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REDACTED - FOR PUBLIC INSPECTION

August 5, 2019

VIA ECFS

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

RE: WC Docket No. 02-6

**Request for Confidential Treatment of Information Filed with Hunt
Telecommunications, LLC Request for Expedited Waiver**



Dear Ms. Dortch:

Hunt Telecommunications, LLC ("Hunt Telecom") submits via ECFS a redacted version of a Request for Expedited Waiver. A confidential version of the Request has been filed with the Secretary's office with a request seeking confidential treatment of:

- (a) the total amount billed to USAC for delivery of dark fiber to the Caddo Parish School District ("Caddo");
- (b) the number of Caddo locations to which Hunt Telecom delivered dark fiber but for which Hunt Telecom has not been reimbursed in full;
- (c) Exhibit A (invoice dated May 7, 2018);
- (d) Exhibit B (invoice dated June 11, 2018);
- (e) Exhibit C (service provider invoice to USAC filed by Hunt Telecom);
- (f) Exhibit D (the July disbursement statement);
- (g) Exhibit E (the September disbursement statement); and
- (h) the amount of E-rate funds Hunt Telecom has not received for delivery of the Caddo dark fiber.

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Please do not hesitate to contact us with any questions.

Respectfully submitted,

/s/ Tamar E. Finn

Tamar E. Finn
Patricia Cave

Counsel for Hunt Telecommunications, LLC

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Request for Expedited Waiver)	
)	WC Docket No. 02-6
By)	
)	
Hunt Telecommunications, LLC)	
)	

Request for Expedited Waiver

Hunt Telecommunications, LLC (“Hunt Telecom”), pursuant to Section 1.3 of the Commission’s rules, requests that the Wireline Competition Bureau (“Bureau”) waive Section 54.720 of the Commission’s Rules and take any and all actions necessary for Hunt Telecom to receive full payment for the Universal Service Administrative Company’s (“USAC’s”) share of non-recurring charges for Hunt Telecom’s delivery of dark fiber to the Caddo Parish School District (“Caddo”) in Funding Year (“FY”) 2016. Hunt Telecom requests that the Bureau take such action on an expedited basis so that Hunt Telecom is able to recover the substantial investments made in good faith in pursuit of the Commission’s broadband deployment goals. Specifically, Hunt Telecom has not received *****BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL***** in reimbursements for E-rate funds committed to delivering dark fiber to *****BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL***** sites for Caddo.

I. Background

Hunt Telecom is one of several wholly-owned indirect subsidiaries of Uniti Group Inc. (“Uniti Group”). Along with its affiliates, including Uniti Fiber, LLC (“Uniti Fiber”), Hunt Telecom primarily provides Dark Fiber, Private Line, Ethernet, Wavelength, Dedicated Internet

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Access and Collocation services to wholesale (e.g., other carriers), and customers in government, health care, education, financial services, and other large enterprises. Hunt Telecom has a long history of participation as a provider in the Universal Service Fund Schools and Libraries (“E-rate”) program.

In 2015, Hunt Telecom bid on Caddo’s FCC Form 470¹ and Request for Proposals (“RFP”) issued to provide E-rate services to the school district during FY 2016 (the “Caddo Form 470”). The RFP sought bids to provide dark fiber, lit fiber, or self-provisioned fiber to Caddo schools. After the competitive bidding process was complete, on May 17, 2016, Hunt Telecom and Caddo entered into a Dark Fiber Lease and Usufruct Agreement pursuant to which Hunt Telecom would lease Caddo dark fiber to 64 locations in the district (the “Dark Fiber IRU”).

Caddo filed its FCC Form 471 for FY2016 on May 21, 2016 (the “Caddo Form 471”),² requesting a commitment of \$4,402,484.00, which is 80 percent of the total non-recurring charge for the Dark Fiber IRU. Support for the Dark Fiber IRU non-recurring charges was assigned FRN No. 1699105037. On March 2, 2017, USAC issued a Funding Commitment Decision Letter (“FCDL”) cancelling FRN No. 1699105037. On the same day (*i.e.*, March 2, 2017) USAC issued new FRN No. 1699144613 to update responses on the Form 471 to remove references to special construction “based on supporting documentation.” USAC issued a Revised FCDL for FY 2016 on March 24, 2018, which approved funding for the original amount of \$4,402,484.00.

Hunt Telecom delivered the Dark Fiber IRU to Caddo before September 30, 2018, the last date to start service under FRN No. 1699144613.³ Hunt Telecom issued invoices to Caddo on May

¹ FCC Form 470 No. 160000305.

² FCC Form 471 No. 161038633.

³ The service start date was extended to September 30, 2018, as a result of an approved late FCDL.

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7, 2018, for the Dark Fiber IRUs provided to *****BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL***** Caddo locations (the “May 2018 Invoice”)⁴ and a June 11, 2018 invoice for the Dark Fiber IRU provided to the remaining *****BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL***** locations (the “June 2018 Invoice,” together with the May 2018 Invoice, the “Applicant Invoices”).⁵ Hunt Telecom timely invoiced USAC on July 3, 2018 in SL Invoice No. 2830067 seeking non-recurring charges totaling *****BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL***** for USAC’s portion of the May 2018 (Line Item 9242614) and June 2018 invoices (Line Item 9242613).⁶ The Applicant Invoices charged the same unit cost for each Dark Fiber IRU location. The only differences between the Applicant Invoices are the dates of issuance, the locations to which each charge in the respective invoices relate, and the total amount to be paid by Caddo and USAC.

On July 13, 2018, USAC authorized disbursement of *****BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL***** to Hunt Telecom (the “July Disbursement”).⁷ The July Disbursement included 100 percent of USAC’s portion of non-recurring charges for the June 2018 Invoice (*****BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL***** locations). On July 10, 2018, USAC asked questions regarding the May 2018 Invoice. Hunt Telecom provided all requested documentation on July 13, 2018, but on September 5, 2018, USAC authorized disbursement of only a portion of the May 2018 Invoice (the “September Disbursement”).⁸ Unlike the July Disbursement, which included 100 percent of non-recurring charges invoiced, the

⁴ See Exhibit A.

⁵ See Exhibit B.

⁶ See Exhibit C. The invoice filing deadline for this FRN was extended to January 28, 2019, as a result of an approved late FCDL.

⁷ See Exhibit D.

⁸ See Exhibit E.

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September Disbursement included just 25 percent *****BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL***** of the committed support for the Dark Fiber IRU non-recurring charges for the remaining *****BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL***** locations. The remittance statement indicated that the remaining amount billed to USAC (*i.e.*, 75 percent of USAC’s portion of the cost under the Dark Fiber IRU) was “not supported by bill(s)” to the customer, Caddo. In total USAC disbursed just \$1,372,007.00 of the *****BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL***** billed, leaving Hunt Telecom with a shortfall in reimbursements from the E-rate program totaling *****BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL*****.

Absent a waiver or some other action by the Commission, Hunt Telecom will be severely financially strained by the loss of over *****BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL***** in E-rate reimbursements USAC committed for the Dark Fiber IRU but failed to pay for *****BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL***** of the 64 locations.

II. Argument

The Commission may waive its rules for good cause shown.⁹ Generally, a waiver is appropriate “if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”¹⁰ Additionally, good cause for a waiver may be shown “in cases where allowing deviation from a rule requirement would not disserve the rule’s underlying purpose and would better serve the public interest than requiring strict compliance.”¹¹ In reviewing a

⁹ 47 C.F.R. § 1.3. The Bureau may act on requests for waiver of the Commission’s rules on delegated authority. *See* 47 C.F.R. § 0.91(b).

¹⁰ *See Northeast Cellular Telephone Co. v. FCC*, 897 F2d 1164, 1166 (D.C. Cir. 1990).

¹¹ *See Mobile Satellite Ventures Subsidiary LLC, Memorandum Opinion and Order*, 22 FCC Rcd. 20548, 2055 (I.B. 2007). *See In the Matter of Federal-State Joint Board on Universal Service; Universal Service*

request for a waiver, the Commission considers hardship, equity and effective implementation of policy.¹²

Waiver of Section 54.720 of the Commission's rules is appropriate here because an appeal would have never been required had USAC complied with FCC rules that require USAC to pay the non-recurring charges associated with the Dark Fiber IRU without requiring that such charges be amortized over a period of three years. Without such a waiver, Hunt Telecom will be harmed to the tune of millions of dollars for fiber it delivered throughout the Caddo School District.

a. Status of the Amortization Requirement for Large, Non-Recurring Category One Charges

In 2014, the Commission suspended for funding years 2015 through 2018 the requirements for schools and libraries to amortize over three years upfront, non-recurring charges of \$500,000 or more (the "Amortization Requirement").¹³ The Commission suspended the Amortization Requirement to lower the barriers to broadband infrastructure investment by avoiding unnecessary financing costs for service providers and applicants associated with such large, upfront charges. The Eligible Services List for FY2016 made clear that "the suspension of the amortization requirement in the Second E-rate Modernization Order is for all large Category One non-recurring costs, *including dark fiber IRU contracts that include upfront payments in excess of \$500,000[.]*"¹⁴

Contribution Methodology, Aventure Communications Technology, LLC, Order, DA 08-1514, ¶ 4, n. 10 (rel. Jun. 26, 2008) ("*Aventure Order*").

¹² See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972) *cert. denied*, 409 U.S. 1027 (1972) (holding that the Commission consider hardship, equity, or more effective implementation of overall policy on an individual basis).

¹³ *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15545-47, ¶¶ 17-21 (2014) ("*Second E-rate Modernization Order*").

¹⁴ *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 30 FCC Rcd 9923, 9926, n. 24 (WCB 2015) (emphasis added).

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Therefore, USAC is required under FY2016 E-rate program rules to pay all non-recurring Category One charges in the first funding year.

The Commission recognized that suspension of the Amortization Requirement has spurred broadband deployment through the E-rate program. In January 2019, the Commission issued a Notice of Proposed Rulemaking and Order proposing to eliminate the Amortization Requirement.¹⁵ That Order also waived the Amortization Requirement while the Commission considers its proposal “to continue to promote buildout of high-speed network to unserved and underserved schools and libraries.”¹⁶

The Commission observed that suspending the Amortization requirement has: “(1) decreased administrative burdens associated with applying for E-rate support; (2) allowed applicants and service providers to receive disbursements for the full E-rate supported portion of projects sooner; and (3) reduced uncertainty regarding the availability of funding.”¹⁷ In addition, “rather than filing funding requests in each year of the amortization cycle, applicants have had to file only a single funding request to receive E-rate support for a project, thereby reducing the administrative effort and costs associated with filing funding requests.”¹⁸ The Commission recognized that “service providers have recouped their buildout costs in one funding year rather than over the three-year amortization cycle, which, in turn, has likely made special construction a more attractive option for service providers.”¹⁹ Moreover, suspending the Amortization

¹⁵ *E-rate Program Amortization Requirement, Modernizing the E-rate Program for Schools and Libraries*, WC Docket Nos. 19-2 and 13-184, Notice of Proposed Rulemaking and Order, FCC 19-5, (2019) (“*Amortization NPRM and Order*”).

¹⁶ *Amortization NPRM and Order* at ¶ 12.

¹⁷ *Amortization NPRM and Order* at ¶ 6.

¹⁸ *Amortization NPRM and Order* at ¶ 6.

¹⁹ *Amortization NPRM and Order* at ¶ 6.

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Requirement “has provided applicants and service providers with increased certainty and predictability that E-rate funding will be available” for large eligible projects,²⁰ including projects like Hunt Telecom’s Dark Fiber IRU provided to 64 locations in the Caddo School District.

b. Good Cause Exists to Waive the USAC Appeal Deadline

The Commission has granted waivers of the appeal filing deadline where the appeal would have never been necessary absent an error on the part of USAC.²¹ As described above, the E-rate rules in effect for FY2016 required USAC to pay its share of large, non-recurring Category One charges in the first funding year for all 64 Caddo locations covered by FRN 1699144613. As discussed above, in the July Disbursement, USAC correctly paid its 80 percent share of the June 2018 Invoice for ***BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL*** locations. However, USAC’s September Disbursement violated program rules by paying just 25 percent of USAC’s share of the May 2018 Invoice for ***BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL*** locations. Hunt Telecom invoiced the same amount for each location, and included both the May 2018 Invoice and June 2018 Invoice in SL Invoice No. 2830067. Yet Hunt Telecom received just \$1,372,007.00 of the total ***BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL*** billed to USAC for the May 2018 invoice. USAC’s finding that the May 2018 invoice did not support full reimbursement was erroneous. Except for the

²⁰ *Amortization NPRM and Order* at ¶ 6.

²¹ *See Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Animas Sch. Dist. 6 Animas, New Mexico, et al.*, 26 FCC Rcd 16903, 16905, ¶ 4 (WCB 2011) (granting a waiver of the appeal deadline because the petitioners would not have had to file an appeal if not for USAC erroneously denying funding because USAC inaccurately found that petitioners did not have signed contracts in place when the Forms 471 were submitted). *See also Streamlined Resolution of Requested Related to Actions by the Universal Service Administrative Company*, Public Notice, 31 FCC Rcd 1737, 1740 (waiving the deadline for appeals due to USAC error) (2016); *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Academy of Excellence Phoenix, Arizona, et al.*, CC Docket No. 02-6, Order, 27 FCC Rcd 5182 (WCB 2012) (granting waivers of the appeal filing deadline when the E-rate participant did not learn that it had not received funding and that USAC made an incorrect determination about its technology plan until after the appeals deadline had expired).

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number/locations billed, the May 2018 invoice that USAC short-paid provided the same information as the June 2018 invoice that USAC paid in full. Had USAC followed the Commission's direction regarding the Amortization Requirement, the instant appeal would not have been necessary.

Absent a waiver of the deadline to appeal an adverse decision from USAC, Hunt Telecom has no clear path to receive reimbursement for the Dark Fiber IRU it provided to *****BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL***** of the 64 locations in the Caddo School District. In total, USAC's error resulted in Hunt Telecom being reimbursed for approximately 35 percent of USAC's share of upfront charges for the Dark Fiber IRU. Hunt Telecom would suffer substantial financial hardship if it were not reimbursed for dark fiber that was already delivered to Caddo schools in reliance on USAC's funding commitment. Full payment of the non-recurring charge for the *****BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL***** locations would be consistent with the Commission's broadband deployment and adoption goals, bringing dark fiber connections to 64 locations in the Caddo School District, which is one of the most disadvantaged districts receiving an 80% discount under the E-rate program. It would be inequitable and manifestly unjust to deny a waiver in these special circumstances. Whereas Hunt Telecom missed a procedural deadline,²² USAC erred in application of a substantive E-rate program rule to the detriment of Hunt Telecom.

Moreover, deviation from the appeal filing deadline rule in these unique circumstances will better serve the public interest. As Hunt Telecom's delivery of the Dark Fiber IRU to 64 Caddo

²² *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District, Cerritos, California, et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, 11020, ¶ 3 (WCB 2011) (finding that "complete rejection" of requests for payment was not warranted "given that the applicants missed a USAC procedural deadline").

locations demonstrates, suspension of the Amortization Requirement incentivizes investments in infrastructure, including the delivery of fiber used for broadband connectivity through the E-rate program.²³ The Commission's policy of spurring fiber connections would be furthered by grant of a waiver in this instance. The waiver would provide assurances to service providers who engage in large fiber projects that USAC will follow substantive program rules, including suspension of the Amortization Requirement. Hunt Telecom did not appeal USAC's improper denial of payment within sixty days primarily due to time and resource constraints. USAC's error occurred during a heightened invoicing season within the E-rate program. For companies like Hunt Telecom and its affiliates who provide E-rate supported services to multiple schools in multiple states, managing and tracking invoices, USAC invoice inquiries and audits, remittance statements, and appeal deadlines for hundreds of FRNs is a monumental task. Absent assurance that USAC will pay large non-recurring charges upfront, service providers like Hunt Telecom will be less likely to bid on E-rate projects involving substantial upfront costs, in particular in urban and rural areas where such deployment may not be economically viable absent E-rate support. Rather than encouraging providers to deploy broadband infrastructure, requiring strict compliance with the appeal deadline in instances of substantive error by USAC would raise legitimate questions for E-rate providers as to whether they should pursue broadband deployment in reliance on USAC's funding commitments.

III. CONCLUSION

For the reasons described above, Hunt Telecom respectfully requests that the Commission waive Sections 54.720 of the Commission's Rules and take any and all actions necessary such that Hunt Telecom can receive the remaining *****BEGIN CONFIDENTIAL** [REDACTED] **END**

²³ *Second E-rate Modernization Order*, 29 FCC Rcd at 15546, ¶ 19.

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CONFIDENTIAL*** in funds USAC committed for the Dark Fiber IRU that Hunt Telecom installed and delivered over six months ago.

Respectfully submitted,

/s/Tamar E. Finn

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Counsel for Hunt Telecommunications, LLC

Dated: August 5, 2019

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Verification of Robert Leithman

I, Robert Leithman, am the Senior Vice President of Uniti Fiber. I verify under penalty of perjury that the foregoing was prepared under my supervision and that the facts contained herein are true, complete, and correct to the best of my knowledge, information and belief.



Robert Leithman
Senior Vice President
Uniti Fiber

Executed on July 31, 2019

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Exhibit A

May 2018 Invoice

[REDACTED IN ITS ENTIRETY]

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Exhibit B

June 2018 Invoice

[REDACTED IN ITS ENTIRETY]

REDACTED FOR PUBLIC INSPECTION

Exhibit C

Service Provider Invoice

[REDACTED IN ITS ENTIRETY]

REDACTED FOR PUBLIC INSPECTION

Exhibit D

July Disbursement

[REDACTED IN ITS ENTIRETY]

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Exhibit E

September Disbursement

[REDACTED IN ITS ENTIRETY]