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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION
17

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 INTER-TEL TECHNOLOGIES, INC.,

22 Defendant.
23

No. CR-04-399-CRB

PLEA AGREEMENT

24 INTER-TEL TECHNOLOGIES, INC., hereafter "INTER-TEL" or "defendant"), a
25 corporation organized and existing under the laws of Arizona, with its principal place of business
26 in Tempe, Arizona, and the United States Department of Justice, by and through the United
27 States Attorney's Office for the Northern District of California and the Antitrust Division of the
28 Department of Justice (hereafter "the government"), enter into this written plea agreement (the

PLEA AGREEMENT

FILED

DEC - 8 2004

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 "Agreement") pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

2 The Defendant's Promises

3 1. Pursuant to Fed. R. Crim. P. 7(b), the defendant agrees to waive indictment and
4 plead guilty to a two-count felony Information charging the defendant with mail fraud and aiding
5 and abetting in violation of 18 U.S.C. §§ 1341 and 2, and conspiracy to suppress and eliminate
6 competition in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. INTER-TEL agrees that
7 the elements of the offenses and the maximum penalties are as follows:

8 Elements of Count One – Mail Fraud:

- 9 a. Defendant participated in a scheme to defraud or a plan for obtaining
10 money or property by making false promises or statements;
11 b. Defendant knew that the promises or statements were false;
12 c. The promises or statements were material;
13 d. Defendant acted with the intent to defraud; and
14 e. Defendant caused the mail to be used to carry out an essential part of the
15 scheme.

16 Maximum Penalties:

- 17 a. Five years probation;
18 b. A fine in the amount of \$500,000 or twice the loss (or gain) from the
19 offense, whichever is greater;
20 c. Mandatory special assessment of \$400;
21 d. Restitution.

22 Elements of Count Two – Sherman Antitrust:

- 23 a. The conspiracy, agreement, or understanding described in the Information
24 was knowingly formed, and was existing at or about the time alleged;
25 b. The Defendant knowingly became a member of the conspiracy, agreement,
26 or understanding, as charged;
27 c. The alleged conspiracy constituted an unreasonable
28 restraint of interstate commerce; and

- d. The offense was carried out, in part, in the Northern District of California within the five years preceding the filing of the Information.

Maximum Penalties:

- a. Five years probation;
- b. A fine in the amount of \$10 million or twice the loss (or gain) from the offense, whichever is greater;
- c. Mandatory special assessment of \$400;
- d. Restitution.

2. INTER-TEL agrees that it is guilty of the offenses to which it will plead guilty, and it agrees that the following facts are true:

FACTUAL BASIS FOR MAIL FRAUD OFFENSE CHARGED

a. From at least December 1999 to approximately March 2001, INTER-TEL sold and installed telecommunication equipment including PBXs (Private Branch Exchange). It also provided maintenance and other services as needed for the equipment it supplied.

b. During the relevant period, E-Rate was a program created by Congress in the Telecommunication Act of 1996 and operated under the auspices of the Federal Communications Commission ("FCC") to provide funding to permit schools and libraries to connect to and utilize the Internet. The FCC designated the Universal Services Administrative Company ("USAC"), a non-profit corporation, to administer the E-Rate program. The E-Rate program was designed to ensure that the neediest schools received the most financial help. All participating school districts were required to fund a percentage of the cost of the equipment and services acquired under the E-Rate program. That percentage, however, was determined based on the number of students in the district qualifying for the United States Department of Agriculture's school lunch program, with the neediest school districts eligible for the highest percentage of funding.

c. During the relevant period, applications for E-Rate funding far exceeded the funding available. To ensure that E-Rate funding was distributed to the widest number of applicants, USAC required all applicants to comply with various rules and procedures including: (1) only USAC approved equipment, services and supplies would be eligible for funding, and (2)

1 local school districts were required to follow competitive bidding procedures in accordance with
2 local and state law to ensure that the school districts got the lowest possible prices from the
3 responsive bidders.

4 d. On or about December 15, 1999, INTER-TEL and a company that manufactured
5 and installed video-teleconferencing switches (hereafter "VX Company") entered into an
6 agreement under which the defendant agreed to pay VX Company a fee for all business
7 opportunities VX Company brought to the defendant and a fee if VX Company assisted in
8 managing those business opportunities.

9 e. During the relevant period, VX Company employed two persons (Consultant One
10 and Consultant Two) to work as sales representatives. Consultants One and Two specialized in
11 marketing VX Company products to educational institutions, including local school districts.
12 During the relevant period Consultants One and Two also acted as consultants to school districts
13 in designing computer networks, identifying potential government sponsored funding sources
14 (including the E-Rate program), applying for those funds, and selecting vendors to supply the
15 specified equipment and services funded by those programs.

16 f. In or before December 1999, Consultants One and Two began working with the
17 San Francisco Unified School District (hereafter "SFUSD") in obtaining E-Rate program funds.
18 Working with a SFUSD official, these consultants put together a Request for Proposal for
19 equipment and services to be funded by E-Rate.

20 g. On or about January 13, 2000, INTER-TEL submitted its bid on the SFUSD E-
21 Rate project. INTER-TEL included VX equipment in its E-Rate proposal and bid. Consultant
22 One ran the bid opening, and, together with an SFUSD Official, opened and reviewed the bids.
23 Consultant One then declared that the defendant had submitted the winning bid for the PBX
24 portion of the project, after declaring that the only other bidder for PBX had failed to comply
25 with the bid requirements. Consultant One also declared that a national data company ("DATA")
26 had submitted the winning bid for the data equipment portion of the project, that a local
27 computer company had submitted the low bid on the server portion of the project, and finally,
28 that a local cabling contractor had submitted the low bid on the cabling portion of the bid. On

1 January 13 or 14, 2000, Consultant One, Consultant Two, and the SFUSD Official decided to
2 make DATA the prime contractor for a portion of the project and to have the local computer
3 company and the local cabling company act as subcontractors to DATA. The defendant was
4 given the PBX portion of the project.

5 h. On or about January 15 through 18, 2000, Consultants One and Two met with
6 DATA's employees to prepare the USAC Application Form 471 for the SFUSD and other school
7 districts. The Form 471 is a school district's application for E-Rate funding. It is supposed to set
8 out the selected vendors' bid amounts, memorialized in contracts, for the equipment and services
9 called for by the district's Request for Proposal. Consultant One told DATA's employees the
10 total prices she wanted to submit to USAC on the Form 471s and then directed them to prepare
11 false spreadsheets justifying those prices. Consultant Two discussed the equipment lists and
12 prices with INTER-TEL in order to assist in hiding the ineligible video-conferencing equipment
13 in INTER-TEL's E-Rate submission. With DATA's assistance, Consultant One prepared the
14 SFUSD Form 471 with inflated prices. In addition, defendant assisted Consultants One and Two
15 in falsely describing the actual equipment to be supplied to the SFUSD. This included hiding the
16 VX Company video-conferencing equipment, which was not eligible for funding under the E-
17 Rate program, in order to have the E-Rate program pay for that equipment. On or about January
18 19, 2000, Consultant Two delivered the SFUSD Form 471 to USAC. Sometime shortly
19 thereafter, the defendant learned that the SFUSD Form 471 had been submitted to USAC with
20 inflated prices and did nothing to inform USAC that the Form 471 prices had been inflated above
21 the amounts originally bid for the project. For the SFUSD, those prices were approximately \$26
22 million greater than the amounts the vendors had bid for the project. Specifically, the data
23 equipment price was increased from \$19,776,318 to \$22,987,223. The server prices were
24 increased from \$9,275,880 to \$21,987,223. The cabling price was increased from \$13,697,838 to
25 \$21,875,698. Finally, the defendant's PBX price was increased from \$19,403,732 to
26 \$21,409,369. At the same time, the number of schools to be covered by the project was reduced
27 from 50 to 46.

i. In late May or early June 2000, USAC's Schools and Libraries Division ("SLD") began a review of the SFUSD Form 471 submitted in January 2000. As part of that review, the SLD asked the SFUSD to supply certain information to the SLD to justify certain parts of the project. Consultant One, and others acting under her direction, submitted spreadsheets to the SLD which contained false information concerning the bidding process, the bidding participants, the winning bids and the bid amounts. Based in part on these false representations, on September 21, 2000, the SLD approved funding for the SFUSD E-Rate project, in part, as follows: \$18,953,751 for data, \$21,875,698 for cabling and \$17,820,886 for PBX, including the required 17% co-pay to be paid by the SFUSD. The SLD specifically denied any E-Rate funding for computer servers.

j. At no time during the relevant period did the defendant disclose to the SFUSD superintendent or the San Francisco School Board that the funding requests to USAC had been increased over the original bid amounts, that there were inflated estimates contained in the bid documents, or that the parties had included ineligible video-conferencing equipment which had been hidden in the documents submitted to USAC.

k. During the relevant period, for the purpose of executing its scheme, the defendant caused the SLD to mail a letter dated September 22, 2000 to the SFUSD in San Francisco, California in which the SLD agreed to make a funding commitment based on the false and fraudulent information submitted in support of the SFUSD E-Rate Project.

FACTUAL BASIS FOR SHERMAN ACT OFFENSE CHARGED

l. For purposes of the Count Two bid rigging violation in this Plea Agreement, the "relevant period" is approximately December 1, 1998 until at least December 31, 2000. During the relevant period, the defendant was a provider of equipment and services related to telecommunications, Internet access, and internal communication connections in the United States.

m. During the relevant period, the defendant participated in a conspiracy with one or more vendors of equipment and services related to telecommunications, Internet access, and/or internal connections, a purpose of which was to suppress and eliminate competition for E-Rate

1 program projects, including those identified in Exhibit A (hereinafter E-Rate projects).

2 n. In furtherance of the conspiracy, the defendant reached an agreement with its co-
3 conspirators to frustrate the competitive process on the E-Rate projects by allocating contracts
4 and submitting fraudulent and non-competitive bids. To carry out this conspiracy, the defendant
5 discussed with these co-conspirators prospective bids for the E-Rate projects agreed with these
6 co-conspirators who would be the lead contractor on the project and who would participate on
7 the project as subcontractors to the designated lead contractors, submitted fraudulent and non-
8 competitive bids in accordance with the conspiratorial agreement, and engaged Consultants One
9 and Two, described above. These Consultants took steps to ensure the success of the conspiracy
10 by eliminating and disqualifying bids from non-conspirators and either directly awarding the
11 contracts or using their best efforts to persuade the school district officials to award contracts to
12 the designated lead contractors.

13 o. As part of the conspiracy, Consultants One and Two successively caused to be
14 awarded E-Rate project contracts to the designated lead contractors. The defendant agreed to
15 pay, and did pay, Consultants One and Two's employer, VX Company, a fee and agreed to
16 purchase and install, and did purchase and install, equipment from VX Company on the E-Rate
17 projects.

18 p. During the relevant period, in accordance with the E-Rate project contracts
19 obtained through the conspiracy by the defendant and its co-conspirators, equipment and services
20 were delivered and payments for that equipment and services were received that traveled in
21 interstate commerce. The business activities of the defendant and its co-conspirators in
22 connection with the sale of that equipment and services affected by this conspiracy were within
23 the flow of, and substantially affected, interstate trade and commerce.

24 q. Acts in furtherance of this conspiracy were carried out within the Northern
25 District of California. The conspiratorial meetings and discussions described above took place in
26 the United States, and at least one of those communications originated or was received by a
27 conspirator in the Northern District of California.

28 3. The defendant agrees to give up all rights that it would have if it chose to proceed

1 to trial, including the rights to a jury trial with the assistance of an attorney; to confront and
2 cross-examine government witnesses; to remain silent or testify; to move to suppress evidence or
3 raise any other Fourth or Fifth Amendment claims; to any further discovery from the
4 government; and to pursue any affirmative defenses and present evidence.

5 4. The defendant agrees to give up its right to appeal its conviction, the judgment,
6 and orders of the Court. The defendant also agrees to waive any right it may have to appeal any
7 sentence consistent with this plea agreement.

8 5. The defendant agrees to have its sentence determined under the United
9 States Sentencing Guidelines ("U.S.S.G.") and waives all constitutional challenges to the
10 validity of the U.S.S.G. The defendant waives any right it may have under cases such as Blakely
11 v. Washington and its progeny to have facts that determine its statutory maximum sentence of
12 Guidelines fine range under the U.S.S.G. (including any facts used to determine its offense level,
13 base fine amount, culpability score or any specific offense characteristic or other enhancement or
14 adjustment under the U.S.S.G., as well as any pecuniary gain or loss resulting from the charged
15 offense) alleged in an indictment and found by a jury beyond a reasonable doubt. The defendant
16 agrees that the facts that determine its statutory maximum sentence or Guidelines fine range will
17 be found by the Court at sentencing by a preponderance of the evidence and that the Court may
18 consider any reliable evidence, including hearsay, in making such determinations.

19 6. The defendant agrees not to file any collateral attack on its conviction or sentence,
20 at any time in the future after it is sentenced, except for a claim that its constitutional right to the
21 effective assistance of counsel was violated.

22 7. The defendant agrees not to ask the Court to withdraw its guilty plea at any time
23 after it is entered, unless the Court declines to accept the sentence agreed to by the parties. Either
24 party may withdraw from this agreement if the Court does not accept the agreed-upon sentence
25 set out below.

26 8. If acceptable to the Court, both parties agree to waive the presentence
27 investigation and report pursuant to Rule 32(C)(i) of the Federal Rules of Criminal Procedure,
28 and ask that the defendant be sentenced at the time the guilty plea is entered under the provisions

of Fed. R. Crim. P. 32(c)(1)(A)(ii) and U.S.S.G. § 6A1.1. The defendant agrees that the Sentencing Guidelines should be calculated as follows, and that it will not ask for any other adjustment to or reduction in the offense level or for a downward departure of any kind, including for its continuing cooperation (utilizing the Guidelines effective November 1, 2000):

For Count One :

a.	Base Offense Level (8C2.1, 8C2.3 and 2F1.1):	6
b.	Specific offense characteristics: (Anticipated Loss > \$1.5 million)	+ 12
c.	More than Minimal Planning:	<u>+ 2</u>
d.	Adjusted offense level:	20

For Count Two:

a.	Base Offense Level (8C2.1, 8C2.3 and 2R1.1):	10
b.	Specific offense characteristics:	
	Bid Rigging (2R1.1(b)(1))	+1
	Volume of Commerce (2R1.1(b)(2)(E)) (Total of sales to two (2) school districts \$5.7 million)	<u>+3</u>
c.	Adjusted offense level	14

Multiple Counts

a.	Grouping (3D1.1(a))	
	Different victims - different harm (3D1.2 & 3D1.3)	
	Group 1 - Mail Fraud offense level:	20
	Group 2 - Bid Rigging offense level:	14
b.	Combined Offense Levels (3D1.4)	
	Highest offense level - Group 1:	20
	Group 2 (within 8 levels):	<u>1/2</u>
	Combined offense level:	21

1 Fine Determination

2 a. Base Fine (8C2.4):

3 The greatest of:

4 Offense Level Fine Table
(8C2.4(d)): \$910,000

5 Base Fine (2R1.1(d)(1), 8C2.4(b))
6 (20% of volume of commerce): \$1.14 million

7 Greatest \$1.14 million

8 b. Culpability Score (8C2.5): 5 + 4
9 (> 1000 employees)

10 Acceptance of Responsibility: - 2

11 Total Culpability Score: 7

12 Minimum/Maximum Multiplier (8C2.6): 1.4 to 2.8

13 Fine Range (8C2.7): \$1.596 to \$3.192 million

14 9. INTER-TEL understands that as part of its plea and the separate civil settlement
15 that it will pay \$ 1,721,000 in criminal fines. The money paid in connection with the civil
16 settlement shall satisfy any obligation to make restitution. (See U.S.S.G. § 8C2.9) In view of all
17 facts and circumstances of this case, including INTER-TEL's continuing cooperation with the
18 government, the parties believe that the sentence recommended is fair and just in accordance
19 with 18 U.S.C. §§ 3553, 3571 and 3572.

20

\$1,721,000	Criminal Fine
\$7,000,000	Civil Settlement and Restitution
\$8,721,000	Total

21
22
23

24 10. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the
25 parties agree that an appropriate disposition of this case is that INTER-TEL receive the following
26 criminal sentence:

27 a. INTER-TEL shall be placed on probation for a period of 3 years on
28 conditions including that INTER-TEL:

- i. commit no violations of federal or state law;
- ii. comply with the terms and conditions of the civil settlement attached as Exhibit B;
- iii. comply with the Special Conditions of Probation attached as Exhibit C; and
- iv. cooperate fully with the United States as set forth below.

b. Within two business days from the date this Plea Agreement is accepted and sentence is imposed, INTER-TEL shall pay a criminal fine in the amount of \$1,721,000. The criminal fine shall be paid to the Clerk of the United States District Court, Northern District of California, in accordance with instructions from the Clerk.

c. On the date this Plea Agreement is accepted and sentence is imposed, INTER-TEL shall pay a civil settlement (including restitution) in the amount of \$ 7,000,000 to the Financial Litigation Unit, United States Attorney's Office, Northern District of California, by FEDWIRE. This money shall be distributed in accordance with the civil settlement agreement, attached as Exhibit B.

d. INTER-TEL shall comply with the Special Conditions of Probation attached as Exhibit C to include, among other things, creating a Corporate Compliance Program, designating a Compliance Officer responsible for monitoring all aspects of the Compliance Policy, training all key personnel in public entity procurement requirements, ensuring that there are both internal and external audits of public entity contracts, and making reports to the defendant's CEO and Board of Directors and the FCC Enforcement Division and FCC/OIG concerning the defendant's efforts to comply with all of the Special Conditions of Probation.

e. On the date of sentencing, INTER-TEL will pay a special assessment of \$800.

f. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal mail and wire fraud, antitrust and related criminal laws involving the sale of equipment and services funded by the E-Rate program, any other federal criminal investigation resulting

1 therefrom, and any litigation or other proceedings arising or resulting from any such investigation
2 to which the United States is a party ("federal proceeding").

3 11. The ongoing full and truthful cooperation of the defendant shall include, but not
4 be limited to:

5 a. producing to the United States all documents, information, and other
6 materials, wherever located, in the possession, custody, or control of the defendant, requested by
7 the United States in connection with any federal proceeding;

8 b. using its best efforts to secure the ongoing, full, and truthful cooperation,
9 as defined in Paragraph 12 of this Plea Agreement, of each current and former director, officer or
10 employee of the defendant as may be requested by the United States, including making these
11 persons available, at the defendant's expense, for interviews and the provision of testimony in
12 grand jury, trial, and other judicial proceedings in connection with any federal proceeding.

13 12. The ongoing full and truthful cooperation of each person described in Paragraph
14 11(b) above will be subject to the procedures and protections of this paragraph, and shall include,
15 but not be limited to:

16 a. producing all non-privileged documents, including claimed personal
17 documents, and other materials, wherever located, requested by attorneys and agents of the
18 United States;

19 b. making himself or herself available for interviews, not at the expense of
20 the United States, upon the request of attorneys and agents of the United States;

21 c. responding fully and truthfully to all inquiries of the United States in
22 connection with any federal proceeding, without falsely implicating any person or intentionally
23 withholding any information, subject to the penalties of making false statements (18 U.S.C. §
24 1001) and obstruction of justice (18 U.S.C. § 1503); and otherwise voluntarily providing the
25 United States with any material or information not requested in (a) - (c) of this paragraph that he
26 or she may have that is related to any federal proceeding; and

27 d. when called upon to do so by the United States in connection with any
28 federal proceeding, to testify fully, truthfully, and under oath before a grand jury, in trial, and in

1 connection with any other ancillary judicial proceedings pursuant to subpoena, subject to the
2 penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in front of the
3 grand jury or in court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and
4 obstruction of justice (18 U.S.C. § 1503).

5 13. INTER-TEL understands and agrees that, should it or the United States withdraw
6 from this Agreement in accordance with Paragraph 7, INTER-TEL may thereafter be prosecuted
7 for any criminal violation of which the government has knowledge, notwithstanding the
8 expiration of any applicable statute of limitations following the signing of this Agreement.

9 14. INTER-TEL agrees not to intentionally provide false information to the Court, the
10 Probation Office, Pretrial Services, or the government; or fail to comply with any of the other
11 promises it has made in this Agreement. INTER-TEL agrees not to commit or attempt to commit
12 any crimes before sentence is imposed. INTER-TEL agrees that, if it fails to comply with any
13 promises it has made in this Agreement, then the government will be released from all of its
14 promises in this Agreement, including those set forth in paragraphs 17 through 19 below, but
15 INTER-TEL will not be released from its guilty pleas.

16 15. INTER-TEL agrees that this Agreement and the attached Exhibits A, B, C and D
17 contain all of the promises and agreements between it and the government, and it will not claim
18 otherwise in the future.

19 16. INTER-TEL agrees that this Agreement binds the United States Department of
20 Justice, excepting the Tax Division, only, and does not bind any other federal, state, or local
21 agency.

22 The Government's Promises

23 17. The government agrees not to file or seek any additional charges against the
24 defendant that could be filed as a result of the investigation into collusion and fraud that led to
25 the captioned information, or arose out of the defendant's participation in the E-Rate program
26 from 1998 to the date of sentencing.

27 18. The government agrees that the appropriate sentence in this case should be as set
28 forth in paragraph 10 above, unless the defendant violates the terms and conditions of this

1 Agreement.

2 19. The government agrees that, if requested, it will advise the appropriate officials of
3 any governmental agency considering any administrative action of the fact, manner, and extent of
4 the cooperation of the defendant as a matter for that agency to consider before determining what
5 administrative action, if any, to take.

6 The Defendant's Affirmations

7 20. INTER-TEL confirms that it has had adequate time to discuss this case, the
8 evidence, and this Agreement with its attorney, and that its attorney has provided it with all the
9 legal advice that it requested.

10 21. This Agreement has been authorized, following consultation with counsel, by the
11 Board of Directors of INTER-TEL, by corporate resolution dated *December 7, 2004*. A
12 certified copy of the corporate resolution is attached as Exhibit D to this Agreement and is
13 incorporated herein. INTER-TEL confirms that its decision to enter a guilty plea is made
14 knowing the charges that have been brought against it, any possible defenses, and the benefits
15 and possible detriments of proceeding to trial. INTER-TEL also confirms that its decision to
16 plead guilty is made voluntarily. Except as set forth in this plea agreement, INTER-TEL has
17 received no promises or inducements to enter its guilty plea, nor has anyone threatened it or any
18 other person to cause it to enter its guilty plea.

19
20 DATED:

21 STEVEN G. MIHAYLO
22 Chairman, Inter-tel Technologies, Inc.
Defendant

23 DATED: *12-08-04*

24 KEVIN V. RYAN
United States Attorney
Northern District of California

25 
26 JEFFREY L. BORNSTEIN
27 Assistant United States Attorney
28

1 Agreement.

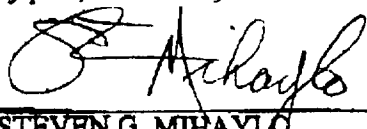
2 19. The government agrees that, if requested, it will advise the appropriate officials of
3 any governmental agency considering any administrative action of the fact, manner, and extent of
4 the cooperation of the defendant as a matter for that agency to consider before determining what
5 administrative action, if any, to take.

6 The Defendant's Affirmations

7 20. INTER-TEL confirms that it has had adequate time to discuss this case, the
8 evidence, and this Agreement with its attorney, and that its attorney has provided it with all the
9 legal advice that it requested.

10 21. This Agreement has been authorized, following consultation with counsel, by the
11 Board of Directors of INTER-TEL, by corporate resolution dated 2004. A
12 certified copy of the corporate resolution is attached as Exhibit D to this Agreement and is
13 incorporated herein. INTER-TEL confirms that its decision to enter a guilty plea is made
14 knowing the charges that have been brought against it, any possible defenses, and the benefits
15 and possible detriments of proceeding to trial. INTER-TEL also confirms that its decision to
16 plead guilty is made voluntarily. Except as set forth in this plea agreement, INTER-TEL has
17 received no promises or inducements to enter its guilty plea, nor has anyone threatened it or any
18 other person to cause it to enter its guilty plea.

19 DATED:


STEVEN G. MIHAYLO


Chairman, Inter-Tel Technologies, Inc.
Defendant

22 DATED:

KEVIN V. RYAN
United States Attorney
Northern District of California

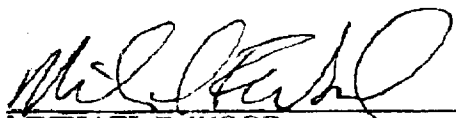
25 JEFFREY L. BORNSTEIN
Assistant United States Attorney

27 DATED:


MICHAEL F. WOOD
RICHARD B. COHEN
VICTOR ALI

28
PLEA AGREEMENT

1 DATED:


MICHAEL F. WOOD
RICHARD B. COHEN
VICTOR ALI
Attorneys, U.S. Department of Justice
Antitrust Division

2
3
4
5 I have fully explained to my client all the rights that a criminal defendant has and all the terms
6 of this Agreement. In my opinion, my client understands all the terms of this Agreement and all
7 the rights it is giving up by pleading guilty, and, based on the information now known to me, its
8 decision to plead guilty is knowing and voluntary.

9
10 DATED: 12-8-04



LEO P. CUNNINGHAM
Wilson Sonsini Goodrich & Rosati,
Professional Corporation
Attorneys for Defendant Inter-tel
Technologies Inc.

EXHIBIT A

EXHIBIT A

The following geographic areas contained projects funded by the E-Rate program that were subject to the illegal activity described in the attached Plea Agreement:

E.D. Michigan
E.D. California

(Highland Park, Michigan)
(W. Fresno, California)

EXHIBIT B

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (Agreement) is entered into by the United States of America, acting through the United States Department of Justice and on behalf of the Federal Communications Commission (FCC), including the Universal Service Administrative Company (USAC), an entity acting on behalf of the FCC (collectively, the United States); the San Francisco Unified School District (SFUSD); the City Attorney for the City and County of San Francisco (City Attorney); and Inter-Tel Technologies, Inc. (Inter-Tel), through their authorized representatives. The parties listed in this Paragraph are hereinafter collectively referred to as the Parties.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Inter-Tel is a corporation organized and existing under the laws of Arizona with its principal place of business in Tempe, Arizona. Inter-Tel does business in California, among other states. Inter-Tel does not operate as a common carrier.

B. E-Rate is a program created by Congress in the Telecommunications Act of 1996 and administered by USAC for the FCC. Under E-Rate, the FCC reimburses providers of internet access and telecommunications services for discounts that they provide to schools and libraries that purchase these services. The FCC utilizes USAC, a not for profit corporation incorporated in Delaware, to administer the E-Rate program.

C. On or about May 16, 2002, SFUSD and the People of the State of California *ex rel.* Dennis J. Herrera (the People) filed a civil action in the United States District Court for the Northern District of California against Inter-Tel and others, styled *United States ex rel. San Francisco Unified School District, et al. v. Nippon Electric Company Business Network Solutions, et al.*, No. C 02-2398 CRB (the Civil Action). In the complaint, SFUSD asserted claims as a *qui tam* relator under the Federal False Claims Act (FCA), 31 U.S.C. §§ 3729-3733, and the California FCA, Cal. Gov't. Code §§ 12650-12652. SFUSD also asserted claims on its

own behalf pursuant to the California FCA, fraud and deceit pursuant to Cal. Civ. Code §§ 1709-10, and under the common law theory of negligent misrepresentation. In addition, the City Attorney asserted a claim on behalf of the People pursuant to Cal. Bus. & Prof. Code § 17200, et seq. The allegations in the complaint relate to the defendants' participation in the E-rate program. On or about December 23, 2003, the State of California filed its Notice of Election by the State of California to Decline Intervention. The State of California is therefore not a party to the Civil Action.

D. Inter-Tel is entering a plea of guilty to a two-count felony Information charging Inter-Tel with mail fraud in violation of 18 U.S.C. § 1341 and conspiracy to suppress and eliminate competition in violation of the Sherman Antitrust Act, 15 U.S.C. § 1, in connection with Inter-Tel's participation in the E-rate program. The guilty plea is being entered in a matter captioned *United States of America v. Inter-Tel Technologies, Inc.* No. CR 04-399 CRB (filed in the Northern District of California, December 6, 2004). A copy of the plea agreement in that matter is attached hereto as Exhibit A (hereinafter the Plea Agreement).

E. The United States, SFUSD, and the City Attorney contend that they have certain civil claims against Inter-Tel under the FCA, the common law, and the other authorities set out in the complaint in the Civil Action for Inter-Tel's conduct in submitting and causing to be submitted false claims for payment under the E-rate program from approximately December 1999 to the present by: (1) engaging in non-competitive bidding practices; (2) paying fees termed "marketing fees" to Video Network Communications, Inc. (VNCI), when VNCI was involved in selecting vendors to obtain E-rate funds; (3) claiming and receiving E-rate funds for goods and services that were ineligible for E-rate funding; (4) providing false information to the United States regarding the goods and services that were provided to schools and school districts under the E-rate program; (5) disregarding the requirement that schools and school districts make co-payments to match a percentage of the E-rate funds disbursed on their behalf; and (6) inflating prices on invoices and other documents provided to the United States to conceal some or all of

the practices listed in this Paragraph. The conduct described in this Paragraph is hereinafter referred to as the Covered Conduct.

F. This Agreement is neither an admission of liability by Inter-Tel nor a concession by the United States, SFUSD, or the City Attorney that their claims are not well-founded.

G. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. Inter-Tel agrees to pay to the United States \$7,000,000 (hereinafter referred to as the Settlement Amount), as follows:

a. Within five calendar days of the time that the United States District Court for the Northern District of California (District Court) imposes sentence on Inter-Tel in accordance with the Plea Agreement, Inter-Tel will pay \$6,740,458.12 by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Northern District of California.

b. Inter-Tel agrees to release the United States, including but not limited to the FCC and USAC, from any obligations to pay and any other liability for work performed under the USAC Funding Request Numbers (FRNs) listed in Exhibit B to this Agreement. The Parties agree that Inter-Tel has performed uncompensated E-rate work under the FRNs listed in Exhibit B in the amount of \$259,541.88. To the extent that Inter-Tel or any related entity (utilizing Service Provider Identification Numbers (SPINs) 143004917, 143005138, 143005176, 143005559, 143006568, 143007286, 143007608, 143007625, 143008103, 143008226, 143009584, 143011125, 143011128, 143011939, 143014716, 143018559, 143019315, 143019400, and 143022581) has performed uncompensated E-rate work under FRNs that are not listed in Exhibit B, Inter-Tel agrees to release the United States, including but not limited to the FCC and USAC, from any obligations to pay and any other liability for work performed under

such additional FRNs. This release shall not extend to (i) Inter-Tel's pending appeals before the FCC in CC Docket No. 02-6, regarding FRNs 641657, 641908, 642460, 448700, 448706, 298712, and 299955 for work performed for Approach Learning Assessment Centers; (ii) Inter-Tel's invoices for \$16,093.26 (submitted March 24, 2003) and \$271,791.40 (submitted March 25, 2003) for work performed for Solen Cannon-Ball School District (FRN 851436); or (iii) Inter-Tel's invoice for \$23,626.65 (submitted February 1, 2003) for work performed for Aldar Academy (FRN 759395). With respect to Billed Entity Applicant Reimbursement Forms (FCC Forms 472) that have been submitted or will be submitted to USAC for products and/or services provided by SPINs listed in this Paragraph, Inter-Tel agrees to comply with the requirements set forth in 47 C.F.R. § 54.514(b), which are applicable to service providers that receive discount reimbursement checks from USAC after having received full payment from the billed entity.

In the event that the District Court does not accept the Plea Agreement, and/or does not impose the sentence agreed to in the Plea Agreement, the United States or Inter-Tel may, each in its respective discretion, within five calendar days of the Court's dispositive action on the Plea Agreement, declare this Agreement null and void by written notice to the other party.

2. The United States agrees that, pursuant to 31 U.S.C. § 3730(d)(1), within a reasonable time after it receives the full payment due under Paragraph 1(a) above, the United States will pay to SFUSD an amount equal to 21 percent of the total Settlement Amount of \$7,000,000 set forth in Paragraphs 1(a) and 1(b). All payments to SFUSD under this Agreement shall be made by electronic funds transfer in accordance with written instructions to be provided by SFUSD.

3. Inter-Tel agrees to cooperate with the United States in the Civil Action and any investigation or litigation related thereto. Inter-Tel agrees to cooperate with SFUSD and the City Attorney in the investigation of the San Francisco fraud as alleged in the Civil Action. Before providing testimony and/or documents in accordance with this Paragraph, Inter-Tel may require that subpoenas be served on it.

4. Releases:

a. Inter-Tel fully and finally releases the United States, SFUSD, and the City Attorney, together with their respective agencies, employees, servants, and agents, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which Inter-Tel has asserted, could have asserted, or may assert in the future against the United States, SFUSD, and/or the City Attorney, their agencies, employees, servants, and agents, related to the Covered Conduct, the Information, the Plea Agreement, and the investigation and prosecution thereof.

b. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of Inter-Tel set forth in this Agreement, and conditioned upon Inter-Tel's full payment of the Settlement Amount:

(i) the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to fully and finally release Inter-Tel and any affiliates, subsidiaries, or parent corporations, and their predecessors, successors, and assigns; and any of their present or former directors, officers, and employees, from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, disgorgement, restitution, recoupment, breach of contract, and fraud, for the Covered Conduct;

(ii) the FCC (on behalf of itself, its officers, employees, and agents, including but not limited to USAC, an entity acting on behalf of the FCC) agrees to release Inter-Tel and any affiliates, subsidiaries, or parent corporations, and their predecessors, successors, and assigns, and any of their present or former directors, officers, and employees, from any monetary claims the FCC has or may have for the Covered Conduct, except that no release is made with regard to (A) Inter-Tel's pending appeals before the FCC in CC Docket No. 02-6 regarding FRNs 641657, 641908, 642460, 448700, 448706, 298712, and 299955 for work performed for Approach Learning Assessment Centers; (B) Inter-Tel's invoices for \$16,093.26 (submitted March 24,

2003) and \$271,791.40 (submitted March 25, 2003) for work performed for Solen Cannon-Ball School District (FRN 851436); or (C) Inter-Tel's invoice for \$23,626.65 (submitted February 1, 2003) for work performed for Aldar Academy (FRN 759395);

(iii) SFUSD (on behalf of itself, its officers and agents) agrees to fully and finally release Inter-Tel and any affiliates, subsidiaries, or parent corporations, and their predecessors, successors, and assigns, and any of their present or former directors, officers, and employees, from any civil or administrative monetary claim SFUSD has or may have under the False Claims Act, the California False Claims Act, Cal. Civ. Code §§ 1709-10, Cal. Bus. & Prof. Code § 17200, et seq. or the common law for the Covered Conduct; and

(iv) the City Attorney (acting on behalf of the People to the full extent of the City Attorney's legal authority to do so) agrees to fully and finally release Inter-Tel and any affiliates, subsidiaries, or parent corporations, and their predecessors, successors, and assigns, and any of their present or former directors, officers, and employees, from any civil or administrative monetary claim the People have or may have under Cal. Bus. & Prof Code § 17200, et seq. for the Covered Conduct.

c. Conditioned on the receipt of the relator's share specified in Paragraph 2, SFUSD releases and forever discharges the United States from any claims arising from or relating to the filing of the Civil Action against Inter-Tel, or this Agreement. SFUSD specifically agrees that the Settlement Amount is fair, adequate, and reasonable under the circumstances, and SFUSD agrees to waive any right it may have to contest the Settlement Amount or its share thereof pursuant to 31 U.S.C. § 3730(c)(2)(B) or otherwise.

d. Subject to the exceptions in Paragraph 6 below, Inter-Tel, SFUSD and the People expressly waive the provisions of Section 1542 of the California Civil Code, which provides as follows:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE: -- A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Inter-Tel, SFUSD and the People understand and acknowledge that the significance and consequence of this waiver of Civil Code Section 1542 is that even if one of those parties should eventually suffer additional damages as arising out of the Covered Conduct or the investigation or litigation of the Covered Conduct, that party will not be permitted to make any claims for such damages. Furthermore, with the exceptions of those matters identified in Paragraph 6, Inter-Tel, SFUSD and the People acknowledge that they intend these consequences even as to claims for injuries and/or damages that may exist as of the date of this release but which they do not know exist and which, if known, would materially affect the decision to execute this agreement.

5. Upon timely payment of the amount set out in Paragraph 1(a) above, the United States, SFUSD, and the City Attorney will dismiss Inter-Tel from the Civil Action with prejudice.

6. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Inter-Tel) are the following claims: (a) any civil, criminal, or administrative liability to the United States arising under Title 26, U.S. Code (Internal Revenue Code); (b) any criminal liability; (c) any process or proceeding, administrative or judicial, for any agency suspension or debarment action; (d) any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; (e) any claims of the United States, SFUSD or City Attorney based upon such obligations as are created by this Agreement; (f) any liability for the delivery of any deficient or defective products/services, including liability under any express or implied product/service liability warranties; (g) any civil or administrative claims of the United States against individuals, including but not limited to present or former directors, officers, and employees of Inter-Tel and any affiliates, subsidiaries, and parent corporations, and their predecessors, successors, and assigns who are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the Covered Conduct; and (h) any claims that SFUSD may have against Inter-Tel for attorneys' fees, costs and expenses pursuant to 31 U.S.C. § 3730(d)(1). SFUSD and Inter-Tel agree (a) to extend the deadline under Rule 54(d)(2) of the

Federal Rules of Civil Procedure by which SFUSD must file its motion for attorney's fees, costs and expenses to 60 days after the entry of judgment and (b) that SFUSD will seek such an extension from the Court as part of SFUSD's Notice of Voluntary Dismissal of the Complaint.

7. Inter-Tel waives and shall not assert, in any criminal prosecution or administrative action relating to the Covered Conduct, any defenses that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Inter-Tel agrees that this Agreement is not punitive in purpose or effect. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

8. Inter-Tel agrees that all costs (as defined by Federal Acquisition Regulation 31.205-47) incurred by or on behalf of Inter-Tel in connection with (a) the matters covered by this Settlement Agreement; (b) the Government's audits and investigations of the matters covered by this Settlement Agreement; (c) Inter-Tel's investigation, defense of the matters, and corrective actions relating to the Covered Conduct; (d) the negotiation of this Settlement Agreement; and (e) the payments made to the United States pursuant to this Settlement Agreement, shall be unallowable costs for government accounting purposes. Inter-Tel shall separately account for all costs that are unallowable under this Settlement Agreement.

9. This Agreement is intended to be for the benefit of the Parties only. Except as expressly stated in Paragraphs 1, 4, and 5 above, the Parties do not release any claims against any other person or entity.

10. Inter-Tel expressly warrants that it has reviewed its financial condition and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment of the Settlement Amount. Inter-Tel further warrants that it has or has access to sufficient assets to pay the Settlement Amount. Further, the Parties

expressly warrant that, in evaluating whether to execute this Agreement, the Parties (a) have intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Inter-Tel within the meaning of 11 U.S.C. § 547(c)(1), and (b) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Inter-Tel was or became indebted on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

11. Inter-Tel agrees that this Settlement Agreement satisfies the requirements of the citation provision under subsections 503(b)(5)(A)-(B) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(5)(A)-(B), such that the FCC may issue a Notice of Apparent Liability against Inter-Tel pursuant to 47 U.S.C. § 503(b)(4) if, after the Effective Date of this Agreement, Inter-Tel engages in conduct of the type described as the Covered Conduct in Paragraph E of this Agreement.

12. The United States and Inter-Tel shall each bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

13. All Parties represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

14. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement shall be the United States District Court for the Northern District of California.

15. This Agreement constitutes the complete agreement between the Parties with respect to civil and administrative monetary liability. This Agreement may not be amended except by written consent of the Parties.

16. The individuals signing this Agreement on behalf of Inter-Tel represent and warrant that they are authorized by Inter-Tel to execute this Agreement, and that Inter-Tel is authorized to release the claims described in Paragraph 1(b) of this Agreement on behalf of itself and/or the related entities using the SPINs listed in Paragraph 1(b). The United States, SFUSD, and City Attorney signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

17. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

18. This Agreement is binding on Inter-Tel's successors, transferees, heirs, and assigns.

19. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.

//

THE UNITED STATES OF AMERICA

DATED: _____

PETER D. KEISLER
Assistant Attorney General

BY: _____

Alicia J. Bentley
ALICIA J. BENTLEY
Trial Attorney
Commercial Litigation Branch
Civil Division
U.S. Department of Justice

KEVIN V. RYAN
United States Attorney
Northern District of California

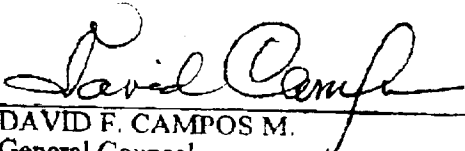
DATED: 12/8/04

BY: _____

Sara Winslow
SARA WINSLOW
Assistant United States Attorney
On behalf of the United States and the
Federal Communications Commission

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

DATED: 12-7-04

BY: 
DAVID F. CAMPOS M.
General Counsel
San Francisco Unified School District

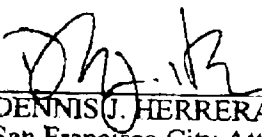
PHILLIPS & COHEN LLP

DATED: _____

BY: _____
ERIC R. HAVIAN
Attorney for SFUSD

CITY ATTORNEY FOR THE CITY AND COUNTY OF SAN FRANCISCO

DATED: 12/7/04

BY: 
DENNIS J. HERRERA
San Francisco City Attorney
On Behalf of the People of the
State of California


SAN FRANCISCO UNIFIED SCHOOL DISTRICT

DATED: _____

BY: _____
DAVID F. CAMPOS M.
General Counsel
San Francisco Unified School District

PHILLIPS & COHEN LLP

DATED: 12/7/04

BY: 
ERIC R. HAVIAN
Attorney for SFUSD

CITY ATTORNEY FOR THE CITY AND COUNTY OF SAN FRANCISCO

DATED: _____

BY: _____
DENNIS J. HERRERA
San Francisco City Attorney
On Behalf of the People of the
State of California

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

DATED: _____

BY: _____
[NAME]
General Counsel
San Francisco Unified School District

PHILLIPS & COHEN LLP

DATED: _____

BY: _____
ERIC R. HAVIAN
Attorney for SFUSD

CITY ATTORNEY FOR THE CITY AND COUNTY OF SAN FRANCISCO

DATED: _____

BY: _____
DENNIS J. HERRERA
San Francisco City Attorney
On Behalf of the People of the
State of California

INTER-TEL TECHNOLOGIES, INC.

DATED: _____

BY:  _____
STEVEN G. MIHAYLO
Chairman, Inter-Tel Technologies, Inc.

WILSON SONSINI GOODRICH &
ROSATI

DATED: 12-7-04

BY:  _____
LEO P. CUNNINGHAM
Attorney for Inter-Tel Technologies,
Inc.

EXHIBIT B

Applicant/BEN	Service Provider/SPIN	BEN
East Dakota Educational Coop BEN 134107	McLeod USA Telecommunications Services, Inc. 143005176	848943
St. Joseph's Indian School BEN 66104	McLeod USA Telecommunications Services, Inc. 143005176	845456
St. Joseph's Indian School BEN 66104	McLeod USA Telecommunications Services, Inc. 143005176	845120
St. Joseph's Indian School BEN 66104	McLeod USA Telecommunications Services, Inc. 143005176	845498
St. Joseph's Indian School BEN 66104	McLeod USA Telecommunications Services, Inc. 143005176	845419
St. Joseph's Indian School BEN 66104	McLeod USA Telecommunications Services, Inc. 143005176	845377
Children's Home Society BEN 65907	McLeod USA Telecommunications Services, Inc. 143005176	837164
Children's Home Society BEN 65907	McLeod USA Telecommunications Services, Inc. 143005176	837118
McCrossan Boys Ranch School BEN 65961	McLeod USA Telecommunications Services, Inc. 143005176	842272

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff.

v.

INTER-TEL TECHNOLOGIES, INC., a corporation.

Defendant.

CASE NO.: CR-04-399-CRB

SPECIAL CONDITIONS OF PROBATION

The defendant, Inter-Tel Technologies, Inc. ("Inter-Tel" or "defendant"), a corporation organized under the laws of Arizona with its principal place of business in Tempe, Arizona, has sold and installed telecommunications equipment, including PBXs (Private Branch Exchange). It also provided maintenance and other services as needed for the equipment it supplied. The defendant offered and sold the products and services to schools within the United States pursuant to a program operated under the auspices of the Federal Communications Commission (the "FCC") and administered by the Universal Services Administrative Company ("USAC"). The program, commonly referred to as the E-Rate Program, was created by Congress to permit schools and libraries to acquire the needed technology to access and utilize the internet. The defendant became the subject of a grand jury investigation arising out of doing business related

1 to the E-Rate Program. After having cooperated in the investigation and seeking a mutually
2 agreeable settlement of all claims related thereto, the defendant has entered into a Plea
3 Agreement with the United States in which the defendant pleaded guilty to a two-count felony
4 information charging the defendant with mail fraud and aiding and abetting in violation of 18
5 U.S.C. § 1341 and 2, and conspiracy to suppress and eliminate competition in violation of the
6 Sherman Antitrust Act, 15 U.S.C. § 1, by conspiring with others to frustrate the public bidding
7 process under the E-Rate Program and submitting false and misleading information to the
8 Schools and Library Division of USAC ("LD") in order to receive funding for products and
9 services not authorized under the E-Rate Program. To address the issues raised in the Plea
10 Agreement concerning its conduct, and having determined that the following conditions will
11 constitute reasonable and necessary steps to avoid the re-occurrence of the conduct which was
12 the subject of the Plea Agreement, the defendant agrees, and the Court hereby imposes the
13 following as a special condition of probation for the entire three year term of probation. In so
14 doing, the Court is not in any way limiting the authority of any agency of the United States to
15 take any action permitted by law or regulation.

16 1. Within sixty (60) days of acceptance of the Plea Agreement by the Court, the
17 defendant shall formally adopt a comprehensive Anti-Fraud and Antitrust
18 Compliance Policy (the "Compliance Policy") and shall provide copies of said
19 policy to the Probation Officer, FCC Enforcement Bureau and the FCC-OIG. At
20 a minimum, the Compliance Policy will address the following:

- 21 a. Creating an internal structure requiring high level management oversight
22 of all government and public entity business;
- 23 b. Creating an internal system of monitoring and audits to include steps to be
24 taken if any employee suspects that any bid, proposal or other company
25 conduct is not in accordance with the company's Compliance Policy
26 and/or applicable law;
- 27 c. Ensuring that there are at least annual reports to the FCC Enforcement
28 Bureau and FCC-OIG of Compliance Policy activities;

- 1 d. Educating and training all responsible employees about their obligations,
2 including government procurement law, regulations and procedures;
3 criminal and civil penalties for mail fraud, wire fraud, false statements,
4 obstruction of justice, and false claims and other related conduct; and the
5 requirements for adherence to the antitrust laws; and
6 e. Ensuring that there are regular reports to the CEO and Board of Directors.
- 7 2. Within sixty (60) days of acceptance of the Plea Agreement by the Court, the
8 defendant shall designate an officer of the defendant to be the Compliance Officer
9 (the "Compliance Officer") responsible for the enforcement of the Anti-Fraud and
10 Antitrust Compliance Policy. This shall include:
- 11 a. Creating and overseeing internal policies and procedures to ensure that all
12 company activities involving government sponsored or funded programs
13 or any other business with any public entities is conducted in accordance
14 with applicable law.
- 15 b. Ensuring that either the Compliance Officer personally or someone under
16 his/her direct supervision is an experienced contract manager
17 knowledgeable about governmental laws and regulations relating to public
18 sector procurement;
- 19 c. Requiring the Compliance Officer and those under his/her direct
20 supervision to oversee the enforcement of the Anti-Fraud and Antitrust
21 Compliance Policy as it applies to all company activities involving
22 government sponsored or funded programs or any other business with any
23 public entities;
- 24 d. Creating and overseeing an ongoing mandatory education and training
25 program for all officers, directors, sales, technical staff and other
26 employees directly involved in the preparation of bid and related
27 contractual materials for any government sponsored or funded programs
28 or any other business with any public entities in order to apprise them of

1 all governmental laws and regulations relating to public sector
2 procurement and the requirements of the Compliance Policy; and

3 c. The Compliance Officer shall ensure and certify under penalty of perjury
4 that all affected individuals have received such training on at least a yearly
5 basis and shall provide the certification to the Probation Officer, FCC
6 Enforcement Bureau and FCC-OIG.

- 7 3. The Compliance Officer shall be the central point of contact for (a) documenting
8 and distributing E-Rate program requirements throughout the company; (b)
9 monitoring changes in the E-Rate rules and regulations to ensure the
10 documentation and distribution of such changes; (c) ensuring that all employees
11 who are involved with the E-Rate program receive training; and (d) arranging
12 monthly meetings with key company executives to ensure consistent
13 implementation of the E-Rate rules and regulations across the company.
- 14 4. The Compliance Officer's salary and other compensation, as well as the salary
15 and other compensation of any employees under the Compliance Officer's
16 supervision, shall be independent of any contracts or other government sponsored
17 or funded programs or other public entity business;
- 18 5. The Compliance Officer shall create and oversee an internal auditing program in
19 which all public sector contracts shall be audited to ensure compliance with the
20 Compliance Program to include that bids, prices and design specifications are
21 appropriate and that there are no hidden terms, side agreements or other
22 undisclosed arrangements, and that all bids and pricing have been done in
23 accordance with all applicable laws and procedures.
- 24 6. The Compliance Officer shall create, oversee and promote an internal voicemail
25 or email hotline system in which all employees are encouraged to report, on an
26 anonymous basis, any believed violation of law by any officer or employee.
- 27
28

- 1 7. The Compliance Officer and the defendant's General Counsel shall be responsible
2 for monitoring the internal hotline system and undertaking all reasonable and
3 necessary investigations arising from any reported matter(s).
- 4 8. The General Counsel and the Compliance Officer shall, on at least a quarterly
5 basis, report to the defendant's CEO and Audit Committee as to the enforcement
6 of the Compliance Policy and the various measures called for herein including the
7 status of any anonymous complaints or reports received from any employees.
- 8 9. On at least an annual basis, the Compliance Officer shall make a report to the full
9 Board of Directors as to the status of the Compliance Policy and the various
10 measures called for herein.
- 11 10. On at least an annual basis, the Compliance Officer shall make a report to the
12 Probation Officer, FCC Enforcement Bureau and FCC-OIG as to the status of the
13 Compliance Policy and the various measures called for herein.
- 14 11. Within sixty (60) days of acceptance of the Plea Agreement by the Court:
 - 15 a. The Compliance Officer shall prepare and distribute a written training
16 program to be used in formal training of Inter-Tel employees involved in
17 the E-Rate Program, including employees involved in accounting,
18 finance, sales, marketing, and installations. Among other things, this
19 training program shall cover the following subject matters: the
20 application process, competitive bidding, eligible services, service
21 provider role and responsibilities, discounts, service substitutions and
22 equipment transfers, billing SLD for services, document retention
23 requirements, and risks of non-compliance. Within 120 days of
24 acceptance of the Plea Agreement by the court, all employees who are
25 involved in the E-Rate Program must certify their completion of the
26 training program. All future employees involved with the E-Rate
27 program shall receive such training and shall certify completion of the
28 training program within 14 days of the date on which such individuals

1 are appointed or hired to such positions. These employee certifications
2 must be collected and maintained by the Compliance Officer for a period
3 of 5 years.

- 4 b. The Compliance Officer shall establish an E-Rate Code of Conduct
5 ("Code"), which will conform to this Corporate Compliance Plan and
6 which shall be signed by all employees involved with the E-Rate
7 program. All subject employees shall reaffirm annually, in writing that
8 they have reviewed, fully understand, and will adhere to the Code.
- 9 c. The Compliance Officer shall inform all employees involved with the E-
10 Rate program that any violation of E-Rate Code shall be grounds for
11 disciplinary action to include warning, censure, reprimand, suspension,
12 loss of pay and firing depending on the severity of the violation and the
13 repetitive nature of the misconduct.

14 12. The Compliance Officer shall meet regularly (at least monthly) with key
15 executives in the following business units to ensure compliance with all
16 applicable internal company rules and regulations and all E-Rate or other
17 telecommunications program requirements: accounting, finance, installations (i.e.
18 service technicians), legal, marketing, and sales.

19 13. The Compliance Officer shall review all company bids in response to Form 471
20 Applications. For each bid, the Compliance Officer will certify that all E-Rate
21 rules and regulations were followed in preparing the bid and all related
22 contractual materials. Such certifications must be maintained by the Compliance
23 Officer for a period of 5 years.

24 14. The Compliance Officer shall collect Form 471 Applications from each customer
25 or prospective customer. The Compliance Officer or his/her designee shall
26 perform a reconciliation of each Form 471 Application to the company's
27 responsive bid and to the resulting contract or business agreement. The
28 Compliance Officer shall keep a copy of the resulting reconciliation worksheet for

1 each application and shall update it as necessary to show any exchanges,
2 substitutions, or cancellations. The Compliance Officer shall maintain these
3 reconciliation worksheets for a period of 5 years.

4 15. The company shall separate all E-Rate eligible and ineligible products and
5 services onto separate customer contracts per installation.

6 16. In addition to any applicable FCC regulation or program requirement, and as a
7 condition of any future participation in the E-Rate Program or other government
8 sponsored or funded telecommunications programs, the defendant agrees that the
9 FCC Enforcement Bureau and FCC-OIG, acting directly or through its agents,
10 may, on an annual basis, audit defendant's compliance with applicable laws and
11 regulations relating to the E-Rate or other government sponsored or funded
12 telecommunication programs to assure adherence to the terms and conditions of
13 those programs. Defendant shall bear all ordinary and reasonable costs of any
14 such audit(s).

15 17. On an at least annual basis, within 30 days after the close of defendant's fiscal
16 year, the defendant shall file a report signed under the penalty of perjury by the
17 CEO with the FCC Enforcement Bureau and FCC-OIG concerning the
18 defendant's compliance with the Compliance Policy. This report shall certify that
19 all required oversight, training and educational activities have been undertaken in
20 accordance with the requirements of the Compliance Policy. In the alternative,
21 the report shall detail any shortcomings in following the Compliance Policy and
22 the steps taken, and those that will be taken, to ensure compliance. This report
23 shall also include a detailed description of any violations that were found during
24 the applicable period, the steps taken to cure the violations and any subsequent
25 steps taken to ensure future compliance.

26 18. The defendant agrees that should it fail to provide the reports required herein on a
27 timely basis, it shall be responsible for liquidated damages to the United States in
28 the amount of \$25,000 per day until the report is received by the FCC

1 Enforcement Bureau and FCC-OIG. The FCC Enforcement Bureau and FCC-
2 OIG may require the defendant to provide additional information as necessary
3 concerning any incidents or other activities contained in the annual report. If the
4 defendant materially fails to provide such information within the time requested
5 or 10 days of such request, whichever is longer, the defendant agrees that it will
6 continue to be liable for liquidated damages in the amount of \$25,000 per day
7 until such information is provided to the satisfaction of the FCC Enforcement
8 Bureau and FCC-OIG.

- 9 19. If defendant is debarred by the FCC from further participation in the E-Rate
10 program, defendant shall remain subject to each of the above Special Conditions
11 of Probation with the exception of the external reporting requirements contained
12 in Paragraphs 1(c), 2(e), 10, 16-18.
- 13 20. These Special Conditions shall apply to the defendant and to any successors or
14 assigns for three years from the date of sentencing. Notwithstanding the above, if
15 the defendant is to be sold, or if all or substantially all of the defendant's assets are
16 to be sold, to an independent third party, then these Special Conditions will be
17 voidable following written notice as set forth below under the following
18 circumstances: a) The acquiring entity (or its shareholder(s)), or individual(s)
19 (collectively, the "Acquirer"), own in excess of 50% of the outstanding shares of
20 the defendant; b) Management decisions are made as part of the new corporate
21 structure which, by way of example and not by way of limitation, shall mean at a
22 minimum that at least 50% of the board of directors are appointed by the Acquirer
23 from individuals who have not previously been directors, officers or employees of
24 the defendant or its former shareholders. The new corporate structure must
25 provide for on-going internal review and consent by responsible corporate officers
26 of all business dealings with any public entity and publicly financed or mandated
27 program such as E-Rate. c) The Chief Executive Officer of the acquiring entity
28 certifies under penalty of perjury to the Court, with copies to the Probation

1 Officer and United States Attorney's Office, that the new entity has a fully
2 functioning Corporate Compliance Program that adequately addresses the internal
3 oversight functions required by these Special Conditions of Probation and
4 provides backup documentation describing the Corporate Compliance Program;
5 and d) Any reports required by these Special Conditions are up to date and any
6 liquidated damages due and owing under paragraph 18 have been paid in full.
7 The United States and Probation Department shall have up to 45 days from notice
8 of the proposed acquisition to evaluate the changed circumstances caused by the
9 acquisition. Unless there is an objection by the United States Attorney's Office or
10 Probation Officer, these Special Conditions shall terminate automatically at the
11 expiration of 45 days following the receipt of defendant's written notice, or sooner
12 if the United States so stipulates. If there is an objection, the defendant may
13 notice this matter for hearing before this Court. Notwithstanding the foregoing, if
14 the conditions set forth in clauses (a), (b), and (d) have been satisfied, but the
15 condition in clause (c) has not been satisfied, then, if the Acquirer certifies that it
16 has adopted a compliance program that satisfies the terms of these Special
17 Conditions (excluding any external reporting requirements), then these Special
18 Conditions shall continue to apply to the defendant and any successors or assigns
19 and will extend to the entire business operations of the acquiring entity with the
20 exception of the external reporting requirements contained in Paragraphs 1(c),
21 2(e), 10, and 16-18.

22 IT IS SO ORDERED.

23 Dated:

24 HONORABLE CHARLES B. BREYER
25 United States District Court Judge
26
27
28

EXHIBIT D

Inter-Tel Technologies, Inc.

**Unanimous Written Consent of the
Board of Directors without a Meeting**

**Pursuant to Section 10-821
Of the Arizona Business Corporation Act**

THE UNDERSIGNED, being all the Directors of Inter-Tel Technologies, Inc., an Arizona corporation (hereinafter referred to as the "Company"), hereby consent to, approve and adopt the following preamble and resolution pursuant to Section 10-821 of the Arizona Business Corporation Act;

WHEREAS, the Company has been the subject of an investigation conducted by the US Department of Justice and the US Attorney (collectively the "Government") regarding the Company's participation in a federally funded program commonly known as the E-rate Program (the "Investigation"); and

WHEREAS, as a result of the Investigation the Government has alleged that the Company acted illegally (the "Allegations"); and

WHEREAS, as a result of the Investigation the San Francisco Unified School District filed a civil action against the Company, alleging, among other things, violations under the Federal False Claims Act (the "Civil Action"); and

WHEREAS, the Company has fully cooperated with the Government during the Investigation and has negotiated a settlement with the Government regarding the Allegations and the Civil Action (respectively the "Plea Agreement" and the "Settlement Agreement").

NOW THEREFORE, it is

RESOLVED, that the Company is hereby authorized to negotiate, complete and execute the Plea Agreement and the Settlement Agreement in a form substantially similar to Exhibit A attached hereto,

FURTHER RESOLVED, that the Company shall enter a plea in Federal District Court for the Northern District of California as more fully set forth in the Plea Agreement mentioned above; and

FURTHER RESOLVED, that Steven G. Mihaylo, Chairman of the Board of the Company, be and hereby is authorized and directed to do and perform, in the name and on behalf of the Company, all such acts and things, and to execute and deliver all such documents and instruments, including but not limited to the Plea Agreement and the Settlement Agreement under the seal of the Company or otherwise, and appearing, or designating someone to appear, on the Company's behalf at any judicial proceeding at which a Company's representative is required, as such officer may deem necessary or advisable to consummate the resolution of the Allegations and Civil Action and carry out the intent and purposes of the foregoing resolution.

This consent may be executed in counterparts and all so executed shall constitute one consent notwithstanding that all of the directors are not signatories to the original or the same counterpart.

Consented to as of the 7th day of December, 2004.

/s/ 
Steven G. Mihaylo

/s/ 
Craig W. Rauchle

/s/ _____
Norman Stout

FURTHER RESOLVED, that Steven G. Mihaylo, Chairman of the Board of the Company, be and hereby is authorized and directed to do and perform, in the name and on behalf of the Company, all such acts and things, and to execute and deliver all such documents and instruments, including but not limited to the Plea Agreement and the Settlement Agreement under the seal of the Company or otherwise, and appearing, or designating someone to appear, on the Company's behalf at any judicial proceeding at which a Company's representative is required, as such officer may deem necessary or advisable to consummate the resolution of the Allegations and Civil Action and carry out the intent and purposes of the foregoing resolution.

This consent may be executed in counterparts and all so executed shall constitute one consent notwithstanding that all of the directors are not signatories to the original or the same counterpart.

Consented to as of the 7th day of December, 2004.

/s/ _____
Steven G. Mihaylo

/s/ _____
Craig W. Rauchle

/s/ Norm Stout _____
Norman Stout

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

USA et al,

Plaintiff,

v.

Inter-Tel Technologies, Inc. et al,

Defendant.

Case Number: CR04-00399 JSW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 10, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jeffrey L. Bornstein
United States Attorney's Office
450 Golden Gate Avenue
11th floor
San Francisco, CA 94102

Michael Wood
Plaza 9 Building
55 Erieview Plaza, Ste 700
Cleveland, OH 44144

Leo P. Cunningham
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050

Dated: December 10, 2004

Richard W. Wieking, Clerk
By: Barbara Espinoza, Deputy Clerk