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June 25, 2019

**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 Waco Independent School District (Waco ISD) and Unite Private Networks (UPN), this summary memorializes meetings between representatives of Waco ISD and Commission staff. On June 21, 2019, Matthew Wolfe, coordinator of network and systems for Waco ISD; Matt Wiltanger, general counsel for UPN; Ronda Plummer, director of K-12 and regulatory affairs for UPN; and the undersigned met with Nirali Patel, Office of Chairman Pai; and separately with Gabriela Gross, Bryan Boyle, and Jesse Jachman, Wireline Competition Bureau, regarding a Request for Waiver filed by Waco ISD.<sup>1</sup>

Waco ISD and UPN representatives discussed the facts and arguments identified in the Request for Waiver filed by Waco ISD and in the attached summary. The Parties explained that Waco ISD's request was consistent with Commission precedent and was in the public interest. Waco ISD asked that the waiver be granted in a monthly public notice as soon as possible, given the incessant outages affecting students that the district experiences with its current services.

Pursuant to Section 1.1208 of the Commission's rules, an electronic copy of this letter is being filed for inclusion in the above-referenced docket and courtesy copies are being sent to the attendees. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

A handwritten signature in black ink that reads "Gina Spade". The signature is fluid and cursive, with the first name "Gina" and last name "Spade" clearly distinguishable.

Gina Spade  
Broadband Legal Strategies

cc: Nirali Patel  
Gabriela Gross  
Bryan Boyle  
Jesse Jachman

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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, Waco Independent School District (filed March 4, 2019).

## **Waco Independent School District E-rate Appeal**

### **June 2019**

**Summary:** Waco ISD's request for a waiver of section 54.503 of the Commission's rules is consistent with precedent because Waco ISD selected the least expensive bid for its FY 2018 WAN services. Waco also believes its competitive bidding process was fair and open because it properly notified all potential bidders of the four-day extension to submit bids.

#### **Background:**

- USAC denied Waco ISD's FY 2018 application for funding for two reasons:
  - USAC said that the District did not select the most cost-effective services.
  - USAC said that the District did not upload a competitive bidding document into EPC.
- Waco ISD conducted a competitive bidding process for funding year 2018 that substantively complied with the Commission's rules.
  - Waco sought bids for both lit and dark fiber, consistent with Commission rules. Waco sought to upgrade from 1 Gbps to 10 Gbps.
  - Waco ISD received numerous bids from five vendors, including both lit and dark fiber solutions and for both five- and 10-year terms.
  - When evaluating the bids it received, Waco ISD mistakenly believed that the lowest-priced bid—a lit fiber bid from Unite Private Networks (UPN)—included all of the requested electronics to deliver the bandwidth the district requested. Accordingly, the evaluators gave this bid the highest score for price.
  - At the end of the bid scoring process, Waco ISD determined that the most *cost-effective* bid was a dark-fiber bid from UPN. (UPN submitted bids for both lit fiber and dark fiber.)
  - Several days later, in the course of confirming various aspects of the bids it had received before asking the Waco ISD school board to award the contract to UPN, the bid evaluators discovered that only one of the lit fiber bids it had received (from AT&T) included in its price all of the electronics necessary for Waco ISD to use the service. Upon learning this, the evaluators reviewed the price for the bids with the price of electronics included, in order to compare the projects apples to apples.
  - When the bids were rescored with the corrected prices, UPN's dark fiber bid was now also the lowest-priced bid, in addition to being the most cost-effective.
  - The district, however, did not revise its evaluation matrix accordingly because (1) the winning bidder did not change with the additional information: (2) if staff revised the matrix, the school board review process would have had to wait until the next month's (March) board meeting and (3) Waco staff were trying to finalize a contract with UPN before the March 2018 E-rate filing deadline.

**1) Waco ISD seeks a waiver of the price-as-primary factor requirement to the extent necessary to grant the requested funding.**

- In its initial evaluation of the bids, using price as the primary factor, Waco ISD concluded that UPN's dark fiber bid was the most cost-effective bid, and that UPN's lit fiber bid was the least expensive bid.
- In its revised evaluation of the bids, still using price as the primary factor, Waco ISD concluded that UPN's dark fiber bid was still the most cost-effective bid, and was now *also* the least expensive bid.
- Either way, UPN's bids were the most cost-effective and the least expensive. No other bidder was harmed by the revised scoring, as UPN would have won either way.
- The only error Waco ISD made was to fail to document the revised scoring so that the bid evaluation matrix should give the most points for price to UPN's dark fiber bid, instead of to UPN's lit fiber bid.
- A waiver is appropriate here because the circumstances are indistinguishable from those identified in the Bureau's *Allendale Order* as deserving of a waiver of the price-as-primary-factor rule: the lowest-priced bid was chosen, all applicable state procurement laws were followed, and there was no waste, fraud, or abuse.

**2) Waco ISD's competitive bidding process was fair and open**

- USAC's second ground for denial is that Waco ISD posted an addendum extending the bid submission deadline by four days, but did not post this addendum in EPC.
  - Waco ISD is unaware of any Commission requirement that *every* document related to competitive bidding be uploaded into EPC in order for a competitive bidding process to be "fair and open."
  - E-rate applicants are not prohibited from using other methods to meet the requirement that the competitive bidding process be fair and open.
  - Here, Waco ISD posted its Form 470 and RFP to EPC, and the RFP clearly advised potential bidders to check Waco ISD's e-bidding website for further information.
  - The four-day extension of the bid deadline was posted on the e-bidding site. All five bids were submitted on the extended due date, indicating that all five bidders had access to the same information and responded accordingly.
  - There is no reason to believe that the competitive bidding process was harmed in any way because the deadline extension was not posted on EPC.
- Without a grant of the waiver in a timely fashion, Waco ISD will have to rebid for these services next year.
  - Waco ISD is experiencing numerous outages because its current shared broadband services do not meet its bandwidth needs. The delay in rebidding will mean another year or two of these significant outages, which limits the Internet access its students receive and harm its ability to provide educational services to its students.
  - Waco ISD may also lose its state match funding if services are not installed by June 2020.