SUBCOMMITTEE ON OVERSIGHT & INVESTIGATIONS
OF THE COMMITTEE ON ENERGY AND COMMERCE,
UNITED STATES HOUSE OF REPRESENTATIVES

Hearing entitled "Problems with the E-Rate Program: Waste, Fraud, and Abuse Concerns in the Wiring of Our Nation's Schools to Internet" - September 22, 2004, 10:00 a.m.

## STATEMENT OF CHARLES TAFOYA, SUPERINTENDENT OF
## EL PASO INDEPENDENT SCHOOL DISTRICT, EL PASO, TEXAS

### Introduction

Mr. Chairman, thank you for the opportunity to speak to you this morning. My name is Charles Tafoya. I am the Superintendent of the El Paso Independent School District ("El Paso I.S.D."), I have been asked to provide this statement on behalf of El Paso I.S.D. for this hearing of the House Energy and Commerce Committee's Subcommittee on Oversight and Investigations entitled "Problems with the E-Rate Program: Waste, Fraud, and Abuse Concerns in the Wiring of Our Nation's Schools to Internet".

El Paso I.S.D. welcomes the Subcommittee's interest in the E-Rate Program (the "Program" or "E-Rate") of the Federal Communications Commission (the "FCC"), and administered by its Schools & Libraries Division (the "SLD") and the Universal Service Administrative Company ("USAC"), and believes that Congressional hearings reviewing the Program's good points and bad points are overdue. Such a review should generally be done with any federal program on a periodic basis. On the other hand, we admittedly would have preferred that El Paso I.S.D.'s own participation in the Program not be a focus of this Subcommittee's review.

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Although I was not Superintendent at El Paso I.S.D. during the most of the relevant periods discussed below [becoming interim Superintendent during 2002, and Superintendent in January 2003], I am or have become familiar with El Paso I.S.D.'s participation in the Program.

I have attached a statement from the El Paso I.S.D. website describing my background, as well as a copy of my curriculum vitae.

The final page of this written statement includes one-page summary of the major points of this written statement.

I also intend to present an oral presentation of five minutes or less at the hearing. Due to the time limitations for such presentation, as well as for my answers to questions from members of the Committee, and the consequent inability to provide detailed, properly nuanced and articulated presentations and responses, my oral testimony at the hearing is and will be subject to, and qualified, supplemented, and clarified by, this written statement.

<u>Background of the El Paso Community</u>

Before proceeding further, it is important for you to understand the circumstances which El Paso I.S.D. faces in its daily efforts to educate and prepare its students for the future.

El Paso I.S.D. is the largest school district within El Paso County, Texas. Its school boundaries encompass much of the City of El Paso. El Paso is located at the far western end of Texas, wedged between Mexico and New Mexico. In fact, El Paso is so far west in Texas, that it is actually closer to Los Angeles than the eastern border of Texas. It is also said that Texarkana is closer to Chicago than El Paso.

El Paso is located in the Chihuahuan desert, with the Franklin Mountains [being the southern end of the Rocky Mountains in the United States] bisecting the city. The Rio Grande river flows south through a portion of El Paso, and then becomes the border with New Mexico,

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and ultimately becomes the border with Mexico [which river border continues to the Gulf of Mexico].

The El Paso community enjoys a long history. Although the first Spanish arrived in the area in the late 1500's [including what is asserted to be the first Thanksgiving ceremony in North America in 1598 by Juan de Onate and his colonists], the original Spanish settlements in El Paso were not established until the 1680's.

The population of El Paso County is approximately 680,000. The city of Cuidad Juarez, Mexico borders El Paso. Cuidad Juarez has a population believed to be from 1,000,000 to 1,500,000 persons. To be clear, unlike the San Diego-Tijuana border area, El Paso and Juarez are actually physically next to each other, separated only by the Rio Grande. The bridges across the Rio Grande handle northbound [i.e.- into El Paso] traffic of about 15,000,000 vehicles and 9,000,000 pedestrians per year.

Demographically, El Paso is a primarily Hispanic city. It is believed to have the largest proportion of Hispanics in its population amongst cities over 500,000 in the country. Approximately 78% of its population is described as Hispanic according to census records. About 17% of its population is non-Hispanic whites, with Asian-Americans and African-Americans constituting only small portions of the population.

El Paso I.S.D. is a poor school district with many poor students, and each have many needs, especially in the technology area. About 70% of El Paso I.S.D.'s students are eligible for "free and reduced lunches" under federal law, though many of its schools have a much higher proportion. Indeed, at close to two-third's of El Paso I.S.D.'s schools, more than 90% of the students are eligible for "free and reduced lunches". The 2000 Profile of Selected Economic Characteristics issued by the United States Census Bureau estimates the per capita income for

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1999 in the El Paso, Texas area at $14,388 per year. For comparison, according to the same survey, the annual per capita income for 1999 in the United States was $21,587, for the State of Texas was $19,617, and for the Washington D.C. area was $28,659.

As one can readily see, El Paso I.S.D. students are extremely poor, and in great need of the benefits from the projects to be completed using E-Rate funding. Relatively few students within El Paso I.S.D. have access to computers at home, much less access to educational resources through the Internet. For many El Paso I.S.D. students, the school computers are the only computers to which they have access. The "digital divide" is a major problem within El Paso I.S.D., and unfortunately many of its students are on the wrong side of the divide.

### El Paso I.S.D.'s History with E-Rate Program

The rules and objectives of the Program have changed over time. Initially, the Program appeared to be used primarily for reimbursement of school districts for telecommunication expenses. Later, cabling for computer networks became popular under the Program. More recently, E-Rate funding for other sorts of so-called internal connections have been commonly sought. The problems with the Program that prompted these Subcommittee's hearings appear to have involved this final category.

El Paso I.S.D. has been a beneficiary of the Program since its inception. In Year 1 of the Program[1], El Paso I.S.D. sought funding for telecommunications and internal connections, and received an award of $2,669,822 from the SLD. For Year 2 of the Program, El Paso I.S.D. was granted funding of $6,463,713 for telecommunications, internal access, and internal connection. In Year 3 of the Program, El Paso I.S.D. received $1,422,392 in funding for telecommunications,

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[1] The nomenclature for the funding years in the Program has changed from "Year 6", etc. to "Year 2003-2004", etc. This statement will generally use the former terminology, for convenience.

internal access, and internal connection. El Paso I.S.D. was awarded $65,683,831 in E-Rate funding in Year 4 of the Program, for a variety of telecommunications, internal access, and internal connections projects. El Paso I.S.D.'s request for Year 5 E-Rate funding of $46,094,835 was denied by the SLD. Upon appeal, in light of confusion over Program rules, in December 2003, the FCC permitted El Paso I.S.D. and a few other districts to re-submit funding applications for Year 5. That has been done, and such new application is now pending for $1,433,932. El Paso I.S.D.'s funding request in Year 6 of the Program for $10,352,203, for both telecommunications, internal access, and some internal connections, was unexpectedly denied by the SLD on an alleged technicality. El Paso I.S.D. strongly disputes that contention and has appealed the SLD's decision to the FCC. Looking closely at those circumstances, one cannot help but wonder whether retaliation against El Paso I.S.D. played a part in that denial. That appeal is still pending. El Paso I.S.D. has also recently filed for funding under Year 7 of the Program. $2,598,600 has been sought, in connection with telecommunications, high speed fiber network, and internal connection projects in Year 7.

The eligible campuses at El Paso I.S.D. under the Program currently consists of 3 high schools, 3 auxiliary campuses, 7 middle school campuses and 39 elementary school campuses, for a total of 52 campuses.

### El Paso I.S.D.'s Participation in Year 4 of the Project

Since El Paso I.S.D.'s participation in Year 4 of the Program unexpectedly and unintentionally appears to have been a catalyst to problems nationwide in the subsequent funding year, further review of such participation [as well as that of Year 5] is in order.

To better understand the E-Rate funding process, an applicant must comply with the following steps in order to be considered to have a complete application about which a funding

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decision may be made: (1) the applicant must develop a technology plan; (2) the applicant must file with the SLD a Form 470, describing the goods and services it wishes to procure in accordance with its technology plan; (3) the SLD then posts the Form 470 on its website, so that vendors interested in providing such goods or services can contact the applicant, make a bid, and seek to become the provider of the same; (4) to the extent that state or local procurement laws apply to the applicant, the applicant must comply with those laws, such as by issuance of competitive bid requests or requests for proposal; (5) the applicant reviews bids and responses from interested vendors, under the Form 470 process and/or state or local procurement laws; (6) the applicant must wait at least 28 days after filing of the Form 470 in order to contract with a particular vendor, so that sufficient time is permitted for vendors to respond or make bids; (7) the applicant selects the successful vendor to provide the goods and/or services under the Form 470; (8) the applicant enters into a contract with the successful vendor; (9) the applicant files a Form 471 with the SLD, in which it names the successful vendor as the "service provider", using the vendor's unique "service provider identification number" or "SPIN", for the goods and/or services under the Form 470; and (10) the applicant then awaits any decision by the SLD as to whether or not funding will be granted, and in what amount, under the Form 471. If the SLD awards a grant of Program funds to an applicant, the applicant must then file a Form 486, accepting such grant. Each applicant also is required, under Program rules, to pay a proportion of the charges [often 10% or so] from the service provider, as a condition of participation.

During each year of the Program, El Paso I.S.D. has had a longstanding technology plan, as modified from time to time (the "Technology Plan"), upon which its Program participation

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has been based. In other words, El Paso I.S.D. has sought E-Rate funding for projects consistent with its Technology Plan. Importantly, El Paso I.S.D. has not relied and does not rely solely on E-Rate funding to satisfy the goals of the Technology Plan, instead using its own funds and other sources as available. The E-Rate funding, however, has essentially permitted El Paso I.S.D. to accelerate the timetables for completion of such projects, thereby providing the benefits of technology for more students.

In December 2000, El Paso I.S.D. posted a Form 470 for Year 4 of the Program (the "Year 4 Form 470"), in accordance with Program requirements. The Year 4 Form 470 was posted through the SLD web-site. A hard-copy of the Year 4 Form 470 was signed by El Paso I.S.D. and forwarded to the SLD.

In December 2000, El Paso I.S.D. also issued its Request for Proposal No. 101-00 entitled "Strategic Technology Solution Provider" (the "Request for Proposal"). The first page of the Request for Proposal stated in relevant part as follows:

*... This Strategic Technology Partnership agreement will include, but not be limited to, E-rate funded projects. The selected vendor should be prepared to assist the District with all aspects of the E-rate process and should demonstrate knowledge and experience in dealing with E-rate funded projects. All E-rate applications will be submitted using the successor bidder's single SPIN number. Vendors must provide their SPIN number as part of their response ...*

The Request for Proposal sought a vendor to provide integrated provision of goods and services for El Paso I.S.D.'s proposed E-Rate projects. This was somehow different than what El Paso I.S.D. had done in prior years. Due to part to the loss of personnel experienced with the

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Program, more outside assistance from the vendor appeared to be beneficial to El Paso I.S.D. Utilization of outside expertise is not inappropriate, especially in the area of technology.

It is unrealistic to expect school districts to have in-house expertise to understand, plan, and identify the specific plans, specifications, and other details of projects of seeking funding. Districts rarely have expertise to do so. The districts generally understand only what projects need to be done and the basic scope and outline of those projects, but do not often know ahead of time the particular plans and specifications for those projects [especially in the technology area where new technologies and techniques come into play very quickly]. This is a very complicated field, and hard for a district to keep track of state-of-the-art goods and services. If a district tried to design a technology project completely on its own, including all plans and specifications, it would not necessarily design the most cost-effective project, and its design would likely include inefficiencies, waste, and obsolete items. Accordingly, it makes sense for a district to seek systems integration expertise from a third party.

By way of example, one should keep in mind the analogy of an individual building an addition to a house. In theory, a person could build the addition himself, but that is very rare indeed since individuals almost never have the necessary expertise and experience to do so. Instead, individuals generally do have in mind their basic needs and desires for the addition [no. of bedrooms, no. of baths, approx. square footage, one or two-story, exterior facing, style, etc.], but do not know all of the details [depth of foundation slab, location of plumbing and electrical conduit, framing details and techniques, etc.]. In addition, the homeowner generally does not know exactly how the framing, plumbing, HVAC, electrical, and other systems of the addition can be made compatible with those in the existing portion of the house. Of course, the homeowner rarely creates the blueprints on his/her own. The homeowner instead generally

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retains an architect and/or a homebuilder to prepare the blueprints, based upon the homeowner's basic needs and desires. Those blueprints are not completed, however, by the architect/contractor without significant input from the homeowner. The homeowner usually reviews those plans and specifications with the architect/contractor and suggests many changes. In that regard, price is an important consideration, and changes are made to the blueprints accordingly. The price of the project is negotiated between the parties. The homeowner retains final control over the plans and specifications, and the price, especially since the homeowner has the right to end negotiations and seek a new builder, if necessary. As applied to the Program, the homeowner is akin to a district seeking Program funding, the addition is akin to the new projects desired to the existing technology at the district, the homeowner's basic needs and desires of the homeowner are akin to the technology plan adopted by district seeking Program funding, the plans and specifications as set forth in the blueprints are akin to the details contained in the Form 471 filed by such district, and the architect and contractor are akin to the service provider for the district. Consequently, this "general contractor" approach seemed reasonable to El Paso I.S.D. when adopted through the Request for Proposal.

The Request for Proposal was prepared by an El Paso I.S.D. employee, based upon review of similar bid documents prepared by other school districts nationally as well as substantial drafting on his own. Importantly, it was not prepared by any vendor, and not based upon draft documents provided by any vendor.

The Request for Proposal was noticed by El Paso I.S.D. in newspaper notices, and placed upon its web-site. El Paso I.S.D. provided copies of its Request for Proposal to eleven different companies who requested a copy, not all ones who ultimately bid.

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The deadline for submitting responses to the Request for Proposal was December 19, 2000, and responses were thereafter opened. Eight vendors [IBM, Amherst Computer, Diversified Technical Services, Kent Data Communications, ESEI, Southwestern Bell, Time Warner Cable, and Cervantes CC] responded to the Request for Proposal in some form or fashion. The Year 4 470 did not generate any responses, in and of itself.

An evaluation committee composed of El Paso I.S.D. Technology and Finance Department officials reviewed the responses and recommended IBM to the Board of Trustees of El Paso I.S.D.. At a Board meeting on January 9, 2001, the Board of Trustees of El Paso I.S.D. selected IBM as the putative awardee under the Request for Proposal, and thus, if a final contract [including pricing] was successfully negotiated and finalized, as the service provider for the El Paso I.S.D. projects for which a Funding Year 2001 application was to be made.

Thereafter, IBM and El Paso I.S.D. entered into an IBM Customer Agreement dated as of January 2001, with incorporated Statements of Work dated January 2001, as well as an Addendum to Customer Agreement for January 2001 SOWs (collectively, the "Year 4 Contract"). The Year 4 Contract had a one-year term, with an option by El Paso I.S.D. to renew for two additional one-year terms. The Statements of Work included with the Year 4 Contract outlined in detail the projects to be completed under the Program.

Importantly, the Year 4 Contract contained special provisions whereby El Paso I.S.D. retained the right to select the ultimate providers of many services and products, through use of procurement requirements of Texas state-law (the "Special Procurement Provisions"). The Special Procurement Provisions are found within the Addendum to the Year 4 Contract. In this way, El Paso I.S.D. intended to minimize the costs for such services and products, and thereby minimize the amounts of Program funding, and thus El Paso I.S.D.'s pro rata contribution,

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ultimately required to perform the desired E-Rate projects. El Paso I.S.D. insisted upon such terms, and after challenging negotiations, was able to obtain IBM's consent to the same. It is El Paso I.S.D.'s understanding that it was the only district nationwide during Year 4 of the Program to obtain such special protection provisions from IBM, and one of only two [the other being a sister district in El Paso County aware of such contract terms] nationwide obtaining such provisions from IBM during Year 5 of the Program.

El Paso I.S.D. then filed a Form 471 for Year 4 of the Program (the "Year 4 Form 471") with the SLD, as required.

El Paso I.S.D. later received a substantial award of funding from the SLD for Year 4 of the Program for IC/IA Services and Telco Services. El Paso I.S.D. accepted such funding, and the projects thereunder have been completed. This award was dated September 28, 2001, for the Year 4 funding year beginning July 1, 2001. As one can see, the award was not received until well after the beginning of the funding year in question.

Upon receipt of such award, El Paso I.S.D. recognized that, due to the SLD's delays in making the grant, it had less time than originally anticipated to complete the desired E-Rate projects. El Paso I.S.D. took a variety of internal steps to manage the construction of those projects, including retention of a consultant to act as overall project manager, looking out for El Paso I.S.D.'s interests, as well as a commitment [often called upon] by its Board of Trustees to hold special meetings or take additional efforts to take the necessary Board actions to complete the projects on a timely basis. El Paso I.S.D.'s Board of Trustees also made a substantial financial commitment from the limited reserves of the District, to pay for its required share of Program costs.

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Ultimately, El Paso I.S.D. was able to complete the Year 4 projects on a timely basis. Through use of the Special Procurement Provisions, El Paso I.S.D. was also able to achieve costs savings and was able to essentially return significant funding to SLD that was not needed to complete the projects in question. Through the Special Procurement Provisions, the pricing was capped at those set in the Form 471s, but El Paso I.S.D. had the opportunity to obtain any better pricing later by the selection of subcontractors and/or suppliers through separate, later competitive procurement. With that better pricing, El Paso I.S.D. hoped to achieve additional savings. In fact, due in large part to the special procurement provisions of the Year 4 Contract, and otherwise due to its intent to ensure that its projects were limited to critical needs, El Paso I.S.D. ultimately did not need to spend, and returned, over $9.3 million from its Year 4 Program funding. In essence, El Paso I.S.D. obtained desired and requested goods and services for a much lower price, and thus achieve "more bang for the buck" as it intended. This conduct demonstrated El Paso I.S.D.'s continued commitment to avoid fraud, waste, and abuse in pricing, both for its own benefit and the Program itself.

El Paso I.S.D. was and remains adamant that its E-Rate projects should be performed for a fair price, and with the most "bang for the buck". El Paso I.S.D. is also very concerned about sustainability of its technology projects for the long-term, and, since Program funding from year to year cannot be guaranteed, El Paso I.S.D. needs to ensure that any Project can be sustained without Program funding in the future. Although El Paso I.S.D. sought to meet such goal with respect to all E-Rate projects, in 20-20 hindsight, it feels that, due to ambiguities in and misunderstanding of Program rules, the so-called "Help Desk" portion of the maintenance statement of work did not prove to be sustainable [contrary to El Paso I.S.D.'s original intent and belief].

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It is important to remember that El Paso I.S.D. is responsible for its pro rata contribution in the event of Program funding for a project. In the case of Year 4 funding, it alone represented a major financial commitment from El Paso I.S.D. That direct contribution, though, does not reflect all of the true costs to El Paso I.S.D. of Program funding. Specifically, if a particular E-Rate project is awarded Program funding, El Paso I.S.D. must not only contribute its pro rata share, but must also pay for the computers or other ineligible hardware necessary to use the eligible services under the project, for additional staff to handle installation and operation of the project, and for additional training [not otherwise eligible] in related areas to best utilize the resources of the project. In addition, El Paso I.S.D. feels strongly that technology and other resources at its various schools be equitable; consequently, El Paso I.S.D. must pay for similar, ineligible projects, similar to an approved project, at other schools who are not granted Program funding due to a lower "free and reduced lunch" level. In short, El Paso I.S.D. has to spend its own money to ensure that each school, whether or not it received Program funding, has similar resources. Accordingly, El Paso I.S.D.'s contribution in the event of Program funding is actually much greater than pro rata contribution. That alone is significant incentive for El Paso I.S.D. to seek cost-effective acquisition of the projects, which El Paso I.S.D. has sought to do in each case.

### El Paso I.S.D.'s Participation under Year 5 of the Program

Year 5 of the Program encountered many problems nationwide. In hindsight, it appears that, based upon El Paso I.S.D.'s large award in Year 4, many districts across the nation prepared requests for proposal for Year projects almost identical to the Year 4 Request for Proposal of El Paso I.S.D. El Paso I.S.D. was unaware of those circumstances. It did share a draft of the Request for Proposal with a sister district in El Paso County, Texas, Ysleta Independent School

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District; staff of local districts commonly share bid documents or similar materials in an effort to avoid unnecessary duplication of efforts.

Frankly, El Paso I.S.D. is somewhat upset that, without its knowledge or consent, the so-called "El Paso model" was presumably pitched to other districts nationwide, who ultimately selected a single vendor, resulting in what are now viewed by some as abuses in the Program. That was not the intent of El Paso I.S.D., and it is very concerned about being indirectly and unknowingly tied to such conduct.

The nationwide problems with Year 5 of the Program also directly affected El Paso I.S.D. For such Program year, El Paso I.S.D. filed a Form 470 for internal connections and related services, as well as for telecommunications services.

With respect to those telecommunication services, El Paso I.S.D. acquired services from AT&T for long-distance service and local telephone service. Section 44.031(b)(4) of the Texas Education Code authorizes school districts to acquire goods or services under the catalogue purchase system under Section 2157.001 et. seq. of the Texas Government Code. Under this catalogue purchase program, the DIR [being a Texas state agency] creates a list of approved statewide vendors for specified goods and services, after a process involving review of different pricing factors, among others. This process essentially forces interested vendors to offer specially discounted prices on a statewide-basis, in order to be listed as an approved vendor, in order to be able to make sales to local governments across the state. The DIR itself advises vendors on its website:

> *DIR expects to receive the vendors' best pricing, since all state agencies, cities, counties,*
> *and other local governments, public school districts, and public colleges and universities*
> *can buy through the DIR contracts. Based on the state's anticipated volume, vendors*

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*need to offer DIR deep discounts from their list price. Those discounts must apply to all DIR customers, regardless of their size, which means that a small agency would receive the same base discounts that a large agency would receive, although entities buying large quantities should be able to negotiate deeper discounts through the DIR contracts.*

The catalogue purchasing program, under state law, supersedes any requirement for a local district to perform a second competitive procurement [insofar as the DIR has already done a competitive procurement previously]. AT&T was/is an approved vendor on the DIR catalogue. The telecommunication services of AT&T as offered in the DIR catalogue were tariffed services. El Paso I.S.D. approved AT&T as the provider of such services for Year 5 of the Program, based upon the procurement under the DIR catalogue.

With respect to internal connections and related services for Year 5 of the Program, after review and analysis by staff and approval by the Board of Trustees at a meeting on January 8, 2002, El Paso I.S.D. decided to renew its relationship with IBM as service provider for Year 5. As noted above, El Paso I.S.D. posted a new Form 470 for Year 5, though not required to do so under Program rules due to the renewal. Nevertheless, El Paso I.S.D. wanted to inquire as to any interest from other possible vendors, in an effort to determine whether or not renewal was cost-effective and should take place. No responses or inquiries were received by El Paso I.S.D. from vendors to the 2002 Form 470 for IC/IA Services sufficient to convince El Paso I.S.D. not to renew its existing contract with IBM; El Paso I.S.D. invited further responses from any such inquiring vendor, but substantive information or materials were not received on a timely basis, if at all. During an internal process, El Paso I.S.D. itself reduced the funding levels it would seek from the Program for Year 5, due to El Paso I.S.D.'s desire to reduce the scope of the projects thereunder. Thereafter, El Paso I.S.D., in consultation with IBM, finalized the specifications for

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the specific goods and services necessary for completion of such internal connections and related projects. The funding requested for such projects for Year 5 of the Program represented a significant reduction in amounts as requested by El Paso I.S.D., and as awarded by SLD, for Year 4.

After further negotiations with IBM, El Paso I.S.D. and IBM entered into Statements of Work dated January 2002, as well as an Addendum to Customer Agreement for January 2002 SOWs (collectively, the "Year 5 Contract"). The Year 5 Contract also contained similar Special Procurement Provisions. The Year 5 Contract effectively represented the renewal and extension of the IBM Customer Agreement, to cover Year 5 projects and new statements of work.

As noted above, funding for El Paso I.S.D. under Year 5 of the Program was denied by the SLD. Such denial was dated March 10, 2003, although Year 5 of the Program actually began on July 1, 2002. In other words, El Paso I.S.D. did not learn of a decision on its Year 5 funding until about three months before Year 5 ended.

El Paso I.S.D. appealed the decision of the SLD to FCC. By FCC Order 03-313 dated December 8, 2003 in *Matter of Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, et. al.*, CC Docket Nos. 96-45 and 97-21 (the "Ysleta Order"), the FCC effectively upheld the denial of Year 5 funding, but granted a waiver of Program rules to permit El Paso I.S.D. and several other school districts to re-file its application for Year 5 funding under certain conditions. El Paso I.S.D. believes that its Year 4 and Year 5 procurement for a service provider under the Program complied with applicable state and federal law. Nevertheless, the FCC effectively found that certain aspects of such procurement did not comply with Program rules. On the other hand, the FCC implicitly admitted that ambiguities and/or past course of dealing might have confused districts as to such legal

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issues, and therefore permitted re-filing of the applications. El Paso I.S.D. has done so, though its requested figure is much less than before, due to reductions in market prices, obsolescence of several projects, and completion of all or part of some projects using other resources, among other things. El Paso I.S.D. still believed that its conduct was appropriate and not in violation of Program rules. Nevertheless, in the circumstances El Paso I.S.D. [as well as the other affected districts] decided not to appeal the Ysleta order to the courts and to instead take advantage of the FCC's allowance of re-filing of the application at issue. The relief permitted by the FCC's ruling was an acceptable compromise in the district's view, and the time and expense of protracted litigation was not justified.

### Benefits to El Paso I.S.D. Students from E-Rate Funding

El Paso I.S.D. is very thankful for the E-Rate funding that it has previously received. That funding has provided immeasurable benefits to students of El Paso I.S.D.. We believe it is important for Congress to recognize the wonderful things that have been accomplished at the front lines of education, due to its funding of the Program.

In Year 1 of the Program, the awarded Program funds allowed El Paso I.S.D. to provide 1,263 local long-distance service connections for telephones in El Paso I.S.D. and provided high-speed Internet access to 2,479 computers at El Paso I.S.D. In addition, such funding allowed eligible campuses to have connections to the Internet and provided structural cabling to all such campuses. With Year 2 Program funding, El Paso I.S.D. was able to continue to provide and supply high-speed Internet access to all the EPISD campuses and to provide additional 1,800 local long-distance service connections for telephones. El Paso I.S.D. used Year 3 Program funding to continue to provide telecommunications services to EPISD's telephones and high-speed Internet access to computers. El Paso I.S.D. also was able to obtain new telephone

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connections for campuses, upgrade networks at all eligible campuses for new telephone systems, and to install additional structural cabling to eligible campuses. El Paso I.S.D. was also able to procure network interface cards and upgrade network switches for all eligible campuses. With Year 3 funding, El Paso I.S.D. was in addition able to procure maintenance and hardware support services for network electronics. In Year 4 of the Program, El Paso I.S.D.'s award was used to continue to provide telecommunications and Internet access with El Paso I.S.D.'s telephones and computers. It also provided an entire redesigned of El Paso I.S.D.'s computer network. The wide area network became a dedicated fiber network as part of this redesign. Structural cabling was also added to eligible campuses and horizontal cable to all campuses was upgraded with enhanced category 5 cable. Fiber optic lines were added to telecommunications lines at eligible campuses and network electronics were upgraded with switches and related components. El Paso I.S.D. also received a new email system for its employees. It also procured new application service. The Year 4 funding also provided funding for virtual schooling, technology-instruction integration, and technology planning.

A major benefit of the Program funds for El Paso I.S.D's teachers and students was acquisition of a computer network and connectivity to and amongst campuses. The network required cabling and wiring in schools and provision of specialized network electronics. Using Program funds, in combination with its own resources, the network was installed and implemented. One cannot over-emphasize the point that, without Program funds, it would have taken many, many years for El Paso I.S.D. to create and complete such a network across the district. Indeed, due to the time delays that would have been involved, and the attendant issues of obsolescence in the meantime, it is indeed questionable that the network would have ever been

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fully complete and compatible. El Paso I.S.D. believes that its experience in this regard has been shared by many school districts across the country.

A related benefit from Program was high-speed Internet access. The prior Internet access provided speed of 1.5 mps. Program funding permitted El Paso I.S.D. to provide such access both through installation of appropriate cabling and network electronics, as well as provision of Internet access services. There was a major problem with campuses using the old system to do classroom work assignments through the Internet or other network resources because it was too slow. Slow speed was due to the saturation of T-1 line that had been providing service. Essentially, over time classroom Internet usage rates increased significantly at El Paso I.S.D. and demand on the system increased for that reason and due to increasing file sizes. The number and size of files and presentations available for educational purposes also increased significantly. In other words, more websites often had more large, video or multi-media presentations available for review, as opposed to previous times. Using the old Internet access, it was difficult, if not impracticable, for El Paso I.S.D. students to fully utilize such educational resources. Importantly, due to the slowness of the old system, it at times was difficult for students to even getting any access to the Internet and many stopped trying to do so. The old system was causing a severe detriment to the education of El Paso I.S.D. students. It was no longer working and El Paso I.S.D. students were beginning to fall further behind other students in technology matters as a result. It is also important to realize that the Texas Essential Knowledge in Skills requirements include technology as part of the required curriculum for students in Texas. In addition, teacher evaluations are based upon their use of technology. State-wide demands were also placing additional pressure upon El Paso I.S.D. to increase the use of technology. The old system was unable to meet that challenge.

Fortunately, due to Program funding, this challenge was in fact met. In addition, the funding not only allowed many more students to gain access to the Internet, it also permitted such Internet experience to be reasonably practicable. Furthermore, Program funding also included web and file service that permitted students to learn high-tech skills involving developing websites and in sharing research. That was something that could not have been done using the El Paso I.S.D. own resources.

El Paso I.S.D. has also been pleased with the result from its acquisition of video carts with Program funding. Indeed, El Paso I.S.D. since then has purchased many more video carts, using its own resources, and is in process of acquiring more. El Paso I.S.D. is seeking to make sure that each campus has at least one such cart. These specialized video carts allow up to eight interactive sessions to occur simulteously. There are often used for video-conferencing whereby one teacher can provide instruction to classes at multiple schools. It is also used to permit multiple classrooms to have interactive sessions to hear and talk to distinguished visitors. In essence, each cart allows broadcasting from a single site to other sites across the district, as a form of distance learning. In addition, the El Paso I.S.D. broadcast studio can provide broadcasts through the video carts to particular classrooms district-wide. The video carts are very popular with both teachers and students and have proven to be a great learning tool. They have allowed El Paso I.S.D. to share the resources of better or specialized teachers with more students. It has had a dramatic effect at the classroom level.

As you can see, E-Rate funding has permitted El Paso I.S.D. to complete needed projects in the technology areas, in an effort to provide its students with a fair opportunity to succeed in the future. To be clear, through Program funds, El Paso I.S.D. did not seek to achieve, and did not achieve, a technological advantage over average school districts. Instead, the district sought

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to use such funding to catch up to those other districts. Although El Paso I.S.D. has not been able to fully "bridge the gap" in this regard, E-Rate funds have permitted it to at least come within range of being able to do so. Without the Program funds, El Paso I.S.D. and similarly-situated participants would technologically now be so far behind a typical school district so that it could never expect to catch up as a practical matter.

El Paso I.S.D. sought the Program funding to aid the eligible schools. Such funding, however, though has also provided incidental [and initially unintended] benefits district-wide and throughout the El Paso community. By way of example, the network advances achieved with Program funding also make it possible for El Paso I.S.D. to comply with certain of the Adequate Yearly Progress and No Child Left Behind Act requirements. With the network, there also can be greater accountability at the campus level, better review of campus-level data and information, better communication between central office and campuses, and greater sharing of resources amongst campuses. In addition, due to the increased connectivity afforded from E-Rate projects in combination with El Paso I.S.D.'s own resources, the district was able to utilize distance-learning to reach students and parents for educational programs. Using one such program, over 225 "virtual learning" students were able to complete high school requirements and graduate from El Paso I.S.D. this year; those young adults [principally from areas of eligible schools] would not otherwise have received high school diplomas, with resultant detriment to their own lives and those of their families, to the local economy, and to the local community. El Paso I.S.D. has also developed the Orion project with the local university, community college, and others to provide dual enrollment as well as specialized training in No Child Left Behind Act and other issues, for both students and teachers. The goal is to create a county-wide educational network to provide educational growth, and hopefully economic growth for the depressed local

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economy. Rather than simply have a collection of disparate, independent centers of basic, secondary, or higher education, El Paso I.S.D. and these other educational bodies are seeking to establish El Paso County as an "educational community", through creative and cost-effective sharing of technological information and resources. Again, these benefits were not sought from the funding, but El Paso I.S.D. has been able to leverage the Program funds using other resources in order to work on this greater good for the community as a whole. El Paso I.S.D. believes that a principal purpose of the Program was to benefit local communities, through provision of funding to aid the technology programs of schools.

It is important to raise this issue of "leveraging" the Program funds. As discussed in detail elsewhere, Program funds are limited in amount and also may be legally expended only on certain sorts of technology goods and services; therefore, districts must commit significant resources on their own in order to ensure proper implementation of the projects. Consequently, Program funds must be "leveraged" by a grantee-district with other sources of funds. In addition, a project constructed with Program funds also should be "leveraged" by a grantee-district with other non-Program projects, in order to meet technology needs. El Paso I.S.D. recognizes that the Program was not created to fulfill all technological needs of school districts, but instead provides a substantial "down payment" to be leveraged by the districts.

### Frustrations with the Program

Although thankful for the funding from the Program, El Paso I.S.D. believes it is also important for Congress to understand frustrations that El Paso I.S.D. has had with the operation and administration of the Program. Those frustrations are believed to be shared with many other school districts across the country.

Probably the primary concern of El Paso I.S.D. and other school districts revolves around an inability to fully understand the ever-changing Program requirements, based upon changes in the actual rules as well as changes in SLD's interpretation of such rules. As El Paso I.S.D. and many other districts have learned, doing something the same way as successfully done in the prior funding year, even in the absence of any formal Program rule changes, is no guarantee that the SLD will approve such approach in the current funding year. Indeed, that is the principal issue with El Paso I.S.D.'s Year 6 appeal. Furthermore, many have complained about the SLD's previous apparent refusal to make its manual of eligibility requirements for goods and services available to the public, leading many well-meaning districts to inadvertently seek ineligible goods or services or misunderstand those requirements. El Paso I.S.D., of course, recognizes that some annual changes in SLD policy are probably warranted, but wishes that such changes are announced publically and in sufficient time for districts to comply with the same.

Furthermore, the Program rules have proven to be vague and ambiguous on a large number of points, making it difficult for districts to seek compliance. For example, in El Paso I.S.D.'s own experience, different persons with the SLD, different E-Rate consultants, different service providers, different attorneys, and different staff persons will have differing interpretations of particular Program rules. If nationally-recognized E-Rate experts in Washington, D.C. in constant communication with SLD officials do not agree upon rule interpretations, it is difficult, if not impossible, to expect a typical school district elsewhere in the nation to fully and properly understand what is expected of it under the rule.

Another major frustration with the Program arises from the SLD's continued delays in making funding decisions. This frustration is believed to be shared by many, if not most, applicants. A funding year under the Program runs from July 1 of one year to June 30 of the

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following year. Generally, a recipient of Program funding must complete the project in question by such June 30 date [although short extensions in certain categories have been permitted by the SLD]. The SLD, however, has routinely issued decisions on Program funding requests long after the beginning of the funding year. For instance, in Year 4 of the Program, El Paso I.S.D. was notified of the SLD's decision almost three months into the funding year in question. In Year 5, the decision of the SLD was received about nine months after the commencement date of the funding year. For Year 6 of the Program, El Paso I.S.D. received notice of the SLD decision about six months after the start of the funding year. In short, the SLD has issued its decisions after the funding year begins, and not beforehand. As a result, the districts are hard-pressed to adequately and properly complete the funded projects, with appropriate oversight.

Such delays in decision-making also wreak havoc on a school district's ability to plan technology projects, whether or not based upon E-Rate funding. A district's technology projects for a particular funding year are generally dependent upon what Program funding was awarded in the prior funding year. If such funding was denied in whole or part, the district might need to re-urge such request in the next funding year. By way of example, using a "pipeline" analogy to reflect the linear nature of many projects, a district cannot be expected to request funds to build mile 5 of a pipeline without knowing whether mile 4 of the pipeline has been funded for construction. Due to the SLD's late announcement of funding decisions, districts have little time to develop projects for the next funding year before Form 470s for that year must be posted. In El Paso I.S.D.'s case, it has often learned of the SLD decision on a particular funding year after its Form 470 for the next funding year is due. El Paso I.S.D.'s experience is not unique.

Similarly, many technology projects must be integrated in order to be usable. It is not uncommon for a district to plan a particular project eligible for Program funding, along with a

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related ineligible project using its own funds. Oftentimes, the timing of such projects must be coordinated. For example, a district's plans to acquire computers for a classroom is necessarily linked to its request for eligible cabling to classrooms. With the delays in decisions on Program funding, the district's plans for the other projects are delayed and disrupted.

In this regard, due to delayed decision-making, districts are often in the uncomfortable position of wondering whether to use precious resources of their own on needed technology projects for which E-Rate funding requests have been long pending. If a district decides to do the project outside of E-Rate, only to later get an Program award, it can effectively lose the requested E-Rate funding, as well as the ability to otherwise use those funds of its own for other needed technology projects.

It is also important to remember that technology constantly changes. Under current Program rules, it is not unusual for a district to be required to issue specifications for particular goods in October of a year in its Form 470, with a decision by the SLD on funding taking place perhaps 12-18 months later, and actual procurement much later. Oftentimes, and El Paso I.S.D. experienced this as well, requested goods are obsolete, no longer compatible with other items, or no longer manufactured at the time actual acquisition thereof is to occur.

In this vein, it is important to point out that the SLD has reportedly suspended awards for the 2003 and 2004 funding years while it resolves problems arising from a change in its accounting system. It is not entirely clear when the SLD will again issue funding commitments.

As a related matter, the appeals process with the SLD and FCC of funding decisions is slow. Not only are decisions delayed in the first place, but delays in appellate decisions aggravate the problems described above.

El Paso I.S.D. realizes that the Program was in its infancy when these problems arose. It is a relatively new federal program, and "growing pains" should have been expected. The structure of the Program was different from other federal programs, and the roles of the SLD and USAC were somewhat unusual. The complaints about ambiguous rules and requirements with the Program are in large part similar to those made about any new federal program during its early years. It often takes a number of years for the "gray areas" to be identified and addressed. It is also important to remember that the Program also experienced a dramatic increase in both the number of applications and in the dollar amount of monies requested. The regulatory bodies were presumably, and not surprisingly, overwhelmed to some extent as a result.

El Paso I.S.D., despite its frustration [and that of other districts], recognizes that staff of the SLD and USAC were probably trying to do the best job they could with limited resources, and were also acting in good faith with respect to handling of the Program [except, perhaps with respect to somewhat-suspicious funding denials by SLD after the Ysleta order was issued]. Moreover, El Paso I.S.D. does wish to acknowledge that the FCC has more recently issued a number of orders and new rules addressing a wide variety of issues in the Program, and is expected to issue more in the near future. Those orders are welcome, and provide much more guidance and clarification to applicants and service provider as to Program requirements. It is hoped that those orders will limit this sort of frustration commonly experienced by applicants in seeking to understand the Program.

### Lessons Learned by El Paso I.S.D.

El Paso I.S.D. has learned a number of lessons from its Program participation. In particular, due to the above-described problems that El Paso I.S.D. encountered with the Program, El Paso I.S.D. has also reviewed and studied causes of such problems. Although El

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Paso I.S.D. would prefer to place full responsibility upon others for those problems, it recognizes and concedes that it bears some of the practical, if not legal, responsibility for the same.

For instance, El Paso I.S.D. in Year 4 of the Program [unlike prior or subsequent Program years] appears to have relied too heavily upon its service provider, IBM, in developing the specifics of the statements of work. As mentioned above, El Paso I.S.D. lost a number of key employees with Program experience and expertise shortly before the Year 4 process began. El Paso I.S.D. also had a relatively new technology director with essentially no Program experience [though very experienced generally in technology areas]. Consequently, El Paso I.S.D. sought to select a "strategic technology solution provider" to provide additional assistance with respect to Program matters. In the circumstances, that was a reasonable approach. On the other hand, IBM submitted statements of work for Year 4 to El Paso I.S.D. for review with limited opportunity for extensive study and analysis before the deadline for submission of the Year 4 Form 471s. Accordingly, El Paso I.S.D. technology department did confirm that the projects represented by statements of work were consistent with its Technology Plan and were ones desired by the district. Unfortunately, there was insufficient time for a detailed review and analysis by various affected departments of El Paso I.S.D. to ensure that those projects were in fact initially configured to meet the specific goals of such department or that each such project [although functionally sufficient] was the preferred solution of the particular department compared to other approaches. El Paso I.S.D. feels that its review was legally sufficient, but in hindsight believes that more review and analysis would have been better. Of course, the Special Procurement Provisions and other provisions in the Year 4 Contract did provide El Paso I.S.D. with an opportunity to further review and modify projects even after an award of Program funds. El Paso I.S.D. in fact exercised these special contractual rights and modified several projects from

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the initial proposals, in accordance with Program rules, in order to better satisfy the needs of the district. Nevertheless, in retrospect, the preferred approach would have been to internally develop project details with little or no assistance from the service provider [recognizing, of course, that the service provider is still a valuable source of expertise for which it would inappropriate to ignore or discount entirely].

On a related topic, looking back at the situation with further knowledge and experience, El Paso I.S.D. now wishes it had had a better understanding in advance of the benefits of one or more Year 4 projects in comparison to the costs thereof. This concern is principally directed at the Year 4 "SOW maintenance" project, which cost about $27 million. El Paso I.S.D. now questions whether the benefits of the project justified such a cost, not only to the Program but also to El Paso I.S.D. for its 10% share. El Paso I.S.D. expended a significant amount of its own funds on this project, and has not been satisfied with it. The maintenance project involved a number of different sub-parts [such as maintenance of certain existing technology, inventorying of existing technology goods, etc.], though the "help desk" was a principal part thereof. The "help desk" was very effective in permitting El Paso I.S.D. to quickly identify and address problems of users, with a great benefit to student, teacher, and administrative productivity. Importantly, the "help desk" immediately referred calls from ineligible schools to the technology department, in order to ensure such assistance services were provided exclusively to eligible locations.

From a purely functional perspective, the "help desk" worked. Unfortunately, El Paso I.S.D. did not realize at the time of acquisition the legal effect under Program rules of characterization of the "help desk", and thus that the "help desk" would not survive the end of the Year 4 term. That was a definite surprise to the district. El Paso I.S.D. was under impression

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that the "help desk" would survive and that the district would continue to run it in the future, using its own staff. That did not prove to be the case. El Paso I.S.D. reviewed different alternatives, but Program rules prevented some from being utilized and cost considerations interfered with others. In the process of that additional review, El Paso I.S.D. also discovered that the "help desk" configuration used certain proprietary software of a third party, for which an individual license for the district [as opposed to a presumed nationwide IBM license] was cost-prohibitive. The design of the "help desk", in retrospect, did not necessarily conform to the long-term needs of the district, and made it difficult to sustain in that configuration. Ultimately, and in light of the denial of Year 5 funding by the SLD, El Paso I.S.D. could not afford bearing the entire cost of continuing the "help desk", and IBM ceased providing such services to the district. The "help desk" did not meet the expectations of El Paso I.S.D. for the project. In this regard, the district expected the "help desk" to achieve a much greater reduction in pending work orders than actually experienced. To be clear, though, El Paso I.S.D. believes that it received substantial value from the maintenance project in Year 4 of the Program, but, in 20/20 hindsight, feels that the overall costs thereof may have outweighed the long-term value to the district. As a result of these concerns, El Paso I.S.D. significantly decreased its request for maintenance contract funding for Year 5 of the Program, and deleted requests for similar sorts of funding in future years.

In short, although El Paso I.S.D. in good faith sought to make cost-effective acquisitions, it now questions whether the purchases met its expectations and fully justified the costs. It is, of course, not unusual for anyone to "second-guess" a purchase of any good or service. "Buyer's remorse" is a well-recognized phenomenon based in large part on the fact that a purchase rarely, if ever, meets all initial expectations or desires of the buyer. Even persons who spend

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extraordinary amounts of time and effort in studying and analyzing proposed purchases often suffer from "buyer's remorse" after actually making the selection and using the product or service in question. El Paso I.S.D. does not feel that its acquisitions violated any Program rules, but nevertheless wishes that additional, extra effort had been made in analyzing and understanding the projects in advance. Such effort might not had lead to a different result [due to outside variables], but should have at least offered a better opportunity to avoid the problems experienced by the district.

Another important "lesson learned" of El Paso I.S.D. involves readiness for the projects. There are two main components of readiness: (a) readiness to manage installation and completion of the projects; and (b) readiness to manage the actual usage of the projects after completion. As a condition to Program participation, a district must essentially certify in the Form 471 that it is ready to and capable of implementing the proposed project(s), specifically:

> *25. The eligible schools and libraries listed in Block 4 of this application have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services.*

El Paso I.S.D. believes that its readiness was sufficient to meet that minimum standard. On the other hand, it also feels that even more resources should have been committed by the district to ensure project success.

When it first received notice that a substantial award had been made to it in Year 4 of the Program, El Paso I.S.D. quickly reviewed whether or not it had sufficient staffing to oversee and supervise the installation of the desired projects, wondering whether "it had bit off more than it could chew" [especially since the late award by the SLD left a significantly reduced time period

for completion of all the requested projects]. Through re-assignment of staff and new hires [including retention of a program manager designated to oversee day-to-day issues on the project installation], and the extra efforts of existing staff, El Paso I.S.D. was able to devote sufficient resources for that phase of the project. Nevertheless, the district probably initially under-estimated the amount and extent of effort that would be required to monitor and supervise completion of the projects. Even though its commitment was adequate, El Paso I.S.D. also now feels in hindsight that even further commitment of staffing and other resources to the supervision of project installation would have been preferable.

Additionally, as noted above, readiness also concerns the ability of a district to implement the project at the end-user level, in order to gain the full expected benefits thereof. It is important to keep in mind that many eligible projects under the Program [e.g.- new servers and cabling] provide benefits to teachers and students, without necessarily necessitating additional training. On the other hand, other technology projects [whether or not acquired using Program funds] do require a district to invest significant resources of its own in training and related usage issues. For example, without training of teachers in use of a new software program for classroom use, the program may prove to have limited practical benefit. This investment is not just on an administrative level. Indeed, the teachers themselves must invest additional time on their own in developing new lesson plans or materials, or converting old materials to the new system, to take advantage of the new software program. Ideally, the training should be on-going, and incorporate "best practices" learned district-wide. El Paso I.S.D. formerly had technology coordinators at most, if not all, campuses. These persons, among other things, aided and trained teachers on a continuing basis on technology matters. El Paso I.S.D. was somewhat advanced, compared to other school districts, in having such campus-level technology staff.

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Such training and assistance, though, is generally ineligible for funding under the Program. Unfortunately, due to serious budget concerns, those positions were eliminated before implementation of the Year 4 projects. In retrospect, El Paso I.S.D. feels that, although not necessarily legally required or even the industry-standard, the district should have made budget cuts elsewhere and made provision at the time to re-institute the technology-coordinator program at campuses, in order to take better advantage of classroom-level projects. El Paso I.S.D. believes that project implementation was successful, but feels that there was and is room for improvement which the technology coordinator program could support.

Upon further analysis of its technology acquisitions, whether or not using Program funds, El Paso I.S.D. also believes that additional planning, above and beyond a technology plan, is appropriate for many projects for which Program funding is sought. For instance, a particular network component may satisfy the technology plan, may fulfill the functional needs, may be at a low price, and may work perfectly, but still be a poor purchase for a particular district. In isolation, the component may be ideal, but the acquisition needs to be considered in light of the total technology universe at the district and in the community. Ideally, a district should review and analyze, from an engineering perspective and otherwise, whether a proposed project is in fact compatible with all of its existing systems, whether the design of the project actually satisfies discrete technological goals, whether the technological goals fulfill particular educational goals, and whether there is a capacity in the community to support and sustain the project in questions over the long run. This sort of review should permit a district to make more intelligent purchasing decisions. For instance, a new server may be "faster", but is not necessarily better than the existing one if "large capacity" is what the district really requires. A particular software program may meet educational goals, but may be unacceptable if it is not

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fully compatible with existing hardware systems. Community support is critical; if the locale has no persons capable of operating or supporting a particular project in the future, the sustainability, and thus value, of the project may be called into question.

That sort of study and evaluation would ordinarily require experienced, highly-skilled persons familiar with "cutting-edge" technology issues, with the requisite training and certification in the field of computer or electrical engineering. Ideally, such a review and analysis could be performed in-house by El Paso I.S.D. and other school districts. Unfortunately, that is generally not realistic. In the first place, many locales outside of "hi-tech" communities do not have a sufficient population of such experienced and skilled persons so as to permit a school district to find and retain an adequate number of such persons on its staff. In any event, to the extent a community has such persons available for hire by a school district, a district generally would be unable to pay a market-rate salaries sufficient to attract and retain such persons. Although, like other districts, El Paso I.S.D. has many experienced and skilled employees in its technology department, those persons do not necessarily have the top-flight credentials and experience to handle this sort of additional analysis. Consequently, such services have to be retained from third parties, hopefully third parties who are also vendors of products which may be at issue in the evaluation. Such services can be very expensive. El Paso I.S.D. doubts that many, if any, districts have engaged in such an exhaustive review and analysis before seeking Program funding. Nevertheless, the district feels that such an approach [even if not required by Program rules] would provide substantial benefits to it, and better ensure the right projects for the district are implemented. El Paso I.S.D. is in the process of putting in place a comprehensive engineering and design review of its technology systems, which it would hope to

be able to supplement on a periodic basis, in order to better guide its acquisitions of technology in the future [whether or not under the Program].

In a somewhat related vein, El Paso I.S.D. also recognizes that it is important for technology acquisitions, whether or not using Program funds, to be coordinated amongst many departments of the district. For instance, if even a particular product meets the requirements of teachers and other educators, and also is deemed to be a good, compatible product by the technology department, a problem may still exist if the particular schools do not have facilities sufficient to locate and maintain the product. El Paso I.S.D. has encountered such a problem with certain campus-level servers. Specifically, at a few school sites with severe space limitations, servers were placed in janitor closets to reduce noise in classroom areas. Unfortunately, some of those closets did not necessarily have sufficient cooling for ideal server usage. In other cases, they did have sufficient cooling, but the evaporative cooling systems [whereby the air is cooled by the addition of moisture, rather than its deletion as in normal air conditioning; evaporative cooling is common in the desert Southwest among houses, businesses, and schools] unfortunately generated too much moisture for ideal server usage. El Paso I.S.D. incurred additional costs for server support at these limited locations. After extensive review of various costly alternatives, the district is planning to relocate those servers to a centralized location with adequate space, cooling, and ventilation [from which they will continue to serve the same eligible campuses in the same way]. This sort of site-specific, detailed, operational issue is not something that ordinarily would be considered by any school district when making a technology purchase. Nevertheless, El Paso I.S.D. believes such a review and coordination amongst various departments would yield significant benefits. Such a process is difficult to design, establish, and implement, but the district is working towards doing so.

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El Paso I.S.D. furthermore enjoys a much better understanding of the true, complete costs of Program participation. As discussed elsewhere in this statement, a district ordinarily must expend much more money than its 10% share in order to implement Program projects. There are many necessary costs that are ineligible for Program funding, but are vital for the project to succeed. El Paso I.S.D. made a substantial monetary commitment in Year 4 of the Program, above and beyond the awarded Program monies. It believes that such commitment was in excess of many other participating districts. In retrospect, though, El Paso I.S.D. realizes that an even greater district commitment, both initially and continuing over time, is needed to achieve the desired goals and expectations of technology projects.

By way a somewhat different "house" analogy, one may view an award under a Program as a gift of a "shell" of a house, with simply the foundation and framing in place. That is a great gift, but is not a cost-free one. The house only achieves its full value if the recipient of the gift then expends its own resources to add the plumbing, electrical, roofing, HVAC, walls, and other facilities and to furnish the finished house with furniture, fixtures, and appliances. The cost of the work needed to properly implement the gift of the "shell" house would typically be much greater than the value of the gift. In the case at hand, the Program only funds certain items, and to a certain extent. Beyond that, the participating district must make a major commitment of financial, staffing, and other resources to the funded projects, in order to ensure that they fulfill the intended goals.

To be absolutely clear, El Paso I.S.D. does not believe that it violated any laws or Program rules. Nevertheless, using 20/20 hindsight, there are things that El Paso I.S.D. would have like to have done differently with respect to Year 4 of the Program, and Year 5 of the Program to some extent as well. In short, although its efforts were "good enough", the district

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believes there was room for improvement. Importantly, El Paso I.S.D. has striven to avoid these sorts of problems with respect to subsequent-years participation in the Program. It feels that it handled Year 5 better than Year 4, Year 6 better than Year 5, and Year 7 better than Year 6. El Paso I.S.D. believes Year 8 participation will be even better than the prior years. Honest mistakes can and will be made by any participant in the Program [indeed, by any participant in any federal program of any kind]; on the other hand, El Paso I.S.D. has sought to identify any errors, learn from those errors, correct those errors, and avoid similar errors in the future. For example, El Paso I.S.D. now exclusively or almost exclusively develops specifics for Program projects on its own. It also has developed in-house expertise on Program matters, and has retained an independent E-Rate consultant for assistance [who is not a vendor to El Paso I.S.D. of technology items]. The district also has re-started its technology-coordinator program at campuses. Sustainability of projects without Program funding [which has turned out to be doubtful] is also a primary consideration for El Paso I.S.D. The district also has invested more of its own resources in training and campus assistance on technology matters, to better ensure that monies spent on technology have the desired impact on the education of students. El Paso I.S.D. has a more realistic view of what sort and quantity of projects can be feasibly and efficiently implemented by it in any particular year, considering all of the other necessary ineligible costs, and has therefore substantially revised its Program funding requests.

El Paso I.S.D. believes that many similarly-situated school districts seeking to participate in the Program may experience some or all of such problems, amongst others, and is sharing its "lessons learned" in order to provide guidance to those districts, as well as to aid Congress in its review of the Program as a whole. The primary theme running through these lessons is "additional district commitment". A Program participant, in order to fully enjoy the benefits of

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Program projects, should make a greater commitment of its own staff, money, and other resources in determining its technology needs, preparing and designing projects, overseeing and supervising project installation, and in ensuring effective implementation of the projects. Though El Paso I.S.D. believes its commitment in these regards was at least legally sufficient, it also now feels that even a greater commitment was and is warranted to ensure project success.

## Reforms with the Program

Within the last year or so, the FCC has adopted a number of rule changes to the Program and has commenced proceedings to adopt additional rule changes. The SLD in such time period also appears to be much better in making important policies and information available to the public, so that districts can better seek to comply with Program or SLD requirements. These changes are welcomed, and seem to go a long ways towards addressing both the concerns of El Paso I.S.D. expressed above, along with Program problems or abuses that have been reported in certain locations elsewhere in the country.

Nevertheless, El Paso I.S.D. does have some recommendations on further reforms in the Program. The district's reforms focus primarily on issues arising to the experiences of it and similar school districts. Since El Paso I.S.D.'s experience did not involve fraud or similar conduct [contrary to what may be the situation in other cases addressed by this Committee], the focus is on these other issues.

In the first place, particularly in light of the delays in awards under the Program, it would be preferable for districts to be permitted a complete 12-month period after receipt of the award notice, in which to complete the projects. Alternatively, the period for completion of projects could run for a period of 18 to 24 months after the commencement of the funding year. This additional time would allow for better review and control of project completion.

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El Paso I.S.D., not surprisingly, would request that overall funding of the Program be expanded. The Program is basically funded by fees imposed on telecommunication billings, rather than the general revenues of the federal government. Even a slight increase in such fees would result in much greater educational benefits for students throughout this country.

It is also important for Congress to recognize that, under the Program, many technology items are not available for funding. For instance, there may be funding for cabling to classrooms, but not for computers in the classroom. In addition, and very importantly, Program funds generally cannot be used for training of teachers or other district personnel to fully and adequately utilize the equipment funded under the Program, or even to retain personnel specifically assigned to teach the faculty on how to take advantage of the new equipment during instructional exercises. The goal of the Program is to reach the students. Although El Paso I.S.D. strives to use its own funds to bridge the gap between Program-acquired items and the actual instructional effect on students, apparently not all school districts can or will do so. Due to problems that have arisen in the past with the Program, there would likely need to be some limits and restrictions on use of such funding. Nevertheless, if certain training or retention costs for districts in connection with new Program goods were made eligible for E-Rate funding, the benefits to the students from such goods should increase.

Whether from the universal services fees or regular budgeting, El Paso I.S.D. also believes that the FCC and SLD do need additional funding, in order to allow prompter handling of applications, appeals, and even audits. The problems with delays in decision-making are probably best served through additional personnel resources for these agencies.

Of course, the "Lessons Learned" section above also highlights issues that El Paso I.S.D. believes are appropriate for consideration by other Program applicants. Some of those issues

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perhaps might be the subject of changes in Program rules. By way of example, if an applicant is seeking a major overhaul of its entire computer network, perhaps the Program rules should require, in addition to the technology plan, some sort of engineering analysis to better ensure that the network design is appropriate for the applicant and compatible with its other components.

Incidentally, and as something not directly experienced by it, El Paso I.S.D. also wishes to highlight an area of potential abuse under the Program in the future. There are a number of companies who act as E-Rate consultants. With the complexity and confusion surrounding Program requirements, that sort of expertise is very valuable to applicants and service providers. Some of these E-Rate consultants are very accomplished, reputable, and experienced. Unfortunately, not all necessarily fall in that category. El Paso I.S.D. is concerned that abuses might arise amongst some of these consultants. Although El Paso I.S.D. has not contracted with this second category of consultant, it believes that other districts nationwide have done so on occasion. It is El Paso I.S.D.'s understanding that one or more of such "lesser" consultants may charge fees to their clients on a contingency basis, based upon the amount of the award received from the SLD by such clients. That sort of compensation method could easily lead such consultants to over-estimate what technology requirements are needed for districts and to request much greater funding than actually needed. In other words, one wonders whether some of the complaints lodged against certain vendors under the Program may in the future be applicable to some of such consultants.

El Paso I.S.D. again wishes to point out that the FCC and SLD have already adopted a number of Program reforms and have issued clarifications on many of the "gray areas" of Program rules. Those reforms and clarifications are expected to continue in the future. Since, the regulatory agencies appear to have already addressed or to be in the process of addressing

many of the problems with the Program, it is not entirely clear that direct Congressional legislation is needed at this time to address those issues [except with respect to the issue of increased funding].

## Overall Evaluation of the Program

El Paso I.S.D. believes that, notwithstanding the problems, the Program has been very successful in bringing much-needed technology to school districts across the country. Such technology has brought great benefits to the students involved. The Program has certainly made allowed El Paso I.S.D. to make great strides in catching up to other, more affluent school districts and providing its students with a fair opportunity to compete and succeed in the real world. To be clear, El Paso I.S.D. has not sought, and has not acquired, technology projects far in advance of other districts. Instead, the Program funding, combined with El Paso I.S.D's own resources, has allowed it to get closer to catching up with a typical school district in the nation.

## Conclusion

In conclusion, El Paso I.S.D. has greatly appreciated the opportunity to participate in the E-Rate program over the years. Such participation has greatly benefited the students at El Paso I.S.D., giving them a fair opportunity to compete with their peers from other communities.

El Paso I.S.D., like other school districts, also supports efforts to reform problems or abuses with the Program. It regrets any role that it may have unintentionally and unwittingly had with respect to any such problems.

El Paso I.S.D. has acted in good faith, and in what it believed to be a reasonable fashion in compliance with albeit-ambiguous Program rules. El Paso I.S.D. does not believe it did anything illegal, and certainly does not believe there is any basis to justify a recovery against the

district. In 20/20 hindsight, of course, there are things that El Paso I.S.D. would likely have done differently.

Mr. Chairman, thank you again for this opportunity to present EPISD's positions and views on the E-Rate Program.

*Charles Tafoya*

Charles Tafoya
Superintendent, El Paso Independent
School District
9600 Sims
El Paso, Texas 79935

September 16, 2004

**Superintendent Webpage from "www.episd.org"**

The Board of Trustees appointed Charles Tafoya to the position of superintendent for the El Paso Independent School District on Jan. 8, 2003. Under his leadership, the community approved a $207.4 million bond for EPISD to retrofit and build new schools throughout the city. Mary Tippin Elementary School, which will open in August 2004, is the first school built during his tenure as superintendent.

With a career in education as well as private business, Tafoya has worked closely with area businesses and governmental agencies to support economic growth through the development of solid instructional career programs. He also has promoted collaborations with area school districts, institutes of higher learning and neighboring states. Recently, he worked with the leadership of the Gadsden Independent School District in New Mexico to gain funding for the creation of an International Real World School in Santa Teresa, NM. The International Real World School is a project-based school that would create a partnership between the states of New Mexico, Texas and Chihuahua, Mexico. It would target 11th and 12th grade students and promote rigorous academics combined with technical, design, process, entrepreneurial and critical-thinking skills.

Tafoya's vision also includes technology advances that will make EPISD a leader in technology among schools nationwide. EPISD is currently working on a Geographic Information System (GIS) that is designed to store, retrieve, manipulate and display geographical data information. The GIS will link student information geographically, enhance school boundary studies and other spatial related studies, provide bus routing and Global Positioning System (GPS) related program monitoring and visual research results for decision-makers.

Prior to being named acting superintendent, Tafoya was EPISD's associate superintendent of human resources since July 2001. He has more than 30 years of experience in education having served as a superintendent, associate superintendent of human resources, director, principal, assistant principal and teacher.

Tafoya holds a Master of Arts degree in educational administration from the University of New Mexico in Albuquerque and a Bachelor of Arts degree in education from New Mexico State University in Las Cruces. He also has Texas Superintendent Credentials, New Mexico Superintendent Certification, New Mexico Principal Certification and New Mexico Teacher Certification.

# RESUME

Charles L. Tafoya
1108 Wind Ridge Dr.
El Paso, Texas 79912
915-581-3033

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OBJECTIVE: To work in a large urban district as a central office administrator

## SUMMARY OF QUALIFICATIONS

Educational experiences that include; Superintendent, Associate Superintendent of Human Resources, Director, Principal, Assistant Principal, and teacher over a 30 year period.

Central Office and Cabinet level experience in a large urban district (88,000 students) and smaller rural district (7500 students)
Limited Bilingual-Spanish - English
Demonstrated leadership in: Human resources management, curriculum, finance, school construction and facilities management, technology, and governmental relations
Excellent communicator; strong human relations and conflict resolution skills
Operational knowledge of school law, finance, collective bargaining, site-based management, outcomes based management, policies and procedure development/implementation
Broad range experience with State and Federal agencies and programs

## PROFESSIONAL EDUCATIONAL BASED EXPERIENCES

1/2003 - Present
Superintendent - El Paso Independent School District, El Paso, Texas.

9/2002 - 12/2002
Acting Superintendent - El Paso Independent School District, El Paso, Texas.

7/2001 - 8/2002
Associate Superintendent, Human Resources - El Paso Independent School District, El Paso, Texas. Responsibilities include oversight of District staffing, employee relations, employee benefits, workers compensation, and other operational duties that were assigned by the Superintendent including: Finance, technology, supervision of one-third of the elementary schools, and acting as Superintendent in his absence.

8/1999 – 8/2000
Assistant Superintendent, Human Resources - Ysleta, Independent School District, El Paso, Texas. Oversight of all aspects of the Human Resources Division including: staffing, employee relations and benefits programs, finance, and technology. Managed the daily operational issues of the District and served in the capacity of Superintendent designee when called upon to do so by the Superintendent.

5/1991 - 1995

Superintendent - Los Lunas Public Schools, Los Lunas, New Mexico. Increased graduation rates. Established the first alternative high school to help reduce the dropout rate. Created the State's first complete local and wide area computer network. Responsibilities included oversight of the district's operational budget; working with the State Legislature to obtain funding for new school construction; working closely with principals in the management of schools; working closely with student, staff and parent advisory councils.

1990 - 4/1991

Director - Student Transportation Services, Albuquerque Public Schools. Had administrative oversight for the daily transportation of 45,000 students; responsible for the operational budget, established guidelines and policy for special needs transportation as a related service, created a framework for route auditing, established a rotation system for the fair distribution of new bus routes.

1988- 1990

Principal - Lincoln Middle School, Albuquerque Public Schools. Established grade level pods. Worked with staff to create Enriched classes in all disciplines. Responsible for the operational budget, restructured advisory councils to include more students, staff, parents and community members, created after schools programs for student remediation, advancement, exploration. Created partnership with business community to expand support and funding for the school.

1983-1988

Principal - Garfield Middle School, Albuquerque Public Schools. Restructured Title I and bilingual education programs in the school. Created an in-school alternative program to help contain out-of-school suspensions, created a Saturday School, introduced an adult literacy program, an evening drug awareness program in conjunction with local hospitals and the District DARE staff. Worked closely with staff and students to also develop a broader range of student recognition programs including first middle school MESA program.

1978-1983

Assistant Principal at two different high schools. Manzano High School (78-82) and Del Norte High School (82-84), Albuquerque Public Schools. Worked closely with City of Albuquerque School Police Detail with gang intervention programs, discipline, finance and supervision of staff. Served as first administrator for the high school "Side-by-Side Program," a centralized program designed for the special needs student population.

1976- 1978

Staff - Congressional Delegation/Consultant, Washington, D.C.: Experiences included Contracting with Mr. John Cordova for the Congressional Delegation, consultant to U.S. Department of Education under Dr. Cordova.

1973- 1976

Assistant Principal at two different junior high schools. Lincoln Junior High School (73) and Washington Junior High School (74-76). Worked with community to successfully close Lincoln Junior High. Member of task force to establish middle schools, member of Student Rights and Responsibilities Committee, responsible for scheduling, discipline and other normal operational issues of the school.

1969-1973

Teacher/ Coach - Wilson Junior High School, Albuquerque Public Schools. Teacher of: Social Studies, Physical Education, Coached football, track, basketball, and baseball.

## OTHER PROFESSIONAL EXPERIENCES

1999-2000

**National Sales Director, E2020 Virtual School**: National Marketing Vice President for E2020Virtual Education. Worked closely with CEO of the company in the marketing, promotion, sales and development of educational virtual school content. Mission of the company was to affect the dropout problem through a web based interactive educational program.

1995-1998

**President/CEO SCANCOR**:  Founder of a software development company that specialized in tracking applications, networking and educational software development. Later merged with another company and became National Vice President of Marketing and Business Development for TAMSCO Systems.


## EDUCATION

Master of Arts in Educational Administration
University of New Mexico
Albuquerque, New Mexico

Bachelor of Arts in Education
New Mexico State University
Las Cruces, New Mexico


## CERTIFICATION

Texas Superintendent Credentials

New Mexico Superintendent Certified
New Mexico Principal Certified

New Mexico Teacher Certified:
Physical Education (K-12) and
Social Studies (8-12)

## SUMMARY OF MAJOR POINTS
### (Statement of Charles Tafoya)

1.     El Paso I.S.D. has participated or sought to participate in the E-Rate program from its origins.  El Paso I.S.D. received funding from the E-Rate program in the early years, with a substantial award in Year 4 of the program, but has not been awarded funds since then.

2.     El Paso I.S.D. has acted reasonably and in good faith to comply with the often-ambiguous and confusing rules and requirements of the E-Rate program, and does not believe that it has violated any Program rules.

3.     The E-Rate funding awarded to El Paso I.S.D. in the past has yielded substantial benefits to the district, its teachers, and its students, as well as the entire community.  Such funding has permitted El Paso I.S.D., a poor school district, with a fair chance to seek to bridge the technological gap between it and average districts.

4.     Although grateful for the funding that it has received under the E-Rate program, El Paso I.S.D., along with other applicants, has experienced a number of frustrations with the program, principally concerning lack of clarity in rules and delays in decision-making.

5.     El Paso I.S.D. is very concerned that what it believed to be reasonable, good faith, and legal actions taken by it in one funding year was perverted by third parties, without the district's knowledge or consent, in such a manner so as to threaten the operations of the entire E-Rate program.  El Paso I.S.D. concedes that, in retrospect, there are a number of additional steps and commitments it should have taken or made in order to yield the maximum benefit from past E-Rate funding.  Although it believes its conduct was legally sufficient and similar to what other participants did, it also feels there was room for improvement.  El Paso I.S.D. has sought to undertake such actions in subsequent funding years, as part of an internal reform process.  The issues raised by these "lessons learned" are not unique to El Paso I.S.D., and those lessons may provide guidance and support to other school districts.

6.     Beyond those internal reforms, El Paso I.S.D. feels that a number of program-wide reforms are also appropriate based upon its experience and understanding of the E-Rate program.  It recognizes that the FCC is already imposing various reforms on its own, and appears ready to continue to do so.

7.     El Paso I.S.D. firmly believes that the E-Rate program should be retained in place, if not expanded.  It is difficult to over-estimate the beneficial impact to the program over the years to poor districts such as El Paso I.S.D.  The program needs some reforms, but with those reforms, can continue to provide substantial benefits to students across the country.

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# House Committee on Energy and Commerce
### Witness Disclosure Requirement –
"Truth in Testimony" Required by House Rule XI, Clause 2(g)

Your Name:   Charles Tafoya

1. Are you testifying on behalf of a Federal, State, or Local Government entity?          Yes (No)

2. Are you testifying on behalf of an entity other than a Government entity?          (Yes) No

3. Please list any federal grants or contracts (including subgrants or subcontracts) which <u>you have</u> <u>received</u> since October 1, 1999:

4. Other than yourself, please list what entity or entities you are representing:

El Paso Independent School District

5. If your answer to question number 2 is yes, please list any offices or elected positions held or briefly describe your representational capacity with the entities disclosed in question number 4:
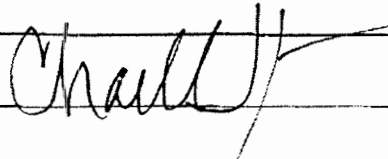
Superintendent

6. If your answer to question number 2 is yes, do any of the entities disclosed in question          Yes (No) number 4 have parent organizations, subsidiaries, or partnerships to the entities for whom you are not representing?

7. If the answer to question number 2 is yes, please list any federal grants or contracts (including subgrants or subcontracts) which were received by the entities listed under question 4 since October 1, 1999, which exceed 10% of the entities revenue in the year received, including the source and amount of each grant or contract to be listed:

Although the District has received federal grants, contracts or subcontracts, during the time period in question, none of them appear to reach the 10% amount, except that the E-Rate award for Year 4 of the Program of $65,683,831 exceed such 10% amount [though the monies were paid to third party vendors and not the District].

Signature: _____          Date: Sept. 16, 2004