EXHIBIT C

E-rate from the Service Provider Perspective

Cynthia Schultz

Train-the-Trainer Workshop
September 27-29, 2004
Schools & Libraries Division

CONTRACT REQUIREMENTS

- FCC Rules require applicant to sign a contract prior to the filing of a Form 471. 47 C.F.R. §54.504(c).
- The FCC Fifth Report and Order requires both the applicant and service provider to sign the contract prior to the filing of a Form 471.
  - This rule does not apply to non-contracted tariffed or month-to-month services.
  - Verbal agreements are not acceptable.
  - Quotes are not acceptable.
  - Purchase orders are acceptable if considered a contract pursuant to state and local procurement laws and state contract laws.

CONTRACT REQUIREMENTS

- Applicant must provide signed and dated contracts for reviews and audits.
  - Applicant must be prepared to prove its contract meets the requirements of state contract law.
- Applicant certifies that it has signed a contract on its Form 486.

EXHIBIT D

E-rate for Beginners

John Noran
Schools and Libraries Division
Universal Service Administrative Company

Train-the-Trainer Workshop
September 27-29, 2004

Both

Contract Requirements

- FCC Rules require applicant to sign a contract prior to the filing of a completed Form 471. 47 C.F.R. §54.504(c).
- Fifth Report and Order requires both the applicant and service provider to sign the contract prior to the filing of a Form 471.
  - This rule does not apply to tariffed or month-to-month services.
  - Verbal agreements are not acceptable.
  - Quotes are not acceptable.

EXHIBIT E

Date 4/20/2006

Federal Communications Commission
Washington, D.C. 20554

To Whom it May Concern:

This letter verifies that I did in fact sign the eChalk Service Order # 04-1981-02A on 2/7/2005, the 'Effective Date' at the top of the Service Order. Mr. Daniel Watts' signature was already on the document. Upon signing this document on 2/7/2005, it was considered fully executed and awarded.

Sincerely,

Mard A. Herrick
Superintendent

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on 20th day of April, 2006 by Mard A. Herrick.

Irene M. Martinez
Notary Public, State of Texas

IRENE M. MARTINEZ
Notary Public, State of Texas
My Commission Expires
JULY 6, 2008

KERSHAW
COUNTY
School District

April 19, 2006

Federal Communications Commission
Washington, D.C. 20554

To Whom it May Concern:

This letter verifies that I did in fact sign the eChalk Service Order # 04-1972-03A on 2/2/2005, the 'Effective Date' at the top of the Service Order. Mr. Daniel Watts' signature was already on the document. Upon signing this document on 2/2/2005, it was considered fully executed and awarded.

Sincerely,

Herbert Berg
Superintendent

STATE OF South Carolina COUNTY OF Kershaw

Acknowledged before me this date 4/19/06 NOTARY NAME Harriett M. Hailey

My Commission Expires 3/22/11 NOTARY SIGNATURE Harriett M Hailey

1301 DuBose Court • P.O. Box 7008 • Camden, SC 29020-7008 • 803-432-8416 • FAX 803-425-8918

LISD
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Daniel García, Jr., Ph.D.
Superintendent of Schools

Board of Education

Dr. Dennis D. Cantu
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Vice President

George M. Beckelhymer
Secretary

Jesus Justo Guerra
Parliamentarian

Members

Guillermina Montes

Jorge L. Rodriguez

Jose A. Valdez

Jesus J. Amezcua, CPA
Chief Financial Officer

April 19, 2006

Federal Communications Commission
Washington, D.C. 20554

To Whom It May Concern:

This letter verifies that I did in fact sign the eChalk Service Order # 03-1656-18A on 2/7/2005, the 'Effective Date' at the top of the Service Order. Mr. Daniel Watts' signature was already on the document. Upon signing this document on 2/7/2005, it was considered fully executed and awarded.

Sincerely,

Jesus J. Amezcua, CPA
Chief Financial Officer

(Seal)
ORALIA AGUILAR
Notary Public, State of Texas
My Commission Expires
May 21, 2009

Attest:

Oralia Aguilar
Notary Public Signature

FIFTH REPORT AND ORDER

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

In the Matter of	)	
	)	
Schools and Libraries Universal Service	)	
Support Mechanism	)	CC Docket No. 02-6
	)	
	)	

FIFTH REPORT AND ORDER
AND ORDER

Adopted: August 4, 2004 **Released: August 13, 2004**

By the Commission: Chairman Powell, and Commissioners Abernathy, Copps, and Adelstein issuing separate statements; Commissioner Martin approving in part, dissenting in part, and issuing a statement.

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I. INTRODUCTION

1. *In this order, we adopt measures to protect against waste, fraud, and abuse in the* administration of the schools and libraries universal service support mechanism (also known as the E-rate program). In particular, we resolve a number of issues that have arisen from audit activities conducted as part of ongoing oversight over the administration of the universal service fund, and we address programmatic concerns raised by our Office of Inspector General (OIG).[1] First, we set forth a framework regarding what amounts should be recovered by the Universal Service Administrative Company (USAC or Administrator) and the Commission when funds have been disbursed in violation of specific statutory provisions and Commission rules. Second, we announce our policy regarding the timeframe in which USAC and the Commission will conduct audits or other investigations relating to use of E-rate funds. Third, we eliminate the current option to offset amounts disbursed in violation of the statute or a rule against other funding commitments. Fourth, we extend our red light rule previously adopted pursuant to the Debt Collection Improvement Act (DCIA) to bar beneficiaries or service providers from receiving additional benefits under the schools and libraries program if they have failed to satisfy any outstanding obligation to repay monies into the fund. Fifth, we adopt a strengthened document retention requirement to enhance our ability to conduct all necessary oversight and provide a stronger enforcement tool for detecting statutory and rule violations. Sixth, we modify our current requirements regarding the timing, content and approval of technology plans. Seventh, we amend our beneficiary certification requirements to enhance our oversight and enforcement activities. Eighth, we direct USAC to submit a plan for timely audit resolution, and we delegate authority to the Chief of the Wireline Competition Bureau to resolve audit findings. Finally, we direct USAC to submit on an annual basis a list of all USAC administrative procedures to the Wireline Competition Bureau (Bureau) for review and further action, if necessary, to ensure that such procedures effectively serve our objective of preventing waste, fraud and abuse.[2]

II. BACKGROUND

2. USAC administers the schools and libraries universal service support program under Commission oversight. Under this program, eligible schools, libraries, and consortia that include eligible schools and libraries, may receive discounts for eligible telecommunications services, voice mail, Internet access, and internal connections.[3] Prior to applying for discounted services, an applicant must conduct a technology assessment and develop a technology plan to ensure that any services it purchases will be used effectively.[4] The applicant then must submit to the Administrator a completed FCC Form 470, in which the applicant sets forth, among other things, the services for which it seeks discounts.[5] Once the school or library has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the service providers with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.[6]

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[1] Semiannual Report to Congress, October 1, 2003-March 31, 2004, Office of the Inspector General, Federal Communications Commission at 3-19.

[2] We intend to address additional issues relating to competitive bidding and the discount matrix in one or more forthcoming orders.

[3] 47 C.F.R. §§ 54.502, 54.503.

[4] *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776, 9077-78 (1997) (*Universal Service Order*).

[5] 47 C.F.R. § 54.504(b).

[6] 47 C.F.R. § 54.504(c). During this process, USAC assigns a "Funding Request Number" to each individual request for discounted services submitted by a school or library. USAC, schools and libraries, and the service providers who provide the discounted services all use the Funding Request Number to track these individual funding (continued....)

3. The Administrator reviews the FCC Forms 471 that it receives and issues funding commitment decision letters indicating discounts that the applicant may receive in accordance with the Commission's rules. Subsequently, pursuant to our rules, the applicant either: (1) pays the bill in full, and seeks reimbursement for discounts from the Administrator via the service or equipment provider, or (2) pays the non-discount portion of the service cost to the service provider, who, in turn, seeks reimbursement from the Administrator for the discounted amount.[7]

4. Under the Commission's rules, eligible schools and libraries may receive discounts ranging from 20 percent to 90 percent of the pre-discount price of eligible services, based on indicators of need.[8] Schools and libraries in areas with higher percentages of students eligible for free or reduced-price lunch through the National School Lunch Program (or a federally approved alternative mechanism) qualify for higher discounts for eligible services than applicants with low levels of eligibility for such programs. Schools and libraries located in rural areas also generally receive greater discounts.[9]

5. The Commission's priority rules provide that requests for telecommunications services, voice mail and Internet access for all discount categories shall receive first priority for the available funding (Priority One services). The remaining funds are allocated to requests for support for internal connections (Priority Two services), beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix. Currently, the most disadvantaged schools and libraries are eligible for a 90 percent discount on eligible services, and thus must pay only 10 percent of the cost of the service. To the extent funds remain after discounts are awarded to entities eligible for a 90 percent discount, the rules provide that the Administrator shall continue to allocate funds for discounts to applicants at each descending single discount percentage. The Commission's rules also provide that if sufficient funds do not exist to grant all requests within a single discount percentage, the Administrator shall allocate the remaining support on a pro rata basis over that single discount percentage level.[10]

6. Since the program's inception, the Commission sought to ensure the use of E-rate funds for their intended purpose. In 1999, the Commission adopted the *Commitment Adjustment Order*, which directed the Administrator to recover funds that, in the first year of the program, were committed to schools and libraries in violation of the Telecommunications Act of 1996.[11] In a companion order issued

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requests. Service providers are also required to reference specific USAC Funding Request Numbers when submitting invoices to USAC for reimbursement of the discounted portion of the services they provide to schools and libraries.

[7] Schools and Libraries Universal Service, Billed Entity Applicant Reimbursement Form, OMB 3060-0856 (October 1998) (FCC Form 472 or BEAR Form); Schools and Libraries Universal Service, Service Provider Invoice Form, OMB 3060-0856 (October 2001) (FCC Form 474 or SPI Form). *See also* 47 C.F.R. § 54.514.

[8] *See* 47 C.F.R. § 54.505.

[9] *Id.* The Commission recently sought comment on altering the discount mechanism. *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, at 26936-39 (2003) (*Schools and Libraries Third Order* or *Schools and Libraries Second Further Notice*).

[10] 47 C.F.R. § 54.507(g)(1)(i-iv); *see also Federal-State Joint Board on Universal Service*, CC Docket 96-45, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915, 14938 para. 36 (1998) (*Fifth Order on Reconsideration*).

[11] *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Order, FCC 99-291 (rel. Oct. 8, 1999) (*Commitment Adjustment Order*) *on reconsideration Federal-State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Schools and Libraries Universal Service Support*
(continued....)

the same day,[12] the Commission granted a limited waiver of four specific Commission rules to first year applicants who had received disbursements in violation of those rules and waived enforcement of one USAC processing procedure.[13] Subsequently, in 2000, the Commission adopted, with minor modifications, USAC's plan to implement the requirements in the *Commitment Adjustment Implementation Order*.[14] In that Order, the Commission emphasized that the recovery plan "is not intended to cover the rare cases in which the Commission has determined that a school or library has engaged in waste, fraud or abuse."[15] The Commission stated that it would address such situations on a case-by-case basis.[16]

7. Pursuant to Commission requirements, as part of ongoing oversight over the schools and libraries mechanism, USAC and other entities have conducted various audits of E-rate beneficiaries to determine whether such beneficiaries are in compliance with the statute and the Commission's implementing rules.[17] In particular, in 2000, USAC contracted with an independent public accounting firm. That firm completed 17 audits of beneficiaries for Funding Year 1998. Subsequently, in 2001, USAC contracted with the same firm to conduct audits of 25 beneficiaries in Funding Years 1999 and 2000. Late in 2002, USAC contracted with another independent public accounting firm to conduct audits of 79 randomly selected beneficiaries from Funding Year 2000; the bulk of the audit work was performed in 2003, with final audit reports issued by spring 2004. We currently are developing plans to audit a greater number of beneficiaries for Funding Years 2001 and 2002 pursuant to a three-way agreement between USAC, our Office of Inspector General and an independent public accounting firm. In addition, USAC's internal audit division has conducted audits of 57 E-rate beneficiaries, as well as two internal control audits.

8. The FCC's OIG also has conducted a number of audits of E-rate beneficiaries, both on its own and through cooperative arrangements with other federal agencies. In 2002, the FCC's OIG entered into a Memorandum of Understanding (MOU) with the Department of Interior OIG for audits of schools and libraries that fall under the responsibility of the Department of Interior. To date, the FCC's OIG has finalized 14 audit reports, two of which were performed by the Department of Interior OIG pursuant o the MOU.[18]

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Mechanism, CC Docket Nos. 96-45, 97-21 and 02-6, Order on Reconsideration and Fourth Report and Order, FCC 04-181 (rel. July 30, 2004)(*Schools and Libraries Fourth Order*).

[12] *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Order, 15 FCC Rcd 7197 (1999) (*Waiver Order).*

[13] *Id.*

[14] *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service,* 15 FCC Rcd 22975 (2000) (*Commitment Adjustment Implementation Order), petition for review pending sub. nom. United States Telecom Ass'n v. FCC,* Case No. 00-1501 (D.C. Cir. filed Nov. 27, 2000).

[15] *Id.* at 22980 para. 13.

[16] *Id.*

[17] Collectively, USAC and other entities have audited over $1.1 billion in total disbursements out of $4.7 billion disbursed in the first three years of the program, representing 23.55% of funds disbursed. USAC has sought recovery of $18 million, based on these audit findings.

[18] See Report on Audit of the E-rate Program at Enoch Pratt Free Library, Report No. 02-AUD-02-04-010 (Sept. 11, 2002); Report on Audit of the E-rate Program at Robeson County Public School System, Report No. 02-AUD-02-04-13 (Feb. 3, 2003); Report on Audit of the E-rate Program at Wake County Public School System, Report No. 02-AUD-02-04-14, (Feb. 3, 2003); Report on Audit of the E-rate Program at Albermarle Regional Library, Report No. 02-AUD-02-04-16, (Aug. 27, 2003); Report on Audit of the E-rate Program at Santa Fe Indian School, Inc., Report
(continued....)

9. The beneficiary audits conducted by USAC thus far have been "agreed upon procedures" audits, in which the auditor has performed specified procedures to determine the existence or nonexistence of certain facts or events and has reported factual findings. As such, the auditor has not opined on whether beneficiaries have complied with FCC rules; rather, such determinations are made in the first instance by USAC. Because the beneficiary audits conducted to date have been designed to examine compliance with FCC rules, certain USAC operating procedures, and presumed good business practices, not all findings implicate rule violations. In some instances, findings have identified areas where additional rules would be beneficial to the operation of the program.[19]

10. To date, USAC has determined amounts to be recovered for specific statutory or rule violations pursuant to the recovery plan approved in the *Commitment Adjustment Implementation Order* in a manner consistent with how it acts on pending applications and requests for reimbursement.[20] Specifically, in situations where USAC would normally deny a funding request outright upon discovering a particular infirmity in the application review process, because the applicant has failed to meet one or more necessary requirements for receipt of support, USAC has sought recovery of the full amount of the funding request. In situations where USAC normally would adjust the commitment amount, because the applicant is eligible for some, but not all, of the support, USAC has sought recovery of the difference between the amount approved and disbursed and the appropriate amount.

11. Early in 2002, the Commission initiated a rulemaking proceeding to seek comment on ideas raised by both the applicant and service provider communities for improving the program.[21] In particular, the Commission sought comment on ways to ensure that the program funds are utilized in an efficient, effective, and fair manner, while preventing waste, fraud, and abuse.[22] Since then, we have issued a series of orders in an ongoing effort to simplify program administration, ensure equitable distribution of funds, and protect against waste, fraud and abuse.[23]

12. In December 2003, the Commission, among other things, adopted rules limiting the

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No. R-GR-FCC-0006-2003. (Nov. 6, 2003); Report on Audit of the E-rate Program at Prince William County Schools, Report No. 02-AUD-02-04-11 (Dec. 22, 2003); Report on Audit of the E-rate Program at the Arlington Public Schools, Report No. 02-AUD-02-04-12 (Dec. 22, 2003); Report on Audit of the E-rate Program at St. Matthew Lutheran School, Report No. 02-AUD-02-04-07 (Dec. 22, 2003); Final Report on Audit of the E-rate Program at Navajo Preparatory School, Inc., Report No. R-GR-FCC-0005-2003 (Jan. 7, 2004); Report on Audit of the E-rate Program at Immaculate Conception School, Report No. 02-AUD-02-04-20 (Mar. 24, 2004); Report on Audit of the E-rate Program at Children's Storefront School, Report No. 02-AUD-02-04-025 (Apr. 5, 2004); Report on Audit of the E-rate Program at St. Augustine School, Report No. 02-AUD-02-04-017 (May 19, 2004); Report on Audit of the E-rate Program at Southern Westchester Board of Cooperative Educational Services, Report No. 02-AUD-02-04-003 (May 25, 2004); Report on Audit of the E-rate Program at United Talmudical Academy, Report No. 02-AUD-02-04-006 (June 7, 2004).

[19] For instance, recent audit findings regarding beneficiaries' lack of documentation have informed our decision today to strengthen our document retention requirements.

[20] *Commitment Adjustment Implementation Order,* 15 FCC Rcd at 22977.

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

[22] Among other things, the Commission sought general comment on the use of independent audits as an oversight tool to provide assurance of program integrity. *See Schools and Libraries Notice,* 17 FCC Rcd at 1937 para. 59.

[23] For example, in April 2003, the Commission adopted a debarment rule and other measures to ensure that program funds are utilized in an efficient, effective and fair manner. *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* or *Schools and Libraries Further Notice*)

ability of schools and libraries to engage in wasteful or fraudulent practices when obtaining internal connections, established a more formal process to ensure that beneficiaries know what services are eligible for support, and codified rules for cost allocation and service substitutions.[24] In addition, the Commission sought comment on procedures for recovery of funds and several proposals intended to protect against waste, fraud and abuse in the schools and libraries universal service program.[25]

III. FIFTH REPORT AND ORDER

13. Since the inception of the schools and libraries support mechanism, schools and libraries have been subject to audits to determine compliance with the program rules and requirements.[26] Audits are a tool for the Commission and USAC, as directed by the Commission, to ensure program integrity and to detect and deter waste, fraud, and abuse. Because audits may provide information showing that a beneficiary or service provider failed to comply with the statute or Commission rules applicable during a particular funding year, audits can reveal instances in which universal service funds were improperly disbursed or used in a manner inconsistent with the statute or the Commission's rules.[27] As explained below, we adopt measures relating to recovery of such funds and other measures to strengthen the integrity of the schools and libraries mechanism of the universal service program and enhance our ongoing oversight over this program.

14. We stress that the measures we adopt herein are not the final steps we plan to take for strengthening oversight of the universal service program and combating waste, fraud, and abuse. We remain committed to deterring inappropriate uses of universal service monies and to rapidly detecting and addressing potential misconduct (including waste, fraud, and abuse), and we recognize that achieving these goals is a continual process. We note that we previously sought comment on additional oversight mechanisms, including a requirement that beneficiaries obtain and pay for independent audits of their compliance with our rules.[28] We are continuing to work on various proposals for improving our oversight of the universal service program, and we expect to issue an order adopting additional measures in the near future.

A. Recovery of Funds

1. Background

15. As noted above, the Commission adopted the *Commitment Adjustment Order* in 1999, which directed the Administrator to recover funds that, in the first year of the program, were committed to schools and libraries in violation of the Telecommunications Act of 1996.[29] The Commission adopted a companion order on the same day granting a limited waiver of certain Commission rules and a USAC procedure to first year applicants who had received commitments and disbursements in violation of such rules and the procedure.[30] Although the Commission found good cause for granting these limited waivers, which resulted in eliminating the potential for recovery of funds disbursed in violation of

[24] *See Schools and Libraries Third Order.*

[25] *See id.* at 26945-53.

[26] 47 C.F.R. § 54.516.

[27] We will use the term "improperly disbursed funds" throughout this order to refer to an amount of money disbursed inconsistently with the statute or Commission rules. This amount may be all or part of a disbursement, depending upon the circumstances.

[28] *Schools and Libraries Support Mechanism*, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 1914 (2002).

[29] *See Commitment Adjustment Order.*

[30] *See Waiver Order.*

Commission rules, the Commission made clear that beneficiaries and service providers would be subject to the possibility of recovery of funds disbursed in violation of rules in the future.[31] Subsequently, in 2000, the Commission adopted the *Commitment Adjustment Implementation Order,* which set up a framework for recovering funds committed or disbursed in violation of the statute consistent with the Debt Collection Improvement Act (DCIA)[32] and our implementing rules.[33] Since then, USAC has implemented this process for statutory and rule violations. To the extent that we have not clearly done so in the past, we reaffirm and adopt this policy and find that it is consistent with the requirements of the DCIA and the general intent of the *Commitment Adjustment Order.*

16. At the time, USAC had been distributing funds through the schools and libraries universal service support mechanism for approximately one year. The Commission and USAC then faced a limited range of situations in which errors had occurred requiring the recovery of funds. Since then, through the audit process, the Commission and USAC have become aware of additional scenarios that raise the issue of recovery of funds. Recognizing that the Commission has not comprehensively addressed the question of what recovery procedures would be appropriate in situations where it is determined that funds have been disbursed in violation of particular programmatic rules that do not implicate statutory requirements, in the December 2003 *Schools and Libraries Second Further Notice,* we sought comment on whether to implement procedures or adopt rules governing fund recovery in particular situations and, more generally, whether additional safeguards or procedures are needed to address the matter of funds disbursed in violation of the statute or a rule.[34] Among other issues, we sought comment on whether to modify our existing commitment adjustment procedures, whether to waive certain rules to make recovery unnecessary in particular situations, and whether to subject beneficiaries that have faced a recovery action to more rigorous scrutiny before acting on subsequent funding requests. In light of the record developed in our ongoing rulemaking proceeding, and our experience with E-rate oversight to date, we refine and extend our recovery procedures as set forth below.

17. Accordingly, we revisit the framework previously established and modify it to the extent described below. All other aspects of the *Commitment Adjustment Order* and *Commitment Adjustment Implementation Order* not addressed in this order and the *Fourth Schools and Libraries Order* remain in place.[35] Moreover, any claims due to the government remain fully subject to the requirements of our rules implementing the Debt Collection Improvement Act.[36]

2. Discussion

a. What to Recover

18. It is clear that funds disbursed in violation of the statute or a rule that implements the statute or a substantive program goal must be recovered.[37] In this order we identify rules of this type and

[31] *See Waiver Order*, 15 FCC Rcd at 7200-01 para. 8, 7202 para. 12.

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

[33] *Commitment Adjustment Implementation Order.*

[34] *See Schools and Libraries Second Further Notice,* 18 FCC Rcd at 26947-49.

[35] *See Schools and Libraries Fourth Order.*

[36] *See* 47 C.F.R. § 1.901 *et. seq. See also, Amendment of Parts 0 and 1 of the Commission's Rules, Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, MD Docket No. 02-239, Report and Order, 19 FCC Rcd 6540 (2004) (*DCIA Order*).

[37] We note that USAC, through its duties as administrator of the fund, initially seeks recovery of erroneously disbursed funds.

provide advance notice to all stakeholders that violation of these rules will result in recovery. In addition, we recognize that other rules may be necessary to protect against waste, fraud and abuse, and that violation of these types of rules will warrant recovery as well, as set forth in this order.[38]

19. On the other hand, we agree with commenters that recovery may not be appropriate for violation of all rules regardless of the reason for their codification.[39] For example, when the administrative costs of recovering funds disbursed in violation of a rule exceed the improperly disbursed amount, it may be reasonable not to seek recovery. Likewise recovery may not be appropriate for violation of procedural rules codified to enhance operation of the e-rate program. We seek to ensure that the determination is made and communicated to applicants in advance. Consistent with this policy, as described more fully below, we intend to evaluate whether there are USAC procedures that should be codified into the Commission's rules and whether violation of each should also be a basis for recovery. Applicants will be required to comply with procedural rules in applying for support—and applications that do not comply will be rejected. If, however, the procedural violation is inadvertently overlooked during the application phase and funds are disbursed, the Commission will not require that they be recovered, except to the extent that such rules are essential to the financial integrity of the program, as designated by the agency, or that circumstances suggest the possibility of waste, fraud, or abuse, which will be evaluated on a case-by-case basis.

20. Amounts disbursed in violation of the statute or a rule that implements the statute or a substantive program goal must be recovered in full. In situations where disbursement of funds is warranted under the statute and rules, but an erroneous amount has been disbursed, the amount of funds that should be recovered is the difference between what the beneficiary is legitimately allowed under our rules and the total amount of funds disbursed to the beneficiary or service provider. We set forth below a number of examples to illustrate the applications of this principle.

21. *Competitive Bidding Requirements*. We conclude that we should recover the full amount disbursed for any funding requests in which the beneficiary failed to comply with the Commission's competitive bidding requirements as set forth in section 54.504 and 54.511 of our rules and amplified in related Commission orders.[40] For instance, it is appropriate to recover the full amount of funds disbursed for a funding request when the beneficiary signs a contract before the end of the 28-day posting period. Likewise, it is appropriate to recover the full amount disbursed in a situation where the beneficiary failed to consider price as the primary factor when evaluating among competing bids.[41] This conclusion is based on our position that the competitive bidding process is a key component of the schools and libraries

[38] We retain discretion to depart from these general standards when application would be contrary to the public interest. Any determination concerning the recovery of funds does not limit the Enforcement Bureau's ability to take enforcement action for any statutory or rule violation pursuant to section 503 of the Act

[39] GCI Comments at 6; Pennsylvania DOE Comments at 33 (not all violations should be treated the same); SECA Comments at 9 (same); *see also* BellSouth Comments at 3 (standard rule may not fit all circumstances).

[40] *Request for Review of the Decision of the Universal Service Administrator by Mastermind Internet Services, Inc.*, SPIN-143006149, CC Docket No. 96-45, Order, 16 FCC Rcd 4028 (2000); *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District,* CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 26407 (2003) (*Ysleta Order*). *See also Federal-State Joint Board on Universal Service,* CC Docket Nos. 96-45 and 97-21, Fourth Order on Reconsideration, 13 FCC Rcd 5318 (1997) (*Fourth Order on Reconsideration*).

[41] We note that our rules do not require applicants to affirmatively seek out price quotes from multiple sources if no service provider responds to a Form 470 posting. *See Request for Review of the Decision of the Universal Service Administrator by Winston-Salem County School District,* CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 26457, 26462 (2003) ("our rules require applicants to seek competitive bids; they do not require an applicant to have competing bidders where none appear").

program, ensuring that funds support services that satisfy the precise needs of an applicant and that *services are provided at the lowest possible rates.*[42]

22. *Necessary Resources Certification*. We conclude that a lack of necessary resources to use the supported services warrants full recovery of funds disbursed for all relevant funding requests. The requirements that beneficiaries have sufficient computer equipment, software, staff training, internal connections, maintenance and electrical capacity to make use of the supported services are integral to ensuring that these monies are used for their intended purposes, without waste, fraud or abuse.[43]

23. *Service Substitution*. Parties have the opportunity to make legitimate changes to requested services when events occur that make the original funding request impractical or even impossible to fulfill.[44] Last December, we codified rules to address requests for service or equipment changes, concluding that allowing parties to make such substitutions is consistent with our goal of affording schools and libraries maximum flexibility to choose the offering that meets their needs more effectively and efficiently.[45] We conclude that in situations where a service substitution would meet the criteria now established in our rules, the appropriate amount to recover is the difference between what was originally approved for disbursement and what would have been approved, had the entity requested and obtained authorization for a service substitution. In situations where the service substitution would not meet the criteria established in our rules, the appropriate amount to recover is the full amount associated with the service in question.

24. *Failure to Pay Non-discounted Share*. We conclude that all funds disbursed should be recovered for any funding requests in which the beneficiary failed to pay its non-discounted share. While our rules do not set forth a specific timeframe for determining when a beneficiary has failed to pay its non-discounted share, we conclude that a reasonable timeframe is 90 days after delivery of service. Allowing schools and libraries to delay for an extended time their payment for services would subvert the intent of our rule that the beneficiary must pay, at a minimum, ten percent of the cost of supported services. We believe, based on USAC's experience to date as Administrator, that a relatively short period – comparable to what occurs in commercial settings – should be established in which beneficiaries are expected to pay their non-discounted share after completion of delivery of service. In other contexts, companies refer payment matters to collection agencies if a customer fails to pay after several requests for payment. Accordingly, we clarify prospectively that a failure to pay more than 90 days after completion of service (which is roughly equivalent to three monthly billing cycles) presumptively violates our rule that the beneficiary must pay its share. For purposes of resolving any outstanding issues relating to audits conducted prior to the issuance of this clarification, we direct USAC to determine whether full payment had been made as of the time the audit report was finalized. If any amounts remained outstanding at the conclusion of the audit work, that constitutes a rule violation warranting recovery of all amounts disbursed. Information on payment of the non-discounted share shall be sought from the beneficiary.

25. *Duplicative Services*. As noted in the *Schools and Libraries Second Order*, our rules prohibit the funding of duplicative services, defined as services that provide the same functionality to the same population in the same location during the same period of time.[46] In such circumstances, we ordinarily will recover the amount associated with the more expensive of the duplicative services, except in situations where there are indications of fraud, where we may recover the full amount of the funding

[42] *See Fourth Order on Reconsideration*, 13 FCC Rcd at 5426 para. 185.

[43] 47 C.F.R. § 54.504(b).

[44] 47 C.F.R. § 54.504(f).

[45] *Schools and Libraries Third Order,* 18 FCC Rcd at 26930 para. 43.

[46] *Schools and Libraries Second Order*, 18 FCC Rcd at 9209.

request.

26. *Failure to Complete Service within the Funding Year*. We conclude that the failure to complete delivery of services by the relevant deadline for a particular funding year is a rule violation that warrants recovery of all funds disbursed for services installed or delivered after the close of the funding year. We note that parties are always free to seek an extension of time to install non-recurring services from USAC, consistent with the conditions set by the Commission for such an extension. Such extensions have been granted in situations where installation cannot be completed for reasons outside the control of the beneficiary.[47] Generally, however, the Commission requires service to be completed within one Funding Year, in order to promote equity among applicants and to avoid waste.[48]

27. *Discount Calculation Violation*. When applicants fail to calculate properly their appropriate discount rate, the amount disbursed in violation of this rule is the difference between the amount of support to which the beneficiary is legitimately allowed and the amount requested or provided. For instance, in a situation in which the beneficiary made a clerical error in calculating the level of participation in the school lunch program, or failed to use an approved methodology for calculating the level of school lunch participation, the beneficiary may legitimately receive support under a recalculated discount rate. In these circumstances, the amount to recover is the difference between the incorrectly calculated amount and the amount recalculated with the appropriate discount.[49] We emphasize, however, that in the narrow circumstance where there is evidence that an applicant has manipulated its discount rate in a deliberate attempt to defraud the government, full recovery may be appropriate. Moreover, in situations where the applicant would not have qualified for any support for internal connections had it properly applied the discount, the recovery would be the entire amount disbursed.

28. *Service Not Provided for Full Funding Year*. Similarly, if an applicant requested and received funding for a full year, and the service provider billed for the full year, but provided services for less than the full year, we believe it would be appropriate to pro-rate support and recover the excess. Such adjustments are ordinarily made prior to disbursement when discovered by USAC through normal review processes.

29. *Recovery Only for Waste, Fraud and Abuse*. We reject the argument some commenters make that applicants should not be required to repay the fund unless waste, fraud or abuse is established.[50] We believe that there may be instances in which rule violations undermine statutory requirements or substantive policy goals of the program, but may not rise to the level of waste, fraud or abuse. For example, a request for an ineligible service might not entail waste, fraud or abuse, but it is still a violation for which recovery is necessary. While we appreciate that it may impose some hardship to make repayment in some situations, a statutory or rule violation cannot be absolved merely because the nature of the violation does not implicate waste, fraud or abuse. Moreover, to limit recovery to situations involving waste, fraud or abuse would place us in the position of condoning violation of the program's

[47] In the *Non-Recurring Services Order*, the Commission specified the circumstances under which a school or library could receive supported services after the conclusion of the normal funding year. *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, 16 FCC Rcd 13510 (2001) (*Non-Recurring Services Order*).

[48] *See Universal Service Order*, 12 FCC Rcd at 9062 para. 544.

[49] This is analogous to the manner in which USAC addresses such situations if it discovers during the application review process that the applicant has made an arithmetic error.

[50] *See, e.g.*, ALA Comments at 21; On-Tech Comments at 12-13; Pennsylvania DOE Comments at 34; SBC Comments at 5 (proposing no recovery for rule violations; recovery would occur for statutory violations); Weisinger Comments at 15, 25; Cox Reply Comments at 9; GCI Reply Comments at 2 (funds spent in good faith to promote objectives of program should not be recovered for technical violations).

rules Further, it would provide no incentives to applicants or service providers to take the necessary steps to familiarize themselves with our rules and put controls in place to ensure rule compliance. Nor do we believe it appropriate for a beneficiary to retain an overpayment if, for some reason, USAC has mistakenly disbursed an amount in excess of that which the entity is allowed under our rules. If there are unique reasons why a particular entity believes recovery for a rule violation is inappropriate, that party is always free to present such information in seeking review of USAC's decision to recover monies, pursuant to section 54.722.[51] We note, however, that we are without authority to waive statutory violations.

30. While we have not, to date, enunciated a bright line standard for determining whether a particular funding request or activities related to it depart from this standard to a degree that constitutes waste, fraud or abuse, we emphasize that we, and USAC in the first instance, retain the discretion to make such determinations on a case-by-case basis in the course of examining specific factual circumstances. For example, section 254(h)(1)(B) of the Act requires that applicants make a bona fide request for services to be used for educational purposes.[52] A funding request may not be bona fide in a situation in which a service provider has charged the beneficiary an inflated price. Thus, it would be appropriate to recover amounts disbursed in excess of what similarly situated customers are normally charged in the marketplace.[53] Similarly, in a situation in which the beneficiary has requested a clearly excessive level of support – which necessarily must be judged in the context of the specific circumstances of the school or library – it would also be appropriate to recover the full amount of the funding request, because the beneficiary has not made a bona fide request based on its reasonable needs.[54] In addition, in specific cases where there is evidence of fraudulent conduct, it would be appropriate to refer such matters to law enforcement officials.

b. When to Recover Funds

31. In this section, we establish an administrative limitations period in which the Commission or USAC will determine that a violation has occurred. We believe that announcing a general policy in this area is in the public interest because it provides applicants and service providers with some certainty of the timing by which an audit or further review of e-rate funding may occur. We also conclude that a *de minimis* exception is in the public interest and direct USAC generally not to seek recovery when the administrative cost is greater than the recovery amount. Finally, we decline to implement a rule generally requiring full recovery when a pattern of violations is discovered, recognizing the punitive nature of such a rule. Rather, we direct USAC to conduct more rigorous scrutiny of applications in subsequent funding years when systematic noncompliance of FCC rules is suspected, and we direct USAC to refer such situations to the Bureau, as appropriate, for further consideration.

32. *Administrative Limitations Period for Audits or Other Investigations by the Commission or USAC.* We believe that some limitation on the timeframe for audits or other investigations is desirable

[51] 47 C.F.R. § 54.722.

[52] 47 U.S.C. § 254(h)(1)(B); *Universal Service Order*, 12 FCC Rcd at 9076 para 570.

[53] An example of waste, fraud and abuse would be when the price for the service in question is in excess of what the service provider charges other customers in the marketplace. *See Universal Service Order*, 12 FCC Rcd at 9031-35 (providers shall offer services to schools and libraries at cost-based rates that are no higher than prices charged to similarly situated non-residential customers, codified at 47 C.F.R. § 54.511(b)). We recognize, however, there may be cases where the service provider could demonstrate that a small difference in price is due to a clerical error, which may not warrant full recovery.

[54] While we have not specifically addressed this situation in the past, we clarify prospectively that an example of such a situation would be where the school requests support for a number of data lines far in excess of the number of students in a school, or support for servers that will provide capacity in excess of the needs of the intended population.

in order to provide beneficiaries with certainty and closure in the E-rate applications and funding processes. For administrative efficiency, the time frame for such inquiry should match the record retention requirements and, similarly, should go into effect for Funding Year 2004. Accordingly, we announce our policy that we will initiate and complete any inquiries to determine whether or not statutory or rule violations exist within a five year period after final delivery of service for a specific funding year. We note that USAC and the Commission have several means of determining whether a violation has occurred, including reviewing the application, post application year auditing, invoice review and investigations. Under the policy we adopt today, USAC and the Commission shall carry out any audit or investigation that may lead to discovery of any violation of the statute or a rule within five years of the final delivery of service for a specific funding year.[55]

33. In the E-rate context, disbursements often occur for a period up to two years beyond the funding year. Moreover, audit work typically is not performed until after the disbursement cycle has been completed. For consistency, our policy for audits and other investigations mirrors the time that beneficiaries are required to retain documents pursuant to the rule adopted in this order.[56] We believe that conducting inquiries within five years strikes an appropriate balance between preserving the Commission's fiduciary duty to protect the fund against waste, fraud and abuse and the beneficiaries' need for certainty and closure in their E-rate application processes.

34. One commenter argues that fund recovery actions should be subject to a one year statute of limitations, comparable to the limitation for imposition of forfeitures,[57] while others argue that a two year timeframe, beginning the date of the funding commitment decision letter, is appropriate.[58] We emphasize that our policy regarding initiation of audits or other investigations does not affect the statutes of limitations applicable under the DCIA for collection of debts established by the Commission.[59]

35. *Recovery for De Minimis Amounts*. We conclude that it does not serve the public interest to seek to recover funds associated with statutory or rule violations when the administrative costs of seeking recovery outweigh the dollars subject to recovery.[60] Accordingly, we direct USAC not to seek recovery of such *de minimis* amounts. We direct USAC to provide the Wireline Competition Bureau and the Office of Managing Director sufficient information regarding the administrative costs of seeking recovery of improperly disbursed funds so that a *de minimis* amount can be determined.[61]

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[55] We note that this administrative limitation period is distinct from the DCIA statute of limitations. The limitation period we establish here relates to the time period within which we must bring action to establish a debt due to a violation of E-rate program rules or the statutory provisions. In contrast, the DCIA statute of limitations relates to the time period within which we must act to collect the debt once established. *See generally* 47 C.F.R. § 1.1901 *et. seq. See also, DCIA Order.*

[56] *See infra* para. 47.

[57] *See* Verizon Comments at 9.

[58] *See* CoSN Comments at 8; EdLiNC Comments at 8; Hayes Reply Comments at 5-6.

[59] See 28 U.S.C. §§ 2415(a), 3201(c), and 31 U.S.C. § 3716(e)(1).

[60] The Federal Claims Collection Standards provide that agencies may terminate collection activity when the "costs of collection are anticipated to exceed the amount recoverable." 31 C.F.R. § 903.3; *see* 47 C.F.R. § 1.1916 (adopting by reference 31 C.F.R. § 903).

[61] *See* BellSouth Comments at 6 (no recovery for amounts under $500); E-rate Central Comments at 6 (no recovery for amounts under $250); IBM Reply Comments at 7; On-Tech Comments at 14 (no recovery for amounts less than 1% of total commitment, or $25,000, whichever is greater); SBC Comments at 5, 7 (no recovery if administrative cost greater than amount to be recovered); Sprint Comments at 9 (same); Verizon Comments at 7-8 (no recovery for minor, technical violations such as late filed applications, data entry errors, and failures to check a box correctly).

36. *Recovery for Pattern of Rule Violations*. We decline at this time to adopt a rule requiring 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. We believe it would be difficult to establish a workable bright line standard that USAC could apply in such cases, and therefore decline to adopt such a rule at this time. We direct the Wireline Competition Bureau to consider such situations on a case-by-case basis in the course of resolving audit findings.[62] Moreover, we emphasize that USAC should subject any school or library that exhibits systematic noncompliance with governing FCC rules to more rigorous scrutiny in the subsequent funding years. We direct USAC to implement this practice and to refer such situations to the Bureau, as appropriate, for further consideration.

c. How to Recover

37. *Elimination of the Offset Options*. In the *Commitment Adjustment Implementation Order*, the Commission authorized USAC to offer service providers two offset methods for repayment of funds disbursed in violation of the statute or a rule.[63] One offset method allowed a service provider to offset the debt by "reductions in the amounts owed to the service provider from other existing valid commitments involving the same applicant and service provider in the same funding year."[64] The other offset method permitted a service provider to offset commitments involving the same applicant and service provider in subsequent funding years.[65]

38. Based on our experience with implementation of the *Commitment Adjustment Implementation Order*, we now conclude that it would better serve our interest in protecting universal service funds to eliminate the offset methods adopted in that order as options for recovery of funds in the schools and libraries universal service mechanism. We have observed that, when used, such offset methods can result in a lengthy process that imposes a significant administrative burden on USAC.[66] We note that although a service provider may fully intend to repay the outstanding debt in a timely manner when choosing the offset options adopted in the *Commitment Adjustment Implementation Order*, events may occur during the current or subsequent funding year which may delay or prevent payment. For example, the offset option was made available when there were sufficient pending funding requests to pay for the outstanding debt during the subsequent funding year, but if actual disbursements requested during that funding year do not satisfy the outstanding debt, the debt may continue during later funding years, or indefinitely if there remains an unsatisfied commitment. Even within the current funding year, such an offset may prove to be an attenuated, lengthy process, given that the beneficiary may have more than a full year after the close of the funding year to complete installation of non-recurring services, and may obtain extensions beyond that in specified circumstances. The potential for carrying the outstanding debt over several funding years, or non-payment altogether, hinders the ability of USAC to fully collect funds as necessary. To avoid this, and to promote administrative efficiency, we eliminate the offset options adopted in the *Commitment Adjustment Implementation Order* from the fund recovery plan.[67]

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[62] *See infra* para. 75.

[63] *See Commitment Adjustment Implementation Order*, 15 FCC Rcd at 22979-80.

[64] *See id.* at 22979.

[65] *See id.* at 22979-80.

[66] According to USAC, of the 1155 instances where recovery of funding commitments and/or disbursements has been sought, there have been only 25 instances in which the service provider elected to use the offset option. *See infra* paras. 41-44.

[67] We eliminate the offset options adopted in the *Commitment Adjustment Implementation Order* specifically to avoid extension of offset to commitments. This action does not affect, however, administrative offset under our DCIA rules. *See* 47 C.F.R. §§ 1.1901, 1.1912. Under that definition, offset applies only to payables. In the schools (continued....)

39. *Booking of Recovery Amounts*. The Commission is committed to meeting its obligations under federal laws by maintaining complete and accurate financial reporting. As we have noted in other orders, universal service monies are reflected on the Commission's financial statements.[68] To ensure the Commission meets its goals with respect to accounting for universal service funds on its financial statements, the Commission previously has directed USAC as Administrator of the Universal Service Fund to prepare financial statements for the Universal Service Fund consistent with generally accepted principles for federal agencies. In accordance with the Commission's rules, recovery amounts should be recorded in the accounting records for the Universal Service Fund consistent with Federal Generally Accepted Accounting Principles (GAAP).

d. Treatment of Applicants Subject to Recovery Actions

40. Some commenters stress that an opportunity to contest recovery should be afforded to applicants and service providers, and one commenter argues that applicants and service providers should receive a full administrative hearing before recovery of funds is sought.[69] We decline to adopt a rule providing for an administrative hearing before the issuance of a letter demanding recovery of funds. Parties are already free today to challenge any action of USAC – including the issuance of a demand for recovery of funds – by filing a request for review with this Commission pursuant to section 54.722 of our rules.[70] We believe that this opportunity sufficiently addresses beneficiaries' needs. We see no significant additional public benefit to justify the creation of another layer of administrative process and the associated administrative costs for all involved.

41. Earlier this year we amended our rules to implement the Debt Collection Improvement Act of 1996, which generally governs the collection of claims owed to the United States.[71] Among other things, we adopted a rule, section 1.1910, providing that the Commission shall withhold action on any application or request for benefits made by an entity that is delinquent in its non-tax debts owed to the Commission, and shall dismiss such applications or requests if the delinquent debt is not resolved. This rule (which we refer to as the "red light rule") applies to any application that is subject to the FCC Registration Number requirement set forth in Part 1, subpart W, of our rules. The new DCIA rules specify that the term "Commission" includes the Universal Service Fund.[72]

42. In response to the *Schools and Libraries Second Notice*, several commenters suggested that we should bar or limit participation in the program when entities have some particular forms of outstanding claims.[73] At present, applicants and some service providers under the schools and libraries mechanism are not required to obtain an FCC Registration Number, and as such, are not subject to the literal terms of section 1.1910 of our rules. We believe adopting analogous requirements for the schools

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and libraries program, funding becomes a payable after the service is provided and the service provider submits a valid invoice to USAC.

[68] *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 and 03-123, Order, 18 FCC Rcd 19911, 19912-13, para. 4 (2003).

[69] IBM Comments at 6; SBC Comments at 8.

[70] 47 C.F.R. § 54.722.

[71] *DCIA Order*.

[72] 47 C.F.R. § 1.1901(b).

[73] CPUC Reply Comments at 7-8; K&S Comments at 12; SBC Comments at 9.