

# Opportunities to Reach the Educational and Rural Health Care Markets Through USF's E-Rate and Rural Health Care Pilot Programs

A Program Overview and Recap of Recent  
Reforms at the FCC and in Congress

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# Overview

- Background on the Universal Service Fund (USF)
- Business opportunities in E-rate and the Rural Health Care Pilot Programs
- Discussion of new services sought for funding under USF programs in for FY2009
- Competitive bidding requirements
- A look at Congressional and FCC reforms impacting the Programs

# Universal Service Fund

- A \$7-billion-a-year program that provides affordable access for technology services
- USF consists of four support programs:
  - Schools and Libraries, or E(ducation)-Rate
  - Rural Health Care
  - High Cost
  - Low Income

# E-Rate Program

- \$2.25 billion available annually to elementary and secondary schools and libraries for technology.
- Public and private schools, school districts and libraries receive discounts ranging from 20% to 90% on “eligible” services.
  - Example: A school with a 90% discount may obtain \$1 million of eligible technology and only pay 10%, or \$100,000. E-Rate funds the \$900,000 balance.
- A school’s discount is based on its poverty level, measured by number of students on federal free and reduced lunch program.
- Most U.S. schools and libraries, including private and charter schools, participate in the program.

# E-Rate Program

- The E-Rate Program provides discounts to eligible schools and libraries for eligible telecommunications, Internet access, internal connections and basic maintenance of internal connection services.
  - Priority 1 = telco and Internet access services
  - Priority 2 = internal connections and basic maintenance of internal connections
- Majority of BICSI Members fall into Priority 2 category.
  - USAC committed [\\$939 million](#) to Priority 2 internal connections and disbursed [\\$190 million](#) for internal connections in Funding Year 2007, according to latest FCC [report](#) on USF revenues and expenses

# E-Rate Program: Eligible Services

- Each Year the FCC assesses whether to add eligible services to its list for funding:
  - In a July 2008 [rulemaking](#), the FCC sought comment on whether services such as filtering software, text messaging, scheduling services and telephone broadcast messaging should be designated as eligible. The FCC also sought comment on retaining interconnected VoIP.
  - In addition to the FCC's rulemaking, the FCC sought comment on eligibility related to video on demand, Intranet web hosting and e-mail archiving.
  - After hearing from stakeholders on the proposed FY 2009 Eligible Services List, the FCC declined to adopt any of USAC's proposed changes.
  - On November 21, 2008, the FCC released the [Eligible Services List](#) (ESL) for Funding Year (FY) 2009 for E-Rate.
    - The FY2009 ESL is the same as the FY2008 ESL.

# E-Rate Program: Interconnected VoIP

- FCC classifies communications services into different categories with different rules and regulations.
- FCC traditionally has treated VoIP with a light regulatory touch, exempting it from more stringent regulations for telecom services.
- Regulatory climate for VoIP has changed, with FCC exercising more oversight in recent years
- The FCC defines interconnected VoIP as a:
  - service that enables real-time, two-way voice communications;
  - requires a broadband connection from user's location;
  - requires Internet protocol-compatible customer premises equipment; and
  - permits users generally to receive calls originating on PSTN and to terminate calls to the PSTN.
- Eligible Services List for E-Rate (2006)
  - FCC treats interconnected VoIP as an eligible service
  - “We include interconnected VoIP as an eligible service irrespective of whether this service is a telecommunications service or an information service.”
- FCC’s July 2008 rulemaking tentatively concluded that interconnected VoIP should be Priority 1 service and questioned whether interconnected VoIP services should require certification of Children’s Internet Protection Act requirements.
  - The FCC has yet to resolve these questions

# E-Rate Program: FCC Treatment of VoIP

- 2008 Telecommunications Worksheet
  - Requires for the first time providers of wireless or interconnected VoIP services relying on "traffic studies," to determine USF contribution eligible revenues
- [Intercall](#) Order, 6/30/2008
  - FCC held that audio bridging services are telecommunications and should contribute to Universal Service Fund
  - FCC changes standard for what constitutes an integrated information service
  - VoIP providers want FCC to clarify that the Order does not cover information services with a functionally integrated voice communications service, thereby exposing VoIP to more regulation
  - FCC is considering public comments it received in September 2008 to VoIP providers' request for reconsideration
- [AT&T Petition](#), 7/17/2008
  - AT&T asks FCC to clarify regulatory obligations that IP-enabled carriers have under intercarrier compensation regime.
  - AT&T urges FCC to adopt interim regulations subjecting interconnecting VoIP services to Title II (telecom) regulations until the FCC officially clarifies the regulatory status of IP-enabled services.
  - FCC response still pending

# E-Rate Program: Business Opportunities

- BICSI members and other ITS providers may provide:
  - Cabling and information transport systems to eligible schools and libraries
  - Cabling and related components qualify as “Internal Connections” (Priority 2)
- Provide maintenance services on installed components (Priority 2)
- Work as a subcontractor for a service provider installing comprehensive products and services
  - E.g., subcontract for a telecom carrier or ISP to provide initial infrastructure build out for delivery of services, fiber or wireless network that interconnects school’s or library’s various buildings (Priority 1)

# E-Rate Program: Competitive Bidding

- **Key Competitive Bidding Requirements for Service Providers:**
  - Avoid conflicts of interest
    - Independent consultant who is also a vendor
    - Participant who is also a vendor
  - Do not write or prepare the RFPs
  - Do not prepare file, or sign FCC forms related to the competitive bid process for applicant
  - Do not act as consultant
  - Provide only vendor-neutral guidance
  - Follow applicable state and local procurement requirements
  - Document the competitive bid process and retain documents for 5 years.

# E-Rate Program: Audits

- The FCC's Office of the Inspector General (OIG) has conducted thousands of audits on E-rate beneficiaries, including service providers, in recent years.
- On October 31, 2008, the OIG released its [Semiannual Report to Congress](#) on recent auditing activities including the E-Rate Program.
- The FCC OIG is now beginning a third round of comprehensive audits involving E-rate and other USF support programs.
- Round 1, conducted during 2007, included 155 audits of E-rate applicants. Round 2, conducted earlier in 2008, involved 260 audits. Although the Report does not indicate the number of E-rate audits planned in Round 3, it does note that OIG:
  - increased internal audit support staff from 5 to 18
  - plans to increase its field presence by 200% from Round 2.

# E-Rate Program: Audits

- On December 12, 2008, the FCC OIG released a [report](#) of the 260 audits in Round 2.
- The purpose of the audits was to determine whether beneficiaries were receiving funds according to FCC directives and whether the federal government issued erroneous payments.
- The [Improper Payments Information Act of 2002](#) (IPIA) requires the FCC and other agencies to annually report improper payments (those that should not have been made or made in the wrong amount).
- The OIG found that the E-rate Program is at risk since the erroneous payment rate in 2008 was 13.8%, versus 12.9% in 2007. A program is at risk under IPIA if the error rate exceeds 2.5% or \$10 million.
- E-Rate's total erroneous payments in 2008 were an estimated \$232.7 million, up from \$210 million in 2007.

# Rural Health Care Pilot Program

- The FCC launched a Rural Health Care Pilot [Program](#) (RHCPP) in 2007 and dedicated \$417 million for three years to construct 69 statewide or regional broadband telehealth networks in 42 states and U.S. territories.
- Telehealth networks link dozens of rural health facilities to urban hospitals and centers via National LambdaRail, Internet2 or public Internet.
- Telehealth networks enable sharing of medical images, distance learning and diagnosis.

# Rural Health Care Pilot Program

- 16 of the 69 [participants](#) have solicited RFPs on USAC's web site for service providers to build telehealth networks. They are:
  - Alaska Native Tribal Health Consortium
  - California Telehealth Network
  - Colorado Health Care Connections
  - Rocky Mountain HealthNet
  - Iowa Health System
  - Iowa Rural Health Telecommunications Program
  - New England Telehealth Consortium (Maine)
  - Missouri Telehealth Network
  - Health Information Exchange of Montana
  - Oregon Health Network
  - Geisinger Health System (Pennsylvania)
  - Northeast HealthNet (New York)
  - Pennsylvania Mountains Healthcare Alliance
  - Palmetto State Providers Network (South Carolina)
  - Heartland Unified Broadband Network (South Dakota)
  - St. Joseph's Hospital
- Many RFPs have yet to be posted, thus offering dozens of opportunities to bid on proposed projects.

# Rural Health Care Pilot Program

- The FCC recently granted two requests to merge separate, but related telehealth projects.
  - On [December 5<sup>th</sup>, 2008](#), the FCC's Wireline Competition Bureau granted a merger of As One Together for Health (ATH) and the University of Mississippi Medical Center (UMC), designating UMC as the successor. In merging the two projects, the Bureau also merged funding of both projects to \$5,831,283.
  - In a separate order issued the same day, the Bureau granted a merger of Holzer Consolidated Health Systems (Holzer) and Southern Ohio Care Network (SOHCN). Holzer cited budget restrictions as the reason for its failure to proceed. The Bureau combined Holzer's award of \$1,836,00 and SOHCN's award of \$13,929,417.

# Rural Health Care Pilot Program

- Each project will receive funding for up to 85% of costs to build and deploy the network. Participants must fund the remaining 15% of eligible costs.
- A primary goal of the RHCPP is ensuring long-term success of rural health care networks. Thus, health care participants must provide [evidence](#) to the FCC that proposed networks will be self sustaining by the pilot program's completion. Evidence may include recouping fees from network partners or state funding.
- Eligible program costs include:
  - Deploying transmission facilities
  - Providing access to advanced telecommunications and information services, similar to E-Rate.
  - Recurring and non-recurring costs of operating and maintaining the network once it is operational.

# RHCPP Business Opportunity

- Upon USAC posting, vendors may begin to view and provide bids for eligible products and services.
- RFPs must be posted for bidding for a minimum of 28 days before a Rural Health Care provider may choose a vendor.
- BICSI members may provide:
  - wireless, satellite, cable, fiber or BPL transmission facilities
  - materials/construction of fiber, broadband infrastructure (internal connections)

# Federal Communications Commission: Recent Reforms

- FCC September 2008 [NOI](#) on USF Oversight (Refresh of 2005 NPRM)
  - FCC weighs public comment improving oversight of USF, including simplifying E-Rate Program
  - Asks whether USAC should remain the USF administrator
- FCC Inspector General undertakes 650 audits in 2008 of USF beneficiaries and contributors
- FCC Steps Up Enforcement of Improper Payments
  - FCC reported \$210 million in payments made improperly to E-Rate recipients in FY2007
  - FCC, USAC attribute improper payments to lack of documentation for services provided, failure to properly identify eligible services, entering a contract with a service provider too early
- FCC Issues [27 Orders](#) in October 2008

# Congress: USF Reform

- 10/6/08—Congress Targets USF Audits
  - 46 House members urge FCC Chairman Kevin Martin to reduce burdens of auditing process on USF recipients by
    - Reducing audit timeframe
    - Establishing that *de minimus* errors do not rise to waste, fraud or abuse of USF funds
    - Eliminate duplicative reviews and audits of beneficiaries and service providers

# Congress: USF Reforms

- Nearly a dozen bills in 110<sup>th</sup> Congress addressed USF reform
  - Key initiatives focus on expanding USF to include deployment of broadband services with download speed of 1 Mbps or greater.
  - Some propose incentives such as broadband loans to unserved areas
  - One bill seeks to expand USF support to cover cost of emergency notification services at schools.
  - All likely to be reintroduced early in 111<sup>th</sup> Congress
- Oversight hearings in House and Senate Commerce committees focused on USF reform
  - Discussed establishment of separate USF disbursement fund for broadband deployment.
  - Set stage for reform in new Congress, educated committee members on legislative history, intent of USF.

# Economic Stimulus for Broadband

- Obama's stimulus plan calls for a component to accelerate broadband build out that may include:
  - Bonds/loans for businesses to build in unserved areas
  - State block grants
  - To flow through Commerce Dept. (NTIA) or Agriculture Dept. (RUS)
- Broadband stimulus: industry proposals range from \$5 to \$40 billion but Congress more likely to back \$6 billion
  - Rural Utilities -- \$2.825 billion
  - NTIA --Wireless and Broadband for Unserved/Underserved Areas – 2.825 billion
  - Education Technology -- \$1 billion
  - Health Information Technology – \$20 billion
- Appropriations Committees expected to vote on stimulus this week
- Obama advisors say broadband proposal more likely to be “timely, targeted and temporary” to “create jobs”
- Rollout by 3<sup>rd</sup> quarter of 2009
- Incentives likely tied to transmission speeds (debate on establishing a minimum speed, i.e. wireline v. wireless)

# A Look Ahead:

## Broadband...Broadband...Broadband

- President Bush signed [Broadband Data Mapping bill](#) last year
  - Directs FCC to collect better data on broadband deployment, setting stage for expansion of USF programs to include broadband services
  - Congress this year may seek to provide funding for the bill (no funds appropriated in 2008)
- President Obama committed to expanding USF
  - Wants all Americans to have access to broadband networks and services
  - Sees E-Rate and Rural Health Care Pilot programs as essential tools toward deployment, rebuilding the economy
  - In a Jan. 8<sup>th</sup> speech, Obama cited the importance of electronic health care and called health information technology a priority for his Administration
  - Beyond the economic stimulus, Obama vows to replace USF disbursements based on voice communications with broadband-based USF disbursements
  - Greater funding for USF likely, thereby expanding available funding for service providers seeking to enter educational and rural health care markets through USF

# A Look Ahead

- New telecom, technology leaders in Congress favor broadband deployment and broader USF role.
- Sen. Jay Rockefeller of West Virginia, now chairman of the Senate Commerce Committee, helped create USF and is advocate of USF reform.
- In the House, Rep. Rick Boucher of Virginia, new Chairman of the House Communications, Technology and Internet Subcommittee has authored various measures to reform USF that include broadband deployment funding.
- House, with newly fortified Democratic majority, also will push for USF reforms, creating greater role for program in stimulating sluggish economy through investment in deployment of broadband infrastructure.
- New FCC chairman expected to implement Administration goals.
- Julius Genachowski, Obama's choice for FCC Chairman and member of the Obama transition team, favors a prominent role for USF. His experience as a Congressional staff member also means he is likely to work closely with House and Senate leaders overseeing USF reform.

# Remember

- E-Rate and Rural Health Care Pilot programs require:
  - Careful documentation
  - Understanding of federal regulatory rules, including eligibility of services and competitive requirements
  - Attention to recent and proposed regulatory and legislative reforms
  - Willingness to seek out E-Rate expertise where questions arise before trouble arrives

# Conclusion

- E-Rate and Rural Health Care Pilot Programs offer tremendous opportunities to ITS providers
- The competitive process affords new entrants opportunity to compete against larger incumbents to offer best service
- Be aware of full cost of doing business in USF programs
- Due to increased focus on USF by President Obama, Congress and the FCC, more funding may be available to ITS providers for universal broadband including E-Rate and Rural Health Care Pilot projects.

# More USF Information Available

- For more information, visit:
  - <http://www.usac.org>
  - <http://www.usac.org/sl/>
  - <http://www.usac.org/rhc-pilot-program/default.aspx>
  - For assistance with federal compliance, advocacy and investigations of the E-Rate and Rural Health Care Pilot Programs and other federal broadband initiatives, contact Cynthia Schultz at [CSchultz@PattonBoggs.com](mailto:CSchultz@PattonBoggs.com) or call 202-456-6343.