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

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In the Matter of:)
)
Federal-State Joint Board on Universal Service)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 96-45

**OPPOSITION OF
EDUCATION NETWORKS OF AMERICA**

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**OPPOSITION OF
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Education Networks of America ("ENA"), by its attorneys and pursuant to Section 1.45 of the Commission's Rules,¹ respectfully submits its Opposition to the "Objection to Application and Request for Expedited Declaratory Ruling" filed by Integrated Systems and Internet Solutions, Inc. ("ISIS 2000") on April 3, 1998.² ISIS 2000 is the unsuccessful and plainly disgruntled bidder in a procurement for Internet access services conducted by the Tennessee State Department of Education ("SDE").

On March 20, 1998, the Tennessee SDE announced its intention to award a contract to ENA. ISIS 2000 filed a protest with appropriate State entities, which protest has twice been found to be without merit. The State and ENA have entered into a contract, and the State has filed its completed application with the FCC's Schools and Library Corporation (SLC) based upon that contract.

¹ 47 C.F.R. Section 1.45.

² ISIS 2000's Petition was captioned "Tennessee State Department of Education Application (Form 471) for Approval of Funding" and was not docketed. ENA understands, however, that pleadings regarding ISIS 2000's Petition should be filed in the Universal Service docket.

Without waiting for a final decision by State authorities on its protest, and before the State's Form 471 was completed and filed, ISIS 2000 filed its inflammatory and sensationally worded Objection.

Education Networks of America (ENA), along with its teaming partners, BellSouth, ISDN-Net, Lucent Technologies, and NCR³, has contracted with the State of Tennessee Department of Education to provide turnkey Internet access to all public K-12 schools in Tennessee, using a point of presence in each school. Under the contract, ENA will provide increasing service levels based on increasing PC growth and Internet access demand. ENA and its partners have a demonstrated history of commitment to service to the students of Tennessee⁴ and are proud to have been awarded this contract, which is so important to Tennessee's education community. ENA's per-school price for Internet access compares favorably to other available options on a regional basis, costing as little as 40 percent of some other alternatives.

ISIS 2000 was an unsuccessful bidder for the same contract. Its protest was found by the State Review Committee to be without merit. One working day before the State Review Committee held the protest hearing, ISIS 2000 filed with the Commission, an inflammatory pleading which:

³ The FCC has anticipated such partnerships. See Universal Service Order, Paragraphs 425 and 449.

⁴ See attached qualification and experience section of ENA's proposal, Attachment 1.

- (1) mischaracterizes ENA's proposal and the State's RFP.
- (2) attacks the integrity of ENA principals and State officials;
- (3) misinterprets FCC orders and rules;
- (4) misrepresents the quality of its technical proposal as equivalent to ENA's;
- (5) repeats inaccurate cost information submitted by ISIS 2000 to the State in its proposal; and
- (6) is based on unsupported speculation.

Mischaracterizing the State's contract as "a fraudulent scheme put together to enrich ENA's principals at the expense of the Universal Service Fund,"⁵ ISIS 2000 purportedly asks for an "immediate Commission determination as to the lawfulness of USF funding purposes of certain key aspects of the proposed ENA contract . . ."⁶ In reality, however, ISIS 2000's petition is nothing more than a desperate, baseless, and quite possibly libelous effort to pressure the State of Tennessee into overturning the award of the contract to ENA, forcing a re-bid, and resuscitating its expiring contract for Help Desk services. Its petition should be promptly denied.

I. INTRODUCTION AND SUMMARY

ENA is a systems integrator that has assembled a team of leading telecommunications companies--BellSouth, Lucent, NCR, and ISDN-Net, Inc.--to respond to the State's desire for a cost-effective, creative, and technically robust means of providing Internet access to students in Tennessee. ENA's president,

⁵ ISIS Petition at 4.

Al Ganier, played a leading role in helping the State develop its existing education network (ConnectEN) and has worked closely with federal and state officials concerning the E-rate program.

The State's procurement conscientiously followed every requirement of the FCC's competitive bidding requirement and State procurement and contracting law. ENA was awarded the contract over ISIS 2000 on the basis of a clearly superior technical proposal (a 40 percent higher rating) and a cost-effective approach to providing service. Contrary to its protestations, ISIS 2000 did not offer an equivalent technical solution at a lower cost. As was demonstrated during the State's protest proceedings, ISIS 2000's proposal was technically inferior and riddled with inconsistencies that made its exact cost difficult to determine.

Stripped of its bombastic and inflammatory rhetoric, ISIS 2000's petition rests on an unduly narrow and baseless interpretation of what services and functions are eligible for discounts under the federal schools and libraries fund, as well as a mischaracterization of ENA's proposal. As discussed in Section IV, ENA believes in good faith, based on the Commission's *Universal Service Orders* and rules and information available on the Schools and Libraries Corporation's web site, that its proposal is fully eligible for discounts to be reimbursed by the fund because ENA will provide Internet access services, using a point of presence in each school. The Tennessee school consortium is

⁶ *Id.* at 3.

purchasing Internet access services; it is not purchasing equipment or telecommunications services.

ISIS 2000's strategy in its Objection is to disaggregate the various elements of providing Internet access service and require ENA to demonstrate that each element is expressly listed as eligible. This approach, however, ignores the fact that Internet access taken as a whole is an eligible service. Neither ENA, America Online, Prodigy, nor any other Internet access provider is required to itemize costs and eligibility for each piece of equipment and transmission link comprising its network, or the staff which makes it all function efficiently. The Commission has never indicated its intention to so regulate or oversee the internal operations of Internet service providers.

Even if ISIS 2000's deconstructionist approach were valid, which it is not, ENA firmly believes that each element challenged by ISIS 2000 is appropriately classified as eligible. The specific elements challenged by ISIS 2000 are critical elements of an efficient architecture for providing the 900,000 schoolchildren in Tennessee with efficient, rapid, robust and cost-effective Internet access. In fact, ENA's proposal provides a means to offer Internet access to students in Tennessee at a per-school cost that is below the prices offered by other Internet access providers such as BellSouth.net. Over the life of the contract, ENA's price for providing high quality Internet access averages \$984 per site per month. As a comparison, a month-to-month price for providing equivalent BellSouth.net Frame Relay service with guaranteed bandwidth (100% CIR) is \$2,519.

Accordingly, ISIS 2000's request for relief should be promptly denied.⁷

II. ENA WAS AWARDED THE TENNESSEE CONTRACT BASED ON A SUPERIOR PROPOSAL AND HAS ACTED AT ALL TIMES IN GOOD FAITH AND IN STRICT ACCORDANCE WITH THE LAW.

Contrary to ISIS 2000's claims that ENA (and by implication, the Tennessee State Department of Education) are engaged in a scheme to defraud the schools and libraries fund, ENA's proposal was clearly superior to ISIS 2000's. ENA received dramatically higher technical scores by all reviewers, especially in the category of "Response to K-12 Need." More importantly for purposes of this proceeding, ENA's proposal provides a cost-effective, creative and technically sound means of expanding and enhancing access to the Internet by students in Tennessee. ENA is a bona fide service provider whose principals are committed to serving the education community. The Tennessee procurement was conducted in strict accordance with all FCC and state procurement requirements, and the Department of Education (whose decision was affirmed by the State's Review Committee) found ENA's proposal clearly superior.⁸

⁷ ENA notes that, pursuant to the delegation of authority made in paragraph 65-67 of the Report and Order and Second Order on Reconsideration in CC Docket Nos. 97-21 and 96-45 (FCC 97-253, rel. July 18, 1997), it appears that the SLC, not the Commission, is responsible for addressing issues of eligibility. ENA nonetheless is filing this Opposition at both the FCC and the SLC in case the Commission asserts authority over this matter.

⁸ The Review Committee consists of designees of the Comptroller of the Treasury, the Commissioner of Finance and Administration, the Department of General Services and, in this case, the Commissioner of Education.

ENA is a bona fide company whose team consists of leading service and equipment providers. ENA, as envisioned by the Commission, has assembled a team of leading companies to provide the best possible service to schoolchildren in Tennessee. Its team members are BellSouth, Lucent, NCR and ISDN-Net, Inc. – all highly respected companies that bring years of experience and expertise to this project. Each of these companies has executed a Teaming Agreement with ENA and participated in the development of the proposal. Moreover, each has signed commitment letters agreeing to enter into subcontracts based upon the proposal. In addition, ENA clearly is knowledgeable about the project and capable of performing its responsibilities under the contract. In this regard, ENA has substantial directly relevant experience, having provided services for the overall design and implementation of the ConnectTEN project, including development, installation, operations, and selection of vendors for network services and Help Desk services currently provided by ISIS 2000.⁹

ENA's principals are committed to the education community. ENA's President and CEO, Albert Ganier III, is committed to bringing the benefits of advanced technology to students and teachers in Tennessee. He spent two years managing work related to the connection of all Tennessee public schools to the Internet and served as volunteer (and uncompensated) president of Connect Tennessee Students, a not-for-profit corporation. That organization has

⁹ See Attachments 1 and 2 hereto.

raised more than \$3 million in cash, goods, and services, and is responsible for the provision of most of the software, including browsers and protection from pornography, to all K-12 schools. Mr. Ganier also has been actively involved in efforts by state and federal officials to help develop the schools and libraries program.

The Tennessee State Department of Education (SDE) complied with all FCC and state rules in conducting its procurement and awarding the contract to ENA. On December 29, 1997, the Tennessee State Department of Education issued an RFP for expansion and enhancement of capabilities and services involved in providing Internet access to 900,000 students in Tennessee's public schools.¹⁰ Two proposals – from ENA and ISIS 2000 – were timely submitted in response. After a thorough review of these proposals in accordance with the RFP's announced methodology, the SDE announced its intent to award the contract to ENA.

On March 30, 1998, ten days after the announcement of intent to award, ISIS 2000 filed a protest with the Commissioner of Education. ENA responded, and on April 2, the Commissioner denied ISIS 2000's protest and issued a written finding that included a detailed report from the RFP coordinator.¹¹ ISIS 2000 appealed the Commissioner's decision to the State Review Committee,

¹⁰ The State Department of Education acted on behalf of the consortium of all K-12 public schools in the State.

¹¹ The Report of the RFP Coordinator is attached hereto as Attachment 3.

which is statutorily created to determine such protests. A full five-hour hearing was held on April 6, and the Review Committee denied ISIS 2000's protest and confirmed the award to ENA, determining that ISIS 2000's protest was without merit and that ENA had met all the requirements of the RFP.

III. ISIS 2000'S PROPOSAL IS NEITHER TECHNICALLY EQUIVALENT TO ENA'S NOR LESS COSTLY.

ENA's and ISIS 2000's proposals were both evaluated by four separate evaluators for compliance with the requirements of the RFP. Each evaluator independently rated ENA's technical proposal as considerably superior to ISIS 2000's. Out of a possible 45 points, ENA received an average score of 35.375. ISIS 2000's score, by contrast, was only 26. Consequently, the technical superiority of ENA's proposal was an important factor underlying the award to ENA.¹² In addition, ISIS 2000's oft-repeated basic premise of equivalent technical offerings is inaccurate and contrary to the record created before the Review Committee and acted upon by State officials.

¹² The Commission, in FCC 97-157, set out the factors specifically relevant to the acquisition of Internet access, stating, "When it specifically addressed this issue in the context of Internet access, the Joint Board only recommended that the Commission require schools and libraries to select the most cost-effective supplier of access." The Commission then found that the following factors, in addition to price, form a reasonable basis on which to evaluate whether an offering is cost-effective: prior experience, including past performance; personnel qualifications, including technical excellence; management capability, including schedule compliance; and environmental objectives. *Id.* at ¶ 481; see also *Fourth Reconsideration Order* at fn. 580. The State's RFP included almost all of these factors. In addition, as noted above, the per site cost of ENA's proposal is cost effective in comparison with other alternatives.

ENA's proposal also is less costly than ISIS 2000's, although inconsistencies in ISIS 2000's proposal make it difficult to determine its exact cost. The ENA cost proposal for 3 ½ years is approximately \$984 per month per site, as compared to a local service provider, BellSouth.net's, monthly price of \$2,500 for similar Internet access.¹³

ENA, ISIS 2000/BellSouth Cost Comparison

	Education Networks of America	BellSouth.net
1 Site	\$984	\$2,500
42 month	\$41,328	\$109,200
1800 sites	\$74,390,000	\$196,560,000

Indeed, projecting ENA's price over 110,000 sites nationwide, and assuming a 66 percent discount, the total cost of providing Internet access at ENA's prices would amount to only 38 percent of the USF. Taking the BellSouth.net cost and applying it nationwide would consume 97 percent of the fund, leaving no money available for telecommunications or internal connections. From a national policy perspective, therefore, ENA's approach offers substantial savings – and ISIS 2000's claims that ENA is taking money away from other schools is flatly wrong.

¹³ From price lists provided by BellSouth with a 15 percent discount and waiving all installation charges. These services are not available in many isolated rural or high cost areas without additional costs.

National Perspective

	Education Networks of America	BellSouth.net
1 Site	\$984	\$2,500
110,000 Sites	\$108,240,000	\$275,000,000
1 year	\$1,299,000,000	\$3,300,000,000
USF Supplement at 66%	\$857,260,000	\$2,178,120
Percent of Total USF	38%	97%

Notably, ISIS 2000's submitted cost proposal contains significant errors, which call into question the real cost of its solution. In response to the State's request for ISIS 2000 to clarify its cost proposal, it merely provided a spread sheet for the first six months which reflected the same figures for the monthly cost and the six-month cost.¹⁴ The monthly figure, correctly extended for the first 6-month period alone,¹⁵ would increase ISIS 2000's total contract cost by \$21 million, making the total nearly equivalent to ENA's total contract cost. If the monthly figure were extended 42 months, ISIS 2000's total contract cost would be approximately \$100 million higher, or approximately equivalent to

¹⁴ The errors and inconsistencies in the ISIS 2000 "clarified" cost proposal were brought to ISIS 2000's attention both before and during the protest hearing and were never explained, refuted, or clarified.

¹⁵ See Exhibit 4 to the RFP Coordinator's Report (Attachment 3 hereto).

BellSouth.net's comparable service.¹⁶ The bottom line is that ISIS 2000's claim that its proposal is \$23 million lower than ENA's proposal is not accurate and not supported by the record developed before State officials.

As the foregoing discussion confirms, ISIS 2000's allegations that its technical solution is equivalent to ENA's and costs less are inaccurate. In the next section, ENA will demonstrate that ISIS 2000's substantive interpretations of the Commission's orders are equally groundless.

IV. ALL ITEMS IN ENA'S PROPOSAL ARE ELIGIBLE FOR DISCOUNTS AND REIMBURSEMENT.

Implementation of ENA's proposal will greatly benefit the 900,000 Tennessee students and advance Congress's and the FCC's Universal Service goals. The current network was designed to support 10,000 to 15,000 computers. The demand is currently for 50,000 computers, and is expected to grow to 90,000. ENA's proposal will enhance existing Internet access arrangements for Tennessee students in several respects. Bandwidth will be expanded using a combination of scaled Connectionless Data Service (an advanced form of frame-relay service provided by BellSouth), dedicated T-1 lines, and dual ISDN lines. In the existing ConnectTEN network, schools are connected through single ISDN lines. ENA will provide average student Internet access time at the rate of three hours weekly at two web pages per minutes, or

¹⁶ Additionally, the State requested that each proposer provide service and cost information for each 6-month period of the contract, with and without E-rate

2.7 million hours of Internet access per week. ENA's Internet access uses special routers and file servers to maximize access to important education sites which reduce bandwidth costs, greatly improving response time and making it easier for teachers to plan lessons and for students to locate relevant resources. ENA's Internet access will also provide secure e-mail and firewall protection against unauthorized access. ENA Internet Access also provides the capacity for pornography protection as contemplated by pending State and Federal legislation.

As the foregoing makes clear, ENA has only proposed to provide schools with Internet access. Internet access is a service that is eligible for discounts.¹⁷ The only exception to the eligibility of Internet access is for content-based additions to information access. That exception is not applicable here because the ENA proposal and the contract with the State do not include such additions. ENA has described some of the elements, such as switches, hubs, routers, DNS and other types of servers, and telecommunications leased services that it will use to facilitate its provision of Internet access, but it is not providing these elements to schools on an individual basis or to a consortium that might own or operate a network.

funding. ISIS 2000 did not comply with this request and, even when given an opportunity to clarify its no-E-rate proposal, it did not.

¹⁷ Universal Service Order, ¶ 428.

ISIS 2000 has misrepresented that ENA is providing elements that are ineligible for discounts and reimbursement from the Schools and Libraries Fund. In addition to mislabeling these elements so as to obscure their true nature and the nature of the contract, ISIS 2000 has also misapplied FCC statements on the subject of eligibility. ISIS 2000 challenges: (1) the "use of existing ConnectEN equipment,"¹⁸ (2) five Education Hub Sites that will be used to aggregate and route Internet access traffic¹⁹, (3) approximately 100 caching servers that ENA will use to enhance the efficiency of the network and enable greater computer time per student²⁰, (4) 8000 hours of Internet access field staff support that ISIS 2000 mischaracterizes as "teacher training"²¹, (5) recurring charges for ISDN circuits.²² There is no basis for ISIS 2000's claims that these elements are ineligible.

ISIS 2000's pleading fails to recognize the clear distinction between the purchase of Internet access on behalf of the schools and the State ownership and operation of its own wide area network. The FCC has clearly made such distinctions throughout its orders and rules. The FCC has carefully considered and described Internet access services and has just as carefully distinguished

¹⁸ ISIS 2000 Petition at 13-19.

¹⁹ *Id.* at 19-23.

²⁰ *Id.* at 23.

²¹ *Id.* at 23-24.

²² *Id.* at 24-26.

those services from telecommunications services and from school-purchased or State owned network components.²³ The May 1997 Order, the Fourth Order on Reconsideration, and the list of eligible items clearly show the distinction.

Internet access service providers are not required, under FCC rules, to detail their operational components or to have each separate component qualified as eligible. The structure of Form 471 clearly demonstrates the differing treatment the FCC intends to afford the different types of school purchases. Similarly, the contract between the State and ENA provides for the purchase of various levels of service, increased capacity, and guaranteed, specific standards of performance.

A. The Purchase of the ConnectTEN Network by ENA and Its Use to Provide Internet Access is Plainly Eligible for Discounts.

Under ENA's proposal, ENA will purchase from the State an existing, operating network which currently connects all Tennessee K-12 public schools to each other and the Internet that will be used to provide service beginning on July 1, 1998. The purchase of the network is a sound business decision to assure that each school continues to receive a certain baseline level of service while ENA initiates network upgrades and introduces new, more efficient capabilities.

²³ Thus, while the State Department of Education in its RFP required a thorough discussion of the details of how the service was to be provided, that information was relevant only to the State's evaluation of the quality of the technical proposal, and how well the proposed solution would meet the needs of Tennessee's schools. ENA provided a clear and comprehensive proposal detailing how it would provide the services it offered. That information, however, is in no way relevant to issues of eligibility for the USF discounts.

ISIS 2000 contends that ENA is not eligible for reimbursement for the costs of this network.

ISIS 2000's argument is patently flawed. As an initial matter, ISIS 2000 cites to FCC orders and "Commonly Asked Questions" published by the SLC to argue that services provided prior to January 1, 1998 are not eligible for reimbursement. While true, this argument is irrelevant. The fact that *equipment* was used, as opposed to new, has no bearing on the eligibility of services made possible by that equipment. ENA seeks no funding for services provided prior to January 1, 1998; rather, it only seeks reimbursement for services provided beginning on July 1, 1998.

Notably, ISIS 2000 fails to identify any rule stating that equipment that existed prior to January 1, 1998 cannot be used to provide eligible services, and such a rule would be nonsensical. Under ISIS 2000's apparent theory, AOL or any other Internet service provider would have to put in place all new equipment, and could not purchase used equipment, in order to obtain reimbursement for Internet access and internal connections. Doing so, however, would obviously raise the costs of providing Internet access and would unreasonably inflate demands on the fund.

Clearly, a service provider may obtain equipment and circuits from a variety of sources in order to provide eligible services. If ENA had obtained a network from a seller other than the State, those network components plainly would have been eligible for reimbursement. By purchasing the network from the State, however, ENA was able both to take advantage of the lower costs of

using existing, in-place equipment and to assure preservation of a continuing service level pending upgrades to the network. Doing so saves money for the State and the fund and provides uninterrupted service to 900,000 students.

The actual charges by ENA to the State are for Internet access service. There is no sale of equipment or telecommunications services to the State so the discussion by ISIS 2000 of inflated costs for equipment is without basis. Moreover, there is no provision for the State to own any part of the system that ENA will own and use during or after the contract period, so the service arrangements are fully consistent with FCC policy.

B. The Education Hub Sites are Eligible for Reimbursement As Part of ENA's Network Used to Provide Internet Access.

ISIS 2000 again ignores that ENA is providing Internet access service when it claims that the five Education Hub Sites, which are part of the ENA system, are not eligible for reimbursement because they are "clearly not internal connections" and "go far beyond the Commission's funding restrictions on WAN facilities and services."²⁴ ISIS 2000 fails to understand both the nature and importance of these hubs in providing efficient Internet access and the FCC's rules governing reimbursement.

ENA is not selling the equipment or a WAN to the State or to the schools. The ENA hubs are part of an upgrade of ENA's equipment to provide more reliable Internet access. They will reside in the five state LATAs to provide more

²⁴ ISIS 2000 Petition at 22, 23.

reliable Internet access. Each Education Hub Site contains two large routers, one facing the Internet and the other facing the ENA/BellSouth Connectionless Data Service "cloud." Sandwiched in between each router are a firewall, caching server, mail server and K-12 domain name service servers. Each hub will provide virtual reserve desks, custom security, and e-mail access. They will store an average of 74 percent of the common web pages used by schools, which dramatically improves web page response time and greatly reduces direct Internet connections for web pages. The firewall feature will provide all K-12 schools with statewide protection from common Internet hacking attacks and provide optional content filtering that can meet any state or federally legislated content filter mandates.²⁵ The hubs also will provide more efficient routing of Internet access traffic and more secure, web-based e-mail capabilities.

The Education Hub Sites are clearly eligible for reimbursement on a number of grounds. First, they are integral parts of providing efficient Internet access to students in Tennessee, and Internet access is unquestionably an eligible service.²⁶ Second, they are not part of a wide area network built or purchased by a state. While ISIS 2000 argues that WANs are not eligible for

²⁵ The SLC's Eligible Services list (at 10n.6) provides that firewalls are eligible if provided as an element of a file server. As described in the text, the Education Hub Sites act as file servers.

²⁶ Universal Service Order, ¶¶ 436-449 (discounts available for the transmission of information as part of a gateway, including data transmission, address translation, protocol conversion, billing management, introductory information content, navigational systems and e-mail (¶ 444) – all functions that are supported by the Education Hub Sites.)

reimbursement, it reads the Commission's Fourth Reconsideration Order far too broadly. That decision states only that "to the extent that states, schools or libraries build and purchase wide area networks to provide telecommunications, the cost of purchasing such networks will not be eligible for universal service discounts."²⁷ In contrast, ENA's network is privately owned and operated; this is not a case of a state seeking direct reimbursement for a WAN that it has built or purchased from another party. Rather, ENA uses its network (and the hubs in particular) to provide Internet access as well as the pure data transmission underlying that access, both of which are eligible for reimbursement.

C. The Caching Servers are Essential Elements of Maximizing the Benefits of Internet Access for Tennessee Students.

Once again, ISIS 2000 fails to understand the use of the caching servers and misreads the Commission's *Universal Service* decisions. Under ENA's proposal, caching servers will be installed at ENA's Education County Routers (ECRs), which are traffic aggregation points and routing points in each county and at certain other particularly large network points of presence. This architecture relieves bandwidth limitations and provides outstanding response time to students, because requests fulfilled by the caching server (which stores frequently accessed web pages) do not travel beyond the local county ECR. Caching also enhances throughput for real-time web services and non-cached requests, such as video, audio, or other real-time services.

²⁷ Fourth Reconsideration Order, ¶ 193.

These caching servers are eligible for reimbursement on several grounds. First, the servers perform gateway functions that are expressly included in the definition of Internet access.²⁸ ENA's proposal and the resulting contract are designed to provide maximum benefits to Tennessee's students and teachers. The caching servers are simply one element of ENA's operational plan to deliver those services. The State and the schools are not being billed separately for these servers or any other components of ENA's activities necessary to provide Internet access services.

Second, the caching servers are critical to maximizing the utility and responsiveness of the eligible Internet access service provided by ENA. Without them, students in Tennessee would suffer through exceptionally slow response times that would severely limit the ability of students to make efficient and effective use of their computer time.²⁹

Finally, although ENA maintains that eligibility of Internet access is determined only by the Commission's directives in that area (e.g., the definition of Internet access and the limitation on content-based services), and that the separate eligibility of components of the provider's operation is simply not relevant, it should be noted that routers, hubs, and network file services are

²⁸ Universal Service Order, ¶ 444.

²⁹ Alternatively, to achieve the same response times without the caching servers would require massive expenditures on bandwidth upgrades – far more than the cost of the servers themselves.

expressly identified as elements of internal connections in the *Universal Service Order* (at ¶ 460). Thus, ISIS 2000's statement that the servers are not included in the SLC's list of Eligible Services is incorrect. Because the caching servers enhance the efficiency and effectiveness of the Internet access to be provided, upholding ISIS 2000's position would deprive Tennessee students of the very benefits that Congress and the Commission hope to achieve from the schools and libraries program and force ENA and others to propose higher cost alternatives.

D. ISIS 2000 Mischaracterizes the Purpose of the ENA School Partners Program.

By mislabeling part of ENA's proposal, ISIS 2000 erroneously claims that ENA is seeking reimbursement for "approximately 8000 hours of ineligible teacher training."³⁰ In reality, the ENA Partners Program is a means of assuring that ENA meets the service level performance commitments contained in its technical proposal. The ENA Partners team consists of eight individuals who comprise the field staff responsible for 1800 points of Internet access throughout the state. These individuals will be responsible for the identification of problems in the field before they begin to impact the ENA Internet access system. Each of these individuals is responsible for more than 200 service points (providing less than 1 hour per month per ENA Internet access point of presence) and cannot

³⁰ ISIS 2000 Petition at 23-24.

possibly provide training for Tennessee's 50,000 teachers. (Nor will they cost \$150 per hour, as ISIS 2000 claims.)

Plainly, the ENA School Partners Program is not a teacher training program. Rather, it is a program aimed at maximizing the availability and quality of the Internet access provided by the ENA team. As such, it is an integral part of providing cost-effective, high quality Internet access, and the cost of providing the committed Internet access service levels would be higher without it.

E. The ISDN circuits challenged by ISIS 2000 Are Eligible for Both Federal and State Discounts.

As its final salvo against ENA, ISIS 2000 asserts that, "[w]hile ISDN circuits are considered an eligible telecommunications service for purposes of obtaining USF discounts, the particular ISDN circuits for which ENA proposes to use in its provision of Internet access are not.³¹ Once again, ENA is providing Internet access. ENA is not selling ISDN services to the State. However, ISIS 2000 argues that under a recent ruling by the Tennessee Regulatory Authority ("TRA"), these circuits are not eligible for federal reimbursement because they are already discounted at the state level.³² ISIS 2000 mischaracterizes the TRA's decision, however; the agency did not formally adopt the proposition that discounted ISDN circuits are ineligible for federal support. Moreover, even if it had adopted this position, such an outcome would be inconsistent with the

³¹ ISIS Petition at 25.

³² *Id.*

FCC's *Fourth Reconsideration Order*. In reality all ISDN circuits included in ENA's proposal are eligible for discount under the FCC's rules.³³ Again, ENA is providing Internet access service and will be billing for that service.

At a directors' conference on February 3, 1998, the TRA considered the issue of "what support in addition to the federal support already adopted by the TRA should be provided to schools and libraries?"³⁴ One of the TRA directors noted that there are currently four services, including ISDN, that "are provided to schools and libraries at discounted rates via tariff offerings."³⁵ He stated that "[f]or these services, schools and libraries will have the opportunity to choose the state or federal discount, whichever is greater."³⁶ This statement, however, was not put to a vote. Rather, the proposition that was voted on and approved by the TRA was that the TRA "continue to require terrified discounts for schools and libraries for . . . ISDN . . ."³⁷ Consequently, the TRA has not ruled that ISDN circuits available at a discount under state tariffs are ineligible for federal support.

³³ Nowhere in ENA's cost proposal does it itemize the prices it will pay its subcontractors for ISDN lines or any other component of the services it will provide. Therefore, ISIS can merely speculate on those prices. In any event, those prices are simply irrelevant because the schools are purchasing Internet access services – not ISDN lines, T-1 lines, or similar telecommunications links.

³⁴ February 3 Director's Conference, Transcript at 41 (Attachment 4 hereto).

³⁵ *Id.*

³⁶ *Id.* at 42.

³⁷ *Id.* at 43.