United States General Accounting Office

GAO

Report to the Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate

August 1999

TELECOMMUNICATIONS

FCC Does Not Know if All Required Fees Are Collected

GAO Accountability * Integrity * Reliability

GAO/RCED-99-216

GAO

United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-281140

August 31, 1999

The Honorable Susan M. Collins
Chairman, Permanent Subcommittee
on Investigations
Committee on Governmental Affairs
United States Senate

Dear Madam Chairman:

In 1993, the Congress directed the Federal Communications Commission (FCC) to begin recovering the cost of its regulatory activities by collecting fees from the telecommunications industry. Since then, the collection of regulatory fees has become an increasingly important activity for FCC. In fiscal year 1998, over 70 percent of FCC's new budget authority of $222 million was offset through these regulatory fees, thereby greatly reducing the need for appropriated funds to support FCC's operations.[1] FCC also requires that companies and individuals submitting applications for action by the Commission pay a fee before the application can be considered. Since 1990, these fees have brought in from $28 million to $51 million annually to the General Fund of the U.S. Treasury.

During an investigation into telephone services fraud done at your request, our Office of Special Investigations tested FCC's filing procedures for telephone companies and found that it could file documents (tariffs) describing long-distance rates without paying the required fee.[2] Concerned about the effectiveness of FCC's fee collection activities, you asked us to (1) review FCC's controls for ensuring that required regulatory and application fees are paid and (2) provide information on the extent to which FCC is collecting the civil monetary penalties resulting from its enforcement actions against entities that have violated its regulations.

Results in Brief

FCC does not know if it is collecting all its required fees. In the case of regulatory fees, FCC relies heavily on the telecommunications industry to comply voluntarily with its fee payment schedule because it does not have a system in place to ensure that all appropriate fees are being paid. Specifically, FCC does not have sufficient information to (1) identify all the

[1]This figure includes regulatory fees credited to FCC's salaries and expenses account. Other offsetting funds, such as those related to spectrum auctions, are outside the scope of this report.

[2]See Telecommunications: Telephone Slamming and Its Harmful Effects (GAO/OSI-98-10, Apr. 21, 1998).

entities that should pay regulatory fees and (2) determine whether these entities have paid the full amounts required. In addition, FCC's fee collection database is not linked to its licensing databases, making it difficult for FCC to perform routine automated checks on whether all licensees have paid their regulatory fees. Nevertheless, FCC has the capability to undertake substantive oversight efforts using the information it does have. In 1998, for example, it used available information to check on regulatory fee collection for radio stations, identifying over 800 stations that did not pay required fees and collecting nearly $600,000 in past-due fees and late payment penalties. However, this type of special effort is not routinely done by FCC. Regarding application fees, our examination of a random sample of applications processed by five FCC bureaus found that four of the bureaus did not have adequate documentation that fees were paid in many cases. FCC's Office of Inspector General also has evaluated FCC's fee collection database and reported that FCC could not provide supporting documentation for almost half of the transactions selected for review. Both FCC's Office of Managing Director and Office of Inspector General have initiatives under way aimed at improving the fee collection processes. These actions are in early stages, however.

FCC reported to the Department of the Treasury that, at the end of fiscal year 1998, it had an uncollected balance of about $15 million in civil monetary penalties. However, we found that the FCC's reports to the Treasury contain errors and are therefore not reliable. As a result, we cannot reach any conclusions about the effectiveness of FCC's collection of civil monetary penalties. Data problems aside, FCC officials maintain that it is difficult to predict how much of the outstanding balance of proposed or assessed penalties ultimately will be collected because most of the penalties listed in the Treasury report are not yet legally enforceable debts. On the basis of experience from prior years, these officials estimate that about 75 percent of the outstanding proposed or assessed penalties will remain uncollected.

This report recommends that FCC (1) take better advantage of available information to improve its oversight of regulatory fee collection, (2) establish procedures for ensuring that application fees are paid before applications are processed, and (3) correct unreliable data on civil monetary penalties and the internal control weaknesses that led to the errors.

Background

The Omnibus Budget Reconciliation Act of 1993 directed FCC to assess and collect annual regulatory fees in order to recover the costs incurred in carrying out its enforcement, policy and rulemaking, international, and user information activities. Under FCC's rules, telecommunications entities are required to pay annual regulatory fees if they are subject to FCC regulations, regardless of whether they have direct dealings with FCC.[3] Ideally, FCC would need to know all the entities that are subject to its regulations to ensure proper fee collection. In practice, this is a difficult task, given the rapid pace of change in the makeup of the telecommunications industry.

Separate sets of fees are associated with the various types of telecommunications services, such as radio and television stations, cable television systems, interstate telephone service providers, and satellite communications companies. The fees for each of these services are based on several factors, such as (1) the costs of performing regulatory activities, (2) an estimate of the number and size of the entities subject to each type of regulatory fee, and (3) the amount that the Congress directs FCC to recover annually through regulatory fees. Each year, FCC's Office of Managing Director prepares and issues a new regulatory fee schedule that adjusts the fees on the basis of changes in these factors. For fiscal year 1998, regulatory fees ranged from under $50 to more than $160,000, depending on the type of telecommunications service.

Fees play an important role in FCC's budget, since collections from regulatory fees and certain other sources are used to offset FCC's appropriation on a dollar-for-dollar basis. As shown in table 1, FCC has become a fee-reliant agency in recent years mainly though its regulatory fees.[4] For example, in both fiscal years 1997 and 1998, regulatory fees offset about 70 percent of FCC's total budget authority. In fiscal year 1998, the $190 million that FCC collected from regulatory fees and other sources reduced the need for appropriated funding to about $32 million.

[3]There are some exceptions. For instance, governmental and nonprofit entities are exempt from regulatory fees.

[4]See Federal User Fees: Budgetary Treatment, Status, and Emerging Management Issues (GAO/AIMD-98-11, Dec. 19, 1997) for a discussion of other agencies that rely heavily on offsets from fees.

Table 1: Historical Overview of FCC's Offsetting Collections Credited to Its Salaries and Expenses Account

Dollars in millions

Fiscal year	Total new budget authority	Funding from appropriations	Funding from offsetting collections: Regulatory fees	Funding from offsetting collections: Other sources[a]
1993	$141	$140	None	Under $1
1994	168	102	$59	7
1995	210	69	116	25
1996	202[b]	59	124	19
1997	223	35	157	31[c]
1998	222	32	159	31[c]

[a]"Other sources" includes interagency reimbursables and auctions receipts to fund the Spectrum Auctions Program.

[b]Does not include about $8 million in available unobligated funds from various sources.

[c]Offsetting collections for the administrative costs to support the Spectrum Auction Credit Program Account are reported separately in the President's Budget Request and are paid from auction receipts.

Source: Office of Managing Director, FCC.

From fiscal years 1995 through 1997, FCC's collection of regulatory fees exceeded the obligation limitations set by the Congress.[5] For fiscal year 1998, however, FCC's collections fell about $7 million short of the target amount. For fiscal year 1999, the Congress raised the amount of regulatory fees that FCC is to collect to $172.5 million.

In addition to annual regulatory fees, FCC collects application fees as authorized under section 8 of the Communications Act of 1934, as amended. An applicant is required to pay a fee whenever applying for certain types of actions by the Commission, such as the approval of an operating license, technical certification, a change in a station's identifying call sign, a construction permit, or transfer of control. For fiscal year 1998, the fees ranged in size from under $50 for routine applications, to about $8,000 for certain types of hearings, to more than $250,000 to launch a communications satellite. Unlike regulatory fees, application fees are deposited into the General Fund of the U.S. Treasury and are not used to offset FCC's appropriation. The amount of application fees collected is also much smaller than regulatory fees. In fiscal year 1998, application fees brought in about $32 million.

[5]Each fiscal year, the Congress establishes an obligation limitation on how much FCC can spend from regulatory fees. Regulatory fees collected in excess of this amount remain available for use in subsequent fiscal years. For example, the $159 million in fiscal year 1998 regulatory fees is made up of $155 million in current year regulatory fees and $4 million in regulatory fees collected in prior years.

One of FCC's most important functions is to ensure compliance with its rules. Violations can disrupt the orderly provision of telecommunications services and compromise public safety. Section 503 of the Communications Act of 1934, as amended, authorizes FCC to assess civil monetary penalties (called "forfeitures") against those who violate the Communications Act or the Commission's regulations. Some types of actions that have resulted in penalties include operating an unlicensed broadcast station, selling unauthorized radio equipment, and changing consumers' long-distance telephone carriers without permission.

FCC Does Not Know if All Fees Are Being Paid

FCC does not know if all required fees are being paid. In the area of regulatory fees, FCC relies on members of the telecommunications industry to comply voluntarily with its fee payment schedule, since it lacks the necessary information and systems to verify that every entity that should pay a fee has done so. Nevertheless, FCC can use information it currently has to undertake substantive oversight efforts. In 1998, for example, FCC was able to identify over 800 radio stations that had not paid their required regulatory fees. However, oversight efforts such as this have not been routinely undertaken by FCC. As for application fees, our review of files at five FCC bureaus showed that while one bureau was able to produce documentation showing that fees were paid for all but a few cases, the other four bureaus were unable to produce documentation showing that the required fees were paid in 18 to 71 percent of cases. FCC's Office of Managing Director and Office of Inspector General are both aware of problems with FCC's fee collection, and actions are under way that could strengthen the collection process. These actions are in the early stages, however, and it is too early to assess their effectiveness.

Regulatory Fees

According to FCC officials, there are two reasons why FCC does not verify whether all entitites that should pay regulatory fees are doing so. First, while most FCC bureaus maintain databases of information on companies that have asked for a license or have been subject to other regulatory action, these databases do not contain information on entities that are subject to regulatory fees but are not licensed by FCC. For example, the databases do not include many telephone companies because while they are required to report their rates to the Commission, they are not required to have a license. Second, even when FCC has licensing information on an entity, the information may not be current because of changes in the company's name, ownership, address, or identifying call sign. For example, radio stations have recently seen a high annual turnover in ownership and many changes in the stations' identifying call signs. Station ownership may even change between the time the annual regulatory fee notice is sent out and the time payment is due.

Additionally, FCC's licensing databases do not always contain information necessary to determine whether an entity has paid the full amount of regulatory fees that it owes. Some regulatory fees are for fixed amounts, such as those for communications satellites. However, many regulatory fees are determined by the size of the entity as measured by the broadcast market served (as with television and radio stations), the number of subscribers served (as with cable services), or the amount of revenue generated (as with telephone companies). Without information on an entity's size, it is difficult for FCC to check on the accuracy of payment. For example, FCC's fee schedule requires some commercial radio operators to pay a fee that is based on the number of units (such as pagers or radio sets) in service, but the Commission does not require the operators to report the number of units they have in service during the licensing process.

Even where information is available to FCC, several factors can limit FCC's ability to use it to determine if required fees were paid. For example, FCC's licensing databases are not linked electronically to the database that stores information on who has paid fees. Any comparisons between them must be done manually. In addition, FCC does not assign unique, agencywide identifiers to the entities it deals with in order to track them in its databases when their name, call sign, or ownership change. The lack of unique identifiers makes it difficult for FCC to match the names of those entities that paid fees with those that owed them.

To illustrate this point, we attempted to manually match the names of more than 2,500 telephone companies operating in fiscal year 1998 with the names of companies listed in FCC's fee collection database as having paid a regulatory fee that year. We were able to match only about 19 percent of the company names with those listed in the fee collection database, even allowing for some variations in the names. (For example, when we found companies with multiple similar names, such as Bell Atlantic Mobile and Bell Atlantic Virginia, we counted all the fees as paid if any of the names appeared in the fee database.) We also attempted to match the names of nearly 800 telephone companies that notified FCC of changes in their rates in fiscal year 1998 with those listed in the fee collection database but could match only 38 percent. Our inability to find matches does not necessarily mean that these entities did not pay their annual regulatory fees, since FCC and industry officials told us that it is possible that fees were paid under a different company name. But without an unambiguous means of identifying a company through a unique identifier, we could not determine the extent to which these companies complied with FCC's fee payment rules.

While FCC does not attempt to verify that all entities subject to regulatory fees have paid them, it has demonstrated that it can use its existing information to identify some entities that may not have paid their fees. For example, FCC mounted a special effort during 1998 to determine whether all AM and FM radio stations paid their regulatory fees for fiscal year 1997. FCC manually compared radio stations' licensing information with the list of stations that paid their regulatory fees and found nearly 1,000 stations that did not appear in the fee database for fiscal year 1997. After contacting these stations, FCC netted an additional $594,000 in past-due fees and late penalties from nearly 800 stations. Another 79 stations were able to prove that they had paid the fee or were exempt. FCC plans to collect the remaining outstanding balance through additional actions against roughly 100 stations.

In other areas, FCC suspects that some entities may not have paid the appropriate fees but has not determined the extent of actual noncompliance. In May 1999, FCC's Common Carrier Bureau raised concerns that some telephone companies may not have paid their regulatory fees or may have paid an incorrect amount. For example, after manually reviewing the fee database, the bureau could not confirm whether 113 companies paid any regulatory fees in 1997, estimating that the fees in question could amount to almost $10 million. Also, officials in the Office of Managing Director stated that the office is planning to review the fees paid by some broadcast stations in fiscal year 1998 because these stations appear to have paid about $1.2 million less in fees than required.

FCC's fee schedule includes a deadline by which regulatory fees must be paid. Section 9 of the Communications Act of 1934, as amended, authorizes the Commission to assess a penalty for the late payment of regulatory fees, amounting to 25 percent of the fee that was not paid by the deadline. However, FCC did not enforce this provision against late filers until last year when, for the first time, it sent notices to all entities that paid the regulatory fee after the closing date specified in the order, informing them that they owed a 25-percent late fee. FCC estimates that about 1,300 entities owed a total of about $760,000 in late fees. FCC informed us that as of August 5, 1999, it had billed all late filers and had collected $247,721 in late fees. Officials in FCC's Office of Managing Director stated that they intend to continue to enforce the penalty for late payments in coming years.

Application Fees

Five of FCC's bureaus—Wireless Telecommunications, Mass Media, Common Carrier, Cable Services, and International—process applications related to the entities they regulate. In most cases, the applicant is required to send to the Mellon Bank in Pittsburgh, Pennsylvania, an FCC application form describing the type of transaction requested, along with an FCC "Remittance Advice" form and payment of the appropriate application fee as specified in FCC's schedule of application fees.[6] Mellon Bank stamps the paperwork with a receipt date, assigns a fee control number, deposits the payment with the U.S. Treasury, enters data from the application into the fee collection database, and forwards the application material and copies of proof of payment, such as a check or electronic payment number, to the appropriate FCC bureau for processing.

According to Office of Management and Budget (OMB) Circular A-123, federal agencies are required to promptly record financial transactions, and documentation for transactions and related procedures must be clear and readily available for examination. However, while FCC officials told us that staff in each bureau are to check each application for proof that the fee has been paid prior to taking action on the application, none of the bureaus were able to provide us with written policies documenting the procedures followed during this process. Additionally, we identified many cases in which adequate documentation did not exist to show that application fees were paid, as shown in table 2. Although FCC was able to provide supplemental information from other sources to show that the fee was paid in some of the cases, only one bureau had sufficient information to show that the fees were paid in nearly all of the cases we selected.

[6]Under an agreement with the Department of the Treasury, Mellon Bank manages post office boxes for federal agencies, including FCC.

Table 2: Results of Application File Review

Bureau	Percentage of applications for which the application and adequate documentation of payment were located in the application file reviewed by GAO	Percentage of applications for which FCC staff provided supplemental information adequate to demonstrate that the application fee was paid	Percentage of applications claiming to be exempt from paying a fee	Percentage of applications for which the application and/or adequate documentation of payment could not be located
Mass Media	17	4	20	59
Cable Services	28	0	1	71
Wireless Telecommunications	37	31	32	1
International	45	24	14	18
Common Carrier	62	15	3	20

Note: Percentages may not add to 100 because of rounding.

Source: GAO's analysis of FCC's records.

Specifically, we examined two types of evidence to reach our conclusions. First, we examined the documentation in the files associated with 150 to 200 applications filed in the five bureaus during fiscal year 1998. We found that only 17 to 62 percent of the files contained both a copy of the application and proof of payment. For example, as shown in the first column of data in table 2, only 28 percent of the Cable Services files we reviewed contained copies of both documents. According to bureau officials, there are several explanations for why some files do not contain documentation showing that the fee was paid. Officials from the Cable Services and Mass Media bureaus stated that when an application that covers multiple stations is received, the original application is placed in one station's file, and the other stations' files may not get copies. Also, officials from the Common Carrier and International bureaus indicated that the application files are made available to the public, who could alter or remove some files.

We provided FCC with a list of the applications for which we could not find adequate documentation in the files to show that an application fee was paid. The bureaus were able to provide supplemental documentation showing that an application fee was paid in up to 31 percent of the cases. For example, as shown in the second column of data in table 2, the International Bureau provided further documentation to show that the required fee was paid for an additional 24 percent of the applications we selected. In many other cases, however, the bureaus provided evidence that a fee was paid, but the evidence was not sufficient to show that the fee was related to the application we selected. For example, in about one-third of the cases for which the bureaus provided additional information, a fee control number was provided as proof of payment, rather than a copy of the check. When the fee data generated by Mellon Bank included a reference to the application in question, we considered that data as adequate proof of payment. However, in many cases, the only identifying information in the data file was the name of the applicant, the date and amount of payment, and the fee type. Because it is not uncommon for some applicants to submit several of the same types of applications within a short period of time, it is not always possible to determine which application a fee is associated with. For example, five of the fee numbers provided by the Cable Services Bureau suggest that the fees were paid nearly a year before the applications were filed, and one suggests that the fee was paid more than a month after the application was filed. It is possible, though, that the fees associated with the numbers provided by the bureau were actually related to other applications filed by the same licensee. Also, the Mass Media Bureau provided copies of applications and FCC's Remittance Advice forms as proof that the fee was paid. However, these documents themselves are not adequate proof that the fee was paid because they do not indicate that a payment was received by Mellon Bank.

The bureaus also identified files that were exempt from the requirement to pay an application fee. As shown in the third column of data in table 2, from 1 to 32 percent of the files we examined in the bureaus were identified by the applicant or the bureau as being exempt from paying the fee. In most cases, the exemptions were based on the type of application being filed, such as a change of address, which does not require a fee. In about one-third of the cases, an exemption was claimed because the applicant was identified as a government entity. FCC requires those claiming an exemption from regulatory fees to provide documentation to confirm that they are entitled to the exemption. However, FCC does not require those entities claiming to be exempt from application fees to provide any proof of their exempt status. Instead, FCC relies on applicants to self-certify that they are entitled to an exemption by checking off a box on their application forms.

After examining the application files and supplemental information, we concluded that the Wireless Telecommunications Bureau was the only bureau to provide an application and documentation showing that a fee was paid or not required for almost all of its files. The other bureaus could not provide documentation to show that a fee was paid or not required for 18 to 71 percent of their files, as shown in the last column of table 2.

FCC's Inspector General Has Identified Similar Problems

Several recently published reports have revealed additional problems with FCC's fee collection process. First, in September 1998, FCC's Office of Inspector General reported that the computer system FCC uses to record collections did not provide evidence for all transactions, did not provide clear audit trails for changes made to transactions, and did not provide for adequate internal controls.[7] The Inspector General's office made 128 observations and recommendations for improvement. For example, the report found that FCC's collections system did not allow for an audit trail for changes to its database and did not record and track all related transactions. FCC officials concurred with 126 of the report's observations and stated that efforts were under way to address many recommendations. Also, as part of the Inspector General's effort, FCC engaged an outside accounting firm to assess the completeness, validity, and accuracy of the data contained in the fee collection system. The firm found that for about 45 percent of the transactions it examined, FCC could not provide documentation to support the transaction, or there were discrepancies between the information in the system and the documentation provided.

In November 1998, FCC's Office of Inspector General reported that FCC lacked the ability to determine whether certain radio operators were paying the appropriate regulatory fees.[8] The Inspector General identified frequent discrepancies between the database that recorded which operators had licenses and the database that recorded which operators paid regulatory fees. Concluding that neither database was reliable, the Inspector General suspended further work on this issue until reliable data become available.

Commission Has Efforts Under Way to Improve Fee Collection

In presenting the fiscal year 2000 goals in its most recent performance plan, FCC states that it will "address and correct all management weaknesses in FCC collections and other financial management systems to ensure that all licensees have paid the correct auction, application, or

[7]See Special Review of Federal Communications Commission (FCC) Collection System, FCC Office of Inspector General (Special Review Report No. 97-21, Sept. 25, 1998).

[8]See Special Review of Federal Communications Commission (FCC) CMRS Regulatory Fee Payments, FCC Office of Inspector General (Special Review Report No. 98-8, Nov. 24, 1998).

regulatory fees and that all fiscal accounting standards are met."[9] The plan does not describe the specific steps that FCC will take to achieve this broad goal or the performance measures that it will use to gauge its progress. FCC's Office of Managing Director does, however, have important efforts under way to improve fee collection. At the time the Inspector General's report was published in September 1998, the Managing Director had already hired a project manager to begin to design and implement a new financial information system. In July 1999, FCC awarded a contract to an independent consulting firm to acquire a new financial system that will provide FCC with a single internal source of information on collections, receivables, and revenues and will maintain data concerning fees, fines, civil monetary penalties, and auction proceeds. In addition, the Office has begun efforts to assign a unique identifier code to each entity that completes a financial transaction with FCC, so that the agency can track payments and other transactions made by the entity even when its name or ownership changes. The Office expects the new system and the unique identifier code to be in operation by mid-2000. In addition, FCC's Office of Inspector General is continuing its efforts in this area by contracting with an independent auditor to review FCC's financial management practices and recommend improvements. The auditor is expected to complete this review by February 2000, and the Inspector General will use its findings in its audit of the Commission's financial statements in fiscal year 2000.

FCC Does Not Have Reliable Data on Penalty Collection

FCC can assess civil monetary penalties against those who violate its regulations or related laws through either (1) an informal administrative process or (2) a formal evidentiary hearing. In the more commonly used administrative process, FCC issues a notice that specifies the amount of the proposed penalty and its justifications. The alleged violator may either pay the proposed penalty or respond by showing reasons why the penalty should be reduced or dismissed. According to FCC officials, alleged violators often try to negotiate a settlement with FCC that can involve making a voluntary payment and taking some type of corrective action. If the proposed penalty is not paid or settled, FCC will issue a final order in which the penalty is reduced, canceled, or assessed. An administrative review often follows at the request of an assessed violator. Those penalties that are not paid, settled, or canceled are referred to the Department of Justice for collection in district court. By statute, such an action shall be

[9]FCC's strategic plan and annual performance plan, prepared in response to the requirements of the Government Performance and Results Act, is incorporated in its February 1999 report to the Congress, Fiscal Year 2000 Budget Estimates.

by trial de novo,[10] and the existence of an informal FCC administrative proceeding cannot be used to the prejudice of the person or entity involved unless that person or entity had paid the penalty order or a district court decision ordering payment has become final. FCC may also assess a penalty after issuing a notice and conducting a full evidentiary hearing before an administrative law judge. According to FCC officials, this process is used infrequently—generally, for more serious offenses. FCC refers the penalties assessed via this process to the Department of Justice for collection after a final order has been obtained and affirmed in court, if appealed. Unlike the nonhearing penalties, the statute provides that the validity and appropriateness of any final hearing penalty shall not be subject to review in the enforcement action. From October 1997 through February 1999, FCC referred 11 cases totaling $119,500 and 1 totaling $5.7 million to the Department of Justice for collection.

We asked FCC's Office of Managing Director to provide us with data on the amount of civil monetary penalties assessed and collected during fiscal years 1997 and 1998. In response, FCC provided us with its annual reports to the Treasury on the status of penalty assessment and collection. See table 3.

[10]This is a trial on the merits of the case, in which the validity of the underlying FCC order would be at issue.

Table 3: Summary of FCC's Civil Monetary Penalty Assessments and Collections in Fiscal Years 1997 and 1998, as Reported to the Department of the Treasury

Status of penalties	Number	Amount	Outstanding balance
Outstanding assessed penalties as of the end of fiscal year 1996			$11,659,353
Penalties assessed in fiscal year 1997	21[a]	$414,000[a]	
Penalties collected in fiscal year 1997	117	2,465,832	
Penalties for which collection was stopped in fiscal year 1997	70	893,431	
Outstanding assessed penalties as of the end of fiscal year 1997			10,500,951
Penalties assessed in fiscal year 1998	59	10,613,437	
Penalties collected in fiscal year 1998	186	1,280,643	
Penalties for which collection was stopped in fiscal year 1998	435	4,615,494	
Outstanding assessed penalties as of the end of fiscal year 1998			15,212,251

[a]According to officials in FCC's Office of Managing Director who are engaged in correcting the data errors, in fiscal year 1997 there were actually 79 penalties assessed, totaling $2,056,000. The number and amount of collections for fiscal year 1997 were verified as accurate using source documents. The number and amount of adjustments (collections stopped) for fiscal year 1997 were revised but not verified. Figures for fiscal year 1998 had not yet been verified to source documents.

Source: FCC Civil Monetary Penalty Reports for Fiscal Years 1997 and 1998.

In examining the data, however, we found an apparent error—$893,431 in penalties for which collection was stopped seemed to have been erroneously added to the outstanding balance, instead of being subtracted from it. When we raised this issue with FCC, officials in the Office of Managing Director explained that the Treasury report for fiscal year 1997 was completed by a member of the clerical staff and had not received any substantive review. They also stated that the Managing Director had recently created and filled a position that will oversee the accuracy of all reports under the responsibility of the Associate Managing Director for Financial Operations.

Subsequently, the Office of Managing Director began an effort to examine the source documents for fiscal year 1997 and found that about $1.6 million in new assessments was erroneously counted as adjustments (collections stopped). In addition, the number of penalty actions in all but one category were found to be incorrect. Finally, the staff stated that the outstanding balance for assessed penalties for the end of fiscal year 1997 was correct as reported to Treasury because the underlying dollar errors happened to cancel each other out. However, at the time we concluded our review in July 1999, the staff had not yet verified the amount of adjustments (collections stopped) for fiscal year 1997 or any of the figures for fiscal year 1998. Without complete and accurate data, we could not reach any conclusions about the effectiveness of FCC's collection of civil monetary penalties.

The data problem aside, FCC officials maintain that it is difficult to predict how much of the outstanding balance of proposed or assessed penalties ultimately will be collected because FCC has taken the position that most of the penalties listed in the Treasury report are not yet legally enforceable debts.[11] The Commission's view, after consultation with the Department of the Treasury, is that it is inappropriate to attempt collection efforts before there is a legal obligation for the suspected violator to pay. However, on the basis of historical data on the amount of penalties collected in past years, they estimate that about 75 percent of the outstanding balance will remain uncollected.

Conclusions

FCC does not know if all entities have paid the fees they owe. This is particularly a problem with the collection of regulatory fees. FCC has identified several hundred entities that have failed to pay appropriate fees and is aware of other possible cases of nonpayment. A shortfall in regulatory fee collection has budgetary ramifications, since FCC's appropriation is reduced by its offsetting collections. There is also an issue of equity, since responsible members of the industry who pay their fees are, in essence, bearing the cost for those who do not pay.

FCC is currently taking actions aimed at improving the financial information system used to support fee collections, linking its licensing and fee databases, and assigning unique identifiers to entities doing business with the Commission. Also, the independent review of FCC's financial management practices by FCC's Office of Inspector General is expected to provide a comprehensive look at FCC's system of financial controls and recommend improvements. These are important first steps,

[11]On the basis of sections 503(b) and 504 of the Communications Act, and after consultation with the Department of the Treasury, FCC has taken the position that penalties going through its administrative process are not legally enforceable debts until the Department of Justice obtains a judgment. FCC states that penalties going through its hearing process become legally enforceable debts after a final order has been obtained and affirmed in court if appealed.

but it is too early to evaluate their effectiveness. Nevertheless, FCC can take action now to make better use of the information and systems currently available to provide stronger oversight on fee collections. Recent FCC actions have shown that proactive oversight efforts can uncover cases in which regulatory fees were not paid and that pursuing these cases can lead to additional fee collections. Such efforts, however, are not a routine part of FCC's approach to regulatory fee collection.

In addition, without adequate documentation of application fee procedures and payments, FCC cannot ensure that all required application fees are being collected. Although FCC collects much less in application fees each year than in regulatory fees, the number of files for which proof of payment could not be provided raises serious concerns about the extent to which FCC is collecting these fees. The fact that the Wireless Telecommunications Bureau (which processes far more applications than the other bureaus) was able to document that a fee was paid or not required for nearly all the application files we reviewed demonstrates that compliance with the requirement for adequate documentation is not unreasonable.

Finally, while FCC's planned new system and the policy changes that FCC has already made should help improve collection rates, the discovery of errors in data previously reported to the Department of the Treasury reinforces the need to ensure that the new system will not be handicapped from the outset by erroneous data.

Recommendations

To better ensure that FCC collects appropriate regulatory and application fees and accurately tracks the status of civil monetary penalty assessments and collections, we recommend that the Chairman of the Federal Communications Commission direct FCC's Managing Director and Bureau Chiefs to take the following actions:

- Develop and implement a business plan and procedures for routinely using the information available to FCC to identify, to the extent possible, entities that have not paid required regulatory fees and to collect the amounts they owe. This plan should include specific performance goals and measures consistent with the requirements of the Government Performance and Results Act.
- Develop and implement written procedures adequate to ensure that the required application fee has been paid before an application is approved.

- Conduct an audit of FCC's data on the status of civil monetary penalties to correct any data errors and internal control weaknesses that may have led to errors before incorporating these data into FCC's planned new financial system.

Agency Comments

We provided FCC with a draft of this report for review and comment. In a letter dated July 30, 1999, FCC's Managing Director wrote that the Commission concurred with our three recommendations and will incorporate them as part of a strategy to improve financial management over fee collections, tracking and reporting of receivables, and collection of enforcement actions. The Managing Director also emphasized that FCC is aware of the need to improve the fee collection process and has been active in addressing deficiencies as soon as identified. The full text of FCC's letter, along with our responses to several points raised in it, is included in appendix II.

We performed our review from September 1998 through July 1999 in accordance with generally accepted government auditing standards. We did not evaluate the reliability of the computer-generated data provided by FCC. Our review was based upon interviews with officials from various FCC offices and bureaus, as well as upon examinations of FCC records. Our scope and methodology are discussed further in appendix I.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days after the date of this letter. We will then send copies to interested congressional committees; the Honorable William E. Kennard, Chairman, FCC; the other FCC commissioners; Andrew S. Fishel, Managing Director, FCC; and the Honorable Jacob J. Lew, Director, OMB. We will also make copies available to others upon request.

If you or your staff have any questions about this report, please call me on (202) 512-7631. Key contributors to this report are listed in appendix III.

Sincerely yours,

Judy A. England-Joseph
Director, Housing and Community
Development Issues

Contents

Abbreviations

FCC	Federal Communications Commission
OMB	Office of Management and Budget

Scope and Methodology

To determine how the Federal Communications Commission (FCC) ensures that required regulatory and application fees are collected, we interviewed officials in FCC's Office of Managing Director, Office of Inspector General, and the various bureaus and offices that review applications. We also reviewed FCC's regulations and related laws and reports. To determine the extent to which common carrier regulatory fees were paid, we obtained lists of carriers from FCC and from several carriers that contract with other carriers to resell their services. We compared the names of the carriers with the names of those who paid regulatory fees in fiscal year 1998, as captured in FCC's fee collection database.

To determine the extent to which application fees were paid, we reviewed a random sample of application files from each of the five bureaus (Wireless Telecommunications, Common Carrier, Cable Services, Mass Media, and International) that process applications. We asked each bureau to provide us with a comprehensive listing of file numbers for all applications submitted in fiscal year 1998. Because of slight differences in the way the information was provided, our methodology differed slightly by bureau.

- Three bureaus–Mass Media, Common Carrier, and International–provided a computer file with information on each of the applications filed in fiscal year 1998. We drew a random sample of 150 applications from each of these bureaus.
- The Cable Services Bureau provided us with the first and last file numbers used in fiscal year 1998 and copies of notices from which we identified the names of the applicants. We generated a random list of 150 file numbers from the lists provided. We were also given access to the bureau's database to confirm the accuracy of the names of applicants for which files could not be located.
- The Wireless Telecommunications Bureau uses several different numbering systems, because of the variety of different services for which they process applications. We were provided with the first and last number of each of several sequential numbering schemes used in the bureau, and drew a random sample of 100 from those provided. About half of the bureau's applications were assigned application numbers that were based on the date. For those files, we first drew a random sample of 100 dates by type of application. We then requested the total number of applications processed on each of the chosen dates and selected another random number to identify a single application on each selected date.

After informing FCC of our preliminary findings, FCC asked for the opportunity to provide additional information to demonstrate that required application fees were paid. We reviewed the supplemental information provided to evaluate its reliability and sufficiency and included the results of this review in our report.

Since we used a sample (called a probability sample) of FCC applications to develop our estimates, each estimate has a measurable precision, or sampling error, that may be expressed as a plus/minus figure. A sampling error indicates how closely we can reproduce from a sample the results we would obtain if we were to take a complete count of the universe using the same measurement methods. By adding the sampling error to and subtracting it from the estimate, we can develop upper and lower bounds for each estimate. This range is called a confidence interval. Sampling errors and confidence intervals are stated at a certain confidence level—in this case, 95 percent. For example, a confidence interval at the 95 percent confidence level means that in 95 of 100 instances, the sampling procedure we used would produce a confidence interval containing the universe value we are estimating.

Table I.1 contains the universe sizes, sample sizes, estimates, and sampling errors of the estimates.

Table I.1: Results of GAO's Review of FCC Applications Files in Fiscal Year 1998

Sample and results	Bureau: Cable Services	Bureau: Mass Media	Bureau: Common Carrier	Bureau: International	Bureau: Wireless Telecommunications
Universe	17,149	1,340	4,215	2,256	124,394
Sample size	150	150	149	148	[a]
Applications claiming to be exempt from paying a fee	1	30	4	21	[a]
Percentage exempt	0.01%	20.00%	2.68%	14.19%	22.73%
Sampling error for exempt files	[b]	6.05	2.56	5.45	6.79
Applications where the application and adequate documentation of payment were located in the application file	42	26	93	66	[a]
Percentage complete in file	28.00%	17.33%	62.42%	44.59%	45.71%
Sampling error for complete files	7.18	5.73	7.66	7.77	8.70
Applications where the application and adequate documentation of payment were provided by FCC	0	6	22	35	[a]
Percentage of files where payment information was provided by FCC	0.00%	4.00%	14.77%	23.65%	30.52%
Sampling error for files where payment information was provided by FCC	0.00	2.97	5.61	6.64	8.04
Applications where application and/or adequate documentation of payment could not be located	107	88	30	26	[a]
Percentage of files where application and/or adequate documentation of payment could not be located	71.33%	58.67%	20.13%	17.57%	1.04%
Sampling error for cases where application and/or adequate documentation of payment could not be located	7.23	7.45	6.35	5.95	1.44[c]

[a]Because of the sampling methodology, the exact numbers for this category are not meaningful.

[b]The sampling error cannot be computed exactly to the small finding. The exact 95-percent confidence interval is from 0.02 percent to 3.57 percent.

[c]Because of the small findings in both strata, this sampling error is only approximate.

Source: GAO's analysis of FCC's information.

To determine the extent to which FCC collects civil monetary penalties, we interviewed officials with FCC's Office of Managing Director and Office of General Counsel and reviewed related reports, documents, laws, and regulations.

We conducted our review from September 1998 through July 1999, following generally accepted government auditing standards. We did not evaluate the reliability of the computer-generated data provided by FCC.

Comments From the Federal Communications Commission

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

Ms. Judy England-Joseph
Director, Housing and Community
Development Issues
United States GAO
Washington, DC 20548

Dear Ms. England-Joseph:

Thank you for the opportunity to review and comment on the proposed report entitled Telecommunications: FCC Does Not Know if All Required Fees are Collected (GAO/RCED-99-216, Code 385761). The Commission is aware of the need to improve the fee collection process and, as noted in the report, several important initiatives are already under way to do so. The comments, however, on page 11 of the draft report concerning the Office of the Inspector General (OIG) report on collections give no credit to the Managing Director's timely efforts to begin corrective action on these deficiencies as soon as they were identified. At the time of the report, the Managing Director had already hired a Project Manager to undertake the major corrective action of finding and implementing a new revenue accounting system.

Now on p. 12.
See comment 1.

First, we would like to comment on the portions of the report that deal with the Bureau's application fee sufficiency verification processes. The Commission feels strongly that, while improvements in file documentation and control are warranted and are underway, Bureau licensing and authorization procedures and systems demonstrated a high level of confidence that application fees are collected and that the amounts collected are correct. Most Bureaus have implemented a review process early in the cycle that provides assurance that fees have been collected before license examiners process the request. Further, when asked, the Bureaus were able to substantiate fee collection in the 98 percent range or to explain and correct discrepancies such as duplicate file numbers created during a recent data conversion, one payment covering multiple stations or exemption entitlements.

See comment 2.

Automated system support for the filing and authorization process is unequal across the Commission but new initiatives are under development or have been recently installed for almost all filing and authorization processes. In fact, the agency's five year strategic plan includes an objective to completely automate all electronic filing and document management systems. The Wireless Telecommunications Bureau (WTB) has the highest level of automation and therefore the highest control over data results at 99% compliance. WTB's Universal Licensing System (ULS) was launched in December 1997. Upon full implementation in late 2000, it will support more than 90 percent of the Commission's licensing volume and consolidates over 14 separate systems. Most Bureaus still rely on a

Ms. Judy England-Joseph 2.

combination of manual and automated processes but as the Commission moves toward more electronic filing, all Bureaus will be able to display the same confidence level that WTB can today.

See comment 3.

The Cable Services Bureau took exception to the comments on page 10 of the report about the effect of time an application was pending on the validity of the fee payment. The report states that fees were paid "10 months or more before the application was approved." This suggests only that the applications were pending for that period of time and not that the fees were unpaid or that the fees paid could not be associated with the applications being reviewed.

The Commission agrees with your verbal recommendation to "develop and implement written procedures adequate to ensure that the required application fee is paid before any application is approved." The Commission will institute uniform written procedures and standard business practices to assure fees are properly documented.

See comment 4.

Secondly, we would like to comment on the findings on regulatory fees. On page 1, paragraph 1, the statistics quoted should read:

"<u>In fiscal year 1998, about 72 percent of FCC new budget authority of $222 million was derived from current ($155 million) and prior ($4 million) year regulatory fees. Eighty-three (83) percent of the actual appropriation of $186.5 million was offset through these fees, thereby reducing the need for appropriated funds to $31.5 million to support FCC's operations. The remaining operating funds were provided by authority to use offsetting collections from spectrum auctions receipts and intergovernmental reimbursable programs</u>."

This change will more clearly reflect the impact of regulatory fee collection on the appropriation process.

As reflected in the report and recommendation, the Commission has undertaken specific efforts in the past to collect delinquent or unpaid regulatory fees for classes of licenses. In FY 1999, the Managing Director conducted a follow on effort to identify and collect additional FY 1998 regulatory fees for AM/FM licenses, building on the information obtained in the FY 1997 exercise. In addition, all late FY 1998 regulatory fee filers have been billed for the additional 25 percent penalty for the first time. These efforts will continue as we move toward implementing both our Commission Registration System (CORES) and our Revenue Accounting and Management Information System (RAMIS).

Ms. Judy England-Joseph 3.

CORES and RAMIS are very important initiatives to improve fee collections and enforcement tracking. CORES will assign an FCC Entity Registration Number to each entity doing business with the Commission. CORES is a web-based system that allows Commission customers to establish and maintain basic information such as name, official mailing address and entity contact information. This Registration Number will be required to obtain a license or pay a fee and will be incorporated into the licensing systems to be used in the fee sufficiency check to RAMIS.

Implementation of changes in the electronic filing systems to integrate the use of the CORES generated identifier will provide a data element to match licenses with the financial transaction history of the entity holding the license or authority. The requirements analysis and impact statements have been completed and programming for CORES will begin in August 1999 with expected implementation in April 2000.

RAMIS is a subsidiary to the Commission's core accounting system that will collect information on fee collections, auction receipts, receivables, loans and enforcement actions and is expected to be fully implemented by December 2000. Financial transaction histories will be collected in RAMIS using the CORES generated registration number as the key identifier. Among other requirements, the Commission has specified that RAMIS must contain functionality to identify late or delinquent filers, record and track an account receivable and generate billing documents within days of the close of the regulatory fee collection period.

See comment 5.

The statement on page 4, *"For the first time since it began collecting regulatory fees, in fiscal year 1998 FCC failed to collect the full amount that the Congress directed, falling short about $7 million."* is not correct. The Commission also did not meet the target in FY 1994. We feel that the fact that regulatory fee collections in FY 1995, FY 1996 and FY 1997 exceeded Congressional direction should also be reported. Further, it bears mentioning that since FY 1995, total annual fee collections from licenses (Section 8) and regulatory fees (Section 9) have generated between 90 percent and 100 percent of the total cost of operations for the Commission. However, the Commission does not have the authority to use licensing fees to offset actual appropriated funds. These fees go directly to the General Fund of Treasury.

Finally, we would like to comment on the Civil Monetary Penalties report for fiscal year 1997 and the second recommendation to conduct an audit of its data on proposed, assessed, and collected civil monetary penalties to correct any data errors and internal controls.

Ms. Judy England-Joseph 4.

As discussed in our meeting with Mr. Sweetman and Mr. Finedore on Thursday, July 15, the Associate Managing Director for Financial Operations (the Commission's CFO) has established a Reports, Research and Reconciliation Group that is responsible for validating all reported financial data created in the CFO's office. The Group Chief has been tasked with validating FY 1998 civil monetary penalty balances and developing procedures. The procedures will ensure that:

- all report data are validated, proper and adequately supported by original source data,
- adjustments are recorded in a timely manner and
- reports are filed in a timely manner.

The Chief of the Financial Operations Center, in conjunction with the CFO, will work with the Office of General Counsel and the Bureaus to develop a financial policy for recording and reporting data on civil monetary penalties. By instituting these measures, we are confident that when open enforcement actions are converted into RAMIS, they will be correct.

In conclusion, the Commission concurs with the three GAO recommendations and will incorporate them as a part of the strategy to improve financial management over fee collections, tracking and reporting of receivables and collection of enforcement actions.

Sincerely,

Andrew S. Fishel
Managing Director

The following are GAO's comments on the Federal Communications Commission's letter dated July 30, 1999.

GAO's Comments

1. We have added a sentence to indicate that a project manager had already been hired by the time of the FCC Inspector General's September 1998 report.

2. We do not agree with FCC that there is a "high degree of confidence" that the required application fees were paid. As shown in table 2 and in appendix I of our report, only one of the five bureaus (Wireless Telecommunications) provided documentation adequate to show that the required fee was paid or not required for nearly all of the sampled applications. The other four bureaus provided documentation to show that the required fee was paid or not required for 82 percent to 29 percent of the sampled files. Bureau officials stated that data conversion problems and payments made for multiple applications contributed to their inability to provide documentation for the remaining files. However, they did not provide us with details to support these assertions. In any event, Office of Management and Budget Circular A-123, which is largely based on our Standards for Internal Controls in the Federal Government, requires that the documentation for transactions, management controls, and other significant events must be clear and readily available for examination. We added a reference to this circular in our report to reinforce the need for the Commission's controls and transactions to be supported by written procedures and adequate documentation.

3. After we notified five of FCC's bureaus that we could not find adequate documentation that application fees were paid for a number of the files we reviewed, four of the bureaus responded with additional documentation, as shown in table 2 of this report. The Cable Services Bureau did not provide additional documentation but instead provided a spreadsheet listing fee control numbers for the files in question. As we state in our report, the data associated with these numbers are not sufficient to positively identify for which applications the fees were paid. Despite repeated requests, the Cable Services Bureau did not provide us with more definitive documentation. Also, on the basis of the documents we were provided, we concluded that the cable applications to which FCC refers were filed about a year after the fees in question were paid, not at the time the fee was paid—as FCC speculates. The report reflects this fact.

4. The additional detail is not appropriate for our opening paragraph, whose purpose is to provide a general characterization of the importance of regulatory fees to FCC's appropriations. A more detailed discussion of regulatory fee collection is found in the background section of the report.

5. We no longer refer to fiscal year 1998 as being the first year that FCC failed to meet its target amount (obligation limitation) in regulatory fee collection. Also, we have added that FCC's collection of regulatory fees for fiscal years 1995-97 exceeded the target amounts set by the Congress.

GAO Contact and Staff Acknowledgements

GAO Contact

John P. Finedore, (202) 512-6248

Acknowledgements

Other key contributors to this report are James R. Sweetman, Jr., Phillis Riley, David A. Rogers, Mindi Weisenbloom, Michael R. Volpe, and Teresa R. Russell.

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are $2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. VISA and MasterCard credit cards are accepted, also. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

U.S. General Accounting Office
P.O. Box 37050
Washington, DC 20013

or visit:

Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC

Orders may also be placed by calling (202) 512-6000 or by using fax number (202) 512-6061, or TDD (202) 512-2537.

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

For information on how to access GAO reports on the INTERNET, send an e-mail message with "info" in the body to:

info@www.gao.gov

or visit GAO's World Wide Web Home Page at:

http://www.gao.gov

United States
General Accounting Office
Washington, D.C. 20548-0001

Bulk Rate
Postage & Fees Paid
GAO
Permit No. G100

Official Business
Penalty for Private Use $300

Address Correction Requested