

Thursday, July 22, 2004

Prepared Testimony for
DENNIS HERRERA
City Attorney of San Francisco

'Blowing the Whistle on E-Rate Fraud'

U.S. House of Representatives
Committee on Energy and Commerce
Oversight and Investigations Subcommittee
2123 Rayburn House Office Building
Washington, D.C. 20515

Chairman Greenwood, distinguished Members of the Subcommittee . . .

I thank you for the opportunity to appear before you today to discuss San Francisco's experience with efforts to defraud the federal E-Rate Program.

I'm also honored to join San Francisco Unified School District General Counsel Louise Renne in testifying today. As my immediate predecessor as San Francisco City Attorney, Louise first ordered the investigation that was so capably undertaken and thoroughly investigated by George Cothran of my office, with whom I'm also honored to appear today.

When I took office in January 2002, our office's investigation into E-Rate fraud had been underway for more than eight months. As much or more than any of the cases I inherited or have undertaken since, the E-Rate case represented exactly the kind of public policy priority I had talked about extensively in my campaign for City Attorney.

In establishing a permanent Public Integrity Unit in my office, I sought to take as aggressive a stand as possible against those who would seek to defraud our City. Because as I'm sure this

subcommittee is well aware, the harm government suffers when it is defrauded cannot be quantified in mere dollar amounts.

Schemes such as these aren't just greedy.

- They're a corrosive influence on the integrity of our public institutions.
- They're an assault on our citizens' faith in their government to do the right thing.
- And they're an insult to the honest businesses and contractors who play by the rules – and yet LOSE government contracts to competitors who cheat.

The E-Rate scheme we unmasked in San Francisco represented all of that – plus one aggravating circumstance for which it deserves an especially prominent place in the Government Rip-off Hall of Shame: it targeted funds intended to benefit the poorest, most vulnerable schoolchildren in America.

For disadvantaged kids in San Francisco – growing up in Silicon Valley's backyard, in a city that is ITSELF a high-tech capital – the abuse of a program to help them bridge the "Digital Divide" represents an all too real theft of future job opportunities and economic advancement.

Indeed, had San Francisco NOT blown the whistle on the fraud we uncovered, vendors associated in the scheme in our school system stood to receive a total of nearly \$60 million. And for all that

money, according to their funding applications, San Francisco schools would have been left with an incomplete computer network that was, by itself, inoperable.

Schools throughout our school district would have been saddled with millions of dollars in equipment that was functionally equivalent to paperweights.

- Routers, cabling and switches with no servers
- A phone system with no phones
- A computer system with no workstations
- Video-conferencing equipment that wasn't even eligible for E-Rate funding

When our investigation was completed – the details of which Mr. Cothran more than I is best equipped to discuss – the evidence confirmed that E-Rate applications for San Francisco schools had been fraudulently conceived and executed in almost every respect. Moreover, the investigation demonstrated that these practices were not confined to San Francisco. We discovered fraudulent applications in several other school districts, frequently involving the same co-conspirators.

On May 16, 2002, I filed a false claims action under seal on behalf of our School District and the People of the State of California. In filing the case as what we lawyers call a "Qui Tam" action, the San Francisco Unified School District became the whistleblower on a nationwide scam. And we

turned the results of our investigation over to the U.S. Department of Justice, with whom we've continued to work.

Under terms of a partial settlement announced in our own case several weeks ago, NEC Business Network Solutions, a subsidiary of NEC Corporation, paid a total of nearly \$16 million in cash and services to the federal government to settle the lawsuit's civil claims. As the "qui tam" whistleblower in the case, the San Francisco School District will receive 21 percent – or nearly \$3.4 million. NEC/BNS also pled guilty to felony counts of wire fraud and conspiring to violate federal antitrust laws, and paid a criminal fine to the feds of \$4.6 million.

Clearly, the settlement represents an excellent outcome for San Francisco public schools. But it was also an important vindication for a brave and controversial decision by our School Superintendent, Arlene Ackerman, to refuse suspect funding from the E-Rate program in the first place.

Moreover, it is testimony to the outstanding work of U.S. Attorney Kevin Ryan of San Francisco, SFUSD General Counsel Louise Renne and to the investigators and attorneys of my office – particularly George Cothran, whose many months of living, breathing and sleeping the details of this highly complex case paid off so impressively.

We are, of course, delighted and proud to see justice done in a manner that realizes such significant benefits for San Francisco's schoolchildren. But we are no less proud to be here today to offer our assistance to this subcommittee and to this Congress to assure that no other school district in this

country – not one more school kid in America – suffers for the waste, fraud and abuse of the E-Rate program.

Mr. Chairman and distinguished Members of the Subcommittee, in concluding my formal statement I would like to thank you again for the opportunity to appear before you today.

While I'm glad to answer any questions you may have at this time, I will confess that I would likely defer to my OWN investigator on the subject, George Cothran, from whom you'll hear next.