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June 9, 1999

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie Roman Sales  
Secretary  
Federal Communications Commission  
455 Twelfth Street, S.W., Room TW-A325  
Washington, D.C. 20554

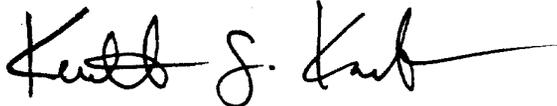
**Re: Notice of *Ex Parte* Presentation -- CC Docket Nos. 96-45, 97-21;  
FCC Form 471 Application No. 18132**

Dear Ms. Salas:

In accordance with Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, notice is hereby given of an *ex parte* presentation regarding the above-captioned Form 471 Application. On Tuesday, June 8, 1999, Albert F. Ganier of Education Networks of America ("ENA"), Jeffrey S. Linder and myself of Wiley, Rein & Fielding met with Ms. Sonja Rifken of the Office of General Counsel and Ms. Sharon Webber of the Common Carrier Bureau. The purpose of the meeting was to discuss ENA's position concerning its Request for Review filed in connection with the above-referenced Form 471 Application.

The issues discussed during the meeting generally are set forth in the attached paper, a copy of which was left with Ms. Rifken and Ms. Webber. In accordance with the Commission's rules, two copies of this letter and of the written hand-out are being provided for inclusion in the record. If you have any questions or need any additional information, please call me at the number listed above.

Respectfully submitted,



Kenneth J. Krisko

Enclosure

cc: Sonja Rifken  
Sharon Webber

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■ **THERE ARE NO SPECIFIC CHARGES THAT RELATE TO THE ConnectTEN NETWORK**

Federal Communications Commission  
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- ⇒ ISIS 2000 has confused the facts. The \$7.5 million is the amount paid by ENA to the State for the purchase of the software and right to use the routers that were formerly part of the ConnectTEN network. The \$7.95 million noted in several pleadings by ISIS 2000 is the amount ENA initially proposed as its method of billing. This amount was subsequently adjusted in contract negotiations with the State. The actual first month billing under the contract was \$2,499,609.
- ⇒ The specific line items on the State's Form 471 do not represent specific reimbursement for the ConnectTEN transaction and instead recover charges (both on a one-time and monthly basis) used to provide Internet access service to Tennessee schoolchildren. These line items recover the following:
- ⇒ Line 1 - \$1,747,000 one-time charge: represents one-time Internet Access service set-up fee of \$1,000 per site (1,747 sites at time of Form 471 filing). This covers all of the electronic conversion, registration and initiation of each school into the ENA network. We believe this is a charge consistent with industry standards.
- ⇒ Line 2 - \$329,276 recurring charge per month: represents Basic Internet Access Service - Managed Internet Access - \$188 per site per month for management and operation of basic service including:
- Managed delivery of World Wide Web pages to each site
  - Management of access link
  - Management of transmission backbone
  - Electronic mapping and monitoring of all sites
  - Guaranteed uptime of access to Internet
  - Help Desk operations
  - E-Mail service
  - IP address management
  - Protocol conversion management
- ⇒ Line 3 - \$275,770 recurring charge per month: represents Basic Internet Access Service - Bandwidth - \$158 per site per month recurring cost for provision of dedicated connection from Site POP to ENA's Tier 2 aggregation point and for provision of transmission backbone connectivity from Tier 2 aggregation point to Tier 1 Internet Service Providers
- ⇒ All of the costs in ENA's contract with the State (and in the subsequent Form 471 filing) are for specific services related to Internet access delivered by ENA after July 1, 1998.

⇒ The above is a method of billing the State. The State can only pay for services received.

■ **THE COMMISSION'S DEFINITION OF "INTERNET ACCESS" USED IN THE SCHOOLS AND LIBRARIES RULES AND APPLIED IN OTHER CONTEXTS PROVIDES A WORKABLE STANDARD FOR DETERMINING ELIGIBILITY**

⇒ *A straightforward definition of Internet access should apply in the context of USF eligibility as it has in other related contexts.* Put simply, eligible services are those services that give end-users access to the Internet, which the Commission described in the Universal Service Report to Congress as "a loose connection of networks belonging to many owners." Reiterated in the context of the Reciprocal Compensation Order, an Internet access provider is any entity "that provides its customers with the ability to obtain on-line information through the Internet."

⇒ *Internet access is more than just transmission capability.* The *Universal Service First R&O* made clear that discounts are available for "basic 'conduit' access to the Internet," which may include so-called information service functions (but excludes content services). In short, the agency recognized that Internet access service necessarily involves more than the use of pure transmission capacity or dial-up access and emphasized the "essential" nature of the "information services" component of Internet access.

⇒ *Viewing the proposed service on an "end-to-end" basis is the proper approach to determining eligibility.* ISP services generally include both transmission components along with hardware/software used in the ISP network, such as routers and caching servers. Disaggregating these networks is not practical, nor would it result in efficient services to schools and libraries.

■ **THE STATE'S BID EVALUATION CRITERIA ALLOWED IT TO AWARD THE CONTRACT TO THE PROVIDER OFFERING THE MOST COST-EFFECTIVE SERVICE TO THE STATE'S SCHOOLCHILDREN**

⇒ *ENA's overall cost (estimated over the 42-month term of the agreement) of approximately \$74 million is substantially less than the State's estimate of the approximately \$187 million cost associated with ISIS 2000's bid.*

⇒ *It was apparent to ENA in the bidding process that the State's cost evaluation formula examined tradeoffs in technical performance and cost.* The State did not issue an RFP for a so-called "commodity" service or propose detailed technical requirements; rather, it asked bidders to develop a technical and cost proposal in light of general performance criteria. Accordingly, a focus limited to lowest "absolute" cost is misleading.

⇒ *ENA offered the State the more cost-effective and technically robust service than that proposed by ISIS 2000. Several notable differences between the services are:*

	<b><u>ENA</u></b>	<b><u>ISIS 2000</u></b>
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