S. HRG. 109–39

S. 241, PERMANENTLY EXEMPTING THE UNIVERSAL SERVICE FUND FROM PORTIONS OF THE ANTI–DEFICIENCY ACT

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

APRIL 11, 2005

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ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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S. 241, PERMANENTLY EXEMPTING THE UNIVERSAL SERVICE FUND FROM PORTIONS OF THE ANTI–DEFICIENCY ACT

MONDAY, APRIL 11, 2005

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 2:05 p.m. in room SR–253, Russell Senate Office Building, Hon. Ted Stevens, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Senator STEVENS. Good afternoon. We appreciate it if the witnesses could come forward. We are going to convene this hearing to examine Senate Bill 241, it's a bill to permanently exempt the Universal Service Fund from the Antideficiency Act.

At the end of last season, Congress had to move quickly to pass a temporary 1-year exemption from the ADA to prevent further disruption to the E-rate program. And given that we only passed a temporary exemption last year, our Committee must now look at how we can permanently fix this problem.

The witnesses are Austin Schlick, Acting General Counsel for the FCC, Lisa Gelb, for the FCC, Brian Talbott, Chairman of the Board of the Universal Service Administrative Company, Patricia Dalton, Managing Director of Physical Infrastructure Issues for the GAO, Sheryl Abshire, District Administrative Coordinator for Technology of, how do you say it, Calcasieu?

Ms. ABSHIRE. Calcasieu.

Senator STEVENS. Steve Hamlen, President and CEO, United Utilities.

I should announce to you that in consideration of the supplemental appropriations bill that contains the Defense portion, primarily it's a Defense matter and when they call us, we are going to have to go, so we hope that we can move along quickly and get your statements.

And we would ask you to summarize them if possible in the short period of time and we will print the full written statement into the record without objection and it would be our hope that we can discuss the issues that you will present to us as quickly as possible with our apologies due to the problems of that supplemental appropriations bill. Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Senator INOUYE. That's right, Mr. Chairman. I thank you for convening this hearing, and I'm also very pleased to advise you that I have co-sponsored this measure with you, Senators Rockefeller and Snowe. And I request that my full statement be part of the record.

[The prepared statement of Senator Inouye follows:]

PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Mr. Chairman, I want to thank you for holding this hearing to examine the need to exempt the Universal Service Fund from certain accounting provisions of the Antideficiency Act. I am pleased to cosponsor S. 241 with you, Senators Snowe and Rockefeller, and many others on this Committee.

Schools, libraries and rural health care providers in all of our states rely on funding from the USF annually. My state of Hawaii alone has received over $27 million from the E-rate and Rural Health Care programs since they were created under the Telecommunications Act of 1996.

However, everyone on this Committee remembers very well the events of last year. While lawyers and policy makers in Washington argued about accounting rules and antideficiency requirements, schools, libraries and rural health care providers across the country were faced with the dilemma of shutting down or delaying deployment of innovative educational and medical services because of unreliable funding. For many people in the affected communities, losing access to these services would have meant losing opportunities to change, enrich, and improve their lives. With your leadership Mr. Chairman, a temporary fix was enacted during the closing days of session last Congress, but we must act now to ensure that future disruptions to these critical programs do not occur.

I want to be clear. Congress must act to ensure that schools, libraries, and rural health care providers continue to receive this funding in a timely and predictable manner. I believe that enacting a permanent solution must be one of our highest priorites this session.

Technology is transforming how we receive and share information, and in turn, it is empowering people to change their lives and the life of their communities. Access to the Internet is the encyclopedia of the twenty-first century, and I, for one, will not allow our young people to lose that access.

I am pleased to hear from the panel of witnesses before us on the Universal Service Fund and the issues relating to the Antideficiency Act. However, it seems that we are missing a critical perspective at the table—the Office of Management and Budget, which has raised concerns with this legislation. We would like to have a full record and I am disappointed that OMB is depriving us of their important perspective on this matter.

Mr. Chairman, this is a very serious matter and we must work hard to find a solution. I commit to working with you and our colleagues to move this legislation through the Congress. Thank you.

Senator STEVENS. Senator Rockefeller?

STATEMENT OF THE HON. JOHN D. ROCKEFELLER IV, U.S. SENATOR FROM WEST VIRGINIA

Senator ROCKEFELLER. The same request, Mr. Chairman.

[The prepared statement of Senator Rockefeller follows:]

PREPARED STATEMENT OF HON. JOHN D. ROCKEFELLER IV, U.S. SENATOR FROM WEST VIRGINIA

Mr. Chairman, I deeply appreciate your cooperation in scheduling this hearing on the applicability of the Anti-deficiency Act to the Universal Service Fund. I would also like to thank you and Senator Inouye for your co-sponsorship of S. 241, Senator Snowe's and my bill to make permanent the exemption of Universal Service from the Anti-deficiency Act. Our bill has bipartisan support with 29 cosponsors.

I would note that this Committee has asked the Office of Management and Budget to appear to discuss their objections to this important legislation—they have declined to appear. I would also note that OMB has consistently refused to put in writing any objections they have.

I find it highly inappropriate to have the Administration object to a bill without the courtesy of telling me why. I am deeply disappointed by the Administration's actions in this manner. OMB was the driver of many of the issues we are facing here today, and it is more than appropriate that they should be testifying to their thoughts on addressing these issues.

The telecommunications, education, library, rural health, and consumer communities have also expressed strong support for this bill. It is my understanding that the Committee will soon mark-up this bill and I hope that we will be able to keep an accelerated schedule to adopt this bill. We need to act soon if to avoid the confusion and problems we experienced last year on Universal Service, particularly E-rate and rural health care.

Last year, the Office and Management and Budget and the Federal Communications Commission imposed accounting changes on the Universal Service Administrative Corporation (USAC)—the non-profit that administers the Universal Service Fund—resulting in the Anti-deficiency Act applying to the USF.

Because of these accounting changes, two of the four universal service programs were suspended for several months, creating enormous difficulties for thousands of schools and rural health care providers across the country. Some schools were forced to shut down their internet because they could not get funding from the E-rate programs. Because of our actions, we avoided a massive disruption in the operations of our nation's small rural telecommunications firms who are dependent on universal service funding to make sure they can connect their consumers to our nation's telecommunications network.

On the last day of our session and do to the considerable efforts of Senator Stevens and Senator Burns, we secured an agreement on a telecommunications package that included a one-year exemption of the Anti-deficiency Act for all of Universal Service. Today's hearing will focus on S. 241, legislation to make the exemption permanent.

Our legislation does nothing more than allow the Universal Service Fund to continue operating as it has since 1998. The benefits of this bill include:

(1) Avoiding a massive funding disruption to schools, libraries, and health providers this summer;

(2) Preventing excessive spikes in the line-items on consumer phone bills; and

(3) Providing financial stability our small telecommunications firms need.

We all know that we need to thoroughly debate and decide on a more comprehensive approach to telecommunication policy, including financing of the Universal Service Fund. In my view, this will take time. This bill is unrelated to broader questions of the policies we must adopt to the Universal Service Fund in light of the telecommunications changes that have occurred in the last decade. The Anti-deficiency Act is an arcane budget policy we can address independently of other universal service fund issues.

We all know that telecommunications has changed dramatically since enactment of the 1996 Act, and this Committee will examine what changes we need to make to that law. I know that Senator Stevens and Snowe and the other Members of this Committee are deeply aware of the fundamental importance of the four component Universal Service Funds—the High Cost Fund, the Low-Income Fund, the E-rate, and the Rural Health Fund. In 1996, we agreed in our historic conference report that:

". . . Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section . . . the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services are essential to education, public health or public safety . . ."

I still strongly believe in the principles of Universal Service, and I am confident that we can forge consensus among the telecommunications industry on ways to fulfill these continuing obligations are part of ongoing telecommunications reform.

But knowing the power and importance of telecommunications in our economy we cannot let our rural areas, our low-income families, our school and libraries, or our rural health clinics be left out and isolated. These institutions cannot afford to have their universal service funding disrupted. We should enact our Anti-deficiency exemption as an interim step to safe guard all aspects of Universal Service.

Again, I would like to thank the Committee's Co-Chairman—Senators Stevens and Inouye for all of their assistance with this legislation.

Senator STEVENS. Without objection, all statements are printed in the record, including those Senators that come in, if they wish to insert them. Let us start first with the Acting General Counsel of the FCC.

STATEMENT OF AUSTIN C. SCHLICK, ACTING GENERAL COUNSEL, FEDERAL COMMUNICATIONS COMMISSION; ACCOMPANIED BY LISA GELB, DEPUTY CHIEF, FCC'S WIRELINE COMPETITION BUREAU

Mr. SCHLICK. Good afternoon. My name is Austin Schlick. I'm the Acting General Counsel for the Federal Communications Commission. Thank you for this opportunity to appear before you to discuss S. 241 and application of the Antideficiency Act to the Universal Service Fund. Appearing with me this afternoon is Lisa Gelb, Deputy Chief of the FCC's Wireline Competition Bureau. Ms. Gelb will address any questions you may have for the Commission about operational aspects of the Universal Service Fund.

The Antideficiency Act prohibits government expenditures and obligations in excess of the amounts available in an appropriation, fund or apportionment. The central purpose of the Antideficiency Act is to prevent Federal agencies from incurring obligations that would require them to receive additional appropriations from Congress.

The Universal Service Fund is funded by industry contributions, not Congressional appropriations. Nevertheless, the Antideficiency Act applies to the Universal Service Fund because the fund is recognized by OMB, CBO, and GAO as a permanent indefinite appropriation. In September 2004, the FCC concluded the Fund was operating in violation of the Antideficiency Act.

The events that led the agency to that conclusion began in October 2003 when the Commission adopted a rule requiring USAC to account for the financial transactions of the Universal Service Fund in accordance with government accounting principles for Federal agencies, known as GovGAAP, beginning with fiscal year 2005. The decision to require USAC to adhere to GovGAAP for transactions of the Fund was based on the need to bring the FCC into compliance with statutory and OMB requirements for financial reporting.

The transition to GovGAAP standards highlighted new accounting issues in the E-rate and rural health care programs. In those programs, USAC issues a funding commitment decision letter that notifies program applicants which specific services will be funded under the program and the amount of funding that will be provided.

In the process of implementing GovGAAP, the question arose whether commitment letters issued by USAC constitute obligations for purposes of applying the Antideficiency Act. In addition, OMB informally advised the Commission and USAC the USF moneys that were invested in Federal securities might not be considered available reserves that could be used to offset obligations under the Antideficiency Act.

In August of 2004, USAC suspended issuance of all commitment letters in the E-rate and rural healthcare programs until those questions were answered.

In September of 2004, the Commission's Office of General Counsel concluded that the USAC commitment letters do constitute recordable obligations for purposes of applying the Antideficiency Act and USAC's non-Federal investments could not be treated as available funds.

Both OMB and GAO have since rendered opinions agreeing with the FCC's application of the Antideficiency Act.

On September 27, 2004, the FCC's managing director and chief of the FCC's Wireline Competition Bureau directed USAC to liquidate its non-Federal investments in order to have sufficient cash on hand to comply with the Antideficiency Act. The deficiency was cured as of September 30th, 2004.

The FCC has also considered the application of the Antideficiency Act to the high cost and low income support mechanisms of the Universal Service Fund. In the high cost and low income support programs there is no specific obligational document equivalent to commitment letters in the E-rate program.

Our tentative view is that obligations in these programs do not occur until USAC signs an internal disbursement authorization that determines the amounts each carrier should be paid for telephone services provided during the prior month.

Assuming the Fund has adequate cash on hand to cover those disbursement decisions, operation of high cost and low income programs complies with the Antideficiency Act. Given the importance of the issue, however, the Commission has sought OMB's expert guidance.

Enactment of Public Law 108–494 in December 2004 permitted the Fund, for 1 year, to incur obligations prior to receipt of cash to cover those obligations. The obligations incurred during the exemption period remain permanently exempt from the Antideficiency Act. As a result, during 2005 USAC may issue commitment letters in the E-rate program and rural health care program without having to have cash on hand at that time to cover the associated future disbursements.

Because the current exemption expires at the end of 2005, the Commission is proceeding cautiously by protecting cash reserves in the Fund that may be needed for Antideficiency Act compliance in the future.

First, on December 22nd, 2004, the FCC staff directed USAC not to shift funds out of the Federal investments that qualify as available amounts under the Antideficiency Act without prior approval. Second, on March 17th, 2005, the FCC staff directed USAC not to issue commitment letters for the E-rate and rural health care programs in amounts that exceed the annual disbursement caps established by the FCC.

The determinations by the FCC, OMB and GAO that commitment letters constitute recordable obligations mean that as of January 1, 2006, the commitment letters may not be issued by USAC unless there is sufficient cash on hand to cover the obligations.

S. 241, however, would make permanent the Fund's current exemption from the Antideficiency Act's restrictions on obligations in excess of available resources.

Thank you for the opportunity to provide the Commission's views on the impact of the Antideficiency Act on the Universal Service Fund. Ms. Gelb and I will be happy to answer your questions.

[The prepared statement of Mr. Schlick follows:]

PREPARED STATEMENT OF AUSTIN C. SCHLICK, ACTING GENERAL COUNSEL, FEDERAL COMMUNICATIONS COMMISSION

Good afternoon, Mr. Chairman, Senator Inouye, and distinguished Members of the Committee. Thank you for this opportunity to appear before you to discuss S. 241 and application of the Antideficiency Act to the Universal Service Fund (Fund). Appearing with me this afternoon is Lisa Gelb, Deputy Chief of the FCC's Wireline Competition Bureau. Ms. Gelb will address any questions you may have for the Commission about operational aspects of the Universal Service program.

The Antideficiency Act prohibits government expenditures and obligations in excess of the amounts available in an appropriation, fund, or apportionment. The central purpose of the Antideficiency Act is to prevent federal agencies from incurring obligations that would require them to seek additional appropriations from Congress. The Universal Service Fund is funded by industry contributions, not congressional appropriations. Nevertheless, the Antideficiency Act applies to the Universal Service Fund because the Fund is recognized by the Office of Management and Budget (OMB), the Congressional Budget Office, and the Government Accountability Office (GAO) as a permanent indefinite appropriation. In September 2004, the FCC concluded that the Fund was operating in violation of the Antideficiency Act.

The events that led the agency to that conclusion began in October 2003, when the Commission adopted a rule requiring the Universal Service Administrative Company (USAC) to account for the financial transactions of the Universal Service Fund in accordance with government accounting principles for federal agencies, known as GovGAAP, beginning with Fiscal Year 2005. The decision to require USAC to adhere to GovGAAP for transactions of the Fund was based on the need to bring the FCC into compliance with statutory and OMB requirements for financial reporting for federal agencies and their programs.

The transition to GovGAAP standards highlighted new accounting issues in the E-rate and rural health care programs. In those programs, USAC issues a Funding Commitment Decision Letter that notifies program applicants which specific services will be funded under the program and the amount of funding that will be provided. In the process of implementing GovGAAP, the question arose whether the Commitment Letters issued by USAC constituted "obligations" for purposes of applying the Antideficiency Act. In addition, OMB informally advised the Commission and USAC that USF monies that were invested in non-federal securities, as defined by OMB, might not be considered available reserves that could be used to offset obligations under the Antideficiency Act.

In August 2004, USAC suspended issuance of all Commitment Letters in the E-rate and rural healthcare programs until these questions were answered. In September 2004, the Commission's Office of General Counsel concluded that the USAC Commitment Letters do constitute recordable obligations for purposes of applying the Antideficiency Act and USAC's non-federal investments could not be treated as available funds. Both OMB and GAO have since rendered opinions agreeing with the FCC General Counsel's conclusion.

Based on those determinations, the Fund was being operated in violation of the Antideficiency Act because Commitment Letters in the E-rate and rural healthcare programs were issued at times when the Fund did not have sufficient cash available to cover those new obligations. On September 27, 2004, the FCC's Managing Director and the Chief of the FCC's Wireline Competition Bureau directed USAC to liquidate its non-federal investments in order to have sufficient cash on hand to comply with the Antideficiency Act.

The Commission has transmitted a report of this Antideficiency Act violation to the President and Congress, as required by statute. The FCC reported that on the last business day before the FCC directed USAC to liquidate its non-federal investments, the total outstanding program obligations of the Fund exceeded available budgetary resources by $3.5 billion and exceeded OMB's initial FY 2004 apportionment for the Fund. The deficiency was cured as of September 30, 2004.

The FCC has also considered the application of the Antideficiency Act to the High Cost and Low Income support mechanisms of the Universal Service Fund. In the High Cost and Low Income support programs, there is no specific obligational document equivalent to the Commitment Letters in the E-rate program. As a result, determining the time of obligation is more complex. At this point our tentative view is that obligations in these programs do not occur until USAC signs an internal disbursement authorization that determines the amounts each carrier should be paid for telephone services provided during the prior month. Assuming the Fund has adequate cash on hand to cover those disbursement decisions, operation of the High Cost and Low Income programs complies with the Antideficiency Act. Given the importance of the issue, however, the Commission has sought OMB's expert guidance.

The passage of the Universal Service Antideficiency Temporary Suspension Act in December 2004 permitted the Fund, for one year, to incur obligations prior to the receipt of cash to cover those obligations without violating the Antideficiency Act. The obligations incurred during the exemption period remain permanently exempt from the Antideficiency Act. As a result, during 2005 USAC may issue Commitment Letters in the E-rate program and the rural healthcare program without having to have cash on hand at that time to cover the associated future disbursements.

Because the current exemption expires at the end of 2005, the Commission is proceeding cautiously by protecting cash reserves in the Fund that may be needed for Antideficiency Act compliance in the future. First, on December 22, 2004, the FCC staff directed USAC not to shift funds out of federal investments that would qualify as available amounts under the Antideficiency Act, without prior approval. Second, on March 17, 2005, the FCC staff directed USAC not to issue Commitment Letters for the E-rate and rural healthcare programs in amounts that exceed the annual disbursement caps established by FCC rules.

The determinations by the FCC, OMB, and GAO that Commitment Letters constitute recordable obligations mean that, as of January 1, 2006, Commitment Letters may not be issued by USAC unless there is sufficient cash on hand to cover the obligations. Further, if USF monies are invested in non-federal securities, those funds will not be available for obligation. S. 241, however, would make permanent the Fund's current exemption from the Antideficiency Act's restrictions on obligations in excess of available resources.

Thank you for the opportunity to provide the Commission's views on the impact of the Antideficiency Act on the Universal Service Fund. Ms. Gelb and I will be happy to answer your questions.

Senator STEVENS. Ms. Gelb, do you have anything to add to that statement?

Ms. GELB. No, I don't, Senator.

Senator STEVENS. Mr. Talbott.

STATEMENT OF BRIAN L. TALBOTT, PH.D., CHAIRMAN OF THE BOARD, UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

Mr. TALBOTT. Good afternoon, my name is Brian Talbott, Chairman of the Board of the Universal Service Administrative Company. It is my privilege to be here today to speak to you about USAC and its administration of the Universal Service Fund.

The Fund provides approximately $6.5 billion annually to support access to telecommunications and other services by rural and low income consumers, schools, libraries, and rural health care providers. On behalf of all of the USF stakeholders, I would like to thank this Committee for its role in the passage of the Universal Service Antideficiency Temporary Suspension Act last September.

USAC is a not-for-profit corporation designated by the FCC to administer the four universal service support mechanisms created by the Telecommunications Act of 1996. I have served on the board since USAC's creation in 1997, was elected chair in January of this year.

From 1998 through 2004, USAC accounted for financial transactions and funding in accordance with GAAP. Generally, this ap-

proach was fully consistent with the FCC rules, and the extensive audits resulted in no material findings from 1998 through 2003. In October 2003, the FCC ordered USAC to change our accounting methodology from GAAP to Federal Government accounting principles, GovGAAP.

At the time, the USAC board understood from FCC staff that the transition to GovGAAP was necessitated by the fact that USF funds were a component of the FCC's financial statements and that this change would have no impact on the way USAC administers its programs.

At the end of September 2004, late in the process of transitioning to GovGAAP, the FCC directed USAC to treat E-rate and rural health care under GovGAAP. This requirement fundamentally changed the manner in which USAC had administered the Fund since 1997.

At the same time, FCC staff after consulting with OMB staff informed USAC for the first time that the Antideficiency Act applied to our funds. FCC staff further informed USAC that under GovGAAP, investments in government-backed mutual funds, government agency securities and money market funds were also considered obligations for government accounting purposes, and had to be liquidated to ensure compliance with ADA.

USAC raised the question of whether high cost and low income projections also constitute obligations and USAC has not yet received an answer to that question. Application of ADA, combined with the accounting determination and E-rate and rural health care funding commitments constituting budgetary obligations had a number of dramatic consequences.

USAC suspended new funding commitments for new funds leaving schools, libraries and rural health care providers without needed support.

USAC was required to move more than $3 billion in safe government money market investments to Treasury securities resulting in a 4.6 million dollar loss to the fund.

At the end of last year, Congress enacted the Universal Service Temporary Suspension Act and this allowed USAC to quickly resume its normal course of operations and begin issuing funding commitments. Many of the consequences experienced in 2004 could very well return upon expiration of the statute.

The most serious occur if USAC is unable to make E-rate commitments at the start of the school year. This significant uncertainty for schools will adversely affect their planning processes. Rural health care providers already strapped for funds will have to wait even longer for funding required to serve critical patient medical needs.

Because high cost support payments to rural telephone companies constitute a significant portion of their revenues, any suspension or delay in disbursements of funds may delay network maintenance or improvements. To the extent that USF investments are limited to Treasury securities, USAC's ability to use safe investments with higher yields to offset increases in the contribution factor will be severely limited. Investment returns help keep the contribution factor as low as possible.

A decrease in income will increase the funding burden on all Americans. If the ADA is permanently applied to the Fund and high cost and low income projections are deemed to be budgetary obligations, a significant increase in the contribution factor could occur.

The application of GovGAAP and ADA does not enhance USAC or the FCC's ability to address waste, fraud or abuse. USAC strongly supports the application of effective accounting rules for financial transactions. Accounting under GAAP between 1998 and 2004, however, did not create the problems USAC has encountered under GovGAAP. USAC is committed to doing all it can to prevent waste, fraud and abuse and get substantial resources toward achieving that objective.

None of the extensive measures that USAC takes to prevent waste, fraud and abuse are related to GovGAAP and the application of ADA to the Fund.

Mr. Chairman, thank you for providing me with the opportunity to address the Committee. USAC looks forward to continuing our work with Congress and I would be happy to respond to any questions you may have.

[The prepared statement of Mr. Talbott follows:]

PREPARED STATEMENT OF BRIAN L. TALBOTT, PH.D., CHAIRMAN OF THE BOARD, UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

Good afternoon, Mr. Chairman and Members of the Committee. My name is Brian Talbott. I am the Chairman of the Board of Directors of the Universal Service Administrative Company (USAC). It is my privilege to be here today to speak with you about USAC and its administration of the Universal Service Fund (USF). The USF provides approximately $6.5 billion annually to support access to telecommunications and other services by rural and low-income consumers, schools, libraries and rural health care providers. On behalf of all USF stakeholders, I would like to thank this Committee for its role in the passage of the Universal Service Antideficiency Temporary Suspension Act last December. This Act provided much needed relief to schools, libraries, and rural health care providers, as well as to the companies serving them.

Overview

USAC is the not-for-profit corporation designated by the Federal Communications Commission (FCC) to administer the High Cost, Low Income, Rural Health Care, and Schools and Libraries (E-rate) universal service support mechanisms created by the Telecommunications Act of 1996 and FCC regulations adopted pursuant to the Act. USAC is governed by a Board of Directors, each of whom is appointed by the Chairman of the FCC. I have served on the Board since USAC's creation in 1997 and was elected Chairman in January 2005.

Application of Government Accounting Principles (GovGAAP) to the USF

From 1998 through 2004, USAC, pursuant to FCC regulations, accounted for the financial transactions of the USF in accordance with Generally Accepted Accounting Principles (GAAP). The extensive annual audits conducted under strict FCC oversight as required by Part 54 of the FCC's rules resulted in no material findings from 1998 through 2003. The 2004 audit has not yet been completed.

In October 2003, the FCC ordered USAC to change the USF accounting methodology from GAAP to Federal Government accounting principles, or GovGAAP. The FCC stated that the purpose of moving the USF to GovGAAP was "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)" because the USF is a component of the FCC's financial statement. At the time, the USAC Board understood from FCC staff that the transition to GovGAAP would have no impact on the manner in which USAC administers the programs themselves.

Throughout the last quarter of 2003 and during 2004, USAC undertook the necessary steps to train our financial staff in and conform our systems to GovGAAP

in order to meet the October 1, 2004 implementation deadline. As USAC worked with FCC staff to transition to GovGAAP, USAC staff raised the question whether GovGAAP should be interpreted to mandate treating commitment letters USAC sends to beneficiaries in the E-rate and Rural Health Care programs as "obligations" for purposes of government accounting. USAC staff raised a similar question as to the treatment of the projections USAC files with the FCC regarding High Cost and Low Income program payments.

In late September 2004, USAC received the answer to one of these questions. FCC staff directed USAC to treat the E-rate and Rural Health Care commitment letters as government obligations. This new requirement fundamentally changed the manner in which USAC had administered the USF since 1997 in accordance with the Telecommunications Act of 1996, FCC regulations, close FCC oversight, and substantial audit review. With regard to the High Cost and Low Income program projections, USAC was informed that a request had been made to OMB for an opinion concerning whether those projections are government obligations as well. We have not received an answer to that question.

Impact of the Antideficiency Act on the USF

During the process of transitioning to GovGAAP, USAC was verbally informed by FCC staff that the USF might be subject to the Federal Antideficiency Act (ADA). In late September 2004, FCC staff, after consulting with OMB, informed USAC for the first time that the ADA applied to the USF. At the same time, FCC staff informed USAC that under GovGAAP, USF investments in government-backed mutual funds, government agency securities, and money market funds were also considered "obligations" for government accounting purposes and had to be liquidated to ensure compliance with the ADA.

Application of the ADA to the USF, combined with the accounting determination that E-rate and Rural Health Care funding commitments constitute budgetary obligations, had a number of dramatic consequences:

- Between August and November 2004, USAC suspended new funding commitments in the E-rate and Rural Health Care programs, leaving schools, libraries and rural health care providers without needed support.
- Suspension of issuing commitments resulted in delays in making the most effective use of services. For example, in one case in Alaska, while the school district's service provider continued to provide service under a multi-year contract despite the lack of a commitment from USAC, the school board became anxious that the amount of debt accumulating could lead to bankruptcy. The district began to plan for the abrogation of its contract and to turn off the services when it received a commitment in January. In another case, a library would not allow a service provider to proceed to install internal connections without a commitment from USAC because the library viewed the discounted share as an unfunded liability for which the city could be sued.
- The late determination that the ADA applied to the USF required USAC to move more than $3 billion in safe government-backed money market investments to Treasury securities, resulting in a $4.6 million loss.

Reapplication of the ADA to the USF will result in significant uncertainty and instability to the detriment of the USF and its many stakeholders. I will provide a few examples here:

- USAC makes commitments to schools for each school year under FCC rules. If USAC is unable to make commitments before the start of the school year, the significant uncertainty for the schools will adversely affect their planning processes and achievement of educational goals.
- Rural health care providers already strapped for funds will have to wait even longer for funding required to serve critical patient medical needs.
- Because High Cost support payments to rural telephone companies in many cases constitute a significant portion of their revenues, any suspension or delay in disbursement of funds will disrupt their revenue flow and may delay network maintenance and improvements.
- To the extent that USF investments are limited to Treasury securities, USAC's ability to use safe investments with higher yields to offset increases in the contribution factor will be severely limited.
- If the ADA is permanently applied to the USF, and High Cost and Low Income projections are deemed to be budgetary obligations, a significant increase in the contribution factor could occur.

- USAC will be required to keep separate accounts for monies collected, committed and disbursed in 2005 for years to come if a permanent exemption is not forthcoming. This increases administrative costs and complexity. Because USAC's administrative costs come from the USF, increasing administrative costs in turn increases the burden on those who contribute to the USF.

Although USAC was able to make some limited E-rate commitments in November and December 2004, as the end of the year approached, USAC was holding back on issuing some $500 million in commitments due to a lack of unobligated monies as defined by GovGAAP and the application of the ADA to the USF. Then, at the end of last year, Congress enacted the Universal Service Antideficiency Temporary Suspension Act. This allowed USAC to quickly resume its normal course of operations and continue issuing funding commitments in the E-rate and Rural Health Care Programs. I would like to thank all of you for your leadership in that effort. The temporary exemption, which allows the USF to incur obligations for a limited period without regard to the ADA or the apportionment limitations otherwise imposed on the expenditure of federal appropriations, offers the USF some administrative relief for 2005. Many of the deleterious consequences experienced in late 2004, however, could very well return upon expiration of the statute. Consequently, without a permanent exemption, there will be significant uncertainty as to how the universal service programs will operate in the future, which could lead to instability in the programs. We know that the unanticipated consequences of the changes mandated by GovGAAP and the application of the ADA to the USF created serious administrative issues that harmed the programs without evident benefits. USAC recognizes the need for appropriate mechanisms to ensure effective oversight of USF programs. Just as imposition of the ADA created damaging uncertainty in the administration of the USF programs, however, the rolling application of additional federal statutes and regulations to the USF and its administrative structure, without careful consideration of their need and their impact on the programs, could lead to similar difficulties.

Effect of the Application of the ADA on USF Investments

The design of the universal service programs requires USAC to maintain a significant USF balance. Since its inception, USAC has managed the USF prudently, investing funds on hand in different safe vehicles, including government-backed mutual funds, government agency securities, and money market funds, all of which—despite their proven safety and high liquidity—are now considered budgetary obligations under GovGAAP. OMB rules mandate that in order for funds to be considered "unobligated" such funds must be invested only in United States Treasury securities or in cash.

If the ADA applies to the USF as of January 1, 2006, USAC's ability to invest the USF in a manner that safely optimizes interest income will be severely curtailed, because investments in essentially anything other than cash and direct Treasury or federal agency instruments—no matter how safe or liquid—are considered "obligations" for purposes of GovGAAP accounting. At best, USAC might be able to invest a very small amount of the funds in accounts that would be considered obligated. Right now, all USF investments are in cash accounts or Treasury instruments.

In three days last year, at the direction of FCC staff, USAC sold approximately $3 billion in safe investments and placed those funds in cash and Treasury instruments, resulting in a $4.6 million loss. This reallocation of the USF investment portfolio resulted in an immediate 20 percent decrease in investment returns. That is, fourth quarter 2004 interest income was $9.7 million, compared to $12 million in interest income in the third quarter of 2004. Because investment returns help keep the contribution factor as low as possible, a decrease in interest income will increase the funding burden on all Americans.

The Transition to GovGAAP and Application of the ADA to the USF Have No Impact On USAC's Ability to Deter, Prevent, and Detect Waste, Fraud, and Abuse and Are Not Required to Limit USF Expenditures

Not only has the application of GovGAAP and the ADA to the USF created instability in the E-rate program, these measures do not enhance USAC's or the FCC's ability to address waste, fraud, or abuse of the USF. They are simply rules governing the accounting treatment of the USF. USAC strongly supports the application of effective accounting rules to the financial transactions of the USF. Accounting under GAAP between 1998 and 2004 did not have the effect of creating the collection and disbursement problems USAC has encountered under GovGAAP.

USAC is committed to doing all it can to prevent waste, fraud, and abuse in the universal service support mechanisms and devotes substantial resources toward

achieving that objective. Since it began administering the USF, USAC has denied millions of dollars in funding requests from ineligible entities and entities seeking ineligible services. None of the measures that USAC takes to prevent waste, fraud, and abuse—extensive data validation procedures, close scrutiny of invoices, and beneficiary audits, to name just a few examples—are related to GovGAAP or the application of the ADA to the USF.

There may be some concern regarding whether application of the ADA to the USF is necessary to contain USF spending. The answer is no. There are extensive statutory and regulatory constraints on the USF and no issues regarding USF spending in excess of applicable laws have been raised. These constraints are unaffected by the ADA. Application of the ADA could, however, create unpredictability and uncertainty regarding the timing and amount of USF payments that beneficiaries could expect to receive.

Conclusion

Mr. Chairman, thank you for providing me with the opportunity to address the Committee. On behalf of all of the many USF stakeholders, I again applaud the Congress for passage of the Universal Service Antideficiency Temporary Suspension Act last December, and USAC welcomes your consideration of a permanent ADA exemption for the reasons I have discussed. USAC looks forward to continuing to work with Congress and I would be happy to respond to any questions you may have.

Senator STEVENS. Thank you very much.

Ms. Dalton. For the information of the Senators that have come and joined us, we have already agreed to put the statements in the record if you have any statements. Ms. Dalton.

STATEMENT OF PATRICIA A. DALTON, MANAGING DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. DALTON. Thank you, Mr. Chairman, Members of the Committee. I appreciate the opportunity to come before you today to discuss the applicability of the Antideficiency Act to the federal E-rate program, which provides schools and libraries across the country with funding for telecommunications and Internet services. GAO recently released a report which examined the FCC's management and oversight of the E-rate program. This afternoon, I will briefly summarize our findings with regard to the FCC's application of various fiscal controls to the E-rate program—specifically, the Antideficiency Act.

Appropriated funds are subject to a variety of statutory provisions, including the Antideficiency Act, which is the cornerstone of Congressional efforts to provide funds control for executive branch expenditures. The Act's primary purpose is to prevent the obligation or expenditure of funds in excess of amounts available in an appropriation or in advance of the appropriation of funds unless authorized by law. Thus the Antideficiency Act is a key statute for financial management and for protecting funds from fraud, waste and abuse.

In 2000, the FCC concluded that the Universal Service Fund constitutes a permanent indefinite appropriation—that is, funding appropriated or authorized by law to be collected and available for specified purposes without further congressional action. We agree with the FCC's determination.

In deciding that the Fund is a permanent indefinite appropriation, the FCC set in motion a chain of events involving the applicability of the Antideficiency Act which led, at one point, to the suspension of E-rate funding commitments to schools and libraries, and which culminated in action by Congress in December 2004 to

grant the Universal Service Fund a temporary exemption from the Antideficiency Act.

As detailed in our report, we agree with the FCC that, absent a statutory exemption, the Universal Service Fund is subject to the Antideficiency Act and the E-rate program's commitment decision letters constitute obligations for purposes of the Act. Additional issues, however, remain to be resolved by the FCC. These issues include whether other actions taken in the Universal Service program constitute obligations and the timing of and amounts of obligations that must be reported.

As we point out in our report, the laws encompassing fiscal and accountability controls are not applied in isolation; rather, they are part of a framework that addresses issues of financial management and general management of Federal agencies and programs. Our report is critical of the FCC for addressing the applicability of statutes to the program on a case-by-case basis, as issues have arisen. This has put the FCC and the E-rate program in a position of reacting to problems as they occur—as happened with the Antideficiency Act—rather than setting up an organization and internal controls designed to ensure compliance with applicable laws.

Since we released our report, the FCC has contracted with NAPA, the National Academy of Public Administration, to study and explore alternative models to the current organizational and governance structure of the Universal Service Fund program. We believe this study will go a long way towards addressing the concerns outlined in our report.

Because it is unknown at this time what changes to universal service, if any, may result from the NAPA study, and because we believe that a comprehensive assessment is needed to examine which Federal requirements, procedures and practices should apply to this program, it is our opinion that a permanent exemption from the Antideficiency Act should not be granted at this time. Instead, other options should be considered.

One option would be for Congress to grant the Universal Service Fund a 2- or 3-year exemption from the Act. This option would allow time for NAPA to complete its study, report its findings to the FCC, and for Congress and the FCC to consider whether structural changes to the universal service program are called for. A comprehensive assessment should then be made to determine, based on the decisions concerning the structure of the program, which Federal requirements, policies and practices—including the Antideficiency Act—should apply to the Universal Service Fund and to any entities administering the program. It could at that time be determined whether a permanent and complete exemption from the Antideficiency Act is warranted.

Alternatively, crafting a limited exemption to the Antideficiency Act or other financial management requirements may be more appropriate. Based on what was learned in 2004, a limited exemption would recognize the program's unique financial structure and provide flexibility in managing the program. For example, Congress could specify that the FCC can use certain receivables or assets as budgetary resources. It also could define how or when an obligation is recognized. Such an approach would target specific issues within

the unique operation of the Fund and yet leave important financial controls in place.

Thank you, Mr. Chairman. This concludes my opening statement. I'd be happy to respond to any questions.

[The prepared statement of Ms. Dalton follows:]

PREPARED STATEMENT OF PATRICIA A. DALTON, MANAGING DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. Chairman, Mr. Co-Chairman, and Members of the Committee:

We are pleased to be here to discuss the results of our recently completed review of the Federal Communications Commission's (FCC's) universal service program for schools and libraries and to discuss specifically the applicability of the Antideficiency Act to the program. As you know, the Telecommunications Act of 1996 expanded the concept of universal service to include assistance to schools and libraries in acquiring telecommunications and Internet services; the act charged FCC with establishing the universal service discount mechanism for eligible schools and libraries. The commission, in turn, created a large and ambitious program that became commonly known as the "E-rate" program, and set the annual funding cap for the program at $2.25 billion. FCC designated the Universal Service Administrative Company (USAC), a private, not-for-profit corporation established under FCC's rules, to carry out the day-to-day operations of the E-rate program. FCC retains responsibility for overseeing the program's operations and ensuring compliance with the commission's rules.

Since 1998, the E-rate program has committed more than $13 billion in funding to help schools and libraries across the nation acquire telecommunications and Internet services. Eligible schools and libraries can apply annually to receive support, which can be used for specific eligible services and equipment such as telephone services, Internet access services, and the installation of internal wiring and other related items. Recently, however, allegations have been made that some E-rate beneficiaries (schools and libraries) and service providers (e.g., telecommunications and network equipment companies) have fraudulently obtained, wasted, or abused E-rate funding. In May 2004, for example, one service provider involved in E-rate projects in several states pleaded guilty to bid rigging and wire fraud and agreed to pay more than $20 million in criminal fines, civil payments, and restitution.

In February 2005, we issued a report on various aspects of the program. Specifically, we evaluated (1) the effect of the current structure of the E-rate program on FCC's management of the program, (2) FCC's development and use of performance goals and measures in managing the program, and (3) the effectiveness of FCC's oversight mechanisms—rulemaking proceedings, beneficiary audits, and reviews of USAC decisions (appeals)—in managing the program.

Our testimony today is based on this report, which contains a fuller discussion of the results of our review and recommendations for improving FCC's management and oversight of the E-rate program.[1] In summary, we found the following:

- FCC established E-rate as a multibillion-dollar program operating under an organizational structure unusual to the Federal Government, but never conducted a comprehensive assessment to determine which federal requirements, policies, and practices apply to the program, to the Universal Service Administrative Company, and to the Universal Service Fund itself. FCC has addressed these issues on a case-by-case basis, but this has put FCC and the E-rate program in the position of reacting to problems as they occur rather than setting up an organization and internal controls designed to ensure compliance with applicable laws.
- With regard to the Antideficiency Act, we agree with FCC's conclusions that the Universal Service Fund is a permanent indefinite appropriation, is subject to that act, and that the issuance of E-rate funding commitment letters constitutes obligations for purposes of the Act. We believe that Congress should consider either granting the Universal Service Fund a two- or three-year exemption from the Antideficiency Act or crafting a limited exemption that would provide management flexibility. For example, Congress could specify that FCC could use certain receivables or assets as budgetary resources. These more limited solutions

[1] *Telecommunications: Greater Involvement Needed by FCC in the Management and Oversight of the E-rate Program*, GAO–05–151 (Washington, DC: Feb. 9, 2005). The report is available on GAO's Web site at *www.gao.gov*.

would allow time for the National Academy of Public Administration to complete its study of the Universal Service Fund program and report its findings to FCC. Congress and FCC could then comprehensively assess, based on decisions concerning the structure of the program, which federal requirements, policies, and practices should apply to the fund and to any entities administering the program. It could then be determined whether a permanent and complete exemption from the Antideficiency Act is warranted.

- FCC has not developed meaningful performance goals and measures for assessing and managing the program. As a result, there is no way to tell whether the program has resulted in the cost-effective deployment and use of advanced telecommunications services for schools and libraries.
- FCC's program oversight mechanisms contain weaknesses that limit FCC's management of the program and its ability to understand the scope of waste, fraud, and abuse within the program. For example, FCC's rulemakings have often lacked specificity and have led to situations where important USAC administrative procedures have been deemed unenforceable by FCC. There is also a significant backlog of E-rate appeals that adds uncertainty to the program and impacts beneficiaries.

FCC has taken some important steps, particularly in recent months, to address some of the areas of concern discussed in our report. Nevertheless, we believe that FCC has not done enough to proactively manage and provide a framework of government accountability for the multibillion-dollar E-rate program. To address the management and oversight problems we have identified, we recommended in our report that the Chairman of FCC: (1) conduct and document a comprehensive assessment to determine whether all necessary government accountability requirements, policies, and practices have been applied and are fully in place to protect the E-rate program and universal service funding; (2) establish meaningful performance goals and measures for the E-rate program; and (3) develop a strategy for reducing the E-rate program's appeals backlog, including that adequate staffing resources are devoted to E-rate appeals.

Background

The concept of "universal service" has traditionally meant providing residential telephone subscribers with nationwide access to basic telephone services at reasonable rates. The Telecommunications Act of 1996 broadened the scope of universal service to include, among other things, support for schools and libraries. The act instructed the commission to establish a universal service support mechanism to ensure that eligible schools and libraries have affordable access to and use of certain telecommunications services for educational purposes.[2] In addition, Congress authorized FCC to "establish competitively neutral rules to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms . . . and libraries . . . "[3] Based on this direction, and following the recommendations of a Federal-State Joint Board on Universal Service,[4] FCC established the schools and libraries universal service mechanism that is commonly referred to as the E-rate program. The program is funded through statutorily mandated payments by companies that provide interstate telecommunications services.[5] Many of these companies, in turn, pass their contribution costs on to their

[2] 47 U.S.C. § 254(h)(1)(B).
[3] 47 U.S.C. § 254(h)(2).
[4] The Federal-State Joint Board on Universal Service was established in March 1996 to make recommendations to implement the universal service provisions of the Telecommunications Act of 1996. The board is composed of FCC commissioners, state utility commissioners, and a consumer advocate representative.
[5] These companies include providers of local and long distance telephone services, wireless telephone services, paging services, and pay phone services. 47 CFR. § 54.706. Along with the E-rate program, other universal service programs under the Universal Service Fund are the High Cost program, the Low Income program, and the Rural Health Care program. The High Cost program assists customers living in high-cost, rural, or remote areas through financial support to telephone companies, thereby lowering rates for local and long distance service. The Low Income program assists qualifying low-income consumers through discounted installation and monthly telephone services and free toll limitation service. The Rural Health Care program assists health care providers located in rural areas through discounts for telecommunications services. These four programs are sometimes collectively referred to as the Universal Service Fund program. For more information on the various universal service programs, see GAO, *Telecommunications: Federal and State Universal Service Programs and Challenges to Funding*, GAO–02–187 (Washington, DC: Feb. 4, 2002).

subscribers through a line item on subscribers' phone bills.[6] FCC capped funding for the E-rate program at $2.25 billion per year, although funding requests by schools and libraries can greatly exceed the cap. For example, schools and libraries requested more than $4.2 billion in E-rate funding for the 2004 funding year.

In 1998, FCC appointed USAC as the program's permanent administrator, although FCC retains responsibility for overseeing the program's operations and ensuring compliance with the commission's rules.[7] In response to congressional conference committee direction,[8] FCC has specified that USAC "may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress."[9] USAC is responsible for carrying out the program's day-to-day operations, such as maintaining a Web site that contains program information and application procedures; answering inquiries from schools and libraries; processing and reviewing applications; making funding commitment decisions and issuing funding commitment letters; and collecting, managing, investing, and disbursing E-rate funds. FCC permits—and in fact relies on—USAC to establish administrative procedures that program participants are required to follow as they work through the application and funding process.

Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries[10] may receive discounts for eligible services. Eligible schools and libraries may apply annually to receive E-rate support. The program places schools and libraries into various discount categories, based on indicators of need, so that the school or library pays a percentage of the cost for the service and the E-rate program funds the remainder. E-rate discounts range from 20 percent to 90 percent. USAC reviews all of the applications and related forms and issues funding commitment decision letters. Generally, it is the service provider that seeks reimbursement from USAC for the discounted portion of the service rather than the school or library.[11]

FCC Established an Unusual Program Structure without Comprehensively Addressing the Applicability of Governmental Standards and Fiscal Controls

FCC established an unusual structure for the E-rate program but has never conducted a comprehensive assessment of which federal requirements, policies, and practices apply to the program, to USAC, or to the Universal Service Fund itself. FCC only recently began to address a few of these issues.

The Telecommunications Act of 1996 neither specified how FCC was to administer universal service to schools and libraries nor prescribed the structure and legal parameters of the universal service mechanisms to be created. The Telecommunications Act required FCC to consider the recommendations of the Federal-State Joint Board on Universal Service and then to develop specific, predictable, and equitable support mechanisms. Using the broad language of the act, FCC crafted an ambitious program for schools and libraries—roughly analogous to a grant program—and gave the program a $2.25 billion annual funding cap. To carry out the day-to-day activities of the E-rate program, FCC relied on a structure it had used for other universal service programs in the past—a not-for-profit corporation established at FCC's direction that would operate under FCC oversight. However, the structure of the E-rate program is unusual in several respects compared with other federal programs:

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[6] The line item is called various things by various companies, such as the "federal universal service fee" or the "universal connectivity fee." Some companies do not separate out universal service costs as a line item, but instead just build it into their overall costs. Either way, consumers ultimately pay for the various universal service programs, including E-rate.

[7] USAC was established at the direction of FCC and operates under FCC's rules and policies.

[8] See S.1768, 105th Cong., § 2004(b)(2)(A) (1998).

[9] 47 CFR § 54.702(c).

[10] Eligibility of schools and libraries is defined at 47 U.S.C. § 254. Generally, educational institutions that meet the definition of "schools" in the Elementary and Secondary Education Act of 1965 are eligible to participate, as are libraries that are eligible to receive assistance from a state's library administrative agency under the Library Services and Technology Act. Examples of entities *not* eligible for support are home school programs, private vocational programs, and institutions of higher education. In addition, neither private schools with endowments of more than $50 million nor libraries whose budgets are part of a school's budget are eligible to participate. 20 U.S.C. § 9122.

[11] The school or library could also pay the service provider in full and then seek reimbursement from USAC for the discount portion.

- FCC appointed USAC as the permanent administrator of the Universal Service Fund,[12] and FCC's Chairman has final approval over USAC's Board of Directors. USAC is responsible for administering the program under FCC orders, rules, and directives. However, USAC is not part of FCC or any other government entity; it is not a government corporation established by Congress; and no contract or memorandum of understanding exists between FCC and USAC for the administration of the E-rate program. Thus, USAC operates and disburses funds under less explicit federal ties than many other federal programs.
- Questions as to whether the monies in the Universal Service Fund should be treated as federal funds have troubled the program from the start. Even though the fund has been listed in the budget of the United States and, since fiscal year 2004, has been subject to an annual apportionment from OMB, the monies are maintained outside of Treasury accounts by USAC and some of the monies have been invested.[13] The United States Treasury implements the statutory controls and restrictions involving the proper collection and deposit of appropriated funds, including the financial accounting and reporting of all receipts and disbursements, the security of appropriated funds, and agencies' responsibilities for those funds.[14]

As explained below, appropriated funds are subject, unless specifically exempted by law, to a variety of statutory controls and restrictions. These controls and restrictions, among other things, limit the purposes for which federal funds can be used and provide a scheme of accountability for federal monies. Key requirements are in Title 31 of the United States Code and the appropriate Treasury regulations,[15] which govern fiscal activities relating to the management, collection, and distribution of public money.

Since the inception of the E-rate program, FCC has struggled with identifying the nature of the Universal Service Fund and the managerial, fiscal, and accountability requirements that apply to the fund. FCC's Office of Inspector General first looked at the Universal Service Fund in 1999 as part of its audit of the commission's fiscal year 1999 financial statement because FCC had determined that the Universal Service Fund was a component of FCC for financial reporting purposes. During that audit, the FCC IG questioned commission staff regarding the nature of the fund and, specifically, whether it was subject to the statutory and regulatory requirements for federal funds. In the next year's audit, the FCC IG noted that the commission could not ensure that Universal Service Fund activities were in compliance with all laws and regulations because the issue of which laws and regulations were applicable to the fund was still unresolved at the end of the audit.

FCC officials told us that the commission has substantially resolved the IG's concerns through recent orders, including FCC's 2003 order that USAC begin preparing Universal Service Fund financial statements consistent with generally accepted accounting principles for federal agencies (GovGAAP) and keep the fund in accordance with the United States Government Standard General Ledger. While it is true that these steps and other FCC determinations discussed below should provide greater protections for universal service funding, FCC has addressed only a few of the issues that need to be resolved. In fact, staff from the FCC's IG's office told us that they do not believe the commission's GovGAAP order adequately addressed their concerns because the order did not comprehensively detail which fiscal requirements apply to the Universal Service Fund and which do not.

FCC's Decision on the Antideficiency Act Should Be Addressed in a Broader Context

FCC has made some determinations concerning the status of the Universal Service Fund and the fiscal controls that apply. For example, FCC has concluded that

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[12] USAC was appointed the permanent administrator subject to a review after one year by FCC to determine that the universal service programs were being administered in an efficient, effective, and competitively neutral manner. 47 CFR § 54.701(a). This review was never conducted.

[13] The Universal Service Fund is included in the federal budget as a special fund. OMB concluded that the Fund does not constitute public money subject to the Miscellaneous Receipts Statute, 31 U.S.C. § 3302, and therefore can be maintained outside the Treasury by a non-governmental manager. Letter from Mr. Robert G. Damus, OMB General Counsel to Mr. Christopher Wright, FCC General Counsel, dated April 28, 2000.

[14] See 31 U.S.C. §§ 331, 3301–3305 and the Treasury Financial Manual, vol. I, which instructs federal agencies in areas of central accounting and reporting, disbursing, deposit regulations, and other fiscal matters necessary for the financial accounting and reporting of all receipts and disbursements of the Federal Government.

[15] As set forth in part 31 of the Code of Federal Regulations or the Treasury Financial Manual.

the Universal Service Fund is a permanent indefinite appropriation subject to the Antideficiency Act and that its issuance of funding commitment letters constitutes recordable obligations for purposes of the act. We agree with FCC's determinations on these issues, as explained in detail in appendix I. However, FCC's conclusions concerning the status of the Universal Service Fund raise further issues relating to the collection, deposit, obligation, and disbursement of those funds—issues that FCC needs to explore and resolve comprehensively rather than in an ad hoc fashion as problems arise.

Status of funds as appropriated funds. In assessing the financial statement reporting requirements for FCC components in 2000, FCC concluded that the Universal Service Fund constitutes a permanent indefinite appropriation (i.e., funding appropriated or authorized by law to be collected and available for specified purposes without further congressional action). We agree with FCC's conclusion. Typically, Congress will use language of appropriation, such as that found in annual appropriations acts, to identify a fund or account as an appropriation and to authorize an agency to enter into obligations and make disbursements out of available funds. Congress, however, appropriates funds in a variety of ways other than in regular appropriations acts. Thus, a statute that contains a specific direction to pay and a designation of funds to be used constitutes an appropriation.[16] In these statutes, Congress (1) authorizes the collection of fees and their deposit into a particular fund, and (2) makes the fund available for expenditure for a specified purpose without further action by Congress. This authority to obligate or expend collections without further congressional action constitutes a continuing appropriation or a permanent appropriation of the collections.[17] Because the Universal Service Fund's current authority stems from a statutorily authorized collection of fees from telecommunications carriers and the expenditure of those fees for a specified purpose (that is, the various types of universal service), it meets both elements of the definition of a permanent appropriation.

Decision regarding the Antideficiency Act. As noted above, in October 2003, FCC ordered USAC to prepare financial statements for the Universal Service Fund, as a component of FCC, consistent with GovGAAP, which FCC and USAC had not previously applied to the fund. In February 2004, staff from USAC realized during contractor-provided training on GovGAAP procedures that the commitment letters sent to beneficiaries (notifying them whether or not their funding is approved and in what amount) might be viewed as "obligations" of appropriated funds.[18] If so, and if FCC also found the Antideficiency Act—which does not allow an agency or program to make obligations in excess of available budgetary resources—to be applicable to the E-rate program, then USAC would need to dramatically increase the program's cash-on-hand and lessen the program's investments[19] to provide budgetary authority sufficient to satisfy the Antideficiency Act. As a result, USAC suspended funding commitments in August 2004 while waiting for a commission decision on how to proceed. At the end of September 2004—facing the end of the fiscal year—FCC decided that commitment letters were obligations, that the Antideficiency Act did apply to the program, and that USAC would need to immediately liquidate some of its investments to come into compliance with the Antideficiency Act. According to USAC officials, the liquidations cost the fund approximately $4.6 million in immediate losses and could potentially result in millions in foregone annual interest income.

FCC was slow to recognize and address the issue of the applicability of the Antideficiency Act, resulting in the abrupt decision to suspend funding commitment decision letters and liquidate investments. In response to these events, in December 2004, Congress passed a bill granting the Universal Service Fund a one-year exemption from the Antideficiency Act.[20] Nevertheless, FCC's conclusion on this issue was correct: Absent a statutory exemption, the Universal Service Fund is subject to the

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[16] 63 Comp. Gen. 331 (1984); 13 Comp. Gen. 77 (1933).

[17] *E.g., United Biscuit Co.* v. *Wirtz*, 359 F.2d 206, 212 (DC Cir. 1965), cert. denied, 384 U.S. 971 (1966); 69 Comp. Gen. 260, 262 (1990); 73 Comp. Gen. 321 (1994).

[18] An "obligation" is an action that creates a legal liability or definite commitment on the part of the government to make a disbursement at some later date.

[19] According to USAC, the Universal Service Fund was invested in a variety of securities, including cash and cash equivalents, government and government-backed securities, and high-grade commercial paper. USAC generally did not seek the approval of the commission on particular investments, although investments were made with FCC knowledge and oversight through formal audits and informal meetings and review.

[20] Universal Service Antideficiency Temporary Suspension Act, Pub. L. No. 108–494, § 302, 118 Stat. 3986 (2004). The law exempts universal service monies from the Antideficiency Act until December 31, 2005.

Antideficiency Act, and its funding commitment decision letters constitute obligations for purposes of the act.

The Antideficiency Act applies to "official[s] or employee[s] of the United States Government . . . mak[ing] or authorizing an expenditure or obligation . . . from an appropriation or fund." 31 U.S.C. § 1341(a). As discussed above, the Universal Service Fund is an "appropriation or fund." Even though USAC—a private entity whose employees are not federal officers or employees—is the administrator of the program and the entity that obligates and disburses money from the fund, application of the act is not negated. This is because, as recognized by FCC, it, and not USAC, is the entity that is legally responsible for the management and oversight of the E-rate program and because FCC's employees are federal officers and employees of the United States subject to the Antideficiency Act. Thus, the Universal Service Fund will again be subject to the Antideficiency Act when the one-year statutory exemption expires, unless action is taken to extend or make permanent the exemption.

An important issue that arises from the application of the Antideficiency Act to the Universal Service Fund is what actions constitute obligations chargeable against the fund. Under the Antideficiency Act, an agency may not incur an obligation in excess of the amount available to it in an appropriation or fund. Thus, proper recording of obligations with respect to the timing and amount of such obligations permits compliance with the Antideficiency Act by ensuring that agencies have adequate budget authority to cover all of their obligations. Our decisions have defined an "obligation" as a commitment creating a legal liability of the government, including a "legal duty . . . which could mature into a liability by virtue of actions on the part of the other party beyond the control of the United States . . . "[21]

With respect to the Universal Service Fund, the funding commitment decision letter provides the school or library with the authority to obtain services from a provider with the commitment that the school or library will receive a discount and the service provider will be paid for the discounted portion with E-rate funding. Although the school or library could decide not to seek the services or the discount, so long as the funding commitment decision letter remains valid and outstanding, USAC and FCC no longer control the Universal Service Fund's liability; it is dependent on the actions taken by the school or library. Consequently, we agree with FCC that a recordable obligation is incurred at the time of issuance of the funding commitment decision letter indicating approval of the applicant's discount.

Additional issues that remain to be resolved by FCC include whether other actions taken in the Universal Service Fund program constitute obligations and the timing and amounts of obligations that must be recorded. For example, this includes the projections and data submissions by USAC to FCC and by participants in the High Cost and Low Income support mechanisms to USAC. FCC has indicated that it is considering this issue and consulting with the Office of Management and Budget. FCC should also identify any other actions that may constitute recordable obligations and ensure that those are properly recorded.

While we agree with FCC's determinations that the Universal Service Fund is a permanent appropriation subject to the Antideficiency Act and that its funding commitment decision letters constitute recordable obligations of the Universal Service Fund (see app. I), there are several significant fiscal law issues that remain unresolved. We believe that where FCC has determined that fiscal controls and policies do not apply, the commission should reconsider these determinations in light of the status of universal service monies as federal funds. For example, in view of its determination that the fund constitutes an appropriation, FCC needs to reconsider the applicability of the Miscellaneous Receipts Statue, 31 U.S.C. § 3302, which requires that money received for the use of the United States be deposited in the Treasury unless otherwise authorized by law.[22] FCC also needs to assess the applicability of other fiscal control and accountability statutes (e.g., the Single Audit Act and the Cash Management Improvement Act).[23]

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[21] See B–300480, April 9, 2003.

[22] Because OMB and FCC had believed the funds were not public monies "for the use of the United States" under the Miscellaneous Receipts Statute, neither OMB nor FCC viewed the Universal Service Fund as subject to that statute.

[23] For example, in October 2003, when the FCC ordered USAC to comply with GovGAAP, it noted that the Universal Service Fund was subject to the Debt Collection Improvement Act of 1996. In that same order, FCC stated that "the funds *may* be subject to a number of federal financial and reporting statutes" (emphasis added) and "relevant portions of the Federal Financial Management Improvement Act of 1996," but did not specify which specific statutes or the relevant portions or further analyze their applicability. FCC officials also told us that it was uncertain whether procurement requirements such as the Federal Acquisition Regulation (FAR)

Continued

Another major issue that remains to be resolved involves the extent to which FCC has delegated some functions for the E-rate program to USAC. For example, are the disbursement policies and practices for the E-rate program consistent with statutory and regulatory requirements for the disbursement of public funds?[24] Are some of the functions carried out by USAC, even though they have been characterized as administrative or ministerial, arguably inherently governmental activities[25] that must be performed by government personnel? Resolving these issues in a comprehensive fashion, rather than continuing to rely on reactive, case-by-case determinations, is key to ensuring that FCC establishes the proper foundation of government accountability standards and safeguards for the E-rate program and the Universal Service Fund.

We are encouraged that FCC recently announced that it has contracted with the National Academy of Public Administration (NAPA) for NAPA to study the administration of the Universal Service Fund. NAPA will review the current status of the Universal Service Fund program as well as other similar governmental and quasi-governmental programs. Among other things, NAPA is to examine the pros and cons of continuing with the program's current structure or switching to an alternative model. NAPA is also to identify specific ways to improve the oversight and operation of the program, as well as any legislative or rule changes that would be needed to implement its recommendations. In addition, the review will identify internal controls in typical federal grant or subsidy programs that are not present in the Universal Service Fund program and determine whether the manner in which other analogous programs handle the holding, investment, and monitoring of program funds offers models for improving the operation of the Universal Service Fund.

We believe that NAPA's study will go a long way toward addressing the concerns outlined in our report, and we look forward to seeing the results of NAPA's efforts. Given this important ongoing study and the unresolved issues mentioned previously, Congress may wish to consider deferring a decision on permanently exempting the Universal Service Fund from the Antideficiency Act at this time and instead consider either granting the fund a two- or three-year exemption from the Antideficiency Act or crafting a limited exemption that would provide management flexibility. For example, Congress could specify that FCC could use certain receivables or assets as budgetary resources. These more limited solutions would allow time for the National Academy of Public Administration to complete its study of the Universal Service Fund program and report its findings to FCC. Congress and FCC could then comprehensively assess, based on decisions concerning the structure of the program, which federal requirements, policies, and practices should apply to the fund and to any entities administering the program. It could then be determined whether a permanent and complete exemption from the Antideficiency Act is warranted.

FCC Did Not Develop Useful Performance Goals and Measures for Assessing and Managing the E-rate Program

Although $13 billion in E-rate funding has been committed to beneficiaries during the past 7 years, FCC did not develop useful performance goals and measures to assess the specific impact of these funds on schools' and libraries' Internet access and to improve the management of the program, despite a recommendation by us in 1998 to do so. At the time of our current review, FCC staff was considering, but had not yet finalized, new E-rate goals and measures in response to OMB's concerns about this deficiency in a 2003 OMB assessment of the program.

One of the management tasks facing FCC is to establish strategic goals for the E-rate program, as well as annual goals linked to them. The Telecommunications Act of 1996 did not include specific goals for supporting schools and libraries, but instead used general language directing FCC to establish competitively neutral rules for enhancing access to advanced telecommunications and information services for all public and nonprofit private elementary and secondary school classrooms and

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applied to arrangements between FCC and USAC, but they recommended that those requirements be followed as a matter of policy.

[24] See 31 U.S.C. §§ 3321, 3322, 3325, and the Treasury Financial Manual.

[25] See OMB Circular A–76, May 29, 2003, which defines an inherently governmental activity as requiring "the exercise of substantial discretion in applying government authority and/or in making decisions for the government." OMB Cir. A–76, Attachment A. Inherently governmental activities include the establishment of procedures and processes related to the oversight of monetary transactions or entitlements. OMB Circular A–76 further states that "[e]xerting ultimate control over the acquisition, use or disposition of United States government property . . . including establishing policies or procedures for the collection, control, or disbursement of appropriated and other federal funds" involves an inherently governmental activity.

libraries.[26] As the agency accountable for the E-rate program, FCC is responsible under the Government Performance and Results Act of 1993 (Results Act) for establishing the program's long-term strategic goals and annual goals, measuring its own performance in meeting these goals, and reporting publicly on how well it is doing.[27]

For fiscal years 2000 through 2002, FCC's goals focused on achieving certain percentage levels of Internet connectivity during a given fiscal year for schools, public school instructional classrooms, and libraries. However, the data that FCC used to report on its progress was limited to public schools (thereby excluding two other major groups of beneficiaries—private schools and libraries) and did not isolate the impact of E-rate funding from other sources of funding, such as state and local government. This is a significant measurement problem because, over the years, the demand for internal connections funding by applicants has exceeded the E-rate funds available for this purpose by billions of dollars. Unsuccessful applicants had to rely on other sources of support to meet their internal connection needs. Even with these E-rate funding limitations, there has been significant growth in Internet access for public schools since the program issued its first funding commitments in late 1998. At the time, according to data from the Department of Education's National Center for Educational Statistics (NCES), 89 percent of all public schools and 51 percent of public school instructional classrooms already had Internet access. By 2002, 99 percent of public schools and 92 percent of public school instructional classrooms had Internet access.[28] Yet although billions of dollars in E-rate funds have been committed since 1998, adequate program data was not developed to answer a fundamental performance question: How much of the increase since 1998 in public schools' Internet access has been a result of the E-rate program, as opposed to other sources of federal, state, local, and private funding?

Performance goals and measures are used not only to assess a program's impact but also to develop strategies for resolving mission-critical management problems. However, management-oriented goals have not been a feature of FCC's performance plans, despite long-standing concerns about the program's effectiveness in key areas. For example, two such goals—related to assessing how well the program's competitive bidding process was working and increasing program participation by low-income and rural school districts and rural libraries—were planned but not carried forward.

FCC did not include any E-rate goals for fiscal years 2003 and 2004 in its recent annual performance reports. The failure to measure effectively the program's impact on public and private schools and libraries over the past 7 years undercuts one of the fundamental purposes of the Results Act: to have federal agencies adopt a fact-based, businesslike framework for program management and accountability. The problem is not just a lack of data for accurately characterizing program results in terms of increasing Internet access. Other basic questions about the E-rate program also become more difficult to address, such as the program's efficiency and cost-effectiveness in supporting the telecommunications needs of schools and libraries. For example, a review of the program by OMB in 2003 concluded that there was no way to tell whether the program has resulted in the cost-effective deployment and use of advanced telecommunications services for schools and libraries.[29] OMB also noted that there was little oversight to ensure that the program beneficiaries were using the funding appropriately and effectively. In response to these concerns, FCC staff have been working on developing new performance goals and measures for the E-rate program and plan to finalize them and seek OMB approval in fiscal year 2005.

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[26] 47 U.S.C. § 254(h)(2)(A).

[27] For additional details on the Results Act and its requirements, see GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, GAO/GGD–96–118 (Washington, DC: June 1996). GAO first noted the lack of clear and specific E-rate performance goals and measures in its July 1998 testimony before the Senate Committee on Commerce, Science, and Transportation. See GAO, *Schools and Libraries Corporation: Actions Needed to Strengthen Program Integrity Operations before Committing Funds*, GAO/T–RCED–98–243 (Washington, DC: July 16, 1998), pp. 15–16.

[28] See NCES, *Internet Access in U.S. Public Schools and Classrooms: 1994–2002*, NCES–2004–011 (Washington, DC; October 2003). This was the most recent update available at the time of our review.

[29] OMB reviewed E-rate using its Program Assessment Rating Tool (PART), which is a diagnostic tool intended to provide a consistent approach to evaluating federal programs as part of the executive budget formulation process.

FCC's Oversight Mechanisms Are Not Fully Effective in Managing the E-rate Program

FCC testified before Congress in June 2004 that it relies on three chief components in overseeing the E-rate program: rulemaking proceedings, beneficiary audits, and fact-specific adjudicatory decisions (i.e., appeals decisions). We found weaknesses with FCC's implementation of each of these mechanisms, limiting the effectiveness of FCC's oversight of the program and the enforcement of program procedures to guard against waste, fraud, and abuse of E-rate funding.

FCC's Rulemakings Have Led to Problems with USAC's Procedures and Enforcement of Those Procedures

As part of its oversight of the E-rate program, FCC is responsible for establishing new rules and policies for the program or making changes to existing rules, as well as providing the detailed guidance that USAC requires to effectively administer the program. FCC carries out this responsibility through its rulemaking process. FCC's E-rate rulemakings, however, have often been broadly worded and lacking specificity. Thus, USAC has needed to craft the more detailed administrative procedures necessary to implement the rules. However, in crafting administrative procedures, USAC is strictly prohibited under FCC rules from making policy, interpreting unclear provisions of the statute or rules, or interpreting the intent of Congress. We were told by FCC and USAC officials that USAC does not put procedures in place without some level of FCC approval. We were also told that this approval is sometimes informal, such as e-mail exchanges or telephone conversations between FCC and USAC staff. This approval can come in more formal ways as well, such as when the commission expressly endorses USAC operating procedures in commission orders or codifies USAC procedures into FCC's rules. However, two problems have arisen with USAC administrative procedures.

First, although USAC is prohibited under FCC rules from making policy, some USAC procedures deal with more than just ministerial details and arguably rise to the level of policy decisions. For example, in June 2004, USAC was able to identify at least a dozen administrative procedures that, if violated by the applicant, would lead to complete or partial denial of the funding request even though there was no precisely corresponding FCC rule. The critical nature of USAC's administrative procedures is further illustrated by FCC's repeated codification of them throughout the history of the program. FCC's codification of USAC procedures—after those procedures have been put in place and applied to program participants—raises concerns about whether these procedures are more than ministerial and are, in fact, policy changes that should be coming from FCC in the first place. Moreover, in its August 2004 order (in a section dealing with the resolution of audit findings), the commission directs USAC to annually "identify any USAC administrative procedures that should be codified in our rules to facilitate program oversight." This process begs the question of which entity is really establishing the rules of the E-rate program and raises concerns about the depth of involvement by FCC staff with the management of the program.

Second, even though USAC procedures are issued with some degree of FCC approval, enforcement problems could arise when audits uncover violations of USAC procedures by beneficiaries or service providers. The FCC IG has expressed concern over situations where USAC administrative procedures have not been formally codified because commission staff have stated that, in such situations, there is generally no legal basis to recover funds from applicants that failed to comply with the USAC procedures. In its August 2004 order, the commission attempted to clarify the rules of the program with relation to recovery of funds. However, even under the August 2004 order, the commission did not clearly address the treatment of beneficiaries who violate a USAC administrative procedure that has not been codified.

FCC Has Been Slow to Address Problems Raised by Audit Findings

FCC's use of beneficiary audits as an oversight mechanism has also had weaknesses, although FCC and USAC are now working to address some of these weaknesses. Since 2000, there have been 122 beneficiary audits conducted by outside firms, 57 by USAC staff, and 14 by the FCC IG (two of which were performed under agreement with the Inspector General of the Department of the Interior). Beneficiary audits are the most robust mechanism available to the commission in the oversight of the E-rate program, yet FCC generally has been slow to respond to audit findings and has not made full use of the audit findings as a means to understand and resolve problems within the program.

First, audit findings can indicate that a beneficiary or service provider has violated existing E-rate program rules. In these cases, USAC or FCC can seek recovery

of E-rate funds, if justified.[30] In the FCC IG's May 2004 Semiannual Report, however, the IG observes that audit findings are not being addressed in a timely manner and that, as a result, timely action is not being taken to recover inappropriately disbursed funds.[31] The IG notes that in some cases the delay is caused by USAC and, in other cases, the delay is caused because USAC is not receiving timely guidance from the commission (USAC must seek guidance from the commission when an audit finding is not a clear violation of an FCC rule or when policy questions are raised). Regardless, the recovery of inappropriately disbursed funds is important to the integrity of the program and needs to occur in a timely fashion.

Second, under GAO's Standards for Internal Controls in the Federal Government,[32] agencies are responsible for promptly reviewing and evaluating findings from audits, including taking action to correct a deficiency or taking advantage of the opportunity for improvement. Thus, if an audit shows a problem but no actual rule violation, FCC should be examining why the problem arose and determining if a rule change is needed to address the problem (or perhaps simply addressing the problem through a clarification to applicant instructions or forms). FCC has been slow, however, to use audit findings to make programmatic changes. For example, several important audit findings from the 1998 program year were only recently resolved by an FCC rulemaking in August 2004.

In its August 2004 order, the commission concluded that a standardized, uniform process for resolving audit findings was necessary, and directed USAC to submit to FCC a proposal for resolving audit findings. FCC also instructed USAC to specify deadlines in its proposal "to ensure audit findings are resolved in a timely manner."[33] USAC submitted its Proposed Audit Resolution Plan to FCC on October 28, 2004. The plan memorializes much of the current audit process and provides deadlines for the various stages of the audit process. FCC released the proposed audit plan for public comment in December 2004.[34]

In addition to the Proposed Audit Resolution Plan, the commission instructed USAC to submit a report to FCC on a semiannual basis summarizing the status of all outstanding audit findings. The commission also stated that it expects USAC to identify for commission consideration on at least an annual basis all audit findings raising management concerns that are not addressed by existing FCC rules. Lastly, the commission took the unusual step of providing a limited delegation to the Wireline Competition Bureau (the bureau within FCC with the greatest share of the responsibility for managing the E-rate program) to address audit findings and to act on requests for waiver of rules warranting recovery of funds.[35] These actions could help ensure, on a prospective basis, that audit findings are more thoroughly and quickly addressed. However, much still depends on timely action being taken by FCC, particularly if audit findings suggest the need for a rulemaking.

In addition to problems with responding to audit findings, the audits conducted to date have been of limited use because neither FCC nor USAC have conducted an audit effort using a statistical approach that would allow them to project the audit results to all E-rate beneficiaries. Thus, at present, no one involved with the E-rate program has a basis for making a definitive statement about the amount of waste, fraud, and abuse in the program.[36] Of the various groups of beneficiary audits conducted to date, all were of insufficient size and design to analyze the amount of fraud or waste in the program or the number of times that any particular problem might be occurring programwide. At the time we concluded our review, FCC

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[30] USAC, through its duties as administrator of the fund, initially seeks recovery of erroneously disbursed funds. In addition, the commission adopted rules in April 2003 to provide for suspension and debarment from the program for persons convicted of criminal violations or held civilly liable for certain acts arising from their E-rate participation. Debarments would be for a period of three years unless circumstances warrant a longer debarment period in order to protect the public interest.

[31] See FCC, *Office of the Inspector General Semiannual Report to Congress, October 1, 2003–March 31, 2004* (Washington, DC; May 3, 2004).

[32] GAO/AIMD–00–21.3.1.

[33] FCC, *Fifth Report and Order*, *In the Matter of Schools and Libraries Universal Service Support Mechanism*, FCC–04–190 (Washington, DC; Aug. 13, 2004), para. 74.

[34] Comments were due January 5, 2005; reply comments were due January 20, 2005.

[35] FCC 04–190, para. 75.

[36] In testimony before the House Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce in June 2004, FCC's Inspector General submitted a prepared statement that said the "results of audits that have been performed and the allegations under investigation lead us to believe the program may be subject to unacceptably high risk of fraud, waste and abuse." At the same hearing, the Chief of FCC's Office of Strategic Planning and Policy Analysis and the Deputy Chief of FCC's Wireline Competition Bureau submitted a prepared statement that said that FCC had "enabled implementation of the [E-rate] statutory goals with a minimum of fraud, waste, and abuse."

and USAC were in the process of soliciting and reviewing responses to a Request for Proposal for audit services to conduct additional beneficiary audits.

FCC Has Been Slow to Act on Some E-rate Appeals

Under FCC's rules, program participants can seek review of USAC's decisions,[37] although FCC's appeals process for the E-rate program has been slow in some cases. Because appeals decisions are used as precedent, this slowness adds uncertainty to the program and impacts beneficiaries. FCC rules state that FCC is to decide appeals within 90 days, although FCC can extend this period. At the time of our review there was a substantial appeals backlog at FCC (i.e., appeals pending for longer than 90 days). Out of 1,865 appeals to FCC from 1998 through the end of 2004, approximately 527 appeals remain undecided, of which 458 (25 percent) are backlog appeals.[38]

We were told by FCC officials that some of the backlog is due to staffing issues. FCC officials said they do not have enough staff to handle appeals in a timely manner. FCC officials also noted that there has been frequent staff turnover within the E-rate program, which adds some delay to appeals decisions because new staff necessarily take time to learn about the program and the issues. Additionally, we were told that another factor contributing to the backlog is that the appeals have become more complicated as the program has matured. Lastly, some appeals may be tied up if the issue is currently in the rulemaking process.

The appeals backlog is of particular concern given that the E-rate program is a technology program. An applicant who appeals a funding denial and works through the process to achieve a reversal and funding two years later might have ultimately won funding for outdated technology. FCC officials told us that they are working to resolve all backlogged E-rate appeals by the end of calendar year 2005.

Summary

In summary, we remain concerned that FCC has not done enough to proactively manage and provide a framework of government accountability for the multibillion-dollar E-rate program. Lack of clarity about what accountability standards apply to the program causes confusion among program participants and can lead to situations where funding commitments are interrupted pending decisions about applicable law, such as happened with the Antideficiency Act in the fall of 2004. Ineffective performance goals and measures make it difficult to assess the program's effectiveness and chart its future course. Weaknesses in oversight and enforcement can lead to misuse of E-rate funding by program participants that, in turn, deprives other schools and libraries whose requests for support were denied due to funding limitations.

To address these management and oversight problems identified in our review of the E-rate program, our report recommends that the Chairman of FCC direct commission staff to (1) conduct and document a comprehensive assessment to determine whether all necessary government accountability requirements, policies, and practices have been applied and are fully in place to protect the E-rate program and universal service funding; (2) establish meaningful performance goals and measures for the E-rate program; and (3) develop a strategy for reducing the E-rate program's appeals backlog, including ensuring that adequate staffing resources are devoted to E-rate appeals.

We provided a draft of our report to FCC for comment. FCC said that it took a number of steps in 2004 to improve its management and oversight of the program, and anticipates taking additional steps during the coming year. FCC concurred with our recommendations on establishing performance goals and measures and developing a strategy for reducing the backlog of appeals. FCC did not concur with our recommendation that it conduct a comprehensive assessment concerning the applicability of government accountability requirements, policies, and practices. FCC maintains that it has already done so on a case-by-case basis. As noted in our report, however, we believe that major issues remain unresolved, such as the implications of FCC's determination that the Universal Service Fund constitutes an appropriation under the current structure of the E-rate program and the extent to which FCC has delegated some program functions to USAC.

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[37] Virtually all of the decisions made by FCC and USAC in their management and administration of the E-rate program may be subject to petition for reconsideration or appeal by beneficiaries. Moreover, schools and libraries have the option of multiple appeal levels, including USAC, the Wireline Competition Bureau, and the commission.

[38] The bulk of the appeals are to USAC, which received a total of 16,782 appeals from the beginning of the program through 2003. Of these, 646—roughly 4 percent—remained undecided as of September 20, 2004.

Scope and Methodology

We conducted our work from December 2003 through December 2004 in accordance with generally accepted government auditing standards. We interviewed officials from FCC's Wireline Competition Bureau, Enforcement Bureau, Office of General Counsel, Office of Managing Director, Office of Strategic Planning and Policy Analysis, and Office of Inspector General. We also interviewed officials from USAC. In addition, we interviewed officials from OMB and the Department of Education regarding performance goals and measures. OMB had conducted its own assessment of the E-rate program in 2003, which we also discussed with OMB officials. We reviewed and analyzed FCC, USAC, and OMB documents related to the management and oversight of the E-rate program. The information we gathered was sufficiently reliable for the purposes of our review. See our full report for a more detailed explanation of our scope and methodology.

This concludes my prepared statement. I would be pleased to respond to any questions that you or other Members of the Committee may have.

APPENDIX I: FISCAL LAW ISSUES INVOLVING THE UNIVERSAL SERVICE FUND

There have been questions from the start of the E-rate program regarding the nature of the Universal Service Fund (USF) and the applicability of managerial, fiscal, and financial accountability requirements to USF. FCC has never clearly determined the nature of USF, and the Office of Management and Budget (OMB), the Congressional Budget Office (CBO), and GAO have at various times noted that USF has not been recognized or treated as federal funds for several purposes.[1] However, FCC has never confronted or assessed these issues in a comprehensive fashion and has only recently begun to address a few of these issues. In particular, FCC has recently concluded that as a permanent indefinite appropriation, USF is subject to the Antideficiency Act and its funding commitment decision letters constitute obligations for purposes of the Antideficiency Act. As explained below, we agree with FCC's determination. However, FCC's conclusions concerning the status of USF raise further issues related to the collection, deposit, obligation, and disbursement of those funds—issues that FCC needs to explore and resolve.

Background

Universal service has been a basic goal of telecommunications regulation since the 1950s, when FCC focused on increasing the availability of reasonably priced, basic telephone service. *See Texas Office of Public Utility Counsel* v. *FCC*, 183 F.3d 393, 405–406 (5th Cir., 1999), cert. denied sub nom; *Celpage Inc.* v. *FCC*, 530 U.S. 1210 (2000). FCC has not relied solely on market forces, but has used a combination of explicit and implicit subsidies to achieve this goal. *Id*. Prior to 1983, FCC used the regulation of AT&T's internal rate structure to garner funds to support universal service. With the breakup of AT&T in 1983, FCC established a Universal Service Fund administered by the National Exchange Carrier Association (NECA). NECA is an association of incumbent local telephone companies, also established at the direction of the FCC. Among other things, NECA was to administer universal service through interstate access tariffs and the revenue distribution process for the nation's local telephone companies. At that time, NECA, a nongovernmental entity, privately maintained the Universal Service Fund outside the U.S. Treasury.

Section 254 of the Telecommunications Act of 1996 codified the concept of universal service and expanded it to include support for acquisition by schools and libraries of telecommunications and Internet services. Pub. L. No. 104–104, § 254, 110 Stat. 56 (1996) (classified at 47 U.S.C. § 254). The act defines universal service, generally, as a level of telecommunications services that FCC establishes periodically after taking into account various considerations, including the extent to which telecommunications services are essential to education, public health, and public safety. 47 U.S.C. § 254(c)(1). The act also requires that "every telecommunications carrier

[1] *See* GAO, *Schools and Libraries Program: Application and Invoice Review Procedures Need Strengthening*, GAO–01–105, 41. FCC's IG has also raised questions regarding the nature of USF. FCC's IG first looked at USF in 1999 as part of its audit of the commission's fiscal year 1999 financial statement. During that audit, the FCC IG questioned commission staff regarding the nature of the fund and, specifically, whether USF was subject to the statutory and regulatory requirements for federal funds. In the next year's audit, the FCC IG noted that the commission could not ensure that USF activities were in compliance with all laws and regulations because the issue of which laws and regulations were applicable to USF was still unresolved at the end of the audit. In the FCC IG's reports on FCC's financial statements from fiscal years 1999 to 2003, the IG consistently recommended that FCC management formally define in writing the financial management roles and responsibilities of FCC and USAC to avoid confusion and misunderstanding.

that provides interstate telecommunications services shall contribute . . . to the specific, predictable, and sufficient mechanisms" established by FCC "to preserve and advance universal service." *Id.*, § 254(d). The act did not specify how FCC was to administer the E-rate program, but required FCC, acting on the recommendations of the Federal-State Joint Board, to define universal service and develop specific, predictable, and equitable support mechanisms.

FCC designated the Universal Services Administrative Company (USAC), a nonprofit corporation that is a wholly owned subsidiary of NECA, as the administrator of the universal service mechanisms.[2] USAC administers the program pursuant to FCC orders, rules, and directives. As part of its duties, USAC collects the carriers' universal service contributions, which constitute the Universal Service Fund, and deposits them to a private bank account under USAC's control and in USAC's name. FCC has directed the use of USF to, among other things, subsidize advanced telecommunications services for schools and libraries in a program commonly referred to as the E-rate program.[3] Pursuant to the E-rate program, eligible schools and libraries can apply annually to receive support and can spend the funding on specific eligible services and equipment, including telephone services, Internet access services, and the installation of internal wiring and other related items. Generally, FCC orders, rules, and directives, as well as procedures developed by USAC, establish the program's criteria. USAC carries out the program's day-to-day operations, such as answering inquiries from schools and libraries; processing and reviewing applications; making funding commitment decisions and issuing funding commitment decision letters; and collecting, managing, investing, and disbursing E-rate funds.

Eligible schools and libraries may apply annually to receive E-rate support. The program places schools and libraries into various discount categories, based on indicators of need. As a result of the application of the discount rate to the cost of the service, the school or library pays a percentage of the cost for the service and the E-rate program covers the remainder. E-rate discounts range from 20 percent to 90 percent.

Once the school or library has complied with the program's requirements and entered into agreements with vendors for eligible services, the school or library must file a form with USAC noting the types and costs of the services being contracted for, the vendors providing the services, and the amount of discount being requested. USAC reviews the forms and issues funding commitment decision letters.[4] The funding commitment decision letters notify the applicants of the decisions regarding their E-rate discounts. These funding commitment decision letters also notify the applicants that USAC will send the information on the approved E-rate discounts to the providers so that "preparations can be made to begin implementing . . . E-rate discount(s) upon the filing [by the applicant] of . . . Form 486." The applicant files FCC Form 486 to notify USAC that services have started and USAC can pay service provider invoices. Generally, the service provider seeks reimbursement from USAC for the discounted portion of the service, although the school or library also could pay the service provider in full and then seek reimbursement from USAC for the discount portion.

What Is the Universal Service Fund?

The precise phrasing of the questions regarding the nature of USF has varied over the years, including asking whether they are federal funds, appropriated funds, or public funds and, if so, for what purposes? While the various fiscal statutes may use these different terms to describe the status of funds, we think the fundamental issue is what statutory controls involving the collection, deposit, obligation, and disbursement of funds apply to USF. As explained below, funds that are appropriated funds are subject, unless specifically exempted by law, to a variety of statutory provisions providing a scheme of funds controls. *See* B–257525, Nov. 30, 1994; 63 Comp. Gen. 31 (1983); 35 Comp. Gen. 436 (1956); B–204078.2, May 6, 1988. On the other hand, funds that are not appropriated funds are not subject to such controls

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[2] In 1998, we issued a legal opinion on the then-current structure of the E-rate program where FCC directed the creation of the Schools and Libraries Corporation to administer the universal service program. Under the Government Corporation Control Act, an agency must have specific statutory authority to establish a corporation. 31 U.S.C. § 9102. We concluded that FCC did not have authority to create a separate independent corporation to administer the E-rate program. B–278820, Feb. 10, 1998. Subsequently, FCC eliminated the Schools and Libraries Corporation as a separate entity, and restructured the universal service program to its present form.

[3] The term "E-rate" evolved from some individuals referring to the program as the "Education" rate.

[4] USAC could reduce the amount requested if the school or library has included ineligible services in its application or has calculated its discount category incorrectly.

unless the law specifically applies such controls. Thus, we believe the initial question is whether USF funds are appropriated funds.

FCC has concluded that USF constitutes a permanent indefinite appropriation. We agree with FCC's conclusion. Typical language of appropriation identifies a fund or account as an appropriation and authorizes an agency to enter into obligations and make disbursements out of available funds. For example, Congress utilizes such language in the annual appropriations acts. See 1 U.S.C. § 105 (requiring regular annual appropriations acts to bear the title "An Act making appropriations . . . "). Congress, however, appropriates funds in a variety of ways other than in regular annual appropriation acts.[5] Indeed, our decisions and those of the courts so recognize.

Thus, a statute that contains a specific direction to pay, and a designation of funds to be used, constitutes an appropriation. 63 Comp. Gen. 331 (1984); 13 Comp. Gen. 77 (1933). In these statutes, Congress (1) authorizes the collection of fees and their deposit into a particular fund, and (2) makes the fund available for expenditure for a specified purpose without further action by Congress. This authority to obligate or expend collections without further congressional action constitutes a continuing appropriation or a permanent appropriation of the collections. E.g., *United Biscuit Co.* v. *Wirtz*, 359 F.2d 206, 212 (DC Cir. 1965), cert. denied, 384 U.S. 971 (1966); 69 Comp. Gen. 260, 262 (1990); 73 Comp. Gen. 321 (1994). Our decisions are replete with examples of permanent appropriations, such as revolving funds and various special deposit funds, including mobile home inspection fees collected by the Secretary of Housing and Urban Development,[6] licensing revenues received by the Commission on the Bicentennial,[7] tolls and other receipts deposited in the Panama Canal Revolving Fund,[8] user fees collected by the Saint Lawrence Seaway Development Corporation,[9] user fees collected from tobacco producers to provide tobacco inspection, certification and other services,[10] and user fees collected from firms using the Department of Agriculture's meat grading services.[11] It is not essential for Congress to expressly designate a fund as an appropriation or to use literal language of "appropriation," so long as Congress authorizes the expenditure of fees or receipts collected and deposited to a specific account or fund.[12] In cases where Congress does not intend these types of collections or funds to be considered "appropriated funds," it explicitly states that in law. *See e.g.*, 12 U.S.C. § 244 (the Federal Reserve Board levies assessments on its member banks to pay for its expenses and "funds derived from such assessments shall not be construed to be government funds or appropriated moneys"); 12 U.S.C. § 1422b(c) (the Office of Federal Housing Enterprise Oversight levies assessments upon the Federal Home Loan Banks and from other sources to pay its expenses, but such funds "shall not be construed to be government funds or appropriated monies, or subject to apportionment for the purposes of chapter 15 of title 31, or any other authority").

Like the above examples, USF's current authority stems from a statutorily authorized collection of fees from telecommunication carriers, and expenditures for a specified purpose—that is, the various types of universal service.[13] Thus, USF meets both elements of the definition of a permanent appropriation.

We recognize that prior to the passage of the Telecommunications Act of 1996, there existed an administratively sanctioned universal service fund. With the Telecommunications Act of 1996, Congress specifically expanded the contribution base of the fund, statutorily mandated contributions into the fund, and designated the

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[5] Congress has recognized that an appropriation is a form of budget authority that makes funds available to an agency to incur obligations and make expenditures in a number of different statutes. For example, see 2 U.S.C. § 622(2)(A)(i) (budget authority includes "provisions of law that make funds available for obligation and expenditure . . . including the authority to obligate and expend the proceeds of offsetting receipts and collections") and 31 U.S.C. § 701(2)(C) (appropriations include "other authority making amounts available for obligation or expenditure").

[6] 59 Comp. Gen. 215 (1980).

[7] B–228777, Aug. 26, 1988.

[8] B–204078.2, May 6, 1988 and B–257525, Nov. 30, 1994.

[9] B–193573, Jan. 8, 1979; B–193573, Dec. 19, 1979; B–217578, Oct. 16, 1986.

[10] 63 Comp. Gen. 285 (1984).

[11] B–191761, Sept. 22, 1978.

[12] B–193573, Dec. 19, 1979.

[13] The United States Court of Appeals for the Fifth Circuit has recognized the governmental character of the funds. *Texas Office of Public Utility Counsel* v. *FCC*, 183 F.3d 393, 426–428 (5th Cir., 1999), cert. denied sub nom; *Celpage Inc.* v. *FCC*, 530 U.S. 1210 2212 (2000). The Fifth Circuit held that USF funds are statutorily mandated special assessments supporting a federal program mandated by Congress. FCC has also requested that the Department of Justice recognize that USF are federal funds for purposes of representing FCC and the United States in litigation involving USF, such as the False Claims Act.

purposes for which the monies could be expended. These congressional actions established USF in a manner that meets the elements for a permanent appropriation and Congress did not specify that USF should be considered anything other than an appropriation. [14]

Does the Antideficiency Act Apply to USF?

Appropriated funds are subject to a variety of statutory controls and restrictions. These controls and restrictions, among other things, limit the purposes for which they may be used and provide a scheme of funds control. *See e.g.*, 63 Comp. Gen. 110 (1983); B–257525, Nov. 30, 1994; B–228777, Aug. 26, 1988; B–223857, Feb. 27, 1987; 35 Comp. Gen. 436 (1956). A key component of this scheme of funds control is the Antideficiency Act. B–223857, Feb. 27, 1987. The Antideficiency Act [15] has been termed "the cornerstone of congressional efforts to bind the executive branch of government to the limits on expenditure of appropriated funds." [16] Primarily, the purpose of the Antideficiency Act is to prevent the obligation and expenditure of funds in excess of the amounts available in an appropriation or in advance of the appropriation of funds. 31 U.S.C. § 1341(a)(1). FCC has determined that the Antideficiency Act applies to USF, and as explained below, we agree with FCC's conclusion.

The Antideficiency Act applies to "officer[s] or employee[s] of the United States Government . . . mak[ing] or authoriz[ing] an expenditure or obligation . . . from an appropriation or fund." 31 U.S.C. § 1341(a). As established above, USF is an "appropriation or fund." The fact that USAC, a private entity whose employees are not federal officers or employees, is the administrator of the E-rate program and obligates and disburses funds from USF is not dispositive of the application of the Antideficiency Act. This is because, as the FCC recognizes, it, not USAC, is the entity that is legally responsible for the management and oversight of the E-rate program and FCC's employees are federal officers and employees of the United States subject to the Antideficiency Act. [17]

Where entities operate with funds that are regarded as appropriated funds, such as some government corporations, they, too, are subject to the Antideficiency Act. *See e.g.,* B–223857, Feb. 27, 1987 (funds available to Commodity Credit Corporation pursuant to borrowing authority are subject to the Antideficiency Act); B–135075–O.M., Feb. 14, 1975 (Inter-American Foundation). The Antideficiency Act applies to permanent appropriations such as revolving funds [18] and special funds. 72 Comp. Gen. 59 (1992) (Corps of Engineers Civil Works Revolving Fund subject to the Antideficiency Act); B–120480, Sep. 6, 1967, B–247348, June 22, 1992, and B–260606, July 25, 1997 (GPO revolving funds subject to Antideficiency Act); 71 Comp. Gen. 224 (1992) (special fund that receives fees, reimbursements, and advances for services available to finance its operations is subject to Antideficiency Act).

Where Congress intends for appropriated funds to be exempt from the application of statutory controls on the use of appropriations, including the Antideficiency Act, it does so expressly. *See e.g.,* B–193573, Jan. 8, 1979; B–193573, Dec. 19, 1979; B–217578, Oct. 16, 1986 (Saint Lawrence Seaway Development Corporation has express statutory authority to determine the character and necessity of its obligations and is therefore exempt from many of the restrictions on the use of appropriated funds that would otherwise apply); B–197742, Aug. 1, 1986 (Price-Anderson Act ex-

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[14] The Senate passed a "sense of the Senate" provision that stated, "Federal and State universal service contributions are administered by an independent nonfederal entity and are not deposited into the federal Treasury and therefore are not available for federal appropriations." *See* section 614, H.R. 2267, as passed by the Senate (Oct. 1, 1997). However, the purpose of that resolution was to respond to an attempt to withhold USF payments as a means to balance the federal budget or achieve budget savings. We understand section 614, H.R. 2267 intended to insulate USF from budgetary pressures and not to express a view on the proper fiscal treatment of USF. Our interpretation of USF as a permanent appropriation is consistent with the intent that USF is only available for universal service and could only be changed if Congress amended the law to permit USF to be used for other purposes.

[15] 31 U.S.C. §§ 1341, 1342 and 1517.

[16] Hopkins & Nutt, *The Anti-deficiency Act (Revised Statutes 3679) and Funding Federal Contracts: An Analysis*, 80 Mil. L. Rev. 51, 56 (1978).

[17] Under FCC's rules, USAC is prohibited from making policy, interpreting unclear provisions of the statute or rules, or interpreting the intent of Congress. 47 CFR § 54.702(c). As addressed below, one of the issues that remains to be resolved is whether USAC is authorized to take the actions that obligate and disburse USF funds pursuant to FCC orders, rules, and directives or whether FCC must implement additional steps to ensure that obligations and disbursements are specifically authorized by FCC officials and employees.

[18] Revolving funds are funds authorized by law to be credited with collections and receipts from various sources that generally remain available for continuing operations of the revolving fund without further congressional action. See 72 Comp. Gen. 59 (1992).

pressly exempts the Nuclear Regulatory Commission from Antideficiency Act prohibition against obligations or expenditures in advance or in excess of appropriations). There is no such exemption for FCC or USF from the prohibitions of the Antideficiency Act. Thus, USF is subject to the Antideficiency Act.

Do the Funding Commitment Decision Letters Issued to Schools and Libraries Constitute Obligations?

An important issue that arises from the application of the Antideficiency Act to USF is what actions constitute obligations chargeable against the fund. Understanding the concept of an obligation and properly recording obligations are important because an obligation serves as the basis for the scheme of funds control that Congress envisioned when it enacted fiscal laws such as the Antideficiency Act. B–300480, Apr. 9, 2003. For USF's schools and libraries program, one of the main questions is whether the funding commitment decision letters issued to schools and libraries are properly regarded as obligations. FCC has determined that funding commitment decision letters constitute obligations. And again, as explained below, we agree with FCC's determination.

Under the Antideficiency Act, an agency may not incur an obligation in excess of the amount available to it in an appropriation or fund. 31 U.S.C. § 1341(a). Thus, proper recording of obligations with respect to the timing and amount of such obligations permits compliance with the Antideficiency Act by ensuring that agencies have adequate budget authority to cover all of their obligations.[19] B–300480, Apr. 9, 2003. We have defined an "obligation" as a "definite commitment that creates a legal liability of the government for the payment of goods and services ordered or received." *Id*. A legal liability is generally any duty, obligation or responsibility established by a statute, regulation, or court decision, or where the agency has agreed to assume responsibility in an interagency agreement, settlement agreement or similar legally binding document. *Id.* citing to Black's Law Dictionary 925 (7th ed. 1999). The definition of "obligation" also extends to "[a] legal duty on the part of the United States which constitutes a legal liability or which could mature into a legal liability by virtue of actions on the part of the other party beyond the control of the United States . . . " *Id*. citing to 42 Comp. Gen. 733 (1963); *see also McDonnell Douglas Corp.* v. *United States*, 37 Fed. Cl. 295, 301 (1997).

The funding commitment decision letters provided to applicant schools and libraries notify them of the decisions regarding their E-rate discounts. In other words, it notifies them whether their funding is approved and in what amounts. The funding commitment decision letters also notify schools and libraries that the information on the approved E-rate discounts is sent to the providers so that "preparations can be made to begin implementing . . . E-rate discount(s) upon the filing [by applicants] of . . . Form 486." The applicant files FCC Form 486 to notify USAC that services have started and USAC can pay service provider invoices. At the time a school or library receives a funding commitment decision letter, the FCC has taken an action that accepts a "legal duty . . . which could mature into a legal liability by virtue of actions on the part of the grantee beyond the control of the United States." *Id*. citing 42 Comp. Gen. 733, 734 (1963). In this instance, the funding commitment decision letter provides the school or library with the authority to obtain services from a provider with the commitment that it will receive a discount and the provider will be reimbursed for the discount provided. While the school or library could decide not to seek the services or the discount, so long as the funding commitment decision letter remains valid and outstanding, USAC and FCC no longer control USF's liability; it is dependent on the actions taken by the other party—that is, the school or library. In our view, a recordable USF obligation is incurred at the time of issuance of the funding commitment decision letter indicating approval of the applicant's discount. Thus, these obligations should be recorded in the amounts approved by the funding commitment decision letters. If at a later date, a particular applicant uses an amount less than the maximum or rejects funding, then the obligation amount can be adjusted or deobligated, respectively.

Additional issues that remain to be resolved by FCC include whether other actions taken in the universal service program constitute obligations and the timing of and amounts of obligations that must be recorded. For example, this includes the projections and data submissions by USAC to FCC and by participants in the High

[19] Legal liability for obligational accounting and to comply with the Antideficiency Act and the Recording Statute, 31 U.S.C. § 1501 is distinct from accounting liabilities and projections booked in its proprietary accounting systems for financial statement purposes. For proprietary accounting purposes, a liability is probable and measurable future outflow or other sacrifice of resources as a result of past transactions or events. *See* B–300480, Apr. 9, 2003, and FASAB Statement of Federal Financial Accounting Standards Number 1.

Cost and Low Income Support Mechanisms to USAC. FCC has indicated that it is considering this issue and consulting with the Office of Management and Budget. FCC should also identify any other actions that may constitute recordable obligations and ensure those are properly recorded.

Senator STEVENS. Thank you very much.

Ms. Abshire.

STATEMENT OF SHERYL ABSHIRE, DISTRICT ADMINISTRATIVE COORDINATOR OF TECHNOLOGY, CALCASIEU PARISH PUBLIC SCHOOLS

Ms. ABSHIRE. Thank you, Mr. Chairman and Members of the Committee. It is a great honor to be asked to testify in support of universal service and the E-rate program. I'm also here to urge you to support S. 241, a bill that would ensure that universal service and E-rate discounts continue to flow to telephone customers, schools and libraries.

My name is Sheryl Abshire and I am the District Administrative Coordinator of Technology for Calcasieu Parish Public Schools in Lake Charles, Louisiana. Currently, I'm board chair of the Consortium for School Networking, CoSN, a non-profit education technology association that promotes the use of information technologies and the Internet to improve K through 12 education. I'm also representing the Education and Libraries Network Coalition, an E-rate advocacy organization that's comprised of every major public and private school organization and the American Library Association.

CoSN and EdLiNC were greatly dismayed by the E-rate's program shutdown last year as a result of the application of the Antideficiency Act. We strongly supported Congress' temporary exemption from that Act for universal service and E-rate. And I'm here today to urge Congress to pass S. 241 and prevent a replay of last year's devastating funding disruption.

The E-rate has had an extraordinary nationwide impact on education in its 7 years of existence. It has improved schools' public classroom connections to the Internet from 14 percent in 1998 to 93 percent as of 2003. It has allowed students in rural and isolated areas to take online courses in subjects not available in their schools. It has also permitted teachers to take online accreditation courses to become highly qualified as required by No Child Left Behind.

Let me now say a few words about what the E-rate has done for my school district in Lake Charles, Louisiana. The Calcasieu Parish Public Schools educates over 32,000 students and employs more than 5,000 people. We are the sixth largest school district in the state and the largest employer in the parish.

Thirty-six percent of our student population is from minority groups and 53 percent of our students are eligible for the Federal free and reduced price lunch program. We qualified for a 72 percent E-rate discount. Before E-rate, our connectivity primarily consisted of dialup connections and the technology program consisted of random trainings to teachers in how to use computers.

Today, however, all this has changed. We now have over 11,000 computers connected to our network and at any given moment over 6,000 of them are accessing the network. Each day our students,

our teachers, and our administrators make more than three million web page or network object requests and send and receive over 30,000 e-mail messages and transmit an astounding 14.5 gigabytes of data. Last fall, our school system was recognized as one of the most digitally advanced in the country by the Center for Digital Education and the National School Boards Association.

How did all this occur in such a short period of time? The answer is simply E-rate. Over the E-rate's first 7 years, the Calcasieu Parish schools have received just over $4 million in E-rate discounts. We have used this money for infrastructure upgrades that will support 100 megabit connections to every desktop of every computer in our district. E-rate discounts also support our telephone service, cellular phones and installation and upgrade of our high speed network to all 59 of our schools in our compressed video services. I believe that we have made good use of our E-rate support.

Each year we have paid careful heed to our district's needs and we only sought E-rate discounts in accordance with documented needs. We have never attempted to maximize our E-rate discounts nor have we overbought technology. We understand that E-rate is a finite and precious resource particularly because it has a hard cap of 2.25 billion per year.

We also know that our technology infrastructure is useless without ample instruction on how to use it and integrate it into the curriculum. We provide extensive professional development for teachers and administrators before we apply any type of technology. But the real proof of the E-rate is in its impact on students.

A prime example is the story of John F. Kennedy Elementary. It's a school where 95 percent of the students participate in a free lunch program. Thirty-seven percent of its student scored below basic in reading and 75 percent scored below basic in math. We used E-rate discounts to connect every classroom to the Internet, then we used Title I dollars to purchase computers for every classroom and established after school programs at Kennedy that targeted online technology resources to specific documented student needs.

The results have been outstanding. Recent test scores indicate only 16 percent of these students are now below basic in reading and only 21 percent scored below basic in math. In response, the U.S. Department of Education awarded Kennedy Elementary the Title I distinguished school award for closing the achievement gap among all groups in the school.

I'm convinced that E-rate played a significant role in this situation. All this leads me to implore you to make sure the program remains smooth, running and vibrant. The Universal Service Administrative Company shut down of the program for 3 months last year was a major catastrophe for my district. We were delayed in implementing our infrastructure, a delay in implementing a library resource center and what a tragedy for our teachers and students to be ready, willing and able to make use of their resources only to be denied because of an accounting issue.

In sum, E-rate has been a blessing for my district. This propelled us from the technology backwater to a nationally recognized district in 6 years. It placed distance learning, professional development and resources at the fingertips of everyone, and it's helped us

to make significant progress. Please help to us continue our work by preventing any unnecessary disruptions to the programs.

I want to thank Senators Snowe and Rockefeller for introducing the bill, Chairman Stevens and Ranking Member Inouye for signing on as original co-sponsors, and all of the Senators who have co-sponsored it. Thank you for this hearing today, Chairman Stevens, for giving me an opportunity to share my views on Universal Service and E-rate and I would be pleased to take any questions.

[The prepared statement of Ms. Abshire follows:]

PREPARED STATEMENT OF SHERYL ABSHIRE, DISTRICT ADMINISTRATIVE COORDINATOR OF TECHNOLOGY, CALCASIEU PARISH PUBLIC SCHOOLS

Thank you, Mr. Chairman and Members of the Committee. It is a great honor to be asked to testify before you today in support of a program that I care for deeply—universal service and, especially, the E-rate program—and in favor of S. 241, a bill that would ensure that universal service and E-rate support continue to flow uninterrupted to deserving telephone consumers, schools and libraries.

My name is Sheryl Abshire and I have been the District Administrative Coordinator of Technology for Calcasieu Parish Public Schools in Lake Charles, Louisiana for the past 7 years. I have been an educator for more than 30 years, serving variously as a school principal, K–5 teacher, a library/media specialist, a classroom teacher, and an adjunct college professor. I have substantial experience with the integration of education technology into the classroom, including working with the International Society for Technology in Education to compile technology standards for teachers, students, and most recently school administrators.

Currently, I hold the Board Chair of the Consortium for School Networking—or CoSN, a non-profit education technology association that promotes the use of information technologies and the Internet to improve K–12 education. CoSN has long been a champion of the E-rate program and views it as essential to attaining the high goals of the No Child Left Behind Act and preparing our students for today's competitive, high-tech oriented job market.

CoSN was greatly dismayed by the E-rate program's shutdown last year as a result of the application of the Antideficiency Act to the E-rate program. We strongly supported the ultimately successful efforts to gain a temporary exemption from a key provision of that Act for all of universal service, including the E-rate. I come before you today to urge that last year's temporary exemption to the Antideficiency Act be made permanent and to state my support and that of the Consortium for School Networking for S. 241, a bill that would do just that.

I am also here representing the Education and Libraries Networks Coalition—or EdLiNC, an E-rate advocacy organization that is comprised of every major public and private school organization, including CoSN, and the American Library Association. EdLiNC has advocated in support of the E-rate program since its inception and continues to this day to work to address E-rate implementation issues before Congress and the FCC.

I am attaching as part of my testimony today a letter (Exhibit A), signed by nineteen EdLiNC member organizations, that details the extraordinary impact that the E-rate has had nationwide, particularly its success in improving public school classroom connections to the Internet from 14 percent in 1998, when the E-rate first rolled-out, to 93 percent as of 2003. The letter also outlines how the E-rate has been instrumental in improving education by affording students in rural and isolated areas the opportunity to take online courses in subjects not available in their schools. It has also permitted teachers to take online accreditation courses that help them attain the "highly qualified" status required by the No Child Left Behind Act. In order to continue this good work, EdLiNC urges—as do CoSN and I—that Congress pass S. 241 and prevent a replay of last year's devastating funding disruption.

While I have spoken of the tremendous national impact of the E-rate, please allow me to say a few words about all that the E-rate has done for my school district in Lake Charles, Louisiana. Calcasieu Parish Public Schools educates over 32,000 students and employs more than 5,000 people. We are the sixth largest school district in the state and the largest employer in the parish. Thirty-six percent of our student population is from a minority group and 53 percent of all Calcasieu Parish students are eligible for the federal free-and-reduced price lunch program. Based on this last figure, Calcasieu Parish Public Schools qualified this year for a 72 percent E-rate discount rate.

When the E-rate began over 7 years ago, our connectivity consisted of a few dial-up connections in our school libraries, and our technology professional development program consisted of random trainings to teach teachers just how to turn on the computers and, occasionally, how to use a specific program with a student.

Today, this has all changed. We now have over 11,000 computers connected to our network and, at any given moment, over 6,000 of them are accessing the network. Each day, our students, teachers and administrators make more than 3 million web page or network object requests, send or receive over 30,000 e-mail messages, and transmit 14.5 gigabytes of data. Last fall, the Center for Digital Education and National School Boards Association recognized us as one of the most digitally advanced large district school boards in the country.

How did all of this occur in such a short period of time? The answer is the E-rate.

Calcasieu Parish Public Schools has applied for E-rate discounts in each of the program's first 7 years, receiving to date just over $4 million. A sizable chunk of this money has gone to support a currently ongoing infrastructure upgrade that, when completed, will support 100 megabit connections to all 11,000 desktops attached to our network. The vast majority of these funds have been used to support plain old telephone service, cellular phone service, the installation and upgrade of a high-speed network to all of our 59 schools, and the bandwidth used by our compressed video services.

I believe that we have made wise use of our E-rate support. Each year, we have paid careful heed to our district's technology needs and its financial capabilities, as laid out in our collaboratively developed technology plan, and have only sought E-rate discounts in accordance with documented needs. We have never attempted to "maximize our E-rate discounts," nor have we "over-bought" technology or network resources with E-rate support. At Calcasieu Parish Public Schools we understand that the E-rate is a finite and precious resource, particularly since it has a hard annual cap of $2.25 billion per year.

We also know, though, that our technology infrastructure is useless without ample instruction on how to use it and integrate it into the curriculum. For that reason, no technology has been deployed in our district without intensive professional development for teachers and administrators. We provide intensive professional development courses annually to over 300 teachers and over 300 pre-service teacher candidates, rotating that training to different grade levels each year. Additionally, all teachers in our district actively participate in instructional technology training through online and face-to-face workshops and in-service trainings. These professional development efforts have paid-off with our recent national recognition for innovative use of online professional development using the Blackboard platform.

The real proof of the value of Calcasieu's and the E-rate's investment in technological infrastructure, however, is its impact on our students. The formal mission of my department is to *"Advance Quality Education with Technology."* The E-rate is helping us accomplish this goal.

A prime example from Calcasieu Parish of which I am particularly proud is John F. Kennedy Elementary. A few years ago, Kennedy Elementary, a high poverty school where 95 percent of its students participate in the federal lunch program, was a failing school. Starting in 1998, we used E-rate discounts to connect all of its classrooms to the Internet and strategically leveraged Title I dollars to purchase computers for each classroom. The district then established after school programs at Kennedy that targeted online technology resources to specific student needs that we identified through multiple assessment analyses.

The results have been outstanding. Last year, Kennedy Elementary was recognized as one of the leading schools in the State of Louisiana for closing the achievement gap among all groups in the school, performing above the state average in all school performance categories and successfully meeting AYP—Annual Yearly Progress as defined by NCLB. The U.S. Department of Education awarded Kennedy Elementary the Distinguished Schools Award for "outstanding achievement and progress towards the goal that all students achieve the state standards of academic excellence." I am convinced that E-rate played a significant role in this achievement by delivering the online educational resources that helped spur these incredible gains.

All of this leads me to implore you to make sure that the program remains not just in operation but smooth running and vibrant. The Universal Service Administrative Company shutdown of the program for three months last year was a major catastrophe for our district. Overall, it set back our infrastructure upgrade anywhere from six months to a year. This inability to complete our upgrade, in turn, caused extensive delays in fully implementing a new student information system and data warehouse, both of which are critical to improving instruction. The up-

grade delay also caused us to eliminate our plans to launch bandwidth intensive video streaming resources in order to assure we had sufficient bandwidth to manage the district's day-to-day network functions, such as basic Internet access, e-mail, and attendance and grading systems. Finally, the upgrade delays caused by the shutdown derailed a long-planned upgrade of our library resources, which would have established a fully automated district-wide online resource center. What a tragedy for our teachers and students to be ready, willing and able to make use of all of these fantastic new resources and to have to stand idle because of an E-rate accounting issue!

Without the passage of a permanent exemption to the Antideficiency Act, we fear another shutdown for the E-rate at the end of this year and even longer delays in building-out our network and providing the learning opportunities that are essential for today's students.

In sum, the E-rate has been a blessing for my district, propelling it from a technological backwater to a nationally recognized technology model in six short years. Our students, teachers, library/media specialists and administrators have all benefited greatly from the distance learning courses, online professional development, and the wealth of Web-based material that the E-rate has put at their fingertips. We continue to make significant progress academically in our schools, which, in no small measure, is helped by the E-rate. Please help us continue our work by preventing any unnecessary disruptions to the program. Please pass S. 241.

I want to thank Senators Snowe and Rockefeller for introducing this bill, Chairman Stevens and Ranking Member Inouye for signing-on as original cosponsors, and all of the Senators who have added their support to this most important legislation. In particular, I want to thank Senator Stevens for holding this hearing today and giving me an opportunity to share my views on universal service and, most particularly, the E-rate. I would be pleased to take any questions that you have.

Exhibit A

(EDLINC) EDUCATION AND LIBRARY NETWORKS COALITION
April 11, 2005

United States Senate
Washington, DC 20510

Dear Senator:

The Education and Libraries Networks Coalition (EdLiNC) greatly appreciates the Senate Commerce, Science and Transportation Committee holding today's hearing on S. 241, critical legislation which would permanently exempt the Universal Service Fund from a particular provision of the Antideficiency Act. EdLiNC is an organization that was formed by the leading public and private education organizations and the American Library Association to support the passage and implementation of the E-rate program as part of the Telecommunications Act of 1996. We commend Senators Snowe and Rockefeller, Chairman Stevens and Ranking Member Inouye, as well as over twenty members of the Senate for co-sponsoring this important bill that would effectively ensure that E-rate funds continue to flow to schools and libraries.

Without prompt Congressional passage of S. 241, we fear that all universal service programs face the prospect of significant and possibly protracted funding disbursement interruptions when the current temporary exemption to the ADA expires in December. EdLiNC fervently hopes that today's hearing will help speed the passage of S. 241 by the Senate and spur the House of Representatives to take similarly quick action on this legislation. At the conclusion of the 108th Congress, the Senate unanimously approved the existing one-year exemption. This exemption expires at the end of this calendar year and would thereby threaten the continued flow of vital E-rate funds to schools and libraries.

Since it commenced operation in 1998, the E-rate, which provides deep discounts to public and private schools and public libraries for telecommunications services, Internet access and internal connections, has played a leading role in connecting schools and libraries to the Internet. In 1998, only 14 percent of public school instructional classrooms were connected to the net; as of 2003, classroom Internet access stands at 93 percent. Nearly all public library outlets are now able to offer Internet access to their patrons. Private schools have benefited substantially, as well, with 88.4 percent of Catholic schools providing student Internet access. The E-rate's continuing importance to schools and libraries is easily observable by the fact that, in each funding year, requests for E-rate discounts vastly exceed the $2.25 billion available annually. These funds are essential if schools and libraries are to remain connected to the Internet, the information super highway.

Beyond these impressive figures, though, the E-rate is essential to schools and libraries for the educational and employment opportunities that it helps provide. A 2003 report commissioned by EdLiNC, entitled *E-rate: A Vision of Opportunity and Innovation*, found the following about the program:

- The E-rate is an important tool for economic empowerment in underserved communities.
- The E-rate is beginning to bring new learning opportunities to special education students.
- The E-rate is transforming education in rural America.
- The E-rate is helping schools improve student achievement and comply with the No Child Left Behind Act.
- Schools and libraries are devoting significant resources and exercising great care in completing E-rate applications.

The story of two of the communities profiled in the 2003 report, the Kuspuk and Kuskokwim School Districts in Southwestern Alaska, provides an excellent illustration of the incomparable value of the E-rate program. Although both of these remote, largely Eskimo and Native American villages are only accessible by single engine plane, snowmobile or boat, their students now enjoy the same online resources as their peers around the country thanks to the E-rate program. Because of E-rate supported connectivity, Kuspuk's teachers are able to exchange lesson plans with their counterparts in other locations and Kuskokwim's students are able to overcome the lack of certified math teachers in their area by taking online courses in math, algebra and geometry. As Kuspuk School District Superintendent Kim Langton summarized: "E-rate funds are critical to the school and to the community; without E-rate funds we would be hamstrung educationally."

S. 241 will ensure that E-rate discounts continue to reach these schools and others like them uninterrupted. Last year, the program was suspended for three months, during which time thousands of applications from schools and libraries languished in the offices of the E-rate's administrator. This de facto shutdown of the program occurred because the FCC determined that a particular ADA provision, which bars federal agencies from obligating funds without adequate cash on-hand to cover those obligations, applied to the E-rate and the program's administrator realized that it had insufficient cash in its accounts to cover E-rate funding commitment decision letters. At the same time, concerns were expressed that the universal service high cost fund's projections system might also fall within the ambit of the ADA, potentially causing a shutdown of that program. Fortunately, the 108th Congress passed and the President signed legislation to exempt for twelve months all of universal service from that ADA provision, thereby allowing E-rate discounts to flow again.

However, we are drawing ever closer to another potential crisis for the E-rate and universal service when the ADA exemption expires in December. Without passage of S. 241, the FCC would face the Hobson's choice of either shutting down the E-rate and/or other universal service programs (rural healthcare, high cost telephone service, and low-income telephone service) for a period of time, thus depriving needed E-rate discounts to deserving public and private schools and libraries, or raising the universal service collection rates dramatically, thereby virtually imposing major telephone rate hikes for consumers. Therefore, we urge you to preclude the FCC from making either of these bad choices and pass S. 241 to permanently exempt universal service from this single provision of the Antideficiency Act.

We thank you for your attention to this very critical issue, and urge you to support S. 241.

Sincerely,

AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS
AMERICAN FEDERATION OF TEACHERS
AMERICAN LIBRARY ASSOCIATION
ASSOCIATION OF EDUCATIONAL SERVICE AGENCIES
CONSORTIUM FOR SCHOOL NETWORKING
COUNCIL OF CHIEF STATE SCHOOL OFFICERS
INTERNATIONAL SOCIETY FOR TECHNOLOGY IN EDUCATION
NATIONAL ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS
NATIONAL ASSOCIATION OF INDEPENDENT SCHOOLS
NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS
NATIONAL ASSOCIATION OF STATE BOARDS OF EDUCATION
NATIONAL CATHOLIC EDUCATIONAL ASSOCIATION
NATIONAL EDUCATION ASSOCIATION
NATIONAL EDUCATION KNOWLEDGE INDUSTRY ASSOCIATION
NATIONAL PTA
NATIONAL RURAL EDUCATION ADVOCACY COALITION
NATIONAL SCHOOL BOARDS ASSOCIATION
ORGANIZATIONS CONCERNED ABOUT RURAL EDUCATION
UNITED STATES CONFERENCE OF CATHOLIC BISHOPS

Senator STEVENS. Thank you very much. Next witness is Steve Hamlen, who is the President and CEO of United Utilities, Inc., which is in my state in an area ranging from the Bristol Bay all the way over to Canada. I'm pleased you could take the time to come down, Steve.

STATEMENT OF STEVE HAMLEN, PRESIDENT AND CEO, UNITED UTILITIES, INC.

Mr. HAMLEN. Thank you, Mr. Chairman, Senator Inouye and Members of the Committee. I'm Steve Hamlen, CEO of United Utilities. We are headquartered in Anchorage, Alaska.

I appreciate the opportunity to appear before you today both in my capacity as CEO of United Utilities as well as on behalf of the United States Telecom Association in support of Senate Bill 241.

Mr. Chairman, I know you are very familiar with my company. I would for the benefit of the rest of the Committee like to take a moment to tell everyone about United and why Universal Service support is so critical to my customers and company.

United receives Universal Service Funds for eligible services provided to schools, libraries, health care providers and residents of rural Alaska. We serve a population of approximately 25,000 in 60 communities. United's communities are accessible only by air and water and our service area is approximately 150,000 square miles. That's comparable to the size of the states of New York, Pennsylvania and Ohio.

English, science and algebra classes are now being offered by distance learning networks and rural communities where it's not been economical or feasible for school districts to provide a full-time instructor. Village health plans are now being assisted by doctors located miles away. Children, teachers and health care professionals are gaining access by the Internet to vast amounts of information and low-income households have access to basic telephone service at affordable rates. Clearly the E-rate and health care Universal Service programs have improved the quality of health care and education.

All of us at USTA are well aware of the crucial role played by you and Senator Burns on the last night of the 108th Congress to temporarily resolve the crisis of applying the ADA to USAC. We

deeply appreciate the ongoing efforts of Senators Snowe and Rockefeller.

Today the agenda is on securing a strong and viable future for Universal Service. We believe that USAC's permanent exemption from the requirements of the Antideficiency Act is essential and that this exemption should be permanently codified this year. The imposition of ADA on USAC will undermine the delivery of telenetworking services to Alaskan communities.

In Alaska, we face unique challenges in building communications infrastructure. When the barge leaves Seattle in the spring, we need to have our materials on board. Most rural communities get only two barges a year. Some of them get only one. Barge deliveries do not go past September. Air transportation is costly and subject to weather and some items like towers and buildings which weigh several tons can only be barged.

Without Universal Service support, it will not be possible for carriers like United to maintain and build infrastructures in our rural communities. The application of the ADA to USAC will introduce uncertainty and raise havoc by disrupting funding to program participants.

USAC will be faced, as it was last fall, with having to suspend funding applications, the processing of new applications will need to be delayed. Contribution factors, the assessment that is placed on interstate revenues to fund Universal Service will need to skyrocket in order to prefund requests. As the ADA compliance issue emerged last year, USAC informed us that in order to ensure adequate funding going forward in the first quarter of 2005, USF contribution factor might need to be increased by almost 50 percent.

Mr. Chairman, Universal Service ensures that networks are viable in rural areas and that the networks are continuously upgraded and maintained—networks that reach into every community and provide real time communications across rural and urban America and across the globe.

Consequently, it is critical that the continued viability of Universal Service not be threatened by applying the ADA to USAC. Mr. Chairman and Members of the Committee, I appreciate the opportunity to address you today. It is critical that the current 1-year suspension of the ADA from application to USAC be made permanent by legislation this year. Thank you for the opportunity to present testimony. I'm available to answer any questions.

[The prepared statement of Mr. Hamlen follows:]

PREPARED STATEMENT OF STEVE HAMLEN, PRESIDENT AND CEO, UNITED UTILITIES, INC.

Mr. Chairman, Senator Inouye and Members of the Committee, I am Steve Hamlen, President and CEO of United Utilities, Inc. (United), headquartered in Anchorage, Alaska. I appreciate the opportunity to appear before you today, both in my capacity as CEO of United Utilities, as well as on behalf of the United States Telecom Association (USTA), in support of making the Universal Service Administrative Corporation (USAC) permanently exempt from the requirements of the Antideficiency Act.

Mr. Chairman, while I know you are very familiar with my company, I would, for the benefit of the rest of the Committee, like to take a moment to tell everyone about United and why universal service support is so critical both to my company and our customers.

United, an Alaskan native-owned telecommunications carrier, receives Universal Service funds for eligible services provided to schools, libraries, health care providers, and residents in rural Alaska. United serves a population of approximately 25,000 residing in 60 communities. These communities are primarily inhabited by Native Americans, many of whom live a subsistence lifestyle. United's communities are accessible only by air and water and this service area is approximately 150,000 square miles—comparable to the size of New York, Pennsylvania and Ohio. English, Science, and Algebra classes are now being offered via distance learning networks in rural communities where it has not been economical, or feasible, for school districts to provide a full time instructor. Village Health Clinic aides are now being assisted by doctors located miles away. Children, teachers, and health care professionals are gaining access via the Internet to vast amounts of information. And low income households and those living in high cost areas have access to basic telephone service at affordable rates. Clearly, the E-rate, Rural Health Care and other universal service programs are improving the quality of life for those living in the communities United serves.

USTA is the premier trade association representing service providers and suppliers of the telecom industry. USTA's 1,200 member companies offer a wide range of services, including local exchange, long distance, wireless, Internet, Internet Protocol video and telephony, and cable television service. Our membership ranges from the smallest rural telephone companies to some of the largest corporations in America. All of us in USTA are well aware of the crucial role played by you and Senator Burns on the last night of the 108th Congress to temporarily resolve the crisis of applying the ADA to USAC. Of course, we also deeply appreciate the ongoing efforts of Senators Snowe and Rockefeller. Their tireless work during the past decade is deeply appreciated by our members—and our customers.

We are an organization where the agenda is set by and for the membership. Today that agenda centers on securing a strong and viable future for universal service. We believe USAC's permanent exemption from the requirements of the Antideficiency Act is consistent with our call for securing a strong viable future for Universal Service and freeing our companies from government micromanagement. It is imperative that this exemption be permanently codified this year. The imposition of the Antideficiency Act on USAC threatens the very survival of rural telephony, the availability of Internet and distance learning services to schools and libraries, the availability of telemedicine for health care, and exemplifies the need for comprehensive legislation.

Given the rugged terrain and conditions in rural Alaska, United would not be able to provide these services at an affordable rate without universal service support. Universal service support allows companies like United to provide basic and advanced telecommunications services to all Americans, whether they are in cities such as Anchorage or in the most rural parts of Alaska. That is why it is so important that the Universal Service system continue to be viable and that threats to the system, such as the unnecessary application of the Antideficiency Act to USAC, be eliminated.

The application of the Antideficiency Act to USAC will lead to overall higher consumer phone bills for all customers and dramatic increases in the phone bills of rural America. It threatens affordable service in high cost areas as well as the viability of the Lifeline and Link-Up Programs which provide reduced phone rates for low income families.

As you are aware, due to actions by the Federal Communications Commission to comply with government accounting rules and the Antideficiency Act, last year USAC was forced to radically change the timing of its funds distribution. Under the government accounting rules, before USAC is permitted to "obligate" funds, it must have those funds on hand. Commitment letters to recipients of the schools and libraries and rural health care programs are considered "obligations" and therefore subject to the application of these new standards. These programs are designed to provide Internet access, Distance Learning, and often telecommunications capabilities to our nation's schools and libraries. In addition, the program helps to develop a robust communications network to allow rural health care providers to properly diagnose and treat patients in rural America. As a result of the FCC's actions, USAC suspended new funding commitments in the E-rate and Rural Health Care programs in August 2004.

Mr. Chairman, as you know, the Universal Service program is funded through an assessment, based on a "contribution factor," on the amount of interstate revenues received by telephone companies. The assessment is then placed on customers' telephone bills. Consequently, a significant increase in the contribution factor results in a significant increase in every telephone customer's monthly phone bill. As the ADA compliance issue emerged last year, USAC informed us that in order to ensure

adequate funding going forward, the first quarter 2005 USF Contribution Factor might need to be increased by almost fifty percent.

There is a strong indication that, if the Antideficiency Act exemption is not made permanent, the same "obligation" restrictions placed on funds for recipients of schools, library and rural health care programs would also be placed on high cost and low income support. This would lead to a disruption of universal service support to rural phone companies and a potential interruption in affordable telephone service to rural customers. Further, the "contribution factor" would again have to be significantly raised, possibly to over 20 percent, resulting in further significant increases to consumers' bills.

Mr. Chairman, Universal Service helps to make sure that networks are viable in rural areas, and that the networks are continuously upgraded and maintained. Networks that reach into every community provide Internet service, distance learning, e-mail, dial tone and real-time communications across rural and urban America and across the globe. Universal Service ensures that networks will be available across the country to provide affordable access to the new communications services which all Americans expect. In fact, given the importance of communications to bringing technology and economic growth to rural America, Universal Service may be more important today than at any other point in our nation's history, as we transition from an industrial to an information society. Consequently, it is critical that the continued viability of universal service not be threatened either by the applications of the Antideficiency Act to USAC or by any of the other challenges facing the Universal Service system today.

Mr. Chairman and Members of the Committee, I appreciate the opportunity to address you on the specific issue of the Antideficiency Act. The FCC's application of the Antideficiency Act to USAC threatens the Universal Service system and a permanent exemption is warranted. It is critical that the current one-year suspension of the ADA from application to USAC be made permanent by legislation this year.

We support passage of S. 241. While it's April and we believe the Congress can develop and pass legislation that provides us with a secure Universal Service program as well as a regulatory regime that creates a level playing field for all telecom providers, we understand the Committee wants to move this legislation forward. This is especially important should unforeseen circumstances slow down efforts toward comprehensive reform.

Thank you for the opportunity to present testimony; I am available to answer any questions.

Senator STEVENS. Thank you very much, Steve. Just a little bit of history so we can go back on this one. When Senator Inouye and I came to the Senate, he was here first, all our states advertisements about communications said that these rates do not apply in Alaska or Hawaii.

So the rate—I do not know what was the rate paid in Hawaii at that time—but my allowance gave me the right to so many minutes of telephone calls to Alaska at the rate of $5 a minute. We saw the development of long distance rate averaging pools in the southern 48, which is what we call the continental 48. And my colleague and I joined together to ask Congress to approve a resolution requesting the telephone industry to integrate rates so that it included Alaska and Hawaii.

That process started voluntarily by the industry and the Universal Service Fund began there. That was a Fund totally organized by the industry, collected by the industry and expended by the industry. Before the 1996 Act, the FCC at one time decided that they ought to take over the management of this Fund. And I objected to that and called the GAO and asked them to investigate the matter, and they did decree that that Fund was not subject to FCC control because it was totally an industry Fund, collected voluntarily and administrated by the industry.

Senators Snowe and Rockefeller in connection with the 1996 Act decided to mandate that that Fund should go to, and be allocated in addition to just bringing long distance service to rural America,

particularly to the offshore states, but to, and I think wisely the two of us joined Senators Snowe and Rockefeller in this, to mandate the concepts of serving schools, libraries and health facilities. Following that, the FCC in its own judgment decided to mandate the creation of this corporation which Mr. Talbott is now the chairman of.

That's the best example I know of an agency trying to pull itself up by its bootstraps and then choking off the subject of its jurisdiction. This has been the result of the determination that the 1996 Act mandated the creation of that corporation, which it did not. Now we are faced, and we were faced last year with the problem of what to do about the FCC decisions confirmed by the GAO, and I think urged by the OMB, to increase Federal control of this money.

The money collected is capped by a decision, I believe of the FCC. Well, you have heard the testimony here and I think there is absolutely no question that the Snowe-Rockefeller amendment has brought about a substantial change in America. It made available to rural schools and rural communities the benefits that telemedicine, tele-education and teleconferencing have brought. It has brought communities together although they are stretched out over 250,000 square miles. That is a community in Alaska, all working together to provide the services that are mandated by the Snowe-Rockefeller amendment.

We are faced with a real problem. And I appreciate for myself the suggestion that we take some type of time to try and figure out what is a solution. The 2-years I don't think is long enough, however, Ms. Dalton. I think if Congress takes a lot longer than that to make up its mind and we have seen that in connection with our problem with the National Wildlife Refuge, 25 years still have not made up its mind.

As far as I'm concerned, we need more time than 2 years. I'm not sure that we can get a solution right now. I'm not sure that we really have the ability to decide how to deal with these other laws which are not within the jurisdiction of this Committee. The only thing we have got the right to do is suspend the application of those laws for a while until we get the other legislative committees to work with us and agree with us that we need to find a solution to how to manage this money.

From my point of view, Mr. Talbott has mentioned one of the real serious problems and that it has wisely invested in this fund in the past. It has leveraged collections they have made so they really have appreciated considerably in terms of the amount of money that's available to carry out the services that they are mandated to do.

That leveraging factor is lost under the decisions that have been made by the FCC, GAO and the OMB. I have a couple of questions to ask and let me say to my colleagues, Senator Inouye and I must go manage the Defense portion of the supplemental bill at 3 o'clock, so we intend to ask our questions and then leave.

And I hope Senator Snowe, if you will be able to stay and Senator Rockefeller stay and conduct the hearing for us for the Committee. I consider this to be one of the major issues before this Committee in terms of communications this year. The solution may

be temporary, but it's going to be very important somehow to find a way to not lose the capabilities that have been brought to rural America and to our two offshore states by the Snowe-Rockefeller Amendment. I apologize for that long monologue.

I have a few rather quick questions. One is what is the current balance of this Fund and how much is offset by the funding commitment decision letters that you have issued?

Mr. TALBOTT. It's about $3 billion in the Fund. Let me check my notes. But it's over $2 billion that's currently committed.

Senator STEVENS. So unless we do something by the time we hit the fall, we are going to be in trouble?

Mr. TALBOTT. Correct.

Senator STEVENS. Is it true that there are overcommitments to the program and how does that come about and why?

Mr. TALBOTT. A couple of things happened. The process that the school districts, libraries go through takes some time. Technology prices if we look at it across the board come down. The cost for technology has come down, so there is a gap in the technology that schools are putting in, what they have requested and then they make those adjustments as they move forward because the vendors will give those adjustments to the users. And that's part of the problem.

Senator STEVENS. Is it true that the more you commit, the more is scored against this bill?

Mr. TALBOTT. I don't understand the question, sir. Maybe FCC—the scoring is affected by overcommitments, right?

Mr. SCHLICK. I hesitate to speak specifically to scoring, but in terms of the obligations, yes, the commitment letters constitute the obligations and therefore it's the issuance of the commitment letter that is counted rather than the eventual disbursement which occurs sometime later.

Senator STEVENS. Let me ask this of the FCC. Is there a way to change the commitment letters to avoid the accounting problems we find that have been outlined here?

Mr. SCHLICK. That is an option that's been considered.

Senator STEVENS. Can it be done without legislation?

Mr. SCHLICK. Yes. Those letters are issued by USAC under the FCC's direction, and they could be modified.

Senator STEVENS. That would take the Commission's concurrence, would it not, to change the rule?

Mr. SCHLICK. Yes. It's one of the functions of USAC under our supervision. Yes.

Senator STEVENS. That would be subject to a series of hearings and procedures under the FCC. In other words, it will take time if we opted to go that direction, it will take time. Ms. Gelb, how long will that normally take to have a real change by the FCC?

Mr. SCHLICK. Mr. Chairman, that's not in the Commission's rules now. It would be a matter of consultation between USAC and the agency's staff.

Senator STEVENS. Would it involve a public process to determine how the rule was issued by the FCC?

Mr. SCHLICK. Mr. Chairman, right now the USAC commitment letters are not enshrined in the rules.

Senator STEVENS. The accounting change I'm suggesting, wouldn't that take a rule?

Mr. SCHLICK. The accounting change, yes. The application of GovGAAP, which is the accounting rule that in October of 2003 the Commission extended to USAC, that would require a change of FCC rules. But it's important to note, Mr. Chairman, that the accounting procedure is one that identifies the timing of the obligations, not the rule that USAC must have cash on hand.

Senator STEVENS. I'm talking about Ms. Dalton's problem, if we need a temporary fix, how long do we really need if we decided to go that route?

Mr. SCHLICK. That rule change will not affect the Antideficiency Act problem, Mr. Chairman, because the Antideficiency Act problem is one that is statutory. The GovGAAP procedures are a tool that identifies the time obligations are incurred, but there is nothing that the Commission could do.

Senator STEVENS. Avoid any accounting problem but not solve the issues that I'm discussing, right?

Mr. SCHLICK. That is correct, Mr. Chairman.

Senator STEVENS. Mr. Hamlen, in terms of this as it affects our state, what would be the impact on your total operation if the exemption is allowed to expire and Congress does not act?

Mr. HAMLEN. Well, first of all, our customers, school districts, rural health care providers would all be impacted. The impact on our company would be severe. Our ability to continue to deliver the services would be undermined and our ability to build out new infrastructure would also be undermined. In fact, if that were to happen, we would probably within a year have to go out of business.

Senator STEVENS. Last comment. By virtue of the investments you've made in the past, Mr. Talbott, investments of the surpluses as occurred temporarily, has that been a factor in acting to keep the contribution level as low as possible?

Mr. TALBOTT. Yes, it has.

Senator STEVENS. It's up to about 11 percent now, is it not?

Mr. TALBOTT. That is correct.

Senator STEVENS. And technically paid by long distance carriers primarily.

Mr. TALBOTT. Right.

Senator STEVENS. Senator Inouye.

Senator INOUYE. Thank you, Mr. Chairman, for reviewing the history of this controversy as we approach this moment. In my review, I note that one cannot help but conclude that the most influential agency guiding policy decision making is OMB. We invited OMB to be with us today but they are not available. But I note that the FCC and GAO have all communicated with OMB. What have they been telling you? Can you share it with us?

Mr. SCHLICK. Senator Inouye, the important communication for purposes of the E-rate program was the consultation that we had back in September of 2004, and then into the fall. And that was the expression of OMB's view that, first, the Universal Service Fund is an appropriation to which the Antideficiency Act would apply.

And second, that the obligation letters, the commitment letters that USAC issues, are obligations that have to be counted under

the Antideficiency Act. We have also requested an opinion from OMB concerning the high cost and low income programs under the USF and we are working with them to obtain that. It's our tentative view that those programs are being operated today in accordance with the obligations of the Antideficiency Act, and that the resumption of the application of the Act to those programs would not cause change in the operation of the programs.

Senator INOUYE. What was the decision of OMB in 2000?

Mr. SCHLICK. In 2000, OMB determined that the Miscellaneous Receipts Act, which is the statute which requires that public moneys for the use of the United States be deposited in the Treasury, does not apply to the Universal Service Fund and that is a view under which we have been operating.

Senator INOUYE. Mr. Talbott?

Mr. TALBOTT. Yes. The question comes down, my point to the commitment letters that we issue versus the high cost, low income where we do not issue the letters, but we certainly post it to the website. That's hard for me to differentiate when a company sees on the website what they will receive, but that's not a commitment. So I think there is an obligation from our vantage point.

Senator STEVENS. The money is still not in the Treasury, is it?

Mr. SCHLICK. No. Mr. Chairman, no. The money is still maintained outside the Treasury.

Senator INOUYE. Ms. Dalton?

Ms. DALTON. Senator, we were simply asked to review what the decisions were by OMB as well as the FCC to see if we concurred, which we did with their reasoning that the Antideficiency Act did apply in this particular situation.

Senator STEVENS. Does Congress take direction from the OMB?

Ms. DALTON. No. It does not, Senator.

Senator INOUYE. Do we have any late message from OMB?

Mr. SCHLICK. Not that I'm aware of.

Senator STEVENS. Again, my regrets to all of you. I ask Senator Snowe and Senator Rockefeller at this time to take over this matter. And it will be my hope that we can find a way to get this matter on the first agenda possible.

STATEMENT OF HON. OLYMPIA J. SNOWE,
U.S. SENATOR FROM MAINE

Senator SNOWE. Thank you, Mr. Chairman. I also want to thank the co-chair as well for giving so much support and having this hearing here today that emphatically I think indicates the support of this Committee toward resolving this issue and I truly appreciate it. Senator Rockefeller.

Senator ROCKEFELLER. They have already left. I wanted to duly thank on behalf of—I know Senator Snowe and myself, the Chairman and the Vice Chairman I guess, for their support of this legislation. I also note not only the absence of OMB but the refusal of OMB to put down in writing to us and as far as I can tell, to any of you, other than perhaps a couple of verbal things several years ago their views, even though they are responsible for a good deal of what has happened here. Mr. Talbott, a couple questions for you, sir.

You're Chairman of USAC?

Mr. TALBOTT. Yes.

Senator ROCKEFELLER. And without an exemption of the Antideficiency Act this year, what would you say you need to recommend to the FCC for the first quarter of 2006 to fully fund all four of the Universal Service Fund programs, that will be the E-rate, the high cost, the low income, and rural health care?

Mr. TALBOTT. Well, if we did not have the passage of the Act—let me back up. The commitment letters that were addressed earlier, we have a softer commitment letter that was one thing that was suggested this past year. But what we found out when the auditors started looking at it, the school district started looking at it, it did not hold water. We either have to raise the contribution factor up significantly which is an impact on everybody or we have got to figure out a way to fund it. And that way would be to shut down for X amount of time so we can build the Fund up.

Senator ROCKEFELLER. Ms. Abshire and Mr. Hamlen, both of your testimony I thought were absolutely superb, but that's no surprise. But would that not also then increase the hesitancy of those particularly rural schools and areas because of the inconsistency being shown by Congress in funding this program? That when you shut things off and turn them on and shut them off and turn them on, people begin to walk away from it just a bit, don't they?

Ms. ABSHIRE. Yes, sir. I think the key is the constant flow of funds that those of us in districts can count on and use to plan. We have had a lot of education and technology funding plans and budgeting and we have tried to be wise and build plans that take us into the future and leverage resources in a very strategic nature. And when we have issued this start and stop, it really disrupts all of the planning processes and makes people reluctant to be engaged, in addition to the educational disruption that occurs.

Senator ROCKEFELLER. Mr. Hamlen, you don't need to answer because you answered most eloquently when you said you'd have to shut your business down in about a year and a half?

Mr. HAMLEN. That is correct, Senator. I would like to add one more item. Many of our school districts in rural Alaska receive 90 percent subsidy and the cost of providing service to these remote schools is very high. And you'll note that some of them could, if we have these disruptions and they continue to try and receive service and they become liable for the full bill, could be forced into bankruptcy. So that that would be an added concern.

Senator ROCKEFELLER. Thank you. I'm going to try and ask a couple of questions quickly before Olympia red lights me. Mr. Talbott, I'll go back to you, sir. Were there any costs that you are aware of in complying with the FCC guidance last fall? Are there any ongoing costs of compliance with the FCC?

Mr. TALBOTT. Yes, the cost to implement GovGAAP, we lost $4.6 million when we had to liquidate investments. We have already put one million into training. It's going to cost us millions more to complete that system overall and we have lost $4.1 million per year in interest over this next year.

Senator ROCKEFELLER. Senator Inouye touched on this, but I want to do it again. I'm interested in an explanation as to why hundreds of millions of dollars are now sitting in non-interest bear-

ing accounts, that are buried in a hole, rather than safely earning interest for the purposes of America's school children.

Some of us here in Congress went through a lot of effort late last year, and Senator Inouye indicated two of those folks, to pass emergency legislation to end such wasteful practices. This legislation granted the Universal Service Fund a 1-year exemption from the Antideficiency Act expressly for the purpose of permitting the FCC to act as a prudent steward of these public resources while we all addressed a more permanent solution.

I agree with Senator Inouye that a 2 or 3-year solution is insufficient because of the nature of Congress and the nature of the situation. The FCC, however, has done nothing to prudently invest these funds, these non-interest bearing account funds. And the delay is costing the public millions of dollars in forgone interest every month, is that not the case?

Mr. TALBOTT. That is correct. And we are working within USAC. In fact, next week the investment committee will be working with the board and trying to make changes there, but we have a letter that states that we are not to proceed with those types of investments that you just described and we have to get FCC to allow us to do that. It's a rule.

Senator ROCKEFELLER. My final question is to you, Mr. Schlick. What is the agency doing to restore the $550 million that was undercollected for the E-rate program in 2004?

Ms. GELB. At this time, we have not actively collected the $550 million. In part, the 1-year ADA exemption permitted us to not have to collect that immediately, so right now there is incomplete collection of that amount.

Senator ROCKEFELLER. I missed it. It was not collected?

Ms. GELB. It has not been recollected.

Senator ROCKEFELLER. It has not been recollected.

Ms. GELB. Yes.

Senator ROCKEFELLER. Thank you, Madam Chair.

Senator SNOWE. Thank you, Senator Rockefeller.

Senator Nelson.

STATEMENT OF HON. E. BENJAMIN NELSON, U.S. SENATOR FROM NEBRASKA

Senator BEN NELSON. Thank you, Madam Chairwoman. I must be a little bit confused here. Mr. Schlick, did the FCC ask for an opinion from OMB? I think you said no. So did OMB volunteer it about the Antideficiency Act application to this Fund?

Mr. SCHLICK. Senator, the FCC did ask for such an opinion and such an opinion has been provided. And it is the view of OMB, as well as now later of GAO, that the Antideficiency Act does apply.

Senator BEN NELSON. Now, is that standard practice on any other funds that you collect other funds? Are you custodian of any other funds that have to be collected and distributed?

Mr. SCHLICK. I don't know the answer to that question. There is nothing closely analogous to USF. I don't know the answer to that question.

Senator BEN NELSON. I'm a little confused, also, Ms. Gelb, about what is the—you used two collections. You said one, has been collected or it's collected again?

Mr. SCHLICK. That's the high cost and low income program within the Universal Service Fund. The operation of those programs within the Universal Service Fund is very different.

In the E-rate program, which is the one that had the problem last fall, USAC issues commitment letters which say to the recipients, this is what you will receive and how much you'll receive. In the high cost and low income programs, USAC does an initial projection quite far in advance of what the expected revenue needs for the program will be, then services are provided, then carriers pay into the Fund in their monthly contributions. And some days after that, USAC authorizes disbursements to the carriers.

So for two reasons, one being that there is no definite commitment to issue funds that's equivalent to the E-rate commitment letters, and also because the funding flows are requiring carriers to put money into the Fund before USAC pays out. For both of those reasons, we think that the high cost and low income Fund is now being operated in compliance under the Antideficiency Act. We did ask OMB for an opinion and we did advise USAC of our views last September.

Senator BEN NELSON. But the other opinion that they gave you that was referenced earlier, apparently an oral opinion, not even a written opinion?

Mr. SCHLICK. On the high cost, low income we have not received a written opinion from OMB. That is correct, Senator.

Senator BEN NELSON. Also, I'm a little concerned about the lack of investment. Mr. Talbott, you said you have a letter and the letter is from whom or from what agency?

Mr. TALBOTT. From the FCC, the Wireline Bureau.

Senator BEN NELSON. About not investing the money?

Mr. TALBOTT. No.

Senator BEN NELSON. Mr. Schlick, why would you tell them not to invest the money. Usually there is very little, if any, risk associated with it and I guess we did at one point invest the money in the long term, and had to liquidate that lost money because of the early liquidation. It seems to me that somewhere along the line, we would figure out how to get it straight.

Mr. SCHLICK. Senator, it's not a situation of investment or no investment. Under the Antideficiency Act and again under the OMB guidance implementing that, which is something called circular A–11, amounts that are in Federal Government securities are treated as available cash for purposes of the Antideficiency Act.

So when we issue a commitment letter if we have investments in Federal securities or literally as cash, those may be used to offset the commitment letter and therefore ensure compliance with the Antideficiency Act. If the moneys are invested in investments other than Federal securities, then the holding of those investments is itself viewed as an obligation of the government, so they may not be treated as available cash for purposes of offsetting the commitment letters.

The result of this is that, because under the law as it now stands on January 1, 2006 the Antideficiency Act will begin to apply to the Fund, we have told USAC that unless they obtain approval from us, they should not reallocate their portfolio out of investments that can be considered cash for purposes of offsetting obligations

under the Antideficiency Act into non-Federal investments that cannot have that status. And the reason for doing that is to prevent the kind of shock that we had last fall where there was not available cash in the Fund to offset the commitment letters.

Senator BEN NELSON. So if this amendment passes, will we be able to earn some money for the kids and people that are going to receive the benefits in Louisiana, Alaska and hopefully Nebraska, Arkansas and everywhere else?

Mr. SCHLICK. Yes, sir. I think it's a fair assumption that the interest will increase.

Senator BEN NELSON. There was another question relating to that. But I think I was trying to follow about you have not decided about investments yet. Is this the same Fund or another Fund that I'm not familiar with?

Ms. GELB. Sorry, I wasn't clear. The question Senator Rockefeller asked me was whether we had collected the $550 million that was not collected in 2004. In 2004 at the beginning of 2004 we worked with the USAC, and USAC agreed that there was substantial buildup of cash in the Universal Service Fund. And rather than continue to collect the full amounts needed in the contribution factor, that there would be a reduction in contribution factor and some of the existing cash surplus will be used instead.

This was—decision was made before the issue of the Antideficiency Act arose. The question was whether we had since collected that $550 million and the answer is no, we have not at this time collected that $550 million that we did not collect in 2004.

Senator BEN NELSON. I must be missing something here as well. Why would that be that we have not collected it?

Ms. GELB. I think largely because the 1-year exemption on the Antideficiency Act gave the Fund flexibility to use existing stores of cash to fund the program and we did not need the full amount of cash on hand in order to make all of the commitments.

Senator BEN NELSON. But if we did not pass the bill that I think we are going to pass, and antideficiency did apply, is it not possible that we would run out of money if we did not go ahead and collect what we have not recollected or whatever it is?

Ms. GELB. Yes. I think that if the exemption to the Antideficiency Act ends, then we would over time, I used the word re-collect, but collect the $550 million that was not collected previously in 2004.

Senator BEN NELSON. I'm not in favor of collecting a lot of money to hold in storage, but I am a little perplexed that a decision would be made not to collect what is due and owing with the expectation that one way or the other it's going to have to be paid out. Is this a decision the Commission made or is it staff driven?

Ms. GELB. It wasn't a decision that the Commission made. I guess the answer to your question is that there are cash reserves to pay out the funds. The issue arises when because there is a lag between when the money is committed and when it is disbursed, there will be money at that time necessary for disbursement. So if the Antideficiency Act exemption were to continue, what we would need would be the cash on hand at the time of disbursement, not necessarily the cash on hand at the time of commitment.

Senator BEN NELSON. Just one follow-up, Ms. Dalton. Did you reference that in your GAO report by any chance as you looked at this issue?

Ms. DALTON. I addressed it very briefly in my statement here today. What we were talking about is looking at the scenario that occurred in 2004 and the fact that the money wasn't available under the definition under the Antideficiency Act. However, Congress can specifically say that certain resources are budgetary resources and are applicable under the Antideficiency Act. For example, the investment funds could be considered as budgetary resources.

Currently under the Act, without special authorization, the money has to be in Treasury or in cash to be considered a budgetary resource. However, Congress can in fact say very specifically that certain investments or anticipated investments in this particular case should be considered as resources to balance out the commitments.

Senator BEN NELSON. But you still have to collect them?

Ms. DALTON. You do.

Senator SNOWE. Thank you, Senator Nelson. At this point, I'll take my turn with respect to questions. It truly is confounding to understand exactly why we are confronting the situation we are that really does have many consequences to the programs at stake.

And certainly, it comes without explanation or rationale from the Office of Management and Budget, and I certainly note the absence of OMB here today which would certainly have been helpful to have their perspective with respect to the impact of the direct and net effect of their directive. With respect to the E-rate program and the overall Universal Service Fund, Mr. Talbott, let me begin with you.

Have you had direct conversations with OMB with respect to the impact and the consequences of these actions prior to the exemption that was passed by Congress?

Mr. TALBOTT. No.

Senator SNOWE. Have you had any since?

Mr. TALBOTT. No. We have not.

Senator SNOWE. So no explanation at all?

Mr. TALBOTT. No. We administer the program, the FCC would communicate that to us I assume.

Senator SNOWE. Mr. Schlick, have you?

Mr. SCHLICK. The Commission was consulting on these problems with OMB in September of 2004 which was after USAC had stopped issuing commitment letters. So OMB was very much aware of the practical problem that we faced there and that's why we went to OMB and asked urgently for guidance. So they were aware.

Senator SNOWE. They were aware. Did they have any explicit explanations and responses to the problems that are associated with the implementation of their directive? I mean, realistic acknowledgment of the practical effect?

Mr. SCHLICK. I don't want to characterize their views, but I think it's fair to say that they were, of course, aware of the problem. They were viewing the issue as one of applying the statute, the Antideficiency Act and precedents under it. As were we. And that's

what was guiding us in reaching the same conclusion that GAO has now arrived at.

Senator SNOWE. Were they aware of the ruling that was made by OMB in 2000 with respect to these funds. It was totally contrary to their view obviously. Were they aware of that ruling?

Mr. SCHLICK. Yes, Senator. They were aware.

That of course arose under a different statute, the Miscellaneous Receipts Act which involves deposits into the Treasury rather than the Antideficiency Act.

Senator SNOWE. And that a court ruling that indicated that the USF funds were not a tax? They were not derived from tax revenues.

Mr. SCHLICK. I believe——

Senator SNOWE. It's not an appropriation.

Mr. SCHLICK. I believe those core decisions were part of our discussions.

Senator SNOWE. They were. And how did they recognize that? How did they acknowledge the core decision?

Mr. SCHLICK. Again, Senator, it's my own view now. That's really an issue that goes more toward the character of the Fund under the Miscellaneous Receipts Act and the Antideficiency Act. Under the Antideficiency Act, once OMB, GAO and CBO all treated the Universal Service Fund as an appropriation, it was that back in late 1990's that triggered the application of the Act.

Senator SNOWE. Well, obviously it is not an appropriation in the final analysis. It is not. I mean, you know, you can call it whatever you want—the reality is and that's the frustration with the directive that has been imposed by OMB—is not acknowledging the net practical effect of what has occurred here. Already the loss of dollars is hard to understand. I mean, obviously in withholding the commitments, and you have had to redeem bonds, did you not, Mr. Talbott, which cost more than $4 million to the Fund?

Mr. TALBOTT. As well as certainty to the program.

Senator SNOWE. You cannot put the funds in an interest bearing account, even a modest interest bearing account. You cannot do that. And what is the explanation for that? Does anybody have one? Mr. Schlick?

Mr. SCHLICK. Investments that are not Treasury securities. So interest can be earned although it has to be a Federal security. And the answer to that is that if you—under OMB guidance, the circular A–11—if you're purchasing an investment asset outside of the Treasury that's viewed as itself an obligation of government funds.

Senator ROCKEFELLER. Senator, I'm just stunned by that answer. I apologize. No loss of your time, Madam Chairwoman, but the OMB said that you could not do this because it could not work out financially. I'm confused as to your responsibilities and the FCC's and OMB's responsibilities.

Mr. SCHLICK. Certainly, Senator. OMB establishes executive branch-wide guidelines and one of those guidelines is that investments in non-Federal securities are, for purposes of the Antideficiency Act, generally treated as an obligation——

Senator ROCKEFELLER. Senator Nelson indicated they could be in government securities.

Mr. SCHLICK. Yes. And my understanding is that a portion are. But perhaps Dr. Talbott can correct me on that. My understanding is that a portion right now are in government securities earning interest.

Senator ROCKEFELLER. Thank you.

Senator SNOWE. Thank you, Senator Rockefeller. So what has been the net cost so far as a result of this OMB directive? Is it four million?

Mr. TALBOTT. We lost 4.6 million in the 3-day period when we got the order to liquidate by the end of the Fund year—because we were directed to do that on September 27th and of course, October 1 is the new fiscal year. So we had to liquidate. We lost 4.6 million there and then sequentially, we have lost for each quarter significant dollars that we have earned.

Senator SNOWE. That you could have earned.

Mr. TALBOTT. Could have earned.

Senator SNOWE. Have these issues been raised by OMB in the subsequent time in which this legislation was passed? I mean, have you raised this at all about the loss?

Mr. SCHLICK. No. I don't think we have. Under our direction from last December to USAC, they are to come to us first with a proposal to reallocate and this may be a good time to note that there is no prohibition on investments outside of Federal securities or cash. It's simply to protect ourselves against the Antideficiency Act, we have to have enough that's treated as cash there.

Senator SNOWE. You have to have a portion of your portfolio in cash?

Mr. SCHLICK. Enough to cover the commitment letters.

Senator SNOWE. Well, maybe they should apply the ADA to common sense because in the final analysis, I mean, it is not only creating an uncertainty to a program that has worked exceptionally well over time. Not to say it hasn't had problems. Not to say that the FCC doesn't have the authority to conduct audits which you are doing. Obviously there are issues, but for someone to arbitrarily impose this dictate that has created enormous consequences for the E-rate program and high cost and low income, which if we do not address this issue for the long term, a tremendous price and penalty will be imposed, as I understand it, to gather a surcharge, 21 percent, will be doubling?

Mr. TALBOTT. That is correct. USAC holds with maturities of less than 90 days and we have one long-term U.S. Treasury note that's being held. That is correct. It not only brings about uncertainty but also—it increases the contribution factor.

Senator SNOWE. It's going to double the surcharge in addition to what it has already been raised—from 8.7 to 10.9 percent. So all combined, you know, it wreaks havoc on this program. As a result of an arbitrary ruling without having the ability to sort through what we can do to plan even in the long term. I mean, that is the issue here is that it was summarily imposed without any opportunity to respond, to react, to try to address.

And so obviously, we have a temporary approach, but clearly it needs to have a permanent exemption so we can address the long term, address other issues regarding the Universal Service Fund because we know that there is declining revenue from long distance

carriers and so on, there are a number of issues. But this has clearly been an obstacle and impediment of a program that has served this country well and schools and libraries as we have heard from you, Ms. Abshire, as well.

We ought to look at the long term to figure it out. But to have to respond in this fashion it clearly does not make any sense. That's what I regret about it because we have to be able to sit here and rationally work out solutions to problems. And if somebody has a better idea on how to do it, fine.

But I think to simply impose this without recognizing—by the way, numerous other agencies that are exempt from the Antideficiency Act. It's not just the USF. There are other agencies. Highway Trust Fund, U.S. Information Agency, National Park Service, Fish and Wildlife Program, National Insurance Development Program, probably many more. It's not as if this has always applied and the uniqueness of this program should be recognized. Everybody wants to live by good government accounting principles obviously. So how can we solve the problem to get to the same net result without imposing or wreaking havoc on this valuable program.

Senator Sununu?

STATEMENT OF HON. JOHN E. SUNUNU,
U.S. SENATOR FROM NEW HAMPSHIRE

Senator SUNUNU. Thank you, Madam Chair. I have a decidedly different view and I would like to begin by encouraging my colleagues that if this bill passes, and I do hope it doesn't pass, that they show the same enthusiasm for allowing Americans to invest their payroll taxes in interest bearing private accounts that we have shown here for investing schools' and libraries' money in private interest bearing accounts.

My sense is, though, that that's not going to happen.

We'll find a reason for avoiding any kind of equivalency. I do think exempting the program from accounting statutes as a general premise is not sound policy. And when you have a program that has had the problems of the schools and libraries, I think that's particularly the case.

We have not, this is not a hearing about fraud, mismanagement, overcharging, misapplication of funds within the E-rate programs, overbuilding, gold plating some of these investments. That's not what this hearing is about. But we all know that these things have occurred in this program to a much greater extent than I think anyone in this room would like to see.

At this point in time, the fact that we are asking the program to operate under this existing accounting standard and that we are looking at Universal Service Fund reform, I think creates an opportunity to address all of these programs as we mark up a telecommunications bill. And I do not think we should just exempt this in perpetuity so that the funding can continue to come in and go out without the kind of oversight and inspection that we would expect of a very large program like this. It's $2.25 billion a year.

So I see this as an opportunity to force the issue to make us look at not just the E-rate but all of Universal Service Fund. In fact, we were told when this temporary extension was passed at the end

of last year that this was just the temporary extension because we were going to look at all of these issues in conjunction with the reform of the Universal Service Fund. And here we are just 3 months later and suddenly, everyone has forgotten about that commitment.

Second, we were told that the single most important reason for extending or providing the waiver of the Antideficiency Act was to avoid an increase in the contribution factor and lo and behold 2 months later the contribution factor is increased any ways.

So I have heard some practical arguments for extending the waiver, that is, arguments that it will make us operate a little bit differently, force us to find ways around the restrictions as a practical matter, but no real principaled argument for why this program should be treated so uniquely. And I think I'll at least begin there and perhaps it was in the testimony and it's something I may have missed. I'll be the first to admit. Mr. Talbott, though, why don't I begin with you. I think in your testimony you said that you support the application of accounting rules to USAC, just not this one.

What is it about the organization or the program that's so unique that you should be exempted from this standard?

Mr. TALBOTT. Let me say that under GovGAAP accounting which we are moving to, we are doing that. We will be under GovGAAP accounting. What it is is whether or not the commitments or obligations are not, and that is the point where this piece of legislation solves the problem for us.

Senator SUNUNU. I recognize the fact that it solves the problem for you. But what is it about you that's so unique that it should be exempted from this?

Mr. TALBOTT. I think it's the impact on the schools and libraries. If there is no ADA exemption, there will be uncertainty. The poorer schools get hit first. The budget process is impacted. Schools may have to discontinue services which actually happened previously.

Senator SUNUNU. Are you suggesting that you won't be able to spend $2.25 billion in schools and libraries in the coming funding year.

Mr. TALBOTT. I have to have it on hand.

Senator SUNUNU. But at the end of the year, will you spend $2.25 billion on libraries and student issues?

Mr. TALBOTT. Absolutely.

Senator SUNUNU. The year after that?

Mr. TALBOTT. I have to have it in the bank.

Senator SUNUNU. And the year after that?

Mr. TALBOTT. Yes.

Senator SUNUNU. And the year after that assuming nothing changes?

Mr. TALBOTT. Yes.

Senator SUNUNU. I appreciate the challenge of dealing with the restraints and I certainly appreciate the degree to which this has provided the benefits to school districts represented here, but the fact that we have spent money and made a different standard does not in an of itself justify spending $2.25 billion.

I could have $2.25 billion and waste half of it and make a heck of a difference with the other half, but that doesn't necessarily mean it's a well run, well administered program. And I think a lot

of efforts have been made to do better, to allocate these moneys better and I appreciate the participation of the school districts for whom it has made a difference.

But I think it makes it all the more important that we look at reform in the context of Universal Service, which is another $4 or $6 billion we provide to districts just like Ms. Abshire's, those with a high cost profile and those with a low-income profile and I would very much like to see them all considered together.

Mr. Hamlen, one question for you, you're a provider, correct?

Mr. HAMLEN. Yes.

Senator SUNUNU. You're, I'm sure, very unique. My guess is we cannot find an operation in New Hampshire that looks anything like yours and that's sort of a tribute to you. But I think the question I have applies not just to you but to others.

Is it your contention, let's say, hypothetically the entire schools and libraries program went away. Is it your contention that you would not be able or willing to offer any discount to any school or library that came to you for service? You'd be forced to charge them the same rate that you charge any business or consumer?

Mr. HAMLEN. Yes. We would. The schools and libraries, the health care providers receive a discount. I'll give you a good example. We just won a contract to, under the rural health care program to provide telemedicine services to 47 clinics that do not have telemedicine services today.

Now, we need to build out a network that will provide that service which will cost a substantial amount, takes a long time to do that. What is driving the buildout of the network is the rural health care program and the funding that is available to the health care provider to be able to purchase that service, and enable the telemedicine services at those clinics. So these networks that we have in rural high cost areas are dependent on the USF support because they cannot be built.

Senator SUNUNU. Thank you. I see my time is up. Thank you, Madam Chairwoman.

Senator SNOWE. Senator Pryor?

STATEMENT OF HON. MARK L. PRYOR,
U.S. SENATOR FROM ARKANSAS

Senator PRYOR. Thank you, Madam Chair. I'd like to follow up on a couple of my colleagues' questions here, first with regard to some of Senator Rockefeller's questioning about the watering down of the commitment letter that you all answered. I believe that was you, Mr. Talbott, that answered that. But I'd like to hear if I could from Ms. Abshire on that. I'd like to know the practical ramifications of that.

Ms. ABSHIRE. Yes, Senator. When that first was considered last year, it was met with dismay by people in my position.

Senator PRYOR. Why is that?

Ms. ABSHIRE. In order for me to be able to seek budget funds for a non-discounted portion, I have to have a commitment to be able to give to my board that tells them that we are contracting only for the non-discounted portions. And so when that first came up, there are many of us around the country that explored that and spoke to legal counsel in our districts.

And we were informed that unless we had a firm funding commitment that enabled us to go to that board and say that the discounted portion would be covered by E-rate, and our board needed to approve the non-discounted portion, that we were really left in a very unclear area, and that we were very reluctant to do so. We did explore that when that concept was put forth last year.

Senator PRYOR. As I understand it, I think it's consistent with what Mr. Talbott said is that in effect the watering down makes it basically unworkable for you. Is that fair to say?

Ms. ABSHIRE. Yes, sir. That's fair.

Senator PRYOR. Mr. Talbott, in connection with Senator Sununu's questions a few moments ago, basically as I understand your answers, you said you needed the cash on hand before you could distribute funds, is that right?

Mr. TALBOTT. Right now. Not right now because the Antideficiency Act—because of the exemption we got. We would have to have those funds and I did misspeak when I supported the change because we administer the program. And through my enthusiasm to get dollars out the door to applicants and vendors, I overstated the support because we are not in a position to say support. Not support. I just wanted to clarify that for the record.

Senator PRYOR. In other words, you were talking about the possible need for cash on hand that you actually had to have the money in the account before you could distribute it?

Mr. TALBOTT. Had to have the money in the account before we could distribute it. We needed the money there in the accounts at the time the obligation was made, the cash has to be on hand.

Senator PRYOR. And I guess what Senator Sununu was asking was, what is the problem with that? Why is that a problem?

Mr. TALBOTT. It's a problem because we have with the cash, when we say we have $3 billion on hand, that's committed but it's committed out over a period of time. So we would have to raise that to $6 billion in order to take care of all of the obligations that we have, rather than paying it out as it comes in.

Senator PRYOR. And I guess, Ms. Abshire, maybe this is best for you, is timing important with these requests? I mean, are these time sensitive requests?

Ms. ABSHIRE. Well, they are really critical in terms of educational opportunities. One of the things that was such a derailing piece of our planning was when we had planned the infrastructure upgrades and put educational programs in place to support the upgrades and we were not approved.

The real key is that 471 process that has all the due diligence involved in it to make sure that we have properly contracted services, that they are eligible. And that that pristine 471 process gives us the approval, and then allows me to move forward with engineering work and deployment across a very large and diverse district, and put education programs in place that are going to meet educational needs.

So the timing is everything in planning because that's what we have been asked to do is to plan wisely, strategically use resources and deploy them for increased educational opportunities. Yes, sir.

Senator PRYOR. Let's talk about the educational needs because now we have No Child Left Behind. Did the E-rate program, does

it help your schools, does it help schools make the annual yearly progress requirement in No Child Left Behind?

Ms. ABSHIRE. For us it has, yes, sir. We have been able to—again, it's the strategy of using all the different resources that we are provided to be able to have the connectivity. And then we have used other funds to train teachers and administrators how to use that connectivity. That's been the key piece.

So that students then, when they are engaged in these types of activities in classrooms using the connections and using the vast resources on the worldwide web, that they are used for highly skilled educational endeavors.

And our communities, our business and industry and folks that are involved in economic development tell us over and over again, we need students that leave our schools that know how to work in these collaborative environments and that are really information literate. And if we don't have the connectivity to model these types of lessons and engage students in these types of activities, we will provide substandard opportunities for them.

Senator PRYOR. Mr. Schlick, let me see if I can change gears and ask you again, if I may, and again touching on something Senator Sununu mentioned a few moments ago or he basically talked about some misuse of funds or he used the term gold plating. I'm concerned about fraud and I think you mentioned that as well. In your opinion, does subjecting USF to the ADA, does that help prevent fraud?

Mr. SCHLICK. No. The waste, fraud and abuse issue is a different one than this question.

Senator PRYOR. So in other words, it's not connected, the two are not connected in your view?

Mr. SCHLICK. That is correct.

Senator PRYOR. I guess that's a little bit counterintuitive to me. Could you walk through that, please?

Mr. SCHLICK. The waste, fraud and abuse issues that we are acting very aggressively against concerned the requests for money and the uses of money. That's essentially the relationship between USAC as the administrator and the recipients of the funds—the schools and libraries. And we are talking about providers that are providing their services.

If it would help, I can give some examples of the kinds of things we are doing to address those problems. Five things in particular. We are working very hard with the Department of Justice to have aggressive civil and criminal enforcement against those who abuse the program, to enforce the laws and protect the program.

We have expanded our own FCC audit program for the E-rate program under the direction of the FCC Inspector General. We have added additional FCC staff to oversee the program, and I know that's directly responsive to one of the recommendations of GAO in their report that was released last March.

We are working now with OMB to develop performance measures for the E-rate program to measure the effectiveness of the dollars we are spending. Again, that's directly responsive to one of GAO's recommendations and we are providing USAC additional guidance concerning the operational issues of the program and details of the implementation we think can protect the program funds.

Senator PRYOR. Thank you, Madam Chair.

Senator SNOWE. Senator Rockefeller?

Senator ROCKEFELLER. Thank you, Madam Chair. I just want to follow on a little bit of what Senator Pryor was questioning. I'm going to wander a bit in making this point which is very unusual for me.

I joined the Peace Corps when it was first started up in 1961 and 1962. And I think most people would agree these days that one of the great things that's happening in this country has been the United States Peace Corps, what it's done for our country's understanding of ourselves and our understanding of ourselves as individuals.

I cannot possibly underestimate to you, however, the amount of waste, not necessarily fraud and abuse because that was not the intention, but I was at that point the director of the Peace Corps program in the Philippines which was the largest one. Had 400 teachers going to 400 Philippine schools with the exception of the fact that when the 400 got there, there are about 100 schools missing.

Now, one can draw conclusions from that philosophically. One can say, well, there goes the U.S. Government messing up again. Or one can say, well, there is an entirely new program we were sitting around on the floor basically with a lot of paper trying to figure out what to do to startup something that should never have taken place in this country before, and it did not start easily. It did not start easily and we made mistakes and we continue to make mistakes.

I can take you through 35 different mistakes that we have made that were corrected as the program matured. For example, we used to say the rule used to be that anybody, in order—everybody went to training camp. It was the Philippines. It was out in Hawaii, which was similar in some respects to what they would expect to live in.

And the rule then was you have to show that you're—you have to show that you cannot do the job in order not to qualify to be a Peace Corps volunteer. Very low disqualification rates. All kinds of people were getting in all kinds of trouble, extreme moments of extreme happy, wrong people marrying the wrong people. All kinds of bad things.

So we just said you have to show that you can handle being a Peace Corps volunteer, or else you'll be eliminated from the program which then eliminated 44 percent of all trainees. Those are lessons learned from the program that is just beginning, these two that I reflect on having in the first two years.

You know, Medicare, boy, I'd love to do a study on waste, fraud and abuse on Medicare, and I say this with all due respect to Senator Sununu, who I greatly respect for many reasons, that there it's systemic. There are CDs that are sent around to physicians saying how you could take advantage of Medicare rates and get more for your money, et cetera. I think that would be a little harder to do these days but nevertheless, that was endemic.

And yes, it is true I can remember as can Senator Snowe when the first head of USAC had to resign because the Congress in our infinite wisdom and then carried by some real examples where

there was vendor waste, fraud and abuse, et cetera. These stories caught on and this poor fellow who was absolutely terrific had to resign. He just flat-out had to resign and he was very good at doing his best. And you remember that, and it was a tragic circumstance.

I would then say that the coverage of classrooms has gone from in 1996 and 1997, probably when the program began or maybe 1998 when it was actually put into effect, from 14 percent of classrooms to 93 percent of classrooms, in just over 6 or 7 years. This is absolutely phenomenal.

California started off with 15 percent of their classrooms covered and they are now up to—Houston had zero through wireless, they are now up to 100 percent. And so the story on the good side is so much better than virtually any other government program that I can even think of. I'm forced to look at the public good as well as the problems.

You, Mr. Schlick, have detailed and I was going to ask you this question, some of the things that the FCC and USAC and you have made rule changes. And you are doing things, both of you, to make major changes that are ongoing. They have been ongoing. They continue to be ongoing. When your funding continues to be terminated, I would think you would tend to ongo with it.

Then I would make the final point, Madam Chair, that waste, fraud and abuse is not accomplished or found in the U.S. Government. The money sits in the government and then it's sent out to the schools. And sure, there was a period of time and there may still be like some examples of where schools that have not handled this before, little schools in rural parts of Alaska or Louisiana or West Virginia, where they are not used to handling the paperwork, where it's like you are going to get a grant from the government you better have somebody that can write a grant. And nobody ever does in rural communities.

And the same thing when you're starting up a program. You make a mistake or a vendor takes advantage of the fact that you cannot do it properly, and those things do occur. Nobody is denying that. But if you're correcting them virtually all of these areas are now covered, and the benefit to the United States is I think immeasurable. And once again, as you said, Mr. Schlick, that the nonpassage of the ADA or the passage of the ADA, either way, would have absolutely nothing to do with waste, fraud and abuse.

Mr. SCHLICK. That is correct, Senator. The Antideficiency Act is essentially a budget mechanism, the purpose of which is to prevent Federal agencies from coming to Congress in need of additional money because they have overobligated. Here, of course, contributions are made by the industry rather than by direct congressional appropriation, and that's the thrust of the Act, which is different from the focus on how the moneys are used once they are made available.

Senator ROCKEFELLER. Thank you, Madam Chair.

Senator SNOWE. Thank you, Senator Rockefeller.

Just to followup on a couple of issues because I think it is important to clarify to some extent, and I know that it's somewhat understood. On the issue of the appropriations because it's a big difference between an appropriation and getting periodically throughout the year the revenues from a surcharge. Is not that the way

it is funded, Mr. Talbott, in this instance, the Universal Service Fund? It's the surcharges that are applied?

Mr. TALBOTT. Yes.

Senator SNOWE. So you don't have the funds in hand consistently throughout the year in order to honor those letter of commitments, is that correct?

Mr. TALBOTT. They are ongoing.

Senator SNOWE. The courts have recognized it's a unique way of financing the programs so it's not dependent like other programs on a one-time appropriation for the full cost of the program. It's ongoing throughout the year, depending on how the surcharges are collected, is that correct?

Mr. TALBOTT. That is correct.

Senator SNOWE. That answers the problem. Now the question is why OMB's directive has wreaked such havoc because it's making the same, drawing the same correlation between a one-time appropriation and ongoing surcharge. You're not going to have all the money for those commitments there at any one time but that you always have the money for that purpose at the time in which you're honoring the commitments, is that correct?

Mr. TALBOTT. That is correct. Through the quarterly contribution.

Senator SNOWE. Right. So it seems to me that it just doesn't make practical sense to be requiring the Fund to adhere to the same standard as those agencies that receive a one-time appropriation. Not to mention the fact that it's not a tax revenue. I mean, it's not considered as taxes at least in the court mandates. That's OMB originally. I understand it's a different administration but the fact of the matter is it did apply it.

The question is what is the net result? And that's the issue here because ultimately it's had a net effect of placing enormous uncertainty in the program. It has cost the program a great deal of money and yes, we are to resolve the issues for the long term, but there is a way in which to do all this.

It's not as if the FCC does not have broad legal authority—and I'd like to follow that, Mr. Schlick, about what you are doing to establish orderly audits, to make sure we are not encountering any potential abuses. And I know, Ms. Dalton, you have done a very good job in your analysis and as Senator Rockefeller indicated, where there are problems, many of them have been resolved.

And I think it's as a result of the FCC's high profile cases in trying to ferret out the abuses is what got the attention of OMB. Mr. Schlick, do you have broad authority under the law, under the Telecommunications Act of 1996, to administer the USF and do anything you need to do in order to be sure that these moneys are being appropriately administered?

Mr. SCHLICK. We do have broad authority and to that I'd add the statutes that the Department of Justice can enforce, antitrust and other, to bring actions against those who would abuse the program.

Senator SNOWE. Are you using them?

Mr. SCHLICK. We are attempting to. I have outlined some of the ways and let me just highlight those again. We are working on criminal enforcement in many cases through the Department of Justice, as well as civil. We are recovering funds and securing

criminal prosecutions. We have expanded our audit program. We have an expansive audit program now, which Ms. Gelb can give you further details if you're interested.

We have extended additional resources to oversight of the program, performance measurements to be sure that the program is doing what it is intended to do, and attempting to work with USAC to develop procedures that are as tight as possible.

Mr. TALBOTT. We cooperate with USAC, with law enforcement and have a close working relationship with the FCC in this area. In fact, working with the FCC–IG, we are beginning to launch a program for 700 beneficiary audits across all four mechanisms. And I think the work that we are doing cooperatively is addressing this issue, and we will continue to address the issue because we want to solve the problem.

Senator SNOWE. If this—if the ADA is back to the full USF and I gather you are thinking it would once it expires at the end of this year, would you have to suspend the high cost program?

Mr. TALBOTT. We would have to raise——

Senator SNOWE. Or double——

Mr. TALBOTT. Raise the contribution factor or suspend it.

Senator SNOWE. 21, 25 percent?

Mr. TALBOTT. 21, 22 percent based on today's contribution.

Senator SNOWE. What would be the net effect of that?

Mr. TALBOTT. Significant.

Mr. SCHLICK. Senator Snowe, I would expect that USAC would follow our direction on that. And the direction we gave them in September is the way the Fund is now being operated and is consistent with the Antideficiency Act. So based on our view at this point, we don't think that those sorts of modifications will be necessary.

Senator SNOWE. Mr. Talbott?

Mr. TALBOTT. We have that question in writing and we are still waiting for a result on that.

Senator SNOWE. Question you are providing to whom?

Mr. TALBOTT. To the FCC.

Senator SNOWE. So you're not convinced that this—you want to see their explanation?

Mr. TALBOTT. I'm not convinced at this point. Just need clarification.

Senator SNOWE. That's important. We know that OMB has not responded, is that correct? Now, how does OMB feel about that? Do they feel that it consistently applies to the ADA at this point?

Mr. SCHLICK. Yes. The Antideficiency Act applies.

Senator SNOWE. Do they think that it does? Do they think currently the high cost low cost program does?

Mr. SCHLICK. You are correct. We are awaiting OMB's view on that.

Senator SNOWE. So you don't know whether or not they agreed with your assessment?

Mr. SCHLICK. Yes. The response that Mr.——

Mr. TALBOTT. It refers to what was provided by the FCC on October 2004 to the USF.

Senator SNOWE. Ms. Dalton, in your report, I'd be interested, Congress could give the FCC broad authority back in the Tele-

communications Act in 1996 when we were drafting all this legislation to oversee the Universal Service Fund. You understand all these issues obviously.

I think the question is, is there another way, I mean does the ADA really fit in this case. I mean, in terms of being applicable to the exigencies of this program, when you consider how they get their funds, and whether or not it takes either a period of adjustment for several years or whatever the case may be, I really don't know, but what I do know is the net effect of what has occurred.

And so again, it gets back to common sense and practicality here. Not that we all disagree with the ultimate goal, but the question is, can you achieve that goal in another way. And you know, all I can say is somebody once said government does more harm inadvertently than it does by design. And so I think that's the bottom line of what has happened here with respect to this program and the directive from OMB.

Ms. DALTON. With ADA, basically it's saying that you have to have the resources available for the obligations that you're committing to. But I think when you look at it, it was designed—and the way it's interpreted at this point—for your typical government program. And so it doesn't take into account in many ways the uniqueness of this program in terms of the resources it has available and how the money comes into the program, as well as how it goes out. So there may in fact be some other alternatives on how to address this issue.

For example, using a targeted approach, the anticipated revenues coming into the program could be included as a budgetary resource. Similarly, on the other side in the commitments, USAC has had the experience over the last 7 years of sending out commitment letters, but obviously not all of those commitments are realized over the course of time. There may be 20 percent unexpended. I don't know exactly what the number is that the schools and libraries have not been able to use because they have had savings out there.

So there is a way on the commitment side that hopefully with some guidance from Congress, they may be able to say that we are committing $100 million, but we recognize from experience that only $80 million of that will actually be spent.

Senator SNOWE. Mr. Talbott, how would you respond to that? Would you respond to what Ms. Dalton just said?

Mr. TALBOTT. FCC has allowed those funds to be rolled over into the next year. If we have unused funds this year, they apply to the next year. So we are only a year behind with those funds.

Senator SNOWE. You are only a year behind, is that what you're saying?

Mr. TALBOTT. Yes. Behind.

Senator SNOWE. Did you want, Ms. Gelb——

Ms. GELB. There is a rollover rule that we created a couple of years ago. If the question is every year the $2.2 billion being spent, I think the answer is no. But there is an increase potentially because of this rollover procedure that we have.

Senator SNOWE. So the commitment is they may be higher, they may not go up to the $2.2 billion. I see. But the commitments are greater than that?

Mr. TALBOTT. Commitments are there. Then you adjust it.

Senator SNOWE. I appreciate that. Senator Sununu?

Senator SUNUNU. Thank you. Couple of points of clarification. First, it's my opinion or my concern is much less for rural districts cited by Senator Rockefeller, rural Alaska, rural Maine for that matter, much less with their actions to effectively request and allocate and apply this money than it is for, say, large urban districts and suburban districts that don't necessarily need the resources as much as those rural districts.

So I just want to be clear about where my concerns lie. I want to make sure all of them are using it efficiently, but I don't think anywhere in my remarks I suggested that I thought rural districts did a poorer job than others in performing in the use of these funds.

Second, with regard to Mr. Schlick, you made the observation that the Antideficiency Act—in and of itself, applying the Antideficiency Act did not address the issues of waste, fraud and abuse. And I think that point is technically correct and from your position, but from a practical matter let us all be honest about what is happening here. We have legislation that proponents of the E-rate program in its current form want to see passed.

We see concerns for reform that I and many others I would assume have. We see discussion about a telecommunications bill and Universal Service reform that is also taking place. And what is really the question is if the proponents want to exempt this program from the ADA, then we have an opportunity to force and require additional reforms to move perhaps in conjunction with that legislation, or as part of a telecommunications bill.

So exemption from the ADA in and of itself may not address these reform issues, but from a practical matter they are absolutely, I think, should be on the table, part of this discussion and considered as part of this discussion because proponents of the program are obviously pursuing an exemption from these accounting standards.

That's why I think it's important. But in and of itself, the application of the ADA or lack of application, is not going to address fraud and abuse, but this is an opportunity to make sure the program works as well as it possibly can.

Mr. Talbott, a couple of final technical questions. I think you were asked before, but I did not hear the specific response. How much do you have on hand, does the corporation have on hand now?

Mr. TALBOTT. Right about $3 billion. About $3.1 billion.

Senator SUNUNU. How much of that has been committed? I have to ask that question.

Mr. TALBOTT. $2.5 billion is committed.

Senator SUNUNU. So you have already committed more than you are allowed to spend?

Mr. TALBOTT. We are going back—that's how we get to that number.

Senator SUNUNU. How much of that previous—is for previous funding years and how much is for current funding years?

Mr. TALBOTT. I will get you that information. I do not have those numbers with me.

Senator SUNUNU. Nobody back there has that number? It actually seems like a both simple and important number.

Mr. TALBOTT. We will get it to you.

Senator SNOWE. Thank you all very much for being here this afternoon not to resolve these issues today, but hopefully we will resolve it this year, so we can provide it and it's essential. And also address the other issues that have been discussed. This hearing is adjourned.

(Whereupon, at 3:55 p.m., the hearing was adjourned.)

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