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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of:	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45

SUPPLEMENT TO OPPOSITION

Education Networks of America ("ENA"), by its attorneys, respectfully responds herein to certain additional arguments raised by Integrated Systems and Internet Solutions, Inc. ("ISIS 2000") in a series of pleadings filed following ENA's Opposition. In ENA's Opposition to ISIS's Objection, ENA demonstrated that it will provide Internet access to all K-12 students in Tennessee in a robust, efficient, and cost-effective manner, and that this service is clearly eligible for discounts under the FCC's universal service rules. ENA also explained that the State of Tennessee followed all federal and state procurement rules and made a reasoned decision to award a contract to ENA, having correctly rated ENA's proposal as superior to ISIS 2000's in every respect.

In a series of recent filings, ISIS 2000 has raised several new matters and repeated many of the unfounded and irrelevant allegations made in its original Objection. ENA believes the dispositive issues in this dispute already have been fully briefed. Nonetheless, it feels compelled to submit this short supplement to its Opposition because of the continuing, reckless attacks on its motives and the blatant errors contained in ISIS 2000's new pleadings. As set forth below, ISIS 2000's various new pleadings are filled with sound and fury signifying nothing: they show no violation of the Commission's rules by ENA or the State of Tennessee, are irrelevant to the

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issues before the Commission, and are based on indefensible analyses and unsupported claims.

ENA will provide an eligible service, Internet access, to 900,000 K-12 students in Tennessee in a robust and highly cost-effective manner. As ENA detailed in its Opposition, it will provide Internet access to schoolchildren in Tennessee in a manner that maximizes the availability and usefulness of the service and is highly responsive to the needs of educators. ISIS 2000's efforts to mischaracterize the nature of what ENA is providing are plainly unavailing.

First, ISIS 2000 errs in claiming that each component of ENA's network must be independently justified.[1] No provider of Internet access faces any such obligation under the Commission's rules. Rather, the Commission has chosen to steer clear of such technological micromanagement and focus on the nature of the service being provided in determining eligibility.[2]

Second, ISIS 2000's characterization of the purchase of the ConnectTEN network as a fraudulent "wash" transaction evidences a clear misunderstanding of the

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[1] *See, e.g,* ISIS Reply to Oppositions, filed April 27, 1998, at 18-20.

[2] In any event, as demonstrated in ENA's Opposition, each component challenged by ISIS 2000 is plainly eligible for service as an integral part of Internet access. ISIS 2000's claim (Reply at 6) that ENA's total service approach could justify the purchase of helicopters and Ferraris is simply ridiculous. Not only does it attribute to ENA a disregard for the needs of schools and the budget constraints of the State and the USF, but it implies bad faith on the part of the State of Tennessee. As ENA's proposal makes clear, ENA has proposed a technically sound but hardly gold-plated network, each part of which is critical to providing the best possible service to Tennessee students given state and federal resource constraints.

service provided by ENA.[3] ENA is buying the network – whether or not the State receives funding approval – in order to assure that service can be provided on an uninterrupted basis as of July 1. It will begin upgrading that network immediately and will charge the State for the levels of service provided. There is no lease-back of facilities to the State.

The State of Tennessee followed all federal and state requirements and properly concluded that ENA's proposal was superior to ISIS 2000's proposal in every respect. ISIS 2000 persists in arguing that it proposed to provide a "substantially identical" service at a lower cost than ENA.[4] This claim is belied by ISIS 2000's own pleading. At page 24 of its Reply, ISIS 2000 reproduces the State's summary evaluation matrix, which shows that ENA's proposal was rated higher than ISIS 2000's in all four categories (qualifications, experience, technical approach, and cost), generally by a substantial margin. The technical evaluation is particularly telling; ENA's approach received 35.375 out of a possible 45 points, compared to only 26 points for ISIS 2000. Far from a "marginal difference,"[5] ENA's proposal was found to be markedly superior. This difference is clearly justified:

- ENA will provide essentially instantaneous access to the most demanded sites; ISIS 2000 would require teachers to call the help desk every time they want a site reserved, which is simply unworkable in the classroom environment.

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[3] *See generally* ISIS Supplement to Objection, filed April 20, 1998.

[4] *See* ISIS 2000 Reply at 7, 21-25.

[5] ISIS 2000 Reply at 25.

- ENA will deliver three hours of Internet access per student per week at 2 pages per minute; ISIS 2000 offers no indication how much capacity it would provide.

- ENA has five security checkpoints; ISIS 2000 has only one or two, although it is difficult to determine from their network diagrams.

- ENA's design is reliable because key functions are located at different points in the network; ISIS combines these functions into one item of equipment, creating a single point of failure.

- ENA provides committed protection from pornography; ISIS 2000 did not demonstrate any capability to provide such protection in the larger schools.

Nor can ISIS 2000 legitimately claim that the State erred in finding ENA's proposal to be more cost-effective.[6] ISIS 2000's original cost proposal simply did not permit an informed analysis. The State sought clarification and ISIS 2000's clarification only made things worse. As ISIS 2000 itself admits, its supplemental response contained "several obvious errors on ISIS 2000's part in the presentation of cost data for the initial six months of the contract period."[7] ISIS 2000 cannot reasonably chastise the State for failing to correct errors that ISIS 2000 itself did not catch and which the

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[6] ISIS 2000 likewise is off the mark in its effort to pick apart ENA's cost comparison. *See* ISIS 2000 Reply at 10-17. ENA submitted a comparison of its cost-per-school to BellSouth.net to illustrate in general terms that its proposal is cost-effective and, if applied nationwide, would impose a relatively small burden on the fund. In a tortured deconstruction based on a series of unexplained assumptions, ISIS 2000 purports to demonstrate that ENA's proposal is actually more than twice as costly as commercially available alternatives. ISIS 2000 Reply at 17. What ISIS 2000 fails to acknowledge, however, is that it is comparing apples and oranges: on the one hand, ENA's end-to-end Internet access service, the virtues of which were fully described in ENA's Opposition, and on the other, pure bandwidth with no value added. A proper comparison of Internet access to Internet access would reveal that ENA's approach is more cost-effective than any commercially available alternative.

[7] ISIS 2000 Reply at 21.

State is prohibited from correcting by state purchasing law. Indeed, not until April 27, in its Reply before the FCC, did ISIS 2000 disclose what it now claims to be the correct cost figures.

In any event, regardless of the true cost of ISIS 2000's proposal, the State plainly was justified in selecting ENA's proposal. The Commission has made it clear that states must consider cost as the primary factor but that they have "'maximum flexibility' to take service quality into account and to choose the offering or offerings that meets their needs 'most effectively and efficiently,' when this is consistent with other procurement rules under which they are obligated to operate."[8] The Commission has further explained that "the Joint Board only recommended that the Commission require schools and libraries to select the most cost-effective supplier of [Internet] access" and that cost-effectiveness could be determined by examining "prior experience, including past performance; personnel qualifications, including technical excellence; management capability, including schedule compliance, and environmental objectives."[9] These are precisely the factors that the State Department of Education evaluated in finding ENA's proposal to be superior. Given the State's finding and the complete unsuitability of ISIS 2000's approach in a classroom environment, the State properly awarded the contract to ENA.

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[8] *Universal Service Order*, at ¶ 481. If this were not the case, then a bidder proposing only the connection of a single computer per schools with no service level commitment would be the cheapest, and the required winner, on all bids.

[9] *Id.*

ISIS 2000's claim that ENA may use its network to provide service to other users is irrelevant. ISIS 2000 argues that ENA is improperly building a commercial network using state and federal funding.[10] There are several problems with this claim. First, it is clear that the network will be used only by primary and secondary schools in Tennessee for the first funding period. If, in the future, ENA uses the network to serve other eligible or ineligible users, the State's Form 471 undoubtedly will claim discounts only for eligible costs, and like all applicants, its request will be subject to the fund administrator's review and audit process. Second, all points of presence and links in ENA's network are dedicated to the use of the schools. If ENA eventually adds other users, it will have to supplement its network, making it easy to segregate eligible from ineligible costs. Third, nothing in the FCC's rules requires that entities providing Internet access to schools forego serving other types of users. Any such rule would be nonsensical: it would preclude service providers from using any existing networks and would raise costs for schools and the fund because common costs could not be spread over a wider user base.

ISIS 2000's claims regarding the value of ENA's network are preposterous and immaterial. ISIS 2000 argues that the State and USF are funding a network that will have a value of $ 60 to $ 160 million at the end of the contract term, while receiving nothing in return.[11] This argument is both wrong and immaterial.

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[10] *See* ISIS 2000 Reply at 4-5, ISIS 2000 Supplement to Objection at 5, ISIS 2000 Supplement to Reply at 3-4.

[11] ISIS 2000 Reply at 4-5, 9, and Att. Q, ISIS 2000 Supplement to Reply.

First, ISIS 2000's proposed valuation is not credible. While ISIS 2000 correctly notes that networks often may be valued based on a multiple of revenues, this is a reasonable method only where the service provider has a multitude of revenue sources. ENA, in contrast, has a 42-month contract with the State that may be cancelled on 60-days' notice. As of the 43rd month (or even before, if the State elects to cancel the contract), ENA may well have zero revenues and therefore a network worth only the salvage value of its piece parts. Even if ENA does invest further in its network in order to serve other users, its predominant revenue stream will cease after 42 months, barring renewal on terms and at a price that would be purely speculative at this point. ISIS 2000 likewise fails to realize that, in an industry where technology advances rapidly and relentlessly, ENA's network may be largely obsolete by the end of the contract term.

Second, the State is receiving tremendous value over the course of the contract. ISIS 2000 simply ignores the fact that, for three-and-a-half years, ENA will be providing robust and cost-effective Internet access, greatly enhancing the learning experience of all 900,000 schoolchildren in Tennessee, no matter how poor and how isolated from urban centers they may be.

ISIS 2000 apparently believes that its characterization of ENA's network as tremendously valuable will help it in its press campaign against ENA and the State. ENA respectfully submits, however, that ISIS 2000's claims are not only wrong but irrelevant to the two key issues before the Commission: whether ENA is providing an eligible service, and whether the State properly followed the FCC's bidding requirements. Even if ISIS 2000 were correct in its characterization, its argument really

is that the State made an imprudent decision – not that any Commission rules were violated. The proper venue for pursuing that claim is before the State, not the Commission.

* * *

As ENA explained in its Opposition, it will provide the schoolchildren of Tennessee with high quality, cost-effective Internet access, which is undeniably an eligible service. Moreover, the Tennessee State Department of Education indisputably followed all FCC and state rules in conducting its procurement and properly awarded the contract to ENA. The barrage of paper submitted by ISIS 2000, and its hyperbolic and reckless rhetoric, cannot mask the fact that it has demonstrated no violation of the Commission's policies. At bottom, ISIS 2000 is a disgruntled bidder that submitted a patently inferior proposal and is now aggressively pursuing every real and imagined option to put pressure on the State to re-open its procurement. The Commission should promptly deny ISIS 2000's Objection. With this cloud removed, ENA can move

ahead with the process of giving the students of Tennessee the level of Internet access that they deserve.

Respectfully submitted,

EDUCATION NETWORKS OF AMERICA

By: _____

Jeffrey S. Linder
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Its Attorney

Patricia Cottrell
Wyatt, Tarrant & Combs
Suite 1500, Nashville City Center
511 Union Street
Nashville, Tennessee 37219
(615) 244-0020

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Supplement to Opposition Of Education Networks Of America was served today, the 15th day of May, by hand delivery, on the following parties:

Irene Flannery
Federal Communications Commission
2100 M Street, N.W., 8th Floor
Washington, D.C. 20554

Ramsey L. Woodworth
Robert M. Gurss
Rudolph J. Geist
Wilkes, Artis, Hedrick & Lane
1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006

Debra Kriete
General Counsel
Schools and Libraries Corporation
1023 15th Street, N.W.
Suite 200
Washington, D.C. 20006

William K. Coulter
Baker, Donelson, Bearman & Caldwell
Suite 800
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Jeffrey S. Linder