

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

In the Matter of	)	
	)	
	)	
Transforming the 2.5 GHz Band	)	WT Docket No. 18-120
	)	
	)	
	)	

**REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION AND  
CLARIFICATION OF THE SCHOOLS, HEALTH & LIBRARIES  
BROADBAND (SHLB) COALITION, CONSORTIUM FOR SCHOOL  
NETWORKING (CoSN), STATE EDUCATIONAL TECHNOLOGY  
DIRECTORS ASSOCIATION (SETDA), AMERICAN LIBRARY  
ASSOCIATION, NATIONAL DIGITAL INCLUSION ALLIANCE (NDIA),  
NEBRASKA DEPARTMENT OF EDUCATION, UTAH EDUCATION AND  
TELEHEALTH NETWORK, COUNCIL OF CHIEF STATE SCHOOL  
OFFICERS, A BETTER WIRELESS, AND ACCESS HUMBOLDT**

John Windhausen, Jr.  
Executive Director  
Schools, Health & Libraries Broadband  
(SHLB) Coalition  
1250 Connecticut Ave. NW, Suite 700  
Washington, D.C. 20036

Keith Krueger  
Chief Executive Officer  
Consortium for School Networking  
1325 G St. NW, Suite 420  
Washington, D.C. 20005

Candice Dodson  
State Educational Technology Directors  
Association (SETDA)  
P.O. Box 10  
Glen Burnie, MD 21060

Angela Siefer  
Executive Director  
National Digital Inclusion Alliance (NDIA)  
3000 E Main St. #50  
Columbus, OH 43209

Larra Clark  
Deputy Director  
American Library Association Public  
Policy & Advocacy Office  
1615 New Hampshire Ave. NW  
Washington, D.C. 20009

Matthew L. Blomstedt, Ph.D.  
Commissioner of Education  
Nebraska Department of Education  
301 Centennial Mall South  
P.O. Box 94987  
Lincoln, NE 68509

Carissa Moffat Miller  
Executive Director  
Council of Chief State School Officers  
One Massachusetts Ave. NW, Suite 700  
Washington, D.C. 20001

Mitchell Koep  
CEO and Founder  
A Better Wireless  
25215 480 Ave  
Henning, MN 56551

Ray Timothy  
CEO and Executive Director  
Utah Education and Telehealth Network  
101 Wasatch Drive  
Salt Lake City, UT 84117

Sean Taketa McLaughlin  
Executive Director  
Access Humboldt  
P.O. Box 157  
Eureka, CA 95502

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## INTRODUCTION AND SUMMARY

Pursuant to Section 405 of the Communications Act of 1934 (“Act”) and Sections 1.4(h) and 1.429(g) of the Federal Communications Commission’s (“FCC” or “Commission”) rules,<sup>1</sup> the Schools, Health & Libraries Broadband (“SHLB”) Coalition, Consortium for School Networking (“CoSN”), State Educational Technology Directors Association (“SETDA”), American Library Association (“ALA”), National Digital Inclusion Alliance (“NDIA”), the Nebraska Department of Education, Utah Education and Telehealth Network (“UETN”), Council of Chief State School Officers (“CCSSO”), A Better Wireless, and Access Humboldt (collectively, “Educational Petitioners”) reply to the oppositions of the Wireless Communications Association International (“WCAI”) and Wireless Internet Service Providers Association (“WISPA”) (collectively, “Opponents”)<sup>2</sup> to their Petition<sup>3</sup> to reconsider certain aspects of the Commission’s recently published order regarding Educational Broadband Service (“EBS”) in the 2.5 GHz band.<sup>4</sup>

The Opponents fail to grapple with the fundamental problems in the EBS Order raised by the Petition. In particular, like the EBS Order itself, they offer no response to Educational Petitioners’ argument that commercial carriers lack sufficient incentive to deploy 2.5 GHz

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<sup>1</sup> 47 U.S.C. § 405; 47 C.F.R. §§ 1.4, 1.429.

<sup>2</sup> Opposition of WCAI, WT Docket No. 18-120 (filed Jan. 2, 2020) (“WCAI Opposition”); Opposition to Petition for Reconsideration and Clarification of WISPA, WT Docket No. 18-120 (filed Jan. 2, 2020) (“WISPA Opposition”). Unless otherwise specified, all FCC citations are to this docket.

<sup>3</sup> Petition for Reconsideration and Clarification of the SHLB Coalition, CoSN, SETDA, ALA, NDIA, Neb. Dep’t of Educ., UETN, CCSSO, A Better Wireless, and Access Humboldt (filed Nov. 25, 2019) (“Petition”).

<sup>4</sup> See *Transforming the 2.5 GHz Band*, Report & Order, 34 FCC Rcd. 5446, ¶¶ 3, 13 (2019) (“EBS Order”).

spectrum to close the digital divide and homework gap. Instead, they parrot the Order’s flawed logic and unsupported findings to conclude that there is no longer any need—or demand—for EBS. But the record of this proceeding demonstrates otherwise. Educational eligibility requirements ensure spectrum can remain in the hands of anchor institutions uniquely positioned to provide benefits for *both* education *and* deployment—particularly in rural, hard-to-reach areas. And absent an educational priority window, educators who have endured a 20-year FCC freeze on EBS licensing will be effectively foreclosed from any opportunity to access spectrum to connect their schools and communities. Educational Petitioners thus urge the Commission reconsider these decisions and preserve an educational EBS.

**I. The Continuing Need for Educational Eligibility Requirements.**

To begin with, Opponents reiterate the false narrative that the EBS band “has been underutilized for decades” because of the now-repealed educational rules.<sup>5</sup> In truth, the current state of the band results from the FCC’s 20-year EBS license freeze. No one can utilize unassigned spectrum.

Where assigned, EBS spectrum has been deployed. WCAI falsely states that “only with open eligibility will 2.5 GHz spectrum truly be part of the 5G mid-band solution.”<sup>6</sup> In fact, what WCAI calls a “restrictive licensing regime that imposes unnecessary ... costs” on operators,<sup>7</sup> its own member Sprint calls a “success story.”<sup>8</sup> Through self-professed “win-win partnerships” with EBS licensees, Sprint relies on EBS as “a critical component of its near-nationwide 4G

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<sup>5</sup> WISPA Opposition at 2, 4; *see also* WCAI Opposition at 3.

<sup>6</sup> WCAI Opposition at 6.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> Reply Comments of Sprint Corp. at 1 (filed Sept. 7, 2018) (“Sprint Reply Comments”).

network” and “the linchpin to its launch of 5G” services in multiple cities.<sup>9</sup> WISPA claims educational eligibility restrictions are an “anchor on commercial use.”<sup>10</sup> Yet 57 WISPs told the FCC “the opposite is true” and urged the FCC to retain educational eligibility that “in no way prevents commercial operators from gaining access to this band.”<sup>11</sup> Proving the point, WISPs like BeamSpeed, LLC, Evertek, Inc., Redzone Wireless, Rise Broadband, SiouxLan Communications, and Watch Communications have “invested many millions of dollars” in networks that “utilize leased [EBS] spectrum to provide high-quality, competitive broadband services to consumers, often in more rural areas of the United States where broadband options are limited.”<sup>12</sup> Indeed, the commercial use of leased EBS spectrum has created a robust 2.5 GHz ecosystem with “lower-cost, less complex” LTE equipment—making it more feasible than ever before for educational entities to self-deploy.<sup>13</sup> In short, Opponents—like the EBS Order—offer no evidence that the eligibility requirement hinders deployment.

Opponents also wrongly equate the prevalence of leases to a lack of educational benefits from EBS. In fact, these leases have allowed thousands of schools, libraries, and nonprofits—and their hundreds of thousands of patrons—to benefit from low-cost EBS internet access,

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<sup>9</sup> *Id.* at 1-2. Sprint makes clear that “[t]his deployment would not be possible without the secondary market leasing arrangements and mutually beneficial partnerships that have developed over many years between Sprint and the EBS community.” *Id.* Far from underutilized, over 50% of Sprint’s data volume in the U.S. rides on the 2.5 GHz band. *See* <https://www.tutela.com/blog/spectrum-analysis-merging-t-mobile-and-sprint-will-create-a-formidable-competitor>. Sprint’s 5G service is delivered via its 2.5 GHz spectrum and covers 16 million people across nine cities. *See* <https://newsroom.sprint.com/sprint-expands-true-mobile-5g-to-cover-approximately-16-million-people-within-nine-metropolitan-areas.htm>.

<sup>10</sup> WISPA Opposition at 4.

<sup>11</sup> Letter from EBPARG to Marlene Dortch, at 1 (filed Apr. 30, 2019).

<sup>12</sup> Letter from BeamSpeed, LLC, Evertek, Inc., Redzone Wireless, SiouxLan Commc’ns, Watch Commc’ns, and Rise Broadband to Chairman Ajit Pai, at 1 (filed Apr. 23, 2019).

<sup>13</sup> Comments of Northern Michigan University at 3 (filed Aug. 8, 2018) (“NMU Comments”).

without which they would need to either curtail critical services or forgo connectivity altogether.<sup>14</sup> Indeed, 41 schools, 27 libraries, 79 nonprofits and membership associations, and over 60 additional individuals from across the country told the FCC how they or their members rely on broadband service from an EBS licensee or to otherwise support an educational EBS.

Such dual educational and commercial benefits are precisely what the FCC envisioned in the 2004 Order cited by WISPA.<sup>15</sup> In that Order, just as the Commission enhanced flexibility and restructured the band for broadband, it also *expressly rejected* calls to eliminate educational eligibility, finding the requirement “in the public interest” because “leasing arrangements [were] sufficiently flexible” to achieve its complementary goals: “promoting education” and “moving spectrum to its highest-valued use.”<sup>16</sup> Far from a “culmination” of Commission policy,<sup>17</sup> the EBS Order is a repudiation of that balanced, public-interest approach.

WCAI reiterates the Commission’s assertion that removing this requirement simply provides EBS licensees with additional flexibility to sell to commercial operators.<sup>18</sup> Yet current EBS licensees—the very entities that would supposedly stand to benefit from this “flexibility”—

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<sup>14</sup> See Reply Comments of NACEPF and Mobile Beacon at 4-7 (filed Sept. 7, 2018) (“NACEPF and Mobile Beacon Reply Comments”) (collecting record evidence of the current and potential uses of EBS for education). Ignoring this record evidence and citing none of their own, Opponents (and the EBS Order) claim that EBS licensees’ educational use is “indistinguishable” from commercial use. WISPA Opposition at 3; WCAI Opposition at 4. In fact, the FCC lacks any comprehensive view of how EBS licenses are being used because it has collected no information from the vast majority of EBS licenses since the last substantial service filing nearly a decade ago.

<sup>15</sup> WISPA Opposition at 3.

<sup>16</sup> *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules*, Report & Order, 19 FCC Rcd. 14165, 14225-26 (2004).

<sup>17</sup> WISPA Opposition at 3.

<sup>18</sup> WCAI Opposition at 4.

in near unanimity, resoundingly voiced their opposition to removing the eligibility requirements and allowing the transfer of licenses to commercial entities.<sup>19</sup> They recognized that the resultant erosion of the educational EBS user base will isolate the committed educators and educational providers that remain. EBS licensees who wish to retain ownership and continue to lease their spectrum will face a hostile lease environment—whereby commercial entities will have the ability and incentive to offer favorable *transfer* terms and highly unfavorable (or no) *lease* terms. In other words, the ability to transfer EBS licenses will likely come at the expense of licensees’ ability to lease the spectrum, which many licensees rely on to achieve their educational missions. Far from empowering licensees with greater flexibility, the elimination of educational eligibility will effectively end an educational EBS.

Opponents also mischaracterize the Petition with respect to E-Rate. Educational Petitioners, of course, believe that E-Rate and other universal service programs are part of the solution to connecting students and communities. But Opponents do not—and cannot—dispute that these programs cannot do it all: E-Rate funds cannot be used to connect students and

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<sup>19</sup> See comments of: AASA, SSA, & AESA at 5; CoSN at 5-6; Digital Wish at 1, 3; EBPARC at 9; Happy House Daycare, Inc. at 2 (filed July 24, 2018) (supporting the 2014 Consensus Proposal, which retained existing eligibility requirements); HITN at 2, 5–7; NDE, NET, & OCIO at 10-11; NEBSA & CTN at 16-18; N.C. Dep’t of Info. Tech. at 5-6; N. Ariz. Univ. Found., Inc. at 8-9; NMU at 9-10; PCs for People at 4; Rural EBS Coalition at 7; SHLB at 9; Select Spectrum at 6; S. Fla. Licensees at 5 & n.10; SETDA at 7; TechSoup Global at 3; UETN at 5-6; Voqal at 8–15; *see also* Chickasaw Nation at 8 (non-licensee seeking access to EBS spectrum); Amelia Educ. Found. at 2 (non-licensee supporting the 2014 Consensus Proposal, which retained existing eligibility requirements); Hackett Sch. Dist. at 2 (same); King George Cty. at 1 (filed July 24, 2018) (same); Lawrence Cty. Sch. Sys. at 2 (same); Torstrick Ministries at 2 (same); *cf.* Cal. K-12 High Speed Network at 23 (recommending that “white space be made available to non-EBS eligible entities, *only* when all options have been afforded to EBS eligible entities”) (emphasis added); NDIA at 3 (asking that existing EBS licensees have “unequivocal priority over for-profit entities in the allocation of underutilized EBS spectrum”). Unless otherwise noted, all comments in this footnote were filed August 8, 2018.



learners at home; and high-cost programs are not sufficient, on their own, to meet students' broadband needs at home.<sup>20</sup>

Finally, Opponents offer no new responses to the Petition's identification of significant multiple factual errors in the EBS Order about the SHLB study's assumptions and methodology.<sup>21</sup> WCAI simply reiterates criticisms in the EBS Order regarding complementary spectrum use and lowered costs. But it fails to respond to the Petition's demonstration that these very criticisms misunderstand the study. Thus, WCAI simply repeats the EBS Order's errors, rather than addressing the arguments in the Petition.

WISPA claims that the SHLB study ignored WISPs' incentives to access 2.5 GHz spectrum to deploy broadband in rural areas. Not so. The study contemplates that educational EBS licensees in rural areas could *either* deploy themselves *or* in partnership with carriers, like WISPs, who as discussed above invested in such partnerships with great success. Although WISPA claims the Petition's comparison between the EBS and BRS auctions is "false," the essentially non-competitive 2009 BRS auction remains the closest analog to a potential auction of EBS spectrum. It is undeniable that the BRS auction involved spectrum with identical physical characteristics to EBS and sought, as with a potential EBS spectrum auction, to sell "overlay" spectrum encumbered by extensive incumbent use, with the extremely predictable result that these encumbrances greatly suppressed bidding activity by all except the incumbent user. WISPA asserts that WISPs intend to bid in a potential future 2.5 GHz auction. This is

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<sup>20</sup> Moreover, the recently released draft RDOF order suggests that recipients of RDOF subsidies will not be required to serve anchor institutions. *See Rural Digital Opportunity Fund, Draft Report & Order, FCC-CIRC2001-01, WC Docket Nos. 19-126 & 10-90 (rel. Jan. 9, 2020).*

<sup>21</sup> *See* Petition at 7-13.

surely true. But they did so in the BRS auction as well.<sup>22</sup> Moreover, WISPA claims that the comparison is inapposite because of the growth in demand for spectrum, but ignores the fact that SHLB’s study accounts for the growth in demand for wireless spectrum since 2009 by assuming that this spectrum has tripled in value since the BRS auction was conducted. Even with a larger multiplier, these adjusted auction returns would remain paltry compared to other successful spectrum auctions. In short, there remains no basis for completely discounting the one piece of economic evidence in the record.

## **II. The Continuing Need for an Educational Priority Window.**

Opponents’ arguments are no less persuasive when it comes to the flaws in the EBS Order’s decision not to hold an educational priority window prior to auctioning available EBS spectrum. To begin with, both WISPA and WCAI claim that there is no demand among educators to use this spectrum. But, even beyond the voluminous record refuting this,<sup>23</sup> Educational Petitioners themselves represent two state Departments of Education as well as the major associations for education technology leaders and their schools and libraries across the country—all of whom stand ready to put 2.5 GHz spectrum to use to promote education and learning and connect students and their communities. Likewise, the U.S. Department of Education voiced strong support for an educational EBS to “ensure that the spectrum will be developed while prioritizing the needs of the students, families, and the local community.”<sup>24</sup>

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<sup>22</sup> See *Auction of Broadband Radio Service Licenses Closes; Winning Bidders Announced for Auction 86*, Public Notice, 24 FCC Rcd. 13572, Attach. A (2009).

<sup>23</sup> See NACEPF and Mobile Beacon Reply Comments at 4-11 (collecting comments that document educators’ widespread use of—and demand for—EBS spectrum).

<sup>24</sup> Letter from Jim Blew, U.S. Dep’t of Educ., to Marlene Dortch, at 4 (filed June 7, 2019).

Nor do Educational Petitioners, as WISPA claims,<sup>25</sup> ignore the fact that educational entities applying for spectrum through the window could partner with WISPs to connect rural communities. As discussed above, that has been one of the most successful ways that EBS licensees have used their licenses to obtain both education benefits and commercial deployment.

The EBS Order’s failure to address the proposal to resolve mutual exclusivity through a settlement window is a material omission. While WCAI is correct that the FCC need not address every comment in the record,<sup>26</sup> the D.C. Circuit has explained that while an “agency is not obliged to respond to every comment,” it must address “those that can be thought to challenge a fundamental premise.”<sup>27</sup> The Commission’s assertion that no viable options exist to resolve mutual exclusivity between competing educational applicants is clearly such a premise.

Moreover, “[a]n agency must ... demonstrate the rationality of its decisionmaking process by responding to those comments that are relevant *and significant*.”<sup>28</sup> Here, not only did multiple parties raise the possibility of a settlement window as a mechanism to resolve mutual exclusivity between potential educational applicants, the *Commission itself* did so in its Notice of Proposed Rulemaking (“NPRM”).<sup>29</sup> Moreover, the Wireless Bureau’s recently released Rural Tribal Priority Window procedures *expressly provide* for just such a settlement period to resolve any mutually exclusive applications.<sup>30</sup> In the EBS Order, however, the Commission declined to

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<sup>25</sup> See WISPA Opposition at 7.

<sup>26</sup> WCAI Opposition at 10.

<sup>27</sup> *MCI WorldCom, Inc. v. FCC*, 209 F.3d 760, 765 (D.C. Cir. 2000).

<sup>28</sup> *Id.* (emphasis in original) (quoting *Grand Canyon Air Tour Coalition v. FAA*, 154 F.3d 455, 468 (D.C. Cir. 1998)).

<sup>29</sup> *Transforming the 2.5 GHz Band*, NPRM, 33 FCC Rcd. 4687, ¶ 46 (2018).

<sup>30</sup> *Wireless Telecommc’ns Bureau Announces Procedures for 2.5 GHz Rural Tribal Priority Window*, Public Notice, DA No. 20-18, ¶ 26 (rel. Jan. 6, 2020).

adopt the educational priority window because of concerns that educational entities would submit mutually exclusive applications—without even addressing its own proposal, much less explaining its reasons for apparently rejecting it. In so doing, the agency failed to articulate a satisfactory explanation for its decision and raised significant questions about its decision-making process.

WCAI claims that the Commission was right to ignore the proposal for a *targeted* rural educational window because it was filed after the draft Order was released and because “[n]o commenter had an opportunity to respond.”<sup>31</sup> That’s incorrect. Parties regularly continue to make proposals following the release of a draft Order and did so here on multiple issues, including the size of the channels subject to the auction.<sup>32</sup> Here, the NPRM in this proceeding proposed an educational priority window and parties definitively learned that the Commission did not intend to adopt that proposal only upon release of the draft Order.<sup>33</sup> The FCC’s rules plainly allow parties to respond to filings made on the day of the Commission’s Sunshine Notice.<sup>34</sup> In all events, the Commission plainly had time to consider the proposal, which specifically addressed the draft EBS Order’s reasoning for reversing course. The FCC’s failure to address the proposal at all is a material omission warranting reconsideration.

WISPA opposes Educational Petitioners’ alternative proposal to limit the educational window to the 16.5 MHz of spectrum that covers Channels G1-G3.<sup>35</sup> While WISPA questions

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<sup>31</sup> WCAI Opposition at 12.

<sup>32</sup> *See, e.g.*, Letter from Steve Coran, Couns. to WISPA, to Marlene Dortch (filed June 28, 2019).

<sup>33</sup> EBS Order ¶ 66.

<sup>34</sup> 47 C.F.R. § 1.1203(c).

<sup>35</sup> WISPA Opposition at 8.

whether 16.5 MHz of spectrum is adequate and the ability of educational licensees to deploy “quickly,” similar entities have deployed fixed wireless 2.5 GHz spectrum using similarly-sized channels to connect long unserved communities in a matter of weeks.<sup>36</sup> In all events, Educational Petitioners would expect all new EBS licensees to be subject to build-out requirements—whether licenses are acquired through application windows or an auction.

We also ask that the Commission clarify its plans for any 2.5 GHz spectrum that is not licensed during the Rural Tribal Priority Window and not sold at auction. Given the high degree of interest among educators to acquire this spectrum for educational purposes, the Commission should clarify when educators will be able to obtain this spectrum for education. Although the record makes clear that the most rational policy would be to retain educational eligibility rules or, failing that, to open a rural educators’ window *before* any auction is conducted, an opportunity to acquire this spectrum post-auction would help to reduce the risk that educators are locked out of this band entirely moving forward.

### **III. Conclusion.**

Opponents characterize the Petition as taking issue only with “a few discrete findings of fact” failing to rise to the level of material errors or omissions warranting reconsideration.<sup>37</sup> This could only mean that Opponents have misunderstood the Petition. As set forth above, the Petition reveals that the EBS Order is premised upon several material factual errors. Opponents have offered no meaningful responses to these problems with the EBS Order. Accordingly, the Commission should reconsider the EBS Order decisions and preserve an educational EBS.

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<sup>36</sup> See, e.g., NMU Comments at 8.

<sup>37</sup> WISPA Opposition at 4. See also WCAI Opposition at 2.

Respectfully submitted,

/s/ John Windhausen, Jr.

John Windhausen, Jr.  
Executive Director  
Schools, Health & Libraries Broadband  
Coalition  
1250 Connecticut Ave. NW, Suite 700  
Washington, D.C. 20036

/s/ Candice Dodson

Candice Dodson  
State Educational Technology Directors  
Association  
P.O. Box 10  
Glen Burnie, MD 21060

/s/ Larra Clark

Larra Clark  
Deputy Director  
American Library Association Public  
Policy & Advocacy Office  
1615 New Hampshire Ave. NW  
Washington, D.C. 20009

/s/ Carissa Moffat Miller

Carissa Moffat Miller  
Executive Director  
Council of Chief State School Officers  
One Massachusetts Ave. NW, Suite 700  
Washington, D.C. 20001

/s/ Mitchell Koep

Mitchell Koep  
CEO and Founder  
A Better Wireless  
25215 480 Ave  
Henning, MN 56551

/s/ Keith Krueger

Keith Krueger  
Chief Executive Officer  
Consortium for School Networking  
1325 G St. NW, Suite 420  
Washington, D.C. 20005

/s/ Angela Siefer

Angela Siefer  
Executive Director  
National Digital Inclusion Alliance  
3000 E Main St. #50  
Columbus, OH 43209

/s/ Matthew L. Blomstedt, Ph.D.

Matthew L. Blomstedt, Ph.D.  
Commissioner of Education  
Nebraska Department of Education  
301 Centennial Mall South  
P.O. Box 94987  
Lincoln, NE 68509

/s/ Ray Timothy

Ray Timothy  
CEO and Executive Director  
Utah Education and Telehealth Network  
101 Wasatch Drive  
Salt Lake City, UT 84117

/s/ Sean Taketa McLaughlin

Sean Taketa McLaughlin  
Executive Director  
Access Humboldt  
P.O. Box 157  
Eureka, CA 95502

**CERTIFICATE OF SERVICE**

I, John Windhausen, Jr., hereby certify under penalty of perjury that, on this 15th day of January 2020, a copy of the foregoing “Reply to Opposition to Petition for Reconsideration and Clarification” was served via First Class, postage pre-paid mail upon:

Stephen E. Coran

David S. Keir

Lerman Senter PLLC

2001 L Street NW, Suite 400

Washington, D.C. 20036

*Counsel for the Wireless Internet Service  
Providers Association*

Mary N. O’Connor

Erin M. Griffith

Wilkinson Barker Knauer, LLP

1800 M Street NW, Suite 800N

Washington, D.C. 20036

*Counsel for the Wireless Communications  
Association International*

*/s/ John Windhausen, Jr.*

John Windhausen, Jr.