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May 23, 2016

SUBMITTED ELECTRONICALLY VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **MEETING SUMMARY PER SECTION 1.1208 OF THE FCC'S RULES**

Request for Review or Waiver of a Decision of the Universal Service Administrator by Sweetwater City Schools et al., Docket No. 02-6

Dear Ms. Dortch:

On May 19, 2016, representatives of Education Networks of America, Inc. and ENA Services, LLC (ENA) and the Sweetwater City Schools Consortium (Sweetwater) met with Nick Degani, wireline legal advisor for Commissioner Pai. Present at the meeting for ENA/Sweetwater were Dr. Melanie Miller, director of schools for the Athens (TN) school district; Joan Gray, executive director of the Tennessee Educational Technology Association; Charles Cagle, attorney for the school districts; David Pierce, CEO of ENA; and Bob Patterson and Gina Spade, attorneys for ENA.

The representatives of ENA and Sweetwater reiterated their requests[1] for the Commission to grant their appeals of the decisions of USAC to deny funding to 45 school districts in Tennessee, which serve about one-third of the public school students in Tennessee, for funding years 2013, 2014 and 2015, and affect $60 million in funding requests. Sweetwater and ENA made the following points:

- To pay for the broadband and telecommunications services provided following the procurement at issue, schools in the Sweetwater Consortium are in the process of cutting teachers and programs for the school year that begins in August. Unless the Commission acts expeditiously, these schoolchildren will suffer irreparable harm.

[1] *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Request for Review and/or Waiver by Education Networks of America of Funding Decisions of the Universal Service Administrative Company, filed May 13, 2016 (ENA Appeal), and *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Consolidated Request for Review and/or Waiver by Sweetwater City Schools et al. of Funding Decisions by the Universal Service Administrative Company, filed May 10, 2016 (Sweetwater Appeal).

- The Commission can avoid the harm to these schools and students by granting the appeal in a streamlined Public Notice.

- The Sweetwater Consortium selected the most cost-effective services using a detailed, objective competitive bidding process with price given the most weight, as required by Commission rules.

- There are no Commission rules or guidance that would have mandated a different selection process or winning bidder.

- The Sweetwater Consortium had a contract with ENA, the winning bidder, based on ENA's offer to provide the services, and the Consortium's acceptance via the award letter.

- There was no waste, fraud or abuse as the services were delivered and used for their intended purposes, satisfying program rules and goals. Further, the schools in the Consortium actually received the lowest prices offered, as AT&T's bid using the state master contract pricing was nearly $2 million more than ENA's bid.

- ENA and the Consortium believe every E-rate requirement was met. Even if the Commission identifies some error in the process, however, a waiver of the rules is in the public interest because of the significant harm to these schools and the adverse effect such a decision will have on the E-rate program by forcing applicants to select the cheapest bid, instead of the most cost-effective bid.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, an electronic copy of this letter is being filed for inclusion in the above-referenced dockets and sent to attendees. We have also attached a handout that summarizes the appeals' procedural posture and arguments. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

/s/ Gina Spade

Gina Spade
Counsel for ENA

cc: Nick Degani

Sweetwater TN Consortium Issues
May 2016

Issue: USAC has denied E-rate funding for 45 school districts (Sweetwater Consortium) for the past four funding years (2012 through 2015). Total amount at issue is approximately **$60 million**. These school districts will have to lay off teachers; cancel programs; and cancel technology initiatives to pay for past-due bills for broadband services in the absence of federal funding.

First Denial (FY 2012)

- In 2012, the school districts joined an existing consortium contract that had been competitively bid by another group of schools in Tennessee the previous year.
- USAC provided written guidance assuring these schools that they could use the competitive bidding process used by the other group of schools.
- After these districts had relied upon USAC's written guidance, USAC reversed its position and denied their funding requests (approximately $12 million).
- Following FCC staff advice, the Consortium members filed a waiver with WCB in 2013. Three years later, WCB has not acted upon the waiver request.

Second Denial (FYs 2013, 2014 and 2015)

- In 2013, after learning they could not use the other competitive bid process, the Sweetwater Consortium schools released their own RFP to bid for broadband services. A panel of three respected educators spent nine hours in an exhaustive review of the bids before awarding a contract to ENA.
- USAC denied the applications and subsequent appeals, which have been appealed to the FCC.
- The districts have ordered services, which ENA has provided, since 2013.
- Approximately $49 million was denied in the funding requests.
- USAC claimed two reasons for the denials:
    - USAC alleges that the schools did not select the most cost-effective services.
        - To the contrary, the Consortium used price as a primary factor and met all other E-rate requirements in the competitive bidding process.
        - The schools have an economic incentive to choose the most cost-effective services. Schools pay between 70 percent and 10 percent of the cost; most schools pay 20 percent.
        - Because of the way AT&T qualified its bid, the winning service provider, ENA, actually offered a lower price than its competitor when the bid response.
        - To allow USAC's decision to stand is contrary to program rules and goals.
    - USAC alleges that the schools did not have a contract when they applied for funding.

- The schools had a contract under Tennessee law. The service provider offered its services with its bid response and the Consortium accepted the offer when it awarded the bid. Both the districts and ENA have performed pursuant to this contract.