

1 KEVIN V. RYAN (CSBN 118321)  
2 United States Attorney

3 R. HEWITT PATE (DCBN 473598)  
4 Assistant Attorney General

ORIGINAL  
FILED

U.S. DIST. CT. S.F. 25 APR 2000

SEALED  
BY COURT ORDER  
RICHARD W. LARSEN  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

5  
6 COPY

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

CRB

11 CR 04-0184  
12 No.

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 NEC-BUSINESS NETWORK  
16 SOLUTIONS, INC. ("NEC/BNS"),

17 Defendant.  
18  
19

VIOLATIONS: Title 18, United States  
Code, Sections 1343 and 2 – Wire Fraud  
and Aiding and Abetting; Title 15,  
United States Code, Sections 1 -  
Sherman Antitrust Act

SAN FRANCISCO VENUE

20 INFORMATION

21 The United States Attorney and the Antitrust Division charge:

22 INTRODUCTION

23 At all times relevant to this Information:

24 1. The defendant, NEC-Business Network Solutions, Inc. ("NEC/BNS"), was a  
25 Delaware corporation with its principal place of business in Irving, Texas.

26 2. From at least December 1999 to approximately March 2001 ("the relevant  
27 period") NEC/BNS manufactured and sold data equipment, including computers, servers,  
28 routers, and switches. NEC/BNS also sold telecommunications equipment, including

INFORMATION

1 PBX (Private Branch Exchange). NEC/BNS installed data cabling and provided  
2 maintenance and other services as needed for the equipment they supplied.

3 3. E-Rate is a program created by Congress in the Telecommunication Act of  
4 1996 and operated under the auspices of the Federal Communications Commission  
5 ("FCC") to provide funding to connect schools and libraries to the Internet. The FCC  
6 designated the Universal Services Administrative Company ("USAC"), a non-profit  
7 corporation, to administer the E-Rate program.

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

14 5. During the relevant period, school district applications for E-Rate funding far  
15 exceeded the funding available. To ensure that E-Rate funding was distributed to the  
16 widest number of qualifying applicants, USAC required all applicants to comply with  
17 various rules and procedures, including: (1) only USAC approved equipment, services,  
18 and supplies would be eligible for funding; and (2) local school districts needed to follow  
19 competitive bidding procedures in accordance with local and state law to ensure that the  
20 school districts got the lowest possible prices from the responsive bidders.

21 6. On or about December 9, 1999, NEC/BNS and a company that manufactured  
22 and installed video-teleconferencing switches (hereinafter "VX Company") entered into  
23 an agreement under which the defendant agreed to pay the VX Company a fee for all  
24 business opportunities the VX Company brought to NEC/BNS that NEC/BNS  
25 subsequently obtained. The defendant also agreed to include VX equipment in its E-Rate  
26 proposals and bids.

27 7. During the relevant period, the VX Company employed two employees  
28 ("Consultants One and Two") to work as sales representatives. Consultants One and

1 Two specialized in marketing VX Company products to educational institutions,  
2 including local school districts.

3 8. During the relevant period, Consultants One and Two also acted as consultants  
4 to school districts in designing computer networks, identifying potential government  
5 sponsored funding sources (including the E-Rate program), applying for those funds, and  
6 selecting vendors to supply the specified equipment and services funded by those  
7 programs.

#### 8 SCHEME TO DEFRAUD

9 9. From at least December 1999 through March 2001, both dates being  
10 approximate and inclusive, the defendant and others, devised and intended to devise a  
11 scheme to defraud USAC and the San Francisco Unified School District ("SFUSD") and  
12 to obtain money by means of false and fraudulent pretenses, representations and promises  
13 by submitting false documents in support of a SFUSD E-Rate application. In particular,  
14 the defendant:

15 a. Participated in the SFUSD's bidding process knowing, first, that VX  
16 Company's Consultants One and Two were advising the SFUSD both in creating the  
17 Request for Proposal (RFP) for equipment and services to be funded by E-Rate and in  
18 selecting the winning bidders, and second, that the defendant would utilize VX  
19 Company's video teleconferencing equipment if the defendant was selected as one of the  
20 winning bidders;

21 b. Assisted Consultants One and Two in submitting false and fraudulent  
22 documents to USAC including inflated contract prices and misleading supporting  
23 documents that misrepresented the true winning bidders and the nature of their winning  
24 bids;

25 c. Assisted Consultants One and Two in fabricating the names of  
26 equipment parts in documents submitted to USAC to hide ineligible VX Company  
27 equipment; and

28 d. Pretended to donate goods and services deemed ineligible by the USAC

1 to the SFUSD when, in fact, the cost of such goods and services was included in the  
2 defendant's inflated bids and contract prices for eligible goods and services.

3 10. It was a further part of the scheme to defraud that on or about January 13,  
4 2000, the defendant NEC/BNS submitted its bid on the SFUSD E-Rate project.  
5 Consultant One ran the bid opening and, together with an SFUSD Official, opened and  
6 reviewed the bids. Consultant One then declared that the defendant had submitted the  
7 winning bid for the data equipment portion of the project, a local computer company had  
8 submitted the low bid on the server portion of the project, and a PBX company had  
9 submitted the low bid on the PBX portion of the project. On or about January 13 or 14,  
10 2000, Consultant One, and Consultant Two, and the SFUSD Official decided to make the  
11 defendant the prime contractor and to have the local computer company and a cabling  
12 company act as subcontractors to the defendant.

13 11. It was a further part of the scheme to defraud that on or about January 15-18,  
14 2000, Consultants One and Two and defendant's employees met to prepare the USAC  
15 Application Form 471 for the SFUSD and other school districts. The Form 471 was a  
16 school district's application for E-Rate funding. It was supposed to set out the selected  
17 vendors' bid amounts, memorialized in contracts, for the equipment and services called  
18 for by the district's RFP. Consultant One told the defendant's employees the total prices  
19 she wanted to submit to the USAC on the Form 471s and then directed them to prepare  
20 spreadsheets justifying those prices. With the defendant's assistance, Consultant One  
21 prepared the SFUSD Form 471 with inflated prices. On or about January 19, 2000,  
22 Consultant Two delivered it to the USAC. Sometime shortly thereafter the defendant  
23 learned that the Form 471 had been submitted to the USAC with inflated prices but did  
24 nothing to inform the USAC that the Form 471 prices had been inflated above the  
25 amounts originally bid for the project. For the SFUSD, those prices were approximately  
26 \$26 million greater than the amounts the vendors had bid for the project. In particular,  
27 the defendant's data equipment price was increased from \$19,776,318 to \$22,987,223.  
28 The server prices were increased from \$9,275,880 to \$21,987,223. The cabling price was

1 increased from \$13,697,838 to \$21,875,698. The number of schools to be covered by the  
2 project was reduced from 50 to 46 and the defendant was falsely described as the winning  
3 bidder for the entire project. In addition, Consultants One and Two worked with others to  
4 falsely describe the actual equipment to be supplied to the SFUSD, including VX  
5 Company equipment, which was not eligible for funding under the E-Rate program, in  
6 order to have the E-Rate program pay for that equipment.

7 12. In or about late May or early June 2000, USAC's Schools and Libraries  
8 Division ("SLD") began a review of the SFUSD Form 471 submitted in January 2000.  
9 As part of that review, the SLD asked the SFUSD to supply certain information to the  
10 SLD to justify certain parts of the project. It was further a part of the scheme to defraud  
11 that Consultant One, and others acting under her direction, submitted spreadsheets to the  
12 SLD which contained material false information concerning the bidding process, the  
13 bidding participants, the winning bids, and the bid amounts. Based in part on these false  
14 representations, on September 21, 2000, the SLD approved funding for the SFUSD E-  
15 Rate project in part as follows: \$15,731,613.33 for data and \$18,156,829.34 for cabling.  
16 The SLD specifically denied any E-Rate funding for computer servers.

17 13. It was a further part of the scheme to defraud that on or about October 16,  
18 2000, the defendant advised the SFUSD that it was prepared to "donate" to the SFUSD  
19 90 computer workstations valued at approximately \$7.4 million. The defendant actually  
20 planned to use E-Rate funds that it expected to collect to offset any expenses it would  
21 incur in making this "donation."

22 14. It was a further part of the scheme to defraud that on or about November 10,  
23 2000, the defendant met with SFUSD officials and others. During this meeting, an  
24 SFUSD official requested that the defendant make a \$14 million "donation" of computer  
25 workstations to the SFUSD and that the defendant obtain those computers from the local  
26 computer company that had bid in response to the SFUSD RFP. The SFUSD official  
27 suggested that the E-Rate funding proposal that had been approved by USAC and the  
28 SLD contained inflated cabling estimates that could be redirected to fund this donation.

1 On or about November 13, 2000, the defendant agreed to purchase 2,250 computer  
2 workstations from the local computer company for \$10,292,000 and to "donate" these  
3 computers to the SFUSD. The defendant planned to use E-Rate funds to pay for this  
4 "donation."

5 15. At no time during the relevant period did the defendant disclose to the SFUSD  
6 superintendent or the SFUSD Board that the funding requests to USAC had been  
7 increased over the original bid amounts or that there were any inflated estimates  
8 contained in the bid documents.

9 16. During the relevant period, for the purpose of executing its scheme, the  
10 defendant transmitted, caused to be transmitted and received electronic wire  
11 communications in interstate commerce in San Francisco, California and elsewhere.

12 COUNT ONE: 18 U.S.C. §§ 1343 and 2 (Wire Fraud and Aiding and Abetting)

13 17. Paragraphs One through Sixteen are realleged as if fully set forth here.

14 18. On or about October 18, 2000, in the Northern District of California and  
15 elsewhere, defendant

16 NEC-BUSINESS NETWORK SOLUTIONS

17 and others, having knowingly and intentionally devised and intended to devise a scheme  
18 and artifice to defraud USAC and the SFUSD, and to obtain money and property by  
19 means of false and fraudulent pretenses, representations, and promises, and, for the  
20 purpose of executing that scheme, knowingly transmitted and caused to be transmitted  
21 electronic wire communications in interstate commerce; specifically, an e-mail dated  
22 October 18, 2000 from a SFUSD official, "dmcq[always]@sfusd.com" in San Francisco,  
23 California, directed to the defendant in Dallas, Texas, and elsewhere which contained a  
24 discussion of the inflated estimates contained in the Form 471 Application that had been  
25 submitted to USAC for the SFUSD E-Rate Project.

26 All in violation of Title 18, United States Code, Sections 1343 and 2.

27 //  
28

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

2 DESCRIPTION OF THE OFFENSE

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

4 20. Beginning at least as early as December 1, 1999, and continuing at least  
5 through December 31, 2000, the exact dates being unknown to the United States, the  
6 defendant

7 NEC-BUSINESS NETWORK SOLUTIONS

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

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

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

24 MEANS AND METHODS OF THE CONSPIRACY

25 22. For the purpose of forming and carrying out the charged combination and  
26 conspiracy, the defendant and co-conspirators, each aware of the others' existence and  
27 ability to compete with the others, did the following things, among others:  
28

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

23 DEFENDANT AND CO-CONSPIRATORS

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

27 24. Whenever this Information refers to any act, deed, or transaction of any  
28 corporation, it means that the corporation engaged in the act, deed, or transaction



1 by or through its officers, directors, employees, agents, or other representatives  
2 while they were actively engaged in the management, direction, control, or  
3 transaction of its business or affairs.

4 TRADE AND COMMERCE

5 25. During the relevant period, the defendant and its co-conspirators  
6 obtained E-Rate project contracts and delivered equipment and services and  
7 received payments for such equipment and services in and affecting interstate  
8 commerce.

9 26. The activities of the defendant that are the subject of this Information  
10 were within the flow of, and substantially affected, interstate trade and commerce.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 //

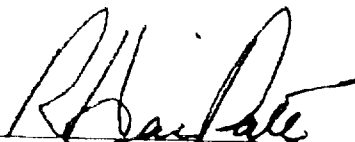
1                                    JURISDICTION AND VENUE

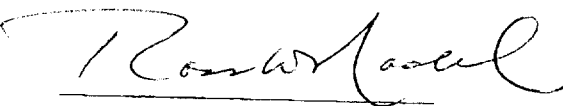
2            27. The combination and conspiracy charged in this Information was  
3 carried out, in part, within the Northern District of California and within the five  
4 years preceding the filing of this Information.

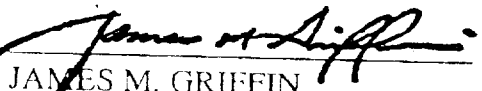
5            All in violation of Title 15, United States Code, Section 1.

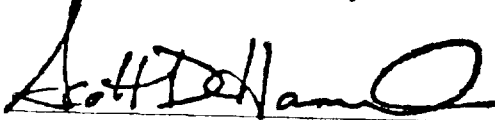
6  
7 DATED: 5/24/04.

8  
9  
10                                    KEVIN V. RYAN  
11                                    United States Attorney


12   
13 R. HEWITT PATE  
14 Assistant Attorney General


15   
16 ROSS W. NADEL  
17 Chief, Criminal Division

18   
19 JAMES M. GRIFFIN  
20 Deputy Assistant Attorney General

21   
22 SCOTT D. HAMMOND  
23 Director of Criminal Enforcement

24  
25 Approved as to form:

26   
27 MICHAEL F. WOOD  
28 Attorney  
Antitrust Division

29   
30 JEFFREY L. BORNSTEIN  
31 Assistant U.S. Attorney