KEVIN V. RYAN (CSBN 118321)
United States Attorney

ROSS W. NADEL (CSBN 87940)
Chief, Criminal Division

JEFFREY L. BORNSTEIN (CSBN 99038)
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
Telephone: (415) 436-6873

MICHAEL F. WOOD (DCBN 376312)
MATTHEW D. SEGAL (CSBN 190938)
RICHARD B. COHEN (CSBN 79601)
Attorneys, U.S. Department of Justice

Antitrust Division
450 Golden Gate Avenue Rm. 10-0101
San Francisco, California 94102
Telephone: 415 436-6660

Attorneys for the United States of America

ORIGINAL
FILED

MAY 2 7 2004

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

COPY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. NEC-BUSINESS NETWORK SOLUTIONS, INC., Defendant.	No. CR 04-184 CRB PLEA AGREEMENT

NEC-Business Network Solutions, Inc. (hereafter "NEC/BNS" or "defendant"), a corporation organized and existing under the laws of Delaware with its principal place of business in Irving, Texas, and the United States Department of Justice, by and through the United States Attorney's Office for the Northern District of California and the Antitrust Division of the

Department of Justice (hereafter "the government"), enter into this written plea agreement (the "Agreement") pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

The Defendant's Promises

1. Pursuant to Fed. R. Crim. P. 7(b), the defendant agrees to waive indictment and plead guilty to a two-count felony Information charging the defendant with wire fraud in violation of 18 U.S.C. § 1343 and conspiracy to suppress and eliminate competition in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. NEC/BNS agrees that the elements of the offenses and the maximum penalties are as follows:

For Count One – Wire Fraud –

Elements:

a. Defendant participated in a scheme to defraud or a plan for obtaining money or property by making false promises or statements;

b. Defendant knew that the promises or statements were false;

c. The promises or statements were material;

d. Defendant acted with the intent to defraud; and

e. Defendant used or caused interstate wire communications to carry out an essential part of the scheme.

Maximum Penalties:

a. Five years probation;

b. A fine in the amount of $500,000 or twice the loss (or gain) from the offense, whichever is greater;

c. Mandatory special assessment of $400; and

d. Restitution.

For Count Two – Sherman Antitrust –

Elements:

a. That the conspiracy, agreement, or understanding described in the Information was knowingly formed, and was existing at or about the time alleged;

b. That the Defendant knowingly became a member of the conspiracy, agreement, or understanding, as charged;

c. That the alleged conspiracy constituted an unreasonable restraint of interstate commerce; and

d. That 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; and

d Restitution.

2. NEC/BNS 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 WIRE FRAUD OFFENSE CHARGED

(a) From at least December 1999 to approximately March 2001, NEC/BNS sold and installed data equipment including computers, computer servers, routers and switches and telecommunication equipment including PBXs (Private Branch Exchange). It also installed data cabling and 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) 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.

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

(e) During the relevant period, VX Company employed two persons (Consultant One and Consultant Two) to work as sales representatives. Consultants One and Two specialized in marketing VX Company products to educational institutions, including local school districts. 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.

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

(g) On or about January 13, 2000, 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, that 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 January 13 or 14, 2000, Consultants One and 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.

(h) 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 is a school district's application for E-Rate funding. It is supposed to set out the selected vendors' bid amounts, memorialized in contracts, for the equipment and services called for by the district's Request for Proposal. Consultant One told the defendant's employees the total prices she wanted to submit to USAC on the Form 471s and then directed them to prepare false spreadsheets justifying those prices. With NEC/BNS' assistance, Consultant One Prepared the SFUSD Form 471 with inflated prices. On or about January 19, 2000, Consultant Two delivered the SFUSD Form 471 to USAC. Sometime shortly thereafter, the defendant learned that the SFUSD Form 471 had been submitted to USAC with inflated prices and did nothing to inform 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. 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.

(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: $15,731,613.33 for data and $18,156,829.34 for cabling. The SLD specifically denied any E-Rate funding for computer servers.

(j) On or about October 16, 2000, the defendant advised the SFUSD that it was prepared to "donate" to the SFUSD 90 computer workstations which it 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 occur in making this "donation."

(k) On or about November 10, 2000, the defendant met with SFUSD officials and others. During this meeting, an SFUSD official demanded 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 on the E-Rate proposal. 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."

(l) 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 or that there were any inflated estimates contained in the bid documents.

(m) During the relevant period, for the purpose of executing its scheme, the defendant caused to be transmitted and received electronic wire communications in interstate commerce including an email dated October 18, 2000 from an SFUSD Official in San Francisco, California, "dmcq[always]@sfusd.com" to NEC/BNS in Dallas, Texas, that contained a discussion of the inflated estimates contained in the Form 471 Application that had submitted to USAC for the San Francisco E-Rate Project.

FACTUAL BASIS FOR SHERMAN ACT OFFENSE CHARGED

(a) For purposes of the Count II bid rigging violation in this Plea Agreement, the "relevant period" is approximately December 1, 1999 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 connections in the United States.

(b) 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 program projects, including those identified in Exhibit C (hereinafter E-Rate projects).

(c) In furtherance of the conspiracy, the defendant reached an agreement with its co-conspirators to frustrate the competitive process on the E-Rate projects by allocating contracts and submitting fraudulent and non-competitive bids. To carry out this conspiracy, the defendant discussed with these co-conspirators prospective bids for the E-Rate projects; agreed with these co-conspirators who would be the lead contractor on the project and who would participate on the project as subcontractors to the designated lead contractors; submitted fraudulent and non-competitive bids in accordance with the conspiratorial agreement; and engaged Consultants One and Two, described in Paragraph 2(e) above. These Consultants 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.

(d) As part of the conspiracy, Consultants One and Two successively caused to be awarded E-Rate project contracts to the designated lead contractors including the defendant. The defendant agreed to pay, and did pay, Consultants One and Two's employer, the VX Company, a fee and agreed to purchase and install, and did purchase and install, equipment from the VX company on the E-Rate projects.

(e) In accordance with the E-Rate project contracts obtained through the conspiracy by the defendant and its co-conspirators, during the relevant period, equipment and services were delivered and payments for that equipment and services were received that traveled in interstate

commerce. The business activities of the defendant and its co-conspirators in connection with the sale of that equipment and services affected by this conspiracy were within the flow of, and substantially affected, interstate trade and commerce.

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

3. The defendant agrees to give up all rights that it would have if it chose to proceed to trial, including the rights to a jury trial with the assistance of an attorney; to confront and cross-examine government witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth Amendment claims; to any further discovery from the government; and to pursue any affirmative defenses and present evidence.

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

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

6. The defendant agrees not to ask the Court to withdraw its guilty pleas at any time after they are entered, unless the Court declines to accept the sentence agreed to by the parties. Either party may withdraw from this agreement if the Court does not accept the agreed upon sentence set out below.

7. If acceptable to the Court, both parties agree to waive presentence investigation and report pursuant to Rule 32(C)(i) of the Federal Rules of Criminal Procedure, and ask that the defendant be sentenced at the time the guilty pleas are 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 as set forth below:

For Count One:

a.	Base Offense Level (8C2.1, 8C2.3 and 2F1.1):	6
b.	Specific offense characteristics: (Anticipated Loss > $20 million)	+ 16
c.	More than Minimal Planning:	+ 2
d.	Adjusted offense level:	24
e.	Base Fine (8C2.4):	$2.1 million
f.	Culpability Score (8C2.5): (> 50 employees and tolerance of offense by substantial authority personnel was pervasive throughout such unit)	5 + 2
g.	Acceptance of Responsibility:	-2
h.	Total Culpability Score:	5
i.	Minimum/Maximum Multiplier (8C2.6):	1 to 2
j.	Fine Range (8C2.7):	$2.1 million to $4.2 million
k.	Maximum Statutory Fine (18 U.S.C. § 3571 and 8 C3.1(a)(b))	$500,000

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 five (5) school districts $23 million)	+ 5
c.	Adjusted offense level	16
d.	Base Fine (2R1.1(d)(1)) (20% of volume of commerce):	$4.6 million
e.	Culpability Score (8C2.5): (> 50 employees and tolerance of offense by substantial authority personnel was pervasive throughout such unit)	5 + 2
f.	Acceptance of Responsibility:	- 2
g.	Total Culpability Score:	5
h.	Minimum/Maximum Multiplier (8C2.6):	1 to 2

i. Fine Range (8C2.7): $4.6 million to $9.2 million

Multiple Counts

a. Grouping (3D1.1(a))

Different victims - different harm (3D1.2 & 3D1.3)

Group 1 - Wire Fraud offense level: 24

Group 2 - Bid Rigging offense level: 16

b. Combined Offense Levels (3D1.4)

Highest offense level - Group 1: 24

Group 2 (within 5-8 levels): 1½

Combined offense level: 25

Fine Determination

a. Base Fine (8C2.4):

The greatest of:

Actual Loss (8C2.4(a)(3)): $4.6 million

Offense Level Fine Table
(8C2.4(d)as limited by 8C3.1(a)(b)): $500,000

Greatest $4.6 million

b. Culpability Score (8C2.5): 5 + 2
(> 50 employees and tolerance of offense by substantial authority personnel was pervasive throughout such unit)

Acceptance of Responsibility: - 2

Total Culpability Score: 5

Minimum/Maximum Multiplier (8C2.6): 1 to 2

Fine Range (8C2.7): $4.6 million to $9.2 million

8. NEC/BNS understands that as part of its plea and the separate civil settlement that it will pay $20,685,263 in criminal fines, civil settlement, and restitution as set forth below. In view of all facts and circumstances of this case, including NEC/BNS' continuing cooperation with the government, the parties believe that the sentence recommended is fair and just in accordance with 18 U.S.C. §§ 3553, 3571 and 3572.

$500,000	Criminal Fine Count One – Wire Fraud
$4,200,000	Criminal Fine Count Two – Sherman Act (to be consecutive to Fine in Count One)
$15,985,263	Civil Settlement and Restitution (includes $10,300,000 in cash and $5,685,263 in-kind products and services)
$20,685,263	**Total**

9. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the parties agree that an appropriate disposition of this case is that NEC/BNS receive the following criminal sentence:

a. NEC/BNS shall be placed on probation for a period of 3 years on conditions including that NEC/BNS:

i. commit no violations of ~~United States or international~~ federal or state law;

ii. enter into a corporate compliance agreement and comply with the special conditions of probation attached as Exhibit A;

iii. cooperate fully with the United States as set forth below.

b. Within five (5) days of the date this Plea Agreement is accepted and sentence is imposed, NEC/BNS shall pay a criminal fine in the amount of $4,700,000. The criminal fine shall be paid to the Financial Litigation Unit, United States Attorney's Office, Northern District of California, by FEDWIRE.

c. Within five (5) days of the date this Plea Agreement is accepted and sentence is imposed, NEC/BNS shall pay a civil settlement (including partial restitution) in the amount of $10,300,000 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 which is attached as Exhibit B.

d. As part of its corporate compliance agreement and as an express condition of Probation, NEC/BNS shall also donate goods and services in the amount of $5,685,263 to the designated school districts in the civil settlement agreement as Community Service pursuant to

U.S.S.G. § 8B1.3 and in furtherance of the sentencing principles provided for under 18 U.S.C. § 3553(a).

e. NEC/BNS will enter into a separate corporate compliance agreement ("Corporate Compliance Agreement") with the United States. The defendant agrees that the Court will require as Special Conditions of Probation that the Company follow all of terms and conditions of the Corporate Compliance Agreement. A copy of the Special Conditions of Probation is attached as Exhibit A to this Plea Agreement and is incorporated by reference herein. As Part of the Corporate Compliance Agreement, NEC/BNS agrees, among other things, to designate a Compliance Officer responsible for monitoring all aspects of the Compliance Policy, to train all key personnel in public entity procurement requirements, to ensure that there are both internal and external audits of large volume and public entity contracts, and to make reports to the defendant's 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.

f. On the date of sentencing, NEC/BNS will pay a special assessment of $800.

g. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigations of violations of federal 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 therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding").

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

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

(b) using its best efforts to secure the ongoing, full, and truthful cooperation, as defined in Paragraph 11 of this Plea Agreement, of each current and former director, officer

and employee of the defendant as may be requested by the United States, including making these persons available at the defendant's expense, for interviews and the provision of testimony in grand jury, trial, and other judicial proceedings in connection with any federal proceeding.

11. The ongoing, full, and truthful cooperation of each person described in Paragraph 10(b) above will be subject to the procedures and protections of this paragraph, and shall include, but not be limited to:

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

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

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

(d) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings, pursuant to subpoena, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503); and

12. NEC/BNS understands and agrees that, should it or the United States withdraw from this Agreement in accordance with Paragraph 6, NEC/BNS may thereafter be prosecuted for any criminal violation of which the government has knowledge, notwithstanding the expiration of any applicable statute of limitations following the signing of this Agreement.

13. NEC/BNS agrees not to intentionally provide false information to the Court, the Probation Office, Pretrial Services, or the government; or fail to comply with any of the other

promises it has made in this Agreement. NEC/BNS agrees that, if it fails to comply with any promises it has made in this Agreement, then the government will be released from all of its promises in this Agreement, including those set forth in paragraphs 17 through 19 below, but NEC/BNS will not be released from its guilty pleas.

14. NEC/BNS agrees not to commit or attempt to commit any crimes before sentence is imposed.

15. NEC/BNS agrees that this Agreement and the attached Exhibits A, B, C, and D, contain all of the promises and agreements between it and the government, and it will not claim otherwise in the future.

16. NEC/BNS agrees that this Agreement binds the United States Department of Justice, excepting the Tax Division, only, and does not bind any other federal, state, or local agency.

The Government's Promises

17. The government agrees not to file or seek any additional charges against the defendant that could be filed as a result of the investigation into collusion and fraud that led to the captioned information, or other matters known to the United States Attorney's Office or the Antitrust Division regarding the defendant's participation in the E-Rate program from 1998 to the date of sentencing.

18. The government agrees that the appropriate sentence in this case should be as set forth in paragraph 9 above, unless the defendant violates the terms and conditions of this Agreement.

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

//

The Defendant's Affirmations

20. NEC/BNS confirms that it has had adequate time to discuss this case, the evidence, and this Agreement with its attorney, and that its attorney has provided it with all the legal advice that it requested.

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

DATED: 5-27-04

JAMES S. HOOVER
Vice President and Controller,
NEC-Business Network Solutions, Inc.
Defendant

DATED: 5-27-04

KEVIN V. RYAN
United States Attorney
Northern District of California

BY: _____
JEFFREY L. BORNSTEIN
Assistant United States Attorney

DATED: 5-27-04

MICHAEL F. WOOD
MATTHEW D. SEGAL
RICHARD B. COHEN
Attorneys
U.S. Department of Justice
Antitrust Division
450 Golden Gate Avenue Rm. 10-0101
San Francisco, California 94102
Tel.: 415 436-6660

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

DATED: 5-27-04

BY: _____
GEORGE D.NIESPOLO, ESQ.
DUANE, MORRIS LLP., Counsel for NEC-Business Network Solutions, Inc.

U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General *Washington, DC 20530-0001*

MAY 27 2004

The Honorable Kevin V. Ryan
United States Attorney
Northern District of California
San Francisco, California 94102

Attention Jeffrey Bornstein
Assistant United States Attorney

Dear: Mr. Ryan

Re: Plea Agreement With NEC Business Network Solutions, Inc.

This refers to your request for authorization to enter into a Plea Agreement with NEC Business Network Solutions, Inc.

I hereby approve the terms of the Plea Agreement, including provisions binding the United States not to initiate further prosecutions as set out therein.

You are authorized to make this approval a matter of record of the proceedings.

Sincerely,

Christopher A. Wray
Assistant Attorney General

John C. Keeney
John C. Keeney
Deputy Assistant Attorney General
Criminal Division

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA Plaintiff, vs. NEC-BUSINESS NETWORK SOLUTIONS, INC., a corporation, Defendant.	Case No.: CR 04-184 CRB SPECIAL CONDITIONS OF PROBATION

The defendant, NEC-Business Network Solutions, Inc. ("NEC/BNS" or "defendant"), a corporation organized under the laws of Delaware with its principal place of business in Irving, Texas, has sold, installed and continues to sell and install telecommunications and data equipment, including computers, computer servers, routers, switches and related telecommunications equipment, and renders ancillary maintenance and other services (the "products and services"). 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 to

the E-Rate Program. After having cooperated in the investigation and seeking a mutually agreeable settlement of all claims related thereto, the defendant has entered into a Plea Agreement with the United States in which the defendant pleaded guilty to a two-count felony information charging the defendant with wire fraud in violation of 18 U.S.C. § 1343 and conspiracy to suppress and eliminate competition in violation of the Sherman Antitrust Act, 15 U.S.C. § 1, by, conspiring with others to frustrate the public bidding process under the E-Rate Program and submitting false and misleading information to the SLD in order to receive funding for products and services not authorized under the E-Rate program. To address the issues raised in the Plea Agreement concerning its conduct, and having determined that the following conditions will constitute reasonable and necessary steps to avoid the re-occurrence of the conduct which was the subject of the Plea Agreement, the defendant agrees, and the Court hereby imposes, that the defendant will do the following as a special condition of probation for the entire three year term of probation:

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

   a. Creating an internal structure requiring high level management oversight of all government and public entity business;

   b. Creating an internal system of monitoring and audits to include steps to be taken if any employee suspects that any bid, proposal or other company conduct is not in accordance with the company's Compliance Policy and/or applicable law;

   c. Ensuring that there are regular reports to the CEO and Board of Directors and at least annual reports to the FCC Enforcement Bureau and FCC-OIG of Compliance Policy activities; and

d. Educating and training all responsible employees of their obligations including governmental procurement laws, regulations and procedures including criminal and civil penalties for mail fraud, wire fraud, false statements, obstruction of justice, false claims and other related conduct and the requirements for adherence to the antitrust laws.

2. Within sixty (60) days of acceptance of the Plea Agreement by the Court, the defendant shall designate an officer of the defendant to be the Compliance Officer (the "Compliance Officer") responsible for the enforcement of the Anti-Fraud and Antitrust Compliance Policy. This shall include:

a. Creating and overseeing internal policies and procedures to ensure that all company activities involving government sponsored or funded programs or any other business with any public entities is conducted in accordance with applicable law.

b. Ensuring that either the Compliance Officer personally or someone under his/her direct supervision is an experienced contract manager knowledgeable about governmental laws and regulations relating to public sector procurement;

c. Requiring the Compliance Officer and those under his/her direct supervision to oversee the enforcement of the Anti-Fraud and Antitrust Compliance Policy as it applies to all company activities involving government sponsored or funded programs or any other business with any public entities;

d. Creating and overseeing an ongoing mandatory education and training program for all officers, directors, sales, technical staff and other employees directly involved in the preparation of bid and related contractual materials for any government sponsored or funded programs or any other business with any public entities to apprise them of all governmental laws and regulations relating to

public sector procurement and the requirements of the Compliance Policy. The Compliance Officer shall ensure and certify under penalty of perjury that all affected individuals have received such training on at least a yearly basis and shall provide the certification to the Probation Officer, FCC enforcement Bureau and FCC-OIG.

3. The Compliance Officer shall be the central point of contact for (a) documenting and distributing E-Rate program requirements throughout the company; (b) monitoring changes in the E-Rate rules and regulations to ensure the documentation and distribution of such changes; (c) ensuring that all employees who are involved with the E-Rate program receive training; (d) arranging monthly meetings with key company executives to ensure consistent implementation of the E-Rate rules and regulations across the company.

4. The Compliance Officer's salary and other compensation, as well as the salary and other compensation of any employees under the Compliance Officer's supervision, shall be independent of any contracts or other government sponsored or funded programs or other public entity business;

5. The Compliance Officer shall create and oversee an internal auditing program in which all public sector contracts shall be audited to ensure compliance with the Compliance Program to include that bids, prices and design specifications are appropriate and that there are no hidden terms, side agreements or other undisclosed arrangements and that all bids and pricing have been done in accordance with all applicable laws and procedures.

6. The Compliance Officer shall create, oversee and promote an internal voicemail or email hotline system in which all employees are encouraged to

report on an anonymous basis, any believed violation of law by any officer or employee.

7. The Compliance Officer and the defendant's General Counsel shall be responsible for monitoring the internal hotline system and undertaking all reasonable and necessary investigations arising from any reported matter(s).

8. The General Counsel and the Compliance Officer shall, on at least a quarterly basis, report to the defendant's CEO and Audit Committee as to the enforcement of the Compliance Policy and the various measures called for herein including the status of any anonymous complaints or reports received from any employees.

9. On at least an annual basis, the Compliance Officer shall make a report to the full Board of Directors and to the Probation Officer, FCC Enforcement Bureau and FCC-OIG as to the status of the Compliance Policy and the various measures called for herein.

10. Within sixty (60) days of acceptance of the Plea Agreement by the Court:

a. The Compliance Officer shall prepare and distribute a written training program to be used in formal training of NEC/BNS employees involved in the E-Rate program, including employees involved in accounting, finance, sales, marketing, and installations. Among other things, this training program shall cover the following subject matters: the application process, competitive bidding, eligible services, service provider role and responsibilities, discounts, service substitutions and equipment transfers, billing SLD for services, document retention requirements, and risks of non-compliance. Within 120 days of acceptance of the Plea Agreement by the court, all employees who are involved in the E-Rate program must certify their completion of the training program. All future employees

involved with the E-Rate program shall receive such training and shall certify completion of the training program within 14 days of the date on which such individuals are appointed or hired to such positions. These employee certifications must be collected and maintained by the Compliance Officer for a period of 5 years.

b. The Compliance Officer shall establish an E-Rate Code of Conduct ("Code"), which will conform to this Corporate Compliance Plan and which will be signed by all employees involved with the E-Rate program. All subject employees shall reaffirm annually, in writing that they have reviewed, fully understand, and will adhere to the Code.

c. The Compliance Officer shall inform all employees involved with the E-Rate program that any violation of E-Rate Code shall be grounds for disciplinary action to include warning, censure, reprimand, suspension, loss of pay and firing depending on the severity of the violation and the repetitive nature of the misconduct.

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

12. The Compliance Officer shall review all company bids in response to Form 471 Applications. For each bid, the Compliance Officer will certify that all E-Rate rules and regulations were followed in preparing the bid and all

related contractual materials. Such certifications must be maintained by the Compliance Officer for a period of 5 years.

13. The Compliance Officer shall collect Form 471 Applications from each customer or prospective customer. The Compliance Officer or his/her designee shall perform a reconciliation of each Form 471 Application to the company's responsive bid and to the resulting contract or business agreement. The Compliance Officer shall keep a copy of the resulting reconciliation worksheet for each application and shall update it as necessary to show any exchanges, substitutions, or cancellations. The Compliance Officer shall maintain these reconciliation worksheets for a period of 5 years.

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

15. The defendant agrees that should it fail to provide the reports required herein on a timely basis, it shall be responsible for liquidated damages to the United States in the amount of $25,000 per day until the report is received by the FCC Enforcement Bureau and FCC-OIG. The FCC Enforcement Bureau and FCC-OIG may require the defendant to provide additional information as necessary concerning any incidents or other activities contained in the annual report. If the defendant materially fails to provide such ~~material~~ information within the time requested or 10 days of such request, whichever is longer, the defendant agrees that it will continue to be liable for liquidated damages in the amount of $25,000 per day until such information is provided to the satisfaction of the FCC Enforcement Bureau and FCC-OIG.

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

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

18. The defendant agrees that should it materially fail to provide the reports required herein on a timely basis, it shall be responsible for liquidated damages to the United States in the amount of $25,000 per day until the report is received by the FCC Enforcement Bureau and FCC-OIG. The FCC Enforcement Bureau and FCC-OIG may require the defendant to provide additional information as necessary concerning any incidents or other activities contained in the annual report. If the defendant materially fails to

provide such information within the time requested or 10 days of such request, whichever is longer, the defendant agrees that it will continue to be liable for liquidated damages in the amount of $25,000 per day until such information is provided.

19. If all or substantially all of the defendant's assets are transferred to a successor organization, that entity shall, as a condition of purchase and by operation of law, become subject to the terms of these special conditions of probation. Prior to any sale, dissolution, reorganization, assignment, merger, acquisition or other action that would result in a successor or assign for provision of the company's E-Rate-related services, the company will furnish a copy of this compliance plan to such prospective successors or assigns and advise same of their duties and obligations under this compliance plan.

IT IS SO ORDERED.

Dated:

By _____
HONORABLE CHARLES R. BREYER
United States District Court Judge

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 NEC Business Network Solutions, Inc. (NEC/BNS) , 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. NEC/BNS is a corporation organized and existing under the laws of Delaware with its principal place of business in Irving, Texas. NEC/BNS does business in California, among other states. NEC/BNS does not operate as a common carrier.

B. E-Rate is a program created by Congress in the Telecommunication Act of 1996 and operated under the auspices of 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 NEC/BNS 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 JCS (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. NEC/BNS is entering a plea of guilty to a two-count felony Information charging NEC/BNS with wire fraud in violation of 18 U.S.C. § 1343 and conspiracy to suppress and eliminate competition in violation of the Sherman Antitrust Act, 15 U.S.C. § 1, in connection with NEC/BNS's participation in the E-rate program. The guilty plea is being entered in a matter captioned *United States of America v. NEC Business Network Solutions*, No. CR 04-0184 CRB (filed in the Northern District of California, May 25, 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 NEC/BNS under the FCA, the common law, and the other authorities set out in the complaint in the Civil Action for NEC/BNS'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 the National Association of Black School Educators, and also 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 NEC/BNS 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. NEC/BNS agrees to pay to the United States $15,985,263 (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 NEC/BNS in accordance

with the Plea Agreement, NEC/BNS will pay $10,300,000 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. NEC/BNS 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 NEC/BNS has performed uncompensated E-rate work in the amount of $3,803,053. To the extent that NEC/BNS has performed uncompensated E-rate work under FRNs that are not listed in Exhibit B, NEC/BNS 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.

c. Within thirty calendar days of the time that the District Court imposes sentence on NEC/BNS in accordance with the Plea Agreement, NEC/BNS will enter into the maintenance contracts attached to this Agreement as Exhibits C to I with, respectively, Ceria M. Travis Academy, Covert Public School District, Ecorse Public School District, Humphreys County School District, Jasper County School District, Lee County School District, and North Chicago Community School District (collectively, the Schools). Within five calendar days of the time that the District Court imposes sentence on NEC/BNS in accordance with the Plea Agreement, NEC/BNS will provide the Schools with copies of the respective maintenance contracts at Exhibits C to I. NEC/BNS agrees to perform its obligations under the contracts at Exhibits C to I at no cost or charge to the Schools, the United States (including but not limited to the FCC and USAC), or to any other entity or individual other than NEC/BNS. NEC/BNS will provide fully executed copies of each of the contracts to the United States Attorney's Office for the Northern

District of California within thirty-three calendar days of the time that the District Court imposes sentence on NEC/BNS in accordance with the Plea Agreement. The Parties agree that the work to be performed by NEC/BNS under these contracts is valued at $1,882,210. In the event that NEC/BNS fails to perform under the terms of the maintenance contracts at Exhibits C to I through its own fault, NEC/BNS shall pay the United States the prorated value of any such failure of performance.

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 NEC/BNS 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 and SFUSD agree that, pursuant to 31 U.S.C. § 3730(d)(1), the Relator's share of the Settlement Amount is 21 percent of the Settlement Amount actually recovered by the United States under this Agreement. The United States agrees that within a reasonable time after it receives the payment due under Paragraph 1(a) above, the United States will pay to SFUSD an amount equal to 21 percent of the $14,103,053 of the Settlement Amount required by Paragraphs 1(a) and 1(b). The United States further agrees that within a reasonable time after it receives the fully executed contracts described in Paragraph 1(c) above, the United States will pay to SFUSD an amount equal to 21 percent of the remaining $1,882,210 of the Settlement Amount required in Paragraph 1(c). 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. NEC/BNS agrees to cooperate with the United States in the Civil Action and any investigation or litigation related thereto. NEC/BNS 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, NEC/BNS may require that subpoenas be served on it.

4. Releases:

a. NEC/BNS 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 NEC/BNS 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 NEC/BNS set forth in this Agreement, and conditioned upon NEC/BNS'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 NEC/BNS 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 NEC/BNS 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; (iii) SFUSD (on behalf of itself, its officers and agents) agrees to fully and finally release NEC/BNS 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 NEC/BNS 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. SFUSD releases and forever discharges the United States from any claims arising from or relating to the filing of the Civil Action, or pursuant to 31 U.S.C. § 3730(d), for a share of any recoveries relating to or arising out of the Civil Action or this Agreement, beyond that share specified in Paragraph 2 of 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, NEC/BNS, 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.

NEC/BNS, 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, NEC/BNS, 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 and receipt of copies of the fully executed contracts described in Paragraph 1(c) above, the United States, SFUSD, and the City Attorney will dismiss NEC/BNS, John Colvin, and Gerard McNulty 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 NEC/BNS) 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 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 NEC/BNS 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 NEC/BNS for attorneys' fees, costs and expenses pursuant to 31 U.S.C. § 3730(d)(1).

7. NEC/BNS 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. NEC/BNS 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. NEC/BNS agrees that all costs (as defined by Federal Acquisition Regulation 31.205-47) incurred by or on behalf of NEC/BNS 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) NEC/BNS'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. NEC/BNS 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 Paragraph 4 and 5 above, the Parties do not release any claims against any other person or entity.

10. NEC/BNS 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. NEC/BNS 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 NEC/BNS 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 NEC/BNS 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. NEC/BNS 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 NEC/BNS pursuant to 47 U.S.C. § 503(b)(4) if, after the Effective Date of this Agreement, NEC/BNS engages in conduct of the type described as the Covered Conduct in Paragraph E of this Agreement.

12. The United States and NEC/BNS 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 NEC/BNS represent and warrant that they are authorized by NEC/BNS to execute this Agreement. 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 NEC/BNS'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

PETER D. KEISLER
Assistant Attorney General

DATED: May 27, 2004

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: 5/27/04

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: 5/26/04

BY: _____
LOUISE H. RENNE
General Counsel
San Francisco Unified School District

PHILLIPS & COHEN LLP

DATED: 5/26/04

BY: _____
ERIC R. HAVIAN
Attorney for SFUSD

CITY ATTORNEY FOR THE CITY AND COUNTY OF SAN FRANCISCO

DATED: 5/26/04

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

NEC BUSINESS NETWORK SOLUTIONS, INC.

DATED: 5/27/04

BY: _____
JAMES S. HOOVER
Vice President and Controller

DUANE MORRIS LLP

DATED: 5-27-04

BY: _____
GEORGE D. NIESPOLO
Attorney for NEC/BNS

EXHIBIT C

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:

W.D. Michigan	(Covert, Michigan)
E.D. Michigan	(Ecorse, Michigan)
E.D. Wisconsin	(Milwaukee, Wisconsin)
E.D. Arkansas	(Lee County, Arkansas)
South Carolina	(Jasper County, South Carolina)

NEC Business Network Solutions, Inc.

Unanimous Written Consent of the Board of Directors without a Meeting

Pursuant to Section 141(f) Of the Delaware General Corporation Law

THE UNDERSIGNED, being all the Directors of NEC Business Network Solutions, Inc., a Delaware corporation (hereinafter referred to as the "Company"), hereby consent to, approve and adopt the following preamble and resolution pursuant to Section 141(f) of the Delaware General Corporation Law:

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 James Hoover, Vice President and Controller 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, 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 21st day of May, 2004.

Masaaki Nakajima