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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20445

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Tennessee State Department Of Education)	Applicant ID No. 145698
)	
Application (FCC Form 471) for Approval of Funding)	Universal Service Control No. 144790000000004

To: The Commission

Administrator, Schools
and Libraries Corporation

**SUPPLEMENT TO OBJECTION TO APPLICATION
AND REQUEST FOR EXPEDITED DECLARATORY RULING**

Integrated Systems and Internet Solutions, Inc. ("ISIS 2000") hereby supplements its pending "Objection to Application and Request for Expedited Declaratory Ruling," ("Objection") filed April 3, 1998, to include the following additional information with respect to the \$74,352,941 contract awarded by the Tennessee State Department of Education ("Department") to Education Networks of America ("ENA"), for which funding is sought under the FCC's Schools and Libraries Universal Service Fund ("USF") program:

- Contract between the State of Tennessee Department of Education and ENA, Contract No. FA-99-12803-00, dated April 7, 1998 (Attachment N);

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- Amendment No. 1 to Contract FA-99-12803-00, dated April 14, 1998 (Attachment O).

These contractual documents, executed subsequent to ISIS 2000's April 3 Objection and Request for Expedited Declaratory Ruling, are being filed at this time to provide the Commission with a more complete record with respect to the issues raised by ISIS 2000.¹ In addition, on April 10, 1998, ISIS 2000 requested that ENA's FCC Form 471 Application for Approval of Funding, which appears to have been filed with the Schools and Libraries Corporation ("SLC") on April 15, 1998, be immediately associated with the FCC public record in this matter. This request (Attachment P) is currently pending.

While the overall 3½ year contract and anticipated USF funding are the same as previously outlined by ISIS 2000, certain changes in anticipated USF funding in 1998 for which application is now being made should be noted. For reasons which have not been explained at this point, the current Contract (more specifically, Amendment No. 1, dated April 14, 1998 (Attachment O)), appears to spread the impact of the \$7,950,000 wash charge for the continued use of the existing ConnectTEN network equipment over the first 18 months of the contract (July 1, 1998 through December 31, 1999). Prior to this change, the charge had been entirely

¹ To avoid confusion with the documentary material (Attachments A-M) included in ISIS 2000's April 3 filing, this additional documentary material is denoted with attachment designations subsequent to those in the original filing.

accounted for in the 1998 funding year.² To illustrate, the following chart compares contribution levels under the accepted ENA bid proposal (Attachment I, p. 3) and original contract (Attachment N, Exhibit 3) with the revised Exhibit No. 3 (full E-rate funding) included as Attachment A to Contract Amendment No. 1 (Attachment O).

Contribution Levels - Funding Year 1998

	<u>Original Contract</u>	<u>Amendment No. 1</u>
Department	\$ 1,000,000	- \$ 437,293
ENA	\$ 7,500,000	\$ 7,500,000
USF	<u>\$16,500,000</u>	<u>\$13,709,961</u>
Total Contract	\$25,000,000	\$20,772,668

Significantly, the net impact of this reprogramming facade results in a net surplus for the Department in 1998. The Department will actually receive a greater credit (\$7,500,000) from ENA for the sale of ConnectTEN than it will be required to contribute as its share of the contract cost in 1998 (\$7,062,777), resulting in a net surplus of \$437,293 which is carried over to the 1999 contract year. This surplus, together with the Department's assumed payment of

² The contract (§ A.11.10) further confirms the "wash" nature of this transaction: "the payment for the ConnectTEN network will be received as a credit that will be applied by the State against invoices received from ENA by September 30, 1998 for basic services. If it is determined by the State, in the State's sole discretion, that such payment is not authorized, then ENA shall pay the State of Tennessee the purchase price for the network by cashiers check or similar form acceptable to the State on July 1, 1998."

\$2,540,000 for purposes of calculating USF funding in 1998, results in a "State Reserve From Sources of Payment" of \$2,977,293 at the end of 1998, which is then applied to 1999 contract costs. (Attachment 0).

While the extent of services to be provided to the Department during 1998 does not appear to change, the charges for services in 1998 and USF funding request are reduced. However, as shown in the following chart incorporating 1999 figures, the reduction in the overall contract price for services during 1998 is then completely offset by increases to 1999 costs and USF charges:

1998-99 USF Funding Request

	<u>Original Contract</u>	<u>Amendment No. 1</u>
<u>Department & ENA</u>		
1998	\$ 8,500,000	\$ 7,062,707
1999 (1)	\$ 4,080,000	\$ 4,747,647
1999 (2)	<u>\$ 2,740,000</u>	<u>\$ 3,509,646</u>
Total	\$15,320,000	\$15,320,000
<u>USF</u>		
1998	\$16,500,000	\$13,709,961
1999 (1)	\$ 7,920,000	\$ 9,216,020
1999 (2)	<u>\$ 5,318,824</u>	<u>\$ 6,812,842</u>
Total	\$29,738,824	\$29,738,824
<u>Total Contract</u>		
1998	\$25,000,000	\$20,772,668
1999 (1)	\$12,000,000	\$13,963,667
1999 (2)	<u>\$ 8,058,824</u>	<u>\$10,322,488</u>
Total	\$45,058,824	\$45,058,823

In addition, it appears that much, if not all, of the \$7,950,000 charge for services utilizing the existing ConnectTEN equipment has been recategorized as a recurring cost rather than a one-time charge. The ability virtually at will to move and recategorize millions of dollars in cost figures by itself raises substantial questions as to the true nature of the arrangement. This "numbers game" is just more evidence of the true nature of the ENA Contract. Under the guise of merely providing Internet access services to the Department, ENA will in reality use federal USF dollars to construct and operate a privately-owned, state-wide, high-tech commercial telecommunications network ineligible for USF funding.

The ENA Contract masks the purchase of millions of dollars of network equipment (which will be owned by ENA) as charges for Internet service to schools, but paid for out of the USF fund. For example, as discussed in the Objection, over \$1.8 million will be used to construct points-of-presence ("POPs") in each of the State's five telephone LATAs, which will be privately owned by ENA and are unnecessary to provide Internet service to end-user schools. Further, ENA will be able to sell services to commercial entities over what will be ENA's privately held state-wide telecommunications network paid for by USF funds.

ISIS 2000 has no desire to disadvantage children in the State of Tennessee from needed federal USF funding this year. For this reason, we urge the Commission to act expeditiously to resolve the substantial issues raised by the ENA contract so that appropriate corrective action may be taken prior to the award and distribution of funds by the SLC.

In soliciting bid proposals, the Department's objective was to spend no more State funds on the program than was currently being spent on the ConnectEN program. As demonstrated in Attachment J of our Objection, the Department's 1998 budget for ConnectTen expenditures equals \$5,080,949, one half of which is approximately \$2,540,000. Based on a projected six-month Department contribution of \$2,540,000, the following chart indicates what the Department's appropriate USF funding amount would be for 1998:

**Department's Standard USF Funding Amount
(July 1, 1998-December 31, 1998)**

Department (34%)	\$ 2,540,000
USF (66%)	\$ 4,931,000
Total Contract	\$ 7,471,000 ³

³ ISIS 2000 proposed to provide services during the first six months (July 1, 1998-December 31, 1998) as requested in the Department's Request for Proposals (RFP 97-2) for \$7,386,868 (not counting ineligible services of \$504,000). The applicable USF funding amount under the ISIS 2000 proposal for this period would be \$4,875,333, which is actually less than the Department's standard USF funding amount indicated in the above chart of \$4,931,000.

ISIS 2000 further suggests that the Commission waive rules as necessary to reserve for the Department this appropriate level of USF funding amount for fiscal year 1998 pending the outcome of this proceeding. Additionally, the Department should be permitted to amend its 1998 USF funding year Form 471 Application as may be necessary upon the determination of the issues raised herein to qualify for this level of funding, including the substitution of a new contract.

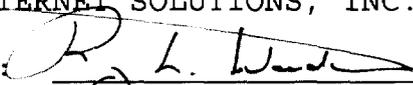
Conclusion

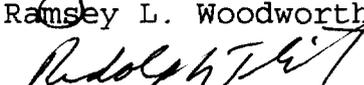
ISIS 2000 therefore respectfully requests that the Commission consider the foregoing supplemental information, and take the above-requested intermediate steps to ensure that an appropriate level of USF funding for 1998 is reserved for the Department pending an immediate ruling on this Objection.

Respectfully Submitted,

INTEGRATED SYSTEMS AND
INTERNET SOLUTIONS, INC.

By:


Ramsey L. Woodworth


Rudolph J. Geist

WILKES, ARTIS, HEDRICK & LANE,
Chartered
1666 K Street, N.W. Suite 1100
Washington, D.C. 20006
(202) 457-7800
Its Attorneys

April 20, 1998

CONTRACT SUMMARY SHEET

<input checked="" type="checkbox"/> NEW CONTRACT <input type="checkbox"/> AMENDMENT #	<input checked="" type="checkbox"/> FA <input type="checkbox"/> GR <input type="checkbox"/> DP <input type="checkbox"/> RV <input type="checkbox"/> ID <input type="checkbox"/> Z <input type="checkbox"/> DG <input type="checkbox"/> NC <input type="checkbox"/> GU <input type="checkbox"/> GG <input type="checkbox"/> DL	CONTRACT NUMBER FA-99-12803-00	RFS NUMBER 331.258-034				
<input checked="" type="checkbox"/> OTHER CONTRACTING PARTY (VENDOR): <input type="checkbox"/> GRANTEE: Education Networks of America		VENDOR ID NUMBER: <input checked="" type="checkbox"/> V <input type="checkbox"/> C 621647709 00					
STATE AGENCY: Department of Education		DIVISION: Local Finance					
PROGRAM CONTACT: Jackie Shrago FLOOR(SUITE)/BLDG.: AJ Tower, 7th Floor TELEPHONE: 532-1229		FISCAL CONTACT: Jeff Roberts FLOOR(SUITE)/BLDG.: AJ Tower, 6th Floor TELEPHONE: 532-1658					
ALLOTMENT CODE 331.25	COST CENTER 035	MAJOR & MINOR OBJECT CODE 083	FUND 25	GRANT IS ON STARS <input checked="" type="checkbox"/> Yes	GRANT CODE	SUBGRANT CODE	CFDA NUMBER

CONTRACT TERM:

BEGIN DATE: July 1, 1998	END DATE: December 31, 2001
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ESTIMATED EXPENDITURES BY FISCAL YEAR AND FUNDING SOURCE:

FY	STATE	FEDERAL	INTERDEPARTMENTAL	OTHER	TOTAL CONTRACT AMOUNT INCLUDING ALL AMENDMENTS
1999	\$12,580,000				\$12,580,000
2000	\$5,080,000				\$5,080,000
2001	\$5,080,000				\$5,080,000
2002	\$2,540,000				\$2,540,000
TOTAL	\$25,280,000				\$25,280,000

CONTRACT SCOPE / SERVICE DESCRIPTION:

Purpose is to expand existing internet services and for the expansion and network operation of ConnectEN

CHECK ONE FOR EACH CATEGORY:

FISCAL YEAR FUNDING IS STRICTLY LIMITED.

FUNDS MAY ROLL FORWARD TO SUBSEQUENT FISCAL YEARS WITHIN THE CONTRACT TERM.

CONTRACTOR/GRANTEE IS ALREADY SET UP IN STARS ON ACH.

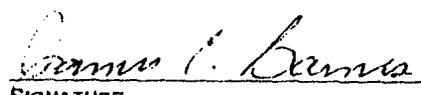
CONTRACTOR/GRANTEE ACH FORM IS ATTACHED.

CURRENT FORM W-9 INFORMATION IS ON FILE IN ACCOUNTS.

A FORM W-9 IS ATTACHED.

CONTRACTOR/GRANTEE IS A SUBRECIPIENT AS DEFINED BY OMB CIRCULAR A-133

CONTRACTOR/GRANTEE IS A VENDOR AS DEFINED BY OMB CIRCULAR A-133

FISCAL OFFICER/DESIGNEE APPROVAL:	COMPLETE FOR AMENDMENTS ONLY:	
 SIGNATURE _____ DATE 4/7/98		
	ORIGINAL CONTRACT AND PRIOR AMENDMENTS	THIS AMENDMENT ONLY
OCA USE ONLY:	TERMINATION DATE:	
	FY FUNDING:	
	TOTAL:	

Routed for Approval Prior Year RFS Number **331. N/A** Prior Year Funding **N/A**
 Supervisor of Program Area Budget/Planning Funding/Performance
 Commissioner Signature Legal Authorized to Print
 OCA F & A Accounts Vendor copy to Program Staff

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF EDUCATION
AND
EDUCATION NETWORKS OF AMERICA

- This Contract, by and between the State of Tennessee, Department of Education hereinafter referred to as the "State" and Education Networks of America, hereinafter referred to as the "Contractor," is for the provision of expanding existing Internet services to Tennessee K-12 public schools, including, bandwidth, equipment and management as described in RFS 97-2 Expansion and Network Operation of ConnectTEN, as further defined in the "SCOPE OF SERVICES."

The Contractor is A LIMITED LIABILITY COMPANY. The Contractor's address is:

209 10th Avenue South, Suite 500, Nashville, Tennessee 37203

The Contractor's place of incorporation or organization is STATE OF Tennessee.

A. SCOPE OF SERVICES:

A.1. Contractor Responsibilities. The Contractor will be responsible for providing Internet access and certain other services to all K-12 schools as defined herein, including Internet filtering and necessary Network hardware, Software, Operations and and remote monitoring and management of the ENA owned and operated network communications and systems equipment as defined in RFP, Contractor's response and Cost Proposal and Section A.10. These services will maximize K-12 Internet availability, and allow Tennessee educators and students to access, utilize and leverage Internet-based resources as effectively as possible and meet reliability measures, maintenance and support services defined in Contractor's RFP response.

A.1.a. Service Levels. The Contractor will provide the levels of service for Enhanced and Basic capabilities to be delivered respectively with and without E-Rate funding. The Contractor's response provides the full detail of these services, with a summary of elements from pages 62-64 of the response attached hereto as Exhibit 1.

A.1.b. Performance Levels. The Contractor will provide the performance levels for Basic and Enhanced Services. The Contractor's response provides the full detail of these levels, with a summary of elements from pages 66-68 of the response attached hereto as Exhibit 2.

The Contractor will invoice the State for one-time costs associated with the delivery of basic service and enhanced service levels as defined in Contractor's Cost Proposal as Supplemented (Exhibit 3) which includes the infrastructure to provide the services described in this contract, upon acceptance by the State. These one-time costs will include the provision of basic service and enhanced service levels that are achieved by ENA's provision of hardware, software and software licenses, communications, engineering support, and furniture and are governed by budgetary constraints defined in RFP.

The Contractor will provide all hardware, software and bandwidth to achieve performance levels as defined in RFP and Contractor's response and will perform the help desk operation and remote network management services described in RFP and Contractor's Response. These will be provided at the one-time costs and recurring monthly service charge specified in Cost Proposal. The school sites that the Contractor will initially support at this recurring monthly service charge are the Standard Plan and Alternate Plan school sites (see A.10.1) in operation at the signing of the Contract in 1998. The school sites to be managed will not exceed 1800, and a list of the specific school sites will be provided by June

1, 1998. The scope also includes the e-mail and web server supporting K-12 schools. The Contractor will provide all new functionality as defined in its RFP response for the specified one-time costs and monthly service charge in the Cost Proposal.

Additional locations beyond 1800 that the State may require can be added at any time, at the recurring pricing structure specified in the Contractor Cost Proposal for basic service at \$2822.22 per year. One-time costs specified in the Contractor's Cost Proposal are prorated per site, but not to exceed \$4167 per site. The charge for enhanced service levels are based on availability of full E-Rate funding and the service levels defined in the Contractor's response as listed below.

Scalability Chart for ConnectTEN			
Student Population	Minimum PCs	Line Type	Enhancements
Above 1,200	120	Full 1.5Mbps CDS	Caching Server
476 - 1,199	80-120	Fractional CDS	
251 - 475	25 - 48	Dual ISDN w/High Compression	
<250	24	Single ISDN with High Compression	

All references to "Network" or "ENA Network" in this Scope of Services shall mean the locations that are receiving ENA-provided services and further defined in the RFP, Contractor's Response and Cost Proposal and in Section A.10.

Except as otherwise specified in this document, the one time costs and recurring monthly service charge identified in Cost Proposal as Supplemented is the total compensation for services provided to all public schools in operation in Tennessee during the period of this Contract. Such services are defined in Exhibit 1 and 2 and subject to availability of E-Rate funding as explained in Exhibit 3.

Lastly, if an ENA customer's service level is interrupted due to the failure of a network connection that requires on-site service and support, the Contractor will dispatch a field service technician, or if necessary, a systems engineer, to assist troubleshooting and problem resolution, in a hands-on capacity or for hands-on systems engineering and integration support, as appropriate. The cost of this service is included in the Cost Proposal as Supplemented.

- A.2. Hours of Operation. The Contractor will operate the help desk and Network Operations Center hereinafter referred to as the "ENA NOC" at the Andrew Johnson Building in Nashville, Tennessee. This NOC will operate 7:00 AM to 5:00 PM Central Standard Time, Monday through Friday not including observed school holidays during the school year and State scheduled holidays during the public school summer vacation. Additionally, the Contractor will provide continuous reactive and proactive remote network management services to diagnose, isolate, identify and resolve ENA networking hardware and software faults.
- A.3 Help Desk Services. The Contractor will provide telephone-based technical support to diagnose, isolate, identify and resolve ENA networking hardware and software faults. Authorized ENA customers will be able to contact the ENA NOC via a 1-800 toll free number to request assistance and help desk services. These same customers will also be able contact the ENA NOC via electronic mail, fax, or the world wide web. The Contractor's technical support engineers will receive, categorize, and log the incoming calls, and, where possible, provide immediate problem resolution for the customer. The Contractor will provide an automated action request system and will log, track and resolve each problem or service request in the shortest time possible.

A.3.1. Personnel. The contractor will staff the ENA NOC with qualified technical support engineers. This staff will provide first-tier helpdesk technical support, and operate the control consoles at the ENA NOC. Their responsibilities include responding to ENA customer support requests, alarms, and coordinating activities to problem resolution. In addition, senior support engineers will provide second tier escalation assistance to the ENA NOC support personnel as needed. These senior engineers will also be responsible for the proactive management of the ENA network. They will evaluate reports and statistics gathered from the managed devices. They will determine whether intervention is required to investigate or rectify abnormal conditions, indications, or trends. They will assist in the resolution of network alarms, faults, and problems, and also provide support to the first tier technical support engineers through event closure as needed.

Both teams of engineers will utilize and leverage Contractor-supplied advanced information technology tools, hardware, software; including an integrated network management platform, an automated action request system, and a unified report database. This automation combined with proactive remote network management services will provide excellent service to all users. While automation may reduce the number of staff members required at any given time the network may experience difficulties at other times which require additional staff. Notwithstanding this, the Contractor will provide the necessary staffing to meet the needs of the help desk. The initial planned help desk staffing levels are shown in the following table:

Projected Number of Daily ENA Support Incidents	First Tier Technical Support Engineers ENA NOC (Nashville, TN)	Second Tier Technical Support Engineers	Management ENA NOC (Nashville, TN)
50 - 80	4	2	1

A.3.1.a Service Level Staffing. Staffing will be provided for enhanced service levels in accordance with the chart provided on pp 87 of the Technical Proposal (Exhibit 4).

A.3.2. Escalation Procedures. For more complex problems or service requests that cannot be resolved within a reasonable timeframe of the initial contact with the ENA NOC, the Contractor will provide second tier senior technical support engineers who will further diagnose the problem and take the necessary means to resolve it. For other than routine requests for services, a trouble call that is not acknowledged within a 30 minute timeframe of the initial contact with the ENA NOC will be automatically escalated to second tier support. If a trouble call is not resolved within one hour, the second tier support will be notified. If the call has not been resolved within a total two hour timeframe, then the Contractor's Director of Customer Support will be notified. The Director will work with the Contractor's third tier engineering staff and the appropriate manufacturer's engineers and product development staff until the problem has been resolved.

A.3.3. Management Information Services and Tools. The Contractor will provide the following information technology tools and services:

A.3.3.1. Action request/trouble ticket reporting service. The Contractor will utilize this to log incoming calls and incident reports; provide a cross reference database containing customer profiles, equipment contract information, and network configuration management information; resolve problems ; track the status of open incident reports or "cases"; issue trouble tickets to assign support engineers to specific cases; and generate management reports that facilitate the general operation of the help desk.

A.3.3.2. Enterprise network management system. The Contractor will fully integrate all ENA enterprise network management systems, in order to

automate the detection and notification of network problems and potential problems with appropriate alerts, and automatically initiate a trouble ticket. The Contractor can then direct a support engineer to respond to the problem, as appropriate to reduce network downtime and provide overall service to the ENA customer community.

A.3.3.3. Network management display. The Contractor will use alarms, topology maps, node configurations, and other network parameters which graphically display the network for fast and easy communication and decision making. All of the software tools will be fully integrated to provide a single incident tracking system and a unified report database.

A.3.3.4. Voice system. The Contractor will supply and operate for the help desk and ENA customers a voice system that facilitates the routing of inbound calls to the appropriate technical support engineer. In addition, if all support staff at the ENA NOC are busy, the Contractor's system will forward incoming calls to the second level support staff, thereby eliminating or minimizing the duration of calling queues.

A.3.3.5. Quality assurance. Upon resolution of problem reports, they will undergo a quality assurance process. During this process, the Contractor's quality assurance staff will verify that the problem has been satisfactorily resolved. In addition, problem reports will be examined for systemic problems and trends. If systemic problems or trends are identified, they will be reviewed with the State and the actions necessary to resolve the problem as appropriate. Lastly, the problem reports will be archived and maintained on off-line storage.

A.4. Remote network fault management and network alarm monitoring. As an integral part of the provision of Internet services, including the help desk services and operations, the Contractor will deliver proactive and reactive remote network management services. The Contractor will be the single point of contact for problems associated with the physical and logical network elements provided in the RFP for all sites listed in Exhibits. The Contractor will continuously monitor the ENA network for fault-related alarms through application of Contractor hardware and software tools. The Contractor will monitor all active interfaces on the network devices associated with sites in that (1) all such devices are Simple Network Management Protocol (SNMP) compliant and manageable, and (2) such devices are not down due to factors under the State control (such as scheduled outages or maintenance).

A.4.1. Remote fault identification and isolation. The Contractor will use reasonable efforts to have identified, sectionalized or isolated the event or problem to the nearest point of failure after detection of an alarm.

A.4.2. Management of incident. The Contractor will resolve the problem remotely whenever possible, and manage all resolutions whether by a sub-contractor or other service provider. At the time of ticket closure/resolution, the Contractor will summarize the problem cause and resolution in the automated action request system and the problem resolution database.

A.4.3. Hardware maintenance and advanced replacement. The Contractor will provide all hardware maintenance coordination services, to facilitate repair and replacement services of the ENA network. The Contractor will provide two- and four-hour hardware maintenance response time as specified in the Scope of Services, section A.2 above. If the determination that an item needs to be replaced is made by 2:00 PM CST, the replacement item will be shipped overnight the same day. If the advance replacement decision is made after 2:00 PM CST, the replacement item will be shipped the following business day. The Contractor will maintain all inventories and arrangements necessary to meet these replacement criteria and will make regular adjustments as to the items and quantities to be maintained based on reviews of historical trend data of problems.

A.4.4. On-site support. If an ENA site requires on-site service and support, the Contractor will dispatch appropriate personnel to the site to assist troubleshooting and problem resolution in a hands-on capacity or for hands-on systems engineering and integration support, as appropriate,

- at the rates set out in the Cost Proposal as Supplemented. The Contractor will also provide this same service and support at these rates in Cost Proposal as Supplemented.
- A.4.5. Problem reports. The Contractor will provide to a designated State individual, a monthly report detailing the number and type of faults and alarms received for the prior month, by the 15th of the next month. Reports containing details of significant outages (any outage of more than 24 hours, or an event that takes down more than one school at a time) will be prepared by the Contractor on the next business day after the occurrence and posted on the web server.
- A.5. Configuration management. The Contractor will provide Configuration Management Services. These services involve maintaining inventory and configuration information for devices and circuits, administering the configuration of devices, and managing the provisioning activities for devices and circuits.
- A.5.1. Inventory and Configuration Database. The Contractor will create and maintain an inventory and configuration database for managed equipment that includes:
- Identification of device type (router, server)
 - IP addresses
 - Device hardware, software, and interface configurations
 - Circuit information
 - IP address reallocation and implementation with minimal impact to the schools to the extent necessary, to allow addressing for up to 100,000 computers.
- A.5.2. Change management. The Contractor will be responsible for network device configuration changes as the result of device moves, adds and changes, to include circuit vendor management. The Contractor will work with the State to permit all new public schools and any non-public schools as additional sites on the ENA network. To the extent that a school with unique equipment wishes to join the ENA network, the Contractor will review the equipment proposed to determine whether or not it will impact on the management of ENA network.
- A.5.3. Management reporting. Periodic inventory and configuration management reporting including a network topology map and Inventory reports will be provided.
- A.5.4. Configuration and installation assistance. The Contractor will direct and provide all platform installation configuration, using appropriate Contractor personnel. The Contractor will also provide this same service and support at the rates in the Cost Proposal as Supplemented, and further defined in chart in section A.1 above.
- A.5.5. Distribution of firmware and software upgrades and "Bug Fixes". The ENA NOC will be the central point of contact for the distribution of firmware and software upgrades and "bug fixes". The Contractor will direct and support the installation and configuration of all upgrades and "bug fixes", either remotely, or alternatively by working via telephone or electronic mail with a locally identified point of contact. The Contractor is responsible directly or through sub-contractors to provide router firmware updates and upgrades for the network devices being managed under this Contract.
- A.5.6. Change Control. The contractor will notify and receive approval to make modifications in A.5.4. and A.5.5., above, to avoid potential network outages which could conflict with specific critical events in school schedules (i.e., school testing, special conferences, etc.)
- A.6. Performance management. In order to maximize network availability, reduce mean time to repair, and improve end user satisfaction, the Contractor will perform continual monitoring of network performance and functions, and ensure that the network is adequately supporting ENA network users
- A.6.1. Performance monitoring and analysis. The Contractor will provide analysis of the throughput and error rates within the managed components of the network. The Contractor will maintain

historical information in order to determine trends and make recommendations to maximize network availability and performance. The performance management will include:

- Protocol analysis
- Throughput analysis
- Trend analysis
- Up-Time analysis

A.6.2. Performance thresholds. Threshold alarms will be set for indication of performance and traffic problems. The Contractor will take action to isolate the cause of performance degradation and to make recommendations to alleviate traffic problems.

A.7. Network audit and network audit responsibility. The Contractor has, under this agreement, an ongoing responsibility to provide certain service levels. To assist in the certification of these services, a yearly audit of all ENA network school sites will be performed. The purpose of this audit is to verify, at a minimum, the following:

- School sites to be monitored
- Enterprise Configuration Map
- Statistics on use and performance levels

A.8. Server management services: E-Mail and Web. The Contractor will provide fault, configuration, and performance management services of the ENA electronic mail and web server hardware platforms, network operating system, and applications to maximize availability of e-mail and Web services related to the provision of Internet services to the ENA user community.

A.9. Management reports and service reviews. The Contractor will conduct monthly service reviews. The dates and location for these monthly service review meetings (or conference calls) will be jointly agreed upon by the State and the Contractor, and will commence the second month following start-up. These sessions should be attended by the State, the Contractor and any sub-contractors both organizations deem needed to improve the performance of the network. This forum will allow review and discussion of quality of service statistics, specific outages or events of concern, and trends in data. The Contractor will also regularly provide help desk usage reports. These reports will contain summary information regarding call statistics (total number of calls fielded, number of calls resolved within a specified time period, etc.) and trend information (such as recurring problems in a specific area).

A.10. Contractor demarcation responsibility for ENA Standard and Alternate Sites.

A.10.1. Definitions. "Standard Plan Sites" are defined as those, as of July 1, 1998 that are composed of a specific configuration of Cabletron Systems router hardware (formerly Network Express International). ENA Standard Plan Sites are those schools with equipment and bandwidth defined and provided by ENA. "Alternative Plan Sites" are defined as those, as of July 1, 1998 that are composed of other heterogeneous mixtures of vendor equipment which have been certified and achieved network connectivity via an interoperability test with the Tennessee Department of Education. At any time a Local Education Agency site may choose to become an ENA Standard plan site by one of the following options if full E-Rate funding is in place: 1) offering its existing equipment to the Contractor for review and receiving the Contractor's approval to declare the Local Education Agency's existing equipment to be considered Standard Plan, or 2) the Contractor receives ownership of the Local Education Agency's equipment, and replaces it with ENA Standard Plan equipment. If full E-Rate funding is not in place, the Local Education Agency purchases the Contractor's equipment for use; and thereby getting the regular services as defined in the contract as ENA Standard Plan.

A.10.2. Demarcation responsibility. The point of demarcation for the Contractor responsibilities for Standard Plan sites is all service levels defined for K-12 schools. The Contractor responsibilities for Alternate Plan sites are limited to service levels defined for Education Hub Sites, the Internet and problem resolution coordination between the public school system and an ENA network connection or a State-Backbone network access point (TAP).

A.10.3. Contractor's interface to other parties. In a network as complex as the ENA network, the devices under management responsibility of the Contractor interface to devices and communications lines which are currently managed by other third parties. The Contractor technical support personnel will take responsibility to avoid "finger pointing" situations, however, the Contractor responsibilities are limited as follows:

- (i) For Standard Plan sites, the Contractor technical support personnel will assist a local school representative to facilitate connecting Local Area Network wiring and servers to the ENA network. Assistance must be provided for remote troubleshooting and possible identification of incompatibilities.
- (ii) For Standard Plan sites and Alternate Plan sites, the Contractor technical support personnel will assist State of Tennessee Office of Information Resource Network Operations Center personnel in isolating network problems between Contractor managed network and those of the State of Tennessee network and beyond. Assistance is provided for coordinated trouble shooting, fault detection and isolation, but not for ultimate problem resolution.
- (iii) For Standard Plan sites and Alternate Plan sites, the Contractor technical support personnel will be responsible directly or through subcontractors in isolating communication line problems between ENA managed sites. Responsibilities include coordinated trouble shooting, fault detection and isolation, and problem resolution.
- (iv) For Standard Plan devices, the Contractor personnel will be responsible for all equipment in isolating equipment firmware and software bugs, and will provide equipment warranty and maintenance.
- (v) For Server management services, the Contractor personnel will be responsible for operation of equipment assuming existing equipment manufacturer hardware and software maintenance agreements are in effect, and provide changes as needed over the life of the contract.

Notwithstanding the above limitations, it is the intention that the Contractor has the primary responsibility to manage all component parts provided by the Contractor or any Sub-Contractor on behalf of the State to maintain the viability and the integrity of the network. The Contractor will serve as the agent for the State with all sub-contractors.

A.10.3 State-Provided Software. Any software provided by the State pursuant to this contract will be licensed pursuant to the software manufacturer's standard software licensing agreement.

A.10.4 Intellectual Property Rights. The Contractor retains all right, title, and interest in and to any software and other intellectual property that it provides to or uses on behalf of the State pursuant to this contract and acknowledges and agrees that the Contractor is free to use software and intellectual property in providing services to other customers.

A.11. State Responsibilities.

- A.11.1. Help Desk and Network Management Interface. The State and Contractor personnel will communicate through a specific set of contacts. Names and phone numbers of the individuals responsible for assisting the Contractor will be provided. This list will include contacts and numbers for business day and off-hours, along with appropriate points of contact for escalation. The State agrees to supply the Contractor with any changes to this list on a periodic basis.
- A.11.2. Point of Presence Circuit. The State will provide the ENA NOC access to the State of Tennessee Network- TNII. This circuit will serve as the link from the Contractor's monitoring equipment at the ENA NOC to the State of Tennessee network, and will be at a minimum of 10Mb Ethernet bandwidth. The State will also provide an ISDN line and port connection on the Davidson County

ENA router as a backup connection. The Contractor will provide and maintain data connectivity between the ENA NOC and any of its' operational sites as needed.

- A.11.3. Office Space. The State shall provide a reasonable amount of office space and utilities for the Contractor to locate and operate the ENA NOC at the Andrew Johnson Building in Nashville, TN. The Contractor personnel will have 24 hour access within the framework of state building security regulations that apply to senior level state managers.
- A.11.4. Toll-Free Telephone Service. The Contractor will provide 1-800 toll free telephone service for authorized K-12 public school personnel to contact the ENA NOC.
- A.11.5. Circuit information. The State will provide all existing circuit information, along with circuit numbers and network diagrams.
- A.11.6. Maintenance Contracts. The State will provide the Contractor all necessary information on maintenance contracts for existing equipment as described in the RFP. This will allow the Contractor to coordinate services to manage the ENA network.
- A.11.7. Agency Letters. The State agrees to provide the Contractor with copies of letters of agency to be sent to any of its' existing service providers prior to the signing of this Agreement. The letters of agency will serve as the State's authorization for the Contractor to act on behalf of the State with regard to changing existing services.
- A.11.8. Replacement spares. All existing replacement spares that are currently maintained by the State will be transferred as part of the State's equipment, in exchange for the salvage value. Such items shall be maintained by the Contractor at the ENA NOC to support the existing replacement program. The Contractor will determine and provide all items and quantities to be maintained for the life of the Contract.
- A.11.9. State-Provided Software. Any software provided by the State pursuant to this contract will be licensed pursuant to the software manufacturer's standard software licensing agreement.
- A.11.10. Payment. The State agrees to pay within forty-five (45) days after receipt of the invoice covering the delivered items or services in accordance with the Prompt Pay Act of 1985 (TCA 12-4-703). The State is not responsible for any discounts received by the Contractor from the E-rate Fund, as described in the proposal. The State shall pay the one-time costs and recurring monthly cost for basic service, upon provision of service, as defined as "Total All Payments" (line d.v) Exhibit 3 for No E-Rate funding. The payment for the ConnectTEN network will be received as a credit that will be applied by the State against invoices received from ENA by September 30, 1998 for basic services. If it is determined by the State, in the State's sole discretion, that such payment arrangement is not authorized, then ENA shall pay the State of Tennessee the purchase price for the network by cashier's check or similar form acceptable to the State, on July 1, 1998. To the extent that E-Rate funding is available, the Contractor will apply all E-Rate supplements to enhancing the basic services as defined in Exhibit 1. The State may withhold payment for failure to respond as stated in this contract or other non-performance of responsibilities.
- A.11.11. In the event the substance of the transfer of ConnectTEN that is described in the Proposal is not approved separately and expressly in writing by May 15, 1998, by the Commissioner of Finance and Administration, the Comptroller, and the Commissioner of Education, then this contract is voidable by the State at the State's option upon written notice. The parties agree that such finding shall not place either party in breach of contract or result in either party being liable to the other for any amount or for any type of damages.
- A.11.12. State Backbone. Pursuant to Section 5.3.4 of the RFP, the State will provide to the Contractor the use of the State Backbone, State routers, modem pools with dial-up access lines at 28kbps, and Internet services. The State, through the Office of Information Resources, will provide a T-1 capacity access link in each of the 95 counties from the County ECR to the State Backbone connection. Such service shall be provided to the Contractor for a total charge of \$2,013,200

annually. Contractor will have access to all existing ConnectTEN network sites and coordinate with OIR for access to State Backbone network sites. The State will coordinate on implementation and routing to establish the service levels in the Contractor's response.

A.12 Incorporation of Proposal

The Request for Proposals for RFS 97-2, as Amended and as clarified by the written answers to vendor questions, and the Contractor's response to RFS 97-2, as supplemented by clarifications requested by the State are hereby incorporated into this contract.

B.

CONTRACT TERM:

- B.1 Contract Term. This Contract shall be deemed effective as of March 20, 1998, upon full execution with defined services to be provided for the period commencing on July 1, 1998 and ending on Dec. 31, 2001. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Twenty-five million two hundred eighty thousand dollars (\$25,280,000.00), per the No E-Rate funding schedule, Exhibit 3. This amount shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, hours worked, or materials or equipment required, or the FCC E-Rate discounts due to the proposer. The Contract Amount includes, but is not limited to, all applicable taxes, fees, overhead, profit, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.2. Compensation Firm. The maximum liability of the State under this Contract is firm for the duration of the Contract and is not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. Upon completion and acceptance of the work described in Section A of this Contract, the Contractor shall submit an invoice, in form and substance acceptable to the State and with all of the necessary supporting documentation, prior to any payment. Contractor shall also submit an invoice, in form and substance acceptable to the FCC E-Rate Fund and with all of the necessary supporting documentation, and receive payment according to FCC E-Rate Fund regulations. The State shall in no way be responsible for the discounted portion that the FCC E-Rate Fund has agreed to pay to the contractor other than the State's obligations to submit Form 470, 471 and 486 to the FCC E-Rate Fund.
- C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be in the amount of actual costs, subject to maximum amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time. There shall be no travel compensation without the prior approval of the State, and will not exceed ten thousand dollars (\$10,000) during the period of the Contract.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts approved by the FCC for E-Rate discounts. The Contractor's invoice shall also be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposits (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, shall be made through the State of Tennessee's Automated Clearing House wire transfer system. The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State. The debit entries to correct errors authorized by the "Authorization Agreement for Automatic Deposits Form" shall be limited to those errors detected prior to the effective date of the credit entry. The remittance

advice shall note that a correcting entry was made. All corrections shall be made within two banking days of the effective date of the original transaction. All other errors detected at a later date shall take the form of a refund or, in some instances, a credit memo if additional payments are to be made.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals.** The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable State laws and regulations.
- D.2. Modification and Amendment.** This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate State officials in accordance with applicable State laws and regulations.
- D.3. Termination for Convenience.** The State may terminate the Contract by giving the Contractor at least sixty days (60) days written notice before the effective termination date. In that event, the Contractor shall be entitled to receive equitable compensation for satisfactory, authorized services completed as of the termination date.
- D.4. Termination for Cause.** If the Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting.** The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to Conflicts of Interest and Nondiscrimination (Sections D.6 and D.7).
- D.6. Conflicts of Interest.** The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination.** The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records.** The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring.** The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports.** The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance.** Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or

condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall be acting in their individual capacities and not as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.

D.14. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, bad faith, negligence, or willful misconduct on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee and the courts of the United States which are located within the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Force Majeure. Contractor shall not be responsible for performance standards due to conditions that are due to Acts of God.

E.3. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Jacqueline B. Shrago, Project Director, ConnecTEN
Department of Education, 6th Floor
710 James Robertson Pkwy., Nashville, TN. 37243
(o) 615-532-1229 (fax) 615-532-4791

The Contractor:

Albert F. Ganier, III, President
Education Networks of America
209 10th Avenue, South, Suite 500, Nashville, Tennessee 37203
(o) 615-429-5178
(fax) 615-252-5425

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

IN WITNESS WHEREOF:

Education Networks of America, LLC:



Albert F. Ganier, III

DATE: 4/7/98

Department of Education:



Jane Walters, Commissioner

DATE: 4-7-98

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:



John D. Ferguson, Commissioner

DATE: 4/7/98

COMPTROLLER OF THE TREASURY:

WR Snodgrass

William R. Snodgrass, Comptroller of the Treasury

DATE: 4-7-58

(From question above) The proposer shall define capabilities in every period if the E-Rate funding is not available in any period, i.e., define the capabilities in July 1-Dec. 31, 1998 with and without E-Rate funding and for each calendar year thereafter with and without E-rate funding for the life of the contract.

ENA's approach is to focus on network service levels from a teacher's perspective, based on a design that provides a response time of two web pages per minute and supports a network with a 10:1 student-to-computer ratio. The bandwidth and equipment figures listed in the following charts are approximate and are subject to modification based on available financial resources.

July 1-Dec. 31 1998	Bandwidth	Equipment	Service Level
Without E-Rate Funding	<ul style="list-style-type: none"> • Maintain current single ISDN connection for each school. • Assist OIR with peered Internet access routing enhancements to eliminate the non-contiguous IP address routing problem. • ENA will consult with OIR on zero-dollar routing and DNS enhancements. 	Maintain and support current equipment, e.g. ECR and school routers	Provide improved routing and E-mail services.
With E-Rate Funding	Install upgraded bandwidth at approximately 50% of Tennessee schools.	<ul style="list-style-type: none"> • Install five Education Hub Sites (EHS) for network-wide response time and security enhancements. • Install caching servers in the largest schools, based on student population and PC counts. • Install regional caching servers at selected Education County Router (ECR) sites. • Replace 50% of school routers with new, scalable routers. • Install additional DNS and E-mail servers 	50% of K-12 schools achieve average response time of 2 pages per minute