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June 2, 2003

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Vistronix, Inc.
236 Massachusetts Avenue, N.E. Suite 110
Washington, DC 20002

Re: In the Matter of Schools and Libraries Universal Support Mechanism,
CC Docket No. 02-6 and In the Matter of Federal Joint Board on
Universal Service, CC Docket No. 96-45

Subject: Written *Ex Parte* Presentation to Supplement Request for Immediate
Relief by the State of Tennessee

Dear Ms. Dortch:

The State of Tennessee (hereinafter the "State") submits this *ex parte* presentation to confirm matters previously presented orally and to supplement in writing its Request for Immediate Relief ("Request"), filed on April 17, 2003 in the above-referenced dockets, to the Wireline Competition Bureau of the Federal Communications Commission (the "Commission").¹ The State of Tennessee submitted its Request to permit the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company to approve of the State's request for a change in its service provider arrangements for the twelve (12) months of funding under Year 2002 (July 1, 2002 - June 30, 2003) of the federal support mechanism for schools and libraries ("E-Rate Program").²

Education Networks of America, Inc. ("ENA"), an Internet Service Provider ("ISP"), is the State's Year 2002 E-Rate service provider and provides the State's K-12 schools with access to the Internet. ENA, like all ISPs, employs "critical employees" and enlists the services of various "subcontractors and vendors" to provide underlying facilities and/or technology to facilitate such ISP access.

¹ See Request for Immediate Relief by the State of Tennessee to Change its Service Provider for Funding Year 2002, filed April 17, 2003.

² The State of Tennessee's Department of Education was the named applicant for funding in Year 2002.

1. Subcontractors and Vendors

As part of its Request, the State proposed that a substitute common carrier step into the shoes of its service provider, ENA, for the purpose of receiving the E-Rate funding and distributing federal payments to all underlying providers and subcontractors for the full funding Year 2002, with the exception of ENA and any affiliates.³ The State has met with BellSouth Telecommunications, Inc. ("BellSouth") and discussed its participation as the substitute carrier. BellSouth has agreed, in principle, to act as the substitute service provider for Tennessee schools for the purpose of distributing E-Rate funding to underlying contractors, as set forth in the State's Request. Final arrangements have not been reached with BellSouth, however, as they will depend on the Commission's directions in response to the Request, and to the parties reaching mutually acceptable terms and conditions

The distribution of payments to these underlying providers and subcontractors for the full Funding Year 2002 is necessary to keep the network operating for the last few critical months of the school year. Without such payments, including reimbursements of advances, offsets, and loans to those entities that had advanced money to providers and subcontractors so that they could continue providing services during the school year, the State's Internet network will not be able to continue operating.

For Funding Year 2002, the monthly cost of the ISP services provided to the State by ENA totals approximately \$1.8M.⁴ Of that amount, the State is paying, and expects to pay ENA an amount representing 30% of the total or approximately \$540,000 per month. The remaining 70% or approximately \$1.2M is to be paid to ENA and its subcontractors through the federal funding received through the E-Rate program.⁵ Of the approximate \$1.8M of total funding, ENA expects to pay approximately 61% to its primary telecommunications and network subcontractors and approximately 18% to its critical employees (See Section 2 below). The remaining 21% would be conveyed to ENA directly for other expenses, costs and overhead, such as depreciation, additional salaries, amortization, taxes and insurance.

To supplement the record in this proceeding, the State provides below a list of key underlying subcontractors. Please note that the above mentioned percentage payments represent a rough approximation and are based on fluctuating levels of service provided by each carrier or other vendor.

³ See Request at p.3.

⁴ See the State of Tennessee's FCC Form 471 at Blocks 5 (Application Number: 329193). The \$1.8M per month represents the \$1.6M on the first Block 5 (1 of 2) and approximately \$200,000 of the \$1.3M on the second Block 5 (2 of 2).

⁵ The State qualifies for a 70% E-Rate discount.

List of Key Subcontractors
AT&T
BellSouth
Ben Lomand Rural Telephone Cooperative, Inc.
Bledsoe Telephone Cooperative
Centurytel, Inc.
Crockett Telephone Company, Inc.
Dekalb Telephone Cooperative
Frontier Corporation (a Citizens Communications Company)
Highland Telephone Cooperative
MCI/Worldcom
Millington Telephone Company
North Central Telephone Cooperative
Peoples Telephone Company, Inc. (a subsidiary of Telephone Electronics Corporation)
Qwest
Sprint
TDS Telecom
Twin Lakes Telephone Cooperative Corporation

2. Critical Employees

The State also proposed in its Request that, if found acceptable by the Commission, the substitute common carrier would be prepared to request funding to cover the direct salaries for certain critical ENA employees for those periods since the filing of the Request where they remain unpaid in Year 2002.⁶ These employees would be paid directly⁷ and were, and are, required to keep the network operating until year-end. Without payment, including reimbursements of salaries and advances, the network can not continue operating. To supplement the record in this proceeding, the State provides a rough breakdown of critical employees that relate to the above mentioned approximate percentage of total monthly costs to pay these employees. Please note that the number of employees listed is a rough approximation and may change depending on network operational requirements.

⁶ See Request at p.3.

⁷ Under this approach, still no payments would be made to ENA, but would be made either to the employees directly or to a Payroll Distribution Company, such as ADP, or to the substitute common carrier, which, in turn would make payments directly to employees.

Department	# of Employees
Customer Support	10
Network Engineering	8
Systems Engineering	5
Field Services	7
Network Security & Help Desk Tools	7
TOTAL:	37

The critical employees and subcontractors do not represent any owners, investors, shareholders or board members of ENA; specifically excluded are the President and Chairman and CEO.

3. Contract Approval Process

As noted in the State's Request, for ENA's contract for services for Funding Year 2002, the State's contract review process required review and approval by three separate entities: the Department of Education and the Department of Finance and Administration, which are part of the Executive Branch, and the Office of the Comptroller of the Treasury, which is part of the Legislative Branch.⁸ This Legislative Branch review is independent and is not under the control of the Administration. Attached as Attachment I is a description of the State's contract approval process.

In the event that there are any questions concerning this submission, please communicate with the undersigned.

Sincerely yours,



Matthew Vitale
William K. Coulter
Counsel for State of Tennessee

⁸ See Request at footnote 8.

ATTACHMENT I

State law (T.C.A. § 12-4-109(a)(1)(A)(ii)) and regulations (Finance and Administration Rules, Chapter 0620-3-3)) direct that service procurement processes be designed to select a proposer with the best combination of attributes based on their qualifications, experience, technical approach and cost. To review proposals submitted in response to a Request for Proposals (“RFP”), the State uses a Proposal Evaluation Team that is typically comprised of three to five independent reviewers who evaluate each responsive proposal against the proposal evaluation criteria detailed in the RFP and complete a scoring sheet for each proposal. The proposal with the highest score is selected as the best-evaluated proposal.¹

Once the best-evaluated proposal is selected,² it is forwarded to the head of the procuring agency, in this case the Department of Education, which reviews the procurement file and proposals in response to the agency’s RFP.³ If the agency head concurs with the Proposal Evaluation Team’s determination of which proposal is the best-evaluated, a contract is tentatively awarded to the winning proposer and is signed by the agency head.⁴ The contract is then forwarded to the Department of Finance and Administration’s Office of Contracts Review (“OCR”)⁵ for review and approval.⁶ To secure approval at this stage, the Department of Education must submit to OCR all procurement documentation for the awarded contract.⁷ The staff of OCR will review: the original RFP; the listing of service providers that received the RFP or formal notice of the RFP; the “Cost Proposal Evaluation Sheet”; the “Proposal Score Summary Sheet Matrix” reflecting the sum of the average technical and cost scores of each proposal; and procuring agency determinations regarding non-responsive proposals. Once the selection of the winning proposer is reviewed by OCR, the head of the Department of Finance and Administration must approve and sign the contract and then forward it to the Comptroller of the Treasury.⁸

The Comptroller of the Treasury, which is outside of the Executive Branch, will then conduct its own independent review of the contract and the procurement documentation to determine whether the Department of Education followed the State’s RFP process in

¹ The State must follow a two-tier evaluation approach, which includes a cost proposal evaluation and a technical (non-cost) evaluation. Cost proposals may not be opened until the evaluation of the technical (non-cost) proposals has been completed. The specific weights assigned to the technical and cost evaluations are consistent with guidelines established by the Universal Service Administrative Company.

² The State’s procurement process also allows for a protest process should a losing bidder contend that a contract was not properly awarded. No protest was filed with the State upon ENA’s selection as the best-evaluated proposal. For the protest process, *see* T.C.A. 12-4-109(a)(1)(E).

³ *See* T.C.A. § 12-4-110(a).

⁴ *See id.*

⁵ OCR is separate and apart from the Proposal Evaluation Team.

⁶ *See id.* *See also* Finance and Administration Rules, Chapter 0620-3-3-.04(c).

⁷ For Information Technology Contracts, OCR obtains approval from the Office of Information Resources (pursuant to policy).

⁸ *See* T.C.A. § 12-4-110(a). *See also* Finance and Administration Rules, Chapter 0620-3-3-.04(c).

accordance with the state service procurement law and regulations. If approved, the Comptroller will sign the contract.

Once these three independent and separated stages of review are completed, the contract with the winning proposer that submitted the best-evaluated proposal may then be fully executed and released.