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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

CRB

CR 04-0184

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>NEC-BUSINESS NETWORK SOLUTIONS, INC. ("NEC/BNS"),<br><br>Defendant. | No.<br><br>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<br><br>SAN FRANCISCO VENUE |

## INFORMATION

The United States Attorney and the Antitrust Division charge:

## INTRODUCTION

At all times relevant to this Information:

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

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

PBX (Private Branch Exchange). NEC/BNS installed data cabling and 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 Services Administrative Company ("USAC"), a non- profit corporation, to administer the E-Rate program.

4. 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.

5. During the relevant period, school district applications for E-Rate funding far exceeded the funding available. To ensure that E-Rate funding was distributed to the widest number of qualifying 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) local school districts needed to follow competitive bidding procedures in accordance with local and state law to ensure that the school districts got the lowest possible prices from the responsive bidders.

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

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

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

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

SCHEME TO DEFRAUD

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

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

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

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

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

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

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

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

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

12. In or about 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. It was further a part of the scheme to defraud that Consultant One, and others acting under her direction, submitted spreadsheets to the SLD which contained material 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: $15,731,613.33 for data and $18,156,829.34 for cabling. The SLD specifically denied any E-Rate funding for computer servers.

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

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

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

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

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

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

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

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

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

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

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

DESCRIPTION OF THE OFFENSE

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

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

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

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

(a) to allocate among the defendant and co-conspirators contracts for E-Rate funded projects;

(b) to submit collusive, noncompetitive, and rigged bids for the E-Rate funded projects; and

(c) to provide equipment and services for E-Rate funded projects and receive payment from USAC as a result of the allocation and collusive bidding.

MEANS AND METHODS OF THE CONSPIRACY

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

(a) discussed with co-conspirators prospective bids for E-Rate projects;

(b) agreed with co-conspirators who would be the lead contractor on the project and who would participate on the project as subcontractors to the designated lead contractor;

(c) submitted fraudulent and non-competitive bids in accordance with the conspiratorial agreement;

(d) engaged Consultants One and Two, described in Paragraph 7 above;

(e) Consultants One and Two took steps to ensure the success of the conspiracy by eliminating and disqualifying bids from non-conspirators and either directly awarding the contracts or using their best efforts to persuade the school district officials to award contracts to the designated lead contractors; and

(f) Consultants One and Two successively caused to be awarded E-Rate project contracts to the designated lead contractors, including the defendant. In return, on projects where the defendant was designated as the lead contractor, the defendant agreed to pay and paid Consultants One and Two's employer, the VX Company, a fee and agreed to purchase and purchased and installed VX Company equipment on those E-Rate projects.

DEFENDANT AND CO-CONSPIRATORS

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

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

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

## TRADE AND COMMERCE

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

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

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## JURISDICTION AND VENUE

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

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

DATED: 5/24/04.

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