

Written Statement of

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Before the

SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

Of the

COMMITTEE ON ENERGY AND COMMERCE

UNITED STATES HOUSE OF REPRESENTATIVES

On

OVERSIGHT OF FCC BUDGET AND MANAGEMENT

September 19, 2014

## **Major Points of Testimony**

- FCC OIG has appreciated the resources given to it by Congress, and continues to strive to make the best possible use of these resources by expanding our resources and our oversight program.
- Audits of the FCC's financial management and operations have disclosed deficiencies, in some cases deficiencies that repeat year after year.
- Our audits of the Universal Service Fund and the Telecommunications Relay Service Fund have resulted in criminal convictions and hundreds of millions of dollars in savings and recoveries.
- OIG's investigations of internal operations have resulted in referrals to management for action and the dismissal or retirement of several employees.
- The IG has generally had a good working relationship with the FCC, but several concerns exist.
- The FCC has refused to allow the IG to hire criminal investigators despite the authority granted to the IG in the IG Act of 1978, as amended.
- Criminal investigators are a very much needed resource at this Office, to increase its ability to conduct criminal investigations without consuming the resources of DOJ and the FBI.
- Further, FCC management retains a right to approve all OIG hires, a requirement which appears to contravene the IG Act and impugn the independence of the OIG.
- The newly established USF Strike Force in the FCC's Enforcement Bureau, while having the potential to make a positive contribution to oversight of the USF, also gives the IG concerns that efforts might be duplicative and resources wasted.

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to come before you today to discuss issues pertaining to the management operations and budget of the Federal Communications Commission (FCC, or Commission). I have been the Inspector General at the FCC since June 2009, first in an acting capacity and in a permanent role since January 2011. I am pleased to say that since I last appeared before this Committee in February, 2012, OIG at the FCC has been provided resources that have enabled us to make significant strides in providing oversight of the FCC and its programs. I would like to take this opportunity to thank the Committee for its continued support of our efforts as has consistently been demonstrated by your approval of my budget requests.

In my testimony today I will discuss our oversight and investigative activities related to the FCC's major program areas. I will then discuss several areas of management and budget at the FCC that merit attention, and will conclude with a discussion of the challenges we face in providing efficient and effective oversight of the Commission.

### **Administrative**

Our Office currently has a permanent staff of 39 professionals and administrative staff. As you are aware, several years ago Congress provided us with funds for oversight of the Universal Service Fund (USF) and we hired several temporary employees with those funds. The terms for all of those employees have expired, and we are now building a staff of diverse and experienced personnel. Recently, we have added technical expertise by hiring a computer forensics examiner, an IT specialist and a contract specialist. We have also hired several auditors and

attorney investigators. While our budget, currently a little over \$11 million dollars, has been somewhat flat between 2014 to the 2016 request, the additional funds we were allocated in the years prior to now have enabled us to build into a structure that is poised to accomplish great things in terms of oversight and investigation. Our current hiring plans include three more auditors, two more attorneys, and two criminal investigators. However, some of these plans have been significantly delayed, as I will discuss later in my testimony.

### **Audits**

Due to recent new staff and an expansion of resources available to us, our Office of Audit has steadily ramped up an active audit program of internal FCC operations and external programs.

My Office performs three statutorily mandated audits annually – the audit of the FCC’s Consolidated Financial Statements, the evaluation of the FCC’s information technology security required under the Federal Information Security Management Act (FISMA), and an audit of FCC compliance with the Improper Payments Elimination and Recovery Act (IPERA). The FCC has received “clean” audit opinions for the past several years and management has made improvements to the financial management of the FCC. However, each of these audits have disclosed findings and resulted in recommendations for improvement, many of which are duplicated year after year. In particular, the financial statement audit and the FISMA evaluation seem to always result in the same deficiencies regarding financial integration and information security each year.

In the past year or so, we have shifted our audit efforts somewhat. In prior years, we had focused our limited audit efforts on the USF and the Video Relay Service (VRS) for the deaf and hard of hearing, auditing funding recipients and contributors of these major programs. Lately, we have conducted more audits of FCC internal processes and procedures. These audits have disclosed generally acceptable results, but several bring to light deficiencies in FCC practices. For example, we will soon issue a report on the FCC's management of civil monetary penalties that has disclosed the FCC has not collected all of the penalties and fines it could have, and that uncollectible penalties have been carried on the agency's books, sometimes for many years and a few even for decades. Recent audits of Bureau and Office functions have resulted in recommendations for improvements and provided my auditors with leads for internal audits for years to come.

However, this increased internal focus has not caused us to forego oversight of FCC programs such as the USF and the Telecommunications Relay Service (TRS) Fund. Changes in all of the USF programs, including contributions, along with implementation of the Connect America Fund will require a significant investment of Commission resources and oversight from OIG. The Office of Audit has ongoing audits and is supporting investigations addressing allegations of fraudulent activity in the USF. To assist in meeting these challenges, the Office of Audits is redirecting resources to conduct performance based audits to better determine the effectiveness and efficiency of these programs.

In accordance with the Reports Consolidation Act of 2000, the OIG annually submits a statement

summarizing our assessment of the most serious management challenges facing the FCC. The OIG is currently developing the FY 2014 statement and we anticipate the areas of challenge to be similar to FY 2013. In FY 2013 we noted that challenges continue to exist in the USF program, the TRS Fund, and overall Innovation at the FCC. During OIG audits and investigations, we have worked with FCC managers in recommending actions that best addressed those challenges. The FCC depends upon its information systems and the information within them to effectively and efficiently accomplish its mission. Additionally, the FCC, along with the rest of the federal government, is being asked to use technology to a greater extent in order to reduce costs and, at the same time, achieve greater productivity, for example, moving to cloud computing. One of the major challenges with this rapid change is the proper implementation, management, and oversight of these new technologies, which have inherent, and constantly evolving, information security risks.

### **Investigations**

In the past two years our investigatory staff, has achieved impressive results, securing numerous settlements and criminal convictions, thus protecting the integrity and quality of the programs the FCC oversees. These activities, coupled with the implementation of policy and procedural changes recommended by OIG have generated hundreds of millions of dollars in savings and recoveries in the past several years. The results of the investigative team's work are even more impressive in light of the fact that my efforts to expand the capabilities of this team by hiring criminal investigators have been stymied by the FCC. I will return to that topic momentarily, but now I would like to discuss some of my investigative team's accomplishments.

Since I last appeared before you, we have secured our first indictments and guilty pleas in the Low Income Program of the USF. The Low Income Program is designed to ensure that quality telecommunications services are available to low-income customers at just, reasonable, and affordable rates, and our office has aggressively been pursuing matters involving fraud in this program for many years.

Additionally, we have added to the number of criminal convictions related to fraud in the provision of VRS. You may recall that OIG, in partnership with the Criminal Division of the Department of Justice (DOJ), the Federal Bureau of Investigation (FBI) and the Postal Inspection Service, successfully prosecuted over two dozen individuals for their role in various schemes to defraud the VRS Fund.

The deterrent effects of these criminal enforcement efforts, and the ensuing rule changes, recommended and supported by OIG, have continued to keep the size of the VRS Fund relatively stable since it saw a dramatic reduction immediately following the initial convictions, following years of consistent and almost exponential growth. This is an example of how investigations combined with the audit function can stem fraud before it occurs.

We are working alongside the FBI and the DOJ in numerous criminal other cases involving virtually all of the USF programs, but as these matters are on-going, I cannot discuss them in public at this time.

On the civil side, the OIG investigations team is continuing its oversight of the E-rate and other USF programs as well as the Commission's spectrum auctions, to identify individuals and companies who may be engaging in activities that to defraud these programs, In this regard, we have initiated cases based on information developed in the first instance within OIG, as well as assisted the Department of Justice in numerous *qui tam* cases brought under the federal False Claims Act.

Lastly, in addition to our programmatic work, OIG has a team of investigators that deals with allegations involving internal Commission operations. The group also handles the initial intake of allegations received via the OIG telephone and e-mail Hotlines. The team looks into allegations of waste, fraud and abuse, including, but not limited to, allegations of (1) ethical violations; (2) improper hiring practices – the subject of a report in a recent SAR; (3) time and attendance abuse; (4) misuse of computer property, including misuse of Commission computers; and (5) failures in the contracting process. The majority of personnel-related and management-related findings are referred to management for appropriate action. Since I last appeared before you, the team's work has been instrumental in investigating matters that have resulted in the dismissal and/or retirement of several employees.

### **Relationship with the FCC**

Over the years I have been the IG at the FCC, I have generally had a good working relationship with agency management. However, there are several areas that give me concern and I would like to discuss with you.



We initiated a discussion with management on hiring criminal investigators at FCC OIG in early 2012 and continued this discussion with current management since Chairman came on board. This is a capability very nearly all OIGs have; those who do not are typically those with less staff. The expansion our Office has experienced has provided us with both the need for and the ability to support these resources, which are critical to investigations of allegations of fraud and criminal activity.

Although the FCC OIG has received excellent support from FBI agents, particularly those in the Washington, D.C. Field Office, there have been cases where the lack of criminal investigative support has slowed and even derailed OIG investigations. FBI agents and Assistant United States Attorneys are in constant demand, and we have lost the services of both to other DOJ/FBI priorities. We have informally been told that the threshold for the FBI involvement is \$1,000,000. Many of our cases, especially those that involve smaller providers, do not reach that threshold. However, if we were to have the support of criminal investigators, we could develop a case to a further point on our own rather than consume DOJ and FBI resources. We would have the ability to pursue more cases to determine with certainty whether a case merits further prosecution, rather than abandoning investigations at the outset because we do not believe they ultimately will meet the FBI threshold. This capability would improve our ability to support criminal investigations and would likely obtain DOJ support for lower value cases.

Criminal investigators would be particularly helpful in pursuing fraud in the Low Income and E-rate programs. Recently, we have seen a low income case hampered because it took several months to garner the support of the FBI, during which time the targets have had an opportunity to move assets to foreign accounts and to leave the country.

Additionally, because criminal investigators may, in appropriate circumstances, be armed, OIG investigators will be able to securely enter premises to interview witnesses in situations where it may be unwise to do so without the assistance of the FBI. We are currently facing such a circumstance in a pending E-rate matter where we have been advised not to conduct interviews because of possible safety concerns.

After an excessively long dialogue with managers under then-Chairman Genachowski, we had reached a point where we posted a job announcement and had applications for investigators positions. However, after Mr. Genachowski left, Human Resources at FCC would not allow us to interview and hire criminal investigators from this announcement. Very shortly after Chairman Wheeler took his office, I was informed by his Chief of Staff that OIG would not be allowed to hire criminal investigators. I have continued a dialogue with management, but to no avail.

In addition FCC Human Resources has for several years retained the right to approve every OIG hire. My Deputy IG or my Assistant IG for Management must email the Chief of HR and ask permission for each hire, be it an auditor or attorney, or even an administrative support employee. We have asked many times why this is necessary and for this practice to end, but we have received neither an explanation for, nor relief from, this restriction.

The IG Act states each Inspector General is authorized “to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office.” (§6(a)(7)) This statement is clear and unambiguous, and authorizes me to make personnel determinations necessary for carrying out my Office’s responsibilities. While, in truth, with the exception of my request for criminal investigators, I have never been denied a

hire, nonetheless, management's involvement in OIG personnel matters appears to be a direct contravention of the IG Act. Further, every time one of my managers has to request permission from an FCC manager to hire someone, our independence is impugned. This ongoing practice gives my Office the appearance of a lack of independence from FCC management.

We intend to continue our dialogue with the Office of the Chairman in our on-going attempt to hire criminal investigators, but it appears destined to be a fruitless discussion.

I would like to address one final area of concern. In July, FCC Chairman Tom Wheeler announced the creation of a "strike force" to combat waste, fraud, and abuse in Universal Service Fund programs. Many in Congress, Chairman Walden included, cheered the creation of this task force, and I too am pleased to see the FCC become active in reducing fraud in the USF. However, this action was taken with no coordination with either OIG or DOJ, and complications abound. As my testimony this morning has demonstrated, the FCC's OIG in recent years has had unprecedented success. We have been instrumental in affecting significant savings on consumer's telephone bills, and have significantly helped ferret out fraud from entire FCC programs such as VRS.

It might have been best to expend the FCC's valuable yet limited resources to bolster the IG's office, an entity with a proven track record that has established relationships with both DOJ and the FBI, rather than one that is potentially encumbered by policy-making constraints and whose mission, as I understand it, is not limited to ascertaining rule violations. Our concern is that the strike force, which does not independently report to Congress, has the *potential* for unnecessary overlap in the agency's enforcement and investigatory efforts.

That being said, we can all agree that expending additional resources to uncover fraud, waste and abuse may be a positive measure provided that the level of coordination between OIG and the Strike Force is extensive and delineated by each entity's responsibilities. Because OIG is primarily engaged in law enforcement, all information gathered by the Strike Force should be provided to the OIG at the earliest possible opportunity. Failure to do so could negatively impact OIG's law enforcement efforts and potentially waste resources.

### **Conclusion**

We have been and we continue to be grateful for the support we have received from both Congress and the FCC. I will continue to work with the FCC and foster good government and cooperation whenever we can. I will also continue to guard the independence of my Office and our adherence to the letter and the intent of the IG Act.

Thank you for the opportunity to address these important matters with the Subcommittee. I will be happy to answer any of your questions.