation as USF Administrator, it has conducted its procurement activities using sound business practices and subject to audit and extensive oversight. The USAC Board of Directors insists on full and open competition in accordance with approved policies. USAC's contracts contain strong confidentiality provisions and significant protections against actual, potential and/or apparent conflicts

[179] *NPRM*, ¶ 12. The Commission correctly states that FAR does not directly apply to USAC's procurement activities, as it addresses only acquisitions made by executive branch agencies and USAC is not an agency of the United States. *See id.* n36.

of interest.[180] USAC has long included a number of FAR-based concepts in its contracts, including termination for convenience and stop work rights typical of government contracts; change order procedures; ownership of copyrights, patents and technical data; procurement integrity; audit rights; and non-discrimination. USAC management and counsel are experienced in procurement matters and obtain the best business and legal terms possible. USAC's low administrative costs discussed above are one testament to its prudent contracting policies.[181]

USAC's procurement activity exists against the backdrop of Commission oversight as well as the numerous internal and external audits of USAC and the USF performed annually. USAC management frequently consults with the Commission, particularly on major contracts, but until recently the Commission remained in an oversight as opposed to an operational role. In March 2005, however, Commission staff introduced new procedural directives, including a requirement that staff review and approve any sole source solicitations and contract awards in excess of $25,000 and all competitive contracting actions in excess of $250,000.[182] These directives place USAC in a difficult position vis a vis the Commission and prospective bidders seeking to do business with USAC.[183] USAC anticipates that this issue can be addressed as part of a

[180] USAC has demonstrated that it responds quickly and decisively when a contractor's action results in a mere appearance of a conflict of interest. For example, USAC terminated for convenience its billing and collections services contract when the contractor was acquired a company that received a large amount of Schools and Libraries program funding. USAC consulted closely with FCC staff as it made this decision.

[181] *See* above at 34-36.

[182] Letter from Jeffrey Carlisle, Chief, FCC Wireline Competition Bureau, and Andrew Fishel, Managing Director, FCC, to Lisa Zaina, Chief Executive Officer, USAC (Mar. 14, 2005).

[183] Commission regulations and orders contemplate that USAC will exercise significant autonomy in business affairs, subject to Commission oversight. For example, USAC is required to include an assessment of contractor performance in its annual report, *see* 47 C.F.R. 54.702(g), in order to "enhance the

broader discussion concerning a potential memorandum of understanding contemplated above.[184]

j. Reporting Requirements and Contribution Factor Timing

The Commission requests comment on whether it should revise the content or frequency of USAC's reports required by regulation and addresses the timing of the public release of the quarterly USF contribution factor.[185]

i. Filing and Reporting Requirements

USAC is obligated to file numerous reports and provide significant amounts of data to the Commission and others. USAC frequently provides additional information on request.

Section 54.702(g) of the Commission's rules requires USAC to submit an annual report to the Commission and Congress.[186] Section 54.709(a) requires USAC to submit, 60 days prior to the start of the quarter, financial and accounting data, including projected administrative expenses and projected program demand (*i.e.*, amount of moneys USAC

Commission's *oversight* of contractor performance." *See USAC Reorganization Order*, 13 FCC Rcd 25068-69, ¶ 18 (emphasis added). More generally, FCC regulations provide that the USAC Chief Executive Officer (who is a Board member) "shall have management responsibility for the administration of the federal universal service support mechanisms," 47 C.F.R. § 54.704(a)(1) while other regulations require the Board and its programmatic Committees to "oversee the administration" of the universal service support mechanisms. 47 C.F.R. §§ 54.705(a)(1), (b)(1), (c)(1). Moreover, in approving the merger of the Rural Health Care Corporation (RHCC) and Schools and Libraries Corporation (SLD) with USAC, the Commission stated that "[i]n implementing the merger, USAC may assume, where appropriate, SLC's and RHCC's contracts with employees and subcontractors. To the extent USAC determines that the recission or modification of certain contracts will result in efficiencies or other benefits, USAC may rescind or modify such contracts, in accordance with applicable law." *See USAC Reorganization Order*, 13 FCC Rcd 25090, ¶ 62. The Commission unambiguously authorized USAC to make such business decisions in the first instance.

[184] *See* above at 41-44, 50.

[185] *NPRM*, ¶¶ 17-18.

[186] 47 C.F.R. § 54.709(g).

expects to disburse in the upcoming quarter for each support mechanism).[187] Section 54.709(a) also requires USAC to submit, 30 days before the start of each quarter, its estimate of the USF contributor base.[188] USAC prepares and submits additional reports, including detailed financial operations reports that are provided to the Treasury Department and Commission staff on a monthly basis. USAC provides information on an *ad hoc* basis to Commission staff on an almost daily basis.

USAC's mandatory reporting is essential to enabling the Commission to establish the quarterly USF contribution factor. USAC's "demand" filing, which occurs 60 days before the start of each quarter, contains estimated program demand and administrative expenses for the upcoming quarter.[189] This extensive filing contains detailed information regarding demand for all of the programs and USAC's administrative expenses. For example, the quarterly High Cost and Low Income programs demand projections provide, in a fully transparent manner, carriers, states, and the Commission with the amount of support to be provided by each component of the High Cost and Low Income programs to carriers that are eligible to receive the support. USAC's demand filings are available on the USAC and FCC websites immediately after they are filed with the Commission. Thirty days after the demand filing, USAC submits the "contribution base" filing, which contains the total revenue reported by contributors.[190]

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[187] 47 C.F.R. § 54.709(a)(3).

[188] *Id.*

[189] *Id.; see, e.g.,* Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2005 (filed August 2, 2005).

[190] *Id.*; *see, e.g.*, Federal Universal Service Support Mechanisms Quarterly Contribution Base for the Fourth Quarter 2005 (filed Sept. 1, 2005).

The production schedule for the demand filing is such that monthly filing, even if desirable, would not be possible due to the volume of data required to be produced. Additionally, as most of the data required to produce these filings is submitted quarterly, USAC sees little value to instituting a monthly demand-type filing. Were the Commission to modify the USF contribution methodology, however, then the timing of mandated filings necessary to calculate contribution requirements may need to be realigned accordingly.

USAC's experience has been that the reporting needs of the Commission and USF stakeholders change over time, and to codify particular types of additional reports could lock the Commission and the Administrator into arrangements that would be difficult to change as needs evolve. USAC is committed to transparency in all aspects of its operations consistent with maintaining program integrity and confidentiality requirements and has worked closely with the Commission and other USF stakeholders to provide as much information to the public as possible. USAC's commitment to provide comprehensive and up-to-date information to the Commission and USF stakeholders is well-established and current regulatory reporting requirements are in place because they are necessary to calculate the USF contribution factor. The current regulatory regime enables reporting to evolve with program requirements and stakeholder needs, without locking the Commission and USAC into reporting requirements that may become outdated.

ii. Calculation of Quarterly Contribution Factor

Paragraph 18 of the *NPRM* seeks comment on whether the Commission should change the time period during which the quarterly contribution factor is determined and

whether USAC should modify the content of its contribution base filing. Although USAC's experience suggests the current regulatory framework provides adequate notice to contributors and to the public of the quarterly contribution factor, USAC is aware that some contributors have expressed concern that the current 14-day period does not provide sufficient time to adjust billing systems and file appropriate tariff revisions.

If USF contributors prefer an earlier release of the contribution factor Public Notice, giving contributors an additional 14 days notice for example, then USAC suggests the Commission require mandatory electronic filing of the FCC Form 499-A and Form 499-Q Telecommunications Reporting Worksheets.[191] Contributors currently can file electronically or on paper. Manual filings require significantly more processing time, which limits USAC's ability to compile the revenue base in less than the 30 days currently provided. Mandatory electronic filing would permit USAC to submit the estimated contribution base earlier and would also result in improved accuracy and administrative efficiency. Alternatively, the Commission could require contributors to file FCC Form 499-Q 14 days earlier. If the Commission were to take this approach, however, the April 1 FCC Form 499-A deadline should also be moved forward 14 days in order to avoid a processing overlap with the May FCC Form 499-Q filing (which would be due in mid-April under the new approach).

[191] *See* Telecommunications Reporting Worksheet, Annual Filing, OMB 3060-0855, April 2005 (FCC Form 499-A) (form for reporting annual revenue); Telecommunications Report Worksheet, Quarterly Filing for Universal Service Contributors, OMB 3060-0855, April 2003 (FCC Form 499-Q) (form for reporting quarterly revenue).

k. Contributor Delinquency

The Commission seeks comment on whether it should make rule changes in order to address USF contributor delinquency.[192] Working closely with the Commission, USAC has implemented numerous measures to reduce delinquency and increase compliance with revenue reporting requirements. In addition, USAC has aggressively pursued debtors with outstanding universal service contribution obligations in bankruptcy proceedings across the country. USAC's efforts are described in detail in Appendix A.[193] While these efforts have been effective in reducing contributor delinquency, express Commission authority for USAC to impose fees on delinquent contributors would further ensure timely payment.

The collection rate on USF invoices is high. USAC utilizes a common measurement of days sales outstanding (DSO) for monitoring USF accounts receivable (*i.e.*, USF contributions owed). DSO shows both the age of outstanding USF contributions and the average time it takes to convert the outstanding balances into cash. DSO is calculated by dividing total receivables by the quarterly amount billed and then multiplying the sum by 90 days. The second quarter 2005 DSO of 35.7 days reflects a 4.9% decrease over the previous quarter and a 5.8% decrease year over year. Since first quarter 2002, USF DSO has declined 8.9% due to the increased effectiveness of the collections methods discussed within this section. USAC has developed numerous methods of maintaining this high compliance rate, and is continually striving to further reduce non-filing and non-payment.

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[192] *NPRM*, ¶ 19.

[193] *See* Appendix A at 12-17.

i. USAC Activities To Ensure Timely and Accurate Revenue Reporting and Collection of USF Debt

Each month, USAC notifies contributors that are delinquent in their USF contribution obligations. USAC may recover reasonable administrative costs associated with handling inaccurate or untruthful FCC Form 499 filings, failure to file FCC Form 499s, and late payment of contributions.[194] As a consequence, USAC imposes late filing and late payment fees through a separate line item on contributor invoices.

Contributors that have previously submitted FCC Form 499, but then fail to subsequently submit FCC Form 499s impose significant administrative burdens on USAC and may affect calculation of the USF contribution factor. USAC mails 30, 60, and 90-day notifications and may make other efforts to contact non-responsive contributors. If a contributor that previously submitted FCC Form 499 does not submit a subsequent Form 499, USAC is required to estimate the contributor's obligations to the USF.[195] USAC bases its estimates upon available information, typically the most recent FCC Form 499-A filing by the contributor. [196]

Not infrequently, FCC Form 499 non-filers with a legitimate basis for not filing fail to notify USAC of the reason for non-filing or fail to provide adequate documentation to support the non-filing. A contributor can become inactive due to merger, acquisition, or ceasing to provide interstate telecommunications services and therefore may legitimately need not file. However, in instances when USAC is unaware of a

[194] 47 C.F.R. § 54.713.

[195] 47 C.F.R. § 54.709(d) (for contributors that fail to file FCC Form 499, USAC required to bill based on relevant data available).

[196] *See id*.

contributor's new status or has not been provided adequate supporting documentation, USAC continues to bill and pursue collection of USF contributions. Thus, a contributor's failure to provide USAC with notice of a change in status or delay in providing this notice may distort estimates of the size of the USF contribution base.

Presently there are no specific penalties for non-filing, failure to notify USAC of filing status changes, or filing revisions. In paragraph 19 of the *NPRM*, the Commission requests comment on whether it should adopt rules to expressly authorize USAC to charge interest and assess penalties for a carrier's failure to file FCC Form 499. The Commission's rules authorize USAC to bill a contributor "a separate assessment for reasonable costs incurred" because of: (1) filing an untruthful or inaccurate FCC Form 499; (2) failure to file FCC Form 499; or (3) late payment of universal service contributions.[197] USAC assesses a late filing fee for both FCC Form 499-A and 499-Q and a late payment fee for failure to pay USF contributions by the due date. Codification of a general authority to assess fees, in addition to costs, interest and penalties for late filing or late payment, will create an additional incentive for contributors to satisfy their universal service obligations in a timely manner.[198]

ii. Assignment of Payments to Delinquent Accounts

In 2003, the Commission directed USAC to develop procedures to implement the requirements of the Debt Collection Improvement Act (DCIA)[199] to USF delinquencies. Among other things, these procedures include transferring uncollected USF contribution

[197] *See* 47 C.F.R. § 54.713

[198] *See* 47 C.F.R. § 1.940.

[199] Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996).

obligations to the Commission pursuant to the DCIA and considering requests by delinquent contributors for extended installment payment plans.[200] Once the debt has been transferred, the contributor is obligated to the Commission rather than USAC, and the Commission may impose additional interest, penalties, and costs.

On July 1, 2003, USAC began transferring the active delinquencies in excess of 90 days to the Commission pursuant to DCIA and in accordance with detailed procedures developed by USAC and Commission staff. As of June 30, 2005, USAC has transferred approximately $95.7 million of outstanding delinquencies, representing 1,725 transfers to the Commission for further collection actions. Of this amount, USAC recovered $9,492,963.07 through payments made directly to the Commission and an additional $15,481,328.01, representing 26% of DCIA debt through application of credits issued resulting from the FCC Form 499 A/Q true-up process and payments made directly to USAC.

In paragraph 19 of the *NPRM*, the Commission asks whether it should adopt a rule on how a carrier's payments are assigned to current and delinquent amounts due. The Commission explains that USAC's current practice is to allocate partial USF payments to the oldest debt first instead of the current billed amount and asks whether that practice should be modified.[201] Codification of USAC's current administrative practice would benefit the USF and the Commission. Applying a payment against the oldest debt first helps keep to a minimum the number of accounts transferred under DCIA

[200] *See* Appendix A at 12-17.

[201] *See North American Telephone Network, LLC*, Forfeiture Order, 16 FCC Rcd 4836, 4838, ¶ 8 & n.12 (2001); *Intellicall Operator Services*, Forfeiture Order, 15 FCC Rcd 21771, 21772, ¶ 6 & n.8 (2000).

for collection efforts by the Commission, thereby lessening the administrative burdens on both the Commission and USAC. Reducing the amount of debt transferred to the Commission also avoids assessment of additional interest and penalties, thus increasing the obligation owed by the debtor.

l. Borrowing Funds

The Commission seeks comment on several questions concerning USAC's borrowing authority, whether it is necessary or desirable to retain a USF cash reserve, and whether to allow interfund borrowing to address potential funding shortfalls.[202]

(i) USAC Borrowing Authority

Commission regulations currently provide that USAC "shall request borrowing authority from the Commission to borrow funds commercially" if contributions received in a given quarter are inadequate to meet the amount of universal service program payments and administrative costs for that quarter.[203] USAC has never requested such authority nor has the Commission authorized borrowing. The Commission seeks comment on whether it should eliminate this rule. The Commission recognizes that "it is unlikely that the Commission would be unable to meet program payment requirements and administrative costs in any quarter because we evaluate the program demand (including administrative expenses) before we establish the contribution factor and we can control to a large extent the amount of USF disbursements in a given quarter."[204]

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[202] *NPRM*, ¶¶ 20-21.

[203] 47 C.F.R. § 54.709(c).

[204] *NPRM*, ¶ 20.

USAC agrees that the current method of establishing the universal service contribution requirement on a quarterly basis, using data provided by contributors, makes eliminating USAC's borrowing authority a matter of limited concern. The quarterly timing allows for prompt adjustments should demand and/or the contribution base fluctuate greatly. Were the Commission to change the contribution assessment methodology, however, retaining borrowing authority could provide a necessary option under some circumstances. For example, if the Commission were to adopt a contribution requirement calculated annually, then borrowing authority may be needed to address potential undercollections to meet disbursement needs on a temporary basis. Given that the Commission must approve on a case-by-case basis any actual borrowing by USAC, elimination of the rule could remove a potential safety valve in the event timing or other rules are amended.

(ii) USF Cash Reserve

The Commission also seeks comment on whether a cash reserve should be maintained to address situations in which the amount of available universal service funds are insufficient to accommodate program demand and administrative expenses.[205] The Commission's directive to account for the USF in accordance with GovGAAP[206] and the application of certain federal financial regulations to the USF causes funds to accumulate in certain programs. Unless the USF is granted a further exemption from the ADA—the current statutory exemption expires on December 31, 2005—the Schools and Libraries and Rural Health Care programs will be required to have sufficient "unobligated" funds

[205] *NPRM*, ¶ 21.

[206] *See GovGAAP Order*.

available at the time funding commitments are issued in those programs. This is in some sense a "cash reserve," but because the nature of those programs requires commitments to be issued far in advance of actual cash disbursements, the amount of funds would have to be extremely high to create a truly unobligated cash "reserve" to cover unanticipated disbursement shortfalls. An appropriate potential cash reserve level could be twice the monthly disbursement rate. Using the disbursement level in August 2005 of $555 million, an appropriate reserve would be approximately $1.1 billion.

At this time, High Cost and Low Income program obligations arise under GovGAAP at the time monthly payments are calculated as directed by the Commission.[207] Collections are closely aligned to disbursements in these programs. Because the High Cost program is the largest program in terms of dollars disbursed, the impact of establishing a cash reserve would be significant.

(iii) Interfund borrowing

The Commission seeks comment on whether it should adopt a rule prohibiting or allowing interfund borrowing.[208] Upon the expiration of the ADA exemption, the usefulness of interfund borrowing becomes limited, because unobligated resources will likely be minimal. If the USF were to be permanently exempted from the ADA, then interfund borrowing could serve as a safety net to enhance the ability to meet short-term cash needs should unanticipated issues arise. There also could be policy implications of

[207] In a September 27, 2004, letter, USAC was instructed not to treat High Cost and Low Income program projections and data submissions as "obligations" for federal budgetary accounting purposes. *See* Letter from Jeffrey Carlisle, Chief, FCC Wireline Competition Bureau, and Andrew Fishel, Managing Director, FCC, to Frank Gumper, Chairman, USAC Board of Directors, at 2 (Sept. 27, 2004).

[208] *NPRM*, ¶ 21.

such a practice associated with borrowing funds from certain programs to meet obligations in other programs which the Commission may need to consider.

(iv) Collection of Funds to Address Potential USF Shortfalls

The Commission seeks comment on other ways to ensure that universal service funds are sufficient to cover costs and administrative expenses.[209] For example, in the event that funds are insufficient to cover costs and administrative expenses, the Commission asks whether it would be appropriate to collect additional funds and postpone payments until sufficient funds have been received. While questions regarding additional collections and prioritization of payments are policy matters appropriately left to the Commission and other commenters, USAC notes that, from an administrative perspective, prioritization across funds could be a difficult process. Prioritization within each program is more administratively feasible.

m. Universal Service Fund Investments

The *NPRM* asks whether the Commission should adopt rules or other requirements governing the investment practices and policies of the Administrator.[210] The Commission's regulations do not currently contain provisions regarding USF investments. Since December 1999, in accordance with informal Commission direction, the USF cash balance has been at all times invested in safe, highly liquid government or government-backed securities, including mutual funds that invest solely in government-backed securities. The primary objectives of USAC's investment strategy are safety, liquidity, and yield, in that order—*i.e.*, preservation of principal is the most important

[209] *NPRM*, ¶ 21.

[210] *Id.*

consideration. Before 2004, USAC staff consulted closely with Commission staff regarding USF investment strategy but neither sought nor obtained formal approval of specific investment decisions. The USAC Investment Committee, with oversight by the USAC Board of Directors, adopted investment strategies and recommended investment decisions.

USAC's professionally-managed investments of the USF cash balance have earned more than $500 million in interest income since 1998:

YEAR	INTEREST EARNED
1998	$ 37,238,000
1999	$ 82,260,000
2000	$126,649,000
2001	$ 72,529,000
2002	$ 41,570,000
2003	$ 31,839,000
2004	$ 50,764,000
2005	$ 63,904,269
Total:	**$506,753,000**
Through August 31, 2005	

In connection with the transition of the USF to GovGAAP, Commission staff determined, based on OMB and Treasury Department regulations, that USF investments other than direct United States Treasury securities are to be accounted for as "obligations" and are not deemed available for program commitment or disbursement under GovGAAP. Thus, in September 2004, Wireline Competition Bureau (WCB) and the Office of Managing Director (OMD) staff instructed USAC to sell and reinvest the proceeds of approximately $3.2 billion of USF investments in short-term direct Treasury

securities and later in non-interest bearing cash accounts.[211] In so doing, the USF incurred realized losses of approximately $4.583 million attributable to selling the securities before final maturity. The USAC Board of Directors expressed concern in adhering to this guidance that it was not adequately performing its fiduciary duty to obtain a reasonable rate of return on USF investments in a prudent manner and proposed a revised investment strategy in March 2005 that was approved by Commission staff in part in September 2005.[212]

In December 2004, WCB and OMD staff informed USAC that it must obtain their approval before proposing changes to USF investment strategy or changing any individual investment.[213] USAC respectfully suggests consideration of a return to the system that worked effectively for several years whereby Commission staff reviews general investment guidelines proposed by USAC and USAC manages the USF cash balance, using professional investment advisors, in accordance with those guidelines. This will ensure ample oversight of the Fund's investment performance and conformity with investment objectives approved by the Commission.

The Commission also asks in the *NPRM* whether it should restrict USF investments to non-interest bearing accounts or Treasury bills.[214] The Commission does not explain what objective it hopes to achieve through such a restriction. The investment

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[211] *See* Letter from Jeffrey Carlisle and Andrew Fishel, Managing Director, FCC, to Frank Gumper, Chairman, USAC Board of Directors (Sept. 27, 2004).

[212] *See* Letter from Andrew Fishel, Chief, Wireline Competition Bureau, FCC, to Brian Talbott, Chairman, USAC Board of Directors (Sept. 21, 2005).

[213] *See* Letter from Jeffrey Carlisle, Chief, Wireline Competition Bureau, and Andrew Fishel, Managing Director, FCC, to Frank Gumper, Chairman, USAC Board of Directors (Dec. 22, 2004).

[214] *NPRM*, ¶ 21.

of the Fund's cash balance in interest-bearing investment vehicles increases the cash available for supporting the universal service programs and reduces the quarterly contribution factor. Placing the USF into non-interest bearing securities, by contrast, would require carriers to contribute more of their revenues to the USF to cover the same support offered today. Given that there are safe investment vehicles available—such as money market mutual funds invested solely in government-backed securities, which USAC used successfully for many years—there does not appear to be a basis for restricting USF investments in this manner.

n. Codification of Certain USAC Administrative Procedures

The Commission seeks comment on whether it should codify certain USAC administrative procedures.[215] At the Commission's direction in the *Schools and Libraries Fifth Order*, USAC identified certain procedures in that program for the Commission to consider codifying.[216] In response to Commission direction in this *NPRM*, USAC submitted a list of administrative procedures for the High Cost, Low Income, and Rural Health Care programs, as well as USF contributions, as an *ex parte* filing.[217]

USAC is responsible for "administering the universal service support programs in an efficient, effective, and competitively neutral manner."[218] USAC is further required to take "administrative action intended to prevent waste, fraud, and abuse."[219] USAC is acutely aware of the fact that it may not "make policy, interpret unclear provisions of the

[215] *NPRM*, ¶ 22.

[216] *See Schools and Libraries Fifth Order*, 19 FCC Rcd at 15835, ¶ 80.

[217] *See* Letter from D. Scott Barash, General Counsel, USAC, to Marlene H. Dortch, Secretary, FCC (Sept. 16, 2005).

[218] 47 C.F.R § 54.701(a).

[219] 47 C.F.R. § 54.702(h).

statute or rules, or interpret the intent of Congress."[220] The Commission anticipates, and USAC agrees, that it will be useful to continue to evaluate which USAC administrative procedures should be codified into Commission rules. The *NPRM* does not define "USAC's rules and procedures," but the Commission appears to mean USAC administrative procedures not directly traceable to a Commission regulation or order that have a substantive effect on the rights of beneficiaries and contributors.

For example, in administering the Schools and Libraries program, USAC rejects manually submitted FCC Form 471[221] applications that fail to contain basic information solicited on the form such as applicant contact information and a signature. Commission rules require applicants to submit a completed Form 471 to USAC, but do not specify what constitutes a completed form.[222] USAC established administrative criteria pursuant to the regulation. The Commission has affirmed USAC's authority to reject applications that USAC determines are not complete.[223]

USAC agrees that certain of its procedures should be codified. For example, the Commission previously adopted USAC's practice of denying funding requests in the Schools and Libraries program if 30% or more of the request is for services that are not eligible under program rules.[224] USAC proposes codification of several Low Income

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[220] 47 C.F.R. § 54.702(c).

[221] Schools and Libraries Universal Service Description of Services Ordered and Certification Form 471 (Approval by OMB 3060-0806, November 2004) (FCC Form 471).

[222] *See* 47 C.F.R. § 54.504(c).

[223] *See Request for Review of the Decision of the Universal Service Administrator by Deer Park Community Consolidated Elementary School District No. 82, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-253932, CC Docket Nos. 96-45, 97-21, Order, 17 FCC Rcd 7318, 7320, ¶ 6 (2002) (affirming USAC's "authority to implement minimum processing standards and to reject those applications that fail to meet those standards.") (footnote omitted)

[224] *See* 47 C.F.R. § 54.504(c)(1).

procedures below.[225] Other types of procedures amenable to codification are those related to deadlines established by USAC, such as deadlines for the Schools and Libraries and Rural Health Care programs invoicing process. Establishing clear rules on these issues would assist USAC in closing out funding years in a more timely manner.

In addition, it would be appropriate to consider codifying certain procedures that are based on Commission orders, but have not been put into Commission rules. At this time, program participants need to review a variety of sources in order to understand fully the requirements applicable to them.[226] To the extent the Commission determines that any USAC procedure should be codified, the Commission and USAC should work in close partnership to ensure that the rules properly reflect operational realities and avoid unintended consequences.

Even though codification is warranted in some cases, the universal service programs are extremely complex and Commission rules and orders cannot cover every situation that the Administrator confronts. The Commission has authorized USAC to administer the programs.[227] As Administrator, USAC's tasks explicitly include the following activities, which must be made in accordance with Commission rules and under Commission oversight, and which must not rise to the level of policy decisions:

> (ii) development of applications and associated instructions as needed for the schools and libraries mechanism; (iii) administration of the application

[225] *See* below at 164.

[226] For example, the commitment adjustment and recovery rules set out in various Commission orders could be codified. USAC's authority to adjust funding commitments and recover funds is established by the following orders: *Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 97-21, 96-45, FCC 99-291 (1999); C*hanges to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 97-21, 96-45, FCC 00-350 (2000); *Schools and Libraries Fourth Order*, 19 FCC Rcd 15252; *Schools and Libraries Fifth Order*, 19 FCC Rcd 15834-35, ¶¶ 79-80.

[227] 47 C.F.R. § 54.701(a).

> process, including activities to ensure compliance with FCC rules and regulations; (iv) the performance of outreach and education functions; and (v) development and implementation of other distinctive functions.[228]

Thus, since USAC began administering the programs, USAC has been required to design and implement operating procedures. In the Schools and Libraries program context, the Commission has recognized that it has "vested in the [USAC] Schools and Libraries Committee and [the USAC Schools and Libraries Division] SLD the responsibility for administering the application process for the universal service support mechanism for eligible schools and libraries."[229] Pursuant to this responsibility, USAC reviews all applications and invoices according to detailed Program Integrity Assurance (PIA) and other applicable procedures to ensure that USAC's decisions are in compliance with Commission rules, orders, appeals decisions, and guidance. PIA procedures are reviewed and updated annually and otherwise as needed, with WCB oversight, approval and guidance. Importantly, any party aggrieved by a USAC decision can appeal to USAC and the Commission.[230] GAO has recognized that the procedures put in place by USAC "generally appear to be sensible and represent thoughtful administration of the E-rate program."[231]

USAC has also developed detailed operating procedures for the other support mechanisms and for USF contributions. In the High Cost and Low Income programs, for

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[228] *See, e.g.*, *USAC Reorganization Order*, 13 FCC Rcd at 25075-76, ¶ 30.

[229] *E.g.*, *Request for Review of the Decision of the Universal Service Administrator by Project Interconnect, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-146858, 146854, CC Docket Nos. 96-45, 97-21, Order, DA 01-1620, ¶¶ 8-9 (2002).

[230] 47 C.F.R § 54.719.

[231] *See GAO 2005 E-Rate Report* at 28.

example, USAC works to ensure that carriers provide information required in a timely manner to prepare, validate, and disburse support. USAC uses numerous procedures and systems in administering these programs. Rural Health Care program procedures change as necessitated by changes in program requirements. In all programs, USAC regularly implements process improvements as opportunities arise to do so.

The Commission asks whether codifying administrative procedures would facilitate or restrict the ability of the Administrator to perform its duties in a flexible and responsive manner.[232] An attempt by the Commission to put many of USAC's day-to-day operating procedures into regulations would unnecessarily restrict USAC's ability to perform its duties in a flexible and responsive manner. There are hundreds of procedures, they change frequently, and many must remain confidential in order to ensure program integrity. To realize operational efficiencies, USAC must be able to adapt its processes and procedures both in relation to the needs of its stakeholders and as new technologies evolve or rules change. USAC also needs flexibility to improve and refine its processes as required to set appropriate controls and validate data. Not only would codification of these types of procedures be cumbersome in the first instance, it would require the Commission to engage in time-consuming rulemaking proceedings every time a particular procedure fails to accommodate changed or unique circumstances.

The Commission observes that "there is a fundamental difference between ministerial errors and intentional fraud, and that greater clarity in USAC's rules and procedures will help reduce ministerial errors."[233] USAC believes that by ministerial

[232] *NPRM*, ¶ 22.

[233] *NPRM*, ¶ 22.

errors, the Commission likely means unintentional mistakes on program forms as a result of, among other things, clerical errors. USAC agrees that there is a fundamental difference between ministerial errors and intentional fraud, and to the extent rules can be clarified, these types of errors will be reduced. USAC provides guidance about many aspects of the programs and contribution requirements on its website, in the instructions for the various forms, and through its education and outreach efforts. USAC proposes that USAC and the Commission work together to provide clear, effective guidance in a timely manner to all stakeholders.

The Commission and USAC are concerned about recovery of funds disbursed when applicants fail to follow USAC procedures. Certain USAC procedures, such as the 30% rule, have since been incorporated into the Commission's rules. This issue of whether other procedures relating to recovery of funds disbursed should be codified has not yet been raised in the context of administrative procedures related to contributions or in the context of the High Cost, Low Income, and Rural Health Care programs, and USAC applauds the Commission's efforts to do so in the *NPRM*.

The Commission seeks comment on how a beneficiary's compliance or lack of compliance with USAC non-codified administrative procedures should be treated in the auditing context.[234] USAC agrees with the Commission's basic approach that recovery should not be sought based on a lack of compliance with USAC's operating procedures. In the auditing context, this lack of compliance is not found until after the funds have been committed to the applicant, the applicant has received the goods and services, and

[234] *NPRM*, ¶ 22.

the funds disbursed to the service provider. USAC addresses this issue in more depth in response to the Commission's questions regarding USF oversight and audits below.[235]

o. Continuity of Operations

The Commission seeks comment on whether it should adopt a rule to require USAC to develop and maintain a continuity of operations (COOP) plan for dealing with emergency situations and whether any modifications to FCC rules are needed to ensure that USAC can continue to perform its mission-critical functions in the event of an incident or emergency situation.[236]

USAC has been working closely with Commission staff to develop a COOP. In November 2004, USAC prepared a draft COOP that complies in all material respects with applicable federal requirements. Although the draft COOP is approximately 95% complete, its plans are functional and executable if needed. The Commission audited USAC's overall Business Continuity Program (BCP), including the COOP, in December 2004, and concluded that USAC's BCP was an appropriate initial plan. The Commission requested additional detail and a demonstration of compliance with the plan's provisions. In response to the Commission, USAC has initiated a BCP project to finalize the COOP and incorporate the findings of Commission staff. The BCP will continually evolve as USAC makes organizational and systems changes. USAC anticipates that this phase of the project will be completed in late 2005.

[235] *See* below at 209, 213-14.

[236] *NPRM*, ¶ 23.

2. Performance Measures

In the *NPRM*, the Commission recognizes effective program management requires implementation and monitoring of meaningful performance measures.[237] Clearly articulated goals and reliable performance data allow the Commission and other stakeholders to assess the effectiveness of the USF programs and to determine whether changes are needed.[238] The Commission seeks comment on performance measures and goals to track progress and efficiency for all the universal service programs.

USAC strongly supports development and implementation of additional meaningful outcome, output and efficiency measures for the USF and each of its mechanisms, as well as the administration of the program. Performance measurement is critical to determining a program's progress in meeting its intended outcomes. USAC previously has assisted the Commission in the development of USF performance measures, particularly for the Schools and Libraries program and the High Cost program, in order to comply with the OMB Program Assessment Rating Tool (PART) requirements.

Following is a program-by-program review of performance measures in response to the specific questions posed by the Commission. USAC discusses the objectives of any recommended performance measurements and goals and then addresses whether the Commission should revise its information collection process, including any of the forms

[237] *NPRM*, ¶¶ 24-25.

[238] *See GAO 2005 E-Rate Report* at 19-26 (criticizing the Commission for failing to develop useful performance goals and measures for the E-rate program).

applicable to the USF programs, in order to collect sufficient information to measure performance of the programs and identify potential areas for program improvement.

a. Schools and Libraries Program

The Commission first seeks comment on suitable outcome, output, and efficiency measures for the Schools and Libraries program.[239] Outcome measures describe the intended result from carrying out a program or activity. Output measures describe the level of activity, such as applications processed, number of units completed, or number of stakeholders served by a program. Efficiency measures capture a program's ability to perform its function and achieve its intended results relative to the resources expended.[240] The Commission asks commenters to address the objectives of any recommended performance measurements and goals, noting that the statutory goal of the program, as set forth in section 254(h) of the 1996 Act, is to provide discounts to eligible schools and libraries for educational purposes.

The Commission states that in the past it has used the percentage of public schools connected to the Internet as a measure of the impact of the program and its success, and seeks comment on continuing to use connectivity as a useful data point for measuring the impact of the Schools and Libraries program.[241] USAC believes connectivity continues to be a valid measuring tool. Measuring connectivity of libraries and private schools is important because these institutions generally have participated in the program at a lower rate than public schools. Thus, measuring connectivity at all

[239] *NPRM*, ¶¶ 26-29.

[240] *See NPRM*, ¶ 25.

[241] *NPRM*, ¶ 26.

relevant sites is the most appropriate outcome measure for the Schools and Libraries program.

In the early years of the program, connectivity alone was an appropriate measure. However, now that connectivity appears to have become essentially ubiquitous in most areas, (thanks in part to the Schools and Libraries program) the time is right to focus on the quality of the connectivity and its impact on education. The Commission seeks comment on whether alternative goals may be more appropriate than connectivity and whether information in addition to connectivity should be collected. USAC suggests that in addition to measuring connectivity information should be gathered that focuses on the quality of the connectivity, the educational uses to which that connectivity is being put, and the effect of the connectivity on education.

With respect to all of these issues, USAC could collect information from applicants as part of the questions asked during its Site Visit Initiative and audits. While this is a relatively small base, it is randomly selected within certain parameters and covers a wide range of program participants. Should the Commission determine that the best way to collect this information would be through a general survey of all program participants, such a survey would likely require OMB approval pursuant to the Paperwork Reduction Act.[242]

The following types of questions could be posed:

- What is the type of connectivity available at the facility?
- Are all classrooms connected?
- What educational purposes does the connectivity serve?

[242] *See* 44 U.S.C. §3501 *et. seq.*

- What can students and teachers do as a result of this connectivity that they could not do before (e.g., distance learning, virtual field trips, etc.)?
- For libraries, how is the connectivity used to improve library service?
- Do the uses of the connectivity require the level of service that is being provided?

In addition, as USAC collects more detailed data on the specific goods and services received by applicants,[243] USAC will be able to obtain further information about the quality of the connections funded through the Schools and Libraries program.

USAC suggests that any data it collects could link to data from the Department of Education to allow additional evaluation of the impact of the program. At this time, USAC gathers National Center for Education Statistics (NCES) Codes from applicants on the FCC Form 471.[244] NCES assigns a unique code to each school in the United States. These codes allow different types of databases to be linked to a large education database known as the Common Core of Data (CCD), which provides a wealth of statistical information about schools throughout the country. Currently, these databases enable research on schools and libraries participating in the program, but details of the participation are limited to the general type of services received and the information provided at Blocks two and three of the Form 471. Beginning in Funding Year 2006, USAC expects that it will be begin collecting data on specific types of services received which will result in more detailed information for analysis.

The Commission also seeks comment on ways to measure the extent to which the Schools and Libraries program has enabled the deployment of broadband services.

[243] Among other things, USAC is expanding its online capabilities to enable applicants to provide more detail electronically regarding goods and services being requested.

[244] This information was collected on the FCC form 471 in Funding Years 1998 and 1999, but was removed from the form until Funding Year 2005.

USAC notes that measuring changes in telecommunications services is important, but access depends on many factors, such as the applicant's economic condition, which may have more of an impact than does the Schools and Libraries program. Consequently, it may be difficult to separate the impact of the USF alone. It may be easier to measure the impact of Schools and Libraries program at higher discount schools because those schools have fewer resources, and so the Schools and Libraries program funding is the sole source of funding for connectivity. However, these schools also may have additional resources, such as Title I and state funding.

The Commission proposes measuring the impact of the program on schools and libraries by collecting data on the use of services supported by the program.[245] As an example, the Commission suggests measuring the number or percentage of students that access the Internet or the number or percentage of teachers using supported services in classrooms, as well as the number or percentage of library patrons who use supported services during a library visit. USAC has provided above a suggested list of information that could be gathered in this endeavor.

The Commission seeks comment on how to determine which schools currently have no connectivity at all so measures can be taken to reach unconnected schools.[246] USAC suggests comparing its data on schools that have applied to the program to the NCES database to determine which schools have not applied or have not been funded. USAC could then perform outreach to determine if those entities in fact have connectivity. Next, the Commission asks for comment on the use of performance

[245] *NPRM*, ¶ 26.

[246] *Id.*

measures developed by the United States Department of Education to evaluate the Enhancing Education Through Technology (EETT) program.[247] USAC does not view the EETT performance measures, standing alone, as especially meaningful indicators of Schools and Libraries program performance, as the mission of USAC is to collect monies, process applications, and disburse funds, as opposed to measuring the improvement of academic achievement, which is the objective of the EETT program. USAC will revisit the EETT measures if appropriate.

In paragraph 28 of the *NPRM*, the Commission seeks comment on meaningful ways to distinguish the impact of the Schools and Libraries program from the numerous other governmental and non-governmental programs that support similar services or facilities.[248] As discussed above, USAC suggests that the most appropriate measures of program impact are changes in connectivity and the manner in which connectivity is used. As described above, measurements associated with the level of telecommunications service and number of classrooms connected to the Internet is the clearest indicator of the program's impact.

Finally, in paragraph 29 of the *NPRM*, the Commission seeks comment on ways to measure the efficiency and effectiveness of the Schools and Libraries program. Noting

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[247] *NPRM*, ¶ 27.

[248] The *NPRM* notes:

> While there is no other federal program that provides similar discounted access to advanced telecommunications and information services for schools and libraries, other programs provide funding for equipment and/or training that builds upon availability of advanced telecommunications services. Thirteen states and, possibly, a few local governments, as well as private organizations, also fund similar or complementary efforts to provide information technology hardware and software once access to advanced telecommunications and information services is established through the E-rate program.

NPRM, ¶ 28 n.72 (citing GAO, Federal and State Universal Service Programs and Challenges to Funding (GAO-02-187) (Feb. 2002).

that delays and uncertainty can create significant administrative problems, the Commission seeks comment on timing issues that may need improvement. Specifically, the Commission asks for discussion of particular deadlines that should be modified and whether it should create new deadlines for Commission or USAC action in various phases of the process. One important measure is the percentage of funding requests decided before the July 1 start of the funding year. In addition, the Commission seeks comment on whether it should set deadlines for progressing from the completion of an application to the funding commitment decision letter (FCDL) or for completion of appeals.

USAC's experience as Administrator suggests that targets, rather than goals, are a more realistic approach and provide sufficient guidance to USAC. USAC does not recommend modifying existing deadlines or creating new deadlines, including processing deadlines. Deadlines for appeals and applications processing, while a laudable objective, in reality are not solely under USAC's control. During the summer months, for example, the ability of USAC to obtain information from schools is severely hampered, as many schools are closed and staff may be unavailable. Additional deadlines for applicants could increase funding denials for failure to respond in a timely manner, which would be counter to program objectives. USAC discusses these issues in more detail below.[249]

b. High Cost Program

Paragraph 30 of the *NPRM* seeks comment on adopting meaningful outcome, output, and efficiency measures for the High Cost, Rural Health Care, and Low Income

[249] *See* below at 113.

programs. The Commission recognizes that because these mechanisms have different goals and purposes than the Schools and Libraries program, it expects to adopt different performance measures and goals for each program.

In establishing performance measures, the Commission notes that participants in USF programs may receive support from other sources (e.g., loans from the Department of Agriculture's Rural Utility Service or the Department of Education) or may seek USF support for only a portion of their telecommunications needs. The Commission seeks comment on whether and how it should account for these factors in crafting performance measurements for each of the mechanisms. In addition, the Commission asks commenters to suggest measures for each of the statutory goals listed in section 254(b)(3) of the 1996 Act:

> Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.[250]

Finally, the Commission seeks comment on ways to measure the efficiency and cost-effectiveness of each support mechanism.

In assessing whether the High Cost program is meeting its statutory goals, the *NPRM* recognizes that suitable performance measures may include comparing rates of telephone subscribership in rural areas to rates in urban areas. In addition, a useful measure is the number of households with telephones for all incumbent study areas receiving High Cost support. The Commission currently publishes data on telephone

[250] 47 U.S.C. § 254(b)(3).

subscribership and broadband connections in local telephone service competition reports. Combined with High Cost program disbursement data, these reports could be used to assess the impact of the programs. For ILECs, analysis of total revenues and USF revenues could be analyzed to determine the impact of USF support on end user rates and service availability. As for CETCs, there is no connection between expenses and support since support is based on the amount received by the ILEC. USAC, however, could work with state regulatory authorities to assess the impact of USF support on CETCs and their customers through analysis of infrastructure build out plans and other mechanisms that states use to ensure appropriate use of USF funds.

In addition, states are required to conduct an annual rate comparability review that compares rural and urban rates within their respective states. By measuring the rates, the impact of the High Cost program on the statutory goal of ensuring reasonably comparable rates for consumers across the country can be assessed. Other measures of program effectiveness worthy of consideration include: High Cost support disbursements made compared to High Cost program-specific administrative costs (e.g., percentages, per-line, etc.); total stakeholders served, including incumbent carriers, competitive carriers, and State commissions; and number of lines supported. Administrative output could be measured by total data points processed, administrative costs versus resources expended for each component including: time cycles for processing line count data, certifications, disbursements; number of carriers served; number of lines processed per carrier; comparison of ILECs and competitors; and disaggregation statistics. As part of its enterprise-wide information technology effort, USAC intends to develop systems that will be capable of collecting data needed to perform such measures. To assess the impact

of other programs supporting ETCs, USAC could work with state and federal agencies to determine the impact of each program, including USF support, state support and Rural Utility Service (RUS) support.

c. Rural Health Care Program

In assessing whether the Rural Health Care program is meeting its statutory goals, the *NPRM* states that relevant performance measures for the Rural Health Care program may determine the comparability of rural and urban rates, the number or percentage of eligible rural health care providers receiving USF support, and the number of patients served by rural health care providers participating in the program.[251] The Commission seeks comment on these possibilities.

The current measures of success for the Rural Health Care program are: the number of health care providers receiving support, the amount of funding provided on their behalf, and whether the amount of support is increasing, decreasing or remaining constant. These measures could be expanded, with a focus on measuring outcomes, which could occur when USAC expands its Site Visit Initiative to the Rural Health Care program, and by including in USAC's audit plan for Rural Health Care beneficiaries questions designed to address these issues.

For example, the following questions could be asked during site visits and audits:

- What is the specific type of connectivity?
- What functions in the clinic are connected?
- For what functions is the connectivity used?
- How often is the connectivity used for each function?
- Of the uses you have for the connectivity, which of them require this level of connectivity?

[251] *NPRM*, ¶ 30.

- What does this connectivity allow you to do that could not be done in the past?
- How many patients have been served by this connectivity during the last twelve months?
- Would you be able to have this connectivity if you did not receive Rural Health Care program support?
- What connectivity would you be able to have without USF support?
- What other types of assistance grants (*e.g.*, RUS) do you receive?
- What equipment or services have these funding sources made possible for you?
- Could you use this equipment if you did not have USF funding?

With respect to the number or percentage of eligible health care providers receiving support, determining this number has posed a challenge. USAC estimated in 2002 that about 8,300 rural health care providers were eligible for this program. In the *Universal Service Order*, the estimate was 12,000.[252] USAC's estimate of 8,300 does not reflect the change to the definition of "rural" implemented in the *RHC Second Order* which slightly decreased the number of totally rural counties from 2,276 to 2,135, but greatly increased the number of partly rural counties from 96 to 848, leading to an overall increase in rural areas eligible to participate in the program.[253]

The 1996 Act recognized the need to provide discounts for recurring monthly telecommunications costs, but these discounts provide only part of the assistance needed to create a fully functional connection to advanced communications services. With respect to sources of funding for technologies that complement the funding provided by the USF, there are a number of considerations. The RUS Distance Learning and Telemedicine (DLT) program provides funds to improve health care delivery in rural America. The DLT Loan and Loan-Grant Program is not limited to end-user equipment,

[252] *See Universal Service Order*, 12 FCC Rcd at 9141, ¶ 706.

[253] *See RHC Second Order*, 19 FCC Rcd at 24618-24, ¶¶ 9-23.

and complements universal service support by providing funds that may be used for land, buildings, construction or other things necessary and incidental to providing telecommunications technology to make health care services affordable and available to rural citizens.

In addition, the Office for the Advancement of Telehealth (OAT) of the Health Resources and Services Administration (HRSA) requires grant recipients to apply for Rural Health Care program funding as a way to maximize the reach of grant funds which are also used for salaries, equipment, or other telehealth network costs in addition to telecommunications. Because eligibility for OAT grants may not match universal service eligibility (such as ineligible provider types or urban designations), the Rural Health Care program provides notice on request if OAT grantees are ineligible for universal service support.

The OAT program also presents an additional option for evaluation of the performance of the Rural Health Care program. The fiscal year 2006 Department of Health and Human Services (HHS) budget calls for OAT to "[d]evelop improved performance measures for telemedicine grant programs" and to "evaluate rural telemedicine grant programs." Targets for OAT include evaluating the extent to which OAT-funded projects improved the availability of specific health and clinical services in rural communities as well as grantee involvement in homeland security, electronic medical records, or other activities related to the grant. Because most OAT grantees are also universal service support applicants, it might be feasible for the Commission and HHS to share information about dually supported applicants to avoid potential duplicate reporting, or to expand OAT's performance measures to include universal service

applicants that are not OAT grantees. The advantage of OAT is that its extensive history of telehealth evaluation would eliminate duplication of efforts, result in a larger evaluation, eliminate the need for USAC or Commission involvement, and result in a comprehensive database usable by OAT, USAC, and the Commission.

Performance measurements and goals are also appropriately directed toward the Administrator of the program. In addition to measurements of USAC performance, a customer-based approach should be implemented whereby, value, accomplishment, and results can be measured by applicant response. In order to assess the efficiency of the Rural Health Care program, the Commission may wish to consider the following performance measures: timeliness of decisions; invoice payments; and appeal resolutions; program specific administrative costs; and customer satisfaction relative to timeliness of decisions; invoices paid; correct information given and other relevant information.

d. Low Income Program

In assessing whether the Low Income program is meeting its statutory goals, the *NPRM* recognizes that relevant program performance measures may include the percentage of eligible households that receive Low Income support and telephone subscribership rates for low income consumers.[254] USAC agrees that these measures are useful. The key measure of success of the Low Income program is whether eligible consumers are receiving support. Because eligibility criteria vary by state, this could be difficult to measure precisely.

[254] *NPRM*, ¶ 30.

USAC proposes a method to measure the reach of tribal support in the Low Income program. USAC tracks tribal Lifeline and Link-Up subscribers to monitor the growth of the tribal support components of the program and publicly reports that information quarterly.[255] However, companies are not currently required to report their tribal subscribers by tribal land or reservation. For example, if a company's service area includes more than one tribal land or reservation, FCC Form 497 requires only that the company report the total number of tribal subscribers served. This practice makes it impossible to monitor tribal subscribership by tribal land or reservation, greatly limiting the ability to concentrate outreach efforts on specific tribes. USAC is often asked for data by tribal land or reservation, but USAC has support and subscribership data only by company. Requiring companies to seek Low Income program support by tribal land or reservation would facilitate outreach by allowing USAC and companies to target areas that have low Lifeline participation rates, including customizing outreach materials in the appropriate native languages. Thus, the Commission may wish to consider modifying FCC Form 497 to require carriers to report their tribal support claims by tribal land or reservation.

USAC also proposes a method to determine more effectively the percentage of households eligible for Low Income program support. USAC currently publishes the number of households receiving Lifeline by state each quarter.[256] These numbers could be compared to the number of households that might be eligible for Lifeline, as compiled

[255] *See, e.g.*, Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2005, Appendices LI08, LI09 (filed Aug. 2, 2005).

[256] *Id.*

in United States census data. The Commission has measured the percentage of eligible households that participate in Lifeline by using census data in the past, and USAC could assist with this calculation and release updated numbers as frequently as census data is updated. This information could be tracked over time to measure the success of the Low Income program.

e. USF Administration

Finally, the Commission seeks comment on establishing suitable performance measurements for evaluating the administration of the USF.[257] Among other duties, USAC bills contributors, collects USF contributions, disburses USF monies, and administers the USF's accounts and transactions.[258] The Commission suggests that relevant performance measures may include; the number of applications for USF support; processed within a particular time period; the percentage of applications rejected by USAC for errors or other reasons; the average number of days required to process an application; the accuracy of bills issued to contributors; or the number of errors made in disbursing funds to USF beneficiaries. The Commission seeks comment on these possibilities and requests that commenters submit alternative proposals.

USAC strongly supports development and implementation of appropriate additional performance measures. In addition to performance measures such as cost-effectiveness discussed elsewhere and the program-specific measurements discussed earlier in this section, the following performance measures, or variations thereof, could be used to gauge USAC's performance:

[257] *NPRM*, ¶ 31.

[258] *See, e.g.*, 47 C.F.R. § 54.702(a), (b), (e).

- Schools and Libraries program:
    - Time to process applications (receipt to commitment)
    - Time to approve or reject SPIN changes and service substitutions
    - Time to pay invoices (submission to payment date)
    - Time to determine appeals
    - Measurements of COMADs and fund recovery efforts

- Rural Health Care program:
    - Time to process applications (receipt to commitment)
    - Time to pay invoices (submission to payment date)
    - Time to determine appeals

- High Cost program:
    - Time to process support payments and authorize disbursements
    - Hits to the website, particularly the number of visits to the disbursement tool
    - Support disbursements compared to program-specific administrative costs (e.g., percentages, per-beneficiary, etc.)
    - Total stakeholders served, including incumbent carriers, competitive carriers, and state commissions; and number of connections supported
    - Administrative output measured by total data points processed; administrative costs versus resources expended for each component including: time cycles for processing support claims and disbursements; number of carriers served; and number of subscribers per carrier

- Low Income program:
    - Time to process support payments and authorize disbursements
    - Hits to the website, particularly the number of visits to the disbursement tool and to the consumer page, www.lifelinesupport.org
    - Support disbursements compared to program-specific administrative costs (e.g., percentages, per-beneficiary, etc.)
    - Total stakeholders served, including incumbent carriers, competitive carriers, and state commissions; and number of connections supported
    - Administrative output could be measured by total data points processed; administrative costs versus resources expended for each component including: time cycles for processing support claims and disbursements; number of carriers served; and number of subscribers per carrier

- USF billing, collection and disbursement:
    - Billing accuracy
    - Disbursement accuracy

- Customer service measurements for all areas:
    - Time to answer calls, time to respond to fax and email inquiries
    - Customer satisfaction survey

As part of its enterprise-wide information technology effort, USAC intends to develop systems that will be able readily to provide the detailed data to compile many of these performance measures.

The Commission also seeks comment on ways of measuring the cost-efficiency of the USAC's operations. As discussed in detail above,[259] to date USAC has administered the USF in an extremely cost-efficient manner. The percentage of administrative cost relative to the total dollars collected and disbursed, as well as program-by-program figures, as measured against analogous programs and activities is a reasonable measure of USAC's cost-effectiveness. In addition, if USAC is given latitude to make responsible investment decisions in accordance with Commission-sanctioned guidelines, another performance measure could be the rate of return achieved on USAC's investments as compared to an appropriate benchmark.

3. Program Management

This section of the *NPRM* seeks comment on ways to improve the management, administration, and oversight of the USF programs, including the billing, collection and disbursement of funds.[260] The Commission wishes to achieve more efficient administration and management, while continuing to deter waste, fraud, and abuse. USAC will discuss the issues raised in this section in detail below.

[259] *See* above at 34 -36.

[260] *NPRM*, ¶¶ 32-66.

The Commission addresses two general issues before turning to the specific programs. First, the Commission requests comment on the accessibility of USAC's application and disbursement process to persons with disabilities.[261] Second, the Commission asks whether the Schools and Libraries and Rural Health Care program distribution processes should more closely track those of the High Cost and Low Income programs.[262]

Disability Access. USAC has implemented measures to make its electronic and information technology accessible to people with disabilities.[263] Among other things, USAC offers a "graphics off" version of the website, which allows users to invoke helper technologies. USAC's website conforms to the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) P1 standard. USAC is currently engaged in a full-scale redesign of its website which will incorporate enhanced accessibility features. In addition, USAC communicates with stakeholders about the programs in a variety of ways and provides numerous tools to assist participants. USAC call centers, which provide alternatives to the website, enable callers to interact with Text Telephone (TTY) operators who can assist hearing and/or speech impaired customers. USAC staff are trained to complete forms on behalf of visually impaired customers.

Whether Schools and Libraries and Rural Health Care Program Distribution Should More Closely Track High Cost and Low Income Program Distribution. The Commission in paragraph 33 of the *NPRM* seeks comment on whether the Schools and

[261] *NPRM*, ¶ 32.

[262] *NPRM*, ¶ 33.

[263] USAC's website complies with section 508 of the Rehabilitation Act, 29 U.S.C. § 794d, as amended by the Workforce Investment Act of 1998 (P.L. 105-220).

Libraries and Rural Health Care program distribution processes should more closely track those of the High Cost and Low Income programs. As an example, the Commission proposes changing its rules to distribute funds directly to schools and libraries according to their size and allow funds to be used in a more flexible way, e.g., for communications-related services and equipment, or training on how best to use such service and equipment, rather than requiring applications that identify needed services and equipment and their cost. The question whether to alter fundamentally the distribution processes in the Schools and Libraries and Rural Health Care programs is ultimately a policy matter. An attempt to comment on the administrative aspects of such a proposal without more details would be speculative. Therefore, USAC will reserve further comment at this time.

a. Application Process

(i) Schools and Libraries Program

(A) Streamlining the Application Process

The Commission has invited comment on many aspects of the Schools and Libraries program application process.[264] In general, the Commission seeks ways to improve the administration of the application process while maintaining an effective review system to ensure funds are committed and disbursed properly. USAC will address each issue raised by the Commission below.

Multi-year Application Process. USAC looks forward to working with the Commission to achieve our shared goal of streamlining the Schools and Libraries program application process to the fullest extent possible while protecting the integrity of the program. The *NPRM*'s tentative conclusion to adopt a multi-year application process

[264] *NPRM*, ¶ 37.

for priority one services (telecommunications and Internet access) is administratively feasible and could streamline the program in important respects depending upon the manner in which the process in defined. The Commission's rules currently require submission of FCC Form 471 annually, even when the applicant entered into a multi-year contract for goods and services.[265] Should the Commission adopt a multi-year application process, USAC would need to work with the Commission on the operational aspects of the rules so it can build efficient and effective administrative processes. For example, among other things the process would need to specify the period of time for the multi-year application, whether the multi-year application applied to both contracted and non-contracted priority one services, the competitive bidding requirements for non-contracted services under a multi-year application process, and whether the eligibility of services would be grandfathered.

USAC believes a single Funding Request Number (FRN) could cover a multi-year period to the extent the multi-year application process is geared toward applicants that receive the same services from the same providers at the same cost year after year. This would fulfill the goals of easing the burden on applicants and service providers as well as reducing USAC's administrative processes and costs. However, if the multi-year process resulted in an increase in the number of FRNs for which the applicant seeks funding in the first year of the process, this would serve to increase the workload of applicants, service providers and USAC because applicants would need to request funding for more FRNs on each application, and USAC would need to review more

[265] *See* 47 C.F.R. § 54.507(d). In that situation, USAC commits funds "to cover the pro rata portion of such a long term contract scheduled to be delivered during the funding year for which universal service support is sought." 47 C.F.R. § 54.507(e).[265]

FRNs during the application review process. USAC suggests that as the Commission defines the contours of this process, it work closely with USAC. Administratively, a multi-year application process could be broadened to include priority two (internal connections) services covered by a multi-year contract rather than, for example, based on changing technology plan criteria.

A multi-year application process could be implemented in a variety of ways. For example, applicants could submit biennial FCC Form 471(s) seeking funding for priority one and priority two services that are covered by a multi-year contract as well as non-contracted priority one services. USAC's experience suggests a biennial cycle would be most workable because it would complement the Commission's rule which limits eligibility for internal connections support to twice every five years.[266] In addition, the fast pace of changes in technology and eligibility supports a two-year cycle rather than a longer one. Rather than requiring the development of a new streamlined form which could be an additional burden on applicants, the existing FCC Form 471 could be revised to allow applicants to indicate for each separate FRN whether funding is being requested for one or two years. USAC would continue to commit funds on an annual basis by issuing annual Funding Commitment Decision Letters (FCDLs) to facilitate compliance with the Commission's rules of priority, [267] and the ADA. Were the Commission to amend its rules for prioritizing funding commitments and if the Fund was permanently exempted from the ADA, biennial FCDLs could be issued.

[266] *See* 47 C.F.R. § 54.506(c).

[267] *See* 47 C.F.R. § 54.507(g).

Under this process, USAC would issue an FCDL for the first year of funding, and would notify the applicant and service provider that USAC expects to be able to approve the second year of funding contingent upon the availability of funds in the next funding year, and contingent upon the applicant and service provider's compliance with program rules. For example, an applicant with a 90% discount seeking funding for internal connections whose application was approved in the first year would receive an FCDL early in the second year of the biennial cycle because the application would have already been processed. However, an applicant with an 85% discount would need to wait until USAC knew it would be able to fund internal connections at that level in the subsequent year. Assuming historical patterns prevail and USAC continues to be able to fund all priority one requests, then all biennial priority one requests would also likely be approved early in the second year of the biennial cycle.

With respect to continued compliance with program rules, if, for example, the applicant was found to be non-compliant as a result of an audit after USAC had determined the second year of funding would be approved, USAC would hold the second FCDL pending the applicant resolving non-compliance issues.[268] Similarly, if USAC received evidence suggesting violations of program rules, such as a whistleblower call, USAC would investigate the matter before issuing the second FCDL.

A biennial application process could provide greater certainty to applicants and service providers, and could reduce administrative burdens and costs on them as well as USAC. Applicants and service providers would know, absent certain circumstances, they

[268] *See* below at 246-47 for an explanation of USAC's non-compliant auditee process.

could expect two years of funding. Furthermore, applicants would not need to submit annual applications to USAC nor, as a general matter, go through the application process each year. Under this process, applicants would be limited to the maximum amount of funding requested in the first of the two years, the specific goods and services for which the funding was sought (although changes could of course be made consistent with the Commission's service substitution rules), and the discount level associated with the FRN. USAC's experience has been that discount percentages are relatively constant. Applicants who do experience a significant change in their discount rate could notify USAC and then submit a new FCC Form 471 application for the second year with the different discount rate.

USAC would welcome the opportunity to work closely with the Commission and the stakeholder community to ensure adequate education and outreach to program participants with respect to the process adopted by the Commission. For example, applicants and service providers would need to be mindful that for the second year of a biennial process, USAC would not be able to disburse funds for any goods and/or services provided prior to the start of the second year, and would need to ensure that applicants did not receive goods and services prior to the start of the second year. Similarly, if applicants determined in the second year they would not need the total amount of funding committed because, for example, the cost of the equipment had decreased, applicants would be encouraged (or could even be required) to submit FCC Form 500.

A multi-year application process—however designed by the Commission—undoubtedly will create new administrative challenges for USAC and program

participants, at least initially. It would require changes to the FCC Form 471, enhancements to the PIA review procedures, systems changes, and extensive education and outreach. It could increase the need for service substitutions because of the speed with which technology changes, with the result being increased USAC workload in this area. Such an increase, however could be offset by a corresponding reduction in application review workload due to the multi-year application process. With respect to service eligibility changes after USAC had approved the funding commitment, the Commission could specify whether changes not based on the Act would be grandfathered for all years of the multi-year application.

Although many details of a multi-year application process are necessarily unclear at this point, USAC's experience suggests such a process would not meaningfully increase the potential for waste, fraud, and abuse. Each application submitted to USAC would still undergo extensive Program Integrity Assurance (PIA) review. Applicants and service providers would continue to be subject to audits and to heightened scrutiny of applications as appropriate. In short, USAC does not believe there is necessarily a connection between preventing waste, fraud and abuse and whether the application process is annual or multi-year.

Participation of Small Schools and Libraries. The Commission seeks comment on whether the complexity of the application process leads some small schools and libraries to choose not to participate in the Schools and Libraries program.[269] USAC's experience suggests the application process and the complexity of program rules in

[269] *NPRM*, ¶ 37.

general indeed impose a special burden on many small schools and libraries that do not have dedicated resources to complete applications and monitor the rules.

USAC has already taken significant steps to simplify the application process targeted at smaller applicants and applicants applying for limited funding. Since November 2000, the FCC Form 470 online "interview" interface has been available to applicants. This interface allows applicants to complete the form by answering a series of questions. In December 2002, USAC expanded the interview interface to FCC Form 471. The interview interface is designed for individual schools, school districts with fewer than 25 schools, individual libraries, and library systems with fewer than 25 branches. The interview interface asks only the questions necessary to complete the form based on the type of application and other information provided by the applicant. These interview formats may obviate the need for short versions of the actual forms. Introducing additional forms could cause confusion in the field if applicants are unsure of which form they should use for different situations and could result in funding denials if an applicant filed the wrong form. In addition, USAC's implementation of online forms that are pre-populated based on information previously submitted by the applicant helps small schools and libraries because they are the applicants with the least time and resources available to devote to the application process.

Notwithstanding these efforts, USAC recognizes more can be done. USAC is planning targeted training for small non-public schools. In addition, as part of USAC's Site Visit Initiative, USAC is gathering information about the particular difficulties faced by smaller applicants who do receive funding. USAC will use this information to devise new strategies for assisting smaller applicants throughout the entire process.

USAC also believes review procedures could be further streamlined for applications requesting smaller amounts of funding. In 2005, USAC received over 10,000 applications requesting less than $5,000 of support for priority one services only, and another 6,000 applications requesting between $5,000 and $13,000 for priority one services only. Narrowly targeted review procedures for such applications could cut processing time significantly and lead to small applicants receiving funding commitments more quickly, which may well increase participation by smaller applicants. Streamlining the procedures for applicants seeking limited funding would also enable USAC to channel its limited resources to areas of program review where the potential for waste, fraud, and abuse are the greatest. USAC seeks to work with the Commission to streamline the process for these types of applications while protecting program integrity.

***Providing Status Information to Program Participants*.** The Commission seeks comment on the amount of information USAC should provide to applicants and service providers regarding the status of applications and other transactions.[270] USAC strives to make as much information as possible available to program participants. USAC has responded to program participants' requests for more information about the status of their applications, and has taken significant steps to achieve this through a combination of making more information available to applicants online, adding an ombudsman to USAC staff, and enhancing its Client Service Bureau capabilities. While USAC has addressed this issue in many important respects, USAC recognizes it must provide more real-time information to applicants and service providers about the status of transactions.

[270] *NPRM*, ¶ 37.

USAC's online FCC Form 471 Application Status Tool has been available since December 2001. This tool provides information about the status of each FCC Form 471 application as it moves through the application review process. In May 2005, USAC significantly enhanced the tool to provide much more detailed information about the status of applications. The tool also provides an explanation of each possible status and is updated in real time. The same information available on this tool is also available by telephone, either from a live customer service representative or through an interactive voice response system. USAC plans to implement similar status tools for invoices and appeals within the next 12 months.

USAC makes available to the general public a substantial amount of program information through the Data Retrieval Tool (DRT) on USAC's website. The DRT allows access to the data on each FCC Form 471 submitted to USAC such as the applicant and service provider name, the amount requested, the funding commitment decision, and the amount funded. The DRT also provides information that assists applicants and service providers in managing their participation in the program such as the amount approved for disbursement for each FRN and service start and end dates for each FRN. The DRT is updated nightly. USAC solicited input from DRT users in March 2005, and plans to implement DRT enhancements that will enable easier and broader searching of the vast amount of available data in 2006. The DRT has been widely used since it was made available. From July 2003 through June 2004, visitors to USAC's website viewed the results of their searches 279,193 times. From July through June 2005, visitors viewed the results of their searches 297,803 times. Also available online is information about FRN extensions at the FRN Extension Tool.

USAC's Client Service Bureau (CSB) handles a large volume of calls and provides status and other information to program participants. If a question is of a highly technical nature or otherwise beyond the scope of the expertise of the CSB agent, the call is escalated to the Technical Client Service Bureau which is staffed by agents who have more expertise in program requirements. The table below sets forth the volume of calls received by the call center.

DATE	INBOUND CALLS RECEIVED	INBOUND FAX	INBOUND WEB INQUIRY
July 2001 – December 2001	95,883	107	2,114
2002	141,471	129	7,089
2003	109,102	85	9,245
2004	88,317	66	9,163
January – August 2005	66,728	125	7,237
TOTAL	**501,501**	**512**	**34,848**

While USAC strives to provide accurate, timely and consistent information to callers, the results of USAC's Site Visit Initiative strongly suggest some program participants have received inconsistent and incomplete answers from CSB agents. USAC is addressing these issues through additional training, access to more complete information, and improvements to the call escalation process.

Recognizing some questions are more complex, USAC created an ombudsman position to assist applicants and service providers with specific questions and problems. USAC's Ombudsman responds to a variety of questions, assists applicants and service providers solve specific problems, and can answer general questions about, for example, application, invoicing, appeal, commitment adjustment, and service substitution procedures.

Establishing Target Dates For Processing Applications. The Commission seeks comment on whether it should establish deadlines or target dates for processing applications, noting there may be practical limitations to establishing firm deadlines for processing applications, which are typically submitted in batches.[271] USAC has taken specific steps toward expediting processing times that are described below.[272] USAC suggests target dates, rather than firm deadlines, be set for processing applications. The reason for establishing targets is, as the Commission has recognized, that there are practical limitations to establishing deadlines created by the structure of the funding cycle, the annual application process, and the challenges inherent in processing applications.[273] Furthermore, certain aspects of the application review process are not entirely within USAC's control. The processing of most applications requires USAC to make contact with applicants or service providers to obtain answers to questions and documentation. While some applicants have dedicated Schools and Libraries program staff, many applicants are teachers and librarians who often have many other duties. Delays in the processing of applications can be caused by the challenges of contacting applicants. Additionally, USAC occasionally needs to seek guidance from the Commission to respond to new situations as they arise. At the same time, USAC has worked to improve its own review processes for making funding commitment decisions more quickly.

[271] *NPRM*, ¶ 37.

[272] *See* below at 115-17.

[273] *Id.*

Using Technology to Improve the Application Process. The Commission also seeks comment on suggestions for using technology to improve the application process, such as receiving electronic-only notifications and status reports.[274] Expanding the use of technology will accelerate the application and communication processes. USAC supports moving to an all-electronic system to the fullest extent possible, and has taken many steps in that direction. To the extent increased automation is planned and implemented, it will likely require additional resources in the short term, but once the systems are in place, administrative costs will likely decrease.

USAC has steadily progressed toward a full "e-commerce" model for all program transactions. Applicants have been able to submit FCC Forms 470 to USAC electronically since the first year of the program, and USAC made online submission of the FCC Form 471 available in the second year. The rate of electronic submission of FCC Form 471 has increased in each funding year. In Funding Year 2005, 97% of all FCC Form 471 applications were submitted online. The electronic submission of FCC Form 471s has resulted in significant time and administrative costs savings by avoiding manual data entry, scanning, and archiving of paper forms. Applicants also receive immediate notification that their submissions have been accepted by the automated systems. USAC pre-populated certain parts of FCC Form 470 and FCC Form 471 beginning in Funding Years 1998 and 1999 based on information previously submitted by the applicant. Beginning in Funding Year 2002, USAC provided applicants with the

[274] *NPRM*, ¶37.

capability to automatically copy the often lengthy data on Block 4, the discount calculation worksheet, of the FCC Form 471 from a prior year.

USAC continues to identify opportunities to make electronic submission of data easier for the user. In addition to the capability to copy Block 4 that is already available, a new Block 4 "bulk upload" function allows Block 4 information to be created externally to the online FCC Form 471, and then uploaded directly to USAC. This function is expected to be available at the opening of the funding year 2006 window. The primary beneficiaries of this function will be large applicants such as consortia who have complex Block 4 information. In addition, for Funding Year 2006 USAC has modified the requirements for obtaining a Personal Identification Number (PIN) in a manner that will enable more applicants to certify forms electronically.

For Funding Year 2005 applications, USAC developed the capability for applicants to submit the information contained in the Item 21 attachment describing the goods and services for which support is sought online. Although at this time the online Item 21 attachment is expected to yield the most significant benefits in the invoicing review and service substitution functions, USAC also expects the application review process to become more efficient because this information will be provided in a standardized format. Applicants will particularly benefit when they select products from the Eligible Products Database discussed below.[275]

Since the first year of the Schools and Libraries program, USAC has had the capability to provide electronic versions of its notifications and decision letters to

[275] *See* below at 127-134.

applicants and service providers. USAC intends to add more electronic dissemination capabilities. USAC also communicates with service providers via an electronic bulletin board and will soon establish a similar communication channel for applicants. In October 2004, USAC emailed the first issue of the *Schools and Libraries News Brief* to program participants. This news brief contains information about upcoming funding commitments, other timely information, and tips for complying with program rules. USAC is also planning to implement email alerts in the near future.

Certification of program forms is an essential component of program integrity required by Commission regulations and orders. After careful study of the program integrity implications of allowing electronic certification and development of a system that is both safe and user-friendly, USAC implemented electronic certification for FCC Forms 470 and 471 in Funding Year 2001. Electronic certification eliminates the cost and inconvenience of mailing certification forms. As of Funding Year 2005, approximately 50% of applicants took advantage of electronic certification. To increase participation, USAC has changed the requirements for submitting and certifying program forms electronically beginning with Funding Year 2006 to increase electronic certifications while at the same time ensuring that adequate authentication controls remain in place.

FCC Form 486, Receipt of Service Confirmation form, has been available for online submission and certification since October 2002.[276] FCC Form 500, the Adjustment to Funding Commitment and Modification to Receipt of Service

[276] *See* http://www.sl.universalservice.org/menu.asp; Schools and Libraries Universal Service, Receipt of Services Confirmation Form, OMB 3060-0853 (August 2003) (FCC Form 486).

Confirmation form, is not available online at this time, but USAC is developing the capability for online entry and other enhancements as described below.[277]

With respect to invoices, FCC Form 474, the Service Provider Invoice Form, has been available online since October 2001. Additionally, service providers have had the option of submitting invoices electronically since December 1, 1999, which USAC strongly encourages for service providers who frequently submit invoices. Service providers may encrypt invoices and submit them as an email attachment to increase security. USAC confirms each submission with an electronic response. However, FCC Form 472, the Billed Entity Applicant Reimbursement (BEAR) Form, is not available for electronic submission or certification at this time because of the dual certifications required by applicants and service providers on the form.

Although USAC has moved in the direction of electronic submission and certification of service provider forms and invoices, further enhancements are underway. For example, electronic certification is not currently available to service providers. USAC's goal is to implement a "service provider portal" to provide program data tailored to the needs of all USF service providers as more fully described below.[278] In the meantime, USAC is working on a service provider PIN system for service providers participating in the Schools and Libraries program, which will enable online submission and certification of FCC Form 473s, the Service Provider Annual Certification form.[279]

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[277] *See* below at 142. *See also*, Universal Service Schools and Libraries, Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form, OMB 3060-0853 (April 2000) (FCC Form 500).

[278] *See* above at 112-14.

[279] Universal Service for Schools and Libraries, Service Provider Annual Certification Form, OMB3060-0856 (October 1998) (FCC Form 473).

(B) Timing of USAC and Commission Processes in the Schools and Libraries Program

In paragraph 38 of the *NPRM*, the Commission addresses the timing of various Schools and Libraries program processes. USAC recognizes, as does the Commission, that timing is critical to applicants, many of which operate according to strict state or municipal budget and procurement schedules. Delay in acting on applications can throw schools and libraries off their mandated budget or procurement schedules, with significant negative consequences. Sometimes delay can complicate the USAC application process for schools and libraries, leading to ministerial errors on subsequent applications, complicating auditing, and undermining USAC's ability to combat waste, fraud, and abuse.

In preparation for Funding Year 2006, USAC is performing a comprehensive review of its Program Integrity Assurance (PIA) review procedures with a focus on streamlining procedures, eliminating redundancies, and analyzing the cost-effectiveness of certain procedures. To the extent this process results in fewer review steps, FCC Form 471 processing time can be reduced. Also, USAC has consistently encouraged applicants to submit separate FCC Form 471s for priority one and two services, as this approach generally enables applicants to receive decisions on priority one services more quickly.

All FCC Form 471 applications for Schools and Libraries program funds and invoices are reviewed according to detailed PIA review procedures. These procedures are applied to each application and invoice to ensure USAC's decisions comply with Commission rules, orders and guidance. There are procedures for heightened scrutiny of

certain applications and invoices as well. These procedures are described in greater detail in Appendix A to these comments.

USAC has taken many steps to improve the timeliness of decisions it renders in the application and invoice review process. However, it is important to understand how the interrelationship of the structure of the funding cycle, the annual application process, challenges inherent in the processing of applications and invoices, and USAC's responsibility to ensure funding and disbursement decisions are made consistent with program rules work together to cause delays. USAC and the Commission must continue to work together regularly to make the Schools and Libraries decision process more efficient.

Structural Impacts on Application Processing. The Commission notes in paragraph 38 of the *NPRM* that applications typically arrive in batches. Commission rules require applicants to submit annual applications and require USAC to establish a filing window each year for submitting FCC Form 471s so that all applications received within the window are treated as simultaneously received.[280] In all but one funding year, demand for funds far exceeded the $2.25 billion annual cap, which means only applicants filing within the window will be able to receive funding. The table below sets forth the number of FCC Form 471 applications received within the funding window and the number of individual Funding Request Numbers (FRNs) on each application since the first year of the program.

[280] *See* 47 C.F.R. § 54.507(c), (d).

NUMBER OF CERTIFIED, IN-WINDOW APPLICATIONS RECEIVED		
FUNDING YEAR	**NUMBER OF APPLICATIONS**	**NUMBER OF FRNS**
1998	30,311	138,153
1999	32,167	136,209
2000	34,778	151,546
2001	34,306	162,836
2002	35,081	142,437
2003	39,807	138,678
2004	39,714	138,141
2005	38,883	125,084
TOTAL	**285,047**	**1,133,084**

While the funding window is open for approximately 75 days each year, the overwhelming majority of FCC Form 471 applications arrive during the last two weeks of the window. For example, in Funding Year 2005, 76% of the applications submitted (representing 92.9% of the funds sought) were received during the last two weeks of the window. This means USAC has four to five months to review the thousands of applications and individual FRNs seeking billions of dollars in funding requests prior to the July 1 start of each funding year.

In addition to delays caused by the structure of the program, USAC recognizes delays may also be caused by the manner in which USAC processes applications. To address these delays, USAC has tried different organizational strategies to maximize the effectiveness of the PIA review. Presently, USAC groups applications by the submitting entity during the regular PIA review process so that commonalities among the applications are reviewed by one, rather than multiple reviewers. With respect to the different types of review——for example, regular PIA reviews, services reviews, selective reviews——USAC has found it is more efficient for reviewers to be specialized and trained to handle the more complex reviews. As a result, each application may be handled

by more than one reviewer, and applicants and service providers can be asked to respond to requests for information from more than one reviewer. The more complex reviews, especially the services reviews and selective reviews, may also cause delays in processing applications.

Eligible Services Reviews. USAC reviews each application to ensure only eligible services for eligible purposes for use by eligible entities are funded.[281] Eligibility for discounts requires not only the product or service be eligible, but that it is put to an eligible use, and it is utilized at an eligible location by an eligible entity. In recognition that no products or services are unconditionally eligible, the Eligible Services List makes clear products and services listed are only eligible if used by eligible entities in eligible locations for eligible purposes. The eligible services review is the most detailed and complex review, often requiring detailed discussions with applicants and service providers to ensure USAC makes lawful funding decisions. The technical complexity of many of the funding requests and the necessity of communicating with applicants and service providers often contributes to delays in making funding decisions. The conditional eligibility of so many products and services is the main complicating factor in reviewing funding requests.

Necessary Resources and Competitive Bidding Reviews. Each year, certain applicants undergo heightened scrutiny reviews to ensure the applicant has complied with its certifications that it has secured access to the resources necessary to make effective use of the discounted services and that it has complied with the Commission's

[281] *See* 47 C.F.R. §§ 54.502, 54.503.

competitive bidding rules. The Commission has recognized the importance of the necessary resources reviews in protecting program integrity.[282] However, these are complex and frequently time-consuming reviews that require applicants to provide detailed documentation to USAC. To complete reviews in a reasonable period of time and mitigate funding delays while reviews are in progress, USAC significantly increased the size and expertise of its review team.

Delays in all areas of program management can be reduced to the extent applicants and service providers are fully cognizant of program rules and requirements. For example, the more thoroughly applicants understand the information required to process an application, the quicker the review process. The more thoroughly service providers understand how to submit accurate invoices, the more quickly USAC can make disbursements.

Introduction of Processing Deadlines. The Commission in paragraph 38 also seeks comment on how USAC can mitigate timing problems and reduce delays. The Commission seeks input on whether it should create new deadlines for Commission or USAC action in various phases of the program, such as deadlines for progressing from the completion of an application to FCDL, or for completion of appeals at the Commission. As stated above, USAC believes target rather than absolute deadlines are

[282] *See, e.g., Request for Review of the Decision of the Universal Service Administrator by New Orleans Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, 16 FCC Rcd 16653, 16658, ¶ 12 (2001) ("Initially, we must emphasize the importance of SLD's Item 25 'necessary resources" review. The necessary resources certification requires applicants to examine their technology needs and available technology and budgetary resources before making funding requests, in order to ensure that applicants will be able to make effective use of any discounted services they receive. As noted before, we have concluded that SLD's process for reviewing this certification is critical to curbing waste, fraud and abuse and to ensuring that the resources of the schools and libraries universal service support program are used in compliance with statutory requirements.") (footnotes omitted).

appropriate, and USAC has discussed the many steps it has taken to reduce application processing times and further steps being planned. USAC has explained how the interaction of the annual funding cycle together with the funding cap results in USAC receiving the majority of applications within a short period of time only four to five months prior to the start of the funding year. USAC has also explained how the complexity of the rules governing the eligibility of goods and services affects the processing of applications. Further, USAC experiences many delays attributable to follow-up communications with applicants and service providers during the application review process. In an effort to address this issue, for Funding Year 2006, USAC revised its customer contact templates to enable reviewers to document whether the applicant or service provider submitted documentation in response to a different request. These efforts notwithstanding, USAC must continue to make every effort to reduce review time and simplify the process while continuing to protect program integrity.

With improved automated systems, and more online filings by applicants, USAC can further mitigate delays experienced by applicants. Additionally, through more effective outreach to applicants and service providers, USAC believes applicants and service providers will be more aware of and adherent to program rules thereby further reducing application processing times. All three—applicants, service providers and USAC—share responsibility for reducing timeframes associated with the application process.

Staff Resources. The Commission also asks in paragraph 38 of the *NPRM* whether USAC and the Commission have adequate staff resources to mitigate delay in the Schools and Libraries program. USAC has continually sought to achieve the right

balance between having adequate staff to administer the Schools and Libraries program and keeping administrative costs low.[283] USAC has added staff when necessary. Where additional resources have been required, for example, as a result of Commission orders, USAC has worked to add only the resources necessary to properly implement the order. As discussed elsewhere in USAC's comments, implementation of some of the initiatives contemplated by the Commission and USAC will require additional resources at least in the short-term.

Guidance Regarding Completed Applications. In paragraph 39 of the *NPRM*, the Commission seeks comment on what guidance, if any, the Commission should provide to define a completed application. The Commission recognizes that some parties have experienced problems with meeting the requirement to submit a complete application during the filing window and desires to provide clarity to program applicants. Early in its administration of the program, USAC established minimum processing standards defining a completed application as part of its administrative responsibility. The Commission has affirmed USAC's authority to do so.[284] The minimum processing standards are identified on the instructions for each FCC form. Failure to meet these standards leads to rejection of the form. USAC's experience has been that as the submission of online applications has grown—for Funding Year 2005 it reached 97%—very few forms are rejected for failing to comply with these standards because for USAC's systems to accept an online application, the information required to meet the

[283] *See* Appendix B.

[284] *See Deer Park Request for Review*, 17 FCC Rcd at 7320, ¶ 6 (re-affirming USAC's "authority to implement minimum processing standards and to reject those applications that fail to meet those standards.").

minimum standards must be provided. As a result, for Funding Year 2005, only 52 FCC Form 471s, and 183 FCC Form 471 certification pages were rejected for failing to meet these standards. USAC expects this rate to decline further as more applicants certify their forms electronically. The Commission also asks whether it should establish minimum processing standards with which USAC must comply, for example requiring USAC to verify the applicant's technology plan was signed by an authorized entity. USAC's experience does not suggest that codification of its internal operating procedures will improve applicant compliance with form submission standards.

(C) Competitive Bidding Rules

Paragraph 40 of the *NPRM* asks commenters to submit alternative proposals or suggestions for improving Schools and Libraries program competitive bidding rules to ensure that program participants obtain the best value for USF support provided. A number of applicants have informed USAC that the FCC Form 470 posting on the USAC website enabled them to hear from service providers they would have not otherwise known were in the potential pool of eligible bidders. Other applicants have said they never received a response to an FCC Form 470 posting. USAC's experience suggests the Commission's competitive bidding rules, and the rules requiring schools and libraries to comply with state and local procurement requirements help to achieve the Commission's goals of full and open competition resulting in the lower prices. However, to the extent private entities are not subject to state and local competitive bidding requirements, there is an inconsistency in the competitive bidding requirements placed on public and non-public applicants to the program. Minimum competitive bidding requirements could be created to apply to entities to which state and local requirements do not apply.

The *NPRM* next asks whether the Commission should limit the obligation to issue a competitive bid only to applications above a particular dollar value threshold.[285] Where there are no applicable state and local procurement requirements, a dollar value threshold for obtaining a minimum number of bids appears appropriate. In establishing such a threshold, care must be taken not to remove an inordinate amount of the funds requested from competitive bidding requirements because this could lead to higher prices for program beneficiaries. For example, the threshold for triggering a minimum number of bids could be as low as $2,000 or could be as high as $10,000 because of the manner in which funding requests are stratified.

If the Commission were to establish new competitive bidding rules, then FCC forms would need to be revised, terms would need to be defined, and USAC would need to revise its procedures to ensure compliance with new rules. For example, the rules would need to specify the conditions under which an exception to obtaining a minimum number of bids would be triggered, and the minimum contents of an RFP. Additionally, USAC would need to modify its systems to support any new rules, and would need to devise an appropriate education and outreach program for participants.

(D) Eligible Services List and Eligible Products Database

Paragraph 40 of the *NPRM* also seeks comment on the process for establishing and administering the Schools and Libraries program Eligible Services List and the Eligible Products Database pilot project.[286]

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[285] *NPRM*, ¶ 40.

[286] *See* 47 C.F.R. § 54.505. To promote greater transparency in what is eligible for support under the schools and libraries support mechanism, in December 2003, the Commission adopted 47 C.F.R. § 54.522

Eligible Services List. The current system for developing and modifying the Eligible Services List (ESL) provides program participants with an opportunity to comment prior to issuance, and, once issued by the Commission, offers greater certainty and a better understanding of the eligible products and services for each funding year. The list is authoritative, appears to be beneficial to program participants, and is certainly beneficial to USAC. USAC suggests the Commission set a regular date for issuance of the list to give participants adequate time to comment and alter plans if necessary.

Products and services are categorized by the Commission on the ESL as either eligible (including conditionally eligible) or ineligible. USAC's experience is the conditional eligibility of products and services is one of the primary causes of the complexity of the program. The Commission has specified the conditions under which products and services are eligible through its rules, orders, and the annual ESL. In some cases the conditions for eligibility are relatively straightforward. In other cases the eligibility of a product or service turns on the specific ways in which the product or service is used, and in those cases there is an associated difficulty in USAC's ability to make an eligibility determination without receiving substantial additional information from the applicant. Making fewer goods and services "conditionally eligible" to the extent possible would ease administrative burdens on applicants, service providers, and

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which, effective beginning Funding Year 2005, formalizes the process for updating the eligible services list by requiring USAC to submit annually a draft of its updated eligible services list for the upcoming year. In August 2004, the Commission released a Public Notice seeking comment on USAC's proposed eligible services list for Funding Year 2005. *See Pleading Cycle Established For Eligible Services List For Universal Service Mechanism For Schools And Libraries*, Public Notice, CC Docket No. 02-6, 19 FCC Rcd 16013 (2004). In October 2004, the Commission released the final Funding Year 2005 eligible services list for Funding Year 2005. *See Release of Funding Year 2005 Eligible Services List for Schools and Libraries Universal Service Support Mechanism*, Public Notice, CC Docket No. 02-6, 19 FCC Rcd 20221 (2004).

USAC. Whenever USAC needs to contact an applicant or service provider to resolve a question about eligibility, this results in delay and increased administrative effort.

The following are examples to illustrate the range of product and service eligibility conditions.

Funding requests for long distance telephone service are relatively straightforward to administer. The Commission has indicated any commercially available telecommunications service is eligible for funding.[287] The ESL states "Long Distance Service and associated charges are eligible for discount." USAC can quickly issue a positive funding commitment as long as the applicant provides basic substantiation supporting the request.

Funding requests for Internet access are often straightforward but can become complex under certain circumstances. The Commission has indicated "basic 'conduit' access" to the Internet is eligible for funding.[288] However, many Internet access services include features the Commission has determined are not eligible such as caching and filtering, that are often included as a basic component of a standard Internet access package. As a general matter, the Commission has indicated that cost allocation is required when ineligible components are included in a funding request.[289] However, the Commission also has recognized that such features, if included on an ancillary basis, do not require cost allocation.[290] As a result of these rules, many requests for Internet

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[287] *See Universal Service Order*, 12 FCC Rcd at 9007-08, ¶ 434.

[288] *See id.* at 9008-09, ¶ 436.

[289] *See* 47 C.F.R. § 54.504(g).

[290] *See*47 C.F.R. § 54.504(g)(2)*; Schools and Libraries Third Order*, 18 FCC Rcd at, ¶ 37.

access, as well as other products and services that have a mixture of eligible and ineligible features, must undergo close scrutiny so USAC can properly determine whether the Commission rules for cost allocation or ancillary use apply.

Products and services in the priority two (internal connections) category create more difficult and complex issues. With the rapid pace of technological change, USAC must apply Commission eligibility guidance based on existing product and service definitions to new products and services for which the existing definitions may provide only an approximate fit. The general category of "network security" is an example. Originally, a network firewall (a security device that protects against unauthorized intrusions) was not considered eligible as internal connections because it was not "necessary to transport information all the way to individual classrooms."[291] The October 2003 ESL for the first time recognized some network security features could be eligible by indicating a "firewall is necessary to ensure operation of the network, and is eligible for discount."[292] However, other security devices were not considered to be eligible. The October 2004 ESL changed the eligibility for another security device—a proxy server—from ineligible to conditionally eligible.[293] Further, the draft ESL issued by the Commission on August 15, 2005, lists a Virtual Private Network (VPN) system for enhanced security as eligible. Consequently, even though some specific security devices are considered eligible, other security devices not specifically listed on the ESL may not

[291] *See Universal Service Order*, 12 FCC Rcd at 9021, ¶ 459.

[292] Eligible Services List of the Schools and Libraries Support Mechanism at 19 (Oct. 10, 2003), *available at* http://www.sl.universalservice.org/data/pdf/ESL_archive/EligibleServicesList101003.pdf *(Eligible Services List 2003).*

[293] Eligible Services List, Schools and Libraries Support Mechanism for Fund Year 2005, USAC Schools and Libraries at 45 (Oct. 5, 2004), *available at* http://www.sl.universalservice.org/data/pdf/EligibleServicesList_102704.pdf (*Eligible Services List 2004).*

be. In reviewing applications, USAC is required to determine the eligibility of specific products depending upon whether those products can be appropriately categorized within an eligible product or service. Because the Commission has a long-standing commitment to technological neutrality, it could consider a general finding regarding the eligibility of network security systems, as opposed to the product-by-product determination that is employed at this time.

Another example is network file servers, which the Commission has determined are conditionally eligible depending on how they are used. The Commission has indicated that "support should be available to fund discounts on … network file servers … because [they] are needed to switch and route messages within a school or library."[294] However, the Commission has concluded file servers "built to provide storage functions to supplement personal computers on the network" are not eligible.[295] USAC emphasizes that the uses of file servers must be specified on program applications. Knowledgeable applicants and service providers no longer make funding requests for "network file servers," but rather specify the use of the server so USAC can evaluate eligibility. In cases where the use of the file server is not specified, however, USAC must contact the applicant to obtain clarifying information.

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[294] *See id.* at 9021, ¶ 460 (footnote omitted).

[295] *See id.* at 9022, ¶ 461. The Commission reaffirmed the conditional eligibility of file servers in 2001 in the *Cleveland Order*. *See Request for Review of the Decision of the Universal Service Administrator by Cleveland Municipal School District Cleveland, Ohio, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, 16 FCC Rcd 15372, 15374, ¶¶ 7-8 (2001) (*Cleveland Order*).

A third example is a basic maintenance of internal connections, a new funding category established in the *Schools and Libraries Third Order*.[296] Applicants and service providers have asked USAC for guidance with respect to what maintenance services are eligible. For example, while the Commission has indicated repair and upkeep of hardware may be eligible as basic maintenance, current guidance does not specifically address maintenance of eligible software. Though the Commission has indicated services "such as 24-hour network monitoring and management" are not eligible, specific guidance has not been provided regarding the eligibility of other network monitoring or management activities.[297] While the Commission has indicated that on-site help desks are not eligible if they provide "any ineligible features or functions," some applicants and service providers have expressed confusion regarding whether on-site support services are eligible.[298] Absent further guidance from the Commission, USAC is unable to provide clarification to participants to assist them in formulating funding requests for eligible products and services. As a result, some program participants have informed USAC that they feel forced into educated guesses concerning eligibility of products and services.

Another administrative issue raised by the current format of the ESL relates to the manner in which information is provided. The ESL indicates the conditions under which approximately 200 separate products and services are eligible for funding. Particularly for smaller applicants not well-versed in the details of the program, understanding these

[296] *See* 18 FCC Rcd 26912.

[297] *See id.* at ¶ 23.

[298] *See id.* at ¶ 24.

details well enough to be able to submit a funding request for eligible products and services can be daunting. The overall complexity of the ESL, and the conditional eligibility the list attempts to describe, compounds the difficulty applicants experience submitting funding requests for eligible products and services.

A summary of eligibility requirements is provided at the end of the ESL in a section called "Special Eligibility Conditions."[299] This section categorizes internal connections into approximately fifteen functional categories. Each category has a broad eligibility definition attached. Software is described as: "Operating system software that is required for operation of an eligible component, and email software, is eligible. End user software is not eligible."[300] Data protection is described as "Some types of data protection components are used to ensure continued operation of eligible equipment, and can be eligible."[301] This information is more general than what is contained in the body of the list itself, and for that reason can be useful to applicants who are not well-versed in program details. USAC's experience has been applicants find the description of software to be useful because it is specific and unambiguous. However, the description of data protection requires judgment to determine whether a specific product is eligible or not, and hence is less useful. The Commission could consider revising the ESL to be based on broader categories, with these broader categories providing specific eligibility statements. Such an approach could provide stakeholders with greater certainty about the eligibility of products and services.

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[299] *Eligible Services List 2005* at 65.

[300] *Eligible Services List 2005* at 62.

[301] *Id.*

Eligible Products Database. In paragraph 40 of the *NPRM*, the Commission seeks comment on the pilot online Eligible Products Database (EPD) USAC established pursuant to a Commission order, and whether this project has improved the application process.

The EPD was made available to the public in September 2004. At this time, it contains over 3,500 products, and 42 manufacturers are currently participating in the project. Initial results indicate the EPD provides a greater degree of certainty about whether specific products are eligible for funding. One of the major issues, however, is that as the program is presently structured—many goods and services are conditionally eligible as discussed immediately above—an applicant cannot be certain a product or service listed in the EPD will be eligible in all circumstances. Additionally, updating the database with more robust and current product information will be labor intensive. The success of the EDP depends on widespread use by applicants and continued participation my manufacturers. USAC believes it is still too early to determine the overall success of the EPD due to the number of products continually introduced into the marketplace and the conditionality of eligibility. If manufacturers commit to participating and other obstacles can be overcome, the EPD could yield considerable benefits. USAC is eager to continue working with the Commission and program stakeholders on this important project.

Service Life and Depreciation. The Commission asks commenters in paragraph 40 of the *NPRM* to discuss whether equipment service life or depreciation guidelines should be published. Current Commission policies provide relatively clear guidance

about equipment service life, which is essentially three years.[302] USAC's experience suggests simplicity is key in this area. More detail or variances for different technologies or products could unnecessarily complicate the program and create additional administrative burdens on program participants, USAC, and auditors.

(E) Technology Planning and Good Samaritan Process

The Commission raises two additional areas for comment in paragraph 40 of the *NPRM*. First, the Commission seeks comment on how the Schools and Libraries program technology planning process can be reviewed in accordance with other federal technology planning requirements. USAC notes current program rules allow USAC to accept technology plans prepared pursuant to the Department of Education's Enhancing Education Through Technology (EETT) program if the applicant also submits a budget. USAC also accepts state library technology plans approved by the Institute for Museum and Library Services (IMLS).

The Task Force recommended "the goals, requirements, and procedures associated with the Schools and Libraries program technology planning process be reviewed in accordance with other pertinent federal requirements for technology planning."[303] In response to the Task Force recommendations USAC convened a series of meetings with the FCC and the Department of Education with respect to technology planning goals and requirements. As a result of those meetings, USAC gained an understanding that the EETT requirements together with the applicant's current operating

[302] *See* 47 C.F.R. § 54.513(c) ("[E]ligible services and equipment … purchased at a discount … shall not be transferred … for a period of three years after purchase [.]").

[303] *See Task Force Response* at 2.

budget satisfied the Commission's rules for technology plans. This satisfies current federal educational standards for educational technology planning.

Second, in paragraph 40 the Commission seeks comment on whether the "Good Samaritan" procedure is efficient. USAC created the Good Samaritan procedure to address a serious problem not addressed in program rules, which fortunately does not occur frequently. The Good Samaritan procedure addresses situations in which services have been rendered and paid for in full by the applicant but the service provider that provided the goods and services to the applicant is out of business or otherwise unable or unwilling to pass through the reimbursement to the applicant. This situation occurs because program rules allow applicants to pay their service providers the cost of the goods and services in full and then seek reimbursement from USAC, but the rules do not allow USAC to disburse funds directly to applicants. Rather, USAC disburses the funds to service providers, who certify they will remit the funds to the applicant. Under this process, the Good Samaritan obtains the payment from USAC and passes the funds through to the applicant. The Good Samaritan does not receive compensation for performing this service.[304] The system effectively addresses the fact that USAC currently cannot pay applicants directly, but USAC would not characterize it as particularly efficient, as it is a manual process that requires significant coordination among several entities.

[304] *See BellSouth Corporation Petition for Clarification of Request for Immediate Relief Filed by the State of Tennessee, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 18 FCC Rcd 24688, 24689, ¶ 3 n.7 (2003).

Below is an overview of the number of Good Samaritan requests per funding year and the dollar value. The Good Samaritan process generally takes about 60 days to complete.

FUNDING YEAR	REQUESTS PROCESSED	AMOUNT AT ISSUE
1998	37	$1,895,907.66
1999	93	$1,644,498.20
2000	77	$375,755.00
2001	80	$2,611,223.77
2002	199	$2,415,736.21
2003	206	$7,784,123.94
2004	26	$540,521.01
TOTAL	**718**	**$17,267,765.79**

The Good Samaritan procedure is one of a number of measures USAC created in response to unanticipated situations to ensure that disbursements of Schools and Libraries program support are made in compliance with program rules. USAC has also instituted other procedures to ensure that appropriate action can be taken to protect these types of reimbursements from becoming part of any bankruptcy estate.[305] In addition, USAC takes steps to encourage payment when USAC receives a complaint that a service provider has not remitted reimbursements to the applicant. As stated above, these situations arise due to the fact that the structure of the program requires payments (even reimbursements) to be made to service providers and precludes payment of support directly to schools and libraries. If the Commission has the authority to authorize USAC to pay applicants directly as suggested in paragraph 33 of the *NPRM*, then these issues would be eliminated.

[305] *See LAN Tamers*, 329 F.3d at 215 (BEAR reimbursements are not property of the estate of bankrupt service provider).

(F) Schools and Libraries Program Forms

Paragraph 41 of the *NPRM* asks numerous questions about Schools and Libraries program forms. Since the creation of the program, USAC has worked closely with Commission staff to develop and modify forms to address changing circumstances.

The Commission asks whether the FCC Form 470 facilitates the competitive bidding process. USAC's experience suggests the FCC Form 470 is an aid to competitive bidding as explained in greater detail above.[306] The Task Force convened by USAC in 2003 recommended the Commission create simple versions of the FCC Form 470 and FCC Form 471 for smaller and less complex applications.[307] As discussed above,[308] USAC agrees less complex applications should undergo a streamlined application and review process but is not convinced new forms are necessary to achieve this objective. The "interview" FCC Form 470 and FCC Form 471 simplifies the process for less complex applications. Also as discussed above, USAC believes the interview options are preferable to creating an entirely new set of forms, which could complicate, rather than simplify, the process.

In paragraph 41, the Commission also seeks comment on whether forms can be combined in an effort to improve the process. The *NPRM* specifically suggests combining the FCC Form 472 and FCC Form 474. In addressing this question, the Commission asks commenters to discuss how to ensure the certifications by the applicant and the service provider on the FCC Form 472 are executed independently. In addition,

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[306] *See* above at 126-127.

[307] *See Task Force Recommendations*; *Task Force Response* at 1.

[308] *See* above at 110-112.

the Commission seeks input on whether there should be a signature requirement for the FCC Form 474.

USAC agrees combining or eliminating forms is a laudable goal. USAC's experience, however, suggests that combining FCC Forms 472 and 474 into one invoice form will not meaningfully increase efficiency or streamline the program. As discussed below, the forms serve different purposes.

To receive disbursements from USAC, service providers may submit FCC Form 474, the Service Provider Invoice (SPI) form,[309] or applicants and service providers may jointly submit FCC Form 472, the BEAR form.[310] FCC Form 474 is used when the applicant pays its share to the service provider, and the service provider bills USAC the support amount. FCC Form 472 is used when the applicant has already paid 100% of the cost of the goods and services to its service provider and is seeking reimbursement of the discounted portion. This form contains both applicant and service provider certifications.

FCC Form 474 is the only form in the Schools and Libraries program that does not contain certifications by the entity submitting the form. Rather, the service provider makes the relevant certifications annually on FCC Form 473. The Commission asks whether it should add a signature requirement to the FCC Form 474.[311] USAC has not experienced adverse effects due to the lack of a signature on this form. USAC has recovered funds from service providers who were paid based on FCC Forms 474 and has

[309] *See* Universal Service for Schools and Libraries, Service Provider Invoice Form, OBM 3060-0856 (October 2001) (FCC Form 474).

[310] Universal Service for Schools and Libraries, Billed Entity Applicant Reimbursement Form, OMB, 3060-0856 (October 1998) (FCC Form 472).

[311] *NPRM*, ¶ 41.

not encountered resistance based on lack of a signature. Requiring a signature or electronic certification on FCC Form 474 could pose an additional burden on service providers that does not appear to be warranted at this time.

USAC supports moving to an online FCC Form 472. The challenge USAC has faced with respect to making this form electronic has been the dual certifications on the form. The table below shows in each funding year, a larger number of FCC Form 472s than FCC Form 474s are received. Consequently, electronic submission of the FCC Form 472 could save considerable applicant, service provider, and administrative resources. USAC has discussed its plans for implementing electronic submission and certification of this form above.[312]

NUMBER OF INVOICES RECEIVED AS OF JUNE 30, 2005		
FUNDING YEAR	**FCC FORM 472**	**FCC FORM 474**
1998	53,335	14,372
1999	50,432	33,637
2000	37,812	36,586
2001	41,019	36,061
2002	45,637	35,963
2003	48,154	41,899
2004	15,219	26,200
2005	2	12
TOTAL	**291,610**	**224,730**

More generally, the Commission asks commenters to discuss FCC Forms 470, 471, 472, 473, 474, 486, and 498 and address whether more or less information should be required on these forms, if any of these forms could be consolidated or eliminated, and if any other forms would be helpful.[313] USAC does not believe major changes need to be

[312] *See* above at 115-118.

[313] *NPRM* ¶ 41.

made to FCC Forms 470, 471, 486 or 498 at this time. FCC Forms 470 and 471 have been revised frequently since the inception of the program, and were most recently overhauled in October and November 2004 respectively. In revising these forms, USAC worked closely with Commission staff, the State E-rate Coordinator's Alliance, the American Library Association, the Department of Education, and service provider groups to address practical issues identified by stakeholders, to clarify the meaning of the certifications, and to discuss the legal basis for the certifications.

USAC explicitly sought input from program participants on how the forms could be simpler to use. USAC learned participants do not view simplification as merely reducing the number of questions asked on the forms. Stakeholders also sought to add information requested on forms to preclude USAC from needing to obtain additional information during the application review process. In response to this type of request, FCC Form 471 now includes a field where applicants can indicate whether the site provides pre-kindergarten, adult education, or juvenile justice education. Similarly, the applicant may indicate whether the discount percentage is based on an alternate discount mechanism. Additionally, USAC recently streamlined FCC Form 471 by combining three discount calculation worksheets into one. This has simplified the application process considerably.

USAC has evaluated some program participants' suggestion that FCC Form 486 be eliminated. USAC believes the FCC Form 486 plays an important role in the current design of the program, especially with regard to serving as the notification that the services have been, are planned to be, or are being provided to the applicant, the applicant's certifications with respect to compliance with the CIPA, the Commission's

technology plan requirements, and the Commission's contract requirements. FCC Form 486 plays a key role in preventing disbursements to service providers where no goods and services have been provided.

USAC is analyzing whether to recommend significant revisions to FCC Form 500. FCC Form 500 is presently used to notify USAC of changes to the service start date, contract expiration date, and amount of committed funding that will actually be needed for a specific FRN. USAC is evaluating the feasibility of expanding the functions of the FCC Form 500 to enable it to be used to request service substitutions, change service providers, correct site identifier or FCC Registration Numbers, split FRNs, request deadline extensions for invoices and delivery of services, request contract number changes, request billing account number changes, and notify USAC of equipment transfers. The FCC Form 500 is not currently available online, but online submission and certification of this form would be an option were the Commission to adopt significant enhancements to FCC Form 500.

More generally with respect to certifications, USAC works closely with the Commission and stakeholders to update program forms as required by changes in Commission rules and orders. Many of the Commission's recent changes to these forms have been changes to the certifications. As the Commission notes, these changes have been made to combat waste, fraud and abuse. USAC does not have additional changes to suggest to the certifications at this time based on current program rules.

The Commission also asks whether it "should revise the Form 473, so that the applicant paying on an installment plan would be required to certify that, as of the time of the final invoice payment, all of the services covered by the invoice or invoices had been

provided."[314] FCC Form 473 is submitted once a year by each service provider. On this form, service providers certify their adherence to the Commission's rules governing the Schools and Libraries program, especially with respect to their submission of invoices to USAC. The Commission's suggestion would appear to require the service provider to submit FCC Form 473 for each of its customers because it would require applicant certification when installment plans are involved. In Funding Year 2005, USAC received FCC Form 471 applications from 22,417 unique applicants as set forth in the table below:

NUMBER OF BILLED ENTITIES ON CERTIFIED, IN-WINDOW APPLICATIONS	
FUNDING YEAR	**BENs**
1998	19,919
1999	21,552
2000	20,976
2001	21,473
2002	22,769
2003	23,408
2004	22,840
2005	22,417
TOTAL	**175,354**

USAC suggests that this proposal may place an unnecessary burden on service providers, and on applicants as well. Furthermore, USAC would be required to receive and maintain many additional forms per year.

USAC believes the Commission's suggestion is based on its desire to ensure that goods and services have in fact been delivered before USAC pays the final invoice to the service provider. For payments made in response to FCC Form 474 the applicant certifies on the form that it has received the services. For payments made for non-recurring services in response to FCC Form 472, service providers indicate the shipping

[314] *NPRM*, ¶ 41.

date or the last day of work performed on the current FCC Form 472.[315] On the proposed revised FCC Form 472 currently under consideration by the Commission, service providers would be required to indicate the delivery date for the service, or first day of reimbursement period.[316] Therefore, USAC expects that when it receives a request for payment for non-recurring services via the new FCC Form 472, the goods and services have been provided to the applicant unless the contract between the applicant and the service provider includes up-front payments or installment payments. USAC respectfully suggests the Commission's concern could be addressed by revising the FCC Form 472 to include the ability to indicate the service provider is seeking final payment for a particular FRN and that the service provider has provided all corresponding goods and services. A corresponding certification could be added to the annual FCC Form 473 covering all invoices submitted during that funding year.

Finally in paragraph 41, the Commission asks whether any forms (other than the Form 500) should be optional. USAC 's experience suggests optional forms create confusion in the participant community.

(G) Timing of Schools and Libraries Program Application Cycle

In paragraph 42 of the *NPRM*, the Commission seeks comment on whether it should more closely synchronize the application and disbursement process with the planning and budget cycles of schools and libraries participating in the program. USAC's experience is that planning and budget cycles of the many schools and libraries

[315] FCC Form 474, Column 12.

[316] *See Wireline Competition Bureau Seeks Comment on Proposed Revisions to FCC Forms 472, 473, and 474*, CC Docket 02-6, Public Notice, 20 FCC Rcd 4172 (rel. Mar. 1, 2005).

participating in the program vary widely. Therefore, USAC defers to other commenters on this question. The Commission next seeks comment on whether there are inconsistencies between Commission rules (or USAC procedures) and state or municipal rules, including state or municipal procurement rules. USAC is not aware of such inconsistencies and defers to other commenters on this question. The Commission asks whether the current annual application cycle is necessary or whether it would be more efficient to permit multi-year application cycles. USAC supports the option of a multi-year application cycle as discussed in detail above.[317]

(H) Service Providers and Consultants

In paragraph 43 of the *NPRM*, the Commission requests comment on whether it should establish criteria such as quality standards, codes of conduct and the like for service providers and consultants in the Schools and Libraries program. The Commission notes that adopting quality standards or standards, this could of conduct for service providers and consultants could help deter waste, fraud, and abuse by, for example, ensuring program participants maintain effective procedures for complying with the Commission's rules.

USAC believes publicizing "best practices" for service providers and consultants helps make the program run more smoothly by ensuring that program participants have adequate knowledge of program rules as well deterring program abuse. USAC has posted detailed best practices for applicants and service providers on its website. USAC also notes that were the Commission to require USAC to ensure service provider and

[317] *See* above at 106-10.

consultant compliance with such standards, this could represent a new administrative responsibility for USAC that could be significant depending upon the contours of the policy.

USAC believes it should further publicize best practices that service providers and consultants participating in the program should follow. Best practices would include, but not be limited to, the following:

- A thorough understanding of Commission rules and orders, USAC procedures, and Schools and Libraries program guidelines.
- Attend USAC-sponsored training on a recurring basis.
- Participate in USAC's electronic bulletin board, conference calls and regularly review USAC's website.
- For service providers, understand the limitations on their role during the applicant's technology planning and competitive procurement process.
- Disclose to customers any business relationships that could raise conflict of interest issues.
- Fully understand their role during the application review process and be able to provide documentation as requested by USAC.
- Fully understand the administrative processes including the application, invoicing and appeals process.

USAC's experience supports requiring consultants to obtain an identifying number similar to the numbers associated with applicants and service providers so USAC can collect information about consultants such as the consultant's name, company and contact information. In a prior rulemaking proceeding, USAC proposed consultants be assigned a Consultant Identification Number and any person who submits FCC Form 470 or FCC Form 471 on behalf of an entity that is not that person's employer be required to identify themselves by use of this number.[318] In addition, USAC believes consultant disclosure and registration practices should include: (1) assigning an entity code, (2) a

[318] *See Comments of the Universal Service Administrative Company*, CC Docket No. 02-6, at 33-34 (filed Apr. 5, 2002).

standardized disclosure statement from consultants to applicants, detailing potential conflicts of interest, and (3) follow signature policies for non-applicants who prepare forms similar to Internal Revenue Service Forms.[319]

By assigning a Consultant Identification Number, USAC would be able to track consultants to identify whether certain consultants are associated with program integrity issues. This information could also be added to the data available for each FCC Form 471 on USAC's Data Retrieval Tool. Applicants would be able to track the funding history for applications associated with consultants and determine whether certain consultants were identified with funding denials. This type of information could help schools and libraries make more informed decisions.

USAC's experience suggests it would be helpful for applicants to consider the following in deciding whether to hire a consultant to assist it with its participation in the Schools and Libraries program:

- Does the consultant have a thorough understanding of Commission rules and orders, and Schools and Libraries program guidelines?
- Has the consultant attended USAC-sponsored training? If so, which specific training did they attend?
- Does the consultant know how to complete program forms and attachments properly?
- What role will the consultant play in the competitive bidding process?
- Does the consultant have business relationships with service providers that could raise conflict of interest issues?
- Does the consultant have a thorough understanding of applicable state and local procurement regulations?
- Does the consultant understand the appeals process?
- Does the consultant understand the invoicing process?

[319] *See Task Force Response* at 6.

Finally, the Commission asks commenters to discuss any other measures it should consider to deter fraudulent actions by service providers or consultants. As discussed in more detail below,[320] USAC suggests the Commission consider establishing a lower standard for service providers, consultants, and applicants to be debarred from the program for violations such that a pattern of behavior would warrant sanctions. USAC suggests this lower standard would be a "substantial pattern of misconduct," and could consist of one or more of the following:

- Service provider which pays applicant's share.
- Applicant who did not pay its share.
- Service provider who filled out and submitted FCC Form 470
- Service provider who provided the RFP.
- Service provider found to have unfairly influenced the competitive bidding process.
- USAC invoiced but services not delivered.
- USAC invoiced, but services not installed when installation was invoiced.
- Non-compliant auditee who fails to respond in a timely manner, or at all, to the non-compliant auditee letter.
- Consultant who is really a service provider but fails to disclose this.

USAC believes rather than define a "substantial pattern of misconduct" by a specific number of violations, USAC and the Commission should be able to exercise flexibility based on the circumstances. For example, one instance of a rule violation could be so egregious that it should be able to satisfy this standard as the circumstances warrant.

[320] *See* below at 265-67.

(ii) High Cost Program

(A) Reducing Burden on Program Participants

In paragraph 46 of the *NPRM*, the Commission seeks proposals on ways to improve the High Cost program application process and increase participation by reducing or eliminating administrative burdens on carriers.

The Commission proposes permitting carriers to file annual, biennial, or triennial applications for support.[321] USAC's experience suggests implementation of such a system could create administrative challenges because actual support levels may vary significantly from year to year. A multi-year process with annual true-ups and revision filings could have the unintended consequences of increasing administrative costs for USAC and compliance burdens on carriers, and reducing predictability of support. Although many carriers may have substantial expertise in forecasting High Cost program requirements, allowing carriers to file for multi-year periods may distort cost and revenue data, resulting in substantial overpayments of support. Although the balance would be reconciled and offset if necessary at the conclusion of the multi-year period, carriers could, in effect, receive substantial interest-free loans. Conversely, underpayments could disadvantage carriers. Because competitive ETCs are also paid at the same per-line rate as the incumbent ETC, the predictability of their support would be affected where there is a substantial true-up payment due.

USAC's experience strongly counsels against allowing process changes be optional. Having different carriers operating under different sets of procedures creates significant administrative difficulties and increases opportunities for taking advantage of

[321] *NPRM*, ¶ 46.

the system. Creating alternate processes may cause significant difficulties for ETCs as well. ETCs have current filing requirements built into their business processes. For ILECs many of the existing processes are relevant to other parts of Commission rules. Data provided monthly or annually for USF purposes are also used by NECA for pooling and tariffing purposes. USAC's experience has been current processes create a more accurate and predictable picture of USF requirements.

(B) Increasing Efficiency in the High Cost Program

The Commission seeks comment on whether rule changes are needed to permit the High Cost program to operate in a more efficient and effective manner while ensuring program funds are used for their intended purpose.[322] The Commission asks whether additional information should be collected from carriers to prevent waste, fraud, and abuse and whether the Commission should adopt additional standards or deadlines to ensure more efficient management of this program. The Commission, noting that the rules pertaining to the High Cost program are contained in both Parts 36 and 54 of the Commission's rules, also seeks comment on whether to consolidate all High Cost program rules.

Clarifying Revision Periods. In order to administer the High Cost program effectively, carriers and USAC must have clear definitions of what is expected from each party. To achieve shared expectations requires clearly stating: (1) deadlines and how missed deadlines should be handled, (2) data requirements, and (3) time frames for data revisions. To provide clearer guidance and predictability, the Commission may wish to

[322] *NPRM*, ¶ 47.

consider articulating specific consequences for a carrier's failure to meet a deadline or other requirement. Additionally, the Commission may wish to consider limiting the time frame for data revisions. This would improve predictability of support and prevent substantial prior period adjustments.

ETC Designations. The Commission may wish to consider further codifying the information to be included in ETC designation orders issued by state commissions to improve the accuracy of carrier eligibility for specified service areas. To enable USAC to properly process support, USAC must be provided with all relevant attachments that define a new ETC's service area at the study area level, or if below the study area level, then by wire centers served using the common language location identifier (CLLI) code.

Currently, ETC service area data varies from state to state. Some ETC orders refer to appendices that are not included in the order or are in the carrier's original ETC application. Other ETC orders refer to a carrier's common carrier certificates to provide service in the state or a tariff for service area purposes. While some of the original applications, certificates, or tariffs are available on state public utility commission websites, locating the necessary documentation can be a difficult and time consuming administrative burden. It is essential that state commissions or ETCs provide the complete ETC order with the attachments and supporting documentation necessary to identify the service area of the new ETC within the incumbent's service area at the wire center level for both rural and non-rural incumbents. This information should be supplied to USAC free of charge. In the past, USAC has been charged by some state commissions for copies of older certificates of public convenience and necessity required

for the identification of an ETC's service territory. Providing all relevant information concerning ETC designations should be made mandatory.

The Commission may wish to consider whether all ETC orders should be required to address service area definition by identifying clearly any service areas requiring redefinition.[323] If no rural incumbent study area requires redefinition, the Commission could require the ETC order to state the Competitive Eligible Telecommunications Carriers (CETCs) service area does not require any redefinition pursuant to 47 C.F.R. § 54.207. USAC should also be notified in cases where ETC designation is contingent upon the satisfaction of certain conditions and of the effective date of the ETC designation once such conditions are met.

The Commission asks in paragraph 47 of the *NPRM* whether it should adopt forms in lieu of the "Line Count Sample Letters" available on USAC's website.[324] The Commission recently adopted a competitive carrier line count reporting form, FCC Form 525.[325] FCC Form 525 provides CETCs with a single form for submission of data required to obtain High Cost support and supersedes the "sample line count letters" formerly available at USAC's website. Upon adoption of FCC Form 525, sample line count letters were removed from the USAC website and are no longer available. All CETCs are required to use FCC Form 525 prospectively. Future enhancements such as including online data submissions for carriers and states and standardized forms or templates submitted by the state commissions for ETC orders should be considered.

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[323] *See* 47 C.F.R. § 54.207.

[324] *See* http://www.universalservice.org/hc/forms.

[325] Competitive Carrier Line Count Report, OMB 3060-0986 (June 2005) (FCC Form 525).

USAC will address specific issues raised by the Commission regarding each component of the High Cost program below. As a general matter, however, USAC's current functions and the procedures derived from Commission rules are well established and known to participants in the program. Both competitive and incumbent carriers are equipped to provide the data necessary to participate in the various components of the High Cost program and state commissions have annual proceedings for certifications as well as their own administrative rules for designating carriers as ETCs. All stakeholders have invested significant resources in the current process. Depending upon their scope and implementation timeline, changes could create significant administrative and cost burdens for stakeholders and USAC.

(C) High Cost Loop Support

Paragraphs 48 and 49 of the *NPRM* seek proposals to improve administration of the High Cost Loop (HCL) component of the High Cost program. USAC believes HCL support can be improved in several ways to increase the accuracy of data collection and disbursements as discussed below.

***USAC Assumption of HCL Support Calculation*.** The National Exchange Carrier Association (NECA) collects HCL line count and cost data from Incumbent Local Exchange Carriers (ILECs) while USAC collects data from competitive carriers and other data for rate-of-return carriers.[326] In 1999, USAC proposed to the Commission that USAC also collect the ILEC data, which would enable USAC to exercise appropriate

[326] *See* 47 C.F.R. §§ 36.611, 36.612, 54.307, 54.903.

oversight responsibility over all program participants.[327] USAC reiterates its proposal to assume certain administrative responsibilities pertaining to HCL support currently contained in 47 C.F.R. Part 36, Subpart F. USAC believes this would improve the oversight and use of data upon which HCL support is disbursed. USAC proposes it assume responsibility for calculations associated with HCL support presently performed by NECA with NECA remaining as agent for ILEC data submissions required pursuant to Subpart F.

Because USAC administers all components of the High Cost program except for certain aspects of HCL support, it is appropriate that USAC be responsible for the calculation of ILEC HCL support and the associated HCL support cap. Presently, USAC calculates only competitive carrier HCL support with NECA performing ILEC HCL support and overall HCL support cap calculations.

NECA would continue to collect the data and act as agent for the carriers by submitting the data to USAC. USAC, in turn, would calculate and distribute HCL support. Similar to Interstate Common Line Support (ICLS), a carrier would need to sign an agency certification for NECA to submit the information to USAC on its behalf. This approach would ensure administrative neutrality and independence in the HCL data calculations.

Additionally, USAC would be able to determine the annual HCL cap and monthly expense adjustments more efficiently while monitoring and ensuring the HCL cap is not exceeded. This would allow for better monitoring and management of the USF. In 2004,

[327] *See* Letter from D. Scott Barash, Vice President and General Counsel, USAC, to Irene Flannery, Chief, Accounting Policy Division, Common Carrier Bureau, FCC (Dec. 10, 1999).

USAC discovered 2002 and 2003 ILEC HCL support, as calculated by NECA, exceeded the HCL support cap. This required NECA to adjust HCL support for 2002 and 2003, and consequently, required USAC to adjust competitive carrier support. If USAC were to manage the ILEC HCL calculation and overall HCL support cap calculation, this would reduce the risk of a similar occurrence in the future and reduce the possibility of serial processing errors through eliminating certain handoffs of information between NECA and USAC.

USAC could also modify existing practices concerning use of data and realize synergies in the calculation of Acquired Exchange Support (AEX), Safety Net Additive (SNA) support, and Safety Valve Support (SVS). USAC has implemented SNA and SVS, which are subcomponents of HCL support, as outlined in 47 C.F.R. §§ 36.605 and 54.305. Carriers seeking to receive SNA or SVS must notify USAC that necessary requirements have been met. To make the process more efficient, USAC recommends the Commission adopt a data collection form for SNA and SVS including specifying eligibility periods for which carriers believe they are qualified.

The Commission may also wish to consider clarifying the National Average Cost per Loop (NACPL) portion of the SVS calculation (to be used in the calculation of index and subsequent year expense adjustments) is the greater of the NACPL values as described in 47 C.F.R. § 36.622(c). This clarification would prevent prospective appeals based on the use of the NACPL as listed in 47 C.F.R. § 36.622(a) and provide predictability of support to both carriers and USAC.

Were USAC to assume Subpart F calculations, USAC would be able to implement regular process improvements across all High Cost program components that

would reduce administrative burdens and associated costs for USAC and the recipient carriers. Additionally, USAC would be able to increase controls and address compliance with the Joint Financial Management Improvement Program (JFMIP) as required by the Federal Financial Management Improvement Act (FFMIA) and *GovGAAP*. Moreover, earlier this year Commission staff determined for the first time that the HCL support calculations performed by NECA should be included in the 2004 annual agreed upon procedures review of USAC required under 47 C.F.R. § 54.717. Before the 2004 audit, Commission staff agreed with USAC that neither the HCL data calculation nor the actual data collection would be included in the annual USAC review. USAC does not control or participate in the data collection and HCL calculations processes performed by NECA and cannot certify NECA collected the data or made the calculations in conformance with any required procedures or controls. As recommended above, if the ILEC HCL data and overall HCL cap calculations are performed by USAC, then it would be appropriate for these processes to be included in the Commission's annual agreed upon procedures review of USAC's operations. Should the Commission conclude actual collection of the data and calculation of ILEC HCL support and overall HCL cap support should remain with NECA, USAC suggests that NECA is the entity that should be required to conform with Commission requirements and controls and be subject to Commission review for this aspect of HCL support, rather than USAC.

Mandatory ETC Line Count Filings. USAC recommends the Commission consider requiring all ETCs to file line counts on a quarterly basis rather than annually as is the current practice. Quarterly filings would ensure up-to-date information is used in HCL calculations, thereby increasing the accuracy of support payments to all ETCs. The

Commission may also wish to consider clarifying the method by which actual line counts are to be determined for USF reporting purposes. For example, should line counts be concurrent with carrier billing cycles? Should forecasted lines be allowed? As discussed below,[328] appropriate document retention rules should also be implemented for line count calculations. While deadlines for line count filings are clearly established in 47 C.F.R. part 36, in USAC's experience many carriers do not have the capability to determine line counts as of the dates codified in the rules.[329] Further, many carriers only have the ability to approximate line counts based on the billing cycles used. Thus, many carriers estimate lines for required line count filings rather than using actual line counts. While these practices are inconsistent with the Part 36 rules, failure to include line counts in a required filing regardless of how the counts are determined will have a detrimental impact on ETC support provided.

Data Submissions and Revisions. The Commission may wish to consider standardizing data submissions across Parts 36 and 54 of its rules. This would provide a uniform set of guidelines for each component of the High Cost program, clarity on how data revisions are handled, and consistency regarding due dates for data submissions and revisions.

The Commission may also wish to consider prohibiting ongoing revisions to Part 36 data filed by NECA after it has been reviewed by NECA to determine the national average cost per loop and study area cost per loop amounts. These revisions require USAC to recalculate prior period HCL support amounts for competitive carriers, adding

[328] *See* below at 227-32.

[329] *See* 47 C.F.R. § 36.612(a) (establishing data submission dates).

administrative burdens to USAC and program participants and making HCL support amounts less predictable. Revisions to HCL support would not be necessary if the Commission were to authorize an annual true-up mechanism similar to Local Switching Support and Interstate Common Line Support. This mechanism would provide disbursement stability to both incumbents and competitors. An HCL true-up process would enable one-time adjustments to prior year HCL support to ensure support was calculated and disbursed under the established HCL cap for a given year, and revisions would not be allowed outside of a true-up process. USAC suggests the Commission's rules include not only the types of actual (non-estimated) data to be submitted and the deadlines for doing so, but any applicable penalties if a carrier fails to provide the data by the deadline or retain the necessary data for audits.

Proposed Reporting Change. To improve the accuracy of and to more efficiently produce High Cost program projections pursuant to 47 C.F.R. § 54.709(a)(3), USAC recommends the Commission consider changing the line count filing deadlines under §§ 36.611, 36.612, and 54.307(c)(1) from July 31 to June 30. Presently, USAC uses line count data filed by March 30 of each year for both third and fourth quarter projections. Because quarterly projections are due 60 days prior to the start of each quarter, USAC's fourth quarter filing is due no later than August 2, two days after the July 31 filing deadline.[330] Under current rules, it is not possible for USAC to meet the fourth quarter projection deadline using July 31 data. USAC is aware the Commission must balance the burden on ETCs with the need for more accurate demand projections. Providing line

[330] *See* 47 C.F.R. § 54.709(a)(3) (USF demand projections due 60 calendar days prior to start of quarter).

count data as of June 30 provides USAC with a reasonable amount of time to calculate projections, which would ensure projections are more accurate and predictable. Moving the deadline to June 30 would also eliminate the administrative burden and costs USAC incurs from filing revised fourth quarter appendices in the first quarter filing of the subsequent year.

(D) Local Switching Support

Paragraph 50 of the *NPRM* seeks proposals to improve administration of the Local Switching Support (LSS) component of the High Cost program. Carrier-submitted LSS projections can lead to excess payments which amount to interest-free loans to carriers. For calendar year 2003, 814 carriers over-projected LSS by approximately $54 million.

The problem of inaccurate projections is exacerbated when carriers fail to submit actual LSS true-up data by the deadline established in the rules.[331] The Commission can, however, mitigate the issue by addressing LSS true-ups to ensure greater accuracy. Currently, USAC accepts late-filed data to preclude all support being rescinded, but these out-of-period filings create additional administrative burden and costs and raise fairness concerns for carriers who meet deadlines. To provide carriers an incentive to file true-up data, the Commission may wish to consider establishing a penalty when a carrier does not file its true-up data by the December 31 deadline.

The current FCC Form LSSc collects the 1996 DEM (Dial Equipment Minutes) weighting factor and the 1996 unweighted DEM factor from the 1996 carrier cost study

[331] *See* 47 C.F.R. § 54.301(e) (LSS true-up data due 12 months after the end of calendar year).

and uses these factors in the LSS calculations. The Commission may wish to consider revising FCC Form LSSc to collect the current year unweighted DEM information and use the current year information in the LSS calculations to be more consistent with 47 C.F.R. § 54.301(a)(3).

USAC proposes carriers be required to submit their actual tax rate for the applicable period instead of using the estimated 35% rate indicated on the LSS form. Also carriers should file cost studies and other relevant documentation to provide USAC with all data relevant to LSS calculations.

Currently, NECA submits LSS projections and true-up filings on behalf of incumbent carriers. USAC recommends LSS forms be revised to include agency certifications (similar to the certification required in the ICLS program) because NECA does not file the projections pursuant to its role under Part 36; rather it makes the filing on behalf of the carrier under Part 54.

(E) Acquired Exchange Support

Additionally, Commission rules do not currently address whether per-line support levels used in the payments to acquiring carriers regarding the sale or transfer of exchanges are subject to revision based on true-ups in the case of LSS or revisions to HCL support that affect pre-transaction support.[332] USAC recommends the Commission consider clarifying whether per-line levels that are frozen due to the sale or transfer of exchanges be subject to true-ups.

[332] *See* 47 C.F.R. § 54.305(a).

(F) Interstate Access Support

Paragraph 51 of the *NPRM* seeks comment on ways to improve administration of the Interstate Access Support (IAS) component of the High Cost program. The Commission requests input on the application process, the timing and scope of the information carriers must file, and whether it should impose greater or lesser reporting requirements on participants.

Section 54.807(b)-(c) of the Commission's rules require USAC to use Table 6.10 (Selected Operating Statistics) of the Commission's periodic report "Statistics of Communications Common Carriers" in determining the IAS rural growth factor (RGF). USAC used Table 6.10 for rate calculations in the first IAS program year. Subsequent reports beginning in 1999 no longer include Table 6.10. However, the same historical data formerly included in Table 6.10 is now listed in Table 4.10, *Selected Operating Statistics of Reporting Incumbent Local Exchange Carriers, 1985 – 2003*. USAC seeks clarification from the Commission on the use of Table 4.10 as described above because Commission rules state "total switched access lines" are to be used for the determination of the line growth rate. Both Table 6.10 and 4.10 only include incumbent carrier lines and do not include competitor lines.

Further, 47 C.F.R. § 54.802(c) requires USAC to reconcile support payments to participating carriers periodically. In USAC's current reconciliation process, carriers making late line count filings after the deadlines established in 47 C.F.R. § 54.802(a) do not have line counts entered for the purposes of current period payments or for prior period reconciliations. USAC suggests the Commission clarify whether the use of late-filed line count data submitted by a carrier should be used for reconciliation of support

payments. If not, during the reconciliation process, all support is recovered by USAC without recourse. Currently, USAC uses industry developed forms for carriers to report IAS data used in the calculation of program year rates, quarterly projections, and monthly disbursements. The forms used by carriers contain all the information needed for USAC to calculate IAS rates, projections and disbursements. The Commission may wish to consider making IAS forms 1, 2, 3, and 4 official FCC forms.

The Commission asks whether it can administer IAS with less information than USAC currently collects and still ensure funds are used appropriately.[333] Although USAC would prefer to collect less data, in this case data that is currently collected from price cap ILECs represents the minimum amount of information necessary for USAC to calculate annual IAS rates.

As with the other components of the High Cost program, the Commission may wish to consider codification of penalties that would apply in instances when carriers do not file the required information by the established deadlines. Without codified penalties, the deadlines lack meaning and carriers have little incentive to file timely. Late filings by carriers add costs and administrative burdens to USAC and reduce the predictability of IAS payments.

(G) High Cost Program Forms

Paragraph 52 of the *NPRM* addresses High Cost program forms and beneficiary certifications. The Commission invited comment on whether certification language in existing forms is sufficient to ensure program funds are used in their intended manner in

[333] *NPRM* ¶ 51.

the absence of waste, fraud, and abuse. The Commission also asks whether additional forms or modified language in existing forms would further protect the program.

USAC has commented on issues related to forms in response to the paragraphs above addressing the specific components of the High Cost program. USAC offers some additional comment here regarding certifications. For rural and non-rural certifications filed by the states pursuant to 47 C.F.R. §§ 54.313 and 54.314, each state should clearly identify those carriers subject to their jurisdiction and those carriers which are not—that is, the carriers required to self-certify. Moreover, the Commission may also wish to consider clarifying in 47 C.F.R. §§ 54.313 and 54.314 that carriers subject to the jurisdiction of state commissions cannot file rural or non-rural carrier self-certifications.[334] This change would remove some of the confusion inherent in the current process and reduce administrative burden and costs to USAC associated with resolving improper self-certifications.

Additionally, to mitigate any clerical errors by state commissions, the Commission may wish to consider establishing a rule enabling retroactively applied corrective treatment for inadvertent omissions of carriers by state commissions without requiring Commission waiver. This would increase the predictability and timeliness of High Cost support while precluding the requirement for petitions of waiver, thus reducing burdens on both the Commission and USAC.

USAC suggests the Commission may wish to consider addressing the consequences for non-compliance of the annual rate comparability certifications pursuant

[334] *See* 47 C.F.R. §§ 54.313(a),(b); 54.314(a),(b).

to 47 C.F.R. § 54.316. Section 54.316 requires states to review annually the comparability of residential rates in rural areas served by non-rural ILECs to urban rates nationwide, and to certify to the Commission and USAC whether the rates are reasonably comparable. If a state fails to certify, no ETCs in that state are eligible to receive High Cost Model (HCM) support. Currently only 10 states receive HCM support; therefore, only these states experience consequences if certifications are not filed. The consequence for non-compliance should be expanded so all states have an incentive to comply with this requirement, not just the states that receive HCM support. In 2004, 24 states failed to comply with this requirement.

To ensure all data submitted to USAC is accurate to the best of the carrier's knowledge, all certifications, forms, and submissions requiring the signature of a carrier or carrier agent should include a statement notifying the signatory that providing false statements to USAC could be punishable under applicable law. Similar OMB-approved language is contained in Schools and Libraries and Rural Health Care program forms.

(iii) Low Income Program

In paragraphs 53-56 of the *NPRM*, the Commission seeks comment on the process for participating in and the forms used in the Low Income program.

(A) Low Income Program Process Issues

Paragraph 55 of the *NPRM* seeks comment regarding certain aspects of the Low Income program process. USAC suggests the Commission consider codification of certain procedures as described below.

Administrative Filing Window. USAC recommends the Commission consider codifying USAC's administrative procedure establishing a March 31 deadline for filing

support claims. As an administrative matter, USAC has established March 31 of each year as the cut-off date for filing revised or new support claims on FCC Form 497[335] for any month in the year preceding the year before the March 31 date. For example, March 31, 2005 was the last day a company could file a new or revised support claim for any month in 2003. After March 31, 2005, a company could file FCC Form 497 for any month in 2004 and 2005. USAC posts a notice on its website and sends a letter reminding companies of the March 31 deadline each year in early February. Codifying this administrative practice would provide additional notice and provide clarity about the filing deadline. This administrative window protects the USF against demands stemming from claims more than two years old. USAC's projections are based on a company's historical support claims. In USAC's experience, if a company goes several months without filing a support claim, the disbursement for that company is likely to exceed its projection. At the same time, USAC's administrative window gives companies the flexibility to file new or revised support claims for up to 27 months.

Recovering Support. The Commission could also consider codifying USAC's practice of recovering all Low Income program support disbursed as a result of errors made by carriers regardless of when the error occurred. Support errors are usually found as a result of audits or through USAC's data validation process. Generally, if a company makes a mistake in calculating its support claim for one month, it has made the same mistake for multiple months. To preserve the integrity of the USF, USAC's practice has been to quantify the amount of overpayment and recover the entire amount from the

[335] LifeLine and Link-Up Worksheet, OMB 3060-0819 (October 2000) (FCC Form 497).

company by offsetting support payments or invoicing the carrier if offsets are not sufficient to recover the full amount of the overpayment. It is essential that USAC have the ability to recover funds found at any time to have been paid in error because frequently the error cannot be discovered until a company's underlying records are reviewed during an audit or data validation.

One Lifeline Connection per Household. USAC recommends the Commission consider codification of the policy announced in the *Universal Service Order* that only one discounted Lifeline connection is available per household address.[336] While USAC has consistently applied this policy, and has featured this language on its website and promotional materials, USAC's experience suggests codifying this restriction in the Commission's rules would eliminate any confusion among carriers and consumers, particularly when a consumer seeks Lifeline service from both wireline and wireless carriers. Additionally, USAC has learned anecdotally that some companies have begun to require their Lifeline consumers certify when they sign up for service that they will not receive Lifeline discounts on an additional connection. USAC recommends the Commission consider codifying this certification requirement to make it mandatory.

Consolidation of Low Income Program Rules. The *NPRM* notes Low Income program rules appear in both Parts 54 and 36 of the Commission's rules.[337] In the *Lifeline and Link-Up Order*, however, the Commission deleted Subpart G of Part 36, effectively consolidating the rules governing Lifeline and Link-Up in Part 54.[338]

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[336] *See* 12 FCC Rcd at 8796, ¶ 36.

[337] *NPRM*, ¶ 55.

[338] *See* 19 FCC Rcd at 8331, ¶ 55 (deleting 47 C.F.R. §§ 36.701-36.741).

Advertising Requirements. In the *NPRM*, the Commission seeks comment on proposed measures to balance the filing and advertising burdens on companies with USAC's need for information to administer the program efficiently.[339] The Commission's rules require all ETCs to "publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service."[340] In the *Lifeline and Link-Up Order*, the Commission set forth a series of outreach "guidelines" for ETCs rather than adopting specific advertising requirements.[341] USAC believes the Commission's guidelines provide ETCs with cost-efficient and effective methods of reaching eligible consumers. Consistent with the Commission's suggestion for program participants to "utilize USAC as a resource" USAC maintains a consumer-oriented website, www.lifelinesupport.org, on which ETCs can post information, including specific instructions on how consumers can apply to receive Lifeline benefits. In addition, USAC has created a customer outreach letter that ETCs can customize to reflect the eligibility criteria and application process for consumers in their service area.

(B) Low Income Program Forms

The Commission addressees Low Income program forms in paragraphs 55-56 of the *NPRM* and seeks comments on the information obtained on the forms, the frequency of their submission, the certifications made on the forms, and whether additional or modified forms are necessary to protect against waste, fraud and abuse.

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[339] *NPRM*, ¶ 55.

[340] 47 C.F.R § 54.405(b).

[341] *Lifeline and Link Order*, 19 FCC Rcd at 8326-30, ¶ 45-49.

***Low Income Form Filing Frequency*.** Carriers report the number of Lifeline and Link-Up customers served for each tier of support on FCC Form 497. This form must be submitted to USAC on a quarterly basis. In paragraph 56 of the *NPRM*, the Commission asks whether annual or semi-annual filing of FCC Form 497 should be adopted.

Although the instructions to the current version of FCC Form 497 direct companies to file quarterly, currently 63% of participating companies file forms on a monthly basis. USAC disburses support on a monthly basis by projecting a carrier's support amount based on historical growth, and then performs a true-up once the company provides its actual claim for support on FCC Form 497. The less frequently a company files its actual support claims, the greater the chance for a large true-up. If the difference between the projected support and actual support amounts is large, a company will be required to return a large amount of excess support payments. Such large true-ups are detrimental to companies and to the USF. Many companies choose to file the form monthly rather than quarterly in order to avoid such large true-ups. USAC recommends the Commission consider codification of a monthly filing requirement to mitigate excess support payments being made by the USF to carriers. Excess support payments in effect constitute an interest free loan from the USF to the carrier.

In paragraph 55 of the *NPRM*, the Commission suggests simplifying the application process to require annual or semi-annual reporting rather than quarterly reporting. USAC is concerned that an annual or semi-annual filing policy would result in new carriers waiting several months before they receive their first support payment.

It is also important to emphasize that if actual support claims were filed only annually or semi-annually, it would be difficult for USAC to make accurate demand

projections. USAC files demand projections for each of the universal service support programs 60 days before the beginning of each quarter. Currently, quarterly Low Income program support projections are based on the average monthly growth in support among all carriers over the preceding twelve month period.[342] If actual data is filed only annually or semi-annually, USAC would have to use older data for least some of its quarterly projections (depending on when the actual data is filed), which might not reflect accurate growth rates. A company must file FCC Form 497 before USAC can calculate support for the company. USAC has no way of predicting how many new companies will file a support claim. Accordingly, if actual data is submitted less frequently than the current practice of monthly and quarterly filing, USAC's projections will be based on less current data and are likely to be less accurate. Thus, USAC recommends a rule requiring monthly filings in order to avoid large true-ups and allow USAC to make more accurate projections.

USAC recognizes this recommendation does not advance the goal of fewer submissions, but for the reasons set forth above believes a monthly filing requirement, which conforms to the current practice of the majority of Low Income program participants, better serves beneficiaries and the USF. While the minority of carriers would be required to file more frequently, USAC's experience suggests the benefits of

[342] USAC calculates the aggregate average monthly growth rate for all companies over the preceding twelve months. USAC then calculates the ratios of Lifeline, Link-Up and TLS to the overall Low Income support amount. USAC makes a projection for each company by multiplying a current month's actual support by the average monthly growth rate for all companies. This is done three times to determine a quarterly projection. This number is then multiplied by the Lifeline, Link-Up and TLS ratios to determine with a quarterly projection for each company for each of the Low Income program components. The total for all companies is the total Low Income projection filed with the Commission for the upcoming quarter.

avoiding large true-ups and preventing waste, fraud, and abuse outweigh the burden of more frequent filings.

Certifications. In paragraph 56 of the *NPRM*, the Commission notes applicants for funds from each of the universal service support mechanisms must comply with various certification requirements. Generally, these requirements consist of statements certifying information provided on the forms is accurate and complete, and that funds received will be used for their intended purpose. In the *NPRM*, the Commission invited comment on whether the certification language in existing forms that must be submitted by applicants for funds from the Low Income program is sufficient to ensure that funds are used in their intended manner in the absence of waste, fraud, and abuse.[343]

In the *Lifeline and Link-Up Order*, the Commission established rules that require an officer from an ETC to certify compliance with income certification procedures.[344] Neither the order nor the rules, however, indicate how or when these certifications should be completed. USAC included certification language in the sample letter that ETCs in federal default states used to submit their verification results. USAC respectfully requests the Commission address this issue, as well as how to collect certifications from ETCs in states that have their own Lifeline programs. USAC recommends the Commission consider modifying the existing certification page of FCC Form 497 to include certifications as required by 47 C.F.R. § 54.410(b)(i)-(ii).[345] This approach

[343] *NPRM*, ¶ 56.

[344] *See* 19 FCC Rcd at 8321, ¶¶ 30-31; 47 C.F.R. §54.410(b)(1)-(2).

[345] The certification language should mirror the language in exiting rules. Officers of ETCs in states that mandate state Lifeline support must certify that "the eligible telecommunications carrier is in compliance with state Lifeline income certification procedures and that, to the best of his/her knowledge, documentation of income was presented." 47 C.F.R. § 54.410(b)(1). Officers of ETCs in states that do not

would reduce the paperwork burden on companies because they already must complete certifications on FCC Form 497 to claim support. Including this additional certification on FCC Form 497 would also be less administratively burdensome than collecting this data on a separate form. Additionally, because companies file one FCC Form 497 for each month for which Low Income support is sought, the certification can be done on a more frequent basis without adding the burden of meeting an additional filing deadline. By signing the certification more frequently, companies are reminded of the need to check the eligibility of each new Lifeline customer. In addition, including this certification on FCC Form 497 would eliminate the need to establish consequences for companies that did not file certifications. If the certifications on FCC Form 497 are not complete, the company cannot receive support; if a separate certification process is established, a question arises as to whether USAC would be required to suspend disbursements to companies that did not meet the filing deadline.

Content of FCC Form 497. The Commission is currently in the process of developing a new FCC Form 497. The existing version of the form contains outdated filing information and instructions and does not collect information sufficient to allow USAC to perform validations crucial to prevent mistakes and abuse. For example, the current form does not provide clear instructions for pro-rating support for customers who begin or terminate service mid-month. USAC recommends the Commission consider adopting one method for all companies to pro-rate support and that the method be fully explained in the instructions. As discussed below, USAC also recommends the

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mandate state Lifeline support must certify that "the eligible telecommunications carrier has procedures in place to review income documentation and that, to the best of his/her knowledge, the carrier was presented with documentation of the carrier's household income." 47 C.F.R. § 54.410(b)(2).

Commission codify rules requiring carriers to retain the records necessary to demonstrate that the pro-rating was completed properly.[346] This will allow auditors to ascertain whether companies are claiming the correct support amounts.

Additionally, USAC currently cannot verify that a CETC is claiming support only for the exchanges of the incumbent ETC for which the CETC has been designated. A CETC might be designated in only some exchanges, but might provide service throughout a larger geographic area. USAC recommends FCC Form 497 require CETCs to list the name of the incumbent and names of the exchanges under which Lifeline service is being provided. This will allow USAC to validate the exchanges against the CETC's eligibility designation order to ensure Low Income program support is not paid in exchanges in which the company is not an ETC.

Similarly, the existing form does not require carriers claiming Tier 4 support for serving tribal customers to specify which tribal lands or reservations they are serving. This prevents monitoring subscribership rates by tribal land or reservation. USAC recommends the Commission consider codifying such a requirement in its rules. Obtaining this information will enable more targeted outreach efforts in tribal lands.

(iv) Rural Health Care Program

In paragraphs 57-59 of the *NPRM*, the Commission seeks comment on the process for participating in and the forms used by the Rural Health Care program.

(A) Rural Health Care Program Process

The Commission seeks comment on ways to improve and streamline the Rural Health Care program application process in paragraph 58 of the *NPRM*. The

[346] *See* below at 227-32.

Commission has already taken numerous steps in other proceedings to improve the program and USAC has, on its own initiative, streamlined the application process to a great degree. The Commission has recognized USAC's efforts:

> Since the *NPRM* was released, USAC has streamlined the application process significantly in response to the numerous comments submitted in this proceeding on this issue…. We believe USAC's efforts to ease the burdens of applying to the program have been exemplary, as further evidenced by the number of completed applications received by USAC in Funding Year 2003 compared to Funding Year 2002.[347]

Application Process. Applicants submit three forms to USAC as part of the application process: FCC Form 465, FCC Form 466 and/or FCC Form 466A.[348] The FCC Form 465 opens the competitive bidding process by serving as a request for bids from service providers, and on the FCC Forms 466 and 466A, the applicant requests support for the services selected. These forms and the application process in general are described in greater detail in Appendix A to these comments. The Commission also seeks comment in paragraph 58 on FCC Forms 465 and 466, including whether more or less information should be required on these forms, whether any of the forms could be consolidated or eliminated, and whether any other forms would be helpful. USAC believes these forms are up-to-date and do not require changes at this time. Each year, USAC evaluates whether changes need to be made to these forms as a result of, among other things, Commission rules. For example, when the Commission authorized USAC to fund Internet access in the *Rural Health Care Report and Order*, USAC worked closely with Commission staff to determine whether Internet access requests could be

[347] *RHC First Report and Order*, 18 FCC Rcd at 24573, ¶¶ 53,54.

[348] *See* 47 C.F.R. §§ 54.603(b) and 54.605, Health Care Providers Universal Service, Description of Services Requested and Certification Form, OMB 3060-0804 (January 2005) (FCC Form 465).

included on FCC Form 466. The Commission and USAC determined it would be more appropriate to devise a new form for that purpose and created FCC Form 466A. USAC does not believe any forms need to be eliminated at this time. Before the start of Funding Year 2003, USAC eliminated FCC Form 468 to streamline the application and disbursement process.

Multi-year Application Process. The Commission tentatively concludes in paragraph 58 of the *NPRM* that it should move to a streamlined multi-year application process for rural health care providers. The Commission correctly recognizes that few cases of waste, fraud, and abuse have arisen to date in the Rural Health Care program. The Commission's tentative conclusion to adopt a streamlined multi-year application process is administratively feasible for the Rural Health Care program, and could serve to streamline the program even further. Should the Commission adopt a multi-year application process, USAC would need to work with the Commission on the operational aspects of the rules the Commission adopts so that USAC can build efficient and effective administrative processes. As noted above in the Schools and Libraries program discussion,[349] the process would need to specify, among other things, the period of time for the multi-year application process, whether it applied to both contracted and non-contracted services, competitive bidding requirements, and the like.

A multi-year application process could be implemented in a variety of ways. For example, applicants could apply for two years of funding on FCC Forms 466 or FCC Forms 466A based on month-to-month services or multi-year contracts. USAC believes

[349] *See* above at 106-10.

the two-year cycle is most desirable from an administrative perspective as well as a result of the rate of change in technology relevant to this program. Applicants would not be able to increase their funding requests set forth in the biennial FCC Form 466 or 466A in the subsequent year unless there was a significant increase in the urban-rural rate difference. Rather than requiring the development of different forms, the existing FCC Form 466s and FCC Form 466As could be revised so that applicants could indicate the time period for which they are seeking funding. A biennial process would require some systems changes that USAC would need to implement. USAC would continue to commit funds on an annual basis to ease compliance with the ADA. Were the USF to be permanently exempted, commitments could be made for longer periods of time. USAC's experience suggests that this type of multi-year application process will not raise significant additional waste, fraud, and abuse concerns in this program. Each application would still undergo close scrutiny to ensure compliance with program rules and beneficiaries would remain subject to audit.

USAC believes that a biennial application process will likely provide significant benefits to applicants and service providers because they will no longer be required to submit annual funding requests, which will also likely provide greater certainty with respect to funding commitments. Should the Rural Health Care program approach its funding cap, USAC would work with the Commission to address any issues that arise in the context of biennial funding requests.[350] Additionally, USAC would adopt and implement an appropriate education and outreach plan to inform applicants and service

[350] The Commission's rules cap the Rural Health Care program at $400 million per year. 47 C.F.R. § 54.623(a).

providers of any changes the Commission directs USAC to implement as a result of this rulemaking.

USAC received over 4,600 applications for telephone and Internet discounts for Funding Year 2004, and the rate of submission of applications received to date indicate that number will be exceeded in Funding Year 2005. Consequently, a biennial application process could result in significant administrative cost savings.

With respect to streamlining the application process, USAC notes it sometimes reviews applications from health care providers multiple times during a single funding year. This occurs, for example, when health care providers increase their level of service, find new lower urban rates to compare to, or find that additional eligible costs of their service were not in their original support request. Currently, there is no restriction on a health care provider requesting its support be recalculated. USAC can consider multiple applications because funding requests in the Rural Health Care program are well under the annual funding cap. While USAC welcomes additional opportunities to provide funding under this program, USAC notes there are administrative costs to processing applications from single applicants multiple times within the funding year.

Participation of Smaller Health Care Providers. In paragraph 58 of the *NPRM*, the Commission asks whether the current application process deters participation, particularly by small health care providers. USAC's experience suggests to the extent participation is deterred, it is due to two reasons. First, a lack of health care provider staff to complete applications and obtain bids, bills, contracts, or other documents necessary to validate the service for which they seek discounts deters participation. USAC has learned health care provider staff responsible for completing applications may be located in one

division of the health care provider's organization, while the bills for the health care provider's organization are handled by another division. These divisions may be located in different facilities. Although the estimated time to complete an application is only five hours (three hours for Internet), that assumes the applicant has access to the necessary records.

Second, the sometimes small amount of funding available also may deter participation. While the average applicant receives $660 in support per month (excluding Alaska, for which the average is $7,100[351]), about 13% of applicants receive under $75 per month. USAC's experience suggests applicants who receive such small amounts of funding are unlikely to apply in the next funding year. For applicants seeking support for Internet access only, the average support is $85 per month, and 18% of applicants receive less than $20 per month. Thus for these applicants, the small amount of funding is likely a discouraging factor.

USAC has provided support to about 2,550 unique health care providers since the start of the program in 1998. Of these, 2,025 are current applicants and about 525 previously funded applicants have not reapplied for more than a year. USAC regularly contacts all health care providers who participated in prior years to urge them to continue to participate in the program. About 200 of the current participants who did not participate for a year or more later reapplied to the program. USAC's experience suggests the primary reason for ceasing participation appears to be staff turnover—the person who filed applications is no longer employed by the health care provider and was

[351] Since discounts on eligible services are based on the difference between the urban and rural rate charged for telecommunications services, and a flat twenty-five percent discount on the monthly cost of Internet access, the more rural and larger the area, the greater the potential discount.

not replaced or the replacement did not understand the need to reapply. USAC has calculated the amount of support received by the applicants who stopped participating and those who returned. USAC found that those who stopped participating and have not reapplied received 67% of the average support, while those that later reapplied received 161% of the average. Again, this suggests the amount of funding received by the applicant is a significant factor in whether an applicant discovers the loss of funding and reapplies to the program.

Automation of Program Processes. Finally in paragraph 58, the Commission seeks comment on the feasibility of implementing additional automation in the administration process, for example, by requiring the use of email to notify applicants of funding commitment decisions and to provide status reports. USAC strongly supports continuing the trend toward full automation of the Rural Health Care program application and invoicing process it has begun in partnership with the Commission. Further streamlining the process will accelerate the application, invoicing and communication processes. USAC believes it should encourage and support online filing of forms to the maximum extent possible, and all communications should be electronic to the extent possible.

USAC has extensively automated the Rural Health Care application process. FCC Forms 465 have been submitted electronically since Funding Year 2002 and USAC made online submission of FCC Form 466 available beginning in Funding Year 2003. FCC Form 466A has been available for electronic submission since it was created for

Funding Year 2004. FCC Form 467[352] became available for online submission midway through Funding Year 2002. USAC also "pre-populated" electronic FCC Forms 465, 466 and 467. Pre-populated forms use data from the health care provider's prior year submission to help the applicant save time, which results in cost and time savings for health care providers and administrative cost savings and faster processing for USAC. USAC has also implemented electronic certification for these forms, which allows health care providers to submit the forms entirely online, thereby eliminating the need to submit paper documents.

The rate of electronic submissions of the application forms has increased in each funding year. In Funding Year 2004, 85% of all FCC Forms 466 and 466A were submitted online. The electronic submission of FCC Forms 466 and 466A results in significant time and administrative cost savings because forms that are not electronically submitted must be data-entered, and the original paper forms scanned and archived. The 15% of applicants who do not submit forms online or certify electronically include new applicants to the program as well as certain applicants who are not comfortable with electronic submissions. New applicants are not eligible to electronically certify their forms until they have submitted their first FCC Form 465 on paper. Thereafter, they may submit subsequent forms for that fund year using electronic certification.

At this time, there are two important communications that are not electronic. First, funding commitment letters are sent via regular mail. USAC welcomes direction from the Commission to disseminate these letters electronically. USAC believes there

[352] Health Care Providers Universal Service, Connection Certification, OMB 3060-0804 (January 2004) (FCC Form 467)

would be no administrative cost to this; only savings. Second, service providers are required to submit the invoicing worksheet on paper. USAC supports moving to electronic invoicing and will work closely with the Commission to implement any such initiative.

(B) Rural Health Care Program Forms

In paragraph 59 of the *NPRM*, the Commission invites comment on whether the certification language in existing forms that must be submitted by applicants for funds from the rural health care support mechanism are sufficient to ensure funds are used in their intended manner, in the absence of waste, fraud, and abuse. The Commission asks whether additional forms or modified language in existing forms would further protect the Rural Health Care program against waste, fraud, and abuse.

USAC's experience suggests additional forms or certifications are not necessary on the current forms in the Rural Health Care program at this time. The existing certification language appears to be sufficient, and USAC questions whether additional forms or modified certification language would further protect the program from waste, fraud and abuse. Moreover, new forms and certifications could increase the administrative burden on participating small rural entities.

b. USF Disbursements

Paragraph 60 of the *NPRM* seeks comment on a wide range of issues associated with disbursement of USF support. USAC is responsible for ensuring that disbursements in all four universal service programs are made to the appropriate service provider in a timely and accurate manner. USAC disburses significant support amounts each month across the four programs. Between June 2004 and June 2005, USAC issued an average

of 5,820 disbursements and $466 million of support funds per month.[353] From a broad perspective, there are two stages to USAC disbursements. First, each programmatic area validates the disbursement amount pursuant to program-specific criteria to ensure the disbursement complies with program rules. Second, USAC's finance team performs the functions necessary to disburse the funds.

USAC obtains vital information about service providers on FCC Form 498.[354] All service providers who provide services and receive disbursements in the High Cost, Low Income, Rural Health Care, or Schools and Libraries programs must submit FCC Form 498 along with a signed letter of authorization to USAC in order to receive disbursements. Service providers choose the manner in which they wish to receive disbursements for each support mechanism in which they participate. In addition, the information provided on the FCC Form 498 enables USAC to offset disbursement against USF contributions when requested or required. In paragraph 60, the Commission seeks comment on whether it should adopt rules to better ensure the disbursement process is administered in an efficient, effective, and competitively neutral manner. The Commission requests information on whether USAC disburses the correct amount of funds in a timely manner and seeks comment on whether it should establish deadlines or performance targets to ensure that beneficiaries get the support for which they qualify in a timely manner. As discussed in more detail in response to questions regarding each program, USAC is not convinced that more rules are necessary for USF disbursements.

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[353] *See* Appendix A at 18.

[354] Service Provider Identification Number and Contact Information Form, OMB 3060-0824 (FCC Form 498)

Disbursements are made pursuant to Commission rules and orders governing each program. USAC allows and encourages electronic submission of invoices and supports increased mechanization of the review process, which has increased the speed of payments and increased accuracy. Further increasing the electronic commerce capabilities of USAC and USF recipients will be critical in achieving additional efficiency gains.

The Commission seeks comment on whether it should establish a single uniform system for disbursing USF support, and whether a single disbursement method is feasible, given the many differences among the USF programs. USAC's experience suggests current disbursement timing and practice appropriately serve the different needs of USF recipients. Should stakeholders comment and the Commission conclude otherwise, USAC will work closely with the Commission and stakeholders to modify the disbursement process appropriately.

The Commission seeks comment on program-specific disbursement issues, which USAC will address below.

(i) Schools and Libraries Program Disbursements

The Commission asks in paragraph 60 of the *NPRM* whether additional procedures are required to help effectuate the Schools and Libraries program carryover rule and to ensure full use of the $2.25 billion annual program cap.

With respect to the carryover rule, USAC believes codification of the deadlines for requesting extensions of time to invoice USAC would help effectuate that rule because it would allow USAC to close out each funding year in a more timely manner. In addition, USAC could be authorized to roll over any unspent funds into the current

year automatically once the invoicing windows are passed and commitments deobligated. Current regulations require express Commission approval to roll over.

With respect to maximizing use of the $2.25 billion annual funding cap, USAC's experience indicates the length of time between issuance of a funding commitment and disbursement of funds is not a disbursement issue *per se*, but rather is a consequence of the structure of the program. Disbursements are made in a relatively timely manner once invoices are submitted but the invoices often are submitted long after the commitments are issued. For example, an applicant may receive a commitment in the spring before the start of the funding year but may not complete the project until the following summer—a full year after the start of the funding year. Consequently, USAC may not receive invoices for more than a year after the funding commitment is made. By that time, the technology may have changed, and the equipment may cost less than what the applicant originally thought it would cost. By the time installation is complete and the service provider has been paid in full, the full commitment may not be needed for that funding request. To the extent funding commitments are made prior to the start of the funding year, this could help alleviate the issue because installation could occur sooner. This could result in USAC being invoiced sooner and could decrease the need for service substitutions. Applicants may submit FCC Form 500 to inform USAC they will not use the entire committed amount—and USAC encourages applicants to do so—but under current rules filing of FCC Form 500 is not required under these circumstances. Requiring applicants to submit FCC Form 500 under these circumstances could also help to address this issue.

Paragraph 60 of the *NPRM* seeks comment on whether to adopt criteria or provide guidance for the Administrator's review of Schools and Libraries program invoices. The criteria for payment of invoices track the Commission's eligibility and procedural rules for the program. USAC does not recommend codifying its criteria pertaining to the review of invoices. The triggers for invoice reviews need to be flexible to respond to perceived risks and need to be confidential in order to protect program integrity. As stated above,[355] USAC does recommend codification of the deadlines for requesting extensions of time to invoice USAC One of the Task Force recommendations was to provide service providers the option of submitting supporting documentation when they submit invoice forms to USAC.[356] USAC does not agree with this recommendation. Some reviews USAC performs require USAC to obtain detailed documentation from the service provider and applicant. USAC has determined it does not need to obtain this documentation for each invoice submitted. Rather, USAC has identified certain criteria that trigger the need for this documentation. Receiving this documentation for each invoice submitted to USAC would increase USAC's administrative burden as well as the burden on all applicants and service providers.

USAC subjects all invoices to stringent invoice review procedures including a number of automatic and manual reviews to ensure disbursements are made in compliance with program rules. With respect to the automated checks on the data provided to USAC on invoices, some identify data discrepancies that result in rejection of a payment request or trigger outreach to resolve the discrepancy. Other checks cause

[355] *See* above at 181.

[356] *Task Force Response* at 7.

further manual review of the invoice to be conducted. When the reviews are complete, the payment is approved, approved in part, or denied based on the results of the review. Invoices submitted to USAC that contain errors are identified and notification provided within one day for service providers submitting bills electronically.

USAC has taken a number of steps since the beginning of the program to strengthen and streamline its invoice review procedures, and these steps are described in detail in Appendix A to these comments. Two specific manual reviews—service checks and payment verification—focus on prevention of inappropriate disbursements when certain factors trigger scrutiny of the invoices. USAC performs service checks to ensure eligible goods and services have been provided to the entity before USAC will pay the service provider. Payment verification reviews are performed to ensure the applicant has paid its non-discount share of the cost of the goods and services to the service provider.

USAC has devoted considerable resources to improving the timeliness and accuracy of Schools and Libraries program invoice payments. The following table shows current processing times for invoice lines submitted to USAC that have been fully processed, which may mean that the invoice was paid in full, was paid in part, or payment was denied.

LINES	YEAR RECEIVED							
AGING	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**
Within 30 days	392	116,651	208,156	228,535	264,605	266,091	285,608	218,756
Within 60 days	2,109	34,655	18,890	15,389	20,824	16,154	12,558	5,372
Within 90 days	681	14,043	9,760	2,979	10,211	9,828	11,714	3,414
Over 90	1,079	12,013	5,822	4,223	14,472	23,564	41,229	5,656
TOTAL	4,261	177,362	242,628	251,126	310,112	315,637	351,109	233,198
Within 30 days	9%	66%	86%	91%	85%	84%	81%	94%
Within 60 days	49%	20%	8%	6%	7%	5%	4%	2%
Within 90 days	16%	8%	4%	1%	3%	3%	3%	1%
Over 90	25%	7%	2%	2%	5%	7%	12%	2%

USAC recently analyzed its invoicing review procedures to determine what process improvements could be made in order to improve customer service while protecting program integrity. USAC also instituted changes to increase the productivity of its invoicing review team members. Specifically, USAC adjusted certain aspects of its service check and certification procedures, as well as some of the automatic triggers for service check and certification procedures based on effectiveness analysis. All of these taken together have lead to faster processing of invoices. The result of this effort has been a 40 percent improvement in the number of invoices paid within 30 days between January and August 2005.

Additionally, USAC has significantly increased the staff on its invoicing review team to address the increases in invoicing lines and different types of invoicing reviews. Since 2001, USAC has been assigning large service provider accounts to single invoice reviewers. As the invoicing staff has increased, more service providers have seen

improved customer service. For some of the largest accounts, weekly meetings are held to review the status of invoices in process.

The Commission notes in paragraph 60 of the *NPRM* that some beneficiaries have asserted USAC has denied payment on submitted invoices even though the original application had been approved. The Act and the Commission's rules authorize USAC to provide universal service support to telecommunications carriers and non-telecommunications carriers for providing supported services to eligible schools and libraries.[357] In other words, USAC makes funding commitments to applicants, and disburses support funds to service providers. Funding commitments are contingent upon USAC's determination that a funding request complies with program rules. Similarly, whether USAC will disburse funds to service providers who have provided the goods and services is contingent upon USAC's determination that the service provider's request for disbursement complies with program rules as well as the applicant's continued compliance with program rules. Consequently, under the rules USAC may properly deny a service provider's request for payment, even if the applicant received a funding commitment and the service provider provided goods and services to the applicant, if USAC's invoice review process determines the request for payment itself does not comply with program rules, the service provider has not complied with program rules, the applicant has not complied with program rules, or there was an error in the original commitment. In short, invoice review is a separate process from issuing funding commitments.

[357] 47 U.S.C. § 254(h); 47 C.F.R §§ 54.501(a), 54.517.

(ii) High Cost Program Disbursements

Paragraph 61 of the *NPRM* addresses High Cost program disbursements. The *NPRM* notes that the High Cost program disburses approximately $300 to $325 million per month. USAC's disbursements process involves collecting data, calculating and validating disbursement amounts, and finalizing disbursements for approximately 1,700 ETCs (including ILECS and CETCs) each month. Payments are made monthly. USAC has not been made aware of significant issues concerning High Cost program disbursements.

USAC issues one payment on the next to the last day of each month, generally by electronic transfer, for each carrier for all payments for which it is eligible. The disbursement amount is posted on USAC's website approximately five days before disbursement, which is the carrier's notification of the disbursement amount. The Commission seeks comment on whether USAC should provide additional notification to recipients.[358] USAC is working diligently to provide additional notice to carriers. Upon implementation of USAC's new financial systems platform, time cycles for review and validation of disbursements will be significantly improved and notification can be proactively provided for out-of-period support changes not otherwise predictable by ETC recipients.

USAC disburses High Cost program support on a monthly basis. Increasing the frequency of payments, even if viewed as desirable, would be administratively infeasible at this time. USAC requires the entire month to process data and validate support payments in order to disburse the correct amounts. Adding to the complexity of the

[358] *NPRM* ¶ 61.

process, stakeholders receiving High Cost support often provide data upon which support is paid that is subsequently adjusted. More generally, USAC's experience has been that electronic payments are a more effective means of disbursing funds. When paper checks are used, about 1% of the checks are lost or not cashed by the valid date on the check. In contrast, only .02% of electronic payments are rejected. Reissuance of payments increases administrative costs and creates beneficiary uncertainty. Therefore, the Commission may wish to consider requiring electronic payments.

The Commission seeks comment on whether it should adopt rules to provide for true-ups of amounts disbursed.[359] Amounts paid to carriers under the Local Switching Support (LSS) and Interstate Common Line Support (ICLS) components of the High Cost program are based on forecasts and are subject to true-up.[360] USAC compares the actual costs submitted by carriers twelve months after the end of the year to the projected costs. There are no rules limiting the level of a carrier's projections and carriers can overestimate or underestimate. The Commission seeks comment on whether it should require data be submitted earlier in order to facilitate true-ups. USAC notes changes to ICLS rules have made support more predictable and subject to smaller true-ups.[361] Enabling adjustments to prior periods and prospective projected amounts for ICLS enables carriers to more accurately predict their support requirements. LSS, with only

[359] *NPRM*, ¶ 61.

[360] *See* 47 C.F.R. §§ 54.301(b), (e); 54.903(a)(3), (4).

[361] *See* Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers , *Federal-State Joint Board on Universal Service*, CC Docket Nos. 00-256, 96-45, Third Order on Reconsideration, 18 FCC Rcd 10284 (2003) (among other things, amending § 54.903(a)(3)) .

one true-up appears to provide less predictability of support for ETCs. For calendar year 2003, 814 carriers over-projected LSS by approximately $54 million.

The Commission asks whether, as part of the true-up process, carriers should pay interest on the difference between projected and actual amounts if the projected amounts exceed actual amounts. USAC notes reducing program time cycles will enable true-ups to be processed and validated earlier and shorten any period during which an ETC essentially receives an interest-free loan, but may not improve the overestimation or underestimation of accounts that leads to potentially dramatic support swings. Were ETCs encouraged to file more accurate projections, the support swings based on the true-ups can be reduced. Encouraging ETCs to more accurately report account data for both LSS and ICLS will preclude carriers from receiving interest-free loans which are repaid only upon the true-up. Charging interest on those ETCs benefiting from overprojection of support would encourage carriers to project support more accurately.

Were the Commission to adopt this approach, the more clearly it can define the interest assessment the better. For example, to administer a process for charging interest, the rules would need to define the amount the interest rate is based on, when it should be applied, for what components, etc. Although an interest requirement would increase USAC's administrative burden, USAC's experience suggests it would reduce the burden on the USF through additional revenues and encourage more accurate projection filings.

(iii) Low Income Program Disbursements

The Commission addresses Low Income program disbursements in paragraph 62 of the *NPRM*. USAC releases Low Income disbursements by the last day of the month. USAC has not been made aware of Low Income program disbursement issues by

program participants. Monthly disbursements are based on projections, which are then trued-up once USAC receives the actual support claim from a company on FCC Form 497. A company's Low Income support for a given month is based on the actual information for previous months, to the extent the carrier has filed this information, and the projection for the current month. USAC provides a report to companies that request information on how their support was calculated, that is, the projection amount versus the actual support claim.

Frequency of Disbursements. USAC processes Low Income program disbursements once each month to reimburse ETCs for the discounts they have already provided to their eligible low income consumers. This monthly disbursement approach matches the practice of most carriers who bill their customers monthly for services. Payment to these service providers is made based on the instructions provided in FCC Form 498. ETCs receive monthly low income support payments based on USAC calculated projections even if they have not claimed support by filing FCC Form 497. The *NPRM* notes Low Income program payments generally are disbursed by electronic transfer.[362] USAC notes that 100% of incumbent carriers receive electronic disbursements compared to 91% of competitive carriers**.** As discussed above,[363] the Commission may wish to consider requiring electronic payment for all universal service programs, including the Low Income program.

Negative Disbursements. The Commission asks whether FCC Form 497 should be revised in order to reduce the likelihood of negative disbursements. As discussed

[362] *NPRM*, ¶ 62.

[363] *See* above at 187.

above,[364] USAC suggests a number of changes to FCC Form 497 that would improve administration, but cannot identify any changes to the form itself to reduce the incidence of negative disbursements.

Low Income program support is disbursed each month based on a projection made by USAC for each carrier. When a company files its actual support claims on FCC Form 497, the claim is trued up against USAC projected support already disbursed. This process benefits companies because they receive a monthly support disbursement without having to file the form each month. The most obvious way to eliminate negative disbursements is for USAC to stop making payments based on projections and pay only on actual support claims. That is, a company would not receive support until it filed an actual support claim on the form for a given month. Alternatively, requiring monthly filing would likely reduce the number and size of negative disbursements by reconciling projections and actual support claims more frequently. USAC would be able to true up the actual support claim received in a given month with the disbursement made during the previous month. As discussed above,[365] many companies already file their actual support claims monthly in order to avoid large true-ups.

Negative disbursements might also be reduced if USAC modified its projection formula by eliminating or reducing the growth rate and simply basing a carrier's monthly projection on the actual data for the last month submitted. However, this practice could result in underpayment of support given the observed overall growth of the Low Income program support in recent years. This under-payment would be reconciled when carriers

[364] *See* above at 99-101, 166-68 and 169-70.

[365] *See* above at 166-68.

file their actual support claims and could result in large fluctuations in Low Income program disbursements. In addition, if the Commission adopts rules requiring companies to file FCC Form 497 annually or semi-annually, for some quarters USAC would not have current data on which to base projections. Thus, adjusting the Low Income program projection formula in order to prevent negative disbursements could create significant administrative issues and have unintended consequences.

Streamlining Lifeline and Link-Up Discount Process. Paragraph 63 of the *NPRM* seeks comment on whether the Commission should simplify or streamline the four-level discount process for Lifeline and Link-Up, or if additional levels would be appropriate. Tier 1 is equal to the incumbent ETC's federal tariffed Subscriber Line Charge.[366] Tier 2 is an additional $1.75.[367] Tier 3 is equal to one-half the amount of state-mandated Lifeline support or one-half of any Lifeline support provided by the carrier, up to $1.75 per month.[368] Tier 4 is additional federal Lifeline support of up to $25 per month for eligible residents of tribal lands.[369] There are additional discounts for low income residents on tribal lands; Enhanced Lifeline, Link-Up, and other universal service-related programs are targeted specifically toward tribal lands.[370]

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[366] 47 C.F.R § 54.403 (a)(1).

[367] 47 C.F.R § 54.403 (a)(2).

[368] 47 C.F.R. § 54.403(a)(3).

[369] 47 C.F.R. § 54.403(a)(4).

[370] The Commission also has an open rulemaking proceeding on extending Enhanced Lifeline and Link-Up to areas near reservations in order to target such assistance to the most underserved areas of the Nation. *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas,* CC Docket No. 96-45, Twenty-Fifth Order on Reconsideration, Report and Order, Order, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10958 (2003).

USAC offers the following suggestions in response to the issues raised in paragraph 63. Regarding Tier 3 support, the Commission may wish to clarify the relationship between the receipt of Tier 3 support by ETCs and a state's status as a federal default state or a state that mandates Lifeline support. If the state approves a carrier's intrastate rate reduction for Lifeline customers,[371] can the state be considered a federal default state or does it mandate support by approving an intrastate rate reduction? Because there are different rules concerning eligibility, certification and verification for federal default states as compared with states that mandate support, clarification on how Tier 3 support impacts a state's status is necessary. The Commission may wish to define what constitutes a "federal default state" and how Tier 3 support affects a state's status.

The Commission may also wish to consider changing the name of Tier 4 support. For example, the name "Supplemental Tribal Support" may make the purpose of this support more evident. Additionally, the Commission may wish to consider modifying the maximum amount of tribal Link-Up support available.[372] Currently, some ETCs establish tribal Link-Up rates of $130.00, and claim the maximum $100.00 from the USF. Lifeline customers are not affected because they pay $30.00 for tribal Link-Up support regardless of the ETC's rates.[373] The amount claimed appears to have no bearing on the ETC's actual costs, but seems to be an attempt to game the system to obtain the maximum amount of support available.

[371] *See* 47 C.F.R. § 54.403(a)(3).

[372] 47 C.F.R. § 54.411(a)(3).

[373] 47 C.F.R. § 54.403.

USAC seeks clarification on whether an ETC can require its Lifeline customers to accept Toll Limitation Service (TLS).[374] Mandating TLS could be seen as violating 47 C.F.R. § 54.101(a)(7), which includes access to interexchange service among the minimum services ETCs must provide to their customers.[375] In addition to restricting use of the network, ETCs that require TLS for Lifeline customers also claim a disproportionate amount of TLS support from the Low Income program.[376] USAC requests the Commission provide guidance on this issue.

Additionally, USAC suggests the Commission consider further clarifying the manner in which ETCs calculate their incremental cost of providing TLS and consider capping the amount of support ETCs can claim for providing TLS. The Commission's rules state TLS is equivalent to the company's incremental cost of providing TLS to a Lifeline customer. The Commission has provided partial guidance on what costs are appropriately included in incremental cost.[377] There is a large range in the amount of support claimed by companies. Large companies generally have small incremental costs and many claim such small amounts per subscriber that they round the number to the sixth decimal point. In contrast, smaller companies claim large amounts per subscriber. USAC recommends the Commission provide guidance on how to calculate incremental TLS support, including a description of which expenses can be included and which must

[374] 47 C.F.R. § 54.403(c).

[375] 47 C.F.R. § 54.101(a)(7).

[376] For example, one mid-sized company that serves approximately 19,000 Lifeline customers in one state claims TLS support for 100% of its customers and routinely receives more TLS support than any other company except Pacific Bell, which serves 2.3 million Lifeline customers.

[377] Letter from Lisa M. Zaina, Acting Deputy Bureau Chief, Common Carrier Bureau, to John Ricker, National Exchange Carrier Association (Mar. 11, 1999).

be excluded. USAC also suggests the Commission consider establishing a maximum TLS support amount.

Deferred Payment Interest Support. The Commission's rules allow ETCs to claim support for providing interest-free payment schedules for Lifeline customers when they commence service.[378] No ETC, however, has ever claimed reimbursement from the Low Income program for interest lost as a result of offering an interest-free deferred schedule for payment of the charges assessed for commencing service. The Commission may wish to consider whether this component of the Low Income program should be continued given the lack of demand.

(iv) Rural Health Care Program Disbursements

Paragraph 60 of the *NPRM* seeks comment on whether to adopt criteria or provide guidance for the Administrator's review of Rural Health Care program invoices. Paragraph 64 seeks comment on whether the Commission should revise the Rural Health Care disbursement process. In the Rural Health Care program, all invoices are processed within 45 calendar days or less of receipt. An invoice must be for the exact amount USAC authorized on the monthly support schedule which USAC sends to each applicant and service provider otherwise the invoice will be rejected. Invoices are paid or netted against the contributor's contribution obligation for all amounts invoiced to USAC. USAC believes additional invoice review criteria are not necessary at this time, nor does USAC recommend changes to the Rural Health Care disbursement process. As with the

[378] 47 C.F.R. §54.413(a).

Schools and Libraries program, however, the Commission may wish to consider whether disbursing reimbursements directly to applicants is an option.

c. USF Contributions Process

In paragraph 65 of the *NPRM* the Commission seeks comment on whether to adopt rules clarifying or improving the contributions process to ensure the Administrator collects sufficient funds.

The Commission may wish to consider requiring companies that engage in a merger, sale, or acquisition to certify to USAC and/or the Commission that the successor company shall be required to pay USF obligations that may be determined after the transaction as a result of a subsequent annual USF contribution true-up or the filing of revised revenue figures for a period prior to the transaction. Tracking such transactions under the current rules has, in some cases, proven difficult.[379] The Commission may wish to require entities provide USAC with business event documentation within a limited number of days after the event. If Commission approval of a transaction is required, it could require a contributor involved in the transaction to provide a legally binding document specifying the entity responsible for past and future USF obligations.

The Commission may wish to consider limiting the period during which a filer is allowed to downwardly revise its FCC Form 499-Q to 15 days. Currently the FCC Form 499-Q can be upwardly or downwardly revised up to 45 days after the due date of the

[379] The following limited guidance is provided in the Instructions to the Form 499-A:

> In the event that a filer that submitted a Form 499-A no longer exists, the successor company to the contributor's assets or operations is responsible for continuing to make assessed contribution or true-up payments, if any, for the funding period and must notify the Form 499 Data Collection Agent. If the operations of an entity ceased during the previous calendar year and are now part of a successor, the successor must include the previous calendar year revenues of the now-defunct entity with its own Worksheet. *See* 2005 FCC Form 499-A Instructions at 12.

form. Because USAC's quarterly contribution base filing is due approximately 30 days after FCC Form 499-Q filing due date, under current rules downward revisions can occur after the contribution base is filed possibly resulting in less USF funds being collected than had been projected in USAC's quarterly contribution base filing. Establishing a 15-day window would ensure the contribution base filing is more accurate and reduce the likelihood of an undercollection of contributions.

As with the current 45-day revision window, a 15-day revision window would present difficulties for a contributor that discovers a significant error outside a shortened revision window. In such a case, the contributor would be required to pay the charges based on the erroneous revenue and wait until the annual FCC Form 499-A/499-Q true-up to receive an adjustment for the error. Notably, however, electronic filing mitigates this risk because contributors receive immediate electronic notification if they attempt to enter revenue grossly out of line with what was reported on prior filings.

The Commission seeks comment on ways to modify or streamline the current USF contribution process.[380] The Commission should consider mandating electronic submission and certification of FCC Forms 499-Q and 499-A. Electronic filing of contributor data would streamline the current USF contribution process. Alternatively, the Commission could assess a processing fee for hardcopy submissions in order to encourage electronic filing. Mandatory electronic filing will promote timely submission of forms, lower administrative costs, and increase filing accuracy because forms will be pre-populated with information that remains constant, data will be validated instantly,

[380] *NPRM*, ¶ 65.

and filers will be immediately alerted to apparent obvious errors.

Finally in paragraph 65 of the *NPRM*, the Commission seeks comment on whether to adopt criteria for the Administrator to follow for making projections or forecasts, and if so, what criteria would be appropriate. USAC is not entirely clear about which projections the Commission is referring to in paragraph 65. The context suggests the question may address whether there should be more specific criteria used in estimating contributor revenue for those companies that fail to file the required FCC Forms 499 (non-filers).

Section 54.709(d) of the Commission's rules contemplates USAC, in making the required revenue estimates for non-filers, consider relevant data from previous years and take into consideration estimated changes for such data in making estimates.[381] However, given the unpredictable fluctuations in revenue typical in the industry, USAC does not attempt to estimate potential changes in non-filers' annual revenue. In addition, the volume of non-filers makes estimating year-to-year changes in revenue impracticable. For similar reasons, USAC also does not consider data regarding presubscribed lines in estimating revenue for non-filers. It thus may be appropriate for the Commission to consider eliminating those requirements from 47 C.F.R. § 54.709(d).

d. Periodic Review of Program Management

The Commission in paragraph 66 of the *NPRM* seeks comment on whether it should adopt rules requiring periodic review of the administration and management of the USF. The Commission proposes a triennial review similar to the local competition rules,

[381] *See* 47 C.F.R. § 54.709(d) (requiring USAC to bill non-filing contributors based upon relevant available information such as data from previous years).

but requests comment on whether such reviews should occur at different time intervals. The administration of the USF and its programs is under constant scrutiny. USAC is audited twice annually and is subject to additional oversight by the Commission and Congress. Notwithstanding the current high level of oversight, USAC believes periodic review of USF administration is appropriate and desirable. The size and scope of the universal service support mechanisms, and the significant effort required to administer them, require regular review. Any review of USF administration should evaluate both the Administrator and the Commission. In addition, the scope of such review should be defined in order to provide focus for parties wishing to participate in the evaluation.

B. Oversight of the USF

The Commission's third broad area of inquiry in the *NPRM* concerns oversight of the universal service programs.[382] The Commission addresses audits, document retention requirements, administrative limitations periods, suspension and debarment standards, and other means of detecting and preventing waste, fraud, and abuse. Program integrity is critical to the success of the programs, and USAC is uniquely positioned to provide input on many of the important questions posed by the Commission in this section of the *NPRM*.

1. Independent Audits

a. USAC's Audit Program

The Commission's rules authorize USAC to conduct audits of all beneficiaries of and contributors to the USF. The programmatic committees of the USAC Board of

[382] *NPRM*, ¶¶ 67-99.

Directors "shall have the authority to make decisions concerning…[p]erformance of audits of beneficiaries" under the High Cost, Low Income, Rural Health Care, and Schools and Libraries programs.[383] USAC is also authorized to audit USF contributors and carriers reporting data to USAC.[384] In addition, members of the USAC Board of Directors have fiduciary obligations to USAC and the USF that require USAC to audit USF beneficiaries and contributors on a regular basis, and USAC's longstanding practice has been to conduct such audits.

Audits are an essential tool for the Commission and USAC to ensure program integrity and to detect and deter waste, fraud, and abuse.[385] Audits can reveal instances in which universal service funds were improperly disbursed or used in a manner inconsistent with the Act or the Commission's rules.[386] Audits also provide valuable insight into overall program compliance and can identify best (and worst) practices. Indeed, numerous audited beneficiaries have stated that the process was useful and increased the beneficiary's understanding of program rules.

Consistent with responsible corporate practice, USAC's Vice President of Internal Audit reports directly to USAC's Chief Executive Officer. Additionally, USAC's Audit Committee oversees the work of the audit staff. USAC performs audits using its Internal Audit Division (IAD) staff and external auditors under contract. USAC audits

[383] 47 C.F.R. § 54.705(a)(1)(x), (b)(1)(viii), (c)(1)(iv).

[384] 47 C.F.R. § 54.707.

[385] *See* 47 C.F.R. §§ 54.516, 54.619, 54.707; *Schools and Libraries Fifth Order*, 19 FCC Rcd at 15813, ¶ 13.

[386] *Id*. The term "improperly disbursed funds" refers funds disbursed in a manner inconsistent with the Communications Act or Commission rules. The amount may be all or part of a disbursement, depending upon the circumstances.

participants in the four universal service support programs and USF contributors.[387] USAC auditors and counsel also provide support to law enforcement and other investigations. Because USAC lacks prosecutorial or other enforcement authority, working with state and federal law enforcement authorities is critical to ensure that participants who violate program rules with fraudulent intent are prosecuted.

The table below summarizes USAC's audit activity through September 15, 2005:

USF BENEFICIARY AND CONTRIBUTOR AUDITS

YEAR	SCHOOLS AND LIBRARIES	RURAL HEALTH CARE	LOW INCOME[388]	HIGH COST	CONTRIB-UTOR REVENUE	TOTAL
2000	17					**17**
2001	25	6	112		15	**158**
2002	7	9	55	3		**74**
2003	106		10	1		**117**
2004	36	10	9	4	38	**97**
2005	103		10	7	5	**125**
TOTAL	**294**	**25**	**196**	**15**	**58**	**588**

USAC has taken steps to expand its audit program considerably. Working closely with OIG staff, in 2004 and 2005, USAC conducted an extensive competitive bidding process to select an outside audit firm or firms to perform up to 700 USF beneficiary audits over several years. The USAC Board of Directors approved the selection of firms to perform the work in April 2005 and USAC presented the arrangements to Commission staff for consideration. In early October 2005, USAC was informed the Commission intends to conduct a new procurement process and requested USAC not initiate new

[387] USAC's IAD also reviews USAC's internal operating processes and assists outside auditors in their work auditing USAC and the USF pursuant to Commission requirements. *See* 47 C.F. R. § 54.717.

[388] USAC contracted with NECA for the performance of the Low Income program reviews for 2001 and 2002. The work performed was a limited review of rule compliance for NECA members. USAC's Internal Audit Division performed Low Income program audits beginning in 2003.

audits of USF beneficiaries using external audit firms.[389] USAC is working with the Commission to ensure that an appropriate beneficiary audit program is conducted in a timely manner.

In paragraph 70 of the *NPRM*, the Commission observes that "USAC, OIG, and independent auditing processes may waste government money if they are unnecessarily repetitious, or inefficiently designed or executed." USAC is careful to ensure that its audits are coordinated with the Wireline Competition Bureau (WCB or Bureau) and OIG and they are properly planned and executed. USAC performs audits in accordance with Generally Accepted Government Auditing Standards (GAGAS) as required by Commission rules.[390] USAC engages in a two-year planning cycle, utilizes a formal process to plan and execute audits, and follows a detailed pre- and post-audit protocol to ensure accuracy and final reports that are useful to USAC, the Commission, and auditees. USAC works closely with Bureau and OIG staff to share best practices in USF audit procedures.

b. Schools and Libraries Program Beneficiary Audits

In paragraphs 71-75 of the *NPRM*, the Commission asks numerous questions regarding Schools and Libraries program beneficiary audits. Although the questions are posed in the context of that program, many of the issues cut across all program beneficiary and contributor audits.

[389] Letter from Andrew S. Fishel, Managing Director, FCC, to Lisa M. Zaina, Chief Executive Officer, USAC (Oct. 7, 2005).

[390] *See* 47 C.F.R. § 54.702(n); *GovGAAP Order*, 18 FCC Rcd at 19912-13, ¶¶ 4-6.

i. Independent Audit Requirement

The Commission first seeks comment on whether some recipients of funding should be required to obtain an annual independent audit to evaluate program compliance.[391] As a general matter, USAC believes that an independent audit requirement could be useful but should not replace USAC's beneficiary audit program. Depending upon the scope and methodology of an independent audit requirement, the benefits may mirror those of USAC's audit program, including deterrence of waste, fraud, and abuse; gathering insights regarding program effectiveness; detecting which programmatic areas need improvement or clarification; revealing best practices; and recovering improperly disbursed funds. However, consistent with its duties as USF administrator under Commission regulations,[392] USAC should retain flexibility and discretion to administer an audit program in consultation with the Commission and to devise audit plans each year based on its assessment of program risk factors.

The Commission suggests that an independent audit requirement could be applied to recipients of funding above a particular dollar amount.[393] The Commission also asks whether the same threshold should apply to both applicants and service providers.[394] Should the Commission adopt audit thresholds, USAC believes that applicants and service providers should be treated similarly. USAC agrees that auditing a significant portion of funds disbursed is an important objective. USAC's experience suggests, however, that establishing firm thresholds could create certain negative consequences.

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[391] *NPRM*, ¶ 71.

[392] 47 C.F.R. § 54.705(a)(1)(x), (b)(1)(viii), (c)(1)(iv).

[393] *NPRM*, ¶ 72.

[394] *Id.*

Thresholds can create the perception that funding under the threshold is not subject to audit. As a consequence, to the extent that beneficiaries believe they are not subject to audit, they may be less concerned with complying with the rules and retaining records. Some applicants may apply for funding below the threshold to avoid being audited. This would almost certainly occur if the threshold is published, but could also occur with an unpublished threshold because beneficiaries could likely deduce the threshold based on observation of the entities being audited. Additionally, a threshold trigger could mean that the same entities would be audited each year, which would not seem to be an efficient use of scarce audit resources.

Because an independent audit requirement places responsibility for audits on the beneficiary itself, the standard by which the audits were to be performed and the roles of USAC and the Commission in the process would need to be clarified. For example, with respect to the scope and methodology of the audits, would USAC or the Commission be responsible for assessing whether the scope and methodology was appropriate? By what standard would that determination be made? Would USAC or the Commission be responsible for assessing the quality and independence of the auditors? Would USAC or the Commission be responsible for ensuring that the audits were uniform in terms of audit procedures and quality of work? What follow-up would be required if the audit report contained findings? To the extent that an independent audit requirement would result in a significant number of audit reports that would need to be reviewed, this could result in increased administrative costs if USAC was designated by the Commission to review and respond to the reports.

ii. Costs, Benefits, and Burdens of Independent Audit Requirement on Smaller Entities

In paragraph 71 of the *NPRM*, the Commission seeks comment on under what conditions the anticipated costs associated with targeted audits of program beneficiaries could outweigh the benefits of enhanced USF oversight. As an example, the Commission asks whether post-disbursement audits are appropriate where the cost of the audit would approach or exceed the amount of universal service support disbursed. In general, audits would not seem appropriate where the cost of the audit would approach or exceed the amount of funding provided. There may be, however, situations where an entity that is the subject of a whistleblower call or law enforcement investigation should be audited even if the entity received only a small amount of support. This will require a case-by-case assessment. In such instances an audit may uncover fraudulent activities that involve that entity and other entities, and may also uncover program weaknesses which will enable the Commission and USAC to make improvements to minimize future waste, fraud, and abuse.

The Commission also asks whether an independent audit requirement would deter smaller schools and libraries from participating in the program because the costs of the audit could exceed the total discounts received by some applicants resulting in benefits of the program being erased by a burdensome audit requirement.[395] Many applicants already express concerns regarding the administrative burden of the program. Requiring small schools and libraries to bear the costs and administrative burdens of an independent audit may cause their participation in the program to cost more in time and money than

[395] *Id.* at ¶ 72.

the benefits received. USAC expects that it could be costly to pay for an independent audit because of the complexity of the program and the amount of work required to reach a reliable audit opinion. For example, the amount of training the auditors would need to undergo to be able to perform an audit could significantly add to audit costs. USAC's experience suggests that many schools and libraries have limited resources and may not be able to afford an independent audit. Current industry standard indicates that the cost to perform even the most limited scope audit is at least $5,000.

In paragraph 73 of the *NPRM*, the Commission seeks comment on whether independent audits should be paid for by program beneficiaries and service providers or whether they should be performed by USAC or another entity at USF expense. Although there are sound justifications why beneficiaries should pay for audits, USAC believes that to be able to rely on audit results and to eliminate any concerns of bias or conflict of interest, USAC and the USF should conduct and bear the costs of beneficiary audits. It is essential to USAC's fulfilling its regulatory and fiduciary obligations that a neutral party control the audit process to obtain reliable and consistent audit findings and ensure effective deterrence of waste, fraud, and abuse.

As suggested by the Commission, USAC could be required to procure the services of independent auditors to perform annual independent audits in accordance with GAGAS with the costs borne by the USF.[396] USAC's beneficiary audit program has involved outside auditors under contract since USAC began conducting such audits.

[396] *Id.* at ¶ 73.

iii. Scope and Methodology of Independent Audit

In paragraphs 74 and 75 of the *NPRM*, the Commission seeks comment on the scope and methodology of a proposed annual independent audit requirement. These paragraphs pose many complex questions and raise numerous novel ideas. USAC addressed several of the issues immediately above and will address the additional items contained in paragraph 74 in turn.

Regardless of whether annual audits are required or whether audits are conducted on a more selective basis, the primary audit objective should be to assess the beneficiary's compliance with Commission rules. The scope of the audit should be based on a risk assessment that considers the following factors at a minimum: (1) the amount of support committed and/or disbursed; (2) types of services the applicant received (telecommunications services, Internet access, internal connections and basic maintenance of internal connections); (3) type of entity; (4) whether the entity was audited in recent years; (5) an internal controls assessment; (6) reports of other auditors; (7) whether the entity is subject to any type of investigation; and (8) whether the entity was referred by a whistleblower call. If risk is assessed as high, the auditor should select a larger sample of transactions and expend more effort on detailed testing. If risk is assessed as low, then the auditor may be able to obtain a reasonable assurance that the applicant complied with the rules with more limited audit procedures. Depending upon the scope and methodology of the audit, USAC could be required to disclose internal operating procedures to numerous outside auditors, which could seriously compromise program integrity.

The Commission asks in paragraph 74 of the *NPRM* whether beneficiary audits should attempt to distinguish between intentional fraud, negligence, and ministerial errors. The Commission requests that parties recommending such an approach offer a definition of "ministerial error" and provide examples, and that they should also discuss whether compliance with certain administrative procedures, such as filing or application deadlines and requirements, provide a degree of certainty to all parties, including the fund administrator.

USAC's experience demonstrates that auditors can distinguish between rule violations, negligence, and ministerial errors such as typographical and transcription errors. Reaching a conclusion that intentional fraud has occurred, however, is more difficult. USAC believes that regulatory violations need to be dealt with more stringently than ministerial errors or violations of procedures that do not compromise program integrity. That said, USAC believes compliance with administrative procedures is an important component of audits so that programmatic and administrative weaknesses can be identified. In evaluating whether an error is appropriately characterized as "ministerial," USAC considers whether the mistake appears to be inadvertent and whether it is material to the overall scope of the transactions being audited. To assist the auditor in determining if an error is ministerial or material, auditors consider the sufficiency of internal controls and the dollar value of the finding relative to total funding received by the beneficiary. Repeated ministerial errors can indicate the entity lacks sufficient internal controls. Consequently, a pattern of repeated ministerial errors can indicate a systemic compliance problem or negligence. USAC regularly makes these distinctions when it determines whether beneficiaries are compliant with program rules.

In paragraph 74 of the *NPRM*, the Commission asks whether USAC and the Commission should recover improperly disbursed funds. When funds are committed or disbursed in error, USAC is required to seek recovery.[397] Loss of funding for non-compliance places appropriate incentives on program participants to comply fully with program rules and cooperate with audits. Because program demand has far exceeded available funds, recovered funds can be distributed to other participants. Thus, regardless of whether a violation is fraudulent, negligent, or merely ministerial in nature, USAC believes recovery is necessary, subject to a *de minimis* standard.[398]

The Commission seeks comment on whether audits should be limited to compliance with Commission rules or whether audits should assess compliance with USAC administrative policies and practices. USAC believes that audits should cover compliance with Commission rules and USAC administrative procedures but that findings and recovery of funds should be based only on violations of rules or published procedures. Prior to the adoption of the *Schools and Libraries Fifth Order*, many of the beneficiary audits resulted in findings that were violations of USAC administrative procedures but not program rules. Many of these findings occurred in the areas of the technology plans, moving equipment to ineligible facilities, and lack of documentation.

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[397] *See Commitment Adjustment Order*; *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, 96-45, Order, 15 FCC Rcd 7197 (1999) (*COMAD Waiver Order)*; *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, 96-45, Order, 15 FCC Rcd 22975 (2000) *(Commitment Adjustment Order II)*; *Schools and Libraries Fourth Order*, 19 FCC Rcd 15252*; Schools and Libraries Fifth Order*, 19 FCC Rcd 15808.

[398] As directed by the Commission in the *Schools and Libraries Fifth Order*, USAC does not seek recoveries where the amount to recover exceeds the administrative cost of seeking recovery. *See Schools and Libraries Fifth Order*, 19 FCC Rcd at 15819, ¶ 35.

Although USAC did not seek to recover funds as a result of these types of findings, they highlighted weaknesses in the program, many of which the Commission addressed in subsequent rulemakings. USAC does not believe that unpublished administrative policies and procedures should be included as findings in audits because it is not fair to hold applicants accountable to unpublished policies and procedures. However, USAC's beneficiary audits note the lack of compliance with published administrative policies and procedures as "other matters" with no monetary impact in order to gather information to quantify the impact to the program.

Next, the Commission seeks comment on whether government auditing standards, which require among other things that independent auditors obtain a sufficient understanding of internal controls the entity uses to ensure compliance with Commission rules and which are material to the subject matter to plan the engagement, should be applied during beneficiary audits.[399] As noted above, USAC has performed audits in accordance with GAGAS since directed to do so in the *Gov GAAP Order*. GAGAS requires auditors to evaluate internal controls as part of audit testing and requires auditors to have a sufficient understanding of the auditee's internal controls. This evaluation and understanding is necessary to assess compliance with program requirements. For example, auditors should understand the entity's inventory controls over program-funded equipment such as fixed asset listings, routine inventories, and how the entity marks equipment.

[399] *NPRM*, ¶74.

The Commission asks whether auditors have been properly trained and understand the program rules and whether auditors have wasted time or resources because the audit is improperly designed, improperly executed, or because auditors do not adequately understand the program rules.[400] USAC defers to other commenters with respect to the perceptions of auditees, but notes that both USAC's audit staff and the external audit firms retained by USAC to conduct beneficiary audits are highly qualified, experienced, and extensively trained.

The Commission seeks comment on the mechanics of administering an independent audit program, including whether it should limit auditing to ensure an entity is not audited more than once for a given program year, and an entity is not audited for the same application by more than one auditing group—that is, USAC, an independent auditor, or the OIG staff.[401] USAC agrees that duplicative audits and multiple audits of the same entities should be avoided. USAC coordinates audit activity closely with the OIG staff and other bureaus and offices within the FCC. Also as part of audit planning, USAC considers the last time the beneficiary was audited to further avoid an unwarranted burden on applicants. An entity should not be subject to more than one audit per program for any program year unless a follow-up audit is required based on findings from an initial audit. However, a service provider could be audited as a result of its participation in, for example, the Schools and Libraries program, and as a contributor to the USF in the same time period. USAC works closely with Commission staff to ensure that duplication does not happen and will continue to do so. Should the Commission adopt an

[400] *Id.*

[401] *Id.*

independent audit requirement for a large class of beneficiaries, the Commission would need to clarify whether beneficiaries subject to this audit could also be audited by USAC as part of its audit program under program rules.

The Commission seeks comment on other standards that should be imposed for carrying out beneficiary audits.[402] For example, because the primary purpose of the audit is to evaluate compliance with program rules, the Commission asks whether auditors should be required to perform a "compliance attestation" in accordance with government auditing standards. USAC recommends that audits be designed with an approach that will provide an opinion regarding program compliance. Either a "compliance attestation" or a "performance" audit approach will give a final conclusion that will be useful for the report user.

In paragraph 74 of the *NPRM*, the Commission asks whether it should provide audit reports to audited entities and, if so, whether USAC should be required to provide the audit report within a particular period of time after the audit is concluded. USAC generally provides auditees with a copy of the final audit report within 30 days of the audit being deemed final and accepted by the USAC Board of Directors.

In paragraph 75 of the *NPRM*, the Commission seeks general comment on whether the current structure of audits is appropriate and on ways to improve the audit process. The Commission notes that some schools have indicated that USAC audits are more intense and require them to expend more resources than do audits for other government programs. USAC recognizes that Schools and Libraries program audits can

[402] *Id.*

be relatively intense and believes that thus far the main contributing factor has been inadequate documentation. Because USAC audits are conducted in compliance with GAGAS, USAC performs an in-depth review of all aspects of the applicant's participation in the program. USAC's experience has been that often applicants have not kept records adequate to respond to audit requests, and when records do exist they often are not stored centrally for easy accessibility nor are they well-organized. GAGAS requires the auditor to gather detailed supporting documentation to include in the audit workpapers. Consequently, the audits require significant information gathering that may be a burden on some applicants. Now that the Commission has clarified the document retention requirements in the *Schools and Libraries Fifth Order*, USAC expects this burden to be eased in future years.

For smaller applicants, limited scope audits targeting, for example, higher risk aspects of the program such as competitive bidding may be appropriate. These limited scope audits may be performed randomly or beneficiaries could be selected based on perceived compliance, prior audit activity, or questions about the sufficiency of the applicant's internal controls. When performing a limited scope review, GAGAS allows the auditor to make professional judgments based on the scope of the work performed. An auditor may conclude based on a limited scope audit that the applicant complied with program rules when considering the applicant's internal controls, and that additional audit work is not necessary.

c. Structure of Rural Health Care, Low Income, and High Cost Beneficiary Audit Program

Paragraphs 76-78 of the *NPRM* seek comment on whether the current audit structure for the Rural Health Care, Low Income, and High Cost programs is appropriate for the programs and solicits input on how the auditing process for those programs can be improved. The questions in paragraph 76 track those posed by the Commission regarding Schools and Libraries program beneficiary audits in paragraph 74. USAC will not repeat the questions or answers in full but incorporates them by reference here.

To summarize, USAC believes beneficiary audits should evaluate whether beneficiaries have complied with Commission rules, and USAC and the Commission should recover improperly disbursed funds regardless of whether the non-compliance was the result of an intentional or unintentional error. To assist the auditor in determining if an error is ministerial or material, auditors consider the sufficiency of internal controls and the dollar value of the finding relative to total funds disbursed for the applicant.

Auditors should report on compliance with both program rules and published administrative procedures. Similar to the Schools and Libraries program, amounts recovered from beneficiaries should be based on violations of program rules and requirements, but not on USAC's administrative procedures. USAC believes it is appropriate to include compliance with administrative procedures in the audit program in order to identify potential weaknesses in the programs. As with Schools and Libraries program audits, USAC coordinates with Commission offices and bureaus to avoid duplicative or overly burdensome audits. Under GAGAS, auditors are required to evaluate the sufficiency of the internal controls the entity uses to ensure compliance with

Commission rules. Auditors should perform compliance attestation or performance audits in order to be able to reach conclusions about compliance. USAC provides audit response reports and outreach to program participants to communicate the lessons learned from audits and to publicize best practices to promote program compliance and prevent waste, fraud, and abuse. USAC provides audit reports to the audited entity within 30 days of the audit being deemed final and accepted by the USAC Board of Directors.

d. Independent Audit Requirement for High Cost, Low Income, and Rural Health Care Program Beneficiaries

In paragraph 77 of the *NPRM*, the Commission seeks comment on whether the Commission should require recipients of funding from the High Cost, Low Income, and Rural Health Care programs to undergo independent audits.

USAC is uncertain at this time whether beneficiaries of the High Cost program should be required to undergo independent audits. USAC intends to audit a significant portion of High Cost program beneficiaries as part of future audit programs. Selecting a statistically significant sample of High Cost recipients using recipient status, size, and dollars disbursed will provide a useful and targeted approach that can be extrapolated to the general High Cost recipient population in a more efficient manner than selection of all carrier entities receiving, for example, $3 million or more in annual High Cost support. Upon conclusion of that work, USAC will evaluate the audit results to determine how many audits should be conducted annually going forward.

At this time, USAC does not believe applicants and service providers associated with the Low Income program should be subject to an independent audit requirement because the audit results to date indicate little evidence of pervasive rule non-compliance

or waste, fraud, and abuse. The majority of the audit and in-depth data validation findings for companies that receive Low Income support reveal what can best be characterized as ministerial errors. Because Eligible Telecommunications Carriers (ETCs) are not required to submit substantiating data with their FCC Form 497 such as customer billing information, proof of customers' eligibility and tariff data, USAC is unable to discover most errors unless an audit or in-depth data validation is performed on a particular carrier. If such an error is discovered, USAC recovers the amount of support that was overpaid due to the company's error beginning with the first month in which the error occurred. USAC intends to audit a significant portion of Low Income program beneficiaries as part of future audit programs. Upon conclusion of that work, USAC will evaluate the audit results to determine how many audits need to be conducted going forward.

Similarly, USAC's experience to date with the Rural Health Care program does not suggest that large-scale audit activity is necessary based on the minimal audit findings in that program. USAC does intend to audit a significant portion of beneficiaries as part of future audit programs. USAC will evaluate the audit results to determine the appropriate level of audit activity in the future.

The Commission also asks in paragraph 77 whether only recipients of funds above a particular threshold should be subject to the requirement. As discussed above, although dollar thresholds may be useful in ensuring that a large percentage of disbursements is audited, establishing thresholds may create problematic incentives.[403]

[403] *See* above at 203-04.

Regardless of the scope of any independent audit requirement, USAC believes that such a requirement should not replace audits conducted by or under the authority of USAC, OIG staff, or the Commission itself. While USAC does not believe that it should rely solely on audits conducted by beneficiaries, audits performed by beneficiaries themselves can be very helpful. Additionally, and as more fully discussed in USAC's response above, to the extent an independent audit requirement is adopted, USAC suggests that the Commission clarify the issues it identified above related to the process for conducting and responding to audits, the audit objectives, and the standards that need to be followed.[404]

The Commission also seeks comment on the costs and benefits of any independent audit program, particularly the potential paperwork and other costs imposed on rural carriers and small entities and whether the costs of an audit outweigh the benefits of enhanced oversight of the USF. In auditing small or rural carriers, sample sizes and the scope of audits tend to be small and therefore less burdensome because such carriers receive less support than larger carriers. Moreover, in USAC's experience, the costs of audits do not outweigh the benefits of enhanced oversight of the USF. Audits can detect and serve as a deterrent to waste, fraud, and abuse, can result in recovery of improperly disbursed funds. They also provide the ability to assess overall program compliance and to note ways USAC can improve its internal operating procedures. USAC addressed the scope and methodology of beneficiary audits in response to the Commission's questions regarding the Schools and Libraries program above.

[404] *See* above at 202-13.

Paragraph 78 of the *NPRM* seeks comment on the estimated costs for audits of the High Cost, Low Income, and Rural Health Care programs. USAC's records indicate that the internal cost to complete the 140 beneficiary audits finalized in 2004 for all programs was approximately $4 million including travel expenses. Many of these audits were performed for the Schools and Libraries program.

e. Alternatives to Audits

The Commission also seeks comment on alternatives to audits that might provide assurances of program integrity consistent with the goals of improving program operation, ensuring a fair and equitable distribution of benefits, and preventing waste, fraud, and abuse.[405] USAC's experience suggests in addition to audits, the following can provide insight into program integrity: (1) trend analysis of program disbursements; (2) site visits; (3) additional data validation during processing; and (4) continuing communication of "best practices" to recipients of funding. As a result of the Site Visit Initiative currently underway in the Schools and Libraries program, some follow-up audit work has been done. Additionally, this initiative has enabled applicants to provide useful feedback improving the program and raised other issues related to program compliance.

These alternatives, while helpful to achieving the goals of the program, do not substitute for audits because they are not designed to detect lack of compliance with rules, or waste, fraud, and abuse. Additionally, an overall assessment of program compliance cannot be made using these techniques.

[405] *NPRM*, ¶ 78.

f. Sunset of Independent Audit Requirement

In paragraph 79 of the *NPRM*, the Commission asks whether it should automatically sunset any independent audit requirements it may adopt. The Commission posits terminating any measures automatically after a three-year period or reviewing any independent audit requirement after a specific period of time.

USAC supports a sunset provision for any independent audit requirements that are established but only if the results of the audits warrant a reduction in audit work. Audit requirements need to conform to any rule changes that may occur. USAC believes that any new audit rules should be applied prospectively but the exact duration will depend upon the nature and extent of program changes that may occur. To the extent that rules change, any audit requirements will need to be adjusted. Adopting an automatic change in audit requirements could create the risk that audits would not be completed. USAC believes audit results should be the determining factor when deciding whether to sunset audit requirements, and not a time period. USAC would need time to address and establish administrative requirements related to audits and to have staff in place to respond to the pre-audit needs for each audit and respond to the numerous audit results.

g. USF Contributor Audits

Paragraph 80 of the *NPRM* asks whether independent audits of USF contributors should be required. USAC believes that periodic audits of contributors are essential to maintain the integrity of the contribution base. Equity among contributors also dictates a strong audit program, as underreporting of revenue increases the contribution factor for all consumers and places more of a burden on those contributors who comply fully with the rules.

The Commission's rules currently authorize USAC to audit contributors and carriers otherwise reporting data to USAC.[406] The objective of the contributor audit is to determine the adequacy and accuracy of the information reported by the contributors on FCC Forms 499-A and 499-Q. In performing these audits, USAC has identified numerous instances in which carriers have not complied with Commission rules.

USAC believes that its audit program adequately tests the reliability and accuracy of the information being reported by carriers on the FCC Form 499-A. The contributor revenue audit program is comprehensive and is revised based on the type of carrier being audited. Giving USAC even stronger and more explicit authority to obtain carrier records would assist USAC's audit efforts. To improve the effectiveness of contributor audits generally, the Commission should ensure that Commission rules and FCC Forms 499-A and 499-Q and associated instructions operate in concert with each other.[407] Audit effectiveness is dependent on timely clarification from the Commission as to the appropriate rule in such cases.

To ensure both rigorous and fair audits, USAC suggests the Commission provide more specific direction with respect to contributor record retention and the contributor's obligation to cooperate during audits.[408] For example, currently there are no consequences for not retaining records or providing them in a timely manner to USAC.

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[406] 47 C.F.R. § 54.707.

[407] *E.g.*, *compare* 2005 FCC Form 499-A Instructions, 24 ("Gross billed revenues [reported from prepaid calling cards] should represent amounts actually paid by customers and not the amounts paid by distributors or retailers . . . .") *with* 2005 FCC Form 499-A, Line 411 ("Pre-paid calling card [including card sales to customers and non-carrier distributors] reported at face value of cards.").

[408] *See* 47 C.F.R. § 54.711(a) (outlining contributor reporting requirements).

The Commission could consider establishing a reasonable time frame in which contributors must respond to audit requests and imposing specific fines and penalties for failure to respond or to maintain sufficient records. USAC discusses the types of records that should be maintained below. Such measures will help ensure that contributors appreciate the importance of retaining this information and responding to USAC in a timely manner, which will, in turn, result in more effective use of audit resources.

Paragraph 80 of the *NPRM* also seeks comment on whether the benefits of ensuring that contributors pay their full amount of USF support justifies the costs of an audit program. Regardless of the scope of the program or what it is modeled on, it has been USAC's experience that monetary recoveries have outweighed the costs of the contributor revenue audits and that these audits act as a general deterrent to underreporting revenue.

The Commission again in paragraph 80 seeks comment on whether there should be a threshold for triggering a contributor audit, for example, require independent audits only for carriers contributing $100 million or more in a particular fiscal year. As with the programmatic audits, USAC believes that setting an explicit threshold creates improper incentives to underreport or misclassify revenues to remain below the threshold. Further, establishing a high threshold would exclude a majority of the current contributors to the USF as only a small minority contributes over $100 million a year. Additionally, carriers that are *de minimis* contributors or LIRE carriers, may never be audited.[409] The majority

[409] 47 C.F.R. §§ 706(c) and 708.

of USF contributors are carriers contributing less than $100 million a year, and therefore, a threshold at or below this level would not be an effective level for initiating an audit.

Paragraph 80 also asks if the Commission were to adopt an independent audit requirement for USF contributors, what additional rules or requirements (if any) should be adopted to ensure effective and fair audits. USAC has provided suggestions above that will increase the fairness and effectiveness of contributor audits generally. In its discussion of Schools and Libraries programmatic audits, USAC discussed various issues relating to, among other things, the scope and methodology of an independent audit requirement and incorporates that discussion by reference here.

Finally, paragraph 80 seeks comment on whether contributors should be required to pay for audits or whether audits should be funded by the USF. As with the programmatic audits, USAC believes that the USF should bear the cost of contributor audits and incorporates that discussion by reference here. With respect to contributors, however, there are additional considerations not relevant to the beneficiary context. Requiring carriers to pay for their own audits could result in difficulties in the initiation of audits and gaining carrier acceptance, as certain carriers may be limited in their cash flow. Each audit would also need to be precisely budgeted at the onset and agreed upon by both the auditee and the auditor. To require a carrier to provide the funds for an audit would also allow each carrier the freedom to obtain competitive bids for the audit work. This freedom could in some cases jeopardize the quality and integrity of the audit and result in inconsistencies. Additionally, contributor audits are not only performed on healthy companies but also companies that are in bankruptcy or have recently come out of bankruptcy. Audits of these carriers ensure that all post-petition and pre-petition

claims for USF funds are accurate and all monies due to the USF are collected. If carriers are required to pay for their own audits, it is likely that audits of these companies would no longer occur as a result of their financial condition.

h. Application of the Single Audit Act to USF Audits

Paragraph 81 of the *NPRM* seeks comment on whether the Commission should model any independent audit requirement for USF participants on the Single Audit Act and OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*.[410] The Single Audit Act replaces multiple audits of federal grant recipients with one annual audit for governmental and not-for-profit entities that receive more than $500,000 in federal awards annually. The objective of the Single Audit Act is to minimize the burden placed on entities receiving federal funds from multiple governmental sources. The single audit is organization-wide and focuses on the recipient's internal controls and its compliance with laws and regulations governing federal awards.[411]

USAC does not believe that this model translates particularly well to the USF context. For example, assuming that Schools and Libraries program beneficiaries fall

[410] *See* Single Audit Act of 1984, Pub. L. No. 98-502, 98 Stat 2327, as amended by the Single Audit Act Amendments of 1996, Pub. L. No. 104-156, 110 Stat 1396, codified at 31 U.S.C. §§ 7501 *et seq.* (*Single Audit Act*); *See* Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations.* The OMB implementing requirements specify in detail the responsibilities of audited entities to (1) maintain internal controls over their operations that provide reasonable assurance of compliance with applicable laws and rules; (2) comply with laws, regulations, and provisions of contracts or grant agreements related to the program; (3) ensure audits are properly performed and submitted when due; and (4) take follow-up and corrective action based on audit findings (*e.g.*, prepare a summary of audit findings and a corrective action plan). *See id.* at § .300. In particular, the OMB's implementing guidance applies sanctions to parties who fail to comply with the audit requirements, *e.g.*, withholding some or all of the moneys committed until the audit is completed. *Id*. at § .225.

[411] For example, federal awards consist of federal financial assistance including grants, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and federal cost reimbursement contracts.

under the Single Audit Act and that USF funds could be included in these audits does not guarantee that these funds would actually be audited because each audit firm selects a discretionary sample of major programs at the organization. Several factors are used by the independent auditor in determining which programs are considered major. As a result, even at large beneficiaries, USF support may not be considered by the auditors to be a major program in any given year. Additionally, USAC would not be able to draw statistical conclusions from results because the selection is not random, sampling approaches vary by auditor, and results reported may be inconsistent because quality will vary depending on the auditor used. Furthermore, these audits, like agreed-upon procedures reviews, do not require auditors to expand their procedures to address issues that may arise during the award. These audits focus on funds expended in a given fiscal year by an audited organization. Under the Schools and Libraries program, for example, the year funds are expended may not correspond to any particular funding year, thus making it difficult for USAC to draw conclusions about the expenditures by funding year.

i. Failure to Comply With Audit Requirements and Address Audit Findings

The Commission also asks whether it should prohibit parties who fail to comply with any independent audit requirement from receiving any USF moneys until such audit is satisfactorily completed. USAC strongly believes that failure to cooperate with information requests or audit is a valid reason to withhold all program disbursements. Withholding disbursements or benefits from the USF until an outstanding audit issue is resolved would deter beneficiaries and contributors from being unresponsive or causing unnecessary delays. This would enhance USAC's leverage and give the carrier an

incentive to ensure that all audits are completed in a timely manner. USAC's experience has been that there is currently little incentive to cooperatively comply with audits, as a result some audits have remained outstanding and incomplete for extended periods of time.

In paragraph 81 of the *NPRM*, the Commission also seeks comment on whether it should adopt rules requiring audited entities to prepare and submit a plan for corrective action addressing all audit findings. USAC believes that requiring USF recipients to provide a plan for corrective action is of great importance. The type of plan will necessarily vary by program.

In the High Cost program, for example, audits of a holding company's study area where an improper cost allocation methodology has been applied, may result in the audit affecting multiple study areas. The carrier will need to make adjustments to its data submissions pursuant to Part 36 of the Commission's rules, which may affect all of the carrier's study areas under the holding company as well as other carriers where the National Average Cost Per Loop (NACPL) is impacted for a given year. The carrier in question should be required to provide evidence that the corrective action specified as a result of the audit has been taken.

Similarly, in the Low Income program, audit findings frequently reveal mistakes that the ETC has made both in multiple months and across study areas within a holding company. Additionally, the amount attributed to a finding can sometimes be quantified only by the company itself. For example, an audit might reveal that a company has incorrectly claimed its retail rate for providing toll limitation service, rather than its incremental rate as permitted by the Commission's rules. USAC does not have access to

the company's incremental rate. Therefore, the only corrective action USAC can take if the company does not cooperate by providing evidence of its incremental rate is to recover all TLS support provided. Adopting a requirement that audited entities prepare and submit a plan for corrective action addressing all audit findings, including if necessary providing information such as incremental rates, would both ensure the company corrects all errors and be a vehicle for providing USAC with the information required to adjust the company's support appropriately.

Auditees in the Schools and Libraries program found to be non-compliant as a result of an audit are asked to inform USAC of the steps they are taking to address the non-compliance issues. For example, if an auditee is non-compliant because it did not comply with the program's competitive bidding rules, it needs to provide a description of the steps it is taking to ensure compliance going forward. Or, if a service provider is non-compliant because it received payment for ineligible products, it needs to provide a description of the steps it is taking to put in place adequate controls to ensure that it does not invoice USAC for ineligible products. USAC reviews the responses and clears the issue if the response is adequate. USAC holds new commitments while the non-compliance is being addressed. Most active applicants and service providers have responded positively to these follow-up steps and holds on new commitments are routinely released.

With respect to USF contributor audits, audit findings reflect errors that typically occur when the contributor incorrectly completes FCC Form 499-A. The corrective action for a majority of these findings is submission of a revised and corrected FCC Form 499-A. Other than ensuring that future Form 499-A filings are accurate, contributor audit

findings do not typically result in additional corrective actions that would require submission of a plan of action.

j. Whether Independent Audits Should Include Opinions Concerning the Sufficiency of Internal Controls

In paragraph 82 of the *NPRM*, the Commission seeks comment on whether any independent audit requirement adopted for beneficiaries or contributors should require the beneficiary or contributor to also obtain and provide to USAC an audit opinion concerning the sufficiency of the audited entity's internal controls over compliance and other areas of concern to the Commission in its policy making role.

Obtaining an audit opinion from an external audit firm addressing the sufficiency of a carrier's internal controls over compliance and other areas would involve a significant increase in the time, cost and resources for the auditor and the carrier. An audit of an entity's internal controls would involve detailed testing of the entity's internal control environment. With the implementation of the Sarbanes-Oxley Act, publicly traded companies are required to conduct audits that address the sufficiency of their control environments.[412] For carriers subject to Sarbanes-Oxley, USAC should be authorized obtain these reports to allow auditors to gain an understanding of the effectiveness and sufficiency of an entity's controls over compliance with FCC regulations. For certain small carriers not subject to Sarbanes-Oxley, controls may not be in place or be very minimal and the auditor would need to make the determination as to whether the costs are worth the benefits of conducting such an audit.

[412] Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (codified in sections of 11, 15, 18, 28 and 29 U.S.C.).

Paragraph 82 also seeks comment on whether the Commission should adopt additional criteria beyond those established in government auditing standards for selecting an auditor, such as competitive bids. USAC believes that auditors should be selected based on knowledge and experience in government auditing as well as knowledge and experience of the programs to be audited and the fees charged for conducting such audits. Competitive bidding will help assure the proper work is performed at the best price available. USAC follows this methodology when it retains auditing firms.

2. Document Retention Requirements

In the *Schools and Libraries Fifth Order*, the Commission concluded recordkeeping requirements not only prevent waste, fraud and abuse, but also protect applicants and service providers in the event of vendor disputes.[413] In that order, the Commission adopted a requirement that applicants and service providers retain all records related to the application for and receipt and delivery of discounted services for a period of five years after the last day of service delivered for a particular funding year.[414] USAC welcomed the Commission's establishment of document retention requirements.

In paragraph 84 of the *NPRM*, the Commission seeks comment on whether to adopt document retention rules for all of the universal service programs that are consistent with the Schools and Libraries program rule. USAC believes the Commission should establish record retention requirements for important documents concerning all of the universal service support programs as well as USF contributions. Comprehensively

[413] *Schools and Libraries Fifth Order*, 19 FCC Rcd at 15823-24, ¶ 47.

[414] *See id*.

articulated document retention requirements would improve compliance with Commission rules and USAC's ability to assess such compliance. The types of records and period of time for which records must be retained should depend on the program.

a. High Cost Program

USAC suggests the Commission consider requiring carriers receiving High Cost support to retain documents for a period of five years from the date of disbursement to the carrier and the carrier should be required to retain all necessary supporting documentation to support the study area cost per loop determination for as long as it would be necessary to corroborate payments. The documentation relevant to High Cost program payments must be sufficient and available to corroborate the payments consistent with the applicable rule.[415] For most of the High Cost program components, USAC makes payments based on historical data. Final support calculations are trued-up at later dates. For example, High Cost Loop support is paid based on an ILEC's study area cost per loop compared with the national average cost per loop. There is a gap of over one year between the date upon which the cost per loop information is based and the disbursement from USAC. In addition, the cost study upon which the cost per loop is based contains information that relies on data that can be much older. Consequently, documentation retention requirements should be cognizant of these time periods to ensure that the data can be obtained. The specific records that should be maintained by High Cost program participants should be the documents used to request funding and any indirect supporting documents that are necessary to provide sufficient, competent, and

[415] For example, ILECS are required to maintain records consistent with 47 C.F.R. § 32.12. Section 32.12(b) provides that the "company's financial records shall be kept with sufficient particularity to show fully the facts pertaining to all entries in these accounts."

relevant evidence in support of the documents filed with USAC for the purposes of receiving support. Documents that should be maintained include but are not limited to the following:

- Data supporting line count filings
- Historical customer billing records
- Fixed asset property accounting records
- General ledgers
- Invoice copies for the purchase and maintenance of equipment
- Maintenance contracts for the upgrade of equipment

USAC believes that sufficient records should be retained to substantiate payments for any given audit period. For any asset subject to a continuing property record, a carrier should be expected to retain its original receipt to substantiate the record for as long as it needs to be substantiated. Documentation necessary to substantiate cost studies and data submitted for any given audit period must be retained for the carrier to receive High Cost program support.

b. Low Income Program

The Commission recently stated that companies receiving Lifeline support are required to maintain records for three years.[416] The provision in the rule concerning records retention to document a Lifeline customer's eligibility is, however, not comprehensive. ETCs must retain the customer's signature on a document that certifies the customer's eligibility and the number of individuals in their household (if qualifying under the income-based criterion) for as long as the customer receives Lifeline support "or until audited by the Administrator."[417] USAC's experience suggests this limitation

[416] *2004 Lifeline and Link-Up Order*, 19 FCC Rcd at 8325-25, ¶ 39; *see also* 47 C.F.R. § 54.417(a).

[417] 47 C.F.R. § 54.417(a).

raises questions; for example, if the ETC is audited by USAC for its participation in the High Cost or Schools and Libraries program, can it then purge its Lifeline customers' eligibility records? Additionally, audits are often conducted for only one of an ETC's study areas. If a company's study area in one state is audited by USAC, can the ETC then eliminate its Lifeline customer's eligibility records in all of the states in which it is designated as an ETC? Given the relatively small number of audits conducted by USAC, most companies will have to retain their Lifeline customers' eligibility records so this limitation provides only limited relief from record-keeping requirements. For these reasons, the limitation that allows companies to dispense with customer eligibility records after an audit by USAC should be eliminated. Documents that should be maintained for as long as it would be necessary to corroborate payments include but are not limited to the following:

- Customer billing records
- Examples of advertising of low income support availability
- Verification results
- Certification of compliance with income documentation procedures
- Proof of customer eligibility

c. Rural Health Care Program

Also in paragraph 84, the Commission asks whether it should revise the document retention requirements for the Rural Health Care program.[418] USAC's experience suggests adoption of a retention period that tracks the Schools and Libraries program would also be appropriate for the Rural Health Care program—i.e., retention of all

[418] *See* 47 C.F.R. § 54.619(a)(1) (outlining document retention requirements for the Rural Health Care program).

records related to the application for and receipt and delivery of supported services for a period of five years after the last day of service delivered for a particular funding year.

d. USF Contributions

Commission rules presently provide for a three-year documentation retention period for records and information needed to corroborate information reported on the Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q).[419] USAC suggests that the Commission consider expanding this retention period to five years. Adopting a five year document retention period for contributors would assist auditors who discover erroneous internal processes or reporting practices among contributor auditees that appear to date back beyond the present three year period.

The Commission may wish to consider clarifying that the document retention period applicable to contributors reaches all records or documentation relied upon to corroborate information reported in any FCC Form 499-A certified and filed within the retention period. Thus, the Commission should clarify that the retention period does not establish a date before which supporting data may be purged but rather refers to retaining records or documentation that justifies any FCC Form 499s filed during the retention period. This approach will help avoid potential confusion among contributors regarding when supporting records or documentation can be safely purged.

e. Failure to Comply With an Audit or Investigation

In paragraph 85 of the *NPRM*, the Commission seeks comment on whether carriers and service providers who are recipients of funds from the High Cost, Low Income, and Rural Health Care programs should be subject to both random audits and/or

[419] *See* 47 C.F.R. § 54.711(a).

investigations to examine an entity's compliance with the Act and the Commission's rules. The Commission further asks whether failing to comply with an audit or investigation by, for example, failing to retain or make available records, should allow USAC to seek recovery of funds relevant to the investigation period. USAC agrees that USF contributors and recipients of funds in the other programs should be subject to the same requirements. In short, all recipients and contributors should have the same requirements for cooperating with audits, limited reviews, and investigations. USAC recommends the adoption of rules with guidelines for administrative action where program participants fail to comply with requests for documentation. In developing such rules and guidelines, careful consideration should be given to disruption in ongoing support where High Cost auditees do not provide documentation because of the pervasive effect such a disruption could have. Commission rules will need to clearly delineate document retention requirements and the sanctions for failing to reply with document requests.

3. Administrative Limitations Period for Audits or Other Investigations by the Commission or USAC of Recipients of Funds from the High Cost, Low Income, and Rural Health Care Programs

In paragraphs 86-88 of the *NPRM*, the Commission seeks comment on creating an administrative limitations period in which the Commission or USAC will determine that a violation has occurred by recipients of funds from the High Cost, Low Income, and Rural Health Care programs, as well as for USF contributors. Establishing a general policy in this area would provide these USF program participants with some certainty of

the time within which an audit or further review of funding may occur.[420] It also provides a degree of certainty for USAC.

In the *Schools and Libraries Fifth Order*, the Commission established a five-year period after final delivery of a service for a specific funding year for initiating inquiries to determine whether statutory or rule violations occurred.[421] As with the Schools and Libraries program, the Commission will need to specify for the other universal service programs the event triggering the start of the five year period. In the Rural Health Care program, it makes sense to adopt the Schools and Libraries five-year period. For the High Cost program, support payments are made based on projected data, and after a given period, the payments follow a true-up period. The requirement should ensure these true-up periods are properly captured and be clear that the period applies to a payment date and not the underlying data that supported the payment. For instance, a five year old payment in the High Cost program may be supported by data that is seven years old. If a five-year period is adopted for the Low Income program, the triggering date should be the month of the FCC Form 497 on which the disbursement in question is based. The Commission should ensure that document retention periods coincide with any administrative limitation periods it should determine are appropriate.

With respect to recovery of USF contributions, although a five-year limitations period may be appropriate generally, the Commission may wish to consider whether an exception should apply in cases where an audit uncovers fraud or willful misrepresentation. If a five-year period is adopted for recovery of USF contributions,

[420] *See NPRM*, ¶ 86.

[421] *Schools and Libraries Fifth Order*, 19 FCC Rcd at 15818-19, ¶ 32.

USAC recommends that it cover all contributions affected by any FCC Form 499 that has an original filing due-date within the five-year period. For example, the 2001 FCC Form 499-A was due April 1 2001, and either adjusted or was the basis for USF contributions between July 2000 and June 2001. Thus, until April 1, 2006, adjustments to July 2000 contributions would be within a five-year limitations period.

For the Low Income program, USAC currently recovers all funds going back to the first instance of the violation. Findings made during Low Income program audits and data validations are almost always the result of a carrier's misunderstanding of the Commission's rules, or errors that can be characterized as ministerial or clerical in nature. USAC nets the amount of support attributed to the findings against a carrier's upcoming Low Income support payment. If the amount to be recovered exceeds a carrier's support payment for one month, the company is sent an invoice for the difference. Therefore, the cost of recovering Low Income support that has been paid based on a carrier's error is very small.

The Commission recognized in the *Schools and Libraries Fifth Order*, that the public interest ordinarily is not served by seeking to recover funds associated with statutory or rule violations when the administrative costs of seeking recovery outweigh the dollars subject to recovery.[422] In paragraph 89 of the *NPRM*, the Commission seeks comment on this conclusion, and on whether and in what circumstances recovery of funds might be in the public interest even where the potential recovery amounts are small in relation to the audit or investigation costs. The Commission also seeks comment on

[422] *Id*. at 15819, ¶ 35.

whether to adopt a rule for the High Cost, Low Income, and Rural Health Care programs that requires recovery of the full amount disbursed in situations in which there is a pattern of rule or statutory violations, but the specific individual violations collectively do not require recovery of all disbursed amounts.

USAC believes that as an administrative matter it should not seek to recover funds associated with statutory or rule violations when the administrative costs of seeking recovery outweigh the funds subject to recovery. USAC notes, however, that since the administrative costs associated with each program vary, the minimum amount justifying a recovery effort will vary. In the High Cost and Low Income programs, costs of recovery are generally minimal as funds are typically netted against current period support, although further costs may be incurred where fund recipients require invoicing or other collections activities. Additionally, the costs associated with recovery is likely to change over time as administrative costs change.

The Commission seeks comment on whether and in what circumstances pursuit of recovery of funds might be in the public interest even where the potential recovery amounts are small in relation to the audit or investigation costs. USAC has responded to this question more fully in its comments in response to paragraph 71 of the *NPRM* in which it noted that while the benefits may not be readily apparent, among other things, support provided to law enforcement investigations would fall into this category. In these circumstances, seeking recovery of small amounts would be justified if USAC determined, for example, that the entity had engaged in intentional fraud.

The Commission seeks comment on whether to adopt a rule for the High Cost, Low Income, and Rural Health Care programs that requires recovery of the full amount

disbursed in situations in which there is a pattern of rule or statutory violations, but the specific individual violations collectively do not require recovery of all disbursed amounts. USAC believes that, except for situations in which the cost of seeking recovery exceeds amount to be recovered, funds should be recovered in each situation in which USAC has determined that a rule was violated. To the extent that a single entity was responsible for a large number of rule violations, each of which was *de minimis*, USAC suggests that in this type of situation, it could be appropriate to recover the collective *non-de minimis* amount. Should the Commission define what a pattern of rules violations consists of and determines that such a pattern should result in recoveries, USAC would administer that rule consistent with the Commission's direction.

As discussed above in response to paragraph 76 of the *NPRM*, most of the audit and in-depth data validation findings for companies that receive Low Income support reveal what can be characterized as ministerial errors rather than intentional fraud. Low income support differs from some of the other support mechanisms because USAC does not calculate the amount of low income support a company receives. Rather USAC attempts to validate the support claim calculated by ETCs. Accordingly, almost every support disbursement that is found to be inconsistent with the Commission's rules is the result of an error the company made but could not be discovered by USAC until an audit or in-depth data validation was performed. Given the tendency for companies to repeat errors in claiming Low Income support over many months and the relatively low administrative cost of recovering support, USAC recommends that the Commission not impose a limit on the time period for which support that was disbursed based on a

company's error can be recovered. Rather, USAC recommends that the Commission establish a *de minimis* threshold under which USAC should not recover support.

4. Recovery of Funds

Paragraph 89 of the *NPRM* discusses recovery of funds. The Commission seeks comment on whether to establish specific rules or criteria to address instances in which a USF beneficiary may not have used moneys in accordance with program rules. The Commission seeks comment on whether, consistent with the conclusions in the *Schools and Libraries Fifth Order*, amounts disbursed from the High Cost, Low Income, and Rural Health Care support mechanisms in violation of the statute or Commission rule must be recovered.[423] As neutral administrator of the USF, USAC believes that statutory and regulatory violations require recovery of funds in all programs. Additionally, USAC believes it has a fiduciary duty to recover improperly disbursed funds.

Additionally, the Commission seeks comment on whether additional rules or criteria are necessary to ensure a fair, transparent fund recovery process for all USF mechanisms. USAC suggests that the direction it has received in Commission orders to adjust funding commitments and seek recovery of funds be codified in Commission rules. Additionally, a rule that explicitly grants USAC and the Commission the authority to recovery "improperly disbursed" funds would provide additional support for recovery activities and clarify the Commission's direction for each universal service program.

[423] *See Schools and Libraries Fifth Order*, 19 FCC Rcd at 15814-15, ¶ 18 n.37. ("USAC, through its duties as administrator of the fund, initially seeks recovery of erroneously disbursed funds.") . The *Schools and Libraries Fifth Order* identified rules of this type and provided notice to all stakeholders that violation of these rules will result in recovery. *Id*. at 15814-15, ¶ 18.

With respect to Commitment Adjustments and recovery of funds, informal guidance from the Commission has been that the principles underlying the Commitment Adjustment orders in the Schools and Libraries program also applies to the Rural Health Care program, but that the specific direction in the Commission's *Schools and Libraries Fourth and Fifth Orders* do not. Pursuant to this guidance, USAC currently seeks recovery of funds from Rural Health Care service providers only.

With respect to the Rural Health Care program, USAC's experience suggests that additional rules or criteria are not necessary for recovery of improperly disbursed funds. Circumstances under which USAC has needed to seek recovery of funds have been based on violations of Commission rules, and USAC has not encountered uncertainty in determining whether to seek recovery nor the amount of recovery to be sought. Recoveries are grounded in applicable Commission rules governing the program, and affected parties have the right to seek review of any recovery decision made by USAC.

For the High Cost and Low Income programs, support should be recovered even if it was disbursed based on an ETC's ministerial or clerical error. In addition, in the Low Income program, USAC validates ETC's support claims, but the calculation of support is made by the ETC, which has access to billing records and price information that USAC does not collect absent an audit or other non-routine data validation process. If a ministerial error is made by an ETC, it might not be discovered until USAC conducts an audit and reviews the underlying data. Such an error is likely to have been committed and repeated beginning with the initial claim for support made by the company. USAC currently recovers any amount found to have been paid in error as a result of an audit or

data validation after sending the company a letter or copy of a final audit report that outlines the amount to be recovered and the reason for the recovery of funds.

The Commission also seeks comment on whether additional rules or criteria are necessary to ensure a fair, transparent recovery process for improperly disbursed funds in all universal service programs. USAC does not believe that additional rules or criteria are necessary. Recoveries are grounded in applicable Commission regulations governing each program, and affected parties have the right to seek review of any decision of the Administrator, including decisions related to fund recovery.

The Commission asks whether there are instances in which violations of Commission rules undermine statutory requirements or substantive policy goals of the USF programs, but may not rise to the level of waste, fraud, or abuse.[424] USAC's experience has been that there are many instances of rule violations that fall within this category. For example, in the High Cost program, carriers are required to submit line count data as of the last day of a given quarter; however, USAC has determined that many carriers submit data consistent with their billing cycles, which may be several days before the end of the months or quarter. While a data filing based on the billing cycle is inconsistent with the rules as written, USAC does not believe that this issue rises to the level of waste, fraud, or abuse.

The Commission also asks whether and under what circumstances a beneficiary may retain an overpayment if, for some reason, USAC has either mistakenly disbursed an amount in excess of that which the entity is allowed under Commission rules or has

[424] *NPRM*, ¶ 89.

disbursed an erroneous amount as a result of violations of administrative procedures. USAC believes that USF participants should not receive windfalls resulting from USAC errors. USAC treats all recipients consistently and corrects any errors made in the application of Commission rules. In a related question, the Commission seeks comment regarding a situation where disbursement of funds is warranted under the statute and rules, but an erroneous amount has been disbursed.[425] The Commission asks whether the amount of funds that may be recovered be limited to the difference between what the beneficiary is legitimately allowed under the statute and Commission rules and the total amount of funds disbursed to the beneficiary or service provider.[426] For the reasons stated elsewhere in USAC's response to this paragraph, such a principle makes good sense. Recipients should obtain no more or no less of the funding to which they are entitled under the Act and the Commission's regulations.

Finally in paragraph 89, the Commission seeks comment on whether it should adopt a rule providing for an administrative hearing before the issuance of a letter seeking recovery of funds from the High Cost, Low Income and Rural Health Care support programs. USAC believes that providing an administrative hearing before issuance of a letter seeking recovery of funds is unnecessary. Current rules provide appropriate avenues of review to USAC, the Commission, and the Court of Appeals.[427] Adding another layer of review, and another layer of bureaucracy, to the programs would be counterproductive. Moreover, there is little basis for giving funds recovery decisions

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[425] *Id.*

[426] *Id.*

[427] *See* 47 C.F.R. § 54.719 (providing for avenues of review of USAC, the FCC, and the Court of Appeals).

higher priority by creating a special review path for them. Although such decisions may have significant consequences, so do many other USAC administrative decisions.

5. Measures to Deter Waste, Fraud, and Abuse

In paragraphs 90-99 of the *NPRM*, the Commission explores a number of ways in which to increase deterrence of waste, fraud, and abuse in the universal service programs. As described elsewhere in its comments, USAC, working with the Commission, has initiated many measures to prevent, detect, and deter waste, fraud, and abuse. USAC recognizes that more can be done and offers the following suggestions in response to the Commission's questions.

a. Schools and Libraries Program Per-Entity Funding Cap

The Commission seeks comment on whether a cap on the total amount of funding a Schools and Libraries program applicant can request would be an effective method of deterring waste, fraud, and abuse.[428] USAC's experience suggests that a per-entity cap would not necessarily achieve this goal. A cap could limit the potential magnitude of any issues but would not attack the root causes of the problems leading to waste, fraud, or abuse. Effective outreach, rigorous application and invoice review, audits, law enforcement referrals, and debarments do attack the underlying causes of waste, fraud and abuse.

Further, new Commission rules have addressed two of the primary issues that the per-applicant cap seeks to address. First, the rule which limits eligibility for internal connections support to twice every five years will help address the issue of high discount

[428] *NPRM*, ¶ 90.

percentage applicants replacing equipment each year while lower discount percentage applicants receive little funding.[429] Second, the Commission's rule prohibiting the transfer of equipment for a period of three years after purchase (with limited exceptions) will help address the issue of applicants with high discount percentage sites being receiving funding for equipment that, after serving the high discount site briefly, is transferred to a low discount school or library because the applicant could request new funding for each high discount site each year.[430]

Although these rules have only recently gone into effect and their long-term results are not clear, USAC believes that the new rules will do much to alleviate the issues discussed above. Another risk presented by a per-applicant cap is that it could lead some applicants to try maximizing funding as close to the cap as possible rather than basing their funding requests on their educational needs and technology plan goals. Further, USAC notes that the Commission sought comment in the *Schools and Libraries Third Order*[431] on amending the discount matrix and possibly lowering the discount rate. To the extent applicants have a greater financial stake in the products and services for which they seek universal service program discounts, the incentives for waste, fraud, and abuse will be diminished.

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[429] *See* 47 C.F.R. § 54.506(c) ("Each eligible school or library shall be eligible for support for internal connections services, except basic maintenance services, no more than twice every five funding years.").

[430] *See* 47 C.F.R. § 54.513(c) ("Eligible services and equipment components of eligible services purchased at a discount under this subpart shall not be transferred, with or without consideration of money or any other thing of value, for a period of three years after purchase …".).

[431] *See Schools and Libraries Third Order*, 18 FCC Rcd at 26912, ¶¶ 59-62.

b. Publication of Best Practices

The Commission seeks comment on whether USAC should publicize "best practices" for Schools and Libraries program applicants.[432] USAC currently provides best practices on its website, in training sessions, and in written materials provided to program participants. USAC intends to continue and expand these efforts. In addition, USAC is obtaining valuable data about the use of Schools and Libraries program funding in the field through its Site Visit Initiative. USAC intends to mine that data to develop and provide additional best practices to the program participant community.

c. Changes to Competitive Bidding Rules

The Commission seeks comment on whether modifying the Schools and Libraries program competitive bidding rules (*e.g.*, by requiring a minimum of three bids) would be an effective measure for deterring waste, fraud, and abuse.[433] USAC responded to this question more fully above.[434] USAC suggests that applicants not subject to state or local procurement requirements be required to obtain a minimum number of bids for funding requests above a certain threshold. This will put public and private applicants on similar footing and should further help deter fraud, waste, and abuse. Should the Commission adopt such rules, USAC will be required to institute compliance validation procedures, systems changes, and education and outreach.

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[432] *NPRM*, ¶ 90.

[433] *Id*.

[434] *See* above 127-27.

d. Addressing "Gold Plating"

The Commission seeks comment on whether rules should be adopted to ensure that USF support is not wasted by, for example, applicants seeking to "gold plate" their supported services by seeking services or equipment beyond what they reasonably need or can use.[435] "Gold plating" refers to investment in unnecessary or excessive facilities when other facilities would be more economically efficient.

USAC strongly supports establishing detailed guidance with respect to what constitutes gold plating so that USAC can deny funding requests squarely on those grounds. Under the current rules, the controls on gold plating are the Commission's competitive bidding requirements and the requirement that the applicant pay its share of the cost of the goods and services being purchased. Additionally, a critical component of the competitive bidding requirements is that the applicant select "the most cost-effective service offering" to meet educational needs and technology plan goals.[436]

USAC has employed different strategies to address this issue. For example, USAC denies funding requests consistent with Commission rules when an applicant does not select the most cost-effective offering with price as the primary factor, when applications include a substantial amount of ineligible services, or when requested services clearly go well beyond the requirements set out in the applicant's technology plan. USAC also denies funding requests when applicants cannot show that they have secured access to all of the necessary ineligible resources to make effective use of the services. In particular, applicants who have submitted excessive funding requests may

[435] *NPRM*, ¶ 90.

[436] 47 C.F.R. § 54.511(a).

not be able to show that they have the funds to pay for their share of the cost of the services. When applicants cannot show that they can pay their share, USAC denies the funding request consistent with Commission rules. Finally, some applications are selected to review whether solutions are cost-effective. Under current rules, however, if the request is consistent with the applicant's technology plan; the applicant has the necessary resources to make effective use of the funds; and the applicant followed rules with respect to vendor selection, USAC cannot deny the request because it is deemed to be "excessive."

Without the parameters of these types of funding requests being more clearly defined, and in the absence of the ability to deny funds on the basis of "waste" or "abuse," USAC's discretion to deny these types of funding request is somewhat constrained. USAC would welcome additional guidance and clear delineation of what constitutes a "cost effective" solution and what should be considered excessive.

e. Guidance Regarding Supported Services and Maximum Prices

The Commission next asks whether it should establish more detailed guidance about what services are supported under the Schools and Libraries program.[437] Publication of the Eligible Services List for comment has been an important step in this direction. The pilot Eligible Products Database is an additional important step. Outreach to service providers and applicants must continue as an essential function of both the Commission and USAC, especially with regard to the conditional eligibility of products

[437] *NPRM*, ¶ 90; *see also Schools and Libraries Third Order*, 18 FCC Rcd 26912, ¶ 87 (seeking comment on codifying rules to establish a bright line test for a "cost effective" service).

and services. USAC discusses the Eligible Services List, the Eligible Products Database, and the issues created by conditional eligibility more fully above.[438]

Finally in paragraph 90, the Commission seeks comment on whether it should establish maximum prices for particular services or equipment. This alternative, while appealing in some respects, raises significant administrative issues. USAC's experience suggests that maximum prices would likely become outdated quickly as a result of the pace of technology change and industry competition. Additionally, the maximum price will be dependent on quantity and geographical location. Further, USAC's experience with the Eligible Products Database to date has been that service providers are reluctant to provide pricing data—most service providers have not completed the optional "approximate price" field in the database.

f. Heightened Scrutiny for Previous Rule Violators

Paragraph 91 of the *NPRM* notes that in the *Schools and Libraries Fifth Order*, the Commission stated that applications from beneficiaries that have violated the Act or the Commission's rules in the past will be subject to additional requirements such as enhanced obligations to provide documentary evidence demonstrating current compliance with program requirements.[439] The Commission seeks comment on whether it should adopt specific rules governing higher scrutiny for previous rule violators. As an example, the Commission suggests requiring specific reports or setting performance goals for these beneficiaries under heightened scrutiny.

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[438] *See* above at 127-35.

[439] *See Schools and Libraries Fifth Order*, 19 FCC Rcd at 15822-23, ¶ 44 (stating "we [the Commission] think it appropriate to subject subsequent applications from beneficiaries that have been found to have violated the statute or rules in the past to greater review.").

USAC's approach is to review applications submitted by applicants that fail heightened scrutiny reviews in any funding year with another heightened scrutiny review in the subsequent funding year. Additionally, USAC's work in the non-compliant auditee area appears to respond in many respects to the Commission's questions here. These efforts are more fully described above.[440] In general, when an auditee is determined to be non-compliant with program requirements, USAC will not issue additional commitments until the applicant or service provider provides appropriate documentary evidence indicating that it implemented adequate steps to address the reasons for the non-compliance.

The Commission seeks comment on requirements, if any, that should apply to the conduct of heightened review of program participants.[441] USAC believes that it should continue to request information in a clear manner, set firm deadlines, and, upon its receipt, process the application on a timely basis without repeated requests for information. Applicants and service providers should ensure they have provided complete responses to the request for information, and should respond within the given timeframe. Additionally, USAC believes that applicants that have been denied funding through the heightened review process should be the focus of specific outreach strategies to enable them to be successful in the future. This could include targeted training, timely emails tailored to their denial reasons, and the general implementation of a USAC newsletter for program participants to provide reminders and timely explanation of

[440] *See* above at 223-25.

[441] *NPRM*, ¶ 91.

program rule issues. Additionally, USAC can continue to publicize best practices and finalize broader process changes that may be suggested as a result of audits.

g. Suspending Payments to Suspected Rule Violators

Paragraph 91 of the *NPRM* asks whether the Commission should adopt rules or guidelines for when USAC should stop payments or processing applications as a result of suspected program violations. As a general matter, USAC denies applications and payments once it is able to determine in a well-founded manner that the application or request for payment is inconsistent with program rules. Also, and as more fully discussed above[442] participants determined to be non-compliant as a result of an audit are informed that USAC will stop processing their applications until the participant has adequately addressed the reasons for the non-compliance. USAC does not hold disbursements on validly issued commitments for this reason, but depending upon the reason for the non-compliance, may subject invoices to heightened scrutiny prior to disbursing funds.

That said, reviews of applications and invoices that are undergoing heightened scrutiny, or that are involved in a potential funding commitment adjustment, are time-consuming. The amount of time the review can take may lead the affected applicant and service provider to feel their application or invoice is being unduly delayed. USAC is committed to reducing the time for those reviews.

USAC follows principles for treating participants under law enforcement investigation that were developed in consultation with Commission staff.[443] The

[442] *See* above at 223-25.

[443] *See Principles for Treating Entities Under Investigation Relating to Their Participation in the Schools and Libraries Universal Service Support Mechanism*, http://www.sl.universalservice.org/reference/Investigation.asp.

Commission also provided guidance in the 2003 *Tennessee Order* and *Puerto Rico Order* regarding USAC's ability to make funding commitments and disbursements to entities under law enforcement investigation.[444] USAC follows these principles with respect to making decisions about when to stop disbursing universal service funds. USAC's experience is that these principles provide adequate guidance for making these difficult decisions. USAC does not recommend the Commission codify these principles because USAC's experience suggests that it needs the ability to be flexible based on the specific facts of the situation. As the law develops with respect to the Commission's suspension and debarment rules, USAC believes that it should revisit the principles with Commission staff to ensure that, consistent with protecting the USF from waste, fraud, and abuse and Commission precedent as set forth in its orders and guidance, funding commitment decisions are not unnecessarily delayed.

Finally in paragraph 91, the Commission solicits input on what would be the appropriate point for USAC to resume payments or processing applications once stopped. Again, as a general matter, USAC makes funding commitments and disbursement decisions in all instances once it is able to determine that the application or request for payment is consistent with program rules. When application processing is stopped because of audit non-compliance, USAC recommends that it follow steps specified in the

[444] *See Request for Immediate Relief filed by the State of Tennessee, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, 18 FCC Rcd 13581, 13586-89, ¶¶ 17, 22 (2003) (*Tennessee Order*); *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. 02-6, 18 FCC Rcd 25417, 25422, ¶ 15 (2003) (*Puerto Rico Order*).

Audit Resolution Plan filed previously with the Commission.[445] For suspended or debarred applicants and service providers, USAC would resume commitments and payments at the close of the applicable suspension or debarment period.

h. Measures to Prevent Waste, Fraud, and Abuse in the High Cost, Low Income, and Rural Health Care Programs

In paragraph 92-94 of the *NPRM*, the Commission poses questions similar to those raised regarding the Schools and Libraries program regarding ways to prevent, detect, and deter waste, fraud, and abuse in the High Cost, Low Income, and Rural Health Care programs.

i. High Cost Program

USAC has data validation controls to detect large changes for ETCs on a month-to-month basis. The Commission may wish to consider establishing penalties for over-projections and other improper filings that cause disbursement of excess support. Having clear penalties for over-projecting, providing fraudulent or grossly inaccurate cost data and the like would also act as a deterrent for carriers that might be tempted to abuse the program. By articulating clear consequences where carrier data filings cause over disbursements, the Commission would provide USAC with the tools to respond to these types of situations.

In order to increase the efficiency of the High Cost program, USAC works with its ETC constituents to develop and publish "best practices" that enable ETCs to provide accurate data in a timely manner and to understand the consequences of not meeting deadlines or following the Commission rules. Through an education and outreach effort,

[445] *See* Proposed Audit Resolution Plan for Schools and Libraries, Support Mechanism Auditees, Universal Service Administrative Company, Schools and Libraries Support Mechanism (filed Oct. 28, 2004).

USAC can communicate High Cost program "best practices" to the carriers. Informing carriers of what the expectations are to receive High Cost support will benefit both the participants and the USF in general, increase operational efficiencies, and potentially reduces prospective administrative costs.

Also, as discussed above,[446] allowing USAC to assume responsibility for data validation and calculation under Part 36 of the Commission's rules would help prevent waste, fraud, and abuse. Giving USAC "ownership" of calculations where it is responsible for disbursements enables USAC to verify payments are being properly calculated thereby increasing the effectiveness of USAC's management of the program as well as providing greater accuracy and predictability.

The Commission in paragraph 92 also asks commenters to address the state certification process and its oversight of costs not directly related to providing telecommunications services. States have a variety of proceedings that monitor ETCs. Based on these proceedings, states provide rural and non-rural use certifications on behalf of carriers. The current process appears to work and changes to the system of certification by states may place additional burdens on the ETCs and state commissions. USAC, however, defers to the Commission in the determination of what oversight and cost monitoring of ETCs is appropriate and the processes in which the states involved.

The Commission also asks whether it should require additional information from High Cost program participants in order to prevent waste, fraud, and abuse.[447] At this

[446] *See* above at 153.

[447] *NPRM*, ¶ 92.

time, USAC does not believe that additional information needs to be obtained from carriers.

Finally, the Commission seeks comment on whether it should adopt specific rules governing higher scrutiny for previous rule violators in these three programs, including requiring specific reports or setting performance goals. USAC generally supports this proposal as it would provide a clearer process for monitoring the actions of such violators so that recurring violations could be more readily detected and referred to the Commission or the states for possible enforcement action.

ii. Low Income Program

In paragraph 93, the Commission asks whether it should require carriers to provide additional documentation on the number of Lifeline subscribers for which they claim reimbursement. The Commission also requests input on requiring carriers seeking Low Income or High Cost support for serving tribal members residing on a reservation to provide additional information to demonstrate that each customer is a tribal member and resides on tribal lands.

USAC believes that the Commission should require carriers to maintain copies of the data files that were originally used to calculate customers obtaining Low Income support. When USAC announces a beneficiary audit, carriers sometimes have attempted to re-create this data file for use during the audit. In USAC's audit experience, the number of consumers receiving support often does not agree with the number of recipients on program forms. Such requirements should describe with particularity the fields and other data that should be included in the database for retention purposes.

More generally, USAC is concerned that some ETCs may be taking advantage of the rules to recover support amounts that exceed the costs they incur in providing discounted service to Lifeline customers. Rather than using Low Income program support as a reimbursement for discounts already provided to Lifeline and Link-Up customers, some ETCs appear to be making a profit by claiming the maximum support available. These practices are not rule violations *per se*, but the Commission should consider whether there are any loopholes in its rules that could allow ETCs to profit from receiving Low Income program support.

Claiming the maximum. The Commission's rules limit the amount of tribal Link-Up support to $100.00. Tribal Lifeline customers are eligible for a discount of up to $30.00 off the first $60.00 of an ETC's customary charge, and an additional $70.00 to cover 100% of the charges between $60.00 and $130.00 assessed for commencing service.[448] Most ETCs apply these discounts against their tariff rate for commencing service, but some set a price of $130.00 for the installation of new service on tribal lands regardless of how much the installation actually costs the company. These ETCs are able to attract Lifeline customers on tribal lands despite the high rates, because the customer will pay $30.00 regardless of the support claimed by the ETC. The Commission should consider whether to require that an ETC's customary Link-Up rate reflect its costs or whether to impose limitations on the rates a company can establish for Lifeline customers. The Commission should also consider whether to require companies that

[448] 47 C.F.R. § 54.411(a)(1), (3).

make support claims at or near the maximum level or that fall outside of a range, justify those claims before support is paid.

TLS support. At least one ETC mandates that their Lifeline customers accept Toll Limitation service.[449] This practice allows the company to claim a disproportionate amount of TLS support compared with ETCs that permit their customers to elect to accept or decline TLS. Additionally, ETCs that prevent their Lifeline customers from placing interexchange calls may also be suppressing their interstate revenues, and thus the revenue on which contributions are based. Additionally, as discussed above, TLS support is not capped and the incremental costs of providing TLS varies greatly among ETCs.[450] Because there is little guidance on how to calculate incremental costs, some ETCs might be over-claiming TLS support based either on a misunderstanding of what constitutes incremental costs, or as a means of profiting from low income support. The Commission may want to address these types of issues by establishing a maximum amount of TLS support available to an ETC, which would facilitate validation of support claims, thereby reducing the administrative burden associated with collecting data to verify the TLS support claims made by ETCs. The Commission could permit an ETC that has a legitimately high incremental cost to petition for a waiver of this limitation.

Tribal membership. USAC notes that the Commission's rules do not require that an individual be a tribal member to receive tribal Lifeline or Link-Up, only that the individual reside on tribal lands.

[449] One company, operating in six states, claims TLS support for 100% of its Lifeline subscribers.

[450] During 1Q2005, the TLS support claimed by ETCs ranged from $0.007000 to $50.00 per subscriber.

iii. Rural Health Care Program

Paragraph 94 of the *NPRM* seeks comments on additional ways to deter waste, fraud, and abuse in the Rural Health Care program. The program has a targeted mission, a relatively limited pool of participants, and tightly constrained ways in which support can be used. The audit work performed in this area supports the conclusion that the risk of waste, fraud, and abuse has been relatively low to this point. The Rural Health Care program does not appear to face "gold plating" issues that cannot be addressed during USAC's program integrity assurance review process. For the reasons discussed above in connection with the Schools and Libraries program, USAC's experience suggests that a per-applicant cap on support would not serve as a deterrent to waste, fraud or abuse. Audits, site visits, investigation of whistleblower calls, and other tools currently available to USAC remain the most effective way to verify whether the rural health care providers and their service providers are in compliance with program rules.

6. Other Actions to Reduce Waste, Fraud, and Abuse

a. Adoption of New Rules Regarding Waste, Fraud, and Abuse

The Commission seeks comment on whether it should adopt a rule "specifically prohibiting recipients from using funds in a wasteful, fraudulent, or abusive manner" in an effort to further protect the universal service support programs.[451] The Commission recognizes that rules should have sufficient specificity for beneficiaries and contributors to understand their requirements. General rules may not provide adequate notice of prohibited behavior. The Commission asks whether such a definition would enhance the effectiveness of any future enforcement efforts relating to the discovery of waste, fraud,

[451] *NPRM*, ¶ 95.

and abuse. Also, the Commission requests comment on whether a rule should apply only to intentional acts of waste, fraud, and abuse, or whether it should include instances when applicants or recipients recklessly or negligently use funds in an inappropriate manner. Finally, the Commission seeks comment on whether it should define "waste, fraud, and abuse" in its rules.[452]

USAC understands the Commission's proposal to adopt a rule "specifically prohibiting recipients from using funds in a wasteful, fraudulent, or abusive manner" to be essentially a catch-all rule that, among other things, could form the basis for denying funding requests. Such a general rule would allow USAC to reach beneficiaries who may be exploiting unanticipated loopholes even though they might not be violating a specific program rule. For example, USAC learned early in its administration of the program that some applicants used internal connections equipment for only one year at a high discount site, and then transferred the equipment to a lower discount site. Applicants would then apply for and receive funding to replace the equipment at the high discount site. USAC believed this practice was wasteful and violated the spirit, if not the letter, of program rules. However, a specific rule on which to base a denial was not available. If USAC had been able to deny the funding based on a general waste, fraud and abuse rule, USAC could have stopped this practice while the Commission determined whether rule modifications were necessary. Although this proposal may raise notice and due process concerns, as administrator, and based on the number of applications USAC reviews, USAC is best positioned to closely examine the facts and make such determinations.

[452] *NPRM*, ¶ 95.

Each waste, fraud and abuse denial would necessarily be a fact-specific inquiry, and all would be subject to Commission review through the appeals process.[453]

In the Rural Health Care program, USAC notes that determining what constitutes using funds in a wasteful, fraudulent, or abusive manner is especially difficult in the health care arena. The difficulty of determining cost-effectiveness in health care was recognized by the Commission, which provided for applicants to consider "features, quality of transmission, reliability, and other factors the health care provider deems necessary" in their selection process.[454] Because no specific guidance is given on how cost-effectiveness should be measured or bids evaluated, a high cost bid may be selected over a low cost bid if a small score differential is given for cost but a large differential is applied to other factors, even if cost is the single most important factor. Although some applicants appear to select very expensive services for relatively minor benefits, it is difficult for USAC to determine that such evaluation criteria are inappropriate. Small rural health care providers are also seeking increasingly large bandwidths, some of which USAC has denied as excessive. Nevertheless, decisions such as whether a particular amount of bandwidth is required is "necessary for the provision of health care" are often difficult.

b. Implementing Application Validity Controls for All Programs

The Commission in paragraph 96 of the *NPRM* seeks comment on whether it should adopt specific rules to require USAC to implement application validity controls for all USF programs. USAC notes that 47 C.F.R. § 54.707 currently provides that "[t]he

[453] 47 C.F.R. § 54.719 (defining the process for requesting review).

[454] *Universal Service Order*, 12 FCC Rcd at 9132, ¶ 684.

Administrator shall establish procedures to verify discounts, offsets, and support amounts provided by the universal service support programs." USAC has implemented controls for the Schools and Libraries program to ensure application and invoice validity and prevent inaccurate data entry. Those procedures are discussed above and in Appendix A.[455] The Commission also recognizes that USAC has data validation procedures for the High Cost, Low Income, and Rural Health Care programs, as also discussed above and in Appendix A. These procedures are necessary to ensure compliance with program rules and to promote efficient administration of the universal service support mechanisms. Development of such procedures are a necessary component of USF administrative authority given to USAC pursuant to Part 54 of the Commission's rules and USAC has exercised this authority.[456]

c. Compliance Audits of Beneficiaries

Paragraph 96 of the *NPRM* addresses compliance audits of USF beneficiaries. Noting that USAC has authority to conduct such audits, and does so using its own staff and external audit firms, the Commission seeks comment on ways that USAC can better facilitate funds recovery in cases of rules violations and transfer such matters to the Commission in a timely manner for consideration of further action when appropriate.[457]

USAC implemented new collections and disbursements policies in November

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[455] *See*, *e.g.* above at 115-18; Appendix A at 61-64.

[456] *See* 47 C.F.R. § 54.705(a)(1)(iii) (stating one Schools and Libraries Committee function is "[a]dministration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations."). The other programmatic committees are similarly empowered. *See* 47 C.F.R. §§ 54.705(b)(1)(iii) (Rural Health Care Committee), (c)(1)(3) (High Cost and Low Income Committee).

[457] *NPRM*, ¶ 96. For most enforcement actions, the FCC statute of limitations is one year from the date of the occurrence. 47 U.S.C. § 503(b)(6).

2004 as a result of the application of the "Red Light Rule" to USF contributors and beneficiaries.[458] Under this rule, USAC does not disburse funds to an entity that shares the same taxpayer identification number as an entity that has a delinquent debt owed to the Commission or its reporting components until the debt is paid, formally appealed, or until other arrangements satisfactory to the Commission are made for the payment.[459] Consequently, schools and libraries and rural health care[460] beneficiaries who do not respond to USAC's recovery requests are referred to the Commission on a monthly basis.[461] Contributors are denied benefits if they maintain an outstanding balance over one day late. In addition, since July 2003 debt over 90 days delinquent has been transferred to the FCC pursuant to DCIA. USAC is monitoring the transfers and will work closely with the Commission on any issues it identifies as the process goes forward.

The Commission also seeks comment on this question with regard to audits of High Cost, Low Income, and Rural Health Care beneficiaries. USAC recovers funds in the High Cost and Low Income programs by netting the amount to be recovered against a company's monthly support amount. If the amount to be recovered exceeds the disbursement, USAC sends an invoice for the difference. In cases in which the company fails to pay the invoice in a timely manner, the company is subject to the Red Light rule, and referred to the Commission for enforcement. This process is used for recoveries resulting from both High Cost and Low Income beneficiary audits and compliance audits.

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[458] *Red Light Rule Order*, 18 FCC Rcd at 6544, ¶ 12.

[459] *Id.*

[460] To date, there have been no transfers of Rural Health Care beneficiaries.

[461] *Schools and Libraries Fifth Order*, 19 FCC Rcd at 15821-22, ¶ 42-43.

USAC believes this process is sufficient to recover support and is administratively effective.

d. Suspension and Debarment Rules

Paragraphs 97 and 98 of the *NPRM* pose many questions regarding the Commission's current rules regarding suspension and debarment in the Schools and Libraries program and whether those rules should be modified and expanded to the other programs.

i. Schools and Libraries Program Debarment Process

The Commission first seeks comment on whether it should revise the Schools and Libraries program debarment process to increase its effectiveness against individuals and other entities such as corporations.[462] The Commission asks for suggestions on ways to inform schools and libraries of the list of debarred parties and how schools and libraries can take steps to reduce their vulnerability to predatory contractors.

USAC notes that the Commission's debarment rule apply to "persons" and defines a "person" to include among other things, corporations and partnerships.[463] USAC publishes and maintains a list of persons and entities that the Commission has suspended or debarred from the Schools and Libraries program.[464] The link to this list, which in turn contains links to the Commission's suspension and debarment notices, is prominently displayed on the Schools and Libraries program homepage on the USAC

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[462] A debarred person is prohibited from involvement in the E-rate program for three years. 47 C.F.R. § 54.521(g). The Commission may set a longer period of debarment or extend the existing period of debarment. *Id.*

[463] *See* 47 C.F.R. § 54.521(a)(6), (b).

[464] *Schools and Libraries Second Order,* 18 FCC Rcd at 9228, ¶ 76.

website. Additionally, the Commission provides information about persons who have been suspended and debarred at the Enforcement Bureau section of its website.

To ensure that schools and libraries are informed when a person or entity is suspended or debarred from the Schools and Libraries program, USAC could include this information in its mass mailing communications with applicants and service providers in the program. USAC believes that it should inform applicants with pending applications associated with suspended or debarred service providers of the service provider's status. USAC has sought guidance from the Commission on verifying applicants with pending funding requests associated with a suspended company and contacting such applicants with information concerning options going forward. Since those options are the subject of an open rulemaking proceeding, USAC is awaiting guidance from the Commission.[465] Once USAC receives this guidance, it will be able to provide this information to applicants in this situation. Additionally, USAC believes that it should provide notice on its website when the debarment period has ended.

As discussed above,[466] USAC believes that to protect schools and libraries the Commission should set a lower bar for service providers, consultants, and applicants to be debarred from the program for violations, so that a pattern of bad behavior, not just a criminal conviction, would warrant this sanction. A lower debarment standard would likely increase administrative costs as USAC would need to document and refer more cases to the Commission for review, but substantial savings from avoiding misdirection of program dollars could be realized and the deterrent effect would likely be significant.

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[465] *See id.* at 924-29, ¶¶ 64-77.

[466] *See* above at 147-48.

The standard could be a pattern of rule violations demonstrating a substantial pattern of misconduct, and could consist of one or more of the following:

- Service provider which pays applicant's non-discounted share of the cost of goods and services
- Applicant which did not pay its non-discounted share
- Service provider which submitted FCC Form 470 on behalf of an applicant
- Service provider which provided an RFP for an applicant's use
- Service provider found to have unfairly influenced the competitive bidding process
- Egregious "Gold plating" activity associated with either applicants or service providers
- USAC invoiced but services not delivered
- USAC invoiced, but services not installed at the time USAC was invoiced
- Non-compliant auditee failure to respond in a timely manner to the non-compliant auditee letter.
- Consultant acting in fact as a service provider or service provider representative without disclosure.

USAC believes that schools and libraries can help to reduce their vulnerability to predatory contractors by becoming as knowledgeable as possible about program rules. The more conversant they are in program rules, the more likely they will be able to identify those who would attempt to take advantage of them. USAC urges schools and libraries to read each communication they receive from USAC and to visit USAC's website frequently. As has been discussed elsewhere in these comments, USAC's education and outreach activities have been expanded so that more applicants will have additional opportunities to attend training sessions.

The Commission asks whether it should also inform schools and libraries when a contractor is "under investigation" and whether as part of its registration process it should require contractors to waive any right to confidentiality they may have during an

investigation.[467] The question whether USAC should inform schools and libraries when a service provider is under investigation is one of the more difficult issues that the Commission and USAC have considered throughout the existence of the Schools and Libraries program. Balancing the due process rights of service providers with the need of applicants to know whether there are problems with the service provider they have selected has proven challenging at times. Service providers and applicants in the Schools and Libraries program are sometimes "investigated" as a result of information that comes to light during the processing of applications and whistleblower calls. Additionally, there have been criminal investigations of participants in the program. USAC notes that to the extent it becomes aware of a confidential law enforcement investigation it cannot divulge information that the investigation is occurring.

With respect to USAC investigations resulting from USAC's internal review processes and whistleblower calls, however, whether to inform schools and libraries of such an investigation is a different question. For these types of investigations, USAC notes that as part of its efforts to improve transparency in the Schools and Libraries program, USAC is implementing a process to send notification letters to entities being investigated. Additionally, USAC already has a process in place to send letters to entities when it has concluded an investigation.

There are a number of concerns regarding whether schools and libraries should be informed when a contractor is under USAC investigation. On the one hand, good customer service supports providing this type of information to participants so they

[467] *NPRM*, ¶ 97.

would have more information as they select their service providers and customers. On the other hand, providing this information could adversely affect a school, library or service provider, and should USAC discover that there was no basis to the allegations, publishing this information could have done harm and could expose USAC to liability.[468] On balance, USAC believes that publishing this information could potentially do more harm than good based on fundamental notions of fairness. USAC notes that a wealth of data about the Schools and Libraries program is available on its website through the Data Retrieval Tool and stakeholders can and do review this data to obtain information about participants in the program.

The Commission also asks whether contractors should be required to waive any right to confidentiality they may have during an investigation. Assuming any due process issues could be addressed appropriately, such a requirement could be helpful to USAC and investigators. USAC defers to other commenters on the effect this requirement would have on participation in the program by contractors. USAC notes that much of the information submitted to USAC is already subject to public disclosure through the Freedom of Information Act.[469]

The Commission asks whether it or USAC should draft a list of best and worst practices to assist beneficiaries in reducing fraud. USAC agrees that best practices

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[468] For example, service providers could allege tortious interference with contract, interference with business relations, or defamation. The four elements that comprise the tort of intentional interference with contractual relations are: "'(1) existence of a contract, (2) knowledge of the contract, (3) intentional procurement of its breach by the defendant, and (4) damages resulting from the breach.'" *Sorrells v. Garfinckel's*, 565 A.2d 285, 289 (D.C. 1989) (quoting *Alfred A. Altimont, Inc. v. Chatelain, Samperton & Nolan* , 374 A.2d 284, 288 (D.C. 1977) (citation omitted)).

[469] *See* 5 U.S.C. §§ 552 *et seq***.** Since 2001, USAC has responded to 54 FOIA requests referred to it by the Commission, many of which sought information regarding Schools and Libraries program service providers.

should be adopted and published in an effort to reduce waste, fraud, and abuse. USAC has published a "best practices" list for the Schools and Libraries program on its website and will continue to do so. As a result of USAC's Site Visit Initiative, USAC is gathering a significant amount of information about best and worst practices that it will make available to participants. As USAC expands this initiative to the other universal service programs, USAC will likewise have additional information that it will be able to publicize.

ii. Adoption of Debarment Rules in the High Cost, Low Income, and Rural Health Care Programs

The Commission seeks comment on whether it should adopt debarment rules applicable to the High Cost, Low Income, and Rural Health Care programs. If so, the Commission asks whether such rules should be modeled on the debarment rule applicable to the Schools and Libraries program, should be mechanism-specific debarment rules, or should be modeled on the government-wide non-procurement debarment regulations. The Commission also seeks comment on whether it should broaden the scope of the debarment rules to encompass entities that have been found guilty of civil and criminal violations beyond those associated with the universal service programs or entities that have been shown to have engaged in a clear pattern of abuse of Commission rules.[470]

USAC believes that debarment rules for the High Cost program will necessarily differ from those established for the Schools and Libraries program. ETCs receiving support under the High Cost program are designated by the states as ETCs. The Commission's rules require states to certify that an ETC will use federal support

[470] *NPRM*, ¶ 97.

appropriately.[471] When funds are used improperly, states may choose not to certify a carrier or may revoke ETC status altogether. This results in effective debarment of the ETC. Additionally, the Commission can revoke ETC designations of those carriers it has approved. Thus, for example, where a persistent bad actor is found to be submitting fraudulent data in contravention of the certification requirements in Parts 69 and 54 of the Commission's rules, the removal of ETC status is an option for the Commission or the state certifying the ETC. The joint federal-state roles in the ETC designation process, and the fact that in many instances ETCs are carriers of last resort, make this issue particularly difficult and appear to raise broader policy issues upon which USAC cannot comment.

In the Low Income program, carriers provide discounted services to eligible customers and are then made whole through support provided by the federal USF. States establish consumer eligibility criteria. USAC's experience suggests that debarment by the Commission for abuse of the Low Income program should be considered. To the extent a company is violating the Commission's rules, it should be sanctioned or prevented from receiving future support. This is especially true if a company is found to have been withholding the full amount of discount available to eligible low income consumers. To the extent an ETC is debarred or otherwise sanctioned for rules violations, the low income consumers served by that carrier may be able to obtain service from another ETC. If there is only one ETC, the Commission as a policy matter will

[471] *See* 47 C.F.R. §§ 54.313, 54.314.

need to balance between punishing an ETC and ensuring that eligible low income consumers have the ability to receive Lifeline, Link-Up and TLS support.

USAC believes that the Schools and Libraries program suspension and debarment rules could be expanded to cover the Rural Health Care program and that the suspension and debarment threshold should be lower than criminal conviction and civil liability.

The government-wide non-procurement debarment regulations set forth a number of causes for debarment in addition to the causes currently in the Commission's rules for the Schools and Libraries program.[472] USAC believes that these are appropriate types of

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[472] *See* Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 70 FR 51863, 51875 (Aug. 31, 2005) (to be codified at 2 C.F.R. pt. § 180). Subpart H, "Debarment" states as follows:

> §180.800 What are the causes for debarment?
> A Federal Agency may debar a person for--
> (a) Conviction of or civil judgment for--
> (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
> (2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;
> (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or
> (4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;
> (b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as--
> (1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;
> (2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or
> (3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;
> (c) Any of the following causes:
> (1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;
> (2) Knowingly doing business with an ineligible person, except as permitted under § 180.135;
> (3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

causes for debarment from each of the universal service programs. However, USAC also believes that repeated rule violations indicating a substantial pattern of misconduct are also appropriate causes for debarment. USAC's experience with the Schools and Libraries program has been that it expends a great deal of administrative resources reviewing applications that result in denying funding to certain applicants, and to applicants associated with certain service providers who repeatedly are unable to support certain certifications that they make on program forms. If the Commission were able to debar those applicants and/or service providers rather than USAC continuing to spend resources reviewing applications in subsequent years, greater protection for program integrity would be provided, administrative costs could be saved, and applicants and service providers have stronger incentives to fully understand program rules.

However, should the Commission adopt new suspension and debarment rules, USAC's administrative costs could increase if it has to gather additional information related to a suspension or debarment investigation. For those cases where USAC may not have complete access to the facts or relevant documents, the Commission would have to provide guidance with respect to any expansion of USAC's administrative duties and authority to gather information about participants such as the participant's record with respect to other federal programs.

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(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 180.640 or of any settlement of a debarment or suspension action; or
(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or
(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

iii. Sanctions Other Than Debarment

The Commission also seeks comment on whether it should adopt sanctions other than debarment for violations of USF program rules.[473] The Commission's question regarding what type of additional sanctions may be appropriate, including reducing a school or library's discount level for a period of years, is a policy matter which USAC will leave to other commenters to address. Administratively, however, assuming the Commission chooses to expand and strengthen the debarment process as contemplated in the *NPRM*, USAC's experience suggests that a system of multiple lesser sanctions could add to the complexity of the programs and increase administrative costs without meaningfully increasing program integrity. USAC notes that the current debarment rules provide for some flexibility as to the period of debarment. Should the Commission decide to expand the causes for suspension and debarment, the Commission could establish different debarment times depending upon the infraction. For example, if the cause were for repeated rule violations, but not for a criminal conviction, the Commission could set a debarment period of one or two years.

iv. Establishing More Aggressive Sanctions and Debarment Procedures

Paragraph 98 of the *NPRM* tentatively concludes that the Commission should establish more aggressive sanctions and debarment procedures and disclosures in all universal service programs and there should be a range of sanctions available for program rule violations. USAC strongly supports more aggressive debarment procedures and understands debarment and those procedures to be the sanctions the Commission is

[473] *NPRM*, ¶ 98.

proposing. Specifically, as discussed above, the threshold for suspension and debarment could be expanded to include repeated rule violations that do not necessarily amount to criminal conviction and civil liability.

The Commission seeks comment on the types of sanctions it should employ for both for clerical mistakes and apparent intentional violations of program rules. USAC believes that sanctions should reflect the fundamental difference between isolated incidents of unintentional ministerial error and committing criminal fraud. Measures to address clerical mistakes are currently in place and no additional sanctions are needed. Some clerical mistakes can be corrected consistent with program rules and do not adversely affect funding or disbursement, while other clerical mistakes lead to funding and disbursement denials. Failure to comply with program rules also results in denials of funding and disbursements. USAC has numerous validation processes in place to ensure compliance with program rules which serve to protect the integrity of universal service funds by avoiding commitments and disbursements based on rule violations. However, to the extent it appears that a program participant intended to obtain funding without following the rules or committed criminal fraud, USAC believes that, in addition to funding denials, the participant should be debarred as discussed above.

Finally, the Commission seeks comment on whether the Commission or USAC should create a list of best and worst practices to assist beneficiaries to reduce waste, fraud, and abuse. This list would provide examples to schools and libraries that would help them identify a good contractor and a good application, and avoid predatory contractors and risky application practices. As stated in the response to paragraph 97 of

the *NPRM*, USAC publishes best practices and will continue to enhance its efforts in this area.

e. General Request for Comment on Other Measures that Would Deter Inappropriate Use of USF Funds

Paragraph 99 of the *NPRM* reiterates the Commission's commitment to detecting and addressing potential misconduct and ensuring that universal service funds are used without waste, fraud, and abuse. The Commission seeks comment generally on other measures that would further these goals by deterring the inappropriate use of universal service funds received. USAC shares the Commission's firm commitment to preventing, detecting and addressing misconduct in the universal service support programs. USAC has presented its comments in response to the specific questions above and looks forward to responding to the initial comments of other interested parties in this proceeding.

IV. CONCLUSION

USAC welcomes the opportunity to assist the Commission as it considers all administrative issues associated with the universal service support mechanisms. USAC stands ready to assist the Commission and to work with all Universal Service Fund stakeholders as this important process moves forward.

Respectfully submitted,

UNIVERSAL SERVICE
ADMINISTRATIVE COMPANY

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COMMENTS OF UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

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