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CLERK: U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SEALED
BY COURT ORDER

JSW

UNITED STATES OF AMERICA,
Plaintiff,
v.
INTER-TEL TECHNOLOGIES, INC.,
Defendant.

CR No. 04 0399

VIOLATIONS: 18 U.S.C. §§ 1341 and 2 -
Mail Fraud and Aiding and Abetting; 15
U.S.C. § 1 - Sherman Antitrust Act

SAN FRANCISCO VENUE
12/6/04 UNDER SEAL
12/8/04 SEAL LIFTED

INFORMATION

The United States Attorney and the Antitrust Division charge:

INTRODUCTION

At all times relevant to this Information:

1. Inter-Tel Technologies, Inc. ("Inter-Tel") was an Arizona corporation with its principal place of business in Tempe, Arizona.
2. Inter-Tel manufactured, sold and installed telecommunications equipment, including PBX (Private Branch Exchange) systems. Inter-Tel provided maintenance and other services as needed for the equipment they supplied.
3. E-Rate is 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 connect schools and libraries to the Internet. The FCC designated the Universal

INFORMATION

1 Services Administrative Company ("USAC"), a non-profit corporation, to administer the E-Rate
2 program.

3 4. The E-Rate program was designed to ensure that the neediest schools received the
4 most financial help. All participating school districts were required to fund a percentage of the
5 cost of the equipment and services acquired under the E-Rate program. That percentage,
6 however, was determined based on the number of students in the district qualifying for the
7 United States Department of Agriculture's school lunch program, with the neediest school
8 districts eligible for the highest percentage of funding.

9 5. School district applications for E-Rate funding far exceeded the funding available. To
10 ensure that E-Rate funding was distributed to the widest applicable number of applicants, USAC
11 required all applicants to comply with various rules and procedures, including: (1) only USAC-
12 approved equipment, services and supplies would be eligible for funding; and (2) local school
13 districts were required to follow competitive bidding procedures in accordance with local and
14 state law to ensure that the school districts got the lowest possible prices from the responsive
15 bidders.

16 6. On or about December 15, 1999, the defendant and a company that manufactured and
17 installed video-teleconferencing switches (hereinafter VX Company) entered into an agreement
18 under which the defendant agreed to pay VX Company a fee for all business opportunities VX
19 Company brought to the defendant that the defendant subsequently obtained. The defendant also
20 agreed to include VX Company's equipment in its E-Rate proposals and bids.

21 7. VX Company employed two employees (Consultant One and Consultant Two) to
22 work as sales representatives. Consultants One and Two specialized in marketing VX Company
23 products to educational institutions, including local school districts.

24 8. Consultants One and Two also acted as consultants to school districts in designing
25 computer networks, identifying potential government-sponsored funding sources (including the
26 E-Rate program), applying for those funds, and selecting vendors to supply the specified
27 equipment and services funded by those programs.

1 SCHEME TO DEFRAUD

2 9. Between in or before December 1999 and March 2001, both dates being approximate
3 and inclusive, the defendant and others devised and intended to devise a scheme to defraud
4 USAC and the San Francisco Unified School District ("SFUSD"), and to obtain money by means
5 of false and fraudulent pretenses, representations and promises by submitting false documents in
6 support of a SFUSD E-Rate application. In particular:

- 7 a. The defendant participated in the SFUSD's bidding process knowing that
8 VX Company's Consultants One and Two were advising the SFUSD both
9 in creating the Request for Proposal (RFP) for equipment and services to
10 be funded by E-Rate and in selecting the winning bidders, and also that the
11 defendant would utilize VX Company's video teleconferencing equipment
12 if the defendant was selected as one of the winning bidders; and
13 b. The defendant assisted Consultants One and Two in fabricating the names
14 of equipment parts in documents submitted to USAC to hide ineligible VX
15 Company equipment.

16 10. It was a further part of the scheme to defraud that on or about January 13, 2000,
17 Inter-Tel submitted its bid on the SFUSD E-Rate project. Together with an SFUSD Official,
18 Consultant One opened and reviewed the bids. Consultant One then declared that a data
19 company had submitted the winning bid for the data equipment portion of the project, that a local
20 computer company had submitted the low bid on the server portion of the project, that a local
21 cabling contractor had submitted the low bid on the cabling portion of the project, and that the
22 defendant had submitted the low bid on the PBX portion of the project. On January 13 or 14,
23 2000, Consultants One and Two and the SFUSD Official all decided to make the data company
24 the prime contractor and to have the local computer company and the local cabling company act
25 as subcontractors to the data company. The defendant was given the PBX portion of the project.

26 11. It was a further part of the scheme to defraud that on or about January 15 through 18,
27 2000, Consultants One and Two and the data company employees all met to prepare false and
28 inflated USAC Application Form 471 for the SFUSD and other school districts. The Form 471 is

1 a school district's application for E-Rate funding. It is supposed to set out the selected vendors'
2 bid amounts, memorialized in contracts, for the equipment and services called for by the
3 district's RFP. In this case, however,

- 4 a. Consultant One told the data company employees the total prices she
5 wanted to submit to USAC on the Form 471s, and she then directed them
6 to prepare spreadsheets justifying those prices;
- 7 b. With the data company employee's assistance, Consultant One prepared
8 the SFUSD Form 471 with inflated prices; and
- 9 c. On or about January 19, 2000, Consultant Two delivered the false and
10 inflated Form 471 to USAC.

11 12. It was further part of the scheme to defraud that in or about late January 2000 the
12 defendant learned that the Form 471 had been submitted to USAC with inflated prices and did
13 nothing to inform USAC that the Form 471 prices had been inflated above the amounts originally
14 bid for the project. The combined 471 prices for the SFUSD project were approximately \$26
15 million greater than the amounts the vendors had bid for the project. Specifically,

- 16 a. The data equipment price was increased from \$19,776,318 to \$22,987,223;
- 17 b. The server prices were increased from \$9,275,880 to \$21,987,223. The
18 cabling price was increased from \$13,697,838 to \$21,875,698;
- 19 c. Finally, The defendant's PBX price was increased from \$19,403,732 to
20 \$21,409,369; and
- 21 d. The number of schools to be covered by the project was reduced from 50
22 to 46.

23 In addition, defendant had assisted Consultants One and Two in falsely describing the actual
24 equipment to be supplied to the SFUSD. This included hiding VX Company video-conferencing
25 equipment in the funding proposal sent to USAC, in order to have the E-Rate program pay for
26 equipment that would otherwise not have been eligible for funding under the E-Rate program.

27 13. It was a further part of the scheme to defraud that in late May or early June 2000,
28 USAC's Schools and Libraries Division ("SLD") began a review of the SFUSD Form 471

1 submitted in January 2000. As part of that review, the SLD asked the SFUSD to supply certain
2 information to the SLD to justify certain parts of the project. Consultant One, and others acting
3 under her direction, submitted spreadsheets to the SLD which contained false information
4 concerning the bidding process, the bidding participants, the winning bids, and the bid amounts.
5 Based in part on these false representations, on September 21, 2000, the SLD approved funding
6 for the SFUSD E-Rate project in part as follows: \$15,731,613.33 for data, \$18,156,829.34 for
7 cabling, and \$17,820,886 for PBX, including the required 17% co-pay to be paid by the SFUSD.
8 The SLD specifically denied any E-Rate funding for computer servers.

9 14. At no time did the defendant disclose to the SFUSD superintendent or the SFUSD
10 Board that the funding requests to USAC had been increased over the original bid amounts or
11 that there were any inflated estimates contained in the bid documents.

12 15. For the purpose of executing its scheme, the defendant caused the SLD to mail a
13 letter dated September 22, 2000 to the SFUSD in which the SLD agreed to make a funding
14 commitment based on the false and fraudulent information submitted in support of the SFUSD
15 E-Rate Project.

16 COUNT ONE: 18 U.S.C. §§ 1341 and 2 (Mail Fraud and Aiding and Abetting)

17 16. Paragraphs One through Fifteen are realleged as if fully set forth here.

18 17. On or about September 22, 2000, in the Northern District of California and
19 elsewhere, defendant

20 INTER-TEL TECHNOLOGIES, INC.,

21 and others, having knowingly and intentionally devised and intended to devise a scheme and
22 artifice to defraud the USAC and the SFUSD, and to obtain money and property by means of
23 false and fraudulent pretenses, representations, and promises, for the purpose of executing that
24 scheme, knowingly caused to be delivered by mail through the United States Postal Service, a
25 letter from the Schools and Library Division of USAC to the San Francisco Unified School
26 District confirming that USAC had agreed to fund portions of the SFUSD E-Rate 471
27 Application.

28 All in violation of Title 18, United States Code, Sections 1341 and 2.

1 COUNT TWO: 15 U.S.C. § 1 (Sherman Antitrust Act)

2 DESCRIPTION OF THE OFFENSE

3 18. Paragraphs One through Eight are realleged as if fully set forth here.

4 19. Beginning at least as early as December 1, 1999, and continuing at least through
5 December 31, 2000, the exact dates being unknown to the United States, in the Northern District
6 of California and elsewhere, the defendant

7 INTER-TEL TECHNOLOGIES, INC.

8 and its co-conspirators entered into and engaged in a combination and conspiracy to suppress and
9 eliminate competition for E-Rate subsidized projects in Michigan and California by allocating
10 contracts for equipment and services relating to telecommunications, Internet access, and/or
11 internal connections. The charged combination and conspiracy unreasonably restrained interstate
12 trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

13 20. The charged combination and conspiracy consisted of a continuing agreement,
14 understanding, and concert of action among the defendant and co-conspirators, the substantial
15 terms of which were:

- 16 a. to allocate among the defendant and co-conspirators contracts for
17 E-Rate funded projects;
- 18 b. to submit collusive, noncompetitive, and rigged bids for the E-Rate
19 funded projects; and
- 20 c. to provide equipment and services for E-Rate funded projects and
21 receive payment from USAC as a result of the allocation and
22 collusive bidding.

23 MEANS AND METHODS OF THE CONSPIRACY

24 21. For the purpose of forming and carrying out the charged combination and
25 conspiracy, the defendant and co-conspirators, each aware of the others' existence and ability to
26 compete with the others, did the following things, among others:

- 27 a. discussed with co-conspirators prospective bids for E-Rate
28 projects;

- 1 b. agreed with co-conspirators who would be the lead contractor on
2 the project and who would participate on the project as
3 subcontractors to the designated lead contractor;
- 4 c. submitted fraudulent and non-competitive bids in accordance with
5 the conspiratorial agreement;
- 6 d. engaged Consultants One and Two, described in Paragraph 7, who
7 did the following:
- 8 i. Consultants One and Two took steps to ensure the success
9 of the conspiracy by eliminating and disqualifying bids
10 from non-conspirators and either directly awarding the
11 contracts or using their best efforts to persuade the school
12 district officials to award contracts to the designated lead
13 contractors;
- 14 ii. Consultants One and Two successively caused to be
15 awarded E-Rate project contracts to the defendant. In
16 return, the defendant agreed to pay and paid Consultants
17 One and Two's employer, the VX Company, a fee and
18 agreed to purchase and purchased and installed VX
19 Company equipment on those E-Rate Projects.

20 DEFENDANT AND CO-CONSPIRATORS

21 22. Various individuals and corporations, not made defendants in this Information,
22 participated as co-conspirators in the charged combination and conspiracy and performed acts
23 and made statements in furtherance of it.

24 23. Whenever this Information refers to any act, deed, or transaction of any corporation,
25 it means that the corporation engaged in the act, deed, or transaction by or through its officers,
26 directors, employees, agents, or other representatives while they were actively engaged in the
27 management, direction, control, or transaction of its business or affairs.

1 TRADE AND COMMERCE

2 24. In accordance with the E-Rate project contracts obtained through the conspiracy by
3 the defendant and its co-conspirators, during the relevant period, equipment and services were
4 delivered and payments for such equipment and services were received that traveled in interstate
5 commerce.

6 25. The activities of the defendant that are the subject of this Information were within the
7 flow of, and substantially affected, interstate trade and commerce.

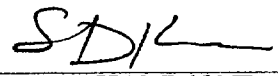
8 All in violation of Title 15, United States Code, Section 1.

9 DATED:

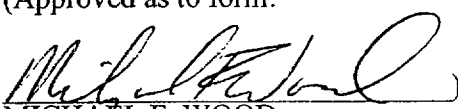
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