

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

In the Matter of)	
)	
Request for Review of the Decision of the)	CC Docket No. 96-45
Universal Service Administrator by the)	CC Docket No. 97-21
Kentucky Department of Education and)	CC Docket No. 02-6
Kentucky School Districts Listed in)	
Appendix A; Request for Waiver)	
)	

DECLARATION OF DAVID COUCH

1. I am the Chief Information Officer/Associate Commissioner of the Office of Education Technology, Kentucky Department of Education (“KDE” or “Department”). In this capacity, I am responsible for implementation of the Kentucky Education Technology System (“KETS”) master plan for technology for all public schools in the Commonwealth of Kentucky. Since 1997, I have been involved in different capacities with the Kentucky Department of Education’s (“KDE” or “Department”) participation in the Schools and Libraries Universal Service Support Mechanism (“E-Rate”).
2. Over the past thirteen years, KDE has taken a unique approach among K-12 education institutions to rolling out network and Internet technology. For example, if a Kentucky public school district seeks internal connections equipment, it is *required* to purchase specific network components that meet product standards determined by the state. In addition, school districts are *required* to purchase these components off state master contracts. In return, schools benefit from extensive, expert technology planning, uniform statewide systems, lower support costs, and below-market prices negotiated by the Commonwealth.

3. Kentucky carefully developed a technology plan prior to applying for any E-Rate funds and even prior to the creation of the E-Rate program. As a result of the *Kentucky Education Reform Act* of 1990, in 1991-92, a joint committee composed of senior KDE staff, Kentucky state legislators and others approved by a state board developed a master plan – the Kentucky Education Technology System. The purpose of KETS is to provide equitable access to technology for all K-12 public school students and teachers.
4. KETS was designed to be a stable, robust, reliable, and secure network infrastructure spanning 1,400 schools in 176 districts. Today, the KETS environment supports more than 700,000 people, including 600,000 students and 125,000 teachers, school staff members, and KDE employees.
5. After extensive research and testing, the KETS master plan incorporated “best in class” standards for about sixty separate pieces of internal connections equipment. This equipment allows students and administrators to share information and computer resources via a robust, internal school network. It also helps support Internet access from multiple points within a school. KETS sets unmet need standards, technical specifications standards and product standards. This ensures equity of price and service for every school district in the state.
6. Government agencies at the federal and state level commonly take an “enterprise approach,” similar to that taken by KDE, in deploying technology throughout an organization. An enterprise approach involves standardizing the products the organization will use with respect to key infrastructure categories (e.g., e-mail systems, financial management systems, networking components). These “product standards” persist while their performances are satisfactory. Since network components are not the same as pencils (vendors for pencils can be replaced each year without raising issues of

interoperability or having completely to rip out an existing investment), no efficient organization will pick a new product standard every year for key technology components.

7. The KETS master plan called for a competitive bidding process at the plan's launch and annual renewals of existing contracts thereafter; an approach consistent with Kentucky procurement law. The bidding process was designed to identify a very limited number of products for each KETS category of internal connections equipment, which all districts would be required to use throughout the master plan's multi-year implementation (it would not be optional). This would leverage the buying power of the Commonwealth, reduce complexity, increase interoperability, and reduce long-term life cycle support costs.
8. Maintaining the same product standards throughout the plan's implementation was crucial to its success because:
 - (a) The prospect of a multi-year, statewide contract was necessary in order to achieve substantial volume discounts for the state's schools; and
 - (b) Once Commonwealth schools had installed equipment or software as per the particular KETS product standard, a change to a different product standard would be much more expensive than the new component's mere purchase price. A change in product standards would require the complete replacement of existing infrastructure (as the new product standard would not be interoperable with the existing hub, chassis components, or management software). This means that, if the set of product standards changed midstream, schools would lose their investment in management software, technical skills and expensive equipment, which has an anticipated useful life measured in decades.

9. In 1992-94, prior to the creation of the E-Rate program, KDE engaged in a competitive bidding process under Kentucky procurement law to identify vendors and products for internal connections equipment and networking software. KDE staff wrote intricate requests for proposals (“RFPs”) and invitations for bids (“IFBs”) concerning specific network components (e.g., local area network hubs, file servers, e-mail software) as per KETS product standards. I personally worked for about a year to develop the KETS Networking Components RFP.
10. KDE received about ten to fifteen bids for each of the internal connections contracts at issue in this proceeding. With respect to the KETS Networking Components project, the Department selected two internal building networking components product standards: Cabletron Systems and Pomeroy Computer Resources, Inc. (at that time, doing business as Synopics, which was bought by Baynetworks, which was bought by Nortel). KDE selected General DataComm to be the single external building networking product standard for all schools. All of these service providers operate nationally, and none are headquartered in Kentucky. In addition, IntraSource, Inc. was selected as the product standard for server operating software.
11. In 1994, KDE entered into 1-2 year contracts with the successful vendors. The contracts provided for renewal in subsequent years if the parties agreed and if the independent Kentucky Finance and Administration Cabinet (“Cabinet”) approved the renewal as lawful and in the Commonwealth’s best interest.
12. KDE and its vendors had strong incentives to exercise renewal options. If renewal options were not exercised and a new RFP resulted in the switching of product standards, Kentucky schools would lose their investment in infrastructure and technical expertise. Vendors would lose the benefits of a statewide, ongoing relationship if they opted not to

renew. Indeed, a contract term substantially longer than a year would have reflected the expectation of the parties concerning the duration of their relationship. Nonetheless, KDE structured the contracts with options to renew (instead of a longer initial term) because such is the Commonwealth's custom and because the parties knew that renewals were available under Kentucky procurement law.

13. KDE secured below-market prices in the KETS internal connections contracts. *Indeed, KDE could not find any price nationwide less than that paid by Commonwealth schools for key internal connections components.* For example, when the online advertised price of a particular file server operating at KETS levels was \$10,781, Kentucky schools purchased this server for \$6,340. These low prices were part of every renewed contract, including contracts for which E-Rate discounts were sought. Further, the contracts included provisions barring price increases during the term of the contract.
14. In 2004, the Gartner Group (an technology consultancy hired by KDE to conduct an independent, third-party review of KETS) confirmed that KDE's costs are "consistently lower than those of its peers." Further, the organization found the centralized KETS structure represented a "best practice." In 2002, the organization identified the Commonwealth's enterprise-based approach to deploying technology as a "cost effective investment" that saved millions of dollars.
15. In a 1999 report concerning education technology, the Milken Family Foundation identified Kentucky's competitive bidding process as a model, saying that its leveraging of state purchasing power and economies of scale resulted in estimated savings of approximately \$35 million over a two-year period. Further, the report used the KETS enterprise-wide approach as an example of how a state education agency can "ensure quality, low cost, supportability and interoperability" in procuring technology.

16. To my knowledge, Kentucky was the first state in the union to make the Internet available in every public classroom. KDE's success in bringing technology to Kentucky schools has been widely recognized; for example:
- (a) As reported in EdWeek Magazine in May 2003, Kentucky was first in the nation in the percentage of teachers in high-minority schools whose students use computers during class (over 85%). Kentucky ranked fourth nationwide in the percent of high-poverty schools where at least half the teachers use the Internet for instruction (over 80%).
 - (b) The National Center for Educational Statistics reported in 2002 that Kentucky beats the national average in the percentage of schools with LAN/WAN wiring (98%), the percentage of teachers with e-mail accounts provided by the school district (99.99%), and the percentage of students with e-mail accounts provided by the school district (99.9%).
 - (c) In a 1999 report, the Milken Family Foundation found that KETS demonstrated the state's commitment to providing equal opportunity for all Kentucky students. Other Milken Family Foundation reports rank Kentucky as one of the top states in the nation for making a difference through technology deployments: students were more engaged in learning (83%) and more independent learners (82.8%).
17. At the launch of the E-Rate program, KDE consulted extensively with SLD to confirm that its KETS procurement approach based on Kentucky law complied with E-Rate rules. KDE staff actively participated in weekly conference calls sponsored by the Council of Chief State School Officers ("CCSSO"), a national organization for education commissioners, which were regularly attended by SLD staff. These conference calls

repeatedly covered E-Rate competitive bidding requirements generally and KDE's multi-year contracts with renewal options specifically.

18. Based on its reading of the Commission's rules, SLD guidance and the consensus formed on multiple CCSSO calls, KDE scrutinized all contracts on which E-Rate discounts would be sought and decided to rebid some to ensure that the Commission's competitive bidding requirements were met. However, KDE was assured that E-Rate rules did not require competitive rebidding of the internal connections contracts at issue in this case.
19. SLD confirmed that Kentucky's internal connections contracts complied fully with E-Rate rules by funding hundreds of applications from Kentucky school districts worth millions of dollars over five funding years. Each year, as per the instructions of SLD to KDE staff concerning KETS contract renewals, KDE sent SLD a copy of the renewed contract, which clearly indicated on the cover page that it consisted of the old contract with a one-year renewal. Further, each year, KDE properly indicated on Forms 470 that Kentucky school districts were not seeking bids due to the presence of an existing, multi-year contract.
20. SLD did not give KDE any indication that its KETS internal connections contracts might raise compliance issues until Fall 2002, after over all 176 Commonwealth school districts had installed millions of dollars of equipment. In response to SLD inquiries, in Fall 2002, KDE held a meeting with senior SLD staff, including the Vice President of the Schools and Libraries Division. I personally attended this meeting in Washington, D.C.
21. In the Fall 2002 conference call, I explained to SLD staff that KDE did not rebid its internal connections contracts because: (a) the Commonwealth had invested \$30-40 million in internal connections infrastructure manufactured by specific vendors that met the KETS standard; (b) a new vendor's equipment would very likely not be compatible

with existing infrastructure; and thus, (c) changing vendors would necessitate replacing tens of millions of dollars of installed, functioning equipment with decades of usable life.

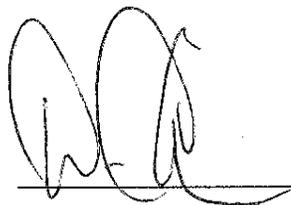
The costs of rebidding also must be considered, as the detailed technical specifications of a KETS RFP require about a year to prepare and each bidder's equipment must be tested.

22. KDE promptly disclosed all contracts requested by SLD and, in a December 2002 letter to SLD, explained that the relevant contract renewals were in compliance with Kentucky procurement law. SLD did not respond to KDE until March 2004, over a year later, when SLD sent hundreds of commitment adjustment notices to Kentucky school districts and KDE's service providers.
23. In light of questions raised about KDE's compliance with E-Rate rules, the Department has rebid many of its E-Rate contracts and will continue to do so where it makes economic sense. Yet, the Commonwealth cannot afford to replace its key internal connections infrastructure. Accordingly, KDE may choose not to apply for E-Rate discounts for certain product standards, because the expense and waste involved in substituting a new vendor's equipment would be even greater than the potential E-Rate discounts. This is unfortunate, as I doubt any state seeking E-Rate discounts is paying less for any item than KDE where the Department has a product standard and a state master contract. The E-Rate program allowed our poorest districts to discount even our existing low prices under existing state contracts.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of May 2004.



David Couch
Chief Information Officer/Associate Commissioner
Kentucky Department of Education Technology