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August 6, 2004

VIA FACSIMILE & FEDERAL EXPRESS

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

**Re: IN THE MATTER OF REQUEST FOR REVIEW BY RELCOMM, INC. OF
DECISION OF UNIVERSAL SERVICE ADMINISTRATOR
CC Docket No. 02-6
SLD decision 1022916 and 1023492
Year Six E-Rate
Billed entity #123420: Atlantic City Board of Education**

Dear Sir or Madam:

This office represents RelComm, Inc., a New Jersey corporation with its principal place of business located at 408 Bloomfield Drive, Suite 3, West Berlin, New Jersey. RelComm is in the business of designing, installing and maintaining computer networks, including both hardware and software, for, among others, municipal and other public entities, including various school boards. RelComm is an "aggrieved party" which participated in the bid process for entity #123420, the Atlantic City Board of Education ("ACBOE"), for Year Six of the E-Rate program, and hereby appeals from the decision of the SLD dated July 14, 2004, granting funding request numbers 1022916 and 1023492. As set forth more fully below, the basis of this appeal is

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prohibited behavior by the applicant (ACBOE), its consultant (Alemar Consulting and its principal Martin Friedman (collectively, "Friedman")), and ACBOE's selected vendor (Micro Technology Groupe, Inc., SPIN143008940, ("MTG")). RelComm alleges that ACBOE, Friedman and MTG violated specific SLD regulations and FCC orders in procuring the funding commitment for Year Six.

These, and other allegations, are currently the subject of a lawsuit pending in the Superior Court of New Jersey, Atlantic County, Docket number ATL-L-477-04. A copy of the complaint is attached as Exhibit A. Also enclosed is the affidavit of Michael Shea, the president of RelComm, which was submitted in connection with that pending litigation. The facts set forth below are sworn to, and incorporated herein by reference, in that affidavit.

I. Question presented for review

Whether ACBOE's, Alemar's, Friedman's and MTG's acts, omissions and violations of specific SLD regulations and FCC orders in connection with the procurement of funding for Year Six warrant (1) a reversal of the SLD's decision to fund ACBOE's Year Six application, and/or (2) suspension or disbarment of these entities from participation in the E-Rate program.

II. Background

In early 2003, ACBOE indicated its intention to submit an application for funding to the SLD under Year Six of the E-Rate program. ACBOE solicited bids from qualified vendors to provide ACBOE with the services and equipment to be requested by ACBOE in its Year Six application. ACBOE, acting through its superintendent, Fred Nickels, without the approval of the Board Members, then hired Alemar Consulting through its President, Friedman, as a consultant to manage its bidding process for Year Six and to recommend a winning bidder to

receive the contract. Alemar has previously acted as the bid manager for other school districts in the Commonwealth of Pennsylvania and in New Jersey.

ACBOE's representative informed RelComm that it would not be selected as a vendor for any part of ACBOE's Year Six application and, in fact (following a bidding process tainted by numerous irregularities), ACBOE selected another vendor, MTG, for participation in its Year Six E-Rate application at the recommendation of Alemar.

Importantly, in every instance in which Alemar has managed the E-Rate bid process on behalf of a school district, a total of 31 times dating back to Year 3 of the E-Rate program, MTG has received a contract award each and every time. Of the 11 school districts where MTG is currently doing work, 10 of these districts had their bid process managed by Alemar. A copy of a table demonstrating this relationship is attached as Exhibit B. Indeed, the USAC SLD website indicates that on all the Form 470s prepared by Alemar, the bid specifications and the 471s have all of the same vendors for all of the entities regardless of size and location. A breakdown of all E-Rate bidding processes Friedman/Alemar managed dating back to Year 3 is attached as Exhibit C.

MTG's winning bid in this instance was announced at a meeting on February 11, 2003, at which ACBOE announced that it was submitting an application for Year Six E-Rate funding in the amount of \$3.6 million. The SLD announced its funding commitment for this bid on July 14, 2004. However, as set forth more fully below, the MTG bid and the application submitted to SLD for Year Six funding did not comply with the bid specifications given to RelComm and other bidders.

III. Specific violations and prohibited behavior

ACBOE's Year Six E-Rate program bidding process violated federal law and state law in the following respects:

(1) The Form 470 drafted by Alemar for ACBOE violated E-Rate program rules and state bidding statutes. The specifications contained in the Form 470 provided no details as to what ACBOE was seeking from bidders and was not related in any way to ACBOE's own Technology Plan. A copy of the bid specifications is attached as Exhibit D. Instead of describing with specificity the items solicited in the bid, it requested a "best solution" proposal to include "all items eligible" for funding under the E-Rate program. This "best solution" request is a violation of FCC's Third Order and Report because it eliminated the competitive bidding process because no adequate comparisons could be done.

(2) After the Form 470 application was posted, which contained the specifications for the Year Six bid, RelComm posed a number of technical questions to Alemar so that it could submit a proper bid. To illustrate, RelComm tried on numerous occasions to get clarification from Alemar and ACBOE as to the exact locations of the equipment to be installed, but to no avail. In an e-mail to Friedman on January 22, 2003 RelComm posed several technical questions regarding the bid specifications to which Friedman replied: "The district has not supplied us with the level of detail for which you are asking. As such, we are asking vendors to take a walk-through and provide the district with a 'best solution.'" Copies of e-mail and correspondence regarding these inquiries, and responses thereto, are attached as Exhibit E.

(3) RelComm's confusion was caused by the fact that Alemar prepared one 470 Form for the entire district (excluding the High School facility) and then separate 470 Forms for each

separate building in the district (again, with the exception of the High School facility). RelComm finally resorted to submitting separate bids for the entire district and for each specific location. Whenever RelComm requested clarification, Alemar responded that adequate responses and information could not be obtained from ACBOE, but that all questions would be answered at the on-site tour of the ACBOE facilities.

(4) ACBOE stated that only vendors who participated in an on-site tour of the Atlantic City School District buildings and facilities, which was conducted on January 24, 2003 by Alemar, would be considered qualified bidders for ACBOE's Year Six application. The specifications stated: "Vendors are required to participate in a walk-through of these premises in order to provide a 'best solution' for all internal connections, excluding the servers detailed." This is a violation of E-Rate program rules and federal bidding statutes, which require that all qualified vendors, no matter where geographically situated, be eligible to bid on federally funding grant projects. ACBOE utilized no state or local procedures that would permit that requirement, nor did it select box "12" in "Block 2" on the Form 470.

(5) That tour itself was tainted by misinformation. For example, ACBOE told bidders at the walk-through that ACBOE was only interested in expansion of its existing network structure and that the expansion must be compatible with the existing network. However, the contract awarded to MTG includes \$1.3 million for the purchase of new network equipment, including 49 new servers, which are meant to replace the existing network, not expand it. When applicants requested clarification of certain aspects of the bid request at the walk-through, they were informed that their questions could not be answered. Indeed, ACBOE's representative stated several times to the vendors present at the tour that the district was seeking a "best

solution,” and that it was up to the applicant to provide a proposal. A copy of the videotape from this tour is enclosed and identified herein as Exhibit F.

(6) During that tour, RelComm again posed its questions but was told by the person conducting the tour, John Holt of Informed Resources, that he did not have answers to any of RelComm’s questions. In addition, Alemar provided misinformation to RelComm and the other prospective bidders at the walk-through.

(7) For example, according to the bid specifications contained in the Form 470, the High School facility was only to receive telecommunications services, and was not to be included in the bid for internal data connections. Indeed, the walk-through videotape captured the Alemar and ACBOE representatives *explicitly stating this several times*. However, contrary to the bid specifications, MTG received a contract that included data equipment and services for the High School, totaling \$227,391.

(8) In addition, Alemar told prospective bidders that the bid for internal connections was for network enhancements, not a complete overhaul of the network, but the contract awarded to MTG includes the replacement of a significant portion of the network, including all of the existing wiring, which is only 3 years old and is covered by 17 remaining years of the original 20 year warranty.

(9) During the walk-through John Holt (an employee of Informed Resources) represented himself as an employee of Alemar. However, as set forth in Exhibit C, Informed Resources (SPIN 143026063) has received numerous E-Rate contracts over the years through Friedman. FCC rules state that vendors who are bidding on E-Rate contracts are barred from developing the bid specifications for the applicant’s 470/471 forms. The USAC website also

states that the applicant may not delegate responsibility for evaluating bids to anyone associated with one of the bidders: “The fundamental principle on which the E-Rate Program is based is that the applicant has conducted a fair and open competitive procurement by which they (sic) decided upon the services they are ordering for E-rate discounts [The applicant must avoid actions that] would furnish the Services Provider with “inside” information or allow them (sic) to unfairly compete in any way The FCC has ruled that the applicant may not delegate this evaluation role to anyone associated with a Service Provider.” USAC Website (www.sl.universalservice.org) (Ch. 5 – Service Provider Role in Assisting Customers). See also Exhibit D (the bid specifications) in which Holt is identified as the contact person for Alemar and Exhibit G (an e-mail from Friedman identifying Holt as the individual conducting the walk-through).

(10) Alemar conducted a second unannounced walk-through of the High School facilities, to which RelComm and the other bidders were not invited. Only MTG was told by Alemar to include the High School facilities in its bid, so MTG’s winning bid was the only one that included the High School building. The bid specifications distributed to RelComm and the other bidders made no mention of the internal connections at the High School facility. The bid specifications drafted by Alemar and posted by ACBOE were conspicuous in their failure to include the High School facilities in the bid. Significantly, the applicants present at the High School walk-through were vendors which had previously won contracts through Friedman at other school districts. A copy of the sign-in sheet for that tour is attached as Exhibit H.

(11) RelComm believes that this omission (the failure to include the High School facilities in the bid specifications) was intended by ACBOE, because inclusion of the high school

student body in the E-Rate program calculation would have lowered the percentage of funding provided by the federal government. In prior years, with the High School students included in the calculation, ACBOE had submitted its Form 471 indicating that 87% of its student body participated in the school lunch program. By excluding the High School from its Year Six Forms 470 and 471, ACBOE was able to increase its school lunch percentage to 90%, thereby making it more likely that its request would be funded because only school districts and schools whose school lunch participation level is at 90% or higher are guaranteed funding under E-Rate program regulations.

(12) MTG's winning bid included an award for items that were not included in the bid specifications. A copy of the MTG's bid is attached as Exhibit I. For example, the award to MTG included \$800,000 to install a video PVBX, which was not contained anywhere in the specifications published by ACBOE. The Form 470 and the bid specifications supplied by Friedman identified only video equipment consisting of EMMI, MCU, enhancer, and MptCU amplifiers, VCM; a video PVBX system is completely different from such equipment and consists of different components and functions. The FCC rules state that an applicant cannot seek discounts for services in a category of service on the Form 471 if those services in those categories were not indicated on a Form 470. The SLD eligible services list delineates this equipment and functions.

(13) In addition, the award to MTG included equipment to be installed at locations that were not mentioned in the specifications. A copy of the Form 471, which includes an award for the Atlantic City High School, is attached as Exhibit J. Indeed, during the litigation currently pending in the Superior Court of New Jersey, and in a prior litigation filed in the United States

District Court for the District of New Jersey, MTG produced documents upon which it relied in preparing its Year Six bid; documents which were not given to other prospective vendors. Copies of these documents are attached as Exhibit K. Those documents include information and specifications about video PVBX equipment, network diagrams of ACBOE's network infrastructure and existing wiring LAN breakdown of all the schools within the district including the Atlantic City High School.

(14) The bid specifications published by ACBOE and drafted by Alemar were so confusing and misleading that the bids submitted in response to them ranged from approximately \$200,000 to \$3.6 million, a variation of 1800%. A ranking of the actual bid dollar amounts is attached as Exhibit L. Of the eight internal connections bids, three were disqualified for allegedly bidding items not listed in the bid specifications. A fourth bidder was disqualified for faxing its bid (even though that vendor was told that this would be acceptable considering time constraints). And none of the remaining three bids included cabling, video PVBX or the high school. MTG's winning bid was the highest at \$3.6 million. The next highest bid was less than half that amount at \$1.4 million, but it was *disqualified because it contained items that do not qualify for E-rate program funding*. MTG's bid, however, also contained \$86,500 of non-E-Ratable items, but it was not disqualified by ACBOE or Alemar. RelComm's bid is actually the lowest responsive bidder for each of the items listed in the actual specifications.

(15) RelComm believes that ACBOE and Alemar gave MTG either different specifications or modified specifications that were not given to RelComm or other bidders. Thus, the bid awarded to MTG was rigged and fraudulent, in that MTG was awarded the bid

without any competition from other bidders, who were bidding on specifications that were different from those on which MTG was bidding.

(16) The unlawful nature of MTG's winning bid is also demonstrated by the wastefulness of its expenditures at taxpayers' expense. For example, the MTG contract award calls for rewiring of the entire ACBOE network, despite that the existing warranty is only 3 years old and has 17 years remaining on the 20-year warranty included with its purchase. Indeed, the award calls for new web/e-mail/DNS/DHCP servers, which duplicate ACBOE's internal connections installed pursuant to the Year Four E-Rate award which could run the proposed new operating system. The FCC regulations specifically provide that price is the most important factor in selecting an E-Rate service provider. See 47 C.F.R. §54.511(a); see also 47 C.F.R. §54.504(a) (price is most important factor to consider in selecting E-Rate program service provider); *Universal Service Order*, 12 FCC Rcd at 9029 ¶ 480 (noting that the competitive bidding process ensures that the eligible entity receives information about all telecommunication choices and receives varying, competitive bids, which preserves the fund for other eligible entities) and 8950 n.819 (addressing whether safeguards were needed to prevent a bidder from driving out competitors). Indeed, applicants are required to undertake a technology assessment before making a request for services. 47 U.S.C. 254(h)(1)(B); *Universal Service Order*, 12 FCC Rcd at 9077-78 ¶¶ 572-574.

(17) The federal regulations explicitly state that the E-Rate "competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt state or local requirements." 47 C.F.R. § 4.504(a). In fact, not only do the regulations indicate that the minimal E-Rate bidding requirements do not preempt state and local

competitive bid requirements, but the E-Rate regulations also indicate that schools must comply “with all applicable state and local procurement processes.” 47 C.F.R. § 54.504(b)(2)(vi). In this case the New Jersey Department of Education found that Friedman’s management of the Year Six bidding process violated state and local bidding laws because the consulting contract was not bid appropriately. ACBOE was subsequently fined by the New Jersey Department of Education for these actions.

(18) The SLD rules state that if 30% or more of the applicant’s request is ineligible the FRN itself is ineligible for funding. 47 C.F.R. 54.504(c)(1). ACBOE’s bid specifications for Year Six do not include a PVBX, and the bid manager specifically stated to vendors during the bid conference that ACBOE was not seeking a network chassis (which was in fact part of MTG’s winning bid). These items alone constitute over 30% of the line item.

IV. Conclusion

For all of these reasons, RelComm requests a review of the SLD’s decision funding Year Six of ACBOE’s E-Rate application, and that that funding decision be stayed pending full investigation by the Commission of these improprieties. RelComm further requests (1) a reversal of the SLD’s decision to fund ACBOE’s Year Six application, and (2) suspension or disbarment of the entities involved from participation in the E-Rate program.

For further information regarding this appeal, you may contact the undersigned at the address and telephone number listed above.

Very truly yours,

FLASTER/GREENBERG P.C.

A handwritten signature in black ink, appearing to read "J. Philip Kirchner", with a long horizontal flourish extending to the right.

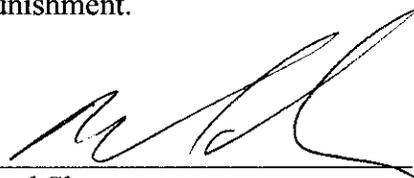
J. Philip Kirchner

Enclosures (via overnight delivery only)

cc: Deborah Weinstein, Esquire (on behalf of Alemar Consulting and Martin Friedman)
Michael J. Blee, Esquire (on behalf of ACBOE)
Ralph Kelly, Esquire (on behalf of Micro Technology Groupe, Inc.)
Schools and Libraries Division
(all with enclosures)

VERIFICATION OF REQUEST FOR REVIEW

I, Michael Shea, am the president of RelComm, Inc., the aggrieved party which has filed the attached Request for Review. I certify that I have read the Request for Review and that the foregoing factual statements made in support thereof are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

A handwritten signature in black ink, appearing to read 'M. Shea', written over a horizontal line.

Michael Shea
RelComm, Inc.

Dated: August 6, 2004

PROOF OF SERVICE

I, the undersigned, am an employee of Flaster/Greenberg P.C., attorneys for the Plaintiff, RelComm, Inc., with regard to the above-captioned matter.

1. On August 6, 2004, I forwarded via facsimile a Request for Review By RelComm, Inc. of Decision of Universal Service Administrator (without enclosures) and via Federal Express overnight delivery (with enclosures) to the Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD, 20743, one copy:

2. On August 6, 2004, I also caused a copy of the Request for Review By RelComm, Inc. of Decision of Universal Service Administrator (with enclosures) to be forwarded via Federal Express overnight delivery to the following:

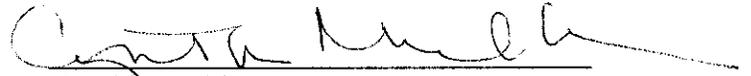
Michael J. Blee, Esquire
Rovillard & Blee
Bayport One
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West Atlantic City, NJ 08232
(On behalf of Atlantic City Board of Education)

Ralph J. Kelly, Esquire
Abrahams, Loewenstein & Bushman
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Haddonfield, NJ 08033
(On behalf of Micro Technology Groupe, Inc.)

Deborah Weinstein, Esquire
The Weinstein Firm
225 West Germantown Pike, Suite 204
Plymouth Meeting, PA 19462-1429
(On behalf of Martin Friedman and Alemar Consulting)

Schools and Library Division
Correspondence Unit
P.O. Box 125
80 South Jefferson Road
Whippany, NJ 07981

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

A handwritten signature in black ink, appearing to read 'Cynthia Muldoon', written over a horizontal line.

Cynthia Muldoon
Legal Secretary

FLASTER/GREENBERG P.C.

By: J. Philip Kirchner, Esquire
Cindy M. Perr, Esquire
Commerce Center
1810 Chapel Avenue West, 3rd Floor
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Phone: (856) 661-1900
Attorneys for Plaintiff RelComm, Inc.

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RELCOMM, INC.	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION
vs.	:	ATLANTIC COUNTY
	:	
ATLANTIC CITY BOARD OF EDUCATION;	:	DOCKET NO. L-477-04
FREDRICK P. NICKELS; MICRO	:	
TECHNOLOGY GROUPE, INC.; DONNA	:	Civil Action
HAYE; MARTIN FRIEDMAN; ALEMAR	:	
CONSULTING; and JOHN DOES, 1-20,	:	AFFIDAVIT OF MICHAEL SHEA
Defendants.	:	

I, Michael Shea, being duly sworn upon his oath, deposes and says:

1. I am the President of RelComm, Inc. ("RelComm"), the plaintiff in this action. I have personal knowledge of all facts sworn to in this Affidavit, except where explicitly indicated in this Affidavit.
2. RelComm is a New Jersey corporation that was created in 1998 to provide data and network services primarily for schools, municipalities and libraries, including E-Rate funded projects.
3. E-Rate funding provides only a portion of the funding requested by school districts for its programs. The percentage of funding to a particular school district is specifically tied to the percentage of students in the school district who participate in the federal school lunch program.
4. During the contract years at issue in this litigation, the ACBOE reported that approximately 90% of its students participated in the school lunch program.

5. ACBOE first submitted an application for funding under the E-Rate program in 1998, the first year of the E-Rate program. In that first year, ACBOE identified Lucent Technologies, in the Form 471 submitted by ACBOE to the SLD for approval of its application, as the selected vendor to provide voice and data networking equipment. ACBOE's application for Year One of the E-Rate program was approved by the SLD and was funded at the 87% rate in 1999.

6. There are two forms involved in the application process for E-Rate program funding. The initial announcement by the applicant of a request for funding is submitted to the SLD on FCC Form 470. A true and correct copy of that form is attached hereto as Exhibit A.

7. The completed Form 470, which is posted on the USAC website announcing the request for bids to the public, includes the specifications of equipment and services on which the applicant is seeking bids and requesting funding. After the successful bidder is selected by the applicant, the final application for funding (including the winning bid) is submitted to the SLD on FCC Form 471. A true and correct copy of that form is attached hereto as Exhibit B.

8. ACBOE's application for funding for Year Two of the E-Rate program in 1999 again identified Lucent Technologies as its selected vendor for data network services. In or about June, 1999, following approval of its Year Two E-Rate application, ACBOE decided that Lucent Technologies was not able to service its network needs and switched vendors to RelComm. ACBOE and Lucent Technologies reached an agreement which allowed ACBOE to switch its data network vendor for Year Two of the E-Rate program to RelComm.

9. ACBOE sent a letter confirming their agreement for Year Two, and, thereafter, RelComm performed services for ACBOE under the grant for Year Two. A true and correct copy of that letter is attached hereto as Exhibit C.

10. ACBOE and RelComm also entered into a Services and Maintenance Agreement, which governed the parties' agreement for RelComm to provide network maintenance services to ACBOE. A true and correct copy of the Agreement is attached hereto as Exhibit D.

11. RelComm received payment directly from the SLD for ACBOE's Year Two award in the amount of \$507,561.60 (which was 87% of the amount requested by ACBOE). ACBOE paid RelComm the 13% unfunded portion of the application amount for Year Two in the amount of \$95,648.40.

12. ACBOE again applied for funding for Year Three of the E-Rate program in 2000 and, this time, identified RelComm as its selected data network vendor. A true and correct copy of ACBOE's Year Three Form 471 is attached hereto as Exhibit B. Two of the line items in its application, however, including content filtering software, were determined by the SLD to be nonconforming, and, as a result, a portion of ACBOE's Year Three application was denied. ACBOE's appeal from the partial denial of funding for Year Three was also denied. Notwithstanding this denial, ACBOE ordered the content filtering software from RelComm and used it, but then refused to pay for it.

13. The remainder of ACBOE's Year Three E-Rate application was approved. RelComm performed the work specified in ACBOE's Form 471 and was paid for its work both by the SLD and by ACBOE.

14. In addition to its E-Rate program funding, ACBOE's network of equipment and software that had been installed by both Lucent Technologies and RelComm during Years One and Two needed to be maintained. As a result, ACBOE issued a purchase order to RelComm for that work and continued to abide by the Services and Maintenance Agreement with RelComm from Year Two. Under the Year Three purchase order and the Services and Maintenance Agreement, RelComm agreed to provide maintenance of ACBOE's network equipment at the

rate and in the amount specified in ACBOE's Year Three application for E-Rate program funding. A true and correct copy of the purchase order and other documents evidencing the contract between ACBOE and RelComm are attached hereto as Exhibit E.

15. As was ACBOE's customary practice, the purchase order was not issued until well after RelComm had commenced performance under the contract.

16. RelComm performed all of its duties under its agreement with ACBOE to provide network maintenance during the period from July 1, 2000 through June 30, 2001 (Year Three), and the amount of \$480,000 is due from the ACBOE for those services. Despite its agreement with RelComm, however, ACBOE notified RelComm after its appeal was denied in early 2003 that it refused to pay RelComm for its network maintenance services during Year Three.

17. ACBOE again applied for funding in Year Four of the E-Rate program in 2001 in the amount of \$3,095,200. ACBOE's Year Four funding request again identified RelComm as the selected vendor for data network services. A true and correct copy of the SLD Funding Commitment Report from Year Four is attached hereto as Exhibit F. ACBOE's Year Four application was approved by the SLD in full. ACBOE authorized payment by the SLD to RelComm, and RelComm was paid by the SLD in April, 2002, in the amount of \$2,692,824, representing 87% of the amount requested by ACBOE for Year Four.

18. RelComm provided all of the services and equipment that it promised to provide as part of ACBOE's Year Four application for funding under the E-Rate program. RelComm invoiced ACBOE for the non-discount portion of its Year Four application (13%) in the amount of \$402,000. However, despite its agreement with RelComm, ACBOE notified RelComm in January, 2003, that it refused to pay RelComm any of the amount owed, in violation of federal law and the E-Rate program regulations.

19. ACBOE also applied for funding during Year Five of the E-Rate program in January, 2002. That request included funding for network maintenance and for hardware to be provided by RelComm. A true and correct copy of ACBOE's Year Five Form 471 is attached hereto as Exhibit G. The SLD approved ACBOE's Year Five application several months later in 2002 and initially indicated that funding under the Year Five grant would be disbursed in March, 2003. RelComm has already provided all of the network maintenance services required by ACBOE's Year Five grant application. Although RelComm has performed all of the network maintenance services for which it contracted with ACBOE, it has not been paid because of ACBOE's refusal to make payment.

20. RelComm has subsequently learned that Year Five funding to ACBOE was cancelled by defendant Martin Friedman at the instruction of defendant Fred Nickels. Because ACBOE cancelled the funding application for hardware it had agreed to purchase from RelComm, RelComm has also been deprived of the profits it would have received from the Year Five contract, which had already been approved by the SLD, and ultimately would have been funded.

21. RelComm was prepared to install the hardware included in ACBOE's Year Five E-Rate program application once the federal funding was released. Despite its obligations to RelComm under the Year Five E-Rate program award, ACBOE advised RelComm early in 2003 that it does not recognize any contractual obligations to RelComm and that it has no intention of paying RelComm any portion of the Year Five application amount, including the amount incurred by RelComm for network maintenance services already provided to ACBOE during Year Five.

22. Furthermore, RelComm also learned recently that MTG received a purchase order from ACBOE (during Year Five) to provide E-Ratable services, despite the fact that (1) there

was no bid announced by ACBOE for these services and (2) these services were part of RelComm's winning and approved Year Five bid.

23. In January 2003, ACBOE's Data Center Manager, Jon Jones, published a Form 470 to the SLD seeking funding for Year Six for network maintenance services. That form was posted on the SLD's website announcing to the public that ACBOE was soliciting bids for those maintenance services. After the required 28 day solicitation period, RelComm was the only bidder. A true and correct copy of ACBOE's Year Six Form 470 is attached hereto as Exhibit H.

24. Jon Jones informed RelComm that it had won the bid for Year Six and he then completed the Form 471 to submit to the SLD for approval of RelComm's bid. After checking with Nickels, however, Jones was informed in a letter from Nickels that he was forbidden from filing the Form 471 and from awarding any contracts to RelComm. Although RelComm saw a copy of this document in the ACBOE document files when it inspected them, that document has not yet been produced to RelComm.

25. In or about October 2002, ACBOE hired defendant Alemar, acting through its president, Martin Friedman, to draft specifications, manage the bid process and recommend a vendor for ACBOE's application for funding in Year Six of the E-Rate program. Alemar was extensively involved in both the bid process and events subsequent to the bid award. Alemar participated in the completion of a second set of Federal Forms 470 and 471 for ACBOE's application for Year Six E-Rate funding.

26. Alemar announced the Year Six bid by completing several Forms 470 and submitting them to the SLD. Alemar submitted a separate Form 470 for every building in the school district, with the exception of the high school building, including two buildings that had not yet been constructed and two that were being torn down, plus a final Form 470 that covered all buildings in the district (but not the high school building). Friedman acknowledged at an

ACBOE meeting that he simply copied the items that had already been approved for Year Five funding to RelComm in completing the Year Six Form 470. A true and correct copy of the minutes of the Board Meeting is attached hereto as Exhibit I.

27. ACBOE, through its agent, Alemar, announced that attendance at an on-site tour of the ACBOE facilities was a mandatory precondition for submitting a bid for Year Six and that only vendors who participated in that tour would be considered *qualified* bidders for ACBOE's Year Six application. See Exhibit K, attached hereto.

28. ACBOE's Forms 470 misled both the SLD and the bidding public by failing to announce the on-site tour of the facilities, which it had announced was required. Form 470 requires that any additional requirement that the school wishes to add to the normal E-Rate requirements must be noted and described on the form, so that it can be evaluated by the SLD. A true and correct copy of each of the Year Six Forms 470 completed by Alemar is attached hereto as Exhibit J.

29. The mandatory tour of ACBOE facilities was conducted on January 24, 2003 by Jon Holt of Informed Resources. There is a long-standing relationship between Alemar and Informed Resources. When Alemar manages an E-Rate program bid for a school, Informed Resources frequently is awarded a contract by that school.

30. Holt told participants in the tour that he was an employee of Alemar, which is not true. Holt failed to disclose to RelComm and the other attendees that his company was a frequent recipient of bid awards when Alemar managed the bid process. Moreover, Holt's company is a frequent competitor of MTG in many E-Rate districts, but in this case Holt did not bid on the contract but instead worked with Alemar to ensure that MTG was the successful bidder. RelComm intends to take discovery on this issue. RelComm videotaped the walk-through.

31. Prior to the walk-through, in an e-mail message, RelComm had requested clarification from Friedman and Alemar as to the scope of the bid request. In an e-mail response, Friedman told Suzanne Zammit, a RelComm employee, that RelComm's questions would be answered at the walk-through. A true and correct copy of the e-mails and attachments exchanged by the parties is attached hereto as Exhibit K. Notwithstanding that promise, no one at the walk-through was able or willing to answer RelComm's questions about the bid specifications.

32. Holt told RelComm what had previously been implied in ACBOE's Forms 470. He stated during the tour that the Atlantic City High School facility was not included within the scope of the Year Six bid solicitation. Holt also told the bidders at the walk-through to bid only on the comprehensive Form 470, not the individual building Forms.

33. Unknown to RelComm at the time, ACBOE and Alemar had conducted a prior secret tour of the High School facility for MTG. Attached hereto as Exhibit L is a true and correct copy of the sign-in sheet from that private tour.

34. MTG's winning bid was the only bid that included the provision of network services to the High School facility. None of the other bidders including RelComm bid on the High School facility because they were told it was not part of the bid. A true and correct copy of MTG's bid is attached hereto as Exhibit M.

35. Holt also reiterated at the tour what ACBOE and Alemar had previously told bidders: that ACBOE was interested only in expansion of its network structure and that the expansion must be compatible with the existing network. The contract awarded to MTG, however, includes \$1.8 million for the purchase of replacement network equipment, including 49 unnecessary servers, which are all meant to replace the existing network, not expand it. See Exhibit M.

36. The contract awarded to MTG also includes \$800,000 to install a video PBX. The video PBX was not contained anywhere in the Form 470 specifications published by ACBOE and Alemar. MTG's bid was the only one that included a video PBX installation. See Exhibit M.

37. In its Fed. R. Civ. P. 26(a)(1) initial disclosures in the federal court litigation, MTG identified and produced a copy of a document entitled "What Every School Wants, a PBVX." That document was originally printed from a website by representatives of RelComm and was given by RelComm to ACBOE in or about September, 2002 in connection with RelComm's proposal to ACBOE for Year Five to install a video PBX system at ACBOE. A true and correct copy of that document is attached hereto as Exhibit N.

38. MTG could only have received Exhibit M from ACBOE as part of the private specifications for the Year Six bid given only to MTG. This document demonstrates that ACBOE provided separate specifications, either directly or through Alemar, to MTG that none of the other bidders including RelComm received.

39. MTG produced two other documents to RelComm in the federal court litigation that prove that MTG was given specifications that were not given to other bidders. MTG produced a document entitled "Network Diagram of ACBOE." This document was actually prepared by RelComm employees and given to ACBOE in or about November, 1999. A true and correct copy of the "Network Diagram of ACBOE" document is attached hereto as Exhibit O.

40. MTG could only have received Exhibit O, which is a flow chart of the then existing data network, from ACBOE either directly or through Alemar. The document was not provided by ACBOE to any other bidder.

41. MTG also produced a document that illustrated a network wiring configuration, which was also created by RelComm employees and given to ACBOE in or about November,

1999. Again, this document, which contains RelComm's analysis for ACBOE in Year Two for additional work that should be done, could only have been given to MTG by ACBOE or Alemar. A true and correct copy of the network wiring diagram is attached hereto as Exhibit P.

42. No other vendor was given a copy of Exhibits N, O or P, and neither RelComm nor any other bidder was told that these documents were included in the specifications for the bid.

43. The MTG bid and the Form 471 submitted to SLD for Year Six funding based on MTG's bid, did not comply with the bid specifications given to RelComm and other bidders on Form 470. Those bid specifications drafted by Alemar and published by ACBOE, were so confusing and ambiguous that the bidders – with the exception of MTG, which had access to a separate set of specifications – did not know what was included in the bid.

44. The bids submitted in response to the Year Six Form 470 ranged from approximately \$200,000 to \$3.6 million, a variation of 1800%. MTG's winning bid was the highest at \$3.6 million. The next highest bid was less than half that amount at \$1.4 million. See Exhibit Q attached hereto. No public bid opening was conducted; instead, ACBOE representatives Donna Haye, Fred Nickels, Marilyn Cohen and Martin Friedman went into a room, without any bidders present, and opened the bids. These procedures violate New Jersey's public bidding statutes.

45. The \$1.4 million bid was disqualified by Alemar purportedly because it contained items that did not qualify for E-Rate program funding -- a defect that did not seem to bother ACBOE or Alemar with respect to MTG's successful bid, which also contained \$300-400,000 of non-E-Ratable items.

46. Alemar has previously acted as the bid manager for other school districts in the Commonwealth of Pennsylvania and in New Jersey. In every instance in which Alemar has