

at the specifics, let me offer a comparison for the context for the cost. Bellsouth.net could provide a comparable service to ENA at an average cost of \$1,770 per school per month. This represents a \$133 million cost over the life of the contract, waiving installation costs. This example is drawn from their current price list. ENA's proposal is \$74 million, 45% less. ISIS offers their service for a **questionable** \$51 million and it is not comparable. I can provide specifics that the services are different and there are significant issues as to whether ISIS can provide even the services proposed for the costs specified in the ISIS proposal.

- I. **Service Levels using specialized equipment cost more to get results we need for students in the classroom**
 - a. **Internet Reliability Index.** Internet access at 10:00am, is often slow. The State of Utah actually demonstrated a 45% increased use and productivity for teachers and students when they installed the kind of equipment that ENA is proposing. This equipment is called "caching." Teachers can't entertain a classroom of students while waiting on an Internet site. ENA's approach is more robust, more reliable, and more expensive. The ENA approach happens automatically without teacher intervention. The capability occurs in 3 levels in the network, not 1. ISIS stated that teachers would actually call the helpdesk every time they wanted a site reserved. Teachers don't have access to phones in the classroom and they can't leave their students while they walk down the hall. Also imagine 50,000 teachers calling the helpdesk whenever a site is to be reserved. The current helpdesk handles about 50 calls a day, so their approach is simply unworkable. ISIS is not clear when, how or where the caching capability will be implemented.
 - b. **Less than half as much security.** ENA has four security checkpoints vs. one or two for ISIS. The RFP stated that this is a growing concern for schools and will only increase as usage increases.
 - c. **Protection from pornography.** It appears to be optional for the ISIS proposal and built in as a committed service level for ENA. Given that our state legislature is currently considering such a law and it will require a significant fiscal note if this contract is not signed, this protection is becoming more important with each passing week. Federal legislation may also make this a requirement.
 - d. **All items are provided at the beginning of the contract for all schools.** Not clear what ISIS has in place in the first six months on these 3 items above.
 - e. **Capacity Index.** Currently ConnectTEN has 5 times as many computers as it was designed for. This means that a lot of computers can't access the network at the same time. It is not clear how much capacity is in the ISIS proposal, however ENA has contracted to deliver guaranteed service levels of 2 pages

per minute for every student with 90,000 computers on the network. What does this mean? Students sitting in a classroom waiting for the information to emerge on the screen are not learning. They are waiting. Teachers know that such waiting generally means that problems will occur in the classroom. So this is an unacceptable and impossible learning environment. ENA built a measurable index that is a combination of equipment and communication line increases to guarantee this level of performance. They document in their response observing teachers and students to design and arrive at this capacity index.

- f. **Equipment Reliability.** ISIS combined 3 functions into one piece of equipment, rather than the 3 that ENA is proposing. Their approach cannot be as robust, reliable or effective as specialized equipment. ISIS has a single point of failure and a greater likely of degradation of performance.

II. **ENA's proposal includes a critical migration plan to return the network to a functioning status within the state's resources without E-rate funding.**

- a. ENA presented a variety of options in equipment and communications under (p. 60-61) 5 separate E-rate scenarios. ENA clearly documented sufficient funds for delivery of services to all schools if E-rate funding disappears particularly in 1999 or 2000.
- b. Even in the clarification letter of March 10 where ISIS response was required to clarify discrepancies in various places in their proposal, there was still missing and misleading information. Chart on page 5 (clarification letter) shows **without E-rate**, new school routers, new county routers, and all schools with upgraded bandwidth. This capability would cost \$3.7 million based on the numbers they provided: (Department response, Exhibit 4)

One-time

95 county routers @ \$10,295	\$ 978,000
Install & maintenance	35,625
School routers (1800)	2,711,000
Total purchases	3,724,625

This exhibit 4 was requested by the State so that we could further study the monthly costs that is what the state may be obligated for. There is a major discrepancy between one-month and six-month costs. Even if we assume that they intended for the six month to be the accurate one, it appears unlikely that there is a tariff from BellSouth to support the costs shown for communications lines offered.

While it might appear that the state is getting this equipment and communications lines for nothing or at a real bargain, it was of grave concern

when we noted that ISIS has a negative net worth of \$1.6 million and was given no credit rating status by Dunn & Bradstreet. In addition, the parent company, Great Universal Inc., also was given no credit rating status by Dunn & Bradstreet (as per their documents). The "Top Parent" according to D&B, is apparently the fourth in a chain of corporations that owns ISIS. There is no credit information for this Luxemborg company which was started in 1992 and operates as a "management and public relations consultant" according to D&B in documents provided by ISIS in their response.

While ENA's costs appear on the surface to be higher for much higher levels of service, we have been unable to verify what ISIS' costs really are, as indicated by Exhibit 4.

Do you have any questions?

Item #4: ENA lacks the Requisite Financial Responsibility to Fulfill its Obligations under its proposal.

Section 5.2.2.10 of the State's RFP requires

"documentation of financial responsibility, financial stability, and sufficient financial resources to provide the scope of services to the state in the volume projected and within the time frames required and within the constraints of receipt of discounts from the FCC E-rate fund " More specifically, "said documentation shall include:

Other pertinent financial information by which the State may reasonably formulate an opinion about the relative stability and financial strength of the proposer--this information must include the most recent audited financial statement, or in lieu of such, a banking reference and a credit rating by a rating service."

All required items were included in the ENA proposal. The ENA audited financial statements showed a net worth of \$1.5 million, compared to the negative \$1.6 unaudited net worth of ISIS. ENA showed an audited net income of \$48,000. ISIS showed an unaudited net loss of \$1.455 million. An ENA Banking reference was included.

ISIS did not provide audited financial statements. ISIS provided Dunn & Bradstreet documentation but no credit rating. Quoting from D&B, "The absence of a Rating (--) indicates that the information available to D&B does not permit us to assign a Rating to this business. In this case, no Rating was assigned because of D&B's "unbalanced" assessment of the company's December 31, 1997, fiscal financial statement. "

As indicated earlier, ISIS, its parent nor the top parent has a credit rating. ISIS included a bank letter that stated it had a satisfactory checking account but no reference was made of its relationship with the bank. A credit line was identified

for the parent but there is no indication or guarantee that any portion of the credit line is available from the parent company to ISIS.

All items were reviewed by the evaluators and scored accordingly.

The State finds no misrepresentation in the documents provided by ENA. ISIS did not provide all of the required documents

Do you have any questions?

Item #3: The Legal Status of ENA to Participate in this Process is Questionable.

The legal existence of ENA has always been valid and is valid now as established in the Secretary of State's Office as required by law, per attached confirmation.

Do you have any questions?

Item #1. ENA Failed to Complete the Required Tests

In the report to Commissioner Walters, in response to the letter of protest, I described the specific tests that we asked proposers to perform. You will note that we did most of the test in a school using volunteer students and teachers in a Nashville school using classroom computers and school network. We did this because we think that while there are lots of technical ways to evaluate vendors providing Internet service, it is most important that we operate from the perspective of our students and the typical school environment. The rationale for the demonstration test, in student terms, was to assure that students wouldn't have to wait as long as they are now waiting to see the picture or information emerge on the computer screen when they request this information from an Internet site. If students have to wait too long, teachers won't use this as a means of instruction, or if the sites just don't show up, students get frustrated! Therefore, the RFP states the criteria that if a proposer demonstrates that they can deliver service on the State of Tennessee network (test 1), and deliver it equivalent to the time that students wait now, or less (test 2), then the proposer meets the criteria as specified in the RFP.

The purpose, as stated in the report, was to have proposers offer equipment and communication lines which are currently on the market and that provide equivalent functionality to the existing network." The State determined that both vendors, ENA and

ISIS2000, met the requirements of the RFP for the demonstration test and told both this information on the day of the test, Sat., March 7, 1998.

Further RFP Section 3.5 stated, "The use of the terms Must/Shall/Will/Should indicates a specific requirement that the State considers essential to this Request for Proposal.

Failure to adhere to this definition *may* (emphasis added) result in bidder disqualification." We determined that neither proposer should be disqualified and that neither should lose any points in the evaluation.

Do you have any questions about the tests?

Item #5. ENA Apparently Failed to Submit Cost Data in a Sealed Envelope.

The page labeled

"Reviewer Questions for ENA Response to RFP 97-2

March 10, 1998

Deliver via email with confirmation phone call to Jackie Shrago" was the heading on the document **provided to ENA.**

In response to this question, ENA delivered the first two pages of the Protest exhibit describing services, but **no cost** information was provided to any evaluator when the response was delivered. All cost information was provided in a sealed envelope and **only in a sealed envelope.** The envelope remained sealed in the Commissioner's office until 3 persons had transferred all evaluator technical scores to the Summary Sheet, signed and dated that Summary Sheet

ISDN tariff is not matchable (per the Tennessee Regulatory Authority), whereas our proposed frame relay and fractional T1 services are.

Component	Before Upgrade	Upgrade with E-Rate	Upgrade without E-Rate
Small School < 30 Computers	NE 1000 128 Kbps ISDN	Cisco 2501 128 Kbps Frac T1 to County	Cisco 2501 128 Kbps Frac T1 to County
Medium School 30 - 60 Computers	NE 1000 128 Kbps ISDN	Cisco 2501 256 Kbps Frac T1 to County	Cisco 2501 128 Kbps Frac T1 to County
Large School 60 - 120 Computers	NE 1000 128 Kbps ISDN	Cisco 2501 512 Kbps Frac T1 to Internet	Cisco 2501 128 - 256 Kbps Frac T1 (depending upon usage) to County or Internet
Extra-Large School > 120 Computers	NE 1000 128 Kbps ISDN	Cisco 2501 T1 to Internet	Cisco 2501 128 - 256 Kbps Frac T1 (depending upon usage) to Internet
County Configuration using State Backbone	NE 5000 V.35 T1 to TAP	Cisco 3640 V.35 T1 to TAP	Cisco 3640 V.35 T1 to TAP
County Configuration using Optional Network Configuration	NE 5000 V.35 T1 to TAP	Cisco 3640 Frame Relay T1 to Internet	Cisco 3640 Frame Relay T1 to Internet

Timing for deployment, per period, with and without E-Rate funding is shown in the table below.

Six Month Period	Standard Network Configuration	Optional Network Configuration
July 1 - December 31, 1998	95 County routers fielded 100 extra-large schools transitioned to T1 frame relay Internet connections 300 large schools transitioned to 512 Kbps fractional T1 frame relay Internet connections	95 County routers fielded to terminate new T1 frame relay Internet connections Terminal servers and modems fielded to each county 100 extra-large schools transitioned to T1 frame relay Internet connections 300 large schools transitioned to 512 Kbps fractional T1 frame relay Internet connections
January 1 - June 30, 1999	470 medium schools transitioned from ISDN to dedicated fractional T1 connections to county routers	125 medium schools transitioned from ISDN to dedicated fractional T1 connections to county routers
July 1 - December 31, 1999	530 medium schools transitioned from ISDN to dedicated fractional T1 connections to county routers	875 medium schools transitioned from ISDN to dedicated fractional T1 connections to county routers

Six Month Period	With E-Rate Funding	Without E-Rate Funding
July 1 - December 31, 1998	County routers fielded, address translation implemented E-mail service fielded, parallel email operations DNS servers fielded Extra-large and large schools transitioned to direct Internet connections Directory services, Caching and web hosting services offered	E-mail service fielded, parallel email operations begin Primary DNS server fielded Web hosting services offered
January 1 - June 30, 1999	Medium schools begin transition Parallel e-mail operations conclude—ten-nash DNS entry is redirected Secondary and backup e-mail servers fielded—email service capable of supporting 100,000 users Caching service expanded Network news services offered	Secondary DNS fielded to East and West TN Parallel e-mail operations conclude (ten-nash DNS entry is redirected) Any E-Rate upgraded schools transition to lower bandwidth (temporarily)
July 1 - December 31, 1999	Conclusion of transition of medium schools Small schools transitioned	E-mail service expanded to 50,000 users Any E-Rate upgraded schools transition to lower bandwidth (temporarily)
January 1 - June 30, 2000	Internet bandwidth upgraded as applicable	Any E-Rate upgraded schools transition to lower bandwidth (temporarily)
July 1 - December 31, 2000	No change	Any E-Rate upgraded schools transition to lower bandwidth (temporarily)
January 1 - June 30, 2001	Internet bandwidth upgraded as applicable	Any E-Rate upgraded schools transition to lower bandwidth (temporarily)
July 1 - December 31, 2001	No change	Any E-Rate upgraded schools transition to lower bandwidth (temporarily)

TABLE 7.
 Capability Fielding Schedule with E-Rate funding versus without E-Rate funding

EXHIBIT 4

**ISIS 2000
Proposed Plan**

SIC Service Provider Number	Services or Products	# of Sites	Estimated One Time Cost per Site	Estimated One Time Prediscount Cost	Estimated Monthly Cost per Site	Estimated Monthly Prediscount Cost	Estimated Total 6 Mo Cost per Site	Estimated Total 6 Mo Prediscount Cost
"Shared" Services								
143005684	County							
	Frame Relay	95						
	Router	95	10,298	978,109			10,298	978,109
	POTS	95						
	Installation & Maintenance	95	376	35,825	1,552	147,400	1,927	183,025
			<u>10,671</u>	<u>1,013,734</u>	<u>1,552</u>	<u>147,400</u>	<u>12,222</u>	<u>1,161,134</u>
	State							
	Frame Relay	1						
	Internet Access	1	53,532	53,532	1,043,183	1,043,183	1,098,715	1,098,715
	E-mail	1	92,500	92,500			92,500	92,500
	Installation & Maintenance	1	1,037,446	1,037,446			1,037,446	1,037,446
			<u>1,183,478</u>	<u>1,183,478</u>	<u>1,043,183</u>	<u>1,043,183</u>	<u>2,228,661</u>	<u>2,228,661</u>
"Site Specific" Services								
Small Schools (Sites w/ < 30 computers)	ISDN	400			360	144,000	360	144,000
	Fractionalized T1	400						
	Frame Relay	400						
	Internet Access	400			433	173,111	433	173,111
	Router	400						
	Installation & Maintenance	400						
					<u>793</u>	<u>317,111</u>	<u>793</u>	<u>317,111</u>
Medium Schools (Sites w/ 30-80 computers)	ISDN	1000			360	360,000	360	360,000
	Fractionalized T1	1000						
	Frame Relay	1000						
	Internet Access	1000			868	865,555	868	865,555
	Router	1000						
	Installation & Maintenance	1000						
					<u>1,228</u>	<u>1,225,555</u>	<u>1,228</u>	<u>1,225,555</u>
Large Schools (Sites w/ 81-120 computers)	ISDN	300						
	Fractionalized T1	300			795	238,500	795	238,500
	Frame Relay	300			795	238,500	795	238,500
	Internet Access	300			1,731	519,333	1,731	519,333
	Router	300	2,087	620,052	267	80,016	2,334	700,068
	Installation & Maintenance	300	438	131,250			438	131,250
			<u>2,504</u>	<u>751,302</u>	<u>3,688</u>	<u>1,078,349</u>	<u>6,092</u>	<u>1,827,651</u>
X-Large Schools (Sites w/ > 120 computers)	ISDN	100						
	Fractionalized T1	100			795	79,500	795	79,500
	Frame Relay	100			795	79,500	795	79,500
	Internet Access	100			3,462	346,222	3,462	346,222
	Router	100	5,234	523,381	604	60,403	5,838	583,784
	Installation & Maintenance	100	438	43,750			438	43,750
			<u>8,071</u>	<u>587,131</u>	<u>6,658</u>	<u>565,626</u>	<u>11,328</u>	<u>1,132,760</u>
Total Proposed Plan			<u>1,202,325</u>	<u>3,518,645</u>	<u>1,056,897</u>	<u>4,376,223</u>	<u>2,258,322</u>	<u>7,890,868</u>

X 6 months
6,335,982

(3,518,645) + (6 MONTHS OF 4,376,223) = 29,766,983

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WRITER'S DIRECT DIAL NUMBER

Tuesday, March 31, 1998

Honorable Jane Walters, Commissioner
Tennessee Department of Education
Andrew Johnson Tower, 6th Floor
710 James Robertson Parkway
Nashville, TN 37243-0375

Dear Commissioner Walters:

Education Networks of America (ENA) has received a copy of the protest filed by ISIS 2000 on March 30, 1998 protesting the State's intent to award the contract resulting from RFS 97-2 to ENA. This letter is submitted on behalf of ENA in response to the items raised in ISIS 2000's protest letter. We have attempted to be brief, but are prepared to respond in greater detail if and when that would be helpful in your decision-making process. ENA submits that the ISIS protest is without merit and that the State's award of the contract to ENA should be confirmed.

1. Submission of Cost Proposal in Sealed Envelope

In its protest, ISIS States "it appeared" that ENA submitted its cost-related response to reviewer questions improperly. In fact, ENA submitted its cost proposal response in accordance with the State's instructions--in a separately sealed, marked envelope. ISIS's speculation to the contrary has no basis in fact. This ground of ISIS's protest is without merit and should be dismissed.

2. **ENA Successfully Completed the Required Demonstrations According to the State's Instructions**

ISIS complains that ENA failed the required tests for throughput and interoperability. In response, ENA submits that it did, in fact, successfully complete the tests as required by the State; that ENA's results provide the assurance needed by the State; and, finally, that the test results were an evaluation factor, not a basis for disqualification.

- a) Section 5.2.4.2.3 of the RFP, as clarified by Item 55 of the State's Written Clarifications, establishes the guidelines for demonstration of (1) interoperability and (2) throughput for end users. No language in those provisions requires automatic disqualification of a proposer based on the results of the demonstration. Rather, the demonstration of End User Throughput was specifically set out in the Proposal Checklist as an item to be evaluated. The State's completed technical proposal evaluation sheets show that both ISIS and ENA were awarded two (2) points for that demonstration, the maximum available. (This result is consistent with the State's announcement at the throughput demonstration.)

Finally, the section of the RFP quoted by ISIS, even if it is relevant here, does not require disqualification of a proposer. It merely allows the State ("may") to disqualify a proposer. Such disqualification would be inappropriate in this situation, and the State has properly exercised its discretion and properly weighed the demonstration results.

- b) Based on the time constraints resulting from the State's unexpected difficulties in establishing a benchmark (refer to the "Summary of Demonstration of User Throughput" from J. Shrago), ENA was requested by the State to limit the quantity of tests performed and was given only 1 1/2 to 2 hours to perform the demonstration instead of the 4 hours allocated to ISIS. In order to demonstrate a sample of all technologies proposed, ENA elected to demonstrate 30 PCs on ISDN and 120 PC's on CDS with a caching server.

While it is true that a 60 PC test was not conducted, it is also true that a test could have been easily. Essentially, the equipment and CDS transport facilities were proven, and this is ENA's proposed solution for a school with 60 PCs. (Refer to Appendix G of the ENA Technical Response)

Thus, ENA complied with the State's on-site instructions and demonstrated throughput at each end of the spectrum. The demonstration provides the State with the assurance it sought regarding user throughput. It is significant that ISIS has raised no issue regarding the quality of ENA's Technical Proposal.

ENA demonstrated interoperability to the satisfaction of the State for three different vendors' equipment: Bay Networks, Cisco and Ascend. The State's interoperability demonstration was designed to test any ECR equipment's ability to successfully interface with the TNII Network at a TAP router. ENA successfully demonstrated the interoperability of all three vendors with this simulated TAP router according to the specifications set forth in the RFP.

ENA did demonstrate all proposed technologies, ISDN, CDS and caching. Time constraints imposed by the State on the day of testing prohibited ENA from completing a more comprehensive suite of tests, but did not affect the validity of the State's reliance on those demonstrations.

Therefore, ISIS's protest based on test results is without merit and should be denied.

3. ENA is a Validly Existing Entity and Capable of Contracting.

In its Item 3, ISIS asserts that ENA's proposal must be disqualified because of the "suspect legal status" of ENA. ISIS apparently bases this conclusion on its own lack of understanding of the legal requirements for a limited liability company's operation, its misinterpretation of information submitted by ENA, and mere speculation.

ENA is a member-managed L.L.C., and, as such, is not required to have a written operating agreement (See TCA §48-206-101(a)). Further, there is no requirement for filing with the Secretary of State any documents reflecting changes in members or ownership. The only public filing requirement is an annual report. It should be noted that the RFP nowhere requests information on ownership. However, ENA is certainly willing to provide all ownership information to the State at any time.

Education Networks of America, L.L.C. holds a Certificate of Existence issued by the Secretary of State (attached). Therefore, ENA is a validly existing legal entity with the legal capacity to contract. ISIS 2000's speculations to the contrary have no discernible basis.

ISIS incorrectly interprets "principals" to mean owners rather than principal officers and bases its argument on that incorrect interpretation. The three individuals identified in the proposal are the CEO, the principal technical officer, and the chief operating officer of ENA. In its response, ENA neither stated nor implied ownership interest. RFP §5.2.2 requested identification of "key people", and §5.2.2.9 asked about the project teams. ENA's response recognized the State's interest in the people responsible for performance of the contract.

Since, in fact, ENA is a legally recognized, existing entity with the capacity to contract, ISIS's other speculations have no relevance. The award to ENA should be confirmed.

4. **Financial Responsibility**

The RFP requires only: “[d]ocumentation of financial responsibility, financial stability, and sufficient financial resources to provide the . . . services . . . in the volume projected . . . within the time frames” (Section 5.2.2.10). The RFP did not require a minimum financial status or net worth. The RFP asked for documentation of ENA’s financial responsibility, stability, and resources. This was included in the proposal with the source documents appended so that the State could read for itself and not rely on the proposer’s description. The evaluation sheets gave a maximum of 2 points for this requirement. ENA received an average of 1.75 from the four evaluators; the protestor received an average of 1.5 from the four evaluators. No disqualification was allowed or required. Having provided the financial description (with source documents), the proposal met all RFP requirements, was properly evaluated and should be upheld.

The protest does not assert that this requirement was not met. Rather, the protest attempts to characterize the “Teaming Agreements” and the letter from First Tennessee Bank. The protest describes the documents, all of which were submitted with the proposal, as having asserted meanings never given to them by ENA. The Teaming Agreements are described by the protestor as purporting “to evidence contractual relationship.” The letter is described by the protestor as a “loan commitment.” The fact that the protest then debunks the asserted meanings stands for and proves nothing.

The documents say what they say and prove what they say - nothing more and nothing less. ENA’s financial position, stature and ability are what they are represented to be in the proposal, including the Agreements, the bank letter, and ENA’s financial Statement. Moreover, ENA’s past performance and financial responsibility are known to the State from its past relationships with the State.

The financial responsibility requirement of the RFP was met. ENA is able to perform and ready to begin.

5. **ENA's Proposal Will Qualify for E-Rate Funding**

ISIS's Statements regarding E-rate funding eligibility reflect a misunderstanding of ENA's Proposal, the State's role, and the relevant FCC orders.

ENA's proposal is simple and straightforward and recognizes the nature of the State's role in this important undertaking. In this process, the Department of Education is acting as the representative of a consortium of schools. Neither the Department of Education nor any other State department will own or operate the network formerly known as ConnectTEN. Rather, the State, in recognition of the FCC's rulings regarding State-Owned networks or for other reasons with in its discretion and judgment, has decided to sell all its interest in the ConnectTEN network and to

contract for Internet access and related services directly from one provider for all Tennessee public K-12 schools. In disposing of its network, the State is entitled to seek proposals for and to receive a fair market price. As a Proposer intending to provide services to all Tennessee public schools on July 1, ENA determined that purchase of the existing ConnectTEN network was its most cost-effective option.

Under the Proposal accepted by the State, ENA will provide a defined and equitable service level of Internet access to all public K-12 schools. ENA will provide a point-of-presence in each school, so the school or the consortium is purchasing direct Internet access rather than routers, hubs, ISDN lines, T-1 lines, or similar services or equipment. Similarly, a school or the consortium is not purchasing the time of specific personnel.

Internet Access is specifically identified by the FCC as eligible for E-Rate discounts. AOL, for example, or any other independent service provider is not required to disclose and have separately qualified every element of its operation (equipment purchased, personnel activities) which produces the service being purchased. Similarly, the consortium's purchase of services at the school makes the eligibility of separate components of ENA's operational plans to deliver those services irrelevant since neither the school nor the consortium is purchasing those separate elements.

Thus, ISIS's questions about the eligibility of ISDN costs, web content management, and other services are simply not applicable to the proposal made by ENA and accepted by the State for the consortium. However, ENA would point out that the FCC's position on the issue of "content and conduit bundling." Purchase of such bundled services by schools is E-Rate eligible if the bundled package includes minimal content and provides "a more cost-effective means of securing non-content access to the Internet." See paragraphs 445 and 462 of FCC Order 97-157. As more fully set out in its response to State reviewer clarifications, ENA's proposed caching (which strategy, incidentally, is prominent in ISIS's proposal) is not actually a content service but is a technology which provides increased reliability and which will decrease the costs of operating ENA's network and delivering its services.

Similarly, ISIS's concern about the eligibility of ENA's service charges to the State for providing the services on July 1 is based upon ISIS's lack of understanding of the nature of ENA's proposal and the State's undertaking. ENA will be selling no equipment to the State (actually, ENA will purchase the ConnectTEN network), and the State Department of Education will not submit to the FCC any requests for reimbursement to the State after June 30.

6. ENA Provided a Proposal, which has been accepted by the State, Which Clearly Provides Defined, Quality Services at Identifiable Costs.

ENA must respond to several comments made in ISIS's protest letter which are not enumerated items, but which must be rebutted. Essentially, ISIS claims that it has proposed services equal to those proposed by ENA at a lower cost. Neither of those assertions is accurate.

While ENA's Proposal clearly delineates the services it proposes to provide and the costs for each level of service, with or without E-Rate funding, ISIS's Proposal is incapable of forming the basis for a contract since it fails to clearly propose a technical solution which meets the State's requirements and proposes no definite price with any realistic basis.

ENA, as a Proposer, possesses the right to protest any action by the State related to this procurement. Without waiving its ten-day period for protest after any adverse action, which action has not yet taken place and is not anticipated, ENA is compelled to at least briefly point out (1) the inaccuracies of ISIS's statements referred to above and (2) the resulting inability of the State to award the subject contract to ISIS. In fact, ISIS in its protest has not asked that the contract be awarded to it, merely that ENA's proposal be disqualified.

Cost

ISIS 2000 submits that their proposal is \$23 million less than the ENA proposal. ENA submits that after a review of the ISIS 2000 E-Rate Cost Clarification schedules, it appears that the ISIS 2000 proposal may be as much as \$123,000,000 higher than the ENA proposal for the 42-month contract period.

After careful review of the ISIS 2000 cost proposal and its related E-Rate Cost Clarification Schedules, it is impossible to confirm that the ISIS 2000 proposal is in fact \$23 million less than the ENA proposal. The E-Rate Cost Clarification schedules are incomplete and are riddled with mathematical errors.

It appears that a significant error was made in calculating the Estimated Total Prediscount Costs. In the E-Rate Cost Clarification information, ISIS 2000 consistently failed to multiply noted Estimated Monthly Prediscount Costs by the applicable number of months (See attached ISIS Cost Proposal Clarification). Extending the applicable monthly costs as listed results in total estimated costs for the first six-month period and the entire 42-month contract period as follows:

ISIS 2000 Optional Plan

	Estimated One Time Cost Per Site	Estimated One Time Prediscount Cost	Estimated Monthly Cost Per Site	Estimated Monthly Prediscount Cost	**Estimated Total 6 Mo. Cost Per Site	Estimated Total Annual Prediscount Cost	*42 Month Extension
Total Optional Plan	1,415,934	4,091,809	795,741	4,593,661	2,211,676	8,685,182	197,025,571
As ENA Calculated	1,415,934	4,091,809	795,741	4,594,215	31,657,099	31,657,099	197,048,839

* 42 Month Extension is calculated by multiplying the estimated monthly Prediscount cost times 42 and adding only the one time Prediscount cost. If additional one-time charges and increased bandwidth cost occurs this number will be significantly higher.

** This number should be obtained by multiplying the estimated monthly Prediscount cost by 6 and adding the one time Prediscount cost.

The copy of the Proposed Plan was incomplete, but it appears that the same results occur.

It is also impossible to reconcile all costs as itemized in the Cost Clarification Schedules to the applicable categories of expenses in the Original Cost Proposal.

RFP Section 5.3.1 requires that “the proposer must clearly show the capability that will be provided through State and Local recurring funds and detail all costs that the State and Local agencies must pay for these services. RFP services should also be identified which will be provided as a result of eligibility and funding from the FCC E-Rate Fund.”

ENA clearly illustrated what services are provided through State and Local recurring resources and what services are provided as a result of FCC E-Rate Funding. ENA’s cost proposal demonstrates the level of functionality assuming State and Local Funds only (No E-Rate Funding) as well as increased levels of functionality which result from increased availability of FCC E-Rate funding during the entire contract period.

It is impossible to determine from the ISIS 2000 proposal which costs will be paid from State and Local Funds versus FCC E-Rate Funds. Further, ISIS 2000 does not illustrate network functionality absent FCC E-Rate funding. No cost spreadsheet based on “No E-Rate Funding” was included.

On pages 4 and 5 of the ISIS 2000 Clarification Answers, ISIS 2000 illustrates Upgrades Without E-Rate. The ISIS 2000 proposed Upgrades Without E-Rate may increase the State’s annual cost by a minimum of \$1,700,000. ISIS 2000 does not identify any additional funding sources which would be necessary to cover such costs.

Technical Approach

ISIS's technical proposal is not equal to ENA's approach in that it does not meet some requirements of the RFP and/or requires additional costs not set out in the cost proposal. A few prominent examples are:

1. **Content Filtering.** Due to the flaws in the caching strategy the proposed content filtering cannot be imposed globally.
2. The use of **Network Address Translation (NAT)** limits how teachers and students can use the Internet.
3. **Support for all Desktop Computers.** Under Table 5, reference is made to the ability of "all sites will be capable of supporting IPX and AppleTalk routing in addition to IP." Considering the use of Frame Relay in conjunction with the "one hop to the Internet" design, implementation of protocols such as IPX or AppleTalk would be difficult since Bell-Managed Facilities (BMF) do not carry IPX or AppleTalk protocols.
4. **Caching Reliability for Teachers.** The proposed caching solution is not adequately described. Also the planned network expansion does not allow for proper placement of the cache server(s) in a central location. The caching solution proposed does not appear to be a transparent one.

ISIS proposes in section 5.2.4.1 2, "Users will be able to submit a service request to the Help Desk requesting that a specific web site or set of web pages be cached. For example, specific web pages that a teacher would require for a lesson plan could be cached prior to the day needed based on a service request to the help desk." The burden is placed on the teacher to submit a request to the Help Desk in order to cache a specific site rather than automating the process.

This means that if Tennessee's 50,000 K-12 teachers each want to cache one site per week, then the Help Desk's current level of incoming calls and/or requests would increase from approximately 300 per week to 50,000 per week.

The ENA proposed solution is in fact superior. When implemented, ENA's caching approach will enable an educator to build a lesson plan incorporating World Wide Web content with the confidence that the required information will be reliably and efficiently delivered to the classroom.

Therefore, ISIS's statements regarding the relative technical merits and relative costs of the two proposals are not accurate. Additionally, no legal requirement of State law or FCC eligibility would require the State to award to the lowest cost proposal. The State's model for evaluation of the cost proposal was not challenged and has been followed.

In summary, ENA submits:

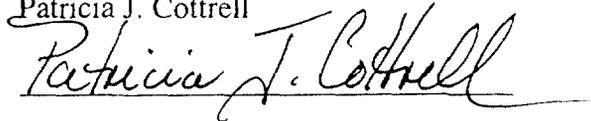
- **The ENA Proposal meets all requirements of the RFP.**
ISIS has failed to cite any provision that would allow disqualification of ENA.
- **State evaluators have followed the evaluation model established in the RFP.**
No challenge is made to the evaluators' award of points.
- **The quality of ENA's technical solution or the accuracy of ENA's cost proposal is not challenged.**
- **Thus, the gravamen of most of ISIS's protest is that it disagrees with the State's exercise of its judgment in awarding the contract to ENA.** ISIS cannot now challenge provisions of the RFP to which it has responded. The State is entitled to rely upon the judgment of its officers and employees in making purchasing decisions. The fact that ISIS disagrees with that decision is not a valid ground for protest.
- **The contract cannot be awarded to ISIS because its Proposal is so flawed that it cannot form the basis of a contract.**

From all of the above, ENA submits that the protest should be denied and that the award of the contract to ENA should be affirmed.

ENA understands the imperative to meet FCC-imposed deadlines for E-Rate eligibility and understands the potential consequences to Tennessee's students. Therefore, we remain available to provide any additional or more-detailed information that may be needed or to attend any meeting you may wish to convene.

Sincerely,

Patricia J. Cottrell

A handwritten signature in black ink that reads "Patricia J. Cottrell". The signature is written in a cursive style and is positioned below the typed name.

CC: Dick Lodge
John Gillmor

Secretary of State
Corporations Section

James K. Polk Building, Suite 1800
Nashville, Tennessee 37243-0306

ISSUANCE DATE: 03/27/1998
REQUEST NUMBER: 98086130
TELEPHONE CONTACT: (615) 741-6488

CHARTER/QUALIFICATION DATE: 05/28/1996
STATUS: ACTIVE
CORPORATE EXPIRATION DATE: PERPETUAL
CONTROL NUMBER: 0312658
JURISDICTION: TENNESSEE

TO:
BOULT CUMMINGS CONNERS & BERRY
P.O. BOX 198062
NASHVILLE, TN 37219

REQUESTED BY:
BOULT CUMMINGS CONNERS & BERRY
P.O. BOX 198062
NASHVILLE, TN 37219

CERTIFICATE OF EXISTENCE

I, RILEY C DARNELL, SECRETARY OF STATE OF THE STATE OF TENNESSEE DO HEREBY CERTIFY THAT
"EDUCATION NETWORKS OF AMERICA, LLC"

A LIMITED LIABILITY COMPANY DULY FORMED UNDER THE LAW OF THIS STATE WITH DATE OF
FORMATION AND DURATION AS GIVEN ABOVE;
THAT ALL FEES, TAXES, AND PENALTIES OWED TO THIS STATE WHICH AFFECT THE
EXISTENCE OF THE LIMITED LIABILITY COMPANY HAVE BEEN PAID;
THAT THE MOST RECENT LIMITED LIABILITY ANNUAL REPORT REQUIRED HAS BEEN FILED;
THAT ARTICLES OF DISSOLUTION HAVE NOT BEEN FILED; AND
THAT ARTICLES OF TERMINATION OF THE EXISTENCE HAVE NOT BEEN FILED.

FOR: REQUEST FOR CERTIFICATE

ON DATE: 03/27/98

FROM:
BOULT, CUMMINGS, CONNERS & BERRY
P. O. BOX 198062
NASHVILLE, TN 37219-0000

RECEIVED: FEES \$20.00 \$0.00
TOTAL PAYMENT RECEIVED: \$20.00

RECEIPT NUMBER: 00002278436
ACCOUNT NUMBER: 00000413



Riley C Darnell

RILEY C. DARNELL
SECRETARY OF STATE



ERATE COST
CLARIFICATION

March 13, 1998

Department of Education
Attn: Jacqueline B. Shrago
RFP Coordinator – Expansion and Network Operation of ConnecTEN
710 James Robertson Pkwy., 6th Floor
Nashville, TN 37243

Dear Ms. Shrago,

Integrated Systems and Internet Solutions, Inc. (ISIS 2000) is pleased to submit our responses to the Reviewer Questions to ISIS on RFP 97-2. Enclosed in this separately sealed package is the requested costs related to the detailed list of services provided in our response to Question 15.

We look forward to providing the State of Tennessee with high-quality help desk, customer care and remote network monitoring and management services throughout this fiscal year and hope to be of service to you and the K-12 education community in the future.

Sincerely,

A handwritten signature in cursive script that reads 'Teri L. Spencer'.

Teri Spencer
President and Chief Executive Officer
Integrated Systems and Internet Solutions, Inc.

enc.

ISIS 2000
Proposed Plan

SLC Service Provider Number	Services or Products	# of Sites	Estimated One Time Cost per Site	Estimated One Time Prediscount Cost	Estimated Monthly Cost per Site	Estimated Monthly Prediscount Cost	Estimated Total 6 Mo Cost per Site	Estimated Total 6 Mo Prediscount Cost
"Shared" Services								
143005594 County	Frame Relay	95	-	-	-	-	-	-
	Router	95	10,296	978,109	-	-	10,296	978,109
	POTS	95	-	-	-	-	-	-
	Installation & Maintenance	95	375	35,625	1,552	147,400	1,927	183,025
			<u>10,671</u>	<u>1,013,734</u>	<u>1,552</u>	<u>147,400</u>	<u>12,222</u>	<u>1,161,134</u>
State	Frame Relay	1	-	-	-	-	-	-
	Internet Access	1	53,532	53,532	1,043,183	1,043,183	1,096,715	1,096,715
	E-mail	1	92,500	92,500	-	-	92,500	92,500
	Installation & Maintenance	1	1,037,446	1,037,446	-	-	1,037,446	1,037,446
			<u>1,183,478</u>	<u>1,183,478</u>	<u>1,043,183</u>	<u>1,043,183</u>	<u>2,226,661</u>	<u>2,226,661</u>
"Site Specific" Services								
Small Schools (Sites w/ < 30 computers)	ISDN	400	-	-	360	144,000	360	144,000
	Fractionalized T1	400	-	-	-	-	-	-
	Frame Relay	400	-	-	-	-	-	-
	Internet Access	400	-	-	433	173,111	433	173,111
	Router	400	-	-	-	-	-	-
	Installation & Maintenance	400	-	-	-	-	-	-
					<u>793</u>	<u>317,111</u>	<u>793</u>	<u>317,111</u>
Medium Schools (Sites w/ 30-60 computers)	ISDN	1000	-	-	360	360,000	360	360,000
	Fractionalized T1	1000	-	-	-	-	-	-
	Frame Relay	1000	-	-	-	-	-	-
	Internet Access	1000	-	-	856	865,555	866	865,555
	Router	1000	-	-	-	-	-	-

In the attached tables we have listed the services that we have proposed for July 1 – Dec 31, 1998 in a form that is appropriate to file an E-Rate Form 471. We have listed the services that are "shared" statewide, the services that are shared by schools in each county, and the "site specific" services. The county services are the same for each county. The "site specific" services and associate differ for each category of schools. We are prepared to prepare the E-Rate Form 471 detail sheets for each county in conjunction with the State once the State determines which schools are assigned to each category.

ISIS 2000
Optional Plan

SLC Service Provider Number	Services or Products	# of Sites	Estimated One Time Cost per Site	Estimated One Time Prediscout Cost	Estimated Monthly Cost per Site	Estimated Monthly Prediscout Cost	Estimated Total 6 Mo Cost per Site	Estimated Total Annual Prediscout Cost
"Shared" Services								
14300594 County	Frame Relay	95	139	13,195	4,192	398,277	4,331	411,472
	Router	95	14,011	1,331,034	-	-	14,011	1,331,034
	POTS	95	-	-	900	85,525	900	85,525
	Installation & Maintenance	95	375	35,625	1,551	147,381	1,926	183,006
			<u>14,525</u>	<u>1,379,854</u>	<u>6,644</u>	<u>631,183</u>	<u>21,169</u>	<u>2,011,037</u>
State	Frame Relay	1	-	-	650,408	650,408	650,408	650,408
	Internet Access	1	263,288	263,288	127,427	127,427	390,715	390,715
	E-mail	1	92,500	92,500	-	-	92,500	92,500
	Installation & Maintenance	1	1,037,446	1,037,446	-	-	1,037,446	1,037,446
			<u>1,393,234</u>	<u>1,393,234</u>	<u>777,835</u>	<u>777,835</u>	<u>2,171,069</u>	<u>2,171,069</u>
"Site Specific" Services								
Small Schools (Sites w/ < 30 computers)	ISDN	400	-	-	360	144,000	360	144,000
	Fractionalized T1	400	-	-	-	-	-	-
	Frame Relay	400	-	-	-	-	-	-
	Internet Access	400	-	-	433	173,112	433	173,112
	Router	400	-	-	-	-	-	-
	Installation & Maintenance	400	-	-	-	-	-	-
			-	-	<u>793</u>	<u>317,112</u>	<u>793</u>	<u>317,112</u>
Medium Schools (Sites w/ 30-60 computers)	ISDN	1000	-	-	360	360,000	360	360,000
	Fractionalized T1	1000	-	-	-	-	-	-
	Frame Relay	1000	-	-	-	-	-	-
	Internet Access	1000	-	-	866	865,558	866	865,558
	Router	1000	-	-	-	-	-	-
	Installation & Maintenance	1000	-	-	-	-	-	-
			-	-	<u>1,226</u>	<u>1,225,558</u>	<u>1,226</u>	<u>1,225,558</u>
Large Schools (Sites w/ 61-120 computers)	ISDN	300	-	-	-	-	-	-
	Fractionalized T1	300	-	-	795	238,500	795	238,500
	Frame Relay	300	-	-	795	238,500	795	238,500
	Internet Access	300	-	-	1,731	519,332	1,731	519,332
	Router	300	2,067	620,052	267	80,016	2,334	700,068
	Installation & Maintenance	300	438	131,250	-	-	438	131,250
			<u>2,504</u>	<u>751,302</u>	<u>3,588</u>	<u>1,076,348</u>	<u>6,092</u>	<u>1,827,650</u>
X-Large Schools (Sites w/ > 120 computers)	ISDN	100	-	-	-	-	-	-
	Fractionalized T1	100	-	-	795	79,500	795	79,500
	Frame Relay	100	-	-	795	79,500	795	79,500
	Internet Access	100	-	-	3,462	346,222	3,462	346,222
	Router	100	5,234	523,381	604	60,403	5,838	583,784
	Installation & Maintenance	100	438	43,750	-	-	438	43,750
			<u>5,671</u>	<u>567,131</u>	<u>5,656</u>	<u>565,625</u>	<u>11,320</u>	<u>1,132,756</u>
Total Optional Plan			<u>1,415,934</u>	<u>4,091,521</u>	<u>795,741</u>	<u>4,593,661</u>	<u>2,211,676</u>	<u>8,685,182</u>

TENNESSEE REGULATORY AUTHORITY



Lynn Greer, Chairman
Sara Kyle, Director
Melvin Malone, Director

460 James Robertson Parkway
Nashville, Tennessee 37243-0505

October 21, 1997

Universal Service Administrative Company
100 South Jefferson Road
Whippany, New Jersey 07981

Gentlemen:

In Re: CC Docket No. 96-45

This is notification that on July 1, 1997, the Tennessee Regulatory Authority adopted a compliant intrastate discount matrix for schools and libraries in Tennessee, pursuant to Section 254(h) of the Telecommunications Act of 1996 and FCC Order 97-157, CC Docket No. 96-45.

A copy of the adopted intrastate discount matrix is enclosed as a part of our Order on this matter.

Sincerely,

K. David Waddell
Executive Secretary

kdw/fa

Enclosure

cc: Mr. William F. Caton, FCC
Ms. Sheryl Todd, FCC

Jenny Ford
726-0464

BEFORE THE TENNESSEE REGULATORY AUTHORITY

12 pages

NASHVILLE, TENNESSEE

September 18, 1997

**IN RE: UNIVERSAL SERVICE
GENERIC CONTESTED CASE**

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DOCKET NO. 97-00888

**ORDER ESTABLISHING INTRASTATE DISCOUNTS FOR SCHOOLS
AND LIBRARIES PURSUANT TO SECTION 254(h) OF
THE TELECOMMUNICATIONS ACT OF 1996 AND FCC ORDER 97-157**

This matter is before the Tennessee Regulatory Authority (the Authority) on its own motion at a regularly scheduled conference held on July 1, 1997, pursuant to 47 U.S.C. 254(h) of the *Telecommunications Act of 1996* and *Federal Communications Commission (FCC) Order 97-157*. The purpose of this Order is to adopt the federal discount levels for intrastate telecommunications services, to permit schools and libraries in Tennessee to begin using the discounted services January 1, 1998, and to provide requisite State approval so that schools and libraries may begin applying for federal funding with the School and Libraries Corporation as soon as the applications are available. See the Supplemental Information attached to this Order. Question number 31, for details on the FCC *Second Order on Reconsideration* issued July 18, 1997.

Background for the Order

In February, 1996, the United States Congress passed the *Telecommunications Act of 1996* ("Telco Act"). The *Telco Act* was enacted to further competition and reduce regulation for American telecommunications consumers. As a part of the *Telco Act*, a provision was made for preservation of Universal Service under § 254. Such preservation of Universal Service would provide a funding

mechanism to ensure access to telecommunications services for low-income, rural, insular and high cost areas at a cost comparable to those in urban areas for similar services. The responsibility for implementing the *Telco Act* was delegated to the FCC, and on May 8, 1997, the FCC issued its *Report and Order, FCC Order No. 97-157 (Docket Number 96-45)*, implementing key portions of *Section 254 of the Telco Act* which addresses universal service.¹ The order concluded several things, including identification of services to be supported by federal universal service funding and the mechanisms whereby such funding will be provided. Discounts on telecommunications services and certain non-telecommunications services for schools and libraries are among the items earmarked for federal funding.

The FCC Order provides for federal funding of both interstate and intrastate services for schools and libraries. Eligibility for the discounts is predicated upon adoption by the states of discount levels no less than the federal discount levels for intrastate services. While the FCC adopted rules that will permit schools and libraries to begin using the discounted services on January 1, 1998, they may begin applying for funding July 1, 1997, or as soon as the application is completed by the School and Library Corporation established by the National Exchange Carrier Association, Inc. We will address the adoption of intrastate discounts for schools and libraries in this Order. We have also attached, as a supplement to this Order, information from the FCC on questions which have been posed to them on the way the application process will work, how discounts will be applied, and who will administer the the federal fund distributions under the FCC Order. It should be noted that the competitive bidding requirement for eligible schools or libraries has been suspended for contracts covering services before December 31, 1998. Question number 31 in the Supplement on frequently asked questions attached to this Order, has the full text of the paragraph in the FCC decision on this exception.

¹ The paragraphs addressed are 424 through 606 of the *Report and Order*.

Discussion

In the *Telco Act of 1996*, Congress directed the FCC and the State Commissions to take steps necessary to establish support mechanisms to ensure the delivery of affordable telecommunications service to all Americans, including low-income consumers, eligible schools and libraries, and rural healthcare providers. The *Telco Act of 1996* requires that states establish intrastate discounts on designated (but not limited to named) services provided eligible schools and libraries.²

While Section 254(h)(1)(B) of the *Telco Act* permits the states to determine the level of discount available to eligible schools and libraries with respect to intrastate services, the FCC states in paragraph 550 of its Order that the *Telco Act* does nothing to prohibit federal funding of such intrastate discounts, nor does it prohibit conditioning that funding on state adoption of the federal discount levels. Accordingly, the FCC has decided to exercise its authority to provide federal universal service support for intrastate discounts. No state funding is required for these intrastate discounts, as long as the FCC discount levels are adopted. The participating providers, such as a Local Exchange Carrier (LEC), referred to as "carriers" throughout the FCC Order, will be compensated for the discounts provided to schools and libraries completely through the federal universal service fund. It should be carefully noted that this funding is not supplemental to state funding, and that when the Federal funds for this purpose are exhausted, the State of Tennessee has no current plans to provide additional or supplemental funding. Adoption of the FCC funding plan does not, however, preclude the State of Tennessee from addressing funding to this program in the future.

² Specifically, the *Act* states: "All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the [FCC], with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities 47 U. S. C. 254(h)(1)(B)."