

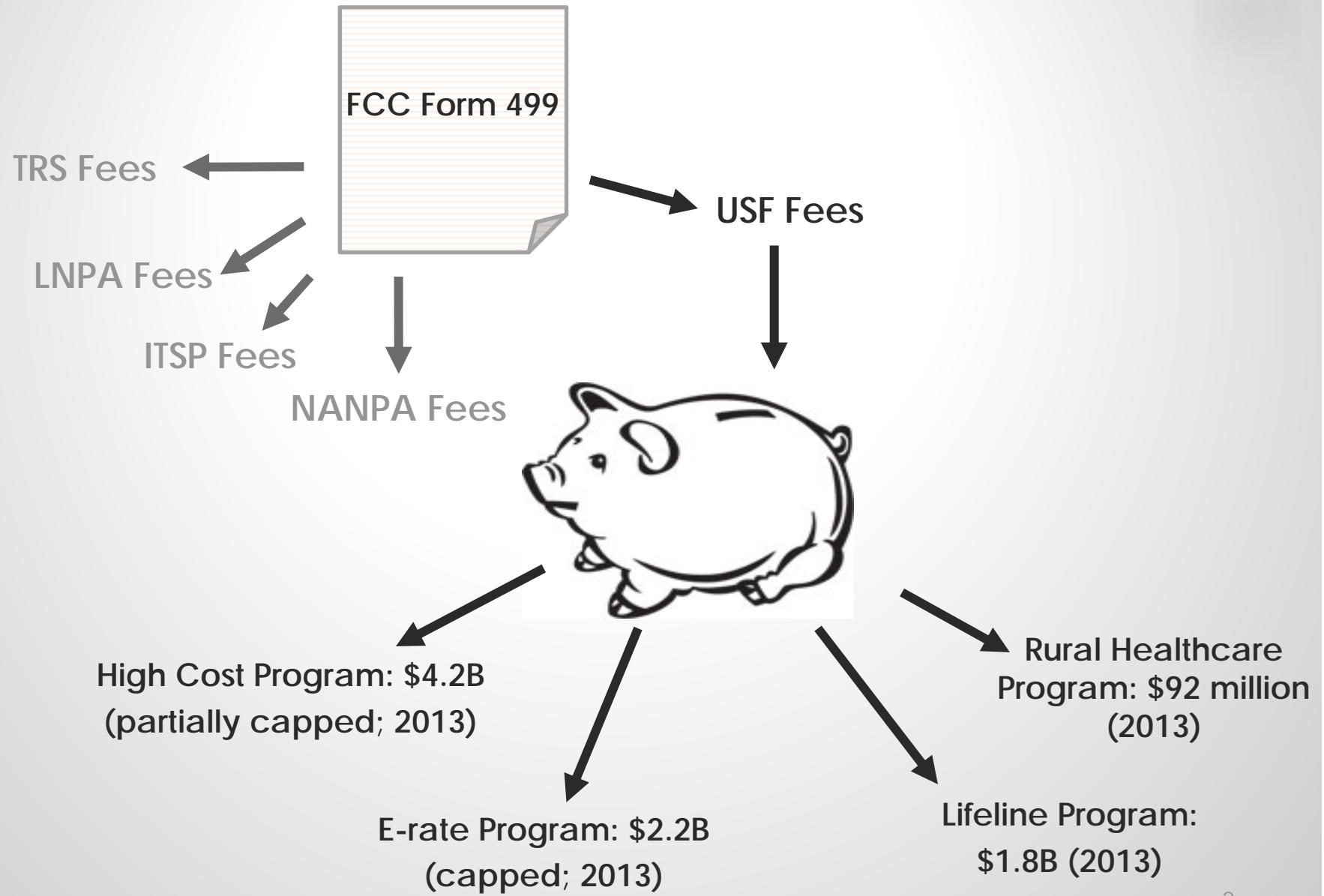
Annual Public Utility (PUC) and FCC Reporting



Davis Wright
Tremaine LLP

DEFINING SUCCESS TOGETHER

Federal Universal Service System



FCC Forms



- Forms:
 - FCC **Form 499A** (annual report)
 - FCC **Form 499Q** (quarterly report)
 - Forms are used to report revenues to the FCC
 - Reported revenues are the basis for a number of FCC fees:
 - Universal Service Fund (USF)
 - Telephone Relay Service (TRS)
 - Interstate Telecommunications Service Provider (ITSP)
 - North American Numbering Plan Administration (NANPA)
 - Local Number Portability Administration (LNPA)



- **Universal Service Fund**
 - Administered by the Universal Service Administrative Company (USAC) (private contractor to FCC)
 - Fee is revised quarterly. Current fee is 16.6% of assessable revenues
 - Contribution factor is based on projected funds needed for:
 - Connect America Fund (f/k/a High Cost)(capped)
 - Lifeline program
 - E-rate (capped)
 - Healthcare Connect

Other Fees



- **Telephone Relay Service (TRS)**
 - Administered by Rolka Loube Saltzer Associates
 - 1.484% of assessable revenues
- **Interstate Telecommunications Service Provider (ITSP)**
 - Administered by the FCC
 - Hovers between 0.346-.375% of assessable revenue
- **North American Numbering Plan Administration (NANPA)**
 - Administered by Welch LLP
 - 0.00302% of assessable revenues
- **Local Number Portability Administration (LNPA)**
 - Administered by Neustar
 - Low fee (rate not public); minimum of \$100

USF Contribution Basics



- “**Contribution Factor**” 2Q 2014: 16.6% on interstate and international revenues
- **Contributor** = entity that cuts the check to gov’t
 - Paying a line item on your phone bill isn’t “contribution”
- **Contributions** = fees paid by contributor that it MAY choose to recover through line item on bill
- **NOT a tax.** Fee assessed on provider, not end user.
 - Tax jurisdictional rules don’t apply.
- **No mark up on bill:** factor x assessable revenues = max

Dissecting the FCC Form 499



- “Block 4” (lines 401-423)
 - Default section
 - Jurisdictional breakdown
 - USF fees triggered for interstate/int'l revenues
 - Each line for different service
- “Block 3” (lines 301-315)
 - Reseller revenues go here (plus other types)
 - Fees not assessed, but need to justify with documents!

Assessable Revenues



- Interstate + int'l end user telecom, interconnected VoIP
- Interconnected VoIP = VoIP services that (1) enable real-time, two-way voice communications; (2) require a broadband connection from the user's location; (3) require IP-compatible customer premises equipment; and (4) permit users to receive calls from and terminate calls to the PSTN (VoIP E911 Order)
- Telecommunications not just voice
 - Point-to-point transport of data is a telecommunications service
- Self-provisioning, government self-provisioning
 - Does NOT mean that governmental customers are typically exempt—they're not!
 - Sales tax exemption certificates not applicable

Anatomy of a Contribution Audit



- Launched by letter sent from USAC
- Entrance conference
- First round of responses to standard document request and questionnaire due a few weeks later
- Followed by many rounds of “PBC” (provided by client) questions to conduct the “field work”
- Draft audit report
- Audited entity gives written response on draft
- Final report approved by USAC Board at a quarterly meeting

Anatomy of a Contribution Audit



- Based revenues reported on **Forms 499A** and **499Q**
- Company should be able to clearly identify the specific basis for every line item revenue reported
- This includes breaking out wholesale services
- Process usually takes around a year—very thorough
- USAC conducts the audit with in-house staff
- Typically involves a site visit

Scope of USAC Audits



- Scope of information requested by USAC auditors is **broad** and includes:
 - General ledger
 - Services provided
 - Business processes
 - Billing systems
 - Tax systems
- Will review whether *all* revenues reported even if not assessable
- Will review jurisdictional allocation
 - Regulatory and jurisdictional classifications per FCC rules and decisions—not governed by tax law concepts such as location of activity.
- Will look for over-collection or under-collection of USF fees from customers
- Auditors request screen shots, examine bills, customer lists, copies of exemption certificates

Claimed Exemptions Will Be Audited



- Exemptions include:
 - Intrastate revenues
 - Revenues from resellers that directly contribute
 - Resellers may pay line item on bill from wholesaler but that doesn't count, it isn't direct contribution
 - LIRE exemption for international revenues
 - Formula

If $\frac{\text{interstate telecom/interconnected VoIP}}{\text{interstate + international telecom/interconnected VoIP}}$ = 12% or less

Must take into account affiliates' revenues

Method of Allocating to Jurisdictional Categories Will Be Audited



Methods for determining interstate vs. intrastate:

- Determined by end-to-end analysis of the entire data stream (not just the portion your company provides, and not just where the facilities lie)
 - Booked revenues
 - Traffic studies
 - Safe harbor
 - 37.1% of mobile telephony revenues
 - 64.9% of interconnected VoIP revenues
 - 10% certificates from customers for “private lines,” special access, services whose jurisdictional nature can’t be determined by service provider

10% and Reseller Exemption Certificates



- 10% certificates
 - For services for which jurisdictional allocation cannot be determined by service provider need “10% certificate” from customer attesting that usage is 10% or less interstate
 - Obtain once unless service changes
- Reseller certificates (avoid double “taxation”)
 - Need 2 things:
 1. “reseller certificate” that is renewed each year that is service specific (for revenues Jan 1, 2014 or later)
 2. print out from FCC website showing the customer is a direct USF contributor

Practical Tips for USF Contribution Audits



- Internal self “audits” can be helpful to fix any problems before an audit is announced
- Internally document allocations when reports are filed
- Monitor FCC decisions
- Monitor changes in the 499 form, instructions
- Do not seek tax advice for something that isn’t a tax
- Anticipate the auditor’s next question in drafting answers and be able to document all answers

Recent Developments



- FCC has been revamping the Universal Service system from top to bottom
 - First were program reforms:
 - CAF, Lifeline, Healthcare Connect, E-rate (pending)
 - Next will be a contribution reform order
 - FCC released Further Notice of Proposed Rulemaking (FNPRM) on contribution reform on April 30, 2012

Contribution Reforms



- FCC has asked in FNPRM:
 - Who should contribute?
 - Could expand contribution base beyond telecommunications and interconnected VoIP
 - Could include broadband, one-way VoIP, text messaging, and MPLS service revenues
 - Should there be a new method of assessing contributions? For instance, should fees be assessed on a per connection or per number basis, or on the full price of bundled services?
 - Should there be changes to the way the contribution system is administered?
 - Should the system for disclosing USF fees to customers be changed?

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