information to the Commission's laboratory:

(i) Laboratory name, location of test site(s), mailing address and contact information;

(ii) Name of accrediting organization;

(iii) Date of expiration of accreditation;

(iv) Designation number;

(v) FCC Registration Number (FRN);

(vi) A statement as to whether or not the laboratory performs testing on a contract basis;

(vii) For laboratories outside the United States, the name of the mutual recognition agreement or arrangement under which the accreditation of the laboratory is recognized.

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–20906 Filed 9–16–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45, 97–21, and 02–6; FCC 04–181]

Federal-State Joint Board on Universal Service; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.; and Schools and Libraries Universal Service Support Mechanism.

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: In this document, the Commission addresses pending petitions for reconsideration filed by Sprint Corporation, United States Telecom Association, Inc., and MCI Worldcom, Inc. The Commission agrees with petitioners that the Commission should seek recovery from schools and libraries in certain instances, and therefore grants their petitions in part. The Commission resolves the limited question raised in the *Second Further Notice of Proposed Rulemaking (Second FNPRM)* in CC Docket No. 02–06 of from whom the Commission will seek recovery of schools and libraries funds disbursed in violation of the statute or a rule. The Commission modifies its requirements in this area so that recovery will be sought from whichever party or parties has committed the statutory or rule violation.

DATES: Effective September 17, 2004.

FOR FURTHER INFORMATION CONTACT: Jennifer Schneider, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration and Fourth Report and Order in CC Docket Nos. 96–45, 97–21, and 02–6 released on July 30, 2004. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In this order, we address pending petitions for reconsideration filed by Sprint Corporation (Sprint), United States Telecom Association, Inc. (USTA), and MCI Worldcom, Inc. (MCI). Petitioners seek reconsideration of an order which, among other things, directed the Universal Service Administrative Company (Administrator or USAC) to cancel any funding commitments under the schools and libraries support mechanism that were made in violation of the Communications Act, as amended (the Act), and to recover from the service providers any funds that had already been distributed pursuant to an unlawful funding decision. For the reasons discussed below, we agree with petitioners that we should seek recovery from schools and libraries in certain instances, and therefore grant their petitions in part. We also resolve the limited question raised in the *Second FNPRM*, 69 FR 6181, February 10, 2004, in CC Docket No. 02–06 of from whom we will seek recovery of schools and libraries funds disbursed in violation of the statute or a rule. We modify our requirements in this area so that recovery is directed at whichever party or parties has committed the statutory or rule violation.

II. Discussion

2. Based on the more fully developed record now before us, we conclude that recovery actions should be directed to the party or parties that committed the rule or statutory violation in question. We do so recognizing that in many instances, this will likely be the school or library, rather than the service provider. We thus grant the petitions for reconsideration in part, and deny the petitions to the extent they argue that recovery should always be directed at the school or library. This revised recovery approach shall apply on a going forward basis to all matters for which USAC has not yet issued a demand letter as of the effective date of this order, and to all recovery actions currently under appeal to either USAC or this agency. We do not intend to modify any recovery action in which the service provider has satisfied the outstanding obligation or for which USAC has already issued an initial demand letter.

3. We now recognize that the beneficiary in many situations is the party in the best position to ensure compliance with the statute and our schools and libraries support mechanism rules. At the time the Commission adopted the *Commitment Adjustment Order,* USAC had been distributing funds through the schools and libraries mechanism for only one year. The Commission and USAC then faced a limited range of situations in which statutory or rule violations had occurred requiring the recovery of funds. Thus, the Commission lacked a full appreciation for the wide variety of situations that could give rise to recovery actions in which the school or library would be the party most culpable. The school or library is the entity that undertakes the various necessary steps in the application process, and receives the direct benefit of any services rendered. The school or library submits to USAC a completed FCC Form 470, setting forth its technological needs and the services for which it seeks discounts. The school or library is required to comply with the Commission's competitive bidding requirements as set forth in §§ 54.504 and 54.511(a) of our rules and related orders. The school or library is the entity that submits FCC Form 471, notifying the Administrator of the services that have been ordered, the service providers with whom it has entered into agreements, and an estimate of the funds needed to cover the discounts to be provided on eligible services.

4. To be sure, service providers have various obligations under the statute and our rules as well. Among other things, the service provider is the entity that provides the supported service, and as such, must provide the services approved for funding within the relevant funding year. The service provider is required under our rules to provide beneficiaries a choice of payment method, and, when the beneficiary has made full payment for services, to remit discount amounts to the beneficiary within twenty days of receipt of the reimbursement check. But in many situations, the service provider simply is not in a position to ensure that all applicable statutory and regulatory requirements have been met. Indeed, in many instances, a service provider may

well be totally unaware of any violation. In such cases, we are now convinced that it is both unrealistic and inequitable to seek recovery solely from the service provider.

5. We conclude that recovering disbursed funds from the party or parties that violated the statute or a Commission rule will further our goals of minimizing waste, fraud and abuse in the schools and libraries support mechanism. We are concerned that the current recovery requirements that are subject to petitions for reconsideration do not place sufficient incentive on beneficiaries to ensure compliance with all relevant statutory requirements and our implementing rules. Indeed, some parties note that under our current recovery procedures beneficiaries often do not directly bear the consequence of any failure to comply with our rules. We conclude that directing recovery actions to beneficiaries in those situations where the beneficiary bears responsibility for the rule or statutory violation will promote greater accountability and care on the part of such beneficiaries.

6. We believe that recovering disbursed funds from the party or parties that violated the statute or rule sufficiently addresses USTA's concern that our prior holding in the *Commitment Adjustment Order* was inequitable. We note, however, that contrary to USTA's claim that we had no rules providing the recovery of funds disbursed in violation of the statute or a rule, our debt collection rules have been in place for some time. And, as explained below, those rules are applicable to the situation presented here.

7. We direct USAC to make the determination, in the first instance, to whom recovery should be directed in individual cases. In determining to which party recovery should be directed, USAC shall consider which party was in a better position to prevent the statutory or rule violation, and which party committed the act or omission that forms the basis for the statutory or rule violation. For instance, the school or library is likely to be the entity that commits an act or omission that violates our competitive bidding requirements, our requirement to have necessary resources to make use of the supported services, the obligation to calculate properly the discount rate, and the obligation to pay the appropriate non-discounted share. On the other hand, the service provider is likely to be the entity that fails to deliver supported services within the relevant funding year, fails to properly bill for supported services, or delivers services that were not approved for funding under the governing FCC Form 471. We recognize that in some instances, both the beneficiary and the service provider may share responsibility for a statutory or rule violation. In such situations, USAC may initiate recovery action against both parties, and shall pursue such claims until the amount is satisfied by one of the parties. Pursuant to § 54.719(c) of the Commission's rules, any person aggrieved by the action taken by a division of the Administrator may seek review from the Commission.

8. We note that USAC's determination concerning which party should be the recipient of the demand letter does not limit the Enforcement Bureau's ability to take enforcement action for any statutory or rule violation pursuant to section 503 of the Act. Any recipient of the demand letter is obligated to repay the recovery amount by the deadlines described in the *Commitment Adjustment Implementation Order.* Failure to do so may subject such recipients to enforcement action by the Commission in addition to any collection action.

9. We also specifically address the issue of whether a service provider should be subject to a recovery action in situations where it is serving as a Good Samaritan. In light of our decision today, we anticipate that recovery would be directed in most instances to the school or library. We conclude that Good Samaritans should not be subject to recovery actions except in those situations where the Good Samaritan itself has committed the act or omission that violates our rules or the governing statute.

10. We briefly address petitioners' remaining arguments. First, USTA argues that the authorities on which the Commission relied, chiefly the *OPM* decision and the DCA, are inapplicable to the funds at issue and thus offer no support for our determination to seek repayment of funds disbursed to providers in violation of the Act. We cannot agree. The authority, as well as the responsibility, of the Government to seek repayment of wrongfully distributed funds is well established as a matter of federal law.

11. Although parties assert that the *OPM* decision is limited in its holding to funds disbursed from the general Treasury, and is therefore not relevant here because universal service funds are taken from a special fund that is not deposited in the Treasury, that is too narrow a reading of the principle found in *OPM.* Rather, the principle to be drawn from *OPM* is that the Commission cannot disburse funds in the absence of statutory authority. It is '' 'central to the real meaning of the rule of law, [and] not particularly controversial' that a federal agency does not have the power to act unless Congress, by statute, has empowered it to do so.'' Thus, contrary to petitioners' argument, we are bound by statutory restrictions in the disbursement of the universal service fund regardless of whether such funds are drawn from the Treasury.

12. Moreover, the Commission's disbursement of funds in violation of the statute or a rule gives rise to a claim for recoupment. As the Commission stated in the *Commitment Adjustment Order,* the DCA imposes a duty on agencies to attempt to collect on such claims. Specifically, the DCA requires that ''[t]he head of an executive, judicial, or legislative agency * * * shall try to collect a claim of the United States Government for money or property arising out of the activities of, or referred to, the agency.'' Here, we find that the disbursement of funds in violation of the statute or a rule gives rise to claims that ''arise out of the activities'' of the Commission, *i.e.,* the activity of ensuring that schools and libraries received discounts for telecommunications services, voice mail, Internet access, and internal connections pursuant to section 254(h). Therefore, we are obligated by law to seek recoupment of funds that were disbursed in violation of our statutory authority. In addition, parties' assertions that the collection mandate of the DCA is inapplicable to the schools and libraries universal service program because its direct application is limited to claims for money owing to the United States Treasury, is inaccurate. By its terms, the DCA is not limited to funds that are owed to the Treasury. The DCA defines ''debt or claim'' as funds which are ''owed to the United States,'' not merely those which are ''owed to the U.S. Treasury.'' In fact, the DCA defines a ''claim'' to include overpayments from an agency-administered program, such as the federal universal service program.

13. We therefore reject the Petitioners' argument that the authorities on which we relied in the *Commitment Adjustment Order* are inapplicable. We conclude that under these authorities, the Commission has an obligation to seek recovery of universal service funds disbursed in violation of the statute or a rule.

14. USTA argues that we unlawfully delegated our authority to recoup universal service funds disbursed in violation of the statute or a rule to the Administrator because this duty is not found in §§ 54.702 or 54.705 of the Commission's rules. We reject this

argument. The Administrator oversees the administration of the schools and libraries support mechanism, including the administration of disbursing schools and libraries funds consistent with, and under the direction of, the Commission's rules and precedent. If the Administrator allows funds to be disbursed in violation of the statute or a rule, it is within the ambit of its administration and disbursement duties to seek recoupment in the first instance. Moreover, we note that the Commission retains its authority to seek final payment of its claim. Thus, we have not unlawfully delegated the Commission's authority to seek recoupment of funds disbursed in violation of the statute or a rule.

III. Procedural Matters

A. Paperwork Reduction Act Analysis

15. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

B. Final Regulatory Flexibility Certification

16. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

17. An initial regulatory flexibility analysis (IRFA) was incorporated in the *Second FNPRM.* The Commission sought written public comment on the proposals in the *Second FNPRM,* including comment on the IRFA. No comments were received to the *Second FNPRM* or IRFA that specifically raised the issue of the impact of the proposed rules on small entities.

18. In this order, we now direct that recovery of funds disbursed to schools and libraries in violation of the Communications Act, or of a program rule, be sought from whichever party or parties have committed the violation. This has no effect on any parties who have not violated our rules, except to make more money available for them to obtain through the schools and libraries support program. It only imposes a minimal burden on small entities that have violated our rules by requiring them to return funds they received in violation of our rules. We believe that the vast majority of entities, small and large, are in compliance with our rules and thus will not be subject to efforts to any recover improperly disbursed funds.

19. Therefore, we certify that the requirements of the order will not have a significant economic impact on a substantial number of small entities.

20. In addition, the order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register.**

21. The Commission will not send a copy of this Order on Reconsideration and Fourth Report and Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

IV. Ordering Clauses

22. Pursuant to the authority contained in sections 1, 4(i), 4(j), and 254 of the Communications Act of 1934, as amended that this Order on Reconsideration and Fourth Report and Order in CC Docket No. 02–06 is adopted.

23. The Petitions for Reconsideration filed by MCI WorldCom, Inc., United States Telecom Association, and Sprint on November 8, 1999 are granted to the extent provided herein.

24. The terms of this Order on Reconsideration and Fourth Report and Order are effective September 17, 2004.

25. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Order on Reconsideration and Fourth Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–21005 Filed 9–16–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket Nos. 90–571 and 98–67; FCC 04–137]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On September 1, 2004 (69 FR 53346), the Commission published final rules in the **Federal Register**, which addressed cost recovery and other matters relating to the provision of telecommunications relay services (TRS) pursuant to Title IV of the Americans with Disabilities Act of 1990 (ADA). This document corrects § 64.604 (a)(4).

DATES: Effective October 1, 2004 except for the amendment to § 64.604 (a)(4) of the Commission's rules, which contains information collection requirements under the Paperwork Reduction Act (PRA) that are not effective until approved by Office of Management and Budget (OMB). Written comments by the public on the new and modified information collections are due November 1, 2004. The Commission will publish a document in the **Federal Register** announcing the effective date for that section.

FOR FURTHER INFORMATION CONTACT: Cheryl King, of the Consumer & Governmental Affairs Bureau at (202) 418–2284 (voice), (202) 418–0416 (TTY), or e-mail *cheryl.king@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document amending part 64 in the **Federal Register** of September 1, 2004 (69 FR 53346). This document corrects the ''Rule Changes'' section of the **Federal Register** summary as it appeared. In rule FR Doc. 04–19955 published on September 1, 2004 (69 FR 53346), make the following correction:

PART 64—[CORRECTED]

■ On page 53351, in the third column, ''§ 64.604(a)(4)'' is corrected to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(a) * * *

(4) *Handling of emergency calls.* Providers must use a system for incoming emergency calls that, at a minimum, automatically and