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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JAN 03 2002
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of Request for Review of the Universal Service Administrator by	)	
Electronic Classroom of Tomorrow	)	File No. SLD-_____
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Changes to the Board of Directors of the National Exchange Carriers Association, Inc.	)	CC Docket No. 97-21

To: The Common Carrier Bureau

Re: Electronic Classroom of Tomorrow ("ECOT")
Billed Entity Number 221005
Form 471 Number 226520
Funding Year 4, 2001-2002

REQUEST FOR REVIEW

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January 3, 2002

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Exhibit 1: ECOT's Non-profit Articles of Incorporation
Exhibit 2: Letter of Preliminary Approval from Lucas County, Ohio School Board
Exhibit 3: ECOT/Lucas Contract
Exhibit 4: Parent/Student Authorized Technology and Communications Use Policy and Release of Liability Form
Exhibit 5: ECOT's Educational Program
Exhibit 6: ECOT's FCC Forms 470 and 471, SLD's Funding Commitment Decision Letter Dated December 4, 2001
Exhibit 7: Letter from ODE in Support of ECOT's Form 471 Application
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SUMMARY

Electronic Classroom of Tomorrow ("ECOT") is in the vanguard of the school choice movement in the State of Ohio. ECOT is an authorized non-profit, public K-12 Ohio Community School, providing students, teachers, and parents a true alternative to the traditional classroom through the use of online interactive Intranet sites. Students at ECOT, many of whom live in rural areas or are physically, emotionally or developmentally disabled, receive tuition-free public education using a curriculum that is comparable to the traditional classroom experience. Like all other public school students in Ohio, ECOT students must be proficient in all requirements, must follow state guidelines for proficiency testing, and must meet or exceed all state minimum standards for graduation. All ECOT teachers are public employees and must be state-certified.

ECOT is requesting a review of the decision of the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company denying ECOT's Year Four Funding Request (Form 471 Application Number 226520) in full because the SLD determined, incorrectly and without inquiry, that ECOT was an ineligible entity. As explained in detail in this Request for Review, ECOT contends that it is entitled to full funding of its Form 471 request, because ECOT satisfies the statutory and regulatory criteria for being considered an eligible entity, and because the requested services will be used for educational purposes.

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Re: Electronic Classroom of Tomorrow ("ECOT")
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Funding Year 4, 2001-2002

Request for Review

Electronic Classroom of Tomorrow ("ECOT"), by its attorneys and pursuant to Sections 54.719(c), 54.720 and 54.721 of the Commission's rules, 47 C.F.R. §§ 54.719(c), 54.720, 54.721, hereby requests a review of the decision by the Schools and Libraries Division ("SLD") Administrator denying ECOT's Year Four Funding Request (Form 471 Application Number 226520). For the reasons set forth below, the Commission should determine that ECOT is an eligible entity under the E-rate program, and should direct the SLD to process ECOT's Year 4 funding application.

I. Statement of Facts.

ECOT is a non-profit corporation formulated under the laws of the State of Ohio to serve as the governing authority of a statewide community school in Ohio. A copy of ECOT's filed and approved non-profit Articles of Incorporation are attached hereto as **Exhibit 1**. ECOT is a validly constituted Ohio Community School. The procedures established by Ohio statute require a Community School to have a preliminary agreement approved by an Ohio school board, and then to enter into a contract with that school board. Attached as **Exhibit 2** is the approval of the preliminary agreement with the Lucas County, Ohio school board. A copy of the fully executed contract between Lucas County Educational Service Center ("Lucas") and ECOT is attached hereto as **Exhibit 3.** [1]

As part of the vanguard in school choice, ECOT is unique among community schools in that it is a statewide school offering a broad-based education to students through the use of computers. An opportunity to receive online education is particularly important for those students who need an alternative to the traditional classroom – for example, students who are physically, emotionally, or developmentally challenged, gifted students, and students in remote rural areas. ECOT currently enrolls over 2,900 students, and held its first graduation ceremony in 2001 in the Atrium of Ohio's Statehouse.

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[1] Section 3314.01 of the Ohio Revised Code ("ORC") gives Lucas the right to enter into a contract for a Community School. Subsections 2-7 specify that the right to operate as a Community School flows from the contract entered into between the school and the school board. Ohio Rev. Code § 3314.02-.07. Exhibit 3 is the contract pursuant to section 3314 which established ECOT as a Community School.

As an Ohio Community School, ECOT provides secure, Intranet-based public education for grades K-12, on a tuition-free basis. Upon matriculation, each ECOT student receives: 1) a desktop computer; 2) a monitor; 3) a printer/scanner/copier; 4) software; 5) an optional in-home phone line; and 6) a secure, Intranet educational network.[2] Network connection services are provided to students and staff, at their residences, at student/parent designated learn centers, or at other ECOT-owned or operated facilities.[3]

Through a partnership with Learn.com, lessons are presented online at Intranet "Learn Center" sites built and maintained by each state-certified ECOT teacher. These Learn Centers serve as the home base for ECOT students. Students may access daily assignments, communicate with other students and teachers through e-mail and monitored chat rooms, and receive data pertinent to a student's goals through the ECOT system. ECOT has also partnered with ChildU and NovaNet, which specialize in high-quality education for students in grades 1 through 12.

ECOT students' access to the Internet is severely restricted. The students are only permitted to access the secure Intranet Learn Center sites plus the Internet websites authorized by the teacher in conjunction with a classroom project

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[2] ECOT did not seek, and is not seeking, discounts under the E-rate program for Items 1-4 or Item 6. Rather, ECOT is only seeking discounts on the telecommunications services and Internet access it purchases from service providers.

[3] *See* Parent/Student Authorized Technology and Communications Use Policy and Release of Liability Form, at 14 (attached hereto as **Exhibit 4**).

and approved by ECOT. Similarly, online outsiders cannot reach ECOT students through the secure firewalls of ECOT's special Intranet.[4]

Learning also takes place offline under the guidance of ECOT teachers. Offline education includes ECOT's Learning Adventures program, which provides opportunities for socialization and extracurricular activities through special projects including field trips, graduation ceremonies, honors sessions, and parent support groups. Students also attend one of ECOT's approximately 30 testing sites to complete state-mandated proficiency tests as needed. A copy of ECOT's Educational Program is attached hereto as **Exhibit 5**.

ECOT students pursue a rigorous curriculum at a guided pace under the supervision of education teachers, special education teachers, tutors, special needs consultants, and parents. In order to pass to the next grade, ECOT students must be proficient in all requirements, must follow state guidelines for proficiency testing, and must meet or exceed all state minimum standards for graduation.

Because ECOT's operational methods require significant telecommunications services and Internet access, ECOT determined that it should request funding under the federal E-rate program. ECOT timely filed its Year 4 Forms 470 and 471 application during the January 2001 filing window, seeking discounts on the telecommunications services and Internet access ECOT purchases from service providers. By letter dated December 4, 2001, the SLD denied ECOT's funding

[4] ECOT did not seek, and is not seeking, discounts under the E-rate program for firewall services it receives from service providers.

request in its entirety, stating that a "significant portion" of the funding request was "for an ineligible entity [ECOT] which is not eligible to receive funding based on the program rules for eligible entities." Copies of ECOT's Forms 470 and 471, as well as the SLD's Funding Commitment Decision Letter, are attached hereto as **Exhibit 6**.[5] ECOT is thus filing this timely appeal to the Commission of the SLD's funding commitment decision.[6]

II. ECOT Satisfies All Statutory and Regulatory Criteria for Being an "Eligible Entity" Under the E-rate Program.

In order to be eligible for discounted telecommunications services under the E-rate program, a school must meet the criteria set forth in the Communications Act of 1934 (the "Act"), as amended by the Telecommunications Act of 1996, and in the Commission's regulations.

A. The Act.

Section 254 of the Act sets forth three criteria which must be satisfied in order to be considered an eligible entity entitled to preferential rates and treatment under the E-rate program. First, the school must meet the statutory definition of an elementary or secondary school found in the Elementary and Secondary

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[5] The Item 21 attachments included with the Form 471 are unavailable from ECOT. To the extent that the Commission needs to review ECOT's Item 21 attachment during its review of this appeal, ECOT respectfully requests that a copy of the Item 21 materials be forwarded from SLD to the Commission.

[6] On December 26, 2001, the Commission released an Order extending the period for filing Requests for Review that were due on or after September 12, 2001 from the current 30 days to 60 days. *See In re Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, FCC 01-376 (rel. Dec. 26, 2001). Thus, although ECOT has been given more time to file its Request for Review, ECOT is nonetheless submitting this appeal within the 30 day period so that Commission consideration of the appeal may be expedited.

Education Act of 1965. That act defines "elementary school" as "a nonprofit institutional day or residential school that provides elementary education, as determined under State law."[7] "Secondary school" is defined as "a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that such term does not include any education beyond grade 12."[8] Second, the school may not operate as a for-profit business. Finally, the school may not have an endowment exceeding $50 million.

ECOT satisfies all three of these criteria. With respect to the first criterion, ECOT is compliant because it is non-profit, as demonstrated in its Articles of Incorporation[9] and by the fact that ECOT is audited by the Auditor of Ohio as a non-profit corporation. ECOT is also "institutional" in the sense that it is an organized program of education. ECOT is a community school offering students the structured environment typical of a classroom setting, with state-certified teachers, rigorous curriculum requirements, and the public education mandate that applies to all Ohio public schools and community schools. The fact that ECOT utilizes distance learning technology to create a virtual classroom environment in order to carry out its chartered mission should not affect its status as an "institution" for purposes of the Act. ECOT also functions as a "day" school because students must

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[7] 20 U.S.C. § 8801(14).

[8] *Id.* § 8801(25).

[9] *See* Exhibit 1.

"attend" required chat room sessions during allotted periods during the day by logging on to the appropriate Intranet Learn Center.

In addition, the ODE has determined that ECOT is permitted to provide "elementary education" and "secondary education" in the State of Ohio. Attached hereto as **Exhibit 7** is a letter from the ODE affirming ECOT's status and voicing ODE's support for ECOT's Form 471 application. ECOT submits that the Commission should give great weight to ODE's endorsement of ECOT, since a school's eligibility under the E-rate program is "determined under State law." Moreover, pursuant to the ECOT/Lucas agreement, ECOT must comply with Ohio school regulations "as if it were a school district,"[10] and ECOT's teachers are considered public employees under Ohio law.[11] These factors, combined with ODE's endorsement of ECOT, indicate that ECOT meets the statutory definition of an elementary and secondary school.

With respect to the remaining two criteria, ECOT is clearly a non-profit corporation, as demonstrated above. Finally, ECOT attests that it does not have an endowment exceeding $50 million. In light of all of this evidence, ECOT should be considered an "eligible entity" for purposes of the Act.

Section 254(h) of the Act places three additional restrictions on schools and libraries who seek E-rate funding. First, telecommunications services and network

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[10] *See* Exhibit 3, § 2.d.

[11] *See* Exhibit 3, § 2.b. Indeed, Section 3314.01 of ORC specifically provides that "[a] community school created under this chapter is a *public school*, independent of any school district, and is part of the state's program of education." Ohio Rev. Code § 3314.01(B) (emphasis added).

capacity provided to schools and libraries under section 254(h) "may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value." Second, section 254(h)(1)(B) requires that schools and libraries make a "bona fide request" for services within the definition of universal service. Finally, any such services requested by schools and libraries must be used for "educational purposes."[12]

ECOT satisfies these remaining criteria. It attests that it will not sell, resell or otherwise transfer the telecommunications services it receives under the E-rate program. In addition, ECOT has submitted to SLD a bona fide request for telecommunications services and in doing so has complied with all SLD filing requirements. ECOT's discount rate is readily discernible, since ECOT can calculate the discount based on the number of its students who would be eligible for the national school lunch program.[13]

Finally, all of the services for which ECOT requested E-rate funding will be used for educational purposes. ECOT has gone to great lengths to prevent abuse of the telecommunications services and Internet access provided to students. ECOT students are permitted access to the Internet from home only for the purpose of logging in to secure, Intranet sites created and maintained by ECOT teachers and other authorized sites. Students are *not* capable of "surfing" the Internet by visiting

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[12] 47 U.S.C. § 254(h)(1)(B), 254(h)(3); *see also Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, para. 552 (1997) ("*Universal Service Order*").

[13] *See* 47 C.F.R. § 54.505(b)(1). In ECOT's Form 471 application, ECOT indicated that the applicable discount rate for Year 5 was 50%.

numerous websites; rather, the equipment provided to students restricts the students to authorized sites. Attached as **Exhibit 4** is the Agreement signed by all students and their guardians which specifically limits the use of the telecommunications facilities. Students that violate these restrictions may have ECOT-provided telecommunications services terminated. In this way, ECOT assures that the equipment and services provided to students may only be used for "educational purposes." In addition, ECOT orders phone lines making every reasonable effort to prevent unauthorized telephone calls. The additional lines placed in students' homes are equipped with call-blocking mechanisms so that long distance, 900/976, and pay-per-use calls are prohibited. Thus, ECOT has taken every reasonable precaution to ensure that the additional lines may only be used for the modem connected to the students' computers. Attached hereto as **Exhibit 8** is a copy of a letter from SBC to ECOT affirming that such mechanisms are in place, and that credits will be issued to ECOT should the mechanisms fail to prevent such unauthorized uses of the telecommunications equipment. The Ameritech use restrictions and sample documents from Sprint, Cincinnati Bell and Alltel indicating that call blocking mechanisms are in place are also contained in **Exhibit 8**. If for any reason the call blocking fails, ECOT immediately requests credits or charge reversals from the carrier so that no E-rate funds are used for non-permitted purposes. Attached as **Exhibit 9** are ECOT's procedures for obtaining credits and verification of credits received from carriers.

B. FCC Regulations.

The Commission has promulgated rules implementing the E-rate program required by the Act. In addition to implementing the statutory provisions discussed above, the Commission requires that: 1) all of the necessary funding in the current funding year has been budgeted by the school; 2) the school has complied with all applicable state and local procurement processes; and 3) the school has a technology plan that has been certified, to the extent that the school is seeking discounts for Internet access and/or internal connections.[14] ECOT stipulates that it has satisfied all of these additional criteria, to the extent that they are applicable. A copy of ECOT's Technology Plan, which has been approved by Ohio SchoolNet, is attached hereto as **Exhibit 10.** The Technology Plan includes a proposed funding year budget (see Appendix C), and ECOT affirms that all necessary funding for Funding Year 4 has been budgeted by ECOT accordingly.[15] Finally, because of ECOT's status as a community school, ECOT is not required to comply with state and local procurement processes.[16] Therefore, ECOT satisfies all additional criteria imposed by the Commission on schools seeking E-rate discounts.

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[14] *Federal-State Joint Board on Universal Service, Petition of the State of Alaska for Waiver for the Utilization of Schools and Libraries Internet Point-of-Presence in Rural Remote Alaska Villages Where No Local Access Exists and Request for Declaratory Ruling*, Order, CC Docket No. 96-45, FCC 01-350, n.6 (rel. Dec. 3, 2001).

[15] An earlier projected budget appears in the ECOT/Lucas agreement; however, that budget is superseded by the budget contained in Appendix C of the Technology Plan.

[16] Chapter 3314 of ORC establishes the legal guidelines and framework by which a community school such as ECOT can be established and operated in Ohio. ORC Section 3314.03(A)(11)(d) contains a list of ORC sections which a community school must follow in order to be in compliance with Chapter 3314. Not included in that list is any reference to ORC Sections 307.86, 3313.37.4, 3313.46 or 3318.10 which set forth the competitive bidding requirements by which a board of (continued...)

C. The SLD Policy Statement.

Pursuant to the Act, the Commission is to establish the rules and procedures for the E-rate program.[17] The Commission designated SLD as the body to implement the Commission's rules and regulations.[18] The SLD has implemented procedures and guidelines for administering the E-rate program pursuant to the FCC's rules. Among these guidelines is a Policy Statement adopted by SLD restricting the use of services received under the E-rate program to "educational purposes" only. The Policy Statement provides:

> The primary purpose of the services for which support is sought must be the delivery of services into classrooms or other places of instruction at schools and libraries that meet the statutory definition of an eligible institution. . . . Universal service support will be limited to services delivered to the onsite educational facility or facilities. Services at a personal residence or at locations that do not host places of instruction or are not accessible to library patrons, with the exception of a centralized district office or similar facility, are not eligible for support.[19]

The Policy Statement adopted by SLD is inconsistent with both the Act and the Commission's regulations, to the extent that the SLD would deny funding for services provided by an eligible entity at a personal residence. There is no such prohibition against discounts for services from personal residences in the Act, the

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education of a school district must comply. Chapter 3314 contains no reference to any sections relating to competitive bidding.

[17] 47 U.S.C. § 254(a), (e), (h).

[18] *See Changes to the to the Board of Directors of the National Exchange Carrier Association, Inc. Federal-State Joint Board on Universal Service*, Report and Order and Second Order on Reconsideration, CC Docket Nos. 97-21, 96-45, FCC 97-253, 12 FCC Rcd 18,400, para. 26 (1997); *see also* 47 C.F.R. § 54.701.

Universal Service Order, or in any subsequent Commission decision. Moreover, the Policy Statement does not acknowledge that a personal residence could be a location that simultaneously serves as a "place of instruction." In ECOT's case, the students' personal residences become the "classrooms" during school hours and thus become places of instruction.

The legislative history of the Act makes it clear that the provisions of section 254(h) of the Act are intended to "help open new worlds of knowledge, learning and education to all Americans—rich and poor, rural and urban. [The provisions] are intended, for example, to provide the ability to browse library collections, review the collections of museums, or find new information on the treatment of illness, to Americans everywhere via schools and libraries. This universal access will assure that no one is barred from benefiting from the power of the Information Age."[20] ECOT provides the State of Ohio-approved curriculum to many students who, because of poverty, location, or mental or physical disability, find it difficult to attend traditional classrooms and are best served working at home under certified teacher guidance. Thus, ECOT serves an important role in accommodating those disadvantaged students who are at risk of being caught on the wrong side of the "digital divide."

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[19] Universal Service Administrative Company, Schools and Libraries Division, "Program Description," at 11, *available at* http://www.sl.universalservice.org/reference/.

[20] H.R. Conf. Rep. 104-458, at 132 (1996), *reprinted in* 1996 U.S.C.C.A.N. 144; *see also Universal Service Order*, para. 426.

ECOT assumes that the rationale behind the SLD Policy Statement is the prevention of fraud and abuse of E-rate funds through personal use of telecommunications services and Internet access at personal residences. Certainly ECOT is aware of the potential for such abuse, and has undertaken every reasonable effort to minimize the risk of fraud and abuse, through the use of telephone equipment that restricts use of the residential phone line to modem use for accessing ECOT's secure Intranet site, and through restrictions on World Wide Web access so that only websites with an educational purpose may be accessed. ECOT submits that an outright ban on services to personal residences is an overly broad policy that disadvantages students who need access at their personal residence, including disabled students, expelled students, and rural students. Accordingly, the Commission should determine that ECOT's efforts to restrict access to services exclusively to educational purposes are sufficient to overcome the SLD's policy prohibiting E-rate services at personal residences.[21]

[21] In the event that the Commission upholds the SLD Policy Statement in this regard, ECOT requests a waiver of the Commission's rules and SLD's policies. A waiver from the Commission is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Here, it would be inconsistent with the public interest to deny E-rate funding for ECOT merely because its student population consists of students who, for various reasons, cannot attend traditional classrooms but must instead attend classes from home. A rule waiver is justified, to the extent one is necessary, because ECOT's students should not be disadvantaged in comparison with their peers attending traditional classrooms.

III. Conclusion.

For the reasons set forth above, ECOT respectfully requests that the Commission determine that ECOT is an eligible entity under the E-rate program, and direct the SLD to process ECOT's Year 4 funding application expeditiously.

Respectfully submitted,

ELECTRONIC CLASSROOM OF TOMORROW

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David A. O'Connor
HOLLAND & KNIGHT LLP
2099 Pennsylvania Ave., N.W., #100
Washington, DC 20006
(202) 955-3000

Its Attorneys

Dated: January 3, 2001

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To: The Common Carrier Bureau

Re: Electronic Classroom of Tomorrow ("ECOT")
Billed Entity Number 221005
Form 471 Number 226520
Funding Year 4, 2001-20002

Supporting Declaration

I, Scott Kern, hereby swear under penalty of perjury of the laws of the United States that I have reviewed the foregoing Request for Review, and that all statements of fact contained within the Request for Review, except those for which official notice may be taken, are true and correct to the best of my personal knowledge.

Executed this 31st day of December, 2001.

Scott Kern
Chief Operations Officer
Electronic Classroom of Tomorrow

CERTIFICATE OF SERVICE

I, Naja Gamble-Wheeler, an employee of Holland & Knight LLP, hereby certify that on January 3, 2002, I caused copies of the foregoing Request for Review to be delivered via first-class mail, postage prepaid to the following:

Universal Service Administrative Company
Schools and Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

Naja Gamble-Wheeler

Naja Gamble-Wheeler

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January 3, 2002

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JAN 03 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Magalie Roman Salas, Esq.
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Federal Communications Commission
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Washington, DC 20002

Re: Electronic Classroom of Tomorrow
Request for Review
CC Docket Nos. 96-45, 97-21, File No. SLD-_____
Billed Entity No. 221005
Form 471 Application No. 226520
Funding Year 4, 2001-2002

Dear Ms. Salas:

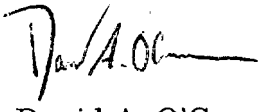
Transmitted herewith, on behalf of Electronic Classroom of Tomorrow ("ECOT"), are an original and four (4) copies of its Request for Review of the decision of the Schools and Libraries Division ("SLD") Administrator in the above-captioned proceeding. For the reasons set forth in the Request for Review, ECOT requests that the Commission determine that ECOT is an eligible entity under the E-rate program and direct SLD to process ECOT's Year 4 funding application.

An extra copy of this filing is enclosed. Please date-stamp the extra copy and return it to the courier for return to me.

Should you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

HOLLAND & KNIGHT LLP



David A. O'Connor
Counsel for Electronic Classroom of Tomorrow

Enclosure

cc: Universal Service Administrative Company
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