Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Comprehensive Review of the Universal	)	
Service Fund Management, Administration,	)	WC Docket No. 05-195
and Oversight	)	

COMMENTS OF THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

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I. INTRODUCTION

The Universal Service Administrative Company (USAC) submits these Comments in response to the Federal Communications Commission's (FCC or Commission) invitation in the 2008 Notice of Inquiry[1] to refresh the record on a number of issues regarding Universal Service Fund (USF) management, administration, and oversight raised in the Commission's 2005 *Comprehensive Review NPRM* in this proceeding.[2] USAC's Board of Directors is pleased to have the opportunity to continue participating in the Commission's ongoing comprehensive review proceeding.[3] As the neutral administrator of the USF designated by the Commission, and as the entity called upon to implement any new USF management initiatives, USAC is uniquely positioned to comment on many of the issues raised in the *NOI*.

USAC is the private not-for-profit corporation that administers the USF and the universal service programs pursuant to the Commission's rules,[4] which implement

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[1] *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service*, WC Docket No. 05-195, Notice of Inquiry, FCC 08-189, (rel. September 12, 2008) (*NOI*).

[2] *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, 20 FCC Rcd 11308, 11312 (2005) (*Comprehensive Review NPRM*).

[3] On October 28, 2008, the USAC Board of Directors authorized the filing of comments and reply comments in this proceeding subject to review by the Board and approval by the Executive Committee of the Board. On November 10, 2008, the Executive Committee of the Board approved these comments and authorized management to file the comments on behalf of USAC.

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

section 254 of the Telecommunications Act of 1996 (the 1996 Act).[5] These programs provide support to companies that serve high-cost areas, low-income consumers, rural health care providers, and schools and libraries. USAC bills, collects and disburses all universal service funds, conducts outreach and education activities, and audits contributors and beneficiaries to ensure compliance with program rules. USAC is governed by a Board of Directors specified in Commission rules and selected by the FCC Chairman that is intended to represent USF stakeholders.[6] 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."[7] USAC, therefore, submits these Comments solely to refresh the record and address the administrative issues raised by the Commission in the *NOI*.

USAC strongly agrees with the Commission's statement that "[t]he importance and size of the USF demands constant scrutiny and assessment of the Commission's oversight efforts,"[8] and adds that USAC's administration of the USF is currently, and should continue to be, subject to the same degree of scrutiny and assessment. As it strives to continuously improve its performance, USAC fully supports the goals articulated in the *NOI*: strengthening the management, administration, and oversight of the USF; more clearly defining the goals of the USF; and identifying additional

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

[6] *See* 47 C.F.R. § 54.703(b).

[7] 47 C.F.R. § 54.702(d).

[8] *NOI* ¶ 2.

performance measures that may be necessary to ensure that the USF operates as Congress intended.[9]

Consistent with and building upon the record arising out of the 2005 *Comprehensive Review NPRM*, the Commission requests that commenters refresh the record and seeks comment on two broad areas: USF oversight and USF management and administration. With respect to oversight, the Commission seeks comment on measures to prevent improper payments and address error rates; to prevent waste, fraud, and abuse and promote compliance with Commission rules; to help the programs operate efficiently and effectively; whether there should be an independent audit requirement; and, whether different safeguards are necessary for each program (paragraph 19); whether additional rules are needed relating to document retention and enforcement (paragraph 21); and how to improve the Commission's oversight of USAC's procurement function (paragraph 33). With respect to management and administration, the Commission seeks comment on the administrative structure created by the Commission (paragraphs 23 and 32), on USAC's customer service (paragraph 24), on performance measures for the universal service programs and for USAC (paragraph 25), on internal controls for USAC and program participants (paragraphs 26 and 31), on the current procedure for seeking USF-related policy guidance from the Commission (paragraph 30), and on the application process for

[9] *See id.* ¶¶ 1-2.

each of the programs (paragraphs 34-35). The Commission directs commenters to consider the costs and benefits of their proposals (paragraph 27).[10]

As with the 2005 *Comprehensive Review NPRM*, USAC is eager to hear from the many USF stakeholders–USAC's customers–who will refresh the record in this proceeding, as well as those who will comment for the first time. USAC looks forward to their assessment of USAC's performance since 2005 and suggestions for improvement. With the benefit of their views, USAC hopes to work with the Commission to refine the USF administrative framework in a manner that ensures the promise of universal service embodied in the 1996 Act continues to be fulfilled.

II. BACKGROUND

While performing the program administrative responsibilities entrusted to it, USAC has worked diligently since its creation to ensure that the Commission is able to exercise effective oversight of USAC, the USF, and the universal service programs. The *NOI* highlights many of the significant steps the Commission has taken to increase its oversight of the USF since the initiation of the 2005 proceeding. These measures generally consist of codifying certain requirements, expanding the reach of Commission authority over program participants, and increasing Commission oversight and management of USAC's administration of the universal service programs.[11] USAC strongly supports all measures to promote and encourage effective oversight of USAC,

[10] The Commission also seeks comments on policy issues, including whether there is a need to more clearly define the goals of the programs (paragraphs 22, 28-29). USAC takes no position on these policy matters.

[11] *See NOI* ¶¶ 4-10.

the USF and the programs, and has worked closely with the Commission to implement the many new directives resulting from the Commission's attention to these important issues. USAC has responded to and executed quickly the administrative actions required by the Commission and its staff to facilitate oversight. USAC has fully and timely complied with new Commission regulations and orders and has implemented dozens of Commission staff directives and other guidance intended to increase efficiency, promote transparency and facilitate oversight.

Besides working to implement Commission directives, USAC has taken many steps on its own initiative to strengthen administration of the USF. These approaches emphasize customer service and outreach, program compliance, operational efficiencies, and technological advances. Since 2005, USAC has accomplished much in these areas and has improved its administration of the multi-billion dollar USF on behalf of the Commission, Congress and the public. USAC stands ready to continue to assist the Commission in its efforts going forward and to look for ways to improve its operations.

A. USAC Implementation of USF Program Changes and Commission Directives to Improve Management, Administration and Oversight

In the *NOI*, the Commission lists some recent steps it has taken to bolster USF oversight: (i) initiating the FCC Office of Inspector General (OIG) USF audit program; (ii) establishing a Memorandum of Understanding (MOU) with USAC; (iii) implementing performance measures and goals for the USF and USAC; (iv) promulgating new rules enhancing document retention requirements applicable to program participants; (v) suspending, debaring, or taking other enforcement action against bad actors; and (vi) initiating reform of the universal service programs.[12] Implementation of these steps has required intensive USAC involvement. USAC has also carried out many additional directives received from Commission staff concerning USF management, administration and oversight.

Implementation of the Commission's directives has entailed considerable administrative efforts and activity, often executed in short periods of time. Of the measures listed above, USAC's largest recent effort has been to implement the FCC OIG USF audit program, which began in 2006.[13] At the direction of the Commission's Inspector General, in Round 1 of the program USAC conducted 459 audits across all four universal service support programs as well as USF contributors. Round 2 of the FCC OIG USF audit program, which began in November 2007, expanded the number of audits to 650 covering the High Cost Program and the Schools and Libraries Program. USAC has not been provided with details regarding the full scope of Round 3, but it is anticipated to be comparable or larger in scale. Not only has USAC executed the audit program in accordance with the direction of the Inspector General, but also where audit results have necessitated seeking recovery of funds, USAC has initiated efforts pursuant to its duty as USF Administrator and consistent with Commission directives. USAC discusses the FCC OIG USF audit program in detail below.[14]

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[12] *See id.* ¶¶ 5-10.

[13] *See id.* ¶¶ 5, 12-18 for the Commission's discussion of the FCC OIG USF audit program.

[14] *See* section III.A below.

In the *NOI*, the Commission explains that its establishment of an MOU with USAC ensures greater clarity with respect to USAC's administrative and management functions.[15] In the 2005 *Comprehensive Review NPRM*, the FCC requested comments as to whether an MOU should be executed between the Commission and USAC for USAC's administration of the USF and the universal service support mechanisms. USAC commented that an MOU may be useful to clarify the "mutual expectations" of the parties.[16] Although the Commission has not to date issued an order on this question, in March 2006, USAC was informed that the Commission wished to enter into an MOU with USAC. The initial MOU was signed in June 2007. As the Commission explained in the *NOI*, the MOU among other things "established reporting requirements of key performance measurement data to the Commission, instructed the Administrator to take corrective action on all audit findings including recovery of all funds identified as improperly disbursed, and directed the Administrator to maintain effective internal controls over its operations."[17] The MOU also codified certain existing Commission staff directives regarding procurement and other matters.

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[15] *See NOI* ¶ 6; *see also* Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company (June 4, 2007) (2007 MOU); Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company (September 9, 2008) (MOU). Note that except where otherwise specified references to the "MOU" in these comments are to the September 9, 2008 MOU currently in effect.

[16] In its comments on the 2005 *Comprehensive Review NPRM*, USAC suggested that an MOU 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." *See* Comments of Universal Service Administrative Company at 50 (filed Oct. 18, 2005) (*USAC Comprehensive Review NPRM Comments*).

[17] *NOI* ¶ 6.

After the one-year term of the initial MOU expired, the Commission established a revised MOU. This four-year MOU went into effect in September 2008 subject to revision or termination by the Commission. The current MOU contains additional performance reporting obligations; expands application of the Federal Acquisition Regulation (FAR) to USAC procurements; mandates notification to Commission staff before conducting training sessions and attending speaking engagements; requires Commission staff approval before USAC makes substantive changes to its website and before exercising options in contracts; and memorializes recent staff directives regarding customer service, complaint reporting, and procurement. USAC is working to implement the new provisions of the MOU to the fullest extent possible.

USAC's relationship with the Commission is unique. USAC was created at the direction of the Commission, and is required by federal regulation to administer the universal service programs in an efficient, fair and competitively neutral manner.[18] The Commission exercises direct control over USAC in a variety of ways.[19] The Chairman of the FCC selects USAC's Board of Directors and approves the selection by the USAC

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[18] *See* 47 C.F.R. §§ 54.701(a); 54.702(c) (USAC "may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress.").

[19] *See, e.g.,* 47 C.F.R. § 54.702(g) (USAC is required to file an annual report with the Congress and the Commission); 47 C.F.R. § 702(h) (USAC is required to provide the Commission with quarterly reports on the disbursement of universal service funds); 47 C.F.R. § 54.702(j) (USAC is required to provide the Commission with full access to data collected pursuant to USAC's administration of the federal universal service programs); 47 C.F.R. § 54.702(l) (USAC is required to make available to whomever the Commission directs, free of charge, any and all intellectual property including all records and information generated as a result of USAC's administration of the programs.); 47 C.F.R. § 54.702(o) (USAC is required to provide the Commission with any performance measurements requested.); 47 C.F.R. §§ 54.703-.704 (specifying the duties of the Board of Directors and the Chief Executive Officer).

Board of the Chief Executive Officer.[20] USAC's administration of the programs is closely regulated by Commission rules and orders.[21] Each MOU established by the Commission memorialized existing Commission staff directives and contained new directives. In entering into each MOU, USAC assured the Commission of its commitment to comply with those directives to the fullest extent possible. As discussed in more detail below, however, certain procurement-related matters, some of which are raised in the *NOI*, raise legal, practical, and cost-benefit questions that could create unintended consequences.[22]

The MOU and the August 2007 *Comprehensive Review Order*[23] require USAC to report a host of performance measurement data on a quarterly basis. Also, as has been USAC's historical practice, USAC provides performance measurement and other information in response to frequent ad hoc requests from the Commission. USAC strongly supports gathering data to measure the performance of the programs, and to track its performance as USF administrator. USAC comments in greater detail on performance measurement reporting below.[24]

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[20] *See* 47 C.F.R. §§ 54.703-704.

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

[22] See section III.J below.

[23] *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, 22 FCC Rcd 16372 (2007) (*Comprehensive Review Order*).

[24] *See* section III.E below.

USAC applauds the Commission's expansion of the Schools and Libraries Program debarment rules to all programs in the *Comprehensive Review Order*.[25] This important penalty also serves as a deterrent to other participants who would seek to defraud the USF.[26] USAC suggests additional triggers below for debarment of program participants that would further enhance protecting the USF from waste, fraud, and abuse.[27] USAC also welcomes the Commission's expansion and clarification of document retention requirements.[28] In its comments below, USAC suggests the Commission clarify certain aspects of its document retention rules based on USAC's administrative experience as well as the results of the FCC OIG USF audit program.[29] USAC expects that over time these rules will result in higher program compliance rates, fewer improper payments, and a reduced need to seek recovery of funds.

In addition to these measures, the Commission has called upon USAC to implement many significant changes to the programs, and to the collection of USF contributions, since 2005. These changes required USAC to develop and implement new procedures, reprogram and repurpose automated systems, retrain staff, conduct outreach and education to program participants, and execute many other administrative activities.

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[25] *See Comprehensive Review Order*, 22 FCC Rcd at 16386-16388 (expansion of debarment rules to all programs).

[26] *See USAC Comprehensive Review NPRM Comments* at 261-63, 266-69 (discussing expansion of debarment rules).

[27] *See* section III.B.2 below.

[28] *See Comprehensive Review Order*, 22 FCC Rcd at 16383-85 (discussing application of document retention rules to all programs).

[29] *See* section III.B below.

The new Rural Health Care Pilot Program, extensive changes in Schools and Libraries Program administration, and the addition of Voice over Internet Protocol to the USF contribution base are examples of such major changes, all of which required quick administrative action by USAC in close coordination with the Commission. USAC's implementation of these changes is discussed in more detail below.[30]

B. USAC Initiatives and Results Since 2005

At the same time USAC was called upon to implement the wide range of Commission orders and directives discussed above, USAC has taken many steps on its own initiative to enhance customer service, improve operational effectiveness, and expand outreach and training activities. These measures have already paid substantial dividends and USAC anticipates additional positive outcomes, including reduced improper payment rates, in the near future. Below are some highlights in each program area and for USF contributors.

High Cost and Low Income Programs. USAC has taken many steps to improve customer service and promote program compliance in the High Cost and Low Income Programs, including the following:

- Developed online FCC Form 525 filing capabilities for Competitive Eligible Telecommunications Carriers (CETCs).[31] Online filing reduces the need for

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[30] *See* pages 11-17 below.

[31] *See* FCC Form 525, High Cost Support Mechanism, Competitive Carrier Line Count Report, OMB 3060-0986 (January 2005) (*FCC Form 525*).

manual data entry and improves accuracy of data filed by requiring automated data validations during data entry.[32]

- Developed Interstate Access Support (IAS) beneficiary statements to facilitate better understanding of payment calculations.

- Provided an online disbursement tool to enable carriers to review monthly program disbursements.[33]

- Provided an online filing deadlines tool to enable carriers to determine deadlines by program component and type of carrier.[34]

- Posted on the USAC website "Recommended Documents to Retain" guidance to help beneficiaries comply with document retention requirements.[35]

- Improved www.lifelinesupport.org, USAC's consumer-oriented website, which provides information on Lifeline eligibility and the application process. In 2007, USAC automated the process whereby Eligible Telecommunications Carriers (ETCs) submit Lifeline enrollment information on the website.[36] As a result of aggressive USAC outreach efforts, more than 875 ETCs now have consumer-oriented information posted online.

- Translated the consumer-oriented pages of the Low Income Program portion of the USAC website into Spanish.[37]

In addition to these customer service improvements, USAC substantially increased outreach efforts to High Cost and Low Income Program participants. Examples include:

- In 2008, USAC began a series of training sessions focused on providing ETCs, CETCs, consultants and counsel with detailed instruction on program rules and procedures.[38]

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[32] *See* https://forms.universalservice.org/usaclogin/login.asp.

[33] *See* http://www.usac.org/hc/tools/disbursements/default.aspx.

[34] *See* http://www.usac.org/hc/tools/filing-tool/default.aspx.

[35] *See* http://www.usac.org/hc/about/understanding-audits.aspx.

[36] *See* http://www.usac.org/li/telecom/step05/advertise.aspx.

[37] *See* http://www.usac.org/li/low-income-es/.

- USAC has conducted 127 site visits to High Cost Program beneficiaries and 50 Low Income Program site visits since 2006. The site visits provide USAC with valuable feedback regarding methods to improve the USF program and to identify best practices for use by other USF program participants.[39]

- USAC has published monthly newsletters for the High Cost and Low Income Programs since March 2006 on its website, and sends the newsletter to nearly 2,000 electronic recipients each month.[40]

- USAC has conducted an annual Lifeline participation rate study since 2006. USAC has used the results to target outreach to states that are found to have program participation rates under 10%.

Finally, USAC has taken numerous steps to improve its operational effectiveness and internal controls over the High Cost and Low Income Programs. Enhancements to information technology systems that enable verification of data submitted by the more than 1,400 ETCs that receive Local Switching Support are an example. Further systems improvements are in development and should be deployed by mid-2009.

Rural Health Care Program. The Rural Health Care Program has grown more than 30% since 2006, not including the new Rural Health Care Pilot Program. USAC welcomes increased participation in the program, and as administrator has maintained operational efficiency and met processing standards even though there has been a significant increase in the number of program participants. In the area of outreach, since 2006 USAC has conducted 100 site visits to rural health care providers to observe USF support in use, assess USAC's outreach and education efforts, and observe best practices

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[38] Information about training opportunities and training materials are at the USAC website at http://www.usac.org/li/tools/tips-best-practices.aspx.

[39] *See* http://www.usac.org/li/about/site-visits/default.aspx.

[40] Newsletters are also archived at the USAC website at http://www.usac.org/about/resource-room/newsletters/hcli-monthly-newsletters.aspx.

in the field. The site visits provide USAC with valuable feedback. Additionally, USAC has expanded its participation at stakeholder events such as telehealth conferences, and issued the first Rural Health Care Program newsletter in April 2007.[41]

Schools and Libraries Program. USAC has substantially improved Schools and Libraries Program operations since 2006. Operational improvements have led to tangible improvements for program participants, including the following:

- Earlier funding decisions–USAC issued more funding commitment decisions before September 1 of the funding year than in previous years. For Funding Year 2007, USAC issued $1.2 billion in funding commitment decisions by September 1 compared to $627 million for Funding Year 2006.

- Clearer funding decisions–USAC provides more detailed information to applicants in its funding commitment decision letters.

- Faster payments–USAC reduced invoice processing time to five days for over 95% of submitted items.

- Improved appeals processing–As a result of Commission orders requiring administrative changes as discussed more fully below,[42] there have been fewer funding denials, resulting in fewer appeals to USAC. USAC received 3,813 appeals in 2006; 2,618 in 2007; and 944 through September 30, 2008. The average number of appeals in process has gone from 1,250 in 2006 to 172 in 2008. USAC now decides 86% of all appeals within 90 days and has reduced the average appeal processing time from 103 days to 87 days since 2006.

- Improved call center performance–Since February 2007, 93% of customer inquiries are resolved on first contact with the customer. The average resolution on first contact during the preceding 12 months was 87%.

Additionally, USAC has implemented the following technological improvements to enhance customer service:

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[41] Newsletters are archived at the USAC website at http://www.usac.org/rhc/tools/newsletter/default.aspx.

[42] *See* pages 49-50 below.

- For Funding Year 2006, USAC revised the online FCC Form 471[43] "Item 21 attachment" which describes the services for which applicants are seeking funding. These revisions dramatically improved applicant acceptance. Usage has grown from 114 attachments submitted online in Funding Year 2005 to 43,562 in Funding Year 2006 with increased participation each year. Using the online Item 21 attachment simplifies the application process for many applicants and enables USAC to review applications more quickly.[44]

- In November 2006, USAC launched the online FCC Form 472.[45] The form is designed to help applicants avoid data entry errors, enables USAC to process the forms more quickly, resulting in quicker reimbursements to applicants.[46]

- Also in November 2006, USAC launched the automated Two-in-Five tool on the USAC website. This tool helps participants determine their eligibility to receive internal connections funding in a given year consistent with Commission requirements.[47]

USAC has also expanded its outreach, training and education activities in the Schools and Libraries Program. Highlights include:

- In January 2007, USAC launched the Helping Applicants to Succeed (HATS) site visit program to provide targeted support to large and small applicants who have experienced difficulty in successfully participating in the program and/or who have had audit findings.[48] More recently, USAC initiated "super-HATS" visits where senior program staff work directly with applicants who have particularly complex issues.

- USAC significantly expanded training opportunities and has conducted seven annual applicant training sessions across the country each fall beginning in

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

[44] *See* http://www.slforms.universalservice.org/mfpin/EPDPublic/_item21/frmBenAppNumRequest.aspx.

[45] Universal Service for Schools and Libraries, Billed Entity Applicant Reimbursement Form, OMB, 3060-0856 (April 2007) (FCC Form 472).

[46] *See* https://www2.sl.universalservice.org/bear/Default.aspx.

[47] *See* http://www.usac.org/sl/tools/search-tools/two-in-five-tool.aspx.

[48] Information about the HATS Program is located at the USAC website at http://www.usac.org/sl/about/hats/hats-overview.aspx.

2006. These training sessions reach more than 1,500 program participants every year.[49]

- USAC initiated holding two annual service provider training sessions and in 2007 held a service provider summit to discuss issues directly with the service provider community.[50]

- USAC created a template for an "E-Rate Binder" with a list of required documentation to help applicants comply with the Commission's document retention requirements and to prepare for audits.[51]

- USAC refined and added content to the Schools and Libraries weekly News Briefs, which currently reach more than 22,000 program stakeholders.[52]

USF Contributors. USAC has made numerous improvements to its revenue reporting, billing, and collection systems. For example, USAC implemented electronic bulk certification for FCC Form 499-Q, which allows a single user to certify and upload multiple forms at the same time. USAC has improved both the speed and accuracy of its processing of FCC Form 499-A by deploying a new system to conduct a number of automated checks of the data reported on the form. USAC answers customer calls in a timely manner and connects customers to the right staff for support. The call abandon rate has steadily decreased, from 2.9% in 2006, to 2.2% in 2007, to .87% through September 30, 2008.

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[49] All training presentations are posted on the USAC website at http://www.usac.org/sl/about/training-presentations/; http://www.usac.org/sl/about/training-presentations/training-presentations-archive/.

[50] *See id.*

[51] This is located in the Checklists and Samples portion of the Reference Area of the Schools and Libraries Program page of the USAC website at http://www.usac.org/sl/about/training-presentations/training-presentations-archive/.

[52] News Briefs are also archived at the USAC website at http://www.usac.org/sl/tools/news-briefs/Default.aspx.

To summarize, in addition to implementing the FCC OIG USF audit program, the requirements of the MOUs and the August 2007 *Comprehensive Review Order*, USAC has implemented many significant staff directives establishing new USAC administrative, operational and reporting responsibilities. USAC has made every effort to fully and timely comply with all applicable statutes, regulations, orders, directives, and other guidance. In addition, as evidence of USAC's commitment to continuous improvement, USAC has taken many steps on its own initiative to enhance customer service, improve operational effectiveness, and expand its outreach and training activities to further promote program compliance.

In its comments below, USAC discusses the issues raised by the Commission in the order in which they are presented in the *NOI*.

III. DISCUSSION

A. FCC Office of Inspector General USF Audit Program

1. USAC Implementation of Round 1 of the FCC OIG USF Audit Program

In assessing ways to further strengthen USF management, administration, and oversight, the *NOI* states that the Commission intends "to build upon the comprehensive audit oversight conducted by the Commission's Inspector General."[53] USAC administered the audit program at the direction of the Inspector General, and is therefore

[53] *NOI* ¶ 1. Paragraphs 12-18 of the *NOI* provide a summary of the findings of the first round of audits, and the Commission refers to the audit results elsewhere in the *NOI*.

uniquely positioned to provide additional insight regarding the conduct of the audit program, its outcomes, and lessons learned.

Beginning in 2006, at the direction of the Inspector General, USAC initiated a large-scale audit program of USF contributors and beneficiaries consisting of 459 audits across all USF programs covering activities from 2005. To execute the program, USAC contracted through a competitive bidding process with 13 independent audit firms at a cost of $27.5 million, deployed a seven-person project management team, and utilized the 16-person USAC Internal Audit Division as well as other USAC and contractor staff. Completing this unprecedented program within the timeframe and operational parameters specified by the Inspector General was a significant accomplishment. USAC appreciates the high degree of cooperation by the vast majority of program participants audited as part of this effort and is aware that the audits required expenditure of considerable resources on the part of the auditees and the Commission.

The first round of the FCC OIG USF audit program completed in 2007 generated valuable information that both confirmed and increased FCC and USAC understanding of program administration and participant actions. The Inspector General stated that "[i]n general, the audits indicated compliance with the Commission's rules, although erroneous payments exceeded 9% in most USF program segments."[54] The audits identified only a single instance of an improper payment resulting from a USAC error–a $490 underpayment in the Schools and Libraries Program–a result consistent with the clean

[54] News Release, "Inspector General Releases Statistical Analyses of Audits of Universal Service Fund" (October 3, 2007)(*FCC OIG October 3 News Release*).

audit opinions USAC has received since its formation.[55] Where non-compliance was identified, the vast majority–92%–was due to reasons within the control of program participants. USAC provided its analysis of the FCC OIG USF audit results and set forth additional steps USAC could take to prevent or reduce improper payments.[56] Although USAC continues to take steps to assess and improve its internal control environment, USAC's efforts to reduce improper payments focus on enhanced education, outreach, and training to assist program participants to achieve greater compliance.

Although the number of payments deemed "improper" placed several programs "at risk" within the meaning of the Improper Payments Information Act of 2002 (IPIA),[57] the first round of the FCC OIG USF audit program also indicated that both the USF rules structure and program administration generally function well. The audit results also suggest that greater attention and effort are required in educating program participants about USF program requirements and procedures, and in providing support throughout participants' experiences with USF programs.

a. The IPIA and Round 1 of the FCC OIG USF Audit Program

Placing the "improper payment" results reported in Round 1 of the FCC OIG USF audit program in context requires an understanding of the purpose of the IPIA. The IPIA

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[55] *See* pages 75-76 below.

[56] *See* Universal Service Administrative Company Report on the Federal Communications Commission Office of Inspector General 2006-07 Universal Service Fund Audit Program (Dec. 31, 2007) (*USAC Round 1 Audit Program Report*)*;* Letter from D. Scott Barash, Acting Chief Executive Officer, USAC to Anthony Dale, Managing Director, FCC (Feb. 28, 2008) (*USAC Feb. 28 Letter*). USAC provides further detail regarding the findings based on these reports in Appendix A to these comments.

[57] 31 U.S.C. § 3321.

is part of a series of laws "aimed at improving the integrity of the government's payments and the efficiency of its programs and activities."[58] Implementation guidance issued by the Office of Management and Budget (OMB) counsels federal agencies to cast a wide net in gathering information about and identifying "erroneous payments," defined as:

> any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. Incorrect amounts are overpayments and underpayments…. In addition, when an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment must be considered an error.[59]

In other words, a payment can be "erroneous" (or "improper") if a program participant fails to comply with a rule that is part of the overall regulatory scheme of the program, even if the failure to comply does not directly influence the size, timing, or nature of a specific payment itself. Moreover, this standard casts as "improper" any payments where it cannot be determined with sufficient certainty whether the recipient complied fully with applicable administrative processes, even if the process in question might have nothing to do with the amount or fact of the payment itself.

For example, the 459 audits comprising Round 1 of the OIG USF audit program found "erroneous payments" as defined by the IPIA totaling $97,742,055. However, of this total, only $8,131,498, or 8.3%, has been deemed potentially recoverable from USF

[58] Office of Management and Budget, Memorandum for Heads of Executive Departments and Agencies: Issuance of Appendix C to OMB Circular A-123, Requirements for Effective Measurement and Remediation of Improper Payments (Aug. 10, 2006) (*OMB IPIA Memorandum*).

[59] *OMB IPIA Memorandum* at 2.

program participants.[60] This difference between "improper" and recoverable payments illustrates that the IPIA and its implementation guidance are designed to serve as tools for improving the oversight and administration of federal programs.

The FCC OIG USF audit program gathered data regarding the actual causes underlying payments deemed "erroneous" (or "improper") for IPIA purposes. The FCC Inspector General reported that, among the 459 audits, auditors identified and categorized 1,340 causes for the erroneous payments.[61] Of these 1,340 causes, 1,236 (92.2%) lay in areas under program participant control, 59 (4.4%) in areas under FCC control, and 26 (1.9%) under USAC control.[62] And as noted above, only one of these USAC causes related to an actual payment; the remaining 25 were procedural errors, 23 of which originated in a rule no longer in effect.[63] Finally, 19 (1.4%) lay outside the control of any of these three program actors.[64] The auditors determined that more than 70% of the payments (or contributions) deemed "improper" were due to four causes: (i) Inadequate Auditee Processes and/or Policies and Procedures (26.4%); (ii) Applicant/Auditee Weak

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[60] Dollar figures associated with audits come from the March 2008 Semi-Annual Report of the FCC OIG, October 1, 2007 to March 31, 2008 (*March 2008 Semi-Annual OIG Report*), the *USAC Round 1 Audit Program Report*, and analyses of audit data performed by USAC and the contracted audit firms.

[61] To gather as complete an understanding as possible to improve the oversight and administration of the programs, more than one cause could be attributed to each instance of an improper payment.

[62] *See USAC Round 1 Audit Program Report* at 7-8.

[63] *See id*.

[64] *See id.*

Internal Controls (21.5%); (iii) Inadequate Document Retention (11.6%); (iv) Inadequate Systems for Collecting, Reporting and/or Monitoring Data (11.1%).[65]

All of these areas are under program participant control; none are under USAC control at the time it reviews requests for payments or disburses funds. As the Commission recognizes,[66] these findings provide clear direction of where to target further education and outreach for USF program participants as well as providing more support throughout participants' experiences with the programs. Indeed, as discussed below, USAC has incorporated these results into the wide range of education and outreach it conducts and has recently undertaken new activities to specifically respond to these findings.[67]

b. Ways to Reduce or Prevent Improper Payments

The numerous beneficiary and contributor audits conducted by USAC prior to implementation of the FCC OIG USF audit program have shaped USAC operations, information technology systems, the USAC website, and USAC outreach efforts. The results of the FCC OIG USF audit program provided more detailed information and helped USAC formulate a wide-ranging set of initiatives designed to prevent or reduce improper payments.[68] These initiatives emerge from the findings of the FCC OIG USF audit program as well as many other exchanges with program participants.

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[65] *See id.*

[66] *See NOI* ¶ 18.

[67] *See also* pages 11-16 above.

[68] *See USAC Feb. 28 Letter.*

USAC has initiated measures in four primary areas: oversight and management, audits, information technology, and outreach. The initiatives fall into these general areas:

- Oversight and management
  - Conform USAC internal controls with best practices defined in OMB Circular A-123[69]
  - Gather additional kinds of data to enhance certainty and accuracy of collections and disbursements
- Audits
  - Employ alternative procedures or methodologies to reduce the number of qualified and disclaimed audit opinions
  - Increase follow-up audit activities
- Information technology
  - Modernize systems in all four programs and USF collections
  - Enhance data mining capacities
- Outreach
  - Increase volume and intensity of in-person education activities
  - Enhance and expand online learning resources

Commission staff has directed USAC to report quarterly on measures taken to reduce improper payments, along with the expenses associated with these measures.[70] In addition, the USAC Annual Report will include updates on measures undertaken to reduce improper payments. USAC welcomes the emphasis on program compliance that all of these efforts represent.

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[69] *See* Office of Management and Budget (OMB) Circular A-123, Management's Responsibility for Internal Control (*Circular A-123*).

[70] Letter from Anthony Dale, FCC Managing Director, to Scott Barash, USAC Acting Chief Executive Officer (Aug. 18, 2008).

2. USAC Implementation of Round 2 of the FCC OIG USF Audit Program

In November 2007, the Commission's Inspector General directed USAC to conduct a second round of 650 audits.[71] Although substantially larger than Round 1, Round 2 of the FCC OIG USF audit program was limited to Schools and Libraries Program and High Cost Program beneficiaries. This program required 11 audit firms, selected after a competitive bidding process and approved by the FCC Inspector General and Managing Director, to conduct the audits, with an estimated total cost in direct contract expenditures of $92.8 million from the USF, including actual costs to date and projections of future costs to complete the work.[72] In comparison to Round 1, the shortened schedule and added volume of work forced USAC and the audit firms to compress activities related to training, preparation, field work, and reporting into less time. The data was reported in compliance with the deadline established by the FCC Inspector General.

USAC believes the results will further substantiate the findings of Round 1. Preliminary results indicate, for example, that out of 260 Schools and Libraries Program audits, zero cited any "USAC error" causes in relation to improper payments. Of the 390 High Cost program audits, 11 "USAC error" causes have been cited to date in relation to improper payments, resulting in a total of 0.68% of all improper payments identified in all audits. As with Round 1, therefore, Round 2 audit results show that the vast majority

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[71] *See NOI* ¶ 5.

[72] The USF audit program costs incurred by USAC do not include the $21.48 million USAC was directed to transfer to the FCC in fiscal year 2008 for USF oversight purposes. *See NOI* ¶ 20.

of improper payments are due to matters under the control of program participants. Again, this suggests aggressive outreach, training and education will be the most effective ways to reduce or prevent improper payments in the future.

3. USAC Implementation of Round 3 of the FCC OIG USF Audit Program

At the direction of the FCC Inspector General, USAC has initiated a third round of the FCC OIG USF audit program. The full scope of this round is still being defined. Drawing on lessons learned during the first two rounds, USAC and the OIG have taken measures to ensure auditors are fully qualified and appropriately trained. USAC and OIG staff members have impressed upon auditors the need to operate with awareness of the burdens that these audits can pose for auditees, whether small or rural companies with few resources to spare, schools or libraries more urgently occupied with students and patrons, and health care providers concerned with caring for patients. On all fronts, USAC will continue to work on behalf of the varied USF constituencies to ensure that audits serve a meaningful, useful role in safeguarding the integrity of the USF and promoting program awareness and compliance.

B. Additional Document Retention and Enforcement Rules

In paragraph 21 of the *NOI*, the Commission seeks comment on whether it should establish additional rules pertaining to document retention and enforcement. The Commission notes that in its August 2007 *Comprehensive Review Order*–the initial order arising out of the rulemaking proceeding initiated in 2005–it adopted specific document retention rules for each USF mechanism. Noting that most problems identified in the results of the FCC OIG USF audit program relate to the lack of documentation by program participants, the *NOI* seeks comment on whether additional steps related to document retention should be taken in order to help verify that Universal Service Funds are used for their intended purposes, and if so, what steps should be taken. In addition, the Commission seeks comment on whether it should "embrace additional enforcement methods, or adopt additional enforcement rules, to address these issues and, if so, what should they be."[73]

1. Document Retention

USAC's analysis confirms the Commission's conclusion that the majority of the issues identified as a result of the FCC OIG USF audit program are the result of program participants' inability to provide sufficient documentation regarding the payment being audited to enable the auditors to render opinions under the compliance attestation methodology required by the Inspector General. Documentation is necessary to enable participants to demonstrate compliance with Commission rules and/or to allow the audit firms to render an opinion. Failure to retain documentation sufficient for those purposes, therefore, does not necessarily mean a lack of compliance with those rules; rather, it means that documentation retained by the auditee was deemed insufficient for purposes of the audit. Indeed, the FCC OIG reported that compliance rates for each program were high in the first round of the audit program.[74]

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[73] *NOI* ¶ 21.

[74] *See* Federal Communications Commission Office of Inspector General, High Cost Program, Initial Statistical Analysis of Data from the 2006/2007 Compliance Audits at 27 (October 3, 2007); Federal

USAC applauds the Commission's adoption of document retention requirements for each of the universal service programs and for contributors in the *Comprehensive Review Order*. In its comments to the 2005 *Comprehensive Review NPRM*, USAC suggested that the Commission establish record retention requirements for important documents concerning all of the universal service support programs as well as USF contributors in order to improve compliance with Commission rules and USAC's ability to assess such compliance. USAC suggested that the types of records and period of time for which records must be retained should depend on the particular program requirements.[75] A major component of USAC's efforts to prevent and reduce improper payments centers on beneficiary education and outreach. USAC provides program participants guidance on appropriate document retention procedures and clarifying for program participants exactly what documentation must be retained through these efforts. USAC plans to monitor the impact these new rules and USAC's education and communications efforts have on audit results on a going forward basis. USAC provides specific comments on document retention issues regarding each program below.

Communications Commission Office of Inspector General, Low Income Program, Initial Statistical Analysis of Data from the 2006/2007 Compliance Audits at 19 (October 3, 2007); Federal Communications Commission Office of Inspector General, Rural Health Care Program, Initial Statistical Analysis of Data from the 2006/2007 Compliance Audits at 18 (October 3, 2007); Federal Communications Commission Office of Inspector General, Schools and Libraries Program, Initial Statistical Analysis of Data from the 2006/2007 Compliance Audits at 23 (October 3, 2007); *see also* FCC OIG October 3 News Release.

[75] *See USAC Comprehensive Review NPRM Comments* at 228-33, Reply Comments of the Universal Service Administrative Company at 94-97 (filed December 9, 2005) (*USAC Comprehensive Review NPRM Reply Comments*).

a. High Cost Program

With respect to the compliance attestation audits currently being conducted under the FCC OIG USF audit program, one of the documentation-driven issues the independent auditors have encountered is that this type of audit may require the auditors to review documentation pertaining to periods of time longer than the five-year retention period the Commission established in its August 2007 *Comprehensive Review Order*. For example, the audit may concern a disbursement USAC made in 2008 based on a form completed in 2006. In order to perform the audit, the auditor may need to verify the cost of an asset that was purchased in 2000. Even assuming that the carrier retained documentation it was not required to retain prior to the *Comprehensive Review Order*, under current rules, the carrier would not be required to retain documentation related to the cost of the asset purchased, for example, in 2000, or even earlier. To address this issue, USAC reiterates its suggestion in its comments to the 2005 *Comprehensive Review NPRM*, that carriers "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."[76]

b. Low Income Program

The *Comprehensive Review Order*, as well as the *NOI*, states that eligible telecommunications carriers are required to retain documentation for as long as a

[76] *USAC Comprehensive Review NPRM Comments* at 229.

recipient receives Lifeline plus three additional years.[77] However, the rule as codified does not include the additional three-year retention requirement.[78] Consequently, USAC suggests that the Commission clarify whether the additional three-year requirement is meant to be part of the codified rule.

c. Rural Health Care Program

The inability to provide complete billing records during audits has been an issue for some Rural Health Care Program applicants undergoing the FCC OIG USF audits. However, USAC does not believe that additional certifications or forms would address this issue because of the particular circumstances of participants in the program. Rather, USAC believes that outreach and training regarding the impact of the failure to retain records or otherwise comply with certifications is the most effective means of ensuring compliance with the Commission's document retention requirements.

d. Schools and Libraries Program

USAC welcomed the Commission's establishment of a five-year document retention requirement in the *Schools and Libraries Fifth Order.*[79] Based on the results of the FCC OIG USF audit program to date, USAC does not believe additional document retention requirements are necessary at this time for participants in the Schools and Libraries Program.

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[77] *See Comprehensive Review Order* 22 FCC Rcd at 16382-16385; *NOI* ¶ 21.

[78] *See* 47 C.F.R. § 54.417(a) (requiring maintenance of records for the three full preceding calendar years and requiring carriers to retain documentation for as long as the customer receives Lifeline service from the ETC or until audited by the Administrator).

[79] *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15823-27 (2004) (*Schools and Libraries Fifth Order*).

e. USF Contributors

In the August 2007 *Comprehensive Review Order*, the Commission codified the document retention requirements that apply to USF contributors at 47 C.F.R. § 54.706(e) as follows:

> Any entity required to contribute to the federal universal service support mechanisms shall retain, for at least five years from the date of the contribution, all records that may be required to demonstrate to auditors that the contributions made were in compliance with the Commission's universal service rules. These records shall include without limitation the following: financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation. This document retention requirement also applies to any contractor or consultant working on behalf of the contributor.

USAC recommends that the Commission clarify that "five years from the date of the contribution" means from the filing due date of the form. So, for example, records related to the April 1, 2008 FCC Form 499-A, which reports 2007 revenue, should be maintained until at least March 31, 2013. USAC also recommends clarifying that "other relevant documentation" includes support for safe harbor percentages.

2. Additional Enforcement Rules or Methods

USAC applauds the Commission's expansion of the scope of debarment to all of the USF programs in its August 2007 *Comprehensive Review Order*. In paragraph 21 of the *NOI*, the Commission seeks comment on whether it should embrace additional enforcement methods, or adopt additional enforcement rules, to address these issues and, if so, what they should be.

a. High Cost and Low Income Programs

The FCC OIG USF audit program has resulted in findings based on violations of FCC rules by ETCs in certain Study Area Codes (SACs). Where appropriate, USAC seeks recovery of funds based on audit findings. However, USAC's recovery is limited to the scope of the particular audit. USAC is unable to take action at the corporate level regarding an ETC. USAC is concerned that if an ETC is violating FCC rules in one SAC, the ETC may be violating rules in other SACs. Short of auditing each SAC associated with the ETC, however, USAC lacks the ability to verify whether the ETC is in compliance in the other SACs in which it operates. In light of this issue, USAC suggests that the Commission consider an appropriate enforcement method that would essentially shift the burden to the company associated with an audit finding to prove that the company is in compliance with Commission rules in other SACs. For example, USAC could require the company to submit underlying documentation regarding the other SACs where the ETC receives support. USAC would then conduct a "desk audit" or other appropriate review of the documentation. Enabling USAC to withhold support until the company could prove that it is in compliance would strengthen this process considerably. This proposal is analogous to the "non-compliant auditee" process currently used in the Schools and Libraries Program.[80]

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[80] See *USAC Comprehensive Review NPRM Comments* at 226 for a description of the non-compliant auditee process in the Schools and Libraries Program.

b. Rural Health Care and Schools and Libraries Programs

In its comments to the *Comprehensive Review NPRM*, USAC suggested expanding the current scope of the FCC's suspension and debarment regulations.[81] USAC suggested that the standard for triggering suspension and debarment should be "a pattern of rule violations demonstrating a substantial pattern of misconduct."[82] USAC reiterates these comments and refreshes the record as follows:

Beginning with the *Bishop Perry Order*[83] in May 2006, the Commission issued a series of orders clarifying Commission rules and in some instances waiving rules otherwise applicable to participants in the Schools and Libraries program.[84] The *Bishop*

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[81] *USAC Comprehensive Review NPRM Comments* at 262.

[82] *Id.* at 263 (suggesting the following triggers: (i) Service provider that pays applicant's non-discounted share of the cost of goods and services; (ii) Applicant that did not pay its non-discounted share; (iii) Service provider that submitted FCC Form 470 on behalf of an applicant; (iv) Service provider that provided an RFP for an applicant's use; (v) Service provider found to have unfairly influenced the competitive bidding process; (vi) Egregious "Gold plating" activity associated with either applicants or service providers; (vii) USAC invoiced but services not delivered; USAC invoiced, but services not installed at the time USAC was invoiced; (viii) Non-compliant auditee failure to respond in a timely manner to the non-compliant auditee letter; and (ix) Consultant acting in fact as a service provider or service provider representative without disclosure).

[83] *See Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Mechanism,* File Nos. SLD-487170, et al., CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) *(Bishop Perry Order).*

[84] *See e.g., Request for Review of the Decision of the Universal Service Administrator by Academy of Careers and Technologies, et al., Schools and Libraries Universal Service Mechanism,* File Nos. SLD-418938, et al., CC Docket No. 02-6, Order, 21 FCC Rcd 5348 (2006) (clarifying the Commission's competitive bidding rules); *Request for Review of the Decision of the Universal Service Administrator by South Carolina Division of the Chief Information Office, Schools and Libraries Universal Service Mechanism*, File Nos. SLD-441106, CC Docket No. 02-6, Order, 21 FCC Rcd 5987 (2006) (clarifying the Commission's requirements pertaining to Letters of Agency); *Request for Review of the Decision of the Universal Service Administrator by Alaska Gateway School District, et al., Schools and Libraries Universal Service Mechanism,* File Nos. SLD-412028, et al., CC Docket No. 02-6, Order, 21 FCC Rcd 10182 (2006) (waiving the FCC Form 486 deadline); *Request for Review of the Decision of the Universal Service Administrator by Macomb Intermediate School District, Schools and Libraries Universal Service Mechanism,* File Nos. SLD-441910, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 8771 (2007)

Perry Order established a significant distinction under which program participants are able to cure ministerial and clerical errors on certain program forms and thereby avoid funding denials based on procedural grounds.[85] This series of orders has further served to elaborate the distinction the Commission set forth in the *Schools and Libraries Fifth Order* between rules that implement the 1996 Act or a substantive program goal as distinguished from procedural rules codified to enhance operation of the program.[86] Thus, USAC proposes that the standard for recommending debarment to the FCC would be a pattern of substantive rule violations demonstrating a substantial pattern of misconduct. USAC believes that expanding the scope of the Commission's debarment rules would result in an appropriate penalty for those participants who engage in systematic abuse of the program, would deter others from similar behavior, and could make more funds available to deserving participants by decreasing USAC's administrative costs to review the applications associated with those who systematically

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(clarifying the Commission's cost-effectiveness and duplicative services rules); *Request for Review submitted by Academia Claret, Puerto Rico, et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 10,703 (rel. September 21, 2006) (clarifying the manner in which an applicant's discount rate should be calculated under program rules); *Request for Review of the Decision of the Universal Service Administrator by Kentucky Department of Education., Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 4742 (2007) (granting a waiver of section 54.504(c) of the Commission's rules); *Request for Review of the Decision of the Universal Service Administrator by Caldwell Parish School District, et al., Schools and Libraries Universal Service Mechanism,* File Nos. SLD-289493, et al., CC Docket No. 02-6, Order, 23 FCC Rcd 2784 (2008) (clarifying the Commission's competitive bidding rules) (*Caldwell Parish Order*); *Request for Review of the Decision of the Universal Service Administrator by Acorn Public Library District, et al., Schools and Libraries Universal Service Mechanism,* File Nos. SLD-637819, et al., CC Docket No. 02-6, Order, FCC 08-2376 (2008) (waiving FCC Form 471 filing window deadline); *Request for Review of the Decision of the Universal Service Administrator by Alcona County Library et al., Schools and Libraries Universal Service Mechanism*, File Nos. SLD-425479, et al., CC Docket No. 02-6, Order, FCC 08-2379 (2008) (waiving FCC form 486 filing deadline).

[85] *See Bishop Perry Order,* 21 FCC Rcd at 5326-27.

[86] *See Schools and Libraries Fifth Order*, 19 FCC Rcd at 15813-814.

abuse the program. USAC believes that this recommendation is appropriate for both the Schools and Libraries Program and the Rural Health Care Program, especially since the creation of the Rural Health Care Pilot Program.

USAC also agreed with the "the Commission's proposal [in the *Comprehensive Review NPRM*] to adopt a rule 'specifically prohibiting recipients from using funds in a wasteful, fraudulent, or abusive manner'"[87] This type of rule would allow USAC to protect against waste, fraud, and abuse by denying funding requests from program participants who exploit unanticipated loopholes while the Commission determines whether rule changes were necessary. USAC noted that "[a]lthough 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."[88] USAC reiterates these comments at this time based on additional experience.

USAC continues to support requiring consultant registration with USAC as an important tracking tool that could be used for enforcement (as well as outreach) purposes.[89] Applicants and service providers in both programs are required to obtain identification numbers.[90] Consultants provide a variety of services to participants in the

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[87] *USAC Comprehensive Review NPRM Comments* at 257 (internal citations omitted).

[88] *Id.*

[89] *See USAC Comprehensive Review NPRM Comments* at 145-146; *see also Comments of the Universal Service Administrative Company*, CC Docket No. 02-6, at 33-34 (filed Apr. 5, 2002).

[90] In the Rural Health Care Program, health care providers are required to obtain Heath Care Provider (HCP) numbers. *See* http://www.rhc.universalservice.org/onlineforms/default.asp. In the Schools and

programs up to being authorized by applicants to conduct the competitive bidding process on behalf of applicants and certifying program forms. Notwithstanding the important role consultants often play, they are not required to register in a way that that allows USAC to track them.[91] USAC believes it would enhance program integrity if USAC could monitor registered consultants' participation in the program.

USAC recommends that the Commission define "consultant" broadly to include persons not employed by the entity requesting funding who assist in the preparation of forms, who provide advice on how to complete forms, and who provide advice on how to answer questions posed by USAC during the application review process. USAC continues to propose that each consultant be required to obtain a Consultant Identification Number (CIN), and that persons involved in the actions described above be required to identify themselves by using this number on the applicable form or other submission. USAC further suggests that consultant disclosure and registration practices should include: (i) assigning an entity code; (ii) requiring a standardized disclosure statement from consultants to applicants detailing potential conflicts of interest; and (iii) following signature policies for non-applicants who prepare forms similar to Internal Revenue

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Libraries Program, applicants are required to obtain a Billed Entity Number. *See* Schools and Libraries News Brief, December 14, 2007 available at the USAC website at http://www.usac.org/sl/tools/news-briefs/default.aspx. For both programs, service providers are required to obtain a Service Provider Information Number by submitting and FCC Form 498. *See* http://www.usac.org/fund-administration/forms/default.aspx.

[91] Consultants are required to obtain Federal Communications Commission Registration Numbers. *See* 47 C.F.R. §§ 1.8001-8003. However, because USAC does not have access to complete FCC Registration Number data, this is not a useful tracking method for USAC.

Service requirements that preparers assisting taxpayers sign tax forms.[92] Should consultants be required to obtain a CIN, USAC would add this information to the data associated with each FCC Form 471 on the Data Retrieval Tool, thereby enabling applicants to make more informed decisions about selecting consultants by reviewing the funding history of applicants associated with consultants.

c. USF Contributors

USAC reports contributors to the FCC's Enforcement Bureau if there is a scope limitation in an audit due to the auditee not providing requested documentation. It could be helpful if a penalty could be imposed for a contributor's failure to provide appropriate documentation; however the penalty would need to be significant enough that companies would rather retain documentation than simply pay the penalty to avoid retaining the documentation. If USAC were to impose such a penalty, USAC's administrative effort would increase because USAC would need to make a determination as to what among varying levels of missing documentation would result in a specific penalty. USAC's decision would then be subject to the administrative appeals process set forth in the Commission's rules.[93] Alternatively, the Commission itself could determine the appropriate penalty in a given situation.

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[92] *See* USAC, SCHOOLS AND LIBRARIES DIVISION INTERIM RESPONSE TO THE RECOMMENDATIONS OF THE TASK FORCE ON THE PREVENTION OF WASTE, FRAUD, AND ABUSE AT 6 (filed Nov. 26, 2003) (*Task Force Response*).

[93] *See* 47 C.F.R. §§ 54.719-.725.

3. Adoption of Additional USF Policy Goals

In paragraph 22 of the *NOI*, the Commission seeks comment on whether it should take steps to more clearly define the policy goals of the universal service support programs. While USAC has commented extensively on performance measurements regarding administrative performance, this paragraph specifically requests comments regarding program policy or outcome goals. Because USAC may not comment on USF policy matters, USAC will not address this paragraph.

C. Administrative Considerations Regarding Whether the Commission Should Fundamentally Alter the USF Administrative Framework

In paragraph 23 of the *NOI*, the Commission seeks comment on whether it should "continue to use a permanent administrator of the USF" or, alternatively, whether the Commission should "obtain the services of a contractor or contractors to perform the USF Administrator's functions." Noting that the Commission solicited comments in the *Comprehensive Review NPRM* on the "utility of a permanent administrator of the USF" and on the option of replacing USAC as the permanent administrator of the USF with a government contractor, the Commission requests comments to refresh the record on this issue. USAC, the permanent USF administrator designated by the Commission,[94] is uniquely qualified to address the administrative ramifications of fundamentally altering the USF administrative structure established by the Commission after extensive proceedings implementing the Telecommunications Act of 1996.

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[94] *See* 47 C.F.R. § 54.701(a).

1. The Existing Record in this Proceeding Supports Retaining the Current Administrative Structure

In asking parties to refresh the record from the 2005 *Comprehensive Review NPRM*, the *NOI* states "commenters either did not address this proposal or filed comments in support of retaining the status quo."[95] Nearly half of parties participating in the proceeding commented on this issue, and those commenters overwhelmingly advocated retaining USAC as permanent USF administrator.[96] While recognizing–as did USAC–that improvements were warranted, many commenters focused on USAC's steady performance, the likelihood of higher costs necessarily associated with a for-profit

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[95] *NOI* ¶ 23.

[96] *See* Comments of Alexicon Telecommunications Consulting at 5 (*Alexicon 2005 Comments*); Comments of the American Association of School Administrators & Association of Educational Service Agencies at 4 (*AASA/AESA 2005 Comments*); Comments of the American Library Association in Response to Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking at 31 (*ALA 2005 Comments*); Comments of CenturyTel, Inc. at 2; Comments of the Chicago Public Schools in Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking at 3-4 (*CPS 2005 Comments*); Comments of the Education and Library Networks Coalition at 4 (*EdLinc 2005 Comments*); Comments of the Council of the Great City Schools at 3; Comments of IDT Telecom, Inc. at 2; Comments of the Florida Public Service Commission and the Florida Department of State, State Library and Archives at 6-7; Comments of FW&A, Inc. at 1-2 (*FW&A 2005 Comments*); Kellogg & Sovereign Consulting, LLC, Initial Comments, FCC Further Notice of Proposed Rulemaking FCC 05-124 at 2; Comments of the NEILSA E-rate Consortia at 3; National Telecommunications Cooperative Association Initial Comments at 2; Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, Comments by the New York City Department of Education at 2 (*NYCDOE 2005 Comments*); Private School Technology Coalition Comments at 2 (*PSTC 2005 Comments*); Comments of Qwest Communications International Inc. at 8 (*Qwest 2005 Comments*); Comments of SBC Communications Inc. at 3-4 (*SBC 2005 Comments*); Initial Comments of the State E-Rate Coordinators Alliance in Response to the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking at 4-5 (*SECA 2005 Comments*); Comments of Verizon at 30 (*Verizon 2005 Comments*); Initial Comments from Greg Weisiger at 9; Comments of the West Virginia Department of Education, Office of Technology and Information Systems at 2 (*WVDE 2005 Comments*); Comments from the Wisconsin Department of Public Instruction at 3, Reply Comments of the Council of the Great City Schools at 2; Reply Comments of GVNW at 3; Reply Comments of IBM Corp. at 5; Reply Comments of the National Exchange Carrier Association at 3; *but see* Reply Comments of the New Jersey Division of the Ratepayer Advocate at 17.

administrator, and risks to program stakeholders due to lack of continuity were the Commission to impose an entirely new USF administrative structure.[97]

Numerous commenters specifically rejected the idea of engaging a government contractor to administer the USF.[98] In opposing such an approach, Qwest emphasized that:

> There is no significant public interest benefit in seeking competitive bids to replace USAC with another entity. Such a process would take too long to set up and would lead to a lack of predictability in the administration of the USF. Moreover, USAC already has substantial experience with administering the USF and has displayed substantial improvement in its capabilities over time.[99]

Similarly, SBC stated:

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[97] *Verizon 2005 Comments* at 30 (citation omitted) ("[c]ertainly, improvements can be made in the administration of the program. However, it is unclear whether bringing in another party, which would have no experience with the program and would have to recreate all of the resources USAC already has invested, would cost more time, effort, and expense than it would save."); *SBC 2005 Comments* at 2 (although "review of USF management and administration is appropriate, SBC does not believe a radical overhaul or replacement of USAC, as the program administrator, is necessary . . . . drastically changing the administrative structure of USF would be extremely disruptive to the industry and the USF programs."); *EdLinc 2005 Comments* at 4 ("[b]y changing the permanent Administrator of the Schools and Libraries program, a collective history of a program could be lost. Also the cost of transferring the program to another administrator would be substantial."); *see also* AASA/AESA 2005 Comments at 4; *NYCDOE 2005 Comments* at 2; *WVDE 2005* Comments at 2; *CPS 2005 Comments* at 3 ("transition to a new Administrator could introduce significant disruptions to the program. These disruptions could include additional funding delays, a need for new rule changes, a completed redesign of the back-end computer systems to run the program, and other instabilities. Given the problems that have resulted from instability in the past, FCC should avoid introducing further instability into the program unless absolutely necessary. We therefore believe that the administration of the program should remain with USAC.").

[98] *CPS 2005 Comments* at 4; *AASA/AESA 2005 Comments* at 3; *Alexicon 2005 Comments* at 5; *FW&A 2005 Comments* at 2-3; *PSTC 2005 Comments* at 2; *Qwest 2005 Comments* at 13; *SECA 2005 Comments* at 4-5; Reply Comments of the State E-Rate Coordinators Alliance in Response to the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking at 2-3. Only one commenter advocated selecting the USF administrator through a periodic competitive bid process. *See* Comments of Sprint Nextel Corporation at 2-3.

[99] *Qwest 2005 Comments* at 8.

> [R]eplacing the USAC with a new administrator selected by competitive bid for a limited term would require funding recipients across the country to expend resources to implement procedures to develop and maintain contacts with each new administrator, and to ensure compliance with any administrative policies or rules established by that administrator. Additionally, appointing an administrator by competitive bid could encourage the new administrator to focus on cutting costs, at the expense of effective program implementation, to increase its profits from administering the USF program.[100]

The Chicago Public Schools echoed this concern, stating "a competitive bidding procedure would likely focus on cost efficiency as a primary criterion for selection."[101] The American Association of School Administrators & Association of Educational Service Agencies raised a similar concern, stating:

> [W]e strongly believe that the Administrator must remain a non-profit entity. It seems wrong to imagine that the Administrator of the E-Rate program could be established in a way to make a profit off of public schools. This does not seem to be a good use of money from a program where demand consistently exceeds the available funding." [102]

The Private School Technology Coalition agreed, stating that a "private entity should not capitalize financially from working with schools and libraries."[103] As described in detail below, USAC's administrative costs as a percentage of the USF were low and compared favorably to entities administering analogous programs in 2005 and remain so today.[104]

The Chicago Public Schools further noted that "introducing a new Administrator–whether through a competitive bidding process or any other process–could introduce a

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[100] *SBC 2005 Comments* at 4.

[101] *CPS 2005 Comments* at 4.

[102] *AASA/AESA 2005 Comments* at 3.

[103] *PSTC 2005 Comments* at 2.

[104] *See* pages 55-59 below.

host of new delays into the funding process, with no guarantee that the overall administration of the program would improve."[105] The State E-rate Coordinators Alliance concurred, stating

> "[s]ubjecting program administration to periodic competitive bids would lend a dangerous instability factor to program processes and operations. The current Administrator's experience and expertise acquired over the last eight years provides substantial value and knowledge that would be lost if the FCC decided to change administrators or change the manner in which the administrator is selected for the USF programs."[106]

Thus, a review of the existing record in the 2005 *Comprehensive Review NPRM* shows that the question whether to fundamentally alter the manner in which the USF is administered by replacing USAC with a government contractor was fully developed. Commenters strongly supported retaining the existing framework that was carefully constructed by the Commission to ensure control, flexibility, and cost-effectiveness in USF administration.

2. The Current USF Administrative Structure Provides the Commission with Control, Flexibility, and Cost Effectiveness

USAC described in detail the congressional and administrative proceedings that ultimately led to the Commission's designation of USAC as the permanent USF administrator in its comments on the 2005 *Comprehensive Review NPRM*.[107] USAC also commented on the ramifications inherent in attempting to administer the USF with a

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[105] *CPS 2005 Comments* at 4.

[106] *SECA 2005 Comments* at 5.

[107] *See USAC Comprehensive Review NPRM Comments* at 4-11.

government contractor, including whether the Commission could maintain the close oversight and control it exercises over the USF as a result of the current structure, and the ability to continue to ensure streamlined decision-making limiting disruptions in services and loss of operational expertise were there to be a transition to a government contractor.[108]

The considerations identified by USAC and numerous other parties in the 2005 proceeding are as pertinent, if not more so, today. As discussed in detail below, the responsibilities the Commission has entrusted to USAC as set forth in 47 C.F.R. Part 54 greatly exceed those of a typical government contractor. The existing administrative structure provides the Commission with a degree of oversight and control it would be unable to achieve in a federal agency-government contractor arrangement, allows the Commission to be highly flexible and implement program changes quickly, and ensures the USF is administered at reasonable cost.

a. USAC's Functions

To appropriately assess the question whether the Commission should attempt to procure the administrative functions USAC currently performs from a government contractor or contractors, it is essential to understand the full breadth of responsibilities entrusted to USAC. USAC described in detail its management and oversight of these multi-billion dollar programs in Appendix A to its comments to the 2005 *Comprehensive Review NPRM*. Since that time, USAC's responsibilities have increased as a result of

[108] *See id.* at 45-49.

many Commission rule changes, orders, and staff directives. As a result of the structure established by the Commission, USAC has been able to respond rapidly and effectively to such changes at reasonable cost. Moreover, USAC continues to examine its operations and has implemented many improvements on its own initiative.

USAC's operations are broad and complex. Ensuring that the programs operate in compliance with Commission rules to the fullest extent possible requires detailed procedures, extensive information technology infrastructure, and experienced personnel. To give a rough sense of the scope of USAC's activities, in 2007 USAC issued 45,800 invoices to USF contributors and collected $7.3 billion in payments—an average of more than $600 million each month. USAC made approximately 72,000 individual disbursements to thousands of beneficiaries totaling approximately $7.0 billion: $4.3 billion in the High Cost Program, $823 million in the Low Income Program, $37 million in the Rural Health Care Program, and $1.8 billion in the Schools and Libraries Program. In 2007, over 1,900[109] carriers received High Cost Program support for approximately 169 million lines across the country. Seven million households received Lifeline support and 1.5 million households received Linkup support from the Low Income Program in 2007. In Funding Year 2006, more than 2,300 rural health care providers received Rural Health Care Program support. USAC handled approximately 40,000 Schools and Libraries Program applications in Funding Year 2007 and more than 115,000 entities

[109] Competitor count reflects some competitive ETCs that serve in both rural and non-rural study areas and are counted separately in each category.

across the country received support. The programs have neither decreased in size nor become less challenging to administer in 2008.

USAC maintains a significant customer service operation, answering over 100,000 phone calls from program participants in 2007 and sending tens of thousands of letters and email messages to its customers. USAC also conducts education, outreach, and training, and it devotes significant resources to fulfilling this commitment.[110] USAC conducts multiple, nationwide training sessions each year, appears at numerous stakeholder events to address concerns, and disseminates education and communication materials such as video tutorials, online learning tools, brochures, and other materials. These activities reach thousands of USF stakeholders each year. In addition, since 2004 USAC has conducted approximately 3,000 site visits to beneficiaries in all four USF programs. USAC also provides extensive reports and makes vast amounts of data available to the Commission and the public in order to enhance oversight and promote transparency in its operations.

USAC is responsible under current regulations for assessing beneficiary and contributor compliance both by detailed up-front review of funding requests and by conducting audits of beneficiaries of the universal service programs and contributors to the USF.[111] Since the first round began in 2006, USAC has been responsible for implementing the FCC OIG USF audit program discussed in detail elsewhere in these

[110] *See* 47 C.F.R. §§ 54.705(a)(iv), (b)(v).

[111] *See* 47 C.F.R. §§ 54.705(a)(x), (b)(viii), (c)(iv); 54.707.

comments. USAC's Internal Audit Division reviews USAC's own operations on a regular basis.

Under close Commission oversight and in accordance with strict investment guidelines established by the Commission, USF investments have earned more than $1 billion in interest income since 1998, more than offsetting USAC cumulative administrative expenses (through September 30, 2008) of $748 million. In addition, USAC, in consultation with the FCC's Office of General Counsel, has successfully represented USAC and the USF in many litigation matters. For example, USAC represents the USF as a creditor when a USF contributor files for bankruptcy. Since 1997, there have been over 150 bankruptcies of entities owing the USF contribution obligations. USAC has recovered over $4.9 million for the USF through bankruptcy proceedings. USAC has obtained favorable results in program-related litigation as well.[112]

USAC performs its many functions having amassed considerable expertise and experience over the past 11 years. USAC has had a stable management team and low employee turnover in recent years, both of which are critical to maintaining the consistency and institutional knowledge necessary to deal with program complexities and the rapid change that has been the hallmark of the USF since USAC was designated permanent USF administrator. Although USAC has no role in policy, USAC is aware of

[112] *See, e.g.*, *Computer Consulting & Network Design, Inc. vs. Universal Service Administrative Company*, No. 4:08-cv-9 (W.D.Ky.); *Integrity Communications, Ltd vs. Universal Service Administrative Company*, Civil Action No. B-08-29 (S.D.Tx.); *Twin Valley Telephone, Inc. vs. Universal Service Administrative Company*, Civil Action No. 07-2172-CM (D.Kan.).

the fact that comprehensive changes to all four universal service programs as well as a major restructuring of the USF contribution methodology are distinctly possible in the coming months and years. In an uncertain policy environment, stability in USF administration becomes an even greater consideration.

b. The Commission's Extensive Oversight and Control of USAC and USAC's Administrative Flexibility Could Not Be Duplicated in a Government Contractor Relationship

In designating USAC as the permanent administrator of the USF, the Commission expressed a strong desire for streamlined decision-making and minimal bureaucracy.[113] The Commission is able to exercise significant oversight and control of USAC as a result of federal regulation and the not-for-profit corporate structure the Commission determined would be in the public interest.[114] The Commission exercises oversight and control over USAC with regard to all facets of its existence–from its corporate duties and structure to its responsibilities as the USF Administrator–in a manner that it could not in a traditional FAR-based relationship with a contractor. Thus, the existing system allows for maximum flexibility, which is why the Commission established the administrative framework in this manner.[115] Replacing this structure with a FAR-based relationship between a private contractor and the Commission could adversely affect the speed and

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[113] *See 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, 25085-90 (1998) (*USAC Reorganization Order*).

[114] For example, the Commission exercises direct control in that the Chairman of the FCC selects USAC's Board of Directors, and approves the appointment of USAC's Chief Executive Officer. *See* 47 C.F.R. §§54.703(b)(3), 54.704(b).

[115] *See USAC Reorganization Order*, 13 FCC Rcd at 25085-90.

flexibility of implementing Commission-directed changes to the universal service programs.[116]

In its comments to the 2005 *Comprehensive Review NPRM*, USAC described many of the Commission directives USAC implemented impartially, efficiently, and effectively.[117] Since the comment cycle closed in late 2005, the Commission has made many changes to the universal service programs and expanded its oversight over USAC through numerous rule changes, orders, MOUs, and staff directives.[118] USAC has consistently responded quickly, effectively, and efficiently to implement these changes, whether they relate to administrative matters or programmatic issues. USAC takes this opportunity to refresh the record by summarizing the significant programmatic changes and administrative directives USAC has been called upon to implement by highlighting some of the administrative actions necessary to carry out the Commission's requirements.

(i) USAC Implementation of Program Changes

Rural Health Care Pilot Program. In 2006, the Commission established the Rural Health Care Pilot Program (Pilot Program) to help public and non-profit health care providers build state and region-wide broadband networks dedicated to the provision of health care services, and connect those networks to national networks.[119] In November 2007, the FCC selected 69 projects, expanded the Pilot Program to three years, and

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[116] *See USAC Comprehensive Review NPRM Comments* at 46 (internal citations omitted).

[117] *See id.* at 14-33.

[118] *See NOI* ¶¶ 2-9.

[119] *See Rural Health Care Support Mechanism*, 21 FCC Rcd 11111 (2006); *see also In the Matter of the Rural Health Care Support Mechanism,* WC 02-60, Order on Reconsideration, 22 FCC Rcd 2555 (2007).

increased the amount of available support for the selected applicants to $139.26 million in each funding year for a total of $417 million.[120] USAC has worked closely with Commission staff to implement the Pilot Program and has taken many necessary administrative actions, including creating a detailed implementation plan, providing in-depth training sessions to every participant, and establishing a secure SharePoint site in order to accommodate form and data submission requirements. In addition, USAC assigned individual "coaches" to each project to assist with form submission, answer questions, and address any issues regarding the Pilot Program projects, many of which are large and complex. USAC handles more than 300 Pilot Program contacts per week. USAC recently issued the first Pilot Program funding commitment, and has disbursed more than $400,000 in support to date. USAC anticipates a significant increase in Pilot Program activity in the coming months and looks forward to continuing to work with program participants to ensure a positive program experience and with the Commission to address any implementation issues that may arise.

Schools and Libraries Program Administration Changes. In 2006, the Commission began making fundamental changes to the manner in which the Commission expected USAC to administer the Schools and Libraries Program. USAC not only handled a large number of remanded appeals under strict timelines directed by the Commission, USAC was also required to change its procedures and operations going forward to accommodate the administrative changes mandated by the Commission.

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[120] *See Rural Health Care Support Mechanism*, WC 02-60, Order, 22 FCC Rcd 21598 (2007).

In May 2006, the Commission began issuing a series of orders in the Schools and Libraries Program covering a large number of appeals clarifying Commission rules and in some instances waiving rules otherwise applicable to program participants.[121] In the first decision, the *Bishop Perry Order*, the Commission granted appeals of 481 applications that had been denied funding for certain clerical or ministerial errors in the application, such as missing deadlines or making minor errors in filling out forms. Previously, USAC was required under program rules and operating procedures approved by Commission staff to strictly enforce deadlines and not permit correction of these types of errors. In the *Bishop Perry Order*, the Commission recognized that allowing applicants to correct ministerial and clerical errors would not undermine program integrity and directed USAC to adjust its procedures to notify applicants of apparent ministerial or clerical errors and provide applicants 15 days to correct such errors.

Implementation of the *Bishop Perry Order* required substantial administrative efforts in a very short time. Although well into the funding year, USAC was required to re-review Funding Year 2006 applications that had already received funding commitments using an expanded list of correctable errors. After consulting with Commission staff, USAC posted guidance on its website and issued 23,564 letters to all Funding Year 2006 applicants providing guidance concerning the types of ministerial and clerical corrections they could make. USAC welcomed the policy changes embodied in

[121] *See* pages 32-33 above.

the series of Commission orders giving USAC the flexibility to allow applicants to correct minor errors and clarifying other areas of program administration.

Contribution methodology changes–the VoIP Order. Also in 2006, the FCC released an interim contribution methodology order, which added providers of interconnected Voice over Internet Protocol to the contribution base, and increased "safe harbor" percentages for various wireless carrier types.[122] Within days of the release, USAC updated its website with information about the order and trained its customer service team to answer inquiries from carriers. USAC worked aggressively and registered approximately 115 new VoIP contributors during July to meet the August 1, 2006, FCC Forms 499-Q due date. USAC invoiced the new contributors in October 2006 as part of its normal process.

Comprehensive USF Administration Review Order. As discussed above, in 2007 the Commission released the *Comprehensive Review Order*, which largely codified the performance measures specified previously in the 2007 MOU, and expanded document retention requirements and suspension and debarment rules to all programs.[123] The order also established fees associated with late filing of the FCC Form 499-A and FCC Form

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[122] *See Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review - Streamlined Contributor 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; IP-Enabled Services,* Report and Order and Notice of Proposed Rulemaking; WC Docket No 06-122, CC Docket Nos 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, 04-36, 21 FCC Rcd 7518 (2006) (*VoIP Order*).

[123] See pages 9-10 above.

499-Q and late payment of contributor invoices. Additionally, it directed USAC to apply partial payments to open balances in a specific priority order, and to enhance the format of the USAC invoice to clearly display the aging of the full unpaid balances. These new calculations are complex and required significant changes to the associated billing and accounting systems, re-training of the customer service team, and outreach to contributors, all of which were completed quickly and effectively.

(ii) USAC Implementation of Commission Staff Directives and USAC Initiatives to Improve USF Administration

USAC works closely with Commission staff on a daily basis to provide information, respond to inquires, follow-up on audit-related issues, and make operational adjustments as required to meet the Commission's oversight requirements. USAC has implemented dozens of directives, large and small, from Commission staff since 2005, some of which have required considerable resources and effort under tight deadlines. USAC welcomes this oversight and has worked diligently to create new processes and procedures, develop new information technology tools and/or hire additional staff or contractor personnel where necessary to address the Commission's needs. Following are highlights of several of those more significant efforts:

FCC-OIG USF audit program. USAC discussed the results of the audit program above, but also raises the matter here to describe briefly some of the administrative actions that have been required to implement the program.[124] In order to execute Round 1

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[124] *See* section III.A.1 above.

of the FCC OIG USF audit program, in the summer of 2006 USAC conducted a competitive procurement process that resulted in the selection of 13 independent audit firms and one project management firm. Under USAC supervision, 459 audits were performed over an 11-month period that culminated in delivering 99% of the improper payment assessment data by the FCC Inspector General's required date of July 31, 2007.

A far greater level of effort has been required to conduct Round 2 of the FCC OIG USF audit program, which was substantially larger than Round 1 and was performed under a compressed schedule. An example of the level of effort provided by USAC in Round 2 was the extensive support required for the Schools and Libraries Program audits. USAC was required to provide complete program-related documentation (covering the application process through disbursement of funds) for each of the 260 entities audited in Round 2. The effort required 17,000 work hours over a three-and-one-half month period to compile the more than 42,000 files required. USAC delivered over 99% of the improper payment assessment data for the Round 2 compliance audits by the deadline established by the FCC Inspector General.

FCC-USAC Memorandum of Understanding. USAC discussed the MOUs established by the Commission above, but also raises the matter here to describe briefly some of the administrative actions that have been required to implement the MOUs.[125] On June 4, 2007, the FCC established an initial MOU with USAC. This MOU memorialized a number of procurement and reporting processes that USAC had received

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[125] *See* pages 7-9 above.

as Commission staff directives; required all USAC staff, contactors, subcontractors, and consultants to sign a new confidentiality agreement as a condition of employment, or of assignment to USAC-related work; contained requirements regarding investments of USF funds, and required implementation of an internal control structure consistent with Appendix A of OMB Circular A-123. Implementing the MOU required development of new processes and reports, refinement of existing processes and reports, coordination with USAC's contractors, and the initiation of an extensive program to formalize its internal control program over its operations, consistent with Appendix A of OMB Circular A-123.

On September 9, 2008, the FCC established a second MOU with USAC, which memorialized numerous additional procurement and reporting processes from recent Commission staff directives; contained new requirements including, but not limited to, tracking and reporting on customer service standards and complaints, providing additional performance reporting, providing an annual report on USAC information technology security, notice requirements prior to website changes and USAC staff conducting training or attending speaking engagements; and requires numerous layers in the procurement area as discussed in more detail below. To comply with the MOU, USAC is working to develop new processes and significant new reports and refine existing processes and reports.

Customer complaint system. On February 29, 2008, Commission staff directed USAC to implement a customer complaint tracking and reporting system beginning

March 1, 2008 and to provide reporting to the FCC monthly beginning in April 2008. USAC immediately launched a start-up phase during March and April to implement the complaint handling process by manually gathering and analyzing complaints. On April 1, USAC updated its website to publish the complaint reporting process and provided a toll-free number for reporting complaints. In May and June, USAC developed and deployed an internal complaint tracking and reporting system that enables classification of complaint type, volume, and disposition of complaints. This effort is more fully discussed elsewhere in these comments.[126]

USAC's experience and familiarity with the programs and all aspects of USF operations gained as permanent USF administrator were instrumental in execution of these initiatives. Were the Commission to attempt to obtain the services USAC provides from a government contractor, the program changes and staff directives discussed above would almost certainly have been outside the scope of an initial contract. To implement them would require a change to the contract consistent with FAR requirements.[127] Both Commission and contractor resources would have to be devoted to contract negotiation and implementation. In addition, under the FAR the services would be required to be re-competed on a regular basis. This would not only take time and could delay

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[126] *See* pages 62-65 below.

[127] *See generally* 48 C.F.R. Chapter 1, Part 43. 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, a 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, which could further delay implementation of key initiatives.

implementation of desired Commission initiatives, it would also mean higher administrative costs and an increased burden on USF contributors or a reduction in funds available to beneficiaries.

While implementing this wide range of Commission orders and directives, since early 2006 USAC also has undertaken many steps on its own initiative to improve its operational effectiveness, increase customer service, and substantially expand its outreach and training activities. USAC provided some highlights for each of the universal service programs and USF contributors in the background section of these comments.[128] A government contractor might not have the same incentive to strive for continuous improvement, and there is no question that any program changes would come with a price tag that the Commission would need to negotiate with the contractor.

c. USAC Administers the USF in a Cost-Effective Manner

An important consideration in assessing the relative merits of retaining USAC or replacing it with a contractor is cost. Reviewing USAC's administrative expenses shows that USAC's costs to administer the universal service support programs are below what comparable entities, whether governmental, non-profit, or commercial, would likely charge to perform the same services.

In comments to the 2005 *Comprehensive Review NPRM*, USAC reported annual administrative expenses from 1998 through 2004 to be 1.08% of funds collected.[129] Since

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[128] *See* pages 11-16 above.

[129] *See USAC Comprehensive Review NPRM Comments* at 34-37, Appendix B.

then, USAC's administrative costs have increased somewhat as explained below, mostly due to the FCC OIG USF audit program, which has been operated by USAC at the direction of the Commission's Inspector General. Nonetheless, USAC's administrative expenses remain low when compared to similar programs. In 2007, the most recent full year, USAC administrative costs were $104,684,000, or 1.49% of the nearly $7 billion in overall USF disbursements. Of this amount, approximately $21,232,000, or 20% of USAC administrative costs, were attributable to Round 1 of the FCC OIG USF audit program. USAC's 2007 administrative cost ratio is 1.19% with the Round 1 costs excluded. USAC's administrative expenses by year are included in Appendix B to these Comments.

Although as described above, USAC's mission, responsibilities, and accountability are unique, a comparison to entities such as foundations, charitable organizations, and government agencies provides context for assessing the reasonableness of USAC's administrative costs. USAC has updated data it collected in 2005[130] on the administrative costs of the top 20 charitable foundations in the United States at Appendix B. This data indicates that for the top 20 charitable foundations, administrative expenses in 2007 averaged 15.22%. No charitable foundation has administrative costs near USAC's 2007 cost ratio of 1.49%. Likewise, the average expense rate was 11.83% for the top 20 charitable organizations in 2007, 7.59% for a selection of United States government agencies with available data, and 21.7% for

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[130] *See id.*

international agencies. Compared to all these organizations, USAC's administrative costs are much lower on a percentage basis, even when new costs associated with the FCC OIG USF audit program are included.

A direct comparison of USAC's expenses to a contemporary contractor-based governmental initiative that bears some similarities to–although is far less complex than–USAC's functions further illustrates the point. This is the ongoing transition to digital television (DTV) administered by the National Telecommunications and Information Administration (NTIA) in the Department of Commerce. The DTV program involves marketing and distributing subsidies, in the form of coupons, to consumers in need of converter boxes to allow their televisions to receive digital television signals as of February 2009. Congress authorized administrative expenses of 12%–a total of $160,000,000–for administrative expenses within an overall program total of $1,500,000,000.[131] Thus, Congress, the Department of Commerce, and NTIA assumed that an administrative cost rate of 12% was appropriate for executing a single program that is significantly less complex than the four universal service programs and the USF contribution process administered by USAC.[132]

NTIA awarded a contract to IBM to assist NTIA with the DTV transition amounted to $119,993,468, according to information on www.USAspending.gov, the public information website offering information on federal contracting activities. This

[131] *See* Deficit Reduction Act of 2005, PL 109-171, 120 Stat. 4 at § 3005.

[132] The application for obtaining a TV converter box coupon consists of providing the requestor's name and address, answering two questions, and signing the form. *See* https://www.dtv2009.gov/ApplyCoupon.aspx>.

contract runs from August 15, 2007, to September 30, 2009, during which time IBM is to provide "professional, administrative, and management support services" associated with the DTV transition. This amount does not include costs associated with NTIA's own administrative expenses. Even without these costs, however, the administrative expense rate comes to 8%. The foregoing discussion suggests that were the Commission to abandon USAC in favor of a FAR-based government contract as proposed in paragraph 23 of the *NOI*, USF administrative costs would increase substantially. Commenters addressing the 2005 *Comprehensive Review NPRM* expressed this concern.[133] Even a jump to 5% of total USF expenses would mean that administrative costs would rise to approximately $350 million, far above what they are today. Transition costs would raise this figure even higher.

USAC's ability to keep costs reasonable considering the breadth of its responsibilities is attributable not least to its unique corporate structure established at the direction of the Commission. USAC is a not-for-profit organization. Its employee salaries are capped. Its Board of Directors receives no compensation. With each member of the USAC Board of Directors representing USF stakeholder audiences, both

[133] *See SBC 2005 Comments* at 4 ("replacing the USAC with a new administrator selected by competitive bid for a limited term would require funding recipients across the country to expend resources to implement procedures to develop and maintain contacts with each new administrator, and to ensure compliance with any administrative policies or rules established by that administrator. Additionally, appointing an administrator by competitive bid could encourage the new administrator to focus on cutting costs, at the expense of effective program implementation, to increase its profits from administering the USF program."); *Verizon 2005 Comments* at 30 (citation omitted) ("[c]ertainly, improvements can be made in the administration of the program. However, it is unclear whether bringing in another party, which would have no experience with the program and would have to recreate all of the resources USAC already has invested, would cost more time, effort, and expense than it would save.").

contributors and beneficiaries, strong incentives–indeed, actual fiduciary obligations–exist for USAC to monitor administrative costs closely. As well, extensive oversight by the Commission and Congress, a stringent audit regime, and keen interest in cost controls by USAC management and all program stakeholders all promote fiscal efficiency and operational prudence.

In sum, USAC's administrative expenses run far below comparable non-profit organizations and governmental agencies. Moreover, seen in light of the DTV transition, a program similar to–although much less complex than–the USF, USAC represents a significantly less expensive option than a private contractor obtained through the mechanism of the FAR. These costs savings derive directly from features of USAC's unique structure and relationship with the Commission, which could not be duplicated in a FAR-based government contractor relationship.

d. Additional Issues Associated With Fundamentally Altering the Current USF Administrative Framework

Changing the current USF administrative structure to move to a government contractor model would require substantial changes to current regulations governing USF administration found at 47 C.F.R. Part 54. Additional issues inherent in adopting a federal agency-government contractor(s) model include where the funds would be held and whether the Commission would need to obtain additional appropriations from Congress to pay for and administer the contract(s).

USF contributions are collected by USAC and held outside the United States Treasury.[134] If the Commission were to obtain the services USAC provides from a government contractor or contractors, the question arises as to whether the USF could continue to be held outside of the United States Treasury as it has been since the creation of the USF. As discussed above, USAC is able, under close Commission oversight and in accordance with strict investment guidelines established by the Commission, to invest temporarily available funds in United States Treasury securities. This is possible because the USF is held outside of the Treasury. USF investments have earned more than $1 billion in interest income since 1998, more than offsetting USAC cumulative administrative expenses through September 30, 2008 of $748 million.

Some parties commenting on the 2005 *Comprehensive Review NPRM* voiced concern over the potential risk of the USF being accessible for other purposes if the current structure was changed. For example, Federated Investors noted that "[i]n an era of increasingly scarce federal resources, investing USF monies outside the Treasury both preserves collected amounts from being poached by other government programs and enhances the amounts available for universal service programs in an efficient manner."[135] Additionally, the American Library Association noted that there could be an impact on entities that are currently eligible for Schools and Libraries Program funding if the funds

[134] *See* 47 C.F.R. § 54.706.

[135] Comments of Federated Investors at 3.

were to be held in the United States Treasury.[136] The American Association of School Administrators & Association of Educational Service Agencies voiced its opposition to Qwest Communication's suggestion that the Department of Education administer the Schools and Libraries Program because "there is no possibility the government could absorb a $2.25 billion program to be funded out of treasury receipts."[137] The Education and Library Networks Coalition advocated maintaining the Schools and Libraries program "outside the U.S. Government."[138]

Finally, the Commission has noted that moving to a government contractor model could require additional appropriations in order for the FCC to pay the contractor. As noted to the GAO in 2005 where the Commission initially discussed moving the USF administration to a government contractor, the Commission "expect[ed] to examine the implications of alternative administrative structures, such as any need for increased appropriations to implement a contractual arrangement."[139]

As USAC stated in its 2005 *Comprehensive Review NPRM* Comments, "USAC currently administers the USF without an annual appropriation from the federal government, collects zero profit" and, as was discussed in detail above, incurs low

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[136] *See* Reply Comments of the American Library Association at 4.

[137] *See* Reply Comments of the American Association of School Administrators & Association of Educational Service Agencies at 4.

[138] *EdLinc 2005 Comments* at 3-4 (noting that the USF is held outside the United States Treasury); PSTC appears to agree, stating the "program should be maintained outside the U.S. Government as a private entity." *PSTC 2005 Comments* at 2.

[139] 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 (Feb. 9, 2005).

administrative expenses in comparison to the size of the programs.[140] Since USAC collects no profit, costs to administer the USF would necessarily rise were the Commission to attempt to engage a government contractor because any contractor submitting a bid would only do so if a profit could be made. Thus, the Commission could be expected to incur substantial costs in implementing a contract or a series of contracts to obtain the services USAC provides under the regulatory framework crafted by the Commission.

D. Customer Service Standards

All USF stakeholders are USAC's customers and USAC makes customer service a high priority. USAC strives to respond to all inquiries, complaints, and requests for administrative action as promptly, accurately, and professionally as possible. USAC continually works to improve processing and turnaround times, provide more timely and accurate information to customers, and enhance its proactive outreach efforts to help participants prevent problems and address concerns.

In addition to its own efforts, USAC has responded quickly and professionally to Commission directives regarding customer service. On February 29, 2008, Commission staff directed USAC to implement, as of March 1, 2008, "measures to improve the quality of service that [USAC] provides to stakeholders of all [USF] programs."[141] USAC was required to begin collecting, monitoring, and reporting "customer complaint

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[140] *See USAC Comprehensive Review NPRM Comments* at 49.

[141] *See* Letter from Anthony J. Dale, FCC Managing Director, to Scott Barash, USAC Acting Chief Executive Officer (February 29, 2008).

information" on a monthly basis, as well as regularly reviewing customer complaint information, identifying trends, and developing proposals for resolving complaints and monthly performance reporting to Commission staff and the USAC Board of Directors. The February 29 letter directed USAC to commence reporting March 2008 data beginning in April 2008. The customer service reporting requirements were subsequently memorialized in the 2008 MOU.[142] In addition, USAC was required to develop and submit customer service standards to the Commission by March 28, 2008, and on April 1, 2008 USAC provided online notice to program stakeholders as to how to submit complaints. USAC complied fully with all these directives within the time frame required.[143]

In paragraph 24 of the *NOI*, the Commission seeks comment on these measures and on additional customer service requirements that should be applied to USAC. In particular, the Commission asks USF stakeholders to provide "additional metrics the USF Administrator should collect and report to illustrate the quality of service it provides stakeholders." USAC welcomes any suggestions from its customers regarding additional information it could collect and report concerning customer service and, more generally, welcomes any suggestions regarding how to improve customer service in any area of its operations.

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[142] *See* MOU at IV.K.

[143] *See* Letter from Scott Barash, USAC Acting Chief Executive Officer, to Anthony J. Dale, FCC Managing Director (Mar. 28, 2008).

Currently, USAC collects and reports the number and type of complaints received, the number of inquiries, the average number of business days to resolve complaints, and the percentage of complaints resolved within 20 business days. During the March and April 2008 start-up phase of the complaint handling process, USAC manually gathered and analyzed complaints. In May and June, USAC deployed an internal complaint tracking and reporting system that enables classification of complaint type, volume, and disposition.

Complainants are asked to provide a general description of the complaint along with any information concerning the date, person involved, and any other details they may wish to provide. USAC promises a response within two business days, consisting of either a resolution or an estimate of how long resolution might take if the matter requires further investigation. The maximum time for a final response is 20 business days, unless the complaint involves a universal service program funding decision or a USF contributor appeal, which may require more time depending on the facts and circumstances surrounding the issue.

The information collected to date shows that USAC interacts with a vast customer base, receives relatively few complaints, and resolves those complaints quickly. Data reported to the Commission since inception of USAC's formal customer complaint handling process (March 2008 through September 2008) shows as follows:

Inquiries received	53,677
Complaints about USAC	66
Total complaints (USAC, FCC, carriers, etc.)	94
Percentage of all complaints/total inquiries	0.17%
Percentage of complaints about USAC/total inquiries	0.12%
Average business days to resolve complaints	2.2
Percentage of complaints resolved within 20 days	100%

As shown in Appendix C, USAC's performance compares favorably to similar organizations in handling customer complaints. USAC examines trends among complaint submissions to identify possible process improvements. To date, analysis of complaints indicates a too wide-ranging set of circumstances to identify specific processes in need of improvement. USAC is committed to achieving and maintaining the highest possible levels of customer service and continues to examine complaints for evidence of operations in need of enhancement.

Finally, the Commission notes in Paragraph 24 of the *NOI* that USAC is "required to base its executive compensation in part on the quality of service it provides stakeholders."[144] In response to a July 9, 2008 directive, the USAC Board of Directors submitted a proposed draft performance-based compensation plan for USAC corporate officers and other executives that includes quality of service measurements as a basis for certain compensation components.

[144] *See also NOI* ¶¶ 6, 7.

E. Performance Measurement

In paragraphs 25 and 27 of the *NOI*, the Commission seeks comment on additional performance management techniques and the costs and benefits of performance measure information collection efforts. USAC agrees that measuring and reporting on its performance is an essential component of its obligations as USF administrator. In fact, USAC has implemented many new performance measures specified in the 2007 MOU and the 2007 *Comprehensive Review Order*.[145] USAC stands ready to implement promptly any measures that support the Commission's goal of efficient, effective, and transparent program administration and operations.

USAC welcomes transparency in reporting and the operations of the USF. USAC has taken the initiative to make program-related data available to the public on its website in readily accessible formats and is continually seeking to improve these online capabilities. USAC commented extensively on these topics in its 2005 *Comprehensive Review NPRM* comments, and the Commission adopted many of the performance measures USAC suggested at that time.[146] USAC reiterates its support for development

[145] *See Comprehensive Review Order* ¶¶ 34-57.

[146] *See USAC Comprehensive Review NPRM Comments* at 85-101. Examples of performance measures proposed by USAC and later incorporated by the Commission include the following: High Cost Program (time to process support payments and authorize disbursements; total stakeholders served, including incumbent carriers, competitive carriers; and number of connections supported; administrative output measured by number of carriers served; and number of subscribers per carrier); Low Income Program (time to process support payments and authorize disbursements; total stakeholders served, including incumbent carriers, competitive carriers; and number of connections supported; administrative output measured by number of carriers served; and number of subscribers per carrier); Rural Health Care Program (time to process applications, time to pay invoices, time to determine appeals); Schools and Libraries Program (time to process applications, time to pay invoices, time to determine appeals); and USF Administration (billing and disbursement accuracy).

and implementation of additional meaningful and cost-effective outcome, output and efficiency measures for the USF and each of its mechanisms, as well as the administration of the program. To the extent the Commission desires expanded measurements, it must authorize collection of necessary data. Performance measurement is critical to determining a program's progress in meeting its intended outcomes while balancing cost and burden of collection.

Paragraph 25 also asks whether "performance measures be oriented toward the implicit social welfare objectives of the USF programs or tied only to accomplishment of the explicit requirements of the Act" and "[i]f and when long-term program goals are met, does the Commission have the authority to terminate or significantly modify a USF program, without explicit Congressional direction?" USAC takes no position on these policy matters, but stands ready to collect and report whatever measurements the Commission directs as a result of this proceeding.

F. USF Program Goals

In paragraphs 28 and 29 of the *NOI*, the Commission invites comments on the long-term and short-term goals of the universal service programs. Specifically for the High Cost program, suggestions are sought for quantifiable measures that can be used to determine the program's success in goal achievement. USAC commented extensively on these topics in its 2005 *Comprehensive Review NPRM* comments including High Cost program measures.[147] USAC reemphasizes that it supports development and

[147] *See USAC Comprehensive Review NPRM Comments* at 91-94.

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. When devising goals and measurements to assess policy outcomes, it is essential that the appropriate data be available. Thus, to the extent the Commission desires expanded measurements to determine achievement of long-term and short-term goals, it must authorize collection of necessary data on program forms or by other means. As USAC has done in response to expansion of USF performance measures and reporting discussed above, USAC stands ready to implement promptly any measures that support the Commission's goal to ensure the program operates in an efficient, effective and transparent manner.

1. High Cost Program

In assessing whether the High Cost program is meeting its statutory goals, the *Comprehensive Review NPRM* recognized that suitable performance measures may include comparing rates of telephone subscribership in rural areas to rates in urban areas. USAC commented that a useful measure is the number of households with telephones for all incumbent study areas receiving High Cost support and noted that the Commission publishes data on telephone subscribership and broadband connections in local telephone service competition reports.[148] Combined with High Cost program disbursement data, these reports could be used to assess the impact of the programs. The Commission requested that USAC report rates of telephone subscribership in urban versus rural areas

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[148] *See id.* at 92-93.

in both the MOU and the *Comprehensive Review Order*, however, this information is not collected on FCC forms and thus not reportable by USAC. Therefore, if the Commission desires this data be reported to USAC, the Commission must authorize collection of necessary data. By measuring 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.

2. Low Income Program

The Commission noted in the 2007 *Comprehensive Review Order* that USAC suggested a method to determine the percentage of households eligible for low-income support, and to measure the effectiveness of the program, is to count the number of households receiving Lifeline per state per quarter compared to census data.[149] In that order, the Commission requested that USAC provide summary information on an annual basis for three carriers from the Lifeline Annual Verification Results filed by carriers each year.[150] USAC provided this information to the Commission in February 2008 and will continue to provide the summary annually to the Commission. USAC also suggested that the Commission consider modifying the FCC Form 497[151] to require carriers to report their tribal support claims by tribal land or reservation.[152] Should the Commission

[149] *Comprehensive Review Order* ¶ 50.

[150] *Id.* ¶ 52.

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

[152] *USAC Comprehensive Review NPRM Comments* at 98.

adopt this modification, it would permit measuring the reach of tribal support in the Low Income program.

3. Rural Health Care Program

USAC reiterates its 2005 suggestion in its *Comprehensive Review NPRM Comments* that the Office for the Advancement of Telehealth (OAT) of the Health Resources and Services Administration (HRSA) program presents an option for evaluation of the performance of the Rural Health Care program.[153] The fiscal year 2006 Department of Health and Human Services (HHS) budget called for OAT to "[d]evelop improved performance measures for telemedicine grant programs" and to "evaluate rural telemedicine grant programs."[154] 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

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[153] *See id.* at 96-97.

[154] *See* Department of Health and Human Services Fiscal Year 2006 Health Resources and Services Administration Justification of Estimates for Appropriations Committees at 416-417.

evaluation, eliminate the need for USAC or Commission involvement, and result in a comprehensive database usable by OAT, USAC, and the Commission.

4. Schools and Libraries Program

In the 2007 *Comprehensive Review Order,* the FCC adopted USAC's suggestions concerning Schools and Libraries Program goals to utilize data from USAC's Site Visit Program and the Blocks 2 and 3 of FCC Form 471.[155] As requested by the Commission, USAC has provided the Commission with summaries of the connectivity issues discussed during site visits. Further, the FCC required that USAC continue measuring and reporting broadband connections provided to program participants. USAC provided this report to the Commission in January 2007 for Funding Years 2005 and 2006, and for Funding Year 2007 the report will be provided in fourth quarter 2008. Finally, during the Program Integrity Assurance review process, USAC now collects detailed information on the type of connectivity for which funding is being requested in order to provide this information to the Commission.

G. Obtaining USF Policy Guidance from the Commission

In paragraph 30 of the *NOI,* the Commission seeks comment on the efficiency and effectiveness of the process under which parties–including USAC–can seek guidance from the Commission regarding interpretation of its rules, particularly with regard to the administration of the USF programs. As the Commission recognizes, "a specific rule

[155] *Comprehensive Review Order* ¶ 40.

may never be specific enough to adequately address all situations" and "may not remain perfectly up-to-date, especially in such a dynamic industry as telecommunications."[156]

In USAC's experience, the process for seeking guidance from the Commission has changed over time due to changes in the programs, the evolution of the relationship between USAC and the Commission and Commission staff changes. The MOU establishes a formal process for seeking guidance from Commission staff. Under this process, designated USAC staff must notify designated Commission staff of USAC's intent to seek guidance and then present a formal written submission to designated Commission staff.[157] The MOU specifies that Commission staff will respond in writing to USAC's request, but does not provide a timeline for doing so.[158] USAC appreciates the Commission's decision to codify the process for seeking policy guidance in the MOU, although the effectiveness of this process has not yet been tested in practice.

H. Additional Internal Control Requirements

The *NOI* seeks comment on internal control requirements for program participants and USAC in several places. Paragraph 31 asks whether the Commission should establish "additional rules pertaining to internal control requirements for program participants." The Commission also seeks comment on its own internal controls with respect to the USF and "whether the Commission needs to have more direct oversight of

[156] *NOI* ¶ 30.

[157] *See* MOU III.L.

[158] *See id.*

the USF Administrator, with respect to the internal controls of the USF."[159] In paragraph 26, the Commission seeks comments on additional measures "to enhance the internal control structure of the entire USF, including all four beneficiary support mechanisms and the contributions program." The Commission requests commenters to assess the costs and benefits of proposed additional measures.[160]

Effective internal controls over all aspects of the universal service programs and the USF are vital to ensuring program funds are collected and disbursed properly. As discussed immediately below, USAC supports Commission efforts to enhance the internal controls of program participants. USAC itself has a strong internal control framework in place and is in the process of further enhancing its internal control environment. The Commission currently exercises substantial and detailed oversight over all aspects of USAC's operations, including its internal control framework. USAC looks forward to working with the Commission to enhance the Commission's oversight of USAC to the extent the Commission determines additional measures may be appropriate.

1. Additional Internal Control Requirements for Program Participants

Properly designed additional internal controls requirements can help reduce the incidence of improper payments. As discussed in detail above, the FCC OIG USF audit program showed that the vast majority of audit findings fell within the control of program

[159] *NOI* ¶ 31.

[160] *Id.* ¶ 27.

beneficiaries and contributors.[161] These results suggest that improvements in beneficiary and contributor internal controls could result in fewer improper payments. USAC plays a vital role in examining the behavior of program participants to determine how to reduce improper payments and to conduct training, education, and outreach to ensure compliance with Commission rules. A comprehensive program to increase rates of program compliance and reduce improper payments will require continued focus by the Commission, USAC, and program participants alike. USAC suggests the Commission balance the need for internal controls against any burdens on program participants as it considers additional rules pertaining to internal control requirements for program participants.

USAC's approach with certain auditees is to require that they strengthen their internal controls so as to avoid similar audit findings in the future.[162] Additionally, many of the measures discussed elsewhere in USAC's comments, such as improved document retention and enhanced asset tracking systems, would improve beneficiary and contributor internal controls.[163] USAC provides training and detailed guidance to help participants comply with these requirements. USAC is eager to hear from the many USF stakeholders regarding proposed enhancements to gain benefit from their ideas on enhancing their internal controls. Because beneficiaries and contributors are in a better

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[161] See section III.A.1 above.

[162] *See USAC Comprehensive Review NPRM Comments* at 226 for a description of the non-compliant auditee process in the Schools and Libraries Program.

[163] See pages 25-30 above.

position to assess their own internal control structures, USAC will reserve further comment on proposed enhancements to beneficiary and contributor internal controls at this time.

2. Additional USAC Internal Controls and Commission Oversight Over USAC Internal Controls

USAC's own internal control framework is robust and closely scrutinized by multiple parties. Internal controls over the USF are reviewed and tested in multiple external audits and reviews, and USAC is in the process of formalizing a system of internal controls consistent with the framework recommended in OMB Circular A-123 as required by the FCC. The annual USF financial audit conducted by the Commission's external auditor and the annual agreed upon procedures review conducted by USAC's external auditor test internal controls of the USF. Since the formation of USAC in 1997, external auditors have rendered unqualified or "clean" financial statement audit opinions and have identified no material audit findings with the annual agreed upon procedures review required by Commission regulations.[164] Since 2002, USAC's Internal Audit

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[164] *See, e.g.*, PricewaterhouseCoopers LLP, Independent Accountants' Report on Universal Service Administrative Company Agreed-Upon Procedures Report Year-End 2007 (June 30, 2008); PricewaterhouseCoopers LLP, Universal Service Administrative Company Financial Statements as of and for the Years Ended December 31, 2007 and 2006 and Independent Auditor's Report (April 14, 2008); Clifton Gunderson, LLP, Independent Auditor's Report as of September 30, 2007 and 2006 (November 13, 2007); Deloitte & Touche LLP, Independent Accountants' Report on Universal Service Administrative Company Agreed-Upon Procedures Report Year-End 2006 (June 25, 2007); Deloitte & Touche LLP, Universal Service Administrative Company Financial Statements as of and for the Years Ended December 31, 2006 and 2005 and Independent Auditor's Report (June 25, 2007); Clifton Gunderson, LLP, Independent Auditor's Report as of September 30, 2006 and 2005 (November 1, 2006); Deloitte & Touche LLP, Independent Accountants' Report on Agreed-Upon Procedures Report Year-End 2005 (June 30, 2006); Deloitte & Touche LLP, Universal Service Administrative Company Financial Statements as of and for the Years Ended December 31, 2005 and 2004 and Independent Auditor's Report (June 30, 2006);

Division has performed 13 internal USAC process audits related to USF operations with seven having a conclusion of satisfactory, zero not satisfactory, and six satisfactory with qualifications.

In the *NOI*, the Commission appropriately points out that "an independent auditor audited the Commission's finance and accounting activities and issued a positive opinion that identified no material weaknesses in these activities in fiscal years 2006 or 2007" and notes that the Commission has received "unprecedented high marks from the outside independent auditor over the Commission's finance and accounting activities, including those governing the USF."[165] The USF–as administered by USAC–constitutes the single largest component of the Commission's financial statements aside from spectrum auction revenue, and is audited as part of the annual audit process referred to in the *NOI*.

The 2007 MOU required USAC to ensure that its internal control structure is consistent with the standards and guidance contained in OMB Circular A-123, including the methodology for assessing, documenting, and reporting on internal controls specified in Appendix A of OMB Circular A-123. USAC, with the assistance of an external accounting firm, is developing the control framework required to conform to the accountability standards set forth in the internal controls integrated framework issued by the Committee of Sponsoring Organizations (COSO) of the Treadway Commission and consistent with the internal control process promulgated by OMB Circular A-123. The

Clifton Gunderson, LLP, Independent Auditor's Report as of September 30, 2005 and 2004 (November 1, 2005); *USAC Comprehensive Review NPRM Comments* at 30 n.99.

[165] *NOI* ¶¶ 2, 6.

project cost associated with the services of the external accounting firm is $1.3 million to conform the USF internal controls to OMB Circular A-123. This program will also assist USAC with its annual report on the effectiveness of its internal control procedures. The key objectives for the internal control program are to: (i) identify primary/key process controls; (ii) identify and document financial business processes; (iii) identify potential deficiencies in USAC's key defined financial business processes; and (iv) perform risk analysis to test key controls at the transaction level. USAC has recently begun the initial testing phase. Once testing is complete, USAC will review and implement appropriate suggestions to improve internal controls.

The Commission, by any measure, has extensive direct oversight of the internal controls of USAC and the USF facilitated through the following activities and vehicles: annual USF financial audit conducted by the FCC's external auditors, annual FCC Part 54 audit by external auditors, the FCC's requirement for USAC to maintain for the USF an internal control structure consistent with the standards and guidance contained in OMB Circular A-123, and the extensive reporting and performance measures required by the MOU. This wide-ranging oversight of USAC provides the FCC extensive transparency with respect to USF internal controls today.

I. USAC-NECA Relationship

Paragraph 32 of the *NOI* discusses the relationship of USAC with the National Exchange Carrier Association, Inc. (NECA). The Commission notes that "under the Commission's rules, NECA performs certain activities and functions related to the USF.

For example, NECA is the sole shareholder of the current USF Administrator, USAC. In addition, NECA collects certain data used to administer the high cost program."[166] The Commission asks whether it

> should take additional measures concerning NECA's relationship to [USAC] and its activities in the program. For example, should the Commission adopt any specific conflict of interest or other requirements pertaining to NECA (or its successors or assigns) and its relations with the USF Administrator? Should the Commission establish any requirements specifically designed to create greater transparency in the relationship between NECA and the USF Administrator?"[167]

The Commission seeks comment on whether it "should establish any rules governing the NECA board with respect to its relations with the USF Administrator, such as sharing information or the possibility of shared board members."[168] In addition, paragraph 32 notes that "USAC has proposed that the Commission consider whether USAC should be divested from NECA"[169] and seeks comment on USAC's proposal.

1. The USAC-NECA Relationship

USAC was expressly created to be–and serves as–the neutral administrator of the universal service programs, and views its actual and perceived neutrality as vital to its continued effectiveness. Although the Commission directed that USAC be established as a subsidiary of NECA, the Commission unambiguously required that USAC be

[166] *Id.* ¶ 32 (internal citations omitted).

[167] *Id*.

[168] *Id.*

[169] *USAC Comprehensive Review NPRM Comments* at 51-52.

independent and clearly intended NECA to have no management or operational control over USAC. The Commission's rules state that USAC:

> shall have a Board of Directors separate from the Board of Directors of the National Exchange Carrier Association. The National Exchange Carrier Association's Board of Directors shall be prohibited from participating in the functions of [USAC].[170]

In addition, the Commission's rules provide that USAC "shall maintain books of account separate from those of [NECA], of which [USAC] is an independent subsidiary."[171] As part of USAC's annual audit, which must be performed pursuant to Commission rules,[172] USAC is required to provide to the auditing firm the names of USAC and NECA board members to ensure there is no membership overlap, and to provide the auditors with assurance that USAC maintains separate books of account from NECA.

Further, the Commission's rules designate the FCC Chairman, not NECA, as responsible for selecting the members of USAC's Board of Directors based on nominations from constituent groups represented on USAC's Board, and for approving the selection by the USAC Board of the USAC Chief Executive Officer.[173] The Commission's rules therefore give NECA no role in the Board or Chief Executive Officer

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[170] 47 C.F.R. § 54.703(a).

[171] 47 C.F.R. § 54.702(e).

[172] *See* 47 C.F.R. § 54.717 ("[USAC] shall obtain and pay for an annual audit conducted by an independent auditor to examine its operations and books of account….") *See also*, 47 C.F.R §§ 54.717(a)-(b) (requiring the FCC Office of Inspector General to approve audit requirements to ensure audit objectives are met prior to the auditing firm conducting the audit).

[173] *See* 47 C.F.R. §§ 54.703-704.

selection process. Thus, existing Commission rules and orders clearly govern the separation of the USAC and NECA Boards of Directors and the assurance of separate books of accounts between USAC and NECA. USAC's auditors have never found USAC to be in violation of 47 C.F.R. §§ 54.703(a) or 54.702(e).

In the 2005 *Comprehensive Review NPRM*, the Commission correctly observed that there are numerous regulatory requirements designed to ensure competitively neutral USF administration.[174] When USAC was established, the Commission went to great lengths to structure USAC to ensure its neutrality as USF Administrator–neutrality was a central issue in USAC's formation 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 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."[175] 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."[176] Although the Commission modified the Board somewhat to address the 1997 merger between the Schools and Libraries Corporation and the Rural Health Care Corporation, the Commission found "the USAC

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[174] *Comprehensive Review NPRM* ¶ 14.

[175] *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, 18417-18 (1997) (*USAC Appointment Order*).

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

Board, as currently configured, generally has afforded fair representation of the diverse participants in, and competitively neutral administration of, the universal service support mechanisms."[177] Thus, the Commission's rules provide for an experienced Board of Directors representing a balance of different interests.[178]

Paragraph 32 of the NOI asks whether the Commission should "establish any requirements specifically designed to create greater transparency in the relationship between NECA and the USF Administrator." USAC welcomes input from the stakeholder community on this question and welcomes whatever examination of its relationship with NECA the Commission deems appropriate. To be clear, however, 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, USAC is required to rely on NECA to provide certain data to USAC pursuant to 47 C.F.R. Part 36, USAC obtains certain insurance as a subsidiary of NECA,[179] and USAC is necessarily included on NECA's tax returns as a corporate subsidiary. As numerous audits have confirmed, the relationship is otherwise arms-length and in compliance with the Commission's already strict rules designed to ensure USAC's neutrality.

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[177] *Id.* at 25074.

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

[179] USAC is in the process of determining the feasibility of and fees associated with obtaining separate directors and officers insurance, liability insurance, and workers compensation insurance so that it can be removed from the NECA policy.

2. USAC Divestiture from NECA

The *USAC Reorganization Order* included a one-year review of whether USAC should be divested from NECA.[180] This review did not occur. USAC reiterates its suggestion from the *Comprehensive Review NPRM* that the Commission consider revisiting the question whether USAC should remain a technical subsidiary of NECA.[181]

Divestiture would assist the Commission in achieving its objectives in at least one specific area. Commission staff recently directed USAC to change its fiscal year-end from December 31 to September 30 to coincide with the federal government year-end.[182] Although USAC and NECA maintain the separations required by Commission rules as discussed immediately above, NECA includes USAC in its federal tax filings as required by the Internal Revenue Code. NECA files its taxes using a December 31 year-end, and subsidiaries of corporations also maintain the same fiscal year-end as their corporate parents to facilitate filings. In fact, for a subsidiary to have a different fiscal year-end than its parent requires permission from the Internal Revenue Service (IRS). Commission staff has instructed USAC to seek such approval from the IRS, which may or may not be granted. If USAC were not an affiliate of NECA, but a separate corporate entity, it could more readily comply with the Commission's directive to change its fiscal year.

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[180] *See USAC Reorganization Order*, 13 FCC Rcd at 25070.

[181] *See USAC Comprehensive Review NPRM Comments* at 66-67.

[182] *See* Letter from Anthony J. Dale, Managing Director, Federal Communications Commission, to D. Scott Barash, Acting Chief Executive Officer, USAC, (July 24, 2008).

After more than 10 years of USAC operating as a neutral entity in the independent manner intended by the Commission, there is no reason why USAC should remain a corporate subsidiary of NECA. Divestiture would definitively and appropriately resolve any lingering questions that may exist regarding the "transparency" of the USAC-NECA relationship. The time is right to revisit the question whether USAC should continue to be a nominal subsidiary of NECA, and NECA and USAC should be empowered to take the steps necessary to become completely separate corporate entities.

J. USAC Procurement of Goods and Services

Paragraph 33 of the *NOI* seeks comment on the Commission's supervision of USAC's procurement activities.

1. Background Regarding USAC's Procurement Process

The complex and wide-ranging nature of USAC's operations, coupled with the size of the USF and its programs, require USAC to purchase a variety of goods and services from a diverse set of vendors. USAC contracts range from small purchases of office supplies to multi-million dollar outsourcing contracts for information technology and program support services. When USAC was established, the Commission outlined principles to guide USAC in its procurements. Since its creation, USAC has conducted its procurement activities using sound business practices in a manner that promotes full and open competition to the fullest extent possible. These efforts have resulted in USAC obtaining competitive prices for goods and services, which have in turn contributed to USAC's reasonable administrative costs as discussed elsewhere in these comments.

USAC's procurements have long been scrutinized by auditors and subject to extensive Commission oversight.

USAC has taken many steps both on its own initiative and in compliance with Commission directives to ensure fairness in its procurements, enhance the Commission's ability to oversee USAC's purchasing activities, and promote transparency in USAC's purchasing activities. USAC's Board of Directors approves all contracts in excess of $100,000, and comprehensive USAC procedures govern every dollar that USAC spends on goods and services. USAC employs purchasing personnel and counsel experienced in procurement matters to obtain the best business and legal terms possible.

USAC is committed to full and open competition as a matter of policy and in practice. From 2005 through 2007, USAC awarded 129 contracts in excess of $25,000. The total value of these contracts was approximately $241 million. Of these, 122 contracts, representing 99.83% of the total amount awarded, were awarded using a competitive procurement process. Seven contracts, or 0.17% of dollars awarded, were awarded via means other than full and open competition. The largest such contract was $86,200 to retain an expert statistician in connection with Round 1 of the FCC OIG USF audit program.

When USAC was established, the Commission recognized that USAC would obtain services from contractors and outlined procurement principles in Commission regulation and orders.[183] Since 2005, Commission staff has assumed a greater role over USAC procurements by: (i) conducing extensive Commission staff review and approving USAC procurement solicitation and award decisions; and (ii) requiring USAC to comply with a vast body of federal procurement law. These requirements and processes have been memorialized in each MOU as explained below. Although a majority of the USAC Board of Directors voted to approve each MOU, and USAC has made–and will continue to make–every effort to comply with all MOU provisions to the fullest extent possible, certain Board members have expressed concerns regarding the potential for unintended consequences resulting from the procurement-related provisions contained in the MOU. USAC is in the process of implementing its MOU compliance plan, and thus far has identified certain consequences in the procurement-related provisions raising legal and practical challenges described below. USAC respectfully suggests that in assuming–and perhaps expanding–Commission management of USAC's procurements, and as a result of the manner in which federal procurement law has been

[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 Commission's oversight of contractor performance." *See USAC Reorganization Order*, 13 FCC Rcd 25068-69, ¶ 18. 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 (SLC) 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 rescission 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.

directly applied to USAC, the Commission risks making USAC a less desirable entity for vendors to do business with, increasing the cost that USAC must pay for goods and services, and jeopardizing USAC's ability to fulfill the Commission's need for flexible administration of the USF.

2. USAC Compliance with Federal Procurement Law

In paragraph 33 of the *NOI*, the Commission states that it "has required USAC to conduct procurements consistent with the Federal Acquisition Regulation ("FAR")", since 2005, and seeks comment on how to improve its oversight of USAC's procurements. In order to comment meaningfully on whether the "Commission should take a more active role" in USAC procurements,[184] it is necessary to understand more fully the current role of Commission staff in this area.

In the 2005 *Comprehensive Review NPRM*, the Commission sought comment "on whether USAC should apply, to the extent practicable, the policies and procedures embodied in the [FAR]."[185] The Commission noted that:

> The FAR is Chapter 48 of the C.F.R. The FAR governs the contractual acquisition of supplies and services for use by the federal government. This does not suggest that FAR applies as a matter of law; we seek comment on whether we could apply rules based on FAR as a matter of policy in arrangements between the Commission and USAC.[186]

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[184] *NOI* ¶ 33.

[185] *Comprehensive Review NPRM*, 20 FCC Rcd at 1134

[186] *Id.*

In its 2005 comments, USAC stated that its "Board of Directors insists on full and open competition in accordance with approved policies" and that USAC's contracts consistently included a number of advantageous FAR-based concepts."[187] USAC noted that the then-recent requirement to obtain Commission staff approval of certain procurements would place USAC in a difficult position with respect to prospective bidders.[188] Although few other parties commented on this issue in 2005, Verizon noted that "[t]he Commission should not require the administrator to navigate and comply with a new set of complex rules which are not demonstrated as being necessary to properly administer the universal service fund."[189]

Although the Commission has yet to determine the applicability of the FAR to USAC procurements, the 2007 MOU required USAC to conduct:

> contracting actions [] consistent with [FAR] requirements designated by [the Office of the Managing Director ("OMD")] and [the Wireline Competition Bureau ("WCB")], including, but not limited to, FAR requirements for full and open competition, permissible business practices, and audit requirements.[190]

USAC endeavored to comply with these requirements by continuing its existing practice of adapting from the FAR relevant provisions that would implement the policies found in the FAR in a manner that would be applicable to procurements conducted by an

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[187] *USAC Comprehensive Review NPRM Comments* at 62 - 63 (internal cites omitted)

[188] *See id.* at 63.

[189] *Verizon* 2005 *Comments* at 31 n.70 ("It is unclear what particular Federal Acquisition Regulation polices and procedures the Notice is proposing to apply; however, the government volumes listing the Federal Acquisition Regulations encompass more than 2000 pages.").

[190] 2007 MOU at IV.A.2.

entity that is not a federal agency. For example, long before the MOU, USAC incorporated into its procurement contracts language from FAR provisions concerning intellectual property rights, travel expenses, inspection of goods and services, termination for convenience, stop work, change orders, non-discrimination, audit rights and vendor conflict of interest prohibitions. USAC's historical practice of careful and selective adaptation of the FAR principles in these areas generally has been accepted by USAC's contractors and has served the interests of the USF and its stakeholders.

Although this remains an open issue in this rulemaking proceeding, Commission staff recently substantially expanded the list of FAR requirements with which USAC must comply. The MOU requires USAC to "mirror the FAR clauses and provisions that are not specifically inherently governmental" and requires "at a minimum" that USAC procurements comply with 31 separate Parts of the FAR.[191] The MOU specifies that the

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[191] *See* MOU Attachment E ("[a]t a minimum, USAC acquisition shall abide by the following FAR Parts" which it lists as follows:

Subchapter A--GENERAL:

Part 2–Definitions of Words and Terms

Part 3–Improper Business Practices and Personal Conflicts of Interest

Part 4–Administrative Matters

Subchapter B--COMPETITION AND ACQUISITION PLANNING:

Part 5–Publicizing Contract Actions

Part 6–Competition Requirements

Part 7–Acquisition Planning

Part 9–Contractor Qualifications

Part 10–Market Research

Part 11–Describing Agency Needs

Part 12–Acquisition of Commercial Items

application of the FAR to USAC procurements is to be accomplished in the following manner:

Subchapter C--CONTRACTING METHODS AND CONTRACT TYPES:

Part 13–Simplified Acquisition Procedures

Part 14–Sealed Bidding

Part 15–Contracting by Negotiation

Part 16–Types of Contracts (Note: Cost type contracts shall not be entered into)

Part 17–Special Contracting Methods

Subpart 17.1–Multi-year Contracting

Subpart 17.2–Options

Subchapter D--SOCIOECONOMIC PROGRAMS

Part 19–Small Business Programs

Part 22–Application of Labor Laws to Government Acquisitions

Part 23–Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace

Subpart 23.5–Drug-Free Workplace

Part 24–Protection of Privacy and Freedom of Information

Subchapter E--GENERAL CONTRACTING REQUIREMENTS

Part 33–Protests, Disputes, and Appeals

Subchapter F--SPECIAL CATEGORIES OF CONTRACTING

Part 37–Service Contracting

Part 39–Acquisition of Information Technology

Subchapter G--CONTRACT MANAGEMENT

Part 42–Contract Administration and Audit Services

Part 43–Contract Modifications

Part 44–Subcontracting Policies and Procedures

Part 45–Government Property

Part 46–Quality Assurance

Part 47–Transportation

Part 49–Termination of Contracts

Subchapter H--CLAUSES AND FORMS

Part 52–Solicitation Provisions and Contract Clauses

> [t]o the extent provisions in the FAR (including standard texts and paragraphs in Part 52 or [sic] the FAR) are written to expressly refer to 'the Government,' the USF Administrator shall insert 'the USF Administrator' instead.[192]

The purpose of the FAR is to codify and publish "uniform policies and procedures for acquisition by all executive agencies"[193] and the goal of the FAR "is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives."[194]

In recognition of USAC's role as USF administrator, and of the USF as federal funds, USAC has conducted its procurements consistent with the goal of the FAR and, as stated above, awards contracts based on full and open competition in accordance with approved policies under Commission oversight. USAC's assessment is that compliance with the MOU requirements will impose substantial new costs on USAC's operations without providing USAC the concomitant savings enjoyed by federal agencies. For example, the USAC Board of Directors recently approved a proposed 2009 budget that contains five new positions directed solely to addressing the new MOU procurement-related requirements. These positions include two contract administrators, a competition advocate, a staff auditor (the FAR requires an audit program to review contractor

[192] MOU at Appendix E.

[193] *See* 48 C.F.R. §1.101.

[194] 48 C.F.R. § 1.102(a). Subsection (b) provides as follows: The Federal Acquisition System will–(1) Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service by, for example–(i) Maximizing the use of commercial products and services; (ii) Using contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform; and (iii) Promoting competition; (2) Minimize administrative operating costs; (3) Conduct business with integrity, fairness, and openness; and (4) Fulfill public policy objectives.

accounting and financial systems), and a senior attorney with substantial FAR expertise. The anticipated cost of these new positions will be over $500,000 in 2009.

Although USAC will incur the monetary and transition costs of attempting to incorporate the bulk of federal agency procurement law in its purchasing operations, USAC is unable to obtain the most significant cost savings that federal agencies enjoy. For example, USAC cannot take advantage of the ability of federal agencies to purchase goods and services using pre-negotiated pricing schedules under contracts between a contractor and the United States General Services Administration (GSA). The GSA's Federal Supply Schedule contracts enable federal agencies to purchase commercial goods and services like computers, office supplies, off-the-shelf software, copiers, furniture, auditing, accounting, information systems services, and thousands of other goods and services at substantial, pre-negotiated discounts off published list prices. Moreover, federal agencies that purchase using a GSA Schedule are not required to conduct competitive procurements, thereby saving themselves the substantial costs in time and money of issuing solicitations, conducting formal offer evaluation processes, and negotiating contracts.

In April 2007, at the suggestion of Commission staff, USAC sought GSA authorization to purchase from the GSA Schedule contracts. The GSA denied USAC's request, stating that USAC is not a federal agency and thus "not eligible to access GSA's sources of supply."[195] Thus, USAC is unable to use an important tool of effective and

[195] Letter from Al Matera, GSA, to Richard Belden, USAC (Oct. 26, 2007).

expedient government procurement because it is not a federal agency, while at the same time it must comply with FAR requirements designed for federal agency procurements. As a result, USAC can neither use more efficient commercial acquisition practices nor may it acquire many goods or services using the most cost-effective vehicle for procurement of commercial items available to federal agencies.

Moreover, although procurement law requirements that must be met by federal agencies have been applied to USAC contracting activities, USAC does not enjoy the procedural,[196] jurisdictional,[197] sovereign immunity[198] and other protections enjoyed by federal agencies to balance these requirements. FAR Part 33, for example, concerns contractor disputes involving federal agency procurements. The MOU applies FAR Part 33 to USAC, but leaves unclear the question whether contractors with disputed claims against USAC, or who wish to challenge USAC's conduct of a procurement, may pursue such matters only in the state and federal courts with subject matter jurisdiction over private contract matters and personal jurisdiction over USAC, only in the United States Court of Federal Claims (the sole federal court with jurisdiction over disputed federal contract matters), or both. An ancillary question is what would occur if application of the

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[196] As a private entity, USAC and its employees do not enjoy the many protections of, *e.g.*, the Federal Tort Claims Act, the Contract Disputes Act, and a host of other statutes that federal agencies and their employees enjoy in carrying out their official responsibilities.

[197] Unlike a federal agency, which enjoys a right to have actions against it litigated in specific federal courts set forth in statute, USAC, as a private corporation, may be sued in any state or federal court where that court's general subject matter and personal jurisdiction will permit the action, and where proper venue may be established.

[198] As a private entity, USAC enjoys no immunity from suit for damages for actions taken in carrying out the functions assigned to it under Commission rules.

dispute resolution process found in FAR Part 33 is attempted by USAC or by the Commission on behalf of USAC, and a state or federal court disagrees with the resulting jurisdictional consequences. If federal contract dispute resolution procedures were applied to USAC, it is unknown whether the Department of Justice, which is responsible for defending federal agencies in litigation, would–or would have the authority to–extend its representation to USAC merely because the Commission has required USAC to follow such procedures.

In addition, the MOU requires USAC to perform functions that are statutorily limited to government agencies. However, USAC is not a government agency and has no authority or ability to perform many of these functions. For example, USAC has no legal authority to suspend or debar contractors for improper conduct, a duty required by incorporating FAR Subpart 9.4 in the MOU. USAC could also be exposed to legal claims from contractors that it sought to suspend or debar through communications with the FCC or other agencies.

Notwithstanding the requirements of the MOU, USAC, like any other non-governmental entity, is governed by an extensive body of state and federal statutes and common law with regard to the conduct of its procurements and administration of its contracts. The MOU requirement that USAC adopt whole Parts of the FAR–which has its source in a host of different statutes, executive orders and other executive branch directives–in their entirety by substituting “USF Administrator” for “the government” everywhere it appears in the FAR adds an additional layer of federal contract law to this existing body of statutory and common law. Moreover, it will create inconsistencies, ambiguities, and conflicts between the two bodies of law, as well as potentially other unintended consequences.

3. Commission Review, Approval, and Management of USAC Procurement Activities

In addition to compliance with the FAR as explained above, Commissions staff has assumed a managerial role over USAC procurements. The 2007 MOU restated a 2005 letter directive that Commission staff:

> must review and approve in advance proposed USF Administrator solicitations and contract award decisions for (1) all sole source contracting actions above $25,000 and (2) all competitive contracting actions in excess of $250,000.[199]

The MOU currently in effect expanded these requirements by adding the following:

- USAC must submit every solicitation for a sole source or limited competition procurement greater than $25,000 and for every procurement or option exercise over $250,000 to Commission staff for prior approval.
- USAC must submit every proposed contract award for a sole source or limited competition procurement greater than $25,000 and for every procurement or option exercise over $250,000 to Commission staff for prior approval.
- USAC's submission must include an analysis of why the procurement is necessary; a synopsis of the procurement with a timeline of estimated benchmark dates; all pricing information including USAC's initial estimates, the offeror's prices, USAC's price analysis and related documents; explanation of the evaluation criteria and the basis for the selection; and a certification by a USAC officer that the procurement complies with all relevant requirements.

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[199] 2007 MOU at IV.A.1, citing Letter from Andrew Fishel and Jeffrey Carlisle, FCC, to Lisa Zaina, USAC (Mar. 14, 2005). The 2007 MOU incorporated the requirements of the 2005 letter directive without substantive change.

- USAC must submit all vendor selection decisions over $100,000 to Commission staff for prior approval if USAC determined there is any "potential apparent or actual conflict of interest or any impropriety by any qualified bidder" in connection with the procurement.

- USAC may not add language to a contract mitigating any contractor's apparent conflict of interest without the Commission's approval of the specific wording.[200]

The review and approval process is in addition to the FAR compliance described above. Two other issues add risk to USAC's performance of its mission: (i) the MOU requires that USAC not exercise options for contract renewals without FCC permission even if such renewals were included as priced options as part of the original competitive procurement that had previously been approved by Commission staff,[201] and (ii) there is no timetable or criteria governing Commission staff review and approval of USAC procurement activities.

These issues place USAC in the position of being unable to act predictably with its commercial vendors. Based on experience to date, it is readily foreseeable that circumstances will arise where USAC will need to exercise an option to extend the term of a contract because the FCC has not yet approved a new contract for the required services. Under the new requirements, USAC also would be faced with the prospect of uncertainty in obtaining approval of the exercise of the option. Such uncertainty could jeopardize program operations and/or substantially increase program administrative costs.

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[200] *See* MOU at III.B.3-5.

[201] Under the FAR, a government agency may exercise a competitively-bid priced option without obtaining further approvals, and exercise of such options is a routine practice. *See* FAR § 17.207.

The Commission established USAC as an independent third-party administrator governed by a neutral Board of Directors subject to substantial Commission oversight. USAC welcomes this oversight as necessary and appropriate in light of the role the Commission has vested in USAC. Because the USAC Board of Directors has in the past and continues to insist on full and open competition in accordance with approved policies, and because USAC is subject to thorough Commission oversight of its procurement activities, USAC respectfully suggests that the MOU provisions regarding USAC's purchasing activities described above may not best serve the interests of the USF or its stakeholders.

4. Commission Staff Role in USAC Procurements Going Forward

In paragraph 33 of the *NOI*, the Commission seeks comment on "whether the Commission should take a more active role in [USAC's] procurements, such as handling all aspects of the procurement process for contracts exceeding $250,000."

Having Commission staff undertake to procure goods and services for USAC raises numerous legal and practical issues. First, the Commission may lack the legal authority to acquire goods and services on behalf of a private corporation.[202] Second, if

[202] "It is fundamental that Federal agencies cannot make use of appropriated funds to manufacture products or materials for, or otherwise supply services to, private parties, in the absence of specific authority therefore." 28 Comp. Gen. 38, 40 (1948). "Regardless of who pays or what happens to the money, a government agency needs statutory authority in order to provide goods or services to non-governmental parties." Principles of Federal Appropriations Law, Vol. IV (GAO-01-179SP), General Accounting Office (March 2001) at 15-132. Federal statute allows executive agencies to enter into agreements to conduct procurements on behalf of another federal executive agency, 41 U.S.C. § 261(b), but there is no analogous provisions allowing a federal agency to conduct procurements on behalf of a private company. As noted

the Commission were to acquire goods and services required by USAC in the name of the Government, it is not clear that the Commission would have the legal authority to effectively turn those assets over to USAC in its capacity as USF administrator.[203] Third, if the Commission acquired goods and services in the name of the Government, it is unclear that the Commission would have the authority to use USF funds for this purpose.[204] Fourth, if the Commission were to assume responsibility for USAC procurements, such procurements would then be subject to the bid protest jurisdiction of the GAO and United States Court of Federal Claims, which could result in delays and additional costs to the USF. Fifth, if the Commission were to conduct procurements on behalf of USAC, the contractor chosen would in effect be answerable to the Commission

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above, the GSA already has determined that USAC may not utilize GSA Schedule contracts because it is not a federal agency.

[203] The Economy Act, 31 U.S.C. § 1535, which allows the "head of an agency" to enter into an agreement with "a major organizational unit" with the same agency or with "another agency" to transfer goods and services required by a requesting agency, has never been interpreted to authorize an agency to transfer goods or services to a private entity. The Economy Act was held specifically to be inapplicable to a permanent commission established under statutory authorization even though it was federally funded and permanent where some members could not be employees of the United States. *See* 33 Comp. Gen. 115, 116-17 (1953). A transfer of government-owned property to USAC for the performance of USAC's functions under authority that permits contractors to use government furnished property in the performance of a government contract also would be constrained by the fact that the FAR requires private parties receiving government-owned property for use in forming a government contract actually be contractors to the government. FAR § 45.102. USAC is not a contractor to the Commission, and transfers of Commission property to USAC to perform its functions would not be authorized under FAR Part 45. Furthermore, even if FAR Part 45 authorized transfers of personal property to USAC, it would not provide a mechanism for authorized transfers of contracted services to USAC. Finally, if the transaction was considered an interagency acquisition under the Economy Act, regulations prohibit "off-loading" procurement of supplies or services to another agency that cannot be obtained as conveniently or cheaply by contracting directly with a private source, and the procuring agency must have the contract in place for its own requirements before receiving the interagency order. FAR § 17.503.

[204] 47 U.S.C. § 254(d) provides telecommunications carriers shall contribute "to the specific, predictable and sufficient mechanisms established by the Commission to preserve universal service." It does not provide that such contributions may be used by the Commission to pay for the government's procurement of goods and services. Thus, the question whether the Commission is authorized to apply the USF to its own procurements of government-owned items is unresolved.

and not USAC. It is not clear how USAC could manage contractor performance, and USAC would not be able to terminate or withhold payments from a contractor for inadequate performance.

The procurement review and approval scheme under which USAC and the Commission currently operate has essentially moved Commission staff from an oversight role into a direct day-to-day operational role over individual USAC procurements. As described above, this has created operational obstacles and uncertainty for USAC's current and proposed vendors. USAC has emphasized throughout these comments and elsewhere its strong support for broad and deep Commission oversight of all aspects of the USF, including procurement. USAC has suggested previously to Commission staff and restates in these comments an alternative approach to procurements as discussed briefly below. This suggested approach promotes transparency, improves the Commission's oversight of USAC's overall procurement function, and enables Commission approval of USAC procurement activities, while at the same time allowing USAC to conduct individual procurements and ongoing operations in a predictable, timely, and cost-effective manner.

Under this approach, USAC would submit a detailed semi-annual procurement plan to the Commission listing all proposed solicitations above $250,000. USAC would provide a detailed description and any other information the Commission deemed necessary to conduct effective oversight. The Managing Director would then approve, reject, or modify the proposed plan, preferably within 30 days. At the same time, to ensure accountability USAC would also provide a semi-annual detailed status report on procurements conducted pursuant to the most recent plan submitted to the Commission. To accommodate unforeseen circumstances, USAC could notify the Commission of solicitations on an individual basis. USAC is eager to work with Commission staff to accommodate and promote its oversight needs, and would welcome the opportunity to refine this proposal.

5. Mandating FAR Socio-Economic Requirements and Performance-Based Contracting in USAC Procurements

Paragraph 33 of the *NOI* poses two other specific questions regarding USAC contracts: first, whether USAC procurements should be subject to the FAR rules dealing with "socio-economic goals…such as veteran's preferences and small business set-asides;" and second, whether the Commission "should mandate a percentage of the USF Administrator's procurements to be performance-based." USAC will address these issues in turn.

a. Application of FAR Set-Aside Requirements to USAC

Federal agencies are required by law to set aside a portion of their contract dollars to contracts with small businesses.[205] The FCC requires in the MOU that USAC be covered by this requirement and set aside 30% of its contracts for small business. Given the fact that the vast majority of USAC's contract dollars are devoted to a small number of large contracts, which are beyond the ability of small service contractors to perform,

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[205] *See generally*, Small Business Act, 15 U.S.C. § 631 *et seq.*, Federal Property and Administrative Services Act, 41 U.S.C. § 252, and Executive Order 12138. These statutes and order are implemented by FAR Part 19.

compliance with this requirement poses an especially difficult challenge for USAC. Further, the 30% set-aside requirement is not a FAR-mandated amount and exceeds the small business utilization goals applied to federal agencies.[206]

Part 19 of the FAR implements aspects of the Small Business Act, which provide a number of programs designed to give small businesses advantages in competing for government contracts. The manner in which these programs are implemented in the FAR may be appropriate for a government agency, however, USAC suggests they are not intended to be applied in the same way to private companies. Under the Small Business Act and FAR Part 19, for example, federal agencies are required to establish an office of small business utilization, with a director and staff. This office is to be involved in all procurements, have full-time personnel assigned to each contract, coordinate with the Small Business Administration, and make reports concerning small business utilization. USAC has no such office or position now, and applying Part 19 will cause USAC to incur additional administrative expense.

Part 19 also requires federal agencies to provide competitive advantages to small businesses in procurements. Where there are at least two small businesses available to satisfy a government requirement, part or all of the procurement is to be set aside solely for competition among small businesses. This has the effect of requiring the agency to

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[206] The current government-wide goal established under the Small Business Act is 23% of prime contracts to small business. See http://www.sba.gov/aboutsba/sbaprograms/goals/SBGR_2006_STATUTORY_GOALS.html. In FY 2007, the Commission's small business subcontracting percentage was 22.77%. See http://www.sba.gov/idc/groups/public/documents/sba_homepage/fy2007sbgr.html. The FY 2008 percentage has not been published.

identify a larger pool of potential competitors than would otherwise be required (*i.e.*, a pool of general competitors, and a second pool of small business competitors). In USAC's major procurements, which have not been oversubscribed in terms of the number of qualified offers received, this requirement will present a material challenge.

FAR Part 19 also provides for a small business set-aside program and determinations of competency by the SBA of small businesses seeking set-aside awards. The set-aside program requires government agencies to declare certain contracts available for award only to small businesses. Contracting officers are required to set aside contracts valued at between $3,000 and $100,000 for award to small businesses, unless there is no reasonable expectation that at least two small businesses would make offers, even if a large business would provide the same goods or services at lower prices. If the SBA recommends that any procurement be set aside for small business, the agency must set it aside or give the SBA the right to appeal the decision not to set the procurement aside. Adoption of set-aside rules for USAC procurements would have a pronounced effect on its current procurement practices.

The interplay of the small business competency determination under FAR subpart 16.6 adds further complexity. Under this section, if a small business offers to supply an agency need, and the agency determines that the small business is not responsible, the agency contracting officer must refer the matter to the SBA, which then is authorized to make a binding decision that the small business is responsible to be awarded the contract. The procuring agency must then make the award to the small business, even if it judges the small business to be unqualified or not adequately responsible to perform. Applying this "certificate of competency" process to USAC is problematic. First, the SBA statute does not authorize SBA to make competency determinations for non-federal government agency contractors. Second, the Delaware General Corporation Law (USAC is incorporated in Delaware) holds USAC's Board of Directors responsible for seeing that its officers carry out their fiduciary obligations to the company, and that is not a duty that can be delegated to a federal agency under Delaware law. Third, as a practical matter, it is questionable whether the SBA would even participate in such a program with a private corporation such as USAC.[207]

FAR subpart 19.7 addresses the small business subcontracting program required of federal agencies by the Small Business Act. Under this program, federal contracting officers are required to make large businesses that obtain contracts in excess of $550,000 negotiate plans to subcontract agreed portions of subcontract work to small businesses. These plans must specify targets for small business subcontracts and provide for the payment of liquidated damages to the agency if the targets are not achieved. Negotiation and enforcement of such small business contracting plans will impose substantial administrative costs on USAC.

FAR Part 19 also includes regulations governing agency contracts with the SBA, which are in turn subcontracted to Section 8(a) companies. FAR subpart 19.8 cannot be

[207] As discussed above, USAC's request to utilize GSA contract vehicles was denied on the basis that USAC is not a federal agency.

applied to USAC, as the SBA has no statutory authority to provide goods and services to USAC through its Section 8(a) program.

b. Application of FAR Performance-Based Contracting Requirements to USAC

In paragraph 33 of the *NOI*, the Commission notes that the MOU requires USAC to "take greater steps to use performance-based contracting in its procurements" and seeks comment on "whether we should mandate a percentage of the USF Administrator's procurements to be performance-based." The MOU provides that USAC "will use performance-based contracting, including incorporation of measurable performance standards in its contracts."[208] Thus, the MOU currently in place requires USAC to use performance-based contracting, together with financial incentives and penalties, in arguably all of its procurement contracts. This is a requirement that is not applied to federal agencies. USAC suggests this requirement may harm competition for USAC contracts and under certain circumstances may be inconsistent with USAC's Commission-mandated duty to administer the USF in a predictable and cost-effective manner as explained below.

In performance-based contracts, contractors are given as much freedom as possible to determine how best to meet the performance objective. Contracts include performance standards and describe how the contractor's performance will be evaluated as part of a quality assurance plan. In appropriate cases, performance-based contracts

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[208] MOU at IV.B.6 ("To give effect to the performance standards, USAC shall include financial incentives and penalties it [sic] its performance-based contracts. In the annual report of USAC's Competition Advocate, USAC shall identify its performance-based contracts.").

will have performance incentives and disincentives. As applied to federal agencies under the FAR, performance-based contracts are limited to service contracts. Contracts for delivery of goods are not considered candidates for performance-based contracts.

Studies of performance-based contracting performed by the United States Government Accountability Office (GAO) and others have recognized that performance-based contracts are not appropriate for all service contracts. Across the government, for example, less than 50% of service contract dollars are expended in performance-based contracts. Contracts for standard commercial services, such as custodial services, advertising services, building maintenance, etc., are good candidates for performance-based contracting because the measurement and specification of performance standards are straightforward. Contracts that are very complex and technical or involve high risk are considered poor candidates for performance-based contracts because they require extensive oversight.[209]

A true performance-based contract could be inconsistent with USAC operations as required by the Commission in cases such as administering the Schools and Libraries Program, where the manner in which the work must be performed is specified in detailed procedures approved by the Commission. While USAC already establishes service-level agreements and enters into performance agreements with specific program-related targets in its major contracts, it is difficult to reconcile the MOU requirement that USAC conduct its procurements using performance-based contracting with the Commission's

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[209] *See* GAO, Contract Management, Guidance Needed for Using Performance-Based Service Contracting, GAO-02-1049 (Sept. 2002).

regular and detailed oversight, review, approval, and frequent directed changes regarding many aspects of USAC's program administration operations. Using performance-based contracts in such circumstances can be expected to hinder USAC's ability to respond to the Commission's daily supervision and oversight of program operations. USAC recognizes that there are areas in which employing performance-based contracting would be beneficial, and suggests that performance-based contracting be used requirements only for those commercial service requirements for which it is intended.

K. Proposed Changes to Application Process for USF Programs

Paragraph 34 of the *NOI* seeks comment on proposed "additional measures, if any, the Commission should undertake with respect to the application process for each of the USF programs." In particular, the Commission requests input regarding revising "existing procedures or forms to help safeguard the process for obtaining program benefits," and requiring additional information from program participants "that would improve the detection of waste, fraud, or abuse, or that would enable the Commission to evaluate whether or how universal service goals are being met."[210] USAC's comments below update its extensive discussion in the 2005 *Comprehensive Review NPRM*[211] and raise new issues where appropriate.

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[210] *NOI* ¶ 34.

[211] *See USAC Comprehensive Review NPRM Comments* at 103-179.

1. High Cost Program

The Commission may wish to clarify the definition of "line" for purposes of CETC line count reporting for obtaining High Cost Loop Support. For wireless CETCs in particular, clarification of how to report customer classes for Interstate Access Support (IAS) and Interstate Common Line Support (ICLS) purposes would enable uniformity of submissions across all wireless CETCs. Additionally, for prepaid wireless and wireline lines reported by CETCs, specific guidelines concerning what constitutes an active line would be beneficial to CETCs.

2. Low Income Program

In the Low Income Program, the current version of FCC Form 497 does not collect information sufficient to allow USAC to perform validations crucial to prevent mistakes and abuse. USAC is aware that some CETCs engage in "double-dipping" by benefiting twice for providing a single Lifeline connection: once by purchasing a line from an incumbent ETC for a price that includes a Lifeline discount and a second time by claiming support for that line from the USF. In these instances, the wholesale ETC then also claims Lifeline support to be reimbursed for the discount it passed on to the CETC reseller. Commission rules prohibit this practice.[212]

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[212] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8876, ¶ 179 (1997), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 Erratum, FCC 97-157 (1997), a*ff'd in part, rev'd in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir., 1999), *cert. denied, Celpage, Inc. v. FCC,* 530 U.S. 1210 (2000) ("If pure resellers. . . were entitled to receive support for providing resold services, they, in essence, would receive a double recovery of universal service support because they would recover the support incorporated into the wholesale price of the resold services in addition to receiving universal service support directly from federal universal service support mechanisms.").

Currently, the only way USAC can confirm that it is paying both a CETC and an incumbent ETC for the same customer is by fully auditing the records of the two companies. We note that the Florida Public Service Commission recently rescinded the ETC status of a competitive carrier found to be claiming support for lines for which it had already received a Lifeline discount from the wholesale ETC.[213] As more competitors are designated as ETCs solely to provide Low Income Program support, this practice may become more widespread. USAC could more readily ascertain whether double-dipping is occurring if ETCs were required to provide additional information on FCC Form 497. Requiring incumbent ETCs that resell Lifeline service to competitive ETCs to provide a list of resold accounts, while at the same time requiring competitive ETCs to identify their resale accounts, would provide USAC with a better opportunity to ensure that both ETCs are not claiming support for the same customers.

3. Rural Health Care Program

a. Rural Health Care Program Process

(i) Eligibility Guidance

USAC suggests that the Commission consider creating an Eligible Services List (ESL) for the Rural Health Care Program similar to the ESL in the Schools and Libraries Program.[214] In recent years, the distinction between telecommunications and information services for which funding can be received under the Rural Health Care program has

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[213] *See* Investigation of Vilaire Commc'n Inc.'s Eligible Telecommunications Carrier Status and Competitive Local Exchange Company Certificate Status in the State of Florida, FL Pub. Serv. Comm'n, Docket No. 080065-TX, Order No. PSC08-0387-FOF-X (issued June 10, 2008).

[214] *See* 47 C.F.R. § 54.522; http://www.usac.org/sl/tools/eligible-services-list.aspx.

become increasingly complicated for health care providers who may not be aware of technical or regulatory distinctions in the services they request. For example, service types such as Virtual Private Networks (VPN), Multi-Protocol Label Switching (MPLS), Ethernet, Voice over Internet Protocol (VoIP), wireless and other services may be difficult for health care providers, as well as USAC, to categorize and may require much discussion between USAC, applicants, and service providers to ensure correct funding and consistent treatment across applications.

(ii) Multi-Applicant Form

USAC suggests the FCC consider creating a multi-applicant form similar to the FCC Form 465[215] attachment used for the Rural Health Care Pilot Program to simplify applications from health care providers with large networks involving multiple sites. USAC would need to verify that eligibility of all sites before posting the form, which due to the diversity of health care provider types could cause delays in posting. However, a multi-site form that allowed posting for competitive bids, with some sites listed as ineligible or with an eligibility determination pending, would allow projects to proceed. Alternatively, the complexity and risk of delay for multi-applicant forms could be reduced if bright-line eligibility definitions for health care providers were developed in coordination with the Commission and posted on USAC's website. This would reduce the case-by-case research now often required.

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[215] *See* Health Care Providers Universal Service, Description of Services Requested and Certification Form, OMB 3060-0804 (April 2008) (FCC Form 465).

(iii) Multi-Year Application Process

The Commission recognized in the 2005 *Comprehensive Review NPRM* that a streamlined multi-year application process could be administratively feasible for the Rural Health Care Program.[216] At that time, USAC suggested a biennial application.[217] With the benefit of additional experience administering the program, USAC now recommends the Commission consider a three- to five-year application. This recommendation is based on the fact that nearly half of applicants sign contracts of up to five years. Because USAC maintains a detailed database of multi-year contracts, USAC would be able to determine applicants qualifying for three- to five-year applications.

For Funding Year 2007, USAC received a record 6,545 applications for Rural Health Care Program support, of which over 75% were repeat applications from Funding Year 2006. A multi-year application could be accomplished with minimal change to the existing FCC Form 466 or FCC Form 466-A.[218] Applicants could increase their reported rural rate in a manner consistent with their multi-year contract, but not more than once per funding year, and USAC would automatically change the urban rate to coincide with current appropriate urban rates. USAC would continue to monitor total funds committed to ensure compliance with the $400 million annual cap and all applicable accounting and statutory requirements. In addition, USAC would continue to commit funds on an annual

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[216] *See Comprehensive Review NPRM* , FCC Rcd at 11333.

[217] *See USAC Comprehensive Review NPRM Comments* at 173-75.

[218] *See* Health Care Providers Universal Service, Funding Request and Certification Form, OMB 3060-0804 (April 2008) (FCC Form 466); Health Care Providers Universal Service, Internet Service Funding Request and Certification Form (And Advanced Services Funding Request and Certification for Entirely Rural States), OMB 3060-0804 (April 2008) (FCC Form 466-A).

basis and would advise applicants that funds are not guaranteed until a funding commitment renewal is received each year.

USAC's experience suggests that a properly designed multi-year application process would not increase the risk of program waste, fraud, and abuse and would significantly reduce the application burden on beneficiaries. Each application would still undergo close scrutiny to ensure compliance with program rules and beneficiaries would remain subject to audit. Further, USAC would enhance its education and outreach efforts to inform applicants and service providers of process changes. Finally, multi-year applications could result in administrative cost savings.

(iv) Promoting Participation of Smaller Health Care Providers

Although there may be as many as 10,000-plus rural health care providers eligible to participate in the Rural Health Care Program, the actual number of applicants has been much smaller. While the average health care provider receives about $2,100 in support per month for telecommunications services (excluding Alaska, where the average is $10,700 per month),[219] and less than 0.07% of applicants receive under $50 per month, applicants for Internet-only support average only $140 per month, and 38% receive less than $50 per month. Thus, these applicants receiving less than $50 per month may be included in the 10-15% of applicants that fail to reapply each year.

[219] Since discounts on eligible services are based on the difference between the urban and rural rate charged for telecommunications services, and a flat 25 percent discount on the monthly cost of Internet access, the more rural and larger the area, the greater the potential discount.

USAC has provided support to about 4,100 unique health care providers since the start of the program in 1998, of which about 2,800 are current applicants and 1,300 are previously funded applicants that have not reapplied in 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. Approximately 375 of the current participants who had previously dropped out for at least a year have now returned to participate in the program. USAC's experience suggests that other than failing to reapply because they have determined the support amount they could obtain is not worth the effort, the primary reason for not reapplying is staff turnover–the staff person who originally submitted application is no longer employed by the health care provider–and was either not replaced or their replacement did not understand the need to reapply. USAC has calculated the amount of support received by the applicants who stopped participating and later reapplied, and found that those who stopped participating and did not reapply received 70% of the average, while those that later returned received 160% of the average. Again, this suggests that the amount of funding an applicant receives is a significant factor in whether or how quickly applicants notice the lack of funding.

(v) Increased Automation of Program Processes

USAC strongly supports increased use of automation in the application, application review, and invoice payment processes. USAC has implemented online application and electronic data processing systems as much as possible. However, a few key areas remain manual–submission of supporting documentation such as contracts and bills, issuance of funding commitments, and vendor invoicing. The use of electronic application submission has increased each funding year since it first began in 2002. In Funding Year 2007, 74% of all FCC Forms 465 and 94% of FCC Forms 466 and FCC Forms 466-A were submitted online. Applicants who do not submit forms online include new applicants who are required to submit their first FCC Form 465 on paper, applicants who prefer paper submission, and applicants who claim exemption from competitive bidding due to a previously competed contract. For this latter type of applicants, their forms must be manually processed by USAC to verify their eligibility for the exemption. Some applicants also submit on paper because they have implemented their own electronic versions of the FCC forms, which are easier for them to populate than applying online. As discussed above, USAC believes these applicants would apply online if an attachment such as the FCC Form 465 attachment used in the Rural Health Care Pilot Program was implemented for the regular Rural Health Care Program.

b. Rural Health Care Program Forms

Rural Health Care Program applicants request support for telecommunications services using FCC Form 466. To request support for Internet services, applicants use the FCC Form 466-A. USAC suggests that these be combined into one form. Some applicants do not submit the correct form for the appropriate service. Until 2005, USAC alerted applicants who needed to submit the correct form. However, if the mistake was not corrected before the application period closed on June 30 of each year, USAC would deny the funding request. Based on the Commission's direction in the *Bishop Perry*

Order for the Schools and Libraries Program and further discussion with Commission staff, USAC now works with applicants to obtain additional information so that the application can be correctly processed, even if the filing period is over, as long as either the FCC Form 466 or FCC Form 466-A was submitted prior to the application deadline. Combining these forms into one form would eliminate the need to expend these administrative resources as well as denials based on submission of incorrect forms.

USAC also notes that use of existing Rural Health Care forms for the application process in the Rural Health Care Pilot Program has created inefficiencies and caused confusion among Pilot Program Project Coordinators. USAC suggests that creating instructions tailored to the Pilot Program could reduce the burden on applicants as well as risk of errors, would ease USAC's review of the applications, and would simplify reporting Pilot Program information.

4. Schools and Libraries Program

a. Streamlining the Application Process

(i) Participation of Small Schools and Libraries

The Commission sought comment in the 2005 *Comprehensive Review NPRM* 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.[220] USAC's experience then and now suggests the application process and the complexity of program rules in

[220] *Comprehensive Review NPRM* , 20 FCC Rcd at 11324.

general do impose a substantial burden on many small schools and libraries that may not have dedicated resources to complete applications and monitor program rules.

In addition to the significant steps USAC has taken over the past years as described in its 2005 *Comprehensive Review NPRM* comments[221] and elsewhere in these comments to simplify the application process targeted at smaller applicants and applicants applying for limited funding, USAC has further enhanced its outreach efforts targeted to smaller schools and libraries. In particular, USAC has expanded its Helping Applicants To Succeed (HATS) program. This initiative, which began in January 2007, is designed to assist applicants, especially smaller schools and libraries, who have experienced difficulties participating successfully in the Schools and Libraries Program by providing targeted training and outreach that may help applicants become more successful in the future. The HATS initiative provides important individual help for these applicants.

Technology improvements can promote participation of smaller entities as well. USAC is in the process of expanding the information available on its website to include short videos and other instructional tools to help applicants with various segments of the application process. Recognizing that not all participants in the program are able to attend USAC training workshops in person, the purpose of the videos is to provide step-by-step instructions covering a variety of program components. Other methods of reaching applicants through technology are also planned.

[221] *See USAC Comprehensive Review NPRM Comments* at 108-110.

USAC also believes its internal review procedures could be further streamlined for applications requesting smaller amounts of funding. With Commission approval, USAC has implemented narrowly targeted review procedures for certain applications. These procedures have cut processing time significantly and have resulted in applicants with low-dollar funding requests receiving funding commitments more quickly. Streamlining the procedures for applicants seeking limited funding also enables USAC to channel resources to program areas where the potential for waste, fraud, and abuse are the greatest. Additional initiatives in this area would help ease the burden of program compliance on smaller entities, and USAC eagerly anticipates the proposals of other commenters in this proceeding.

(ii) Using Technology to Improve the Application Process

In the 2005 *Comprehensive Review NRPM*, the Commission sought suggestions on using technology to improve the application process, such as receiving electronic-only notifications and status reports.[222] Expanding the use of technology accelerates 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.

The rate of electronic submission for the FCC Form 471 has increased in each funding year. In Funding Year 2008, 98% of all FCC Form 471 applications were submitted online up from 96% in Funding Year 2005. USAC continues to identify opportunities to make electronic submission of data easier for the user. In addition to the

[222] *See Comprehensive Review NPRM*, 20 FCC Rcd at 11324.

capability to copy Block 4 that is already available, a Block 4 "bulk upload" function allows Block 4 information to be created outside the online FCC Form 471 and then uploaded directly to USAC. The primary beneficiaries of this function are large applicants with extensive Block 4 information.

In 2005, USAC developed the capability for applicants to submit electronically the information contained in the Item 21 attachment describing the goods and services for which support is sought. Use of the electronic Item 21 attachment has increased in each funding year, and for Funding Year 2008, applicants submitted online Item 21 attachments for 61,076 Funding Request Numbers (FRNs), which represents approximately half of the FRNs that are submitted each year. The standardized format of the electronic Item 21 attachment increases the efficiency of USAC's application review process. For Funding Year 2009, USAC plans to make the online Item 21 attachment available to the service provider associated with the particular FRN.

USAC implemented an online version of the FCC Form 472 in November 2006. In third quarter 2008, 56% percent of FCC Form 472s were received online leading to additional efficiencies for applicants, service providers, and for USAC. The online FCC Form 472 system electronically notifies service providers when the forms are ready to be certified. Additional notifications and online reports provide applicants and service providers with detailed information about pending and processed invoices.

USAC implemented electronic certification for FCC Form 470 and FCC Form 471 in Funding Year 2001. For Funding Year 2006 USAC modified the requirements for obtaining a Personal Identification Number (PIN) enabling more applicants to certify forms electronically. As of Funding Year 2008, approximately 80% of applicants took advantage of electronic certification. This is a significant increase over the 33% of applicants utilizing electronic certification for Funding Year 2005. At this time, the only FCC forms that are not available online are the FCC Form 473[223] and the FCC Form 500.[224] In addition to moving these remaining forms online, USAC plans further technology enhancements, including providing applicants and service providers with greater ability to request post-commitment changes online.

b. Timing of USAC and Commission Processes in the Schools and Libraries Program

The Commission in the 2005 *Comprehensive Review NPRM* also sought comment on how USAC can mitigate timing problems and reduce program delays.[225] Since 2005, USAC has made great strides in processing applications, invoices, and appeals (as well as other program processes) while continuing to protect program integrity and mitigate waste, fraud, and abuse. For example, the percentage of applications processed by June 1 has increased from 25% for Funding Year 2006 to 39% for Funding Year 2008.[226] Follow-up communications with applicants and service providers during the application

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[223] *See* Universal Service for Schools and Libraries, Service Provider Annual Certification Form, OMB 3060-0856 (April 2007) (FCC Form 473).

[224] *See* Universal Service Schools and Libraries, Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form, OMB 3060-0853 (April 2007) (FCC Form 500).

[225] *See Comprehensive Review NPRM*, 20 FCC Rcd at 11325.

[226] Funds committed to applicants on or before September 1 of the Funding Year have increased by 103%, funds disbursed by that time have increased by more than 800%, the average time to process an invoice line has decreased by 72%, and the number of appeals awaiting a decision has decreased from 605 to 172.

review process do, however, continue to affect USAC's processing times. As a result of the changes introduced with the *Bishop Perry Order*, USAC now contacts applicants more frequently prior to making funding decisions to provide them with opportunities to correct errors and address potential denial reasons. These steps, which USAC believes help applicants obtain funding to which they are entitled, nevertheless can increase the time needed to process the application.

c. Eligible Services List and Eligible Products Database

USAC also commented in the 2005 *Comprehensive Review NPRM* on the process for establishing and administering the Schools and Libraries program Eligible Services List (ESL) and the Eligible Products Database (EPD) pilot project.[227]

The current system for developing and modifying the 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.[228] The ESL categorizes products and services under the four service types along with any conditional eligibility information.[229] For Funding Year 2007, USAC substantially revised the format of the ESL in an effort to make the list easier for program participants to use. Despite these efforts, USAC's experience is that conditional eligibility of products and services remains one of the primary causes of

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[227] *See Comprehensive Review NPRM*, 20 FCC Rcd at 11324.

[228] *See* 47 C.F.R. § 54.522.

[229] The four service types are telecommunications service, Internet access service, internal connections service, and basic maintenance of internal connections service.

program complexity. The Commission has specified the conditions under which products and services are eligible through its rules, orders, and the annual ESL. USAC reiterates its view that making fewer goods and services "conditionally eligible," to the extent possible would lessen administrative burdens on applicants, service providers, and USAC.[230]

USAC also commented in the *Comprehensive Review NPRM* on whether the pilot online EPD, which USAC had established pursuant to Commission order, has improved the application process. At that time, USAC highlighted concerns with the EPD's usefulness.[231] Those concerns included the fact that many goods and services are conditionally eligible, that many manufacturers had not fully participated in the effort, and that updating the EPD with current information is labor-intensive and burdensome due to the rapid changes in technology. The same concerns are present today. Absent expression of strong stakeholder demand to continue it, USAC proposes winding down the EPD project to focus on more effective administrative improvements.

d. Schools and Libraries Program Forms

Since the inception of the Schools and Libraries Program, USAC has worked closely with Commission staff to develop and modify forms to address changing circumstances. As described above, for example, USAC developed the online FCC Form 472, which has resulted in a more streamlined and efficient process for both the applicant

[230] *See USAC Comprehensive Review NPRM Comments* at 127-32.

[231] *See id.* at 133.

and service provider. Since the creation of the online FCC Form 472 in November 2006 through September 30, 2008, 44,300 online FCC Forms 472 have been submitted.

USAC continues to recommend significant revisions to FCC Form 500,[232] which 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. As stated in 2005, USAC suggests expanding the functions of the FCC Form 500 so that it could be used to request many different types of post-commitment changes, including service substitutions, changing service providers, correcting site identifiers or FCC Registration Numbers, splitting FRNs, requesting deadline extensions for invoices and delivery of services, requesting contract number changes, requesting billing account number changes, and notifying USAC of equipment transfers. The FCC Form 500 is not currently available online, but online submission and certification of this form would be highly desirable were the Commission to adopt significant enhancements to the FCC Form 500.

L. Low Income Program Certification and Verification Requirements

Paragraph 35 of the *NOI* seeks comment on ways to "ensure better accuracy in the certification and verification requirements" of the Low Income Program. The certification and verification procedures established in the Commission's *2004 Lifeline*

[232] *See id.* at 141.

Order[233] are an important tool in ensuring that only eligible consumers receive the monthly Lifeline discount. Under the *2004 Lifeline Order*, ETCs are required to submit certifications and verifications to USAC by August 31 of each year. USAC compiles the results and submits a summary to the Commission.

For companies operating in federal default states, the Commission requires verification of a "statistically valid sample" of Lifeline subscribers.[234] The Commission has recognized that states that mandate Lifeline can choose to make ETCs, state agencies or third parties responsible for verifying Lifeline eligibility. States have adopted procedures that vary greatly in terms of frequency and percentage of subscribers verified. For example, Texas employs a third-party administrator to verify the eligibility of a majority of Lifeline subscribers each month. At the other extreme, USAC has learned that a few states have no verification processes. The Commission could establish a minimum standard for verification which states would be free to exceed. For example, the existing annual verification of a statistically valid sample of Lifeline customers could be established as the minimum verification procedure for all companies, regardless of the state in which they operate.

In addition, the Commission may wish to consider imposing more stringent verification requirements on companies that do not bill their customers monthly, or that provide Lifeline service free of charge. In these instances, the risk of abuse may be

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[233] *See Federal-State Joint Board on Universal Service Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8317 (2004) (*2004 Lifeline Order*).

[234] *See 2004 Lifeline Order*, Appendix J.

greater, because the ETC is claiming Lifeline support for all of its subscribers each month without maintaining monthly contact with its subscribers. Lifeline subscribers who are no longer eligible or no longer want the service have little incentive to take steps to stop receiving the service since the customer is not paying for the service. More frequent verifications of Lifeline subscribers could help to mitigate any increased risk associated with providing free Lifeline service.

As a further measure to deter abuse, an audit of a carrier's Low Income support claims should include an audit of the information obtained by the carrier during the verification process to ensure the company actually received information–either from a state agency, third-party or directly from the customer–verifying the continued eligibility of the Lifeline customers subject to the verification process, or that a customer who could not be verified was removed from the company's Lifeline support claim.

The Commission should also consider clarifying how companies that are operating in states that mandate support but are not subject to state regulation should comply with the verification requirements. Many states do not have jurisdiction over wireless carriers, and in many instances, carriers serving tribal lands are not subject to state regulation. The Commission's rules do not address how companies in these situations should comply with the verification requirement. USAC is aware that some wireless and tribal companies do not have access to the state information generated by, for example, a state agency that determines Lifeline eligibility because they are not subject to state regulation. Accordingly, the carriers are not always able to comply with state verification procedures. The alternative is to require wireless and tribal carriers that are not subject to state regulation to follow the federal verification procedures.

Finally, the Commission's rules do not include consequences for carriers that fail to meet the filing deadline or carriers that neglect to file certification or verification results. The Commission may wish to consider implementing a financial penalty or other sanction to encourage timely submission of certifications and verifications.

IV. CONCLUSION

As part of fulfilling its duty to administer the USF in an efficient, effective, and neutral manner, USAC appreciates the opportunity to assist the Commission as it considers all management, administrative, and oversight issues associated with the universal service support mechanisms. USAC stands ready to assist the Commission and to work with all USF stakeholders as this important process moves forward.

Respectfully submitted,

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APPENDIX A

ROUND 1 FCC OIG USF AUDIT PROGRAM RESULTS

USF Contributors

As stated in the *NOI*, the FCC OIG USF audit program included 90 audits of contributors to the USF and found an estimated improper payment rate of 5.5%.[1]

The opinions provided for the 90 audits were as follows:[2]

- Unqualified: 14
- Qualified: 52
- Adverse: 18
- Disclaimed: 6

Dollar amounts associated with the 90 audits were as follows:

- Total payments audited: $459,091,945[3]
- Total dollar amount associated with improper payment findings: $25,204,668[4]
- Total dollar amount associated with disclaimed audits: $14,397,607 (57.1% of all improper payments)[5]

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[1] *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service*, WC Docket No. 05-195, Notice of Inquiry, FCC 08-189, at ¶ 13 (rel. Sep. 12, 2008) (*NOI*).

[2] The audits were conducted using a "comprehensive attestation" methodology. Compliance attestation audits result in the following opinion types: (1) Unqualified – The beneficiary received a "clean" opinion based on the management assertions tested, and the audit did not disclose any material findings; (2) Qualified – The beneficiary received a "clean" opinion based on the management assertions tested, however the auditor noted material audit findings with certain assertions; (3) Disclaimer – The auditor is unable to provide an opinion on management assertions due to a limitation on the audit scope or objectives, which could be caused by a lack of documentation, lack of beneficiary cooperation with the audit, or lack of access to appropriate records; or (4) Adverse – The auditor concludes that the beneficiary is materially not complying with program or USF contribution requirements.

[3] *See Universal Service Administrative Company Report on the Federal Communications Commission Office of Inspector General 2006-07 Universal Service Fund Audit Program* (Dec. 31, 2007) (*USAC Round 1 Audit Program Report*), Appendix: Analysis of FCC Audit Report on Contributors, A. Richard Bolstein LLC, at 2.

[4] *See id*. at 2.

[5] Dollar figures and causation data reported in this Appendix and associated with audits come from the *Semi-Annual Report of the FCC OIG, October 1, 2007 to March 31, 2008* (*March 2008 Semi-Annual OIG Report*), *USAC Round 1 Audit Program Report*, and analyses of audit data performed by USAC and the contracted audit firms (*USAC and OIG Audit Analyses*). Note that dollars cited as "recoverable" for the High Cost, Low Income, Rural Health Care, and Schools and Libraries Programs come from the *March 2008 Semi-Annual OIG Report*. Amounts deemed "recoverable" in the USF Contributors, High Cost, Rural Health Care, and Schools and Libraries Programs might change, as USAC and contracted audit firms conduct follow-up work on disclaimed audits to calculate more accurately the scope and nature of any possible improper payments.

- Total dollar amount deemed to be recoverable: $1,961,088 (7.8% of all improper payments)
- Total dollar amount associated with USAC or USAC contractor error: $0

The five most frequently cited causes of non-compliance were:

- Inadequate Auditee Processes and/or Policies and Procedures: 192
- Applicant/Auditee Weak Internal Controls: 169
- Failure to Review/Monitor Work, Material or Data/Application Submitted by Consultant/Agent: 83
- Applicant/Auditee Data Entry Error: 61
- Inadequate Systems for Collecting, Reporting and/or Monitoring Data: 59

High Cost Program

As stated in the *NOI* , the FCC OIG USF audit program included 65 audits of High Cost Program beneficiaries and found an estimated improper payment rate of 16.6%.[6]

The opinions provided for the 65 audits were as follows:[7]

- Unqualified: 45
- Qualified: 5
- Adverse: 3
- Disclaimed: 12

Dollar amounts associated with the 65 audits were as follows:

- Total payments audited: $140,869,183[8]
- Total dollar amount associated with improper payment findings: $21,229,500[9]
- Total dollar amount associated with disclaimed audits: $3,515,292 (16.6% of all improper payments)[10]
- Total dollar amount deemed to be recoverable: $78,599 (0.4% of all improper payments) [11]
- Total dollar amount associated with USAC or USAC contractor error: $0

The five most frequently cited causes of non-compliance were:

- Inadequate Document Retention: 16
- Inadequate Systems for Collecting, Reporting and/or Monitoring Data: 11
- Inadequate Auditee Processes and/or Policies and Procedures: 11
- Applicant/Auditee Weak Internal Controls: 10
- Applicant/Auditee Data Entry Error: 8

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[6] *See NOI* ¶ 16.

[7] *See* note 2 above for definitions of audit opinion types.

[8] *USAC Round 1 Audit Program Report,* Appendix: Results of FY 2005 High Cost Program, A. Richard Bolstein LLC, at 4.

[9] *See id.* at 5.

[10] *USAC and OIG Audit Analyses*.

[11] *See March 2008 Semi-Annual OIG Report* at 20. See also note 5 above.

Low Income Program

As stated in the *NOI* , the FCC OIG USF audit program included 60 audits of Low Income Program beneficiaries and found an estimated improper payment rate of 10%.[12]

The opinions provided for the 60 audits were as follows:[13]

- Unqualified: 28
- Qualified: 32

Dollar amounts associated with the 60 audits were as follows:

- Total payments audited: $70,452,576[14]
- Total dollar amount associated with improper payment findings: $17,075,730[15]
- Total dollar amount deemed to be recoverable: $678,507 (4.0% of all improper payments) [16]
- Total dollar amount associated with USAC or USAC contractor error: $0

The five most frequently cited causes of non-compliance were:

- Inadequate Auditee Processes and/or Policies and Procedures: 76
- Inadequate Document Retention: 38
- Applicant/Auditee Weak Internal Controls: 37
- Disregarded FCC Rules: 29
- Inadequate Systems for Collecting, Reporting and/or Monitoring Data: 21

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[12] *See NOI* ¶ 14.

[13] *See* note 2 above for definitions of audit opinion types.

[14] *USAC and OIG Audit Analyses*.

[15] *USAC and OIG Audit Analyses*.

[16] *See March 2008 Semi-Annual OIG Report* at 19-20.

Rural Health Care Program

As stated in the *NOI* , the FCC OIG USF audit program included 77 audits of 2005 Rural Health Care Program payments to beneficiaries and found an estimated improper payment rate of 20.64%.[17]

The opinions provided for the 77 audits were as follows:[18]

- Unqualified: 60
- Qualified: 6
- Adverse: 1
- Disclaimed: 10

Dollar amounts associated with the 77 audits were as follows:

- Total for all dollars audited: $679,234[19]
- Total dollar amount associated with improper payment findings: $120,518[20]
- Total dollar amount associated with disclaimed audits: $104,309 (86.6% of all improper payments)[21]
- Total dollar amount deemed to be recoverable: $3,816 (3.2% of all improper payments)[22]
- Total dollar amount associated with USAC or USAC contractor error: $0

The three most frequently cited causes of non-compliance were:

- Inadequate Auditee Processes and/or Policies and Procedures: 19
- Inadequate Document Retention: 13
- Inadequate Systems for Collecting, Reporting and/or Monitoring Data: 10

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[17] *See NOI* ¶ 17. The initial Rural Health Care Program audit sample contained 89 payments, but 12 required replacement. The OIG did not use the 12 replacements in its report based on its conclusion that use of the 12 would have created "substitution errors." See *The Rural Health Care Program: Initial Statistical Analysis of Data from the 2006/2007Compliance Audits, Office of Inspector General, Federal Communications Commission* (Oct. 3, 2007) at 10.

[18] *See* note 2 above for definitions of audit opinion types.

[19] *USAC and OIG Audit Analyses*.

[20] *USAC and OIG Audit Analyses*.

[21] *USAC and OIG Audit Analyses*.

[22] *See March 2008 Semi-Annual OIG Report* at 18. See also note 5 above.

Schools and Libraries Program

As stated in the *NOI* , the FCC OIG USF audit program included 155 audits of Schools and Libraries Program Funding Request Numbers (FRNs) and found an estimated improper payment rate of 12.9%.[23]

The opinions provided for the 155 audits were as follows:[24]

- Unqualified: 109
- Qualified: 33
- Adverse: 12
- Disclaimed: 1

Dollar amounts associated with the 155 audits were as follows:

- Total payments audited: $264,431,312[25]
- Total dollar amount associated with improper payment findings: $34,111,639[26]
- Total dollar amount deemed to be recoverable: $5,409,488 (15.9% of all improper payments)[27]
- Total dollar amount associated with USAC or USAC contractor error: $490

The five most frequently cited causes of non-compliance were:

- Applicant/Auditee Weak Internal Controls: 45
- Inadequate Document Retention: 29
- Inadequate Systems for Collecting, Reporting and/or Monitoring Data: 26
- Followed USAC Procedures (apparent conflict with FCC Rules): 24
- Inadequate Auditee Processes and/or Policies and Procedures: 20

One USAC error was found in the course of the 155 Schools and Libraries audits. It resulted from USAC making a $490 underpayment to a beneficiary, owing to a miscalculation of the applicant's discount amount.

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[23] *See NOI* ¶ 15.

[24] *See* note 2 above for definitions of audit opinion types.

[25] *Universal Services* [sic] *Administrative Company Schools and Libraries Support Mechanism Summary Report Related to Compliance Attestation Engagements Conducted for Disbursements in the Fiscal Year Ended September 30, 2005, KPMG* (August 2007) at 3.

[26] *USAC and OIG Audit Analyses*.

[27] See *March 2008 Semi-Annual OIG Report* at 18-19. See also note 5 above.

APPENDIX B

ADMINISTRATIVE EXPENSES

USF ADMINISTRATIVE EXPENSES[1]

YEAR	OVERALL USF DISBURSEMENTS	USAC ADMINISTRATIVE EXPENSES	ADMINISTRATIVE COST PERCENTAGE	FCC OIG USF AUDIT PROGRAM COSTS	ADMINISTRATIVE EXPENSES LESS FCC OIG USF AUDIT COSTS	NET ADMINISTRATIVE COST PERCENTAGE
1998	$2,208,457,000	$36,692,000	1.66%	$0	$36,692,000	1.66%
1999	$3,667,994,000	$38,627,000	1.05%	$0	$38,627,000	1.05%
2000	$4,460,533,000	$43,384,000	0.97%	$0	$43,384,000	0.97%
2001	$4,764,120,000	$39,284,000	0.82%	$0	$39,284,000	0.82%
2002	$5,391,672,000	$46,192,000	0.86%	$0	$46,192,000	0.86%
2003	$5,479,624,000	$58,791,000	1.07%	$0	$58,791,000	1.07%
2004	$5,729,558,000	$67,349,000	1.18%	$0	$67,349,000	1.18%
2005	$6,608,566,000	$85,190,000	1.29%	$0	$85,190,000	1.29%
2006	$6,700,601,000	$88,588,000	1.32%	$6,257,560	$82,330,440	1.23%
2007	$7,038,474,000	$104,684,000	1.49%	$21,321,689	$83,362,311	1.19%
2008*	$5,273,261,000	$139,213,000	2.64%	$73,082,128	$66,130,872	1.27%
USAC Average Administrative Expenses 1998 - 2008 ** As of September 30, 2008*			**1.30%**			**1.14%**

[1] Source: USAC Annual Reports for 1998 – 2007 and for 2008, USAC unaudited financial records.

TOP 20 CHARITABLE FOUNDATIONS BY VALUE OF OVERALL ASSETS[1]

(Expenses based on 2007 data, unless otherwise noted)

RANK	NAME	OVERALL EXPENSES*	ADMINISTRATIVE EXPENSES**	ADMINISTRATIVE COST
1	Bill & Melinda Gates Foundation[2]	$3,374,335,000	$284,194,000	8.42%
2	Ford Foundation [3]	$802,263,000	$175,438,000	21.87%
3	J. Paul Getty Trust [4]	$307,703,000	$33,621,000	10.93%
4	Robert Wood Johnson Foundation [5]	$509,659,000	$101,961,000	20.01%
5	William and Flora Hewlett Foundation [6]	$342,587,000	$44,274,000	12.92%
6	W. K. Kellogg Foundation [7]	$799,029,504	$61,254,104	7.67%
7	Lilly Endowment [8]	$356,208,699	$21,061,931	5.91%
8	David and Lucile Packard Foundation [9]	$300,053,000	$20,187,000	6.73%
9	Andrew W. Mellon Foundation [10]	$323,137,000	$10,752,000	3.33%
10	Gordon and Betty Moore Foundation [11]	$329,106,562	$55,612,590	16.90%
11	John and Catherine MacArthur Foundation [12]	$423,159,000	$133,714,000	31.60%
12	California Endowment [13]	$191,905,000	$57,636,000	30.03%
13	Rockefeller Foundation [14]	$185,530,000	$46,274,000	24.94%
14	Kresge Foundation [15]	$215,182,231	$32,176,048	14.95%
15	Annie E. Casey Foundation [16]	$244,017,585	$52,011,264	21.31%
16	Starr Foundation [17]	$229,448,307	$23,185,921	10.11%
17	Tulsa Community Foundation [18]	$66,108,469	$17,011,177	25.73%
18	Carnegie Corporation of New York [19]	$155,333,595	$22,697,339	14.61%
19	Duke Endowment [20]	$185,044,665	$23,689,761	12.80%
20	Robert W. Woodruff Foundation [21]	$98,923,174	$3,669,342	3.71%

*"Overall Expenses" include: All "Administrative Expenses" and Grants, Direct Charitable, Distribution, and Program Activity related expenses."

**"Administrative Expenses" include: Administrative, Depreciation, Fund Raising, General, Investment, Management, Program Operating, Retirement Benefit, and Tax-related expenses.

TOP 20 CHARITABLE ORGANIZATIONS BY TOTAL REVENUE[22]

(Expenses based on 2007 data, unless otherwise noted)

RANK	NAME	OVERALL EXPENSES	ADMINISTRATIVE EXPENSES*	ADMINISTRATIVE COST
1	American Red Cross [23]	$3,451,294,000	$372,122,000	10.78%
2	YMCA of the USA [24]	$80,983,038	$12,633,421	15.60%
3	United Jewish Communities [25]	$422,875,000	$11,691,000	2.76%
4	Catholic Charities USA [26]	$94,038,655	$3,296,718	3.51%
5	Salvation Army [27]	$2,996,000,000	$509,320,000	17.00%
6	Goodwill Industries International [28]	$28,465,961	$3,561,603	12.51%
7	Memorial Sloan-Kettering Cancer Center [29]	$1,913,664,000	N/A	N/A
8	Boys & Girls Clubs of America [30]	$164,835,442	$21,970,244	13.33%
9	Habitat for Humanity International [31]	$301,133,402	$44,435,725	14.76%
10	Boy Scouts of America [32]	$142,796,000	$13,571,000	9.50%
11	American Cancer Society [33]	$989,020,000	$288,843,000	29.20%
12	Nature Conservancy [34]	$806,648,000	$166,775,000	20.68%
13	National Easter Seal Society [35]	$94,734,000	$17,582,400	18.56%
14	World Vision [36]	$953,031,000	$126,663,000	13.29%
15	Planned Parenthood Federation of America [37]	$903,100,000	$166,200,000	18.40%
16	Gifts In Kind International [38]	$356,431,068	$1,336,209	0.37%
17	AmeriCares Foundation [39]	$870,094,645	$11,724,513	1.35%
18	Food For The Poor [40]	$1,037,495,325	$33,377,612	3.22%
19	Volunteers of America [41]	$846,855,386	$96,180,746	11.36%
20	Girl Scouts of the USA [42]	$81,262,000	$6,941,000	8.54%

*"Administrative Expenses" include Administrative, General, Management, Other, and Fundraising related expenses.

FEDERAL AND INTERNATIONAL AGENCIES*

(Expenses based on 2007 data, unless otherwise noted)

AGENCY	OVERALL EXPENSES	ADMINISTRATIVE EXPENSES	ADMINISTRATIVE COST
United States Federal Government Agencies			
Agency for International Development [43]	$9,330,596,000	$725,202,000	7.77%
Department of Agriculture [44]	$21,265,000,000	$523,000,000	2.46%
Department of Education [45]	$54,410,271,000	$2,781,288,000	5.11%
Department of Health & Human Services [46]	$81,900,000,000	$15,479,100,000	18.90%
Department of Housing & Urban Development [47]	$33,646,000,000	$953,000,000	2.83%
Department of State [48]	$19,024,539,000	$3,472,286,000	18.25%
Department of Treasury [49]	$20,825,000,000	$883,000,000	4.24%
National Science Foundation [50]	$5,884,370,000	$264,410,000	4.49%
Pension Benefit Guaranty Corporation [51]	$4,366,000,000	$443,000,000	10.15%
Social Security Administration [52]	$623,051,000,000	$10,465,000,000	1.68%
International Agencies			
International Finance Corporation [53]	$7,650,000,000	$555,000,000	7.25%
International Monetary Fund [54]	$1,665,212,375	$927,522,973	55.70%
UNICEF [55]	$2,782,000,000	$94,000,000	3.38%
World Bank [56]	$5,249,000,000	$1,065,000,000	20.29%
World Health Organization [57]	$4,109,000,000	$899,000,000	21.88%

*Agencies selected because data was publicly available in categories analogous to USAC's reporting of administrative expenses.

1 List Source: The Foundation Center (as of 9/11/08) - http://foundationcenter.org/findfunders/topfunders/top100assets.html.

2 Bill and Melinda Gates Foundation: 2007 Annual Report - http://www.gatesfoundation.org/nr/public/media/annualreports/annualreport07/AR2007Statements.html.

3 Ford Foundation: 2007 Annual Report - http://www.fordfound.org/pdfs/impact/ar2007.pdf.

4 J. Paul Getty Trust: 2007 Annual report - http://www.getty.edu/about/governance/trustreport/trust_report_07.pdf.

5 Robert Wood Johnson Foundation: 2007 Annual Report - http://www.rwjf.org/files/publications/annual/2007/activities.html.

6 William and Flora Hewlett Foundation: 2006 Annual Report - http://annualreport.hewlett.org/wfhf_ar06.pdf.

7 W. K. Kellogg Foundation: 2007 Annual Report - http://www.wkkf.org/Pubs/AnnualReport/2007/AR2007_Activities.pdf.

8 Lilly Endowment: 2007 Annual Report - http://www.lillyendowment.org/annualreports/2007/FinancesGrants.pdf.

9 David and Lucille Packard Foundation: 2007 Financial Statements - http://www.packard.org/assets/files/about_the_foundation/how_we_operate/finances/packard_foundation_audited_financials_2007.pdf.

10 Andrew W. Mellon Foundation – 2007 Annual Report - http://www.mellon.org/news_publications/annual-reports-essays/annual-reports.

11 Gordon and Betty Moore Foundation: 2007 Annual Report http://www.moore.org/files/2007-2006-financial-statements.pdf.

12 John and Catherine MacArthur Foundation: 2007 Financial Statement: http://www.macfound.org/atf/cf/%7Bb0386ce3-8b29-4162-8098-e466fb856794%7D/KPMG_FINAL_AUDIT_REPORT.PDF.

13 California Endowment: 2006-2007 Annual Report - http://www.calendow.org/annual_report_07/flash/TCE%202007%20Final%20Report.pdf.

14 Rockefeller Foundation: 2007 Annual Report: http://www.rockfound.org/library/annual_reports/2007rf_ar.pdf.

15 Kresge Foundation: 2007 Financial Statement - http://www.kresge.org/content/FS-Y-12-31-07-06.pdf.

16 Annie E. Casey Foundation: 2007 Financial Statement - http://www.aecf.org/AboutUs/~/media/PDFFiles/AECF_2007_Financial_Statements.pdf.

17 Starr Foundation: 2006 IRS Form 990-PF - http://www.starrfoundation.org/990pf_2006.pdf.

18 Tulsa Community Foundation: 2006 Financial Statement - On File at the Tulsa Community Foundation.

19 Carnegie Corporation of New York: 2007 Annual Report - http://www.carnegie.org/pdf/CCNY-AR07.pdf.

20 Duke Endowment: 2007 Annual Report - http://www.dukeendowment.org/downloads/2007DukeAnnualMED.pdf.

21 Robert W. Woodruff Foundation: 2007 IRS Form 990-PF - http://foundationcenter.org/grantmaker/rww/rww_990pf_2007.pdf.

22 List Source: The Nonprofit Times (2006) - http://www.nptimes.com/07Nov/071101SR.pdf.

23 American Red Cross: 2007 Financial Statement - http://www.redcross.org/pubs/car07/14606D.pdf.

24 YMCA of the USA: 2007 IRS Form 990 - http://www.ymca.net/downloads/form_990_2007.pdf.

25 United Jewish Communities: 2007 Financial Report - http://www.ujc.org/local_includes/downloads/24047.pdf.

26 Catholic Charities USA: 2006 Annual Report - http://www.catholiccharitiesusa.org/NetCommunity/Document.Doc?id=576.

27 Salvation Army: 2007 Annual Report - http://www.salvationarmyusa.org/usn/tsa_annual2007.pdf.

28 Goodwill Industries International: 2007 Financial Statement - http://www.goodwill.org/c/document_library/get_file?folderId=102012&name=DLFE-10037.pdf.

29 Memorial Sloan-Kettering Cancer Center: 2007 Financial Statement - http://www.mskcc.org/mskcc/shared/graphics/AR_2007/pdf/Financial.pdf.

30 Boys & Girls Clubs of America: 2007 Annual Report - http://marketing.bgca.org/Marketing/files/2007AnnualReport_lo.pdf.

31 Habitat for Humanity International: 2007 Annual Report - http://www.habitat.org/giving/report/2007/annual_report_2007.pdf.

32 Boy Scouts of America: 2007 Financial Statement - http://dev2.scouting.org/990/2007tr.pdf.

33 American Cancer Society: 2007 Annual Report - http://www.cancer.org/downloads/AA/AnnualReport_2007.pdf.

34 Nature Conservancy: 2007 Financial Statement - http://www.nature.org/aboutus/annualreport/files/tnc_fs_fy07.pdf.

35 National Easter Seal Society: 2007 Financial Statement - http://www.easterseals.com/site/DocServer/FINAL_Easter_Seals_2007.pdf?docID=65164.

36 World Vision: 2007 Financial Statement - http://www.worldvision.org/resources.nsf/main/2007_financials.pdf/%24file/2007_financials.pdf.

37 Planned Parenthood Federation of America: 2007 Annual Report - http://www.plannedparenthood.org/files/AR_2007_vFinal.pdf.

38 Gifts In Kind International: 2007 Annual Report - http://www.giftsinkind.org/forms/annual_report_2007.pdf.

39 AmeriCares Foundation: 2007 Annual Report –
http://www.americares.org/newsroom/publications/annual_reports_history/2007-annual-report.pdf.

40 Food For The Poor: 2007 Annual Report – http://www.foodforthepoor.org/atf/cf/%7B7C3EFD88-ADC6-4282-93C9-66E9DE4E24F5%7D/ANNUAL%20REPORT%20(KIT%20A).PDF.

41 Volunteers of America: 2007 Annual Report - http://www.voa.org/Portals/40/Publications/Annual%20Report/2007AnnualReport.pdf.

42 Girl Scouts of the USA: 2007 Annual Report - http://www.girlscouts.org/who_we_are/facts/pdf/2007_annual_report.pdf.

43 USAID: 2007 Budget Overview - http://www.usaid.gov/policy/budget/cbj2007/support.html#oe.

44 USDA: 2007 Discretionary Budget - http://www.gpoaccess.gov/usbudget/fy09/pdf/budget/agriculture.pdf.

45 Department of Education: 2007 Discretionary Budget - http://www.ed.gov/about/overview/budget/history/edhistory.pdf.

46 HHS: 2007 Financial Statement - http://www.hhs.gov/afr/management/analysis/.

47 HUD: 2007 Discretionary Budget - http://www.hud.gov/about/budget/fy07/fy07budget.pdf.

48 Department of State: 2007 Financial Statement - http://www.state.gov/s/d/rm/rls/perfrpt/2007/html/98568.htm.

49 Department of Treasury: 2007 Financial Statement - http://treas.gov/offices/management/dcfo/accountability-reports/2007-par/Part_III_Annual_Financial_Report.pdf.

50 NSF: 2007 Financial Highlights - http://www.nsf.gov/pubs/2008/nsf0803/financial_highlights6.pdf.

51 PBGC: 2007 Annual Report - http://www.pbgc.gov/docs/2007_annual_report.pdf.

52 SSA: 2007 Financial Statement - http://www.socialsecurity.gov/finance/2007/Financial_Statements.pdf.

53 International Finance Corporation: June 30, 2008 Financial Statement -
http://www.ifc.org/ifcext/annualreport.nsf/AttachmentsByTitle/AR2008_Financial_Statements/$FILE/AR2008_Financial_Statements.pdf.

54 International Monetary Fund: April 30, 2007 Financial Statement - http://www.imf.org/external/pubs/ft/ar/2007/eng/pdf/file8.pdf.

Monetary Units converted from SDRs to US Dollars based on exchange rate for April 30, 2007 of 1 SDR = $1.524180.

Source: http://www.imf.org/external/np/fin/data/rms_mth.aspx?SelectDate=2006-04-30&reportType=CVSDR.

55 UNICEF: 2007 Annual Report - http://www.unicef.org/publications/files/Annual_Report_2007.pdf.

56 World Bank: 2007 Financial Statement - http://siteresources.worldbank.org/EXTANNREP2K7/Resources/AR07FinancialStatements_IBRD.pdf.

57 World Health Organization: 2006/2007 Director General's Report - http://www.who.int/gb/ebwha/pdf_files/A61/A61_20-en.pdf.

APPENDIX C

COMPLAINT AND INQUIRY STATISTICS FOR USAC AND COMPARABLE ORGANIZATIONS

COMPLAINT AND INQUIRY STATISTICS FOR USAC AND COMPARABLE ORGANIZATIONS

USAC (2008 Data)[29]

BY MONTH	INQUIRIES	COMPLAINTS	TOTAL	COMPLAINTS / TOTAL
March	8,333	11	8,344	0.13%
April	8,333	23	8,356	0.28%
May	6,043	20	6,063	0.33%
June	7,431	8	7,439	0.11%
July	7,970	11	7,981	0.14%
August	7,525	10	7,535	0.13%
September	8,042	11	8,053	0.14%
TOTAL	**53,677**	**94**	**53,771**	**0.17%**

Communications Industry (2007 data from the Better Business Bureau)[30]

COMMUNICATIONS INDUSTRY SECTOR	INQUIRIES	COMPLAINTS	TOTAL	COMPLAINTS / TOTAL
Telephone	141,527	15,957	157,484	10.13%
Calling Cards	15,752	1,436	17,188	8.35%
Cellular	7,909	1,762	9,671	18.22%
Internet-Based	2,421	76	2,497	3.04%
Long Distance	34,523	1,716	36,239	4.74%
Radiotelephone	169	9	178	5.06%
Satellite	11,616	1,200	12,816	9.36%
Microwave	91	0	91	0.00%
TOTAL	**214,008**	**22,156**	**236,164**	**9.38%**

Public Utilities (2007 data from the Better Business Bureau)[31]

OTHER UTILITIES	INQUIRIES	COMPLAINTS	TOTAL	COMPLAINTS / TOTAL
Electric Companies	51,430	2,166	53,596	4.04%
Gas Companies (Natural)	23,973	1,493	25,466	5.86%
Gas Companies (Propane)	12,219	420	12,639	3.32%
Internet Companies	366,590	13,766	380,356	3.62%
Television Companies	116,894	16,810	133,704	12.57%
Water Companies	5,821	435	6,256	6.95%
TOTAL	**576,927**	**35,090**	**612,017**	**5.73%**

[29] USAC Complaint Report.

[30] Source: http://us.bbb.org/WWWRoot/SitePage.aspx?site=113&id=4f04355f-4546-47a9-8022-e2fa6e9c49c5.

[31] Source: http://us.bbb.org/WWWRoot/SitePage.aspx?site=113&id=4f04355f-4546-47a9-8022-e2fa6e9c49c5.