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May 27, 2004

By Hand Delivery

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Natek, Inc.  
236 Massachusetts Avenue, NE  
Suite 110  
Washington, DC 20002

**STAMP & RETURN**

**RECEIVED**

**MAY 27 2004**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Attn: Enforcement Bureau  
Wireline Competition Bureau**

**Re: NEC Business Solutions  
Petition for Waiver of Section 54.521**

Dear Ms. Dortch:

Transmitted herewith, on behalf of NEC Business Network Solutions, Inc. is an original and 4 copies of a Petition for Waiver of Section 54.521 of the Commission's Rules.

Please direct any inquiries to the undersigned.

Respectfully submitted,



Richard Rubin  
Counsel for NEC Business  
Network Solutions, Inc.

Enclosure

DC #168744 v1

**STAMP & RETURN**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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<b>In the Matter of</b>	)	
	)	
<b>NEC Business Network Solutions, Inc.</b>	)	<b>CC Docket No.</b>
	)	
<b>Petition for Waiver of Section 54.521 of the Commission's Rules</b>	)	
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To: The Commission

**PETITION FOR WAIVER**

NEC Business Network Solutions, Inc. ("BNS"), by its attorneys, herein advises the Commission of certain events concerning the participation by BNS as a vendor under the FCC's universal service mechanism for schools and libraries ("E-Rate Program") and, in light of those events, pursuant to Section 1.3 of the Federal Communication Commission's ("FCC" or "Commission") Rules, requests a waiver of the Commission's debarment provisions contained in Section 54.521 of the Commission's Rules ("Petition").<sup>1</sup> BNS further requests that the Commission toll any suspension of BNS under the debarment rules pending its decision on this Petition.

<sup>1</sup> 47 C.F.R. § 1.3; 47 C.F.R. § 54.521; *see also* Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) ("Second Report and Order").

As discussed below, the facts of this case establish the existence of extraordinary circumstances such that debarment of BNS is not necessary to protect the integrity of the Program and, in fact, the public's interest would be served if BNS were allowed to continue as a service provider. Accordingly, BNS submits that good cause exists for the waiver.<sup>2</sup>

**I. BACKGROUND.**

**A. BNS' Involvement in the E-Rate Program.**

Irving, Texas-based BNS was founded in 1989 as a multi-services systems integrator and a direct sales and service organization for NEC America. BNS designs, sells, installs, and services a complete line of voice, data, and video communication systems and networks from 35 regional sales offices throughout the United States and Puerto Rico. BNS products and services include PBX systems, data networking including switches, hubs, routers, bridges and other network devices supporting ATM, ISDN, FDDI, Ethernet and other networking protocols, network design, project management, and systems and network management.

Since at least 1999, BNS participated in the E-Rate Program by selling and installing data equipment and telecommunication equipment to school districts that qualified for funding under the Program. BNS also installed data cabling and provided maintenance and other services as needed for the equipment it supplied. BNS has operated as a vendor under the E-Rate Program at approximately forty schools.

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<sup>2</sup> The Commission's rules relating to debarment were recently promulgated and BNS understands that this Petition presents a novel request. As such, BNS would be glad to provide the Commission with any additional information the Commission may deem necessary or helpful to reaching a decision with respect to this Petition.

In the fall of 2002, BNS learned that a Grand Jury investigation had been commenced concerning matters related to its involvement in the E-Rate Program. BNS reacted by fully and voluntarily cooperating with the government investigation and freezing all of its activity associated with the E-Rate Program. After reviewing the allegations and conducting its own internal investigation, BNS made a commitment to the government to accept responsibility for the conduct of a few of its employees and to resolve any related liabilities with the government. As a result, BNS agreed to plead guilty to one count of fraud and one count of violating the antitrust laws. BNS also agreed to pay \$15 million cash in fines and restitution, and to provide equipment, maintenance, and services valued at \$5.7 million to seven school districts that are customers of BNS through the E-Rate program. In addition, as described in detail below, BNS cooperated fully with the Department of Justice in developing and implementing a comprehensive list of measures and internal controls to address the failures that led to this situation.

A great number of the company's E-Rate projects arose out of BNS' regional sales offices. As far as BNS is aware, its conduct in these regional offices never has been the subject of investigation and complied with all applicable rules and regulations related to the E-Rate Program. The conduct which is the subject of BNS' plea and related settlement arose out of a limited group (the Public Sector Sales Group) comprised of a handful of the over 800 BNS employees. The E-Rate Program accounted for less than three percent of BNS total revenues during the period at issue in the plea and settlement.

Since becoming aware of the matters related to the government's investigation leading to the plea arrangement, BNS management has taken key steps to assure that all employees will act responsibly and to affirmatively protect the integrity of the E-Rate Program. BNS has

implemented the appointment of a Chief Compliance Officer with broad powers, commenced the retraining of all staff in ethics and compliance policies and procedures, implemented an anonymous hot-line for employees to report ethical concerns, and scheduled regular audits of all government contracts. BNS also worked extensively with the Department of Justice to put control measures in place that will give the government the right to assess the integrity of BNS' government contracting work. Moreover, as evidenced by BNS' response to the investigation (where it cooperated with the government, implemented the steps described above, and accepted responsibility for conduct that was isolated to only a few of its employees) and the many other government contract programs in which BNS has participated without incident, BNS can be counted on by the Commission as an example of what a model service provider should be under the E-Rate Program.

**B. Conduct Resulting in BNS' Plea and Settlement.**

During Year Three of the Program (2000-2001), BNS established the Public Sector Sales Group to create a centralized unit responsible for managing BNS' expansion into and involvement with the Program. This expansion was the direct result of BNS' entry into a teaming agreement with a manufacturer of video teleconferencing switches. BNS severed its consulting relationship with the company after it realized that certain practices adopted by the company's employees were inappropriate.

Notwithstanding, there were some very bad judgment calls by BNS employees which the company's then existing internal controls unfortunately did not pick-up until it was too late. BNS does not seek to excuse this conduct, but it should be noted that the initiative overseen by the Public Sector Sales Group in connection with the E-Rate Program was BNS' first full-scale venture into federal contracting, and by far the most complex. The Public Sector Sales Group

was inexperienced in this type of complex procurement process and, it is plain, did not understand it. This has been corrected by BNS. As noted below, the Public Sector Sales Group has been dissolved and comprehensive changes to the administration and internal controls of BNS have been and are being implemented.

Once the problems associated with the management of this Public Sector Sales Group came to light, BNS cooperated with the government investigation and froze all activity associated with the E-Rate Program. As discussed with the Department of Justice, these problems were not systemic within BNS and the violations arose out of work supervised by the employees in the Public Sector Sales Group. Notwithstanding, BNS as a company accepted responsibility for the violations and thus ensured that restitution and proper on-going service would be provided to the schools. BNS understands that the Department of Justice has been pleased with the extent and nature of BNS' cooperation in its on-going investigation. BNS encourages the Commission to verify this matter with the Department of Justice.

BNS accepted responsibility for the improper conduct of the few subject employees and agreed to plead guilty to one count of wire fraud and one count of antitrust violation. BNS further agreed to pay \$15 million cash in fines and restitution, and to provide equipment, maintenance, and services valued at approximately \$5.7 million to seven school districts that were overseen by the Public Sector Sales Group.

In addition, the Public Sector Sales Group at BNS was disbanded. Two of the individuals that were part of the group are no longer with the company and the others have been reassigned; they do not work on E-Rate Program matters or any other form of government procurement. The company also has put in place a new, strengthened compliance and monitoring program which

will allow it to function as a model vendor in the E-Rate Program and other government-funded projects.

Finally, as part of the settlement of this matter, BNS committed to continue to maintain the systems that were installed with E-Rate funding at the districts administered by the Public Sector Sales Group.

In sum, it is plain that mistakes were made by a few BNS employees related to the E-Rate Program and that the company has acknowledged and accepted responsibility for those mistakes and cooperated fully with the government. BNS management takes this matter seriously, and – as set forth fully below – believes that good cause exists to permit the company to proceed as an unfailing government contractor and provider of eligible goods and services to schools that qualify for funding under the E-Rate Program.

## **II. WAIVER OF THE DEBARMENT RULES IS WARRANTED AND IS IN THE PUBLIC'S INTEREST.**

The Commission's debarment rules found at Section 54.521 provide that the Commission suspend and debar a person from the E-Rate Program that is convicted of certain specified criminal offenses arising out of activities related to the E-Rate Program. 47 C.F.R. § 54.521(b) and (c). Where extraordinary circumstances exist, a conviction need not result in suspension and debarment. *Id.*; see also Second Report and Order at ¶ 67 (2003). The Commission has stated that a company will not be debarred where only individual employees are convicted for violations. See *Second Report and Order* at fn. 134.

The purpose of the debarment rules is not punitive. *Second Report and Order* at ¶ 66 (2003); cf. 48 C.F.R. § 9.402(b) ("serious nature of debarment and suspension requires that these

sanctions be imposed only in the public interest and not for purposes of punishment"). Rather, the purpose of debarment rules is to protect the integrity of the E-Rate Program. *Id.* As described below, in pleading guilty and settling civil liabilities, BNS has accepted responsibility for a handful of its employees, assured restitution to the government and continuity of service to the affected schools, and implemented an unprecedented compliance program in the area of government contracting. BNS should not now be debarred for acting in such a responsible fashion, especially considering that there is no need to debar BNS to protect the integrity of the E-Rate Program.

**A. Factors to be Considered in Waiving the Debarment Rules.**

Since adoption of the suspension and debarment rules in 2003, the Commission has not had much opportunity to articulate policies and interpretations regarding the application of those rules. In one such case, *Petition of the Puerto Rico Department of Education to Release Funds Associated with the Schools and Libraries Universal Service Support Mechanism for Years 2001 and 2002*, 18 FCC Rcd 25417 (2003) ("PRDOE Decision"), the Commission faced the Puerto Rico Department of Education ("PRDOE"), an applicant under the E-Rate Program, where the Secretary of Education for Puerto Rico had been indicted and convicted for extortion activities related to contractors for PRDOE. Giving due consideration to the first three years (FY1998-2000) of E-Rate Program funding for the PRDOE, while PRDOE was under the leadership of the Secretary who was subsequently convicted, the Commission nonetheless decided not to debar PRDOE and, absent additional convictions, directed the USAC to review and process the funding requests of PRDOE for FY2001 and 2002 because of "PRDOE's change in leadership and the achievements of its recovery program." *PRDOE* at ¶¶ 17-18.



In the PRDOE Decision, the Commission found particularly significant the actions of PRDOE after the conviction:

Based on the representations made by PRDOE in this proceeding, PRDOE is rectifying the problems created by the prior administration. [fn omitted] These efforts have allowed PRDOE to move beyond the problems of the past and towards section 254's goal of enhancing access at reasonable and affordable rates. [fn omitted] The current administration of PRDOE has been and continues to be responsive to federal and local authorities requesting information. PRDOE has undertaken significant measures to install infrastructure, network, and desk equipment, and has undertaken training to utilize these resources. Moreover, PRDOE launched and implemented these changes from its own funding sources, without relying on E-rate program funds.

*PRDOE Decision at ¶ 19*

Taken together, the change in PRDOE's leadership, administration and operating procedures represents a significant demarcation point in PRDOE's relationship with the E-rate program. We therefore view PRDOE's conduct with respect to FY 1998, 1999 and 2000 as severable from that of FY 2001 and 2002, such that the two periods should be treated with separate approaches and in separate orders. The analyses required for these two periods (FY 1998-2000 and FY 2001-2002) stem from separate sets of PRDOE decision-makers employing separate administrative procedures.

*PRDOE Decision at ¶ 22*

In the *PRDOE Decision*, the Commission drew a distinction between the unlawful activities of PRDOE before new operating procedures were put in place. *PRDOE Decision at ¶ 22* (using words as "significant demarcation" and "severable" to distinguish between the time period associated with the conviction and the future), ¶ 19 (noting that while the offending activities occurred in prior funding years, PRDOE seeks action on funding requests for subsequent years). Indeed, despite the conviction, the Commission did not apply debarment as a remedy. *PRDOE Decision at ¶ 18*.

The *PRDOE Decision* illustrates that while the Commission may not accept assurances from an individual that he or she will mend their ways and while debarment of an individual may

be necessary, the Commission typically treats corporations and institutions differently. In the case of corporations and institutions, the Commission allows a showing that new procedures have been adopted and other organizational changes made as necessary to ensure that past conduct is not repeated. Where such a showing is made, the Commission has not imposed sanctions that would bar the corporation or institution from continuing to serve the public interest. In the BNS matter, the problems associated with the E-Rate Program centered around the activities of a small number of employees and had nothing to do with the vast majority of BNS staff or its primary business. Accordingly, although the rules might be viewed as requiring debarment of the company, BNS requests a waiver of the rules and application of the debarment rules in accordance with footnote 134 to the *Second Report and Order* : "For example, if Company X and its President were each charged or sued, but only the President was convicted or found civilly liable, only the President would be debarred." This case should be treated in this manner. BNS has taken responsibility for the conduct of its employees. It should not be penalized for acting in such a responsible fashion. Under such circumstances, the guilty plea by BNS should be viewed differently from the type of conviction and "bad actor" status that the debarment rules are intended to address.

In the PRDOE case the Commission noted that PRDOE showed that it had made changes from the prior bad conduct, including cooperation with the government and institution of internal procedures to ensure that past misconduct was not repeated. *Id.*, para. 12-13. In this case BNS has taken even more comprehensive actions both to ensure that compliance procedures are in place within the company to safeguard against future violations. BNS reacted promptly and decidedly upon becoming aware of the problem, extending its cooperation to the Department of Justice. It decided to take responsibility for the actions of its employees by agreeing to enter a

guilty plea and, consequently, assure that retribution could be made and services to the affected schools would continue to be provided. BNS has disbanded the Public Sector Sales Group, has agreed to appoint a Chief Compliance Officer to oversee government contracting, and has agreed to implement a long list of remedial measures identified in Section II.2.a of this Petition. Thus, the *PRDOE Decision* provides the Commission with particularly instructive guidance with respect to the facts here and supports the grant of this waiver request.

The Commission's decision in the PRDOE case is consistent with the debarment regulations and decisions of other federal agencies and in fact the Commission looked to those other agency regulations for guidance in adopting its own debarment rules. *Cf.* Second Report and Order at ¶ 67 (the Commission's debarment rules "are informed by the nonprocurement debarment regulations for federal agencies") (citing to the Department of Justice rules). In deciding cases involving corporate parties, other agencies also consider organizational changes and new procedures adopted by the corporation to determine whether past conduct should result in debarment.

For example, under the Federal Acquisition Regulations, the test for whether debarment is warranted is the "present responsibility" of the contractor. 48 C.F.R. § 9.406-1(a)(1)(10) (contractor has the burden of demonstrating, to the satisfaction of the debarring official, that it is presently responsible and that sufficient mitigating factors make debarment unnecessary); *see also Roemer v. Hoffman*, 419 F.Supp. 130, 131-132 (D.D.C.1976). In government contract law, "responsibility" is a term of art, defined to include the honesty and integrity of the contractor as well as the ability to successfully perform a contract. *Roemer, supra*, 419 F.Supp. at 131. "The agency is required to carefully consider any favorable evidence of responsibility to ensure that all

findings of responsibility are based on the presence of a realistic and articulable threat of harm to the government's proprietary interest." *Robinson v. Cheney*, 876 F.2d 152, 160 (D.C. Cir. 1989).

Factors that would be considered to assess the responsibility of a contractor would include those mitigating factors that are set forth in the Federal Acquisition Regulations. See 48 C.F.R. § 9.406-1. Other considerations should include (1) the contractor's performance on past contracts, (2) the remedial measures taken by the contractor to ensure that the problems will not recur, (3) the quality of management and administration in the contractor's business, and (4) the contractor's present financial capability. See *Silverman v. United States Department of Defense*, 817 F. Supp. 846, 849 (S.D. Cal. 1993).

Both the Commission's *PRDOE Decision* and the government contracting regulations of and decisions of other agencies are consistent with the Commission's longstanding precedent and policy in dealing with corporations convicted of civil and criminal violations.<sup>3</sup> Likewise, in this

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<sup>3</sup> For example, in the Commission's 1980 decision in *Miami Valley Broadcasting*, 47 RR 2d 445, 1980 FCC LEXIS 247 (Apr. 29, 1980), the Commission recited the history of its handling of matters involving General Electric Corporation ("GE") going back to 1962. In the 1980 decision, the FCC rejected allegations that broadcast assignment applications of GE should be denied based upon past misconduct of GE. In so holding, the FCC noted that in cases going back to 1962 the Commission had held that a corporation such as GE adequately could address convictions of criminal and civil violations through the institution of new, internal compliance procedures and that sanctions such as license revocation or denial of assignment applications are not in the public interest:

In 1962, GE was convicted of criminal and civil violations of anti-trust laws including price-fixing and rigging bids on sales of heavy power electrical equipment. GE paid fines of \$437,500. It pled guilty in seven cases and "nolo contendere" in thirteen cases; sixteen persons connected with GE, including one group vice-president and three division vice-presidents, were indicted; the case against the group vice-president was nol prossed, fifteen persons were fined, eleven drew prison sentences and three were jailed. These convictions and violations jeopardized GE's 1964 renewal applications of WGY(AM), WGFM(FM) and WRGB(TV), Schenectady, New York. The Commission, however,

(Continued...)

case, BNS has a long history of technological innovation and customer service, and BNS has instituted a new and comprehensive compliance program to assure the Department of Justice and this Commission that it can and will monitor the adherence of its employees to the requirements of the E-Rate Program going forward. Under the circumstances, BNS submits that it would be consistent with Commission precedent for the Commission to give careful consideration to a showing by BNS that it is instituting comprehensive new procedures that are adequate to address the past violations and preserve the integrity of the E-Rate Program without debarring BNS from participation. The remedial actions taken by BNS are described in detail in the following sections.

**B. Remedial Actions Taken By BNS Demonstrate that Debarment Should Be Waived as to BNS.**

As set forth above, the Commission has not imposed debarment where a corporate or institutional party undertakes remedial action to prevent future misconduct, fully cooperates with the Commission and other authorities, and has a history of public service. When all of these factors are taken into account, BNS submits that it has demonstrated good cause to waive the debarment regulations as to BNS. 47 C.F.R. § 1.3 (petitioner must show good cause for a waiver of the Commission's rules).

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(Continued...)

renewed these licenses because: (1) GE represented that it would institute a new compliance program to prevent further anti-trust violations; (2) its record of meritorious broadcast service was long and consistent; and (3) GE transferred its broadcast licenses to a wholly-owned subsidiary to assure that the "higher echelon" of its parent company's management would be more closely and regularly involved in the direction and supervision of the broadcast stations.

*Id.*, para. 86.

**1. BNS Has Implemented Programs to Prevent Recurrence.**

Once the information related to the administration of the E-Rate Program by the Public Sector Sales Group came to light, BNS management was determined to rectify the situation and ensure that mistakes were not made again. To that end, existing internal control systems which existed at the time of the conduct at issue but had not prevented the errors (such as an Ethics Hotline and in-house Ethics training) were reinvigorated. Furthermore, after discussions with the government regarding steps that it would like to see BNS take to prevent similar conduct in the future, BNS management adopted unprecedented measures that will allow it to function as a model vendor in E-Rate Program for years to come. These steps include the following:

- > The adoption of a comprehensive Anti-Fraud and Antitrust Compliance Policy ("Compliance Policy") that: (1) creates an internal structure requiring high level management oversight of all government and public entity business; (2) creates an internal system of monitoring and audits to include steps to be taken if any employee suspects that any bid, proposal or other company conduct is not in accordance with the company's Compliance Policy and/or applicable law; (3) ensures that there are regular reports to the CEO and Board of Directors and at least annual reports to the FCC Enforcement Bureau and FCC-OIG of Compliance Policy activities; and (4) educates and trains all responsible employees of their obligations including governmental procurement laws, regulations and procedures including criminal and civil penalties for mail fraud, wire fraud, false statements, obstruction of justice, false claims and other related conduct and the requirements for adherence to the antitrust laws.
- > The designation of a corporate officer to be the Compliance Officer (the "Compliance Officer") responsible for the enforcement of the Anti-Fraud and Antitrust Compliance Policy. This includes: (1) creating and overseeing internal policies and procedures to ensure that all company activities involving government sponsored or funded programs or any other business with any public entities is conducted in accordance with applicable law; (2) ensuring that either the Compliance Officer personally or someone under his/her direct supervision is an experienced contract manager knowledgeable about governmental laws and regulations relating to public sector procurement; (3) requiring the Compliance Officer and those under his/her direct supervision to oversee the enforcement of the Anti-Fraud and Antitrust Compliance Policy as it applies to all company activities involving government sponsored or funded programs or any other business with any public entities; and (4) creating and overseeing an ongoing mandatory education and training program for all officers, directors, sales, technical staff and other employees directly involved in the

preparation of bid and related contractual materials for any government sponsored or funded programs or any other business with any public entities to apprise them of all governmental laws and regulations relating to public sector procurement and the requirements of the Compliance Policy;

- > The Compliance Officer will certify under penalty of perjury that all affected individuals have received training as described in the previous paragraph on at least a yearly basis and will provide the certification to the FCC enforcement Bureau and FCC-OIG;
- > The Compliance Officer will be the central point of contact for (a) documenting and distributing E-Rate program requirements throughout the company; (b) monitoring changes in the E-Rate rules and regulations to ensure the documentation and distribution of such changes; (c) ensuring that all employees who are involved with the E-Rate program receive training; and (d) arranging monthly meetings with key company executives to ensure consistent implementation of the E-Rate rules and regulations across the company.
- > The Compliance Officer's salary and other compensation, as well as the salary and other compensation of any employees under the Compliance Officer's supervision, will be independent of any contracts or other government sponsored or funded programs or other public entity business;
- > The Compliance Officer will create and oversee an internal auditing program in which all public sector contracts shall be audited to ensure compliance with the Compliance Program to include that bids, prices and design specifications are appropriate and that there are no hidden terms, side agreements or other undisclosed arrangements and that all bids and pricing have been done in accordance with all applicable laws and procedures;
- > The Compliance Officer will promote an internal voicemail or email hotline system in which all employees are encouraged to report on an anonymous basis, any believed violation of law by any officer or employee. The Compliance Officer and the BNS' General Counsel will monitor the internal hotline system and undertake all reasonable and necessary investigations arising from any reported matter;
- > The General Counsel and the Compliance Officer will, on at least a quarterly basis, report to the defendant's CEO and Audit Committee as to the enforcement of the Compliance Policy and the various measures called for herein including the status of any anonymous complaints or reports received from any employees;
- > On at least an annual basis, the Compliance Officer will make a report to the full Board of Directors and to the FCC Enforcement Bureau and FCC-OIG as to the status of the Compliance Policy;
- > The Compliance Officer will prepare and distribute a written training program to be used in formal training of BNS employees involved in the E-Rate program, including employees involved in accounting, finance, sales, marketing, and installations.

Among other things, this training program will cover the following subject matters: the application process, competitive bidding, eligible services, service provider role and responsibilities, discounts, service substitutions and equipment transfers, billing SLD for services, document retention requirements, and risks of non-compliance. All employees who are involved in the E-Rate program will certify their completion of the training program;

- > The Compliance Officer will establish an E-Rate Code of Conduct ("Code"), which will conform to this Corporate Compliance Plan and which will be signed by all employees involved with the E-Rate program. All subject employees will reaffirm annually, in writing that they have reviewed, fully understand, and will adhere to the Code;
- > The Compliance Officer will inform all employees involved with the E-Rate program that any violation of E-Rate Code will be grounds for disciplinary action to include warning, censure, reprimand, suspension, loss of pay and firing depending on the severity of the violation and the repetitive nature of the misconduct;
- > The Compliance Officer will meet regularly (at least monthly) with key executives in the following business units to ensure compliance with all applicable internal company rules and regulations and all E-Rate or other telecommunications program requirements: accounting, finance, installations (*i.e.*, service technicians), legal, marketing, and sales;
- > The Compliance Officer will review all company bids in response to Form 471 Applications. For each bid, the Compliance Officer will certify that all E-Rate rules and regulations were followed in preparing the bid and all related contractual materials;
- > The Compliance Officer will collect Form 471 Applications from each customer or prospective customer. The Compliance Officer or his/her designee will perform a reconciliation of each Form 471 Application to the company's responsive bid and to the resulting contract or business agreement. The Compliance Officer will keep a copy of the resulting reconciliation worksheet for each application and will update it as necessary to show any exchanges, substitutions, or cancellations; and
- > BNS will separate all E-Rate eligible and ineligible products and services onto separate customer contracts per installation.

In addition to these considerable efforts that will prevent any waste, fraud, or abuse in the E-Rate Program, BNS has agreed with the Department of Justice that the FCC's Enforcement Bureau and FCC-OIG may, on an annual basis, audit BNS' compliance with applicable laws and regulations relating to the E-Rate or other government sponsored or funded telecommunication



programs to assure adherence to the terms and conditions of those programs. BNS will bear all ordinary and reasonable costs of any such audit.

Furthermore, BNS has agreed with the Department of Justice to file, on at least an annual basis, a report signed under the penalty of perjury by the CEO with the FCC Enforcement Bureau and FCC-OIG concerning BNS' compliance with the E-Rate Compliance Policy. This report will certify that all required oversight, training and educational activities have been undertaken in accordance with the requirements of the E-Rate Compliance Policy. The report will detail any shortcomings in following the E-Rate Compliance Policy and the steps taken, and those that will be taken, to ensure compliance. This report also will include a detailed description of any violations that were found during the applicable period, the steps taken to cure the violations, and any subsequent steps taken to ensure future compliance.

Plainly, as the foregoing illustrates, management is directing the company to move forward with a full commitment to the highest standards of legal and ethical compliance on every level. The Commission should take comfort that these unprecedented steps will ensure that the company will abide by E-Rate Program's rules and regulations in the future.

**2. BNS Has Cooperated with Government Agencies During the Investigation and Has Accepted Responsibility and Agreed to Pay All Criminal and Civil Liability and to Make Full Restitution.**

In addition to the many efforts that BNS has taken to ensure that its prospective conduct with respect to E-Rate is beyond reproach, the Commission should consider BNS' conduct since it was informed of the Grand Jury proceedings.

BNS, upon receiving information as to the Grand Jury proceedings, immediately froze E-Rate Program invoicing until its own investigation was complete. The purpose of this action was

to make sure that the government did not suffer loss in the event that there were problems with the administration of the E-Rate Program at BNS. It should not be lost on the Commission that BNS froze all E-Rate invoicing – not just that associated with the Public Sector Group. As a result, invoices for equipment and services that were authorized by the government and did not suffer from the problems associated with the Public Sector Group were never sent to the government. BNS took this conservative position (contrary to its own interest) to be sure that the government would not be injured and the integrity of the Program would be maintained. Indeed, as a practical matter, the freezing of invoices served as a self-imposed debarment, suspending BNS from all E-Rate activity for approximately 18 months.

BNS also fully cooperated with the government's investigation and has been working with the Department of Justice by providing documents and identifying witnesses that would be helpful to the Department's investigation.<sup>4</sup> After reviewing the allegations and conducting its own internal investigation, BNS made a commitment to the government to accept responsibility for the conduct of several of its employees and to focus on ensuring that the schools received the equipment and services they need as well as on-going maintenance.

We submit that this conduct very much exemplifies the conduct of a vendor that is committed to acting lawfully and observing all applicable rules and regulations.

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<sup>4</sup> Again, BNS invites the Commission to contact the Department of Justice to satisfy itself as to the nature and extent of BNS' cooperation.

### **3. Granting the Waiver Is In the Public's Interest.**

BNS seeks a waiver from the applicability of the debarment rules in order to continue to provide services to those that qualify for funding under the Program. The public interest is served by a waiver that enables BNS to continue to participate in the market for such services. Maximizing the number of vendor participants will result in the best products being provided to schools in the shortest period of time.

Furthermore, allowing BNS to continue to be a participant in the E-Rate Program will promote the public interest because such a decision would allow BNS to proceed as an example of a vendor that has robust and dedicated resources in place to deliver technology to schools and ensure compliance with the E-Rate rules and regulations. BNS has worked with the government to put all possible control measures in place to prevent waste, fraud, and abuse under the E-Rate Program. This unprecedented level of cooperation may now serve as a model as to how an E-Rate service provider can educate and oversee its employees and prevent waste fraud and abuse under the Program.

BNS has a long history of technological innovation and customer service. To bar BNS from participation in the E-Rate Program, even for a limited time period, is unnecessary and would be contrary to the public interest.

#### **IV. CONCLUSION.**

In view of the foregoing, BNS submits that it has established the extraordinary circumstances necessary to avoid debarment, that good cause exists for a waiver of Section 54.521 of the Commission's Rules and that the public interest would be well served by permitting BNS to continue to participate in the E-Rate Program. BNS further requests that the Commission toll any suspension of BNS under the debarment rules pending its decision on this Petition.

Respectfully submitted,



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