Attachment 3

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June 30, 2004

HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
c/o Natek, Inc.
236 Massachusetts Avenue, N.E., Suite 110
Washington, DC 20002

Re: NEC Business Network Solutions

Dear Ms. Dortch:

Transmitted herewith is on behalf of NEC Business Network Solutions, Inc. is a Supplement to its Petition for Waiver. Please associate this Supplement with the Petition for Waiver filed on May 27, 2004.

Should additional information be necessary in connection with this matter, kindly communicate with the undersigned.

Respectfully submitted,

James A. Stenger

DC #170979 v1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of NEC Business Network Solutions, Inc. Petition for Waiver of Section 54.521 of the Commission's Rules	))))))))	

To: The Enforcement Bureau and the Wireline Competition Bureau

SUPPLEMENT TO PETITION FOR WAIVER

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Dated: June 30 , 2004

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Summary

NEC-Business Network Solutions, Inc. ("BNS") filed the captioned Petition for Waiver with the Commission on May 27, 2004 ("Petition"), and a supplement to the Petition in the form of a copy of the subsequent Plea Agreement, including the Special Conditions of Probation (Exh. 1) and Settlement Agreement (Exh. 2), with the Commission on June 4, 2004. In its Petition, BNS explained its background and involvement in the E-Rate Program, the conduct that resulted in the Plea and Settlement, the remedial action taken by BNS to address problems resulting in the Plea and Settlement, and BNS' assumption of responsibility for the conduct of a handful of employees.

In providing this supplemental submission, BNS seeks to do two things. First, to highlight why this Petition presents extraordinary circumstances for purposes of relief from debarment that will serve as an appropriate high water mark for future enforcement of the recently adopted debarment regulations. Second, BNS provides additional information and argument related to the Petition now that the Plea Agreement has been formally filed and the Staff has had an opportunity to review both the Waiver Petition and the Plea Agreement.

With respect to the first matter, BNS respectfully submits that this Petition demonstrates extraordinary circumstances for purposes of the debarment rule contained in Section 54.521 of the Commission's Rules. As a policy matter, the finding of extraordinary circumstances and the grant of the Petition for Waiver would incent similar conduct and in the future impress upon vendors the need to come forward, take responsibility for questioned conduct, and put in place meaningful, though costly, future policies and procedures to avoid any future inappropriate conduct. Moreover, the requested waiver, if granted, will encourage other companies to cooperate as BNS has done. For these reasons, in addition to meeting the extraordinary circumstances standard in the debarment rule, the Plea Agreement and related facts discussed in

the Petition and this Supplement also serve the underlying purposes of the debarment rule and thus meet the test for granting a waiver of that rule.

Regarding the sale of the assets of BNS to NEC-Unified, this Supplement explains why the sale will not detract from the commitments set forth in the Plea Agreement, but in fact will extend them to a wider scope of business activities. Accordingly, although this Petition only concerns BNS and its conduct, the Commission should be aware that oversight commitments made by BNS will extend beyond BNS to NEC-Unified.

Finally, it must be pointed out that substantial questions are presented as to whether the debarment rule may be applied retroactively to conduct that preceded the adoption of the rule. Consistent with *Bowen v. Georgetown University Hospital,* the Commission has avoided retroactive application of new rules and should follow its precedent in this case.

Table of Contents

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To: The Enforcement Bureau and the Wireline Competition Bureau

SUPPLEMENT TO PETITION FOR WAIVER

NEC Business Network Solutions, Inc. ("BNS"), by its attorneys, herein supplements the above-captioned Petition for Waiver filed with the Commission on May 27, 2004 (the "Petition"). In the Petition, BNS advised the Commission of certain events concerning the participation by BNS as a vendor under the Commission's universal service mechanism for schools and libraries ("E-Rate Program") and, in light of those events, requested a waiver of the Commission's debarment provisions contained in Section 54.521 of the Commission's Rules ("Petition").[1] BNS further requested that the Commission toll any suspension of BNS under the debarment rules pending its decision on the Petition. BNS files this Supplement to Petition For Waiver to provide additional information relevant to the Commission's consideration of the Petition.

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[1] 47 C.F.R. §54.521; *see also Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 9202 (2003) ("Second Report and Order").

I. Basis for the Supplement.

Subsequent to the filing of the Petition, BNS entered into a plea agreement with the Department of Justice ("DOJ") in United States of America v. NEC-Business Network Solutions, Inc. before the U.S. District Court for the Northern District of California ("the Plea Agreement') which effectively resolved various claims arising out of BNS' participation in the E-rate program. A copy of the Plea Agreement was filed with the Commission shortly thereafter on June 4, 2004. In the interest of providing the Commission with the filed Plea Agreement as soon as possible, it was submitted to the Commission without explanation. As explained now in detail below, the Plea Agreement and the facts surrounding the resolution with the Government represent extraordinary circumstances for purposes of the debarment rule.[2]

II. The Plea Agreement Demonstrates That Extraordinary Circumstances Exist That Justify Relief Under The Debarment Rule Itself, Including That BNS Has Entered Into What Amounts To A Consent Decree That Includes The FCC and USAC.

The Plea Agreement provides a basis upon which the Commission should find that BNS has made the requisite showing of extraordinary circumstances to avoid debarment under the terms of the rule. The rule provides for a showing of extraordinary circumstances, the Plea Agreement satisfies that requirement, and the public interest will be served by keeping BNS in the E-rate Program.

A. Extraordinary Circumstances Are Shown By BNS.

The Commission should find that debarment is inappropriate under the express terms of the debarment rule which allows the BNS to demonstrate extraordinary circumstances.[3] A finding of extraordinary circumstances herein would constitute active enforcement of the debarment rule. Only a company that has undertaken a comparable, extraordinary level of

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[2] The entry of the Plea Agreement constitutes new information that was contemplated, but had not occurred when the Petition for Waiver was filed. An applicant, or petitioner, is permitted, and indeed required, to keep the Commission informed of new information relevant to a pending request for Commission action. 47 C.F.R. §1.65.
[3] 47 C.F.R. § 54.521(a)(5)(f).

cooperation, and committed to restitution, and future compliance monitoring and reporting in concert with the Department of Justice and the Commission could utilize as precedent a finding of extraordinary circumstances in this case. Even as a narrow precedent, a finding of extraordinary circumstances in this case could only serve to encourage others to come forward with respect to past conduct and enter into similar commitments for future participation.

B. BNS' Acceptance of Responsibility, Cooperation, and Compliance Program Represent Extraordinary Circumstances Under the Debarment Rules.

1. BNS' Cooperation and Acceptance of Responsibility.

As explained in its Petition, upon receiving information as to the grand jury proceedings, BNS took immediate steps to protect the integrity of the Program and cooperate with the Department of Justice's investigation. The facts surrounding this conduct are highlighted below because they serve as an appropriate factor for the Commission's interpretation of what "extraordinary circumstances" should mean under the newly promulgated debarment rules. BNS respectfully submits that the presence of "extraordinary circumstances" would include – at a minimum – assumption of responsibility by the person(s) involved and cooperation with all appropriate governmental entities (not blanket denials of wrong-doing and stonewalling of investigational inquiries). To that end, BNS's behavior detailed below is compelling:

> BNS froze E-Rate Program invoicing until its own investigation was complete. The purpose of this action was to make sure that the Government did not suffer loss in the event that there were problems with the administration of the E-Rate Program at BNS. BNS froze <u>all</u> E-Rate invoicing – not just that associated with the wrong-doing being investigated. BNS took this conservative position (contrary to its own interest) to be sure that the Government would not be injured and the integrity of the Program would be maintained. As a practical matter, the freezing of invoices served as a self-imposed debarment, suspending BNS from all E-Rate activity for approximately 18 months;

> After reviewing the allegations and conducting its own internal investigation, BNS made a commitment to the Government to accept responsibility for the conduct of several of its employees and to focus on ensuring that the schools received the equipment and services they need as well as on-going maintenance.

This culminated in the Plea and Settlement which provided both full restitution to the Government and adequate maintenance support to the districts where the Government had invested in technology infrastructure; and

> BNS fully cooperated with the Government's investigation. BNS searched its many offices for documents requested by the Government and promptly provided them to the Department of Justice. BNS identified key witnesses for the Government and made them available to be interviewed. As the Department of Justice has written to the Commission, this cooperation has been "full and complete" and has caused the Department of Justice to be able to "identify and focus [its] investigative efforts on other culpable corporations and individuals," "including in school districts [that the DOJ] only learned about because of NEC-BNS's cooperation." U.S. Department of Justice letter to the FCC filed on June 22, 2004.

We submit that this conduct very much exemplifies the conduct of a vendor that is committed to acting lawfully and observing all applicable rules and regulations. For that very reason, the Commission should encourage and incent such conduct from other vendors by finding that extraordinary circumstances are present where a corporation assumes responsibility for its employees' conduct and cooperates with all appropriate governmental entities, as BNS had done here. Indeed, participation of a vendor exhibiting such conduct and implementing a compliance program like the one now in place at BNS will not prevent any threat to the integrity of the E-Rate Program.

2. The FCC and USAC Are Parties To What Amounts To A Consent Decree With BNS.

The terms of the Plea Agreement, including the Settlement Agreement, and the Special Conditions of Probation (the "SCP") assume continued participation by BNS in the E-rate program. For example, the Plea Agreement, particularly the SCP, provides for the appointment within sixty (60) days after entry of the Plea Agreement of a Compliance Officer who is to oversee BNS under the E-rate Program and report to the DOJ and the FCC Enforcement Bureau "on at least an annual basis."[4] This is not simply a contractual condition but, rather, a

[4] SCP, paras. 9 and 17.

commitment particular to the E-rate program, which, in addition, is a condition of probation. The probationary condition gives the Commission assurance that the integrity of the E-rate program will be protected without a debarment.

The Settlement Agreement, Exhibit B to the Plea Agreement, which contains all of the specific commitments made by BNS, as previously itemized in the Waiver Petition. The Settlement Agreement was "entered into by the United States of America, acting through the United States Department of Justice **and on behalf of the Federal Communications Commission (FCC), including its agent the Universal Service Administrative Company (USAC) (collectively, the United States).**"[5] BNS has entered into what is in effect a "consent decree" to which both the FCC and USAC are represented parties, and which fully addresses the matters at issue by providing the Commission with a road map to BNS' future compliance with the E-rate program rules. The future integrity of the E-rate program is thereby protected by virtue of a consent decree. Moreover, as part of the Settlement Agreement, BNS has made full restitution such that the integrity of the E-rate program has been fully restored. To debar BNS after entering into what is, in effect, a consent decree with the FCC and USAC, would be grossly unfair and bad policy.

The inequity of imposing further sanctions on BNS after it has made full restitution, fully cooperated and bound itself to a detailed set of behavior modification conditions is apparent. Indeed, the purpose of the debarment rules is not punitive. *Second Report and Order* at ¶ 66 (2003); *cf.* 48 C.F.R. § 9.402(b) ("serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest and not for purposes of punishment"). Rather, the purpose of debarment rules is to protect the integrity of the E-Rate Program. *Id.* In this case,

[5] Plea Agreement, Exhibit B, preamble, emphasis added.

the integrity of the Program has been assured and the public interest is best served by encouraging such cooperation and restitution.[6]

C. The Public Interest Will Be Served By Keeping BNS in the E-rate Program.

The public interest is better served by keeping BNS in the E-rate program. BNS is a valuable and innovative broadband supplier. While the E-rate program has been a small part of the BNS business, broadband technology is a principal focus of BNS and its parent company, NEC. NEC is a technology innovator in wireless and wireline broadband technology, has an extensive research and development program, holds many patents and licenses its technology to many other companies. Given that the E-rate program contemplates competitive bidding among alternative suppliers, the effective functioning of the program is facilitated by maximizing, not reducing, the number of competing suppliers. Given that the integrity of the participation of BNS has been secured, the public interest is best served by keeping BNS within the program.

III. The Terms of the Plea Agreement and the Special Conditions of Probation Justify A Waiver Of The Debarment Rule.

In addition to its demonstration in Section II above that extraordinary circumstances exist for purposes of Section 54.521, BNS further submits that the terms of the Plea Agreement as entered also support the waiver of the debarment rule requested in its pending Petition.

A. A Waiver Would Serve The Policy Underlying The Debarment Rule.

A waiver is appropriate where the underlying policy of the rules would not be served by strict application thereof or where unique and unusual factual circumstances make it inequitable and contrary to the public interest to apply the rule.[7] As the D.C. Circuit observed in the seminal waiver case of *Wait Radio v. FCC*[8], "...[A] rule is more likely to be undercut if it does not in some way take into account considerations of hardship, equity, or more effective implementation

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[6] In that regard, the DOJ letter further states that, "the Plea Agreement...also represents the first instance (to our knowledge) in which a major corporation has pled guilty to E-rate program fraud." DOJ letter at 2. Other companies will doubtless look carefully to see how the FCC handles this matter of first impression.

[7] 47 C.F.R. § 1.925(b)(3).

[8] 418 F.2d 1153, 1159 (D.C. Cir. 1969).

of overall policy, considerations that an agency cannot realistically ignore, at least on a continuing basis. The limited safety valve permits a more rigorous adherence to an effective regulation." BNS has shown precisely that in its Petition, namely that a waiver based upon its extraordinary cooperation, restitution and compliance program will set an example that the FCC is implementing "a more rigorous adherence to an effective regulation" than it could accomplish by debarring BNS and discouraging other companies from taking similar steps.

B. A Waiver Is Particularly Appropriate Where A Consent Decree Is Entered.

Commission case law demonstrates that a waiver is particularly appropriate when accompanied by a consent decree that provides the Commission with a road map to the private party's future compliance with the rules. For example, the Commission in the Enhanced 911 ("E911") proceedings has granted waivers in conjunction with consent decrees that provide a roadmap for meeting the E911 requirements.[9] As discussed above, a similar situation exists in this case where BNS has entered into the Plea Agreement, including the Special Conditions of Probation and the Settlement Agreement. To debar BNS after entering into a consent decree with the government would be inconsistent with the treatment of other waiver applicants, such as the E911 applicants, who have entered into consent decrees.

IV. Additional Information Concerning BNS Corporate Status.

NEC also supplements its Petition to provide additional information concerning the current status of BNS within NEC America and its establishment of a new entity, NEC Unified Solutions, Inc. ("NEC-USI"). NEC, for reasons unrelated to the E-rate program, recently consolidated several lines of business into NEC-USI. Substantially all of the assets of BNS were

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[9] *E.g., In the Matter of 911 Emergency Calling Systems, Order Denying Reconsideration of Rule Waivers and Consent Decrees*, 18 FCC Rcd 21838 (Oct. 15, 2003); *In the Matter of 911 Emergency Calling Systems, AT&T Wireless Compliance Plan Approval*, 16 FCC Rcd 18253 (Oct. 2, 2001); *In the Matter of 911 Emergency Calling Systems, Sprint Spectrum Compliance Plan Approval*, 16 FCC Rcd 18330 (Oct. 2, 2001).

sold to NEC-USI. Effectively, NEC combined no less than seven businesses/subsidiaries to create NEC Unified Solutions, Inc.

NEC wishes to clarify two points with respect to these intra-corporate transactions. First, the successor entity, as well as BNS will remain subject to the terms and conditions of the special conditions of probation. Second, this Petition is filed on behalf of BNS, as the conduct of that entity in the E-rate Program was reviewed by the Department of Justice and resulted in the Plea and Settlement by BNS.

A. The Plea Agreement Will Be Honored By BNS and any Successor Entity.

Under the terms of the Plea Agreement, upon the sale of all or substantially all of the assets of BNS, the successor organization becomes subject to the special conditions of probation.[10] Thus, no danger exists that the transfer of certain lines of business into a new entity by NEC will result in any less oversight than what is provided for in the Plea Agreement. Moreover, notwithstanding the sale of assets, BNS continues to remain in existence as a legal entity and, under the terms of the Plea Agreement, the referenced maintenance contracts will be performed by NEC BNS.[11] Thus, NEC BNS will be using its contract licenses as necessary to complete these obligations.

B. This Petition Concerns Only BNS.

The Petition was filed to address whether there should be a waiver of the debarment rule as to BNS. The Petition appropriately was filed on behalf of BNS because the conduct of a handful of its employees in connection with the E-rate Program – beginning in 1999 and ending in 2002 – was the conduct that was investigated by the Department of Justice. This conduct, of course, resulted in the Plea and Settlement entered into by BNS and triggered the question of

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[10] Plea Agreement, Exhibit A, Special Conditions of Probation, para. 19.

[11] In this regard, the DOJ letter states, "BNS has now merged with a much larger entity, NEC Unified. NEC Unified is subject to the terms of the compliance program, which means that full and complete compliance with all government procurement rules and regulations will be extended to a broader spectrum of NEC businesses." DOJ letter at 2.

whether BNS was a "person" that should be debarred by the Commission's rules. The question of debarment of other entities is not before the Commission.

V. The Plea Agreement Shows That The Timing Of The Offenses Is Such That Application Of The Debarment Rule Would Be Impermissible Retroactive Rulemaking.

The Plea Agreement as entered shows that the matters that were the subject thereof occurred prior to the adoption of Section 54.521. Therefore, BNS hereby supplements its Petition to include an alternative argument that a waiver is not necessary because the debarment rule in Section 54.521 is not applicable to the BNS situation.

Specifically, the Plea Agreement states, "From at least December 1999 to approximately March 2001, NEC/BNS sold and installed data equipment [under the E-rate program]."[12] This time period is referred to throughout the Plea Agreement as "the relevant period."[13] Furthermore, the DOJ has stated:

> Based upon our investigation, the wrongdoing that led to the Plea Agreement involved a small number of employees of BNS acting under the influence of companies and individuals outside of BNS. As time wore on, BNS management realized that the company was engaged in wrongdoing and took steps to end the illegal behavior, including severing its relationship with the other companies and individuals involved in the collusion and fraud. This severance occurred several years ago and our investigation has uncovered no evidence of illegal behavior by the company since that time. Specifically, we have no evidence suggesting a lack of integrity or business honesty on part of BNS or its current management or employees in the last several years.[14]

As the Commission is aware, Section 54.521 was not adopted until April, 2003 and did not become effective until July, 2003, more than two years after the end of "the relevant period."[15]

The Supreme Court held in *Bowen v. Georgetown University Hospital* that under the Administrative Procedures Act agencies may adopt rules only "of future effect."[16] The

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[12] Plea Agreement, para. 2.(a).
[13] *E.g.*, Plea Agreement, para. 2(b) *et seq.*
[14] DOJ letter at 3.
[15] *See* Second Report and Order at para. 163 ('IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 C.F.R. Part 54, IS AMENDED as set forth in Appendix B attached hereto, effective thirty (30) days after the publication of this Second Report and Order in the Federal Register, except for sections 54.500(k), 54.503, 54.507(g)(i-ii), 54.517(b), and 54.514(a), which are effective July 1, [2003](sic)."

Commission has taken pains to ensure that its rules comply with the *Bowen* standard. The Commission has held that, "[b]y definition, a rule has legal consequences only for the future."[17] The Commission also has recognized that, "[i]mpermissible retroactivity involves, by definition, the application of a new rule to past occurrences."[18] Since the debarment rule became effective in July, 2003, and the activities that were the subject of the Plea Agreement occurred more than two years earlier, the Commission would not apply the debarment rule against BNS under established case law.

While *Bowen v. Georgetown University Hospital* stands as an absolute bar to retroactive *rulemaking,* the Supreme Court has distinguished *adjudication*, noting that administrative agencies, like courts, have the right to adjudicate disputes arising from past conduct.[19] However, the distinction between rulemaking and adjudication does not provide a basis for debarring BNS for two reasons.

First, adjudication involves the application of rules to past conduct *where those rules were in effect at the time the conduct occurred.* Otherwise, there would be no meaningful distinction between rulemaking and adjudication. That is the essence of the holding in *Bowen*, where the Supreme Court rejected the position of the Secretary of Health and Human Services that, after promulgating a new rule, the Secretary could apply the rule retroactively under his authority to adjudicate adjustments to medicare reimbursements.[20] Because the Court rejected

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[16] 488 U.S. 204, 216, 109 S.Ct. 468, 476 (1988).

[17] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service,* 23 CR 410, 15 FCC Rcd 25020 (Dec. 13, 2000), para.37; *accord In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1998* (Apr. 1, 2003), paras. 10-11.

[18] *In the Matter of Amendment of Part 1 of the Commission's Rules, Competitive Bidding Procedures,* 19 FCC Rcd 2551, 2004 FCC LEXIS 599 (Feb. 4, 2004), para. 22; *accord Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992,* 72 RR 2d 649, 8 FCC Rcd 3359, 1993 FCC LEXIS 2187(April 30, 1993), paras. 118-121.

[19] *Bowen,* 488 U.S. at 216; 109 S.Ct. at 476 (The distinction between rulemaking and adjudication is "the entire dichotomy upon which the most significant portions of the APA are based.")

[20] "The profound confusion characterizing the Secretary's approach to this case is exemplified by its reliance upon our opinion in *SEC v. Chenery Corp.*...Even apart from the fact that that case was not decided under the APA, it has nothing to do with the issue before us here, since it involved adjudication rather than rulemaking." *Bowen,* 488 U.S. at 220, 109 S.Ct. at 507-508.

the use of adjudication retroactively to apply a new rule, likewise here the Commission cannot bootstrap itself into retroactive application of the debarment rule by asserting that it is merely adjudicating the applicability of the rule to BNS.

Secondly, even in the case of an adjudication, where the issue presented is a new and novel one, it is inappropriate retroactively to apply a newly announced policy to past conduct. In that regard, the Commission has followed the Supreme Court's decision in *SEC v. Chenery,*[21] which holds that administrative agencies should be more circumspect than the courts in making new law through adjudications because administrative agencies, unlike courts, have the option of using rulemaking to make new law.[22] The Commission has recognized that when it announces a new policy through a decision in an adjudication, including a petition for a declaratory judgment, the Commission must consider whether it would be inequitable retroactively to apply the new policy.[23]

In this case, where the conduct occurred well-before the debarment rule was adopted, the new rule cannot be retroactively applied. Other public interest considerations militate heavily against retroactive application of the debarment rule in this case. At the time of the events that define the conviction, the Commission did not count with debarment as an enforcement tool.[24] As stated by the Commission in the Notice, "[T]here are no provisions in our current rules, however, to bar entities from participating in the program for periods of time."[25] Since the "relevant period" of events in this case predates the availability to the Commission of debarment

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[21] 332 U.S. 194, 67 S. Ct. 1575 (1947).

[22] "Since the Commission, unlike a court, does have the ability to make new law prospectively through the exercise of its rule-making powers, it has less reason to rely upon *ad hoc* adjudication to formulate new standards of conduct...." 332 U.S. at 202; 67 S. Ct. at 1580.

[23] *E.g., Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges,* WC Docket No. 02-361, FCC 04-97 (released Apr. 21, 2004), para. 22 ("The court's have made clear that retroactive effect may be denied if the equities so require."), *accord Communications Vending v. Citizens Communications,* 17 FCC Rcd 24201 (Nov. 19, 2002), para. 33; *In re Gaco Communications,* 94 FCC2d 761, 1983 LEXIS 502 (June 21, 1983), para. 24.

[24] *See Schools and Libraries Universal Service Support Mechanism, Notice of Proposed Rulemaking and Order,* 17 FCC Rcd 1914, paras. 58-62 (2002) (the "Notice").

[25] *Id.* at para. 60.

as an enforcement tool, BNS suggests that it would be manifestly unjust if not unlawful to retroactively impose debarment on BNS under the factual circumstances of this case.

VI. CONCLUSION.

In view of the foregoing, BNS submits that it has established (a) the extraordinary circumstances necessary to avoid debarment under the terms of Section 54.521, (b) that good cause exists for a waiver of Section 54.521 of the Commission's Rules, and (c) that the Commission should not engage in retroactive rulemaking by applying debarment under the facts of this case. Under any and all of the foregoing, the public interest would be well served by permitting BNS to continue to participate in the E-rate program. BNS further requests that the Commission toll any suspension of BNS under the debarment rules pending its decision on the Petition.

Respectfully submitted,

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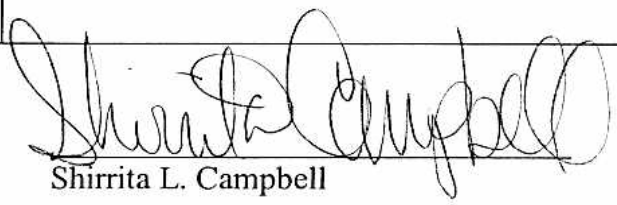
Counsel for NEC Business Network Solutions, Inc.

Dated: June 30, 2004

CERTIFICATE OF SERVICE

I, Shirrita L. Campbell, a Secretary in the law of office of Thelen Reid & Priest, LLP hereby certify that a copy of the foregoing "Petition for Waiver" was served by hand this 30th day of June, 2004 to:

David H. Solomon, Chief Enforcement Bureau Federal Communications Commission c/o Natek, Inc. 236 Massachusetts Avenue, NE Suite 110 Washington, DC 20002 William Maher, Chief Wireline Competition Bureau Federal Communications Commission c/o Natek, Inc. 236 Massachusetts Avenue, NE Suite 110 Washington, DC 20002 Hillary DeNigro, Esq. Enforcement Bureau Federal Communications Commission c/o Natek, Inc. 236 Massachusetts Avenue, NE Suite 110 Washington, DC 20002	Christopher Olsen, Esq. Enforcement Bureau Federal Communications Commission c/o Natek, Inc. 236 Massachusetts Avenue, NE Suite 110 Washington, DC 20002 Narda Jones, Esq. Wireline Competition Bureau Federal Communications Commission c/o Natek, Inc. 236 Massachusetts Avenue, NE Suite 110 Washington, DC 20002



Shirrita L. Campbell