

1 one for?

2 A. The second one was she wanted to buy her
3 retirement back. She apparently cashed it out when she
4 left Arkansas. And that was for \$60,000. She needed to
5 do it by the end of the year. And Eddie needed \$100,000
6 to pay off something, Eddie Hill.

7 Q. Okay. That's a separate loan, right?

8 A. Separate loan, yeah.

9 Q. Okay. When was the second loan to Palmer?

10 A. It may have been the first one. It was at the
11 end of 2004, I believe. It was only for seven days, by
12 the way.

13 MS. BROOKS: She paid you back seven days
14 later?

15 THE WITNESS: She got a loan. She was in
16 the process of getting a loan and just needed the money
17 by the end of the year. The loan didn't close till --

18 Q. (BY MR. HOGAN) So it was a front?

19 A. The loan didn't close till the 5th or
20 something.

21 Q. So you basically just fronted the money for her
22 for seven days?

23 A. Same thing with Eddie.

24 Q. Okay. Do you remember what -- what year that
25 Eddie's was?

1 took -- I know every year they took people to the Super
2 Bowl. Now, most of the time, there might have been a
3 lot of vendors in there, too. I don't know.

4 Q. Did you know Sharrard Thomas?

5 A. Uh-huh.

6 Q. Who was that?

7 A. He was probably the third or fourth rep that
8 Compaq/HP had assigned to HISD.

9 Q. When you say "third or fourth," is that in time
10 or is that in authority?

11 A. Time.

12 Q. Okay. Was -- did you ever hear of Sharrard
13 taking out school officials?

14 A. Well, I mean, he's the one that paid for that
15 lunch that I went to.

16 Q. Okay.

17 A. But I'm not sure his predecessor didn't as well
18 and I just didn't go.

19 Q. Who was his predecessor?

20 A. Tony Lynch, I believe, was his name.

21 Q. Did you know -- or do you know Garrett Gedders?

22 A. He was the Dallas rep.

23 Q. Did you ever hear of Mr. Gedders providing
24 gratuities to DISD officials or HISD officials?

25 A. The only thing I know of directly was -- I

1 don't know if he did. I went to a -- at the
2 fairgrounds, there was a Jimmy Buffet concert or
3 something, and this wasn't -- there was a big one at
4 Texas something, but this was at the fairgrounds years
5 ago before the big one where George Strait and everybody
6 played. And somebody had a -- I don't know if it's a
7 gratuity, if you call this a gratuity, but somebody had
8 an old motor home set up there and had a party going on.
9 I went out there. Ruben was there. There was a bunch
10 of people there.

11 Q. And did you get your ticket from HP?

12 A. I didn't go to the -- I didn't go to the show.

13 Q. Okay.

14 A. I just went out there in the afternoon for a
15 couple hours.

16 Q. Is it pretty common in the industry for these
17 folks to wine and dine school officials?

18 A. I'd be shocked if somebody didn't.

19 Q. Do you think it provides a competitive
20 advantage --

21 A. No.

22 Q. -- doing so?

23 You think the school officials just take
24 advantage of it and --

25 A. Some do and some don't. I mean, I've gone out

1 with some that -- you know, I wanted to buy them a Coke,
2 and they said, "No. Here's my dollar and a half for a
3 Coke." I mean, if I'm -- I think it's common, I mean,
4 very common. I mean, if you go to TCEA in February,
5 which isn't very far away, you will see dinners going on
6 in every restaurant in Austin. And a vendor is paying
7 for every one of them, and there's a school -- nothing
8 but school officials at every one of them. And not just
9 one night. Three nights in a row. They've just got to
10 choose which one they want to go to.

11 Q. Do you think -- do you think that there is an
12 obligation on behalf of school officials to not accept
13 those things?

14 A. Me personally?

15 Q. Yes, sir.

16 A. Only if it's going to make a difference.

17 Q. Tell me what you mean, only if it's going to
18 make a difference.

19 A. If a \$50 meal is going to make a difference in
20 my decision, then I don't -- I need a different job
21 anyway. That's my opinion. I mean, there are excesses.
22 Don't get me wrong. But, I mean, a free lunch and
23 everything -- I mean, I don't know if you've been in any
24 of these schools, but, literally, Daryl Ann Burrell
25 would make it back to her office at 6:00 because she's

1 been in meetings all day. And you don't get a chance as
2 a vendor to talk to her unless you take her to lunch,
3 bring in a sandwich for her to eat, something.

4 I mean, that's the way it was back then. I
5 mean, these people don't get to do any work because
6 they're in meetings all day. I mean, if they want to
7 conduct -- get any knowledge, it's almost the only place
8 to do it. I mean, it's sad to say.

9 Q. Do you think that the E-Rate program
10 requirements regarding competitive bidding are
11 compromised by this industry custom?

12 A. If they are, it's across the board.

13 Q. Is that a yes?

14 A. No. That's if they are -- we'll stay with my
15 message.

16 Number one, the E-Rate program, from what I
17 can tell, doesn't require a competitive bid. They
18 require you to post for 28 days and you to receive
19 responses. The individual rest of the bidding is done
20 based on local law.

21 I mean, if somebody wanted to -- if
22 somebody -- let's take Frankie because he's getting the
23 shit kicked out of him anyway. If somebody wanted to --
24 if Ruben wanted to buy off either one of those
25 contracts, he could have gone to the State of Texas

1 contract, bought HP, and named Frankie as his reseller.
2 No bid. No anything. Could have done it with any
3 number of 300 vendors on the state contract.

4 And people do it every day on E-Rate. As
5 long as they post it out there on the 28 days on the
6 USAC site, they still use the state contract, and they
7 can buy from whoever they want.

8 And back to your original question, do I
9 think the program's compromised? I think everybody's
10 doing it, but the answer is no.

11 Q. Okay. You lost me there.

12 A. No, because everybody -- no, because
13 everybody's doing it.

14 Q. Okay. Well, let's just talk hypothetically --

15 A. Okay.

16 Q. -- because I understand your interpretation is
17 that it doesn't violate in any way the competitive
18 requirements. Let's assume --

19 A. At some level. If your -- if your agency has
20 that you can't take \$25, then it just did.

21 Q. Right. Okay. Let's assume, just for purposes
22 of my question, that the E-Rate program does require
23 competitive bidding --

24 A. Uh-huh.

25 Q. -- okay? Do you think that the providing of

1 Q. And same for '04?

2 A. Probably slacked off in '04 because I was in
3 Dallas a lot. A lot less.

4 Q. Okay. What about in '05?

5 A. A lot less.

6 MS. VENEZIA: Did you ever use Bill
7 Edwards' office for meetings or phone calls or anything
8 else when he wasn't there?

9 THE WITNESS: If his door was open, I'd go
10 in and sit down sometimes and open up my computer if I
11 was waiting on another meeting.

12 MS. VENEZIA: Were you guys close friends,
13 personal?

14 THE WITNESS: Back to my personal versus
15 business.

16 MR. LAIRD: Personal versus business, yeah.

17 THE WITNESS: No. We rarely did anything
18 after work, and that's my definition of personal.

19 MS. VENEZIA: So in your definition, he was
20 a --

21 THE WITNESS: We were business friends.

22 MS. VENEZIA: -- business friend?

23 THE WITNESS: Yeah. We went to lunch
24 probably once or twice a week. I bought one. He bought
25 one. Our high end was Demeris Barbecue, 15 bucks. We

1 wouldn't go over 15 bucks. He's real cheap.

2 (Marked Lehmann Exhibit No. 10.)

3 Q. (BY MR. HOGAN) All right. I'll show you
4 Exhibit 10 and ask you if you've ever seen this before.

5 A. I've seen something like it, probably.

6 Q. Does it appear to be the Acclaim Professional
7 Services general ledger?

8 A. Yes.

9 Q. But only -- and let me -- I guess I need to
10 make sure I represent it correctly. It appears to be
11 only the marketing portion of the general ledger,
12 transactions marked -- categorized as marketing; is that
13 true?

14 A. Yes, uh-huh.

15 Q. Do you see that amount, the total amount for
16 marketing on the second page?

17 A. Uh-huh.

18 Q. What is that amount?

19 A. 1,105,000.

20 Q. Is that amount shocking to you?

21 A. Yes.

22 Q. Would you have thought it was less?

23 A. I would have thought it was somewhat less.

24 Q. Describe "somewhat" for me or define "somewhat"
25 for me.

1 A. I would have thought it would have been 5 or
2 600,000.

3 Q. There are some entries in here that are to you
4 personally, for example, on 5/15/2003. Do you see that?

5 A. For 9,000 something?

6 Q. Yes, sir.

7 A. Uh-huh.

8 Q. Is that for situations you've talked -- like
9 you've talked about earlier of something you've paid in
10 advance and are now seeking reimbursement?

11 A. I'd have to look at it to find out. I would
12 assume that, but I don't know that.

13 Q. Sounds like that process happened quite a bit.

14 A. I mean, I'm surprised that there's not a lot
15 more in here because -- well, there is some more because
16 at times, if I had personal charges on my American
17 Express and they were using that to pay for meals and
18 what have you as well, I'd pay the whole bill and then
19 say, "Look, this" --

20 Q. "I need a reimbursement"?

21 A. Yeah.

22 Q. And there's a couple of entries for CGS
23 Consulting on the second page. Why would Acclaim have
24 been paying CGS for marketing?

25 A. I don't know. Off the top of my head, I don't

1 know.

2 MR. HOGAN: Anyone? Jennifer?

3 THE WITNESS: Is she locked up again?

4 MS. CHORPENING: Is that because you were
5 reimbursing CGS for purchasing rodeo tickets for school
6 officials?

7 THE WITNESS: I don't know what we were
8 reimbursing them for. I'm sorry. I don't.

9 MS. CHORPENING: Did you have -- did you
10 look at the Acclaim's books?

11 THE WITNESS: Periodically.

12 MS. CHORPENING: So you were aware of how
13 much you were spending in marketing?

14 THE WITNESS: I knew we were spending a
15 lot. I don't think I've ever looked at that total in
16 that format, no.

17 This is over a four-year period, I think,
18 it looks like, or three-and-a-half-year period. I mean,
19 I -- I'm sorry. I don't run books over three years at a
20 time. I usually run them just for specific periods.

21 MS. CHORPENING: So -- but all your clients
22 are school officials; is that right?

23 THE WITNESS: All the clients at Acclaim
24 were school entities.

25 MS. CHORPENING: Did you have any

1 understanding of what Houston Independent School
2 District's rules were as to providing gratuities to
3 school officials?

4 THE WITNESS: No. I mean --

5 MS. CHORPENING: You never -- didn't know
6 anything about it?

7 THE WITNESS: I mean, I assume most people
8 have something, but nobody ever touted a large one
9 there. As a matter of fact, I thought they just wrote
10 one and enforced it after a lot of things came up. I --
11 I may be wrong about that.

12 MS. CHORPENING: Did you read the contracts
13 that ACS --

14 THE WITNESS: Excuse me?

15 MS. VENEZIA: Did you read the contracts
16 that ACS signed with the Houston Independent School
17 District regarding gratuities?

18 THE WITNESS: Have I read those contracts?
19 Perhaps at some point. I assume there's a clause in
20 there about --

21 MS. CHORPENING: Are you aware if
22 there's --

23 THE WITNESS: Sorry.

24 MS. CHORPENING: Go ahead.

25 THE WITNESS: I assume there's probably a

1 clause in there or something about that.

2 MS. CHORPENING: But if there is a clause
3 in there about gratuities, you don't specifically recall
4 what that might have required?

5 THE WITNESS: I do not. I'm sorry.

6 MS. CHORPENING: And you don't know if you
7 followed that practice?

8 THE WITNESS: I don't think I ever bought
9 them anything expensive, if that's -- if that's the
10 question. I don't know -- since I don't know what the
11 number is, I don't know if I followed it exactly.

12 MS. CHORPENING: Your company spent
13 \$1.1 million on marketing expenses. How expensive does
14 it have to be to go over a school district policy?

15 THE WITNESS: That's probably over it
16 there, but I -- again, I don't know how much or what of
17 that piece was used by them at all.

18 MS. CHORPENING: And if somebody offered
19 tickets to Acclaim's box, that wasn't you. Is that
20 your -- is that your statement?

21 THE WITNESS: I don't remember offering any
22 to anybody, but I -- I never had any control over the
23 tickets. I may have said to somebody, "Hey, you want
24 to" --

25 MS. CHORPENING: Who had the control over

1 the tickets?

2 THE WITNESS: MSE had control over some.
3 Analytical had control over some. I told somebody
4 yesterday, if I wanted to go to the football game,
5 sometimes I had to go buy a separate ticket and go and
6 get a box myself because they were used up. So I asked
7 for tickets just like everybody else did.

8 MS. CHORPENING: You told us Acclaim had
9 its own box. Who would have been handing out the
10 tickets for Acclaim's box?

11 THE WITNESS: On the baseball? That's the
12 only one we had. And I do not remember if Stephanie
13 controlled them or if she sent them over to either
14 Analytical or MSE. I don't remember.

15 MS. CHORPENING: Who told Stephanie to
16 purchase the Acclaim box?

17 THE WITNESS: I think that was a joint
18 decision of Frank, Frankie, and myself.

19 MS. CHORPENING: That's all I have.

20 MR. HOGAN: Anyone else?

21 Okay. Thank you very much.

22 (The deposition concluded at 12:43 p.m.)
23
24
25

**Exhibit 7 To Attachment to Proof of Claim of United States of America
in In re Lakehills Consulting, L.P., Case No. 09-34049 (Bankr. S.D. Tex.)**

**CONSENT TO ASSIGNMENT OF CONTRACTS
BETWEEN
HOUSTON INDEPENDENT SCHOOL DISTRICT
AND
ANALYTICAL COMPUTER SERVICES, INC.
TO
LAKEHILLS CONSULTING LP**

This Consent to Assignment of Contracts (Consent) is made by and between the Houston Independent School District ["HISD" or the "District"] and Analytical Computer Services, Inc. ("ACS") and Lakehills Consulting LP ("Lakehills").

1. Whereas, HISD and ACS are parties to the following described Contracts ["Contracts"]:

**CONTRACT BETWEEN HOUSTON INDEPENDENT
SCHOOL DISTRICT AND ANALYTICAL COMPUTER
SERVICES, INC. CONTAINED IN REQUEST FOR
PROPOSAL NO. 03-11-05 RFP/NETWORK CABLING
WITH AN EXTENDED TERMINATION DATE OF
SEPTEMBER 30, 2007;**

**CONTRACT BETWEEN HOUSTON INDEPENDENT
SCHOOL DISTRICT AND ANALYTICAL COMPUTER
SERVICES, INC. CONTAINED IN REQUEST FOR
PROPOSAL NO. 03-11-04 RFP/NETWORK
MAINTENANCE WITH AN EXTENDED TERMINATION
DATE OF SEPTEMBER 30, 2007;**

**CONTRACT BETWEEN HOUSTON INDEPENDENT
SCHOOL DISTRICT AND ANALYTICAL COMPUTER
SERVICES, INC. CONTAINED IN REQUEST FOR
PROPOSAL NO. 03-11-03 RFP/NETWORK HARDWARE
WITH AN EXTENDED TERMINATION DATE OF
SEPTEMBER 30, 2007;**

**CONTRACT BETWEEN HOUSTON INDEPENDENT
SCHOOL DISTRICT AND ANALYTICAL COMPUTER
SERVICES, INC. CONTAINED IN REQUEST FOR
PROPOSAL NO. 06-08-11 RFP/NETWORK HARDWARE
WITH A TERM FROM JULY 1, 2007 TO JUNE 30, 2008;**

**CONTRACT BETWEEN HOUSTON INDEPENDENT
SCHOOL DISTRICT AND ANALYTICAL COMPUTER**

SERVICES, INC. CONTAINED IN REQUEST FOR PROPOSAL NO. 06-08-12 RFP/ADVANCED NETWORK MAINTENANCE WITH A TERM FROM JULY 1, 2007 TO JUNE 30, 2008;

CONTRACT BETWEEN HOUSTON INDEPENDENT SCHOOL DISTRICT AND ANALYTICAL COMPUTER SERVICES, INC. CONTAINED IN REQUEST FOR PROPOSAL NO. 06-08-13 RFP/NETWORK MAINTENANCE WITH A TERM FROM JULY 1, 2007 TO JUNE 30, 2008;

CONTRACT BETWEEN HOUSTON INDEPENDENT SCHOOL DISTRICT AND ANALYTICAL COMPUTER SERVICES, INC. CONTAINED IN REQUEST FOR PROPOSAL NO. 06-08-14 RFP/NETWORK CABLING WITH A TERM FROM JULY 1, 2007 TO JUNE 30, 2008;

CONTRACT BETWEEN HOUSTON INDEPENDENT SCHOOL DISTRICT AND ANALYTICAL COMPUTER SERVICES, INC. CONTAINED IN REQUEST FOR PROPOSAL NO. 04-09-10 RFP/NETWORK MAINTENANCE WITH A TERM FROM JULY 1, 2005 TO SEPTEMBER 30, 2007;

CONTRACT BETWEEN HOUSTON INDEPENDENT SCHOOL DISTRICT AND ANALYTICAL COMPUTER SERVICES, INC. CONTAINED IN REQUEST FOR PROPOSAL NO. 04-09-14 RFP/NETWORK HARDWARE WITH A TERM FROM JULY 1, 2005 TO SEPTEMBER 30, 2007;

CONTRACT BETWEEN HOUSTON INDEPENDENT SCHOOL DISTRICT AND ANALYTICAL COMPUTER SERVICES, INC. CONTAINED IN REQUEST FOR PROPOSAL NO. 04-09-15 RFP/NETWORK CABLING WITH A TERM FROM JULY 1, 2005 TO SEPTEMBER 30, 2007;

CONTRACT BETWEEN HOUSTON INDEPENDENT SCHOOL DISTRICT AND ANALYTICAL COMPUTER SERVICES, INC. CONTAINED IN REQUEST FOR PROPOSAL NO. 05-08-08 RFP/NETWORK MAINTENANCE WITH A TERM FROM JULY 1, 2006 TO JUNE 30, 2007;

CONTRACT BETWEEN HOUSTON INDEPENDENT SCHOOL DISTRICT AND ANALYTICAL COMPUTER SERVICES, INC. CONTAINED IN REQUEST FOR PROPOSAL NO. 05-08-10 RFP/NETWORK HARDWARE WITH A TERM FROM JULY 1, 2006 TO JUNE 30, 2007;

CONTRACT BETWEEN HOUSTON INDEPENDENT SCHOOL DISTRICT AND ANALYTICAL COMPUTER SERVICES, INC. CONTAINED IN REQUEST FOR PROPOSAL NO. 05-08-09 RFP/NETWORK CABLING WITH A TERM FROM JULY 1, 2006 TO JUNE 30, 2007;

CONTRACT BETWEEN HOUSTON INDEPENDENT SCHOOL DISTRICT AND ANALYTICAL COMPUTER SERVICES, INC. CONTAINED IN REQUEST FOR PROPOSAL NO. 05-08-02 RFP/NETWORK MAINTENANCE WITH A TERM FROM JULY 1, 2006 TO JUNE 30, 2007;

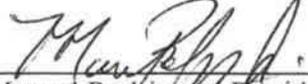
The above-referenced Contracts were approved by the HISD Board of Education.

2. Whereas ACS has sold and assigned all of its right title and interest in and to the Contracts to Lakehills, and the Contracts contain a non assignment clause requiring the written consent of the parties:
3. Whereas HISD, ACS and Lakehills agree and consent to the assignment of the Contracts (and all other contracts between the District and ACS, whether specifically listed above) and agree that all terms and conditions of the contracts remain in full force and effect.
4. Execution of Consent

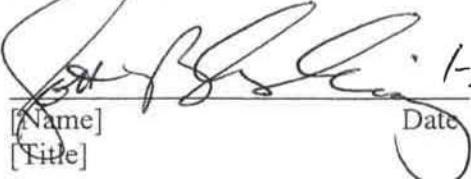
The parties have executed this Consent effective as of the date signed by HISD.

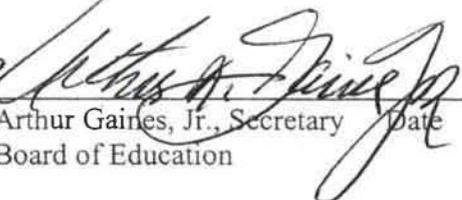
ANALYTICAL COMPUTER SERVICES, INC. HOUSTON INDEPENDENT SCHOOL DISTRICT


[Name] _____ Date 1/26/07
[Title] _____


Manuel Rodriguez, President Date 2-5-07
Board of Education

LAKEHILLS CONSULTING LP


[Name] _____ Date 1-26-07
[Title] _____


Arthur Gaines, Jr., Secretary Date 2-5-07
Board of Education

Abelardo Saavedra 2-2-07
Abelardo Saavedra (sig) Date
Superintendent of Schools

APPROVED AS TO FORM ONLY:

Elneita Hutchins-Taylor 2-2-07
Elneita Hutchins-Taylor Date
General Counsel

**APPROVED AS TO BUSINESS AND
FINANCE TERMS:**

Melinda Garrett 2/2/07
Melinda Garrett, CFO Date

5165

Exhibit E

Hoe, Sandy

From: Shoko Hair [Shoko.Hair@fcc.gov]
Sent: Tuesday, May 17, 2011 5:09 PM
To: Hoe, Sandy
Subject: FOIA Control No: 2011-332 - Corrected

Dear Ms. Hoe:

A response to your Freedom of Information Act (FOIA) request dated April 20, 2011, for copies of "materials relating to funding by the Universal Service Administrative ("USAC") and/or the FCC in connection with the FCC's schools and libraries universal service support program or the E-rate program. Specifically, this request relates ... to the Dallas Independent School District" is due May 19, 2011. However, because of the need to consult with several offices within the Commission, we are extending the time for responding to your FOIA request by 10 business days, so that a response is now due June 3, 2011. See 47 CFR 0.461(g)(1)(iii). We appreciate your patience and understanding in this matter.

Sincerely,

Shoko B. Hair
FCC Public FOIA Liaison
202-418-1379
Shoko.hair@fcc.gov

FURTHER EXPLANATION OF THE ADMINISTRATOR'S DECISIONS

March 29, 2011

Houston Independent School District
Form 471 Application Numbers: 295389, 367296, 377451, 398823, and 398827 for
Funding Years: 2002, 2003, and 2004

Along with this letter, you are being sent Notice of Commitment Adjustment Letters (hereinafter "CAL Letters") concerning the FCC Form 471 Application Numbers cited above. These CAL Letters will rescind and initiate recovery of previously committed funding for the specified funding request numbers ("FRNs") contained in these applications.

Please be advised that the CAL Letters are the official action by the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") regarding these federal Universal Service Schools & Libraries Support Mechanism (aka the "E-Rate Program") funding applications. Please refer to these letters for instructions on how to appeal the Administrator's decisions, if you wish to do so.

The purpose of this letter is to provide you with additional information concerning the reasons for the Administrator's decision to rescind and recover the previously committed funding for these funding applications.

I. Discussion

A. Schools and Libraries Universal Service Support Mechanism Competitive Bidding Requirements

In preparing requests for funding, applicants seeking discounted services through the E-Rate Program must follow certain competitive bidding requirements.¹ After preparing a technology plan, an applicant initiates the competitive bidding process by submitting an FCC Form 470 to USAC for posting on the USAC website.² This posting enables prospective service providers to bid on the equipment and services for which the applicant will request universal service support. After the FCC Form 470 has been posted, the applicant must wait at least 28 days before entering into agreements with

¹ See 47 C.F.R. § 54.504.

² See 47 C.F.R. §§ 54.504(b), 54.508; *Schools and Libraries Universal Service, Description of Services Requested and Certification Form 470*, OMB 3060-0806.

service providers (to provide one or more of the services and/or products listed on the Form 470),³ must comply with all applicable state and local procurement laws,⁴ and must comply with the other competitive bidding requirements established by the FCC.⁵ If an applicant chooses to issue requests for proposals (“RFPs”) or is required to issue an RFP under applicable state and local procurement laws, the RFP(s) must also be available for at least 28 days.⁶ Starting with Funding Year 2004, the Commission required that applicants mark on their FCC Form 470 whether or not they were issuing or planning to issue RFPs for the requested services.⁷

“A fundamental requirement of the E-Rate program is that solicitation for services be based on a fair and open competitive bidding process that is free from conflicts of interest.”⁸ Under the Commission’s rules, service providers may not participate in the bidding process other than as bidders because, as the Commission has ruled, “direct involvement in an application process by a service provider would thwart the competitive bidding process.”⁹ Communications between applicants, their consultants, and service providers that unfairly influence the outcome of the competition, provide inside information, or allow the provider to unfairly compete taints the competitive process. Further, applicants cannot reveal to one perspective service provider information that they do not provide to all bidders. *See Caldwell Parish Order* at ¶ 16. USAC guidance provides in relevant part as follows:

The competitive bidding process must be fair and open. “Fair” means that all bidders are treated the same and that no bidder has advance knowledge of the project information. “Open” means

³ See 47 C.F.R. § 54.504(b)(4).

⁴ See 47 C.F.R. § 54.504(c)(vi).

⁵ See 47 C.F.R. §§ 54.504, 54.511; *In re Federal-State Joint Bd. on Universal Service*, CC Docket No. 96-45, Rep. and Order, 12 FCC Rcd 8776, ¶ 575 (rel. May 8, 1997).

⁶ See *Request for Review of the Decision of the Universal Service Administrator by Ysleta Indep. Sch. Dist., El Paso, Texas, et al., Federal-State Joint Bd. on Universal Service, Changes to the Bd. of Directors of the Nat’l Exchange Carrier Ass’n*, SLD Nos. 321479, 317242, 317016, 311465, 317452, 315362, 309005, 317363, 314879, 305340, 315578, 318522, 315678, 306050, 331487, 320461, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26424 ¶ 39 (2003) (“*Ysleta Order*”). USAC’s web site clarifies that the applicant must “[w]ait 28 days after the Form 470 is posted to the USAC web site or after the public availability of the Request for Proposals, whichever is later, before selecting a vendor or executing a contract. See Step 3: Opening a Competitive Bidding Process (Form 470), <http://www.usac.org/sl/applicant/step03/>.

⁷ *Ysleta Order*, 18 FCC Rcd at 26424, ¶ 39.

⁸ See *Request for Review of a Decision of the Universal Service Administrator by Lazo Technologies, Inc., et al., Schools & Libraries Universal Service Support Mechanism*, SLD Nos. 360412, 360904, 360931, 369205, 369537, CC Docket No. 02-6, Order, 24 FCC Rcd 10675, at ¶ 5 (Aug. 12, 2009) (citations omitted).

⁹ See *Ysleta Order*, 19 FCC Rcd at 26434 ¶ 60; see also, *Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Bd. on Universal Service*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4032-33, ¶ 10 (2000) (“*MasterMind Order*”); *Request for Review of Decisions of the Universal Service Administrator by SEND Technologies LLC, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 07-1270 (2007); *Request for Review of Decisions of the Universal Service Administrator by Caldwell Parish Sch. Dist., et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 08-449 (2008) (“*Caldwell Parish Order*”).

there are no secrets in the process, such as information shared with one bidder but not with others, and all bidders know what is required of them. The [FCC] Form 470 or the RFP should be clear about the products, services, and quantities the applicant is seeking.

In order to be sure that a fair and open competition is achieved, any marketing discussions held with service providers must be neutral, so as not to taint the competitive bidding process. That is, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way.¹⁰

FCC rules also require applicants to select the most cost-effective service offering and require applicants to certify that "[a]ll bids submitted were carefully considered and the most cost-effective bid for services or equipment was selected, with price being the primary factor considered, and is the most cost-effective means of meeting educational needs and technology plan goals."¹¹ This requirement applies even if an applicant received only one bid.¹²

Once the applicant has selected its service providers, it must submit an FCC Form 471 to USAC. See 47 C.F.R. § 54.504(c); Schools and Libraries Universal Service Description of Services Ordered and Certification Form 471, OMB Form 3060-0806 ("FCC Form 471"). On the FCC Form 471 for Funding Years 2002 - 2004, the applicant was required to further certify that:

I certify that the entities eligible for support that I am representing have complied with all applicable state and local laws regarding procurement of services for which support is being sought.

I certify that the entity(ies) I represent have complied with all program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments.

¹⁰ See <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>.

¹¹ 47 C.F.R. § 54.504(c)(1)(xi); see also, 47 C.F.R. § 54.511(a).

¹² *Ysleta Order*, 18 FCC Rcd at 26431 - 26432.

B. Houston Independent School District's Competitive Bidding Process Violated FCC Rules for Fair and Open Competition and its Local Procurement Policies

1. Funding Year 2002

Houston Independent School District ("HISD") submitted its Form 470, Application No. 528460000367226, on September 24, 2001, which had an Allowable Contract Date ("ACD") of October 22, 2001 (attached at Tab 1). On this particular Form 470, HISD noted that it did not release an RFP to further describe the services and equipment it was seeking for this funding year. *Id.* However, it appears that on December 7, 2001, HISD issued RFPs for 02-01-06 (Network Cabling), 02-01-07 (Network Development), and 02-01-10 (Network Maintenance) with a Bid Opening date of January 3, 2002¹³ (attached at Tabs 2, 3, & 4). A mandatory Pre-Proposal Conference was held on December 17, 18 and 19, 2001 for these RFPs.¹⁴ On January 3, 2002, Larry Lehmann prepared and submitted responses for the Texas Cooperative Purchasing Network at Region IV Educational Service Center ("Region IV ESC").¹⁵ In the responses, three entities, Lakehills ISC, LLC ("Lakehills"), Analytical Computer Services ("ACS"), and Micro System Engineering ("MSE") were included as resellers and Compaq Computers and Hewlett Packard Company (hereinafter "HP")¹⁶ were the major suppliers of the equipment offered. According to HISD's Form 471 Application No. 295389, HISD awarded contracts 02-01-06, 02-01-07 and 02-01-10 to Region IV ESC on January 10, 2002 (attached at Tab 9).¹⁷ However, according to HISD's documentation, it appears that Region IV ESC was awarded the contracts on Feb. 6, 2002 and HISD's Board of Education ("BOE") approved the contracts on February 14, 2002.¹⁸ Based on this documentation, it does not appear that HISD had signed contracts in place with Region IV ESC at the time it certified its Form 471 on January 16, 2002.¹⁹

During the competitive bidding period (between September 24 and January 4, 2002), HISD appears to have held conversations and meetings with vendors who were bidding for HISD contracts. For example, on September 26, 2001, Sheppard Thomas, a

¹³ FCC rules require applicants to wait 28 days after posting the Form 470 and/or RFP. 47 C.F.R. § 54.504(b)(4). In this case, because the RFP was issued after the Form 470, HISD was required to wait until January 4, 2002 before it could award contracts for that funding year.

¹⁴ See Tab 5 for copies of the Bid/RFP Document Work Order Forms for RFPs 02-01-06, 02-01-07, and 02-01-10.

¹⁵ See Tabs 6, 7, and 8 for copies of Region IV's responses to HISD's RFPs 02-01-06, 02-01-07, and 02-01-10.

¹⁶ Compaq Computers, Inc. merged with Hewlett Packard Company in the 2000/2001 time frame.

¹⁷ HISD submitted a SPIN change request to USAC on January 17, 2003 and April 16, 2003 to change the SPIN for these FRNs from Region IV ESC to ACS (attached at Tab 10).

¹⁸ See HISD's Bid Tabulations for Project 02-01-06, 02-01-07 and 02-01-10 (attached at Tabs 11, 12, & 13).

¹⁹ See 47 C.F.R. § 54.504(c) ("An eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this subpart, shall upon signing a contract for eligible services, submit a completed FCC Form 471 to the Administrator.").