

Strategies Law Group, PLLC

September 19, 2018

VIA ECFS

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

Re: **Request For Review by Layer2 Licensing, Inc. of a Decision by the Universal Service Fund Administrator and Request for Waiver of the One-Year Downward Revision for FCC Form 499A; WC Docket No. 06-122 - PUBLIC VERSION.**

Dear Secretary Dortch:

On behalf of Layer2 Licensing, Inc. ("Layer2") (Form 499 Filer Identification Number 828864), by its attorneys, enclosed please find a redacted "PUBLIC VERSION" of Layer2's Request for Review of a Decision by the Universal Service Fund Administrator and Request for Waiver of the One-Year Downward Revision for FCC Form 499A ("Request for Review and Waiver").

Under separate cover, Layer2 is submitting an unredacted version of the Request for Review and Waiver along with a request for confidential treatment pursuant to Section 0.459 of the Commission's rules. Please contact the undersigned if you have any questions.

Sincerely,



Brian McDermott
Edward S. Quill, Jr.

Counsel for Layer2 Licensing, Inc.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)

Request For Review by)

Layer2 Licensing, Inc.)

Of a Decision by the Universal Service)

Fund Administrator and Request for Waiver)

of the One-Year Downward)

Revision for FCC Form 499A)

WC Docket No. 06-122

**REQUEST FOR REVIEW BY LAYER2 LICENSING, INC. OF A DECISION BY THE
UNIVERSAL SERVICE FUND ADMINISTRATOR AND REQUEST FOR WAIVER OF
THE ONE-YEAR DOWNWARD REVISION FOR FCC FORM 499A**

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September 19, 2018

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SUMMARY

Layer2 Licensing, Inc. (“Layer2” or “Company”) (Form 499 Filer Identification Number 828864), requests that the Commission: (1) reverse USAC’s decision to reject Layer2’s revised amended 2017 FCC Form 499A filed August 21, 2018 (“Form 499A Correction”), which sought to correct an inadvertent clerical entry error on the Form 499A revision filed by Layer2 on July 3, 2018 (“July 2018 Form 499A Revision”), and (2) waive the one-year revision deadline for FCC Form 499A in order to allow Layer2 to resubmit its Form 499A Correction to correct the clerical error.

Layer2 respectfully submits that the unique confluence of circumstances in this matter support a deviation from the rule because: (A) the FCC has regularly granted waivers in similar situations and the relief requested is therefore consistent with clear FCC precedent; (B) the relief requested is consistent with and needed to preserve the intent of the Commission’s *FCC Form 499-A One-Year Deadline Order*; (C) the relief requested is necessary to prevent a severe and unwarranted financial penalty that would constitute an unreasonable financial hardship to the Company; (D) the relief requested would allow USAC to reject an obviously erroneous and internally inconsistent filing and therefore preserve the accuracy and integrity of the Commission’s records and processes; and (E) by promoting fundamental fairness, grant of the requested relief would serve the public interest.

Before the
FEDERAL COMMUNICATIONS COMMISSION
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**REQUEST FOR REVIEW BY LAYER2 LICENSING, INC. OF A DECISION BY THE
UNIVERSAL SERVICE FUND ADMINISTRATOR AND REQUEST FOR WAIVER OF
THE ONE-YEAR DOWNWARD REVISION FOR FCC FORM 499A**

Layer2 Licensing, Inc. (“Layer2” or “Company”) (Form 499 Filer Identification Number 828864), through its undersigned counsel, pursuant to Sections 1.3, 54.719(c), and 54.722 of the Federal Communications Commission (“FCC” or “Commission”) Rules¹, and at the advice of the Universal Services Administrative Company (“USAC”) staff, files this Request and respectfully requests that the Commission: (1) reverse USAC’s decision to reject Layer2’s revised amended 2017 FCC Form 499A filed August 21, 2018 (“Form 499A Correction”), which sought to correct an inadvertent clerical entry error on the Form 499A revision filed by Layer2 on July 3, 2018 (“July 2018 Form 499A Revision”), and (2) waive the one-year revision deadline for FCC Form 499A in order to allow Layer2 to resubmit its Form 499A Correction to correct the clerical error.

¹ 47 C.F.R. §1.3, §54.719(c) & §54.722.

Through this filing, Layer2 seeks the ability to correct a purely typographical error that renders the Company's July 2018 Form 499A Revision inaccurate on its face. Through this Request, Layer2's seeks only the ability to make an administrative correction necessary to make the Company's 2017 Form 499A internally consistent. Indeed, the Company's existing Form 499A now on file is clearly erroneous because the information contained in the July 2018 Form 499A Revision internally contradicts itself and reflects financial information that is literally impossible.

As demonstrated below, grant of Layer2's Request falls squarely in line with Commission precedent in identical circumstances. The Commission has granted relief identical to that sought through this Request to numerous similarly situated Universal Service Fund ("USF") contributors.

Commission relief is appropriate and necessary in order to allow Layer2 to avoid the imposition of an excessive and unreasonable increase in Layer2's USF assessed contribution amount, which if uncorrected would result in a material and unfair penalty to the Company. The relief sought by Layer2 is necessary to allow Layer2 to avoid the Company having to pay USF contribution on a large amount of revenue that the Company never received. Furthermore, because the clerical error would result in the Company being assessed USF contribution amounts several times larger than the correct USF contribution amount, the Company seeks Commission relief in order to avoid a crippling financial hardship that is inappropriate given the nature of the clerical error. Layer2 therefore submits that reversal of USAC's decision and a waiver of the revision deadline would allow the Company to avoid a fundamentally unfair result and therefore serve the public interest.

While the Company has not accrued any interest and penalties for the amounts owed under the July 2018 Form 499A Revision, Layer2 respectfully further requests that the Commission waive any such interest and penalties that may accrue during the pendency of this proceeding.

I. LEGAL AUTHORITY AND SUMMARY OF REQUESTED RELIEF.

The Commission has authority to grant the relief sought in this Request. The Commission may waive any provision of its rules for good cause shown.² The Commission may grant a waiver of its rules where the particular facts make strict compliance inconsistent with the public interest.³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁴

Through this Request, Layer2 seeks review of an action taken by USAC. Specifically, for the reasons set forth below, Layer2 requests that the Commission review and reverse USAC's decision to reject the Form 499A Correction filed by Layer 2 on August 21, 2018 that was filed to rectify an inadvertent clerical entry error on Layer2's July 2018 Form 499A Revision. Layer2 has already sought relief from USAC but has been advised by USAC that the relief sought can only be obtained from the Commission. Accordingly, the Commission has authority to review USAC's action pursuant to Commission Rules 54.719(c) and 54.722.⁵

In accordance with those Commission Rules and Commission precedent, Layer2 requests that the Commission: (a) find that there is good cause to waive the one-year downward revision

² 47 C.F.R. §1.3.

³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972) ("*WAIT Radio*"); *Northeast Cellular*, 897 F.2d at 1166.

⁵ 47 C.F.R. §54.719(c) & §57.722.

deadline for FCC Form 499A; (b) reverse USAC's decision to reject Layer2's Form 499A Correction; and (c) permit such filing to be accepted as though timely filed.

In the alternative, Layer2 requests that the FCC instruct USAC to reject the Company's July 2018 Form 499A Revision as non-compliant as that form contains errors on its face and therefore cannot be accurate (which would permit Layer2 to refile a corrected revised Form 499A).

II. STATEMENT OF FACTS

In 2016, Layer2 had net universal service contribution base revenues for interstate services of [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL].

On April 6, 2017, Layer2 filed an original Form 499A showing Layer2's 2016 universal service contribution base revenues for interstate services as [BEGIN CONFIDENTIAL][END CONFIDENTIAL]. That filing omitted any discussion of bad debt. Layer2's original filing is submitted as Exhibit A with the relevant totals highlighted.

In 2018, upon subsequent re-review the Form 499A instructions, Layer2 sought to revise its Form 499A in order to reflect the uncollectible debt and ensure accurate disclosure. On July 3, 2018, Layer2 filed its July 2018 Form 499A Revision. The sole changes sought through that filing were to clarify that Layer2 had 2016 interstate gross billable revenues of [BEGIN CONFIDENTIAL][END CONFIDENTIAL]. The filing was meant solely as a clarification. As the submitted changes exactly offset, the July 2018 Form 499A Revision should have resulted in no change to Layer2's net universal service contribution base revenues which should have remained [BEGIN CONFIDENTIAL][END CONFIDENTIAL].

Unfortunately, the July 2018 Form 499A Revision included a clerical error. In that form, Layer2 correctly listed [BEGIN CONFIDENTIAL][END CONFIDENTIAL] on Line 419(d) (interstate gross billed revenue from all sources) and Line 420(d) (interstate gross universal service contribution base amounts). Layer2 also correctly listed interstate uncollectable debt of [BEGIN CONFIDENTIAL][END CONFIDENTIAL] on line 421(d). However, that amount of interstate uncollectible debt was inadvertently not correctly carried over to Line 422(d). As a result, the July 2018 Form 499A Revision failed to account for the impact of the uncollectible debt and inaccurately shows net universal service contribution base revenues for interstate services [BEGIN CONFIDENTIAL][END CONFIDENTIAL].⁶

The inaccuracy in Layer2's July 2018 Form 499A Revision was resulted, in significant part, from the then newly implemented Form 499A input processes. Although the system permits the direct entry of total interstate uncollectable debt on Line 421(d), that amount does not directly carry over to the subsequent Line 422(d) unless an affirmative entry is made to the "Did you have bad debt associated with your revenue billed to end users?" question contained in the associated drop-down box. Unless that affirmative entry is made, no option to enter in information on Line 422(d) even appears.⁷ Furthermore, the total net universal service contribution base revenues for interstate services in Line 423(d) is automatically calculated and inserted, and is not manually entered by the reporting entity.

Often, USAC's system automatically alerts users that numbers entered are patently inconsistent or erroneous and automatically rejects such errors, however no such protection existed in this instance. Layer2's sole billed interstate revenues consisted of [BEGIN

⁶ A copy of the July 2018 Form 499A Revision is attached as Exhibit B with the relevant sections highlighted.

⁷ A screen shot of that page is attached as Exhibit C.

CONFIDENTIAL][END CONFIDENTIAL] was uncollectible, therefore there is no possible way that Layer2's net universal service contribution base for interstate revenues could have exceeded **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]**, the amount the Company intended to report.

In any event, Layer2 did not detect that the interstate uncollectible debt listed on Line 421(d) July 2018 Form 499A Revision had not accurately carried over to Line 422(d) and Line 423(d) of the Form 499A. The result of the omission of interstate uncollectible debt on Line 422(d) caused the Layer2's net universal service contribution base revenues for interstate services to be reported on Line 423(d) as **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** instead of remaining unchanged at **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]**.⁸

Promptly upon learning of the clerical error, on August 21, 2018, less than two months after the filing of the 2018 Form 499A Revision, Layer2 attempted to correct the error by filing its Form 499A Correction.⁹ The sole change listed in that Correction was to insert the missing interstate uncollectible debt amounts on Line 422(d) such that Layer2's net universal service contribution base revenues for interstate service listed on Line 423(d) would revert to the correct amount of **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]**.

USAC rejected the August Form 499A Correction on August 23, 2018 based on the Commission's Form 499-A One-Year Deadline Order.¹⁰

⁸ The amount is being billed as part of the true-up process since the Company had been paying monthly invoices based upon its FCC Form 499qs that were filed with the accurate net universal service contribution base revenue amounts. The numbers contained in the Company's 499Q filings is further evidence that amounts shown on the July 2018 Form 499A Revision was inaccurate.

⁹ Form 499A Correction is attached as Exhibit D.

¹⁰ See *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms: Changes to the*

Layer2 immediately sought relief from USAC, informally requesting that USAC correct the obvious error on its own or reject the July the July 2018 Form 499A Revision. On August 27, 2018, again citing Commission's Form 499-A One-Year Deadline Order, USAC confirmed that USAC could not correct or allow the Company to address the clerical error in any way and informed the Company that recourse to the Commission would be required in order to correct the mistake. Accordingly, the Company has submitted this Request to seek relief as directed by USAC.

The Company has continued to make timely monthly USAC payments on its current revenue for 2018 but has not paid the true-up amounts associated with the erroneous July 2018 Form 499A Revision.¹¹

III. BASIS OF REQUEST

Layer2 understands that USAC's rejection of Layer2's August Form 499A Correction is based solely on a strict application of the Commission's FCC Form 499A One-Year Deadline Order. In 2004, the Wireline Competition Bureau ("Bureau") issued an order that prevented filers from downwardly revising their annual FCC Form 499A filings if the revision was filed more than twelve months after the due date for such filing.¹²

In adopting the *Form 499A One-Year Deadline Order*, the Bureau found that the firm year deadline would: (1) improve administrative efficiency and certainty for the contribution

Board of Directors of the National Exchange Carrier Associations, CC Docket Nos. 96-45, 98-171, 97-21, Order, 20 FCC Rcd 1012 (rel. Dec. 9, 2004) ("*FCC Form 499-A One-Year Deadline Order*").

¹¹ While the Company is aware of USAC's pay and dispute policy, given that the amount in question is equal to a third of the total yearly revenue of the company, the Company is not in financial position and has not sufficient resources to feasibly make payments on that true-up amount and continue operations. The Company notes that a Company's failure to make timely payments has not precluded the FCC from granting a waiver in similar circumstances. See *Universal Service Contribution Methodology, Petition for Reconsideration by Ascent Media Group, Inc.*, Order on Reconsideration, DA 13-966 at ¶ 11 (rel. May 3, 2013) ("*Ascent Media Waiver Grant*").

¹² See *FCC Form 499-A One-Year Deadline Order*.

system, (2) ensure the stability and sufficiency of the fund, (3) improve the integrity of the methodology, and (4) promote efficiency in administration of the universal service support mechanisms.¹³ The Bureau also supported the year deadline by reasoning that a year was an “adequate time to discover errors, while providing incentive to submit accurate revenue numbers” given the fact that the contributor has reviewed the revenue for the 499Q filings throughout the year and had a full year to discover errors on the FCC Form 499-A.¹⁴ Due to various subsequent concerns, the FCC Form 499-A One-Year Deadline Order is currently subject to a pending application for review.¹⁵

As noted above, the Commission may waive its rules “for good cause shown.”¹⁶ The Commission has stated that it “generally finds good cause to grant a waiver of its rules where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question.”¹⁷ The Commission has also stated that it “may take into account considerations of

¹³ See *id.* at 1016 ¶ 10.

¹⁴ See *id.* at 1017 ¶ 11.

¹⁵ See *In re Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms: Changes to the Board of Directors of the National Exchange Carrier Associations*, SBC Communications Inc. Application for Review of Action Taken Pursuant to Delegated Authority, CC Docket Nos. 96-45,98-171, 97-21 (filed Jan. 19, 2005).

¹⁶ 47 C.F.R. §1.3.

¹⁷ *In re Revisions of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance with Deadlines for Tier III Carriers*, CC Docket No. 94-102, Order, 20 FCC Rcd 7709 ¶ 9 (2005).

hardship, equity, or more effective implementation of overall policy on an individual basis.”¹⁸ As summarized by the FCC in a recent order granting a Petition for Reconsideration thereby granting a waiver to allow a company to revise its FCC Form 499-A after the one-year deadline, “[i]n sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would serve the public interest than strict adherence to the general rule.”¹⁹

Layer2 respectfully submits that the unique confluence of circumstances in this matter support a deviation from the rule because: (A) the FCC has regularly granted waivers in similar situations and the relief requested is therefore consistent with clear FCC precedent; (B) the relief requested is consistent with and needed to preserve the intent of the Commission’s *FCC Form 499-A One-Year Deadline Order*; (C) the relief requested is necessary to prevent a severe and unwarranted financial penalty that would be a financial hardship; (D) the relief requested would allow USAC to reject an obviously erroneous and internally inconsistent filing and therefore preserve the accuracy and integrity of the Commission’s processes; and (E) by promoting fundamental fairness, grant of the requested relief would serve the public interest.

A. The FCC has regularly granted waivers in similar situations and the relief requested is therefore consistent with clear FCC precedent.

In numerous recent cases, the Commission has consistently granted waivers to other USAC contributors where needed to correct obvious clerical errors. In, 2013, the Commission

¹⁸ See *Universal Service Contribution Methodology, Adventure Communications Technology, LLC, Request for Review of USAC Rejection Letter and Request for Waiver of USAC 45 Day Revision Deadline*, CC Docket No. 96-45, WC Docket No. 06-122, Order, 23 FCC Rcd 10096, n. 10 (2008) citing *WAIT Radio* at 1159.

¹⁹ See *Universal Service Contribution Methodology, Application for Review by American Teleconferencing Services, Ltd/ d/b/a Premiere Global Services*, Memorandum Opinion and Order WC Docket No. 06-122, Order, DA 16-1089 (rel. September 26, 2016) ¶ 9 (2016) (“*ATS Waiver Grant*”) citing *Northeast Cellular* at 1164..

granted a similar waiver to *Ascent Media Group, Inc.* which had a committed clerical error which caused it to report its total projected company revenue instead of its projected interstate and international telecommunications revenue on its August 2007 FCC Form 499-Q.²⁰ Subsequently in 2014, in *Peak Communications, Inc.*, the Commission granted Peak Communications a waiver to allow it to correct an inadvertent clerical error on its November 2013 FCC Form 499-Q that significantly overstated its assessable telecommunications but which the company did not discover until the revision deadline had passed.²¹ Similarly, in *Peerless Network, Inc.*, the Commission granted a waiver to Peerless Networks which allowed the company to correct an inadvertent clerical error on its May 2013 FCC Form 499-Q that caused Peerless Network to significantly overstated its assessable telecommunications revenue.²² In 2015, in *Emperior*, the Commission granted a waiver in order to allow a filer to correct a typographical error where the filer has inadvertently added an additional “0” to the end user projected revenue number.²³

Such Commission precedent has not been limited to quarterly filings. In *ATS Waiver Order*, the FCC granted a waiver when ATS made a ministerial error by commingling assessable

²⁰ See *Ascent Media Waiver Grant*.

²¹ See also *Universal Service Contribution Methodology, Emergency Request for Review by Peak Communications, Inc. of a Decision of the Universal Service Administrator and Request for Waiver of Deadline for Filing Revisions to FCC Form 499-Q*, Order, DA 14-1179 (Rel. August 12, 2014).

²² *Universal Service Contribution Methodology, Emergency Request for Review of the Decision of the Universal Administrative Company and Request for Waiver by Peerless Network, Inc.* Order, DA 14-870 (rel. June 23, 2014).

²³ *Universal Service Contribution Methodology, Request for Review of the Decision of the Universal Administrative Company and Request for Waiver by American Broadband & Telecommunications*, Order, DA 13-1608 (rel. July 22, 2013).

and non-assessable revenues on an assessable line on it Form 499A.²⁴ In doing so, the Bureau recognized that it “has routinely allowed waivers in other contexts so as to allow corrections necessary as a result of ministerial errors.”²⁵

As previously explained above, the circumstances that pertain to Layer2’s request for relief are squarely within the range of circumstances within which the Bureau has routinely granted relief. Layer2 has committed a ministerial error and seek the same ability to rectify that mistake as has been regularly granted to similarly situated USF contributors.

B. The relief requested is consistent with and needed to preserve the intent of the Commission’s FCC Form 499-A One-Year Deadline Order.

In the *Form 499-A One-Year Deadline Order* the Bureau implicitly recognized that USF contributors would, from time to time, require the opportunity to revise their Form 499 submissions. In adopting a one year deadline for Form 499A downward corrections, the Bureau also explicitly recognized that companies would have an entire year to identify and correct errors and found that one year was a sufficient opportunity to submit corrections.

Layer2 has been caught by an apparent unintended consequence of the one year rule. In this instance, the filing that Layer2 seeks to correct was not filed in 2017 but rather only recently filed in July of 2018. Because the date of the erroneous filing was more than one year past the filing due date, USAC’s interpretation of the one year deadline is that Layer2 can have no

²⁴ See *ATS Waiver Order*. See also *Universal Service Contribution Methodology, Request for Waiver by Emperior Network; Request for Review by Coaxial Cable Television Corporation of Decision on Universal Service Administrator*, WC Docket No. 06-122, Order, DA 15-565 (rel. May 11, 2015) (*Emperior Waiver Order*”).

²⁵ See *ATS Waiver Grant* at ¶ 13 citing examples such as *Request for Waiver and Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools et al.; Schools and Libraries Universal Support Mechanism*, Order, 25 FCC Rcd 17319, 17320 ¶ 2 (WCB 2010) (permitting applicants to correct an inaccurately entered date and a mathematical error); *Request for Review of Decisions of the Universal Service Administrator by Archer Public Library et al, Schools and Libraries Universal Support Mechanism*, Order, 23 FCC Rcd 15518,15520 ¶ 6 (WCB 2008) (permitting correction where applicant interchanged the amounts of items).

opportunity at all to correct its filing. Layer2 respectfully submits that the language of the *Form 499-A One-Year Deadline Order* demonstrates that Bureau only intended to limit the ability of filers to make changes to a reasonable amount of time – not to eliminate the ability to make changes altogether. Layer2 respectfully submits that a de facto elimination of all opportunity to make corrections would be inconsistent with the approach taken by the Bureau in establishing a one year deadline.

Layer2 recognizes that in adopting the *Form 499-A One-Year Deadline Order*, the Bureau sought to mitigate the impact of subsequently filed revisions on the Universal Service Fund and to provide certainty. In this instance however, Layer2 is not seeking to modify the revenue number upon which its 2017 USF contribution was based. The USF contribution base revenues listed by Layer2 in its original 2017 Form 499A remain correct and Layer2 seeks no change to those revenue amounts. Instead, Layer2 seeks to undo a recent change inadvertently caused by a recent filing.

Layer2 is aware that pursuant to the *Form 499-A One-Year Deadline Order* the Commission has regularly denied requests from USF contributor to re-categorizing revenues earned far in the past. Layer2 emphasizes that no such request is made in this filing. In particular, no authority is requested to reclassify or re-categorize any of the revenues earned by the Company. The relief sought is limited solely to the correction of a clerical error.

Finally, Layer2 respectfully submits that it has diligently sought to address and rectify the clerical error. Layer2 has not allowed excessive time to pass in submitting revisions but has instead sought to submit corrections promptly. As discussed above, the Company began attempts to fix the error to the July 2018 Form 499A Revision almost immediately after becoming aware of the error and within two months of the submission of the erroneous filing.

C. The relief requested is necessary to prevent a severe and unwarranted financial penalty that would be a financial hardship.

The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁶ In considering previous waiver requests, the Commission has granted waivers of the one year deadline in similar circumstances where a contributor “has established financial hardship in this case incurred as a result of an inadvertent administrative mistake.”²⁷

As in such precedent, denial of Layer2’s Request would create a severe hardship to Layer2. As noted above, if uncorrected, Layer2’s July 2018 Form 499A Revision would result in Layer2 owing a USF contribution increase [BEGIN CONFIDENTIAL][END CONFIDENTIAL] – based on revenues that Layer2 never received. In 2017, Layer2’s total collected company revenue was [BEGIN CONFIDENTIAL][END CONFIDENTIAL] as reported on its 2018 Form 499A. A contribution of that size would represent [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]. An attestation confirming the financial impact such a result would have on the Company is attached as Exhibit E.

²⁶ See *WAIT Radio* at 1159.

²⁷ See *ATS Waiver Grant* at ¶ 12.

D. The relief requested would allow USAC to reject an obviously erroneous and internally inconsistent filing and therefore preserve the accuracy and integrity of the Commission's processes.

The revenue information presented on Layer2's Form 499A is relatively straightforward. All of the Company's interstate revenue from 2017 as reported on the Form 499A came from the provision of telecommunications services subject to USF contribution. Layer2's July 2018 Form 499A Revision accurately states that interstate gross billed revenues as listed on Line 419(d) and interstate gross universal service contribution base amounts as listed on Line 420(d) are both listed as [BEGIN CONFIDENTIAL][END CONFIDENTIAL] in uncollectable debt for interstate services. Layer2 is reporting lines 419(d) and 420(d) as identical which means that all interstate revenue received by the company in 2016 also fell into the gross universal service contribution base amount. Therefore any uncollectible debt on interstate revenue as reported on 421(d) must also be uncollectible interstate revenue on the universal service contribution base amount because there is no other interstate revenue for there to be bad debt on. The July 2018 Form 499A Revision is therefore facially inaccurate because there is no way for the financial information as currently reported to be reconciled.

Both the Commission and USAC have substantial interests in maintaining the accuracy and consistency of the USF records and processes and the integrity of the USF methodology.²⁸ As a result, USAC regularly rejects USF filings which are incomplete, inaccurate or otherwise non-compliant. And USAC regularly includes safeguards in its filing processes that prevent filers from inserting information that cannot be correct. Given that Layer2's July 2018 Form 499A Revision contains internal inconsistencies that cannot be reconciled, Layer2 respectfully

²⁸ See *ATS Waiver Grant* at ¶ 3.

submits that Layer2's July 2018 Form 499A Revision should similarly have been rejected and that nothing in the Commission's *Form 499-A One-Year Deadline Order* or other rules prevents USAC from taking such action. Accordingly, Layer2 respectfully submits that the requested waiver is appropriate in order to allow for the correction of USAC's records.

E. By promoting fundamental fairness, grant of the requested relief would serve the public interest.

Layer2 respectfully submits that strict compliance to the one-year downward change rule would be manifestly unfair and unreasonable and therefore inconsistent with the public interest in these set of circumstances. If the Commission denies the Company's waiver request, it will essentially be requiring Layer2 to pay USF contribution based on revenues the Company never received solely as a consequence of a clerical error. Indeed, the Form 499A Revision filed by Layer2 was not seeking a decrease (or even an adjustment) in Layer2's USF contribution obligations but rather was filed as a "zero impact" filing in an attempt to ensure that accuracy of Layer2's filings and USAC's records. That that filing would then cause a material increase in Layer2's USF obligations would disproportionally and materially penalize Layer2 in a manner that the Commission has regularly chosen to rectify.

Granting the waiver will not result in a material negative effect on the Universal Service Fund. While the amount involved is significant to Layer2, it is only a sliver of the entire Universal Service Fund. The total amount owed by Layer2 will represent less than [BEGIN CONFIDENTIAL][END CONFIDENTIAL] of the total fund.²⁹ This amount is a mere fraction of the anticipated one percent (1%) uncollected amount anticipated by the Commission when it calculated the contribution factor. Therefore, granting the waiver will have no adverse impact on the fund.

CONCLUSION

In light of the foregoing, Layer2 respectfully requests that that the Commission (1) reverse USAC's decision to reject Layer2's Form 499A Correction which was filed solely to correct a clerical error on the July 2018 Form 499A Revision, and (2) waive the one-year revision deadline for FCC Form 499-A to allow Layer2 to resubmit its revised amended 2017 FCC Form 499A. In the alternative, the company asks that USAC reject the July 2018 Form 499A Revision for obvious inaccuracy so that that form can be resubmitted in correct form.

Respectfully Submitted,



Brian McDermott
Edward S. Quill, Jr.

Counsel for Layer2 Licensing, Inc.

²⁹ See 2016 USAC Annual Report (showing the total size of the Universal Service Program in 2016 was \$8,738,615,000.

Exhibit A-E

[REDACTED IN THEIR ENTIRETY]