Form 470, as the SLD seems to now insist upon, that detail would likely be obsolete later. When those details are obsolete, at minimum, the district would need to seek change orders with the vendor and seek SLD approvals for changes. In that event, the SLD would be faced with having to deal with the voluminous requests for changes from each and every grantee-district. As such, the level of detail being apparently urged by the SLD is unrealistic.

Furthermore, since the SLD generally does not fully fund Form 471 requests, a district does not know exactly what Program funds will be awarded to it, and whether, and to what extent, it can do certain projects. With less funding, some projects may have to be re-configured completely, with dramatic changes after-the-fact on the needed goods and services from those originally disclosed in the Form 470 or the Request for Proposal. Again, in such cases, the detail in the original Form 470 is obsolete by the time the services are actually acquired.

In addition, a district's projects for a particular funding year are generally dependent upon what Program funding was awarded in the prior funding year. If such funding was denied in whole or part, the district might need to re-urge such request in the next funding year. By way of example, using a "pipeline" analogy to reflect the linear nature of many projects, a district cannot be expected to request funds to build mile 5 of a pipeline without knowing whether mile 4 of the pipeline has been funded for construction. Due to the SLD's late announcement of funding decisions, districts have little time to develop projects for the next funding year before Form 470s for that year must be posted. In EPISD's case, it learned of its Funding Year 2001 award only a few weeks before the Form 470 for Funding Year 2002 was posted. Districts could not be expected to have detailed plans for Funding Year 2002 so soon after award of Funding Year 2001 amounts, because of the

important reliance on the funding levels in Funding Year 2001 in determining what projects are necessary in future funding years.

In light of these issues, any alleged requirement for a great detail in the Request for Proposal and 2001 Form 470 is unrealistic and inconsistent with the goals of the Program.

The 2001 Form 470 and Request for Proposal contained sufficient detail to comply with Commission requirements. Decision No. 1 is erroneous in this regard.

D. In Decision No. 1, the SLD erroneously contends that EPISD did not use price as a consideration in selecting IBM.

Perhaps the principal contention in Decision No. 1 is that EPISD selected IBM as service provider for Funding Year 2002 without using price as a factor in the selection. Importantly, the SLD is not merely arguing that price was not the primary consideration[6] in EPISD's selection of IBM, but instead that EPISD did not consider price whatsoever.

Before deciding whether to renew the contract with IBM, EPISD posted the 2002 Form 470, even though not required by Program rules to do so. This was part of an effort to review possible interest by other vendors, which may provide better pricing. Moreover, EPISD had conducted an internal review of IC/IA Projects for Funding Year 2002 and discussed pricing in detail with IBM prior to its decision to renew the contract. In fact, the pricing for the IC/IA Projects for Funding Year 2002 had been agreed upon by IBM and EPISD, before the vote to renew the IBM relationship by the Board of Trustees of EPISD and before the effective date of the 2002 Contract.

Consequently, Decision No. 1 is without merit on this ground.

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[6] As noted above, there is some question as to whether it is a legal requirement that price be the primary consideration.

Furthermore, to the extent the SLD is actually addressing EPISD's procurement for Funding Year 2001, that effort is an improper collateral attack. In any event, even in such a case, the SLD's position is in error.

For Funding Year 2001, price was clearly a factor in EPISD's selection of IBM. The Request for Proposal itself lists price as a factor to be considered. IBM's response to the Request for Proposal included discussion of pricing. The evaluation of respondents to the Request for Proposal considered price as a factor. Consequently, price was clearly a factor for Funding Year 2001.

Moreover, pricing was in fact a major factor in EPISD's selection of IBM as service provider for Funding Year 2001. The Commission has recognized that a district's selection of a service provider is subject to a presumption that most cost-effective bid was selected, absent evidence to contrary. In the Matter of Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Application No. 18132, FCC Docket 96-216 (1999) (the "Tennessee Order"), pp. 6-7. The Commission recognizes that a district, due to the required contribution for its projects, has a substantial incentive to select the most cost-effective bids. Id. at pp. 6-7. There is no affirmative evidence presented in Decision No. 1 that any response to the Request for Proposal was more cost-effective other than the IBM Response. The presumption that the IBM Response was the most cost-effective of the responses received by EPISD should be therefore given effect.

Furthermore, the Tennessee Order disagrees with the SLD's contention therein that "most points for cost category" must be awarded to low bidder. Id. at p. 7. Districts are not limited to considering only price. Id. at p. 7.

In the Tennessee Order, the Commission there decided that the weight given to pricing as a factor in the selection process under state procurement law met the "primary factor" of the Commission's prior order. That should be done here as well insofar the weight given to pricing under Texas state law is consistent with that given to pricing by the Commission. Under Texas law, a school district must ordinarily acquire goods or services in the manner that provides the "best value" to the district, considering the purchase price and other factors. Tex. Educ. Code §44.031(a) (Vernon 2002). In addition, Section 44.031(d) of the Texas Education Code permits the acquisition of professional services using other means, including the Texas Professional Services Procurement Act, which requires that any pricing be fair and reasonable. Tex. Educ. Code §44.031(a) (Vernon 2002); Tex. Govt. Code §2254.0003 (Vernon 2002). In either case, price is an important consideration in any acquisition under Texas state law. As discussed above, the Commission should defer to detailed state procurement laws with respect to these issues, and the Commission should not do independent analysis of compliance with state procurement laws.

It should also be noted that, on the facts of the Tennessee Order, price was not the factor with the majority of points, and indeed, not even the plurality of points. Nevertheless, the Commission upheld the procurement in that case.

Here, EPISD believes that it complied with all applicable Texas procurement laws with respect to the Request for Proposal, including the evaluation of pricing. As such, it believes that the competitive procurement requirements of the Commission were satisfied. Decision No. 1 should therefore be reversed since EPISD did in fact take price into an account as a factor in selection of IBM as service provider.

E. In Decision No. 1, the SLD erroneously contends that the price of services were set only after selection of IBM.

In Decision No. 1, the SLD argues that the price of services for Funding Year 2002 was set only after selection of IBM. That argument is without merit. As discussed above, before deciding whether to renew the contract with IBM, pricing for the IC/IA Projects for Funding Year 2002 had been agreed upon by IBM and EPISD, before the vote to renew of the contract by the Board of Trustees of EPISD and before the effective date of the 2002 Contract. Indeed, such pricing was incorporated into the 2002 Contract itself. Consequently, Decision No. 1 is in error.

Furthermore, to the extent the SLD is actually addressing EPISD's procurement for Funding Year 2001, that effort is an improper collateral attack. In any event, even in such a case, the SLD's position is in error.

The Purchasing and Technology Departments of EPISD are very experienced with respect to purchasing requirements under Texas law and general pricing in a variety of areas, and acquires many millions of dollars in goods and services each year.

Moreover, similar to issues concerning obsolescence when describing items in detail, it is difficult for pricing to be the primary consideration in the technology area, where [as apparently contended by SLD], a district needs to get detailed, set pricing on particular goods or services perhaps 12 to 18 months before actually acquired and installed. Pricing changes dramatically in the technology area, and hardware becomes quickly obsolete. By the time a district is ready to acquire hardware after the 18-month or so delay, the hardware may no longer be available or, if available, now available at a much lower price [though district is committed at the higher price already agreed

upon]. This model as supposedly urged by the SLD also gives rise to a danger of a vendor "selling short" particular goods, by locking in high then-market prices to district under the Program for the goods, though the then-obsolete goods will be available for purchase by the vendor after the 12 to 18 month delay at a much cheaper price in the market. In light of these issues, overemphasis on pricing of particular detailed items is unrealistic and inconsistent with the goals of the Program.

The competitive selection process by EPISD did not end with the Board's award to IBM, but continued until the 2001 Contract and incorporated statements of work were negotiated and signed. If EPISD was unable to reach agreement with IBM on all specifications and prices for the IC/IA Projects, EPISD would instead select another respondent as the service provider and seek mutual agreement on those terms. The selection process in effect continued until the 2001 Form 471 was filed. In effect, there was a two-stage process.

In its evaluation of the responses to the Requests for Proposal, EPISD reviewed pricing models from the respondents, looking at general pricing structures, with the idea that EPISD would later confirm the details of the pricing once the detailed plans and specifications of the Projects were created. That was in fact done. That is similar to what is done under Texas law with respect to the procurement of professional services or technology consultants using similar rules. EPISD's selection of IBM was subject to final negotiation of the statements of work for the Project, and detailed pricing for the same. EPISD reserved the right to select another vendor as service provider in the event mutual agreement was not reached between EPISD and IBM on these points.

Based upon the understanding and experience of its staff and the results of prior acquisitions, EPISD had a general knowledge of pricing in these areas, with more specific knowledge on

particular parts. Indeed, a number of the Projects or their predecessors had been submitted for Program funding in prior years; in those cases, EPISD maintained and reviewed pricing information for goods and services in such proposed acquisitions in the previous years for comparison purposes. In many cases, EPISD also researched and reviewed pricing information for similar goods or services, from other vendors or their web-sites, in order to compare to pricing proposed for the statements of the work for the Projects. Taken together, EPISD took additional efforts to ensure that both initial and ultimate pricing would be fair and reasonable.

Going back to the analogy, this is like the homeowner, before negotiating with the contractor, knowing the market pricing on certain items specifically [e.g.- wallpaper, tile, etc.] as well as overall pricing generally [e.g.- price per square foot]. Indeed, when negotiating the statements of work with IBM, EPISD insisted upon and received significant reductions in the pricing initially proposed by IBM, as well as changes in the specifications of the Projects as set forth in the initial statements of work proposed by IBM. In particular, EPISD negotiated significant changes in the level and cost of services, as well as similar changes in goods to be acquired.

Furthermore, EPISD believes that the pricing levels in the 2001Form 471 [and the IC/IA Form 471] are reasonable, based upon general knowledge and experience of EPISD personnel. Nevertheless, under the Special Procurement Provisions and other provisions of the 2001 Contract [and 2002 Contract], EPISD retained to select subcontractors and suppliers using Texas procurement laws, and to modify or delete Projects even after Program funding was awarded. IBM also promised to share with EPISD detailed information relating to the pricing of the services component on certain Projects; that process was on-going at the time the Decision was rendered. Those provisions better

ensured fair, reasonable, and cost-effective pricing from IBM to EPISD, with possible savings over even what was proposed in the Form 471s.

In this regard, EPISD wanted to continue its review of the Projects on an on-going basis, and to take account of changed prices, conditions, technologies, etc. in the market as well as any changes in EPISD's own needs or capabilities, and then decide later whether a particular Project should go forward. Specifically, EPISD's desires and needs in December 2001 might be different from those in January 2003. If EPISD decided against a Project or decided to limit its scope, it would advise the SLD and return the unneeded Program funds, as it had done in the past with respect to prior Program funding years. The Form 471 was effectively a ceiling on the price to be charged for the Projects. To be clear, the Form 471 was not a "wish list", but instead a list of needed goods and services, consistent with the Technology Plan and consistent with EPISD's past pattern of funding requests under the Program. EPISD believed that this continued review was necessary to ensure that most "bang for the buck" for the Program funds and EPISD's own contribution.

EPISD was and remains adamant that the Projects should be performed for a fair price, and with the most "bang for the buck". EPISD is also very concerned about sustainability of Projects for the long-term, and, since Program funding from year to year cannot be guaranteed, EPISD needs to ensure that any Project can be sustained without Program funding in the future.

As noted before, EPISD is responsible for its pro rata contribution in the event of Program funding for a Project. That contribution, though, does not reflect all of the true costs to EPISD of Program funding. Specifically, if a particular Project is awarded Program funding, EPISD must not only contribute its pro rata share, but must also pay for the computers or other ineligible hardware

necessary to use the eligible services under the Project, for additional staff to handle installation and operation of the Project, and for additional training [not otherwise eligible] in related areas to best utilize the resources of the Project. In addition, EPISD feels strongly that technology and other resources at its various schools be equitable; consequently, EPISD must pay for similar, ineligible Projects, similar to an approved Project, at other schools who are not granted Program funding due to a lower "free and reduced lunch" level. In short, EPISD has to spend its own money to ensure that each school, whether or not it received Program funding, has similar resources. Accordingly, EPISD's contribution in the event of Program funding is actually much greater than pro rata. That alone is significant incentive for EPISD to seek cost-effective acquisition of the Projects, which EPISD believes it has done in this case.

Furthermore, and importantly, EPISD's 2001 Contract [and 2002 Contract] with IBM permitted involvement of EPISD in selection of many goods and services for the Projects after Program funding was awarded, which would be done using state procurement laws. As such, even if there was a problem originally as to pricing or detail [which is denied], vendors would have an extra opportunity to bid, EPISD would have another opportunity to review, and decisions on such items would be made based upon detailed pricing figures with respect to then-current versions of hardware, etc. Indeed, assuming [without admitting] there was a problem, it is remedied by this approach. EPISD would have required similar provisions with another systems integrator. EPISD's approach in this regard would have the benefit of ensuring the best pricing possible using the Program funds, since further review and analysis would be done when the goods and services were actually going to be acquired [with a maximum not to exceed the pricing in the Form 471], probably

at a lower price than in the Form 471s itself.

Through the Special Procurement Provisions in the 2002 Contract, and similar ones in the 2001 Contract, the pricing was capped at those set in the Form 471s, but EPISD had the opportunity to obtain any better pricing later by the selection of subcontractors and/or suppliers through separate, later competitive procurement. With that better pricing, EPISD hoped to achieve additional savings; indeed, EPISD did so for Funding Year 2001 and actually returned part of its award of Program funding as a result of such savings. In fact, due in large part to the special procurement provisions of the 2001 Contract, and otherwise due to its intent to ensure that its projects were limited to critical needs, EPISD ultimately did not need to spend, and returned, over $9.3 million from its Year 2001 Program funding. In essence, EPISD obtained desired and requested goods and services for a much lower price, and thus achieve "more bang for the buck" as it intended. This conduct demonstrates EPISD's continued commitment to avoid fraud, waste, and abuse in pricing, both for its own benefit and the Program itself.

As a final point, it should be pointed out that, even if EPISD had in the Request for Proposal assigned a greater number of points to the price factor, that would not have made any difference in the selection of the service provider. Specifically, each of the complete respondents to the Request for Proposal, upon review and analysis by EPISD, were judged to be equivalent in terms of pricing [and the other respondents less competitive], and each of those received the same maximum number of points in that category. As such, even if three times the number of points had been assigned to the price factor, each of those respondents would have still received the same number of points. Although price was very important and was considered, factors other than price proved to be the

difference-maker in the selection process. Consequently, the number of points assigned to the price category was not determinative, in the evaluation of the various vendors.

EPISD believes that pricing considerations should be based by the Commission upon state procurement requirements, that EPISD satisfied those state law requirements, that EPISD took numerous steps to ensure fair and low-cost pricing, and that EPISD insisted upon and obtained special contractual provisions to ensure the best pricing. The SLD's contentions to the contrary should be rejected, and Decision No. 1 reversed.

F. In summary, Decision No. 1 should be reversed.

Based upon the foregoing, additionally and in the alternative, each of the grounds raised by the SLD in Decision No. 1 for denial of Program funding for EPISD as to its IC/IA Form 471 are without merit. Consequently, Decision No. 1 should be reversed.

2. <u>In Decision No. 2, the SLD erroneously contends that EPISD failed to comply with the Program rules</u>

A. In Decision No. 2, the SLD erroneously contends that EPISD failed to properly complete the Form 470 since it failed to mark that there was a request for proposal.

In Decision No. 2, SLD argues that EPISD failed to properly complete the 2002 Form 470. That position is meritless.

EPISD did not issue a request for proposal for any Telco Services for Funding Year 2002. As noted above, EPISD instead acquired those services as permitted by Texas state law under the DIR catalogue purchase methodology.

Since there was no request for proposal issued by EPISD for those services, the 2002 Form 470 was correctly completed by EPISD and is accurate.

The SLD's contention in this regard is wholly contrary to the facts.

B. In Decision No. 2, the SLD erroneously contends that EPISD did not use the Form 470 to make its decision, but instead relied upon a request for proposal.

The SLD wrongfully argues that EPISD used a request for proposal, not the 2002 Form 470, to acquire long-distance Telco Services for Funding Year 2002.

This argument of the SLD is without merit. As explained above, EPISD did not issue a request for proposal for any Telco Services whatsoever for Funding Year 2002.

Instead, EPISD posted the Form 470 as required by federal law, and then sought vendors for such services. No inquiries were made by vendors to EPISD regarding long-distance Telco Services for Funding Year 2002 based upon the 2002 Form 470 alone, until after the process was almost complete; EPISD nevertheless requested rate and service information from such vendor. Insofar as EPISD must also comply with Texas procurement law, EPISD legally sought and acquired long-distance Telco Services under the state-permitted DIR catalogue purchase method.

As discussed at greater length as to Decision No. 1, a Form 470 is not, in and of itself, a procurement methodology, but simply a form of nationwide "public notice". A district must still comply with the detailed rules of applicable state procurement laws. EPISD did so here, both posting the 2002 Form 470 and complying with Texas procurement laws.

Decision No. 2 is incorrect in this respect.

C. In Decision No. 2, the SLD erroneously contends that EPISD did not adequately describe and define the specific goods and services being requested before AT&T was selected.

Under Decision No. 2, the SLD takes the erroneous position that EPISD failed to define the

long-distance Telco Services before AT&T was selected as service provider. This position is untenable.

The 2002 Form 470 describes the need for "Long Distance Services" with "2000 lines + 200 additional", as well as "Long Distance, calling cards" for "95 sites + 5 additional". These descriptions are under Item 8 of the 2002 Form 470, relating to telecommunication services. "Long-distance services" is a commonly-used term, both in the industry and among consumers. No reasonable vendor could misunderstand what sort of services, and what quantity, were being sought by EPISD under the 2002 Form 470. EPISD suspects that few, if any, districts posting a Form 470 in any Funding Year described long-distance services any differently. EPISD is puzzled as to what sort of "more detailed" description that SLD expects a district to make in a Form 470 for long-distance services.

It is unreasonable for the SLD to insist that EPISD failed to adequate describe the long-distance Telco Services in the 2002 Form 470. As such, Decision No. 2 should be denied on that ground.

D. In Decision No. 2, the SLD erroneously contends that EPISD did not use price as a consideration in selecting AT&T.

In Decision No. 2, the SLD argues that EPISD did not use price as a factor in deciding to select AT&T as service provider for the long-distance Telco Services for Funding Year 2002. Importantly, as noted above with respect to Decision No. 1, the SLD is not merely contending that price was not the primary factor in selecting its service provider, but that price was not a factor whatsoever in such selection. That argument of the SLD is without merit.

Price was in fact a factor in EPISD's selection of AT&T as service provider for long-distance Telco Services for Funding Year 2002. In the first place, EPISD posted the 2002 Form 470 describing such services, and inviting vendors to make inquiries regarding provision of such services. EPISD then reviewed the DIR catalogue on such services, and had a choice of two providers, AT&T and Southwestern Bell. EPISD chose to use AT&T for the long-distance Telco Services based upon its overall pricing, especially considering authorization code restrictions offered by AT&T as part of its package, and not by Southwestern Bell, which would provide a better cost control for EPISD to ensure that actual prices were lower. Price was not just a factor, but was the primary factor in the determination of which of the two service providers to select.

Moreover, as explained above, the DIR catalogue purchasing method is based upon a state-run process of reviewing and approving vendors based upon a number of factors, especially pricing. As noted, the DIR expects to receive the best possible pricing from vendors, in light of the low-priced vendors' subsequent ability to sell large volumes to state agencies and local governments across the entire state.

Price was clearly a factor in selection by EPISD as its service provider for long-distance Telco Services for Funding Year 2002. Decision No. 2 is incorrect, and should be reversed, on this point.

E. In Decision No. 2, the SLD erroneously contends that the price of services were set only after selection of AT&T.

The SLD wrongfully alleges in Decision No. 2 that the price of services of AT&T for long-distance Telco Services was determined only after selection of AT&T.

This allegation has absolutely no merit. As noted above, AT&T was selected as service provider by EPISD for long-distance Telco Services based upon its presence in the DIR catalogue. The DIR already had AT&T's pricing listed in the catalogue at that time. The relevant portions of the DIR catalogue were published before EPISD made the selection, and even before the 2002 Form 470 was posted by EPISD. AT&T presented its pricing to DIR long before EPISD's attempt to participate in Funding Year 2002 of the Program. Since the pricing of AT&T was for tariffed services, such pricing also existed in advance on that ground as well.

It is clear that AT&T's pricing for the long-distance Telco Services were set long before EPISD's selection of AT&T as service provider for the same. EPISD also confirmed such pricing with AT&T prior to the award being made.

The SLD's position in this regard is untenable.

F. In summary, Decision No. 2 should be reversed.

Based upon the foregoing, additionally and in the alternative, each of the grounds raised by the SLD in Decision No. 2 for denial of Program funding for EPISD as to its IC/IA Form 471 are without merit. Consequently, Decision No. 2 should be reversed.

V. CONCLUSION

1. <u>The focus should be upon EPISD's good faith efforts to comply with the rules and goals of the Program</u>.

EPISD made a good faith attempt at compliance with Commission requirements relating to completion of the Form 470, specificity, and procurement. In this regard, the Form 470 for Funding Year 2002 was generally consistent in level of detail as approved by the SLD in prior years. EPISD

also had no reason to believe that the level of detail in its Form 470 was problematic due to the SLD's approval of a similar one for EPISD in Funding Year 2001. Moreover, EPISD believes that the SLD has approved, during each funding year, funding IC/IA Form 471s by districts who used similar levels of description and used similar pricing models.

It cannot be emphasized enough that, unlike other districts nationwide [except EPISD] to EPISD's knowledge, EPISD insisted upon and obtain the Special Procurement Provisions in the 2002 Contract, and also provided for a variety of other conditions placing extra requirements on IBM. The Special Procurement Provisions, and the additional continuing review of pricing and other issues, were intended and designed to ensure the most "bang for the buck", with respect to EPISD's own funds and thus the Program funds as well. EPISD went the "extra mile" in trying to protect itself and the Program from any excessive pricing. EPISD went to great effort to compare IBM's pricing to other vendors, and to review and evaluate that the IBM pricing in light of its own experience and expertise in pricing. EPISD was in charge of the process of determining the scope of the Projects and in determining agreed-upon pricing for those Projects, not IBM. Many other districts who did not make any such effort have received Program funding. EPISD should not be penalized for taking these extra steps. EPISD, not IBM, controlled the process here and EPISD insisted upon and received numerous conditions and restrictions upon IBM.

EPISD is a poor district with many poor students, and each have many needs, especially in the technology area. Currently, 68% of EPISD's students are eligible for "free and reduced lunches" under federal law, though many of its schools have a much higher proportion. The 2000 Profile of Selected Economic Characteristics issued by the United States Census Bureau estimates the per

capita income for 1999 in the El Paso, Texas area at $14,388 per year. For comparison, according to the same survey, the annual per capita income for 1999 in the United States was $21,587, for the State of Texas was $19,617, and for the Washington D.C. area was $28,659. As one can readily see, EPISD students are extremely poor, and in great need of the benefits from the Projects to be completed using Program funding.

EPISD believes that the SLD is essentially "changing the rules" at the last-minute, and thereby depriving its needy and deserving students from a fair opportunity to learn and attempt to escape the poverty and circumstances in which so many have been born and raised. After substantial review and investigation, EPISD believes that the scope and pricing for the IC/IA Projects are fair and reasonable, and EPISD will continue such review even if funding is granted.

The Decisions themselves [particularly in light of many similar denials and decisions with other districts nationwide] imply, without presenting evidence, that IBM may have acted improperly with respect to various districts participating in the Program. In considering this Request for Review, however, the Commission should review the unique and specific EPISD-based facts, and not to infer inappropriate conduct to EPISD based upon alleged conduct that is irrelevant to this appeal. EPISD believes that it complied with all Program rules, and that IBM did likewise with respect to its dealings with EPISD. In the unlikely event the Commission nevertheless believes that IBM has acted improperly under Program rules, the Commission should not penalize EPISD by denying the IC/IA Form 471. To be clear, EPISD does not believe that IBM acted improperly with respect to EPISD's own participation in the Program, and notes that IBM categorically denies any improper conduct whatsoever with respect to the Program, including conduct relating to other

districts.

2. The Decisions should be reversed.

Based upon the foregoing, additionally and in the alternative, the Decisions are erroneous, and the Commission should reverse each of the Decisions and award full funding to EPISD under the IC/IA Form 471 and Telco Form 471, at least consistent with the funding levels granted to other recipients with a similar "free and reduced lunch" proportion of their school populace.

EPISD greatly appreciates the funding it has received in the past from the Program, and believes that such funding has been significantly assisted EPISD in trying to provide technology resources to its students, on average some of the neediest in the entire country. EPISD acknowledges that it received a substantial award of Program funding for Funding Year 2001, and could not necessarily expect a similar award the following year; indeed, EPISD reduced its funding request by about $20 million for Funding Year 2002.

It is therefore with reluctance that EPISD even brings this Request for Review. EPISD does not believe that it violated any Program requirements, and certainly did not intend to do so. Nevertheless, due to the erroneous Decisions of the SLD, and the resulting harm to EPISD and its students, this Request for Review is made.

SIGNED as of the 6th day of May, 2003.

Respectfully submitted,

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

RECEIVED

MAY - 8 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:	§	
	§	
Request for Review of the Decision of the	§	
Universal Service Administrator by	§	
	§	
El Paso Independent School District	§	
	§	
	§	
Federal-State Joint Board on Universal Service	§	CC Docket No. 96-45
	§	
Changes to the Board of Directors of the	§	CC Docket No. 97-21
National Exchange Carrier Association, Inc.	§	

APPENDIX TO REQUEST FOR REVIEW
OF EL PASO INDEPENDENT SCHOOL DISTRICT

Volume I of Three

Exhibit No.		*Description*
Exhibit "1"	-	Decision No. 1
Exhibit "2"	-	Decision No. 2
Exhibit "3"	-	IC/IA Form 471
Exhibit "4"	-	Telco Form 471
Exhibit "5"	-	Technology Plan
Exhibit "6"	-	2001 Request for Proposal
Exhibit "7"	-	IBM Response to Request for Proposal

USAC

Universal Service Administrative Company
Schools & Libraries Division

FUNDING COMMITMENT DECISION LETTER

(Funding Year 2002: 07/01/2002 - 06/30/2003)

March 10, 2003

EL PASO INDEP SCHOOL DISTRICT
Jack Johnston
6531 BOEING DR
EL PASO, TX 79925

Re: Form 471 Application Number: 318522
Funding Year 2002: 07/01/2002 - 06/30/2003
Billed Entity Number: 142118
Applicant's Form Identifier: Yr 5 - IBM

Thank you for your Funding Year 2002 E-rate application and for any assistance you provided throughout our review. We have completed review of your Form 471. This letter is to advise you of our decision(s).

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. We have reviewed each Discount Funding Request on your Form 471 application and have assigned a Funding Request Number (FRN) to each Block 5. The enclosed report includes a list of the FRNs from your application. The SLD is also sending this information to your service provider(s) so preparations can be made to begin implementing your E-rate discount(s) upon the filing of your Form 486. Immediately preceding the Funding Commitment Report, you will find a guide that defines each line of the Report.

NEXT STEPS

FILE FORM 486. Once you have reviewed this letter and have determined that some or all of your requests have been funded, your next step to facilitate receipt of discounts as featured in this letter will be to file an FCC Form 486 with the SLD. The Form 486 notifies the SLD to begin payment to your service provider and provides certified indication that your technology plan(s) has been approved by an SLD certified Technology Plan Approver. The Form 486 and instructions and the list of SLD certified Technology Plan Approvers can be found on the SLD web site at <www.sl.universalservice.org> or you can call the SLD Client Service Bureau at 1-888-203-8100 and ask that the form be sent to you. The Form 486 dated July, 2001 in the lower right corner MUST be used for Funding Year 2002 and for any previous funding years. Submissions of earlier versions of the Form 486 will be returned to you and will not be able to be processed. As you complete Form 486, you should also contact your service provider to verify they have received notice from the SLD of your funding commitments. After the SLD processes your Form 486, we can process invoices for services that have been provided to you.

DEADLINE FOR FORM 486. Form 486 must be postmarked within 120 days of the Service Start Date featured on the Form 486 or within 120 days of the date of the Funding Commitment Decision Letter, whichever is later. If the Form 486 is postmarked after the later of those two dates, the date 120 days before the Form 486 postmark date will become the start date for discounted services. If the service start date is moved, your funding commitment may be reduced. You are advised to keep proof of the date of mailing of your form(s).

REVIEW CIPA REQUIREMENTS. On December 21, 2000, the Children's Internet Protection Act (CIPA) was signed into law. That law requires schools and libraries that receive Universal Service discounts for certain services to adopt an Internet safety policy incorporating the use of filtering or blocking technology on computers with Internet access as a condition of receiving those discounts. Funding Year 2002 may be the Second Funding Year for purposes of CIPA for one or more schools and/or libraries represented on your Form 486. (Funding Year 2002 is the Second Funding Year for purposes of CIPA for a school or library if a Form 486 for internet access or internal connections was successfully data entered for Funding Year 2001. See the section of the Form 486 Instructions entitled "Impact of CIPA Requirements on Form 486" for more information on First, Second and Third Funding Years.) If Funding Year 2002 is the Second Funding Year for purposes of CIPA for one or more schools and/or libraries represented on your Form 486, those school(s) and/or library(ies) must certify that they are in compliance with CIPA unless state or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required. A school or library so prevented may request a waiver for Funding Year 2002. Certification(s) for purposes of CIPA and CIPA waiver request(s) must be made on the Form 486 or the Form 479, whichever is appropriate. See the Form 486 Instructions and the Form 479 Instructions for more information. You may also refer to the SLD web site at <www.sl.universalservice.org> or call the Client Service Bureau at 1-888-203-8100 for more information about Form 486, Form 479, and the requirements of CIPA.

FILE FORM 472 (APPLICANT) or FORM 474 (SERVICE PROVIDER). After a Form 486 has been properly filed, the SLD must receive an invoice from either the applicant or the service provider in order to make payments for approved discounts on eligible services. Form 472, Billed Entity Applicant Reimbursement (BEAR) Form, is filed by the applicant; Form 474, Service Provider Invoice Form, is filed by the service provider.

NEW DEADLINES FOR INVOICES. Invoices must be postmarked within 90 days of the last date to receive service or within 90 days of the date of the Form 486 Notification Letter, whichever is later. If an invoice is postmarked after the later of those two dates, payment will be denied.

TO APPEAL THESE FUNDING COMMITMENT DECISIONS

If you wish to appeal the Funding Commitment Decision(s) (FCD) indicated in this letter, your appeal must be RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.

2. State outright that your letter is an appeal. Identify which FCD Letter you are appealing. Indicate the relevant funding year and the date of the Funding Commitment Decision Letter. Your letter of appeal must also include the applicant name, the Form 471 Application Number, and the Billed Entity Number from the top of your FCD Letter.

3. Identify the particular Funding Request Number (FRN) that is the subject of your appeal. When explaining your appeal, include the precise language or text from the Funding Commitment Decision Letter that is at the heart of your appeal. By pointing us to the exact words that give rise to your appeal, the SLD will be able to more readily understand and respond appropriately to your appeal. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.

4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by calling the Client Service Bureau.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket Nos. 96-45 and 97-21 on the first page of your appeal to the FCC. Your appeal must be RECEIVED BY THE FCC WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER. Failure to meet this requirement will result in automatic dismissal of your appeal. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by calling the Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options because of continued substantial delays in mail delivery

to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the universal service mechanisms for schools and libraries. FCC Form 471 Applicants who have received funding commitments continue to be subject to audits and other reviews that SLD or the Federal Communications Commission may undertake periodically to assure that funds have been committed and are being used in accordance with all such requirements. If the SLD subsequently determines that its commitment was erroneously issued due to action or inaction, including but not limited to that by SLD, the Applicant, or Service Provider, and that the action or inaction was not in accordance with such requirements, SLD may be required to cancel these funding commitments and seek repayment of any funds disbursed not in accordance with such requirements. The SLD, and other appropriate authorities (including but not limited to USAC and the FCC), may pursue enforcement actions and other means of recourse to collect erroneously disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

We look forward to continuing our work with you on connecting our schools and libraries through advanced telecommunications services.

Sincerely,

Schools and Libraries Division
Universal Service Administrative Company

Enclosures

A GUIDE TO THE FUNDING COMMITMENT REPORT

Attached to this letter will be a report for each E-rate funding request from your application. We are providing the following definitions.

FUNDING REQUEST NUMBER (FRN): A Funding Request Number is assigned by the SLD to each Block 5 of your Form 471 once an application has been processed. This number is used to report to Applicants and Service Providers the status of individual discount funding requests submitted on a Form 471.

FUNDING STATUS: Each FRN will have one of three definitions: "Funded," "Not Funded," or "As Yet Unfunded."

1. An FRN that is "Funded" will be approved at the level that SLD determined is appropriate for that item. The funding level will generally be the level requested unless the SLD determines during the application review process that some adjustment is appropriate.

2. An FRN that is "Not Funded" is one for which no funds will be committed. The reason for the decision will be briefly explained in the "Funding Commitment Decision," and amplification of that explanation may be offered in the section, "Funding Commitment Decision Explanation." An FRN may be "Not Funded" because the request does not comply with program rules, or because the total amount of funding available for this Funding Year was insufficient to fund all requests.

3. An FRN that is "As Yet Unfunded" reflects a temporary status that is assigned to an FRN when the SLD is uncertain at the time the letter is generated whether there will be sufficient funds to make commitments for requests for internal connections at a particular discount level. For example, if your application included requests for discounts on both telecommunications services and internal connections, you might receive a letter with our funding commitment for your telecommunications funding requests and a message that your internal connections requests are "As Yet Unfunded." You would receive a subsequent letter(s) regarding the funding decision on your internal connections requests.

SERVICES ORDERED: The type of service ordered from the service provider, as shown on Form 471.

SPIN (Service Provider Identification Number): A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support mechanisms. A SPIN is also used to verify delivery of services and to arrange for payment.

SERVICE PROVIDER NAME: The legal name of the service provider.

CONTRACT NUMBER: The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.

BILLING ACCOUNT NUMBER: The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on Form 471.

EARLIEST POSSIBLE EFFECTIVE DATE OF DISCOUNT: The first possible date of service for which the SLD will reimburse service providers for the discounts for the service.

CONTRACT EXPIRATION DATE: The date the contract expires. This will be present only if a contract expiration date was provided on Form 471.

SITE IDENTIFIER: The Entity Number listed in Form 471, Block 5, Item 22a will be listed. This will appear only for "site specific" FRNs.

ANNUAL PRE-DISCOUNT AMOUNT FOR ELIGIBLE RECURRING CHARGES: Eligible monthly pre-discount amount approved for recurring charges multiplied by number of months of recurring service provided in the funding year.

ANNUAL PRE-DISCOUNT AMOUNT FOR ELIGIBLE NON-RECURRING CHARGES: Annual eligible non-recurring charges approved for the funding year.

PRE-DISCOUNT AMOUNT: Amount in Form 471, Block 5, Item 23, Column I, as determined through the application review process.