

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

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

NOTICE OF INQUIRY

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Comment Date: [30 days after date of publication in the Federal Register]

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By the Commission: Commissioners Capps, Adelstein, and Tate issuing separate statements.

I. INTRODUCTION

1. In this Notice of Inquiry (“NOI”), we seek comment on ways to further strengthen management, administration, and oversight of the Universal Service Fund (“USF” or “Fund”), how to define more clearly the goals of the USF, and to identify any additional quantifiable performance measures that may be necessary or desirable. We also seek comment on whether and, if so, to what extent the Commission’s oversight of the USF can be improved. In conducting this inquiry, we plan to build upon the comprehensive audit oversight conducted by the Commission’s Inspector General in 2007.

2. Our primary goal in initiating this NOI is to ensure sufficient safeguards are in place for the USF to operate as Congress intended. In recent years, the Commission has undertaken a series of steps to improve and strengthen oversight, including support of the Inspector General’s audit program. Still, we are concerned about the error rates the Inspector General identified. The Commission has already taken a number of steps to address the problems identified by the Inspector General and others, for example, implementing program-wide debarment measures in 2007, initiating recovery of any improperly disbursed funds, and executing a Memorandum of Understanding (“MOU”) with the USF Administrator. These recent steps have provided tangible benefits. For example, 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. The independent auditor’s opinion expressly covers the Commission’s financial controls over the USF and represents a marked improvement over the period covering fiscal years 1999 through 2005.¹ The importance and size of the USF demands constant scrutiny and assessment of the Commission’s oversight efforts. We are initiating this NOI to continue our assessment, solicit input from the public, and develop additional rules and safeguards to protect the Fund.

II. BACKGROUND

3. As set forth in section 254 of the Communications Act of 1934, as amended (the “Act”),

¹ See Federal Communications Commission’s Performance and Accountability Reports for fiscal years 2007 and 2006, available at <http://www.fcc.gov/omd/strategicplan/>. For audit results from fiscal years 1999 through 2005, see the Commission’s Office of Inspector General’s Audit Reports on the Commission’s Financial Statements, available at <http://www.fcc.gov/oig/oigreportsaudit.html>.

universal service policy is intended to ensure the availability of affordable telecommunications services to consumers living in high-cost areas, low-income consumers, eligible schools and libraries, and rural health care providers.² Section 254 also required explicit federal universal service mechanisms and enlarged the scope of the universal service program.³ The universal service programs are funded by contributions remitted by telecommunications carriers providing interstate and international telecommunications services and from certain other providers of interstate telecommunications. The Universal Service Administrative Company (“USAC” or “USF Administrator”), a subsidiary of the National Exchange Carrier Association (“NECA”) and a private not-for-profit corporation, was created to serve as the Administrator of the USF.⁴ The USF consists of four programs: (1) high-cost, providing financial support to eligible telecommunications carriers (“ETCs”) serving high-cost areas; (2) schools and libraries (“E-Rate”), providing discounted telecommunications services, Internet access, and internal connections to eligible schools and libraries; (3) low-income, assisting low-income customers with discounted installation and monthly telephone services; and (4) rural health care, providing discounted telecommunications and information services to rural health care providers.⁵

4. Many observers, including the Government Accountability Office (“GAO”), have recommended that the Commission take steps to improve oversight of the USF.⁶ In response, the Commission has taken action in previous proceedings to detect and deter waste, fraud, and abuse of the Fund.⁷ In addition, schools and libraries participating in the E-rate program have been subject to audits to determine compliance with program rules and requirements.⁸ Audits and investigations have uncovered issues ranging from poor program design to improper use of funds, including intentional efforts to defraud the program by unscrupulous actors. In many instances these audits and investigations have resulted in the referral of fraud cases to the Department of Justice (“DOJ”), and in settlements favorable

² 47 U.S.C. § 254(b).

³ *See id.*

⁴ *See Changes to the Board of Directors of the National Exchange Carrier Association*, 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, 25063-66, paras. 10-14 (1998); 47 C.F.R. § 54.701(a).

⁵ The Commission also established the Rural Health Care Pilot Program in which 69 participants covering 42 states and three US territories are eligible to receive funding for up to 85 percent of the costs associated with: (1) the construction of a state or regional broadband network and the advanced telecommunications and information services provided over that network; (2) connecting to Internet2 or National LambdaRail (“NLR”); and (3) connecting to the public Internet. *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 22 FCC Rcd 20360, 20361, para. 1 (2007). The Commission intends to use the information gathered from the Pilot Program to understand how to modify the existing rural health care program to support the deployment of a nationwide broadband health care network. *See id.* at 20366, para. 15.

⁶ *See, e.g.,* GAO, Telecommunications, Greater Involvement Needed by FCC in the Management and Oversight of the E-Rate Program, GAO-05-151 (Feb. 9, 2005) (“2005 GAO E-Rate Report”); GAO, Telecommunications, FCC Needs to Improve Performance Management and Strengthen Oversight of the High-Cost Program, GAO-08-633 (June 2008) (“2008 GAO High-Cost Report”).

⁷ *See, e.g., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808 (2004) (“*Schools and Libraries Fifth Report and Order*”); *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, 02-6, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252 (2004); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (“*Schools and Libraries Second Report and Order*”).

⁸ 47 C.F.R. § 54.516; *see Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15813, ¶ 13.

to the Government and/or criminal convictions or civil judgments against the wrongdoers. In addition, where wrongdoers have been convicted or subject to civil judgments, the Commission has debarred or proposed debarment of the wrongdoers consistent with our rules.⁹

5. More recently, the Commission has taken a series of steps to further bolster oversight of the USF. First, the Inspector General initiated 459 audits of beneficiaries and contributors.¹⁰ Based on the results of those audits, the Inspector General is now overseeing a second round of 650 audits (beneficiaries of Schools and Libraries and High Cost Fund programs only) that build upon experience from the first round. The results of the Inspector General's audits have resulted in both recoveries of USF monies and enforcement action against entities that apparently violated Commission rules.

6. Second, the Commission has strengthened its oversight and management of the USF Administrator. In June 2007, the Commission established an MOU with the USF Administrator to ensure greater clarity in administrative and management functions.¹¹ The MOU 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. Specifically, the MOU directs the Administrator to implement an internal controls structure consistent with the requirements of Office of Management and Budget ("OMB") Circular A-123. The Administrator is in the process of re-assessing its internal controls framework. The results of this effort should enable the Administrator to develop and implement corrective action plans for any identified internal control weaknesses, which will help to prevent and reduce improper payments across all USF programs. As noted above, the improved internal control structure over the USF has helped the Commission receive unprecedented high marks from the outside independent auditor over the Commission's finance and accounting activities, including those governing the USF. More recently, the Commission directed the USF Administrator to establish an incentive-based system for its executives to reduce and prevent improper payments. Specifically, any bonuses the USF Administrator pays to its executives must be based at least in part on the USF Administrators' success at reducing and preventing improper payments.

7. Third, the Commission established performance measures and goals for the USF and the USF Administrator.¹² These performance measures and goals will be reported at least annually by the USF Administrator and will be summarized in the Commission's budget and financial submissions to Congress. In addition, the Commission required the USF Administrator to develop customer service standards and to prepare, review, and report data concerning the quality of service the USF Administrator provides to USF stakeholders. Like the USF Administrator's efforts to reduce and prevent improper payments, the quality of service it provides its stakeholders will also help form the basis for executive compensation.

⁹ See, e.g., Letter from Maureen F. DelDuca, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Duane Maynard, *Notice of Debarment*, 18 FCC Rcd 26729 (2003).

¹⁰ See Federal Communications Commission, Office of the Inspector General, *Initial Statistical Analysis of Data from the 2006-2007 Compliance Audits*, Oct. 3, 2007.

¹¹ The 2005 GAO E-Rate Report observed that as there was no contract or memorandum of understanding between the Commission and USAC, USAC has less explicit federal ties than many other federal programs. 2005 GAO E-Rate Report at 12.

¹² See *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Report and Order, 22 FCC Rcd 16372, 16388-398, ¶¶ 34-57 (2007) ("*Comprehensive Review Order*"). These performance measures were also in the MOU.

8. Fourth, in August 2007, the Commission adopted rules that address many of the problems previously identified with the USF program.¹³ The Commission's new rules establish rigorous document retention requirements for program participants and establish performance measurements to better manage the Administrator and the USF. These measurements, among other things, require the Administrator to provide specific performance metrics such as the number of program beneficiaries, rates of telephone subscribership in urban versus rural areas, and the average dollar amount of support. The Commission's new rules also create additional penalties for bad actors – specifically, the Commission can now debar from continued participation in the program, any party that defrauds any of the four disbursement programs.¹⁴

9. Fifth, the Commission has followed-up on investigations by taking strong enforcement action against bad actors. Since January 2007, the Commission has suspended or debarred 14 individuals or companies and proposed or issued 19 forfeitures or consent decrees against violators and other targets of our investigations.¹⁵ We expect that strong enforcement action and the deterrent effect of the Inspector General's comprehensive audit program will encourage compliance among program participants.

10. Finally, although not the subject of this *Notice of Inquiry*, the Commission has taken steps toward more fundamental reform of the USF. For example, the Commission recently took action to rein in the explosive growth in high-cost universal service support disbursements by adopting an interim, emergency cap on the amount of high-cost support that competitive ETCs may receive.¹⁶ Further, on January 29, 2008, the Commission released three notices of proposed rulemaking addressing proposals for comprehensive reform of the high-cost program.¹⁷ In the *Identical Support Rule NPRM*, the Commission tentatively concludes that it should eliminate the Commission's current "identical support" rule, which provides competitive ETCs with the same per-line high-cost support amounts that incumbent LECs receive. In the *Reverse Auctions NPRM*, the Commission tentatively concludes that reverse auctions offer several potential advantages over the current high-cost support distribution mechanisms. In the *Joint Board Comprehensive Reform NPRM*, the Commission is considering the recommendations of the Joint Board to establish three separate funds with distinct budgets and purposes: a broadband fund; a mobility fund; and a provider of last resort fund, and to adopt an overall cap on high-cost funding. The Commission is also considering all the principles in section 254(b) of the Act, including reasonable comparability, in the *Tenth Circuit Remand* proceeding.¹⁸ Further, building on the progress made by the Commission in the *Comprehensive Review Order*, the Commission is continuing to consider

¹³ See *Comprehensive Review Order*, 22 FCC Rcd at 16383-85, ¶¶ 22-27.

¹⁴ *Id.*, 22 FCC Rcd at 16387, ¶ 32.

¹⁵ See Federal Communications Commission Enforcement Bureau website, Universal Service Fund Enforcement, available at <http://www.fcc.gov/eb/usfc/> (last retrieved July 1, 2008) (listing Universal Service Fund suspension and debarment actions).

¹⁶ See *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, FCC 08-122 (rel. May 1, 2008).

¹⁷ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) ("*Identical Support Rule NPRM*"); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) ("*Reverse Auctions NPRM*"); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) ("*Joint Board Comprehensive Reform NPRM*").

¹⁸ See *Federal-State Joint Board on Universal Service, High-Cost Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Proposed Rulemaking, 20 FCC Rcd 19731 (2005).

comprehensive USF reform proposals raised in, or in response to, the *Comprehensive Review NPRM*,¹⁹ including ways to simplify the E-Rate program.²⁰

11. These oversight improvements have built upon the earlier measures taken by the Commission. In 1999, in the *Commitment Adjustment Order*, the Commission directed the USF Administrator to recover E-Rate funds committed in violation of the Act.²¹ In 2003, the Commission adopted a debarment rule and other measures for the E-Rate program to safeguard the Fund.²² In addition, as mentioned above, the Commission has taken other actions to detect and deter waste, fraud, and abuse of the Fund.²³

Summary of Audit Findings

12. In the *Comprehensive Review NPRM*, we asked whether we should require audits of program participants.²⁴ In the *Comprehensive Review Order*, we concluded that the Inspector General's compliance audits of contributions to the USF and distributions from the USF would provide appropriate audit oversight of the USF programs and that an additional annual audit requirement was unnecessary.²⁵ Working under the Inspector General's supervision, independent auditors audited distributions from and contributions to the USF that occurred during the 2005 funding year. The auditors tested compliance with the Commission's rules and provided the basis for the Inspector General's statistical estimates of erroneous payments as defined in the Improper Payments Information Act of 2002 ("IPIA").²⁶ Under the IPIA, a program is at risk if the erroneous payment rate exceeds 2.5 percent and the total amount of erroneous payment is greater than \$10 million. Under those criteria, the low income, schools and libraries, and high cost fund distributions were determined to be at risk.²⁷ These audits represent the most

¹⁹ See generally, *Comprehensive Review Order*, 22 FCC Rcd 16372; *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) ("*Comprehensive Review NPRM*").

²⁰ See *Comprehensive Review NPRM*, 20 FCC Rcd at 11323-28, 11334-35, paras. 32-43, 60. Nothing in this NOI is intended to limit in any way whatsoever the Commission's ability to act on these, or other, pending notices of proposed rulemakings.

²¹ *Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 97-21 and 96-45, Order, 17 Rad.Reg. (P&F) 1192 (1999) ("*Commitment Adjustment Order*"), recon., CC Docket Nos. 96-45, 97-21, and 02-6, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252 (2004).

²² See *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9224-28, ¶¶ 64-77.

²³ See, e.g., *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808 (2004) ("*Schools and Libraries Fifth Report and Order*"); *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, 02-6, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252 (2004); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) ("*Schools and Libraries Second Report and Order*").

²⁴ *Comprehensive Review NPRM*, 20 FCC Rcd at 11338-342, ¶¶ 71-82.

²⁵ *Comprehensive Review Order*, 22 FCC Rcd at 16382-83, ¶¶ 19-21.

²⁶ Improper Payments Information Act of 2002, Pub.L.No. 107-300, 116 Stat. 2350 (2002).

²⁷ The Rural Health Care program had an erroneous payments rate of more than 20 percent but, at \$4.45 million in estimated erroneous payments, did not reach the \$10,000,000 IPIA criterion to be at risk. Contributors had an estimated erroneous payment rate (*i.e.*, receipts to the Fund) of 5.5 percent, which resulted in more than \$200,000,000 in estimated erroneous payments.

rigorous review of USF beneficiaries and contributors since the Fund's inception. The auditors performed a random sample of 459 audits of beneficiaries from all USF programs, as well as contributors, from 2005. The Inspector General released a preliminary analysis on October 3, 2007.²⁸ The Office of Managing Director ("OMD") subsequently directed the USF Administrator to propose steps it could take to reduce future improper payments based on the information gained from the Inspector General's audits.²⁹ The USF Administrator submitted a report on December 31, 2007, and a follow-up report on February 28, 2008.³⁰ In its reports, the USF Administrator proposes additional steps that it could take to enhance oversight.

13. *Contributors.* Section 254 of the Act and the Commission's rules require all telecommunications carriers providing interstate and international telecommunications services and certain other providers of interstate telecommunications to contribute to the USF.³¹ Ninety contributors were randomly selected for the audits. The contribution improper payment rate was 5.50 percent. The independent auditors found noncompliance with the following rules: rules associated with contributor ID; regulatory contact information; agent for service of process; Commission registration number; company's reported interstate revenues; company's reported interstate estimate; certification, and records maintained to support data.

14. *Low-income program.* The low-income program provides discounts to qualified consumers by reducing installation fees and monthly charges for basic telephone service. Additional discounts are available to qualified consumers living on tribal lands. The estimated improper payment rate was 9.5 percent. Areas of noncompliance included violations of the following: advertising supported services; rates; link up discount; support of toll election; no deposit for lifeline; determination of consumer qualification; eligibility verification; officer certification; procedures for qualification; accurate submission of Form 497; record keeping; and certification from resellers.

15. *Schools and libraries program.* The E-Rate program provides discounts to schools and libraries for telecommunications services, Internet access, and internal connections. The auditors estimated the improper payment rate at 12.9 percent. The auditors found non-compliance in several areas, such as recordkeeping; eligible services; using the correct discount; and entering into a contract too early in the application process.

16. *High-cost program.* The high-cost program provides support for ETCs to ensure that consumers in all rural, insular, and high-cost areas have access to telecommunications services at rates that are reasonably comparable to those paid in urban areas. The estimated improper payment rate was 16.6 percent. The auditors found noncompliance with various rules, e.g., failure to accurately report historical revenue; failure to report the number of working loops; failure to submit forms; and failure to submit data.

17. *Rural health care program.* The rural health care program provides discounts to rural

²⁸ Summaries of the audit reports can be found at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-277103A3.pdf; http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-277103A4.pdf; http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-277103A5.pdf; http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-277103A6.pdf; http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-277103A7.pdf.

²⁹ See Letter from Anthony Dale, Managing Director, FCC to D. Scott Barash, Acting Chief Executive Officer, USAC, Oct. 31, 2007.

³⁰ See Letter from D. Scott Barash, Acting Chief Executive Officer, USAC to Anthony Dale, Managing Director, FCC, Feb. 28, 2008 ("USAC Feb. 28 Letter"). The USAC Feb. 28 Letter is attached to this Notice in the Appendix.

³¹ 47 U.S.F. § 254(b); 47 C.F.R. § 54.706(a).

health care providers to ensure they pay no more than their urban counterparts for their telecommunications needs in the provision of health care services.³² In addition, the program provides support to rural health care providers for access to the Internet.³³ The estimated improper payment rate was 20.64 percent which was mainly due to record keeping and record production problems.

18. In the *Comprehensive Review Order*, the Commission adopted rules that addressed many of the audit findings. For example, the audits disclosed widespread failure of beneficiaries to retain appropriate documentation to justify USF support. The document retention requirements adopted in the *Comprehensive Review Order* should remedy these problems. Other concerns raised by the audits, such as rule violations, may be prevented by better outreach by the USF Administrator, or other methods of educating program beneficiaries.

III. DISCUSSION

19. At the outset, we seek comment broadly on ways to further strengthen the administration, management, and oversight of the Fund. For example, we seek comment on what additional measures the Commission can implement to prevent improper USF payments, to safeguard the USF from waste, fraud, and abuse, to ensure that all providers are properly contributing the amounts they have collected from their subscribers to the USF, and to help operate the program in a more efficient, effective manner. Commenters should propose measures that the USF Administrator could take to prevent improper payments and collect all sums that should be paid to the fund and address the error rates identified in the Inspector General's audit results. Commenters should also propose measures that the Commission could take to prevent improper payments and address error rates, as well as measures that program participants can take to prevent improper payments and address error rates. We seek comment on whether the Commission should adopt an independent audit requirement for program beneficiaries and contributors. Commenters should address whether safeguards should be adopted uniquely for certain USF programs and contributions or if the safeguards should remain more or less uniform, and if so, why. Commenters should discuss the costs versus benefits of their proposals in specific, rather than general, terms. We recognize that the four USF disbursement programs and the contribution mechanism have many differences and perhaps need different, more closely tailored requirements to prevent waste, fraud, and abuse efficiently and effectively. In summary, we seek comment on whether different safeguards are necessary for the different aspects of the universal service program. We also use this as an opportunity to request that parties refresh the record on these issues in response to the Commission's 2005 *Comprehensive Review NPRM*.³⁴

20. We expect to continue to rely on the expert oversight of the Commission's Inspector General to conduct and maintain a sufficient audit program. As noted above, the Commission's Inspector General completed the most comprehensive round of audits of the USF ever conducted. Based on these initial results, the Inspector General has initiated plans to significantly expand the audit program going forward in order to provide more precise estimates of the error rates and more detailed information on the underlying causes of any high error rates. In Fiscal Year 2008, the Commission requested and received from Congress \$21.48 million for the Inspector General's USF oversight efforts. The Commission has requested an additional \$25.48 million in USF oversight funding for the Inspector General in Fiscal Year 2009. As the Inspector General completes audits of the program, we will continue to recover any

³² See 47 U.S.C. § 254(h)(1)(A); 47 C.F.R. Part 54, Subpart G; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9093-9161, ¶¶ 608-749 (1997).

³³ 47 C.F.R. § 54.621.

³⁴ Comments in response to the *Comprehensive Review NPRM* were filed on October 18, 2005. Reply comments were filed on December 19, 2005.

improperly disbursed monies and work to implement appropriate corrective action in light of the audit results.

21. We seek comment on whether the Commission should establish additional rules pertaining to document retention and enforcement. We note that most problems identified in the audit results were related to lack of documentation by program participants. In August 2007, the Commission adopted specific document retention rules for each USF mechanism.³⁵ We seek comment on whether the audit results suggest that the Commission should take additional steps related to document retention in order to help verify that USF monies are used for their intended purposes. If so, what steps should be taken? Should recipients of universal service funding be required to retain documents that they are currently not required to retain?³⁶ Currently, the rules require that records be retained for five years for all aspects of the USF, except for the low-income program for which documents must be retained for as long as the recipient continues to receive supported service plus three additional years.³⁷ Should applicants and service providers be required to retain records for a longer period? Should the Commission embrace additional enforcement methods, or adopt additional enforcement rules, to address these issues and, if so, what should they be?

22. As part of our examination into enhancing our oversight and management of the USF, we seek comment on whether the Commission should take steps to more clearly define the goals of the federal universal service programs. We seek comment on whether we should adopt specific qualitative or quantitative goals beyond those policy objectives enumerated in section 254 of the Act.³⁸ We ask parties that advocate additional goals to identify with specificity the goals they recommend we apply.

23. In 2005 we sought comment on the utility of a permanent administrator of the USF.³⁹ We specifically solicited comment from stakeholders on the option of eliminating USAC as the permanent administrator of the USF and thereby using a contractor (obtained using the FAR) to perform the administration of the USF. As a general matter, commenters either did not address this proposal or filed comments in support of retaining the status quo. We use this opportunity to refresh the record in this regard. Should the Commission continue to use a permanent administrator of the USF? Alternatively, the Commission could obtain the services of a contractor or contractors to perform the USF Administrator's functions. We seek comment on this option.

24. Earlier this year, the Commission required the USF Administrator to establish customer service standards and to report regularly on the quality of service provided to USF stakeholders. At this time, the USF Administrator 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. These specific data elements are currently under review and may change. We note that the USF Administrator is now required to base its executive compensation in part on the quality of service it provides stakeholders. In the meantime, we seek comment from USF

³⁵ See *Comprehensive Review Order*, 22 FCC Rcd at 16383-85, ¶¶ 22-27.

³⁶ Program participants must now retain records in order to demonstrate compliance with the Act and the Commission's rules, that the funding received was proper, or that contributions made to the Fund were made in compliance with program rules. *Id.*

³⁷ *Id.*

³⁸ See 47 U.S.C. § 254(b)(7) (permitting the Commission to apply "[s]uch other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this chapter.")

³⁹ *Comprehensive Review NPRM*, 20 FCC Rcd at 11314, ¶ 12.

stakeholders on additional metrics the USF Administrator should collect and report to illustrate the quality of service it provides stakeholders.

25. We seek comment on what additional performance management techniques the Commission could adopt to improve the administration and operation of the USF. In August 2007, the Commission took initial steps to improve the performance management of the USF by adopting performance measures to help ensure the program operates in an efficient, effective manner. Most of these performance measures were “output measures.” OMB and GAO have written extensively on the use of performance management techniques and the use of performance goals and measures in Federal programs. OMB and GAO have recommended greater reliance on other types of performance goals and measures, including “outcome” and “efficiency” measures.⁴⁰ Because we are committed to ensuring the USF operates in the manner intended by Congress, we seek comment on whether the Commission should establish additional performance goals and measures, or delete or revise any previously-established performance goals and measures, and, more fundamentally, if the Commission has the authority to set long-term goals for the USF programs. If so, what additional performance goals and measures should be established, deleted, or modified, and, if so, why? Should 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? If 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?

26. The GAO recently concluded that the internal control mechanisms over the High Cost program, including the use of audits, have “weaknesses.” However, the GAO declined to make any specific recommendations for strengthening or improving the internal control structure over the program beyond recommending that the Commission “should identify areas of risk in its internal control environment and implement mechanisms that will help ensure compliance with program rules and produce cost-effective use of program funds.”⁴¹ Nor did the GAO identify any specific internal control weaknesses beyond concluding that the existing internal controls “may not fully address” the concerns the GAO identified about cost-effectiveness, accuracy of cost and line count data, and the appropriateness of high cost support.⁴² We invite program stakeholders to identify areas of risk in the program’s internal control environment and to propose mechanisms that will help ensure compliance with program rules and produce cost-effective use of program funds. We seek comment on additional measures we can take to enhance the internal control structure of the entire USF, including all four beneficiary support mechanisms and the contributions program. We seek comment on whether we should establish an independent audit requirement such as the one discussed in the 2005 NPRM.⁴³ We note that the Commission’s OIG may exercise its discretion to evaluate the accuracy of cost and line count data, which the GAO identified as a concern. We seek comment on whether the Commission should establish any additional measures to provide better guarantees in this area.

27. Commenters should describe the costs and benefits of any such proposals, including the costs associated with any information collection effort. Commenters should address how the Commission should gather, process, and report on performance measures. Should the funds for such data collection and processing come from the USF? If so, how much USF money should be spent on an information

⁴⁰ See, e.g., 2008 GAO High-Cost Report at 25-30.

⁴¹ 2008 GAO High-Cost Report at 37-38.

⁴² *Id.*

⁴³ *Comprehensive Review NPRM*, 20 FCC Rcd at 11337-342, ¶¶ 69-82.

collection effort for performance measurements?

28. Commenters should also discuss whether short-term goals should flow from explicitly stated long-term goals and if the Commission has the responsibility to set short-term operational goals based upon the requirements in the Act. Should performance measurements of accomplishment of the long and short-term goals be at least in part the responsibility of the USF Administrator?

29. We seek comment on any specific long-term and short-term goals of the USF programs. With respect to the high-cost program, we seek comment on any quantifiable measures that can be used in determining the program's success in meeting its goals. Commenters should discuss whether the Commission has the authority to adopt goals that are not specifically part of section 254 of the Act. Commenters should address whether high-cost program goals should focus exclusively on broadband connections or develop a defined mix of support for broadband and traditional voice telecom. Commenters should discuss appropriate long-term goals for the schools and libraries program and what the Commission should do with respect to the schools and libraries program after such goals have been met. For example, if an appropriate long-term goal is a certain level of connectivity in the Nation's schools and libraries, what should the Commission do, and what authority does the Commission have, with respect to the program after that level of connectivity is met? With respect to the high-cost program, should the Commission create a low, mid, and high range set of options regarding services that could be provided by the program under current rules with less, the same, or more funding?

30. We recognize that a specific rule may never be specific enough to adequately address all situations. In addition, a specific rule may not remain perfectly up-to-date, especially in such a dynamic industry as telecommunications, *e.g.*, changes in technology, corporate structures, etc. We recognize the need of an administrator to be able to effectively implement our rules in such a fast-changing environment. Under Part 54 of our rules, USAC, as the administrator, is not permitted to make policy decisions without bureau guidance.⁴⁴ Any party, including USAC and NECA, can file for such guidance at any time. Timely guidance would be important to the efficient and effective administration of the USF programs. We seek comment on the efficiency and effectiveness of this process for obtaining timely guidance with interpretation of our rules, especially with regard to the administration of the USF programs. Commenters are encouraged to provide specifics to the extent possible. For example, comments on actual experience(s) in receiving timely guidance on the interpretation of our rules would be most helpful. Commenters are also asked to state how any identified problem area can be improved.

31. We seek comment on whether the Commission should establish additional rules pertaining to internal control requirements for program participants. For example, OMB Circular A-123 describes the internal control requirements applicable to Federal agencies. In this circular, OMB describes internal control, consisting of organization, policies, and procedures, as a method to help program and financial managers achieve results and safeguard the integrity of their programs.⁴⁵ We seek comment on what steps, if any, the Commission should take with respect to the establishment of internal control measures for program participants. We also seek comment on whether the Commission's internal control measures should be improved with respect to the universal service fund. Commenters should describe any internal control recommendations in detail, as well as the estimated costs and benefits of any such requirements. Commenters should discuss whether the Commission needs to have more direct oversight of the USF Administrator, with respect to the internal controls of the USF.

⁴⁴ Part 36 of our rules does not specifically address to the same extent as Part 54 whether or not NECA in its capacity of collecting High Cost Loop information is allowed to make *de facto* policy decisions, *i.e.*, interpretations of our rules

⁴⁵ See http://www.whitehouse.gov/omb/circulars/a123/a123_rev.pdf at 4.

32. We note 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.⁴⁶ In addition, NECA collects certain data used to administer the high cost program.⁴⁷ On a related note, NECA performs comparable administrative functions over the TRS fund. We seek comment on whether we should take additional measures concerning NECA's relationship to the current USF Administrator 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? We seek comment on whether we should establish any rules governing the NECA board with respect to its relations with the USF Administrator, such as the sharing of information or the possibility of shared board members. USAC has proposed that the Commission consider whether USAC should be divested from NECA ownership.⁴⁸ We seek comment on USAC's proposal.

33. Since 2005, the Commission has required USAC to conduct its procurements consistent with the Federal Acquisition Regulation ("FAR"). We seek comment on ways that we can improve our oversight of the Administrator's procurement function. For example, should the Commission adopt rules that apply fully the socio-economic goals incorporated into the FAR, such as veteran's preferences and small business set-asides? We note that the USF Administrator is currently subject to an annual audit as specified in Part 54 of the Commission's rules and that, while this audit may cover the USF Administrator's procurement activities, such reviews and evaluations are not guaranteed. We therefore seek comment on the extent to which we should establish additional oversight of the USF Administrator's compliance with the FAR. We note that the MOU requires the USF Administrator to take greater steps to use performance-based contracting in its procurements. We seek comment on whether we should mandate a percentage of the USF Administrator's procurements to be performance-based. We also seek comment on other ways to ensure fairness and transparency in the USF Administrator beyond those provided for in the FAR. Alternatively, the Commission could handle certain or all procurements on behalf of the USF Administrator. We seek comment on whether the Commission should take a more active role in the USF Administrator's procurements, such as by handling all aspects of the procurement process for contracts exceeding \$250,000. Commenters should discuss whether the Commission should impose additional substantive or reporting requirements on the Administrator.

34. We seek comment on what additional measures, if any, the Commission should undertake with respect to the application process for each of the USF programs. For example, should the Commission revise any of the existing procedures or forms to help safeguard the process for obtaining program benefits? In particular, should additional information be required of program participants in the application process 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? We seek comment on these issues for each of the universal service mechanisms.

⁴⁶ See 47 C.F.R. § 54.702(e).

⁴⁷ See, e.g., 47 C.F.R. § 36.611 Submission of information to the National Exchange Carrier Association (NECA). For example, all incumbent local exchange carriers are required to submit certain investment and expense data, including line count information, to NECA by July 31 of each year; nonrural incumbent carriers must file their line count information with NECA quarterly as well. NECA is governed by sections 69.601-69.610. See 47 C.F.R. §§ 69.601-69.610.

⁴⁸ Comments of Universal Service Administrative Company at 51-52 in response to *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) (filed Oct. 18, 2005)

35. We seek comment on ways in which we could ensure better accuracy in the certification and verification requirements in the low-income program. In 2004, the Commission adopted federal verification and certification procedures and required states, under certain circumstances, to establish verification and certification procedures to minimize potential abuse in the low-income program.⁴⁹ Each year, ETCs are required to verify the continued eligibility of a statistically valid sample of their Lifeline subscribers.⁵⁰ ETCs in states that do not have state-based low-income programs must follow the certification and verification procedures set out in the *Lifeline Order*.⁵¹ ETCs in states with their own state-based low-income programs must follow the state-established verification procedures.⁵² We are concerned about the possibility of waste, fraud, and abuse in this program by consumers and telecommunications carriers, in federal default states as well as in other states. We therefore seek comment on how to improve the certification and verification requirements. Commenters should suggest ways in which the USF Administrator can better ensure that Lifeline and Link-Up low-income consumers are eligible for such programs after their initial enrollment. Commenters should also discuss whether different methods should be used to prevent waste, fraud, and abuse in federal default states and in states that are not federal default states.⁵³

IV. PROCEDURAL MATTERS

A. Initial Paperwork Reduction Act Analysis

36. This NOI does not contain proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (“PRA”), Public Law 104-13. This NOI does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.⁵⁴

B. Ex Parte Rules

37. This is as a “permit-but-disclose” proceeding subject to the requirements under section 1.1206(b) of the Commission’s rules.⁵⁵ *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.⁵⁶ Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

⁴⁹ *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, 18 FCC Rcd 8302 (2004) (“*Lifeline Order*”).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*; see also *Deadline for Annual Lifeline Verification Surveys*, WC Docket No. 03-109, Public Notice, 22 FCC Rcd 12753 (2007).

⁵³ Commenters should also address unique verification and certification issues, if any, for carriers that may not be under state jurisdiction, such as wireless ETCs and ETCs serving Tribal Lands.

⁵⁴ See 44 U.S.C. § 3506(c)(4).

⁵⁵ See 47 C.F.R. § 1.1206(b); see also 47 C.F.R. §§ 1.1202, 1.1203.

⁵⁶ See 47 C.F.R. § 1.1206(b)(2).

C. Filing Requirements

38. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,⁵⁷ interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) procedures for filing paper copies.⁵⁸

39. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

40. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

41. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the Commission Reference Center, Federal Communications Commission, 445 12th Street, SW, CY-A257, Washington, DC 20554. These documents will also be available free online, via ECFS. Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.

42. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432

⁵⁷ See *id.* §§ 1.415, 1.419.

⁵⁸ See *Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322 (1998).

(TTY). This document can also be downloaded in Word and Portable Document Format (“PDF”) at: <http://www.fcc.gov>.

V. ORDERING CLAUSES

43. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i) and (j), 9, 205, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 159, 205, and 303(r), this Notice of Inquiry is HEREBY ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, WC Docket No. 05-195.

The Universal Service system is an essential part of this country's commitment to ensuring that all Americans have access to basic phone service and advanced telecommunications. The successes of the program can be found in rural areas, in schools and libraries, in our rural health care system, and in the poorest communities. In all these places, the Universal Service Fund is making a real difference in bringing the essential tools of the Digital Age to communities that would not otherwise have access to telephone and broadband services. Like any great program, however, the Universal Service system cannot meet its full potential without regular review and care. For this reason, I have long believed that substantial and on-going auditing and oversight of the Fund will do much to ensure its sustainability.

The Commission has taken some significant steps towards protecting the integrity of the Fund and today's Order identifies many of the Commission's worthwhile efforts. However, we must recognize that there is always more that can be done. The Government Accountability Office, Members of Congress, and many others have pointed to the need for improvement in the oversight of the Fund. Accordingly, this Notice of Inquiry is quite timely, if not overdue, in asking for comments on new methods for safeguarding the Fund. Only with the Commission's vigilance and scrutiny, along with the responsible use of monies by USF recipients, will the Fund be able to continue its successes in the future. I therefore support this Notice of Inquiry and urge that the public record quickly form the basis for any additional safeguards that are needed to protect the Fund and its underlying mission.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, WC Docket No. 05-195.

Our universal service programs strengthen the links in our communications network and, today, we open today an inquiry about how to reinforce and improve those programs. By seeking comment comprehensively on our administration, management and oversight of the program, we again demonstrate our commitment to its effectiveness and integrity.

In the Telecommunications Act of 1996, Congress reaffirmed its commitment to universal service by enshrining the principles of keeping our communities connected and ensuring that the latest advanced communications services reach all Americans. Universal service has played an important role in stimulating and maintaining the high levels of telephone penetration that our country now enjoys, and the program will be a key component of meeting the growing broadband challenge.

To ensure continued success, we must remain committed to monitoring, auditing, reviewing and reinforcing this program. Part of that process is being responsive to criticisms of the Commission's management, and this item seeks comment on a wide-ranging set of proposals. It also means building on the many successes and positive improvements that the Commission and the universal service community have already made. Indeed, I appreciate very much the dedication of the Members of Congress, Commission staff, contributors, beneficiaries, and many others who have worked hard to make this program a success. With the help of this broad community, we can further strengthen the program and ensure that it continues the positive strides that it has already made.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: *Comprehensive Review of the Universal Service Fund Management, Administration and Oversight*, WC Docket No. 05-195

As Federal Chair of the Federal-State Joint Board on Universal Service, I am fully committed toward furthering the key goals of the program: promoting the availability of quality services at just, reasonable and affordable rates, increasing access to advanced telecommunications services, and advancing availability of these services to all Americans wherever they live.

As we consider the best policies to achieve these goals and move toward comprehensive reform, it is of utmost importance that we have a Universal Service Program that functions effectively through rigorous financial oversight in order to fulfill its mission. This Notice of Inquiry takes a productive step in that direction, again taking heed of Government Accounting Office recommendations regarding improvements to both the management and administration of the Universal Service Fund. The NOI builds on the Commission's efforts to bolster oversight of the USF and USAC, seeking comment on what additional safeguards we can implement to prevent waste, fraud and abuse as well as any additional measures that could be taken to reduce improper or under-payment. We also ask broadly what additional performance measures and management techniques the Commission could adopt to improve the administration, operations and overall efficiency of the USF.

As stewards of public funds, the Commission has an important role in insuring a Universal Service Fund that is efficiently and effectively managed in order to advance its goals for millions of consumers across this country. I would like to thank Chairman Kevin Martin for his leadership, and look forward to working with colleagues toward ensuring an accountable and sustainable USF.