



August 7, 2019

**SUBMITTED ELECTRONICALLY VIA ECFS**

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

Re: Request for Waiver of E-Rate Service Implementation Deadline for Funding Year  
2018 by Grand Canyon Unified School District, WC Docket No. 02-6

Dear Ms. Dortch:

On July 30, the Grand Canyon Unified School District (GCUSD or the District) filed a request for waiver of the E-rate service implementation deadline for funding year 2018.<sup>1</sup> With this letter, Commnet AZ, LLC (Commnet)—GCUSD's service provider—respectfully provides some additional information in support of GCUSD's Request. Commnet asks that the Wireline Competition Bureau consider this letter as it reviews Grand Canyon USD's Request.

Commnet primarily wishes to emphasize how similar GCUSD's situation is to the facts that underlay the waiver requests from UETN, Grants/Cibola, and others that the Bureau has granted. As GCUSD explained, its funding request was for construction of a 67-mile fiber route.<sup>2</sup> Given the District's remote location within Grand Canyon National Park, this construction is the most cost-effective—indeed, the *only*—way that GCUSD can upgrade its existing, “woefully inadequate” broadband service.<sup>3</sup> The rugged terrain and shortened construction season required extensive planning and engineering before construction begins, and the fact that the planned fiber route traversed national forest and national park land complicated and lengthened the process of obtaining the necessary permits and rights-of-way.<sup>4</sup>

In short, the circumstances of this waiver request are at least as compelling as those present in other waiver requests that the Bureau has granted. Commnet thus respectfully argues

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<sup>1</sup> Request for Waiver by Grand Canyon Unified School District of the Commission's Rules, WC Docket No. 02-6 (filed July 30, 2019) (Request).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 3.

that GCUSD is equally deserving of a waiver, and that a waiver in this case would be in the public interest.

## **The Project**

As GCUSD explained in its Request, this project is designed to improve the District's unacceptably poor current broadband service, which among other things makes it impossible for GCUSD students to take standardized tests online, as has become the norm in most of the country.<sup>5</sup> Commnet's proposal would increase GCUSD's available bandwidth from less than 10 Mbps to at least 50 Mbps and as much as 1 Gbps (or more), finally bringing GCUSD into the 21st century.<sup>6</sup>

To achieve this result in the most cost-effective manner, GCUSD signed a contract with Commnet to construct a new fiber route connecting GCUSD to the central office in Williams, Arizona, a route of nearly 70 miles.<sup>7</sup> Almost 90 percent of this fiber route will consist of new above-ground facilities, and the rest new buried facilities.<sup>8</sup> Commnet will need to install or replace almost 650 utility poles.<sup>9</sup> Commnet also notes that the National Park Service is making an exception to allow aerial facilities—which are far less expensive to install given the extremely rugged and rocky terrain—for this construction project. Standard policy is that all facilities in the Grand Canyon National Park must be underground.

As the Request explained, GCUSD is the only school district in the United States that lies within a national park.<sup>10</sup> The District's location makes this fiber build particularly complex for two reasons. First, it vastly complicates the permitting and rights-of-way process, because in addition to securing the necessary permissions and rights of way from CenturyLink, the City of Williams, Arizona, the town of Tusayan, Arizona, the Grand Canyon Railway, and Arizona Public Service (the state's largest electric utility), Commnet must work with the National Park Service and the National Forest Service to obtain the necessary rights of way, easements, and permits.<sup>11</sup> The Form SF299 (the federal government's application for transportation and utility systems and facilities on federal land) requires an applicant to identify its funding source and demonstrate viability of funding. Thus the permitting process could not begin until the requested E-rate funding was committed.<sup>12</sup>

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<sup>5</sup> Request at 6.

<sup>6</sup> Request at 2. GCUSD's current service purportedly provides 10.5 Mbps of capacity, which would be inadequate enough, but in fact GCUSD reports that speeds rarely exceed 6 Mbps.

<sup>7</sup> Request at 2.

<sup>8</sup> Request, Exhibit 6, at 26 (Appendix C: Special Construction Schedule).

<sup>9</sup> Request, Exhibit 12, at 4.

<sup>10</sup> Request at 1.

<sup>11</sup> Request at 7.

<sup>12</sup> *Id.*



Given how many entities must sign off on the proposed build, there was no possibility that construction could have been completed before the end of funding year 2018. Indeed, Commnet estimated that the permitting and rights-of-way acquisition process would require approximately nine months before construction could even begin.<sup>13</sup> And it should be noted that nine months is a very short timeline for permitting and rights of way for this particular project. The National Park Service and National Forest Service right-of-way process generally takes 18 months to two years. But all of the stakeholders understand the need for this project and have bent over backwards to make it possible. The National Park Service and the Forest Service are bound by the National Environmental Policy Act, which requires consultation with tribes and the Arizona State Historic Preservation Officer. Both agencies have done everything they can to expedite that process, including committing to hire a third party to help them do that given their staffing limitations.

The second reason GCUSD's location complicates the fiber build is geographical. As GCUSD explained, the District lies near the southern rim of the Grand Canyon, a mile above sea level.<sup>14</sup> The remoteness and elevation of this location make any construction project challenging, notably because construction typically has to halt during the winter months.<sup>15</sup> Snow storms are very frequent and close the Grand Canyon National Park down. Whenever the park is shut down due to a weather event, employees are assigned to emergency matters specifically ensuring the safety of visitors and the park rather than working on permitting and rights of way matters. Further, given the remoteness of this location, several areas where construction will occur are accessible only by train. Therefore, weather and park closings play a critical role in the company's ability to access those areas for purposes of planning, assessing, delivering materials and construction. Finally, the soil in the area becomes very muddy following snow falls and delays construction even after the storms have moved on. Collectively, these factors significantly limit the construction season in the Grand Canyon.

### **Bureau Precedent on Service Implementation Deadline Waivers for Special Construction**

In the wake of the *Second Modernization Order*, the Bureau has granted several requests for waiver of the service implementation deadline over the past year and a half or so. In its *UETN Order*, for example, the Bureau granted the applicant an additional two years to complete its special construction project, beyond the one-year extension that the applicant had already received from USAC, citing "the complexity of the build, unforgiving topography of the build route, and very short annual construction season due to weather."<sup>16</sup>

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<sup>13</sup> Request, Exhibit 5 at 5.

<sup>14</sup> Request at 5, 7-8.

<sup>15</sup> Request at 7-8.

<sup>16</sup> *Request for Waiver by Utah Education and Telehealth Network, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 4607, 4612 ¶ 12 (Wireline Comp. Bur. 2018) (*UETN Order*).

In its *Grants/Cibola-Jemez Order*, the Bureau granted an 18-month extension to Grants/Cibola because USAC's program compliance review and the associated funding uncertainty significantly delayed construction.<sup>17</sup> In its most recent streamlined public notice, the Bureau granted several extension requests from comparably situated applicants.<sup>18</sup> The Bureau has explained that an extension is appropriate where "the applicant was unable to complete implementation for reasons beyond the service provider's control and the petitioner made good faith efforts to comply with Commission rules and procedures."<sup>19</sup>

### **The Circumstances Here Are Similarly Deserving of a Waiver**

Commnet respectfully argues that the circumstances here warrant a waiver, consistent with the Bureau precedent described above. As in the *UETN Order*, the project was complicated by a challenging build route and a shortened construction season.<sup>20</sup> As in the *Grants/Cibola-Jemez Order*, here the uncertain funding status delayed commencement of the project. USAC did not issue a funding commitment until January 3, 2019, by which time the funding year was more than half over.<sup>21</sup> Additionally, given the well documented snow storms of 2019 in the Grand Canyon, the actual construction window would have been limited to approximately three months. As in both those orders, GCUSD made good-faith efforts to comply with the Commission's rules and procedures. GCUSD was transparent from the beginning about the length and complexity of the project, filed a timely extension request with USAC, and provided prompt and thorough responses to USAC's questions about the project.<sup>22</sup>

Additionally, the grant of a waiver here would be consistent with the Commission's service extension rule for non-recurring services.<sup>23</sup> The rule allows an extension to be granted if the applicant satisfies one of four criteria.<sup>24</sup> One of the criteria is that the applicant's service provider is unable to complete implementation for reasons beyond the service provider's control. As GCUSD explained, Commnet needed to obtain permits and rights-of-way access from numerous entities, including federal agencies—a nine-month process that had to be completed before construction began.<sup>25</sup> In addition, the school district lies one mile above sea level, the

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<sup>17</sup> *Requests for Waiver by Grants/Cibola County School District and Jemez Pueblo Tribal Consortium*, CC Docket No. 02-6, Order, 33 FCC Rcd 10048, 10052 ¶ 10 (Wireline Comp. Bur. 2018) (*Grants/Cibola-Jemez Order*).

<sup>18</sup> *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket No. 06-122, Public Notice, DA 19-701, at 6-7 & n.21 (rel. July 31, 2019).

<sup>19</sup> *Id.* n.21.

<sup>20</sup> Request at 7-8.

<sup>21</sup> Request at 4.

<sup>22</sup> Request at 3-4.

<sup>23</sup> 47 C.F.R. § 54.507(4).

<sup>24</sup> *Id.*

<sup>25</sup> Request at 7.



planned fiber route traverses rugged and challenging terrain, and because of the school district's elevation (one mile above sea level), construction during the winter is virtually impossible.<sup>26</sup> None of these factors was within the service provider's control.

### **A Waiver Would Serve the Public Interest**

Commnet agrees with GCUSD that a waiver would be in the public interest. This construction project will bring robust broadband service to a remote, economically disadvantaged school district whose students have gone without the modern educational tools that broadband brings for far too long.<sup>27</sup> The lengthy, complicated new fiber route planned by GCUSD and Commnet is the best, most cost-effective way to achieve this outcome.

In effect, USAC's position is that E-rate applicants cannot plan a special construct project that will take longer than one year to complete. Commnet respectfully argues that USAC's position is contrary to the public interest and is inconsistent with how the Bureau has treated similar extension requests. As the Bureau has acknowledged by granting applicants substantial additional time beyond the one-year extension already obtained from USAC, extending broadband service to remote and geographically challenging locations simply cannot always be done within a year. But when USAC refuses to grant an extension where an applicant and its service provider prudently acknowledge up front that the necessary permitting and engineering alone will push the project out beyond a year, essentially USAC is telling the most disadvantaged school districts that they are out of luck. This outcome cannot possibly be squared with the public interest, the goals of the E-rate program, or the Bureau's precedent.

As noted above, the Bureau has granted as much as two additional years (beyond USAC's one-year extension) to complete a fiber special construction project, given the unique challenges involved in the construction.<sup>28</sup> GCUSD and Commnet are requesting much less time. Indeed, if USAC had granted GCUSD's timely filed one-year extension request, there likely would have been no need for GCUSD to seek a waiver from the Commission at all: the construction would have been completed within the additional one year that USAC granted.

As GCUSD noted, Commnet believes that it will be able to complete the project within 12 months of the grant of an extension, despite the delayed funding commitment, the government shutdown, the permitting processes and the other factors that GCUSD described. Commnet nonetheless agrees with GCUSD that it is wise to ask the Commission for a waiver through the end of 2020, to be on the safe side. While Commnet understandably has not begun construction, given USAC's denial of the extension request, it has begun the engineering and pursued the permitting and right-of-way access. All told, Commnet has already sunk approximately

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<sup>26</sup> *Id.* at 7-8.

<sup>27</sup> Request at 2.

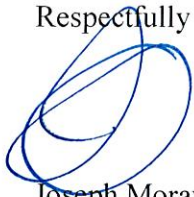
<sup>28</sup> *Id.*

\$350,000 into this project, an investment that will go to waste and will never be funded if this waiver is not granted.<sup>29</sup>

Commnet is nearing completion of the rights-of-way process with the National Park Service. Soon, Commnet will have to do the final biological and cultural surveys for the National Forest Service and issue purchasing orders for the new and replacement poles, but it cannot complete this process as long as E-rate funding for the project is uncertain. If a decision on GCUSD's request for waiver is delayed, winter will be upon us, and Commnet likely will not be able to complete the surveys or install the poles until spring. As noted above, both of these agencies have bent over backward to expedite their review processes because the communications needs of GCUSD are so great. Commnet respectfully asks the Bureau to treat GCUSD's request for waiver with similar urgency, and to recognize that without a waiver GCUSD's students will never be on a level playing field with the rest of the country.

Commnet appreciates the Bureau's consideration of this additional information. Please let us know if you have any questions.

Respectfully submitted,



Joseph Moravec  
Chief Executive Officer  
Commnet AZ, LLC  
400 Northridge Road, Suite 1100  
Atlanta, GA 30350  
Telephone: (404) 649-6625  
E-Mail: JMoravec@atni.com

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<sup>29</sup> It is for this reason that GCUSD cannot simply reapply for funding for this project in 2019: if it did, there would be no way to recoup the funding that has already been invested in the project in funding year 2018.