Old National Trail Special Services

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Monday, September 28, 2015

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

RE: CC Docket No 02-6 – Schools and Libraries Universal Service Support Mechanism
WC Docket No. 13-184 – Modernizing the E-Rate Program for Schools and Libraries
Request for Waiver
Billed Entity Name: Old National Trail Special Services Coop
Billed Entity Number: 130240
471 Number: 1033248, FRN : 2811094

Dear Ms. Dortch;

We request a waiver of section IV.C.2.c of FCC 14-99, the Report and Order and Further Notice of Proposed Rulemaking (adopted 7/11/2014, colloquially known as the 1st Modernization Order) and the first three paragraphs of section VI.F of FCC 14-189 the Second Report and Order and Order on Reconsideration (adopted 12/11/2014, colloquially known as the 2nd Modernization Order). The result of these sections is the elimination of support for cellular data service. We believe a wavier is warranted for two reasons.

1. Cellular data service is only provided to a limited number of key staff members. The cellular data service is deemed necessary to the performance of the staff members' jobs on applicant property. As the local agency, we believe that we best understand our community's goals and needs and we are always aware of our requirement to be a prudent guardian of the public's resources and to allocate our resources where they do the most public good. This is a belief supported by long standing practice in the E-Rate program and we believe best described in the FCC's own words; "The Commission has recognized that the applicant is the best entity to determine what technologies are most suited to meet the applicant's specific educational goals." (paragraph 30 of FCC 03-313, The Ysleta Order). The FCC's usurpation of that responsibility has resulted in overly broad assumptions that do not fit our local situation. It is also in direct conflict with Federal Regulation 47 USC §254(c)(1)(A) which requires the FCC to support services that are essential to education, public health, or public safety. The Old National Trail Special Services Cooperative has determined that these key staff members' job performance is enhanced by cellular connectivity, both voice and data and so the School provides this tool. The School has been able to supply this tool to its staff largely due to the support provided by E-Rate.

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2. The FCC rule requirement for cost effectiveness and price as a primary factor has not been violated. 47§54.503(c)(vi)(2)(ii)(B) does require that "all bids submitted for eligible products and service will be carefully considered, with price being the primary factor, and the bid selected will be for the most cost-effective service offering (with further reference to 47§54.511, which reiterates that selection of a provider of eligible services must revolve around cost-effective offerings). Neither of these sections require that eligible services be put in competition with each other, only that, once a local agency has determined that they need a service that is eligible for E-Rate support, that they run a fair and open competitive bidding process to determine which of the service providers has the most cost-effective solution for their needs. The presumption in the Modernization Orders that WiFi access is more cost-effective than cellular data service pits two types of service against each other, eliminating the local agency decision process.

Summary

Loss of cellular data service due to the rollback of support for voice services and elimination of support for cellular data will decrease the safety of our students while on our property. We find pitting public safety against cost effectiveness the most baffling conflict between two FCC rules. In this time of hyper awareness of public safety, we suggest it is difficult for the FCC to justify prioritizing cost effectiveness over safety. We understand that the FCC cannot support duplicative services and we acknowledge that in everyday use, cellular data service looks very much like accessing WiFi networks. It would seem reasonable to compare the cost effectiveness of the two services if you do not consider the implications of various emergency situations. However, we believe section 254(c)(1)(A) requires the FCC to consider these emergency situations when determining the eligibility of a service for E-Rate support. The simple fact is that building WiFi networks are not reliable in emergency situations. Consider the simple example of a fire in a school building. The likelihood of the WLAN equipment remaining functioning and uncompromised by the combination of the fire and the fire suppression efforts is low. However, nearby cellular towers would remain unaffected by this emergency and the ability of a principal to use his cell phone to both call for emergency responders and email fellow district administrators for assistance would be a lifesaving necessity. The same would be true for equipment that is not on the premise of a building under assault by an active shooter. It is important to note that FBI statistics indicated that 60% of active shooter incidents end before the police arrive, making the [District or Library] staff the first line of defense against such a threat (Blair, J. Pete, and Schweit, Katherine W. (2014). A Study of Active Shooter Incidents, 2000 - 2013. Texas State University and Federal Bureau of Investigation, U.S. Department of Justice, Washington D.C. 2014). We would also like to point out that the FCC's own advice in severe weather (posted on the FCC website under "Preparedness, Response and Recovery; How to communicate during a severe weather emergency) recommends the use of cellular service, voice, texting, and data usage. We do not believe it serves the public interest by eliminating the use of tools for schools and libraries the Commission recommends to the general public.

Cellular data service has been on the eligible service list since 2003. We understand that the goals of the two modernization orders have been to shift the focus of the program to providing support for driving more bandwidth to and into eligible schools and libraries. We also understand that when the first order was passed July, 2014, there were distinct concerns about the availability of funding. This concern was addressed by the increase to funding approved by the December, 2014 Order, aptly demonstrated by FY 2015 demand. The very limited funding we are requesting for staff cellular data plans will not increase the FY 2015 demand estimate by a significant percentage.

Request for Wavier of FCC Rules

It is important to remember that the FCC is required to direct USAC to run the E-Rate program within ALL of the federal rules governing the Universal Services Fund, and while the Modernization Orders of July 11, 2014 and December 11, 2014 both spell out the reasons why the current FCC Board presupposes supplying data service to devices on campus is most cost effectively supplied by WiFi, neither of these orders address the necessity of supplying data service to the devices of limited number of Key Staff members while on campus during an emergency that shuts down the local network. Federal Regulation 47 USC §254(c)(1)(A) requires the FCC to support services that are essential to education, public health, or public safety and it is important to remember that this regulation predates both Modernization Orders and nothing in either Modernization Order amends, curtails, or in any way ameliorates the need to conform with 47 USC §254(c)(1)(A). As a result, we are requesting this waiver of paragraphs 151-153 of FCC 14-99 and paragraphs 156-159 of FCC 14-189 in order to continue to support for our key staff members' cellular data service and that the FCC direct USAC to review their denial of funding for FRN 2811094 in light of such a waiver.

Thank you for your time and consideration. You are hereby authorized to contact our E-Rate Consultant, Darsey Carnal, if you have any questions concerning this waiver request or require additional information. Her contact information is as follows:

Darsey Carnal
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Thank you,

Dr. Nancy Holdsapple

Nancy Holdsapple
Director

CC:

The Honorable Daniel Coats
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