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# Classifying Broadband Services as Telecommunications Services: A Tidal Wave of Change to USF Contribution Rules or a Slow Road to Somewhere?

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C. Douglas Jarrett  
Partner  
Keller and Heckman LLP  
[jarrett@khlaw.com](mailto:jarrett@khlaw.com)  
202-434-4180



# Let's Not Get Too Serious!!

Question: What do you get if you send *the Godfather* to law school?

Answer: *An offer you can't understand*

Question: What do you get if the FCC says it does not want its orders to read like law review articles?

Answer: *The Open Internet Order with 1,777 footnotes*



# Topics

- What's new since 2012 FNPRM?
- Opportunity for Process Improvement
- Potential Adds to the USF Contribution Base
- Impediments to Action

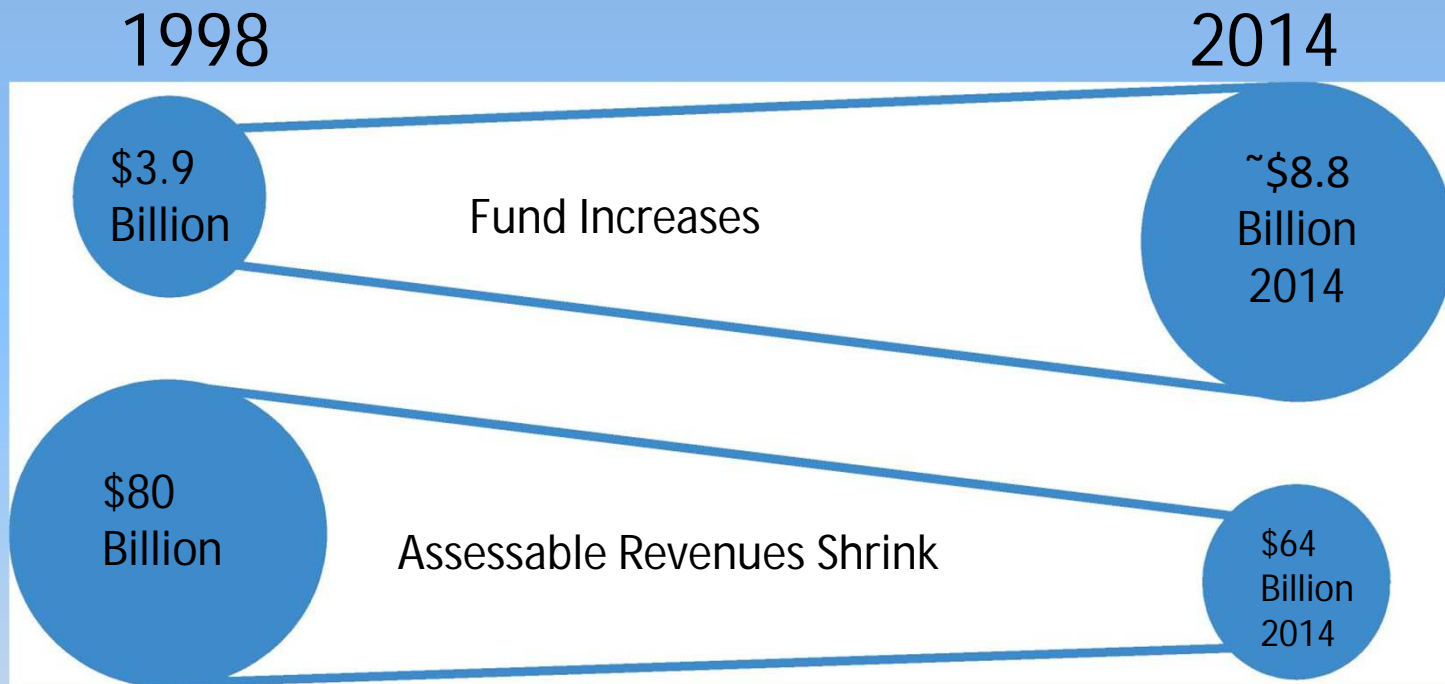
# What's New Since 2012 FNPRM?



# Paraphrasing the Ad Hoc Telecommunications Committee,

'For every \$1.0 Million in telecommunications expenditures, customers now pay \$174,000 in USF contribution surcharge reimbursement costs'

# Assessable Revenue Shrinkage



*NOTE: This diagram is an excerpt from the Ad Hoc Telecommunications Users Committee ex parte presentation filed in FCC Docket No. 06-122 on April 1, 2015*

# USF Focused on Broadband

- *USF/ICC Transformation Order*
  - *aff'd* In re: FCC 11-161, 753 F.3d 1015 (10<sup>th</sup> Cir. 2014), *cert. denied* \_\_\_ U.S. \_\_\_ (2015).
  - Shifted USF support from voice to broadband, capped line support, phased out identical support, shifted funding to support broadband investment
  - Created Connect America Fund (CAF II)
    - Set minimum broadband speeds @ 10Mbps/1Mbps
    - Up to \$1.8B annually for High Cost support of price cap ILECs; focus shifting to rate of return ILECs and balance of \$4.5B High Cost program
- E-Rate Modernization Orders (2014)
  - Increased E-Rate funding to \$3.9B/yr. for at least six years

# FCC Punts, Again, On USF Reform

- Open Internet Order\*
  - Forbears temporarily from imposing USF contributions on revenues earned on “broadband Internet access service” (“BIAS”) that is reclassified as a Title II “telecommunications service”
    - Carriers that currently offer broadband as Title II service remain subject to USF contribution obligations
  - Extends indefinitely the April 7, 2015 due date for Federal-State Joint Board Recommendations on USF contribution reform
  - Preempts states from assessing state universal service contributions on BIAS revenues

\* Appeals pending, United States Telecom Ass’n v. FCC & USA, Case No. 15-1063 (D.C. Circuit); “Motion for Stay or Expedition” also pending before the court.



# FCC Punts, Again, On USF Reform

- Open Internet Order Establishes 3 Classes of Information Services
  - Broadband Internet Access Service (“BIAS”)—a “mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints”
  - Non-Bias Data Services—Application specific, *not* intended to reach all Internet endpoints and rely on ISP network management to isolate capacity (for these services) from BIAS
    - Examples: connectivity supporting heart monitors, e-readers, and telematics
  - “Enterprise-targeted” high speed Internet access service
    - Confirms BIAS is subject to FCC’s exclusive jurisdiction
    - Regulatory, tax and USF implications---TBD

# Opportunity for Process Improvement



# Opportunity for Process Improvement

- USF contribution rules: Far Too Complex
  - Blurring lines for statutory definitions of “telecommunications services,” “telecommunications” and “information services”—problematic at best
    - How is MPLS classified, despite Form 499-A instructions?
    - *WebEx v. Intercall*
    - *TelePacific*: ISPs treated as end-users when buying transport from “telecommunications carriers,” but not from “telecommunications providers”
  - Complexity challenges compounded under new [Policy Statement](#) on forfeitures for failing to pay or timely submit “federal payments”

# Opportunity for Process Improvement

- Reverse FCC's backward march
  - All appeals of USAC determinations must first be filed with USAC (absent a waiver)
  - FCC adds to USAC staff responsibilities under E-Rate program
  - FCC still exercises discretion to delay action on appeals of USAC determinations
  - Regulation by edits to FCC Form 499-A Instructions
    - *TelePacific* effectively decided in the Instructions

# Opportunity for Process Improvement

- Open Internet Order classifying BIAS as a “telecommunications service” could
  - Minimize the importance of classifying services
  - Eliminate the *TelePacific* disparity
  - Simplify reporting and minimize demands on USAC resources
  - Shift USAC reviews and audits from the buckets in which revenues should be placed to computational accuracy/veracity
  - Encourage FCC to assess USF contributions on the “telecommunications” component of all information services
  - Capture bulk of wireless broadband revenues
  - Minimize competitive issues based on definitional ambiguity


# Potential Adds to USF Contribution Base



# Potential Adds to USF Contribution Base

	Dial Settings <sup>1</sup>	Expected Additional Revenues <sup>2</sup> (\$M)	Cumulative Contribution Base <sup>3</sup> (\$M)	Program Cost (\$ M) <sup>4</sup>	Adjusted Contribution Factor
		A	B	C	D = C / B
0	Baseline (current mechanism)	-	\$51,976	\$8,720	16.78%
1	+ International Exemption/LIRE Revenue	\$2,868	\$54,844	\$8,720	15.90%
2	+ M2M Service Revenue	\$5,996	\$60,840	\$8,720	14.33%
3	+ Broadband Revenue	\$52,430	\$113,270	\$8,720	7.70%
4	+ Wireless Data Revenues	\$105,000	\$218,270	\$8,720	4.00%
5	+ Other Enhanced Services Revenue	\$54,836	\$273,106	\$8,720	3.19%
6	+ Intrastate End User Revenue	\$110,914	\$384,020	\$8,720	2.27%
7	+ EDGE Provider Revenue	??	??	\$8,720	??
8	+ Other	??	??	\$8,720	??


1. The order of the Dial Settings uses the lowest to highest amount of expected revenues from the service category being added.
2. Expected Additional Revenues are based on entities that currently report to USAC.
3. This chart is not meant to endorse revenues as a Widget. Other assessment methods could use a per telephone number (TN) or a per connection assessment. These methods would result in assessments of approximately: \$1.07/TN per month or \$1.35/connection per month. NOTE: Special access connections were not included due to data limitations.
4. Program cost is based on 1st quarter 2015 projected program cost data (annualized) from the FCC's Public Notice.

*NOTE: This chart is an excerpt from an AT&T ex parte presentation filed in FCC Docket No. 06-122 on February 18, 2015* 

# Potential Adds to USF Contribution Base

	Dial Settings <sup>1</sup>	Expected Additional Revenues <sup>2</sup> (\$M)	Cumulative Contribution Base <sup>3</sup> (\$M)	Program Cost (\$ M) <sup>4</sup>	Adjusted Contribution Factor
		A	B		C
0	Baseline (includes additional \$1.5B S/L funding)	-	\$51,976	\$10,220	19.66%
1	+ International Exemption/LIRE Revenue	\$2,868	\$54,844	\$10,220	18.63%
2	+ M2M Service Revenue	\$5,996	\$60,840	\$10,220	16.80%
3	+ Broadband Revenue	\$52,430	\$113,270	\$10,220	9.02%
4	+ Wireless Data Revenues	\$105,000	\$218,270	\$10,220	4.68%
5	+ Other Enhanced Services Revenue	\$54,836	\$273,106	\$10,220	3.74%
6	+ Intrastate End User Revenue	\$110,914	\$384,020	\$10,220	2.66%
7	+ EDGE Provider Revenue	??	??	\$10,220	??
8	+ Other	??	??	\$10,220	??

1. The order of the Dial Settings uses the lowest to highest amount of expected revenues from the service category being added.
2. Expected Additional Revenues are based on entities that currently report to USAC.
3. This chart is not meant to endorse revenues as a Widget. Other assessment methods could use a per telephone number (TN) or a per connection assessment. These methods would result in assessments of approximately: \$1.25/TN per month or \$1.59/connection per month. NOTE: Special access connections were not included due to data limitations.
4. Program cost is based on 1st quarter 2015 projected program cost data (annualized) from the FCC's Public Notice plus the potential additional \$1.5B for Schools and Libraries funding.

*NOTE: This chart is an excerpt from an AT&T ex parte presentation filed in FCC Docket No. 06-122 on February 18, 2015* 



# Impediments to Action

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- Joint Board deliberations; no date set for delivering recommendations
- FCC concern over fate of Open Internet Order on appeal
  - Can FCC implement USF contribution reform if Open Internet Order is reversed or remanded??
- Will Administration issue another “surprise” blog post?
- Republicans in Congress
  - Don’t want expanded government programs, but don’t appreciate cost and disparate impact of current USF contribution factor
- Will a consensus or coalition of interested parties emerge?

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# Thank you!

C. Douglas Jarrett

Partner

Keller and Heckman LLP

