

1 the Universal Service Line, E-rate Funding Program, is going to
2 work. On that point, on Friday and probably now the prior best
3 reference to this FCC objection. This explains the problems
4 that we feel that ENA has and we are asking the FCC to make a
5 declaration about that.

6 MR. LEE: What is the status with the FCC?

7 MR. NEY: This was filed on Friday and is under
8 consideration. I'm not -- I don't know any better than that,
9 but the FCC will be reviewing this. The reason it is important
10 for the State is not simply so it can impress you with
11 knowledge about E-rate Funding and try to persuade you to look
12 closer. In a nutshell, the issue here is the failure to comply
13 with applicable federal laws. We think that this proposal does
14 not comply with the applicable federal laws and the federal
15 funding.

16 They have quite a few problems. If I can use this little
17 chart to point out what we think they are. I am willing to do
18 this rather rapidly just so that you don't get bogged down with
19 what the FCC is already considering. This chart here says, ENA
20 E-rate ineligible charges as alleged by ISIS2000. On the
21 left-hand side we have equipment and services and on the right-
22 hand side we have the proposed or estimated cost. These
23 contain the proposed cost as contained in the ENA proposed
24 estimated cost were in our FCC pleading, you see this more
25 fully. We estimated what the value of some of these things

1 were so we could come up with a number we thought represented
2 how much of the cost proposal of ENA is ineligible.

3 The most important part of this chart for our purposes
4 right now is this side, so if I could just walk you through
5 what we think the categories of problems are. This is all very
6 nice and I think it gives you a clear indication of what we
7 think the magnitude of the problem is.

8 These are the five issues before the FCC. The proposed
9 resale of the existing ConnectEN equipment to ENA. It is our
10 position that that violates the spirit to the extent that it is
11 claimed that this transaction under which ENA proposes to pay
12 the State \$7.5 million and, within a brief period of time
13 around there, rebill the State \$7,950,000, I think is the
14 number, and that is a wash transaction. The only consequence
15 of which really in this whole scenario is that they are going
16 to the federal government and ask for about \$15 million; they
17 are going to double that to \$7,500,000 which ENA proposes to
18 declare a one time cost eligible for funding and they are going
19 to pump up the number of dollars they get out of the E-rate
20 fund.

21 That amount is the 15 or \$16 million that we talked about
22 and I think is, also, or may have been, referred to in my most
23 recent letter, that is how we get that. If that doesn't work,
24 the whole ENA proposal falls right on its face. ENA first has
25 to be able to buy this system from the State under its proposal

1 to sell it so they can lease it back immediately at a greater
2 expense. If they can't do that, I don't see how they get from
3 point "A" to point "B" and continue the service.

4 The State is actually better served without getting into
5 this contract and continuing with their current service and
6 spending the \$5 million and something they had to keep
7 improving it gradually as they have been doing, particularly in
8 the last year when ISIS has been in charge.

9 The second issue is the five points-of-presence or
10 Education Hub Sites. These are important parts of ENA's
11 proposal. I think they are the part the ENA likes to talk
12 about because they in some ways distinguish what ENA is doing
13 from what ISIS proposed to do. These are also, we believe,
14 ineligible for federal funding because what they are
15 essentially doing when they create these five POP facilities,
16 they are creating their own little wide area network, their own
17 system.

18 After the end of this project or even during the project,
19 they will own a system that isn't solely dedicated to the
20 education network; it doesn't need to be. But through federal
21 and State funds, they are building themselves a business upon
22 which they may be able to provide services to other businesses.
23 Now if they do that, I think, they clearly understand that
24 there are limitations on how they can apply for E-rate funding.
25 This is unnecessary under the scope of services required. The

1 way they proposed to ask for the government to fund it, is
2 also, we think, ineligible.

3 Caching Servers -- they propose to use approximately 100
4 caching servers. Now caching servers are interesting here
5 because they are probably the two most distinguishing factors
6 between ENA's proposal and the ISIS proposal. Other than that,
7 of course, we can debate for months and weeks and years with
8 all of the technical jargon of whether one thing or another is
9 better or worse or comparable, but when they put it altogether
10 these two things are the main things that are different that
11 the State is getting the services of under the ENA proposal.

12 So 100 caching servers at five POP facilities is what you
13 have to say is 23 million extra dollars being charged, or
14 proposed to be charged, by ENA; that makes it a pretty
15 expensive caching server. We value our servers at about
16 \$1,500,000, and I believe that includes the cost of
17 installation, but if you put another million on top of that,
18 you still have \$20 million less. Again, we think the caching
19 servers because of the way they are intended to be used in this
20 program, we have asked the FCC to determine whether they are
21 eligible for funding.

22 Finally, the State discounted ISDN Network Services. I
23 want to make this clear that we don't believe that those
24 services are eligible for a discount as calculated and proposed
25 by ENA. We will say this, we have in our materials both here

1 and before the FCC provided a transcript of the proceedings of
2 the TRA meeting of February 3rd, which says that. There is not
3 an order yet issued on that, so we are not representing that
4 there is a final order from the TRA. We just wanted to make
5 that clear because the way all of these regulatory authorities
6 work, you never know what they mean until they say it. That is
7 a point that is important to make because Ms. Shrago has said
8 on Friday, and I expect today, to talk about all of her
9 conversations with all of these people from the FCC and the
10 SLC. Of course, we have had those, too.

11 The important thing to remember is until it is in writing
12 in that order, we don't know what it actually means. You just
13 can't depend on talking to the general counsel or anybody to
14 give you a complete and correct answer. I want to be clear,
15 there is not yet an order on that. But based on the current
16 standing of the law, as represented by TRA and the public
17 hearing, that is another ineligible cause. That is all I
18 really want to say about that unless you have questions because
19 it gets mind boggling.

20 MR. LEE: The teacher's training; did you go
21 over that?

22 MR. NEY: I'm sorry, I skipped over the
23 teacher's training. Training is not one of the reimburseable
24 or eligible services. Basically you have Internet Access,
25 Telecommunication Services and Internal Connections and that is

1 how the FCC broadly defines the three categories of services
2 for which you can get the E-rate funding. Within those, there
3 is some debatable areas. For instance, the Wide Area Network,
4 I mentioned it up here. Sometimes the Wide Area Network or
5 some components of it can be eligible for funding since they do
6 not constitute internal connections. But when it is used
7 outside of that path, our position is and we asked the FCC to
8 determine, we don't think that is an internal connection.

9 Telecommunications service, although, there may be an
10 element of what is in the plan about the POP facilities that
11 could qualify telecommunication services, but all of this
12 creates a problem because the FCC has said that they don't want
13 you mixing eligible and ineligible services in the same
14 contract because they don't want the headache of trying to pull
15 them apart to try to figure out what you are actually entitled
16 to. Teacher training is not one of the eligible services.

17 MR. LEE: So that totals \$13 million?

18 MR. NEY: Well, the money or the charges
19 proposed by ENA of the \$75 million are not eligible for FCC
20 funding, which, when you take into account the discount rate,
21 it amplifies this number way beyond this. That is our position
22 about that. More importantly, however, if you don't get all of
23 this money and these are ineligible, ENA's proposal financially
24 is not viable and they are going to fall on their face.

25 I will get next into the financial element. If you have

1 any other questions about this, I will be glad to answer them
2 but I would like to go on to the financial because that is the
3 real problem. I think the State is at risk.

4 MR. LEE: Let me ask about the resale. You said
5 they will not let you fund the resale?

6 MR. NEY: Correct.

7 MR. LEE: However, will they let you fund the
8 purchasing of new equipment?

9 MR. NEY: Let who fund?

10 MR. LEE: Well, --

11 MR. NEY: That is one of the things that gets
12 hairy here because the schools can't be buying the equipment.
13 The provider provides the equipment and there are certain
14 funding elements entailed there. The general scheme is you are
15 supposed to buy the equipment and then you lease services off
16 of that equipment and then recoupe through the services, but
17 there is some one time funding payment provisions.

18 COMMISSIONER HAWKINS: How old is that ConnectEN
19 system?

20 MS. SHRAGO: We started it in October of 1996.

21 COMMISSIONER HAWKINS: At a cost of?

22 MR. NEY: At about \$12 million.

23 MS. SHRAGO: Well, it is probably a little
24 higher than that; I would say more like 14.

25 COMMISSIONER HAWKINS: I will come back to that

1 later.

2 MR. NEY: Just before we get onto that, this is
3 a bid comparison. I have taken and blown up two charts from
4 the ENA proposal that just shows a comparison of what they are
5 offering and how things are done. One of the things I want you
6 to note here is that the other funds, in which to purchase the
7 existing equipment, 7.5 million is proposed to be paid by ENA;
8 we think there is a problem with that.

9 COMMISSIONER HAWKINS: Let me ask you a question
10 on that issue right there. If they are estimating the value of
11 that equipment at 7.5 or 7.9 --

12 MR. NEY: It is 7.5 but they are going to sell
13 it back at 7.95.

14 COMMISSIONER HAWKINS: Considering the question
15 that I just asked, the system is less than two years old and we
16 have more than \$12 million in it, are you going to tell me that
17 you are only estimating it at 295,000?

18 MR. NEY: I think the only part I can disagree
19 with there, I think, is the life of technology. Life of
20 technology is about 18 months in this purview. Let me say this
21 about that, what the system is -- well, it costs \$12 million to
22 put it in, but it is not all \$12 million worth of routers.

23 The routers have salvage value that I am told is somewhat
24 worse. The routers degradation of value is worse than
25 automobiles. When you put them on the road, an automobile

1 loses, what, 30 percent as soon as the tire hits the road. I'm
2 told that when you plug in a router, you wipe off 50 percent
3 and it's down hill from there. Especially since in the
4 meantime somebody is building a better router that costs less.
5 I will tell you this, that this salvage value, for one thing,
6 we do not use and suggest that it was eligible for a discount;
7 it is just out there on the side. It is too crucial in any way
8 to our cost proposal but I'm going to avoid those comparisons.

9 This salvage value comes from CISCO, who is actually the
10 manufacturer of the large number of the currently used routers
11 and under both proposals the manufacturer of the routers used.
12 I think, if I remember correctly from being there and reading
13 the little boxes, CISCO routers is what everyone was using on
14 all of these tests.

15 CISCO valued the current routers at this. The problem with
16 this is purchasing a system and purchasing equipment that was
17 in place and purchased before January 1, that is an FCC issue
18 again. It would be difficult to believe that the FCC says we
19 are not going to fund equipment purchased and put into use
20 before January 1, but then allow this sort of transaction to
21 happen where there is an appearance of paying \$7.5 million and
22 it is leased back. It is a wash transaction with a little bit
23 of money going to ENA. To allow that to be eligible for
24 funding when it preexisted January 1, 1998, that is the point
25 of the FCC pleading on that issue.

1 Now let me just go through here. This is a bid comparison.
2 It is probably a whole lot more relevant to the FCC, but it
3 gives you an idea on this point and ultimately where we have
4 all of these numbers. I think down here when we take this wash
5 transaction out of ENA's bid proposal, this is what we get from
6 ENA. We get \$9.8 million put in by the State and almost \$50
7 million put in by the federal funds. That distorts the 66
8 percent discount rate up to 81 percent; that is the problem
9 that we see that they are going to have with the FCC.

10 This is another instance, if you take just the first six
11 months of the ENA cost proposal, that distorts the number
12 close to 90 percent discounted because there is \$25 million
13 being paid in the first six months, or it may have been the
14 first year, but for the short period of the three and a half
15 year contract and it distorts that so grossly we think the FCC
16 is going to be concerned about that.

17 But I think the big point here, the most important point
18 particularly from the FCC's perspective, is it relates to the
19 financial ability or responsibility or capability of ENA, which
20 is clearly, unless there is some new information that we are
21 not privy to; it is something that the State needs to be
22 seriously concerned about.

23 On Friday, I think, it was Commissioner Walters, took the
24 position the RFP says we need documentation of financial
25 responsibility and financial stability. They gave us

1 documentation and ISIS gave us documentation and we exercised
2 our judgment and -- now as I'm saying this, I'm not for sure if
3 it was Commissioner Walters who said that, but it was somebody
4 on that side of the room -- we exercised our judgment and used
5 our discretion and decided that ENA met the requirements to
6 fulfill this contract. How that happened based on the
7 information provided to the State, is just incomprehensible.

8 What the RFP requires in 5.2.2.10 is documentation of
9 financial responsibility, financial stability, and most
10 importantly, sufficient financial resources to provide the
11 scope of services (and any related equipment) to the State in
12 the volume projected and within the time frames required and
13 within the constraints of receipt of discounts from the FCC
14 E-rate fund.

15 This is a copy of the financial statement submitted to the
16 State by ENA. This financial statement shows that the current
17 assets of this company that the State is contemplating awarding
18 a \$75 million contract to, is \$29,521. They also have some
19 property and equipment, which consisted of a vehicle. If you
20 look at Note 4, you should have all of that. A vehicle, some
21 computers or a computer -- I can't remember if it was plural --
22 and software. Then long-term notes receivable from its
23 members, who I can't tell you who they are, but totals \$1.5
24 million.

25 A couple of people wrote notes to themselves and said we are

1 going to pay ourselves 1.5 million at the end of 1999 and that
2 is how they can inflate their asset number up above \$40,000.

3 This is what was submitted and that in no way suggests the
4 financial resources to provide the scope of services
5 contemplated under the RFP or under the proposal of ENA. This
6 is compared to financial statements, which were submitted by
7 ISIS, that show that ISIS, itself, has a little bit more money
8 to back up its claims or promises or services. Universal,
9 Inc., is a company that has to show assets of \$109 million --
10 this is all in your material and it is in the proposals from
11 ISIS.

12 I just wanted you to note the comparison between 30,000 in
13 cash and this and wonder how in the world could these
14 evaluators grade ENA as more financially capable than ISIS?
15 Now ENA did provide the financial statements of every team
16 member, but that means nothing for the State. No other team
17 has direct financial responsibility to the State under this
18 contract, in fact, they are all sub-contractors.

19 The financial responsibility and flow in that regard
20 between ENA and the subcontractors is going to be ENA is
21 responsible to them to pay them for the services they provide.
22 The State cannot reasonably expect, nor can the ENA, that if
23 they don't pay the cash out of their 30,000, or wherever they
24 are going to get on the front end, if they don't pay with cash,
25 they are not going to get services. BellSouth is not going to

1 continue to pump in a bunch of services without being paid I
2 can't imagine; I don't think any of these other subcontractors
3 intend to do that either.

4 ENA's lack of financial resources imperils the State's
5 program. Now the State will have under this contract, I'm
6 sure, a lot of rates and remedies, but the remedy isn't what
7 you want; it is the service. The remedy is what you get after
8 somebody has failed to perform; you want the service. You
9 won't get the service because ENA isn't financially capable of
10 providing it or insuring that in a tough time or a delayed
11 period when E-rate funds are slowed down by governmental
12 bureaucracy.

13 What if it goes for 45 days to 120 days for payment for
14 this \$16 million extra that they are proposing under this
15 E-rate fund? Where is the money going to come from? Maybe a
16 bank is going to come in -- let's address that issue. I want
17 to address this on two points. It is not just the lack of
18 financial resources but a misrepresentation in the narrative
19 regarding financial resources. To be fair, the document on the
20 left is a document that was provided by ENA to the State. But
21 the way that ENA described that document in Section 5.2.2.10 in
22 their response was, ENA has a \$5 million line of credit from
23 First Tennessee Bank of Nashville. That is a mistake.
24 Obviously, this letter comes from First Tennessee Bank but I
25 don't think there is a First Tennessee Bank of Nashville.

1 Maybe this is their business title, but subject to the award of
2 this contract and documentation. That was a representation
3 that was false.

4 Here is the letter, and I think you've probably seen it
5 because I provided it to you in about three different ways and
6 now I have blown it up for you. What they have here is a
7 promise that if ENA gets this contract, these bankers will talk
8 to them. It says, our willingness to provide this credit
9 facility is based upon our previous excellent experience with
10 you in other commercial ventures. We are willing to discuss
11 credit financing for working capital funds. Our willingness to
12 provide --

13 MS. SHRAGO: ("Lender") is willing to provide
14 Borrower with a \$5,000,000.00 line of credit financing for the
15 working capital requirements of the contract over the next
16 three (3) years.

17 MR. NEY: Right. This letter is not a binding
18 commitment of Borrower or Lender nor does it define all of the
19 terms and conditions of the credit facility, but it is an
20 expression of Lender's intent that upon Borrower being awarded
21 the contract, Lender is willing to proceed with further
22 discussion and negotiations of the terms of the credit facility
23 and such due diligence as Lender may deem necessary. Credit
24 shall be subject to Lender completing its due diligence,
25 including a review of the terms and conditions of the contract,

1 the business and financial affairs of Borrower and Borrower's
2 management. This is some banking officer saying we will talk
3 to you about a \$5 million line of credit if you get it; it is
4 much more than just documentation.

5 That compares, again, to the letter from Chase Manhattan
6 Bank that says, Chase Manhattan Bank provides a \$17,500,000
7 credit facility to Great Universal, Inc., ISIS's parent
8 company. Funds under the aforementioned credit facility are
9 available to subsidiaries of Great Universal, Inc., including
10 ISIS, to be used for capital and operating funds as required by
11 ISIS in order to meet ongoing needs.

12 Again, we will talk to you and see if the credit committee
13 will give you \$5 million as opposed to ISIS's \$17.5 million.
14 There is a serious problem existing that determines that ENA is
15 more financially capable of providing services it proposes.

16 MR. LEE: Let me ask you this. The letter from
17 Chase states that the parent company has a \$17 million line of
18 credit that can be used for the parent for aiding subs?

19 MR. NEY: Yes, sir. What this says is, funds
20 under the aforementioned credit facility are available to
21 subsidiaries of Great Universal including ISIS. So it
22 specifically identifies ISIS as having access to that \$17.5
23 million. Even if it weren't and it just said five, at least
24 there is a conclusive response that they have it instead of
25 going through all of these other problems.

1 COMMISSIONER HAWKINS: How many other subs are
2 noted there?

3 MR. NEY: The subsidiaries?

4 COMMISSIONER HAWKINS: Yes.

5 MR. NEY: They are not noted in that letter at
6 all. Mr. Chelap may know; I don't know how many subs they
7 have.

8 MR. LEE: It doesn't say how much of the \$17.5
9 is already pledged, does it?

10 MR. NEY: No, it does not. That is the lack of
11 financial resources of ENA. I think this may be the most
12 compelling reason to uphold our protest. They don't have the
13 \$7.5 million that they are required to have to give to the
14 State on July 1, 1998, when they purchase this system. I don't
15 know where they are going to get it.

16 Even if there was \$5 million in there, in that credit
17 facility, and if that letter could be interpreted or some
18 banker is going to come in and say, yeah, you have 5 million
19 dollars and we took all of the assets including collecting the
20 1.5 million promissory notes that were made by the principals
21 of ENA, to ENA, we still don't have \$7.5 million and that is
22 just for the purchase of the existing ConnectEN system.

23 How about operating funds between now and July 1st and
24 there is a lot of other things to be done and the FCC is not
25 turning loose of a bunch of money before it is kicked off. So

1 they just can't conceivably meet their obligations as they
2 proposed. As I pointed out on Friday, there is a provision in
3 the State regulations regarding the sale of State property. We
4 will touch on that a little bit.

5 MR. LEE: Let me ask you one questions on the
6 financial. Do you recall that the RFP -- I did not look at
7 this, but generally there is a Performance Bond; do you recall
8 the amount of their Performance Bond?

9 MR. NEY: It is my understanding that no
10 Performance Bond is required under this RFP. I saw that they
11 required insurance, proof of \$1 million, in liability insurance
12 but I don't recall a Performance Bond, but I think that would
13 be a very good idea. Quite candidly, we wish it were there
14 because if it were, we don't think ENA could even be in this
15 room now because I don't see them coming up with a Performance
16 Bond to cover the magnitude of the contract proposal.

17 I was saying that on Friday; I pointed out that there is a
18 State regulation that requires that the sale of State property
19 cannot pass until payment is made by cashiers check, cash or
20 certified check. In addition, it is clear regulation that the
21 State doesn't pay for services before they are rendered and the
22 State pays for services -- this is under the F&A regulations, I
23 believe as opposed to the General Services Regulations, the
24 State gets billed after services are rendered. Again, this
25 doesn't leave ENA the possibility of getting enough money to

1 get through the first six months of this contract.

2 I'm sure they are working on ways to find it out now, but
3 we are talking about this process and the fairness and
4 legitimacy of this process and making a determination under
5 what we know now or what we knew within the last couple of
6 weeks about ENA's fiscal financial stability and
7 responsibility. There is just no way in the world it could be
8 deemed prudent to entrust the entire ConnectTEN system, under a
9 \$75 million contract, to ENA based on that information.

10 Finally, I will glide into the disposition of personal
11 property, State personal property. I think I laid that out in
12 my letter of April 3rd to this committee that was filed in
13 conjunction with the review of the request to lift the stay.
14 The narrative wasn't so artful. It was sort of done about
15 10:00 o'clock the night before. But in a nutshell, we think
16 that this matter should be heard through the protest process.

17 As I said, we would be handing a letter to Commissioner
18 Walters if we didn't have this opportunity to address this now.
19 On April 2nd we asked the State to show how they were complying
20 with the law, the State law and the State regulations, because
21 they were clearly getting ready to or intending to sign a
22 contract; we wanted to know what that was.

23 We learned that not only did the State not have any
24 documentation to show that they are complying, but it was that
25 day that we learned that the State had no intention of

1 complying with the State laws and State regulations that we
2 believe specifically govern the purpose of the ConnectTEN system
3 and equipment.

4 We think that by making the request for the protest on that
5 point, within its time period, we have made it on a timely
6 basis. We think we are entitled to assume and treat the State
7 as though it were doing its business properly with respect to
8 some of the ancillary issues surrounding this contract. In
9 fact, we now know that apparently the State is going to talk to
10 the Commissioner of General Services and see what to do with
11 all of this, but we think that this is timely.

12 We also know that whether you conclude that it was timely
13 or not, that it is the State law and the people in the State
14 have to take a look at that and make their determinations
15 appropriately to comply with the State law because there are
16 serious consequences.

17 The most serious consequence of which for the entire bid
18 process is this. This, again, brings into play the FCC and
19 that crucial E-rate funding window that we talked about on
20 Friday. On Friday, Ms. Shrago explained that by the 15th we
21 have to have a signed contract, an executed contract, that
22 accompanies the 471 application and submit it. The State would
23 like to get that there sooner rather than later in case there
24 is some sort of mistake or problem and they don't want to get
25 kicked back and rejected totally.

1 Now there is a hierarchy of problems that trigger that sort
2 of situation of kicking it back or not. Suffice it to say, it
3 would be good to get this in timely and correct; it would
4 benefit the State, but the State would still operate under its
5 current system quite admirably compared to most other states
6 and maybe with less imperil to the ConnectEN system.

7 Here is what is important about the disposition of
8 property. If we are correct, and we believe we are, the
9 proposal right now made by ENA to dispose of the property
10 violates State law. One of two things can happen, they can go
11 ahead and sign a contract incorporating that sort of proposal
12 and the purchase of the ConnectEN. Or two, we can try to
13 modify the contract. But any way the contract gets modified.
14 It takes that purchase proposal out of there, alters the E-rate
15 funding application that is proposed by ENA, whether it is
16 eligible or not. Anyway they do that, that makes a cardinal
17 substantial change to the cost proposal and to the response of
18 ENA, which would require the State to re-bid or go to its next
19 bidder. You cannot just get in there and change everything so
20 fundamental as a cost proposal which was a very large percent
21 of the entire evaluation process. If you change that, you are
22 throwing away half of the evaluation process, the State is
23 violating its own procurement and bidding rights.

24 So they have this stick with this. If they stick with this
25 and it is against the law, here is what happens. Among other

1 things, the contract agreement may be in violation -- this is
2 basically the provision of the statute relating to the
3 disposition of surplus and State property. When you get down
4 to the bottom here, it is against public policy, unlawful, and
5 void.

6 If you sign this contract and this law applies, you have an
7 unlawful and void contract, which you have now certified for
8 the federal government as a good contract so you could get FCC
9 Funding under 471. It is a great amount of peril and jeopardy
10 in sending up a contract with this cloud over it because you
11 know if this law applies, it is void and unlawful and you have
12 made a misrepresentation to the federal government under the
13 E-rate Funding Program; that is one of the consequences. It
14 also mentions that it could be a Class E felony and it also
15 mentions removal of State employees as punishment for violating
16 that law.

17 But for the purposes of today, what I think we are all
18 really concerned about is, does it hurt the program? It very
19 likely does because it imperils the program. It could do great
20 harm to the program. It could cost the State a lot of money
21 and headaches.

22 For all of those reasons we respectfully request that our
23 protest be upheld on any or all of those grounds and that the
24 review committee determine that the contract cannot be awarded
25 to Education Networks of America. Thank you.

1 MR. LEE: I have a couple of questions. First
2 off, the ten days, in your opinion, starts running April 2nd?

3 MR. NEY: That is our position, yes, with
4 respect to the disposition of property.

5 MR. LEE: Because you did not have notice?

6 MR. NEY: We did not have the facts and I don't
7 think we could have had the facts because it didn't appear that
8 the State was going to be so basically flouting the law until
9 we asked and they said, no, actually we don't even think that
10 applies much less you don't have the documents to support the
11 position.

12 MR. LEE: But you would have had notice after
13 reviewing the proposal of ENA of their intent to use the
14 property; that is correct, isn't it?

15 MR. NEY: Of their intent to purchase?

16 MR. LEE: Uh-huh.

17 MR. NEY: Yes, sir.

18 MR. LEE: So in your letter you have got that in
19 there, as you may be aware the proposal of ENA and in response
20 to RFS 97-2 contemplates the State's sale of State owned
21 property to ENA. Then, in your letter you just basically asked
22 for copies of any documents relating to the compliance with the
23 State statute; that is discovery?

24 MR. NEY: Right, that is what we didn't know.
25 We didn't know that there were documents or not documents -- or

1 actually what we ultimately didn't know, was that the State
2 didn't even think that the Department of Education didn't think
3 it applies.

4 We did know that this is a proposal, but we didn't know
5 that the State hadn't taken care of this. We are not fully
6 aware, and I don't know that you ever are you just assume, I
7 think reasonably that when these RFS's were created it goes
8 around to a lot of their people and a lot of their lawyers and
9 General Services and F&A. All of those people who are going to
10 be asked later on to sign off on this, and even, I guess, the
11 controller's office may be given the magnitude of this
12 contract, but just look at it. So we assumed that the State
13 did its business.

14 One of the things that could have been done, for instance
15 -- which we didn't know but specifically we wanted to know
16 about notice given. Conceivably this would have been an okay
17 process for the disposition of State property under the sealed
18 bid definition. If the notice requirements of the statute
19 governing 12-2-403 if they were followed. 12-2-406
20 specifically talks about the notice that must be given.
21 Conceivably this process could have been used simultaneously.

22 MR. LEE: The RFS had language in there
23 somewhere about contemplating the sale or the disposition of
24 the property, but no objection was raised or no question was
25 raised about that.

1 MR. NEY: What were the questions about?

2 MR. LEE: Well, no objection was raised for that
3 so that is a waiver of any objection to that provision by the
4 RFS, there is language in there. Then your client also had
5 language in its proposal where they was going to spend \$200,000
6 and something to acquire the equipment.

7 Then if there were to have been notice pursuant to that
8 statute, then your client, being a proposer, would have
9 received that notice because they were on the proposal list.

10 MR. NEY: I'm sorry; I missed that last part.

11 MR. LEE: You say that you inquired whether or
12 not notice was provided in compliance with State statute.

13 MR. NEY: Well, the notice, though, is notice --
14 well, the notice of 12-2-406 relates to publication; it is a
15 public notice. The idea is that everything in this State and
16 really in the world is entitled to come in and give their best
17 shot at paying the State for this property; that is the idea.
18 Then the State is supposed to maximize its value, I presume.

19 MR. LEE: That is basically what you were asking
20 for April 2nd.

21 MR. NEY: Well, there was some other things that
22 we were asking for. We were asking for everything encompassed
23 within that, but I contemplated that there would be
24 documentation as required by General Services that the
25 Commissioner or the head of the department had declared certain

1 property surplus that she had estimated value and made a
2 recommendation regarding the method of disposal. Those things
3 all come under the regulations rather than the rule.
4 So I contemplated that there is something there if the State
5 was going to do this the right way.

6 We presumed that the State intended to do it the right way,
7 but when we asked that question that apparently was missed or
8 nobody in the State agrees with me on this point.

9 MR. LEE: Anything like that, though, your
10 client would have received a copy as a proposer though?

11 MR. NEY: I don't think -- I don't know the
12 answer to that. I'm not sure about how this counsel or anybody
13 would have advised somebody with respect to including
14 disposition notices or determinations or surplus value
15 declarations or surplus declarations. I really don't know. I
16 mean it is conceivable that they would have been included. It also
17 could seem conceivable that they wouldn't have been included; I
18 just don't know.

19 MR. LEE: Well, they were included on all other
20 notices about the RFS or responses by the RFS or anything up
21 until the date of the intent?

22 MR. NEY: What was included, the reference of
23 salvage value?

24 MR. LEE: Well, you are not saying that the
25 department would have sent documentation to ENA and not