

Before the  
**Federal Communications Commission**  
Washington, DC 20554

In the matter of:

Comment Sought on Integrity  
Communications, LTD. Petition  
for Reconsideration and United States  
Telecom Association Petition for  
Clarification, or in the Alternative,  
Partial Reconsideration of the  
Wireline Competition Bureau's Order  
Denying Integrity Communications' Request  
for Review of a Decision of the  
Universal Administrative Review Company

CC Docket No. 02-6

**COMMENTS OF ENA (Education Networks of America, Inc./ENA Services, LLC)**

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Dated: November 19, 2009

ENA, consisting of Education Networks of America, Inc. and ENA Services, LLC, is a significant provider of Internet Access and Telecommunications Services through the E-Rate program. ENA has been involved in the program since its initial filing year in 1998 and has extensive experience with schools, libraries and large consortium filings.

ENA appreciates the opportunity to comment on the matters raised by this NPRM. While ENA cannot provide any information related to the factual matters raised by the Integrity case, ENA believes that USAC/SLD processes and procedures highlighted in this case deserve additional evaluation by the FCC. As apparent from an outside perspective in the Integrity matter, many dispute situations between USAC/SLD and service providers seem to escalate to higher levels and longer delays without a discussion of the matter between USAC/SLD and the service provider to try to resolve the concerns. We believe such processes inserted into the USAC/SLD methodology could lead to quicker resolution of many matters and allow the SLD to focus on matters that truly rise to fraud, waste and abuse.

Many times service providers ask the SLD for information on why they are subject to special procedures or why there are extra processing delays. The standard SLD response seems to be silence or indication that information cannot be shared. Service providers desire the opportunity to assist the SLD in resolving issues and are denied that opportunity in many cases. We believe such methods are detrimental to the program and lead to service providers refusing to participate in the E-Rate program. Service providers desire and deserve a voice in these matters.

Specifically, ENA has experienced and believes other service providers have experienced situations where the SLD subjects the service provider and their FRNs and invoices to heightened scrutiny

without any opportunity for the service provider to respond to SLD concerns, no matter the source of those concerns. It is possible that SLD does reach out to service providers in some situations, but it appears that such outreach is inconsistent. While ENA respects the role of the SLD to prevent fraud, waste and abuse, ENA asserts that the program could be improved and become more efficient if clear guidance regarding due process and transparency related to vendors was developed by the FCC including requirements to allow vendor input to the resolution process for most issues.

ENA recommends that the FCC consider the following actions:

1. Develop standards and timelines to guide SLD in disclosure to vendors and allowance for vendor input in the event that a vendor is selected for heightened scrutiny.
  - a. Such standards would not apply if the service provider issue was covered by the Principles for Entities Under Investigation (the Principles); however, even in those circumstances, the service provider should receive notification from the SLD that the service provider's FRNs and invoices are being treated under the Principles including which section of those Principles are applicable to the service provider.
    - i. Such notification should include a statement indicating which FCC rule governs the SLD's decision to provide no further information and that this determination has been made in compliance with due process procedures that are applied to federal agencies.
    - ii. The FCC should evaluate their current rules to guide the SLD on how to implement such a procedure consistently.

- b. These standards should include requirement for the SLD to disclose to the service provider what steps are required to be removed from heightened scrutiny procedures and the applicable time frame for such steps.
  - c. These actions from the SLD should create an ability to appeal the SLD's actions to the FCC, if desired.
- 2. For audit situations, ENA supports the comments of the USTA. Specifically, ENA asserts that a service provider should be given an opportunity to review any evidence of a violation discovered during a beneficiary audit and have the same opportunity as the beneficiary to interact with the auditor and USAC and to refute the finding. We further believe that the SLD is correct that it must pursue evidence of vendor non-compliance, wherever discovered, but we assert that the vendor deserves the right to review any evidence and respond to any such findings.
- 3. The FCC should require the SLD to provide at least quarterly reports updating the status of each service provider under heightened scrutiny and the steps underway to attempt to correct the concerns causing the need for heightened scrutiny. Such reporting should be provided to both the FCC and the service provider to provide clear communication and evidence of timely efforts by the SLD.
  - a. We recognize that criminal investigations may require the SLD not to provide complete details; however, the FCC should provide specific guidance in consultation with Department of Justice regarding when such disclosure is required by law to be limited. Otherwise, information should be provided.
    - i. Speculation, press reports and other unsubstantiated indications of potential wrongdoing should not be reasons for SLD to cease communications with a service provider on potential program violations.

- ii. We actually believe such indications are reasons for USAC/SLD to reach out to service providers to gain information related to concerns. However, this seems to happen inconsistently if at all.
4. As indicated in the order, USAC/SLD should not expand communication of potential concerns to other than the service provider outside of the already established procedures for such communication as part of the debarment process. To do otherwise eliminates any ability for the service provider to defend themselves, which due process principles mandate.
5. SLD should be instructed to provide information to inquiring applicants and service providers under heightened scrutiny. Responses from the SLD that indicate that they cannot reveal why an applicant or service provider is facing heightened scrutiny do not appear to protect the program from fraud, waste and abuse. In fact, if the SLD believes that the applicant or service provider is violating FCC rules, it should disclose that to the potential violator to allow for such behavior to cease and be corrected going forward. We are confused regarding how silence and non-disclosure reduces the potential for additional program non-compliance including fraud, waste and abuse. If the service provider or applicant is unaware of what they are doing wrong, they cannot stop or correct retroactively that behavior.
6. The SLD has implemented its HATS program and we understand that program has been expanded to include service providers. As we understand it, the HATS program is designed to have the SLD and the applicant or service provider meet and discuss reasons for program issues, denials and non-compliance. We applaud this program and recommend that it become a mandatory part of the SLD's procedures to offer a HATS program discussion/meeting in the event that heightened scrutiny becomes necessary. Again, we understand that in the event the matter includes law enforcement involvement that such a

meeting would not be allowable. However, we recommend that the FCC set clear guidance regarding what constitutes law enforcement involvement and err on the side of transparency and disclosure to the service provider. We are hard pressed to see many situations where such disclosure would harm the E-Rate program.

7. The FCC should evaluate procedures in place today to determine that consistent treatment is granted to all service providers. It appears to many small business service providers that the SLD is quick to subject them to heightened scrutiny while larger entities that have actually returned E-Rate funds or been fined due to E-Rate violations may not be subjected to such heightened scrutiny. ENA does not have specific evidence of such disparity, but is concerned that such disparity is in fact occurring based on discussions with other small business service providers. Small business providers play an important role in providing competitive service pricing across the program and the FCC should make certain that such entities receive equal treatment by the program.

In conclusion, ENA again thanks the Commission for the opportunity to respond to this NPRM.

ENA believes the E-Rate program provides significant value to schools and libraries across the country and desires the program to continue to improve in the future.

ENA strongly believes that the SLD is working diligently to protect the program from fraud, waste and abuse, but that the SLD needs additional rules and guidance regarding due process and transparency for service providers selected for heightened scrutiny. As indicated above, ENA believes that program can be improved if SLD procedures are enhanced to require input from the impacted service provider as part of the resolution process. Significant periods of delay and silence from the SLD toward selected service providers do not seem to further program goals and we believe

more emphasis on transparency and due process will allow SLD to focus on true instances of fraud, waste and abuse.

Ultimately, service providers desire a greater voice in the heightened scrutiny process to help resolve SLD concerns. ENA respectfully requests that the FCC guide the SLD with procedures that grant service providers that voice.

Respectfully submitted,

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