



# PUBLIC NOTICE

Federal Communications Commission  
445 12th St., S.W.  
Washington, D.C. 20554

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DA 04-2034  
July 7, 2004

**THE ENFORCEMENT BUREAU, INVESTIGATIONS AND HEARINGS DIVISION,  
SEEKS COMMENT ON NEC BNS PETITION FOR WAIVER OF SECTION 54.521 OF  
THE COMMISSION'S RULES**

**EB-03-IH-0738**

**Comment Date: July 19, 2004**

**Reply Comment Date: July 29, 2004**

On May 27, 2004, NEC Business Solutions, Inc. ("NEC BNS") filed a petition<sup>1</sup> with the Commission for a waiver of section 54.521 of the Commission's rules.<sup>2</sup> Section 54.521 provides that the Commission shall suspend and initiate debarment proceedings against persons convicted of fraud or related criminal acts arising out of activities associated with the schools and libraries E-Rate program. NEC BNS recently pled guilty to one count of wire fraud and one count of antitrust violation arising from its participation as a service provider in the E-Rate program.<sup>3</sup> A copy of NEC's waiver request, plea agreement, and supplement to the waiver request is attached to this Public Notice. We seek comment on NEC BNS's petition, in light of the novel relief that it requests.

Requests for waiver of the Commission's rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under section 1.1208 of the Commission's rules unless otherwise provided.<sup>4</sup> Because this request may implicate broadly applicable policy issues, we believe it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules.<sup>5</sup> *Ex parte* presentations that are made with respect to the issues involved in the petition will be allowed but must be disclosed in accordance with the requirements of § 1.1206(b) of the Commission's rules.<sup>6</sup> Commenters seeking to protect the

<sup>1</sup> NEC Business Network Solutions, Inc. Petition for Waiver of Section 54.521 of the Commission's Rules, EB-03-IH-0738, dated May 27, 2004 ("NEC BNS Petition").

<sup>2</sup> 47 C.F.R. § 54.521.

<sup>3</sup> See NEC BNS Petition at 4-5.

<sup>4</sup> 47 C.F.R. § 1.1208.

<sup>5</sup> 47 C.F.R. §§ 1.1200(a), 1.1206.

<sup>6</sup> 47 C.F.R. § 1.1206(b).

confidentiality of information produced shall follow the procedures set forth in Commission rule section 0.459.<sup>7</sup>

Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested persons may file comments on NEC BNS's waiver request on or before July 19, 2004.<sup>8</sup> Reply comments must be filed on or before July 29, 2004. All comments should reference the NEC BNS waiver request, including the Enforcement File number, EB-03-IH-0738, and the DA number of this Public Notice. Interested persons should file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room TW-A325, Washington, D.C. 20554.

Filings can be submitted by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Commenters should also send one (1) copy to the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, or via e-mail at [joshir@erols.com](mailto:joshir@erols.com), and three (3) paper copies and one (1) diskette copy of their filing in an IBM compatible format using Word or Acrobat Reader (with the .pdf extension) to Ernestine Creech, Investigation and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 Twelfth Street S.W., Room 3A-247, Washington, D.C. 20554. A courtesy copy of all comments should be provided in an IBM compatible format using Word or Acrobat Reader (with the .pdf extension) via e-mail to [diana.lee@fcc.gov](mailto:diana.lee@fcc.gov). In addition, a copy of their filing should be served on Richard Rubin, Counsel for NEC BNS, at 701 Pennsylvania Avenue, N.W., Suite 800, Washington, DC 20004-2608, or provided via e-mail to [rrubin@thelenreid.com](mailto:rrubin@thelenreid.com).

Filings and comments are available for public inspection and copying during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, S.W., Room CY-A257,

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<sup>7</sup> 47 C.F.R. § 0.459.

<sup>8</sup> 47 C.F.R. §§ 1.415, 1.419.

Washington, D.C. 20554, (202) 418-0270. They may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone 1(800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via e-mail at [joshir@erols.com](mailto:joshir@erols.com).

For further information, contact Hillary DeNigro at (202) 418-7334 or Diana Lee at (202) 418-0843.

Action by the Chief, Investigations and Hearings Division.