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## Be Aware, New Universal Service Fund Rules To Soon Take Effect

The Federal Communications Commission (FCC) has adopted several new measures to safeguard the universal service fund from waste, fraud and abuse, as well as measures to improve the management, administration and oversight of the USF. The initiatives are part of the FCC's continuing process to deter misconduct and inappropriate uses of universal service funds and to improve the overall viability of the USF programs.

All contributing telecommunications carriers, including recipients designated as eligible telecommunications carriers (ETCs), should be aware of the new requirements set forth by the FCC's *Report and Order* adopted in *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight, et al.* The new rules will become effective 30 days after publication in the *Federal Register* (as of this date, the *Report and Order* is still unpublished).

If you have any questions about these changes or their impact, please consult a member of the Briggs Telecommunications Practice Group.

### Document Retention Requirements

The *Report and Order* and FCC's new rules clarify that participants in all USF programs must retain information necessary to demonstrate compliance with FCC rules and regulations, and that such information must be available to USAC, its auditors and FCC personnel upon request. The new rules, detailed below, establish specific record retention requirements for individual universal service programs and for all USF contributors.

*High-Cost Program:* FCC Rule 54.202 is amended to require that all ETCs:

- Retain, for at least five years following receipt of USF support, all records required to demonstrate that the support was used consistent with universal service high-cost program rules.
- Records retained should include, without limitation:
  - o Data supporting line count filings
  - o Historical customer records
  - o Fixed asset property accounting records
  - o General ledgers
  - o Invoice copies for the purchase and maintenance of equipment
  - o Maintenance contracts for the upgrade of equipment
  - o Any other relevant documentation

*Low-Income Program:* The *Report and Order* maintains the current three-year record retention period for the low-income program, however, FCC Rule 54.417(a) has been amended to require participants to continue to retain records relating to the low-income program for at least three years after an audit has been conducted. The *Report and Order* also clarifies that service providers must retain records verifying the eligibility of low-income program recipients for at least three years after the recipient ceases receiving benefits from the program.

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*All USF Contributors:* FCC Rule 54.706 is amended to require that USF contributors:

- Retain, for at least five years from the date of the contributions, all records that may be required to demonstrate the contributions made were in compliance with the FCC's universal service rules. This is also applicable to the records of any contractor or consultant working on behalf of the contributor.
- Records retained should include, without limitation:
  - o Financial statements and supporting documentation
  - o Accounting records
  - o Historical customer records
  - o General ledgers
  - o Any other relevant documentation

### **Expanded Sanctions and Debarment**

The FCC's new rules have been fortified to apply sanctions, suspension and debarment procedures to all of the universal service programs (previously only applied to the Schools and Library Program). FCC Rule 54.521 has been renumbered 54.8 and amended to specify that the procedures now apply to the High-Cost, Low-Income and Rural Health Care programs, in addition to the Schools and Library Program.

Universal service program participants convicted of, or held civilly liable for, the commission or attempted commission of fraud or similar offenses in relation to the universal service programs are subject to sanctions and debarment.

### **Additional Penalties and Charges**

The FCC's new rules replace the existing late-filing charge and late-payment charges with new consequences for both types of failures. To effectuate these changes, FCC Rule 54.713 is amended by adopting several new subsections.

- A universal service contributor that fails to make the full universal service payment set forth on its Form 499-A or Form 499-Q, or on the monthly USAC invoice, on or before the due date, will have the payment deemed delinquent.
- All delinquent payments will incur interest at a rate equal to the U.S. prime rate (in effect at the date of delinquency) plus 3.5 percent, as well as administrative charges of collection and/or other penalties and charges permitted by applicable law from the date of delinquency until all charges and costs are paid in full.
- A universal service contributor more than 30 days delinquent in filing Form 499-A or 499-Q will be assessed by USAC and given a remedial collection charge equal to the greater of \$100 or an amount computed using the U.S. prime rate (in effect on the applicable form's due date) plus 3.5 percent of the amount due per USAC's calculations.
- A delinquent contributor will also be responsible for administrative charges of collection and/or penalties and charges permitted by applicable law.
- The FCC may also pursue enforcement action against delinquent contributors and late filers, and assess costs for collection in addition to those imposed by USAC.

- A contributor that fails to file Form 499-A or Form 499-Q and fails to pay its contribution will have interest accrue on the greater of the amounts due, beginning with the earlier of the date of failure to file or pay.
- A contributor that pays USAC a sum that is less than the full amount of the required contribution will have the payment first applied to the outstanding penalty and administrative cost charges, then to accrued interest, and finally to the outstanding principal amount. Payments applied to a contributor's principal will first be applied to the contributor's oldest past due amounts.

### Performance Measures

The new rules require USAC to report performance data to the FCC with greater granularity for each universal service program, and for administration of the USF. To implement reporting requirements, USAC is required to provide the FCC with specific performance data as set forth in the *Report and Order*. However, no specific performance goals for the high-cost or low-income programs, or for the administration of the USF, have been established at this time. Relevant performance measures to be provided by USAC are below.

*High-Cost Program:* USAC must report the following to the FCC (quarterly):

- Number of program beneficiaries (i.e., ETCs) per study area, per wire center
- Number of lines per wire center, per study area for each ETC
- Number of requests for support payments
- Average dollar amount of support and median dollar amount of support for each line for high-cost ETCs
- Total amount disbursed in the aggregate, and for each ETC
- Time to process 50 percent, 75 percent and 100 percent of the high-cost support requests and authorize disbursements
- Rates of telephone subscribership in urban vs. rural areas

*Low-Income Program:* USAC must report the following to the FCC (quarterly):

- Number of program beneficiaries (i.e., carriers)
- Number of low-income customers for which each carrier receives low-income support
- Number of connections supported
- Time to process support payments and authorized disbursements
- Average dollar amount and median dollar amount awarded, per carrier
- Total amount disbursed

USAC must also report performance data based on the Annual Lifeline Verification results filed by carriers each year. Currently, this is limited to the verification results submitted by Qwest, Verizon and AT&T. USAC must report the following data for each of these carriers on an annual basis:

- o Number of Lifeline customers surveyed
- o Number of Lifeline customers found to be eligible
- o Number of Lifeline customers who did not respond to the survey

*USF Administration:* USAC must report the following to the FCC (quarterly):

- USAC administrative costs per program and general administrative costs (not program-specific)
- The amount of payments determined to be improper and the error rate (i.e., the percentage of total payments that are determined to be improper payments), per program
- The amount of improper payments subsequently recovered from the beneficiaries by USAC, per program
- Number of corrections or true-ups due to errors by USAC, per program
- Number of USF contributors
- Number of USF contributors 90 days or more delinquent in payments
- Total amount of delinquencies or past due payments
- Total number of contributors assessed late fees or penalties
- Total amount of late fees or penalties
- Total amount of contributions to the USF
- Total amount of disbursements

#### **Administrative Limitations Period**

The *Report and Order* adopts a five-year administrative limitations period, which sets forth the necessary time frame for audits and investigations to occur for all universal service programs. This is intended to balance universal service program beneficiaries' need for finality and the need to safeguard USF programs from waste, fraud and abuse. It is not a statute of limitations for pursuing enforcement actions or prosecuting a service provider or program beneficiary.

Any inquiries to determine whether statutory or rule violations have occurred are to be initiated and completed within the five-year period after final delivery of service for that funding year.

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