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November 14, 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 November 13, 2019, the undersigned counsel for Commnet AZ, LLC spoke via telephone with Gabriela Gross, deputy division chief of the Wireline Competition Bureau's Telecommunications Access Policy Division, regarding the above-reference matter.¹

The *Second Modernization Order* stated applicants could receive up to a one-year extension if “they demonstrate that construction was *unavoidably* delayed due to weather or other reasons.”² In orders granting further extensions, the Commission has also indicated that extensions may be granted for *unavoidable* delays.³ In granting waiver requests, the Bureau has noted that there are two requirements for a waiver.⁴ First, the applicant was unable to complete implementation for reasons beyond the service provider's control.⁵ Second, the petitioner made good faith efforts to comply with the Commission's rules and procedures.⁶

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

² *Modernizing the E-rate Program for Schools and Libraries; Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15553, 15558, ¶¶ 38, 49 (2014) (*Second Modernization Order*) (allowing an extension for dark fiber and self-provisioned fiber networks) (emphasis added).

³ *Request for Waiver by Grants/Cibola County School District, Grants, New Mexico*, CC Docket No. 02-6, Order, 33 FCC Rcd 10048, 10049, 10051, ¶¶ 3, 8 (WCB 2018) (*Grants/Cibola Waiver Order*); *Request for Waiver by Utah Education and Telehealth Network*, CC Docket No. 02-6, Order, 33 FCC Rcd 4607, 4608, 4611, ¶¶ 3, 9 (WCB 2018) (*UETN Waiver Order*) (emphasis added).

⁴ *Grants/Cibola Waiver Order*, 33 FCC Rcd 10048, 10051, ¶ 8.

⁵ *Id.*

⁶ *Id.*

During our discussion, we discussed the difference between “unavoidable” and “unforeseeable.” USAC’s denial of Grand Canyon USD’s service extension request correctly states the standard that delays must be “unavoidable” to receive an extension, but it seems to require that the delays also be unforeseeable by the parties.⁷

It is true that events that are unavoidable are often also unforeseeable. For example, in the *Grants/Cibola* order, the Bureau described a situation in which a delay with the New Mexico Department of Transportation was both “unavoidable *and* unforeseeable.”⁸ The converse, however, is not necessarily true. Just because an event is foreseeable—say, adverse weather in the mountains prohibits construction for more than half of the year—does not mean that situation can be avoided. Any service provider that serves mountainous regions is well aware that the time construction is possible is very short, but the service provider cannot do anything to change that fact.

Similarly, here, Grand Canyon USD and Commnet were aware that the project could take more than one year due to weather conditions and the lengthy, typical National Park Service and National Forest Service permitting processes—so they were foreseeable—but that does not mean those events were somehow avoidable. We emphasize that the Commission’s standard is whether the events are “unavoidable,” not unforeseeable. USAC cannot add additional requirements that the Commission has not adopted.⁹

Further, as Grand Canyon USD noted in its waiver request, the Bureau has advised applicants to try to find ways to complete their projects—the installed fiber must be lit before funds can be disbursed—within the one-year initial deadline so that an extension is not necessary.¹⁰ The Bureau specifically noted that applicants that *know in advance* a project will take longer than one funding year to complete should consider breaking the project down into stages and seeking funding for each stage in separate years. It is important to note here the Bureau did not say projects that applicants knew would take longer than one funding year were not allowed.

Unfortunately, in this case, as Grand Canyon USD has noted in its waiver request, it is impossible for Grand Canyon USD to follow that advice.¹¹ Grand Canyon USD consists of one single location, and the entire 67-mile build must be constructed before the fiber can be lit.¹²

⁷ USAC did not explain its analysis so it is not exactly clear why it did not believe Grand Canyon USD’s request did not meet the Commission’s standard.

⁸ *Grants/Cibola Waiver Order*, 33 FCC Rcd at 10050, ¶ 5 (emphasis added).

⁹ 47 C.F.R. § 54.702(c).

¹⁰ Waiver at 11, *UETN Waiver Order*, 33 FCC Rcd at 4612, n.46.

¹¹ Waiver at 11.

¹² *Id.*

Finally, Grand Canyon USD requested it be allowed an additional 18 months after the Bureau's decision¹³ due to the complexities of the project, which are further detailed in Commnet's letter to the Bureau.¹⁴ We respectfully request the Commission grant the extension requested so that Commnet can install the fiber to this very rural and unserved location.

Please let us know if you have any questions.

Respectfully submitted,

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

Gina Spade
Counsel for Commnet AZ, LLC

cc: Gabriela Gross, TAPD/WCB
Michael H. Pryor, Counsel for Grand Canyon USD

¹³ *Id.* at 12.

¹⁴ Letter from Joseph Moravec, CEO, Commnet AZ, LLC, to Marlene H. Dortch, Secretary, FCC, Request for Waiver of E-rate Service Implementation Deadline for Funding Year 2018 by Grand Canyon Unified School District, WC Docket No. 02-6 (filed Aug. 7, 2019).