

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Federal Communications Commission (“FCC”) (collectively the “United States”) and Omega Technology Center, Inc., Todd Greenway, and Kristie Greenway (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Omega Technology Center, Inc. (“Omega”), is a for profit business incorporated in the State of Oklahoma and owned by Todd and Kristie Greenway (collectively the “Greenways”).

B. The Universal Service Administrative Company (“USAC”) is a not-for-profit entity that administers an FCC program called E-Rate which is designed to improve the telecommunication capabilities of schools and libraries, particularly schools and libraries that are in indigent areas. It does so by subsidizing the cost of new telecommunication equipment and services, and internal connections, to bring connectivity within the school or library (such as cabling, routers, and servers), as well as maintenance services.

C. The United States contends that it has certain civil claims against Omega and the Greenways arising from payments received by Omega under the FCC E-Rate program for goods and services that were never provided to the Fort Towson school district for the 2010 and 2012 E-Rate year. That conduct is referred to below as the Covered Conduct.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Omega and the Greenways shall pay to the United States FIFTY-FOUR THOUSAND DOLLARS (\$54,000.00) with a fixed interest rate based on the rate provided for in 28 U.S.C. § 1961, which shall run from the Effective Date of this Agreement (“Settlement Amount”). Payments shall be made by electronic funds transfer pursuant to written instructions to be provided by United States Attorney’s Office for the Western District of Oklahoma. The Settlement Amount shall be paid as follows:

a. Omega and the Greenways shall pay THIRTY THOUSAND DOLLARS (\$30,000) within fourteen (14) days of the Effective Date of this Agreement.

b. Omega and the Greenways shall make sixty (60) monthly installment payments of FOUR HUNDRED DOLLARS (\$400.00) with the first payment to be made on or before October 1, 2022, and the remaining payments to be paid thereafter on or before the first day of each month.

c. Ninety (90) days after the final payment called for in Paragraph b, Omega and the Greenways shall make an additional payment for any outstanding balance of the Settlement Amount, plus all accrued interest as provided for in Paragraph 1.

d. Omega and the Greenways agree to sign a promissory note to secure the Settlement Amount which is attached as Exhibit A.

d. Omega and the Greenways agree to sign a promissory note to secure the Settlement Amount which is attached as Exhibit A.

2. Omega and the Greenways agree not to participate in any FCC program administered by the USAC for a period of three (3) years or until the Settlement Amount is paid in full, whichever occurs later. Thereafter, before Omega and/or the Greenways may participate in any FCC program administered by USAC, they agree to undertake training for any such program in which they want to participate, including training offered by USAC or such other training for which they receive approval by the FCC.

3. Subject to the exceptions in Paragraph 4 (concerning reserved claims) below, execution of the Promissory Note, and conditioned upon the United States' receipt of the Settlement Amount, the United States releases Omega and the Greenways from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; administrative monetary claims of the FCC and USAC; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

4. Notwithstanding the release given in Paragraph 3 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;

- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals except as explicitly stated in this Agreement;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. Omega and the Greenways have provided sworn financial disclosures and supporting documents (“Financial Disclosures”) to the United States and the United States has relied on the accuracy and completeness of those Financial Disclosures in reaching this Agreement. Omega and the Greenways warrant that the Financial Disclosures are complete, accurate, and current as of the Effective Date of this Agreement. If the United States learns of asset(s) in which Omega and the Greenways had an interest of any kind as of the Effective Date of this Agreement (including, but not limited to, promises by insurers or other third parties to satisfy Omega’s and the Greenways’ obligations under this Agreement) that were not disclosed in the Financial

Disclosures, or if the United States learns of any false statement or misrepresentation by Omega and the Greenways on, or in connection with, the Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth set forth in the Financial Disclosures by \$5,000.00 or more, the United States may at its option: (a) rescind this Agreement and reinstate its suit or file suit based on the Covered Conduct or (b) collect the full Settlement Amount in accordance with the Agreement plus one hundred percent (100%) of the net value of Omega's and the Greenways' previously undisclosed assets. Omega and the Greenways agree not to contest any collection action undertaken by the United States pursuant to this provision, and agree that they will immediately pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected in the collection action, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States, pursuant to this paragraph rescinds this Agreement, Omega and the Greenways waive and agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 120 calendar days of written notification to Omega that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on May 25, 2018 (tolling agreement date).

6. Omega and the Greenways waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive

Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

7. Omega and the Greenways fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that they have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

8. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Omega, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Omega's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Omega makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Omega, and Omega shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Omega shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Omega or any of its subsidiaries or affiliates from the United States. Omega agrees that the United States, at a minimum, shall be entitled to recoup from Omega any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Omega's books and records and to disagree with any calculations submitted by Omega or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Omega, or the effect of any such Unallowable Costs on the amount of such payments.

9. Omega and the Greenways agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Omega and the Greenways shall encourage, and agree not to impair, the cooperation of its directors, officers, and employees, and shall use their best efforts to make available, and encourage, the cooperation of former directors, officers,

and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Omega and the Greenways further agree to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

10. The Settlement Amount represents the amount the United States is willing to accept in compromise of its civil claims arising from the Covered Conduct due solely to Omega's and the Greenways' financial condition as reflected in the Financial Disclosures referenced in Paragraph 5.

a. In the event that Omega and the Greenways fail to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, Omega and the Greenways shall be in Default of their payment obligations ("Default"). The United States will provide a written Notice of Default, and Omega and the Greenways shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to Omega and the Greenways, or to such other representative as Omega and the Greenways shall designate in advance in writing. If Omega and the Greenways fail to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule ("Uncured Default"), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and

interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

b. In the event of Uncured Default, Omega and the Greenways agree that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against Omega and the Greenways for the claims that would otherwise be covered by the releases provided in Paragraph 3 above, with any recovery reduced by the amount of any payments previously made by Omega and the Greenways to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action or by reinstating the Civil Action; (iii) offset the remaining unpaid balance from any amounts due and owing to Omega and the Greenways and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, Omega and the Greenways agree immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this paragraph, Omega and the Greenways waive and agree not to plead, argue, or otherwise raise any defenses of statute of limitations, laches,

estoppel or similar theories, to any civil or administrative claims that are (i) filed by the United States against Omega and the Greenways within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on May 25, 2018 (tolling agreement date).

Omega and the Greenways agree not to contest any offset, recoupment, and /or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

11. In exchange for valuable consideration provided in this Agreement, Omega and the Greenways acknowledge the following:

a. Omega and the Greenways have reviewed their financial situation and warrant that they are solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the United States of the Settlement Amount.

b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Omega and the Greenways, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

d. The Parties do not intend to hinder, delay, or defraud any entity to which Omega and the Greenways were or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

e. If Omega's and the Greenways' obligations under this Agreement are avoided for any reason (including but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full, Omega, the Greenways or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Omega's and the Greenways' debts, or to adjudicate Omega and the Greenways as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Omega and the Greenways or for all or any substantial part of Omega's and Greenways' assets:

(i) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Omega and the Greenways for the claims that would otherwise be covered by the releases provided in Paragraph 3 above;

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against Omega and the Greenways in the amount of One Hundred Twenty Thousand Dollars (\$120,000,00), less any payments received pursuant to Paragraph 1 of this Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by a receiver, trustee, creditor, custodian, or similar official;

f. Omega and the Greenways agree that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 11 is not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States’ police and regulatory power. Omega and the Greenways shall not argue or otherwise contend that the United States’ claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Omega and the Greenways waive and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to Omega and the Greenways that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on May 25, 2018 (tolling agreement date).

12. This Agreement is intended to be for the benefit of the Parties only.

13. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

15. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Western District of Oklahoma. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and

shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

16. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

17. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

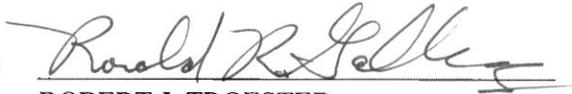
18. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

19. This Agreement is binding on Omega's and the Greenways' successors, transferees, heirs, and assigns.

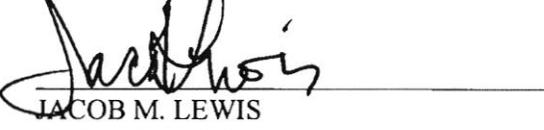
20. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

21. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 8-24-2022 BY: 

ROBERT J. TROESTER
United States Attorney
RONALD R. GALLEGOS
SCOTT MAULE
Assistant U.S. Attorneys
United States Attorney's Office
210 Park Avenue, Suite 400
Oklahoma City, OK 73102
Telephone: (405) 553-8700
Facsimile: (405) 553-8885
ron.gallegos@usdoj.gov
scott.maule@usdoj.gov

DATED: 8/23/2022 BY: 

JACOB M. LEWIS
Acting General Counsel
Office of General Counsel
Federal Communications Commission

OMEGA TECHNOLOGY CENTER, INC.,
TODD GREENWAY, KRISTIE GREENWAY

DATED: 7-18

BY:



TODD GREENWAY

President

Omega Technology Center, Inc.

DATED: 7-18

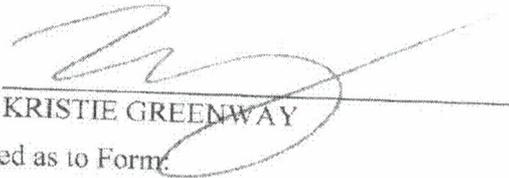
BY:



TODD GREENWAY

DATED: 7-18

BY:



KRISTIE GREENWAY

Approved as to Form:

DATED: 7-19-22

BY:



GINA SPADE

Broadband Legal Strategies, LLC

gina@broadbandlegal.com

Counsel for Omega Technology Center, Inc.,

Todd Greenway, and Kristie Greenway