



**Federal Communications Commission**  
**Office of the Managing Director**  
Washington, D.C. 20554

September 14, 2020

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
340 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Johnson:

The Federal Communications Commission (FCC or Commission) is writing to you to follow up on the results of the audit by its Office of Inspector General of the FCC's compliance with the reporting requirements for the Improper Payments Elimination and Recovery Improvement Act (IPERIA) for Fiscal Year (FY) 2019.

The FCC's Inspector General's auditors determined that the Universal Service Fund's (USF) Rural Health Care Program and Schools and Libraries Program as well as the FCC's Telecommunications Relay Service (TRS) Program were out of compliance with the government-wide improper payments reporting requirements for the FY 2019 reporting year. The requirements for IPERIA reporting compliance are described in the Office of Management and Budget's (OMB) guidance in Appendix C of OMB Circular A-123.

Specifically, the Inspector General's auditors reported the following findings related to non-compliance with improper payment reporting requirements:

- The Rural Health Care Program had an estimated improper rate of 11.46 % of the program's total outlays for the year. This percentage exceeds the compliance limit of having an improper payment rate of less than 10 % of outlays as described in OMB's guidance on improper payments reporting.
- The Schools and Libraries Program did not meet its improper payment reduction target for the year. Also, the statistical sampling plan used for testing the Schools and Libraries Program for improper payments deviated from the proposed sampling plan the FCC originally submitted to OMB.
- The TRS Fund's improper payment rate may be underestimated because the testing plan used by the TRS Administrator to estimate the improper payment rate did not sufficiently address significant risks of improper payments in the TRS Fund.

Per the reporting requirements for agencies on non-compliance as contained in OMB Circular A-123, please find the required information below from the FCC on its efforts to bring the agency back into compliance for the Rural Health Care Program, the Schools and Libraries Program, and the TRS Program.

1) *Measurable milestones to be accomplished in order to achieve compliance for each program or activity.*

In the sections that follow, the FCC describes its efforts to prevent and reduce improper payments in the Rural Health Care Program, School and Libraries Program, and the TRS Program. The FCC has organized the information into separate sections for each program.

### **USF Rural Health Care Program**

For FY 2019, the Rural Health Care Program had an estimated improper rate of 11.46 % of the program's total outlays for the year. The FCC and the Universal Service Administrative Company (USAC) are working to significantly reduce this error rate and bring the program back into compliance with OMB's threshold of having no greater than a 10 % error rate.

The following paragraphs describe the key efforts by the FCC and USAC to prevent and reduce improper payments in the USF Rural Health Care Program:

- **2019 Rural Health Care Program Reform Order:** USAC's improper payment testing in 2019 for the Rural Health Care Program determined that a number of improper payments occurred due to non-compliance by Rural Health Care Program participants with the FCC's urban and rural rate rules. Recognizing that its rules governing the rural and urban rate determinations were difficult to administer, resulted in inconsistent support amounts between health care providers for the same services in the same areas, and permitted waste, fraud, and abuse, the Commission adopted a Report and Order on August 1, 2019 that streamlines the process to determine urban and rural rates that are used to calculate Rural Health Care Telecommunications Program support. Specifically, the Commission modified its rules for determining the urban and rural rates and directed USAC to create a publicly available database of available rates. USAC has published the Rates Database, which provides the urban rates that participants must use to request Rural Health Care Telecommunications Program support and the maximum rural rate Rural Health Care Program participants may receive absent a waiver granted by the Commission. As a result of these changes, the FCC anticipates that improper payments based on the failure of Rural Health Care Program participants to substantiate and document the urban and rural rates used to determine Rural Health Care Telecommunications Program support will decline significantly.
- **Program Integrity Efforts:** USAC's Rural Health Care Program team has enhanced its application review procedures to ensure compliance with the Commission's urban and rural rate rules. In addition, USAC will also continue to test Rural Health Care participants' compliance with competitive bid requirements as part of its application review procedures. Through USAC's strengthened application review procedures, USAC will verify Rural Health Care participants' compliance with the Rural Health Care Program rules. As such, competitive bidding, urban rate, and rural rate issues will be identified and addressed prior to disbursement, thereby reducing future instances of improper payments. USAC has also increased its outreach to Rural Health Care participants regarding urban and rural rate issues and the FCC's competitive bidding rules to assist participants with achieving and maintaining compliance.

- **Improper Payment Analysis:** USAC management is performing a deep-dive analysis of its improper payments to more thoroughly understand the root causes and to identify corrective actions that will address those root causes. Through this analysis, USAC management is institutionalizing corrective actions as part of its program integrity efforts that will further reduce future instances of improper payments.

### **USF Schools and Libraries Program**

In FY 2019, the Inspector General’s auditors found that the FCC did not meet its improper payment reduction target for the Schools and Libraries program. The auditors also concluded that the statistical sampling plan used for testing the Schools and Libraries Program for improper payments deviated from the proposed sampling plan the FCC originally submitted to OMB.

The following are brief descriptions of key efforts by the FCC and USAC to prevent and reduce improper payments in the Schools and Libraries Program:

- **Improper Payment Rate Sampling Plan:** The FCC and USAC will work together with USAC’s independent statistician to ensure the statistical sampling plan used for testing in any given year is consistent with the most recent sampling plan submitted to OMB. If the statistical sampling plan needs to change after submission to OMB, the FCC and USAC will resubmit the plan to OMB and explain the reasons for the changes.
- **Improper Payment Reduction Targets:** The FCC and USAC will establish realistic improper payment reduction targets for the Schools and Libraries Program based on historic reduction trends.
- **Improper Payment Analysis:** USAC management is performing a deep-dive analysis of its improper payments to more thoroughly understand the root causes and to identify corrective actions that will address the root causes. Through this analysis, USAC management is institutionalizing corrective actions as part of its program integrity efforts that will reduce future instances of improper payments.

### **TRS Program**

FCC management does not agree with the auditors’ findings asserting that improper payments “may be understated” for the TRS Program and that the TRS Administrator’s “test plan . . . did not sufficiently address significant risks of improper payments.” The TRS Program was first deemed susceptible to significant risk of improper payments in 2011 based on findings from the Commission’s Office of the Inspector General of fraudulent activities by Video Relay Service (VRS) providers and related prosecutions by the Department of Justice. Since that designation, the Commission and the TRS Administrator have taken extraordinary steps through rulemakings, increased analysis, and related regulatory actions to insulate the program from fraud. Ongoing review of specific data elements and trends within the TRS Program show that the FCC and the TRS Administrator are sufficiently prepared to adequately control and prevent efforts to defraud the TRS Program. Based on these actions and the consistently low improper payment rate in the TRS Program, the FCC requested improper payment testing relief for the TRS Program in FY 2020 from OMB. Upon reviewing the FCC’s justification, OMB granted the FCC’s request for relief for the TRS Program. The corrective actions taken by the FCC are described further below:

- **Rule Changes:** To strengthen the controls related to VRS providers and the TRS Fund overall, the Commission implemented the following rule changes:
  - Required that VRS providers submit a statement describing the location and staffing of their call centers twice a year, and a notification at least 30 days prior to any change in the location of such centers;
  - Initially prohibited VRS communications assistants (CAs) from relaying calls from their homes – thereafter, established a pilot program in 2017 permitting VRS at-home call handling subject to extensive regulatory restrictions to prevent waste, fraud, and abuse, and in 2020, based on the success of the pilot program, approved rule changes to continue this practice along with extensive regulatory restrictions to protect the TRS Fund;
  - Prohibited VRS provider arrangements that involve tying minutes or calls processed by a CA to compensation paid or other benefits given to that CA, either individually or as part of a group;
  - Adopted procedures for the resolution of disputed provider payment claims when payment has been suspended;
  - Prohibited compensation for VRS calls that originate from IP addresses that indicate the individual initiating the call is located outside of the United States, with the exception of callers who pre-register with their default provider for a specified time and location of travel;
  - Prohibited VRS CAs from using visual privacy screens;
  - Required VRS CAs to terminate a VRS call, after providing a warning announcement, if either party to the call: (1) enables a privacy screen or similar feature for more than five minutes, or (2) is unresponsive or unengaged for more than five minutes, unless the call is to 9-1-1 or one of the parties is on hold;
  - Prohibited compensation for VRS calls for remote training when the provider is involved in any way with such training;
  - Required automated recordkeeping of TRS minutes submitted to the TRS Fund;
  - Amended the rules governing data collection from VRS providers to add requirements for the filing of data associated with each VRS call for which a VRS provider is seeking compensation;
  - Required that VRS be offered to the public only in the name of the eligible provider seeking compensation from the TRS Fund, and when sub-brands are used, that these sub-brands identify such eligible provider;
  - Required that calls to any brand or sub-brand of VRS be routed through a single URL address for that brand or sub-brand;
  - Prohibited revenue sharing agreements for CA or call center functions between entities eligible for compensation from the TRS Fund and non-eligible entities;
  - When an eligible provider has contracts with third parties for non-CA or call center functions, prohibited the third party subcontractor from holding itself out to the public as a VRS provider, and required such contracts to be in writing and made available to the Commission or TRS Administrator upon request;
  - Prohibited compensation on a per minute basis for costs related to marketing and outreach costs performed through a subcontractor where such services utilize VRS;
  - Adopted whistleblower protection rules for current and former employees and contractors of TRS providers;
  - Required that VRS providers submit to audits annually or as deemed

- appropriate by the TRS Administrator or the Commission;
- Required that all Internet-based TRS providers retain all records that support their claims for payment from the Fund for five years; and
  - Made permanent the rule requiring the Chief Executive Officer, Chief Financial Officer, or another senior executive of a TRS provider with firsthand knowledge of the accuracy and completeness of the information provided to certify, under penalty of perjury, to the validity of minutes and data submitted to the TRS Administrator.<sup>1</sup>
- **Targeted Audits of Providers:** Over the past decade, the TRS Administrator, with Commission oversight, has conducted a series of audits of providers to review various aspects of the services including procedures and documentation of TRS rule requirements. In addition to verifying provider reports to the TRS Administrator and ensuring compliance with applicable rules, the provider audits have enabled a positive working relationship between providers and the TRS Administrator. The audits have also helped to improve the effectiveness and efficiency of administrative procedures that address the flow of necessary information to ensure the integrity of the TRS Fund. Furthermore, the audits have resulted in more efficient and accurate reviews of reimbursement requests from providers and have improved the registration processes for users.
  - **Enhanced Reviews of Provider Invoices:** Providers submit their call detail records (CDRs) electronically pursuant to procedures established by the TRS Administrator. For each call for which compensation is sought, CDRs include the following information: phone numbers to the call, duration of the call, the relay operator to the call, and other details. The formatting requirements for CDRs allow the TRS Administrator to run various tests to ensure compliance with rules and detect suspicious activities including *indicia* of fraud, which must be reported to the Office of the Inspector General, the Enforcement Bureau, and the Office of the Managing Director. These tests are reviewed and improved on an ongoing basis.
  - **Establishment of a User Registration Database (URD):** Pursuant to Commission order, the TRS Administrator has created and implemented rules applicable to the procedures to register each user of VRS. The database is accessible to providers in real time to allow them to ensure that no calls are placed without one party being a registered user of the service. A comparable dataset is under development for Internet Protocol Captioned Telephone Service (IP CTS).
  - **Rate Analysis:** During its review of instances of fraud, the Commission recognized that VRS rates that over compensated providers (substantially exceeded costs) created a greater incentive to defraud the TRS Fund. Accordingly, the Commission has consistently analyzed VRS and IP CTS costs and reduced rates paid to providers to minimize compensation-cost disparities.

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<sup>1</sup> *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545 (2011).

2) *The designation of a senior agency official who should be accountable for the progress of the agency in coming into compliance for each program or activity.*

Mark Stephens, who serves as the FCC's Managing Director, has been designated as the accountable official for FCC compliance. The Managing Director oversees the FCC's operations group, which includes the Chief Financial Officer.

3) *The establishment of an accountability mechanism, such as a performance agreement, with appropriate incentives and consequences tied to the success of the senior agency official in leading agency efforts to achieve compliance for each program and activity.*

The FCC is committed to continually improving and strengthening the program integrity of its operations and the programs that it oversees. The Managing Director's performance plan will be modified to include measures related to strengthening program integrity and assuring compliance with improper payment related laws and guidance.

Please feel free to contact me at 202-418-0817 if you have any questions about this correspondence.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark Stephens", written over a light blue horizontal line.

Mark Stephens  
Managing Director