

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Requests for Waiver of Decisions of	)	
the Universal Service Administrator by	)	
	)	
Ada School District	)	File Nos. SLD-963751 et al.
Ada, Oklahoma et al.	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**Petition for Reconsideration**

In accordance with 47 U.S.C. § 405(a) and 47 C.F.R. § 1.106 et seq., Bulloch County Rural Telephone Cooperative, Inc. (the “Company”) respectfully requests reconsideration of a decision issued by the Telecommunications Access Policy Division of the Wireline Competition Bureau (the “Bureau”)<sup>1</sup> denying the waiver request filed by the Bulloch County School District (the “BCSD”).<sup>2</sup> For the reasons demonstrated herein, the Order’s focus solely on administrative

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<sup>1</sup> *In the Matter of Requests for Waiver of Decisions of the Universal Service Administrator by Ada School District, Ada, Oklahoma, et al., Sch. & Libraries Universal Serv. Support Mechanism*, Order, CC Docket 02-6, 2016 WL 1628815, DA 16-448 (Apr. 25, 2016) (the “Order”).

<sup>2</sup> *See In the Matter of Request for Review by Bulloch County School District of Decision of Universal Service Administrator (“USAC”)*, CC Docket No. 02-6 (filed Nov. 4, 2015) (BEN: 127341 - Form 471 No. 953960, FRN 2592444; Form 471 953298, FRNs 2591613 and 2591504) (the “BCSD Waiver Request”). The Company submits that it is an interested party with standing to file this Petition because the Company participated in the BCSD Waiver Request. As that submission reflects, the Company provided a sworn affidavit in support of the BCSD Waiver Request. Out of an abundance of caution, however, and pursuant to 47 C.F.R. § 1.106(b)(1), the Company makes this additional showing. As a service provider to BCSD, the Order adversely affects and improperly rejects the BCSD Waiver Request based on the Company’s good faith efforts to comply with its obligations pursuant to the E-rate program. Unless rectified as requested herein, the Order’s denial of the BCSD Waiver Request may adversely affect the Company’s relationship with the BCSD based on the level of services that the BCSD may be able to purchase from the Company in the coming school year in light of the deficit in E-rate

efficiency lacks any hallmark of reasoned decision making. Accordingly, the Order should be reconsidered and the BCSD Waiver Request should be granted promptly.

The BCSD Waiver Request was filed due to an inadvertent error in missing a filing deadline of the BEAR form by the Company,<sup>3</sup> an error rectified by the Company in less than twenty-four (24) hours of the deadline. The Order dismissed the BCSD Waiver Request summarily, and, in doing so, the Order failed to address the specific facts and circumstances presented by the BCSD and the Company that justified the finding that a grant of the waiver of the filing deadline in this instance would be in the public interest. The legal and factual infirmities associated with the Order *vis-à-vis* the specifics of the BCSD Waiver Request require reconsideration coupled with a grant of the BCSD Waiver request in full. This result, in turn, would advance the E-rate program policies established by the Federal Communications Commission (the “Commission” or “FCC”), a program that the Company has been engaged in for over the last fifteen (15) years.<sup>4</sup>

By denying the BCSD Waiver Request and thus the 2014 BEAR form E-rate funding to the BCSD, the Order adversely affects the Company and BCSD’s objective of providing state-of-

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funding disbursements to the BCSD. The Company did not file the waiver request because it was the BCSD who was seeking direct reimbursement by USAC.

<sup>3</sup> The “BEAR form” is the Billed Entity Applicant Reimbursement Form, also referred to as FCC Form 472, which is filed by a billed entity who has paid in full for services and is seeking reimbursement from USAC for its discount. *See* 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](http://www.usac.org/_res/documents/sl/pdf/handouts/SL-Glossary-of-Terms.pdf).

<sup>4</sup> This is the first instance in which the Company has needed to seek relief from the FCC concerning the Company’s well-over fifteen (15) years participation in the E-rate program as a service provider. For administrative convenience, the Company incorporates herein by reference the BCSD Waiver Request which was previously filed. *See* note 2, *supra*; *see also* Order, Appendix (p. 6). Incorporation of the BCSD Waiver Request herein cannot be viewed as presenting repetitive facts because the Order did not specifically address those specific facts and circumstances.

the-art telecommunications services to students attending school in rural areas of Georgia.<sup>5</sup> The Order reaches this result despite the lack of discussion or analysis of the specifics of the BCSD Waiver Request such as, for example, the fact the waiver request was filed in light of an isolated and inadvertent human error which was corrected by the Company within less than one day of a missed deadline. The Company's efforts to comply with the E-rate program deadlines were set forth in the BCSD Waiver Request. In addition, the Company recalls contacting USAC during the week of October 28, 2015, in order to seek guidance to insure the Company's compliance with E-rate program deadlines. When USAC staff was able to be reached, the Company does not recall any indication from USAC staff regarding the imminent deadline confronting the Company.

The Order in summary fashion aggregated the BCSD Waiver Request into one of four groups among more than 120 other such requests. By doing so, the Order infers (but in no way demonstrates) that at least one of these groups created a factually "homogenous" group of waivers that could logically include the BCSD Waiver Request. The Order compounded this mistake by improperly finding and concluding (as a result of the lack of any targeted analysis) that the BCSD Waiver Request failed to meet the Commission's new waiver standard.<sup>6</sup>

One could contend that, the closest group of petitioners addressed in the Order was that group comprised of petitioners who sought waivers of the filing deadlines because they were "unaware that the service provider would fail to approve and certify the form before the

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<sup>5</sup> Attached hereto is the "Declaration of John D. Scott" attesting the underlying facts contained in this filing. Mr. Scott is the General Manager and Chief Operating Officer of the Company and the affiant noted in note 2, *supra*. See Attachment A.

<sup>6</sup> Order at ¶¶ 7-10.

invoicing deadline.”<sup>7</sup> The Order *did not* indicate, however, that those cases presented similar facts to those raised in the BCSD Waiver Request.

For example, the Order failed to address the pertinent additional facts raised by the BCSD that the Company was seeking a waiver of a missed deadline after over fifteen (15) years of compliance, and that the Company corrected the error within less than twenty-four (24) hours of the missed deadline. Other distinguishing facts may also be present but the Order’s failure to address these two obvious facts raised in the BCSD Waiver Request amply shows the error upon which the Order is based – the Order’s failure to address the specific facts and circumstance before the Commission that were unquestionably raised and demonstrated in the BCSD Waiver Request.

As the Bureau is aware, the recognized standard for waiver requires attention to specific facts and circumstances,<sup>8</sup> and reconsideration of an Order is entirely proper when “the petitioner . . . demonstrates a material error or omission in the underlying order.”<sup>9</sup> These requirements were not followed in the Order. The Order must be reconsidered and the BCSD Waiver Request granted in full.

It is difficult to reconcile that inadvertently missing a deadline by less than twenty-four (24) hours could produce the harsh result reached in the Order, *i.e.*, as a result of the missed deadline, the BCSD is denied the totality of the requested and Commission-committed funding

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<sup>7</sup> Order at ¶ 9, n.24.

<sup>8</sup> See *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>9</sup> *In the Matter of J&J Broadcasting, Inc.*, Memorandum Opinion and Order, 2016 WL 483429 at \*1, DA 16-131 (Feb. 8, 2016).

under the E-rate program rules. While the Commission in the *E-rate Modernization Order*<sup>10</sup> altered the waiver request standard to require a demonstration of “extraordinary circumstances,”<sup>11</sup> the Commission did not alter the fundamental aspect of a waiver request – that the specific facts and circumstances must be examined to determine if the public interest is served by granting the relief that the waiver requests. Although presumed in the Order,<sup>12</sup> the *E-rate Modernization Order* does not provide that seeking a one-time extension is a precondition to obtaining a waiver of the invoicing deadlines.

The Order, in turn, sets forth a framework that, practically speaking, allows waivers to be denied without addressing the facts and circumstances that give rise to the waiver request in the first instance, where the petitioners did not first seek a one-time extension. Blanket statements regarding missed “invoice deadline[s]” without an examination of the justification for such events cannot sustain a decision denying a waiver.<sup>13</sup> A waiver decision must at least be fact-centric based on the request for waiver before it. This is the standard for waivers being granted and helps ensure that the Commission’s action rationally serves or advances the public interest. Nothing along these lines occurred in the Order associated with the BCSD Waiver Request.

So too, the need for the Order’s reversal *vis-à-vis* the BCSD Waiver Request is further demonstrated by a failure to address the harsh result of the Order’s apparent administrative effort (albeit improper) to streamline its decisional process. It is telling that the Commission did not vacate its prior precedents in the *E-rate Modernization Order* and even stated that “USAC’s

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<sup>10</sup> *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, ¶¶ 238-242 (2014) (“*E-rate Modernization Order*”).

<sup>11</sup> *Id.* at ¶ 240.

<sup>12</sup> Order at ¶ 7.

<sup>13</sup> See e.g., *Id.* at ¶¶ 7-10, n. 22, 24-26.

procedures were reasonable in the past.”<sup>14</sup> The Order appears to create a tremendously high bar for waiver while at the same time failing to explain why the combination of facts and circumstances that justified waivers in the past (or any of the facts individually),<sup>15</sup> should not equally be applicable under an “extraordinary circumstances” test.

Further, in light of the policy goals of the E-rate program, it seems implausible that the Order’s effort to implement the *E-rate Modernization Order* would result in a decision that relief could not be granted to billed entities or service providers who occasionally encounter human error in their day to day efforts to comply, particularly when any inadvertent failure was rectified in less than one business day. Yet, that is precisely what has happened in this instance.

Finally, the Company is aware of the Petition for Reconsideration & Petition for Omnibus Waiver of Invoice Deadline Regulation & Petition for Rulemaking to Revise Invoice Deadline Regulation that was filed by the State E-rate Coordinators’ Alliance (“SECA”) in the above-captioned matter (collectively, the “SECA Petition”). The underlying E-rate policies that are frustrated by the Order as noted in the SECA Petition are even more glaring when viewed in light of the BCSD Waiver Request and the adverse public interest impacts that result in the absence of a failure, on reconsideration, to grant the BCSD Waiver Request in its entirety. The Company fully supports SECA’s position that the policy goals of the FCC to encourage funding through the E-rate program to students attending school in rural areas are frustrated by the Order as it currently stands. This shortcoming of the Order is only amplified by the Order’s failure to

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<sup>14</sup> *E-rate Modernization Order* at ¶ 242.

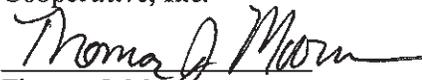
<sup>15</sup> See *In the Matter of Requests for Review of Decisions of the Universal Serv. Adm'r by Canon-McMillan Sch. Dist., Canonsburg, Pa, et al. Sch. & Libraries Universal Serv. Support Mechanism*, Order, CC Docket No. 02-6, 23 F.C.C. Rcd. 15555, 15557-58 (2008).

address the specifics of the BCSD Waiver Request. Like SECA, the Company supports the notion that the Order is legally deficient and must be reconsidered.

The Order's harsh result in light of the specific circumstances that BCSD and the Company have presented to the FCC is, at best, difficult to reconcile with the underlying objectives of the Commission's E-rate program. Bolstered with the specific facts and circumstances presented in the BCSD Waiver Request, the blanket denial of the BCSD Waiver Request without addressing the specifics of it should be rectified by the Bureau reconsidering the Order and granting the relief requested. In light of the foregoing, the Company respectfully requests prompt grant of the relief requested herein.

Respectfully submitted,

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Date: May 25, 2016