Appeal of USAC's Administrator's Decision on Appeal (DOA) - Funding Year 2015-2016 (FY15) dated August 29, 2018
Applicant: WHITE OAK INDEPENDENT SCHOOL DISTRICT 1, Vinita, OK (WHIO)
FCC Form 471 Application Number: 999698
Billed Entity Number (BEN):140126
Appellant: Northeast Rural Services, Inc., d/b/a RECtec Technology & Communications (NRS)
Internet Service Provider
498 ID (SPIN):143016556

LETTER OF APPEAL

In the matter of Request for Review by Northeast Rural Services Inc. d/b/a RECtec Technology & Communications of USAC Appeal Decision FRN 2722400.

E-Rate Program: CC Docket No. 02-6

October 26, 2018

Marlene H. Dortch, Secretary
Wireline Competition Bureau
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, D.C. 20554

RE: *Appeal of USAC's Administrator's Decision on Appeal – Funding Year 2015-2016 WHIO 2015-C1-999698*
(Following Appeal of USAC's CAL for FY15 – WHIO 2015-C1-999698)
Funding Request Number -2722400

NRS's, Internet Access Provider, Authorized Contact for this Appeal:

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Dear Secretary Dortch,

I. DECISION APPEALED

NRS, through its undersigned legal counsel, hereby submits this letter and attached documentation for its appeal of the USAC's decision stated in the Administrator's Decision on Appeal – Funding Year 2015-2016 for WHIO dated August 29, 2018 ("DOA"), to wit:

> ***Post-commitment USAC has determined that $3,890.00 per month pre-discount of this funding request was for special construction charges, which the applicant is not eligible for in the Funding Year 2015. Per program rules, construction charges can only be funded in the Funding Year which it took***

> ***place. Based on the information provided, the applicant is only eligible for special construction charges under their FY2014 application. For these reasons the commitment adjustment made to the funding request has been partially restored to $1,000.00 per month of $900.00 per month post-discount.***
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> ***Your FCC Form 471 indicates that some of the products and/or services for which you requested funding were scheduled to occur outside of the current funding year. FCC Rules require, that except for under limited circumstances, all of the products and/or services for which discounts have been approved must be delivered within the current funding year. See 47 C.F.R. sec 54.507(d).***

The DOA is attached hereto as **Exhibit #1**. Per the DOA, the USAC partially granted NRS's appeal of USAC's Commitment Adjustment Letter ("CAL"). The original CAL dated March 19, 2018, indicated USAC rescinded all E-Rate funding awarded to WHIO for NRS's internet service provided in FY15. USAC's initial decision is stated in USAC's CAL for FY15, attached hereto as **Exhibit #2**, to wit:

> ***After thorough investigation, it has been determined that this funding commitment must be rescinded in full. USAC will seek recovery of $52,812.00 in improperly disbursed funds from applicant. Funds were erroneously committed for FRN 2722400, which was not justified as cost effective. This funding request is denied as a result of a Cost Effectives Review, which has determined that your request for a 10mb high speed circuit at a monthly costs of $4,980.00 is more than 5 times the average 10mb circuit cost in OK and for a school with only 49 students is excess and not cost effective as required by FCC Rules.***

USAC's partial grant of NRS's appeal marginally reinstated WHIO's E-Rate funding in the amount of $10,800.00 [(12 months x $1,000.00 per month) x 90%]. However, the USAC's DOA is devoid of any specific explanation or detail regarding the basis for the DOA. As stated above, the DOA reinstates $1,000.00 per month for internet service, but rescinds $3,890.00 per month relative to unspecified ineligible construction charges from outside FY15. Both the original CAL and the DOA are in contravention of the E-Rate rules and program goals.

II. RELIEF REQUESTED

In essence, NRS respectfully requests the Wireline Competition Bureau (the "Bureau") and/or the Federal Communications Commission (the "FCC") order the following relief:

> **(1)** ***The Bureau grant NRS's appeal of WHIO's DOA for FY15 and, in reconsideration, amend WHIO's DOA for FY15 to reinstate E-Rate funding***

> ***amount of $53,264.09, which includes the full 90% of NRS-provided Category 1-Internet Access charges equal to $52,81.002.***
>
> ***(2) The Bureau further find that, despite the FCC's directed suspension of USAC's amortization requirement in the Second E—Rate Modernization Order (SEMO), NRS and WHIO may amortize non-recurring costs over a multi-year contract under the SEMO; therefore, deeming special construction costs from outside of the requested funding year eligible for E-Rate funding.***
>
> ***(3) In the alternative, the FCC waive USAC's apparent policy/rule that special construction costs outside of the requested funding year are not eligible for funding. The FCC should find good cause to waive USAC's policy/rule because the requested 10 Mbps high speed circuit costs are in compliance with, and in furtherance of, the FCC's SEMO[1] directives e.g., encouraging "efficient investment in high-speed broadband infrastructure, including the deployment of fiber . . . ."[2]***

III. PROCEDURAL HISTORY

In 2013, WHIO, a remote school located in rural northeast Oklahoma, conducted a compliant bidding and evaluation process for 10 Mbps internet service in accordance with 47 C.F.R. § 54.503. Ultimately, WHIO selected NRS as it provider.

After selecting NRS's bid to provide a 10 Mbps dedicated fiber circuit, WHIO submitted E-Rate funding requests to USAC for FY15, FY16, and FY17. E-Rate funding for FY15 was approved and disbursed in the amount of $52,812.00.

On March 19, 2018, USAC issued a CAL rescinding WHIO's FY15 funding award in its entirety citing cost effectiveness problems (related to the "average cost" of a 10 mbps circuit in Oklahoma and student size of WHIO's rural school).

Pursuant to 47 C.F.R. § 54.720, WHIO timely appealed USAC's CAL on May 18, 2018. WHIO's initial USAC appeal is attached as **Exhibit #3**.

In response to WHIO's appeal, USAC issued the DOA. While it appears USAC conceded the appropriateness of WHIO's bid evaluation and selection process in awarding the full amount requested for monthly recurring internet service, the DOA reinstated only a marginal portion of the $58,264.00 in eligible E-Rate funding for FY15. The DOA is the first time USAC has cited

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[1] *In the Matter of Modernizing the E-Rate Program for Sch. & Libraries Connect Am. Fund (SEMO)*, 29 F.C.C Rcd. 15538 (2014).
[2] *SEMO*, at para. 17.

WHIO's amortization of special construction costs over a multi-year contract as the basis for denying funding.

NRS now timely appeals USAC's decision embodied in in the DOA to the Wireline Competition Bureau and the FCC pursuant to 47 C.F.R § 719.

IV. STANDARD OF REVIEW

Under 47 C.F.R. §54.723:

> (a) The Wireline Competition Bureau shall conduct de novo review of request for review of decisions issue[d] by the Administrator.

In accordance with 47 C.F.R. § 1.3:

> "The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."

V. GROUNDS FOR APPEAL & SUPPORTING AUTHORITIES

a. General

For the sake of brevity, NRS refers the Bureau and the FCC to NRS's appeal of USAC's CAL, attached hereto as **Exhibit #3**, for details regarding WHIO's rural location, demographics, multi-year internet access service contract with NRS, NRS's qualification, experience, and business operations, and other evidence supporting the prior and current appeals.

Further, USAC's CAL rescinded WHIO's E-Rate funding on the basis of cost effectiveness. However, in review of the DOA, USAC's vague justification for only a partial reinstatement of funding appears to be based upon the type of costs WHIO requests, *i.e.*, non-recurring construction charges, not cost effectiveness as originally stated. As a result, USAC has conceded the appropriateness of WHIO's provider selection process, and thus, should not be a subject of this appeal. For purposes preserving WHIO's rights, in the event the Bureau and/or the FCC interprets USAC's DOA differently, NRS relies on its prior appeal to USAC regarding the CAL and the cost effectiveness issues alleged by USAC (*see* **Exhibit #3**).

b. FCC's E-Rate Program Policies & Clarifications

As explained in further detail below, the FCC's *SEMO* expressly mandates that E-Rate funding be used to incentivize construction of high-speed broadband infrastructure to remove any barriers to infrastructure investment and to ensure all schools achieve the FCC's connectivity targets.[3] The E-Rate funds denied in the DOA consist predominantly of the precise category one non-recurring construction costs that the FCC authorized as proper and eligible under the E-Rate program.[4] Specifically, the following sets out the applicable principles:

Under 47 U.S.C.A § 254(b)(2), (3), and (6):

> Access to advanced telecommunications and information services should be provided in all regions of the Nation . . . Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to . . . information services, including . . . advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. . . . Elementary and secondary schools and classrooms . . . should have access to advanced telecommunications services.

Per the FCC's findings in its SEMO:

> Building on the E-rate Modernization Order we adopted in July, the improvements to the program that we adopt in this Order seek to close the high-speed connectivity gap between rural schools and libraries and their urban and suburban counterparts, and provide sufficient and certain funding for high-speed connectivity to and within all eligible schools and libraries. *SEMO*, at para. 1.
>
> Since its inception 18 years ago, the E-rate program has helped connect almost every school and library in the country to the Internet, bringing tremendous benefits to teachers, students, and library patrons. In the E-rate Modernization Order, we recognized the growing need for high-speed connectivity to and within schools and libraries. Today, high-speed broadband is transforming learning by providing teachers and students with a vast array of tools to improve educational outcomes, collaboration, and access to information. Investments from the E-rate program help schools take full advantage of feature-rich educational technologies that allow for individualized digital learning, access to interactive content, and online assessments. The same investments allow libraries to offer a free and safe place to search for information on job opportunities, find public services, access online education, and connect with friends and family. And by helping to connect every student and every library patron to high-speed

[3] *SEMO*, at para. 17.
[4] *See generally*, *SEMO*.

broadband, no matter where they live or their income level, E-rate provides a vital link to the digital world and new opportunities. *SEMO*, at para. 2.

Commission staff has estimated that only 65 percent of schools have access to high-speed broadband that can be scaled up to meet our connectivity targets, and that rural schools have even less access than urban schools. Only a fraction of rural schools with access to high-speed connectivity are connecting at speeds that meet our targets because of the high cost of connectivity, while other schools are unable to find a provider willing to provide high-speed broadband services. The connectivity gap that libraries face is even wider, with half of all public libraries reporting connections of less than 10 Mbps. Connections within the building are also a concern, as demonstrated by the recent Consortium for School Networking survey of school district leaders showing that 45 percent do not believe their Wi-Fi networks have the capacity to move to one-to-one student-to-device deployment. *SEMO*, at para. 4.

The CoSN Survey shows that 91 percent of respondents identified at least one infrastructure upgrade that is essential for them to implement in order to meet our connectivity targets. *SEMO*, at para. 5.

We therefore take actions targeted at closing the rural connectivity gap and increasing affordable high-speed broadband connections to schools and libraries. First we direct USAC to suspend its policy requiring applicants to amortize over multiple years upfront charges for category one special construction exceeding $500,000 while allowing applicants to pay the non-discounted portion of category one special construction charges over four years. *SEMO*, at para. 12.

To encourage efficient investment in high-speed broadband infrastructure, including the deployment of fiber, we direct USAC to suspend for four years its policy of requiring applicants to amortize large category one non-recurring charges. Encouraging construction of high-speed connections to schools and libraries is a crucial part of our effort to ensure that all schools and libraries achieve our connectivity targets. Suspending the amortization requirement will give applicants the flexibility to plan large construction projects knowing they can recover the E-rate supported portion of any non-recurring costs upfront, thus providing greater certainty regarding funding and removing this potential barrier to infrastructure investment. *SEMO*, at para. 17.

Large upfront payments have not proven to be a drain on the Fund, and would not have been even if they had not been amortized. Moreover, we agree with

> commenters that argue that suspension of this amortization policy is likely to incentivize efficient investments in infrastructure, including the deployment of fiber. *SEMO*, at para. 19.
>
> In this Order, as discussed in more detail below, we are raising the annual E-rate cap, in part to ensure there are sufficient category one funds available to meet the build-out costs of connecting currently underserved schools and libraries. Moreover, while some providers will offer an upfront payment option, we recognize that in other instances providers will continue to incorporate the cost of building out to schools and libraries into their recurring charges. *SEMO*, at para. 20.
>
> We therefore direct USAC to suspend application of its multi-year amortization policy for funding years 2015 through 2018 and allow applicants to seek support for upfront or non-recurring charges without imposing any amortization requirements. . . . However, we are cognizant of the interest reflected in the *Brooklyn Order* of balancing the immediate needs of some E-rate applicants against the needs of all of the applicants. *SEMO*, at para. 21.
>
> We recognize that allowing applicants greater flexibility to pay the non-discounted cost of special construction charges combined with the other changes we make in this Order could increase demand for category one support. However, a temporary increase in the demand to the Fund for special construction charges will ultimately be beneficial to E-rate applicants and the stability of the Fund. It will result in more students and library patrons enjoying access to scalable, high-speed broadband connections and we expect increasing flexibility for applicant's non-recurring payments for special construction will allow applicants to structure the agreements with service providers so as to lower future costs for recurring services. *SEMO*, at para. 25.

In FCC Chairman's, Tom Wheeler's, SEMO Statement, Chairman Wheeler summarized SEMO objectives:

> Previously I indicated that two-thirds of schools and libraries do not subscribe to sufficient high-speed connectivity. In addition, nearly one-third of all schools and three-fourths of all libraries couldn't get a high-speed connection if they wanted because the infrastructure simply isn't there. . . . Whereas the Commission's program to help defray the costs to rural health care facilities allows funds to be spent to build or lease high-speed capacity where it isn't commercially available or where there is no affordable option, the E-rate program to connect our schools and libraries has specifically prohibited this. Today's action will give rural schools

> and libraries an alternative beyond being held hostage by the actions or inactions of a local telecommunications provider. This gap is worst in rural America. Rural schools have even less access to high-speed connectivity than most urban and suburban schools. Forty-one percent of America's rural schools couldn't get a high-speed fiber connection if they tried.

Although Commissioner Ajit Pai wrote a dissenting statement in SEMO, he emphatically stated:

> Despite today's Order, and despite July's sad, partisan retreat, I still believe that E-Rate is a program worth fighting for. When I spoke to villagers in America's northernmost library, in Barrow, Alaska, I saw how broadband can connect a community that no road reaches. When I visited Los Angeles in the spring, and Chicago in the fall at Mayor Rahm Emanuel's invitation, I saw the progress that poor children can make when technology is integrated in the classroom. In South Dakota and Kansas, I've seen the potential of next-generation technologies to empower small communities and give rural Americans the opportunities found in our nation's largest cities. . . . But in time, I do believe we will achieve real E-Rate reform. And I hope I'm prescient about that, too, because every one of our communities, urban and rural, rich and poor, deserve it.

c. *USAC's relied upon statutory authority is not applicable and does not prohibit WHIO from amortizing non-recurring special construction costs.*

USAC's DOA grants WHIO's appeal and partially reinstates funding but vaguely justifies the decision stating, *"Your FCC Form 471 indicates that some of the products and/or services for which you requested funding were scheduled to occur outside of the current funding year. FCC rules require that, except under limited circumstances all of the products and/or services for which discounts have been approved must be delivered within the current funding year."* USAC generally cites to 47 C.F.R. § 54.507(d) in support of the decision. In review of the statute, §54.507(d) deals generally with E-Rate's Annual Filing Requirement. Specifically, §54.507(d)(1) states:

> Schools and libraries, and consortia of such eligible entities shall file new funding requests for each funding year no sooner than July 1 prior to the start of that funding year. Schools, libraries, and eligible consortia must use recurring services for which discounts have been committed by the Administrator within the funding year for which the discounts were sought.

Based on the context of USAC's general citation and vague explanation, it appears USAC more specifically relies upon 47 C.F.R § 54.507(d)(4) which states:

> The deadline for implementation of all non-recurring services will be September 30 following the close of the funding year [June 30]. An applicant may request and receive from the Administrator an extension of the implementation deadline for non-recurring services if it satisfies one of the following criteria: . . .

Recently, the FCC specifically applied § 54.507(d) *In the Matter of Requests for Waiver by Grants/Cibola County School District Grants, New Mexico*, 2018 WL 5112224 (October 17, 2018). In *Grants/Cibola* the FCC explained, through *SEMO:*

> The Commission also adopted several safeguards, including service implementation deadlines, to ensure that E-Rate support is not used to purchase unnecessary services. Specifically, applicants may only receive E-Rate discounts for special construction charges related to lease lit or dark fiber if the fiber is lit by the end of the funding year (i.e. June 30) and *special construction charges related to a self-provisioned network are only eligible for E-Rate Support if the facilities are constructed and used by the end of the funding year*. Applicants may obtain a one year extension of the June 30th deadline to complete special construction and light the fiber or use a self-provisioned network if they demonstrate construction was "unavoidably delayed due to weather or other reasons."

In *Grants/Cibola*, the applicant and service provider had arranged for the provision of a fiber connection which would need to be constructed. Both the services and construction were eligible for E-Rate funding. Due to a delay in USAC's funding commitment and an archeological survey, the service provider was unable to complete construction until July 2018, well after the June 30, 2017 and June 30, 2018 statutory deadlines. The FCC waived the deadlines set forth by § 54.507(d) making the unfinished construction eligible for E-Rate funding on the applicants FY16 funding request despite construction and implementation being completed in what would be the FY18 funding year.

Based on the FCC's clear explanation and application of § 54.507(d), it is obvious that the provision cited by USAC is not applicable to USAC's decision to rescind WHIO's FY15 funding. It is clear, § 54.507(d) was established by the FCC in order to set forth a start and end date for the fiscal year. Under § 54.507(d), special non-recurring construction expenses only become eligible for funding upon completion and implementation (i.e., projects which are **not fully implemented** or **incomplete** are not eligible for E-Rate Funding and become eligible for funding beginning in the FY in which they are completed/implemented).

Therefore, USAC is not incorrect in their statement that "*FCC rules require that, except under limited circumstances all of the products and/or services for which discounts have been approved must be delivered within the current funding year.*" The FCC's order in *Grants/Cibola* supports USAC's assertion – special construction projects must be completed, implemented, and delivered before they become eligible for that funding year.

WHIO and NRS complied with § 54.507(d) as construction of the dedicated fiber circuit serving WHIO was completed, implemented, and delivered in FY14. Therefore, per FCC rules, and as USAC openly admits in the DOA, the non-recurring special construction costs of building the dedicated fiber circuit for WHIO became eligible for E-Rate funding in FY14.

While USAC is not incorrect in their restatement of FCC Rules, USAC inaccurately applies § 54.507(d) stating that pursuant to § 54.507(d) "*the applicant is **only** eligible for special construction charges under their FY2014 application*." The clear language of the statute reads, and the FCC in *Grants/Cibola* reiterates, §54.507(d) was implemented in order to prohibit the use of E-Rate funds for projects which are not fully implemented or are incomplete during the fiscal year in which funding is sought. The statute does not state, nor has the FCC interpreted §54.507(d) to state, non-recurring construction costs cannot be amortized over a multi-year contract once construction is complete and implemented and therefore eligible for E-Rate funding. Under FCC rules, upon completion and implementation of the dedicated fiber circuit in FY14, the WHOI's non-recurring special construction costs associated with the project became eligible for E-Rate funding. Despite USAC's justification, the cited statute in no way prohibits the amortization of WHIO's eligible non-recurring special construction costs over a multi-year contract.

As such, the statutory provision cited by USAC in the DOA, § 54.507(d), does not prohibit the amortization of eligible non-recurring special construction costs over a multi-year contract. Rather, the statute USAC relies upon, § 54.507(d), only demands the project to be completed and implemented within the enumerated fiscal year in which funding is sought in order to be eligible for funding in that particular fiscal year.

d. *Costs incurred outside FY15 are Eligible for E-Rate Funding as the SEMO permits WHIO to Amortize Non-Recurring Costs despite SEMO's Suspension of USAC's Amortization Policy.*

USAC provides further justification, albeit vague, in their DOA stating, "*Per program rules, construction charges can only be funded in the Funding Year which it took place. Based on the information provided, the applicant is only eligible for special construction charges under their FY2014 application. . . . Your FCC 471 indicates that some of the product and/or services for which you requested funding were scheduled to occur outside of the current funding year.*" USAC does not provide grounds nor cite to the USAC rule/policy supporting the denial of funding for special construction costs incurred outside of the funding year. Reading between the lines of the DOA, it is apparent that USAC's current rule/policy is to deny amortized non-recurring costs and require service providers to recover those costs upfront. However, an across the board denial of amortized non-recurring costs is neither directed nor required by *SEMO*.

In response to the *Brooklyn Order*, the USAC enacted policies which required the amortization of non-recurring category one special construction costs in order to protect the E-Rate fund[5]. While *SEMO* suspended the amortization requirement, *SEMO* did not outright prohibit amortizing non-recurring construction costs nor did *SEMO* require applicants to seek upfront payment. Rather *SEMO* "**allow[s]** applicants to seek support for upfront or non-recurring charges."[6] Further, despite the suspension, *SEMO* acknowledged some providers would continue to amortize special construction costs stating, "While some providers will offer an upfront payment option, we recognize that in other instances providers will continue to incorporate the cost of building out to schools and libraries into their recurring charges." [7] As a result, while *SEMO* suspended USAC's amortization requirement, *SEMO* affords applicants the option to utilize the suspension but does not require applicants to do so. In fact, *SEMO* expressly *acknowledges* that some applicants may still elect to amortize costs over multi-year contracts. Therefore, WHIO's amortization of non-recurring construction costs is permitted by *SEMO* and special construction costs from outside the funding year are eligible for E-Rate funding.

Additionally, *SEMO* addresses the *Brooklyn Order's* policies regarding up-front payment for non-recurring costs. While *SEMO* states up-front recovery of non-recurring charges have not proven to be a drain on the E-Rate fund, *SEMO* still acknowledges the potential dangers choosing to merely suspend the amortization policy for a four year period rather than permanently ending the policy.[8] As a result, while *SEMO* states up-front recovery of costs have not proven detrimental to the fund; applicants who decide to amortize costs over a multi-year contract undoubtedly lower the risk of adverse impacts on other schools and libraries seeking support from the fund. Therefore, WHIO and NRS's election to amortize the construction costs for fiber lines over a multi-year contract benefitted the E-rate fund and reduced the risk of adversely impacting other eligible recipients.

Lastly, as set forth herein, WHIO and NRS's amortization of construction costs over a multi-year contract provided a 10 mbps fiber connection and achieved the primary objectives of the E-Rate program as proffered in *SEMO* and interpreted by FCC Commissioners Wheeler and Pai, because it resulted in significant investment in broadband fiber infrastructure for the purpose

[5] *In the Matter of Request for Review of the Decision of the Universal Service Administrator by Brooklyn Public Library Brooklyn, New York*, 15 F.C.C Rcd. 18598 (2000), at para. 18.
[6] *SEMO*, at para. 21
[7] *SEMO*, at para. 20
[8] *SEMO*, at para 19

of closing the connectivity gap in rural Oklahoma while evidencing the most cost-effective service offering of any provider submitting bids for WHIO Category 1 services.

Therefore, not only is WHIO's amortization of eligible construction costs over a multi-year contract permitted by *SEMO,* but the amortization benefited the E-Rate fund and furthered *SEMO*'s overall objectives. For those reasons, the Bureau should amend USAC's DOA as requested above based on a finding that (1) the amortization of special construction costs is permissible and (2) WHIO may recover special construction costs from outside the funding year.

e. *In the Alternative, Waiver of USAC's apparent policy to deny amortized non-recurring construction costs is appropriate given WHIO's efforts directly fulfill the SEMO's overall objectives and WHIO's amortization of costs benefit the E-Rate fund.*

Even if the Bureau and the FCC find that USAC's "anti-amortization" policy is applicable, the efforts, investments, and actions by WHIO directly further and fulfill *SEMO's* primary objectives. As such, "good cause" exists to waive USAC's anti-amortization policy, and thereby, reinstating the entirety of WHIO's FY15 funding including amortized special construction costs for the project.

NRS's bid addressed WHIO's requested point-to-point fiber services and charges for installation and construction to connect fiber at WHIO's demarcation point. NRS's bid offered a multi-year contract which spread the non-recurring construction costs over multiple years.

WHIO's installation of a dedicated fiber circuit and the amortization of costs over a multi-year contract accomplished the overarching goals of the E-Rate program. In essence, E-Rate goals, as clarified and refined in *SEMO*, can be summarized as follows:

(i) closing the high-speed connectivity gap between rural schools and their urban counterparts;

(ii) ensuring rural schools have robust and scalable broadband networks, which allow students to move to one-to-one devices, and thus, increase educational opportunities;

(iii) encouraging construction of high-speed connections to schools and libraries as the same is a crucial part of the FCC's effort to ensure that all schools and libraries achieve connectivity targets;

(iv) encouraging efficient investment in high-speed broadband infrastructure, which specifically **includes the deployment of fiber**;

(iv) suspending the build-out cost amortization requirement to give applicants the flexibility to plan large construction projects knowing they can recover the E-rate supported portion of any non-recurring costs upfront, thus providing greater certainty regarding funding and removing this potential barrier to infrastructure investment;

(iv) raising the annual E-Rate cap to ensure sufficient Category 1 funds available to meet build-out costs, especially considering that large upfront payments have not proven to be a drain on the Fund; and

(v) achieving the overall result - more students and library patrons enjoying access to scalable, high-speed broadband connections, with the expectation that increasing flexibility for applicant's non-recurring construction payments will allow applicants to structure the agreements with service providers **so as to lower future costs for recurring services**.

WHIO's investment in a dedicated fiber circuit and amortization of costs over a four year period achieve all of the foregoing E-Rate goals. As evidenced in the testimony of WHIO's Superintendent, fiber deployment allowed students to move to one-to-one devices, take virtual field trips, take foreign language classes, and have access to digital library books and textbooks. *See* **Exhibit #3**, at p. 22. Moreover, the arrangement between WHIO and NRS to plan a fiber build-out with the understanding that WHIO could cover the construction costs over the first four years of the subject multi-year contract was an efficient investment by parties for the deployment of fiber. Rather than depending on the E-Rate Fund to cover the entire costs of the build-out upfront, the amortization spread the costs over four years imposing less of a burden on the fund. Most importantly, the amortization arrangement had the direct result of lowering future costs for recurring services in accordance with the FCC's primary goal pronounced in *SEMO*. Specifically, NRS's bid offered a multi-year contract which spread the non-recurring construction costs over multiple years, and ultimately, resulted in the most cost-effective service offering with 10 Mbps internet access charges falling to **$650.00** per month in FY18 – a price that is more than 50% less than the monthly charge ($1,500.00) offered by the lowest priced bidder, OneNet, for less reliable and far more inferior internet access services. *See* **Exhibit #3**, at p. 98. Further, comparing the annual cost of $7,800 for NRS's service beginning in FY18 to alternative bidders, NRS's services provides an annual savings of $10,200.

If USAC's anti-amortization policy/rule is determined to apply to WHIO's FY15 funding request, NRS respectfully requests the Bureau and/or the FCC waive such apparent policy/rule for "good cause" consistent with the foregoing. In direct furtherance of the FCC's E-Rate goal of granting greater flexibility relative to school's construction cost payments in order to increase access to scalable, high-speed broadband connections while lowering future costs for recurring services, WHIO's amortization of non-recurring costs ultimately resulted in a monthly charge of $650.00 for internet access services provided over robust and scalable point to point fiber facilities – **a monthly charge nearly $350.00 less than the average monthly cost for a 10 mb high speed circuit**.[9].

III. CONCLUSION

As an eligible recipient under 47 C.F.R § 54.501, WHIO complied with the competitive bidding requirements set forth in 47 C.F.R §54.504 and selected NRS's bid as representing the "most cost-effective service offering" in compliance with 47 C.F.R § 54.511. NRS's bid was the only provider that directly responded to WHIO's request for internet access service provided over point to point fiber. NRS's monthly charge of $4,890.00 included the amortized cost for construction and installation of new fiber facilities, which the FCC emphatically permits and encourages under *SEMO*. Additionally, the initial costs would allow WHIO to receive 10 Mbps internet access services at the extremely reasonable, below-average cost of $650.00 per month ($7,800.00 per year) beginning in FY 2018.

Undoubtedly, granting the relief requested in this appeal, will further Commissioner Wheeler's express goal of giving "rural schools and libraries an alternative beyond being held hostage by the actions or inactions of a local telecommunications provider," and provide high-speed broadband options that remain non-existent in rural America. Further, granting this appeal would be in line with Chairman Pai's belief that the "E-Rate is a program worth fighting for," and further his desire to achieve E-Rate reform because, after all, every rural student deserves it.

WHEREFORE, NRS respectfully requests the Wireline Competition Bureau and/or the Federal Communications Commission grant its appeal of USAC's DOA for FY15 and, in reconsideration, amend USAC's DOA for FY15 to reinstate approved E-Rate funding in the amount of $53,264.09, which includes the full 90% of NRS-provided Category 1-Internet Access charges equal to $52,812; and further find the requested 10 mbps high speed circuit costs are in compliance with, and in furtherance of, the FCC's *SEMO* directives, e.g., encouraging "efficient investment in high-speed broadband infrastructure, including the deployment of fiber." In the alternative, NRS requests the FCC to waive USAC's apparent anti-amortization policy/rule because WHIO's amortization of non-recurring constructions costs for a fiber infrastructure directly furthered *SEMO's* objectives and policies.

[9] NRS bases its position on USAC's finding that $4,980/month is 5 times the average 10 mb circuit cost in Oklahoma (*i.e.*, $4,980 / 5 = $996/month for 10 mb circuit).

Dated this 26th day of October, 2018.

Respectfully submitted,

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