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PROBLEMS WITH THE E-RATE PROGRAM: WASTE, FRAUD, AND ABUSE CONCERNS IN THE WIRING OF OUR NATION'S SCHOOLS TO THE INTERNET Part 3

HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

SEPTEMBER 22, 2004

Serial No. 108–124

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PROBLEMS WITH THE E-RATE PROGRAM: WASTE, FRAUD, AND ABUSE CONCERNS IN THE WIRING OF OUR NATION'S SCHOOLS TO THE INTERNET—Part 3

WEDNESDAY, SEPTEMBER 22, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2123, Rayburn House Office Building, Hon. Joe Barton, (acting chairman of the subcommittee) presiding.

Members present: Representatives Stearns, Bass, Walden, Rogers, Barton (ex officio), Deutsch, and DeGette.

Also present: Representative Bono.

Staff present: Mark Paoletta, majority counsel; Tom Feddo, majority counsel; Peter Spencer, majority professional staff; Jaylyn Jensen, majority professional staff; Michael Abraham, legislative clerk; David Nelson, minority counsel; and Jessica McNiece, minority clerk.

Chairman BARTON. The subcommittee will come to order. Today, we are continuing a series of hearings by the Oversight and Investigations Subcommittee of the Energy and Commerce Committee on problems with the E-Rate program, waste, fraud, abuse concerns in the wiring of our Nation's schools to the Internet.

We are going to have three panels. The first panel is a panel of Federal officials responsible for overseeing the program, approving the program, and monitoring compliance with the regulations for the program. Our next two panels consist of officials of local school districts and various private vendors and consultants who have assisted those districts in applying for and using funds within the program.

This hearing is going to resume our focus on problems with the front end of the E-Rate process, the critical area of the program where applicants must take certain required steps to plan and choose the products and services that they wish E-Rate to support. Failure to take the right steps at the beginning of the process can result in wasteful spending, if not fraud and abuse, when the E-rate funds begin to flow.

This hearing will also resume the subcommittee's examination of a bid-rigging conspiracy involving a large vendor, NEC BNS, which affected E-rate applications in a number of school districts around the country. In late May of this year, the NEC pled guilty to con-

spiring to eliminate competition in E-rate projects and also to wire fraud.

This past July, we examined this conspiracy largely in connection with the San Francisco Unified School District. We heard about a fraudulent $50 million application that passed the normal approval process and was thankfully eventually stopped because one key individual, that district's superintendent, took responsibility and turned down the questionable funding and launched an internal investigation. In that case, because of that superintendent's responsible actions, E-rate funds did not flow into the conspirator's hands.

In contrast, we are going to look at a couple of districts where the superintendents did not stop the questionable funding, where E-rate funds were expended, and we will examine how the school districts abdicated their duty to responsibly manage the people's money.

Four of the witnesses in connection with the topic today declined to appear voluntarily. Therefore, this committee had to issue subpoenas last week to command their presence and testimony. Among those that we had to subpoena that are here today are the superintendent of the Ecorse Michigan Public School District, Dr. Emma Epps, and the former facilities director for Ecorse, Dr. Douglas Benit. Both of these school officials can help us, if they will, understand how Ecourse became involved with NEC BNS and how they developed plans to spend E-rate funds, including spending on goods and services that were ineligible for E-rate discounts.

We also have Mr. Quentin Lawson, the executive director of the National Alliance of Black School Educators, NABSE. He can explain how NABSE assisted school districts with their E-rate plans and how NEC BNS became involved with these plans.

We have also issued a subpoena to Mrs. Judith Green, an E-rate consultant and former employee of VNCI, a now defunct company that supplied E-rate gear to school districts through NEC BNS. Although U.S. marshals were not able to serve Mrs. Green to command her appearance at our July hearing, she has been successfully served this time, and we have provided her another opportunity to explain what she knows about the NEC BNS conspiracy.

A well-run E-Rate program requires a high degree of accountability on the part of applicants, vendor participants and the managers of the program, both at the Universal Service Administrative Company, or USAC, and the Federal Communications Commission, the FCC. There are many key questions we must address on this front. For example, how do we ensure that school districts have done their homework, as the program requires, and have planned and decided what they need from E-rate before they choose vendors? How do we ensure that the competitive bidding for goods and services has been conducted properly and truly is competitive? How do we ensure that vendors and consultants do not insinuate their advice inappropriately in this process?

To help us answer these questions, another aspect of this hearing involves a case where about 20 school districts applied for a total of $500 million in E-rate support but were rejected for the funding by USAC, the E-rate administrator, because they did not select E-rate goods and services competitively. The year before this massive rejection, the El Paso Independent School District, which is the

seventh largest district in Texas, applied for and received E-rate discounts using the very same methods later identified by the FCC as undermining the competitive process.

It is notable that El Paso E-rate support increased by some $64 million in a single year. In other words, it went from around $4 million 1 year to around $67 million, I believe, the next year when it deployed this strategy to use a single vendor as a so-called strategic technology integrator for the purposes of E-rate work. El Paso's public request for this integrator made clear that the district had not yet determined what goods and services it would seek on E-rate applications, thus suggesting that the winning vendor would become closely involved in the subsequent E-rate planning process.

The success of El Paso's funding request appears to have influenced school district decisions around the region the very next year. In other words, the word got out that there was easy money to be had. Those districts that decided to implement a strategy similar to El Paso's fortunately, for the taxpayers, were later rejected because the strategy did undermine competition.

We will hear from the vendor that served El Paso as the integrator, IBM, about its role in the process today. We will also hear from several of the school districts and from other witnesses who can shed light on how the process unfolded. I am hopeful they can explain how the public came to be so poorly served.

What happened in El Paso and in the other districts will provide for this subcommittee a window into the program setup, the quality of planning by school districts and the impacts on price and eligibility of services when competition is not able to flourish. Throughout this review, I have remained very troubled by the performance of the FCC and USAC at actually rooting out waste, fraud, and abuse. They are supposed to be guardians of the public trust. In many cases, in my opinion, they have failed to adequately discharge their oversight responsibility. These case studies today will further illuminate problems that we found within their oversight of the program. The pace and scope of program reforms have been, in many cases, too little and too late.

Finally, and more fundamentally, I have serious concerns about why the FCC set up the program this way in the first place. From the evidence emerging from the series of hearings, this program needs wholesale restructuring.

With that said, I look forward to hearing from the USAC and the FCC as well as the numerous other witnesses at this hearing today. I look forward to getting clear answers so that we can do our job as the oversight committee to reform the program, so that the public trust is not squandered. I want to welcome all of our panelists and, with that, I would recognize the distinguished ranking member of the subcommittee, Mr. Deutsch of Florida, for any opening statement which he wishes to make.

Mr. DEUTSCH. Thank you, Mr. Chairman, for recognizing me for the purpose of making an opening statement. As you are aware, the opportunity to make opening statements, which has long been recognized in the Committee on Energy and Commerce on a bipartisan basis as a member's right, was denied members on Wednesday, September 15. Before proceeding with my initial remarks, let me note that next Congress, regardless of who is in the majority,

members will have an opportunity to debate and vote on the serious break with committee precedent and tradition. In the interim, I strongly urge that committee precedent and tradition be respected. Again, I want to thank you for recognizing me for this opening statement this morning.

Mr. Chairman, I commend you for holding this hearing and the investigation that has led up to today's inquiry. The E-Rate program has far-reaching consequences and is among those that determine the economic health and security of this Nation for years to come. Congress enacted the E-Rate program to assure that all of our children have schools and libraries that connect to the Internet. Seven years and over $15 billion later, the program has not yet achieved that goal.

In fairness, there has been some marvelous success stories. In those instances where competent administrators have combined E-rate funds with other funding sources and good planning, they have produced classrooms where first graders do Powerpoint presentations and third graders forecast weather. Unfortunately, this is clearly not the norm.

Mr. Chairman, this subcommittee has a history of exposing waste, fraud and abuse in Federal programs. We have usually been able to proceed on a bipartisan basis because it is in the interest of everyone to expose and halt such practices. In this investigation, the subcommittee has unfortunately hit the trifecta. Our first hearing focused on waste—$100 million spent in Puerto Rico for high-speed Internet, yet the two computers per school were connected to the Internet via dial-up modems provided from local funds. All E-rate funds were wasted. Our second hearing focused on fraud. NEC Corporation paid $20 million in fines and pled guilty to criminal charges involving bid-rigging of an E-rate contract in San Francisco and elsewhere. Local officials stopped the fraud from coming to fruition in San Francisco. Two of the school districts where NEC and its co-conspirators fraudulently obtained funds will be part of today's hearings.

This hearing really focuses on abuse of the program. One of the premier technology corporations, IBM, devised schemes to appropriate virtually all of the funds available for wiring 30,000 schools and school districts in the country to a handful of school districts that agreed to become strategic partners with that company in use of E-rate funds. In 2002, school districts listing IBM as a primary vendor submitted applications totaling about $1 billion in costs to wire the internal connections in a handful of school districts.

The applications were modeled on its, "success," in El Paso, Texas where IBM managed to spend $69 million the year before to supply those schools with equipment and services that far exceeded the ability of the district to effectively utilize them. This gold-plate equipment was installed without the necessary discussions and teacher trainings. Much of it has gone unused. A prime example is the $27 million spent on a help desk that the extent that such funds might have been eligible for E-rate funds largely duplicated the warranties that should have come with the installed equipment. That desk operated for only a couple of months and provided no present-day benefit for the school children of El Paso.

Mr. Chairman, you and your staff have indeed documented how a program that was enacted to serve such an important goal has been derailed by incompetent administration, greedy vendors and in some cases ill-prepared local school officials. The IBM case study demonstrates once again how this program that is supposed to benefit our children has been captured by vendors whose only interest is fattening their own pockets. E-rate was designed to close the digital divide, to close the gap between those children whose parents could afford to provide them with a computer connected to the Internet at home, whose community schools taught them how to utilize the unlimited information available on the World Wide Web, to make a place for themselves in this increasingly technologically dependent economy and those Americans who are not so advantaged.

It is these children, the children of America's hardworking families whose jobs have been lost to competition from cheap foreign labor who must access the new technology if they have any hope of being part of the economic future of this country. And this country can ill-afford to be a Nation divided between the competitive and the ill-equipped. Look forward to the testimony.

Chairman BARTON. I thank the distinguished ranking member of Florida for that opening statement. Before he recognizes the vice chairman, I'd just like to take a point of personal privilege to point out that the Chair held the start of this hearing for 15 minutes so that the distinguished ranking member could be here to give that statement.

Mr. DEUTSCH. I thank you.

Chairman BARTON. And we have honored the tradition of opening statements on both sides in every hearing this committee has done this year except one when it was the chairman's judgment that the political implications of that particular subject did not rise to the requirement that the opening statements tradition should be honored. So if we can keep the purpose of the hearings and the legislation under consideration to be constructive, there won't be any restrictions on opening statements.

And with that, the Chair would recognize the distinguished vice chairman of the subcommittee, Mr. Walden of Oregon, for an opening statement.

Mr. WALDEN. Thank you, Mr. Chairman, and thank you for your work on this and many other issues. Today, as you said, we will continue to explore a critical issue with respect to our oversight of the E-Rate program, and that is how well does the application process ensure that applicants have taken the appropriate steps to choose the most cost-effective E-rate goods and services? This is a central issue with this program. Weaknesses upfront in the application process, be it the planning or the competitive process, to choose the goods and services for E-rate support paves the way either to effective educational enhancements, as envisioned for the program, or to the waste and abuse of limited resources.

Incentives really matter. When a program is designed to provide recipients and applicants access to others' money, there is a powerful incentive to buy more than is needed. And when tens of millions of dollars are at issue, there is a very powerful incentive to spend wastefully. To prevent such wasteful spending, the program must

deploy measures that enhance the incentives that ensure efficient and effective spending for schools and libraries.

At today's hearing, we will approach this from several perspectives. We will continue to look at the impact of the NEC BNS conspiracy we heard testimony about this past July and the involvement of certain schools in this mess. We will also focus on the planning and decisions by school districts that pursued a procurement method advertised as useful for, "maximizing," E-rate funding.

And we will hear today about school districts' obligations to do their homework so that what they ask for can be put to use. I am interested to learn more from our witnesses about the burdens of planning and also about the ways to plan properly so that districts don't bite off more than they can chew. I am interested to learn how we can strengthen the incentives to plan properly. I would also like to learn if efforts to improve certifications on the applications are sufficient for this task. Planning is essential. Also essential is to know the rules and understand what is necessary for a competitive process to flourish.

We will hear today about a case where competition did not flourish and where it appears that school districts really did not fully plan out what they needed for the program. The result was tens of millions of dollars of questionable spending in one poor school district. In another school district, the result was an application that asked for more than what the district really needed. Fortunately, the district took subsequent steps to scale back the request, but I am not sure that is what normally happens.

What is the responsibility of the vendor in these situations? Despite a powerful incentive to sell and do business, vendors must play by the E-rate rules as well. So today we will be able to learn about the responsibilities of vendors in this process and whether the requirements and rules are clear and sufficient to ensure that vendors participate appropriately.

One of the foremost issues we must address is accountability. Today, we will hear about accountability from all parties—the school districts, the vendors, and the agency charged with overseeing the program—and I think this is critical for our oversight of this very important program. So I look forward to welcoming the witnesses, and I would especially like to thank the efforts made by Charles Tafoya of El Paso Independent School District who will join us by video conference link today. We appreciate his efforts, especially given the last minute complications in his plans to attend the hearing.

Thank you, Mr. Chairman, and I will yield back whatever time remains.

Chairman BARTON. We thank the gentleman of Oregon for that opening statement and recognize the gentleman of Michigan, Mr. Rogers, for any opening statement he wishes to make. The gentleman yields.

The Chair would ask unanimous consent that all members of the subcommittee not present have the requisite number of days to put their opening statements formally in the record. Without objection, so ordered.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Thank you, Mr. Chairman. Today we will continue to explore a critical issue with respect to our oversight of the E-rate program. And that is: how well does the application process ensure that applicants have taken the appropriate steps to choose the most cost-effective E-rate goods and services?

This is a central issue with this program. Weaknesses up front in the application process—be it the planning or the competitive process to choose the goods and services for E-rate support—paves the way either to effective educational enhancements envisioned for the program or to the waste and abuse of limited resources.

Incentives really matter. When a program is designed to provide recipients and applicants access to other people's money, there is a powerful incentive to buy more than is needed. And when tens of millions of dollars are at issue, there is a powerful incentive to spend wastefully.

To prevent such wasteful spending, the program must deploy measures that enhance the incentives that ensure efficient and effective spending for schools and libraries.

At today's hearing we will approach this from several perspectives; we will continue to look at the impact of the NEC-BNS conspiracy we heard testimony about this past July, and the involvement of certain schools in this mess; we will also focus on the planning and decisions by school districts that pursued a procurement method advertised as useful for "maximizing" E-rate funding.

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One of the foremost issues we must address is accountability. Today we'll hear about accountability from all parties—the school districts, the vendors, and the agency charged with overseeing the program. I think this is a critical hearing for our oversight of this program.

Let me welcome the witnesses. I'd like to thank, especially, the efforts made by Charles Tafoya of El Paso Independent School District, who will join us via video link today. We appreciate his efforts given the last minute complications in his plans to attend the hearing.

Thank you, Mr. Chairman. I'll yield back the remainder of my time.

Chairman BARTON. We would now like our first panel to come forward. We have Mr. Walker Feaster, III, who is the Inspector General of the Federal Communications Commission. He is accompanied by Mr. Thomas Cline, the Assistant Inspector General for Audits. We have Mr. George McDonald, the vice president, Schools and Libraries Division, the Universal Service Administrative Company. We also have Mr. Jeffrey Carlisle, the Chief of the Wireline Competition Bureau of the FCC.

Gentlemen, I think each of you understand that it is the tradition of this subcommittee to take all testimony under oath. Do any of you object to testifying under oath? Let the record show they all shook their head that they don't object.

It is also the tradition and your right under the United States Constitution to be advised by counsel during your testimony. Do any of you so wish to be advised by counsel? Let the record show they all shook their head that said no.

Would each of you gentlemen please rise and raise your right hand?

[Witnesses sworn.]

Chairman BARTON. Be seated. We are going to start with you, Mr. Feaster. Your testimony formally is in the record in its entirety, and we will recognize you for 7 minutes to elaborate on that. Welcome to the subcommittee.

TESTIMONY OF WALKER FEASTER, III, INSPECTOR GENERAL, FEDERAL COMMUNICATIONS COMMISSION; ACCOMPANIED BY THOMAS CLINE, ASSISTANT INSPECTOR GENERAL, AUDITS, FEDERAL COMMUNICATIONS COMMISSION; GEORGE MCDONALD, VICE PRESIDENT, SCHOOLS AND LIBRARIES DIVISION, UNIVERSAL SERVICE ADMINISTRATION COMPANY; AND JEFFREY CARLISLE, CHIEF, WIRELINE COMPETITION BUREAU, FEDERAL COMMUNICATIONS COMMISSION

Mr. FEASTER. Thank you, sir. Good morning, Mr. Chairman and members of the subcommittee. I appreciate the opportunity to appear before you today to discuss concerns regarding waste, fraud and abuse in the E-Rate 9rogram. I would like to introduce Tom Cline. He is my Assistant Inspector General for Audits and has been heavily involved in our oversight of the E-Rate program.

This is the second opportunity that I have had to testify before the subcommittee in these matters. In my comments and written testimony, I will discuss my office's involvement in the investigations of NEC Business Network Solutions and IBM Global Services and describe in more general terms the programmatic concerns raised by these investigations.

First, I will briefly discuss my office's involvement in an ongoing Federal investigation involving NEC BNS. I want to point out that there are aspects of this case that I am not at liberty to discuss because of an ongoing nature of this investigation. In fact, the two audit staff in my office that are involved in this investigation are prohibited by law from disclosing information that they have been provided related to this case that was developed through the grand jury process.

We first received allegations related to NEC BNS in August 2001 and referred the matter to the FBI. In July 2002, we established a working relationship with the Antitrust Division of the Department of Justice to investigate E-rate fraud and we provided information related to this case. The Antitrust Division opened an investigation and my office have been involved in supporting this ongoing investigation since that time.

Now, I will briefly discuss my office's involvement in an investigation involving participation in the E-Rate program by IBM. In February 2002, my office was contacted by the general counsel of USAC regarding an anonymous letter that they had received alleging wrongdoing by IBM related to their involvement in providing E-rate support to the El Paso Independent School District. The letter was signed, "Concerned Taxpayer," and outlined three areas of

concern involving El Paso's applications: The need for the program and IBM's role and them driving that need, apparent violations of Federal and State rules governing the procurement process and a lack of project information for the El Paso School Board and public. The letter provided a great deal of detail regarding the project and IBM's involvement and clearly raised legitimate questions about whether or not program rules were followed.

As a result of the allegations raised in the concerned taxpayer letter, USAC initiated a special investigation of IBM's involvement as a service provider with El Paso for funding years 2001 and 2002 and with the Ysleta Independent School District for funding year 2002. Based on the results of the analysis, USAC concluded that Ysleta failed to comply with program requirements and that those Ysleta funding requests associated with IBM should be denied. USAC further recommended that they deny funding requests associated with IBM when the request fit the pattern of Ysleta and El Paso.

We referred this matter to the Antitrust Division shortly after they established an E-Rate Fraud Task Force in July 2002 and began supporting their work. Antitrust initiated a preliminary inquiry in October 2002. Meanwhile, in September 2002, we received additional allegations regarding IBM's overinvolvement in the competitive bidding process in numerous E-rate submissions, and we forwarded this additional information to the Antitrust attorney directing the investigation. In April 2004, we were advised that the Department of Justice has closed a preliminary inquiry of the IBM matter. We discussed this case with representatives from the Antitrust Division and were informed that they did not identify any evidence of criminal activity based on the material that they reviewed as part of the preliminary inquiry. After receiving this information, my office closed their case on this matter.

The NEC BNS and IBM investigations highlight two general concerns that my office has with the design of the E-Rate program: One, weaknesses in the rules governing the competitive procurement of goods and services, and, two, overreliance on self-certifications received from beneficiaries and vendors on E-rate funding applications. It has been frustrating to me and my staff that these are concerns that were identified in 2002 and the Commission has yet to fully address these matters. The Commission has only recently started to address recommendations by the Antitrust Division of DOJ for strengthening program certifications. These recommendations are on three tracks: One track, some recommendations have been incorporated into E-rate forms and are at OMB for approval; two, some recommendations are out for public comment; and, three, some recommendations are not being implemented at this time.

For this third group of recommendations, my office, along with DOJ and the Wireline Competition Bureau, will work together to see how they can be implemented. We believe all the antitrust recommendations would resort in better management of this program and in delays in implementing these recommendations or the lack thereof in some cases represents an ongoing risk to the program. In view of these and numerous other concerns about the E-Rate

program, I believe that it would be appropriate to conduct a broad-based review of the program.

We believe we have made significant progress toward our goal of designing and implementing effective independent oversight of the USF Program. However, primarily because of the lack of adequate resources, we have been unable to fully implement an oversight program. There has been progress made in making resources available to us for conducting E-rate audits, but we believe that direct access to the USF is the best manner for obtaining the resources needed or adequate oversight and, as I have stated in the past, until resources and funding are available to provide adequate independent oversight for the USF Program, we are unable to give the chairman, Congress and the public an appropriate level of assurance that the program is protected from fraud, waste and abuse. Thank you, and I will be happy to try to answer any of your questions.

[The prepared statement of H. Walker Feaster III follows:]

PREPARED STATEMENT OF H. WALKER FEASTER III, INSPECTOR GENERAL, FEDERAL COMMUNICATIONS COMMISSION

INTRODUCTION

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before the subcommittee today to discuss concerns regarding waste, fraud, and abuse in the E-rate program. This is the second opportunity that I have had to testify before the subcommittee on these matters. In my comments and written testimony, I will discuss my office's involvement in the investigations of NEC-BNS and IBM and describe in more general terms the programmatic concerns raised by these investigations.

NEC-BUSINESS NETWORK SOLUTIONS INC. (NEC-BNS)

In this section of my testimony, I will briefly discuss my office's involvement in an on-going federal investigation involving NEC-BNS. I want to point out that there are aspects of this case that I am not at liberty to discuss because of the on-going nature of this investigation. In fact, the two audit staff in my office that are involved in this investigation are prohibited by law from disclosing information that they have been provided related to this case that was developed through the Grand Jury process.

In August 2001, my office was contacted by an Associate General Counsel with the Universal Service Administrative Company (USAC) regarding a request for information from an investigator from the Office of the City Attorney for the City and County of San Francisco. We obtained a copy of the request for information that was provided to USAC and a copy of the USAC response. In September 2001, we referred this matter to the Governmental Fraud Unit of the Federal Bureau of Investigation (FBI) in accordance with the process that we had established with the FBI for centralized management of E-rate fraud cases.

In July 2002, my office established a working relationship with the Antitrust Division of the Department of Justice to investigate E-rate fraud. The Antitrust Division was interested in E-rate fraud because of the large number of cases that included allegations of bid rigging and other violations related to the Sherman Act. Information related to this case was provided to the E-rate fraud task force established by the Antitrust Division and my office has been involved in supporting this on-going investigation since that time. As part of our support for the investigation, my office has performed in-depth analyses of E-rate documents, testified before a federal grand jury, participated in the execution of a search warrant, evaluated seized electronic media, and participated in numerous witness interviews.

As part of the analysis that we performed for federal law enforcement, we examined NEC-BNS participation in the E-rate program with the purpose of identifying suspect activity. For the universe of NEC-BNS participation in the program from funding years 1998 through 2004, we identified fifty-three (53) E-rate applications at twenty (20) schools that we concluded were suspect. These fifty-three (53) applications represented approximately $380 million in requested E-rate funding, over $40 million in commitments, and $29.7 million in disbursed funding. Although these

applications represented only 27% of the E-rate applications during this period that included NEC-BNS, they represented 93% of requested funds and 96% of disbursed funds. The results of our analysis was shared with federal law enforcement and served as the basis for the NEC-BNS portion of the overall investigation.

To date, there have been numerous indictments and plea agreements related to this case. In October 2002, Desmond McQuoid and US Machinery were indicted for mail fraud in the United States District Court for the Northern District of California. In March 2003, Mr. McQuoid entered into a plea agreement in which he agreed to plead guilty to mail fraud. In that plea agreement, Mr. McQuoid agreed to numerous facts regarding the matter including the following facts concerning E-rate fraud:

- Participating in a scheme to submit false and inflated funding requests to the USAC and SLD a part of the E-Rate program beginning in 1999 and continuing until 2000.
- Allowing the competitive bid process to be compromised by the consultants he was working with.
- Despite being aware that the contractors had submitted inflated bid price information to the School District and the USAC and SLD, not taking steps to correct the information provided.
- Attempting to obtain a 10 million dollar in-kind donation from the main contractor by having them purchase computer workstations from US Machinery and then donate these servers to the School District.
- Attempting to use the excess funds in the inflated bids to pay for these products even though I knew that the USAC and SLD had disallowed using their funds for these expenditures.

In March 2003, US Machinery entered into a plea agreement in which they agreed to plead guilty to mail fraud. In that plea agreement, US Machinery agreed to numerous facts regarding the matter including the following facts regarding E-rate fraud:

- US Machinery bid to supply computer servers as part of an E-Rate application submitted by and on behalf of the San Francisco Unified School District.
- US Machinery learned during the process that some of the contractors had submitted inflated bids to the School District and to the USAC and SLD.
- US Machinery brought this fact to Dennis McQuoid's attention and failed correct the misstatements in the bid documents.
- Dennis McQuoid arranged a meeting with the principal contractor—and tried to obtain a concession from the contractor to purchase computers from US Machine.
- As a result, the contractor was then supposed to donate these computers to the School District.

In May 2004, NEC-BNS entered into a plea agreement as a result of this investigation. In that agreement, NEC-BNS agreed to plead guilty to one count of wire fraud in violation of 18 U.S.C. § 1343 and one count of conspiracy to suppress and eliminate competition in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. As part of the settlement, NEC-BNS agreed to pay $20,685,263 in criminal fines, civil settlement, and restitution.

IBM GLOBAL SERVICES

In this section of my testimony, I will briefly discuss my office's involvement in an investigation involving participation in the E-rate program by IBM Global Services (IBM).

In February 2002, my office was contacted by the General Counsel of the Universal Service Administrative Company (USAC) regarding a letter they had received alleging wrongdoing by IBM related to their involvement in providing E-rate support to the El Paso Independent School District (EPISD). The letter, signed "Concerned Tax Payer", outlined three areas of concern: (1) the need for the program and IBM's role in driving that need; (2) apparent violations of Federal and state rules governing the procurement process; and (3) the lack of project information for the EPISD board and the public. The letter provided a great deal of detail regarding the project and IBM's involvement and clearly raised legitimate questions about whether or not program rules were followed.

As a result of the allegations raised in the "Concerned Tax Payer" letter, USAC initiated a special investigation of IBM's involvement as a service provider with EPISD for funding years 2001 and 2002 and with the Ysleta Independent School District (Ysleta ISD) for funding year 2002. Based on the results of their analysis, USAC concluded that Ysleta ISD failed to comply with program requirements and that those Ysleta funding requests associated with IBM should be denied. USAC

further recommended that SLD deny funding requests associated with IBM when those requests fit the pattern of Ysleta ISD and EPISD.

As I discussed earlier in my testimony, we established a working relationship with the Antitrust Division of the Department of Justice in June 2002. We referred this matter to the Antitrust Division shortly after they established an E-rate fraud task force in July 2002. In September 2002, representatives from my office visited with representatives on the Antitrust task force to review case material. In October 2002, the Antitrust attorney directing the investigation requested authority within the Antitrust Division to conduct a preliminary inquiry "to pursue a possible bid rigging scheme in which competing telecommunication providers may have colluded with each other, with school districts, or through representatives, on contracts for communications equipment sold to El Paso ISD in El Paso, Texas, Ysleta ISD in Ysleta, Texas, and potentially other districts nationwide." Authority to conduct a preliminary inquiry was granted.

In September 2002, we received additional allegations regarding IBM participation in the E-rate program. These allegations were provided following a Train-the-Trainers workshop provided by the Schools and Libraries Division of USAC during which SLD trainers encouraged participants to provide any information highlighting serious violations of program rules. The allegations address IBM's "over-involvement in the competitive bidding process." The allegations provided information detailing a pattern of virtually identical "cookie-cutter" or "laundry list-type" form 470s posted by applicants around the country and provided detailed information on a number of these schools issuing "strikingly similar" requests for proposals around the same time as the form 470s were posted seeking essentially the same thing—"a strategic technology partner—to assist the district in securing E-rate funds." We forwarded this additional information to the Antitrust attorney directing the investigation.

In April 2004, we were advised that the Department of Justice had closed their preliminary inquiry of the IBM matter. We discussed this case with representatives from the Antitrust Division and were informed that they did not identify any evidence of criminal activity based on the material that they reviewed as part of the preliminary inquiry. After receiving this information, my office closed their case file on this matter.

PROGRAMMATIC CONCERNS HIGHLIGHTED BY NEC-BNS AND IBM INVESTIGATIONS

The NEC-BNS and IBM investigations highlight two general concerns that my office has with the design of the E-rate program: (1) weaknesses in the rules governing the competitive procurement of goods and service; and (2) over-reliance on self certification.

Competitive Procurement

Program rules require that applicants use a competitive procurement process to select service providers. In establishing this requirement, the Commission recognized that "(c)ompetitive bidding is the most efficient means for ensuring that eligible schools and libraries are informed about all of the choices available to them" and that "(a)bsent competitive bidding, prices charged to schools and libraries may be needlessly high, with the result that fewer eligible schools and libraries would be able to participate in the program or the demand on universal service support mechanisms would be needlessly great."

Applicants are required to submit a form 470 identifying the products and services needed to implement the technology plan. The form 470 is posted to the USAC web page to notify service providers that the applicant is seeking the products and services identified. Applicants must wait at least 28 days after the form 470 is posted to the web site and consider all bids they receive before selecting the service provider to provide the services desired. In addition, applicants must comply with all applicable state and local procurement rules and regulations and competitive bidding requirements. The form 470 cannot be completed by a service provider who will participate in the competitive process as a bidder and the applicant is responsible for ensuring an open, fair competitive process and selecting the most cost-effective provider of the desired services. Further, although no program rule establishes this requirement, applicants are encouraged by USAC to save all competing bids for services to be able to demonstrate that the bid chosen is the most cost-effective, with price being the primary consideration.

In the case of IBM, it seems clear that the practices followed by several of the school districts that selected IBM as their service provider for participation in the E-rate program for the funding years reviewed did not follow program requirements for the competitive procurement of goods and services. Although the Department of Justice did not find evidence of criminal activity, USAC denied numerous applications involving IBM as a result of their investigation and the Commission affirmed

USAC decisions regarding these applications in the order they adopted in December 2003.

On June 5, 2002, USAC prepared a preliminary special investigation report summarizing the results of that review. In that preliminary report, USAC concluded that both EPISD and Ysleta ISD utilized a Request for Proposal (RFP) format that did not make price the major factor in the selection of the service provider in violation of program rules. In October 2002, USAC prepared a preliminary draft analysis of issues identified in the EPISD and Ysleta ISD funding requests, determined that funding requests for the two school districts followed the same basic pattern, and presented the results of their legal analysis focusing on the Ysleta ISD funding requests. In that document, USAC concluded that:

- Ysleta selected IBM as its service provider by a process other than the FCC Form 470 posting process and without defining the specific services that would be provided;
- Ysleta selected IBM as its service provider without complying with the requirements that the applicant select the most cost-effective provider of service with low cost being the primary factor;
- Compliance with FCC Form 470 posting requirement is necessary in addition to applicable state and local procurement requirements;
- IBM's proposal specifies a range of services that it will provide as the Strategic Technology Partner. Many of these services are not eligible for funding.
- IBM's proposal emphasizes developing the technology plan and structuring funding requests in order to maximize funding requests; and
- Requests for Proposal contain similar language and raise significant questions as to whether IBM was improperly involved in the selection process.

In the case of NEC-BNS, wrongdoing rose to the level of criminal activity. In the plea agreement that NEC-BNS accepted, NEC-BNS admitted to the following facts regarding this case:

- NEC "participated in a conspiracy with one or more vendors of equipment and services related to telecommunications, Internet access, and/or internal connections, a purpose of which was to suppress and eliminate competition for E-Rate program projects".
- In furtherance of the conspiracy, NEC "reached an agreement with its co-conspirators to frustrate the competitive process on the E-Rate projects by allocating contracts and submitting fraudulent and non-competitive bids" and, to carry out this conspiracy, NEC "discussed with these co-conspirators prospective bids for the E-Rate projects; agreed with these co-conspirators who would be the lead contractor on the project and who would participate on the project as subcontractors to the designated lead contractors; submitted fraudulent and non-competitive bids in accordance with the conspiratorial agreement." Further, NEC engaged two consultants who "took steps to ensure the success of the conspiracy by eliminating and disqualifying bids from non-conspirators and either directly awarding the contracts or using their best efforts to persuade the school district officials to award contracts to the designated lead contractors.

Reliance on Applicant Certifications

The E-rate program is heavily reliant on applicant and service provider certifications. For example, on the form 470, applicants certify that the support received is conditional upon the ability of an applicant to secure access to all of the resources, including computers, training, software, maintenance, and electrical connections, necessary to use effectively the services that will be purchased under this mechanism. On the form 471, applicants make several important certifications. Applicants certify that they have "complied with all applicable state and local laws regarding procurement of services for which support is being sought" and that "the services that the applicant purchases—will not be sold, resold, or transferred in consideration for money or any other thing of value." Other certifications are required on various program forms.

Reliance on applicant and service provider certifications has been an area of concern in my office for some time. We have two concerns regarding certifications. The first concern deals with over-reliance on certifications in lieu of USAC verification and validation of applicant and service provider assurances as part of USAC's normal review processes. The significance of this concern has been diminished somewhat by steps that USAC has taken, and is proposing to take, to strengthen the Program Integrity Assurance (PIA) process.

The second, and more serious, concern is related to the design of the certifications. Concerns about the design of program certifications were first brought to our attention by federal law enforcement. Numerous concerns about certification design were brought to our attention during our first meeting with the E-rate fraud task force

established by the Antitrust division of the Department of Justice in July 2002. A representative from the Commission's Wireline Competition Bureau (WCB) was present during that discussion. At our request, task force members provided written comments on program certifications in December 2002. Some of the concerns expressed by task force members dealt with applicant certification to future events (i.e., on the form 470, applicants certify that they recognize that support is conditional upon the schools "securing access to all of the resources . . . necessary to use the services purchased effectively").

In the case of IBM, the pattern that was observed at several applicants shows applicants reporting on the form 470 that they do not have Requests for Proposal for the specific internal connections being sought and certifying that the request has been examined and that "to the best of my knowledge, information, and belief, all statements of fact contained herein are true." Shortly after form 470s were posted, applicants would issue a separate RFP ("strikingly similar" in many cases) for a "Technology Implementation and Systems Integrator Partner." The RFP for the "Technology Implementation and Systems Integrator Partner" states that the "selected vendor will serve as the prime contractor for any projects funded through E-rate." Effectively, applicants provided assurance to the program that they have not sought proposals for E-rate projects at the same time that they clearly have.

In the case of NEC-BNS, there are numerous examples of fraudulent representations on program forms. In fact, it may be more challenging to identify certifications that were not fraudulent representations. Desmond McQuoid certified that he was authorized to submit requests on behalf of the San Francisco Unified School District when he was not. He further certified that the state and local procurement regulations were followed and that program rules were followed when neither of these statements was accurate.

CERTIFICATION WEAKNESSES HAVE NOT BEEN FULLY ADDRESSED

My office started to raise concerns about perceived weaknesses in the competitive procurement process and over reliance on certifications shortly after we became involved in program oversight. We first became concerned about the competitive procurement process as a result of our involvement in the Metropolitan Regional Education Service Agency (MRESA) investigation. During that investigation we observed how weaknesses in competitive bidding requirements and reliance on self certification were exploited resulting in, at a minimum, a significant amount of wasteful spending. We continued to express our concerns as we designed our oversight program, developed a program for auditing beneficiaries, and supported E-rate fraud investigations. In fact, we established a working relationship with the Antitrust Division of the Department of Justice in a large part because of the number of investigations that we were supporting that involved allegations regarding the competitive procurement process.

Our level of concern regarding both the competitive procurement process and reliance on self-certification was heightened as we started to work with the Antitrust Division. During our discussions with Antitrust, they expressed a general concern with the lack of information regarding the competitive process and specific concerns regarding applicant and service provider certifications. Although we started to pursue these issues with Commission staff in the fall of 2002, the Commission has only recently started to address some of the recommendations from Antitrust, and none of these recommendations are fully implemented. We have been informed by WCB that several of the Antitrust suggestions have been incorporated into the appropriate E-rate forms and that those forms are now at the Office of Management and Budget for approval. Other recommended certifications, particularly regarding the competitive process, are still in the process of public comment, and we are as yet uncertain what the FCC may ultimately do with these recommendations. Numerous of the suggestions from Antitrust involved USAC obtaining and reviewing critical procurement documents during the application review process. The Commission's response to these suggestions was to include in the 5th Report and Order the requirement that the applicant retain these documents, but providing these documents for review along with an E-rate application was not required. And lastly, WCB has informed us that at this time they will not incorporate certain recommendations. I believe that the delay in implementing Antitrust's recommendations, and the exclusion of some of the recommendations from implementation, continues to place the program at risk.

CONCLUSION

The Office of Inspector General remains committed to meeting our responsibility for providing effective independent oversight of the Universal Service Fund pro-

gram. As I have described in this testimony, we continue to have numerous concerns about this program. The results of audits that have been performed and the allegations under investigation lead us to believe the program may be subject to an unacceptably high risk of fraud, waste and abuse through noncompliance and program weaknesses. We are concerned with program rules governing the competitive procurement of goods and service and with the over reliance on certifications. In view of these concerns, I believe that it would be appropriate to conduct a broad based review of the program.

We believe we have made significant progress toward our goal of designing and implementing an effective, independent oversight program. However, primarily because of a lack of adequate resources, we have been unable to implement our oversight program. But some progress has been made. We have partnered with USAC to accomplish approximately 100 audits of E-rate beneficiaries using contracted resources available to them and the Commission has been actively furthering efforts for us to use the USF to accomplish more audits. But we believe direct access to the USF is the best manner with which to obtain the necessary resources and, as I have stated previously, until resources and funding are available to provide adequate independent oversight for the USF program, we are unable to give the Chairman, Congress and the public an appropriate level of assurance that the program is protected from fraud, waste and abuse.

Thank you and I will be happy to answer any of your questions.

Chairman BARTON. Thank you, Mr. Feaster. Does Mr. Cline wish to make a statement?

Mr. CLINE. No. Thank you.

Chairman BARTON. Okay. We now recognize Mr. George McDonald, who is the Vice President of the Schools and Library Division of USAC, for an opening statement. Your statement is in the record in its entirety, and we would recognize you for 7 minutes to elaborate.

TESTIMONY OF GEORGE MCDONALD

Mr. MCDONALD. Thank you, Mr. Chairman. Good morning, members of the subcommittee. Thank you for inviting me here today to discuss USAC's administration of the E-Rate program. Previous hearings have given me the opportunity to outline our procedures to combat waste, fraud, and abuse. Today, I want to focus on requirements for conducting a fair and open competitive process and ensuring cost-effective use of E-rate funds. While USAC has responsibility for ensuring applications are properly reviewed, applicants and service providers alike have responsibility for knowing and following the spirit, intent, and letter of the law and rules of the program. The FCC, in a series of recent rulemakings, has stressed that accountability.

We have been concerned from the beginning of the program about service providers offering and applicants accepting free, ineligible services. Since service providers must cover their costs, these free services would be paid for through inflated prices on eligible equipment. Two key program requirements designed to protect the integrity of the program are that applicants must conduct fair and open competitive processes to select service providers, and applicants must pay the non-discount share of the cost of eligible goods and services. These requirements are intended to ensure that the applicants and E-rate are getting fair value. The rules require competition over the price of eligible services, competitively neutral RFPs, and that applicants select the cost-effective offer with price the primary factor.

The rules also require that applicants pay their share of the cost so that they have a stake in selecting the most cost-effective offer

and so that they do not request services in excess of their needs. If service providers offer to waive the non-discount share of the cost, they remove any incentive for the applicant, who is the one making the decision, to select the most cost-effective alternative. If service providers do waive the applicant's share, they cover their costs by inflating the pre-discount costs so that the discount share to be paid by USAC more than covers their cost and E-rate is the loser.

The E-Rate program is designed to give applicants discretion in deciding which technology solutions best meet their educational objectives. USAC generally does not second guess the technology choices applicants make, but the subcommittee and USAC have seen instances of goldplating, purchases that are clearly excessive for the use that will be made of them. The Commission recently directed that applicants certify that the bid selected was, "the most cost-effective means of meeting educational needs and technology plan goals." If an applicant solely relies on service provider recommendations, this may lead to applications that run afoul of program rules. Therefore, applicants must take the necessary steps to determine if the recommended solution is in fact what is needed.

As the E-Rate program has matured, E-rate consultants have played an increasing role. However, applicants remain responsible for their applications and for ensuring that there is a fair and open competitive process. USAC has denied millions of dollars in funding requests when we have determined that the consultant who provided free services to the applicants was associated with the service provider selected.

Let me now turn to the participation of IBM in the E-Rate program. In January 2002, USAC received an anonymous letter alleging program abuses at the El Paso Independent School District in Texas, as Mr. Feaster has said. Our Special Investigations Team began an investigation which led to a concern that the procurement approach may not have been consistent with program rules. We identified a number of funding year 2002 applicants who were requesting large amounts of E-rate discounts and funding requests associated with IBM and who may have used a similar procurement approach. Ultimately, we concluded that the procurement approach was not consistent with the rules, and we denied requests for over $500 million.

The rules require applicants to identify the specific eligible services for which they will seek funding based on the applicant's technology plan, to solicit bids from competing service providers and then to choose the most cost-effective alternative with price the primary factor. These applicants and IBM participated in a two-step approach which consisted first of choosing a strategic technology partner and then, with the help of that partner, deciding which eligible services to seek funding for. At the first step, each applicant used the Generic Form 470 and a similar RFP indicating that they had not decided which specific services they needed and sought a partner to help them make those decisions. Since the applicant's did not identify the specific services they were seeking, the proposals did not state the cost of the services. Consequently, the applicants did not make the selection of the service provider based on which was the most cost-effective alternative.

After IBM was selected, the second step began. At this step, IBM worked with the applicants to identify the specific services for which funding would be sought. This meant that at the time the decisions were made about what specific services to request E-rate discounts for and how much to request, there was only one service provider at the table. Consequently, the price competition for eligible services that the FCC rules envisioned never took place. IBM and the applicants appealed USAC's denials; the FCC affirmed USAC's decisions to deny funding in all but one instance.

We funded El Paso in funding year 2001 even though El Paso used the two-step approach that we determined was inconsistent with program rules in the next year. This occurred because our review procedures did not flag the El Paso application for a particular kind of heightened scrutiny. We review almost 40,000 applications for funding every year, and we use a staff of some 150 people to conduct those reviews. With a process of that magnitude, we appropriately rely on written procedures to guide the reviews to ensure consistency and equity for all applicants. Our procedures did not contemplate the two-step procurement approach in 2001 and therefore we did not identify this application as one requiring heightened scrutiny. We have learned much more about the services IBM was offering through our intense review of the 2002 applications and concluded based on that analysis and on review of statements of work for El Paso for 2001 that our 2001 funding commitments for El Paso may have included a substantial amount of ineligible services. We have asked IBM to respond to our tentative conclusions. Depending on that response, we may seek recovery of a substantial portion of the funds we dispersed to IBM for work in El Paso in 2001.

Mr. Chairman, thank you for providing me with the opportunity to address the subcommittee. I would be happy to respond to any questions.

[The prepared statement of George McDonald follows:]

PREPARED STATEMENT OF GEORGE MCDONALD, UNIVERSAL SERVICE ADMINISTRATIVE COMPANY VICE PRESIDENT, SCHOOLS AND LIBRARIES DIVISION

Good morning, Mr. Chairman and Members of the Subcommittee. I am George McDonald, Vice President of the Universal Service Administrative Company ("USAC") with responsibility for the Schools and Libraries Division. Thank you for inviting me here today to discuss USAC's administration of the "E-rate" program.

Protecting Against Pre-Commitment Program Abuse

Previous hearings held by this Subcommittee about E-rate have given me the opportunity to outline our procedures to combat those who would try to circumvent program rules, which can lead to waste, fraud or abuse. Today, I will focus on requirements for conducting a fair and open competitive process and ensuring cost-effective use of E-rate funds. These are the responsibilities of the applicant and areas that the applicant must take responsibility for prior to submitting an application. While USAC has responsibility for ensuring applications are properly reviewed, applicants and service providers alike have responsibility for knowing and following the spirit, intent, and letter of the law and rules of the program. The Federal Communications Commission (FCC), in a series of recent rulemakings, has stressed that accountability.

Free, Ineligible Services—We have been concerned from the beginning of the program about service providers offering and applicants accepting free, ineligible services and have taken steps to address this potential for abuse. Since service providers must cover their costs, these "free" services would not be free to E-rate; they would be paid for through inflated prices on eligible equipment. For example, NEC-Business Network Solutions Inc. (NEC) admitted in its recent plea agreement that

it planned to "donate" millions of dollars worth of ineligible computer workstations to the San Francisco Unified School District (SFUSD) and that NEC actually planned to use E-rate funds to cover the costs of these "donated" workstations. NEC also admitted that the funding requests that were submitted to us for SFUSD contained inflated prices.

An applicant can, however, accept free, ineligible services, along with eligible services, request discounts, and satisfy the rules if the applicant complies with the following requirement. The applicant must reduce the prediscount cost of the eligible services by the fair market value of the ineligible services it will be provided at no cost. When we review applications, we look for free, ineligible services so that we may take appropriate action.

USAC is authorized to provide funding for eligible services only. This prohibits applicants and service providers from using discounts to subsidize the procurement of ineligible or unrequested services. The value of all price reductions, promotional offers, and "free" services must be deducted from the pre-discount cost of services. In this manner, universal service funds are not used to subsidize ineligible services. Similarly, since applicants are required to choose the most cost-effective bid with the price of eligible services being the primary factor, applicants cannot base their decisions on free, ineligible offerings by service providers.

Competitive Process to Select Service Provider and Payment of the Non-Discount Share of the Cost of Eligible Goods and Services—Two key program requirements designed to prevent waste, fraud, and abuse, and to protect the integrity of the program are that applicants must conduct fair and open competitive processes to select service providers and applicants must pay the non-discount share of the cost of eligible goods and services. If applicants do not comply with these requirements, their applications will be denied. These requirements are intended to ensure that the applicants and E-rate are getting fair value. The rules require competition over the price of eligible services, competitively neutral RFPs, and that applicants select the most cost-effective offer with price the primary factor. Applicants must remain in control of the procurement process and cannot abdicate their responsibilities to a service provider who is competing for their business, or to a consultant.

The rules also require that applicants pay their share of the cost so that they have a stake in selecting the most cost-effective offer and so that they do not request services in excess of their needs. If service providers offer to waive the non-discount share of the cost, they remove any incentive for the applicant, who is the one making the decision, to select the most cost-effective alternative. This undermines the goal of preventing waste, fraud, and abuse. If service providers waive the non-discount share of the cost, they must still cover their costs. They do this by inflating the prediscount cost so that the discount share to be paid by USAC more than covers their costs, and E-rate is the loser.

Goldplating—The E-rate program is designed to give applicants discretion in deciding which technology solutions best meet their educational objectives. Some applicants seek discounts only for basic phone service and dial-up Internet access. Others seek assistance in building sophisticated networks with broadband connections for Internet access and distance learning. USAC generally does not "second guess" the choices applicants make, but the Subcommittee and USAC have seen instances of "goldplating"— purchases that are clearly excessive for the use that will be made of them. Applicants are responsible for the reasonableness of their choices. To emphasize this responsibility, the Commission recently directed that applicants explicitly certify that "the selection of services and service providers is based on the most cost effective means of meeting educational needs and technology plan goals." We can and do deny requests when the applicant did not select the most cost-effective offering with price the primary factor, when applications include a substantial amount of ineligible services, or when requested services clearly go well beyond the requirements set out in the applicant's technology plan. Applicants are responsible for their requests—they must do the planning for technology solutions tied to their educational objectives, they make the certifications on the forms, they are to share the cost. If an applicant solely relies on service provider recommendations, this may lead to applications that run afoul of program rules. Therefore, applicants must take the necessary steps to be in a position to determine if the recommended solution is in fact what is needed.

Consultants—As the E-rate program has matured, E-rate consultants have played an increasing role. Consultants offer a variety of services to applicants, from providing advice with respect to the available technologies, to submitting program forms, to overseeing the competitive process underlying the application. As with deciding which technology solutions best meet their educational objectives, applicants have discretion to choose a consultant. However, applicants remain responsible for

their applications and for ensuring that there is a fair and open competitive process. USAC has denied millions of dollars in funding requests when we have determined that the "consultant" who provided free services to the applicant was associated with the service provider selected.

Participation of IBM in the E-rate Program

Let me now turn to the participation of IBM in the E-rate program. IBM has been participating as a provider of internal connections since the inception of the program. It has been paid over $760 million from 1998 until today—more than any other single E-rate service provider. In January 2002, USAC received an anonymous letter alleging program abuses at the El Paso Independent School District in Texas (El Paso). Our Special Investigations team began an investigation, which included a site visit. As we came to understand the procurement approach that had been used by El Paso to select IBM for Funding Year 2001, we became concerned that it may not have been consistent with program rules. We identified a number of Funding Year 2002 applicants who were requesting large amounts of E-rate discounts in funding requests associated with IBM and who may have used a similar procurement approach. We extended the investigation to cover these Funding Year 2002 applicants, which included El Paso. Ultimately, we concluded that the procurement approach was not consistent with the rules and denied requests for over $500 million because of that approach. Several of the applicants associated with IBM in Funding Year 2002 would have been selected for heightened scrutiny of their applications even if USAC had not received the whistleblower call. I believe that it's likely that would have resulted in USAC identifying these program rule violations independently of the whistleblower letter, but certainly the letter was helpful in the process.

As I have discussed, the FCC rules are designed to ensure prudent use of E-rate funds by requiring applicants to conduct a fair and open competition for obtaining the eligible services the applicant has decided it needs. The rules require applicants to identify the specific eligible services for which they will seek funding based upon the applicant's technology plan, to solicit bids from competing service providers, and then to choose the most cost-effective alternative with price being the primary factor.

These applicants and IBM participated in a two-step approach, involving a "Strategic Technology Partner." Generally, the Strategic Technology Partner is a consultant to help customers determine what their technology needs are, and a general contractor overseeing the implementation of the different projects. The two-step approach consisted of first choosing the Strategic Technology Partner, and then, with the help of that partner, deciding which eligible services to seek funding for.

At the first step, each applicant used a generic Form 470 and a similar RFP indicating that they had not decided which specific services they needed and sought a partner to help them make those decisions. Since the applicants did not identify the specific services they were seeking, the bids that the service providers submitted did not state the cost of the services. Consequently, when the applicants selected the winning service provider, they did not make that selection based on which was the most cost-effective alternative with price the primary factor.

After IBM was selected, the second step began. At this step, IBM worked with the applicants to develop detailed statements of work that identified the specific services for which funding would be sought on the applications submitted to USAC. This meant that, at the time decisions were made about what specific services to request E-rate discounts for and how much to request, there was only one service provider at the table. Consequently, the price competition for eligible services that the FCC rules envision never took place.

IBM and the applicants appealed USAC's denials to the FCC, and in some cases to USAC. The FCC affirmed USAC's decisions to deny funding in all but one instance. USAC reversed one of its denials on appeal. The FCC decision affected two other appeals pending with USAC.

We funded El Paso in Funding Year 2001 even though El Paso used the two-step approach that we determined was inconsistent with program rules in the next year. This occurred because our review procedures did not flag the El Paso application for a particular kind of heightened scrutiny. We review almost 40,000 applications for funding every year, and we use a staff of some 150 people to conduct those reviews. With a process of that magnitude, we appropriately rely on written procedures to guide the reviews to ensure consistency and equity for all applicants. Our procedures did not contemplate the "strategic technology partner" procurement approach in 2001 and, therefore, we did not identify this application as one requiring heightened scrutiny.

We have learned much more about the services IBM was offering through our intense review of the Funding Year 2002 applications and concluded based on that analysis and review of Statements of Work for El Paso for Funding Year 2001 that our Funding Year 2001 funding commitments for El Paso may have included a substantial amount of ineligible services. We have asked IBM to respond to our tentative conclusions. Depending on that response, we may seek recovery of a substantial portion of the funds we disbursed to IBM for work in El Paso for Funding Year 2001.

Conclusion

Mr. Chairman, thank you for providing me with the opportunity to address the Subcommittee. I would be happy to respond to any questions you may have.

Chairman BARTON. We thank you. Now I want to welcome Mr. Jeffrey Carlisle who is the Chief of the Wireline Competition Bureau of the FCC. Mr. Carlisle, your statement is in the record in its entirety, and we welcome you to elaborate on it for 7 minutes. Welcome to the subcommittee.

TESTIMONY OF JEFFREY CARLISLE

Mr. CARLISLE. Thank you. Good morning, Mr. Chairman and distinguished members of the subcommittee. I was named Chief of the Wireline Competition Bureau on August 4, 2004. As such, many of the incidents that are the subject of this hearing occurred before my tenure, and I do not have firsthand knowledge of them. I am here, however, to relate to you the facts as I have ascertained them. I am also here to communicate to you that with respect to the E-Rate program, I am working hard to achieve three main goals: First, to acquaint myself with the program and learn about its functioning in detail; second, to get up to speed with the current status of proceedings and pending audits and enforcement actions, including the IBM case which the Commission concluded at the end of last year; and, third, to continue work already started to improve functioning and oversight of the program.

With the 2002 launch of the schools and libraries rulemaking proceeding, the Commission has sought to improve the effectiveness, fairness and efficiency of the E-Rate program and taken significant steps to prevent waste, fraud and abuse. In April 2003, the Commission adopted debarment rules. In December 2003, the Commission established limits on the use of the internal connections, restrictions on funding for duplicative services and clarified eligible services.

We have adopted rules to revise our approach to recovery of funds for violations, strengthened our audit and investigation processes and will make recommendations to adjust the discount matrix and also to require recipients of funding to conduct their own independent audits.

Competitive bidding is a cornerstone of the E-Rate program because it limits waste, ensures program integrity and assist applicants in receiving the best value for their limited funds. The potential weaknesses in the competitive bidding system were highlighted by the facts in the various 2002 IBM applications. Under the E-Rate program rules for competitive bidding, after developing a technology plan, applicants are required to seek competitive bids on goods and services eligible for E-rate discounts by completing and posting an FCC Form 470 on the USAC web site.

In the IBM cases, the applicants submitted a broad generic version of the Form 470 indicating they were seeking virtually every product and service eligible for E-rate discounts rather than developing a list of services actually desired based on their technology plans with sufficient specificity to enable bidders to submit realistic bids with prices for specified services.

This was coupled with the applicants posting an RFP for a systems integrator, something they did not disclose on Form 470 even though Form 470 asks for such disclosure. IBM, in responding to these RFPs, did not provide specific prices for specific facilities and services, nor were such responses requested. Rather, the RFPs sought general information and prices for acting as a systems integrator, and IBM responded with hourly rates. Subsequently, the school districts selected IBM and then negotiated a contract for E-rate-eligible products and services.

After receiving a whistleblower's anonymous letter in January 2002, USAC investigated and ultimately denied Ysleta's request for funding on December 3, 2002, then denied eight other applications that selected IBM as a systems integrator. On December 8, 2003, after de novo review of the facts in these multiple cases, the Commission upheld USAC's denial of 8 of the 9 funding requests, totaling over $250 million. The Commission found in general that the two-step bidding process, that is procurement of a systems integrator followed by private negotiation with that integrator for goods and services eligible for E-rate support, violated the Commission's competitive bidding requirements.

The Commission permitted the applicants denied funding to have a second chance to receive funding for funding year 2002 and allowed them to seek further bona fide competitive bids. The eight school districts denied funding resubmitted funding requests seeking a total of $40 million in services, an amount substantially less than the prior requests. IBM was permitted to bid again but bid on only one of these applications and was not successful.

The Commission acted unanimously in just over a year after USAC initially denied funding in the IBM cases, even as it was addressing numerous other cases and was engaged in general rulemakings to improve the E-Rate program. In the course of the IBM cases, USAC denied a quarter of a billion dollars of support and also denied an additional quarter billion dollars of support for funding year 2002 to nine applicants in similar circumstances involving IBM. Thus, in the IBM cases, no funding was distributed and no dollars had to be recovered.

I believe there is more that we can and should be doing. As I indicated at the beginning of my testimony, since the IBM case was concluded, the Commission has implemented further oversight requirements, and the Bureau has recommended changes to certification requirements to the Office of Management and Budget for approval. We believe these steps will continue to improve our oversight over the program, and we will continue to use adjudications, rulemakings and audits to help us identify areas of E-rate program administration that are vulnerable to fraud or to confusion that leads to waste and abuse.

Thank you, Mr. Chairman, for the opportunity to participate in your review of the E-Rate program. I look forward to your questions.

[The prepared statement of Jeffrey Carlisle follows:]

PREPARED STATEMENT OF JEFFREY CARLISLE, CHIEF, WIRELINE COMPETITION BUREAU, FEDERAL COMMUNICATIONS COMMISSION

Good morning, Mr. Chairman and distinguished members of the Subcommittee. I was named Chief of the Wireline Competition Bureau on August 4, 2004. As such, many of the incidents that are the subject of this hearing occurred before my tenure and I do not have first-hand knowledge of them. I am here, however, to relate the facts to you as I have ascertained them. More importantly, I am here to communicate to the Subcommittee that, with respect to the E-rate Program, I am working hard to achieve three main goals: first, to acquaint myself with the program and learn about its functioning in detail; second, to get up to speed with the current status of pending audits and enforcement actions, including the IBM case which the Commission concluded at the end of last year; and third to continue and advance the work already started to improve functioning and oversight of the program, and thereby eliminate waste, fraud and abuse.

I. THE COMMISSION IS IMPROVING PROGRAM OVERSIGHT

As a program that benefits the public, the E-rate program has matured to such a level that it has attracted bad actors that bend and violate the public trust. We began to detect these individuals and entities, in some cases schools or libraries, as early as 2001, in reviewing audits completed in the year 2000. These individuals and entities have either gamed the system and exploited loopholes in our rules, or they have committed outright fraud, and engaged in deceptive practices in an effort to thwart our system of internal checks and audits. Some turn out to be honest mistakes, but some have also resulted in civil and criminal prosecutions. The sheer gall of some of these deceptions—bid rigging, failure to deliver services already paid for, falsified forms and kickbacks—is disappointing, given that this is a program to benefit children and library patrons, but it is not surprising. We are dealing with elements in some instances that acknowledge no moral limits, regardless of the purposes of the program.

Understanding this, the Commission has redoubled its efforts to deter and detect all forms of waste, fraud and abuse in the E-rate program, and we believe we can demonstrate good progress toward this goal.

Since the program's inception, and more recently with the 2002 launch of the Schools and Libraries Universal Support Mechanism rulemaking, the Commission has sought to improve the effectiveness, fairness, and efficiency of the E-rate program, while preventing waste, fraud and abuse.

In April 2003, the Commission adopted rules to bar participation in the program of any individuals and companies that have been found criminally or civilly liable for actions that violate our rules. We already have applied these procedures in three instances, and we have sought comment on whether to expand the reach of our debarment rules.

In December 2003, the Commission emphasized that our rules have always prohibited funding of duplicative equipment and services. To prevent entities from exploiting discounts on internal connections, the Commission adopted rules to prevent program applicants from making repeated, uneconomical upgrades or transferring their purchases to other entities, except in special circumstances. The Commission also endorsed an initiative to publicize specific lists of services and equipment that are eligible for E-rate discounts, both to help applicants more easily avoid ineligible ones and to clarify the scope of the program.

In July of this year, the Commission adopted rules to revise our recovery approach such that recovery actions are no longer limited to instances in which service providers have violated our rules, but instead recovery is directed against any party or parties (including service providers and E-rate applicants) that have committed rule or statutory violations.

Last month, the Commission adopted the Schools and Libraries Fifth Report and Order, in which it addressed a number of issues that have surfaced as a result of audits conducted during the Commission's oversight of the E-rate program. The Schools and Libraries Fifth Report and Order strengthens the Commission's current process for conducting audits and investigations of the E-rate program in a timely and efficient fashion. Specifically, the order establishes a framework for determining the appropriate amount to be recovered when funds are disbursed in violation of the

statute and our rules. In addition, the order sets forth a framework for heightened scrutiny for applicants and service providers that have violated our rules in the past. The order also extends the "red light" rule of the FCC's existing Debt Collection rules to bar fund recipients from receiving additional program benefits if they have yet to repay the fund for past erroneous disbursements. Our "red light" rule provides that the Commission shall withhold action on any application or request for benefits made by an entity that is delinquent in its non-tax debts owed to the Commission, and dismiss all such applications or requests if the delinquent debt is not resolved. The Fifth Report and Order also responds to recommendations made by the Commission's Office of Inspector General (OIG), including codifying USAC procedures into our rules and strengthening the program's document retention requirements, so that any misdeeds can be more easily detected and prosecuted. Consistent with the OIG's recommendations, the order also modifies technology plan requirements to require applicants to have an approved plan that follows the U.S. Department of Education technology plan guidelines, subject to an additional requirement that an applicant show that it has the necessary resources to achieve its technology aims.

In response to recommendations from the U.S. Department of Justice, the Fifth Report and Order also requires applicants to make important new certifications as a prerequisite to funding. For example, applicants must now certify that price will be the primary factor in bid selection, and, as a guard against gold-plating, that they will select the most cost-effective means to achieve goals of their technology plans. Finally, the order establishes a process to codify USAC procedures and update those requirements as necessary to protect against waste, fraud and abuse.

This Fall, we will make recommendations to the Commission on revising the schedule of discounts schools and libraries are accorded under the program, as they purchase equipment and services. We believe that adjusting the discounts so that applicants are required to increase their contribution to those purchases will encourage schools and libraries to make better economic choices, and further minimize the opportunities for abuse. We also continue to tighten and monitor the competitive bidding process to minimize opportunities for waste, fraud and abuse. The potential weaknesses in a competitive bidding system were highlighted by the facts in the various 2002 IBM applications.

II. THE IBM CASES ILLUSTRATE THE NEED FOR CONTINUING REFORM AND VIGILANCE

Under the E-rate program rules for competitive bidding, after developing a technology plan, applicants are required to seek competitive bids on goods and services eligible for E-rate discounts by completing and posting an FCC Form 470 on the USAC website. Applicants also must satisfy applicable state procurement rules, wait at least 28 days after posting before committing to a contract, and in selecting their service providers, make price the primary consideration. Competitive bidding is a cornerstone of the E-rate program because it limits waste, ensures program integrity, and assists applicants in receiving the best value for their limited funds.

In the IBM cases, the applicants submitted a broad, generic version of the Form 470 indicating that they were seeking virtually every product and service eligible for E-rate discounts, rather than developing a list of services actually desired, based on their technology plans, with sufficient specificity to enable bidders to submit realistic bids with prices for specified services. While the Form 470 offered applicants the chance to inform potential bidders if there was a more specific request for proposal (RFP) that they could consult, the applicants in the IBM cases generally indicated that one was not available, even though they posted such an RFP only five days after filing their respective Form 470s with USAC.

In the principal IBM case, involving Ysleta Schools District (Ysleta), the applicant indicated that it was seeking a "Technology Implementation and Systems Implementation Partner" to "assist the District in preparing applications on the District's behalf for E-rate funding . . ." Five firms responded to Ysleta's RFP. IBM submitted a 147-page response that addressed each category in the RFP. In that response, the only prices that IBM quoted were hourly rates for Systems Integration, ranging from $394 per hour for a Project Executive to $49 per hour for a Project Administrator. A "systems integrator" operates in the role of a prime contractor for coordinating services actually delivered by subcontractors. Our rules, however, contemplate a direct relationship between the applicants and the service providers, not an indirect relationship through an intermediary subcontracting unit.

In its response to the RFP, IBM did not place bids on the specific products and services that were eligible for E-rate discounts, as required by our rules. Ysleta selected IBM subject to the condition that a satisfactory contract could be negotiated between IBM and Ysleta over the scope of work and the prices of E-rate-eligible

products and services. IBM and Ysleta engaged in those negotiations and completed them on January 17, 2002. The final contract included five statements of work, ranging from just under $1 million to more than $12 million, each with detailed specifications, prices, and terms.

Triggered by a whistleblower's anonymous letter in May 2002, USAC sent a special investigator to do a site visit and collect documentation from Ysleta concerning whether it had the resources to effectively use the services it had purchased. After reviewing Ysleta's application and supporting documents, USAC denied Ysleta's request for funding on December 3, 2002, based on violations of the Commission's competitive bidding rules, and provided Ysleta and IBM with a detailed explanation for that denial. Soon thereafter, USAC also denied eight other applications that selected IBM as system integrator. On January 30, 2003, Ysleta and IBM sought Commission review of USAC's decision, and the eight other applicants associated with IBM filed similar appeals.

On December 8, 2003, after a *de novo* review of the facts of Ysleta and similar cases, the Commission upheld USAC's denial of eight of the nine funding requests totaling over $250 million, for Ysleta, Donna, El Paso, and Galena Park in Texas; the Navajo Education Technology Consortium and Albuquerque in New Mexico; Oklahoma City, Oklahoma; and Memphis, Tennessee. The Commission found, in general, that the so-called "two-step" bidding process (i.e., procurement of a system integrator followed by private negotiation with that integrator for the goods and services eligible for E-rate support) that IBM had participated in with Ysleta and others had violated the Commission's competitive bidding requirements.

Specifically, the Commission found in Ysleta that:

1. Ysleta did not attempt to select the products and services that represented the most cost-effective offerings, with price as the primary consideration. The only prices that IBM presented were hourly rates for systems integration. No bids were for prices for any E-rate supported offerings. Ysleta did not request or obtain sufficient data about the prices of IBM's competitors for E-rate services to know if IBM's prices represented the most cost-effective option. Ysleta's internal assessment of cost-effectiveness was not sufficient;
2. The manner in which Ysleta and other schools used Form 470 had the effect of eliminating competitive bidding for the products and services eligible for discounts under the E-rate program, because Ysleta's form failed to describe the services that it sought to purchase in sufficient detail to enable potential providers to formulate bids. Specifically, the structure and content of the RFP meant that potential vendors of specific services would be unlikely to respond in a meaningful way to the all-inclusive FCC Form 470;
3. Because Ysleta's two-step system integration approach was inconsistent with our competitive bidding requirements and Ysleta failed to demonstrate that it selected IBM with price as the primary factor, it failed to submit a bona fide request for service, contrary to section 254(h)(1)(B) of the Communications Act; and
4. Compliance with state and local procurement processes did not exempt Ysleta from complying with the Commission's competitive bidding rules.

The Commission found it in the public interest, however, to permit the applicants that were denied funding to have a second chance to receive Funding Year 2002 support for services that they sought by seeking bona fide competitive bids. In particular, the Commission found that there was "substantial and widespread reliance" on USAC's prior approval of applications that utilized two-step bidding. USAC could reasonably have been construed as sanctioning the improper two-step bidding process by approving a 2001 application by El Paso, which involved IBM. The processing window for these rebid applications closed on June 9, 2004.

The eight school districts denied funding by the IBM decision have resubmitted funding requests seeking a total of $40 million in services, an amount that is substantially less than the prior requests. IBM was permitted to bid again because, as stated in the order, the Commission believes that its rules were not as clear as we would have liked, and that IBM may not have realized that its aggressive interpretation of the rules actually crossed the line. As it turns out, IBM bid on only one of these applications, and it was not successful. As directed by the Commission, USAC is carefully scrutinizing these requests to ensure that they are consistent with the Commission rules as clarified in the Order. USAC is also investigating the circumstances surrounding El Paso's 2001 application.

III. THE LESSONS LEARNED FROM THIS CASE

The IBM case illustrates the importance of a robust competitive bidding mechanism in the E-rate program. It also shows the importance of having clear rules. We continue to be vigilant in pursuing both goals.

The Commission acted unanimously in just over a year after USAC initially denied funding in the IBM cases. The Commission acted decisively and quickly, even as it was addressing numerous other cases and was engaged in general rulemakings to improve the E-rate program. In the course of the "IBM cases," USAC denied a quarter of a billion dollars in support, and also denied an additional quarter billion dollars of support for Funding Year 2002 to nine applicants in similar circumstances involving IBM. Thus, in the IBM cases, no funding was distributed, and no dollars had to be recovered.

Competitive bidding is critical to the success of the E-rate program. As long as vendors and suppliers are subject to competition from others who are also eager to gain a customer, they have a strong incentive to offer a competitive, cost-based price for E-rate eligible goods and services. Absent competitive pressures, service providers and applicants may inflate prices to maximize their gains.

Clear rules are also crucial. Private firms and E-rate applicants have incentives to interpret unclear rules to their benefit, even at the expense of the nation's students, library patrons, and all Americans—the true beneficiaries of the E-rate program. The Commission is committed to enforcing, explaining, and, when necessary, changing its rules to minimize potential for their abuse. Through the ongoing rulemaking process, we are revising and adjusting the program rules to minimize abuse, as we have done in the recent Fifth Schools Order, while we continue to grant support to those in need.

Finally, the IBM decisions are an example of the system working. The inquiry into Ysleta began with an anonymous letter alleging rule violations by IBM. Pursuant to its normal practices, USAC sent a special investigator to do a site visit and collect documentation, and USAC denied the funding request consistent with our rules. The Commission followed its normal process by reviewing the record de novo, and it largely affirmed USAC's decision, seizing the opportunity to clarify its rules.

We at the Commission are proud of this result. But I believe there is more we can and should be doing. As I indicated at the beginning of my testimony, since the IBM case was concluded, the Commission has implemented further oversight requirements, and the Bureau has recommended changes to certification requirements to the Office of Management and Budget for approval. We are considering further steps. We believe these steps will continue to improve our oversight of the program, and we will continue to use adjudications, rulemakings, and audits to help us identify areas of E-rate program administration that are vulnerable to fraud or to confusion that leads to waste or abuse.

The Commission and its staff remain absolutely committed to making necessary improvements in the E-rate program. We are happy to provide any assistance to the Subcommittee and stand ready to offer our technical and subject area expertise as you move forward. Thank you, Mr. Chairman, for the opportunity to participate in your review of the universal service fund's schools and libraries support mechanism, and I look forward to your questions on these issues.

Chairman BARTON. We thank you, Mr. Carlisle. The Chair would recognize himself for the first round of questions, and the staff would put the clock at 10 minutes.

Mr. McDonald, I am going to ask you just some general questions to set the parameters. Do you know approximately how much money is being spent each year on the E-Rate program nationally?

Mr. MCDONALD. We have a cap on dispursements and collections of $2.25 billion annually. We commit up to about that level and we disperse about 80 percent of that. We actually send checks out for about 80 percent.

Chairman BARTON. So about $2.25 billion. And has that amount changed since the program was implemented in the late 1990's? Has it been about $2 billion each year?

Mr. MCDONALD. That was the cap, as originally set, and then in 1998 the Commission changed the first fund year from a 12-month to 18 months and lowered the cap to $1.925. Since then it has been

$2.25 billion a year, and the Commission has recently provided for rollover of unused funds for prior year.

Chairman BARTON. Okay. So in the history of the program, we have expended somewhere around $12 billion; is that just a ball park figure?

Mr. MCDONALD. I think it is about $8 billion in actual money out the door.

Chairman BARTON. $8 billion out of the door. As we speak, how many requests are pending for funding, either for this year or the next year; do you know, in terms of dollars?

Mr. MCDONALD. We have committed $740 million for the funding year we are in now, and the cap for this year is $2.4 billion.

Chairman BARTON. So you have expended about a third of the money that is allocated for this year.

Mr. MCDONALD. We have committed, sir. We send letters out to commit funds, and then as applicants do the work, applicants or service providers can bill us for that. Our actual expenditures are much less than $740 million.

Chairman BARTON. Okay. Now, my first question—I just kind of want to get that in the record so we know what we are talking about—I believe this is our third hearing on this program, it may be the fourth hearing, but every hearing it is one horror story after another. Is this a program that we should suspend any funding until we can get it right, just stop spending the money until we can get the program rules right? Mr. Feaster, do you want to take a shot at that?

Mr. FEASTER. We agree that there has been a series of horror stories. I think the movement has been in the right direction. From our perspective, it hasn't been fast enough. I think it would be a real major decision for somebody to make to suspend the program. I think the schools are very dependent upon the money to maintain connections to the Internet and get new connections. I think that would be a very radical decision. I think tightening up the procedures, as happened in the past and will hopefully happen in the future, you will see less horror stories. And we also are instigating a broad-based audit program using USF funds to check up on more applicants than we have been doing in the past where we are looking at a program of 250 audits over the next 18 months to identify major problems.

Chairman BARTON. Mr. McDonald, do you have an opinion whether we should suspend the program?

Mr. MCDONALD. Sir, I think you would have to weigh it against disruption to schools and libraries across this country. We have focused on particular instances that are very troubling. One of the ones we are here to talk about today, as Mr. Carlisle said, except for the 2001 money in El Paso, the money did not go out the door; we stopped it. As I have told the committee before, we are initiating a new program of 1,000 site visits to complement the application and invoice reviews we do and the audits we do.

The audits that we have done, and we have worked very closely with Mr. Feaster and his team on these audits, they have identified issues but they haven't identified very many instances of fraud. I think that the subcommittee staff has done a good job of focusing on the worst cases. I don't think that the public should come away

from these hearings thinking what they are hearing in these hearings——

Chairman BARTON. By the testimony of one of you gentlemen, there are 150 program reviewers and you admit that most of it is self certification. You assume that what they are telling you is the truth because you just don't have the staff to really investigate it. Was that your testimony, Mr. McDonald?

Mr. MCDONALD. I believe Mr. Feaster spoke about the self certification.

Chairman BARTON. So we are basically on an honor system here. We have spent $8 billion and there is a real question about how much of that has been effectively utilized. Mr. Carlisle, do you have a view on whether we should suspend the program?

Mr. CARLISLE. I would largely agree with Mr. Feaster on this. I think it would be a radical decision. And if I could provide a little specificity about why, my understanding is is that it is not as if in every funding year you are funding schools and libraries from the ground up to build new systems and establish new connections. A good deal of the funding is sent out in order to maintain connections that are already there.

Chairman BARTON. Well, one of my questions is where are we in wiring our schools? What percent of the eligible schools and libraries have been wired effectively? Do we have any statistics on that? Are we 90 percent there or 80 percent there?

Mr. CARLISLE. In our recent 706 report, we identified—I can't speak to the percent that are eligible for funding, but in the 706 report, we stated that 94 percent of the schools in the country have broadband access, and somewhere between 94 and 95 percent of libraries, I believe, do.

Chairman BARTON. So we are over the 90 percent level. That would indicate that there is really not a need to continue to fund at the $2 billion plus year level.

Mr. CARLISLE. Well, a review of that level may be in order, although I would say that, again, you have recurring costs for the connections that are already there. There are monthly payments that you have to make to keep a broadband line up or a telephone line up.

Chairman BARTON. Well, I guarantee you, as long as money is available, people are going to ask for it. We could double the program to $4 billion a year and there would be requests for $4 billion. We could double that to $8 billion and there would be requests for $8 billion. If we cut it to $1 billion, if it is really 100 percent—as we get closer to 100 percent, change the rules a little bit, the user community will adapt to that and do that effectively.

Well, one of my next questions, since nobody said we ought to suspend the program, I was hoping somebody would say we should, but I have to be honest and our expert witnesses here that are in charge of the program say we shouldn't, should we restructure the program so that the local communities that are requesting the funding have to put more of their local tax dollars upfront to participate? In other words, instead of requesting Federal dollars and you go out and use them, should we set it up so that you go out and we set out the program requirements. The local school district, the local library goes out and puts in a system that meets those

requirements and then gets reimbursed for it. Obviously, if the local taxpayers are on the hook, the school board members and the administrators are going to make sure or I would think they would make sure that those monies are actually effectively used because it is coming out of their local tax base. Mr. Feaster, do you have a comment on that?

Mr. FEASTER. I think that would be an excellent idea. From the standpoint of oversight, the more local money that goes into a system, I think the better it is going to be. I would have to defer to the program operators in terms of the impact on whether the schools that don't have that money how that would affect them in the operation of the program.

Chairman BARTON. Mr. McDonald, do you have an opinion on that? Just the general concept. I understand that we would have to do a lot of work to work it out.

Mr. MCDONALD. I think you would see a much lower participation by the poorer schools who would have to come up with that money upfront. The poorer schools frequently wait for our commitment letters to initiate service because they don't have that money, and when they are assured——

Chairman BARTON. Well, but now 94 percent have gotten some connection established, if Mr. Carlisle's statistics are relevant. So we are not starting from ground zero. You could set up some sort of a loan program that a low-income school district could apply for a loan, and once they show that they are actually spending the money for what it is supposed to be, they could be reimbursed. I understand there is a difference between El Paso Independent School District in far west Texas, it is low income, and in Highland Park School District in urban Dallas that is one of the higher income districts in the country. I understand that.

So you could have some special provisions for low income participation based on some sort of a loan program. But unless we force accountability or at least incentivize accountability at the local level, if you have got a pile of Federal dollars that are just out there, people are going to grab at it. It is free money, it is found money, it is somebody else's money. So you have got to figure—I think we have to figure out a way to make sure that there is a real incentive at the local level to use the money for which it is intended.

Mr. Carlisle, do you have a comment on some sort of a system where the local dollars go upfront?

Mr. CARLISLE. Well, I think your proposal would certainly create that incentive. I would have the same concern, although what you point out about much of the facilities already being in place would be a countervailing consideration. We are taking steps and will make a recommendation to the Commission in the next month or so to lower the discount rate that is currently applied, which would have the effect of requiring school districts to have more skin in the game, to put more of their money upfront in order to qualify for funding. That coupled with a requirement that certain of those recipients would have to do independent audits would also be a control on the program, an alternative one to what you have suggested but a control.

Chairman BARTON. Let the record show that "skin in the game" is a technical term used at the FCC for the local community to put more of their dollars at risk in the beginning of the program.

Mr. McDonald, before my time—my time has expired. You wrote a letter to Mr. Bob Richter who is with IBM Corporation, in charge of their national E-Rate program. This letter was dated September 16. It is directed toward the El Paso Independent School District funding for the year 2001, and the amount of money that was dispersed under that was a little over $55 million. The thrust of this letter appears to be that a fair amount of that money may have to be reimbursed. Do you care to comment of what percentage of that $55 million this letter indicates might need to be reimbursed?

Mr. MCDONALD. Potentially a significant amount of that, and we have invited IBM to come back to us and help clarify which of these services that they delivered an invoice for are eligible and which are not.

Chairman BARTON. But do you think it is going to be in the neighborhood of $40 million or half of it?

Mr. MCDONALD. I don't think it would be that high. The analysis attached to the letter walked through the individual pieces of it, and a portion of the issue is what schools got the services? Were they schools that qualified for the 90 percent discount rate or was it the entire school district? And the answer to that question could be a significant piece, and we just don't know.

Chairman BARTON. The Chair would ask unanimous consent that the letter with the attachments be included in the record. I am told that the minority staff has seen this letter? Is there any objection? With hearing no objection, this letter is included in the record.

My final question before I turn it over to Ms. DeGette, in the El Paso case, they were being funded in the $2 million to $4 million range and then the funding request jumped up to over $60 million. Is there no protocol within USAC, when you have such a huge increase from a prior year, that that is not automatically red-flagged? We had the same case in the Dallas Independent School District where they were going along at an amount of money and then there was a significant jump in a single year. Does that not raise some internal flag that needs to be investigated?

Mr. MCDONALD. It does since these hearings have begun, sir. I think after the last hearing we realized that that should have been an additional flag for us, and we have made that an automatic step now.

Chairman BARTON. Okay. The Chair would recognize Ms. DeGette of Colorado for 10 minutes.

Ms. DEGETTE. Thank you, Mr. Chairman. I agree with the chairman that one of the reasons this money has been so grossly misused is because of lack of oversight and local accountability, but my concern is one that Mr. McDonald articulated, which is that some of these school districts are so poor, I mean after all the whole program is to target poor districts, that they may not have the financial wherewithal to even come up with an initial amount of money. And what I would like to explore is I was just telling staff my daughter in the Denver Public Schools, which does receive this money, they quit watering the lawn at her high school because they don't have enough money to maintain the grass. So I was try-

ing to think about how they would come up with enough money to make a major investment in computer wiring, and I think that is a concern we all share.

But my concern is how do we find alternative ways to ensure that this money is well spent? And I wanted to ask you a couple of questions, Mr. Feaster. You testified in your opening statement that it would take additional enforcement resources to really do the job that you need to do; is that correct?

Mr. FEASTER. That is correct; yes, ma'am.

Ms. DEGETTE. You have, I think, three folks investigating these complaints right now; is that right?

Mr. FEASTER. Yes, ma'am.

Ms. DEGETTE. How many staff do you think you would need to adequately investigate and do this oversight?

Mr. FEASTER. Approximately 16 additional staff. We are in the process of developing a request for proposals to conduct approximately 250 audits of the program over the next 18 months. For us to do that many reviews of the audits, we would need additional resources.

Ms. DEGETTE. Do you have a ball park sense of the kind of resources you are talking about, a dollar amount?

Mr. FEASTER. For the 250 audits, about $10 million.

Ms. DEGETTE. Ten million? And do you have any estimate about how much fraud and waste and abuse is going on out there, roughly?

Mr. FEASTER. Based on 135 audits that have been done over the past couple of years, we found about 36 percent of those people were not following the rules.

Ms. DEGETTE. Do you have any sense about how much money we are talking about with that 36 percent, roughly?

Mr. FEASTER. No, I don't.

Ms. DEGETTE. What do you think—do you have advocate independent audits of these applications?

Mr. FEASTER. Yes, I do.

Ms. DEGETTE. Tell me how that would work, and are there additional rules that can be put into place to beef up independent audits?

Mr. FEASTER. When you say independent audit, I think that the audits done by my organization or by contractors under my authority is the way to go. USAC also does internal audit—using an internal audit staff, they also do audits. I think that adds to the number of audits we do. The concept I think you are talking about is independent audits by the school district.

Ms. DEGETTE. That would be helpful too, I would think.

Mr. FEASTER. We would have to review that to ensure that they are truly independent. If the school district is paying somebody to do something, they tend to get the results they like. That is always a possibility.

Ms. DEGETTE. But there is a mechanism that can be put into place as part of the application process to ensure independent audits by school districts, I would assume.

Mr. FEASTER. We could develop something in coordination with USAC and the Wireline Bureau.

Ms. DEGETTE. Now, can USAC funds be used for independent audits?

Mr. FEASTER. We are going to try to do that with my office and USAC partnering in some audits.

Ms. DEGETTE. Mr. Carlisle, in your testimony, you said that the Wireline Competition Bureau is making a recommendation to the Commission on revising the schedule of discounts that schools libraries are quoted under the program. And what this recommendation would do, as you testified, it would increase applicants to increase their contribution to purchases. And this is what I am concerned about: I am wondering if you are concerned whether these disadvantaged school districts will have a difficult time paying for the equipment as a result of the increased costs of the schools, and has your agency done any research on this issue?

Mr. CARLISLE. My staff is looking into it as part of the process of making a recommendation. Obviously, any recommendation that we make to the Commission is going to take that into account.

Ms. DEGETTE. So you don't have any firm proposal to increase the cost to the schools of the equipment and services, correct?

Mr. CARLISLE. I have not read the recommendation yet, so I don't exactly know what——

Ms. DEGETTE. I am sorry, is there a recommendation already?

Mr. CARLISLE. Not before the Commission yet. My staff is in the process of writing that, which would be a recommended order to the Commission.

Ms. DEGETTE. And what kind of research is your staff doing to take into account the financial ability of these poor school districts to pay?

Mr. CARLISLE. Well, typically, what we do in any rulemaking proceeding is review the record that we have got on hand, the comments and replies filed, which will include comments and replies filed by the school districts and advocates on their behalf, and also have meetings with them to find out what the scope of that issue is.

Ms. DEGETTE. And what is that—is that comment period open now?

Mr. CARLISLE. I am not sure—I am sure it is——

Ms. DEGETTE. Someone is shaking her head no behind you.

Mr. CARLISLE. I am sure it is closed at this point, but I am not sure exactly——

Ms. DEGETTE. I mean was there notice to these school districts?

Mr. CARLISLE. It would have been the same public notice that anyone receives of any rulemaking that we have. So it is publication in the Federal Register. I don't know that specific notice was sent. We have had ex parte meetings with a number of schools already, schools and libraries already, that would be affected by changing the discount rate. But in terms of when the initial notice of proposed rulemaking went out, it would have been the same publication that the rest of the public received about it.

Ms. DEGETTE. And do you know whether—since the comment period is closed, do you know how many comments that you have received and from what types of schools and so on?

Mr. CARLISLE. Off the top of my head, no, but I would be happy to work with your staff to give you that information.

Ms. DEGETTE. That would be great. Mr. Chairman, I would ask unanimous consent that Mr. Carlisle be allowed to submit in writing the kinds of responses to my questions.

Mr. WALDEN [presiding]. Absolutely. Without objection.

Ms. DEGETTE. Thank you. Now, I am wondering, Mr. McDonald, I think you testified a minute ago in response to the chairman's question that you had some concerns about these schools, the needy schools being able to pay a higher percentage. I am wondering if you can elaborate on that answer and tell me why you do have that concern?

Mr. MCDONALD. At a 90 percent discount rate, the schools are paying 10 percent. If the discount rate were lowered to 80 percent, the schools would pay 20. That is a doubling of the share they have to come up with, so from their perspective, that isn't a trivial impact on them. I am not taking a position about should the rate be changed or not, just that from that perspective, every 10 percent decrease in the maximum discount rate is a doubling or tripling of what the schools have to pay today.

Ms. DEGETTE. Do you know if anybody has done any research on whether reducing the E-rate contribution from 90 percent to 80 percent would have any effect on the wrongdoers? I mean it still seems to me that if you have a 20 percent match, there is going to be an incentive on some people's part because there is still 80 percent.

Mr. MCDONALD. You mean——

Ms. DEGETTE. Where is the tipping point where it would really create more accountability?

Mr. MCDONALD. You may be aware that USAC formed a Task Force on Prevention of Waste, Fraud and Abuse last year, and the task force spent a lot of time on this question. And there were advocates—the composition of the task force included representatives of schools, rural schools, urban schools, libraries, service providers, and there was extensive discussion about this, some people pushing for maximum 70 percent rate. The task force ended up at 80 percent, very much the kind of issues you were just going through there. Is the non-discount share large enough to stop the wrongdoing?

Ms. DEGETTE. Right.

Mr. MCDONALD. Was it still possible for the service provider to inflate the price and get that money back? That is where they came out. I have learned more about what is really going on in some of what the committee has seen, because documents that have come to your attention have not come to ours. Obviously, they aren't sharing these documents with us.

Ms. DEGETTE. And this task force, as I understand it, was primarily composed of vendors, while there were others on the task force; is that right?

Mr. MCDONALD. No, I think it is primarily applicants that were—vendors and applicants. We tried to get a cross section of all the stakeholders in the program. So there were a number of school applicants, a number of library applicants, rural schools, Catholic schools.

Ms. DEGETTE. It would be helpful to me, Mr. Cline, if you could—I am sorry, Mr. McDonald, if you could—the name tags are over—Mr. Cline says, "Oh, no."

If you could supplement your testimony with the list of who was on that task force, that would be very helpful.

Mr. MCDONALD. Be happy to do that.

Ms. DEGETTE. Thank you.

[The information referred to follows:]

USAC - WASTE, FRAUD AND ABUSE TASK FORCE MEMBERS

Harry Cook

BellSouth

Local Exchange Carriers (LECs)

Having been involved with the E-rate program since its inception, Harry Cook has participated with numerous committees, task forces, industry groups and educational organizations seeking to improve the E-rate program. As a service provider who has modified internal systems to better support the E-rate program, he is also very familiar with how even small changes to process and operational side of the program impact the service provider's cost structure.

Sara Fitzgerald

Funds for Learning

Consultants

Sara Fitzgerald is vice president, communications, of Funds For Learning LLC, an educational technology consulting firm that has focused on the E-rate program since 1997. Funds For Learning provides support for school and library applicants throughout all phases of the application process. It also provides independent consulting support to the vendor community. Through its web site, Funds for Learning tracks program developments and offers tools for program stakeholders. Ms. Fitzgerald also serves as project director of the Consortium for School Networking's Taking TCO to the Classroom and Safeguarding the Wired Schoolhouse initiatives.

Maureen Foley

Center City Consortium

Parochial schools

As the Administrative Director for a community of Catholic elementary schools in Washington, D.C., Maureen Foley has been involved with the E-rate

program since its inception. With a background in information systems and education, Ms. Foley has worked with the schools to develop technology plans, negotiate with vendors, complete applications at all phases of the program and implement technology.

Wayne Hay

Westchester Library System

Libraries

Wayne Hay is the IT Manager for the Westchester Library System (WLS), a cooperative of the 38 public libraries in Westchester County, New York. WLS has been an E-rate applicant since the first year of the program, submitting about 40 applications per year. Mr. Hay has been a member of the American Library Association E-rate Task Force since its beginning.

Win Himsworth

E-Rate Central

Schools, consultants

Win Himsworth is the Executive Director of E-Rate Central. E-Rate Central, a division of CentralEd, is a private consulting company specializing in the provision of E-rate services since 1997. E-Rate Central provides full E-rate application services for over 100 large- and medium-sized applicants, serves as the E-rate coordinator for New York State Education Department, and runs E-Rate Central's nationally recognized web site.

Vicki Hobbs

Rural School and Community Trust

Rural schools

Vicki Hobbs is currently a Telecommunications Policy Analyst with the Rural School and Community Trust, a national nonprofit foundation, and a member of EdLiNC, the Education and Library Networks Coalition. Ms. Hobbs has been involved with research and analysis of the E-rate program since 1995 and testified before the FCC on behalf of the Regional Education Labs. She has served as Telecommunications Panel Chair for the Rural Policy Research Institute (RUPRI) at the University of Missouri; director of an 18-school

two-way I-TV network; and past president and co-founder of the Missouri Distance Learning Association. In those capacities she has worked with the E-rate program as a researcher, an analyst, an applicant, and a consultant.

Toni Pickle

Pioneer Telephone Cooperative

Service providers

Toni Pickle serves as Division Manager for Pioneer Telephone Cooperative, Inc. For the past seven years, her responsibilities have included: coordinating all E-rate and OUSF activities for Pioneer Telephone departments as well as for the applicant community. She has made presentations on Universal Service and the E-rate Program and Process at numerous state and regional conferences. She also participated in a team that assisted in developing information for the "Service Provider's Manual" on the SLD website.

Gary Rawson

Mississippi Department for ITS

Schools, state networks

Gary Rawson is currently the Infrastructure Planning Coordinator for the Mississippi Department of Information Technology Services (ITS). He has served as Mississippi's State E-rate Coordinator since the program's inception. Gary served on the SLD's Year Three Task Force representing the National Association of State Telecommunications Directors (NASTD). He is the former Chair of the NASTD E-rate Action Committee and is the current Chair of the Council of Chief State School Officers (CCSSO) National Alliance of State E-rate Coordinators. The CCSSO Alliance is made up of approximately 40 states and has a membership of 79 E-rate coordinators. Mr. Rawson has worked with the SLD through NASTD and CCSSO since the beginning of the program. Mr. Rawson brings many perspectives to the table: those of state networks, master contracts, state procurement, and small, rural applicants.

Ron Reynolds

California Association of Private School Organizations

Private schools

Ron Reynolds is Executive Director of the California Association of Private School Organizations. CAPSO is the California state affiliate of the Council for American Private Education (CAPE), the organizational portal to the nation's private school community. Mr. Reynolds has devoted 25 years of service to private education as an organizational executive, professor and consultant, and has served as the primary reviewer of school technology plans for a SLD-certified approving agency.

Lauren Brown

EarthLink

Internet service providers (ISPs)

Lauren Brown is an Accounts Receivable Special Billing Supervisor at EarthLink, Inc., headquartered in Atlanta, Georgia. Ms. Brown joined the Finance team in 2002 and got involved with the E-rate program soon thereafter. Her involvement with E-rate has been managing the project from an ISP perspective, working with public schools, private schools, and libraries.

Barbara Stoll

Sprint

Local Exchange Carriers (LECs)

Barbara Buchhorn Stoll joined the Sprint education team in 1998 and has worked with E-rate ever since. Prior to joining Sprint, Ms. Stoll worked as a teacher, both in the United States and overseas, and served three years with the U.S. Department of Education. In addition to her K-12 and E-rate responsibilities at Sprint, she is active with her twin sons' PTA in the suburban Kansas City area.

Tony Wening

Missouri Research & Education Network

Libraries

Tony Wening is Director of State and Federal Programs for the Missouri Research and Education Network (MOREnet). MOREnet serves K-12 schools, public libraries, higher education and state government with Internet access, training, technical support, licensed online resources, and teacher professional development. Mr. Wening has been involved with the E-rate program since its inception and currently participates in both the American Library Association E-rate Task Force and the Council of Chief State School Officers E-rate Alliance. He also served on SLD's Year Three Task Force.

Robert Westall

School District of Philadelphia

Large urban public school systems

Bob Westall has directed technology services for Philadelphia Public Schools, the nation's eighth largest school system, since 1997. He has coordinated Philadelphia's successful implementation and participation in the Universal Service E-rate program since its inception and has been actively involved in the program's evolution. Mr. Westall serves on the Task Force on behalf of the Council of the Great City Schools, a coalition of 60 of the nation's largest urban public school systems. Urban districts overwhelmingly represent the largest and most successful beneficiaries of the E-rate support mechanism and have become key stakeholders in the continued development of the program in its support for the betterment of technology in elementary and secondary education.

Alecha Stackle

Dell

Internal connections service providers

As senior marketing consultant to K-12, Alecha Stackle is responsible for developing programs to enable Dell to address a wide variety of issues facing the K-12 marketplace. In this role, she is Dell's subject matter expert for topics ranging from No Child Left Behind legislation to E-rate funding and is a primary point of contact for Dell's work with educational organizations such as CoSN, ISTE and the Department of Education. The programs Ms. Stackle has developed for Dell focus on institutional effectiveness, improved student performance and identifying ways educators can implement technology to improve student outcomes.

Mr. WALDEN. Mr. McDonald, I want to go to you. Could you turn to tab 65 in our notebook of information? You will find there a memo from Mr. Quentin R. Lawson of the National Alliance of Black School Educators to Mr. Bob Emery, John Colvin and Don Parker. And attached thereto is a November 2, 2000 letter from NEC to Mr. Lawson in which you will see—are you on the same? Okay. In which you will see right off the top he says, "Dear Mr. Lawson, I am pleased to respond to your letter on behalf of the VNCI, NEC and IBM," quote, unquote, "the team."

And then later on page 2 of that letter he says, on sub 6, "The teaming agreement related to the team members participation with one another is in negotiation and will remain the confidential information of each member of the team. The team, while fully committed to supporting NABSE and NABSE's membership, believes that any contractual arrangement between NABSE and the team could be construed inappropriately by third parties."

And on the third page, he writes—or these people write, Mr. Colvin, Mr. Emery and Mr. Parker, "As an offset to the costs that NABSE will incur in support of this partnership, NABSE will receive an annual payment of 1.5 percent of the cumulative business generated by the team members in sales to NABSE member schools."

Is this some sort of kickback we are dealing with here? How would you describe this 1.5 percent payment back to NABSE and this reference to how this might be misconstrued by third parties?

Mr. MCDONALD. My understanding is that NABSE was presenting itself as a disinterested consultant to these school districts, helping them participate in E-rate. As I mentioned in my testimony, we have denied millions of dollars where that consultant who is controlling the process of selection of vendor is associated with those vendors.

Mr. WALDEN. Do you think that is the case here, that NABSE was associated with the vendors?

Mr. MCDONALD. NABSE certainly has an interest in making sure the work goes to these vendors, because they make money if it does. Presumably, they don't if it does not.

Mr. WALDEN. And what qualifications, from your experience, did the NABSE people bring to the process as technical qualifications?

Mr. MCDONALD. I don't know, sir.

Mr. WALDEN. Are you familiar with other such agreements where there is a percentage that goes back based on sales to a third party?

Mr. MCDONALD. I recall the incident of Total Com and there was an FCC decision on this where we found Total Com was the consultant where whenever they were involved with an applicant, the applicant chose an outfit called SiteLink to provide internal connections. We got hold, in that case, of a contract that the applicant and Site Link would sign that named Total Com a beneficiary of the contract. It didn't specify the percentage, as I recall, but presumably there was some money going back to Total Com based on getting business for SiteLink. We denied those applications; the FCC upheld that decision.

Mr. WALDEN. But that is a similar sort of scheme to what we are reading about here?

Mr. MCDONALD. I would think that is similar; yes, sir.

Mr. WALDEN. And so would this be in violation of your rules then?

Mr. MCDONALD. If this document had come to our attention, we would have denied these applications.

Mr. WALDEN. Now that this document has come to your attention, is there a mechanism for recovery if this is in violation of your rules?

Mr. MCDONALD. Yes, sir.

Mr. WALDEN. And is that something you are pursuing?

Mr. MCDONALD. Yes, sir.

Mr. WALDEN. All right. Mr. Feaster, from your perspective as the IG, what is your reaction to this?

Mr. FEASTER. It would be something we would look into. It may be part of a wider investigation that is ongoing at the present time. I don't know that for a fact, though.

Mr. WALDEN. All right. Mr. McDonald, your testimony indicates that your investigations of El Paso in funding year 2001 have shown, as you said, there were substantial amounts of ineligible services funded. Walk me through this process of going back and recovering on those that you determine are ineligible. Is that happening? Will that happen in 2001?

Mr. MCDONALD. Let me just amend my answer to that last question. NEC reached a settlement agreement with the Justice Department and we won't seek, as I understand it, additional money from NEC. They settled all their issues with E-rate. So as we go back to look at the NABSE stuff, as I understand it, we wouldn't be looking to take—to recover——

Mr. WALDEN. From NEC. But what about the other participants in that?

Mr. MCDONALD. Yes. Yes. In 1999, we discovered that we had made some errors in making commitments in the first year. We were in the middle of an audit, disclosed that to the auditor. That led to discussions with the Commission and led to issuance of an order in 1999, the Commitment Adjustment Order, where the Commission directed how do we do this when we discover after the fact that we have committed money and dispursed money in violation of the rules? So the process was established back then, and they have recently amended that process in the fifth report and order so that previously we could only seek money from the service provider, now the guidance is to seek it from whoever the guilty party is, whoever violated the rules. In the old days, there was an opportunity for the service provider to offset the money owed back to us from additional invoices that would be otherwise properly paid. They have eliminated the offset option, so——

Mr. WALDEN. They have to pay you back.

Mr. MCDONALD. [continuing] it has to be paid. And they have moved it under the Debt Collection Improvement Act so that there is much more teeth in getting the money back and applied the so-called red light rule to that, that we won't make any other payments and we will deny other requests if they are delinquent in making those payments. The Commission has moved strongly to tighten up recovery for rule violations.

Mr. WALDEN. What is your take on the fact that IBM bundled its consulting services, valued at 7 percent of the cost of each E-rate project, under the fees charged to the district and El Paso?

Mr. MCDONALD. I would say they were bundling ineligible services and seeking recovery of payments for ineligible services.

Mr. WALDEN. You testified that your investigation of El Paso concluded that the procurement approach was not consistent with the rules. Is this because of their strategic technology partnership with IBM? And how else was the procurement approach in violation of the rules?

Mr. MCDONALD. In my testimony, I talked about the two-step approach, and I think that is the fundamental issue, that they avoided the competition over prices of goods and services, but there were a number of other flaws in the processes. As my colleagues have pointed out, the Form 470 listed virtually every possible product and services——

Mr. WALDEN. Right. That is sort of like saying here is the catalog. I want everything in it but I don't know exactly when or what.

Mr. MCDONALD. Yes, sir.

Mr. WALDEN. But make it all available to me at the discount.

Mr. MCDONALD. So that doesn't provide any guidance to would-be vendors about what do you really want, what should I bid on?

Mr. WALDEN. And have they thought through what they need.

Mr. MCDONALD. Correct.

Mr. WALDEN. Isn't that the underlying issue here?

Mr. MCDONALD. Yes, sir. The 470 said there was no RFP. There was an RFP, and it was very different from the Form 470, as Mr. Carlisle, I believe, testified. So there were a number of issues in addition to ineligible services in the statements of work.

Mr. WALDEN. I want to go back just briefly to a comment you made about where USAC had made some errors in approving funds and then you later told your auditor. What happens in that case or in future cases if USAC makes the mistake? Does the district still have to pay it back or how—I mean where does this equal out?

Mr. MCDONALD. In the commitment adjustment order, the commission addressed that and said in a number of instances the mistakes we made were rule violations, and for that first year they waived those. The others were statutory violations that we were paying for ineligible services or paying for telecommunications services to be provided by an ineligible telecommunications provider. They concluded those were statutory violations, and they had no authority to waive those, so we had to seek recovery. Folks who——

Mr. WALDEN. How do you end up with rule and statutory violations when you are administering this program? How did that happen?

Mr. MCDONALD. Well, the statute is not very detailed, and the——

Mr. WALDEN. I see.

Mr. MCDONALD. [continuing] Commission has obviously done a lot to flesh this program out in rules.

Mr. WALDEN. All right. Mr. Feaster, you mentioned steps the Commission has taken to address the programmatic weaknesses and expressed frustration, though, with the pace of the Commis-

sion. We have a new gentleman who has just taken over with the Commission. Can you elaborate on what bothers you with the process, what Mr. Carlisle can do or has done since taking over and what remains?

Mr. FEASTER. I think the full implementation of the DOJ recommendations on certifications is one positive step. We have had discussions about that and we have both agreed that our staffs should work together with DOJ to see how far we can go with those certification changes. Also, they have some items out for comment which would tighten up the competitive process aspects of the program that we would—we would like to see the requirement for three bids as a minimum requirement. We think that would help the process be more competitive and lower the prices for the equipment. The Bureau has a—we know they have a lot to do but we think that they need to expedite, and I think Mr. Carlisle has committed to that process.

Mr. WALDEN. Mr. Carlisle, would you like to comment on that?

Mr. CARLISLE. I have committed to that process. I think one of the first public statements I made after I took the Office of Bureau Chief was that I had four primary things that we had to get done, and E-rate was right on there, improving oversight of them. We obviously have many, many things that we have to get done in the Bureau, but in terms of the things we absolutely have to get done as top priorities, that is right up there at the top.

My sense is that we are continuing the work that was started with the 2002 notice of proposed rulemaking. We have already released three orders at this point, typing up aspects of the program on our fifth report and order, and we are moving into our sixth report and order, which is the recommendations that we will be making in the next month or so. So we are doing the best we can with what we have got, and we will continue to do so. And I am also committed to working with Mr. Feaster and also Mr. Fishel at the Office of the Managing Director and our general counsel.

Mr. WALDEN. We appreciate that. Obviously, you have got a bucket with a lot of money in it, and a lot of people have been drilling holes in the bottom of it.

Mr. FEASTER. That is true.

Mr. WALDEN. And it is time to plug those holes. Thank you. The Chair recognizes the gentleman from New Hampshire, Mr. Bass, for questions.

Mr. BASS. I will pass, Mr. Chairman.

Mr. WALDEN. Chair recognizes the gentlewoman from Colorado, Ms. DeGette, for further questions.

Ms. DEGETTE. Are we going to do two rounds?

Mr. WALDEN. If you have any further questions you want to ask.

Ms. DEGETTE. Thank you very much, Mr. Chairman. Thank you, Mr. Chairman. I have actually never known Mr. Bass to pass on questions, so I wasn't quite prepared.

Mr. Feaster, I just wanted to ask you, your written testimony indicated that the FCC IG established a working relationship with the Antitrust Division of the DOJ, in large part because of the number of investigations that you were supporting involved allegations regarding the competitive procurement process. About how

many competitive procurement process investigations are you currently supporting the Antitrust Division with?

Mr. FEASTER. I believe there are about 35. I don't know if they are all antitrust related. We work with two groups, actually, the FBI and the Antitrust people, and I am not sure how that 35 breaks down. Maybe Tom knows.

Mr. CLINE. I am not certain exactly of the active investigations that are in process how many of them specifically relate to competitive procurement problems. Some of them relate to items such as paying for goods and services that were not received. But we do know that we have 35 that are active at the moment, and our office is actively supporting 18 of those with audit support and work like that. The others we are monitoring, we are aware of them, and we respond to requests when we receive them.

Ms. DEGETTE. And that is in addition to the existing work that you folks have.

Mr. FEASTER. Yes.

Ms. DEGETTE. And that is with the three agents that you have?

Mr. FEASTER. Yes, ma'am.

Mr. CLINE. They are auditors, though, ma'am.

Ms. DEGETTE. Oh, they are auditors. I have just got to say on behalf of the committee, and I think we would all agree, you folks have been doing a heck of a job with very limited resources, so hopefully we can get you some more resources to continue your fine work.

Mr. FEASTER. Thank you.

Ms. DEGETTE. Now, Mr. Carlisle, I want to come back to you for a minute because you testified that USAC denied a quarter of a billion dollars in support to the IBM cases and that no dollars have to be recovered because funding was never distributed. And Mr. McDonald talked in his testimony about how USAC was concerned about funding year 2001 and the ineligible services from IBM. So I guess my question is if it turns out that El Paso was guilty of receiving money for ineligible products and services, is the FCC going to make every appropriate effort to recover those monies?

Mr. CARLISLE. Yes.

Ms. DEGETTE. Okay. My other question, and I don't know if you can answer this or someone else, do you all think that if there hadn't been this whistleblower letter, that the El Paso case would have come to light? Would we have found that? Mr. McDonald?

Mr. MCDONALD. In my longer statement, I think it may have not got into my oral statement, I do believe we would have uncovered the 2002 pattern. There were so many applicants doing the same thing, seeking so much money that I believe we would have conducted intensive reviews of those, sought the competitive bidding documents and learned what the approach was. And I think that would have led us to look back to El Paso 2001.

Ms. DEGETTE. Do you think it would have happened as quickly as it did or would it have happened after monies were already dispersed?

Mr. MCDONALD. I am glad we got the letter.

Ms. DEGETTE. How many cases do you think are out there like that that haven't had whistleblower letters? Mr. McDonald?

Mr. MCDONALD. One, the whistleblower hotline is a very effective tool for us. It does bring our attention to a lot of issues, and we have a special investigations team that follows up on every complaint we get—telephone calls, letters, whatever. In addition to that, we have our own pretty intensive review of applications. We look for similarities across applications that would suggest service provider involvement in those applications. So we have our own means at this and we catch a lot of this ourselves without whistleblower complaints, but that is a very valuable tool.

Ms. DEGETTE. Well, I understand you have mechanisms in place, but, as we heard in the last hearing and as we have seen ample evidence, there are just these gross examples of fraud going on throughout the country, and I am wondering if there are procedures other than the ones you have in place that can be put into place so that we can catch these systems like El Paso early on.

Mr. MCDONALD. We are in funding year 2004, and the committee is focused on Puerto Rico was 1998 and 1999; San Francisco I think was 1999 or 2000. We have gotten a lot more sophisticated from those early years as we have learned about the abuses of the program. After these hearings, we go back and think about the issues that you have raised and what could we do to literally improve our procedures to address them. We want to get this right, and we are looking for every means we can to improve to make sure we get it.

Ms. DEGETTE. So it is your view that since 2000-2001 these gross abuses are not occurring at the rates they were before then?

Mr. MCDONALD. I believe they are not occurring in the rates they were before then. We have hired certified fraud examiners to look at these applications, to look for patterns. One of the first things we do when we get the applications data entered is look for patterns across, look for very large requests from smaller school districts, is there a pattern, and then we go look for those.

Ms. DEGETTE. Okay. So then here is my question: If we have adequate enforcement in place now, why are we talking about lowering the E-rate contribution or the formula to 80 percent?

Mr. MCDONALD. Are you asking me that?

Ms. DEGETTE. Yes.

Mr. MCDONALD. Well, I am saying we are getting better. I think that we are catching this much better than we used to. I don't want to represent that there is no fraudulent activity in E-rate today.

Ms. DEGETTE. What do you think about that, Mr. Feaster?

Mr. FEASTER. It goes back to the fact that we haven't done enough work in the audit area to make that statement positively, but we have indications that waste and fraud is widespread.

Ms. DEGETTE. Do you think it has decreased dramatically since these new controls have been put into place?

Mr. FEASTER. I don't know if it decreased dramatically. I think it has taken a bite out of it. The review process has been strengthened. We are doing more audits. We are finding more problems. The more audits we do, the more problems we find, so I don't know whether it is decreasing or we are just finding more or finding less.

Ms. DEGETTE. We don't really have a way to know right now how much fraud and abuse is out there, do we?

Mr. FEASTER. No, we don't. Hopefully, once I get 250 audits under our belt, we will be able to tell you.

Ms. DEGETTE. Mr. Carlisle, I want to ask you, many vendors and school districts have been found guilty—and I recognize that you are new, so the information you have will be based on what your agency has been doing—but many of the vendors and school districts have been found guilty of violating E-Rate program rules, either accidentally or maliciously. Some of the repeat offenders like IBM have been allowed to continue operating with the E-Rate program, and I am wondering why that is.

Mr. CARLISLE. Well, our debarment rules, which were adopted in April 2003, debar participation in the program of anybody who has been convicted of a criminal offense related to the program or of civil fraud or like civil charges related to actions within the program.

Ms. DEGETTE. I am sorry, I am confused. Civil actions, you mean a judgment, a court judgment? Okay. Because people don't——

Mr. CARLISLE. If they are sued for fraud or there is a DOJ civil action against them for fraud, yes, exactly.

Ms. DEGETTE. Which is—okay. I am confused, because I thought that it required a criminal conviction.

Mr. CARLISLE. No.

Ms. DEGETTE. No?

Mr. CARLISLE. In April 2003, we made clear that if there are civil—if they have been found liable for civil judgments related to the program, things like fraud, et cetera, they can also be debarred from the program.

Ms. DEGETTE. Okay. And can these vendors avoid that kind of finding by entering into a settlement agreement which specifically doesn't have a finding of fraud and thereby be eligible for continued participation in the E-Rate program?

Mr. CARLISLE. Theoretically, they would not have received a conviction and also not a civil judgment against them, so, theoretically, yes. However, my understanding is is that applications submitted for funding by such vendors would be subjected to a higher level of scrutiny.

Ms. DEGETTE. Since April 2003, when you folks promulgated these standards, has there been a civil judgment that would debar somebody from eligibility under the E-Rate program?

Mr. CARLISLE. Not to my knowledge, although we have debarred individuals on the basis of criminal convictions.

Ms. DEGETTE. Right. And how many have been debarred on that basis?

Mr. CARLISLE. Three, and we have pending action on several others.

Ms. DEGETTE. And who was that?

Mr. CARLISLE. Oscar Alvarez, John Angelitis and Duane Maynard.

Ms. DEGETTE. So those were three individuals who were convicted. What about some of these big companies? Has any company, has any corporation been debarred?

Mr. CARLISLE. I believe the Enforcement Bureau currently has under consideration debarment of NEC, but they have not yet completed that proceeding.

Ms. DEGETTE. And that has been a criminal proceeding as well, NEC, right?

Mr. CARLISLE. I believe so, yes.

Ms. DEGETTE. Thank you.

Mr. BASS [presiding]. The Chair recognizes himself for 10 minutes. Mr. Feaster, did you agree with the Commission's order regarding the IBM matter?

Mr. FEASTER. Yes and no. First, we agreed with the Commission agreeing with USAC in denying the applications. The no is that we thought they were—that the schools played a role in the misdeeds, that there should have been action taken against the schools and also against IBM. Basically, the order let them redo it, and we think that IBM shouldn't have had the opportunity to rebid, and the schools should have lost the money.

Mr. BASS. What are your specific concerns regarding the program's competitive bidding requirements? What do you believe is the effect of weakness in this area of program design?

Mr. FEASTER. The effect is basically to cost the Universal Service Fund more money. The lack of competition means higher prices paid for equipment. The long-range effect is that the schools that are the neediest end up losing money because the fund is capped.

Mr. CLINE. Sir, if I could expand on that as well.

Mr. BASS. Sure.

Mr. CLINE. We believe that the current competitive process that is utilized for E-rate funding decisions—or applications, excuse me, is based upon some faulty assumptions. There is an assumption that the posting by the applicant of the 470 on USAC's web site for 28 days is going to generate a cycle of competitive activities, that there will be vendors looking at these 470's and there will be this activity of phone calls and discussions. And we could certainly not say anything to the extent that that may or may not be true, but our audits indicate that that frequently does not happen. The posting of the 470—the 470 is too general for vendors to be able to generate good and competitive and sort of point-on bids that meet the schools needs, and frequently that just does not generate the level of competition that was originally envisioned by this process.

Mr. BASS. Mr. Feaster, what are your specific concerns regarding the program's reliance on self certification? What do you believe is the effect of weaknesses in this area on the program design?

Mr. FEASTER. Well, the conclusion we have reached regarding certification is that the bad guys will certify anything, and we recommended that the Bureau take the DOJ recommendations and implement them on their forms to strengthen the language on the forms and let the antitrust people when they do find misconduct to take the appropriate legal action. That has partly been done, and we were working with the Bureau to implement the other ones, other recommendations that hadn't been fully implemented yet.

Mr. BASS. What do you think it is—the weakness in this area, what effect do you think it has on program design, in general? How does it affect the rest of the process?

Mr. FEASTER. Well, the certification process is a major foundation of the program, and if people are certifying to things that they

haven't done, we allow funding to occur for when it shouldn't occur. So, again, it goes back to money being misused by the applicants of the program. That means less money for the truly needy applicants.

Mr. CLINE. If I could expand——

Mr. BASS. Yes.

Mr. CLINE. [continuing] another thought on that matter. What we frequently run into in discussions with the certifications, again with the Antitrust Division, is the lack of strength that the certifications as they currently are is sort of ignoring the impact of some of the actions the Commission has taken recently to improve the certifications and forms. Discussions we have had with numerous antitrust attorneys indicate that these certifications provide no strength, they have no basis by which they can make charges.

An interesting fallout of some of the charges and some of the charges that are being worked on in active investigations under the E-Rate program is they, to our knowledge, never include a charge of false statements. Now, in government contracting, in grants, in numerous other activities involving the transfer of Federal funds, false statements is kind of one of those bread and butter charges. Typically, if you have committed a crime, you have made a false statement. I think it is telling that we have no charges of false statements in this program, and it goes back to the weakness with the certifications.

Mr. BASS. Mr. Feaster, in testimony today, we hear that El Paso Independent School District's $27 million maintenance operation was, "consistent," with its technology plan. Do you believe rules regarding technology plans are sufficient to prevent wasteful spending?

Mr. FEASTER. No, we don't. One of the findings that we have come up in our audits is the difference between program rules and implementing procedures established by USAC, and we have been recommending that those implementing procedures be codified by the Commission in order to bring them up to the status of rules where we could take money back for violation of those. One of those areas is the tech plan, that there are a lot of implementing procedures that we would like to see codified.

Mr. BASS. Mr. McDonald, if you would be good enough to turn to tab 38 and 39.

Mr. MCDONALD. Yes, sir.

Mr. BASS. Mr. McDonald, tab 38 and 39. One issue with the strategic partnership approach is the vendor getting—an example of the vendor getting too involved in the application process. These e-mails used the term, "verbal commit." What do you make of that? What does that imply to you about the integrity of the competitive process?

Mr. MCDONALD. It appears that the verbal commit is occurring before the Form 470 is even posted, which is a violation of the rules. The Form 470 is to be posted, wait 28 days, consider all the bids you got and choose the most cost effective. It appears that wasn't followed in this instance.

Mr. BASS. And, obviously, the—well I am not going to answer the question for you—what does it imply about the integrity of the competitive process? It is pretty self evident.

Mr. MCDONALD. Yes. The commitment was made before it was even begun.

Mr. BASS. Right. You state that you would probably have caught the El Paso-IBM patterns absent the anonymous letter; is that correct?

Mr. MCDONALD. Yes, sir.

Mr. BASS. Do you think your processes would have captured the full pattern of activity?

Mr. MCDONALD. We didn't see these documents. I think your powers to get documents are better than ours.

Mr. BASS. Well, have you changed your procedures since then to make sure you can catch such an activity?

Mr. MCDONALD. We have certainly broadened our scrutiny of the competitive process and sought—much more than we used to—we are seeking the RFPs, all bids that were received, evaluation worksheets to see how the winning vendor was selected. We are doing much, much more of that than we used to.

Mr. BASS. Later we will hear from Charles Tafoya, the superintendent of the El Paso Independent District who alleges in his written testimony that USAC unexpectedly denied their year 6 funding request. It might be a form of retaliation. What can you tell us about this application and why it was denied?

Mr. MCDONALD. We did subject El Paso to heightened scrutiny in funding year 2003 based on denying its application in 2002. Part of the review was whether they had secured access to the necessary resources to make effective use of the discounts, and we were not able to get clear documentation that they had budgeted for the non-discount share for all the services they were requesting. So we denied on that basis. If they think that is incorrect, that they did present that documentation to us, they can appeal to the FCC if they do that timely.

Mr. BASS. One last question, Mr. McDonald. What is the appropriate role for a consultant in the E-Rate program, and what is your understanding of Judy Green's role in the NEC BNS case? In your opinion, do you think it was appropriate?

Mr. MCDONALD. A consultant ought to not have any ties to service providers. If the consultant is going to control the process, have any influence on the process to select the service provider, that consultant needs to be an arms length from everybody, just as the applicant needs to ensure a fair and open process, selection of the most cost-effective provider. If I understand Ms. Green's relationship, she had a relationship to the vendors that were selected to do the work.

Mr. BASS. Which, obviously, was not appropriate.

Mr. MCDONALD. Not appropriate.

Mr. BASS. All right. Thank you, Mr. McDonald. My time has expired. The committee has completed questioning of this panel. We have no further questions to submit at this time. We are about to have votes called on the floor of the House, so what the Chair would like to do is to call a recess of the subcommittee until such time as the votes are complete, at which time we will swear in the second panel. With that, the Chair will declare a recess.

[Brief recess.]

Chairman BARTON The subcommittee will come back to order. We are now ready to call the second panel forward, but before we do that, we are going to show a brief video regarding the E-Rate program, which has been produced by committee staff during the course of this investigation. So could we dim the lights and show the video? Produced to the committee staff, not produced by the committee staff. Do we have sound on this?

[Video plays.]

The MODERATOR. The expanded use of computers in schools is leading to important transformations tied to the use of multimedia applications, broadband width communication pipes and widely distributed connectivity to the Internet, exposing students and teachers to an exciting world of synchronous distance learning, streaming audio and video and a host of other digital advances.

For many schools, however, especially those in high poverty and geographically isolated communities, a lack of access to this new technology is a serious problem. They are caught in the digital divide. The National Alliance of Black School Educators, known as NABSE, stands ready to help schools bridge that divide through the federally funded E-Rate program. Recently, NABSE has put together a program designed to help schools achieve the funding they deserve from the often complicated E-rate process. This program utilizes NABSE's considerable experience in the application process, combined with the technical expertise of NABSE's world-class technology partners, NEC, IBM and VNCI, among others.

Video SPEAKER 1. Certainly one of NABSE's major goals is to bring the latest state-of-the-art equipment, methodologies and best practices to its members. And with the advent of the E-Rate program, NABSE is very pleased that we have entered a partnership with our three or four hybrid organizations, and these are technology firms who are making it much easier for the NABSE schools to apply for E-rate funds, providing technical assistance in completing the application, conducting the research. So we are appealing to NABSE superintendents, to the principals, that when you hear about this program that you will call us right away and request, at no cost to you, assistance from the support group so we can assure that, one, you are getting the maximum amount of the E-rate funds that is allowable for your school district.

Video SPEAKER 2. Our children are video learners. We have a multimedia generation of children in our public schools today, but yet we have an educational system that is designed to teach them in a black and white format. That is probably the easiest way to say it. Chalk and erasers, that is not the way our children are learning.

The MODERATOR. The E-Rate program was authorized by Congress as a part of the Telecommunications Act of 1996. The E-Rate program provides all public and private schools and libraries access to affordable telecommunications and advanced digital technologies.

Video SPEAKER 3. NABSE was able to partner with the Jasper County School District, partner with VNCI and we began the process of developing our needs and desires for the Jasper County School District. And so it was not—I can't say that it was extremely easy because it wasn't, but it wasn't quite as difficult as

it could have been if we did not have the partnership, and that was the key factor.

Video SPEAKER 4. NABSE has really in its mission, if you look at our mission, one of our goals speaks to partnering with individuals, organizations, institutions and entities of all forms. We welcome the partnerships, and more importantly we welcome the spirit in which the partners have come forth.

Video SPEAKER 5. If a small school district thinks that they can develop all of the technology that is needed by their students for the future, if they think they can do that alone, then they are sadly mistaken. And when we were able to get all of the help and the assistance from NABSE, then the amount of money that we received went through the ceiling. Ten and a half million dollars for a district this size is basically unheard of. A million dollars versus $10 million, big difference. A million dollars, you can put in a few wires; $10 million, you can do video conferencing, and that is even better.

The MODERATOR. Most rural schools, due to their locations, do not have access to the world-class technology that NABSE's partners provide. These partnerships give both the rural and urban schools the ability to do the accurate technology needs assessments required for E-rate applications. To aid school districts in acquiring the technology they need, NABSE has developed consulting services which partner with several world-class companies: NEC, IBM and VNCI, among others. These partnerships, combined with NABSE's assistance throughout the application process, have made the E-Rate program a success for districts large and small.

Video SPEAKER 6. In terms of a very small school district like I have, yes, it was very important to have NABSE's assistance. I do not have the time nor the staff, and NABSE has been able to assist our school district in obtaining over $88 million in funds. My school districts received approximately $9.8 million apiece.

Video SPEAKER 7. NABSE, NEC Business Relations and VNCI for Jasper County School District have proven to be perfect partners. The technical people from VNCI and NEC, as a matter of fact, they came in so quickly it almost scared me.

Video SPEAKER 8. Why this team is so important is that they do this every day. They have people on their staff who are trained and who will be able to answer the technical questions, who will be able to research information. They know how other school districts have done it, so they are able to bring that knowledge and information to bear to be sure that the NABSE school district gets the maximum amount of funds available.

The MODERATOR. To bridge the digital divide, today's schools need technology solutions that span the entire range of products and services required in the field of education. NABSE's technology partners offer a wide range of desktops, laptops and high-quality monitors. With today's trends toward optimal speeds, it is essential to be on the cutting edge of PC processing. Video solutions are beginning to be developed in progressive districts and campuses. Distance learning has allowed the K through 12 and campus educators to expand beyond the walls of their facilities. Classroom content is boundless.

Video SPEAKER 9. Students will be able to see resources, they will be able to see things around the world in real time that they have never been able to see before.

Video SPEAKER 10. They love, they want it, and we must bring that technology to the students. They deserve it, and we owe them our very best.

The MODERATOR. NABSE and its partners are well versed in the E-rate application process. NABSE personnel can help school districts fill out the application, while the technology partners can help in the needs assessment criteria. For assistance in E-rate applications, technology planning and needs assessment, school districts should contact NABSE before the window of opportunity is gone.

Video SPEAKER 11. We appeal to the superintendents, to principals, to the technology directors to pursue this project with vigor. As we have stated before, it certainly isn't going to last forever. Some corporate member of the school district must come to us, let us know that they are interested, because otherwise the funds will go to other school districts. When their program ends, then we will find that once again many of the older schools in central city that will be operating for the next 30 or 40 years will not be wired. The students will be deprived of this, and therefore the digital divide will become broader and wider and wider as the years go.

[Video ends.]

Chairman BARTON. All right. At this time, the Chair is going to use an unusual procedure. The second panel consists of seven individuals: Ms. Judy Green, a former E-rate consultant for Video Network Communications; Mr. Quentin Lawson, the executive director of the National Alliance of Black School Educators; Mr. Carl Muscari, former president and CEO of Video Network Communications; Mr. Robert McCain, program manager for NEC BNS; Dr. Emma Epps who is superintendent of the Ecorse Public School District; Dr. Douglas Benit, former facilities director for the Ecorse Public School District; and Dr. William Singleton who is the superintendent of the Jasper County Schools in Ridgeland, South Carolina.

Some of you have indicated that you are going to refuse to answer questions and use your constitutional guarantee to plead the Fifth Amendment. So we are going to call the individuals who we believe are going to exercise that right forward first. So at this time, we are going to call forward the following witnesses: Ms. Judy Green, Mr. Quentin Lawson and Mr. Carl Muscari. If you individuals would please come forward. And you can be seated at the table.

We do need to indicate for the record that Ms. Green and Mr. Lawson declined to come forward voluntarily and were subpoenaed and they did answer their subpoena. Ms. Green was subpoenaed to attend our July 22 hearing, but U.S. marshals were unable to find her to serve the subpoena. Ironically, on the very day that we held that hearing, Ms. Green's attorney notified the committee staff that he had actually been retained.

During the last hearing then, I explained how serious this committee takes its need to get testimony and how serious we are about our subpoenas being honored. I indicated that we would

again subpoena Ms. Green. We have done that and to her credit she has answered that subpoena. But we will take every action under the law in doing our oversight responsibility for the people of the United States to compel attendance when we deem that it is necessary to get the facts of the issues that are under investigation.

I think each of you individuals know that it is the practice of this subcommittee to take testimony under oath. Does anybody here oppose testifying under oath? Let the record show that two of the three shook their head. Mr. Muscari, you haven't indicated. Do you have a problem with testifying under oath? Okay. You also know that you have the right to be advised by counsel. Do you all have counsel here? Could each of you bring your counsels forward and speak into the microphone and let us know who those individuals are. Ms. Green? You have got to push that button. There is a little button you have to push to turn the microphone on.

Mr. LINCENBERG. My name is Gary Lincenberg, counsel for Ms. Green.

Chairman BARTON. Okay. Mr. Lawson?

Mr. LAWSON. Pete Harrison.

Chairman BARTON. And he is your counsel?

Mr. LAWSON. He is my counsel.

Chairman BARTON. Okay. Mr. Muscari?

Mr. SAVAGE. It is Joseph F. Savage, Jr. for Mr. Muscari.

Chairman BARTON. Okay. Will each of you individuals please rise, raise your right hand?

[Witnesses sworn.]

Chairman BARTON. Be seated.

The Chair will now recognize Ms. Green for the purposes of making an opening statement if you so desire. Do you wish to make an opening statement?

TESTIMONY OF JUDY GREEN, FORMER E-RATE CONSULTANT, VIDEO NETWORK COMMUNICATIONS; ACCOMPANIED BY QUENTIN LAWSON, EXECUTIVE DIRECTOR, NATIONAL ALLIANCE FOR BLACK EDUCATORS; CARL MUSCARI, FORMER PRESIDENT AND CEO, VIDEO NETWORK COMMUNICATIONS; ROBERT MCCAIN, PROGRAM MANAGER, NEC BNS; EMMA EPPS, SUPERINTENDENT, ECORSE PUBLIC SCHOOL DISTRICT; DOUGLAS BENIT, FORMER FACILITIES DIRECTOR, ECORSE PUBLIC SCHOOL DISTRICT; AND WILLIAM SINGLETON, SUPERINTENDENT, JASPER COUNTY SCHOOLS, RIDGELAND, SOUTH CAROLINA

Ms. GREEN. No.

Chairman BARTON. Okay. Let the record indicate that Ms. Green declined to make an opening statement. The Chair would now recognize Mr. Lawson for purposes of making an opening statement if you so desire.

Mr. LAWSON. No.

Chairman BARTON. Mr. Lawson declines to make an opening statement. The Chair will now recognize Mr. Muscari to make an opening statement if he wishes.

Mr. MUSCARI. I have no opening statement. Thank you.

Chairman BARTON. Mr. Muscari also declines to make an opening statement. The Chair will then recognize himself for 10 minutes for questions.

Ms. Green, on July 22, 2004, we heard from the San Francisco City Attorney's Office about an elaborate conspiracy between individuals at NEC BNS and VNCI, including you, George Marchelos and others in which the co-conspirators eliminated competitive bidding and inflated prices on contracts related to the E-Rate program. As you know, NEC BNS ultimately pleaded guilty to conspiracy to suppress and eliminate competition for the E-Rate program projects and to wire fraud. As a former employee of VNCI, were you part of the conspiracy by NEC BNS, VNCI and others to defraud the E-Rate program by rigging bids, inflating contract prices, forging the signatures of school district officials and lying to USAC officials during their review of that process?

Ms. GREEN. On advice of counsel, I respectfully decline to answer that question based on my Fifth Amendment constitutional right.

Chairman BARTON. Ms. Green, are you refusing to answer all of this committee's questions on the right against self-incrimination which is afforded to you under the Fifth Amendment of the United States Constitution?

Ms. GREEN. Yes, sir.

Chairman BARTON. And is it your intention to assert such right in response to all further questions from the subcommittee today?

Ms. GREEN. Yes, sir.

Chairman BARTON. Given that, I will dismiss you at this time, but I want to make it perfectly clear that you are still subject to being recalled by this subcommittee if we deem it necessary. Do you understand that?

Ms. GREEN. Yes.

Chairman BARTON. If you don't, now is the time to——

Ms. GREEN. No. Can I just——

Chairman BARTON. If you say anything, you are going to have to answer every question.

Ms. GREEN. All right.

Chairman BARTON. I am not going to play games with you. You have got the right to take the Fifth Amendment, which you have done, but once you answer one question, then you have waived that right, and we could ask you many questions. So at this time, I am going to excuse you subject to recall if necessary.

We are now going to go to you, Mr. Lawson. We have just seen a video that NABSE, of which you are affiliated with, produced, marketing their E-Rate program. You appear in that program. The video refers to an E-rate-related partnership between NABSE, VNCI, NEC BNS and others. As the executive director of NABSE, were you aware of the conspiracy by NEC BNS, VNCI, Judy Green, George Marchelos and others to defraud the E-Rate program by rigging bids and inflating contract prices?

Mr. LAWSON. Mr. Chairman, as you know, there are ongoing Federal criminal investigations into the same events that are the subject of this hearing. I have fully cooperated with the officials conducting these criminal investigations; however, in view of the open-ended Federal criminal investigations that are currently ongoing, I reluctantly, and contrary to my desire to testify, will follow the ad-

vice of my legal counsel and respectfully decline to testify based upon my rights under the Fifth Amendment to the United States Constitution. I hope that the subcommittee will not draw a negative inference from my assertion of this basic constitutional right guaranteed by the Bill of Rights. I respectfully request that the letter prepared and submitted by my counsel, dated September 17, 2004, be considered part of the record of this hearing.

Chairman BARTON. Are you refusing to answer the question based on your constitutional rights under the Fifth Amendment?

Mr. LAWSON. Yes.

Chairman BARTON. Then we cannot accept the letter that you just asked that we put into the record. Ms. DeGette has already indicated that she would object, I would object, Mr. Walden will object. You can't have it both ways. You can't honor your rights under the Fifth Amendment and then, I won't say sneak into the record, but put into the record something that is to your benefit, so to speak.

Mr. Lawson, are you refusing to answer all of the questions on the rights against self-incrimination afforded to you under the Fifth Amendment of the U.S. Constitution?

Mr. LAWSON. Yes.

Chairman BARTON. And is it your intention to assert such right in response to all further questions from the subcommittee today?

Mr. LAWSON. Yes.

Chairman BARTON. Given that, with the understanding, as we just explained to Ms. Green, that there may be further requests for you to come before this subcommittee, I am going to dismiss you at this time, subject to the right of recall if necessary. Do you understand that?

Mr. LAWSON. Yes.

Chairman BARTON. Okay. Then at this time, you are excused also.

Mr. LAWSON. Thank you.

Chairman BARTON. Mr. Muscari, on July 22, 2004, we heard testimony about an elaborate conspiracy between individuals at NEC BNS and VNCI, including Judy Green, George Marchelos and others, in which the co-conspirators eliminated competitive bidding and inflated prices on contracts related to the E-Rate program. As you know, NEC BNS later pleaded guilty to conspiracy to suppress and eliminate competition for the E-Rate program projects and to wire fraud. As a former president and CEO of NEC BNS, were you aware of this conspiracy by your company, or your former company, VNCI, Judy Green, George Marchelos and others to defraud the E-Rate program by rigging bids, inflating contract prices, forging signatures of school district officials and lying to USAC during its review process?

Mr. MUSCARI. Mr. Chairman, based upon the advice of my attorneys, I respectfully decline at this time to answer based upon my rights under the Fifth Amendment of the U.S. Constitution.

Chairman BARTON. And, Mr. Muscari, are you refusing to answer all of these questions based on your right against self-incrimination afforded to you under the Fifth Amendment of the U.S. Constitution?

Mr. MUSCARI. I am.

Chairman BARTON. And is it your intention to assert such right in response to all further questions from the subcommittee today?

Mr. MUSCARI. Yes.

Chairman BARTON. Given that, as long as you understand that you are still subject to being recalled by the subcommittee at a date future, I am going to dismiss you at this time, again, subject to the right to be recalled. Do you understand that?

Mr. MUSCARI. I do understand, yes.

Chairman BARTON. Okay. Then you too are excused, sir.

At this time, the Chair will now call forward the remainder of our panel from Panel 2: Dr. Emma Epps, superintendent of the Ecorse School District in Ecorse, Michigan; Dr. Douglas Benit, the former director of facilities at Ecorse School District; Dr. William Singleton, the superintendent of the Jasper County School District in Jasper County, South Carolina; and Mr. Robert McCain, the former NEC BNS project manager at Ecorse School District who is appearing before us by video link. If those of you that are in the chamber will come forward and be seated at the table.

As each of you individuals know, this subcommittee conducts its investigative hearings by taking all testimony under oath. Do any of you object to testifying under oath? Let the record show that all three individuals said that they are willing to testify under oath.

You also have the right to be advised by counsel under the Constitution of the United States of America. Do any of you have counsel that are with you today?

Ms. EPPS. Yes.

Chairman BARTON. Dr. Epps, would you read into the record your counsel, please, ma'am? You just push the button.

Mr. ALLEN. Yes, Mr. Chairman. Floyd Allen, representing Dr. Epps and Dr. Benit.

Chairman BARTON. Okay. Dr. Benit, do you have—oh, he is counsel for both of you. Dr. Singleton, do you have counsel with you?

Mr. SINGELTON. No.

Chairman BARTON. Okay. Will all of you please stand and raise your right hand? Oh, Mr. McCain, do you object to testifying under oath?

Mr. MCCAIN. No.

Chairman BARTON. You also have the right to be advised by counsel. Do you have a counsel with you today?

Mr. MCCAIN. Yes, Mr. Sutra.

Chairman BARTON. Could you bring him into the video.

Mr. SUTRA. Good morning, Mr. Chairman. Steve Sutra.

Chairman BARTON. Okay. Mr. Sutra needs to stay in camera range, because he is going to have to be sworn too. So would all——

Mr. SUTRA. I am not getting sworn.

Chairman BARTON. Are the attorneys—I thought they did. Will our witnesses please stand to be sworn and raise your right hand.

[Witnesses sworn.]

Chairman BARTON. Be seated.

Okay. Mr. McCain, we are going to recognize you for 7 minutes. Your statement is in the record, and if you would like to elaborate on that, we would like to have your elaboration.

Mr. MCCAIN. No statement, sir.

Chairman BARTON. No statement. Okay. Dr. Epps, would you like to make an opening statement?

Ms. EPPS. No, sir, I have no statement.

Chairman BARTON. Okay. Dr. Benit, would you like to make an opening statement?

Mr. BENIT. No, sir.

Chairman BARTON. Okay. Dr. Singleton, would you like to make an opening——

Mr. SINGELTON. No, sir.

Chairman BARTON. So we have nobody that wishes to make an opening statement. Okay. The Chair would suspend for just a second.

[Pause.]

Chairman BARTON. The Chair is going to recognize Mr. Walden for 10 minutes.

Mr. WALDEN. Thank you, Mr. Chairman. Mr. McCain, when you were NEC BNS' project manager at Ecorse School District, what were your job responsibilities?

Mr. MCCAIN. My responsibilities were to install the products that were within the job package and get them operational and turn them over to the school district.

Mr. WALDEN. And what year did NEC BNS conduct work for Ecorse while you were the project manager?

Mr. MCCAIN. The work started in February 2001.

Mr. WALDEN. And who was your primary contact at Ecorse School District, sir?

Mr. MCCAIN. Dr. Benit.

Mr. WALDEN. Dr. Benit. Okay. And did you interact or work often with Dr. Epps?

Mr. MCCAIN. No.

Mr. WALDEN. Did you work at all with Judy Green from VNCI while managing the Ecorse project?

Mr. MCCAIN. No.

Mr. WALDEN. Who built the TV production studio for Ecorse?

Mr. MCCAIN. NEC.

Mr. WALDEN. NEC. Okay.

Mr. MCCAIN. Yes, sir.

Mr. WALDEN. Whose idea was it to provide Ecorse School District with a TV production studio?

Mr. MCCAIN. That was from information we received from Dr. Benit.

Mr. WALDEN. So it was Dr. Benit's idea to build the TV studio?

Mr. MCCAIN. Yes, sir.

Mr. WALDEN. Please turn to the NEC document numbered 6345. That is 6345. How much money was awarded to Ecorse School District by the E-Rate program for funding year 2000?

Mr. MCCAIN. The document 6345 indicates $4,135,969.81.

Mr. WALDEN. That is what it shows. Mr. McCain, please describe document 6347. What is Dr. Benit insisting on dollar values for, "in-kind items," document 6347?

Mr. MCCAIN. His inquiry was to identify the in-kind dollars and what that detailed reference to products that were being proposed for installation.

Mr. WALDEN. And at document 6348, go to that one.

Mr. MCCAIN. Yes, sir.

Mr. WALDEN. Why does Dr. Benit describe the TV studio as being at a "critical status?"

Mr. MCCAIN. That was to interface with the current onsite construction contractors to make ready the rooms for the TV production studio.

Mr. WALDEN. All right. So you had contractors onsite doing wiring installation, and from your recollection, he felt it was important, it was a critical status for the TV studio.

Mr. MCCAIN. Yes, sir.

Mr. WALDEN. Mr. McCain, looking now at document 6350 and 6351, do you have those in front of you, sir?

Mr. MCCAIN. Yes, sir.

Mr. WALDEN. Could you briefly describe these e-mails and the issue being discussed here?

Mr. MCCAIN. The first document, 6350, was initiated from Dr. Benit to Gerard McNulty, who was the account exec from NEC assigned to the Ecorse project, and he wanted to request an overview of the dollars allocated from the SLD funding to properly be evaluated as to how those funds were going to be identified within the project scope.

Mr. WALDEN. Okay. And does that cover 6351 as well then?

Mr. MCCAIN. 6351 is a reference to a meeting I had with Dr. Benit and updated my immediate supervisor, Randy Weekly. After that meeting—sorry, during that meeting, Dr. Benit did express from this document that he had requested detail regarding the production studio cost and that he would follow up the following week with Mr. Weekly.

Mr. WALDEN. And we are talking about the TV production studio?

Mr. MCCAIN. Yes, sir.

Mr. WALDEN. Okay. And now turn to document 6352. What is this lengthy document?

Mr. MCCAIN. This document was originated from Bill Barber who was a systems engineer for NEC in reference to the video TV production studio. It outlines all the line items that had been within the initial design, identifying those items and what the total dollar amount was.

Mr. WALDEN. And what is that total dollar amount of the TV studio?

Mr. MCCAIN. The original design was $1,040,239.62, and that is reflected on document 6363.

Mr. WALDEN. And let's go to document 6364 and 6365. Do you recognize this document, and can you please describe your understanding of this document and in particular the second page. Is this a document you recognize, sir?

Mr. MCCAIN. Yes. This document was identifying the NEC proposed use of funds, which is in the left columns. The middle columns were the response of the funds as to what was being requested to be installed by Dr. Benit, and the right column shows the balance of award funds from the original amount authorized by the SLD funding.

Mr. WALDEN. All right. And who built this spreadsheet, do you know?

Mr. MCCAIN. Dr. Benit.

Mr. WALDEN. And, again, the first column shows what?

Mr. MCCAIN. The first column shows the original dollars in reference to the design of the line items located on the left column there.

Mr. WALDEN. Okay. And the second column again?

Mr. MCCAIN. Is what Dr. Benit had requested funding to be spent for those particular line items in that dollar amount.

Mr. WALDEN. It is what Dr. Benit requested the line items be.

Mr. MCCAIN. Yes.

Mr. WALDEN. And is that what the okay next to the numbers in the second column would mean?

Mr. MCCAIN. Yes.

Mr. WALDEN. And is that—so that is Dr. Benit's okay?

Mr. MCCAIN. Yes, sir.

Mr. WALDEN. All right. This document then seems to indicate that Dr. Benit knew that E-rate funds were covering all the costs of the TV studio. Is that a correct assumption?

Mr. MCCAIN. Yes, sir.

Mr. WALDEN. All right. Then please turn to 6366.

Mr. MCCAIN. Okay.

Mr. WALDEN. Who drafted this memo to you, sir?

Mr. MCCAIN. That is from Bill Barber, the systems design engineer for NEC for the video.

Mr. WALDEN. And would you agree that this memo describes a Dr. Benit who is intimately involved with the design, construction and many minor details of the TV studio?

Mr. MCCAIN. Yes. This document was reviewed with Dr. Benit to be extended to the contractors onsite to address some of the items that needed to be completed to provide a functional TV production studio.

Mr. WALDEN. And, finally, turn with me to 6377. Can you briefly describe this e-mail?

Mr. MCCAIN. This e-mail was originated from Dr. Benit to myself, Bill Barber and John Colvin, who was the director of the public sector for NEC, requesting NEC to support an open house conducted at Ecorse School District May 17 through May 19. I, in turn, from the middle of the document, 6367, had requested from the contractor that was hired by NEC to install the TV production studio to also be onsite to assist in the open house.

Mr. WALDEN. All right. Given all the hype over the ribbon-cutting ceremony, does it seem likely to you that Dr. Epps could be unaware of the fact that NEC built this studio for Ecorse through the E-Rate program?

Mr. MCCAIN. No, she couldn't be unaware of it.

Mr. WALDEN. She could not be unaware.

Mr. MCCAIN. Right.

Mr. WALDEN. Mr. McCain, did you ever learn or hear whether Ecorse paid NEC BNS its required E-rate copayment?

Mr. MCCAIN. No.

Mr. WALDEN. Does that mean, no, you never learned or heard or they never made the copayment?

Mr. MCCAIN. I never learned or heard.

Mr. WALDEN. So you don't know whether that copayment was ever made?

Mr. MCCAIN. That is correct.

Mr. WALDEN. All right.

Chairman BARTON. Do you have further questions?

Mr. WALDEN. Mr. Chairman, I don't have any further questions at this time.

Chairman BARTON. Okay. The Chair would recognize Ms. DeGette for 10 minutes if she wishes.

Ms. DEGETTE. I have no questions at this time.

Chairman BARTON. Okay. The Chair would then recognize himself for 10 minutes.

Dr. Epps, you have just heard Mr. McCain in his comments on some of the contracts that were in your school district. What is your understanding of your district's financial obligation in participating in the E-Rate program?

Ms. EPPS. My understanding is that we followed the rules of the E-Rate program. That is my understanding.

Chairman BARTON. Dr. Benit?

Mr. BENIT. My understanding—could you repeat the——

Chairman BARTON. After listening to Mr. McCain's answers to Congressman Walden's questions and some of the contracts that were let for your school district, including the way a television studio was built and paid for, what is your understanding of your school district's financial obligation to participate in the E-Rate program?

Mr. BENIT. My understanding is that the district is supposed to pay a 10 percent share because they are at a 90 percent rate. A lot of the documents that we referred to, Mr. Colvin and I reverted back, with our counsels, back to the original agreement. So my understanding is that all the equipment that was supposed to be spent, all the E-rate dollars supposed to be spent on E-rate was spent and the TV production was something that they provided that was outside of E-rate.

Chairman BARTON. Had you seen the documents that Mr. Walden referred to with the various columns? Have you seen those documents?

Mr. BENIT. Yes.

Chairman BARTON. Okay. Have we asked unanimous consent to put those documents in the record? Okay. The Chair would ask unanimous consent that the binder that has been prepared for this hearing be put in the record. Is there objection? And the Chair would indicate that this particular document that is NEC E-rate contract, district attachment, rider A, memorandum of understanding is one of the documents that has been put in the record.

So you have seen this document?

Mr. BENIT. I saw it just as we were waiting here.

Chairman BARTON. Oh. You had not seen it before today.

Mr. BENIT. No. The document that was on top?

Chairman BARTON. Well, the primary document that we are referring to is the——

Mr. BENIT. That was signed by myself and John Colvin?

Chairman BARTON. Yes. And on page 0635, which shows the spreadsheet.

Mr. BENIT. Where do I find this?

Chairman BARTON. It is in your binder, and it is at tab—it is called the Benit spreadsheet.

Mr. BENIT. Okay. What tab number is that?

Chairman BARTON. Well, that is a very good question. We need to get that. You obviously have the right to take a look at that. Tab 85.

Mr. BENIT. I don't have a tab 85 in this one, sir. Oh, here it is. Hang on.

Chairman BARTON. It is a big binder, so we certainly——

Mr. BENIT. Okay. I see the spreadsheet.

Chairman BARTON. Okay. And do you see the middle column where it says, "EPS response to proposed use of funds?" That is that middle column.

Mr. BENIT. Yes, I do, sir. I see that column, but I——

Chairman BARTON. And do you see the blocks, like $700,000 has been blocked and then next to it it says, "okay." And then the next one is $500,000 and it is okay. And then $1 million and it is okay. And then $14,000 and it is okay. And then $800,000 total, which is not blocked, but that says, "okay."

Mr. BENIT. I see all that, but I also want to go on record as after we did this and we had a discussion with our attorneys, we went back to the original agreement that was signed.

Chairman BARTON. I am not sure I understand that response. Do you want to elaborate on that?

Mr. BENIT. All I want to say is that we signed a memorandum of understanding to the contract. We did some of this spreadsheet, we discussed it with our attorneys and went back to the original memorandum of understanding that all the E-rate dollars are supposed to be spent for E-rate purposes.

Chairman BARTON. So even though these say, "okay," you are saying that that was invalid, that you retracted that.

Mr. BENIT. Absolutely. That was done through a telephone conversation with John Colvin of NEC, I believe it was his attorney, our attorney and myself.

Chairman BARTON. Mr. McCain, can you hear me?

Mr. MCCAIN. Yes.

Chairman BARTON. Do you want to respond to Dr. Benit saying that even though we have got these documents that they were later disallowed?

Mr. MCCAIN. I was not part of those conversations that Dr. Benit had with Mr. Colvin and his counsel.

Chairman BARTON. Okay. Dr. Epps, does your school district's high school have a television production studio?

Ms. EPPS. Yes.

Chairman BARTON. Do you know when that production studio was built?

Ms. EPPS. I am thinking the 2001-2002 school year.

Chairman BARTON. Do you know who built the production studio?

Ms. EPPS. I was asked that question. I know that NEC donated the radio-TV room to the school district.

Chairman BARTON. So it is your understanding that NEC BNS built the studio?

Ms. EPPS. Yes.

Chairman BARTON. And, Dr. Benit, is that your understanding as well?

Mr. BENIT. My understanding is they contributed the equipment. We were completing the building of a new high school at that time. We had I think about 40, 50 contractors onsite. We had to put air conditioning in the room, we had to paint the room. We used those contractors through our construction manager to come in there and make the room ready for the TV production.

Chairman BARTON. Do you know whose idea it was to build the TV studio?

Mr. BENIT. I don't recall, but I know there was a lot of discussions with a lot of people, and that was one idea that came up.

Chairman BARTON. Dr. Epps, do you recall who thought of the idea to build this studio?

Ms. EPPS. No, sir, I don't recall.

Chairman BARTON. When somebody approached you with it, did you question whether it should be built and who was going to pay for it or did you just accept that television studios kind of fell out of the sky?

Ms. EPPS. No, sir. When Dr. Benit brought it to my attention, it was supposed to be a donation from NEC.

Chairman BARTON. So your impression was that it was a donation.

Ms. EPPS. Yes, sir.

Chairman BARTON. Dr. Benit, is that your impression also?

Mr. BENIT. Yes, it is.

Chairman BARTON. Okay. Mr. McCain, do you have any comment you would like to make on who paid for the construction of this studio?

Mr. MCCAIN. From the direction we were given, the funding for the Ecorse project was all funded reference to what was identified on the spreadsheet, initiated by Dr. Benit. I am not aware of any donations of the TV production at NEC's cost.

Chairman BARTON. So, Mr. McCain, your testimony would be, based on the record, that this television studio was built with E-rate money, not with money donated.

Mr. MCCAIN. That is correct.

Chairman BARTON. All right. Dr. Benit and Dr. Epps, now that you have heard that, do you still stand by the original answer that this was somehow donated money?

Mr. BENIT. I do, because Mr. McCain was not—he was a project manager. He was not involved in any of the discussions. He is not even aware of the discussion that John Colvin and I had to go back to the original agreement that was agreed to.

Chairman BARTON. Do you agree, Dr. Benit, and you also, Dr. Epps, that this television studio cost over $750,000?

Ms. EPPS. Sir, I don't know the financial value of that radio-TV studio.

Chairman BARTON. Dr. Epps, as superintendent——

Ms. EPPS. Yes, sir.

Chairman BARTON. [continuing] are you expected to track the financial aspects of the school district that you are superintendent of?

Ms. EPPS. Yes, sir.

Chairman BARTON. Is $750,000 something that you would normally be expected to have some awareness of? I mean is that a small sum, a large sum that it would be expected that an individual in your position would have a knowledge of and where the money came from and how it was spent?

Ms. EPPS. If it came from the school district, but my understanding is it was a donate item to the school district.

Chairman BARTON. Do you have anything in the record that shows that it was a donation? Is there anywhere a document where whoever you think donated it actually made that donation and submitted a letter, a check, a voucher at all——

Ms. EPPS. No, sir, I am not aware——

Chairman BARTON. [continuing] that you could provide to this committee documentation?

Ms. EPPS. No, sir, I am not aware of a check or a letter. I only know about the memorandum that was signed by Dr. Benit and I think Mr. Colvin.

Chairman BARTON. Dr. Benit, do you want to comment on that?

Mr. BENIT. The document that was signed by Mr. Colvin of NEC, the vice president of E-Rate Operations at the time, and myself, with our attorneys present, stated that the non-E-rate items could include a TV production studio that would be donated by NEC.

Chairman BARTON. But there is no documentation to that. I mean we agree—I think we agree the television station cost $750,000. Do either of you dispute that?

Mr. BENIT. I haven't—it has been a long time, so I am not aware of the value.

Chairman BARTON. Okay. Dr. Benit, do you recall that when you were questioned about this by the committee staff during the interview process, you said that you didn't know who paid for the studio?

Mr. BENIT. I don't recall that either, because I do know that the studio's equipment was donated by NEC, but I also know that a lot of the contractors that we had on staff through our construction manager was doing work throughout that building and through that area at all times while they were there.

Chairman BARTON. Well, are you all aware, Dr. Epps and Dr. Benit, that this television studio, just the actual studio itself, was ineligible at the time and would be ineligible today for E-rate funding?

Mr. BENIT. I am aware that it was donated. The agreement says it was supposed to be outside. It wasn't supposed to violate any E-rate rules or SLD rules.

Chairman BARTON. Okay. But there is no documentation that the committee staff is aware of that shows that such a donation was ever made. The documentation that we have shows in fact that it was paid for by E-rate funding. Now, I——

Mr. BENIT. I don't have any of that information.

Chairman BARTON. Mr. Walden?

Mr. WALDEN. Mr. Chairman, a question for Dr. Epps and Dr. Benit. Did anyone in your district bother to check with the USAC to see if E-rate allowed a $750,000 gift from a vendor receiving government funds?

Mr. BENIT. No. I have asked our attorney to make sure that whatever we do we are in compliance.

Mr. WALDEN. Who is your attorney?

Mr. BENIT. Jaffey Rait.

Mr. WALDEN. And do you know if he checked?

Mr. BENIT. I don't know. They were supposed to let us know if something was askew, but I never did hear from him back that we weren't doing something right.

Mr. WALDEN. Mr. McCain, would you have known of any of these other financial memos that we are hearing about today?

Mr. MCCAIN. No.

Mr. WALDEN. You wouldn't have known.

Mr. MCCAIN. No.

Mr. WALDEN. You were the onsite project manager. Who told you how this was being funded?

Mr. MCCAIN. All the financials were done through Dallas.

Mr. WALDEN. Okay. So you just installed the TV studio.

Mr. MCCAIN. Yes, sir.

Mr. WALDEN. Is that right?

Mr. MCCAIN. Yes.

Mr. WALDEN. Then how did you know about this memo, the spreadsheet that Mr. Benit had?

Mr. MCCAIN. That was extended to me from my immediate supervisor.

Mr. WALDEN. And who is that?

Mr. MCCAIN. Randy Weekly.

Mr. WALDEN. Okay. Then I want to go to a memo to Mr. Weekly from Mr. Benit. This is 06347, dated February 15, 2001, 2:54 in the afternoon, and it says, and I quote, "I am reviewing the two sides; however, I have discussed my concerns with our superintendent, Dr. Epps, regarding the services to be provided by NEC. We would like to know in detail just what you were provided and a dollar value assigned to each. I want to firm up what is going to be considered as in-kind and the dollar assigned to each. I am going to review the in-kind amounts tomorrow, and I will e-mail you the changes which I see. I would want this in place before we proceed any further with this project along with the coordination between existing contractors and your final scope of work. Call me on my cell or e-mail me." What do you mean by the in kind part of this?

Mr. BENIT. In kind would be any kind of donations that would was beyond the E-rate dollars that were applied.

Mr. WALDEN. See, it is our understanding that USAC does not allow for gifts like this.

Mr. BENIT. I am not aware of that.

Mr. WALDEN. And your attorney clearly wasn't aware of that; is that what you are——

Mr. BENIT. They have not informed me of that.

Mr. WALDEN. Mr. Chairman, I yield back.

Chairman BARTON. I want to go back then. This television studio that $750,000 was spent for and which our records show was spent with E-rate funding, which each of you, Dr. Epps and Dr. Benit, indicate was donated, although there is no documentation that you received the donation or even a letter notifying you of the donation. How has that TV studio been used or is it even being used?

Ms. EPPS. Yes, sir, it is being used by the students at the high school every day.

Chairman BARTON. By the students at the high school every day.

Ms. EPPS. We have classes. We do TV classes for credit.

Chairman BARTON. Has it been used by local businesses to generate revenue?

Ms. EPPS. No, sir.

Chairman BARTON. Not at all?

Ms. EPPS. No, sir.

Chairman BARTON. Dr. Benit?

Mr. BENIT. No. It is only for students. It started out being used by students and is still being used by students.

Chairman BARTON. Mr. McCain, do you have any information that the television studio has been used for local business, by local businesses to generate revenue?

Mr. MCCAIN. No.

Chairman BARTON. Dr. Epps, do you know how much money the E-Rate program was granted to your school for the funding year 2000?

Ms. EPPS. I believe with the reduction, I believe it came to about $7 million.

Chairman BARTON. $7 million.

Ms. EPPS. Like six point something million dollars.

Chairman BARTON. Okay. Our records show $4 million, but if you say $7 million, okay. Dr. Benit, what is your recollection?

Mr. BENIT. Well, I think the original award through NEC was about $7 million. I conducted a review and told Dr. Epps that I thought that one portion of the award was redundance and I asked to reduce it by $3.3 million. And so the final award came out to $4.1 million. I wrote a letter back to Schools and Libraries and asked them to——

Chairman BARTON. So originally the $7 million that Dr. Epps referred to was granted, and then when that was reviewed, you made a decision, or somebody, you and Dr. Epps made a decision that some of those funds were not eligible and you refunded some of the money or didn't accept it so that the final number is the $4.135 million?

Mr. BENIT. Well, those funds were eligible, but we reviewed what our needs were within the district and didn't feel that we needed the redundancy that that award would give us, so I asked the Schools and Libraries by a letter to cut that funding for that particular award.

Chairman BARTON. Dr. Epps, do you want to comment on that?

Ms. EPPS. Dr. Benit reviewed our needs and I remember he came to my office and told me that he had reviewed our needs in terms of the E-rate. He had reviewed our bond project. We were building the high school, another school at that time and remodeling two others, so we had a big project going. And he had reviewed all of that, and he felt that there were some items that would be redundant to what we were doing over with the bond so that he wanted to reduce the amount. And my comment was if that is what we needed to do, we didn't want anything that we didn't need, so he wrote a letter or e-mail reducing that amount. And the exact figures he knows exactly how much that was.

Chairman BARTON. Well, we have—I have got 12 more questions, but I haven't even asked Dr. Singleton a question yet, and I want to ask him some. I just want the record to show that our documents indicate that the Ecorse School District E-rate funds paid for any number of projects and equipment that was ineligible, including servers, security systems, video equipment, a message center for the high school football field. And I would also like to indicate that our records and documents that we have created during the course of this investigation cast some question on the Ecorse copay for E-rate-related work that NEC and BNS accomplished for your school district in 2001. Would Dr. Epps or Dr. Benit, either one of you, wish to document for the committee that you in fact did pay the copay and not roll it into the E-rate that would be ineligible because the local school district is supposed to pay a copay?

Mr. BENIT. Well, I think we can provide that information to you. Also, there was no scoreboard paid for. That was paid for with bond funds. We have checks that were paid out of the bank trust fund for that. Most of the items that you read off were paid through the bond funds of the district that was handled through a bank trust account.

Chairman BARTON. So you dispute the records that indicate the E-rate funds were used in a way they shouldn't have been used to provide and pay for that. And we can give a detailed list of that equipment.

Mr. BENIT. If you could do that, then I would like to provide you with documentation that shows that it was paid for out of the district bond funds.

Chairman BARTON. Okay. Mr. Walden?

Mr. WALDEN. Thank you, Mr. Chairman. I want to go back to something because I am confused. The spreadsheet we talked about, number 6365, that there is testimony that these were your okays next to it and it lists the TV studio, the spreadsheet Mr. McCain and I were talking about, tab 85.

Mr. BENIT. Yes.

Mr. WALDEN. And that is your spreadsheet, right, and those are your okays.

Mr. BENIT. Yes, that is correct.

Mr. WALDEN. And it does list TV studio on there, correct?

Mr. BENIT. It does.

Mr. WALDEN. And then didn't you testify earlier that that is basically an old document that was superseded then by the memorandum of understanding with Mr. Colvin that would be found under——

Mr. BENIT. No. The memorandum of understanding was signed first. What I did say was that after this was done, we talked—I talked with Mr. Colvin and our attorneys and it was agreed we are out of line as far as E-rate rules, so we had to go back to the original memorandum of understanding.

Mr. WALDEN. How were you out of line as regards to E-rate rules?

Mr. BENIT. Well, we felt that we were—this doesn't show the money all being spent for what it did in the memorandum of understanding. So we are trying to get back to the memorandum of understanding.

Mr. WALDEN. I am confused because you are talking about two memoranda of understanding, correct?

Mr. BENIT. No, I am not; I am talking about one.

Mr. WALDEN. Okay. The one that came after this——

Mr. BENIT. No, the one that came before that.

Mr. WALDEN. Okay. Is that the one on tab 79?

Mr. BENIT. I don't know.

Mr. WALDEN. Why don't you take a look at tab 79. This is the one that is dated January 18, 2000.

Mr. BENIT. Yes. This is the one I am referring to.

Mr. WALDEN. Okay. But your spreadsheet, if I am correct, is dated after that.

Mr. BENIT. That is right. I am saying that after that we got into more detail and I was trying to find out how much money was being spent, but, like I said, there were some discussions on those items. We met with our counsels, we had a conference call, we talked, and we were advised to go back to the original memorandum of understanding, which we did.

Mr. WALDEN. And were you advised that you couldn't have a TV studio as part of that discussion?

Mr. BENIT. No, I was not.

Mr. WALDEN. But yet that shows up here on the spreadsheet as being moved around, right?

Mr. BENIT. It does.

Mr. WALDEN. Why was it on the spreadsheet?

Mr. BENIT. Well, it was on the spreadsheet that I was playing around with things. Then we went back to counsel and said, "What can we do and what can't we do," and they said, "Go back to your regular memorandum of understanding. That will guide you to stay within the school and library rules." Mr. WALDEN. So are you testifying that your counsel never saw this spreadsheet?

Mr. BENIT. Yes, I am.

Mr. WALDEN. They never saw it.

Mr. BENIT. I don't believe they did. Maybe they did. I can't recall.

Mr. WALDEN. You can't recall. Okay. So you had no knowledge anywhere along the way that E-rate couldn't fund a TV studio?

Mr. BENIT. Well, it says in the memorandum a media production room is non-qualified equipment and services, so that had to be donated. So my understanding it was donated.

Mr. WALDEN. It is your understanding that NEC then just turned around and donated $1 million or $750,000 or whatever worth of——

Mr. BENIT. That is my understanding.

Chairman BARTON. Would the gentleman yield?

Mr. WALDEN. Certainly.

Chairman BARTON. Well, then, Dr. Benit, if that is the case, this original memo of understanding that you have referred to refers to a number of items that total, if I am reading this right, a little over $2 million. Were those installed also, the 24-port Cisco 3524 series ethernet switch, the NEC 8550 ATM workgroup switch, the 6066 gigabyte backbone switches, the four Cisco 3508 gigabyte ATM intermediary backbone switches and the four Cisco 3660 routers? Were those actually installed?

Mr. BENIT. My understanding everything on the first sheet of memorandum of understanding was installed.

Chairman BARTON. Now, our understanding is that some of those items were not installed because the money was switched to pay for the television studio. Mr. McCain, do you have a comment on that?

Mr. MCCAIN. What NEC installed was in reference to the document 6365, and within line item 3 it indicates the data system. It also references back to the MOU.

Chairman BARTON. So are you—that is kind of a confusing answer. Dr. Benit and Dr. Epps are saying that the television studio was donated and that this other material that is listed on page 1 was also installed. Is that what you are saying too or are you saying that only some of the equipment on page 1 was installed and the funds that weren't used for that were used to pay for the TV studio, which is our understanding?

Mr. MCCAIN. I am not aware of any donation that NEC made for the TV production studio.

Chairman BARTON. I understand that, but my question is was money that was supposed to be used for these switches, which would be eligible for E-rate funding, was it reallocated to pay for the television studio, which was ineligible for E-rate funding? That is what the documents tend to indicate.

Mr. MCCAIN. The NEC installed what was on the spreadsheet in reference to document 6365 and how those line items were implemented and the associated dollar amount.

Chairman BARTON. Okay. Well, I have one—Mr. Walden. And we need to get to Mr. Singleton here pretty soon.

Mr. WALDEN. All right. I am sorry, sir. Mr. McCain, have you done several of these installs like this?

Mr. MCCAIN. Yes, sir.

Mr. WALDEN. From your experience, are these figures that are on spreadsheet, 06365, are those numbers, the costs there, are those pretty standard? Are they below what you would see charged elsewhere or are they inflated?

Mr. MCCAIN. No, they are not inflated. I mean new technology is very expensive these days.

Mr. WALDEN. Okay. So I guess my question is then did a full $4,135,900 and whatever that says, 81—I didn't bring my glasses today—is that what was spent?

Mr. MCCAIN. Yes.

Mr. WALDEN. On the project?

Mr. MCCAIN. Yes, sir.

Mr. WALDEN. And is the only way you could have spent that to have spent the million for the TV studio—or $800,000, I am sorry?

Mr. MCCAIN. What we did—what NEC did is from this spreadsheet, an agreement by both parties, we installed the line items that are on the spreadsheet to use the funds that were approved by the SLD funding.

Mr. WALDEN. And would that include the $800,000 for the TV studio?

Mr. MCCAIN. Yes.

Mr. WALDEN. Okay.

Chairman BARTON. All right.

Mr. WALDEN. And one final time, neither superintendent, you all don't know, Doctors, whether your school district ever came up with the match amount.

Ms. EPPS. It is my understanding, sir, that we paid our matching, either through the bond money that we had or our general fund.

Mr. WALDEN. But you don't know which?

Ms. EPPS. I can't say we paid $10 from this or that. I don't have that information.

Mr. WALDEN. Dr. Benit, you don't know specifically either.

Mr. BENIT. Well, I do know. I present it to our business office that they need to pay a match. I am not sure what happened. I believe that they did, but I would have to go back and review the records to find out how it was paid.

Mr. WALDEN. And you haven't done that prior to this hearing at all?

Mr. BENIT. No, because I am working in another district, and I just got the request to come here while I am trying to get another district working.

Mr. WALDEN. All right.

[During the hearing, Members of the Oversight and Investigations Subcommittee and the Committee Chairman requested that either Dr. Emma Epps, the Superintendent of Ecorse Public School District, or Dr. Douglas Benit, the former facilities director at Ecorse Public School District, provide the Committee with documentation demonstrating that the school district in fact paid its E-rate copayment, and did not use E-rate funds to cover the district's obligation. Dr. Benit stated that the requested information could be provided to supplement the record. Following subsequent requests from Committee staff that Dr. Benit provide the documentation before the record closed, Dr. Benit, through his attorney, produced several documents to the Committee that were irrelevant and failed to answer the outstanding questions. At the close of the record, the Committee has no documentation that in fact demonstrates that Ecorse Public School District did not use E-rate funds to pay for ineligible products and services and to pay for the school district's required co-payment.]

Chairman BARTON. Well, before we get off of that issue, what does a television studio have to do with connecting your students to the Internet? Either one of you.

Mr. BENIT. Well, as a donated piece of equipment, it does teach kids how to project themselves, how to do TV production and——

Chairman BARTON. That has nothing to do with the Internet. That has nothing to do with wiring your school system so that your students can receive material for educational purposes over the Internet.

Mr. BENIT. I understand that. All kids can, all buildings have total access to the Internet.

Chairman BARTON. So you all think that E-rate funds should be spent to put television studios in every high school in this country, even though none of it is used for Internet purposes. You want to expand the intent of the E-Rate program.

Mr. BENIT. No, sir, that is not what we said.

Chairman BARTON. Well, we had another school superintendent from the San Francisco School District here before us. She refused to sign documents. She instigated an investigation that resulted in tens of millions of dollars being refunded to her credit, and in this case, the school district that you represent, you all have a very

vague notion of what was spent and what it was spent for and don't appear, quite frankly, to be too concerned about it, which is a disappointment to me.

Let me ask Dr. Singleton some questions for the record. Dr. Singleton, you are the superintendent of the Jasper County School District in South Carolina; is that not correct?

Mr. SINGELTON. That is correct.

Chairman BARTON. What is your understanding of your school district's financial obligation to participate in the E-Rate program?

Mr. SINGELTON. We have written several—worked with NABSE and also with the VNCI and NEC. That is how we became involved. When I became superintendent in 1999, we wrote the first grant or filed the first forms for E-rate funding. And, as I mentioned in my written testimony, I was at a conference and E-rate was being promoted by NABSE.

Chairman BARTON. Is that where you met Judy Green for the first time?

Mr. SINGELTON. I believe she was there, but I remember George Marchelos. I remember him specifically.

Chairman BARTON. Do you know to what extent, if any, Judy Green was involved in assisting Mr. Duncan in your district preparing E-rate forms and paperwork for the grant application?

Mr. SINGELTON. When I returned I filed the first form, 470, in Nashville, and when I came back I turned everything over to Mr. Duncan. He was our director of technology at that time, and he was working with, I believe it was, Kim Mars and Judy Green and Gerard McNulty.

Chairman BARTON. Do you know if Judy Green helped Mr. Duncan to prepare the E-rate RFP?

Mr. SINGELTON. From what Mr. Duncan said, he had assistance from the organization, NEC and VNCI.

Chairman BARTON. But do you know if the employee or the consultant of NEC BNS was Judy Green, the woman here today who refused to testify under oath—who took her Fifth Amendment right against self-incrimination—I want to be exact on that.

Mr. SINGELTON. I don't know for a fact that she sat down and wrote the application, but she was physically in the district on several occasions. I can say VNCI filed the first form out in Nashville, and I know that for a fact because after the breakout session I came back downstairs and did that application electronically and sent it in.

Chairman BARTON. Okay. Do you have the big notebook with all the tabs there at the desk before you?

Mr. SINGELTON. This?

Chairman BARTON. Yes, sir. Could you turn to tab 48, please, sir? Tab 48 should be the Jasper County memorandum of understanding.

Mr. SINGELTON. Yes, sir.

Chairman BARTON. Do you see that?

Mr. SINGELTON. Yes.

Chairman BARTON. Could you tell us how much money was awarded to the Jasper County School District by the E-Rate program for year 2000?

Mr. SINGELTON. Well, the amounts meant $10.4 million.

Chairman BARTON. What is the document before you indicate?
Mr. SINGELTON. This indicates that 9.5——
Chairman BARTON. Four-eight.
Mr. SINGELTON. [continuing] 48.
Chairman BARTON. On the page marked 6374, can you describe the items listed under the caption, "Non-qualified equipment and services?"
Mr. SINGELTON. Electrical upgrade, university training for teachers, climate control system, alterations of internal existing structure.
Chairman BARTON. That is enough. The entire document is in the record, but would you just summarize. Does it look like there are dozens of items that were non-qualified on that page, including personal computers? There are a lot of items on that.
Mr. SINGELTON. Yes, sir.
Chairman BARTON. You would agree with that? Do you know if Jasper County received all of those items even though they were non-qualified?
Mr. SINGELTON. I believe we received most of the items.
Chairman BARTON. You believe that you did receive.
Mr. SINGELTON. Yes.
Chairman BARTON. Okay. On the next page, 6375, what is the total cost of the so-called bonus package?
Mr. SINGELTON. Three million fifty.
Chairman BARTON. Three million fifty. Now, do you acknowledge that that means your school district received $3 million in non-qualified items for which they should not have been paid for by the E-Rate program?
Mr. SINGELTON. Well, we received it as a bonus package. It was given to us as a bonus package.
Chairman BARTON. All right.
Mr. SINGELTON. That was promoted by VNCI, NEC and——
Chairman BARTON. Define in your own words what a bonus package means.
Mr. SINGELTON. In my words, and what was said to us, was that a bonus package would pay for the matching—could be used as the matching for our portion that the district should have been paying.
Chairman BARTON. That makes no sense at all.
Mr. SINGELTON. Well, that is what was told to us.
Chairman BARTON. All right.
Mr. SINGELTON. That the bonus package could be used as in kind. They would give us that and we could, in turn, use that as the matching for the district.
Chairman BARTON. All right. The E-Rate program is supposed to be—funds for the E-Rate program are supposed to be used to actually create the Internet connection, the servers, the wiring, the switches, the monitors, the computers so that students can participate and receive information over the Internet and help with their education. None of the equipment that was listed in the bonus package does that. It is not qualified, it is not part of it. Some of it may be if there are some computers there. Those funds to the tune of $3 million were non-eligible and should not have been funded by E-rate. If the school district wanted those, the school district should have paid for them themselves. There is no free lunch, and

you want us to believe that $3 million worth of equipment could be given to your school district and you really think that the vendor that provided it did it and didn't charge the government for it. On a $4 million contract, they could give you a $3 million bonus.

Mr. SINGELTON. A $9 million——

Chairman BARTON. Well, but $3 million of it was listed as bonus.

Mr. SINGELTON. That is correct. And I am just repeating what was told to us, that we——

Chairman BARTON. But you didn't question that.

Mr. SINGELTON. No, sir, I did not.

Ms. DEGETTE. Mr. Chairman, would you yield for 1 second?

Chairman BARTON. I would be happy to.

Ms. DEGETTE. Dr. Singleton, who told you that this list of nonqualified equipment could be applied toward the district's match?

Mr. SINGELTON. Well, if you read through this document, it says in-kind and——

Ms. DEGETTE. No. Who told you that?

Mr. SINGELTON. When we first started discussing this out in Nashville, I know it was discussed there——

Ms. DEGETTE. Who——

Mr. SINGELTON. Morales, George Morales mentioned it when we got back to our district. Gerard McNulty, Judy Green, that whole group——

Ms. DEGETTE. All of them told you that?

Mr. SINGELTON. Yes, ma'am.

Ms. DEGETTE. Thank you, Mr. Chairman.

Chairman BARTON. Doctor, doesn't it strike you as too good to be true that you could receive all these bonus items and have your copayment waived by NEC BNS?

Mr. SINGELTON. We know now sir, that it is too good to be true. There are no free lunches, I will agree with that. Understanding that we are a very rural, poor school district, NABSE involvement by——

Chairman BARTON. So it is just don't look a gift horse in the mouth.

Mr. SINGELTON. Yes. Yes.

Chairman BARTON. That is kind of the——

Mr. SINGELTON. Well, a reputable organization like NABSE we just assumed that everything was okay.

Chairman BARTON. I can understand that. The Chair would ask unanimous consent to recall Mr. McDonald of USAC if he is still in the audience. He is still under oath.

Mr. McDonald, you have heard Superintendent Epps and Superintendent Benit and now Dr. Singleton all indicate that they were getting equipment and bonus packages and donations. Would that be allowed, including a television studio, under the existing E-Rate program, even if it was donated?

Mr. MCDONALD. These would be the kind of free, ineligible services I was talking about this morning, that the cost of those services need to be covered somehow, and they are covered by inflating the cost of eligible services so that E-rate ends up paying for them. TV production studio, we do pay for connectivity. We pay for distance learning. If the TV production studio were being used for dis-

tance learning, switches and cables that were carrying that data would be eligible but not the TV production studio itself.

Chairman BARTON. And if Dr. Singleton's school district had contacted USAC and asked about this bonus package or the concept of a bonus package, what would your reviewers' response have been?

Mr. MCDONALD. We have been pretty clear about free, ineligible services from the inception of the program, that they are not eligible, that the applicants should not acquire free, ineligible services from service providers.

Chairman BARTON. Do you do anything to be proactive to send out materials to these small school districts and these rural school districts and low-income school districts that would tend not to have professional—or not as likely to have professional staff that were up to date on these programs to inform them, to warn them, so to speak, to be wary of these kind of proposals that in fact they are illegal?

Mr. MCDONALD. We have a web site that we try to promote as much as possible where we put information about the rules of the program. We have a toll-free call center that participants can call and get information. We do an annual train the trainer conference and bring people in from all the States and train and hope that they will go back and train, and we do a mass mailing at the start of the window for each funding year to basically all applicants in the program, trying to highlight significant features of the program, things that have been problems that we have found recently.

Chairman BARTON. Before I let—I think Mr. Walden may have a question for you, but I sent a letter, and I think Mr. Dingell sent a letter, we signed a letter asking that this particular vendor be barred because of what they have done. Do you know the status of that debarment proceeding? Would that be your agency or would it go to the FCC directly?

Mr. MCDONALD. That would be the FCC, sir.

Chairman BARTON. And you are not aware of—Ms. DeGette, do you wish to ask a question?

Ms. DEGETTE. Thank you. Dr. Singleton, I just wanted to clear a couple of things up. And thank you for appearing today. You are making some sense here. This in-kind donation agreement that we have been talking about, now you were told by Judy Green and others that these were going to be donated by NEC, correct?

Mr. SINGELTON. Donated.

Ms. DEGETTE. And were you aware of an application by NEC for E-rate money to pay for these items?

Mr. SINGELTON. No. I was not aware of that, no.

Ms. DEGETTE. Okay. Did you know that E-rate money cannot be used to pay for these items?

Mr. SINGELTON. I know now, but that never occurred to me in the beginning because they were donated items.

Ms. DEGETTE. Right. You just thought they were donating it as part of your agreement, right?

Mr. SINGELTON. Yes.

Ms. DEGETTE. Now, as you look at this list of items, is there anything on this list that—well, everything on this list you needed to

be able to hook up computers for kids to use them in the classroom, didn't you?

Mr. SINGELTON. That is correct.

Ms. DEGETTE. Did your school district have $3 million to pay for all this equipment?

Mr. SINGELTON. No, we do not.

Ms. DEGETTE. What would have happened if you didn't have a way to get this equipment? Did you have——

Mr. SINGELTON. We would never put it in. We could never afford this kind of equipment.

Ms. DEGETTE. Right. Now, let's say that Congress said that you had to pay 20 percent. Because now you know, right, that there is a 10 percent amount? What would you say to Congress if we said, "Well, the way we are going to stop the kind of fraud by Judy Green and others is to make you pay for 20 percent"?

Mr. SINGELTON. I think that would be detrimental to districts like ours. Rural, poor districts cannot afford to pay upfront or to pay the percentage that is required. Small amount but the magnitude of this project we could never afford it, we could never pay it.

Ms. DEGETTE. Do you have any ideas what kind of changes—because I know you would never support fraudulent transactions at all for your district, right?

Mr. SINGELTON. No, ma'am. That will get you fired.

Ms. DEGETTE. Well, it will do worse than that. And so my question to you is what do you think Congress can do to make sure that this E-rate money goes to school districts like yours, the poorest school districts in the country to help the students, but at the same time there are not people just skimming millions of dollars off of it fraudulently.

Mr. SINGELTON. Really, I think the whole application process, I believe, needs to be revamped. It seems to be a complicated process, and I don't know all the ins and outs because my technology persons have always done it, and I have sort of taken a back seat and they just bring it to me and say, "Okay. We have got this approved," and I have signed documents as they came in. But I believe that is—the process is complicated, and I think the bid process may need to be looked at, because when we got into this project, and if you ask me how VNCI and NEC got into it, I could not tell you today. I know that we started in Nashville, and from then on they were partnering with us. So it is unclear exactly how they started. And maybe by just signing on and having them transmit that 470, that first application, and they are off and running with us.

Ms. DEGETTE. Thank you. Thank you for sharing those views. I appreciate it.

Mr. WALDEN [presiding]. Dr. Epps, are you a member of NABSE?

Ms. EPPS. Yes, I am.

Mr. WALDEN. I am not sure, is that mic on?

Ms. EPPS. Yes, I am.

Mr. WALDEN. Thank you. Are you currently an officer of NABSE?

Ms. EPPS. Yes, sir.

Mr. WALDEN. And how long have you been an officer at NABSE?

Ms. EPPS. I think 1998.

Mr. WALDEN. You were elected——
Ms. EPPS. Secretary.
Mr. WALDEN. [continuing] secretary. And you are now—what is your title now?
Ms. EPPS. President-elect.
Mr. WALDEN. President-elect.
Ms. EPPS. Yes, sir.
Mr. WALDEN. You appear in the NABSE E-Rate marketing video that we viewed a short time ago.
Ms. EPPS. Yes, sir.
Mr. WALDEN. What do you know about NABSE's participation in the E-Rate program?
Ms. EPPS. As a board member, I know that a presentation was made to us about a partnership and I, as a board member, voted at that meeting because——
Mr. WALDEN. You voted for the partnership?
Ms. EPPS. For the partnership to assist school districts that didn't have the persons to do the work.
Mr. WALDEN. Sure. And you are aware of the, what was it, 1.5 percent fee that NABSE got back off some of these contracts, if not all?
Ms. EPPS. That was in the presentation.
Mr. WALDEN. Okay. And Mr. McDonald again, is that fee generally acceptable under USAC rules?
Mr. MCDONALD. Depending on the role that NABSE would be playing. If it is playing a role as the consultant and steering work to those companies in order to get the 1.5 percent, no, that is not keeping a fair and open competitive process.
Mr. WALDEN. Did you see the video?
Mr. MCDONALD. I did.
Mr. WALDEN. Did it trouble you that they listed various companies in the video, NEC, UNCI?
Mr. MCDONALD. If I were seeing that for the first time, I wouldn't be sure exactly what was being said there. If NABSE had money and these companies were volunteering to come out and help people put technology plans together and not going to corrupt the process of the selection of the service provider, that would be okay.
Mr. WALDEN. Will USAC be looking at NABSE's role?
Mr. MCDONALD. Yes.
Mr. WALDEN. Okay. And in terms of these school districts, are yo pursuing recovery? I mean we are hearing a lot today about $4 million and a free TV studio.
Mr. MCDONALD. I am making notes here.
Mr. WALDEN. I bet you have. Dr. Epps, what role did Quentin Lawson play on behalf of NABSE and NABSE's participation in the E-Rate program?
Ms. EPPS. Sir, I can't tell you what his role was, other than as a board member, as I said, at the meeting, the project was presented to the board, but I can't——
Mr. WALDEN. Does the board have legal counsel that reviewed this process, do you know?
Ms. EPPS. The policy, sir, is that when projects are brought before the board, the general process is that if it is an agreement or

a contract, as a board member, I know that it is supposed to go to the legal attorney.

Mr. WALDEN. Who is that?

Ms. EPPS. The legal attorney is Mr. McCutcheon.

Mr. WALDEN. Mr. McCutcheon. Okay. What do you know about NABSE's E-rate partnership with NEC, VNCI and IBM?

Ms. EPPS. What I know has to do with there was a presentation that there would be a partnership. I don't know the intricate details of what that was and how it all came together. I don't have that detailed information, as I was one member.

Mr. WALDEN. That wasn't presented in your board meeting? There would be documents, minutes perhaps.

Ms. EPPS. The information was presented to the board. I can't recall, tell you all of the details of the presentation, but just like all the other initiatives, it was presented to the board.

Mr. WALDEN. All right. If you would take a look at tab 66 in our big binder there.

Ms. EPPS. Okay.

Mr. WALDEN. I was just wondering if you were aware that NABSE had entered this memorandum of understanding with NEC BNS and VNCI? This was in January 2001. It references there the 1.5 percent of the gross revenue of said contract.

Ms. EPPS. And what is the question, sir?

Mr. WALDEN. Were you aware that NABSE had entered this memorandum of understanding with NEC BNS and VNCI?

Ms. EPPS. I wasn't aware of this particular memorandum. I have seen it recently, but I was not aware of it previously.

Mr. WALDEN. Okay. Were you aware that this MOU provided for the compensation of NABSE by those vendors?

Ms. EPPS. One and a half percent.

Mr. WALDEN. Right. Were you aware of that?

Ms. EPPS. I think that was—if my memory serves me correctly, that was presented in the——

Mr. WALDEN. As part of the presentation?

Ms. EPPS. [continuing] presentation.

Mr. WALDEN. Yes. I question the term, "donation" versus perhaps "commission" on sales. I mean it is 1.5 percent of the gross revenues is part of the agreement.

Why would NABSE get that funding, the 1.5 percent, as opposed to just helping schools for free, because that is your mission, right?

Ms. EPPS. Well, our mission is to help schools and children, yes.

Mr. WALDEN. Right. Why take 1.5 percent? I mean that could be quite a bit of money on what we have heard today in terms of the size of some of these contracts.

Ms. EPPS. Yes. Well, I can answer as one board member. At the time it was presented——

Mr. WALDEN. Do you know how much money they did make?

Ms. EPPS. No, sir.

Mr. WALDEN. That doesn't show up in a budget item or—do you get like monthly cash-flow statements or P&Ls?

Ms. EPPS. No, sir. I haven't seen monthly cash-flow statements, but it would eventually be in the audit, I am sure, at the end of the year.

Mr. WALDEN. The audit? How often does your board meet?

Ms. EPPS. I attend board meetings about three times a year.

Mr. WALDEN. And that is how often the board meets?

Ms. EPPS. Yes, sir, about three times a year.

Mr. WALDEN. And at those meetings, do they give you financial statements? I mean do they give you sort of——

Ms. EPPS. Yes, sir.

Mr. WALDEN. [continuing] quarterly cash-flows or——

Ms. EPPS. Yes, sir, we get financial statements.

Mr. WALDEN. Okay. But this isn't one you looked at as a new line of business?

Ms. EPPS. I did not particularly pay attention to that.

Mr. WALDEN. Is that information——

Ms. EPPS. I can't say that it was there or not.

Mr. WALDEN. Sure. I have been through various boards I have been on and I understand how that happens. Is that information you could provide for us, though? NABSE?

Ms. EPPS. I am sure that NABSE could provide that for you.

Mr. WALDEN. Well, you are the president-elect. I mean is that something you would help us get?

Ms. EPPS. I think that you could request that from the office, and I am sure they would give you that.

Mr. WALDEN. Okay. Because it would be interesting to know just how much money was generated off the E-rate projects in the NABSE.

So take a look at tab 66, for example—I am sorry, 68. VNCI, Video Network Communications, Inc. provided NABSE on October 1999 it appears to be $37,000. How big is your annual budget?

Ms. EPPS. I am sorry?

Mr. WALDEN. How big is your annual budget at NABSE?

Ms. EPPS. I really don't——

Mr. WALDEN. Would $37,000 in one payment be considered quite a bit? I mean are we talking a $10 million budget or——

Ms. EPPS. As a board member, I would think that $37,000 is a lot.

Mr. WALDEN. So if I were looking at your P&L for the prior 4 months, $37,000 would jump out as a line item, wouldn't it, in terms of revenue source? And that is just one check. Is that what you are telling me, that that would tend to show up? I mean how big an organization——

Ms. EPPS. In revenue, I am sure it would show up in the office, but I don't remember seeing this check.

Mr. WALDEN. No, I wouldn't think you would see the check. But I mean I am just thinking back to my own company and others. I mean $37,000 is a pretty good chunk of dough, and that is just one check. Were there others maybe? How about at tab 69, July 2001. That is a $10,000, looks like, check. Again, it looks like from VNCI. It just seems like a lot of money coming in, I don't know.

And I think tab 69 and 70 also have revenue coming in as well, it looks like, $45,000 from VNCI. It just seems like a lot of money coming out of this program. I mean do you know the kind of technical support that your folks at—how many people are in this division at NABSE that help schools? How big is the staff for the E-rate side of things?

Ms. EPPS. I don't remember how many. I couldn't give you a number of the staff doing the E-rate, what I consider the E-rate time. I can tell you just about the staff now.

Mr. WALDEN. How many are on staff now total?

Ms. EPPS. Hold on a second.

Mr. WALDEN. Sure.

Ms. EPPS. I believe, sir, it is maybe 6 or 7 regular people, and then there are, like, interns.

Mr. WALDEN. So you are not a big organization here, 6 or 7. And that is full-time staff when you say the word, "regular?"

Ms. EPPS. I believe that it is about that many full-time.

Mr. WALDEN. Okay. So 6 or 7 full-time. And that would include people working on E-rate or do you——

Ms. EPPS. Well, working on projects. I don't know who would exactly in the office work on specific projects.

Mr. WALDEN. Right. No, but it would be within that group of 6 or 7 people.

Ms. EPPS. That is the NABSE staff.

Mr. WALDEN. Yes. So the current staff you have that would have been the ones that would be getting the payments, in effect. I mean the payment came to NABSE, right, that we have the checks under the tabs that I referenced earlier?

Ms. EPPS. I see the checks, sir. I don't know—I haven't looked at in terms of when they were. I don't know—the staff has changed and the staff changes, so I can't say this exact 6 and 7 people were the people——

Mr. WALDEN. No, I understand that. I am not saying that. I am just saying that when NABSE was holding itself out as a technological consultant for school districts like the one Mr. Singleton is superintendent of, in theory, you had 6 or 7 people or positions, right?

Ms. EPPS. Yes, sir.

Mr. WALDEN. That is what you have testified to.

Ms. EPPS. That is how many we have now, sir, that I know of.

Mr. WALDEN. Was it more or less then?

Ms. EPPS. I said that I couldn't tell you how many it was, if you remember when I said, during what I am considering the E-rate time. I said now I would say it was 6 or 7 and some interns.

Mr. WALDEN. Was it more during the E-rate time?

Ms. EPPS. I really don't know the number of staff members at that time.

Mr. WALDEN. Okay.

Ms. EPPS. And I am thinking 2001. That is what I call E-rate time.

Mr. WALDEN. All right. Did you rely a lot on Judy Green?

Ms. EPPS. I don't know if NABSE relied on Ms. Green.

Mr. WALDEN. Was the NABSE Board informed that Quentin Lawson had joined the VNCI Board? See Tab 88 if you want to, there is a reference.

Ms. EPPS. Sir, I, as a board member, was made aware of that this year, 2004, this year.

Mr. WALDEN. Okay. So you just learned about it sometime in 2004.

Ms. EPPS. Yes, sir.

Mr. WALDEN. Okay. All right. Now, does that present any conflict of interest in your mind?

Ms. EPPS. I, as an individual—I would tend to think that it is—as an individual, I would think that it wasn't——

Mr. WALDEN. It was not?

Ms. EPPS. It could be a conflict.

Mr. WALDEN. It could be a conflict.

Ms. EPPS. I mean I would think, as an individual. I can't——

Mr. WALDEN. Mr. McDonald, do you think that presents a conflict?

Mr. MCDONALD. It certainly deepens the issue of were these fair and open competitive processes.

Mr. WALDEN. Are you aware of these payments to NABSE?

Mr. MCDONALD. No, sir.

Mr. WALDEN. Do they seem out of the ordinary, hard to tell?

Mr. MCDONALD. They would be out of the ordinary. As we discussed earlier today, if we had seen these, we would have misconstrued them as causing a problem, and we would have denied the applications.

Mr. WALDEN. Are these payments the kind of payments that you would go back and review and seek refunds on if they are not—I mean——

Mr. MCDONALD. It sounds like E-rate funds were used to make the payments to NABSE and those would not be eligible uses of E-rate funds.

Mr. WALDEN. Unless they provided very specific technological support to the districts, right?

Mr. MCDONALD. Unless they were installing or providing connectivity services.

Mr. WALDEN. All right. Anything else? All right. Thank you all for your patience and time. We have no other questions for this panel. You are dismissed. We will take a brief 5-minute recess because we have to bring up another witness by video. While our technicians work on that, we will be in recess for 5 minutes.

[Brief recess.]

[The prepared testimony of William Singleton follows:]

PREPARED STATEMENT OF WILLIAM SINGLETON, SUPERINTENDENT, JASPER COUNTY SCHOOLS

SCHOOL YEAR 1999-2000

I was somewhat familiar with the E-Rate Program some time before 1999. However, after attending the National Alliance of Black School Educators (NABSE) Conference in Nashville, Tennessee, I became more familiar with the program. I began to take notice after being approached by a representative from VNCI, who had on display numerous pieces of telecommunication equipment in the hotel lobby. VNCI representatives stood in the hotel lobby soliciting conference participants to attend a breakout session on how to acquire E-Rate funds. Several announcements were made by NABSE officials encouraging conference participants to attend the breakout session.

A representative of VNCI encouraged conference participants to attend the breakout session to hear testimonies from other school districts that were recipients of their equipment (see Exhibit A). The breakout session was very interesting. School district representatives and superintendents that had received E-Rate funds shared how they enhanced their school district's technology program. As I recall, a superintendent from a small school district in the state of California shared during the breakout session that he had received somewhere in the neighborhood of three million dollars. The school district was approximately half the size of Jasper County

School District's three thousand student population. I became interested because the California school district's demographics for free and reduced lunch population was very similar to Jasper County.

The second selling point was that VNCI was promoting a special NABSE bonus package of free telecommunication equipment. The school district would receive as "in-kind" donations to be used as the school district's 15% match (district had at this time 85% free and reduced lunch program). The bonus package included a 33 inch TV monitor for each classroom, pan-tilt-zoom cameras, 400 computers, 12 laptop computers, 100 teacher workstations, etc. (see Exhibit B). During the presentation at the NABSE Conference, VNCI agreed to assist any school district that needed help with the application process. After the session, participants returned to the lobby and completed the first phase of the application process, Form 470.

Upon my return from the NABSE Conference in Nashville, Tennessee, I turned the project over to Michael Duncan, the school district's Director of Technology. As we continued throughout the school year, the Director of Technology, along with VNCI and NEC staff, filed the other necessary paperwork.

SCHOOL YEAR 2000-2001

After notification of the E-Rate subsidy awarded to Jasper County, Judy Green, VNCI representative, and Gerard McNulty made a presentation to the Jasper County Board of Education (see Exhibit C). At this meeting, the focus seemed to change from VNCI to NEC. As a matter of fact, Gerard McNulty announced that Ken Morrison would be the onsite manager for NEC and Jonathan James for VNCI. These individuals worked with Michael Duncan, Jasper County Director of Technology, in completing the application process and designing the system.

Believing everything was legitimate, Michael Duncan informed me periodically on the status of the project. Michael Duncan resigned from the school district on June 25, 2001 due to health reasons.

SCHOOL YEAR 2001-2002

Early in the 2001-2002 school year, I was contacted by George Marchelos, VNCI representative, to recommend him to Eleanor Adams, Director of the Salkehatchie Consortium, to present the E-Rate program to the other superintendents using Jasper as a model for acquiring E-Rate funds. As I recall, George Marchelos and Judy Green presented the program to the consortium superintendents on November 27, 2001 (see Exhibit D).

Ed Sauls was brought in to replace Michael Duncan and found that most of the VNCI video-conferencing equipment did not work properly or was not working at all.

SCHOOL YEAR 2002-2003

Attorney Karen Jones, U. S. Department of Justice, came to Jasper County to investigate the E-Rate subsidy that was allocated to Jasper County. I shared with her what I knew about the program, basically the information communicated in this document.

SCHOOL YEAR 2003-2004

On July 30, 2003, I was subpoenaed to appear before the United States District Court Eastern District of Michigan Grand Jury. I gave the same testimony as outlined in this document and what was shared with Attorney Jones.

After receiving notice that NEC pleaded guilty and agreed to pay restitution and supply Jasper County School District with eighteen months of free maintenance services, we are still trying to negotiate a workable contract.

SUMMARY

I believe it is vital that the E-Rate program continue although the application process seems to be complicated and burdensome. After learning more about the E-Rate program over the past three years and our school district's involvement in the investigation of E-Rate, I feel the following problems were present:

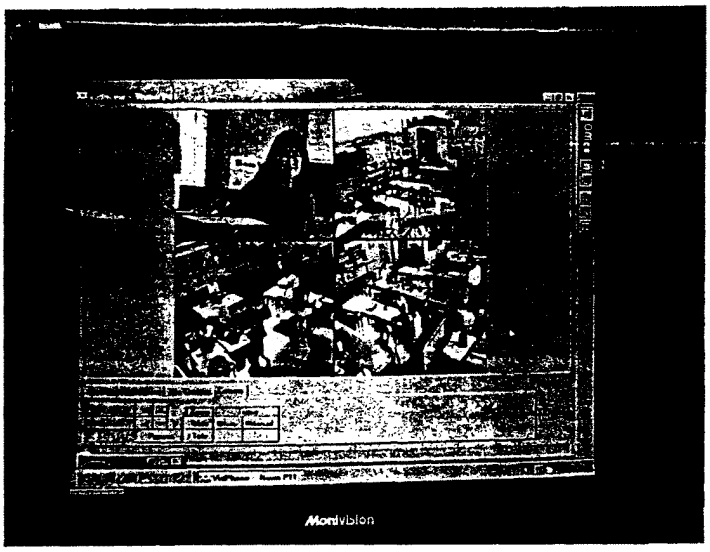
1. VNCI offered Jasper County a Bonus Package with equipment that was ineligible for E-Rate funds.
2. VNCI as a provider of video-conferencing equipment assisted with the application process Form 470 in Nashville, Tennessee.
3. Excessive equipment, such as a server in every classroom, probably was not necessary.

4. VNCI/NEC agreeing not to charge the school district the 15% match (85% free/ reduced lunch), the match would be the in-kind NABSE Bonus Package donation.
5. I believe VNCI/NEC may have been involved in the RFP and bid process, which was handled by the Director of Technology.

It appears that large companies, such as VNCI/NEC, have been going around the country offering solutions to school district technology problems and taking advantage of the E-Rate program.

EXHIBIT
A

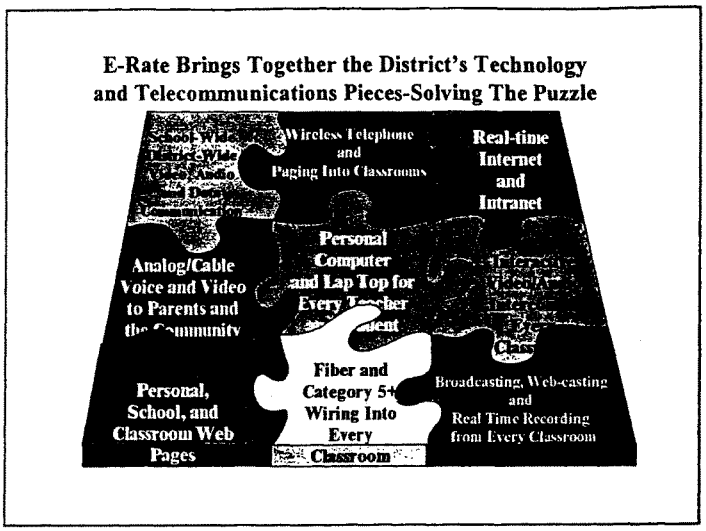
Integrating E-Rate Technology into the Classroom

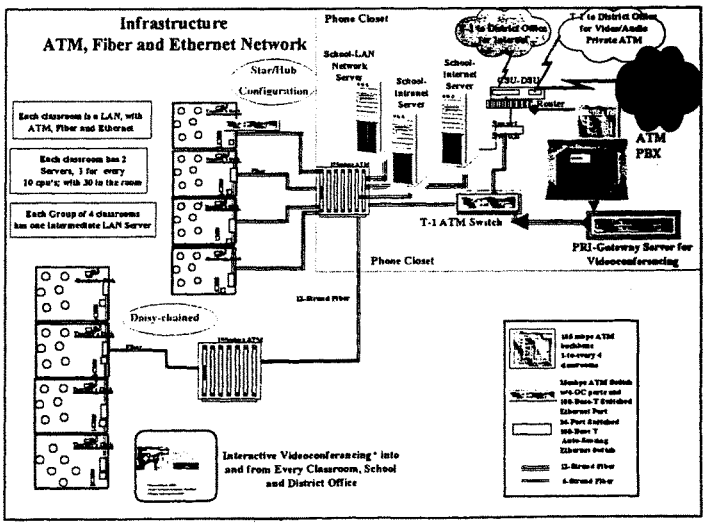


NABSE Conference 1999

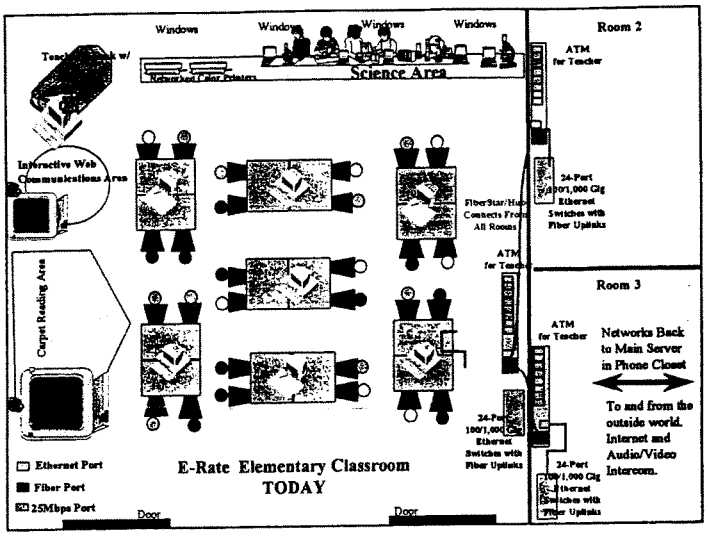
For More Information

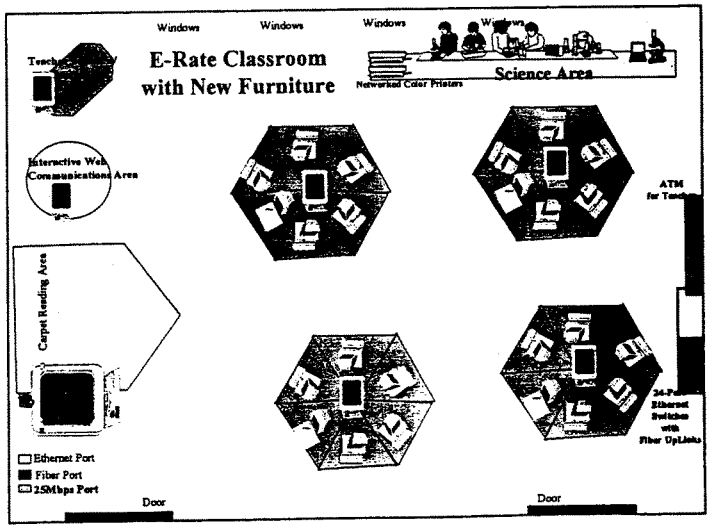
Call Kristi Cole @ *VNCI* 800-763-8099 ext. 2240


E-Rate Brings Together the District's Technology and Telecommunications Pieces-Solving The Puzzle
Wireless Telephone and Paging Into Classrooms
Real-time Internet and Intranet
Personal Computer and Lap Top for Every Teacher
Analog/Cable Voice and Video to Parents and the Community
Fiber and Category 5+ Wiring Into Every Classroom
Personal, School, and Classroom Web Pages
Broadcasting, Web-casting and Real Time Recording from Every Classroom

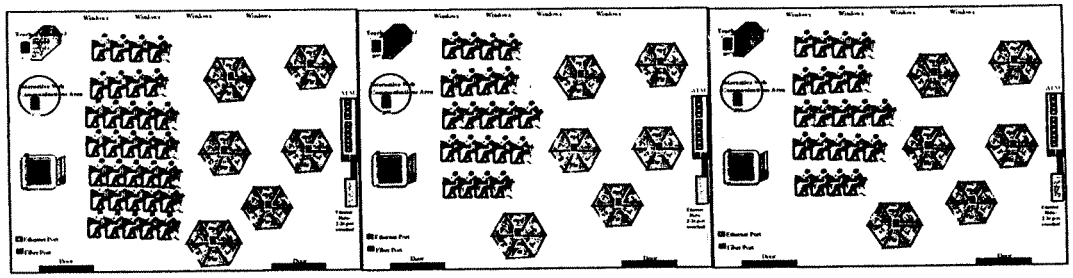

Infrastructure
ATM, Fiber and Ethernet Network
Phone Closet
Star/Hub Configuration
Each classroom is a LAN, with ATM, Fiber and Ethernet
Each classroom has 2 Servers, 1 for every 10 cpu's; with 30 in the room
Each Group of 4 classrooms has one intermediate LAN Server
School-LAN Network Server
School-Intranet Server
School-Internet Server
CSU-DSU
Router
Switch
ATM PBX
T-1 ATM Switch
PRI-Gateway Server for Videoconferencing
Phone Closet
Daisy-chained
Interactive Videoconferencing * into and from Every Classroom, School and District Office

SB
8

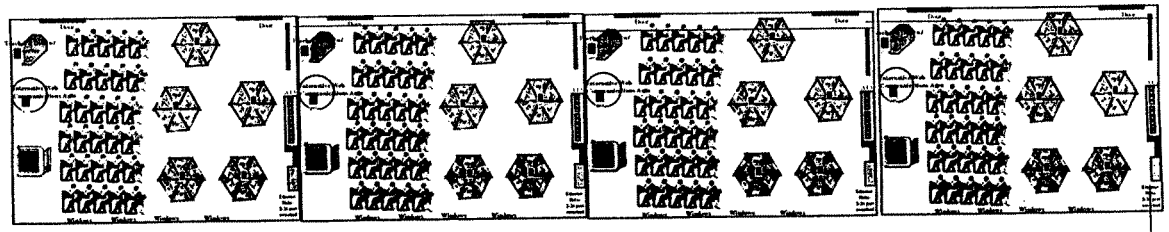

Windows
Windows
Windows
Windows
Science Area
Networked Color Printers
Interactive Web Communications Area
Carpet Reading Area
Room 2
ATM for Teacher
24-Port 10/100/1,000 Gig Ethernet Switches with Fiber Uplinks
Room 3
ATM for Teacher
Networks Back to Main Server in Phone Closet
To and from the outside world. Internet and Audio/Video Intercom.
Ethernet Port
Fiber Port
25Mbps Port
E-Rate Elementary Classroom
TODAY
Door
Door


Windows
Windows
Windows
E-Rate Classroom
with New Furniture
Science Area
Networked Color Printers
Interactive Web Communications Area
Carpet Reading Area
ATM for Teacher
24-Port Ethernet Switches with Fiber Uplinks
Ethernet Port
Fiber Port
25Mbps Port
Door
Door

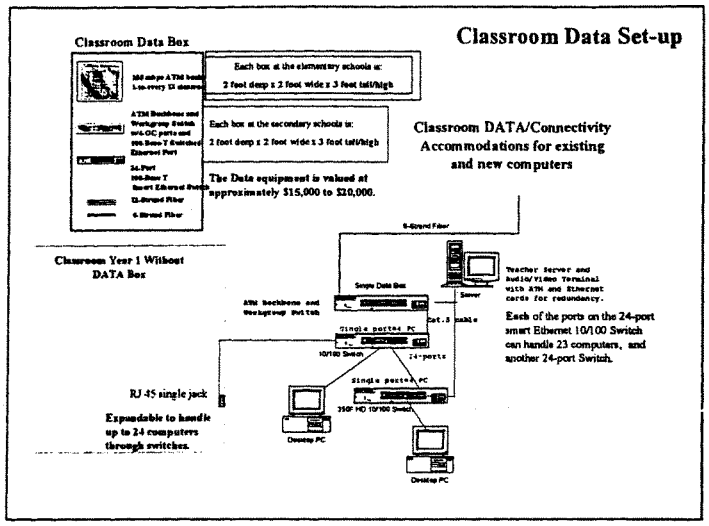
3

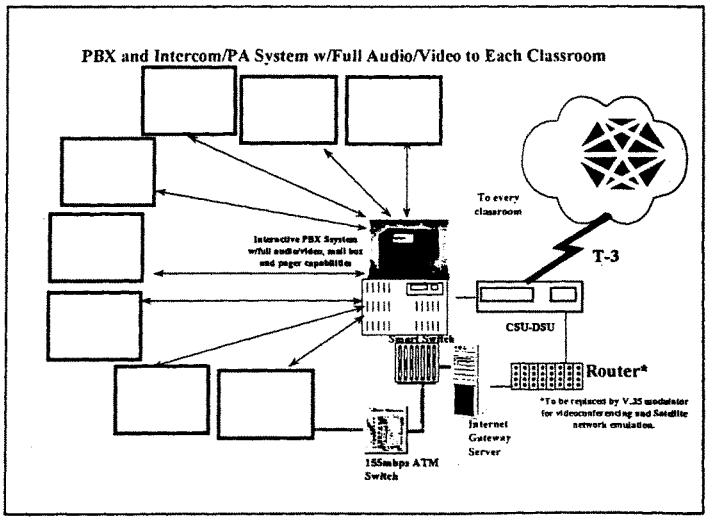


E-Rate Middle and High School Rooms of the Future

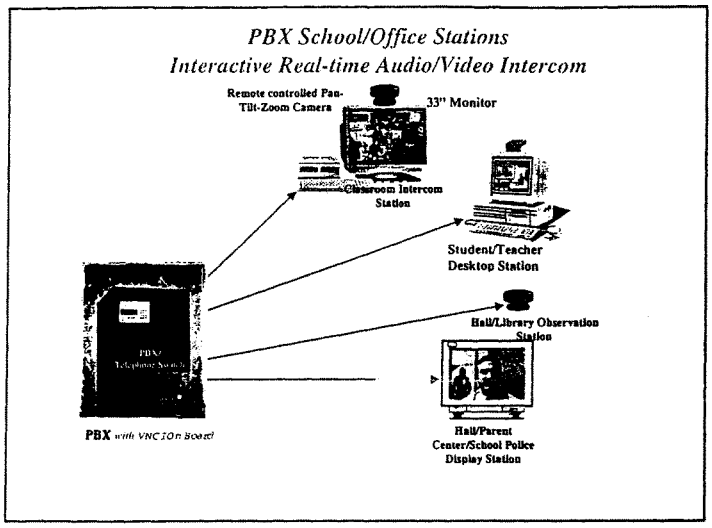


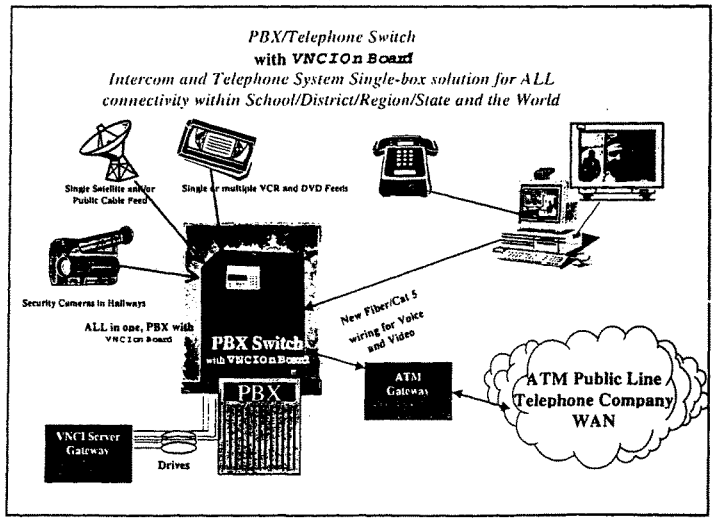
155 ATM Switch


Classroom Data Box
Classroom Data Set-up
Each box at the elementary schools is:
2 foot deep x 2 foot wide x 3 foot tall/high
Each box at the secondary schools is:
2 foot deep x 2 foot wide x 3 foot tall/high
Classroom DATA/Connectivity Accommodations for existing and new computers
The Data equipment is valued at approximately $15,000 to $20,000.
Classroom Year 1 Without DATA Box
Server
Each of the ports on the 24-port smart Ethernet 10/100 Switch can handle 23 computers, and another 24-port Switch.
RJ-45 single jack
Expandable to handle up to 24 computers through switches.
Desktop PC
Desktop PC


PBX and Intercom/PA System w/Full Audio/Video to Each Classroom
To every classroom
T-3
Interactive PBX System w/full audio/video, mail box and pager capabilities
CSU-DSU
Router*
*To be replaced by V.35 modulator for videoconferencing and Satellite network emulation.
Internet Gateway Server
155mbps ATM Switch

5
96

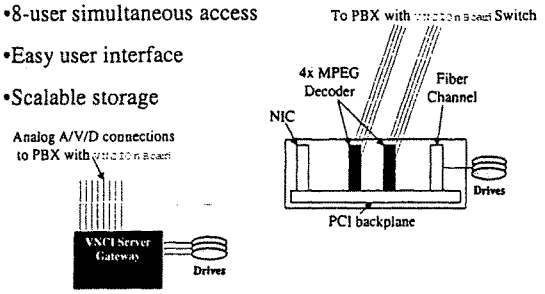

PBX School/Office Stations
Interactive Real-time Audio/Video Intercom
Remote controlled Pan-Tilt-Zoom Camera
33" Monitor
Classroom Intercom Station
Student/Teacher Desktop Station
Hall/Library Observation Station
Hall/Parent Center/School Police Display Station
PBX with VNCIOn Board

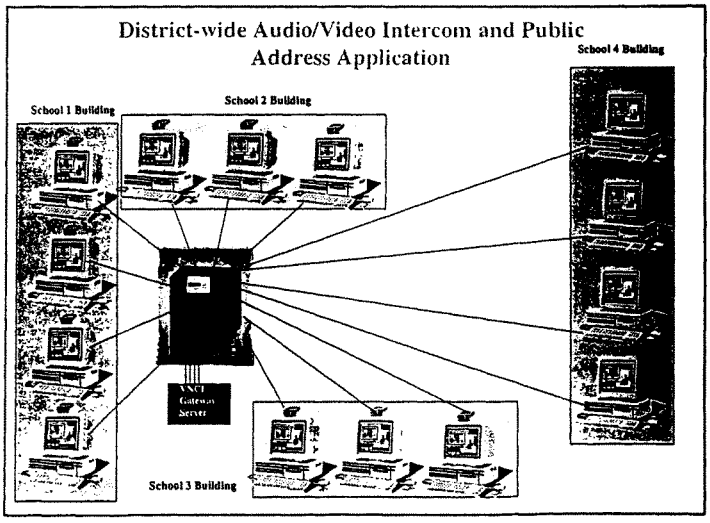

PBX/Telephone Switch
with VNCIOn Board
Intercom and Telephone System Single-box solution for ALL connectivity within School/District/Region/State and the World
Single Satellite and/or Public Cable Feed
Single or multiple VCR and DVD Feeds
Security Cameras in Hallways
ALL in one, PBX with VNCIon Board
PBX Switch with VNCIOn Board
PBX
New Fiber/Cat 5 wiring for Voice and Video
ATM Gateway
ATM Public Line Telephone Company WAN
VNCI Server Gateway
Drives

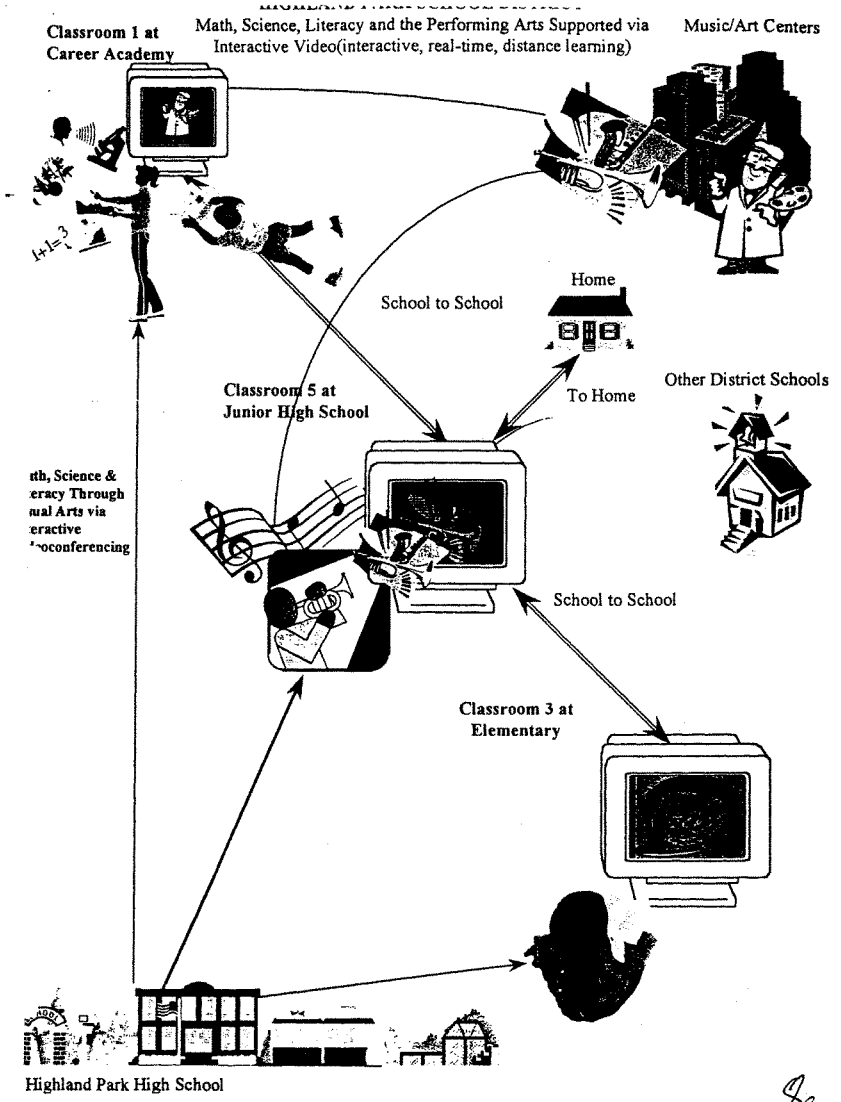
6

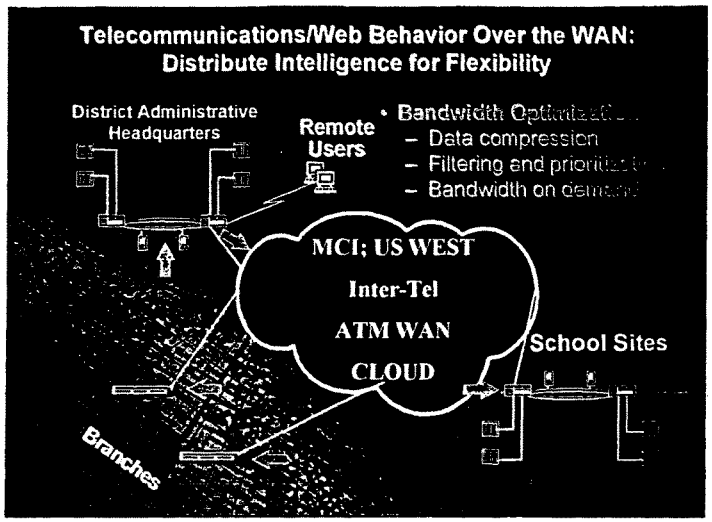
PBX/VNCI Gateway to the World

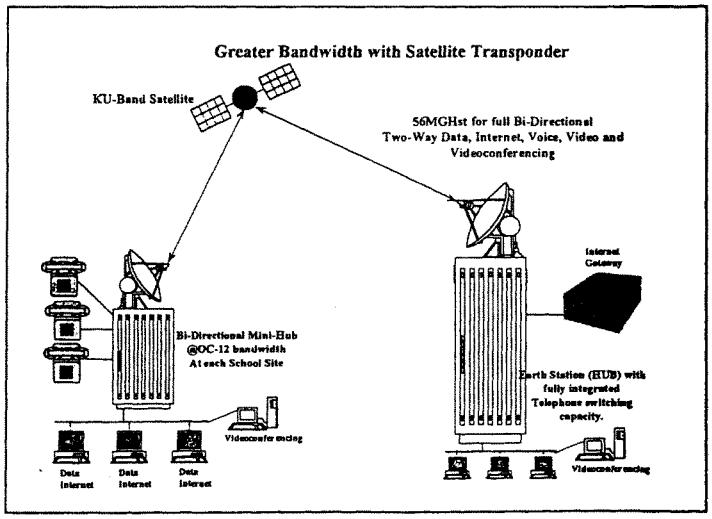
- TV-quality video and stereo audio
- 8-user simultaneous access
- Easy user interface
- Scalable storage

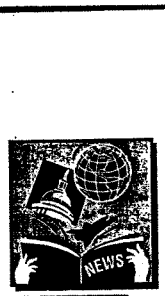





Classroom 1 at Career Academy
Math, Science, Literacy and the Performing Arts Supported via Interactive Video(interactive, real-time, distance learning)
Music/Art Centers
School to School
Home
To Home
Other District Schools
Classroom 5 at Junior High School
School to School
Classroom 3 at Elementary
Highland Park High School


Telecommunications/Web Behavior Over the WAN:
Distribute Intelligence for Flexibility
District Administrative Headquarters
Remote Users
• Bandwidth Optimization
– Data compression
– Filtering and prioritization
– Bandwidth on demand
MCI; US WEST
Inter-Tel
ATM WAN
CLOUD
School Sites
Branches


Greater Bandwidth with Satellite Transponder
KU-Band Satellite
56MGHst for full Bi-Directional
Two-Way Data, Internet, Voice, Video and
Videoconferencing
Internet Gateway
Bi-Directional Mini-Hub
@OC-12 bandwidth
At each School Site
Earth Station (HUB) with
fully integrated
Telephone switching
capacity.
Videoconferencing
Videoconferencing
Data
Internet
Data
Internet
Data
Internet



E-Rate, 1999
West Fresno School District gets $4.1 Million
School District of the City of Highland Park gets $3.1 Million
Cluster 7, 24 schools in the Los Angeles Unified School District Gets their own $26.2 Million

E-Rate, 2000
Apply in the Tn. Lobby B, live today!

Get big $ for your schools and students!

Give Your Students the 21st Century Tools for Success!

WITHOUT ASSISTANCE

In 1998, **Highland Park** received $ 200,000.00 in E-Rate. In 1998, **West Fresno Elementary School District** received over $ 230,000.00 in E-Rate. In 1998, **Cluster 7** received $3.5 Million in E-Rate.

WITH ASSISTANCE

As of today, Highland Park, a K-12 District near Detroit, serving over 3,650 students in six schools, **received $3.1 Million; West Fresno,** an Elementary District serving over 1,100 students in two schools, **received $4.1 Million; and Cluster 7 received $26.2 Million,** for 24 schools and 26,000 students, completely separate from the District's applications that yielded $27.3 Million for more than 550 schools and 650,000 students.

Find out how these Districts were able to get ALL of the funds.

NOW is the time to Apply for E-Rate 2000!

Come visit us today in the **Tennessee Lobby B,** see & use the technology going into the schools.

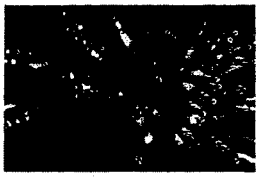
We'll help you put your E-Rate Application On-line TODAY! and you'll be helping NABSE for the future.
Don't waste another year without the extra $.

These Districts are installing state-of-the-art technology and backbones, along with on-site support and maintenance that will last past 2020. The students in these Districts are getting the tools and the access to the Information Highway that will assure them of success in 2000.

The Complete E-Rate Package for a 90% District is Only:

$ 3,500.00 a Classroom
or
$ 150.00 a Student

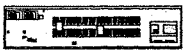
Fiber and Cat. 5/6 into Every Classroom



1*

ATM and 100/1,000 Gig Switched Ethernet Backbone with 24-port switch in each classroom

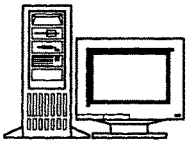
2*



10/100 Switch

Server and Internet in Every Classroom

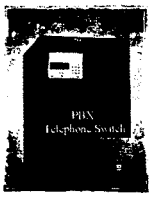
3*



Server

4*

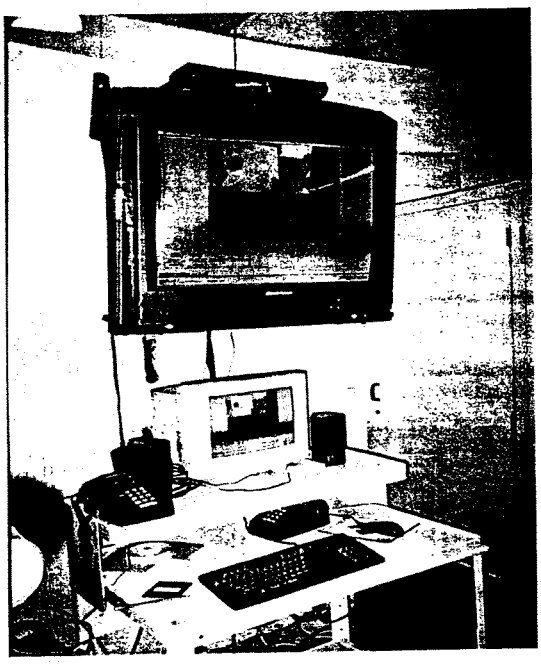
Telephone/ Video Intercom/ P.A. into Each Classroom



* ALL of the Equipment Comes with FULL On-site Service/Maintenance and Support

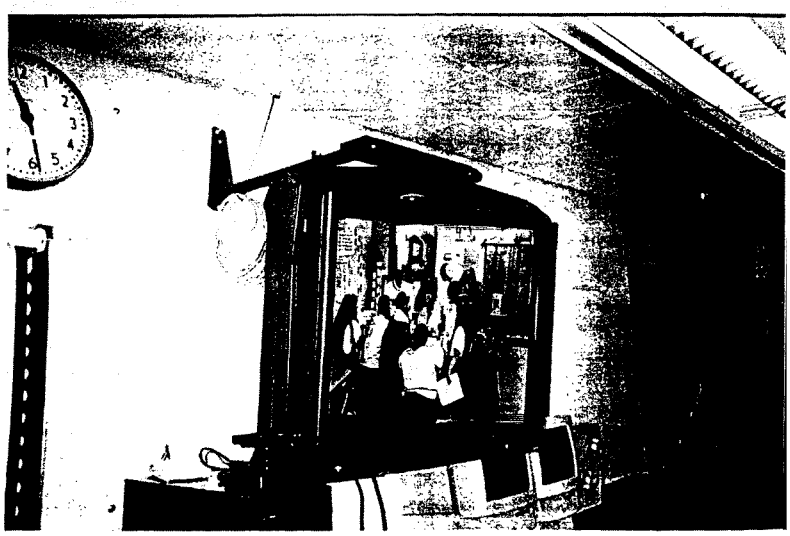
E-Rate Bonus Package

Multi-Media Teacher Station



CLASSROOM BONUS EQUIPMENT
33" COLOR HDTV MONITOR
TEACHER MULTIMEDIA STATION

Audio & Video Intercom System



Classroom Equipment

13

Working 400 Miles Apart

West Fresno Elementary School District*

E-Rate 1998 $230,000.00

E-Rate 1999 $4,100,000.00

* West Fresno Elementary School District has two schools, One Elementary School and one Middle School. Approximately 1,100 students are enrolled, with about 90 classrooms.

Let the experts at VNCI, RMI and Inter-Tel help your District and Students get the Same RESULTS!

Van Nuys/Grant, Cluster 7*, of the Los Angeles Unified School District

E-Rate 1998 $6,500,000.00

E-Rate 1999 $26,100,000.00

* Cluster 7 has 26,000 students in 24 schools. It is one of the 27 Clusters of LAUSD. The District (central office) has received $ 27,450,000.00 from E-Rate for the remainder of the 650,000 students.

Mr. Foschetti working from Van Nuys High School, in Van Nuys California, part of the Los Angeles Unified School District, with a student from Fresno.

The student on the monitor is almost 500 miles north of the Van Nuys location.

The equipment is part of the AUDIO/VIDEO Intercom and Telephone Switch (PBX). Both Districts were fully funded by E-RATE. Thus Districts are now entering the Super-Highway and preparing their students with the tools of the 21st Century for success in the 21st Century.

14

The Classroom

Dramatic Results with Interactive Video in the Classroom:

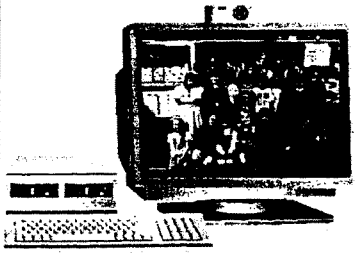
Student Reading Scores Increase by 24 NCE Points

Read all about it, in the attached *T.H.E. Journal* article.

Improving student scores and "re-charging" teachers in 11 inner-city public schools. The schools are ALL part of the Los Angeles Unified School District.

Find out ALL about getting the same technology at only 10¢ on the Dollar, through the E-Rate Program.

Interactive Audio-Video Intercom and P.A. to and from EVERY Classroom.
It can go throughout the School and throughout the District.



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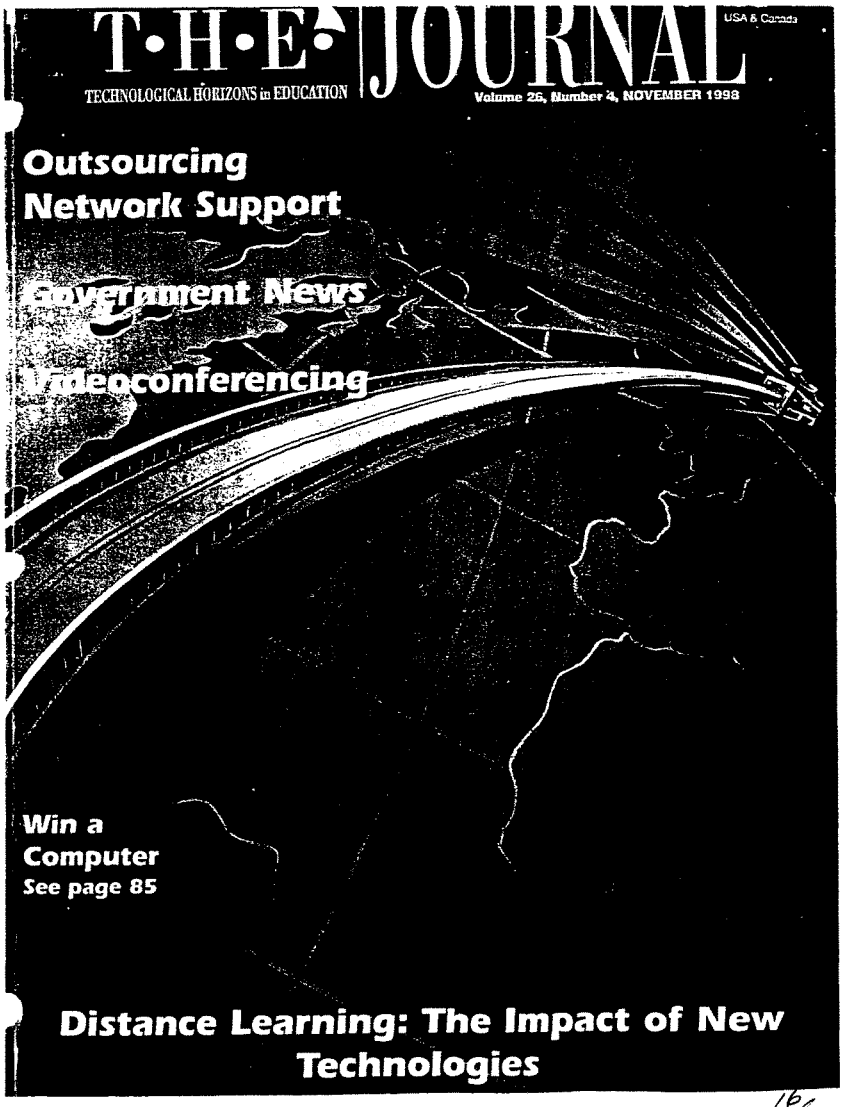
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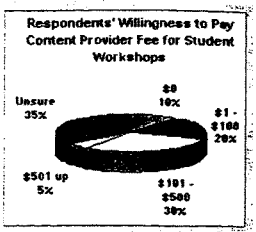

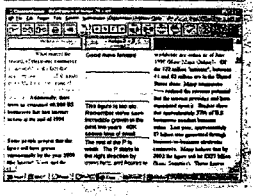

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Interactive Videoconferencing Improves Performance Of Limited English Proficient Students

JUDY N. GREEN, Director of Project REBUILD
Los Angeles Unified School District
Los Angeles, Calif.

As we stand at the brink of the 21st century, it is our responsibility as educators to assure that our students are not only prepared, but also receive the immediate benefits of a technologically advanced society and economic environment. Project REBUILD, an acronym for Restructuring Educational Behaviors to Ultimately Improve Literacy in Dual languages, is a national dissemination project funded by the U.S. Department of Education under Title VII. Since its inception in 1995, the project has transformed our nine elementary schools, one middle school and one senior high school into a seamless K-12 collaborative learning environment. Staff, students, parents and community members work together to improve student outcomes through the sharing of information over interactive 30-frames-a-second videoconferencing and state-of-the-art ATM networks.

Successful implementation has been the result, to some degree, of the dedication of private corporate partners.

In the Gardena Complex of Schools within the Los Angeles School District, Project REBUILD centers on the incorporation of advanced telecommunications and technology into the curriculum. The primary goal of the project is to improve the performance of Limited English Proficient (LEP) students, while also meeting needs and improving the performance of all students. Evaluating standardized CTBS test scores, enrollment in advanced college preparatory classes and improved attendance at the conclusion of the second year of the project, independent research has validated the use of advanced telecommunications and technology in public education. The successful implementation and expanded use of technology into the classrooms combined with teacher and staff training has resulted in the elimination of classroom isolation and the increase in English and second language academic proficiency.

Overcoming Obstacles

Project REBUILD has been able to overcome the huge obstacles found in large, inner-city, mainly minority and usually poorly funded public school districts. Successful implementation has been the result of not only staff dedication, but also the dedication of private corporate partners such as Premio Computer, Inc., a company with proven experience in the K-12 and post secondary education field. Premio along with Zydacron and Lucent Technologies have provided continued assistance in developing technical design, training and support. Premio built and installed the student desktop computers and assisted in the set-up and design of the ATM intra-school and inter-school networks for teachers, staff and students. Desktop videoconferencing systems that are easily and economically scalable to room-size systems — all designed and provided by the expert engineers at Premio — give staff, students, administrators, parents and community the opportunity to share ideas and information without ever leaving the classroom.

The "CNN quality" interactive videoconferencing systems used across the K-12 spectrum and at all grade levels provide the school staff with the ability to jointly plan lessons and team teach from different school sites. The 85 teachers and 11 principals, none of whom had ever touched a computer prior to the project, have radically altered their own behaviors and methodologies. The staff members at the school sites are supported in their continuing professional development — remotely using videoconferencing by the Center for Language Minority Education and Research at California State University Long Beach. The teaming of the staff, teachers and University mentors through the advanced ATM and computer networks is providing equal access to primary language and advanced curriculum instruction to the LEP and all students and their parents for the first time.

Teachers are currently using the technology to accelerate student learning, improve self-esteem and increase individual student achievement. All of the minority and especially the LEP students have easy-to-use, daily access to the Internet and electronic mail in their classrooms and from home. The individual schools in the project are learning to take advantage of both local and wide area networks for use with software and communications. Parents and teachers can now communicate directly with each other for the first time.

Positive Changes

Entering the fourth year of implementation at the Gardena complex of schools, Project REBUILD has resulted in many positive changes and effects. The project students, both LEP and English only, have made substantial gains in English reading proficiency, as measured by CTBS (comparing 1995-1996 results to the 1996-1997 school year test results). The students participating in Project REBUILD showed an overall increase of 24 NCE points over students not participating in the project. The dramatic

increase in achievement, we believe, is the direct result of incorporating powerful and advanced telecommunications and technology to support instruction and curriculum. In addition, just one year after implementation of the project, student participants at Gardena High School showed a 6.5% increase in the number of students successfully completing college preparatory course work. Finally, overall student attendance for those participating in the project showed a significant increase, resulting in an average of more than two days of instructional time.

Finally, overall student attendance for those participating in the project showed a significant increase.

Project REBUILD and the Gardena Complex of Schools within the Los Angeles Unified School District is one of the few documented projects and programs that clearly demonstrates the tremendous benefits that can be realized through the integration of advanced technologies. The success of Project REBUILD has led to the schools within the complex to budget their own funds to expand the ATM networks, videoconferencing and computer systems for the 1998-1999 school year. The schools of the complex have banded together with Project REBUILD and jointly applied for E-Rate subsidies in order to put a fiber and ATM infrastructure backbone onto the entire school site. Through the E-Rate subsidies, providing for a 90% discount on infrastructure and advanced telecommunications services, the 11 schools of the complex will be able to carry public telco ATM into every one of the more than 450 classrooms. Each classroom will become its own LAN, with purchased and donated computers, at a ratio of one computer for every two students. Each classroom will have its own homework hotline through one of its three NT network and telecommunications servers. These servers will be the gateways for all telecommunications and information passing from and entering the classroom.

Partnerships with Premio Computer, First Virtual (now FVC.COM), Lucent Technologies, Bay Networks and WorldCom will provide the support for the purchase, installation and training in the ongoing use of the servers, ATM networks, videoconferencing, telephone and data networks. Premio Computers will be assisting Project REBUILD and the Gardena complex of schools along with the Grant and Van Nuys Cluster of 24 schools in developing electronic true assessment portfolios that will be kept on CD-ROM for students. Several other school districts within California are also planning to adopt the Project REBUILD technology and telecommunications model in order to further enhance student achievement in their districts. The 1998-1999 school year marks the fourth year of the five year Project REBUILD and looks to be one of the most exciting.

Judy N. Green is the director of Project REBUILD and author of the 75-page competitive grant. She is now working alone to coordinate and implement all aspects of the project. She is also working with the PSRTEC to educate other districts and vendors regarding E-Rate possibilities. Green is an educator with more than 30 years experience in public education.
E-mail: jgreen01@lausd.k12.ca.us

Companies mentioned:

Bay Networks, Santa Clara, CA, (408) 988-2400, www.baynetworks.com

FVC.COM, Santa Clara, CA, (408) 567-7200, www.fvc.com

Lucent Technologies, Murray Hill, NJ, (908) 953-8615, www.lucent.com

MCI WorldCom, Jackson, MS, (601) 974-8400, www.mciworldcom.com

Premio Computer, Inc., City of Industry, CA, (626) 839-3100, www.premiopc.com

Zydacron, Inc., Manchester, NH, (603) 647-1000, www.zydacron.com

NEC
NEC Business Network Solutions Inc.

JASPER COUNTY PUBLIC SCHOOL DISTRICT

EXHIBIT
tabbies
B

NEC E-RATE CONTRACT

DISTRICT'S ATTACHMENT RIDER A

MEMORANDUM OF UNDERSTANDING

This document will serve as a memorandum of understanding between the Jasper County School District (customer) and NEC Business Network Solutions, Inc. (Prime Contractor).

It is the express desire of the District to honor ALL terms and conditions of the signed E-Rate Purchase Agreement. In light of the awards, it is the District's intent that NEC BNS provide the following items and services, utilizing District approved subcontractors as required (pursuant that the specified vendors meet NEC BNS qualifications and standards).

Upon mutual acceptance, agreement and signing of this document by authorized NEC BNS representatives and executed by the District. The District will complete and submit the FCC Forms 486 and 500 stating that services began July 1, 2000. The completed forms will be submitted to the SLD. NEC BNS will the be able to invoice the SLD for up to 80% of ALL approved funds. The balance (20%) will be approved, by the District for invoicing to the SLD upon completion of the infrastructure by NEC BNS, NO LATER than January 31, 2001.

The District requests that NEC BNS review the following companies as possible subcontractors: Entre Solutions and Computer Network Engineering, Inc..

NEC BNS to provide equipment and services as approved and funded by the SLD as follows:

CABLING: **FRN 450081** **$1,421,589.30**

Each classroom to be equipped as follows:

- One 12 strand multi-mode fiber drop
- Two category 5 voice drops
- Two category 5 ATM drops
- Five category 5 Ethernet drops
- New Conduit

Administrative Stations:

- Stations to receive voice, data and fiber drops as required

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JASPER COUNTY PUBLIC SCHOOL DISTRICT

SERVICE – Recurring (District Service)	**FRN 45132**	**$ 194,472.91**
TOTAL USAC FUNDING COMMITMENT		**$ 9,548,507.80**

NEC BNS has agreed to provide "in-kind donations" of non E-rate qualified equipment and services based on current pricing not to exceed the values delineated below:

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JASPER COUNTY PUBLIC SCHOOL DISTRICT

NEC BNS has agreed to provide "in-kind donations" of non E-rate qualified equipment and services based on current pricing not to exceed the values delineated below:

Non Qualified Equipment and Services

Electrical Upgrades

University Training for Teachers

Climate Control Systems at MDF's

Alterations to internal existing structure to create Network Operations Centers

Four (4) color network copiers (collate, staple and paper feed up to 14"x17"

NABSE Bonus Package: - One per classroom
- 33" Monitors, mounted to walls or ceiling
- Pan-tilt-zoom cameras
- Video Clients for PC's
- Color ink jet printers

PBX Bonus Package:
- Dterm Series E 32 Button Administrative telephones for Administrative positions as required.
- One Dterm DTP-1-2 Single Line Telephones for Classrooms and Administrative positions as required.
- Five (5) Active Voice AD8 Voice Mail Systems
- Locked data box (wall mounted) 2' x 2'x 3' with rack mounts
- Data closets to be provided with locks and alarmed.

Computers:
400 – Personal Computers (approximately)
12 – Laptop Computers
100 – Teacher workstations (approximately)
150 – Mobile workstation (Stanley or Busch – mobile computer carts for teacher workstations)

PC configuration for student and teacher multimedia workstation as follows:

CPU	Pentium® III 733 Mgz.
L2 Cache	256K
Memory	128MB (128/0)
Floppy Drive	Yes
Hard Drive	15GB[3]
Controller	IDE Ultra DMA 66
Graphic	Integrated 2D/3D AGP graphics 4MB Display Cache
Audio	16-bit AC97 compliant stereo audio
Int. Networking	3Com® 10/100 Ethernet
Chassis	Convertible
CD-ROM	40X Max Variable Speed[4]
Op Sys	Windows 98

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JASPER COUNTY PUBLIC SCHOOL DISTRICT

TOTAL NEC BNS BONUS PACKAGE **$3,050,000**

- This is an estimated value based on NEC BNS current pricing and is not subject to change, modification or substitution went without advanced written consent of both parties. Prior to commencement of any work, a Scope of Work (SOW) will be agreed upon by both parties which will detail equipment itemization and functionality.

All of the above items are subject to verification of quantities and specifications to insure that the project does not exceed $ 9,548,507.90 as approved by the SLD and are in compliance with the terms and conditions of the E-Rate Program. Our signatures indicate that we accept the terms and conditions of the MOU, subject to further clarifications within the limits of the SLD funding.

District	NEC BNS
By: Dr. William Singleton (Print Name)	By: _____ (Print Name)
William Singleton (Signature)	_____ (Signature)
Title: Superintendent	Title: _____
Date: October 10, 2000	Date: _____

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EXHIBIT C

JASPER COUNTY BOARD OF EDUCATION
"REGULAR" SCHOOL BOARD MEETING
MONDAY - OCTOBER 9, 2000 - 6:30 P.M.
DISTRICT OFFICE BOARDROOM
RIDGELAND, SOUTH CAROLINA

A G E N D A

1. CALL TO ORDER
2. ROLL CALL & ESTABLISHMENT OF A QUORUM
3. NOTIFICATION OF NEWS MEDIA
4. INVOCATION
5. PLEDGE OF ALLEGIANCE
6. RECOGNITION OF STAFF & VISITORS
7. PUBLIC HEARING(S)
8. *APPROVAL OF AGENDA
9. *ADOPTION OF MINUTES - SEPTEMBER 25, 2000
10. SPECIAL HEARING(S)
    - 10.1 STUDENT HEARINGS
    - 10.2 NEC UPDATE - MR. MIKE DUNCAN - EXH. NEC
    - 10.3 ADULT EDUCATION PROGRAM/ALTERNATIVE SCHOOL/ ESL PROGRAM UPDATE - MR. WARREN NORRIS - EXH. I
    - 10.4 ADEPT PROGRAM UPDATE - MRS. GWEN SMITH - EXH. II
    - 10.5 *POLICY COMMITTEE REPORT - MS. BERTY RILEY - EXH. III
    - 10.6 OTHERS
11. COMMUNICATIONS
    - 11.1 *OUT-OF-STATE TRAVEL REQUESTS (A-B) - EXH. IV
    - 11.2 *REQUEST TO PURCHASE CARGO/UTILITY VAN - EXH. V
    - 11.3 *CRITICAL NEEDS BUDGET - EXH. VI
    - 11.4 *INCREASED HIGH SCHOOL DIPLOMA BUDGET - EXH. VII
    - 11.5 1998-2000 CSAB RESULTS - EXH. VIII
    - 11.6 OUT OF DISTRICT STUDENT TUITION - EXH. IX
    - 11.7 BOARD ATTENDANCE - SEPTEMBER 2000 - EXH. X
    - 11.8 OTHERS
12. PERSONNEL UPDATE
    - 12.1 VACANCY LISTING
    - 12.2 *EMPLOYMENT RECOMMENDATIONS (A-E)
    - 12.3 *RESIGNATIONS (F)
    - 12.4 *MATERNITY LEAVE REQUEST (G-H)
    - 12.5 EXIT INTERVIEWS (I-J)
    - 12.6 OTHERS
13. SUPERINTENDENT'S REPORT
    - 13.1 SALARIES ENHANCEMENT POSITION PAPER - EXH. XI
    - 13.2 MINUTES FROM MEETING WITH STATE DEPT. - EXH. XII
    - 13.3 UPDATE ON STUDENT EXPULSIONS 1999-2000 - EXH. XIII
    - 13.4 DUE PROCESS HEARING REQUEST- EXH. XIV
    - 13.5 FOLLOW UP TO JCHS GATE RECEIPT SHORTAGE
    - 13.6 OTHERS
14. OLD BUSINESS
15. NEW BUSINESS
16. *EXECUTIVE SESSION
17. ADJOURNMENT

*BOARD ACTION REQUIRED

JASPER COUNTY BOARD OF EDUCATION
MINUTES - OCTOBER 9, 2000

PRESENT: Berty Riley, Patricia Wade, Daniel Williams, Patricia Stephens, Patricia Walls, Priscilla Fraser and David Riley

ABSENT: Kathleen Snooks and Jimmy Baker

1. CALL TO ORDER - This regular meeting was called to order at 6:30 p.m. by Patricia Walls, Chairperson, in the District Office Boardroom, Ridgeland, South Carolina.

2. ROLL CALL & ESTABLISHMENT OF A QUORUM - 7P/2A

3. NOTIFICATION OF NEWS MEDIA - The following news media were notified of the date, time, place and agenda of this meeting: Jasper Sun/Hardeeville Times, Beaufort Gazette, Carolina Morning News, WSAV, WTOC and WJWJ.

4. INVOCATION - The invocation was led by the Chaplain, Daniel Williams.

5. PLEDGE OF ALLEGIANCE - The pledge to the flag was recited by the Board and the audience.

6. RECOGNITION OF STAFF & VISITORS - Dr. Singleton recognized the parents present, NEC representatives, Dr. Jim Boerner, Mrs. Daisy Johnson (JCEA President), Dr. Jane Upshaw, Dr. Bob Wolff and staff members.

   Dr. Singleton announced that Dr. Upshaw and Dr. Wolff would like to do a special introduction to the Board. Dr. Upshaw came forward and introduced Gail Quick, who was named as Assistant Dean for University Relations. Dr. Upshaw stated that Dean Quick would be responsible for looking for funding sources for the partnership with the school district. They will first look for a funding source to bring USC's early childhood education program to Jasper County, which is directed by Professor Melanie Pulaski. She explained that this would be a pilot project for language development. She stated that Dean Quick would be very involved with Dr. Wolff in looking for other ongoing possibilities.

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Dr. Upshaw stated the Dean Quick brings to the partnership twenty-two years of higher education experience. Twelve of these years have been in the area of grants and development. She stated that they look forward to having her as part of the team at the University and part of the partnership with Jasper County School District.

Dean Quick addressed the Board regarding her role with the partnership. She introduced Janet Thomas, who is a consultant from the U. S. Department of Education and who will be assisting them.

Mrs. Walls welcomed them to the meeting and thanked them for the great things that they would be bringing to the children in the school district. She also welcomed the parents and others present and encouraged them to continue to support the Board at its meetings.

7. PUBLIC HEARING(S) - NONE

8. *APPROVAL OF AGENDA - Mrs. Walls entertained a motion for the approval of the Agenda. A motion was made by Daniel Williams and seconded by Patricia Wade. THE MOTION PASSED UNANIMOUSLY 6-0.

9. *ADOPTION OF MINUTES - SEPTEMBER 25, 2000 - Mrs. Walls entertained a motion for the adoption of the minutes of September 25, 2000. A motion was made by Berty Riley and seconded by David Riley. There were no corrections. THE MOTION PASSED UNANIMOUSLY 6-0.

10. SPECIAL HEARING(S) -

10.1 STUDENT HEARING(S) - Dr. Singleton stated that there were three student hearings for expulsion scheduled from JCHS, however, only two parents were present. These parents were asked to come forward. Mrs. Walls gave them the option of an open or closed hearing. Both parents chose a closed hearing.

Mrs. Walls entertained a motion from the Board to go into Executive Session for these hearings. A motion was made by Patricia Wade and seconded by Patricia Stephens to go into Executive Session.

THE BOARD ENTERED INTO EXECUTIVE SESSION AT 6:39 P.M.

* * * * * *

THE BOARD RETURNED TO OPEN SESSION AT 7:27 P.M.

During the Executive Session the third parent had arrived. All of these were conducted in closed hearings.

The following motion was derived from Executive Session:

A motion was made by Patricia Stephens to allow students A and B to return to school under a contract with the principal to include in-school and outside counseling, and student C to be expelled from school for the remainder of the school year. This motion was seconded by David Riley. THE MOTION PASSED UNANIMOUSLY 6-0.

10.2 NEC UPDATE - MR. MIKE DUNCAN - Dr. Singleton stated that NEC Business Corporation was present to demonstrate some of the equipment that will be installed in the school district through the E-Rate grant. He stated that there would be a need to go into Executive Session to discuss contractual matters regarding this.

Mr. Duncan came forward to introduce Judy Green with VNCI, and Gerard McNulty, National Accounts Manager with NEC. They both came forward to share information with the Board.

Mrs. Green explained that E-Rate is not a grant, but a subsidy. It is a federally managed program that was created as part of an agreement between Congress and the telephone companies as part of the Telecommunication Act of 1996.

She shared that E-Rate pays directly to the vendors for telephone service, tier-1 servers and onsite service for technicians, etc. Mrs. Green passed out information on the NEC E-Rate Contract and went through what items will be included. She stated that the total for this is $9,548,507. The remaining $900,000 (approximately) will pay for telephones, cellular phones and Internet access.

Mr. McNulty stated that this new technology will help the school district to have an equal playing field for all of the students. He introduced Ken Morrison, who will be the onsite manager for NEC, and Jonathan James from VNCI.

The Board expressed a concern about the installation causing any disruptions in the classrooms.

Mr. McNulty explained that they would be working around the schedule of the schools to install the equipment, etc. They will not be disturbing the classes.

Mrs. Green shared that the next window of opportunity to apply for funds for next year will open up in November.

Dr. Singleton asked them to explain how the school district qualified for these funds.

Mrs. Green stated that the award was based on the number of students eligible for free and reduced lunch. She explained that because Ridgeland Elementary and Ridgeland Middle Schools reported their count as one school this reduced the subsidy this year. She explained that both schools need to report separately. She stated that Jasper qualified for an 85% discount level.

The equipment to be installed in each classroom was on display in the boardroom. It was demonstrated to the Board and audience how each teacher would be able to communicate with the office staff through the computer or on the telephone. Other ways that the equipment could be used was also explained.

Mrs. Walls entertained a motion from the Board to go into Executive Session to discuss contractual matters with NEC Business Corporation and VNCI. A motion was made by Patricia Stephens and seconded by Berty Riley to go into Executive Session. THE MOTION PASSED UNANIMOUSLY 6-0.

THE BOARD ENTERED INTO EXECUTIVE SESSION AT 8:11 P.M.

* * * * * *

THE BOARD RETURNED TO OPEN SESSION AT 8:37 P.M.

The following motion was derived from Executive Session:

A motion was made by Patricia Wade to accept the offer of technology from NEC Business Corporation for the school district. Daniel Williams seconded this. THE MOTION PASSED UNANIMOUSLY 6-0.

10.3 ADULT EDUCATION PROGRAM/ALTERNATIVE SCHOOL/ESL PROGRAM UPDATE - MR. WARREN NORRIS - Mr. Norris came forward to share the highlights of his written report to the Board that was included in the board packet.

Adult Education Program

He shared that he had attended a two-day training in July for the state mandated accountability program called EdVantage Pro. He explained that this program tracks students, staff and classes, and will be instrumental in filing reports to the State Department. Mr. Norris shared the breakdown of the enrollment in the programs at

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Barbara Peeples - Nov. 27, 2001 Consortium Meeting.doc

EXHIBIT D

Consortium Meeting
November 27, 2001

Attendance:

Allendale	Kay Gooding
Bamberg I	Phyllis Schwarting
Bamberg II	Walter L. Tobin
Barnwell 19	Andy Sandifer
Barnwell 29	Edward Mozingo
Barnwell 45	Carolyne S. Williams
Hampton I	Buddy Phillips
Hampton II	Dennis Thompson
Jasper	William Singleton
Cons. Orangeburg 4	Absent

Visitors:

Robert Scarborough	SCASA
Dr. Al Eads	
George Marchelos	UNCI/ERATE
Myrtle Smoak	Barnwell School District 45

Buddy welcomed everyone, especially the guests. Robert Scarborough of South Carolina Association of School Administrators began by stating that tomorrow we're meeting with The State newspaper to put some information concerning the report cards. Fractional percentage points will put students in different categories. The report card is more than a report on the schools. It is a report card on the community. The grade on the front does not come close to telling the whole story. You have to take the information that's on the back of the card and make a story out of it about your school and community. We want to hold everyone accountable – the legislature, everybody.

The law says that a school that is judged unsatisfactory will get a good bit of resources, teacher specialists, external teams, principal specialists. They're going to be looking at what that cost was going to be and tell you things you already know. So, you could be the worst of the worst or be the best of the worst and just get a review team come in and tell you what you already know. You can also be in the middle of the worst. If you have schools that are below average, you can get that same help if you request it.

For your below average schools, we want you to ask the SDE to provide you with the resources to improve those schools. Of course, she is going to write you back and say they don't have the funds; therefore, she can't do it. That's the point. Don't not write because you know the outcome; that she can't do it. You write to make her tell you that she can't provide you with these services because of the funding situation. That's going to make a difference when the second report card comes out. We're going to be talking about what the legislature didn't do during the fist and second year. It will be a good foundation.

Buddy: You're saying that there is money out there; but the below average schools would not receive any help? Scarborough: That's right; but the law says that if you're a below average school, you can receive help if you request it. We want you to ask for it so she has to say she can't do it. That sets the stage for a lot of things we will be doing during the next legislative session and a year from now for the second round of report cards. If there is a second round of report cards. It may not be.

Dr. Eads said that it also sets the stage to say 'here is what we tried to do on our own but we obviously couldn't. The appropriations of the legislature is the problem. We don't want to blame the SDE; they're trying to help. We want to put some heat on the legislature. Speaking of the legislature, this is the 2002 version of this little brochure we do each year. We have platform statements and position statements. Platform statements are those issues that we'll be proactive on trying to get done. Position statements are more passive in that we won't bring it up unless someone else does; but we do know what we believe about it. We usually have eight of each; but this year you will see that we have one platform statement and everything else is position statements. You can see it on our website. We have budget cuts also.

We will be back in touch with you round about the 4th of December or shortly thereafter asking you to write the SDE asking for assistance for your below average schools and what your expectations are for your unsatisfactory schools. Jot down January 3rd and 4th, Thursday and Friday. The Governor would like to try to meet with superintendents. You may be hearing from us about such a meeting. Mrs. Adams stated that she has called three times for the Governor to come meet with us. We'll change our meeting date to accommodate him; but I haven't gotten it yet.

Questions: List of resources – district – principal specialist, teacher specialist? A principal specialist actually replaces a principal; but if the principal remains, then a principal leader is assigned. All that come under the heading of more people, more experts, more hands on the task to bring more resources. A long discussion reiterating the above took place.

Dr. Eads restated that funding is the problem. EIA funding and what should and shouldn't be cut out. Teacher salaries won't be touched. He met with the budget committee – bleak news. The Constitution says we have to have a balanced budget, and that's what we're going to do. Student/teacher ratio has gone up because of budget constraints. The leadership position is not being taken where it's needed on these committees. The EOC is hurting now. The chairman has been elected Mayor of Spartanburg. We need to start meeting with these business folks who are making decisions about education. (note: The chairman has resigned.)

Buddy thanked Dr. Eads for his input and for coming. He then asked Dr. Singleton to introduce the next guess, George Marchelos. His company's name is VNCI - a video networking company. He is in the Consulting Professional Services Group. George said: We specialize in ERATE. We have great products that almost no school district in the country can afford. So, I have to figure out a way to help them get the funds and ERATE is the perfect vehicle for that. I travel around the country and help districts like yours maximize their return on ERATE.

Does anyone here not know what ERATE is? Does anyone know how to start it? Quick history: In 1935, Congress passed the first communications act to bring phones to rural areas because that was the only way they could reach their voters. They had the telephone companies polled to establish subsidy for a year. By the 1960s, the areas were wired; but they did not stop collecting the money. The phone companies were pocketing the money until 1966. Congress passed the communications act of 1996, also called the Gore Tax. This split the collected money in half. One half to rural health services, the other $2.25 billion will go for ERATE to bring internet and telephones into every classroom, especially in poor and minority school districts. That's where ERATE came from.

Last year, my team raised $80.5 million in ERATE just for the National Alliance of Black School Educators. I go to their conference every year; and I was invited by Bill to come out here and talk to this group for additional business. There is no charge for our services. ERATE is all we do. The video system is included as part of our proposal. The vendors provide it; so that's how I get paid. So, I'm providing free services in lieu of that.

Some things you can use this system for are teacher re-certification, help keep your shinning star teachers, it can rejuvinate veteran teachers by giving them new tools and techniques to use in the classroom. I have some brochures of classrooms you can see. With the influx of technology we're going to get for you and to increase community involvement, you can take old computers and raffle them to the community. The only requirement is that they must attend PTA meetings. Other ideas to get the community involved with the school is that districts can become their own Internet service provider; donate old computers. The more you get the community involved, the better it will be for you. You can use ERATE to subsidize other parts of your budget if you get all the components together.

How do we take a district with two schools, 1,100 kids, and a $250,000 ERATE program on your own and get $4.2 million? You push it. Push it right to the line. The only way to get something educationally, I've found, is to push it right up to the line and ask for every single dollar that's due to you.

There are some do's and don'ts required of you: Give me the information that I need to do this for you if you choose to join our program. There are no fees, no commitments up until I file your application on January 17, 2002. When I ask for information, I need you to get it to me quickly because they give me seven days to respond to questions. Do not be fooled. These people who run the ERATE program are not in business to fund you; they're in business *not* to fund you. They had $5 billion worth of applications last year; they only had $2.25 billion for funding. One out of every two applications is going to be rejected.

Other points of interest in this system: Crisis intervention component – CD ROM. Percentage of eligible Title 1 – You need to be 75% eligible to participate in ERATE. Eligibility is a Catch 22 situation with Rural Health. Also, you need to know with ERATE contracts, they know that they don't have to purchase equipment for about another year which, at the current rate, would be about $1,000 per computer. If *you* bought the same computer today, it might cost you $300; but they *will not* use the current price, which would undoubtedly be lower, but will charge you the ERATE price for the computer.

With us, we know how school districts work; we know how ERATE works. We answer questions, settle options. That's some of the things we specialize in. So, what I need to know is what questions you have about the program. I can show you the technology, show you some of the classrooms we've connected around the country. There is a time deadline that we must meet. We have 28 days to put an application on-line even if you choose to do it or not. My hope is that I could get an application posting this week just to represent all the districts. It takes 5-6 weeks to get everything together and put it on-line.

Eleanor asked George to explain the process for the Consortium. George said that they can do individual applications or as a consortium. It is asking for information – how many teachers, students, your eligibility, number of students per school. Those types of things. Dennis: "Are you a part of the State contract? George: "No, we're not." Dennis: "How do we deal with all the others who come?" George: "We don't bid. I can not come to you and say let me help you with your application, write your proposal, do your paperwork, and oh, by the way, let me win it too." That's against the law; it's a huge conflict of interest and it'll get you in serious trouble. So, we're actually working as your consultants.

Dr. Tobin asked what about technology if computers were not part of this? How would you sell computers as a reduction? Good question. The way we do it is PCs are not eligible; file servers are eligible. What's the difference between a file server and a PC? Software. That's it. We have studies and documentation that show that each

classroom should be made it's own individual network. We're making each classroom it's own individual island. We put a file server in it; and because of the affiliation we have with Bill through the National Alliance of Black School Educators, each file server comes with this new computer – a donation back to the district.

The file server costs 50% less now. You will get a computer with everyone of those file servers. Not only that; but you can donate half of the district's $10,000 you paid for teacher re-certification. You can also donate to this university for doing teacher re-certification. So, instead of paying money for services, you can donate systems. It's a kind of barter system. Mrs. Adams stated that "we can do that through the Consortium." "Yes, you can", was George's response. Or, if not enough here which would want to do it through the Consortium, you can do it individually. It is easier for me to do it as a consortium because it is just as difficult to do a single school district, as it is to do twenty school districts. Only numbers matter, the paperwork is exactly the same. I don't mine doing single districts; but I have a limited amount of staff.

Question: As a consortium, how would you break down the amount each member would receive? Good question. The only fair way to do it is by student count. If we had 20,000 students and the consortium received $20 million, we'd have to sit down and figure out particular needs that each school has. For example: The number one need in districts is electrical upgrades because you can't run the computers if you do get them. That depends on how much is warranted to how much was negotiated.

Someone asked about expensive equipment that is reimbursable. George said that it is then it isn't. You have to apply for it. The way it is broken down is Priority 1 and Priority 2. Because this is a public communications act, only Priority 1 servers are guaranteed. Technical talk - BVBX systems, video conferencing, video recording, security system integrated into it, links to other classrooms, etc. It is an impressive piece of equipment; and the fact that I found money to help pay for it doesn't hurt either.

I'm going to be here. I can do a 5-minute video presentation if you like. I can do individual districts or as the Consortium. Its up to you; but I'd like to know something this evening. At least let me put an application on-line for you. Someone asked what is you already have an ERATE person with some stuff going for you. I can look at what you've already got on-line and go from there.

Dr. Tobin: The districts need to know that they're getting what they need out of the deal as far as technology and the Consortium is concerned. George said that's true; however, due to time constraints, I will not evaluate each district's needs right now. Don't think that it's a coincidence that the deadline is set up around the holidays. I work with so many districts. I don't have time to go over each one's technology needs. I wish I did; but I don't at this time. We can do that at a later date. But what we'll do is put in a generic application. I'll ask for the world. If it is approved, you don't need it on paper. After I've submitted the application, we'll sit down and assess what you need. Some of you may say we don't need this; while another may need it. It is just too difficult to do

that now.

The Don'ts – Please don't ask to buy the district a car; put carpeting down, rebuild your gym. I'm going to be here for a while to answer questions. Buddy thanked George for coming and presented him with a token of appreciation.

Buddy then stated that we'll run through the agenda because some of you may have to leave. May we get a motion to approve the minutes and if there are any changes, we'll do that at a later date? It was moved and seconded. All in favor, opposes likewise. Buddy then called for the Director's report.

Director's Report

Mrs. Adams referred to a sheet with George's contact information on it. She then referred them to the agenda. She asked them to please look through item #1. This is in answer to the Standards. Look at the questions. Once they're passed, we'll have to live with them. Now is the time to make recommendations and suggestions.

Item #2 – Joanne Anderson - ECC. Please read through this and give her any comments before you leave for Christmas. If you don't comment, it doesn't get changed. That's very important.

Item #3 – The studies key – Their key finding fiscal autonomy property taxes vs. student performance. The piece under Torrey. You should all know about this; but it was sent to all ADEPT coordinators.

Superintendent Evaluation – If you have not had one, you want a formal evaluation.

Legislative information:

- SCSBA annual convention/conference
- Sandy Rowe wants your input on teacher certification. Carolyn can probably give you additional information on that if anybody needs it.
- Let me say that from working with Induction teachers, we have some that have not been observed. You need to have your ADEPT coordinator send something like this to each principal. This is an example of what Kay Gooding uses for Allendale.

Item #15 – There is an increase in USC's tuition.

Item #16 – On December 13th, I plan to have a meeting with the Staff Development Coordinators. We need to decide what we're going to do as far as staff development is concerned. Remember budgets are pinching and I would recommend that we do re-certification credit instead of graduate credit. We have paid $8,000 this semester for college courses. We always start out with 15-25 participants; but end up with 10-12 per class and that is not financially feasible to me. Please tell your staff development

coordinator what you want and they will tell me. We will meet at 10:0 am on December 13th. I'll send a memo to them. Do you have your card filled out? Thank you.

Old Business – None

Last Minute Concerns

Dr. Tobin stated that Denmark's board met last night and selected a superintendent. Beginning January 7, 2002, Dr. Deborah Williams will take the office of superintendent. I'm going home.

Our next meeting will be the legislative workshop. Is that right, Eleanor? Mrs. Adams stated that we need to decide if you all want to meet on January 8th or put it off a week because on January 9th, you'll go to the Governor's conference. I can call around and get a tally. Buddy asked her to please do that.

Buddy then thanked Dr. Tobin and Mr. Tindal, in his absence, for being a part of us. He wished them both success in the future.

Meeting adjourned.

REVISED DRAFT

SECTION 6

Federally Funded Programs
(Listed by Revenue Code)

Revenue Code	Subfund	Federal Program	2002–03 Award Estimates	Page Number
4210	207	Vocational Aid, Title I	$ 11,296,721	210
4220	258	Tech Prep Education, Title II	1,738,505	215
4230	240	Appalachian Regional Commission (ARC)	301,901	217
4240	261	School-to-Work Implementation Grant (Carryover Provision)	4,311,630	219
4310	200	Title I, Basic State Grant Programs	109,914,437	223
4312	251	Rural and Low-Income School Program, Title VI, (Carryover Provision)	TBD[a]	226
4315	265	Title I Accountability Grants for School Improvement	1,747,243	228
4316	906	SC READS—Local Reading Improvement	5,280,000	230
4317	907	SC READS—Tutorial Assistance Subgrants	1,100,000 *est.*	234
4320	252	Public Charter School Grant (Carryover Provision)	2,200,000	237

REVISED DRAFT

Federally Funded Programs
(Listed by Revenue Code)

Revenue Code	Subfund	Federal Program	2002–03 Award Estimates	Page Number
4330	254	Technology Literacy Challenge Fund, Title III (2001–02 Carryover Only)	$ 0	240
4331	253	Enhancing Education Through Technology (Ed Tech), Title II	8,393,257	243
4340	241	Promoting Informed Parental Choice and Innovative Programs, Title V, Carryover (Formerly Title VI Innovative Education Program Strategies)	0	248
4341	264	Language Instruction for Limited English Proficient and Immigrant Students, Title III (Carryover Provision)	TBD[a]	252
4342	262	Class-Size Reduction Program VI (2001–02 Carryover Only)	0	254
4351	267	Improving Teacher Quality	34,800,000	256
4360	242	Even Start Family Literacy	2,786,552	257
4370	263	Comprehensive School Reform Grant	3,437,389	259
4400	243	Adult Education	4,111,114	261

REVISED DRAFT

Federally Funded Programs
(Listed by Revenue Code)

Revenue Code	Subfund	Federal Program	2002–03 Award Estimates	Page Number
4510	203	Individuals with Disabilities Education Act (IDEA) (Carryover Provision)	$ 98,231,807	266
4520	205	Preschool Grants (Carryover Provision)	6,514,534	271
4800/4991	600	School Food Service Programs (USDA Reimbursements and Commodities) (Carryover Provision)	135,000,000	273
4920	209	Drug and Violence Prevention Program (Title IV, 21st Century Schools)	4,536,562	277
4922	244	Eisenhower Professional Development Program, Title II (Carryover Provision)	4,344,148	280
4940	245	Statewide Systemic Initiatives (NSF Federal Grants for Mathematics and Science Hubs)	1,182,000	283
4950	266	School Renovation, IDEA, and Technology (RIT) Grants	14,515,953	285
4951	266	Renovation	IA[b]	286
4952	266	IDEA	IA[b]	286

REVISED DRAFT

Federally Funded Programs
(Listed by Revenue Code)

Revenue Code	Subfund	Federal Program	2002–03 Award Estimates	Page Number
4953	266	Technology	$ IA[b]	287
4995	248	CDC State and Local Coordinated School Health Programs	50,000	288
4996	249	Learn and Serve America	500,000	290
4998	220	Before-/After-School Day Care	3,500,000	292
4999	200	AmeriCorps	1,500,000	294

[a] To be determined.
[b] Included in above allocation amount.

RESUME'

William Singleton, Jr.

Jasper County Schools
Post Office Box 848
Ridgeland, SC 29936
(843) 717-1101

53 Marsh Point Road
Ridgeland, SC 29936
(843) 726-8054

CAREER OBJECTIVE: District Superintendent

PROFESSIONAL PREPARATION

Doctoral Degree in Educational Administration from South Carolina State University, 1990.

Post Master's work at the University of South Carolina, Clemson University, Columbia College and Cornell University for social studies teacher, reading supervisor, and high school principal, 1978-1981.

Masters of Education degree in Social Work Administation – State University of New York at Buffalo, New York, 1974.

Bachelors of Science degree in Social Work – State University of New York at Buffalo, New York, 1972.

PROFESSIONAL EXPERIENCE

1999 – Present	***Superintendent of Schools***, Jasper County School District. Administers as Chief School Executive, the development and maintenance of a positive educational program designed to meet the needs of the community and to carry out the policies of the Board.
1998 –1999	***Interim Superintendent***, Jasper County School District. Assume all responsibilities of the Chief Administrative Officer of the district.
1997 – 1999	***Director of Operations***, Jasper County School District. Directed the operation of entire Transportation Program, Food Service Program and Maintenance Program.

1995 – 1997	***Senior Associate - Curriculum Programs***, Jasper County School District. Duties includes Curriculum Development, Grant Writing, Federal Programs, Human Resources and evaluation of Curriculum Programs' Personnel.
1993 – 1995	***Coordinator Chapter I and Vocational Education***, Jasper County School District. Responsible for developing the proposal, budget, monitoring the programs, and evaluation design.
1986 – 1993	***Principal, Jasper County High School***, a rural high school of approximately 750 students and staff members in Jasper County with responsibilities for planning, development, and coordination of the instructional program, management of facilities, staff selection, development of positive parent and community relations.
1983 – 1986	***Principal, West Hardeeville High School***. A rural high school of approximately 550 students and staff members in Jasper County with responsibilities for planning, development, and coordination of the instructional program, management of facilities, staff selection, staff development, and evaluation of staff, administration of activity budgets, and development of positive parent and community relations.
1980 – 1983	***Supervisor of Chapter I Reading and Mathematics***, for rural Jasper County with responsibilities for upgrading and restructuring the reading and math programs for the school district, and conduct teachers' evaluations.
1978 – 1980	***Assistant Principal***, West Hardeeville High School with responsibilities for coordination and leadership of student activities and discipline. Also, responsibilities for observation of teachers within the district using the state evaluation systems.
1974 – 1978	***Director of Adult and Community Education***. Developed and monitored budget for various programs, seek community, state and national funding sources, coordinate and supervise the Adult Education program and staff.

1972 – 1974 ***Community Creativity Internship***, State University of N.Y., in Buffalo, New York.
Worked with children from 4-16 years of age, with mental disorders or disabling conditions.

PROFESSIONAL INVOLVEMENTS (Partial List)
- National Association of Secondary School Principals
- South Carolina Association of School Administrators
- South Carolina Vocational Education Directors Association and South Carolina of Allied School Administrators.

Jasper County School District
- Fort Howard Scholarship Committee
- Daisy Taylor Scholarship Committee
- Hampton/Jasper Scholarship Committee
- Principal Evaluation Committee

Other Professional Memberships
- Association of Supervision and Curriculum Development
- Association of Community Educators
- South Carolina Association of Black Educators

Community Involvements (Partial List)
- Lowcountry Alcohol and Drug Commission, Chairman
- Beaufort/Jasper Comprehensive Health Advisory, Board Member
- Beaufort/Jasper CAA Comprehensive manpower, Program Council
- Jasper County High School Booster Club, Member
- Lowcountry Historical Preservation Committee, Member
- George Gardner VFW Post 6559, Quartermaster
- Jasper County Election Commission, Chairman
- Lowcountry Human Development Board, Member
- Zion Oak Grove Baptist Church, Chairman Deacon

South Carolina Credentials
- Professional Certificate (#120803)
- Social Studies Teacher
- Principal High School
- Supervisor High School
- Superintendent

Military Services
U.S. Army, SP/4 – 1964 - 1966

REFERENCES
Current references will be furnished upon request.

Mr. WALDEN. Let me call the Subcommittee on Oversight and Investigations back to order, and we now have our third panel ready to go, including our witness by video. We have Mr. Charles Tafoya, superintendent, El Paso Independent School District; Ms. Sharon Foster, technology information systems director; Mr. Ruben Bohuchot—did I say that right—chief technology officer, associate superintendent, Dallas Independent School District; Ms. Paula Glogovac, former E-rate consultant to Sun Microsystems; Mr. Nathaniel Hawthorne, general counsel, Alpha Telecommunications, Incorporated; Mr. Christopher G. Caine, vice president, Government Programs for IBM, accompanied by Mr. Mike Pratt.

And you are aware the committee is holding an investigative hearing and when doing so has had the practice of taking testimony under oath. Do you have any objection to testifying under oath? Let the record show they all indicated no.

The Chair then advises you that under the rules of the House and the rules of the committee you are entitled to be advised by counsel. Do you desire to be advised by counsel during your testimony? Mr. Bohuchot, the answer is yes and could you identify your counsel, please, or have your counsel come up to one of the microphones? Please make sure it is turned on. It is not——

MS. JALLOH. I am sorry, my name is Joni Jalloh. I am an attorney for Dallas ISD here with Mr. Bohuchot.

Mr. WALDEN. Okay. Thank you. Ms. Foster, do you wish to be represented by counsel?

Ms. FOSTER. Yes.

Mr. WALDEN. And your counsel, please identify yourself, sir.

Mr. PINE. Clyde Pine on behalf of Ysleta Independent School District.

Mr. WALDEN. Okay. And let's see, Ms. Glogovac?

Ms. GLOGOVAC. No.

Mr. WALDEN. Do not wish to be represented by counsel. Mr. Hawthorne?

Mr. HAWTHORNE. No.

Mr. WALDEN. The answer is no. Mr. Caine?

Mr. CAINE. Yes.

Mr. WALDEN. And your counsel, sir?

Mr. CAINE. Biz van Gelder.

Mr. WALDEN. Sorry, could you say that again?

Mr. CAINE. Ms. Biz van Gelder.

Mr. WALDEN. Thank you. And Mr. Pratt?

Mr. PRATT. It would be the same.

Mr. WALDEN. Okay. And let's see, witness in the video is Mr. Tafoya. Mr. Tafoya, do you wish to be represented by counsel?

Mr. TAFOYA. Yes.

Mr. WALDEN. And your counsel's name?

Mr. SOFFI. Anthony Soffi.

Mr. WALDEN. Thank you, sir. In that case, let's see, in that case, if you would, the witnesses, rise and raise your right hand, I will then swear you in.

[Witnesses sworn.]

Mr. WALDEN. Let the record show they all indicate, yes, they do.

So you are now under oath, and you may now give a 5-minute summary of your written statement. Mr. Tafoya, we are going to start with you this afternoon.

TESTIMONY OF CHARLES TAFOYA, SUPERINTENDENT, EL PASO INDEPENDENT SCHOOL DISTRICT; RUBEN BOHUCHOT CHIEF TECHNOLOGY OFFICER, ASSOCIATE SUPERINTENDENT, DALLAS INDEPENDENT SCHOOL DISTRICT; SHARON FOSTER, TECHNOLOGY INFORMATION SYSTEMS DIRECTOR, YSLETA INDEPENDANT SCHOOL DISTRICT; PAULA GLOGOVAC, FORMER E-RATE CONSULTANT TO SUN MICROSYSTEMS; NATHANIEL HAWTHORNE, GENERAL COUNSEL, ALPHA TELECOMMUNICATIONS, INCORPORATED; AND CHRISTOPHER G. CAINE, VICE PRESIDENT, GOVERNMENT PROGRAMS, IBM, ACCOMPANIED BY MIKE PRATT

Mr. TAFOYA. Thank you. Mr. Chairman, thank you for the opportunity to speak with you today. As indicated earlier, my names is Charles L. Tafoya. I am the superintendent of the El Paso Independent School District and in that capacity I have decided to present a short statement on behalf of the district for the hearing. We also have provided you a much more detailed statement, which is available, again, at your convenience.

Although I was not superintendent during most of the relevant period, I have some familiarity with the program. The district is the largest school district within the El Paso, Texas County in far west Texas, along the border of New Mexico and Mexico. El Paso is primarily an Hispanic city with a population of over 600,000 students. The district is a poor school district—I am sorry, with over 600,000 residents, not students. The district is a poor school district with many poor students. About 70 percent of the district's students are eligible for free and reduced lunches under Federal law, though many of its schools have a much higher proportion.

As one can readily see, the district students are extremely poor and in great need of benefits from the projects to be completed using E-rate funding. Relatively few students within the district have access to computers at home, much less access to educational resources through the Internet. For many district students, the school computers are the only computers to which they have access. The digital divide is a major problem within the district, and, unfortunately, many of its students are on the wrong side of that divide.

The district has been a beneficiary of the E-Rate program since its inception. In year 4 of the program, the district received an award of approximately $65 million. That was a major grant, and the district was ecstatic about it. The award was made several months into year 4 and the district had less time than expected to complete the projects. Those year 4 projects were a major undertaking for the district. The district devoted significant financial and manpower resources of its own to the projects. The projects were timely completed and implemented by the district and the service provider, IBM.

Principally, though, some special contract provisions with IBM—I am sorry, principally through some special contract provisions with IBM, the district was able to save money and was in fact able

to return over $9.3 million from its funding while still completing the projects.

The district sought E-rate funding again in year 5 of the program but a significantly lower amount. That is the year in which problems with the program came to light in a major way. Unbeknownst to the district, the Request for Proposal developed and used by the district for year 4 was used as a model by school districts throughout the country. At almost all of those other districts, IBM was the successful vendor.

An issue arose as to whether that Request for Proposal was in full compliance with program rules. The FCC ultimately concluded that the RFP model was improper but acknowledged the ambiguity of the rules and good faith of the districts. The district was, and remains, adamant that its E-rate projects should be performed for a fair price and with the best value for the dollar.

The district is responsible for its pro rata contribution in the event of program funding for a project. The district contribution, though, does not reflect all of the true costs that the district E-rate awarded. Specifically, if a particular E-rate project is awarded program funding, the district must not only contribute its pro rata share but must also pay for the computers and other ineligible hardware necessary to use the eligible services under the project, for additional staff to handle installation and operation of the project and for additional training in related areas to best utilize the resources of the project.

In addition, the district feels strongly that technology and other resources at its various schools is equitable. Consequently, the district must pay for similar ineligible projects similar to an approved project at schools ineligible for E-rate funding. Accordingly, the district's contribution in the event of program funding is actually much greater than pro rata contribution.

The district is very thankful for E-rate funding that it has previously received. That funding has provided immeasurable benefits to students of the district. The written statement addresses those in more detail. By way of example, a major benefit of the program funds for El Paso ISD teachers and students was acquisition of a computer network and connectivity to and amongst campuses. Another residual benefit is exactly being realized as I speak to you through the ability to have been connected to the El Paso Community College from where this broadcast is being projected. The network required cabling and wiring in schools and provision of specialized network electronics. Using program funds, in combination with the district's own resources, the network was installed and implemented. One cannot over emphasize the point that, without program funds, it would have taken many, many years for the district to create and complete such a network across the district. Indeed, due to the time delays that would have been involved, the attendant issues of obsolescence in the meantime, it is indeed questionable if the network would have ever been fully completed and compatible.

The district believes that its experience in this regard has been shared by many school districts across the country. The primary benefit from the program was high-speed Internet access. The funding not only allowed many more students to gain access to the

Internet, it also committed our students to expand their educational experience. E-rating funding has permitted the district to complete needed projects in the technology area in an effort to provide its students with an enhanced opportunity for success in the future. To be clear, through program funds, the district did not seek to achieve and did not achieve a technology advantage over other school districts. Instead, the district sought to use such funding to catch up to other districts.

Although thankful for the funding from the program, the district has experienced frustration with the program as more fully outlined in the written statement. These frustrations primarily involve ambiguities in the rules and the length of delays in making awards, which make it difficult for school districts to properly handle technology projects. The district has learned a number of lessons from the program participation. These lessons learned are likely to apply to many other school districts. The written statement addresses those in greater detail.

I did want to briefly focus on a few of those related to the issues of preparedness and commitment. A district seeking E-rate funds needs to ensure that it has properly planned for the projects, is ready to manage the installation and completion of the projects and is prepared to manage the actual usage of the projects, after completion. Each of these steps takes a major commitment by the district. For instance, beyond the technology plan required under the program, a school district needs to do a comprehensive review and analysis of its education needs, various technology solutions to meet those needs, compatibility and structure issues as well as sustainability issues. Merely getting the latest and the greatest system may not be appropriate if it is not compatible with existing technology, it does not meet the actual and structural needs or cannot be sustained in the future.

Moreover, in order to ensure that E-rate projects actually have a direct positive effect in the classroom, a school district should expect to spend substantial sums on teacher training, staff, and again, preparedness; equipment and other ineligible items under E-rate. In short, a program participant, in order to fully enjoy the benefits of program projects, should make a greater commitment of its own staff, money and other resources in determining its technology needs, preparing and designing projects, overseeing and supervising project installation and ensuring implementation of the projects.

We believe that the district acted reasonably, in good faith, within legal guidelines. Although its efforts were good, the district believes there was room for improvement. It is working to address those issues. The district believes that the E-Rate program is a good program and should be retained. Some reforms, though, are needed. The written statement discusses those in more detail as well.

The district believes, in conclusion, that notwithstanding the problems, the program has been very successful in bringing much needed technology to school districts across the country. Such technology has brought great benefits to the students involved. Thank you, Mr. Chairman.

[The prepared statement of Charles Tafoya follows:]

PREPARED STATEMENT OF CHARLES TAFOYA, SUPERINTENDENT, EL PASO INDEPENDENT SCHOOL DISTRICT

INTRODUCTION

Mr. Chairman, thank you for the opportunity to speak to you this morning. My name is Charles Tafoya. I am the Superintendent of the El Paso Independent School District ("El Paso I.S.D."), I have been asked to provide this statement on behalf of El Paso I.S.D. for this hearing of the House Energy and Commerce Committee's Subcommittee on Oversight and Investigations entitled "Problems with the E-Rate Program: Waste, Fraud, and Abuse Concerns in the Wiring of Our Nation's Schools to Internet".

El Paso I.S.D. welcomes the Subcommittee's interest in the E-Rate Program (the "Program" or "E-Rate") of the Federal Communications Commission (the "FCC"), and administered by its Schools & Libraries Division (the "SLD") and the Universal Service Administrative Company ("USAC"), and believes that Congressional hearings reviewing the Program's good points and bad points are overdue. Such a review should generally be done with any federal program on a periodic basis. On the other hand, we admittedly would have preferred that El Paso I.S.D.'s own participation in the Program not be a focus of this Subcommittee's review.

Although I was not Superintendent at El Paso I.S.D. during the most of the relevant periods discussed below [becoming interim Superintendent during 2002, and Superintendent in January 2003], I am or have become familiar with El Paso I.S.D.'s participation in the Program.

I have attached a statement from the El Paso I.S.D. website describing my background, as well as a copy of my curriculum vitae.

The final page of this written statement includes one-page summary of the major points of this written statement.

I also intend to present an oral presentation of five minutes or less at the hearing. Due to the time limitations for such presentation, as well as for my answers to questions from members of the Committee, and the consequent inability to provide detailed, properly nuanced and articulated presentations and responses, my oral testimony at the hearing is and will be subject to, and qualified, supplemented, and clarified by, this written statement.

BACKGROUND OF THE EL PASO COMMUNITY

Before proceeding further, it is important for you to understand the circumstances which El Paso I.S.D. faces in its daily efforts to educate and prepare its students for the future.

El Paso I.S.D. is the largest school district within El Paso County, Texas. Its school boundaries encompass much of the City of El Paso. El Paso is located at the far western end of Texas, wedged between Mexico and New Mexico. In fact, El Paso is so far west in Texas, that it is actually closer to Los Angeles than the eastern border of Texas. It is also said that Texarkana is closer to Chicago than El Paso.

El Paso is located in the Chihuahuan desert, with the Franklin Mountains [being the southern end of the Rocky Mountains in the United States] bisecting the city. The Rio Grande river flows south through a portion of El Paso, and then becomes the border with New Mexico, and ultimately becomes the border with Mexico [which river border continues to the Gulf of Mexico].

The El Paso community enjoys a long history. Although the first Spanish arrived in the area in the late 1500's [including what is asserted to be the first Thanksgiving ceremony in North America in 1598 by Juan de Onate and his colonists], the original Spanish settlements in El Paso were not established until the 1680's.

The population of El Paso County is approximately 680,000. The city of Cuidad Juarez, Mexico borders El Paso. Cuidad Juarez has a population believed to be from 1,000,000 to 1,500,000 persons. To be clear, unlike the San Diego-Tijuana border area, El Paso and Juarez are actually physically next to each other, separated only by the Rio Grande. The bridges across the Rio Grande handle northbound [i.e. into El Paso] traffic of about 15,000,000 vehicles and 9,000,000 pedestrians per year.

Demographically, El Paso is a primarily Hispanic city. It is believed to have the largest proportion of Hispanics in its population amongst cities over 500,000 in the country. Approximately 78% of its population is described as Hispanic according to census records. About 17% of its population is non-Hispanic whites, with Asian-Americans and African-Americans constituting only small portions of the population.

El Paso I.S.D. is a poor school district with many poor students, and each have many needs, especially in the technology area. About 70% of El Paso I.S.D.'s students are eligible for "free and reduced lunches" under federal law, though many

of its schools have a much higher proportion. Indeed, at close to two-third's of El Paso I.S.D.'s schools, more than 90% of the students are eligible for "free and reduced lunches". The 2000 Profile of Selected Economic Characteristics issued by the United States Census Bureau estimates the per capita income for 1999 in the El Paso, Texas area at $14,388 per year. For comparison, according to the same survey, the annual per capita income for 1999 in the United States was $21,587, for the State of Texas was $19,617, and for the Washington D.C. area was $28,659.

As one can readily see, El Paso I.S.D. students are extremely poor, and in great need of the benefits from the projects to be completed using E-Rate funding. Relatively few students within El Paso I.S.D. have access to computers at home, much less access to educational resources through the Internet. For many El Paso I.S.D. students, the school computers are the only computers to which they have access. The "digital divide" is a major problem within El Paso I.S.D., and unfortunately many of its students are on the wrong side of the divide.

EL PASO I.S.D.'S HISTORY WITH E-RATE PROGRAM

The rules and objectives of the Program have changed over time. Initially, the Program appeared to be used primarily for reimbursement of school districts for telecommunication expenses. Later, cabling for computer networks became popular under the Program. More recently, E-Rate funding for other sorts of so-called internal connections have been commonly sought. The problems with the Program that prompted these Subcommittee's hearings appear to have involved this final category.

El Paso I.S.D. has been a beneficiary of the Program since its inception. In Year 1 of the Program [1]1, El Paso I.S.D. sought funding for telecommunications and internal connections, and received an award of $2,669,822 from the SLD. For Year 2 of the Program, El Paso I.S.D. was granted funding of $6,463,713 for telecommunications, internal access, and internal connection. In Year 3 of the Program, El Paso I.S.D. received $1,422,392 in funding for telecommunications, internal access, and internal connection. El Paso I.S.D. was awarded $65,683,831 in E-Rate funding in Year 4 of the Program, for a variety of telecommunications, internal access, and internal connections projects. El Paso I.S.D.'s request for Year 5 E-Rate funding of $46,094,835 was denied by the SLD. Upon appeal, in light of confusion over Program rules, in December 2003, the FCC permitted El Paso I.S.D. and a few other districts to re-submit funding applications for Year 5. That has been done, and such new application is now pending for $1,433,932. El Paso I.S.D.'s funding request in Year 6 of the Program for $10,352,203, for both telecommunications, internal access, and some internal connections, was unexpectedly denied by the SLD on an alleged technicality. El Paso I.S.D. strongly disputes that contention and has appealed the SLD's decision to the FCC. Looking closely at those circumstances, one cannot help but wonder whether retaliation against El Paso I.S.D. played a part in that denial. That appeal is still pending. El Paso I.S.D. has also recently filed for funding under Year 7 of the Program. $2,598,600 has been sought, in connection with telecommunications, high speed fiber network, and internal connection projects in Year 7.

The eligible campuses at El Paso I.S.D. under the Program currently consists of 3 high schools, 3 auxiliary campuses, 7 middle school campuses and 39 elementary school campuses, for a total of 52 campuses.

EL PASO I.S.D.'S PARTICIPATION IN YEAR 4 OF THE PROJECT

Since El Paso I.S.D.'s participation in Year 4 of the Program unexpectedly and unintentionally appears to have been a catalyst to problems nationwide in the subsequent funding year, further review of such participation [as well as that of Year 5] is in order.

To better understand the E-Rate funding process, an applicant must comply with the following steps in order to be considered to have a complete application about which a funding decision may be made: (1) the applicant must develop a technology plan; (2) the applicant must file with the SLD a Form 470, describing the goods and services it wishes to procure in accordance with its technology plan; (3) the SLD then posts the Form 470 on its website, so that vendors interested in providing such goods or services can contact the applicant, make a bid, and seek to become the provider of the same; (4) to the extent that state or local procurement laws apply to the applicant, the applicant must comply with those laws, such as by issuance of

[1] The nomenclature for the funding years in the Program has changed from "Year 6", etc. to "Year 2003-2004", etc. This statement will generally use the former terminology, for convenience.

competitive bid requests or requests for proposal; (5) the applicant reviews bids and responses from interested vendors, under the Form 470 process and/or state or local procurement laws; (6) the applicant must wait at least 28 days after filing of the Form 470 in order to contract with a particular vendor, so that sufficient time is permitted for vendors to respond or make bids; (7) the applicant selects the successful vendor to provide the goods and/or services under the Form 470; (8) the applicant enters into a contract with the successful vendor; (9) the applicant files a Form 471 with the SLD, in which it names the successful vendor as the "service provider", using the vendor's unique "service provider identification number" or "SPIN", for the goods and/or services under the Form 470; and (10) the applicant then awaits any decision by the SLD as to whether or not funding will be granted, and in what amount, under the Form 471. If the SLD awards a grant of Program funds to an applicant, the applicant must then file a Form 486, accepting such grant. Each applicant also is required, under Program rules, to pay a proportion of the charges [often 10% or so] from the service provider, as a condition of participation.

During each year of the Program, El Paso I.S.D. has had a longstanding technology plan, as modified from time to time (the "Technology Plan"), upon which its Program participation has been based. In other words, El Paso I.S.D. has sought E-Rate funding for projects consistent with its Technology Plan. Importantly, El Paso I.S.D. has not relied and does not rely solely on E-Rate funding to satisfy the goals of the Technology Plan, instead using its own funds and other sources as available. The E-Rate funding, however, has essentially permitted El Paso I.S.D. to accelerate the timetables for completion of such projects, thereby providing the benefits of technology for more students.

In December 2000, El Paso I.S.D. posted a Form 470 for Year 4 of the Program (the "Year 4 Form 470"), in accordance with Program requirements. The Year 4 Form 470 was posted through the SLD web-site. A hard-copy of the Year 4 Form 470 was signed by El Paso I.S.D. and forwarded to the SLD.

In December 2000, El Paso I.S.D. also issued its Request for Proposal No. 101-00 entitled "Strategic Technology Solution Provider" (the "Request for Proposal"). The first page of the Request for Proposal stated in relevant part as follows:

> . . . This Strategic Technology Partnership agreement will include, but not be limited to, E-rate funded projects. The selected vendor should be prepared to assist the District with all aspects of the E-rate process and should demonstrate knowledge and experience in dealing with E-rate funded projects. All E-rate applications will be submitted using the successor bidder's single SPIN number. Vendors must provide their SPIN number as part of their response . . .

The Request for Proposal sought a vendor to provide integrated provision of goods and services for El Paso I.S.D.'s proposed E-Rate projects. This was somehow different than what El Paso I.S.D. had done in prior years. Due to part to the loss of personnel experienced with the Program, more outside assistance from the vendor appeared to be beneficial to El Paso I.S.D. Utilization of outside expertise is not inappropriate, especially in the area of technology.

It is unrealistic to expect school districts to have in-house expertise to understand, plan, and identify the specific plans, specifications, and other details of projects of seeking funding. Districts rarely have expertise to do so. The districts generally understand only what projects need to be done and the basic scope and outline of those projects, but do not often know ahead of time the particular plans and specifications for those projects [especially in the technology area where new technologies and techniques come into play very quickly]. This is a very complicated field, and hard for a district to keep track of state-of-the-art goods and services. If a district tried to design a technology project completely on its own, including all plans and specifications, it would not necessarily design the most cost-effective project, and its design would likely include inefficiencies, waste, and obsolete items. Accordingly, it makes sense for a district to seek systems integration expertise from a third party.

By way of example, one should keep in mind the analogy of an individual building an addition to a house. In theory, a person could build the addition himself, but that is very rare indeed since individuals almost never have the necessary expertise and experience to do so. Instead, individuals generally do have in mind their basic needs and desires for the addition [no. of bedrooms, no. of baths, approx. square footage, one or two-story, exterior facing, style, etc.], but do not know all of the details [depth of foundation slab, location of plumbing and electrical conduit, framing details and techniques, etc.]. In addition, the homeowner generally does not know exactly how the framing, plumbing, HVAC, electrical, and other systems of the addition can be made compatible with those in the existing portion of the house. Of course, the homeowner rarely creates the blueprints on his/her own. The homeowner instead generally retains an architect and/or a homebuilder to prepare the blueprints, based upon the homeowner's basic needs and desires. Those blueprints are not completed,

however, by the architect/contractor without significant input from the homeowner. The homeowner usually reviews those plans and specifications with the architect/contractor and suggests many changes. In that regard, price is an important consideration, and changes are made to the blueprints accordingly. The price of the project is negotiated between the parties. The homeowner retains final control over the plans and specifications, and the price, especially since the homeowner has the right to end negotiations and seek a new builder, if necessary. As applied to the Program, the homeowner is akin to a district seeking Program funding, the addition is akin to the new projects desired to the existing technology at the district, the homeowner's basic needs and desires of the homeowner are akin to the technology plan adopted by district seeking Program funding, the plans and specifications as set forth in the blueprints are akin to the details contained in the Form 471 filed by such district, and the architect and contractor are akin to the service provider for the district. Consequently, this "general contractor" approach seemed reasonable to El Paso I.S.D. when adopted through the Request for Proposal.

The Request for Proposal was prepared by an El Paso I.S.D. employee, based upon review of similar bid documents prepared by other school districts nationally as well as substantial drafting on his own. Importantly, it was not prepared by any vendor, and not based upon draft documents provided by any vendor.

The Request for Proposal was noticed by El Paso I.S.D. in newspaper notices, and placed upon its web-site. El Paso I.S.D. provided copies of its Request for Proposal to eleven different companies who requested a copy, not all ones who ultimately bid.

The deadline for submitting responses to the Request for Proposal was December 19, 2000, and responses were thereafter opened. Eight vendors [IBM, Amherst Computer, Diversified Technical Services, Kent Data Communications, ESEI, Southwestern Bell, Time Warner Cable, and Cervantes CC] responded to the Request for Proposal in some form or fashion. The Year 4 470 did not generate any responses, in and of itself.

An evaluation committee composed of El Paso I.S.D. Technology and Finance Department officials reviewed the responses and recommended IBM to the Board of Trustees of El Paso I.S.D. At a Board meeting on January 9, 2001, the Board of Trustees of El Paso I.S.D. selected IBM as the putative awardee under the Request for Proposal, and thus, if a final contract [including pricing] was successfully negotiated and finalized, as the service provider for the El Paso I.S.D. projects for which a Funding Year 2001 application was to be made.

Thereafter, IBM and El Paso I.S.D. entered into an IBM Customer Agreement dated as of January 2001, with incorporated Statements of Work dated January 2001, as well as an Addendum to Customer Agreement for January 2001 SOWs (collectively, the "Year 4 Contract"). The Year 4 Contract had a one-year term, with an option by El Paso I.S.D. to renew for two additional one-year terms. The Statements of Work included with the Year 4 Contract outlined in detail the projects to be completed under the Program.

Importantly, the Year 4 Contract contained special provisions whereby El Paso I.S.D. retained the right to select the ultimate providers of many services and products, through use of procurement requirements of Texas state-law (the "Special Procurement Provisions"). The Special Procurement Provisions are found within the Addendum to the Year 4 Contract. In this way, El Paso I.S.D. intended to minimize the costs for such services and products, and thereby minimize the amounts of Program funding, and thus El Paso I.S.D.'s pro rata contribution, ultimately required to perform the desired E-Rate projects. El Paso I.S.D. insisted upon such terms, and after challenging negotiations, was able to obtain IBM's consent to the same. It is El Paso I.S.D.'s understanding that it was the only district nationwide during Year 4 of the Program to obtain such special protection provisions from IBM, and one of only two [the other being a sister district in El Paso County aware of such contract terms] nationwide obtaining such provisions from IBM during Year 5 of the Program.

El Paso I.S.D. then filed a Form 471 for Year 4 of the Program (the "Year 4 Form 471") with the SLD, as required.

El Paso I.S.D. later received a substantial award of funding from the SLD for Year 4 of the Program for IC/IA Services and Telco Services. El Paso I.S.D. accepted such funding, and the projects thereunder have been completed. This award was dated September 28, 2001, for the Year 4 funding year beginning July 1, 2001. As one can see, the award was not received until well after the beginning of the funding year in question.

Upon receipt of such award, El Paso I.S.D. recognized that, due to the SLD's delays in making the grant, it had less time than originally anticipated to complete the desired E-Rate projects. El Paso I.S.D. took a variety of internal steps to manage the construction of those projects, including retention of a consultant to act as

overall project manager, looking out for El Paso I.S.D.'s interests, as well as a commitment [often called upon] by its Board of Trustees to hold special meetings or take additional efforts to take the necessary Board actions to complete the projects on a timely basis. El Paso I.S.D.'s Board of Trustees also made a substantial financial commitment from the limited reserves of the District, to pay for its required share of Program costs.

Ultimately, El Paso I.S.D. was able to complete the Year 4 projects on a timely basis. Through use of the Special Procurement Provisions, El Paso I.S.D. was also able to achieve costs savings and was able to essentially return significant funding to SLD that was not needed to complete the projects in question. Through the Special Procurement Provisions, the pricing was capped at those set in the Form 471s, but El Paso I.S.D. had the opportunity to obtain any better pricing later by the selection of subcontractors and/or suppliers through separate, later competitive procurement. With that better pricing, El Paso I.S.D. hoped to achieve additional savings. In fact, due in large part to the special procurement provisions of the Year 4 Contract, and otherwise due to its intent to ensure that its projects were limited to critical needs, El Paso I.S.D. ultimately did not need to spend, and returned, over $9.3 million from its Year 4 Program funding. In essence, El Paso I.S.D. obtained desired and requested goods and services for a much lower price, and thus achieve "more bang for the buck" as it intended. This conduct demonstrated El Paso I.S.D.'s continued commitment to avoid fraud, waste, and abuse in pricing, both for its own benefit and the Program itself.

El Paso I.S.D. was and remains adamant that its E-Rate projects should be performed for a fair price, and with the most "bang for the buck". El Paso I.S.D. is also very concerned about sustainability of its technology projects for the long-term, and, since Program funding from year to year cannot be guaranteed, El Paso I.S.D. needs to ensure that any Project can be sustained without Program funding in the future. Although El Paso I.S.D. sought to meet such goal with respect to all E-Rate projects, in 20-20 hindsight, it feels that, due to ambiguities in and misunderstanding of Program rules, the so-called "Help Desk" portion of the maintenance statement of work did not prove to be sustainable [contrary to El Paso I.S.D.'s original intent and belief].

It is important to remember that El Paso I.S.D. is responsible for its pro rata contribution in the event of Program funding for a project. In the case of Year 4 funding, it alone represented a major financial commitment from El Paso I.S.D. That direct contribution, though, does not reflect all of the true costs to El Paso I.S.D. of Program funding. Specifically, if a particular E-Rate project is awarded Program funding, El Paso I.S.D. must not only contribute its pro rata share, but must also pay for the computers or other ineligible hardware necessary to use the eligible services under the project, for additional staff to handle installation and operation of the project, and for additional training [not otherwise eligible] in related areas to best utilize the resources of the project. In addition, El Paso I.S.D. feels strongly that technology and other resources at its various schools be equitable; consequently, El Paso I.S.D. must pay for similar, ineligible projects, similar to an approved project, at other schools who are not granted Program funding due to a lower "free and reduced lunch" level. In short, El Paso I.S.D. has to spend its own money to ensure that each school, whether or not it received Program funding, has similar resources. Accordingly, El Paso I.S.D.'s contribution in the event of Program funding is actually much greater than pro rata contribution. That alone is significant incentive for El Paso I.S.D. to seek cost-effective acquisition of the projects, which El Paso I.S.D. has sought to do in each case.

EL PASO I.S.D.'S PARTICIPATION UNDER YEAR 5 OF THE PROGRAM

Year 5 of the Program encountered many problems nationwide. In hindsight, it appears that, based upon El Paso I.S.D.'s large award in Year 4, many districts across the nation prepared requests for proposal for Year projects almost identical to the Year 4 Request for Proposal of El Paso I.S.D. El Paso I.S.D. was unaware of those circumstances. It did share a draft of the Request for Proposal with a sister district in El Paso County, Texas, Ysleta Independent School District; staff of local districts commonly share bid documents or similar materials in an effort to avoid unnecessary duplication of efforts.

Frankly, El Paso I.S.D. is somewhat upset that, without its knowledge or consent, the so-called "El Paso model" was presumably pitched to other districts nationwide, who ultimately selected a single vendor, resulting in what are now viewed by some as abuses in the Program. That was not the intent of El Paso I.S.D., and it is very concerned about being indirectly and unknowingly tied to such conduct.

The nationwide problems with Year 5 of the Program also directly affected El Paso I.S.D. For such Program year, El Paso I.S.D. filed a Form 470 for internal connections and related services, as well as for telecommunications services.

With respect to those telecommunication services, El Paso I.S.D. acquired services from AT&T for long-distance service and local telephone service. Section 44.031(b)(4) of the Texas Education Code authorizes school districts to acquire goods or services under the catalogue purchase system under Section 2157.001 et. seq. of the Texas Government Code. Under this catalogue purchase program, the DIR [being a Texas state agency] creates a list of approved statewide vendors for specified goods and services, after a process involving review of different pricing factors, among others. This process essentially forces interested vendors to offer specially discounted prices on a statewide-basis, in order to be listed as an approved vendor, in order to be able to make sales to local governments across the state. The DIR itself advises vendors on its website:

> DIR expects to receive the vendors' best pricing, since all state agencies, cities, counties, and other local governments, public school districts, and public colleges and universities can buy through the DIR contracts. Based on the state's anticipated volume, vendors need to offer DIR deep discounts from their list price. Those discounts must apply to all DIR customers, regardless of their size, which means that a small agency would receive the same base discounts that a large agency would receive, although entities buying large quantities should be able to negotiate deeper discounts through the DIR contracts.

The catalogue purchasing program, under state law, supersedes any requirement for a local district to perform a second competitive procurement [insofar as the DIR has already done a competitive procurement previously]. AT&T was/is an approved vendor on the DIR catalogue. The telecommunication services of AT&T as offered in the DIR catalogue were tariffed services. El Paso I.S.D. approved AT&T as the provider of such services for Year 5 of the Program, based upon the procurement under the DIR catalogue.

With respect to internal connections and related services for Year 5 of the Program, after review and analysis by staff and approval by the Board of Trustees at a meeting on January 8, 2002, El Paso I.S.D. decided to renew its relationship with IBM as service provider for Year 5. As noted above, El Paso I.S.D. posted a new Form 470 for Year 5, though not required to do so under Program rules due to the renewal. Nevertheless, El Paso I.S.D. wanted to inquire as to any interest from other possible vendors, in an effort to determine whether or not renewal was cost-effective and should take place. No responses or inquiries were received by El Paso I.S.D. from vendors to the 2002 Form 470 for IC/IA Services sufficient to convince El Paso I.S.D. not to renew its existing contract with IBM; El Paso I.S.D. invited further responses from any such inquiring vendor, but substantive information or materials were not received on a timely basis, if at all. During an internal process, El Paso I.S.D. itself reduced the funding levels it would seek from the Program for Year 5, due to El Paso I.S.D.'s desire to reduce the scope of the projects thereunder. Thereafter, El Paso I.S.D., in consultation with IBM, finalized the specifications for the specific goods and services necessary for completion of such internal connections and related projects. The funding requested for such projects for Year 5 of the Program represented a significant reduction in amounts as requested by El Paso I.S.D., and as awarded by SLD, for Year 4.

After further negotiations with IBM, El Paso I.S.D. and IBM entered into Statements of Work dated January 2002, as well as an Addendum to Customer Agreement for January 2002 SOWs (collectively, the "Year 5 Contract"). The Year 5 Contract also contained similar Special Procurement Provisions. The Year 5 Contract effectively represented the renewal and extension of the IBM Customer Agreement, to cover Year 5 projects and new statements of work.

As noted above, funding for El Paso I.S.D. under Year 5 of the Program was denied by the SLD. Such denial was dated March 10, 2003, although Year 5 of the Program actually began on July 1, 2002. In other words, El Paso I.S.D. did not learn of a decision on its Year 5 funding until about three months before Year 5 ended.

El Paso I.S.D. appealed the decision of the SLD to FCC. By FCC Order 03-313 dated December 8, 2003 in *Matter of Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, et. al.*, CC Docket Nos. 96-45 and 97-21 (the "*Ysleta* Order"), the FCC effectively upheld the denial of Year 5 funding, but granted a waiver of Program rules to permit El Paso I.S.D. and several other school districts to re-file its application for Year 5 funding under certain conditions. El Paso I.S.D. believes that its Year 4 and Year 5 procurement for a service provider under the Program complied with applicable state and federal law. Nevertheless, the FCC effectively found that certain aspects of such procurement did not comply with Program rules. On the other hand, the FCC implicitly

admitted that ambiguities and/or past course of dealing might have confused districts as to such legal issues, and therefore permitted re-filing of the applications. El Paso I.S.D. has done so, though its requested figure is much less than before, due to reductions in market prices, obsolescence of several projects, and completion of all or part of some projects using other resources, among other things. El Paso I.S.D. still believed that its conduct was appropriate and not in violation of Program rules. Nevertheless, in the circumstances El Paso I.S.D. [as well as the other affected districts] decided not to appeal the *Ysleta* order to the courts and to instead take advantage of the FCC's allowance of re-filing of the application at issue. The relief permitted by the FCC's ruling was an acceptable compromise in the district's view, and the time and expense of protracted litigation was not justified.

BENEFITS TO EL PASO I.S.D. STUDENTS FROM E-RATE FUNDING

El Paso I.S.D. is very thankful for the E-Rate funding that it has previously received. That funding has provided immeasurable benefits to students of El Paso I.S.D. We believe it is important for Congress to recognize the wonderful things that have been accomplished at the front lines of education, due to its funding of the Program.

In Year 1 of the Program, the awarded Program funds allowed El Paso I.S.D. to provide 1,263 local long-distance service connections for telephones in El Paso I.S.D. and provided high-speed Internet access to 2,479 computers at El Paso I.S.D. In addition, such funding allowed eligible campuses to have connections to the Internet and provided structural cabling to all such campuses. With Year 2 Program funding, El Paso I.S.D. was able to continue to provide and supply high-speed Internet access to all the EPISD campuses and to provide additional 1,800 local long-distance service connections for telephones. El Paso I.S.D. used Year 3 Program funding to continue to provide telecommunications services to EPISD's telephones and high-speed Internet access to computers. El Paso I.S.D. also was able to obtain new telephone connections for campuses, upgrade networks at all eligible campuses for new telephone systems, and to install additional structural cabling to eligible campuses. El Paso I.S.D. was also able to procure network interface cards and upgrade network switches for all eligible campuses. With Year 3 funding, El Paso I.S.D. was in addition able to procure maintenance and hardware support services for network electronics. In Year 4 of the Program, El Paso I.S.D.'s award was used to continue to provide telecommunications and Internet access with El Paso I.S.D.'s telephones and computers. It also provided an entire redesigned of El Paso I.S.D.'s computer network. The wide area network became a dedicated fiber network as part of this redesign. Structural cabling was also added to eligible campuses and horizontal cable to all campuses was upgraded with enhanced category 5 cable. Fiber optic lines were added to telecommunications lines at eligible campuses and network electronics were upgraded with switches and related components. El Paso I.S.D. also received a new email system for its employees. It also procured new application service. The Year 4 funding also provided funding for virtual schooling, technology-instruction integration, and technology planning.

A major benefit of the Program funds for El Paso I.S.D's teachers and students was acquisition of a computer network and connectivity to and amongst campuses. The network required cabling and wiring in schools and provision of specialized network electronics. Using Program funds, in combination with its own resources, the network was installed and implemented. One cannot over-emphasize the point that, without Program funds, it would have taken many, many years for El Paso I.S.D. to create and complete such a network across the district. Indeed, due to the time delays that would have been involved, and the attendant issues of obsolescence in the meantime, it is indeed questionable that the network would have ever been fully complete and compatible. El Paso I.S.D. believes that its experience in this regard has been shared by many school districts across the country.

A related benefit from Program was high-speed Internet access. The prior Internet access provided speed of 1.5 mps. Program funding permitted El Paso I.S.D. to provide such access both through installation of appropriate cabling and network electronics, as well as provision of Internet access services. There was a major problem with campuses using the old system to do classroom work assignments through the Internet or other network resources because it was too slow. Slow speed was due to the saturation of T-1 line that had been providing service. Essentially, over time classroom Internet usage rates increased significantly at El Paso I.S.D. and demand on the system increased for that reason and due to increasing file sizes. The number and size of files and presentations available for educational purposes also increased significantly. In other words, more websites often had more large, video or multimedia presentations available for review, as opposed to previous times. Using the

old Internet access, it was difficult, if not impracticable, for El Paso I.S.D. students to fully utilize such educational resources. Importantly, due to the slowness of the old system, it at times was difficult for students to even getting any access to the Internet and many stopped trying to do so. The old system was causing a severe detriment to the education of El Paso I.S.D. students. It was no longer working and El Paso I.S.D. students were beginning to fall further behind other students in technology matters as a result. It is also important to realize that the Texas Essential Knowledge in Skills requirements include technology as part of the required curriculum for students in Texas. In addition, teacher evaluations are based upon their use of technology. State-wide demands were also placing additional pressure upon El Paso I.S.D. to increase the use of technology. The old system was unable to meet that challenge.

Fortunately, due to Program funding, this challenge was in fact met. In addition, the funding not only allowed many more students to gain access to the Internet, it also permitted such Internet experience to be reasonably practicable. Furthermore, Program funding also included web and file service that permitted students to learn high-tech skills involving developing websites and in sharing research. That was something that could not have been done using the El Paso I.S.D. own resources.

El Paso I.S.D. has also been pleased with the result from its acquisition of video carts with Program funding. Indeed, El Paso I.S.D. since then has purchased many more video carts, using its own resources, and is in process of acquiring more. El Paso I.S.D. is seeking to make sure that each campus has at least one such cart. These specialized video carts allow up to eight interactive sessions to occur simulteously. There are often used for video-conferencing whereby one teacher can provide instruction to classes at multiple schools. It is also used to permit multiple classrooms to have interactive sessions to hear and talk to distinguished visitors. In essence, each cart allows broadcasting from a single site to other sites across the district, as a form of distance learning. In addition, the El Paso I.S.D. broadcast studio can provide broadcasts through the video carts to particular classrooms district-wide. The video carts are very popular with both teachers and students and have proven to be a great learning tool. They have allowed El Paso I.S.D. to share the resources of better or specialized teachers with more students. It has had a dramatic effect at the classroom level.

As you can see, E-Rate funding has permitted El Paso I.S.D. to complete needed projects in the technology areas, in an effort to provide its students with a fair opportunity to succeed in the future. To be clear, through Program funds, El Paso I.S.D. did not seek to achieve, and did not achieve, a technological advantage over average school districts. Instead, the district sought to use such funding to catch up to those other districts. Although El Paso I.S.D. has not been able to fully "bridge the gap" in this regard, E-Rate funds have permitted it to at least come within range of being able to do so. Without the Program funds, El Paso I.S.D. and similarly-situated participants would technologically now be so far behind a typical school district so that it could never expect to catch up as a practical matter.

El Paso I.S.D. sought the Program funding to aid the eligible schools. Such funding, however, though has also provided incidental [and initially unintended] benefits district-wide and throughout the El Paso community. By way of example, the network advances achieved with Program funding also make it possible for El Paso I.S.D. to comply with certain of the Adequate Yearly Progress and No Child Left Behind Act requirements. With the network, there also can be greater accountability at the campus level, better review of campus-level data and information, better communication between central office and campuses, and greater sharing of resources amongst campuses. In addition, due to the increased connectivity afforded from E-Rate projects in combination with El Paso I.S.D.'s own resources, the district was able to utilize distance-learning to reach students and parents for educational programs. Using one such program, over 225 "virtual learning" students were able to complete high school requirements and graduate from El Paso I.S.D. this year; those young adults [principally from areas of eligible schools] would not otherwise have received high school diplomas, with resultant detriment to their own lives and those of their families, to the local economy, and to the local community. El Paso I.S.D. has also developed the Orion project with the local university, community college, and others to provide dual enrollment as well as specialized training in No Child Left Behind Act and other issues, for both students and teachers. The goal is to create a county-wide educational network to provide educational growth, and hopefully economic growth for the depressed local economy. Rather than simply have a collection of disparate, independent centers of basic, secondary, or higher education, El Paso I.S.D. and these other educational bodies are seeking to establish El Paso County as an "educational community", through creative and cost-effective sharing of technological information and resources. Again, these benefits were not

sought from the funding, but El Paso I.S.D. has been able to leverage the Program funds using other resources in order to work on this greater good for the community as a whole. El Paso I.S.D. believes that a principal purpose of the Program was to benefit local communities, through provision of funding to aid the technology programs of schools.

It is important to raise this issue of "leveraging" the Program funds. As discussed in detail elsewhere, Program funds are limited in amount and also may be legally expended only on certain sorts of technology goods and services; therefore, districts must commit significant resources on their own in order to ensure proper implementation of the projects. Consequently, Program funds must be "leveraged" by a grantee-district with other sources of funds. In addition, a project constructed with Program funds also should be "leveraged" by a grantee-district with other non-Program projects, in order to meet technology needs. El Paso I.S.D. recognizes that the Program was not created to fulfill all technological needs of school districts, but instead provides a substantial "down payment" to be leveraged by the districts.

FRUSTRATIONS WITH THE PROGRAM

Although thankful for the funding from the Program, El Paso I.S.D. believes it is also important for Congress to understand frustrations that El Paso I.S.D. has had with the operation and administration of the Program. Those frustrations are believed to be shared with many other school districts across the country.

Probably the primary concern of El Paso I.S.D. and other school districts revolves around an inability to fully understand the ever-changing Program requirements, based upon changes in the actual rules as well as changes in SLD's interpretation of such rules. As El Paso I.S.D. and many other districts have learned, doing something the same way as successfully done in the prior funding year, even in the absence of any formal Program rule changes, is no guarantee that the SLD will approve such approach in the current funding year. Indeed, that is the principal issue with El Paso I.S.D.'s Year 6 appeal. Furthermore, many have complained about the SLD's previous apparent refusal to make its manual of eligibility requirements for goods and services available to the public, leading many well-meaning districts to inadvertently seek ineligible goods or services or misunderstand those requirements. El Paso I.S.D., of course, recognizes that some annual changes in SLD policy are probably warranted, but wishes that such changes are announced publically and in sufficient time for districts to comply with the same. Furthermore, the Program rules have proven to be vague and ambiguous on a large number of points, making it difficult for districts to seek compliance. For example, in El Paso I.S.D.'s own experience, different persons with the SLD, different E-Rate consultants, different service providers, different attorneys, and different staff persons will have differing interpretations of particular Program rules. If nationally-recognized E-Rate experts in Washington, D.C. in constant communication with SLD officials do not agree upon rule interpretations, it is difficult, if not impossible, to expect a typical school district elsewhere in the nation to fully and properly understand what is expected of it under the rule.

Another major frustration with the Program arises from the SLD's continued delays in making funding decisions. This frustration is believed to be shared by many, if not most, applicants. A funding year under the Program runs from July 1 of one year to June 30 of the following year. Generally, a recipient of Program funding must complete the project in question by such June 30 date [although short extensions in certain categories have been permitted by the SLD]. The SLD, however, has routinely issued decisions on Program funding requests long after the beginning of the funding year. For instance, in Year 4 of the Program, El Paso I.S.D. was notified of the SLD's decision almost three months into the funding year in question. In Year 5, the decision of the SLD was received about nine months after the commencement date of the funding year. For Year 6 of the Program, El Paso I.S.D. received notice of the SLD decision about six months after the start of the funding year. In short, the SLD has issued its decisions after the funding year begins, and not beforehand. As a result, the districts are hard-pressed to adequately and properly complete the funded projects, with appropriate oversight.

Such delays in decision-making also wreak havoc on a school district's ability to plan technology projects, whether or not based upon E-Rate funding. A district's technology projects for a particular funding year are generally dependent upon what Program funding was awarded in the prior funding year. If such funding was denied in whole or part, the district might need to re-urge such request in the next funding year. By way of example, using a "pipeline" analogy to reflect the linear nature of many projects, a district cannot be expected to request funds to build mile 5 of a pipeline without knowing whether mile 4 of the pipeline has been funded for con-

struction. Due to the SLD's late announcement of funding decisions, districts have little time to develop projects for the next funding year before Form 470s for that year must be posted. In El Paso I.S.D.'s case, it has often learned of the SLD decision on a particular funding year after its Form 470 for the next funding year is due. El Paso I.S.D.'s experience is not unique.

Similarly, many technology projects must be integrated in order to be usable. It is not uncommon for a district to plan a particular project eligible for Program funding, along with a related ineligible project using its own funds. Oftentimes, the timing of such projects must be coordinated. For example, a district's plans to acquire computers for a classroom is necessarily linked to its request for eligible cabling to classrooms. With the delays in decisions on Program funding, the district's plans for the other projects are delayed and disrupted.

In this regard, due to delayed decision-making, districts are often in the uncomfortable position of wondering whether to use precious resources of their own on needed technology projects for which E-Rate funding requests have been long pending. If a district decides to do the project outside of E-Rate, only to later get an Program award, it can effectively lose the requested E-Rate funding, as well as the ability to otherwise use those funds of its own for other needed technology projects.

It is also important to remember that technology constantly changes. Under current Program rules, it is not unusual for a district to be required to issue specifications for particular goods in October of a year in its Form 470, with a decision by the SLD on funding taking place perhaps 12-18 months later, and actual procurement much later. Oftentimes, and El Paso I.S.D. experienced this as well, requested goods are obsolete, no longer compatible with other items, or no longer manufactured at the time actual acquisition thereof is to occur.

In this vein, it is important to point out that the SLD has reportedly suspended awards for the 2003 and 2004 funding years while it resolves problems arising from a change in its accounting system. It is not entirely clear when the SLD will again issue funding commitments.

As a related matter, the appeals process with the SLD and FCC of funding decisions is slow. Not only are decisions delayed in the first place, but delays in appellate decisions aggravate the problems described above.

El Paso I.S.D. realizes that the Program was in its infancy when these problems arose. It is a relatively new federal program, and "growing pains" should have been expected. The structure of the Program was different from other federal programs, and the roles of the SLD and USAC were somewhat unusual. The complaints about ambiguous rules and requirements with the Program are in large part similar to those made about any new federal program during its early years. It often takes a number of years for the "gray areas" to be identified and addressed. It is also important to remember that the Program also experienced a dramatic increase in both the number of applications and in the dollar amount of monies requested. The regulatory bodies were presumably, and not surprisingly, overwhelmed to some extent as a result.

El Paso I.S.D., despite its frustration [and that of other districts], recognizes that staff of the SLD and USAC were probably trying to do the best job they could with limited resources, and were also acting in good faith with respect to handling of the Program [except, perhaps with respect to somewhat-suspicious funding denials by SLD after the Ysleta order was issued]. Moreover, El Paso I.S.D. does wish to acknowledge that the FCC has more recently issued a number of orders and new rules addressing a wide variety of issues in the Program, and is expected to issue more in the near future. Those orders are welcome, and provide much more guidance and clarification to applicants and service provider as to Program requirements. It is hoped that those orders will limit this sort of frustration commonly experienced by applicants in seeking to understand the Program.

LESSONS LEARNED BY EL PASO I.S.D.

El Paso I.S.D. has learned a number of lessons from its Program participation. In particular, due to the above-described problems that El Paso I.S.D. encountered with the Program, El Paso I.S.D. has also reviewed and studied causes of such problems. Although El Paso I.S.D. would prefer to place full responsibility upon others for those problems, it recognizes and concedes that it bears some of the practical, if not legal, responsibility for the same.

For instance, El Paso I.S.D. in Year 4 of the Program [unlike prior or subsequent Program years] appears to have relied too heavily upon its service provider, IBM, in developing the specifics of the statements of work. As mentioned above, El Paso I.S.D. lost a number of key employees with Program experience and expertise shortly before the Year 4 process began. El Paso I.S.D. also had a relatively new tech-

nology director with essentially no Program experience [though very experienced generally in technology areas]. Consequently, El Paso I.S.D. sought to select a "strategic technology solution provider" to provide additional assistance with respect to Program matters. In the circumstances, that was a reasonable approach. On the other hand, IBM submitted statements of work for Year 4 to El Paso I.S.D. for review with limited opportunity for extensive study and analysis before the deadline for submission of the Year 4 Form 471s. Accordingly, El Paso I.S.D. technology department did confirm that the projects represented by statements of work were consistent with its Technology Plan and were ones desired by the district. Unfortunately, there was insufficient time for a detailed review and analysis by various affected departments of El Paso I.S.D. to ensure that those projects were in fact initially configured to meet the specific goals of such department or that each such project [although functionally sufficient] was the preferred solution of the particular department compared to other approaches. El Paso I.S.D. feels that its review was legally sufficient, but in hindsight believes that more review and analysis would have been better. Of course, the Special Procurement Provisions and other provisions in the Year 4 Contract did provide El Paso I.S.D. with an opportunity to further review and modify projects even after an award of Program funds. El Paso I.S.D. in fact exercised these special contractual rights and modified several projects from the initial proposals, in accordance with Program rules, in order to better satisfy the needs of the district. Nevertheless, in retrospect, the preferred approach would have been to internally develop project details with little or no assistance from the service provider [recognizing, of course, that the service provider is still a valuable source of expertise for which it would inappropriate to ignore or discount entirely].

On a related topic, looking back at the situation with further knowledge and experience, El Paso I.S.D. now wishes it had had a better understanding in advance of the benefits of one or more Year 4 projects in comparison to the costs thereof. This concern is principally directed at the Year 4 "SOW maintenance" project, which cost about $27 million. El Paso I.S.D. now questions whether the benefits of the project justified such a cost, not only to the Program but also to El Paso I.S.D. for its 10% share. El Paso I.S.D. expended a significant amount of its own funds on this project, and has not been satisfied with it. The maintenance project involved a number of different sub-parts [such as maintenance of certain existing technology, inventorying of existing technology goods, etc.], though the "help desk" was a principal part thereof. The "help desk" was very effective in permitting El Paso I.S.D. to quickly identify and address problems of users, with a great benefit to student, teacher, and administrative productivity. Importantly, the "help desk" immediately referred calls from ineligible schools to the technology department, in order to ensure such assistance services were provided exclusively to eligible locations.

From a purely functional perspective, the "help desk" worked. Unfortunately, El Paso I.S.D. did not realize at the time of acquisition the legal effect under Program rules of characterization of the "help desk", and thus that the "help desk" would not survive the end of the Year 4 term. That was a definite surprise to the district. El Paso I.S.D. was under impression that the "help desk" would survive and that the district would continue to run it in the future, using its own staff. That did not prove to be the case. El Paso I.S.D. reviewed different alternatives, but Program rules prevented some from being utilized and cost considerations interfered with others. In the process of that additional review, El Paso I.S.D. also discovered that the "help desk" configuration used certain proprietary software of a third party, for which an individual license for the district [as opposed to a presumed nationwide IBM license] was cost-prohibitive. The design of the "help desk", in retrospect, did not necessarily conform to the long-term needs of the district, and made it difficult to sustain in that configuration. Ultimately, and in light of the denial of Year 5 funding by the SLD, El Paso I.S.D. could not afford bearing the entire cost of continuing the "help desk", and IBM ceased providing such services to the district. The "help desk" did not meet the expectations of El Paso I.S.D. for the project. In this regard, the district expected the "help desk" to achieve a much greater reduction in pending work orders than actually experienced. To be clear, though, El Paso I.S.D. believes that it received substantial value from the maintenance project in Year 4 of the Program, but, in 20/20 hindsight, feels that the overall costs thereof may have outweighed the long-term value to the district. As a result of these concerns, El Paso I.S.D. significantly decreased its request for maintenance contract funding for Year 5 of the Program, and deleted requests for similar sorts of funding in future years.

In short, although El Paso I.S.D. in good faith sought to make cost-effective acquisitions, it now questions whether the purchases met its expectations and fully justified the costs. It is, of course, not unusual for anyone to "second-guess" a purchase

of any good or service. "Buyer's remorse" is a well-recognized phenomenon based in large part on the fact that a purchase rarely, if ever, meets all initial expectations or desires of the buyer. Even persons who spend extraordinary amounts of time and effort in studying and analyzing proposed purchases often suffer from "buyer's remorse" after actually making the selection and using the product or service in question. El Paso I.S.D. does not feel that its acquisitions violated any Program rules, but nevertheless wishes that additional, extra effort had been made in analyzing and understanding the projects in advance. Such effort might not had lead to a different result [due to outside variables], but should have at least offered a better opportunity to avoid the problems experienced by the district.

Another important "lesson learned" of El Paso I.S.D. involves readiness for the projects. There are two main components of readiness: (a) readiness to manage installation and completion of the projects; and (b) readiness to manage the actual usage of the projects after completion. As a condition to Program participation, a district must essentially certify in the Form 471 that it is ready to and capable of implementing the proposed project(s), specifically:

> 25. The eligible schools and libraries listed in Block 4 of this application have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services.

El Paso I.S.D. believes that its readiness was sufficient to meet that minimum standard. On the other hand, it also feels that even more resources should have been committed by the district to ensure project success.

When it first received notice that a substantial award had been made to it in Year 4 of the Program, El Paso I.S.D. quickly reviewed whether or not it had sufficient staffing to oversee and supervise the installation of the desired projects, wondering whether "it had bit off more than it could chew" [especially since the late award by the SLD left a significantly reduced time period for completion of all the requested projects]. Through re-assignment of staff and new hires [including retention of a program manager designated to oversee day-to-day issues on the project installation], and the extra efforts of existing staff, El Paso I.S.D. was able to devote sufficient resources for that phase of the project. Nevertheless, the district probably initially under-estimated the amount and extent of effort that would be required to monitor and supervise completion of the projects. Even though its commitment was adequate, El Paso I.S.D. also now feels in hindsight that even further commitment of staffing and other resources to the supervision of project installation would have been preferable.

Additionally, as noted above, readiness also concerns the ability of a district to implement the project at the end-user level, in order to gain the full expected benefits thereof. It is important to keep in mind that many eligible projects under the Program [e.g.—new servers and cabling] provide benefits to teachers and students, without necessarily necessitating additional training. On the other hand, other technology projects [whether or not acquired using Program funds] do require a district to invest significant resources of its own in training and related usage issues. For example, without training of teachers in use of a new software program for classroom use, the program may prove to have limited practical benefit. This investment is not just on an administrative level. Indeed, the teachers themselves must invest additional time on their own in developing new lesson plans or materials, or converting old materials to the new system, to take advantage of the new software program. Ideally, the training should be on-going, and incorporate "best practices" learned district-wide. El Paso I.S.D. formerly had technology coordinators at most, if not all, campuses. These persons, among other things, aided and trained teachers on a continuing basis on technology matters. El Paso I.S.D. was somewhat advanced, compared to other school districts, in having such campus-level technology staff. Such training and assistance, though, is generally ineligible for funding under the Program. Unfortunately, due to serious budget concerns, those positions were eliminated before implementation of the Year 4 projects. In retrospect, El Paso I.S.D. feels that, although not necessarily legally required or even the industry-standard, the district should have made budget cuts elsewhere and made provision at the time to re-institute the technology-coordinator program at campuses, in order to take better advantage of classroom-level projects. El Paso I.S.D. believes that project implementation was successful, but feels that there was and is room for improvement which the technology coordinator program could support.

Upon further analysis of its technology acquisitions, whether or not using Program funds, El Paso I.S.D. also believes that additional planning, above and beyond a technology plan, is appropriate for many projects for which Program funding is sought. For instance, a particular network component may satisfy the technology plan, may fulfill the functional needs, may be at a low price, and may work per-

fectly, but still be a poor purchase for a particular district. In isolation, the component may be ideal, but the acquisition needs to be considered in light of the total technology universe at the district and in the community. Ideally, a district should review and analyze, from an engineering perspective and otherwise, whether a proposed project is in fact compatible with all of its existing systems, whether the design of the project actually satisfies discrete technological goals, whether the technological goals fulfill particular educational goals, and whether there is a capacity in the community to support and sustain the project in questions over the long run. This sort of review should permit a district to make more intelligent purchasing decisions. For instance, a new server may be "faster", but is not necessarily better than the existing one if "large capacity" is what the district really requires. A particular software program may meet educational goals, but may be unacceptable if it is not fully compatible with existing hardware systems. Community support is critical; if the locale has no persons capable of operating or supporting a particular project in the future, the sustainability, and thus value, of the project may be called into question.

That sort of study and evaluation would ordinarily require experienced, highly-skilled persons familiar with "cutting-edge" technology issues, with the requisite training and certification in the field of computer or electrical engineering. Ideally, such a review and analysis could be performed in-house by El Paso I.S.D. and other school districts. Unfortunately, that is generally not realistic. In the first place, many locales outside of "hi-tech" communities do not have a sufficient population of such experienced and skilled persons so as to permit a school district to find and retain an adequate number of such persons on its staff. In any event, to the extent a community has such persons available for hire by a school district, a district generally would be unable to pay a market-rate salaries sufficient to attract and retain such persons. Although, like other districts, El Paso I.S.D. has many experienced and skilled employees in its technology department, those persons do not necessarily have the top-flight credentials and experience to handle this sort of additional analysis. Consequently, such services have to be retained from third parties, hopefully third parties who are also vendors of products which may be at issue in the evaluation. Such services can be very expensive. El Paso I.S.D. doubts that many, if any, districts have engaged in such an exhaustive review and analysis before seeking Program funding. Nevertheless, the district feels that such an approach [even if not required by Program rules] would provide substantial benefits to it, and better ensure the right projects for the district are implemented. El Paso I.S.D. is in the process of putting in place a comprehensive engineering and design review of its technology systems, which it would hope to be able to supplement on a periodic basis, in order to better guide its acquisitions of technology in the future [whether or not under the Program].

In a somewhat related vein, El Paso I.S.D. also recognizes that it is important for technology acquisitions, whether or not using Program funds, to be coordinated amongst many departments of the district. For instance, if even a particular product meets the requirements of teachers and other educators, and also is deemed to be a good, compatible product by the technology department, a problem may still exist if the particular schools do not have facilities sufficient to locate and maintain the product. El Paso I.S.D. has encountered such a problem with certain campus-level servers. Specifically, at a few school sites with severe space limitations, servers were placed in janitor closets to reduce noise in classroom areas. Unfortunately, some of those closets did not necessarily have sufficient cooling for ideal server usage. In other cases, they did have sufficient cooling, but the evaporative cooling systems [whereby the air is cooled by the addition of moisture, rather than its deletion as in normal air conditioning; evaporative cooling is common in the desert Southwest among houses, businesses, and schools] unfortunately generated too much moisture for ideal server usage. El Paso I.S.D. incurred additional costs for server support at these limited locations. After extensive review of various costly alternatives, the district is planning to relocate those servers to a centralized location with adequate space, cooling, and ventilation [from which they will continue to serve the same eligible campuses in the same way]. This sort of site-specific, detailed, operational issue is not something that ordinarily would be considered by any school district when making a technology purchase. Nevertheless, El Paso I.S.D. believes such a review and coordination amongst various departments would yield significant benefits. Such a process is difficult to design, establish, and implement, but the district is working towards doing so.

El Paso I.S.D. furthermore enjoys a much better understanding of the true, complete costs of Program participation. As discussed elsewhere in this statement, a district ordinarily must expend much more money than its 10% share in order to implement Program projects. There are many necessary costs that are ineligible for

Program funding, but are vital for the project to succeed. El Paso I.S.D. made a substantial monetary commitment in Year 4 of the Program, above and beyond the awarded Program monies. It believes that such commitment was in excess of many other participating districts. In retrospect, though, El Paso I.S.D. realizes that an even greater district commitment, both initially and continuing over time, is needed to achieve the desired goals and expectations of technology projects.

By way a somewhat different "house" analogy, one may view an award under a Program as a gift of a "shell" of a house, with simply the foundation and framing in place. That is a great gift, but is not a cost-free one. The house only achieves its full value if the recipient of the gift then expends its own resources to add the plumbing, electrical, roofing, HVAC, walls, and other facilities and to furnish the finished house with furniture, fixtures, and appliances. The cost of the work needed to properly implement the gift of the "shell" house would typically be much greater than the value of the gift. In the case at hand, the Program only funds certain items, and to a certain extent. Beyond that, the participating district must make a major commitment of financial, staffing, and other resources to the funded projects, in order to ensure that they fulfill the intended goals.

To be absolutely clear, El Paso I.S.D. does not believe that it violated any laws or Program rules. Nevertheless, using 20/20 hindsight, there are things that El Paso I.S.D. would have like to have done differently with respect to Year 4 of the Program, and Year 5 of the Program to some extent as well. In short, although its efforts were "good enough", the district believes there was room for improvement. Importantly, El Paso I.S.D. has striven to avoid these sorts of problems with respect to subsequent-years participation in the Program. It feels that it handled Year 5 better than Year 4, Year 6 better than Year 5, and Year 7 better than Year 6. El Paso I.S.D. believes Year 8 participation will be even better than the prior years. Honest mistakes can and will be made by any participant in the Program [indeed, by any participant in any federal program of any kind]; on the other hand, El Paso I.S.D. has sought to identify any errors, learn from those errors, correct those errors, and avoid similar errors in the future. For example, El Paso I.S.D. now exclusively or almost exclusively develops specifics for Program projects on its own. It also has developed in-house expertise on Program matters, and has retained an independent E-Rate consultant for assistance [who is not a vendor to El Paso I.S.D. of technology items]. The district also has re-started its technology-coordinator program at campuses. Sustainability of projects without Program funding [which has turned out to be doubtful] is also a primary consideration for El Paso I.S.D. The district also has invested more of its own resources in training and campus assistance on technology matters, to better ensure that monies spent on technology have the desired impact on the education of students. El Paso I.S.D. has a more realistic view of what sort and quantity of projects can be feasibly and efficiently implemented by it in any particular year, considering all of the other necessary ineligible costs, and has therefore substantially revised its Program funding requests.

El Paso I.S.D. believes that many similarly-situated school districts seeking to participate in the Program may experience some or all of such problems, amongst others, and is sharing its "lessons learned" in order to provide guidance to those districts, as well as to aid Congress in its review of the Program as a whole. The primary theme running through these lessons is "additional district commitment". A Program participant, in order to fully enjoy the benefits of Program projects, should make a greater commitment of its own staff, money, and other resources in determining its technology needs, preparing and designing projects, overseeing and supervising project installation, and in ensuring effective implementation of the projects. Though El Paso I.S.D. believes its commitment in these regards was at least legally sufficient, it also now feels that even a greater commitment was and is warranted to ensure project success.

REFORMS WITH THE PROGRAM

Within the last year or so, the FCC has adopted a number of rule changes to the Program and has commenced proceedings to adopt additional rule changes. The SLD in such time period also appears to be much better in making important policies and information available to the public, so that districts can better seek to comply with Program or SLD requirements. These changes are welcomed, and seem to go a long ways towards addressing both the concerns of El Paso I.S.D. expressed above, along with Program problems or abuses that have been reported in certain locations elsewhere in the country.

Nevertheless, El Paso I.S.D. does have some recommendations on further reforms in the Program. The district's reforms focus primarily on issues arising to the experiences of it and similar school districts. Since El Paso I.S.D.'s experience did not

involve fraud or similar conduct [contrary to what may be the situation in other cases addressed by this Committee], the focus is on these other issues.

In the first place, particularly in light of the delays in awards under the Program, it would be preferable for districts to be permitted a complete 12-month period after receipt of the award notice, in which to complete the projects. Alternatively, the period for completion of projects could run for a period of 18 to 24 months after the commencement of the funding year. This additional time would allow for better review and control of project completion.

El Paso I.S.D., not surprisingly, would request that overall funding of the Program be expanded. The Program is basically funded by fees imposed on telecommunication billings, rather than the general revenues of the federal government. Even a slight increase in such fees would result in much greater educational benefits for students throughout this country.

It is also important for Congress to recognize that, under the Program, many technology items are not available for funding. For instance, there may be funding for cabling to classrooms, but not for computers in the classroom. In addition, and very importantly, Program funds generally cannot be used for training of teachers or other district personnel to fully and adequately utilize the equipment funded under the Program, or even to retain personnel specifically assigned to teach the faculty on how to take advantage of the new equipment during instructional exercises. The goal of the Program is to reach the students. Although El Paso I.S.D. strives to use its own funds to bridge the gap between Program-acquired items and the actual instructional effect on students, apparently not all school districts can or will do so. Due to problems that have arisen in the past with the Program, there would likely need to be some limits and restrictions on use of such funding. Nevertheless, if certain training or retention costs for districts in connection with new Program goods were made eligible for E-Rate funding, the benefits to the students from such goods should increase.

Whether from the universal services fees or regular budgeting, El Paso I.S.D. also believes that the FCC and SLD do need additional funding, in order to allow prompter handling of applications, appeals, and even audits. The problems with delays in decision-making are probably best served through additional personnel resources for these agencies.

Of course, the "Lessons Learned" section above also highlights issues that El Paso I.S.D. believes are appropriate for consideration by other Program applicants. Some of those issues perhaps might be the subject of changes in Program rules. By way of example, if an applicant is seeking a major overhaul of its entire computer network, perhaps the Program rules should require, in addition to the technology plan, some sort of engineering analysis to better ensure that the network design is appropriate for the applicant and compatible with its other components.

Incidentally, and as something not directly experienced by it, El Paso I.S.D. also wishes to highlight an area of potential abuse under the Program in the future. There are a number of companies who act as E-Rate consultants. With the complexity and confusion surrounding Program requirements, that sort of expertise is very valuable to applicants and service providers. Some of these E-Rate consultants are very accomplished, reputable, and experienced. Unfortunately, not all necessarily fall in that category. El Paso I.S.D. is concerned that abuses might arise amongst some of these consultants. Although El Paso I.S.D. has not contracted with this second category of consultant, it believes that other districts nationwide have done so on occasion. It is El Paso I.S.D.'s understanding that one or more of such "lesser" consultants may charge fees to their clients on a contingency basis, based upon the amount of the award received from the SLD by such clients. That sort of compensation method could easily lead such consultants to over-estimate what technology requirements are needed for districts and to request much greater funding than actually needed. In other words, one wonders whether some of the complaints lodged against certain vendors under the Program may in the future be applicable to some of such consultants.

El Paso I.S.D. again wishes to point out that the FCC and SLD have already adopted a number of Program reforms and have issued clarifications on many of the "gray areas" of Program rules. Those reforms and clarifications are expected to continue in the future. Since, the regulatory agencies appear to have already addressed or to be in the process of addressing many of the problems with the Program, it is not entirely clear that direct Congressional legislation is needed at this time to address those issues [except with respect to the issue of increased funding].

OVERALL EVALUATION OF THE PROGRAM

El Paso I.S.D. believes that, notwithstanding the problems, the Program has been very successful in bringing much-needed technology to school districts across the country. Such technology has brought great benefits to the students involved. The Program has certainly made allowed El Paso I.S.D. to make great strides in catching up to other, more affluent school districts and providing its students with a fair opportunity to compete and succeed in the real world. To be clear, El Paso I.S.D. has not sought, and has not acquired, technology projects far in advance of other districts. Instead, the Program funding, combined with El Paso I.S.D's own resources, has allowed it to get closer to catching up with a typical school district in the nation.

CONCLUSION

In conclusion, El Paso I.S.D. has greatly appreciated the opportunity to participate in the E-Rate program over the years. Such participation has greatly benefited the students at El Paso I.S.D., giving them a fair opportunity to compete with their peers from other communities.

El Paso I.S.D., like other school districts, also supports efforts to reform problems or abuses with the Program. It regrets any role that it may have unintentionally and unwittingly had with respect to any such problems.

El Paso I.S.D. has acted in good faith, and in what it believed to be a reasonable fashion in compliance with albeit-ambiguous Program rules. El Paso I.S.D. does not believe it did anything illegal, and certainly does not believe there is any basis to justify a recovery against the district. In 20/20 hindsight, of course, there are things that El Paso I.S.D. would likely have done differently.

Mr. Chairman, thank you again for this opportunity to present EPISD's positions and views on the E-Rate Program.

Mr. WALDEN. We appreciate your testimony. Thank you for joining us by video conference today.

Mr. Bohuchot.

TESTIMONY OF RUBEN BOHUCHOT

Mr. BOHUCHOT. One quick statement. On page 3 of the document that I turned in, toward the bottom there is a number $84 million some odd hundred thousand dollars. It should be $86 million. Thank you.

[The prepared statement of Ruben Bohuchot follows:]

Dallas Independent School District – Erate Year 5

In January 2001, the Dallas Independent School District (District) passed a $1.5 Billion Bond Program, which provided the District with sufficient contribution funds for an Erate Year 5 request. Throughout the summer and early fall of 2001 the District met with numerous suppliers of Erate products and services including IBM.

During the course of discussions with IBM, the term "Strategic Technology Partner" was mentioned. Whether by IBM or the District I am unsure, but the possibility of IBM becoming a Strategic Technology Partner with the District was considered.

IBM offered the District a "boilerplate" Request For Proposal (RFP) to help shorten the time to issue an RFP. However, given the compressed time constraints for RFP issuance, review and award, the District chose to work with the Texas Cooperative Purchasing Network (TCPN). TCPN functions as a procurement vehicle for the State of Texas.

TCPN issued a RFP December 20, 2001 for a Strategic Technology Partner. In preparing to issue the RFP, District staff worked with TCPN to assist in developing the criteria for RFP response.

On January 11, 2002, the TCPN announced that IBM was the selected vendor.

Immediately following the selection, IBM began working on the Statements of Work (SOW) for the project with DISD staff. In addition to IBM, Alpha Inc. helped to develop the SOW's. The SOW's were finalized January 17, 2002 in order to meet the timeframe to take to the DISD Board of Trustees for approval. All SOW's were projected based on schools at the 90% level of free and reduced lunch. SOW's were prepared for:

- Network Electronics

- Video Equipment
- Cabling
- Email
- File Servers
- Web Access
- Technology Support

During the review of the SOW's, I questioned the size and scope of the effort being proposed by IBM. I was told that it was okay; "You never get everything you ask for; the SLD always reduces the scope of work." Nevertheless I was concerned and asked IBM to set up a meeting once all the mandatory dates were met to revisit the filings and revise if necessary. I also called George McDonald at the SLD -Schools and Libraries Division (USAC), to let him know my dilemma. I needed more time to further review the filings, but couldn't do so and still meet the application deadline. I informed George that I would review the filings at my first convenience and would let him know the outcome.

Between January 11, 2002 and January 17, 2002, Form 471's were prepared and submitted.

I believe it was early February when IBM, Alpha Inc., Alden Gaw (District Network Director) and I met to discuss reducing the filing for Erate Year 5. This meeting occurred in my office at the time, Room 212, 3700 Ross Ave. Dallas, TX 75214. As a direct result of that meeting, the District's pre-discount total went from $216,030,996.00 to $129,185,228.00 - a difference of $84,845,768.00 for the project. This is a savings of $78.161,191.20 for the SLD and $8,684,576.80 for the District.

I believe we began receiving questions from the SLD relative to our Erate Year 5 filing on or about March 1, 2002. I also believe questions continued until June 12, 2002.

The District was notified March 19, 2003 that we were denied Erate Year 5 funding for most of our filings. Upon receiving notification, IBM contacted the District to encourage the District to protest the denial. I felt it was in the best interest of the District not to appeal

During the period we were waiting for a response to the Erate Year 5 filing, and at the suggestion of George McDonald, the District issued an entirely new RFP for Erate Year 6. We took the opportunity to bundle Erate Year 5's scope of work along with Erate Year 6 and file as Erate Year 6. The result was a reduced filing amount for Erate Year 6 with a greater scope of work than that filed for just Erate Year 5 with IBM. I believe the appeal process for Erate Year 5 would have taken longer than it did to process and get approval of the Erate Year 6 application.

In conclusion, it was fortuitous that the IBM submittal did not make it through the process. It ended up saving the District and SLD funding.

I would like to thank the USAC, the SLD and all of the great people that work in those organizations; in a particular, Mr. George McDonald. We appreciate the magnitude of their work and all that they do to help school districts.

Submitted By:

September 17, 2004

Ruben Bohuchot
3701 So. Lamar St.
Dallas, TX 75215

Date

Notary

9-17-04

Date

JANICE GOEBEL LLOYD NOTARY PUBLIC STATE OF TEXAS EXPIRES 09-09-2006

Dallas Independent School District

Erate Funding Commitments

1998 – Current

E-Rate Funding Commitments

Funding Year: 1998 (Year 1 1998-1999)

Applicant DALLAS INDEP SCHOOL DISTRICT

Service	*Address*	*City*	*Zip*	*$ Amount*	*Discount (%)*
INTERNAL CONNECTIONS	3700 ROSS AVENUE	DALLAS	75204	$12,167,336.00	80
TELCOMM SERVICES	3700 ROSS AVENUE	DALLAS	75204	$105,100.80	80
Sum				***$12,272,436.80***	

Funding Year: 1999 (Year 2 1999-2000)

Applicant DALLAS INDEP SCHOOL DISTRICT

Service	*Address*	*City*	*Zip*	*$ Amount*	*Wave*	*Discount (%)*
INTERNAL CONNECTIONS	3700 ROSS AVENUE	DALLAS	75204	$1,781,698.40	15	80
INTERNAL CONNECTIONS	3700 ROSS AVENUE	DALLAS	75204	$4,274,673.20	8	82
TELCOMM SERVICES	3700 ROSS AVENUE	DALLAS	75204	$48,000.00	15	80
TELCOMM SERVICES	3700 ROSS AVENUE	DALLAS	75204	$98,400.00	15	82
Sum				***$6,202,771.60***		

Funding Year: 2000 (Year 3 2000-2001)

Applicant DALLAS INDEP SCHOOL DISTRICT

Service	*Address*	*City*	*Zip*	*$ Amount*	*Wave*	*Discount (%)*
TELCOMM SERVICES	3700 ROSS AVE BOX 37	DALLAS	75204	$1,680,193.39	29P	79
TELCOMM SERVICES	3700 ROSS AVENUE BOX 37	DALLAS	75204	$47,400.00	29E	79
Sum				***$1,727,593.39***		

Funding Year: 2001 (Year 4 2001-2002)

Applicant ***DALLAS INDEPENDENT SCHOOL DISTRICT***

Service	*Address*	*City*	*Zip*	*$ Amount*	*Wave*	*Discount (%)*
TELCOMM SERVICES	3700 ROSS AVENUE	DALLAS	75204	$1,118,578.66	7	79
TELCOMM SERVICES	3700 ROSS AVENUE	DALLAS	75204	$1,475,277.60	15E	79
Sum				***$2,593,856.26***		

Funding Year: 2002 (Year 5 2002-2003)

Applicant ***DALLAS INDEP SCHOOL DISTRICT***

Service	*Address*	*City*	*Zip*	*$ Amount*	*Wave*	*Discount (%)*
TELCOMM SERVICES	3700 ROSS AVE	DALLAS	75204	$3,239,420.28	24	83
Sum				***$3,239,420.28***		

Funding Year: 2003 (Year 6 2003-2004)

Applicant ***DALLAS INDEP SCHOOL DISTRICT***

Service	*Address*	*City*	*Zip*	*$ Amount*	*Wave*	*Discount (%)*
INTERNAL CONNECTIONS	3700 ROSS AVE	DALLAS	75204	$21,718,124.55	25	80
INTERNAL CONNECTIONS	3700 ROSS AVE	DALLAS	75204	$97,636,713.95	25	90
TELCOMM SERVICES	3700 ROSS AVE	DALLAS	75204	$3,483,285.02	25	84
Sum				***$122,838,123.52***		

Funding Year: 2004 (Year 7 2004-2005)

"In Process"

Mr. WALDEN. And that is your opening statement, sir? All right. Thank you.

Ms. Foster, welcome. Do you have an opening statement?

TESTIMONY OF SHARON FOSTER

Ms. FOSTER. Yes, thank you.

Mr. Chairman, thank you for the opportunity to speak to you this morning, well, this afternoon now. My name is Sharon Foster. I am currently the Executive Director of Technology Information Systems for the Ysleta Independent School District in El Paso, Texas.

During my career as an educator, I have had experience in virtually every aspect of classroom and administrative work. I have been a classroom teacher, campus administrator, technology trainer, director of instructional technology, and currently the Executive Director of Technology Information Systems.

That position requires me to oversee instructional technology, administrative information systems, and telecommunication networks. All of my experience is with large urban districts with student populations of over 45,000 students.

I worked in the El Pas Independent School District, a neighboring district of YISD, for 15 years, the last eight of which where I was the head of the Instructional Technology Department. Part of my responsibility in that position was that of the E-Rate coordinator.

I served as E-Rate coordinator for the first 3 years of the E-Rate program. As the E-Rate coordinator, I met with other technology and telecommunications staff to identify projects for which EPISD would seek E-Rate funding.

In addition to determining the appropriateness and scope of the E-Rate projects, I would make sure that all application requirements were met in a timely manner and addressed in the request for additional information from the schools and libraries division of the Federal Communications Commission.

In August 2000, I left EPISD in order to join YISD as an employee. My departure was not related to the E-Rate program in EPISD. I left EPISD prior to the bidding process for the year 4 submission.

At YISD, I assumed the position of Director of Instructional Technology. As Director, I worked with YISD's E-Rate coordinator, Richard Duncan, and other staff members to determine future E-Rate projects for the District in years 4, 5, 6, and 7.

In other words, I was involved in YISD's participation in the E-Rate program, but not principally responsible for such participation.

I recently was named the Executive Director for Technology and Information Systems at Ysleta and now, once again, I am responsible for overseeing the E-Rate projects. The most significant improvement that E-Rate has enabled to be achieved in my experience as been the improvement to school district infrastructure with both EPISD and Ysleta.

As done by most school districts across the nation, EPISD and YISD use the initial E-Rate projects to improve the speed and reliability of voice and data networks. E-Rate projects provide the basics for each district's network which supports virtually any type

of technology based instruction, including high speed Internet access to all classrooms, distance learning systems, video to classrooms, integrated phone networks, and other improved network functionality.

E-Rate funding has allowed for acquisitions by school districts of network electronics that insured high speed access and for the cabling and distributed networks across every instructional area. Most school districts would never have been able to afford the cabling and network initiatives that E-Rate funded.

The E-Rate program has been the mechanism that many large under-funded school districts have used to improve telecommunication infrastructure. School districts have discovered that virtually all instructional initiatives require one essential element, namely a high speed reliable telecommunications network. One of the great successes of the E-Rate program is that it has been able to help school districts enormously in developing those networks. With that said there are several issues in the administration of the program that have created obstacles to districts and planning projects, providing continuity and managing the projects from year to year.

Technology projects are linear, and in the case of most school districts, are planned in phased in implementations. Planning for those projects can be done with estimated E-Rate funding from 1 year to the next. But, so far, the experience of most districts has been that funding is nearly always delayed.

For example, currently, YISD is managing proposed projects for years 5, 6, and 7 of the E-Rate program. Some of those funds have been awarded. Some have not. In some cases decisions on initial and/or continued funding have not always been clear.

In planning a multi-year project it is extremely difficult to provide assurances to campuses when it is unclear how fast implementation can proceed based on unknown levels of funding and/or indefinite schedules for release of funds. The delays have proven frustrating to districts.

In the case of YISD, we have tried, and for the large part succeeded in applying for funds based on correct interpretation of E-Rate funding guidelines. There have been instances when we have had to provide additional information, explanation to the SLD for guidance and in virtually every case, our position has been determined to be correct.

In the very few instances when our interpretation of funding or use guidelines have not been upheld, our interpretation of E-Rate guidelines were made in good faith, reasonably based, and in a line with how other school districts have interpreted those same guidelines.

It has been difficult and has taken a tremendous staff effort to maintain our understanding of funding guidelines. In particular, knowledge of eligible products, eligible locations, and how you determine in what instances campuses are not eligible for E-Rate funding have been at best less than straightforward.

We understand the need for E-Rate's guidelines to evolve and for the guidelines to change in some instances, but that makes the district's efforts, especially in multi-year project planning or long-term network development, extremely difficult.

One increasing common issue with E-Rate program among school districts is the best use of funds to provide for the appropriate network design and development that both support instructional needs of the particular district and that allow the district to take advantage of the support, the network, in the future.

The E-Rate funds have been used overwhelmingly for the upgrade of the networks, and though the funds cannot be used for specific instructional purposes, the distinction between hardware and software that is exclusively instructional is difficult to maintain.

Districts are using networks to support Web based projects, administrative information management systems, submission of state mandated reports, and E-mail systems that are important to both administrative and instructional functions, and it's difficult if not impossible to segregate.

In my view, what districts and E-Rate administrators have found most difficult about the use of E-Rate funds is managing multi-year projects, implementing large projects without adequate support resources, insuring that teachers' skill sets match the upgrades in the network capability and instructional potential, and dealing with the changes in regulations and application of rules. I have found with both EPISD and YISD that one of the essential elements in the use of E-Rate funds is insuring that the projects supported by each funding are successful.

However, without a support mechanism for the teachers who will be using the technology, including training, staff development, and campus-based technology support services it is virtually impossible for districts to implement technology projects that would be successful and use the full potential of the networks that E-Rate has funded.

That would be the task of all school districts, including YISD, that use E-Rate funds. In many instances districts have been criticized for failing to capitalize fully on the improvements afforded through E-Rate. In my experience some of that lost capacity has been almost predictable.

In the first years of the E-Rate program, districts for the most part applied for only what they could implement. It is my personal opinion that in the following years of the E-Rate program, when the vendors began to have more of a role in the application process and when further ambiguities arose regarding the scope and extent of the E-Rate program, many school districts across the country may have asked for too much too quickly and were not in the best position to fully support the technology projects for which funding was awarded.

Such districts likely had the needs for that technology and justifiably requested E-Rate funding for those projects, but in hindsight perhaps should have been less ambitious in order to better assure fully effective implementation.

As school districts have more skillfully used E-Rate funds and have developed support staff for the technology infrastructure made possible by the E-Rate program, I believe it is more critical for districts to insure that technology infrastructure and capability is driven by instructional need; that teacher technology skill sets are established through staff development and training; and that

campus based technology support is provided. In my opinion, technology projects fail when there is no identified instructional need for the technology; when teachers are asked to use technology that does not support their teaching outcomes; when teachers are asked to use technology without sufficient training; or when campuses are required to support technology without adequate resources.

Although the E-Rate program has enabled vastly improved networks for school districts, the use of those networks has been limited by the lack of funding for the training in campus-based support that would help better insure full success. In some instances school districts have had to abandon technology projects or have implemented projects that did not provide the results that were hoped for due to training, staff development, and support issues.

For school districts like El Paso in Ysleta, the E-Rate program has been a successful program. It does, however, require some adjustments on the part of both the school district, in general, and the E-Rate program.

However, without the funding provided by E-Rate program, there is no question that many of the instructional initiatives and some of the instructional programs in progress in these school districts would not have been possible. Such funding has significantly benefited the instructional process at each of these districts.

YISD is not a wealthy district. Its free and reduced lunch average is 86 percent. In general, YISD has a low economic profile. The 2000 profile selected economic characteristics issued by the United States Census Bureau estimates the per capital income for 1999 in El Paso, Texas was $14,388 per year.

It should be noted that YISD's boundaries do not include the areas generally recognized as being the most affluent in El Paso. So the figures for the census tracks within YISD boundaries would be probably lower.

For comparison, according to the same survey, the annual per capita income for 1999 in the United States was $21,587 and for the State of Texas it was $19,000, and for the Washington, D.C. area it was $28,659. As one can readily see, YISD students are in poor financial circumstances and in great need of the benefits from the projects that can be completed using E-Rate funding.

The primary impact on YISD of E-Rate funding that is no longer available is that instructional advantages available through a typical telecommunications network would in all likelihood no longer be available.

Mr. WALDEN. Ms. Foster, how much longer do you have in your testimony?

Ms. FOSTER. Thirty seconds.

Mr. WALDEN. You are about 11 minutes into. Okay.

Ms. FOSTER. I am sorry.

Well, I will just tell you, to close it up, if the E-Rate program should go away, it would significantly damage our instructional program and as access for our students.

Thank you.

[The prepared statement of Sharon Foster follows:

PREPARED STATEMENT OF SHARON FOSTER, EXECUTIVE DIRECTOR, TECHNOLOGY INFORMATION SYSTEMS, YSLETA INDEPENDENT SCHOOL DISTRICT

BACKGROUND

Mr. Chairman, thank you for the opportunity to speak to you this morning. My name is Sharon Foster. I am currently the Executive Director of Technology Information Systems of the Ysleta Independent School District ("YISD") in El Paso, Texas. I have been asked to provide this statement for this hearing of the House Energy and Commerce Committee's Subcommittee on Oversight and Investigations entitled "Problems with the E-Rate Program: Waste, Fraud, and Abuse Concerns in the Wiring of Our Nation's Schools to Internet". A copy of my curriculum vitae is attached to this statement.

During my career as an educator, I have had experience in virtually every aspect of classroom and administrative work. I have been a classroom teacher, campus administrator, technology trainer, Director of Instructional Technology and acting Executive Director for Technology Information Systems. I am currently the Executive Director of Technology Information Systems for YISD in El Paso, Texas, a position that requires me to oversee instructional technology, administrative information systems, and telecommunication networks.

All of my experience is with large urban districts with student populations over 45,000. I worked in El Paso Independent School District ("EPISD"), a neighboring district of YISD, for 15 years, the last eight of which were as head of the Instructional Technology Department. Part of my responsibility in that position was that of E-Rate Coordinator. I served as E-Rate Coordinator for years 1 through 3 of the E-Rate Program. As E-rate Coordinator, I met with other technology and telecommunication staff to identify projects for which EPISD would seek E-Rate funding. In addition to determining the appropriateness and scope of the E-Rate projects, I would make sure that all application requirements were met in a timely manner and addressed any requests for additional information from the Schools and Libraries Division of the Federal Communications Commission (the "SLD").

In August of 2000, I left EPISD in order to join YISD an as employee. My departure was not related to the E-Rate program at EPISD. I left EPISD prior to the bidding process for year 4 of the E-Rate Program. At YISD, I assumed the position of Director of Instructional Technology. As Director, I worked with YISD's E-Rate coordinator, Richard Duncan, and other staff members to determine future E-Rate projects for the District (years 4, 5, 6, and 7). In other words, I was involved in YISD's participation in the E-Rate program, but am not principally responsible for such participation.

I recently was named Executive Director for Technology and Information Systems at Ysleta and now, am once in again responsible for over-seeing E-Rate projects.

WHAT E-RATE HAS DONE FOR DISTRICTS

The most significant improvement that E-Rate has enabled to be achieved in my experience has been the improvement to school district infrastructure, with both EPISD and YISD. As done by most school districts across the nation, EPISD and YISD used the initial E-Rate projects to improve the speed and reliability of voice and data networks. E-Rate projects provided the basics for each district's network, which supports virtually any type of technology-based instruction, including high-speed internet access to all classrooms, distance learning systems, video to classrooms, integrated phone networks [such as phone service to every classroom], and other improved network functions. Very early on in the E-Rate program, dial-up or other non-broadband Internet access was identified as inadequate for technology-based instruction in the classroom. E-Rate funding has allowed for acquisitions by school districts of network electronics that ensured high-speed access, and for the cabling that distributed network access to every instructional area.

Most school districts would never have been able to afford the cabling and network initiatives that E-Rate funded. Moreover, without the E-Rate funds and the flexibility in their use, most school districts would never have been able to develop the in-house expertise for such extensive cabling projects. YISD explored the feasibility of training and using district-employees as cablers for the network cabling, and its turnover costs in employees alone would have been prohibitive. Skilled network technicians were able to seek employment in virtually locale, and YISD would have lost employees as to whom it had spent a great deal of money to train. E-Rate funding allowed poor school districts to cable schools on an aggressive schedule, using vendors specializing in that work, and thereby allowing them to try to catch up to more affluent districts in terms of computer networking.

An example of the way that the E-Rate program allowed fully functioning networks was in the implementation of the YISD telephone network. While YISD could not use E-Rate funds for some of the network costs [for example, the purchase of the individual phone sets], E-Rate funds did allow YISD to purchase the PBX and switching equipment, and funded the cabling to the classroom. YISD could never have afforded the integrated phone system it now has without the use of E-Rate funds. That telephone system has benefited teachers and students at the district.

Similarly, the E-Rate program has allowed school districts to upgrade network electronics on reasonable schedules. Indeed, for districts like YISD, they have been able to manage the upgrades and use the network routers, servers and other electronics in very effective ways. Cabling upgrades, for example from 10-Base T cabling to cabling with more capability and reliability, have been possible via E-Rate funding. These upgrades have provided benefits to faculty and students, and aided the instructional process.

CONCERNS AND PROBLEMS WITH E-RATE PROGRAM

The E-Rate program has been the mechanism that many large, under-funded school districts have used to improve telecommunication infrastructure. School districts have discovered that virtually all instructional initiatives require one essential element: namely, a high-speed, reliable telecommunications network. One of the great successes of the E-Rate program is that it has been able to help school districts enormously in developing those networks.

There are several issues in the administration of the program that have created obstacles to districts in planning projects, providing continuity, and managing the projects from year to year.

Technology projects are linear, and in the case of most school districts, are planned in phased implementations. Planning for those projects can be done with estimated E-Rate funding from one year to the next, but so far the experience of most districts has been that funding is nearly always delayed. For example, currently, YISD is managing proposed projects for years 5, 6, and 7 of the E-Rate program. Some of those funds have been awarded, some have not, and in some cases the decisions on initial and/or continued funding have not always been clear. In planning a multi-year project, it is extremely difficult to provide assurances to campuses when it is unclear how fast implementation can proceed, based on unknown levels of funding and/or indefinite schedules for release of funds. The delays have proven frustrating to districts.

In the case of YISD, we have tried and for the largest part succeeded in applying for funds based on correct interpretation of E-Rate funding guidelines. There have been instances when we have had to provide additional information and explanation to the SLD for guidance, and in virtually every case our position has been determined to be correct. In the very few instances when our interpretation of funding or use guidelines have not been upheld, our interpretation of E-Rate guidelines were made in good faith, reasonably-based, and in line with how other school districts have interpreted the guidelines.

It has been difficult, and has taken a tremendous staff effort, to maintain our understanding of funding guidelines. In particular, knowledge of eligible products, eligible locations, and how to determine in what instances campuses are not eligible for E-Rate funding have been, at best, less than straightforward. We understand the need for E-Rate's guidelines to evolve, and for guidelines to change in some instances, but that makes the district's efforts, especially in multi-year project planning or long-term network development, extremely difficult. School districts are generally also faced with equity issues; in other words, ensuring that all campuses, including those that are not E-Rate eligible, receive fair and equitable treatment by the district in terms of technology acquisition and funding.

One increasing-common issue with the E-Rate program amongst school districts is the best use of funds to provide for the appropriate network design and development that both supports instructional needs of the particular district and that allows the district to take advantage of and support the network in the future. The E-Rate funds have been used overwhelmingly for the upgrade of networks, and though the funds cannot be used for specific instructional purposes, the distinction between hardware and software that is exclusively instructional is difficult to maintain. Districts are using networks to support web-based projects, administrative information management systems, submission of state-mandated reports, and e-mail systems that are important to both administrative and instructional functions, and difficult if not impossible to segregate.

In my view, what districts and E-Rate administrators have found most difficult about the use of E-Rate funds is managing multi-year projects, implementing large

projects without adequate support resources, ensuring that teacher skill-sets match the upgrades in network capabilities and instructional potential, and dealing with the changes in regulations and application of rules. I have found, with both EPISD and YISD, that one of the essential elements in the use of E-Rate funds is ensuring that the projects supported by such funding are successful. However, without a support mechanism for the teachers who will be using the technology, including training and staff development, and campus-based technology support services, it is virtually impossible for districts to implement technology projects that will be successful and use to full potential the networks that E-Rate funds have enabled. That will be the task of all school districts, including YISD, that use E-Rate funds.

In many instances, districts have been criticized for failing to capitalize fully on the improvements afforded through E-Rate. In my experience, some of that lost capacity has been almost predictable. In the first years of the E-Rate program, districts for the most part, applied for only what they could implement. It is my personal opinion that, in the following years of E-Rate program, when vendors began to have more of a role in the application process and when further ambiguities arose regarding the scope and extent of the E-Rate program, many school districts across the country may have asked for too much too quickly, and were not in the best position to fully support the technology projects for which funding was awarded. Such districts likely had the needs for that technology, and justifiably requested E-Rate funding for those projects, but in hindsight perhaps should have been less ambitious in order to better assure fully effective implementation.

As school districts have more skillfully used E-Rate funds, and have developed support staff for the technology infrastructure made possible by the E-Rate program, I believe it is more critical for districts to ensure that technology infrastructure and capability is driven by instructional need, that teacher technology skill-sets are established through staff development and training, and that campus-based technology support is provided. In my opinion, technology projects fail when there is no identified instructional need for the technology, when teachers are asked to use technology that does that support their teaching outcomes, when teachers are asked to use technology without sufficient training, or when campuses are required to support technology without adequate resources.

Although the E-Rate program has enabled vastly improved networks for school districts, the use of those networks has been limited by the lack of funding for the training and campus-based support that would help better ensure full success. In some instances, school districts have had to abandon technology projects, or have implemented projects that did not provide the results that were hoped for, due to training, staff development, and support issues. One specific example was the initial success in EPISD technology projects when when Campus Technology Coordinators (CTC) were part of all technology planning and implementations. When funding for CTC's was no longer available, several projects decreased in usefulness because of the difficulty individual campuses had in making sure teachers were adequately supported and that equipment was always working and available for use. In short, staff development for technology use must meet instructional needs, and funding for staff development, like the funding for network and technology projects, must be on a consistent, realistic, multi-year basis.

For school districts like EPISD and YISD, the E-Rate program has been a successful program. It does, however, require some adjustments, on the part of both school districts in general and the E-Rate program. However, without the funding from provided by the E-Rate program, there is no question that many of the instructional initiatives and some of the instructional progress in these schools districts would not have been possible. Such funding has significantly benefited the instructional process at such districts.

CLOSING REMARKS

YISD is not a wealthy district; its "free and reduced lunch" average is 86%. In general, YISD has a low economic profile. The 2000 Profile of Selected Economic Characteristics, issued by the United States Census Bureau, estimates the per capita income for 1999 in the El Paso, Texas at $14,388 per year. It should be noted that YISD's boundaries do not include the areas generally recognized as being the most affluent of El Paso, so the figures for census tracts within YISD's boundaries would probably be lower. For comparison, according to the same survey, the annual per capita income for 1999 in the United States was $21,587, for the State of Texas was $19,617, and for the Washington D.C. was $28,659. As one can readily see, YISD students are in poor financial circumstances, and in great need of the benefits from the projects that can be completed using E-Rate funding.

The primary impact to YISD if E-Rate funding is no longer available is that instructional advantages available through a typical telecommunications network would, in all likelihood, no longer be available. It would be virtually impossible for YISD to fund the maintenance of the network, and within several years we would have a much smaller access to Internet resources, limited student e-mail availability, and virtually no services for teachers in the way of voice or data network capability. In such a case, our goal would be to continue to offer the best services we could to teachers and students, but, realistically, that level of network service would be very small in comparison to the current levels. Ultimately, the instructional variety and opportunity would be decreased for the students of YISD. I think that would be true for other poor districts throughout the country.

Thank you again for providing me with this opportunity to present testimony.

Mr. WALDEN. Thank you. We appreciate your comments. They were very much on point.

Ms. Glogovac, welcome.

TESTIMONY OF PAULA GLOGOVAC

Ms. GLOGOVAC. Thank you, Mr. Chairman, and subcommittee members. I appreciate the opportunity to speak with you today.

My name is Paula Glogovac. I was a contractor for Sun Microsystems, where I provided E-Rate program management resources to the company.

My role as a program manager was to review the E-Rate program rules for applications and service providers and to make sure those rules were communicated to the Sun sales and marketing team. I was the knowledge base for any questions regarding the E-Rate program to the Sun sales and marketing team, and starting in year 6 of the E-Rate program, I reviewed 470's that were actually posted on USAC's Website, looking for internal connection needs, and would try to make initial contact with the applicant or their suggested contacts to qualify them for Sun opportunities.

I did this throughout the entire United States. I supported Sun's internal accounts receivables, payables, and order entry groups in processing all the paper work. I was the single point of contact for Sun with USAC and the SLD for paper work process and any issues Sun might have had.

My experience with E-Rate programs started at the end of year 1 when I was a full-time Sun employee covering the K-12 educational market in support of the Sun sales team across the United States. I consistently ran the program while at Sun for the next 2 years as a full-time employee.

I managed Sun's involvement in the E-Rate program as a contractor for the last 5 years. I attended the E-Rate service provider training in San Diego that was provided by USAC and the SLD, and I might add it was very beneficial. I also participated in the bi-weekly service provider conference calls on a regular basis to stay current with the program, which also allowed me to ask questions that were relevant at the time.

What I have seen with this program is that in many cases it does work for schools and libraries that have effectively learned how to adhere to the rules, understand the process and value the much needed support. In several cases, service providers are not following the program rules, as I have experienced myself.

For example, some have been developing the 470's for small schools and capturing the sales along with it, without the knowledge of this being against the program rules by the applicant. They

prey upon applicants that have no knowledge of the program but are told that this service provider can get them money for computers. I saw it a lot.

This happened in year 6 across the United States with small charter schools, religious schools, and special schools. Some consultants actually blocked service providers from responding to the 470's that are posted by not allowing them to get appropriate technical information to size products and services for what the account needs or by stating that the applicant is going to use a State contract to purchase from.

Even if you are on the State contract, they are choosing what they want versus having a service provider provide them with information on what is available to them. Some service providers are providing ineligible products and services knowing that they are not eligible under the program rules, as I will get into in just a few moments. This makes the applicant feel like they are getting a better solution and leaves those of us who are adhering to the rules not an option.

I also see applicants making several program rule violations. Some applicants will prerelease their RFPs prior to the posting of the 470's and then will close the RFP response prior to the 28-day waiting window.

Some will require a mandatory prebid conference attendance prior to or very shortly after the 470 being posted. This makes it almost impossible for a service provider to respond to these applications unless they have had prior notification of the RFP from the applicant.

Some applicants will release an RFP with ineligible products or services or with clear violations of the program rules. In one case just this year, a consortium applicant required a 3-percent kickback on all sales. In another case, an applicant's RFP was for global positioning products and services.

In other cases, I have seen on the 470 forms and in RFPs applicants specifying specific brand names of products and not allowing anyone else to respond. In making contact with some of these applicants, I have heard that they are already working with a vendor, that they are only buying off their State contract, that they are using the same vendor as last year, that they already have enough responses or they do not even return my fax, phone calls, or E-mails even though that is the suggested method of contacting these vendors or applicants.

But not much is publicly stated about what the investigations have found through all of these contacts that I have made and publicized to the whistleblower hotline. I am still seeing some of the same activities happening today as I did in year 6.

Today when I see a possible violation, I actually try to tell the applicant what the violation is and recommend that they call the 800 number at USAC to get their take on it and ask what they can do about it. I do not know how successful that is. It is anyone's guess.

In one case I was brought in by the Sun sales team to work with them on the E-Rate Project that they had been selected for. It was an E-mail solution. In this case, as I started to get more involved in it, I had serious questions about the integrity of what was going

on with this applicant and the originally awarded service provider. The applicant was El Paso Independent School District, and the selected service provider on the original 471 form was IBM.

I had been given a Statement of Work that was provided to Sun by IBM and had El Paso ISD's name on it. I reviewed the Statement of Work, and it had several issues. They included ineligible products and services and had products that did not pertain to just an E-mail solution.

I sent an E-mail off to the service provider E-mail Alias, asking if these products and services were eligible, and the response back in most cases was no.

We had a conference call with El Paso ISD and IBM representatives discussing these issues, and IBM's response was that we should take this off line to discuss it, that they had FCC lawyers that handled this kind of stuff. In my opinion, saying that in front of the applicant gives them the belief that IBM is behind this 100 percent and I would buy into that as an applicant, as well.

I did take this off line with Don Riddick from IBM. Don told me not to worry about that, that they would take care of it. I was to fill out the service substitution form, and that would take care of everything. He did not appear to be concerned about the products and services that were being offered in the Statement of Work that were not eligible.

In trying to fill out the service substitution form, I realized that IBM did not include their E-mail software solution on any line item. I informed the Sun sales team, and I was instructed to call Woodrow Lee from IBM.

When I spoke with Mr. Lee, he informed me that they did not include it because their E-Rate consultant had advised them not to. In the Statement of Work it was listed as Lotus Notes, and in my E-mail to the service provider Alias, I specifically asked if Lotus Notes was eligible, and they said no.

I responded back to Mr. Lee that they must have known it was not eligible and did not include it on their itemized list on the 471. Again, he said no, but their E-Rate consultant had advised them not to.

If that was the case, I did not know how I could substitute out E-mail software solution for one that did not exist on their original 471. IBM agreed that Sun should also leave off their software solution.

I believe that it would not be acceptable since the original 470 products and services must match the 471, and in turn, the service substitution form also needed to match the products and services selected.

This was confirmed to me by SLD in another E-mail. Sun has substantial discounts that they provide to educational institutions. In this case, since we were asked by the applicant to work through IBM on this project, we were not able to pass along those educational discounts.

We did offer to go direct with El Paso ISD, and the price would be substantially lower for El Paso ISD. El Paso ISD again directed Sun to work through IBM. IBM also stated to Sun that we needed to work through them.

We did, however, provide our best possible pricing to IBM, considering that we were providing all of the products and installation services, but IBM did not like our price. It was unclear to Sun why IBM required us to provide them with a price that allowed them to take approximately 51 percent of the overall cost for the project, as they specified on the original 471 form, with Sun doing most of the work, not to mention that Sun was providing an E-mail solution that could cover the entire school district versus the 5,000 accounts that were mentioned in IBM's Statement of Work.

When Sun would not come down in our price to IBM, IBM told Sun they were going to rebid the project and release an RFP that would be due in approximately 1 day. It was clear to the Sun sales team that even though they had been selected amongst three vendors, one of which was IBM, that Sun would not get the business unless IBM had made a significant amount of money off the E-mail solution.

In closing today, I would like to say that the intent of the E-Rate program is very good one. Service providers and applicants that do not feel ownership in working within the program rules and guidelines should not jeopardize those applicants and service providers that do adhere to the program rules and value what the program does for them.

There needs to be more extreme measures taken against the waste, fraud, and abuse, and there are tools out there that can help. There are some proficient sets of tools for service providers and applicants to help them with the E-Rate process. These tools could be modified to assist USAC and the SLD in providing a traceable method for service providers and applicants to work together. Without the traceable contact between service providers and applicants, it will be very difficult to monitor the waste, fraud, and abuse.

These tools could also help in identifying patterns of consultants and service providers that might be working together, as well as service providers and applicants. Exposing the program violations and the offenders in a public forum is key to fixing some of these problems. It is also important for those that report waste, fraud, and abuse to get some sort of notification of what happened with the reporting. This would encourage more reporting of these issues when they see results from it versus nothing for years.

By eliminating the waste, fraud, and abuse, all of our schools and libraries will have an opportunity to take full advantage of what this program has to offer.

Thank you.

[The prepared statement of Paula Glogovac follows:]

PREPARED STATEMENT OF PAULA GLOGOVAC

My name is Paula Glogovac. I was a contractor for Sun Microsystems, Inc., where I provided E-rate Program Management Resources to the Company. My role as a Program Manager was to review the E-Rate Program Rules for Applicants and Services Providers and to make sure those Rules were communicated to the Sun Sales and Marketing Team. I was the knowledge base for any questions regarding the E-Rate Program to the Sun Sales and Marketing Team. Starting in Year 6 of the E-Rate Program, I reviewed 470's as they were posted, looking for Internal Connections needs and would try to make initial contact with the applicant or their suggested contact(s) to qualify them for Sun opportunities. I did this throughout the entire United States. I supported Sun's internal accounts receivables, payables, and

order entry groups in processing paperwork. I was the single point of contact for Sun with USAC and the SLD for paperwork processing and issues.

My experience with the E-Rate Program started at the end of Year 1, when I was a full-time Sun Employee covering the K-12 Educational Market in support of the Sun Sales Team in the United States. I consistently ran the program while at Sun for the next 2 years. I managed Sun's involvement in the E-rate Program as a contractor for the last 5 years. I attended the E-rate Service Provider Training in San Diego that was provided by USAC & SLD. I also participated in the Bi-Weekly Service Provider Conference Calls on a regular basis to stay current with the program.

What I have seen with this program is that in many cases it does work for Schools and Libraries that have effectively learned how to adhere to the rules, understand the process and value the much needed support. In several cases, service providers are not following the program rules. For example; some have been developing the 470's for small schools and capturing the sales along with it, without the knowledge of this being against the program rules, by the applicant. They prey upon applicants that have no knowledge of the program, but are told that this service provider can get them money for computers. This happened in Year 6, across the United States with small charter schools, religious schools and special schools. Some consultants actually block service providers from responding to the 470's that are posted by not allowing them to get appropriate technical information to size products and services for what the account needs, or by stating that the applicant is going to use a State Contract to purchase from. Even if you are on the state contract, they are choosing what they want vs. having a service provider provide them with information on what's available to them. Some service providers are providing ineligible products and services, knowing that they are not eligible under the program rules, as I will get into in just a few moments. This makes the applicant feel like they are getting a better solution.

I also see Applicants making several program rule violations. Some applicants will pre-release their RFP's prior to the posting of the 470's and will then close the RFP response prior to the 28-day waiting window. Some will require a mandatory prebid conference attendance prior to or very shortly after the 470 being posted. This makes it almost impossible for a Service Provider to respond to these applications, unless they had notification of the RFP from the applicant. Some applicants will release an RFP with ineligible products or services or with clear violations of the program rules. In one case, just this year a consortia applicant required a 3% kickback on all sales. In another case, an applicants RFP was for Global Positioning products and services. In other cases, I have seen on the 470 forms and in RFP's applicants specifying specific brand names of products and not allowing anyone else to respond. In making contact with some applicants, I have heard that they are already working with a vendor, that they are only buying off their state contract, that they are using their same vendor as last year, that they already have enough responses or they don't return my faxes, phone calls or e-mails even though that is their specified method of contacting them. Very little has been highly publicized about these issues, until just recently. But not much is publicly stated about what the investigations have found once you do report these violations. I'm still seeing some of the same activities happening today as I did in Year 6. Today when I see a possible violation, I actually try to tell the applicant what the violation is and recommend to them to call the 800 number with USAC to get USAC's take on whether it's a violation or not and what can be done about it. I don't know how successful that is.

In one case, I was brought in by the Sun Sales Team to work with them on an E-rate Project that they had been selected for. It was an E-mail solution. In this case as I started to get more involved in it, I had serious questions about the integrity of what was going on with this applicant and the originally awarded service provider. The applicant was El Paso Independent School District and the selected Service Provider on the original 471 forms was I.B.M. (International Business Machines). I had been given a Statement of Work that was provided to Sun by IBM and had El Paso ISD's name on it. (See Reference #1) I reviewed the Statement of Work and it had several issues. They included ineligible products and services and had products that didn't pertain to just an E-mail Solution. I sent an e-mail off to the Service Provider E-mail Alias asking if these products and services were eligible and the response back was NO. (See Reference #2) We had a conference call with El Paso ISD and I.B.M. representatives discussing these issues and I.B.M.'s response was that we should take this offline to discuss, but they had FCC lawyers that handled this kind of stuff. I did take this offline with Don Riddick from IBM. Don told me not to worry about it that they would take care of it. I was to fill out the service substitution form and that would take care of everything. He didn't appear to be concerned about the products and services that were being offered in the Statement of Work that were not eligible. In trying to fill out the service substi-

tution form, I realized that IBM didn't include their e-mail software solution on any line item. (See Reference #3) I informed the Sun Sales Team and I was instructed to call Woodrow Lee from I.B.M. When I spoke with Mr. Lee, he informed me that they didn't include it on there because their E-rate Consultant had advised them not to. In the Statement of Work it was listed as Lotus Notes and in my e-mail to the Service Provider Alias, I specifically asked if Lotus Notes was eligible and they said NO. I responded back to Mr. Lee that they must have known it wasn't eligible and didn't include it on their itemized list on the 471. Again, he said no, but their E-rate Consultant had advised them not to. If that was the case, I didn't know how I could substitute our e-mail software solution for one that didn't exist on their original 471. IBM agreed that Sun should also leave off their software solution. I believed that it would not be acceptable, since the original 470 products and services must match the 471 and in turn the service substitution form also needed to match the products and services selected. This was confirmed to me by the SLD in another e-mail. Sun has substantial discounts that they provided to Educational Institutions. In this case, since we were asked by the applicant to work through I.B.M. on this project, we were not able to pass along those Educational discounts. We did offer to go direct with El Paso ISD and the price would be substantially lower for El Paso ISD. El Paso ISD again directed Sun to work through IBM. IBM also stated to Sun that we needed to work through them. (See Reference # 4) We did however, provide our best possible pricing to IBM considering that we were providing all the products and installation services, but IBM didn't like our price. It was unclear to Sun why IBM required us to provide them with a price that allowed them to take approximately 51% of the overall cost for the project, as they specified on the original 471 form, with Sun doing most of the work. (See Reference #5) Not to mention, that Sun was providing an e-mail solution that could cover the entire school district vs. the 5,000 accounts that were mentioned in IBM's Statement of Work. When Sun wouldn't come down in our price to IBM, IBM told Sun they were going to rebid the project and release an RFP that would be due in approximately 1 day. (See Reference #6) It was clear to the Sun Sales Team that even though they had been selected amongst three vendors, one of which was IBM, that Sun would not get the business unless IBM had made a significant amount of money off of the E-mail Solution.

In closing, I would like to say that the intent of the E-Rate Program is a very good one. Service Providers and Applicants that don't feel ownership in working within the program rules and guidelines, should not jeopardize those Applicants and Service Providers that do adhere to the programs rules and value what the program does for them. There needs to be more extreme measures taken against the waste, fraud and abuse and there are tools out there that can help. There are some proficient sets of tools for Service Providers and Applicants to help them with the E-rate Process. These tools could be modified to assist USAC & the SLD in providing a traceable method for service providers and applicants to work together. Without that traceable contact between service providers and applicants, it will be very difficult to monitor the waste, fraud and abuse. These tools could also help in identifying patterns of consultants and services providers that might be working together, as well as service providers and applicants. Exposing the program violations and the offenders in a public forum is key to fixing some of these problems. It's also important for those that report waste, fraud and abuse to get some sort of notification of what happened with their reporting. This would encourage more reporting of these issues when they see results from it. By eliminating the waste, fraud, and abuse, all of our schools and libraries will have an opportunity to take full advantage of what this program has to offer.

Reference 1

IBM

STATEMENT OF WORK FOR

EL PASO INDEPENDENT SCHOOL DISTRICT

FOR

EMAIL

JANUARY 18, 2001

STATEMENT OF WORK

Statement of Work - Introduction

This section describes the Services that IBM will provide under the terms of the IBM Customer Agreement (ICA) and this Statement of Work (SOW). Specifically, IBM will provide El Paso Independent School District (El Paso ISD) with a set of customized services. The details of the Services to be provided are described in this section. These Services will be provided at existing and newly built El Paso ISD locations in El Paso, Texas.

This Statement of Work is comprised of the following sections:

1.0 Assumptions

2.0 IBM Responsibilities

3.0 El Paso ISD Responsibilities

4.0 Deliverable Materials/Documentation

5.0 Project Schedule

6.0 Completion Criteria

7.0 Charges

8.0 Project Warranty

The following are incorporated in and made part of this Statement of Work:

Appendix A, Deliverable Guidelines

Appendix B, Project Change Control Procedure

Appendix C, Equipment and Operational Software

Changes to this Statement of Work will be processed in accordance with the procedure described in Appendix B, "Project Change Control Procedure." The investigation and the implementation of changes may result in modifications to the Schedule, Charges or other terms of this Statement of Work.

This proposal will expire December 31, 2001 unless this date is extended by IBM in writing.

1.0 Assumptions

This Statement of Work and IBM's estimates to perform the Statement of Work are based on the following assumptions. Deviations that arise during the proposed project will be managed through the procedure described in Appendix B, "Project Change Control Procedure."

1. El Paso ISD personnel who will be assigned to this project will have the technical skills necessary to participate in the project.
2. El Paso ISD IS and user personnel will be available as described in 3.0, "El Paso ISD Responsibilities."
3. Work under this Statement of Work will be performed at sites within the El Paso ISD and will not require travel to sites outside district boundaries.
4. Only those components specified in this SOW are to be supplied and installed by IBM. Additional components can be specified via the Project Change Control Procedure detailed in Appendix B.
5. Work under this contract will be performed during school hours (7:00 a.m. and 4:00 p.m) unless otherwise mutually agreed upon by IBM and El Paso ISD.
6. Work to be performed at specific sites will be mutually agreed to and scheduled with IBM and El Paso ISD at least ten (10) business days prior to the commencement of the work.
7. IBM and our subcontractor will have unlimited, unrestricted access to all buildings. Any security requirements inclusive of guards, security codes/access codes, lighting and internal access and/or central monitoring are the responsibility of El Paso ISD.
8. IBM will be provided with access badges, keys and combinations or escorts to perform the work described in this SOW. Any delay encountered due to unavailability of buildings may result in additional charges being incurred by El Paso ISD. If this situation arises, it will be addressed via the Project Change Control Procedure detailed in Appendix B.
9. It is understood by El Paso ISD and IBM that this SOW is based upon the start date provided below. In the event this date is not achieved, IBM reserves the right to extend the projected project completion date on a working day for working day basis, and as mutually agreed upon by IBM and El Paso ISD via the Project Change Control Procedure detailed in Appendix B.
10. It is understood by El Paso ISD and IBM that this SOW and the pricing associated with this SOW are based upon the award of the total proposed SOW described in this document. The work described in this SOW will be performed during one continuous phase.
11. El Paso ISD will provide remote access to the EPISD network for maintenance support.

Exclusions from this Statement of Work

1. IBM is not responsible under this SOW for the identification or correction of any existing safety and/or code violations, whether federal, state or local, including but not limited to fire and electrical codes. If IBM should discover any safety and/or code violations during the course of this project, IBM will notify El Paso ISD of the problem. IBM will not be

required to proceed with its work under this SOW until El Paso ISD remedies such violation, nor will IBM be responsible for delays to the work caused by such violation.

2. On-going network operations and Coordination are not included in this Statement of Work. IBM would be pleased to respond to El Paso ISD for the addition of these services.

3. Relocation and testing of existing computers, telecommunications, or CCTV equipment(s) or systems are not required.

4. Removal of existing telecommunications or CCTV cabling is not required.

5. No data Media Converters are being supplied by this Statement of Work.

6. Installation of any hardware, software, and network electronics not specified in this SOW (e.g., workstations, servers, printers, routers, DSUs/CSUs, repeaters, modulators) is the responsibility of El Paso ISD.

7. It is understood by El Paso ISD and IBM that all matters relating to physical construction of new wiring closets/equipment locations and retrofits for existing wiring closets/equipment locations, (general construction buildout, HVAC, electrical, lighting, construction permits) is the responsibility of El Paso ISD.

It is agreed that all non e-rate eligible products and services are excluded from this agreement and is included in a separate contract.

2.0 IBM Responsibilities

2.1 Project Coordination

Task Description: The objective of this task is to provide technical direction, maintain project control and to establish a framework for project communications, reporting, procedural, and contractual activity for the IBM tasks described. This task consists of the following activities:

- •Establish and coordinate IBM efforts with the El Paso ISD Project Coordinator.
- •Develop and maintain work plans for the performance of IBM responsibilities.
- •Administer the Change Control Procedures.
- •Maintain communications and review progress with the El Paso ISD Project Coordinator and team members during status meetings.
- •Prepare and submit written Monthly Status Reports of IBM activities to the El Paso ISD Project Coordinator.

Completion Criteria: This task will be considered complete when the other tasks identified under IBM Responsibilities have been completed and the Final Status Report has been delivered to the El Paso ISD Project Coordinator.

Deliverables/Documentation: Monthly Status Reports.

2.2 Email Installation Planning

Description: To perform planning and assessment for email deployment.

The major sub tasks are:

1. Define roles & responsibilities for email deployment.

2. Develop distributed email architecture.

3.Develop standard district-wide naming conventions.

4.Specify email server sizing & configuration.

5.Develop minimum client specifications for desktop hardware, software, and Operating systems.

6.All standard desktop computers should meet or exceed the following specifications:

Windows 95/98 computer, 266 MHz Pentium processor, 64MB ram, 300MB free disk space

Power Macintosh 6500, 64MB RAM, 300MB free disk space, System 8.1

Develop email migration strategy for users with current email accounts.

Develop phased implementation & deployment plan.

Assist in development of district-wide email Policies & Procedures.

Assist in developing standards for connectivity, security, and access from outside the firewall.

Completion Criteria: This task will be considered complete when IBM delivers report of Email planning summary to the EPISD Project Coordinatorr.

Deliverable/Documentation: Email Planning Summary Report

Assumptions:

1.Desktop Hardware or software upgrades, where required will be performed under separate contract.

2.Full and timely cooperation and participation of EPISD staff.

2.3 Email Deployment

Description: To install e-mail servers and operational software.

The major sub tasks are:

1.Install and configure central email server cluster.

2.Install & configure DNS server.

3.Install & configure IBM I servers. (2)with free firewall software.

4.Test, and performance-tune servers and mail routing performance.

5.Configure, and test for connectivity with external mail providers.

6.Develop end-user training curriculum and materials, and train trainers.

7.Generate district-wide email directory through data import from existing data sources.

8.Register new email accounts and set up mail boxes (3000).

1.

Completion Criteria: This task will be considered complete when Email servers have been configured and 3000 email accounts have been enabled.

Deliverable: Documentation Email server configuration document and TCO Software license certificates.

Assumptions:

Includes: Installation -- 200 person-days of on-site client installation.

2.4 Email Follow-up

Description: To perform maintenance, support and Phase 2 planning.

The major sub tasks are:

- Provide email support to the District and end users with up to four-hour on-site response during working hours.
- Provide on-going email system maintenance, including software updates.
- Prepare documentation for subsequent phases of email deployment.

Completion Criteria: This task will be considered complete when the contract period of twelve (12) months is completed and the plan for subsequent phases of email deployment is delivered to the EPISD Project Coordinator.

Deliverable/Documentation: Plan for subsequent phases of email deployment.

Assumptions:

Full and timely cooperation and participation of EPISD staff.

2.5 Web Maintenance

Description:

Overview

A successful Web strategy in the K-12 education arena includes an effective Web presence in the following three areas:

Public District Web site

Private District Intranet site

Campus web sites for internal and external access

In order to maintain uniform standards of appearance, navigation and access, we propose to implement a common template-based structure for all three areas of Web presence. IBM will provide a palette of standard Web site components that can be combined in various combinations to produce harmonious Internet and Intranet sites.

Content Filtering is a needed service for controlling web access to inappropriate content. We will provide CyberPatrol content filtering on two servers to allow content filtering of Internet access. Regular updates will be automatically made to the list of restricted sites

under separate contract. This is a subscription-based service with one-year subscription for 25,000 PCs with access to the Internet included.

Summary of Services

IBM will provide skilled technical staff to provide services in the following areas of activity:

The major sub tasks are:

1.Web Planning

a.Establish and facilitate a District Web Policy steering committee.

b.Designate Web roles & responsibilities, both internal & external.

c.Assist in developing District-wide Web Policies & Procedures.

d.Develop a comprehensive Web implementation strategy, including input from stakeholders throughout the district.

e.Develop a phased Web implementation plan.

f.Develop graphic & layout design standards, and navigation standards.

g.Develop security, access and authentication standards.

h.Develop a strategy for distributed Web maintenance, including template-based design and designated Content Managers.

i.Specify, provide and configure servers for all Web applications.

2.Web Deployment

a.Provide a toolkit of reusable Web component templates. Some examples include:

i. Web Shell for page-based content
ii. Calendar of Events
iii. Staff Directory
iv. Search Interface
v. Policies & Procedures
vi. Moderated Discussion
vii. Newsletter & News Bulletin
viii. FAQ / Q&A
ix. Knowledgebase
x. Training Schedules / Sign-up
xi. Cafeteria Menus

xii. Lotus QuickPlace for building instant places for ad hoc working groups, including as examples: class projects, teams, clubs, etc.

b.Implement Web security, including integration with Firewall Server.

c.Provide Content Manager Training.

d.Provide Web administrator staff training (included 7 days classroom training for up to 6 administrators).

e.Provide site development services to bring up initial sites.

3.Web Maintenance Follow-up

a.Provide site maintenance & user support with up to four hour on-site response during working hours.

Consulting b.Conduct research & planning for future Intranet integration with internal systems: online form entry, etc.

Completion Criteria: This task will be considered complete when the Web Planning Summary Report is delivered to the EPISD Project Coordinator.

Deliverable/Documentation: Web Planning Summary Report

2.6 Web Applications

Description: The Domino platform supplied by IBM provides a rich and robust application platform for many types of document-based or workflow-enabled applications. By limiting a Domino implementation solely to email, users get the benefit of Domino's excellent mail services, but they will likely not experience the types of added-value services that the Domino platform can so powerfully provide. We will provide and install three Domino applications as pilots for three selected groups within the district. These applications will provide users with an experience of the types of rich applications available for Domino, they will provide immediate productivity enhancements, and they will serve as a basis for later expansion, customization and wider deployment of these and other Domino-based applications.

IBM will provide skilled technical staff to provide pilot application solutions in the following area.

Email Desktop Applications

a.Identify a pilot group (limited to 150 users) for the District.

b.Install and configure this application suite.

c.Provide user and administrator training for this application.

d.Provide limited application tailoring and customization.

e.Provide on-going application and user support with up to four-hour on-site response during working hours.

Completion Criteria: This task will be considered complete when aforementioned applications are installed and configured and pilot users and administrators have been trained.

Deliverables/Documentation: Software license agreements for Email.

Assumptions:

EPISD will assist in identifying enthusiastic participants for the pilot groups.

Email Hardware & Operational Software

Hardware

(1 ea) IBM Netfinity server for DNS & SameTime services IBM Netfinity 6000R (2) 700MHz Pentium III Xeon, 2660MB RAM (2) 9.1GB HD, Redundant power supply

(1 ea) IBM Netfinity server for Web Intranet & Applications server (inside the firewall) IBM Netfinity 6000R (2) 700MHz Pentium III Xeon, 2660MB RAM (3) 9.1GB HD, Redundant power supply

N.E.

(1 ea) IBM Netfinity server for Web services IBM Netfinity 6000R (2) 700MHz Pentium III Xeon, 2660MB RAM (3) 9.1GB HD, Redundant power supply

Rack, UPS, keyboard and monitor for above.

what's this?

Email Software

Email Communications Total Campus Option (TCO); IT Factory Business Suite license for 150 users on single server.

(2) WebSphere Edge Server software (for load balancing to Content Filtering servers, to be installed on RS/6000 B50s not included in this SOW)

?

3.0 El Paso ISD Responsibilities

The responsibilities listed in this section are in addition to those responsibilities specified in the IBM Customer Agreement and are to be provided at no charge to IBM. IBM's performance is predicated upon the following responsibilities being fulfilled by El Paso ISD.

3.1 General Responsibilities

- Assign a Project Coordinator to represent El Paso ISD regarding this contract.
- Provide full access to all El Paso ISD school locations as required under this SOW.
- Communicate with appropriate El Paso ISD personnel at your location of the work to take place and obtain their approval if necessary.
- Provide floor diagrams of affected campus locations in 8 1/2 x 11 hardcopy format.
- Provide all the necessary closet and/or equipment areas for location of network electronics, racks and cabinets as described within this SOW.
- Provide all necessary power and environmental support to accommodate all IBM and El Paso ISD provided equipment.
- Inform IBM of any change in network requirements in accordance with the IBM Project Change Control Procedure, Appendix B.
- Provide required conduit and trenching within the project schedule timeframe should El Paso ISD require IBM to utilize buried or underground conduit that does not currently exist.

3.2 Project Coordination

Prior to the start of this Statement of Work under the Agreement, El Paso ISD will designate a person, called the El Paso ISD Project Coordinator, to whom IBM communications will be addressed and who has the authority to act for El Paso ISD in all aspects of the contract.

The El Paso ISD Project Coordinator's responsibilities include:

- Provide liaison between all project participants.
- Manage the Project Change Control Procedure for El Paso ISD.
- Attend project status meetings.
- Obtain and provide information, data, decisions and approvals, within three working days of IBM's request unless EPISD and IBM agree to an extended response time.
- Help resolve project issues and escalate issues within the EPISD organization, as necessary.

3.3 Space, Facilities and Utilities

Provide installation facilities for IBM provided equipment. El Paso ISD is responsible for space allocation, HVAC and electrical considerations. El Paso ISD is responsible for providing power, light and water necessary in performance of this project.

3.4 Security and Laws

El Paso ISD will identify and make the interpretation of any applicable federal, state, and local laws, regulations and statutes to see that the services provided by IBM comply.

4.0 Deliverables/Documentation

The following items will be delivered to El Paso ISD under this Statement of Work. See Appendix A, "Deliverable Guidelines" for a description of each deliverable. Deliverable materials are Type II; there are no Type I deliverable materials.

- •Status Report
- •Email Planning Summary Report
- •Email server configuration documentation and TCO Software license certificates
- •Plan for subsequent phases of email deployment.
- •Web Planning Summary Report

consulting? consulting?

5.0 Schedule

5.1 Project Dates

- •Start Date - July 1, 2001.
- •End Date - June 30, 2002

5.2 Project Delays

IBM will not be responsible for delays or additional requirements imposed by any government agencies or unforeseen conditions such as delays in the progress of the project by your acts or neglect or the acts or neglect of your employees or separate contractors employed by you, by changes ordered in the project not caused by the fault of IBM, by labor disputes, fire, unusual delays in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties or other causes beyond IBM's control or by another cause which you and IBM agree is justifiable, the contract time shall be reasonably extended and the charges adjusted, if necessary, by Change Authorization.

6.0 Completion Criteria

IBM shall have fulfilled its obligations under this Statement of Work when any one of the following occurs:

- •IBM accomplishes the tasks described in section 2.0, "IBM Responsibilities."
- •El Paso ISD terminates the Project in accordance with the provisions of the IBM Customer Agreement.
- •The End Date for the contract is reached.

7.0 Charges

TOTAL CHARGES: **$3,591,600**

This price does not include the charges for:

- Items involving, but not limited to tests, inspections, concealed or unknown conditions or other unanticipated events beyond our control.
- Increases in the Work due to plan checks or field inspections by building or planning department. In addition to the charge described above, you agree to pay us for any additional charges resulting from changes to this project scope, when approved via the Project Change Control Procedure detailed in Appendix B. IBM will submit invoices per the payment schedule as stated in Section 7.1.

7.1 Payments Schedule

IBM will invoice EPISD monthly for the services provided. Invoices are payable within 30 days of receipt by the El Paso ISD Accounts Payable Department.

8.0 Project Warranty

IBM warrants to the Owner that materials and equipment furnished under this Agreement will be new and that Work will be of good quality, free from improper workmanship and defective materials in conformance to applicable drawings and specifications.

IBM does not guarantee or warrant, either express or implied, the materials used in workmanship of supplies, materials, equipment or machinery manufactured by third parties and furnished and installed under this Agreement. IBM shall endeavor to obtain from all vendors and suppliers and assign to Owner the customary warranties and guaranties of such vendors and suppliers with respect thereto. IBM shall render reasonable assistance to Owner when requested in order to enable the Owner to enforce such warranties and guaranties by third party manufacturers and suppliers.

There are no other warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

Appendix A

Deliverables/Documentation Guidelines

A.1 Monthly Status Reports

Purpose: IBM will provide Status Reports monthly during the project to describe the activities which took place during that period. Significant accomplishments, milestones and problems will be described.

Delivery: One (1) hard copy will be delivered to the EPISD Project Coordinator within five (5) working days following the reporting period.

Content: The report will consist of the following, as appropriate:

- •Activities performed during the reporting period
- •Activities planned for the next reporting period
- •Project change control summary
- •Problems, concerns, and recommendations

A.2 Email Planning Summary Report

Purpose: IBM will provide the Email Planning Summary Report at the completion of the Email Installation Planning task to summarize the results of the planning for Email installation.

Delivery: One (1) hard copy will be delivered to the EPISD Project Coordinator within five (5) working days following the reporting period.

A.3 Email Server Configuration Documentation and TCO Software license certificates

Purpose: IBM will provide these Deliverables/Documentation upon completion of the Email Deployment task to describe the activities which took place during that period.

Delivery: One (1) hard copy of the Email Server Configuration Documentation along with the TCO Software license certificates will be delivered to the EPISD Project Coordinator within five (5) working days following the reporting period.

A.4 Plan for Subsequent Phases of Email Deployment

Purpose: IBM will provide this documentation at the completion of the Email Follow up task.

Delivery: One (1) hard copy will be delivered to the EPISD Project Coordinator within five (5) working days following the reporting period.

Content: The report will consist of the plan for ongoing email deployment.

A.5 Web Planning Summary Report

Purpose: IBM will provide this report at the completion of the Web Maintenance Follow up task.

Delivery: One (1) hard copy will be delivered to the EPISD Project Coordinator within five (5) working days following the reporting period.

Appendix B

Project Change Control Procedure

When both of us agree to a change in this Statement of Work, a written description of the agreed change (called a "Change Authorization") will be prepared, which both parties must sign. The Change Authorization will describe the change, the rationale for the change, and specify any change in the charges, schedule or other terms. Depending on the extent and complexity of the requested changes, IBM may charge for the effort required to analyze it. When charges are necessary in order to analyze a change, IBM will provide a written estimate and begin the analysis on written authorization. The terms of a mutually agreed upon Change Authorization will prevail over those of this Statement of Work or any previous Change Authorization.

Appendix C

Equipment:

IBM will provide the following internal connections equipment and associated documentation in accordance with the terms and conditions of this SOW:

Hardware

(1 ea) IBM Netfinity server for DNS & SameTime services IBM Netfinity 6000R (2) 700MHz Pentium III Xeon, 2660MB RAM (2) 9.1GB HD, Redundant power supply

(1 ea) IBM Netfinity server for Web Intranet & Applications server (inside the firewall) IBM Netfinity 6000R (2) 700MHz Pentium III Xeon, 2660MB RAM (3) 9.1GB HD, Redundant power supply

(1 ea) IBM Netfinity server for Web services (outside the firewall) IBM Netfinity 6000R (2) 700MHz Pentium III Xeon, 2660MB RAM (3) 9.1GB HD, Redundant power supply

IBM will supply the following software and associated documentation in accordance with the terms and conditions of this SOW :

Email Software

? Lotus Communications Total Campus Option (TCO) for Notes/Domino licensing (based on total 5,300 FTE's)

N.E. Lotus Secure Home Access TCO licensing for parent and student access from home (based on total 5,300 FTE's)

N.E. Lotus QuickPlace Collaboration TCO licensing for real-time communication and application sharing (includes SameTime) (based on total 5,300 FTE's)

N.E. Licensing for pilot installations of Lotus Domino.Doc and Lotus LearningSpace Forum

N.E. IT Factory Business Suite license for 150 users on single server.

Email Hardware and Software

7026-H80	RS/6000 Enterprise Server Model H80	1
	1.44MB 3.5-in Diskette Drive	1
	Integrated SCSI-2 F/W Adapter	1
	Integrated Ultra2 SCSI Adapter	1
	Integrated Ethernet Adapter	1
0009	Final Light Manufacture	1
2624	32x Speed CD-ROM	1
2830	POWER GXT130P Graphics Adapter (PCI)	1
2968	10/100 Mbps Ethernet PCI Adapter	1
2975	10/100/1000 Base-T Ethernet PCI Adapter	1
3027	9.1 GB 10K RPM Ultra SCSI Disk Drive	2
3142	Remote I/O Cable - 3m	2
4075	Memory Board, 16-position	1
4119	512 MB (2x256MB) SDRAM DIMMs	4
5204	4-Way RS64 III 450 MHz Processor Card, 4MB L2 Cache	1
5992	System Control and Initialization Cable	1
6132	CEC to Primary I/O Drawer Power Control Cable, 3m	1
6159	12GB/24GB 4mm Tape Drive	1
6204	Universal Ultra SCSI Differential Adapter	1
6324	Primary I/O Drawer, 5 EIA	1
6540	IPL Disk Mounting Hardware, Cables, Terminator	1
7305	AAP Preinstall - SDF Ship	1
9172	AC Power Specify	1
9300	Language - English (US)	1

7014-T42	Enterprise Rack - 42 EIA	1
0128	Content : 7026-H80 (5 EIA)	1
0175	Content: 7316-TF1 (3 EIA)	1
0176	Content : FC 6324 (5 EIA)	1
0183	Content : 9910-A30 (5 EIA)	1
6081	Front Trim Kit for 2.0m Rack, Black	1
6086	Suite Attach Kit for 2.0m Rack, Black	1
6098	Side Panel for 1.8 or 2.0m Rack, Black	2
9171	Power Distribution Unit, Side-Mount, 1 Phase	1
9300	Language - English (US)	1
9800	Rack Power Cord - US/Canada	1

7316-TF1	Flat Panel Color Monitor (T54A)	1
0002	Light Manufacturing Order Indicator	1
4242	6-foot Extender Cable for Displays	1
6050	Space Saver 2 Keyboard - US English	1
9900	4m Power Cord- US/Canada	1

9910-A30 APC 5000VA Smart-UPS Rack-Mount 1

Product	Description	Qty
5765-C34	AIX Version 4	1
4061	AIX 4.3	1
7305	Preinstall Final Light Manufacture Indicator	1
9001	Asset Registration	1
5692-AIX	System Software	1
0598	AIX Welcome Center	1
0838	AIX 4.3 Update CD	1
0857	AIX 4.3	1
0859	Preinstall AIX 4.3 Server Bundle	1
0860	AIX 4.3 Bonus Pack - Non Export.	1
1004	CD-ROM Process Charge	1
2924	English	1
3410	CD-ROM	1
5924	AIX 4.3 PII - English	1
7305	Preinstall Final Light Manufacture Indicator	1
9001	Asset Registration	1

Product	Description	Qty
7026-M80	RS/6000 Enterprise Server Model M80	1
	1.44MB 3.5-in Diskette Drive	1
	Integrated SCSI-2 F/W Adapter	1
	Integrated Ultra2 SCSI Adapter	1
	Integrated Ethernet Adapter	1
0009	Final Light Manufacture	1
2624	32x Speed CD-ROM	1
2830	POWER GXT130P Graphics Adapter (PCI)	1
2968	10/100 Mbps Ethernet PCI Adapter	1
2975	10/100/1000 Base-T Ethernet PCI Adapter	1
3027	9.1 GB 10K RPM Ultra SCSI Disk Drive	2
3142	Remote I/O Cable - 3m	2
4073	Memory Board, 32-position	1
4133	1024 MB Memory (8x128MB DIMMs)	2
5200	2-Way RS64 III 500MHz Processor Card, 4MB L2 Cache	1
5992	System Control and Initialization Cable	1
6132	CEC to Primary I/O Drawer Power Control Cable, 3m	1
6196	76A Processor Power Regulator	1
6205	PCI Dual Channel Ultra2 SCSI Adapter	1
6230	Advanced SerialRAID Plus Adapter	1
6235	32 MB Fast-Write Cache Option Card	1
6283	Redundant AC Power Supply, I/O Drawer,	1

595W

6284	Redundant AC Power Supply, CEC, 1100W	1
6324	Primary I/O Drawer, 5 EIA	1
6540	IPL Disk Mounting Hardware, Cables, Terminator	1
7305	AAP Preinstall - SDF Ship	1
9172	AC Power Specify	1
9300	Language - English (US)	1

3580-L11	Ultrium External Drive	1
8001	Ultrium Data Cartridge	4
8002	Ultrium Cleaning Cartridge	1
9600	Attached to RS/6000 System	1
9703	2.5m VHDCI to HD68 SCSI Cable	1
9800	2.7m Power Cord 125V, 15A - U.S./Canada	1

7014-T42	Enterprise Rack - 42 EIA	1
0129	Content : 7026-M80 (8 EIA)	2
0156	Content : 7133-D40 (4 EIA)	1
0176	Content : FC 6324 (5 EIA)	2
0183	Content : 9910-A30 (5 EIA)	1
6081	Front Trim Kit for 2.0m Rack, Black	1
6086	Suite Attach Kit for 2.0m Rack, Black	1
6098	Side Panel for 1.8 or 2.0m Rack, Black	2
6171	Additional Power Distribution Unit, Side-Mount, 1 Phase	1
9171	Power Distribution Unit, Side-Mount, 1 Phase	1
9300	Language - English (US)	1
9800	Rack Power Cord - US/Canada	1

7133-D40	Advanced SSA Disk Subsystem (Rack-Mounted)	1
0987	Rochester Integration	1
8022	50/60Hz AC, 300 VDC Power Supplies	1
8031	Raven Black Drawer Cover	1
8518	One 10K/18.2GB Advanced Disk Drive Module	16
8802	2.5m Advanced SSA Cable	2
8805	5m Advanced SSA Cable	4
9300	Language - English (US)	1

9910-A30	APC 5000VA Smart-UPS Rack-Mount	1

Product	Description	Qty
5765-C34	AIX Version 4	1
4061	AIX 4.3	1
7305	Preinstall Final Light Manufacture Indicator	1
9001	Asset Registration	1
5692-AIX	System Software	1
0598	AIX Welcome Center	1
0838	AIX 4.3 Update CD	1
0857	AIX 4.3	1
0859	Preinstall AIX 4.3 Server Bundle	1
0860	AIX 4.3 Bonus Pack - Non Export.	1
1004	CD-ROM Process Charge	1
2924	English	1
3410	CD-ROM	1
5924	AIX 4.3 PII - English	1
7305	Preinstall Final Light Manufacture Indicator	1
9001	Asset Registration	1

Product	Description	Qty
7026-M80	RS/6000 Enterprise Server Model M80	1
	1.44MB 3.5-in Diskette Drive	1
	Integrated SCSI-2 F/W Adapter	1
	Integrated Ultra2 SCSI Adapter	1
	Integrated Ethernet Adapter	1
2624	32x Speed CD-ROM	1
2830	POWER GXT130P Graphics Adapter (PCI)	1
2968	10/100 Mbps Ethernet PCI Adapter	1
2975	10/100/1000 Base-T Ethernet PCI Adapter	1
3027	9.1 GB 10K RPM Ultra SCSI Disk Drive	2
3142	Remote I/O Cable - 3m	2
4073	Memory Board, 32-position	1
4133	1024 MB Memory (8x128MB DIMMs)	2
5005	Preinstall	1
5200	2-Way RS64 III 500MHz Processor Card, 4MB L2 Cache	1
5992	System Control and Initialization Cable	1
6132	CEC to Primary I/O Drawer Power Control Cable, 3m	1
6196	76A Processor Power Regulator	1
6230	Advanced SerialRAID Plus Adapter	1
6235	32 MB Fast-Write Cache Option Card	1
6283	Redundant AC Power Supply, I/O Drawer,	1

	595W	
6284	Redundant AC Power Supply, CEC, 1100W	1
6324	Primary I/O Drawer, 5 EIA	1
6540	IPL Disk Mounting Hardware, Cables, Terminator	1
9172	AC Power Specify	1
9300	Language - English (US)	1

Product License	Description	Qty
5765-C34	AIX Version 4	1
4061	AIX 4.3	1
5005	Preinstall	1
9001	Asset Registration	1
5692-AIX	System Software	1
0598	AIX Welcome Center	1
0838	AIX 4.3 Update CD	1
0857	AIX 4.3	1
0859	Preinstall AIX 4.3 Server Bundle	1
0860	AIX 4.3 Bonus Pack - Non Export.	1
1004	CD-ROM Process Charge	1
2924	English	1
3410	CD-ROM	1
5005	Preinstall	1
5924	AIX 4.3 PII - English	1
9001	Asset Registration	1

Product	Description	Qty
7046-B50	RS/6000 Model B50	4
	375 MHz 604e PowerPC Processor	4
	1.44MB 3.5-in Diskette Drive	4
	Integrated Ultra SCSI Adapter	4
	Integrated Ethernet Adapter	4
	Standard Mounting Rails	4
2624	32x Speed CD-ROM Drive	4
2830	POWER GXT130P Graphics Adapter (PCI)	4
3112	9.1 GB Ultra SCSI Disk	8
3752	Service Package	4
4169	256 MB SDRAM DIMM, 168 Pin	16
4951	4-port 10/100 Mbps Ethernet Adapter	4
5005	Preinstall	4
9300	Language - English (US)	4
9911	Rack Power Cord - ALL IBM Racks, 4m	4

Product	Description	Qty
5765-C34	AIX Version 4	4
4061	AIX 4.3	4
5005	Preinstall	4
9001	Asset Registration	4
5692-AIX	System Software	4
0598	AIX Welcome Center	4
0838	AIX 4.3 Update CD	4
0857	AIX 4.3	4
0859	Preinstall AIX 4.3 Server Bundle	4
0860	AIX 4.3 Bonus Pack - Non Export.	4
1004	CD-ROM Process Charge	4
2924	English	4
3410	CD-ROM	4
5005	Preinstall	4
5924	AIX 4.3 PII - English	4
9001	Asset Registration	4

Product	Description	Qty
9467445	8-port Console Server Selector Switch	1

Additional Services

Product	Description	Qty
HW/INTG	Hardware and Software Integration Standard load of UNIX operating sys, Memory,Storage devices, I/O adapters, Device drivers and load device.	1

Product Covered:
7026-H80, 7316-TF1, 7026-M80 X 2,
7133-D40, 7014-T42 X 2, 7046-B50 x 4
9910-A30 X 2, All System OS

EXECUTED at El Paso, Texas on the day and year first above mentioned:

IBM	EL PASO INDEPENDENT SCHOOL DISTRICT
Don Kaiser	Yinuo Du
Principal	Executive Director
IBM Global Services	Technology and Information Systems
Houston, Texas	El Paso, Texas
Date	Date

Reference 2

From: serviceprovider
To: P. Glogovac
Date: 4/3/2002 2:30:05 PM
Subject: RE: Several Questions about Eligible/Ineligible Products/Services, etc.

Paula: Here are our answers:

1. If a 470 form for internal connections stated that it had an RFP for the products and services and that was awarded to a specific vendor, can that vendor then put out to bid the products and services in that award to them, for a lesser amount and bill the full amount of the award to the customer and to the program? Can the customer request that the vendor put out to bid the products and services they originally awarded to the vendor on the 471 and allow them to bid on the products and services as well?
(The answer to these questions would be governed by state and local procurement laws. Usually there are provisions under state and local procurement laws pertaining to prime contractors and subcontractors and whether those subcontractors must be identified. I am not sure that I understand your last question; if the vendor has "won the bid" what was that "win" based on, if the goods and services are still going out to bid. The basic question to answer is whether the applicant had a legally binding relationship with the vendor (service provider) BEFORE the Form 471 was filed. If the answer is no (i.e., that another service provider could "win the bid" for the goods and services), then I think the application could fail because the applicant violated program rules.)

2. Is project coordination covered as an eligible service and this is what the description is: The objective of this task is to provide technical direction, maintain project control and to establish a framework for project communications, reporting, procedural, and contractual activity for the tasks described. This task consist of the following: Establish and coordinate efforts with the applicants project coordinator. Develop and maintain work plans for the perform of vendors responsibilities. Administer the Change Control Procedures. Maintain communications and review progress with the applicants project coordinator and team members during status meetings. Prepare and submit written Monthly Status Reports of vendor

activities to the applicants project coordinator.
(Per the Eligible Services List:
http://www.sl.universalservice.org/reference/eligible.asp "Consulting Services - Costs of expertise in areas such as initial planning, consulting, development of technology plans, application assistance, and program advice" are NOT eligible. "Project Management - Costs associated with the overall management of the installation and initial operation of eligible products and services" are ELIGIBLE IF they are part of a contract or bid for the eligible products and services.)

3. Are these eligiblie services?:
Develop email migration strategy for users with current email accounts.
Develop phased implementation & deployment plan for email.
Assist in development of district-wide email Policies and Procedures.
Assist in developing standards for connectivity, security, and access from outside the firewall.
(These 4 services would have to fall under a part of contractual service as a part of eligible e-mail service. The refrence to consulting service and project management (as posted above) would apply.)

Install and configure email servers with free firewall software.
(If the firewall service is a true "bundle" and has no identifiable cost, it would be eligible.)

Develop end user training curriculum and materials for email use.
(End user training is NOT eligible.)

Prepare documentation for subsequent phases of email deployment.
(This would have to be a part of the bid by the vendor as a part of the contract for e-mail service.)

Web Maintenance: Implementation of a common template-based structure for Public District Web site, Private District Intranet Site, and campus web sites for internal and external access. Provide apallette of standard web site components that can be combined in various combinations to produce harmonious Internet and Intranet sites.
(This sounds like application programming which is NOT eligible.)

Web Planning: Establish and facilitate a District Web Policy Steering

committee. Develop graphic & layout design standards, and navigation standards. Develop a strategy for distributed Web maintenance, including template based design and designated Content Managers. Specify, provide and configure servers for all Web applications.
(Application development and other application based software is NOT eligible for discount. Please refer to the Eligible Services list in the Internal Connections section under Software.)

Web Deployment: Provide a toolkit of reusable Web component templates.
Some examples include:
Web Shell for page-based content
Calendar of Events
Staff Directory
Search Interface
Policies and Procedures
Moderated Discussion
Newsletter & News Bulletin
FAQ/Q&A
Knoweldgebase
Training Schedules/Sign-up
Cafeteria Menus
(These are all development applications and are NOT eligible.)

Provide content manager training.
(This needs some clarification - are you referring to IBM type content manager?)

Provide site development services to bring up initial sites.
(If this service involves application software, programming and training, it is NOT eligible.)

Web Applications: Web-based workflow application.
(Only Operational Software and E-Mail Software are eligible for discount.)

4. Are any of the following products eligible under the E-rate program?
Lotus Notes
Lotus QuickPlace
Microsoft Exchange
Lotus Domino Platform

CyberPatrol Filtering Software with Internet Access
Application Servers
WebSphere Edge Server Software
Lotus Communications Total Campus Option for Notes/Domino Licensing
Lotus Secure Home Access TCO licensing for student and parent access from home
Lotus QuickPlace Collaboration TCO license for real-time communication and application sharing
Lotus Domino.doc and Lotus Learning Space Forum
IT Factory Business Suite
(Only Operational Software and E-Mail Software are eligible for discount. Software included with an eligible product or service that incurs no identifiable cost and cannot be unbundled is considered eligible. For example, network administration software, included as an intrinsic component of an eligible network operating system, is eligible.)

5. Can this kind of wording be in a Statement of Work and not have an impact on a vendor with the E-rate program rules?
Applicant will identify and make the interpretation of any applicable federal, state, and local laws, regulations and statues to see that the services provided by the vendor comply.
(While the presence of such a statement would not negate eligibility under the E-rate program, neither would it serve to prevent USAC/SLD from requiring an audit or doing further investigation to be sure that the applicant and service provider are following program rules.)

Please let me know if you have further questions.

Ellen Wolfhagen
Director, Service Provider Support
(with assistance from Stella Blaney, Services Manager)

Reference 3

Attachment to FCC Form 471 Application Number XXXXXX El Paso Independent School District

Attachment #EM

E-Mail

Vendor: **IBM Corporation**

IBM will provide the file servers, operational software, installation, support and maintenance involved in implementing E-Mail for El Paso Independent School District.

Hardware and Operational Software Configuration

7026-H80	RS/6000 Enterprise Server Model H80	1
	1.44MB 3.5-in Diskette Drive	1
	Integrated SCSI-2 F/W Adapter	1
	Integrated Ultra2 SCSI Adapter	1
	Integrated Ethernet Adapter	1
0009	Final Light Manufacture	1
2624	32x Speed CD-ROM	1
2830	POWER GXT130P Graphics Adapter (PCI)	1
2968	10/100 Mbps Ethernet PCI Adapter	1
2975	10/100/1000 Base-T Ethernet PCI Adapter	1
3027	9.1 GB 10K RPM Ultra SCSI Disk Drive	2
3142	Remote I/O Cable - 3m	2
4075	Memory Board, 16-position	1
4119	512 MB (2x256MB) SDRAM DIMMs	4
5204	4-Way RS64 III 450 MHz Processor Card, 4MB L2 Cache	1
5992	System Control and Initialization Cable	1
6132	CEC to Primary I/O Drawer Power Control Cable, 3m	1
6159	12GB/24GB 4mm Tape Drive	1
6204	Universal Ultra SCSI Differential Adapter	1
6324	Primary I/O Drawer, 5 EIA	1
6540	IPL Disk Mounting Hardware, Cables, Terminator	1
7305	AAP Preinstall - SDF Ship	1
9172	AC Power Specify	1
9300	Language - English (US)	1

7014-T42	Enterprise Rack - 42 EIA	1
0128	Content : 7026-H80 (5 EIA)	1
0175	Content: 7316-TF1 (3 EIA)	1
0176	Content : FC 6324 (5 EIA)	1
0183	Content : 9910-A30 (5 EIA)	1
6081	Front Trim Kit for 2.0m Rack, Black	1
6086	Suite Attach Kit for 2.0m Rack, Black	1

6098	Side Panel for 1.8 or 2.0m Rack, Black	2
9171	Power Distribution Unit, Side-Mount, 1 Phase	1
9300	Language - English (US)	1
9800	Rack Power Cord - US/Canada	1

7316-TF1	Flat Panel Color Monitor (T54A)	1
0002	Light Manufacturing Order Indicator	1
4242	6-foot Extender Cable for Displays	1
6050	Space Saver 2 Keyboard - US English	1
9900	4m Power Cord- US/Canada	1

9910-A30	APC 5000VA Smart-UPS Rack-Mount	1

Product	Description	Qty
5765-C34	AIX Version 4	1
4061	AIX 4.3	1
7305	Preinstall Final Light Manufacture Indicator	1
9001	Asset Registration	1
5692-AIX	System Software	1
0598	AIX Welcome Center	1
0838	AIX 4.3 Update CD	1
0857	AIX 4.3	1
0859	Preinstall AIX 4.3 Server Bundle	1
0860	AIX 4.3 Bonus Pack - Non Export.	1
1004	CD-ROM Process Charge	1
2924	English	1
3410	CD-ROM	1
5924	AIX 4.3 PII - English	1
7305	Preinstall Final Light Manufacture Indicator	1
9001	Asset Registration	1

Product	Description	Qty
7026-M80	RS/6000 Enterprise Server Model M80	1
	1.44MB 3.5-in Diskette Drive	1
	Integrated SCSI-2 F/W Adapter	1
	Integrated Ultra2 SCSI Adapter	1
	Integrated Ethernet Adapter	1
0009	Final Light Manufacture	1
2624	32x Speed CD-ROM	1
2830	POWER GXT130P Graphics Adapter (PCI)	1
2968	10/100 Mbps Ethernet PCI Adapter	1
2975	10/100/1000 Base-T Ethernet PCI Adapter	1
3027	9.1 GB 10K RPM Ultra SCSI Disk Drive	2
3142	Remote I/O Cable - 3m	2

4073	Memory Board, 32-position	1
4133	1024 MB Memory (8x128MB DIMMs)	2
5200	2-Way RS64 III 500MHz Processor Card, 4MB L2 Cache	1
5992	System Control and Initialization Cable	1
6132	CEC to Primary I/O Drawer Power Control Cable, 3m	1
6196	76A Processor Power Regulator	1
6205	PCI Dual Channel Ultra2 SCSI Adapter	1
6230	Advanced SerialRAID Plus Adapter	1
6235	32 MB Fast-Write Cache Option Card	1
6283	Redundant AC Power Supply, I/O Drawer, 595W	1
6284	Redundant AC Power Supply, CEC, 1100W	1
6324	Primary I/O Drawer, 5 EIA	1
6540	IPL Disk Mounting Hardware, Cables, Terminator	1
7305	AAP Preinstall - SDF Ship	1
9172	AC Power Specify	1
9300	Language - English (US)	1

3580-L11	Ultrium External Drive	1
8001	Ultrium Data Cartridge	4
8002	Ultrium Cleaning Cartridge	1
9600	Attached to RS/6000 System	1
9703	2.5m VHDCI to HD68 SCSI Cable	1
9800	2.7m Power Cord 125V, 15A - U.S./Canada	1

7014-T42	Enterprise Rack - 42 EIA	1
0129	Content : 7026-M80 (8 EIA)	2
0156	Content : 7133-D40 (4 EIA)	1
0176	Content : FC 6324 (5 EIA)	2
0183	Content : 9910-A30 (5 EIA)	1
6081	Front Trim Kit for 2.0m Rack, Black	1
6086	Suite Attach Kit for 2.0m Rack, Black	1
6098	Side Panel for 1.8 or 2.0m Rack, Black	2
6171	Additional Power Distribution Unit, Side-Mount, 1 Phase	1
9171	Power Distribution Unit, Side-Mount, 1 Phase	1
9300	Language - English (US)	1
9800	Rack Power Cord - US/Canada	1

7133-D40	Advanced SSA Disk Subsystem (Rack-Mounted)	1
0987	Rochester Integration	1
8022	50/60Hz AC, 300 VDC Power Supplies	1
8031	Raven Black Drawer Cover	1

8518	One 10K/18.2GB Advanced Disk Drive Module	16
8802	2.5m Advanced SSA Cable	2
8805	5m Advanced SSA Cable	4
9300	Language - English (US)	1
9910-A30	APC 5000VA Smart-UPS Rack-Mount	1

Product	Description	Qty
5765-C34	AIX Version 4	1
4061	AIX 4.3	1
7305	Preinstall Final Light Manufacture Indicator	1
9001	Asset Registration	1
5692-AIX	System Software	1
0598	AIX Welcome Center	1
0838	AIX 4.3 Update CD	1
0857	AIX 4.3	1
0859	Preinstall AIX 4.3 Server Bundle	1
0860	AIX 4.3 Bonus Pack - Non Export.	1
1004	CD-ROM Process Charge	1
2924	English	1
3410	CD-ROM	1
5924	AIX 4.3 PII - English	1
7305	Preinstall Final Light Manufacture Indicator	1
9001	Asset Registration	1

Product	Description	Qty
7026-M80	RS/6000 Enterprise Server Model M80	1
	1.44MB 3.5-in Diskette Drive	1
	Integrated SCSI-2 F/W Adapter	1
	Integrated Ultra2 SCSI Adapter	1
	Integrated Ethernet Adapter	1
2624	32x Speed CD-ROM	1
2830	POWER GXT130P Graphics Adapter (PCI)	1
2968	10/100 Mbps Ethernet PCI Adapter	1
2975	10/100/1000 Base-T Ethernet PCI Adapter	1
3027	9.1 GB 10K RPM Ultra SCSI Disk Drive	2
3142	Remote I/O Cable - 3m	2
4073	Memory Board, 32-position	1
4133	1024 MB Memory (8x128MB DIMMs)	2
5005	Preinstall	1
5200	2-Way RS64 III 500MHz Processor Card,	1

	4MB L2 Cache	
5992	System Control and Initialization Cable	1
6132	CEC to Primary I/O Drawer Power Control Cable, 3m	1
6196	76A Processor Power Regulator	1
6230	Advanced SerialRAID Plus Adapter	1
6235	32 MB Fast-Write Cache Option Card	1
6283	Redundant AC Power Supply, I/O Drawer, 595W	1
6284	Redundant AC Power Supply, CEC, 1100W	1
6324	Primary I/O Drawer, 5 EIA	1
6540	IPL Disk Mounting Hardware, Cables, Terminator	1
9172	AC Power Specify	1
9300	Language - English (US)	1

Product License	Description	Qty
5765-C34	AIX Version 4	1
4061	AIX 4.3	1
5005	Preinstall	1
9001	Asset Registration	1
5692-AIX	System Software	1
0598	AIX Welcome Center	1
0838	AIX 4.3 Update CD	1
0857	AIX 4.3	1
0859	Preinstall AIX 4.3 Server Bundle	1
0860	AIX 4.3 Bonus Pack - Non Export.	1
1004	CD-ROM Process Charge	1
2924	English	1
3410	CD-ROM	1
5005	Preinstall	1
5924	AIX 4.3 PII - English	1
9001	Asset Registration	1

Product	Description	Qty
7046-B50	RS/6000 Model B50	4
	375 MHz 604e PowerPC Processor	4
	1.44MB 3.5-in Diskette Drive	4
	Integrated Ultra SCSI Adapter	4
	Integrated Ethernet Adapter	4
	Standard Mounting Rails	4
2624	32x Speed CD-ROM Drive	4
2830	POWER GXT130P Graphics Adapter (PCI)	4
3112	9.1 GB Ultra SCSI Disk	8
3752	Service Package	4
4169	256 MB SDRAM DIMM, 168 Pin	16

4951	4-port 10/100 Mbps Ethernet Adapter	4
5005	Preinstall	4
9300	Language - English (US)	4
9911	Rack Power Cord - ALL IBM Racks, 4m	4

Product	Description	Qty
5765-C34	AIX Version 4	4
4061	AIX 4.3	4
5005	Preinstall	4
9001	Asset Registration	4
5692-AIX	System Software	4
0598	AIX Welcome Center	4
0838	AIX 4.3 Update CD	4
0857	AIX 4.3	4
0859	Preinstall AIX 4.3 Server Bundle	4
0860	AIX 4.3 Bonus Pack - Non Export.	4
1004	CD-ROM Process Charge	4
2924	English	4
3410	CD-ROM	4
5005	Preinstall	4
5924	AIX 4.3 PII - English	4
9001	Asset Registration	4

Product	Description	Qty
94G7445	8-port Console Server Selector Switch	1

Additional Services

Product	Description	Qty
HW/INTG	Hardware and Software Integration Standard load of UNIX operating sys, Memory,Storage devices, I/O adapters, Device drivers and load device.	1

Product Covered:
7026-H80, 7316-TF1, 7026-M80 X 2,
7133-D40, 7014-T42 X 2, 7046-B50 x 4
9910-A30 X 2, All System OS

Total One Time Charges: $3,591,600.00

Reference 4

From: Woodrow Lee Jr
To: Sandi Boyd; Tom Paine; Tim Kendall; Shawn Gross; P. Glogovac; David Cates
Cc: John Milota; Jim Damm; Jack Johnston; Stephen Crye; Mike Miles
Date: 4/1/2002 8:15:30 PM
Subject: EPISD Administrative E-Mail Project

Thank you for participating in our conference call today.

In an effort to clarify any misunderstandings, please be advised of the following:

IBM is the company responsible for procurement and installation of the Administrative Email system on behalf of EPISD.
IBM will procure Goods through a vendor of EPISD's choice as long as that vendor is an approved IBM Business Partner or Vendor (or the selected Goods provider will/can become an IBM Vendor in time to complete the project).
IBM is responsible to deploy those Goods the EPISD wishes to purchase and IBM (not the EPISD) will select a service provider based on cost and performance.
Our goal is to provide the installation services for our projects by the most eligible service provider with an emphasis on both cost and performance.
The selected service provider will commit to a completion date of 09/30/02.
The selected service provider will be under contract to IBM and will sign an IBM SOW containing tasks, terms and conditions, assumptions and payment terms.
The service provider is expected to give a fixed price for the services being performed and no consideration will be given for any additional charges presented by that services provider unless a Project Change Authorization is produced, agreed to and signed by both IBM and the other company.

If you have any questions, please contact me at you convenience.
Regards,
Woodrow Lee, Senior Project Manager
El Paso Independent School District
(713) 940-1265 T/L 345-1265 Office - Houston
(832) 407-1118 Cell

Reference 5

From: Sandi Boyd
To: Larry Miller - Enterprise Services
Cc: dennis.pearce@sun.com; shawn.gross@sun.com; scott.cassady@sun.com; tim.kendall@sun.com; glogovac@earthlink.net
Date: 4/10/2002 10:37:18 PM
Subject: Re: IBMGS status?

We lost to IBMGS implementing Groupwise using a local partner, Desert Communications, Inc. Partner was approved to be a subcontractor on a previously awarded EPISD E-rate activity, but is not a nationally approved business partner.

Board approved this recommendation last night with no discussion. They would not let Shaun Cooper speak, because he didn't get there early enough to sign in to speak. He was a hour away when we knew that was what we needed to do, with less than an hour before the meeting.

The switch was done yesterday afternoon as far as we could tell.

Clearly this was not a reasonable process. No answer in any of our calls to what number they needed until 11 PM Monday night. 51% (1.8 million) of the project for what we had negotiated at that point to be just program management and overall technology coordination. It exceeds all federally allowable overhead rates that Universities can claim.

Shawn and I will debrief sales management today. We are trying to get funding for Funds for Learning to manage our protest--hopefully in conjunction with Dell.

We will let everyone know what happens next. We may need everyone's collective memory to support the protest.

sandi

Larry Miller - Enterprise Services wrote:

> Hi Sandi:
> When I tried to reach Shawn back last night around 7:00 pm EST, he said he was
> on with IBMGS.....what was the outcome or what is the latest??
>
> Regards,
> Larry

Reference 6

From: Sandi Boyd
To: shawn.gross@sun.com; tim.kendall@sun.com; scott.cassady@sun.com; dennis.pearce@east.sun.com; larry.miller@east.sun.com; glogovac@earthlink.net; tom.paine@tpaine.com
Date: 4/3/2002 6:44:43 AM
Subject: Summary of 4-3-02 IBM GS call

First today's issues:

New requirement to respond to RFP in less than 24 hours based on IBM statement of work to be provided tomorrow which includes no request for qualifications from the potential vendors. Sun raised the issue of how this could support a fair evaluation of vendors. Seems to leave cost as the only selection criteria.

John Milota indicated that the sections of the email project were based on the functionality of Lotus Notes and were in fact tightly integrated with that solution. Sun provided input on allowable/not allowable services in the initial statement of work and those that are allowable need to be tightly integrated with the iPlanet solution, just has their previous SOW had done.

IBM Global Services, by issuing their RFP, should be excluded from responding because they would be in violation of program rules. Question of what qualified vendor can respond with in 24 hours—with no background on the objectives of El Paso or involvement in these discussions.

Question of how the software will be provided if the services do not come to Sun. Because IBM did not include software as a "good" there was no place to put in on the substitution form. Sun should not provide an in-kind contribution if we do not receive the services contract. This leaves EPISD in a very difficult position.

sandi

From: Sandi Boyd
To: Woodrow Lee Jr
Cc: Jack.Johnston@EPISD.org; shawn.gross@sun.com; tim.kendall@sun.com; scott.cassady@sun.com; dennis.pearce@east.sun.com; larry.miller@east.sun.com; glogovac@earthlink.net
Date: 4/4/2002 3:25:04 PM
Subject: IBM Global Services rfp for email

Just wanted to let you know that as of 5:30 Eastern time (where Tim Kendall is), we have not received your RFP for email.

thanks,

sandi

Mr. WALDEN. Thank you. Thank you for your testimony.

Mr. Hawthorne, welcome.

TESTIMONY OF NATHANIEL HAWTHORNE

Mr. HAWTHORNE. I think I will stand.

Mr. WALDEN. I think your microphone is not on, sir.

Mr. HAWTHORNE. Thank you.

I think I will pass on an opening statement, and I will stand ready to respond to any questions.

Mr. WALDEN. All right. Thank you very much.

[The prepared statement of Nathaniel Hawthorne follows:]

Statement
of
Alpha Telecommunications, Inc.
before the
US House of Representatives
Committee on Energy and Commerce
Subcommittee on Oversight & Investigations
Washington DC 20515-6115

Problems with the E-Rate Program: Waste, Fraud and Abuse Concerns in the Wiring of Our Nation's Schools to the Internet

Wednesday, September 22, 2004
10:00a.m.
2123 Rayburn House Office Building

Nathaniel Hawthorne
Alpha Telecommunications, Inc.
27600 Chagrin Blvd. Suite 260
Cleveland, OH 44122

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Statement Summary

I have been "invited" to testify regarding "Problems with the E-Rate Program: Waste, Fraud and Abuse Concerns in the Wiring of Our Nation's Schools to the Internet". Specifically, I have been asked to explain the "relationship" between IBM and Alpha. This I will do; it is not complicated, it only seems complicated because that is the way people choose to see it based on their own economic agenda. However, there are other issues that need to be addressed.

A visionary Congress created a pot of money for American children in grades K-12. That "pot" was designed to incorporate technology into the classroom so that technology might be used to deliver education to the classroom; it was created so that all American children, poor and rich, black, white, red, and yellow, might have access to the Internet, so called "connectivity". But then something very strange occurred. Many, many people, corporate and otherwise, started to construct hurdles that that these American children had to run through, over and under to make use of the pot of money so that they could have access to a better education, indeed a better future, through technology.

The need for E-Rate is greater than ever. However, we now focus on "waste fraud and abuse" rather than the issue of what have we as a society received for the billions invested in the so-called "wiring" of America's schools and libraries", and providing access to the Internet. How has E-Rate incorporated technology into the education process? Although I have no personal knowledge of waste

fraud and abuse, I do read the media reports of these events. There are abuses, just like in all other government programs, and we need to focus on any abuse. Wherever government and private funds are spent there will be those that will take advantage of the process. But we have a criminal process to prosecute those that engage in fraud. Yet, we spend an inordinate amount of time looking at this as a political issue. Why? How much political time has been spent to determine what benefits have been derived from the money invested? How much political time has been spent "Assessing the impact of Instructional Technology on Student Achievement."[1]

The government has spent billions on E-Rate, and collected a lot if data from schools; however, I have yet to see any analysis, made public, of that data to demonstrate, either objectively or subjectively, what the impact is of the billions spent on America's children, in terms of learning.

My statement filed with this Committee is self explanatory; I am here to answer questions.

[1] Article by Lorraine Sherry, Shelley, Billig, Daniel Jessie, and Deborah Watson-Acosta, February 2001, The Journal Online.

I. Background of Alpha Telecommunications, Inc.

Alpha Telecommunications, Inc. is an Ohio based company specializing in telecommunications/internal connections and Internet Access needs analyses, E-rate application preparation/processing, Program Integrity Assurance process (PIA), client representation with vendors, insuring that clients receive all funding from vendors, preparation/filing of all required E-rate forms, and SLD audits (Item 25 Reviews). Paul Karas and Nathaniel Hawthorne each own a 50% interest in Alpha.[2]

Alpha works with two distinct types of clients: (1) K-12 School Districts, public and private and public libraries and (2) vendors who provide services to K-12 School Districts. Alpha was incorporated during the first year of the E-rate program, and has been involved in all phases of universal service funding (USF/E-Rate). Attachment A is a contract used with School districts/libraries; Attachment B is a contract used with IBM. Attachment C is a contract used with other vendors.

Paul Karas

Electrical Engineer specializing in telecommunications

Twenty plus years experience in telecommunications including Fortune 100 Company; state government, school districts, and libraries

Seven years Universal Service Funding experience

[2] Due to management conflict there is a petition to dissolve Alpha pending before the Common Please Court of Cuyahoga County, Ohio.

Nathaniel Hawthorne

Member of the Ohio, Illinois, and District of Columbia Bar associations.

Legal counsel for Alpha Telecommunications, Inc.

Approximately thirty years (30) years of telecommunications experience with Fortune 100 telecom carriers, and smaller competitive local exchange carriers (CLECs), that includes, all aspects of regulatory matters, marketing and contracts; experience with Universal Services issues for approximately 25 years, and Universal Services Funding (E-rate, or education rate) issues since the Telecommunications Act of 1996 amended the Communications Act of 1934. Specifically, I have been involved in regulatory issues such as FCC regulations, Notice of Proposed Rule Makings, Orders and SLD regulations as they specifically relate to E-rate for the past seven years, or since the inception of E-rate, and otherwise. I first became aware of the Telecommunications Act of 1996 while working as retained Counsel for an Ohio CLEC, CBG. I observed that there would be tremendous marketing opportunities for CBG, however, CBG never showed any interest in the program.

II. Services Provided by Alpha Telecommunications, Inc.

Alpha has technical and administrative staff with the following skill set:

- Telecommunications
- Statistical analysis
- Product sales and delivery
- Creation of proposals and documentation
- Follow-on customer care

- Analysis and preparation of FCC/SLD forms and documents complying with the FCC/SLD rules and regulations
- Program Integrity Assurance (PIA) process

Services provided:

- System design, planning, systems integration, project management
- Bid preparation, review, contract preparation, negotiation and review
- Design and implementation of intranet/internet systems
- Design and implementation of backbone network
- Write specifications for hubs, routers, switches, servers
- Design and implement video network
- Evaluate and optimize the existing voice network
- Integrate various communications technology plans
- Produce all necessary plans, documents required to file for E-Rate
- Project management and implementation
- Alpha has not, and does not provide legal advice to vendors or school districts

Alpha handles all E-rate issues from beginning to end, including making sure vendors get paid, and, where there is a reimbursement due the school district, making sure that the school district gets paid.

Alpha's involvement in the E-rate process is a cooperative effort with the district and various vendors. With school districts, this process starts with the review of the district's technology plan and the conversion of the district's technology needs into specific products and services. FCC Form 470 is filed together with

any RFPs and/or description of products and services desired. SLD approved evaluation criteria are utilized.

Alpha works with the school district's nutrition staff to obtain free and reduced data and convert enrollment and free and reduced school lunch data provided by the district into a correct and successful format for e-rate applications.

Form 471 is filed and attachments to Form 471 are created for submission to the SLD. During the SLD review the program integrity assurance (PIA) is responded to in a timely fashion and the application process is defended to assure successful funding.

If an Item 25 (selective review) is requested of the district by the SLD, Alpha assists the district in this comprehensive review. When the funding commitment decision letter is awarded, Alpha prepares the Form 486 and starts the implementation portion of the project. Alpha works with the district and the vendors to assure that only fundable products and services are delivered. In the case of the need for additional time to implement the products and services Alpha will file a Form 500 and contract extensions and obtain the additional time necessary for the implementation.

Alpha collects billable data and issues Form 472 or Form 474 (BEAR or SPIF) to assure payments to the district and/or vendors are received in a timely manner.

During these processes records are retained by Alpha to assure compliance with the FCC/SLD rules and guidelines. Since the SLD funding process may take 12-18 months from application to implementation, products and services often change; Alpha will process substitution requests to assure the district implements only the latest in technology available. Finally, during this process Alpha keeps records of any additional products and services that may be required in the next funding cycle.

If the districts require an appeal, I (a regulatory attorney experienced in both FCC and SLD appeals) will assist the district at their request. As the attorney, I work directly with the school district.

Currently, Alpha provides services to over 50 K-12 School Districts in the following states: Indiana, Kentucky, New Mexico, Ohio, Pennsylvania, Texas, New York and West Virginia.

Pending engagements are located in numerous other states. Our assistance/work is consistent with SLD rules and regulations set forth at: **http://www.sl.universalservice.org/**

These basic contracts summarize how Alpha serves its clients is attached. Attachment A is a contract that I prepared where Alpha is the agent for the

district or library. When working with a vendor, Alpha most often use the vendor prepared contract, Attachment B.

III. Regulatory/Technology Requirements of School Districts and Libraries: Connectivity

My starting point for Alpha's business was:

1) The Telecommunications Act of 1996, (Conference Report),
2) a Report by McKinsey & Co.,
3) the Report by the Federal-State Joint Board on Universal Service (Recommended Decision),
4) The Federal-State Joint Board on Universal Service, FCC 97-157, and subsequent FCC orders on E-Rate.[3] FCC 97-157

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[3] For the first time, the 1996 Act includes schools and libraries among the explicit beneficiaries of universal service support. The legislative history indicated that Congress intended to ensure that eligible schools and libraries have affordable access to modern telecommunications and information services that will enable them to provide educational services to all parts of the nation.(1086)

425. We adopt the Joint Board's recommendation that all eligible schools and libraries (1087) should receive discounts of between 20 percent and 90 percent on all telecommunications services, Internet access, and internal connections provided by telecommunications carriers, subject to a $2.25 billion annual cap. We take this action pursuant to section 254(c)(3) and section 254(h)(1)(B) rather than section 254(h)(2)(A) on which the Joint Board relied. We note that the Joint Board did not suggest that these services are not covered by section 254(h)(1)(B), it merely chose to rely on section 254(h)(2). As to installation and maintenance of internal connections, the Joint Board explicitly rejected the argument that these services are ineligible for support under section 254(h)(1) because they are "goods" or "facilities" rather than "services."(1088) In addition, any funds that are

not disbursed in a given year shall be carried forward and may be disbursed in subsequent years without regard to the cap. We agree with the Joint Board that schools and libraries should have maximum flexibility to purchase the package of services they believe will most effectively meet their communications needs. We also share the Joint Board's preference that we foster competition from non-telecommunications carriers. We, therefore, encourage those providers to enter into partnerships or joint ventures with telecommunications carriers. In addition, pursuant to sections 254(h)(2) and 4(i), we extend support for the provision of discounted services by non-telecommunications carriers, within the overall annual cap mentioned above. We also concur with the Joint Board and conclude that economically disadvantaged schools and libraries, as well as schools and libraries located in high cost areas, shall receive greater discounts to ensure that they have affordable access to supported services. Finally, we agree with the Joint Board's conclusion that schools and libraries should be required to comply with several self-certification requirements, each designed to ensure that only eligible entities receive universal support and that they have adopted plans for securing cost-effective access to and use of all of the services purchased from telecommunications carriers under section 254(h)(1) and non-telecommunications carriers under sections 254(h)(2) and 4(i).

We also reject the argument that providing support to non-telecommunications carriers would violate the competitive neutrality requirement of section 254(h)(2)(A) because non-telecommunications carriers could benefit from universal service support but only telecommunications carriers would be required to contribute to that support.[1528] In section XIII below, we conclude that contribution obligations will be based on revenues from telecommunications. Neither telecommunications carriers nor non-telecommunications carriers will be required, however, to contribute to federal universal service support mechanisms based on their provision of Internet access and non-telecommunications internal connections. Thus, telecommunications carriers' contributions will not place them at a competitive disadvantage as providers of supported non-telecommunications services. Permitting both telecommunications carriers and non-telecommunications carriers to collect universal service support based on discounts afforded to eligible schools and libraries on Internet access and internal connections, therefore, meets the competitive neutrality requirement of section 254(h)(2)(A).

598. We also reject the argument advanced by some commenters that providing support for non-telecommunications carriers would violate the Origination Clause of the United States Constitution,[1529] which states that all bills for raising revenue must originate in the House of Representatives.[1530] These parties assert that, because section 254 originated in the Senate, requiring telecommunications carriers to contribute to universal service support mechanisms from which non-contributors can draw violates the Origination Clause. This argument fails, however, because the fact that the statute allows discounts to be provided to

demonstrates the conflict between carriers and non-carriers, which still exist today.

The only companies that have been investigated are Internal Connections providers, not Telecom providers. Why is that?

I felt that it was important to have a complete understanding of the historical origins of E-rate so that we could understand the purpose of the Telecom Act, as it relates to "wiring" schools and libraries; in this manner we could better market Alpha's services, and direct compliance with the rules and regulations. It was also important to understand the relationship between the FCC, telecommunications providers (they contribute to the Universal Service Fund), and non-telecommunications providers who do not contribute to the Universal Service Fund but are permitted by FCC order to participate in the reimbursement process.

I think that most of this background has been forgotten, and we have lost focus of E-Rate's goal: that is, to use and apply universal service principles to schools and libraries to benefit learning by the nation's children.

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schools and libraries for services provided by non-telecommunications carriers does not convert this valid statute into a revenue-raising measure within the meaning of the Origination Clause. The D.C. Circuit has held that "a regulation is a tax only when its primary purpose judged in legal context is raising revenue."[1531] The purpose of section 254(h)(2)(A), however, is to enhance access of schools and libraries to advanced telecommunications and information.

The need for E-Rate is greater than ever. However, we now focus on "waste fraud and abuse" rather than the issue of what have we as a society received for the billions invested in the so-called "wiring" of America's schools and libraries", and providing access to the Internet. How has E-Rate incorporated technology into the education process? Isn't this the real issue? Sure, there are abuses, just like in all other government programs. Wherever government and private funds are spent there will be those in that will take advantage of the process. But we have a criminal process to prosecute those that engage in fraud. Yet, we spend an inordinate amount of time looking at the issue. Why?

How much time has been spent to determine what benefits have been derived from the money invested? "[W]aste fraud and abuse" is a red herring. Nothing can take away from the historical social concerns that brought about E-Rate. For example, one study, "Connecting K-12 Schools to the Information Superhighway," by McKinsey and Company, found that the funding need for the accomplishment of this critical goal was somewhere between $2 billion (5-year initial outlay) and $4.7 billion (10-year initial outlay) annually, with an additional annual amount between $4 billion and $14 billion necessary for maintenance.[4] McKinsey & Company, Inc. http://www.uark.edu/mckinsey.

[4] This information can be found in the section titled "Infrastructure Options and Cost", under the heading "Models of infrastructure deployment (23)".

The technological needs for schools and libraries are well documented. As

McKinsey & Co stated:

"Connecting all of America's public K-12 schools to the national information infrastructure (NII) would be valuable and is achievable. The NII, frequently called the "information superhighway," offers services and resources that help students not only to master technical and vocational skills, but also to achieve significant improvements in academic performance. In addition, connection to the information superhighway provides teachers access to a broad array of on-line curricular materials and innovative instructional approaches. It also opens up new communication channels between students and teachers, teachers and their peers, and schools and their communities.

...

The deployment process has to be "bottom-up" by nature, since without the commitment of teachers, principals, school boards, parents, and other community members, little change can take place in the classroom. The leadership required to encourage local deployment, spur courseware development, help teachers build new skills, and secure budget funds, grants, donations, and subsidies, will need to come from both the public and private sectors. To some extent, this process has already begun, and leaders are emerging. But without broader intervention, the process will likely be slow and inequitable. While no single blueprint for deployment can meet the diverse needs of every school district, it is equally true that individual schools will need help in marshaling resources and moving forward.

Strong leadership has been a key success factor in every case study we examined. Local leaders at innovative schools like the Ralph Bunche School in New York City, the Carrollton City School District in Georgia, and the schools in California's Hueneme District have pioneered the way, and students in those schools are already profiting from the educational benefits of technology. Actively encouraging experiments and initiatives in many more schools and districts around the country could result in widespread and significant improvements in American education."

http://www.uark.edu/mckinsey

There was an initial recognition of the high cost of the "wiring" America's schools.

Again, the McKinsey & Co Report:

"The funding challenge is substantial both because of the limited access most schools have today to the basic infrastructure, and because of the fiscal pressures at work in the current budgetary environment. Setting budget priorities among many competing demands for funds-and securing grants, donations, and subsidies-requires strong leadership at many levels and a clear, compelling vision, as well as a good dose of creativity and persistence.

Limited current infrastructure. When it comes to basic infrastructure, most schools are starting from a low base. While many schools have computers, as of 1994 over 85% of these computers were not equipped to support the latest multimedia courseware-in other words, they could not combine text with advanced graphics, video or sound. Neither could many connect to an internal or external network. Factoring in new computer purchases in the 1994-95 school year, there are now on average 14 multimedia-capable computers per K-12 school or approximately 38 students per multimedia-capable computer. However, averages are misleading: the computers are not evenly distributed across schools. Surveys conducted by Quality Education Data, Inc., reveal disparities across schools based on socioeconomic and racial/ethnic status, although the situation has been corrected to some extent through federal funds and special grants available to underprivileged areas. For example, public K-12 schools with less than 20% of students qualifying for Chapter 1 funds (i.e., students from low income families) average nearly 8.6 computers (of any type) per 100 students while schools with over 80% average only 7.2 computers per 100 students. Likewise, schools with no minority students average 9.9 computers per 100 students while schools with over 90 percent minority students average only 7.3 computers per 100 students."

There is no question that E-Rate is focused on poor urban and rural school districts. As recognized by a leading study, "[u]rban schools…tend to have greater concentrations of poor children and to be larger in size…" "E-Rate and the Digital Divide: A Preliminary Analysis from the Integrated Studies of Educational Technology." U. S. Department of Education Office of the Under Secretary, Doc #00-17. [The data used in the analyses was provided the Universal Service Administrative Company, Schools and Libraries Division.]

And, [w]hile the US is in the forefront of the technological revolution, there are segments of our society – particularly poor and minorities – for whom access to

computers [internal connections required] and the Internet is significantly lower." *Id.* E-rate was recognized as a means of assisting in eliminating the digital divide because "schools and libraries...are [the] primary means of gaining access to what...new technology has to offer...in the dramatic changes in the education of the nation's children..." *Id.*

Although urban districts comprise only eight percent of all public school districts, they enroll 33 percent of all public school students. *Id.*, at Tables A.1 and 2. In contrast, rural districts, comprising nearly half of all public school districts, enroll only about 14 percent of all public school students.

As stated by the Federal-State Joint Board "the gap between access to telecommunications services afforded to rich and poor students continues to widen." Recommended Decision, para. 525. Is this still true?

IV. IBM as Vendor, Alpha as Subcontractor to IBM

After Alpha's initial success locally, IBM asked Alpha for assistance with its national accounts. A Contract was executed along with Statements of Work for various accounts. IBM recognized, in my opinion, that it did not have the regulatory and telecommunications experience to incorporate E-Rate (the Eligible Services Lists) into its marketing program.

IBM would identify the prospective school districts and Alpha would explain the benefits of E-rate to the school districts. Alpha was available to not only initiate

the E-rate process with the schools, but to also give IBM guidance in respect to the implementation period if IBM won the business.

Attachment B is an IBM Statement of Work (SOW) with Alpha. While executed by both parties for E-Rate Year 5 (2002), Alpha only recently received payment on September 15, 2004.

This payment was for Alpha's work performed almost two (2) years ago.

V. E-Rate Issues: Schools Districts, Libraries and Vendors

The issues before the Committee are fraud, waste and abuse, but the Committee should be aware of other concerns that impact E-Rate from school districts perspective. In preparing today's statement, I asked school districts about "some" of their issues. The following are some statements from various districts' we do business with:

1. The schools are penalized if they put too much on 470 (a grab bag of services). However, they are also penalized if they don't have a needed item on the 470, so if they are near the SLD filing date for the 471 and decide to apply for a product or service they can be disqualified because they don't have 28 days between the posting of the 470 and the filing deadline.

2. PIAs spend an inordinate amount of time looking and asking for documentation on funding requests for telecom services that are less than $3,000.00 monthly. Often after going through several answers and sending reams of paper to substantiate the funding request, bills once again must be sent when the BEAR is submitted to again substantiate the amount being requested. Creating a monthly dollar amount that can be used as a set point would be more beneficial and substantiation could still be done at the time BEAR forms are submitted.

3. State contracts with established allowable contract dates, contract award dates. This information is submitted to the SLD by several schools and often the state agency itself; it would seem that there would be some database or some way that these establishing 470's and contract dates could be tracked this way instead of a PIA on each one.

4. These same state contracts establish a set point for the cost of certain services, *i.e.*, T-1s, 56kbs, installation charges for upgrades. These also could be kept in some type of database that could verify that a new T-1 in West Virginia under a state contract will be $1200.00 and unless the non-recurring charge is outside that box there would be no need to spend time asking that question for every school using that state contract.

5. It is not unusual to have a number of questions asked in a PIA, send in the answers and then 2 to 3 months later have the same questions asked by another interviewer because the initial interviewer has left and the paperwork cannot be found.

Another school districts states:

> "It is far too complicated and consumes far too much time from our end of the equation. It was consuming 1/4 to 1/3 of all the time I worked (before we hired your company to handle it for us). It is much like income tax in that regard, except that it is worse. It would have been a lot simpler and less time consuming if we simply sent them our phone bills and they simply paid 75% of them. For most school systems that is essentially what happens anyhow since we are not eligible for hardware. In that way there would be virtually no room for the fraud that they keep citing. On the other hand, if it were that simple then your company would not have a business (much like a flat tax would probably put income tax preparers out of business). I'm also not sure why they pay for voice phone lines and other items like pagers and such since those have nothing to do with Internet access. Make it simpler if you want to eliminate fraud.
>
> For our riverfront schools I can get broadband access much faster and cheaper through the cable company than through the phone company. However, there would be no state filtering or control by the state which is probably something that they do not want.
>
> The premise that you should plan ahead for all hardware purchases is somewhat flawed because communication servers do not always work until the planned time for their upgrade. This results in eligible schools ordering a communication server every year in case their server "goes belly up" since otherwise E-rate would not pay for a replacement.

This, in my opinion, is the source of the inflated requests and unused funds about which the E-rate people complain.

A school district in West Virginia states:

"It seems to me that they worry about fraud from the schools but in reality there is actually much more potential for fraud from the commercial companies that provide us with services and hardware. E-Rate is a wonderful source of funds to allow schools the opportunity to offer connectivity, resources, and support to assist in the education of the students who will be making up the next generation and one that has been invaluable to us in Hancock County Schools. This resource has become one that I cannot envision being deprived of in the future if we are to be able to continue to make educational progress and continue to leverage our local resources to utilize the ever expanding number of sources that are being offered online. In addition, collaborations have begun that are in their infancy and when allowed to become mature, will offer educational opportunities never before imagined in public education.

It is my personal opinion that in the effort to allow more disadvantaged schools and districts to have increased opportunity, school districts that are marginally above that level are in a position to not be able to take maximum advantage of resources. In addition, districts with a proven track record of getting things accomplished are not given many of the resources due to economic status, and as a result, opportunities for best practice models are being lost.

E-Rate gets an A - from me and we hope to be able to utilize it for the foreseeable future. We pledge to use it wisely for the betterment of our students.

My staff and I did our own E-rate for the first few years. Not surprisingly, a whole new and massive federal bureaucracy sprung up overnight; E-rate became more complicated by the month. We gladly engaged Alpha to take over the task, as we could no longer keep up with the regulations and complexity, and did not wish to lie awake nights worrying about the consequences of some innocent error on our part. I still fear an audit, and that should not be, because we, the WVDE, and our agent have all attempted to follow the letter and the spirit of the law since day one. Yet it is so intricate that I myself can't be sure.

In my opinion there is presently only one state-employed person who has anywhere near a comprehensive understanding of E-rate and that is Phyllis Justice in the WVDE Technology Department. I am convinced that

if a County school system does not have a full-time dedicated E-rate employee who can keep up with the regulations, that they are probably not getting all the E-rate money to which they are entitled. I attribute this frustrating complexity ... to two factors:

(1) The natural behavior of a bureaucracy to expand and perpetuate itself;
(2) The understandable desire by the Congress to ensure oversight.

However, the unfortunate end result is that a few abusers have caused E-rate to be too complex for most applicants to deal with. I am fond of saying that I think that Senators Snowe and Rockefeller would be appalled if they really understood what has been wrought from their Amendment.

A second comment:

The telecom vendors have, for the most part, defied the sprit of the law if not the letter, by still refusing to give real-time discounts. The hardware vendors, particularly those engaged through state contracts, are doing what they are supposed to do; but the phone companies continue to play games. The program is now eight years old, and we still have to file for reimbursements on our overpayments in order to get our money, which means another layer of complexity, paperwork, and delays. The vendors such as Verizon, then have the use of our money for that time. This represents an extremely large figure for which we receive no interest on money which is rightfully ours. Presumably they are realizing profits on the investment of our money while they are holding it. The government should put its foot down.

Comment three:

Because of the necessity of having to file for, and wait months for reimbursements, E-rate monies can never be counted on for budgeting, because we never know when an Approval letter will come, then when a check may arrive months after that. Yet, we are expected to plan years into the future for exactly how we are going to spend E-rate-eligible monies. The expectations by the SLD in this regard are not at all reasonable.

Final comment:

While E-rate remains politically controversial, and the reimbursement checks are always unexpected and sporadic, they are certainly welcome. I can definitely confirm that the benefits to our schools have been significant in terms of the core mandate of the program. Our schools have all benefited by receiving cabling infrastructure, networking equipment, and related technology which we otherwise could not have afforded. The

real-time discounts from the hardware vendors for eligible goods and services have similarly enabled the purchase of more equipment.

If there is anything erroneous in the above statements, it is a result of my misunderstanding; but these are my perceptions."

There was a great outcry by the SLD when it discovered that school districts were concerned with "maximization" of E-Rate funding. Will the next buzzword to cause a problem be "optimization"?

In "E-Rate News for the Week - September 13, 2004" in an E-Mail entitled "Critical Period for Discount Rate Optimization" E-Rate Central states:

"This is the time of year that many school parents are returning application forms for free and reduced-price lunches under the National School Lunch Program ("NSLP"). Since E-rate discount levels are determined by the percentage of students in each school whose family income levels qualify them for free or reduced-price lunches, many applicants will find it well worth their time to track the NSLP application process carefully and to encourage maximum participation by eligible students.

Family income levels for NSLP eligibility are set each year by the U.S. Department of Agriculture. The guidelines, based on family size and annual
income, can be found at
http://www.fns.usda.gov/cnd/governance/notices/iegs/IEGs04-05.pdf.

The two most important points to remember regarding E-rate discount levels
are as follows:

(1) In some cases, finding only a few more eligible students can significantly improve a school's discount rate. As a dramatic example, consider an urban school with a total of 500 students. If 247 students - or 49.4% - are eligible, the school would have a discount rate of 60%. With one more eligible student - bringing the eligibility percentage to 49.6%, which rounds to 50% - the school's discount would increase to 80%. Not only does this mean a one-third increase in the discount rate,

but often may make the difference between an 80% discount on Internal Connections requests and no discount at all. (The Priority Two funding threshold for FY 2003 was 70%.)

(2) E-rate discounts are based on the number of students eligible for free or reduced-price lunches, not on the actual number of students participating in the NSLP program. Although the percentage of participating students is the easiest way to establish an E-rate discount - and is the number that the SLD will accept without additional documentation - it often significantly understates a school's true eligibility percentage (particularly at the junior or senior high school level).

There are several techniques that can be used to find and document additional eligible students. Here, in order of the amount of work required, are a few:

(1) Many schools will know or suspect that certain families have incomes below the NSLP guidelines, perhaps based on the previous year's participation. If they are tracking application returns, the schools can tactfully encourage those families to apply. This is a critical time in the year to track and encourage applications for eligible students.

(2) Although discount rates are established on a school-by-school basis, districts with separate primary and secondary schools may find it advantageous to collect NSLP applications centrally and to search (so-called "sibling searches") for families enrolling only their younger children in the lunch programs. Those same family applications can be used to document the eligibility of older, non-participating, students.

(3) Alternative measures are approved for documenting income eligibility for E-rate purposes http://www.sl.universalservice.org/reference/alt.asp. As indicated, these include student participation in other school food programs (breakfast or snack), eligibility for other Federal assistance programs, or school-wide surveys."

Will there be a pointless public outcry over "optimization"? But is this truly the issue? Is this optimization or maximization? Dose it matter?

And, what about the impact on vendors? Congress deliberately did not funnel E-Rate funds to school districts/libraries. The funds were sent as a "reimbursement

to vendors" that provided services and hardware. What are the consequences of this?

Many *E-Rate* vendors are small businesses. The following quote is from a letter to the SLD from a small vendor.

> "Currently we [vendor] have right at $2,000,000.00 outstanding with SLC [sic] waiting for payment. Our total Yearly Revenue is around 8,000,000 so that is a quarter of what we are looking to do this year. I understand that you are going to try and get FRN xxxx and FRN xxxx to final review today. Please let the final reviewer know how desperate we are to get some of this coming in. My lines [of credit] are maxed and I am basically at a stand still until we get some money. The canceled check requirement really backed us up. [This was a new rule implemented by the SLD and not communicated with the vendors or the applicants, and caught many off-guard and not prepared for the extra work this step requires.] As I told you earlier we don't push our customers to pay right away, it may take them [the school districts] 30-60 days to pay and then we have to wait for the check to clear the bank. That whole process has held us up 4 weeks or more on some of these. Please do what ever you can to push these through as soon as possible.
>
> Can you tell me who has FRN xxxxx, it was billed on 4/12 and I have not heard anything. And FRN xxxxxx was billed on 7/1/04 and I have not heard anything."

There was, of course, no response from the SLD. The statement is typical of the impact on businesses generally. The Committee should remember that under the Telecommunications Act of 1996 no funds are paid directly to schools and libraries; the money goes directly to vendors. The issue, of course, is the Congress did not trust school districts or libraries to use the fund appropriately. Now it appears that the SLD does not trust vendors either.[5]

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[5] Universal service (and the universal service fund) must be understood in its historical context. Historically, USF support is defined as "a public policy to spread telecommunications to most members of society and to make available directly or indirectly, the funds necessary to accomplish such a policy." Communications Law and Practice, Section 5.01[a]

Another Alpha client school district elaborated on its experience with E-Rate.

The school districts are, rather sarcastic:

"The following observations are based on the experience of the Director of Technology with e-rate. He has been responsible for preparation of e-rate applications, for responding to SLD questions and reviews, and for coordination with providers since the beginning of the program. This experience has provided him with the unique ability to make observations about the process.

...

E-rate process is time-consuming

The e-rate application process has been very time-consuming. During several years, the Director and his secretary worked full- time on the e-rate process for more than two-thirds of the year.

In one case, the Director had to miss the annual state-wide technology conference because of the press of last minute e-rate application requirements.

Staff is required to spend an inordinate time on arcane or bureaucratic trivia.

The process is convoluted: a 470 application followed by 471 - with its idiosyncratic requirements - must be submitted half a year in advance of the funding year, and be based on data (such as telephone bills) that are more than a year old. Prior to a decision by SLD, an Item 25 review asks for trivial, historical, and sometimes unavailable information. When funding is finally granted, the applicant must submit an acknowledgement - telling SLD what SLD has told the district, followed by the BEAR form, telling SLD again what was contained in the 471 submitted 18 months ago.

Universal service funds are collected and distributed to telecommunications carriers in high cost areas, low income customers, and suppliers of "internal connections" to schools, libraries and health care providers (in rural areas). No USF funds are directly paid to schools. The intent of universal service funding is to "encourage higher rates of application from the poorest communities and getting funds to the places with the greatest need." Findings, Doc #00-17; also, see conference report, 104-230, Joint Explanatory statement of the committee of conference, Page 132-133, stating that universal fund support will "help open new worlds of knowledge, learning and education to all...rich and poor, rural and urban."

For a new school, the process has such a long lead time that there is no hope of obtaining e-rate funding for needed technology before the school has been completed. The SLD version of Catch 22: a new school is not eligible for e-rate funding until it exists, but after it exists it's too late because the 470/471 was not filed for this school on time.

SLD is ignorant of school district procedures

The SLD often requires responses-with short deadlines-to questions during school breaks, during the summer, or at other times when staff are unavailable or otherwise busy with the business of teaching students.

The questions on the Item 25 review persist, year after year, in asking for final budgets, when budgets - for all school districts in Texas - are finalized late in August. SLD should be aware of this by now, but the questions appear again and again.

SLD asks same questions repeatedly

SLD asks for the same information again and again. It appears that there is no systematic filing system or maintenance of historical data that would obviate the need for districts to keep providing the same answers to the same questions – often during the same Item 25 review.

These requests for redundant information contribute to the need for a small staff to spend more and more time furnishing information that has been provided in the past or that is publicly available elsewhere.

SLD staff often appear transient or unqualified

One possible cause of the repetitive questions and the ignorance of school procedures is the nature of the SLD workforce.

Over an eight year period, this Director has rarely talked with the same individual more than twice by telephone or responded to the same person with more than two consecutive requests for information. Frequently, the individuals at SLD give the appearance of being unqualified or untrained in e-rate procedures on in the business of public education.

This suggests that there is a very high turnover rate of employees within the SLD.

SLD does not follow its own instructions or rules change in mid-stream

Often, SLD changes its rules during the course of the application process, changes the requirements on the application forms, or staff conducting Item 25 reviews ignores SLD rules.

A good is example is the alternate procedure for calculating E-rate discounts using NSLP surveys. One district used the Student Nutrition survey data two years in a row and SLD disallowed some of the data--collected using their own rules. As a result, the district went back to using AEIS data, even though it meant the loss of a significant percent of student eligibility.

Suggestions for improvement

Make the e-rate program a formula grant program, similar to Title I. A ward block grants to the States, and let the state education agencies be responsible for distribution to the districts on a formula basis.

Shorten the time between application and award of the grant. Currently, there is a minimum of two calendar years between the submission of the application and the receipt of the money.

At the present time, the e-rate program appears to be designed to prevent schools from receiving the funds to which they are entitled - the orientation must be changed to one where SLD facilitates the distribution of these funds so that students can benefit. "

The Joint Explanatory Statement of the Committee of Conference states:

"The ability of K-12 classrooms...libraries... to obtain access to advanced telecommunications services is critical to ensuring that these services are available on a universal bases...This universal access will assure that no one is barred from benefiting from the power of the Information Age." [Emphases added.]

Conference Report, Report 104-230, p.132

However, the actions taken by those that administer the E-Rate fund insure that the Congressional mandate is nothing more than a pipe dream.

The real issue is whether or not the letter and intent of universal service funding (USF), as set forth in the Telecommunications Act of 1996, 47 U.S.C. Sections,151 *et seq.* (Telecom Act), is being met. Thirty percent (30%) of the nation's Hispanic students, 35% of the nation's African American students, and 25% of the nation's children ...[are]...living in poverty." In other words, what is the purpose of universal services if it is not to provide funds for the schools that these children attend so that they too can have access to technology as it is incorporated into a district's curriculum?

Section 254 (c) (1) (A)-(D) mandates that the FCC "consider the extent to which...'telecommunications services' included in the definition of universal service:

(1) are essential to education...
(4) are consistent with the public interest, convenience and necessity."

In the Matter of Federal State Joint Board on Universal Service, Report and Order, Rel., May 8, 1997.

Is E-Rate nothing more than a cruel form of lip service to K-12 educational institutions? The process is so unbelievably complicated that you may want to consider doing away with the program altogether.

VI. SLD/FCC Appeals

In the legal profession there is saying that the wheels of justice grind slowly but grin exceedingly fine. While that may be true to protect the rights of various segments of this society, it should not be true with educational funding for Americas schools.

Currently, it takes approximately 18 months to determine an E-Rate appeal. This is entirely too long. The issue is not whether school districts have correctly filled out a Form; the issue is what about the children that are suppose to benefit from the use of technology to enhance the classroom learning experience. These children, specifically the ones in the upper grades move on. When technology funding is denied, these children move out into the employment world with fewer tools at their disposal to make a success out of life.[6]

Conclusion

[6] There is no question that E-Rate is focused on poor urban and rural school districts. As recognized by a leading study, "[u]rban schools...tend to have greater concentrations of poor children and to be larger in size..." "E-Rate and the Digital Divide: A Preliminary Analysis From the Integrated Studies of Educational Technology." U. S. Department of Education Office of the Under Secretary, Doc #00-17. And, [w]hile the US is in the forefront of the technological revolution, there are segments of our society – particularly poor and minorities – for whom access to computers [internal connections required] and the Internet is significantly lower." *Id.* E-rate was recognized as a means of assisting in eliminating the digital divide because "schools and libraries...are [the] primary means of gaining access to what...new technology has to offer...in the dramatic changes in the education of the nation's children..." *Id.*

Although urban districts comprise only eight percent of all public school districts, they enroll 33 percent of all public school students. *Id.*, at Tables A.1 and 2. In contrast, rural districts, comprising nearly half of all public school districts, enroll only about 14 percent of all public school students.

- The government should do an analysis, subjective and objective, to determine the benefits derived from current expenditures; this will determine waste, and abuse;
- There is still a tremendous need for E-rate; but a real commitment must be made rather than give political lip service to something as important as America's educational system;
- The process must be simplified, and expedited for both school districts and vendors;
- A qualified and professional staff is required to administer the program, perhaps those with some educational background with some technology experience as a criterion;
- To prevent fraud, rely upon the federal criminal justice system;
- Expedite the appeal process.

RESPECTFULLY SUBMITTED,

Nathaniel Hawthorne
Alpha Telecommunications, Inc.
27600 Chagrin Blvd.
Cleveland, OH 44122

Attachment A

Year 5 Agreement

This Agreement ("Contract" or "Agreement") is made and entered into as of _____, ____, 2001, between Alpha Telecommunications, Inc. ("Alpha"), 27600 Chagrin Blvd., Ste. 260, Cleveland, Ohio 44122 and the Logan County School District ("District").

Recitals

WHEREAS, Alpha is in the business of network planning, systems improvements and upgrades, engineering voice, data, and video systems, project management, and associated preparing and filing e-rate forms with the Schools and Libraries Division of the Universal Services Administrative Corporation; and,

WHEREAS, in order to meet the anticipated deadline for collection of e-rate data, and e-rate filings and in order for the school district to be eligible for SLD e-rate funds there is a significant amount of work that must be performed prior to filing Federal Communications Commission's Forms 470 and 471;

NOW, THEREFORE, in consideration of the mutual promises herein contained and intending to be legally bound hereby, the parties agree as follows:

1. **Scope of Work**

A. The District agrees to retain Alpha as its contractor to perform all work set forth herein and in Attachment A to this Contract on the terms and conditions set forth herein.

B. Alpha will review the School District's vision for incorporating technology into classroom curriculum, and review existing Technology Plan ("Plan") to ensure that the Plan conforms to the Telecommunications Act of 1996 (the "Act") and the FCC's and SLD's Rules, and Regulations that implement the Act.

C. Alpha will review work presently performed by the School District and current vendors and recommend appropriate products, services, and maintenance job function categories. Alpha will review the budget portion of the School District's Technology Plan and recommend any necessary modifications, and be available to perform the Services required hereunder in a diligent, ethical, and professional manner. Alpha further agrees that it will devote the amount of time, energy, attention, and skills essential to the delivery of such services herein and as is necessary to result in the successful planning, conceptual design, and integration of voice, data, and video communications systems. Alpha will be involved in the technical evaluation of

alternative technologies and review of proposed systems design related to telecommunications, as required.

D. Alpha will process the e-rate Applications through the administrative, and regulatory approval process, including the SLD/FCC. Administrative appeals of adverse decisions, if any are included in the fees. However, this does not include any appeals to federal courts.

E. Alpha will concurrently work with the School District, its contractors, and communication providers in planning, designing, and implementing Technology Plans, and as a part of its services, will do the work required to file the e-rate forms. All work includes providing detailed specifications, negotiating, and/or reviewing or drafting agreements with functionality of a state of the art communication system covered by the e-rate. Alpha will be involved in the implementation and maintenance of the network, modification, monitoring, expediting, and integration of vendor services.

F. Alpha's involvement will include areas of Telecommunications, Internal Connections, Internet Access, intranet, interface with local exchange companies, new exchange providers, information services, leased lines, internal connections, electronic mail, transmission of information and transmission of information as part of a gateway to an information service. This includes consulting on associated maintenance.

G. Internet access will include advice and assistance in terms of the implementation of a robust and cost effective network and related maintenance.

H. Specifically, during the contract term Alpha will provide the following services as required: systems design, planning, systems integration, project management, bid review, and contract preparation, negotiation, and review. Utilization of a state of the art communications network will be integrated into the School District's curriculum. These functions will be performed with input from and in close cooperation with the School District. This work will include, if required, preparing bid specifications, evaluating bids, and negotiating contracts for procurement.

I. Prepare maintenance functions related to the District's backbone network connecting all the School District's buildings which insures interoperability, and provide connectivity to the communications universe.

J. Provide advice to integrate the existing *Technology Plan* into the curriculum.

1. Review and modify, as needed the existing *Technology Plan;* integrate and coordinate this plan into a Strategic Plan in areas where the two Plans meet in the deployment of District wide technology.

2. Cooperate with the School District's planning and implementation team working on both the *Strategic and Technology Plans* to insure seamless interoperability between the two Plans.

K. Assist in compilation of all necessary documents required, and prepare the application for filling of the e-rate. Such documents shall include:

1. Short and long term technology plans.
2. Inventory of existing telecommunications equipment.
3. Determine capability of the existing electrical system in the areas where equipment is being deployed as well as the District's plan to upgrade if required, including proposed budget.
4. Budget for the current application.
5. Existing expenditures for the voice network.
6. All other existing communications expenditures.
7. Computer software necessary to communicate with other computers.
8. Experience and training received by the staff and training budgeted for the current and future years.
9. Existing and budgeted maintenance contracts.

Alpha represents that it possesses the qualifications, resources, and experienced and qualified personnel to provide such services.

L. Alpha will perform all work associated with the 5th year of e-rate.

M. The parties agree that any work not covered by this Contract and performed by Alpha shall be charged separately at an agreed upon rate.

N. **Alpha will not perform legal work. Alpha will retain an experienced regulatory attorney.**

M. **Court appeals are not included in the fees.**

2. Term

The term of this Agreement shall commence upon the date first set forth above and shall expire on June 30, 2003. This contract is for Year 5 e-rate only.

3. District's Payment Obligation to Alpha

Alpha's fee for its services is 10% of the approved funding, provided however, that payment to Alpha fee shall occur as follows:

a) Upon submitting the FCC Form 471 to the SLD, 2.5% of the requested funding, excluding internal connections, is due Alpha as the first installment.

b) 5% of all Approved Funding less the first installment is due Alpha when an SLD notification letter is received.

c) 2.5% of all Approved Funding is due Alpha two months after an SLD notification letter is received.

d) 2.5% of all Approved Funding is paid four months after an SLD notification letter is received.

It is agreed that the District's obligation to pay Alpha arises if Alpha is successful in obtaining funding in excess of the year four awards after Alpha's fees are deducted. The District shall make payments in accordance with the above payment schedule, provided however, that Alpha will adjust payments if Alpha does not achieve funding as stated herein.

In total, Alpha will receive 10% of all Approved Funding as the fee for service.

If an SLD decision is appealed, final payment shall be made when the District is notified that the appeal has been successful.

All fees are due and payable at Alpha's office in Cleveland, Ohio.

4. **Independent Contractor**

The parties acknowledge and agree that Alpha is an independent contractor.

5. Mutual Cooperation

A. Time is of the essence in performing all work under this Agreement.

B. The Parties shall cooperate with each other in the performance of their services hereunder, including securing and providing all information and data in a timely manner so that all filings are timely completed.

6. Confidentiality

A. The Parties agree that all financial, statistical, or proprietary information provided by either Party, one to the other, or to the School District will be kept confidential.

B. Alpha agrees that any technical, or marketing information owned or used by the District and designated as proprietary under this Agreement shall not be used without the written consent of the District.

C. The District agrees that any technical or marketing information owned or used by Alpha and designated as proprietary under this Agreement shall not used without the written consent of Alpha.

7. Assignment

Neither party may assign this Contract or any right or interest herein, without the prior written consent of the other party, which consent shall not be unreasonably withheld.

8. Miscellaneous

A. **Any** amendment, supplement, or waiver of any provision of this Agreement must be in writing and signed by authorized representatives of both parties.

B. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

C. The WHEREAS and NOW THEREFORE clauses and paragraph headings are not solely for convenience, but in fact demonstrate the interpretation to be accorded this Agreement.

D. All agreements and covenants herein are severable, and in the event any of them is held to be invalid by any competent court, the Agreement will be interpreted as if such invalid agreements or covenants were not contained herein. The parties further agree that in the event such portion is an essential part of this Agreement, they will immediately begin negotiations for a replacement.

E. Alpha will comply with all applicable federal, state, county and local laws, ordinances, regulations and codes in the performance of their obligations hereunder.

F. No waiver by any party of the breach of any term or provision of the Agreement will be construed to be a waiver of any proceeding or succeeding breach of the same or any other term or provision.

9. Integration Clause

The Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements. Alpha and the District stipulate that neither has made any representations with respect to the subject matter of the Agreement or any other representations except such representations as are specifically set forth herein. Alpha and the District further acknowledge that any representations that may have heretofore been made by either to the other are of no effect and that none of them have relied thereon in connection with their dealings with the other.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized representatives all as of the date first above written.

By:
Print Name

_____
Signature

Alpha Telecommunications, Inc.

By: Nathaniel Hawthorne
Print Name

_____
Signature

Attachment A

SYSTEMS IMPROVEMENTS/UPGRADES

- **Network review, and planning of new technology with the existing network, optimization of performance of the network, systems design and specifications.**

INTEGRATION OF TECHNOLOGY AND CURRICULUM

- **Author Educational Technology plans**
- **Author Educational Technology grants (This service is provided under separate contract for a distinct fee.)**
- **Develop in-house benchmarks and analyses to monitor and assess the effectiveness of Educational Technology and its use in instruction**
- **Collaborate with central office and building administration and teachers in developing best practice models in infusing technology into the curriculum**

PLANNING AND NETWORK DESIGN

- **Perform systems - network design, system implementation work, as required.**
- **Evaluate / implement latest technology re: hubs, routers, and switches, servers, network interfaces, and connectivity**
- **Work with Client re: short and long - term planning, integration of technology (voice, data and video communications) into the classroom**

PROJECT MANAGEMENT

- **Project manage the entire telecommunications project, or co-project manage with Client's designated person.**
- **Attend Client meetings, by conference call and personally where required, with Staff and vendors.**

CONTRACT MANAGEMENT

- **Assist in contract management.**
- **Design E-Rate billing system, if required.**
- **Train Client personnel regarding billing issues, if required.**
- **Interface with vendors.**
- **Consult with Client to insure vendors provide information, data, service, and products in compliance with E-Rate rules and regulations to obtain maximum funding.**

CONTRACT ISSUES

- **Draft and review telecom proposals, bids prepared by the District, and contracts.**
- **Work under direction of Client's legal counsel on contract issues, as required.**

SLD PROCESS

- **Advise Client on responding to SLD problem resolution and audit.**
- **Respond to all SLD questions, request for documents, issues. Retain all files for Client for audit purposes. (Five-year record retention is mandatory.)**

LEGAL CONSULTATION

- **Work under direction of Client's legal counsel on regulatory issues.**
- **Monitor and keep Client advised of latest E-Rate, Federal Communications Commission issues, and rulings.**
- **Experienced telecommunications attorney will be retained by Alpha for E-Rate, contract, telecommunications and regulatory issues. Attorney has prior E-Rate, regulatory experience. (Alpha will not perform legal work.)**

E-RATE FILING

- **Evaluate bid(s).**
- **Evaluate and document support for 470s.**
- **Prepare 470s;**
- **Prepare 471s; deliver to SLD or appropriate regulatory body.**

Attachment B

Subcontractor Agreement

for

Pike County School District

Statement of Work for E-Rate year 2002

This Statement of Work ("SOW") # 4902AT0602-Pike-YR5 dated as of November 12, 2002 ("Effective Date") and adopts and incorporates by reference the terms and conditions of the Customer Solutions Agreement (4999CS0442 between International Business Machines Corporation /Integrated Technology Services ("IBM" or "Buyer") and Alpha Telecommunications ("Supplier"). Transactions performed under this SOW will be conducted in accordance with and be subject to the terms and conditions of the Base Agreement and any applicable Work Authorizations ("WAs").

1.1 Key Assumptions

This Statement of Work is based on the Key Assumptions listed below:

This SOW is contingent on the funding confirmation from the Schools and Libraries Division (SLD) of the Universal Service Administrative Corporation, Schools and Libraries Division. Funding confirmation shall occur when the SLD posts the funding for the school districts on the SLD web site. This Subcontractor Statement of Work is being executed by both parties subsequent to the 471 filing for PIKE COUNTY School District which occurred on or before January 17, 2002.

Alpha Telecommunications will assess and provide the level of personnel support required by this subcontractor agreement. If either Alpha or IBM do not have adequate resources to meet the agreement then they must notify the other party within 48 hours. The Change Control Procedure in Appendix A. will be used to make changes to this agreement and the fee structure as appropriate.

1.2 Alpha Telecommunications Inc. Services

Alpha Telecommunications will perform the following tasks for school districts in accordance with the terms and conditions of the IBM Customer Solutions Agreement and this Statement of Work.

Services will be performed by Alpha Telecommunications at its facility located in Cleveland, OH or at the client location if requested by IBM and agreed to by Alpha.

1.2.1 Project Overview and Tasks

IBM will work with Alpha Telecommunications at PIKE COUNTY School District for e-rate year 2002. Alpha Telecommunications will provide consultation services to IBM throughout the e-rate year 5 funding period including the following:

1.3 Materials

Alpha Telecommunications will deliver the following sample project materials to IBM Global Services:

- A script that reflects e-ratable projects and services that my be used by the school district in preparing an FCC Form 470.
- FCC Form 471 (E-Rate forms)
- Any additional FCC Forms (e.g., 486, 472, eligible services list) and documentation as required to satisfactorily and successfully complete this project.

1.4 Completion Criteria

Alpha Telecommunications will have completed its obligations under this Statement of Work when the tasks and materials listed above have been completed. In the event there is an SLD audit of funding year 2002, Alpha will assist IBM with the audit at no additional charge.

1.5 Estimated Schedule

The estimated schedule begins when the SLD funds PIKE COUNTY School District for year 2002 and IBM confirms the customer Statements of Work with the district and then will continue throughout funding year 2002.

1.6 Terms of Payment

The terms of payment will be net 45 days after Buyer receives an acceptable Supplier invoice.

1.7 Travel Expense Guidelines

Alpha Telecommunications will be responsible for their own travel expenses

1.8 Electronic Commerce

Unless previously submitted by Supplier, in order to initiate electronic transfer of payments associated with this SOW, Supplier will complete the attached form entitled "Authorization for Electronic Funds Transfer" and fax the completed form to Accounts Payable at the number included on the form.

- Assist IBM after the school district files the 471 form or during the SLD program integrity to address questions from the SLD to the district. Provide feedback to IBM within three business days on the questions from the SLD assuming a seven day turnaround from the SLD. If the turnaround is less than seven days, IBM/Alpha will agree on the response time-frame.

- Consult with IBM regarding systems improvements/upgrades, planning, integration of new technology into the network, optimization of performance of the network, systems design, and specifications as it pertains to the IBM Statements of Work for PIKE COUNTY School District.

- Alert IBM to any potential SLD rule changes, telecommunications firm lobbying activities and other efforts that will impact IBM's ability to continue to successfully participate in the e-rate program. Upon request from IBM, Alpha will provide written summary with recommended courses of action.

- Assist IBM as needed with SLD inquiries or product and services substitution forms submitted by the client to the SLD. Provide IBM with recommendations within two business days.

- Assist IBM as needed with audit compliance questions or in the event an audit occurs at Pike County School District. IBM and Alpha will agree on a response timeframe in order to comply with the SLD guidelines for audit.

- As requested by IBM, assess new SLD funding opportunities and strategize with IBM to create new service offerings for PIKE COUNTY district

Alpha will work through IBM with a client. Alpha should not engage in direct communications with the client without prior approval from IBM. Alpha is not authorized to work independently of IBM or represent IBM at PIKE COUNTY School District. All documentation related to a client must be filed with IBM/ITS.

1.2.2 Project Leadership

Alpha Telecommunications will provide project leadership services for the tasks in this IBM Statement of Work. Alpha will appoint a project leader once the 471 is filed identifying IBM as the vendor; IBM confirms customer Statements of Work; and this subcontractor agreement is signed by both parties.

Alpha will notify IBM in writing of the individuals assigned. Given the potential impact on the client due to personnel changes on the IBM team, Alpha will provide IBM with a 30 day written notice on changes to the project leadership. Then, the Change Control Procedure in Appendix B will be used to approve changes.

The project leader (s) will have explicit responsibility for the administering the tasks described in this Statement of Work. He or she will administer the Change Control Procedure with the IBM Project Manager.

1.9. Payment Schedule

Total Fee: $

(Fee will be determined for each client based upon the PIKE COUNTY School Districts' Statements of Work filed with the SLD. This fee and SOW scope will be adjusted to meet the IBM delivered and invoiced amount to the SLD through the Change Control Procedure in Appendix A.)

Upon funding confirmation (FRN) from the SLD and the district, IBM will notify Alpha Telecommunications of this confirmation within 48 hours.

IBM will pay Alpha as described below:

- These payments will be calculated as 7% of the amount of the value of the IBM signed Statements of Work with PIKE COUNTY School District which are funded by the SLD, not the district, and are successfully delivered to the client and invoiced to the SLD, and for which IBM has received payment from the SLD.

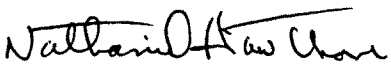
- If portions of the Statement of Work with school districts are not funded or cannot be completed due to the delayed release of the funds, client issues with matching payments or any other issues related to the SLD or the client, the payment(s) to Alpha Telecommunications will be delayed until funding occurs or the fee will be prorated and reduced accordingly to actual IBM invoices submitted to the SLD.

- IBM will notify Alpha within 48 hours after IBM has received payment on the invoices submitted to the SLD. Alpha may then submit their invoice (s) to IBM for payment.

Each of us agrees that the complete agreement between us about this transaction consists of 1) this Statement of Work and 2) the IBM Customer Solutions Agreement (or any equivalent agreement signed by both of us) and its applicable Attachments and Transaction Documents.□

Agreed to: (IBM Subcontractor)

Alpha Telecommunications, Inc.



By
Authorized signature

Name (type or print): Nathaniel Hawthorne

Date:

Subcontractor address:
27600 Chagrin Blvd., Suite 260
Cleveland, OH 44122

IBM Customer name and address:
Pike County Schools
Pikeville, KY

Agreed to:

International Business Machines Corporation

By
Authorized signature

Name (type or print):Richard D. Murphy

Date: 12 November 2002

Statement of Work number: 4902AT0602
Agreement number: 4999CS0442

IBM PO number:

IBM Office address:
3rd Floor
455 Park Place
Lexington, KY 40511

Appendix A: Change Control Procedure

Changes to this IBM Statement of Work may be requested any time by either party. Since a change could affect the price, schedule, or other terms of Agreement for this Statement of Work, both the IBM Project Manager and the Alpha Tele approve each change before amending the Statement of Wor and implementing the change.

The procedure below will be used by IBM and Alpha to control changes to the Statement of Work and changes to any previously deliverables.

- All Project Change Requests (PCRs) documenting es will be prepared and submitted in writing by IBM . They will describe the change include whatever rationale and/or estimated effect the change will have on the Statement of
- The IBM Project Manager/Alpha Tel review the proposed change. If rejected, the PCR is to the originator, along with the reason for the rejection.
- The IBM Project Manager and Alpha ıns Project Leader will weigh the merits of the proposed change and approv ın or reject it. Effect on the price, estimated schedule or other terms of the this Statement of Work will be determined. The change will then be approv d for implementation. Approved changes will be incorporated into the Statement of Work ough written change authorization (change orders), as appropriate.

Attachment C

Year 6 E-Rate Subcontractor Agreement for The Viramontes Group, Inc.

Statement of Work

1. Overview: Scope of Services, charges, and other applicable terms

1. This Statement of Work (SOW) between The Viramontes Group, Inc. (Viramontes), and Alpha Telecommunications, Inc. for the school districts covered by this SOW incorporates the following:

   - "Appendix A. Payment Schedule"
   - "Appendix B. Change Control Procedure"
   - "Appendix C. School Districts"

2. Changes to this SOW will be administered through the procedure described in "Appendix B. Change Control Procedure".

3. Total Fees: Fifteen percent (15%) of the funded Viramontes purchase orders with the school districts covered by this SOW, and for which Viramontes receives payment. A list of school districts that are potentially successful e-rate candidates, in terms of funding, is set forth in Appendix C.

Each of us agrees that the complete agreement between us about this transaction consists of this SOW.

Agreed to: (Subcontractor)	*Agreed to:*
Alpha Telecommunications, Inc.	**The Viramontes Group, Inc.**
By Authorized signature	By Authorized signature
Name (type or print): Nathaniel Hawthorne	Name (type or print):
Date:	Date:
Subcontractor address: 27600 Chagrin Blvd., Suite 260 Cleveland, OH 44122	
	Office address: 11308 Rockwell Court

Austin, TX 78726

2. Key Assumptions

This SOW is based on the Key Assumptions listed below:

1. Viramontes shall provide Alpha with a list of potential school districts that are candidates for successful e-rate funding. After receiving Viramontes's list, Alpha shall evaluate the likelihood of success with the list of candidates provided by Viramontes. After Alpha's evaluation, Alpha will advise Viramontes of the likelihood of success. Thereafter, Alpha and Viramontes will proceed only with the candidates that are likely to receive e-rate funding. Alpha will not become involved with any candidates where, in Alpha's opinion, there is no likelihood of the district(s) receiving e-rate funding.

2. This SOW is contingent on funding confirmation from the Schools and Libraries Division (SLD) of the Universal Service Administrative Corporation, Schools and Libraries Division. Funding confirmation shall occur when the SLD posts funding for the school districts on the SLD web site.

3. After Viramontes has received payment from the SLD, Alpha Telecommunications will invoice Viramontes for the amount(s) due. Alpha Telecommunications will receive payment from Viramontes for services upon Viramontes's receipt of payment from the federal government. Viramontes shall thereafter send payment on all due and payable invoices to Alpha Telecommunications in Cleveland, Ohio within 30 days of Alpha's invoice. Alpha's payment will be calculated upon the total amount stated in the SOW and billed to the school district.

3. Alpha Telecommunications Inc. Services

1. Alpha Telecommunications will perform the following tasks for school districts in accordance with the terms and conditions of this SOW.

2. Services will be provided at the Alpha Telecommunications facility located in Cleveland, OH. Venue for purposes of this SOW, in case of disagreement regarding the terms and conditions of this SOW is Cuyahoga County Ohio.

4. Project Overview

1. Viramontes will provide Alpha Telecommunications a Customer Statement(s) of Work for each school district or applicant. Alpha Telecommunications will review Statement(s) of Work and consult with the vendor on applicability of services to be provided to the E-Rate guidelines. Alpha Telecommunications will consult Viramontes on strategic sales positioning with the school districts in relation to E-rate funded programs.

2. Alpha Telecommunications will work with Viramontes in preparing E-Rate forms and 471 and 471Attachments for filing in cooperation with the school districts. This includes

consulting with Viramontes on E-Rate eligibility of all services and products to be provided to school districts. Alpha Telecommunications will also counsel on E-Rate rules and regulations, provided that Alpha will not render any legal, or regulatory advice. Such advice, if any, will only be provided by an experienced regulatory attorney selected by Alpha

3. Alpha Telecommunications will consult with Viramontes regarding systems improvements/upgrades, planning, integration of new technology into the network, optimization of performance of the network, systems design, and specifications as it pertains to the Statements of Work proposals being provided to the school districts and the E-Rate program.

4. Alpha Telecommunications will provide consultation services to Viramontes throughout the project timeline of July 1, 2002 – July 1, 2004 (this includes the marketing, sales and perform period for Round 6) on E-Rate, and related issues, brought forward by the SLD, the vendor, or school districts.

4.1. Provide Project Leadership

1. Alpha Telecommunications will provide project leadership services for the tasks in this SOW. Alpha Telecommunications will appoint a Project Leader who will have explicit responsibility for the administering and technical direction of Alpha Telecommunication's activities. Project leadership duties including:

   - With the vendor's Manager, discuss this *Agreement,* this SOW, and the Change Control Procedure in "Appendix B. Change Control Procedure" and review the responsibilities of all parties.
   - Administer the Change Control Procedure with the vendor's Project Manager.

4.2. Materials

1. Alpha Telecommunications will deliver the following project materials to the vendor:

   - A worksheet that may be used by school districts for purposes of determining the completeness of the FCC Form 470.
   - FCC Form 471 and Attachments
   - Any additional FCC Forms (e.g., 486, 472) and documentation as required to satisfactorily and successfully complete this project.

2. FCC Forms, in terms of how they are completed are based upon FCC/SLD rules and regulations and the years of experience of a regulatory attorney and telecommunications engineer. If these completed Forms, and any other written material in whatever form, are used by the vendor for other customers, it must be done with Alpha's specific written consent prior to use by the vendor.

4.3. Completion Criteria

1. Alpha Telecommunications will have completed its obligations under this SOW when the Alpha Telecommunications tasks and materials listed above have been completed by Alpha Telecommunications and accepted by the vendor and school districts.

4.4. Estimated Schedule

1. Alpha Telecommunications will perform services in this SOW as required to meet customer requirements.

Appendix A. Payment Schedule

1. Pending an award and funding confirmation from school districts and the SLD, Viramontes will notify Alpha Telecommunications of this confirmation.

2. Payment shall be made by Viramontes to Alpha Telecommunications, as the vendor, upon Viramontes's receipt of payment from the school districts and the SLD, and upon invoice by Alpha Telecommunications within 30 days of Alpha's invoice.

3. The only way that Alpha can independently determine the amount due is from the funded purchase order(s). Viramontes will provide specific information upon request so that Alpha's billing is accurate.

4. To determine the payment due Alpha Telecommunications, the parties will use Viramontes's purchase orders with the school including any funded USF award. If portions of the School District Statement(s) of Work with school districts are not funded or cannot be completed due to delayed release of the funds, Alpha Telecommunications payment will be delayed until funding occurs or reduced accordingly.

5. Alpha's fees for their services defined under this SOW will be fifteen percent (15%) of Viramontes's funded purchase orders (including any USF award) with the school districts defined in Appendix C of this SOW.

6. The above prices are valid through June 30, 2003 or the completion of each SOW associated with funded purchase orders, if an extension to the Period of Performance is granted by the SLD.

Appendix B. Change Control Procedure

1. Either party may request changes to the SOW at any time. Since a change could affect the price, schedule, or other terms of the Agreement for this SOW, both the Viramontes Project Manager and the Alpha Telecommunications Project Leader must approve each change before amending the SOW and implementing the change.

2. This procedure will be used by Viramontes and Alpha Telecommunications to control changes to the SOW and changes to any previously approved deliverables.

   - All Project Change Requests (PCRs) will be submitted in writing. They will describe the change and include whatever rationale and/or estimated effect the change will have on the SOW.
   - The Viramontes Project Manager/Alpha Telecommunications Project Leader, as appropriate, will review the proposed change. It is then accepted or rejected for submission to the other party. If rejected, the PCR is returned to the originator, along with the reason for the rejection.
   - Viramontes's Project Manager and Alpha Telecommunications Project Leader will weigh the merits of the proposed change and approve it for investigation or reject it. Approval of a PCR for investigation by both parties constitutes authorization by Viramontes of the Fixed Price amount proposed by Alpha Telecommunications to investigate the PCR. Appropriate staff work will take place at this time. Effect on the price, estimated schedule or other terms of the *Agreement* for this SOW will be determined. The change will then be approved/disapproved for implementation.
   - Approved changes will be incorporated into the SOW through written change authorization (change orders), as appropriate.

Appendix C. School Districts Included in this SOW (Districts may be added or removed.)

1. These listed school districts are Viramontes's project list for the covered by this SOW for USF Year 6. Viramontes agrees to use Alpha for accounts on this project list that the Parties (Viramontes and Alpha) successfully capture for Year 6.

Confidential
School District

Mr. WALDEN. All right. Thank you very much.
Mr. Caine, welcome.
Mr. CAINE. Thank you.
Mr. WALDEN. Do you have an opening statement for us today?

TESTIMONY OF CHRISTOPHER G. CAINE

Mr. CAINE. I do.
Mr. Chairman and Ms. DeGette, thank you very much.
I am Chris Caine, Vice President of Governmental Programs for IBM.
I appreciate this opportunity to provide IBM's perspective regarding the E-Rate program. We have a long history of commitment to public education and working to help our Nation's leaders improve K through 12 schools. Therefore, we responded willingly in 1997 when FCC Chairman Reed Hunt requested our help in educating school districts about the newly created E-Rate program.
We recognize that you and other members of this committee have raised important questions about a number of issues surrounding the program, including incompatible technologies that do not work together, equipment delivered but not installed, billing for equipment or services not provided, and procurement irregularities. And these are important issues and they should be addressed.
But we believe in IBM that overall the E-Rate program has been a success in helping millions of disadvantaged students bridge the digital divide. IBM is here today voluntarily because we care about the program and we want to help you and others make it the best it can be.
IBM has participated in the program as a service provider since its inception. Our extensive experience in E-Rate and in K through 12 education has given us an insight into the E-Rate program and how its goals can be fully realized.
Some have suggested that IBM has been too involved in the procurement process because school officials listened to advice from IBM prior to issuing a request for proposal. We strongly disagree. The SLD guidance encourages vendors to share their experience with schools and specifically authorizes vendors to provide assistance in the development of an RFP as long as the resulting procurement is neutral. IBM has confidence in school districts to objectively consider technical options from various sources and apply their good judgment to make sound and proper procurement decisions.
Deploying a modern network infrastructure is not a simple task, especially under the often tight schedules imposed by the E-Rate program. So it is important that the schools get the right technical and project management help, and I think we heard that from some of our earlier speakers.
As this committee has learned from prior hearings, students, teachers, and communities will suffer if much needed equipment is left stacked in a warehouse for lack of coordination or technical skills. This is why IBM supported the choice by the El Paso Independent School District, among others, to use a systems integration approach for selected E-Rate projects.
As a systems integrator, IBM can provide a single point of accountability to insure that all components of the network will be

installed as planned and will work properly together. In El Paso IBM delivered good, tangible value on time and on budget.

Deploying complex network systems is not a plug and play activity. A collection of the lowest priced piece parts is often not the most cost effective decision. That approach may not optimize the cost of the overall solution, and the parts may not work together effectively.

Implementing such projects under the strict rules of the E-Rate program and dealing with the old physical infrastructure that is frequently found in many school districts carries substantial risk and requires considerable program management experience. For these reasons, we believe systems integration is a valuable approach.

El Paso selected IBM as its E-Rate systems integrator in January 2001, following an open, two-step procurement process permitted under Texas law. In the first step, El Paso ranked bidders based on technical qualifications, experience, and pricing information. As a result of this step, El Paso selected IBM as the most qualified bidder.

In the second step, the district entered into detailed negotiations with us and satisfied itself that we were the most cost effective vendor for meeting its comprehensive network requirements.

As part of our E-Rate engagement in El Paso, IBM provided maintenance support, including a centralized help desk to keep the network up and running. We believe that quality maintenance is critical for a school district to get the full value out of its technology investments, another thing we just heard recently from other speakers on the panel here.

The Consortium for School Networking agrees. The consortium, which is made up of education leaders in technology from school districts across the country, notes the importance of a formalized support infrastructure. In addition, the group reports that over 95 percent of school districts with more than 20,000 students, such as El Paso, use help desks to provide technical support.

This industry standard practice is a good way to provide fast resolution for network problems and insure high network availability. It is important to remember that the E-Rate program is relatively new and that the rules are still evolving. Since the beginning of the program, we have complied with the rules as we understood them at the time. It is very unfortunate that El Paso and other school districts were denied funding, despite the fact that they had followed application approaches that the SLD has previously approved.

However, we believe the FCC ultimately reached a fair and balanced decision in its Ysleta order. Significantly, the Commission acknowledged that some E-Rate program rules were unclear and applied inconsistently. Consequently, the Commission took the unusual step of waiving its rules to allow these applicants to conduct rebids and to reapply for the denied funding.

The Commission also expressly noted that IBM could participate in these rebid applications. IBM has always taken compliance with E-Rate rules very seriously. Now that the Commission has provided additional clarification, we are working even harder to insure our compliance. We have hired two highly regarded E-Rate experts

from the applicant community and consolidated expertise into an E-Rate Center of Competence as a resource for IBM staff.

Our Center of Competence is actively engaged with the SLD. For example, we are proactively seeking to resolve questions about the rules, working to improve clarity of our statements of work and participating in the on-line product data base pilot program.

Members of the committee, IBM is committed to the ongoing success of E-Rate, and we will continue to work with the SLD, the Commission and you to improve the program. As you can see in our written statement, we have offered some recommendations for the program, the most important of which is to make the rules as simple and as clear as possible.

Thank you for the opportunity to be here, and I will look forward to answering your questions.

[The prepared statement of Christopher G. Caine follows:]

PREPARED STATEMENT OF CHRISTOPHER G. CAINE, VICE PRESIDENT, GOVERNMENTAL PROGRAMS,, INTERNATIONAL BUSINESS MACHINES CORPORATION

INTRODUCTION

Mr. Chairman, Members of the Subcommittee, I am Christopher G. Caine, Vice President, Governmental Programs for IBM. I appreciate the opportunity to appear before this Subcommittee to provide IBM's perspective regarding the E-rate program.

IBM has had a long history working with our nation's educators. For example, in 1986 IBM pioneered the use of technology in classrooms with the introduction of *Teaching and Learning with Computers,* a pioneering use of technology in the classroom. Since 1994, through our *Reinventing Education* program, IBM has given almost $75 million in philanthropic technology grants and worked with school partners to improve student achievement. As a result of this grant program, the Center for Children and Technology, which has researched technology and learning for over two decades, estimates that over 90,000 teachers and millions of students are using the educational technology tools created by IBM and our school partners. Last year alone, we provided over $35M in grants to elementary and secondary schools, making IBM the largest corporate contributor to K-12 education. And to advance the cause of public school reform, IBM organized and hosted National Education Summits in 1996, 1999 and 2001, bringing together the nation's governors and business and education leaders to collaborate on this important goal.

Clearly, IBM was committed to improving schools through the application of information technology long before the E-rate program was created.

IBM AND E-RATE

Because of IBM's strong commitment to improving K-12 education and bringing the opportunities created by information technology to *all* students in our nation, we were pleased when Congress created the E-rate program as part of the Telecommunications Act of 1996. We believed then as we believe today that the program was structured properly to provide greater assistance to those schools that have the greatest need, helping to provide opportunities for economically disadvantaged students to participate in the "information age."

Shortly after the FCC established the initial rules to govern the E-rate program in 1997, I participated in a small meeting of high-tech leaders where then-FCC-Chairman Reed Hundt asked us directly to help educate schools across the country about the opportunities of E-rate. IBM willingly responded by creating a booklet that described the new program, and we mailed a copy to over 12,000 school districts in the nation. We followed up by providing seminars about E-rate for school officials and meeting with individual districts to talk about how E-rate could help them meet their communities' educational needs and objectives.

IBM has participated in the E-rate program as a service provider since its inception, and we believe that the program has been an enormous success in bringing the vast resources and opportunities of the Internet to deserving students. E-rate funding has allowed many of our country's poorest school districts to bridge the "digital divide".

The E-rate program has provided the opportunity to many poorer school districts to explore new ways to use technology to enhance teaching and learning. Many districts have found that the universal access to the Internet that E-rate funding provides has exposed their students to a depth and breadth of material that their local teachers could not possibly have developed and delivered on their own. The program has the added benefit of helping to prepare our nation's students for the career requirements of a highly competitive, technology-based economy.

Since the beginning of the Erate program, IBM has served well over 200 E-rate customers in over 30 states. As the largest computer company and IT services company in the world with a history of applying our world-class research capabilities to educational challenges, IBM has provided a broad range of eligible networking products and services under the E-rate program. IBM has the resources to support many of the largest school districts across the country.

We believe that IBM has an excellent record of helping schools achieve their educational objectives under the E-rate program, delivering complex networking solutions—on time and on budget—to meet the increasingly sophisticated demands of districts with tens of thousands of students, teachers and staff.

E-RATE INVESTMENTS TO IMPROVE EDUCATION

Our experience has shown that with clear goals and proper planning, school districts can leverage information and communication technology to transform the learning environment, providing effective tools for teachers and leading to measurable improvements in student achievement. Therefore, IBM fully endorses the E-rate program requirement that schools base their technology investments on a comprehensive Technology Plan that is aligned with their educational goals.

As the El Paso Independent School District stated in its 2000-2001 Technology Plan:

> "In addition to a sound background in traditional academics, today's students must be competent and confident in using a wide range of technology in a variety of settings. Today, and in the future, most career paths require the use of computers and a wide-range of other technology. In short, students must be as comfortable using a computer or other technology as they are in using a pencil and paper."

In our work over the last decade with school partners in our *Reinventing Education* program, IBM has encouraged schools to take a systemic approach to education reform, consistent with the goals of the E-rate program. For technology to be used effectively in the classroom, it must be fully integrated in the curriculum, and professional development opportunities must be provided for teachers so that they can learn how to use it. If these principles are followed, the resulting improvements can be dramatic. Indeed, as research has shown, students in *Reinventing Education* classrooms have outperformed their peers on standardized achievement tests. Fortunately, the E-rate program created by Congress is making it possible for more students to enjoy the educational benefits of technology in the classroom.

IBM also believes that network infrastructure that schools install today should be designed to avoid rapid obsolescence by supporting evolving technical requirements and by accommodating reasonably projected future growth in demand for network capacity. The network infrastructure should support not only basic Web usage and e-mail, but should also be designed to support sensible, proven technologies that can greatly improve the productivity and effectiveness of the educational environment, such as online dissemination of lesson plans, classroom administration, and stored broadcasts or real-time, interactive video instruction to enable distance learning and sharing of the best-available teaching resources. Based on their educational goals and available resources, school districts must make the ultimate decision about what technology they should deploy.

TECHNOLOGY CHALLENGES FACING SCHOOLS

Many school districts have required substantial investments in recent years to upgrade their network infrastructures so that they could meet their educational objectives and prepare their students for the networked world. But deploying a modern enterprise network is not a simple task. For example, a district with 50,000 students plus thousands of teachers and administrators has networking requirements that are at least as complex as those of a small city. Many districts do not have sufficient technical staff and knowledge to handle these projects on their own. They require considerable assistance with the deployment, configuration, project management, technical support and maintenance for their large, complex network infrastructure projects. The Erate program has made it possible for many economically

disadvantaged school districts to obtain the technology products and services that they need to offer their students the same opportunities as more fortunate districts.

Certain constraints imposed by the E-rate program structure and the school environment, generally, create additional challenges in deploying advanced network infrastructure. For example, the annual E-rate funding cycle requires that major projects be performed on an artificially accelerated basis, compressed to fit into a narrow time window between receipt of E-Rate funding approval (often after long delays) and the funding year deadline. Meeting this tight schedule is further complicated by having to work around classroom schedules, after hours and during school holidays. And the simple fact that many school buildings were built decades ago, long before the Internet and the need for wiring classrooms were contemplated, can present difficult deployment problems, such as asbestos removal and inadequate electrical supply.

Given the complexity of the task of installing, integrating and maintaining a sophisticated network environment, especially under the often-tight schedules imposed by the E-rate annual funding cycle, it is important that school districts get the right technical and project management help. And if a school district hires multiple vendors separately to perform portions of the work, they may also find it difficult to coordinate among them.

Congress, the FCC and the SLD are well aware of the potential for waste if expensive equipment is left stacked in a warehouse for lack of planning, coordination, or technical skills. IBM has also seen cases where computers sit unused, gathering dust in classrooms, because schools had not invested sufficiently in technical support, maintenance or teacher training. In each case, expensive investments are idled, the school's instructional objectives and technology vision are frustrated, and E-rate goals of bridging the digital divide go unfulfilled.

IBM HELPS SCHOOLS MEET THESE CHALLENGES

One way that IBM has responded to these challenges has been by proposing a *systems integration* approach for selected E-rate projects. Systems integration is recognized as the most effective procurement model for governments and businesses undertaking complex IT projects. In fact, the Federal Government's use of systems integrators is longstanding and extensive. Since each school district's requirements are unique and districts often have varying levels of technology resources, schools have seen great value in working with a technology partner like IBM.

As a systems integrator, IBM can provide a single point of accountability so that school administrators are assured that all components of their network will be installed on time, within budget, and will work properly together. IBM can take responsibility for all of the work performed by multiple vendors and subcontractors, and for keeping school officials and boards of education informed. And by overseeing the entire project, IBM is able to provide a fixed-price commitment to a school district, enabling it to plan its budget and funding needs more precisely and avoid costly overruns. Once installed, IBM can provide ongoing technical support and maintenance to ensure that the network stays up and running so the school district can obtain the full benefit of its E-rate-funded investment.

IBM does not consider systems integration to be a "one size fits all" approach. Some school districts choose to hire a systems integrator to manage their project, while other districts prefer to act as their own general contractor. IBM offers its products, services, and experience either way. IBM strives to be a true partner to many of our nation's poorest school districts, helping them through the labyrinth of technological solutions for their needs, as well as through the E-rate process itself, while providing proven solutions. At the heart of each partnership is a firm understanding of the connection between infrastructure and educational results, and a commitment by IBM to assist the school district with its technology goals.

2001 E-RATE FUNDING FOR EL PASO INDEPENDENT SCHOOL DISTRICT

Among the school districts that IBM has served as part of the E-rate program is the El Paso Independent School District (EPISD or El Paso), which at the time served over 63,000 students in 52 elementary schools, 16 middle schools and 16 high schools, with over 8,000 employees. EPISD is an economically disadvantaged district, with a large portion of its students eligible for the National School Lunch Program. The mission of EPISD is to meet the diverse needs of all students and empower them to become successful members of a global community. EPISD developed a thorough and forward-looking Technology Plan designed to achieve its educational goals.

The selection by EPISD of IBM as its strategic technology partner provides an example of IBM's role as a systems integrator in the E-rate program. El Paso had par-

ticipated in the E-rate program from Funding Years 1 through 3 with service providers other than IBM. In December 2000, El Paso posted a Form 470 for Year 2001 on the Universal Service Administrative Company, Schools and Libraries Division ("SLD") Web site in accordance with E-rate program rules. El Paso also issued a Request for Proposal (RFP) in December 2000 detailing El Paso's requirements and describing the form of the prospective contract.

EPISD selected IBM as its systems integration partner in January 2001 after evaluating competitive bids from IBM and seven other vendors, following a negotiated solicitation process in accordance with Texas State procurement regulations, FCC rules and SLD requirements in effect at the time. El Paso recognized that the complex network solution they sought to procure to support their educational objectives was not a simple, commodity purchase in which the cheapest initial proposal would necessarily be the most cost-effective solution over time. So EPISD issued an RFP and followed an open, transparent, "two-step" procurement process permitted under Texas law. In the first step, EPISD ranked systems integration partner bidders based on technical qualifications, experience and pricing of skilled labor. As the result of this step, EPISD selected IBM as the most qualified bidder to implement the network environment as envisioned in its Technology Plan.

In the second step, the District entered into detailed negotiations with IBM to agree to contractual terms, with price as a primary factor in the final selection. EPISD satisfied itself that it was receiving the right combination of cabling, equipment, software and services at a fair and reasonable price that, considering all of the factors, made IBM the most cost-effective vendor for meeting its comprehensive network requirements. At the end of the second step, EPISD staff presented its decision and rationale for consideration by the Board of Trustees in open, public meetings. The Board then voted in favor of the recommendation and issued formal authorization for the contracts. The SLD subsequently reviewed EPISD's E-rate funding request in thorough detail and awarded E-rate funding to EPISD in October 2001.

EPISD's contracts with IBM allowed the District to bid out portions of the purchases to ensure competitive prices and provided for termination if the District became dissatisfied with IBM's performance. IBM believes that the EPISD technical staff and Board had sufficient procurement expertise and experience to make sound decisions to ensure they received the best value for the money.

The lowest priced initial solution is often not, over time, the most cost-effective use of taxpayer dollars. IBM believes that selection of a systems integrator is an effective approach for procuring complex information technology systems. Where school districts seek a comprehensive networking solution, as in El Paso, the proven ability of the integrator to manage such a difficult project to completion on time and on budget is particularly relevant.

Federal and state procurement laws provide for government procurements of complex IT systems, like the one in El Paso, through the use of a procurement model that weighs vendor qualifications, technical expertise and management experience, along with price, to choose the most cost-effective provider. The FCC recognized this point in two key decisions governing the E-rate program. The Commission's 1997 Universal Service Order gave schools "*maximum flexibility* to take service quality into account and to choose the offering—that meets their needs most effectively and efficiently." (emphasis added) And in its 1999 *Tennessee Order,* the Commission upheld a bid selection process in which price was an important factor, but was explicitly given a lower weighting than technological approach. In other words, price was not required to be the most important selection criterion.

The work that EPISD procured in 2001 under the E-rate program was particularly complex. IBM acted as a systems integrator, or general contractor, providing a single point of contact and accountability so that EPISD could be assured that the network and all of its components would be installed as planned and work properly. IBM worked closely with EPISD's senior management and technical staff to ensure that the network solution and product selection met the requirements as specified by the District in line with their approved Technology Plan and that the solution complied with E-rate eligibility rules as EPISD and IBM understood them. We also made regular presentations to the Board of Trustees to keep them apprised of progress and to seek their direction and approval.

IBM implemented a network solution, providing internal connections necessary for high-speed Internet access to enable distance learning and to take advantage of the educational resources available on the Internet. We accomplished this challenging task to connect and integrate these schools into an advanced communication network in a very compressed time frame, as required by E-rate program rules. We delivered everything that we committed to deliver, on time and on budget—and it worked.

Providing a modern technology infrastructure to support education is important and will create long-term benefits for our students. Such infrastructure may require significant investment, but it is an investment we must be willing to make. Implementing network projects of this size, scope and complexity for a fixed price under the strict rules and time constraints of the E-rate program carries substantial risk and requires considerable program management experience. A collection of the lowest priced piece parts is often not the most cost-effective decision. That approach may not optimize the cost of the overall solution, and the parts may not work together effectively. It may be tempting to go with such a "cheaper" solution, only to find out later that the District's educational goals are not met when the network cannot be deployed as planned or is frequently down.

IBM has the resources and capability to meet the challenges of implementing complex network systems under the E-rate program. Based on customer satisfaction surveys and comments from key EPSID staff, IBM believes that we met or exceeded the District's expectations. IBM is proud of the job that we did. We believe that we built the right solutions and delivered the value that we promised to the District.

For Funding Year 2001, IBM implemented and integrated a total of nine projects, including cabling, network electronics, server upgrade, Web and file servers, Fiber Internet Access, video, e-mail, Web access and technical support. The following section provides further detail on the technical support IBM provided to EPISD.

IBM TECHNICAL SUPPORT SERVICES FOR EPISD

Prior to the projects IBM undertook at EPISD, the District had only begun to introduce a modern technology infrastructure, and they lacked sufficient technical staff to properly support their new network infrastructure. To meet their needs, EPISD sought a service provider to assist with technical support under the E-rate program. The use of vendor resources in such cases is common, as illustrated by a study by the Consortium for School Networking (CoSN)., made up of education leaders in technology from school districts across the country and others CoSN found that over half of the school districts surveyed outsourced at least some of their technical support.[1]

IBM provided technical support and maintenance to EPISD using a methodology IBM had honed through many years of support for customers with similar reliability requirements and with environments of similar complexity. The goal was to enable the network infrastructure to operate reliably and with little downtime, so that it would be available to students and teachers to support learning in the classroom. IBM first set up a Technical Services Office (TSO), which designed, developed and implemented the support services. The TSO provided project coordination, site and connectivity networking services support, network infrastructure support, Web maintenance support, Local Area Network (LAN) and network hardware maintenance support, and help desk support. The IBM services achieved the following improvements for EPISD:

- Higher network availability.
- The ability to resolve network problems quickly, shortening downtime.
- Routine maintenance and technical change management methods to reduce unplanned connectivity outages.
- Network performance metrics to track quality of service and improvements.
- A single-point-of-contact help desk to screen calls and route them either to the IBM network support for eligible services, or to EPISD's own desktop PC support function for services not covered by E-rate.
- Trouble report status accessible by Web or phone.

IBM believed then, as it does now, that an effective technical support and maintenance program is an essential element of any school district's technology investment. We believe that quality maintenance support is critical for a school district to get the full value out of its technology investments. School districts are also coming to the realization that technical support is a critical element of their IT budget that can no longer be treated as an afterthought to be handled by technologically savvy teachers and students in their spare time. As CoSN has observed:

> "Ever-broadening use of personal workstations and the Internet in schools has increased the awareness of support costs and the need for a more formalized support infrastructure. The increasingly complex technology infrastructure makes the historically informal support approaches less adequate or practical."[2]

[1] Consortium for School Networking study available at http://classroomtco.cosn.org/survey__tech__press.html

[2] http://classroomtco.cosn.org/gartner__intro.html

CoSN reports that over 95 percent of school districts with more than 20,000 students use help desks to provide technical support, so this is a very common practice among large districts such as El Paso.[3] Help desks are a good way to provide fast resolution of network problems and ensure high network availability.

2002 EPISD E-RATE FUNDING DENIAL

In November 2001, a month after receiving its funding award for E-rate Year 2001, EPISD posted a Form 470 on the SLD website for Funding Year 2002. According to EPISD, the District wanted to inquire into any additional vendor interest in providing internal connection or Internet access services, and to ensure that renewing the IBM contract would be cost-effective and advisable. It did *not* issue an RFP for Funding Year 2002, and received no response to the Form 470 posting that it considered sufficient to prompt non-renewal. Consequently, El Paso conducted an internal review of its projects for 2002 and discussed pricing in detail with IBM prior to its decision to renew the contract. El Paso's Board of Trustees voted to renew IBM's contract on January 8, 2002. Through the first half of calendar year 2002, IBM continued implementation of its Year 2001 E-rate contract, successfully installing the new network and support infrastructure for EPISD.

The 2001 funding year ended on June 30, 2002, without El Paso receiving a funding decision for Year 2002. In anticipation of eventually receiving 2002 funding, IBM, at its own risk and expense, continued to provide technical support for EPISD beyond the end of our Year 2001 service contract. This support continued for six months until the end of calendar year 2002, when IBM reached the point at which it was unwilling to continue service without being paid. IBM did not subsequently seek payment from EPISD after E-rate funding was denied, despite the fact that IBM incurred millions of dollars in expenses in providing technical support services for those extra six months.

El Paso did not receive the SLD decision denying its Year 2002 application until March 10, 2003. Among the reasons for the denial, SLD criticized EPISD's use of the "two-step" procurement process for EPISD's Year 2001 application (which the SLD had approved the prior year), and therefore questioned whether EPISD had adequately established that IBM was the most cost effective vendor for Year 2002. IBM supported El Paso in its appeal of the SLD funding denial to the FCC, and IBM also filed its own appeal at the FCC. IBM urged the Commission to expedite the appeals of EPISD and other similarly situated school districts. The Commission's Ysleta Order subsequently upheld the SLD's denial of Year 2002 funding for EPISD, Ysleta and six other school districts. The *Order* was released on December 8, 2003, eighteen months after the end of the 2001 funding year.

While waiting for the delayed Year 2002 funding decision, IBM and EPISD discussed various options for continuing technical support services in the event that funding was ultimately denied. EPISD originally had intended to transition technical support services over to its internal staff over time, but this plan was dependent upon renewal of E-Rate funding. EPISD and IBM had not planned the project to address the eventuality that E-Rate funding for the technical support service would be approved for one year and then abruptly cancelled for subsequent years. As of December 2002, it was still too early in the implementation of the services for the EPISD staff to have gained enough experience with the system to effectively take over operation of it themselves. EPISD considered purchasing the system from IBM[4], but it did not believe that alternative was viable given the short timing and lack of funding.

This was a frustrating time for both EPISD and IBM. Substantial start-up effort and cost were expended on establishing the Technical Support Office, the help desk, the maintenance procedures, the tools and the supporting computer systems. It is very unfortunate that a change in the interpretation or application of the Erate rules caused much of the return on this investment to be unnaturally truncated. IBM also regrets that El Paso, Ysleta and other schools were delayed by a year or more in the implementation of their Technology Plans due to denial of their Year 2002 funding applications, which were submitted to the SLD in good-faith reliance upon the SLD's previous approval of similar applications. However, EPISD did receive full value from the other important E-Rate projects IBM implemented for Year 2001.

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[3] http://classroomtco.cosn.org/survey__tech__support.html

[4] Since IBM had been providing technical support to the District as a service, E-rate rules did not permit us at the end of the contract to donate the tools that we were using to EPISD.

THE COMMISSION'S YSLETA ORDER

IBM believed that we had complied with all applicable rules relating to the El Paso projects and Year 2002 proposals, including Erate program rules, state procurement rules and communities' local procurement requirements, as we understood them at the time. In addition to complying with the rules, IBM met its commitments in delivering products and services to our funded Erate customers—some of the largest school districts in the country with the most challenging network requirements.

Significantly, the Commission, in ruling on the funding appeals by IBM and our school district partners in El Paso, Ysleta and elsewhere, acknowledged that some E-rate program rules were unclear and applied inconsistently. The Commission's *Ysleta Order* said: "SLD could reasonably have been construed as sanctioning the two-step Systems Integration process by approving the El Paso Independent School District's application" for Year 2001. (¶69) Further, the *Ysleta Order* "acknowledge[d] that the Commission's use of varying phraseology in the same decision [concerning whether price must be "the primary factor" or only "a primary factor"] created some ambiguity on this issue." (¶50) And as the Commission noted, some applicants received funding despite circumstances similar to those of the denied applications associated with IBM. For example, while some of IBM's E-rate customers were criticized for including a broad list of internal connections services on their Forms 470, other districts that were not working with IBM received funding despite using the same or similar lists of services.[5]

Because of applicants' "substantial and widespread reliance on prior SLD" funding decisions and to avoid imposing an "unfair hardship" on applicants, the Commission took the unusual step of waiving its rules to allow these applicants to conduct "rebids" and reapply for denied funding under the new guidance issued as part of the appeals order. The Commission expressly noted that IBM would be eligible to participate in these rebids.

IBM believes that it is very unfortunate that El Paso, Ysleta and other school districts were denied funding for Year 2002, despite the fact that they followed application approaches that SLD had previously funded. However, given the circumstances, we commend the Commission for reaching a fair and balanced decision on these districts' funding appeals. What is most important is that the Commission provided additional guidance on E-rate rules to ensure that they are interpreted as intended and gave these school districts the opportunity to conduct rebids under this guidance so that they would not lose out on Year 2002 funding opportunities.

IBM'S RELATIONSHIPS WITH SCHOOL DISTRICTS

Some have suggested that IBM may have exerted improper influence on the procurement process at certain school districts, because school officials listened to advice from IBM prior to issuing a Request for Proposal (RFP). We strongly disagree. IBM has been successful in winning E-rate contracts from many districts across the country, but this is not surprising, since IBM for many years has been a major information technology supplier to both commercial and governmental customers. IBM has a reputation for being able to handle the most challenging systems integration projects, and the company has a long history of providing innovative IT solutions for K12 education.

In some cases, individual school districts interested in applying for E-Rate funding shared with each other, or IBM shared with a school district, sample RFP documents that other school districts had previously used successfully. School districts could learn from these examples and tailor an RFP to meet their needs. SLD guidance encourages vendors to share their experience with schools and specifically authorizes vendors to provide assistance in the development of an RFP, as long as the resulting procurement is neutral. IBM strives at all times to comply with applicable state, local, and E-rate rules and regulations.

It is appropriate for vendors to get to know their school customers, understand their needs, goals, and Technology Plans, and offer advice. In fact, school districts should be encouraged to seek input from as many competing vendors as possible. As a company that has worked closely with American public school systems for decades, it is natural for school administrators to seek our advice and for us to offer thoughts on technology-related education matters. IBM believes that school districts can objectively consider input from various sources and apply their own good judgment to make sound procurement decisions. School officials understand very well that they must comply fully with all applicable procurement regulations and must

[5] [W]e acknowledge that SLD has approved other funding requests in the past that utilized all-inclusive FCC Forms 470 similar to that submitted by Ysleta. (Ysleta Order, ¶35)

obtain the approval of independent boards of education for their procurement decisions.

ELIGIBILITY OF PRODUCTS AND SERVICES

The SLD's guidance on eligibility of products and services for E-rate discounts is contained in the Eligible Services List. Since the beginning of the E-rate program, applicants and service providers have frequently raised questions about interpretation of the ESL. In response, the SLD has periodically updated the ESL to elaborate and provide clarification about what products and services are covered. However, given the rapid advances in networking and information technology, it is very difficult to provide a clear, definitive statement on the eligibility of the broad range of products and services that a school district might consider as part of its technology infrastructure. There is always room for improvement, and SLD should strive to provide greater clarity and certainty about eligibility by continuing to update and refine the ESL.

Given the evolving nature of the ESL, it is understandable that there would be varying interpretations about whether a certain product or service is considered eligible. IBM has made a good-faith attempt to understand and comply with the ESL as it existed at the time, and we have added and deleted products and services from our E-rate portfolio as a result of the periodic changes in the ESL. However, we are very concerned that new guidance in the ESL might be applied retroactively to declare a product or service that was previously approved for funding by SLD now ineligible and subject to recovery of funds from the applicant or service provider.

IBM is very willing to work with the Commission and SLD to identify areas of the Eligible Services List that would benefit from further clarification, but we believe that new guidance should only apply prospectively.

ONGOING SUCCESS OF E-RATE

IBM is committed to the ongoing success of the Erate program, and we will continue to work with the SLD, the Commission and Congress to improve the program so that it can continue to help bring the latest tools for learning to schoolchildren, teachers and communities.

IBM has always taken compliance with the E-Rate rules very seriously, and we have spent considerable time trying to understand and comply with the rules. Each region in our Erate sales team was responsible for monitoring, understanding, and complying with program rules. Employees who worked on E-rate projects participated in annual training sessions and periodic conference calls and e-mail updates. Each year every IBM employee must certify that he or she will comply with IBM's Business Conduct Guidelines requiring compliance with all applicable laws and regulations. Employees who participate in sales to government entities, such as E-rate school customers, must read and certify to a separate set of Public Sector Guidelines.

Now that the Commission has provided additional clarification, we are working even harder to ensure our compliance. We have hired two highly regarded E-rate experts from the applicant community and consolidated expertise into an E-rate Center of Competence as a resource for IBM staff and our customers. Our Center of Competence is actively engaged with the SLD. For example, we are proactively seeking to resolve questions about the rules, working to improve the clarity of our statements of work, and participating in the online product database pilot.

RECOMMENDATIONS TO IMPROVE E-RATE

IBM offers the following recommendations to improve the E-rate program and help ensure its continuing success:

1. **Make rules simple and clear.** Ensure rules are simple, consistent, clear and fully disclosed to the public. The entire rules structure must be open and public. In particular, processing criteria used by the SLD to review applications and invoices should be open and publicly available. Capturing all questions asked by applicants and service providers and their answers in a wide ranging Frequently Asked Questions (FAQ) would help to improve program integrity, clarity and compliance.
2. **Expedite application reviews and appeals.** Provide SLD with adequate resources to process applications and appeals in a timely manner. Appeals and prior year applications pending at SLD should have top priority for processing over current year applications.
3. **Provide adequate advance notice of rules changes.** Advance notice of changes in FCC rules and SLD guidance should be given so that applicants will

have adequate time to plan budget changes. Changes that have significant impact on applicants should be made after longer advance notice.

4. **Clarify the Eligible Services List.** SLD should provide illustrative examples of both eligible and ineligible products and services to help clarify the Eligible Services List and create greater certainty for applicants and service providers. SLD should create a Web-based Eligible Services List with links to SLD's answers to questions posed by applicants and service providers over time.
5. **Identify E-rate consultants and their business relationships.** IBM agrees with the recommendation of SLD's waste, fraud and abuse task force that E-rate consultants should disclose their business relationships with service providers for both applicants and other service providers to see. Alternatively, consultants who also sell eligible services on a third party basis should be prohibited from involvement in the procurement process on behalf of applicants.

Thank you for the opportunity to be here to offer IBM's perspective on the E-rate program and how it can be improved. I look forward to answering your questions.

Mr. WALDEN. Mr. Caine, thank you for being here, and thank you all for your testimony this afternoon and for your patience throughout the day. I know this has been a long hearing. It is an important issue, and I want to assure all of you and everyone else listening in that it is our goal as well to make sure that the—we are picking up some audio somewhere. It is me. That is a frightening thought. I do not know if there is a way to—well, if you could turn off your microphone for now because we are hearing all of that back here.

Thank you.

I just want to assure people that it is our goal as well to figure out how to make E-Rate work because we have seen how it does not work and we have seen how vendors have misused it to their advantage and how some school districts have been overtaken by, frankly, greedy vendors who have gone out of their way to rip off the system, and so we are committed to try and figure out how we make it work, work right, work fairly because there are a lot of districts that need to be wired and operated.

Ms. Glogovac, in your comments, you made reference to awareness of a consortium that gets a 3-percent kickback, I believe was your term.

Ms. GLOGOVAC. This year I was reviewing 470's. I believe it was in the May or June timeframe, and I saw that there was an RFP for a consortium.

In reviewing the RFP, I believe it was on line. It read that they were looking for a 3-percent kickback from the vendors that were going to get the business.

Mr. WALDEN. Tell me what the consortium is.

Ms. GLOGOVAC. I do not know exactly. I cannot remember off the top of my head, but I——

Mr. WALDEN. But these would have been school districts?

Ms. GLOGOVAC. I believe it was school districts that were allowed to use this contract.

Mr. WALDEN. Who was putting together the contract?

Ms. GLOGOVAC. The consortia was.

Mr. WALDEN. Who is the——

Ms. GLOGOVAC. I do not know the exact name of the consortia. I did not bring that information with me.

Mr. WALDEN. Okay.

Ms. GLOGOVAC. I did report it to the whistleblower hotline.

Mr. WALDEN. All right. Good. But in general terms, just so I understand, when you say "consortia," is that a consortia of vendors?

Ms. GLOGOVAC. No, it is a consortia of applicants. So it could be a number of school districts, private schools lumped into one application.

Mr. WALDEN. Right, and they basically said, "You come provide this to us, and we will give you"?

Ms. GLOGOVAC. Basically it was an RFP that said they were looking for E-Rate products and services, and in order to go through this RFP and win the business for the RFP, you had to provide them back 3 percent of whatever you sold into those applicant sites.

Mr. WALDEN. I wonder from your experience would that be a violation of the USAC rules?

Ms. GLOGOVAC. I think we heard today that, yes, it is.

Mr. WALDEN. I would think so as well.

You did report that to the hotline, you said?

Ms. GLOGOVAC. Yes, I did.

Mr. WALDEN. That is what I thought. Okay.

What I would like to do now is have you walk us through what happened again with IBM and the E-mail solution. Sun Microsystems, as I understand it, was selected to provide the E-mail services by the school district.

Ms. GLOGOVAC. According to what I was told by the Sun sales team, there was what they called a bake-off. There were three vendors, one of which was IBM and I believe the other vendor was Novell; were brought in, and they presented their E-mail solution to the school district, and I do not know if the board was there or who was there. I was not privy to that information, but Sun was actually selected.

And then Sun was told that they needed to work back through IBM for the project.

Mr. WALDEN. Okay, and yet when Sun submitted a proposal, IBM wanted to add costs, 51 percent?

Ms. GLOGOVAC. What happened was Sun provided a cost to IBM. IBM had a specific number associated with it based on the original 471 they submitted and, I guess, were awarded.

Mr. WALDEN. Okay. Let me see if I understand this. So is it accurate then to say Sun came in and said, "Here is an E-mail solution that will work for your district"?

Ms. GLOGOVAC. Yes.

Mr. WALDEN. "And here is what we think it costs to do that."

Ms. GLOGOVAC. Correct.

Mr. WALDEN. And then you were told by the district you had to work back through IBM?

Ms. GLOGOVAC. No, we were told that we needed to work through IBM.

Mr. WALDEN. By whom?

Ms. GLOGOVAC. By the district.

Mr. WALDEN. Yes, that is what I mean. The district told you that you have got to work through IBM.

Ms. GLOGOVAC. Yes.

Mr. WALDEN. And it is your recollection then that IBM said, "We have got to up this cost by 51 percent"?

Ms. GLOGOVAC. No, what IBM was telling Sun was, "You need to lower your cost in order for us to get what we need out of the amount that was designated for this project."

Mr. WALDEN. What were they going to do with that money? Do you know?

Ms. GLOGOVAC. I do not know.

Mr. WALDEN. Mr. Caine, are you familiar with that situation?

Mr. CAINE. I would be happy to comment on it, Mr. Chairman.

We disagree with the characterization that Sun has presented. We were selected as the systems integrator, as I mentioned in my opening statement.

Mr. WALDEN. Okay.

Mr. CAINE. We pointed out certain risks to the school district, that if they were to implement the Sun E-mail solution, they needed to consider as the systems integrator, the party responsible for bringing it all together, all of the parts together.

Mr. WALDEN. Right.

Mr. CAINE. These risks included schedule delays, need to rework designs, the need for SLD change approvals and possibly increased costs, which is the dialog we were having with our applicant and our partner, the school district.

IBM also pointed out the pros and cons of a non-Sun and non-IBM solution, as Ms. Glogovac said, Novell.

Mr. WALDEN. Okay.

Mr. CAINE. Ultimately the school district chose neither IBM's solution nor Sun's solution. They chose Novell. So we believe we played the role as a systems integrator fairly, pointing out to the school district the appropriate considerations they needed to keep in mind on this particular topic.

So neither IBM nor Sun received the E-mail solution. An entirely independent vendor, Novell, did.

Mr. WALDEN. And, Ms. Glogovac, do you have a comment on that?

Ms. GLOGOVAC. I guess my comment would be that why would IBM not consult with El Paso prior to selecting Sun during the three-step process of selecting Sun amongst the three vendors if they were playing that role.

Mr. WALDEN. All right. Now, Sun had already installed the system in EPSID, right?

Ms. GLOGOVAC. That I do not know.

Mr. WALDEN. All right. Okay. Mr. Tafoya, you state in your testimony that your school district lost a number of employees shortly before the funding year 4 application process, and your technology director had essentially no program experience.

Did the district rely on its strategic technology provider to fill the gap in knowledge on E-Rate experience?

Mr. TAFOYA. It was my belief because, again, as I said, I was not directly involved at that time with the E-Rate program; I was in the district, and so I was watching the progress of the program. It was my belief that they really did not, if I understood your question correctly, have the resources internally to provide that kind of leadership to answer those technical questions.

Mr. WALDEN. You relied on a strategic technology provider?

Mr. TAFOYA. That is correct. That is what I saw.

Mr. WALDEN. Okay, and to your knowledge, prior to issuing the request for a strategic provider, did the district consult with USAC or other E-Rate authority as to the propriety of this approach?

Mr. TAFOYA. Again, it was my understanding in the conversations that I heard at the board meetings that I attended that we were compliant with all of the current rules.

Mr. WALDEN. Okay, and you state that IBM, after it was chosen as a strategic technology provider, submitted statements of work to your district for review with limited opportunity for extensive study and analysis before the E-Rate application deadline. Could you elaborate on that comment?

Mr. TAFOYA. I am sorry. Part of that broke up at the very end there.

Mr. WALDEN. Yes. The question is this. You state that IBM, after it was chosen as the strategic technology provider, submitted statements of work to your district for review with limited opportunity for extensive study and analysis before the E-Rate application deadline. In other words, you did not have much time to review this; is that correct, or your district did not?

Mr. TAFOYA. No.

Mr. WALDEN. Could you elaborate on that? Why was that? What happened?

Mr. TAFOYA. I believe there were a couple of reasons that that took place. One was that after the award was made, you had a limited window of opportunity for the actual execution of the work itself, and I think the other thing that happened is because of the scope of the number of projects that were involved, there was a real scramble to make sure that we got all of that addressed as quickly as we could.

I think there was a big concern on the part of the district that, with an award of this magnitude, which was highly publicized in the community, that we did not want to have any appearance whatsoever of having essentially misrepresented what we are capable of doing, and by that I mean that we wanted to make sure that the money that was awarded was used, that it was, you know, the intent of the board.

Mr. WALDEN. Right.

Mr. TAFOYA. And it was the intent of the administration to make sure that based on the original design that we were able to deliver within that timeframe what we said we could.

Mr. WALDEN. Okay. You state the work submitted by IBM was consistent with the district's technology plan.

Mr. TAFOYA. Yes, sir.

Mr. WALDEN. Does the technology plan provide guidelines as to the specific scope and size of the projects?

Mr. TAFOYA. It was scalable. Yes, sir, it did, but again, as I said, what happened was, which I saw as a problem for the district looking at it externally in this capacity, was that the award was made, and there was approximately 90 days of lost time. And I believe that that window of opportunity that was sunk really did affect the overall technology implementation.

Mr. WALDEN. All right. You state in your testimony the help desk operation did not necessarily conform to the long-term needs of your district. Do you believe the district got its money's worth?

Mr. TAFOYA. Frankly, no.

Mr. WALDEN. Why?

Mr. TAFOYA. I think, again, there was a lot of confusion as to who was going to own the equipment after the help desk was installed. There were a number of work orders that were left that were unattended to simply because, again, we ran out of time and ran out of opportunity to utilize the equipment that was available.

Mr. WALDEN. How much did you pay for that help desk operation?

Mr. TAFOYA. It is my recollection it was somewhere in the neighborhood of $27 million.

Mr. WALDEN. Twenty-seven million dollars for the help desk? Over what period of time and for how many schools?

Mr. TAFOYA. That would have been over approximately I would say a 6-month period of time, and it would have been for the 53 eligible schools.

Mr. WALDEN. So 6 months, 53 eligible schools, $27 million?

Mr. TAFOYA. Yes, sir.

Mr. WALDEN. Just for a help desk?

Mr. TAFOYA. That is correct.

Mr. WALDEN. What did the help desk do? Is this where you just call and say, "I am having trouble with my server. What do I do?" Is this a support desk?

Mr. TAFOYA. Essentially that is what it was, and I believe that was one of the reasons that there was concern and questions that were being asked within the district as to what the value at that point was of what we were receiving.

Mr. WALDEN. I hope there were questions. I mean, I do not know. Some of you all do this, but I mean, I pay software support services for software I have, but $27 million in 4 months seems like an awful lot. I do not know.

Ms. Foster, do you have a reaction to that? Is that normal? Is that what is going on out there with our E-Rate money?

Ms. FOSTER. I do not think that is normal. I think it is excessive.

Mr. WALDEN. By how much? What would I expect? I mean, I do not know.

Ms. FOSTER. You know, really, there are all sorts of products and they all have different bells and whistles. So it would be hard to say, but my opinion would be that it is very excessive.

Mr. WALDEN. I mean, let's go back a second here. Twenty-seven million over 4 months, right? Fifty-three schools. Now, I am not a mathematician, but you could hire people probably for a good share of their life for that money and put them in the district, couldn't you? Pay them a million bucks a piece and you have got 27 people.

Mr. CAINE. Mr. Chairman.

Mr. WALDEN. Yes.

Mr. CAINE. I would be happy to comment.

Mr. WALDEN. Please do.

Mr. CAINE. I think there are a couple of things we have to remember. First of all, the 1 year timeframe that the E-Rate program imposes upon school districts and their service providers to both come up with the 470's, the statements of work, and the plan, to submit the application——

Mr. WALDEN. I am aware of that.

Mr. CAINE. [continuing] to get the funding approval, okay, eats up a fair amount of time.

Mr. WALDEN. That is why they operate on a 15-month budget year.

Mr. CAINE. So when you get your approval, then you have a limited period of time on which to execute your plan.

Mr. WALDEN. Okay.

Mr. CAINE. Because the funding year stops. In this case, it stopped at June 30.

Mr. WALDEN. Right.

Mr. CAINE. You do have some capacity to continue work until September.

Mr. WALDEN. All right.

Mr. CAINE. So the program rules have a very compressed and a very intensive timeframe for both application approval and execution.

Mr. WALDEN. Right.

Mr. CAINE. This is why we feel as a systems integrator that that is a good approach, because if we are willing to sign up for that as a school district's partner in this process, we will have the accountability to make sure that it ends on time and on budget.

Now, let me go exactly to your point. The help desk was more than just a help desk as you know it. Okay? There is a lot of risk in the timeframe to execute. So, therefore, there is a lot of pressure to get it done, and I talked in my opening statement about who suffers if you do not get it done.

So there were startup costs involved because in El Paso we were going from no infrastructure and no maintenance to support this infrastructure that we were building to something. This was a large, complex system.

Mr. WALDEN. But in that startup cost phase you just referenced——

Mr. CAINE. Yes.

Mr. WALDEN. [continuing] is that part of the $27 million?

Mr. CAINE. Yes.

Mr. WALDEN. Okay.

Mr. CAINE. Okay. So there are startup costs that, as I can discuss later, were not evident; were not evident in the following years or would not have been evident in the following years. We never got to the following years. Okay?

So within two and a half months of beginning the operation, IBM helped reduce the outstanding trouble tickets that the school district had from the old El Paso help desk arrangement, all right, from 600 down to 173. We thought that was good value.

Mr. WALDEN. How much did they pay for the old help desk?

Mr. CAINE. We were not their partner. So I cannot answer that question, but my point, if I could just finish, my point here is to say that there was a presentation made to the board. The board reviewed the progress that had been made in that funding year and seemed pleased with it.

Now, let me just say at the end of that funding year, El Paso did not have funding approvals for the following year. We, the company, stayed with the school district and ran that maintenance and help desk service for 6 months following the end of that year re-

ceiving no funds. So we stayed on with the school district from June until the end of the year on our cost because we knew that we had built this; we thought there was good value to the school district; and we did not want to leave the school district just hanging there.

Mr. WALDEN. I am sure they appreciated that.

Ms. Foster, do you know what your costs were for the help desk prior to IBM?

Ms. FOSTER. No. I really was not responsible for the help desk. So I could not tell you.

Mr. WALDEN. All right.

Mr. HAWTHORNE. May I make a comment on the help desk issue?

Mr. WALDEN. Yes. Somebody help me out here.

Mr. HAWTHORNE. I think one of the issues that got the attention of IBM initially was that the help desk that was in place, and representing Alpha got our attention, was that they basically had no network, and it would take up to 4 months for a teacher or students if there was a problem in the network to get it repaired.

And so what happened is that IBM came in. Let me back up. The school district realized that they really needed some help in this area, and that was the impetus for focusing on the help desk.

And I might suggest also that there is probably maintenance in there. To just say that there was a help desk, that somebody is sitting there to answer phones——

Mr. WALDEN. How many people were involved in the help desk? Mr. Caine?

Mr. CAINE. I do not know the exact number, Mr. Chairman.

Mr. WALDEN. And how long was the help desk in operation for that $27 million?

Mr. CAINE. Well, as I said, we started, and then we got it up. We would have liked to have gotten it up earlier than we did within that year.

Mr. WALDEN. That is fine.

Mr. CAINE. It was up for 2½ months.

Mr. WALDEN. 2½ months?

Mr. CAINE. 2½ months, until the funding year ended June 30.

Mr. WALDEN. And for that 2½ month period, that is where the $27 million was allocated?

Mr. CAINE. No, Mr. Chairman. That portion of the award for that maintenance support, which included the help desk, was a part of a startup.

Mr. WALDEN. How much was the help desk then?

Mr. CAINE. I do not have the breakout number for you on that, but for the maintenance for that network and for that infrastructure, which Mr. Hawthorne just referred to, that entire piece was $27 million, and we believe that within the 2½ months that it was up—so we basically got it up in April——

Mr. WALDEN. So you got up a network. Let me see if I understand this because I do not do what you all do. You created, wired, hard wired the 53 schools, got a network up and running among all those schools, and then had a support system in place including staff to keep it running. Does that kind of capture what you did?

Mr. CAINE. Yes, that is correct. Yes, you have described it correctly. I wanted to be care.

Mr. WALDEN. Yes, sure. No, that is all right. That is what we are after here.

And for that you got paid $27 million, but is the $27 million just for the support or is it for the technicians to go in and wire and hook things up and crawl around in the buildings?

Mr. Pratt, do you know?

Mr. PRATT. Yes. There was the help desk. There was actually onsite support, maintenance if somebody had to go out onsite to do that. So that was all included in that. The number of people between the onsite maintenance and the help desk were in the 40 range.

Mr. WALDEN. So 40 people?

Mr. PRATT. Yes. Also, it was a problem that the school district at the time had no space on their facility to house the Operations Center. So we had to go out within the city of El Paso and find a location that was proximate to the district that we could then outfit and build out, put all of the tools in place.

So all of those things were rolled into that $27 million startup cost.

Mr. WALDEN. Is that all E-Rate eligible?

Mr. PRATT. It was part of the service. It was required to put that in place as part of the service which is eligible under E-Rate based on the rules at the time.

Mr. WALDEN. All right. All right. My time has long since expired. My apologies to my ranking member.

Ms. DeGette.

Ms. DEGETTE. Thank you, Mr. Chairman.

Ms. Foster, I was very impressed by your testimony. You seem to really know this business quite well and have been involved in it for a long time, and you also seem to be very committed, as I am sure everyone here is, to the goals of the E-Rate, which is to help low income students learn to use computers and have a level playing field.

So let me ask you something we have been struggling with today, which is how do we eliminate the waste, fraud, and abuse that seems to be rampant in the program. One of the suggestions has been, as you probably heard, that we increase the local match to 20 percent. I am wondering from your perspective what that would do for the E-Rate program in these low income school districts.

Ms. FOSTER. I think that if you increased it to 80 percent, it would be very difficult for districts, such as Ysleta, your poorer districts, to continue to provide what we are currently and to go forward with projects because one thing that you have to consider is that E-Rate does pay for certain eligible services, and mostly what we have used it for in the past and what I always use it for was connectivity issues and teleco issues.

But then there's a whole other thing. You are building this infrastructure, but what you want to do with that is to educate kids.

Ms. DEGETTE. Right.

Ms. FOSTER. And so, therefore, you have to train the teachers, which is not E-Ratable. You have to buy the computers, which is not E-Ratable, and that is very expensive. Those types of services are very expensive, and so, therefore, the district is already putting

a huge chunk of money into trying to go forward with these technology initiatives.

E-Rate does a great job in giving us our connectivity and our teleco services, but then districts make a huge commitment as well so that you have the tools necessary so that if you raise that to 80 percent it would be very hard.

Ms. DEGETTE. And, in fact, we have seen some examples like in our last hearing with Puerto Rico where they did all of the connectivity, but then they did not actually put in the computers or train the teachers, and that does not help the students one iota, does it?

Ms. FOSTER. Not at all.

Ms. DEGETTE. For your school district, YISD, how much would you estimate that you spend, and you probably know, for teacher training and for hardware and other aspects that are not covered by the E-Rate annually?

Ms. FOSTER. District-wide annually, we probably spend $8, $9 million annually.

Ms. DEGETTE. And how many students do you have in your district?

Ms. FOSTER. About 45,000.

Ms. DEGETTE. Ms. Glogovac, I am wondering if you can tell me in your testimony you said you thought there were a lot of tools out there for discovery of waste, fraud, and abuse that are being under-utilized that perhaps we could look at. I am wondering if you could explain some of those.

Ms. GLOGOVAC. Well, I am lucky enough to get access to some tools from Funds for Learning. I do not know if you are familiar with them. They are an organization here in the D.C. area. They are E-Rate consultants. They provide consulting services to applicants and service providers, and Sun actually purchased one of their packages that allows them to view the 470 forms line item by line item and identify which applicants are looking for internal connections' needs.

You can also go in and view what the applicants have been awarded for the last 5 years of E-Rate program, which kind of tells you how they might be increasing in their requests, and it also will allow you to pull up which service providers have been selected by that applicant in those subsequent years, which can provide you with information about a pattern of consistently the same service provider or possibly consistently the same consultants and service providers working together with an applicant. So that is possible.

Ms. DEGETTE. What you are saying is that the regulators could just look at that data on line and begin to see patterns.

Ms. GLOGOVAC. Yes, you could.

Ms. DEGETTE. Which, in fact, is what they did, to deny some of these IBM contracts and other contracts for El Paso and other school districts. They saw patterns and said that is a problem.

Ms. GLOGOVAC. Right.

Ms. DEGETTE. I wanted to clarify something. You are not here testifying today on behalf of Sun, correct?

Ms. GLOGOVAC. That is absolutely correct.

Ms. DEGETTE. You do not work for Sun anymore because you got laid off, right?

Ms. GLOGOVAC. Correct.

Ms. DEGETTE. And you are just here testifying as to what you saw in your years of employment with that company, right?

Ms. GLOGOVAC. That is correct, and I also have a passion for this program, the E-Rate program, and that is why I am here today.

Ms. DEGETTE. And why is that?

Ms. GLOGOVAC. I have two children that go to school and I work in the school, and I know how hard it is for schools to get funding for projects, and technology is at the top of the list of most of the schools. And I think this program really helps them out. I think it is important.

Ms. DEGETTE. Thank you.

Mr. Caine, I wanted to follow up on a question that the chairman asked because I was a little confused when Ms. Glogovac was testifying. She said Sun had a much lower rate that they were able to offer educational institutions, but IBM, as the manager in the El Paso situation, declined that.

I am wondering if you know why that was declined, that lower rate.

Mr. CAINE. Ms. DeGette, I do not believe that we necessarily declined the lower rate. What we did is we looked at what the integration implications were of a Sun offering. Of course, the school district has to make these determinations, which they ultimately did, on selecting the Novell solution, but as you go to a fixed price contract and as the systems integrator, we had to manage where all of the different funds were going to ultimately come out for all of the different parts of what the school district had asked for.

So when we presented, and we raised these issues with the school district about the various options and implications of the three vendor choices, the school district arrived at their decision.

Ms. DEGETTE. So the school district was the one in your recollection that decided not to use Sun. It was not IBM.

Mr. CAINE. The school district ultimately made the decision to take Novell, correct.

Ms. DEGETTE. And I am going to have staff bring you a document. This was a document that was prepared by the USAC about IBM's application. It says Evaluation of IBM's Statement of Work. Do you see that on the top? I just want to make sure we have the same.

Mr. CAINE. Yes, I do.

Ms. DEGETTE. Okay. This is USAC's evaluation of the IBM Statement of Work for the El Paso Independent School District E-mail system for the funding year 2001, and it talks about the various ineligibility issues that arise.

You can take a look on the second page of this document. At the bottom it says, "Specific areas of the Statement of Work that raise questions are as follows." Do you see that there?

Mr. CAINE. I do.

Ms. DEGETTE. And it says, "Section 2.2 describes implementation services that appear to include high level ineligible consulting, such as updating the objectives and vision. Furthermore, the scope of the work described raises a question whether the extent of work that received funding approved in the previous year was completed successfully."

I am wondering if you can comment on whether or not IBM was aware that they were violating program rules with this item or were just misadvised by your employees and consultants about what was allowable under the E-Rate program rules.

Mr. CAINE. Well, Ms. DeGette, we have never seen this document before. So——

Ms. DEGETTE. Well, are you aware of the issues raised there about Section 2.2?

Mr. CAINE. No, I am not personally aware.

Ms. DEGETTE. Who would be aware of that?

Mr. CAINE. I am not sure I can tell you who specifically would be aware of it. This is the first time we have seen the document. I would say——

Ms. DEGETTE. Well, forget about the document. Do you know about the issue that is raised right there?

Mr. CAINE. Not specifically, no.

Ms. DEGETTE. So the USAC never told you that there was high level ineligible consulting?

Mr. CAINE. Well, I do not know the date of this document, and so it is hard for me to answer your question precisely, Ms. DeGette, because it does not have a date. I do not know whether——

Ms. DEGETTE. Well, it is March 2003, sir, if that helps you.

Mr. CAINE. Okay. That is helpful, but it does not help me answer the question, but it certainly is, therefore, the case that that would be after our engagement with El Paso.

Ms. DEGETTE. Okay. Section 2.2—so you have never seen this evaluation, even though you are in charge of—what is your title? It is Vice President for Government Programs?

Mr. CAINE. That is correct, but I am not——

Ms. DEGETTE. But you have never seen this evaluation of the IBM Statement of Work?

Mr. CAINE. Ms. DeGette, I have never seen this evaluation, and I am not in charge of the overall E-Rate activity for the company, but I am involved with it.

Ms. DEGETTE. Okay. Who is in charge of the E-Rate activity for the company?

Mr. CAINE. Let me explain my role if I could, as Vice President of Governmental Programs, I have responsibility for public policy issues for the company of which the E-Rate program, Edits and Section, was one. So I have been involved with the E-Rate program on behalf of the company, commenting on its development when it was a legislative proposal and when it became a regulatory reality and program.

Ms. DEGETTE. Okay. So you are a guy who can testify as to the policy implications on behalf of IBM of the E-Rate, correct?

Mr. CAINE. That is correct.

Ms. DEGETTE. Who is in charge of the E-Rate applications and the program within your company?

Mr. CAINE. We have a management system in IBM that is a distributed management system, a matrix management system. There is no E-Rate division of IBM.

Ms. DEGETTE. So there is no equivalent within IBM of what Ms. Glogovac did when she was at Sun?

Mr. CAINE. I have to remember precisely the way she said it, but I thought I heard her say that she was a subject matter expert; is that correct?

Ms. GLOGOVAC. Single point of contact.

Mr. CAINE. Okay. So we have a management system within IBM that allows different people to get close to the customer because we have a very large company. So we have sales people and we have execution people who will get to know what the requirements of a school district are all across the country.

Obviously we have been working with school districts for a long time. So we have a matrix management system that brings a team of people together when working with a school district about what their needs are, E-Rate or not. In the context of an E-Rate discussion, it would be a number of different people. We have regular discussions about the E-Rate rules. We have conference calls. We have now, as I said in my statement, created a Center of Competence within the company.

But at the end of the day the organizational structure within the IBM company relative to the E-Rate program uses the fundamental matrix management system we have as an enterprise.

Ms. DEGETTE. So what you are saying is for each team that goes out there in the field to advise the El Paso school system or the Denver public school system or any other school system, you are relying on the members of each of those individual teams to have the familiarity with eligibility under the E-Rate program.

Ms. DEGETTE. That is correct, and they are backed up by people who are not necessarily customer facing, but are knowledgeable about the program and the rules as——

Ms. DEGETTE. Who are those people?

Mr. CAINE. Those people, they would be people within the company, again, broken up into different section that would be dealing with the public sector and education.

Ms. DEGETTE. Are those people identified as resources for those folks out in the field?

Mr. CAINE. Sure, and the staff. We have made these people available to the staff of the subcommittee for numerous interviews over the last——

Ms. DEGETTE. And how many of those people are there?

Mr. CAINE. I cannot tell you exactly how many there are.

Ms. DEGETTE. Okay. Mr. Chairman, I would like it if Mr. Caine could supplement his—I am sorry. Is Mr. Hawthorne helping out there? Do you know Mr. Hawthorne?

Mr. CAINE. Yes.

Mr. HAWTHORNE. One of the resources sitting right here. This matrix that he is talking about, they were authorized to contact Alpha Telecommunications for E-Rate help.

Ms. DEGETTE. That is the folks out in the field that Mr. Caine is describing. Was Alpha basically the consultant for IBM on eligibility issues under the E-Rate program?

Mr. HAWTHORNE. That is correct, as I pointed out in my testimony. That is correct.

Ms. DEGETTE. Okay, and are you the only consultant or is Alpha the only consultant that they were using?

Mr. HAWTHORNE. That I do not know.

Ms. DEGETTE. Okay. Do you know the answer to that, Mr. Pratt?

Mr. PRATT. Yes, ma'am. We have evolved over time as the program has grown, and in the early days we had retained Alpha as part of our expertise on the E-Rate program, and that was nationally. They were available to us nationally. We have evolved now. As Mr. Caine has said, we have brought in from the applicant community, we brought in additional experts. We have approximately five folks. We have training that is conducted on a yearly basis as the E-Rate cycle starts again, brings up to speed on the eligible services, but we do have a central point that is responsible for making sure that we are all applying and adhering to the——

Ms. DEGETTE. And the central point is Alpha?

Mr. PRATT. No, it was initially, and we have now expanded. In addition to still using Alpha, we now have our own folks. As I said, we have got five IBM folks that are actually providing that support.

Mr. CAINE. Ms. DeGette, we hired Alpha to help us deepen our internal expertise about the program. We felt we had expertise, but we wanted more. They were a very knowledgeable and respected E-Rate enterprise. So we hired them as a consultant to help us internally.

Ms. DEGETTE. That is great. What I am wondering is when all of your sales people are out in the field trying to work with these school districts and other educational entities, is there someone or a group, and I guess you are saying now there is.

Mr. Pratt, when was that group established within the company?

Mr. CAINE. When was it established?

Ms. DEGETTE. Yes, I was asking Mr. Pratt since he seems to know.

Mr. PRATT. Yes, we started formulating it toward the end of last year in terms of the current population that is in the group that is supporting us today.

Ms. DEGETTE. The end of 2003?

Mr. PRATT. Yes, as we have evolved.

Ms. DEGETTE. Okay.

Mr. PRATT. That is where the group that is in place today began, and then prior to that we were using folks like Alpha.

Ms. DEGETTE. Okay. So here is my question. There is some sales team out in the field, and they are trying to do a big contract. Were they required to vet that contract through Alpha so that the people with the expertise could see whether there were ineligible items there?

Mr. HAWTHORNE. That is correct, through Alpha.

Ms. DEGETTE. Was that a requirement that IBM put on its sales folks? I know Alpha did it, but was it a requirement?

Mr. PRATT. Yes, ma'am.

Ms. DEGETTE. And the sales folks all knew that?

Mr. PRATT. Yes, ma'am.

Ms. DEGETTE. And now what happens, now that you have this internal team?

Mr. PRATT. The same exact thing, but we have, as I said, we have got an internal group now that has built up the expertise. We brought them in with that same level. So the first point of contact would be that team now.

Ms. DEGETTE. Okay. So I guess I will ask you, Mr. Hawthorne, then since Alpha was apparently the E-Rate expert hired by IBM at the time that these applications were disallowed. Why from your perspective were there so many ineligible items in these contracts, in these proposals?

Mr. HAWTHORNE. I do not recall any ineligible items in the contracts.

Ms. DEGETTE. I mean, maybe you can take a look at that document that I gave Mr. Caine.

Actually, Mr. Chairman, shall I go on on that?

I am going to yield, and I will come back to you, Mr. Hawthorne.

Mr. WALDEN. All right. Mr. Bohuchot, let's start with you.

In your testimony you said on page 3, "During the review of the SOWs, I questioned the size and scope of the effort being proposed by IBM. I was told that it was okay. 'You never get everything you ask for. The SLD always reduces the scope of the work.'" Who said that?

Mr. BOHUCHOT. I do not recall the name of the individual. It was one of the Alpha people.

Mr. WALDEN. One of the Alpha people. Okay. Then walk through with me how all of this works because the district's pre-discount total you said went from $216,030,996 to $129,185,228, a difference of nearly $85 million.

Mr. BOHUCHOT. Eighty-six.

Mr. WALDEN. All right. It is 84,845,768. Oh, that is right. Okay. So that is the figure that we needed to correct.

Mr. BOHUCHOT. Right.

Mr. WALDEN. I stand corrected. So okay. Eighty-six million dollars.

How do you go from a $216 million project to a 100—now, do we change the one? No, we do not. Okay. So how do you go down to about a $129 million project? That is a fairly substantial change. What happened?

Mr. BOHUCHOT. Well, once IBM had been selected as the strategic technology partner for the district, they had aggressively started the work to go ahead and figure out what the filing with the SLD was going to be, and when I was giving those documents to sign, I was just blown away by $216 million.

Mr. WALDEN. It does tend to get your attention.

Mr. BOHUCHOT. Yes, and I asked some questions.

Mr. WALDEN. Of whom?

Mr. BOHUCHOT. Of the IBM and the Alpha people who were in my office.

Mr. WALDEN. All right.

Mr. BOHUCHOT. And when that comment that you had quoted was made, and I asked a few high level questions, and I had told them at that time that I did not believe that that was a correct filing, that we are going to reduce it or that I needed to look at it in greater detail. The problem was that it needed to be signed and sent to the SLD to meet a time line.

I did——

Mr. WALDEN. Who came up with the $86 million reduction?

Mr. BOHUCHOT. What we did is we subsequently met. After I signed the documents that went forward to the SLD, I had let the

SLD know that I was going to look at the projects in detail and more than likely was going to reduce the filing.

I had spent some time with the documents, the statements of work that were given to me by IBM, and set a meeting with IBM and Alpha, and we sat down to talk about it, and I was not convinced that there was not some redundancy in cost. By the time we had finished that meeting, we had reduced it by $86 million.

Mr. WALDEN. So there was redundancy in cost?

Mr. BOHUCHOT. In my opinion there was.

Mr. WALDEN. How so?

Mr. BOHUCHOT. There was for file service, for example, there was the cost to set up the file servers, and you do the conditioning work to get them ready to be installed, and then the actual installation, and then when I looked at the technical support Statement of Work, there was also—you seem quizzical.

Mr. WALDEN. No, go ahead.

Mr. BOHUCHOT. Okay. When I looked at the technical support, which was another filing, it seemed to be redundant, some of that activity, with the file server activity. So when we kind of agreed that there was some redundancy there, we went ahead and reduced the technical support.

Mr. WALDEN. Did you have technical people on your team evaluating this?

Mr. BOHUCHOT. Yes, sir.

Mr. WALDEN. So they took a look at this contractor. Was IBM your technical person for the company?

Mr. BOHUCHOT. Well, yeah, they were.

Mr. WALDEN. The integrator. So you had your own tech people looking at what IBM had put forward. Are they the ones who put forward the $200 million recommendation?

Mr. BOHUCHOT. IBM did. I will say that, you know, when I sat down with IBM, I had my wide area network director.

Mr. WALDEN. Sure.

Mr. BOHUCHOT. My No. 1 technician, in essence, with me, and he was agreeing that, you know, everything was okay relative to the file server filing and the technical support filing, and I did take him outside the room, and I asked him not to say anything until I finished the discussion.

Mr. WALDEN. Why? Why did you do that?

Mr. BOHUCHOT. Well, because he honestly believed that—he did not understand the direction that I was taking relative to try and see if there was redundancy.

Mr. WALDEN. I see.

Mr. BOHUCHOT. And he believed that the filings were absolutely spot on. He had help to work on them and had a sense of ownership in those also.

Mr. WALDEN. I see. So he helped put all of that together.

Mr. BOHUCHOT. He participated with IBM. So I had asked him not——

Mr. WALDEN. So you were coming back from a management standpoint saying, "Justify what is in here."

Mr. BOHUCHOT. Well, the item that got him to kind of settle down was when I said to him, "If you take the $49 million of tech-

nical support and you divide it by $250 an hour, that is 102 people. Where are you going to put 102 people at?"

Mr. WALDEN. So your tech support was $49 million?

Mr. BOHUCHOT. Right.

Mr. WALDEN. Over what period of time?

Mr. BOHUCHOT. It would have depended. I mean, if we had 10 months to do the project, it would have been 10 months. If we had——

Mr. WALDEN. What did you whittle it down to in that sector?

Mr. BOHUCHOT. We went from $49 million down to $13 million, and quite frankly, at $13 million I kind of acquiesced there because, you know, I really did not at that time know that it would be $13 million. At that point I said okay.

Mr. WALDEN. Okay. So you got it down. How big is your project compared to El Paso's?

Mr. BOHUCHOT. We have 165,000 students. So we are what, four times?

Mr. WALDEN. How many schools?

Mr. BOHUCHOT. Two hundred eighteen schools.

Mr. WALDEN. I want to compare apples to apples here. I represent an apple growing region. So I always like to do that. We grow pears.

Mr. BOHUCHOT. As a percent, El Paso would have been larger than DISD.

Mr. WALDEN. Yes, I guess that is my question.

Mr. BOHUCHOT. Right.

Mr. WALDEN. So you had a bigger project with more schools with a smaller size help desk or help work?

Mr. BOHUCHOT. I thought it was going to be a huge help desk for a while.

Mr. WALDEN. But you cut yours down to $13 million is my point.

Mr. BOHUCHOT. Right.

Mr. WALDEN. And El Paso still stayed at $27 million, right? For next year, but still, what is the difference?

Mr. CAINE. I was going to clarify one of the comments about El Paso, which was the following year, which was never funded. That cost was cut in half basically in the proposal because the startup costs——

Mr. WALDEN. So year 2. Was his year 1 or year 2?

Mr. BOHUCHOT. Year 5.

Mr. WALDEN. Year 5. Okay. What were your year 1 costs on the help desk then?

Mr. BOHUCHOT. DISD has been very conservative relative to filing for E-Rate. Our year 1 was, I think—well, I can tell you exactly. Our year 1 filing was $12,272,000.

Mr. WALDEN. That is for your total project though, right?

Mr. BOHUCHOT. Internal connections was $12 million; telecom was $105.

We have been very conservative for a number of reasons. One is that we are cash strapped, revenue strapped district, and having the commensurate matching funds has not been an easy thing.

Mr. WALDEN. What happens now? I understand you have been rejected.

Mr. BOHUCHOT. Well, we were rejected for E-Rate year 5. IBM had asked us to appeal, and we had thought about that, but we decided not to appeal.

Understand that this whole process was about a year, 10, 11 months in making. So during that time we had the benefit of all the work that we did with IBM and the numbers that we developed with them.

Mr. WALDEN. But your tech support staff today, are they able to keep the network up and running and do all of that?

Mr. BOHUCHOT. Well, it kind of is not a fair question because we did not get the funding that year. So we are just now working on the funding for E-Rate year 6. So, I mean, our tech support——

Mr. WALDEN. But don't you have a network up and running today?

Mr. BOHUCHOT. Yes. For what we have got up and running, which is a fairly robust network, we keep everything running with the staff that we have that is full time.

Mr. WALDEN. And what does that cost you?

Mr. BOHUCHOT. Probably $600,000, $650,000 a year.

Mr. WALDEN. Thank you.

Mr. Caine and Mr. Pratt, the CIO of Dallas Independent School District testifies that he questioned the size and scope of the effort being proposed by IBM, and he says IBM told him you never get everything you ask for. You just heard me go through that, with the implication that the district should ask for more than they plan to receive. At least that is the way I would read it.

Is this how the system operates?

Mr. CAINE. Mr. Chairman, we have a different characterization than Mr. Bohuchot about what happened on this particular point.

Mr. WALDEN. All right.

Mr. CAINE. We disagree with his characterization, and I will be happy to explain.

Mr. WALDEN. Yes, please do. How did you get to over $200 million?

Mr. CAINE. Mr. Chairman, the initial proposal from IBM to Dallas was $100 million, and it was not our proposal at $220 million.

Mr. WALDEN. Whose was it?

Mr. CAINE. It was the decision of the school district.

Mr. WALDEN. Okay. We are somewhere between $100 and $200 million off here. Who made the decision to take your proposal at $200 million, Mr. Bohuchot? Was it your folks?

Mr. BOHUCHOT. I received documentation to sign to forward to the SLD of $216 million.

Mr. WALDEN. Who gave you the documentation?

Mr. BOHUCHOT. I suppose it was IBM. I mean, IBM was the partner that was supposed to help us bring those out.

Mr. WALDEN. Okay. Mr. Caine, you seem to know that you submitted $100 million, and Mr. Bohuchot says documentation is $200 million. Who but the other $100 in there?

Mr. CAINE. Mr. Chairman, our understanding is that Mr. Bohuchot had a conversation with George McDonald, the SLD, and after that conversation the $200 million was reduced, but we never proposed originally the $200 million. We proposed a $100 million scope.

Mr. BOHUCHOT. If I can, maybe——

Mr. WALDEN. If you can enlighten us, yes, because I was left with the impression from your comments, Mr. Bohuchot, that it was IBM that brought you a $216 million contract or proposal.

Mr. BOHUCHOT. I have a document here and its proposed adjustments that was developed by IBM, and the numbers that we are talking about, the $216 reduced, are in this document here.

Mr. WALDEN. Would it be possible for you to provide that?

Mr. BOHUCHOT. Sure.

Mr. WALDEN. For the record, without objection.

[The following was received for the record:]

The following summary shows adjustments based on a reduced number of schools, recent due diligence and the elimination of the Video SOW.

SOW	Original	Adjustment	New Total
Server	$37,527,525	<$19,789,654>	$17,737,871
Network Electronics	$61,727,798	<$14,615,276>	$47,112,522
Technical Support	$49,182,145	<$35,961,845>	$13,220,300
Video	$16,478,993	<$16,478,993>	$0
Cabling	$43,048,419	$0	$43,048,419
Web Access	$4,906,182	$0	$4,906,182
E-Mail	$3,159,934	$0	$3,159,934
	$216,031,026	<$86,845,768>	$129,185,228

Server Procurement

Original		$37,527,525
Adjustments		
Remove 460 Content Delivery Servers		<$33,197,426>
Add 240 Terminal Services Servers		$17,320,396
Add 150 File, Print, Authentication and Replication Servers		$10,825,248
Change in Server Model		<$10,000,000>
	Adjustment	<$15,051,782>
	New Total	$22,475,743

Remarks

- Represents 450 servers
- Pricing on a smaller Compaq server configuration is not complete. Smaller server model could reduce price by $10M - $12M
- Pricing on Microsoft Terminal Services software, Citrix and Volera Software not complete

Network Electronics

Original		$61,727,798
Adjustments		
Revised Network Equipment		
Reduced Scope from 230 sites to 156 sites		
Added Cisco Hardware to 1,000 portable classrooms		<$14,615,276>
	Adjustment	<$14,615,276>
	New Total	$47,112,522

Remarks

- New network equipment model reflected in attached drawing .

Technical Support

Original	$49,182,145
Adjustments	
Primary Shift Operation Model Netware 6.0 Upgrade, Client Upgrade, Network Capable Other Projects - Change Management, Event/Availability, Terminal Services Implementation, Data Center Move, Program and Project Management, Backup Project, Volera Implementation	<$16,259,245>
Adjustment	<$16,259,245>
New Total	$32,922,900

Remarks

- SAN Configuration for High Schools not e-ratable
- Data Center Move e-ratable, ongoing SBC charges not e-ratable

Cabling

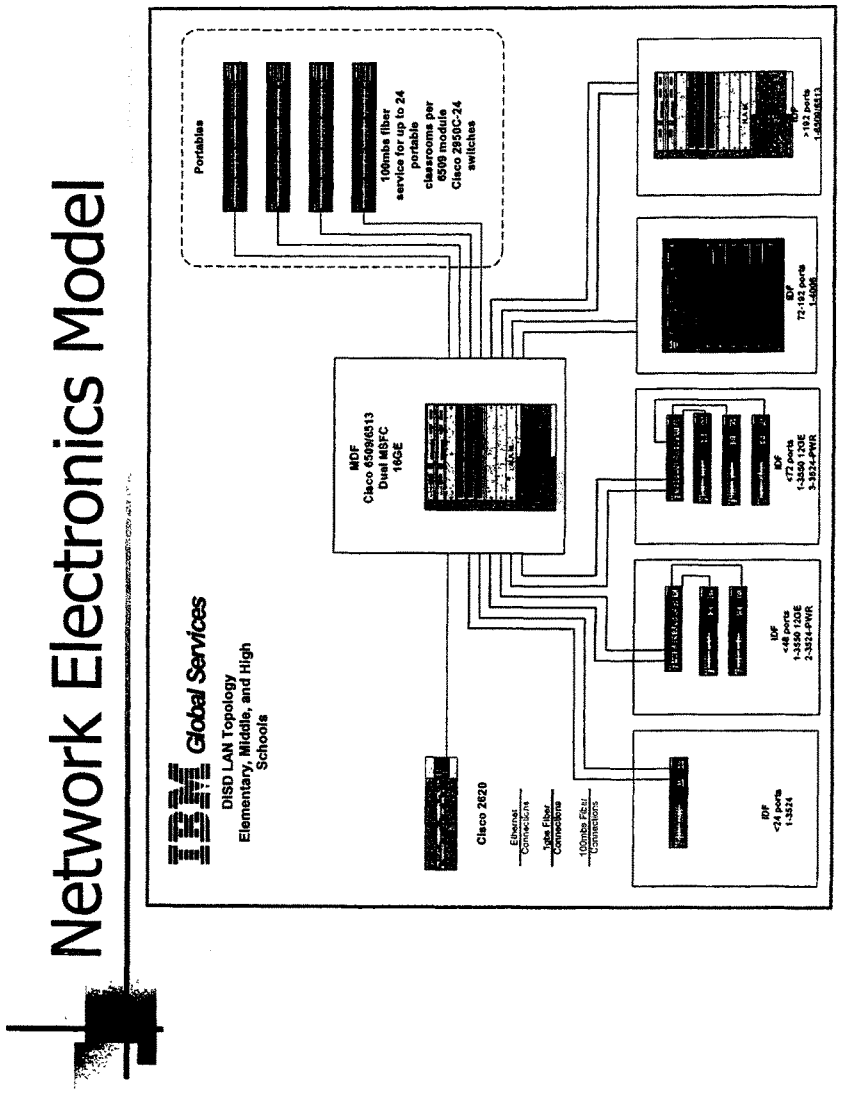
Original		$43,048,419
Adjustments		
Remove 1200 Portables		<$8,471,000>
Remove 1000 UPS Units		<$495,133>
Add drops to classroom model		$12,438,108
Add RM5UX4 110V and 5000XR 208V UPS		$1,090,829
	Adjustment	$4,562,804
	Total	$ 43,048,419

Remarks

- Additional scope raised price, need to work to reach agreement on completing new scope for price already submitted

Backup Information

Network Electronics Model


Network Electronics Model
IBM Global Services
DISD LAN Topology
Elementary, Middle, and High
Schools
Portables
100mbs fiber
service for up to 24
portable
classrooms per
6500 module
Cisco 2950C-24
switches
MDF
Cisco 6509/6513
Dual MSFC
16GE
Cisco 2620
Ethernet
Connections
1gbs Fiber
Connections
100mbs Fiber
Connections
IDF
<24 ports
1-3524
IDF
<48 ports
1-3550 12GE
2-3524-PWR
IDF
<72 ports
1-3550 12GE
3-3524-PWR
IDF
72-192 ports
1-4006
IDF
>192 ports
1-6509/6513

Mr. CAINE. And, Mr. Chairman, if I could just add that we have provided all of our documents to the committee staff, as well.

Mr. WALDEN. Including this one?

Mr. CAINE. All of the documents that we have, yes.

Mr. WALDEN. All of the documents that you have?

Mr. CAINE. Yes, all the documents——

Mr. WALDEN. Is this a document you recognize? Can you show this?

Mr. CAINE. I have to see it.

Mr. WALDEN. Oh, yes, that is always good in this process.

Mr. Caine needs to see that.

Yes, it has the IBM logo on it, Mr Caine. I will give you a minute with that.

Mr. Hawthorne, do you have some knowledge of this?

Mr. HAWTHORNE. Your Honor, I do recall working with the Dallas School District, and I recall that it was one of the more sophisticated school districts that we worked with. And my recollection is that the Dallas School District, the technology person, drove the process, and that the member that originated $200 million or thereabouts was a Dallas School District member, not an Alpha or an IBM member, and that this number was reduced not voluntarily. It was only reduced after Mr. Bohuchot had a conversation with the SLD, specifically Mr.—I forget his name.

Mr. WALDEN. McDonald?

Mr. HAWTHORNE. McDonald, yes.

So it was not reduced, in my opinion, as an independent review.

Mr. CAINE. And, Mr. Chairman, I do want to answer your question about this.

Mr. WALDEN. Yes, please.

Mr. CAINE. Yes, we did submit this document to the staff.

Mr. WALDEN. Okay. So we do have it. As you can tell, we have a lot of them in the binder.

Ms. DeGette.

Ms. DEGETTE. Thank you, Mr. Chairman.

Okay. Mr. Hawthorne, if you could just take a look at that document that I had given to Mr. Caine, the one that says "evaluation of IBM Statement of Work," and maybe you are familiar with some of these issues. I will simplify my questioning.

If you can look at Appendix A, it says Appendix A, "Eligibility Issues Contained in Statement of Work," and first of all, have you ever seen this document from the USAC?

Mr. HAWTHORNE. No, I have not.

Ms. DEGETTE. What Appendix A appears to be, well, what it says it is, the left column and the information that follows describes information contained in the Statement of Work. The right columns provides conclusions about the E-Rate eligibility of the products or service described by the statements.

Do you see that there?

Mr. HAWTHORNE. I see it, yes, ma'am.

Ms. DEGETTE. Okay. So here is my question to you. It says Section 2.2 is titled E-mail installation planning. Eligibility comment: this may imply initial planning which is not eligible per the eligible services list.

Were you aware of any problems with the title of Section 2.2, implying that there may be ineligible planning?

Mr. HAWTHORNE. What it says, ma'am, is ineligible initial planning, which is outside the scope of E-Rate.

Ms. DEGETTE. So that was not contemplated?

Mr. HAWTHORNE. No, it does not say that planning is ineligible because it is.

Ms. DEGETTE. Right.

Mr. HAWTHORNE. It is eligible.

Ms. DEGETTE. But what you are saying is there was no ineligible planning contained.

Mr. HAWTHORNE. I was not aware of any initial planning. To be perfectly honest, it was very difficult to get IBM moving on the project at all because they wanted to wait until the project was funded. So to my knowledge, there was no initial planning.

Ms. DEGETTE. Okay. What about Item 2? Now, this clearly says in the next category here Section 2.2, Item 2, is develop distributed E-mail architecture. That was clearly in the Statement of Work, but the eligibility comment says such an activity clearly falls within the ineligible initial planning category. Architecture must already be known for applicants to indicate the products and services to be deployed, which is a requirement of Form 471.

Now, did IBM run this by you before they put this section in their Statement of Work? That is clearly ineligible.

Mr. HAWTHORNE. Well, the SLD says it is clearly ineligible, but they also say that it clearly falls within the ineligible initial planning category.

Ms. DEGETTE. Right. Develop distributed E-mail architecture is within the ineligible initial planning category, right?

Mr. HAWTHORNE. Ineligible initial planning category. That is what it says in the right-hand column, and again, I am not aware of any initial planning done by IBM on this project.

Ms. DEGETTE. No, what the USAC is saying is this item, develop distributed E-mail architecture, is ineligible because it is within the initial planning category, but you disagree with that?

Mr. HAWTHORNE. I know of no initial planning involving this.

Ms. DEGETTE. Well, what they are saying the initial planning is develop distributed E-mail architecture. You do not think develop——

Mr. HAWTHORNE. During the initial planning stage?

Ms. DEGETTE. Yes.

Mr. HAWTHORNE. If it is in the initial planning stage, it would be ineligible, but I do not recall that being done, during the initial planning stage. There was no initial planning.

Ms. DEGETTE. Let's talk about the fifth little section there, the second one from the bottom, which says Section 2.2, Item 12, is "assist in developing standards for conductivity, security, and access from outside the firewall," and the comment is, "Security features are not eligible under current program rules and, thus, consultation in security standards would not be eligible."

What is your response to that?

Mr. HAWTHORNE. I do not know what current program rules you are talking about. Are you talking about current current program

rules or are they talking about current rules that were current at the time El Paso made its application?

Program rules change each year.

Ms. DEGETTE. Did this program rule change, since you are an expert?

Mr. HAWTHORNE. My recollection is that connectivity dealing with firewalls was eligible in 2001. I may be wrong.

Ms. DEGETTE. It was? Okay. Did IBM run this item past you as the expert on the E-Rate eligibility?

Mr. HAWTHORNE. If it was in the Statement of Work, they ran it, yes.

Ms. DEGETTE. So you saw the whole Statement of Work, right?

Mr. HAWTHORNE. Yes.

Ms. DEGETTE. Okay. Take a look at the next page of Appendix A, and it says Section 2.5, "Web maintenance overview indicates that Cyber Control content filtering software will be provided." Do you see that?

Mr. HAWTHORNE. Yes.

Ms. DEGETTE. Now, the comment is filtering software is not eligible. What is your opinion on that?

Mr. HAWTHORNE. I would saying filtering software is not eligible.

Ms. DEGETTE. But it was——

Mr. HAWTHORNE. I do not recall seeing this in the El Paso Statement of Work.

Ms. DEGETTE. Okay, but the USAC apparently did see it in the El Paso Statement of Work.

Mr. HAWTHORNE. So they say, yes.

Ms. DEGETTE. But you do not recall, and you reviewed that.

Mr. HAWTHORNE. I did personally.

Ms. DEGETTE. Okay. So you made a mistake? Would that be——

Mr. HAWTHORNE. Well, I am not above making mistakes, but I make very few of them.

Ms. DEGETTE. Well, as I recall, your company received what, about $2.4 million in fees as a result of the——

Mr. HAWTHORNE. From IBM, that is correct.

Ms. DEGETTE. For the El Paso project.

Mr. HAWTHORNE. That is correct.

Ms. DEGETTE. Were you the one that worked on this or were there others that helped you review it?

Mr. HAWTHORNE. There were others, yes.

Ms. DEGETTE. How many others?

Mr. HAWTHORNE. There were three of us altogether.

Ms. DEGETTE. And did you review this and then did you provide written comments to IBM about their proposal or did you draft the Statement of Work?

Mr. HAWTHORNE. No, IBM provided the Statement of Work, which we reviewed and we provided——

Ms. DEGETTE. And who was it you dealt with at IBM with respect to the El Paso proposal?

Mr. HAWTHORNE. I believe it was Don Riddick.

Ms. DEGETTE. Don Riddick?

Mr. HAWTHORNE. Yes, that's my recollection.

Ms. DEGETTE. Okay. And did you provide any comments to Mr. Riddick about ineligible items?

Mr. HAWTHORNE. Continually.

Ms. DEGETTE. Do we have that documentation?

Mr. HAWTHORNE. I believe I provided everything that was in our possession regarding that.

Ms. DEGETTE. Okay. Now, Mr. Caine, when this initial Statement of Work was developed by IBM for the El Paso district, were you in your position at IBM at that time? I think that was 2001.

Mr. CAINE. Yes.

Ms. DEGETTE. Did anyone bring it to your attention, any issues relating to ineligible items in the Statement of Work for El Paso?

Mr. CAINE. No.

Ms. DEGETTE. So that is why you told me earlier when I showed you this document you did not have any idea, correct?

Mr. CAINE. We have never seen this document before. We have never and the IBM company has not seen this document before.

Ms. DEGETTE. As far as you know. You have never seen it.

Mr. CAINE. No, but I am consulting with my colleagues, we turned everything over to the subcommittee that we have, and we have never seen this, and we do not know the date of it.

Ms. DEGETTE. Okay.

Mr. CAINE. Can I just amplify one thing that Mr. Hawthorne said?

Ms. DEGETTE. Sure.

Mr. CAINE. The eligible services list has evolved dramatically over the time, over the years of this program, and different interpretations have been made about what is eligible and what is not eligible throughout that time period. So in defense of Mr. Hawthorne, it is very hard to make a definitive statement about a document we have never seen before that is making a decision about an eligible service without a time context to know whether it aligns with the El Paso application or not.

Ms. DEGETTE. Well, Mr. Caine, let me say this. We are concerned, and we are not just trying to pick on IBM. We are concerned because we are talking about millions and millions, in some cases hundreds of millions of dollars from the E-Rate fund which are just wildly going around and which could be used to wire up these low income schools.

And I am going to ask Mr. McDonald to come back up in a minute and talk about this, but it seems to me that when corporations and their consultants are making so much money from these projects, the letter of the regulations should be followed, and I do not think you would disagree with that.

Mr. CAINE. Not one bit.

Ms. DEGETTE. One bit.

Mr. CAINE. Not one bit, and that is exactly why we believe the rules and the criteria should be clear, and quite honestly, they have not been either clear or consistently applied over time.

Ms. DEGETTE. I would like to recall Mr. McDonald.

Mr. WALDEN. Mr. McDonald, could you rejoin us for this panel? I think you have now been on all three panels, and as a reminder, you remain under oath.

Ms. DEGETTE. Thank you, Mr. McDonald. I know you have had a long day today.

Are you familiar with the document that I have been talking with these gentlemen about?

Mr. MCDONALD. I am.

Ms. DEGETTE. And did you prepare that document?

Mr. MCDONALD. A colleague of mine on my staff did.

Ms. DEGETTE. And when was that document prepared?

Mr. MCDONALD. We did not date this. There are a series of these drafts that we provided to your staff. IBM did not see this analysis until last week when we sent a letter to them asking them to comment on our tentative conclusions. So they would not have recognized this document.

Ms. DEGETTE. Okay. I think I have got a copy of that. That letter that was sent last week was sent to Bob Richter?

Mr. MCDONALD. That is correct.

Ms. DEGETTE. And he is addressed in your letter as the National E-Rate program Executive, correct?

Mr. MCDONALD. Yes, I believe he is in the new Center of Competence that Mr.——

Ms. DEGETTE. Is that right, Mr. Caine?

Mr. CAINE. That is correct.

Ms. DEGETTE. Okay. Now, some of the issues that were outlined in the evaluation of the IBM Statement of Work, were those issues also contained in your letter that was sent to IBM last week?

Mr. MCDONALD. Yes.

Ms. DEGETTE. So while they may not be familiar with this particular document, they are familiar with those issues, right?

Mr. MCDONALD. That letter just went out last Thursday.

Ms. DEGETTE. So were they apprised of the eligibility issues before last week?

Mr. MCDONALD. No, ma'am.

Ms. DEGETTE. So, for example, in Appendix A, when I am asking Mr. Hawthorne and Mr. Caine about these ineligibility issues, they were never informed of that before?

Mr. MCDONALD. They were not informed before the letter last Thursday. That is correct.

Ms. DEGETTE. Okay.

Mr. MCDONALD. We were working with the FCC about getting this document out.

Ms. DEGETTE. All right. Well, let me ask you this because we were talking about some of these issues that were in Appendix A, Section 2.2, develop distributed E-mail architecture, and the eligibility comment was such an activity clearly falls within the ineligible initial planning category.

Can you explain why that item would be ineligible?

Mr. MCDONALD. Applicants are supposed to do technology planning. They are supposed to develop their network concepts, the planned architecture and so forth, and then put out a Form 470 that describes that actual services they need to fill that technology plan. The planning developing architecture, that kind of information, that kind of work is supposed to be done ahead of time before filing the Form 470, and certainly before filing the Form 471. That is ineligible for discount.

What is eligible for discount is the actual work to put that technology plan in place.

Ms. DEGETTE. And do the vendors know that?

Mr. MCDONALD. I believe they do.

Ms. DEGETTE. And was that the case in 2001?

Mr. MCDONALD. That has always been the case.

Ms. DEGETTE. Okay. So the rules did not change around that?

Mr. MCDONALD. Firewall has changed since 2001.

Ms. DEGETTE. Okay. Now, so when you say here Section 2.3, Item 3 indicates that IBM servers will be installed and configured with free firewall software, you say here or your colleague says firewall software is not eligible. But that was not true in 2001? It was eligible?

Mr. MCDONALD. No, it was not eligible in 2001, and in looking at the eligible services list, they would have seen firewall is ineligible.

Ms. DEGETTE. Okay, and again, in 2001, were the vendors well aware that firewall software was not eligible at that time?

Mr. MCDONALD. They should have been. It was on our eligible services list.

Ms. DEGETTE. And certainly consultants who were experts in the E-Rate program would know that I would think.

Mr. MCDONALD. I would hope so.

Mr. HAWTHORNE. Consult——

Ms. DEGETTE. Let me finish.

Just one more question, Mr. McDonald. Where it says Section 2.5, Web maintenance overview indicates that Cyber Patrol content filtering software will be provided, and then the comment is filtering software is not eligible; was that the rule in 2001?

Mr. MCDONALD. That has been the clear rule from the beginning. I believe Congress addressed that when they passed the Children's Internet Protection Act, I believe.

Ms. DEGETTE. Okay. What I would like you to do, just take just a second and look over this Appendix A and tell me for all of the items on Appendix A, were those rules in place in 2001 and should the vendors have known about it in 2001.

Mr. MCDONALD. I believe so.

Ms. DEGETTE. All right. Mr. Chairman, I would ask unanimous consent that both this document, "Evaluation of IBM Statement of Work," and also the September 16 letter from the USAC to IBM be entered in the record.

Mr. WALDEN. The letter is already in the record, but the other information will be added.

Without objection, so ordered.

Ms. DEGETTE. And I would also say, Mr. Chairman, that I would hope that the USAC where it is seeing issues like this, where there is widespread ineligibility in these applications would communicate that to the vendors immediately. I would hope that would happen because I can now understand some of Mr. Caine's confusion at least.

Mr. McDonald?

Mr. MCDONALD. At this point we were waiting for the FCC decision on the basic big picture with the IBM procurement approach, which was true of El Paso as well. So we did not know what the guidance was going to be about the procurement approach, and if the decision was it was improper and was always improper, we

would have sought to recover the money from El Paso for everything independent of the services. We were doing this analysis. Depending on what the FCC decided, then we would pursue recovery based on the services. That was what was going through our mind.

Ms. DEGETTE. Thank you.

Thank you, Mr. Chairman.

Mr. WALDEN. I believe Mr. Hawthorne wanted a follow-up.

Mr. HAWTHORNE. I am not sure what the procedure here is, but could we have additional time to respond to this document since we have just seen it today?

Ms. DEGETTE. Mr. Hawthorne, we would give you——

Mr. WALDEN. The record remains open for 10 days.

Ms. DEGETTE. I would not object to allowing you to send a written response.

Mr. HAWTHORNE. When Mr. McDonald was speaking, and I am not positive on this; I have to go back and review the rules, but it says on Section 2.3, Appendix A, the second column, "firewall software is not eligible," but then it says, "Program rules require cost allocation for such components."

I am not aware that the cost allocation process was even in place when El Paso was funded. Again, I may be wrong. I would just like an opportunity to review.

Ms. DEGETTE. Mr. Hawthorne, I have no objection whatsoever to you being allowed extra time to respond.

Mr. HAWTHORNE. Thank you.

Mr. WALDEN. And our record does remain open.

Mr. McDonald.

Mr. MCDONALD. And our letter asks IBM to respond to us within 30 days. They have asked for an extension of that, which we will grant, to get back to us with a detailed response to our analysis.

Mr. WALDEN. All right. I guess sort of fundamentally here, Mr. Caine or Mr. Pratt, did El Paso need a $67 million system? And did Dallas need a $216 million system?

Mr. CAINE. Mr. Chairman, the E-Rate program asks school districts to develop a technology plan, as we talked about this afternoon.

Mr. WALDEN. Right.

Mr. CAINE. It is that plan that service providers or vendors like IBM are asked to respond to. We do not tell the school district what they need. They set up the requirements, and then we respond to their 470's and their RFPs accordingly.

That process goes through obviously a judgment and a decision-making process by the schools and then boards. This was a fairly open, very open process of the plan that the school districts prepare—what is in the community's interest. Do they need it? Do they have the appropriate funds to put up their share as you were talking about earlier this afternoon?

And so we respond to what the community feels it needs.

Mr. WALDEN. Okay, but how does that gibe then with the sort of cookie cutter approaches IBM came up with for various school districts, the almost identical, if not identical, proposal? Twenty-one of them?

Mr. CAINE. Well, we would not necessarily say they were cookie cutters. We were saying that the school districts obviously are in-

terested in understanding what other school districts are doing. They can get that information from various sources: the SLD Website. There are a number of Websites within the E-Rate community.

Now, each school district has to come up with its own technology plan.

Mr. WALDEN. Okay. Mr. McDonald, weren't these 470's pretty much identical?

Mr. MCDONALD. They were.

Mr. WALDEN. Do you think that represents individual plans from each district of those you saw in those 470's?

Mr. MCDONALD. I believe the committee staff has an E-mail from Seattle from IBM to the Seattle Public Schools attaching the 470, suggesting this is a good 470 that is very broad and it gives us lots of flexibility.

So I think there is reason to believe that the 470's were suggested by IBM.

Mr. WALDEN. Is this one of these where they basically ask for every available service?

Mr. MCDONALD. The 470, I have used the word "encyclopedic." It appears to try to cover every possible service and equipment that is eligible under the program.

Mr. WALDEN. All right. I want to get back to my other question. Did Dallas need a $216 million system?

Mr. CAINE. Mr. Chairman, only they can answer that question. We suggested to them that they did not at the beginning.

Mr. WALDEN. Then let me have you go to Tab 41, and I realize you say you told them $100 and some million dollar system, but it is like two or three pages in here, and it is from one of your folks, IBM H0026480, and it is from a James Whitmer, I believe, who is with IBM.

Mr. CAINE. Mr. Chairman, could I just ask are you on Tab 41 did you say?

Mr. WALDEN. I believe that is correct. Tab 41, and then about three pages in, and you give your IBM number at the bottom.

Mr. CAINE. James Whitmer, yes, and you said the number was?

Mr. WALDEN. Zero, zero, two, six, four, eight, zero. Two, six, four, eight, zero.

Mr. CAINE. Okay.

Mr. WALDEN. And I go back to this because here, this person, Jim Whitmer, is your IBM Global Services Integrated Technology Services Sales, and it is dated in March. And, Mr. Pratt, I believe you were cc'ed on this E-mail, and it says, "We met with Dallas ISD staff today and our approach to any changes will not require a new QA or PCRs. Worst case, they will eliminate one of the SOWs which will most likely be the video SOW. This would actually be a postponement until E-Rate 6. We will be meeting with them again this Thursday and will encourage them to move ahead with the SOWs as submitted totaling 216M. If there are any questions, please let me know. Thanks. Regards, Jim Whitmer."

So you are telling me you submit a $100 and some million dollar proposal. It comes back at 200, but then your folks are saying, hey, you know, we are going to try to get them to move ahead as planned here for the full $216.

Mr. Pratt, do you have a comment on that or Mr. Bohuchot? Mr. Caine?

Mr. Pratt.

Mr. PRATT. Yes, sir. I wasn't directly involved in the conversation. I got copied on a lot of notes for Western Region, but my understanding was that when DISD came back and said the requirements due based on the technology plan, this is what we need, we felt the integrity of the program would be held up. If we started reducing at that point, there was a question that the SLD would come back and say why was this asked for in the first place.

And so it was better to continue with the original submission.

Mr. WALDEN. Well, what that says to me is we never believed in the original submission of 216. That was them. Now they are coming back saying that is more than we need, and you are saying, no, let's keep the 216 in there. They might ask other questions? Is that what you are saying?

Mr. PRATT. Not necessarily other questions, but once we——

Mr. WALDEN. Well, you said it might bring into question, I think you said, the integrity of the submission.

Mr. PRATT. The integrity of the submission. It would raise questions as to why would you submit $216 million in the first place if——

Mr. WALDEN. Well, isn't that a realistic question somebody needed to ask? Why do you think it raises that question?

Mr. Hawthorne? Mr. Caine? We are talking a lot of—Mr. Bohuchot, how do you respond to that?

It appears here—I will just read it again. "We will be meeting with them again this Thursday." I assume that means you all, the school district, "and will encourage them to move ahead with the SOWs as submitted totaling $216 million."

Mr. BOHUCHOT. I am supposing that we met on a Thursday, and we jointly came to the conclusion that we should reduce the filing, which generated the document that you have got.

Mr. WALDEN. Right, that then came out in May, right? That says, "The following summary shows adjustments based on reduced number of schools, recent due diligence, and the elimination of the video SOW."

So, indeed, Mr. Whitmer was right. You are going to eliminate, but I guess the question I have is: what happens in between here? I mean, on the one hand, I am told—one second, Mr. Hawthorne. I will give you time.

Mr. HAWTHORNE. Okay.

Mr. WALDEN. On the one hand, I was told it was not IBM's plan. Then it seems to be like it is your techies and the school district pumped it up. It comes back to IBM. IBM said, "Hey, not our plan. We did not pump it up to 216. They did." But then when you start to question it, their people are saying, "We are going to try and keep them going at 216 because somebody may question why it was pumped up." Mr. Hawthorne?

Mr. HAWTHORNE. You know, IBM certainly does not need any help from me, but my recollection on this particular item was that there was talk of a reduction, but when you are talking reduction, you just can't start lopping stuff off. What you have to do is look and see what is out there.

Do you just reduce by a certain dollar amount or do you see how much you want to cut back on your maintenance? Do you see how much you want to cut back on your internal connections?

It has to be some type of proportionate adjustment. You do not just——

Mr. WALDEN. Well, I do not dispute that. That is not the question here.

Mr. HAWTHORNE. Well, I think it is the question. From what I have heard being bantered about here is that there was this great reduction because someone looked at this and said, "We cannot afford this. We do not want to do this."

Mr. WALDEN. No, that is not what I heard. What I heard was from Mr. Bohuchot, they figured out it was gold plated. It was far more than they needed for their system. Isn't that what you basically said, Mr. Bohuchot? Eighty-six million?

Mr. BOHUCHOT. Quite frankly, a lot of it was because I felt that I would end up here eventually regardless of what was being filed.

Mr. WALDEN. Not everybody is that lucky, but we are glad you are here.

Mr. BOHUCHOT. And here I am, and I would rather explain $17 million in technical support versus $43 million or whatever it was.

Mr. WALDEN. All right.

Mr. BOHUCHOT. So you were suspicious of this; is that right? Most people do not wake up in the morning and say, "Gee, I think I am going to get to go to the O&I Subcommittee some day."

IBM and the district has a long, good standing relationship. I personally have worked with numerous IBM staffers. They were our partner implementing a major ERP system, finance H.R. payroll, and quite frankly, without them, we would not have got it done on time and under budget. So it is not an IBM personal thing.

Mr. WALDEN. No.

Mr. BOHUCHOT. We hit a wall, and the wall said there is $216 million there. Ruben, you have to sign the documents to let it go. Are you comfortable signing it?

Quite frankly, I was not comfortable signing it.

Mr. WALDEN. Good for you.

Mr. BOHUCHOT. Well, I do not want to take credit for it.

Also I do not know if Mr. McDonald remembers, but I also called George.

Mr. WALDEN. Right.

Mr. BOHUCHOT. And I said, "George, I have signed this thing, but I want to let you know that I am going to adjust it."

Mr. WALDEN. Do you remember that, Mr. McDonald?

Mr. MCDONALD. I do, sir.

Mr. WALDEN. You do. Okay.

I want to go to Tab 17, and you all may want to take a look at this. Mr. McDonald, I think this was the document that you recently referred to when you talked about Seattle. I will let you get that in front of you, sir.

Mr. MCDONALD. Yes, sir.

Mr. WALDEN. In about the third paragraph down, it says Mitchell, and that is John Mitchell. Who is John Mitchell?

Mr. MCDONALD. He is a consultant to Seattle Public Schools for overseas—their E-Rate.

Mr. WALDEN. It says, "Mitchell stated that he called George McDonald after the December 3, 2002 Website noticed was posted because he was concerned that SPS would be targeted for scrutiny because they had used the Form 470 boilerplate template that IBM had provided to them during their preliminary discussions with IBM when they posted their FCC Form 470. Mitchell forwarded me the E-mail that he received from IBM with the FCC Form 470 boilerplate template attached."

This, by the way, is from Kristy Carroll to file, and then the next graph says, "Mitchell stated the discussions with IBM began in October and that he was on a conference call with Steve Mueller and Charles Gentry. He stated that one of IBM's selling points was that they represented to him that former SLD attorneys work for IBM, and as a consequence IBM knows all of the loopholes in the program. Mitchell said that because SPS had started the E-Rate process a little late this year, that the plan with IBM was that SPS would use the Western States consulting contract agreement rather than go through local procurement regulations."

And it later says Mitchell said that he saw it as a way for IBM to get around State procurement cycle and says Mitchell stated that another one of IBM's selling points was that IBM could get SPS a lot more funding than they had gotten in the past.

The next page it says Mitchell stated that he was told by Alpha or Gentry that they could increase the number of 90 percent sites at the SPS from 13 to 40, and then says Mitchell stated that he started feeling unpleasant about the discussions with IBM in November.

Can you address this for us?

Mr. MCDONALD. Kristy Carroll is our Associate General Counsel. She is here with us today.

And when we posted the notice in December 2002, we posted a prominent notice on our Website about the procurement pattern that IBM had engaged in, and I contacted Mr. Bohuchot at that point, and a lot of the applicants who had 2002 applications with IBM to tell them I was not making any judgment about the 2002 applications, except this letter was the only one that we had completed, but that to alert them that our conclusion that this procurement pattern was not consistent with the rules. So as they approached, we were in the filing window for 2003. They would have a heads up not to continue down this road or at least to do so at risk since our conclusion was that it was not consistent.

So that Website notice prompted Mr. Mitchell to call me and said we did not go through this process, but we did use the encyclopedic 470.

The allegation of that SLD attorney is working for IBM, I know nothing about that. Certainly USAC attorney, I know all of the attorneys that have worked for USAC, and I am not aware that any of them work for IBM.

And then he did provide the template 470.

Mr. WALDEN. All right.

Mr. MCDONALD. If I could go back to the question that Congresswoman DeGette asked.

Mr. WALDEN. Yes.

Mr. MCDONALD. Giving IBM a heads up about the ineligible services, in our December 2002 denial letter for this letter which we copied IBM on, there is an entire discussion in there about ineligible services that we believe were not the basis of our denial. It was the procurement pattern, but that we gave them a heads up that we thought they were asking for ineligible in the initial planning.

Ms. DEGETTE. Thank you for clarifying your testimony, Mr. McDonald, because that is what I was just saying. The staff has before it sounded like there was no notice at all, and in fact, your testimony right now shows there was notice several years ago.

Mr. MCDONALD. December 2002.

Ms. DEGETTE. Thank you.

Mr. WALDEN. Mr. Caine, do you want to comment?

Mr. CAINE. I was just going to say that that was relative to the Ysleta denial, and therefore prompted the appeals to the Commission both by the Ysleta School District and other school districts, about those denials of funding. So in that context, yes, Mr. McDonald is correct.

But the Commission ruled five-nothing on an opinion that we think was very fair and balanced and pointed out a number of things where there was inconsistency and ambiguity all the way around.

Mr. WALDEN. Did they rule on this issue of the boilerplate proposals?

Mr. CAINE. No, I don't believe that was part of the decision.

Mr. WALDEN. All right. Let's go to Tab 33. Perhaps you can help us clarify this one as well, Mr. Caine. This is an E-mail to Tracy Diaz/Austin/IBM at IBM U.S. from Jack McKinney, Kansas City IBM at IBM U.S., and it talks about E-Rate lessons learned, year 5 strategic partnership agreement, Oklahoma City schools, $49 million.

And if you drop down to the second from the bottom point, it talks about communication and time lines are areas that need improvement, and then the second from the bottom point says, "The customer knows that the pricing for the SOWs are significantly inflated but has not"—I assume that should be "had." It is just the letter A—"but has not a conversation on how this will be remedied. Our pricing methodology would be undefendable in public forum."

Do you have any idea what this document that is supplied by IBM would——

Mr. CAINE. No, I do not, but I will tell you that relative to Statements of Work——

Mr. WALDEN. I'm sorry. Relevant to?

Mr. CAINE. SOWs.

Mr. WALDEN. Okay.

Mr. CAINE. Statements of Work.

Mr. WALDEN. Yes.

Mr. CAINE. They were frequently expansive by many applicants in the program. As a matter of fact, there was guidance given that expansive Statements of Work enabled substitutions and revisions later on to be made.

Mr. WALDEN. Sure.

Mr. CAINE. So that the 470 process also were made to be expansive because they were basically public notices, and that there were school districts that we had nothing to do with that were funded using expansive 470's and Statements of Work.

So I cannot refer to this specific E-mail as you have asked me to do, Mr. Chairman, but on the topic of expansive Statements of Work and the 470 process, we do have experience that says, yes, vague, expansive Statements of Work are not the preferable approach, but they were the reality at the time.

Mr. WALDEN. Are they still the reality, Mr. McDonald?

Mr. MCDONALD. I hope since the Ysleta order that they are not, and we are looking at those then.

Mr. WALDEN. Wouldn't this be like hiring a contractor to do a remodel on your house and the contractor basically comes back and says, "Here, Mr. Homeowner or Mrs. Homeowner. You know, everything at Home Depot. I am not sure what I am going to use, but here is your Statement of Work"? Isn't that pretty close to what was happening in some instances?

Mr. MCDONALD. The 470 was like that. The Statements of Work were tied to specific functions, the E-mail, the servers, and that kind of thing.

Mr. WALDEN. Because it looks to me like the missing piece here is the homeowner, and that tends, I guess to be sort of us. I guess you, if you have your auditors, but we wonder whether enough of that, but who is saying, "Wait a minute. I do not need everything in Home Depot. I just want to fix my kitchen"?

Mr. CAINE. Mr. Chairman.

Mr. WALDEN. Yes.

Mr. CAINE. Could I just make a reference to the FCC's Ysleta order?

Mr. WALDEN. Sure.

Mr. CAINE. On this point?

Mr. WALDEN. Yes.

Mr. CAINE. The order was quoted as saying the SLD cautioned applicants in the past to be expansive in listing services on FCC Form 470 to provide applicants with greater flexibility to make service substitutions post commitment.

So that is what the FCC rule determined in their order on the Ysleta appeals.

Mr. WALDEN. Tell me the difference between the Statement of Work and the 470.

Mr. HAWTHORNE. The 470 is a document, an FCC Form 470.

Mr. WALDEN. Right.

Mr. HAWTHORNE. Which the applicant is supposed to use to list his required services or the services that he is looking for, and it has to stay posted for 28 days and hopefully during that period of time vendors will call and try and get more information. There is a place on the 470 to indicate what the——

Mr. WALDEN. So how is the Statement of Work?

Mr. HAWTHORNE. The Statement of Work is the actual work, that if the successful vendor gets and defines that it is supposed to provide.

Mr. WALDEN. Okay. So going back to this earlier E-mail——

Mr. HAWTHORNE. It is a contract.

Mr. WALDEN. Okay. Going back to this earlier E-mail I had, the one from Mr.—here it is right here—the one from Mr. Whitmer then, Mr. Hawthorne, where he says, "We will be meeting with them," being Dallas, "again this Thursday and will encourage them to move ahead with the SOWs as submitted totaling $216 million."

So this is not the wish list anymore, if I understand you right.

Mr. HAWTHORNE. No.

Mr. WALDEN. This is actual statements of work?

Mr. HAWTHORNE. That is correct. Those are contracts, which I would assume were submitted to——

Mr. WALDEN. And they should have been the whittled down version of I am only doing my bathroom and my kitchen, not the whole house. I do not need everything in Home Depot.

Mr. HAWTHORNE. If Dallas was dissatisfied with the Statement of Work before it was executed, I would think they would have an opportunity to say, "I do not want this. I want that," and you know, because it is a negotiated document.

Mr. WALDEN. Right, but it is an IBM person who is saying, "We are going to try and convince Dallas to stay with the 216, the Statements of Work as submitted."

Mr. HAWTHORNE. Well, again, I get to the point that I raised earlier. In my opinion, you have to go back and reevaluate what you have asked for from bottom up. You just cannot start lopping off goods and services just based on the Statement of Work. What did you ask for? I mean, I do not think that can be done.

Mr. CAINE. Mr. Chairman, this is one area that needs improvement. We would clearly acknowledge that in the program. Okay? There is no process actually to coming backwards, and there should be probably. Okay? In this particular context that you were just referring to.

Mr. WALDEN. But didn't Dallas hire you at IBM to come help give them guidance as to what they need to wire their schools? Wasn't that your role?

Mr. CAINE. Yes, to be their strategic partner.

Mr. WALDEN. So at what point in that partnership do you say to Dallas, "We do not think you need all of this stuff"?

Mr. Pratt, were you involved in that part of it?

Mr. PRATT. Not with the Dallas.

Mr. WALDEN. All right. Mr. Caine, you were not involved in that.

Mr. CAINE. I was not, but as I said in my statement, we believe we said that at the front end. Our initial proposals were significantly——

Mr. WALDEN. Yes, but later in this E-mail, your own people are saying we are going to try and get them to hold to 216, and Mr. Pratt said reducing it might call into question the integrity of the overall proposal, right?

I mean, all right. Ms. Glogovac——

Mr. HAWTHORNE. May I comment on the 470 before you move on?

Mr. WALDEN. Sure.

Mr. HAWTHORNE. I agree with the statements that E-Rate is very important in the process of wiring schools. It is crucial.

Mr. WALDEN. Nobody is disputing that.

Mr. HAWTHORNE. And I disagree with the statement that 94 percent of the schools have been wired. I mean, there are schools that have not even been touched by E-Rate.

However, it appears that E-Rate has now become a game. School districts want to get money, and people at the government level will say to them, "Well, you know, gosh. You didn't put this on your 470. We're not going to allow it." You might have made some vague reference to it, but you know, it is not there. So we are going to deny you.

There is that Catch-22. Do you put a lot of stuff on the 470 or do you put what you think you might need and that evolves over time?

Mr. WALDEN. But couldn't you come back the next year and get that which you——

Mr. HAWTHORNE. Time moves on.

Mr. WALDEN. Well, yes, but that is true in any project, right? I mean, if I go get a loan in a bank——

Mr. HAWTHORNE. I thought the objective here was to put technology in place to educate kids.

Mr. WALDEN. Of course it is. Of course it is, but if I go get a loan from a bank to do my home remodeling and I get a certain amount of money, that is what I have got to operate under, right?

I do not know. Let me go on to Ms. Glogovac. Did Sun do work for EPISD prior to funding year 4?

Ms. GLOGOVAC. That I do not know. What I do know is that Sun was selected the year prior to that to provide servers, and for some unknown reason that I was not privy to, El Paso did not follow through on that funding commitment and never made the purchase.

Mr. WALDEN. My understanding was that Sun did provide an E-mail system of some sort.

Ms. GLOGOVAC. That I do not know.

Mr. WALDEN. All right. Do you recall what the budget was for EPISD's E-mail system?

Ms. GLOGOVAC. I do not know what that was.

Mr. WALDEN. Okay. Mr. Caine has testified that the budget they were provided with was to be used in the best interest of the district. How many E-mail addresses did the system Sun was going to provide? What was the capability?

Ms. GLOGOVAC. I believe Sun had an unlimited license, software, E-mail software package.

Mr. WALDEN. What does that mean?

Ms. GLOGOVAC. Meaning it would scale with however many users they need to use.

Mr. WALDEN. So they could have an unlimited number of E-mail addresses?

Ms. GLOGOVAC. Correct.

Mr. WALDEN. And then what is the capacity of what EPISD and IBM put in?

Ms. GLOGOVAC. I believe their Statement of Work said 3,000, but on conversations on conference calls, I was told 5,000.

Mr. WALDEN. So is that correct, Mr. Caine or Mr. Pratt? Do you know? Is the system in El Paso 5,000 E-mail addresses?

Mr. CAINE. I cannot confirm the number for you, Mr. Chairman, but I do know that the proposal from Sun included E-mail addresses for ineligible activities in schools. So there was always a distinction between eligible schools in the district and ineligible schools in the district, and that was a factor.

Mr. WALDEN. So you advised them of that?

Mr. CAINE. That was part of the consideration that we brought to the attention of the school district.

Mr. WALDEN. Paula, is that correct?

Ms. GLOGOVAC. I would have to say that El Paso was completely open to selecting how many E-mail licenses they wanted to deploy and where they wanted to deploy them. That was not dictated by Sun.

Mr. WALDEN. But were they ineligible places?

Ms. GLOGOVAC. I have no idea. I do not know what school was ineligible in El Paso, and that was not brought up to our attention on any conference call that I know of.

Mr. WALDEN. Even by IBM?

Ms. GLOGOVAC. No, or El paso.

Mr. WALDEN. And who is the area coordinator? Are you, Ms. Foster? No. You were the area——

Ms. GLOGOVAC. I was a contractor that was brought in to assist the Sun sales team.

Mr. WALDEN. So, Mr. Caine, you were involved in that discussion then. Where is your information coming from?

Mr. CAINE. No, I was not involved in the conversation, but I do think that it is probably a question about eligible schools versus ineligible schools within the El Paso School District that the district could answer. But I do know that not all schools in the El Paso School District were eligible, and so there has to be this distinction.

Mr. WALDEN. I wonder if our superintendent on video—can you address this issue, sir? Thanks for keeping your mic off, too, so that we do not get the feedback. But this issue of ineligible E-mail addresses in our schools.

Mr. TAFOYA. Yes, sir. I do recall there was conversation that took place at that time, that we had to be careful that we did not cross the line of the eligibility using E-Rate money, and so I do know that just like I said, the piece of the conversation that I can recall was that there was concern that the scope of work would not exceed what we were eligible to receive in E-Rate funding.

Mr. TAFOYA. And are you satisfied with the notion of like 5,000 E-mails versus unlimited?

Mr. TAFOYA. We were satisfied with what we received because it was what we could afford within that E-Rate funding.

Mr. WALDEN. Thank you, sir.

Ms. DEGETTE. Just very quickly, Mr. Chairman, Mr. Caine, if you could take a look at Tab 65 of your notebook. This is the agreement. We got this from NABSE. I do not know if you have seen this, Mr. Caine.

Mr. CAINE. No, I have not.

Ms. DEGETTE. Okay. This is the agreement with NABSE, the one that Mr. McDonald was testifying about earlier, and part of the agreement talks about on page 3 the offset to the cost that NABSE will incur in support of this partnership. NABSE shall receive an

annual payment of 1.5 percent of the cumulative business. This is the kickback we have been talking about all day. Do you see that on page 3?

Mr. CAINE. I do.

Ms. DEGETTE. Now, this agreement was signed by Donald J. Parker, the customer service executive for IBM Global Services on behalf of IBM. Do you see that on the last page there?

Mr. CAINE. I do.

Ms. DEGETTE. Did Mr. Parker as far as you know have the authority to enter into this type of agreement?

Mr. CAINE. Actually the video was quite a surprise to us. We were not aware of it. We had actually asked the staff when we were told that it existed to see it. We were not given an opportunity to see it.

But he was not sanctioned to do this. This was not an official IBM activity. Our company——

Ms. DEGETTE. Is he still with the company? Do you know?

Mr. CAINE. No, he is not.

Our company does have relationships, Ms. DeGette, with a number of educational organizations, but none specifically for E-Rate performance. We have not done that. So it was not sanctioned by the IBM company, and I think if I could just—I do not mean to propose where you are going, but if I could just point to the next tab, which is also a document that talks about a memorandum of understanding on this point. It is conspicuously not signed by IBM.

Ms. DEGETTE. Okay. Well, but you would not dispute the fact that by Mr. Parker's signature on this document on behalf of IBM he bound the company contractually to that, correct?

Mr. CAINE. Well, we would dispute that.

Ms. DEGETTE. You would?

Mr. CAINE. Yes, we would.

Ms. DEGETTE. Well——

Mr. CAINE. Yes, we would. He was not sanctioned to do this for the company, and it is actually a proposal, not a contract.

Ms. DEGETTE. I will yield to the chairman.

Mr. WALDEN. I just wanted to note the committee staff had tried repeatedly to interview Mr. Parker, and apparently IBM does not know where he is anymore.

Mr. CAINE. He is no longer an employee of the IBM company.

Mr. WALDEN. So otherwise we would have shared that at that time.

Ms. DEGETTE. I am studying this, and in fact, it is an agreement. It is a letter agreement, and on page 2, it says the team, well, fully committed to supporting NABSE, and NABSE's membership believes that any contractual agreement could be construed inappropriately by third parties. The team is not going to request an exclusive or formal endorsement by NABSE. The individual members are content that NABSE will recommend the team and each team members with the same confidence and vigor.

So, in fact, what this is, it is a letter agreement that everybody is agreeing to. Disagree?

Mr. CAINE. Ms. DeGette, yes, in this sense: that he was not sanctioned to do this. We are as surprised about this as you seem to

be disturbed by it, and we are as well, and we are referring it to our attorneys as soon as we get a copy of this.

Ms. DEGETTE. Well, take it with you.

Mr. CAINE. I would be happy to.

Ms. DEGETTE. Are your customer service executives authorized to sign letter agreements of this nature?

Mr. CAINE. No.

Ms. DEGETTE. And are they informed of that in some personnel guideline or handbook?

Mr. CAINE. Each IBM employee is asked each year to sign a business conduct guideline, which is a code of conduct. All right? And they know that contracts have to go through or proposals have to go through a rigorous process.

Ms. DEGETTE. Is there a written guideline for that, that talks about that in the code of conduct?

Mr. CAINE. I would have to go back and look at the——

Ms. DEGETTE. I would appreciate it if you would supplement your response on this, and I will tell you, frankly, my concern, and it is a concern for all of the companies that are doing these E-Rate contracts. I mean, I always tell people in this committee, and the chairman has heard me say it, in my law practice I am on inactive status in Colorado, but I practiced for a number of years, and I will tell you this looks like a letter agreement to me.

And the thing I was always worried about when I represented corporations in my law practice was exactly this type of thing where you have got sales representatives signing what end up to be binding contracts.

And I will tell you probably your lawyers will tell you that even though Donald J. Parker may not have had the legal authority to sign this, if he is doing it and putting it out there to the world, you would have been bound by this. So that is a concern.

Mr. CAINE. Well, we appreciate your comments, and we are going to look into this very, very quickly and very forcefully.

Ms. DEGETTE. Good, and the other concern I have, first of all, to your knowledge, I would assume, you are unaware of any other contracts that IBM or any of its representatives have entered into for kickback agreements to organizations, correct?

Mr. CAINE. Correct.

Ms. DEGETTE. And that would not be your policy, I would assume.

Mr. CAINE. Never.

Ms. DEGETTE. So, Mr. Hawthorne, as a consultant, did your company ever enter into agreements that involved kickbacks to the organization?

Mr. HAWTHORNE. Absolutely not.

Ms. DEGETTE. Okay. But here was my concern, Mr. Caine. Earlier when you were testifying, and I am glad you have put this little group together of E-Rate experts, but when you put so much authority on sales reps. out in the field, sometimes this kind of thing in an aggressive market can result, and so I would hope IBM would take this very seriously and adopt some clear rules.

Mr. CAINE. We do Ms. DEGETTE. Thank you very much.

Thank you, Mr. Chairman. I yield back.

Mr. WALDEN. I appreciate the gentle woman's comments and her participation for this full day.

Mr. Tafoya, if I could just ask you a question, sir, because one of the other issues that we are looking at, and we did certainly in the North Carolina situation, are districts now in a position where they have, frankly, bitten off more than they can chew? And is that the case in your district, sir?

Because this is an enormous amount of equipment. It is not a new technology. Do you have the information, staff up to speed to really be able to run a system like this? Is this something other districts need to take note of?

Mr. TAFOYA. Well, I would like to bring the answer two ways. I do believe that an award of this magnitude really needs to be scrutinized very, very carefully simply because all of the residual expense and support that is required once the installation takes place is very overwhelming. We feel fortunate that we do have the capacity with the structure now to manage the network that we have in place. We are not exactly where we want to be, but we have made great strides, and we will continue to devote because we have, in fact, a commitment from our board to continue to devote resources to make sure that this network does, in fact, work.

But I would say overall an award of this magnitude needs much longer scrutiny than I think we took in El Paso.

Mr. WALDEN. So a good lesson learned for other districts that may be going down this path?

Mr. TAFOYA. I believe so, yes sir.

Mr. WALDEN. I was reading through the PowerPoint presentation that, Mr. Johnston, Jack Johnston, the Executive Director of Technology Information, had done, I think, for the board in which he said, "We are no longer in the driver's seat."

This was in 2002 as the whole system was rolling out, and he said with the introduction of the first class technology came the need for skill upgrade for many of the TIS staff. What IBM could provide within the SLD guidelines for skill transfer, they did so. Unfortunately my staff has a long way to go before we could ever be expected to provide the same level of service as IBM in many areas.

And so it looks to me like as this handoff occurs for other districts that may be observing this whole process, they need to learn the lesson your district learned the hard way it sounds like.

Mr. TAFOYA. Mr. Chair, I believe one of the things that we always have to keep in mind in public education is that sometimes it is hard to embrace a business model where you have recurring revenue and an opportunity to grow that resource to support that in a public setting where you have limited resources that are going to be pressed a number of different directions.

Mr. WALDEN. I appreciate your comments.

I have no other questions for our panel. I know we have been rejoined by the distinguished Chairman of the full committee who has put a lot of energy into oversight over the years and continues to as our Chairman.

Mr. Chairman, I would yield.

Chairman BARTON. Well, Mr. Chairman, and Ranking Member DeGette, I do not want to delay this. This is another of our all day hearings.

I do want to thank our witnesses for being here and participating, and I have actually been watching a lot of this on TV in my office as I have had a series of meetings. So it is six o'clock. I am not going to ask any direct questions.

I guess I do want to ask the gentleman that represents IBM. Which one is that?

Mr. WALDEN. That is Mr. Caine and Mr. Pratt.

Chairman BARTON. How can a company as credible as IBM is participate in the way that apparently you all have where we have gone into these districts and just the amount of money that has been requested, it has increased by orders of magnitude?

I mean, I cannot tell you how disappointed I am to find that out. I mean, what is the real justification for that?

Mr. CAINE. Mr. Chairman, we believed we were responding to the technology plans the school districts were putting together, that we were complying with the rules as we understood them at the time. There are a number of decisions that had been made throughout the program that allowed these kinds of approaches to be sanctioned in the Ysleta decision and denials. That question was called, and we submitted our comments.

Quite honestly, we were happy that it was called, and the FCC looked at a number of issues here, and they decided 5-0, in that order, and we have learned from that, and we have actually made adjustments since that time, since the FCC came out with its decision, but these are——

Chairman BARTON. But, you know, in the panel before you we had some rural school districts or at least low income school districts where I do not believe your company was one of the vendors, but you know, it is fairly credible to some extent if the school district says, well, we do not really know a whole lot about the program, but if a company like IBM says it is okay, it is okay.

And when you look at the amounts of money that are requested, I think ultimately the accountability is at the local level, the school board and the school superintendent. If it is a library, the city council, the county or whatever, but companies like IBM have a lot of credibility, and to use that in a way that just has the appearance of abusing the public trust is just extremely disappointing, you know.

I have not really read the hearing record directly on point in detail on what IBM's relationship was and direct participation is, but IBM is one of the icons of corporate America, I have to say I am very disappointed, and I certainly hope that you will take back to your management and to the board that we expect companies of your stature to honor the public trust and not try to push these things, you know, right to the extreme letter of the law or your interpretation of it.

Mr. CAINE. Mr. Chairman, I appreciate your comments, and I can tell you that I do not think you were here when I had my opening statement. This program is very important to us, and we do not want to ever jeopardize it, and we have been willing to work with

you and your staff and the Commission and the SLD to make changes to the program so that it is successful.

So relative to the purpose and the mission of this program, the IBM company takes it very seriously, and that is why we are here, and that is why we are here voluntarily.

Mr. BOHUCHOT. Well, I want to end on this note. We have a document from USAC, and has this been put into the record?

Mr. WALDEN. Yes, it is in the record, Mr. Chairman.

Mr. BOHUCHOT. But the paragraph that has been highlighted said, "Mr. Mitchell stated discussions with IBM begin in October and that he was on a conference call with Steve Mueller and Charles Gentry. He stated that one of IBM's selling points was that they had represented to him that former SLD attorneys worked for IBM and as a consequence IBM knows all of the loopholes in the program."

You know, we are going to do our very best to close those loopholes, and we are going to hope that the IBMs of the world do their very best to honor the spirit as well as the exact technicalities of the new program.

And with that, Mr. Walden, I would yield back.

Mr. WALDEN. Thank you, Mr. Chairman.

And I will tell you after three of these hearings, it makes me wonder what is going on elsewhere around the country that we need to continue to look at as this program evolves. We are seeing some progress in some areas, but it is troubling.

I think the one thing we probably would all agree on is our kids need access to the Internet in their schools, and it is our responsibility to make sure that happens, but in a way that we can have a straight face, look at the taxpayers and rate payers and say we are good guardians and stewards of your money.

And what we have seen in some instances around the country, Mr. Chairman, we cannot tell them that, and we have got to make sure and get on top of it, and that is what this committee's job is and we will continue to do it.

So I want to thank our witnesses who have spent the day with us by video an din person, and the record will remain pen for an additional 30 days for additional questions and comments.

And with that, the Subcommittee on Oversight and Investigations stands adjourned.

[Whereupon, at 6:16 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows:]

	IBM	
1	FCC Ysleta Order Data	8/15/2003
2	FCC Winston-Salem Order	12/4/2003
3	USAC Year 5 Ysleta Decision	12/3/2002
4	IBM Marketing Samples	7/4/3280
5	Breakdown of Nine El Paso Statements of Work	
6	EPISD Technology Plan 2000-2001	
7	EPISD Preliminary Special Investigation Report	1/17/2002
8	Concerned Citizen Letter	1/17/2002
9	Funds for Learning letter to EPISD	12/26/2001
10	USAC Preliminary Draft Analysis of IBM Associated-Funding Requests	10/3/2002
11	FCC Inspector General Briefing for FCC Chairman Powell	12/6/2002
12	Email - Orange County, Florida Concern	12/9/2002
13	Jack Johnson email re: RFP for Strategic Technology Integrator	12/5/2000
14	USAC to IBM requesting response on eligibility determinations	9/16/2004
15	USAC Analysis of Network Maintenance Eligibility	
16	USAC Eligibility Analysis for EPISD FY 2001	9/16/2004
17	USAC - John Mitchell Interview Notes	1/14/2003
18	IBM / Seattle Schools/ Mitchell E-mails	10/11/2002
19	Sample 470 Script	10/8/2001
20	P. Glogovac E-mails	7/15/1992
21	IBM - Alpha E-mails re: server eligibility	7/11/2002
22	EPISD E-mail Upgrade Project	6/23/2004
23	EPISD Server Upgrade Project	2/10/2002
24	IBM to Alpha on Maintenance - Questions to Alpha on Eligibility	01/28/92
25	Hawthorne to Pratt on Maintenance Eligibility	2/10/2002
26	Pratt to Hawthorne - No interaction with District	2/26/2002
27	Pratt Emails re: Value Statement	6/24/2002
28	Pratt provides Desktop Technicians	10/17/2002
29	Jack Johnson Provides Powerpoint on 10/15 :	10/15/2002

30	Pratt E-mail re:Johnson PowerPoint	10/16/2002
31	El Paso Times	12/13/2002
32	Daily Oklahoman	4/20/2003
33	IBM E-mail re:Oklahoma City concerns -	11/13/2002
34	USAC - Bohuchot E-mail	6/6/2003
35	Alpha - IBM email re: Funding Year 5 plans for Texas	8/7/2001
36	Sample Alpha/IBM Subcontractor agreement/SOW	8/21/2001
37	Hawthorne E-mails re: IBM SOW Alpha-IBM	11/13/2000
38	Canutillo offers "verbal" commit	11/13/2001
39	Gain a Verbal Commit from Customer	11/8/2002
40	470 Script - NETC	6/20/2001
41	Dallas Reduction in Request E-mails	3/5/2002
42	Pratt to Alpha build in 7% fee	5/3/2002
43	IBM email - pressure from SLD on districts	3/19/2002
44	Riddick Practicing Law Without a License	4/12/2002
45	E-mail RE: SLD Board member information on denials	12/94/02
46	E-rate: Still a Critical Focus at IBM	5/20/2003
	NEC	
47	E-Mail - Judy Green to Duncan	2/13/2001
48	NEC E-Rate Contract, Memo of Understanding - Jasper County	10/10/2000
49	E-Mail - Marchelos to Colvin re: Board Report to Jasper County	1/7/2000
50	E-Mail: Marchelos to Colvin re: Jasper Board Information Forms	1/7/2000
51		
52		
53	E-Mail: Marchelos to Colvin re: Last page of Board Summary	1/7/2000
54		
55	VNCI / NEC Agreement	12/13/1999
56	E-Mail from Bill Holman re: VNCI Payment	11/19/1999
57	Holman E-Mail re: Judy Owns the Bid Process and is Brains	12/26/1999
58	Holman E-Mail re: Judy's Awarding Contract to NEC	12/29/1999

59	E-Mail from Fergysin to McNulty re: Keeping same Mark-Up Prices	1/14/2000
60	E-Mail from Green to McNulty re: Item 25 Review - Ecorse	5/15/2000
61	Letter from Lawson to Dr. TC Wallace - Mount Clemens	11/29/2000
62	Letter from Lawson to Karen Buchanan - Lee County	3/6/2001
63	Letter from Lawson to Mildred McGhee - Wilkinson County	3/8/2001
64	NABSE Technology Assistance Form and Informational Flyer	
65	Letter and Response from Lawson to NEC, VNCI, and IBM	10/25/2000
66	NABSE Memorandum of Understanding & Cover Letter	Jan. 2001
67	Fax Cover from Colvin to Lawson re: IBM Signature	2/6/2001
68	VNCI Single Invoice Record	10/26/1999
69	VNCI Single Invoice Record	7/17/2001
70	NABSE Cash Journal	1/1/2000
71	NABSE E-Rate Satisfaction Survey	
72	Letter from NEC to Lawson	6/19/2002
73	Promissary Note from NEC to NABSE	9/10/2002
74	Internal NEC E-Mail Re: Higher "in kind" Donation for Jasper County	1/3/2000
75	Response to Request for Proposal - Jasper County	1/4/2000
76	E-Mail from Judy Green re: Jasper Discount Percentage	4/27/2000
77	E-Mail from Judy Green re: Jasper MOU	9/27/2000
78	E-Mail from Zahid Masood to Colvin re: E-Rate Process	2/2/2000
79	NEC / Benit - Ecorse MOU	1/18/2000
80	E-Mail from Colvin re: Jasper pricing	2/16/2001
81	E-Mail from McCain to Benit re: Meeting	2/21/2001
82	E-Mail from Benit to McNulty re: Scope of Work	3/15/2001
83	E-Mail from McCain re: Production Studio Costs	3/16/2001
84	E-Mail from NEC to Benit re: Video / Studio Pricing	3/19/2001
85	E-Mail with Benit Spreadsheet	3/21/2001
86	E-Mail re: TV Studio Ribbon Cutting	2/15/2002
87	E-Mail - McNulty to Judy Green re: Completed 470 forms	12/18/2000
88	VNCI Press Releases	
89	Alpha E-mail to IMB re: Atlanta's 470 Script	10/21/2001

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Ysleta Independent School District	)	SLD No. 321479
El Paso, Texas	)	
	)	
International Business Machines, Inc. on behalf of	)	
Ysleta Independent School District	)	SLD No. 321479
El Paso, Texas	)	
	)	
Donna Independent School District	)	SLD Nos. 317242, 317016, 311465,
Donna, Texas	)	317452, 315364, 309005,
	)	317363
	)	
International Business Machines, Inc. on behalf of	)	SLD Nos. 317242, 317016, 311465,
Donna Independent School District	)	317452, 315364, 309005,
Donna, Texas	)	317363
	)	
Galena Park Independent School District	)	SLD Nos. 314879, 305340
Houston, Texas	)	
	)	
International Business Machines, Inc. on behalf of	)	SLD Nos. 314879, 305340
Galena Park Independent School District	)	
Houston, Texas	)	
	)	
Oklahoma City School District I-89	)	SLD No. 315578
Oklahoma City, Oklahoma	)	
	)	
International Business Machines, Inc. on behalf of	)	SLD No. 315578
Oklahoma City School District I-89	)	
Oklahoma City, Oklahoma	)	
	)	
El Paso Independent School District	)	SLD Nos. 318522, 315768
El Paso, Texas	)	
	)	
International Business Machines, Inc. on behalf of	)	SLD Nos. 318522, 315678
El Paso Independent School District	)	
El Paso, Texas	)	

Navajo Education Technology Consortium Gallup, New Mexico	)	SLD No. 306050
Memphis City School District Memphis, Tennessee	)	SLD No. 331487
International Business Machines, Inc. on behalf of Memphis City School District Memphis, Tennessee	)	SLD No. 331487
Albuquerque School District Albuquerque, New Mexico	)	SLD No. 320461
International Business Machines, Inc. on behalf of Albuquerque School District Albuquerque, New Mexico	)	SLD No. 320461
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

ORDER

Adopted: December 4, 2003 **Released: December 8, 2003**

By the Commission:

I. INTRODUCTION AND OVERVIEW

1. Before the Commission is a Request for Review by the Ysleta Independent School District (Ysleta), El Paso, Texas, and similar Requests for Review filed by seven other schools set forth in the caption.[1] As noted in the caption, International Business Machines, Inc. (IBM) also files a Request for Review in most of the appeals.[2] The schools and IBM seek review of decisions of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying $250,977,707.08 in schools and libraries universal service

[1] *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District,* CC Docket Nos. 96-45 and 97-21, Request for Review, filed January 30, 2003 (Ysleta Request for Review). Relevant citations for the other appeals are contained in the Appendix.

[2] *See, e.g., Request for Review of the Decision of the Universal Service Administrator by International Business Machines, Inc. on behalf of Ysleta Independent School District,* CC Docket Nos. 96-45 and 97-21, Request for Review, filed January 30, 2003 (IBM Request for Review).

support mechanism discounts to the schools for Funding Year 2002.[3] Because each appeal raises very similar issues, we consolidate our review here.[4] For the reasons set forth below, we affirm SLD's decisions and deny the Requests for Review. Under the terms set forth below, however, we waive the filing window for Funding Year 2002 to permit the above-captioned schools to resubmit requests for eligible products and services for Funding Year 2002 under the terms set forth below.[5]

2. The Commission is deeply concerned about a number of practices that undermine the framework of the competitive bidding process established by the Commission's *Universal Service Order* of May 8, 1997. If allowed to persist, the practices that we address in this Order could suppress fair and open competitive bidding, and ultimately thwart the goal of effective, efficient, and equitable distribution of universal service support to eligible schools and libraries. The Commission has directed program applicants to take full advantage of the competitive market to obtain cost-effective services and to minimize waste, fraud, and abuse. Reliance on competitive markets also assures that program funds can be distributed as widely and as equitably as possible among the applicants. To enhance competitive-market processes, the Commission has developed a process in which applicants first develop detailed technology plans that describe their technology needs and goals in a manner consistent with their educational or informational objectives. Having determined the services for which they would seek E-rate discounts,[6] applicants would then submit for posting on the Administrator's website an FCC Form 470, listing the desired services, consistent with the technology plan, with sufficient specificity to enable potential bidders to submit bids for E-rate eligible services. Applicants could indicate on the FCC Form 470 if they also had a Request for Proposal (RFP) providing additional detail on the services sought. Once an applicant received bids with specific prices quoted for eligible services, it would select the most cost-effective services, with price as the primary factor. Where consistent with these practices, applicants would rely on state and local procurement processes. This is the foundation upon which the Commission's rules and orders are based.[7]

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[3] *See* Appendix A. *See* Request for Review; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Richard L. Duncan, Ysleta Independent School District, dated December 3, 2002 (Funding Commitment Decision Letter); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Richard L. Duncan, Ysleta Independent School District, dated December 3, 2002 (Further Explanation). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

[4] For ease of discussion, our analysis in this Order will focus on the facts presented in the Ysleta appeal. We provide additional information about the eight other appeals in Appendix B.

[5] There are additional appeals before SLD that are factually similar in nature to the appeals discussed herein. SLD shall address those appeals in accordance with the terms of this Order.

[6] "E-rate" is the colloquial term by which the schools and libraries support mechanism is widely known.

[7] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9076-80, paras. 570-80 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000),

3. The procurement processes presented in the instant Requests for Review thwart the Commission's competitive bidding policies. The factual scenarios of the different applicants vary to some degree, but all present troubling conduct or outcomes that are inconsistent with the competitive bidding procedures required by our rules and orders. Most of the above-captioned applicants selected a Systems Integrator to provide millions of dollars worth of services, but chose the Systems Integrator without seeking bids on any of the prices of the specific E-rate-funded services sought. Most of the applicants also submitted FCC Forms 470 expressing interest in purchasing a catalogue of virtually every eligible service, rather than developing a list of services actually desired, based on their technology plans, with sufficient specificity to enable bidders to submit realistic bids with prices for specified services. Some applicants also stated on their FCC Forms 470 that they did not have an RFP relating to the E-rate eligible services, and then subsequently released such an RFP just a few days later.

4. These practices are contrary to our rules and policies and create conditions for considerable waste of funds intended to promote access to telecommunications and information services. Such waste harms individual applicants that do not receive the most cost-effective services. If allowed to continue, the practices identified here would harm other applicants who may be under-funded because funds needlessly have been diverted to these excessive program expenditures. Further, it would damage the integrity of the program, which to date has successfully provided discounts enabling millions of school children and library patrons, including those in many of the nation's poorest and most isolated communities, to obtain access to modern telecommunications and information services for educational purposes, consistent with the statute.

III. BACKGROUND

A. Communications Act and Commission Rules

5. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.[8] Section 254(h)(1)(B) of the Act provides, "All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to [schools and libraries] for educational purposes at rates less than the amounts charged for similar services to other parties . . . ."[9] The Commission elaborated on the meaning of "bona fide" in the *Universal Service Order*, where it stated that Congress "intended to require accountability on the part of schools and libraries," which should therefore be required to "(1) conduct internal assessments of the components necessary to use effectively the discounted services they order; (2) submit a

cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co., 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

[8] 47 C.F.R. §§ 54.502, 54.503.

[9] 47 U.S.C. § 254(h)(1)(B) (emphasis added).

complete description of services they seek so that it may be posted for competing providers to evaluate; and (3) certify to certain criteria under perjury."[10]

6. In the *Universal Service Order*, the Commission designed the program application structure to encourage competitive bidding on specific eligible products and services. Our rules provide explicit requirements for applicants to develop technology plans based on the reasonable needs and resources of the applicant, setting forth in detail how the applicant will use certain technologies in the near term and into the future, and how they plan to integrate the use of the technologies into their curriculum.[11] At the time of the FCC Form 470 filing, applicants must certify whether their technology plans have been approved, and that they recognize that support is conditional upon securing access "to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services purchased effectively."[12] This requirement limits waste in the program by ensuring that products and services for which discounts are sought have been carefully selected to complement an applicant's educational and information goals, consistent with available resources. The Commission specifically required that technology plans be independently approved, to ensure that the plans are based on the "reasonable needs . . . of the applicants and are consistent with the goals of the program."[13]

7. The Commission's rules state that "an eligible school or library shall seek competitive bids . . . for all services eligible for support . . . ."[14] Under our rules, the competitive bidding process involves the use of an FCC Form 470 describing services being sought. An eligible school, library, or consortium seeking to receive discounts for eligible services must submit to the Administrator a complete FCC Form 470, which must include certain information such as information about the computer equipment, software, and internal connections available or budgeted for purchase, and staff experience.[15] As explained in the *Universal Service Order*, the Form 470 must "describe the services that the schools and libraries seek to purchase in sufficient detail to enable potential providers to formulate bids. . . ."[16] Each

[10] *Universal Service Order*, 12 FCC Rcd at 9076, para. 570.

[11] *See Universal Service Order*, at 9077, para. 572-74.

[12] *Id.* In a recent Further Notice of Proposed Rulemaking, the Commission sought comment on whether to change our rules so that applicants may certify that their technology plans will be approved by the time that E-rate supported services begin. *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Rulemaking, FCC 03-101 at paras 99-100 *(rel. April 30, 2003) (Second Order and FNPRM).*

[13] *Universal Service Order*, 12 FCC Rcd at 9077, paras. 573-74.

[14] 47 C.F.R. § 54.504(a).

[15] 47 C.F.R. § 54.504(b).

[16] *Universal Service* Order, 12 FCC Rcd at 9078, para. 575 (emphasis added).

applicant must certify in its FCC Form 470 that it has developed a technology plan that has been approved by an authorized entity.[17]

8. The Administrator must post each applicant's Form 470 on SLD's website, allowing review by all potential competing service providers.[18] After waiting at least four weeks so that competing providers may consider submitting competitive bids for services, the eligible school, library, or consortium seeking discounts may then enter into a contract with the chosen service provider. The applicant then submits a completed FCC Form 471 application to the Administrator, indicating the selected service provider and services for which discounts are sought.[19] SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules. Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules, and typically do not receive funding.[20]

9. Under our rules, applicants must select the most cost-effective bids.[21] The Commission's rules state, "These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements."[22]

B. Ysleta

10. Ysleta initially developed a technology plan in 1993, then revised it in 1998, partly to comply with the Commission's newly adopted rules governing the new schools and libraries support mechanism.[23] Ysleta modified its technology plan again in May 2001.[24] Ysleta's

[17] 47 U.S.C. § 54.504(b)(2)(vii). An applicant must certify that its technology plan has been "certified by its state, the Administrator, or an independent entity approved by the Commission." *Id.* Technology plans must establish the connections between the information technology and the professional development strategies, curriculum initiatives, and objectives that will lead to improved education or library services. They must (1) establish clear goals and a realistic strategy for using telecommunications and information technology to improve education or library services; (2) include a professional development strategy to ensure adequate use of the technology; (3) include an assessment of the telecommunications services, hardware, software, or other services needed; (4) provide for a sufficient budget; and (5) include an evaluation process to monitor progress and make mid-course corrections. *See Universal Service Order*, 12 FCC Rcd at 9077-78, paras. 572-74; SLD web site, Frequently Asked Questions About Technology Planning, <http://www.sl.universalservice.org/reference/TechnologyPlanningFAQ.asp>.

[18] 47 C.F.R. § 54.504(b); *Universal Service Order*, 12 FCC Rcd at 9078, para. 575.

[19] 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471). The FCC Form 471 notifies SLD of the services that have been ordered and indicates the amount of discounts sought. *Id.*

[20] 47 C.F.R. § 54.507(g).

[21] *Universal Service Order*, 12 FCC Rcd at 9029-30, para. 481.

[22] 47 C.F.R. § 54.504(a).

[23] *See* Ysleta Appendix I, Tab 3, Ysleta Long-Range Technology Plan, History, Overview at 1. Consistent with our rules, Ysleta's technology plan was approved by the State of Texas. *See* Ysleta Request for Review at 8; FCC Form 470, Ysleta Independent School District, posted October 12, 2001 (Ysleta Form 470).

Funding Year 2002 FCC Form 470 was posted on SLD's website on October 12, 2001.[25] In its FCC Form 470, Ysleta indicated that it was seeking virtually every product and service eligible for discounts under the support mechanism.[26] It also stated that it was "seeking a Technology Implementation and Systems Integration Partner."[27] In Blocks 8, 9, and 10 of the form, Ysleta checked the box for, respectively, telecommunications services, Internet access, and internal connections, indicating in each instance "No, I do not have an RFP [Request for Proposal] for these services."[28]

11. On October 17, 2001, five days after the posting of the FCC Form 470, Ysleta released an RFP, the substantive requirements of which comprised only six pages.[29] The RFP stated that Ysleta was seeking a "Technology Implementation and Systems Implementation Partner" to "assist the District in preparing applications on the District's behalf for E-rate funding and applying technology to improve student achievement and administrative practices in support of teaching and learning."[30] The Systems Integrator would "implement, refine and support a state-of-the-art technology infrastructure . . ." and the scope of the project would "include all E-rate funded projects."[31] Significantly, however, such projects were not identified in the RFP. The Systems Integrator would "serve as the prime contractor for any projects funded through E-rate, and all E-rate applications will be submitted using the successful

[24] Ysleta Request for Review at 8.

[25] *See* Ysleta Form 470.

[26] Ysleta indicated that it was seeking the following services or functions for "63 locations": (Telecommunications Services): Basic Telephone Service (POTS, Centrex); Long Distance; High Bandwidth Service (56K, ISDN, DSL, Frame Relay, Fractional T1, DS1, DS3, OC3, ATM, Satellite, MAN, WAN, LAN Interconnect); Wireless Service (Cellular, PCS, Paging, LAN, WAN); Video Service, Interactive TV, Distance Learning; Maintenance/Installation (Inside Wire Maintenance); Homework Hotline Service; (Internet Access): Internet Access; Wireless Service (LAN, WAN); High Bandwidth Service (56k, ISDN, DSL, Frame Relay, Fractional T1, DS1, DS3, OC3, ATM, Satellite, MAN, WAN, LAN Interconnect); Maintenance/Installation; (Internal Connections): Wiring (CAT5, COAX, Fiber, Conduit, wiring accessories); Routers, Servers, Switches, HUBS, Upgrades; PBX, KSU, ARS, Console, Components and Upgrades; Video CODEC, MCU, MPEG encoder, Multimedia Kit, PVBX, Video Group and Desktop Equipment, EMMI; Maintenance/Installation, Onsite Technical Support, Documentation; Wireless Service (WAN, LAN); Video Equipment (Broadband Amplifier, Cable Box and Modem); ATM Equipment (Edge Device, EMMI); Hardware and Upgrades for Internal Connections (CSU/DSU, Antenna, DAT, Line Sharing Device, Media Converter, Modem, Monitor, Multiplexing, Satellite Dish, TA, Terminal Server, UPS, Zip Drive); Internal Connections Components (Backup Power Supply and Batteries, Cabinets, Power Strips, Circuit Card, Eithernet [sic] Cards, Graphics Card, Harddisk Array Controllers, RAID, MAU, NIC, SNMP Module); Operational Software and Upgrades, E-Mail Software. *See* Ysleta Form 470.

[27] *Id.*

[28] *See* Ysleta Form 470.

[29] *See* Ysleta Independent School District, Request for Proposal 22-1113-016RFP, released October 17, 2001 (Ysleta RFP).

[30] *Id.* at 1.

[31] *Id.*

bidder's single SPIN number (Service Provider Identification Number)."[32] The successful bidder would be identified based on points awarded for availability and quality of resources, staff development and training, project management/systems integration, technology solutions, commitment to K-12 education, District funding considerations, pricing model and cost assurances, and other vendor attributes.[33]

12. The RFP did not seek pricing information from bidders concerning products and services for which discounts under the support mechanism would be sought, nor did it require the successful bidder to provide such information as part of its bid.[34] Prospective bidders were required to provide a proposed pricing model that would demonstrate throughout the life of the contract that costs would be within normal and customary charges, would be simple to administer, meet all statutory requirements for recordkeeping and auditing, adhere to district purchasing policy, and be flexible within established budgets.[35]

13. The deadline for responses to the RFP was November 15, 2001.[36] Five vendors submitted bids: IBM, Avnet Enterprise Solutions, Compaq Computer Corp., I-Next, Inc., and SBC-Southwestern Bell.[37] IBM submitted a 147-page response that addressed each category in the RFP, describing in general terms IBM's experience and resources.[38] Under the "Pricing Model and Cost Assurances" category, IBM stated that "the only inputs necessary to determine a price are: length of project, number and type of project resources required, and determination of IBM's risk assumption."[39] The only actual prices quoted by IBM were part of a schedule of hourly rates strictly for Systems Integration, ranging from $394 per hour for a Project Executive to $49 per hour for a Project Administrator.[40]

14. Ysleta Technology Department and Purchasing Department officials reviewed the bids and recommended that IBM be selected.[41] On December 12, 2001, the Ysleta Board of

[32] RFP at 3.6. The SPIN is a number issued by SLD to identify service providers for purposes of the program.

[33] *Id.* at 3.7.

[34] *See generally* RFP.

[35] *Id.*

[36] Ysleta Request for Review at 9.

[37] *Id.*

[38] *See* IBM Response to Ysleta Request for Proposal, Ysleta Request for Review at Appendix II Tab 6 (IBM Bid).

[39] *Id.* at 77.

[40] *Id.* at 79-80.

[41] *See* Ysleta Request for Review at 9.

Trustees selected IBM "as the putative awardee . . . if a final contract (including pricing) was successfully negotiated and finalized . . . ."[42]

15. Only after Ysleta chose IBM as the putative awardee did Ysleta begin negotiating the scope of work and cost of the actual products and services for Funding Year 2002 that would be eligible for discounts under the support mechanism.[43] The contract that IBM and Ysleta ultimately entered into set forth five Statements of Work, each with detailed specifications, prices, and terms: Cabling Services ($2,090,400),[44] Network Electronics ($965,500),[45] Network File and Web Servers ($3,945,320),[46] Basic Unbundled Internet Access ($968,600),[47] and Technical Support Services ($12,409,811).[48] This last Statement of Work covered: "IBM Project Management of the Technical Support Office; network infrastructure support; Local Area Network technical support, including network hardware; technical support procedures supporting networking systems and maintenance, including design, installation, implementation, and customization of network functions; and dedicated technical resources for network technical support on a time and materials basis."[49]

16. As negotiated, the contract provided for a one-year term, and could be terminated by Ysleta upon thirty days notice.[50] The contract also entitled Ysleta to review IBM's pricing of products, and to direct IBM to contract with particular vendors for specific products specified in a Statement of Work, provided that IBM approved the selection based on its standards for vendor quality.[51] Ysleta contends that in negotiations with IBM prior to signing the contract, it refused a request from IBM to add another project, and that it negotiated substantial changes in pricing with IBM, totaling "many millions of dollars."[52]

17. On January 17, 2002, the final day of the filing window for Funding Year 2002 applications for discounts, Ysleta completed negotiations with IBM, signed the contract, and

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[42] *Id.*

[43] *See* IBM Request for Review at 7.

[44] *See* Ysleta Appendix II, Tab 7 (General Contract), IBM Statement of Work for Cabling Services at 13.

[45] *See* General Contract, IBM Statement of Work for Network Electronics at 13.

[46] *See* General Contract, IBM Statement of Work for Network File and Web Servers at 20.

[47] *See* General Contract, IBM Statement of Work for Basic Unbundled Internet Access at 11.

[48] *See* General Contract IBM Statement of Work for Technical Support Services at 22.

[49] *Id.* at 7.

[50] *Id.* at 11; *See* General Contract at 1.01, 10.01.

[51] *See* General Contract at 10.01.

[52] Ysleta Request for Review at 10.

also filed its FCC Form 471 application.[53] Subsequently, on or about May 13, 2002, Ysleta received an Item 25 Selective Review Information Request from SLD, to which it responded with various information on June 3, 2002.[54] Ysleta and SLD thereafter exchanged further correspondence.[55] On December 3, 2002, SLD issued a decision denying Ysleta discounts, and also issued a Further Explanation providing greater detail for the reasons of the denial.[56]

18. In the Further Explanation, SLD enumerated a number of reasons for denying the pending requests. SLD concluded that Ysleta violated our rules by failing to note on its FCC Form 470 that it had issued an RFP.[57] SLD also noted that the Form 470 process was circumvented because Ysleta's RFP did not require bidders to submit proposals for specific services with a definite price, but required only general information regarding the bidders' approach, qualifications, and experience as a Systems Integrator.[58] SLD determined that Ysleta violated the Commission's rules by selecting IBM without establishing that it was the most cost-effective provider of the services for which Ysleta was seeking discounts. SLD observed that even if Ysleta complied with state and local procurement rules, Ysleta failed to comply with the Commission's competitive bidding rules, with which applicants must comply in addition to state and local rules.[59] SLD concluded that IBM's proposal and the resulting contract included "a vast array of ineligible services" such as teacher and administrative personnel training, project management services, consulting services, and assistance in filling out program forms.[60] SLD stated that the record reflected that the overall goal of the IBM-

[53] *See* SLD web site, <http://www.sl.universalservice.org/whatsnew/2002/012002.asp#011002b>; FCC Form 471, Ysleta Independent School District, filed January 17, 2002 (Ysleta Form 471).

[54] *See* Ysleta Request for Review at 12. Item 25 of the FCC Form 471 requires applicants to certify that they had secured access "to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services." *See* FCC Form 471 at Item 25. SLD may review the accuracy of applicants' certifications regarding necessary resources, in order to ensure compliance with statutory requirements and Commission rules. *See Request for Review of the Decision of the Universal Service Administrator by United Talmudical Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, 15 FCC Rcd 423 (2000) (*United Talmudical Academy Order*). These certifications and other requirements are critical to curbing waste, fraud, and abuse in the schools and libraries universal service mechanism.

[55] *See* Ysleta Request for Review at 12.

[56] *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Richard L. Duncan, Ysleta Independent School District, dated December 3, 2002 (Further Explanation). The same letter was sent to IBM. *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to John Policastro, IBM Corporation, dated December 3, 2002. As set forth in the Appendix, SLD issued decisions relating to the other schools on March 10 and March 24, 2003.

[57] *Id.* at 4.

[58] *Id.* at 4-5.

[59] *Id.* at 6-7.

[60] *Id.* at 8.

Ysleta relationship was to maximize SLD funding, rather than promoting educational goals that were clearly defined in a technology plan.[61] SLD also stated that after reviewing numerous RFPs issued by applicants that had relationships with IBM, it had found strikingly similar, and sometimes identical, language in the RFPs, indicating that IBM may have unduly influenced the selection process in IBM's favor.[62] On January 30, 2003, Ysleta and IBM filed their Requests for Review with the Commission.[63]

19. Under our rules, the Commission considers requests for review of decisions by the Administrator that involve novel questions of fact, law, or policy.[64] We conclude that the instant appeals meet this standard, and we engage below in *de novo* review of SLD's denials, as provided in our rules.[65]

III. DISCUSSION

20. We have reviewed the records in the above-captioned Requests for Review. Upon careful review, and for the reasons discussed below, we conclude that Ysleta and the similarly situated applicants set forth in the caption violated our rules regarding competitive bidding, our requirements governing the weighting of price in selecting bidders, and the requirement that applicants submit bona fide requests for services.[66] In light of the circumstances presented, however, we conclude that waiving our filing deadlines in order to permit Ysleta and similarly situated applicants that have appealed SLD's denial of funding to re-bid for services for Funding Year 2002 is in the public interest.[67]

21. Competitive Bidding Violations. Ysleta and IBM argue that Ysleta did not violate any Commission competitive bidding rules.[68] They argue that Ysleta did competitively bid for services, by filing an FCC Form 470 in accordance with program rules that listed eligible services sought, and which indicated that Ysleta was seeking a partnership with a Systems Integrator.[69] They also note that Ysleta thereafter published an RFP seeking the services of a

[61] *Id.* at 9-10.

[62] *Id* at 10.

[63] *See* Ysleta Request for Review; IBM Request for Review. As set forth in the Appendix, the eight other schools also timely filed Requests for Review. All of the Requests for Review involve schools that applied as eligible for 90 percent discounts under our discount matrix.

[64] *See* 47 C.F.R. § 54.723.

[65] *Id.*

[66] The factual situations of the similarly situated applicants are set out in the Appendix. *See* Appendix B, *infra.*

[67] *See* section IV, *infra.* To the extent an applicant proceeded to take service, particularly telecommunications services or Internet access, notwithstanding SLD's denial of discounts, we do not and will not provide funding to pay for such services. *See* para. 75, *infra.*

[68] *See* Ysleta Request for Review at 13-32; IBM Request for Review at 11-32.

[69] *See* Ysleta Request for Review at 13-17; IBM Request for Review at 11.

Systems Integrator, and received five competing bids for those services.[70] We are not persuaded by these arguments, however, because the competitive bidding in which Ysleta engaged was carried out without regard to the products and services eligible for discounts, such that the prices of actual services were never compared.

22. We conclude that the type of procurement practiced by each school in these cases violates our competitive bidding rules, because it effectively eliminates competitive bidding for the products and services eligible for discounts under the support mechanism. Section 54.504(a) of the Commission's rules specifically states that "an eligible school or library shall seek competitive bids . . . for all services eligible for support . . . ."[71] As the Commission has previously observed:

> Competitive bidding is the most efficient means for ensuring that eligible schools and libraries are informed about all of the choices available to them. Absent competitive bidding, prices charged to schools and libraries may be needlessly high, with the result that fewer eligible schools and libraries would be able to participate in the program or the demand on universal service support mechanisms would be needlessly great.[72]

Competitive bidding for services eligible for discount is a cornerstone of the E-rate program, vital to limiting waste, ensuring program integrity, and assisting schools and libraries in receiving the best value for their limited funds.[73]

23. Ysleta engaged in a two-step procurement process, but only the first step, at which it selected the service provider, involved competitive bidding, and only in a limited fashion.[74] First, Ysleta sought competitive bids for a Systems Integrator without regard to costs for specific projects funded by the schools and libraries support mechanism.[75] Second, Ysleta negotiated with the Systems Integrator it had selected regarding the scope and prices of E-rate eligible products and services, but it never sought competing bids for those products and services, as required by our rules.[76] Thus, Ysleta never received a single competing bid for the

[70] *See* Ysleta Request for Review at 9; IBM Request for Review at 16.

[71] 47 C.F.R. § 54.504(a).

[72] *Universal Service Order*, 12 FCC Rcd at 9029, para. 480.

[73] *Id.*; *see also Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, ____ para. 185 (1997) (*Fourth Order on Reconsideration*) ("The competitive bidding process is a key component of the Commission's effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the services are provided at the lowest possible rates.").

[74] Ysleta Request for Review at 27; IBM Request for Review at 5.

[75] *See generally* RFP.

[76] 47 C.F.R. § 54.504(a).

$2,090,400 in Cabling Services, $965,500 in Network Electronics, $3,945,320 in Network File and Web Servers, $968,600 in Basic Unbundled Internet Access, or $12,409,811 it requested in Technical Support Services. Instead, the only dollar figures that Ysleta compared in its determination of cost effectiveness were the hourly rates of IBM employees (*e.g.*, $394 per hour for a Project Executive, with no estimate of the number of hours projected to complete specific projects) versus the hourly rates of competitors' employees.[77] These hourly rates are so unrepresentative of and unrelated to the large amounts of E-rate funding requested by Ysleta as to render the application of competitive bidding under the program virtually meaningless.[78]

24. The Commission's rules and orders require competitive bidding on the actual products and services supported by the program, rather than merely on the basis of a vendor's hourly rates, reputation and experience. The Commission's orders state that "an eligible school [or] library . . . shall seek competitive bids . . . for *all services eligible for support* . . . ."[79] Ysleta did not seek competitive bids for such services. Furthermore, in the *Universal Service Order*, the Commission directed that applicants must "submit a *complete* description of services they seek so that it may be posted for competing providers to evaluate."[80] Our rules therefore contemplate that applicants will compare different providers' prices for actual services eligible for support. Only by doing so can applicants ensure that, in accordance with our rules, they are receiving the most cost-effective services. As the Commission stated in its 1999 *Tennessee Order*, "We certainly expect that schools will evaluate the actual dollar cost proposed by a bidder . . ."[81] The context of that statement makes clear that the Commission expected schools to evaluate the actual dollar amount of eligible services during the bidding process.[82] From the evidence before us, we find that Ysleta did not comply with this requirement.

25. Because Ysleta failed to seek competitive bids for specific eligible services, it violated section 54.504(a) of our rules. Moreover, we cannot find Ysleta satisfied this requirement through the posting of its FCC Form 470. Although the posting of a FCC Form 470 will generally satisfy section 54.504(a), Ysleta's does not here because Ysleta made clear through its RFP, which was released almost simultaneously with its FCC Form 470, that Ysleta was actually seeking bids for a vendor to serve as the Systems Integrator in a two-step

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[77] *See* IBM Bid at 79-80.

[78] Our review of the record of the other appellants reveals an identical approach. *See* Appendix B, *infra*.

[79] 47 C.F.R. § 54.504(a) (emphasis added).

[80] *Universal Service Order*, 12 FCC Rcd at 9076, para. 570 (emphasis added).

[81] *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc., of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the Universal Service Administrator, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13734, 13740, para. 13 (1999) (*Tennessee Order*).

[82] *Id.*, 14 FCC Rcd at 13740, para. 13.

procurement process and was not seeking bids for all of the services outlined on its FCC Form 470.[83]

26. Although we do not hold that the FCC Form 470 presented here violated our competitive bidding rules, in light of the actions of Ysleta and the other similarly situated applicants, we reiterate the importance of the FCC Form 470 to the competitive bidding process. The applicant's FCC Form 470, based on the applicant's technology plan, puts potential bidders on notice of the applicant's specific needs to encourage competitive bids, so that the applicant may avail itself of the growing competitive marketplaces for telecommunications and information services.[84] The fact that these certifications on the FCC Form 470, all of which relate to the actual products and services for which the applicant will seek discounts, are required on the FCC Form 470, indicates that the Commission's rules and procedures contemplate that providers will bid on the cost of the specific products and services eligible for discounts, based on the applicant's technology plan.[85] Our rules and procedures do not contemplate that potential providers will bid solely on Systems Integration services, with the expectation that the applicant will decide on specific products and services *after* the applicant has selected a provider.

27. We are troubled that Ysleta submitted an FCC Form 470 listing virtually every possible product and service for which it could conceivably seek discounts. Rather than representing the outgrowth of a carefully designed technology plan as required under our rules, offering potential bidders specific information on which to submit bids, Ysleta's FCC Form 470 failed to "describe the services that the schools and libraries seek to purchase *in sufficient detail to enable potential providers to formulate bids*. . . ."[86]

28. An applicant's FCC Form 470 must be based upon its carefully thought-out technology plan and must detail specific services sought in a manner that would allow bidders

[83] The record reflects that Ysleta developed a "tentative projects list" which served as the basis for negotiations regarding the eligible products and services Ysleta actually intended to seek. *See* Letter from Richard Duncan, Ysleta Independent School District, to Schools and Libraries Division, Universal Service Administrative Company, dated June 21, 2002 ("After IBM's response to the RFP/FCC Form 470 posting was determined to be the most responsive, and recommended for contract award, the tentative projects list was shared with IBM; it was then asked to assist in the definition of each item's (each IBM [Funding Request Number]) scope of work. This activity resulted in a shortened list comprised of individual FRNs, ultimately submitted for possible funding."). The fact that Ysleta discussed with IBM a specific tentative projects list that differed significantly from the overbroad list it submitted on its FCC Form 470 reinforces our view that Ysleta's FCC Form 470 was a paper exercise, and the RFP process effectively supplanted the FCC Form 470 posting.

[84] *See Universal Service Order*, 12 FCC Rcd at 9078 para. 575 (requirements to provide sufficient detail in the FCC Form 470), and at 9077 paras. 572-74 (technology plan requirements).

[85] *See supra* note 26. Ysleta states that no bids were received in response to its FCC Form 470, and that all bids received were for Systems Integration services in response to its RFP. *See* Ysleta Request for Review at 17. Given that Ysleta released its formal RFP only days after the posting of the FCC Form 470, it is not surprising that providers responded to the RFP but not the FCC Form 470. Not every FCC Form 470 will result in bids, but the requirement that applicants seek bids through the FCC Form 470 ensures that providers are notified of bidding opportunities.

[86] *Universal Service Order*, 12 FCC Rcd at 9078, para. 575 (emphasis added).

to understand the specific technologies that the applicant is seeking.[87] Thus, a Form 470 that sets out virtually all elements that are on the eligible services list would not allow a bidder to determine what specific services the applicant was seeking. The Form 470 should not serve as a planning device for applicants trying to determine what is available or what possible solutions might meet the applicant's specified curriculum goals. A Form 470 should not be a general, open-ended solicitation for all services available on the eligible services list, with the hope that bidders will present more concrete proposals. The research and planning for technology needs should take place when the applicant drafts its technology plan, with the applicant taking the initiative and responsibility for determining its needs.[88] The applicant should not post a broad Form 470 and expect bidders to do the "planning" for its technological needs.

29. Some applicants have simple, straightforward requests, such as discounts on telephone lines to each of their classrooms or dial-up Internet access for several computers in a library. Other applicants seek discounts on highly complex and substantial systems that span multiple sites and utilize highly advanced equipment and services. The FCC Forms 470 developed from an applicant's technology plans should mirror the level of complexity of the services and products for which discounts are being sought.

30. The Commission has recognized that the applicant is the best entity to determine what technologies are most suited to meet the applicant's specific educational goals. The applicant's specific goals and technology plans are therefore unique to the applicant.[89] While we recognize that some states may, for valid reasons, want all applicants to have some level of uniformity in technological development, in cases where the Administrator finds "carbon copy" technology plans and Forms 470 across a series of applications, especially where the services and products requested are complex or substantial, and when the same service provider is involved, it is appropriate for the administrator to subject such applications to more searching

[87] *Universal Service Order*, 12 FCC Rcd at 9077-80, paras. 572-579 (describing sequence of designing detailed technology plan and subsequently submitting detailed description of services sought); 47 C.F.R. § 54.504.

[88] For instance, in this case, Ysleta indicated on its FCC Form 470 that it sought the following types of high-bandwidth services for 63 sites: 56K, ISDN, DSL, Frame Relay, Fractional T1, DS1, DS3, OC3, ATM. Satellite, MAN, WAN, and LAN Interconnect. It is beyond dispute that 56K service is not functionally equivalent to a DS1. A properly-designed FCC Form 470 would identify the specific services sought, based on a realistic assessment of the most cost-effective way to meet the bandwidth needs of the specific schools to be served. For instance, in advance of posting its FCC Form 470, Ysleta should have been able to determine for each of the 63 sites the anticipated number of channels desired, based on the numbers of computers and students in each location, and thus should have specified how many sites were seeking DSL service versus a DS1 or a DS3 or whatever. We recognize that depending on the demographics within a school district, a district may choose to deploy a higher capacity pipe in, for instance, a high school serving 2000 students than an elementary school serving 300 students. But we do expect the applicant to determine in advance of posting its FCC Form 470 what tier or tiers of capacity it is seeking.

[89] Some might argue that applicants have similar goals and therefore it is not unreasonable for applicants to have similar or identical technology plans and Forms 470. At a high level, it is true that all schools have the same educational goal – to educate their students. For purposes of receiving discounts under the E-rate, however, we would expect some variation in how schools choose to meet their technology needs.

scrutiny to ensure there has been no improper service provider involvement in the competitive bidding process.[90]

31. On appeal, IBM raises several arguments concerning the Administrator's findings about the Ysleta FCC Form 470. As we have explained above, our decision here does not rely on Ysleta's FCC Form 470. Instead we are clarifying on a going forward basis how an applicant's FCC Form 470 must be based upon its technology plan and must detail specific services sought in a manner that allows bidders to understand the specific technologies that the applicant is seeking. Thus, for purposes of this appeal, IBM's arguments concerning the Form 470 are inapposite. In the interest of clarity, however, we respond to its arguments so that applicants will understand more completely the Commission's requirements as they relate to the FCC Form 470.

32. IBM argues that the fact that five providers bid on Systems Integration services demonstrates that there was sufficient information to enable service providers to prepare bids for the provision of products and services eligible for discounts.[91] Just as an FCC Form 470 may fail to provide sufficient information to potential bidders by not listing all the services for which the applicant may seek discounts, an applicant's FCC Form 470 may fail to provide sufficient information by virtue of its overbreadth, with so many services listed that it fails to indicate which services the applicant is likely to pursue.[92] Potential vendors of specific services are less likely to respond to an all-inclusive FCC Form 470, concluding that the applicant does not realistically intend to order all services listed, and being unable to determine which services are actually being sought.

33. Similarly, IBM argues that interested providers may contact an applicant with a comprehensive FCC Form 470 to obtain additional information that would explain what the applicant seeks.[93] But the purpose of the FCC Form 470 is not to allow an applicant to indicate its interest in E-rate services generally, with the burden being on potential bidders to find out whether the services they offer might be among those sought by an applicant. Otherwise, the FCC Form 470 would merely need to include a single box that an applicant could check if it anticipated receiving E-rate services, and there would be no need to list or describe those services. Rather, the FCC Form 470 is intended "to allow providers to reasonably evaluate the requests and submit bids."[94] Ysleta's FCC Form 470, even if considered in conjunction with its

[90] While we do expect some variation among individual applicants, we stress that we are not prohibiting a state or school district from seeking uniformity in technological development, *i.e.*, through the use of statewide technology plans or requiring applicants to seek the same level or types of service.

[91] *See* IBM Request for Review at 16.

[92] *See infra* note 101 (regarding Commission's prohibition on duplicative services).

[93] *See* IBM Request for Review at 14-15.

[94] *Universal Service Order*, 12 FCC Rcd at 9078, para. 575.

RFP for Systems Integration, fails to provide the specificity necessary to place potential bidders on notice of the services actually sought by Ysleta.[95]

34. IBM argues that Ysleta's FCC Form 470 contained sufficient information for potential service providers to identify potential customers.[96] But in this instance, Ysleta's FCC Form 470 is simply too broad to provide useful guidance to any potential service provider. The fact that there may have been "nothing in the Form 470 that discouraged or prevented any potential services provider from using the contact information in the Form 470 to contact Ysleta regarding the subset of E-rate services Ysleta sought to procure" is irrelevant.[97] Applicants must submit a "complete" description of services sought "for competing providers to evaluate."[98] Service providers thus must have sufficient information to evaluate the services sought in order to formulate bids. Similarly, if an applicant on its FCC Form 470 refers potential bidders to an RFP it has released or will release, the applicant's RFP must provide sufficiently detailed and specific information that potential bidders may evaluate the E-rate eligible services sought in order to formulate bids.

35. We recognize that some past practices arguably could be construed as permitting broad FCC Forms 470.[99] Although we acknowledge that SLD has approved other funding requests in the past that utilized all-inclusive FCC Forms 470 similar to that submitted by Ysleta,[100] we are concerned about the use of such broad listings of services. We also recognize that SLD cautioned applicants in the past to be expansive in listing services on an FCC Form 470, to provide applicants with greater flexibility to make service substitutions post-commitment. But our consideration of the facts of this case lead us to conclude such practices should not be permitted on a going-forward basis.

36. We therefore clarify prospectively that the requirement for a *bona fide* request means that applicants must submit a list of specified services for which they anticipate they are likely

[95] *See* Ysleta Request for Review at 19.

[96] *See* IBM Request for Review at 14.

[97] *Id.* at 15.

[98] *Universal Service Order*, 12 FCC Rcd at 9076, para. 570.

[99] In a footnote in the Commission's *Brooklyn Order*, for example, the Commission stated that an applicant "is required to provide only general information about the services for which it seeks discounts, *e.g.*, the number of phones that require service, number of dial-up connections necessary, as well as an assessment of the applicant's existing technology that may be necessary for the effective use of eligible services. *See Request for Review by Brooklyn Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-149423, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 17931, 18598 n.4 (2000) (*Brooklyn Order*). However, that statement should not be read as authorizing applicants to prepare FCC Forms 470 that list every eligible service under the E-rate program.

[100] A number of appellants point to other FCC Forms 470 with similarities to those in appellants' cases, which were approved by SLD. *See, e.g.*, El Paso Request for Review at 20-21; IBM (Albuquerque) Request for Review at 3-4; Winston-Salem Request for Review at 9-11. These applications, however, differ from the applications at issue here in that they did not contain the elements underlying our finding of competitive bidding violations, such as a two-step procurement process, or a failure to consider price as a primary factor in the vendor selection.

to seek discounts consistent with their technology plans, in order to provide potential bidders with sufficient information on the FCC Form 470, or on an RFP cited in the FCC Form 470, to enable bidders to reasonably determine the needs of the applicant. An applicant may, in certain circumstances, list multiple services on its FCC Form 470, knowing that it intends to choose one over another. However, all products and services listed on the FCC Form 470 must be linked in a reasonable way to the applicant's technology plan and not request duplicative services.[101] The Commission has previously stated that we expect applicants to "do their homework" in determining which products and services they require, consistent with their approved technology plan.[102] We clarify prospectively that requests for service on the FCC Form 470 that list all services eligible for funding under the E-rate program do not comply with the statutory mandate that applicants submit "bona fide requests for services."[103]

37. We do not expect that this prospective clarification will affect the manner in which the vast majority of applicants complete their FCC Forms 470. For some applicants, however, it will require more careful consideration of their actual technology needs. We expect that this clarification will ensure that the integrity the program and the purposes of our competitive bidding rules are met, while limiting waste, fraud, and abuse. Furthermore, we stress that our prospective clarification that "encyclopedic" FCC Forms 470 will not meet the requirements for a *bona fide* request for services does not alter our finding that Ysleta violated our competitive bidding requirement, because Yselta's all-inclusive FCC Form 470 was accompanied by a RFP that sought bids for a systems integrator, which, based on the facts before us, functionally supplanted the FCC Form 470.

38. We also take this opportunity to clarify the wording on the FCC Form 470 regarding RFPs that provide more detailed solicitations for bidders than the FCC Form 470. Blocks 8, 9, and 10 of the form ask the applicant, "Do you have a Request for Proposal (RFP) that specifies the services you are seeking?"[104] If so, the applicant checks a box marked "Yes, I have an RFP" and indicates the Web site on which the RFP can be found, or the contact person from whom an

[101] As the Commission recently stated, the E-rate program does not fund requests for duplicative services, because such requests cannot comply with our longstanding requirement that services be cost-effective. *See Second Order and FNPRM*, FCC 03-101, at paras. 22-24. An FCC Form 470 that asks for all eligible services would necessarily seek duplicative services, because different products and technologies provide equivalent functionality for the same population in the same location during the same period of time. *Id.* at para. 24. An applicant may request duplicative services on the FCC Form 470 only if the technology plan reasonably indicates, for example, that the applicant is willing to consider alternative types of services to provide a given functionality. However, an applicant that simply lists every eligible service on the FCC Form 470 fails to base that request on its technology plan, and thus improperly seeks duplicative services.

[102] *Universal Service Order*, 12 FCC Rcd at 9077, para. 573.

[103] 47 U.S.C. § 254(h)(1)(B).

[104] *See* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (May 2003) at 9-11 (FCC Form 470).

applicant may obtain the RFP.[105] If an applicant does not have an RFP, it selects the box identified as, "No, I do not have an RFP for these services."[106]

39. Ysleta checked the boxes indicating it did "not have" an RFP.[107] Five days later, it released a detailed RFP for Systems Integrator services. SLD found that Ysleta's statement that it did not "have" an RFP was misleading, because the fact that it released one less than a week later suggested that it did "have" an RFP at the time it submitted its FCC Form 470. Ysleta contends that it did not "have" the completed RFP until it was ready for release five days later. We recognize that due to the wording of that question, some applicants may have been unsure how to portray the fact that they had not yet released an RFP but intended to do so. On the other hand, the intent of the FCC Form 470 is to provide potential bidders with as much information as possible in order to maximize competition for applicant's contracts. We direct the Wireline Competition Bureau (WCB) to clarify on a revised FCC Form 470, before the start of Funding Year 2004, that an applicant shall certify either, "Yes, I have released or intend to release an RFP for these services" or "No, I have not released and do not intend to release an RFP for these services." We anticipate that applicants will know at the time that they submit their FCC Form 470 whether they intend to release an RFP relating to the services listed on the FCC Form 470. To the extent that the applicant also relies on an RFP as the basis of its vendor selection, that RFP must also be available to bidders for 28 days. This clarification will help to fulfill the purposes of the FCC Form 470 by informing potential bidders if there is, or is likely to be, an RFP relating to particular services indicated on the form.[108]

40. State and Local Procurement Rules and Competitive Bidding. Ysleta and IBM argue that because Ysleta complied with state and local procurement processes, the Commission must approve its selection of IBM.[109] Ysleta states that the Commission has four competitive bidding requirements: the applicant must post an FCC Form 470, comply with state and local procurement laws, wait at least 28 days after posting the FCC Form 470 before signing a contract, and "possibly" consider price as the primary consideration.[110] Ysleta argues that the requirement that applicants comply with state and local procurement laws "is the most important element."[111] IBM contends that in the *Fourth Order on Reconsideration*, the

[105] *Id.*

[106] *Id.*

[107] *See* Ysleta Form 470.

[108] We note that IBM argues that Ysleta made a good faith effort on the FCC Form 470 to indicate that it was seeking a Technology Implementation and Systems Integration Partner. *See* IBM Request for Review at 13-14. Although Ysleta did so indicate, that is irrelevant, as the RFP did not present an adequate description of the underlying eligible services it was seeking.

[109] *See* Ysleta Request for Review at 15, 26; IBM Request for Review at 17-20.

[110] Ysleta Request for Review at 15.

[111] *Id.*

Commission "confirmed the supremacy of state and local procurement rules" [112] when it stated that it would look to state or local procurement laws to determine whether a contract modification was "minor," and that only where state procurement law was silent would the Commission apply a federal standard.[113] Ysleta and IBM argue that our rules forbid us from preempting state and local procurement laws, and that because Ysleta's selection of IBM was consistent with Texas law, we must approve that selection.[114] In addition, they argue that the fact that none of the other bidders filed complaints indicates that the bidding process was fair and open.[115]

41. Although compliance with any applicable state and local procurement laws is one of the minimum requirements for selecting services under the E-rate program, there are also certain specific FCC requirements with which all E-rate applicants must comply, regardless of state and local law. Section 54.504(a) of the Commission's rules specifically states that the Commission's "competitive bid requirements apply in addition to state and local competitive bidding requirements . . . ."[116] For example, program rules require the posting of an FCC Form 470 and Form 471 in order to obtain funding under the program, and these constitute federal requirements that apply in all circumstances, regardless of state and local law. Similarly, even though a state or local procurement law may permit an applicant to forego competitive bidding for products and services under a certain dollar threshold, the Commission's rules require that applicants for E-rate services seek competitive bids on all such services, to the extent that the services covered by the state law are eligible for discounts from the federal universal service fund.[117]

42. Even if we assume that Ysleta's selection of IBM did not violate applicable state and local procurement law, such compliance would not automatically ensure compliance with our rules governing the selection of bidders in the E-rate program. The Commission has never recognized "the supremacy" of state and local laws over our competitive bidding requirements.[118] The Commission's examination of state and local procurement laws to determine whether a proposed contract modification was minor has no bearing on our

[112] IBM Request for Review at 18.

[113] IBM Request for Review at 19.

[114] *See* IBM Request for Review at 18-19.

[115] *See* Ysleta Request for Review at 19-21; IBM Request for Review at 16.

[116] 47 C.F.R. § 54.504(a).

[117] For example, Louisiana does not require competitive bidding for services of $10,000 or less. *See* La. Rev. Stat. § 2211A(10); La. Rev. Stat. § 2212.1A(1)(a); *See also* www.ebrschools.com/n.businessaffairs/purchasing/bidlaws.eona (summary of current Louisiana bid laws and policy prepared by East Baton Rouge Parish School System). To the extent this state law could apply to any services obtained through the e-rate mechanism, applicants would nevertheless still be required to comply with the Commission's competitive bidding requirements.

[118] IBM Request for Review at 18.

competitive bidding requirements.[119] Such determinations regarding contractual interpretations are well within the purview of state and local procurement laws, where applicable. But we cannot rely solely upon state and local laws to effectuate our goals of ensuring support is provided without waste, fraud and abuse. The fact that there were four other bidders in this case and that none of them registered protests does not demonstrate that Ysleta's selection process met the requirements of our rules.[120] Nor did the other bidders, all of whom were bidding for Systems Integration services, have any incentive to assert that this procurement process did not comply with our rules, because all stood to gain from being awarded the Systems Integration contract, either by Ysleta or in another case. Similarly, other bidders would appear unlikely to challenge the Systems Integration approach because in doing so they would run the risk of losing both the Systems Integration contract with a school, and also the likelihood of being picked by the successfully bidding Systems Integrator to serve as a subcontractor.

43. Nor has the Commission ever held that compliance with state and local laws is "the most important element" in our competitive bidding rules.[121] The four steps cited by Ysleta, and other Commission-imposed requirements such as the approval of a technology plan, are designed to work in concert to promote competitive bidding and assist schools and libraries in procuring the most cost-effective and appropriate services under the program. Compliance with state and local procurement rules is necessary, but not to the exclusion of compliance with other Commission requirements.

44. Ysleta and IBM also misread the Commission's rules and orders to assume that any state or local procurement process complies with the Commission's rules. In the *Tennessee Order*, the Commission stated that it would "generally rely on local and/or state procurement processes *that include a competitive bid requirement* as a means to ensure compliance with our competitive bid requirements."[122] The two-step approach Ysleta utilized in procuring services fails to include a competitive bidding requirement for selecting specific E-rate eligible services. Therefore, it does not constitute a "state or local competitive bidding requirement" under our rules, even if such an approach may be a valid means of procurement under Texas law. Furthermore, as discussed below, while Texas law may permit competitive bidding, Texas law does not impose a competitive bidding requirement on eligible schools and libraries as was the case in the *Tennessee Order*.[123] Our rules state that "an eligible school . . . shall seek

[119] *Id.*

[120] *See* Ysleta Request for Review at 20-21; IBM Request for Review at 16.

[121] Ysleta Request for Review at 15. Because our rules and orders have been consistent in the consideration of the role of state and local competitive bidding rules, enforcing our minimum competitive bidding requirements does not, as alleged by IBM, represent a departure from Commission precedent requiring only prospective application. *See* IBM (Memphis) Request for Review at 9-10 (citing *Request for Review by Williamsburg-James City County Public Schools*, Order, 14 FCC Rcd 20152 (1999) (granting waiver where applicant submitted application violating Commission rules before rules were adopted)).

[122] *Tennessee Order*, 14 FCC Rcd at 13739, para 10.

[123] *See infra* para 45, note 123.

competitive bids . . . *for all services*" and such services must be noticed with specificity.[124] Although Ysleta sought competitive bids for the service of Systems Integration, its procurement process did not include an effective competitive bidding requirement with respect to the actual services eligible for funding, and therefore, under both section 54.504 and the *Tennessee Order*, Ysleta's procurement policies, even if consistent with state and/or local law, were not adequate to meet our requirements.

45. We find unconvincing IBM's argument that because our rules state that our competitive bidding requirements "apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements," if Texas law permits this two-step bidder selection and negotiation approach, then requiring competitive bidding of services under our program would constitute a federal preemption of state and local requirements in contravention of our rules.[125] Texas law does not forbid E-rate applicants from complying with our minimal competitive bidding requirements. Section 44.031 of the Texas Code, which governs school district purchasing contracts, explicitly permits school districts to make contracts subject to competitive bidding.[126] Texas law therefore does not preclude compliance with our threshold federal requirements.[127]

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[124] 47 C.F.R. § 54.504.

[125] IBM Request for Review at 28.

[126] *See* Tex. Code Ann. § 44.031(a); White Paper, Review of Federal, State of Texas, and FCC E-rate Procurement Laws and Regulations, filed on behalf of IBM on April 24, 2003 (IBM White Paper) at 15. Section 44.031 states that a school district may, at its option, contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Texas Code Section 2254.003, which states that a governmental entity may not select a provider of professional services on the basis of competitive bids, but shall make the selection (1) on the basis of demonstrated competence and qualifications to perform the services; and (2) for a fair and reasonable price. *See* Tex. Code Ann. §§ 44.031, 2254.003. It is not clear that section 2254.003 authorizes a two-step selection process such as that engaged in by Ysleta, where the school district first selects the most highly qualified provider and then negotiates price. Such a process is described in a different section relating to contracts for "Professional Services of Architect, Engineer, or Surveyor." 2254.004. Nor is it clear that IBM's services in this case as a Systems Integrator would constitute those of an engineer under Texas law. *See* Texas Engineering Practice Act (stating that a "professional engineer" shall mean "a person who has been duly licensed by the Texas Board of Professional Engineers to engage in the practice of engineering."). Tex. Rev. Civ. Stat. Ann. Art. 3271(a), Section 2(3). Furthermore, it is not clear whether "professional services" as defined in the Texas law encompasses any eligible services provided through the e-rate mechanism. But the fact remains that Texas law expressly permits school districts to engage in competitive bidding.

[127] *See Louisiana Public Service Commission v. FCC*, 476 US 355, 368-69 (1986) ("Preemption occurs when Congress, in enacting a federal statute, expresses a clear intent to pre-empt state law, when there is outright or actual conflict between federal and state law, where compliance with both federal and state law is in effect physically impossible, where there is implicit in federal law a barrier to state regulation, where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law, or where the law stands as an obstacle to the accomplishment and execution of the full objectives of Congress. Pre-emption may result not only from action taken by Congress itself; a federal agency acting within the scope of its congressionally delegated authority may preempt state regulation." Because Ysleta may, consistent with state law, comply with our rules, there is no "outright or actual" conflict between Texas law and our rules. It is certainly possible for Texas school districts to comply with our requirements.

46. Although we do not believe that preemption of state or local rules is necessary here, we note that the Commission has previously recognized that there may be circumstances where our requirements could preempt state or local competitive bidding requirements if schools or libraries wish to receive E-rate discounts. In the *Tennessee Order*, the Commission provided guidance regarding section 54.504(a) by stating that it would only "generally" rely on state and/or local procurement processes, giving notice that there may be circumstances where the Commission will not rely on such processes.[128] The Commission stated that it did not need "in this instance" to make a separate finding of compliance with its competitive bidding requirements, because state and local "rules and practices will generally consider price to be a primary factor . . . and select the most cost-effective bid."[129] But where the Commission determines from the specific circumstances that Commission rules were not met, *e.g.*, specific services were not subject to proper competitive bidding, the Commission need not and should not rely solely on state and/or local procurement processes to ensure compliance with our established regulatory framework. The Commission's responsibility to combat potential waste, fraud, and abuse in the Commission's program, while promoting goals such as having schools and libraries obtain the most cost-effective services, commands that the limited rules we impose regarding competitive bidding constitute a floor or minimum set of requirements. We will generally rely on state and/or local procurement processes, but there may be circumstances such as those presented here that require us to look beyond those processes to ensure that our threshold requirements are met.

47. Violations of Requirements of Cost-effectiveness and Price as the Primary Factor. The procurement process used by Ysleta also violates Commission requirements regarding the role of price in an applicant's determination of cost-effectiveness when evaluating bids. Applicants must select the most cost-effective offerings, and price must be the primary factor in determining whether a particular vendor is the most cost-effective.[130] Price need not be the exclusive factor in determining cost-effectiveness, however, so that schools and libraries selecting a provider of eligible services "shall carefully consider all bids submitted and may consider relevant factors other than the pre-discount prices submitted by providers."[131]

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[128] *Tennessee Order*, 14 FCC Rcd at 13739, para. 10.

[129] *Id.*

[130] *See Universal Service* Order, 12 FCC Rcd at 9029-30, para. 481; 47 C.F.R. § 54.511(a). Ysleta suggests in a footnote that because the requirement that price be considered the primary factor is set forth in a Commission order rather than in our rules, it is subject to challenge, particularly because it conflicts with sections 54.504 and 54.511 of our rules. *See* Ysleta Request for Review at 15 n.5. We cannot agree that this language conflict with sections 54.504 or 54.511. Although we believe this requirement was sufficiently noticed, consistent with the Administrative Procedures Act, it is, at a minimum, a further explanation of sections 54.504 and 54.511 of the Commission's rules. Ysleta also suggests that SLD adopted its own rules and policies at issue here "without a formal rulemaking as provided by law." Ysleta Request for Review at 15 n.5. Ysleta misunderstands the ministerial role of SLD. The Commission, not SLD, establishes rules and policies governing the schools and libraries support mechanism through rulemakings and adjudicatory decisions. Pursuant to our rules, SLD administers the application process and implements procedures to ensure compliance with our rules. *See* 47 C.F.R. § 54.705(a).

[131] 47 C.F.R. § 54.511(a).

48. In the *Universal Service Order*, the Commission stated that "price should be the primary factor in selecting a bid," adding that other factors, particularly "prior experience, including past performance; personnel qualifications, including technical excellence; management capability, including schedule compliance; and environmental objectives" could "form a reasonable basis on which to evaluate whether an offering is cost-effective."[132] In *Tennessee*, the Commission provided additional "useful guidance with regard to our competitive bid requirements and factors that may be considered in evaluating competitive bids."[133] The Commission specifically emphasized the significance of price of services as a factor in selecting bids. The Commission stated:

> . . . [A] school should have the flexibility to select different levels of services, to the extent such flexibility is consistent with that school's technology plan and ability to pay for such services, but when selecting among comparable services, however, this does not mean that the lowest bid must be selected. Price, however, should be carefully considered at this point to ensure that any considerations between price and technical excellence (or other factors) are reasonable.[134]

49. In discussing the role of state and local procurement processes, however, the Commission stated that price would be "a primary factor" rather than "the primary factor."[135] However, in discussing the *Fourth Reconsideration Order*, the Commission stated that price would be "the primary factor" rather than "a primary factor."

50. We acknowledge that the Commission's use of varying phraseology in the same decision created some ambiguity on this issue. To strengthen the consideration of price as "the primary factor" in the competitive bidding process, we hereby depart from past Commission decisions to the contrary[136] and clarify that that the proper reading of our rule, in light of the Commission's longstanding policy to ensure the provision of discounts on cost-effective services, is that price must be the primary factor in considering bids.[137] Applicants may also take other factors into consideration, but in selecting the winning bid, price must be given more

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[132] *Universal Service Order*, 12 FCC Rcd at 9029-30, para. 481.

[133] *Tennessee Order*, 14 FCC Rcd at 13739, para. 9.

[134] *Id.* This view of price as the primary factor, where other factors are taken into consideration as well and balanced to determine cost-effectiveness, appears generally consistent with the "best value" concept cited in the Federal Acquisition Regulations. *See* 10 U.S.C. § 2305(a)(2); 48 C.F.R. § 2.101; IBM White Paper at 23-31.

[135] *Tennessee Order*, 14 FCC Rcd at 13739-40, paras. 10-11.

[136] *Id.*

[137] The Commission stated that a comparison of price was not determinative of a cost-effective bid in the factual scenario presented in the *Tennessee Order* only because it found that the differences in the services that were bid were such that the applicant could reasonably prefer one offering over another. This factual finding was consistent with the Commission's statement that any consideration between price and other factors must be reasonable. *Id*, 14 FCC Rcd at 13739, para 9; *.see also Universal Service Order*, 12 FCC Rcd at 9029-30, para. 48. Here, the petitioners failed to demonstrate that the price of E-rate eligible services was a consideration at all in the first stage of the procurement process, much less the primary factor.

weight than any other single factor.[138] When balancing the need for applicants to have flexibility to select the most cost-effective services and the limited resources of the program, we conclude that requiring price to be the single most important factor is a rational, reasonable, and justified requirement that will maximize the benefits of the E-rate discount mechanism, while limiting waste, fraud, and abuse.

51. Ysleta and IBM offer a number of arguments supporting their position that, consistent with our rules, Ysleta selected the most cost-effective services with price as the primary factor with its "two-step" selection process. They argue that the bid responses by the five bidders for Systems Integration services "included substantial information regarding the bidders' experience and track record for efficient, successful performance of similar services."[139] They further aver that the prices of eligible services were determined through careful negotiations with IBM during the second step of the selection process, after IBM had been "recommended" by the Ysleta Board of Trustees over the other four bids, but before Ysleta "selected" IBM by signing the contract."[140] During this negotiating phase, IBM argues, price was the "sole and exclusive factor that determined whether IBM would ultimately be selected as the service provider."[141] Furthermore, IBM states, the RFP provided that if Ysleta could not negotiate "a fair and reasonable price with the offeror judged most highly qualified, negotiations will be made with the offeror judged next most highly qualified until a contract is entered into."[142] Thus, before signing the contract, Ysleta could cease negotiations with IBM and start over with another provider. Additionally, under the contract Ysleta retained the right to review pricing on an on-going basis, to obtain IBM's own pricing information, to direct IBM to particular product vendors and require that products be acquired in accordance with Texas procurement law, and to modify or delete projects after funding was awarded.[143] Ysleta and IBM argue that the emphasis on price in these provisions cumulatively reflect that Ysleta complied with the Commission's requirements in selecting the most cost-effective offering with price as the primary factor, in accordance with Texas "best value" practices.[144] They contend that because Ysleta must contribute significant costs in order to receive E-rate discounts, it had a strong incentive to select the most cost-effective services.[145]

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[138] For example, if in selecting bids an applicant assigns 10 points for reputation, 10 points to past experience, and 10 points to timing considerations, it must assign at least 11 points to price. This is how SLD has interpreted our requirements, which we find to be a reasonable administrative implementation of our rules.

[139] *See* IBM Request for Review at 29.

[140] *See* IBM Request for Review at 7, 30;

[141] *Id.* at 30.

[142] IBM Request for Review at 30; RFP § 1.12.

[143] Ysleta Request for Review at 29; General Contract § 10.01; IBM Request for Review at 32-33.

[144] IBM Request for Review at 32; IBM White Paper at 20; Ysleta Request for Review at 25-32.

[145] IBM Request for Review at 31-32; Ysleta Request for Review at 30.

52. We first address IBM's argument that the November 15, 2001 bid responses for Systems Integration services "included substantial information regarding the bidders' experience and track record for efficient, successful performance of similar services."[146] Despite listing other E-rate projects it had completed, IBM's bid offered no specific pricing information regarding those projects to demonstrate to Ysleta that it had provided cost-effective services.[147] IBM's bid offered only general assurances relating to pricing, such as an explanation that IBM's profit margins "are consistent with our competitors," and the statement, "You are assured that IBM prices will always be market driven, competitive with other consulting firms of similar profile and skill levels, and within normal and customary charges for the type of services provided."[148] But the prices relevant for our competitive bidding requirements are those of eligible services, rather than the hourly rate for Systems Integration services. While non-price-specific information that goes to a bidder's experience and reputation can be important for determining cost-effectiveness, our past decisions require that actual price be considered in conjunction with these non-price factors to ensure that any considerations between price and technical excellence or other factors are reasonable.[149] As noted above, the Commission stated in the *Tennessee Order* that it "certainly expect[s] that schools will evaluate the actual dollar amount proposed by a bidder . . ." for eligible services during the bidding process.[150] Yet the only specific pricing information proposed by IBM or the other bidders was an hourly rate schedule for various individuals' services. Ysleta fails to demonstrate that both price and non-price factors were reasonably considered at this point.

53. Ysleta and IBM argue that Ysleta did not "select" IBM until it signed the contract, following extensive negotiations where Ysleta asserts it relied on its extensive expertise and its knowledge of information technology and contracting to ensure that pricing would be fair and reasonable.[151] They argue that Ysleta could obtain cost-effective services both by negotiating price before signing the contract, and by exerting pricing pressure thereafter through its contractual right to review IBM's prices and direct IBM to select particular vendors, and modify or delete particular projects.[152] They assert that Ysleta could abandon negotiations with IBM before signing the contract, and even after signing the contract would continue to exert pressure

[146] *See* IBM Request for Review at 29.

[147] *See* IBM Bid at 3.7.6.

[148] IBM Bid at 3.7.7.

[149] *See Tennessee Order*, 14 FCC Rcd 13734, 13739, para 9. ("Price, however, should be carefully considered at this point [*i.e.*, when selecting among comparable services] to ensure that any considerations between price and technical excellence (or other factors) are reasonable.").

[150] *Id.*,14 FCC Rcd at 13740, para 13; *see supra* para. 24. IBM also states that it gave a "significant concession" to Ysleta by agreeing to maximum "not to exceed" prices for services, and argues that this helps to demonstrate that Ysleta acquired the most cost-effective services. *See* IBM Request for Review at 25. The fact that IBM agreed to capped prices in its contract does not strike us as a significant concession, nor does it demonstrate that Ysleta obtained the most cost-effective services.

[151] *See* Ysleta Request for Review at 28-29; IBM Request for Review at 31.

[152] Ysleta Request for Review at 29; IBM Request for Review at 32-33.

thereafter to keep prices reasonable, which helped result in cost-effective services. However, the Commission has determined that seeking competitive bids for eligible services is the most efficient means for ensuring that eligible schools and libraries are fully informed of their choices and are most likely to receive cost-effective services.[153] In a situation where several entities in fact are potentially interested in providing eligible services, we expect the applicant to make some effort to ascertain the proposed prices for the eligible services for each bidder. We do not think our goals of limiting waste are well served when an applicant merely compares the prices of one bidder against its internal assessment of what a "reasonable" price would be.

54. Even if an applicant receives only one bid in response to an FCC Form 470 and/or RFP, it is not exempt from our requirement that applicants select cost-effective services. The Commission has not, to date, enunciated bright-line standards for determining when particular services are priced so high as to be considered not cost-effective under our rules. There may be situations, however, where the price of services is so exorbitant that it cannot, on its face, be cost-effective. For instance, a proposal to sell routers at prices two or three times greater than the prices available from commercial vendors would not be cost effective, absent extenuating circumstances. We caution applicants and service providers that we will enforce our rules governing cost-effectiveness in order to limit waste in the program.[154]

55. As for Ysleta and IBM's argument that E-rate applicants have sufficient incentive to select the most cost-effective services because they must contribute a portion of the costs, the Commission stated previously in the *Tennessee Order* that because an applicant must contribute its share, the Administrator "generally" need not make a separate finding that a school has selected the most cost-effective bid, even where schools do not have established competitive bidding processes.[155] It anticipated that a particular case may present evidence that even though an applicant followed state and local rules, the applicant did not select the most cost-effective services.[156] Our de novo review standard provides an ample basis for examining the facts more closely when, as here, there are indications that the applicants did not contract for the most cost-effective services.

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[153] *See Universal Service Order*, 12 FCC Rcd at 9029, para. 480. Ysleta also argues that the Commission should not require that price be the primary factor given that "it is difficult for pricing to be the primary consideration in the technology area" because "pricing changes dramatically . . . and hardware quickly becomes obsolete." Ysleta Request for Review at 26-27. We note, however, that Ysleta signed a one-year contract with IBM, and it is not unreasonable to expect applicants to anticipate price changes within a given year. Moreover, Ysleta's FCC Form 470 was posted on October 12, 2001, whereas IBM signed a contract with firm pricing only three months later on January 12, 2002. *See* Ysleta Form 470, Ysleta Request for Review at 11.

[154] It is illustrative of our concerns that Ysleta School Board President Wayne Belisle, quoted in the *El Paso Times*, termed the $12.4 million for the technology help center "a huge waste of money." Corrie MacLaggan, *El Paso Times*, December 13, 2002. "YISD Denied Tech Funds."

[155] *Tennessee Order*, 14 FCC Rcd at 13739, para. 10.

[156] *Id.* ("Absent evidence to the contrary in a particular case, we believe that this incentive [to reduce costs] is generally sufficient to support a conclusion that a school has selected the most cost-effective bid for requested services.").

56. Violation of *Bona Fide* Requirement. Section 254(h)(1)(B) of the Telecommunications Act of 1934, as amended, states that E-rate applicants must submit a "*bona fide* request" for services.[157] The Commission has stated that the *bona fide* requirement means that applicants must conduct internal assessments of the components necessary to use effectively the discounted services they order, submit a complete description of services they seek so that it may be posted for competing providers to evaluate, and certify to certain criteria under perjury.[158] Further, applicants may violate the statutory *bona fide* requirement through conduct that undermines the fair and open competitive bidding process. In the *Mastermind Order*, the Commission found that a violation of its competitive bidding rules had occurred where a service provider listed as the contact person on the Form 470 also participated in the competitive bidding process as a bidder.[159] The Commission concluded that, even in the absence of a rule explicitly prohibiting such conduct, under such circumstances, a fair and open competitive bidding process had not occurred, and thus the requirement that an applicant make a *bona fide* request for services had been violated.[160]

57. We conclude that Ysleta violated the statutory requirement that applicants submit a "*bona fide* request" for services under the E-rate program by using a two-step Systems Integration approach and by failing to use price of the actual services being sought as the primary factor in selecting IBM. Ysleta released an RFP in conjunction with its FCC Form 470, making it clear that it was seeking bids for a systems integrator, and not bids for the specific services listed in the FCC Form 470.[161] As discussed above, the two-step Systems Integration approach is inconsistent with our competitive bidding requirements. Moreover, as discussed above, this procurement process violated Commission requirements regarding the role of price in determining the most cost-effective bid.[162] Because Ysleta violated our competitive bidding requirements and failed to demonstrate that it selected IBM with price as the primary factor, we conclude that it also violated section 254's mandate that applicants submit a *bona fide* request for services.[163]

58. Retroactive Application of New Rules. We reject the contention that the denial of discounts for the procurement practices utilized in these cases represents a retroactive

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[157] 47 U.S.C. § 254(h)(1)(B).

[158] *Universal Service Order*, 12 FCC Rcd at 9076, para. 570. *See supra* para. 5.

[159] *See Request for Review of the Decision of the Universal Service Administrator by Mastermind Internet Services, Inc., Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4033, para. 10 (2000) (*Mastermind Order*).

[160] *Id.* 16 FCC Rcd at 4032-33, paras. 10-11.

[161] *See supra* para. 33.

[162] *See supra* paras. 47-53.

[163] For future purposes, parties should also remember that, as clarified above, the requirement for a *bona fide* request also means that applicants must submit a list of specified services for which they seek discounts, consistent with their technology plans, in order to provide potential bidders with sufficient information on the FCC Form 470 to enable bidders to reasonably determine the needs of the applicant. *See supra* para. 35.

application of new rules and procedures.[164] Our rules cannot, and need not, address with specificity every conceivable factual scenario.[165] As stated above, our rules require applicants to seek competitive bids on eligible services, and to consider price as the primary factor. These rules are not new. Rather, we are applying them to the facts at hand, as is appropriate in an adjudicatory context. The fact that in prior years, USAC did not disapprove applications that utilized the procurement processes at issue in no way limits our discretion to apply our existing rules.[166]

59. Other Rule Violations. Because we conclude that Ysleta violated our rules regarding competitive bidding, the requirement that price be the primary factor in selecting bidders, and the requirement that it make a *bona fide* request for services, we need not address SLD's conclusions that Ysleta and/or IBM violated other rules. However, because we are remanding the instant appeals to SLD and permitting similarly situated applicants that have appealed to re-bid, we take this opportunity to provide specific guidance regarding practices that are inconsistent with our rules to provide greater clarity to those applicants re-bidding services and future applicants. We emphasize that we will remain vigilant to prevent waste, fraud, and abuse in this program to ensure that the statutory goals of section 254 are met.

60. We emphasize that applicants and service providers are prohibited from using the schools and libraries support mechanism to subsidize the procurement of ineligible or unrequested products and services, or from participating in arrangements that have the effect of providing a discount level to applicants greater than that to which applicants are entitled. The Administrator has implemented this Commission requirement by requiring that: (1) the value of all price reductions, promotional offers, and "free" products or services be deducted from the pre-discount cost of services indicated in funding requests; (2) costs, trade-in allowances, and discounts be fairly and appropriately derived, so that, for example, the cost for eligible components is not inflated in order to compensate for discounts of other components not included in funding requests; and (3) contract prices be allocated proportionately between eligible and ineligible components.[167] We also stress that direct involvement in an application process by a service provider would thwart the competitive bidding process. These requirements are necessary to ensure that program funds are allocated properly, consistent with section 254.

61. We also emphasize that applicants may not contract for ineligible services to be funded through discounts under the E-rate program. In its response to Ysleta's RFP, IBM

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[164] *See* IBM Request for Review at 40-41; Ysleta Request for Review at 40.

[165] *See, e.g., Mastermind Order*, 16 FCC Rcd at 4032-33, para. 10 (finding violation of our rules even though rules did not specifically prohibit conduct at issue).

[166] *See, e.g., Request for Review by School for Language and Communication Development*, Order, 17 FCC Rcd 15166, 15169, para. 9 (Wireline Comp. Bur. 2002) (citing precedent and noting that failure to detect violations in prior funding years does not preclude SLD or the Commission from requiring compliance with the Commission's rules in subsequent years.).

[167] 47 C.F.R. §§ 54.502 – 54.503. *See also* SLD web site, Free Services Advisory, <<http://www.sl.universalservice.org/reference/freeservices.asp>>

offered to provide as Ysleta's "Technology Partner" many apparently ineligible services, such as teacher and administrative personnel training, consulting services, and assistance in filling out forms.[168] IBM and Ysleta assert that to the extent such services were proposed in IBM's bid, they were merely "generic descriptions of the global set of services the company is capable of providing" and were not included in the final contract.[169] When Ysleta rebids for services, we direct SLD to carefully scrutinize the requests to ensure no funding is committed for ineligible services.

62. An analysis of Ysleta's application suggests that it sought support for "Help Desk" services, as part of the Technical Support Statement of Work.[170] A computer Help Desk accepts support calls from end users, and initiates action to resolve the problem. This action might involve initial diagnostics, creation of a Trouble Ticket, logging the support call, and alerting other personnel that a problem exists.

63. As a result of the complex and evolving nature of the E-rate program and the technologies it supports, our rules do not codify a precise list of products and services that are eligible. Instead, SLD has developed a generalized list of eligible services in an effort to provide clarity to applicants of which services are eligible under governing rules.[171] Among other things, the Funding Year 2002 Eligible Services list defined as eligible: "Technical Support is the assistance of a vendor-provided technician. This support may include the installation, maintenance and changes to various services and equipment under contract. Technical support is only eligible if it is a component of a maintenance agreement or contract for an eligible service or product, and it must specifically identify the eligible services or products covered by the contract."[172] The Eligible Services List thus implemented the Commission's holding in the *Universal Service Order* that support may be provided for "basic maintenance services" that are "necessary to the operation of the internal connections network."[173]

64. When confronted with products or services that contain both eligible and ineligible functions, SLD in the past has utilized cost allocation to determine what portion of the product price may receive discounts.[174] We generally endorse this practice as a reasonable means of addressing mixed use products and services. When SLD reviews the applications that are submitted after the rebidding occurs, it should ensure that discounts are provided only for "basic maintenance" and not for technical support that falls outside the scope of that deemed eligible in the *Universal Service Order*. For instance, calls from end-users may involve problems with

[168] *See, e.g.*, IBM Bid at 3.7.2, 3.7.4, 3.7.6.

[169] *See* IBM Request for Review at 34-35.

[170] *See* Ysleta FCC Form 471.

[171] *See* Funding Year 2002 Eligible Services List.

[172] *See id.*

[173] *Universal Service Order*, 12 FCC Rcd at 9021-22, para. 460.

[174] *See* <<www.sl.universalservice.org/reference/costallocationguide.asp>>

end-user workstation operating systems and hardware, and Help Desks typically field questions about the operation and configuration of end-user software. Such end-user support is not eligible for E-rate funding. Even if the actual correction of a problem involves non-contractor personnel, and is therefore not reimbursed with E-rate funds, the routing and logging function of the comprehensive Help Desk activities would effectively support ineligible services, and therefore is ineligible for discounts.

65. We expect that following the re-bidding of contracts described below, SLD will carefully scrutinize applications to ensure that discounts are provided only for eligible services.[175] For example, SLD will examine applications to ensure that if they include project management costs for Systems Integrators or others, such costs do not include the cost of ineligible consulting services.[176] Our mandate is to ensure that the statutory goals of section 254 are met without waste, fraud, and abuse. We emphasize that competitive bidding is a key component of our effort to ensure that applicants receive the most cost-effective services based on their specific needs, while minimizing waste in the program. The various procurement practices described above (and described in the attached appendix) represent a significant departure from the competitive bidding practices envisioned by the Commission, which were designed to best fulfill the goals of section 254. Although aspects of particular approaches utilized by individual applicants may, taken out of context, appear not to constitute a significant violation of our rules, the practices in each of the above-captioned Requests for Review weaken, undercut, or even subvert the Commission's competitive bidding requirements. We clarify our rules concerning these competitive bidding requirements where such clarification is appropriate, and, as detailed below, allow for re-bidding of services because some applicants may have relied on past approval by the Administrator of some of these practices. Fundamentally, however, this Order confirms the competitive bidding framework the Commission established in the *Universal Service Order* and which has been clarified and upheld in subsequent Orders.

IV. RE-BIDDING OF SERVICES FOR FUNDING YEAR 2002

66. Although we conclude that the practices followed in these cases are not consistent with our rules, we find that there is good cause for a waiver of our rules regarding the filing window for Funding Year 2002. Under the unique circumstances presented here, we find that good cause exists to direct SLD to re-open the filing window for Funding Year 2002 in order to permit Ysleta, and similarly situated applicants listed in the caption who appealed SLD's denial of their funding requests, to re-bid for services, to the extent such services have not already been provided.

67. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.[177] In addition, the Commission may take into account considerations of

[175] Furthermore, our rules provide that if 30 percent or more of a request for discounts made in an FCC Form 471 is for ineligible services, the request shall be denied in its entirety. *See* 47 C.F.R. § 54.504(c)(1).

[176] Initial planning activities, such as design of technology architecture, determination of project scope, and evaluation of what technologies and products to utilize, constitute consulting services and are ineligible for discounts under the program. *See* Funding Year 2002 Eligible Services List.

[177] *Northeast Cellular*, 897 F.2d 1164, 1166 (DC Cir. 1990).

hardship, equity, or effective implementation of overall policy on an individual basis.[178] In sum, a waiver 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.[179]

68. Although we affirm SLD's denial for the reasons set out above, we find that these applicants should be allowed to re-bid services in accordance with the terms set forth below. We exercise our discretion in this matter for the following reasons.

69. SLD could reasonably have been construed as sanctioning the two-step Systems Integration process by approving the El Paso Independent School District's application for the previous year, Funding Year 2001. Although the record is unclear, there are indications that other applicants may have engaged in similar procurement practices even prior to El Paso's Funding Year 2001 application.[180] IBM marketed its success with the El Paso contract, as one approved by SLD.[181] In its bid for Systems Integration services for Ysleta, IBM explained that the El Paso school district had received less than $2 million in E-rate funding in Funding Year 2000, but that after El Paso selected IBM as a Systems Integrator for Funding Year 2001, El Paso received over $70 million in funding under the program.[182]

70. Ysleta maintains that it was strongly influenced by SLD's prior approval of the two-step Systems Integration approach used by El Paso to select IBM. As Ysleta states,

> [Ysleta] was well aware of the large program funding award to [El Paso] for [Funding Year 2001], through the local media and conversations with [El Paso] officials. Consequently, [Ysleta] was under the impression that [El Paso's] model of selection of a service provider was a more effective method in light of the large award, and that [Ysleta] has been unduly restrictive on its requests. [Ysleta] had no reason to believe that there was any actual or alleged problem with [El Paso's] methodology, since the SLD had approved the [El Paso] model for large [Funding Year 2001] funding. [Ysleta] requested the form of the request proposal directly from [El Paso], and made appropriate changes thereon, culminating in the Request for Proposal.

[178] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (DC Cir. 1969).

[179] *Northeast Cellular*, 897 F.2d at 1166.

[180] *See* IBM Bid at 71-76 (citing IBM's prior success with other applicants, reflecting similarities to Ysleta's practices).

[181] *See* IBM Bid at 71.

[182] *See* IBM Bid at 71.

71. Similarly, a number of applicants point to SLD's past approval of funding requests that utilized all-inclusive FCC Forms 470.[183] These applicants observe that the approved funding requests are similar or identical to that submitted by Ysleta.[184]

72. We recognize that in certain instances, our rules and past decisions did not expressly address the circumstances presented here. That, however, does not preclude a finding that there has been a violation of our competitive bidding rules.[185] In considering how to remedy this violation, we seek to enforce our rules to prevent waste, fraud and abuse, while also considering factors of hardship, fairness, and equity. For the reasons described below, we find that waiver of our rules to permit applicants to rebid services in accordance with the terms below is in the public interest in light of the uncertain application of our rules to the novel situation presented, and the substantial and widespread reliance on prior SLD approval.

73. The Commission has previously granted a waiver of its rules where one factor that it took into account was confusion caused by the application of a new rule.[186] We anticipate that we will rarely find good cause to grant a waiver of our rules based on confusion among applicants in applying them. We think that it is appropriate to consider this factor with regard to the instant appeals, however, as they involve the application of our rules to a unique situation, namely the two-step System Integration approach and related practices. The exercise of our discretion to grant such a waiver in this instance is also informed by the extent to which applicants relied upon the fact that other applicants that utilized this approach previously were approved for funding. We have previously considered an applicant's good faith reliance in deciding whether to grant a waiver of our rules.[187] Here, we think that such consideration is appropriate because enforcement of these rules in these circumstances would impose an unfair hardship on these applicants.[188] Accordingly, in light of all these factors, we find that it is in the public interest to grant a waiver of our rules in the novel situation posed by the instant case.

74. We therefore direct the Administrator to re-open the Funding Year 2002 filing window for all of the applicants set forth in the caption.[189] Applicants will have sixty days from

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[183] *See supra* note 100.

[184] *Id.*

[185] *Id.*

[186] *Request for Review by Naperville Community Unit School District 203*, Order, 16 FCC Rcd 5032 (2001) (*Naperville*) (noting confusion among a number of applicants based on the redesign of the FCC Form 471 and where specific request was new to the application); *see also Request for Review by Eastern Lebanon County School District*, Order, 18 FCC Rcd 5466 (2003).

[187] *See Request for Review by Edumaster.Net, DBA Mastermind Learning Center, or Mastermind Internet Services, Year 3 Filing Window,*, Order, 15 FCC Rcd 15281, 15284-85, paras. 9-11 (2000) (*Mastermind Filing Window Order*).

[188] *See* IBM Request for Review at 41.

[189] Commission precedent exists for re-opening the filing window where the Commission deemed it appropriate following competitive bidding violations. *See Mastermind Filing Window Order*, 15 FCC Rcd at 15285, para.11.

the date of release of this Order to resubmit their FCC Forms 470. In order to receive full consideration as in-window applicants for Funding Year 2002, the affected applicants must comply with all stages of the original application process. Specifically, applicants must seek competitive bids for all services eligible for discounts, and submit to the Administrator completed FCC Forms 470 on or before February 6, 2004. The Administrator will post the FCC Forms 470 to its web site, and once the FCC Forms 470 have been posted for 28 days and the applicant has signed a contract for eligible services with a service provider, the applicants must then submit their FCC Forms 471. In all cases, the applicants must file their completed FCC Forms 471 on or before April 23, 2004.

75. In accordance with this Order, applicants will be required to submit FCC Forms 470 that set forth in sufficient detail the services requested, or that reference RFPs that do so. Applicants must seek competitive bids for eligible services, requiring potential bidders to submit proposed prices for specified services. Applicants may select a Systems Integrator for project management, but not without seeking bids from potential Systems Integrators that specify prices to be charged by the Systems Integrator for eligible services. Nothing in this Order prevents IBM from submitting new bids for services.

76. Re-submitted applications shall be capped at the amount of pre-discount funding that applicants originally sought. We direct the Administrator to ensure that no applicant receives funding in excess of the amount for which the applicant originally applied for each individual funding request. However, because many of the contracts at issue in the instant appeals may not have been the most cost-effective offerings for obtaining eligible services, we fully anticipate that applicants will obtain substantial savings over their original applications once they have re-bid for actual E-rate eligible services. As noted above, we direct the Administrator not to approve requests for discounts on maintenance costs that are not cost-effective.

77. To the extent an applicant proceeded to take service, particularly telecommunications services or Internet access, notwithstanding SLD's denial of discounts, we do not and will not provide funding to pay for such services. We therefore do not grant a waiver of the filing window with respect to any requests for services that have already been provided as of the date of this Order. We do not believe that such a conclusion is overly harsh, since applicants proceeded at their own risk to take service, and we would be remiss to permit discounts in a situation where parties assumed the risk of proceeding in the face of SLD's denial. The loss of discounts for such services is a fair and appropriate consequence of the actions of these applicants.

78. Applicants that sought funding in Funding Year 2003 for internal connections products or services for which SLD denied discounts in Funding Year 2002 for competitive bidding violations may not receive discounts for the identical products or services in both Funding Year 2002 and Funding Year 2003. After rebidding, if applicants receive funding commitments in both 2002 and 2003 for identical products and services, they must cancel the funding requests for one of the two years.

79. Although each application under the E-rate program is unique to some degree, we conclude that all of the appellants listed in the attached appendix demonstrate factual circumstances sufficiently similar to those in the instant appeal as to merit a denial and right to

re-bid in accordance with the terms of this Order. Applicants who were denied by SLD under similar factual circumstances, but who elected not to file appeals with SLD or the Commission, may not re-bid, because they failed to preserve their rights on appeal.

80. The Commission remains staunchly committed to limiting waste, fraud, and abuse in the program. The Administrator's diligence in finding and addressing the problems cited in the instant Order for Funding Year 2002 are a reflection of that commitment. We direct the Administrator to carefully scrutinize the applications submitted following the re-bidding process, to ensure full compliance with all of our rules.

V. ORDERING CLAUSES

81. ACCORDINGLY, IT IS ORDERED, pursuant to section 54.722(a) of the Commission's rules, 47 C.F.R. §54.722(a), that the following Requests for Review ARE DENIED: Request for Review filed by Ysleta Independent School District, El Paso, Texas, on January 30, 2003; Request for Review filed by International Business Machines, Inc., on behalf of Ysleta Independent School District, El Paso, Texas, filed on January 30, 2003; Request for Review of Donna Independent School District, Donna, Texas, filed on May 6, 2003; Request for Review of International Business Machines, Inc., on behalf of Donna Independent School District, Donna, Texas, filed May 9, 2003; Request for Review of Galena Park Independent School District, Houston, Texas, filed April 28, 2003; Request for Review of International Business Machines, Inc., on behalf of Galena Park Independent School District, Houston, Texas, filed May 9, 2003; Request for Review of Oklahoma City School District I-89, Oklahoma City, Oklahoma, filed May 8, 2003; Request for Review of International Business Machines, Inc., on behalf of Oklahoma City School District I-89, Oklahoma City, Oklahoma, filed May 9, 2003; Request for Review of El Paso Independent School District, El Paso, Texas, filed May 8, 2003; Request for Review of International Business Machines, Inc., on behalf of El Paso Independent School District, El Paso, Texas, filed May 9, 2003; Request for Review of Navajo Education Technology Consortium, Gallup, New Mexico, filed April 22, 2003; Request for Review of Memphis City School District, Memphis, Tennessee, filed May 27, 2003; Request for Review of International Business Machines, Inc., on behalf of Memphis City School District, Memphis, Tennessee, filed May 23, 2003; Request for Review of Albuquerque School District, Albuquerque, New Mexico, filed May 23, 2003; and Request for Review of International Business Machines, Inc., on behalf of Albuquerque School District, Albuquerque, New Mexico, filed May 23, 2003.

82. IT IS FURTHER ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-54 and 254, and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that the Funding Year 2002 filing window deadline established by the Schools and Libraries Division of the Universal Service Administrative Company pursuant to section 54.507(c) of the Commission's rules IS WAIVED for the affected applicants listed in the Appendix of this Order, and the Schools and Libraries Division shall take the steps outlined above to effectuate this Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Requests Denied (amount in dollars)			
Entity Name	**Telecommunications Services**	**Internet Access**	**Internal Connections**
Ysleta Independent School District		**871,740.04**	**17,469,927.90**
Donna Independent School District			**28,641,208.95**
Galena Park Independent School District		**9,006.00**	**23,893,555.50**
Oklahoma City School District I-89	**561,480.39**	**3,216,360.00**	**40,770,145.80**
El Paso Independent School District	**46,800.00**	**3,088,074.03**	**41,639,602.13**
Navajo Education Technology Consortium			**41,305,747.50**
Memphis City School District	**5,891,241.25**	**25,377.96**	**19,902,043.07**
Albuquerque School District			**37,355,476.23**
TOTALS	**6,499,521.64**	**7,210,558.03**	**250,977,707.08**

APPENDIX B

1. Although the specific circumstances of each of the following applicants vary, the record reflects that the following applicants engaged in competitive bidding practices substantially similar to those practiced by Ysleta in Funding Year 2002. We describe below the factual circumstances of each applicant, and incorporate by reference our discussion in this Order regarding Ysleta's practices. As with Ysleta, the procurement process of each of the following applicants violates our competitive bidding rules and undermines the goals of the program. For the reasons discussed in the Order, however, we find that good cause exists to waive our rules governing the filing window for Funding Year 2002, and permit these applicants to re-bid for services for Funding Year 2002 in accordance with our rules.

Donna Independent School District (DISD)

2. On October 1, 2001, DISD's Funding Year 2002 FCC Form 470 was posted on SLD's website.[190] DISD indicated on its FCC Form 470 that it was seeking services for virtually every product and service eligible for discounts under the support mechanism.[191] Moreover, in Blocks 8, 9, and 10 of FCC Form 470, DISD checked the box for, respectively, telecommunications services, Internet access, and internal connections. In each instance, DISD checked the box stating, "No, I do not have an RFP [Request for Proposal] for these services."[192]

3. Twenty-five days after the posting of the FCC Form 470, DISD released a Request for Information (RFI) on October 21, 2001 which generally sought a strategic technology partner to assist it with the E-rate program.[193] DISD's RFI did not specify projects for which it sought funding, and did not seek pricing information from bidders concerning products and services for which discounts under the support mechanism would be sought.[194]

4. DISD subsequently received bids.[195] In its bid submitted to DISD, IBM did not list any prices except for a listing of hourly rates for its employees.[196] After negotiations were conducted, on January 15, 2002, DISD signed an agreement with IBM to provide its requested

[190] *See* Donna Independent School District (DISD) FCC Form 470.

[191] *See* DISD Form 470; *supra* para. 10.

[192] *See* DISD FCC Form 470. Although DISD checked the box indicating no RFP had been released, it did state in Box 15(f) of its FCC Form 470 "Request RFP for Internal Connections" *See* DISD FCC Form 470; *supra* para. 10

[193] *See* DISD RFI at 1.

[194] *See* DISD RFI at § 4(g); *supra* para. 12.

[195] DISD Request for Review filed by IBM at 8-9. Although IBM indicates DISD received multiple bids, IBM does not specify the actual number of bids that DISD received, or the identity of the other bidders. *See id.*

[196] *See* IBM Response to Donna Independent School District Request for Information at Section 4G; *supra* para 13.

services.[197] On January 16, 2002, DISD filed its FCC Form 471 application.[198] On March 10, 2003, SLD issued a decision denying DISD's discounts.[199] Similar to SLD's denial for Ysleta, SLD denied discounts finding: (1) the price of services was not a factor in vendor selection; (2) the price of services was set after vendor selection; (3) the vendor was selected by RFP instead of an FCC Form 470; (4) the FCC Form 470 did not reference an RFP; and (5) the services for which funding was sought were not defined when the vendor was selected.[200]

5. As with Ysleta's appeal, we conclude that DISD's two-step procurement process violated program rules. First, DISD's competitive bidding for a Systems Integrator without regard to costs for specific projects funded by the schools and libraries support mechanism violated section 54.504(a) of the Commission's rules requiring that "an eligible school or library shall seek competitive bids . . . for all services eligible for support."[201] Further, as with the bidding process employed by Ysleta, DISD failed to seek actual pricing information from bidders, and selected IBM without consideration of specific pricing information relating to the actual E-rate eligible services to be provided.[202] We therefore find that DISD did not consider price as the primary factor in selecting IBM. DISD neither sought to ascertain the proposed prices for the eligible services for each bidder, nor compared different providers' prices for actual services eligible for support.[203] As a final matter, we also find that because DISD violated our competitive bidding rules and failed to demonstrate that it selected IBM with price as the primary factor, DISD violated section 254's mandate that applicants submit a *bona fide* request for services.[204]

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[197] DISD Request for Review filed by IBM at 4; DISD Request for Review at 4. IBM submitted a bid response on November 8th. *See generally* IBM Response to Donna Independent School District Request for Information.

[198] DISD FCC Form 471.

[199] SLD Funding Commitment Decision Letter for Donna Independent School District at 6.

[200] *See id.*

[201] 47 C.F.R. § 54.504(a); *supra* paras. 22-26.

[202] *Supra* para. 24.

[203] *See* 47 C.F.R. § 54.511(a); *Universal Service Order*, 12 FCC Rcd at 9029-30, para. 481; *supra* paras. 24.47, 48, 53.

[204] *Supra* paras. 54-55.

Galena Park Independent School District (Galena Park)

6. Galena Park's initial Funding Year 2002 FCC Form 470 was posted on September 10, 2001.[205] In its FCC Form 470, Galena Park indicated it did not have an RFP for the services for which it was seeking discounts.[206] On October 4, 2001, Galena Park released an RFP.[207] Galena Park's RFP did not seek bids for specific services eligible for support.[208] Its RFP stated that Galena Park was seeking an "E-rate Program Architect" to serve as a Systems Integrator.[209] Galena Park's RFP did not seek pricing information from bidders concerning products and services for which discounts under the support mechanism would be sought.[210]

7. IBM submitted a bid response on October 19, 2001.[211] IBM did not list any prices except for a listing of hourly rates for its employees.[212] On November 9, 2001, Galena Park filed another FCC Form 470 which added E-mail to services for which it sought discounts.[213] In its second FCC Form 470, Galena Park indicated that it was seeking services for virtually every product and service eligible for discounts under the support mechanism.[214] Despite the fact that Galena Park had released its RFP a month earlier, in Blocks 8, 9, and 10 of FCC Form 470, Galena Park checked the box for, respectively, telecommunications services, Internet access, and internal connections, indicating in each instance "No, I do not have an RFP [Request for Proposal] for theses services."[215]

8. Galena Park did not receive any bid other than IBM's.[216] After conducting negotiations with IBM, on January 16, 2002 Galena Park signed a contract with IBM and filed an FCC Form 471.[217] On March 10, 2003, SLD issued a decision denying DISD's discounts.[218]

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[205] *See* Galena Park Request for Review filed by IBM at 2.

[206] *See id.*

[207] *See generally* Galena Park RFP.

[208] *See id.; supra* para. 12

[209] *See* Galena Park RFP at § 1(a). Specifically, the RFP sought a consultant that could "advise and assist the district in all aspects of the e-rate program." *Id.*

[210] *See* Galena Park RFP at § 5(e).

[211] *See* IBM Response to Galena Park Independent School District Request for Proposal.

[212] *See* IBM Response to Request for Proposal at 32-33; *supra* para. 13.

[213] *See* Galena Park FCC Form 470; Galena Park Request for Review filed by IBM at 3.

[214] *See* Galena Park FCC Form 470; *supra* para. 10.

[215] *See* Galena Park FCC Form 470.

[216] *See* IBM Request for Review (Galena Park) at 9.

[217] *See* Galena Park Request for Review filed by IBM at 3, 8-9; Galena Park FCC Form 471.

SLD denied discounts finding: (1) the price of services was not a factor in vendor selection; (2) the price of services was set after vendor selection; (3) the vendor was selected by RFP instead of an FCC Form 470; (4) the FCC Form 470 did not reference an RFP; and (5) the services for which funding was sought were not defined when the vendor was selected.[219]

9. We conclude, similar to our findings concerning Ysleta's appeal, that Galena Park's two-step procurement process violated program rules. By checking the box on its second FCC Form 470 to indicate that it did not have an RFP, even though it had previously released an RFP, Galena Park provided incorrect and misleading information on its FCC Form 470. Further, Galena Park's competitive bidding for a systems integrator without regard to costs for specific projects funded by the schools and libraries support mechanism violated section 54.504(a) of the Commission rules requiring that "an eligible school or library shall seek competitive bids . . . for all services eligible for support," and violated section 254's mandate that applicants submit a *bona fide* request for services.[220]

Oklahoma City Public Schools (OCPS)

10. OCPS's Funding Year 2002 FCC Form 470 was posted on SLD's website on October 16, 2001.[221] In its FCC Form 470, OCPS indicated that it was seeking services for virtually every product and service eligible for discounts under the support mechanism.[222] Moreover, in Blocks 8, 9, and 10 of the form, OCPS checked the box for, respectively, telecommunications services, Internet access, and internal connections, indicating in each instance "No, I do not have an RFP [Request for Proposal] for these services."[223]

11. Some time in mid to late October, 2001, OCPS released an RFP.[224] The RFP stated that OCPS was seeking a "Strategic Technology Solution Provider" for a four-year term to, among other things, "assist the District with all aspects of the E-rate process."[225] The Solution

[218] SLD Funding Commitment Decision Letter for Galena Park Independent School District at 6-7.

[219] *See id.* at 6-7.

[220] 47 C.F.R. § 54.504(a); *supra* paras. 22-26; paras. 54-55.

[221] *See* OCPS Form 470.

[222] *See* OCPS Form 470; *supra* para. 10.

[223] *See* OCPS Form 470.

[224] *See* OCPS RFP. The RFP has a cover page dated October 15, 2001. However, the text of the RFP is date-stamped October 24, 2001, indicating that the RFP was released after October 15, 2001. *See also* OCPS Request for Review at n.1.

[225] Oklahoma City Public School District, Request for Proposal, Quotation # 8839, dated October 15, 2001 (RFP) at 1.

Provider would "assist [OCPS] in effectively infusing technology throughout the District."[226] The specified technology requirements were not identified in the RFP.

12. OCPS's RFP did not seek pricing information from bidders concerning products and services for which discounts under the support mechanism would be sought.[227] The RFP stated, "Prospective bidders should note that this RFP does not require a firm fixed price, a cost plus proposal, or any other specific cost information with the exceptions of: a cost schedule for services and costs for Specialized Services for funding assistance."[228]

13. Eight vendors submitted bids in response to the OCPS proposal.[229] On December 17, 2001, the Oklahoma City Board of Education unanimously approved IBM as the District's Solution Provider.[230] Only after OCPS chose IBM as the awardee, and prior to submitting its FCC Form 471, did OCPS begin specifically identifying the scope of work and cost of the actual products and services for Funding Year 2002 that would be eligible for discounts under the support mechanism.[231] On January 17, 2002, the final day of the filing window for Funding Year 2002 applications for discounts, OCPS filed its FCC Form 471 application.[232]

14. On March 10, 2003, SLD issued a decision denying OCPS's discounts.[233] SLD denied discounts finding: (1) the price of services was not a factor in vendor selection; (2) the price of services was set after vendor selection; (3) the vendor was selected by RFP instead of an FCC Form 470; (4) the FCC Form 470 did not reference an RFP; and (5) the services for which funding was sought were not defined when the vendor was selected.[234]

15. We conclude, consistent with our findings concerning Ysleta's appeal, that OCPS's two-step procurement process violated program rules. First, OCPS' competitive bidding for a Systems Integrator without regard to costs for specific projects funded by the schools and libraries support mechanism violated section 54.504(a) of the Commission rules requiring that "an eligible school or library shall seek competitive bids . . . for all services eligible for support."[235] As with the bidding process employed by Ysleta, OCPS failed to seek actual

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[226] *Id.*

[227] *See generally* OCPS RFP; *supra* para. 12.

[228] *Id.*

[229] *Id.*

[230] OCPS Request for Review at 4.

[231] *See* IBM Request for Review at 7.

[232] *See* OCPS Form 471.

[233] SLD Funding Commitment Decision Letter for Oklahoma City School District I-89 at 6-9.

[234] *Id.*

[235] 47 C.F.R. § 54.504(a); *supra* paras. 22-26.

pricing information from bidders, and selected IBM over other bidders without consideration of specific pricing information relating to the actual E-rate eligible services to be provided.[236] We therefore find that OCPS did not consider price as the primary factor in selecting IBM. OCPS neither sought to ascertain the proposed prices for the eligible services for each bidder, nor compared different providers' prices for actual services eligible for support.[237] As a final matter, we also find that because OCPS violated our competitive bidding rules and failed to demonstrate that it selected IBM with price as the primary factor, it violated section 254's mandate that applicants submit a *bona fide* request for services.[238]

El Paso Independent School District (EPISD)

16. EPISD's Funding Year 2002 FCC Form 470 was posted on SLD's website on November 26, 2001.[239] In its FCC Form 470, EPISD indicated that it was seeking services for virtually every product and service eligible for discounts under the support mechanism.[240] Like Ysleta, in Blocks 8, 9, and 10 of the form, EPISD checked the box for, respectively, telecommunications services, Internet access, and internal connections, indicating in each instance "No, I do not have an RFP [Request for Proposal] for these services."[241]

17. In the previous Funding Year (Funding Year 2001), IBM had been selected by EPISD as its service provider pursuant to a contract entered into by IBM and EPISD on January 18, 2001.[242] This contract was based upon an RFP dated December 1, 2000.[243] El Paso selected IBM over seven other bidders, in a two-step process similar to Ysleta's that did not compare proposed prices for specified E-rate eligible services during the bidding process.[244] Prices and service terms were negotiated with IBM post-selection in the second step of this two-step process.[245] The 2000 RFP and the subsequent contract, similar to Ysleta's Funding Year 2002 arrangements, formed a "Strategic Technology Solution Provider" relationship between IBM and EPISD for a four-year term to, among other things, "assist the District with all aspects of the E-rate process." Similar to Ysleta, the exact technology requirements were not identified in

[236] *Supra* para. 24.

[237] *See* 47 C.F.R. § 54.511(a); *Universal Service Order*, 12 FCC Rcd at 9029-30 para. 481; *supra* paras. 47, 48, 53, 24.

[238] *Supra* paras. 54-55.

[239] *See* EPISD FY 2002 Form 470.

[240] *See* EPISD FY 2002 Form 470; *supra* para. 10.

[241] EPISD FY 2002 Form 470 at Blocks 8, 9, 10.

[242] EPISD Request for Review at Exhibit 8 (2001 Contract).

[243] EPISD Request for Review at Exhibit 6 (2001 Request for Proposal).

[244] EPISD Request for Review at 10.

[245] *Id.*

the December 2000 RFP.[246] The RFP also did not seek pricing information from bidders concerning products and services for which discounts under the support mechanism would be sought.[247]

18. EPISD states that it "did not issue a[n RFP] for Funding Year 2002 . . ." but instead "renewed its pre-existing contract with IBM as a service provider."[248] EPISD states that even though it was not required to post a Form 470 in Funding Year 2002, it did so because it wanted to "inquire as to interest from other possible vendors, in an effort to determine whether or not renewal was cost-effective and should take place."[249] EPISD states that no inquiries were received from vendors other than IBM in response to the Funding Year 2002 Form 470 "sufficient to convince EPISD not to renew its existing contract with IBM."[250]

19. On March 10, 2003, SLD issued a decision denying EPISD's discounts for internal connections and Internet access from IBM.[251] Similar to SLD's denial for Ysleta, SLD denied discounts finding: (1) the price of services was not a factor in vendor selection; (2) the price of services was set after vendor selection; (3) the vendor was selected by RFP instead of an FCC Form 470; (4) the FCC Form 470 did not reference an RFP; and (5) the services for which funding was sought were not defined when the vendor was selected.[252]

20. We find that EPISD's Funding Year 2001 procurement process for internal connections and Internet access, which was the foundation for its renewal of its contract with IBM, contains significant similarities to Ysleta's procurement process and violates program rules. EPISD argues that its decision to select IBM for Funding Year 2002 was based not on its Funding Year 2002 FCC Form 470, but rather on its Funding Year 2001 RFP.[253] EPISD maintains that the Commission may not address the propriety of EPISD's Funding Year 2001 RFP, because doing so "is an improper collateral attack."[254] That position is without merit, as nothing precludes the Commission from examining the circumstances of a previous funding decision.[255] EPISD's competitive bidding in Funding Year 2001 for a Systems Integrator

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[246] *Id.*

[247] *Id.*

[248] EPISD Request for Review at 15.

[249] EPISD Request for Review at 12.

[250] *Id.*

[251] Funding Commitment Decision Letter for El Paso Independent School District at ---.

[252] *Id.*

[253] *See* EPISD Request for Review at 15-19.

[254] EPISD Request for Review at 16.

[255] *See, e.g., Request for Review by School for Language and Communication Development*, Order, 17 FCC Rcd 15166 (Wireline Comp. Bur. rel. August 6, 2002) (citing precedent and noting that failure to detect violations in

without regard to costs for specific projects funded by the schools and libraries support mechanism violated section 54.504(a) of the Commission rules requiring that "an eligible school or library shall seek competitive bids . . . for all services eligible for support."[256]

21. As with the bidding process employed by Ysleta, EPISD did not seek actual pricing information from bidders for its Internet access and internal connections services, and selected IBM over other bidders without consideration of specific pricing information relating to the actual E-rate eligible services to be provided.[257] We therefore find that EPISD did not consider price as the primary factor in selecting IBM. EPISD neither sought to ascertain the proposed prices for the eligible services for each bidder, nor compared different providers' prices for actual services eligible for support.[258] As a final matter, we also find that because EPISD violated our competitive bidding rules and failed to demonstrate that it selected IBM with price as the primary factor, it violated section 254's mandate that applicants submit a *bona fide* request for services.[259]

22. We note that SLD also denied a Funding Year 2002 funding request from EPISD for telecommunications services, to be provided by AT&T.[260] This funding request was denied for the same reasons that the funding requests for Internet access and internal connections from IBM were denied.[261] Although EPISD also challenges SLD's denial of funding for this funding request in its Request for Review, we do not make a decision on that funding request in this Order. Rather, since this funding request was part of a separate Form 471 and Funding Commitment Decision Letter and thus requires a separate factual assessment, we will defer a ruling on this portion of EPISD's Request for Review to a later decision.

Navajo Education Technology Consortium (NETC)

23. NETC's Funding Year 2002 FCC Form 470 was posted on SLD's website on October 31, 2001.[262] NETC indicated in its FCC Form 470 that it was seeking services for virtually every product and service eligible for discounts under the support mechanism.[263]

prior funding years does not preclude SLD or the Commission from requiring compliance with the Commission's rules in subsequent years.).

[256] 47 C.F.R. § 54.504(a); *supra* paras 22-26.

[257] *Supra* para. 24.

[258] *See* 47 C.F.R. § 54.511(a); *Universal Service Order*, 12 FCC Rcd at 9029-30 para. 481; *supra* paras. 47, 48, 53, 24.

[259] *Supra* paras. 54-55.

[260] Letter from SLD to Jack Johnston, El Paso Independent School District dated March 10, 2003 at 6, FRN No. 832243.

[261] *Id.*

[262] *See* NETC Form 470.

[263] *Id.*; *supra* para. 10.

Moreover, like Ysleta, in Blocks 8, 9, and 10 of FCC Form 470, NETC checked the box for, respectively, telecommunications services, Internet access, and internal connections, indicating in each instance "No, I do not have an RFP [Request for Proposal] for theses services."[264] Unlike in Ysleta, however, in its FCC Form 470, NETC did not indicate that it was seeking a technology implementation and Systems Integration partner.[265]

24. Unlike Ysleta, NETC did not release a subsequent RFP. Rather, NETC states that it determined the size of its project through an "E-Rate 5 Planning" process in which the scope of funding and services needed by NETC was developed and the schools and buildings for which funding was required were identified.[266] NETC also states that it relied on a state-approved Educational Technology Plan as a model to determine the parameters of its project.[267] NETC subsequently received 12 bids, and states that it contacted each vendor by phone and explained the scope and size of the proposed project.[268] NETC points to certain "quotes" by vendors as evidence that price was considered prior to the selection of IBM.[269] These "quotes," however, do not by any means match the scope of the services outlined in NETC's FCC Form 470, nor do they compare in any way to the IBM "Statement of Work" dated January 11, 2002, which apparently formed the basis for the approximately $41 million in services from IBM that NETC sought in its FCC Form 471[270]

25. On January 17, 2002, NETC filed its FCC Form 471 application.[271] On March 10, 2003, SLD issued a decision denying NETC's discounts.[272] Similar to SLD's denial for Ysleta, SLD denied discounts finding: (1) the price of services was not a factor in vendor selection; (2) the price of services was set after vendor selection; and (3) the services for which funding was sought were not defined when the vendor was selected.[273]

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[264] *Id.* at Blocks 8, 9, 10.

[265] *Id.*

[266] NETC Request for Review at 4.

[267] *Id.*

[268] NETC Request for Review at Attachment 13.

[269] NETC Request for Review at Attachment 17.

[270] NETC Request for Review at Attachment 17. For example, NETC provides a copy of a quote from Tamsco Communications for "satellite internet services" at $14,579 per site and monthly service costs between $1,107 and $2,769 per month. Tamsco also quoted $149,291 for LAN maintenance services. None of these quotes compare to the "E-rate eligible" prices quoted by IBM for NETC ($5.7 million for Network Electronics, $25.9 million for Video Equipment, and $14.9 million for Technical Support Services Solution charges).

[271] *See* NETC Form 471.

[272] Funding Commitment Decision Letter for Navajo Educational Technology Consortium.

[273] *See id.*

26. We find that NETC's Funding Year 2002 procurement process contains significant similarities to Ysleta's procurement process and violates program rules. Its competitive bidding without regard to costs for specific projects funded by the schools and libraries support mechanism violated section 54.504(a) of the Commission rules requiring that "an eligible school or library shall seek competitive bids . . . for all services eligible for support."[274] As with the bidding process employed by Ysleta, NETC failed to seek actual pricing information from bidders for comparable service packages, and selected IBM over other bidders without consideration of specific pricing information relating to the actual E-rate eligible services to be provided.[275] Furthermore, according to the record, the price of IBM's services was far in excess of any other quote received by NETC. We therefore find that NETC did not consider price as the primary factor in selecting IBM. NETC neither sought to ascertain the proposed prices for the eligible services for each bidder, nor compared different providers' prices for actual services eligible for support.[276] As a final matter, we also find that because NETC violated our competitive bidding rules and failed to demonstrate that it selected IBM with price as the primary factor, it violated section 254's mandate that applicants submit a *bona fide* request for services.[277]

Memphis City School District

27. The FCC Form 470 for Memphis City Schools (Memphis) was posted on August 10, 2001.[278] Unlike the other entities discussed in this Order, Memphis indicated in Blocks 8, 9, and 10 on its FCC Form 470 that it had a Request for Qualifications (RFQ) for, respectively, telecommunications services, Internet access, and internal connections, and that the RFQ was available on its website.[279] Because it indicated that it had an RFQ,[280] Memphis was not required under SLD's procedures to list the eligible services it sought on the FCC Form 470.[281] On the same day as the posting of Memphis's FCC Form 470, Memphis released the related RFQ. In its RFQ, Memphis indicated it was seeking a "Technology Business Partnership" with a "Qualified Provider" with whom to enter into a multi-year master contract for "a comprehensive program."[282] This program included management services, telecommunications services, Internet access, hardware/software, infrastructure services, other technology-related

[274] 47 C.F.R. § 54.504(a); *supra* paras. 22-26.

[275] *Supra* para. 24.

[276] *See* 47 C.F.R. § 54.511(a); *Universal Service Order*, 12 FCC Rcd at 9029-30 para. 481; *supra* paras. 47, 48, 53, 24.

[277] *Supra* paras. 54-55.

[278] *See* FCC Form 470, Memphis City Schools, filed August 10, 2001.

[279] *Id.*

[280] The term "Request for Qualifications" as used by Memphis appears to be synonymous with the term "RFP" as used elsewhere in this Order and in the *Ysleta* Order.

[281] *See* FCC Form 470 Instructions.

[282] *See* Memphis RFQ.

services, application and systems support services, and customer support services.[283] Bids were due one month later on September 10, 2001.[284]

28. Memphis's RFQ outlined a two-step procurement process. In the first step, bidders would submit bids that would be evaluated on the basis of (1) experience and background; (2) total capabilities; (3) project implementation; (4) minority/women business enterprise participation; (5) legal agreement; and (6) on-going support program.[285] After selecting the most qualified bidder based on these criteria, Memphis would then engage in contract negotiations.[286] The chosen firm would have fifteen days to submit a proposed contract, and if, within thirty days of the date of selection, Memphis and the provider had not concluded successful negotiations (including the price of services), the next highest-ranked bidder would be contacted.[287]

29. Memphis received only one bid, however, from IBM.[288] Consequently, it immediately entered into contract negotiations with IBM.[289] Memphis and IBM signed a contract on December 19, 2002. As with Ysleta, the contract included language that offered Memphis certain price protections.[290] On March 24, 2003, SLD denied Memphis's request for discounts, stating, "Services for which funding [were] sought [were] not defined when vendors selected; price of services [was] not a factor in vendor selection; [and] price of services [was] set after vendor selection."[291]

30. We conclude, consistent with our findings concerning Ysleta's appeal, that Memphis' use of a two-step procurement process violated program rules. In particular, Memphis' competitive bidding for a Systems Integrator without regard to costs for specific projects funded by the schools and libraries support mechanism violated section 54.504(a) of the Commission's rules requiring that "an eligible school or library shall seek competitive bids . . . for all services eligible for support."[292] As with the bidding process employed by Ysleta, Memphis failed to seek actual pricing information from bidders for E-rate eligible services. Moreover, we find that because Memphis violated our competitive bidding rules through the use

[283] *Id.*

[284] *Id.*

[285] *Id.*

[286] *Id.*

[287] *Id.*

[288] Memphis Request for Review at 2.

[289] Memphis Request for Review at 2-3.

[290] *See* Memphis Request for Review at 3..

[291] Memphis Funding Commitment Decision Letter.

[292] 47 C.F.R. § 54.504(a); supra para. 22-26.

of a two-step procurement process, it also violated section 254's mandate that applicants submit a bona fide request for services.[293]

31. That only one bidder responded to the RFQ does not alter our conclusion that Memphis' two-step procurement process failed to comply with program rules. Indeed, this case illustrates how an imperfect competitive bidding process may well stifle competition among service providers. We find it unusual that only one entity would bid on the opportunity to provide services and products eligible for discounts under the schools and libraries support mechanism, given the size of the Memphis School District and the scope of its proposed project. In a major city like Memphis, we would expect to see more robust competition.

Albuquerque School District (Albuquerque)

32. Unlike Ysleta, Albuquerque states that it relied on a purchasing alliance as equivalent to an RFP when it selected IBM.[294] In 1999, the Western States Contracting Alliance (WCSA) set out an RFP to select computer vendors for several Western states. After a competitive bidding process, the WCSA selected five computer companies with whom to enter into price agreements, effective from September 3, 1999 through September 2, 2004: Compaq, CompUSA, Dell, Gateway, and IBM.[295] Price was factored into the selection of the five companies in a limited manner, as each vendor submitted bids with prices for three computer configurations: a server, a desktop computer, and a laptop computer.[296] The resulting price agreements included various pricing protections for Albuquerque and the other members of WCSA, such as predetermined discount percentages that would apply to purchases after certain volume "trigger points" were reached.[297]

33. Albuquerque's FCC Form 470 was posted on December 10, 2001.[298] Similar to Ysleta's FCC Form 470, Albuquerque indicated in its FCC Form 470 that it was seeking services for virtually every product and service eligible for discounts under the support mechanism.[299] Subsequently, Albuquerque began negotiating Statements of Work (SOWs) with IBM. IBM proposed five SOWs: maintenance, servers, network electronics, video systems, and web-based community interaction.[300] Albuquerque contracted with IBM to provide

[293] *Supra* paras. 54-55.

[294] *See* Albuquerque Request for Review at 7-10.

[295] *Id.* at 8-9.

[296] *See* Western States Contracting Alliance, RFP dated June 16, 1999 at 56-59.

[297] Albuquerque Request for Review at 9.

[298] *See* FCC Form 470, Albuquerque School District, posted December 10, 2001.

[299] *Id.*

[300] Affidavit of Maureen Davidson, Albuquerque School District, dated May 21, 2003 at 3.

services based on three SOWs—maintenance, servers, and network electronics (without cabling).[301]

34. On March 24, 2003, SLD denied Albuquerque's request on the grounds that Albuquerque "did not identify the specific services sought—either clearly on the 470 or in the RFP—to encourage full competition on major initiatives."[302] Albuquerque maintains that it competitively bid for eligible services, because the 1999 WSCA RFP served as the RFP for its Funding Year 2002 selection of IBM.[303] Albuquerque also suggests that its agreement with IBM that stemmed from the WSCA RFP constituted a master contract, which is permissible under our rules.[304]

35. Although Albuquerque maintains that it relied on a master contract, and therefore did not need to submit an FCC Form 470, the WSCA contract with IBM does not meet our requirements for a master contract, negotiated by third parties, that has been competitively bid.[305] Master contracts subject to competitive bidding must bear a reasonable connection to the products or services for which discounts are sought.[306] We conclude that in this instance, the WSCA contract did not have such a connection. The record does not reflect that IBM's bid on the cost of a server, a laptop, and a desktop in its 1999 bid was reasonably related to the extensive costs for maintenance and network electronics for which Albuquerque sought discounts in Funding Year 2002.[307] Although Albuquerque argues that the 1999 master contract includes "maintenance and support services," we are not persuaded that the type of maintenance and support services sought in 2002 in the 1999 RFP are sufficiently similar to the extensive maintenance and support services to relieve Albuquerque of its obligation to

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[301] *Id.*

[302] *See* Letter from Schools and Libraries Division, Universal Service Administrative Company to Maureen Davidson, Albuquerque School District, dated March 24, 2003 (Albuquerque Funding Commitment Decision Letter). We note also that Albuquerque argues that it is confused by SLD's language citing "major new initiatives," and that SLD representatives told Albuquerque that this term was based on the Commission's *Brooklyn* Order. *See* Albuquerque Request for Review at 4-6; *Request for Review by Brooklyn Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-149423, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 17931 (2000). Other applicants stated this as well. *See, e.g.*, Winston-Salem Request for Review at 7-8. The reasoning of the Commission's *Brooklyn* Order does not appear to pertain to the facts at issue in these cases. We do not base our conclusions on the reasoning contained in that Order or on the question of whether these services comprised "major new initiatives."

[303] *See* Albuquerque Request for Review at 6-11.

[304] *Id.* at 9; *Fourth Order on Reconsideration*, 13 FCC Rcd at 5452 para. 232.

[305] *See Fourth Order on Reconsideration*, 13 FCC Rcd at 5452 paras. 233-34.

[306] *Id.* For example, a master contract to purchase photocopy machines and other office equipment could not be used as a substitute for competitive bidding for internal connections under the E-rate program.

[307] Indeed, laptops and desktop computers themselves are only eligible for discounts under the program if used solely as servers. *See* Funding Year 2002 Eligible Services List.

competitively bid those services in Funding Year 2002.[308] We therefore conclude that Albuquerque's reliance on the WSCA contract in lieu of an FCC Form 470 was misplaced.

36. Albuquerque's competitive bidding without regard to costs for specific projects funded by the schools and libraries support mechanism violated section 54.504(a) of the Commission rules requiring that "an eligible school or library shall seek competitive bids . . . for all services eligible for support."[309] We also find that because Albuquerque violated our competitive bidding rules, it violated section 254's mandate that applicants submit a *bona fide* request for services.[310]

[308] *Ex parte* letter from Arthur D. Melendres, Counsel, Albuquerque Public School District, to Marlene H. Dortch, Secretary, FCC, dated August 15, 2003.

[309] 47 C.F.R. § 54.504(a); *supra* paras. 22-26.

[310] *Supra* paras.54-55.

TAB 2

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Winston-Salem/Forsyth County School District	)	SLD No. 302305
Winston-Salem, North Carolina	)	
	)	
International Business Machines, Inc. on behalf of	)	SLD No. 302305
Winston-Salem/Forsyth County School District	)	
Winston-Salem, North Carolina	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.	)	

ORDER

Adopted: December 4, 2003 **Released: December 8, 2003**

By the Commission:

I. INTRODUCTION

1. Before the Commission are Requests for Review by Winston-Salem/Forsyth County School District, Winston-Salem, North Carolina (Winston-Salem), and International Business Machines, Inc. (IBM). [1] This school and IBM seek review of decisions of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) that denied Winston-Salem $16.7 million in discounts for internal connections from the universal

[1] *Request for Review of the Decision of the Universal Service Administrator by Winston-Salem / Forsyth County School District,* CC Docket Nos. 96-45 and 97-21, Request for Review, filed June 20, 2003 (Winston-Salem Request for Review); *Request for Review of the Decision of the Universal Service Administrator by International Business Machines, Inc. on behalf of Winston-Salem / Forsyth County School District* , CC Docket Nos. 96-45 and 97-21, SLD No. 302305, Request for Review, filed June 20, 2003 (IBM Request for Review).

service support mechanisms for schools and libraries for Funding Year 2002.[2] For the reasons set forth below, we grant these Requests for Review, and remand to SLD for consideration in accordance with this Order.

2. Today the Commission also releases the *Ysleta* Order, which addresses requests for review by other applicants that also selected IBM as their service provider.[3] In the *Ysleta Order*, the Commission finds that a number of schools in Funding Year 2002 engaged in various practices that violated one or more of our rules regarding competitive bidding, the weighting of price in selecting among bidders, and the submission of bona fide requests for services under this support mechanism.[4] The Commission also concluded, however, that the circumstances of those applicants justified a waiver of our rules governing the Funding Year 2002 filing window, and allowed those applicants to re-bid for their requested services.[5] As set forth below, we conclude that the facts presented in this case, unlike the cases that the Commission addresses in the *Ysleta Order*, do not support a denial of Winston-Salem's request for discounts under the program.

II. BACKGROUND

A. Governing Rules

3. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.[6] Section 254(h)(1)(B) of the Act provides, "All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to [schools and libraries] for educational purposes at rates less than the amounts charged for similar services to other parties . . . ."[7] The Commission elaborated on the meaning of "bona fide" in the *Universal Service Order*, where it stated that Congress "intended to require accountability on the part of schools and libraries," which should therefore be required to "(1) conduct internal assessments of the components necessary to use effectively the discounted services they order; (2) submit a complete description

[2] *See* Winston-Salem Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

[3] *See in the Matter of Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, etal.,*CC Docket Nos. 96-45 and 97-21, SLD Nos. 321479, 317242, 317016, 311465, 317452, 315364, 309005, 317363, 314879, 305340, 315578, 318522, 315768, 306050, 320461, FCC 03-313 (December 8, 2003) (*Ysleta Order*).

[4] *Ysleta Order* at paras. 20-63.

[5] *Ysleta Order* at paras. 64-78.

[6] 47 C.F.R. §§ 54.502, 54.503.

[7] 47 U.S.C. § 254(h)(1)(B) (emphasis added).

of services they seek so that it may be posted for competing providers to evaluate; and (3) certify to certain criteria under perjury."[8]

4. In the *Universal Service Order*, the Commission designed the program application structure to encourage competitive bidding on specific eligible products and services. Our rules provide explicit requirements for applicants to develop technology plans based on the reasonable needs and resources of the applicant, setting forth in detail how the applicant will use certain technologies in the near term and into the future, and how they plan to integrate the use of the technologies into their curriculum.[9] At the time of the FCC Form 470 filing, applicants must certify whether their technology plans have been approved, and that they recognize that support is conditional upon securing access "to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services purchased effectively."[10] This requirement limits waste in the program by ensuring that products and services for which discounts are sought have been carefully selected to complement an applicant's educational and information goals, consistent with available resources. The Commission specifically required that technology plans be independently approved, to ensure that the plans are based on the "reasonable needs . . . of the applicants and are consistent with the goals of the program."[11]

5. The Commission's rules state that "an eligible school or library shall seek competitive bids . . . for all services eligible for support . . . ."[12] Under our rules, the competitive bidding process involves the use of an FCC Form 470 describing services being sought. An eligible school, library, or consortium seeking to receive discounts for eligible services must submit to the Administrator a complete FCC Form 470, which must include certain information such as information about the computer equipment, software, and internal connections available or budgeted for purchase, and staff experience.[13] As explained in the *Universal Service Order*, the Form 470 must "describe the services that the schools and libraries seek to purchase in sufficient detail to enable potential providers to formulate bids. . . ."[14] Each applicant must certify in its

[8] *Universal Service Order*, 12 FCC Rcd at 9076, para. 570.

[9] *See Universal Service Order*, at 9077, para. 572-74.

[10] *Id.* In a recent Further Notice of Proposed Rulemaking, the Commission sought comment on whether to change our rules so that applicants may certify that their technology plans will be approved by the time that E-rate supported services begin. *See Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6, Second Report and Order and Further Notice of Rulemaking, FCC 03-101 at paras 99-100 *(rel. April 30, 2003) (Second Order and FNPRM).*

[11] *Universal Service Order*, 12 FCC Rcd at 9077, paras. 573-74.

[12] 47 C.F.R. § 54.504(a).

[13] 47 C.F.R. § 54.504(b).

[14] *Universal Service* Order, 12 FCC Rcd at 9078, para. 575 (emphasis added).

FCC Form 470 that it has developed a technology plan that has been approved by an authorized entity.[15]

6. The Administrator must post each applicant's Form 470 on SLD's website, allowing review by all potential competing service providers.[16] After waiting at least four weeks so that competing providers may consider submitting competitive bids for services, the eligible school, library, or consortium seeking discounts may then enter into a contract with the chosen service provider. The applicant then submits a completed FCC Form 471 application to the Administrator, indicating the selected service provider and services for which discounts are sought.[17] SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules. Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules, and typically do not receive funding.[18]

7. Under our rules, applicants must select the most cost-effective bids.[19] The Commission's rules state, "These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements."[20]

B. Winston-Salem's Application

8. Winston-Salem's Funding Year 2002 FCC Form 470 was posted on SLD's website on November 15, 2001.[21] Winston-Salem indicated in its FCC Form 470 that it was seeking

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[15] 47 U.S.C. § 54.504(b)(2)(vii). An applicant must certify that its technology plan has been "certified by its state, the Administrator, or an independent entity approved by the Commission." *Id.* Technology plans must establish the connections between the information technology and the professional development strategies, curriculum initiatives, and objectives that will lead to improved education or library services. They must (1) establish clear goals and a realistic strategy for using telecommunications and information technology to improve education or library services; (2) include a professional development strategy to ensure adequate use of the technology; (3) include an assessment of the telecommunications services, hardware, software, or other services needed; (4) provide for a sufficient budget; and (5) include an evaluation process to monitor progress and make mid-course corrections. *See Universal Service Order*, 12 FCC Rcd at 9077-78, paras. 572-74; SLD web site, Frequently Asked Questions About Technology Planning, <http://www.sl.universalservice.org/reference/TechnologyPlanningFAQ.asp>.

[16] 47 C.F.R. § 54.504(b); *Universal Service Order*, 12 FCC Rcd at 9078, para. 575.

[17] 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471). The FCC Form 471 notifies SLD of the services that have been ordered and indicates the amount of discounts sought. *Id.*

[18] 47 C.F.R. § 54.507(g).

[19] *Universal Service Order*, 12 FCC Rcd at 9029-30, para. 481.

[20] 47 C.F.R. § 54.504(a).

[21] *See* Winston-Salem FCC Form 470.

services for virtually every product and service eligible for discounts under the support mechanism.[22] In Blocks 8, 9, and 10 of FCC Form 470, Winston-Salem checked the box for, respectively, telecommunications services, Internet access, and internal connections, indicating in each instance "No, I do not have an RFP [Request for Proposal] for these services."[23] Winston-Salem also states that it received a number of telephone inquiries in response to the FCC Form 470, and that those companies that inquired were given "information necessary to complete a proposal."[24] Winston-Salem also states that BellSouth was interested in selling Cisco equipment to Winston-Salem, but that once BellSouth understood the broad nature of Winston-Salem's request for internal connections, BellSouth decided not to submit a proposal.[25] Unlike in Ysleta's case, only one vendor, IBM, submitted a proposal in response to Winston-Salem's FCC Form 470.[26]

9. In its proposals, IBM sought to provide a variety of services, at one total price, for system design and installation of these technologies for Winston-Salem. Winston-Salem stated in correspondence with SLD, "[S]ince there were not other bids, the selection process was very straightforward. We evaluated the one and only bid for each of the requested services."[27] IBM negotiated various SOWs, and submitted the completed SOWs on January 17, 2002, the last day of the filing window.[28] Winston-Salem selected IBM as its service provider and filed its FCC Form 471 on January 17, 2003.[29]

10. More than five months after filing its FCC Form 471, on June 25, 2002, Winston-Salem released an RFP seeking an additional System Integrator (a "Strategic Technology Integration Partner") to implement its technology plan.[30] In contrast to Ysleta, Winston-Salem's RFP excluded work related to E-rate services since IBM was already selected to perform such

[22] *See* Winston-Salem FCC Form 470.

[23] *See* Winston-Salem FCC Form 470.

[24] Winston-Salem Request for Review at 12.

[25] *Id.*

[26] *See* Winston-Salem Request for Review at 12.

[27] *See* Winston-Salem Response to SLD Item 25 Selective Review.

[28] *See generally* Winston-Salem FCC Form 471 and attachments; IBM Global Services Proposal for Winston-Salem/Forsyth County Schools to Provide Cable and Networking Electronics, dated January 17, 2002; IBM Global Services Proposal for Winston-Salem/Forsyth County Schools to Provide Wireless LAN, dated January 17, 2002; IBM Global Services Proposal for Winston-Salem/Forsyth County Schools to Provide Voice Over IP, dated January 17, 2002. The record reflects negotiations between IBM and Winston-Salem that resulted in the completed SOWs. *See* Winston-Salem Response to SLD Item 25 Review (appointment calendar showing numerous conference calls and meetings with IBM).

[29] *See* Winston-Salem FCC Form 471; Winston-Salem Request for Review at 11-12.

[30] *See* Winston-Salem Request for Proposal. Winston/Salem's RFP was revised on December 5, 2002. *See id.*

work.[31] After receiving seven proposals in response to its RFP, Winston-Salem selected Eperitus, LLC to be its System Integrator.[32]

11. On April 21, 2003, SLD denied discounts for Winston-Salem finding the "[a]pplicant did not identify the specific services sought - either clearly on the 470 or in an RFP - to encourage full competition on major new initiatives."[33]

III. DISCUSSION

12. We conclude, based on the record before us, that SLD erred in denying the discounts requested by Winston-Salem. The grounds upon which we found rule violations in the Ysleta case are not present here.

13. First, we cannot conclude that Winston-Salem violated our competitive bidding rules. Unlike the *Ysleta Order*, Winston-Salem did not issue any sort of RFP for a systems integrator prior to filing its FCC Form 471. It merely posted a request for bids for eligible services on FCC Form 470. While we are troubled that it utilized an overly broad FCC Form 470, that is not, in itself, a basis for denying its requests for discounts. In the *Ysleta Order*, we clarified that the requirement for a bona fide request for services means that applicants must submit a list of specified services for which they anticipate they are likely to seek discounts, consistent with their technology plans; they may not list every service and product eligible for discounts under the schools and libraries support mechanism. At the same time, we recognized that past practices arguably could be construed as permitting broad FCC Form 470, and therefore clarified this requirement prospectively.

14. Second, we cannot conclude that Winston-Salem failed to properly consider price when selecting its service provider because only one party responded to its posted FCC Form 470. Its decision to enter into a contract with the one bidder is no different than the thousands of other applicants who receive either no bids, or only one bid, in response to a FCC Form 470 posting. Our rules require applicants to seek competitive bids; they do not require an applicant to have competing bidders where none appear. While we find it unusual, given the size of Winston-Salem's proposed project, that no other entity submitted a bid, this alone, without more, cannot be the basis for denying Winston-Salem's request for review. We note, however, that this case demonstrates how an overly broad FCC Form 470 posting may well stifle competition among service providers. In the *Ysleta Order*, we clarify that prospectively such a broad FCC Form 470 is not consistent with our rules.[34]

15. Finally, we note that in its Request for Review, Winston-Salem describes in detail the process it employed to select a Systems Integrator, to demonstrate that Winston-Salem is

[31] *See* Winston-Salem Request for Proposal at §§ 2.6 , 2.7.

[32] *See* Winston-Salem Request for Review at 5-6.

[33] *See* SLD Funding Commitment Decision Letter for Winston-Salem at 7-10.

[34] *See Ysleta Order* at paras. 36-37.

committed to utilizing a fully competitive selection process for the award of its contracts.[35] We find that Winston-Salem's procedures for selecting Eperitus as a Systems Integrator are not relevant to our decision here, because it did not seek discounts on any services provided by Eperitus, and the services provided by Eperitus were outside the scope of the E-rate program.[36]

16. For the reasons cited above, therefore, we grant the above-captioned Requests for Review and remand the Winston-Salem application to SLD. In doing so, we emphasize that we make no determination as to whether the applicant is ultimately entitled to any funding, as SLD must scrutinize all applications for ineligible services and compliance with all program rules, including all prospective clarifications enunciated in the *Ysleta Order*.

IV. ORDERING CLAUSE

17. ACCORDINGLY, IT IS ORDERED, pursuant to section 54.722(a) of the Commission's rules, 47 C.F.R. § 54.722(a), that the above-captioned Requests for Review ARE GRANTED to the extent provided herein and REMANDED to SLD for further processing in accordance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[35] *See* Winston-Salem Request for Review at 4-6.

[36] We note, however, that Winston-Salem's 76-page RFP for Systems Integration sought bids based on specific pricing information related to management, design, construction costs, and quantity discounts. *See* Winston-Salem RFP. Winston-Salem's RFP, in contrast to Ysleta's, provides an example of how price can be taken into account in the competitive bidding process, rather than relying on mere negotiation to secure the most cost-effective services.

Universal Service Administrative Company
Schools & Libraries Division

December 3, 2002

Richard L. Duncan
Ysleta Indep School District
9600 Sims Dr.
El Paso, TX 79925 7200

Further Explanation of Administrator s Funding Decision
Form 471 Application Number: 321479
Funding Year 2002
Case # SR 2002 142115

Under separate cover, you are being sent a Funding Commitment Decision Letter concerning the FCC Form 471 Application Number cited above. This Funding Commitment Decision Letter denies all funding requests on this application.

Please be advised that the Funding Commitment Decision Letter is the official action on this application by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC). Please refer to that letter for instructions regarding how to appeal the Administrator s decision, if you wish to do so.

The purpose of this letter is to provide you with additional information concerning the reasons for denial of these funding requests.

I. Factual Background

Ysleta Independent School District s (Ysleta or Applicant) FCC Form 470 # 666710000370147 was posted to the USAC website on October 12, 2001. Applicant s Form 470 specifically indicated that there was no Request For Proposals (RFP) for the specific services for which Applicant would be seeking funding through the Schools and Libraries Universal Service Support Mechanism. At approximately the same time that the FCC Form 470 was posted, Ysleta issued a separate RFP (*Ysleta RFP*) for a Technology Implementation and Systems Integration Partner (Technology Partner). Ysleta s RFP which was not cited in Applicant s FCC Form 470 is undated, but indicated that proposals would be accepted until November 15, 2001. (*Id.* at 1). The RFP indicated that [t] he selected vendor will serve as the prime contractor for any projects funded through E rate, and all E rate applications will be submitted using the successful bidder s single SPIN number (Service Provider Information Number). (*Id.* at 3.6). The RFP did not define the particular services that the partner would provide and

for which funding would be sought, (*id.* at 3.7.4); nor did the RFP require a firm, fixed price, a cost plus proposal, or any other specific cost information with the exceptions of: a cost schedule for services and costs for Specialized Services for funding assistance. (*Id.* at 3.7.7).

Pursuant to the Yselta RFP, Ysleta selected IBM Corporation (IBM) to be its Technology Partner. (Ysleta Independent School District, Competitive Solicitations for Board Approval, December 12, 2001, at B 5 (*Ysleta Board of Trustees Meeting*)). The General Contract (contract) between Ysleta and IBM was signed by the parties on January 17, 2002 and January 18, 2002. (General Contract at 1).[1] The contract provided that the cost of the entire contract would be the amount of Schools and Libraries Universal Service Support Mechanism funding committed to Ysleta, plus Ysleta s non discount obligation, and that the Funding Source was E rate. (General Cont ract at 1). The contract further indicates that the entire agreement between Ysleta and IBM consists of RFP #22 1115 016RFP and the Contractor s Appendix to RFP#22 1115 016RFP, the IBM Customer Agreement (Z125 4575)(ICA), the General Contract dated January 17, 2002, and the individual IBM Statements of Work listed below. (General Contract at 2).

Applicant s FCC Form 471 # 321479 was submitted to USAC on January 17, 2002. This Form 471 contains five Funding Request Numbers (FRNs) and the service provider for each FRN is IBM. One FRN is for Internet access service and the remaining four are for internal connections goods and services. Each FRN on this Form 471 is associated with FCC Form 470 # 666710000370147. Applicant submitted the Statements of Work with IBM, referenced above, as the underlying contract for each FRN.

In response to SLD s request for copies of all bids that Applicant received in response to the FCC Form 470 posting, Applicant responded:

> All of our service/hardware requirements were listed in the FCC Form 470 and posted as required. This was the competitive bidding process in which we engaged.
>
> Although we do not have an E Rate Funding Request for our Systems Integration Partner contract, it is extremely important to our successful use of technology, so we have included the RFP, and all of the bid responses.

(Ysleta Facsimile to SLD, June 3, 2002, at 1 (emphasis in original))(*Ysleta Fax).*

Applicant further indicated that [o]ther than the contracts, no bid responses were received for any of the e Rate Funding Requests. (*Ysleta Fax* at 2). In response to SLD s request for documentation regarding the bid selection process, Applicant responded, Since there were no other bids, the selection process was very

[1] The pages of the General Contract are not numbered. These page numbers have been supplied by SLD for ease of reference.

straightforward. We evaluated the one and only bid for each of the requested services. (*Id.*)

II. Discussion

A. Schools and Libraries Universal Service Support Mechanism Competitive Bidding Requirements

In preparing request(s) for funding, applicants seeking discounted services through the Schools and Libraries Universal Service Support Mechanism must follow certain competitive bidding requirements. An applicant initiates the competitive bidding process when an applicant submits an FCC Form 470 to USAC for posting on the SLD portion of the USAC website. *See* 47 C.F.R. 54.504(b); Schools and Libraries Universal Service, Description of Services Requested and Certification Form 470, OMB 3060 0806 (April 2002) (FCC Form 470). This posting enables prospective service providers to bid on the equipment and services for which the applicant will request universal service support. After the Form 470 has been posted, the applicant must wait at least 28 days before entering into agreements with service providers, must comply with all applicable state and local procurement laws, and must comply with the other competitive bidding requirements established by the Federal Communications Commission (FCC). *See* 47 C.F.R. 54.504, 54.511; In re Federal State Joint Board on Universal Service, CC Docket No. 96 45, *Report and Order*, FCC 97 157, 575 (rel. May 8, 1997) (*Universal Service Order*).

FCC rules require applicants to submit a complete description of the services they seek so that it may be posted for competing service providers to evaluate. *Universal Service Order*, 570. The FCC requires the application to describe the services that the schools and libraries seek to purchase in sufficient detail to enable potential providers to formulate bids. *Id.* 575. A description of the Inte rnet access and internal connections services being sought are required to be provided in Items 9 and 10 of the FCC Form 470. The instructions for FCC Form 470 state that these items must be completed to provide potential bidders with particular information about the services you are seeking. *See* FCC Form 470 Instructions, April 2002 at 10.[2] The instructions for Item 9(b) state that this box should be checked if the applicant does not have an RFP, and that, if this box is checked, the applicant must fill in details in the space provided about the specific Internet access services or functions and quantity and/or capacity of service that is being sought. *Id.* at 12. The Form 470 instructions for Item 10(b) state that this box should be checked if the applicant does not have an RFP, and that, if this box is checked, the applicant *must* fill in details in the space provided about the specific internal connections services or functions and quantity and/or capacity of service. *Id.* (emphasis added).

FCC regulations further require that the entity selecting a service provider carefully consider all bids submitted and may consider relevant factors other than the pre discount

[2] The FCC Form 470 and Instructions were revised in April 2002. The language cited here was not changed when the instructions were revised.

prices submitted by providers. 47 C.F.R. 54.511(a). In regard to these comp etitive bidding requirements, the FCC mandated that price should be the primary factor in selecting a bid. *Universal Service Order,* 481. When allowed under state and local procurement rules, other relevant factors an applicant may consider include p rior experience, including past performance; personnel qualifications, including technical excellence; management capability, including schedule compliance; and environmental objectives. *Id.*

B. The Solicitation Process Conducted by Applicant Did Not Comply With Schools and Libraries Universal Service Support Mechanism Requirements

1. Applicant Selected a Service Provider By a Process Other Than the FCC Form 470 Posting Process and Without Specifying the Services Being Sought

The Form 470 posting process mandated by FCC rules requires applicants to choose service providers that will provide specific, defined services. The FCC regulatory framework governing the Schools and Libraries Support Mechanism does not allow applicants to select service providers through a process other than the FCC Form 470 posting. If an applicant chooses a service provider through any process other than the FCC mandated process, then the services being procured cannot be eligible for Schools and Libraries Support Mechanism funding. *See, e.g.,* 47 C.F.R. 54.504(b); FCC Form 470.

The facts above demonstrate that Ysleta selected IBM to be its Technology Partner as a result of the RFP which was not cited or otherwise referred to in Applicant s FCC Form 470. Applicant did post an FCC Form 470 for the services for which it now seeks funding.[3] However, in the RFP, Ysleta explicitly stated its intention to select its service provider through the RFP process rather than through the 470 posting process. The RFP stated that: all E rate applications will be submitted using the successful bidder s single SPIN number (Service Provider Information Number). (*Ysleta RFP* at 3.6). In addition, Ysleta acknowledged that it selected IBM as a result of the RFP rather than through the FCC Form 470 posting process when, in response to SLD s inquiry, it stated, [a]lthough we do not have an E Rate Funding Request for our Systems Integration Partner contract, it is extremely important to our successful use of technology, so we have included the RFP, and all of the bid responses. (*Ysleta Fax* at 1).

The RFP issued by Ysleta did not describe the specific services that were described on the FCC Form 470. Rather, the RFP described Ysleta s request for a Technology Implementation and Systems Integration Partner and the criteria Ysleta would use to choose that partner. Ysleta s RFP did not require bidders to submit proposals for specific

[3] SLD does not evaluate as part of this analysis whether the description of the services sought on Ysleta s FCC Form 470 complies with program rules.

services with a definite price. Rather, Ysleta only required bidders responding to its RFP to describe their approa ch, qualification, and industry experience in the design and implementation of these network requirements in large school districts. (*Ysleta RFP* at 3.7.4.) Furthermore, the RFP did not require a firm, fixed price, a cost plus proposal, or any other specific cost information with the exceptions of: a cost schedule for services and costs for Specialized Services for funding assistance. (*Ysleta RFP* at 3.7.7). In regard to the specific services for which funding would later be requested, IBM provided only a general description of IBM s networking capabilities. (IBM Proposal at 30). IBM s proposal stated that while it is capable of performing all the tasks, it will only be performing those tasks specifically identified in the Statements of Work developed at the direction of [Ysleta]. (IBM Proposal at 30). The RFP indicated that after the Technology Partner was selected, Ysleta and the Technology Partner would negotiate the Statements of Work for each funding request. (*Ysleta RFP* at 3.7.7).

Applicant stated that it did not receive any other bids in response to its FCC Form 470 posting other than the contracts. (*Ysleta Fax* at 2). These contracts are the Statements of Work that are described in the RFP and in IBM s proposal to Ysleta that Ysleta and IBM negotiated after Ysleta selected IBM to be its Technology Partner.

Viewed in totality, these facts indicate that IBM was selected as the service provider as a result of Ysleta s RFP and IBM s Proposal, *not* as a result of the FCC Form 470 posting process required by Schools and Libraries Support Mechanism regulations. In selecting its service provider through a separate RFP process, while at the same time stating in its FCC Form 470 that no RFP existed, Applicant in effect misled those service providers that may have relied on its FCC Form 470 as posted. These facts further demonstrate that when IBM was selected to be Ysleta s Technology Partner, the actual services for which funding would be requested had not been defined. The Statements of Work were negotiated after Ysleta selected IBM. Because Applicant failed to comply with the requirement that it select its service provider to provide specific services through the FCC Form 470 posting process, its funding request has been denied as being in violation of Schools and Libraries Support Mechanism competitive bidding requirements.

2. Applicant Selected a Service Provider in Violation of the Requirement that it Choose the Most Cost Effective Provider of Service with Cost Being the Primary Factor

Schools and Libraries Support Mechanism rules require a competitive bidding process pursuant to which an applicant chooses a service provider only after defining the specific services sought and after the FCC Form 470 has been posted. The primary factor in making the selection must be low cost. *See* 47 C.F.R. 54.511(a); *Universal Service Order,* 481.

The RFP issued by Ysleta did not require a firm, fixed price, a cost plus proposal, or any other specific cost information with the exceptions of: a cost schedule for services and costs for Specialized Services for funding assistance. (*Ysleta RFP* at 3.7.7). The

selection criteria indicate that this factor is among the least heavily weighted, at 25 points. (*Ysleta RFP* at 3.7.1 3.7.8). IBM responded to Ysleta s RFP with a description of its pricing model, a reminder that IBM must return a profit, and a schedule of IBM hourly rate charges. (IBM Proposal at 77 80). In addition, as set out above, Ysleta selected IBM before defining the actual work to be done for which funding would be requested.

These facts demonstrate that Ysleta could not have selected the most cost effective provider of service, with low cost being the primary factor. This is the case because IBM did not specify the cost of the contract, because Ysleta selected IBM before the actual work for which funding would be requested was defined and quantified, and because the RFP s selection criteria do not include these factors. Furthermore, Applicant s stated reasons for selecting IBM do not indicate that Applicant selected IBM based on whether IBM was the most cost effective provider of service with low cost being the primary factor. (*Ysleta Board of Trustees Meeting* at B 5). Because it is beyond dispute that Applicant did not select IBM based on whether IBM s bid was the most cost effective, with price being the primary factor, Applicant s funding request has been denied as being in violation of Schools and Libraries Support Mechanism competitive bidding requirements.

3. Applicant Must Comply with FCC Form 470 Posting Requirements in Addition to Applicable State and Local Procurement Laws

FCC regulations governing the Schools and Libraries Support Mechanism require applicants to comply with all applicable state and local procurement laws. *See, e.g.,* 47 C.F.R. 47 C.F.R. 54.504, 54.511; *Universal Service Order,* 575. This requirement does not, however, eliminate the FCC s competitive bidding requirements pursuant to which the service provider must be selected with reference to the particular services sought, after the FCC Form 470 has been posted, and the primary factor in making the selection must be low cost.

Under Texas law, school district contracts, with certain exceptions not relevant here, are required to be made according to whichever of a list of methods provides the best value for the district. *See* Texas Educ. 44.031(a)(1). Those methods include competitive bidding. *See id.* In determining to whom to award a contract, districts may consider a variety of factors, one of which is the purchase price. *See id.* at 44.031(b)(1). These requirements do not, however, necessarily apply to contracts for services rendered by a technology consultant:

> A school district may, at its option, contract for professional services rendered by a financial consultant or a technology consultant in the manner provided in Section 2254.003, Government Code, in lieu of the methods provided by this section.

Id. at 44.031(f). Section 2254.003 of the Texas Government Code prohibits government entities from selecting professional service providers on the basis of competitive bids submitted for the contract or services, but rather, requires the selection to be made:

> (1) on the basis of demonstrated competence and qualifications to perform the services; and
> (2) for a fair and reasonable price.

Texas Government Code 2254.003.

Ysleta s RFP may have been issued under the provision of Texas procurement law which allows, but does not require, technology consultants to be selected on the basis of the factors indicated in the RFP. SLD does not reach the issue of whether the services for which Ysleta seeks funding on its FCC Form 471 may properly be considered professional services under Texas law, but notes that Ysleta seeks Schools and Libraries Support Mechanism funding for particular goods and services. Thus, even if the RFP was issued, and IBM selected as Ysleta s technology consultant, pursuant to this local law, Ysleta is still required to comply with FCC competitive bidding requirements in seeking Schools and Libraries Support Mechanism funding. As explained above, the FCC requirements apply *in addition to* any applicable state and local laws. Furthermore, the contract between Ysleta and IBM indicates that the cost of the General Contract is USAC s funding commitment to the school district plus the school district s non discount portion. Because the contract between Ysleta and IBM specifically provides that 90% of IBM s compensation will be through the Schools and Libraries Support Mechanism, Ysleta and IBM are required to comply with FCC competitive bidding requirements.

4. The Winning Proposal Included Many Ineligible Services

Schools and Libraries Support Mechanism rules authorize USAC to provide universal service support to telecommunications carriers and non telecommunications carriers for providing supported services to eligible entities. *See* 47 C.F.R 54.501(a), 54.517. These rules prohibit applicants and service providers from using discounts to subsidize the procurement of ineligible or unrequested products and services. *See, e.g.,* Free Services Advisory, http://www.sl.universalservice.org/reference/freeservices.asp. Consequently, [t]he value of all price reductions, promotional offers, and free products or services must be deducted from the pre discount cost of services indicated in Funding Requests. *Id.*

FCC rules further require applicants to certify that they have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services. *See* Schools and Libraries Universal Service, Services Ordered and Certification Form 471, OBM 3060 0806, Item 25 (October 2000)(FCC Form 471). Although applicants certify that they have secured access to these resources, these resources are generally not eligible for discounts. In

particular, the Eligible Services List indicates that training is conditionally eligible under the following parameters:

> Training is eligible if it is basic instruction on the use of eligible equipment, coincident with and directly associated with the installation of such equipment. Training of teachers and staff in the use of covered services in their programs of instruction or for professional development is not eligible for discount.

See http://www.sl.universalservice.org/data/pdf/EligibleServicesList_101701.pdf at 34. The list further indicates that Internet training is ineligible. *See id.* at 14. The list also provides that Consulting Services Costs of expertise in areas such as initial planning, consulting, development of technology plans, application assistance, and program advice are not eligible. *Id.* at 34.

Ysleta s RFP identified a range of services that Ysleta sought under each selection criteria. These included development of a Staff Development Plan, Project Management, project planning, specialized program assistance, and other services including funding assistance. In response to each selection criteria identified by Ysleta, IBM described in detail a wide range of services that it would provide to Ysleta as Ysleta s Technology Partner. (IBM Proposal at 17 80). These services included a vast array of ineligible services, including teacher and administrative personnel training, project management services, consulting services, and assistance in filling out program forms, among others. In responding to the selection criteria, IBM indicated that it will only be performing those tasks specifically identified in the Statements of Work. (IBM Proposal at 30). IBM stated that the cost to Ysleta for all of these services will be the percentage of the costs based on Ysleta s discount percentage and that USAC would pay the remainder of the cost as support. (IBM Proposal at 69). The General Contract between Ysleta and IBM specifies that IBM would be paid for the services specified in the RFP, IBM s Proposal, and the Statements of Work by the Universal Service Fund (90%) and the Applicant (10%). (General Contract at 1, 2).

Under FCC rules, the only services that are potentially eligible for funding are the services sought on the FCC Form 471 and identified in the Statements of Work. However, the agreement between Ysleta and IBM indicates that IBM will be providing Ysleta with a wide range of other services in addition to the services specified in the Statements of Work. These types of training and consulting services are not eligible for funding. Consequently, their cost cannot be included in Ysleta s funding request. However, the General Contract provides that IBM would be paid for these services by Schools and Libraries Support Mechanism funding earmarked for eligible services only.

If the cost of these services are included in Ysleta s funding requests, then those funding requests contain ineligible items. If IBM considers its services to be free, then the Free Services Advisory requires that the value of those services be deducted from the pre discount cost of services indicated in the funding requests. It appears highly unlikely that IBM intends to provide these services free of charge since IBM clearly stated in its

proposal that [s]ince the IBM Corporation must return a profit to its investment owners, the first consideration in pricing is earning that expected margin over our costs. (IBM Proposal at 77). Because it can reasonably be inferred that IBM, with its stated profit making mandate, is not covering the cost of providing these services itself, these costs must be built into Ysleta s request for Schools and Libraries Support Mechanism funding.

SLD is not denying these funding requests at this time on the grounds that they include a prohibited proportion of ineligible services. However, SLD notes that the documentation provided by the Applicant demonstrates that these funding requests include many ineligible services. Because these services are not eligible for funding, their cost should have been deducted from the pre discount cost of services included in the Funding Request Numbers at issue here.

C. The Proposal Selected by Applicant Emphasized Development of a Technology Plan and Structuring Technology to Maximize Schools and Libraries Support Mechanism Funding

FCC regulations governing the Schools and Libraries Support Mechanism require applicants to conduct a technology inventory/assessment, develop a technology plan that identifies educational objectives and then identify the technology resources necessary to achieve those objectives. *See Universal Service Order,* 572 573. The FCC has stipulated that funding requests must be based on a technology plan that complies with program requirements. *See id.* 573. As explained above, FCC rules also require applicants to choose the most cost effective alternative to achieve objectives. Unless applicants will seek discounts only for basic local and long distance service, they must certify on the Form 470 that all of the individual schools, libraries, and library consortia receiving services under this application are covered by either individual technology plans or higher level plans. *See* FCC Form 470, Item 20. A basic premise of the program is that, applicants determine the educational objectives to be served by technology, the technology needs, and the resources that will be required for those technology needs *before* initiating the procurement process and before filing the Form 470. If technology plans are not in place or are vague at the time of the Form 470 filing, applicants cannot present to would be vendors a clear idea of the products and services they seek.

In its proposal, IBM indicated that it could help Ysleta develop its technology plan and that it would structure Ysleta s funding requests to maximize funding requests to SLD. IBM s approach is to structure the technological aspects to ensure that the services are eligible for funding (IBM Proposal at 66 67) and to structur[e] the application for funding and supporting documentation to maximize the SLD funding. It is anticipated that all funding requests will be funded at the 90% level. (IBM Proposal at 67). Applicant, in explaining its basis for selecting IBM, stated that it considered IBM s success in obtaining awards for E Rate projects and IBM s ability to enhance the quality and viability of any District submittal seeking Schools and Libraries Support

Mechanism funding to be critically important in its decision to select IBM. (*Ysleta Board of Trustees Meeting* at B 5).

Thus, the record reflects that the overriding goal of the IBM Ysleta relationship is to maximize the SLD funding, no t necessarily to promote educational goals that have been clearly defined in a technology plan. The emphasis on maximizing Schools and Libraries Support Mechanism funding is inconsistent with the design of the program to first develop a technology plan that identifies educational objectives and then the technology resources necessary to achieve those objectives. Nor is the approach here consistent with the requirement to choose the most cost effective alternative to achieve objectives. Furthermore, if IBM and the district are rewriting the technology plan after selection of IBM as the service provider, it is difficult to see how the district can ensure it is choosing the most cost effective alternative to meet its educational objectives.

D. Similar Language in Other RFPs Raised Significant Questions as to Whether the Service Provider Chosen by Applicant was Improperly Involved in the Selection Process

SLD s Service Provider Manual provides the following guidance in regard to service provider involvement in preparation of an RFP or other solicitation materials to be used in the competitive bidding process:

> The FCC understands that applicants sometimes need to seek assistance from service providers in developing RFPs. Such assistance is permissible even if the service provider plans to submit a bid in response to that RFP as long as the service provider s assistance is neutral. For example, RFPs may not be written in such a way that only the service provider who rendered the assistance could win the bid. Or, an applicant may not reveal information to the service provider assisting in the preparation of the bid that the applicant does not share with all prospective bidders. These are just two examples of assistance that would not be considered neutral.

See www.sl.universalservice.org/vendor/manual/chapter5.doc.

SLD has also reviewed numerous RFPs issued by applicants seeking the same type of consultant as sought by Applicant in this situation. These RFPs bear striking similarities, sometimes including virtually identical language. This creates an inference that the service provider in question, IBM, is involved before the RFP is issued or that school districts have shared the RFPs that have worked for them with others. Absent a contrary explanation, if IBM is contacting applicants before the selection process and encouraging them to use a standard RFP or other solicitation materials, SLD reasonably could infer that IBM has unduly influenced the selection process in IBM s favor.

III. Conclusion

Based on the totality of the circumstances and a careful review of all documentation submitted by Applicant in connection with the FCC Form 471 Application Number cited above, all funding requests on that application are denied. As discussed above, under separate cover, you are being sent a Funding Commitment Decision Letter concerning the Form 471 application cited on the first page of this document.

Please be advised that the Funding Commitment Decision Letter is the official action on this application by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC). Please refer to that letter for instructions regarding how to appeal the Administrator s decision, if you wish to do so.

Universal Service Administrative Company
Schools and Libraries Division

Universal Service Administrative Company
Schools & Libraries Division

December 3, 2002

John Policastro
IBM Corporation
4800 Falls of Neuse Rd
Raleigh, NC 27609

Further Explanation of Administrator s Funding Decision
Ysleta Indep School District
Form 471 Application Number: 321479
Funding Year 2002
Case # SR 2002 142115

Under separate cover, you are being sent a Funding Commitment Decision Letter concerning the FCC Form 471 Application Number cited above. This Funding Commitment Decision Letter denies all funding requests on this application.

Please be advised that the Funding Commitment Decision Letter is the official action on this application by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC). Please refer to that letter for instructions regarding how to appeal the Administrator s decision, if you wish to do so.

The purpose of this letter is to provide you with additional information concerning the reasons for denial of these funding requests.

I. Factual Background

Ysleta Independent School District s (Ysleta or Applicant) FCC Form 470 # 666710000370147 was posted to the USAC website on October 12, 2001. Applicant s Form 470 specifically indicated that there was no Request For Proposals (RFP) for the specific services for which Applicant would be seeking funding through the Schools and Libraries Universal Service Support Mechanism. At approximately the same time that the FCC Form 470 was posted, Ysleta issued a separate RFP (*Ysleta RFP*) for a Technology Implementation and Systems Integration Partner (Technology Partner). Ysleta s RFP which was not cited in Applicant s FCC Form 470 is undated, but indicated that proposals would be accepted until November 15, 2001. (*Id.* at 1). The RFP indicated that [t]he selected vendor will serve as the prime contractor for any projects funded through E rate, and all E rate applications will be submitted using the successful bidder s single SPIN number (Service Provider Information Number). (*Id.* at 3.6). The RFP did not define the particular services that the partner would provide and

for which funding would be sought, (*id.* at 3.7.4); nor did the RFP require a firm, fixed price, a cost plus proposal, or any other specific cost information with the exceptions of: a cost schedule for services and costs for Specialized Services for funding assistance. (*Id.* at 3.7.7).

Pursuant to the Yselta RFP, Ysleta selected IBM Corporation (IBM) to be its Technology Partner. (Ysleta Independent School District, Competitive Solicitations for Board Approval, December 12, 2001, at B 5 (*Ysleta Board of Trustees Meeting*)). The General Contract (contract) between Ysleta and IBM was signed by the parties on January 17, 2002 and January 18, 2002. (General Contract at 1).[1] The contract provided that the cost of the entire contract would be the amount of Schools and Libraries Universal Service Support Mechanism funding committed to Ysleta, plus Ysleta s non discount obligation, and that the Funding Source was E rate. (General Contract at 1). The contract further indicates that the entire agreement between Ysleta and IBM consists of RFP #22 1115 016RFP and the Contractor s Appendix to RFP#22 1115 016RFP, the IBM Customer Agreement (Z125 4575)(ICA), the General Contract dated January 17, 2002, and the individual IBM Statements of Work listed below. (General Contract at 2).

Applicant s FCC Form 471 # 321479 was submitted to USAC on January 17, 2002. This Form 471 contains five Funding Request Numbers (FRNs) and the service provider for each FRN is IBM. One FRN is for Internet access service and the remaining four are for internal connections goods and services. Each FRN on this Form 471 is associated with FCC Form 470 # 666710000370147. Applicant submitted the Statements of Work with IBM, referenced above, as the underlying contract for each FRN.

In response to SLD s request for copies of all bids that Applicant received in response to the FCC Form 470 posting, Applicant responded:

> All of our service/hardware requirements were listed in the FCC Form 470 and posted as required. This was the competitive bidding process in which we engaged.
>
> Although we do not have an E Rate Funding Request for our Systems Integration Partner contract, it is extremely important to our successful use of technology, so we have included the RFP, and all of the bid responses.

(Ysleta Facsimile to SLD, June 3, 2002, at 1 (emphasis in original))(*Ysleta Fax).*

Applicant further indicated that [o]ther than the contracts, no bid responses were received for any of the e Rate Funding Requests. (*Ysleta Fax* at 2). In response to SLD s request for documentation regarding the bid selection process, Applicant responded, Since there were no other bids, the selection process was very

[1] The pages of the General Contract are not numbered. These page numbers have been supplied by SLD for ease of reference.

straightforward. We evaluated the one and only bid for each of the requested services. (*Id.*)

II. Discussion

A. Schools and Libraries Universal Service Support Mechanism Competitive Bidding Requirements

In preparing request(s) for funding, applicants seeking discounted services through the Schools and Libraries Universal Service Support Mechanism must follow certain competitive bidding requirements. An applicant initiates the competitive bidding process when an applicant submits an FCC Form 470 to USAC for posting on the SLD portion of the USAC website. *See* 47 C.F.R. 54.504(b); Schools and Libraries Universal Service, Description of Services Requested and Certification Form 470, OMB 3060 0806 (April 2002) (FCC Form 470). This posting enables prospective service providers to bid on the equipment and services for which the applicant will request universal service support. After the Form 470 has been posted, the applicant must wait at least 28 days before entering into agreements with service providers, must comply with all applicable state and local procurement laws, and must comply with the other competitive bidding requirements established by the Federal Communications Commission (FCC). *See* 47 C.F.R. 54.504, 54.511; In re Federal State Joint Board on Universal Service, CC Docket No. 96 45, *Report and Order*, FCC 97 157, 575 (rel. May 8, 1997) (*Universal Service Order*).

FCC rules require applicants to submit a complete description of the services they seek so that it may be posted for competing service providers to evaluate. *Universal Service Order*, 570. The FCC requires the application to describe the services that the schools and libraries seek to purchase in sufficient detail to enable potential providers to formulate bids. *Id.* 575. A de scription of the Internet access and internal connections services being sought are required to be provided in Items 9 and 10 of the FCC Form 470. The instructions for FCC Form 470 state that these items must be completed to provide potential bidders with particular information about the services you are seeking. *See* FCC Form 470 Instructions, April 2002 at 10.[2] The instructions for Item 9(b) state that this box should be checked if the applicant does not have an RFP, and that, if this box is checked, the applicant must fill in details in the space provided about the specific Internet access services or functions and quantity and/or capacity of service that is being sought. *Id.* at 12. The Form 470 instructions for Item 10(b) state that this box should be checked if the applicant does not have an RFP, and that, if this box is checked, the applicant *must* fill in details in the space provided about the specific internal connections services or functions and quantity and/or capacity of service. *Id.* (emphasis added).

FCC regulations further require that the entity selecting a service provider carefully consider all bids submitted and may consider relevant factors other than the pre discount

[2] The FCC Form 470 and Instructions were revised in April 2002. The language cited here was not changed when the instructions were revised.

prices submitted by providers. 47 C.F.R. 54.511(a). In regard to these competitive bidding requirements, the FCC mandated that price should be the primary factor in selecting a bid. *Universal Service Order,* 481. When allowed under state and local procurement rules, other relevant factors an applicant may consider include prior experience, including past performance; personnel qualifications, including technical excellence; management capability, including schedule compliance; and environmental objectives. *Id.*

B. The Solicitation Process Conducted by Applicant Did Not Comply With Schools and Libraries Universal Service Support Mechanism Requirements

1. Applicant Selected a Service Provider By a Process Other Than the FCC Form 470 Posting Process and Without Specifying the Services Being Sought

The Form 470 posting process mandated by FCC rules requires applicants to choose service providers that will provide specific, defined services. The FCC regulatory framework governing the Schools and Libraries Support Mechanism does not allow applicants to select service providers through a process other than the FCC Form 470 posting. If an applicant chooses a service provider through any process other than the FCC mandated process, then the services being procured cannot be eligible for Schools and Libraries Support Mechanism funding. *See, e.g.,* 47 C.F.R. 54.504(b); FCC Form 470.

The facts above demonstrate that Ysleta selected IBM to be its Technology Partner as a result of the RFP which was not cited or otherwise referred to in Applicant s FCC Form 470. Applicant did post an FCC Form 470 for the services for which it now seeks funding.[3] However, in the RFP, Ysleta explicitly stated its intention to select its service provider through the RFP process rather than through the 470 posting process. The RFP stated that: all E rate applications will be submitted using the successful bidder s single SPIN number (Service Provider Information Number). (*Ysleta RFP* at 3.6). In addition, Ysleta acknowledged that it selected IBM as a result of the RFP rather than through the FCC Form 470 posting process when, in response to SLD s inquiry, it stated, [a]lthough we do not have an E Rate Funding Request for our Systems Integration Partner contract, it is extremely important to our successful use of technology, so we have included the RFP, and all of the bid responses. (*Ysleta Fax* at 1).

The RFP issued by Ysleta did not describe the specific services that were described on the FCC Form 470. Rather, the RFP described Ysleta s request for a Technology Implementation and Systems Integration Partner and the criteria Ysleta would use to choose that partner. Ysleta s RFP did not require bidders to submit proposals for specific

[3] SLD does not evaluate as part of this analysis whether the description of the services sought on Ysleta s FCC Form 470 complies with program rules.

services with a definite price. Rather, Ysleta only required bidders responding to its RFP to describe their approach, qualification, and industry experience in the design and implementation of these network requirements in large school districts. (*Ysleta RFP* at 3.7.4.) Furthermore, the RFP did not require a firm, fixed price, a cost plus proposal, or any other specific cost information with the exceptions of: a cost schedule for services and costs for Specialized Services for funding assistance. (*Ysleta RFP* at 3.7.7). In regard to the specific services for which funding would later be requested, IBM provided only a general description of IBM s networking capabilities. (IBM Proposal at 30). IBM s proposal stated that while it is capable of performing all the tasks, it will only be performing those tasks specifically identified in the Statements of Work developed at the direction of [Ysleta]. (IBM Proposal at 30). The RFP indicated that after the Technology Partner was selected, Ysleta and the Technology Partner would negotiate the Statements of Work for each funding request. (*Ysleta RFP* at 3.7.7).

Applicant stated that it did not receive any other bids in response to its FCC Form 470 posting other than the contracts. (*Ysleta Fax* at 2). These contracts are the Statements of Work that are described in the RFP and in IBM s proposal to Ysleta that Ysleta and IBM negotiated after Ysleta selected IBM to be its Technology Partner.

Viewed in totality, these facts indicate that IBM was selected as the service provider as a result of Ysleta s RFP and IBM s Proposal, *not* as a result of the FCC Form 470 posting process required by Schools and Libraries Support Mechanism regulations. In selecting its service provider through a separate RFP process, while at the same time stating in its FCC Form 470 that no RFP existed, Applicant in effect misled those service providers that may have relied on its FCC Form 470 as posted. These facts further demonstrate that when IBM was selected to be Ysleta s Technology Partner, the actual services for which funding would be requested had not been defined. The Statements of Work were negotiated after Ysleta selected IBM. Because Applicant failed to comply with the requirement that it select its service provider to provide specific services through the FCC Form 470 posting process, its funding request has been denied as being in violation of Schools and Libraries Support Mechanism competitive bidding requirements.

2. Applicant Selected a Service Provider in Violation of the Requirement that it Choose the Most Cost Effective Provider of Service with Cost Being the Primary Factor

Schools and Libraries Support Mechanism rules require a competitive bidding process pursuant to which an applicant chooses a service provider only after defining the specific services sought and after the FCC Form 470 has been posted. The primary factor in making the selection must be low cost. *See* 47 C.F.R. 54.511(a); *Universal Service Order,* 481.

The RFP issued by Ysleta did not require a firm, fixed price, a cost plus proposal, or any other specific cost information with the exceptions of: a cost schedule for services and costs for Specialized Services for funding assistance. (*Ysleta RFP* at 3.7.7). The

selection criteria indicate that this factor is among the least heavily weighted, at 25 points. (*Ysleta RFP* at 3.7.1 3.7.8). IBM responded to Ysleta s RFP with a description of its pricing model, a reminder that IBM must return a profit, and a schedule of IBM hourly rate charges. (IBM Proposal at 77 80). In addition, as set out above, Ysleta selected IBM before defining the actual work to be done for which funding would be requested.

These facts demonstrate that Ysleta could not have selected the most cost effective provider of service, with low cost being the primary factor. This is the case because IBM did not specify the cost of the contract, because Ysleta selected IBM before the actual work for which funding would be requested was defined and quantified, and because the RFP s selection criteria do not include these factors. Furthermore, Applicant s stated reasons for selecting IBM do not indicate that Applicant selected IBM based on whether IBM was the most cost effective provider of service with low cost being the primary factor. (*Ysleta Board of Trustees Meeting* at B 5). Because it is beyond dispute that Applicant did not select IBM based on whether IBM s bid was the most cost effective, with price being the primary factor, Applicant s funding request has been denied as being in violation of Schools and Libraries Support Mechanism competitive bidding requirements.

3. Applicant Must Comply with FCC Form 470 Posting Requirements in Addition to Applicable State and Local Procurement Laws

FCC regulations governing the Schools and Libraries Support Mechanism require applicants to comply with all applicable state and local procurement laws. *See, e.g.,* 47 C.F.R. 47 C.F.R. 54.504, 54.511; *Universal Service Order,* 575. This requirement does not, however, eliminate the FCC s competitive bidding requirements pursuant to which the service provider must be selected with reference to the particular services sought, after the FCC Form 470 has been posted, and the primary factor in making the selection must be low cost.

Under Texas law, school district contracts, with certain exceptions not relevant here, are required to be made according to whichever of a list of methods provides the best value for the district. *See* Texas Educ. 44.031(a)(1). Those methods include competitive bidding. *See id.* In determining to whom to award a contract, districts may consider a variety of factors, one of which is the purchase price. *See id.* at 44.031(b)(1). These requirements do not, however, necessarily apply to contracts for services rendered by a technology consultant:

> A school district may, at its option, contract for professional services rendered by a financial consultant or a technology consultant in the manner provided in Section 2254.003, Government Code, in lieu of the methods provided by this section.

Id. at 44.031(f). Section 2254.003 of the Texas Government Code prohibits government entities from selecting professional service providers on the basis of competitive bids submitted for the contract or services, but rather, requires the selection to be made:

(1) on the basis of demonstrated competence and qualifications to perform the services; and
(2) for a fair and reasonable price.

Texas Government Code 2254.003.

Ysleta s RFP may have been issued under the provision of Texas procurement law which allows, but does not require, technology consultants to be selected on the basis of the factors indicated in the RFP. SLD does not reach the issue of whether the services for which Ysleta seeks funding on its FCC Form 471 may properly be considered professional services under Texas law, but notes that Ysleta seeks Schools and Libraries Support Mechanism funding for particular goods and services. Thus, even if the RFP was issued, and IBM selected as Ysleta s technology consultant, pursuant to this local law, Ysleta is still required to comply with FCC competitive bidding requirements in seeking Schools and Libraries Support Mechanism funding. As explained above, the FCC requirements apply *in addition to* any applicable state and local laws. Furthermore, the contract between Ysleta and IBM indicates that the cost of the General Contract is USAC s funding commitment to the school district plus the school district s non discount portion. Because the contract between Ysleta and IBM specifically provides that 90% of IBM s compensation will be through the Schools and Libraries Support Mechanism, Ysleta and IBM are required to comply with FCC competitive bidding requirements.

4. The Winning Proposal Included Many Ineligible Services

Schools and Libraries Support Mechanism rules authorize USAC to provide universal service support to telecommunications carriers and non telecommunications carriers for providing supported services to eligible entities. *See* 47 C.F.R 54.501(a), 54.517. These rules prohibit applicants and service providers from using discounts to subsidize the procurement of ineligible or unrequested products and services. *See, e.g.,* Free Services Advisory, http://www.sl.universalservice.org/reference/freeservices.asp. Consequently, [t]he value of all price reductions, promotional offers, and free products or services must be deducted from the pre discount cost of services indicated in Funding Requests. *Id.*

FCC rules further require applicants to certify that they have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services. *See* Schools and Libraries Universal Service, Services Ordered and Certification Form 471, OBM 3060 0806, Item 25 (October 2000)(FCC Form 471). Although applicants certify that they have secured access to these resources, these resources are generally not eligible for discounts. In

particular, the Eligible Services List indicates that training is conditionally eligible under the following parameters:

> Training is eligible if it is basic instruction on the use of eligible equipment, coincident with and directly associated with the installation of such equipment. Training of teachers and staff in the use of covered services in their programs of instruction or for professional development is not eligible for discount.

See http://www.sl.universalservice.org/data/pdf/EligibleServicesList_101701.pdf at 34. The list further indicates that Internet training is ineligible. *See id.* at 14. The list also provides that Consu lting Services Costs of expertise in areas such as initial planning, consulting, development of technology plans, application assistance, and program advice are not eligible. *Id.* at 34.

Ysleta s RFP identified a range of services that Ysleta sought under each selection criteria. These included development of a Staff Development Plan, Project Management, project planning, specialized program assistance, and other services including funding assistance. In response to each selection criteria identified by Ysleta, IBM described in detail a wide range of services that it would provide to Ysleta as Ysleta s Technology Partner. (IBM Proposal at 17 80). These services included a vast array of ineligible services, including teacher and administrative personnel training, project management services, consulting services, and assistance in filling out program forms, among others. In responding to the selection criteria, IBM indicated that it will only be performing those tasks specifically identified in the Statements of Work. (IBM Proposal at 30). IBM stated that the cost to Ysleta for all of these services will be the percentage of the costs based on Ysleta s discount percentage and that USAC would pay the remainder of the cost as support. (IBM Proposal at 69). The General Contract between Ysleta and IBM specifies that IBM would be paid for the services specified in the RFP, IBM s Proposal, and the Statements of Work by the Universal Service Fund (90%) and the Applicant (10%). (General Contract at 1, 2).

Under FCC rules, the only services that are potentially eligible for funding are the services sought on the FCC Form 471 and identified in the Statements of Work. However, the agreement between Ysleta and IBM indicates that IBM will be providing Ysleta with a wide range of other services in addition to the services specified in the Statements of Work. These types of training and consulting services are not eligible for funding. Consequently, their cost cannot be included in Ysleta s funding request. However, the General Contract provides that IBM would be paid for these services by Schools and Libraries Support Mechanism funding earmarked for eligible services only.

If the cost of these services are included in Ysleta s funding requests, then those funding requests contain ineligible items. If IBM considers its services to be free, then the Free Services Advisory requires that the value of those services be deducted from the pre discount cost of services indicated in the funding requests. It appears highly unlikely that IBM intends to provide these services free of charge since IBM clearly stated in its

proposal that [s]ince the IBM Corporation must return a profit to its investment owners, the first consideration in pricing is earning that expected margin over our costs. (IBM Proposal at 77). Because it can reasonably be inferred that IBM, with its stated profit making mandate, is not covering the cost of providing these services itself, these costs must be built into Ysleta s request for Schools and Libraries Support Mechanism funding.

SLD is not denying these funding requests at this time on the grounds that they include a prohibited proportion of ineligible services. However, SLD notes that the documentation provided by the Applicant demonstrates that these funding requests include many ineligible services. Because these services are not eligible for funding, their cost should have been deducted from the pre discount cost of services included in the Funding Request Numbers at issue here.

C. The Proposal Selected by Applicant Emphasized Development of a Technology Plan and Structuring Technology to Maximize Schools and Libraries Support Mechanism Funding

FCC regulations governing the Schools and Libraries Support Mechanism require applicants to conduct a technology inventory/assessment, develop a technology plan that identifies educational objectives and then identify the technology resources necessary to achieve those objectives. *See Universal Service Order,* 572 573. The FCC has stipulated that funding requests must be based on a technology plan that complies with program requirements. *See id.* 573. As explained above, FCC rules also require applicants to choose the most cost effective alternative to achieve objectives. Unless applicants will seek discounts only for basic local and long distance service, they must certify on the Form 470 that all of the individual schools, libraries, and library consortia receiving services under this application are covered by either individual technology plans or higher level plans. *See* FCC Form 470, Item 20. A basic premise of the program is that, applicants determine the educational objectives to be served by technology, the technology needs, and the resources that will be required for those technology needs *before* initiating the procurement process and before filing the Form 470. If technology plans are not in place or are vague at the time of the Form 470 filing, applicants cannot present to would be vendors a clear idea of the products and services they seek.

In its proposal, IBM indicated that it could help Ysleta develop its technology plan and that it would structure Ysleta s funding requests to maximize funding requests to SLD. IBM s approach is to structure the technological aspects to ensure that the services are eligible for funding (IBM Proposal at 66 67) and to structur[e] the application for funding and supporting documentation to maximize the SLD funding. It is anticipated that all funding requests will be funded at the 90% level. (IBM Proposal at 67). Applicant, in explaining its basis for selecting IBM, stated that it considered IBM s success in obtaining awards for E Rate projects and IBM s ability to enhance the quality and viability of any District submittal seeking Schools and Libraries Support

Mechanism funding to be critically important in its decision to select IBM. (*Ysleta Board of Trustees Meeting* at B 5).

Thus, the record reflects that the overriding goal of the IBM Ysleta relationship is to maximize the SLD funding, not necessarily to promote educational goals that have been clearly defined in a technology plan. The emphasis on maximizing Schools and Libraries Support Mechanism funding is inconsistent with the design of the program to first develop a technology plan that identifies educational objectives and then the technology resources necessary to achieve those objectives. Nor is the approach here consistent with the requirement to choose the most cost effective alternative to achieve objectives. Furthermore, if IBM and the district are rewriting the technology plan after selection of IBM as the service provider, it is difficult to see how the district can ensure it is choosing the most cost effective alternative to meet its educational objectives.

D. Similar Language in Other RFPs Raised Significant Questions as to Whether the Service Provider Chosen by Applicant was Improperly Involved in the Selection Process

SLD s Service Provider Manual provides the following guidance in regard to service provider involvement in preparation of an RFP or other solicitation materials to be used in the competitive bidding process:

> The FCC understands that applicants sometimes need to seek assistance from service providers in developing RFPs. Such assistance is permissible even if the service provider plans to submit a bid in response to that RFP as long as the service provider s assistance is neutral. For example, RFPs may not be written in such a way that only the service provider who rendered the assistance could win the bid. Or, an applicant may not reveal information to the service provider assisting in the preparation of the bid that the applicant does not share with all prospective bidders. These are just two examples of assistance that would not be considered neutral.

See www.sl.universalservice.org/vendor/manual/chapter5.doc.

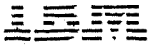
SLD has also reviewed numerous RFPs issued by applicants seeking the same type of consultant as sought by Applicant in this situation. These RFPs bear striking similarities, sometimes including virtually identical language. This creates an inference that the service provider in question, IBM, is involved before the RFP is issued or that school districts have shared the RFPs that have worked for them with others. Absent a contrary explanation, if IBM is contacting applicants before the selection process and encouraging them to use a standard RFP or other solicitation materials, SLD reasonably could infer that IBM has unduly influenced the selection process in IBM s favor.

III. Conclusion

Based on the totality of the circumstances and a careful review of all documentation submitted by Applicant in connection with the FCC Form 471 Application Number cited above, all funding requests on that application are denied. As discussed above, under separate cover, you are being sent a Funding Commitment Decision Letter concerning the Form 471 application cited on the first page of this document.

Please be advised that the Funding Commitment Decision Letter is the official action on this application by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC). Please refer to that letter for instructions regarding how to appeal the Administrator s decision, if you wish to do so.

Universal Service Administrative Company
Schools and Libraries Division



TAB 4

E-rate *--- The money to build your technology dreams*

✓ **Maximizing District E-rate funding requires significant staff and expertise**

1. Successful Districts average $100-$200 per student annually
2. The national average is $50 per student annually
3. IBM/Alpha assisted Districts average $1000 per student funding
   a. IBM provides needed staff for application planning/processing
   b. IBM expertise includes full-time E-rate specialists
   c. IBM does not charge the district for these services

✓ **E-rate eligible projects funded with IBM systems integration expertise:**

a. Faster Internet Access over fiber, wireless, etc.
b. Internet access solutions for a school community
c. Video solutions
d. District Telephony upgrade (conventional or Voice-Over-IP)
e. Wireless LAN/WAN
f. On site technical support and hardware maintenance
g. Email implementation and support
h. Cabling: fiber and copper
i. Network electronics
j. Network servers: file, web, email, etc.
k. Infrastructure upgrades (software and hardware)

✓ **District funding for year 4 (totaling over $150 Million)**

Cleveland -- $60 Million Gallup -- $15 Million El Paso -- $68 Million

✓ **District applications for year 5 (totaling over $800 Million)**

Dallas -- $125 Million Fort Worth -- $97 Million Oklahoma City -- $49 Million
El Paso -- $49 Million Albuquerque -- $42 Million Atlanta -- $30 Million

✓ **IBM E-rate specialists work with your District staff <u>throughout the year</u>**

a. Identify your District needs as you know them
b. Develop a prioritized Project List for E-rate Year 6 (7/1/03-6/30/04)
c. IBM assists District staff who build an appropriate E-rate application
d. E-rate specialists analyze free/reduced data and suggest improvements
e. IBM E-rate specialists support E-rate audit needs for the District
f. IBM and District staff manage the implementation of funded projects
g. E-rate specialists assist District staff with ongoing E-rate needs/issues/appeals

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IBM

E-rate*, the money to build your technology dreams*

- ✓ **Maximizing District E-rate funding requires significant staff and expertise**
  1. Successful Districts average $100-$200 per student annually
  2. IBM-assisted Districts average $1000 per student
     a. IBM provides needed staff for application planning/processing
     b. IBM expertise includes full-time E-rate specialists
     c. IBM does not charge the district for these services

- ✓ **E-rate eligible projects funded with IBM systems integration expertise including project management, planning, design, installation and support:**
  a. Increased bandwidth (faster Internet access)
  b. Internet access for a school community
  c. Video solutions
  d. Wireless LAN/WAN
  e. On site technical support and hardware maintenance
  f. Email implementation and support
  g. Cabling: fiber and copper
  h. Network electronics
  i. Network servers: file, web, email, print, etc.

- ✓ **School Districts working in partnership with IBM received funding through year 4 in the following amounts:**
  a. El Paso $68 Million
  b. New York City $210 Million
  c. Cleveland $158 Million
  d. Gallup $42 Million
  e. Memphis $80Million

- ✓ **IBM E-rate specialists work with your District staff throughout the year to create large E-rate funding and then to implement your technology plans.**
  a. Identify your District needs as you know them
  b. Develop a prioritized Project List for E-rate Year 6 (7/1/03-6/30/04)
  c. IBM and District staff build an appropriate E-rate application
  d. E-rate specialists analyze free/reduced data and suggest improvements
  e. IBM E-rate specialists support E-rate audit needs for the District
  f. IBM and District staff manage the implementation of funded projects
  g. E-rate specialists assist District staff with ongoing E-rate needs/issues/appeals

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IBM IBM

Value Proposition
for
IBM Strategic Technology Provider Clients

IBM, through our services group, IBM Global Services (IGS), offers education industry clients a unique combination of skills, experience, and capabilities. When engaged these traits can enhance an education organization's ability to: plan for, fund, deploy, integrate, train in the use of, and maintain technology based solutions.

Education clients today are faced with a myriad of challenges. For those meeting the Federal Communication Commission's (FCC) E-rate Program participation criteria and desiring to participate in the E-Rate program, challenges can include:

- Adequate Planning for Technology Infrastructure
- Understanding the Application Process and its Complexity
- Developing Appropriate Projects that meet E-Rate Guidelines
- Bidding and Procurement of Solutions
- Processing SLD Forms Correctly and On Time
- Meeting Funding Match Requirements
- Handling and Coordinating SLD Communications in an Appropriate and Timely Manner
- Deployment and Integration of Solutions – Successfully and On Time
- Collection of Funds from SLD

As with any complex program specialized skills are required for organizations to successfully participate in and maximize the opportunity that is presented. The E-rate Program is no different and requires specialized skills to address the challenges outlined above.

IBM's team of E-rate experts provides various specialized skills and services in a way that allows IBM's clients to maximize their funding opportunity through E-rate and minimize their investment in client staff or outside consulting to achieve the desired results.

Unique value to our clients is derived from both IBM's capabilities and IBM's solution packaging. As the world's largest technology solutions company, IBM has the broadest set of skills in the industry. Our areas of expertise and competency include:

- E-Rate Regulatory Issues
- Education Industry Infrastructure Solutions
- Project Planning
- Solution Design and Deployment
- Systems Integration
- Solution Maintenance and Support

This unique set of skills allows IBM to offer clients a single Strategic Technology Provider (STP) approach. Rather than work with various third parties or hire additional in-house staff, the IBM team can engage with the district though each and every step of the E-rate process.

IBM's E-rate offering is only valid for specific clients.
This is not a general offering.

Confidential Information

Value Proposition for E-rate Clients

IBM, through our services group, IBM Global Services (IGS), offers education industry clients a unique combination of skills, experience, and capabilities. When engaged these traits can enhance an education organization's (or consortium's) ability to: plan for, fund, deploy, integrate, train in the use of, and maintain technology based solutions.

Education clients today are faced with a myriad of challenges. For those meeting the Federal Communication Commission's (FCC) E-rate Program participation criteria and desiring to participate in the E-Rate program, challenges can include:

- Adequate Planning for Technology Infrastructure
- Understanding the Application Process and its Complexity
- Developing Appropriate Projects that meet E-Rate Guidelines
- Bidding and Procurement of Solutions
- Processing SLD Forms Correctly and On Time
- Meeting Funding Match Requirements for Districts and Consortiums
- Handling and Coordinating SLD Communications in an Appropriate Manner
- Deployment and Integration of Solutions – Successfully and On Time
- Collection of Funds from SLD

As with any complex program specialized skills are required for organizations to successfully participate in and maximize the opportunity that is presented. The E-rate Program is no different and requires specialized skills to address the challenges outlined above.

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- E-Rate Regulatory Issues
- Education Industry Infrastructure Solutions
- Project Planning
- Solution Design and Deployment
- Systems Integration
- Solution Maintenance and Support

This unique set of skills allows IBM to offer clients a single Strategic Technology Solution (STS) approach. Rather than work with various third parties or hire additional in-house staff, the IBM team can engage with the district though each and every step of the E-rate process.

IBM Responsibilities

When an organization and IBM agree that a Strategic Technology Solution (STS) approach with IBM acting a prime vendor is a desired course of action, the IBM team provides the following services for our clients:

E-Rate Project Planning

IBM will provide the appropriate assistance to review the client's current environment and desired future environment. The desired future environment will be obtained by implementing a number of interrelated projects that implement new technology infrastructure and migrate from the current client environment. Planning for these activities is crucial to district success both in terms of actual project success as well as being able to maximize E-Rate funding requests. This process also includes planning the financial aspects of a project and understanding the client's direct funding requirements.

E-Rate Regulatory Assistance

IBM will provide the appropriate assistance to understand the current regulatory environment and how that impacts client applications. Assistance will be provided in the preparation of specific forms required by the Schools and Libraries Division (SLD) as well as in responding to any audit questions posed by the SLD to the client.

E-Rate Project Implementation

IBM will provide the various solutions upon funding as desired by our clients. IBM Global Services (IGS) will provide systems integration services as defined in the agreed to IBM Statement of Work (SOW) to deliver and deploy each solution within the time frame required by the client. IBM will provide these services consistent with client procurement regulations.

E-Rate Collections

IBM will provide assistance to collect funds from the SLD including assistance with any necessary appeals or other procedural steps that may be required.

E-Rate Renewal

IBM will provide assistance with the next round of E-Rate activity based upon both parties desire to continue the relationship under the same terms as the current round. IBM will also include appropriate maintenance and support activities in each successive cycle.

Client Responsibilities

When an organization (client) and IBM agree that a Strategic Technology Solution (STS) approach with IBM acting a prime vendor is a desired course of action, the client provides the following to the project:

Executive Commitment

Success in major projects depends upon the commitment of a client's executive leadership team. The client will provide an executive sponsor (senior level executive or member of that executive's leadership team) who will be aware of the project and champion project issues that arise during the course of the project. The IBM team will report to the sponsoring executive on a regular basis as agreed to by both parties.

Strategic Technology Solution RFP

Engaging IBM in a timely manner is critical to maximizing potential funding for clients. An STS RFP will be issued and awarded in a timely manner by the client. IBM cannot engage resources on behalf of the client until this process is complete.

Matching Funds

All E-Rate projects require various levels of matching client funds. The client will commit to obtaining those funds so that once the applications are approved by the SLD the client can begin work in a timely fashion.

Project Team/Access to Information

The client will provide a day to day contact (client project manager) who will interface with the IBM project manager. In addition, the client will provide access to appropriate information about the current and desired client environments. Access to appropriate staff as necessary will be provided as well.

SPIN Number Assignment

The client will assign the IBM SPIN number to all of the E-Rate projects named by IBM. Both parties will agree on all procurement issues that may impact a client's ability to meet this responsibility early in the engagement.

E-Rate Renewal

Client will continue the IBM relationship with the next round of E-Rate based upon both parties desire to continue the relationship under the same terms as the current round.

A Strategic Technology Solution has the following benefits for our clients:

- Maximized E-rate Funding Opportunity
- Understood and Articulated Internal Funding Requirements
- Increased Number of Technology Solutions Deployed
- Improved Ability to Support and Maintain Technology
- Improved Overall District Technology Position through Integrated Solutions
- Improved Access to Information Resources for Students, Teachers, and Administrators

IBM achieves these results by packaging the STS in a manner most desirable for our clients. IBM will provide up front services to plan projects, organize activities, and assist the client in the preparation and audit of E-rate forms at NO CHARGE. IBM will implement all E-rate projects and assist with collections issues as appropriate. The client will assign the IBM SPIN number to each project submitted to the SLD.

IBM E-Rate Value Statement

IBM will provide a complete set of services to MAXIMIZE the client's e-rate funding opportunity. IBM provides UNIQUE skills that combine E-rate Regulatory Expertise with Infrastructure Technology Skills for the design, implementation, and maintenance of school district technology infrastructure. IBM will deploy these solutions as a single STRATEGIC vendor providing a single point of contact for all E-rate activities. IBM does this at NO COST and requires only that IBM be the awarded vendor for E-rate projects. IBM clients do not pay for services other than the specific projects themselves.

Client's that desire to move forward with technology solutions and are paving the way for e-business activities have a tremendous opportunity with the E-Rate program. The IBM team can provide leadership and expertise to your organization in a way that makes financial sense and can increase your ability to plan for, deploy, and maintain the technology infrastructure that is crucial to your organizations success now and into the future.

EXHIBIT 1

El Paso ISD E-Rate Round 4 Statements of Work: Identification of Required Goods

1. USF Maintenance

Total Charges	$27,121,700
Required Goods	-none-
Total, Services	$27,121,700

2. Fiber Network Exclusive Internet Access Services

Total Charges	$ 4,736,700
Required Goods	-none-
Total, Services	$ 4,736,700

3. Cabling Services

Total Charges	$ 7,867,400
Required Goods	$ 2,753,600
Total, Services	$ 5,113,800

4. Network Electronics

Total Charges	$11,636,600
Total, Required Goods	$ 6,418,579
Total, Services	$ 5,218,021

5. (Novell) Server Upgrade

Total Charges	$ 2,919,700
Total, Required Goods	$ 1,573,474
Total, Services	$ 1,346,226

6. Web and File Server Project

Total Charges	$ 6,500,600
Total, Required Goods	$ 4,102,106
Total, Services	$ 2,398,494

7. Video Solution and Installation Services

Total Charges	$ 4,374,054
Total, Required Goods	$ 1,903,053
Total, Services	$ 2,471,001

8. Email

Total Charges	$ 3,591,600
Total, Required Goods	$ 570,413
Total, Services	$ 3,021,187

9. Web Access for a School Community

Total Charges	$ 2,825,700
Total, Required Goods	$ 94,245
Total, Services	$ 2,731,455

El Paso Independent School District Technology Plan

Revised 2000-2001

CURRENTLY UNDER REVISION
SPRING 2003

Good and Getting Better

El Paso Independent School District.

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Glenna Archer, *Interim, Human Resources*

Executive Director

Luis Villalobos, *Communications and Business Partnerships*

About this Plan

This document is an update of the technology plan developed and submitted to the State in 1997.

Many of the recommendations in the earlier document have been implemented or are in the process of being implemented, but new technologies have also meant that alight changes in direction when compared to the original plan were inevitable.

This plan follows the format outlined by the Commissioner of Education for the State of Texas in the Instructions for Technology Plan Approval Process for Universal Service Fund E-Rate Discounts. The content follows many of the suggestions published in the State of Texas Long-Range Plan for Technology, 1996-2010.

The El Paso ISD technology plan is intended to be a living, working document. It will be reviewed annually by the District Technology Advisory Committee and updated as needed.

PREFACE

El Paso is an international city of approximately 690,000 residents of which 70% are Hispanic. It is the 4th largest city in Texas, 3rd fastest growing in the nation, 17th largest city in the country, and 5th poorest metropolitan area in the country. It is closer to the capital of New Mexico and Chihuahua, Mexico than to Austin. It is also a city of rich cultural heritage and diversity, where many people have met and grown interdependent.

Established in 1881, El Paso Independent School District (EPISD) is the second largest employer in the city, largest of nine school districts in the county with approximately 64,000 students, 5th largest in Texas and 51st largest in the U.S. It is one of the poorest districts, with a property-tax base that is only 70% of the state average. El Paso's close proximity to Mexico means the district has a large Limited English Proficient (LEP) population of immigrants enrolled in its bilingual program of which 13,000 students are in a low-socio-economic group and 90% receive free or reduced lunch. Their poverty and language needs put them at risk of becoming part of the disproportionately high Hispanic dropout rate. About 6,100 students are enrolled in special education classes, of these approximately 150 require adaptive technology devices and many more could benefit from technological advances.

EPISD is comprised of 55 elementary, one elementary/intermediate, 14 middle, 10 high schools and eight special campuses. The district's 1999-2000 statistics provided by Research and Evaluation reflects: 52% at-risk, 66% eligible for free and reduced lunch, 13% grade retention, and 7% residing in public housing, yet the final dropout rate for grades 7-12 is .08%. Through technology, the district seeks to promote and provide equity in educational opportunities for all students.

In 1996, EPISD received a technology-planning grant from the Texas Education Agency titled, "Revisiting Roads to the Future." The grant proposal stated that the district must reexamine its technology plan. The plan derived from this grant, maximized the potential benefits technology offered for increased student achievement, teacher and administrative management, and community involvement.

El Paso Independent School District's main focus is on providing students with an excellent, comprehensive education that will enrich their lives and prepare them for their future.

Executive Summary

In addressing the technological needs of our students, staff, and community, the El Paso Independent School District (EPISD) has established the Technology Advisory Committee (TAC) to review, revise and/or update the District's technology plan. This committee will seek to promote and provide equity in educational opportunities for all students.

This document, which is aligned to state and national standards, is designed to outline our understanding of how technology can assist EPISD in achieving the following vision:

> To participate in the fast-changing global community, EPISD will give students, educators, and stakeholders' access to information, which allows for the effective integration of technology into the learning process.
>
> We envision a community, which promotes the transition of information into knowledge and the development of questioning learners.

Delivering this vision will unquestionably require philosophical and pedagogical shifts. To address these areas, the following goals are proposed:

> *Goal 1:* Build a solid technological foundation for learning by providing an infrastructure, which gives voice, video, and data access to district information and universal access to global information.
>
> *Goal 2:* Help all students reach challenging academic standards so that they are prepared for responsible citizenship, further learning, and productive employment.
>
> *Goal 3:* Provide on-going staff development to meet district, regional and campus needs to ensure use of district technology resources.
>
> *Goal 4:* Make EPISD, technologically, a high-performance organization by focusing on results, service quality, and customer satisfaction.
>
> *Goal 5:* Ensure access to post-secondary educational opportunities and life-long learning for all stakeholders.

While technology is a means of providing assistance, it is of value only to the extent to which student achievement and student support services are enhanced. To that end, this Technology Plan identifies certain benefits and outcomes such as: Administrators can expect to be better informed about school operations and campus decision making; educators can expect greater support in the development and implementation of instructional strategies; and the district's stakeholders can expect increased opportunities to participate in the educational process along with a more efficient and equitable use of financial and human resources.

The Strategic Action Plan submitted to the state in 1997 identified several activities needing to be addressed. The following illustrates the status of those activities:

Activities	To Do	On-Going	In Progress	Completed
Goal 1: Build a solid technological foundation for learning by providing an infrastructure, which gives voice, video, and data access to district information and universal access to global information.				
Continue to assess current technological infrastructure to include structural, electrical, mechanical, asbestos removal, and telecommunication needs.		✔		
Develop a deployment plan based on the assessment.			✔	
Seek funding opportunities/ partnerships (grants, SCE, etc.).		✔		
Consider leasing equipment to decrease cost and maintenance.		✔		
Conduct annual review and report.		✔		
Implement technology training for district support personnel.		✔		
Train building administrators in basic network information, software evaluation and integration of technology into instruction.			✔	
Investigate out-sourcing.			✔	
Implement a help desk manned by a qualified technology staff.				✔
Develop and/or increase the presence of home pages.		✔		
Provide public access to the Internet from campus libraries.				✔
Align curriculum content, instructional strategies with TEKS and appropriate software.		✔		
Integrate technology into DIP and CIP.		✔		
Place technology specialist at each campus.		✔		
Provide on-going staff development to technology specialists.		✔		
Create a database of technology, which includes platform, speed, RAM, hard drive, upgrade y/n, Ethernet capability, system, and year of acquisition.		✔		
Budget to replace/upgrade technology.		✔		
Reallocate non-upgradeable technology.		✔		
Purchase workstations to provide student-to-workstation ratio of 4:1.		✔		
Purchase workstations to provide student-to-workstation ratio of 3:1.		✔		
Purchase workstations to provide student-to-workstation ratio of 1:1.		✔		
Purchase workstations to provide educator-to-workstation ratio of 1:1.		✔		
Collaborate with Special Services Department to purchase equipment for special population needs.		✔		
Ensure that adaptive hardware and software be available to every student who exhibits special needs.		✔		

Activities	To Do	On-Going	In Progress	Completed
Goal 2: Help all students reach challenging academic standards so that they are prepared for responsible citizenship, further learning, and productive employment.				
Continue annual assessment of technology resources at each campus.		✔		
Survey technology usage at campus level.		✔		
Prepare technology related expenditure reports at district and campus level.	✔			
Make a computer with graphic Internet access available to every teacher to enhance student learning and classroom management.				✔
Create a "library without walls" whereby faculty, staff, and students can access digital information globally.	✔			
Ensure that all key campus administrators have access to an appropriate computer to perform administrative tasks.				✔
Make technology available to parents/guardians of students and community members.		✔		
Ensure that multimedia-teaching tools are available across the district for classroom instruction.		✔		
Make technology available for students to use from home where applicable.	✔			
Provide opportunities for students to use universal labs.				✔
Integrate technology into all curriculum areas as specified in TEKS.		✔		
Provide information resources.		✔		
Provide opportunities for students to create web pages and use e-mail.		✔		
Provide mentorship for students with universities, colleges, and businesses.		✔		
Implement keyboarding software at the elementary level.				✔
Provide lab/classroom opportunities to utilize specific materials (i.e., TAAS review, Accelerated Reader, etc.).		✔		
Provide distance-learning sites.	✔			
Provide graphical Internet access in each classroom and library for research purposes.				✔
Provide resources for students to utilize technology in their daily learning.				✔
Offer students additional opportunities to utilize advanced applications.		✔		
Design assessments that continually monitor technology proficiencies.		✔		
Increase distance/distributed-learning opportunities for all students.	✔			
Provide student opportunities for use of the WWW and e-mail.				✔
Provide teacher training on technology integration in accordance with state mandates.		✔		
Using regional workgroups, ensure that all content curriculum is integrated with technology.		✔		

Activities	To Do	On-Going	In Progress	Completed
Outfit each classroom with a network computer for access to resources, including Internet, list serves, e-mail, etc.				✔
Provide each teacher with an e-mail account for communication and collaboration, assisting in integrating technology into the curriculum.				✔
Begin any major technology initiative at high school and work backward to ensure that graduating students are prepared for post-secondary endeavors.		✔		
Create individual school web pages.			✔	
Post student projects and student accomplishments via electronic media.				
Provide each teacher a workstation to access and post classroom information.				✔
Provide on-going technology training.		✔		
Align curriculum with technology TEKS.		✔	✔	
Provide Internet access and Distance Learning to all teachers.	✔			✔
Use network computers to access individual student data.			✔	
Use network computers to access TEKS, lesson plans, texts, etc.				✔
Participate in list serve discussion groups.	✔			
Conduct/Participate in "job-alike" meetings.	✔			
Post and access best technology practices and sites on the WWW.	✔			
Present best technology practices at local, regional, and national conferences.	✔			
Put appraisal on-line to provide immediate feedback.	✔			
Provide incentives for teacher training.	✔			
Goal 3: Provide on-going staff development to meet district, regional and campus needs to ensure use of district technology resources.				
Prepare an annual software, hardware, and training needs analysis at the district, regional, and campus levels.		✔		
Develop technology implementation training at each campus based on needs analysis.		✔		
Employ a technology resource person for each feeder pattern.		✔		
Employ a technology resource person at each campus dedicated to train and model for campus teachers.	✔			
Train the technology resource personnel.		✔		
Provide schedule of training classes that integrate technology into the curriculum.	✔			
Distance Learning opportunities utilizing T-Star Satellite Network.				✔
Integrate planning for technology into all classroom, campus, region, and district planning to ensure connectivity across the organization.				✔

Activities	To Do	On-Going	In Progress	Completed
Continue to provide targeted technology staff development based on campus needs.		✔		
Include the technology resource person in CIT planning at each campus to ensure resources are dedicated to technology.	✔			
Share successful models/programs.		✔		
Provide on-line support to all educators for immediate responses to questions and concerns.	✔			
Conduct interregional meetings of all technology resources and district staff to share ideas.	✔			
Give PDAS credit for attending technology-related training.				✔
Make computer-based training available at all times.				✔
Give stipends for after-hours assistance and training.	✔			
Form committee to plan implementation of a problem-solving process.	✔			
Train teachers/campus personnel to use and interpret disaggregated data.		✔		
Form a curriculum committee to develop strategies for delivering instruction via distance learning, based on assessed needs.	✔			
Set up and provide schedule to campus for distance learning programs.	✔			
Create outstanding technology achievement committee (TAC) to evaluate best technology practices/projects.	✔			
Recognize outstanding technology achievement on a 6-week basis, through the Board of Trustees or Ad-Com.	✔			
Submit outstanding projects to outside parties for recognition.	✔			
Provide scholarships to teachers for continual training.	✔			
Goal 4: Make EPISD, technologically, a high-performance organization by focusing on results, service quality, and customer satisfaction.				
Include technology goals in campus, region, and district improvement plans.				✔
Apply district technology guidelines for review of technology-related purchases.		✔		
Develop a plan to maintain an active inventory of equipment.	✔			
Develop a plan to maintain an active inventory of district/regional software licenses.	✔			
Utilize on-line lesson plans for access and review.		✔		
Implement an educational standards (TEKS) management system.	✔			
Establish an accountability system for technology proficiencies.	✔			
Establish a performance management system correlated to PDAS and AEIS.	✔			
Develop and implement appropriate staff development for performance management system.	✔			

Activities	To Do	On-Going	In Progress	Completed
Establish on-line access to administrator evaluation process.	✔			
Standardize on-line grade reporting and student assessment.			✔	
Develop assessment model to determine impact of technology on student attendance, teacher morale, and campus performance.			✔	
Initiate and implement policies for data access (i.e., PEIMS).		✔		
Incorporate technology use in the teacher appraisal system.		✔		
Develop abbreviated electronic personnel file.	✔			
Develop a promotional portfolio for EPISD.	✔			
Provide training on grant writing.	✔			
Provide support for implementation and management of grants.	✔			
Coordinate community efforts to expand use of technology in schools and within community partnerships.	✔			
Provide mentorship for students with universities and businesses.	✔			
Seek partnerships with technology businesses.	✔			
Seek technology grants from local businesses.	✔			
Provide access to public information via EPISD home page and studio.				✔
Define and implement a strategy for the replacement of hardware and software that becomes inoperable and/or obsolete.		✔		
Standardize software for administration.				✔
Draft a plan to address hardware security and maintenance issues.	✔			
Plan and adopt open databases for equitable access by teachers, campus/regional/and district administrators.	✔			
Engage in on-going process to ensure alignment with current and future government guidelines.	✔			
Maintain database of essential information, demographics, TAAS scores, inventories, etc.			✔	
Goal 5: Ensure access to post-secondary educational opportunities and life-long learning for all stakeholders.				
Develop plan to provide opportunities for technology use in the home.	✔			
Write policies and procedures for home use of equipment.	✔			
Implement software and computer checkout program.	✔			
Develop staff development curriculum for training parent volunteers in district labs.	✔			
Train volunteers to work as helpers in district labs.	✔			
Work toward maximizing the use of technology in existing district literacy programs.	✔			
Provide opportunities for training to parents in using technology.	✔			
Use broadcast studio to air "board meetings" and other programs providing district information.				✔

Activities	To Do	On-Going	In Progress	Completed
Use web pages to share information with parents. Include information in EPISD At A Glance.		✔		
Provide on-going updates on technology resources (i.e., on-line).		✔		
Provide dial-in access from off campus (library without walls).	✔			
Maintain a database of essential information to enhance community awareness (demographics, scores.)	✔			
Coordinate community efforts to expand use of technology in schools and within community partnerships.	✔			
Involve parents and community members in technology planning.	✔			
Provide access to campus libraries and computer centers during and after school hours.			✔	
Summarize technology plan and share with parents.			✔	
Seek to find partnerships with technology businesses.	✔			

Vision Statement

To participate in the fast-changing global community, EPISD will give students, educators, and stakeholders' access to information, which allows for the effective integration of technology into the learning process.

We envision a community, which promotes the transition of information into knowledge and the development of questioning learners.

Expected Benefits/Outcomes

- El Paso Independent School District students can expect higher performance and deeper engagement in academic endeavors by accessing and creating resources available through a variety of modalities appropriate to diverse learning styles.
- El Paso Independent School District parents can expect not only to participate more directly in their children's education but also to improve their own knowledge as parents and citizens.
- El Paso Independent School District educators and teachers can expect to be supported in the creation and implementation of instructional strategies by having access to a wider variety of resources.
- El Paso Independent School District administrators can expect to be more informed and to manage campus decision-making more efficiently through timely access and analysis of information in support of school operations.
- El Paso Independent School District taxpayers and school board members can expect more efficient and equitable use of financial and human resources.
- El Paso Independent School District stakeholders can look forward to the opportunity to participate in the educational process.
- El Paso Independent School District communities can expect wider access to diverse curricular programs because of the ability to move information and not people.

Goals

In addition to a sound background in traditional academics, today's students must be competent and confident in using a wide range of technology in a variety of settings. Today, and in the future, most career paths require the used of computers and a wide-range of other technology. In short, students must be as comfortable using a computer or other technology as they are in using a pencil and paper.

Most importantly, students must have access to technology on a regular basis in their classroom environment so they can become proficient in using it in many ways. They must be encouraged and guided to use technology as a tool to access information and to efficiently develop dynamic, effective projects.

Teachers are a key component in developing and nurturing appropriate technology use by students. Therefore, they too must have access to up-to-date technology and the appropriate training and technical support to take advantage of it. Technology then becomes a tool to assist teachers in many ways - from presenting lessons in new, dynamic fashions, to assessing individual student needs and monitoring and reporting student progress. And, teachers must be able to prepare students by teaching the concepts and skills needed for them to understand and use technology effectively.

Technology is equally important to administrators and support staff within the school district. It is essential that all staff have access to technology and the skills to use it to its best advantage.

The following goals are proposed to address the previous statements.

Goal 1 Build a solid technological foundation for learning by providing an infrastructure, which gives voice, video, and data access to district information and universal access to global resources.

Goal 2 Help all students reach challenging academic standards so that they are prepared for responsible citizenship, further learning, and productive employment.

Goal 3 Provide on-going staff development to meet district, regional, and campus needs to ensure optimal use of district technology resources.

Goal 4 Make EPISD, technologically, a high-performance organization by focusing on results, service quality, and customer satisfaction.

Goal 5 Ensure access to postsecondary educational opportunities and lifelong learning for all stakeholders.

Recent History of Technology Implementation

The El Paso ISD has been using technology in the classroom and administrative offices for approximately two decades.

Today, every classroom in the district is equipped with a minimum of one computer connected to the district's wide area network and Internet access. In addition, campuses may have additional workstations within classrooms or labs that are available for student and staff use.

Locations of these computers vary by content area and campus but include both large group lab settings and classroom settings. Students and teachers are taking advantage of a wide variety of software packages to enhance and extend many curricular areas.

We began a 3-phase project in 1998-1999 by installing workstations in all high schools, followed by middle schools and in 2000-2001 completing the elementary campuses. In addition, the majority of the campuses have a computer lab, which can range in function from math to reading to a lab where each class can visit and perform different functions such as research or group projects.

Integrating Information Technologies into the Curriculum

The El Paso ISD continually offers training to all faculty members regarding ways to integrate technology into their everyday curriculum. These technology tools help facilitate best practices for teaching and learning in the classroom, to meet group and individual student needs and to maximize each student's learning environment. Listed below are guidelines and strategies for integrating information technologies in the classroom that the district plans to follow.

- Focus on basic skills, content, and higher level thinking skills.
- Encourage lifelong learning.
- Structure learning around big ideas and meaningful concepts.
- Provide connections among the various curricular disciplines.
- Provide learners opportunities to apply skills they have learned.
- Encourage active participation in relevant real-life experiences.
- Captivate, motivate, and challenge all learners.
- Provide for deeper understanding of content.
- Offer opportunities for smaller groups and individualized instruction.
- Incorporate technology as an integral part of learning.

An on-going challenge that the El Paso ISD faces is the resources and time to properly train faculty members.

The integration of technology into the curriculum requires changes of significant magnitude in educational philosophy, classroom management, and curriculum goals. For the technology to be used optimally, teachers must be comfortable with a center- or project-based problem solving approach to learning. They must also be willing to tolerate classroom space restrictions and support students' progressing independently and at widely varying paces.

Each classroom is equipped with a multi-media workstation connected to the Internet in which teachers can utilize to enhance their curriculum. In addition, many campuses have a wide variety of peripherals to enhance their teaching. And students could use these items to embellish and amplify classroom projects.

The range of technology used in campuses across the district is as follows:

- multimedia computers
- interactive white boards
- digital cameras
- VCR's
- laptops
- scanners
- digital video cameras
- televisions
- projectors
- laserdisc players

The following depicts some of the ways that technology is integrated into the curriculum currently across the district:

- writing/reading labs
- technology education labs
- math labs
- journalism classes
- foreign language labs
- business ed classes

Integrating Information Technologies into Administration

All El Paso ISD administration utilizes technology on a daily basis. There is a variety of software currently used within the district. Below is a partial list of said software:

- Software
- Microsoft Office '97, 2000, '98
- Word, Excel, PowerPoint
- FileMaker Pro
- Adobe Acrobat
- Adobe Acrobat Reader
- Adobe PageMaker
- InteGrade Pro Gradebook
- TEAMS - absentee reporting system
- EMS - Energy Management System
- Microsoft Works
- Appleworks / Clarisworks

Staff Development for Effective Use of Information Technologies

El Paso ISD continues to experience a problem of resources to fully train staff to be successful in the use of technology.

The Training Department offers a wide variety of training classes in the area of technology software applications, curriculum integration and equipment usage. A sampling of said classes follows:

Class Title	*Description*	*Offered*
Intro to Macintosh	This class will introduce you to the Macintosh and familiarize you with the most important elements of the MacOS. You'll learn the menu system, features common to virtually all programs and other shortcuts.	January 8 March 9 April 2
Integrade Pro - HS Windows	Structured for secondary teachers, this class will introduce you to InteGrade Pro version 7.0, the District's new gradebook software. You'll learn how to create a new gradebook, set it up to use during the school year, create and enter spreadsheets that track attendance, skill mastery and even the students' end of semester grade. Participants may wish to bring a COPY of their gradebook on floppy disk.	March 27 April 24 April 28
Excel 2 Windows	Dig deeper into the rich features of Excel! This class will show you more advanced operations, such as working with multiple workbooks, advanced formulas and charting, as well as other uses of Excel.	January 19 February 19
Word 1 Mac	Go deep inside Microsoft's most powerful word processing program: Word. Part of the Office suite of programs, Word lets you create any kind of text document. You will learn how to customize Word to your tastes and needs, as well as use advanced features such as tables, graphics and linking other work into your documents.	January 11 February 6 February 23 April 20
The One-Computer Classroom	This three-hour class focuses on the use of one computer in the classroom. It features instructional purposes and student projects demonstrating content mastery. Topics include: using the Internet, Tom Snyder's software, as well as strategies for enhancing student generated material.	January 30 March 15 March 29

Assessment of needed Telecommunications Services, Hardware, Software and Related Services

El Paso ISD has existing building Local Area Networks (LAN) that have been upgraded to Ethernet speed and provide for TCP/IP and IPX protocols. 10/100 MB Ethernet switches have been provided to each campus to boost throughput on the networks by supporting simultaneous parallel connections on numerous segments. This solution has alleviated many of the congestion problems by dedicating internal bandwidth more appropriately. A large number of computers in the district are connected to an internal campus network and the majority of classrooms have multiple connection outlets for Internet access, application launching, file sharing and network printings. Every campus in the El Paso ISD has an administrative file server.

During the period covered by this technology plan, the district is planning to replace the campus 10/100 BM Ethernet switches with 10/100/1000 MB Ethernet switches. These new switches will bring all campus LAN Ethernet backbones to gigabyte capacity and provide switched 10/100 MB Ethernet bandwidth to network computers and/or classroom hubs.

To continue to support the all programs and departments within the district, the following of sample services are needed:

- Continuation of phone service to campuses and individual campuses
- Continuation of maintenance agreement for electronics and telephone systems
- Expansion of bandwidth for the Wide Area Network (WAN)
- Continuation of Internet access over the WAN
- Continuation of proxy filtering server
- Upgrade of internal networks (LANs) to support gigabit Ethernet
- Internal cabling for network access in all new and renovated facilities (also to include portables)

Budget Strategies to Acquire and Maintain Components of the Technology Plan

The El Paso ISD continues to commit a significant portion of budget dollars to support and improve the use of technology within the district, which is located in an economically poor area. In the 1999-2000 school year, the district had over 10 million dollars in the technology budget. Also the district is actively seeking any technology grants available nationwide. One of the largest technology grants is from E-Rate type of funding. Currently, we are looking into at least $30 million e-rate fund to provide the district with basic cabling, networking, and the other technology related projects. There is a perception that a growing base of financial resources and public support for an increased use of technology in education exists. However, the demand for such support is ever increasing and generally exceeds the available "local" resources. For this reason, the district tried to pass a $300-$400 million bond recently. If the bond is passed, the district will be able to allocate more dollars for the technology-related projects.

Use of Limited Budget to Implement El Paso ISD's Technology Plan

- To establish priorities according to our technology plan's vision and goals.
- To establish spending guidelines for technology purchases.
- To review the sources of funding and consider the total range of needs related to our plan's implementation.
- Creating standards and benchmarks.
- Provide initial technology training as early as possible.

Alternate Funding Sources

To fully implement the goals and adhere to the vision of this plan, it will be necessary to secure resources from a variety of public and private organizations.

Competitive governmental grants, state and federal, could provide significant support in areas in which El Paso ISD qualifies. These grants are generally targeted to meet a district's most critical needs and are highly competitive.

The district has been successful in securing funds for technology initiatives using both E-Rate and grant processes.

Universal Service Fund (E-Rate)

On May 7, 1997, the Federal Communications Commission (FCC) adopted a Universal Service Order implementing the Telecommunications Act of 1996. The Order was designed to ensure that all eligible schools and libraries have affordable access to modern telecommunications and information services. Up to $2.25 billion annually is available to provide eligible schools and libraries with discounts, often referred to as the "E-rate," for authorized services.

The Universal Service Fund, established by the Federal Communications Commission (FCC), supports this benefit, to provide for affordable access to specified telecommunications services for

all communities, regardless of location or economic strata. The not for profit Universal Service Administrative Company (USAC) is responsible for administering the Fund under the direction of the FCC. The Schools and Libraries Division (SLD) of USAC administers the Schools and Libraries Program.

Up to $2.25 billion is available each Funding Year. As of the end of October 2000, over $5.7 billion has been committed and $2.7 billion has been disbursed to schools and libraries.

Eligible schools and libraries may receive discounts on eligible telecommunication services ranging from 20 percent to 90 percent, depending on economic need and location (urban or rural). The level of discount is based upon the percentage of students eligible for the National School Lunch Program or other federally approved alternative mechanisms contained in the Improving America's Schools Act. Libraries will use the discount percentage of the school district in which they are located.

Discounts can be applied to commercially available telecommunications services, Internet access, and internal connections. Eligible services range from basic local and long distance telephone services, and Internet access services, to acquisition and installation of equipment to provide internal connections.

The El Paso ISD applied for the grant in March 1998 and received approximately $2,287,671 during the 1998-99 school year.

Telecommunications Infrastructure Fund (TIF)

The mission of the Telecommunications Infrastructure Fund Board is to help Texas deploy an advanced telecommunications infrastructure by stimulating universal and scaleable connectivity for public schools, higher education, public libraries, and nonprofit healthcare facilities. The Telecommunications Infrastructure Fund Board will also effect technology-training programs and encourage quality content that strengthens education, healthcare, and libraries in Texas.

The El Paso ISD has applied and received grant funds since 1996. The following campuses have benefited from the TIF Grants, which total $1,993,184.

Location	*Grant Amount*
Bowie High School	$248,559
Guillen Middle School	$238,946
Andress High School	$90,801
Austin High School	$85,600
El Paso High School	$99,357
Irvin High School	$98,100
Jefferson High School	$95,403
Cordova Middle School	$99,899
Hornedo Middle School	$99,381
Terrace Hills Middle School	$99,382
Wiggs Middle School	$99,855

Burleson Elementary School	$79,908
Clardy Elementary School	$79,955
Coldwell Elementary School	$79,848
Collins Elementary School	$79,015
Guerrero Elementary School	$79,812
Kohlberg Elementary School	$79,894
Logan Elementary School	$79,755
Nixon Elementary School	$79,714

Evaluation Strategies for Implementation of the Technology Plan

El Paso Independent School District actively monitors and adjusts technology implementations as part of our ongoing evaluation plan. The technology plan is revisited and revised every year by the Technology Advisory Committee (TAC) that was appointed by the executive director of Technology and Information Systems within the district. In addition, campus technology committees and campus technology resource persons provide feedback and suggestions regularly as they implement their campus technology plans that are based on this district-wide plan. Common areas that are an integral part of our evaluation process include: (1) what has been done/is being done with campus technology implementation? (2) how can the implementation be improved? and (3) what are the next steps?

The department of technology and information systems collects information on an ongoing basis in order to continually improve student learning opportunities as well as using the technology for all staff that are employed by the district. Each year members of the technology advisory committee and representatives from all campuses will gather together to discuss the implementation of technology district-wide. The information will be used to examine the school program and see what needs to be improved.

Technology surveys are employed by the evaluation process. The Technology department and Research and Evaluation Department will work together to design and implement different technology surveys. By using the results of these surveys, the district is able to identify many important technology needs and problems in the implementation of technology.

The district technology advisory committee will review and develop a plan to address the immediate needs for the implementation of the technology. They will identify areas that need further attention and work and prioritize steps that could be taken within two to three years to meet their goals.

TAB 7

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El Paso and Ysleta Independent School Districts

Preliminary Special Investigation Report on the Selection of IBM as the "Technology Partner"

June 4, 2002

We have completed the **preliminary** phase of a Special Investigation based on information received in a Code 9 letter from an anonymous writer, who signed the letter "Concerned Tax Payer."

Objective
The objective of this phase of the investigation was to obtain information on the selection methodology used by these two school districts in selecting a "Technology Partner," and determine if that method of selection violated SLD rules on competitive bidding and the need to select the most cost-effective service provider.

Scope of the Examination
The scope of this phase of the investigation was limited to an analysis of the selection criteria utilized by these two districts for the selection of the successful vendor. In the case of El Paso ISD we looked at FY 2001 and FY2002. In Ysleta ISD we reviewed only FY2002.

In future reports, we will communicate the results of the analysis of other specific issues under review, prompted by the Code 9 letter.

Background
An anonymous letter sent to SLD in January 2002, [1] made numerous claims that the El Paso Independent School District (EPISD) was misusing (or planning to misuse) funding obtained from the Universal Service Fund. While the letter pointed to several areas of concern, the focus of this investigation is the selection criteria used by the District to select its Technology Partner. The letter also mentioned that IBM was using the same technique to get selected as a vendor to the Ysleta ISD, a neighboring school district also in El Paso, Texas. Hence, Ysleta was included in the site visit conducted in El Paso.

Source Documents
For the purpose of this report, Special Investigations reviewed the following documents:

- "Request for Proposals for Strategic Technology Solution Provider" #101-00 – El Paso ISD, dated December 1, 2000.
- "Request for Proposal, Technology Implementation and Systems Integration Partner," # 22-1115-016RFP – Ysleta ISD, dated "until November 15, 2001."
- Response from IBM to the RFP from El Paso ISD, dated December 19, 2000.

[1] Anonymous letter, dated January 17, 2002, signed "Concerned Tax Payer"

Summary of Procedures Performed

1. We examined the listed documents for signs of possible SLD rule violations.
2. We interviewed Dr. Gilberto Anzaldua, Superintendent; Mr. Jack Johnston, Executive Director, Technology and Information Systems; and Mr. Clyde Pine, Jr., counsel to EPISD in El Paso, Texas.
3. We interviewed Mr. Vernon Butler, Acting Superintendent; Mr. Art Gonzalez, Executive Director, Department of Technology Information Systems; Mr. Aaron Stone, Network Services Manager; and Mr. Richard Duncan, Telecommunications Administrator, of the Ysleta ISD, in El Paso, Texas.
4. We reviewed various other documents while on site but did not request copies as both entities were in the process of sending those documents to the Selective Review Team in response to an Item 25/Competitive Bidding Review.

Findings

The following findings are the result of the investigation:

1. EPISD utilized an RFP format that did not make price the major factor in the selection of the Service Provider.

The RFP in question outlines eight criteria for selection as the successful vendor.[2] While 'price' is among the eight criteria, the RFP specifically states: "EPISD understands that a strategic partnership as described in this RFP, does not allow for firm fixed pricing, as the specific scope of work necessary for such pricing is impossible to ascertain."[3] The RFP goes on to state, "Additionally, EPISD wants to enter a partnership with the best available company or organization and recognizes that the 'best' is not always provided by the 'low bid'."[4] Finally, the RFP states, "Prospective bidders should note that this RFP does not require a firm fixed price, a cost plus proposal, or any other specific cost information."[5]

Although the RPF does make the following comment: "However, it is vitally important that EPISD get value for its dollar and be able to demonstrate this to the taxpayers of EPISD. Consequently, prospective bidders are required to provide a proposed pricing model that will:

- Be able to demonstrate throughout the life of the contract that the costs associated with this partnership are within normal and customary charges for the type of service provided.
- Be simple to administer as specific scopes of work are developed.
- Meet all statutory requirements for record keeping, reporting and auditing of public funds.
- Be flexible in working within established budgets..."[6]

nowhere in IBM's Response to the RFP is a dollar figure for the cost of services or products

[2] "Request for Proposals for Strategic Technology Solution Provider" #101-00 – El Paso ISD, dated December 1, 2000; Section 5.0, 5.1 – 5.8; pp. 3-7
[3] EPISD RFP, Section 5.7, pp. 6-7
[4] EPISD RFP, page 7
[5] EPISD RFP, page 7
[6] EPISD RFP, page 7

mentioned (other than a general discussion of standard hourly rates and assumptions of risk). [7] In fact, although we did not review the responses from the other vendors, we were informed by Mr. Johnston and Mr. Pine that "price was not an issue in this RFP." They stated that the vision was to select a "Technology Partner," then develop and cost out the specific statements of work (SOW's) *after* the contract was awarded.

Mr. Johnston stated that during the selection process IBM was the only respondent that submitted Statements of Work with the original submittal. The other three bidders promised to develop and submit SOW's within nine days of being selected. When asked how IBM could have known what specific projects were envisioned by EPISD, Mr. Johnston stated that IBM had had numerous "conversations with the previous Technology Director" (no longer with the District).

[7] Response from IBM to EPISD Request for Proposal, dated December 17, 2002 (While Investigator viewed the cited document, a copy was not obtained, anticipating a response to the Item 25/Competitive Bidding Review. At this point, the response is unavailable. However, the response from IBM to Galena Park ISD is available and is very similar to the IBM response to EPISD); pp. 31-33

2. Ysleta ISD utilized an RFP format that did not make price the major factor in the selection of the Service Provider.

The Ysleta ISD utilized basically the same format for its RFP, as did El Paso ISD.[8] While this may not be surprising, given that the districts neighbor each other, the language in both cases is strikingly similar (and in some case, identical). For example, the selection criteria are very similar; the number of criteria (8) is the same, as is the order in which the criteria are presented.[9]

In response to the question, was IBM the lowest bidder, Mr. Gonzalez, Mr. Stone, and Mr. Duncan all responded, or agreed, that "this is not a price-based RFP. It is project-based." Which meant, they expanded, that that there was no price attached to the response – the vision was to select the vendor and negotiate a contract after the selection.

Conclusion

We initiated a Special Investigation as a result of correspondence received from an anonymous "Concerned Tax Payer" in El Paso, Texas. The writer alleged that the El Paso ISD and IBM had violated SLD's rules on competitive bidding; had entered into agreements to purchase products and services for highly-inflated prices, and had not allowed other vendors to participate.

This phase of the investigation focused specifically on the selection criteria used to select IBM as the Service Provider. Because both school districts used an RFP that did not ask for pricing of any kind, such a selection instrument does not allow for subsequent review to determine if the Applicant selected the most cost-effective service provider. In addition, such an instrument violates, at least in principle, the requirement in the competitive bidding processes of SLD, that price must be the major factor. In these cases, price was not a factor at all in the selection of IBM.

Finally, although several major national (and international) vendors participated in the competitive bidding process of both El Paso and Ysleta,[10] the criterion, which asks for knowledge and specific successful experience in the E-Rate Program,[11] clearly favors IBM over most other competition.

[8] "Request for Proposal, Technology Implementation and Systems Integration Partner," # 22-1115-016RFP – Ysleta ISD, dated "until November 15, 2001;" Section 3; subsection 3.7.1 – 3.7.8; pp. 11-14
[9] Ysleta RFP, pp. 11-14
[10] Responses to Item 25/Competitive Bidding Review from both El Paso and Ysleta ISD's
[11] Ysleta RFP, subsection 3.7.6, "District funding considerations" p. 13; and comments to the Investigator by Mr. Johnston and Mr. Pine (EPISD) and Mr. Gonzalez, Mr. Stone, Mr. Duncan (Yselta ISD)

IBM has reportedly told numerous other school districts throughout the country that they can duplicate the successful experience El Paso ISD had in FY2001, and we have seen similar "non-price-type" RFP's used where IBM is the successful bidder.[12] Associated with these contract awards are very large-dollar requests from the Applicants in these cases. Therefore, we recommend that the issue of "non-price-type" RFP's, as described here, be analyzed by SLD senior management and legal counsel and a determination reached as soon as possible so that the decision may be applied to the numerous other IBM-related requests that are pending.

Ray Mendiola
Special Investigations
Schools and Libraries Division

[12]RFP's for Galena Park ISD; Fort Worth ISD; Dallas ISD

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El Paso and Ysleta Independent School Districts

Preliminary Special Investigation Report on the Selection of IBM as the "Technology Partner"

June 5, 2002

We have completed the **preliminary** phase of a Special Investigation based on information received in a Code 9 letter from an anonymous writer, who signed the letter "Concerned Tax Payer."

Objective
The objective of this phase of the investigation was to obtain information on the selection methodology used by these two school districts in selecting a "Technology Partner," and determine if that method of selection violated SLD rules on competitive bidding and the need to select the most cost-effective service provider.

Scope of the Examination
The scope of this phase of the investigation was limited to an analysis of the selection criteria utilized by these two districts for the selection of the successful vendor. In the case of El Paso ISD we looked at FY 2001 and FY2002. In Ysleta ISD we reviewed only FY2002.

In future reports, we will communicate the results of the analysis of other specific issues under review, prompted by the Code 9 letter.

Background
An anonymous letter sent to SLD in January 2002, [1] made numerous claims that the El Paso Independent School District (EPISD) was misusing (or planning to misuse) funding obtained from the Universal Service Fund. While the letter pointed to several areas of concern, the focus of this investigation is the selection criteria used by the District to select its Technology Partner. The letter also mentioned that IBM was using the same technique to get selected as a vendor to the Ysleta ISD, a neighboring school district also in El Paso, Texas. Hence, Ysleta was included in the site visit conducted in El Paso.

Source Documents
For the purpose of this report, Special Investigations reviewed the following documents:

- "Request for Proposals for Strategic Technology Solution Provider" #101-00 – El Paso ISD, dated December 1, 2000.
- "Request for Proposal, Technology Implementation and Systems Integration Partner," # 22-1115-016RFP – Ysleta ISD, dated "until November 15, 2001."
- Response from IBM to the RFP from El Paso ISD, dated December 19, 2000.

[1] Anonymous letter, dated January 17, 2002, signed "Concerned Tax Payer"

Summary of Procedures Performed

1. We examined the listed documents for signs of possible SLD rule violations.
2. We interviewed Dr. Gilberto Anzaldua, Superintendent; Mr. Jack Johnston, Executive Director, Technology and Information Systems; and Mr. Clyde Pine, Jr., counsel to EPISD in El Paso, Texas.
3. We interviewed Mr. Vernon Butler, Acting Superintendent; Mr. Art Gonzalez, Executive Director, Department of Technology Information Systems; Mr. Aaron Stone, Network Services Manager; and Mr. Richard Duncan, Telecommunications Administrator, of the Ysleta ISD, in El Paso, Texas.
4. We reviewed various other documents while on site but did not request copies as both entities were in the process of sending those documents to the Selective Review Team in response to an Item 25/Competitive Bidding Review.

Findings

The following findings are the result of the investigation:

1. **EPISD utilized an RFP format that did not make price the major factor in the selection of the Service Provider.**

The RFP in question outlines eight criteria for selection as the successful vendor.[2] While 'price' is among the eight criteria, the RFP specifically states: "EPISD understands that a strategic partnership as described in this RFP, does not allow for firm fixed pricing, as the specific scope of work necessary for such pricing is impossible to ascertain."[3] The RFP goes on to state, "Additionally, EPISD wants to enter a partnership with the best available company or organization and recognizes that the 'best' is not always provided by the 'low bid'."[4] Finally, the RFP states, "Prospective bidders should note that this RFP does not require a firm fixed price, a cost plus proposal, or any other specific cost information."[5]

Although the RPF does make the following comment: "However, it is vitally important that EPISD get value for its dollar and be able to demonstrate this to the taxpayers of EPISD. Consequently, prospective bidders are required to provide a proposed pricing model that will:

- Be able to demonstrate throughout the life of the contract that the costs associated with this partnership are within normal and customary charges for the type of service provided.
- Be simple to administer as specific scopes of work are developed.
- Meet all statutory requirements for record keeping, reporting and auditing of public funds.
- Be flexible in working within established budgets..."[6]

nowhere in IBM's Response to the RFP is a dollar figure for the cost of services or products

[2] "Request for Proposals for Strategic Technology Solution Provider" #101-00 – El Paso ISD, dated December 1, 2000; Section 5.0, 5.1 – 5.8; pp. 3-7
[3] EPISD RFP, Section 5.7, pp. 6-7
[4] EPISD RFP, page 7
[5] EPISD RFP, page 7
[6] EPISD RFP, page 7

mentioned (other than a general discussion of standard hourly rates and assumptions of risk).[7] In fact, although we did not review the responses from the other vendors, we were informed by Mr. Johnston and Mr. Pine that "price was not an issue in this RFP." They stated that the vision was to select a "Technology Partner," then develop and cost out the specific statements of work (SOW's) *after* the contract was awarded.

Mr. Johnston stated that during the selection process IBM was the only respondent that submitted Statements of Work with the original submittal. The other three bidders promised to develop and submit SOW's within nine days of being selected. When asked how IBM could have known what specific projects were envisioned by EPISD, Mr. Johnston stated that IBM had had numerous "conversations with the previous Technology Director" (no longer with the District).

[7] Response from IBM to EPISD Request for Proposal, dated December 17, 2002 (While Investigator viewed the cited document, a copy was not obtained, anticipating a response to the Item 25/Competitive Bidding Review. At this point, the response is unavailable. However, the response from IBM to Galena Park ISD is available and is very similar to the IBM response to EPISD); pp. 31-33

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This phase of the investigation focused specifically on the selection criteria used to select IBM as the Service Provider. Because both school districts used an RFP that did not ask for pricing of any kind, such a selection instrument does not allow for subsequent review to determine if the Applicant selected the most cost-effective service provider. In addition, such an instrument violates, at least in principle, the requirement in the competitive bidding processes of SLD, that price must be the major factor. In these cases, price was not a factor at all in the selection of IBM.

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[9] Ysleta RFP, pp. 11-14

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Ray Mendiola
Special Investigations
Schools and Libraries Division

[12] RFP's for Galena Park ISD; Fort Worth ISD; Dallas ISD

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FCC COR01-24-02666000808
FY 01

January 17, 2002

USAC, Schools and Library Division
Client Service Bureau
3833 Greenway Dr.
Lawrence, KS 66046-5444

TAB 8

Dear Sir or Madame:

It is not easy for me to do this, but I am writing as a concerned citizen of the El Paso Independent School District to inform you of improprieties with a large, Federally sponsored project currently underway at the District. In all my years of working in the Educational field, I have never witnessed a greater perversion of both the law and the facts of a project as presented to the School Board and the public at large; at least in terms of the dollar magnitude and purpose of such an undertaking. I am referring to the $66 million Educational Rate Discount (or ERATE) project with IBM. My conscience will not allow me to sit by quietly without presenting information that has missed and not made public.

There are three general areas that should be of concern relative to this project. The first involves the need for such a project. The second concerns apparent violations of Federal and State rules governing the ERATE program. The third has to do with lack of project information for the Board and the public.

Why this Project?

The Educational Rate Discount program was conceived a few years back to help districts and libraries improve their telecommunications infrastructures to provide information technology goods and services to end users. In the District's case, this would be directly to the students. That purpose must be kept firmly in mind when reviewing what is going on with IBM's program for EPISD for this current ERATE program year.

The program allows for certain eligible activities to be funded based on the number of students participating in the "Free and Reduced Lunch Program". The first issue with the IBM offering concerns the number of schools actually certified to be in the 90% (highest bracket of need) category for Free and Reduced Lunch participation. For the first few years of the program, the District has certified around 30 schools (depending on year-to-year statistics). When IBM took over the development of the actual application for funding, part of their sales pitch was to find a way to increase the number of schools showing the highest participation in the Free and Reduced Lunch program. The higher the participation (in general terms) in the Free and Reduced program the greater the probability of receiving ERATE funding. In fact, if an application has a participation rate less than 90%, then the odds of receiving funding would be next to zero given the enormous competition for ERATE dollars across the nation. Somehow, IBM managed to certify over 50 schools at the 90% level. How they came to that level is something that needs to be scrutinized much more carefully and in the open for all to see. On its face, this certification reeks of fraud and should be investigated. How were they able to accomplish in a few weeks what District personnel have been unable to do since the inception of the ERATE program? The implication of a higher Free and Reduced lunch rate simply means more funding.

Once IBM was able to insure a significant base of "poor schools" to assure maximum funding, then the next goal was to create a project to chase that funding. It is important to note there in no detailed long-

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range plan specifically driving the IBM solution. IBM prepared their plan with minimum input from the District just prior to its ERATE application submission back in January 2001. As a result, IBM is driving the direction of technology in the District for years to come. In its most basic form, IBM's plan is to implement a massive, server-based solution that relies on extensive fiber optic connectivity throughout the District. Upon completion this wide area network will connect every student and administrator to a series of file servers, provide email, and connect to the World Wide Web.

Conceptually, there is nothing wrong with the plan. It will however, require large sums of money for the purchase of the servers and other electronic networking equipment to perform this function, but more importantly, it will produce a heavy reliance on IBM for future maintenance to keep it all operational. The District does not have the resources for a maintenance program of this size and scope. If asked, IBM will rightly claim that maintenance expenses are eligible for future ERATE funding. They will probably not mention the debate currently raging in Washington D.C. concerning the fate of future funding of the ERATE program. There is absolutely no guarantee of future funding for what IBM will demand in order to keep their equipment operational. In the case of a loss of Federal support, where will the District turn for the money to keep its extensive, centralized server-based network operational? No one has seriously and publicly explored this question.

More importantly, a review of the "need" for such a network is essential. With some exceptions, the District has a T1 connection for data and in most cases another connection for voice communications to every campus. This arrangement works well enough for the voice connectivity but is not always the best solution for the data side of the operation. Nevertheless, the District's data network does function. All too often however, access to the Internet is slow simply because of a lack of bandwidth out to the Internet. For years, administrators have clamored for more bandwidth to address the need for faster connectivity, especially in the high schools. There is certainly room for improvement.

As stated, the IBM solution is to provide a server farm, in a centralized facility or facilities, to provide all files and Internet connectivity in a "remote" fashion. The computer user has little more than a "dumb terminal" that gets all of its instructions and files from somewhere else. Additionally, the plan calls for a private network of fiber connecting all facilities. If done correctly, the plan should produce faster connections—and it will have to! The user on this network will eventually have limited or no hard drive to store files on, and possibly no way to introduce a diskette or CD into a computer for local viewing of files. If the fiber system (or whatever it turns out to be) is not thoroughly robust then the District will inherit a much worse problem with connection and file transfer speeds than ever before, and will pay a fortune for it! This portion of the project is daring at best and something that should be studied in great detail before implementation.

Unfortunately, time is in very short supply. The ERATE program mandates that all aspects of this project be completed on or before the end of September 2002. The fiber network portion of this project alone is a massive undertaking that would normally take much longer to plan out and implement. By January, the District and IBM will have a mere nine months to complete all aspects of the project after essentially starting the planning phase back in the Fall of this year.

By comparison, consider what the District goes through to design and implement a new school. Much thought and effort goes into each of these projects, and they can take a year or longer to compete. While everyone wants the construction of a new school to show quick progress, there are many practical and legal reasons while a thoughtful process must be followed. In the case of this networking project, the keys to the entire process have been handed to IBM with a mandate to make it happen in record time. Rushing projects of this size have historically not always been in the best interest of the District.

The central question still remains—is this project the most cost effective way to address what is basically a plan to "speed up" network connectivity? The answer is—"no". There are ways and means to address the issue outside the IBM solution and at considerably less cost. There is also a strong argument that the EPISD network is not seriously broken enough to warrant such a massive overhaul. There would be trade offs with any plan, but the rushed IBM solution will have a costly price tag this year and in the years to come. The District has simply not thought this through all the way.

Potential Legal Problems?

The IBM program now underway was studied and planned by IBM with relatively little input by the District. Additionally, the District's ERATE submission was hurried to the Board for approval back in January of 2001 with minimal staff review or input. By internal Staff admissions, not all aspects of the IBM proposal were fully appreciated at the time of submission. It appears IBM's plan was to put in the maximum amount of eligible services and equipment up front based on its server-based solution, then take more time to develop a plan for the actual implementation once the project was funded.

Upon award in the Fall of 2001, District officials approached the Board to approve the first phase. IBM put on a slide show informing the Board of the process, direction and planned outcome. The Board approved a lump sum of $1.7 million dollars to start the project. IBM made it clear at this meeting that the "start" of the project would be to produce a plan, based on the technology needs of the District, to effectively utilize the ERATE funding. The Board authorized initial funding to undertake what is clearly a "consultative service". That point must be stressed, because the Schools and Libraries Division of the Universal Services Corporation (government entity regulating ERATE) has very specific rules pertaining to consulting services. Specifically, the government states that:

> Costs of expertise in areas such as initial planning, consulting, development, of technology plans, application assistance, and program advice are not eligible.

This information can be verified by accessing the SLD web site at www.sl.universalservice.org . Refer to the "Reference" area then select "Eligible Services List" to get a detailed accounting of eligible services under the ERATE program. A review of the "Miscellaneous" category will produce a list of eligible and ineligible services for consulting.

IBM has consistently avoided answering any questions on the consultation fee in this project even under direct questioning. Had they addressed previous public attempts by the Board to answer that question, then they would have gone on record as charging what amounts to a questionable if not illegal consultation fee. They even went as far as warning Board members to exercise caution when talking about planning or consulting related functions. They made it clear they did not want the SLD to get the wrong idea. How much is being charged for consultation services in this project is unknown, but its eligibility is not. If the SLD were to fully understand what IBM is doing, it could seriously jeopardize the funding for this and future projects. Incidentally, nowhere has the Board or the public been advised as to IBM's overall project planning and management fees. It is usually a considerable percentage in a project of this nature, but so far is unknown.

There is yet another legal issue that needs to surface. This concerns a potential violation of State bidding laws. Specifically, the District cannot allow a third party (IBM in this case) to assume its role in selecting vendors to provide information technology equipment. IBM is currently well underway in re-cabling much of the District's buildings and portable classrooms through Desert Communications, Inc. of El Paso. IBM made that selection and is project managing this effort. IBM will likely claim that the cabling portion of the project is a "service", and that State law allows IBM to act on behalf of the District in the

case of rendering a service. That argument would be true if IBM/Desert Communications were to provide the cabling installation only, but that is NOT what is happening. In fact, nearly $2 million in cabling equipment has been purchased for installation by Desert Communications. No bid of any kind was conducted for the material in this portion of the project. Given the highly competitive nature of data cabling in our community, it is questionable whether the District is receiving the best value for its $7 million cabling investment.

EPISD Board and Public Largely Uninformed

Throughout this entire project, the EPISD Board has been convinced and still believes this effort is both good for the students and faculty. They also believe this project will be completed on time and within budget. Board members have been told this project will greatly improve data communications capabilities for the students of the District. Sadly, most of this is nothing but pure hype.

To begin with, the Board has no comprehension of the sheer magnitude of the proposed changes to the District's data network structure, especially given the aggressive time line mandated by the ERATE program. Furthermore, the government will not allow any extensions. The District will likely need to rely on successive ERATE funding years to both tune the final product and keep it maintained. As mentioned earlier, this will become an expensive, long-term commitment with no guarantees for additional Federal funding.

The Board has also been assured that a significant amount of the funding will be open to local contractors to bid on. To date, only one local contractor, Desert Communications, Inc. has been the benefactor of that policy. This is not surprising since DCI has been a loyal IBM partner for many years. Also, as mentioned above, the cabling portion of the project has been exclusively awarded to DCI. DCI is also slated to receive the sale of the network servers as well. That element of the plan will cost millions of dollars, and if that does occur, then it will likely be done without any noticeable bidding process governing the sale. That appears to be the plan from behind the scenes.

Another area of great concern with the Board is the timely expenditure of the funds. As this project unfolded in September and October of 2001, District staff conceded during internal meetings that it was never the intent of this project to utilize all funding planned for by IBM. This was primarily because all of the funding was not needed...at least by internal estimates. Since there was little time to prepare the initial application for ERATE funding back in January of 2001, IBM "aimed for the moon and stars" with the intent of paring down the project once funding was secured. At least that was the impression District staff had of the project in the beginning. The Board even went so far as to carefully warn staff to spend the funds and not to create another "Ninth Grade Initiative" problem of a year ago. In effect, the Board opened the door for wasteful and excessive spending without really being aware of it.

At this time, there appears to be very robust plans to utilize all funding with little regard to need. The data cabling is a good example of this. The District has spent millions on high end cabling over the past 5 years. For the most part, all campuses and administrative facilities have been cabled and are capable of handling high data rates for years to come. In fact, many of the campuses were cabled with the intent of those systems remaining viable for 15-20 years. Manufacturer warranties in place at many of the campuses are supposed to guard against the need to re-cable based on throughput needs for many years to come. The reality is that IBM appears to be searching for ways to spend the millions they budgeted for cabling, even if that includes removing perfectly good data cable in the process. Again, the mentality is "better spent than unspent". The unfortunate reality is that for every dollar encumbered, the District is responsible for $.10. That ten percent share may not sound like much, but over the entire project, it

amounts to approximately $6.6 million in opportunity lost for such things as building renovation, books, teacher training and retention to name a few needs. The list of urgent priorities in the District is long.

Bottom Line

There is no disputing the need to improve the networking systems at EPISD. No one can seriously argue that the District must avoid being on or near the cutting edge of technology. If for no other reason, the educational well being of our students should always be the reason for undertaking detailed and sweeping technology initiatives. In the case of this year's ERATE project, it appears that greed and fear is more at work than addressing the need.

The District Board and Staff started this project with the best of intentions, but in the rush to get this extensive program underway, corners were cut essentially allowing a major contractor to take over what should be the District's responsibilities—to both plan and manage its own technology infrastructure re-development. Of equal concern, the legal questions that hover over this project should warrant a thorough investigation before more matching funds are dolled out and we get farther down the road. The farther our District gets into this project, and if elements are found to be outside the bounds of the ERATE program (speaking hypothetically), then the risk of repayment and loss of funds exists.

It is hard to believe that anything short of another "Ninth Grade Initiative" disaster is underway again. The chances are slim that IBM will truly complete this project within the time remaining and as conceptually planned. No doubt IBM will claim completion when the time comes, but it is doubtful anyone will really understand all the performance measures thoroughly enough to judge successful completion. The project is unclear enough and time is short enough to ensure this outcome.

The real irony here is the "hay" IBM has already made with this project. Talks are currently underway to emulate the "success" of the El Paso ISD ERATE win at Ysleta ISD. It appears that someone at YISD is envious of the millions gained by EPISD and is eager to jump on the bandwagon with IBM for the upcoming ERATE funding year. The temptation of handing over IT responsibilities to someone else is apparently too great. I can only hope that YISD's project is better planned than the one with my District.

Your interest in this matter would be greatly appreciated by the parents, students and taxpayers of the District. Thank you for your time and consideration.

Sincerely,

Concerned Tax Payer

cc:

El Paso Times
KVIA
KTSM
El Paso ISD Board President
Texas Education Agency
Schools and Library Division, USAC
Federal Bureau of Investigation

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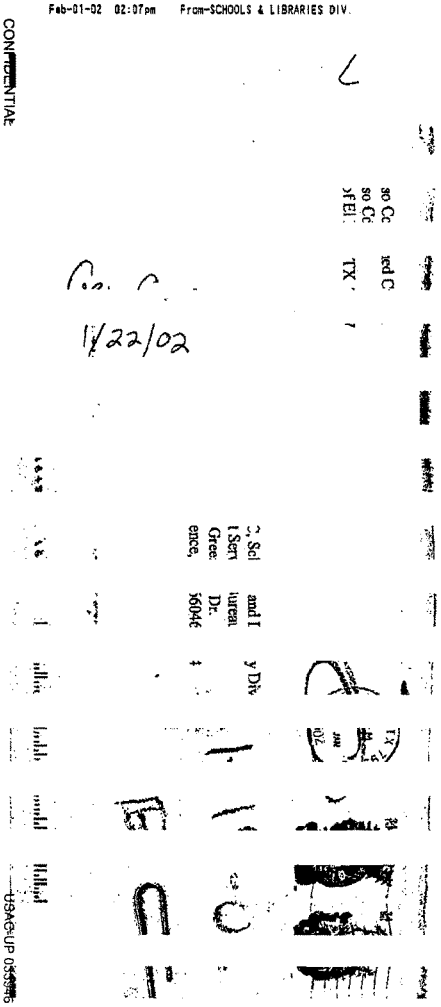

USAC-UP 05

FUNDS FOR LEARNING
BRINGING TECHNOLOGY TO THE CLASSROOM

TAB 9

VIA FACSIMILE 915-587-1161 *(5 PAGES)*

December 26, 2001

Jannett E. Sarracino
Project Administrator, Technology & Information Systems
El Paso Independent School District
6500K Boeing Drive
El Paso, Texas 79925

Jannett:

It was a pleasure meeting with you and the rest of your team last week. You raised a number of important E-rate issues during our meeting, including:

- Service/Product Substitution
- Equipment Moves
- Competitive Form 470 Process
- Network Management Software
- Use of E-rate Funds

I would like to address each of these items for you in more detail.

SERVICE/PRODUCT SUBSTITUTION

The SLD has posted very clear guidelines regarding product substitutions. Here is a hyperlink to the rules and procedures for handling a service substitution:

http://www.sl.universalservice.org/reference/ServiceSub.asp

The basic criteria are:
- the substituted product or service has the same functionality as the original proposal,
- the substitution does not result in an increase in the percentage of ineligible services or functions,
- the substitution does not violate any contract provisions, and
- the requested change is consistent with the controlling Form 470 and any Request for Proposal for the original services.

This is a simple, somewhat routine procedure. The SLD will ask what you originally planned to purchase and what you would like to substitute for it. Also, you will be asked for a detailed parts list and pricing schedule.

EQUIPMENT MOVES

The FCC does not provide direct guidance on the statute of limitations for equipment moves. However, there are at least two items that provide indirect guidance on the subject. Item 32 of the Form 471 is a certification that applicants will maintain records for five years. Therefore, the most conservative approach for equipment moves would be to keep "c-rated" equipment at the same location for five years. After that, the school could move it wherever it likes.

However, keeping networking equipment at the same location, providing the same function for five years may not be a viable solution in all cases. The SLD seems to acknowledge this reality on its web site. Item II(6)(b) of the SLD's suggested document checklist (http://www.sl.universalservice.org/data/pdf/CompDocChecklist.pdf) refers to keeping a "Replacement Log reflecting the replacement or upgrading of any E-rate funded equipment."

Bottom line: there is no clear rule, but a common sense approach would be to keep equipment at the site for which it was originally intended for as long as possible (and certainly the funding year in which it was installed), and, then, move it if, and only if, there are sound, documented, technical reasons for the move. If an applicant feels it must move a piece of E-rate supported hardware from one school to another, it's best to move it, if at all possible, to another school with the same discount rate --eg, from a 90% school to a 90% school or at least to an 80% school.

COMPETITIVE FORM 470 PROCESS

We have reviewed the Year 5 Form 470 that the District has posted on the SLD's web site. This Form 470 is virtually identical to dozens of other Forms that have been posted during the last few months. We urge the school district to note carefully the cautionary information we have set forth below.

The E-rate application process involves several steps. The first, the filing of the Form 470 application, is the moral equivalent of issuing an RFP. This form must be posted on the Web site of the Schools and Libraries Division for at least 28 days to give all interested vendors a chance to respond. Because one goal of the Telecommunications Act of 1996 was to promote competition in the delivery of telecommunications services, the Federal Communications Commission has been adamant about enforcing this rule.

The Schools and Libraries Division is increasingly concerned about arrangements in which technology consultants help school districts plan their networks and then control the early stages of the E-rate application process, including the selection of which companies will be used. Although there is no prohibition on a winning bidder providing application assistance after it has won a contract that was signed pursuant to a Form 470 application, there is strong concern about vendors who are too closely involved in the early stages of the process.

In Chapter 5 of its online Service Provider Manual, "Service Provider Role in Assisting Customers," the SLD writes:

> "The fundamental principle on which the E-rate Program is based is that the applicant has conducted a fair and open competitive procurement by which they decided upon the services they are ordering for E-rate discounts. In order to be sure that such a fair and open competition is achieved, it is imperative that Service Providers remember that their marketing discussions with applicants must be neutral so as not to taint the competitive bidding process. That is, the applicant should not have a relationship with the Service Provider prior to the competitive bidding that would unfairly influence the outcome of a competition nor would furnish the Service Provider with 'inside' information or allow them to unfairly compete in any way."

Thus, if the district's intention is to choose a strategic technology partner from whom it intends to purchase E-rate eligible services or products, it must make that clear when it files a Form 470. In addition, if the successful vendor must respond to an RFP to be in contention, that fact too must appear in the Form 470. To our knowledge, the district has not posted such a Form 470. Furthermore, we believe there's a serious question whether this type of procurement, where you are in essence "bundling" the procurement of eligible and ineligible services is even permissible under E-rate rules regulations.

This SLD document goes on to say:

> "The FCC understands that applicants sometimes need to seek assistance from Service Providers in developing RFPs. Such assistance is permissible even if the Service Provider plans to submit a bid in response to that RFP as long as the Service Provider's assistance is neutral. For example, RFPs may not be written in such a way that only the Service Provider who rendered the assistance could win the bid. Or, an applicant may not reveal information to the Service Provider assisting in the preparation of the bid that the applicant does not share with all prospective bidders."

Further, the document adds:

> "Service Providers may offer technical assistance on the development of a technology plan, so long as that assistance can be interpreted as neutral and in no way as having an undue influence on the applicant's ability to conduct a fair and open competition for the necessary technology services and products."

In addition, this document specifies:

> "Service Providers should not be preparing Requests for Proposals (RFPs) for the applicants. The applicants are responsible for this part of the competitive bidding process. While Service Providers may contribute information to help applicants prepare the RFP, the Service Provider may not provide the completed product."

In a posting to its Website, entitled "Pitfalls to Avoid in Filing Form 470," the SLD also cautions:

> "Many Service Providers offer to complete the E-rate forms for their clients. It is important to remember that applicants—and only applicants—can sign and file their Form 470. The signing of a Form 470 by a Service Providers, or the listing of a Service Provider representative as the Form 470 contact, are considered by SLD and the FCC to be violations of the competitive bidding requirements of the program. The reason is that it appears that the applicant has a pre-existing relationship with that Service Provider. This appearance of such a relationship compromises the open and fair quality of the competition that is the subject of the Form 470. As a result, those Forms 470 signed by Service Providers, or listing Service

> Provider representatives as contacts, will be rejected; any Form 471 citing such Forms 470 will be rejected."

On July 20, 2001, the Federal Communications Commission released a document, in an appeals case involving Total Communications, Inc., and Site Link Communications, Inc., that detailed how the SLD had rejected the applications of more than 150 school districts because of concerns over the relationship between a consultant and the winning vendor. In each of the cases, the "applicants apparently entered into business relationships with Total Communications, Inc. (Total Com), where in Total Com agreed to serve as a 'consultant' to the applicant and assist them in obtaining supported services and vendors to provide such services for Year 3" of the E-rate program. The FCC also noted that the record showed that all of the applicants eventually selected Site Link as their service vendor.

The SLD rejected the applications because, among other reasons:

> "the contracts between Site Link and the applicants made Total Com a third-party beneficiary of the contracts, and consequently, when Total Com reviewed the contracts submitted by Site Link it had a direct financial interest in the contract."

The SLD also noted that a comparison of competing bids showed that the consultant selected the vendor's proposals "even when comparable or updated equipment was offered in the competing bids at roughly half the price of that in the Site Link proposals, and some of these competing bids indicated that Total Com did not provide the detail necessary to enable bidders to formulate adequate bids."

The FCC did direct the SLD to review each of the applications individually, but acknowledged "we do believe that SLD has identified potentially serious issues surrounding the applications." Based on this record, we expect that at least some, if not most of these applications will still be rejected by the SLD when it reviews their individual circumstances.

At the quarterly meeting of the Schools and Libraries Committee in October, the SLD staff reported that the majority of calls it receives to its "whistleblower hotline" now involve allegations that schools have failed to follow the program's competitive bidding rules.

Further, because of the volume of the funding commitments the district has received in the past, it is a potential candidate for one of the SLD's "high-risk" audits, conducted by the accounting firm of Arthur Andersen. The school districts of New York, Los Angeles and Chicago have already been subjected to these. As part of this process, Athur Andersen asks to see documentation that the districts did, in fact, hold fair and open bidding competitions for their E-rate-related work, and that the bidding was, in fact, still open when the Form 470 was posted. We believe that as each year of the program passes, the SLD and FCC will get tougher on districts that are found to be in violation of these rules. Even in cases where equipment is installed and services have been delivered, districts may be required to repay the program for funds they have received if they are found to have violated the laws and regulations that govern the program.

NETWORK MANAGEMENT SOFTWARE

In our meeting last week, Steve Cry made at least one reference to Tivoli network management software being installed with E-rate funds. Richard Nyquist of the SLD confirmed for me on December 19, 2001, that under no circumstance is Tivoli software (or similar management/monitoring software) eligible for E-rate support.

USE OF E-RATE FUNDS

The SLD carefully reviews how E-rate funds are actually used. It is important that only eligible products and/or services are used with the E-rate funds. Furthermore, it is critical that E-rate discounted products/services only be delivered to schools that qualify for support.

In your case, you indicated that the entire project was erroneously funded for all EPISD schools, instead of only the fifty-two 90%-discount schools in the district. Based on those facts, it appears that approximately half of the Year 4 internal connections funding is not available for use.

I would be happy to discuss these issues with you in more detail. My phone number is 405-341-4140 x100.

Sincerely,

John D. Harrington
Vice President, Operations

TAB 10

Universal Service Administrative Company

Kristy L. Carroll
Associate General Counsel

This facsimile may contain information that is privileged, confidential, and exempt from disclosure. It is intended for use only by the person to whom it is addressed. If you have received this in error, please (1) do not forward or use this information in any way; and (2) contact me immediately. Thank you.

Date: October 3, 2002

To: Mark Seifert, Deputy Division Chief, Telecommunications Access Policy Division, Federal Communications Commission Wireline Competition Bureau (202) 418-7361

Tom Bennett, Assistant Inspector General for Audits, Federal Communications Commission Office of the Inspector General, (202) 418-2811

Kim Bumstead, Senior Auditor, Federal Communications Commission Office of the Inspector General, (202) 418-2811

From: Kristy L. Carroll, (202) 263-1603

Number of pages: 20, including cover

PRIVILEGED AND CONFIDENTIAL

Mark, Tom and Kim–

Attached please find SLD's preliminary draft analysis of the issues identified in certain funding requests associated with IBM Corporation.

Analysis of Certain Schools and Libraries Support Mechanism Funding Requests Associated With Ysleta Independent School District and IBM Corporation

PRELIMINARY DRAFT—PRIVILEGED AND CONFIDENTIAL

Introduction

In the fall of 2001, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) received an anonymous letter alleging program rule violations by some Texas school districts and IBM Corporation (IBM). The letter focused on the El Paso Independent School District (EPISD), but also alleged that IBM was using the same approach with the Ysleta Independent School District (Ysleta). In response to that letter, SLD determined that its contractor's Special Investigator should visit EPISD and Ysleta, a neighboring school district in Texas, both of which had selected IBM as their service provider. EPISD was funded for IBM's services in Funding Year 2001; and both school districts applied for funding with IBM in Funding Year 2002. During the site visit, SLD obtained documentation regarding the districts' funding requests. In addition, these and other school districts associated with IBM funding requests are undergoing item 25 reviews and as a part of that review, have submitted additional documentation associated with their funding requests.

Summary of Factual Scenario

The documentation assembled by USAC at this time indicates that some funding requests associated with IBM follow the following pattern:

- Each school district issued a Request for Proposals (RFP) seeking a technology consultant to provide an array of technology consulting services as well as the actual services supported under the Schools and Libraries Universal Service Support Mechanism. Each RFP contains explicit language indicating that the Service Provider Identification Number (SPIN) for the service provider who is selected as the technology consultant will appear on each subsequent funding request from that applicant. The RFPs do not define the services that will be provided as part of the eventual funding request to SLD. The RFPs do not require that the bidder indicate the cost of the contract.

- Each school district posted a Funding Year 2002 FCC Form 470. The Forms 470 were posted at around the same time that the RFP was dated. Each Form 470 indicates that there is no RFP for the services sought on the Form 470.

- Each school district selected IBM as its technology consultant. The agreements between the school districts and IBM indicate that the cost of the technology consultant contract is USAC's funding commitment to the school district plus the school district's non-discount portion.

- Each school district submitted one or more Funding Year 2002 FCC Forms 471 seeking funding. In response to the item 25 fax, each district submitted Statements of Work with IBM as the contract for each Funding Request Number.

SLD's analysis below focuses on Ysleta. This analysis indicates that Ysleta's funding request should be denied because Ysleta failed to comply with a variety of FCC rules. SLD proposes that it deny funding when it determines that the facts underlying a specific funding request fit this pattern.

The first part of this paper describes the specific facts with respect to Ysleta, including a description of the RFP, IBM's response, and subsequent agreements with IBM. The second part of this paper sets out the relevant rules and requirements of the Schools and Libraries Universal Service Support Mechanism as announced in FCC orders and rules and analyses Ysleta's compliance with program requirements.

Discussion

I. Facts Regarding Ysleta Independent School District (Ysleta[1])

A. Ysleta FCC Form 470 Posted on October 12, 2001

FCC Form 470 # 666710000370147 was posted to the USAC website on October 12, 2001. (Tab 1 at 1). This form indicates that there is no RFP for the specific Internal Connections services being sought. (Tab 1 at 3). This form indicates that the Allowable Contract Date is November 9, 2001. (Tab 1 at 1).

B. Ysleta Issues RFP for Technology Implementation Systems Provider, not dated

When is the RFP issued?

Ysleta issued a Request for Proposal (RFP) for a Technology Implementation and Systems Integration Partner (Technology Partner). (Tab 3, Ysleta RFP). The RFP does not indicate the date that it was issued, but does indicate that proposals will be accepted until November 15, 2001. (Tab 3, Ysleta RFP at 1). The RFP describes its purpose as follows:

> The Vendor will assist the District in preparing applications on the District's behalf for E-rate funding and applying technology to improve student achievement and administrative practices in support of teaching and learning. A single vendor will be selected to be the strategic partner to implement, refine and support a state-of-the art technology infrastructure that will provide world-class technology to the students and staff of the District. The partner will primarily collaborate with the District's Director of Technology and others, as appropriate, for the District. The scope of the project will include all E-rate funded projects. All E-rate applications will be submitted using the partner's SPIN number.

[1] The tabs refer to a binder entitled "Ysleta Independent School District" prepared by USAC that contains copies of the relevant documents cited in this memorandum.

(Tab 3, Ysleta RFP at 1.1). The RFP describes the scope of the work is as follows:

> The Technology Implementation and Systems Integration agreement will include all E-rate funded projects. The selected vendor should be prepared to assist the district with all aspects of the E-rate process and should demonstrate knowledge and experience in dealing with E-rate funded projects. The selected vendor will serve as the prime contractor for any projects funded through E-rate, and all E-rate applications will be submitted using the successful bidder's single SPIN number (Service Provider Identification Number.) Vendors must provide this SPIN number as part of their response. It is anticipated that the term of this partnership will be for a period of four (4) years, which will include a contract for the first year. There will be three (3) renewal option years with each option year to be awarded annually as a separate follow-on contact based on the previous year's performance.

(Tab 3, Ysleta RFP at section 3.6). The RFP indicates that Ysleta will select its Technology Partner based on its evaluation of the following criteria:

- Availability and Quality of Resources (30 points)
- Staff Development and Training (20 points)
- Project Management/Systems Integration (50 points)
- Technology Solutions (25 points)
- Commitment to K-12 Education (20 points)
- District funding considerations (100 points)
- Pricing Model and Cost Assurances (25 points)
- Other Vendor Attributes (30 points)

(Tab 3, Ysleta RFP at 3.7.1 – 3.7.8).

In regard to the Staff Development and Training criteria, the RFP states that Ysleta will need a Staff Development plan and requests that bidders describe how they would implement such a plan, including a description of the training materials and other considerations necessary for implementing such a plan. (Tab 3, Ysleta RFP at 3.7.2).

In regard to the Project Management/Systems Integration criteria, the RFP states that Ysleta will need a "project management function as part of the services delivered by the strategic technology partner." (Tab 3, Ysleta RFP at 3.7.3). The RFP indicates that this function needs to include, among others, project management methodologies and tools, and project planning and communications. (Tab 3, Ysleta RFP at 3.7.3).

In regard to the Technology Solutions criteria, the RFP describes Ysleta's networking requirements by listing some of the functional components sought, and seeks the bidder's "approach, qualifications, and industry experience in the design and implementation of these network requirements in large school districts." (Tab 3, Ysleta RFP at 3.7.4). The

RFP indicates that its networking requirements are not limited to the list provided. (Tab 3, Ysleta RFP at 3.7.4).

In regard to the Commitment to K-12 Education criteria, the RFP seeks, among other things, an "[e]xplanation of the size, type, and location of your company's relevant activities." (Tab 3, Ysleta RFP at 3.7.5).

In regard to the District Funding Considerations criteria, the RFP states that bidders must explain what assistance they will provide in securing funding for the technology. (Tab 3, Ysleta RFP at 3.7.6.). In particular, the RFP requests that bidders "[s]pecify the services available to the district for project planning, specialized program assistance, and other services provided to the District dealing with funding assistance." (Tab 3, Ysleta RFP at 3.7.6). The RFP further requests that bidders "[s]pecify the Costs to the District for all services discussed in the previous item." (Tab 3, Yselta RFP at 3.7.6). The RFP further requires that bidders provide at least three references where the bidder and school district have successfully obtained funding for technology projects. (Tab 3, Ysleta, at 3.7.6).

In regard to the Pricing Model and Cost Assurances criteria, the RFP indicates that the bidders do not have to respond with a specific cost:

> The District understands that a strategic partnership as described in this RFP, does not allow for a firm, fixed pricing in all areas as the specific scope of work necessary for such pricing is impossible to ascertain. Prospective bidders should note that this RFP does not require, a firm fixed price, a cost plus proposal, or any other specific cost information with the exceptions of: a cost schedule for services and costs for Specialized Services for funding assistance.

(Tab 3, Ysleta RFP at 3.7.7) Ysleta states that it will need to demonstrate to the District Board that it "receives value for its dollar in the other areas included in this scope of work." (Tab 3, Ysleta RFP at 3.7.7). As a result, the RFP states that "bidders are required to provide a proposed pricing model that will:

- Be able to demonstrate throughout the life of the contract that the costs associated with this partnership are within normal and customary charges for the type of services provided.
- Be simple to administer as specific scopes of work are developed.
- Meet all statutory requirements for record keeping reporting and auditing of public funds.
- Adhere to district purchasing policy.
- Be flexible in working within established budgets."

(Tab 3, Ysleta RFP at 3.7.7). The RFP seeks "a proposed schedule of hourly charges and/or other services based pricing" that the bidding company normally uses for similar projects. (Tab 3, Ysleta RFP at 3.7.7). The RFP states that this criterion will be a major factor in determining whether to renew the contact. (Tab 3, Ysleta RFP at 3.7.7). Finally, in regard to this criterion, the RFP states:

> Contingent upon negotiations with the selected vendor, a specific price quote may be required upon completion of the final negotiated contract for the E-rate eligible projects. This information will be submitted on the District 471 application. Specific pricing will be required for any additional projects.

(Tab 3, Ysleta RFP at 3.7.7).

In response to this RFP, Ysleta received responses from Avnet Enterprise Solutions, Compaq, IBM, I-Next Inc. and SBC Southwestern Bell.

C. IBM Responds to Ysleta's RFP

IBM responded to Ysleta's RFP on November 15, 2001. In the Executive Summary, IBM indicates as follows:

> IBM can assist in developing the required technology plan, which is required before an E-rate application but also can fully support all aspects of the E-rate process, including installing and maintaining your E-rate connection projects with whatever hardware and wiring solutions that best suit your schools' plans. We can bring our systems integration and project management expertise to bear, acting as your E-rate general contractor, coordinating with your suppliers to improve planning, procurement, and installation. Our goal is to deliver an entirely integrated project in order to help you maximize the E-rate program for your school.

(Tab 6, IBM Proposal at 7).

In regard to the legal approach,

> IBM proposes that any services performed as a result of award of this RFP will be subject to the terms and conditions of the IBM Customer Agreement (ICA) previously negotiated between Ysleta ISD and IBM. As such, the entire agreement will consist of any future executed Statements of Work, the General Contract, the negotiated ICA, and RFP #22-1113-016RFP. These documents are collectively referred to as the "Agreement." If there is a conflict among the terms of these documents, they prevail from most to least significance: Statement of Work, General Contract, ICA and RFP #22-1113-016RFP.

(Tab 6, IBM Proposal at 10). SLD does not have a copy of the signed IBM Customer Agreement with Ysleta. However, an unsigned copy of the IBM Customer Agreement is attached to the IBM Proposal at Appendix C. (Tab 6, IBM Proposal, Appendix C). An unsigned "General Contract" is attached at Appendix D. In regard to the Statements of Work, IBM states:

> A unique SOW [Statement of Work] will be developed for each initiative or project. Each SOW will provide a description of our respective responsibilities in completing project tasks, assumptions upon which our estimates and performance are predicated, an estimated schedule for completing the project, the completion criteria that we are required to meet to fulfill our obligations, definition of the specific project deliverables, resource requirements, and applicable charges. [Ysleta] must approve and sign each SOW before work begins on the project.

(Tab 6, IBM Proposal at 11).

In regard to the Staff Development and Training selection criteria, IBM proposes to develop "an extensive staff development plan and facilitate the implementation of new technologies into the [Ysleta] curriculum." (Tab 6, IBM Proposal at 19). IBM states that this plan would contain a number of components including building-level needs assessment, on-going teacher training, training of "key building personnel," creating a teacher mentoring program, assessments of the effectiveness of the technology implementation, and creating a Standard Participant Guide." (Tab 6, IBM Proposal at 19-20). IBM also proposes to provide training to administrative personnel including providing introductory courses on applications and software, and conducting a needs assessment to identify other training needs. (Tab 6 , IBM Proposal at 20).

In regard to the Project Coordination/Systems Integration selection criteria, IBM states that it provides "fiscal, technical, and scheduling responsibility for all project tasks, and oversees the design and delivery of [Ysleta] specific technology and services solutions." (Tab 6, IBM Proposal at 21). IBM states that its project managers will employ "IBM's project coordination methodologies and disciplines," effective project planning, effective project communications, and project execution. (Tab 6, IBM Proposal at 22-24). IBM states that each Statement of Work will be subjected to rigorous quality assurance including evaluations of "the technical feasibility of the proposed solution, assessment of the project risk factors, definition of contingency plans, [and] validation of project estimates." (Tab 6, IBM Proposal at 25). IBM states that certain projects are subjected to Project Reviews by IBM Project Systems Assurance staff who are not directly associated with the project. (Tab 6, IBM Proposal at 25). IBM further states that IBM continually tracks and measures client satisfaction by conducting a variety of surveys, (Tab 6, IBM Proposal at 25).

In regard to the Technology Solutions selection criteria, IBM provides a "general description of IBM's networking capabilities." (Tab 6, IBM Proposal at 30). IBM states that while it is capable of performing all the tasks, it "will only be performing those tasks specifically identified in the Statements of Work developed at the direction of [Ysleta]." (Tab 6, IBM Proposal at 30). IBM's proposal indicates that these capabilities include a variety of consulting-type services to assist school districts in determining what their technology needs are. (Tab 6, IBM Proposal at 28 – 64).

In regard to the Commitment to K-12 Education selection criteria, IBM states that its "K-12 education consultants have a detailed knowledge of school districts and the

administrative processes that support their operations." (Tab 6, IBM Proposal at 61). IBM further states that it has an Education Services team that is comprised "of over 500 highly skilled professionals focused exclusively on providing thought leadership and services to K-12 and Higher Education clients." (Tab 6, IBM Proposal at 61).

In regard to the District Funding Considerations selection criteria, IBM states:

> IBM can help develop your technology plan, which is required before you can apply for E-rate discounts. We can bring our systems integration and project coordination expertise to bear, acting as your focal E-rate general contactor, working and coordinating with your suppliers to improve project planning, procurement and integration. IBM is unique in our proven abilities to design, plan , deliver and support the entire integrated project, making it faster and easier for you to apply for E-rate.

(Tab 6, IBM Proposal at 66). IBM states that it "can provide skills, knowledge, and personnel resources to assist the [Ysleta] E-rate Implementation Support Team with E-rate technical analysis" in areas including the eligibility of services and products and estimate the eligibility of "alternative technical implementations," (Tab 6, IBM Proposal at 66). IBM further states that it "will assist [Ysleta] with structuring the application for funding and supporting documentation to maximize the SLD funding. It is anticipated that all funding requests will be funded at 90% level." (Tab 6, IBM Proposal at 67). IBM states that "[Ysleta] will be responsible for providing district personnel to work with IBM to complete and submit the E-rate application and Program Integrity Assessment (PIA) process. [Ysleta] personnel will be involved in planning sessions, small group and one-on-one meetings with IBM to discuss and develop district e-rate plans and projects." (Tab 6, IBM Proposal at 68).

In regard to the specific services that IBM will provide to IBM as it Technology Partner, IBM states that it will provide "E-Rate Project Planning" assistance in the development of Ysleta's technology needs and to structure those needs to "maximize E-rate funding requests;" E-Rate Regulatory Assistance including assistance in the preparation of SLD forms; E-Rate Project Implementation assistance to provide the services indicated on the Statements of Work; E-Rate Collections assistance to collect SLD funds, appeals, and other procedural steps; and E-Rate Renewal assistance with the next funding year funding requests. (Tab 6, IBM Proposal at 69). IBM further states that the cost to Ysleta for all of these services will be the percentage of the costs based on Ysleta's discount percentage. (Tab 6, IBM Proposal at 69).

In regard to the Pricing Model and Cost Assurances selection criteria, IBM states that it:

> Conducts periodic (at least annually) market studies to compare our rates with those of our major competitors, and implements pricing strategies that make us competitive with them. You are assured that IBM prices will always be market driven, competitive with other consulting firms of similar profile and skill levels, and within normal and customary charges for the type of services provided. IBM

Global Services pricing model, and therefore customer costs, are based upon the following factors:

- Resource costs
- Expected profit margin, and
- Project risk factors.

(Tab 6, IBM Proposal at 76-77). IBM states that "[s]ince IBM Corporation must return a profit to its investment owners, the first consideration in pricing is earning that expected margin over our costs." (Tab 6, IBM Proposal at 77). IBM states that the cost associated with each Statement of Work is determined by "length of project, number and type of project resources required, and determination of IBM's risk of assumption." (Tab 6, IBM Proposal at 77). IBM attached a Schedule of Hourly Charges indicating a range from $49 per hour for Project Administrator to $88 per hour for Technical Support to $259-294 per hour for Program Manager/Architect to $394 per hour for a Project Executive. (Tab 6, IBM Proposal at 79-80).

D. General Contract between Ysleta and IBM, Including Five Statements of Work Attached.

The General Contract between Ysleta and IBM was signed by the parties on January 17, 2002 and January 18, 2002. This contract contains the following provisions:

- The contract amount is $20,379,631.00, and the portion that Ysleta is responsible for is 10% or, $2,037,963.00. (Tab 5, General Contract at 1).[2]
- "It is the desire of the District to engage the Contractor as a Technology Implementation and Systems Integration Partner to perform for the District, Services, as prescribed in RFP #22-1115-016RFP and services described in the IBM "Statements of Work," listed below. The entire agreement consists of RFP #22-1115-016RFP and the Contractor's Appendix to RFP#22-1115-016RFP, the IBM Customer Agreement (Z125-4575)(ICA), the General Contract dated January 17, 2002, and the individual IBM Statements of Work listed below." (Tab 5, General Contract at 2).
- "For those Statements of Work under which IBM is to supply Products to the District, IBM agrees to provide detailed product pricing upon at least thirty days prior written request from the District. For this purpose, "Products" will be defined as those that appear in the Attachments to the Forms 471 that are submitted to the E-Rate FCC Snowe-Rockefeller administration." (Tab 5, General Contract at 6).

[2] The pages of the General Contract are not numbered. These page numbers have been supplied by SLD.

- "The District may direct IBM to particular vendors whom they may designate as the vendor for the Products specified in the various Statements of Work." (Tab 5, General Contract at 6).

- Attached to the General Contract are the following Statements of Work:
  IBM/YISD ER5-001 Cabling Services (471 Attachment C)
  IBM/YISD ER5-002 Network Electronics (471 Attachment NE)
  IBM/YISD ER5-003 Network File and Web Servers (471 Attachment S)
  IBM/YISD ER5-004 Technical Support Services (471 Attachment TS)
  IBM/YISD ER5-005 Basic Unbundled Internet Access (471 Attachment IA).
  (Tab 5, General Contract at 1).

E. FCC Form 471 Postmark Date January 17, 2002

FCC Form 471# 321479 was submitted to USAC on January 17, 2002. (Tab 2) This Form 471 contains five Funding Request Numbers (FRNs) and the service provider for each FRN is IBM. (Tab 2). One FRN is for Internet Access and the remaining four are for Internal Connections. The contract award date for each FRN is January 17, 2002. Each FRN on this Form 471 is associated with FCC Form 470 # 666710000370147. (Tab 2). This FCC Form 471 request a total of $ 18,341,667.94 in universal service support.

F. Ysleta's Response to Item 25 Fax.

Ysleta is in the process of undergoing an item 25 review. Ysleta explained its decision to select IBM at the school district's Board of Trustees meeting on December 12, 2001. (Tab 3, December 12, 2001 Board Meeting). As part of its rationale, Ysleta concluded that "IBM Corporation has an impressive record in obtaining awards for E-rate projects." (Tab 3, December 12, 2001 Board Meeting at B-5). Ysleta further stated that "IBM has developed competence in the E-Rate funding/application process which will enhance the quality and viability of any District submittal." (Tab 3, December 12, 2001 Board Meeting at B-5). In regard to the nature of the contractual relationship between Ysleta and IBM, Ysleta stated the following:

> The award of this contract establishes a "general contractor" relationship with IBM. In this role, the firm will contract with other companies to provide the necessary products and services for each E-rate project. This provides the District the advantages of coordination with one vendor and provides access to the firm's buying power with regard to any requisite procurement.
>
> . . .
>
> The cost for the contact is divided into separate, not-to-exceed totals for each project that will be submitted to the School and Library Corporation for funding consideration in January, 2002. . . . Each project budget takes into consideration project management fees, materials and implementation costs.

(Tab 3, December 12, 2001 Board Meeting at B-5).

In response to SLD's request for copies of all Requests for Proposals, Ysleta responded:

> All of our service/hardware requirements were listed in the FCC Form 470 and posted as required. This was the competitive bidding process in which we engaged.
>
> Although we do not have an E-Rate Funding Request for our Systems Integration Partner contract, it is extremely important to our successful use of technology, so we have included the RFP, and all of the bid responses.

(Tab 8 at 1).

Ysleta further indicated that "[o]ther than the contracts, no bid responses were received for any of the e-Rate Funding Requests." (Tab 8 at 2). In response to SLD' request for documentation regarding the bid selection process, Ysleta responded, "Since there were no other bids, the selection process was very straightforward. We evaluated the one and only bid for each of the requested services." (Tab 8 at 2).

II. Legal Framework and Analysis

A. Schools and Libraries Support Mechanism Competitive Bidding Requirements

Under the Telecommunications Act of 1996 (Act), discounts must be provided in response to *bona fide* requests for services to be used for educational purposes. *See* 47 U.S.C. § 254(h)(1)(B) (emphasis added). To that end, the Federal Communications Commission (FCC) requires that eligible entities

> (1) conduct internal assessments of the components necessary to use effectively the discounted services they order, (2) submit a complete description of the services they seek so that it may be posted for competing service providers to evaluate; and (3) certify to certain criteria under penalty of perjury.

Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, FCC 97-157 ¶ 570 (rel. May 8, 1997) (*Universal Service Order*).

To ensure fiscal responsibility, FCC rules require eligible entities to seek competitive bids for the goods and services eligible for discounts. Universal Service Order, ¶ 480; 47 C.F.R. § 54.504(a). The FCC reasoned that:

> Competitive bidding is the most efficient means for ensuring that eligible schools and libraries are informed about all of the choices available to them. Absent competitive bidding, prices charged to schools and libraries may be needlessly high, with the result that fewer eligible schools and libraries would be able to

> participate in the program or the demand on universal service support mechanisms would be needlessly great.

Universal Service Order, ¶ 480.

The competitive bidding process is initiated when the applicant submits an FCC Form 470 to USAC for posting on its website. *See* 47 C.F.R. § 54.504(b); Schools and Libraries Universal Service, Description of Services Requested and Certification Form 470, OMB 3060-0806 (April 2002) (*FCC Form 470*). This posting enables prospective service providers to bid on the equipment and services for which the applicant will request universal service support. After the Form 470 has been posted, the applicant must wait at least 28 days before entering into agreements with service providers, comply with all applicable state and local procurement laws, and comply with Federal Communications Commission (FCC) competitive bidding requirements. *See* 47 C.F.R. §§ 54.504, 54.11. The FCC has stated that the posting requirements "is in no way intended as a substitute for state, local, or other procurement processes." *Universal Service Order*, ¶ 575.

FCC rules require applicants to "submit a complete description of the services they seek so that it may be posted for competing service providers to evaluate." *Universal Service* Order ¶ 570. The FCC requires "the application to describe the services that the schools and libraries seek to purchase in sufficient detail to enable potential providers to formulate bids." *Universal Service Order* ¶ 575. A description of the Internet Access and Internal Connections services being sought are required to be provided in Items 9 and 10 of the FCC Form 470. The instructions for the Form 470 state that these items "must be completed to provide potential bidders with particular information about the services you are seeking." *FCC Form 470 Instructions*, April 2002 at 10.[3] The instructions for Item 9(b) state that this box should be checked if the applicant does not have an RFP, and that if this box is checked, "you must fill in details in the space provided about the specific Internet access services or functions and quantity and/or capacity of service." *FCC Form 470 Instructions*, April 2002 at 12. The Form 470 instructions for Item 10(b) state that this box should be checked if the applicant does not have an RFP, and that if this box is checked, "you must fill in details in the space provided about the specific internal connections services or functions and quantity and/or capacity of service." *FCC Form 470 Instructions*, April 2002 at 12.

FCC rules require that the entity selecting a service provider "carefully consider all bids submitted and may consider relevant factors other than the pre-discount prices submitted by providers." 47 C.F.R. § 54.511(a). In regard to these competitive bidding requirements, the FCC noted that "price should be the primary factor in selecting a bid." *Universal Service* Order, ¶ 481. When allowed under state and local procurement rules, other relevant factors include "prior experience, including past performance; personnel qualifications, including technical excellence; management capability, including schedule compliance; and environmental objectives." Federal-State Joint Board on Universal

[3] The FCC Form 470 and Instructions were revised in April 2002. The language cited here was not changed when the instructions were revised.

Service, CC Docket No. 96-45, *Report and Order*, FCC 97-157 ¶ 481 (rel. May 8, 1997); *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, FCC 99-216 ¶ ¶ 7-9 (rel. August 11, 1999).

B. Competitive Bidding Analysis

- **Ysleta Selected IBM as its Service Provider By a Process Other Than the FCC Form 470 Posting Process and Without Defining the Specific Services that Would be Provided**

FCC rules require applicants to select service providers to provide specific, defined services through the FCC Form 470 posting process. FCC rules do not allow applicants to select their service provider through a process other than the FCC Form 470 posting.

The facts above indicate that Ysleta selected IBM as its service provider as a result of the RFP, and not through the FCC Form 470 posting process. Ysleta did post an FCC Form 470 for the services for which it now seeks funding.[4] However, in the RFP, Ysleta explicitly stated its intention to select its service provider through the RFP process rather than through the 470 posting process when it stated that "[a]ll E-rate applications will be submitted using the partner's SPIN number." (Tab 3, Ysleta RFP at 1.1). In addition, Ysleta admitted as much when, in response to SLD's inquiry, it stated, "[a]lthough we do not have an E-Rate Funding Request for our Systems Integration Partner contract, it is extremely important to our successful use of technology, so we have included the RFP, and all of the bid responses." (Tab 8 at 1).

The RFP does not describe the specific telecommunications services that were described on the FCC Form 470. Rather, the RFP describes the Technology Implementation Systems Integration Partner and the criteria Ysleta will use to choose its Technology Partner. The RFP does not require bidders to submit proposals for specific services with a fixed priced. Rather, Ysleta asks bidders to "describe their approach, qualification, and industry experience in the design and implementation of these network requirements in large school districts." (Tab 3, Ysleta RFP at 3.7.4.) In regard to the specific services for which funding would later be requested, IBM provides a "general description of IBM's networking capabilities." (Tab 6, IBM Proposal at 30). IBM states that while it is capable of performing all the tasks, it "will only be performing those tasks specifically identified in the Statements of Work developed at the direction of [Ysleta]." (Tab 6, IBM Proposal at 30). The RFP indicates that after the Technology Partner is selected, Ysleta and the Technology Partner will negotiate the Statements of Work for each funding request. (Tab 3, Ysleta RFP at 3.7.7).

[4] SLD does not evaluate as part of this analysis whether the description on Ysleta's FCC Form 470 complies with program rules. However, there are striking similarities between, and a cookie-cutter aspect to each FCC Form 470 that SLD has determined to be associated with applicants that selected IBM to be their technology consultant.

Yselta states that it did not receive any other bids in response to its FCC Form 470 posting other than the "contracts." (Tab 8 at 2). These "contracts" are the Statements of Work that are described in the RFP and in IBM's proposal to Ysleta. Ysleta may have received no "bids" in response to the FCC Form 470 because pursuant to the RPF and IBM's response, Ysleta and IBM negotiated these Statements of Work after Ysleta selected IBM. Regardless of whether Ysleta received other bids, the RFP indicates that Ysleta selected IBM as a result of that RFP, and not as a result of the FCC Form 470 posting.

These facts indicate that IBM was selected as the service provider as a result of the RFP and not as a result of the FCC Form 470 posting process. These facts further indicate that when IBM was selected, the actual services for which funding would be requested had not been defined. Since Ysleta failed to comply with the requirement that it select its service provider to provide specific services through the FCC Form 470 posting process, its funding request should be denied.

- **Ysleta Selected IBM as its Service Provider Without Complying with the Requirement that the Applicant Select the Most Cost-Effective Provider of Service with Low Cost Being the Primary Factor**

FCC rules require a competitive bidding process pursuant to which the service provider must be selected after defining the specific services sought and after the FCC Form 470 has been posted. The primary factor in making the selection must be low cost.

In the RFP, Ysleta states that it does not require "a firm, fixed price, a cost plus proposal, or any other specific cost information with the exceptions of: a cost schedule for services and costs for Specialized Services for funding assistance." (Tab 3, Ysleta RFP at 3.7.7). The selection criteria further indicate that this factor is among the least heavily weighted, at 25 points. (Tab 3, Ysleta RFP at 3.7.1 – 3.7.8). IBM responded with a description of its pricing model, a reminder that it must return a profit, and with a schedule of hourly charges. (Tab 6, IBM Proposal at 77-80). In addition, as set out above, Ysleta selected IBM before defining the actual work to be done for which funding would be requested.

These facts indicate that Ysleta could not have selected the most cost effective provider of service with low cost being the primary factor, because IBM did not specify the cost of the contract, because Ysleta selected IBM before the actual work for which funding would be requested was defined and quantified, and because the RFP's selection criteria does not include these criteria. Furthermore, Ysleta's stated reasons for selecting IBM do not indicate that Ysleta selected IBM based on whether IBM was the most cost effective provider of service with low cost being the primary factor. (Tab 3, December 12, 2001 Board Meeting).

In addition, Ysleta stated in its explanation of its decision to select IBM that the terms of the agreement were that it would enter into a general contractor relationship with IBM, and that IBM would enter into contracts with other companies to provide the products and services for each funding request. (Tab 3, December 12, 2001 Board Meeting, B-5).

Consequently, despite the Statements of Work submitted by Ysleta and IBM, IBM will not be providing all of the services and products indicated on those Statements of Work, but rather will subcontract portions of them. Ysleta states that this relationship will be advantageous to Ysleta because it "provides access to the firm's buying power with regard to any requisite procurement." (Tab 3, December 12, 2001 Board Meeting, B-5). However, because the Statements of Work were not entered into after a competitive FCC Form 470 posting process, and because some of the products and services will be subcontracted, Ysleta did not select IBM based on whether IBM could provide the services at the lowest cost. If Ysleta's request were to be funded in full and IBM subcontracted the services for a lower cost than the cost in the funding request, the question would arise as to whether Ysleta should submit an FCC Form 500 to revise the amount of funding committed. IBM's line-item profit would likely not be considered an eligible service. (See discussion of eligibility below.)

Because it is clear from the face of the documents that Ysleta did not select IBM based on whether IBM's bid was the most cost effective with price being the primary factor, Ysleta's funding request should be denied as being in violation of Schools and Libraries Support Mechanism competitive bidding requirements.

- **Compliance with FCC Form 470 Posting Requirement is Required in Addition to Applicable State and Local Procurement Requirements**

FCC regulations governing the Schools and Libraries Support Mechanism require applicants to comply with all applicable state and local procurement laws. This requirement does not, however, negate the FCC's competitive bidding requirements pursuant to which the service provider must be selected with reference to the particular services sought, after the FCC Form 470 has been posted, and the primary factor in making the selection must be low cost.

Under Texas law, school district contracts, with certain exceptions not relevant here, are required to be made according to whichever of a list of methods provides the "best value" for the district. *See* Texas Educ. § 44.031(a)(1). Those methods include competitive bidding. *See id.* In determining to whom to award a contract, districts may consider a variety of factors, one of which is the purchase price. *See id.* at § 44.031(b)(1). These requirements do not, however, necessarily apply to contacts for services rendered by a technology consultant:

> A school district may, at its option, contract for professional services rendered by a financial consultant or a technology consultant in the manner provided in Section 2254.003, Government Code, in lieu of the methods provided by this section.

Id. at 44.031(f).

Section 2254.003, Government Code, prohibits government entities from selecting professional service providers "on the basis of competitive bids submitted for the contract or services," but rather, requires the selection to be made:

> (1) on the basis of demonstrated competence and qualifications to perform the services; and
> (2) for a fair and reasonable price.

Texas Government Code § 2254.003.

The RFP may have been issued under the provision of Texas procurement law which allows, but does not require, technology consultants to be selected on the basis of the factors indicated in the RFP. However, even if the RFP was issued, and IBM selected as Ysleta's technology consultant, pursuant to this local law, Ysleta is still required to comply with FCC competitive bidding requirements. As explained above, the FCC requirements apply in addition to any applicable state and local laws. Furthermore, the agreement between Ysleta and IBM indicates that the cost of the technology consultant contract is USAC's funding commitment to the school district plus the school district's non-discount portion. Since IBM will be paid by USAC, Ysleta and IBM are required to comply with FCC competitive bidding requirements.

SLD does not evaluate as part of this analysis whether the FCC Form 470 submitted by Ysleta satisfies applicable state and local procurement regulations. By posting the Form 470 and indicating that there is no RFP, Ysleta indicates to SLD that it has entered into an agreement with IBM for IBM to provide $20,379,631.04 in services based on a one and one-half page description of those services on an FCC Form 470. Since SLD does not make individual determinations of compliance with state and local regulations, SLD will not perform this analysis at this time.

- **IBM's Proposal Specifies a Range of Services that it will Provide as the Strategic Technology Partner. Many of These Services are not Eligible for Funding.**

FCC rules provide that USAC provide universal service support to telecommunications carriers and non-telecommunications carriers for providing supported services to eligible entities. *See* 47 C.F.R §§ 54.501(a), 54.517. These rules prohibit applicants and service providers from using discounts to subsidize the procurement of ineligible or unrequested products and services. *See* Free Services Advisory, http://www.sl.universalservice.org/reference/freeservices.asp. Consequently, "[t]he value of all price reductions, promotional offers, and "free" products or services must be deducted from the pre-discount cost of services indicated in Funding Requests." *Id.*

FCC rules further require applicants to certify that they "have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services." *See* Schools and Libraries Universal

service, Services Ordered and Certification Form 471, OBM 3060-0806, Item 25 (October 2000) (*FCC Form 471*). While applicants certify that they have secured access to these resources, these resources are generally not eligible for discounts. In particular, the Eligible Services List indicates that training is conditionally eligible under the following parameters:

> Training is eligible if it is basic instruction on the use of eligible equipment, coincident with and directly associated with the installation of such equipment. Training of teachers and staff in the use of covered services in their programs of instruction or for professional development is not eligible for discount.

See http://www.sl.universalservice.org/data/pdf/EligibleServicesList_101701.pdf at 34. The list further indicates that Internet training is ineligible. *See id.* at 14.

The RFP identifies a range of services that Ysleta seeks under each selection criteria. These include development of a Staff Development Plan, Project Management, project planning, specialized program assistance, and other services including funding assistance. In response to each selection criteria identified by Ysleta, IBM describes in detail a wide range of services that it will provide to Ysleta as Ysleta's Technology Partner. (See Tab 6, IBM Proposal at 17-80). These services include a vast array of teacher and administrative personnel training, project management services, consulting services, and assistance in filling out program forms, among others. In responding to the Technology Solutions selection criteria, IBM indicates that it "will only be performing those tasks specifically identified in the Statements of Work." (Tab 6, IBM Proposal at 30). IBM states that the cost to Ysleta for all of these services will be the percentage of the costs based on Ysleta's discount percentage and that USAC will pay the remainder of the cost as support. (Tab 6, IBM Proposal at 69). The General Contract between Ysleta and IBM specifies that IBM will be paid for the services specified in the RFP, IBM's Proposal, and the Statements of Work by the Universal Service Fund (90%) and the District (10%). (Tab 5, General Contract at 1, 2).

Under FCC rules, the only services that are potentially eligible for funding are the services sought on the FCC Form 471 and identified in the Statements of Work. However, the agreement between Ysleta and IBM indicates that IBM will be providing Ysleta with a wide range of other services in addition to the services specified in the Statements of Work. These types of training and consulting services are not eligible for funding. Consequently, their cost cannot be included in Ysleta's funding request. However, IBM would be paid for these services by the USAC and Ysleta funding designated for eligible services.

If the cost of these services are included in Ysleta's funding request, then that funding request contains ineligible items. If IBM considers its services to be "free," then the Free Services Advisory requires that the value of those services be deduced from the pre-discount cost of services indicated in the funding request. SLD doubts that IBM is providing these services free of charge since IBM stated in its proposal that "[s]ince the IBM Corporation must return a profit to its investment owners, the first consideration in

pricing is earning that expected margin over our costs." (Tab 6, IBM Proposal at 77) Since IBM, with its mandate to return a profit, is probably not covering the cost of providing these services itself, these costs must be included in the funding request to SLD. Since these services are not eligible for funding, their cost must be deducted from the pre-discount cost of services indicated in the funding request.

C. IBM's Proposal Emphasizes Developing the Technology Plan and Structuring Funding Requests in Order to Maximize Funding Requests.

FCC rules require applicants to conduct a technology inventory/assessment, develop a technology plan that identifies educational objectives and then identify the technology resources necessary to achieve those objectives. *See Universal Service Order*, ¶¶ 572-573. The FCC has stipulated that funding requests must be based on a technology plan that complies with program requirements. *See id.* ¶ 573. As explained above, FCC rules also require applicants to choose the most cost-effective alternative to achieve objectives. Unless applicants will seek discounts only for basic local and long distance service, they must certify on the Form 470 that "all of the individual schools, libraries, and library consortia receiving services under this application are covered by" either individual technology plans or higher-level plans. *FCC Form 470*, Item 20. A basic premise of the program is that, before filing the Form 470, applicants determine the educational objectives to be served by technology, the technology needs, and the resources that will be required for those technology needs. If technology plans are not in place or are very vague at the time of the Form 470 filing, applicants cannot present to would-be vendors a clear idea of the products and services they seek.

IBM indicates that it can help Ysleta develop its technology plan and that it will structure Ysleta's funding requests to maximize funding requests to SLD. IBM's approach is to structure the technological aspects to ensure that the services are eligible for funding (Tab 6, IBM Proposal at 66-67), and to "structur[e] the application for funding and supporting documentation to maximize the SLD funding. It is anticipated that all funding requests will be funded at the 90% level." (Tab 6, IBM Proposal at 67.) Ysleta, in explaining its selection basis, stated that it considered IBM's success in "obtaining awards for E-Rate projects" and "IBM's ability to "enhance the quality and viability of any District submittal" seeking Schools and Libraries Support Mechanism funding to be critically important in its decision to select IBM. (Tab 3, December 12, 2001 Board Meeting at B-5).

The emphasis on maximizing e-rate funding is inconsistent with the design of the program to first develop a technology plan that identifies educational objectives and then the technology resources necessary to achieve those objectives. Nor is it consistent with the requirement to choose the most cost-effective alternative to achieve objectives. Furthermore, if IBM and the district are rewriting the technology plan after selection of IBM as the service provider, it is difficult to see how the district can ensure it is choosing the most cost-effective alternative to meet its educational objectives.

D. **Similar Language in RFPs Raise Significant Questions as to Whether IBM was Improperly Involved in the Selection Process**

SLD's Service Provider Manual provides the following guidance in regard to service provider involvement in the RFP:

> The FCC understands that applicants sometimes need to seek assistance from service providers in developing RFPs. Such assistance is permissible even if the service provider plans to submit a bid in response to that RFP as long as the service provider's assistance is neutral. For example, RFPs may not be written in such a way that only the service provider who rendered the assistance could win the bid. Or, an applicant may not reveal information to the service provider assisting in the preparation of the bid that the applicant does not share with all prospective bidders. These are just two examples of assistance that would not be considered neutral.

See www.sl.universalservice.org/vendor/manual/chapter5.doc.

In addition to Ysleta's RFP, SLD has also reviewed RFPs seeking the same type of consultant for Dallas Independent School District, El Paso Independent School District, Fort Worth Independent School District, and Galena Park Independent School District. SLD has noticed striking similarities, and some times virtually identical language across these RFPs.. This may indicate that IBM is involved before the RFP is issued or that school districts have shared the RFPs that have worked for them with others. If IBM is contacting applicants before the selection process and encouraging them to use a standard RFP, it could be slanting the selection process in IBM's favor.

Conclusion

The foregoing discussion demonstrates that Ysleta's Funding Year 2002 Schools and Libraries Support Mechanism funding requests associated with IBM Corporation should be denied because Ysleta failed to comply with a variety of program requirements. USAC is aware of other school districts seeking support for services to be provided by IBM Corporation that reflect a similar scenario. USAC proposes that SLD deny funding requests when, after thorough investigation, it determines that the facts underlying a specific funding request fit the pattern described in detail above. The elements of this pattern are:

- An applicant's FCC Form 470 indicates that there is no RFP for Internet Access and/or Internal Connections services sought, but SLD determines that there is an RFP similar to the RFP described above,
- The RFP seeks to select one service provider to provide a broad range of services to the applicant,
- The RFP does not define specific services for which support will be sought,

- The RFP does not seek a firm cost estimate for work to be performed,
- The contracts associated with a funding request reference other agreements similar to the Statements of Work described above.

In addition to situations where SLD has obtained RFPs and Statements of Work, SLD will also review funding requests associated with IBM to determine whether a funding request fits this pattern by conducting the following review:

- Review of the amount of funding requested for funding requests associated with IBM and comparison of that amount to funding requests known to be associated with RFPs for technology consultants similar to the one described here to determine whether the amount of funding fits into the pattern indicated in this description.

- Review of each FCC Form 470 associated with a funding request for services to be provided by IBM to determine the similarities between it and FCC Forms 470 that are known to be associated with a technology consultant RFP similar to the one described here. For example, SLD will determine whether the Form 470 indicates that there is an RFP and whether the Form 470 provides similar details regarding the services sought.

- Compare item 21 attachments with the Statements of Work known to be associated with technology consultant RFPs. Compare item 21 attachments with the Form 470 to determine whether the Form 470 was specific about the services sought.

- SLD will send additional item 25 faxes as it determines to be necessary.

Federal Communications Commission
Office of Inspector General

Investigation of IBM Global Services

Briefing Provided to Chairman Powell on December 6, 2002

Non-Public - For Internal Use Only

Background

- IBM Global Services is the largest service provider in the E-rate program
- IBM has received disbursements totaling $551 million in years 1998-2000
- IBM is identified as the service provider for $1.26 billion in applications for 2002
- Preliminary analysis indicates that $470 million in 2002 applications are from "cookie cutter" requests for proposal

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Allegations

- IBM is engaged in a possible bid rigging scheme in which they are colluding with other telecommunications providers or with school districts on contracts for communications equipment sold to school districts nationwide.

- School Districts select IBM as the service provider by a process other than the FCC form 470 posting process and without defining the specific services to be provided.

- School districts select IBM as the service provider without complying with the requirement that an applicant select the most cost-effective provider of service with low cost being the primary factor.

- IBM's proposal specifies a range of services that it will provide as the strategic funding partner (technology consultant). Many of these services are not eligible for funding.

- IBM's proposal emphasizes developing the technology plan and structuring funding requests in order to maximize funding.

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Scenario

- School districts issue an RFP seeking a technology consultant to provide an array of technology consulting services as well as e-rate services. RFP contains explicit language that the service provider (SPIN) selected will appear on each subsequent funding request from the applicant. RFP do not define the e-rate services that will ultimately be part of the eventual e-rate funding requested. RFPs do not require that the bidder indicate the cost of the contract.

- School districts post form 470s at around the same time as the technology consultant RFP is dated. The form 470s indicate that there is no RFP for the services being sought.

- School districts select IBM as the technology consultant. Agreements with the schools indicate that the cost of the technology consultant contract is USAC's e-rate funding commitment plus the school districts non-discount portion.

- Schools districts submit form 471s seeking funding. School districts submit Statements of Work with IBM as the contract for each funding request.

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Preliminary Investigative Activities

- January 17, 2002: Letter from "Concerned Tax Payer" to USAC outlining allegations against IBM. Letter was copied to several media outlets, president of the school board, Texas education agency, and FBI.

- February 1, 2002: Matter referred to FCC OIG. USAC indicates that they will be investigating.

- June 5, 2002: USAC completes the preliminary phase of their investigation of the allegations contained in the "Concerned Tax Payer" letter. The USAC investigator determined that the matter be "analyzed by SLD senior management and legal counsel."

- September 18, 2002: OIG received referral related to IBM from Orin Heend, Funds For Learning LLC. Allegations are similar to those contained in the "Concerned Tax Payer" letter.

- September 23, 2002: Representatives from the OIG meet with Antitrust Attorney's in the Dallas field office to discuss the IBM matter (members of the Antitrust taskforce).

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Preliminary Investigative Activities

- October 3, 2002: Schools and Libraries Division (SLD) of USAC completes its analysis of the allegations and prepares a "preliminary draft analysis" document. USAC concludes that funding should be denied in the case of the specific application reviewed and that funding should be denied for other applications seeking services to be provided by IBM that reflect a similar scenario.

- October 24, 2002: A. Jennifer Bray, Antitrust Attorney with the Dallas field office, prepares a request to open a preliminary inquiry into IBM – Bid Rigging (Nationwide). Recommendation states that "(i)f true competition were present in the situations where there seems to be "cookie cutter" RFPs, it seems unlikely that IBM would always be the successful bidder." Recommendation further states that "(w)e may find that the competitive bidding process was tampered with in violation of Section One of the Sherman Act."

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TAB 12

Kristy Carroll

From: George McDonald
Sent: Monday, December 09, 2002 11:31 AM
To: Kristy Carroll
Subject: FW: IBM question - Orange County, FL (Orlando)

Here's an e-mail from Manish that the IBM question came from Orange County, FL.

-----Original Message-----
From: Manish Naik [mailto:mnaik@cgcs.org]
Sent: Monday, December 09, 2002 11:28 AM
To: 'George McDonald'
Subject: IBM question - Orange County, FL (Orlando)

We would like to participate in the conference scheduled for 12/9 at 4pm and do have some questions:

IBM has approached us about acting as an "integrator", specifically they would compile a script for a 470 which we would file. They would be identified as the vendor for the services on the 471 and we would make all our purchases through them. Is the integrator concept acceptable? It would seem to be contrary to the intention that vendor selection should be a competitive process.

They have also proposed a method of increasing the number of 90% schools in the district. As I read the alternative methods, a survey conducted by the district could be used in lieu of the NSLP figures. What other methods are acceptable?

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CONFIDENTIAL

TAB 13

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m: <pdoremu@us.ibm.com>
To: <tdiaz@us.ibm.com>; <cgentry@us.ibm.com>; <dkaiser@us.ibm.com>; <jonesjp@us.ibm.com>; <nateh@oh.verio.com>; <hdm@bedford.net>
Cc: <jangle@us.ibm.com>; <lnich@us.ibm.com>; <tchambe@us.ibm.com>
Sent: Tuesday, December 05, 2000 7:52 PM
Subject: Re: A Few Questions

A good response from Jack. We don't understnad the politics of this place well enough, K-12.
Time for you to go in-country and figure it out.

Jack will push for more time. I will forward these unborn RFPs around next.

Pete Doremus
IBM Global Services
Integrated Services Specialist
pdoremu@us.ibm.com
210-403-1089 voice (T/L 898-)
210-403-1016 FAX

---------- Forwarded by Pete Doremus/San Antonio/IBM on 12/05/2000 05:44 PM ----------

Jack Johnston <jack.johnston@episd.org> on 12/05/2000 05:24:12 PM

To: Pete Doremus/San Antonio/IBM@IBMUS
cc: Ron Johnson/Albuquerque/IBM@IBMUS
Subject: Re: A Few Questions

pdoremu@us.ibm.com wrote: Hello, Jack.

Ron tells mer that Terry Freiburg in Purchasing directed him to you with his question, so we thought that we would combine his with a few of mine to be efficient. Please advise us if you feel that any of these requests is inappropriate.

1. We have soft copy of the main body of the RFP, but not of the additional pages that Purchasing adds on.
Do you have those in soft copy? It helps a lot.Please check with Terry for copies in soft form. I do not have them.
2. Where are RFPs referred to in your posted Forms 470. May we get soft copy of them? Yes, I will send them in *pdf format in a separate e-mail.

3. Finding no description in the RFP of specific projects to be addressed or priced, we are planning the following response and want to ensure that it meets your expectations: Pete, I patterned the RFP after the Atlanta model which did not ask for specific pricing. Their approach was to select a vendor in two steps: Step 1 was to identify and quantify a vendor's ability to provide the necessary services to the District. Step 2 was the actual negotiation of costs, etc. I thought this was a better approach than the Memphis model, especially in view of the limited time for a vendor to respond. Am I missing something?
a. Our response to the RFP will be an exposition of our capabilities in the role of technology solution provider, with references, organized accordingly.

b. We will not include a "price" per se for our services, as described, as no specific technology integration tasks were called for, but we will include a Pricing Model, per instructions.

c. We will turn our attention towards consideration of the projects described in the Forms 470 already posted (and newly posted). For these, we will be organizing to create priced solutions, described in Statement of Work deliverables, which can be signed into contracts. Each SOW will have a companion Form 471.

It is our understanding that you need these deliverables in hand prior to the Board meeting scheduled for January 9th, unless it is possible for you to request and be granted a special Board meeting a little later (maybe the 13th?), in order to allow a little more time to be sure all gets done.I will forward an altered copy of this email to Yinuo asking him to push for a separate E-rate board meeting.
4. When would be the right time to call on Joe Loya, without exacerbating the feelings between he and Yinuo?Boy, this is the $64,000 question. What just happened today is the demotion of Joe Loya from Deputy Superintendent back to Associate Superintendent for Finance. He still has control of TIS, so... Let me get back to you on this one in a few days as I need to test the water, if you know what I mean.
I hope to hear from you soon, and will call you tomorrow before noon, if that is acceptable.

Pete Doremus
IBM Global Services
Integrated Services Specialist
pdoremu@us.ibm.com
210-403-1089 voice (T/L 898-)
210-403-1016 FAX

--
Jack Johnston
Administrator, Application Development
Technology and Information Systems
El Paso Independent School District
Voice: (915) 834-5186

From: <pdoremu@us.ibm.com>
To: <tdiaz@us.ibm.com>; <cgentry@us.ibm.com>; <dkaiser@us.ibm.com>; <jonesjp@us.ibm.com>; <nateh@oh.verio.com>; <hdm@bedford.net>
Cc: <jangle@us.ibm.com>; <lnich@us.ibm.com>; <tchambe@us.ibm.com>
Sent: Tuesday, December 05, 2000 7:52 PM
Subject: Re: A Few Questions

A good response from Jack. We don't understnad the politics of this place well enough, K-12.
Time for you to go in-country and figure it out.

Jack will push for more time. I will forward these unborn RFPs around next.

Pete Doremus
IBM Global Services
Integrated Services Specialist
pdoremu@us.ibm.com
210-403-1089 voice (T/L 898-)
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---------- Forwarded by Pete Doremus/San Antonio/IBM on 12/05/2000 05:44 PM ----------

Jack Johnston <jack.johnston@episd.org> on 12/05/2000 05:24:12 PM

To: Pete Doremus/San Antonio/IBM@IBMUS
cc: Ron Johnson/Albuquerque/IBM@IBMUS
Subject: Re: A Few Questions

pdoremu@us.ibm.com wrote: Hello, Jack.

Ron tells mer that Terry Freiburg in Purchasing directed him to you with his question, so we thought that we would combine his with a few of mine to be efficient. Please advise us if you feel that any of these requests is inappropriate.

1. We have soft copy of the main body of the RFP, but not of the additional pages that Purchasing adds on.
Do you have those in soft copy? It helps a lot.Please check with Terry for copies in soft form. I do not have them.
2. There are RFPs referred to in your posted Forms 470. May we get soft copy of them? Yes, I will send them in *pdf format in a separate e-mail.

3. Finding no description in the RFP of specific projects to be addressed or priced, we are planning the following response and want to ensure that it meets your expectations: Pete, I patterned the RFP after the Atlanta model which did not ask for specific pricing. Their approach was to select a vendor in two steps: Step 1 was to identify and quantify a vendor's ability to provide the necessary services to the District. Step 2 was the actual negotiation of costs, etc. I thought this was a better approach than the Memphis model, especially in view of the limited time for a vendor to respond. Am I missing something?
a. Our response to the RFP will be an exposition of our capabilities in the role of technology solution provider, with references, organized accordingly.

b. We will not include a "price" per se for our services, as described, as no specific technology integration tasks were called for, but we will include a Pricing Model, per instructions.

c. We will turn our attention towards consideration of the projects described in the Forms 470 already posted (and newly posted). For these, we will be organizing to create priced solutions, described in Statement of Work deliverables, which can be signed into contracts. Each SOW will have a companion Form 471.

It is our understanding that you need these deliverables in hand prior to the Board meeting scheduled for January 9th, unless it is possible for you to request and be granted a special Board meeting a little later (maybe the 13th?), in order to allow a little more time to be sure all gets done.I will forward an altered copy of this email to Yinuo asking him to push for a separate E-rate board meeting.
4. When would be the right time to call on Joe Loya, without exacerbating the feelings between he and Yinuo?Boy, this is the $64,000 question. What just happened today is the demotion of Joe Loya from Deputy Superintendent back to Associate Superintendent for Finance. He still has control of TIS, so... Let me get back to you on this one in a few days as I need to test the water, if you know what I mean.
I hope to hear from you soon, and will call you tomorrow before noon, if that is acceptable.

Pete Doremus
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Jack Johnston
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El Paso Independent School District
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TAB 14

Universal Service Administrative Company
Schools & Libraries Division

George McDonald
Vice President, Schools and Libraries Division

September 16, 2004

Bob Richter
National ERate Program Executive
IBM Corporation
166 Deer Run
Burlington, CT 06013

RE: El Paso Independent School District Funding Year 2001 FCC Form 471 # 256606

Dear Mr. Richter:

In Funding Year 2001, El Paso Independent School District (El Paso ISD) submitted FCC Form 471 # 256606 to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) seeking funding for eight internal connections Funding Request Numbers (FRNs) and one Internet access FRN. IBM Corporation (IBM) is the service provider associated with each of these FRNs. USAC funded these requests and eventually disbursed $55.3 million to IBM for providing the products and services to El Paso ISD.

USAC approved these funding requests based upon the FCC Form 471 Item 21 attachments submitted to USAC, and upon information provided to Program Integrity Assurance (PIA) reviewers during the review of the funding requests.

USAC has since obtained the Statements of Work that underlie each FRN. USAC's analysis of these Statements of Work raises significant questions about the eligibility of the actual products and services for which funding was disbursed to IBM. This analysis indicates that the Item 21 attachments generally do not accurately reflect the products and services identified in the Statements of Work. Specifically, USAC's analysis concludes that:

- The funding commitment for FRN 648646 should be analyzed to determine which costs are allocable to eligible products and services, and which to ineligible products and services. If no documentation is available, the funding commitment for this FRN should be rescinded in full and recovery sought for any amounts disbursed.

- The funding commitment for FRN 648729 should undergo cost allocation based on the issues identified in the analysis. The funding commitment will need to be

rescinded in part and recovery sought for any amounts disbursed for ineligible products and services.

- The funding commitment for FRN 648758 should be rescinded in full and recovery sought for any amounts disbursed.

- The funding commitment for FRN 648793 contains substantial ineligible services and must undergo cost allocation.

- The funding commitment for FRNs 648909, 648960, and 648594 should be analyzed to determine whether the funding commitment was limited to 52 locations at a 90% discount. If the funding commitment was not limited to 52 locations, the funding commitment will need to be rescinded in part and recovery sought for any amounts disbursed for products and services delivered to locations that do not qualify for a 90% discount. For FRN 648594, a final eligibility determination needs to be made for fiber exclusive access service.

- The funding commitments for FRNs 648857 and 648996 do not appear to raise eligibility issues.

The detailed analysis is enclosed for your review. Also enclosed are the Statements of Work on which the analysis is based.

USAC requests that you respond to USAC's eligibility determinations explained in the enclosed analysis. In some instances, it is not clear based on the information available at this time the extent to which the FRNs contain ineligible products and services. If you believe that all of the products and services for which funding was committed were eligible for funding, provide any and all documentation necessary to support your position. Furthermore, if you believe that all of the products and services for which USAC disbursed funds were eligible for funding, provide any and all documentation necessary to support your position.

USAC is required to adjust funding commitments and seek recovery as necessary when it determines that it made a funding commitment in error. If you do not respond to this request within 30 days of the date of the letter, USAC will base its commitment adjustment determinations on the documentation enclosed for your review.

We expect to work with you in making a final determination of the eligible and ineligible components of funding requests in this application, and I hope your response will advance that process.

Sincerely,

George McDonald
Vice President, Schools and Libraries Division

cc: Jack Johnston, Executive Director, TIS, El Paso Independent School District

Enclosures

Universal Service Administrative Company, Schools and Libraries Support Mechanism Eligibility Analysis

Statement of Work for El Paso Independent School District for Fiber Network Exclusive Internet Access 1/18/2001.

IBM Proposal to El Paso Independent School District for Cabling Services 1/18/2001.

IBM Statement of Work for El Paso Independent School District for Email 1/18/2001.

IBM Statement of Work for El Paso Independent School District for Network Electronics 1/18/2001.

IBM Statement of Work for El Paso Independent School District for Server Upgrade 1/18/2001.

IBM Statement of Work for El Paso Independent School District for IBM's Web Access for a School Community Solution, 1/18/2001.

Contract for the Provision of USF Maintenance Services for El Paso Independent School District 1/18/2001.

IBM Statement of Work for Video Solution and Installation Services for El Paso Independent School District, 1/18/2001.

IBM Statement of Work for El Paso Independent School District for Web and File Server Project 1/18/2001

TAB 15

Analysis of Eligibility for EPISD Network Maintenance

(Scope of this first draft is PIA Review; Invoicing analysis is forthcoming)

1. The "network maintenance" for EPISD in 2001 (Application # 256606, FRN 648793) was for a pre-discount amount of $27,121,700.00.

2. The Item 21 Attachment described two components for this work, "Network Maintenance Support," and "Internal Connections Hardware Maintenance." There is no cost breakdown for these two components.

3. For Internal Connections Hardware Maintenance section of the Attachment, a total of 6200 eligible Internal Connections components are listed for coverage. Taken by itself, we see no eligibility concerns with this aspect of the FRN.

4. For the Network Maintenance Support section of the Attachment, the specific wording appears tailored to meet SLD eligibility requirements. However, a close inspection of the submission hints that the services may extend beyond the confines of E-rate eligibility. This section of the Item 21 Attachment describes a "Maintenance Support Office," which appears analogous to a Help Desk—a means for any end user to report and have resolved a wide variety of computer issues, many of which would not necessarily involve eligible products or services. Whether or not the "Maintenance Support Office" was strictly limited to certain network support issues that are E-rate eligible, or also included ineligible services (such as support for application software or components within end-user computers) is not known at this time. ~~We are investigating (??).~~

   Update: I've spoken to Ray Mendiola about this. His team has determined that the MSO provided a routing function for all calls from all schools (both 80% and 90% discount), but that IBM technicians were apparently dispatched only to 90% schools. The routing of support calls from 80% schools should have been cost allocated.

   There is no specific reference in the file to services beyond network support, but the scope of the services and the fact that end-users (not technicians) were able to call the MSO provides at least an implication that ineligible services may have been provided. Ray indicates that the MSO is no longer in operation, and that IBM has removed all their personnel and equipment. Perhaps an evaluation of trouble tickets, if available, would indicate the extent of additional ineligible services, if any.

5. Our eligibility standards for "Maintenance," such as that provided by this FRN, include the provision that the "agreement or contract must specifically identify the eligible products or services covered." PIA made a reasonable conclusion that this requirement was satisfied via the Internal Connections Hardware Maintenance section of the Item 21 Attachment. Using hindsight, future similar

situations might benefit from additional applicant information concerning the individual sections of an FRN, and whether all sections of an FRN are within the eligibility conditions of SLD program rules.

6. Under current processing standards, PIA has no dollar threshold for Maintenance that triggers a more detailed review. Such a dollar threshold, or a cost per component, can be considered as an aid for future PIA processing.

7. Under the processing standards in place at the time this FRN was approved, SLD was not empowered to deny an FRN that appeared potentially excessive in cost (so long as the applicant could demonstrate that it met the program's bidding and selection requirements). SLD has since denied for excessive cost, although the denial has not been reviewed by the FCC.

8. We have multiple checks in our overall process, including a Commitment Adjustment process when we find that a commitment was made in error. That is the situation in this case—we are in the process of seeking the return of funds for this FRN. (Further data: e-mail from Mike Deusinger to Ed Hosler on June 5 indicates "El Paso FRNs were denied in Fund Year 2002 as part of the IBM pattern and [FRN 648793 and others] from 2001 are part of that pattern.")

— See next page for Invoicing information —

Invoicing Information for EPISD Network Maintenance

Seven invoices were processed for FRN 648793. (Two other invoices were received but were canceled at service provider request.)

Each invoice was for one-eighth of the FRN total, with the exception of the first processed invoice, which was for two-eights (or one-quarter) of the FRN total.

Each invoice triggered an Exception 45, which is generated when an invoice line item exceeds a high dollar figure. Further attention by the Invoicing Team was required in order to determine if the invoices could be cleared for payment.

This process requires applicant sign-off that the services have been delivered, and evaluation of the services described on the invoice in comparison to the services described on the Item 21 Attachment.

The invoices were cleared in each case. In some cases, review after-the-fact revealed information that, in hindsight, could have created questions about whether the services provided were in fact consistent with the services described on the Item 21 Attachment.

For example, the file for Invoice 277649 includes this description of work performed: "Multiple Project Management services provided. Finalized and presented the assessment of Technology Information Systems current state to EPISD. Began high level design of the MSO (Maintenance Support Office)." This description appears to describe ineligible consulting efforts that are not tied to immediate maintenance efforts.

The file for Invoice 285085 includes this description: "Completed high level design of the TSO (Technology Support Office)....Began detailed design of the Help Desk." Again, this appears to describe high level planning efforts that are not eligible, and does not appear to describe actual maintenance services. The fact that SLD has in the past provided support for on-site technicians when justified by the size of the applicant is not expandable to provide eligibility for the customized development of an applicant Call Center.

The distinctions between "eligible" and "ineligible" for professional services involve whether the service is:

- "Coincident" with installation, rather than provided before installation
- Associated with "installation and initial operation"
- Or "coincident and directly associated" with installation

In this case, services appear to have been invoiced that did not meet these eligibility criteria.

Furthermore, an approved FRN for maintenance services must be used for maintenance services, rather than allowing funds to be diverted to other service types, such as design & engineering and project management, even if such services would be eligible, or diverted to consulting services, which are not eligible.

PGieseler
June 19, 2003

TAB 16

Universal Service Administrative Company
Schools and Libraries Support Mechanism

ELIGIBILITY ANALYSIS
EL PASO INDEPENDENT SCHOOL DISTRICT
FUNDING YEAR 2001
FCC FORM 471 # 256606

OVERVIEW

This paper contains an analysis of the eligibility of products and services requested by El Paso Independent School District (EPISD) on FCC Form 471 # 256606, and funded by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC), for Funding Year 2001.

Of the nine FCC Forms 471 submitted by EPISD for Funding Year 2001, FCC Form 471 # 256606 stands out as having service eligibility issues. This Form 471 includes eight Internal Connections funding requests and one Internet Access funding request for a wide range of technology deployment, such as network electronics, video technology, file servers, and cabling.

During Program Integrity Assurance (PIA) Review, SLD determined that some Funding Request Number(s) (FRNs) contained ineligible components, and the costs of those components were removed from the FRNs prior to approval. Apart from this standard process, no significant eligibility issues were apparent under then-current review procedures.

Subsequently, SLD obtained the Statements of Work for each FRN on this Form 471 application. SLD has evaluated these Statements of Work and other relevant information, and has determined, based on this documentation, that some FRNs are in fact NOT eligible for funding, and that there are questions about the extent to which other FRNs are eligible for funding.

FCC FORM 471 # 25606

Below is a table indicating the amount committed and disbursed for each FRN on this FCC Form 471 application. The final column below states the results of SLD's review based on the Statements of Work for each FRN.

FRN	FUNCTIONALITY	COMMITTED $	DISBURSED $	ANALYSIS CONCLUSION
648646*	E-mail	$3,229,025.65	$3,229,025.25	**Ineligible components must be cost allocated**
648729*	Video	$3,902,493.60	$3,324,008.12	**Requires cost allocation;**

Universal Service Administrative Company
Schools and Libraries Support Mechanism

				questions raised
648758	Web Access	$2,457,027.90	$2,457,027.87	**NOT ELIGIBLE**
648793	Maintenance	$24,409,530.00	$24,409,530.00	**Substantial ineligible services must be cost allocated.**
648857*	Network Electronics	$10,472,940.00	$9,042,502.06	No issues apparent
648909*	Server Upgrades	$2,627,730.00	$1,506,832.13	Quantity changes appear acceptable. **Need to verify location of servers.**
648960*	Web & File Servers	$5,850,540.00	$3,374,300.63	Quantity changes appear acceptable. **Need to verify location of servers. Needs cost allocation to subtract ineligible functionality.**
648996	Network Cabling	$7,080,660.00	$7,080,660.00	No issues apparent
648594	Internet Access	$3,591,810.00	$878,310.00	**Need to make final eligibility determination for fiber exclusive access service, and need to**

				determine if service was limited to 52 locations.

* Those FRN's marked with an asterisk had service substitution requests submitted after approval of the funding request. None of the service substitution requests appears to change the analysis in this report.

Thus, for the nine funding requests, this analysis concludes that one is clearly not eligible for funding, six raise further questions, and two appear to raise no eligibility questions that cannot be answered from a review of existing information.

This analysis does not necessarily identify every questionable or ineligible product or service in the Statement of Work, but relies on significant examples of core eligibility issues.

E-mail Funding Request (FRN 648646)

The Item 21 Attachment submitted in support of the FRN contained some components (data cartridges and cleaning cartridges) that are not eligible for funding. Costs for these components were removed from the FRN by PIA Review personnel. No other indications of ineligible products or services were apparent based only on review of the Item 21 Attachment.

Subsequently, a copy of the service provider's Statement of Work was obtained. Page 4 of the Statement of Work indicates that "all non e-rate eligible products and services are excluded from this agreement and is (sic) included in a separate contract." This phrase indicates that all aspects of the Statement of Work were felt to be E-rate eligible. However, significant aspects of the Statement of Work are clearly not eligible under SLD program rules.

Examples from the Statement of Work that indicate ineligible services include:

- "[P]erform planning and assessment for email deployment," i.e., ineligible consulting services
- "Develop distributed email architecture," i.e., ineligible consulting services
- "Specify email server sizing & configuration," i.e., ineligible consulting services, since server size and configuration have already been specified in the Form 471
- "Develop minimum client specifications for desktop hardware, software, and Operating systems," i.e., ineligible consulting, since such end user components are not eligible for E-rate funds
- "Assist in development of district-wide email Policies & Procedures, i.e., ineligible consulting

- "Develop end-user training curriculum and materials, and train trainers," i.e., ineligible training
- "Develop graphic & layout design standards," i.e., ineligible content development
- Provide "free firewall software," i.e., ineligible security functions that require a cost reduction to be compliant with the SLD Free Services Advisory
- "[P]rovide CyperPatrol content filtering on two servers to allow content filtering of Internet access," i.e., ineligible filtering software
- "Establish and facilitate a District Web Policy Steering Committee," i.e., ineligible consulting since this function is not directly tied to the actual installation and initial operation of eligible components
- "Assist in developing District-wide Policies and Procedures," i.e., ineligible consulting
- "Develop a comprehensive Web implementation strategy, including input from stakeholders throughout the district," i.e., ineligible consulting.
- "Develop a strategy for distributed Web maintenance, including template-based design and designated Content Managers," i.e., ineligible support for ineligible content
- "Provide a toolkit of reusable Web component templates," i.e., ineligible content software
- Provide Content Manager Training," i.e., ineligible training
- "Conduct research & planning for future Intranet integration with internal systems," i.e., ineligible consulting
- "We will provide and install three Domino applications as pilots…'" i.e., ineligible software

A determination of the costs of these ineligible components is required.

Video Funding Request (FRN 648729)

The Statement of Work provides substantially more detail than what is provided by the applicant's Item 21 Attachment. It specifies products that are not eligible, or that require cost allocation, as follows:

(17) Cisco Archive Server
(16) Cisco Content Engine

The Archive Server provides ineligible caching. The Content Engine also includes ineligible caching, and additionally includes some eligible functionality. The full cost of the Archive Servers must be eliminated from the funding request, and a percentage of the cost of the Content Engines must be eliminated from the funding request. The Statement of Work specifically indicates that there has been no subtraction for the ineligible functionality.

Perhaps more fundamentally, the Statement of Work consistently indicates that the video solution is to be implemented for 90 locations, whereas only 52 locations are specified in

Block 5 of Form 471. The applicant's Block 4 information includes a listing of 52 schools with a shared discount of 90%, and also includes a listing of 91 locations with a shared discount of 78%. This raises the question of whether the funding request is for the 52 sites with a shared discount of 90% only, or whether it also included the additional 39 locations with a shared discount of 78%.

The Statement of Work indicates that "IBM will...operate...the video solution for EPISD for a period of one year." Operation of video components is not eligible for funding. The Statement of Work indicates that a "dedicated support staff (3) will be assigned to EPISD to ensure proper coverage." This is taken to mean that three contractor persons will be devoted to operation of the equipment, as well as administration and support. Dedicated contractor personnel have been funded by SLD when the maintenance requirements of a large applicant can justify this arrangement in comparison to on-call personnel. However, this arrangement cannot be interpreted as providing for operational services that would otherwise be provided by the applicant's own staff.

The Statement of Work indicates that the video solution requirements will be re-verified, and that the development of the current list of requirements will affect the final design of the solution. Technical services such as program management and engineering design can be eligible for funding if directly tied to installation and operation, but are not eligible if involved with initial planning activities. Further investigation of the scope and details of this aspect of the project would be required to determine the extent of ineligible services.

Web Access Funding Request (FRN 648758)

The Statement of Work reveals that the funding request is for a product called "IBM Web Access for a School Community." This product has been determined to be a collaboration package that provides application software, and is ineligible for funding.

Maintenance Funding Request (FRN 648793)

The Item 21 Attachment for maintenance services described two principal activities, hardware maintenance and technical support. A review of the Statement of Work indicates that an extensive on-site "Maintenance Support Office" was to be provided. This was a comprehensive Help Desk facility that provided a level of services well beyond the scope of other support services seen by SLD staff. The services described in the Statement of Work appear to have been integrally tied to the provision of ineligible components.

A computer "Help Desk" accepts support calls from end users, and initiates action to resolve the problem. This action might involve initial diagnostics, creation of a Trouble Ticket, logging the support call, and alerting other personnel that a problem exists. Such

a Help Desk function is not eligible under SLD program rules, because it is not limited only to support of the products and services that are eligible for E-rate funds.

The Statement of Work indicates that the Help Desk would "[a]ccept support related calls from end users." Calls from end-users would include problems with end-user workstation operating systems and hardware, and potentially other areas such as questions about the operation and configuration of end-user software. Such end user support is clearly not eligible for E-rate funding. Even if the actual correction of a problem involves non-contractor personnel, and is therefore not reimbursed with E-rate funds, the routing and logging function of the comprehensive Help Desk activities would include ineligible support services.

Furthermore, a comprehensive Help Desk system goes beyond the level of support authorized by the FCC in the original Universal Service Order: "[S]upport should be available to fund discounts on such items as routers, hubs, network file services, and wireless LANs and their installation and basic maintenance...." *See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, FCC 97-157 ¶ 460 (rel. May 8, 1997). (Emphasis added.) There is no authorizing language that provides for the level of support provided by the Help Desk facility described in the Statement of Work.

On the contrary, paragraph 459 of the original Universal Service Order indicates that support will be provided for a product or service "only if it is necessary to transport information all the way to individual classrooms. That is, if the service is an essential element in the transmission of information within the school or library...." (Emphasis added.)

The lack of eligibility for many or all of the Help Desk services is not a determination that such facilities have no value, but simply that they fail to meet eligibility requirements. Industry information indicates that approximately 20% of a technology implementation can be funded through E-rate eligibility, with the remaining 80% not eligible. (See, for example, paragraph 497 in the "97 Report and Order.)

Network Electronics Funding Request (FRN 648857)

No product and service eligibility issues were apparent in the review of the Network Electronics Statement of Work.

Server Upgrade Funding Request (FRN 648909)

The Statement of Work specifies that up to 90 file servers will be installed. Only 52 locations are specified in the Form 471 as having a 90% shared discounts. Briefing information from the service provider indicates that the applicant erred in the quantity specification, and that the correct number is 52 file servers. Further investigation is

needed to determine whether the original funding commitment was for file servers at 90 locations, or for file servers at the 52 locations that had a 90% discount.

Web & File Server Funding Request (FRN 648960)

The Statement of Work specifies that up to 90 file servers and up to 90 web servers will be installed. Technical specifications of these servers are identical to the technical specifications of the servers in the previous section of this analysis. Briefing information from the service provider indicates that the applicant erred in the quantity specification, and that the correct number is 52 file servers and 52 web servers. Further investigation is needed to determine whether the original funding commitment was for file servers at 90 locations, or for file servers at the 52 locations that had a 90% discount.

The Statement of Work indicates that proxy, DHCP, and server caching will be provided. Proxy services and caching are not eligible uses. Therefore, the proportion of server functionality providing these ineligible features should be determined and the appropriate ineligible cost calculated.

Network Cabling Funding Request (FRN 648996)

No product and service eligibility issues were apparent in the review of the Network Cabling Statement of Work.

Internet Access Funding Request (FRN #648594)

The Internet Access Statement of Work indicates that high bandwidth access will be provided for up to 90 campuses. Since only 52 locations are a part of the specification for this funding request, this raises the question of whether the funding request is for the 52 sites with a shared discount of 90% only, or whether it also included the additional 39 locations with a shared discount of 78%.

Furthermore, the Statement of Work indicates that "fiber high speed optic cable or other digital media" will be "used for exclusive access to the Internet." The FCC has raised high concern over exclusive access arrangements, and indicates that funding is not to be provided for arrangements that, even if titled a lease of services, reach essentially the same result as a prohibited WAN purchase. Further information is required to make a final determination, including whether a lease-purchase option exists and whether E-rate funds were requested for up-front costs of service provider infrastructure.

CONCLUSION

The analysis above indicates the following:

- The funding commitment for FRN 648646 should be analyzed to determine which costs are allocable to eligible products and services, and which to ineligible products and services. If no documentation is available, the funding commitment for this FRN should be rescinded in full and recovery sought for any amounts disbursed.

- The funding commitment for FRN 648729 should undergo cost allocation based on the issues identified in the analysis. The funding commitment will need to be rescinded in part and recovery sought for any amounts disbursed for ineligible products and services.

- The funding commitment for FRN 648758 should be rescinded in full and recovery sought for any amounts disbursed.

- The funding commitment for FRN 648793 contains substantial ineligible services and must undergo cost allocation.

- The funding commitment for FRNs 648909, 648960, and 648594 should be analyzed to determine whether the funding commitment was limited to 52 locations at a 90% discount. If the funding commitment was not limited to 52 locations, the funding commitment will need to be rescinded in part and recovery sought for any amounts disbursed for products and services delivered to locations that do not qualify for a 90% discount. For FRN 648594, a final eligibility determination needs to be made for fiber exclusive access service.

- The funding commitments for FRNs 648857 and 648996 do not appear to raise eligibility issues.

TAB 17

USAC

Universal Service Administrative Company

Kristy L. Carroll
Associate General Counsel
kcarroll@universalservice.org

Memorandum

To: File
From: Kristy Carroll
Date: January 14, 2003
Re: Report of Interview with John Mitchell

On January 13, 2003, I spoke with John Mitchell (Mitchell) regarding his contacts with IBM Corporation (IBM). According to Mitchell, he is a principal for a consulting company named Moss Bay Group that provides Erate consulting to Seattle Public Schools (SPS). Moss Bay Group is located at 6100 219th St., S.W., Unit 380, Mountlake Terrace, Washington, 98043. The telephone number is (425) 776-0188.

Mitchell stated that he has performed Erate consulting work for SPS since Funding Year 1998, and that SPS is Moss Bay's only Erate client.

Mitchell stated that he called George McDonald after the December 3, 2002 website notice was posted because he was concerned that SPS would be targeted for scrutiny because they had used the Form 470 boilerplate template that IBM had provided to them during their preliminary discussions with IBM when they posted their FCC Form 470. Mitchell forwarded to me the email that he received from IBM with the FCC Form 470 boilerplate template attached.

Mitchell stated that discussions with IBM began in October and that he was on a conference call with Steve Mueller and Charles Gentry. He stated that one of IBM's selling points was that they represented to him that former SLD attorneys work for IBM, and as a consequence, IBM knows all the loopholes in the program. Mitchell said that because SPS had started the Erate process a little late this year, that the plan with IBM was that SPS would use the Western States Contracting Agreement (WSCA) rather than go through local procurement regulations. According to Mitchell, WSCA is like a state master contract, but it was set up in Arizona and the intention was that it would be good in 5 or 6 states. Mitchell said that he saw it as a way for IBM to get around the state procurement cycle. Mitchell stated that SPS attorneys told him that WSCA was crafted so that applicants could use it without having to go through local procurement regulations, but that school boards still have to agree to use WSCA. Mitchell stated that his understanding was that by using the WSCA there would be no competition – they would just bring IBM in through that agreement.

Mitchell stated that another one of IBM's selling points was that IBM could get SPS a lot more funding than they had gotten in the past. IBM told him that he would get a call from

CONFIDENTIAL

Mary Sue Pinnell at IBM regarding how to deal with WSCA and with someone from a company called "Alpha" regarding SPS's discount percentages. (Mitchell stated that IBM gave SPS boiler plate language for dealing with WSCA, too.) According to Mitchell, Alpha is a subcontractor to IBM that does work on discount percentages. Mitchell stated that he sent Gentry the SPS eligibility lists. Mitchell stated that he was told by Alpha or Gentry that they could increase the number of 90% sites at the SPS from 13 to 40. Mitchell said he didn't know how they could do that. Mitchell stated that the person at Alpha would not tell him how they would accomplish the increase.

Gentry told Mitchell that what IBM does is to move the help center to one of the 90% schools, and that all the calls that come in are presumed to be support calls for one of the 90% schools. Then, if a call is about a non-90% school, the call is re-routed to the call center for the non-90% schools.

Mitchell stated that he started feeling unpleasant about the discussions with IBM in November. Mitchell stated that he spoke with Fred Alvares at El Paso. Alvares told him that IBM makes money on the maintenance agreement, and on the "preferred agreement" with IBM. Alvares also told him that El Paso ended up with a lot of equipment that they don't need, and that they have very complex lease agreements with IBM that end up being very expensive. Alvares said that IBM insists on using its own products. One such product is "Tivoli" and it still doesn't work. Alvares said that Jack Johnston [at El Paso] had trouble controlling IBM once they got in – that IBM would go over his head. Mitchell said that Alvares was confident that El Paso would get their funding this year, but that if they didn't get their money they would be "screwed" because they would have huge equipment lease costs that they wouldn't be able to afford if the SLD funding didn't come through.

Mitchell stated that at some point after talking with Jack Rollins [at SPS] that they decided that they were not comfortable with going with IBM, mainly because of the WSCA issue. Mitchell stated that IBM sent SPS copies of the agreement between the state of Utah and IBM using WSCA. Mitchell said that he took this to Ron English, a school district attorney. He said that they were both troubled by a provision in the agreement under which all but a few categories of equipment would be provided by IBM.

While SPS was still working with IBM, 2 people from IBM came for a visit – Reggy Rouh and Gerry Carbone. Mitchell said that the visit caused some confusion because Rouh and Carbone appeared to be representing to the 15 to 20 SPS personnel with whom they met that SPS could get funding for ineligible goods and services. Mitchell thinks that this was unintentional – that these were technical people who didn't know much about Erate.

Mitchell stated that while they would have liked to get all the services IBM offered, the big problem for SPS would be getting the local money they would need for electrical needs, and for the non-discount portion. Mitchell said that he told Gentry they would not be going with IBM two days before the website notice went up. Mitchell said that Gentry was nervous and wanted to know if they had talked to anyone at Alpha.

CONFIDENTIAL

Mitchell stated that he did discuss with Gentry on 2 or 3 occasions that he was concerned about the legalities of the IBM approach, and that Gentry's response was why would they want to do anything illegal? Gentry said that IBM just knows how to walk the lines [of legality].

I asked Mitchell if he ever provided any information to Alpha. Mitchell said that IBM sent Alpha the eligibility lists from SPS. Mitchell said that El Paso believes that Alpha uses demographic models to get to actual number students eligible for, not just those enrolled in, NSLP.

I asked Mitchell how the WSCA works together with the Strategic Partner (SP) RFP. Mitchell said that he thinks that what would happen would be that the SP came up long before the idea of having any kind of involvement with the WSCA contract, so whatever SPS did, SPS was always going to need the SP Agreement with IBM. IBM wanted SPS to advertise the SP RFP right away and IBM would help advertise – IBM needed to get the SP agreement in place with IBM – the question was whether to send the RFP out or to select IBM through the WSCA – since the competitive process underlying WSCA was greater than Seattle's, they could use WSCA. Mitchell stated that IBM was not at all worried that anyone else could compete with IBM in regard to the SP RFP. For example, no other service provider would be able to have 30 people show up on a day's notice; only IBM could do it. Mitchell never saw the SP RFP. Mitchell stated that IBM had a high degree of confidence that IBM's ability to win the SP RFP would not be a problem.

TAB 18

From: Charles Gentry [cgentry@us.ibm.com]
Sent: Friday, October 18, 2002 2:50 PM
To: jrowlands@seattleschools.org; jmitchell@mossbaygroup.com
Cc: prouh@us.ibm.com; rkum@us.ibm.com; Steven Mueller; dabitte@us.ibm.com
Subject: Thank you

John, thank you for spending time with us today. You have certainly maximized the E-Rate opportunity for Seattle. We now need to see what additional services can be funded to augment the work you've already done. Steve will be sending you a sample Strategic Partnership Agreement. Take a look at this document and we can discuss any questions you might have on the conference call on Monday. In the meantime, I'll be researching any E-Rate options we might have for your Private Fiber Network.
I look forward to working with you!

Thank You,

Charles Gentry
National Education Executive - ITS
IBM Global Services
400 West 15th Street, 12th floor
Austin, Texas 78701
512-469-8360
Assistant: Gaylene Oakley
Tel: 704-595-4679

ANY DISTRICT
USA

Any District USA School Board requests proposals for a Strategic Technology Solution Provider for the Any District USA.

1. GENERAL SCOPE AND PURPOSE OF PROCUREMENT:

The purpose of this RFP is to select a strategic technology partner with the competencies, expertise and resources necessary to assist the Any District USA (ADU) in effectively infusing technology throughout the district. The technology infusion should result in significantly improved student achievement, and improved administrative practices in support of teaching and learning.

ADU is looking for a single vendor to assist the Technology Committee (TC) chaired by the Director of Technology, ADU Technology Department with the implementation of technology at both a technical and financial level.

The ADU wishes to enter into a long-term strategic partnership with a technology provider for the purpose of implementing, refining and supporting a state-of-the-art technology infrastructure that will provide world-class technology to the students and staff of ADU. The selected provider will work under the direction and supervision of the chairman for TC.

The Strategic Technology Partnership agreement will include, but not limited to, E-rate funded projects. The selected vendor should be prepared to assist the district with all aspects of the E-rate process and should demonstrate knowledge and experience in dealing with E-rate funded projects. All E-rate applications will be submitted using the successful bidder's single SPIN number. Vendors must provide their SPIN number as part of this response. It is anticipated that the term of this partnership will be for a period of four (4) years, which will include a contract for the first year. There will be three (3) renewal option years with each option year to be awarded annually as a separate follow-on contract based on the previous year's performance. The decision to award an option year shall be based on the availability of funding for the fiscal year under consideration, school system needs, and vendor performance. The decision will be at the sole discretion of ADU. The performance of the technology provider on the previous year's scope of work will be measured against the Methodology for Measuring Results described in Section 3, Selection process, of this document.

The work itself will consist of all aspects of technology implementation for which ADU desires to contract with the partner. The current technology program calls for the installation of new technology equipment, software and services on an on-going basis.

GENERAL INFORMATION:

A. Eligible Offerors

An eligible offeror is, any firm that can demonstrate competence as a systems integrator in handling projects that are:

* Complex in that solutions requiring the integration of multiple technologies, with the involvement of multiple vendors as subcontractors.
* Long term with the management of projects that may span several years including the leadership required to successfully conclude project on time and budget.
* The financial stability to cope with protracted federal payment practices.
* That may require scalability of the workforce in the field to meet time deadline(s).

B. Response Format

Each response, will be reviewed to determine if it is complete before evaluation. Any response not containing the information requested, will not be considered. Responses will, be evaluated according to the materials and substantiating evidence presented.

C. Legal Approach

Include a sample contract, Statement of Work (SOW), any existing pricing contracts available for use by ADU (GSC, TCPN, Western States Contracting Alliance, or other), and all other documents that would become a part of the final contract. Pricing to include: rate card for services, planning and consulting pricing, and other pricing appropriate for this RFP.

SELECTED PROCESS:

A. Submission of Written Qualifications

ADU will review and evaluate the response to the RFP in accordance with the qualification evaluation criteria identified herein.

B. General Requirements of Each Offeror

Adherence to the requirements of this RFP,
Adherence to the ADU procurement process and,
Provide audited financial statements for the last two fiscal years.

C. Oral Interview

ADU reserves the right to conduct oral interviews with a select short list of firms to fully discuss their qualifications for this project and to answer questions posed by ADU Board of Directors. A final selection will be, based upon the written response, oral evaluation, and references of the offeror. If an oral interview is required, notification will be, provided to each finalist a minimum of five (5) days before the scheduled interview.

D. **Selection of the Strategic Technology Partner**

ADU will issue a Letter of Intent (LOI) to the most qualified firm as determined by ADU, for this project. Under the LOI the recommended firm and ADU will negotiate a contract detailing commitments, guarantees, methodology for measuring results, termination procedures, fee structure, and any other legal requirement necessary to execute a contract. If an acceptable contract cannot be reached with the selected offeror within thirty (30) days from the date of the Letter of Intent, then the next highest ranked offeror may be contacted.

E. **Methodology for Measuring Results**

Particular attention, should be paid to the development of your methodology for Measuring Results. This will provide the basis of evaluation for award or non-award of the follow-on option years under this contract. Additionally, your Methodology for Measuring Results must be sure to include those concerns detailed in Section 5 Pricing Model and Cost Assurances.

ADU Background (Optional Section)

ADU consists of.....

Criteria for Selection of a Strategic Technology Partner

ADU has identified the factors itemized in sections 5a to section 5g as critical to a company's ability to effectively assist ADU infuse technology and better prepare students to be successful citizens and productive workers in the 21st century. To be considered for evaluation, companies must provide relevant responses to all sections of this RFP with particular attention to sections 5a - 5h (**300 Evaluation Points Possible**)

A. **Availability and Quality of Resources (30 POINTS)**

ADU is seeking a strategic technology partner that has the depth, breadth, and quality of resources necessary to complete all phases of a broad technology and service project. In addition, the timely availability of these resources and related support elements will be critical to project success.

* Describe the various resources from your company that, will be made available to assist ADU in the execution of its mission.
* Indicate the availability of each resource, e.g., full-time, part-time, or as required.
* Indicate the availability of local resources to support ADU.
* Indicate the anticipated use of out-of town resources to support ADU.
* Provide sample resumes and related experience summaries to demonstrate the competencies and experience of typical personnel who would be assigned to the ADU program.

SEPARATE RESPONSE AND LABEL AS #5A

B. **Staff Development and Training (20 Points)**

ADU recognizes that a Staff Development plan, specifically designed to meet the needs and requirements of the school district, is essential to the

success and growth of students, teachers and administrators.

A comprehensive staff development plan can offer services that will meet the needs of technology implementation. Describe how your company would implement an effective staff development and training program for ADU. Include a description of the training materials or training manual that would be produced and provided to ADU for future use in a "train the trainer" model. Also, describe your approach for class composition, class size, training location, instructors, scheduling, registration, etc.

SEPARATE RESPONSE AND LABEL AS #5B

C. **Project Management/Systems Integration (50 Points)**

ADU requires a project management function as part of the services delivered by the strategic technology partner. Service providers must describe their competencies to manage and coordinate project activities, resources, and communications. Service providers must address their capabilities in areas to include but not limited to:

* Project management methodologies and tools
* Project planning and communications
* Quality assurance procedures
* Project management experience with large school districts
* Project management experience as a single vendor or "prime" systems integrator
* Methodology for measuring results

The strategic technology partner will work closely with ADU project manager to ensure successful project delivery, effective management of project resources and efficient communications between the service provider and ADU.

ADU requires System Implementation services to be included as part of those delivered by the strategic technology partner. ADU's continued transition to an integrated technology approach and migration to new technologies will require the selected provider to take an enterprise focus throughout project delivery. Service providers must describe their approach to systems integration and capabilities to provide these services to large student populations.

SEPARATE RESPONSE AND LABEL AS #5C

D. **Technology Solutions (25 Points)**

ADU requires a network that will continue to provide the District with a modern, efficient and reliable network to support data and will eventually provide voice and video information transfer capabilities within and external to the members district buildings. Reliability and high performance are key requirements of this networking plan, as the ADU network continues to migrate to the base which must support the technology needs of the future.

This networking requirements includes, but not limited to, the following functional components.

* Physical Infrastructure Plans for building wiring, fiber optic distribution (or leasing), wiring closets, patch panels, etc.
* Logical network designs such as switches, routers, gateways, etc. including routing, protocols carried (LAN and WAN), and rationales

for such selections.
* Network and Distributed Systems management approach
* Video distribution plans, including coaxial cable, fiber optics, studio equipment, switching and distribution equipment, satellite down links, and operational requirements.
* Installation of Hardware and Support
* Asset management support for leased and purchased items.
* Intranet and Internet access.
* User training required to integrate these technologies into the curriculum and administrative process.

Please describe your approach, qualifications, and industry experience in the design and implementation of these network requirements in large school districts.

SEPARATE RESPONSE AND LABEL AS #5D

E. Commitment to K-12 Education (20 Points)

The responding provider must demonstrate a commitment to the K-12 education market. ADU is interested in providers that understand the technology, administrative, and instructional challenges facing today's educators, children and administrators. A demonstration of the provider's K-12 commitment should include but not be limited to:

* A description of your company's commitment to K-12 Education.
* Examples of your company's activities as evidence of its commitment and support for K-12 Education.
* Explanation of the size, type, and location of your company's relevant activities.
* Description of your company's commitment to work with local contractors and business enterprises.

SEPARATE RESPONSE AND LABEL AS #5E

F. District funding considerations (100 Points)

ADU requires each vendor to address possible assistance in securing funding for technology infusion throughout the school district. In addition ADU desires to understand the up front investment that must be made with district funds to be prepared to take advantage of other funding opportunities.

1.) Respond in general terms how such assistance will be provided and the funding sources expected to be utilized. Additional details should be provided in the following areas: (25 Points)

- Describe in detail what the level of assistance might be provided
- Provide a total amount of funding assistance anticipated for the sample configuration
- Identify long-term considerations including the likelihood of multi-year funding assistance and the commitment of the vendor to provide such services to ADU.
- Identify how much effort will be required by ADU in obtaining this funding.

2.) Specify the services available to the district for project planning, specialized program assistance, and other services provided to the district dealing with funding assistance. (25 Points)

3.) Specify the Costs to the District for all services discussed in the previous item (#2). (25 Points)

4.) Provide at least 3 references where the District/vendor partnership has been successful in securing funding for technology projects. (25 Points)

SEPARATE RESPONSE AND LABEL AS #5F

G. **Pricing Model and Cost Assurances** *(25 Points)*

As with any project, cost is a consideration. ADU understands that a strategic partnership as described in this RFP, does not allow for firm, fixed pricing in all areas as the specific scope of work necessary for such pricing is impossible to ascertain. Prospective bidders should note that this RFP does not require, a firm fixed price, a cost plus proposal, or any other specific cost information with the exceptions of: a cost schedule for services and costs for Specialized Services for funding assistance. However, it is vitally important that ADU get value for its dollar in the other areas included in this scope of work and be able to demonstrate this to the ADU Board. Consequently, prospective bidders are required to provide a proposed pricing model that will:

* Be able to demonstrate throughout the life of the contract that the costs associated with this partnership are within normal and customary charges for the type of services provided.
* Be simple to administer as specific scopes of work are developed.
* Meet all statutory requirements for record keeping reporting and auditing of public funds.
* Adhere to district purchasing policy.
* Be flexible in working within established budgets.

Include a proposed schedule of hourly charges and/or other services based pricing, your company would normally use for a project of this scale.

Bidders are encouraged to provide any additional ideas, concerns or strategies for accomplishing the above.

It cannot be, over emphasized how important this criterion is to the potential success of any prospective bidders and your particular attention to providing a unique and workable implementation is strongly recommended. This criterion will be a major factor in evaluating the contractor's previous year's performance for determining the annual renewal/non renewal of this contract.

Contingent upon negotiations with the selected vendor, a specific price quote may be required upon completion of the final negotiated contract for the E-rate eligible projects. This information will be, submitted on ADU 471 application. Specific pricing will be required for any additional projects.

SEPARATE RESPONSE AND LABEL AS #5G

H. **Other Vendor Attributes** *(30 Points)*

ADU has also determined that a company's background, experience, and financial stability are essential for the success of a long-term strategic relationship with its selected Strategic Technology Partner. In addition, the satisfaction of clients with the quality and cost effectiveness of services and products provided by the vendor is also critically important. Vendors responding to this RFP should include information about their company's experience, financial stability, and quality of services and products and satisfaction of their clients. A minimum of three (3) references must be provided. Preferred references would be other large school districts. Vendors must provide project scope and contract information.

SEPARATE RESPONSE AND LABEL AS #5H

I. **Proposal Evaluation Model**

A committee designated to evaluate the response to this RFP will select up to three (3) vendors as finalists. The finalists may be required to present and answer questions regarding their RFP responses. The committee will select a single vendor to recommend as ADU Strategic Technology Partner from the finalists.

ADU reserves the right to select outright a Strategic Technology Partner, and to waive the finalists state of the evaluation process in the event a vendor has a total points scored significantly higher than all the other vendors responding to this RFP.

ADU is its sole discretion may accept or reject any or all responses to this RFP and may waive all formalities, technicalities and irregularities. All bidders are placed on notice that award of the RFP will be based upon the products and services best suited to ADU. The sole judgement of ADU on such matters shall be final.

DOES YOUR OFFER COMPLY WITH ALL OF THE TERMS AND CONDITIONS? IF NO, INDICATE EXCEPTIONS.

_____

_____

_____

_____

DOES YOUR OFFER MEET OR EXCEED ALL SPECIFICATIONS? IF NO, INDICATE EXCEPTIONS.

_____

_____

_____

_____

From: Charles Gentry [cgentry@us.ibm.com]
ent: Monday, October 21, 2002 10:57 PM
To: jrowlands@seattleschools.org; jmitchell@mossbaygroup.com
Cc: Steven Mueller
Subject: Re: 470 Templates....

Service List - 470 format Upda...

John, Thanks again for your time on the conference call together this afternoon. Per your request, I have attached the sample 470 that would open up all areas that we discussed on Friday. Filing this general 470 allows you complete flexibility when filling your 471. You can file multiple 470's, so you can just file this new one in addition to the one you have already filed. As far as 471, these are the SOWs that we would need to modify based on the meeting with Seattle to discuss the district requirements..... once we get the Strategic Partnership RFP done.

-

> Charles Gentry
> National Education Executive - ITS
> IBM Global Services
> 400 West 15th Street, 12th floor
> Austin, Texas 78701
512-469-8360
> Assistant: Gaylene Oakley
> Tel: 704-595-4679
>
>
(See attached file: Service List - 470 format Updated 10-30-01.doc)

From: Charles Gentry [cgentry@us.ibm.com]
Sent: Tuesday, October 29, 2002 5:41 PM
To: jrowlands@seattleschools.org; jmitchell@mossbaygroup.com
Cc: Steven Mueller
Subject: Fw: Generic 470s

Service List - 470 format Upda...

John, this is the 470 template that we've used with other districts. This 470 opens all areas that we might want to address. I hope this helps.

Thank You,

Charles Gentry
National Education Executive - ITS
IBM Global Services
400 West 15th Street, 12th floor
Austin, Texas 78701
512-469-8360
Assistant: Gaylene Oakley
Tel: 704-595-4679

(See attached file: Service List - 470 format Updated 10-30-01.doc)

rom: Peggy Rouh [prouh@us.ibm.com]
ent: Thursday, October 31, 2002 1:50 PM
To: jmitchell@mossbaygroup.com
Cc: Gerald L Carbone
Subject: Meeting @ Seattle Public Schools 11/5

John, we look forward to seeing you on Tuesday, Nov 5th. Jerry Carbone and I will be at your office @ 9 a.m. We will want to focus on the Help Desk and support areas.

We will be looking for those areas that can be addressed with e-rate funds and where you feel efficiencies could be gained or specific areas of problem exist that you would like to have addressed.

We would like to gather info such as:

1. volumes of calls, types of calls, 1,2,3 level resolution, SLAs.
2. Type(s) of Help Desk software and tools you are currently running
3. Process/procedures manual/info for things such as Problem Mgmt, Change Mgmt, Asset Mgmt
4. Network diagrams
5. Network Management tools
6. Plans for managing the environment once you have completed your LAN/WAN project

We would like to spend a bit of time with you and John Rowlands on more specifics of what areas of e-rate funding we should go after.

erry and I would like to talk with the person responsible for the Help Desk as well as to be able to site and watch the operation. As we discussed on the phone, we want the staff to understand that we are there to help the district secure more funding and are not there to evaluate or appraise their performance. An understanding of the current environment will aid us in determining in what ways we can be of assistance.

See you next week.

Dr. Peggy Rouh, Network Management Segment Leader
IBM Global Services West Region
1507 LBJ Freeway
Dallas, TX 75234
(972) 280-1456 t/l 542-1456
FAX (817) 481-2778
prouh@us.ibm.com

From: Steven Mueller [muellers@us.ibm.com]
Sent: Friday, November 08, 2002 12:47 PM
To: John Mitchell's work address
Subject: Free and Reduced Lunch Data and from 470

John,
Can you get me Seattle's latest free and reduced lunch data? I would like IBM analysts to go over the data to see how we can best maximize funding to the District.

Also, have you filed the form 470? I know Charles has sent you a generic copy. I believe we want to keep the form as generic as possible so we can fit the project into the 470.

Thank you.

Steven A. Mueller
International Business Machines, Inc.
Client Representative, Education
7100 Highlands Parkway, Smyrna, GA 30082
Phone: 800-426-1751 x1528; 770-863-1528; T/L 753-
Fax: 800-242-6329
muellers@us.ibm.com
Visit http://www.ibm.com/solutions/education/schools http://www.ibm.com

'Obstacles are those things you see when you take your eyes off your goals"

From: Steven Mueller [muellers@us.ibm.com]
Sent: Thursday, November 21, 2002 11:15 AM
o: John Mitchell's work address
Subject: Seattle eRate

John,
I believe Charles Gentry might have contacted you about this but we would like to arrange a call with you and the IBM team to discuus the free and reduced lunch count at Seattle Schools. Can you share when you might be available over the next 3-5 days?

Second, I also want to see if you can file that form 470 this week. Again, you might have spoken to Charles about this but we need you to file that this week. Please let me know if I can help in any way.

Lastly, how is the WSCA discussion going? Any news that you can move forward with that?

Regards,

Steven A. Mueller
International Business Machines, Inc.
Client Representative, Education
7100 Highlands Parkway, Smyrna, GA 30082
Phone: 800-426-1751 x1528; 770-863-1528; T/L 753-
Fax: 800-242-6329
uellers@us.ibm.com
/isit http://www.ibm.com/solutions/education/schools http://www.ibm.com

"Obstacles are those things you see when you take your eyes off your goals"

TAB 19

From: "Alpha Telecommunications" <admin@alphatelecommunications.com>
To: "Don Kaiser" <dkaiser@us.ibm.com>; "Lynne Nicholson" <lnich@us.ibm.com>
Sent: Monday, October 08, 2001 2:27 PM
Attach: Service List - 470 format.doc
Subject: script for 470

Attached is a script for Year 5 FCC Form 470

Paul

Below is a filed out sample FCC Form 470 Block 2 Items 7-10. In the column "Quantity and/or Capacity:" xx represents the number of buildings a service or equipment is required. "xx "must be replaced by the actual number of buildings in the district.

Block 2: Summary Description of Needs or Services Requested

7. This Form 470 describes (check all that apply):

- [x] a. Tariffed services - telecommunications services, purchased at regulated prices, for which the applicant has no signed, written contract. A new Form 470 must be filed for tariffed services for each funding year.
- [x] b. Month-to-month services for which the applicant has no signed, written contract. A new Form 470 must be filed for these services for each funding year.
- [x] c. Services for which a new written contract is sought for the funding year in Item 2.
- [ ] d. A multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous program year.

NOTE: Services that are covered by a qualified contract for all or part of the funding year in Item 2 do NOT require filing of Form 470. A qualified contract is a signed, written contract executed pursuant to posting a Form 470 in a previous program year OR a contract signed on/before 7/10/97 and reported on a Form 470 in a previous year as an existing contract.

8. [x] **Telecommunications Services**

Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?

- [ ] **YES**, I have an RFP. Choose one of the following: It is available on the Web at _____ or via [ ] the Contact Person in Item 6 or [ ] the contact listed in Item 11.
- [x] **NO** , I do not have an RFP for these services.

If you answered NO, you must list below the Telecommunications Services you seek. Specify each **service or function** (e.g., local voice service) and quantity and/or capacity(e.g., 20 existing lines plus 10 new ones). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications Services, and remember that only common carrier telecommunications companies can provide these services under the universal service support mechanism. Add additional lines if needed.

Service or Function:	Quantity and/or Capacity:
basic telephone service (POTS, Centrex)	for xx buildings
long distance	for xx buildings
high bandwidth service (56kb/s, ISDN, DSL, frame relay, fractional T-1, DS-1, DS-3, OC-3, ATM, satellite, MAN, WAN, LAN interconnect)	for xx buildings
wireless service (cellular, PCS, paging, LAN, WAN)	for xx buildings
video service, interactive TV, distance learning	for xx buildings
maintenance/installation (inside wire maintenance)	for xx buildings

homework hotline service	for xx buildings

9 ☑ **Internet Access**
Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?

○ **YES**, I have an RFP. Choose one of the following: It is available on the Web at
or via ☐ the Contact Person in Item 6 or ☐ the contact listed in Item 11.

○ **NO** , I do not have an RFP for these services.

If you answered NO, you must list below the Internet Access Services you seek. Specify each **service or function** (e.g., monthly Internet service) and quantity and/or capacity(e.g., for 500 users). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Internet Access Services. Add additional lines if needed.

Service or Function:	Quantity and/or Capacity:
internet access	for xx buildings
wireless service (LAN, WAN)	for xx buildings
high bandwidth service (56kb/s, ISDN, DSL, frame relay, fractional T-1, DS-1, DS-3, OC-3, ATM, satellite, MAN, WAN, LAN interconnect)	for xx buildings
maintenance/installation	for xx buildings

10 ☑ **Internal Connections**
Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?

○ **YES**, I have an RFP. Choose one of the following: It is available on the Web at
or via ☐ the Contact Person in Item 6 or ☐ the contact listed in Item 11.

○ **NO** , I do not have an RFP for these services.

If you answered NO, you must list below the Internal Connections Services you seek. Specify each **service or function** (e.g., local area network) and quantity and/or capacity(e.g., connecting 10 rooms and 300 computers at 56Kbps or better). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Internal Connections Services. Add additional lines if needed.

Service or Function:	Quantity and/or Capacity:
wiring (Cat3, Cat5, coax, fiber, conduit, wiring accessories)	for xx buildings
routers, servers, switches, hubs, and upgrades	for xx buildings
PBX, KSU, ARS, console, components and upgrades	for xx buildings
video CODEC, MCU, MPEG encoder, multimedia kit, PVBX, video group and desktop equipment, EMMI	for xx buildings
maintenance/installation, on-site technical support, documentation	for xx buildings

wireless service (LAN, WAN)	for xx buildings
video equipment (broadband amplifier, cable box and modem)	for xx buildings
ATM equipment (edge device, EMMI)	for xx buildings
hardware and upgrades for internal connections (CSU/DSU, antenna, DAT, line sharing device, media converter, modem, monitor, multiplexing, satellite dish, TA, terminal server, UPS, zip drive)	for xx buildings
internal connections components (backup power supply and batteries, cabinets, and power strips, circuit card, ethernet card, graphics card, hard disk array controller, RAID, MAU, NIC, SNMP module)	for xx buildings
operational software and upgrades, e-mail software	for xx buildings

TAB 20

From: P. Glogovac [glogovac@earthlink.net]
Sent: Monday, July 15, 2002 7:47 PM
To: rmendio@sl.universalservice.org
Subject: EPISD Summary of 4-3-02 IBM GS call

Ray,

Here's an e-mail from our sales rep. recapping the conference call with IBM. At this point IBM informed us that they were going out to bid for the e-mail services we had been awarded by EPISD with EPISD's consent. We had less than 24 hours to respond to a new Statement of Work from IBM. This is how they pushed us out of the picture for the award, which was completely now based on IBM's required maximum number for hardware and software only. No longer did they want Sun to do the installation and set-up. They decided they wanted to keep that piece.

Paula Glogovac

----- Original Message -----
From: "Sandi Boyd" <sandi.boyd@sun.com>
To: <shawn.gross@sun.com>; <tim.kendall@sun.com>; <scott.cassady@sun.com>; <dennis.pearce@east.sun.com>; <larry.miller@east.sun.com>; <glogovac@earthlink.net>; <tom.paine@tpaine.com>
Sent: Wednesday, April 03, 2002 6:35 AM
Subject: Summary of 4-3-02 IBM GS call

> First today's issues:
>
> New requirement to respond to RFP in less than 24 hours based on IBM
> statement of work to be provided tomorrow which includes no request for
> qualifications from the potential vendors. Sun raised the issue of how
> this could support a fair evaluation of vendors. Seems to leave cost as
> the only selection criteria.
>
> John Milota indicated that the sections of the email project were based
> on the functionality of Lotus Notes and were in fact tightly integrated
> with that solution. Sun provided input on allowable/not allowable
> services in the initial statement of work and those that are allowable
> need to be tightly integrated with the iPlanet solution, just has their
> previous SOW had done.
>
> IBM Global Services, by issuing their RFP, should be excluded from
> responding because they would be in violation of program rules.
> Question of what qualified vendor can respond with in 24 hours-with no
> background on the objectives of El Paso or involvement in these
> discussions.
>
> Question of how the software will be provided if the services do not
> come to Sun. Because IBM did not include software as a "good" there was
> no place to put in on the substitution form. Sun should not provide an
> in-kind contribution if we do not receive the services contract. This
> leaves EPISD in a very difficult position.

>
> sandi
>
>
>
>

From: P. Glogovac [glogovac@earthlink.net]
Sent: Monday, July 15, 2002 7:43 PM
To: rmendio@sl.universalservice.org
Subject: EPISD

Part.001

Ray,

This speaks to the objections that I had with some of the products and services and the way IBM was running the procurement
process on this Application. I didn't want to point out the specifics to him as we hoped that they would come around.

Paula Glogovac

----- Original Message -----
From: P. Glogovac
To: wleejr@us.ibm.com
Cc: P. Glogovac ; Sandi Boyd ; Shawn Gross
Sent: Wednesday, April 03, 2002 6:39 AM
Subject: Conference Call - Follow-up

Hi Woodrow,

As we discussed several concerns I had with the E-rate program rules and eligible products list, I wanted to forward to you
the names of the documents that I received my guidance on and specifically point you to the website where you can find them.

This first link is to the Service Provider Manual on the USAC website that specifically refers to the Service Provider Role in
Assisting Customers.

http://www.sl.universalservice.org/vendor/manual/chapter5.doc

This second link is to the Eligible Services List which was recently updated in October of 2001. Note: that it's the applicant
and Service Providers responsibility to know this list.

http://www.sl.universalservice.org/reference/eligible.asp

I hope you find these useful.

Regards,

Paula Glogovac

Confidential USAC SUPP 6949

Confidential

From: P. Glogovac [glogovac@earthlink.net]
Sent: Monday, July 15, 2002 7:54 PM
To: rmendio@sl.universalservice.org
Subject: EPISD IBMGS status?

Ray,

This speaks to the back door politics of the School Board and IBM's embedded themselves with EPISD to the
point that anything goes. Note the 1.8 million required for IBM to do their part in the project. After they debriefed Sun's
management, management decided not to pursue this as we have a global partnership with IBM. We do compete, but they
didn't want to mess up that partnership over this. This is how IBM gets around cheating the E-rate program. Everyone has
partnerships with each other and you don't want to destroy that over this incident or other small incidents when the big picture is a bigger $ amount to worry about. Unfortunate, but true.

Paula G.

----- Original Message -----
From: "Sandi Boyd" <Sandi.Boyd@central.sun.com>
To: "Larry Miller - Enterprise Services" <Larry.Miller@sun.com>
Cc: <dennis.pearce@sun.com>; <shawn.gross@sun.com>; <scott.cassady@sun.com>; <tim.kendall@sun.com>; <glogovac@earthlink.net>
Sent: Wednesday, April 10, 2002 6:41 AM
Subject: Re: IBMGS status?

> We lost to IBMGS implementing Groupwise using a local partner, Desert
> Communications, Inc. Partner was approved to be a subcontractor on a previously
> awarded EPISD E-rate activity, but is not a nationally approved business partner.
>
> Board approved this recommendation last night with no discussion. They would not
> let Shaun Cooper speak, because he didn't get there early enough to sign in to
> speak. He was a hour away when we knew that was what we needed to do, with less
> than an hour before the meeting.
>
> The switch was done yesterday afternoon as far as we could tell.
>
> Clearly this was not a reasonable process. No answer in any of our calls to what
> number they needed until 11 PM Monday night. 51% (1.8 million) of the project for
> what we had negotiated at that point to be just program management and overall
> technology coordination. It exceeds all federally allowable overhead rates that

> Universities can claim.
>
> Shawn and I will debrief sales management today. We are trying to get funding for
> Funds for learning to manage our protest--hopefully in conjunction with Dell.
>
> We will let everyone know what happens next. We may need everyone's collective
> memory to support the protest.
>
> sandi
>
> Larry Miller - Enterprise Services wrote:
>
> > Hi Sandi:
> > When I tried to reach Shawn back last night around 7:00 pm EST, he said he was
> > on with IBMGS.....what was the outcome or what is the latest??
> >
> > Regards,
> > Larry
>

Confidential

From: P. Glogovac [glogovac@earthlink.net]
Sent: Monday, July 15, 2002 7:40 PM
To: rmendio@sl.universalservice.org
Subject: EPISD Administrative E-Mail Project

After several heated conference calls trying to nail down the State of Work to IBM for EPISD, this is one of the e-mails that came to Sun from their project leader. Note he copied the customer on this. Also note, that even though IBM states they have no choice in the decision process, the service providers MUST BE AN APPROVED IBM Business Partner, which means they will be providing the services in some form or fashion. They told us they thought they were better suited to work with another partner in installing our products and services. They were so wrong. Sun owns the company that makes those products and services and they have much more experience in installing their own products than any company out in the industry. They do it on a daily basis and the expertise is located in-house. Another way for IBM to take away some of the business from Sun for this project.

Paula G.

----- Original Message -----
From: "Woodrow Lee Jr" <wleejr@us.ibm.com>
To: "Sandi Boyd" <Sandi.Boyd@central.sun.com>; "Tom Paine" <tpaine@tpaine.com>; "Tim Kendall" <Tim.Kendall@sun.com>; "Shawn Gross" <shawn.gross@eng.sun.com>; "P. Glogovac" <glogovac@earthlink.net>; "David Cates" <dlcates@us.ibm.com>
Cc: "John Milota" <jmilota@us.ibm.com>; "Jim Damm" <jdamm@episd.org>; "Jack Johnston" <jack_johnston@uk.ibm.com>; "Stephen Crye" <stcrye@elpaso.k12.tx.us>; "Mike Miles" <mpmiles@us.ibm.com>
Sent: Monday, April 01, 2002 7:16 PM
Subject: EPISD Administrative E-Mail Project

> Thank you for participating in our conference call today.
>
> In an effort to clarify any misunderstandings, please be advised of the
> following:
>
> IBM is the company responsible for procurement and installation of
> the Administrative Email system on behalf of EPISD.
> IBM will procure Goods through a vendor of EPISD's choice as long as
> that vendor is an approved IBM Business Partner or Vendor (or the
> selected Goods provider will/can become an IBM Vendor in time to
> complete the project).
> IBM is responsible to deploy those Goods the EPISD wishes to purchase
> and IBM (not the EPISD) will select a service provider based on cost
> and performance.
> Our goal is to provide the installation services for our projects by
> the most eligible service provider with an emphasis on both cost and
> performance.

> The selected service provider will commit to a completion date of
> 09/30/02.
> The selected service provider will be under contract to IBM and will
> sign an IBM SOW containing tasks, terms and conditions, assumptions
> and payment terms.
> The service provider is expected to give a fixed price for the
> services being performed and no consideration will be given for any
> additional charges presented by that services provider unless a
> Project Change Authorization is produced, agreed to and signed by
> both IBM and the other company.
>
> If you have any questions, please contact me at you convenience.
>
> Regards,
> Woodrow Lee, Senior Project Manager
> El Paso Independent School District
> (713) 940-1265 T/L 345-1265 Office - Houston
> (832) 407-1118 Cell
>
>
>

From: P. Glogovac [glogovac@earthlink.net]
Sent: Monday, July 15, 2002 7:48 PM
To: rmendio@sl.universalservice.org
Subject: EPISD - Several Questions about Eligible/Ineligible Products/Services, etc.

Here's an e-mail regarding EPISD's statement of work from IBM as well.

Paula G.

----- Original Message -----
From: "serviceprovider" <serviceprovider@universalservice.org>
To: "'P. Glogovac'" <glogovac@earthlink.net>
Sent: Wednesday, April 03, 2002 2:19 PM
Subject: RE: Several Questions about Eligible/Ineligible Products/Services, etc.

> Paula: Here are our answers:
>
> 1. If a 470 form for internal connections stated that it had an RFP for the
> products and services and that was awarded to a specific vendor, can that
> vendor then put out to bid the products and services in that award to them,
> for a lesser amount and bill the full amount of the award to the customer
> and to the program? Can the customer request that the vendor put out to bid
> the products and services they originally awarded to the vendor on the 471
> and allow them to bid on the products and services as well?
> (The answer to these questions would be governed by state and local
> procurement laws. Usually there are provisions under state and local
> procurement laws pertaining to prime contractors and subcontractors and
> whether those subcontractors must be identified. I am not sure that I
> understand your last question; if the vendor has "won the bid" what was that
> "win" based on, if the goods and services are still going out to bid. The
> basic question to answer is whether the applicant had a legally binding
> relationship with the vendor (service provider) BEFORE the Form 471 was
> filed. If the answer is no (i.e., that another service provider could "win
> the bid" for the goods and services), then I think the application could
> fail because the applicant violated program rules.)
>
> 2. Is project coordination covered as an eligible service and this is what
> the description is: The objective of this task is to provide technical
> direction, maintain project control and to establish a framework for project
> communications, reporting, procedural, and contractual activity for the
> tasks described. This task consist of the following: Establish and
> coordinate efforts with the applicants project coordinator. Develop and
> maintain work plans for the perform of vendors responsibilities. Administer
> the Change Control Procedures. Maintain communications and review progress
> with the applicants project coordinator and team members during status

> meetings. Prepare and submit written Monthly Status Reports of vendor
> activities to the applicants project coordinator.
> (Per the Eligible Services List:
> http://www.sl.universalservice.org/reference/eligible.asp "Consulting
> Services - Costs of expertise in areas such as initial planning,
consulting,
> development of technology plans, application assistance, and program
advice"
> are NOT eligible. "Project Management - Costs associated with the overall
> management of the installation and initial operation of eligible products
> and services" are ELIGIBLE IF they are part of a contract or bid for the
> eligible products and services.)
>
> 3. Are these eligiblie services?:
> Develop email migration strategy for users with current email accounts.
> Develop phased implementation & deployment plan for email.
> Assist in development of district-wide email Policies and Procedures.
> Assist in developing standards for connectivity, security, and access from
> outside the firewall.
> (These 4 services would have to fall under a part of contractual service
as
> a part of eligible e-mail service. The refrence to consulting service and
> project management (as posted above) would apply.)
>
> Install and configure email servers with free firewall software.
> (If the firewall service is a true "bundle" and has no identifiable cost,
it
> would be eligible.)
>
> Develop end user training curriculum and materials for email use.
> (End user training is NOT eligible.)
>
> Prepare documentation for subsequent phases of email deployment.
> (This would have to be a part of the bid by the vendor as a part of the
> contract for e-mail service.)
>
> Web Maintenance: Implementation of a common template-based structure for
> Public District Web site, Private District Intranet Site, and campus web
> sites for internal and external access. Provide apallette of standard web
> site components that can be combined in various combinations to produce
> harmonious Internet and Intranet sites.
> (This sounds like application programming which is NOT eligible.)
>
> Web Planning: Establish and facilitate a District Web Policy Steering
> committee. Develop graphic & layout design standards, and navigation
> standards. Develop a strategy for distributed Web maintenance, including
> template based design and designated Content Managers. Specify, provide
and
> configure servers for all Web applications.
> (Application development and other application based software is NOT
> eligible for discount. Please refer to the Eligible Services list in the
> Internal Connections section under Software.)
>
> Web Deployment: Provide a toolkit of reusable Web component templates.
> Some examples include:
> Web Shell for page-based content
> Calendar of Events
> Staff Directory
> Search Interface

> Policies and Procedures
> Moderated Discussion
> Newsletter & News Bulletin
> FAQ/Q&A
> Knoweldgebase
> Training Schedules/Sign-up
> Cafeteria Menus
> (These are all development applications and are NOT eligible.)
>
> Provide content manager training.
> (This needs some clarification - are you referring to IBM type content
> manager?)
>
> Provide site development services to bring up initial sites.
> (If this service involves application software, programming and training,
it
> is NOT eligible.)
>
> Web Applications: Web-based workflow application.
> (Only Operational Software and E-Mail Software are eligible for discount.)
>
> 4. Are any of the following products eligible under the E-rate program?
> Lotus Notes
> Lotus QuickPlace
> Microsoft Exchange
> Lotus Domino Platform
> CyberPatrol Filtering Software with Internet Access
> Application Servers
> WebSphere Edge Server Software
> Lotus Communications Total Campus Option for Notes/Domino Licensing
> Lotus Secure Home Access TCO licensing for student and parent access from
> home
> Lotus QuickPlace Collaboration TCO license for real-time communication and
> application sharing
> Lotus Domino.doc and Lotus Learning Space Forum
> IT Factory Business Suite
> (Only Operational Software and E-Mail Software are eligible for discount.
> Software included with an eligible product or service that incurs no
> identifiable cost and cannot be unbundled is considered eligible. For
> example, network administration software, included as an intrinsic
component
> of an eligible network operating system, is eligible.)
>
> 5. Can this kind of wording be in a Statement of Work and not have an
impact
> on a vendor with the E-rate program rules?
> Applicant will identify and make the interpretation of any applicable
> federal, state, and local laws, regulations and statues to see that the
> services provided by the vendor comply.
> (While the presence of such a statement would not negate eligibility under
> the E-rate program, neither would it serve to prevent USAC/SLD from
> requiring an audit or doing further investigation to be sure that the
> applicant and service provider are following program rules.)
>
> Please let me know if you have further questions.
>
> Ellen Wolfhagen
> Director, Service Provider Support
> (with assistance from Stella Blaney, Services Manager)

Confidential

From: P. Glogovac [glogovac@earthlink.net]
Sent: Monday, July 15, 2002 8:09 PM
To: rmendio@sl.universalservice.org
Subject: Fw: Desert Communications Inc. and More

Part.001

Here's the detective coming out in me. In one of our meetings IBM mentioned that they were looking at Desert Communications, Inc.
as the partner to support the e-mail installation. I wanted to find out who they were and how they could come up to speed on this
newly revised RFP so quickly. They are an IEM partner so they were probably waiting on the sideline all along.

Paula G.

----- Original Message -----
From: P. Glogovac
To: Sandi Boyd ; Shawn Gross
Cc: P. Glogovac
Sent: Friday, April 12, 2002 5:49 PM
Subject: Desert Communications Inc. and More

Hey Guys,

I did a little research on Desert Communications Inc. The link listed below is a link to a spreadsheet of products and pricing they have. Guess who is included on their products sheet? IBM and Novell are both on their.

http://www.descominc.com/texascat/Spreadsheets/tbl208_44.xls

Also, under their program management section they do cover IBM products, but they don't cover Novell products. I wonder who is
going to do the installation and program management of the Novell products on this. It's very hard to believe that DCI is not recognized by IBM as a major partner with all the products and project management capabilities they have for their products.

Also if you go under their internet section on the web location above they have I-Planet and Sun-Net listed in this section. They must
be a Sun Reseller as well?

Also, they are a telecommunications and networking company.

I found in the School Board Minutes instances where DCI was choosen to do work. I also found mention of an RFP that IBM
responded but it didn't mention e-mail specifically, it mentioned running all of EPISD's E-rate applications. One very interesting School Board Meeting Minutes that caught my eye was one where Jack Johnston noted they had received a large Sum of E-rate
dollars and they needed to respond quickly to it and therefore needed to hire IBM to do this so they didn't loose the funding. Pretty scarey!

Confidential

I found the Texas State Legislature site that speaks to procurement process. Note this link has several sections that speak to
the competitive bidding process that is supposed to take place. It's worth reading.

http://www.capitol.state.tx.us/statutes/lg/lg025200.html#lg004.252.021

If you want me to give you any of the documents for the school board meetings, let me know.

Paula G.

From: P. Glogovac [glogovac@earthlink.net]
Sent: Monday, July 15, 2002 8:24 PM
To: rmendio@sl.universalservice.org
Subject: Fw: My Info on IBM/EPISD

Whoops

----- Original Message -----
From: "P. Glogovac" <glogovac@earthlink.net>
To: <emendio@sl.universalservice.org>
Sent: Monday, July 15, 2002 5:06 PM
Subject: My Info on IBM/EPISD

Ray,

This is what I provided to my boss and sales rep. when they went to go meet with the president of the school board and the School District Lawyers. They also had Orin with them from Funds for Learning. There was no outcome from that meeting, other than they were moving forward with IBM.

Paula G.

----- Original Message -----
From: P. Glogovac
To: Shawn Gross ; Sandi Boyd
Cc: P. Glogovac
Sent: Thursday, April 11, 2002 11:27 AM
Subject: My Info on IBM/EPISD

I will keep working on the most thorough document I can put together, but hopefully this will give you some ammunition in your meeting. Good luck!!!!!

Paula Glogovac

Ray,

Here's the original e-mail that I sent off to USAC regarding eligible/ineligible products and services. You'll see they were taken
directly from the SOW from IBM to EPISD.

Paula G.

----- Original Message -----
From: P. Glogovac
To: serviceprovider@universalservice.org
Cc: P. Glogovac
Sent: Tuesday, April 02, 2002 11:17 AM
Subject: Several Questions about Eligible/Ineligible Products/Services, etc.

Hi,

I have several questions about eligible and ineligible products and services and some general questions that I'm
hoping you can answer or put into prospective for me.

1. If a 470 form for internal connections stated that it had an RFP for the products and services and that was awarded to
a specific vendor, can that vendor then put out to bid the products and services in that award to them, for a lesser amount
and bill the full amount of the award to the customer and to the program? Can the customer request that the vendor put out
to bid the products and services they originally awarded to the vendor on the 471 and allow them to bid on the products and
services as well?

2. Is project coordination covered as an eligible service and this is what the description is:

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3. Are these eligiblie services?:

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Web Maintenance: Implementation of a common template-based structure for Public District Web site, Private District Intranet
Site, and campus web sites for internal and external access. Provide a pallette of standard web site components that can be combined
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and navigation standards. Develop a strategy for distributed Web maintenance, including template based design and
designated Content Managers. Specify, provide and configure servers for all Web applications.

Web Deployment: Provide a toolkit of reusable Web component templates. Some examples include:

Web Shell for page-based content
Calendar of Events
Staff Directory
Search Interface
Policies and Procedures
Moderated Discussion
Newsletter & News Bulletin
FAQ/Q&A
Knoweldgebase
Training Schedules/Sign-up
Cafeteria Menus

Provide content manager training. Provide site development services to bring up initial sites.

Web Applications: Web-based workflow application.

4. Are any of the following products eligible under the E-rate program?

Lotus Notes

Lotus QuickPlace
Microsoft Exchange
Lotus Domino Platform
CyberPatrol Filtering Software with Internet Access
Application Servers
WebSphere Edge Server Software
Lotus Communications Total Campus Option for Notes/Domino Licensing
Lotus Secure Home Access TCO licensing for student and parent access from home
Lotus QuickPlace Collaboration TCO license for real-time communication and application sharing
Lotus Domino.doc and Lotus Learning Space Forum
IT Factory Business Suite

5. Can this kind of wording be in a Statement of Work and not have an impact on a vendor with the E-rate program rules?

Applicant will identify and make the interpretation of any applicable federal, state, and local laws, regulations and statues to see
that the services provided by the vendor comply.

Here's the detective coming out in me. In one of our meetings IBM mentioned that they were looking at Desert Communications, Inc.
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Paula G.

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Part.001

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that the services provided by the vendor comply.

TAB 21

From: "Phil Kibler" <pckible@us.ibm.com>
To: "John Milota" <jmilota@us.ibm.com>
Sent: Friday, July 11, 2003 2:18 PM
Subject: Re: EPISD Round 4 Projects

Stop emails on this. Call Alpha or set up a conference call. I want to participate. I understand it. I'll make my self available early next week anytime.

Phil
Director, Public Sector U.S.
IBM Integrated Technology Services
IBM Corporation
9229 Delegates Row; Suite 500
Indianapolis, IN 46240
Tel: 317-566-3847 (T/L554), Fax: 317-566-4458
E-mail: pckible@us.ibm.com
Pager: 1-800-946-4646, PIN # 2298092
Assistant: Diana Watford (dwatford@us.ibm.com)
Tel: 317-566-4188 (T/L 554)

John Milota

07/11/2003 12:37 PM

To: "Alpha Telecommunications" <admin@alphatelecommunications.com>, admin@alphatelecommunications.com, nateh@oh.verio.com
cc: Michael Pratt/Houston/IBM, Don Kaiser/San Antonio/IBM, Mike Miles/Wichita/IBM, Phil Kibler/Indianapolis/IBM
From: John Milota/Chicago/IBM@IBMUS
Subject: Re: EPISD Round 4 Projects

Gentlemen, I do not understand your response.

I checked the 471s and SOWs for these two projects and none of the documents refer to how any of these boxes are to be used - they only specify the h/w that we provided and installed.

However, we all knew how EPISD planed to use this equipment. Please do not hide behind "Since Alpha was not on site during any installation of EPISD..." I begged Alpha to get more involved and have more on-site involvement during the delivery phase of this deal.

In any case, have the guidelines regarding the use of the equipment that we provided changed since Round 4? If so, that may be contributing to the confutation and Jack Johnston's concerns.

Can you please review the bullets below and render an opinion as to the eligibility of use? These bullets were taken from slides that I presented to the Board on 10/15/02.

Thank you.

Server Upgrade Scope

- Procured, Configured and Installed 52 Dell PowerEdge 4600 Servers to:
- Replace older servers running TSS - Student Systems Software.
- Provide reliable servers to support current TSS application and planned migration to SASi XP.
- Installed and Configured Novell Netware 6.0 Network Operating System replacing EPISD's older

technology.

- This technology refresh will support the growing EPISD environment for many years to come.

Web & File Server Scope

- Procured, Configured and Installed 104 Dell PowerEdge 4600 servers to:
- Provide e-mail services to Students at all funded sites
- Perform as Web servers for student use
- Installed and Configured Novell Netware 6.0 Network Operating System.
- Installed and configured TLC NetConnect for Student e-mail enabling students to communicate with their teachers.
- Installed and configured Microsoft Advanced Server to provide Web and File services to students.

John Milota
Project Executive
Office: 630-568-7165
Cell Phone: 630-880-1111

"Alpha Telecommunications"
<admin@alphatelecommunications.com>

07/10/2003 12:44 PM

Please respond to "Alpha Telecommunications"

To: John Milota/Chicago/IBM@IBMUS
cc: Michael Pratt/Houston/IBM@IBMUS, Mike Miles/Wichita/IBM(
Karas" <admin@alphatelecommunications.com>, "Rosemary Enos"
<renos@AlphaTC.com>
Subject: Re: EPISD Round 4 Projects

In reviewing IBM's SOW for EPISD and e-mail issues that were sent to Alpha
regarding EPISD, there were absolutely no funding for either application or
database servers. All funding was consistent with FCC/SLD Eligibility
Service and Hardware. Since Alpha was not on site during any installation of
EPISD, it has no opinion as to any installation issues raised by inference.
Moreover, it is totally unclear as to whether this is an installation issue
or "use" issue.

Nate Hawthorne
----- Original Message -----
From: "John Milota" <jmilota@us.ibm.com>
To: "Alpha Telecommunications" <admin@alphatelecommunications.com>
Cc: "Michael Pratt" <mpratt@us.ibm.com>; "Mike Miles"
<mpmiles@us.ibm.com>
Sent: Wednesday, July 09, 2003 4:28 PM
Subject: EPISD Round 4 Projects

>
>
>

>
> Gentlemen, do you have an answer for this yet? Mike Pratt is on
vacation
> this week, so I am following up in his absence.
>
> thanks, in advance. john
>
> John Milota
> Project Executive
> Office: 630-568-7165
> Cell Phone: 630-880-1111
> ----- Forwarded by John Milota/Chicago/IBM on 07/09/2003 03:26 PM -----
>
> "JACK Johnston"
> <jsjohnst@episd.o To: John
Milota/Chicago/IBM@IBMUS, Mike Miles/Wichita/IBM@IBMUS
> rg> cc: "James Damm"
<jdamm@episd.org>, Michael Pratt/Houston/IBM@IBMUS
> Subject: EPISD Round 4
Projects
> 07/03/2003 12:56
> PM

>
>
>
>
>
>
> Hi, Guys. How are things going? John wrote to say he was catching up
on
> certifications and such. What about you, Mr. Miles? Did you "hang up
your
> hat yet"?
> I have a question for you, Mike, regarding the servers installed during
R4.
> Three boxes were installed under the SOWs Server Upgrade and Web and
File
> Server.
> In reviewing the SLD regs on the definition of eligible uses of a
server,
I
> am concerned that the only proper install was the student e-mail box
> running TLC NetConnect. The other two, according to the SLD are either
> application servers or database servers, of which both are ineligible
for
> discount.
> Any thoughts on this would be appreciated.
> Thanks.
>
> Jack Johnston, Executive Director
> Technology & Information Systems
> El Paso Independent School District
>
>
>

TAB 22

El Paso Independent School District

Technology and Information Systems
Networks

Erate year-4 E-mail Upgrade Project
Analysis of Vendor Proposals and Selection of Vendor

Overview:

For the last two years, TIS technical staff have been actively investigating all available options for providing improved email and related messaging services to all employees and students of the EPISD. Our current system, which is based on an Open-Source application called SendMail, running on five-year-old hardware, is inadequate for the District's current and future needs.

As we evaluated and studied the available messaging options, we evolved our goals and requirements. We conferred with our peers in other districts and in the private sector. We used information from IT trade publications and other IT industry sources. We attended vendor presentations and performed hands-on tests of the client and web-based interfaces. One of the systems under consideration, Novell GroupWise, has been used for the last five years by a small (~100) group of central office administrative personnel.

It became apparent that while the new messaging system must provide more than just simple e-mail, it must provide those basic e-mail functions with tremendous speed, stability and reliability. It must be scaleable and economical to support over the long term, in the event that we have to rely solely on local resources in the absence of erate funding.

In December of 2000, when the EPISD engaged IBM Global Services as the District's Strategic Technology Provider, TIS had already selected hardware and software for a new email system and was planning to implement it using funds from the TIS operational budget. We decided to wait for the outcome of our Erate year-four submissions before installing a new email system; this was the correct decision – we now have X.XX million dollars to spend on the system, instead of the $80,000.00 that we had budgeted for it!

This document summarizes our research and analysis in support of our choice of Sun's iPlanet system for the District e-mail, calendaring, messaging and workflow.

Goals and Requirements:

* Maximize the speed and capacity of the hardware and software as much as possible with year-four funding

* Minimize long-term support, licensing and application development costs

* Maximized speed and reliability, capacity to handle very large attachments, heavy messaging loads, inter-campus traffic

* Use as many Open-Source components as possible, such as Linux for the OS

* Avoid the use of Windows 2000 Server where possible

* Migration of all existing users' messages and folders, from both the SendMail and GroupWise systems

* Compliance with CIPA requirements, tight security and confidentiality

* Automate the creation and update of email user accounts from AS/400 Human Resources database

* Compatibility with Novell eDirectory, (either directly or via LDAP, Meta Directories, etc.)

* Support open standards such as LDAP, POP, IMAP, Java

* Single vendor integrated hardware/software solution

* Clearly defined long-term licensing costs

* Clearly defined long-term software and hardware maintenance costs

* Browser neutrality

* Preferred user interface is via browser, all functionality of optional desktop client, if offered, should also be available via the browser interface

* Avoid the use of Microsoft's Internet Information Server (IIS)

* Ability to scale from 8000 users (employee's only) to 70,000 (employee's and students)

* Centrally located and managed architecture

* Avoid architecture that requires adding servers support additional users, for example needing another server for every 3000 additional users.

Analysis of potential solutions

Outsourced email vs. District owned and operated

Advantages

- Free services such as hotmail, Juno, yahoo are available
- Hosted for-fee email providers such as usa.net, mail.com are available

Disadvantages

- Traffic would overwhelm ISP pipe
- Performance limited by ISP pipe
- No leverage of EPISD high-speed Fiber WAN
- Free services do not meet District requirements for speed, security, confidentiality, spam control, CIPA compliance
- Does not offer features needed
- For-fee services: EPISD might be cut-off from service during fiscal emergency, too risky for such a mission-critical system such as email
- Pop-up ads distracting and potentially inappropriate

We concluded from our research that an outsourced solution would not meet the District's minimum requirements, and therefore did not solicit presentations from email outsourcing vendors.

IBM Notes/Domino

Advantages:

- Easy to use client and web-based GUIs
- Good calendaring and scheduling capabilities
- Can run on Linux, Solaris, AIX or Windows 2000
- Does not require IIS
- IBM can provide integrated hardware/software solution that includes design, integration, installation, migration and support
- Notes/Domino was the solution that IGS proposed to the SLD, and will not require a petition for change
- Good workflow features built into base product
- Web-based interface has spell-checker

Disadvantages:

- Client settings locked/forced for a single, dedicated user
- Long-term licensing costs high, not clearly defined by IBM (recent massive price hikes for Notes/Domino support have caused concern for existing users)
- Lack of clearly defined long-term software and hardware maintenance costs
- Unfavorable feedback from peers in public and private sectors
- Large footprint desktop client required for full functionality
- Web-based interface not as full-featured as the client interface
- Can't view multiple calendar's overlaid as one view
- Web-based interface functionality limited in Netscape browser
- Proposed architecture will require a mix of AIX and Windows 2000 servers
- Proposed solution requires proprietary hardware (IBM "RS6000") and operating systems (AIX and Windows 2000)
- Enhanced or customized workflow applications require coding, Lotus developers not common or inexpensive
- IBM de-emphasizing Domino as an application server platform, encouraging developers to code for Websphere
- Apache webserver not supported
- Many of EPISD's workflow requirements can and will be met by custom applications such as WinOcular, obviating the need for a robust, but complicated application engine such as Domino.
- Proposed architecture will not scale to 70,000 users, cost to run 70,000 Notes seats would be prohibitive
- Vendor unfamiliar with EPISD existing SendMail system

Microsoft Exchange

Advantages:

- Outlook client popular with public, easy to use.
- Easy to use client and web-based GUIs
- Good calendaring and scheduling capabilities

Disadvantages:

- Microsoft can't provide integrated hardware/software solution, EPISD would have to locate system integrator or perform design, integration, installation, migration and support with TIS staff
- Unfavorable feedback from peers in public and private sectors
- No cross-OS capability; can only run on Intel-based servers running Windows 2000
- Web-based interface requires IIS (in supported configurations)
- MS focus toward interdependence of all MS products, forced MS-only architecture
- Exchange reliance on Active Directory - AD is not the preferred DS for the EPISD
- Security issues with MS products in general
- Security issues; Outlook is frequently compromised
- Microsoft's anti-Linux, anti-Java corporate philosophy
- IDC market share numbers reflect larger numbers of small installations
- Full web-based functionality not available on all browsers
- Exchange was not the solution that IGS proposed to the SLD, and would require submission of a change request

We concluded from our research that a Microsoft Exchange solution would not meet the District's minimum requirements, and therefore did not solicit presentations for Microsoft Exchange.

Novell GroupWise

Advantages:

- Excellent, easy to use client and web-based GUIs, very intuitive, single inbox for multiple email accounts
- Excellent calendaring and scheduling features
- Web-based interface functionality identical on all browsers
- TIS has run and supported a small GroupWise system since 1996, with fair reliability and user satisfaction.
- Can run on Netware or Windows 2000
- Does not require IIS
- Will not require the use of Windows 2000 server, Apache and Netscape Enterprise webservers supported
- Client settings not locked/forced for a single, dedicated user
- Web-based interface has spell-checker

Disadvantages:

- Novell can't provide integrated hardware/software solution, EPISD would have to locate system integrator or perform design, integration, installation, migration and support with TIS staff
- Proposed solution requires proprietary operating systems (NetWare or Windows 2000)
- History of unsatisfactory GW technical support
- GW 6.0 still does not have the ability to selectively restore individual mailboxes
- Live backup utilities very archaic, difficult to use
- Lack of support for disaster recovery
- Large footprint desktop client required for full functionality
- Web-based interface not as full-featured as the client interface
- Can't view multiple calendar's overlaid as one view
- GroupWise was not the solution that IGS proposed to the SLD, and would require submission of a change request
- No workflow features built into base product; requires separate eWork product for workflow
- Vendor did not address scalability issues; uncertain if the system can scale to support 70,000 users
- Vendor did not provide any information on recommended hardware configurations
- Proposal did not clearly define long-term support and licensing costs
- Vendor's proposal was not clear, detailed, or complete.
- Vendor unfamiliar with EPISD existing SendMail system

Sun iPlanet:

Advantages:

- Chosen by the ad-hoc committee as the recommended solution
- Good calendaring and scheduling capabilities
- Can view multiple calendars overlaid as one view
- Multiple server architecture provides resilience; failure of a single server will take down entire system
- Multiple server architecture improves performance and allows subsystems to be sized appropriately
- Vendor proposal was clearest, most detailed, and technically complete of the three proposals.
- No client installation required, vastly simplifying deployment
- IIS not required, Apache and Linux supported
- Local Sun integrator will provide integrated hardware/software solution that includes design, integration, installation, migration and support
- System as-proposed is sized fast enough to support 70,000 users; storage capacity as-proposed is sized for 8000 users, and can easily scale to support storage needs of all EPISD students.
- No long-term licensing costs, all 70,000 seats included in initial purchase
- Sun founded to serve K-20 market, focus continues to be education customers
- Clearly defined, low, long-term software and hardware maintenance costs
- Workflow customizations can be done by Java or PHP programmers, who are more plentiful, locally available and inexpensive compared to Lotus developers.
- Best vendor for migrating existing SendMail users, because existing SendMail system is maintained by same vendor.

Disadvantages:

- Proposed solution requires proprietary hardware (Sun) and operating system (Solaris)
- Current version does not support spell checking via the browser interface
- Requires nine separate servers, each dedicated to a specific function; this increases complexity and chances for failure
- Workflow not as robust as Notes/Domino

Spencer, Peter

From: S. ANTHONY SAFI [SAFI@MGMSG.com]
Sent: Wednesday, June 23, 2004 1:19 PM
To: Spencer, Peter
Cc: JACK Johnston; CLYDE A. PINE
Subject: EPISD email erate yr4 eval

Peter, per your requests, attached is a staff evaluation of the e-mail project, or at least a draft. We have been unable to locate a finalized draft with numbers instead of X.XX in the fourth paragraph. As discussed, the Board approved Novell GroupWise at its meeting of April 9, 2002. The potential of use of Sun Microsystems iPlanet was mentioned at the Board meeting of April 2, 2002, & Tom Paine of Paine & Associates, a local Sun business partner, spoke at that meeting.

TAB 23

El Paso Independent School District

Technology and Information Systems
Network Services

E-Rate Server Upgrade and Web & File Server Projects
Analysis of Enterprise Tier Vendor Server Offerings

Overview:

Since 1996, the EPISD has standardized on Dell PowerEdge servers and Dell Optiplex desktops for all Student Systems computers. Dell computers also represent the majority of systems installed for instructional use in the District.

When the year four erate SOWs were written in 2000 by IBM Global Services, IBM did not ask the EPISD what its preferred server platform was, and instead specified IBM servers for both the Student Systems Network Server Upgrade Project and the Web and File Server Project. Because the District has had a long and successful relationship with Dell, and because of the quality of Dell's products and the worldwide success of Dell, there must a compelling reason for the District to switch to vendors from Dell to IBM.

Jim Damm, the Districts e-rate consultant, reasoned that because it had been several years since the EPISD reviewed its preferred vendor for servers and workstations, it would be in the District's best interests to solicit presentations and proposals from Enterprise Tier server vendors, in order to determine if the EPISD would be better served by another vendor.

Prior to 1996, the District used Everex servers and workstations for all Student Systems applications. Problems with Everex's products and Everex's viability as a company led the District to the decision to switch to a (then) "Tier 1" vendor. In 1995 and 1996, the EPISD spent approximately six months evaluating Standard Intel Architechture servers and desktops from Compaq, Dell, HP and IBM. That evaluation included not only presentations from the four vendors, but actually installations of demo units into campuses, where they were used as production machines for several months. The evaluation culminated in an RFP where Dell was the successful vendor.

Although the time constraints of the current year-four erate projects does not permit as thorough an evaluation as was done in 1996, we are also not faced with the same circumstances as then, in that there is no current need to replace substandard, underperforming systems from a non-Enterprise Tier vendor. Instead, we are faced with the question: "Is there a compelling need to change from our current supplier of Standard Intel Architechture servers, with which we have had a long, successful and productive relationship, to a new vendor?"

In December 2001, Compaq, Dell, HP and IBM were asked to give the EPISD ½ day presentations on their products. After the presentations, the EPISD asked each vendor to provide a price quote for servers, enclosures and UPSs that met the EPISD's minimum requirements for the two projects.

Based on those presentations and proposals, and on information gleaned from trade journals and other IT professionals, we have concluded that the District will be best served if the EPISD continues to purchase Dell's PowerEdge servers for Student Systems and Instructional applications. TIS has summarized its analysis in this document and the two spreadsheets that accompany it.

TIS assigned a score from 1 to 10 in each of several categories of evaluation criteria. For categories where either all vendors met the minimum requirements or there were no relevant differences in the vendor's offerings, all vendors were scored a 10. For categories where a vendor's offering either did not meet the minimum requirements or there were relevant differences between the vendors, scores of less than 10 were assigned. Scores of 5 were assigned to vendors where the solution was considered to be functional but not preferred, with scores of less than 5 being assigned where the offering not only did not meet the minimum requirements but also offered less functionality than the District is willing to accept.

Because some evaluation criteria are more important to the EPISD than others are, a weighting was given to each category. The overall score for each vendor is the weighted sum of that vendor's scores in each category.

Vendors' Proposed Server Models

All systems are 4-way capable, dual-processor, rack-mountable midrange severs that are positioned by each vendor to be competitive with their competition's similar offerings.

Compaq:	ProLiant ML570R
Dell:	PowerEdge 6400
Hewlett-Packard:	HP NetServer LH6000r (Note: HP's server is a 6-way capable unit)
IBM:	eSeries xServer 250

The EPISD asked each vendor for a proposal that met the District's *minimum* requirements for hardware, service and support as follows:

1.] Lockable ventilated server enclosure with standard 19" rails, floor standing.
2.] UPS - 1400 KVA, rack-mountable
- Three-year warranty with next-day on-site response

3.] Tray-style flat-panel SVGA compatible monitor with keyboard and mouse, 3U or less.
- Three-year warranty with next-day on-site response
- Lifetime unlimited telephone technical support

4.] Server:
- Hardware for mounting the server in the enclosure
- Three-year warranty with next-day on-site response
- Lifetime unlimited telephone technical support for all hardware components
- 4-way multiprocessor capable with 2x 700 MHz Pentium III Xeon, 1MB cache
- 1GB ECC system RAM

- Hardware RAID-5 controller
- 5x30 GB SCSI (Ultra 3) 10,000-rpm drives configured for RAID-5, hot swappable
- 1.44 MB 3.5" floppy drive
- CD-ROM drive
- Intel 10/100 Mbps network card (or Intel 10/100 Mbps chipset on system board)
- Linear Tape Open 100/200 GB internal tape drive
- Hot-swappable, N+1 redundant power supplies
- Hot-Pluggable PCI support
- Remote Management card

All vendors' proposals met most of the District's requirements. Dell's proposal was the only one that met 100% of the requirements.

Summary of EPISD Analysis of Vendors' Proposals

Service and support

Quality and cost of technical support and warranty support

While all the vendors offer free unlimited telephone technical support for the products they proposed, Compaq, HP and IBM stop providing the support ~5 years after the date they no longer offer the product for sale. Dell provides the support for as long as the original customer owns the product. Dell also included as part of the purchase Premier Gold Enterprise technical support for three years at no additional charge. This support plan provides additional features such as reduced hold times, proactive support notification, customized support for the District's applications and configurations, an assigned Technical Account Management representative and immediate access to level two support staff via a priority queue. If purchased separately, Premier Gold Enterprise technical support would cost approximately $1185.60/server/year, or $554,860.80 for all the servers for three years.

Dell's proposal includes at no additional charge an upgrade from the standard 3-year Next Business Day (NBD) warranty coverage to same-day (four-hour) response. If purchased separately, this enhanced warranty would cost $1533.60/server/year, which totals $717,224.80 over the life of the warranty for 156 servers.

During the server presentations, the EPISD clearly informed each vendor how highly we value unlimited, toll-free, lifetime technical support, and specially asked the vendors who did not offer this type of support to consider including it in their proposal. Dell was not only the sole vendor who offered this type of technical support as a standard, they were also the only vendor to offer, in writing, enhanced technical and warranty support to the EPISD at no additional charge.

Compaq: 4

Dell: 10

Hewlett-Packard: 4

IBM: 4

Single point-of-contact for all OEM offerings

All vendors were able to meet the District's requirements in this category. The two significant OEM products that are part of this project are the UPS and the tape drive.

Compaq: 10

Dell: 10

Hewlett-Packard: 10

IBM: 10

Telephone, e-mail, and web-based support options

All vendors were able to meet the District's requirements in this category.

Compaq: 10

Dell: 10

Hewlett-Packard: 10

IBM: 10

On-site tech support if issue can't be resolved remotely

All vendors were able to meet the District's requirements in this category. All vendors offer this service at an additional charge.

Compaq: 10

Dell: 10

Hewlett-Packard: 10

IBM: 10

Problem resolution process

Dell has the advantage in this category due to several factors such as Dell's inclusion of Premier Enterprise Gold Support and an enhanced warranty at no additional charge. The EPISD also took into consideration that Dell was the only vendor who will supply standard "level one" technical support for as long as the District owns the product; this is important to financially disadvantaged Districts such as the EPISD that keep servers in production long past the manufacturer's end-of-life date for that model.

Dell provided statistics and survey results from independent reviewers documenting Dell's performance in categories such as mean time for problem resolution (1.0 hours for Dell vs. 4.6 hours for the industry as a whole), customer satisfaction (Dell highest at 86%) and Average Speed to Answer. Dell referenced the PC Magazine 14th Annual Reader Survey, where Dell swept the competition in all categories, not only for servers, but also for desktop and laptop PCs. Readers reported that IBM's support technicians were the least knowledgeable, and hold times were nearly twice the average for all vendors. Dell's average hold times were the lowest,

as were Dell's average repairs per server. IBM's technicians were rated the worst in the category of "customer got a runaround".

Compaq: 6

Dell: 10

Hewlett-Packard: 5

IBM: 4

Assistance with troubleshooting intermittent problems, resolution of intermittent vs. consistent failures, in and out of warranty

None of the vendors provided a solution or methodology that satisfactorily addresses this issue. All vendors offer robust systems with predictive failure analysis capabilities, but none of them have any specific programs in place to deal with baffling problems that continue to appear even after the subsystem in question has been repeatedly replaced.

Compaq: 4

Dell: 4

Hewlett-Packard: 4

IBM: 4

Installation service offerings

All vendors offer a variety of installation services including NOS installation, on-site configuration and setup and factory installation of customer-developed images. All vendors except Dell are prepared to configure and install the servers into their enclosed racks and ship the assembled racks on shock-pallets directly to the customer.

Because both of the erate projects include funding for configuration and installation services, vendor installation services are not critical to the success of the two projects. We concluded that the vendors' installation service offerings were nearly identical.

Compaq: 10

Dell: 9

Hewlett-Packard: 10

IBM: 10

Ease of setup and serviceability, ease of access to critical components

Based on the District's "hands-on" comparisons of the models that the vendors brought to the server presentations, all the vendors' servers are nearly identical in this category. IBM's "LightPath" LED diagnostic feature can slightly speed up the time it takes to find a failing subsystem in the server.

The Dell PowerEdge 6400's fans were slightly more difficult to remove compared to the other vendor's servers. The issue of fan accessibility has been addressed in Dell's newest server models; Dell has given the EPISD the option of substituting the new PowerEdge 4600 server for the PowerEdge 6400.

Compaq: 9

Dell: 9

Hewlett-Packard: 9

IBM: 10

Reliability

Vendors were asked to provide statistics on failure rates, to include head-head comparisons with other Enterprise Tier vendors.

Dell provided far more statistics than the other vendors did. Dell stated that PowerEdge servers have the lowest field failure rates of Standard Industry Architecture servers, and provided statistics from PC Magazine, DataQuest and Strategic Research Corp to support their assertion.

Head to head comparisons with other vendors

Compaq: *5*

Dell: 8

Hewlett-Packard: 5

IBM: 5

Failure rates

Compaq: *5*

Dell: 8

Hewlett-Packard: 5

IBM: 5

Types of failures

Compaq: 5

Dell: 6

Hewlett-Packard: 5

IBM: 5

Independent reviews/awards in industry publications such as Network World, PC Week, etc.

While all the vendors listed at least a dozen favorable awards or reviews, Dell's list was the most impressive. Of particular interest was the PC Magazine Reader Survey of overall satisfaction, of which Dell is a 10-time winner. PC Magazine goes on to say, "Dell, as in every other computer category, earns the best grade. In fact, every other manufacturer's reliability-satisfaction score in this section is average, with the sole exception of Dell."

Compaq boasted four consecutive years of the Novell BrainShare Preferred Server award.

Compaq: 7

Dell: 10

Hewlett-Packard: 5

IBM: 5

Speedy availability of product

IBM's stated time-to-ship figures are lowest, resulting in IBM having the highest score in this category. We did not have an opportunity to verify this information in the time given.

Compaq: 9
Compaq did not provide time-to-ship information.

Dell: 9
Dell stated that the servers would be shipped within 15-20 business days from the receipt of the order.

Hewlett-Packard: 9
HP did not provide time-to-ship information.

IBM: 10
IBM stated that the servers would be shipped within 10 business days from the receipt of the purchase order.

Stable product lifespan, length of time product is available

All vendors met the District's minimum requirements for this category. The different scores reflect the slight differences in product lifespan between the vendors.

Compaq: 8
12-24 month average lifespan.

Dell: 10
18-24 month average lifespan.

Hewlett-Packard: 7
12-18 month average lifespan.

IBM: 7
12-month average lifespan.

Quality of custom manufacturing processes and protocols

Based on information presented to the EPISD, all four vendors have excellent custom manufacturing processes and controls. The EPISD prefers the build-to-order model, pioneered by Dell, which allows Dell to make maximum use of proven efficiencies such as just-in-time deliveries and custom-configured systems. This translates into smaller inventories and a better price/performance ratio to the customer.

Compaq: 8

Dell: 10

Hewlett-Packard: 8

IBM: 8

Current market share and projected trends

Of the four vendors, only Dell has consistently increased its market share from 1997 to 2001. Dell was the only vendor to provide graphs showing market share of for US shipments of Standard Intel Architecture servers from 1996 to 2001. Dell also provided statistics showing its leadership in the K-12 market.

Compaq: 7
Compaq's market share for US shipments of Standard Intel Architecture servers has declined from ~40% in 1997 to ~28% in 2001.

Dell: 10
Dell's market share for US shipments of Standard Intel Architecture servers has increased from ~10% in 1997 to ~29% in 2001. In 2001, Dell also overtook Compaq to become #1 in market share for worldwide shipments of Standard Intel Architecture servers.

Hewlett-Packard: 5
HP's market share for US shipments of Standard Intel Architecture servers has declined from

~11% in 1997 to ~4% in 2001.

IBM: 6
IBM's market share for US shipments of Standard Intel Architecture servers has declined from ~14% in 1997 to 10% in 2001. IBM provided information about how it's shipments suffered a smaller decline and increased market share relative Sun Microsystems and HP during the current economic downturn, but those servers are very high-end machines designed to run Unix, so those statistics were not relevant to this project.

Company stability, to include cash reserves and independent analysis of long-term viability

We considered not only the materials presented by each vendor, but also other industry sources such as publications, The Gartner group, IDG, etc. The EPISD is aware that this category does not lend itself to a 100% objective evaluation, as is evidenced by the wide range of opinions offered by industry pundits on this topic. All vendors presented information showing they are stable and riding out the current economic downturn.

While both Compaq and HP played down the significance of the proposed merger, many industry pundits predict that if the merger occurs, there will be an eventual merger of the two companies' server product lines. Some sources predict that HP lines will be merged into Compaq's, while others predict that Compaq's will be merged into HP's. This uncertainty is the main reason why Compaq and HP did not score 10s in this category.

Compaq: 8
Until very recently, Compaq was the world's largest supplier of Standard Intel Architecture servers. It remains a very powerful force in the market.

Dell: 10
Dell is the current market leader in Intel PCs and Servers; Dell's stock has appreciated over 28,000% since its IPO.

Hewlett-Packard: 7
Many industry pundits predict that if the proposed merger goes through, HP's Standard Intel Architecture server line will be merged into Compaq's, because Compaq currently has a much larger market share (~28% vs. ~4%).

IBM: 10
IBM is the world's largest computer hardware company.

Price versus performance

All four vendors proposed equipment that would offer stunning performance improvements over the hardware that the District is currently operating, or over the underpowered hardware that IBM originally proposed in its SOWs for the server projects. While there are differences among the four offerings, the performance of the systems will be essentially identical.

All vendors provided price/performance statistics based on the TPC-C benchmark utility. All four vendors have recently demonstrated servers that held the #1 rating in this category at a

given time. Vendors tend to "leapfrog" each other in this metric as they release new models at different times of the year.

Because these servers are being purchased for an erate-funded project, this category must be analyzed in a different fashion than if the project was funded as a conventional budget item.

The District is expected to spend as much of the erate money as possible, without wasting taxpayer dollars on unnecessary equipment. Local taxpayers have little sympathy or understanding when the EPISD must return grant money to the awarding agency, regardless of how compelling the reasons for doing so may be. Dell's proposal was the only one to offer three separate server options, each of which will meet the District's minimum specifications. This allows the EPISD the flexibility to choose the option that provides maximum performance without exceeding the funding available to the projects.

Compaq: 7

Dell: 10
Dell's proposal includes at no additional charge enhanced warranty and technical support and $25,000 credit toward any Dell product. Dell also included at no additional charge enhanced warranty and support services with a retail value of $1,272,585.60 over a three-year period for 156 servers.

Hewlett-Packard: 7
HP's proposal includes one-week training on Top Tools, at an HP training facility, for three EPISD employees. HP's proposed server is a 6-way capable box.

IBM: 7
IBM's proposal had the lowest price.

IT community acceptance

The IT community's acceptance of a vendor is closely related to that vendor's market share – IT professionals "vote" with their dollars. The EPISD also considered survey results when we assigned the scores for this category.

Compaq: 7

Dell: 10

Hewlett-Packard: 5

IBM: 5

Vendor's engineering relationship with Novell; hardware support for NetWare 6.0

Based on the vendors' presentations and our analysis, Compaq is strongest in this category; for example, Compaq has won the Novell Brainshare "Preferred Server" award for the last four years. Dell is aggressively working to unseat Compaq in this category, and formed a number of partnerships with other firms to provide Novell expertise to Dell customers. HP's and IBM's

presentations did not emphasize the strengths of their relationships with Novell.

Compaq: 10

Dell: 9

Hewlett-Packard: 5

IBM: 5

Remote management

With the exception of IBM, all the vendors remote management solutions met the EPISD's minimum requirements. Compaq's solution is the best due to the tight integration of the Compaq Insight Manager (CIM) with Novell's eDirectory (formerly known as Novell Directory Services); because the District will be deploying eDirectory on these servers there is an advantage in Compaq's ability to store alerts and performance information as eDirectory objects.

Compaq: 10

Dell: 9

Hewlett-Packard: 9

IBM: 4

IBM's remote management solution via its "Director" application does not meet the District's minimum specification, because it requires the use of Windows 2000 servers. It is the District's view that it is not efficient or reasonable to require the use of Windows 2000 Server to remotely manage servers running Novell 6.0, and none of the other vendors' remote management solutions exhibit this deficiency.

Technical design

All vendors met the District's minimum requirements for technical design. Vendors' scores in this category were nearly identical, despite variations in the design of the servers. For example, a feature lacking in one vendor's design will not necessarily result in a lower score, because that vendor may offer another feature that is not found in some or all of the other vendors' servers.

Vendors were asked to present to the EPISD a description of innovative or unique features in their products that represent superior technical value for the customer. We based our scores primarily on the information that was provided to the District as part of the presentations. We evaluated technical features in the context of our District's support practices, software requirements and other District-specific criteria. For example, hot-swap memory allows a server to continue to operate during the replacement of failed memory, but the District has experienced zero failures of server memory in the Dell servers we have used since ~1996. The District also does not have to run the Student Systems servers in a 24x7x365 fashion, the way a mail server or e-commerce web-server must be run, so it would not be unreasonable to

occasionally down a campus server for a few moments to replace memory, in the unlikely event of a failure. Therefore, hot-swap memory is not as beneficial to the EPISD as it would be to an entity such as the New York Stock Exchange.

In contract to hot-swap memory, a feature such as "one-button restore" from tape would be very useful; each year, several of our Student Systems Servers experience disk failures that necessitate restoring the entire system from tape backup. The tape restore process currently requires our technicians to follow a fairly complex series of instructions, including re-installation of the operating system, that are difficult to perform with 100% accuracy.

The features listed below are not meant to represent the comprehensive list of technical design elements unique to each vendor.

Compaq: 10
Hot-pluggable PCI-X slots, liquid-cooled heat sinks, Predictive Failure Analysis, hot-swap redundant fans and power supplies.

Dell: 9
ChipKill Memory, Hot-Pluggable PCI slots, Predictive Failure Analysis, hot-swap redundant fans and power supplies.

Hewlett-Packard: 9
One-Button restore, Hot-pluggable PCI slots, Predictive Failure Analysis, hot-swap redundant fans and power supplies.

IBM: 10
"Light Path" diagnostics, ChipKill Memory, Hot-pluggable PCI-X slots, Predictive Failure Analysis, hot-swap redundant fans and power supplies.

Consulting service offerings, with emphasis on migration from NW 4.11 to NW 6.0

Dell was the only vendor to bring a representative from a partner firm, Tenacious Consulting Services, which specializes in offering consulting services for Novell customers. Tenacious Consulting services has developed a plan to assist the EPISD with the migration from Netware 4.11 to Netware 6.0, should the EPISD need such services to augment the expertise available from IBM Global Services and it's local El Paso business partners.

Compaq's presentation emphasized its continuing commitment to design and manufacture servers that are optimized for Novell Netware. Compaq provided a white paper discussing some of the technical aspects of a NW 4.11 to 6.0 migration.

IBM and HP did not present as strong a case describing why their server products would be ideal for a large Netware 6.0 deployment, choosing instead to focus on other NOSs such as Unix or Windows 2000.

Compaq: 10

Dell: 10

Hewlett-Packard: 6

IBM: 6

Relationships with other vendors that add synergy to the offering

All four vendor's presentations included information about numerous relationships with other vendors.

Compaq clearly has the strongest relationship with Novell of the four vendors. Compaq provided statistics showing that Compaq has 33% of the worldwide installed base of Netware servers.

Dell brought to the server presentation representatives from two business partners: Tenacious Consulting Services, a company with Novell consulting expertise, and Funds for Learning, a company that offers erate consulting services. Dell understands the District's concern with ensuring that our application to the SLD for a change of server vendor is timely and successful.

Compaq: 9

Dell: 10

Hewlett-Packard: 8

IBM: 8

References describing relationships with large urban school districts

The importance of Dell's relationship with one specific "large urban school district", the EPISD, cannot be understated. Ever since standardizing on Dell servers and desktops, the EPISD has enjoyed a productive and successful relationship with Dell. The District's success with Dell is partly due to Dell's serious commitment to K-12 Education – Dell has over 500 employees devoted exclusively to the K-12 marketplace.

All four vendors offered many examples school district's that have purchased large quantities of their servers. Dell and Compaq have the advantage over HP and IBM in this category, due mainly to the sizeable installed bases from the two top vendors of Standard Intel Architechture servers.

Compaq: 9

Dell: 10

Hewlett-Packard: 8

IBM: 8

Minimum Hardware Specifications

The EPISD asked the vendors to propose products that met certain *minimum* requirements. The Vendors were asked to bring to propose a server that met these requirements.

Lockable ventilated server enclosure with standard 19" rails, floor standing

All vendors met the minimum specifications for this category. Based on the specifications and photographs provided by the vendors, Dell's enclosures are superior to the ones offered by the other vendors.

Compaq: 8

Dell: 10

Hewlett-Packard: 8

IBM: 8

UPS - 1400 KVA, rack-mountable

All vendors met the minimum specifications for this category.

Compaq: 10

Dell: 10

Hewlett-Packard: 10

IBM: 10

1U tray-style flat-panel monitor with keyboard and mouse

All vendors met the minimum specifications for this category.

Compaq: 10

Dell: 10

Hewlett-Packard: 10

IBM: 10

Hardware for mounting the server in the enclosure

All vendors met the minimum specifications for this category. Dell's enclosures feature the tool-less Rapid Rails system and a sophisticated cable-free power distribution system.

Compaq: 8

Dell: 10

Hewlett-Packard: 8

IBM: 8

Three-year warranty with next-day on-site response

All four vendor's proposals met the Districts minimum specifications for warranties.

Dell's proposal includes at no additional charge an upgrade from the standard 3-year Next Business Day (NBD) warranty coverage to same-day (four-hour) response. Dell was the only vendor to offer enhanced warranty support to the EPISD at no additional charge. The enhanced warranty offered by Dell is valued at $1533.60/server/year. ($717,224.80 over the life of the warranty for 156 servers)

Compaq: 5

Dell: 10

Hewlett-Packard: 5

IBM: 5

Lifetime unlimited telephone technical support for all hardware components

Dell was the only vendor to meet the minimum specifications for this category. While all the vendors offer free unlimited telephone technical support for the products they proposed, Compaq, HP and IBM stop providing the support 5 years after the date they no longer offer the product for sale. Dell provides the support for as long as the original customer owns the product. Dell also included as part of the purchase Premier Gold Enterprise technical support for three years at no additional charge. This support plan provides additional features such as reduced hold times and immediate access to "level two" support staff.

Compaq: 4

Dell: 10

Hewlett-Packard: 4

IBM: 4

Dual 700 MHz Pentium III Xeon processors with 1MB cache

All vendors met the minimum specifications for this category.

Compaq: 10

Dell: 10

6-23-04; 3:42PM;MGMSG ;915+532+8024 # 15/ 44

Hewlett-Packard: 10

IBM: 10

1GB system RAM

All vendors met the minimum specifications for this category.

Compaq: 10

Dell: 10

Hewlett-Packard: 10

IBM: 10

Hardware RAID-5 controller

All vendors met the minimum specifications for this category.

Compaq: 10

Dell: 10

Hewlett-Packard: 10

IBM: 10

5x30 GB SCSI (Ultra 3) 10,000-rpm drives configured for RAID-5, hot swappable

All vendors met the minimum specifications for this category.

Compaq: 10

Dell: 10

Hewlett-Packard: 10

IBM: 10

1.44 MB 3.5" floppy drive

All vendors met the minimum specifications for this category.

Compaq: 10

Dell: 10

Hewlett-Packard: 10

IBM: 10

CD-ROM drive

All vendors met the minimum specifications for this category.

Compaq: 10

Dell: 10

Hewlett-Packard: 10

IBM: 10

Intel 100 Mbps network card (or Intel 100 Mbps chipset on system board)

All vendors met the minimum specifications for this category. Although all the vendors' nics used the Intel chipset, Dell is the only vendor to offer the actual Intel brand network card, instead of a rebranded nic using the Intel chipset.

Compaq: 8

Dell: 10

Hewlett-Packard: 7
HP's proposal did not include an Intel-chipset nic, but HP offered to provide one after they were asked to clarify their proposal.

IBM: 8

Linear Tape Open 100/200 GB internal tape drive

Compaq's proposal did not include an LTO drive. Instead, they proposed a Quantum Super DLT drive. Although DLT is a functional, well-established technology, the EPISD prefers LTO drives for a number of reasons such as superior transfer rates (54 GB/hour vs. 40 GB/hour), cross-vendor standards, cost, and superiority of technical aspects of the design.

Compaq: 4

Dell: 10

Hewlett-Packard: 10

IBM: 10

Hot-swappable, N+1 redundant power supplies

All vendors met the minimum specifications for this category.

Compaq:	10
Dell:	10
Hewlett-Packard:	10
IBM:	10

		E-rate Server Projects			
		Weighted Evaluation			
		Compaq	Dell	HP	IBM
EVALUATION CRITERIA	weight				
Service and support					
quality and cost of technical support	2	4	10	4	4
single point-of-contact for all OEM offerings	1	10	10	10	10
support contact options such as email, web	1	10	10	10	10
on-site tech support	1	10	10	10	10
problem resolution process	2	6	10	5	4
assistance with intermittent problems	1	4	4	4	4
installation service offerings	1	10	9	10	10
ease of setup/access to critical components	1	9	9	9	10
Reliability statistics	1				
Head-head comparisons with other vendors	1	5	8	5	5
Failure rates	1	5	8	5	5
Types of failures	1	5	6	5	5
Independent reviews/awards	2	7	10	5	5
Speedy availability of product	1	9	9	9	10
Average product lifespan of servers	1	8	10	7	7
Quality of custom manufacturing	1	8	10	8	8
Current and projected market share	1	7	10	5	6
Company stability, viability	2	8	10	7	10
Price versus performance	1	7	10	7	7
IT community acceptance	1	7	10	5	5
Engineering relationship with Novell	2	10	9	5	5
Remote management	1	10	9	9	4
Innovative technical design	1	10	9	9	10
Consulting service offerings: NW 6.0	2	10	10	6	6
Relationships with other vendors	1	9	10	8	8
Relationships: large school districts	2	9	10	8	8
Meeting EPISD specifications					
Enclosure	1	8	10	8	8
UPS	1	10	10	10	10
tray-style keyboard and monitor	1	10	10	10	10
server mounting hardware	0.5	8	10	8	8
warranty	3	5	10	5	5
lifetime unlimited technical support	3	4	10	4	4
Dual PIII Xeon processors	1	10	10	10	10
1 GB system RAM	1	10	10	10	10
Hardware RAID-5 controller	1	10	10	10	10
5x30 GB SCSI hard disks	1	10	10	10	10
1.44" floppy drive	0.5	10	10	10	10

CD-ROM drive	1	10	10	10	10
Intel 10/100 nic	1	8	10	7	8
LTO 100/200 GB tape drive	2	4	10	10	10
hot-swappable N+1 redundant pwr	1	10	10	10	10
TOTALS:		**391**	**489**	**366**	**370**

E-rate Server Projects

Cost Comparison

Please refer to the attached server evaluation for a description of the servers, enclosures, UPSs and other options.

Items	Compaq	Dell	Hewlett-Packard	IBM
Server enclosure	$ 2,314.00	$ 3,059.00	$ 2,112.96	$ 2,236.00
Server	$ 11,470.00	$ 11,624.50	$ 9,994.83	$ 9,499.00
Server option 2 (Dell PE 4400)		$ 10,081.20		
Server option 3 (Dell PE 2500)		$ 8,396.01		
tray-style keyboard and flat monitor	$ 1,100.00	$ 1,000.35	$ 1,152.30	$ 675.00
rack-mounted UPS	$ 640.00	$ 311.50	$ 745.11	$ 684.00
TOTAL	**$ 15,524.00**	**$ 15,995.35**	**$ 14,005.20**	**$ 13,094.00**
Server option 2 (Dell PE 4400)		$ 14,452.05		
Server option 3 (Dell PE 2500)		$ 12,766.86		

Don Riddick
01/28/2002 01 36 PM
This document expires on 04/28/2002

To admin@alphatelecommunications com
cc
From Don Riddick/Costa Mesa/IBM@IBMUS
Subject EPISD Questions for Maintenance Contract

TAB 24

Hi Paul

Here are the first of 15 questions on EPISD Maintenance Hopefully we can discuss these questions this week?

Thanks

Donald M Riddick
Advisory Project Manager
IBM Global Services
Costa Mesa California
714-438-6194 TTL 925-6194
Cell Phone- 714-585-2976
Email riddick1@us ibm com

- Forwarded by Don Riddick/Costa Mesa/IBM on 01/28/2002 02 25 PM -

David Tillman
01/28/2002 07 45 AM

To Don Riddick/Costa Mesa/IBM
cc
From David Tillman/Dallas/IBM@IBMUS
Subject Questions for Alpha

Here are some of the questions for USFMS More will follow later today

1 Situation/Observation The USFMS SOW has been classified as a Services Only' SOW
Questions
a Does that mean that anything IBM purchases or acquires in order to provide the service stays in IBM s posession and control? In other words does IBM retain title to any equipment and secure software licenses in its name instead fof passing same to EPISD?
b Under the auspices of it being a 'Services SOW, does that mean that the items in the Eligible Services list are not applicable or are someway mitigated? For example the Eligible Services List clearly says that Network Management Systems are not eligible However the entire SOW is based on the requirement for IBM to design build implement and manage (operate) a Maintenance Service Office (MSO) whose whole reason for existence is to monitor and manage the network
c Why can't a Services SOW get the end date extended? The MSO is supposed to support the whole network including all the HW & SW being installed as part of the network by the other eight SOWs Most of them are getting their end dates extended to 9/30/02 because of the late start Most of their implementation schedules call for dates AFTER the end date of the USFMS SOW
d FCC Form 471 Attachment M has a table in it that includes a list of Internal Connections Hardware Maintenance, including Servers by manufacturer model and quantity (same for switches and routers) If USFMS provides a 'Service" why is this table in the SOW? Does it mean that nothing but these devices in these quantities can be monitored managed and fixed under the USFMS SOW?

2 Situation/Observation There is no provision in any of the nine SOWs for there to be system level network architecture This is work that has to be done (planning design documentation and deployment support) in order to make sure that the entire network is designed properly and will actually work We already know that if any of the nine were to be implemented just as written the network will not work properly
Questions
a Can Systems Network Architecture be included in the USFMS SOW including tasks and

deliverables

b If yes what are the allowable activities and examples of deliverables that will be acceptable?

c If not how do we provide the system network architecture services that are required?

3 Situation/Observation Each of the none SOWs has an assumption in it or an EPISD Responsibility that makes it clear that EPISD is supposed to provide physical space desks phones office support etc for the IBM team This includes space for the MSO equipment and Call Center EPISD told us in early December that they cannot provide these services and space Our IBM management team is willing to provide these services but can only do so by absorbing the cost in one or more of the SOWs This means that something that is currently in the SOW(s) as services or deliverables cannot be done - so that the cost and GP structure can be maintained Since the USFMS SOW didn t start until mid-October because of late notification from the SLD there are some costs that will not be realized Both the IBM team and EPISD are agreeable to have the USFMS SOW bear the cost because these costs will never be realized

Questions

a Can IBM absorb the facilities and support costs under the USFMS SOW?

b If so can it all be absorbed under the USFMS SOW? The other SOWs do not have any cost cushion that will allow them to absorb any of the cost

c If not how do you suggest we can move forward to provide the space and services? If we cannot provide the space and services most of the work will stop because the IBM team has no good place to work - and there is no space for the MSO (hardware and call center)?

4 Situation/Observation No one thought that EPISD would be granted all nine SOWs AS a result there is no provision in any of the SOWs to support 'Program Level' coordination or management Becasue EPISD was not notified of the grant until mid-October some of the costs from the USFMS SOW will never be realized The Program Level support is absolutely necessary in order to manage the efforts of nine separate yet related SOWs

Questions

a Can IBM absorb the costs for Program Level support under the USFMA SOW?

b If so can it all be absorbed under the USFMA SOW? THe other SOWs do not have any cost cushion that will allow them to absorb any of the cost

c If not how do you suggest that we can move forward to provide the program level support?

Thanks

Dave

David R Tillman PMP
Certified Senior Project Manager
(972) 280-1089 IBM Office
(972) 724-2011 Home Office
(972) 467-9921 Cell Phone
Internet e-Mail dtillman@us ibm com

TAB 25

Memorandum

To: **Mike Pratt**

From: **Nate Hawthorne**

Date: **February 10, 2002**

Issue: Can eligible schools be charged for maintenance "tools" when the vendor provides Internal Connections maintenance service?

The FCC in its Report and Order, CC Dkt No. 96-45, May 7, 1997, stated that "...eligible schools...may....secure support for installation and maintenance of internal connections..." Pg. 241.

Subsequently, the SLD published an "Eligible Services List" for Year 4. The SLD's eligible services list addresses maintenance in two (2) categories.

First, "On Site Technical Support". The SLD defines this category in the following manner: "On-Site Technical Support is the presence of a vendor at the client's location for a specified period of time. Most often this on-site support includes the installation, maintenance and changes to various service and equipment under contract." Eligible Services List, Pg. 22.

Second, "Maintenance & Installation". The SLD defines this category in the following manner: "...The charges incurred for the installation and contractual maintenance of eligible...Internal Connections and Internet Access are eligible for discount. The charges incurred for the maintenance...on eligible ...internal Connections on a time and material basis are eligible for discount."

These are the SLD Eligible Services categories for Year 4.

Opinion: For Year 4, based on the plain language of the SLD categories, maintenance for Internal Connections will be provided by a vendor to an eligible entity only on a time and material basis. Does this mean that a vendor can never sell a maintenance "tool" to an eligible entity? No, it does not. However, if there is a sale of a tool by the vendor, there must be reasonable basis for it and there can be no conflict with any other SLD regulation.

Recommendation: There must be careful analyses of each event.

TAB 26

IBM

International Business Machines Corporation
Two Riverway

Houston, TX 77056

February 26, 2002

Nate Hawthorne

Alpha Telecommunications

Dear Nate:

As you know, El Paso ISD has recently asked for interpretation of erate rules and regulations. Therefore, this memorandum is intended to clarify how Alpha and IBM will interact and respond with the school districts in these types of situations.

We appreciate your continuing support as our subcontractor for the El Paso ISD and other erate projects, both underway and which we are seeking. To make sure we are on the same page with you, this letter clarifies the role we intend Alpha to fill in these projects and specifies some services Alpha is specifically directed not to provide to the customers.

Our current practice of seeking your input to customer and SLD questions and issues is to request that you communicate directly to the IBM team. Any communications from you to the customer are to go through the IBM team. This is unchanged. We intend to provide the customer with consulting services, including factual information about past practices. Alpha assists in gathering this information, as well as assisting IBM in completing SLD required forms. We will not, however, provide the customer with legal advice or services and we direct Alpha not to do so. This includes advising the customer about laws, regulations, and rules, including those of the SLD, current or anticipated. This type of service goes beyond our role as a technology integration provider and beyond the contracts we have in place with the customer. Obviously, as our subcontractor you also cannot exceed these limits. To the extent the customer seeks or needs legal advice, they should be directed to contact their own counsel in all cases. To the extent the customer contacts you directly, you are to route those requests to IBM and we will determine how to respond and how Alpha can assist us in making any response.

Thank you for your continuing efforts to follow IBM's direction and support IBM on these projects. If you have any questions, please feel free to give me a call.

Sincerely,

Michael Pratt
Complex Engagements Manager
Integrated Technology Services
IBM Global Services

TAB 27

From: "Michael Pratt" <mpratt@us.ibm.com>
To: "Daniel Bissonnet" <dbisson1@us.ibm.com>; <admin@alphatelecommunications.com>
Sent: Monday, June 24, 2002 8:09 PM
Attach: EPISD USF MS Contact Value FINAL.doc
Subject: Re: final value statement

Paul, have you reviewed this yet? I am way overdue to get it back to EPISD.
Thx

Thanks, Mike

Michael Pratt
Complex Engagements Executive,
IBM Global Services
Phone: 713-940-2116 Tie Line: 345-2116, Cell 832-483-7036
---------- Forwarded by Michael Pratt/Houston/IBM on 06/24/2002 07:08 PM ----------

Michael Pratt
06/21/2002 07:41 AM

To: Daniel Bissonnet/Austin/IBM@IBMUS, admin@alphatelecommunications.com
cc:
From: Michael Pratt/Houston/IBM@IBMUS
Subject: Re: final value statement (Document link: Michael Pratt)

Dan, looks good. I just changed one word. I have attached the file with the one change. Paul/Nate, last review. This is essentially the same file I sent you yesterday. Any changes are marked. Please advise if there are any issues. Thx

(See attached file: EPISD USF MS Contact Value FINAL.doc)

Thanks, Mike

Michael Pratt
Complex Engagements Executive,
IBM Global Services
Phone: 713-940-2116 Tie Line: 345-2116, Cell 832-483-7036

DANIEL BISSONNET
06/20/2002 08:44 PM

To: Michael Pratt/Houston/IBM@IBMUS
David Tillman/Dallas/IBM
From: Daniel Bissonnet/Austin/IBM@IBMUS
Subject: *IBM Confidential: final value statement

e,

I have taken your version, and edited with some feedback I got mainly from Dave on the previous version. It is ready for you to go thru one more time and accept/reject changes, then take it from there.

What is the correct way to write "erate" ? E-rate. E-Rate. e-rate. erate. Somewhere I picked up that E-Rate is correct, and have changed all references to that. If one of the other ways is accurate, please fix.

Many thanks for the kudos!!! Had fun.

Im not copying everyone until you have finished the final touches...please distribute as appropriate.

Daniel Bissonnet,
Consultant, Infrastructure and Systems Management Competency,
Integrated Technology Services,
IBM Global Services

Voice Mail, Paging, and Calls Forwarded:
713 940 1354 (T/L 345 1354)
Cell
713 927 6784

Internet E-Mail: dbisson1@us.ibm.com

The El Paso Independent School District (EPISD) welcomes this opportunity to demonstrate to the Schools and Library Division (SLD) the value of the Universal Services Fund-Maintenance Services (USF MS) Project ~~for~~ the teachers, staff, students, and parents of the District. To show this value, we will first describe the network support environment as it existed before SLD funding, and then describe how improvements have provided immediate and long term value.

Like many school districts, EPISD has long struggled with under funding, and focused its resources on direct support of our teachers, and maintenance of our facilities. Our Technology Information Services (TIS) department has often taken a back seat to these more immediate funding needs.

This under funding has had several major effects over the last few years. TIS has had numerous changes in executive leadership, as well as turn over in line management. These management challenges have kept us from developing consistent business processes. We have not been able to provide our staff with tools commonly found in other IT support organizations. We have not been able to organize our staff around solid service delivery objectives. We have not been able to measure our performance. And perhaps most significantly, we have not been able to address the critical need for developing a more integrated network architecture. Morale and productivity has decreased.

Other organizations faced with similar issues have found that re-engineering is costly, and takes many years. We realized that without significant additional funding, and the ability to use outside subject matter experts, it was unlikely that TIS could make more than ~~incremental~~marginal gains in developing its network service delivery capability. E-Rate funding made it possible to make huge leaps in a relatively short period of time.

IBM was chosen to design and implement an enterprise network solution for EPISD in accordance with the eligibility requirements of the E-Rate program. The largest single part of that solution was the USF MS Project. Our expectation was for IBM to work closely with EPISD senior and executive management to deliver a radically transformed network support organization in less than one year. Our expectations were met.

IBM first listened to our own assessment of the state of TIS, then conducted an independent assessment of the then current environment. They accurately identified all the key weaknesses we presumed existed, and identified underlying causes.

Based on the requirements identified in the assessment, IBM designed a new network support organization, the Technical Support Office (TSO) with new tools, work processes, and organizational structure.

They developed these new tools by installing and configuring a Network Control Center, and Help Desk software. They conducted an inventory, providing us with core data used by these tools. They supplied us with customized work processes, aligned with service delivery objectives, and supported by the new tool set. They created an organization with defined roles, responsibilities, and job descriptions, bringing much needed accountability to the staff.

Without SLD funding, none of these radical changes, correcting years of unintended neglect, would have been possible. ~~By end of~~During the E-~~r~~Rate Round 4 Project, IBM will complete a fully operational and documented TSO, employing a service delivery model capable of network support of a quality higher than EPISD customer's have ever had. We will have the first reliable inventory in TIS history. IBM will have provided the District with 43,000 hours of technical professional services, installed $16,000,000. worth of tools, and provided a library of intellectual capital. These improvements will allow teachers, staff, students, and parents to focus on their core educational objectives, while the network transparently enables their efforts.

As this new Technical Support Office matures, EPISD will begin to see the following numerous improvements. These improvements made during this year will be leveraged ~~not just~~ during the next year~~, but~~ and for years afterward.

- Network Availability
  - The TSO will have the ability to resolve problems quickly, shortening network down time. Routine maintenance will become a standard practice. EPISD will be able to take proactive steps to make changes to the network, such as hardware moves. These processes will help assure high network availability.
  - Using technical change management methods, more predictable changes will create fewer unplanned connectivity outages.
  - Centralized backup and recovery will lessened the risk of lost data.
  - Decreased down time (increased availability) will make teachers and students more productive.
  - Integrated network architecture, a missing key component in EPISD's old environment, will connect technical support and delivery of education to the classroom.
- Metrics and Measurements
  - Measurements will work to identify weaknesses and improvement opportunities.
  - New Service Levels will provide a means of measuring success in meeting stated performance expectations, while before there was no way to address the serious problem of accountability in TIS.
  - EPISD will have a means to keep track of how long it takes to solve problems, how many problems are called in, who is fixing problems, where problems are happening the most, and how customer's see the value of the services. Performance trends can be tracked to spot areas that need improvement.
- Quality Service Delivery
  - The single point of contact help desk will allow any EPISD employee to request any service offered by the TIS by calling a single number, rather that needing to find someone in the organization who can assist in some particular specialized area.
  - A standardized process for requesting a service or problem to be resolved from the TSO will enable the delivery of a consistent level of service to everyone.
  - Customers can find out the status of a request by looking at a Web site, or calling the same number they used to request the service. When the service is complete, they may receive a request for an evaluation of the service, ~~enabling decreased~~

~~down time that will make teachers and students more productive~~identifying areas for improvement.
    - Most help desks begin modestly and evolve over a long period of time. Because TIS never had a help desk, we were able to provide a Service Center process customized for the new technical support.
- Cost savings
    - Fewer service redundancies, particularly in the schools that provide much of their own support, will lower EPISD expenses.
    - Inventory control will lessen shrinkage.
    - Configuration Management will provide much more control over sizing expensive assets.
    - Project discipline will allow completion of non-operations tasks within budget, on time, with proven results, freeing resources for support activities.
    - Integrated operations processes for managing service calls, problem management, change management, and inventory/configuration management will provide economies of scale, mainly in the skill sets of personnel being applied to several processes.
    - The physical inventory taken during this contract period is one that most organizations keep over time. Network support is nearly impossible without accurate data on network components, including network workstations, routers, switches, hubs, and servers. There were 22,610 network terminals and a total of 47,000 objects found. This inventory supports about 62,000 students, and 5,018 additional professional staff.

In conclusion, we would like to emphasize that the value of the USF MS Project is not to be measured in terms of just the service delivery during the SLD -defined service delivery period.~~contractual period~~. The service IBM provided was a complete re-engineering of the way TIS does business. EPISD will benefit from this effort for years to come.

Michael Pratt
10/17/2002 06:10 PM

To: Ron Forrest/Phoenix/IBM@IBMUS
cc: john milota/chicago/ibm
From: Michael Pratt/Houston/IBM @ IBMUS
Subject: Alternative Solution to Enhance Value Add Perception of USF Maint at EPISD

Ron, per our discussion yesterday on this topic, I did some investigation on providing desktop technicians at little or no charge to EPISD to get them out of their current bind and to demonstrate the added value that IBM brings to the table. Here are the highlights of what I have come up with working with Alpha, John and some of his folks:

- Alpha has no problem with us providing desktop technicians at no charge to EPISD as long as it is provided under a separate contract since desktop support is not eligible. In fact they thought it would be a good idea
- The assigned S&D client rep thinks that it will be received as a definite added value
- I have not covered this with the customer yet until I have the green light to move forward. However, independently, the customer has requested IBM to put together a proposal to assist them here (expecting to be charged) since it is a current significant problem for them. They have in excess of 1000 desktop calls they cannot get to.
- The actual proposal would be to provide an initial team of 20 desktop techs for 8 weeks to attack the 1000 calls and quickly handle. We will then leave them with two full-time techs for ten months to assist with ongoing calls. This would then be a one year project.
- We would offer this to EPISD for a very (obvious to the customer) nominal fee of about $10K. The actual cost to IBM would be between $286K and $310K (A lot less than $4M). We can either run this cost under the separate SOW and run it as a loss, or move the appropriate portion of the cost under the existing USF Maint SOW. We need to know your preference on this.
- We can use a combination of IBM and local subcontractor folks to implement which would also help in our vendor relationships. If we have any qualified IBMers on the bench, we could consider engaging them.

Ron, I believe that we can get significant mileage in improved perception and future business since I would want EPISD to respond to questions from peer districts in a very positive way as to the true value that IBM brings to the table, leading to more business from other districts and a very satisfied EPISD. The S&D rep and I are planning to set up meetings with individual members of the Board and this would be a great adder to those discussions as we position ourselves to move into Erate 6. I know that you were going to discuss this with Warren today, and I will also be trying to get you via phone. I owe Jack Johnston a comeback and I will be meeting again with him on Tuesday. If you and Warren are OK with this approach, please advise and John and I will initiate the implementation.

Thanks, Mike

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Thanks, Mike

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Thanks, Mike

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Michael Pratt
10/30/2002 10:24 AM

To: Drew Willim/Phoenix/IBM@IBMUS
cc: Ron Forrest/Phoenix/IBM@IBMUS, John Milota/Chicago/IBM@IBMUS, Mike Miles/Wichita/IBM@IBMUS
From: Michael Pratt/Houston/IBM@IBMUS
Subject: Investment Method and Reasoning for Desktop Support at EPISD
Importance: Urgent

Drew, as a follow up to our discussion yesterday afternoon, I wanted to give you some additional justification as to why I need your help in figuring out the best method for making the investment at EPISD and why it is critical that we make this happen. As we discussed, EPISD is our "Poster Child" in the West for the Erate business. In the education world, all of the districts talk to each other and many, including YISD, Boot Heel , Ft Worth, etc have approached EPISD as to their opinion of the value IBM brings to the table as a Strategic Partner, particularly as it relates to Erate. Due to the magnitude and timing, Jack Johnston, Executive Director at EPISD has had a tough time articulating the value of the USF Maintenance $27M solution. The other solutions he has no problem with. It has also been an issue with Board members at EPISD and has even filtered into the community. The Board is currently deliberating about whether to proceed with IBM into Erate 6. At the Board meeting on 10/15, one of the Board members, publically stated that perhaps they should not even spend the Erate 5 funding once it is released and save the 10% matching funds and the impact to EPISD ITS resources which was an issue. One of the major resource issues that was an item on the Board Agenda for that night was introduced by Jack and was a plea for additional resources since the implementation of $70M in technology had caused him to redirect his support staff to that and because of this he had over 1,000 unresolved desktop problems that he could not get to.

As we discussed, my proposal is to provide desktop resources under a standalone SOW at little or no charge to EPISD to remedy this major problem for EPISD as their "Strategic Partner" and by doing so immediately fix the IBM Value issue. The investment is a little over $300K, and here is why it is a sound business decision:

- It will get EPISD to approve spending the Erate 5 funding. Value to IBM: $51M over the next 12 months which is currently at risk
- It will lock IBM into the approved solution provider for Erate 6, a decision that is currently at even higher risk and which the Board must approve. Estimated value to IBM between $30M and $40M.
- It will result in a positive response to the IBM value question from both the IT staff and the Board when approached by other districts for Erate 6. Estimated value of only a single district locking with IBM based on the testimonial from EPISD: $20 to $50M.
- We have the money to cover this under our projects at EPISD. As you know, we have captured the cost of supporting EPISD under the USF Maintenance SOW for the months of July-October under the existing USF Maint SOW, and the existing contract is highly profitable. When Erate 5 funding is released, we will then bill the SLD for these same three months which essentially results in $4M of revenue with no additional cost.

Drew, we cannot afford NOT to do this. You and I go back a long way and have worked deals over the years that have been extremely beneficial to IBM. In my opinion, this is the greatest one yet and is a hingepin effecting over $100M of present and future ITS business. Ron is fully on board and has approved the investment. I discussed this with EPISD and said that I think we can pull this off to help them out of this immediate support issue and Jack was absolutely delighted and has mentioned it to the Board President, Dan Weaver who was also delighted.

But, I want to make sure we do this right and use the approved method, particularly given recent actions. Need your help buddy. I would like to

construct a normal SOW showing true revenue and cost and accompany it with a letter from IBM stating that we will not charge EPISD for the major portion of the SOW. Need your advice today. I have another meeting with Jack at lunch and he will be looking for status.

Thanks, Mike

Michael Pratt
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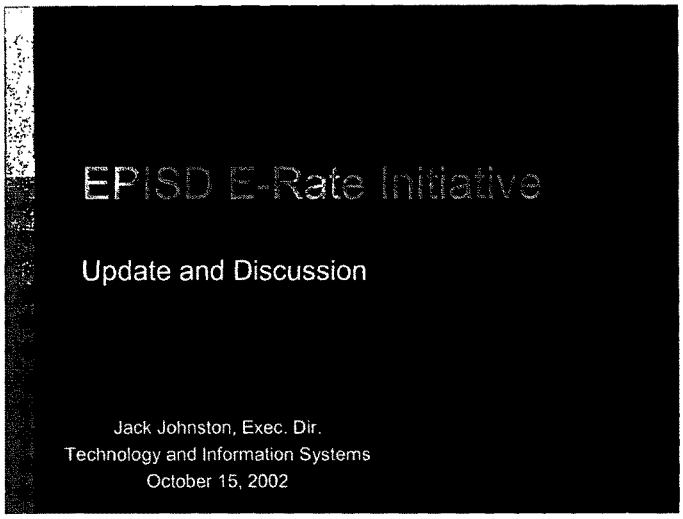
TAB 29



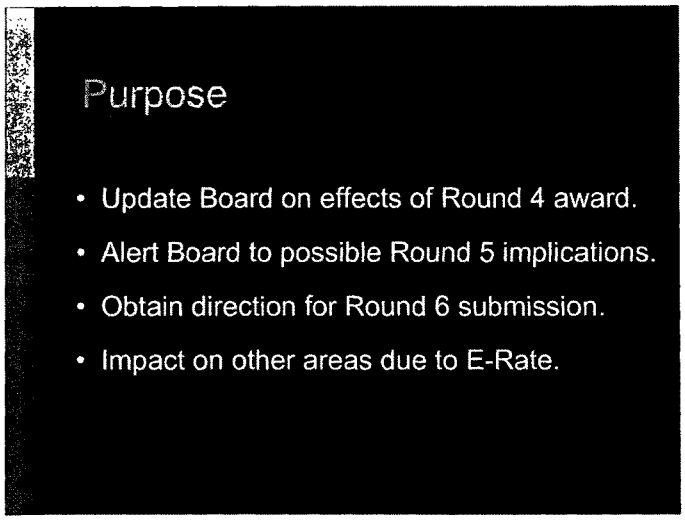
I appreciate the opportunity to provide the Board with this update on the District's E-Rate initiative.

Before I begin though, I need to state that the intent of this presentation, and the information provided, is not to be construed as a negative reflection on the services provided by IBM as our Strategic Technology Solution Provider.

IBM's performance followed the guidelines provided by the Board, and the District's administration. They have labored long and hard to make this partnership work efficiently and effectively for us.

We are very important to them. Being the only District with an addendum to their base contact is evident of their desire to keep this collaboration alive.

This really isn't about IBM; it's about us and what we are facing today.



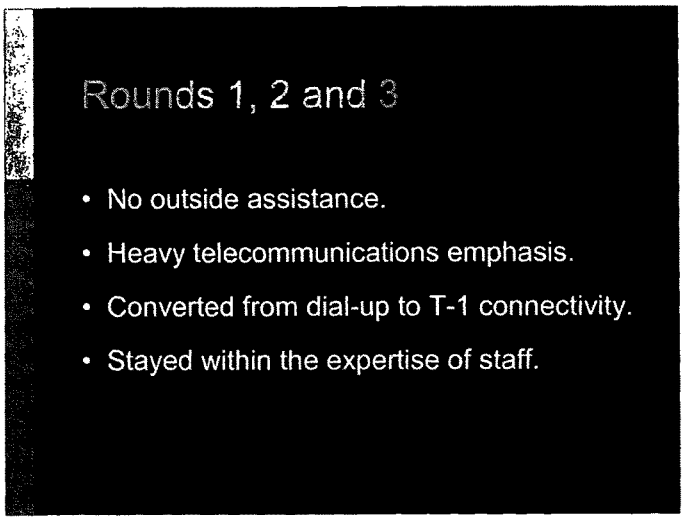
A significant impact occurred on District resources with the Year 2001(Round 4) E-rate award.

With the impending announcement of Year 2002 (Round 5) funding, the Boards needs to have this information available in order to provide administration with direction on how to proceed for Round 5.

At one time the Board indicated a desire to deviate from the methods used to apply for Round 4 and Round 5 funding for Round 6 (Year 2003). I need to validate if that is still the Board's desire to do so, and to provide the upside and downside of doing so.

Technology within the District was a full time endeavor before the Round 4 award, and there are some serious issues the Board needs to be aware of that could effect their decision process. Some are a residual effect of E-Rate and others are on-going, day-to-day issues.

Areas to be Covered
• Rounds 1, 2, and 3 (Years 1998 – 2000)
• Round 4 (Year 2001)
• Round 5 (Year 2002)
• Round 6 (Year 2003)
• Other issues

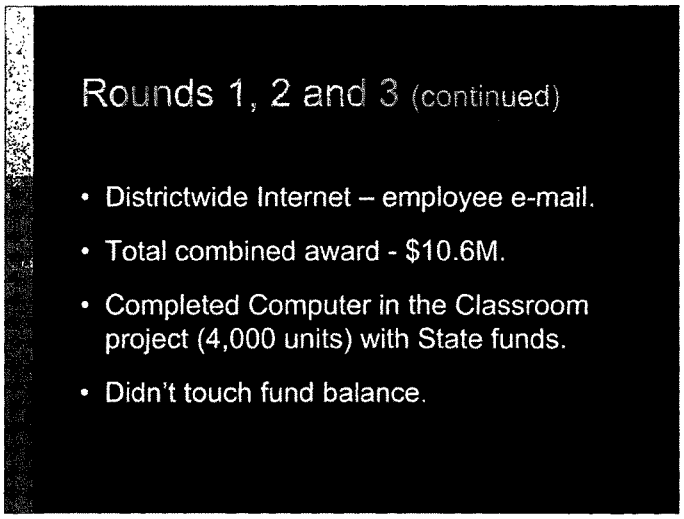


During the first three years of E-Rate, the expertise and knowledge of the program came from within. The Instructional Technology group within TIS did everything from forms development and submission, as well as the required RFPs or quotes. Any compliance questions were directed back to the SLD for a ruling.

Following the intended purpose of the program, our concentration was on infrastructure and the upgrade of the telecommunication services for the campuses and central office.

Our dial-up access for Internet was converted to the higher speed digital T-1 lines which provided a 25 times greater transfer rate. We experimented with video conferencing between Blue Flame and Boeing, but even with the increased transfer rate, the video was choppy and the equipment somewhat difficult to use.

We took our staff's existing skills into consideration as we developed the scope of the projects to be applied for E-rate funding.

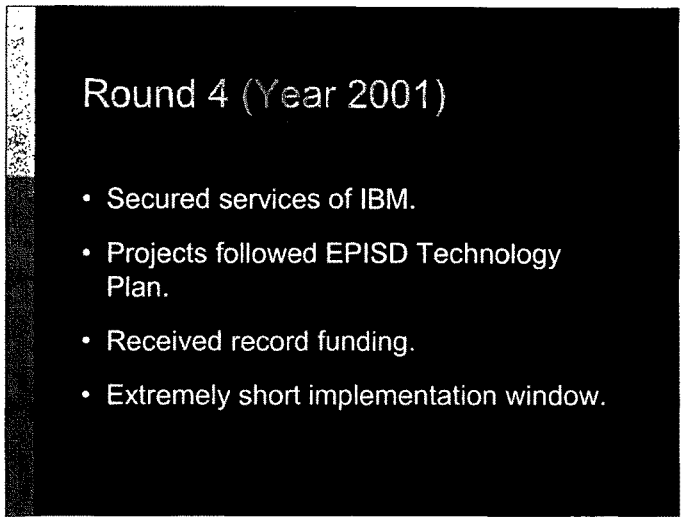


With higher speed access came employee e-mail. Many still chose to stay with AOL or WhiteHorse, as less than 1,000 employees showed continuous usage of the District's system. We did not offer student e-mail accounts at this time.

For the first three years, $10.6M was received for our effort.

Now that we had Internet connectivity in every classroom in the District, we needed hardware. During this time, starting with the high schools, every classroom received an Internet-ready, multimedia desktop computer with the MS Office suite of products preloaded. These units purchased with local and state funds, were intended for shared use by the students and teacher. Some continue to comply with this condidtion, and some don't. The middle schools were completed in 1999, and the elementary schools in 2000.

Fund balance remained untouched.



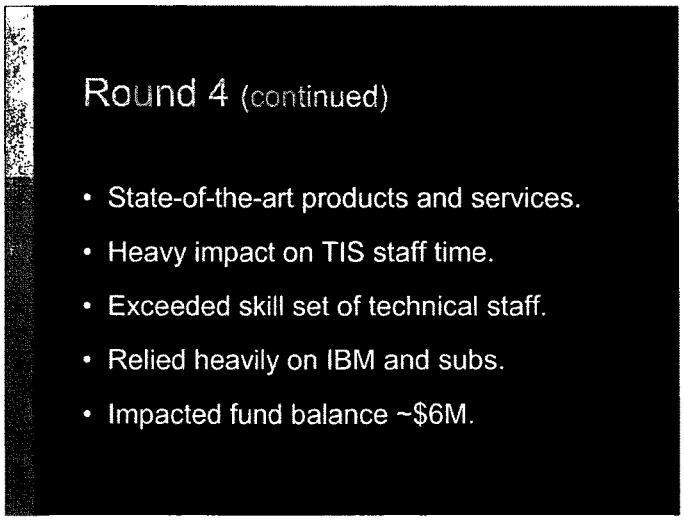
With Round 4, due to a change in leadership in TIS and Finance, a different approach to funding was explored. Also, two of the three key players in Rounds 1, 2 & 3 left the District.

Dialogue between IBM and the District began in the summer of 2000 regarding a strategic alliance. What came out of it was the Strategic Technology Solution Provider agreement.

The development of the submitted projects for Round 4 followed those initiatives stated in the District's Technology Plan for Education, which was a key issue during the SLD investigation.

We submitted ~ $76.6M in requests to the SLD and were approved for ~$75.5M, with the SLD providing fund at $66.1M.

Due to the later than usual notification on the award, coupled with the procurement difficulties, we really had our backs to the wall. There was little or no room for error.



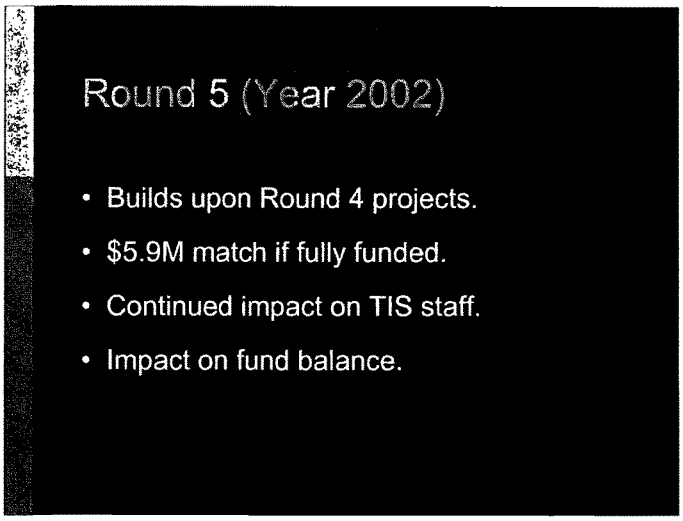
What we received was nothing short of a state-of-the-art implementation. Even the SLD investigator commented on that fact.

The downside of the award was the impact on my existing staff. IBM provide many learning experiences for us, with the most noticeable being superior project management techniques. With each of the nine projects requiring a project manager on both sides, I had to ask all of my administrative staff to pull double-duty... some even triple duty. TIS was short staffed before the large award, and now it became even worse.

With the introduction of this first-class technology came the need for skill upgrade for many of the TIS staff. What IBM could provide within the SLD guidelines for skill transfer, they did so. Unfortunately, my staff has a long way to go before we could ever be expected to provide the same level of service as IBM in many areas.

We are no longer in the driver's seat.

Thanks to the Board's action, approximately $6M were drawn from fund balance to supplement the $1M that came from the budgeted funds in TIS.



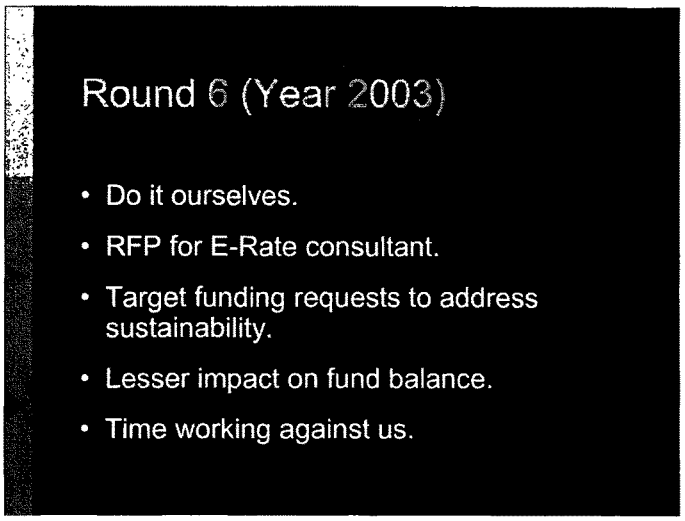
According to the SLD experts, it could be two more weeks before we know what Round 5 funding will be. If what NYCBOE received for this round is any indication, we stand a very good chance of getting what we asked for. Last round, they were #1 and we were #2 in funding awards.

Eight projects are coming forward from Round 4, with the Server Upgrade being the only one excluded.

~$52.4M in projects were submitted, with the anticipated SLD portion being $46.5M, leaving the District with a match of ~$5.9M.

If nothing is done regarding a change in staffing, then the impact of a large award will provide continuation of the problems my staff faced in Round 4, in actuality, I will lose even further ground.

Fund balance will take full hit of the matching funds.



As if I don't have enough to handle with the effects of Round 4 and the impending announcement of Round 5, I have Round 6 staring me right in the face. The deadline for filing the initial paperwork, Form 470, is due now, and the Form 471s are due no later than January 16, 2003. As I have no idea what Round 5 will fund, I cannot do much on filing for Round 6.

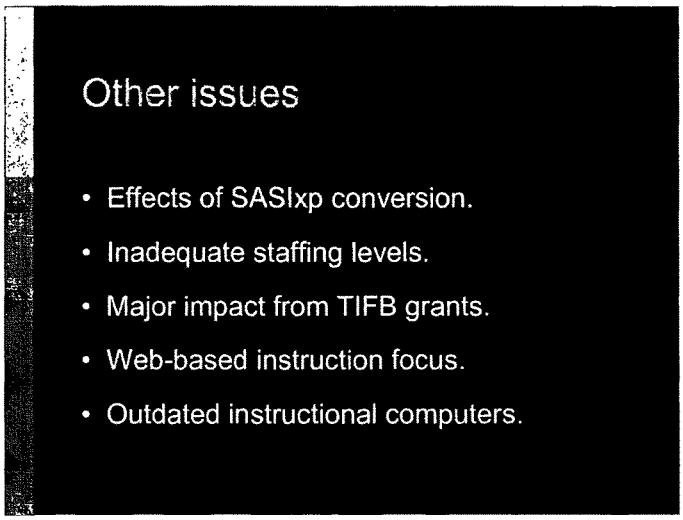
The Board, specifically the Finance Committee, asked if there might be a better way to approach Round 6, so we could be in total control of the vendor selection process.

In conferring with Clyde Pine, it was determined that at the minimum we'd better have the assistance of an E-Rate consultant. The thought was to prepare an RFP for such services.

The thought was to limit our scope to sustainability of products and services acquired in previous rounds, and not blaze any new trails.

It could be that fund balance might not be hit so hard.

Time and available in-house resources are working against us.



As I stated in the beginning of this presentation, TIS had a full time job before the big E-Rate initiative hit us.

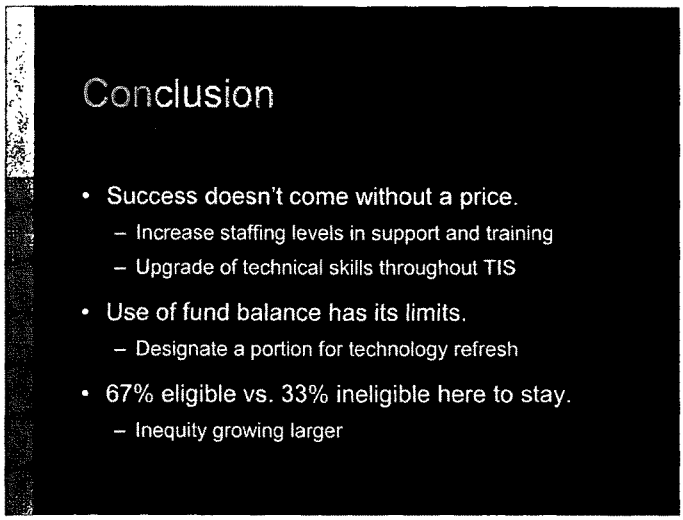
We are in the middle of a very large and complex conversion of the student administrative system that must be completed before the start of the next school year. Additional hardware and connectivity to the portable classrooms are two critical components of this project.

TIS needs more staff... more micro techs, network specialists and trainers for certain.

With the very successful TIFB grants this past year, we are introducing over $3.5M in desktop technology equipment at the campuses. Add to that the $1.9M received in previous years and the support issue grows even worse. We are over 900 support calls behind at the present time.

With the instructional technology focus moving to the "anytime, any where" mode, the need for adequate desktop equipment is very apparent.

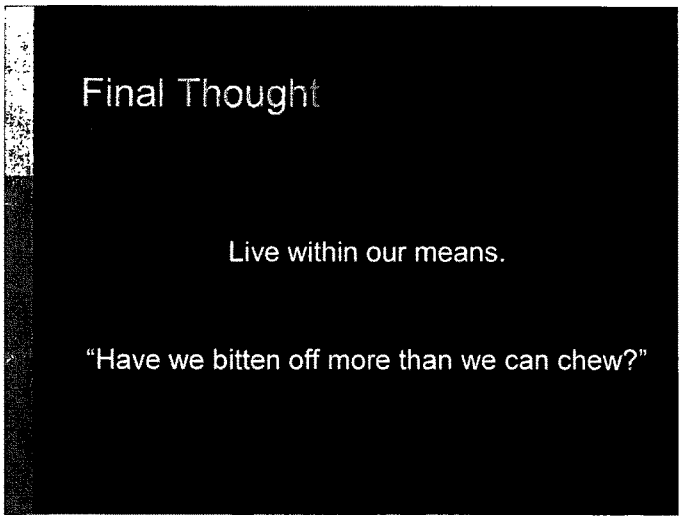
A substantial number of the units in the classroom are well below the necessary level required for on-line access. Funds need to be designated for a technology refresh at the minimum of every 5 years based on the trends of the past.



Again, I repeat what you have heard from the very beginning of the E-Rate initiative... success will not come without a cost.

With the concern of maintaining a favorable bond rating, I do understand why a moratorium on fund balance is necessary. Nevertheless, funds need to be set aside annually for technology refresh.

The "have and the have nots", or "eligible and ineligible" are phrases being voiced throughout the District. While I do not agree with the process the SLD uses to determine funding, it is here to stay, it seems. Given that fact, be aware that the gap will continue to grow wider unless we provide some relief from local funds to those ineligible E-Rate campuses.



My wife keeps reminding me of this fact, and it might be something for the Board to reflect upon.

As a youngster, my Grandfather would use this phrase whenever he saw me in a jamb. Could this be us?

Comments and Discussion

TAB 30

Michael Pratt
10/16/2002 11 37 AM

To Erate Core Team
cc Warren Weller/Phoenix/IBM@IBMUS Mike Sementelli/Dallas/IBM@IBMUS
From Michael Pratt/Houston/IBM @ IBMUS
Subject EPISD Board Meeting Interesting Perspective for the Future

Last night I had the opportunity to attend the EPISD School Board Meeting where the Exec Director, Jack Johnston presented where they were with Erate 4 5 and looking ahead at 6 He stated that IBM had done an exemplary job and had met the financial and schedule requirements and that the district was very satisfied with the results However, in looking ahead, there were two side issues as a result of the program

- First the implementation of $60M+ of new technology has placed severe impacts on an IT staff that was already short handed to begin with This is even with the support that IBM is providing under USF Maint
- Secondly, the matching funds required on funding requests this large even at 10% is a significant amount that is currently being taken from their Fund Balance which is shrinking and funds will be needed for new school construction and other district initiatives The use of funds from the Fund Balance needs to be weighed against these other initiatives

Mr Johnston concluded his presentation with a chart that stated " We need to live within our means" Basically interpreted as " we spent $70M on technology in Erate 4 and will spend another $50M if funded in Erate 5 which will stretch our IT support staff even further How much additional technology do we need?" This stimulated comments from Board members ranging from "let's turn back the Erate 5 funding to the SLD" to "since Erate funding will probably not be around forever and they pay 10 cents on the dollar we owe it to our students to implement the highest level of technology possible and we need to apply for every dollar we can get" No resolution was defined at this meeting and more discussions will follow The net of this presentation is that there is a potential for a seriously reduced submission for Erate 6 and possibly a reduction in spending the awarded funds for Erate 5

As we in IBM enter into the second and third years of Erate support with our clients, these could become pervasive issues The continuation of the Cleveland support is being severely challenged at the moment As in the case of EPISD where we will have implemented well over $100M in technology we can expect the out years to show a significant drop off in funding requests Therefore, customer relationship and understanding of their requirements is absolutely critical to our continued success Limited support staff and matching funds will play a more and more important role with subsequent Erate rounds We need to make sure that our onsite teams are aware of this potential and that they closely manage the customer relationships and truly act as a 'Strategic Partner' in helping them develop their plans This is incumbent on both the S&D and ITS teams It is also a good reason to keep new districts coming into our program to offset diminishing requests from existing customers Heads up

Thanks Mike

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IBM INTERNAL REVIEW ONLY

TAB 31

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El Paso Times (El Paso, TX)

December 13, 2002 Friday

SECTION: PAGE ONE; Pg. 1A

LENGTH: 1721 words

HEADLINE: :YISD denied tech funds;
Agency warns districts about bad grant requests

BYLINE: By Corrie MacLaggan

BODY:

The Ysleta Independent School District has been denied an $18 million grant by the federal agency that distributes federal "E-Rate" technology money.

The agency that oversees the grants, the Schools and Libraries Division of the Universal Service Administrative Co., has issued a stern warning to school districts nationwide for allegedly violating rules on competitive bidding and originality of applications. Ysleta is the only district in the country so far to be denied funding in the crackdown, but officials in the neighboring El Paso Independent School District fear they may be denied their $45 million grant request in the same program.

The federal government's concerns appear to focus on up to $1 billion in proposals from districts working with IBM Corp. -- including El Paso, Ysleta and nine other Texas districts -- and whether the districts followed competitive bidding processes and other rules. The money is supposed to be used to improve telecommunications technology for students and staff.

"The record reflects that the overriding goal of the IBM-Ysleta relationship is to 'maximize the (Schools and Libraries Division) funding,' not necessarily to promote educational goals that have been clearly defined in a technology plan," the Universal Service Administrative Co. wrote in denying Ysleta's application. "Nor is the approach here consistent with the requirements to choose the most cost-effective alternative to achieve objectives."

IBM spokesman Andy Kendzie said the company has followed E-Rate guidelines.

"We have always operated in full compliance with (Federal Communications Commission) and SLD regulations," Kendzie said in a phone interview from Washington. "We are confident that we'll see a quick resolution to the issue."

Ysleta school trustees voted 7-0 late Thursday to appeal the grant denial, although the board president acknowledged mistakes in the application process.

"This is probably going to set us behind about a year," Ysleta board President Wayne Belisle said. "We made a mistake, IBM made a mistake and the bureaucrats made a mistake."

But after the vote Thursday, Belisle said, "Why pick on us out of all the districts out there?"

E-Rate grants, established through the federal Telecommunications Act of 1996, provide Internet access, internal connections and telecommunications services to schools and libraries. The grants are funded from a telecommunications charge on all phone bills.

Last year, EPISD received almost $66 million from the fund, Ysleta received more than $1 million and Socorro about $500,000. Schools must contribute funds to match a portion of the grants.

The Federal Communications Commission set aside $2.25 billion for the Schools and Libraries Division, or SLD, to distribute in 2002.

IBM has far more at stake in those grants than other service providers. The company's grant requests in 2002 totaled nearly $1.1 billion, while BellSouth Telecommunications' requests -- the second highest -- came to $150 million.

The FCC's Office of Inspector General is investigating alleged abuses in **E-Rate** funding, and last week issued a report stating: "The results of audits and the allegations under investigation lead us to believe the program is subject to unacceptably high risk of malfeasance through noncompliance and program weaknesses."

That report did not name any particular service providers or programs.

Although SLD's Web site has issued warnings about noncompetitive bidding and flawed applications nationwide, much of its current attention appears focused on El Paso schools. SLD denied Ysleta's $18 million request because the district didn't follow **E-Rate** guidelines on using competitive bidding in selecting a service provider. The agency also noted in its denial letter that the grant request appeared to be copied from another district's request.

The other district wasn't named in the letter, but Ysleta's request is remarkably similar to the one submitted last year by EPISD.

The denial didn't affect another $1.6 million in grant requests that Ysleta has through other service providers. Decisions on those requests are pending.

Mel Blackwell, a spokesman for the agency that administers the **E-Rate** program, said districts are expected to submit unique applications that address specific local concerns.

"Anything that would look as though it's dampening the competitive nature of the program violates program rules," Blackwell said.

EPISD officials said they're worried that their $45 million grant proposal might be jeopardized because of their links to **IBM.**

Anticipating trouble, the El Paso school district board Tuesday night pre-approved an appeal and will meet next week in a special meeting to develop a contingency plan.

IBM's role

The SLD's Web site reprimands unnamed districts for using a cookie-cutter approach to applications: "SLD has found nearly identical language in (requests for proposal) from a variety of applicants that resulted in awards to the same service provider. Applicants and service providers undermine the competitive bidding process if they structure (requests) and competitive bidding processes that favor one service provider."

The Web site didn't identify the service provider, but Blackwell said it was **IBM.**

The SLD Web site said the agency has begun denying such flawed applications, apparently referring to Ysleta.

Ysleta's 2002 grant proposal is much like EPISD's statement from 2001, the year the El Paso district received the second-largest grant in the nation. **IBM** was the service provider for that grant.

For example, EPISD's statement says of technical maintenance: "The purpose of these roles is to provide call-in and dispatch services, help desk functions and technical support for EPISD personnel as related to support of the EPISD network." An excerpt from Ysleta's statement a year later says, "The purpose of these roles is to provide call-in and dispatch services, help desk functions and technical support for YSLETA ISD personnel as related to support of the YSLETA ISD network."

No service providers are named on the Web site, but **E-Rate** spokesman Blackwell said **IBM** is the only service provider found to have been violating the program's guidelines.

Ysleta's Belisle said, "Our mistake was made in December of last year when we partnered with **IBM.**"

SLD amended its Web site Wednesday morning to say that its warning did not mean that a large group of applications will necessarily be denied. Kendzie said that is a sign that **IBM's** discussions with the FCC and SLD have been fruitful.

Texas concerns

Nationwide, SLD has not yet decided on almost $1 billion in grant requests from districts that propose to use **IBM** as their service provider, according to an analysis by Funds for Learning, an **E-Rate** consulting firm.

About $387 million of that is from Texas school districts, including about $180 million from the Dallas Independent School District, $87 million from the Fort Worth Independent School District and $29 million for the Donna Independent School District, according to an El Paso Times review of SLD databases.

It's not clear how much of the $1 billion in requests tied to **IBM** might be affected by questions being raised about competitive bidding and duplicative applications.

In the Dallas school district, Associate Superintendent Ruben Bohuchot said he doesn't think his district will be denied funding. He said Dallas differs from other school districts that used **IBM** as a strategic partner in that it advertises each bid for technology equipment and services through the Texas Cooperative Purchasing Network -- not **IBM.**

"When I got a call from SLD, I was nervous for about an hour," said Bohuchot, who heads technology programs for the Dallas ISD. "But I read in great detail what they were objecting to. As I read it I kept thinking to myself, 'We didn't do that.' One thing SLD is really concerned about is lack of competition and ours is the complete opposite of that in that everything is going to be bid."

Bohuchot said that **E-Rate** has been the "life blood" for urban districts' technology programs, and he dismissed the thought of **E-Rate** funds being inappropriately allocated.

"Without the **E-Rate** program, I seriously doubt that large urban school districts would be anywhere near where they're at with having kids have access to the Internet," he said.

Without **E-Rate** funds, YISD could fall behind in many planned technology improvements for schools, such as wiring fiber optics.

But Belisle said that even if Ysleta had received its requested grants, the funds would not have been used effectively. He cited a $13 million request for an **IBM**-run technology help center that he called a huge waste of money.

"We've got to take some of the blame ourselves," he said. "I'm not convinced that we were ready to get that large of a grant."

If EPISD is denied funding, it could have to dip into its reserve funds for as much as $3.5 million to keep the bare bones of the technology programs running, said Jack Johnston, executive director of technology and information systems for the district. Even if EPISD does receive 2002 grants, it would have to use reserves to provide its matching funds.

The El Paso district's fund balance is hovering around $31 million, and Bill Goodman, the district's associate superintendent for finance, recommends the board keep it closer to $42 million, or 10 percent of the district's general budget. "We're concerned that the money may be too precious to spend on more **E-Rate** activity," Goodman said.

But the decision on how much of the reserves to contribute to technology programs rests with the school board.

"The fund balance is really important, but it isn't as important as the children," EPISD board President Dan Wever said.

Now, school districts must concentrate on funding for next year's grants, for which they must apply by February.

"We don't know what to do," Johnston said. "If we worry about Round Five (2002) and don't think about Round Six (2003), we've lost two years of funding. It's rather stressful."

See a page from YISD and EPISD grant requests

Corrie MacLaggan may be reached at cmaclagganelpasotimes.com; For more information: www.sl.universalservice.org

LOAD-DATE: December 14, 2002

TAB 32

Copyright 2003 The Sunday Oklahoman
Daily Oklahoman (Oklahoma City, OK)

April 20, 2003 Sunday CITY EDITION

SECTION: NEWS; Pg. 1-A

LENGTH: 932 words

HEADLINE: Schools miss out on funds

BYLINE: Christy Watson and Randy Ellis; Staff Writers

BODY:

The Oklahoma City School District has missed out on more than 43 million in federal technology funds because of a questionable deal with **IBM,** The Oklahoman has learned.

An arm of the Federal Communications Commission rejected last month a funding request to upgrade technology and provide more computer access to students.

"It had to do with not following the competitive bidding process," said Manny Soto, the school district's chief operating officer.

School board members will meet behind closed doors Monday to discuss whether to appeal the rejection.

The district has until May 9 to appeal.

Nationwide, Oklahoma City is just one of many large school districts that picked **IBM** as a vendor and subsequently had applications for hundreds of millions of dollars of federal technology funding rejected amid questions about price competitiveness.

For example, the Dallas Independent School District had 116.2 million in such funding requests denied, and the Fort Worth, Texas, district had 87 million in requests rejected.

Tulsa, which awarded projects to **IBM,** is still awaiting word on its application.

In the Oklahoma City School District, the denial likely will mean at least a yearlong delay in some technology projects, including providing wireless computer access in some schools, Soto said.

While deciding whether to appeal, Oklahoma City has submitted a new application for 15.3 million in federal funds.

The request includes many of the same projects listed in the previous application but at roughly half the cost, district officials said.

"The only thing we can conclude is we had a better competitive, open process," Soto said.

IBM officials contend they have done nothing wrong and have appealed the funding denial in at least one Texas district.

"**IBM** believes that we have acted in full compliance with all rules and regulations," a company spokeswoman said.

"We also believe, by the way, that our customers have also acted in compliance with state and local procurement processes."

At issue locally is IBM's role in a 44.5 million funding request submitted in February 2002 to the Schools and Libraries Division, an arm of the FCC that annually grants millions of dollars in discounts of up to 90 percent to school districts for telephone, Internet access and other telecommunications services.

Two months earlier, IBM had submitted the winning proposal to the school district in which it agreed, as its strategic technology solution partner, to identify at no cost the district's technology needs and assist in preparing the district's federal funding application.

In return, IBM later was allowed to choose which services it would provide.

IBM was to be paid only if the district obtained federal funding.

In rejecting most of the district's IBM-assisted application, federal officials cited the district for selecting IBM without knowing in advance what services the computer giant would provide and how much they would cost.

The Schools and Libraries Division also notified the school district it would receive 38,000 in discounts for some cellular telephone and long-distance services provided by Nextel Communications and AT&T.

Along with the IBM-related rejections, the agency refused to pay for a percentage of local telephone and paging services and for cellular service with Southwestern Bell Wireless over questions about bidding, contracts and ineligible services.

Mel Blackwell, spokesman for the Schools and Libraries Division, said he couldn't comment specifically on Oklahoma City's case. But he said the IBM portions of the application likely were denied "for a pattern of behavior that was found to have compromised the bidding process."

The IBM agreement since has expired, Soto said. District spokeswoman Sherry Fair said Friday she could not say whether IBM had been paid any money as part of the agreement because the district is considering the matter pending litigation.

The Schools and Libraries Division warned schools in December - long after the 2002-03 funding applications had been submitted - that they needed to use the most cost-effective approach in improving technology with federal money.

Price should be the "single most heavily weighted factor," the warning said.

The funding program, commonly known as E-rate, is paid for through fees on telephone bills. School districts must match the federal funds on a sliding scale, with the steepest discounts awarded to high-poverty schools.

In Oklahoma City, those discounts range from 84 percent to 90 percent. The district would have paid for the remaining portion, using general fund money or money earmarked for technology through the MAPS for Kids plan.

Soto said he wasn't with the district when IBM was selected, but thinks the district left it up to IBM to obtain the best prices on E-rate-related projects by obtaining bids from subcontractors if necessary. Soto said last week he doesn't know whether IBM sought such bids.

"That was the due diligence IBM was supposed to do," Soto said.

Officials had difficulty answering a lot of questions about the district's dealings with IBM in part because the former chief technology officer was the chief contact. Steve Finch's job was eliminated as part of a reduction in force late last year, and he could not be reached for comment.

Competitive bidding questions and congressional criticism have sparked the Schools and Libraries Division to step up enforcement of program rules and create a task force to combat potential fraud and abuse by both school districts and vendors.

LOAD-DATE: April 22, 2003

TAB 33

Jack McKinney
11/13/2002 08:09 PM

To: Tracy Diaz/Austin/IBM@IBMUS
cc:
From: Jack McKinney/Kansas City/IBM@Ibmus
Subject: E-rate Lessons Learned

Year 5 Strategic Partnership Agreement
Oklahoma City Schools, 49 Million

Internet Access
Network Electronics Upgrade and Installation Services
Cabling
Network Server Upgrade
Network File and Web Server
Wireless
VOIP
Video-Multipoint Control Unit
E-Mail
USF Technical Support

Communication and timeliness are areas that need improvement.

- 471 submission was completed and filed on the last day.
- The question and answer process was cumbersome. We were always up to the deadline before we received the review from Alpha. The customer didn't have enough time to review the answers before the deadline or in some cases even see the answers. We looked very unprofessional and uncoordinated.
- We did not file a separate 471 for Internet Access which has caused a delay in funding for a priority one project. This has caused the customer extra paper work to process payment out of the general fund.
- We have had a Project Executive and two Project Managers on site since 7/1 but have been unable to contract Internet Access until 11/1. The customer is paying more for the same bandwidth under this contract than they did last year.
- The customer knows that the pricing for the SOW's are significantly inflated but has not a conversation on how this will be remedied. Our pricing methodology would be undefendable in public forum.
- From the customers point of view the value proposition of a strategic partnership with IBM is, no funding, on over priced SOW's, while paying more for the same level of service.

The above sounds negative but in reality we are still better than anyone else in the industry. ITS is risking a significant amount of resource on E-Rate Strategic Partners. This risk has proved to be the difference maker between IBM and its competition. BCS needs to take this same risk reward attitude with No Child Left Behind. The risk is higher with a new funding program but also the reward. E-rate funds the technology foundation so a schools district would have the infrastructure to take advantage of the funding opportunities of No Child Left Behind. With E-rate, if we get our Strategic Partners funded we are the general contractor for the projects. Why can't we make that same value proposition with No Child Left Behind funding opportunities?

Jack E. McKinney
Senior Client Account Manager
IBM Global Education
816.556.6472 P/F
jemckin@us.ibm.com

From: Kristy Carroll
Sent: Friday, June 06, 2003 12:27 PM
To: John Alco
Subject: FW: IBM Story

-----Original Message-----
From: George McDonald
Sent: Friday, February 14, 2003 12:31 PM
To: Mark Seifert (E-mail)
Subject: IBM Story

Mark,

I got a call yesterday from the tech director of a large urban school district who filed with IBM for Year 2002 and wanted me to know that, based on the warning, they had redone their 2003 471 and filed with another provider. The Year 2003 app covers the 2002 work plus the 2003 work (on the assumption that their 2002 will be denied) and he was proud to say that the 2003 two-year total is less than the Year 2002 app -- "because of IBM's high rates in Year 5."

I asked if we could talk more about his experience with IBM and he offered to do that "off the record."

He said IBM had written the template RFP with places for districts to fill in their names. He said he threw it in the trash and his district wrote their own RFP, but it was still for a technology partner. They came in for Year 2002 for over $200 million -- he said he was objecting, but IBM said they should come in high because SLD would cut it back. He said he didn't have time before the window closed to scale it back, but this district did call me after the close and say they would scale it back, and they did -- substantially.

I asked why IBM always wins the contracts and he said because the way the RFP is written no one else can meet the qualifications.

I asked whether there had been any discussion of the district not paying its share, and he said no. But he said it's worth spending $20 million to get $200 million of E-rate funds. He said his district had a big bond issue, so the matching share wasn't a problem. He said he scaled back the request because they just couldn't manage that big a project.

He estimated that what costs $130 million when purchased through IBM could be bought for about $95 million from other providers.

He said he does not think IBM was involved in collusion, but they sure were trying to "maximize" funding.

I asked Frank Gumper's question about whether they had been billed for the up-front consulting to plan the projects. He said no. IBM's ads (as you saw) say they'll provide these services at no charge, but they didn't trust IBM and got a statement in writing from IBM saying those services are provided pro bono. He offered to fax me that, but I haven't gotten it yet.

From: Kristy Carroll
Sent: Friday, June 06, 2003 12:41 PM
To: John Alco
Subject: FW: Feedback -- Orleans and Atlanta

-----Original Message-----
From: George McDonald
Sent: Wednesday, December 04, 2002 12:32 PM
To: Tom Schnipp (E-mail); Catriona Ayer
Cc: Kristy Carroll
Subject: Feedback -- Orleans and Atlanta

For what it's worth, Orleans and Atlanta do not believe they fit the pattern.

Rusty Weaver of Orleans (acting for Alonzo Luce, who's been called to duty in Afghanistan -- so call Rusty at 504-915-5842 if we need to) says the 470 said no RFP because there was no RFP at the time, but the services on the 470 are consistent (says he) with the services called for in the RFP.

Harilyn Johnson of Atlanta says the 470 said no RFP because there was no RFP.

I told both that we would review their applications and issue our decisions based on what we find.

George

Confidential **USAC SUPP 8288**

. .om: "N A Wilson" <alanwils@us.ibm.com>
To: <admin@alphatelecommunications.com>
Sent: Wednesday, March 13, 2002 5:45 PM
Attach: Pricing for Alpha hw and srvc version b.xls

(See attached file: Pricing for Alpha hw and srvc version b.xls)

Regards,

Alan Wilson
Principal , Integrated Technology Services
IBM Global Services
Telephone (972) 280-2301 , Mobile 214-476-2740

TAB 35

Nathaniel Hawthorne

From: "Michael Pratt" <mpratt@us.ibm.com>
To: <nateh@oh.verio.com>
Sent: Monday, July 30, 2001 9:53 AM
Subject: Re: Houston agreement

Nate, any thoughts on this yet? We need to move as quickly as possible

Thanks, Mike

Michael Pratt
Sales Manager, Greater Southwest
IBM Global Services
Phone: 713-940-2116 Tie Line: 345-2116, Pager: 1-800-225-0256, PIN 5978502
---------- Forwarded by Michael Pratt/Houston/IBM on 07/30/2001 07:55 AM ----------

Michael Pratt
07/24/2001 04:15 PM

To: "Nate Hawthorne" <nateh@oh.verio.com>
cc: Daryl Williams/Houston/IBM@IBMUS, Charles Gentry/Austin/IBM@IBMUS, dboss
From: Michael Pratt/Houston/IBM@IBMUS
Subject: Re: Houston agreement (Document link: Michael Pratt)

Nate, just returned from vacation and dived into a state of texas RFP response. Just now getting caught up on email. Glad we could reach agreement on HISD. I have another proposition concerning erate 5 and how we capitalize on what we see as up to a $1B opportunity in the State of Texas. We have targeted numerous ISDs in Texas that we want to go after, but want to implement an approach which locks in the downstream erate business for the IBM/Alpha team up front. It involves having each district release an RFP for an Erate Strategic Partner. As you know we did this in EPISD and NETC. But these agreements don't have any guarentees that IBM will get the business, even though it is assumed. The teeth that we want to put in these deals requires us to be in compliance with the Texas procurement policies. i think you are aware of the issues that we were faced with at EPISD that we have finally resolved. To avoid this and secure lock ins with the districts up front our plan is to include a "rate card" with labor rates for various skills that would include Alpha's 7% built into the rates. The rates would be somewhat high, but the award is based on erate skills, services and maximizing their funding and the weighting for the rates would be less. The hardware procurement would be covered by a standard fee levied by IBM against all required hardware and software products. We are looking at between 8 and 10 % of the product price as a fee. This way, the ISD can procure the specified products from any vendor of their choice(meeting the procurement policies) and then we add our fee on top. Where I need your help is in Alpha's fee on these products. Alpha can have 7% of IBM's revenue (the 10% fee) or a full point, but it wont be 7% of the total hardware cost since we are working off of a flat fee. Please let me know your thoughts. We would like to build a template and proposal to start going after these districts ASAP.

Thanks, Mike

Michael Pratt
Sales Manager, Greater Southwest
IBM Global Services
Phone: 713-940-2116 Tie Line: 345-2116, Pager: 1-800-225-0256, PIN 5978502

"Nate Hawthorne" <nateh@oh.verio.com> on 06/26/2001 05:12:12 PM

To: Michael Pratt/Houston/IBM@IBMUS
cc:
Subject: Re: Houston agreement

249.2343

1) finders fee —

2) Sign B —

3) who drives hardware? Alpha

Mike,

Accepted.

Nate

----- Original Message -----
From: "Michael Pratt" <mpratt@us.ibm.com>
To: "Nate Hawthorne" <nateh@oh.verio.com>
Sent: Tuesday, June 26, 2001 5:59 PM
Subject: Re: Houston agreement

Nate, I made some refinements to the verbiage that did not change the basic arrangement. Please review and let me know. I have also copied our procurement function to ensure that they are OK. If you are in agreement with the verbiage, I think we are good to go. I am out on vacation starting tomorrow, but we can move forward based on this agreement. Please let Hugh know if you are good to go.

(See attached file: HISD IBM SOW with Alpha.doc)

Thanks, Mike

Michael Pratt
Sales Manager, Greater Southwest
IBM Global Services
Phone: 713-940-2116 Tie Line: 345-2116, Pager: 1-800-225-0256, PIN 5978502

"Nate Hawthorne" <nateh@oh.verio.com> on 06/26/2001 02:20:56 PM

To: Michael Pratt/Houston/IBM@IBMUS
cc:
Subject: Houston agreement

Mike,

attached is for your review.

Nate

TAB 36

Subcontractor Agreement

Statement of Work

August 21, 2001

Scope of Services, charges, and other applicable terms

This Statement of Work to the IBM Customer Solutions Agreement No. 4999CS0442 (Agreement) between IBM and Alpha Telecommunications, Inc. for the State of Texas (Texas) and the Southwestern United States, excluding Texas, Statement of Work incorporates the following:

- "Appendix A. Payment Schedule"
- "Appendix B. Change Control Procedure"

Changes to this Statement of Work will be administered through the procedure described in "Appendix B. Change Control Procedure".

Total Fees: Ten percent (10%) of the IBM SOWs with school districts within Texas, and Seven (7%) of the IBM SOWs with school districts in the Southwestern United States, excluding Texas, which are funded and delivered.

Each of us agrees that the complete agreement between us about this transaction consists of 1) this Statement of Work and 2) the IBM Subcontractor Agreement (or any equivalent agreement signed by both of us) and its applicable Attachments and Transaction Documents.

Agreed to: (IBM Subcontractor)	*Agreed to:*
Alpha Telecommunications, Inc.	**International Business Machines Corporation**
By Authorized signature	By Authorized signature
Name (type or print):Nathaniel Hawthorne	Name (type or print):
Date:	Date:
Subcontractor address: 27600 Chagrin Blvd., Suite 260 Cleveland, OH 44122	Statement of Work number: Agreement number: 4999CS0442 IBM PO number:
IBM Customer name and address:	IBM Office address:

1.1 Key Assumptions

This Statement of Work is based on the Key Assumptions listed below.

1 Alpha Telecommunications, Inc. will only work with IBM Global Services on opportunities within Texas and in the Southwestern United States, excluding Texas.

2 This Statement of Work is contingent on funding confirmation from the Schools and Libraries Division (SLD) of the Universal Service Administrative Corporation. Funding confirmation shall occur when the SLD post funding on the SLD web site.

3. Alpha Telecommunications, Inc. will receive payment from IBM Global Services for services provided pursuant to the appropriate SOW concerning a specific school district or consortium upon IBM Global Services receipt of payment from the federal government. Alpha Telecommunications, Inc. will invoice IBM Global Services for the amount(s) due. After IBM Global Services has received payment from the SLD, Alpha will submit its invoice. IBM shall thereafter pay Alpha Telecommunications, Inc. within ten (10) business days after invoice.

1.2 Alpha Telecommunications, Inc. Services

Alpha Telecommunications, Inc. will perform the following tasks for the E-Rate Network Hardware Project for Texas and in the Southwestern United States, excluding Texas, in accordance with the terms and conditions of the *Agreement.*

Services will be provided at the Alpha Telecommunications, Inc. facilities located in Cleveland, OH.

1.2.1 Project Overview

IBM will provide Alpha Telecommunications, Inc. a Customer Statement of Work for various districts, and/or consortia in Texas and in the Southwestern United States, excluding Texas. This Statement of Work is subject to the terms of the IBM agreement for the exclusive Exchange of Confidential Information. Alpha Telecommunications, Inc. will review all Statements of Work and consult on applicability of services to be provided to the E-Rate guidelines. Alpha Telecommunications, Inc. will consult IBM Global Services on strategic sales positioning with the school districts and /or consortia in relation to E-rate funded programs.

Alpha Telecommunications, Inc. will work with IGS in evaluating E-Rate forms 470 and 471 for the Texas and in the Southwestern United States, excluding Texas. This includes consulting with IBM Global services on E-Rate eligibility of all services and products to be provided to Texas and in the Southwestern United States, excluding Texas. Alpha Telecommunications, Inc. will also counsel on E-Rate rules and regulations.

Alpha Telecommunications, Inc. will consult with IBM Global Services regarding systems improvements/upgrades, planning, integration of new technology into the network, optimization

of performance of the network, systems design, and specifications as it pertains to the "E-Rate" proposals being provided in Texas and in the Southwestern United States, excluding Texas and the E-Rate program.

Alpha Telecommunications, Inc. will provide consultation services to IBM Global Services throughout the project (Project Year: July 1, 2002 – June 30, 2003) on E-Rate, and related issues, brought forward by the SLD, IBM Global Services, Texas or the Southwestern United States, excluding Texas.

1.2.2 Provide Project Leadership

Alpha Telecommunications, Inc. will provide project leadership services for the tasks in this Statement of Work. Alpha Telecommunications, Inc. will appoint a Project Leader who will have explicit responsibility for the administering and technical direction of Alpha Telecommunication's activities. Project leadership duties including:

- With the IBM Project Manager, discuss this *Agreement,* this Statement of Work, and the Change Control Procedure in "Appendix B. Change Control Procedure" and review the responsibilities of all parties.
- Administer the Change Control Procedure with the IBM Project Manager.

1.3 Materials

Alpha Telecommunications, Inc. will evaluate the following project materials to IBM Global Services:

- FCC Form 470 (E-Rate forms)
- FCC Form 471 (E-Rate forms)
- Any additional FCC Forms (e.g., 486, 472) and documentation as required to satisfactorily and successfully complete this project.

Forms 470, 471 in terms of how they are completed, are based upon FCC/SLD rules and regulations and the years of experience of a regulatory attorney and telecommunications engineer. If these completed Forms are used by IBM for other customers, it must be done with Alpha's specific written consent prior to use by IBM.

1.4 Completion Criteria

Alpha Telecommunications, Inc. will have completed its obligations under this Statement of Work when the Alpha Telecommunications, Inc. tasks and materials listed above have been completed by Alpha Telecommunications, Inc. and accepted by IBM.

1.5 Estimated Schedule

Alpha Telecommunications, Inc. will perform services in this Statement of Work as required to meet customer requirements.

Appendix A. Payment Schedule

Pending an award and funding confirmation from the SLD, IBM will notify Alpha Telecommunications, Inc. of this confirmation.

Payment shall be made to Alpha Telecommunications, Inc. as IBM receives payment from the SLD, and upon invoice by Alpha Telecommunications, Inc.

The only way that Alpha can independently determine the amount due is from the SOW and/or purchase order(s). IBM will provide specific information upon request so that Alpha's billing is accurate.

To determine the payment due Alpha Telecommunications, Inc., the parties will use IBM's Statements of Work (SOW) with school districts in Texas and in the Southwestern United States, excluding Texas. If portions of the Statements of Work are not funded or cannot be completed due to delayed release of the funds, Alpha Telecommunications, Inc. payment will be delayed until funding occurs or reduced accordingly.

Except as provided above, ten percent (10%) of the IBM SOWs within Texas, and seven percent (7%) of the IBM SOWs in the Southwestern United States, excluding Texas, which is funded and delivered.

The above prices are valid through **June 30, 2003.**

Appendix B. Change Control Procedure

Changes to the Statement of Work may be requested at any time by either party. Since a change could affect the price, schedule, or other terms of the Agreement for this Statement of Work, both the IBM Project Manager and the Alpha Telecommunications Project Leader must approve each change before amending the Statement of Work and implementing the change.

This procedure will be used by IBM and Alpha Telecommunications, Inc. to control changes to the Statement of Work and changes to any previously approved deliverables.

- All Project Change Requests (PCRs) will be submitted in writing. They will describe the change and include whatever rationale and/or estimated effect the change will have on the Statement of Work.
- The IBM Project Manager/Alpha Telecommunications Project Leader, as appropriate, will review the proposed change. It is then accepted or rejected for submission to the other party. If rejected, the PCR is returned to the originator, along with the reason for the rejection.
- The IBM Project Manager and Alpha Telecommunications Project Leader will weigh the merits of the proposed change and approve it for investigation or reject it. Approval of a PCR for investigation by both parties constitutes authorization by IBM of the Fixed Price amount proposed by Alpha Telecommunications, Inc. to investigate the PCR. Appropriate staff work will take place at this time. Effect on the price, estimated schedule or other terms of the *Agreement* for this Statement of Work will be determined. The change will then be approved/disapproved for implementation.
- Approved changes will be incorporated into the Statement of Work through written change authorization (change orders), as appropriate.

TAB 37

From: "Nate Hawthorne" <nateh@oh.verio.com>
To: <cgentry@us.ibm.com>
Sent: Monday, November 13, 2000 4:18 PM
Attach: CMSD Data Cabling SOW with Alpha 10-11-2000.doc
Subject: Fw: SOW Alpha-IBM

----- Original Message -----
From: Nate Hawthorne
To: Lynne Nicholson
Sent: Monday, November 13, 2000 11:10 AM
Subject: Fw: SOW Alpha-IBM

Lynne,

This was misdirected.

Nate
----- Original Message -----
From: Nate Hawthorne
To: nich@us.ibm.com
Sent: Sunday, November 12, 2000 3:19 PM
Subject: SOW Alpha-IBM

CONFIDENTIAL

Lynne,

Thank you for meeting with us on Friday *via* conference call. We can assist IBM and its customers achieve their funding objectives.

As a follow up, we would like to make the following points.

IBM-Alpha Relationship:

1. Attached is an illustrative Statement of Work (SOW). Please use this in preparing the SOWs.
2. Prepare one (1) SOW between IBM and Alpha per each SOW between IBM and customer.
3. Recommendation: Alpha will work in the background - customer perception: IBM provides complete solution including E-rate support.

IBM-Customer Relationship (**Each document is reviewed by Alpha and will be modified as required**):

1. IBM will prepare a Customer "wish list" (list consists of products/services that IBM thinks the customer wants and IBM wishes to sell; IBM will find out customer's budget for maintenance, products and other services. Customer, at 90%, must pay complementary 10% to IBM under E-rate rules).
   Customer must have a "buy-in" to wish list.
3. FCC Form 470 containing items on the wish list is filed. **(Existing 470 is deficient.)**
4. After there is customer "buy-in", Alpha will prepare proposal(s) in "layman" terms that reflect the

customer's buy-in and are E-rate compatible. IBM will prepare cost of products and services for inclusion in the proposal(s).
After the customer accepts these proposal(s), IBM SOWs are prepared. Depending on the services/products sold, multiple SOWs will be created, *e. g.*, maintenance, e-mail, wiring, web-servers. Alpha will structure the proposals to comply with E-rate rules to optimize funding.

6. Alpha reviews SOW for E-rate compatibility.
7. IBM sends SOWs to quality assurance.
8. 28 days after Form 470 was filed customer signs SOWs.
9. Make sure that Form 471 is delivered to Kansas on time.
10. All Program Integrity Assurance (PIA) questions from SLD must be in writing and forwarded to IBM. Alpha answers all PIA questions in writing and forwards the answers to IBM.
11. Alpha provides post funding support (billing, changes of products and services, planning new services...)
12. Neither Alpha nor IBM will be involved in the bidding process.
13. The contact person must be an El Paso District employee.

From: "Lynne Nicholson" <lnich@us.ibm.com>
To: "Kim Glossip" <kglossip@us.ibm.com>; "Vic Bentley" <vbentley@us.ibm.com>; "Michael Pratt" <mpratt@us.ibm.com>; "Don Kaiser" <dkaiser@us.ibm.com>; "Pete Doremus" <pdoremu@us.ibm.com>
Cc: <fjoleary@descominc.com>; "John Milota" <jmilota@us.ibm.com>; "Mike Miles" <mpmiles@us.ibm.com>; "Warren Weller" <wweller@us.ibm.com>; "Teresa Ferguson" <tpitts@rmi.net>; "Joe M San Marco" <sanmarco@us.ibm.com>; "Sarah Everett" <severet@us.ibm.com>; "Charles Gentry" <cgentry@us.ibm.com>
Sent: Tuesday, November 13, 2001 8:02 PM
Subject: Canutillo Strategic Partner RFP, vendor relationships, erate 5 & erate 4 in general

Team,
The Canutillo client has already made the verbal commit on erate 5, the 470 is filed, & RFP is due on December 3rd. Projects identfied so far are under internal connections: infrastructure: cabling, electronics, etc and distance learning.

My understanding is that we are leveraging DCI's relationship with the client here both for erate 5 and for a change of spin number for erate 4 so IBM/DCI can do the work.

FYI for some of you new to erate and/or these clients, DCI is one of our key vendors to leverage here with this client & others for erate 5 (even as we did in erate 4 and worked together on SOWs) for such accounts as El Paso, Canutillo, Boot Hill, GMCS, to name a few. BNI is also another vendor to continue to leverage, that falls into that same category for erate 4 & 5 projects across the West.

If you have any questions, please give me a call.

Best Regards,

Lynne Nicholson, Western Education Exec
505 888 2386 t/l 796 pager:1 800 759 8352 pin 1064154

Principal Assistant: Jimmie Chavis 704-595-4669 t/l 795

----- Forwarded by Lynne Nicholson/Albuquerque/IBM on 11/13/01 03:24 PM -----

"F.J. O'Leary" <fjoleary@descominc.com> 11/13/01 02:47 PM

To: Pete Doremus/San Antonio/IBM@IBMUS, Don Kaiser/San Antonio/IBM@IBMUS, Tracy Diaz/Austin/IBM@IBMUS, Bud Campbell/Dallas/IBM@IBMUS, Lynne Nicholson/Albuquerque/IBM@IBMUS, Vic Bentley/Austin/IBM@IBMUS, Hugh Manning <HDM@Bedford.net>, Ron Johnson/Albuquerque/IBM@IBMUS
cc:
Subject: Canutillo Strategic Partner

The EPISD team, soon to be the Canutillo, Ysleta, Clint, etc. are now being notified that the Strategic Partner Bid for Canutillo is now out and available to be responded to. The bid will be available on their web site tonight at : WWW.Canutillo.K12.
Tx.US. The bid is due by December 3rd at 10:00 A.M.

Also, The pink slips are in for erate round four and will be faxed to Hugh so he can work on the SPIN change. Hugh, if Martha doesn't get the sheets to you would you follow up with her please?

Sincerely - F.J.

FCC Form

Approval by O
3060-0

.0

Schools and Libraries Universal Service
Description of Services Requested and Certification Form

Estimated Average Burden Hours Per Response: 4.0 h

This form is designed to help you describe the eligible telecommunications-related services you seek so that this data can be posted on the Fund Administrator website and interested service providers can identify you as a potential customer and compete to serve you.

Please read instructions before beginning this application. (To be completed by entity that will negotiate with provid

Block 1: Applicant Address and Identifications

Form 470 Application Number: 364680000373489

Applicant's Form Identifier: 470-yr5

Application Status: CERTIFIED

Posting Date: 10/29/2001

Allowable Contract Date: 11/26/2001

Certification Received Date: 10/29/2001

1. Name of Applicant:
CANUTILLO INDEPENDENT SCHOOL DISTRICT

2. Funding Year:	3. Your Entity Number
07/01/2002 - 06/30/2003	142090

4a. Applicant's Street Address, P.O.Box, or Route Number
7273 BOSQUE RD

City	State	Zip Code
CANUTILLO	TX	79835

b. Telephone number	c. Fax number
(915) 877- 7460	(915) 877- 7418

d. E-mail Address

5. Type Of Applicant

- ☑ Individual School (individual public or non-public school)
- ☑ School District (LEA;public or non-public[e.g., diocesan] local district representing multiple schools)
- ☑ Library (including library system, library branch, or library consortium applying as a library)
- ☑ Consortium (intermediate service agencies, states, state networks, special consortia)

6a. Contact Person's Name: Martha Veale

First, fill in ***every*** *item of the Contact Person's information below* ***that is different from Item 4, above.*** *Then check the box next to the preferred mode of contact. (At least one box* ***MUST*** *be checked.)*

6b. Street Address, P.O.Box, or Route Number
☑ 7273 BOSQUE RD

City	State	Zip Code
CANUTILLO	TX	79835

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6c. Telephone Number	(915) 877- 7460
6d. Fax Number	(915) 877- 7418
6e. E-mail Address	mveale@canutillo.k12.tx.us

Block 2: Summary Description of Needs or Services Requested

7 This Form 470 describes (check all that apply):

a. ☒ Tariffed services - telecommunications services, purchased at regulated prices, for which the applicant has no signed, written contract. A new Form 470 must be filed for tariffed services for each funding year.

b. ☒ Month-to-month services for which the applicant has no signed, written contract. A new Form 470 must be filed for these services for each funding year.

c. ☒ Services for which a new written contract is sought for the funding year in Item 2.

d. ☒ A multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous program year.

NOTE: Services that are covered by a signed, written contract executed pursuant to posting of a Form 470 in a previous program year OR a contract signed on/before 7/10/97 and reported on a Form 470 in a previous year as an existing contract do NOT require filing of a Form 470.

What kinds of service are you seeking: Telecommunications Services, Internet Access, or Internal Connections? Refer to the Eligible Services List at www.sl.universalservice.org for examples. Check the relevant category or categories (8, 9, and/or 10 below), and answer the questions in each category you select.

8 ☒ Telecommunications Services

Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?

a ☒ **YES**, I have an RFP. It is available on the Web at or via (check one):
☒ the Contact Person in Item 6 or ☐ the contact listed in Item 11.

b ☐ **NO** , I do not have an RFP for these services.

If you answered NO, you must list below the Telecommunications Services you seek. Specify each **service or function** (e.g., local voice service) and quantity and/or capacity(e.g., 20 existing lines plus 10 new ones). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications Services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Add additional lines if needed.

Service or Function:	Quantity and/or Capacity:
basic telephone service(POTS,Centrex)	for 12 buildings
long distance	for 12 buildings
high bandwidth service (56kb/s, ISDN, DSL, frame relay, fractional T-1, DS-1, DS-3, OC-3, ATM, satellite, MAN,WAN,LAN interconnect)	for 12 buildings
wireless service (cellular, PCS, paging, LAN, WAN)	for 12 buildings
video service, interactive TV, distance learning	for 12 buildings
maintenance/installation (inside wire maintenance)	for 12 buildings
homework hotline service	for 12 buildings

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9 ☒ **Internet Access** ***Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?***
a ◉ **YES**, I have an RFP. It is available on the Web at or via (check one): ☒ the Contact Person in Item 6 or ☒ the contact listed in Item 11.
b ○ **NO** , I do not have an RFP for these services.
If you answered NO, you must list below the Internet Access Services you seek. Specify each **service or function** (e.g., monthly Internet service) and quantity and/or capacity(e.g., for 500 users). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Internet Access services. Add additional lines if needed.

Service or Function:	Quantity and/or Capacity:
internet access	for 12 buildings
wireless service (LAN,WAN)	for 12 buildings
high bandwidth service (56kb/s ISDN, DSL, frame relay, fractional T-1, DS-1, DS-3, OC-3, ATM, satellite, MAN, WAN, LAN interconnect)	for 12 buildings
maintenance/installation	for 12 buildings

10 ☒ **Internal Connections** ***Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?***
a ◉ **YES**, I have an RFP. It is available on the Web at or via (check one): ☒ the Contact Person in Item 6 or ☒ the contact listed in Item 11.
b ○ **NO** , I do not have an RFP for these services.
If you answered NO, you must list below the Internal Connections Services you seek. Specify each **service or function** (e.g., local area network) and quantity and/or capacity(e.g., connecting 10 rooms and 300 computers at 56kbps or better). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Internal Connections services. Add additional lines if needed.

Service or Function:	Quantity and/or Capacity:
wiring (Cat3, Cat5, coax, fiber, conduit, wiring accessories)	for 12 buildings
routers, servers, switches, hubs, and upgrades	for 12 buildings
PBX, KSU, ARS, console, components and upgrades	for 12 buildings
video CODEC, MCU, MPEG encoder, multimedia kit, PVBX, video group and desktop equipment, EMMI	for 12 buildings
maintence/installation, on-site technical support, documentation	for 12 buildings
wireless service (LAN,WAN)	for 12 buildings
video equipment (broadband amplifier, cable box and modem)	for 12 buildings
ATM equipment (edge device, EMMI)	for 12 buildings
hardware and upgrades for internal connections (CSU/DSU, antenna, DAT, line sharing device, media converter, modem, monitor, multiplexing,satellite dish, TA, terminal server, UPS, zip drive)	for 12 buildings
internal connections components (backup power supply and batteries, cabinets,and power strips, circuit card, ethernet card, graphics card, hard	for 12 buildings

disk array controller, RAID, MAU, NIC, SNMP module)	
operational software and upgrades, e-mail software	**for 12 buildings**

11 (Optional) Please name the person on your staff or project who can provide additional technical details or answer specific questions from service providers about the services you are seeking. This need not be the contact person listed in Item 6 nor the signer of this form.

Name:	Title:
Telephone number () -	
Fax number () -	
E-mail Address	

12. ☑ Check here if there are any restrictions imposed by state or local laws or regulations on how or when providers may contact you or on other bidding procedures. Please describe below any such restrictions or procedures, and/or provide Web address where they are posted and a contact name and telephone number for service providers without Internet access.

Provider must be on state QISV list with the State of Texas or we must have 3 bids on hand if not tarriffed

13. If you intend to enter into a multi-year contract based on this posting or a contract featuring an option for voluntary extensions you may provide that information below. If you have plans to purchase additional services in future years, or expect to seek new contracts for existing services, summarize below (including the likely timeframes).

Block 3: Technology Assessment

14. ☐ **Basic telephone service only:** If your application is for basic local and long distance telephone service (wireline or wireless) only, check this box and skip to Item 16.

15. Although the following services and facilities are ineligible for support, they are usually necessary to make effective use of the eligible services requested in this application. Unless you indicated in Item 14 that your application is ONLY for basic telephone service, you must check at least one box in (a) through (e). You may provide details for purchases being sought.

a. Desktop software: Software required ☑ has been purchased; and/or ☐ is being sought.

b. Electrical systems ☑ adequate electrical capacity is in place or has already been arranged; and/or ☑ upgrading for additional electrical capacity is being sought.

c. Computers: a sufficient quantity of computers ☑ has been purchased; and/or ☐ is being sought.

d. Computer hardware maintenance: adequate arrangements ☐ have been made; and/or ☐ are being sought.

e. Staff development ☑ all staff have had an appropriate level of training /additional training has already been scheduled; and/or ☐ training is being sought.

f. Additional details: Use this space to provide additional details to help providers to identify the services you desire.

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Block 4: Recipients of Service

16. Eligible Entities That Will Receive Services:

Check the ONE choice (a,b or c) that best describes this application and the eligible entities that will receive the services described in this application. You will then list in Item 17 the entity/entities that will pay the bills for these services.

a. ☐ **Individual school or single-site library.**

b. ☐ **Statewide application for (enter 2-letter state code) TX representing (check all that apply):**
- ☐ All public schools/districts in the state:
- ☐ All non-public schools in the state:
- ☐ All libraries in the state:

If your statewide application includes INELIGIBLE entities, check here. ☐ **If checked, complete Item 18.**

c. ☐ **School district, library system, or consortium application to serve multiple eligible entities:**

Number of eligible sites	**12**
For these eligible sites, please provide the following	
Area Codes (list each unique area code)	**Prefixes associated with each area code (first 3 digits of phone number) separate with commas, leave no spaces**
915	877,886

If your application includes INELIGIBLE entities, check here. ☐ **If checked, complete Item 18.**

17. Billed Entities
List the entity/entities that will be paying the bills directly to the provider for the services requested in this application. These are known as Billed Entities. At least one line of this item must be completed. Attach additional sheets if necessary.

Entity	**Entity Number**
CANUTILLO INDEPENDENT SCHOOL DISTRICT	142090

18. Ineligible Participating Entities
Does your application also seek bids on services to entities that are not eligible for the Universal Service Program? If so, list those entities here (attach pages if needed):

Ineligible Participating Entity	**Area Code**	**Prefix**

Block 5: Certification and Signature

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19. The applicant includes:(Check one or both)
a. ☑ schools under the statutory definitions of elementary and secondary schools found in the No Child Left Behind Act of 2001, 20 U.S.C. Secs. 7801(18) and (38), that do not operate as for-profit businesses, and do not have endowments exceeding $50 million; and/or
b. ☐ libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 that do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to elementary and secondary schools, colleges and universities).

20. All of the individual schools, libraries, and library consortia receiving services under this application are covered by:
a. ☑ individual technology plans for using the services requested in the application, and/or
b. ☐ higher-level technology plans for using the services requested in the application, or
c. ☐ no technology plan needed; application requests basic local and/or long distance telephone service only.

21. Status of technology plans (if representing multiple entities with mixed technology plan status, check both a and b):
a. ☑ technology plan(s) has/have been approved by a state or other authorized body.
b. ☐ technology plan(s) will be approved by a state or other authorized body.
c. ☐ no technology plan needed; application requests basic local and long distance telephone service only. .

22. ☑ I certify that the services the applicant purchases at discounts provided by 47 U.S.C. Sec. 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value.

23. ☑ I recognize that support under this support mechanism is conditional upon the school(s) or library(ies) I represent securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services purchased effectively.

24. ☑ I certify that I am authorized to submit this request on behalf of the above-named entities, that I have examined this request, and to the best of my knowledge, information, and belief, all statements of fact contained herein are true.

25. Signature of authorized person. ☑

26. Date (mm/dd/yyyy): **10/29/2001**

27. Printed name of authorized person: **Charles Hart**

28. Title or position of authorized person: **Superintendent**

29a. Address of authorized person:
City: State: Zip:

29b. Telephone number of authorized person: **(915) 877 - 7444**

29c. Fax number of authorized person: **()**

29d. E-mail address number of authorized person:

Persons willfully making false statements on this form can be punished by fine or forfeiture, under the Communications Act, 47 U.S.C. Secs. 502, 503(b), or fine or imprisonment under Title 18 of the United States

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Code, 18 U.S.C. Sec. 1001.

Service provider involvement with preparation or certification of a Form 470 can taint the competitive bidding process and result in the denial of funding requests. For more information, refer to the "Service Provider Role in Assisting Customers" at www.sl.universalservice.org/vendor/manual/chapter5.doc or call the Client Service Bureau at 1-888-203-8100.

NOTICE: Section 54.504 of the Federal Communications Commission's rules requires all schools and libraries ordering services that are eligible for and seeking universal service discounts to file this Description of Services Requested and Certification Form (FCC Form 470) with the Universal Service Administrator. 47 C.F.R. § 54.504. The collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended. 47 U.S.C. § 254. The data in the report will be used to ensure that schools and libraries comply with the competitive bidding requirement contained in 47 C.F.R. § 54.504. All schools and libraries planning to order services eligible for universal service discounts must file this form themselves or as part of a consortium.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The FCC is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information you provide to determine whether approving this application is in the public interest. If we believe there may be a violation or a potential violation of a FCC statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party of a proceeding before the body or has an interest in the proceeding. In addition, information provided in or submitted with this form or in response to subsequent inquiries may also be subject to disclosure consistent with the Communications Act of 1934, FCC regulations, the Freedom of Information Act, 5 U.S.C. § 552, or other applicable law.

If you owe a past due debt to the federal government, the information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide the information to these agencies through the matching of computer records when authorized.

If you do not provide the information we request on the form, the FCC may delay processing of your application or may return your application without action.

The foregoing Notice is required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. § 3501, et seq.

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Performance Evaluation and Records Management, Washington, DC 20554.

Please submit this form to:

SLD-Form 470
P.O. Box 7026
Lawrence, Kansas 66044-7026
1-888-203-8100

For express delivery services or U.S. Postal Service, Return Receipt Requested, mail this form to:

SLD-Form 470
c/o Ms. Smith
3833 Greenway Drive
Lawrence, Kansas 66046
1-888-203-8100

FCC Form 470
May 2003

New Search | Return To Search Results

h e e ce g f e e

Patricia Sullivan
11/04/02 07:44 PM

To: Jack McKinney/Kansas City/IBM
cc: Lynne Nicholson/Albuquerque/IBM, Michael Pratt/Houston/IBM, HDM@alphatc.com, Tracy Diaz/Austin/IBM@IBMUS
From: Patricia Sullivan/Oakland/IBM@IBMUS
Subject: *IBM Confidential: URGENT - ACTION REQUIRED - Action items for E-rate Year 6 prospects - DUE FRIDAY, 11/8/02

Jack -

Well, we're finally here - we're into November, and by now we have cut the list down to our verbal commit and high odds prospects for E-rate Year 6. Now the hard part starts (if it hasn't already!) - the time when you, Alpha and ITS kick into full gear to make sure that we get everything done by 1/16/03.

Here are the districts that are on the final list in your territory:

District	ITS Proposal Team Lead
Oklahoma City Schools	Mitchell Claver
Tulsa SD	Earline Callaway
Kansas City, Missouri SD	Earline Callaway
Muskogee SD	Earline Callaway

To make sure we stay on schedule, please complete the following by Friday, 11/8/02 (again, if you haven't already started this):

- Gain action verbal commitment from your customer to proceed with IBM. Update the Team Room with the latest information as soon as your have it - with both an update to a client call and to the prospect qualification spreadsheet. If an account falls out, notify Tracy Diaz immediately
- Work with your customers to ensure that they file their Form 470's by the end of this week.
- Contact Hugh Manning to schedule customer discussions about and collection of Free and Reduced Lunch Data for your district(s). Hugh's at HDM@alphatc.com or (814)285-0474.
- Contact the Proposal Team Leader on each of your accounts and schedule customer calls to begin the planning process for the work that will be done under E-rate year 6.

If you have any questions, contact Tracy Diaz. Thanks for your time, attention and focus on this very critical part of our 2003 strategy!

Thanks! Patty

Patricia A. Sullivan
Western Region Education Executive
IBM Corporation
pasulliv@us.ibm.com
office phone: 415-545-4515 (tieline 473)
fax: 415-545-2132
cell phone: 510-858-1084

TAB 40

From: "hugh manning" <hdm@bedford.net>
To: <doakes@gmcs.k12.nm.us>
Cc: "Alpha Telecommunications" <admin@alphatelecommunications.com>
Sent: Wednesday, June 20, 2001 10:06 PM
Subject: Re: NETC E-rate consortium

David: Thanks for the feedback. I was going to call you today and did not get around to it. You must have read my mind! I have seen different lists of who is in the NETC. How would I get a definitive list? We want to do some more demographics on these districts before the 9th if possible.

I will send you the 470 script soon so you can be ready for the 9th. Of course, we will have to wait 28 days from the 470 posting before an agreement with IBM can be signed. Thanks Hugh

----- Original Message -----
From: David Oakes
To: hugh manning
Sent: Wednesday, June 20, 2001 4:19 PM
Subject: RE. NETC E-rate consortium

Hugh,

Sorry I didn't respond back sooner, I read this and then set it aside until after the meetings with IBM and the NETC. I don't think there will be very many more (if any) district join the consortium. We usually see a districts wanting to join after a major grant has been awarded. No new grants have been awarded yet. If you want to send me the data I could start working on the 470 and have it ready for the NETC to review on the 9th of July. If they approve it at that time, we would be ready to post it.

David Oakes
Director of Technology and Telecommunications
Gallup McKinley County Schools
PO Box 1318
640 S. Boardman
Gallup NM 87305
(505)722-7711 ext 51200
FAX (505)722-7411
Pager (505)698-1396

-----Original Message-----
From: hugh manning [mailto:hdm@bedford.net]
Sent: Monday, June 04, 2001 2:17 PM
To: David Oakes
Subject: NETC E-rate consortium

David: So, how is this Monday going? I am back to the matter we discussed before which is the filing of a 470 for the NETC consortium. The last thing I said was that we need to provide you the data to file and yet we thought there may be one more thing to do first. That is, the 470 will list those districts who are in the consortium. We thought that Mr. Gomez or other NETC members may want to offer participation in the E-rate consortium to more than just NETC members. Districts cannot join after the 470 is posted with member districts.

Do you think this is worth the bother, especially considering the effort involved and the delay that would likely occur to signing an RFP award? We just thought it should be brought up and I am sending the matter to you since you basically run the entire Navajo Nation the way I see it!! thx Hugh

Toll-free phone: (877) 512-2667
Fax: (814) 623-0773
Office: (814) 623-4048
Email: HDM@Bedford.Net
Address: 135 Overpar Drive
Bedford, PA 15522

"Find a way to make a difference"

TAB 41

From Lynne Nicholson on 03/05/2002 11:12 AM

To James Whitmer/Dallas/IBM@IBMUS
cc Chad E Hobgood/Dallas/IBM@IBMUS Michael Pratt/Houston/IBM@IBMUS Mitchell Claver/Minneapolis/IBM
From Lynne Nicholson/Albuquerque/IBM@IBMUS
Subject Re Fwd Dallas ISD erate applications year 5
Importance Normal

James thanks for your being so proactive in your interactions and communications I appreciate it

Good luck!

Lynne Nicholson Western Education Exec
505 888 2386 t/l 796 pager 1 800 759 8352 pin 1064154

Principal Assistant Jammie Chavis 704-595 4689 t/l 795

James Whitmer

James Whitmer
03/05/2002 08:32 AM

To Lynne Nicholson/Albuquerque/IBM
cc michael pratt/Houston/IBM mitchell Claver/Minneapolis/IBM chad E Hobgood/Dallas/IBM
From James Whitmer/Dallas/IBM@IBMUS
Subject Re Fwd Dallas ISD erate applications year 5

Lynne - we have a meeting set up with DISD this afternoon and will have Alpha participating, (both Paul and Hugh) Chad and I are going to discuss the situation with them having direct interaction with SLD, one more time! We have attempted to put an IBMer on-site to hopefully preclude some this from happening and have been turned down on that request

Regards

James (Jim) Whitmer
IBM Global Services
Integrated Technology Services Sales
(972)280 3742 Fax (972)280-5043 Cell (972)898-8766
jwhitmer@us ibm com

From Lynne Nicholson on 03/04/2002 04:31 PM

To James Whitmer/Dallas/IBM@IBMUS Alpha Telecommunications <admin@alphatelecommunications com>
cc Michael Pratt/Houston/IBM@IBMUS Mitchell Claver/Minneapolis/IBM hdm@bedford net
From Lynne Nicholson/Albuquerque/IBM@IBMUS
Subject Re Fwd Dallas ISD erate applications year 5

Michael Pratt
03/04/2002 07 21 PM

To admin@alphatelecommunications com
cc James Whitmer/Dallas/IBM@IBMUS
From Michael Pratt/Houston/IBM@IBMUS
Subject Fwd Dallas ISD erate applications year 5

Paul do we need to modify the SOWs? Do we need to resubmit the Form 471s?

Thanks Mike

Michael Pratt
Complex Engagements Manager
IBM Global Services
Phone 713-940-2116 Tie Line 345-2116,
---------- Forwarded by Michael Pratt/Houston/IBM on 03/04/2002 06 19 PM ---------- --- ----------

James Whitmer
03/04/2002 02 11 PM

To michael pratt/Houston/IBM lynne Nicholson/Albuquerque/IBM mitchell Claver/Minneapolis/IBM
cc
From James Whitmer/Dallas/IBM@IBMUS
Subject Fwd Dallas ISD erate applications year 5

If we adjust the $ amount of the Dallas downward as the DISD CIO has suggested to SLD what is the best approach - PCAs to the contracts that were signed or new SOWs? My guess would be PCAs but I want to validate this

The original SOWs were built around all of the schools and administration buildings before we got the last minute tally of 155 of the 245 schools being 90% qualified

Please advise Thanks

Regards

James (Jim) Whitmer
IBM Global Services
Integrated Technology Services Sales

IBMH0025610

Phil Kibler
04/09/2002 04 46 PM

To Bill King/Dallas/IBM@IBMUS
cc Lynne Nicholson/Albuquerque/IBM@IBMUS Michael Pratt/Houston/IBM@IBMUS Charles Gentry/Austin/IBM@IBMUS
From Phil Kibler/Indianapolis/IBM@IBMUS
Subject Question To Ask The SLD For Dallas ISD
Importance Urgent

Bill you pointed out a very good issue on the call I'm glad you brought it up Two examples from prior years we can site would be Atlanta PS and San Francisco USD who either didn t get funded or gave money back and did NOT get any benefit or preferred shake in either that year or the subsequent year They were shut out and had to reapply the following year No benefit no pat on the back no improved position IBM could offer tons of examples or statements but they really mean nothing The only way to convince Dallas is to have them get it straight from the horses mouth So here is my suggestion

Ask the SLD the following question If we unilaterally reduce our funding request by withdrawing one or more of our applications, all of which are at 90% will the SLD guarantee us in writing that by doing so we will improve above all other 90% applicants our odds of having the remaining applications funded or have those 90% funding request funded at a higher rate than other 90% funding requests from other districts assuming prorating occurs '

Long winded I know But the point I m trying to make is they must get a guarantee from the SLD that they would either get at the head of the line to get funded assuming others will not (preferred position if they withdraw one or more) OR they will get more money guaranteed than the average 90% applicant will get Short of either of these guarantees, in writing from the SLD, there is ZERO benefit for them to withdraw a funding request except to help everyone else

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Assistant Keith Gwin (kgwin@us ibm com)
Tel 317-566 4360 (T/L 554)

IBMH0025694

James Whitmer
03/06/2002 12 27 AM

To Lynne Nicholson/Albuquerque/IBM
cc Barb Norton/Costa Mesa/IBM@IBMUS Jessica Isen/Los Angeles/IBM@IBMUS Kim Glossip/Los Angeles/IBM Larry Jewell/San Francisco/IBM@IBMUS Michael Pratt/Houston/IBM@IBMUS Mitchell Claver/Minneapolis/IBM Warren Weller/Phoenix/IBM gregg givens/Dallas/IBM
From James Whitmer/Dallas/IBM@IBMUS
Subject Re Dallas ISD False Alarm! ☐
Importance Normal

Alpha has been involved We had a meeting/conference call with the customer at 2 30 PM CT today to do damage control with what the CIO had communicated to SLD The elimination of Video was one of the suggestions that the Executive Director made and that we are taking under consideration although this may not be the final answer We had a follow-on conference call (internal), with IBM and Alpha Both Paul Karas and Hugh Manning participated Other options are being considered to include making no changes to our original submission Hugh Manning is coming to Dallas on Thursday and we are meeting with the DISD CIO and Executive Director to make our recommendation as to how to respond to SLD

Between now and Thursday we are going to be looking at this in every perspective and relying heavily on Alpha for their final recommendation as to what we say to DISD at that meeting

At the end of this e-mail I have attached a copy of the note we received from DISD yesterday that started this whole process I believe that I had forwarded this to you Mike Pratt and Mitch Claver

Regards

James (Jim) Whitmer
IBM Global Services
Integrated Technology Services Sales
(972)280 3742 Fax (972)280-5043 Cell (972)898 8766
jwhitmer@us ibm com

From Lynne Nicholson on 03/05/2002 11 00 PM

To James Whitmer/Dallas/IBM@IBMUS
cc Barb Norton/Costa Mesa/IBM@IBMUS Jessica Isen/Los Angeles/IBM@IBMUS Kim Glossip/Los Angeles/IBM Larry Jewell/San Francisco/IBM@IBMUS Michael Pratt/Houston/IBM@IBMUS Mitchell Claver/Minneapolis/IBM Warren Weller/Phoenix/IBM
From Lynne Nicholson/Albuquerque/IBM@IBMUS
Subject Re Dallas ISD False Alarm! ☐

IBMH0026479

postponement Just because something is funded one year does not guarantee it will be funded the same for the next year This has been a lesson learned in the past The rules change every year as to fundable erate services and products Either Alpha or I would be happy to speak to them on this

Regards
Lynne Nicholson Western Education Exec
505 888 2386 t/l 796 pager 1 800 759 8352 pin 1064154

Principal Assistant Jimmie Chavis 704-595 4669 t/l 795

James Whitmer

James Whitmer
03/05/2002 09 49 PM

To jessica Isen/Los Angeles/IBM barb Norton/Costa Mesa/IBM larry jewell/San Francisco/IBm kim Glossip/Los Angeles/IBM
cc lynne Nicholson/Albuquerque/IBM mitchell Claver/Minneapolis/IBM michael pratt/Houston/IBM
From James Whitmer/Dallas/IBM@IBMUS
Subject Dallas ISD - False Alarm!

We met with Dallas ISD staff today and our approach to any changes will not require a new QA or PCRs Worst case they will eliminate one of the SOWs which will most likely be the Video SOW This would actually be a postponement until e-rate 6 We will be meeting with them again this Thursday and will encourage them to move ahead with the SOWs as submitted - totaling $216M

If there are any questions please let me know Thanks

Regards

James (Jim) Whitmer
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jwhitmer@us ibm com

Alden Gaw <AGAW@dallasisd org> on 03/04/2002 01 35 58 PM

To <hdm@bedford net> Chad E Hobgood/Dallas/IBM@IBMUS James Whitmer/Dallas/IBM@IBMUS Glorias Dixon <GDixon@dallasisd org>
cc
Subject Fwd erate applications year 5

IBMH002643

FYI

Also, I have sent the response to the SLD that Jim sent me last week

In addition, I had a voice message today from Charlesetta Haywood of the SLD (and an email format of same) requesting FIEMS verification on 7 schools enclosed in attachment

In a phone converstation this morning with Ruben, myself, Glorias, Ellen Wolfhagen and George McDonald of the SLD on an unrelated matter, the subject of year 5 applications was raised They asked why the amount was so large Ruben indicated the acutal amount would probably be much less, that we want to be prepared in light of the new bond that passed George indicated they would appreciate if we could redo the amounts to reflect what we really expect to spend We agreed to do so within a two week timeframe

We should meet this week to begin this process

Alden Gaw
Executive Director - Network Services
Dallas Independent School District
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Dallas, TX 75204

Ph 972-925-3577
Fx 972-925-3566
agaw@dallasisd org

Michael Pratt
05/03/2002 05 52 PM

To Nate Hawthorne <nhawthorne@earthlink net>
cc
From Michael Pratt/Houston/IBM@IBMUS
Subject Re Year 4 IBM Alpha SOW
Importance Normal

Nate I am also confused because the language I remember in the erate 4 agreement defined how we calculated the 7% It was the last sentence of the Bold paragraph on the first page Specifically it was the total SOW value BEFORE we calculated the Alpha fees and we had multiple discussions regarding how it was calculated This one looks more like the Erate 5 agreement Where we did bump it up to a total of 7% If you recall we were compiling all of the IBM costs and uplifts WITHOUT the Alpha content and multiplying it by 7% to determine your fee The catch is that we then had to add your fee back into the SOW as a cost and mark it up which then increased the value of the SOW By maintaining a fixed markup on your fee the percentage of the new SOW value was 6 32 Otherwise, IBM would essentially be paying Alpha twice , by applying a 7% fee on your 7% fee or a real fee of 7 5% and we wouldnt have a fixed base from which to calculate the fee as it is part of the SOW price To fix that in erate 5 I increased your 7% to 8(approx) so the final math worked out to 7% and that is stated in the erate 5 Agreement I will need to look for my copy of the erate 4 agreement because I was certain that the calculation was articulated in the bold language in front because we discussed it on multiple occassions Perhaps there were multiple versions? Anyway your 7% for erate 4 was calcualted exactly as stated above and that was why I mentioned you can t just take the new face value of the erate 4 SOWs and multiply by 7% because it would be off We can chat on Monday but I would have bet my next paycheck that the calculation was in the Agreement I do have my copy somewhere buried in my desk and I will find it on Monday Sorry for the confusion

Thanks Mike

Michael Pratt
Complex Engagements Executive
IBM Global Services
Phone 713-940-2116 Tie Line 345-2116 Cell 832 483 7036

Nate Hawthorne <nhawthorne@earthlink net> on 05/03/2002 01 05 58 PM

Please respond to Nate Hawthorne <nhawthorne@earthlink net>

To Michael Pratt/Houston/IBM@IBMUS
cc
Subject Year 4 IBM Alpha SOW

Mike,

During yesterdays meeting you stated that the Year 4 IBM-Alpha SOW provides for a 6 23% fee

I have very carefully reviewed the IBM-Alpha SOW for Year 4, and a copy of the executed SOW is attached

Since we both want to abide by the SOW that was executed in good faith, please direct me to the precise language that states that IBM will pay Alpha less than 7% for Year 4

A prompt response would be appreciated

Nate

Nathaniel Hawthorne
email nhawthorne@earthlink net
Tele # 216-514-3336
Fax # 216-514-3337

IBMH0026620

TAB 43

Assistant Linda Brickman 914-766-2188

Phil Kibler
03/19/2002 04 20 PM

To Andy Bernardin/Columbia/IBM@IBMUS, Angela Brown/Bethesda/IBM@IBMUS, Betty L Rottmann/St Louis/IBM@IBMUS, Charles Gentry/Austin/IBM@IBMUS, Donald Parker/Southfield/IBM@IBMUS, George Powell/Richmond/IBM@IBMUS, Greg Haas/Atlanta/IBM@IBMUS, John Rowland Jr/Atlanta/IBM@IBMUS, Judy Srail/Cleveland/IBM@IBMUS, Kevin J Claus/Columbus/IBM@IBMUS, Lynne Nicholson/Albuquerque/IBM@IBMUS, Man Bui/Atlanta/IBM@IBMUS, Patricia Sullivan/Oakland/IBM@IBMUS, Portia Lemons/Atlanta/IBM@IBMUS, Rae Ann Alton/Atlanta/IBM@IBMUS, Richard Murphy/Lexington/IBM@IBMUS, Robert Barthelmes/Waltham/IBM@IBMUS, Ross Mead/Memphis/IBM@IBMUS, Stephene Terry/Atlanta/IBM@IBMUS, Steve Evans/Tallahassee/IBM@IBMUS, Susan Gabrielsen/New York/IBM@IBMUS, Teresa R Kodatt/Springfield/IBM@ibmus, Terry Eaves/Louisville/IBM@IBMUS, Timothy Mulligan/Cleveland/IBM@IBMUS, Victor Viggiano/New York/IBM@IBMUS, David Flanagan/Rochester/IBM@IBMUS, David McOmber/Syracuse/IBM@IBMUS, Michael Pratt/Houston/IBM@IBMUS, Mitchell Claver/Minneapolis/IBM@IBMUS
cc Kevin Corcoran/Somers/IBM@IBMUS, Don Bradford/Somers/IBM@IBMUS, Amy David/Denver/IBM@IBMUS, Steve Evans/Tallahassee/IBM@IBMUS, Marianne Cooper/New York/IBM@IBMUS
From Phil Kibler/Indianapolis/IBM@IBMUS
Subject SLD Pressure On E-rate Applications

Folks, it is clear that the pressure is enormous from the SLD on our clients to go back and review their needs and their funding requests They hope to brow beat or cajole or shame the large application districts to reduce their funding requests We have to be working with each and every client to help them and let them know that it is not in their best long-term interest to reduce their funding requests Here are the reasons why 1)They may be solely doing so There is no guarantee anyone else will reduce their funding requests, thus leaving the program with way too much demand at 90% and proration still in the cards 2)Even if others reduce, proration is still likely If they reduce from $100M to $50M, and proration still dictates 50 cents on the dollar, then instead of getting the $50M they said they could live with, they are now at $25M, a full $75M less than originally requested 3)The funding outlook and demand outlook is not more positive next year If there are funding issues this year, waiting until next year will not fix them

They need to stand their ground, hold out for maximum funding, and not let the SLD coerce them into reducing their funding requests unilaterally If proration occurs, it will happen soon enough Let that be the guiding force in reducing ultimately the amount of funding they receive I'm hearing from various locations that they are being quizzed and squeezed and pressured and pushed We must help them get through this cycle If anyone knows their customer is considering reducing their funding request to the SLD please notify me or Charles Gentry so we can work with you and the client to help turn the situation around

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2

Unknown

From Phil Kibler
Sent Wednesday March 20 2002 3 46 AM
Subject Re SLD Pressure On E-rate Applications

Agreed Glad you talked to Mike Two additional things I need to work with your team on 1) We sold Internet Access, or as Kevin C likes to refer to it, E-rate Plus, to several districts I think I walked you through the concept a few months back, but just in case, it involves IBM being the provider of WAN services to the district and owning/leasing assets as the SLD states clearly for it to count under Internet Access, the district can NEVER own the assets We priced and scoped this but the asset ownership has never been resolved BCRS was approached originally but they decided/determined wasn't right for them So we have a number of SOW's, priced well, adequate risk, good GP, sitting out there and if we are funded, we will have to be able to handle this somehow I'd like to know who from the team I should work with on point to get this wrestled to the ground and resolved once and for all Mike, Mark McConville, Kevin, and all were very supportive of moving forward on this 2) We need to turn the crank on E-rate and protect ourselves and our streams and make the Internet Access/E-rate Plus solution more of an offering rather than an 'idea' Phil and team had I'm not sure if it is Ed Harrison's team or someone from Steve's team, but I need to work with someone to really bake this, harden it, get the total concept locked down, and collateral created to ensure we are prepared for the next selling season which is fast approaching If we do this right, this is Priority 1, which gets funded automatically, and we position ourselves much better for continued success in E-rate for Year 6

I'll ask Keith to set some time for us as soon as we can get it scheduled to discuss further I've got a pitch, if you haven't seen it, that describes the concept pretty well

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Tel 317-566-4360 (T/L 554)

Don Bradford
03/19/2002 08 38 PM
To Phil Kibler/Indianapolis/IBM@IBMUS
cc
From Don Bradford/Somers/IBM@IBMUS
Subject Re SLD Pressure On E-rate Applications

spent some time with Mike Uliano this afternoon and understand the requirements better Have asked Gayle Manley to develop a plan to support this As discussed, we need to plan for the worklaod that is going to occur in 2/3Q

Regards,

Don Bradford
VP, Integrated Technology Services
IBM Global Services
Somers, New York
914 - 766 - 2190 tie line 826 - 2190 fax 826-7245

From Don Riddick on 04/12/2002 10 47 AM

To Phil Kibler/Indianapolis/IBM@IBMUS
cc Charles Gentry/Austin/IBM@IBMUS David Stone/Houston/IBM@IBMUS Michael Pratt/Houston/IBM@IBMUS Mike Ullano/Phoenix/IBM@IBMUS Ron Forrest/Phoenix/IBM@IBMUS
From Don Riddick/Costa Mesa/IBM@IBMUS
Subject Re Alpha Strawman for next Discussion
Importance Normal

Phil

I think that you are offbase on this point Certainly at EPISD we have had this occur Our Marketing team Ron Johnson Tracy Diaz Etc has brought Hugh Manning an Alpha employee out to the client Ron has encouraged Hugh to answer detailed complex legal questions on E-rate funding and guidelines while he was here Similarly we have recieved counsel of this nature until I stopped it during the past month Paul another Alpha employee has travelled to IBM sites and provided similar advice Paul and Hugh have given advice without going through the only licensed attorney in the practicing law without licenses in any state who have encouraged and directed them to do so on numerous occasions and have unlimited liability for these actions

As to the practice of law it is absolutely the practice of law as identified in the model rules of professional conduct (adopted in almost all of the 50 states) for attorneys The interpretation of statutes and regulations for a fee to a third party is exactly what Alpha is doing and they have admitted on several occasions that they are indeed practicing law by drafting reviewing and giving interpretations of federal regulatory statutes (FCC UCAS and SLD statutes)

This is a major exposure and it should be addressed or we assume the risk (it is a business risk) but we should not ignore this issue

On a separate point, I am very concerned that the delivery team for e-rate round 5 will not get the support necessary to pass an audit operate legally, avoid legal and criminal actions and coincidentally if we don't show good faith and due diligence lose all future e rate business by violating our Pension affadavit with the SLD This plan seems to focus on future business and effort for round 6 but we have a potential $500+ million dollars of business that we may have to deliver that has no protection from these risks

I do not concur with your statements and do not believe them to be fair or accurate

I am very concerned about our delivery teams for e rate 5

-Don

As I said last night I don't agree with the following statement • Alpha personnel practicing law without being licensed in the state This is primarily their staff on the road, but effect their assistance in the event of an audit as well ' This statement suggests we are encouraging them to provide us legal advice and we are taking legal guidance from them I do not believe that is the case We are getting guidance from them as we do ourselves in non Alpha cases like Memphis and LAUSD and NY on eligible services lists wording and how to respond to questions and queries from the SLD I don t think portraying this as practicing law is fair or accurate and I don't concur

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Phil Kibler

Phil Kibler
04/11/2002 04 14 PM

To: Michael Pratt/Houston/IBM@IBMUS
cc: Don Riddick/Costa Mesa/IBM@IBMUS Mike Uhano/Phoenix/IBM@IBMUS Charles Gentry/Austin/IBM@IBMUS David Stone/Houston/IBM@IBMUS Ron Forrest/Phoenix/IBM@IBMUS
From: Phil Kibler/Indianapolis/IBM@IBMUS
Subject: Re Alpha Strawman for next Discussion

Mike, nice summary Thanks for pulling together Hopefully my note this morning sufficed in sizing the opportunity in outlying years based on history in the early years

As I said last night I don t agree with the following statement • Alpha personnel practicing law without being licensed in the state This is primarily their staff on the road, but effect their assistance in the event of an audit as well ' This statement suggests we are encouraging them to provide us legal advice and we are taking legal guidance from them I do not believe that is the case We are getting guidance from them as we do ourselves in non Alpha cases like Memphis and LAUSD and NY on eligible services lists wording and how to respond to questions and queries from the SLD I don t think portraying this as practicing law is fair or accurate and I don t concur

You captured the elements well We do need to figure out if possible how to hold Alpha accountable for their performance their level of support and responsiveness etc If they can't be held liable based on our agreements then the only cards we hold over them are Year 6 and possibly exiting from a Year 5 engagement if we had to thus severing their fee as well Now we would never go there in actuality but they have to believe it is a possibility so they aren t arrogant

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Michael Pratt
04/10/2002 07 55 PM

To Phil Kibler/Indianapolis/IBM@IBMUS Don Riddick/Costa Mesa/IBM@IBMUS Mike Uliano/Phoenix/IBM@IBMUS Charles Gentry/Austin/IBM@IBMUS
cc dstone Ron Forrest/Phoenix/IBM@IBMUS
From Michael Pratt/Houston/IBM@IBMUS
Subject Alpha Strawman for next Discussion

Based on our discussion today I have summarized what we discussed and added a Next Steps section This can provide a basis for our next discussion prior to presenting recommendations to Manos Dave I believe that Rondi is trying to set up the call Phil Mike Don, Charles and I had a preliminary discussion this afternoon and Phil is going to come up with a rough market sizing for erate 6 and beyond so that the opportunity can be compared with the required investment Please feel free to take editorial license to the attached document

Thanks Mike

Michael Pratt
Complex Engagements Manager
IBM Global Services
Phone 713-940-2116 Tie Line 345-2116

From: "Lynne Nicholson" <lnich@us.ibm.com>
To: "Phil Kibler" <pckible@us.ibm.com>; "Michael Pratt" <mpratt@us.ibm.com>
Cc: "Charles Gentry" <cgentry@us.ibm.com>; "Deanna Higson" <dhigson@us.ibm.com>; "Don Kaiser" <dkaiser@us.ibm.com>; "Jennifer Zedalis" <zedalis@us.ibm.com>; "Jimmie Chavis" <chavisj@us.ibm.com>; "Kim Glossip" <kglossip@us.ibm.com>; "Lynne Nicholson" <lnich@us.ibm.com>; "Daryl Williams" <dwillia1@us.ibm.com>; "Margaret Lake" <mlake@us.ibm.com>; "Michael Pratt" <mpratt@us.ibm.com>; "Mike Hoevelman" <mhoevel@us.ibm.com>; "John Milota" <jmilota@us.ibm.com>; "Patrick F Millette" <millette@us.ibm.com>; "Phil Kibler" <pckible@us.ibm.com>; "Tracy Diaz" <tdiaz@us.ibm.com>; "Vic Bentley" <vbentley@us.ibm.com>; "Dwain Bitter" <dabitte@us.ibm.com>; "Sarah Everett" <severet@us.ibm.com>; "Patricia Sullivan" <pasulliv@us.ibm.com>; "Kelly Ryan" <kmryan@us.ibm.com>; "Alice Davidson" <alice.davidson@us.ibm.com>; "Charlie Richburg" <cerichbu@us.ibm.com>; "Bill King" <bking@us.ibm.com>; "Rosie Thompson" <rosiet@us.ibm.com>; "Paul Boetig" <pjboetig@us.ibm.com>; "Gary Hom" <ghom@us.ibm.com>; "Doug Boswell" <dboswell@us.ibm.com>; "Judy Winer" <jawiner@us.ibm.com>; "Alfredo Villalobos" <avillal@us.ibm.com>; "Mike Sementelli" <msement@us.ibm.com>; "Kevin E Mazzatta" <kevinmaz@us.ibm.com>; "Dan Curtis" <dcurtis@us.ibm.com>; "Andy Kendzie" <kendzie@us.ibm.com>; "Steve Evans" <sevans@us.ibm.com>
Sent: Wednesday, December 04, 2002 1:42 PM
Subject: Erate: Expect Vendors to approach our clients to do spin changes

Here is one example. I know we are taking a proactive approach with our clients but be aware that this is going on.

>From NETC-John Cleaver PE

Karen Lesher did speak with Karen Bullard (SLD Board Member & whose company has its own spin number). Karen Bullard informed Karen that the GMCS and NETC applications would be denied. I believe that Karen Bullard also suggested that NETC consider switching SPINS. I believe that NETC and GMCS will do whatever it takes to obtain funding. I have persuaded Karen to allow us to continue work on NETC for the balance of the week. David Oakes-Gallup has not pushed the issue of stopping work. We agreed to take a checkpoint on Thursday and reassess the plans for next week.

Lynne Nicholson - Western Education ITS Exec
505 888 2386 (t/l 796)
Jimmie Chavis Principal Assistant 795-4669

Integrated Technology Services

E-rate: Still a Critical Focus at IBM

Phil Kibler, Director, ITS Public Sector

For Internal Use Only | May 20, 2003

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TAB 46

Agenda

- Brief E-rate Refresher: How does IBM play in E-rate?
- The IBM-SLD Story and Status
- E-rate Year 6 2003 (Current Application/Funding Year) Activity and Strategy
- E-rate Year 7 Strategy
- Internet Access Update and Strategy
- Action Items for All on This Call

IBMH0025439

Categories of Services

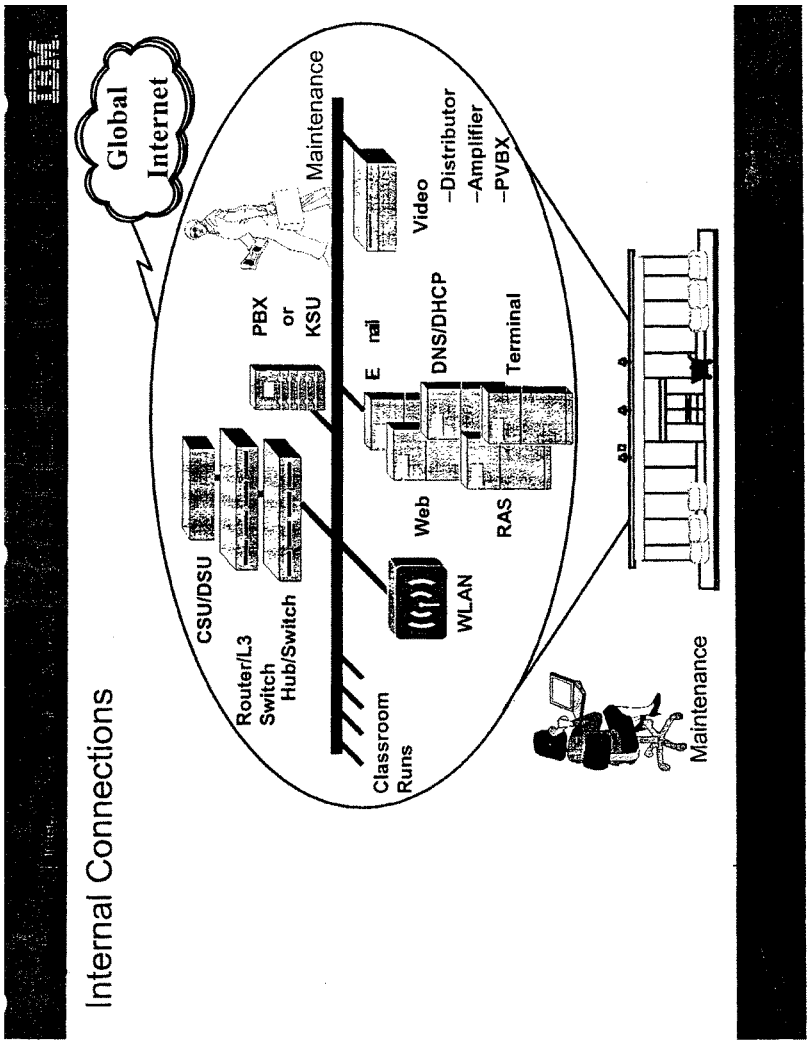
- **Telecommunications Services - Priority 1**
  - Must be provided by a common carrier
  - Provided as a SERVICE. Applicant does not own.
  - Basic telephone service, POTS, Cellular Service, Centrex, 800 Service, WAN, Distance Learning
- **Internet Access Services - Priority 1**
  - Service providers for Internet Access need not be eligible Telecommunications Service Providers
  - Provided as a SERVICE- applicant does not own resources
  - Basic Unbundled Access, Bundled Access, Email Account Fees and Service, WAN (conditional)
- **Internal Connections - Priority 2**
  - Funded after Priority 1 is allocated
  - Scope delivered to and turned over to applicant. They own it and are responsible after turn over.
  - Network Electronics, Cabling, Fiber backbone, Wireless technology, Web and File Servers, UPSs, Email Servers and Software, Video Group and Desktop, PBX, Network Maintenance and Support

IBMH0025440

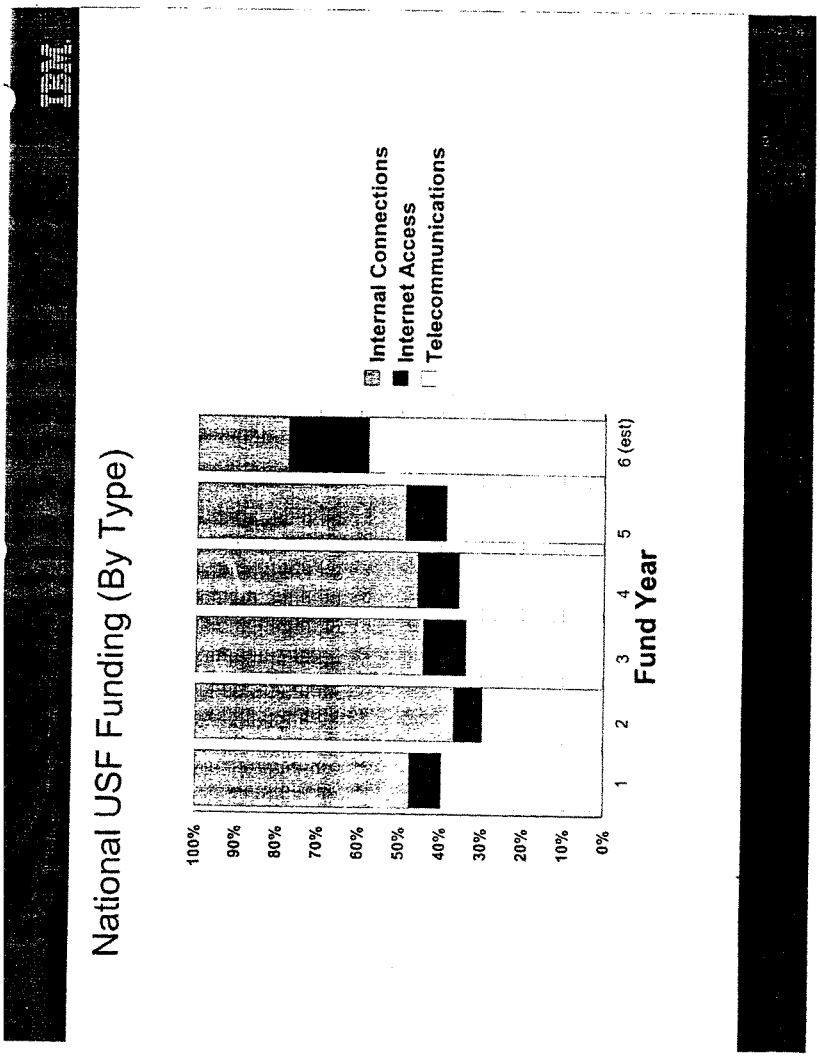
Although our projects are typically categorized as "infrastructure build-out," our real strength is in end-to-end educational technology solutions that leverage both E-rate and non E-rate funding

A district's technology plan spells out the community's long term vision for using computing resources to deliver improved instruction, improved school student parent communication and data driven decision making. E rate helps provide the "pipes" that deliver the "water"

IBMH0025441



IBMH0025442



IBMH0025443

ITS has a tremendous track record over the last few years in signings and revenue by targeting E-rate

- New York City Schools
- Los Angeles Unified School District
- El Paso Independent School District
- Clark County School District
- Memphis City Schools
- Cleveland City School District
- Austin Independent School District
- Atlanta Public Schools
- Ysleta Independent School District
- Gallup-McKinley School District
- Alpena School District
- State of Kentucky K-12
- State of West Virginia K-6

IBMH0025444

SLD's Concerns - Expressed in Warning Dated 12/3/2002

- IBM's share of E- rate funding caught their attention
  - Significant growth in IBM's funding in recent years
  - Significant increase in funds applied for once applicant started working with IBM
- Believes that IBM undermined the competitive process by gaining undue influence over school districts
- Suspects IBM is selling products and services that the schools don't really need by leveraging eligible services list without regard for Technology Plan
- Believes IBM worked too closely with schools throughout the procurement process
  - Involvement prior to 470 with sample 470 and RFP
  - Misled potential competitors by not mentioning RFP on 470
  - Avoided direct price competition in procurement process

[redacted]

IBMH0025445

SLD's Reasons for Denial of Ysleta **(as an important example)**

- Selected vendor via RFP without indicating RFP on 470
- Services not defined when vendor selected
- Applicant did not comply with requirement to select most cost effective vendor with cost as the primary factor
  - Price not a factor in vendor selection
  - Price set after vendor selected
- IBM offered to help with Technology Plan
- Overriding goal was to "maximize the SLD funding"-- inconsistent with requirement to promote goals defined in Technology Plan
- Similar RFP language used by numerous applicants indicates undue influence from IBM
- IBM proposal included ineligible services (not actually used as a basis for denial but included in SLD denial letter)

Year 5 (2002) E-rate Timeline

- Sept.- Nov. 2001-- Schools posted Form 470 for Year 5
- Jan. 2002-- Schools identified IBM as service provider on Form 471
- Summer 2002-- continuing SLD questions for Ysleta
- July 2002-- SLD Web site adds search tool to show E rate funds awarded by service provider
- Summer- Fall 2002-- SLD reviews other IBM applicants and notices "pattern"
- Oct. / Nov. 2002-- NY City ($149M), WVa ($0.8M)
- Dec. 3, 2002-- Ysleta funding denied ($18.3M) and SLD Web site warning
- Dec. 4, 2002-- retained Levine Blaszak Block & Boothby as counsel
- Dec. 6, 2002-- Initial IBM meeting with FCC Wireline Competition Bureau

Year 5 (2002) E-rate Timeline (cont.)

- Dec 10, 2002-- IBM reviewed whistle blower letter and OIG report
- Dec. 2002- Jan. 2003-- series of meetings with SLD and FCC
- Dec 19, 2002-- Connect2 arrests for E rate fraud in NY
- Jan 2002-- Rep Tauzin (R LA) announces House Commerce Committee E rate investigation
- Jan 30, 2003-- IBM and Ysleta filed separate but coordinated appeals at FCC
- Feb 4, 2003-- IBM met with Tauzin's investigative staff
- Feb 6, 2003-- E rate Year 6 (2003) applications due, $600+M filed with IBM
- Feb 2003-- Meetings with SLD/FCC on Ysleta appeal
- Mar 3, 2003-- Bootheel funding denied ($41.2M)
- Mar 10, 2003-- 11 funding denials ($489 5M)

Year 5 (2002) E-rate Timeline (cont.)

- Mar. 14, 2003-- Tauzin requested E rate documents from SLD and FCC for House Commerce investigation
- Mar. 19, 2003-- Bootheel filed appeal
- Mar. 20, 2003-- New Orleans filed appeal for IBM, Cox, BellSouth, but later decided to withdraw appeals and refile only for Cox and BellSouth
- Mar. 24, 2003-- 4 funding denials ($74.1), including Syracuse ($11.6M); Lansing, MI funded for $0.3M
- Mar. 24, 2003-- Retained Wiley Rein & Fielding to help with FCC commissioners
- Mar. 25, 2003-- IBM met with SLD on denials; pointed out inconsistency in SLD funding decisions in Syracuse
- Mar. 28, 2003-- SLD informed Syracuse they would receive funding for IBM
- Mar. 31, 2003-- SLD announced waste, fraud and abuse task force

Year 5 (2002) E-rate Timeline (cont.)

- Apr. 1, 2003-- Syracuse filed appeal per SLD instructions
- Apr. 7, 2003-- NY City funded at 87% level for $48.5M; 2 more funded for $2.1M; 2 denied funding for $4.4M
- Apr. 14, 2003-- IBM filed comments in E rate NPRM
- Apr. 15, 2003-- IBM and WRF met with the legal advisor for each of 5 FCC commissioners regarding NPRM comments
- April 17, 2003-- NETC appeal filed
- Apr. 18, 2003-- Gallup McKinley, NM filed appeal
- Apr. 21, 2003-- Winston Salem denied funding ($12M); Guam funded ($0.5M); Columbus, OH application withdrawn by district ($2.1M)

Year 5 (2002) E-rate Timeline (cont.)

- Apr. 24, 2003-- IBM filed procurement white paper prepared by WRF
- Apr. 25, 2003-- IBM and WRF met with FCC Wireline Competition Bureau chief regarding procurement white paper
- Apr. 28, 2003-- Galena Park ISD appeal filed
- May 8, 2003-- FCC E rate Forum
- May 9, 2003 – Cleveland, Atlanta, El Paso ISD, Fort Worth ISD, Oklahoma City, Donna ISD appeals filed
- June 4, 2003 – Executive meetings planned with FCC Commissioners
- Summer 2003 – Anticipate Ysleta ISD appeal decision

IBMH0025451

Appeals Status (as of 5/9/03)

Plans to Appeal		Undecided		Will Not Appeal		Already Appealed	
School	$M	School	$M	School	$M	School	$M
Albuquerque	348	LCPA	240	Dallas	1290	Vista (1/30)	483
Prairie Hills	35	Kingdom	40	New Orleans	106	Rochester (3/19)	412
Memphis	128			Cinn	12+	Syracuse (4/10)	106
						NSC (4/17)	419
						Gallup (4/18)	149
						Cabrini Park (4/28)	287
						New Haven	119
						Winston Salem	220
						Cleveland	274
						Wyoming	342
						El Paso	150
						Denver	287
						Fort Worth	873
						Oklahoma City	740
Total	514		520				

Total Denials 22 applicants worth $651 9M

E-rate Year 5 Summary

- IBM was aggressive and proactive in our marketing
- Some marketing collateral gave the wrong impression and contributed to this situation
- All but 3 clients have appealed Year 5 denials
- Districts that have actively sought political support are making progress
- We believe that we will know one way or another concerning most of the denials and appeals by summer

You should:

- ***Understand that IBM followed SLD's advice on subsequent applications/submissions, once posted 12/3/2002 on the SLD Website***
- ***Familiarize yourself with the contents of the SLD response white paper that was prepared for us by Wiley Rein and Fielding (available on PSN)***
- ***Review appeals filed for IBM applicants to get a better understanding***

E-rate Year 6

- We've had over $600 million submitted for Year 6
  - Some of that is re-submission of Year 5 requests, some of it is below the 90% level
- We anticipate selective reviews for every IBM application due to unavoidable increase in scrutiny
- We must stay focused on helping our clients respond in appropriate and timely fashion to SLD denials and inquiries
- SLD has recently issued guidance on selective review questions and what a participating service provider can and cannot do
- Funding has begun for 2003 telecommunications and Internet Access, don't anticipate Internal Connections funding until 4Q
- We are moving forward with Year 7, including the further rollout of our Internet Access offering

E-rate Year 7 (2004)

- The selling season has already begun We can't wait to see what the FCC or SLD will do or say for Year 5 or Year 6
- We are already seeing RFP's on the street for 2004 Eligible Services
- 470 Forms are already being posted
- We will have to monitor closely what comes from the NPRM's and other rule making changes
- If the 90% rule is changed for internal connections, it would be surprising if it is made for Year 7 It will have to happen pretty fast for that to take effect and several clients are already bidding or preparing to bid for projects right now

E-rate Year 7 (2004 - continued)

- **So what should we do in Year 7?**
  - ƒ Stay focused on our solutions and what has made us successful in previous years
  - ƒ Continue pursuing Internal Connections and ramp up our marketing/sales efforts for Internet Access More on Internet Access in a bit
  - ƒ Technical Support and Maintenance, Wireless, Network Electronics, Servers, Cabling, Web Access, Video and Installation
  - ƒ We have a lot of work ahead of us to restore our image and credibility in the market place Work is underway on a number of fronts on that specific point FCC and SLD decisions will go a long way toward taking care of that if they are positive
  - ƒ Everyone involved with E-rate should ensure they have taken the Business Conduct Guidelines and DII on the Web
  - ƒ Be prepared to evaluate and respond to many RFP's

E-rate Year 7 (2004 - continued)

- What will applicants do in Year 7?
  - ƒ Huge majority are going to buy through RFP's and not 470 alone Some will use the 470 with state or cross-state contracts
  - ƒ In each state we need to assess what capabilities IBM has in Eligible Services on the state contract and take action where there are holes as time allows
  - ƒ Pendulum will likely swing too far and we will see piece meal RFP's Districts should not overreact If RFP's they should continue to look for total solutions and not piece parts One vendor solutions the entire building or buildings, not multiple vendors in the same building
  - ƒ Districts should make sure their 470 services list matches both their ability to fund and their Technology Plans It should be customized to their individual environment and not a template

E-rate Year 7 (2004 - continued)

- What will applicants do in Year 7?
  - ƒ More than ever, the national and regional leadership teams are mobilized and ready to help with relationship or positioning calls
  - ƒ Our sales efforts and activities will be highly scrutinized by consultants, SLD, competitors, watchdog groups Most critical will be marketing flyers, presentations, proposals, and any other leave behinds

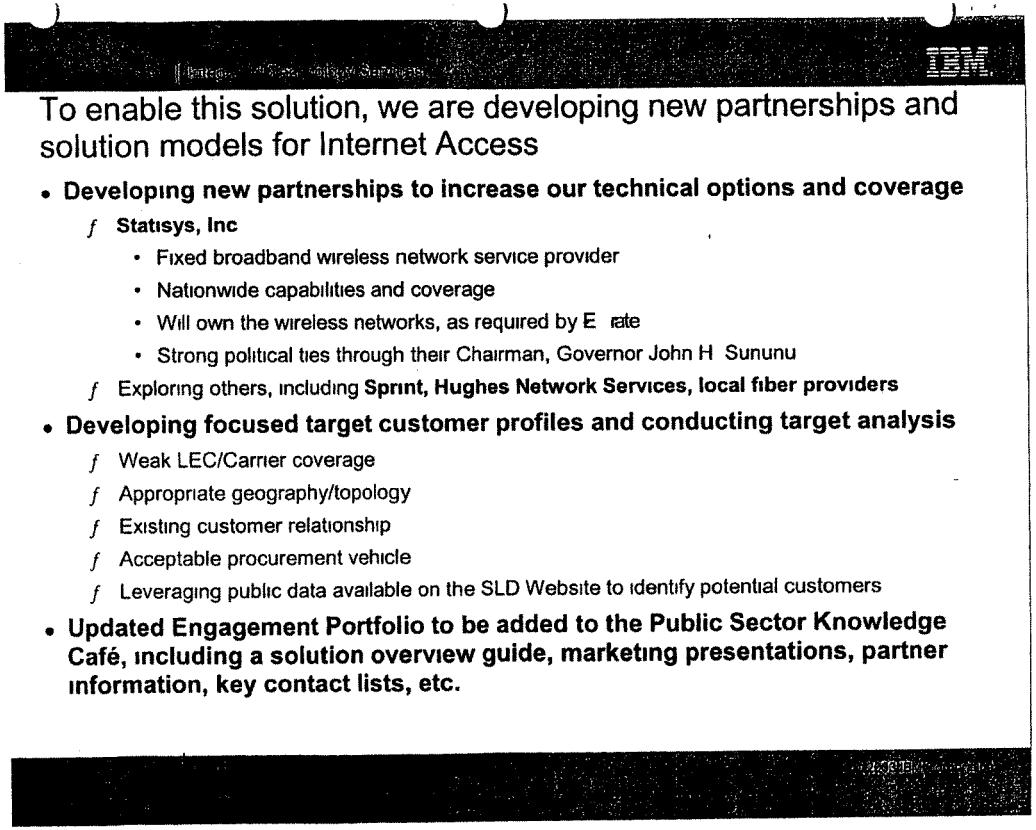
Internet Access, which is one of three funding categories within the federal E-rate program, has historically not been a strong play for IBM

- **E-rate Funding Categories:**
  - Telecommunications Priority 1 funded, must be common carrier
  - Internet Access Priority 1 funded, anyone can provide
  - Internal Connections Priority 2 funded, IBM's historical strength
- **E-rate Internet Access must be provided as a service**
  - Customer can not own any assets
  - Flat monthly fee, multi-year contracts
  - Service must include Internet connectivity, last-mile connections to schools, on-going support, network ownership, etc
- **Historically, IBM has had limited success in the E-rate Internet Access space**
  - Success in small pockets of the country (KY, TX, NM), not repeatable nationwide
  - Primarily working through local subcontractors or reselling someone else's service
  - IBM has yet to master the ownership of E-rate Internet Access assets

IBMH0025459

However, it is important that we increase our focus on Internet Access

- **Priority one E-rate funding for net-new IBM revenue that is an annuity**
- **Only funding category that is growing in size – Year 6 funding requests:**
  - Telecommunications down 7%
  - Internet Access up 6%
  - Internal Connections down 24%
- **Very fragmented competition**
  - In ten target states, 62 different Service Providers service the top 100 revenue generating E rate Internet Access accounts
  - Of these top 100 districts, no single Service Provider covers more than nine (SBC 9, BellSouth 6, Sprint 5, Qwest 4, MCI WorldCom 4, Cox Cable 4, AT&T 1)
- **IBM can offer the customer a better solution than they are getting today**
  - We can offer *very competitive pricing*, often equal to or less than what they are paying today
  - The solution can provide *significantly greater bandwidth* than what they have today 90+% of schools are connected to the internet at T1 speeds or lower
  - *Wide availability* Our service can fit very well where traditional providers have limited offerings (e g 56Kbps connection is all that is currently available to some of our customers)
  - IBM would be a *single point of contact* for Internal Connections and Internet Access
  - *Improved customer service* versus traditional telco providers


IBM
To enable this solution, we are developing new partnerships and solution models for Internet Access
• Developing new partnerships to increase our technical options and coverage
ƒ Statisys, Inc
• Fixed broadband wireless network service provider
• Nationwide capabilities and coverage
• Will own the wireless networks, as required by E rate
• Strong political ties through their Chairman, Governor John H Sununu
ƒ Exploring others, including Sprint, Hughes Network Services, local fiber providers
• Developing focused target customer profiles and conducting target analysis
ƒ Weak LEC/Carrier coverage
ƒ Appropriate geography/topology
ƒ Existing customer relationship
ƒ Acceptable procurement vehicle
ƒ Leveraging public data available on the SLD Website to identify potential customers
• Updated Engagement Portfolio to be added to the Public Sector Knowledge Café, including a solution overview guide, marketing presentations, partner information, key contact lists, etc.

Action Items for All . . .

- In-depth training on Internet Access and E-rate Year 7 (session to be scheduled for June)
- Work to restore client confidence
  - ƒ Understand the actions we've taken to clarify and remedy any areas of SLD concern
  - ƒ Continue to point to IBM success stories in talking to clients
- Be prepared to respond to RFPs
- Build IBM capabilities into State Contracts
- Utilize Public Sector Knowledge Café to access Engagement Portfolio for Internet Access Offering*
- ***Get your head up . . . or you're gonna run into a wall!***

Details in ITS Public Sector Newsletter at
http //w3
1 ibm com/industries/public/pubmain nsf/33c1d438a8a1bcc9852567a800688f1a/9b018bfcbcdfc83e85256d21004cf14a?OpenDocument&ExpandSection=1&Table Row=6 1 2 6 0#6 1

IBMH0025462

Contacts

Region	Assigned Executive	Assigned Coverage
National	Charles Gentry Charles Gentry/Austin/IBM 512 658 6836	National Education Executive
ITS National Public Sector Practice	Toby Ford Toby Ford/Tempe/IBM 520 653 3191	Principal (with responsibility for the Education industry)
Northeast	Sue Gabrielsen SUSAN GABRIELSEN/New York/IBM 212 746 3537	Education (and Government Sector Executive
Central	Betty Rottmann Betty L Rottmann/S Louis/IBM 314 469 4239	Education (and Government) Sector Executive
South	Angela Brown Angela Brown/Bethesda/IBM 304 803 6893	Education Industry
West	Lynne Nicholson Lynne Nicholson/Albuquerque/IBM 505 288 2886	Education Sector Executive
	Mike Pratt Michael Pratt/Houston/IBM 713 949 2116	Western Region E ate Specialist

IBMH0025463

TAB 47

NEC

FACSIMILE COVER SHEET

Kenneth Morrison
Project Director
NEC Business Network Solutions, Inc.
@ Jasper County School District
212 N. Jacob Smart Blvd.
Ridgeland, SC 29936
Telephone: (843) 726-9916
Facsimile: (843) 726-9922
Email kmorrison@bns.nec.com

DATE: 2-13-01

TO: JOHN COLVIN Bob Emery

FAX:

SUBJECT: J. GREEN EMAIL TO DUNCAN

THIS IS PAGE 1 OF 3 PAGES

CONFIDENTIALITY NOTICE

THIS TRANSMISSION IS DIRECTED SOLELY TO THE ATTENTION OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED. THIS COMMUNICATION IS CONFIDENTIAL AND MAY BE EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE DESIGNATED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE TRANSMISSION TO THE DESIGNATED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS NOT AUTHORIZED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL TRANSMITTAL TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

VNCledxprt@aol.com wrote:

Hello Mike,

I hope that your wife, Gloria, is feeling much better. Did you get the flowers and fruit basket?

Sorry for trying to reach you like that, when you were worried sick about your wife. I wasn't able to reach anyone at the District either, but when I did reach them and they told me about Gloria, I just went ahead and put in the Year 4 471, for dollars to cover any new schools etc

I have made an excellent contact with the Department of Education of Puerto Rico. Banco Popular, a fairly large bank, with headquarters in Chicago, Ill., has an integration arm called the GM Group.

The GM Group, owned by Banco Popular, is working with several private and public schools both in Puerto Rico and the States. They are providing Internet and Telco services They would like very much to meet with you, if Gloria is feeling better, on Thursday, February 15, 2001 in the early afternoon

I will be with them, and have your back-up documentation for the Year 4, E-Rate application. The GM Group, would like to use Jasper County as their gateway into the Southeast, for two-way dual-language (Spanish-English) programs. They have developed a strong relationship with one of the best private University's in Puerto Rico to provide staff development and training for Spanish.

It might be extremely beneficial to Jasper County Schools and both the Spanish speaking students and the African American students to have a "sister" type relationship, school to school The GM Group and the Banco Popular have a Foundation, that could possibly provde the funds to take you, Gloria, the Superintendent and two or three District teachers to visit Puerto Rico (get out of the cold) and set up the relationship between the schools They, probably, would also fund the visit of one or two classes to Puerto

Rico, and visa versa so that the children would get to know one another, learn their languages and become better prepared for the future

Also, we want to work out a Banking training program, since Banco Popular has branches in many States and Cities.

I am sorry about RMI.NET and Howard Sherman, not coming through, but hopefully can make up for it with the services provided through the GM Group.

If you find it in yours and the District's best interests, GM Group would like to become your Internet and Telco provider, and they would have an on-site internet and web specialist as soon as a SPIN change could be approved. We will of course do whatever you want, just keep in mind that unless a strong relationship is in place with a telco/internet provider not too much can be done to create a beneficial relationship for the District.

I am especially pushing to have them invite you and Gloria down to their offices and facilities (at their expense of course) and show you Puerto Rico, in a relaxed, recovery way. There is nothing like being waited upon hand and foot while lying on the beach or at the Pool of one of the exclusive hotels There is even gambling at the Casinos, and don't worry, I have left you a lot of my money to win.

If it is all right with you and Gloria is feeling better, perhaps we can also take the two of you out to dinner on Thursday You name the place.

I look forward to hearing that Gloria is fine and everything is OK. Please call me, or give me an email regarding the visit on February 15, 2001.

Best wishes again to Gloria, and you take care of yourself too!

Judy Green

Michael B. Duncan <mduncan1@infoave.net>
Director
Jasper County School District
Operations & Related Services

NEC
NEC Business Network Solutions Inc.

JASPER COUNTY PUBLIC SCHOOL DISTRICT

TAB 48

NEC E-RATE CONTRACT

DISTRICT'S ATTACHMENT RIDER A

MEMORANDUM OF UNDERSTANDING

This document will serve as a memorandum of understanding between the Jasper County School District (customer) and NEC Business Network Solutions, Inc. (Prime Contractor).

It is the express desire of the District to honor ALL terms and conditions of the signed E-Rate Purchase Agreement. In light of the awards, it is the District's intent that NEC BNS provide the following items and services, utilizing District approved subcontractors as required (pursuant that the specified vendors meet NEC BNS qualifications and standards)

Upon mutual acceptance, agreement and signing of this document by authorized NEC BNS representatives and executed by the District. The District will complete and submit the FCC Forms 486 and 500 stating that services began July 1, 2000. The completed forms will be submitted to the SLD. NEC BNS will the be able to invoice the SLD for up to 80% of ALL approved funds. The balance (20%) will be approved, by the District for invoicing to the SLD upon completion of the infrastructure by NEC BNS, NO LATER than January 31, 2001

The District requests that NEC BNS review the following companies as possible subcontractors: Entre Solutions and Computer Network Engineering, Inc.

NEC BNS to provide equipment and services as approved and funded by the SLD as follows

CABLING:	**FRN 450081**	**$1,421,589.30**

Each classroom to be equipped as follows

- One 12 strand multi-mode fiber drop
- Two category 5 voice drops
- Two category 5 ATM drops
- Five category 5 Ethernet drops
- New Conduit

Administrative Stations

- Stations to receive voice, data and fiber drops as required

JASPER COUNTY PUBLIC SCHOOL DISTRICT

DATA COMMUNICATIONS: **FRN 451292** **$2,438,745.20**

- One 24 port Cisco 3524 series Ethernet 10/100 switch with Gigabit uplink ports for OC-3 fiber (maximum 150) for every one classroom
- One ATM workgroup switch for every four classrooms (maximum 45)
- Five Cisco 6006 Gigabit Backbone switches
- Thirty six Cisco 3508 Gigabit ATM Intermediary Backbone switches

PBX: **FRN 451293** **$2,721,335.29**

- Five PBX's for school and administrative locations
- Digital and analog trunk ports

SE RVER NETWORK **FRN 451294** **$2,772,365.10**

- One Tier I Servers (20 gig raid array hard drives) per classroom
  LS2400, one Pentium III processor 550 MHz/512K cache
  64MB ECC SDRAM Registered Stacked memory module (1x64MB DIMM)
  18 2GB Ultra2-Wide SCSI HDD (1")
  32 bit PCI 10/100Mbps Ethernet(Intel Pro100+ Server) Adapter
- One Tier II Servers (60 gig raid 5 array disk drives) for every eight classrooms
  120Mc2, one Pentium III processor 667MHz/256K cache, redundant power/cooling
  256MB ECC (1x256MB) 133MHz FSB registered SDRAM Memory upgrade kit
  18.0GB Wide Ultra160M SCSI, 10000 RPM HDD
  16MB cache
- Two Tier III Servers (100 gig raid 5 array disk drives) per location as required by server network
  120Mc2, one Pentium III processor 667MHz/256K cache, redundant power/cooling
  5U Rack-Mount Chassis
  Pentium III 667MHz/256 KB Processor Kit
  256MB ECC (1x256MB) 133MHz FSB registered SDRAM Memory upgrade kit
  18 0GB Wide Ultra160M SCSI, 10000 RPM HDD

Each Server to be at current technology levels with direct ATM and Gigabit NIC cards

JASPER COUNTY PUBLIC SCHOOL DISTRICT

SERVICE – Recurring (District Service)	FRN 45132	$ 194,472.91
TOTAL USAC FUNDING COMMITMENT		$ 9,548,507.80

NEC BNS has agreed to provide "in-kind donations" of non E-rate qualified equipment and services based on current pricing not to exceed the values delineated below

JASPER COUNTY PUBLIC SCHOOL DISTRICT

NEC BNS has agreed to provide "in-kind donations" of non E-rate qualified equipment and services based on current pricing not to exceed the values delineated below

Non Qualified Equipment and Services

Electrical Upgrades

University Training for Teachers

Climate Control Systems at MDF's

Alterations to internal existing structure to create
Network Operations Centers

Four (4) color network copiers
(collate, staple and paper feed up to 14"x17"

NABSE Bonus Package - One per classroom
- 33" Monitors, mounted to walls or ceiling
- Pan-tilt-zoom cameras
- Video Clients for PC's
- Color ink jet printers

PBX Bonus Package
- Dterm Series E 32 Button Administrative telephones for Administrative positions as required.
- One Dterm DTP-1-2 Single Line Telephones for Classrooms and Administrative positions as required
- Five (5) Active Voice AD8 Voice Mail Systems
- Locked data box (wall mounted) 2' x 2'x 3' with rack mounts
- Data closets to be provided with locks and alarmed

Computers
400 – Personal Computers (approximately)
12 – Laptop Computers
100 – Teacher workstations (approximately)
150 – Mobile workstation (Stanley or Busch – mobile computer carts for teacher workstations)

PC configuration for student and teacher multimedia workstation as follows

CPU	Pentium® III 733 Mgz
L2 Cache	256K
Memory	128MB (128/0)
Floppy Drive	Yes
Hard Drive	15GB[3]
Controller	IDE' Ultra DMA 66
Graphic	Integrated 2D/3D AGP graphics 4MB Display Cache
Audio	16-bit AC97 compliant stereo audio
Int. Networking	3Com® 10/100 Ethernet
Chassis	Convertible
CD-ROM	40X Max Variable Speed[6]
Op Sys	Windows 98

NECBNS CON
06374

JASPER COUNTY PUBLIC SCHOOL DISTRICT

TOTAL NEC BNS BONUS PACKAGE $3,050,000

- This is an estimated value based on NEC BNS current pricing and is not subject to change, modification or substitution went without advanced written consent of both parties Prior to commencement of any work, a Scope of Work (SOW) will be agreed upon by both parties which will detail equipment itemization and functionality.

All of the above items are subject to verification of quantities and specifications to insure that the project does not exceed $ 9,548,507 90 as approved by the SLD and are in compliance with the terms and conditions of the E-Rate Program Our signatures indicate that we accept the terms and conditions of the MOU, subject to further clarifications within the limits of the SLD funding.

District	NEC BNS
By Dr. William Singleton (Print Name)	By _____ (Print Name)
William Singleton (Signature)	_____ (Signature)
Title Superintendent	Title _____
Date October 10, 2000	Date _____

TAB 49

From: "George_Marchelos"@vnci.net
Sent: Friday, January 07, 2000 5:04 PM
To: Colvin, John
Subject: E-mail Board Report to Jasper County

Excel 2.x Chart

---------- Forwarded by George Marchelos/VNCI on 01/07/2000 08:03 PM ----------

Judy Green
01/07/2000 10:05 AM

To: George Marchelos/VNCI@OCOM
cc:
Subject: E-mail Board Report to Jasper County

George,
atteched is excel summary for Board for Jasper County. Please print it out and fax to Mike Duncan VERY VERY urgent!!

(See attached file: Jasper County Bid Summary and Board Presentation of Information General.xls)

This is the first page, I'll send you next page after a few minutes.
CALL me if you have any questions!! DO NOT just forward the e-mail!!!
Judy

...PER COUNTY BID RESPONSE ... SUMM... Y YEAR ONE ... B... ENDOR

Vendor	Equipment and/or Services Requested	Item Quantity	Total Bid	Total Cost to District*	Bonus Items to District	Bonus Items $(dollar) Value to District	Educational Value and Expectations
NEC	Fiber Optic, Voice, Data, and Video Wiring of classrooms	250	$1,400,000.00	$140,000.00	Electrical Upgrade	$600,000.00	Preparing classrooms and schools with wiring infrastructure for voice, data, video and internet for next 20 (plus) years. The electrical will save District $ from general fund, to use elsewhere for improving student achievement.
					Teacher/staff training from University	$65,000.00	Teacher training to improve methodology and content delivery thus improve student achievement
NEC	All Servers	181	$2,261,301.00	$226,130.00	Per classroom: 2-student computers, 1-teacher station; 1-33" monitor; 1 inkjet color printer		
	Includes extended five year manufacturer's warranty and full technical training.				Total computer bonus=additonal 625 computers for District and students. Training center for parents and community	$906,471.00	Giving students equity with equipment and assist teachers in using new tools to improve student test scores and achievement; provide community with training and retraining facility for improved skills and work opportunities.
NEC	Routers	8	$276,577.00	$27,657.70			
NEC	Gigabit Ethernet Cisco Switches 5509	5	$451,102.00	$45,102.00			
NEC	ATM Switches 5500	5	$940,866.00	$94,086.60			
NEC	Cisco Ethernet Workgroup Switches 3500	80	$657,000.00	$65,700.00			
NEC	ATM Workgroup Switches Access NG	35	$820,195.00	$82,019.50	Color Printer Copier, Xerox or equivalent; staff/teacher training w/ University	$95,846.00	Saving District $; additional training and support for teachers/staff to improve student achievement and raise test scoreds
NE	PBX with Audio/Video Intercom &a Video Conferencing for Distance Learning	5	$2,449,777.00	$244,977.70	Voice mail/teachers/ staff; phones; homework hotline; video intercom &video conferenc.for distance learn; design & engineering	$1,179,112.00	Improved communication with parents and community thru improved phone system and ability to leave direct messages for and talk immediately with teachers. Guarantee that data network will be exactly what District needs for present and future.
NE	Nextel Wireless Service for 2-way radio and cellular, paging	250	$450,000.00	$45,000.00	250 Telephone Handsets	$62,500.00	
NE	On-site Service	three	$450,000.00	$45,000.00			On-site service and maintenance for all equip. and technical training
NE	TOTAL FROM BID		$10,156,818.00	$1,015,673.50		$2,908,929.00	

NEOGENS CON 06377

TAB 50

From: "George_Marchelos"@vnci.net
Sent: Friday, January 07, 2000 5:04 PM
To: Colvin, John
Subject: Complete Board Information Forms

Lotus Manuscript 1.0

Excel 2.x Chart

Excel 2.x Chart

---------- Forwarded by George Marchelos/VNCI on 01/07/2000 08:03 PM ----------

Judy Green
01/07/2000 10:41 AM

To: George Marchelos/VNCI@OCOM
cc:
Subject: Complete Board Information Forms

George,

Here are the complete Board Information forms. Except for the Entre Summary.

Judy(See attached file: JASPER BOARD ACTION ITEM.doc)(See attached file: Jasper County Bid Summary and Board Presentation of Information General.xls)(See attached file: Jasper County Bid Summary and Board Presentation of Information RMI.xls)

BOARD ACTION ITEM:
E-RATE

Pursuant to the RFP for public bidding for E-Rate it is requested that the Board make Awards Contingent on E-Rate funding of 100% by the SLD (Schools and Libraries Division) of the Districts approved subsidy discount of 90%.

The RFP was posted on the SLD web site for the 28 days required by the SLD, and legal notice was placed into the newspapers by the District, announcing the bid, the mandatory pre-bidder's meeting was held, and the bids were opened publicly on January 4th, 2000.

We received bids from Entre and NEC. Attached are the summaries of the bids from the companies.

It is our recommendation, upon careful review of the submitted dollars, that NEC should receive the award for ALL items, as their response was the lowest.

Entre, upon qualifying, will become one of NEC's subcontractor's in the completion of this project.

The District will submit the E-Rate application for subsidy discounts to the SLD pursuant to this authorization of the Board for the following contracts and contract reference numbers:

Contract Number:	Cabling, Wiring
Contract Number:	Data
Contract Number:	PBX, Intercom
Contract Number:	Service
Contract Number:	Wireless Service
Contract Number:	Servers
Contract Number:	Local, Long Distance Service and Private line T-1
Contract Number:	Internet Access

We further request that the Board accept the "in-kind" provided by NEC, contingent on full E-Rate funding approval by the SLD, and at such time that the District is notified of said approvals.

Respectfully Submitted:

JAS } COUNTY BID RESPONSE SUMMAR EAR ONE BY V OR

Vendor	Equipment and/or Services Requested	Item Quantity	Total Bid	Total Cost to District*	Bonus Items to District	Bonus Items $(dollar) Value to District	Educational Value and Expectations
NEC	Fiber Optic, Voice, Data, and Video Wiring of classrooms	250	$1,400,000.00	$140,000.00	Electrical Upgrade	$600,000.00	Preparing classrooms and schools with wiring infrastructure for voice, data, video and internet for next 20 (plus) years. The electrical will save District $ from general fund, to use elsewhere for improving student achievement.
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NEC	ATM Switches 5500	5	$940,866.00	$94,086.60			
NEC	Cisco Ethernet Workgroup Switches 3500	80	$657,000.00	$65,700.00			
NEC	ATM Workgroup Switches Access NG	35	$820,195.00	$82,019.50	Color Printer Copier, Xerox or equivalent; staff/teacher training w/ University	$95,846.00	Saving District $; additional training and support for teachers/staff to improve student achievement and raise test scoreds
NE	PBX with Audio/Video Intercom &n Video Conferencing for Distance Learning	5	$2,582,346.00	$258,234.60	Voice mail teachers/ staff; phones; homework hotline; video intercom &video conferenc.for distance learn; design & engineering	$1,179,112.00	Improved communication with parents and community thru improved phone system and ability to leave direct messages for and talk immediately with teachers. Guarantee that data network will be exactly what District needs for present and future.
NE	Nextel Wireless Service for 2-way radio and cellular, paging	250	$450,000.00	$45,000.00	250 Telephone Handsets	$62,500.00	
NE	On-site Service	three	$450,000.00	$45,000.00			On site service and maintenance for all equip. and technical training
NE	TOTAL FROM BID		$10,289,387.00	$1,028,930.40		$2,908,929.00	

NECBNS CON 0638

Vendor	Equipment and/or Services Requested	Item Quantity	Total Bid	Total Cost to District*	Bonus Items to District	Bonus Items $(dollar) Value to District	Educational Value and Expectations
NEC/RMI	Local and Long Distance Telephone Service with 800 numbers for parent call in	9	$175,000.00	$17,500.00	Training for teachers/staff and community, dial up modems for free dial-up community and parent access	$35,000.00	Access to Internet and schools from home for students and staff at no charge
NEC/RMI	Internet w/installation and equipment		$90,935.00	$9,093.50	Training for teachers/staff and community, dial up modems for free dial-up community and parent access	$45,000.00	Access to Internet and schools from home for students and staff at no charge
NEC/RMI	Service and equipment		$85,000.00	$8,500.00			On-site service and equipment for ALL telephone and Internet related problems.
NEC/RMI	Private Line T-1 frm schools to District	15	$475,000.00	$47,500.00			
RMI	TOTAL		$825,935.00	$82,593.50		$80,000.00	

*** District's 10%; however vendors will provide bid items using only funds from SLD. Thus actual cost to District will be "0".**

NEGBNS CON 0630282

TAB 53

From: "George_Marchelos"@vnci.net
Sent: Friday, January 07, 2000 5:04 PM
To: Colvin, John
Subject: Last Page of Board Summary

Excel 2.x Chart

---------- Forwarded by George Marchelos/VNCI on 01/07/2000
)8:04 PM ----------

ludy Green
)1/07/2000 10:59 AM

To: George Marchelos/VNCI@OCOM
:c:
Subject: Last Page of Board Summary

George,

Here is the Entre bid last page that MUST GET to DUNCAN TODAY!!!!

udy(See attached file: Jasper County Bid Summary Entre Information
General.xls)

NECBNS CON
06383

JAS [illegible] COUNTY BID RESPONSE SUMMAR[illegible] EAR ONE BY V[illegible] OR ENTRE

Vendor	Equipment and/or Services Requested	Item Quantity	Total Bid	Total Cost to District*	Bonus Items to District	Bonus Items $(dollar) Value to District	Educational Value and Expectations
ENTRE	Fiber Optic, Voice, Data, and Video Wiring of classrooms	150	$980,000.00	$98,000.00			
ENTRE	All Servers	71	$1,735,123.84	$173,512.38			
	Includes extended five year manufacturer's warranty and full technical training						
ENTRE	Routers		no bid	no bid			
ENTRE	Gigabit Ethernet Nortel Switches 5509	5	$50,085.00	$5,085.00			
ENTRE	ATM Switches 5500	no bid					
ENTRE	Cisco Ethernet Workgroup Switches 3500	45	$190,561.00	$19,561.00			
ENTRE	ATM Workgroup Switches Access NG	no bid					
ENTRE	PBX with Audio/Video Intercom &n Video Conferencing for Distance Learning	NO Bid					
ENTRE	Nextel	NO Bid					
ENTRE	On-site Service		$756,000.00	$75,600.00			On site service and maintenance for all equip. and technical training
ENTRE	TOTAL FROM BID		$3,711,769.84	$371,758.38		$0.00	

NECBNS CON 06384

TAB 55

VNCI

Robert Emery
Telephone: (603) 334-6741
Facsimile: (603) 334-6742
Video: (603) 431-4748 Ext. 6741
E-mail: Robert_Emery@vnci.net

ORIGINATE TO: Amy Williams
COPY TO: Sue Lawrence
B. Holman
J. Colvin
R. Bliss
J. LAMOSA
J. Houston

December 13, 1999

NEC BNS
Attention: Mr. William J. Holman
Vice President Sales
2425 Gateway Drive
Suite 200
Irving, TX 75063

Please find enclosed the executed copy of our agreement. We look forward to working with NEC.

Sincerely,

Robert Emery
Vice President Administration & Finance

Enclosure

Video Network Communications, Inc.
50 International Drive
Portsmouth, NH 03801-2862
Tel. 603 334 6700 Fax. 603 334 6701

TEAMING AGREEMENT

THIS AGREEMENT entered into this 9th day of December, 1999, by and between Video Network Communications, Inc., a Delaware corporation, with its principal offices at 50 International Drive, Portsmouth, New Hampshire, 03801, (hereinafter referred to as "VNCI"), and NEC Business Network Solutions, Inc. (NEC), a Delaware corporation, with its principal place of business at 2425 Gateway Drive, Irving, Texas 75063 (hereinafter referred to as "NEC" and VNCI and NEC jointly referred to as the "Parties.")

WITNESSETH:

WHEREAS, the Parties acknowledge mutual interest in obtaining awards (hereinafter referred to as "Contracts") pursuant to Requests for Proposals (hereinafter referred to as "RFPs") for the purchase and licensing of telecommunications, data, wiring and PBX equipment and related hardware and software peripherals, as well as continuous maintenance and service contracts; and

WHEREAS, the Parties further acknowledge that VNCI will undertake initiatives (hereinafter the "Work") on behalf of NEC and VNCI. Work shall include, but is not limited to, marketing activities to gain new customers; sales calls on school districts; development of bid specifications to meet school district requirements, the filing and follow up of critical forms with the Schools and Library Division (SLD) to ensure proper payment, and ongoing support to the school districts during a multi-year contract (such new customers including school districts hereinafter collectively referred to as the "Clients").

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, it is hereby agreed as follows:

1. Relationship

   a. During the term of this Agreement the parties hereto shall be independent contractors. The Parties shall use their respective best efforts to secure the award of a Contract and to assist the other party by providing information and expertise for developing a response to a RFP or other proposal to the Client.

   b. In the event NEC is successful in its proposal and obtains the Contract for the Work, the parties shall, unless otherwise specifically required by the Client, and subject to approval of the Client and the requirement of the Contract, enter into good faith negotiations for a subcontract under which VNCI shall perform those areas of work pertaining to VNCI in the RFP to Client.

      Any such subcontract shall be subject to applicable laws, regulations, and mandatory terms of the Client, mutual agreement on pricing and other mutually acceptable subcontract terms and conditions and statement of work provided, however, that VNCI shall be obligated to honor all pricing and comply with all terms and conditions which it represents to NEC is acceptable and upon which NEC relies in its proposal to Client. NEC will exert all reasonable efforts to secure the Client's approval of the NEC/VNCI subcontract.

   c. Nothing in this Agreement shall be deemed to constitute, create, give effect to, or otherwise recognize a joint venture, partnership, or formal business entity of any kind.
      Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the parties, except, as may be provided for in any resultant subcontract agreed to between parties. The cooperation of the parties is for the purpose of complementing their respective abilities so that the Client may best accomplish the Work.

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2. Proposal Preparation

a. The Parties shall prepare and submit to the Client, a proposal in accordance with the terms and conditions of the RFP and any other documents, integrating therein the information and data provided by VNCI and identifying therein the contribution of VNCI to the proposal. NEC shall consult with VNCI on decisions affecting the VNCI content of the proposal and shall identify VNCI as a potential contractor under the proposal, but the ultimate responsibility for the content of the proposal to the Client shall rest with NEC.

b. VNCI shall provide appropriate highly qualified personnel for, and use its best efforts to support, the preparation of the proposal to be submitted to the Client.

c. Each party shall bear all of its own expenses incurred in connection with the preparation of the proposal under this Paragraph 2. Neither party has the authority to act for or on behalf of the other party unless specifically agreed in writing.

3. Contract Negotiations and Other Pre-Award activities

a. VNCI agrees to assist NEC after preparation of the proposal in providing the Client with any additional information and data reasonably required to assist the Client in its evaluation of the proposal, and shall participate with NEC as reasonably required by NEC, in any negotiations, presentations, additional submittals, or the like deemed necessary or advantageous by both parties in securing the award of the Contract for the Work. Each party hereto shall be solely responsible for the accuracy and completeness of any and all pricing or other data, materials, certifications or representations prepared by it and submitted to the Client in connection with the proposal, the Contract or the proposed NEC/VNCI subcontract, and each party agrees to release, defend, indemnify and hold the other harmless against any and all liability or loss which may arise in connection with such data, materials, certifications or representations.

b. Each party shall bear all of its own costs, expenses, risks and liabilities in performance of its obligations under this Paragraph 3.

4. Fee

a. NEC agrees to pay VNCI the following fee for Contracts awarded to NEC, as a result of the Work undertaken by VNCI. The fee will be applicable to Contracts that result from VNCI-identified opportunities and which VNCI obtains on behalf of NEC and VNCI. In the event the Contract with the Client is a multi-year contract, payment of fees shall apply to the total Contract amount and payments will be made on a pro-rata annual basis based on annual revenues paid by the Client to NEC. Existing NEC customers, such as those with current service contracts, are specifically excluded.

b. NEC shall pay to VNCI a fee equal to ten percent (10%) of the gross dollar value of the Contract entered into between NEC and the Client, excluding the gross dollar value of VNCI's products and services, if included in the Contract, and any sales taxes and other value added goods and services as mutually agreed to between VNCI and NEC at the time of preparation of the RFP.

c. The fee shall be due owing and payable only upon receipt of payment to NEC by the Client and shall be due to VNCI within 30 days of receipt of such payment from Client. NEC shall have the right to deduct from future fee payments any amounts that have been reimbursed to Client as a result of any termination of a Contract.

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5. Proprietary Information

a. NEC and VNCI, to the extent of their respective rights and abilities to do so, shall exchange such technical information and data as are reasonably required of each to perform its part of this join effort. Each party hereto agrees to keep in confidence and to use the same degree of care as it uses with respect to its own proprietary data to prevent the disclosure to third parties of all technical information and confidential business information (hereinafter called "Data") received from the other party under this Agreement, if such Data is disclosed in writing and designated by an appropriate stamp or legend by the disclosing party to be of a proprietary nature. Such restriction shall not apply, however, to the extent such Data: (a) was in the public domain at the time of disclosure or later comes into the public domain; or (b) was known to the receiving party at the time of disclosure; or (c) is authorized for disclosure by the written approval of the transmitting party, or (d) is not unlawfully derived by the receiving party from a source other than the disclosing party without restriction as to the use or disclosure of the Data; or (e) is independently developed by the receiving party without recourse to any proprietary data provided under this Agreement. The foregoing restrictions shall cease to apply upon the expiration of three (3) years from the date of this Agreement. The provisions of this paragraph shall not limit either party's right to use in accordance with the terms under which it is received, any information disclosed by a third party who the receiving party does not know or have reason to know received that information directly or indirectly from the other party hereto under an obligation prohibiting such disclosure.

b. Data qualifying as proprietary in accordance with Paragraph 5.a above may be disclosed in confidence to appropriate representatives of the Client for proposal evaluation purposes only and may be used only in connection with the submission of proposals resulting from this Agreement. Upon execution of a subcontract to VNCI as a result of any such proposal, the terms of that subcontract shall govern with respect to subsequent use or disclosure of Data.

c. Upon termination of this Agreement, Data shall be promptly returned to the owner thereof upon request of the owner of said Data. All Data furnished hereunder may be destroyed by the custodian of such Data sixty (60) days following termination of this Agreement, if the return of such Data was not requested prior to such destruction. The recipient of any Data under this Agreement may retain, one copy of Data transmitted pursuant to this Agreement solely for purposes of determining compliance with this Paragraph 5. It is agreed that no license to any patents of either party is granted by this Agreement or by any discussions or confidential business data and/or proprietary data or information supplied hereunder.

d. Each party hereto shall designate in writing one or more individuals within its organization as the only person(s) authorized to receive Data exchanged between parties. Any proposal submitted hereunder and the pages relating thereto which contain Data shall bear a restrictive legend acceptable to both parties and the Client.

e. Inventions made by employees of either party shall be owned by the party employing the inventor(s). Ownership of inventions made jointly by employees of the parties shall be mutually agreed upon by the parties to the agreement.

6. Termination of Agreement

This Agreement shall automatically expire upon the happening of any of the following events, whichever shall first occur:.

a. By mutual agreement between the parties.

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b. By thirty (30) days written notice from one party to the other party stating its intent to terminate the Agreement; provided, however, that if a proposal has been submitted and is under consideration by a Client upon the expiration of such period, this Agreement shall continue in force for the limited purpose of fulfilling the terms of the Contract.

The parties hereto agree that the provisions of Paragraph 5 hereof shall survive any termination of this Agreement in accordance with the terms set forth therein.

7. Miscellaneous

a. Any publicity or advertising in connection with this Agreement or any resulting Contract to NEC shall not be released by either party if such release mentions the name of the other party, without the prior written consent of that party. Neither party shall unreasonably withhold such consent.

b. Neither party shall be precluded from revealing the contents of this Agreement to the Client. The parties agree that governmental agencies may compel disclosure of this Agreement.

c. This Agreement shall be interpreted under the Laws of the State of Delaware.

d. This Agreement contains the entire agreement between the parties and supersedes any prior or contemporaneous oral or written agreements, commitments, understandings or communications with respect to the subject matter hereof.

e. Neither party may assign its rights or responsibilities under this Agreement without the prior written consent of the other. Notwithstanding such consent, however, the assigning party shall remain responsible for the performance of the applicable terms of this Agreement by its assignee, unless otherwise agreed at the time of such assignment. The parties agree to look solely to each other with respect to performance of this Agreement.

f. No subsequent modification of this Agreement shall be binding upon the parties unless reduced to writing and signed by an authorized officer of the part sought to by bound thereby.

g. The failure of either party to enforce at any time any of the provisions of this Agreement, or to requite at any time performance by the other party of any of the provisions hereof, shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any party thereof, or the right of either party thereafter to enforce each and every provision.

h. In no event shall either party have any obligation or liability to the other nor shall any remedy be available to whether party, except as expressly set forth herein. Limitations on liability, indemnities and releases set forth in this Agreement shall apply even in the event of fault, negligence, or strict liability on the part of the party indemnified, released, or whose liability is limited.

i. The scope of this Agreement is confined solely to proposal preparation activities and the provisions hereof shall have no application or effect whatsoever to work which may be performed by NEC under any other agreement with Client, or by NEC under any other agreement with VNCI. In this connection, it is specifically understood with respect to such work that the terms of such other agreement shall government and solely apply.

j. Neither party shall be liable to the other party for any indirect, incidental, special or consequential damages, however caused, whether as a consequence of negligence or otherwise.

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Nothing in this Agreement shall preclude either party hereto from soliciting or accepting any contract from any third party for any other project or, to the extent not inconsistent with this Agreement, for the Work.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year first above written.

NEC BUSINESS NETWORK SOLUTIONS, INC.

By: _____

Title: Vice President Sales

VIDEO NETWORK COMMUNICATIONS, INC.

By: _____

Title: _____

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(3)

TAB 56

Bliss, Bob

From: Holman, Bill
Sent: Friday, November 19, 1999 5:23 PM
To: Leonard, Susan; Gormican, Kevin
Cc: Jamison, Mark; Colvin, John; Bliss, Bob
Subject: RE: VNCI and Judy Green

VNCI is paid within 30 days of what? We will not pay unless they have completed the work and we are paid. Who would be the "political project manager"? Judy?? We would only pay subcontract dollars and marketing fees to the company.

Most of this is OK with me. However, I think we must obtain at least a 30% GP with the fee to VNCI set a 10%. If our margin goes down to get the deal, then their fee goes down as well. I also would like to know what margin they expect to obtain on their equipment. Please forward the sample agreement to me for review. Call Teresa, she can get it to me in Colorado. The issue is that we would have all risk of delays and non performance as the prime, yet VNCI gets margin plus 10%. We have to tie them to the risk as well. for example, project delays and other issues will not be cause for VNCI or any other subs to alter their price to BNS.

Booking credit goes to the sales team selling the product as per the comp plan. Splits are OK between NI and other branch sales. Revenue goes to the operations and/or engineering group doing the install. Cost of sales for engineers and other support is as per standard accounting methods; that is, each group bears the cost of support personnel against the booking and revenue generated.

"Free" items must be costed into the jobs. Marketing package can identify any free items.

Those are my comments.

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the work
10. VCNI is paid within 30 days
11. Work commences, July 1, 2000

The Relationship Structure
1. Since this work must start IMMEDIATELY because it is all due to the SLD by January 17, they would like to work with Sohail out of Redwood City. He would like to sign up to do the work as well.
2. We need to have an NEC representative call on the accounts with Judy and VNCI. This must happen during the week of November 29!!
3. RFPs would have to be answered from central location (makes sense) with a December 18 return date!!
4. The VNCI/NEC team goes back on the road January 3-17 to attend the Board meetings at the various districts
5. January 19 the forms due to the SLD from the School Districts

Opportunity at the onset:
1. West Fresno: $4.1 m for only 2 schools, so that's a technology expenditure of $4k per student. $800k in the PBX. $3.1 m for data, voice and video. Will need onsite technician for this and all deals. This is a 5-year contract, so expect $4m to go up every year after.
2. Grant VanNuys (LAUSD): $32m for 24 schools, so that's $1k per student the first year. Also a 5-year contract, so expect that number every year for the length of the contract. Estimate $8m for PBX, $3.1 wiring, $8.1 for data.
3. Highland Park, MI: $3.1m (expect $10m next year). $800k PBX, $900K wire, $1.1 m data. 6 buildings, 300 classrooms.

Other Requirements:

1. Demo Kit to take on the road with a 4' rack containing a 27" monitor, PBX with 2 phones, VCR and video equipment with tilt zoom cameras from VNCI. The Board of Education will receive a demo of 4 video sources and still make a phone call.

Marketing Agreement:
1. Pricing packages to the customer will include "free items" that capture the attention of the K-12 market. Therefore, we are able to specify to the VNCI partners what % margin we would like from each deal. From there, we develop the final price to the customer. Within that final amount, we need to add a marketing fee to pay VNCI. The requested amount is 15%. We also have the option of selecting a Political Project Manager for an additional 10% of the contract. This is valuable because she would ensure the right documentation is filed and process is followed. The contract lasts for 1 year.

Recommendation from Sue:
Based on the information received from Sohail and past experiences, I would recommend that we move forward on this deal immediately. The following would have to be established:
-NEC personnel to support (Sohail, NEC national acct rep, NEC RFP center)
-% of bookings and revenue to installing branch
-% to go to pay for Sohail
-Pay no more than 12% marketing fee to VNCI
-I think the political project management piece will be a fallout of the above 12% because in the end they would like to be paid.

I can have Judy fax this agreement to the appropriate place once we determine the true owner. Looking forward

to your immediate response. Sue

Relationship Structure:

Sue Leonard, Public Sector Industry Manager
(925) 543-5122
(925) 543-5151, fax
susan.leonard@bns.nec.com

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TAB 57

(10)

From: Holman, Bill
Sent: Wednesday, December 29, 1999 3:43 PM
To: Colvin, John
Subject: RE: Covert and Mt Clemens E-Rate Bids

Thanks!

B.

-----Original Message-----
From: Colvin, John
Sent: Tuesday, December 28, 1999 5:30 PM
To: Holman, Bill
Cc: McNulty, Gerard
Subject: RE: Covert and Mt Clemens E-Rate Bids

Bill,

Unfortunately, Judy Green who owns the bid process and seems to be the brains behind the VNCI operation was out of the country and un-reachable until today. As such, we relied on George who gave us some erroneous information. Gerard, Peggy, Chuck and I have discussed this matter and tried to clear up some of the loose ends on the Covert bid. At this point we are finished with the bid but I do not believe that we feel like we have mastered the process. Gerard will be speaking to Judy Greer tomorrow after the bid opening to review our bid with her and to clarify just home we should respond to future bids.

John

-----Original Message-----
From: Holman, Bill
Sent: Tuesday, December 28, 1999 2:18 PM
To: Bratcher, Peggy; Colvin, John; McNulty, Gerard; Qasim, Sohail; Leonard, Susan; Walden, Kristy
Cc: Ferguson, Chuck; Masood, Zahid
Subject: RE: Covert and Mt Clemens E-Rate Bids

Sounds like we need to get our act together with VNCI. This kind of miscommunication is death.

John, I think you should speak with Judy and perhaps her superiors at VNCI and make sure we are all on the same page!

B.

-----Original Message-----
From: Bratcher, Peggy
Sent: Tuesday, December 28, 1999 11:31 AM
To: Colvin, John; McNulty, Gerard; Qasim, Sohail; Leonard, Susan; Walden, Kristy
Cc: Ferguson, Chuck; Holman, Bill
Subject: Covert and Mt Clemens E-Rate Bids

Chuck Ferguson just received a call from Sohail and Judy Green indicating that if NEC wants to bid the jobs in Michigan, we need to bid all three sections of the RFPs. We are mailing one of those jobs today.

Two weeks ago, Kristy attended the bidders conference for Covert and we were told that bidders could pursue sections A, B, or C alone or parts of C. Considering the time involved and the fact that sections A and C required subcontractor bids to NEC, Sales Management decided not to bid sections A and C. Today we have only original signed forms for section B, bid bond for section B and pricing for section B for the Covert bid. During a conference call yesterday, I was advised to type "NEC is not responding to Section A" on the first 12 pages of that section and "NEC is not responding to section C" on the first 12 pages of that section. We have no bid bonds, pricing, or subcontractor arrangements made to bid the other sections of Covert.

Sohail advised Chuck that VNCI is now pursuing a bid bond for Mount Clemans and we would be sub-

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NEC ATD-000799

contracting to VNCI on that job. Earlier, Gerard advised me that we would not be bidding that job. Mount Clemans is now due 1/05 and I need to know what section if any we are mailing. Kristy also informed me that Muskegon has already purchased their PBX, WAN and LAN equipment from GTE so there is virtually nothing left for NEC to bid on.

Thus far, the jobs that I have been advised that we are bidding are:
Covert mailing 12/28
Jasper mailing 1/03
Ecorse mailing 1/04
Muskegon mailing 1/05
Lee County mailing 1/06
North Chicago mailing 1/11

It appears that Judy Green, by being on vacation for the last 2 weeks, failed to convey some key information regarding these bids and that the sales team needs to have a strategy meeting with her. After that we need to have a conference call where the jobs to be bid and the sections thereof are decided. Each section of each bid requires a separate bid bond and they take a week to obtain. This means that I need to know the value of the Jasper and Ecorse bids today. Thank you for your prompt replies.

Peggy Bratcher
Manager Sales Operations
NEC BNS National Accounts
(972)582-6030 fax:(972)582-6025
peggy.bratcher@bns.nec.com

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NECBNS CON 04906

NEC ATD-000800

TAB 58

(9)

From: Holman, Bill
Sent: Wednesday, December 29, 1999 4:17 PM
Subject: RE: Covert and Mt Clemens E-Rate Bids

Thanks for the clarification. No, I don't that is a conflict of interest.

B.

-----Original Message-----
From: McNulty, Gerard
Sent: Wednesday, December 29, 1999 3:13 PM
To: Holman, Bill; Bratcher, Peggy; Colvin, John; Qasim, Sohail; Leonard, Susan; Walden, Kristy
Cc: Ferguson, Chuck; Masood, Zahid
Subject: RE: Covert and Mt Clemens E-Rate Bids

Bill,

I may have chose my words poorly. Judy certainly will have a heavy influence in the outcome of these projects but ultimately its the decision of the school district. Judy will however assist the district once they have made a decision in preparing form 470 applications to the school and libraries corporation. Hopefully that in itself is not considered a conflict of interest.

-----Original Message-----
From: Holman, Bill
Sent: Wednesday, December 29, 1999 12:49 PM
To: McNulty, Gerard; Bratcher, Peggy; Colvin, John; Qasim, Sohail; Leonard, Susan; Walden, Kristy
Cc: Ferguson, Chuck; Masood, Zahid
Subject: RE: Covert and Mt Clemens E-Rate Bids

Gerard, thanks for the detailed update. It sounds like we are moving in the right direction. It probably does not matter whether we are prime or sub, as long as we are not responsible for the performance of another vendor, including VNCI, unless we are absolutely comfortable that they can perform and agree to be bound by the terms and conditions of the prime contract as if they were prime.

What do you mean when you say "she", as in Judy Green, awarding the contract? Is this a mistatement on your part or are you saying that Judy is somehow involved in the decision process directly as opposed to a position of influence? Is there any potential conflict of interest here??

B.

-----Original Message-----
From: McNulty, Gerard
Sent: Tuesday, December 28, 1999 6:36 PM
To: Holman, Bill; Bratcher, Peggy; Colvin, John; Qasim, Sohail; Leonard, Susan; Walden, Kristy
Cc: Ferguson, Chuck; Masood, Zahid
Subject: RE: Covert and Mt Clemens E-Rate Bids

Bill and et all,

Unfortunately Judy Green was out of the country during all the different bidders conferences and preliminary exchange of instructions from VNCI. She returned only today and informed us of new information and expectations that were never relayed to us by George Marchelos who was acting on her behalf during her absence.

George has been helpful but he was under the impression that we did not have to bid the cable at Covert and instructed us to use our judgement and keep in mind that in all likelihood Julius Green engineering would bid the cable on their own. On this basis we initially choose to cherry pick only section B and prepared our response accordingly.

In my meeting with Judy this morning we learned that she needed a bid for the cable portion of the project as Julius Green was busy on three other projects and may not be able to prime the cable project. According to

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NECBNS CON 04891

NEC ATD-003475

Judy if they did not receive a cable bid they could not award this project including section B. I explained to her the difficulty this presented us in light of the bid being due tomorrow and she outlined how we could structure our response to section A and give her the flexibility to award the whole project to NEC. The net of the meeting was an agreement that we would charge the district $4,000 per classroom for all cabling requirements. There are 150 classrooms for a total cable value of $600,000. Based on our investigation of the site and conferring with our Chicago representatives this would result in a highly profitable piece of business for us. There are approximately two drops in each room with some minor electrical work associated with conduit placement and absolutely no trenching. It is a project for three schools but they share a contiguous property. Chicago estimates the work to cost us about $300,000.

With respect to the bid bond for section A Judy said she would waive the requirement for section A provided we make mention of the difficulty associated with getting bid bonds during the holidays. We also reviewed this with Glen Means today and visited with him regarding the project in advance of his signing the bid bond that we do have for section B.

With respect to Muskegon that was outside our control as VNCI appears to have lost their influence at that account and Judy would not be involved in the decision. Based on VNCI not being involved there appears to be no reason to participate.

Mt Clemans was a situation where our representative in Chicago Kristy Walden had to attend two bidders conferences on the same day in rural Michigan and was late to the second bidders conference due to a snow storm which delayed her about an hour. The district had a mandatory meeting for this project that we were late to which according to their policy prevents us from bidding as the prime however they have encouraged us to bid as a sub to either VNCI or Julius Green. VNCI is interested in having us bid as a sub and essentially do all the work for Mt. Clemans.

All other projects from my perspective should be on track. I have completed all the narrative responses for each section of the bid and they should almost be cookie cutter going forward with some slight customization for each district. We have attended bidders conferences at Jasper County, Ecorse, North Chicago, Dubois, Pittsburg,Ca, and Muskegon. We also plan on responding to Lee County which did not have a mandatory bidders conference.

As Peggy pointed out our biggest hurdle for Dallas is getting the valuations for these projects so we can request the appropriate bid bond. To that end Sohail and Chuck are trying to complete the pricing models for each project so we can have a per project total. We plan on having a conference call tomorrow to Finalize this piece of the process.

Bill, today definitely was stressful with Judy asking a great deal at the last minute (including my having to re-write several answers in the bid based on her new requests) but with her back in town the communication should be much better. She is very demanding but we seem to have found common ground and mutual interests regarding these projects. She has also committed to meet with me on the telephone Thursday following the opening of Covert to critique our response. I will keep you informed of our progress.

Please let me know if you have any specific questions or if there is additional information that I can provide you going forward.

Gerard

Original Message----
Sent: Tuesday, December 28, 1999 2:18 PM
To: Bratcher, Peggy; Colvin, John; McNulty, Gerard; Qasim, Sohail; Leonard, Susan; Walden, Kristy
Cc: Ferguson, Chuck; Masood, Zahid
Subject: RE: Covert and Mt Clemens E-Rate Bids

Sounds like we need to get our act together with VNCI. This kind of miscommunication is death.

John, I think you should speak with Judy and perhaps her superiors at VNCI and make sure we are all on the same page!

B.

----Original Message----
From: Bratcher, Peggy
Sent: Tuesday, December 28, 1999 11:31 AM
To: Colvin, John; McNulty, Gerard; Qasim, Sohail; Leonard, Susan; Walden, Kristy

CONFIDENTIAL
NECBNS CON 04892

NEC ATD-003476

Cc: Ferguson, Chuck; Holman, Bill
Subject: Covert and Mt Clemens E-Rate Bids

Chuck Ferguson just received a call from Sohail and Judy Green indicating that if NEC wants to bid the jobs in Michigan, we need to bid all three sections of the RFPs. We are mailing one of those jobs today.

Two weeks ago, Kristy attended the bidders conference for Covert and we were told that bidders could pursue sections A, B, or C alone or parts of C. Considering the time involved and the fact that sections A and C required subcontractor bids to NEC, Sales Management decided not to bid sections A and C. Today we have only original signed forms for section B, bid bond for section B and pricing for section B for the Covert bid. During a conference call yesterday, I was advised to type "NEC is not responding to Section A" on the first 12 pages of that section and "NEC is not responding to section C" on the first 12 pages of that section. We have no bid bonds, pricing, or subcontractor arrangements made to bid the other sections of Covert.

Sohail advised Chuck that VNCI is now pursuing a bid bond for Mount Clemans and we would be sub-contracting to VNCI on that job. Earlier, Gerard advised me that we would not be bidding that job. Mount Clemans is now due 1/05 and I need to know what section if any we are mailing. Kristy also informed me that Muskegon has already purchased their PBX, WAN and LAN equipment from GTE so there is virtually nothing left for NEC to bid on.

Thus far, the jobs that I have been advised that we are bidding are:
Covert mailing 12/28
Jasper mailing 1/03
Ecorse mailing 1/04
Muskegon mailing 1/05
Lee County mailing 1/06
North Chicago mailing 1/11

It appears that Judy Green, by being on vacation for the last 2 weeks, failed to convey some key information regarding these bids and that the sales team needs to have a strategy meeting with her. After that we need to have a conference call where the jobs to be bid and the sections thereof are decided. Each section of each bid requires a separate bid bond and they take a week to obtain. This means that I need to know the value of the Jasper and Ecorse bids today. Thank you for your prompt replies.

Peggy Bratcher
Manager Sales Operations
NEC BNS National Accounts
(972)582-6030 fax:(972)582-6025
peggy.bratcher@bns.nec.com

CONFIDENTIAL
NECBNS CON 04893

NEC ATD-003477

TAB 59

19

Howe, Dean

From	Ferguson Chuck
Sent	Friday January 14 2000 4 27 PM
To	Dean Howe McNulty Gerard
Subject	471 Form Spreadsheets for E Rate Projects
Importance	High

Dean and Gerard

Attached are three files Please also read these notes about them

HOMEWORK for 471 XLS This file contains three configurations of AVT for Homework Hotline (HWH) 16 port 24 port and 36 port These are the only three that we bid and most locations got the 24 port system Note that the 24 port system price matches the HWH price for Mt Clemens I ve given the other two configurations in case you need them for other locations I really didn t spend much time on this Should be easy to find one that is close to what you need for a particular school and change the MarkUp (Cell H1) to make it match Be careful of the Michigan schools they have to match between schools If they need to be the same size but two different prices I suggest you discount the one that should be lower

MICHIGAN for 471 XLS This is the IVS spreadsheets for all of the Michigan locations It is very important that they all have the same MarkUp so that if someone compares them they will find the same Unit Price (I continued that philosophy across all of the sites even outside Michigan) So I chose the configuration for Ecourse since it is priced the highest (based on the spreadsheets directly from the Proposal) and combined certain items so that no end user equipment or video equipment is identified as such in the bid If you look to the far right column of the sheet I listed in text what items were included Please note that items with Part Numbers of VC xxxxx are for VNCI equipment and were completely made up by me The SP xxxxx Part Numbers are based on Bogen Part Numbers but have speakers and control buttons combined into the price for the control boxes After all the part descriptions looked good and the prices corrected and matched I then used Goal Seek on Ecourse to arrive at a standard MarkUp for all projects (1 59 or so) Then I went to each of the Michigan projects and changed the quantities of items to match what I figured they should be for that site Note that I also took some liberty with the VNCI configuration for the smaller sites (the Part Numbers and Descriptions are changed and I think they make some sense) As long as we don t try to order from these we ll be OK If I had to make some other adjustments (add a Discount or change the Misc Material value) to get the job to add to the correct total I made a note of that in the cells below the cell containing the BID price for PBX for that job

Other IVS for 471 XLS This spreadsheet contains the non Michigan locations I used the same MarkUp and similar techniques to make these work out I don t want someone at SLC looking these over and discovering some problem

I will be available to assist you tomorrow if needed Please leave an Urgent Voice Mail for me or call my Cell at 214 695 0959 Gerard I have your Cell number programmed into mine

Homework_for-471.xls

Michigan_for-471.xls

Other IVS for 471 .xls

Good Luck

Chuck Ferguson
Director Sales Engineering
NEC BNS Inc
(972) 582 6026

NEC 003 003 1943

CONFIDENTIAL
NECBNS CON 05055

[redacted]

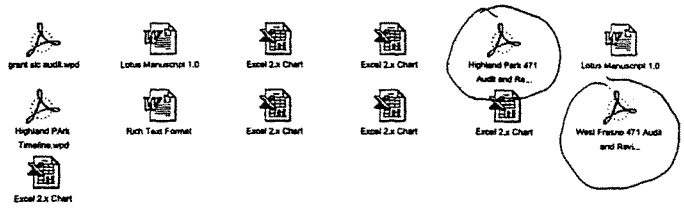
NEC ATD-000173

TAB 60

36

McNulty, Gerard

From: "judy_green"@vnci.net
Sent: Monday, May 15, 2000 10:51 AM
To: McNulty, Gerard
Cc: Colvin, John; whoiman@bns.nec.com
Subject: FCC Item 25 Review



Hello Gerard,

Ceria Travis just received their FCC Item 25 Review. This now makes three of the applicants who have received the Item 25: Lee County, Ecorse and Ceria M. Travis. For these, once the Item 25 is received and all is well, then funding approval follows usually within 2-3 weeks.

I fully expect the others to also receive the Item 25 Review. I am now really bogged down because these Item 25 Reviews require a tremendous amount of documentation from the districts as well as a fully detailed narrative.

The Districts that can not respond with a GOOD narrative DO NOT get funded! Case in point Ravenswood! Thus the narrative and other documentation is critical to the success of the applications.

The narratives must be detailed and provide information and back-up explanations of the printed District budget information. I can not stress the importance and the critical need to have the narrative be excellent. You are the only other person within our team that I would entrust with the following:

I am attaching the narratives I used for Highland Park and West Fresno last year. YOU need to re-write the narrative and change it somewhat, so that it looks and reads differently. WE CAN NOT submit the same narrative for each applicant. LEE County and Ecorse's narrative needs to look and sound completely different!! I am relying on you and your expertise!! We have also run out of time, because these FCC Item 25 Reviews must be back in the hands of the SLD by Wednesday!! to meet the 7-day turn around. We will be attaching the District's copies of their budgets to substantiate the information.

Please let me know if you have any questions. The narratives are in Word Perfect, sorry!
(See attached file: grant slc audit.wpd)(See attached file: Highland Park Fax 471 Review Coversheet.doc)(See attached file: Highland Park Budget Summary for Audit 1999-2000.xls)(See attached file: Highland Park Budget Summary for Audit.xls)(See attached file: Highland Park 471 Audit and Review.wpd)(See attached file: Highland Park Verification of 471 Eligible Students.doc)(See attached file: Highland PArk Timeline.wpd)(See attached file: West FresnoTimeline.doc)(See attached file: WEST FRESNO ADD REV Budget Summary for Audit 1999-2000.xls)(See attached file: WEST FRESNO Budget Summary for Audit 1999-2000.xls)(See attached file: WEST FRESNO Expenditures Budget Summary for Audit 1998-99.xls)(See attached file: West Fresno 471 Audit and Review version 2.wpd)(See attached file: WEST FRESNO ADD REV Budget Summary for Audit 1998-99.xls)

CONFIDENTIAL
NECBNS CON 05352

NEC 001-002-0716

NEC ATD-000072

TAB 61

November 29, 2000

Dr. T.C. Wallace
Superintendent
Mount Clemens Community Schools
167 Cass Avenue
Mount Clemens, MI 49022

Dear Dr. Wallace:

The National Alliance of Black School Educators (NABSE) is a thirty-year-old non-profit organization designed to increase the motivation and achievement of African American students. The membership consists of nearly 6,000 teachers, parents, administrators, corporate representatives, higher education officials, and superintendents from across the United States and the Caribbean.

NABSE has been an aggressive proponent of Education rate (E-rate) which is the name used to describe the Universal Service Fund for Schools and Libraries. This program provides funding to low-income school districts in order to provide wiring for internet access as well as other telecommunications services.

Last year NABSE organized a group of corporations who agreed to provide technical assistance to school districts that are interested in applying for the maximum allowable E-rate funds. We are please to announce that over $36 million was awarded to NABSE schools. The specific awards are identified below:

- Ecorse Public Schools, Ecorse, Michigan $6.39 million
- Lee County School District, Lee County, Arkansas $6.9 million
- Highland Park Public Schools, Highland Park, Michigan $8.6 million
- West Fresno Independent School District, Fresno, California $2.6 million
- Jasper Public School District, Jasper, South Carolina $10 million

In order to ensure that your school district receives the maximum funding, I invite you to make use of the support team NABSE has established. If you are interested in becoming a member of NABSE please complete the attached form and fax it to NABSE immediately.

Sincerely,

Quentin R. Lawson
Executive Director

5/14/04
(P11)

TAB 62

National Alliance of Black School Educators
310 Pennsylvania Avenue, SE ♦ Washington, DC 20003
202-608-6310 ♦ 800-221-2654 ♦ 202-608-6319 fax
www.nabse.org ♦ nabse@nabse.org

March 6, 2001

Ms. Karen Buchanan
Superintendent
Lee County School District
55 North Carolina
Marianna, AR 72360

Dear Karen Buchanan:

The National Alliance of Black School Educators (NABSE) is seeking feedback from schools regarding the E-rate program and the services provided from their partnerships with NEC, IBM, and VNCI. In order that we may develop a program that is highly relevant, responsive and effective we must learn from those superintendents involved. I am therefore, asking you as one of the superintendents receiving E-rate funds to take a few minutes to give us your thinking on how the NABSE E-Rate Assistance Program is working.

Your thoughts and recommendations are essential to the success of this program. I know your schedule is extremely tight but we ask that you will make this sacrifice in the interest of future E-rate funding opportunities that will benefit from your input. Please complete the enclosed E-rate Satisfaction Survey and fax to our office by Monday, March 12.

Many thanks for your support.

Sincerely,

Quentin R. Lawson
Executive Director

OPP
5/14/04
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TAB 63

National Alliance of Black School Educators

310 Pennsylvania Avenue, SE ♦ Washington, DC 20003
202-608-6310 ♦ 800-221-2654 ♦ 202-608-6319 fax
www.nabse.org ♦ nabse@nabse.org

March 8, 2001

Ms. Mildred McGhee
Superintendent
Wilkinson County School District
P.O. Box 785
Woodville, MS 39669

Dear **Ms. McGhee**:

The Federal E-Rate Program was instituted in 1996 to stimulate educational technologies into all school districts, nationwide. The FCC committed $2.25 billion per year towards this initiative. The Program was designed to impact the districts with the greatest need FIRST. While most districts have enjoyed some of the benefits of the Program, the vast majority of districts only utilize a small portion of the overall funding available to them.

The Federal E-Rate Program is complex and ever changing. NABSE has organized a team of Educational Technology Professionals to assist, at no charge, those districts desiring to maximize their opportunity. Nationally, the average e-rate award is $79,697.13 per District for year 3. Your District did not participate in year 3 of the program. **The average NABSE award for year 3 has been over $9.8 million.**

NABSE contacted the your district last year in October. This was late in the funding year and you were unable to take advantage of the short time allotment. We are again offering this highly successful program to our Mississippi membership.

We encourage you and your technology team to meet with our professionals and assess your opportunity. The NABSE team will demonstrate how to acquire technologies into every classroom as well as reduce administrative cost for telephone services. Please rest assured that the assistance provided will be at no cost to your school district.

P.20 5/14/04

- **High Speed Data Networks**
- **Infinite Storage Servers**
- **Full Motion Video Networks**
- **Full Time Support Engineers, on site**
- **Wireless Voice Systems**

For the program to be successful, we need your personal endorsement. An assessment team of professionals will be assigned to work with your technology staff and determine the total impact on your district. Any program with the potential to deliver millions of dollars to your district will take time and commitment. NABSE is committed to your support.

If this opportunity is of interest, please complete the enclosed form and either mail or fax the form back to NABSE's headquarters. You will be contacted within one week to arrange an appropriate schedule.

Sincerely,

Quentin Lawson
Executive Director
National Alliance of Black School Educators

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The National Alliance of Black School Educators
310 Pennsylvania Ave. SE
Washington, DC 20003

Technology Assistance Form
(No Cost to School Districts)

School District: _____

Superintendent: _____

Address: _____

City: _____ State: _____ Zip: _____

Superintendent's Telephone: _____ Fax: _____

Email: _____

Technology Contact: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

Amount of E-rate Funds Currently Received: _____

Currently Not Receiving any E-rate Funds: _____

Percentage of Students receiving subsidized lunch: _____%

I am extremely interested in having the NABSE E-Rate Support Group assist my school district to ensure maximum funding, and at no cost to my school district.

Signature: _____ Date: _____

PLEASE COMPLETE AND RETURN TO QUENTIN R. LAWSON BY THE END OF THE CONFERENCE.

TAB 64

QL
5/14/04
P.27

NABSE

National Alliance of Black School Educators

HIGH TECHNOLOGY IN THE CLASSROOM

THE NATIONAL ALLIANCE OF BLACK SCHOOL EDUCATORS (NABSE) IS A THIRTY-YEAR-OLD NON-PROFIT ORGANIZATION DEDICATED TO INCREASING THE MOTIVATION AND ACHIEVEMENT OF AFRICAN AMERICAN STUDENTS. THE MEMBERSHIP CONSISTS OF NEARLY 6,000 TEACHERS, PARENTS, ADMINSTRATORS, CORPORATE REPRESENTATIVES, HIGHER EDUCATION OFFICIALS AND SUPERINTENDENTS FROM ACROSS THE UNITED STATES, CANADA AND THE CARRIBBEAN.

NABSE HAS ORANIZED A TECHNICAL ASSISTANCE TEAM TO HELP SCHOOL DISTRICTS OBTAIN THE MAXIMUM AMOUNT OF UNITED STATES FEDERAL E-RATE FUNDS TO IMPROVE COMMUICATIONS AND GAIN INTERNET ACCESS FOR THEIR STUDENTS.

THIS IS A NABSE SERVICE AND DOES NOT COST SCHOOL DISTRICTS ANYTHING!

THE TEAM THAT IS PROVIDING THIS SERVICE TO SCHOOL DISTRICTS CONSISTS OF IBM, NEC AND VNCI.

IN 1999 THE NABSE TECHNICAL ASSISTANCE TEAM WORKED WITH 5 SCHOOLS AND THEIR GRANTS EXCEEDED $36 MILLION:

- ECORSE PUBLIC SCHOOLS, ECORSE, MIGHIGAN $6.39 MILLION
- LEE COUNTY SCHOOL DISTRICT, LEE COUNTY, ARKANSAS $6.9 MILLION
- HIGHLAND PARK PUBLIC SCHOOLS, HIGHLAND PARK, MICHIGAN $8.6 MILLION
- WEST FRESNO INDEPENTENT SCHOOL DISTRICT, FRESNO, CALIFORNIA $2.6 MILLION
- JASPER PUBLIC SCHOOLS, JASPER, SOUTH CAROLINA $10 MILLION

TO TAKE ADVANTAGE OF THIS COST FREE SERVICE CALL:

CONNIE GRUMICH
OR
QUENTIN R. LAWSON
NABSE
(800) 221-2654
QLAWSON@NABSE.ORG

Membership Service Is Our Business

NATIONAL ALLIANCE OF BLACK SCHOOL EDUCATORS

2816 GEORGIA AVENUE, N.W.
WASHINGTON, D.C. 20001
Phone (202) 483-1549
(800) 221-2654
Fax (202) 483-8323
www.nabse.org ♦ nabse@nabse.org

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Executive Director

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October 25,2000

URGENT

To: Bob Emery
John Colvin
Don Parker

From: Quentin R. Lawson

Re: E-Rate Partnership Agreement

I am concerned that a written strategy for assistance by the NABSE E-Rate Support Team has not been developed for Year-four. NABSE has been somewhat aggressive in identifying superintendents who are interested in our help – approximately 25 year-to-date. We have also arranged for the team to meet with several school districts in Jackson, Mississippi on November 4 at 10:00 a.m.-2:00 p.m., with a working lunch. However, I am reluctant to move forward until the following concerns have been discussed and agreed to (in writing) by all members of the team:

1. Level of participation of team members in (a) preparation of application, (b) exacting proof of eligibility of the school district, and (c) design of request for proposals.
2. How will the companies on the NABSE E-Rate Support Team be involved in the bidding process?
3. Are all parties included in #2 above eligible to submit a bid?
4. What will be the involvement of the team members in opening and the evaluation of the bids, and the selection of the vendor?
5. NABSE staff person to coordinate the assistance process:
   a) Job Description
   b) Salary
   c) Staff or Consultant
   d) Location-NABSE offices or remote
   e) Commencement Date
6. Transcribe the partnership into an agreement with obtained signatures
7. Define how the team will work together
   a) Division of labor
   b) Who does what and when

Can we have a conference call ASAP?

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NEC

NEC Business Network Solutions, Inc.
2425 Gateway Drive, Suite 200
Irving, TX 75063

November 2, 2000

Mr. Quentin R. Lawson
Executive Director
NABSE
2816 Georgia Avenue, N.W.
Washington, D.C. 20001

Re: NABSE Letter dated October 25, 2000 regarding E-Rate Partnership Agreement

Dear Mr. Lawson:

I am pleased to respond to your letter on behalf of VNCI, NEC and IBM (the "Team"). We understand your concerns about the timing and formality of our proposals for E-Rate support to NABSE by the Team. We have been working hard at supporting Year 3 initiatives, developing a strategy for Year 4, and reconstructing our generic request for proposal. We are prepared to provide support now and will routinize and document the nature of that support rapidly over the next two weeks.

We are delighted at the prospect of engaging some of your membership in Mississippi on November 4. We need to discuss quickly the potential audience and the specifics of our participation. In addition to a presentation, we have already discussed including an E-Rate enrollment session as part of the meeting. We are also considering providing site visits early the following week to assist the attendees in preparing their requests for proposals. Bill Rissler of NEC is in frequent contact with your coordinator for this event and is making progress regarding arrangements. We look forward to speaking with you on a conference call regarding this event.

The following relate to the corresponding paragraphs in your letter.

1. The Team is prepared to support candidate participants in the E-Rate process to the full extent of appropriate participation by vendors who are participating in the E-Rate program as service providers. (a) With respect to the E-Rate program application process, we will provide advice, guidance and administrative support in filling out necessary forms (Form 470) for any school or district desiring to apply for participation in the E-Rate program. We will not act in any official capacity on behalf of the applicant; e.g., we will not sign the application for the applicant. We do anticipate having an online application process available for participants in the NABSE conference in November and will assist those attending the event in Jackson, MI on November 4, 2000 to complete and submit applications. (b) We intend to validate eligibility of applicants via an online database. If there are material differences between what this database indicates and what the applicant believes is accurate, we will assist, to the degree possible, in reconciling the incongruities. (c) We will have a generic request for proposal available for NABSE to provide applicants who request one. We will provide one directly to any applicant once initial discussions between any member of the Team and the potential applicant indicate it is appropriate to do so. Upon request of the applicant, we will provide assistance to reconcile the generic document with the particular requirements of the applicant.

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NEC

2. Each member of the Team is an authorized service provider, i.e., the holder of a SPIN (Service Provider Identification Number). The Team and individual member of the Team will bid on E-Rate opportunities whenever they deem it a prudent business decision to do so.

3. Yes.

4. No Team member will be involved in the opening or evaluation of bids. No Team member will be involved in the selection of a vendor participating in a bid process.

5. NABSE Staff

   a) The new staff member should be a mid-level manager who addresses all forms of funding for schools and districts that have an affiliation with NABSE. E-Rate is certainly a year round activity but the level of participation could vary widely depending on the time of year with respect to the E-Rate cycle of application, RFP generation, bid process, etc. The individual should have E-Rate expertise and will be fully utilized for approximately six months of every year and perhaps on a one-third basis for the remainder.

      The incumbent in this position should also be capable of informing and assisting NABSE's membership with respect to other forms of potential funding, e.g., commercial business sponsorship, grants from non-profit institutions, etc. E-Rate is limited in scope and, while the source of very significant funds for important resources, NABSE's members should take advantage of as many sources of funding as is practical. In the course of assisting NABSE's membership with funding, the individual will undoubtedly also assist in the funding of NABSE per se.

   b) Salary: commensurate with qualifications and the market in Washington D.C.

   c) Staff member

   d) At NABSE headquarters

   e) Commencement date: as soon as possible

6. The Teaming Agreement related to the Team members' participation with one another is in negotiation and will remain the confidential information of each member of the Team.

   The Team, while fully committed to supporting NABSE and NABSE's membership, believes that any contractual arrangement between NABSE and the Team could be construed inappropriately by third parties. The Team is not going to request an exclusive or formal endorsement by NABSE. The individual members of the Team are content that NABSE will recommend the Team and each Team member with the same confidence and vigor with which the Team and its members support NABSE and NABSE's membership.

As an integral Team member, NABSE will promote this Partnership. NABSE will contact its membership and other appropriate entities regarding this Partnership, as NABSE deems appropriate. Additionally, NABSE will at no cost to the other Team members, provide access to all local, regional and national meetings to allow the Team to meet with and present the value of this Partnership to members of NABSE. In the event NABSE identifies another vendor that NABSE believes would contribute to the success of the Team, NABSE will introduce the vendor as a potential addition to the Team. The Team will evaluate the potential of the candidate vendor discuss the appropriate course of action with NABSE.

NEC

As an offset to the costs that NABSE will incur in support of this Partnership, NABSE shall receive an annual payment of 1.5% of the cumulative business generated by the Team members in sales to NABSE member schools. The payment will be made as non-restricted funds to NABSE and the Team members will have no liability for any costs incurred by NABSE in support of this Partnership per se. Payment will be due and payable to NABSE within thirty days of receipt of payment by the SPIN holder for services provided for current-year projects by the Team member who holds the individual SPIN for each project. This arrangement shall last for one year and may be renewed by the mutual consent of all parties.

We look forward to moving forward with this Partnership aggressively. As a united Team, we can help reduce the digital divide that exists within many NABSE schools.

Sincerely,

John F. Colvin
Director of Sales – Public Sector
NEC Business Network Solutions, Inc.

Robert Emery
Chief Financial Officer
Vice President Administration
Video Network Communications, Inc.

Donald J. Parker
Customer Service Executive
IBM Global Services

Date: _____

Acknowledged and agreed:

Quentin R. Lawson
Executive Director
National Alliance of Black School Educators

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NATIONAL ALLIANCE OF BLACK SCHOOL EDUCATORS

2816 GEORGIA AVENUE, N.W.
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FANNIE T. GIBSON
Local School Administration
EARL C. RICKMAN
Governance in Education
DOREEN E. BARRETT, Ph.D.
Program Development, Research and Evaluation
JAMES A. CLARKE, Ed.D.
Retired Educators
ROSALIND JONES-JOHNSON
Special Projects Administration
BERNICE P. VENABLE, Ed.D.
Superintendents
VIVIAN CELESTE NEAL
Parents Council Chair
JOSEPH A. DRAYTON, Ed.D.
Immediate Past President

HISTORIAN
CHRISTELLA D. MOODY

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JEROME HARRIS, Ph.D.
ALFRED L. ROBERTS, SR., Ph.D.
CHARLIE MAE KNIGHT, Ed.D.

To: Bob Emery, VNCI
Don Parker, IBM
John Colvin, NEC

From: Quentin R. Lawson, NABSE

Date: January 2, 2001

Re: Memorandum of Understanding- the E-Rate Program

I trust you had a very relaxing holiday and by now you are back into the work stream.

As we discussed during our mid-December conference call I am forwarding four original copies of the Memorandum of Understanding for your signatures. Upon your signature, John, please return all copies to me. An original containing all signatures will be forwarded to each of you.

Please sign and forward to the next person expeditiously as possible.

Many thanks for giving this matter your immediate attention.

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310 Pennsylvania Ave. S.E.
Washington, DC 20003

Memorandum of Understanding

This represents an E-Rate Program Alliance between the National Alliance of Black School Educators (NABSE) and NEC, VNCI and IBM, uniformly, collectively and individually. The above reference entities desire to cooperate to provide assistance to selected school districts to insure that they secure maximum E-rate funding for the purpose of improving telecommunication services and internet access for the benefit of teachers, students and administrators, in each school district.

VNCI, NEC & IBM are capable of providing assistance to school districts in accomplishing the above objectives; and VNCI, NEC and IBM are each willing to provide such assistance and whatever assistance is needed by the school districts throughout the E-rate funding program application process, at no cost to the school district or NABSE.

NABSE is willing to inquire and capable of inquiring, of school districts regarding their interest in, and the extent of, their knowledge of E-rate programs and their funding.

NABSE is willing to inquire and capable of inquiring of school districts regarding the extent to which such districts need and desire assistance in completing the E-rate Program application.

NABSE will make the above inquiries of districts NABSE selects, under conditions NABSE imposes as a precedent for selection and shall notify VNCI, NEC and IBM of the results of the inquiries and the needs for assistance, which are identified.

VNCI, NEC and IBM will upon receipt of the knowledge and information obtained by NABSE, contact the respective school districts to offer specific assistance to the district.

If, after (or when) the knowledge obtained by NABSE, a contract to implement a resultant project grant approved by federal authorities is entered into between the district and VNCI, NEC and IBM, or either of them, said entity or entities shall make to NABSE an unrestricted contribution of 1.5% (one and one-half percent) of the gross revenue of said contract.

This agreement shall remain in effect so long as NABSE is performing the functions set forth in paragraph 3,4 and 5 above, or until the Memorandum of Understanding of initial understanding is modified or terminated in writing by each of the parties hereto.

1-2-2001
NABSE

IBM

VNCI

11/8/01
NEC

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6555 N. State Highway 161, 8th Floor
Irving, TX 75039-2402
Tel: 214-262-6116
Fax: 214-262-6800

NEC BNS, Inc.

TAB 67

Fax

To:	Quentin Larson	**From:**	John F. Colvin
Fax:	202-608-6319	**Pages:**	[Click here and type # of pages]
Phone:		**Date:**	02/06/01
Re:	Teaming Agreement	**CC:**	

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:**

Quentin,

We are still awaiting IBM's signature, which Don Parker has promised will come by Wednesday, however, I wanted to make sure that you had a copy of this for your records.

John

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TAB 68

VIDEO NETWORK COMMUNICATIONS, INC.

34198

OUR REL. NUMBER	YOUR INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	NET CHECK AMOUNT
010951	90876109	10/24/99	37000.00	37000.00	0.00	37000.00

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TAB 69

35630

VENDOR NUMBER	YOUR INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	NET CHECK AMOUNT
036472	CR071701	7/17/01	10866.38	10866.38	0.00	10866.38

Conference Room

VNCT E-RATE Review

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National Alliance of Black School Educators
Cash Journal - CASH JOURNAL
1010 - Suntrust Bank - Checking
From 1/1/2000 Through 12/31/2003

Document Nu...	ID	Effective Date	Deposits	Disbursements	Adjustments
TO RECORE...	VNCI	4/20/2001	42,669.40	0.00	0.00
VNCI	VNCI	7/18/2001	2,330.60	0.00	0.00
	Total 1010 - Suntrust Bank - Checking		45,000.00	0.00	0.00
Report Total			45,000.00	0.00	0.00

Video Network Communication Inc

TAB 70

ADDENDUM

TAB 71

National Alliance of Black School Educators

E-RATE SATISFACTION SURVEY

National Alliance of Black School Educators (NABSE) is conducting a survey about the ways in which schools have benefited from their partnership with NEC, IBM, and VNCI over the last two years. To evaluate the effectiveness of the program and services provided by this partnership, NABSE is asking schools that have participated in the program to complete the **E-Rate Satisfaction Survey**. Please respond to the questions below by February 27, 2001, to fax (202) 608-6319.

1. Which company is your primary contact? (Circle one)
   NEC IBM VNCI

2. For your district, submit the service provider's contact person.
   _____

3. Level of satisfaction (in rank order from very dissatisfied #1 to very satisfied #5)
   a) Responsiveness 1 2 3 4 5
   b) Technical assistance/information 1 2 3 4 5

4. In your judgment, to what extent is the E-Rate program (Choose one)
   a) On schedule
   b) Ahead of schedule
   c) Behind schedule

5. Based on your contacts and dealings with the NABSE partnership, estimate the impact and overall level of satisfaction of the services in your district/schools.
   1 2 3 4 5

6. Do you have other comments or recommendations about the NABSE E-Rate Partnership?
   _____
   _____
   _____
   _____
   _____

NABSE Headquarter Office, 310 Pennsylvania Ave. SE, Washington DC 20003
202.608.6310 ♦ 202 608 6319 fax

5/14/04
P.39

NEC

TAB 72

NEC America, Inc.
6555 N. State Hwy. 161
Irving, TX 75039-2402
Tel: 214 262-2000

June 19, 2002

Quentin R. Lawson
NABSE
310 Pennsylvania Avenue, S.E.
Washington, DC 20003

Dear Mr. Lawson:

It was a pleasure speaking with you last week concerning the possibility of creating a grant program for disadvantaged school districts attempting to participate in the E-Rate program. As I stated, NEC Business Network Solutions, Inc. ("NECBNS") is very interested in participating in the funding of the NABSE Foundation to promote this program. NABSE is in a perfect position to enhance its members participation in the E-Rate Program. A program that provides assistance to those districts that cannot otherwise participate in E-Rate due to the matching funds "requirements" or other resource deficiencies is a win-win proposition. The concept of having this program funded by vendors has NEC's support. I have evaluated this proposal and suggest the following course of action:

1. Since proposed grants to qualifying school districts would come from the NABSE Foundation, I believe NABSE and the SLD should meet to discuss the program since they are in the best position to evaluate how the program should work to insure compliance with E-Rate guidelines and related policies and procedures.

2. The SLD will understand the intent of the program is to provide resources to disadvantaged school districts to provide them with the opportunity to participate in the E-Rate program. Program elements would include:

   - Resources should include monetary grants for minority school districts that otherwise would not be able to participate in E-Rate in order to assist the district in areas such as a) paying matching funds, or b) grants to pay for technical evaluations or c) other consultative services to assist the district in maximizing the use of E-Rate funds for their particular needs.

   - Funding by participating vendors. Vendors would designate a contribution level to NABSE and NABSE would establish guidelines for issuing grants as well as administering those funds as NABSE deems appropriate.

If you need any additional assistance or would like to discuss this further please contact me.

Very truly yours,

Gerald P. Kenney

Gerald P. Kenney
General Counsel
NEC America, Inc.

GPK:ar

cc: Thomas Burger
Bill Holman
John Colvin

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TAB 73

PROMISSORY NOTE

U.S. $1,000,000.00 Dated: September 10, 2002

This Promissory Note is made by **NEC BUSINESS NETWORK SOLUTIONS, INC.** ("Maker"), for the benefit of the **NATIONAL ALLIANCE OF BLACK SCHOOL EDUCATORS** ("NABSE" or "Payee") for the purpose of providing funding for NABSE'S proposed Technology Assistance Grant Program.

1. Subject to the terms hereof, Maker hereby promises to pay to NABSE the sum of one million dollars ($1,000,000.00).

2. The principal amount of this Note is payable in lawful money of the United States of America at the offices of NABSE, 310 Pennsylvania Avenue, SE, Washington, DC 20003, or to its designated account, in same day funds on November 4, 2002.

3. This Note is fully conditioned upon the Board of Directors of NABSE authorizing, implementing and promoting the Technology Assistance Grant Program to assist in promoting technology initiatives to its member school districts. If the Technology Assistance Grant Program is not ratified and implemented by NABSE on or before October 31, 2002 this Note shall be deemed null and void and of no further legal effect.

4. Miscellaneous.

   a. Binding Benefit. This Note, and the obligations and rights of the parties hereunder, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, legatees, administrators, executors, successors and assigns.

   b. No Waiver. No delay or omission on the part of the Payee in exercising any right hereunder shall operate as a waiver of such right or of any other right of the Payee, nor shall any delay, omission or waiver on any occasion be deemed a bar to or waiver of the same or any other right on any future occasion. The rights and remedies under this Note are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to the Payee.

   c. Waivers by the Maker. The undersigned Maker waives presentment, demand, protest and notice of every kind and assents to any one or more extensions or postponements of the time of payment or any other indulgences.

   d. Amendment. None of the terms or provisions of this Note may be excluded, modified, waived or amended except by a written instrument duly executed on behalf of the Payee expressly referring to this Note and setting forth the provision so excluded, modified or amended.

   e. Governing Law. All rights and obligations under this Note shall be governed by the internal laws of the State of Texas, without regards to principles of conflicts or choice of law.

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IN WITNESS WHEREOF, the undersigned has executed this Note effective as of the date first above written.

Maker
NEC Business Network Solutions, Inc.

By: Thomas J. Burger
President and CEO

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TAB 74

From: McNulty, Gerard
Sent: Monday, January 03, 2000 2:02 AM
To: Ferguson, Chuck; Bratcher, Peggy; Qasim, Sohail; Colvin, John
Subject: Jasper cabling value

Chuck,

Please use a number of $1.4 million for cabling in the first year for Jasper. There are 300 rooms in the district and Judy will allow us a higher number then we used for Covert(at Covert we used $4,000 per classroom) because she wants a higher "in kind" donation tied to the cabling portion of this particular project. Please refer to Stephanie Meyers notes on Jasper. Its very straight forward with no trenching and Judy will not allow us to go upside down.

Thanks,

Gerard

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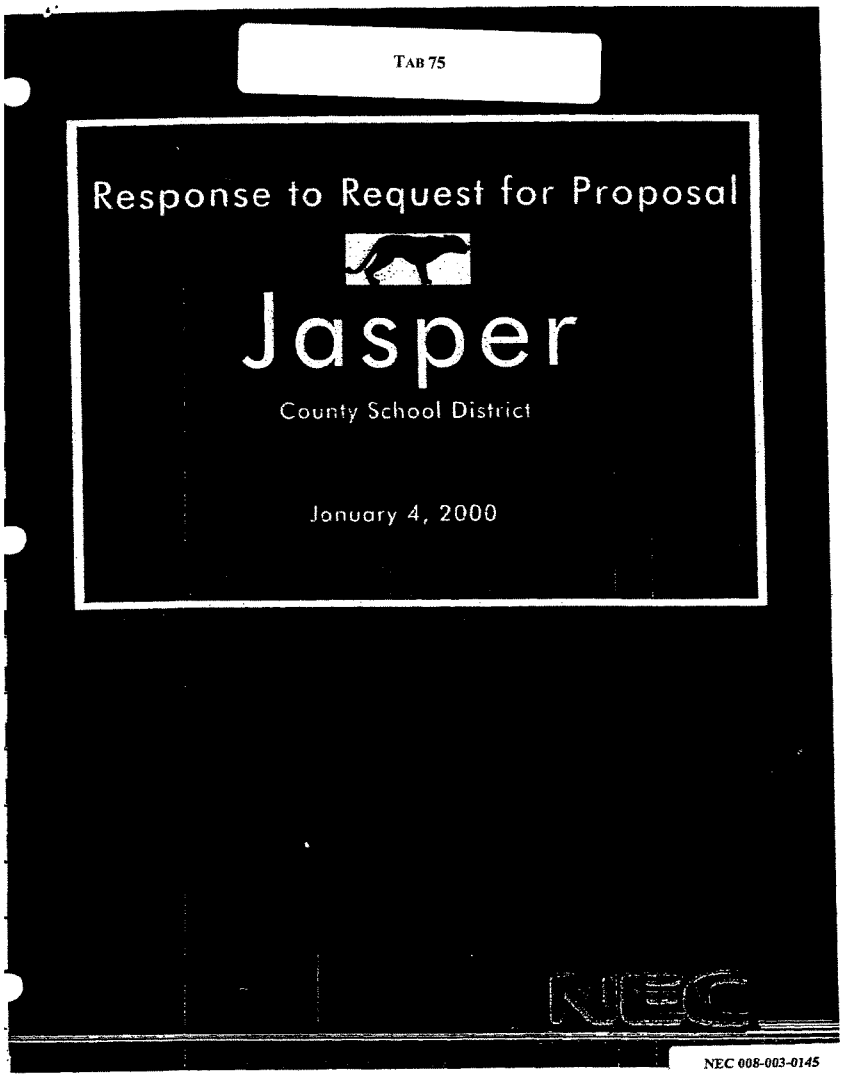
NECBNS CON 04930

NEC ATD-000982


TAB 75
Response to Request for Proposal
Jasper
County School District
January 4, 2000
NEC
NEC 008-003-0145

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Product Literature

NEC 008-003-0147

NABSE Bonus
Section A

As a result of agreements with the National Association of Black School Educators (NABSE), NEC and its partners will be providing the district and its schools the following "in kind" bonuses:

1. With the purchase of the cabling system in Section A, NEC will perform, as an "in kind" bonus, a direct link to the electrical requirements needed for the district. The "in kind" bonus for electrical work related to this project can not exceed $600,000.

2. NEC, with the purchase of the cabling system, will extend "in kind" bonuses of higher education and technology instruction to select district staff up to a maximum amount of $65,000. NEC will identify the appropriate classes and content that will empower the district.

NABSE BONUS PRODUCTS and SERVICES PACKAGE
Section B

As a result of agreements with National Association of Black School Educators (NABSE), NEC and its partners will be providing the District and its schools the following "in kind" bonus products and services as depicted in the attached matrix:

CONTRACT PURCHASE ITEMS	"IN KIND" BONUS PRODUCTS	APPROXIMATE VALUE
PBX	NEC single line phones for classrooms, NEC DTERM multi line displays phones for Administrators, Voice Mail, Video Intercom, 10 head sets, Project Implementation consulting.	• $ 1,179,112
Tier-1, 2 and 3 Servers	Teacher's Multi Media Station with a 32" Monitor and Audio Video Intercom, Student Stations complete with Microsoft Office97, Monitors, Digital Pan, Tilt and Zoom Cameras, Ink Jet Printers	• $ 399,976
ATM Large Chassis Multi Blade Backbone Switch Catalyst 5500 Ethernet 100/1000 Mb Backbone Catalyst 5509 Switch 10/100 Base/T Ethernet Switch Catalyst 2924C-XL & CISCO 4700 Router ATM-25 SWITCHES	Xerox Color Network Copier or Equivalent Higher Education Training for Teachers and Staff Specialized End User Technical Training	• $ 30,846 • $ 65,000 • $ 15,000

These Bonus products and services are based on the volume of purchase. Any changes in the total volume will result in an adjusted Bonus Package.

TAB 76

From: "judy_green"@vnci.net
Sent: Thursday, April 27, 2000 7:44 AM
Subject: Re: Jasper 85%

George,

Did you firget that this is the game the SLD plays to reduce discount levels when State has different numbers. Spoke with Duncan early this AM,
he is sending me information. Called Grady, not in as of yet and probably
not getting in for rest of today.

George, calm down, if other districts call the situation is the same, we justify the numbers we sent in, WE DO NOT re-do the 471. If the SLD really
does not agree, they re-do the discount at their approved rate upon funding. Grady, wants to avoid this and have Jasper change their own submitted Discount percentage. This is Grady's easy way around getting the
discount rate changed. Otherwise he has to officially sign to have it changed and wants to avoid that at ALL costs.

Regards,

Judy

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NECBNS CON 05325

NEC ATD-003675

TAB 77

From:	"judy_green"@vnci.net
Sent:	Wednesday, September 27, 2000 8:05 AM
To:	Colvin, John
Cc:	McNulty, Gerard; "Robert_Emery"@vnci.net; "Carl _Muscari"@vnci.net; "George_Marchelos"@vnci.net
Subject:	Jasper

Hello John,

I received a copy of the revised MOU for Jasper, very well written. Please don't think that this interferes, or is set to interfere in any way with NEC's total control of the implementation and the project. Just some thoughts that may help with the process. Please keep in mind that the following are mere suggestions that will make the process flow smoother, take them, don't take them it's entirely up to you. I just wanted to make certain, since this is your first one of these, that everything was clear and above board and easily understood. If you don't mind and don't take offense there are a couple of small corrections that need your attention:

The SLD because of the one-time charges for installation of the T-1's, Internet T-1's, Internet equipment i.e. e-mail server, web server, domain set up and modem racks etc. Chose to change the funding category from Telecommunications and Internet into internal connections. This of course depends upon who is reviewing the application as you have probably surmised by now.

FRN 451297 is for telecommunications for the point-to-point T1 lines leased from Telco, not network connection. Normally this is part of local and long distance.
FRN 451301 is for Internet ISP, set up and access charges with dial-up for remote users, using the T-1 lines 3 of them as 800 numbers.

FRN 451329 is NOT for anything related to NEC. It is for the District's existing and past annual local and long distance telephone service, with Sprint. We did make the same changes in Jasper as we did in Lee (that were NOT funded) .

Also, NO application was made for PVBX, only PBX. It was changed in the Bid documents, through an addendum. I know what you are saying, but please change it, for everyone's protection.

Finally, the Board needs to see a document with some details, but not an-thing that looks like this MOU.

It is my feeling that if these corrections are made it will resolve a

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NECBNS CON 05864

NEC ATD-000946

great
deal of concern, as they have caused unneccessary confusion and concern.

If not too disturbing could the following also be tweaked, slightly changed?

1. would it be possible to change the additional server description to hard
drives. The servers themselves are NOT bonus items, but the hard-drives are bonus items.

2. the teacher's work station and desk, need to be added into the bonus package this will mean adjusting dollars, since the teacher's multimedia stations were in addition to the student work stations. In other words there are approximately 200 teacher stations and an additional number upto
400 student stations, with different configuration from the teacher's PC workstation. In all there it is actually 600 PC's that you are providing,
if the dollars allow. You could modify one of the other bonuses, and/or reduce one of them, or use some of the point-to-point T-1 or telephone charges to augment these dollars, to maintain your profit line. Again these are just suggestions to make the process flow smoother.

3. Could you put the approximately 200 teacher's work stations and desks,
under the PBX bonus package, the appearance of suc high dollars on telephone hand sets is extremely disturbing, to people who are not in the
business.

4. Did you put the security into this somewhere? Sorry I couldn't see it
through one eye, since I got the fax, before 6:00 a.m. this morning.

Judy

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NECBNS CON 05865

NEC ATD-000947

TAB 78

From: Masood, Zahid
Sent: Wednesday, February 02, 2000 6:14 PM
To: Colvin, John
Subject: E-Rate

Bill,

I wanted to give you the E-Rate projects background and how BNS to date has put the responses for these projects.

This program started with our relationship with VNCI. VNCI, a manufacturer of video delivery systems and BNS have signed a teaming agreement whereas VNCI is targeting the K-12 market using the E-Rate funding program. VNCI's role is of consultative selling to the school districts, so that the schools can get the maximum allowable monies under this program. It is important to note that VNCI does not bill for any of the pre-sales efforts that they offer to school districts. The intent of the pre-sales consultative role is purely a marketing decision that VNCI has made to drive sales opportunities. VNCI has created a special vertical market program under the supervision of Carl Muscari - CEO, Bob Emery - CFO and Roger Booker - CTO. Marketing efforts and consultative services are provided by Judi Green and George Marcellos. VNCI has also joined and participated in the NABSE (National Association of Blacks School Educators) to promote the benefits of the E-Rate program and how using VNCI's knowledge of how the E-Rate program can work for their schools. A brochure of their promotional program is attached.

E-RATE BACKGROUND

The E-Rate program is a federal initiative to provide assistance to schools and libraries with the installation of technology enhancements that will allow connection to the Internet. The E-Rate program provides rebates and discounts on communications services such as basic phone service, internal phone connections infrastructure, servers and routers. The E-Rate program requires cash match in addition to the awarded funds. The match is computed using a formula that the Schools and Libraries Division (SLD) applies. The formula is based on the "Free and Reduced Priced Lunch Program" rate in the District. This rate varies from school to school and cluster to cluster in a large District. The E-Rate program is funded by putting a surcharge on the long distance bills by FCC.

Who administers the program?

The Universal Service Program is administered by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC). This not-for-profit corporation was appointed by the Federal Communications Commission (FCC) to ensure that the benefits of telecommunications services reach students and communities across the country.

The 470 Process.

The Form 470 is the first FCC form which is filled out in order to receive E-rate discounts. The Form 470 describes the services and/or products a school district is seeking, and includes information about the school district that service providers need to know to best meet their needs.

Bid are recieved and reviewed by the district. VNCI may provide guidance to a school district on an as needed basis.

Once the Form 470 is filed, it is posted to the SLD Web site for competitive bidding. The competitive bidding process demands the mandatory 28 day period during which service providers bid on the new services that have requested on the Form 470. The FCC established this mandatory bidding period to benefit both vendors and applicants - vendors have greater access to potential customers, and applicants gain greater choice in vendor selection.
Upon processing or posting of the Form 470, the SLD will notify the school district the date upon which you may **sign a contract or enter into an agreement for new services or file Form 471.** This date will be referred to as the "Allowable Contract Date."
The school district is required to wait 28 days before they sign a contract or enter into an agreement for services. After you sign a contract or enter into an agreement, the school district can initiate the next step in the application process, the filing of FCC Form 471.

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NECBNS CON 05105

NEC ATD-001078

The district selects a vendor on the merits of the bids submitted by the vendors. The lowest qualified bid gets the recommendation. NABSE bonuses are not considered in evaluating the bids by the districts. They are not to be factored in by the district in making a recommendation for a given vendor. For example, NEC BNS did not get the award for the Pittsburgh or Ecourse projects, because we were deemed more expensive than the other bidders. Although if the district would have taken the NABSE bonuses into account we would have been a low bidder.

471 Process

The Form 471 is the second form that you are required to file to receive E-rate discounts on eligible services. The Form 471 lists the services for which you are requesting E-rate discounts, the entities that are eligible to receive these services, and establishes the discount rate that the school district will receive on these services

The school district MUST have a plan (approved by its board or otherwise) to come up with its own share of the total project cost. It is the responsibility of the district to pay for its share and it must certify that when it files for the 471.

After choosing a vendor, the district may apply for more funds than the qualified bid totals based upon increasing the number of schools or classrooms it needs to wire in a given year under its technology programm.

The wait period after filing the 471s could be up to six months. Generally the needy districts gets their funds approved first. The SLD may approve portions of the bids submitted, for example if the district has submitted a 471 which includes, cabling, PBX , Servers and Data network, the SLD may pick and choose as to which of these items it funds and approve only partial those projects. The SLD has a nationwide product cost comparison charts, if it finds a given vendor exceeding those competitive cost comparisons, it may reject that portion of the bid. SLD wants to make sure that Vendors are not over charging for the products to the districts. The only area where the SLD may not be able to compare is the labor charges of a given vendor, which might be based upon the given geographic area or perhaps the extra cost a given vendor may incur if the school district is old and is in need of lot of conduit or other infrastructure work.

486 Process

Once the project is approved, SLD sends out a 486 to the district with approved projects. A copy of approval also goes to the vendor whose Spin number was on the 471. The district has 7 days to sign and return it to the SLD confirming that it still intends to use the same vendor whose spin number was on the 471 form.

After that the SLD sends a notification of Receipt of Form 486 with a Funding Request Number. At that time the vendor can invoice the SLD for full payment. The receipt of payment can take from 3-8 weeks. If we file this electronically, this time frame can be reduced.

SAMPLE PROJECT BID-JASPER DISTRICT

Please see attached excel file that has total costing break up by product and service area. The summary page outlines the sales, cost and profit margin numbers. It also indicates the marketing fee as a cost item for VNCI.

Value added services are the NABSE bonuses based upon what the district will be buying from us. Value added Services/NABSE bonus is built into our cost structure.] *

PAYMENT TERMS

In our example of Jasper, the total bid as submitted is $9,006,070.10. BNS would have to invoice the SLD for $8,105,463 and the District for $900,607. We will invoice the SLD up front and potentially get all of the monies up front for the $8M+ share. For the $900,607 we would have to wait until the project is complete and then invoice the district. For any reason if the district chooses not pay, we have the following options:

1-Only complete 90% of the work.
2-Realize cost effectiveness in project and materials management and therefore not invoice the District.
3-Roll over the project into Year 4.
4-Invoice and not collect the money and lower the margins on the job. In this scenario we will still have a gross profit of 22%.] *

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NECBNS CON 05106

NEC ATD-001079

We need to keep in mind that due to the nature of reallocating funds within school districts, we anticipate that from time to time there may be some school districts who will have a difficult time funding their portion of these projects. **PLEASE NOTE, THAT UNDER NO CIRCUMSTANCES HAS NEC BNS TOLD ANY DISTRICT TO FORGIVE THESE PAYMENTS IN RETURN FOR THE SCHOOL DISTRICTS RECOMMENDATION.**

RISKS WITH PARTNERING WITH VNCI WHERE NEC IS THE PRIME CONTRACTOR

VNCI is a small company traded publicly at the NASDAQ. They are not financially sound but see this opportunity which can contribute 35% to 40% to their this years sales numbers. They expect to do about $17M this year.

I have checked with sales engineers and we can substitute other products to fulfill BNS obligations as a Prime in the event VNCI becomes insolvent.

IMMEDIATE OPPORTUNITIES

We have two or three school districts who are in the Year 2 of the funding cycle where VNCI and its partners have the contracts to perform work. Two of the projects are where VNCI is the prime we have recieved Letters of Intent. The first project is $648K for Highland Park District (Michigan) for cable are electrical work and the second project is $614K for W. Fresno School District (California) to provide servers and on site data technical support.

We need to execute an agreement with VNCI. I understand the risk is how we will collect our monies since VNCI is in not sound financial shape. We need to come up with an escrow account stipulation where we can collect our money on a timely basis. I need assistance from Glen to come up with a financial transactional structure where by we can protect BNS's interest.

We do not have much time. The Year 2 projects need to be completed by end of June, 2000.

Zahid.

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NECBNS CON 05107

NEC ATD-001080

NEC E-RATE CONTRACT

DISTRICT'S ATTACHMENT RIDER A

MEMORANDUM OF UNDERSTANDING

This document will serve as a memorandum of understanding between Ecourse Public School District (customer) and NEC Business Network Solutions, Inc. (Prime Contractor).

It is the express desire of the District to honor ALL terms and conditions of the signed E-Rate Purchase Agreement. In light of the awards, it is the District's intent that NEC BNS provide the following items and services, utilizing District approved subcontractors as required (pursuant that the specified vendors meet NEC BNS qualifications and standards).

Upon mutual acceptance, agreement and signing of this document by authorized NEC BNS representatives and executed by the District. The District will complete and submit the FCC Form 500 stating that services began July 1, 2000. The completed form will be submitted to the SLD. NEC BNS will then be able to invoice the SLD for up to 80% of ALL approved funds. The balance (20%) will be approved by the District, for invoicing to the SLD upon completion of the infrastructure by NEC BNS, NO LATER than March 1, 2001.

NEC BNS to provide equipment and services as approved and funded by the SLD as follows:

DATA COMMUNICATIONS: **FRN 450334** **$2,159,298.92**

- One 24 port Cisco 3524 series Ethernet 10/100 switch with Gigabit uplink ports for OC-3 fiber (maximum 75) for every one classroom.
- One NEC 8550 ATM workgroup switch for every four classrooms (maximum 39)
- Two Cisco 6006 Gigabit Backbone switches
- Four Cisco 3508 Gigabit ATM Intermediary Backbone switches
- Four Cisco 3660 Routers (six slot)

- **PBX:** **FRN 450317** **$1,976,670.89**

- Four PBX's for school and administrative locations
- Digital and analog trunk ports

TOTAL USAC FUNDING COMMITMENT **$4,135,969.81**

NECBNS CON
06345

NEC BNS has agreed to provide "in-kind donations" of non E-rate qualified equipment and services. The following list of equipemnt will be reviewed by NEC BNS and Ecourse Public Schools as

Non Qualified Equipment and Services

Servers

Media Retrieval System

Media Production Room

Enhancement of Security Systems

Enhanced Proxy Readers

Message Center for High School

Message Center for High School Football Field

Technology Centers at High School

- This is an estimated of "in-kind services" and is subject to change, modification or substitution by mutual advanced written consent of both parties. Prior to commencement of any work, a Scope of Work (SOW) will be agreed upon by both parties which will detail equipment itemization and functionality.

All of the above items are subject to verification of quantities and specifications to insure that the project does not exceed $4,135,969.81 as approved by the SLD and are in compliance with the terms and conditions of the E-Rate Program. Our signatures indicate that we accept the terms and conditions of the MOU, subject to further clarifications within the limits of the SLD funding.

District	NEC BNS
By: Douglas A. BENT, Ed.D. (Print Name)	By: John F. Colvin (Print Name)
Douglas A Bent (Signature)	John F. Colvin (Signature)
Title: Director Facility Development	Title: Director Public Sector
Date: 1-18-2000	Date: 1-18-2000

TAB 80

McNulty, Gerard

From: Colvin, John
Sent: Friday, February 16, 2001 6:18 AM
To: Weekly, Randy; McNulty, Gerard
Cc: Kern, Gary; McCain, Robert
Subject: RE: High School and Board Office

Randy,

Gerard and I will call Dr. Benit

-----Original Message-----
From: Weekly, Randy
Sent: Friday, February 16, 2001 8:03 AM
To: Colvin, John; McNulty, Gerard
Cc: Kern, Gary; McCain, Robert
Subject: FW: High School and Board Office

Can you guys help out here. I know we have a meeting next week to better determine exactly what we can provide, but I suggest a call from you guys to Dr. Benit in the meantime to explain our position on what we think we sold and associated dollar amounts, since he is saying to provide before we move further. Let me know your thoughts.
thanks.....Randy

-----Original Message-----
From: Doug Benit [mailto:dbenit@eps.k12.mi.us]
Sent: Thursday, February 15, 2001 2:54 PM
To: Weekly, Randy
Subject: Re: High School and Board Office

I'm reviewing the two sites; however, I have discussed my concerns with our Superintendent Dr. Epps regarding the services to be provided by NEC. We would like to know in detail just what you are provided and a dollar value assigned to each. I would want to firm up what is going to be considered as in-kind and the dollar assigned to each. I'm going to review the in-kind amounts tomorrow and I will e-mail you the changes which I see. I would want this in place before we proceed any further with this project along with a coordination between existing contractors and your final scope of work. Call me on my cell or email me.

Weekly, Randy wrote:

> Part 1.1 Type: Plain Text (text/plain)

TAB 81

From:	McCain, Robert
Sent:	Wednesday, February 21, 2001 11:42 AM
To:	'Doug Benit'
Cc:	Barber, Bill; Biggs, Bob; McNulty, Gerard; Colvin, John; Weekly, Randy; Kern, Gary
Subject:	RE: February 22nd & 23rd Meetings
Importance:	High

Dr. Benit,

To confirm our conversation this afternoon, yes we will be on-site at 1:30 Thursday to meet with ICOMM and Advanced Integrations Group. We will discuss the current environment and see how we will enhance your technology deliverables. Friday morning at 8:00, we will discuss your TV Production facility design and also a follow up on the previous days meeting. If you have any questions or concerns, please call me at my cell # 440.336.2625.
Thank you,

Mac McCain
Sr. Project Manager
NEC Business Network Solutions, Inc.
(440) 746-3503 Voice
(440) 746-0033 Fax
mail to:rmccain@necbns.com

-----Original Message-----
From: Doug Benit [mailto:dbenit@eps.k12.mi.us]
Sent: Wednesday, February 21, 2001 12:18 PM
To: Robert McCain
Subject: February 22nd & 23rd Meetings

I will be available after 1:30 p.m. on Thursday and Friday either between 8 to 10 a.m. and in the afternoon between 2 and 4 p.m. to attend a meeting. Where are you planning to have this meeting with my existing vendors?? We are in a critical status on the T.V. Production room. We need to know room requirements, power requirements, a drawing laying out the room, etc. We are moving into finishes soon.

TAB 82

McNulty, Gerard

From: Doug Benit [dbenit@eps k12.mi.us]
Sent: Thursday, March 15, 2001 1:39 PM
To: Gerald McNulty
Subject: Proposed Scope of Work

I received a proposed overview last week from your group. However, this is what I find wrong with it and we will be unable to continue until we are able to get this to an acceptable level. We can discuss this in more detail when you arrive tomorrow.

1. The proposal was a overview with no dollars attached. I want to attach a dollar amount to everything so that it can be properly evaluated. If we can't do this, then we will have to consider reducing the dollar amount down somewhere between zero and the awarded amount. This proposal is not acceptable as of now.

2. Because of the lack of established dollars for the TV production center, this too cannot be evaluated.

3. As of this date, nothing is acceptable. Now we must be presented with dollars attached to each scope of work.

I will see you tomorrow morning!

TAB 83

From: McCain, Robert
Sent: Friday, March 16, 2001 8:38 AM
To: Colvin, John at NECBNS; Biggs, Bob; Barber, Bill
Cc: Boyce, Brian; Kern, Gary; Weekly, Randy; McNulty, Gerard
Subject: ECORSE UPDATE

Importance: High

I just talked to Randy Weekly and the meeting with Dr. Benit went well. However, Dr. Benit is asking for more detail regarding the Production Studio costs. With that, he will get back to Randy next Wednesday with his final config. In the meantime, we are on HOLD for now. We still are planning to have VNCI in the last week of the month to do their install at three buildings that are available now. I have a sub lined up to install the relay racks for the VNCI hardware, so we are good there. Any questions, please give me a call.
Thank you,

Mac McCain
Sr. Project Manager
NEC Business Network Solutions, Inc.
(440) 746-3503 Voice
(440) 746-0033 Fax
mail to:rmccain@necbns.com

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06351

TAB 84

From:	Barber, Bill
Sent:	Monday, March 19, 2001 12:26 PM
To:	'DBENIT@eps.k12.mi.us'
Cc:	Weekly, Randy; Colvin, John at NECBNS

Dr. Benit,
Attached is the Video Studio file. Please call when you receive this and we can discussion farther detail.
Thank you

Video-Price-Ecorse.
xls

William D. Barber
Engineer-Video-Data

Barber, Bill.vcf

Ecorse Public Schools
Video Studio Pricing

ITEM	QUANTITY	MODEL	DESCRIPTION	Unit Price	Extended
			TV STUDIO EQUIPMENT AND ACCESSORIES		
A	2	DXCD35WTXS	SONY WIDESCREEN CAMERA TRIAX STUDIO PACKAGE -DXCD35WSL CAMERA -CCUTX7/1 TRIAX CCU WITH SDI OUTPUT -RCPTX7 REMOTE CONTROL -CATX7 CAMERA ADAPTER -DXF51 STUDIO VIEW-FINDER -VCTU14 TRIPOD ADAPTER	$43,886.85	$87,773.70
B	2	YJ12X65B	CANON 12:1 WIDE ANGLE ZOOM LENS WITH 2X (YJ12X6.5BIRS)	$11,064.69	$22,129.38
C	2	MS210M	CANON REAR LENS CONTROL KIT	$3,698.52	$7,397.04
D	2	M80616	MOHAWK 10 METER TRIAX CABLE W/CONNECTORS CAMERA TO STUDIO BULKHEAD PANEL	$490.98	$981.96
E	3	M081855	MOHAWK 5 METER TRIAX CABLE -STUDIO BULKHEAD PANEL TO CAMERA CCU	$423.36	$1,270.08
F	2	CONTROL25	JBL COMPACT SPEAKER WITH WALL MOUNT	$147.00	$294.00
G	1	KV32S42GRY	SONY 32" MONITOR/ RECEIVER	$933.45	$933.45
H	1	VTRPN4448E	BRETFORD 44" MONITOR CART W/8" PNEUM WHEELS AND 2 OUTLET ELEC STRIP	$1,049.58 $0.00 $0.00 $0.00	$1,049.58 $0.00 $0.00 $0.00
I	2	VIN11ST2	VINTEN CAMERA SUPPORT PACKAGE -VISION 11 FLUID HEAD WITH SINGLE PAN BAR -3392-3 TWO-STAGE TRIPOD -3313-3 SPREADER -3358-3 SOFT CASE	$6,466.53	$12,933.06
J	2	321968	VINTEN SECOND PAN BAR	$351.33	$702.66
K	2	331933	VINTEN DOLLY WITH 5" WHEELS	$1,086.33	$2,172.66
L	3	BG3.1	SHURE DYNAMIC HANDHELD MICROPHONE	$110.25	$330.75

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06353

Ecorse Public Schools
Video Studio Pricing

ITEM	QUANTITY	MODEL	DESCRIPTION	Unit Price	Extended
M	3	DS5E	ATLAS EBONY DESK MIC STAND	$22.05	$66.15
N	3	MS10CE	ATLAS EBONY FLOOR MIC STAND	$52.92	$158.76
O	3	MX183	SHURE WIRED CONDENSER LAVALIER MICROPHONE	$260.19	$780.57
P	6	XLRPXLRJ25	COMPREHENSIVE 25' MICROPHONE CABLE	$47.04	$282.24
Q	1	PANEL	MCSI STUDIO BULKHEAD PANEL, TV STUDIO EQUIPMENT AND ACCESSORIES TV CONTROL ROOM EQUIPMENT/ACCESSORIES	$1,102.50	$1,102.50
R	1	MCD8BAY	MODULAR CONSOLE DESIGN 8-BAY PROD. CONSOLE	$12,575.85	$12,575.85
S	2	WRK4432	MIDDLE ATLANTIC 77" EQUIPMENT RACK	$1,011.36	$2,022.72
T	2	PD1220CNS	MIDDLE ATLANTIC 12 OUTLET POWER STRIP	$192.57	$385.14
U	2	LBPIR	MIDDLE ATLANTIC HORIZ LACING BARS (10)	$73.50	$147.00
V	2	CBSWRK32	MIDDLE ATLANTIC CASTOR BASE	$148.47	$296.94
W	1	MCD2RWS	MODULAR CONSOLE DESIGN TWO RACK WORKSURFACE	$580.65	$580.65
X	1	RMMTXR7//A	SONY RACK KIT FOR (4) RCPTY7 CONTROLLERS	$658.56	$658.56
Y	1	DFS700	SONY DIGITAL PRODUCTION SWITCHER	$22,983.45	$22,983.45
Z	1	BKDF711	SONY SECOND CHANNEL EFFECTS BOARD	$4,246.83	$4,246.83
AA	1	BKDF712	SONY 3D MAPPING EFFECTS BOARD	$5,131.77	$5,131.77
AB	1	DSR1600	SONY DVCAM EDIT PLAYER	$9,741.69	$9,741.69
AC	1	DSBK1601	SONY SDI OUTPUT BOARD FOR DSR1600	$1,128.96	$1,128.96
AD	1	DSR1800	SONY DVCAM EDIT RECORDER	$13,920.90	$13,920.90
AE	1	DSBK1801	SONY SDI INPUT/OUTPUT BOARD FOR DSR1800	$1,437.66	$1,437.66
AF	2	RMM130US	SONY RACK KIT FOR DSR VTRS	$266.07	$532.14
AG	1	RM450A	SONY CUTS ONLY EDIT CONTROLLER	$2,704.80	$2,704.80

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06354

Ecorse Public Schools
Video Studio Pricing

ITEM	QUANTITY	MODEL	DESCRIPTION	Unit Price	Extended
AH	1	ST200	DNF VTR REMOTE CONTROLLER	$1,984.50	$1,984.50
AI	1	325301DOON	PINNACLE DEKO 500 DIGITAL CHARACTER GENERATOR	$19,687.71	$19,687.71
AJ	1	340SPRTSN	PINNACLE SPORTS/LIVE OPERATION OPTION	$657.09	$657.09
AK	1	340STILW	PINNACLE STILL STORE OPTION	$3,938.13	$3,938.13
AL	1	340880KBD	PINNACLE FAST ACTION KEYBOARD	$3,544.17	$3,544.17
AM	1	3151024RK	PINNACLE RACK SLIDE KIT FOR DEKO 500	$264.60	$264.60
AN	6	PVM8042Q	SONY 8" COLOR PRODUCTION MONITOR	$1,078.98	$6,473.88
AO	3	MB520	SONY RACK KIT FOR PVM8042Q MONITORS	$223.44	$670.32
AP	2	PVM14M2U	SONY 14" PRODUCTION MONITOR	$1,462.65	$2,925.30
AQ	1	VSG201D	VIDEOTEK DIGITAL SYNC GENERATOR	$4,193.91	$4,193.91
AR	1	TVM821D	VIDEOTEK DIGITAL COMBO WAVEFORM/VECTORSCOPE	$5,806.50	$5,806.50
AS	1	DRC1	VIDEOTEK RACKMOUNT KIT	$454.23	$454.23
AT	1	BLK1	VIDEOTEK BLANK PANEL FOR DRC1	$105.84	$105.84
AU	1	OC16DV	PESA 16X16 SDI MATRIX ROUTING SWITCHER	$6,666.45	$6,666.45
AV	1	OC16A2	PESA 16X16 ANALOG AUDIO MATRIX ROUTER	$6,512.10	$6,512.10
AW	1	RCP1616L	PESA LOCAL 16X16 CONTROL PANEL	$668.85	$668.85
AX	2	RCP161R	PESA 16 BUTTON PER SOURCE REMOTE PANEL	$690.90	$1,381.80
AY	1	TVM621	VIDEOTEK COMBINATION WAVEFORM/VECTORSCOPE -FOR CAMERA SHADING	$5,637.45	$5,637.45
AZ	1	PVM8045Q	SONY HIGH RESOLUTION COLOR MONITOR -FOR CAMERA SHADING	$1,511.16	$1,511.16
BA	1	RKPM8044	FEC DUAL RACK MOUNT KIT FOR SONY MONITORS -FOR CAMERA SHADING	$185.22	$185.22
BB	1	WF8044	FEC WFM/VS ADAPTOR FOR RKPM8044 -FOR CAMERA SHADING	$189.63	$189.63

Ecorse Public Schools
Video Studio Pricing

ITEM	QUANTITY	MODEL	DESCRIPTION	Unit Price	Extended
BC	1	APM200	VIDEOTEK STEREO AUDIO RACKMOUNT MONITOR -FOR CAMERA SHADING	$1,058.40	$1,058.40
BD	1	TERM	MISCELLANEOUS TERMINAL EQUIPMENT -DISTRIBUTION AMPLIFIERS -PATCH BAYS/CORDS -AUDIO LINE- MATCHING TRANSFORMERS -COST ESTIMATE, ACTUAL EQUIPMENT AND COST TO BE DETERMINED BY ENGINEERING PROCESS	$27,195.00	$27,195.00
BE	1	ICOM	CLEARCOM INTERCOM SYSTEM =-COST ESTIMATE, ACTUAL EQUIPMENT AND COST TO BE DETERMINED BY ENGINEERING PROCESS	$12,495.00	$12,495.00
BF	1	CDPD11	SONY PROFESSIONAL RACKMOUNT CD PLAYER	$1,073.10	$1,073.10
BG	1	MDSE10	SONY PROFESSIONAL RACKMOUNT MD RECORDER	$880.53	$880.53
BH	1	1604VLZPRO	MACKIE 16 INPUT AUDIO MIXER	$1,744.89	$1,744.89
BI	2	D75A	CROWN 75 WATT POWER AMPLIFIER	$873.18	$1,746.36
BJ	2	CONTROL25	JBL COMPACT SPEAKER WITH WALL MOUNT TV CONTROL ROOM EQUIPMENT/ACCESSORIES STUDIO LIGHTING EQUIPMENT/ACCESSORIES	$147.00	$294.00
BK	1	GRID/DIST	ILS GRID AND DISTRIB HARDWARE F/STUDIO -SEE ATTACHED FOR DETAILS	$17,497.41	$17,497.41
BL	1	CONTROL	ILS LIGHTING CONTROL SYSTEM -SEE ATTACHED FOR DETAILS	$17,029.95	$17,029.95
BM	1	CYC	ILS CYCLORAMA CURTAIN AND TRACK -SEE ATTACHED FOR DETAILS	$21,132.72	$21,132.72

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Ecorse Public Schools
Video Studio Pricing

ITEM	QUANTITY	MODEL	DESCRIPTION	Unit Price	Extended
BN	1	FIXTURES	ILS LIGHTING FIXTURES AND ACCESSORIES STUDIO LIGHTING EQUIPMENT/ACCESSORIES EDIT ROOM AND ACCESSORIES	$29,427.93	$29,427.93
BO	3	23307	MEDIA 100 POWERGRADE BROADCAST EDITION -MEDIA 100 IFINISH 4.0 SYSTEM WITH CPU, BOARDSET AND SOFTWARE *EDUCATIONAL PRICING	$21,867.72	$65,603.16
BP	3	21168	MEDIA 100 IFINISH SDI INPUT/OUTPUT OPTION	$5,521.32	$16,563.96
BQ	3	22221	ATTO DUAL CHANNEL ULTRA1.60 SCSI CARD	$967.26	$2,901.78
BR	3	21857	MEDIA 100 ISTOR 72GB EXTERNAL STORAGE ARRAY =-EXTERNAL CASE AND POWER SUPPLY -TWO (2) 36GB SCSI HARD DRIVES -CABLE AND TERMINATOR	$4,312.98	$12,938.94
BS	6	231055	VIEWSONIC GS790 19" SVGA DISPLAY MONITOR	$627.69	$3,766.14
BT	6	MS12C	ROLAND 10 WATT POWERED SPEAKER	$202.86	$1,217.16
BU	3	PVM14M2U	SONY 14" COLOR PRODUCTION MONITOR	$1,462.65	$4,387.95
BV	3	DSR20	SONY DVCAM RECORDER/ PLAYER	$4,714.29	$14,142.87
BW	3	E4606	WINSTED 94" DIGITAL EDITING DESK W/RISER EDIT ROOM AND ACCESSORIES	$2,381.40	$7,144.20
			NON-EQUIPMENT COSTS MCSI ENGINEERING AND DESIGN SERVICES		
BX	1	ENG*	MCSI CAD SERVICES MCSI PROJECT	$27,540.45	$27,540.45
BY	1	CAD*	MANAGEMENT SERVICES	$5,512.50	$5,512.50
BZ	1	PMT*	MCSI INSTALLATION PARTS	$8,195.25	$8,195.25

Ecorse Public Schools
Video Studio Pricing

ITEM	QUANTITY	MODEL	DESCRIPTION	Unit Price	Extended
CA	1	IP*	MCSI INSTALLATION LABOR	$22,035.30	$22,035.30
CB	1	Vic*	MCSI SYSTEM SERVICE CHECKOUT	$33,052.95	$33,052.95
CC	1	SSC*	MCSI COMPUTER SYSTEM INTEGRATION SERVICES	$11,017.65	$11,017.65
CD	1	SI*	CONTROL ROOM TRIAX CAMERA PATCH PANEL	$2,058.00	$2,058.00
				Studio Total:	**$661,965.99**

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Ecorse Public Schools
Video Studio Pricing

ITEM	QUANTITY	MODEL	DESCRIPTION	Unit Price	Extended
		Remote Locations			
A	1	TRIAXPP	-CONNECTIONS TO INCLUDE: -(2) TRIAX CONNECTORS FOR CCU'S -(2) TRIAX CONNECTORS FOR STUDIO -(2) TRIAX CONNTECTORS FOR GYMNASIUM -(2) TRIAX CONNECTORS FOR AUDITORIUM MCSI REMOTE LOCATION CONNECTOR PANEL	$2,058.00	$2,058.00
B	2	PPREMOTE	FOR AUDITORIUM AND GYMNASIUM =-CONNECTIONS TO INCLUDE: - (2) TRIAX CAMERA - (2) INTERCOM - (8) AUDIO - (4) VIDEO	$2,925.30	$5,850.60
C	1	PREMSMSA	MCSI PREMIUM SMSA MAINTENANCE PACKAGE	$27,749.19	$27,749.19
D	1	F/H	FREIGHT AND HANDLING	$11,061.75	$11,061.75
				Remote Site Total:	**$46,719.54**

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06359

Ecorse Public Schools
Video Studio Pricing

ITEM	QUANTITY	MODEL	DESCRIPTION	Unit Price	Extended
		Training Room			
A	1	6027401	EXTRON CROSSPOINT 126HV VIDEO SWITCHER	$5,324.34	$5,324.34
B	1	6022002	EXTRON PRO RGB 109XI INTERFACE	$8,471.61	$8,471.61
C	1	6028901	WOLFVISION VISUALIZER	$818.79	$818.79
D	1	VZ8	PANASONIC VHS VIDEO CASSETTE RECORDER	$7,033.95	$7,033.95
E	1	AG2560	MIDDLE ATLANTIC SHELF	$643.86	$643.86
F	1	RSH4S	ELMO SLIDE/VIDEO CONVERT	$105.84	$105.84
G	1	TRV35H	MIDDLE ATLANTIC 4 RU RACK SHELF	$4,033.68	$4,033.68
H	1	U4	PARKERVISION GENERAL PAN/TILT CAMERA W/GNLK	$63.21	$63.21
I	3	CPT2112AIN	PARKERVISION WALL MOUNT	$6,057.87	$18,173.61
J	3	CWM2000	PARKERVISION CAMERAMAN JOYSTICK CONTROLLER	$213.15	$639.45
K	1	JSC2100	VIDEO SOURCES	$4,845.12	$4,845.12
	1		NEC LCD PROJECTOR	$11,623.29	$11,623.29
	1		NEC PROD. MOUNT	$239.61	$239.61
L	1	MT1055	CHIEF APAPTER PLATE	$60.27	$60.27
M	1	RPA810	CHIEF 4'-6-	$97.02	$97.02
N	1	DCS200	EXTENSION COLUMN	$0.00	$0.00
O	1	ADJ0406	DRAPER 120" DIAGONAL ACCESS V SCREEN	$2,399.04	$2,399.04
P	1	102005	PROJECTION SYSTEM	$14,417.76	$14,417.76
	1		GENTNER AUDIO PERFECT CONFERENCING SYSTEM	$5,672.73	$5,672.73
Q	1	AP800	GENTNER AUDIO PERFECT CONFERENCING SYSTEM	$5,672.73	$5,672.73
R	1	AP400	SHURE UHF WIRELESS COMBINATION UNIT	$4,537.89	$4,537.89
S	2	U124D58	SHURE MICROPHONE	$5,194.98	$10,389.96
	12		SHURE CEILING MICS	$123.48	$1,481.76
T	2	WL183	JBL LOUD SPEAKER	$291.06	$582.12
U	12	MX202W/S	SYSTEM	$254.31	$3,051.72
V	2	CONTROL28	JBL CONTROL26CT WHITE	$270.48	$540.96
	12		70V CEILING SPEAKER SY	$176.40	$2,116.80
W	3	CONTROL26	ALTEC AMPLIFIER 75 WATT 3RU	$576.24	$1,728.72
X	3	1407A	SABINE FEEDBACK	$724.71	$2,174.13

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Ecorse Public Schools
Video Studio Pricing

ITEM	QUANTITY	MODEL	DESCRIPTION	Unit Price	Extended
			EXTERMINATOR		
Y	1	FBX1020+	VIDEOTEK AUDIO DIST AMP	$448.35	$448.35
Z	1	ADA16	CROWN AUDIO AMPLIFIER FOR PROGRAM AUDIO	$705.60	$705.60
AA	1	DTS	AUDIO SYSTEM	$705.60	$705.60
	1		PANDA INTEGRATED CONTROL SYSTEM	$2,205.00	$2,205.00
AB	1	AXCENT3PRO	PANDA VOLUME CONTROL	$643.86	$643.86
	1		PANDA TPI RGB INPUT	$1,461.18	$1,461.18
AC	1	AXBVOL3	CARD	$643.86	$643.86
AD	1	TPIRGB	PANDA VIDEO INPUT CARD	$1,093.68	$1,093.68
		TPIVID	PANDA ELO 15 IN DIAG		
AE	1		TOUCHSCREEN LCD PANEL	$3,445.68	$3,445.68
AF	1	ELO	PANDA CONTROL HARDWARE	$4,226.25	$4,226.25
	1		MARSHALL FURNITURE	$3,307.50	$3,307.50
AG	1	PANDA/HRDW	PRESENTATION LECTERN		
AH	1	MLP45	MARSHALL FIXED RACK RAILS	$267.54	$267.54
AI	1	FRR	MARSHALL REAR ACCESS PANEL	$349.86	$349.86
AJ	1	RAP	MARSHALL POCKET DOORS	$147.00	$147.00
	1		MARSHALL LAPTOP AND	$1,608.18	$1,608.18
AK		PD	DOCUMENT CAMERA PACK		
AL	1	LDSP50	EQUIPMENT RACKS	$5,680.08	$5,680.08
AM	1	TECH/SERV	MSCi INTEGRATION SERVICES IS AN ESTIMATION		
	1		EQUIPMENT RACKS	$8,820.00	$8,820.00
				Training Room Total:	**$152,699.19**

NECBNS CON
06361

Ecorse Public Schools
Video Studio Pricing

ITEM	QUANTITY	MODEL	DESCRIPTION	Unit Price	Extended
		Auditorim			
A	1	XT5000	NEC HIGH BRIGHTNESS XGA PROJECTOR 5000 ANSI LUMENS	$68,953.29	$68,953.29
B	1	TL4Z	NEC 4.0-7.0 LONG THROW ZOOM LENS	$10,143.00	$10,143.00
C	1	XTFRAME	NEC XT FLYING FRAME	$1,791.93	$1,791.93
D	1	XTLPHOUSE	NEC XT SPARE LAMP WITH HOUSING	$5,164.11	$5,164.11
	1				
E	1	PARAGON	DRAPER PARAGON 200" DIAGONAL PROJECTION SCREEN.	$5,136.18	$5,136.18
F	1	LVCIII	DRAPER LOW VOLTAGE SCREEN CONTROLLER	$176.40	$176.40
G	1	DVPC660	SONY 5 DISK DVD PLAYER	$443.94	$443.94
H	1	RSH4S	MIDDLE ATLANTIC SHELF	$105.84	$105.84
I	1	SLVN81	SONY VCR	$216.09	$216.09
J	1	RSH4S	MIDDLE ATLANTIC SHELF	$105.84	$105.84
K	1	6034001	EXTRON SYSTEM 7 SC SWITCHER	$5,503.68	$5,503.68
L	1	6027101	EXTRON POWER SENSOR	$174.93	$174.93
M	1	6028901	EXTRON PRO RGB 109XI INTERFACE	$818.79	$818.79
N	1	6028703	EXTRON RGB 508 WHITE ARCH. SERIES INTERFACE	$818.79	$818.79
0	1	7005501	EXTRON POWER SUPPY	$47.04	$47.04
P	4	2644102	EXTRON L13C VGA 6 FT CABLE	$138.18	$552.72
Q	1	7009422	EXTRON WHITE RCA PASS THROUGH	$51.45	$51.45
R	1	7010324	EXTRON XLR AND RJ45 CONNECTION MODULE	$61.74	$61.74
S	1	PVM14N2U	SONY 14" MONITOR	$909.93	$909.93
T	1	RKMP1341	FEC RACK MOUNT KIT	$183.75	$183.75
U	1	7009021	EXTRON WHITE BLANK MODULE	$20.58	$20.58
V	1	VPXCPW	AMX VIEWPOINT EXPRESS COLOR 2 WAY CONTL SYS	$6,340.11	$6,340.11
W	1	AXTCA10	AMX COLOR TOUCH SCREEN CONTROL PANEL	$5,512.50	$5,512.50

Ecorse Public Schools
Video Studio Pricing

ITEM	QUANTITY	MODEL	DESCRIPTION	Unit Price	Extended
X	1	AXBVOL3	PANDA VOLUME CONTROL	$643.86	$643.86
Y	1	WRK3732	MIDDLE ATLANTIC STAND-ALONE EQUIP. RACK	$814.38	$814.38
Z	1	PDS615R	MIDDLE ATLANTIC 6 OUT LET SEQUENCED 15 AMP	$409.95	$409.95
AA	1	CBSWRK32	MIDDLE ATLANTIC BASE WITH CASTERS	$124.95	$124.95
AB	1	SS	MIDDLE ATLANTIC SLIDING SHELF	$120.54	$120.54
AC	2	D3	MIDDLE ATLANTIC DRAWER	$149.94	$299.88
AD	1	IP	MCSi INSTALLATION PARTS	$6,340.11	$6,340.11
AE	1	TECH/SERV	MCSi TECHNICAL SERVICES HAVE BEEN ESTIMATED BASED ON MCSI's LIMITED UNDERSTANDING OF THE END USERS NEEDS	$47,040.00	$47,040.00
AF	1	FREIGHT	FREIGHT & HANDLING	$1,764.00	$1,764.00
AG	1	SMSA	MCSi SCHEDULED MAINTENANCE CONTRACT	$8,011.50	$8,011.50
				Auditorium Total:	**$178,854.90**
				Grand Total:	**$1,040,239.62**

NECBNS CO
06363

TAB 85

From: Weekly, Randy
Sent: Wednesday, March 21, 2001 11:49 AM
To: Colvin, John at NECBNS
Cc: McNulty, Gerard
Subject: FW: SLD Scope of Work

NEC $$ STRIBUTION.00-01 fyi.....lets discuss

Randy

-----Original Message-----
From: Doug Benit [mailto:dbenit@eps.k12.mi.us]
Sent: Wednesday, March 21, 2001 1:14 PM
To: Randy Weekly
Subject: SLD Scope of Work

Randy: I have attached a spreadsheet on what we discussed. Please review and comment. I can be reached tomorrow by cell phone 313-363-3883. I will be in the office all day on Friday. Doug

NECBNS CON 06364

3/16/2001

NEC PROPOSED USE OF FUNDS				EPS Response To Proposed Use Of Funds		Balance of Awarded Funds
						$ 4,136,969.81
1 PBX SYSTEM	Equipment	$ 593,760.00				
	Labor	$ 118,000.00				
Total		$ 711,760.00	$ 700,000.00	OK		$ 3,436,969.81
2 VNCI Video (In Kind)		$ 1,042,890.00	$ 500,000.00	Too Much Reduce to cover H.S. and other bldgs		
Total		$ 1,042,890.00	$ 500,000.00	OK		$ 2,936,969.81
3 Data System	Equipment	$ 999,600.00				
	Labor	$ 119,000.00				
Total		$ 1,118,600.00	$ 1,000,000.00	OK		$ 1,936,969.81
4 PC Cards		$ 14,000.00	$ 14,000.00	OK		
Total		$ 14,000.00	$ 14,000.00	OK		$ 1,921,969.81
5 T.V. Studio	Not Broken Down	$ 1,040,239.62	$ 800,000.81			
Total		$ 1,040,239.62	$ 800,000.81	OK		$ 1,121,969.00
6 Other In-Kind		$ 317,908.81				
			$ 368,500.00	H.S. Multicenter	$	753,469.00
Items Not Designated			$ 368,500.00	Kennedy Multicenter	$	384,969.00
			$ 284,969.00	Grandport Trade Center	$	100,000.00
			$ -		$	100,000.00
			$ 100,000.00	Staff Development	$	-
Total		$ 317,908.81	$ 1,121,969.00			

NECBNS CON 06365

TAB 86

From: Larry Moskal [larry.moskal@mcsinet.com]
Sent: Friday, February 15, 2002 1:50 PM
To: McCain, Robert
Subject: RE: Ribbon Cutting Ceremony for the New High School

Mac,
Of course we will help! I'll plan to have some there for the event as well.

Larry Moskal
Engineering Manager
MCSi Chicago

-----Original Message-----
From: RMcCain@necbns.com [mailto:RMcCain@necbns.com]
Sent: Friday, February 15, 2002 10:57 AM
To: lmoskal@videoimages.com
Cc: RWeekly@NECBNS.com; RMcCain@necbns.com; BBarber@necbns.com
Subject: FW: Ribbon Cutting Ceremony for the New High School

Larry,

We will be reaching out to you to help us for this request. Looks like Bill may get to Ecorse the first of March because he is being asked to go to Arkansas the rest of March! Anyway, will let you know what Dr. Benit is looking to do.

Mac

-----Original Message-----
From: Doug Benit [mailto:dbenit@eps.k12.mi.us]
Sent: Wednesday, February 13, 2002 12:04 PM
To: McCain, Robert; Barber, Bill; Colvin, John
Subject: Ribbon Cutting Ceremony for the New High School

We need to having an open house to our community May 17, 18, & 19th. WE would like to interview people as they come into the building and within the building. We want to show off the T.V. production area, broadcast a tape across all T.V. in the district, etc.

My question to all of you, will you help us get this done. I will try to schedule a training period in March at the High School so that we can get started. However, this is very important that we get it correct! Let my know if you will be able to help us. Thanks!

TAB 87

McNulty, Gerard

From: McNulty, Gerard
Sent: Monday, December 18, 2000 4:54 PM
To: 'Judy_green@vnci.net'
Subject: Busy day

Judy,

I have spoken to and completed 470 forms for each of the following districts.

Ecorse
Lee
Jasper
Covert
Ceria Travis
N. Chicago

I have also set up an appointment for George while he is in Arkansas(Wednesday) with the Superintendent of Helena schools He and I have talked a number of times over the last few days and I believe he is ready to utilize us I think this will be a good one with 9 schools at 87% free and reduced.

I have not been able to get copies of the Wellstone RFP,Brinkley RFP and Earle RFP. It seems everyone is on an early vacation due to the weather. What do you suggest?

Best Regards,
Gerard

CONFIDENTIAL
NECBNS CON 06101

NEC 003-003-1491

NEC ATD-000152

TAB 88

Video Network Communications, Inc. Announces First Quarter Results

PORTSMOUTH, N.H., May 22 /PRNewswire/ -- Video Network Communications, Inc. (Nasdaq: **VNCI** and VNCIW), a provider of real-time video network communications solutions, today announced first quarter results for the period ended March 31, 2001.

The Company recognized $2,654,000 in revenue in the first quarter of 2001, compared to $653,000 in the first quarter of 2000, an increase of approximately three hundred percent. The Company reported a net loss of $794,000 for the quarter, or $.07 per share. This loss compares to a net loss of $1.9 million, or $.22 per share, for the first quarter of 2000, a net loss improvement of 58%.

During the quarter, the company also invoiced $1.4 million dollars that have not been reflected in first quarter results of operations. Management had anticipated recognizing these fees as revenue in the first quarter, but a careful review of current revenue recognition guidance suggested that it is more appropriate to reflect the receipt of these funds in a later period.

Chairman and CEO Carl Muscari commented: "We are pleased with our progress compared to a year ago and continue to anticipate a strong performance for the business in fiscal year 2001, with targeted revenues in excess of $20 million and what should be our first overall year of profitability. The $2.7 million in revenues reported for this quarter include revenues generated by continuing deployment of our technology in the education market at several different K-12 school districts, a repeat sale to a premier national law firm, and sales through an active reseller to a new federal government client."

Highlights for the first quarter included the addition of specialized engineering and project management staff to support business development in the healthcare and educational sectors. VNCI also added 20-plus years of communications sales experience with the addition of Mike Bennis as director of government sales. According to Bennis: "I've been marketing video technology to the government and, in particular, the Department of Defense, for over 11 years and I am convinced that the primary obstacles to widespread implementation can be overcome by VNCI's flexible network design. For example, the company's new large-capacity switch, and hub and spoke technology, enable VNCI to deploy the most extensive and robust video networks available today. Simply put, we can get high-quality video to hundreds of desktops faster and easier than anyone else."

The Company has scheduled an investor conference call for Tuesday, May 22, 2001 at 3:00 p.m. To access the call, dial 212-231-6006. A live webcast of the conference call will be available at the VNCI Web site at **http://www.vnci.n** For those who cannot listen to the live broadcast, an audio replay of the call will be available on the Web site for 30 days. A telephone replay of the call will also be available from 5:00 p.m. EDT on May 22 until 5:00 p.m. EDT on May 29. To listen to the telephone replay, dial 800-633-8284 (858-812-6440 outside the U.S.) and enter reservation number 18933163.

About Video Network Communications, Inc.

Video Network Communications designs, develops, and markets video distribution systems that provide full-motion, high-resolution video networking, enabling video broadcast distribution, retrieval of stored video-on-demand and interpersonal video communications. VNCI's patented technology allows the VNCI Video System to use the active telephone wiring to bring TV-quality video anywhere there's a phone jack. The Company's ISDN/IP and

Universal (ATM) Gateway solutions extend the system's reach from enterprise desktops out to the wide-area-networks (WANs). The Company's common stock and warrants are listed on The Nasdaq SmallCap Market under the symbols "VNCI" and "VNCIW" respectively. VNCI can be found at **http://www.vnci.net.**

Except for the historical information herein, the matters discussed in this news release include forward-looking statements that may involve a number of risks and uncertainties. Actual results and future events may vary significantly based on a number of factors, including, but not limited to, risks in product and technology development, market acceptance of new products and continuing product demand, the impact of competitive products and pricing, changing economic conditions and other risk factors detailed in the Company's most recent filings with the Securities and Exchange Commission.

VIDEO NETWORK COMMUNICATIONS, INC.

BALANCE SHEETS

ASSETS

	March 31, 2001 (Unaudited)	December 31, 2000
Current assets:		
Cash and cash equivalents	$1,169,821	$1,660,051
Accounts receivable	2,064,371	3,020,377
Inventories	5,939,109	4,668,938
Other current assets	148,473	42,889
Total current assets	9,321,774	9,392,255
Property and equipment, net	624,050	682,815
Trademarks and patents, net	265,290	269,029
Other assets	8,309	8,309
	$10,219,423	$10,352,408

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities:		
Notes payable	$95,000	$29,806
Accounts payable	1,442,810	1,486,949
Deferred revenue	3,331,531	2,623,303
Accrued liabilities	1,665,325	1,645,516
Current portion of notes payable	2,936,931	109,102
Obligations under capital lease, current portion	14,079	7,635
Total current liabilities	9,485,676	5,902,311
Notes payable	-	2,855,617
Obligations under capital lease	14,757	24,556
Commitments		
Stockholders' equity:		

h e ec cg b e

Preferred stock, par value $.01, 2,500,000 shares authorized; - 0 - issued at March 31, 2001 and December 31, 2000, respectively	-	-
Common stock, par value $.01, 30,000,000 shares authorized; 10,667,970 outstanding at March 31, 2001 and December 31, 2000, respectively	106,680	106,680
Additional paid-in capital	60,054,137	60,110,721
Accumulated deficit	(59,441,827)	(58,647,477)
Total stockholders' equity	718,990	1,569,924
	$10,219,423	$10,352,408

VIDEO NETWORK COMMUNICATIONS, INC.

STATEMENTS OF OPERATIONS

(UNAUDITED)

	For the three months ended March 31,	
	2001	2000
Revenues:		
Products	$2,084,788	$643,046
Services	568,800	10,324
	2,653,588	653,370
Cost of sales:		
Products	1,210,987	524,631
Services	45,523	3,097
Management fees	-	-
	1,256,510	527,728
Gross margin	1,397,078	125,642
Operating expenses:		
Research and development	704,019	940,353
Selling, general and administrative	1,429,582	1,049,564
Total operating expenses	2,133,601	1,989,917
Loss from operations	(736,523)	(1,864,275)
Interest expense, net	57,827	53,625
Net loss	$(794,350)	$(1,917,900)
Net loss per common share - basic and diluted	$(.07)	$(0.22)
Weighted average shares outstanding - basic and diluted	10,667,970	8,848,263

h e ec cg b e

Contact:
Robert Emery, Chief Financial Officer
Video Network Communications, Inc.
(603) 334-6741

William A. Walkowiak, CFA
Lippert/Heilshorn & Associates, Inc.
(212) 838-3777

SOURCE Video Network Communications, Inc.
*Web Site: **http://www.vnci.net***

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VNCI Announces Multiple E-Rate Awards to Client School Districts; Near-Term Benefit Expected From Participation in $30M in Awards.

PR Newswire, March 20, 2002

PORTSMOUTH, N.H. -- (BULLETIN BOARD: VNWC) Video Network Communications, Inc. (VNCI), a leader in enterprise video networking, today announced its potential $4-5M benefit from E-rate funding announcements made February 11, 2002 and March 18, 2002 by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC). The awards totaled approximately $30,740,000 for K-12 school districts in Arizona, Alabama, California, Illinois, Michigan, and Puerto Rico. VNCI, through its partners Inter-Tel, NEC, and GM Group, expects to participate in these projects to a potential maximum of $4-5M over the next two quarters. Additional E-rate funding announcements, beneficial to VNCI, are expected in the immediate weeks ahead.

For further information on the E-rate program, consult its website at http://www.sl.universalservice.org/.

About Video Network Communications, Inc.

Video Network Communications designs, develops, and markets video distribution systems that provide full-motion, high-resolution video networking, enabling video broadcast distribution, retrieval of stored video- on-demand, security solutions, and interpersonal visual communications. The patented technology allows the VNCI system to use the same wiring as the telephone to bring TV-quality video anywhere there is a phone line. The Company's ISDN/IP and Universal Gateway solutions extend the system's reach from enterprise desktops out to the wide-area-networks (WANs). The Company's common stock and warrants are listed under the symbols "VNWC" and "VNWCW" respectively. Additional information is available at http://www.vnci.net/.

Except for the historical information herein, the matters discussed in this news release include forward-looking statements that may involve a number of risks and uncertainties. Actual results and future events may vary significantly based on a number of factors, including, but not limited to, risks in product and technology development, market acceptance of new products and continuing product demand, the impact of competitive products and pricing, changing economic conditions and other risk factors detailed in the Company's most recent filings with the Securities and Exchange Commission.

Contact:
Kerri Connelly,
603/334-2232
kerri_connelly@vnci.net
Video Network Communications, Inc.
Investor Relations Contact:
Robert F. Emery, CFO
603/334-6741
robert_emery@vnci.net
MAKE YOUR OPINION COUNT - Click Here
http://tbutton.prnewswire.com/prn/11690X76778333

Contact: Kerri Connelly, +1-603-334-2232, kerri_connelly@vnci.net; or Investor Relations: Robert F. Emery, CFO, +1-603-334-6741, robert_emery@vnci.net, both of Video Network Communications, Inc.

Website: http://www.vnci.net/

VNCI Appoints New Board Member

Director Brings over 30 years of Development Experience in Education Sector

PORTSMOUTH, N.H., Oct. 3 /PRNewswire/ -- Video Network Communications, Inc. (VNCI), a leader in enterprise video networking, today announced the appointment of Quentin R. Lawson, of Baltimore, Maryland, to the VNCI Board of Directors. Mr. Lawson, who currently serves as Executive Director of the National Alliance of Black School Educators (NABSE), brings over 30 years of experience in educational policy development and management in the public, private and non-profit sectors.

Mr. Lawson previously held high-profile positions including Executive Director for the Congressional Black Caucus Foundation from 1992 to 1995, and founder and Executive Director of the National Forum for Black Public Administrators from 1987 to 1992. Recognized as one of the "deans of the non-profit sector," Lawson implemented key research and educational policy programs, held annual conferences attracting more than 15,000 educational leaders from across the country and forged strategic partnerships at the national and local levels. In addition to his impressive management record, Quentin Lawson taught science and mathematics for almost 15 years, developing a deep understanding of the complex challenges facing educators - and the students they are attempting to reach.

"We are extremely pleased that Quentin Lawson has accepted the nomination to VNCI's Board of Directors," said President and CEO Carl Muscari. "As we continue to develop leading-edge video networking technology for the education market, Mr. Lawson's knowledge and experience in policy and program development will help ensure that our video solutions and services are designed to deliver maximum educational impact."

This appointment culminates more than a year of collaboration among Mr. Lawson, NABSE, and the VNCI executive team. Mr. Lawson noted: "I look forward to working with this fantastic technology and VNCI's highly committed management team. Over the past several months, I've come to appreciate our shared vision of introducing video to the educational community as a very accessible tool that can facilitate the training of teachers as well as students. I believe that VNCI video networks can deliver on the promise of combining Information Age technology and traditional curriculum in a very powerful medium."

About Video Network Communications, Inc.

Video Network Communications designs, develops, and markets video distribution systems that provide full-motion, high-resolution video networking, enabling video broadcast distribution, retrieval of stored video-on-demand and interpersonal video communications. The patented technology allows the VNCI system to use the same wiring as the telephone to bring TV-quality video anywhere there is a phone line. The Company's common stock, units and warrants are listed on The Nasdaq SmallCap Market under the symbols "VNCI" and "VNCIW" respectively. VNCI can be found at **http://www.vnci.net**

Except for the historical information herein, the matters discussed in this news release include forward-looking statements that may involve a number of risks and uncertainties. Actual results and future events may vary significantly based on a number of factors, including, but not limited to, risks in product and technology development, market acceptance of new products and continuing product demand, the impact of competitive products and pricing, changing economic conditions and other risk factors detailed in the Company's most recent filings with the Securities and Exchange Commission.

SOURCE Video Network Communications Inc.
*Web Site: **http://www.vnci.net***

TAB 89

From: "Hugh Manning" <HDM@Bedford.net>
To: "Portia Lemons" <PLemons@us.ibm.com>
Cc: "Alpha Telecommunications" <admin@alphatelecommunications.com>; <BrookeMarlow@aol.com>; "Mike Shelf" <Mshelf@us.ibm.com>
Sent: Sunday, October 21, 2001 8:20 PM
Subject: Atlanta

Portia: Atlanta's 470 was submitted as we were told it had. Unfortunately, it omitted communications software, e-mail software and some other piece parts. This is a prohibitive problem that necessitates another 470. I can't imagine why our script was changed and I sure don't want to have you go back to Arthur with this bad news. However, there is simply no reason for the changes to have been made and they will definitely limit what they get funded for items both Arthur and Bob Beman said they wanted to pursue. We need another 470 submitted exactly as we have scripted so every fundable avenue is open. Please let know if there is any way I can help with this matter. Thanks, Hugh

IBM

Office of the Vice President, Governmental Programs

1311 K Street Northwest, Suite 1200 Washington, DC 20005-3307

October 22, 2004

Representative Joe Barton
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you once again for the opportunity to present IBM's perspective on the E-rate program at the Committee's hearing on September 22. As I stated at the hearing, IBM believes that, overall, the E-rate program has been a success in helping millions of disadvantaged students bridge the "digital divide," and we want to work with you, Members of your Committee, the SLD and the FCC to improve the program.

We would like to supplement the record regarding questions raised at the hearing about an alleged E-rate teaming agreement among NEC Business Network Systems (NEC BNS), Video Network Communications, Inc. (VNCI), the National Alliance of Black School Educators (NABSE) and IBM. We have looked into this matter, and we have found no evidence that IBM has ever entered into any such teaming agreement.

Based on our review of documents presented at the hearing and our available records, we have made the following conclusions, consistent with my statements at the hearing:

- The January 2001 Memorandum of Understanding, which appears to be the formal teaming agreement, was <u>not</u> signed by IBM – clear demonstration that IBM did not join the agreement.
- IBM has never made any payments to NABSE in exchange for E-rate business referrals.
- Mr. Donald J. Parker, who is no longer employed by IBM, was not authorized by IBM management to sign any proposal or enter into any teaming agreement related to E-rate on behalf of IBM with NABSE, NEC BNS or VNCI.
- The November 2, 2000 letter signed by Mr. Parker and representatives from NEC BNS and VNCI was only a proposal, not a definitive, legally effective teaming agreement. As the letter stated: "The Teaming Agreement related to the Team members' participation with one another is in negotiation...." Clearly, the letter signed by Mr. Parker could not have been the Teaming Agreement to which the letter, itself, referred. In any event, NABSE did not sign the proposal letter, and therefore did not accept the proposal in the form set forth in the letter. Instead, NABSE accepted the January agreement to which IBM did not join, which differed from the November proposal in important respects.

- IBM management was not aware of, and did not approve, the video presented by the Committee at the September 22 hearing.

IBM always strives to conduct business in an ethical manner and to comply with all applicable rules and regulations. We stress this in our company's Business Conduct Guidelines, to which all employees must certify on an annual basis as a condition of employment. IBM believes that we have complied with E-rate program rules as we understood them at the time. But as the FCC has acknowledged by a 5-to-0 vote in their Yaleta Order, those rules have not always been clear or applied consistently.

We hope that the Committee can help to bring clarity to the program's rules. Through the creation of our E-rate Center of Competence and changes in our approach to E-rate, which I described at the hearing, we are doing everything that we can to ensure that IBM complies with those rules.

Thank you for this opportunity to supplement the record.

Sincerely,

Christopher G. Caine

CGC:bd

cc: Rep. Diana DeGette
Rep. Greg Walden

Evaluation of IBM Statement of Work
For El Paso Independent School District
For Email
Application #256606, FRN #648646
(Funding Year 2001)

1. Summary

This analysis evaluates whether the above Statement of Work describes products or services that are not eligible under the program rules of the Schools and Libraries Support Mechanism. The author has found several problem areas—descriptions within the Statement of Work—that appear ineligible or that raise serious questions about eligibility. These are described further in Section 2 of this document.

In addition, the above Statement of Work, which is for Funding Year 2001, is compared with Statements of Work that are associated with a funding request for Funding Year 2002, from the same applicant and service provider. Some parts of the Statements of Work are remarkably similar, raising questions not only about eligibility under program rules, but also about the extent that products and services promised as part of the Funding Year 2001 Statement of Work were delivered. Additional information about the similarities and differences between the Statements of Work for each year is provided in Section 3 of this document.

2. Eligibility Questions in the Statement of Work

Page 4 of the Statement of Work indicates that "all non e-rate eligible products and services are excluded from this agreement and is (sic) included in a separate contract." This phrase indicates that all aspects of the Statement of Work were felt to be E-rate eligible. However, several aspects of the Statement of Work are clearly not eligible under SLD program rules, and others have questionable eligibility (i.e., more information would be required before a final eligibility determination could be made).

Examples of ineligible areas provided in the Statement of Work are:

"Develop distributed email architecture," i.e., ineligible consulting services
"Develop end-user training curriculum," i.e., ineligible training
"Develop graphic & layout design standards," i.e., ineligible content development
Provide "free firewall software," i.e., ineligible security functions

Further details are provided in the Appendix to this document.

3. Comparison of Statements of Work for 2001 and 2002

One Statement of Work for funding year 2001 included products and services both for e-mail and for web server deployment. For funding year 2002, these two tasks were described in separate Statements of Work. (The application number for year 2002 is 318522. FRN for web access is 849783; FRN for e-mail is 849842.)

Web Access

The first 2002 document reviewed was entitled "IBM Statement of Work for Web Access for a School Community." This Statement of Work, while using the same general organization as the 2001 Statement of Work, was quite different in specific content. Some issues were identified, as indicated below; but in general there were fewer eligibility issues raised with the 2002 Statement of Work for web access in comparison to the 2001 Statement of Work.

IBM's web site indicates that "Web Access for a School Community" is a "complete solution utilizing services, hardware and Internet software." (The information obtained from the IBM web site is included as Appendix B.) No ineligible application software is specifically indicated in the description for this product, but features such as teachers being able to "[a]ssign team projects to groups of students" are mentioned, which could imply that ineligible application software is a part of the feature set. Further investigation would be required to determine if the comprehensive solution is limited to eligible Internal Connections.

Specific areas of the Statement of Work that raised questions are as follows:

- Tasks in Section 2.5 include "application maintenance." This phrase appears to describe maintenance of ineligible software
- Section 2.2 describes "Implementation Services" that appear to include high-level (ineligible) consulting, such as updating the "objectives and vision." Furthermore, the scope of the work described raises a question whether the extensive work that received funding approval in the previous fund year was completed successfully.
- Section 3.5 indicates that the applicant is responsible for "identification, procurement, and implementation" of an e-mail package. However, e-mail was to have been implemented by IBM in the previous fund year, and fund year 2002 also includes a substantial funding request for e-mail. Thus, a question is raised whether the products and services for which funding has been granted are being successfully implemented.

E-mail

The Fund Year 2002 Statement of Work for e-mail was quite similar to the e-mail portion of the Fund Year 2001 Statement of Work, and, in general, the same eligibility issues exist as for Year 2001.

Sections 2.2 and 2.3 of both Statements of Work are extremely similar, using identical phrasing in many places, except that the 2002 Statement of Work uses the words "review" and "update" for the same topics that are described in the 2001 Statement of Work with the word "develop." With one exception noted below, reviewing the issues identified for sections 2.2 and 2.3 detailed in Appendix A (for fund year 2001) will also identify the eligibility issues for fund year 2002.

For example, section 2.2, item 11 of the 2001 Statement of Work reads "Assist in development of district-wide email Policies & Procedures." This appears to describe a service that is not eligible under program rules. (See Appendix A for further information.) In the 2002 Statement of Work, item 8 of the Statement of Work reads "Review and assist in update of district-wide email Policies & Procedures." This very similar description also appears to describe an ineligible service.

Item 1 of this section 2.2 in the 2001 Statement of Work reads "Define roles and responsibilities for email deployment." The 2002 Statement of Work for item 1 of section 2.2 reads "Update roles and responsibilities for email installation." While either description may relate to an eligible service, the apparent need in 2002 to define roles for the email installation raises a question of what services were actually successfully performed in 2001 that would require the need for further e-mail installation, and defining roles for e-mail installation, in 2002.

The one area that is revised in 2002 so that an eligibility issue is no longer apparent is item 9 of section 2.2. of the Statement of Work (which corresponds to item 12 of the 2001 Statement of Work). Appendix A points out that the security features described in 2001 do not appear eligible. However, the description for 2002 has been revised to remove references to security, as follows:

2001: Assist in developing standards for connectivity, security, and access from outside the firewall.

2002: Review and assist in update of standards for connectivity.

Further analysis would be required to determine if the 2002 services included ineligible security features.

Conclusion

Both Statements of Work, for fund years 2001 and 2002, describe services that appear clearly ineligible, and describe other services that would need further analysis before an eligibility determination could be made. [1]

Furthermore, the extent that highly similar implementation services were proposed for fund year 2002 raises a question whether there was a waste or abuse of program funds for these services in fund year 2001.

Phil Gieseler
March 13, 2003

[1] The Item 21 Attachment for fund year 2001 was evaluated. It did not describe products or services in a way that would raise questions about eligibility. It is not known by this author whether the Statement of Work was reviewed by PIA staff in the process of considering eligibility of the Funding Request. If PIA reviewed the Item 21 Attachment, only, and did not request a copy of the Statement of Work, there would be no indication of ineligible products and services.

APPENDIX A:
ELIGIBILITY ISSUES CONTAINED IN STATEMENT OF WORK

The left column in the information that follows describes information contained in the Statement of Work. The right column provides conclusions about the E-rate eligibility of the products or services described by the statements.

S.O.W.	Eligibility Comment
Section 2.2 is titled "Email Installation Planning"	This may imply initial planning which is not eligible per the Eligible Services List.
Section 2.2, item 2 is "Develop distributed email architecture."	Such an activity clearly falls within the ineligible "initial planning" category. Architecture must already be known for applicants to indicate the products and services to be deployed, which is a requirement of our Form 471.
Section 2.2, item 4 is "Specify email server sizing & configuration."	The server sizing and configuration has already been specified in the Form 471. This appears to indicate another "initial planning" description. At best, this appears to be an unnecessary task.
Section 2.2, item 11 is "Assist in development of district-wide email Policies and Procedures."	The Eligible Services List indicates that "[d]ocumentation is eligible for discount if provided as part of the purchase or installation of eligible equipment or eligible services." However, assuming that the policies and procedures are designed for end users (a logical assumption), such documentation would not be connected to "eligible equipment of eligible services," and would thus be ineligible.
Section 2.2, item 12 is "Assist in developing standards for connectivity, security, and access from outside the firewall."	Security features are not eligible under current program rules, and thus consultation in security standards would not be eligible.
Section 2.3, item 3 indicates that IBM servers will be installed and configured "with free firewall software."	Firewall software is not eligible. Program rules require cost allocation for such components, even when "free."

Section 2.3, item 6 is "Develop end-user training curriculum and materials, and train trainers."	The ESL indicates that "training" is eligible in very limited circumstances. End-user training is specifically not eligible. Curriculum development and train-the-trainers are well beyond any indication of eligibility provided in the ESL. They are clearly not eligible.
Section 2.5, Web Maintenance (overview), indicates that CyberPatrol content filtering software will be provided.	Filtering software is not eligible.
Section 2.5, Web Maintenance, Web Planning, item 1(a) is "Establish and facilitate a District Web Policy steering committee."	The ESL indicates that "[c]osts associated with the overall management of the installation and initial operation of eligible products and services are eligible if they are part of a contract or bid for the eligible products and services." Although inclusion in the Statement of Work could constitute "part of a contract or bid," the services must be eligible, and they must involve "installation and initial operation." The services described here are not directly involved with installation or initial operation, and are thus ineligible.
Section 2.5, Web Maintenance, Web Planning, item 1(c) is "Assist in developing District-wide Policies and Procedures."	The Eligible Services List indicates that "[d]ocumentation is eligible for discount if provided as part of the purchase or installation of eligible equipment or eligible services." However, assuming that the policies and procedures are designed for end users, or involve the content of communication rather than the technology of distributing that content, such documentation would not be connected to "eligible equipment of eligible services," and would thus be ineligible.
Section 2.5, Web Maintenance, Web Planning, item 1(f) is "Develop graphic & layout design standards, and navigation standards."	The services described involved development of content, and are therefore not eligible.

Section 2.5, Web Maintenance, Web Planning, item 2(a) describes a "toolkit of reusable Web component templates," i.e., web development software	Such software is not eligible, however, we have allowed templates to be provided as ancillary in other situations. We would need to analyze further information to determine whether cost allocation would be needed, or whether the ancillary use principle would apply.
Section 2.6, Web Applications	This entire section describes implementation of a software-based workflow pilot project that is clearly not eligible under program rules. Partial quote from this section of SOW: "By limiting a Domino implementation solely to email, users get the benefit of Domino's excellent mail services, but they will likely not experience the types of added-value services that the Domino platform can so powerfully provided. We will provide and install three Domino [software] applications as pilots for three selected groups within the district." A range of extensive consulting services is then detailed.

APPENDIX B:
INFORMATION ABOUT "IBM WEB ACCESS FOR A SCHOOL COMMUNITY"

The following information was taken verbatim from an Internet site (http://www-1.ibm.com/industries/education/component/SOFTWARE_78511.html) on March 12, 2003.

IBM's Web Access for a School Community

Are you looking for a way to bring the Internet to your school district? Are you concerned about ease-of-use, costs and security? With IBM's Web Access for a School Community, IBM can help you implement easy-to-use, secure and reliable Internet access throughout your district, providing access for teachers, administrators, staff and students. IBM's Web Access for a School Community includes:

- Planning
- Project management
- Servers
- Installation
- Operational software
- Support

This is a complete solution utilizing services, hardware and Internet software, facilitating easy and reliable access to the Internet. Teachers can use the Internet to:

- Assign team projects to groups of students.
- Participate in private conferences on the Internet with parents.
- Communicate with other teachers and administrators within the district.

From: "Hugh Manning" <HDM@Bedford.net>
To: "Portia Lemons" <PLemons@us.ibm.com>
Cc: "Alpha Telecommunications" <admin@alphatelecommunications.com>; <BrookeMarlow@aol.com>; "Mike Shelf" <Mshelf@us.ibm.com>
Sent: Sunday, October 21, 2001 8:20 PM
Subject: Atlanta

Portia: Atlanta's 470 was submitted as we were told it had. Unfortunately, it omitted communications software, e-mail software and some other piece parts. This is a prohibitive problem that necessitates another 470. I can't imagine why our script was changed and I sure don't want to have you go back to Arthur with this bad news. However, there is simply no reason for the changes to have been made and they will definitely limit what they get funded for items both Arthur and Bob Beman said they wanted to pursue. We need another 470 submitted exactly as we have scripted so every fundable avenue is open. Please let know if there is any way I can help with this matter. Thanks, Hugh

Office of the Vice President,
Governmental Programs

1301 K Street Northwest, Suite 1200
Washington, DC 20005-3307

October 22, 2004

Representative Joe Barton
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you once again for the opportunity to present IBM's perspective on the E-rate program at the Committee's hearing on September 22. As I stated at the hearing, IBM believes that, overall, the E-rate program has been a success in helping millions of disadvantaged students bridge the "digital divide," and we want to work with you, Members of your Committee, the SLD and the FCC to improve the program.

We would like to supplement the record regarding questions raised at the hearing about an alleged E-rate teaming agreement among NEC Business Network Systems (NEC BNS), Video Network Communications, Inc. (VNCI), the National Alliance of Black School Educators (NABSE) and IBM. We have looked into this matter, and we have found no evidence that IBM has ever entered into any such teaming agreement.

Based on our review of documents presented at the hearing and our available records, we have made the following conclusions, consistent with my statements at the hearing:

- The January 2001 Memorandum of Understanding, which appears to be the formal teaming agreement, was <u>not</u> signed by IBM – clear demonstration that IBM did not join the agreement.
- IBM has never made any payments to NABSE in exchange for E-rate business referrals.
- Mr. Donald J. Parker, who is no longer employed by IBM, was not authorized by IBM management to sign any proposal or enter into any teaming agreement related to E-rate on behalf of IBM with NABSE, NEC BNS or VNCI.
- The November 2, 2000 letter signed by Mr. Parker and representatives from NEC BNS and VNCI was only a proposal, not a definitive, legally effective teaming agreement. As the letter stated: "The Teaming Agreement related to the Team members' participation with one another is in negotiation...." Clearly, the letter signed by Mr. Parker could not have been the Teaming Agreement to which the letter, itself, referred. In any event, NABSE did not sign the proposal letter, and therefore did not accept the proposal in the form set forth in the letter. Instead, NABSE accepted the January agreement to which IBM did not join, which differed from the November proposal in important respects.

- IBM management was not aware of, and did not approve, the video presented by the Committee at the September 22 hearing.

IBM always strives to conduct business in an ethical manner and to comply with all applicable rules and regulations. We stress this in our company's Business Conduct Guidelines, to which all employees must certify on an annual basis as a condition of employment. IBM believes that we have complied with E-rate program rules as we understood them at the time. But as the FCC has acknowledged by a 5-to-0 vote in their Yaleta Order, those rules have not always been clear or applied consistently.

We hope that the Committee can help to bring clarity to the program's rules. Through the creation of our E-rate Center of Competence and changes in our approach to E-rate, which I described at the hearing, we are doing everything that we can to ensure that IBM complies with those rules.

Thank you for this opportunity to supplement the record.

Sincerely,

Christopher G. Caine

CGC:bd

cc: Rep. Diana DeGette
Rep. Greg Walden

Oct-26-04 12:54pm From-house Energy & Commerce Committee 4555881 T-272 P.001/008 F-037
OCT 22 2004 16:44 FR IBM WASHINGTON

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date:	October 22, 2004
subject:	E-rate
pages:	Cover + 2
NOTES:	Original will be delivered by courier

If there are any problems with this fax please contact Brenda DeAbreu at (202) 515-5170.

IBM CONFIDENTIAL ____YES ____NO