

Semi-Annual Audit Recovery Report

In the *Schools and Libraries Fifth Order*,¹ the Federal Communications Commission (FCC or Commission), directed the Universal Service Administrative Company (USAC) to “submit a report to the Commission on a semi-annual basis summarizing the status of all outstanding audit findings. To the extent findings cannot be resolved within six months, USAC shall describe the status of its efforts, and provide a projected timeframe for completion.”² This report summarizes outstanding audit-related recoveries as of August, 31, 2009 and consists of this three-page descriptive narrative and the attached spreadsheet.

Process for Seeking Recovery of Funds

The process of seeking recovery based on an audit finding is comprised of the following stages:

1. After reviewing the audit report, USAC management may determine that additional outreach is necessary and may contact the applicant and/or service provider depending on the nature of the audit findings. In general, USAC management will only contact the applicant and/or service provider if: (1) the party responsible for the rule violation was not given an opportunity to respond to findings during the audit or did not have adequate time to respond to the findings, (2) the findings are complex and further explanation is warranted, or (3) it is unclear if the program rules have been violated. If contacted, the applicant and/or service provider can submit written documentation or provide a verbal response, depending on the information that is needed.
2. Within 30 days of the USAC Board of Directors deeming an audit report final or USAC completing any additional outreach, USAC issues a Notification of Commitment Adjustment Letter or Notification of Recovery of Improperly Disbursed Funds Letter (both referred to as Notification Letter in this document), to the applicant and/or service provider as appropriate.
3. If the applicant and/or service provider does not appeal the Notification Letter within 60 days, USAC issues the First Demand Payment Letter on the 61st day and notifies the applicant and/or service provider which party(ies) are responsible for the recovery.
4. If the applicant and/or service provider does not respond to the First Demand Payment Letter, or does not make satisfactory arrangements to repay the funds within 30 days of the First Demand Payment Letter, a Second Demand Payment Letter is sent and the Red Light is turned on for that applicant and/or service provider.³ The Commission allows applicants and/or service providers to enter

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

² *Id.* ¶ 77.

³ In the *Schools and Libraries Fifth Order*, the Commission amended its rules “to bring all E-rate beneficiaries and service providers within the ambit of the red light rule.” *Id.* ¶ 42.

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into payment plan arrangements with USAC to pay the recovery amount.⁴ If the applicant and/or service provider does not respond to the Second Demand Payment Letter, or does not make satisfactory arrangements to repay the funds within 60 days of the Second Demand Payment Letter, USAC will advise the Commission of that fact, and the debt will be transferred to the Commission under the provisions of the Debt Collection Improvement Act (DCIA).⁵

5. If an appeal is filed with USAC or an appeal and/or request for waiver is filed with the Commission, the recovery process is held in abeyance pending resolution of the appeal/waiver request.

In the absence of an appeal, request for waiver or direction from the Commission to hold the process in abeyance, the time period from issuance of the Notification Letter to final collection by USAC or transfer of the debt to the Commission is five months.

Description of Audit Findings Outstanding for More Than Six Months

The recoveries based on audit findings that have been outstanding for more than six months fall into the following seven categories:

- At this time, there are 21 beneficiary audits older than six months with a potential recovery amount of \$1,228,371. Notification Letters have not been issued because USAC is reviewing the audit reports or conducting additional outreach to determine whether rules were violated based on the guidance received from the Commission on January 16, 2009. There are an additional 31 beneficiary audits older than six months with a potential recovery of \$11,065,905. Notification Letters have not been issued because USAC is working with Commission staff to determine whether the rule violations warrant recovery of funds consistent with the *Schools and Libraries Fifth Order*. There are no other audit findings older than six months that have either not been cleared, or have resulted in the issuance of a Notification Letter to either the applicant and/or service provider, as appropriate and as further explained below.
- From January through April 2005, USAC issued Notification Letters relating to 2 beneficiary audits with a recovery amount of \$70,007 based on the guidelines set forth in the *Schools and Libraries Fifth Order*. In April 2005, USAC suspended issuing Notification Letters or Demand Payment Letters in certain situations based on direction from Commission staff. On January 16, 2009 the Commission issued USAC written guidance regarding these recoveries. USAC is reviewing these and will be issuing Notification Letters and/or Demand Payment Letters within 30 days of the filing of this report.

⁴ *Id.*

⁵ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996) (codified at 31 U.S.C. §§ 3701 *et seq.*).

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- For certain audit findings the recovery process has been ongoing for more than six months because the applicant and/or service provider appealed the recovery determination to USAC and/or requested waiver of the recovery request to the Commission. The recovery process was held in abeyance pending USAC and/or the Commission's decision on appeal. USAC and/or the Commission have since decided the appeal, and so the process of recovery has resumed.
- The recovery process is being held in abeyance for 14 beneficiary audits with a recovery amount of \$2,497,032 because the applicant and/or service provider has appealed USAC's recovery determination to USAC.
- The recovery process is being held in abeyance for 48 beneficiary audits with a recovery amount of \$22,830,175 because the applicant and/or service provider has appealed and/or requested wavier of USAC's recovery determination to the Commission.
- The applicant and/or service provider has not paid the funds to USAC and has not made satisfactory arrangements for payment of the funds. Consequently, the debt has been transferred to the Commission under the *DCIA*. To date USAC has transferred \$7,204,487 relating to 26 audits to the Commission pursuant to the *DCIA*.
- The audit performed consistent with the Commission's *Puerto Rico Department of Education Order*⁶ covering Funding Years 1998 through 2000 has been approved by USAC's Board of Directors and provided to Commission staff. In that order, the Commission stated that it – rather than USAC – would review the results of that audit to determine what recovery action would be appropriate.⁷ Consequently, although the audit has been deemed final for more than six months, recovery amounts that may eventually be associated with the results of that audit are not included on the attached spreadsheet.

⁶ *Federal-State Joint Board on Universal Service, Petition of the Puerto Rico Department of Education to Release Funds Associated with the Schools and Libraries Universal Service Support Mechanism for Years 2001 and 2002*, CC Docket No. 02-06, Order, 18 FCC Rcd 25417 (2003)(*Puerto Rico Department of Education Order*).

⁷ See *id.* ¶¶ 2, 25.

Fund Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Total
Number of Audits Performed Per Fund Year	24	47	177	25	125	101	129	252	226	17	1123
Total Disbursed Amount Audited	\$170,279,326	\$252,752,569	\$633,290,328	\$67,984,961	\$407,383,590	\$328,880,286	\$108,767,072	\$210,010,242	\$175,180,013	\$3,654,146	\$2,358,182,534
TOTAL STAGES OF RECOVERY	\$811,552	\$9,809,056	\$21,059,237	\$14,833,519	\$25,163,986	\$3,869,045	\$8,834,020	\$5,446,053	\$5,370,807	\$2,346	\$95,199,621
\$ Recovered to Date	\$782,976	\$5,577,121	\$3,858,607	\$4,960,991	\$2,633,684	\$933,554	\$637,748	\$315,048	\$154,948		\$19,854,677
\$ Sent to OMD for Recovery	\$6,300	\$883,099	\$6,031,126	\$58,483	\$225,479						\$7,204,487
\$ Remanded – Approved		\$1,783,666	\$52,051	\$52,052	\$3,610,452		\$2,333,332				\$7,831,553
\$ USAC Appeals – Approved			\$116,106	\$514,421	\$4,385,457	\$11,969		\$54,692	\$240,588		\$5,323,232
Balance Remaining (Stages of Recovery)	\$28,576	\$1,565,170	\$11,001,347	\$9,247,572	\$14,308,915	\$2,923,522	\$5,862,939	\$5,076,313	\$4,975,272	\$2,346	\$54,991,972
STAGES OF RECOVERY											
\$ DeMinimis – No Recovery			\$776			\$261	\$365	\$1,034	\$1,625		\$4,061
# of Billed Entities			3			2	3	9	8		25
USAC conducting add'l outreach/review							\$899	\$134,410	\$138,556		\$273,866
# of Billed Entities							1	9	8		18
Determined no recovery				\$503,520	\$1,892,297	\$894,302	\$1,504,720	\$1,897,064	\$964,619		\$7,656,522
# of Billed Entities				1	9	1	5	25	23		64
\$ Notification Letter (CAL) Pending			\$1,981,982	\$4,418,400	\$8,749,878	\$217,243	\$543,299	\$121,683	\$941,645	\$2,346	\$16,976,474
# of Billed Entities			9	6	27	3	5	9	18	2	79
\$ Notification Letter (CAL) Issued						\$17,097	\$1,313,951	\$1,295,371	\$1,282,960		\$3,909,379
# of Billed Entities						3	4	13	9		29
\$ 1st Demand Letter Issued			\$11,525				\$17,718	\$57,144	\$827,607		\$913,994
# of Billed Entities			1				1	5	7		14
\$ 2nd Demand Letter and Red Light Issued							\$19,912	\$6,706	\$51,589		\$78,207
# of Billed Entities							1	2	2		5
\$ USAC Appeals Pending		\$96,125			\$33,944	\$460,555	\$162,723	\$1,155,448	\$588,237		\$2,497,032
# of Billed Entities		1			2	1	3	4	5		16
\$ FCC Appeals Outstanding	\$176,315	\$1,469,045	\$9,007,064	\$4,325,652	\$3,632,796	\$1,334,064	\$2,299,353	\$407,453	\$178,434		\$22,830,175
# of Billed Entities	3	12	16	5	7	4	1	6	1		54

The total number of audits performed includes audits that covered more than one year. These audits are reflected in each year's totals. The actual number of audits performed was 776. Under "Stages of Recovery" a particular recovery is shown only in its latest stage. For example, a recovery will not be shown in the "Notification Letter Issued" stage even though it has been through that stage as long as it has progressed to the subsequent stage.