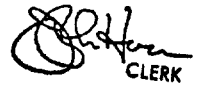


UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
APR 20 2006

CLERK

UNITED STATES OF AMERICA,

CR06 -40041

Plaintiff,

INFORMATION

vs.

Fraud by wire

NEXTIRAONE, LLC,

18 U.S.C. § 1343

Defendant.

The United States of America, acting through its attorneys, charges:

(INTRODUCTION)

1. In the Telecommunications Act of 1996, Congress mandated a “Universal Service Fund” to help provide modern telecommunication and information services to four groups: schools and libraries, rural health care providers, low-income consumers, and high-cost communities. The Federal Communications Commission (“FCC”) adopted a Universal Service Order on or about May 7, 1997, which implemented the Telecommunications Act of 1996. The schools and libraries portion of the order, known as the “Education rate” or the “E-rate” Program, was designed to encourage schools and libraries to upgrade their telecommunications and information infrastructure and to assist in providing students with access to the Internet. The FCC subsequently contracted with the Universal Services Administrative Company (“USAC”), a non-profit corporation, to administer the Universal Services Fund, including the Schools and Libraries Division’s (“SLD”) portion.

2. The E-rate Program provides up to \$2.25 billion annually in discounts to eligible schools and libraries for data and telecommunications goods and services. A core requirement of the E-rate Program is that all qualifying school districts and libraries must pay a percentage of the cost of the equipment and services for which funding is sought (“non-discounted portion”). That percentage is based on the number of students in the district qualifying for the United States Department of Agriculture’s free/reduced school lunch program, with the neediest school districts eligible for the highest discount percentage. The E-rate Program pays a percentage — between 20% and 90% — of the costs of the eligible services and equipment directly to the contracted service provider while the school district or library is required to pay the remainder, or non-discounted portion, plus the total cost of any non-eligible goods and services. Among the reasons why applicant schools are required to pay a portion of the costs are: (a) to ensure that schools have a financial incentive to negotiate with vendors for the most competitive prices, and (b) to ensure that schools purchase only those services and equipment that they truly need and can afford, thus ensuring that the government’s spending under the program is not wasteful.

3. During the relevant period, applications for E-rate funding far exceeded the amount of money available. In order to distribute funds to the largest number of applicants, the FCC instituted certain rules and procedures. Two such rules were that only USAC-approved equipment and services would be eligible for funding, and that school districts had to follow competitive bidding procedures in accordance with local and state laws. In establishing the competitive bidding requirement, the FCC commented that without competitive bidding, the prices that vendors charged schools and libraries might be needlessly high, with the result that fewer eligible schools and libraries would be able to benefit from the E-rate Program.

(BACKGROUND)

4. For the purposes of this Information, the “relevant period” encompasses from at least December, 2000, through at least December, 2002. During this period, NextiraOne, LLC (“NextiraOne”) was a wholly-owned subsidiary of Platinum Equity, LLC (“Platinum”). NextiraOne was organized as a limited liability company in the state of Delaware with its principal place of business in Houston, Texas. NextiraOne was formerly known as Williams Communications Solutions (“WCS”). In or around January, 2001, WCS’s parent company agreed to sell WCS to Platinum. WCS was sold in April of 2001, and Platinum renamed the business unit “Nextira,” and then later, “NextiraOne”.

5. Whenever this Information refers to any act, deed, or transaction of either WCS or NextiraOne, it means that they engaged in the act, deed, or transaction by or through their officers, directors, employees, agents, or other representatives while they were actively engaged in the management, direction, control, or transaction of their business or affairs.

6. During the relevant period, WCS, and subsequently NextiraOne, were engaged in the design, sale, and maintenance of advanced voice and data networks.

7. During the relevant period, NextiraOne sought to expand its E-rate business and employed a group of individuals to advise and educate its sales force about how to obtain E-rate customers. These individuals sought out school districts that qualified for discounts ranging from 80% to 90%, which are the discount rates associated with the poorest schools. Under the rules of the E-rate program, these schools were obligated to pay their chosen service providers between 10% and 20% of the cost of eligible goods and services that USAC approved during any funding year; NextiraOne, as a vendor, had a reciprocal obligation to submit invoices to the schools for the non-discounted portion.

8. During the relevant period, the Oglala Nation Educational Coalition (“ONEC”) member schools, located on the Pine Ridge Reservation in the District of South Dakota, applied for and received funding from the E-rate Program at the 90% discount rate using first WCS, and then NextiraOne, as their primary vendor for upgrading their telecommunications and data infrastructure. Among the ONEC schools were: Pine Ridge High, Wounded Knee, Loneman, Red Cloud, Our Lady of Lourdes, Crazy Horse, Porcupine, American Horse, Pine Ridge Christian, Batesland, Rockyford, Red Shirt, Wolf Creek, and the Oglala Lakota College (the “ONEC schools”).

(PURPOSE OF THE SCHEME AND ARTIFICE)

9. During the relevant period, it was a purpose of the scheme to defraud that WCS, and then NextiraOne, would unlawfully enrich itself through:

- a. Control of the application, design, implementation, and invoicing processes for the ONEC project, which WCS, and then NextiraOne, intended to be funded entirely by the E-rate Program;
- b. The submission of materially false and misleading information to the SLD in order to obtain E-rate Program funding for the ONEC project;
- c. The omission and misrepresentation of information that would have resulted in the denial or significant reduction of E-rate Program funding for the ONEC project; and
- d. The concealment of the above from the FCC and the SLD.

(THE SCHEME AND ARTIFICE TO DEFRAUD)

10. It was a part of the scheme and artifice to defraud that WCS, and subsequently NextiraOne, went to great lengths to deceive the ONEC schools and to induce them to participate in the fraudulent scheme by making a materially false representation that the entire voice, video, and data project would cost the ONEC schools nothing.

11. It was a part of the scheme and artifice to defraud that the defendant also engaged in an ongoing deception to convince the SLD that the ONEC schools had paid their non-discounted portion when, in reality, inflated equipment costs billed to the SLD were used to pay for ONEC's 10% obligation and non-eligible items.

12. In particular, the defendant:

- a. Induced the ONEC schools to participate in the E-rate Program and to select WCS and, later, NextiraOne as the primary vendor in each year's E-rate application during the relevant period with the promise of an advanced voice, video, and data network at no cost;
- b. Represented to the SLD that the ONEC schools had been billed for the non-discounted portion of all eligible services and equipment. The defendant, in fact, charged ONEC nothing for the eligible goods and services, and charged nothing for related non-eligible goods and services, and assured the ONEC schools that they would not have to pay for these goods and services because a foundation or philanthropic organization would pay for ONEC's non-discounted share. In this manner WCS and, later, NextiraOne were able to secure ONEC's business and "sell" goods and services at non-competitive prices, and to impose the entire inflated cost on the E-rate Program;
- c. Deceived the SLD by submitting materially false and fraudulent invoice documents which included out-of-date equipment lists, misleading service certifications, and

related supporting documentation that gave the false appearance that the work being performed and the equipment being installed was what was originally requested and was being billed for, and that the ONEC schools had paid their non-discounted share;

d. Claimed to donate goods and services deemed ineligible for E-Rate funds to ONEC when, in fact, the defendant's prices were calculated so as to pay for the cost of all such non-eligible goods and services; and

e. Persuaded ONEC's leaders and its treasurer to disregard statements mailed by the defendant's outside auditor by misrepresenting that the letters were generated for internal purposes, and that the auditor's statements did not reflect actual financial obligations that ONEC had incurred under the E-rate Program.

13. It was further part of the scheme to defraud that on or about December 15, 2000, WCS representatives gave a presentation to ONEC schools and Oglala Lakota Sioux tribal leaders in Rapid City, South Dakota, during which an employee of WCS promised that the proposed voice and data network project would cost the ONEC schools nothing and that WCS would find alternative funding sources to pay for ONEC's non-discounted portion.

14. It was further part of the scheme to defraud that on or about January 18 and 19, 2001, a WCS employee instructed a tribal member on the Pine Ridge Reservation by telephone what to fill in, line by line, on the Form 471s submitted to the SLD. By filing a FCC Form 471, which is also known as the "Services Ordered and Certification" form, applicant schools request funding from the E-rate Program for specific goods and services.

15. It was further part of the scheme to defraud that the same WCS employee faxed over interstate wires the necessary documents to complete the final Form 471 for Funding Year Four to tribal members on or about January 19, 2001, which was after the deadline for filing.

16. It was further part of the scheme to defraud that on or about December 17, 2001, the NextiraOne employee described in Paragraph 14 submitted a Service Provider Annual Certification Form (FCC Form 473) that falsely represented that, with respect to any Service Provider Invoice submitted to the SLD by NextiraOne, NextiraOne had also billed the customer for the non-discounted portion, while knowing that this had not happened with the ONEC project.

17. It was further part of the scheme to defraud that beginning in or about December 2001, in connection with changes in project management personnel, the defendant re-engineered the original ONEC project with the result that the total cost of the project materially decreased. The defendant did not tell the ONEC schools that the project's cost, after the redesign, was substantially lower. In addition, the defendant sent to the SLD – and received payment on – bills that intentionally concealed the redesigned project and resulting lower costs. By submitting these false and misleading invoices, NextiraOne circumvented SLD oversight procedures that would have otherwise resulted in a significant reduction of E-rate funding for this project.

18. It was further part of the scheme to defraud that from approximately December, 2001, through at least February, 2002, NextiraOne employees used substantial sums of E-rate money generated by the submission of these false and misleading invoices to pay for ONEC and other related consulting contracts. These contracts were ineligible for E-rate funding and the SLD was unaware that its money was being diverted to consulting contracts, as these contracts were not reflected in the invoice materials that NextiraOne submitted.

19. It was further part of the scheme to defraud that in or around June, 2002, the defendant delivered only seven PictureTel videoconferencing units to the ONEC schools as part of the ONEC project when the SLD had approved and paid for 14 PictureTel units.

20. It was further part of the scheme to defraud that by failing to deliver and install certain equipment at the ONEC schools, by utilizing different equipment than what had been submitted to the SLD for funding approval, and by charging inflated prices for the ONEC project, the defendant deceived the SLD into overpaying for the ONEC Funding Year Four application by over \$1,000,000. At no time during the relevant period did the defendant advise ONEC, or the tribal member, to file an FCC Form 500 notifying the SLD of these equipment changes and substantially lower costs, as required under the Program's rules.

21. It was further part of the scheme to defraud that the SLD, in reliance upon the defendant's materially false representations, paid NextiraOne the following amounts in response to Form 474 Service Provider Invoices submitted by NextiraOne for the ONEC FY 4 project: \$429,020.40 (December 13, 2001, invoice); \$160,098.77 (January 7, 2002, invoice); \$616,141.80 (May 24, 2002, invoice); \$1,500,000.00 (August 8, 2002, invoice); \$658,488.60 (August 23, 2002, invoice); and \$441,442.93 (September 3, 2002, invoice), for a total amount of \$3,805,192.50.

22. During the relevant period, for the purpose of executing its scheme, the defendant transmitted, and caused to be transmitted and received, electronic wire communications in interstate commerce in South Dakota, and elsewhere.

(THE USE OF INTERSTATE WIRES)

23. On or about January 21, 2002, the defendant,

NEXTIRAONE, LLC,

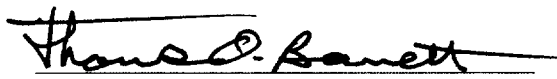
having devised and intending to devise a scheme and artifice to defraud the SLD and the ONEC schools, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises and the concealment of material facts, and, for the purpose of


executing that scheme to defraud, transmitted and caused to be transmitted a fax communication in interstate commerce from Houston, Texas, to an SLD invoice analyst in New Jersey which contained a materially false invoice representing that ONEC had been billed for its non-discounted portion of the ONEC project and had paid, or would pay, the listed amount.

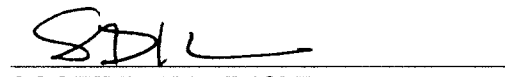
(JURISDICTION AND VENUE)

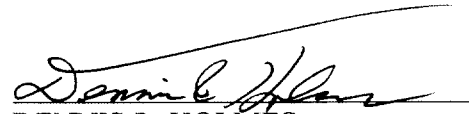
24. The fraudulent scheme charged in this Information was begun, and subsequently carried out, within the District of South Dakota and elsewhere.

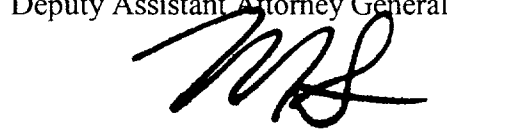
All in violation of Title 18, United States Code, Section 1343.

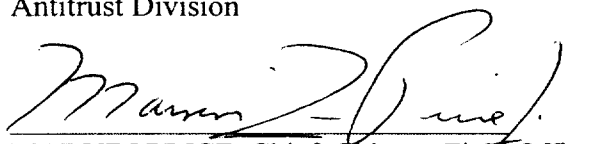

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