

Accepted / Filed

APR 27 2016

Federal Communications Commission
Office of the Secretary

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Petition for Waiver of)	
FCC Form 474 Filing Deadline)	
)	
NebraskaLink, LLC)	CC Docket No. 02-6
FCC Form 474 Service Provider)	
Identification Number: 14305006)	
)	
Schools and Libraries Universal Service)	
Support Mechanism)	

Petition for Waiver of FCC Form 474 Filing Deadline for
Funding Year 2014 Section 54.514 of the Commission's Rules

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Date: April 19, 2016

No. of Copies rec'd 041
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SUMMARY

NebraskaLink, LLC (“NebraskaLink” or the “Company”), pursuant to 47 C.F.R. § 1.3, respectfully requests a waiver of the filing deadlines found in 47 C.F.R. 54.514 for the filing of Federal Communications Commission Form 474. The Company’s FCC Form 474s at issue are those submitted by the Company for Funding Year 2014 for the E-rate program administered by the Universal Service Administrative Company (“USAC”). NebraskaLink specifically seeks this waiver in order to facilitate payment for discounted services that NebraskaLink provided through the E-rate program, and specifically for line items that were rejected by USAC when NebraskaLink regularly submitted the forms during Funding Year 2014. NebraskaLink respectfully maintains that the instant waiver request is warranted and that grant of this request would conform with and advance the public interest.

As demonstrated herein, a combination of circumstances resulted in NebraskaLink inadvertently missing the prescribed procedural deadlines for resubmission of invoices and for seeking a one-time extension of those deadlines. NebraskaLink respectfully submits that as demonstrated herein the public interest would be advanced through a grant of this Petition. Based on the circumstances outlined herein, the Company does not believe that the public interest is served by penalizing a qualified entity (like NebraskaLink) that, through inadvertent oversight and staff turnover, missed a procedural deadline. The Company also respectfully submits that this matter is procedural only. Thus, no issue is raised regarding waste or fraud associated with granting this waiver.

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Schools and Libraries Universal Service Support Mechanism)	

**Petition for Waiver of FCC Form 474 Filing Deadline for
Funding Year 2014 Section 54.514 of the Commission's Rules**

NebraskaLink, LLC ("NebraskaLink" or the "Company"), pursuant to 47 C.F.R. § 1.3, respectfully requests a waiver of the filing deadline found in 47 C.F.R. 54.514¹ for the filing of

¹ Section 54.514 states in part that:

(a) *Invoice filing deadline.* Invoices must be submitted to the Administrator:

- (1) 120 days after the last day to receive service, or
- (2) 120 days after the date of the FCC Form 486 Notification Letter, whichever is later.

(b) *Invoice deadline extension.* In advance of the deadline calculated pursuant to paragraph (a) of this section, service providers or billed entities may request a one-time extension of the invoicing deadline. The Administrator shall grant a 120 day extension of the invoice filing deadline, if it is timely requested.

The Company notes that the current version of 47 C.F.R. 54.514(a) published in the Electronic Code of Federal Regulations and the Code of Federal Regulations ("CFR") annual edition each provide that "[p]aragraphs (a) and (c) will not become effective until July 1, 2016." See http://www.ecfr.gov/cgi-bin/text-idx?SID=d1c7c1feb67f8c74b087c80b8ea788f5&mc=true&node=se47.3.54_1514&rgn=div8;https://www.gpo.gov/fdsys/pkg/CFR-2015-title47-vol3/pdf/CFR-2015-title47-vol3-sec54-514.pdf. Thus, it is not entirely clear that the 120 day deadline noted in the revised Section 54.514 is effective and thus missed by NebraskaLink. Rather, since the request arguably falls under the prior Section 54.514, the timing issue raised in this petition should be resolved based on past Commission precedent. See *infra* Section V.

Federal Communications Commission (the "Commission" or the "FCC") Forms 474. The Company's FCC Form 474s at issue are those submitted by the Company for Funding Year 2014 for the E-rate program administered by the Universal Service Administrative Company ("USAC").² NebraskaLink specifically seeks this waiver in order to facilitate payment for discounted services that NebraskaLink provided through the E-rate program, and specifically for line items that were rejected by USAC when NebraskaLink regularly submitted the forms during Funding Year 2014. NebraskaLink respectfully maintains that the instant waiver request is warranted and would conform with and advance the public interest.

As demonstrated herein, a combination of circumstances resulted in NebraskaLink inadvertently missing the prescribed procedural deadlines for resubmission of invoices and for seeking a one-time extension of those deadlines. In this regard, NebraskaLink respectfully submits that the public interest is advanced through a grant of this petition. Based on the circumstances outlined herein, the Company does not believe that the public interest is served by penalizing a qualified entity that, through inadvertent oversight and staff turnover, missed a procedural deadline. The Company is not aware of any substantive rule violation at issue and thus no issue is presented other than the procedural aspects of potentially missed deadlines (*see supra* note 1).

² For purposes of this petition the operative deadline under the possibly effective 47 C.F.R. § 54.514(a) apparently is October 28, 2015 (*see supra* note 1), which is 120 days after the end of the funding year 2014 (*June 30, 2015*). Data obtained in February 2016 from the USAC Data Retrieval Tool indicates that the last date to invoice in most instances was October 28, 2015, but for reasons unknown to NebraskaLink, for a select few customers the deadline was extended to January 28, 2016. The factual basis for the Company's waiver request as to this deadline also explains why the Company did not seek a one-time extension from the Administrator.

I. BACKGROUND

Organized in 2010, NebraskaLink³ operates a state-wide fiber optic transport network. The Company is headquartered in Lincoln, Nebraska. NebraskaLink supplies direct Internet access, Ethernet transport, special access, private line, and optical carrier services to retail and wholesale customers. Although headquartered in Lincoln, Nebraska, NebraskaLink's customer base is predominantly located in more rural areas of Nebraska. In 2010, NebraskaLink was awarded a Broadband Technology Opportunities Program ("BTOP") grant for a project to "deploy a high-speed, middle mile fiber-optic network across nearly the entire state of Nebraska."⁴ Named, "Connecting Nebraska Communities", the project specifically involved "450 miles of newly constructed fiber in western Nebraska [to] serve community anchor institutions."⁵

Specifically relevant to the foregoing petition, NebraskaLink is a USAC service provider,⁶ and since 2011 provides Ethernet transport services to several dozen Nebraska schools, school districts, consortiums, and public libraries (individually a "customer" or collectively "customers"). The Company notes that the vast majority of communities and surrounding areas associated with the customers NebraskaLink serves have populations of less

³ Attached hereto is the "Declaration of James Warren" attesting to the underlying facts contained in this filing. Mr. Warren is Chief Financial Officer of NebraskaLink. See Attachment A.

⁴ See BroadbandUSA Fact Sheet, NebraskaLink, LLC, available at http://www2.ntia.doc.gov/files/grantees/fact_sheet_-_nebraskalink.pdf.

⁵ *Id.*

⁶ A service provider is a "company that participates in the Schools and Libraries Program and provides telecommunications or Internet services, equipment, hardware, or software." USAC Schools and Libraries (E-rate) Program, Glossary of Terms, available at http://www.usac.org/_res/documents/sl/pdf/handouts/SL-Glossary-of-Terms.pdf.

than 10,000.⁷ The services provided by NebraskaLink allow its customers to connect to Network Nebraska, which is best described as a statewide consortium that facilitates: (1) Ethernet connectivity and transport; (2) network management and monitoring; (3) administrative assistance; and (4) distance learning opportunities for its members.⁸

Through its contracts with certain of these customers (*i.e.*, schools and libraries), NebraskaLink agreed to invoice the customers for the discounted price of its services through the E-rate program. The administration of the E-rate program between these customers and the Company was straightforward -- the schools and libraries would file their necessary paperwork with USAC (FCC Form 486) and NebraskaLink would seek reimbursement from USAC through the periodic filing of FCC Form 474s. The balance of the administrative burdens between the Company and its customers was and continues to be an important element of enabling the schools and libraries to reap the benefits of the E-rate program, particularly since the majority of the schools and school districts served by NebraskaLink are located in rural areas of Nebraska.

Because NebraskaLink provides its service to these rural schools, libraries, and consortiums of schools, the Company respectfully submits that NebraskaLink's service commitment fulfills the Commission-defined public interest objectives associated with the E-rate program.

Over the last 17 years, the E-rate program has helped to ensure that our nation's schools and libraries are connected to the digital world. At the same time, we acknowledge and embrace our responsibility to make sure the program evolves as the needs of schools and libraries evolve. In particular, the E-rate program must evolve to focus on providing support for the high-speed broadband that schools

⁷ Although NebraskaLink serves the public library in Grand Island, which community was reclassified as an "urbanized area" in 2012, the award of that contract primarily resulted from NebraskaLink's deployment of fiber to the Grand Island Public Library, a community anchor institution, as a part of the BTOP grant project.

⁸ See Network Nebraska, <http://www.networknebraska.net/>.

need to take advantage of bandwidth-intensive digital learning technologies and that libraries need to provide their patrons with high-speed access to the Internet on mobile devices as well as desktops. Access to high-speed broadband is crucial to improving educational experiences and expanding opportunities for all of our nation's students, teachers, parents and communities.⁹

A. Circumstances Necessitating Relief Requested

Although NebraskaLink is comprised of a small administrative staff, it successfully facilitated and does facilitate without any known substantive issue the E-rate program discounts for its customers.¹⁰ For example, in addition to its FCC Form 474s, NebraskaLink timely submitted its FCC Form 473 for each funding year when it participated in the program as a service provider,¹¹ and regularly submitted FCC Form 474s for reimbursement on a monthly

⁹ *In the Matter of Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd. 8870, ¶ 1 (2014) (“*E-rate Modernization Order*”). For example, Chairman Tom Wheeler stated similarly that “we all win when we place a priority on high-capacity broadband in schools and libraries. Not broadband for the sake of broadband, but broadband for what it enables.” *E-rate Modernization Order* at 9032 (Statement of Chairman Tom Wheeler). Likewise, Commissioner Rosenworcel stated in her approval and concurrence to the *E-rate Modernization Order* the following:

If you are a school and want to run the most up-to-date educational software, you need high-speed, high-capacity broadband. To do this, we need goals. So today, I am pleased that we put them in place. In the near term, we want to have 100 Megabits per 1000 students to all of our schools. In the long term, we want to have 1 Gigabit per 1000 students to all of our schools. We also set targets for libraries that are on par with these goals.

* * *

Plus, the spillover effect from bringing broadband to anchor institutions like schools and libraries is huge. Because simply bringing these kinds of speeds to schools makes it incrementally less expensive to deploy higher-speed broadband to the homes and businesses nearby.

E-rate Modernization Order at 9037 (Statement of Commissioner Jessica Rosenworcel Approving in Part, Concurring in Part).

¹⁰ In this regard, the Company respectfully directs the Commission to its own records and that of USAC.

¹¹ As the Commission is aware, FCC Form 473 is the Service Provider Annual Certification

basis through July 2015. It was only in late 2015 that the current NebraskaLink executive management discovered that USAC had rejected certain line items during the 2014 Funding Year because the subject customers had not filed their respective FCC Form 486s prior to NebraskaLink's submission of the relevant FCC Form 474. By the time the Company made this discovery the possible October 28, 2015 last date to invoice for Funding Year 2014 (*see supra* note 1) had passed for resubmission of its FCC Form 474s for the 2014 Funding Year to obtain reimbursement, as well as the deadline to request a one-time extension.¹² The rejected line items eligible for reimbursement total \$89,669.75.¹³

Since recognizing this inadvertent procedural failure, the Company has spent the ensuing months trying to identify the underlying internal processes that resulted in the missed resubmission of the applicable FCC Form 474s in October, 2015¹⁴ and to establish new internal review processes that are aimed at ensuring that such failure was a one-time occurrence. While those remedial measures are addressed herein in Section I.A.2, based on its investigation, NebraskaLink has concluded that a combination of unfortunate factors, which are described

Form that must be submitted each funding year allowing the service provider to later submit invoices for reimbursement.

¹² At the time of the discovery of USAC's rejections, the Company believed that the last date to invoice for all of its customers was October 28, 2015. *See* 47 C.F.R. § 54.514(b).

¹³ Attachment B contains a list of the subject FCC Form 471 Application Numbers and Funding Request Numbers (FRN) for the rejected line items at issue. All other necessary documentation concerning the subject invoices has been submitted by the Company to USAC. It is the Company's good faith understanding that access to that documentation is available to the Commission should it wish to review it. *See infra* note 14. In the alternative, if the Commission and its Staff would like that information to be submitted to it by the Company, the Company will work with Commission Staff to make that submission.

¹⁴ On or about March 3, 2016, the Company resubmitted FCC Form 474 to USAC for certain of the rejected line items ("March Submission"). Thereafter on April 15, 2016, the Company transmitted to USAC an update to the March Submission.

below, led to the administrative and inadvertent oversight for which NebraskaLink seeks relief through this petition.¹⁵

1. Staff Turnover & Third-Party Provider Challenges

From the beginning of NebraskaLink's participation in the E-rate program, a designated NebraskaLink employee handled all necessary USAC filings and correspondence and did so without any known errors. The employee who was responsible for USAC compliance along with other significant administrative duties for the Company, unfortunately left NebraskaLink in October 2014. Although prior to her departure the employee provided general guidance to the Company's executive management that NebraskaLink's third party accounting provider kept a record of amounts that had not yet been paid by USAC; this guidance unfortunately did not identify any particular action that the Company should undertake to obtain reimbursement for such amounts. Following the employee's departure, NebraskaLink worked in good faith to transition the USAC administrative duties to a new employee, sent staff to USAC training programs and frequently contacted USAC representatives for guidance when questions arose. These subsequent actions underscored the complexity and follow-up that was later determined by the Company to be necessary to ensure full compliance with the E-rate filing deadlines. Thus, despite its good faith efforts to identify and institute what it believed to be reasonable and appropriate measures to comply with USAC program deadlines, NebraskaLink was unable to ensure one-hundred percent (100%) procedural compliance with all timing and invoice review needs that had been triggered by its staff turnover.

¹⁵ This is the first time NebraskaLink has sought relief from the FCC concerning its participation in the E-rate program as a service provider.

NebraskaLink understands that the ultimate responsibility for oversight rests with it and not the Company's staff. The Company takes its filing obligations seriously and believed in good faith it had the internal review processes in place and the necessary internal checks and balances to avoid the errors that have necessitated this filing. Unfortunately, that view was mistaken in that human error and transitioning new employees into new roles did not eliminate the inadvertent oversight identified herein despite good faith efforts to avoid such procedural mistakes.

As noted above, once the procedural submission errors were identified in late 2015, the Company recognized the need for additional internal "checks and balances" (which have now been instituted) including redundant monitoring of all USAC communications related to USAC-initiated remittance statements transmitted by email. These processes were expanded beyond those prior procedures in place between the Company and its outside third-party accounting provider. The new procedures are aimed at the identification of required actions to properly ensure resolution of any USAC-identified invoicing issues. As a result, until its subsequent investigation of unpaid USAC invoices, NebraskaLink did not recognize the fact that time-sensitive action was required by the Company regarding the resubmission of invoices for line items rejected by USAC after initial submission, or the amounts that would be at issue based on the method by which account receivable reporting was being conducted.

At the time that the invoice issue arose, aged receivable reports provided to NebraskaLink's executive management by the Company's accounting provider did not reference the Company's billing to USAC.¹⁶ Further, while NebraskaLink's executive management did

¹⁶ The Company understands that the system that was in place did not permit USAC receivables to be separately identified in the aged receivable reports.

receive monthly reports of its financials, these reports were effectively “total company” and did not reflect the level of disaggregation necessary to identify the USAC receivables issue¹⁷ until the USAC receivable grew to a value where it could not honestly be mistaken as part of a typical “ebb and flow” of NebraskaLink’s accounts receivables. Once triggered, this discovery prompted NebraskaLink’s identification of and remedial measures associated with the Funding Year 2014 rejections by USAC as outlined in Section I.A.2, *infra*.

2. Remedial Actions

In order to prevent the type of inadvertent but now identified oversight shortcomings described herein from occurring in the future, NebraskaLink has undertaken a number of remedial actions, noted below. These actions, in the Company’s view, should ensure that its USAC administration procedures are updated in order to avoid repeating the procedural compliance issues noted herein.

- NebraskaLink has instituted a requirement that its third-party accounting provider add a USAC-specific line item on monthly financial reports that will show any outstanding USAC balance.
- NebraskaLink has changed its invoicing process so that it will not apply discounts for a customer until NebraskaLink has confirmation that the customer has filed the paperwork required by the E-rate program, including the FCC Form 486, thus reducing the need for resubmission of invoices.
- NebraskaLink has implemented redundant monitoring of all USAC communications related to USAC-initiated remittance statements transmitted by email, including internal and external tracking of all USAC invoices, FCC Form 474 submissions, and remittances.
- NebraskaLink has instituted a quarterly review of all actions necessary to reconcile internally-generated and externally generated accounting reports, with any necessary action identified to be taken in order to allow the reconciliation to be made.

¹⁷ This shortcoming has now been addressed. *See infra* Section I.A.2.

B. Funding Commitments

Upon review of data available through the USAC Funding Request Data Retrieval Tool,¹⁸ it appears that funding commitments were made for Funding Year 2014 to each of the customers for which NebraskaLink seeks permission to resubmit invoices for reimbursement.¹⁹ The data further shows that the amounts that have already been committed to these customers meet or exceed the amounts that NebraskaLink will seek if its waiver request is granted and payment is made by USAC on the resubmitted invoices.²⁰ Thus, the Company does not believe that a grant of this waiver creates new demand for E-rate monies. Rather, E-rate monies appear to be already committed by USAC for the Company's customers for the previously-rejected 2014 Funding Year invoices. In this regard, the Company respectfully directs the Commission to its own records and that of USAC.

II. STANDARD FOR GRANTING WAIVER

The general standard for the granting of a waiver by the Commission from a regulation is set forth in 47 C.F.R. §1.3. This regulation states:

The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.

The Commission has further explained this "good cause" standard as follows:

The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Cellular*

¹⁸ Open Data Search – Schools & Libraries (USAC), Funding Request Data Retrieval Tool, available at <http://www.slforms.universalservice.org/DRT/Default.aspx>.

¹⁹ See Attachment C; see also *supra* note 13.

²⁰ See *id.*

Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.²¹

These standards have been explained and applied by the Commission in the past but more recently have been modified in connection with the Commission's Order in its *E-rate Modernization Order*.²²

As a result of the *E-rate Modernization Order*, the Commission essentially set forth two separate standards with regard to funding years prior to 2014. The Commission directed USAC and the Wireline Competition Bureau (the "Bureau") to "to consider whether such requests were made in good faith and within a reasonable time period after the services were provided or whether other extraordinary circumstances exist that support such a request."²³ With regard to requests or appeals seeking an extension of more than twelve (12) months following the last date to invoice, the Commission expected that such requests present "extraordinary circumstances justifying the failure to timely submit invoices."²⁴ For Funding Year 2014 and following years, the standard appears to limit waivers to those cases that present extraordinary circumstances.²⁵

²¹ *In the Matter of Connect America Fund et al.*, Order, WC Docket No. 10-90 et al., 27 FCC Rcd 15768 (2012) at n. 9.

²² *E-rate Modernization Order* at ¶ 242.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at ¶ 240.

III. SPECIAL AND EXTRAORDINARY CIRCUMSTANCES WARRANT DEVIATION FROM THE APPLICABLE RULE

As described above, a combination of several circumstances led NebraskaLink to miss a procedural deadline to resubmit FCC Form 474 requests for reimbursement for amounts that were previously rejected by USAC and to similarly miss the deadline to seek a one-time extension. The Company, however, respectfully submits that the extraordinary circumstances outlined here justify the Company's ability to avail itself of a one-time extension of the submission date.

The circumstances presented by NebraskaLink differ greatly from those described in waiver requests that were recently denied by the Bureau.²⁶ Unlike the petitioners in the *Hamilton County Library Order*,²⁷ NebraskaLink regularly submitted FCC Form 474s requesting reimbursement throughout Funding Year 2014. The only lapse was as to amounts that were not recognized by the Company as having been rejected by USAC until several months after the close of the funding year and subsequent to the last date to invoice. NebraskaLink has already taken actions to prevent an oversight of this nature in the future and to better meet all USAC E-rate program deadlines. The reasons for the oversight have been fully described above. The Company respectfully submits these reasons constitute extraordinary circumstances entitling NebraskaLink to a waiver of the rules allowing it to resubmit the subject invoices.

²⁶ See *In the Matter of Requests for Waiver or Review of Decisions of the Universal Service Administrator by Hancock County Library System Bay Saint Louis, Mississippi, et al.*, CC Docket No. 02-6, Order, 30 FCC Rcd. 4723 (2015) ("*Hamilton County Library Order*").

²⁷ *Id.* at ¶ 5-8.

IV. GRANTING OF WAIVER WOULD CONFORM WITH AND ADVANCE THE COMMISSION'S PUBLIC INTEREST GOALS

A grant of NebraskaLink's waiver would also conform with and advance the public interest goals of the Commission. The Commission emphasized in the *E-rate Modernization Order* that enforcement of its invoicing rules was important to allow USAC and the Office of Managing Director ("OMD") to de-obligate funds that were previously committed such that the funds could be carried forward to future funding years.²⁸ In furtherance of that policy the rules provide that such unused funds are made available "in the second quarter of each calendar year...for use in the next full funding year . . . in accordance with the public interest."²⁹ In prior years such notification has been made in early to mid-May.³⁰ Thus, the subject waiver request has been filed within a reasonable time both because it has been filed prior to May 2016 and also less than six months following the last date to invoice of the presumed end of the invoicing for Funding Year 2014 (purportedly October 28, 2015).

As discussed above, the resubmitted invoices (*see supra* note 14) which the Company requests that the Commission direct USAC to process, involve funds that NebraskaLink believes have already been committed to NebraskaLink's customers.³¹ Thus, granting the waiver would

²⁸ *E-rate Modernization Order* at ¶ 241.

²⁹ 47 C.F.R. § 54.507(a)(6).

³⁰ See e.g., *Wireline Competition Bureau Announces Carry-Forward of Unused Schools and Libraries Universal Service Funds for Funding Year 2015*, CC Docket No. 02-6, Public Notice, DA 15-559 (rel. May 8, 2015); *Wireline Competition Bureau Announces Carry-Forward of Unused Schools and Libraries Universal Service Funds for Funding Year 2014*, CC Docket No. 02-6, Public Notice, DA 14-609 (rel. May 2, 2014); *Wireline Competition Bureau Announces Carry-Forward of Unused Schools and Libraries Universal Service Funds for Funding Year 2013*, CC Docket 02-6, Public Notice, DA 13-1119 (rel. May 16, 2013).

³¹ See *supra* notes 13 & 19-20.

not require USAC or the FCC to increase or reallocate funding to reimburse the subject invoices once they are resubmitted by NebraskaLink and reviewed by USAC.

Further, NebraskaLink is at the end of the invoicing process, has completed the provision of services to all of the customers at issue and has to the best of its information and belief complied with all other E-rate program rules. A decision to deny the waiver request will have a negative financial impact on NebraskaLink, a provider of E-rate services, a company committed to providing advanced services to rural Nebraska schools and libraries, and a key provider of the discounted telecommunications and information services to customers in primarily rural areas of Nebraska.

V. ALTERNATIVE STANDARD FOR GRANTING WAIVER

As explained in note 1, *supra*, it is not totally clear whether Section 54.514(a) is actually in effect.³² Thus, if the revised invoicing rules are not effective until July 1, 2016, then the Company respectfully submits that the Commission's discussion of the new waiver standards in the *E-rate Modernization Order* is presently inapplicable³³ because those waiver standards were apparently adopted based on the underlying rationale for the codification of Section 54.514(a) – certainty of invoicing deadlines to allow for efficient program administration.³⁴ Thus, the Company respectfully submits that its petition should be considered based upon the former

³² See *supra* note 1.

³³ See *E-rate Modernization Order* at ¶ 240 ([I]n considering waivers of our new invoicing rules, we find that it is generally not in the public interest to waive our invoicing rules, and therefore the Bureau should grant waivers of those rules in extraordinary circumstances.”) (emphasis added).

³⁴ *E-rate Modernization Order* at ¶¶ 238, 239 (“Codifying the invoicing deadline will provide certainty to applicants and service providers. Providing certainty on invoicing deadlines will also allow USAC to de-obligate committed funds immediately after the invoicing deadline has passed, providing increased certainty about how much funding is available to be carried forward in future funding years.”).

standards utilized for review of similar waiver petitions prior to the invoicing changes set forth in the *E-rate Modernization Order*.

The question as to whether the effective date of Section 54.514(a) arises is based on the following facts. First, to access the relevant federal regulations for the FCC, the Commission's website directs users to the Electronic Code of Federal Regulations, which provides that 47 C.F.R. § 54.514(a) is not effective until July 1, 2016.³⁵ Second, the official annual codification of the general and permanent rules published in the Federal Register by agencies of the Federal Government, including the FCC, is the CFR annual edition. The most recent publication of the CFR annual edition similarly provides that 47 C.F.R. § 54.514(a) is not effective until July 1, 2016.³⁶ Thus, it would be reasonable to conclude that based on these documents Section 54.514(a) is not yet effective.

Prior to the *E-rate Modernization Order*, the Commission found the good cause standard was met where issues related to staff turnover or delayed discovery of inadvertent errors led petitioners to miss applicable deadlines.³⁷ In each of those cases and similarly here, the petitioners missed USAC procedural deadlines but did not violate any Commission E-rate rules. Additionally, as is the case with NebraskaLink, the petitioners in those cases "made good faith efforts to comply with programmatic rules" of the Commission.

Further, as the Commission has previously recognized:

³⁵ See <http://www.fcc.gov> (Access Now, 47 CFR Rules & Regulations); see also *supra* note 1.

³⁶ See *supra* note 1.

³⁷ See *In the Matter of Requests for Review of Decisions of the Universal Service Administrator by Alton Community Unit School District 11, Alton, Illinois, et al*, Order, CC Docket No. 02-6, 25 FCC Rcd. 7089, 7091-92 (2010); *In the Matter of Requests for Review of Decisions of the Universal Serv. Adm'r by Canon-McMillan Sch. Dist., Canonsburg, Pa, et al. Sch. & Libraries Universal Serv. Support Mechanism*, Order, CC Docket No. 02-6, 23 F.C.C. Rcd. 15555, 15557-58 (2008) ("*Canon-McMillan Order*").

In the *Bishop Perry Order*, the Commission found that, under certain circumstances, rigid adherence to certain E-rate rules and requirements that are “procedural” in nature does not promote the goals of section 254 of the Act - ensuring access to discounted telecommunications and information services to schools and libraries - and therefore does not serve the public interest. This is especially true in these circumstances, where the applicants are at the end of the process and have already received service and complied with all other E-rate program rules to date.³⁸

As discussed in the *Canon-McMillan Order* and *Bishop Perry Order* and similarly here, NebraskaLink is at the end of the invoicing process, has completed the provision of services to all of the customers at issue and has complied with all other E-rate program rules. Since this waiver involves a missed procedural deadline and no other substantive E-rate rule, the public interest and integrity of the E-rate program is served by a grant of this waiver by matching payment with the discounted services provided and received by the schools, libraries and consortiums located in rural Nebraska that NebraskaLink serves. On the other hand, a decision to deny the waiver request will have a negative impact on NebraskaLink, a provider of E-rate services and a company committed to providing advanced services to rural Nebraska schools and libraries, and will run counter to the Commission’s previous actions in *Canon-McMillan Order* and *Bishop Perry Order* where waivers based on the same overarching operative facts – procedural deadlines missed and no other rule violation at issue – were granted.

VI. CONCLUSION

Good cause exists for a grant of this waiver. As set forth herein, NebraskaLink has presented extraordinary circumstances for consideration and its waiver request conforms with and advances the public interest. The public interest is also advanced by NebraskaLink’s efforts

³⁸ *Canon-McMillan Order* at 15558 (citing *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Order, 21 FCC Rcd 5316, 5316-17, 5319-20, 5323, paras. 2, 9, 14 (2006) (“*Bishop Perry Order*”).

to facilitate access to discounted telecommunications and information services to schools, libraries, and consortiums under the circumstances described herein. Based upon the remedial measures that the Company has now undertaken, NebraskaLink respectfully submits that it foresees no need to repeat this waiver request. The shortcomings outlined herein regarding the Company's oversight of its USAC E-rate invoicing and monitoring have been addressed in a manner such that the Company reasonably expects that the errors outlined herein should not occur in the future.

Respectfully submitted,

NebraskaLink, LLC

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Date: April 19, 2016

Attachment A

DECLARATION

I, James Warren, Chief Financial Officer of NebraskaLink, LLC (the "Company"), do hereby declare under penalties of perjury that I have read the foregoing "Petition for Waiver of FCC Form 474 Filing Deadline for Funding Year 2014 Section 54.514 of the Commission's Rules" and the information contained therein regarding the Company is true and accurate to the best of my knowledge, information, and belief.


James Warren
Chief Financial Officer

Date: 4/19/16

Attachment B

FRN	471 #
947233	2577972
986756	2691511
948409	2581208
975449	2656143
984781	2685272
960187	2608404
987219	2693074
947676	2579097
948484	2581419
985251	2688501
937687	2560609
955286	2595521
984949	2685683
988460	2696731
988676	2699733
942275	2568416
942802	2568695
938468	2561934
987328	2693228
986843	2691764
960848	2610615
949883	2584044
958755	2604063
958755	2604089
985260	2686810
947315	2578210
984662	2684915
984500	2684433
986745	2691392
985119	2686398

Attachment C

471 Application Number	FRN	Applicant Name	SPIN	Service Provider Name	Commitment Status	486 SSD	Funding Year	FCDL Date	Last Date to Invoice	Committed Amount	Invoicing Mode	Total Authorized Disbursement
947233	2577972	ALLEN CONS SCHOOL DISTRICT 70	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$20,552.40	SPI	\$13,840.00
986756	2691511	ANSELMO-MERNA PUBLIC SCHOOLS	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	1/28/2016	\$16,198.42	SPI	\$11,938.50
975449	2656143	CENTRAL CITY PUBLIC SCHOOLS	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$15,856.18	SPI	\$14,534.85
984781	2685272	COLERIDGE COMM SCHOOL DISTRICT	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/21/2014	10/28/2015	\$31,970.40	SPI	\$26,642.00
960187	2608404	COZAD COMMUNITY SCHOOLS	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$13,289.52	SPI	\$12,611.83
987219	2693074	EDUCATIONAL SERVICE UNIT NO 02	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$12,767.76	SPI	\$11,703.78
947676	2579097	EDUCATIONAL SERVICE UNIT NO.8	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$11,560.32	SPI	\$8,670.24
948484	2581419	FULLERTON PUBC SCHOOLS	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	8/6/2014	1/28/2016	\$16,348.59	SPI	\$13,496.67
985251	2688501	GRAND ISLAND PUBLIC LIBRARY	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$9,000.00	SPI	\$6,000.00
985119	2686398	HARTINGTON PUBLIC SCHOOLS	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$18,429.24	SPI	\$12,286.16
937687	2560609	HIGH PLAINS COMMUNITY SCHOOL DISTRICT	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	7/23/2014	10/28/2015	\$7,207.92	SPI	\$5,405.94
955286	2595521	HUMPHREY PUBLIC SCHOOL DIST	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$11,851.20	SPI	\$11,488.29
984949	2685683	LAUREL-CONCORD PUBLIC SCHOOLS	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$15,692.29	SPI	\$13,209.00
988460	2696731	LOUP CITY PUBLIC SCHOOL DIST	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$5,245.42	SPI	\$4,808.32
988676	2699733	LOUP COUNTY PUBLIC SCHOOL DIST	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	1/28/2016	\$21,045.45	SPI	\$19,016.69
942275	2568416	NEBRASKA UNIFIED DISTRICT 1	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	6/11/2014	10/28/2015	\$18,595.16	SPI	\$17,663.80
942802	2568695	NORTH LOUP-SCOTIA PUBLIC SCHS	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$15,926.59	SPI	\$7,161.25
938468	2561934	O'NEILL PUBLIC SCHOOL DISTRICT	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$11,583.00	SPI	\$9,289.50
987328	2693228	OAKLAND-CRAIG PUBLIC SCHOOLS	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$13,316.41	SPI	\$8,967.28
986745	2691392	SANDHILLS PUBLIC SCHOOL DIST	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	1/28/2016	\$21,564.04	SPI	\$20,964.08
986843	2691764	SARGENT PUBLIC SCHOOL DISTRICT	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	1/28/2016	\$18,520.00	SPI	\$16,737.93
960848	2610615	SILVER LAKE PUBLIC SCHOOLS	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/29/2014	10/28/2015	\$11,588.40	SPI	\$10,622.70
949883	2584044	UMO N HO N NATION PUBLIC SCHOOL DISTRICT	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$21,095.32	SPI	\$14,205.60
958755	2604089	VALENTINE COMMUNITY SCHOOLS	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$924.00	SPI	\$770.00
958755	2604063	VALENTINE COMMUNITY SCHOOLS	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$14,347.20	SPI	\$11,179.00
985260	2686810	WAKEFIELD PUBLIC SCHOOL DIST	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$16,813.17	SPI	\$11,322.00
947315	2578210	WALTHILL PUBLIC SCHOOL DIST	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$20,379.60	SPI	\$13,586.40
948409	2581208	WEBSTER COUNTY DISTRICT 74	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/21/2014	10/28/2015	\$9,396.00	SPI	\$8,613.00
984500	2684433	WINNEBAGO PUBLIC SCHOOL DIST	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$20,379.60	SPI	\$13,586.40
984662	2684915	WINSIDE PUBLIC SCHOOL DISTRICT	143035006	Nebraska Link LLC	FUNDED	7/1/2014	2014	5/15/2014	10/28/2015	\$26,718.12	SPI	\$24,739.00