

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Opposition To Requests For Review)
Filed By the State of Tennessee)
and Education Networks of America)
By Integrated Systems and)
Internet Solutions, Inc.)
)
To: Common Carrier Bureau)

CC Docket No. 96-45
CC Docket No. 97-21

Application No. 18132

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REPLY OF
EDUCATION NETWORKS OF AMERICA

Education Networks of America ("ENA"), by its attorneys and pursuant to Sections 1.45 and 54.720 of the Commission's Rules,¹ respectfully submits this Reply to the above-captioned Opposition filed by Integrated Systems and Internet Solutions, Inc. ("ISIS 2000").²

In its Opposition, ISIS 2000 once again portrays a distorted picture of the State of Tennessee's contract award to ENA for Internet access service. Repeating its unfounded and irrelevant allegations made in its prior filings with the Commission, ISIS 2000 fails to offer any legitimate basis to refute ENA's fundamental argument set forth

¹ As ENA noted in its Opposition and Motion for Leave to File, there appears to be some ambiguity in the Commission's rules concerning the filing procedures set forth in Sections 54.720 and 54.721 of the FCC's rules. ENA believes that this Reply is timely filed under Sections 54.720 and 1.45. However, it respectfully requests that its filing be treated as an *ex parte*, if the Commission were to determine otherwise.

² ISIS 2000 Opposition to Requests for Review Filed by the State of Tennessee and Education Networks of America, CC Docket Nos. 96-45, 97-21 (filed Apr. 13, 1999) ("ISIS 2000 Opposition").

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in its Request for Review: namely, that the Administrator erred in denying in part the State of Tennessee's application for Schools and Libraries Fund discounts.

First, ISIS 2000 incorrectly asserts that ENA is providing "far more" than eligible Internet access service. As ENA fully detailed in its Request for Review, the "end-to-end" access service purchased by the State is fully eligible for discounts as Internet access service under the Commission's universal service rules and the agency's plain interpretation of that term. Second, in renewing its personal attack against ENA, ISIS 2000 misrepresents the experience and resources of ENA and its team of subcontractors providing service to the State of Tennessee. In stark contrast to these assertions, the State recognized and the record reflects the commitment and qualification of ENA and its bidding partners.

Third, ISIS 2000 continues to obfuscate the relevant issues in a fabricated cloud of allegations that the State and ENA acted in bad faith and that the State improperly discarded ISIS 2000's alleged low-cost bid. These claims are utterly false and should be rejected. ENA has done nothing more than follow the letter and the spirit of the State's request for proposal -- which properly followed the Commission's rules -- and submitted a responsive and ultimately superior bid. The barrage of ISIS 2000's rhetoric does not change these facts.³

³ ISIS 2000 also requests that the full Commission act on its "Request for Declaratory Ruling" and the pleadings filed in connection with the above-captioned Administrator's decision. ISIS 2000 Opposition at 1 n.1. While ENA does not object to the Commission's attention to these matters, it does not believe that such action is necessary at this point given that no novel question of law, fact or policy is presented. Rather, ENA maintains that the Bureau has discretion to correct the interpretive error made by the Administrator in construing the Commission's universal service eligibility
(Continued...)

I. ENA'S CONTRACT PROVIDES AN ELIGIBLE INTERNET ACCESS SERVICE

ISIS 2000 has it flat wrong when it claims that "ENA intends to use any funding [the State] receives for far more than simply providing Internet access to Tennessee public schools."⁴ Rather, ENA is providing to the State nothing more than "end-to-end" Internet access service consistent with the Commission's rules.

The Commission recognizes that "basic 'conduit' access to the Internet" which may include so-called information service functions (but not content) is an eligible service.⁵ In particular, the definition of "Internet access" for purposes of universal service eligibility recognizes both a transmission component and other elements that include "address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to access information services" along with e-mail.⁶ This is identical in form and function to the service offered under ENA's contract with the State of Tennessee.

Put simply, ENA's service connects a point of presence located in a particular school using dedicated bandwidth (an advanced form of frame relay service or

(...Continued)

requirements to deny, in part, the State of Tennessee's application for discounts.

⁴ See ISIS 2000 Opposition at 11.

⁵ *Federal/Joint Board on Universal Service*, FCC 97-157, ¶ 437 (rel. May 8, 1997).

⁶ See 47 C.F.R. § 54.5 (Internet access). Moreover, the Commission has further reiterated in other related contexts that an Internet access service provider may combine "computer processing, information storage, protocol conversion and routing with transmission to enable users to access Internet content and services." See *Universal Service Report to Congress*, FCC 98-67, ¶ 63 (rel. Apr. 10, 1998).

dedicated ISDN) with ENA's and its subcontractors' Internet Service Provider (ISP) network. This service provides access to important educational sites on the World Wide Web and the delivery of secure e-mail with a user-friendly interface and permits end users to dynamically share access and connect to desired Internet applications. When expanded, it will provide Internet access at the rate of three hours weekly per student at two web pages per minute, or 2.7 million hours of Internet access per week, at a cost of only \$2 per student each month.⁷ Accordingly, ENA's service offers exceptional benefits to Tennessee public school children and will advance Congress's and the Commission's universal service goals in funding Internet access service.

Moreover, as the State has pointed out, the Schools and Libraries Division has properly awarded discounts to other states receiving service similar to that offered by ENA.⁸ Ironically, private schools in the State of Tennessee recently received universal service discounts for Internet access services (which included routers and other equipment on the ISP-side of the network) like those sought by the State's public schools. Along similar lines, the State of Kentucky received approximately \$45 million in Schools and Libraries support for a state-wide Internet access service to a smaller number of schools using an ISP with a network approach comparable to that used by ENA. These decisions thus further confirm that ENA is providing an eligible service.

⁷ In addition, ENA allows for peering with multiple Tier-1 providers at ENA's network access point, is responsible for routing all traffic within Tennessee, and provides alternative network routing functions to allow schools to receive service in the event of a localized network failure. These capabilities were simply not available to a State-owned network or to Tennessee schools prior to the award of ENA's contract.

⁸ See Request for Review of the State of Tennessee, CC Docket Nos. 96-45, 97-
(Continued...)

II. ENA AND ITS TEAMING PARTNERS WILL ALLOW THE STATE TO REALIZE ITS GOAL OF CONNECTING ALL TENNESSEE PUBLIC SCHOOL CHILDREN TO THE INTERNET

Apparently attempting to cast doubt on the State's decision to select ENA as the winning bidder, ISIS 2000 argues that ENA has "no other customers . . . little or no assets, and no established facilities equipment or network whatsoever."⁹ ISIS 2000's attempt to distort the truth is simply unavailing, and in any event, does not bear on the eligibility of ENA's service.

As the State has recognized, ENA and its team of bidding partners offer the State an extraordinary set of skills and unmatched capacity in order to help it reach its goal of connecting all 900,000 public school children in Tennessee. Indeed, as the prime contractor, ENA's principals and employees have substantial experience well-suited to meet the State's needs, and ENA's president, Al Ganier, played a significant role in helping the State to develop its former education network (ConnectTEN).¹⁰ In addition to its own experience and resources, ENA assembled a bidding team comprised of the following communication industry experts to provide service to the State: (1) BellSouth – the largest telecommunications provider in the Southeastern U.S.; (2) ISDN-Net, Inc. – the State of Tennessee's largest ISP, currently providing

(...Continued)
21, at 26 (filed Mar. 29, 1999).

⁹ See ISIS 2000 Opposition at 11.

¹⁰ Mr. Ganier also has served as President of Connect Tennessee Students, which has raised more than \$3 million in cash, goods, and services, and is responsible for the provision of most of the software, including browsers and protection from pornography, to all K-12 schools. And, he recently was appointed by the United States Senate as a member of the Commission on Online Child Protection.

service to thousands of customers in the state; (3) NCR – one of the largest engineering and computer consulting firms in the U.S.; and (4) Lucent Technologies – a worldwide provider of network and help desk management services, among other things.

Taken together, ENA's team has hundreds of years of combined experience, tens of thousands of employees, more than adequate financial, technical and other resources in place to continue to expand service throughout the State to eligible schools, and a demonstrated commitment to providing high-quality services enriching the learning environment of students. ENA and its team in fact are providing Internet access today to over 100,000 computers located in the State's K-12 schools as well as access to thousands of other customers. Most importantly, ENA and its team are providing Internet access to eligible schools in all areas of Tennessee regardless of whether a school is located in a remote and/or high cost area.

III. ISIS 2000 OFFERS NO LEGITIMATE BASIS TO QUESTION THE INTEGRITY OR ACCURACY OF THE STATE'S PROCUREMENT

ISIS 2000 renews its effort to attempt to undermine the State's procurement process and continues its reckless attacks on the State's motives, which directly implicate ENA.¹¹ In this regard, ISIS 2000 yet again erroneously alleges that the State and ENA are engaged in a "wash transaction" that inflated the amount of reimbursement from the federal Schools and Libraries Fund.¹² This claim is preposterous.

¹¹ See ISIS 2000 Objection at 5-9.

¹² See ISIS 2000 Objection at 7.

ENA simply responded to the State's request for proposal and offered the State a superior bid. While it did indeed purchase certain software and a right to use the routers formerly operated as part of the ConnectTEN network, it will substantially augment these items with other equipment and communications facilities to provide service to the State. Further, the State is being charged for the costs of providing Internet access *service* to the State's schools – not individual costs of component equipment. Far from ISIS 2000's mischaracterization, this arrangement merely allows ENA (and would have allowed any other winning bidder, for that matter) to minimize service disruptions and lower the cost of providing service to the State and to the federal fund by using the State's previously-owned equipment.

More importantly, ISIS 2000 neglects to mention that the integrity and accuracy of the State of Tennessee's procurement process was affirmed both by the State's Commissioner of Education and by the State Review Committee in dismissing its bid protest. The State clearly and carefully evaluated both ENA's and ISIS 2000's proposals consistent with the stated methodology of its request for proposal, which included all factors deemed relevant by the Commission and state authorities. Notably, ISIS 2000 did not seek review of these conclusions in any state or federal court.

IV. THE COMMISSION MUST DISREGARD ISIS 2000'S DISTORTION OF THE RELEVANT FACTUAL RECORD

ENA submits that the record in this proceeding bears out the fact that ISIS 2000's characterization of ENA's proposal, the State's procurement process and the nature and cost of its own bid twist the truth beyond recognition. While these points

have been addressed fully in other filings, it is important for the Commission to recognize the following underlying facts:

The State found that ENA (not ISIS 2000) offered the lowest pre-discount price bid. ISIS 2000's assertion that the State erroneously rejected its bid in favor of the "highest pre-discount price bid" is plainly inconsistent with the record in the State's procurement review and filings in this docket.¹³ For example, as the State explained in its Opposition, the ISIS 2000 cost proposal appears to have been grossly understated in the course of the procurement, and the State's revised cost estimates went unchallenged by ISIS 2000.¹⁴ A summary of these findings underscores the true nature of the ISIS 2000 proposal:

- ISIS 2000's initial pre-discount bid (which it alleges to be \$51 million) was found to be technically and economically impossible by the State.
- After a review of ISIS 2000's cost proposal, the State concluded that the ISIS 2000 bid was \$187 million (as projected over the entire anticipated 42 month contract term); this finding went unchallenged by ISIS 2000 during its bid protest hearings and is substantially higher than ENA's pre-discount price bid of \$74 million.

The State concluded that ENA (not ISIS 2000) offered a substantially superior technical approach. In addition, ISIS 2000 in its Opposition continues to ignore the fact that the State found a substantial technical difference between ISIS

¹³ See ISIS 2000 Opposition at 6. The State's Opposition further clarifies that the State's procurement criteria encouraged bidders to reduce pre-discount price and that it indeed awarded the contract to the *lowest* pre-discount price, which was offered by ENA. See State of Tennessee Opposition to Request For Review of ISIS 2000, CC Docket Nos. 96-45, 97-21, at 10-14 (filed Apr. 13, 1999) ("State of Tennessee Opposition").

¹⁴ State of Tennessee Opposition at 9-10.

2000's proposal and that offered by ENA.¹⁵ By proposing a state-owned and operated network (with ISIS 2000 serving as the purchasing agent for the equipment and the leased-line communications services), ISIS 2000 offered the State a solution it simply did not want given the risk of technological obsolescence and the resources required to build, own and manage such a network. On the other hand, ENA's end-to-end Internet access service provided the State with robust service levels and the added benefit of scaling the service level to meet the State's present and future access needs.

These conclusions are reflected in the State's scoring of ENA's and ISIS 2000's proposals on technical merit (which was weighted by the State to account for approximately one-half of the available total points): ENA scored approximately 36 percent higher than did ISIS 2000.¹⁶ Moreover, as ENA has pointed out throughout this proceeding, the differences in the performance of basic access functions are stark:

	ENA	ISIS 2000
Access Method	Automatic, reliable and electronic access to key Internet education sites	Teacher must call the help desk to reserve a site to ensure availability (proposed a 5 person help desk to handle requests from the State's 50,000 teachers)
Service Performance	3 hours of Internet access per student per week at two pages per minute	No indication
ISP Performance	ENA team had actual statewide ISP operations and large numbers of customers prior to making its bid	ISIS 2000 team had no ISP operations or customers in Tennessee or elsewhere at the time of the bid

¹⁵ See ISIS 2000 Opposition at 5-7.

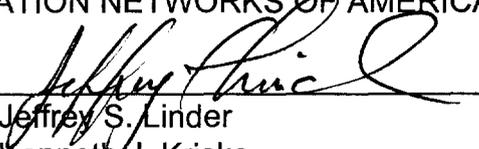
¹⁶ Specifically, out of possible 45 points for technical merit, ENA received an average score of 35.375, while ISIS 2000 received a score of only 26.

V. CONCLUSION

As ENA explained in its Request for Review, ENA is providing Internet access service to the State of Tennessee that is eligible for discounts and reimbursement. Further delay in awarding these discounts to the State will continue to deprive Tennessee public school children from receiving high quality and cost effective Internet access as contemplated by the Congress's and the Commission's stated goal of the Schools and Libraries program. Accordingly, for the foregoing reasons and as set forth in its prior pleadings, the Request for Review of ISIS 2000 should be denied and ENA's Request for Review granted.

Respectfully submitted,

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April 26, 1999

**DECLARATION OF
ALBERT F. GANIER III**

I declare under penalty of perjury that the foregoing "Reply of Education
Networks of America" is true and correct. Executed on this 26th day of April 1999.

A. F. Ganier III
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply of Education Networks of America was served today, the 26th day of April, 1999, by first class mail, postage pre-paid on the following parties:

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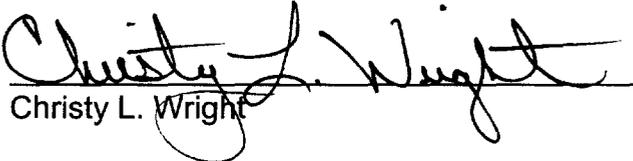
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