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| FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554 FCC DIRECTIVE | Title | |
| | Standards and Process for Holding Disbursements to Beneficiaries and Service Providers. | |
| | Directive Number: FCCINST 1038.1 | Effective Date: April 2016 |

- 1) **PURPOSE:** This directive sets forth the Federal Communications Commission’s (Commission or FCC) policies, procedures, and responsibilities regarding when and how the Commission may direct the Administrator of the Universal Service Funds (USF Administrator or Administrator) to hold commitments to beneficiaries and service providers for the following universal service fund (USF) programs: Connect America Fund (CAF) and Lifeline.
- 2) **SCOPE:** This directive applies to all Bureaus and Offices within the FCC. It does not apply, however, in the event that a different process has been established by rule or Commission order to govern particular categories of cases.
- 3) **DEFINITIONS:**
 - a) “Credible information” means information from any source including but not limited to:
 - i) Information received during the course of the Commission’s own investigation or audit; an investigation or audit performed by another governmental entity; an investigation or audit by the Administrator; or an audit conducted by the funding recipient;
 - ii) The filing of local, state or federal criminal charges, civil fraud charges, or qui tam suits;
 - iii) Information received from the media, State governmental agencies, Congress, local, state or federal law enforcement.
 - b) “Federal Do Not Pay List” was created by Executive memorandum and requires agencies, before payment and award, to check the following existing databases (where applicable and permitted by law) to verify eligibility: the Social Security Administration's Death Master File, the General Services Administration's Excluded Parties List System, the Department of the Treasury's Debt Check Database, the Department of Housing and Urban Development's Credit Alert System or Credit Alert Interactive Voice Response System, and the Department of Health and Human Services' Office of Inspector General's

List of Excluded Individuals/Entities. This network of databases, and additional databases so designated by the Director of the Office of Management and Budget (OMB) in consultation with agencies, is collectively known as the "Do Not Pay List." *See* 75 FR 35953.

- c) "Good Cause" not to hold payments or to hold payments only in part may include, but is not limited to, interference with law enforcement investigations; considerations involving life, property, or national security emergencies; or a detrimental effect on continuity of service to a substantial number of customers or end users.
- d) "Red light" rule requires the Commission to withhold action on applications and other requests for benefits when the entity applying for or seeking benefits has a delinquent balance due to the Commission, or its components (USF, Telecommunications Relay Service (TRS), Local Number Portability (LNP), and North American Numbering Plan (NANP)). *See* 47 C.F.R. § 1.1910. The red light list is a list maintained by the Commission of such entities. *See* Red Light Display System Login, Federal Communications Commission, available at www.fcc.gov/redlight/.
- e) "Payment" and "funding" are used interchangeably in this directive to refer to the disbursement of funds to USF recipients.
- f) "Hold" means the withholding of USF funds to an entity after the application of the standard found herein.

4) STANDARD:

- a) The Commission may direct the Administrator to hold payment, either wholly or in part, when any of the offices or bureaus of the Commission has proof, or credible information, that leads it to reasonably believe, based on the totality of the information available, that all or part of a payment would be in violation of the statutes and regulations applicable to the USF programs. In deciding whether to hold payment, the Commission will consider the factors set forth at section 5 below. The Commission will also consider whether there is good cause not to do so, or to hold only in part.
- b) The Commission must direct the Administrator to hold payments when an entity is delinquent in non-tax debts owed to the Commission or its components, i.e. the entity is on the Commission's red light list.
- c) The Commission may direct the Administrator to hold payments when an entity is on the Federal Do Not Pay List. *See* Do Not Pay, Department of Treasury, Bureau of the Fiscal Service, available at <http://www.donotpay.treas.gov/>.

5) ADDITIONAL CONSIDERATIONS AFTER STANDARD IS MET:

- a) After determining that the standard articulated in (4)(a) is met, the Commission staff will consider, among other things, the following factors in determining whether to hold funding and in establishing the parameters of the hold of funding:
 - i) the weight of the evidence that significant program violations, or program waste, fraud, or abuse, is occurring and has resulted, or will result, in overpayments to the particular recipient;
 - ii) whether the issue appears to be widespread (that is, industry-wide), or isolated to a particular recipient;
 - iii) whether the issue is a systemic part of a recipient's operations or limited in scope to a particular geographic area or business unit;
 - iv) whether a full or only partial hold of funding is warranted;
 - v) the amount of money at stake;
 - vi) the impact of a funding hold on the recipient; and
 - vii) the precedential impact of holding funding.

6) COMMISSION PROCESS:

- a) Commission staff shall coordinate on whether a funding hold is warranted in a particular case and shall bring the case to the Wireline Competition Bureau Chief and the Enforcement Bureau Chief if staff believe that a hold may be appropriate.
- b) The Wireline Competition Bureau Chief and the Enforcement Bureau Chief shall decide whether the known facts meet the standard articulated in section 4(a). The Wireline Competition Bureau Chief and the Enforcement Bureau Chief will have authority to hold funding of USF disbursements (subject to consultation with the General Counsel as described below at (d)). If there is disagreement between the Bureau Chiefs on whether to hold funding, they will raise the issue with the General Counsel for final resolution.
- c) Before any hold is implemented, the Enforcement Bureau will coordinate with the Inspector General and/or the Department of Justice as necessary.
- d) The Bureaus recommending the decision to hold funding shall provide to the Office of General Counsel (OGC) a draft letter as described in section 7 (b) below. OGC staff will review for potential litigation risk and compliance with fiscal law. If the General Counsel believes, after review of the letter, that a hold of funding may not be justified, then the Chiefs of EB and WCB and the General Counsel will consult to determine an appropriate outcome.
- e) In the event that a decision is made to hold funding, the Bureau that initiated the hold request will send the letter to the Chief Financial Officer (CFO), or his designee, who will (1) provide written direction to the Administrator to hold funding to the funding recipient; (2) issue a letter or direct USAC to issue a letter to the funding recipient to provide notice that the next (and subsequent disbursement or some portion thereof,) will be withheld. USAC will be instructed to accept such instructions only from the CFO, no other FCC staff is authorized to relay a decision directing USAC to hold funding.

7) NOTICE:

a) Timing of Notice:

- i) The Commission or the Administrator, at the direction of the Commission, shall provide notice and an opportunity for the affected party to respond prior to implementing the funding hold, except in extraordinary cases where advance notice would likely cause significant harm to the Fund, for instance, by hindering the possibility of recovering funds. The Commission or the Administrator will generally provide the recipient 30 days to respond.
- ii) If the Chief of the Bureau that initiated the hold request believes that a hold without prior notice is appropriate under (i) above, he/she will consult with the General Counsel so that they may determine an appropriate outcome. If they reach a decision that hold without prior notice is warranted, then the Commission or Administrator may hold funding prior to such notice. In such cases, the Commission or the Administrator shall provide notice simultaneously with or as soon as possible after the decision to hold funding has been communicated to the Administrator, but no later than 15 days after the funding was expected to have been disbursed.

b) Contents of Notice. The Notice shall:

- i) State that the next (and if appropriate, subsequent) disbursement, or some portion thereof, will be withheld;
- ii) Explain that the Commission has become aware of credible information suggesting that payments would be in violation of Commission rules or otherwise improper, and has determined, based on the totality of the information available, that payment would likely not be consistent with program rules, and that funding should be held pending completion of further investigation;
- iii) Provide the factual basis for the determinations in (ii) at a level of specificity that gives the recipient an opportunity to provide evidence or argument to the contrary, without compromising any pending law enforcement investigations, and that will allow OGC to defend the decision in court if necessary;
- iv) Give the recipient an opportunity to attempt to demonstrate why the payments should not be held. If possible, the letter should explain the type of response that could, if submitted quickly enough, resolve the issue and avoid the need for holding of payments;
- v) Without compromising any pending law enforcement investigations, describe the factual basis for the hold at a level of specificity that provides the recipient an opportunity to respond to the allegations;
- vi) Provide thirty (30) days for the funding recipient to respond to the notice. The beneficiary or service provider response shall be sufficiently detailed to provide the Commission and Administrator with the information necessary to evaluate whether there has been a violation of the USF program rules;
- vii) Explain that the Commission may direct the Administrator to recover from the beneficiary or service provider past funding that is found to have been disbursed in violation of the USF program rules; and

viii) Explain that if the beneficiary or service provider does not respond to the Commission's letter and requested information therein, the requested funding may be denied permanently.

- c) If the funding recipient does not persuade the Commission that the hold should be lifted, then the Commission or Administrator will notify the beneficiary or service provider of its decision as soon as practical, but not to exceed one (1) month from the date of the decision to continue to hold funding.
- d) If the funding recipient does persuade the Commission that the hold should be lifted, then the Commission will promptly direct USAC to do so using the procedures set forth below.

8) DURATION OF FUNDING HOLD:

- a) Funding will be held as set forth by the process set forth above, but generally not to exceed one (1) year. If, after one (1) year, the Commission determines that there is additional credible information to hold for longer than one (1) year, it will notify the funding recipient using the process outlined in section 7, above. In determining whether to continue to hold funds after one (1) year, the Commission will consider the same factors set forth above for determining whether to implement an initial hold.

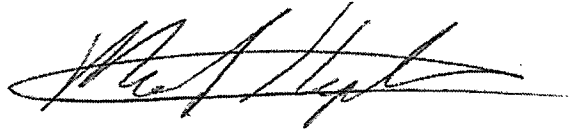
9) RELEASING A FUNDING HOLD:

- a) To release a funding hold, the Wireline Competition Bureau Chief and/or the Enforcement Bureau Chief as appropriate shall notify the Chief Financial Officer, or his or designee, of the decision to release funding.
- b) The Chief Financial Officer shall:
 - i) Provide written direction to the Administrator to release the funding hold to the funding recipient.
 - ii) Inform the funding recipient that the funding hold has been released, or direct the Administrator to do so.

10) TRACKING: The Administrator shall maintain a list of all funding withheld by the Commission and provide such list, by program, to the Commission, including the Office of Managing Director, the Wireline Competition Bureau, and the Enforcement Bureau on a monthly basis. This list will include at a minimum:

- a) name and location of beneficiary and/or provider;
- b) month and funding year at issue (if relevant);
- c) date that the decision to hold funding was made;
- d) applicable FCC Form numbers associated with funding request;
- e) reason for the funding hold;
- f) date of notice to beneficiary and/or provider;
- g) one year deadline for the funding hold;

11) EFFECTIVE DATE AND IMPLEMENTATION: This directive is effective immediately and shall be implemented promptly upon distribution.

A handwritten signature in black ink, appearing to read 'Mark Stephens', written in a cursive style.

Mark Stephens
Acting Managing Director