

APR 18 2011

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an Idaho
limited liability company,

Plaintiff/Appellant,

vs.

IDAHO DEPARTMENT OF
ADMINISTRATION; J. MICHAEL
"MIKE" GWARTNEY, in his personal and
official capacity as Director and Chief
Information Officer of the Idaho
Department of Administration; JACK G.
"GREG" ZICKAU, in his personal and
official capacity as Chief Technology
Officer and Administrator of the Office of
the CIO; EDUCATION NETWORKS OF
AMERICA, Inc., a Delaware corporation;
QWEST COMMUNICATIONS
COMPANY, LLC, a Delaware limited
liability company;

Defendants/Respondents.

Case No. CV OC 0923757

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENTS: Idaho Department of Administration;
J. Michael "Mike" Gwartney, in his personal and official capacity as Director and Chief
Information Officer of the Idaho Department of Administration; Jack G. "Greg" Zickau,
in his personal and official capacity as Chief Technology Officer and Administrator of
the Office of the CIO; ENA Services, LLC, a Division of Education Networks Of
America, Inc., a Delaware corporation; Qwest Communications Company, LLC, a
Delaware limited liability company; and to their attorneys:

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And to the Clerk of the Above Entitled Court.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant Syringa Networks, LLC, an Idaho limited liability company (“Syringa”), appeals against the above named Respondents to the Idaho Supreme Court from the final judgment entered in the above entitled action on the 8th day of March, 2011, Honorable Judge Patrick Owen presiding.

2. That Syringa has a right to appeal to the Idaho Supreme Court, and the Judgment described in paragraph 1 above is appealable under and pursuant to Rule 11(a)(1) I.A.R.

3. Preliminary Statement of Issues on Appeal:

- a. Whether the District Court erred by ruling that Syringa’s failure to file an Idaho Code § 67-5733(c) administrative appeal from the January 20, 2009 IEN award to Qwest and ENA precluded Syringa from challenging the legality of contract amendments which were issued to Qwest and ENA after the time to appeal the award had expired and which, for the first time, unlawfully split the IEN project into two contracts for dissimilar services in violation of Idaho Code § 67-5718A.
- b. Whether the District Court erred by ruling that the February 26, 2009 contract amendments issued to Qwest and ENA were an “award” subject to mandatory Idaho Code § 67-5733(c) administrative appeal and that Syringa’s failure to file such an appeal after the amendments were issued

prohibited it from seeking declaratory judgment that the amendments unlawfully split the IEN project into two contracts for dissimilar services in violation of Idaho Code § 67-5718A.

- c. Whether the District Court erred by ruling that Syringa's failure to file an Idaho Code § 67-5733(c) administrative appeal precluded it from claiming, as an element of its claims for tortious interference with contract and prospective business advantage against state employees Gwartney and Zichau, that the decision to split the IEN project into two contracts for dissimilar services in violation of Idaho Code § 67-5718A was wrongful.
- d. Whether the District Court erred by ruling that Syringa was required to present evidence that state employees Gwartney and Zichau acted with malice and/or criminal intent and acted outside the course and scope of their employment in order to overcome the immunity provided to state employees by the Idaho Tort Claims Act, Idaho Code §6-901 *et. seq.*
- e. Whether the District Court erred by ruling that Syringa's failure to file an Idaho Code § 67-5733(c) administrative appeal precluded it from claiming, as an element of its claims for tortious interference with contract and prospective business advantage against Qwest, that Qwest's participation in the DOA decision to split the IEN project into two contracts for dissimilar services in violation of Idaho Code § 67-5718A was wrongful.
- f. Whether the District Court erred by concluding, at summary judgment, that the DOA decision to make a multiple award to Qwest and ENA was a

formal and final rejection of the ENA proposal which terminated the ENA/Syringa Teaming Agreement and ENA's obligations to Syringa under the Teaming Agreement.

- g. Whether the District Court erred by concluding, at summary judgment, that the ENA/Syringa Teaming Agreement was an unenforceable "agreement to agree" and by dismissing Syringa's claims for tortious interference with contract on that basis.
- h. Whether the District Court erred by granting summary judgment dismissing Syringa's claims for breach of contract against ENA by concluding that the ENA/Syringa Teaming Agreement was an unenforceable "agreement to agree" that is not enforceable against ENA.
- i. Whether the District Court erred by ruling that even if the ENA/Syringa Teaming Agreement was an enforceable contract, Syringa's complaint for breach of contract against ENA must be dismissed because there is no evidence ENA caused the DOA to assign the work to Qwest that the Teaming Agreement said would be performed by Syringa.
- j. Whether the District Court erred by refusing to view evidence, in the form of audio-visual recordings of depositions, for the purpose of determining whether conflicting testimony, significant failures of recollection and questionable demeanor of witnesses documented by those recordings, combined with other evidence in the record, presented issues of credibility that could not be resolved on summary judgment but required resolution by the jury as the ultimate finder of fact.

- k. Whether the District Court erred by granting summary judgment against Syringa and refusing to consider evidence in the record in the form of audio-visual recordings of depositions demonstrating conflicting testimony, significant failures of recollection and questionable demeanor by witnesses whose credibility on disputed, material issues of fact was determinative to the outcome of the case.
- l. Whether the District Court erred by failing to draw all reasonable inferences from the record in favor of Syringa as the non-moving party.
- m. Whether the District Court erred by deciding disputed, material questions of fact.

4. A Stipulation for Protective Order was signed by the Parties and Filed August 10, 2010. The following documents were filed under seal thereafter:

- a. Plaintiff's Statement of Material Facts in Support of Response to Defendants' Motions for Partial Summary Judgment (filed November 16, 2010);
- b. Opposition to State Defendants' Motion for Summary Judgment re Count Four of Plaintiff's Complaint (filed November 16, 2010);
- c. Opposition to Defendant Qwest Communications Company, LLC's Motion for Partial Summary Judgment on Counts Four and Five of the Complaint (filed November 16, 2010);
- d. Affidavit of David R. Lombardi in Support of Plaintiff's Opposition to Motions for Partial Summary Judgment (filed November 16, 2010);

- e. Supplemental Affidavit of David R. Lombardi in Support of Opposition to Motions for Partial Summary Judgment (filed January 4, 2011);
 - f. Affidavit of Patrick Roden (filed January 4, 2011);
 - g. Affidavit of Kevin Johnsen in Support of Plaintiffs' Opposition to ENAs Motions for Partial Summary Judgment (filed January 7, 2011); and
 - h. Supplemental Submission in Opposition to Defendant ENA's Second Motion for Summary Judgment (filed January 14, 2011).
5. (a) A reporter's transcript is requested as designated in (b) below.
- (b) The Appellant requests the preparation of the following portions of the reporter's transcript in electronic format:
- 1. Hearing of May 25, 2010.
 - 2. Hearing of September 7, 2010.
 - 3. Hearing of January 20, 2011.
6. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

<u>Date</u>	<u>Document Name</u>
1/25/10	Defendant Qwest Motion to Dismiss Counts Four, and Five
1/25/10	Memorandum in Support
2/23/10	Motion for Order to Show Cause (Oral Argument Requested)
2/23/10	Affidavit of Greg Lowe
2/23/10	Affidavit of Molly Steckel
2/23/10	Affidavit of Susan Heneise
2/23/10	Plaintiff's Memorandum in Support of Motion for Order to Show Cause
3/3/10	Memorandum in Opposition to Motion to Dismiss Counts Four and Five
3/8/10	Defendant Qwest Communications Company Reply in Support of Motion to Dismiss Counts Four and Five
3/19/10	Motion for Summary Judgment
3/19/10	Affidavit of Mark Little
3/19/10	Affidavit of J. Michael Gwartney
3/19/10	Affidavit of Bill Burns
3/19/10	Memorandum in Support of Motion
3/19/10	Memorandum in Opposition to Plaintiff's Motion for Order to Show Cause

<u>Date</u>	<u>Document Name</u>
4/5/10	Reply Brief in Support of Plaintiff's Motion for Order to Show Cause
4/6/10	Qwest Communication Company, LLC's Joinder in Memorandum in Opposition to Plaintiff's Motion for Order to Show Cause
4/8/10	Motion to Strike Plaintiff's Motion for Order to Show Cause or, in the Alternative, Convert Plaintiff's Motion for Order to Show Cause to a Rule 65 Proceeding
4/8/10	Memorandum in Support of Defendants' Motion to Strike Plaintiff's Motion for Order to Show Cause or, in the Alternative, Convert Plaintiff's Motion for Order to Show Cause to a Rule 65 Proceeding
4/8/10	Opposition to Motion to Strike Plaintiff's Motion for Order to Show Cause or, in the Alternative, Convert Plaintiff's Motion for Order to Show Cause to a Rule 65 Proceeding and Opposition to Motion to Shorten Time
4/9/10	Motion to Strike Qwest Communication Co., LLC's Joinder in Memorandum in Opposition to Plaintiff's Motion for Order to Show Cause
4/12/10	Response to Opposition to Motion to Strike
4/29/10	Stipulation RE: Plaintiff's Motion for Partial Con't of Summary Judgment Proceedings
5/11/10	Opposition to Motion for Summary Judgment
5/11/10	Second Affidavit of Greg Lowe
5/18/10	Reply in Support of Motion for Summary Judgment
5/18/10	Affidavit of Counsel re State Defendants Motion for Summary Judgment
5/21/10	Opposition to Motion to Strike Testimony from the Second Affidavit of Greg Lowe
5/24/10	Reply in Support of Motion to Strike
5/25/10	Opposition to Motion to Shorten Time and Motion to Strike Testimony
7/22/10	Affidavit in Support of Motion to Protective Order
7/22/10	Third Affidavit of Greg Lowe
7/23/10	Notice of Errata Regarding the Third Affidavit of Greg Lowe
7/23/10	Notice of Errata Regarding the Affidavit in Support of Motion for Protective Order
7/27/10	Amended Third Affidavit of Greg Lowe
8/3/10	Affidavit of Steven F. Schossberger Re: Plaintiff's Motion to Compel
8/3/10	Affidavit of Greg Zickau Re: Plaintiff's Motion to Compel
8/10/10	Stipulation for Protective Order
8/17/10	Motion for Reconsideration of the Dismissal of Counts Two and Three of Syringa's Complaint (Oral Argument Requested)
8/20/10	Memorandum in Support of Motion for Reconsideration of Dismissal of Counts Two and Three of Syringa Complaint
8/31/10	The State Defendants' Memorandum in Opposition to Plaintiffs' Motion for Reconsideration of the Dismissal of Counts Two and Three of Syringa's Complaint
9/3/10	Brief in Support of Motion for Reconsideration of the Dismissal
9/3/10	Motion for Summary Judgment on Count Four of Plaintiff's Complaint
9/13/10	Plaintiff's Expert Witness Disclosure

<u>Date</u>	<u>Document Name</u>
11/1/10	Motion for Partial Summary Judgment on Counts Four & Five of the Complaint
11/1/10	Memorandum in Support of Motion
11/1/10	Statement of Undisputed Facts in Support of Motion
11/1/10	Affidavit of Meredith A. Johnston
11/2/10	Memorandum in Support of the State Defendants' Motion for Summary Judgment Re Count Four of Plaintiff's Complaint
11/2/10	Affidavit of Steven F. Schossberger in Support of Defendants' Motion for Summary Judgment Re Count Four of Plaintiff's Complaint
11/16/10	Plaintiff's Statement of Material Facts in Support of Response to Defendants' Motions for Partial Summary Judgment (filed under seal)
11/16/10	Opposition to State Defendants' Motion for Summary Judgment Re Count Four of Plaintiff's Complaint (filed under seal)
11/16/10	Opposition to Defendant Qwest Communications Company, LLC's Motion for Partial Summary Judgment on Counts Four and Five of the Complaint (filed under seal)
11/16/10	Affidavit of David R. Lombardi in Support of Plaintiff's Opposition to Motions for Partial Summary Judgment (filed under seal)
11/23/10	Affidavit of Leslie Hayes in Support of ENA Services' Motion for Summary Judgment
11/23/10	Memorandum in Support
11/23/10	Reply to Opposition to Motion for Summary Judgment on Count Four of Complaint
11/23/10	Affidavit of Steven Schossberger in Opposition to Motion to Continue and in Support of Reply to Opposition to Motion for Summary Judgment
11/23/10	Affidavit of Merlyn Clark in Opposition to Motion to Continue
11/23/10	Motion to Strike Testimony
11/23/10	Memorandum in Support of Motion to Strike Testimony
11/23/10	Affidavit of Jennifer Pike
11/23/10	Reply Memorandum in Support of Defendant Qwest Communications Motion for Partial Summary Judgment on Counts Four and Five of Complaint
11/23/10	Affidavit of Stephen R. Thomas
11/26/10	Opposition to Motion to Strike and Disregard Testimony
11/29/10	Reply in Support of the State Defendants' Motion to Strike and Disregard Testimony
12/13/10	Defendant's Second Motion for Summary Judgment
12/16/10	Fourth Affidavit of Greg Lowe
12/22/10	Affidavit in Support of Motion for Summary Judgment
12/22/10	Memorandum in Support of Motion for Summary Judgment
1/4/11	Supplemental Brief in Opposition to Motion for Summary Judgment and Qwest Communications Motion for Partial Summary Judgment
1/4/11	Supplemental Affidavit of David R. Lombardi in Support of Opposition to Motions for Partial Summary Judgment (filed under seal)
1/4/11	Supplement to Statement of Material Facts in Support of Response to Motion for Partial Summary Judgment

<u>Date</u>	<u>Document Name</u>
1/4/11	Affidavit of Patrick Roden (filed under seal)
1/7/11	Opposition to Defendant ENA Services LLCs Motion for Summary Judgment
1/7/11	Opposition to Defendant ENA Services LLCs Second Motion for Summary Judgment
1/7/11	Affidavit of Amber N. Dina in Support of Opposition
1/7/11	Affidavit of Kevin Johnsen in Support of Plaintiff's Opposition to ENA's Motion for Partial Summary Judgment (filed under seal)
1/11/11	Supplemental Reply Brief in Support of Defendant Qwest Communications Company Motion for Partial Summary Judgment on Counts Four and Five of Complaint
1/11/11	Affidavit of Steven J. Perfrement
1/13/11	Response to Defendants J. Michael Gwartney and Jack G. Zickau
1/13/10	Affidavit of Steven F. Schossberger
1/14/11	Second Affidavit of Stephen R. Thomas
1/14/11	Supplemental Submission in Opposition to Defendant ENAs Second Motion for Summary Judgment (filed under seal)
1/14/11	Reply Memorandum in Support of Motion for Summary Judgment
1/14/11	Reply Memorandum in Support of Second Motion for Summary Judgment
1/14/11	Affidavit of Counsel
1/14/11	Second Affidavit of Stephen R. Thomas
1/24/11	Response to Motion to Strike
1/24/11	Defendant ENA Services, LLC's Opposition to Plaintiff's Motion to Strike
2/14/11	Withdrawal of Defendant ENA Services, LLC's Second Motion for Summary Judgment

7. The Appellant requests the following documents, charts, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court:

All exhibits to the Affidavits listed above, including but not limited to,

Exhibits 1, 2 and 3 to the Affidavit of Patrick Roden filed January 4, 2011.

8. I certify:

- (a) That a copy of this Notice of Appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

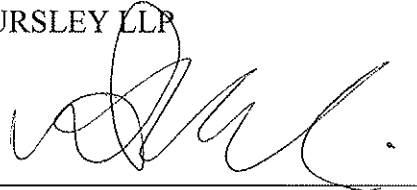
Kasey Redlich
Ada County Courthouse
Transcripts Department, 4th Floor
200 W. Front Street
Boise, ID 83702

- (b) That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript.
- (c) That the estimated fee for preparation of the clerk's or agency's record has been paid.
- (d) That the appellate filing fee has been paid.
- (e) That service has been made upon all parties required to be served pursuant to Rule 20 (and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code).

DATED this 18th day of April, 2011.

GIVENS PURSLEY LLP

By: _____


David R. Lombardi
Attorneys for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of April, 2011, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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