

Oral Statement of

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Before the

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

of the

COMMITTEE ON ENERGY AND COMMERCE  
UNITED STATES HOUSE OF REPRESENTATIVES

On

Problems with the E-Rate Program: Waste, Fraud, and Abuse Concerns in the Wiring of

Our Nation's Schools to the Internet

JUNE 17, 2004

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to come before you today to discuss oversight of the E-rate program and to discuss concerns that my office has with the program as a result of our involvement in audits and investigations. In my testimony, I will briefly summarize my office's involvement in USF oversight, discuss our specific actions with respect to the Puerto Rico Department of Education's, or PRDOE's, involvement in the E-rate program, and describe in more general terms concerns my office has regarding the program. I would also like to introduce Thomas Bennett, the Assistant Inspector General for USF Oversight in the FCC Office of Inspector General. Mr. Bennett is responsible for USF oversight including oversight of the E-rate program.

I believe that it is particularly timely that we meet now to discuss waste, fraud and abuse in the E-rate program given recent events and media interest.

- In November 2003, Florida Today and WKMG Channel 6 in Orlando, Florida published a series of reports describing questionable spending of E-rate funding by the Brevard County School District.
- In April 2004, five individuals were indicted in connection with charges of conspiracy, mail fraud, and money laundering involving the E-rate program. The indictment charges that USAC paid these individuals over \$1.2 million dollars for goods and services that were not provided to the schools.
- Last month NEC-Business Network Solutions Inc. agreed to plead guilty and to pay a total \$20.6 million criminal fine, civil settlement and restitution today relating to

charges of collusion and wire fraud in the E-Rate program. NEC/BNS was charged with rigging bids, wire fraud, inflating bids, agreeing to submit false and fraudulent documents to hide the fact that it planned on installing ineligible items, agreeing to donate “free” items that it planned to bill E-Rate for, and submitting false and fraudulent documents to defeat inquiry into the legitimacy of the funding request.

- Also last month, the Atlanta Journal-Constitution (AJC) ran a series of articles reporting wasteful spending of E-rate funding by the Atlanta Public School system. The Atlanta Journal Constitution reported that the Atlanta Public School system bought more equipment than it needed, routinely overpaid for goods and services, and stored unused network equipment worth about \$4.5 million in warehouses.

### Background

My office first looked at the USF as part of our audit of the Commission’s FY 1999 financial statement. Since that time, my office has continued to devote considerable resources to oversight of the USF, and the E-rate program in particular; however, several obstacles have impeded our ability to implement effective, independent oversight of the program.

The primary obstacle we have dealt with has been a lack of adequate resources to conduct audits and provide audit support to investigations. We have requested appropriated funding to obtain contract support for USF oversight activities, but those funding requests are yet to be approved. I am presently able to devote three auditors full time and two auditors part time to the USF. Despite these limited resources, my office has

implemented an independent oversight program that includes audits conducted using both internal resources and other federal Offices of Inspector General under reimbursable agreements; review of audit work conducted by USAC; and active participation in federal investigations of E-rate fraud. In addition to further audits of compliance, I believe it would be appropriate to conduct a broad-based review of the program.

#### Puerto Rico Department of Education

I would like to briefly discuss allegations that my office received regarding wrongdoing related to PRDOE's involvement in the E-rate program and programmatic concerns that are highlighted by PRDOE.

In April 2001, my office was contacted by an auditor from the Office of the Comptroller of Puerto Rico, who alleged wrongdoing by PRDOE related to the receipt of E-rate funding. The allegations were that PRDOE did not comply with state and local procurement regulations during the E-rate vendor selection process and that PRDOE had not secured access to all the resources, such as teacher training and electrical infrastructure at the schools, necessary to make effective use of the goods and services being provided.

Based on information we gathered and reviewed in a preliminary investigation, we referred this matter to Federal law enforcement on May 31, 2001. That investigation is on-going and we are continuing to provide support to the investigation as warranted.

### Concerns with the E-rate Program

The Puerto Rico matter highlights several concerns that my office has with this program. These concerns include a lack of timely and effective resolution for audit findings from E-rate beneficiary audits, inadequacies in the competitive procurement requirements, effective use of purchased goods and services, and inadequacies in applicant certifications regarding compliance with program requirements.

Program rules require that applicants use a competitive procurement process to select vendors. We question whether the rules are adequate to ensure a competitive process is followed. In addition, weak recordkeeping requirements to support the procurement process, as well as other aspects of the E-rate application, offer little protection to the program.

Site visits to PRDOE facilities have verified that the schools had neither the physical infrastructure to support the system that was planned nor appropriate equipment and training to effectively use the E-rate funded system. Additionally, some assets purchased with E-rate funding are yet to be installed in Puerto Rican schools. These conditions exist despite PRDOE certifications that they were prepared to make effective use of the goods and services purchased with E-rate funds. The E-rate program is heavily reliant on applicant certifications, in lieu of independent verification.

In addition to concerns that are highlighted by PRDOE, my office has identified other

concerns as a result of audits and investigations.

USAC has implemented numerous procedures to administer the E-rate program. The Commission has formally adopted some, but not all, of the USAC operating procedures. We believe that this distinction between program rules and USAC implementing procedures represents a weakness in program design and we believe that this situation contributes to confusion regarding the rules governing the program.

This differentiation between program rules and USAC procedures is illustrated in the technology planning area. Program rules require that applicants prepare a technology plan and that the technology plan be approved. USAC implementing procedures contain detailed requirements for the contents of technology plans, which significantly add to the value and validity of the plan. We have observed many instances of non-compliance with program rules and USAC procedures related to the technology planning process.

The E-rate program allows eligible schools and libraries to receive goods and services based on discount rates, with the fund picking up the portion not paid by the applicant. A number of audits have identified that applicants have not followed program requirements for discount rate calculation or were unable to support the discount rate calculated.

Applicants are required to pay their portion of the cost for E-rate goods and services to their service providers and service providers are required to bill applicants for these costs.

We have found examples of applicants not paying their portion or not paying their portion in a timely manner, and service providers not billing for these costs.

The Office of Inspector General remains committed to meeting our responsibility for providing effective independent oversight of the USF and we believe we have made significant progress. However, until resources and funding are available to provide adequate oversight for the program, I am unable to provide assurance that the program is protected from fraud, waste and abuse.

Thank you, Mr. Bennett and I will be happy to answer any of your questions.