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March 23, 2006

Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Request for Waiver – CC Docket Nos. 96-45 and 02-6

FCDL Date: January 25, 2006

Form 471 Number: 449052

Funding Year: 2005 (7/1/2005 – 6/30/2006)

Billed Entity Name: KANED PROJECT

BEN: 226927

FRNs: 1234887, 1308146, 1308148, 1308150, 1308151, 1308153, 1308155,
1308156, 1308158, 1308160, 1308161, 1308162, 1308164, 1308166,
1311483

Service Providers: SBC Advanced Solutions, Inc.; SBC Long Distance; SBC
Capital Services, Inc.; Cox Kansas Telcom, LLC; S&A Telephone
Company, Inc.; S&T Telephone Cooperative Association, Inc.; Craw-
Kan Telephone Cooperative, Inc.; The Pioneer Telephone Association,
Inc.; Rural Telephone Service Co., Inc.; Blue Valley Tele-
communications, Inc.; Haviland Telephone Company, Inc.; Sprint
Communications Co., L.P.; The Golden Belt Telephone Association,
Inc.; Cox Kansas Telcom, LLC; TelCove Investment, LLC

SPINs: 143022137, 143008823, 143008661, 143006715, 143002308,
143002307, 143002304, 143002303, 143002306, 143002286,
143002293, 143005695, 143002291, 143006715, 143022855

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Kan-ed is requesting a waiver of the general requirement that consortia have Letters of Agency (LOAs) for more than 70 percent of their members listed in Block 4 of the Form 471. We are also requesting a waiver of the requirement that discounted services only be provided to entities listed in Block 4 of the Form 471 for Funding Year 2006. The Funding Requests listed above were denied by USAC for the following reason: “. . . because a substantial number of the Letters of Agency or other documentation authorizing the filing of the Form 471 were not signed before the 471 Certification Postmark Date or were not provided.”

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Summary

Kan-ed is a statewide consortium and is authorized by state statute to represent its members. Kan-ed is a young and growing network that is only providing the backbone and not the individual connections to each school district, school, and library. Since we provide only the backbone, Kan-ed's network costs are largely independent of the specific number of entities participating. This broadband, low latency network is primarily designed to accommodate the needs of video for distance learning capabilities. New connections are being made each year.

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It is precisely the growing nature of the network that makes the LOA requirement a constraint on the network and its use. We listed in the Block 4 of our Form 471 those entities currently participating in the network and those we anticipated might join. That way they could join after the filing of the Form 471 and we would be able to serve them without risk of a later audit finding that we were serving entities not listed on the Form 471. If LOAs are required, school districts that acquire the necessary video equipment during the funding year but that did not anticipate they would and did not sign an LOA before the 471 filing are precluded from joining until the next funding year. That deprives them of valuable service that can improve educational opportunities for their students and improve the benefit-cost ratio of the network.

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We respectfully ask that the Commission grant a waiver of the requirement for Funding Year 2005 for Kan-ed so that funds will not be denied to the State of Kansas for providing critical connectivity to schools and libraries throughout the State. We also request a rule change or a waiver for Funding Year 2006 of the requirement that discounted services only be provided to entities listed in Block 4 of the Form 471. This is important because we limited the entities in Block 4 for FY 2006 to those for which we had signed LOAs in order to satisfy the LOA requirement. But this will limit our ability to serve new entities that did not sign an LOA unless a waiver is granted.

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What is Kan-ed?

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We think it is important for the Commission first to understand the nature Kan-ed and of the services it provides.

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The Kan-ed Act, which was passed by the Kansas Legislature in 2001, gave authority to the Kansas Board of Regents to create the Kan-ed network, a broadband technology-based network to which all public and regulated private schools and all public libraries will eventually be able to connect for broadband Internet and intranet access for distance learning.¹

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The statute created a private-public partnership whereby over time all schools and libraries could become members and apply for assistance to gain connectivity to the Kan-ed network working with their local providers. The Kan-ed network does not provide the actual connection to the school or library – it provides the network backbone, and the schools and libraries rely on local Internet service providers to provide the connection to the Kan-ed network. It was designed to work with the E-rate program and provide lower cost broadband connections. Kan-ed also provides subsidies to its members to defray the cost of the local connection to the network. Once connected, the schools and libraries can use the local connection and the Kan-ed backbone to participate in distance learning and to access Internet2.

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Schools and libraries that wish to employ the network’s connectivity apply to be members of the Kan-ed network. Connectivity to the network is progressing incrementally across the State. Members who are not connected to the network may still receive assistance for connecting to the Internet.

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One important consequence of the nature of the Kan-ed network – that it is backbone and not the local connection – is that the costs of the network do not vary significantly with the number of members served. The backbone must be there to serve the members that participate whether there are 30 or 300. Another important consideration here is that there is no chance that the service provided by the Kan-ed network will be duplicated by services Kan-ed members procure on their own – those members must procure Internet access on their own to participate in the Kan-ed network, but the only way to participate in the state-wide distance learning opportunities Kan-ed provides is to join the network.

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Were the funding requests Kan-ed submitted justified?

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We understand that one objective of the LOA requirement is to ensure that consortium um members know that discounts are being requested for services that will

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¹ The statute also authorizes post-secondary schools and licensed hospitals to connect to the network, and, in Funding Year 2005, one hospital and 23 higher education entities are among the total of 183 entities participating in the network. We should have, but did not, allocate the costs for serving these ineligible entities out of our funding requests. Therefore, if our waiver request is granted, the funding requests should be reduced by 13.1% to account for these ineligible entities.

be provided to them so that they will be prepared to make effective use of the services. In many cases, if the members are not aware, the funding requests may be larger than they should be. For consortia that provide the connections to the schools and libraries, that would be the case. If funds are requested for connections to ten schools but only five will make effective use of the connections, half the amount requested may be wasted.

In the case of a backbone network, however, that is not the case. The cost generally does not vary by the number of entities that use the network. If we had listed only the entities for which we had documentation of their intent to use the network, we would not have reduced the funding requests since those were the amounts necessary to provide the network no matter the number of users.

In the case of a backbone network such as Kan-ed provides, the LOA requirement acts as a constraint on the use of the network. We listed in the Block 4 of our Form 471 all the entities that were using the network at the time of the 471 filing as well as eligible entities that we anticipated might join the network before the end of Funding Year 2005. We want to be able to permit entities to join the network as they become ready to do so and we were concerned that, if an entity asked to join the network after the filing of the 471 and they had not been included in the Block 4, our choice would be to deny them or to risk a finding in audit and a potential recovery of funds for providing service to an entity not listed in the Block 4.

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Is Kan-ed authorized to request services on their behalf?

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The Kan-ed Act² (1) authorized Kan-ed to contract for the creation, operation and maintenance of a state-wide broadband network to which schools, libraries, and hospitals may connect, (2) directed Kan-ed to adopt standards for determining whether the network access is available to each school, library or hospital desiring such access, (3) established a standard that 75% of all schools and libraries that have applied to participate in the network have access by July 1, 2004, and (4) provided “all other powers necessary to achieve the purposes of this act, including but not limited to the power to receive any appropriations, donations, grants, bequests and devises, conditional and otherwise, of money, property, services or other things of value for the purposes of this act.”

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Clearly, Kan-ed is authorized by Kansas State statute to request services on behalf of schools and libraries in the State of Kansas for the broadband network.

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Impact of Denial of Funding

SLD denied \$2 million in discounts to be expended with 15 telecommunications providers throughout the State of Kansas. For the 2005-06 school year, the distance

² Kansas Statutes Annotated (K.S.A.) 75-7221 through 75-7227.

learning capability supported by the Kan-ed network permitted over 2,833 K-12 students to enroll in 123 sections of high school courses and 59 college credit courses. These 123 high school sections represent 74 course offerings, and the 66 college sections represent 59 course offerings. Information as of March 10, 2006, indicates there are 105 to 117 classes held per day over the Kan-ed network.

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The State has been paying the 15 telecommunications providers for their services in support of the network during the current funding year, and the network will continue to operate even if these funds are not approved. Denial of the funding will mean that Kan-ed will have less money to support schools and libraries that use the network, in the years ahead. Fewer new connections will be made in a time when the demand for video distance learning is clearly on the rise. For example, Kan-ed assists the schools and libraries in the purchase of video equipment needed to optimize use of the network, a contribution that would be adversely affected by denial of E-rate funds for FY 2005.

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Request

We ask the Commission to grant Kan-ed a waiver of the LOA requirement for Funding Year 2005.

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Kan-ed ensured that it has LOAs for all of its members listed in the Block 4 worksheet in its Funding Year 2006 Form 471, in order to satisfy the LOA requirement for the upcoming funding year. However, as discussed above, we are concerned about our ability to accommodate new entities that will want to join the network over the next 15 months but had not signed LOAs by February 16, 2006. Therefore, we ask the Commission to modify the LOA requirements so that they do not apply to consortia like Kan-ed where the cost of the services is largely independent of the number of entities served or to grant Kan-ed a waiver for Funding Year 2006 so that we would be able to accommodate new entities that want to join the network between now and the end of the Funding Year 2006 but that did not sign an LOA by February 16 and, therefore, are not listed in our Block 4.

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Such waivers would be consistent with the Commission's thinking in the recent decision with respect to an appeal from the State of Wyoming Department of Administration and Information:

Furthermore, we find that granting a waiver here is consistent with the Commission's goal of minimizing universal service costs and will serve the public interest. In many instances, third parties negotiating master contracts may be able to secure lower rates than the eligible entity negotiating on its own behalf. . . . Without this waiver, schools using the State of Wyoming state master contracts may lose funding for essential

services or have their services disrupted. Such a result is inconsistent with the public interest.³

| In the ~~Kan-ed~~ case, the issue is consortium-acquired services, not a State master contract; but the benefits (lower rates), the adverse consequence (possible disruption of critical services), and the scope (statewide) are the same.

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Sincerely,

(submitted electronically via ECFS)

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³ In the Matter of Requests for Review of the Decision of the Universal Service Administrator by State of Wyoming Department of Administration and Information, Order DA 06-484, Released February 28, 2006, para. 8.