



Department of Justice

FOR IMMEDIATE RELEASE
THURSDAY, MAY 27, 2004
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AT
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TDD (202) 514-1888

JUSTICE DEPARTMENT CHARGES NEC IN PROBE INTO FEDERAL E-RATE PROGRAM

***NEC-Business Network Solutions Inc. Agrees to Plead Guilty to Bid Rigging and Wire Fraud
and Agrees to Pay \$20.6 Million Fine and Restitution***

WASHINGTON, D.C. – NEC-Business Network Solutions Inc., a subsidiary of NEC America Inc., has agreed to plead guilty and to pay a total \$20.6 million criminal fine, civil settlement and restitution today relating to charges of collusion and wire fraud in the Federal Communication Commission’s E-Rate program, the United States Attorney’s Office for the Northern District of California and the Department of Justice’s Antitrust and Civil Divisions announced.

The E-Rate program, created by Congress in the Telecommunications Act of 1996, provides funding for needy schools and libraries to connect to and utilize the Internet. Under the E-Rate program, which is funded by monies collected from telephone users, schools apply for monies for cabling, Internet backbone equipment (i.e. servers, PBX, and switches), and monthly connectivity service fees.

In court papers filed under seal on May 24, 2004, and unsealed today in U.S. District Court in San Francisco, NEC-Business Network Solutions Inc. (NEC/BNS), based in Irving, Texas, was charged with allocating contracts and rigging bids for E-Rate projects at five different school districts in Michigan, Wisconsin, Arkansas, and South Carolina, in violation of the Sherman Antitrust Act. NEC/BNS is also charged with wire fraud by entering into a scheme

to defraud the E-Rate program and the San Francisco Unified School District by inflating bids, agreeing to submit false and fraudulent documents to hide the fact that it planned on installing ineligible items, agreeing to donate “free” items that it planned to bill E-Rate for, and submitting false and fraudulent documents to defeat inquiry into the legitimacy of the funding request. The plea agreement calls for a \$4.7 million criminal fine for the bid rigging and wire fraud.

“This conduct deprived the E-Rate program of fair and competitive prices, caused the program to pay for unnecessary and ineligible items, and as a result, prevented the funding of projects at other needy schools,” said R. Hewitt Pate, Assistant Attorney General in charge of the Department’s Antitrust Division. “The Division will continue to prosecute vigorously those who defraud the E-Rate program.”

NEC/BNS also entered a civil settlement today to provide restitution for the harm caused by the criminal conduct. The United States Attorney’s Office for the Northern District of California, together with the Department’s Civil Division, will intervene in a civil action brought by the San Francisco Unified School District (SFUSD) alleging that various companies, including NEC/BNS, submitted false claims in the E-Rate program. The SFUSD filed the civil action as a relator under the qui tam provisions of the False Claims Act. The United States intervened against NEC/BNS, Inter-Tel Technologies Inc., a subsidiary of Inter-Tel Inc.; TPC Liquidation Inc (formerly known as Video Network Communications Inc. or VNCI); and former VNCI employees Judy Green and George Marchelos. United States signaled its intention to proceed with the case as the plaintiff. The relator may be entitled to share in a portion of any money the government recovers in the lawsuit. In addition to pleading guilty to the pending felonies, NEC/BNS agreed to resolve pending civil claims as part of a nationwide global resolution. That civil settlement requires NEC/BNS to pay \$10.3 million in cash and provide

\$5.6 million in goods and services to designated school districts as a condition of a three year probation. Under the terms of the plea agreement, the company has and will continue to cooperate in the government's ongoing investigation, and will enter into a comprehensive Corporate Compliance Program as a special condition of its probation.

U.S. Attorney Kevin Ryan in San Francisco said, "Congress established the E-Rate program to help educate the underprivileged. This criminal attempt to steal funds from the program comes at the expense of children across the country, and is totally unacceptable." The U.S. Attorney also praised the City and County of San Francisco, the Department's Antitrust and Civil Divisions, and the FBI, for devoting the necessary resources needed to ferret out this fraud.

Sentencing for NEC/BNS is scheduled before Judge Charles R. Breyer in San Francisco federal court today at 3:30 p.m. (PT).

"This case represents an overlap between two of the FBI's highest criminal investigative priorities, corporate fraud and public corruption. It underscores the severe damage which can be done by corrupt public officials and companies, and the importance of the FBI's aggressive pursuit of such cases," said Mark Mershon, FBI SAC in San Francisco.

San Francisco City Attorney Dennis Herrera said, "Today's settlement represents an excellent outcome for San Francisco public schools and a remarkable achievement for a whistleblower action that proved decisive in uncovering and stopping a nationwide scheme to defraud underfunded school districts. It vindicates Superintendent Ackerman's decision to refuse suspect funding from the E-Rate program, and it is powerful testimony to the outstanding efforts of U.S. Attorney Kevin Ryan and investigators and attorneys of my office's Public Integrity Team."

“This is a victory for the children and I am pleased that justice was served,” said San Francisco Unified School District Superintendent Arlene Ackerman. “To expose these widespread illegal business practices was the right thing to do because our students were being robbed of the much needed funds they deserve. I would like to express my gratitude to U.S. Attorney Kevin Ryan, City Attorney Dennis Herrera and all the agencies involved for their diligence and hard work during this long investigation.”

The Sherman Act charge, a violation of 15 U.S.C. § 1, carries a maximum penalty of a \$10 million dollar fine and a \$400 special assessment. The wire fraud charge, a violation of 18 U.S.C. § 1343, carries a maximum penalty of a \$500,000 fine and restitution to the victims of the crime and a \$400 special assessment. The maximum fines may be increased to twice the gain derived from the crime or twice the loss suffered by the victims of the crime, if either of those amounts is greater than the statutory maximum fine.

The plea announced today resulted from an ongoing federal investigation of fraud and anti-competitive conduct in the E-Rate program. Federal Bureau of Investigation agents from San Francisco, Los Angeles, Fresno, and Detroit conducted the two-year investigation. The investigation is being conducted jointly by the United States Attorney Office for the Northern District of California (Assistant U.S. Attorneys Jeffrey L. Bornstein and Sara Winslow) along with the Department’s Antitrust Division (trial attorneys Mike Wood from the Cleveland Office and Richard Cohen and Matthew Segal from the San Francisco Office). The Department’s Civil Division attorney Alicia Bentley is handling the civil action jointly with the U.S. Attorney’s office. The FCC’s Office of Inspector General also assisted in the investigation.

Anyone with information concerning fraud or anticompetitive conduct in the E-Rate

program should contact the Cleveland Field Office of the Antitrust Division at (216) 522-4070 or the San Francisco office of the FBI at (415) 553-7642.

A copy of this press release may also be found on the U.S. Attorney's Office's website at www.usdoj.gov/usao/can and the Antitrust Division's website at www.usdoj.gov/atr. Related court documents and information may be found on the District Court website at www.cand.uscourts.gov or <http://pacer.cand.uscourts.gov>.

All press inquiries to the U.S. Attorney's Office should be directed to Assistant U.S. Attorney Matthew J. Jacobs at (415) 436-7181. Press inquiries regarding the Department's Antitrust Division should be directed to Gina Talamona, Deputy Director, Office of Public Affairs, (202) 514-2007.

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