

## FCC POISED TO BUST THE USF BUDGET

By Kenneth E. Hardman  
ATSI Special Counsel

At its forthcoming meeting in early December, the FCC almost certainly will scrap the current \$8+ billion ceiling on the Universal Service Fund (USF) and increase program expenditures to nearly \$10 billion annually. The FCC will do so by voting to enlarge the “E-Rate” program -- one of four discrete components of the USF – by \$1.5 billion, from \$2.4 billion to \$3.9 billion. This increase, when implemented, will bring total annual USF expenditures to almost \$10 billion. The FCC’s action thus will largely make good on the “ConnectED” initiative announced by the White House on June 6, 2013, in which the Obama administration pledged to increase wired broadband and wireless access service to 99% of U.S. schools within five years.

ATSI members were first alerted to the likelihood of this increase in the USF at ATSI’s annual meeting in Kansas City in June 2013. Participants in the “What’s Coming At You” session on June 13<sup>th</sup> were afforded a preview of a projected “massive increase” in the E-Rate expenditures resulting from the White House ConnectED announcement earlier in the month.

The USF E-Rate program, which was created by the 1996 Telecommunications Act, distributes USF monies to schools and libraries to subsidize their use of communications and broadband services. In July of this year, the FCC voted to use E-Rate monies to expand Wi-Fi networks in schools and library, and, at the time, capped expenditures by the program at \$2.4 billion annually. However, the FCC also requested comment on the amount of money that would be required to achieve its broadband penetration goals, and the order being voted on in December is the result of that inquiry.

According to a “Fact Sheet” released by FCC Chairman Wheeler, more than 60% of the \$1.5 billion increase represents a “catch up” inflation adjustment covering the time since the E-Rate program began in 1997, and the remainder reflects the increased need for broadband service experienced by schools and libraries since that time. Wheeler estimates that the cost of the increase will translate to about 16 cents per month per individual telephone ratepayer, or about \$1.90 per year. However, Commissioner Pai, whose office evidently leaked news of the FCC action to New York Times reporter Edward Wyatt, has opposed the enlarged program as an unjustified “17.2% tax increase” that imposes a “greater burden on families struggling to make ends meet in this lackluster economy”. Commissioner O’Rielly, the other sitting Republican, has similarly denounced the FCC action as an unwarranted “spending spree” which he predicts will have “disastrous[]” ultimate consequences.

All four USF programs are funded by an FCC assessment on interstate telephone revenues – called a USF “contribution factor” – that is billed monthly by U.S. carriers to their customers. The current USF contribution factor is 16.1% of interstate telephone revenues, and the 17.2% increase calculated by Commissioner Pai, when fully funded, would increase the contribution factor to approximately 18.9% of interstate revenues. In reality, however, the actual contribution factor when the E-Rate increase is funded is likely to be even higher than 18.9%. This is because the telephone industry transition to an Internet Protocol (IP) technology for network services is already causing the contribution factor to increase simply in order to maintain the current level of funding, without considering the effect of the projected increase in the E-Rate program.

Despite the opposition by the FCC’s two Republican commissioners, Wheeler’s \$1.5 billion increase in the E-rate program undoubtedly will be approved by the agency. The FCC is a five-member agency in which Wheeler and two other Democratic members comprise the majority. One is Mignon Clyburn, the interim Chair of the FCC before Wheeler took over in November 2013 and a reliable supporter of Wheeler’s proposals. The third Democratic commissioner is Jessica Rosenworcel, who was promoted to her present position at the behest of her former boss, retiring Chair of the Senate Commerce Committee, Senator Jay Rockefeller (D-WV). Senator Rockefeller was one of the principal architects of the E-rate program in the 1996 Act, and one of its staunchest supporters all along, and Rosenworcel herself has publicly proclaimed her desire to “right-size” the E-rate program “and its budget”.

Historically, ATSI has not taken a position on whether the USF budget is too large. Instead, ATSI has opposed changing the methodology for assessing USF contributions from the current percentage of interstate revenues (the “Revenues” method) to a flat monthly assessment per telephone number (the “Numbers” method), a change that AT&T, Verizon and other large corporate interests have been seeking for many years. While the E-Rate increase being adopted in December does not itself make any change in the contribution methodology, it will surely contribute to the pressure on the FCC to reform the USF contribution methodology and, potentially, to switch to a methodology such as “Numbers” that is onerous and unfair to ATSI members.

The issue of a change in USF contribution methodology has been referred to a special panel of FCC and state public utility commissioners, with instructions to report back to the FCC on recommended changes by April 7, 2015. By statute the FCC then will have one year to accept, reject or modify recommended changes. The fight against “Numbers” has been waged by ATSI and others for several years. In part due to the massive increase in the E-Rate budget to be approved by the FCC next month, ATSI may well need to gear up for yet another major battle over “Numbers” next year.