

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

In the Matters of
Changes to the Board of
Directors of the National Exchange
Carrier Association, Inc.
Federal-State Joint Board on
Universal Service
CC Docket No. 97-21
CC Docket No. 96-45

ORDER

Adopted: October 8, 1999

Released: October 8, 1999

By the Commission:

I. INTRODUCTION

1. In this Order, as discussed below, we direct the Administrator of the universal service support mechanisms (the Universal Service Administrative Company or USAC) to adjust certain commitments of discount funding that were made to schools and libraries because the funding of such applications would violate a federal statute. Specifically, we direct USAC to adjust such commitments by: (1) canceling all or any part of a commitment to fund discounts for ineligible services or the provision of telecommunications services by non-telecommunications carriers; and (2) denying payment of any requests by providers for compensation for discounts provided on such services. Further, we direct USAC to submit an implementation plan, for Commission approval, outlining its proposals for pursuing collection of any actual discount funding that has been awarded to service providers serving such applicants.

II. BACKGROUND

2. Pursuant to Commission rules, USAC is responsible for "billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds." The Commission's rules, however, do not address directly the obligations and procedures in connection with the commitment or disbursement of funds subsequently found not to comply with applicable law. As this is a situation "where the Act or the Commission's rules are unclear, or do not address a particular situation," USAC seeks guidance from the Commission, as provided by Commission rules.

1 47 C.F.R. § 54.702(b).

2 47 C.F.R. § 54.702(c).

3. USAC, through standard audit and review processes, discovered that it committed discount funding to a small number of year one applicants for universal service discounts who failed to satisfy the requirements of the Communications Act of 1934, as amended (the Act). USAC identified the affected applications as part of its internal post-commitment management review of applications. In addition, USAC contracted with independent auditors for reviews of its internal controls and, during the course of one of those reviews, USAC further defined and quantified affected applications.

4. In particular, USAC discovered applications in two general categories where disbursement of funds for these applications would violate the Act:³ (1) applications seeking discounts for ineligible services;⁴ and (2) applications seeking discounts for telecommunications services to be provided by non-telecommunications carriers.⁵ More specifically, first, in establishing the universal service support mechanism for schools and libraries, the Act requires that only those services within the definition of “universal service” be provided at discounted rates,⁶ and that the Commission establish rules to enhance school and library access to advanced telecommunications and information services.⁷ In its implementation of these statutory provisions, the Commission defined the services within the definition of “universal service” for schools and libraries as all commercially available telecommunications services,⁸ Internet access, and internal connections.⁹ USAC has discovered that it committed funds to a small number of applications that sought discounts on ineligible services – that is, those services that do not meet the criteria for universal service designation. As of September 27, 1999, USAC estimated that it had committed approximately \$970,000 to 33 applications requesting ineligible services.¹⁰

³ We note that USAC discovered additional applications where disbursement of funds for these applications would violate certain Commission rules and USAC procedures. These violations are addressed in the Commission’s companion Order to this Order, *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Order, FCC 99-292, (rel. October 8, 1999).

⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9002 (1997), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Erratum, FCC 97-157 (rel. June 4, 1997), *aff’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) (*Universal Service Order*).

⁵ 47 U.S.C. § 254(h)(1)(B).

⁶ 47 U.S.C. § 254(h)(1)(B).

⁷ 47 U.S.C. § 254(h)(2)(A).

⁸ 47 C.F.R. § 54.502.

⁹ 47 C.F.R. § 54.503.

¹⁰ See Letter from D. Scott Barash, Vice President and General Counsel, USAC, to Magalie Roman Salas, Secretary, Federal Communications Commission, dated October 8, 1999 (USAC October 8 Letter).

5. Second, the Act also requires that telecommunications services provided at discounted rates to schools and libraries shall be provided by telecommunications carriers.¹¹ USAC has discovered it committed funds, in violation of the Act, to a small number of applications that sought discounts for telecommunications services provided by non-telecommunications carriers. As of September 27, 1999, USAC estimated that it had committed approximately \$1.7 million to 99 applications requesting telecommunications services provided by non-telecommunications carriers.¹²

6. These funds amount to less than one fifth of one percent of the total funding awarded in year one of the program.¹³ Upon discovery of statutory violations, USAC instituted both information systems checks and manual review processes that will decrease significantly the instances of undetected violations in future funding years. For example, USAC has implemented rigorous screening procedures for all applications, including putting in place an additional special reviewing team.

III. DISCUSSION

7. *Repayment obligation.* In the circumstances outlined above, the law requires us to seek repayment of erroneously disbursed funds. Indeed, Supreme Court precedent prohibits the disbursement of funds without statutory authorization.¹⁴ Although prior authority involved disbursements from the Treasury rather than, as here, a Congressionally authorized fund, we “cannot grant . . . a money remedy that Congress has not authorized” by permitting the funding of discounts for ineligible services or the provision of telecommunications services by non-telecommunications carriers.¹⁵ In any event, even in contexts not involving payments from the Treasury, it is clear that only in extreme circumstances could an agent, such as USAC, bind the government – here the FCC – to actions that violate a federal statute.¹⁶ We, therefore, direct USAC, pursuant to sections 54.702 and 54.705 of the Commission’s rules, and with close Commission oversight, to adjust funding commitments made to schools and libraries where

¹¹ 47 U.S.C. § 254(h)(1)(B). The Act’s definition of a “telecommunications carrier” mirrors the common law definition of a “common carrier.” 47 U.S.C. § 153(44). Thus, in the May 8, 1997, *Universal Service Order*, the Commission determined that the term “telecommunications services” encompasses only telecommunications provided on a common carrier basis. *Universal Service Order* at 9177-78.

¹² See USAC October 8 Letter.

¹³ In the first funding year, USAC committed \$1.7 billion in funding for the schools and libraries program. Of this amount, approximately \$2.7 million was committed in violation of the Act. Thus, \$2.7 million in commitments that constitute statutory violations divided by a total commitment of \$1.7 billion is equal to .0016 or an error rate of .16%.

¹⁴ See *OPM v. City of Richmond*, 496 U.S. 414, 424 (1990).

¹⁵ 496 U.S. at 426.

¹⁶ 496 U.S. at 434.

disbursement of funds associated with those commitments would result in violations of a federal statute.

8. We will seek repayment from service providers rather than schools and libraries because, unlike schools and libraries that receive discounted services, service providers actually receive disbursements of funds from the universal service support mechanism. Specifically, we direct USAC to adjust such commitments and seek repayment of funds by: (1) canceling all or any part of a commitment to fund discounts for ineligible services or the provision of telecommunications services by non-telecommunications carriers; and (2) denying payment of any requests by service providers for compensation for discounts provided on such services.

9. *Repayment options.* We also authorize USAC, pursuant to sections 54.702¹⁷ and 54.705¹⁸ of the Commission's rules, with close Commission oversight and after Commission review of USAC's implementation plan discussed below, to pursue collection of any disbursements that have been awarded to service providers serving such applicants. Section 1.1911 of the Commission's rules both requires and authorizes the Commission to collect debts owed to the United States for which it is responsible,¹⁹ and section 1.1912 authorizes the Commission to offset debts where an administrative offset would be feasible and in accordance with the Commission's applicable rules.²⁰ Administrative offset is one of several remedies available to the Commission for collecting debts. It means "withholding funds payable by the United States to, . . . or held by the United States for, a person to satisfy a claim."²¹ It could apply, for example, to funds payable under the universal service support mechanism for schools and libraries to a service provider pursuant to a valid funding commitment.

10. As discussed above, once USAC determines, subject to Commission concurrence, that a particular amount has been disbursed which is not authorized by a federal statute, it is a claim that must be collected under Commission rules and the Debt Collection Improvement Act (DCIA).²² We, therefore, direct USAC to present an implementation plan for the Commission's approval identifying the specific amounts of schools and libraries discount funds that were disbursed in error and proposing methods for their collection. We also direct USAC to include in its implementation plan proposals, subject to the Commission's approval, for collecting those debts and

¹⁷ 47 C.F.R. § 54.702.

¹⁸ 47 C.F.R. § 54.705.

¹⁹ 47 C.F.R. § 1.1911.

²⁰ 47 C.F.R. § 1.1912.

²¹ 31 U.S.C. § 3701(a).

²² 31 U.S.C. §§ 3701 et seq., 47 C.F.R. §§ 1.1901 et seq. Section 1.1911 of the Commission's rules both requires and authorizes the Commission to collect debts owed to the United States for which it is responsible, and section 1.1912 authorizes the Commission to offset debts where an offset would be feasible and in accordance with the Commission's applicable rules. 47 C.F.R. §§ 1.1911, 1.1912.

identifying those instances where an offset would be feasible and in accordance with all applicable Commission rules and the DCIA.

IV. CONCLUSION

11. We direct USAC to adjust commitments of discount funding made to schools and libraries that filed applications for discount funding, the disbursement of which would violate a federal statute. We also direct USAC to submit, within 14 days of release of this Order, an implementation plan, for Commission approval, regarding USAC's proposal for the collection of any actual discount funding that has been awarded to service providers in violation of a federal statute, as discussed above.

VI. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, and 303(r), this Order in CC Docket Nos. 96-45 and 97-21 IS ADOPTED.

13. IT IS FURTHER ORDERED that the Universal Service Administrative Company MUST SUBMIT, within 14 days of release of this Order, an implementation plan for Commission approval, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary