

COMMONWEALTH OF PENNSYLVANIA

RAY COMMUNICATIONS, INC. : BEFORE THE BOARD OF CLAIMS  
VS. :  
COMMONWEALTH OF PENNSYLVANIA, :  
STATE SYSTEM OF HIGHER EDUCATION, :  
CHEYNEY UNIVERSITY OF PENNSYLVANIA : DOCKET NO. 3390

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**FINDINGS OF FACT**

1. This matter originated with the filing of a Claim by the Claimant, Ray Communications, Inc., (hereinafter referred to as **ARay@ or AClaimant@**) on April 27, 2001, in the amount of \$178,750.73. (Docket No. 3390)
2. The Respondent, Commonwealth of Pennsylvania, State System of Higher Education, Cheyney University of Pennsylvania, (hereinafter referred to as **ACheyney@ or Athe Commonwealth@**) filed its Answer on May 29, 2001. (Docket No. 3390)
3. Ray is a Pennsylvania corporation with its place of business at 150 Monument Avenue, Suite 106, Bala-Cynwyd, Pennsylvania 19004. (Complaint and Answer, parag. 1)
4. Cheyney is an instrumentality of the Commonwealth of Pennsylvania, established pursuant to Article XX-A of the Public School Code of 1949, as amended, 24 P.S. 20-2001-A, et seq. (Complaint and Answer, parag. 2)
5. In April, 1999, Cheyney issued a Request for Proposal (**ARFP@**), soliciting bids for the installation of a computer network, linking five campus buildings at the University. (Exhibit C-1)
6. The RFP provided interested vendors with information in order to prepare and submit proposals for consideration by Cheyney for a fiber-to-desk design and installation with procurement and installation of the associated electronic equipment (switches, cabinet, routers, hubs, etc.). The RFP also required an inside structured cable plant in the following buildings at Cheyney: L.P. Hill Library, Harris-Turner, Duckrey Social Science Center, and Vaux Hall/Logan Annex. (Exhibit C-1, pg. 1 of 29; N.T. 22, 23)
7. Cheyney decided to utilize **A3Com@** equipment on the project and Ray=s Dennis Meskill, who was the technical project manager for the project, was familiar with the installation of 3Com networks. (N.T. 19, 21, 95)

8. On or about April 29, 1999, Ray submitted a best and final financial proposal and a best and final technical proposal resulting in Cheyney sending to Ray a fully-executed agreement (the ~~A~~Agreement@), for the network installation on September 29, 1999. The total contract price, on a not-to-exceed basis, without change orders, was \$965,833.72. (Exhibits C-2, C-3 and C-4, at pg. 26)

9. Ray Communications, prior to entering into the Agreement with Cheyney, sent a letter to Cheyney on July 21, 1999, submitting final pricing on its bid. Cheyney's RFP specified that the selected contractor would provide ~~A~~3-hour response as required for problem resolution support@; however, Ray's final pricing dated July 21, 1999, included a~~A~~4-hr. response year 1" valued at \$105,798.35. (Exhibit C-1, pg. 19 of 29, C-4)

10. Ray's technical proposal provided that Ray would provide ~~A~~24x7x4 service on all 3Com materials for the 3 year period required, pricing for the years 2 and 3 are separate and not included in the base year cost. (Exhibit C-3, pg. 11)

11. The term of Agreement ran from September 17, 1999 through June 30, 2002. (Exhibit C-4, Cheyney letter of September 29, 1999, and C-4, pgs. 26 and 42)

12. Cheyney had the right to terminate the contract ~~A~~for its convenience@, pursuant to paragraph 11(a), which reads as follows:

Termination of Agreement. The Commonwealth has the right to terminate the Contract for any of the following reasons. Termination shall be effective upon written notice to the Contractor:

- a. Termination of Agreement. The Commonwealth has the right to terminate the Contract for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover lost profits.

(Exhibit C-4, pg. 28)

13. The Agreement included, as exhibits, final pricing sheets dated June 16, 1999, which were submitted with Ray's letter of July 21, 1999, and the parties concur that the exhibits are part of the Agreement. (Exhibit C-4)

14. Where a particular vendor was to supply equipment or services, the vendor is identified in the pricing sheets in the margin. When 3Com equipment and services are identified, there is a notation A3C@in the margin on the pricing sheet. Where Ray was to supply equipment or services, there is no margin identification. The 4-hour response item is among those items. There is no dispute between the parties regarding this fact. (Exhibit C-4; N.T. 26, 27)

15. Ray was responsible to provide Aany work shown on the drawings and not particularly mentioned in the specifications and vice versa, and everything necessary for the completion and successful operation of the work. . . .@ (Exhibit C-4, pg. 3)

16. Harold Hudson was the project manager for Cheyney. This project was his first experience supervising a network installation. (N.T. 100, 101)

17. The technical lead on the project for Ray was Mr. Meskill, who had approximately 21 years of telecommunications experience for the U.S. Air Force and federal government, along with a few years of design experience. Mr. Meskill had about 12 years of computer networking experience within the 21 years of telecommunications experience and had a lot of training in 3Com networks. (N.T. 19, 21)

18. Ray had three individuals on staff, Mr. Meskill, Rodney Mothersbaugh, and Damien Cutillo, who were qualified to work on 3Com equipment. Mr. Meskill had attended training in Cisco equipment as well, and was certified on the type of ATM switches installed in the network installation at Cheyney. (N.T. 67, 68)

19. Rong-Dong Zhang was the technical lead on the project for Cheyney. (N.T. 169)

20. Mr. Harold Hudson, Cheyney's project manager, mistakenly believed that there was a contractual provision that required 3Com to perform the maintenance responsibility of the contract between Ray and Cheyney. During cross-examination, Mr. Hudson admitted that the final pricing sheets attached to the contract did not indicate that 3Com was to provide the maintenance service and that Cheyney's RFP gave the contractor responsibility for problem resolution. (N.T. 112-115)

21. Mr. Hudson testified that Cheyney never expected to have a maintenance agreement with Ray. (N.T. 179)

22. Mr. Hudson, when asked how many times he gave Ray an opportunity to come out and perform the maintenance service portion of the Cheyney contract, replied candidly, Anone.@ (N.T. 117)

23. Mr. Hudson established that in September, 2000, Cheyney Astarted to migrate@from 3Com equipment to Cisco equipment and signed a new contract for the maintenance response with another vendor. (N.T. 181)

24. As the contract work commenced, the parties discovered that the fiber installed in the campus building by another contractor did not reach as far as it was needed in each building and was not properly terminated. The parties agreed that Ray would extend and/or terminate and test the fiber for an additional \$22,000.00. The parties also agreed to delete 33 desktop drops and 161 NIC cards, and to add 22 drops at Cheyney=s Urban Center in West Philadelphia, which was not part of the original Agreement. A total of \$51,526 in additional work was requested and there was \$38,777 credit to Cheyney in equipment and services which was deleted, resulting in a net addition to the contract price of \$12,748. It is apparent from Ray=s claim and the record that the change order did not increase the total contract price above the not-to-exceed amount. (N.T. 29-33, 36; Exhibit C-5)

25. Ray completed its work in late March or early April, 2000, tested the network and turned the network over to Cheyney. Dr. W. Clinton Pettus, Cheyney=s President, agreed that the work done by Ray created a functional network which was satisfactory to Cheyney. (Pettus Deposition at pages 6 and 7; N.T. 28)

26. In April, 2000, Mr. Hudson and Mr. Meskill, as part of the contract close-out, conducted an inventory of the supplied equipment and materials. The inventory was based upon Mr. Meskill=s walk-through with Mr. Hudson. Mr. Hudson raised no objections to the inventory prepared by Mr. Meskill, has acknowledged that the inventory was Apretty much@ accurate and has identified no items with which he disagreed. (N.T. 41, 103; Exhibit C-9)

27. In May of 2000, Cheyney provided Ray with a punchlist, noting several items which Cheyney wanted completed before acceptance. According to Mr. Meskill, each of the items was completed. (N.T. 61-63)

28. Ray acknowledges that certain items were bid, but not supplied by Ray, and that Cheyney is entitled to credit against the aggregate contract/bid price determined by comparing the inventory sheets with the final pricing sheets. Ray acknowledges a credit due and owing to Cheyney of \$24,594.89. (Exhibit C-4, C-9 and Exhibit C to Ray=s Proposed Findings of Fact and Conclusions of Law)

29. Ray claims the unpaid amount under the contract is \$178,750.73 and, subtracting the credit of \$24,594.89, produces an alleged balance due of \$154,155.84. Ray=s total claim of \$169,509.76 includes interest at the rate of six percent (6%) from July 1, 2000, through March 1, 2003. (Complaint; N.T. 10)

30. R.D. Zhang estimated that fifty percent (50%) of the project installation was completed by Ray=s subcontractor, 3Com. (N.T. 170)

31. Mr. Zhang testified that the network never completely worked because it was never completely configured. (N.T. 170)

32. Mr. Zhang testified that he attempted to address the installation and configuring problem with Ray's personnel, but found them not to understand the technical issues. (N.T. 174, 175)

33. Karl Brockenbrough is the Vice-President for Finance Administration for Cheyney University and is also the Chief Financial Officer. Mr. Brockenbrough's role in the project was to review the financial information and insure that the project moved along and that the payments were made in a timely fashion. (N.T. 135, 136)

34. Mr. Brockenbrough established that Cheyney paid Ray \$200,587.86 for Invoice Nos. 993474 through 993478. (Exhibit D-4; N.T. 138)

35. Invoice Nos. 993474 through 993478 include a breakdown entitled **AContractor's Application for Payment@**, which contains the following amounts billed for the 4-hour maintenance response portion of the contract under the category **AValue of Work this Period@**.

Invoice No. 993474	\$1,658.64
Invoice No. 993475	\$4,471.48
Invoice No. 993476	\$2,622.97
Invoice No. 993477	\$712.36
Invoice No. 993478	\$20,861.90
 TOTAL	 \$30,327.35

(Exhibit D-4)

36. Mr. Brockenbrough also testified that Ray had claimed entitlement to \$45,331 for out-of-scope work which Cheyney had not approved. Mr. Brockenbrough, on behalf of Cheyney, refused to pay the out-of-scope work invoice because there was no indication regarding different labor rates, no payroll information, no time sheets and nothing of such a nature which might verify which people actually spent what number of hours working on the particular activities listed. (N.T. 142, 143; Exhibits D-2, C-19)

37. Mr. Brockenbrough also established that he refused to authorize the payment of \$32,501.27 billed by Ray for **Adisputed items@**because the back-up documentation illustrated a charge for \$15,000, for the 4-hour response time, but the sub-total was \$27,902.88. He stated that the figures did not add up, and therefore, he did not feel comfortable authorizing payment for the invoice. (N.T. 145; Exhibit C-19)

38. Mr. Brockenbrough also refused Ray's claims for out-of-scope materials which were disputed totaling \$27,813.96 and \$194,777.91. (N.T. 145-146; Exhibit D-2)

39. Mr. Brockenbrough also acknowledged that Cheyney University never utilized the services of Ray for the 4-hour response maintenance contract. (N.T. 150)

40. Cheyney claims certain items were Amissing@ and other items are Adisputed@; however, Ray responds that in fact more items were supplied than actually bid in response to the Amissing items@ claimed for credit. Ray also claims it supplied more than 40 extra pieces of equipment necessary to complete the project, even though they were not part of the original bid, with regard to Cheyney=s Adisputed items@ claim for credit. The missing items related to SSII switch 3300-24 port materials. The disputed items are summarized on Exhibit C-22. Ray does acknowledge a credit due Cheyney of \$24,594.89 based upon the unit prices taken from the pricing sheet. (Exhibits C-9, C-21, C-22; Exhibit C to Ray=s Proposed Findings of Fact )

41. Mr. Zhang acknowledged being paid specifically for the work at Cheyney, work that he claimed was Ray=s obligation, at the rate of \$43.84; however, no summary of Mr. Zhang=s hours was ever provided. (N.T. 173-177)

42. Ray was ready, able, and willing to perform the maintenance work under the contract with Cheyney. (N.T. 68, 69)

43. There is no dispute between the parties that Cheyney never authorized payment to Ray for the \$105,798.35 maintenance portion of the agreement. (N.T. 164, 181)

44. Cheyney has not claimed or submitted evidence to the effect that it ever terminated or attempted to terminate the Agreement (which included the first year maintenance provisions). (Record)

### **CONCLUSIONS OF LAW**

1. The Board of Claims has jurisdiction over the parties, as well as the subject matter of the claim, pursuant to 72 P.S. ' 4651-1, et seq.

2. Ray and Cheyney entered into a binding contract with an effective date of September 17, 1999, which was to run through June 30, 2002.

3. The total cost of the Agreement between Ray and Cheyney was on a not-to-exceed basis in the amount of \$965,833.72.

4. Cheyney=s RFP specified that the selected contractor would provide a 3-hour response for problem resolution and Ray=s technical proposal provided that Ray would provide a 24x7x4 service on all 3Com materials for the 3-year period required, with pricing for years 2 and 3 to be separate and not included in the base-year cost.

5. Ray completed its work in the Spring of 2000, tested the network as installed, and turned the network over to Cheyney, which network was functioning properly.

6. Cheyney's Hudson and Ray's Meskill, as part of the contract close-out, conducted an inventory of supplied equipment and materials and concluded that the inventory prepared by Meskill was essentially accurate.

7. Cheyney provided Ray with a punchlist which Cheyney wanted completed, and each of those items were completed.

8. Ray acknowledges a credit due Cheyney of \$24,594.89 for items bid that were not supplied by Ray.

9. The 4-hour response (year 1) maintenance portion of the contract has a value of \$105,798.35.

10. Ray has billed Cheyney, and Cheyney has paid for \$30,327.35 related to maintenance portions of the contract.

11. Cheyney never terminated the Agreement with Ray, including the maintenance portion thereof, pursuant to Paragraph 11(a).

12. Ray remained ready, willing, and able to complete the maintenance portion of the contract, but was never contacted by Cheyney to do so.

13. The net amount due Ray from Cheyney is \$50,876.11, broken down as follows:

Net amount for maintenance due under Contract:	\$105,798.35
Minus the credit of :	\$24,594.89
Minus amount previously billed and paid	
for maintenance contract:	\$30,327.35
 TOTAL DUE:	 \$50,876.11

### OPINION

The Claimant herein, Ray Communications (hereinafter referred to as "Ray") filed its Claim against the Commonwealth of Pennsylvania, State System of Higher Education, Cheyney University of Pennsylvania (hereinafter referred to as "Cheyney" or the "Commonwealth") on April 27, 2001, in the amount of

\$178,750.73+. Cheyney filed its Answer on May 29, 2001, and the parties engaged in discovery until September, 2002, when hearings on the matter were scheduled for November 4, 2002. Both parties submitted pre-trial statements, a hearing was held before this Board on November 4, 2002, and the hearing was completed that same day. Ray submitted its Proposed Findings of Fact, Conclusions of Law and Discussion on January 6, 2003. Cheyney filed its Proposed Findings of Fact, Conclusions of Law and Brief on February 10, 2003.

In April, 1999, Cheyney issued a Request for Proposal (ARFP@), soliciting bids for the installation of a computer network, linking five campus buildings at the University. The RFP provided interested vendors with information enabling them to prepare and submit proposals for Cheyney=s consideration relative to a fiber-to-desk design and installation, with procurement and installation of the associated electronic equipment. The RFP also required an inside structured cable plant at L.P. Hill Library, Harris-Turner, Duckrey Social Science Center, and Vaux Hall/Logan Annex, all buildings at Cheyney University. Cheyney chose to utilize 3Com equipment on the project. The technical project manager for the project, Ray=s Dennis Meskill, was familiar with the installation of such equipment and networks.

On or about April 29, 1999, Ray submitted Abest and final@financial and technical proposals which were accepted by Cheyney for the network installation on September 29, 1999. The contract price was a not-to-exceed amount totaling \$965,833.72. Prior to entering into the Agreement with Cheyney, Ray sent the University a letter on July 21, 1999, submitting its final pricing on its bid. Although Cheyney=s RFP specified that the selected contractor would provide A3-hour response as required for problem resolution support@, Ray=s submittal and final pricing included aA4-hr. response year 1" valued at \$105,798.35. Ray=s technical proposal provided that Ray would provide aA24x7x4 service on all 3Com materials for the 3 year

period required, with pricing for the years 2 and 3 being separate and not included in the base year cost.<sup>@</sup>

The Agreement ran from September 17, 1999 through June 30, 2002. The Agreement included as exhibits, final pricing sheets dated June 16, 1999, which were submitted with Ray's letter of July 21, 1999, and the parties concur these exhibits are part of the Agreement.

The parties also concur, per Cheyney's Proposed Findings of Fact, that where a particular vendor was to supply equipment or services, that vendor is identified in the pricing sheets in the margin. In other words, when 3Com equipment and services are identified, there is a concurrent notation in the margin on the pricing sheet, whereas when Ray was to supply equipment or service, there is no such margin identification. Ray was responsible to provide ~~A~~ny work shown on the drawings and not particularly mentioned in the specifications and vice versa, and everything necessary for the completion and successful operation of the work. . . <sup>@</sup> per the contract language. (Exhibit C-4, page 3) Besides Mr. Meskill, Ray had other individuals on staff who were qualified to work on 3Com equipment.

Rong-Dong Zhang was the technical lead on the project for the Commonwealth. Mr. Zhang estimated that 50% of the project installation was completed by Ray's subcontractor, 3Com. Mr. Zhang maintained the network never completely worked because it was never completely configured. Although he attempted to address the installation and configuring problems with Ray's personnel, he found them not to understand the technical issues.

As the fact finder, this Board has to judge the credibility of the witnesses and weigh their testimony. See Miller v. C.P. Centers, Inc., 334, Pa. Super. 623, 483 A.2d 912 (1984). While Mr. Zhang offered general concepts of alleged inefficiency as a basis for a reduction of Ray's claim, the concepts never ~~A~~gelled<sup>@</sup> in a sufficiently clear or convincing manner, and cannot be the subject of an offset. Mr. Zhang was quite

obviously exasperated with what he felt was inferior work on the part of the Claimant; however, his testimony was ineffectively presented and a definitive offset was never formulated.

Howard Hudson, Cheyney's project manager, believed that there was a contractual provision requiring 3Com to perform the maintenance responsibility of the contract between Ray and Cheyney. However, during cross-examination, Mr. Hudson admitted that the final pricing sheets attached to the contract did not indicate 3Com was to provide the maintenance service and that Cheyney's RFP gave Ray the responsibility for problem resolution. Apparently, Mr. Hudson never expected to have a maintenance agreement with Ray, and when asked how many times he gave Ray an opportunity to come out and perform the maintenance service portion of the Cheyney contract, he candidly admitted: *Anone.*@

As the contract work commenced, the parties discovered that fiber installed in the campus building by another contractor did not reach as far as it was needed in each building and was not properly terminated. The parties agreed that Ray would extend and/or terminate and test the fiber for an additional \$22,000. The parties also agreed to delete 33 desktop drops and 161 NIC cards, and to add 22 drops at Cheyney's Urban Center in West Philadelphia, which was not part of the original Agreement. A total of \$51,526 in additional work was requested, and there was a \$38,777 credit to Cheyney in equipment and services, which was deleted. All of this resulted in a net addition to the contract price of \$12,748. This amount did not increase the total contract price above the not-to-exceed amount.

Ray completed its work in late March or early April of 2000, tested the network and turned the network over to Cheyney. Dr. W. Clinton Pettus, Cheyney's President, agreed, in his deposition, that the work done by Ray was completed and, as to Phase One, was a functional network which was satisfactory to Cheyney, notwithstanding Mr. Zhang's testimony to the contrary. In April, 2000, Mr. Hudson and Mr.

Meskill, as part of the contract close-out, conducted an inventory of the supplied equipment and materials. The inventory was based on Mr. Meskill's walk-through with Mr. Hudson. Mr. Hudson raised no objections to the inventory prepared by Mr. Meskill and acknowledged that the inventory was Apretty much@ accurate. In May of 2000, Cheyney provided Ray with a punchlist, noting several items which Cheyney wanted completed before acceptance. According to Ray=s Mr. Meskill, each of the items was completed. Ray acknowledges that certain items were bid, but not supplied by Ray, and that Cheyney is entitled to a credit against the aggregate contract/bid price to Cheyney in the amount of \$24,594.89. Ray calculates its claim by subtracting that amount from the balance of the monies which were not paid under the total contract price (\$178,750.73), reducing the alleged balance due to \$154,155.84. Ray=s total claim of \$169,509.76 includes interest at the rate of 6% from July 1, 2000 through March 1, 2003.

Karl Brockenbrough, Cheyney=s Vice-President for Finance Administration and Chief Financial Officer, testified on behalf of the Commonwealth. His role on the project was to review the financial information and insure that the project moved along and that payments were made in a timely fashion. Mr. Brockenbrough established that he paid Cheyney \$200,587.86 for Invoice Nos. 993474 through 993478. These invoices, submitted by Ray, contained the following amounts billed for the 4-hour maintenance response portion of the contract under the category AValue of Work this Period@

Invoice No. 993474	\$1,658.64
Invoice No. 993475	\$4,471.48
Invoice No. 993476	\$2,622.97
Invoice No. 993477	\$712.36
Invoice No. 993478	\$20,861.90
<b>TOTAL</b>	<b>\$30,327.35</b>

Mr. Brockenbrough also testified that Ray claimed entitlement to \$45,331 for out-of-scope work which Cheyney had not approved. Mr. Brockenbrough refused this invoice because there was no indication regarding different labor rates, back-up payroll information, time sheets, etc., that might verify which people actually spent what hours working on behalf of the particular activities listed. Mr. Brockenbrough also established that he refused to authorize the payment of \$32,501.27 for ~~A disputed items@~~because the back-up documentation illustrated a charge that did not jibe with the subtotal claimed. For similar reasons, Mr. Brockenbrough also refused Ray's claim for out-of-scope materials.

We found Mr. Brockenbrough to be credible with regard to the invoice issue and concur with his refusal to honor invoices which were not properly documented. Contract damages cannot be awarded if the amount is too speculative or vague. See Spang & Co. v. U.S. Steel Corp., 519 Pa. 14, 545 A.2d 861 (1988).

Mr. Brockenbrough also acknowledged that Cheyney University never utilized the services of Ray for the 4-hour response maintenance contract. While Cheyney claimed that certain items were ~~A missing@~~ and other items were ~~A disputed@~~, Ray responds by noting, and in fact in certain instances proving, more items were supplied than were actually bid. Cheyney representatives seemed somewhat confused with respect to their testimony regarding these alleged ~~A missing@~~ and ~~A disputed@~~ items.

The parties agree that Cheyney never authorized payment to Ray for the \$105,798.35 maintenance

portion of the Agreement. Ray maintains that it was ready, able and willing to perform the maintenance work under the contract with Cheyney, and we concur.

Remarkably, there was a provision in the contract that permitted the Commonwealth to terminate the contract ~~for its convenience~~; however, Cheyney never advised Ray of its apparent desire to terminate the contract. Despite the fact, established by Mr. Hudson, that Cheyney signed a new contract for the maintenance response portion of this project with another vendor, Cheyney never advised Ray of this fact, in writing or otherwise. Paragraph 11(a) of the contract reads as follows:

Termination of Agreement. The Commonwealth has the right to terminate the Contract for any of the following reasons. Termination shall be effective upon written notice to the Contractor:

- a. Termination of Agreement. The Commonwealth has the right to terminate the Contract for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover lost profits.

(Exhibit C-4, page 28)

It is abundantly clear to this Board that Ray and Cheyney had a binding contract that ran from September 17, 1999 through June 30, 2002. The Board must interpret contracts as written. In construing a contract, each and every section of it must be taken into consideration, and the intention of the parties must be ascertained from the entire instrument. See John McShain, Inc. v. Commonwealth General State Authority, 9 Pa. Cmwlth. 427, 307 A.2d 469 (1973). In the instant case, although the Commonwealth had the ability to terminate the maintenance portion of the contract with Ray, it simply failed to do so. No credible evidence has been adduced that Ray was unwilling or unable to provide this service. Ray has billed

Cheyney, and Cheyney has paid for \$30,327.35 related to the maintenance portion of the contract. Ray acknowledges a credit due to Cheyney of \$24,594.89. The net amount due Ray from Cheyney is \$50,876.11, broken down as follows:

Net amount for maintenance due under Contract:	\$105,798.35
Minus the credit of :	\$24,594.89
Minus amount previously billed and paid for maintenance contract:	\$30,327.35
 TOTAL DUE:	 \$50,876.11

The Board flatly rejects Ray=s contention that the Claimant is entitled to the difference between the not-to-exceed amount of the contract and the amount actually paid. Unlike a@total cost@agreement, the contract in this case clearly states the @initial cost of this Agreement to the University shall not exceed . . . \$965,833.72. (Exhibit C-4, page 26). An appropriate Order shall be entered.

## ORDER

**AND NOW**, this 19th day of May, 2003, it is hereby **ORDERED** that an award in the amount of Fifty Thousand Eight Hundred Seventy-Six Dollars and Eleven Cents (\$50,876.11) shall be entered in favor of the Claimant, Ray Communications, Inc., and against the Commonwealth of Pennsylvania, State System of Higher Education, Cheyney University of Pennsylvania. Each party shall bear its own costs. Interest shall be paid by the Respondent in the amount of 6% from the date of July 1, 2001.

## BOARD OF CLAIMS

Jeffrey F. Smith  
Chief Administrative Judge

# Opinion Signed

John R. McCarty  
Citizen Member