

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

In the Matter of)	
)	
Application of Generally Accepted Accounting Principles for Federal Agencies and Generally Accepted Government Auditing Standards to the Universal Service Fund)	CC Docket No. 96-45
)	
)	
Application of Generally Accepted Accounting Principles for Federal Agencies and Generally Accepted Government Auditing Standards to the Telecommunications Relay Services Fund)	CG Docket No. 03-123
)	
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ORDER

Adopted: September 26, 2003

Released: October 3, 2003

By the Commission:

I. INTRODUCTION

1. By this Order, we amend our rules governing certain financial reporting and auditing requirements applicable to the Universal Service Fund and the Telecommunications Relay Services (TRS) Fund (collectively referred to as the Funds) to ensure that the Commission can maintain its obligations under federal financial management and reporting statutes and directives of the Office of Management and Budget (OMB). Specifically, we will require the administrators of the Funds to prepare financial statements for the Funds consistent with generally accepted accounting principles for federal agencies (Federal GAAP) and to keep the Funds in accordance with the United States Government Standard General Ledger (USGSGL). We will also require the administrators to conduct audits of the Funds pursuant to generally accepted government auditing standards. Further, because the Funds are agency programs included on the Commission's annual financial statement, the Funds may be subject to a number of federal financial and reporting statutes. We revise our rules to reflect this, and to note that, where appropriate under relevant law, the Funds may be subject to similar statutes that are enacted in the future. We also clarify our rules regarding compensation limitations for employees of the Universal Service Administrative Company (USAC).

II. BACKGROUND

2. Pursuant to statutory mandate, the Commission established four universal service support mechanisms and a mechanism for providing people with hearing and speech disabilities access to telecommunications services.¹ The monies to support the universal service support mechanisms and the provision of TRS are collected from providers of interstate and international end-user telecommunications

¹ See 47 U.S.C. §§ 254 and 225. Pursuant to section 254, there are four universal service support mechanisms -- the high-cost program, the low-income program, the schools and libraries program, and the rural health care program.

services and telecommunications, including payphone aggregators.² The Universal Service Fund is administered by the Universal Service Administrative Company and the TRS Fund is administered by the National Exchange Carrier Association (collectively the “Administrators”).

3. Because the Funds are included as programs in the FCC portion of the United States Budget, the Commission is required to include the Funds as components of its financial statements.³ Pursuant to the Accountability of Tax Dollars Act of 2002, the Commission prepares organization-wide financial statements annually, and such statements must be audited by an external auditor.⁴ In accordance with the Federal Financial Management Improvement Act of 1996 (FFMIA) and OMB guidance, the Commission is required to follow Federal GAAP when preparing its financial statements and is required to maintain its accounts according to the USGSGGL.⁵ OMB’s guidance specifically provides that when agencies issue consolidated or consolidating financial statements that include components, GAAP for federal entities shall be applied to those components.⁶ The audits of the financial statements must be conducted pursuant to generally accepted government auditing standards (GAGAS).⁷ The Commission also must comply with various other statutes governing the management, accounting, and reporting of relevant financial, management and similar information.⁸

² See 47 U.S.C. § 254(d) and 47 C.F.R. § 64.604(c)(5)(iii)(A).

³ OMB specifies the form and content of agency financial statements through issuance of OMB Bulletins, pursuant to its authority under the Chief Financial Officers Act of 1990, as amended, 31 U.S.C. §§ 331(e) and 3512(d). Under that authority, OMB requires all agencies to follow the Federal Accounting Standards Advisory Board’s Statement of Federal Financial Accounting Concepts No. 2 (SFFAC No. 2), which contains criteria for determining whether programs should be included on an agency’s financial statement. Under SFFAC No. 2’s “conclusive criterion,” programs and accounts listed on the United States Budget, such as the Universal Service Fund and the TRS Fund, must be included in an agency’s financial statement.

⁴ At the request of the Department of Treasury, the Commission prepared its first audited balance sheet in fiscal year 1999 and has prepared a complete set of audited financial statements since fiscal year 2000. Subsequently, the Commission was included among agencies that were required to prepare annual financial statements under provisions of the Accountability of Tax Dollars Act of 2002, Public Law No. 107-289. Since 1999, the Administrators’ Fund accounts have been consolidated with the Commission’s accounts through the use of accounting cross-walks.

⁵ Section 803 of the FFMIA states that “[e]ach agency shall implement and maintain financial management systems that comply substantially with Federal financial management systems requirements, applicable Federal accounting standards, and the [USGSGGL] at the transaction level.” See Section 803 of the FFMIA, *reprinted at* 31 U.S.C. § 3512 note (1996) (Federal Financial Management Improvement). See also OMB Bulletin No. 01-09, Form and Content of Agency Financial Statements, Sept. 25, 2001 (OMB Bulletin).

⁶ OMB Bulletin at 3.

⁷ See Chief Financial Officer’s Act of 1990, Public Law No. 101-576, as expanded by the Government Management Reform Act of 1994, Public Law No. 103-356. See also OMB Bulletin 01-02, Audit Requirements for Federal Financial Statements, Oct. 16, 2000.

⁸ See, e.g., Prompt Payment Act of 1982, Public Law No. 97-177; Federal Managers’ Financial Integrity Act of 1982, Public Law No. 97-255; Cash Management Improvement Act of 1990, Public Law No. 101-453; Federal Credit Reform Act of 1990, Public Law No. 101-508, as amended; Chief Financial Officer’s Act of 1990, Public Law No. 101-576; Government Performance and Results Act of 1993, Public Law No. 103-62; Government Management Reform Act of 1994, Public Law No. 103-356; Federal Financial Management Improvement Act of 1996, Public Law No. 104-208; Debt Collection Improvement Act of 1996, Public Law No. 104-134; Information Technology Management Reform Act of 1996, Public Law No. 104-106; Reports Consolidation Act of 2000, Public Law No. 106-531; Accountability of Tax Dollars Act of 2002, Public Law No. 107-289; and Improper Payments Information Act of 2002, Public Law No. 107-300.

III. DISCUSSION

4. As noted above, the Universal Service Fund and the TRS Fund are components of the Commission's annual financial statements. In preparing these financial statements, the Commission is required to follow Federal GAAP and maintain its accounts according to the USGSGL pursuant to the FFMIA.⁹ Because the OMB has concluded that all components included on agency financial statements must comply with Federal GAAP, we direct the Administrators of the Universal Service Fund and the TRS Fund to prepare financial statements for those funds consistent with Federal GAAP and to keep any related accounts in accordance with the USGSGL as of October 1, 2004.¹⁰ Similarly, as discussed more specifically below, because audits of the Commission's financial statements are conducted according to GAGAS, we direct the Administrators to conduct certain audits of the Universal Service Fund and the TRS Fund according to GAGAS.

5. The modifications we make to our rules regarding audits are intended to reflect the distinction between audits of the Funds and audits of the Administrators of those funds. Any audit conducted by the Administrators, or by any independent auditor hired by the Administrators, of the beneficiaries of the Funds, contributors to those Funds, or any other providers of services under the universal service support mechanisms and the TRS program, must be done in accordance with GAGAS.¹¹ For example, audits conducted of beneficiaries of the schools and libraries support mechanism pursuant to section 54.516 of the Commission's rules must follow GAGAS. In contrast, audits conducted of the Administrators may be conducted according to generally accepted auditing standards (GAAS). For example, the required audit of the Universal Service Fund Administrator pursuant to section 54.717 of the Commission's rules may continue to be conducted according to GAAS.¹² Similarly, any audit of the TRS Fund Administrator may be conducted pursuant to GAAS. Because the TRS Fund will be audited as a component of the Commission's financial statements, we find that the yearly audit of the TRS Fund pursuant to section 64.604(c)(5)(iii)(D) is no longer necessary, and we delete 64.604(c)(5)(iii)(D) from the Commission's rules.

6. Because the Funds are components of the Commission's financial statements, the Administrators, in their capacity as administrators of the Funds, may also need to comply with relevant provisions of certain federal financial management and reporting statutes and rules. We therefore amend our rules to reflect the fact that the Funds are also subject to certain existing legal requirements, *e.g.*, the Debt Collection Improvement Act of 1996 and relevant portions of the Federal Financial Management Improvement Act of 1996.¹³ As appropriate under federal law, the Commission will also apply relevant provisions of similar federal laws that may be enacted in the future.

7. Finally, we take this opportunity to clarify our rules by adding a note to section 54.715(b) of the Commission's rules. Section 54.715(b) provides that the annual rate of pay for officers and employees of the Administrator of the universal service support mechanisms may not "exceed the annual rate of basic pay for level I of the Executive schedule." The note we add clarifies that the compensation to be included when calculating whether an employee's rate of pay exceeds Level I of the Executive Schedule does not include life insurance benefits, retirement benefits (including payments to 401(k)

⁹ See Section 803 of the FFMIA, *reprinted at* 31 U.S.C. § 3512 note (1996) (Federal Financial Management Improvement).

¹⁰ OMB Bulletin at 3.

¹¹ 47 C.F.R. §§ 54.516, 54.619, 54.705(c)(iv), 54.707 and 64.604(c)(iii)(C).

¹² 47 C.F.R. § 54.717.

¹³ See Debt Collection Improvement Act of 1996, Public Law No. 104-134, and Federal Financial Management Improvement Act of 1996, Public Law No. 104-208.

plans), health insurance benefits, or other similar benefits, provided that any such benefits are reasonably comparable to benefits that are provided to employees of the federal government. To the extent any of these clarifications require adjustments to benefits that are currently provided to employees of the Administrator, they shall be applied prospectively.

8. We understand that the Administrators will need time to update accounting systems and train accountants, auditors and other relevant employees in order to comply with the rule changes adopted herein. To ensure adequate time for implementation of these new rules, the Administrators will have until October 1, 2004, to update their financial accounting and audit procedures for financial reporting for fiscal year 2005. These rules will go into effect 30 days after publication in the Federal Register. We find for good cause that these rule changes may be adopted without affording prior notice and an opportunity for public comment because, for the most part, the rules merely reflect existing legal requirements.¹⁴ Other parts of the rule amendments are exempt from the notice and comment requirements of the Administrative Procedure Act because they concern interpretations of existing rules.¹⁵ The Commission will send a copy of this Order in a report to be sent to Congress pursuant to the Congressional Review Act.¹⁶ In addition, the Commission will send a copy of the Order to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order will also be published in the Federal Register.¹⁷

IV. ORDERING CLAUSES

9. IT IS ORDERED that, pursuant to sections 4(i), 225, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 225, 254, and 303(r), Parts 54, and 64 of the Commission's rules are amended, as set forth in the Appendix, effective 30 days after publication of this Order in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁴ 5 U.S.C. § 553(b)(3)(B).

¹⁵ 5 U.S.C. § 553(b)(3)(A).

¹⁶ See 5 U.S.C. § 801(a)(1)(A).

¹⁷ See 5 U.S.C. § 604(b).

APPENDIX A - FINAL RULES

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Part 54 of title 47 of the Code of Federal Regulations (“C.F.R.”) is amended as follows:

1. Section 54.702 is amended by adding new subparagraph (n)

* * * * *

(n) The Administrator shall account for the financial transactions of the Universal Service Fund in accordance with generally accepted accounting principles for federal agencies and maintain the accounts of the Universal Service Fund in accordance with the United States Government Standard General Ledger. When the Administrator, or any independent auditor hired by the Administrator, conducts audits of the beneficiaries of the Universal Service Fund, contributors to the Universal Service Fund, or any other providers of services under the universal service support mechanisms, such audits shall be conducted in accordance with generally accepted government auditing standards. In administering the Universal Service Fund, the Administrator shall also comply with all relevant and applicable federal financial management and reporting statutes.

2. Section 54.715 is amended by adding a note to subparagraph (b)

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Note: The compensation to be included when calculating whether an employee's rate of pay exceeds Level I of the Executive Schedule does not include life insurance benefits, retirement benefits (including payments to 401(k) plans), health insurance benefits, or other similar benefits, provided that any such benefits are reasonably comparable to benefits that are provided to employees of the federal government.

Part 64 of title 47 of the Code of Federal Regulations (“C.F.R.”) is amended as follows:

3. Section 64.604(c)(5)(iii)(D) is deleted.

4. Section 64.604(c)(5)(iii)(H) is deleted and replaced as follows:

* * * * *

(H) *Administrator reporting, monitoring, and filing requirements.* The administrator shall perform all filing and reporting functions required in paragraphs (c)(5)(iii)(A) through (J) of this section. TRS payment formulas and revenue requirements shall be filed with the Commission on May 1 of each year, to be effective the following July 1. The administrator shall report annually to the Commission an itemization of monthly administrative costs which shall consist of all expenses, receipts, and payments associated with the administration of the TRS Fund. The administrator is required to keep the TRS Fund separate from all other funds administered by the administrator, shall file a cost allocation manual (CAM) and shall provide the Commission full access to all data collected pursuant to the administration of the

TRS Fund. The administrator shall account for the financial transactions of the TRS Fund in accordance with generally accepted accounting principles for federal agencies and maintain the accounts of the TRS Fund in accordance with the United States Government Standard General Ledger. When the administrator, or any independent auditor hired by the administrator, conducts audits of providers of services under the TRS program or contributors to the TRS Fund, such audits shall be conducted in accordance with generally accepted government auditing standards. In administering the TRS Fund, the administrator shall also comply with all relevant and applicable federal financial management and reporting statutes. The administrator shall establish a non-paid voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers, which will meet at reasonable intervals (at least semi-annually) in order to monitor TRS cost recovery matters. Each group shall select its own representative to the committee. The administrator's annual report shall include a discussion of the advisory committee deliberations.

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