

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
New York City Department of Education )
File No.: EB-IHD-13-00010704
Acct. No.: 201632080002
FRN: 0020769279

ORDER

Adopted: December 22, 2015

Released: December 23, 2015

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether the Board of Education of the City School District of the City of New York (New York City Department of Education or NYC DOE) violated the rules of the E-Rate program.

2. Since its inception 18 years ago, the Schools and Libraries Universal Service Program, also known as E-rate, has helped to connect almost every school and library in the country to the Internet, bringing tremendous benefits to teachers, students, and library patrons. The program allows schools and libraries to receive subsidies for telephone and Internet access. In order to receive E-rate support, schools and libraries must seek competitive bids, and treat the price of E-rate eligible goods and services as the primary factor when selecting service providers. These competitive bidding rules form the cornerstone of the E-Rate program, ensuring that the limited funds available to bring modern telecommunications capability to students and library patrons are distributed in the most efficient and equitable manner possible. As such, applicants that fail to comply with the competitive bidding requirements decrease the availability of E-Rate funds for other program participants. The Commission is committed to enforcing the rules for all Universal Service Fund (USF) programs, including the E-Rate program.

3. NYC DOE is the largest recipient of E-rate funds, and has received approximately \$1.3 billion in E-rate program disbursements since 1998. The Enforcement Bureau's Universal Service Fund Strike Force conducted an extensive investigation into NYC DOE's compliance with the Commission's rules (Rules) pertaining to the E-rate program. As the result of the investigation, and pursuant to terms of an Interim Compliance Plan implemented in July 2014, NYC DOE has taken steps to ensure greater compliance with the Rules. To settle this matter, NYC DOE will implement a Final Compliance Plan (FCP) that includes the appointment of internal and external monitors and an E-rate compliance officer. The FCP also requires NYC DOE to provide extensive training to personnel on E-rate program rules and to be subject to yearly audits. These and other robust compliance-related terms found in the FCP, in our view, place NYC DOE in a better position to comply with the Rules going forward. NYC DOE will also withdraw and cancel all funding requests for Funding Years 2011-2013, and will surrender all rights and claims, including, but not limited to, claims to undisbursed funding associated with approved funding requests for Funding Years 2002-2010, and will pay a settlement amount to the United States Treasury in the sum of three million dollars (\$3,000,000).

4. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the above referenced investigation regarding NYC DOE's compliance with Section 254(h) of the Communications

Act of 1934, as amended (Act)<sup>1</sup>, and Sections 54.500–54.523 and 54.8 of the Rules<sup>2</sup> pertaining to competitive bidding in the E-rate program.

5. In the absence of material new evidence relating to this matter, we do not set for hearing the question of NYC DOE's basic qualifications to hold or obtain any Commission license or authorization.<sup>3</sup>

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act<sup>4</sup> and the authority delegated by Sections 0.111 and 0.311 of the Rules,<sup>5</sup> the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

7. **IT IS FURTHER ORDERED** that the investigation regarding NYC DOE in the above-captioned matter **IS TERMINATED**.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Sabita Krishnan, Esq. Assistant Corporation Counsel, New York City Law Department, 100 Church Street, 20-83, New York, NY 10007, and to Stephen Rosen, Esq., Levine, Blaszack, Block & Boothby, 2001 L Street, NW, Suite 900, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc  
Chief  
Enforcement Bureau

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<sup>1</sup> 47 U.S.C. § 254(h).

<sup>2</sup> 47 C.F.R. §§ 24.500–54.523, 54.8.

<sup>3</sup> *See* 47 C.F.R. § 1.93(b).

<sup>4</sup> 47 U.S.C. § 154(i).

<sup>5</sup> 47 C.F.R §§ 0.111, 0.311.

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**CONSENT DECREE**

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission and the Board of Education of the City School District of the City of New York, known as the New York City Department of Education (NYC DOE), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether NYC DOE violated the E-rate Rules, as defined below, in connection with NYC DOE’s participation in the Federal Universal Service Schools and Libraries Program, which is commonly known as the E-rate Program, during E-rate Funding Years 2002 through 2013.

**I. DEFINITIONS**

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended.<sup>1</sup>
  - (b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
  - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
  - (e) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which NYC DOE is subject by virtue of its business activities, including but not limited to the E-rate Rules.
  - (f) “Effective Date” means the date by which both the Bureau and NYC DOE have signed the Consent Decree.
  - (g) “E-rate Rules” means Section 254(h) of the Communications Act, 47 U.S.C. § 254(h), and Sections 54.500–54.523 and 54.8 of the FCC’s Rules, 47 C.F.R. §§ 54.500–54.523, 54.8 and other provisions of the Act, the Rules, and Commission orders related to the Schools and Libraries/E-rate Program.
  - (h) “Final Compliance Plan” or “FCP” means the compliance obligations, program, and procedures described in and adopted by this Consent Decree at Paragraph 12.
  - (i) “Investigation” means the Bureau’s investigation regarding whether NYC DOE violated the E-rate Rules in connection with its participation in the E-rate program during Funding Years 2002 through 2013.

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<sup>1</sup> 47 U.S.C. § 151 *et seq.*

- (j) “NYC DOE” means the Board of Education of the City School District of the City of New York and its employees, departments, bureaus, groups, divisions, and predecessors.
- (k) “Parties” means NYC DOE and the Bureau, each of which is a “Party.”
- (l) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

## II. BACKGROUND

3. The E-rate program provides subsidies for telecommunications, Internet access, internal connections and managed internal broadband services for schools and libraries, and is designed to bring modern telecommunications capabilities to students and library patrons. Applicants for E-rate funding are required to seek competitive bids from prospective service providers,<sup>2</sup> and are required to treat the price of E-rate eligible goods and services as the primary factor when selecting amongst competing service providers.<sup>3</sup> As set forth in FCC Reports and Orders, these rules are the cornerstone of the E-rate program, as without competitive bidding, “prices charged to schools and libraries may be needlessly high, with the result that fewer eligible schools and libraries would be able to participate in the program.”<sup>2</sup>

4. NYC DOE is the largest school district in the United States, serving approximately 1.1 million students in over 1,800 schools. Since 1998, NYC DOE has received approximately \$1.3 billion dollars in E-rate program disbursements.

5. In April 2011, the Special Commissioner of Investigation for the New York City School District (SCI) issued a report concluding that Willard “Ross” Lanham (Lanham), a consultant who served as the Project Manager for Project Connect, had orchestrated a massive fraud from 2002–2008. According to the reports, Lanham created a subcontracting scheme under two of the primary vendors NYC DOE used on Project Connect, through which Lanham was able to use a company (Lanham Enterprises) that he owned to misappropriate money from NYC DOE, without NYC DOE’s knowledge or agreement. Lanham was later ordered to pay NYC DOE \$1.7 million in restitution. A portion of the funds that Lanham misappropriated were distributed from the Universal Service Fund (USF).

6. The same day the SCI’s report was released, Lanham was charged in a criminal complaint by the United States Attorney’s Office for the Southern District of New York and arrested. Shortly thereafter, the Universal Service Administrative Company (USAC), administrator of the USF, commenced an investigation of NYC DOE and the service providers that worked on Project Connect. Funding holds were put in place that ceased the flow of E-rate money to NYC DOE and its service providers during the course of the investigation. Lanham was subsequently indicted by a grand jury, tried and convicted on all counts.<sup>3</sup> Following Lanham’s conviction, USAC sought further information from NYC DOE and the Project Connect service providers. In 2014, the Bureau, led by the Universal Service Fund Strike Force, conducted further investigations into E-rate compliance by NYC DOE and two of its service providers.

7. NYC DOE has taken steps, some in coordination with the Commission, to enhance compliance with the E-rate Rules. In June 2014, NYC DOE and the Commission entered into an Interim Compliance Plan, which contained robust terms aimed at ensuring NYC DOE’s compliance with all of the E-rate Rules. To date, NYC DOE has complied with the terms of the Interim Compliance Plan. NYC DOE has established the Office of Federal and State Regulatory Compliance, a department within NYC

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<sup>2</sup> *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9029, para. 480 (1997); *see also Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District*, Order, 18 FCC Rcd 26407, 26417, para. 22 (2003) (“Competitive bidding for services eligible for discount is a cornerstone of the E-rate program. . .”).

<sup>3</sup> Specifically, Lanham was convicted of three counts of mail fraud in violation of 18 U.S.C. § 1341, one for each of three consultants that Lanham provided through a NYC DOE vendor, and one count of theft relating to a program receiving federal funds in violation of 18 U.S.C. § 666.

DOE that oversees the district's administration of the E-rate program, including oversight of all employees at NYC DOE involved in the E-rate program. NYC DOE also revised and enhanced its process for the development and review of its E-rate applications for the 2014 and 2015 Funding Years. These steps, as well as the Final Compliance Plan adopted herein and attached as Appendix A, will provide additional assurances to the Commission that NYC DOE will be in compliance with the E-rate Rules going forward.

### III. TERMS OF AGREEMENT

8. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

9. **Jurisdiction.** NYC DOE agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

10. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

11. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation of NYC DOE in EB-IHD-13-00010704. In consideration for the termination of the Investigation, NYC DOE agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion, any new proceeding, formal or informal, or take any action on its own motion against NYC DOE concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or set for hearing the question of NYC DOE's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission licenses or authorizations.<sup>4</sup> The Bureau reserves all rights to use the materials gathered in the Investigation, including but not limited to the documents and information obtained from NYC DOE, against other service providers that previously provided or currently provide E-rate eligible products and services to NYC DOE. This Consent Decree does not terminate any other investigations that have been or might be conducted by other law enforcement agencies or offices.

12. **Compliance/Adoption of Final Compliance Plan.** For purposes of settling the matters set forth herein, the Bureau and NYC DOE agree to the adoption of Appendix A, Final Compliance Plan, attached hereto, which contains compliance-related terms that apply to NYC DOE as of the Effective Date. The Final Compliance Plan is a part of this Consent Decree and its terms are incorporated herein.

13. **Settlement Amount.** NYC DOE will pay a settlement amount to the United States Treasury in the sum of three million dollars (\$3,000,000) within thirty (30) calendar days of the Effective Date. NYC DOE shall send electronic notification of payment to Loyaan.Egal@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and Facility Registration Number referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>5</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

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<sup>4</sup> See 47 C.F.R. § 1.93(b).

<sup>5</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

14. **Waivers.** As of the Effective Date, NYC DOE waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. NYC DOE shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither NYC DOE nor the Commission shall contest the validity of the Consent Decree or the Adopting Order. NYC DOE shall waive any statutory right to a trial *de novo* in any judicial action brought by the United States on behalf of the Commission to enforce Paragraph 13 of the Consent Decree. NYC DOE hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act<sup>6</sup> relating to the matters addressed in this Consent Decree.

15. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

16. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

17. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which NYC DOE does not expressly consent) that provision will be superseded by such Rule or Order.

18. **Successors and Assigns.** NYC DOE agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

19. **Final Settlement.** In furtherance of settlement, and subject to the other terms of this Consent Decree, including the obligations NYC DOE undertakes in the FCP, the Parties agree as follows:

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<sup>6</sup> See 5 U.S.C. § 504; 47 C.F.R. §§ 1.1501–1.1530.

(a) This Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. This Consent Decree does not settle any other investigations that have been or might be conducted by other law enforcement agencies or offices.

(b) The Bureau fully and finally releases NYC DOE and the City of New York from any future enforcement actions relating to or arising out of or in connection with NYC DOE's participation in the E-rate Program in 2002-2013. The release set forth in Paragraph 19 and the conditions in the Paragraphs 17 and 18, above, shall survive the termination of this Consent Decree.

(c) With limited exception, NYC DOE agrees to withdraw and cancel all funding requests for Funding Years 2011-2013,<sup>7</sup> and to surrender all rights and claims, including, but not limited to, claims to undisbursed funding associated with approved funding requests for Funding Year 2010 and appeal rights with the Commission or with USAC, that NYC DOE might otherwise have for seeking E-rate support for the services and/or equipment for those Funding Years.

(d) Upon incorporation of this Consent Decree into an Adopting Order, the Commission directs USAC: (i) to issue funding commitment adjustment decision letters to NYC DOE for the funding requests for Funding Years 2002-2013 reducing the commitments for those funding requests to the amounts already disbursed or reducing the commitments to zero dollars if no funding has been disbursed with respect to each such funding request; and (ii) to take no further action to approve the pending funding requests or to recover from NYC DOE any disbursed funds for Funding Years 2002-2013.

(e) NYC DOE agrees not to assert on its behalf or behalf of any other party any rights or claims for E-rate funding (including, but not limited to, any rights or claims on behalf of itself or on behalf of any service provider, subcontractor, lender, or other person or entity) for products or services provided in connection with funding requests corresponding to Funding Years 2002-2013, including but not limited to rights or claims seeking payment pursuant to, or seeking products, services or any other type of benefit related to, such funding requests. This provision does not prevent USAC from seeking to recover funding from other persons or entities including service providers E-rate funding that has been disbursed to pay for products or services for NYC DOE.

20. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

21. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

22. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

23. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

24. **Cooperation.** During the pendency of the Consent Decree and any extensions thereof NYC DOE agrees to cooperate and to make their officers and employees available to cooperate, as permitted by law, so as to provide documents, information, written statements and/or serve as witnesses

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<sup>7</sup> The two funding request numbers that are excepted from the requirement that NYC DOE withdraw and cancel all funding requests for Funding Years 2011-2013 are Nos. 2237090 (from Funding Year 2011) and 2389504 (from Funding Year 2012).

as requested, in any other investigations of service providers conducted by the Commission or the Bureau relating to NYC DOE's participation in the E-rate program. Any such cooperation provided shall be limited to the facts and circumstances within the knowledge of NYC DOE or such officer or employee. This requirement applies in addition to any cooperation-related provisions found in the Final Compliance Plan.

25. **Termination.** This Consent Decree shall remain in effect until two (2) years from the Effective Date, or until the expiration of the FCP pursuant to the terms contained therein, including any extensions of the FCP, whichever occurs later.

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Travis LeBlanc  
Chief  
Enforcement Bureau  
Federal Communications Commission

\_\_\_\_\_  
Date

\_\_\_\_\_  
Carmen Fariña (or designee)  
Chancellor  
New York City  
Department of Education

\_\_\_\_\_  
Date

## APPENDIX A

## FINAL COMPLIANCE PLAN

**REGARDING THE NEW YORK CITY DEPARTMENT OF EDUCATION'S PARTICIPATION IN THE SCHOOLS AND LIBRARIES UNIVERSAL SERVICE SUPPORT PROGRAM**

The Federal Communications Commission ("FCC" or "Commission") and the New York City Department of Education ("NYC DOE") by their authorized representatives (collectively, "Parties"), and based on the facts and circumstances presented, hereby enter into this Final Compliance Plan Regarding NYC DOE's Participation in the Schools and Libraries Universal Service Support Program ("Final Compliance Plan" or "FCP"). This FCP replaces and supersedes the Interim Compliance Plan Regarding Participation in the Schools and Libraries Universal Service Support Program ("Interim Compliance Plan" or "ICP"), which the parties entered into on or about June 11, 2014 and which has remained in effect until the signing of this FCP.

WHEREAS, under the schools and libraries universal service support program (also known as the "E-rate Program"), eligible schools, libraries and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications, Internet access, internal connections, and managed internal broadband services;

WHEREAS, the FCC has a fiduciary duty to ensure compliance with E-Rate Program Rules;

WHEREAS, the FCC and NYC DOE have resolved the FCC's investigation into NYC DOE's participation in the E-rate Program beginning in Funding Year 2002 and continuing through Funding Year 2013 by entering into a Consent Decree on December 22, 2015;

WHEREAS, many funding requests related to NYC DOE's participation in the E-rate Program have been subject to holds;

WHEREAS, NYC DOE's compliance with the ICP was a prerequisite for the consideration of NYC DOE's E-rate applications;

WHEREAS, NYC DOE has complied with the ICP and the FCC is considering NYC DOE's E-rate applications for funding years 2014 and 2015;

WHEREAS, NYC DOE and the FCC seek to maintain and augment processes that will enable NYC DOE to continue to participate in the E-rate Program; and

WHEREAS, the FCC has determined that the compliance measures that were part of the ICP are required going forward before future E-rate funding can be committed or disbursed including during the period covered by the FCP.

THE PARTIES agree as follows:

**1. Definitions**

For purposes of this Final Compliance Plan, the following terms shall have the meanings provided herein:

- a. "Business Day" means any day other than a Saturday, Sunday, Federal Holiday, or a day on which the NYC DOE main office is closed as set forth in the NYC DOE calendar applicable to administrative employees and personnel, which shall be provided promptly to the FCC on request.

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- b. “Communications Act” means the Communications Act of 1934, as amended.
- c. “Conflicts of Interest Rules and Policies” means (i) any rules or policies adopted by NYC DOE or the City of New York related to conflicts of interest, (ii) the provisions of the E-rate Program Rules governing conflicts of interest, including 47 C.F.R. § 54.503, (iii) FCC decisions addressing the E-Rate Program Rules governing conflicts of interest, and (iv) the obligations identified in paragraphs 85–92 of the Commission’s Sixth Report and Order (*see Schools & Libraries Universal Serv. Support Mechanism*, Sixth Report and Order, 25 FCC Red. 18,762, 18,798–803, paras. 85–92 (2010)) and clarified in paragraphs 8–16 of the *2010 Clarification Order* (*see Schools and Libraries Universal Service Support Mechanism*, 25 FCC Rcd 17324, 17326–31, paras. 8–16 (Wireline Comp. Bur. 2010)).
- d. “Effective Date” means the date of the last signature to the Final Compliance Plan. For the purposes of determining the Effective Date of the Final Compliance Plan, facsimiles and PDFs of signatures shall constitute acceptable, binding signatures.
- e. “E-rate Program” or “Program” or “E-rate” means the federal Schools and Libraries Universal Service Support Program administered by the Universal Service Administrative Company, subject to the oversight of the FCC.
- f. “E-rate Program Personnel”
- i. The term “E-rate Program Personnel” means all NYC DOE officers, employees, contractors, vendors, consultants and other individuals or entities who on behalf of NYC DOE are:
- A. Involved in any way in the E-rate application process or the procurement process for E-rate eligible goods and services, including those who prepare, review, approve, sign, or submit E-rate applications, technology plans or other forms or requests related to NYC DOE’s participation in the E-rate Program;
- B. Charged with monitoring compliance with E-rate Program Rules, including but not limited to monitoring compliance with the competitive bidding requirements, and reviewing E-rate program invoices;
- C. Involved in any way with determining whether goods and services are eligible for E-rate funding;
- D. Involved in any way with communicating or working with E-rate service providers in connection with NYC DOE’s participation in the E-rate Program (except when the communications are limited to logistical issues e.g., identifying locations for wall jacks, etc.); and
- E. Responsible for training related to NYC DOE’s participation in the E-rate Program.
- F. The NYC DOE General Counsel and the E-rate Compliance Officer.
- ii. Notwithstanding Subparagraph 1(f)(i), the term “E-rate Program Personnel” does not cover individuals or entities that are involved in NYC DOE’s participation in the E-rate Program only in the following ways:
- A. An end user of the services or products supported by the E-rate program;

- B. A service provider that provides E-rate supported services or products to NYC DOE;
  - C. A school-based NYC DOE employee who is not involved in the development of E-rate technology plans or the application process, procurement process, or the review of invoices for compliance with E-rate Program Rules;
  - D. The Independent Compliance Examiner;
  - E. The Independent Compliance Monitor;
  - F. Counsel who are not employees of NYC DOE who advise on matters related to NYC DOE's participation in the E-rate Program;
  - G. The NYC DOE Chancellor; or
  - H. The members of the Panel for Education Policy.
- g. "E-rate Program Rules" means all rules and requirements applicable to the E-rate Program, including 47 U.S.C. § 254, orders, rules, and policies adopted by the FCC, guidance provided by USAC, as well as any instructions, notices, and certifications in the E-rate Program forms, currently in force and as amended in the future.
- h. "Funding Year" means the period July 1 through June 30 as provided in the Commission's rules at 47 C.F.R. § 54.507(b). For example, Funding Year 2014 means July 1, 2014 through June 30, 2015.
- i. "Interim Compliance Plan" or "ICP" means the agreement between the FCC and NYC DOE dated June 11, 2014.
- j. "Known, Alleged, or Suspected Non-Compliance" means any information obtained, through formal reports and notifications or otherwise, by the NYC DOE Chancellor, the E-rate Compliance Officer, the Independent Compliance Examiner, or the Independent Compliance Monitor, that would lead a reasonable person to believe that a violation of E-rate Program Rules, the E-rate Compliance Policy, or this Final Compliance Plan may have occurred with respect to the Funding Years covered by this Agreement.
- k. The pronouns "he" and "she," and all comparable terms (e.g., "his," "her," "him," "her," "himself," "herself"), are interchangeable.

## 2. General Provisions

- a. As a condition of receiving support from the E-rate Program for Funding Years 2014 and 2015 and thereafter during the term of this Final Compliance Plan as stated in Paragraph 14, NYC DOE shall: (i) timely complete all actions required by this Final Compliance Plan; (ii) take all steps reasonably necessary to ensure that it is in and remains in full compliance with all E-rate Program Rules and with the terms of this Final Compliance Plan; (iii) inform the FCC and USAC, as provided for in Subparagraph 4(c)(iii) herein, of any Known, Alleged, or Suspected Non-Compliance; and (iv) respond fully and reasonably promptly to any requests from USAC or the FCC for information about NYC DOE's participation in the E-rate Program or in connection with any of NYC DOE's funding requests.

- b. NYC DOE acknowledges and agrees that compliance with the E-rate Program Rules, and material compliance with the terms of this Final Compliance Plan are conditions precedent to its receipt of E-rate funds for Funding Years 2014 and 2015 and Funding Years thereafter during the term of this Final Compliance Plan. NYC DOE further acknowledges and agrees, however, that compliance with the terms of this Final Compliance Plan in and of itself does not guarantee the commitment or disbursement of E-rate funding for Funding Years 2014, 2015 and thereafter.
- c. Nothing in this Final Compliance Plan is intended to alter the E-rate Program Rules or USAC procedures. Compliance with this Plan neither constitutes a defense to, nor limits penalties or damages in, any civil, criminal, or administrative proceeding against NYC DOE brought by or on behalf of any federal, state, or local governmental entity, or USAC (*e.g.*, including *qui tam* litigation) alleging violations of the E-rate Program Rules, including, but not limited to, any action brought under applicable federal or state fraud, conspiracy, or antitrust laws as applied to the E-rate Program, provided, however, that NYC DOE may, in response to any such allegation or proceeding, present evidence or otherwise describe its efforts to comply with the E-rate Program Rules, whether or not such efforts were taken in connection with this Final Compliance Plan. NYC DOE's compliance with the terms of this Plan shall not limit the investigation of any alleged violations of E-rate Program Rules by the FCC, USAC, U.S. Department of Justice, or other authorized entity; nor shall it limit any associated enforcement or administrative action, except as otherwise provided in the Consent Decree that adopts this Final Compliance Plan.
- d. Nothing in this Final Compliance Plan is an admission by NYC DOE of a failure to comply with the E-Rate Program Rules, the Communications Act, or the FCC's rules or orders, nor shall it limit NYC DOE's right to defend against any entity's investigation or enforcement activity alleging violations of the E-Rate Program Rules, the Communications Act, or the FCC's rules or orders.
- e. NYC DOE may seek the extension of any deadline or waiver of any obligation imposed by this Final Compliance Plan by submitting a request in writing to the FCC's Enforcement Bureau at least ten (10) business days before the applicable deadline date with an explanation of the reason for the request. The FCC's Enforcement Bureau will grant or deny NYC DOE's request within five (5) business days after receipt of that request. Such request may be granted or denied in the reasonable discretion of the FCC. The filing or pendency of an extension request shall not toll or extend any deadline.
- f. All NYC DOE submissions required by this Final Compliance Plan shall be supported by an affidavit or declaration under penalty of perjury consistent with 47 C.F.R. § 1.16 of the Commission's rules, signed and dated by an authorized officer of NYC DOE with personal knowledge of the representations provided, verifying the truth and accuracy of the information therein and that all of the information required has been provided.
- g. NYC DOE agrees to bear any and all costs and fees incurred to timely complete all actions required by this Final Compliance Plan, including but not limited to the Independent Compliance Monitor, discussed herein.

### 3. Required Actions and Deadlines

- a. As discussed in Paragraph 4, 5, and 6 respectively, NYC DOE shall appoint and utilize an E-rate Compliance Officer, an Independent Compliance Examiner, and an Independent Compliance Monitor. The E-rate Compliance Officer, Independent Compliance

Examiner, and Independent Compliance Monitor shall be distinct from one another, and shall be distinct from the entity selected to perform the audit described in Paragraph 11.

- b. Within thirty (30) calendar days of the Effective Date, NYC DOE shall:
- i. Distribute copies of the Final Compliance Plan to all E-rate Program Personnel and outside counsel.
  - ii. Direct all E-rate Program Personnel to retain all documents, including documents currently in existence and those created during the term of this Final Compliance Plan, related to the E-rate Program for ten (10) years from the last day of service delivered in a particular Funding Year. This obligation includes, but is not limited to, documents subject to the retention requirement currently codified at 47 C.F.R. § 54.516 of the Commission's rules, as it now exists or as it may be amended, and all documents relevant to determining compliance or non-compliance with this Plan.
  - iii. Inform all E-rate Program Personnel in writing that they are required to comply with the E-rate Program Rules and the Final Compliance Plan. Inform all E-rate Program Personnel in writing of the availability of the USAC Whistleblower Hotline and post the phone number for the USAC Whistleblower Hotline on the NYC DOE website and intranet.
- c. Lanham Certification:
- i. NYC DOE shall certify that no person or entity with any affiliation with Willard "Ross" Lanham or Lanham Enterprises, Inc. is currently serving, or will serve, as E-rate Program Personnel (except to the extent any such person or entity would be subject to the request in Subparagraph 3(c)(ii)). NYC DOE shall provide such certification to the FCC in the first Quarterly Compliance Report that follows its annual training program.
  - ii. Upon retaining a vendor, consultant, contractor, or service provider in connection with NYC DOE's participation in the E-rate Program, NYC DOE shall request a written certification from the vendor, consultant, contractor or service provider that no person or entity with any affiliation with Willard "Ross" Lanham or Lanham Enterprises, Inc., is employed by, or working under contract for, each such vendor, consultant, contractor, or service provider and providing services to the DOE. Such requests must require responses within fifteen (15) calendar days.
    - A. When requesting certifications from vendors, consultants, contractors, and service providers, NYC DOE shall inform them in writing that (1) in the event they are unable to so certify, they should respond by explaining the circumstances that prevent them from doing so, and (2) NYC DOE is obliged to file reports with the FCC and USAC that include the responses it receives to its requests for certification and identify those who fail to respond.
    - B. NYC DOE shall report to the FCC the response NYC DOE receives to its requests for certification pursuant to Subparagraph 3(c)(ii) or inform the FCC that NYC DOE did not receive a response, in the Quarterly Report pursuant to Subparagraph 12(a) that follows such request and response or such request and failure to respond.

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- C. As of the Effective Date, NYC DOE agrees not to enter into a new contract in connection with its participation in the E-rate program with any vendor, consultant, contractor, or service provider that fails to respond to NYC DOE's request for certification with respect to that contract.
- D. For any multi-year contract NYC DOE enters into after the Effective Date, NYC DOE shall request the written certification as described in 3(c)(ii) on an annual basis from all vendors, agents, consultants, contractors, and service providers involved in NYC DOE's participation in the E-rate Program and shall report on the responses it receives in its reports filed pursuant to Subparagraph 12(a) and identify those that fail to respond. If a vendor, consultant, contractor or service provider fails to respond to NYC DOE's request for the annual written certification in any year of a multi-year contract, NYC DOE will not enter into a new contract with the vendor, consultant, contractor or service provider after the multi-year contract expires, unless the vendor, consultant, contractor or service provider provides the written certification in connection with the new contract.
- iii. For purposes of Subparagraph 3(c) an "affiliation" means a situation in which a person, organization, or other entity is associated with Lanham or Lanham Enterprises as an employee, employer, subordinate, subsidiary, consultant, contractor, subcontractor, member, agent, supplier, or partner, or in any comparable capacity, or has been so associated at any time since five years prior to the Effective Date, except that no E-rate Program Personnel has an affiliation with Lanham or Lanham Enterprises merely as a result of Lanham's prior status as a consultant to NYC DOE.
- d. Within ninety (90) calendar days of the Effective Date, NYC DOE shall:
- i. Adopt the updated E-rate Compliance Policy required by Paragraph 7 herein.
- ii. Have substantially completed distributing copies of the updated E-rate Compliance Policy to all E-rate Program Personnel informing them in writing of their obligation to comply with the E-rate Compliance Policy. NYC DOE shall complete the distribution within one hundred (100) calendar days of the Effective Date.
- iii. Inform all E-rate Program Personnel in writing that violations of the E-rate Program Rules, the Final Compliance Plan, or the E-rate Compliance Policy may be grounds for disciplinary action as set forth in the updated E-rate Compliance Policy and, in the case of contractors, consultants or other outside entities that are covered by the term E-rate Program Personnel, contract rescission or other actions.
- e. Recurring requirements.
- i. The E-rate Compliance Officer must submit a draft of the Quarterly Compliance Reports described in Paragraph 12 to the NYC DOE Chancellor and NYC DOE General Counsel for their review.
- ii. NYC DOE must file Quarterly Compliance Reports to the FCC and USAC as required by Subparagraph 12(a) herein.

- iii. NYC DOE must file Independent Audit Reports as required by Paragraph 11 herein.
- iv. The Independent Compliance Monitor must file progress reports every six (6) months as required by Subparagraph 6(c)(iii) herein.
- v. The Independent Compliance Examiner must file monthly reports as required by Subparagraph 5(c)(iii) herein.
- vi. The E-rate Compliance Officer shall report any Known, Alleged, or Suspected Non-Compliance as required by Subparagraph 4(c)(iii).

#### **4. E-rate Compliance Officer**

- a. NYC DOE shall have an E-rate Compliance Officer. NYC DOE has appointed an E-rate Compliance Officer under the provisions of the Interim Compliance Plan. In the event that the E-rate Compliance Officer position becomes vacant, NYC DOE shall notify the FCC and USAC of the person NYC DOE proposes to appoint as the new E-rate Compliance Officer no more than sixty (60) calendar days after the departure of the previous E-rate Compliance Officer. NYC DOE shall, at the same time provide the FCC with information sufficient to determine that the new E-rate Compliance Officer meets the requirements identified in Subparagraphs 4(b)(i), 4(b)(ii) and 4(b)(iv) or will meet them no later than sixty (60) calendar days after his or her appointment. Such information shall include an organizational chart annotated to demonstrate that the E-rate Compliance Officer will have a sufficiently senior position and sufficient authority to satisfy the requirement in Subparagraph 4(b)(iv).
  - i. The FCC shall inform NYC DOE if it has any objection to the proposed E-rate Compliance Officer no later than fourteen (14) calendar days after the FCC has received notice of NYC DOE's proposed candidate.
  - ii. Once the FCC informs NYC DOE it has no objections, or that any objections have been resolved, NYC DOE shall promptly appoint the candidate as E-rate Compliance Officer. The FCC may require NYC DOE to identify an alternative candidate in the event objections to a proposed candidate cannot be resolved.
  - iii. In the event the FCC informs NYC DOE of an objection to the proposed E-rate Compliance Officer, the FCC shall clearly state the nature of its objection, how it can be resolved if possible, and whether an alternative candidate must be identified.
  - iv. In the event the FCC requires NYC DOE to identify an alternative candidate, no later than sixty (60) calendar days later NYC DOE shall identify for the FCC and USAC the person NYC DOE proposes to appoint as the new E-rate Compliance Officer, and it shall at the same time provide the FCC with information sufficient to determine whether the proposed E-rate Compliance Officer meets the requirements identified in this Final Compliance Plan. The processes described in Subparagraphs 4(a)(i)–(iii) shall apply thereafter.
- b. Qualifications and Authority:
  - i. The E-rate Compliance Officer will be familiar with NYC DOE's procurement rules and practices and NYC DOE's technology needs.

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- ii. The E-rate Compliance Officer shall have extensive knowledge of and experience with the E-rate Program and the E-rate Program Rules prior to assuming his or her duties, or must promptly obtain extensive training regarding the E-rate Program Rules and requirements, including by attending USAC training courses and reviewing USAC training materials and news briefs.
  - iii. The E-rate Compliance Officer shall work with the Independent Compliance Examiner to obtain additional and ongoing training.
  - iv. The E-rate Compliance Officer shall hold a senior position within NYC DOE, and shall have authority within that position, to oversee and supervise NYC DOE's compliance with E-rate Program Rules by all components of NYC DOE's participation in the E-rate program and by all E-rate Program Personnel, including but not limited to those in the Office of Capital Grants and Finance, Division of instructional and Information Technology, and Division of Contracts and Purchasing.
- c. Duties:  
The E-rate Compliance Officer shall:
- i. Directly oversee NYC DOE's compliance with E-rate Program Rules.
  - ii. In coordination with the Independent Compliance Examiner, update (as needed) and oversee NYC DOE's E-rate Compliance Policy to ensure that it satisfies the requirements of Paragraph 7.
  - iii. Report any Known, Alleged, or Suspected Non-Compliance with the E-rate Compliance Policy (as defined herein at Paragraph 7), the E-rate Program Rules, this Final Compliance Plan, or the Conflicts of Interest Rules and Policies within five (5) business days of the discovery thereof to the NYC DOE Chancellor, NYC DOE General Counsel, the Independent Compliance Examiner, the Independent Compliance Monitor, the FCC, and USAC, and within thirty (30) calendar days of discovery provide the same recipients with a detailed summary of the surrounding circumstances and corrective actions taken or planned. The duty to report any Known, Alleged, or Suspected Non-Compliance as described herein and below exists *even if* the Special Commissioner of Investigation (SCI) is presently investigating the matter. Where the E-rate Compliance Officer first learns about any such Known, Alleged, or Suspected Non-Compliance through the SCI and subject to the SCI's request for confidential treatment, the E-rate Compliance Officer shall nevertheless be required to report as described herein alongside a request for confidential treatment by the Independent Compliance Examiner, the Independent Compliance Monitor, the FCC, and USAC.
    - A. The E-rate Compliance Officer shall report any Known, Alleged, or Suspected Non-Compliance with the Conflict of Interest Rules and Policies only to the extent the conduct at issue both (a) directly or indirectly implicates E-rate Program Personnel or the NYC DOE Chancellor, and (b) is related to NYC DOE's participation in the E-rate Program or more generally involves procurement, bidding, contracting, invoicing, financial management, or comparable matters.
    - B. To the extent the Known, Alleged, or Suspected Non-Compliance with the Conflict of Interest Rules and Policies is not related to the discharge of duties related to NYC DOE's participation in the E-rate Program, the

conduct at issue will not form the basis of a determination by the FCC that NYC DOE has violated this Final Compliance Plan or that the remedies identified in Paragraph 13 are warranted. This does not, however, foreclose the FCC or USAC from investigating the conduct further and taking action as appropriate and consistent with their authority.

- C. The E-rate Compliance Officer shall create and maintain a log of all reports she receives, from E-rate Program Personnel or other sources, of Known, Alleged, or Suspected Non-Compliance. The log shall identify the date and time the report was received, the name of the person making the report (if known), details about the reported conduct or activities, and actions NYC DOE has taken or plans to take in response. NYC DOE shall produce the log to the FCC and USAC upon request, subject to reasonable redactions to protect the privacy interests of persons making reports.
- iv. Oversee the implementation of an ongoing mandatory, comprehensive training program for all E-rate Program Personnel as required by Paragraph 8, and for the NYC DOE Chancellor as required by Subparagraph 9(b). The E-rate Compliance Officer will provide to the FCC or USAC, upon request, information about the NYC DOE E-rate training program.
  - v. Distribute or oversee distribution of information in a timely manner about E-rate Program Rules, including updates and changes to the E-rate Program Rules, to relevant E-rate Program Personnel, and ensuring consistent implementation of and compliance with E-rate Program Rules throughout NYC DOE.
  - vi. Distribute or oversee distribution of to all E-rate Program Personnel, information about the E-rate Program application process, competitive bidding requirements, conflicts of interest prohibitions, gift restrictions, eligibility requirements, eligible services, and document retention rules. This information shall be distributed as part of the training required by Subparagraph 8(a) and annually thereafter, as well as whenever there is a change in such policies or rules.
  - vii. Oversee the hiring of an independent auditor and facilitate the auditors' work consistent with the requirements of Paragraph 11.
  - viii. Submit a draft of the Compliance Reports described in Paragraph 12 to the NYC DOE Chancellor and NYC DOE General Counsel for their review.
  - ix. Submit the Compliance Reports described in Paragraph 12 and, prior to their submission, provide copies to the Independent Compliance Examiner for review and comment.
  - x. In coordination with the NYC DOE General Counsel, conduct a review of the E-rate Compliance Policy at least annually, based on, among other things, the results of audits required in Paragraph 11, and make any necessary modifications. Copies of any such modifications shall be provided to the FCC and USAC reasonably promptly, and in no event more than ten (10) business days after their adoption.
  - xi. Review all of NYC DOE's FCC Forms 470, 471, 472, 486, and 500, and any other relevant E-rate program forms, and documents or attachments thereto,

before they are submitted to USAC or the FCC to ensure (i) compliance with the E-rate program Rules, including all competitive bidding rules and requirements; (ii) timely submission of E-rate Program applications, forms or other documents; and (iii) consistency among the bid request, the bid, the contract, the application, service provider invoices, or other submissions to USAC or the FCC.

- xii. Oversee NYC DOE's participation in USAC's "Invoice Check" system under which USAC provides applicants with Form 474s submitted by service providers for the applicant's review prior to USAC issuing payment on the Form 474s. In connection with the "Invoice Check" system, the E-rate Compliance Officer shall ensure that eligible goods and services identified on each Form 474 have been delivered or installed, or that the charges are for progress/up-front charges for services that will be provided on an installment or ongoing basis pursuant to contract.
- xiii. Oversee retention and production of documents as required by FCC rules (47 C.F.R. § 54.516), and in accordance with the guidance in the FCC's orders. *See, e.g., Schools and Libraries Universal Service Support Mechanism, Fifth Report and Order and Order, 19 FCC Red 15808, 15823–25 (2004).*

## 5. Independent Compliance Examiner

- a. NYC DOE shall have an Independent Compliance Examiner. NYC DOE appointed an Independent Compliance Examiner under the provisions of the Interim Compliance Plan. NYC DOE may terminate the Independent Compliance Examiner's service in that position only upon providing ten (10) business days' advance written notice to the FCC. In the event that the position of Independent Compliance Examiner becomes vacant, NYC DOE shall identify for the FCC a candidate for the position of Independent Compliance Examiner no more than sixty (60) calendar days after the departure of the previous Independent Compliance Examiner. Any new Independent Compliance Examiner shall be retained pursuant to the following procedures:
  - i. The FCC shall inform NYC DOE of any objection to the proposed Independent Compliance Examiner no later than fourteen (14) calendar days after the FCC has received notice of NYC DOE's proposed candidate.
  - ii. Once the FCC informs NYC DOE it has no objection, or that any objection has been resolved, NYC DOE shall promptly retain or begin utilizing the candidate as Independent Compliance Examiner.
  - iii. In the event NYC DOE cannot satisfy the concerns raised by the FCC in any objection it has made to an Independent Compliance Examiner, NYC DOE shall identify an alternative candidate, no later than sixty (60) calendar days after the FCC's initial objection, and it shall at the same time provide the FCC with information sufficient to determine that the proposed Independent Compliance Examiner meets the requirements identified in this Final Compliance Plan. The processes described in Subparagraphs 5(a)(i)–(iii) shall apply thereafter.
  - iv. The FCC may withdraw its approval of the Independent Compliance Examiner via written notice to NYC DOE. The FCC shall include a justification for its decision in any such notice. NYC DOE may respond to the FCC's notice within five (5) business days of receipt to provide any information that it believes supports continuing to utilize the Independent Compliance Examiner.

- b. Qualifications:
- i. The Independent Compliance Examiner shall have extensive knowledge of the E-rate Program, including competitive bidding procedures and federal portions of the Conflicts of Interest Rules and Policies. Prior to assuming its duties, the Independent Compliance Examiner shall have a general knowledge of the FCC rules and orders relating to the E-rate Program.
  - ii. The Independent Compliance Examiner shall not have any affiliation with, receive any compensation from, or have any financial interest in any E-rate service provider, E-rate consultant, or any other outside entity with which NYC DOE does business related to the E-rate Program. For purposes of this provision; (1) an “affiliation” means a situation in which a person, organization, or other entity is currently associated with another as an employee, employer, subordinate, subsidiary, consultant, contractor, subcontractor, member, agent, supplier, or partner, or in any comparable capacity, for the purpose of providing advice or services specific to participation in the E-rate Program or has been so associated at any time within the two years prior to the Effective Date; and (2) “compensation” is limited to payments received for the provision of advice or services specific to participation in the E-rate Program.
    - A. In the event that the Independent Compliance Examiner is a limited liability company, partnership, or other corporate entity, the requirement in Subparagraph 5(b)(ii) shall apply only to individuals employed by the Independent Compliance Examiner or working under contract with the Independent Compliance Examiner in connection with its duties under this Final Compliance Plan.
    - B. For purposes of Subparagraph 5(b)(ii), buying, selling or owning publicly available securities other than a mutual fund or comparably diversified instrument constitutes an “affiliation” or “financial interest.”
    - C. In the event that the Independent Compliance Examiner (or, if it is a corporate entity, any individuals employed by the Independent Compliance Examiner or working under contract with the Independent Compliance Examiner) owns publicly available securities in violation of the requirements in Subparagraph 5(b)(ii), the Independent Compliance Examiner (or the applicable employee or contractor) must divest within thirty (30) calendar days of the latest of the following: (1) the date on which the Independent Compliance Examiner is retained by NYC DOE (or, in the case of an employee or contractor of the Independent Compliance Examiner, the date on which an employee or contractor begins working in connection with the Independent Compliance Examiner’s duties under this Final Compliance Plan), or (2) the date on which the applicable E-rate service provider, E-rate consultant, or other outside entity commences doing business with NYC DOE related to the E-rate Program.
- c. Duties:  
The Independent Compliance Examiner shall:
- i. Review all E-Rate Program forms and other requests (including service substitution requests, Service Provider Identification Number (SPIN) changes, and service delivery deadline extensions) before NYC DOE submits them to

USAC or the FCC, and provide NYC DOE with advice and/or comments before NYC DOE submits them to ensure that they comply with the E-Rate Program Rules.

- A. The E-rate Compliance Officer (or designee) shall provide the forms and/or requests to the Independent Compliance Examiner sufficiently in advance of any submission deadline to enable the Independent Compliance Examiner to provide advice and/or comments on them and to enable NYC DOE to act on any such advice and/or comments.
  - B. The Independent Compliance Examiner shall request, and NYC DOE shall to the extent reasonably possible, provide access to the personnel, records, or other information necessary to enable the Independent Compliance Examiner to provide advice and/or comments on the forms or requests before their submission.
  - C. In the event that NYC DOE submits E-Rate Program forms or requests to USAC or the FCC in connection with E-rate funding years covered by this Final Compliance Plan but at a time when there is no Independent Compliance Examiner in place (e.g., in an interval between Independent Compliance Examiners), the next Independent Compliance Examiner to be appointed shall review the forms that were submitted without review and provide advice and/or comments related to compliance to NYC DOE, including any advice regarding submitting revised E-rate Program forms or requests if necessary.
- ii. Advise the E-rate Compliance Officer on all compliance issues relating to the E-rate Program Rules, this Final Compliance Plan, and compliance reporting.
  - iii. Submit written monthly reports to the NYC DOE Chancellor, NYC DOE General Counsel, the FCC, and USAC that provide updates on NYC DOE's compliance with E-rate Program Rules, this Final Compliance Plan, and compliance reporting.
    - A. The monthly reports must include an assessment of each form or request that the Independent Compliance Examiner reviewed in the previous month pursuant to Subparagraph 5(c)(i), including copies of any written advice and/or comments that the Independent Compliance Examiner provided to NYC DOE, and including descriptions of any difficulty the Independent Compliance Examiner faced in preparing advice and/or comments (e.g., lack of access to records or personnel). In addition to addressing the forms' or requests' compliance generally, the reports must also assess, to the extent applicable, whether the forms or requests reflect compliance with the requirements of the Commission's procurement requirements, requirements to properly categorize products and service, and all other competitive bidding requirements (*see e.g.*, 47 C.F.R. § 54.503; *Request for Review of the Decision of the Universal Serv. Adm'r by Ysleta Indep. Sch. Dist., El Paso, Texas*, Order, 18 FCC Red. 26407 (2003)).
    - B. The monthly reports must also include a description of any Known, Alleged, or Suspected Non-Compliance that came to the attention of the Independent Compliance Examiner during the month in question.

- C. NYC DOE reserves the right to respond to any monthly report prepared by the Independent Compliance Examiner and, when applicable, to submit any additional information relevant to the information contained in the monthly report. NYC DOE must submit any such response and additional information to the FCC and USAC no more than fifteen (15) calendar days after the date on which the Independent Compliance Examiner submitted the monthly report to which NYC DOE is responding.
- iv. Prior to their submission to the FCC and USAC, review all Compliance Reports required by Paragraph 12. The Independent Compliance Examiner must be given the opportunity to provide any written comments on the Compliance Reports to the E-rate Compliance Officer prior to any such submission, and all such comments provided must be included in their entirety as attachments to the reports when submitted to the FCC and USAC.
- d. Access: To the extent consistent with NYC DOE's obligations under federal, state and local law, the Independent Compliance Examiner shall be given access to all NYC DOE documents, contracts, emails, and any other information related to the E-rate Program that the Independent Compliance Examiner deems necessary to perform his or her duties.
  - i. With respect to any similar materials held by any contractor, vendor, or service provider, NYC DOE shall direct in writing that the applicable contractor, vendor, or service provider make the materials available to the Independent Compliance Examiner.
  - ii. In its reports filed pursuant to Subparagraphs 12(a), NYC DOE shall include the responses it receives to the directions it makes pursuant to Subparagraph 5(d)(i) and identify any entities that fail to respond along with a description of the records that they failed to provide.
  - iii. When directing parties to grant access pursuant to Subparagraph 5(d)(i), NYC DOE shall inform the recipient(s) in writing that (1) in the event they are unable to provide access to the materials in question, they should explain the circumstances that prevent them from doing so; and (2) NYC DOE is obliged to file reports with the FCC and USAC that include the responses it receives and identify those that failed to respond.

## 6. Independent Compliance Monitor

- a. No later than ninety (90) calendar days after the signing of the Consent Decree, NYC DOE shall identify for the FCC Enforcement Bureau two (2) qualified candidates that NYC DOE proposes to retain as the Independent Compliance Monitor. NYC DOE may express its preference between the two candidates. NYC DOE shall provide the FCC with information sufficient to determine that the proposed Independent Compliance Monitor candidates meet the qualifications set forth in Subparagraph (b). The FCC shall inform NYC DOE of any objection to the proposed Independent Compliance Monitor candidates no later than fourteen (14) calendar days after the FCC has received notice of NYC DOE's proposed candidates. NYC DOE shall have fourteen (14) calendar days to respond to the FCC's objection(s). If the FCC Enforcement Bureau then reasonably determines that neither candidate is qualified to serve as the Independent Compliance Monitor, the FCC Enforcement Bureau may seek from NYC DOE the nomination of up to two (2) additional candidates. NYC DOE shall propose the additional candidate(s) within sixty (60) calendar days of the FCC Enforcement Bureau's request for such

additional candidate(s). This process shall continue until an Independent Compliance Monitor acceptable to the FCC Enforcement Bureau and NYC DOE is selected.

- i. The FCC Enforcement Bureau may withdraw its approval of the Independent Compliance Monitor by providing written notice to NYC DOE that includes a justification for its decision. NYC DOE may respond to the FCC's notice within five (5) business days of receipt to provide any information that it believes supports continuing to utilize the Independent Compliance Monitor.
- ii. NYC DOE shall retain the Independent Compliance Monitor for a term of twenty-four (24) months ("Term of Monitorship"). However, NYC DOE may terminate the services of the Interim Compliance Monitor if, after eighteen (18) months of the Term of Monitorship, three (3) consecutive progress reports fail to report any findings of conflicts of interest, gift-giving, quid pro quo arrangements, or other arrangements that would undermine the E-rate program requirement of fair and open competitive bidding processes.
- iii. NYC DOE may seek termination of the Independent Compliance Monitor before the end of the Term of the Monitorship for cause ("Termination for Cause"). In the event NYC DOE seeks a Termination for Cause, it shall submit a request to the FCC Enforcement Bureau setting forth the basis for the Termination for Cause. The FCC Enforcement Bureau shall respond to the Termination for Cause request within thirty (30) calendar days. The FCC Enforcement Bureau shall not unreasonably withhold approval of the Termination for Cause request. If the Independent Compliance Monitor position becomes vacant due to Termination for Cause, the Term of Monitorship shall be extended by the number of calendar days taken to fill the position.
- iv. If the Independent Compliance Monitor position becomes vacant, NYC DOE shall recommend a qualified candidate within sixty (60) calendar days. The FCC Enforcement Bureau shall inform NYC DOE of any objection to the proposed candidate within fourteen (14) calendar days. NYC DOE shall have fourteen (14) calendar days to respond to the FCC Enforcement Bureau's objection(s). If the FCC Enforcement Bureau then reasonably determines the candidate is not qualified to serve as the Independent Compliance Monitor, NYC DOE shall propose an additional candidate within sixty (60) calendar days of the FCC Enforcement Bureau's request for such additional candidate. This process shall continue until an Independent Compliance Monitor acceptable to the FCC Enforcement Bureau and NYC DOE is selected.
- v. No attorney-client relationship shall exist between NYC DOE or the City of New York and the Independent Compliance Monitor.
- vi. NYC DOE shall bear all the costs and fees of retaining the Independent Compliance Monitor. NYC DOE agrees that the Independent Compliance Monitor may hire others to assist with the duties set forth in Paragraph 6(c)(i) consistent with the requirements in the Independent Compliance Monitor's agreement with NYCDOE.
- vii. In the event that during the Term of Monitorship the Independent Compliance Monitor reports potentially illegal conduct or material or substantial noncompliance with the E-rate competitive bidding rules that goes to the integrity of the E-rate program, the FCC Enforcement Bureau may extend the Term of the Monitorship for up to one year. Notwithstanding the foregoing, in

no event shall the total Term of the Monitorship exceed the term of the Final Compliance Plan as provided in Paragraph 14.

- b. Qualifications:
- i. The Independent Compliance Monitor shall have demonstrated expertise with federal and New York State laws concerning fraud, false claims, false statements, misrepresentation, bribery or theft involving programs receiving federal funds, and/or anti-kickback laws
  - ii. The Independent Compliance Monitor shall, prior to assuming his or her duties, have or acquire general knowledge of the FCC rules, orders, and rulings relating to the E-rate program including but not limited to the competitive bidding rules.
  - iii. The Independent Compliance Monitor shall review the April 28, 2011 Report of the Special Commission of Investigation relating to Ross Lanham and the Consent Decree. The Independent Compliance Monitor shall also review materials associated with *U.S. v. Willard Lanham*, No. 11 Cr. 548 (GBD) (S.D.N.Y.).
- c. Duties:
- i. The Independent Compliance Monitor shall assess whether NYC DOE's policies, procedures and training are adequate to prevent the development of an environment vulnerable to arrangements that would undermine the E-rate program requirement of fair and open competitive bidding processes, or other inappropriate or potentially illegal conduct. To that end, the Independent Compliance Monitor shall:
    - A. Review the Independent Audit Report, and the work papers associated with said report, the reports of the Independent Compliance Examiner and NYC DOE's Quarterly Compliance Reports.
    - B. Review and test NYC DOE's procurement process to verify that there are controls in place to prevent improper contact with potential service providers before, during or after the bidding process, including conflicts of interest and the exchange of gifts or other things of value that could taint the competitive bidding process or create the appearance of a quid pro quo for the contract; that NYC DOE is adhering to the procedures and requirements associated with those controls; and that NYC DOE personnel responsible for administering the controls are not aware of any improper contact that occurred notwithstanding the controls.
    - C. Review and test NYC DOE's procurement process to verify that there are controls in place to prevent hidden terms, side agreements or payments, other undisclosed arrangements, or conflicts of interest that are inconsistent with the E-rate Program Rules; that NYC DOE is adhering to the procedures and requirements associated with those controls; and that NYC DOE personnel responsible for administering the controls are not aware of any such hidden terms, side agreements or payments, other undisclosed arrangements, or conflicts of interest that exist notwithstanding the controls.

- D. Review and test invoices from vendors who provide E-rate funded goods and services to NYC DOE for any hidden or improper charges that might be indicative of kickbacks or other similar conduct.
  - E. Review NYC DOE's E-rate Compliance Policy and Comprehensive Education and Training Program to ensure that they are adequate to prevent the development of an environment vulnerable to conflicts of interest, gift-giving, or quid pro quo agreements.
  - F. Review NYC DOE's use of contractors or consultants to ensure that any contractors or consultants who are E-rate Program Personnel are adequately supervised by NYC DOE employees and have clear job descriptions.
  - G. Review VENDEX documentation submitted by vendors that provide E-rate funded goods or services to NYC DOE and their subcontractors for any indication of conflicts of interest.
- ii. The Independent Compliance Monitor shall conduct an initial review and prepare an initial report providing a detailed work plan within thirty (30) calendar days of being retained. The purpose of the work plan shall be to detail the steps the Independent Compliance Monitor will take to carry out the duties set forth in this Final Compliance Plan. The work plan shall include a work schedule, the specific tasks to be performed, the staff assigned to perform the task, and the anticipated number of hours to complete the task. The FCC Enforcement Bureau and NYC DOE shall provide comments within fourteen (14) calendar days after receipt of the written work plan. Disputes between NYC DOE and the Independent Compliance Monitor with respect to the written work plan shall be decided by the FCC Enforcement Bureau in its reasonable discretion and considering the Independent Compliance Monitor's duties as set forth in this Final Compliance Plan. After consultation with NYC DOE, the Independent Compliance Monitor may extend the time period for issuance of the initial report for a brief period of time with the prior written approval of the FCC Enforcement Bureau.
  - iii. During the Term of Monitorship, the Independent Compliance Monitor shall issue a written progress report every six (6) months, with the first progress report to be issued six (6) months after the Independent Compliance Monitor is retained. Each progress report shall describe the Independent Compliance Monitor's activities during the period and any findings or recommendations. Each report shall be addressed to the Chief of the Enforcement Bureau, as well as the Director and/or Deputy Director of the Universal Service Fund Strike Force. Copies of the report shall be distributed to each office identified in Paragraph 16 of this Plan.
  - iv. The Independent Compliance Monitor shall provide NYC DOE draft progress reports for comment at least thirty (30) days prior to their issuance, and NYC DOE shall provide written comments, if any, within twenty-one (21) days. The Independent Compliance Monitor should consider NYC DOE's comments and make any changes it deems appropriate before issuing the report.
  - v. NYC DOE shall consider any and all recommendations in the Independent Compliance Monitor's progress report. Within thirty (30) calendar days of receiving the Independent Compliance Monitor's progress report, NYC DOE

shall notify the Independent Compliance Monitor and the FCC Enforcement Bureau in writing of any actions NYC DOE proposes to take in response to the Independent Compliance Monitor's recommendations and of any recommendations that NYC DOE considers unduly burdensome, inconsistent with applicable law or regulation, excessively expensive, or otherwise infeasible or inappropriate.

- vi. If potentially illegal conduct is discovered by or reported to the Independent Compliance Monitor, the Independent Compliance Monitor shall refer the matter to the Special Commissioner of Investigation for the New York City School District, the FCC Enforcement Bureau and USAC.
- d. Access:
- i. To the extent consistent with NYC DOE's obligations under federal, state and local law, the Independent Compliance Monitor shall be given access to all NYC DOE non-privileged documents, contracts, emails, and any other information related to the E-rate Program that is reasonably necessary for the Independent Compliance Monitor to perform his or her duties.
  - ii. With respect to any similar materials held by any contractor, vendor, or service provider, NYC DOE shall direct in writing that the applicable contractor, vendor, or service provider make the materials available to the Independent Compliance Monitor.
  - iii. In its reports filed pursuant to Subparagraphs 12(a), NYC DOE shall include the responses it receives to the directions it makes pursuant to Subparagraph 6(d)(ii) and identify any entities that fail to respond along with a description of the records that they failed to provide.
  - iv. When directing parties to grant access pursuant to Subparagraph 6(d)(ii), NYC DOE shall inform the recipient(s) in writing that (1) in the event they are unable to provide access to the materials in question, they should explain the circumstances that prevent them from doing so and (2) NYC DOE is obliged to file reports with the FCC Enforcement Bureau and USAC that include the responses it receives and identify those that failed to respond.
  - v. In the event that NYC DOE withholds from the Independent Compliance Monitor access to information, documents, records, facilities, or current or former personnel of NYC DOE that may be subject to a claim of attorney-client privilege or to the attorney work-product doctrine, or where NYC DOE reasonably believes production would otherwise be overly burdensome and oppressive or inconsistent with applicable law, NYC DOE shall inform the Independent Compliance Monitor of the grounds for its position and shall work cooperatively with the Independent Compliance Monitor to resolve the matter. If the matter cannot be resolved, NYC DOE shall promptly provide written notice to the Independent Compliance Monitor and the FCC Enforcement Bureau. Such notice shall include a general description of the nature of the information, documents, records, facilities, or current or former personnel that are being withheld, as well as the legal basis for withholding access. The FCC Enforcement Bureau may then consider whether to make a further request for access to such information, documents, records, facilities, or current or former personnel.

## 7. E-rate Compliance Policy

- a. NYC DOE shall have an E-rate Compliance Plan that is available to E-rate Program Personnel via an internal NYC DOE web page or, to the extent such a web page is unavailable altogether or inaccessible for some E-rate Program Personnel, via physical or email distribution including confirmation of receipt. In accordance with the ICP, NYC DOE, in cooperation and consultation with its Independent Compliance Examiner, (i) formally adopted a comprehensive written E-rate Compliance Policy (“E-rate Compliance Policy”) that is consistent with the E-rate Program Rules; (ii) established written policies and procedures as set forth in the ICP; and (iii) established written training materials as required by the ICP. NYC DOE provided copies of the E-rate Compliance Policy to the FCC and USAC for review and approval. NYC DOE shall update its E-rate Compliance Plan in accordance with this FCP and shall provide copies of the updated E-rate Compliance Plan to the FCC and USAC for review and approval reasonably promptly following its adoption, and in no event more than ten (10) business days after its adoption. The FCC and USAC may require NYC DOE to amend the E-rate Compliance Policy if it does not satisfy all requirements listed herein.
- b. At a minimum, the E-rate Compliance Policy shall:
  - i. Incorporate expressly the requirements of this Final Compliance Plan;
  - ii. Establish a system of internal monitoring, documentation, physical inspection, and controls that ensure (i) direct management oversight of all of NYC DOE’s E-rate Program activities, and (ii) the ability of the E-rate Compliance Officer, the Independent Compliance Examiner, and the Independent Compliance Monitor, to fulfill their respective duties under this Final Compliance Plan;
  - iii. Establish specific procedures to ensure that:
    - A. NYC DOE engages in a fair and open competitive bidding process for E-rate supported goods and services, pursuant to the E-rate Program Rules and any state and local procurement laws or regulations applicable to NYC DOE’s participation in the E-rate Program, by:
      1. Filing with USAC for posting on the USAC website in accordance with procedures established by USAC, FCC Form 470 seeking bids for every E-rate supported product and service sought by NYC DOE, except in cases where the E-rate Program Rules do not require the submission of an FCC Form 470. Such FCC Forms 470 must describe with particularity the E-rate-supported products and services sought; state whether NYC DOE is seeking a multi-year contract, disclose disqualification factors to potential bidders; and state whether NYC DOE will release a request for proposal or request for bid associated with the products and services covered by the FCC Form 470;
      2. Evaluating all bids, proposals or responses, whether they are received in response to the posted FCC Forms 470 or are bids from a master contract, pursuant to the E-rate Program Rules, selecting the response that is most cost-effective, considering the price of the E-rate eligible services and products sought as the primary factor in its bid selection, and ensuring overall compliance with the E-Rate Program Rules;

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- B. E-rate Program Personnel employed by NYC DOE comply with all applicable Conflict of Interest Rules and Policies.
  - C. NYC DOE creates a written bid evaluation matrix, or another written evaluation system that documents how bids or proposals (including price lists under state or city master contracts, invoices and/or quotes) are scored and ranked, including treating price of eligible goods and services as the primary factor, for each bid or proposal it is required to evaluate;
  - D. To the extent required by the FCC rules, USAC requirements, or New York State and local contract law, all written contracts with selected vendors are signed or legally binding agreements with vendors have been reached before NYC DOE files an FCC Form 471. The signed contract must cover all products and services identified on the FCC Form 471 at the time the Form 471 is signed and submitted to USAC.
  - E. NYC DOE adheres to the document retention rules pursuant to E-rate Program Rules and this Final Compliance Plan, maintains all documents properly, and provides copies of such documents reasonably promptly upon request by USAC or the FCC, but in no event more than fifteen (15) business days following a request, (subject to any extension request by NYC DOE pursuant to Subparagraph 2(e) if granted by the FCC exercising reasonable discretion).
  - F. NYC DOE seeks E-rate funding only for E-rate eligible services and/or equipment as defined by the USAC eligible services list in effect for the applicable Funding Year.
  - G. NYC DOE compiles information about applicable rules concerning competitive bidding, vendor selection, Conflicts of Interest Rules and Policies, eligible services, document retention, and employee standards of conduct related to fraud, misrepresentation, theft, financial impropriety, or comparable misconduct. This information shall be distributed as part of the comprehensive training required by Subparagraph 8(a), or within ten (10) business days after the date on which any E-rate Program Personnel begins employment or assumes E-rate Program duties and at least annually thereafter, as well as whenever there is a change in such policies or rules.
  - H. USAC is only billed for approved eligible services, delivered to eligible entities prior to the relevant service delivery deadline, and that the billing is consistent with the applicable Funding Commitment Decision Letter.
  - I. NYC DOE pays its non-discounted share in accordance with the E-rate Program Rules, and no service provider paid, waived, or otherwise covered this requirement.
  - J. NYC DOE establishes procedures to ensure proper inventory review, both to track E-rate funded property and to ensure that the services for which it pays have actually been provided.
- iv. Explicitly recognize that NYC DOE contractually requires E-rate service providers to comply with all applicable Conflicts of Interest Rules and Policies.

- v. Establish a system of internal monitoring and compliance review that includes the steps to be taken, including an affirmative obligation to notify the E-Rate Compliance Officer within five (5) business days, whenever NYC DOE E-rate Program Personnel know, suspect, or are aware of allegations that any bid, proposal, or submission for E-rate funding or other E-rate Program related conduct is not in compliance with E-rate Program Rules, the Final Compliance Plan, the E-Rate Compliance Policy, or procurement, competitive bidding, and other state or local applicable laws, regulations, and procedures.
  - vi. Require the appointment and utilization of the E-rate Compliance Officer as required by Paragraph 4 above.
  - vii. Require the utilization of the Independent Compliance Examiner as required by Paragraph 5 above.
  - viii. Require the utilization of the Independent Compliance Monitor as required by Paragraph 6 above.
- c. Any updates or changes to the E-rate Compliance Policy must be submitted to the FCC and USAC reasonably promptly after adoption, but in no event more than ten (10) business days following adoption.

## **8. Comprehensive Education and Training Program**

- a. NYC DOE shall have a Comprehensive Education and Training Program. In accordance with the ICP, NYC DOE, under the direction of the E-rate Compliance Officer, established a comprehensive mandatory program to educate and train all E-rate Program Personnel. NYC DOE provided this training to all E-rate Program Personnel in accordance with the ICP. Pursuant to this FCP, all E-rate Program Personnel shall receive this training within thirty (30) calendar days after beginning employment or assuming E-rate Program duties for or on behalf of NYC DOE, whichever occurs later and annually thereafter. Such education and training should last at least four (4) hours and must be sufficiently detailed to include the presentation and dissemination of written information about, among other topics:
- i. The E-rate Program Rules and the E-rate Compliance Policy, with a particular focus on requirements related to competitive bidding, conflict of interest and gift restrictions, eligibility of entities and services, invoicing, and document retention;
  - ii. Any state and local procurement laws or regulations applicable to NYC DOE's participation in the E-rate Program;
  - iii. The duty of E-rate Program Personnel to notify the E-Rate Compliance Officer within five (5) business days of obtaining any information constituting Known, Alleged, or Suspected Non-Compliance; and
  - iv. The consequences of non-compliance with E-rate Program Rules, including rescission of funding commitments, recovery of disbursed E-rate funds, suspension and debarment from the E-rate Program, and criminal and civil prosecution.
- b. Prior to employing updated training materials, NYC DOE shall submit to the Independent Compliance Examiner for review and written comment, a copy of the training materials to be used in connection with the training described in Subparagraph 8(a). Further, NYC DOE shall submit any such materials to the FCC and USAC reasonably promptly after

the commencement of that training, but in no event more than ten (10) business days after commencement. NYC DOE shall also provide any updated training materials to the FCC and USAC reasonably promptly after any substantive change to the materials, but in no event more than ten (10) business days after the updated materials have been put into use. Whenever NYC DOE submits training materials to the FCC and USAC pursuant to this provision, it shall also include copies of any written comments it received from the Independent Compliance Examiner.

- i. The Compliance Officer (or designee) shall provide the proposed training materials to the Independent Compliance Examiner sufficiently in advance of the commencement of training to enable the Independent Compliance Examiner to provide advice and/or comments on them and to enable NYC DOE to act on any such advice and/or comments.
- c. As part of its comprehensive education and training program, NYC DOE shall require all NYC DOE E-rate Program Personnel to electronically register for, and to receive and review, USAC's weekly Schools and Libraries News Brief. NYC DOE also shall send the E-rate Compliance Officer, appropriate E-rate Program Personnel, and other appropriate NYC DOE representatives, to the applicant training sessions that USAC offers annually.
- d. NYC DOE shall require all E-rate Program Personnel to certify that they have attended the training described in Subparagraph 8(a), or comparable training by persons with equivalent expertise, and the E-rate Compliance Officer shall retain those certifications in accordance with record retention requirements set forth in the FCC's rules (47 C.F.R. § 54.516), and also in accordance with the guidance in the FCC's orders.

## **9. Duties of the Chancellor**

- a. The NYC DOE Chancellor, in consultation with the NYC DOE General Counsel, shall be responsible for ensuring that:
  - i. NYC DOE complies with this Final Compliance Plan and all E-rate Program Rules, including by reviewing the reports prepared by the E-rate Compliance Officer pursuant to Subparagraph 4(c)(viii) and the Independent Compliance Examiner pursuant to Subparagraph 5(c)(iii);
  - ii. NYC DOE appoints the E-rate Compliance Officer as required by Paragraph 4;
  - iii. the E-rate Compliance Officer fully satisfies all of his or her obligations as set forth herein;
  - iv. NYC DOE appoints the Independent Compliance Examiner as required by Paragraph 5 herein;
  - v. the Independent Compliance Examiner fully satisfies all of his or her obligations as set forth herein;
  - vi. NYC DOE appoints the Independent Compliance Monitor as required by Paragraph 6 herein; and
  - vii. The Independent Compliance Monitor fully satisfies all of his or her obligations as set forth herein.

- b. Training:
- i. NYC DOE, under the direction of the E-rate Compliance Officer, shall provide E-rate training to the NYC DOE Chancellor. In accordance with the ICP, NYC DOE provided E-rate training to the NYC DOE Chancellor. Under this FCP, NYC DOE shall provide this training to the NYC DOE Chancellor annually. If a new NYC DOE Chancellor is appointed, NYC DOE shall provide him or her E-rate training within sixty (60) calendar days of the appointment. The training must be sufficiently detailed to include the presentation and dissemination of written information about, among other topics:
    - A. The E-rate Program Rules and the E-rate Compliance Policy, with a particular focus on requirements related to competitive bidding, conflict of interest and gift restrictions, entity and service eligibility, invoicing, and document retention;
    - B. Any state and local procurement laws or regulations applicable to NYC DOE's participation in the E-rate Program; and
    - C. The consequences of non-compliance with E-rate Program Rules, including rescission of funding commitments, recovery of disbursed E-rate funds, suspension and debarment from the E-rate Program, and criminal and civil prosecution.
  - ii. Prior to commencing training for the NYC DOE Chancellor or employing updated training materials, NYC DOE shall submit to the Independent Compliance Examiner for review and written comment a copy of the training materials to be used in connection with the training described in Subparagraph 9(b)(i). Further, NYC DOE shall submit any such materials to the FCC and USAC reasonably promptly after the commencement of that training, but in no event more than ten (10) business days after commencement. NYC DOE shall also provide any updated training materials to the FCC and USAC reasonably promptly after any substantive change to the materials, but in no event more than ten (10) business days after the updated materials have been put into use. Whenever NYC DOE submits training materials to the FCC and USAC pursuant to this provision, it shall also include copies of any written comments it received from the Independent Compliance Examiner.
  - iii. The Compliance Officer (or designee) shall provide the proposed training materials to the Independent Compliance Examiner sufficiently in advance of the commencement of training to enable the Independent Compliance Examiner to provide advice and/or comments on them and to enable NYC DOE to act on any such advice and/or comments.
  - iv. NYC DOE shall require the NYC DOE Chancellor to certify that she has attended the training described in Subparagraph 9(b)(i), and the E-rate Compliance Officer shall retain the certification in accordance with record retention requirements set forth in the FCC's rules (47 C.F.R. § 54.516), and also in accordance with the guidance in the FCC's orders.
- c. The NYC DOE Chancellor must notify the E-rate Compliance Officer within five (5) business days of learning any information constituting Known, Alleged, or Suspected Non-Compliance.

**10. Financial Interest Restrictions**

- a. The E-rate Compliance Officer, the NYC DOE Chancellor, the NYC DOE General Counsel, and all E-rate Program Personnel employed by NYC DOE shall not have any affiliation with, receive compensation from, or have any financial interest in any E-rate service provider, E-rate consultant, or any other outside entity with which NYC DOE does business related to the E-rate Program, except as provided in Subparagraph 10(b). For purposes of this provision, an “affiliation” means a situation in which a person, organization, or other entity is currently associated with another as an employee, employer, subordinate, subsidiary, consultant, contractor, subcontractor, member, agent, supplier, or partner, or in any comparable capacity, or has been so associated at any time within the two years prior to the Effective Date. For purposes of this provision, the term “financial interest” includes buying, selling, or owning (directly or indirectly, in whole or in part) an E-rate service provider, E-rate consultant(s) (or its services), or any other outside entity with which NYC DOE does business related to the E-rate Program, or any publicly available securities issued by such an entity other than a mutual fund or comparably diversified instrument.
- b. *Generally applicable restrictions.* All E-rate Program Personnel employed by NYC DOE (including the E-rate Compliance Officer and the NYC DOE General Counsel) and the NYC DOE Chancellor may have a financial interest in an E-rate service provider, E-rate consultant, or any other outside entity with which NYC DOE does business (“Possibly Permissible Interests”) only if (i) the financial interest complies with the requirements set forth in the New York City Charter and any rules adopted by the New York City Conflicts of Interest Board, and any rules or policies adopted by NYC DOE related to conflicts of interest as they exist as of the Effective Date, and (ii) if Section 2604(b) of the New York City Charter, or any rules or policies adopted by NYC DOE, or the New York City Conflicts of Interest Board, requires the E-rate Program Personnel’s recusal from any duties, NYC DOE has timely disclosed the financial interest and the recusal to the FCC through reports filed pursuant to Subparagraph 12(a).<sup>1</sup>
- c. *Reporting.* In its reports filed pursuant to Subparagraph 12(a), NYC DOE shall include the reports required by Subparagraph 10(b) and state how many individuals covered by Paragraph 10 have reported to the NYC Conflict of Interest Board a financial interest in any E-rate service provider, E-rate consultant, or any other outside entity with which NYC DOE does business related to the E-rate Program. The reports shall state further how many individuals were required to recuse themselves from involvement with any such entities, how many were required to divest holdings, and on how many occasions the NYC Conflicts of Interest Board took other actions related to such financial holdings (along with a description of any such actions taken). NYC DOE agrees that the FCC or USAC may request additional information related to all such reports and that NYC DOE will provide such information promptly (and in no event more than fifteen (15) calendar days after receiving the request) subject to any redactions necessary to ensure compliance with applicable law. Nothing in this provision will require NYC DOE to enforce any reporting obligation against an E-rate Program Personnel covered by any collective bargaining agreement if that obligation exceeds what is required by the New York City Charter or any rules or polices adopted by NYC DOE related to conflicts of interest.

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<sup>1</sup> The Enforcement Bureau reserves its right to issue subpoenas seeking documents and information from NYC DOE including on financial interests held by E-Rate Program Personnel.

## 11. Independent Audit Reports

- a. Pursuant to the ICP, at the end of Funding Year 2014, NYC DOE was required to obtain and pay for an independent (i.e., third-party) audit and associated audit report assessing NYC DOE's compliance with the ICP, the E-rate Compliance Policy, and the E-rate Program Rules for and during Funding Year 2014 (including compliance with state and local procurement laws to the extent necessary to ascertain compliance with the E-rate Program Rules). This audit shall cover the procurements for which NYC DOE has sought E-rate funding and E-rate applications for funding years 2014 and 2015. NYC DOE must comply with the requirements set forth in the ICP with respect to this audit.
- b. Pursuant to this FCP, at the end of Funding Year 2015 and thereafter, NYC DOE annually must obtain and pay for an independent (i.e., third-party) audit and associated audit report ("Independent Audit Report") assessing NYC DOE's compliance with this Final Compliance Plan or the Interim Compliance Plan, the E-rate Compliance Policy, and the E-rate Program Rules for the applicable Funding Year (including compliance with state and local procurement laws to the extent necessary to ascertain compliance with the E-rate Program Rules). NYC DOE shall ensure the timely completion of each annual audit in a manner consistent with generally accepted government auditing standards (GA GAS), and shall submit the final Independent Audit Report to the FCC and USAC together with the Annual Compliance Report as required by Subparagraph 12(b). The independent audit shall be designed to test whether:
  - i. NYC DOE is complying with the terms of this Final Compliance Plan or the Interim Compliance Plan, as applicable, the E-rate Compliance Policy, and E-Rate Program Rules; and
  - ii. all contracts for which NYC DOE has sought E-rate funding, and the bidding processes associated with contracts for these goods and services, comply with the E-rate Program Rules and local and state procurement laws, including that prices and design specifications are consistent with the applicable bid request and the selected bid is consistent with the bid request.
- c. NYC DOE acknowledges that the FCC or USAC, acting directly or through agents, may review or audit NYC DOE's compliance with this Final Compliance Plan, the E-rate Compliance Policy, and E-rate Program Rules. NYC DOE shall cooperate fully with such review or audit by promptly complying with requests for information or documents, permitting inspection of physical premises and equipment, and making requested and relevant personnel available. NYC DOE shall maintain records in accordance with the requirements in Subparagraph 4(c)(xiii) in a manner that permits any auditor to evaluate compliance with this Final Compliance Plan, the E-rate Compliance Policy, and E-rate Program Rules. Audits or investigations may include periodic unscheduled visits or interviews to spot check compliance and compliance activities, subject to reasonable coordination with NYC DOE if the visit is to a school in order to avoid the disruption of essential school activities, such as student testing.
- d. NYC DOE may not select the Independent Compliance Examiner to conduct the independent audits required by this Paragraph.

## 12. Compliance Reports

- a. *Quarterly Compliance Reports.* Consistent with the schedule established pursuant to the ICP, until termination of this Final Compliance Plan, NYC DOE shall submit to the FCC and USAC a Quarterly Compliance Report, signed by the NYC DOE Chancellor, NYC

DOE General Counsel, and the E-rate Compliance Officer under penalty of perjury, describing in detail specific actions taken during the quarterly reporting period to comply with the terms of this Final Compliance Plan, the E-rate Compliance Policy, and the E-rate Program Rules applicable to the most recent Funding Year.

- i. Each Quarterly Compliance Report shall also include certifications by the NYC DOE Chancellor, NYC DOE General Counsel, and E-rate Compliance Officer that: (i) all required oversight, training, education, reporting, and other E-rate compliance activities were undertaken in accordance with this Interim Compliance Plan and the E-rate Compliance Policy in the time period covered by the report; (ii) all contracts or other service arrangements associated with pending E-rate Program funding requests or commitments for the time period covered by the report were entered into pursuant to a fair and open competitive bidding process compliant with the E-rate Program Rules; (iii) all services and/or equipment for which NYC DOE received E-rate support for the time period covered by the report were eligible for E-rate funding; (iv) all invoices submitted to obtain payment of charges associated with eligible services, delivered to eligible entities during the appropriate timeframe; (v) NYC DOE has paid its non-discount share in accordance with the E-rate Program Rules, when applicable; and (vi) NYC DOE complied with all document retention rules in the time period covered by the report.
  - ii. Each Quarterly Compliance Report shall also identify any provision of this Final Compliance Plan or the E-rate Compliance Policy with which NYC DOE did not comply during the quarterly reporting period.
  - iii. Each Quarterly Compliance Report shall also include a list of all reports of Known, Alleged, or Suspected Non-Compliance filed pursuant to Subparagraph 4(c)(iii) during the time period covered by the report, as well as a description of the specific investigative and corrective measures taken or planned in response.
- b. *Annual Compliance Report.* Beginning in 2015, by December 31 of each year, NYC DOE shall submit to the FCC and USAC a report signed by the NYC DOE Chancellor, NYC DOE General Counsel, and the E-rate Compliance Officer under penalty of perjury. Each Annual Compliance Report shall include copies of any audit reports that pertain to the applicable funding year, including independent audit reports prepared pursuant to Paragraph 11, as well as a detailed description of efforts taken or planned to address any adverse findings included in any such audit reports.
- c. With respect to each Compliance Report that NYC DOE must submit to the FCC and USAC pursuant to Paragraph 12, the E-rate Compliance Officer shall provide a copy to the Independent Compliance Examiner for review prior to submission to the FCC and USAC. The Independent Compliance Examiner shall review each such report and provide written comments, if any, thereon to the E-rate Compliance Officer.
- i. The Compliance Officer (or designee) shall provide a copy of the Compliance Report to the Independent Compliance Examiner sufficiently in advance of any submission deadline to enable the Independent Compliance Examiner to provide comments and to enable NYC DOE to act on any such comments.
  - ii. The Independent Compliance Examiner shall request, and NYC DOE shall to the extent reasonably possible provide, access to personnel, records, or other information necessary to enable the Independent Compliance Examiner to review and comment on the reports before their submission.

- iii. In the event that NYC DOE submits a report to USAC or the FCC pursuant to Paragraph 12 at a time when there is no Independent Compliance Examiner in place, the next Independent Compliance Examiner to be appointed shall review the report that had been submitted without review and provide written comments (if any) to the E-Rate Compliance Officer.
- iv. NYC DOE shall include copies of any written comments received from the Independent Compliance Examiner together with the applicable report or, in the case of comments prepared pursuant to Subparagraph 12(c)(iii), within ten (10) business days of receiving them from the Independent Compliance Examiner.

### 13. Remedies for Non-Compliance

- a. *Reservation of Rights.* The FCC reserves its right to pursue violations of the E-Rate Program Rules for any violations not covered by the Consent Decree, consistent with its authority under the Communications Act and other applicable laws, regulations, rules, and orders.
- b. *Suspension of Application Processing; Withholding Payments.* If NYC DOE fails to comply with the E-rate Program Rules or materially fails to comply with any provision of this Final Compliance Plan with respect to the Funding Years covered by this Agreement, the FCC may among other remedies direct USAC to exercise its authority to suspend action on processing NYC DOE E-Rate Program applications applicable to the Funding Years covered by this Agreement, including processing of applications and disbursement of funds, until NYC DOE demonstrates to the satisfaction of the FCC and USAC that NYC DOE has remedied such non-compliance.
- c. *Additional Enforcement Action for Certain Violations.* If NYC DOE materially fails to comply with any part of this Final Compliance Plan, the FCC may treat such material non-compliance in the same manner as the failure to comply with an order issued or rule promulgated by the Commission (*e.g.*, take enforcement action pursuant to, and subject to the requirements of, sections 501–504 of the Act, 47 U.S.C. § 501–504), as well as avail itself of such other remedies as may be set forth in this Paragraph.
- d. *Waiver of Citation Requirements.* For purposes of this Agreement, and any violations covered by Paragraph 13, NYC DOE agrees to waive the requirements of the citation provisions under sections 503(b)(5)(A) and (B) of the Act. 47 U.S.C. §§ 503(b)(5)(A), (B).
- e. *Remedy Procedures.*
  - i. NYC DOE shall be subject to the remedies provided for in Subparagraphs 13(b) and (c) if the FCC determines that NYC DOE has failed to comply with the E-rate Program Rules or materially failed to comply with the relevant terms of this Final Compliance Plan. The FCC may base its determination on any FCC or USAC audit, an Independent Audit Report, any required Compliance Report, the Independent Compliance Monitor, self-reporting by NYC DOE, or other reliable source of information.
  - ii. A determination that NYC DOE has materially complied with the obligations in this Final Compliance Plan is not intended to and shall not constitute a determination that NYC DOE has complied with any or all E-rate Program Rules for any other purpose.

- iii. If the FCC determines that NYC DOE has failed to comply with the E-rate Program Rules or materially failed to comply with this Final Compliance Plan, it shall provide written notice to NYC DOE explaining its determination before imposing any remedies pursuant to Subparagraphs 13(b) or 13(c). Within thirty (30) calendar days thereafter, NYC DOE may submit any additional materials or evidence that it believes would demonstrate (a) that NYC DOE complied with the E-rate Program Rules or materially complied with this Final Compliance Plan, or (b) that circumstances do not otherwise reasonably merit the imposition of remedies. The FCC may seek remedies pursuant to Subparagraphs 13(b) and 13(c) after NYC DOE submits such additional materials or following the expiration of the thirty-day period for submitting them, whichever occurs first.
- iv. NYC DOE may challenge, appeal, or otherwise contest an action or determination by the FCC related to the Final Compliance Plan or E-rate Program Rules consistent with the Communications Act, the FCC's rules, and any other applicable law.

#### **14. Termination**

This Final Compliance Plan shall remain in effect until two years after the Effective Date. Upon a finding of material or substantial noncompliance with the Final Compliance Plan, the FCC has discretion to extend this Final Compliance Plan for an additional year. At the expiration of that additional year, upon a finding of material or substantial noncompliance during that year, the FCC may extend this Final Compliance Plan for a second year. This Final Compliance Plan may also be further extended, replaced, or terminated by mutual agreement of the FCC and NYC DOE.

#### **15. Amendments**

This Final Compliance Plan may be amended only by written agreement duly executed by all the Parties.

#### **16. Notices and Reports**

All notices, reports, disclosures or other communications required by this Final Compliance Plan shall be in writing and shall be deemed to have been duly given (a) on the date of service if served personally; (b) on the day of transmission if sent via E-mail and PDF; (c) on the day of facsimile transmission to the facsimile number given below and telephonic confirmation of receipt is obtained; or (d) on the day after delivery to an overnight courier service, prepaid and properly addressed. All documents provided to the parties pursuant to this Final Compliance Plan must be served on each of the following:

(a) USAC:  
General Counsel (or designee)  
Universal Service Administrative Company  
2000 L St. N.W., Suite 200  
Washington, D.C. 20035  
Telephone: (202) 775-0200  
Facsimile: (202) 775-0080

(b) FCC Office of General Counsel:  
General Counsel (or designee)  
Federal Communications Commission  
445 12th St., S.W.  
Washington, D.C. 20554

Telephone: (202) 418-1700  
Facsimile: (202) 418-2825

(c) Wireline Competition Bureau:  
Bureau Chief (or designee)  
Federal Communications Commission  
445 12th St. S.W.  
Washington, D.C. 20554  
Telephone: (202) 418-1500  
Facsimile: (202) 418-2825

(d) Enforcement Bureau:  
Bureau Chief (or designee)  
Federal Communications Commission  
445 12th St. S.W.  
Washington, D.C. 20554  
Telephone: (888) 225-5322  
Facsimile: (866) 418-0232

(e) Enforcement Bureau/Universal Service Fund Strike Force:  
Director (or designee)  
Federal Communications Commission  
445 12th St. S.W.  
Washington, D.C. 20554  
Telephone: (888) 225-5322  
Facsimile: (866) 418-0232

(f) NYC Department of Education  
General Counsel  
Office of the General Counsel  
52 Chambers Street  
New York, NY 10007  
Telephone: 212-374-3440  
Facsimile: (212) 374-5596

(g) The City of New York Law Department  
Chief, Affirmative Litigation Division (or designee)  
100 Church Street  
New York, NY 10007  
Telephone: (212) 356-1000  
Facsimile: (212) 356-2038

(h) The New York City Department of Education  
E-rate Compliance Officer  
Office of the General Counsel/Office of Federal and State Regulatory Compliance  
NYC Department of Education  
52 Chambers Street  
New York, NY 10007  
Telephone: (212) 374-0559  
Facsimile: (212) 374-5596

**17. Successors and Assigns**

The provisions of this Final Compliance Plan shall be binding on the successors and assigns of the signatories hereto.

**18. Section Headings**

The headings of the Sections in this Final Compliance Plan are inserted for convenience only and are not intended to affect the meaning of this Final Compliance Plan.

**19. Authorized Representative**

Each party represents and warrants to the other that it has the full power and authority to enter into this Final Compliance Plan.

**20. Counterparts**

This Final Compliance Plan may be executed in any number of counterparts (including by facsimile or PDF), each of which, when executed and delivered, shall be an original, and all of which together shall constitute one and the same fully executed instrument.

By: \_\_\_\_\_  
Travis LeBlanc  
Chief  
Enforcement Bureau  
Federal Communications Commission

By: \_\_\_\_\_  
Carmen Fariña (or designee)  
Chancellor  
New York City Department of Education

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_