2

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

February 25, 2005

The Honorable Richard B. Cheney
Vice President of the United States
276 Eisenhower Executive Office Building
1650 Pennsylvania Avenue, N.W.
Washington, D.C. 20501

Dear Mr. Vice President:

Enclosed is a letter to the President reporting a violation of sections 1341 and 1517(a) of Title 31, United States Code. This Antideficiency Act violation report is required by sections 1351 and 1517(b) of Title 31, United States Code.

Sincerely,

Michael Powell
Chairman

Enclosure

EXHIBIT
A

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

February 25, 2005

The President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

After consultation by the Federal Communications Commission (FCC) with the Office of Management and Budget (OMB), I am writing this letter, as required by sections 1351 and 1517(b) of Title 31 of the United States Code, 31 U.S.C. §§ 1351, 1517(b), to report a deficiency in one of the FCC's accounts.

A violation of sections 1341(a) and 1517(a) occurred in account 27x5183, Universal Service Fund, Federal Communications Commission. The account represents the Universal Service Fund programs (USF or Fund) and Telecommunications Relay Services program (TRS) of the FCC, authorized under sections 254 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 254, 225. The violation occurred principally in connection with the USF programs prior to the close of FY 2004. Both USF and TRS are funded by mandatory, monthly contributions from interstate communications common carriers at levels set by the FCC. The violation occurred because obligations from the Fund exceeded the total amount of budgetary resources in the Fund and the initial FY 2004 apportionment for the Fund.

As of September 8, 2004, the FCC determined that account 27x5183 was deficient. To estimate the amount of the deficiency, the Universal Service Administrative Company (USAC), which is a not-for-profit corporation that administers the USF programs for the FCC, reported that $3.6 billion in Fund balances were invested in non-Federal instruments as of September 24, 2004. Unlike investment in Federal securities, which is counted as a budgetary resource available for obligation under OMB guidelines, investment in non-Federal securities is treated as an obligation of budgetary resources and an outlay. The Fund's investments in these securities were booked as available balances. In addition, long before payments were made, USAC issued Funding Commitment Decision Letters (FCDLs) to E-rate and Rural Health Care program beneficiaries, notifying them of their awards for a given year. Since the inception of the USF programs, USAC had not recorded these obligations in the Schools and Libraries (E-rate) and Rural Health Care programs until just before payments were disbursed. USAC represents that such treatment was consistent with Generally Accepted Accounting Principles (GAAP) for non-profit organizations, which, under the Commission's rules, applied to USF until September 30, 2004. After consulting with OMB, the FCC determined that FCDLs constitute obligations. Commission staff formally communicated that determination to USAC on September 27, 2004. Pursuant to that determination, roughly $3 billion in outstanding FCDLs from funding years 1998-2004 were booked as obligations for the first time in September 2004.

The amount of deficiency, or the total amount of outstanding program obligations in excess of budgetary resources on September 24, 2004, is estimated at $3.5 billion, based on USAC's available records. The precise amount of the violation for FY 2004 cannot be determined because under then-applicable Commission regulations USAC maintained the records of the USF under GAAP for not-for-profit organizations, not under Governmental Generally Acceptable Accounting Principles (Gov/GAAP). The Commission ordered USAC to maintain USF records under Gov/GAAP effective October 1, 2004. Nevertheless, because USAC maintained the records under GAAP during the period at issue, USAC cannot provide the FCC with detailed, daily documentation of individual USF transactions associated with the USF's investments and commitments. Additionally, as of September 29, 2004, the accumulation of Fund investment transactions throughout FY 2004 and the now booked commitments resulted in total obligations in excess of the initial FY 2004 apportionment for the Fund.

The five commissioners of the FCC are the officers responsible for the Commission's rules and policies, while USAC is the entity responsible for administering the Fund under the oversight of the FCC. In October 2003, the Commission directed that USAC keep its accounts for the Fund in accordance with federal accounting standards to improve Fund management and financial controls effective October 1, 2004. In the course of converting USAC's books of account from GAAP for not-for-profit organizations to federal government standards, failures in the system that caused these problems were discovered and steps have been taken to address them. We have no evidence of any willful or knowing violation of any law on the part of the Commission or any Commission employee.

In August 2004, because of concerns about possible violations of the Antideficiency Act, USAC suspended issuance of all FCDLs. On September 27, 2004, after consultation with OMB, the Commission instructed USAC that liquidation of non-Federal investments would be necessary to cover the Fund's obligations including its FCDLs. USAC liquidated the securities, and the deficiency was cured by September 30, 2004. Further, the FCC requested a $10.5 billion reapportionment to reflect newly available resources from the sale of non-federal investments during the course of the year and to show the newly booked obligations. The reapportionment reflected that there were sufficient resources to cover existing obligations. The reapportionment did not reflect an actual shortfall in available cash. OMB approved the reapportionment on September 30, 2004. As of the end of fiscal year 2004, it is estimated that the Universal Service Fund had $98 million in available budgetary resources. Further, because outlays from the Fund are paid from mandatory carrier contributions that the FCC has authority to increase in order to meet the Fund's obligations, no risk arose that any deficiency in the Fund's operation might require supplemental appropriations from the general fund of the Treasury.

The FCC has strengthened its guidance for USAC on financial management systems and investment policies to ensure that adequate resources for the program are always available and accurately measurable. The FCC is reviewing fund controls to ensure that these are in place at USAC. The FCC expects to be able to certify budgetary accounting for USF when USAC has fully implemented Gov/GAAP. The FCC has taken these additional measures in an effort to prevent recurrence of the same violation.

Thus, we are hopeful that when the temporary exemption from the Antideficiency Act in Public Law 108-494 expires at the end of this calendar year, the USF budgeting, planning, recording, and reporting practices will comply with all legal requirements and meet the highest standards of federal financial management. The FCC does, however, estimate that under USAC's current plans, USF obligations will exceed budgetary resources during FY 2005 by approximately $200 million. Under Public Law 108-494, these obligations would not be considered a deficiency required to be reported.

Identical reports will be submitted to the presiding officer of each House of Congress.

Sincerely,

Michael K. Powell
Chairman