

FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554 FCC DIRECTIVE	Title	
	Debt Collection	
	Directive Number: FCC INST 1064.4	Effective Date: April 2016

1. **PURPOSE:** This Directive sets forth the policies and procedures of the Federal Communications Commission (“FCC” or “Commission”) pertaining to the collection of non-tax debts owed to the U.S. Government arising out of the activities of or referred to the Commission (including activities of the Commission’s reporting components), including treatment of debt compromise requests and uncollectible debts, and closing out systems and records identifying such debts. Under the law, and for the purpose of this Directive, the terms “claim” and “debt” are synonymous.

2. **AUTHORITY:**
 - a. The Debt Collection Improvement Act (DCIA) of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996) (*codified* at 31 U.S.C. §§ 3701 through 3720E).
 - b. FCC Rules implementing DCIA, 47 C.F.R. Parts 0 (47 C.F.R. §§ 0.11 through 0.392) and 1 (47 C.F.R. §§ 1.1901-1.1953).
 - c. Digital Accountability and Transparency Act of 2014 (Data Act), Pub. L. No. 113-101, 128 Stat. 1153 (2014) (See Sec. 5. Debt Collection Improvement amending 31 U.S.C. § 3716(c)(6)).
 - d. Federal Claims Collection Standards, 31 C.F.R. Parts 900 through 904.

3. **SCOPE:** This directive applies to all Bureaus and Offices of the Commission, and reporting components.

4. **BACKGROUND:** The Debt Collection Improvement Act (DCIA) of 1996, as codified, requires that federal agencies collect debts, assess charges of collection and impose administrative sanctions, transfer delinquent debts to the U.S. Treasury for further collection action or, as appropriate, refer debts to the Department of Justice (DOJ) for enforced collection, and bar delinquent Federal debtors from obtaining Federal loans or guarantees. The Commission’s rules implementing the DCIA parallel the Federal Claims Collections Standards promulgated by DOJ and the Secretary of the Treasury. The Commission’s regulations and changes are consistent with the foregoing DOJ and Treasury authorities.

5. **POLICY:** The Commission will:

- a. Aggressively pursue delinquent debts owed to the Commission (including interagency requests).
- b. Provide delinquent debtors required due process (as set forth at 47 C.F.R. § 1.1911), to include notification prior to the offsetting any payments to the debtor or referring debts to Treasury's cross-servicing program.
- c. Negotiate, approve, or reject requests for debt compromise (for debts of not more than \$100,000) and/or installment payment of debts in hardship cases.
- d. Accord hearings to debtors, if requested.
- e. Report written off and closed out debts on the Treasury Report on Receivables (TROR).
- f. Except as prohibited by the United States Bankruptcy Code, bar (or "red light") delinquent debtors from receiving Commission benefits and withhold action on applications until the delinquency has been resolved.
- g. Negotiate and accept, as appropriate, installment plans following imposition of a Notice of Apparent Liability (NAL) or Forfeiture Order (FO) (independent from enforcement actions by DOJ) when an initial or partial payment is made.

6. RESPONSIBILITIES:

- a. Pursuant to the Commission's rule at 47 C.F.R. § 0.211, the Chairman is the Head of the Agency or Agency Head for all administrative determinations pursuant to the DCIA. The Chairman is responsible for assuring that the Commission complies with all debt collection requirements applicable to the Commission. The Chairman is required to collect claims of the United States for money or property arising out of activities of the Agency, and has the authority to compromise or suspend or terminate collection on debts not more than \$100,000.
- b. Pursuant to the authority delegated in 47 C.F.R. § 0.231, the Managing Director, under the supervision of the Chairman, is authorized to perform all administrative determinations under the DCIA pertaining to Commission claims (including debt collection, and compromise or suspension and termination of collection of debts not more than \$100,000 and under 47 C.F.R. § 0.11, is responsible for:
 - 1) The creation and management of internal procedures to monitor the Commission's debt collection activities.
 - 2) Ensuring that the Commission's financial management systems comply with all applicable rules and regulations.
- c. The Managing Director has delegated to the Chief Financial Officer (CFO) and the Deputy Chief Financial Officer (DCFO) the authority to perform all administrative determinations under the DCIA pertaining to Commission claims including:
 - 1) Debt collection and compromise, or suspension or termination of collection action

- on debt not more than \$100,000.
 - 2) Monitoring compliance with government policies and directives regarding debt collection.
 - 3) Ensuring compliance with 31 U.S.C. § 3711(g)(1), 31 U.S.C. § 3716(c)(6) and 31 C.F.R. Part 285.12 by transferring to Treasury non-tax debt that is 120-days delinquent.
 - 4) Ensuring compliance with IRS directives and rules concerning compromise or discharge of debt.
 - 5) The creation and management of internal procedures to monitor the Commission's debt collection activities.
- d. The Chief, Financial Operations Revenues & Receivables Operations Group (FO-RROG), is responsible for:
- 1) Maintaining an accounts receivable financial subsystem, which properly records, tracks and posts amounts from inception of the debt through termination.
 - 2) Determining when a debt is delinquent.
 - 3) Ensuring that appropriate debt collection procedures are followed.
 - 4) Issuing Payment Demand Letters (PDL) for delinquent debts.
 - 5) Reviewing and certifying cases prior to referral to FCC Office of General Counsel (OGC), Treasury, Office of Personnel Management (OPM) or to an appropriate credit reporting agency.
 - 6) Reporting on the status of debts.
 - 7) Giving guidance on complicated debt collection action.
 - 8) Providing delinquent debt details and recommendations to the CFO and DCFO concerning the termination of collection action, and the write off and close out of uncollectible debts.
 - 9) Working with Financial Systems Operations Group (FSOG) in providing Bureau/Office access to Financial Operations financial system.
- e. The Commission Bureau/Office Chiefs are responsible for assisting the Managing Director and Chief Financial Officer in carrying out debt collection functions:
- 1) Verifying the validity and amount of delinquent outstanding debt to the CFO/DCFO as of the date of delinquency.
 - 2) Reviewing the Commission's red light list of delinquent nontax debtors upon receipt of an application and prior to the grant or decision on an application.
 - 3) Notifying a delinquent debtor with an application filed of the red light status, including notice as set forth at 47 C.F.R. § 1.1910, and the consequences of failing to pay the delinquent debt.
 - 4) Providing necessary information to the offices of General Counsel and/or Managing Director.
 - 5) Reviewing Section 8 (47 U.S.C. § 158) Application Fee filings to ensure correct fee payment prior to granting of application.
 - 6) Assisting OMD during the annual Section 9 (47 U.S.C. § 159) Regulatory Fee filing process by verifying that the license assessments are correct.
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- f. Pursuant to 47 C.F.R. §0.251, the Office of General Counsel (OGC) is also authorized to perform all administrative determinations provided by the DCIA.

7. DEMAND FOR PAYMENT AND NOTICES:

- a. Introduction. A claim or debt (the terms are synonymous) means any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency (31 U.S.C. § 3701(b)(1)). A debt comes into existence when the Government agency determines that there is a debt, unless some statute provides otherwise. The Government does not have to go to court to establish the indebtedness except in matters that arise from the issuance of an NAL or FO. A negotiated Consent Decree (CD) may result in a contractual agreement to pay a debt, and a default may result in a delinquent debt. The demand to pay the debt by a specific date establishes the date the debt becomes delinquent. Under both statutory and common law the Commission may apply administrative offset, collect interest, and impose administrative charges. The Commission's demand for payment should comply with 47 C.F.R. § 1.1911 to include the appropriate due process notification of the consequences of failing to make prompt and complete payment.
- b. Demand for Payment. No specific form to a demand for payment is required – the Commission may use a letter, order, memorandum, or other form of written communication that provides essential information as set forth below. For control, OMD should make the written demand and/or be informed of an action by a Bureau/Office that incorporates the demand into another document. The written demand for payment should be specific to notify the debtor of the amount and nature of the debt, the due date, and the consequences of failure to pay by the due date. The demand letter must, at a minimum, include:
 - 1) The basis for the debt, and the opportunities to request a Commission review of the indebtedness;
 - 2) The applicable standards for assessing interest, penalties, and charges of collection;
 - 3) The date by which payment is to be made to avoid late charges and enforced collection;
 - 4) The name, address, and telephone number of a Commission point of contact.
 - 5) The Commission's willingness, if applicable, to discuss alternative methods of payment structure;
 - 6) The Red Light Rule sanction of withholding action and dismissal of an application.
 - 7) Other remedies available to the FCC to enforce payment of the debt (including assessment of interest, costs and penalties, administrative offset and litigation), reporting the debtor's delinquency to credit bureaus, the use of private collection agencies, and reporting of the debt to the Internal Revenue Service as discharged, which may result in income tax liability; and.
 - 8) The requirement that nontax delinquent debts may be transferred to the Department of the Treasury for collection at any time, and not later than 120-days from the date of delinquency.

8. MAIL PROCEDURES:

- a. The Demand letter will be forwarded to the debtor via U.S. Postal Service (U.S.P.S.) mail using the FCC's Commission Registration System (CORES) contact address.

- b. Notices and letters sent to debtors will be mailed U.S.P.S. on or before the date printed on the notices and letters. In certain instances, where proof of service is necessary, the correspondence will be sent by U.S.P.S. Certified Mail, Return Receipt Requested, or expedited signature receipt delivery. As provided in any other agreement among the parties, or as may be required by exigent circumstances, the Commission may use other forms of delivery, including facsimile telecopy or electronic mail.

9. RED LIGHT PROCESS:

Under the Commission's Red Light Rule (47 C.F.R. § 1.1910), the Commission will withhold action on and dismiss an application filed by a delinquent debtor. Section 1.1910 provides for a review process of applications and fee payments with the applicant's FCC Registration Number (FRN) to determine whether the applicant is delinquent in paying a debt owed to the Commission or whether the appropriate fee has been paid. The Commission will notify an applicant found to be delinquent that action will be withheld on the application until full payment or an arrangement to pay has been made, and if the debt remains unpaid after 30-days, the application will be dismissed. Withholding and dismissal will not apply if the applicant has filed a timely challenge through an administrative appeal or a juridical proceeding as to the existence or amount of the debt owed the Commission.

The Commission and the reporting entities will provide timely reports of delinquent debtors to the red light system database. B/Os will determine, from a review of the Commission's financial records and the Red Light Display system whether any delinquent debt exists. This review for delinquent debt may be initiated at any time by the B/O, but it must be performed when the application is first received by the Commission and again as close to the actual grant date as possible. An applicant's FCC Registration Number (FRN) will be used to determine all delinquent debt owed attributable to all entities using the same Tax Payer Identification Number (TIN). All Commission electronic systems will be linked and will check the FRN provided on the filing for eligibility-based fee sufficiency and the existence of any non-tax delinquent debt through the FCC financial system. All FRNs provided on the filing are to be checked for delinquent debt and the delinquency of any entity covered by the same TIN will trigger the Red Light. In no case will the application or other request for benefit be granted until the delinquent debt issue has been resolved.

Delinquent debtors will be promptly notified by OMD/FO of all applications held pending Red Light resolution. Notification will be sent to the CORES contact address. OMD/FO will respond to a delinquent debtor's request to pay or arrange to pay delinquent debt. Applications for emergency authorizations and Special Temporary Authority (STA) applications involving safety of life or property, including national security emergencies, will not be subject to the Red Light rule. Further, the exceptions are expanded to include situations where an entity's license is cancelled or expired, and where the entity seeks a STA in order to continue providing service to a substantial number of customers or end-users for a brief period until those customers or end-users can be transitioned to other methods of communications.

As set forth in section 1.1164 and 1.1167, a petition for reconsideration or application for review of a fee determination does not relieve licensees from the requirement to make full and proper payment of the underlying fee and it does not prevent the Commission from dismissing

the petition or application if the underlying debt is delinquent.

10. MANDATORY REFERRAL OF DEBTS TO THE U.S. TREASURY DEPARTMENT:

Any delinquent legally enforceable non-tax debt may be referred to the Treasury for administrative offset and cross servicing before the debt is 120-days delinquent. See 31 C.F.R. § 285.12; 31 C.F.R. § 901.01; 31 C.F.R. § 3716 and 47 C.F.R. § 1.1917. OMD-FO is responsible for ensuring that delinquent debts are transferred to Treasury.

a. The following debts are exceptions to referral:

- 1) Debts that are not legally enforceable;
- 2) Debts under appeal;
- 3) Debts in litigation or foreclosure proceedings;
- 4) Debts of another federal agency;
- 5) Debts which are scheduled for sale under an approved asset sale program;
- 6) Debts which have been referred to a private collection contractor for a period of time acceptable to the Secretary of Treasury;
- 7) Debts which have been referred to Treasury-designated “debt collection centers” for a period of time acceptable to the Secretary of Treasury;
- 8) Debts which will be collected within three (3) years of the date of delinquency through internal offset procedures; and
- 9) Debts exempt by order of the Secretary of the Treasury.

11. REFERRAL OF DEBTS TO THE DEPARTMENT OF JUSTICE FOR LITIGATION AND ENFORCED COLLECTION.

This FCC Office of General Counsel (OGC) option involves DOJ enforcing collection on behalf of the Commission in the courts for those claims that meet the individual DOJ US Attorney Office amount standards, exclusive of interest, penalties, and administrative costs. Referral shall be in accordance with 31 C.F.R. Part 904 and 47 C.F.R. § 1.1917. Specific requirements include OGC preparation of a Claims Collection Litigation Report (CCLR) and the collection and preservation of evidence. See 31 C.F.R. §§ 904.1 – 904.4.

12. INTEREST, PENALTY AND ADMINISTRATIVE FEES:

Interest, penalties, and administrative fees will be charged as provided by 31 U.S.C. 3717 and following the procedures set forth at 31 C.F.R. § 901.2 and 47 C.F.R. § 1.1940. Specifically:

- a. Interest accrues from the date of delinquency, or as otherwise provided by the terms of any contract, note, or security agreement, regulation, or law.
- b. Unless otherwise established in a contract, repayment agreement, or by statute, the rate of interest charged shall be the rate established annually by the Treasury in accordance with 31 U.S.C. 3717. Pursuant to 31 U.S.C. 3717, the Commission may charge a higher rate of interest if it reasonably determines that such a higher rate is necessary to protect the rights of the United States. The Commission should document the reason(s) for its determination that the higher rate is necessary.
- c. Except as provided in a contract, prepayment agreement, or by statute, the rate of interest,

as initially charged, shall remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the agency may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed (or as negotiated in repayment plan). Interest shall not be compounded, that is, interest shall not be charged on interest, penalties, or administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal under the new repayment agreement.

- d. The Commission shall assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs may be based on actual costs incurred or upon estimated costs as determined by the Commission.
- e. Unless otherwise established in a contract, repayment agreement, or by statute, the Commission will charge a penalty, pursuant to 31 U.S.C. 3717(e)(2), not to exceed six percent (6%) a year on the amount due on a debt that is delinquent for more than 90-days. This charge shall accrue from the date of delinquency. If the rate permitted under 31 U.S.C. §§ 3717 is changed, the Commission will apply that rate effective with the change.
- f. The Commission may increase an “administrative debt” by the cost of living adjustment in lieu of charging interest and penalties under this section. “Administrative debt” includes, but is not limited to a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of Government credit, such as those arising from loans and loan guaranties.



Mark Stephens
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