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October 9, 2018

**SUBMITTED ELECTRONICALLY VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: **MEETING SUMMARY PER SECTION 1.1208 OF THE FCC'S RULES**  
Schools and Libraries Universal Service Support Mechanism,  
Docket No. 02-6

Dear Ms. Dortch:

On behalf of Education Networks of America and ENA Services, LLC (collectively, ENA), this *ex parte* memorializes the conference call on October 5, 2018, between the undersigned counsel for ENA and Nirali Patel, Special Counsel, Office of Chairman Ajit Pai, regarding the Request for Waiver filed by the Tennessee E-Rate Consortium in 2013.<sup>1</sup> Also attached is a summary of the arguments made in the request for waiver and subsequent related submissions to the Commission.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, an electronic copy of this letter is being filed for inclusion in the above-referenced docket and sent to Ms. Patel. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

*/s/ Gina Spade*

Gina Spade  
*Counsel for ENA*

cc: Nirali Patel, Office of the Chairman (via email)  
Charles W. Cagle, counsel for the Tennessee E-rate Consortium

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<sup>1</sup> Request for Waiver, *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Tennessee E-Rate Consortium (filed Feb 11, 2013; Supplement filed Dec 17, 2013).

## TENNESSEE CONSORTIUM WAIVER PETITION

### **Background**

- In 2011, a consortium of 79 Tennessee public school districts submitted a Form 470 and sought bids for Internet access and telecommunications services (the Consortium).
- The following year, 43 school districts wanted to join the Consortium contract.
- Those school districts thought that joining the consortium would be permissible, and USAC management provided written guidance assuring the schools that they could “opt in” to the contract.
- USAC later reversed its position and denied the collective funding requests of approximately \$17 million. USAC stated that the “addition of the 43 Districts would cause a change in the scope of services sought in the solicitation. Program rules require that [school districts] must be listed on an FCC Form 470 that established the competitive bidding process.”
- Consortium members filed a waiver request with WCB in 2013.

### **Analysis**

- Contrary to USAC’s holding, program rules do not require all Consortium members to be listed on Form 470.
- If not reversed, USAC’s decision would mean that schools and libraries could only join a consortium in its initial year. Such a result would frustrate the Commission’s policy encouraging consortia applications.
  - The Commission may establish parameters or limitations on a consortium’s composition in the future if it believes this is an issue, but it would be unfair to hold these schools to a standard that did not exist in 2012.
- USAC management provided written guidance assuring the schools that they could take services from the existing consortium contract. These schools relied on this guidance. If USAC provided incorrect information, it is a further demonstration that the rules were not clear.
- Program rules require only (1) a list of specific services for which entities are likely to seek discounts and (2) “sufficient information” to enable bidders to “reasonably determine” the needs of the applicants. 47 C.F.R. § 54.503 (2011).
- The additional districts did not change the scope of the services to be provided to the schools. The demographic characteristics of the schools that initiated the consortium in 2011 and the ones that wanted to opt into the consortium contract were very similar.
- The public interest would be served by grant of the waiver request.
  - There was no harm to the fund. Broadband services were provided to all the schools. There was no waste, fraud and abuse. No other party was prejudiced by the inclusion of additional school districts to the Consortium.
  - USAC had no issue with the consortium procurement or contract formed in 2011 by the initial 79 schools, so there should be no issue with additional schools receiving those services at those rates.