

Semi-Annual Audit Recovery Report

In the *Schools and Libraries Fifth Order*,¹ the Federal Communications Commission (FCC or Commission), directed the Universal Service Administrative Company (USAC) to "submit a report to the Commission on a semi-annual basis summarizing the status of all outstanding audit findings. To the extent findings cannot be resolved within six months, USAC shall describe the status of its efforts, and provide a projected timeframe for completion."² This report summarizes outstanding audit-related recoveries as of February 27, 2009 and consists of this three-page descriptive narrative and the attached spreadsheet.

Process for Seeking Recovery of Funds

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

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

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

² *Id.* ¶ 77.

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

⁴ *Id.*

5. If the applicant and/or service provider does not respond to the Second Demand Payment Letter or does not make satisfactory arrangements to repay the funds within 60 days of the Second Demand Payment Letter, USAC will advise the Commission of that fact, and the debt will be transferred to the Commission under the provisions of the Debt Collection Improvement Act (DCIA).⁵
6. If an appeal is filed either with USAC or the Commission, the recovery process is held in abeyance pending resolution of the appeal.

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

Description of Audit Findings Outstanding for More Than Six Months

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

- At this time, there are 56 beneficiary audits older than six months with a recovery amount of \$15,625,223. Notification Letters had not been issued because USAC was working with Commission staff to determine whether the rule violations warrant recovery of funds consistent with the *Schools and Libraries Fifth Order*. On January 16, 2009, the FCC issued USAC written guidance regarding these recoveries.⁶ USAC is in the process of determining which recoveries should be sought consistent with the Commission's guidance. There are no other audit findings older than six months that have either not been cleared, or have resulted in the issuance of a Notification Letter to either the applicant and/or service provider, as appropriate and as further explained below.
- From January through April 2005, USAC issued Notification Letters relating to five beneficiary audits with a recovery amount of \$673,865 based on the guidelines set forth in the *Schools and Libraries Fifth Order*. In April 2005, USAC suspended issuing Notification Letters or Demand Payment Letters in certain situations based on direction from Commission staff. On January 16, 2009, the FCC issued USAC written guidance regarding these recoveries.⁷ USAC is in the process of determining which recoveries should be sought consistent with the Commission's guidance.
- For certain audit findings, the recovery process has been ongoing for more than six months because the applicant and/or service provider appealed the recovery determination to USAC and/or the Commission. The recovery process was held in abeyance pending USAC's and/or the Commission's decision on appeal.

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

⁶ Letter from Dana R. Shaffer, Chief, Wireline Competition Bureau, to Scott Barash, Acting Chief Executive Officer, Universal Service Administrative Company, DA 09-86 (Jan. 16, 2009).

⁷ *See id.*

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USAC and/or the Commission have since decided the appeal, so the process of recovery has resumed.

- The recovery process is in abeyance for eight beneficiary audits with a recovery amount of \$16,440,107 because the applicant and/or service provider has appealed USAC's recovery determination to USAC.
- The recovery process is being held in abeyance for 39 beneficiary audits with a recovery amount of \$14,788,999 because the applicant and/or service provider has appealed USAC's recovery determination to the Commission.
- The applicant and/or service provider has not paid the funds to USAC and has not made satisfactory arrangements for payment of the funds. Consequently, the debt has been transferred to the Commission under the *DCIA*. To date, USAC has transferred \$7,199,710 relating to 27 audits to the Commission pursuant to the *DCIA*.
- The audit performed consistently with the Commission's *Puerto Rico Department of Education Order*,⁸ covering Funding Years 1998 through 2000. It has been approved by USAC's Board of Directors and provided to Commission staff. In that order, the Commission stated that it – rather than USAC – would review the results of that audit to determine what recovery action would be appropriate.⁹ Consequently, although the audit has been deemed final for more than six months, recovery amounts that may eventually be associated with the results of that audit are not included on the attached spreadsheet.

⁸ *Federal-State Joint Board on Universal Service, Petition of the Puerto Rico Department of Education to Release Funds Associated with the Schools and Libraries Universal Service Support Mechanism for Years 2001 and 2002*, CC Docket No. 02-06, Order, 18 FCC Rcd 25417 (2003)(*Puerto Rico Department of Education Order*).

⁹ See *id.* ¶¶ 2, 25.

Fund Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	Grand Total
Number of Audits Performed per Fund Year	24	47	175	22	122	96	104	193	155	
Total Disbursed Amount Audited	170,279,326	\$252,752,569	632,817,916	\$67,400,793	\$399,157,269	326,824,894	\$91,002,218	\$176,068,997	\$120,633,978	\$2,236,937,960
TOTAL STAGES OF RECOVERY	\$900,325	\$9,694,319	\$21,428,915	\$23,891,210	\$21,312,616	\$4,641,463	\$13,629,488	\$37,236,851	\$8,198,080	\$140,933,266
\$ Recovered To Date	\$782,976	\$5,397,176	\$4,329,948	\$2,203,240	\$2,428,360	\$531,709	\$503,515	\$52,062	\$6,809	\$16,235,795
\$ Sent to OMD for Recovery	\$6,300	\$883,099	\$6,026,349	\$58,483	\$225,479					\$7,199,710
\$ Remanded - Approved		\$1,801,978	\$39,397	\$40,099	\$3,610,453		\$2,333,332			\$7,825,258
\$ USAC Appeals - Approved			\$1,963				\$2,144			\$4,107
Balance Remaining (Stages of Recovery)	\$111,049	\$1,612,066	\$11,031,258	\$21,589,388	\$15,048,325	\$4,109,754	\$10,790,497	\$37,184,789	\$8,191,271	\$109,668,396
STAGES OF RECOVERY										
\$ DeMinimis - No Recovery			\$1,045			\$261	\$365	\$521	\$1,648	\$3,840
# of Billed Entities			4			2	3	5	8	
USAC conducting add'l outreach/review			\$569,009		\$569,009	\$461,138	\$6,868,994	\$34,304,848	\$6,133,040	\$48,337,029
# of Billed Entities			1		1	2	3	22	21	
Determined no recovery					\$1,418			\$220,051	\$368,697	\$590,167
# of Billed Entities					1			6	6	
\$ Notification Letter (CAL) Pending		\$96,125	\$1,393,929	\$3,777,556	\$7,218,321	\$2,293,383	\$1,500,402	\$2,322,729	\$1,467,330	\$20,069,775
# of Billed Entities		1	7	5	27	12	15	39	28	
\$ Notification Letter (CAL) Issued				\$4,591	\$491,430	\$569,699	\$121,383	\$241,075	\$209,115	\$1,637,293
# of Billed Entities				1	6	3	1	13	6	
\$ 1st Demand Letter Issued			\$6,488,200					\$20,322		\$6,508,522
# of Billed Entities			1					1		
Remands Under Review		\$707,521	\$585,143							\$1,292,664
# of Billed Entities		1	1							
\$ USAC Appeals Pending			\$39,991	\$16,361,785				\$26,890	\$11,441	\$16,440,107
# of Billed Entities			3	3				2	1	
\$ FCC Appeals Outstanding	\$111,049	\$808,419	\$2,522,950	\$1,445,457	\$6,768,146	\$785,273	\$2,299,353	\$48,352		\$14,788,999
# of Billed Entities	3	12	16	4	8	3	1	1		
Total of Stages of Recovery	\$111,049	\$1,612,065	\$11,031,258	\$21,589,389	\$15,048,325	\$4,109,754	\$10,790,497	\$37,184,788	\$8,191,271	\$109,668,396

The total number of audits performed includes audits that covered more than one year. These audits are reflected in each year's totals. The actual number of audits performed was 695. Under "Stages of Recovery" a particular recovery is shown only in its latest stage. For example, a recovery will not be shown in the "Notification Letter Issued" stage even though it has been through that stage as long as it has progressed to the subsequent stage.