

J. PHILIP KIRCHNER, ESQUIRE
Member of NJ & PA Bar
Direct Dial (856) 661-2268
E-Mail: phil.kirchner@flastergreenberg.com
PLEASE RESPOND TO CHERRY HILL

DOCKET FILE COPY ORIGINAL

March 29, 2006

Via Certified Mail, Return Receipt Requested

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**

**IN THE MATTER OF REQUEST FOR REVIEW BY RELCOMM, INC. OF
DECISION OF UNIVERSAL SERVICE ADMINISTRATOR
CC Docket No. 02-6
SLD decisions 1185824, 1185996, 1185946, 1185717, 1185789 and 1185745
Year Seven E-Rate decisions dated January 11, 2005
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 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. At the same time, RelComm also appeals as an aggrieved party from the decision of the SLD dated January 11, 2005, granting funding request numbers 1185824, 1185996, 1185946, 1185717, 1185789 and 1185745. This appeal is based

no. of Copies rec'd 0

list ABCDE

upon 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 and Year Seven.¹

RelComm originally requested a review of the above Year Six funding decisions in a Request for Review filed with this office on August 6, 2004. RelCom later requested review of the Year Seven funding decisions in a Request for Review filed with this office on February 26, 2005. At the time of filing of its original Requests for Review, RelComm was pursuing private civil litigation against ACBOE, Alemar, Friedman, MTG and others in the Superior Court of New Jersey, Law Division, Atlantic County, under docket number ATL-L-477-04. As part of the settlement of that lawsuit (the "Settlement"), which became effective on September 28, 2005, upon the adoption by ACBOE of a formal resolution approving it, RelComm agreed to file a request with the FCC that its Requests for Review for Year Six and Year Seven be withdrawn. In keeping with its obligations under the Settlement, RelComm requested in a letter to this office dated October 20, 2005 that its Requests for Review be withdrawn. In an Order dated February 1, 2006, the FCC granted RelComm's request and dismissed the Requests for Review *without prejudice*.

Since the withdrawal of its original Requests for Review, RelComm has learned that ACBOE has initiated its own private investigation of the very same conduct that formed the basis of both of RelComm's Requests for Review and its lawsuit against ACBOE and the other defendants. On February 7, 2006, at its regularly scheduled meeting, ACBOE voted to retain an independent investigator "to

¹ The specific facts upon which RelComm bases its Request for Review are set forth in earlier Requests for Review filed by RelComm in connection with these same funding decisions. See RelComm's Request for Review of Year Six funding decisions dated August 6, 2004; RelComm's Request for Review of Year Seven funding decisions dated February 26, 2005.

investigate the terms and conditions of the year six e-rate proposals submitted to the federal government for the elementary schools of the City of Atlantic City.” *See* Resolution No. 06 2A 46 of the Atlantic City Board of Education passed at its February 7, 2006 meeting (a true and correct copy of that Resolution is attached hereto as Exhibit A). The Resolution further recites that “significant issues have been raised with regard to the integrity of the year six e-rate program by several persons....”

One of the factual predicates cited in the Resolution of February 7, 2006 as support for the decision to investigate the Year Six E-Rate decisions is an offer on behalf of ACBOE to indemnify the FCC in exchange for a release of the Year Six funds awarded to ACBOE. That offer was conveyed in a letter to the FCC from ACBOE’s counsel, Michael J. Blee, Esquire, dated January 6, 2005, in response to RelComm’s original Request for Review of ACBOE’s Year 6 E-Rate awards. In reference to this incident, the Resolution states that “the Board of Education has been advised during the course of said litigation [with RelComm] the school offered to indemnify the Federal Government and perhaps others against any irregularities with regard to the e-rate program.” *See* Exhibit A. It appears from the language used in that part of the Resolution that the School Board was unaware of the indemnification offer until just recently and that it had not approved the offer at the time it was made to the FCC.

The Resolution makes clear that the school board itself was not aware of the actions taken by its agents in connection with the Year Six E-Rate program bid awards, and, now that it has learned about those actions, it is concerned enough to request its own investigation of those incidents. In light of these new developments, it is imperative that the FCC not release those Year Six funds to ACBOE until it has had an opportunity to conduct its own investigation. At the same time, although ACBOE has not yet launched an investigation of the Year Seven E-Rate program activities, because the factual pattern that occurred in Year Seven is so similar to that of Year Six, the FCC should also freeze the Year Seven

ACBOE award until it has conducted its own investigation of that year. For these reasons, RelComm again requests that the above Year Six and Year Seven funding decisions be reviewed.²

RelComm believes that ACBOE would not have committed \$25,000 of its own money to investigate its Year 6 E-Rate program bid awards -- which were run by Alemar and its principal, Martin Friedman, as consultants to ACBOE -- unless it had become aware of significant irregularities. The FCC should, in turn, conduct its own review of the facts and circumstances of ACBOE's Year Six bid awards, along with the Year Seven bid awards, including an investigation of the facts laid out by RelComm in its original Requests for Review, which are incorporated herein by reference, and upon which RelComm relies in support of this new Request for Review.

RelComm believes that Alemar, Friedman, MTG and agents of ACBOE violated specific SLD regulations and FCC orders in procuring the funding commitments for Years Six and Seven. If any such violations did, in fact, occur, RelComm requests (1) a reversal of the SLD's Year Six and Year Seven funding awards to ACBOE and (2) suspension or debarment of the offending persons and entities from further participation in the E-Rate program. Pending a full and complete review of the decisions by the SLD to fund ACBOE's Year Six and Year Seven E-Rate funding applications, the above funding decisions should be stayed.

The bases for RelComm's belief that SLD regulations and FCC orders have been violated are the decision of ACBOE to order its own investigation and the facts set forth in RelComm's original Requests for Review of ACBOE's Year Six and Year Seven funding awards. Because it believes that the FCC still has its original Requests for Review in its file, RelComm has not resubmitted with this Request for

² Although the ACBOE investigation appears, by the terms of the Resolution, to be limited to the Year Six E-Rate bid awards, RelComm alleged in its complaint against ACBOE and the other defendants that they engaged in the very same illegal behavior with regard to the Year Seven E-Rate bid awards. For that reason, RelComm requests review of both years' funding decisions.

March 29, 2006

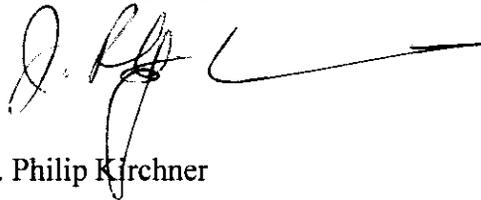
Page 5

Review either of its original Requests for Review, any of the exhibits filed with its original Requests for Review or the Affidavit of its president, Michael Shea, which was filed with the original Year Six Request for Review. If that is not the case, and the FCC would like RelComm to resubmit any of those materials, please let me know, and RelComm will be happy to resubmit them.

Finally, if permitted by FCC procedure and regulation, RelComm requests an ex parte meeting with FCC staff to explain in more detail the facts upon which this Request for Review is based.

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

JPK/kd

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)

ATLANTIC CITY BOARD OF EDUCATION
Regular Meeting
February 7, 2006 - 6:00pm

Approved
Subcommittee for
Year 6 e-rate

Resolution No. 06 2A 46: On a motion made by Ms. Jones and seconded by Ms. Davies-Khan, the Atlantic City Board of Education voted to approve the following resolution: At the call of the roll, the vote is as follows: Mr. Bonanni-abstain; Ms. Callaway-yes; Ms. Davies-Khan-yes; Mr. Davis-abstain; Mr. Devlin-no; Mr. Dollard-no; Ms. Jones-yes; Mrs. Kelly-abstain; Ms. LaPorte-yes; Mrs. Salway-yes, Mr. Stewart-yes. Of eleven members present, six voted in the affirmative, two in the negative, three abstained. The motion carried.

Whereas the year six federal elementary school e-rate program resulted in litigation between one of the vendors and the Board of Education and;

Whereas the Board of Education ultimately settled such litigation for the sum of approximately \$1,600,000 and;

Whereas the Board of Education has been advised during the course of said litigation the school offered to indemnify the Federal Government and perhaps others against any irregularities with regard to the e-rate program and;

Whereas the Board of Education has not yet received any e-rate monies from the federal government with regard to year six elementary schools and;

Whereas significant issues have been raised with regard to the integrity of the year six e-rate program by several persons and;

Now Therefore Be It Resolved that the Board of Education hereby authorizes the sum of \$25,000 to be utilized solely to retain an independent professional to investigate the terms and conditions of the year six e-rate proposals submitted to the federal government for the elementary schools of the City of Atlantic City and;

Be It Further Resolved that the Board of Education hereby creates a sub-committee consisting of two board members to contact and retain such independent investigation and;

Be It Further Resolved that the Board of Education hereby authorizes and empowers the Assistant Superintendent Mr. Melvin Clarke to work with the committee exclusively to investigate persons or entities who may provide such investigative services and to cooperate with the investigation and;

Be It Further Resolved that all employees of the Board of Education shall cooperate with such investigation and;

Be It Further Resolved that such person shall report back to the Board of Education no later than three (3) months from the date of this resolution.