

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)

Request for Review/Waiver of Decision of)
the Universal Service Administrator by)

Appling County School District)

CC Docket No. 02-6

File No. SLD Form 471 No. 685537
FRN 1880115

To: Chief, Wireline Competition Bureau

SUPPLEMENT TO REQUEST FOR REVIEW OR WAIVER

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Dated: December 29 , 2014

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SUMMARY

Appling County School District (“Appling County” or “District”) hereby supplements its timely filed August 7, 2014 Request For Review Or Waiver (“Appeal”) of the Universal Service Administrative Company’s Schools and Libraries Division (“USAC”) Notification Of Commitment Adjustment Letter, dated June 9, 2014 (“COMAD”).

In the COMAD, USAC seeks to rescind and recover all the Funding Year 2009 Priority 2 (“P2”) support awarded and disbursed to the District for eligible, off-site Basic Maintenance of Internal Connections (“BMIC”) in the amount of \$103,200 because the funds were allegedly erroneously committed for services that were not justified as “cost effective.”

USAC fails to provide adequate notice to the District as to how or why the selection of the service provider was not cost effective. The District acted consistent with a detailed technology plan that was properly approved. It used price as the highest weighted factor, along with other acceptable factors in making the selection.

The Commission has said that there is no “bright line” for determining that a particular request for E-Rate Program support is not “cost effective.” However, it has used two to three times the commercial price as a benchmark. There is no evidence here that the price for the off-site BMIC services exceeded that multiple or the reasonable needs of the District. For these reasons the District respectfully submits that the COMAD is improper and should be rescinded.

Even assuming the Commission finds a technical violation of the E-Rate Program under these circumstances—where the District made good faith efforts to comply with what the Commission itself concedes can be a complicated set of rules—the District respectfully submits that a waiver of any such technical violation is wholly justified. Simply put, equitable considerations, hardship, and the lack of any evidence of waste, fraud, or abuse warrant that the COMAD be rescinded.

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SUPPLEMENT TO REQUEST FOR REVIEW OR WAIVER

This is a Supplement (“Supplement”) to a pending Request For Review Or Waiver (“Appeal”) filed on behalf of the Appling County School District (“Appling County” or “District”). Specifically, on August 7, 2014, the District timely filed, in accordance with Sections 54.719-54.721 of the Federal Communication Commission’s (“FCC” or “Commission”) rules, a separate Appeal relating to a decision of the Universal Service Administrator (“Administrator” or “USAC”) to rescind and recover certain Schools and Libraries Support Mechanism (“E-Rate Program” or “Program”) funding provided to the District for Basic Maintenance of Internal Connections (“BMIC”) for Funding Year (“FY”) 2009.¹

Therein the District reserved the right to supplement its Appeal and herein does so, further reserving the right to address any additional questions that might be raised by the Commission as a result of this Supplement, including by way of further supplementation at its own discretion or at the request of the Commission.

¹ A copy of the Appeal is attached as Exhibit 1.

I. INTRODUCTION

The basis for the COMAD is USAC's finding that E-Rate Program funds approved and disbursed *five years ago* were "erroneously committed" because the selected services allegedly were (1) not "cost effective" and (2) beyond the District's "reasonable needs." This finding, supported by neither explanation nor supporting data or documentation, resulted in USAC's conclusion that \$103,200 in funding awarded and disbursed to the District for off-site BMIC under the relevant FRN should be rescinded and recovered in full.

USAC fails to provide adequate notice to the District as to how or why the selection of the service provider was not cost effective. The District acted consistent with a detailed technology plan that was properly approved. It used price as the highest weighted factor, along with other acceptable factors in making the selection.

The Commission has said that there is no "bright line" for determining that a particular request for E-Rate Program support is not "cost effective." However, it has used two to three times the commercial price as a benchmark. There is no evidence here that the price for off-site BMIC services exceeded that multiple or the reasonable needs of the District. For these reasons, and as set forth in more detail below, the District respectfully submits that the COMAD is improper and should be rescinded.

Even assuming the Commission finds a technical violation of the requirements under these circumstances—where the District made good faith efforts to comply with what the Commission itself concedes can be a complicated set of rules—the District respectfully submits that a waiver of the requirement is wholly justified. Simply put, equitable considerations, hardship, and the lack of any evidence of waste, fraud, or abuse warrant that the COMAD be rescinded.

II. STATEMENT OF THE DISTRICT'S INTERESTS IN THE APPEAL

The District had standing to file the Appeal and this Supplement because Section 54.719(c) of the Commission's rules provides that "[a]ny person aggrieved by an action taken by a division of the Administrator ... may seek review from the Federal Communications Commission."² In this case, the District is directly aggrieved by USAC's COMAD and its continued efforts to recover E-Rate Program funds approved and committed five years ago, and expended in accordance with that approval.

III. KEY BACKGROUND FACTS

A. The District

Appling County is a rural school district consisting of seven (7) schools and the Board of Education building. In FY 2009 it served some 3125 students in grades K-12. The shared discount rate for the District was at the 86% level, with the percentage of students eligible for free or reduced price lunches under the National School Lunch Program exceeding 60% in all schools, two of which exceeded 90%. The District's internet access network served 239 classrooms and 1300 computers—including those used by the school's library and faculty administration.

B. FCC Form 470

The District timely posted the relevant FCC Form 470 for FY 2009 on January 6, 2009, indicating the District's intent to seek E-Rate Program support for BMIC.³ The Form 470 indicated that the District would also release a Request For Proposals ("RFP") for the "Offsite Basic Maintenance" covering the eight (8) eligible locations. The allowable contract date was February 3, 2009.

² 47 C.F.R. § 54.719(c). Note, the current rules, which require an initial appeal be filed with USAC, took effect only after the Appeal to which this Supplement relates, was filed.

³ The relevant Form 470 is attached as Exhibit 2.

C. The Technology Plan

The District had prepared and submitted a detailed technology plan to the appropriate authority covering the period July 1, 2008 through June 30, 2011. The Georgia Department of Education approved the plan before the commencement of FY 2008.⁴

D. The Competitive Bidding Process and FCC Form 471

The District waited the required time period under the FCC's rules after posting the Form 470 and as required under its state and local procurement rules (i.e., the RFP) before awarding a contract for BMIC services to Netmatrix, Inc. ("Netmatrix"). The Form 471 was posted on February 12, 2009.

The RFP evaluation criteria gave the greatest weight to price, among five (5) factors considered.⁵ USAC approved the requested support for the amount requested through a Funding Commitment Decision Letter dated February 2, 2010.⁶ The District then timely filed its Form 486, which was acknowledged by USAC on February 24, 2010.⁷

E. USAC's 2014 Commitment Adjustment Letter

After an inquiry by USAC dated January 23, 2013 and a February 22, 2013 response by the District, almost 18 months later, on June 9, 2014, USAC issued the COMAD.⁸ The Funding Commitment Adjustment Explanation was as follows:

⁴ A copy of the technology plan and evidence of its approval is attached as Exhibit 3.

⁵ See Letter, dated February 22, 2013, from Winton Herrin, Chief Operating Officer, Appling County Board of Education, to Clara Paterson, Associate Manager Special Compliance Review, Solix, Inc., at p. 2, attached as Exhibit 4 ("District Letter").

⁶ The relevant Form 471 and FCDL are attached as Exhibit 5.

⁷ Attached as Exhibit 6.

⁸ A copy of the COMAD is included in Exhibit 1. The February 22, 2013 response is the District Letter at Exhibit 4.

After multiple requests for documentation and application review, it has been determined that this funding commitment must be rescinded in full. Funds were erroneously committed for FRN 1880115, which was not justified as cost effective. FCC rules require that, in selecting the service provider, the applicant must select the most cost effective service or equipment offering, with price being the primary factor, which will result in it being the most effective means of meeting educational needs and technology plan goals. Additionally, the applicants [sic] technology plans for requested services should be based on an assessment of their reasonable needs. Applicants that request services that are beyond their reasonable needs and thus not cost effective have violated the above rules. Since FRN 1880115 exceeded the applicants [sic] reasonable needs, this funding commitment of \$103,200 is rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

IV. STANDARD OF REVIEW

USAC's authority to administer the E-Rate Program is limited to implementing and applying the FCC's rules and the Commission's interpretations of those rules as found in Commission decisions and orders.⁹ USAC is not empowered to make policy, interpret any unclear provisions of the governing statute or the rules promulgated by the Commission,¹⁰ or to create the equivalent of new guidelines.¹¹

USAC is responsible for "administering the universal support mechanisms in an efficient, effective, and competitively neutral manner."¹² In connection with efforts to recover previously approved E-Rate Program support, USAC has the burden of acting in a timely manner to recover funds and of demonstrating that there has been a statutory or substantive rule violation.¹³ Finally, the Commission's review of the COMAD decision is *de novo*, and the agency is not bound by any findings or conclusions of USAC.¹⁴

⁹ 47 C.F.R. § 54.702(c).

¹⁰ *Id.*

¹¹ *Changes to the Board of Directors of the Nat'l Exchange Carrier Ass'n, Inc.*, Third Report and Order, 13 FCC Rcd 25058, 25066-67, ¶¶15-16 (1998).

¹² 47 C.F.R. § 54.701(a).

¹³ *See In the Matter of Schools and Libraries Universal Service Support Mechanism*, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15813 and 15819, ¶¶15, 32 (2004) ("*Fifth R and O*").

¹⁴ 47 C.F.R. § 54.723.

V. ARGUMENT

A. The COMAD is Vague As To The Nature Of The Violations On Which It Is Based

It is reasonable to expect that a COMAD explanation include sufficient details so that an applicant is able to (1) understand how USAC alleges the applicant violated the applicable E-Rate Program rules and (2) frame an appeal. The District respectfully submits that the COMAD explanation issued to the District, which contains the assertions to which it must respond, fails to meet that standard.

The COMAD does not provide any notice as to how or to what degree the services supported in FY 2009 now, some 4 years after they were provided, “exceeded the ...reasonable needs” of the District. Nor does the COMAD inform Applying County as to the nature and extent of the “failure” of the District to “justify” the relevant FRN as cost effective. This is not adequate notice that provides the District with the opportunity to defend its decisions to select the service provider. The District cannot be required to guess as to what specific actions underscore USAC’s generalizations.

In the *Virginia DOE Order*, the Commission acknowledged “[t]here appears to have been confusion on the part of Virginia DOE with regard to why USAC denied its funding request, and this may have impaired Virginia DOE’s efforts to appeal the decision.”¹⁵ The Commission granted the Virginia DOE’s petition for reconsideration and explained that “[t]he inconsistencies noted above indicate that a more detailed inquiry should have been conducted to determine what services were actually provided ... [and] we find that USAC does not yet have enough information to make that determination. ... We direct USAC to provide the Bureau with detailed findings as a result of

¹⁵ *Petition for Reconsideration by Virginia State Department of Education, Richmond, VA, et al., Order on Reconsideration*, 22 FCC Rcd 7250, ¶ 7 (Wireline Compet. Bur. 2007) (“*Virginia DOE Order*”).

its further investigation and analysis of how it reached its conclusions.”¹⁶ In other circumstances where there has been a lack of adequate notice, the FCC has granted appeals.¹⁷

The District is in a similar position. The COMAD lacks the necessary specificity for the District to be able to understand the alleged violation of E-Rate Program rules and leaves the District to guess at what specific alleged shortcomings in connection with FY 2009 now warrant the COMAD. Such a scenario does not meet the Commission’s standards and does not support the COMAD.

B. The District Made A Cost Effective Selection Consistent With Its Reasonable Needs

The COMAD contends that the District failed to make the “most cost-effective” selection, “with price being the primary factor, which will result in it being the most effective means of meeting educational needs and technology plan goals.” Even though USAC fails to explain how the District fell short of meeting this standard, Appling County respectfully disagrees with this conclusion.

The Commission has stated that schools must be given “‘maximum flexibility’ to take service quality into account and choose the offering or offerings which meets their needs ‘most effectively and efficiently.’”¹⁸ For example, in addition to price, the FCC has stated that an evaluation including the following factors forms a reasonable basis on which to determine whether an offering is cost

¹⁶ *Id.*, ¶ 10.

¹⁷ See *Request For Review of a Decision of the Universal Service Administrator by Atlanta Public Schools*, Order, 27 FCC Rcd 13943, 13944-45, ¶¶5, 6 (Telecom. Access Pol. Div. 2012) (FCDL explanation insufficient to put applicant on notice); *Petition for Reconsideration by Franklin County School District*, Order, 26 FCC Rcd 14251, 14252, ¶¶2, 3 (Telecom. Access Pol. Div. 2011)(vague language did not provide requisite notice of denial); see generally *Requests for Review of the Decision of the Universal Service Administrator by Academia Claret, Puerto, et.al.*, Order, 21 FCC Rcd 10703 (Wireline Compet. Bur. 2006).

¹⁸ *In the Matter of Federal State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9029-30, ¶¶ 480-481 (1997)

effective: “personnel qualifications, including technical excellence; management capability, including schedule compliance; and environmental objectives.”¹⁹

Here the District gave price the greatest weight (30%) among a series of five (5) factors that included: single vendor turnkey ability (25%), technical qualifications (20%), industry certifications (10%), and prior ERATE experience (15%).²⁰ Furthermore, in this case the service provider selected also offered the “unique ability for cross-platform (novell and mac os) support.”²¹

Nowhere does USAC explain why consideration of this array of factors, with price being given the highest weight, is not a reasonable basis for evaluating whether an offering is cost effective. The District submits that it is an imminently reasonable basis and that the BMIC funding request was “reasonable” based on Appling County’s circumstances. In such a case, the Commission has found that the cost effective standard of the rules is met.²²

The Commission “has not established a bright line for determining when costs for services are excessive.”²³ The Commission has, however, indicated that “there may be instances where costs

¹⁹ *Id.*, ¶481.

²⁰ *See* Exhibit 4, at p. 2.

²¹ *Id.* Past experience, reputation, timing considerations are other acceptable factors to be considered. *See Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District*, Order, 18 FCC Rcd 26407, 26431, ¶50, n. 138, 26432, ¶52 (2003) (“*Ysleta*”).

²² *Requests for Review of Decisions of the Universal Administrator by Net56, Inc.*, Order, 27 FCC Rcd 15071, 15075, ¶2 (Telecom Access Pol. Div. 2012) (“*Net56Order1*”); *Requests for Review of Decisions of the Universal Administrator by Net56, Inc.*, Order, 27 FCC Rcd 13606, 13607, ¶3 (Telecom Access Pol. Div. 2012) (“*Net56Order2*”); *see generally Requests for Waiver and Review of Decisions of the Universal Service Administrator by Hondo Valley School District*, Order, 27 FCC Rcd 2797 (Telecom. Access Pol. Div. 2012).

²³ *Net 56Order1*, ¶8; *Net56Order2*, ¶13.

for ...services are so exorbitant that they cannot be cost effective” giving as an example “a router that is sold for two or three times the commercial market price.”²⁴

There is no indication in the COMAD that demonstrates that this sample benchmark is exceeded in this case. In fact, USAC provides no rationale for the bare assertion that the services acquired from Netmatrix were excessive and therefore were not cost effective.²⁵

The District’s off-site BMIC needs met by the Netmatrix service were eligible and, the District submits, reasonable. The Commission expressly held that “[b]asic maintenance services are ‘necessary’ if, but for the maintenance at issue, the connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services without e-rate discounts.”²⁶ Off-site technical support, on an as-needed basis, such as provided by Netmatrix here, is the preferred method for providing such technical assistance.²⁷ Here, there were 8 different locations involved with 239 classrooms with internet access and 1300 devices that relied upon maintenance of internal connections to ensure reasonable reliability.²⁸ The services were to be provided on an as-needed basis only when requested/called for by the school district.

²⁴ *Id.*; *Ysleta*, ¶54.

²⁵ The Commission concedes that it reviews the rationale for USAC determinations, even though the burden of proof to establish cost-effectiveness is necessarily not on USAC. *Id.*, ¶9, n.43. Here USAC made no finding that the services exceeded “twice the cost of a commercially available solution.” *Compare, Net56Order1*, ¶7.

²⁶ *In the Matter of Schools and Libraries Universal Service Support Mechanism*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26921-22, ¶23 (2003) (“*Third R and O*”); see also *In the Matter of Requests for Review of Decisions of the Universal Service Administrator by Chicago Public Schools*, Order, 26 FCC Rcd 4114, 4115-16, ¶3 (2011) .

²⁷ *Third R and O*, ¶23.

²⁸ See Exhibits 2 and 5.

The District proceeded based on a detailed, three-year technology plan approved for the period July 1, 2008 through June 30, 2011.²⁹ The plan set forth the reasonable needs of the District and has not been questioned by USAC. The District submits that the plan fully supports the services sought and used for the purposes for which the BMIC support funding was approved.

Unquestionably, for all the foregoing reasons the BMIC services obtained here were based on a decision making process wholly consistent with the requirements for establishing cost-effectiveness. The resulting BMIC services did not exceed the reasonable needs of the District. Therefore the COMAD is without justification and should be rescinded.

C. A Waiver Is Justified

Nevertheless, if the Commission finds that a violation occurred despite Appling County using price as the primary factor in selecting the service provider consistent with Commission rules, a waiver of any technical rule violation is wholly justified under the circumstances here.

The Commission's rules allow waiver of a Commission rule "for good cause shown."³⁰ The Commission has extended this authority to waivers of USAC rules. For example, in the *Bishop Perry Order*, the Commission noted that it "has vested in USAC the responsibility of administering the application process for the schools and libraries universal service support mechanism."³¹ Pursuant to that authority, USAC developed procedures relating to the application and appeals process.³²

²⁹ The plan and requisite approval are at Exhibit 3. The plan was approved prior to the commencement of FY 2008. See *In the Matter of Schools and Libraries Support Mechanism*, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15828, ¶ 57 (2004); *In the Matter of Requests for Review or Waiver of Decisions of the Universal Service Administrator by Brownsville Independent School District*, Order, 22 FCC Rcd 6045, 6048-49, 6051 ¶¶7, 13 (2007) ("*Brownsville Order*").

³⁰ 47 C.F.R. § 1.3.

³¹ *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al.*, Order, 21 FCC Rcd 5316, ¶4 (2006) ("*Bishop Perry Order*").

³² The *Bishop Perry Order* dealt with USAC application procedures known as "minimum processing standards." *Id.*

Thus, in *Bishop Perry*, the Commission applied the 47 C.F.R. § 1.3 waiver rule to allow a limited waiver of USAC procedures.³³

The Commission has established the following guidance for determining whether waiver is appropriate:

A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.³⁴

The District respectfully submits that the outcome of the vendor selection process here was “consistent with the policy goals underlying the Commission’s competitive bidding rules” and therefore a waiver is appropriate.³⁵

Strict application of the Commission’s rules under these circumstances would not be in the public interest,³⁶ and thus, it is appropriate for the Commission to maintain the flexibility that practical implementation of its rules require, and to use its prosecutorial discretion here in considering Appling County’s request for waiver.³⁷ In *Bishop Perry*, the FCC granted 196 appeals of

³³ *Id.*

³⁴ *Requests for Review of a Decision of the Universal Service Administrator by Richmond County School District*, 21 FCC Rcd 6570, 6572, ¶5 (Wireline Compet. Bur. 2006) (internal references omitted)(citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (D.C. Cir. 1972)).

³⁵ *Requests for Review of Decision of the Universal Service Administrator by Euclid City School District, Euclid, OH, et al.*, Order, 27 FCC Rcd 14169, 14170, ¶2 (Telecom. Access Pol. Div. 2012).

³⁶ *See generally Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Excellence*, Order, 27 FCC Rcd 5182 (Telecom. Access Pol. Div. 2012).

³⁷ It is long established precedent that “a general rule serving the public interest for a broad range of situations will not be rigidly applied where its application would not be in the public interest. . . . Therefore, when an agency receives a request for waiver that is ‘stated with clarity and accompanied by supporting data,’ such requests ‘are not subject to perfunctory treatment, but must be given a

decisions denying funding due to “clerical or ministerial errors in the application.”³⁸ In that case, the FCC found good cause to waive the minimum processing standards established by USAC, finding that “rigid compliance with the application procedures does not further the purposes of section 254(h) or serve the public interest.”³⁹ Many of the appeals in *Bishop Perry* involved staff mistakes or mistakes made as a result of staff not being available.⁴⁰ The Commission granted the waivers for good cause, noting that:

[T]he primary jobs of most of the people filling out these forms include school administrators, technology coordinators and teachers, as opposed to positions dedicated to pursuing federal grants, especially in small school districts. Even when a school official has learned how to correctly navigate the application process, unexpected illnesses or other family emergencies can result in the only official who knows the process being unavailable to complete the application on time. Given that the violation at issue is procedural, not substantive, we find that the complete rejection of each of these applications is not warranted. Notably, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. Furthermore, we find that denial of funding in these cases would inflict undue hardship on the applicants.⁴¹

The Commission has recently formally recognized that the existing E-rate system is complex and burdensome, requiring applicants to spend many hours focusing on compliance with its various

hard look.” *Bellsouth Corp. v. FCC*, 162 F.3d 1215, 1224 (DC Cir. 1999)(quoting *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

³⁸ *Bishop Perry Order*, ¶1.

³⁹ *Id.*, ¶11. The Commission departed from prior Commission precedent, noting that the departure was, “warranted and in the public interest.” *Id.*, ¶9. The Commission noted that many of the rules at issue were procedural, and that a waiver is consistent with the purposes of Section 254, which directs the Commission to “enhance ... access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers and libraries.” *Id.*; see also *Brownsville Order*, ¶2 (waiver actions will promote the statutory requirements of Section 254(h) by helping ensure that eligible schools and libraries obtain access to discounted telecommunications and information services).

⁴⁰ *Bishop Perry Order*, ¶13.

⁴¹ *Id.*, ¶14.

requirements.⁴² Indeed, it is so complicated as to be a deterrent to particularly smaller schools even applying.⁴³

The outcome of the vendor selection process here was otherwise consistent with the policy goals underlying those rules.⁴⁴ Where the outcome of the competitive bidding process provided the applicant with the services that met their needs in a way that was ultimately likely to impose the least burden on the federal universal service fund, a waiver is appropriate.⁴⁵

Also, there is absolutely no evidence here of any activity by the District intended to defraud or abuse the E-Rate Program.⁴⁶ Nor has the District engaged in any waste, fraud, abuse, or misuse of funds.⁴⁷

Furthermore, the imposition of a requirement to reimburse the requested funds under these circumstances years after they were originally approved and expended would impose an undue hardship on the District.⁴⁸ There is no evidence that the District failed to act in good faith, and,⁴⁹

⁴² *In the Matter of Modernizing the E-Rate Program for Schools and Libraries*, Notice of Proposed Rulemaking, 28 FCC Rcd 11304, 11319, ¶45 (2013).

⁴³ *Id.*, 11474 (Statement of Commissioner Jessica Rosenworcel) and 11475 (Statement of Commissioner Ajit Pai).

⁴⁴ The Commission has granted waivers of violations of the E-Rate Programs rules in such circumstances. *See Requests for Review of Decisions of the Universal Service Administrator by Central Islip Union Free School District*, Order, 29 FCC Rcd 2715, 2716, ¶1 (Telecom. Access Pol. Div. 2014).

⁴⁵ *Id.*, n.7.

⁴⁶ *See Request for Review of the Decision of the Universal Service Administrator by New Haven Free Public Library*, Order, 23 FCC Rcd 15446, 15449, ¶7 (Telecom. Access Pol. Div. 2008); *Request for Review of the Decision of the Universal Service Administrator by the District of Columbia Public Schools*, Order, 23 FCC Rcd 15585, 15588, ¶5 (Telecom. Access Pol. Div. 2008); *Request for Review of the Decision of the Universal Service Administrator by Tekoa Academy of Accelerated Studies*, Order, 23 FCC Rcd 15456, 15458-59, ¶6 (Telecom Access Pol. Div. 2008).

⁴⁷ *See Requests for Review of Decisions of the Universal Service Administrator by Broadus Independent School District et al.*, Order, 23 FCC Rcd 15547, 15551-52, ¶12 (Telecom. Access Pol. Div. 2008).

⁴⁸ *See Request for Review of a Decision by the Universal Service Administrator by Radford City Schools*, Order, 23 FCC Rcd 15451, 15453, ¶4 (Telecom. Access Pol. Div. 2008); *Request for Review of a Decision of the Universal Service Administrator by Grand Rapids Public Schools*, Order, 23 FCC Rcd 15413, 15416, ¶6

requiring repayment would not further the purpose of preserving and advancing access to universal service support for schools and libraries.⁵⁰ Consequently, it would be inequitable to uphold the COMAD.⁵¹ Thus, a waiver is appropriate under these special circumstances.

VI. CONCLUSION AND REQUEST FOR RELIEF

For the reasons set forth above, Appling County respectfully requests that the Commission grant the Appeal and direct USAC to overturn its prior decision and cancel the COMAD relating to the District's FY 2009 funding request for BMIC.

Even assuming the Commission finds a technical violation of the E-Rate Program rules under these circumstances—where the District made good faith efforts to comply with what the Commission itself concedes can be a complicated set of rules—the District respectfully submits that a waiver of the violation is wholly justified. Simply put, equitable considerations, hardship, and the lack of any evidence of waste, fraud, or abuse warrant that the COMAD be rescinded.

(Telecom. Access Pol. Div. 2008).

⁴⁹ See *Request for Waiver of the Decision by the Universal Service Administrator by Great Rivers Education Cooperative, Forrest City, Arkansas*, Order, 21 FCC Rcd 14115, 14119, ¶9 (Wireline Compet. Bur. 2006).

⁵⁰ See *Request for Review of a Decision by the Universal Service Administrator by Adams County School District 14*, Order, 22 FCC Rcd 6019, 6022, ¶8 (2007).

⁵¹ See *Request for Waiver and Review of a Decision of the Universal Service Administrator by Approach Learning and Assessment Center, Santa Ana, CA, Schools and Libraries Universal Service Support Mechanism*, Order, 23 FCC Rcd 15510, 15513, ¶8 (Telecom Access Pol. Div. 2008).

Respectfully submitted,

Appling County School District



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Dated: December 29, 2014

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DECLARATION

I, Scarlett M. Copeland, am the Superintendent of Schools for the Appling County School District ("District"), a position that I have occupied since 2011. As Superintendent I am generally familiar with the E-Rate Program and the participation of the schools in the District in that Program. I am further aware that on June 9, 2014, the Administrator of the Universal Service Administrative Company ("USAC") issued Notification of Commitment Adjustment Letters to the District in connection with certain E-Rate Program support for Funding Years ("FY") 2008 and 2009. I am also aware that on August 7, 2014, the District appealed, as a matter of right, the USAC decisions to the Federal Communications Commission ("FCC").

The foregoing "Supplement To Request For Review Or Waiver" was prepared pursuant to my ultimate direction, supervision, and control. I declare under penalty of perjury that the factual

statements therein relating to the participation of the District in the E-Rate Program for FY 2009
are true and correct to the best of my knowledge, information and belief.

Scarlett M. Copeland

Scarlett M. Copeland

Dated: 12/24/14

CERTIFICATE OF SERVICE

I, Paul C. Besozzi, certify on this 29th day of December, 2014, a copy of the foregoing "Supplement To Request For Review Or Waiver" has been served via electronic mail or first class mail, postage pre-paid, to the following:

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