91-281

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FEB 25 2016

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PETITION OF ENLARGED CITY SCHOOL DISTRICT OF MIDDLETOWN

FOR WAIVER OF FEDERAL COMMUNICATIONS COMMISSION

REGULATIONS AT 47 C.F.R. § 64.1601(B)

RE: CALLING PARTY NUMBERS

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EXECUTIVE SUMMARY

The Enlarged City School District of Middletown respectfully requests a limited waiver of Section 64.1601(b) of the Federal Communications Commission regulations, which restricts telecommunications carriers from transmitting calling party numbers when requested by a calling party. This limited waiver will protect the rights of most callers using this regulation in order to maintain their privacy while enabling the Enlarged City School District of Middletown efficiently and effectively to pinpoint those callers using the same regulation to threaten the safety and security of Middletown students, faculty, and staff.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Request for Waiver of Section 64.1601 (b) of the Rule – Blocked Telephone Numbers	CC Docket No. _____

PETITION OF THE ENLARGED CITY SCHOOL DISTRICT OF MIDDLETOWN FOR WAIVER OF FEDERAL COMMUNICATIONS COMMISSION REGULATIONS AT 47 C.F.R. § 64.1601(B) RE: CALLING PARTY NUMBERS

I. INTRODUCTION

The Enlarged City School District of Middletown (the "Middletown School District" or the "District") respectfully petitions the Federal Communications Commission ("FCC") for a limited waiver of Section 64.1601(b)[1] of the FCC's rules prohibiting terminating carriers from transmitting a calling party number ("CPN")[2] to a called party upon the caller's privacy request.[3] The Middletown School District's proposed limited waiver will permit carriers to transmit restricted CPNs of anyone calling Middletown School District telephones to a centralized system. These CPNs would be stored on the system, at most, for a week, to permit specific identified telecommunications contractors, Middletown School District personnel, and law enforcement officials to respond to threatening phone calls received by the Middletown School District.

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[1] *See* 47 C.F.R. § 64.1601(b).

[2] Or a calling party's charge number ("CN"), if different from the calling party's CPN. *Cf.* 47 C.F.R. § 64.1601(a).

[3] *See generally* 47 C.F.R. § 64.1601.

This controlled telecommunications system to store callers' CPNs will enable Middletown School District security personnel and local law enforcement to coordinate with one another efficiently and effectively to respond to calls threatening students, schools, faculty, and staff. A limited waiver granting the Middletown School District the ability to implement and utilize this system will satisfy the two-part standard established by the FCC for good cause because it will better protect the safety of people, including young children, in the Middletown School District and because there are special circumstances and other considerations justifying the waiver. Thus, for the following reasons, the Middletown School District respectfully requests the FCC grant it a limited waiver of Section 64.1601(b) to help the District to serve the public safety without undermining the FCC policy objectives underlying this rule or the privacy interests of most callers.

II. FACTUAL BACKGROUND

The Middletown School District is a public school district with a central office located at 233 Wisner Avenue, Middletown, New York 10940. The District serves all of the city of Middletown, as well as portions of the towns of Wallkill, Wawayanda, and Goshen, encompassing a student body totaling almost 7,500 students. These students are educated throughout seven different schools, supported by a workforce of administrators, faculty, and staff totaling about 700 individuals. Together, these schools and employees work to enrich the academic and social lives of Middletown School District students in a safe and secure environment.

Despite its efforts to provide such an environment for its students and personnel, the Middletown School District has been repeatedly victimized by threatening, obscene, and harassing phone calls. Since June 2015 alone, the Middletown School District has received twelve active shooter and bomb threats from restricted CPNs. For example, the most recent

event, on February 8, 2016, blocked the caller's CPN and spoofed[4] the District's main number so that it looked like the threat was coming from a safe phone number. These threats are not just an annoyance; they trigger lock-down procedures that cause psychological trauma to young children, with some children wetting themselves and others unable to access their medications during multi-hour lock-down procedures. This is not to mention the lost instructional time for at-risk students.[5]

Building lock-downs also create a grave risk of injury. In the wake of the highly publicized and unspeakably tragic school shootings, distraught parents teem into school property when word gets out about a threat. Even with the most diligent safety planning and law enforcement expertise, it is only a matter of time before there is a serious injury as a result of the threats being called into the District.

In accordance with 8 NYCRR § 155.17 of the New York State Department of Education Commissioner's Regulations and the *New York State School Safety Guide* (2013)[6], all bomb

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[4] The practice of "spoofing" enables a caller to alter her own caller identification information or manipulating it to take on the appearance of another phone number. *See* 26 FCC Rcd. 9114, 9115-18 (2011); Federal Bureau of Investigation, "The Crime of Swatting: Fake 911 Calls Have Real Consequences," FBI STORIES (Sept. 3, 2013); *see also* Federal Communications Commission, "Caller ID and Spoofing," FCC CONSUMER GUIDES (Feb. 2, 2015). While spoofing itself is legal, **when spoofing is used to perpetrate fraud or cause others harm, as it does when callers phone bomb threats into school districts, it is illegal**. *Compare* 26 FCC Rcd at 9124 ("The legislative history of the Act makes clear that manipulation or alteration of caller ID information done without the requisite harmful intent does not violate the Act."), *with* 47 U.S.C. § 227(e) (prohibiting spoofing with an "intent to defraud, cause harm, or wrongfully obtain anything of value," but not prohibiting it generally). For this reason alone, telecommunications carriers should disclose customer proprietary network information to schools and law enforcement. *Cf.* 47 U.S.C. 222(d)(2) (permitting telecommunications carriers to pass on this information "to protect the rights or property of a carrier or to protect users of these services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services."). Presently, the District and local law enforcement are encountering difficulties obtaining this information from telecommunications carriers, but this information could, in addition to the information that could be obtained with this limited waiver, give the District and law enforcement more information to apprehend threatening callers.

[5] Students have lost nearly 7% of their instructional time this year due to the threatening calls. This simply cannot be sustained from any reasonable educational perspective.

[6] Issued collaboratively by the New York State Education Department, the New York State Police, the New York State Office of Homeland Security, the New York State Division of Criminal Justice Services, and the New York State Office of Emergency Management.

threats must be taken seriously and no bomb threat may be treated as a hoax when it is first received. Therefore, upon each of these twelve active shooter and bomb threats in the past eight months, the Middletown School District has had to evacuate students from their schools or compartmentalize ("lock down") them in their present locations for hours at a time in order to assess the threat and ensure the safety of its students and personnel. As discussed above, these evacuations and lock downs can lead to classroom accidents, community panic, and high costs to law enforcement.

Yet, as the schools and community members in the Middletown School District reel from these threats, perpetrators of these calls often remain anonymous and immune from the grasp of District personnel and local law enforcement. Section 64.1601(b)'s prohibition on the transmission of restricted CPNs prevents telecommunications carriers from transmitting these perpetrators' CPNs to the Middletown School District, and in so doing, hinders rapid response by security personnel and local law enforcement. Thus, not only does the rule hamper law enforcement efforts to track down and stop offenders, but also thwarts the District's ability to determine the validity of a threat and take optimal precautions. These results encourage the persistence of active shooter and bomb threats, enabling those making true threats to act upon them, and enticing "copycats" to call in their own threats, whether true or benign. As discussed above, even benign threats can cause dangerous situations for students locked down in classrooms or evacuated from school without access to required medication, restrooms, or contact with family.

Issuing the limited waiver requested by the Middletown School District will significantly decrease the frequency and magnitude of these invidious threats. The process in place now to trace these calls back to the true caller can take so long that it becomes nearly impossible to

apprehend and stop them from acting on the threat or making future calls. With a limited waiver, law enforcement would have readily accessible accurate data to track down the individual making the threatening call. When there are no threats, the system would delete this call data automatically to ensure the privacy preferences of callers.

By reducing the amount of time it takes to identify and apprehend the perpetrators of these threats and by providing the Middletown School District with faster and better information on which to make safety determinations for their students, this limited waiver will better serve the public interest than the present application of Section 64.1601(b) by ensuring that those individuals who victimize the students, personnel, and community in the Middletown School District by instilling fear and panic by threatening others – domestic terrorism – meet justice and do not have the opportunity to strike again or to act on their threats.

III. PROTECTION OF PRIVACY AND WAIVER STANDARDS

While the FCC generally allows individual callers wishing to remain anonymous to block their CPNs, in certain limited circumstances, the callers' interest in privacy may be outweighed. When the FCC adopted rules requiring "common carriers using Signaling System 7 to transmit the CPN on interstate calls to interconnecting carriers," it concluded that "requiring CPN transmission would bring consumers more rapid and efficient service and encourage introduction of new technologies and services to the public."[7] To ensure the privacy interests of calling parties wishing to remain anonymous despite this FCC goal, the FCC "established privacy

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[7] *See Petition of Liberty Public School District for Waiver of Federal Communications Commission Regulations at 47 C.F.R. § 64.1601(b)*, CC Docket No. 91-281, Memorandum Opinion and Order, 28 FCC Rcd 6412, 6412-13 (FCC 2013) [hereinafter *Liberty Public School District Order*] (citing Rules and Policies Regarding Calling Number Identification Service – Caller ID, CC Docket No. 91-281, Report and Order and FNPRM, 9 FCC Rcd 1764 (1994) [hereinafter *Caller ID Order*]; 47 C.F.R. § 64.1601(a)).

options to allow callers to restrict the transmission of their telephone numbers."[8] Specifically, pursuant to Section 64.1601(b) of the FCC's regulations,

> [c]arriers must arrange their CPN-based services, and billing practices, in such a manner that when a caller requests that the CPN not be passed a carrier may not reveal that caller's number or name, nor may the carrier use the number or name to allow the called party to contact the calling party.[9]

Thus, the FCC carved out a privacy protection for individuals wishing to remain anonymous when making phone calls.

The FCC has recognized, however, that in some instances, this carve-out should not apply, and as a result, has promulgated regulations and granted waivers establishing "that in certain limited circumstances, the public interest requires CPN transmission despite any countervailing privacy request from the calling party."[10] Specifically, the FCC has concluded that, "to the extent that CPN based services are used to deliver emergency services, we find that the privacy requirements for CPN based services should not apply to delivery of the CPN to a public agency's emergency line, a poison control line[,] or in conjunction with 911 emergency

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[8] *See id.*, at 6413 (citing 47 C.F.R. § 64.1601(b); Rules and Policies Regarding Calling Number Identification Service – Caller ID, Memorandum Opinion and Order on reconsideration, Second Report and Order and Third Notice of Proposed Rulemaking, CC Docket No. 91-281, 10 FCC Rcd 11700, 11728-29, paras. 81-84 (1995) [hereinafter *Caller ID Reconsideration Order*]).

[9] 47 C.F.R. § 64.1601(b)

[10] *Liberty Public School District Order*, at 6413 (citing 47 C.F.R. § 64.1601(d)); *see, e.g.*, INSIGHT 100 Petition for Waiver of § 64.1601(b) regarding the Transmission of Calling Party Number, CC Docket No. 91-281, Memorandum Opinion and Order, 17 FCC Rcd 223 (CCB 2002) [hereinafter *INSIGHT Order*] (waiving Section 64.1601(b) on behalf of certain universities and hospitals); Rules and Policies Regarding Calling Number Identification Service – Caller ID; Petition of National Aeronautics and Space Administration for Waiver of Federal Communications Commission Regulations at 47 C.F.R. § 64.1601(b), CC Docket No. 91-281, Order, 27 FCC Rcd 5704 (CGB 2012) [hereinafter *NASA Order*] (waiving Section 64.1601(b) on behalf of the Kennedy Space Center); Rules and Policies Regarding Caller Identification Service – Caller ID; Petition of Chevrah Hatzalah Volunteer Ambulance Corps Inc. for Waiver of Section 1601(b) of the Commission's Rules – Blocked Telephone Numbers, CC Docket No. 91-281, Order, 28 FCC Rcd 1253 (CGB 2013) [hereinafter *Hatzalah Order*] (waiving Section 64.1601(b) on behalf of a private emergency response ambulance corps).

services,"[11] and has granted waivers to other entities, including universities and hospitals, for the Kennedy Space Center, for private ambulance services, and for school districts when they satisfy these waiver standards, under certain circumstances.[12]

The FCC is empowered to issue such waivers, pursuant to Section 1.3 of its regulations, for "good cause shown."[13] Specifically, the FCC may grant a waiver of any of its rules if "(1) the waiver would better serve the public interest than would application of the rule; and (2) special circumstances warrant a deviation from the general rule."[14] These "special circumstances" may include "'considerations of hardship, equity, or more effective implementation of overall [FCC] policy,'"[15] and the ability to identify and articulate reasonable standards that are practicable, workable, and not susceptible to discriminatory application.[16] Stated differently, the FCC may grant a waiver for good cause shown "if the relief requested would not undermine the policy objectives of the rule in question, and would otherwise serve the public interest."[17] Therefore, the FCC may grant a limited waiver to the Middletown School District if it finds that the District's requested relief will not undermine the FCC's policy objectives underlying Section 64.1601(b) and will serve the public interest.

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[11] *See id.*, at 6413 (citations omitted) (internal quotation marks omitted); *e.g.*, *Caller ID Order*, at 1770, para. 37.

[12] *See supra*, n. 5.

[13] 47 C.F.R. § 1.3; *e.g.*, *Nat'l Assoc. of Broadcasters v. FCC*, 569 F.3d 416, 426 (D.C. Cir. 2009) (citations omitted) (asserting the FCC "has authority under its rules . . . to waive requirements not mandated by statute where strict compliance would not be in the public interest, so long as it articulates identifiable standards for exercising that authority."); *see generally WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F. 2d 1203 (D.C. Cir. 1972), *cert denied* 409 U.S. 1027 (1972).

[14] *See Liberty Public School District Order*, at 6415 (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)).

[15] *See id.* (citing *WAIT Radio*, 418 D. 2d at 1157).

[16] *See Northwest Cellular Tel. Co.*, 897 F.2d at 1166.

[17] *See Liberty Public School District Order*, at 6415 (citing *WAIT Radio*, 418 D. 2d at 1159).

IV. THE MIDDLETOWN SCHOOL DISTRICT MEETS THE STANDARDS REQUIRED FOR A LIMITED WAIVER OF SECTION 64.1601(B)

The Middletown School District's present circumstances are exactly the type giving rise to a finding of good cause in support of a limited waiver of Section 64.1601(b). In fact, a recent FCC order granted a limited waiver to a public school district under indistinguishable circumstances. In the *Liberty Public School District Order*, issued in 2013, the FCC granted a limited waiver to the Liberty Public School District (the "LPSD") of Section 64.1601(b) after LPSD filed a petition showing how the safety and security of the students and faculty in its care would be better served by a waiver than strict adherence to the rule, that special circumstances warranted the deviation, and that the waiver would apply to a "narrow, well-defined public institution, thereby making it predictable, workable, and not subject to discriminatory application."[18]

Like the LPSD, and under nearly identical circumstances, the Middletown School District will satisfy both elements required for the FCC to grant it a similar limited waiver of Section 64.1601(b). First, the waiver will better serve the public interest than will application of the general rule because it will enable the District to better protect its students and personnel by allowing it to provide a rapid response to the persistent and pervasive threatening calls it experiences. Second, the Middletown School District's responsibility over thousands of children, persistent receipt of bomb threats from blocked numbers, and sophisticated telecommunications system, all represent special circumstances warranting deviation from the general rule. Furthermore, as with other FCC waivers, this waiver would be applicable only to a

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[18] *See Liberty Public School District Petition*, at p. 10; *see generally Liberty Public School District Order*.

narrow and well-defined institution, the Middletown School District, making it predictable, workable, and not subject to discriminatory application.[19]

A. Granting a Limited Waiver to the Middletown School District will Better Serve the Public Interest than will Application of Section 64.1601(b).

A limited waiver of Section 64.1601(b) will reduce the amount of time it takes to identify and apprehend the perpetrators of threatening calls made to the Middletown School District by providing the District with faster and better information with which to make safety determinations and to protect its students and personnel. The FCC has recognized that strict compliance with the CPN rules may thwart efforts to apprehend perpetrators of threatening calls, thereby giving them more opportunity to act on their threats.[20] In so recognizing, the FCC specifically has held that, where a waiver of Section 64.1601(b) would make an entity "better able to protect the safety of [those in its charge] by reducing the time required to identify and apprehend the perpetrators of threatening phone calls," the public safety prong of its "good cause" analysis is satisfied.[21] For example, in the *Liberty Public School District Order*, the FCC found that the LPSD's circumstances satisfied this prong in favor of waiving Section 64.1601(b) where the LPSD received six to ten threatening calls a year that were "serious in nature, including bomb threats," and that many of these calls were perpetrated by "callers us[ing] the CPN restrictions in order to delay authorities from identifying them or their location."[22]

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[19] *Cf. Liberty Public School District Petition*, p. 10 (filed April 22, 2007); *Insight 100 Order*, at *225.

[20] *See NASA Order*, at *5708 (asserting that in one instance where "strict compliance with the CPN rules" caused a delay in identifying a threatening caller, "the threatening caller was apprehended only after attempting to gain entrance to the [Kennedy Space Center] with a concealed handgun."); *Liberty Public School District Order*, *6416 (asserting "[t]he ability to access blocked CPN in these situations enhances the opportunity of security and law enforcement personnel to apprehend such individuals before they can act on their threats.").

[21] *See NASA Order*, at *5707; *Liberty Public School District Order*, at *6416.

[22] *See Liberty Public School District Order*, at *6416.

In the past eight months alone, Middletown has received *twelve* bomb threats, and many of the calls have been made by individuals using CPN restrictions and spoofing in order to delay authorities from identifying them or their location. These calls threaten the safety of students and personnel throughout the Middletown School District, and every time a caller evades apprehension because of the CPN rules, the caller obtains more time to act on a threat or make more threatening calls. Granting the District a waiver from Section 64.1601(b) will provide it with the opportunity to stop these bad actors and keep their schools safe while enabling students, faculty, and staff to focus on learning, not evacuating or having lock downs as a result of persistent threats. Unfortunately, strict adherence to the CPN restrictions, for the Middletown School District, has made the latter situation a reality, and as a result, has caused public safety issues that a limited waiver could prevent.

B. Special Circumstances Warrant a Deviation from Section 64.1601(b) in Middletown's Case.

The special circumstances warranting a deviation from Section 64.1601(b) in Middletown's case are nearly identical to those that supported such a deviation in the case of the LPSD. In the *Liberty Public School District Order*, the FCC noted that three main special circumstances: (1) the district was responsible for the safety of a large number of schoolchildren; (2) the district received threatening phone calls of a serious nature; and (3) the district provided some of its own security and telecommunications functions.[23] The FCC also noted that the waiver criteria were met "subject to appropriate measures to protect the privacy of the calling

[23] *See Liberty Public School District Order*, at * 6416.

party."[24] Here, as in the case of the LPSD, both the special circumstances and privacy protection requirements are met.

First, like the LPSD, the Middletown School District is a public authority, spread over a unique geographical area, and providing workplace facilities and services for employees, schools, and students.[25] Specifically, the Middletown School District serves over 700 employees, 7 schools, and almost 7,000 students in a geographical area that serves all of the city of Middletown, as well as portions of the towns of Wallkill, Wawayanda, and Goshen. As such, the District not only embodies almost exactly the same circumstances as the LPSD, but also satisfies a general consideration that "only a narrow and well-defined class of public institutions qualif[y] for such a waiver, making it predictable, workable, and not subject to discriminatory application."[26] The Middletown School District strives to create a safe environment for the entities and individuals in its charge, including young children and children with disabilities and other special needs, and strict adherence to the FCC's CPN rules impede this goal when callers threaten the school using CPN restrictions.

Second, these calls, like those that impacted the LPSD, threaten the safety of the employees, schools, and students in the Middletown School District's charge. The FCC has found that, in multiple cases,[27] such threatening calls constitute a special circumstance weighing in favor of granting a waiver. In the *Liberty Public School District Order*, the FCC found that the six to ten threatening calls a year received by the district were sufficient to represent such a waiver. In another similar order, the *INSIGHT 100 Order*, the FCC found special circumstances

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[24] *See id.*

[25] *Cf. Petition of Liberty Public School District*, p. 9.

[26] *See id.*, (citing *INSIGHT 100 Order*).

[27] *E.g.*, *NASA Order*, at * 5708.

supporting a waiver for an organization comprised of public institutions such as universities and hospitals, provided residential facilities or services, as well as emergency, security, and telecommunications services where a waiver would enable the organization's entities "to provide rapid and appropriate responses to distress calls and threatening or abusive calls."[28] As previously discussed, in the past eight months alone, the Middletown School District has received twelve emergency-triggering threatening calls coming in from restricted numbers. These threatening calls cause the District to enter literal lock down as it works to keep its students, schools, and personnel safe and to find the people perpetrating these calls to stop them before they act. The subsequent, very real and significant, trauma that this situation causes young children, the staff that educate them, and their families, can be avoided by the requested limited waiver.

Third, the Middletown School District, along with a private telecommunications contractor, provides some of its own telecommunications and security functions, making it easy for them to ensure that legitimately private users remain private in its attempt to stop these threatening phone calls. These capabilities also make it possible for the District, like in LPSD's petition for a waiver, to ensure its waiver is limited enough to protect the privacy of callers wishing to block their CPNs without a nefarious purpose.[29] In granting a waiver to the LPSD, the FCC accepted their proposed protections, along with other conditions including:

> (1) the CPN on incoming restricted calls to LPS may not be passed on to the line called; (2) the system used to record CPN shall be

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[28] *See Insight 100 Order*, at * 225.

[29] *Cf. Liberty Public School District Petition*, at p. 9. LPS proposed the following: (1) operating and maintaining the Central Office switch in a secure facility; (2) Designated telecommunications and security personnel may access restricted CPN data only when investigating harassing or threatening phone calls, and shall document such access as part of the investigative report; (3) any transmission by LPS of restricted CPNs to other law enforcement agencies will be via secure communications; and (4) restricted CPNs will remain recorded in the Central Office data base for a reasonable period of time and then destroyed

> operated in a secure facility limiting access to designated telecommunications and security personnel who have signed non-disclosure agreements that acknowledge and commit the individual to comply with LPS's obligations established [in this order]; (3) telecommunications and security personnel may access restricted CPN data only when investigating phone calls of a threatening and serious nature, and shall document that access as part of the investigative report; (4) transmission of restricted CPN information from LPS to law enforcement agencies must occur only through secure communications; (5) CPN information must be destroyed in a secure manner after a reasonable retention period; (6) any violations of these conditions must be reported promptly to the [FCC]; and (7) LPS will monitor and report on the effect of this waiver [as dictated in the report].

The Middletown School District proposes to ensure that any waiver granted it by the FCC imposes similar protections for the CPNs of parties calling the District without a nefarious purpose.

For example, the system that will contain the CPNs of incoming restricted calls will be operated securely on a private drive, and only will be accessible to specific individuals who understand their duty to keep the CPNs confidential. To ensure that these individuals and the system keep these CPNs confidential, the numbers will be deleted after a week unless a threatening event occurs, individuals with access only will obtain data when a threatening event occurs, the CPNs themselves will not be passed to the line called, and upon the occurrence of a threatening event, the CPNs will be sent to law enforcement over a secure communication. These security protocols are possible because, like in the LPSD petition, the Middletown School District is a narrow and well-defined institution, making a limited waiver predictable, workable, and not subject to discriminatory application.

V. CONCLUSION

Based on the foregoing, the Middletown School District satisfies the standards required for the FCC to grant it a limited waiver of Section 64.1601(b) for good cause shown. First, the

limited waiver would serve the public interest by enabling the District to better protect the safety and security of almost ten thousand individuals working and learning in seven schools. Specifically, a limited waiver will permit the District to identify and apprehend the perpetrators of threatening calls that hide behind the FCC's CPN restrictions for nefarious purposes while maintaining the privacy of those who use CPN restrictions without such motivations. The faster the District can determine who is making the calls, the more quickly it can stop a potential attack, protect those in harm's way, and stop future attacks from occurring by the same person or copycats. Second, the special circumstances in the Middletown School District's case, including protecting students, persistent receipt of these types of calls, the District's control over its telecommunications system, and the procedures and safeguards the District will implement in order to ensure restricted CPNs are not released to anyone but specified District personnel/contractors and law enforcement in emergency situations, all demonstrate the necessity and practicability of such a waiver. Therefore, the Middletown School District respectfully requests the FCC grant it a limited waiver of Section 64.1601(b).

Respectfully submitted,

Dated: February 18, 2016

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