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April 12, 2018

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: CC Docket No. 02-6

Dear Ms. Dortch:

This is to memorialize that yesterday the following persons met with staff of the Commission's Wireline Competition Bureau:

Dr. Melanie Miller; Charles Cagle; Kitty Ganier; Gina Spade and the undersigned met with D'wana Terry; Ryan Palmer; James Batchell; Arielle Ross and Aaron Garza of WCB.

The issues discussed are as outlined in the enclosed one page statement.

Should you have any questions with respect to this matter, please communicate with the undersigned.

Very truly yours,

/s/

Thomas Gutierrez

cc: D'wana Terry
Ryan Palmer
James Batchell
Arielle Ross
Aaron Garza

TENNESSEE CONSORTIUM WAIVER PETITION

Background

- In 2011, a consortium of 79 Tennessee public school districts submitted a Form 470 and formally sought bids for Internet access and other telecommunications services (the Consortium).
- The following year, 43 school districts wanted to join the Consortium contract.
- Those school districts determined that joining would be permissible, and USAC 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, the applicable rules do not require all Consortium members to be listed on Form 470 and applicable 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).
- In prior orders regarding whether sufficient information was provided, the Commission has analyzed whether additional vendors would have submitted bids if the information that was omitted would have been included.
- The additional districts did not change the scope of the services to be provided. The demographic characteristics of the two sets of schools were very similar.
- Only two bidders in Tennessee are able to provide services statewide, and they both submitted bids. There is no reason to believe additional vendors would have submitted bids if all of the schools had been listed on the original Form 470. The bid prices would not have changed. This is true for ENA, and the other carrier offered its state master contract pricing.
- The consequence of USAC’s decision, if not revised, would be to limit schools’ ability to join consortia, thereby frustrating Commission policy encouraging consortia applications.
- 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.
- Grant of the Waiver would correct an errant ruling and further the Commission’s goal of encouraging Consortia.