

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of	:	
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Comprehensive Review of Universal Service Fund Management, Administration and Oversight	:	WC Docket No. 05-195
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	:	
Federal-State Joint Board on Universal Service	:	CC Docket No. 96-45
	:	
Schools and Libraries Universal Service Support Mechanism	:	CC Docket No. 02-6
	:	
	:	
Rural Health Care Support Mechanism	:	WC Docket No. 02-60
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Lifeline and Link-Up	:	WC Docket No. 03-109
	:	
	:	
Changes to the Board of Directors for the National Exchange Carrier Association, Inc.	:	CC Docket No. 97-21

Initial Comments from Greg Weisiger

Introduction

As an individual directly involved in the E-Rate program, am pleased to provide comments to the Federal Communications Commission (FCC) in response to the FCC's Comprehensive Review of the Universal Service Mechanisms and the Universal Service Administrative Company (Administrator). I represent E-Rate applicants and service providers in the Commonwealth of Virginia in an official capacity and applicants nationally as a consultant. Since the inception of the E-Rate program, commonwealth

schools have generally benefited immensely from the E-Rate program. Discounts from the program reduce connectivity costs across the state for schools and libraries by approximately \$20 million annually.

On average, 97 percent of school divisions apply for funding, according to Administrator records. Of the three percent that are not listed on Administrator records, half either miss filing deadlines or have applications rejected. Each year, approximately 20 percent of funding requests are denied and another 20 percent of committed funding goes unused. For example, in Fund Year 2003, Virginia schools and libraries applied for \$39 million in E-Rate discounts but received \$32 million funding commitments. By the deadline to claim funds, only \$25 million ultimately went back to applicants. It is not known how many applications were lost by the Administrator or rejected for failure to meet minimum processing standards.¹

Broadband Success in the Commonwealth

Broadband digital communications links are vital to the efficient operation of Virginia schools. This year, over 1 million Standards of Learning assessments will be administered online. Electronic administration of required assessments speeds evaluation and grade reporting, allowing schools to schedule tests close to the end of the school year, giving teachers more instructional time. Online assessments allow students that do not achieve a passing score to immediately retake the assessment or review material before re-taking the exam. This rapid evaluation response is

¹ Download of the Data Retrieval Tool from Administrator's Web site on October 14, 2005

particularly beneficial to high school seniors who have not passed assessments required for graduation.

Every school division uses online remediation tutorials to assist struggling students and reduce dropout rates. Thousands of students across the state are able to simultaneously engage in remedial tutorials that identify student weakness and target lessons to specific academic needs. These tutorials would not be possible without reliable broadband connections.

Distance learning is delivered to and within every commonwealth school division using one and two-way video, internet, fiber optic, and other connections. Schools rely on distance learning to provide instruction to students, increase the number of available courses, provide students with additional choices, and allow disruptive students the opportunity to continue receiving instruction.

School divisions have universally implemented electronic student management and administrative systems. These administrative tools speed reports mandated by the federal No Child Left Behind Act and give local administrators real-time data on student, teacher, and school performance.

Many schools are utilizing streaming video technology that allow teachers to instantly access thousands of Standards of Learning (SOL) based videos online. Teachers can electronically search the video library for clips covering a specific SOL requirement such as “explorers” under the third grade Standards of Learning. The teacher is provided with dozens of choices

on explorers from Columbus to Magellan. After selecting the appropriate videos, the teacher simply clicks a mouse during class and the video is played on the overhead projector installed in the classroom.

These evolving services require increased bandwidth. Even with E-Rate funding, many schools have insufficient bandwidth to support all online services simultaneously. Consequently, during the online assessment windows, some network administrators will curtail video streaming and distance learning activities. Minimum acceptable bandwidth per school has increased from 1.5 Mb/s, or “T1” several years ago to 10 Mb/s or more today. Additionally, because high-stakes SOL assessments are delivered online, it is imperative that connections are reliable at or in excess of 99.9 percent of the time.

Administration and Structure of the Program

The Commission poses several questions regarding administration and structure of the E-Rate program. Specifically, the Commission asks commentors to discuss the performance of the Administrator. The Commission also requests comment on the Commission’s management and oversight of the program, whether the Administrator has performed in an efficient and effective manner, and whether additional rules are needed to

provide clarity of the Administrator's functions. The Commission asks if the Administrator should be replaced entirely.

The Administrator, the not-for-profit Universal Service Administrative Company, was established by Commission Order. With the establishing order, the Commission gave little specific guidance for complete implementation of the program. While many Commission regulations were ambiguous, regulations were clear that the Administrator could not make policy or interpret unclear Commission rules.

In the void of clear regulation and the inability of the Administrator to affect policy or interpret ambiguous Commission regulation, a great many applicants and vendors engaged in what is now considered wasteful or abusive practices with E-Rate eligible products and services. Indeed, in a 2003 video interview between DOE and an Administrator official, the question of excessive services was raised. The official stated that if the Administrator detected what may be considered excessive services, they would compare the requested services with the applicant's Technology Plan. If the plan supported the requested services, the Administrator would likely fund the request. It was not until the Fifth Order on Reconsideration issued in October 2004 that the Commission finally directed the Administrator to evaluate applications on the basis of "economic reasonableness." The same order offered no guidance to the Administrator or to the applicant community

what the Commission considered “economically reasonable” when evaluating or applying for services.

Commission regulations and decisions on appeal have been generally reactionary in nature, responding to real or perceived problems with the program. Unfortunately, this incremental regulation complicates the program immensely. Applicants believing they are complying with program rules – because “that is the way it worked last year,” find themselves under intense scrutiny or completely denied funding the following year. Further, when audited, applicants may be evaluated on current regulations or policies rather than the regulations or policies in force at the time services were rendered.

I respectfully submit that the program is fundamentally flawed as currently operated. The Commission is a regulatory rather than an administrative body. Establishing regulations forbidding the Administrator from creating policy or interpreting unclear directives has stifled the decision making process and has exacerbated instances of waste, fraud, and abuse. Even today, significant policy questions before the Commission in the form of appeals languish for years in Commission bureaucracy while the Administrator continues to act in an information vacuum. The incremental approach used to date has complicated the program, driven applicants away, and lead to unintentional violations of Commission rules.

The Administrator contracted with BeringPoint to conduct 1000 annual Site Visits to thoroughly review a single Funding Request at each site. BearingPoint gave its first report to the Administrator and Board of Directors in April 2005. The report stated that half of the applicants reviewed had “potential rule violations” with half of those (twenty five percent of the total) having potentially severe rule violations requiring additional investigation with consequences including recovery of funds. While the program has had isolated instances of waste, fraud, and abuse, it has been my experience that the vast majority of program rule violations result not from willful acts, but of confusion over program expectations. Again, the incremental regulatory approach is fundamentally flawed.

Lack of management guidance or accountability for the Administrator from the Commission has resulted in an inefficiently run organization. In my testimony before the Commission in Commissioner Abernathy’s Waste, Fraud, and Abuse Forum on May 8, 2003, I asked that the Administrator establish “Continuity” of application reviewers. Applicants have seen no improvement in the review process during the ensuing two application review cycles. It appears the Administrator continues to rely on temporary workers for initial review, It appears there continues to be a great deal of personnel turnover during review season, and it continues to appear that reviewers generally lack a basic understanding of technology or school and library practices.

Further, and leading to inefficiency and waste, when an application reviewer terminates employment with the Administrator, all files and supporting documentation under review appear to vanish in thin air. When a new reviewer enters the scene, applicants are required to re-submit all documents. In some cases, the same documents must be submitted three or four times. Clearly, the Administrator lacks an effective mechanism for ensuring continuity. Sadly, some applicants have been denied funding because the Administrator alleges it never received requested information. However, even when the applicant can prove a fax was sent or letter mailed, the Administrator insists that proof of mailing does not equal proof of receipt. It appears the Commission is oblivious to these gross inefficiencies. I refresh the record here with my testimony in the May 8, 2003 Waste, Fraud, and Abuse testimony.

I believe these fundamental flaws may be overcome with open and continuous dialogue between the Administrator, the Commission and massive overhaul of Commission regulations and Administrator management structure. It is abundantly clear that direct communication between the Administrator and Commission has broken down and replaced with reports and Orders and volleys of denied appeals by the Administrator and reversals lobbed back from the Commission. Applicants should not be placed in this untenable position, when simple conversation between the regulator and

Administrator could resolve ambiguities and strengthen the management system.

Should the Administrator be Replaced

The Commission asks if the Administrator should be replaced with another entity. While I am generally dissatisfied with the performance of the Administrator, I do not call for replacement of the Administrator at this time. I do call for the Commission to hold the Administrator and Administrator contractors accountable for improper advice, incompetence, and general failure to properly and efficiently administer the program.

There is absolutely no question that the Administrator fails to operate the program in an effective or efficient manner. While absolute administrative costs in dollar terms are low when compared to the funding cap, I note that the Administrator has failed in each year to issue funding commitment letters for even half of submitted applications by the beginning of the fund year. The cost of delayed commitment letters to applicants and vendors far exceeds Administrator savings by understaffing the application review department.

The Administrator continues to make an unacceptable number of improper funding denials, continues to give bad advice on the customer service telephone line, implements online filing systems with major flaws, and improperly withholds payments on previously funded applications through the Invoice Review Team. Numerous commetors throughout the

years have itemized specific problems with Administrator customer service and application review shortcomings. I offer several examples with these comments.

During the Year 2004 application review period, six Virginia applicants were denied funding because a single Administrator reviewer improperly determined that the statewide contract used by the applicants was invalid for E-Rate. The denials were reversed on appeal soon after. In the first wave of Year 2005, another Virginia applicant was denied funding for the same contract for the same reason. It should be noted that one of the applicants from Year 2004 successful appeal has not received a funding commitment letter from because the application was misplaced by the Administrator. Calls and correspondence to the Administrator during the spring and summer of 2005 went unanswered. There are several appeals now before the Commission detailing horrific problems with Administrator customer service and basic application processing problems.

The online Year 2005 Form 471 application contained a flaw that jeopardized the certification of applications. Applicants that used previously filed Block 4 of the Form 471 to simplify the discount calculation process AND used a certain Internet browser, the application number printed on the Form 471 certification page would be the application number of the Form 471 from the Block 4 the applicant loaded into the new application. Thus, when the applicant submitted the certification page, it was for the wrong

application! The Administrator would reject the application for failure to submit a proper certification.

Finally, and most disturbing, the Administrator has increased staff at invoice review. Numerous applicants and vendors have been denied payment on invoices submitted to the Administrator. The intent is to reduce improper payments where the vendor or applicant has violated program rules.

However, as noted earlier, based on the initial BearingPoint visits, half of all funding requests have potential problems. Depending on how stringently the Invoice Review Team reviews invoices, potentially thousands of invoices and hundreds of millions of dollars could be denied. The Commission recently overturned a denied invoice for a vendor of Roosevelt Elementary School District Number 66 in Phoenix, Arizona. The vendor submitted an invoice for \$1.2 million representing 90 percent of the job total. The Administrator denied the initial appeal. Over a year after the original invoice was submitted to the Administrator, the Commission reversed the denial on appeal.² The Commission must instruct the Administrator to carefully evaluate the severity of program rule violations before denying invoices and provide guidance in this area. I suggest that Commission staff review all invoice denials before being issued by the Administrator.

² Request for Review by Roosevelt Elementary School District Number 66, Phoenix, Arizona, DA 05-2177, Released July 27, 2005.

If the Administrator is to be retained, the Commission must establish performance measures and consequences for failing to perform its duties accurately. The measure should include a customer service component.

Delays, should deadlines be created for USAC and FCC action

Without question, deadlines for performance should be established for both the Administrator and the Commission. I note that regulatory deadlines currently in place, such as 90 day appeal review, are routinely ignored without consequence. Discount applications should be reviewed by the Administrator and funding commitments issued by July 1 of the fund year. Applicants, particularly the highest discount applicants, who cannot afford to pay full price for services face the possibility of disconnecting or never initiating broadband connections if a commitment is not received by July 1. This program, like the high-cost and low-income programs, is geared to ensure all schools and libraries are able to access affordable telecommunications and advanced services. Extended delays during application review jeopardize continuous connection and are counter to the goals the Telecommunications Act. It is my position that all Priority One applications must be reviewed by the Administrator and funding commitments issued prior to July 1 of the fund year. The only exception would be applications undergoing Selective Review or applicants previously denied funding for significant rule violations. Contracts with Administrator

sub-contractors should stipulate monetary consequences for failure to meet this deadline.

Appeals before the Commission are required to be ruled on within 180 days of filing with the Commission.³ Almost without exception, appeal deadlines are extended by the Wireline Competition Bureau. Once extended, appeals can remain unresolved for years. I am concerned that the Commission has not established sufficient resources to review appeals in a timely fashion. I note that very few E-Rate appeal decisions have been issued this calendar year while hundreds of “slamming” cases have been resolved. I also note that slamming cases are typically resolved within one year.

Further, I am very concerned that the Commission appears to be selective in its reviews, reviewing some appeals ahead of others. For example, the Maine State Library submitted an appeal on January 17, 2003 which was resolved in an Order dated October 7, 2003.⁴ The West Virginia Department of Education submitted a Request for Waiver on February 25, 2005 and the Commission rendered a decision on July 27, 2005.⁵ Finally, Roosevelt Elementary School District Number 66 in Phoenix, Arizona received a

³ Code of Federal Regulations Title 47, Part 54, Section 54.724: (a) The Wireline Competition Bureau shall, within ninety (90) days, take action in response to a request for review of an Administrator decision that is properly before it. The Wireline Competition Bureau may extend the time period for taking action on a request for review of an Administrator decision for a period of up to ninety days.

⁴ Decision in the Request for Review by Maine State Library, Augusta, Maine, DA 03-3104, Released October 7, 2003.

⁵ Decision in the Request for Waiver by the West Virginia Department of Education, Charleston, West Virginia, DA 05-2179, Released July 27, 2005.

relatively lightning-fast decision of its April 21, 2005 appeal when the Commission issued a decision on July 27, 2005 – almost within the 90 day review deadline.⁶ Worthy appeals from hundreds of other applicants remain locked at the Commission for years. At least six appeals from Virginia applicants have been before the Commission for over two years.

The Commission established regulations governing the E-Rate program. The Commission, in accordance with established Commission practice, afforded E-Rate beneficiaries the right to plead cases before the Commission. It is the practice of the Commission to resolve requests for review within 90 days or less. The reality for most Commission Divisions is that most requests are not resolved within 90 days. However, E-Rate appeals remaining unresolved for two or three years is simply unconscionable. The Commission must devote sufficient resources to reduce the appeal backlog to 180 days or less. If an appeal has not been resolved within 180 days, I ask that the appeal be granted.

Formula approach. Should rules be changed to use a formula to distribute funds

The Commission opens the question of a potential radical approach to funding beneficiaries of the E-Rate program in the form of a formula of some nature. I agree that a formula should be used to distribute funding for Priority Two services but oppose a formula approach for Priority One. I

⁶ Request for Review by Roosevelt Elementary School District Number 66, Phoenix, Arizona, DA 05-2177, Released July 27, 2005.

suggest the Commission consider Priority One proposals submitted in response to this NPRM to streamline the application process, consider multi-year funding, or grant expedited review for small funding requests.

Priority One Funding

Funding for Priority One service – Telecommunications and Internet – should follow a simplified application method suggested by other commentors. It has been well established by experience, the Waste, Fraud, and Abuse Taskforce, the Invoice Review Team, and numerous commentors over several years that there is very little waste, fraud, or abuse of the program resources in the Priority One category of service.

Priority Two Formula

On the other hand, cases of Waste, Fraud, and Abuse in Priority Two services have generally surfaced in the form of highly inflated charges and requests for excessive services for applicants at the 90 percent discount level. I and others have repeatedly asked the Commission to reduce the discount rate for Internal connections to a cap of 70 percent. I reiterate that request here. Funding commitments for Priority Two services should be based strictly on a formula approach. I propose that once Priority One demand is established, funding for Priority Two services be distributed as follows: From the funds remaining from Priority One to the funding cap and including carryover funds, every school instructional facility and library building serving patrons shall receive the base sum of \$2,000. If funds are insufficient

to provide each entity with \$2,000, the available funds shall be divided equally between all entities. If additional funds are available beyond the base, remaining funding shall be distributed to each entity according to its weighted discount average expressed as a percentage of the aggregate and multiplied by the remaining funds. Library funding shall be the weighted average multiplied by a factor of .10 (ten percent). The calculation shall be as follows: Each applicant has a “weighted average” number that is the product of the number of students and the discount percentage. For this formula, the weighted average for libraries shall be ten percent of the calculated weighted average. The Administrator shall sum all weighted averages for schools and libraries. This number shall be the denominator. The numerator shall be the weighted average for each school and one tenth the weighted average for each library. The resulting number is the percentage of total available Priority Two funds to be made available to the school or library.

After performing this calculation, the Administrator shall issue a funding commitment letter for internal connections to all eligible entities. It is anticipated that funding commitments for internal connections will be made in May or June preceding the start of the fund year. Applicants receiving internal connection funding commitments may initiate a competitive procurement either before or after receipt of the funding commitment letter, in accordance with established competitive bidding requirements for the E-Rate program. Applicants may procure internal

connection equipment and installation at a schedule most convenient to the applicant. For example, new construction may be contracted long before the funding year, while retrofitting or equipment replacement may be procured after the start of the fund year.

The Administrator shall expand the Eligible Products Database to include the widest possible array of eligible equipment, including cable, conduit, jacks, and other equipment potentially eligible for E-Rate funding. Through the Eligible Products Database, applicants will know with relative confidence the percent of eligibility for specific equipment. Installation charges for eligible equipment will also be eligible for funding. All other regulations pertaining to installation of internal connection equipment shall remain in force. Applicants must retain records of technology plan approval, procurement, installation, and payment of non-discounted share for audit and review purposes. The Two-in-Five internal connection funding regulation must be rescinded.

Because funding is directed at the school and library branch level, the administrative authority for those entities may allocate funding in a given year to target one location over another. For example, a school division with five schools may receive division-wide internal connection funding commitments of \$55,000 (five schools times \$2,000 each, plus the weighted average percentage of remaining funds for each school). The school division may need to replace switches at the middle school, which is a 50 percent

discount school. The school board, as governing authority over the five schools, may use the division aggregate commitment to fund E-Rate eligible equipment and installation at the middle school. If the total installation exceeds \$110,000, the school division or the contractor may submit an invoice to the Administrator for the entire \$55,000. If the total installation is less than \$110,000, the contractor or school may submit an invoice for fifty percent of the total. Equipment installed at the middle school must remain at the middle school for at least three years and may never be sold for anything of value. The equipment must also be used exclusively for eligible services. The Administrator will be required to revise forms and instructions to the Form 486, SPAC, and BEAR forms to account for this approach. Funding will be tracked by Funding Request Number, rather than a Form 471 number, as no Form 471 was used to generate the filing. Also, applicants that choose to aggregate funding will need a mechanism to report this aggregation.

Using this approach, applicants will not be forced to enter into internal connection contracts six months prior to the fund year on the speculation that sufficient E-Rate funds will be available for the project. Based on program history, applicants typically will not know if they are funded for internal connections until spring of the funding year – over a year after contracts for service have been signed. Applicants choosing to begin the procurement process earlier for projects such as new construction may do so. Applicants may also choose to wait until a funding commitment arrives

before entering into competitive bids. Finally, the applicant discount for Internal connections shall be no more than 70 percent, based on previously proposed discount matrix reforms. Applicants must pay at least 30 percent of the total eligible cost.

Should the administrator publish “Best Practices” 90, 97

Without question, the Administrator should publish Best Practices documents. Such documents should include technology plans, Form 470 filings, examples of RFPs, Item 21 attachments, Local Area Network design, Wide Area Network design, equipment maintenance, staff training, and budgeting. In addition to the best practices documents listed here, the Administrator must publish a document specifying what the Administrator considers “economically reasonable” funding requests. Not only should the Administrator publish best practices documents in these areas, as described below, the Administrator must make evaluation criteria available to the public so applicants will know exactly what is expected when applying for discounts.

Item 25 Review

Applicants are required to swear to a number of certifications when submitting E-Rate forms to the Administrator. One such certification on the Form 471 is Item 25, where applicants certify that they have secured all

resources to pay the non-discounted portion of E-Rate funding requests and other expenses to make effective use of discounted services.⁷

The Item 25 Selective Review was instituted in reaction to revelations that some applicants did not pay the non-discounted portion of requested services or requested excessive products or services that could not be supported using local or state funds. The FCC determined that if an applicant failed an Item 25 review, all funding requests for the applicant in the Item 25 review year would be denied – thus linking all requests to the applicants’ ability to pay the non-discounted portion and providing sufficient other resources to make “effective use of discounted services.” The only exception to linking denials is “basic” telephone local and long distance service.⁸ Neither the Commission nor the Administrator have issued guidelines detailing acceptable minimum levels of support required by the Item 25 Certification, beyond sufficient budget to pay the actual non-discounted portion of requested services.

What constitutes “sufficient” support would vary widely depending on the services ordered, the level of baseline infrastructure, the existing knowledge of staff, source of training or support, and a myriad of other factors. Some items, such as PBX’s require virtually no additional support

⁷ Form 471 Item 25 certification language: “The entities listed on this application have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections, necessary to make effective use of the services purchased, as well as to pay the discounted charges for eligible services from funds to which access has been secured in the current funding year. I certify the Billed Entity will pay its non-discount portion of the cost of the goods and services to the service provider(s).”

⁸ Request for Review by United Talmudical Academy CC Dockets no 96-45 and 97-21, 2000

beyond payment of the non-discounted portion of funding requests, as a new phone system would not require staff training or technical expertise. A significant portion of funding requests here under appeal are for PBX's installed at each school.

E-Rate discounted maintenance service on eligible equipment would actually mitigate applicants' Item 25 compliance requirements, as the applicant could reduce personnel and training costs because local support would be replaced with contracted support provided at discounts. The applicant would be required to pay non-discounted charges, but would need absolutely no additional local support for maintenance contracts. The Commission has not established regulations outlining non-discount support requirements. Again, Wireline Competition Bureau Orders under Delegated Authority and Commission Orders have not addressed specific definitions or criteria that would constitute sufficient non-discount support, beyond the actual non-discounted monetary amount.

The Administrator has improperly established secret criteria for evaluating Item 25 reviews. The Administrator rationalizes this decision based on the incorrect assumption that publication of such information would encourage additional waste, fraud, or abuse of the E-Rate program, assuming applicants would parrot recommended non-discount support levels set by the Administrator. Contrary to the Administrator's stance, applicants would benefit immeasurably from public disclosure of a rubric outlining sufficient

support for requested services. Armed with such knowledge, applicants with limited technology knowledge would be able to better prepare technology plans, design efficient networks, provide training for employees, and provide adequate staffing for varying levels of technology. As currently implemented, 30,000 applicants are essentially planning and implementing programs in a vacuum of advice by the Administrator.

Further, establishment of minimum levels for support must be opened for public comment and evaluation before being used by the Administrator for evaluation. The Administrator may or may not be qualified to determine what is or is not sufficient for support. Administrator qualifications and internal training practices have been called into question by many E-Rate experts and the Commission routinely overturns Administrator decisions. Until Administrator evaluation criteria is opened for public debate, the Commission cannot uphold Administrator funding denials based on failed Item 25 reviews – beyond support for the actual non-discount funding amount. To the extent the Administrator has determined applicants have not documented support for requested services, the Commission must overturn the decision, whether provided during the initial Item 25 response or the Appeal to the Administrator. The only allowable evaluation for an Item 25 review must be the applicant's showing of ability to pay the non-discounted portion of requested services. The Commission must publish Item

25 review criteria and review public comment as is currently done with the Eligible Services List.

Conclusion

I recognize that E-Rate discounts to schools and libraries is vital to help ensure all students, teachers, and library patrons have access to telecommunications and advanced services in accordance with the Telecommunications Act of 1996. I ask the Commission to open lines of communication with the Administrator and review proposed invoice adjustments or denials. I ask the Commission to establish a formula for issuance of Priority Two funding commitments. I ask the Commission to consider replacement of the Administrator and urge the Commission to require the Administrator to be accountable for its decisions. I ask the Commission to require the Administrator to issue funding commitment letters no later than July 1 of the fund year. I ask the Commission to review appeals within 180 days, as required by liberalized Commission rules. Finally, I ask that the Commission require far more disclosure of Administrator policies and practice.

Respectfully submitted this 18th day of October, 2005

Greg Weisiger

14504 Bent Creek Court

Midlothian, VA 23112

(804) 692-0335