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August 26, 2016

**CONFIDENTIALITY REQUESTED
PURSUANT TO 47 C.F.R. § 0.459**

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

Re: Request for Review or Waiver of a Decision of the Universal
Service Administrator by Sweetwater City Schools et al.,
Docket No. 02-6

Dear Ms. Dortch:

In the attached document, filed in accordance with section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, Education Networks of America (ENA) responds to questions from the Wireline Competition Bureau in the above-captioned proceeding. Pursuant to sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457, 0.459, ENA seeks confidential treatment of portions of its response. ENA requests that the enclosed copies of this filing be delivered to Aaron Garza or Bryan Boyle of the Wireline Competition Bureau.

Statement Required by Section 0.459(b)

(1) Identification of the specific information for which confidential treatment is sought.

ENA's response to the Bureau includes specific and competitively sensitive information about how ENA develops the prices it charges for individual services and circuits, and how it developing pricing to submit in response to requests for proposals (RFPs) issued by states, consortia, school districts and individual schools and libraries in the E-rate program.

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.

ENA submits this information in the above-captioned proceeding, a request for review of Universal Service Administrative Company (USAC) decisions to deny Schools and Libraries Universal Service funding to Sweetwater City Schools and the other members of the Sweetwater Consortium (or

the Consortium) for Funding Years 2013, 2014 and 2015.¹ The information is being submitted pursuant to a request for additional information from the Wireline Competition Bureau in connection with the appeal Sweetwater filed with the Commission.

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged. The information for which ENA seeks confidential treatment is both commercial and financial, as it describes in detail how ENA formulates prices for its services. This information is entitled to protection from disclosure under Exemption 4 of the Freedom of Information Act because it constitutes “commercial or financial information obtained from a person and [is] privileged or confidential.”² Disclosure of the information, as we explain under (5), below, would cause substantial harm to ENA’s competitive position.³

(4) Explanation of the degree to which the information concerns a service that is subject to competition. The information in question concerns broadband services that are—and are required to be under the Commission’s E-rate rules—procured via competitive bidding. In the above-captioned proceeding, the Sweetwater Consortium issued a request for proposals and received two bids in response. ENA’s was the winning bid. Any time ENA provides the services in question to school districts or consortia of school districts, it has won the business through a competitive bidding process.

(5) Explanation of how disclosure of the information could result in substantial competitive harm. The information for which ENA seeks confidential treatment has been recognized as “competitively sensitive” in other Commission proceedings.⁴ ENA’s business model involves finding innovative ways to minimize the cost of providing services to schools, then passing the savings on to its customers. These practices enable ENA to provide the best possible service to schools at the most affordable prices, and therefore enable ENA to win competitively bid contracts with schools. Disclosure of ENA’s internal calculations and methodologies would result in substantial competitive harm because such disclosure would give its competitors insights into ENA’s pricing methodology that could give those competitors an unfair advantage in future competitive bidding for E-rate service contracts.

¹ Request for Review or Waiver of a Decision of the Universal Service Administrator by Sweetwater City Schools et al., CC Docket No. 02-6 (filed May 13, 2016).

² 47 U.S.C. § 552(b)(4).

³ See *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (establishing that “commercial or financial matter is ‘confidential’ for purposes of [Exemption 4] if disclosure of the information is likely to have either of the following effects: (1) to impair the Government’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained”). Disclosure of the pricing information that ENA has submitted could potentially impair the Commission’s ability to obtain similar information in the future as well.

⁴ See, e.g., *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Data Collection Protective Order, 29 FCC Rcd 11657, 11658 para. 3 (WCB 2014) (listing “prices charged to customers at the circuit level” as an example of information that is “competitively sensitive and not public[ly] available”).

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure. ENA does not customarily make the information for which it seeks confidential treatment available to the public and instructs its employees not to disclose such information. In addition to restrictions on the use and dissemination of this information as detailed in its employee handbook, employees are required to sign a non-disclosure and confidentiality agreement.

(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties. While ENA does include pricing information for E-rate-eligible services in the publicly available bids it submits, the information included in the attached response about how ENA develops prices is competitively sensitive, and ENA does not make that information available to the public or disclose it to third parties.

(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure. ENA asks that the competitively sensitive information in the attached response to the Bureau be kept confidential for an indefinite period. This information would allow competitors to gain insights into how ENA develops prices for bids it submits for services that qualify for E-rate funding, and ENA does not believe that the competitive sensitivity of this information will “expire” or become diminished within any specific, identifiable timeframe.

(9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted. ENA believes that confidential treatment is particularly justified in this case because robust competitive bidding is so essential to the proper functioning of the E-rate program. The disclosure of competitively sensitive information could undermine a company’s ability to submit its best possible bids, potentially leading to higher prices for E-rate-supported services. ENA is being required to submit this information to the Commission in support of its appeal. Without confidential treatment, parties may be less likely to appeal adverse decisions made by USAC, which could harm parties’ due process rights and negatively affect the Commission’s ability to oversee the administration of the program. Finally, there is no public interest in disclosure of the information that ENA has submitted in response to the Bureau’s questions.

Pursuant to the Commission’s rules, ENA has submitted an original and four copies of the unredacted version of its response to the Commission for filing, and has provided two hard copies of its unredacted response under separate cover to Bryan Boyle or Aaron Garza of the Wireline Competition Bureau.

Please do not hesitate to contact me with any questions regarding this submission.

Respectfully submitted,

/s/ Gina Spade

Gina Spade
Counsel for ENA

cc: Aaron Garza, Bryan Boyle, Chas Eberle, Kate Dumouchel, TAPD/WCB (via email)
Chuck Cagle, attorney for Sweetwater Consortium (via email)