**Before the**

**Federal Communications Commission**

**Washington, D.C. 20554**

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| In the Matter of  Request for Review of Decisions of the Universal Service Administrator for  Stillwater Area Public Schools #834  Schools and Libraries Universal  Service Support Mechanism  Funding Year 2016  Form 471 App 161040478  FRNs 1699144934 and 1699144935 | **)**  **)**  **)**  **)** | CC Docket No. 02-06 |

**Request for Review**

Stillwater Area Public Schools1 (“Stillwater PS”), pursuant to and in accordance with Sections 54.719 – 54.725 of the Federal Communications Commission’s (“FCC” or Commission”) rules, hereby requests FCC overturn the denial issued in the Funding Commitment Decision Letter issued by the Universal Service Administrative Company (“USAC”), as administrator of the National Education Rate Program (“E-rate”), upheld in an appeal filed with on April 20, 2017. In particular, Stillwater PS appeals the Administrator’s Decision on Appeal – Funding Year 2016-2017, dated November 27, 2017 (See *Exhibit 1* - *USAC Appeal Denial*2

An appeal was submitted to USAC on April 20, 2017, within 60 days of the Funding Commitment Decision Letter issuance, (see *Exhibit 2 - Stillwater Area PS 834 USAC Appeal BEN 133553, Form 471#161040478, FRNs 1699144934 and 1699144935*). The appeal requested that the funding denial issued by USAC on March 2, 2017 be overturned and that FRNs 1699144934 and 1699144935 revert to the status of “Funded”. The Administrator’s Decision on Appeal Letter was issued by USAC denying our appeal on November 27, 2017 (see *Exhibit 1 - USAC Appeal Denial*) .USAC concluded that the solution selected by the applicant was not the most cost effective solution as required by competitive bidding rules in regards to FCC Form 471 161040478 FRNs 1699144934 and 1699144935.

Stillwater PS respectfully requests the Commission to overturn the USAC appeal denial and restore FCC Form 471 161040478 FRNs 1699144934 and 1699144935 to the amounts requested in the Funding Commitment Decision letter attached to this request for review (see *Exhibit 3 - Funding Commitment Decision Letter*. Any other action would be contrary to the spirit and goals of the E-rate Program.

**Background**

Stillwater Area Public Schools #834 3 is a district located in Stillwater, Minnesota and is comprised of seven elementary schools, two middle schools, one high school, and one alternative learning center. Under this regulatory authority, Stillwater Area Public Schools #834 annually submits E-rate application(s) for eligible services. Prior to E-rate Funding Year 2016-2017, Stillwater PS’s Wide Area Network was a leased dark fiber solution. In the months leading up to the posting of Stillwater PS’s FY 2016-2017 Form 470 160027292 that requested both Lit Fiber and Dark Fiber, the district underwent a complete refresh of all the equipment necessary to light the fiber. This upgrade included routers and switches as well as the implementation of single mode fiber. Stillwater PS posted FCC Form 470# 160027292 for FY 2016-2017 with an accompanying RFP seeking quotes for both Lit Fiber and Dark Fiber as the term of their existing dark fiber contract was set to expire on June 30, 2016. The District received proposals from 3 service providers and a total of nine options that consisted of various lit fiber and dark fiber solutions. Stillwater PS evaluated the proposals with Price of E-rate Eligible Services as the primary factor and Zayo Group, LLC’s Dark Fiber Option 1 was awarded as the most cost-effective solution. Upon additional inspection of the proposals the District realized that Zayo’s two proposed leased dark fiber options (Option 1 and Option 2) were technically identical to each other with the only difference being the payment schedule for the $100,000 construction costs to add a new school to the district’s wide area network. Option 1 reflected the $100,000 as a one-time, non-Recurring cost to be paid in year 1 of the 60 month contract. Option 2 amortized the $100,000 over the 60 month contract term. Based on the fact that the costs for either solution would be identical over both 5 year and 10 year terms, the district opted to go with Option 2 and amortize the construction costs.

Stillwater PS’s FCC Form 471 161040478 underwent USAC’s Program Integrity Assurance (“PIA”) review from the period of September 23, 2016 through February 23, 2017. After multiple rounds of PIA review a Denial Notification was issued for FRNs 1699144934 and 1699144935 with the rationale that the applicant failed to select the most cost-effective solution. The applicant rebutted this determination by submitting pages from the actual bid response that very clearly showed, side by side that Option 1 and Option 2 (See *Exhibit 4 - Zayo Bid Response* page 11) are the same exact solution and cost but with different payment schedules for the $100,000 construction costs. The cost calculation spreadsheet that the district used to calculate the costs for all of the proposed solutions was submitted during PIA. It was pointed out to PIA that there were errors in a few of the formulas within the district’s cost calculation worksheet, however the supporting bid responses substantiated the district’s selection. The assertion that Option 1 and Option 2 were identical on every level except for the timing in which the $100,000 would be paid was justified by Zayo’s bid response. Below is a screenshot of the cost calculation worksheet. The only modifications made are Notes in red font for the purpose of explaining the formula errors which applied to the original calculations for Zayo-DF WAN Pricing Option 1 and Zayo – DF WAN Pricing Option 2. The unedited original is attached as *Exhibit 5 Dark – Lit Fiber Cost Comparison – original,* Edited with notes is *Exhibit 6 Dark – Lit Fiber Cost Comparison – edited*



On March 2, 2017 Stillwater Area Public Schools was issued their Funding Commitment Decision denying FRNs 1699144934 and 1699144935 with the FCDL Comments: ***FCC Rules require applicants to evaluate the cost effectiveness of the fiber solutions and to choose the most cost effective solution. Documentation provided failed to demonstrate that the Dark Fiber solution # 2 from Zayo Group, LLC is more cost effective than the requested Dark Fiber solution # 1 from Zayo Group LLC based on total cost. Therefore, the applicant has violated the competitive bidding program rules***.

On April 20, 2017 an appeal was submitted to USAC that would include all of the documentation and recalculations, which could be corroborated to prove that the District was complicit with all of the FCC’s E-rate competitive bidding rules (See *Exhibit 2 -Stillwater Area PS 834 USAC Appeal BEN 133553 471#161040478, FRNs 1699144934 and 1699144935)*. After seven months of no outreach from USAC a Revised Funding Commitment Decision Letter stating Denial was issued on November 27, 2017 with the following rationale ***USAC denied your funding request because you did not demonstrate that the Dark Fiber solution # 2 from Zayo Group, LLC is more cost effective than the other alternative solution you requested during the competitive bidding process, specifically the Dark Fiber solution # 1 from Zayo Group LLC as alternative solution based on total cost. As a result, you did not demonstrate that services requested in FRN 1699144934 were the most cost effective solution as required by competitive bidding rules for this service type. Your appeal did not show that USAC’s determination was incorrect. Consequently, your appeal is denied.***

We can only conclude that USAC did not perform an adequate assessment of the appeal and the related documents otherwise the appeal would have been approved. Below are screen shots of the cost proposal pages from every bid response received. With the exception of the formula errors that were previously clarified in this appeal, all costs tie to the cost calculation sheet and therefore support that Stillwater PS awarded their contract in compliance with competitive bidding rules.

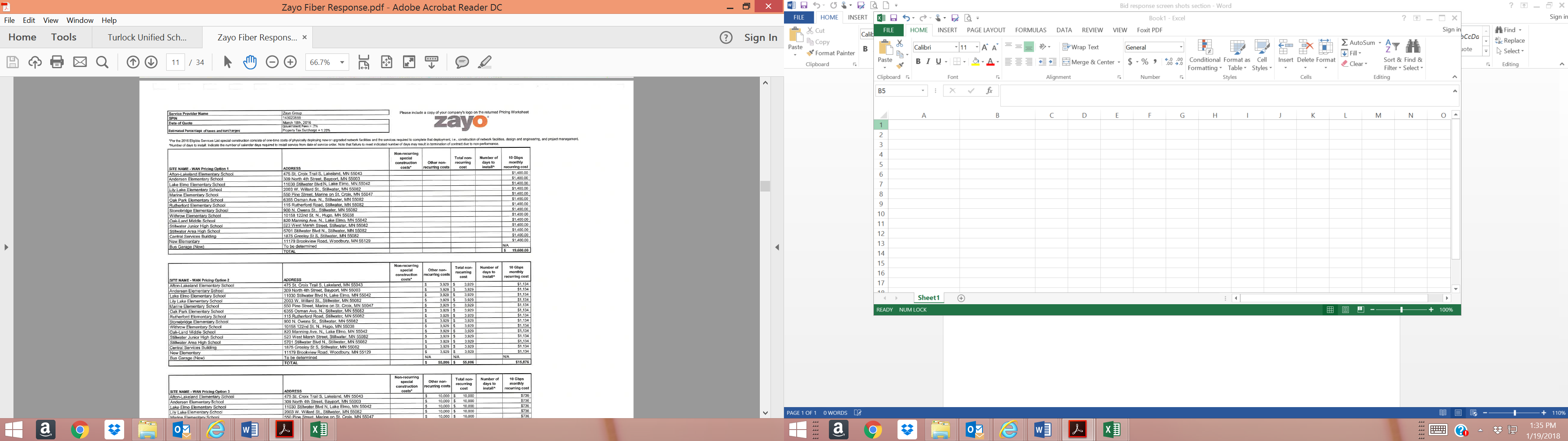
Zayo WAN Pricing Option 1

Column B of *Exhibit* 5 *Dark – Lit Fiber Cost Comparison – original, Exhibit 6 Dark – Lit Fiber Cost Comparison - edit*

Annual Cost: $235,200

5 Year Cost: $1,176,000

10 Year Cost: $2,352,000



Zayo WAN Pricing Option 2

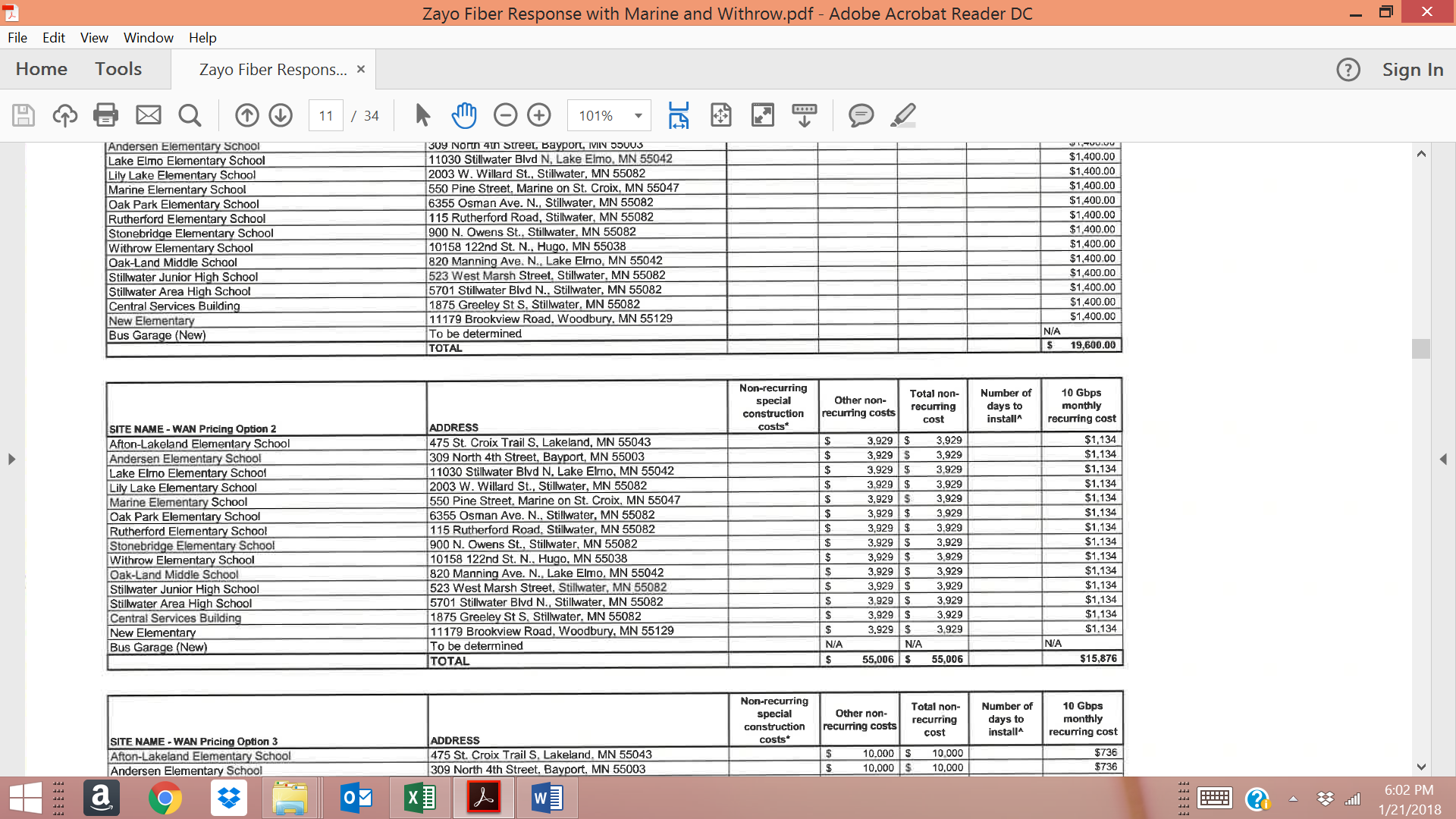
Column C of *Exhibit* 5 *Dark – Lit Fiber Cost Comparison – original, Exhibit 6 Dark – Lit Fiber Cost Comparison - edit*

Annual Cost: $190,512

One-Time NRC: $55,006

5 Year Cost: $1,007,566

10 Year Cost: $1,960,126



Zayo WAN Pricing Option 3

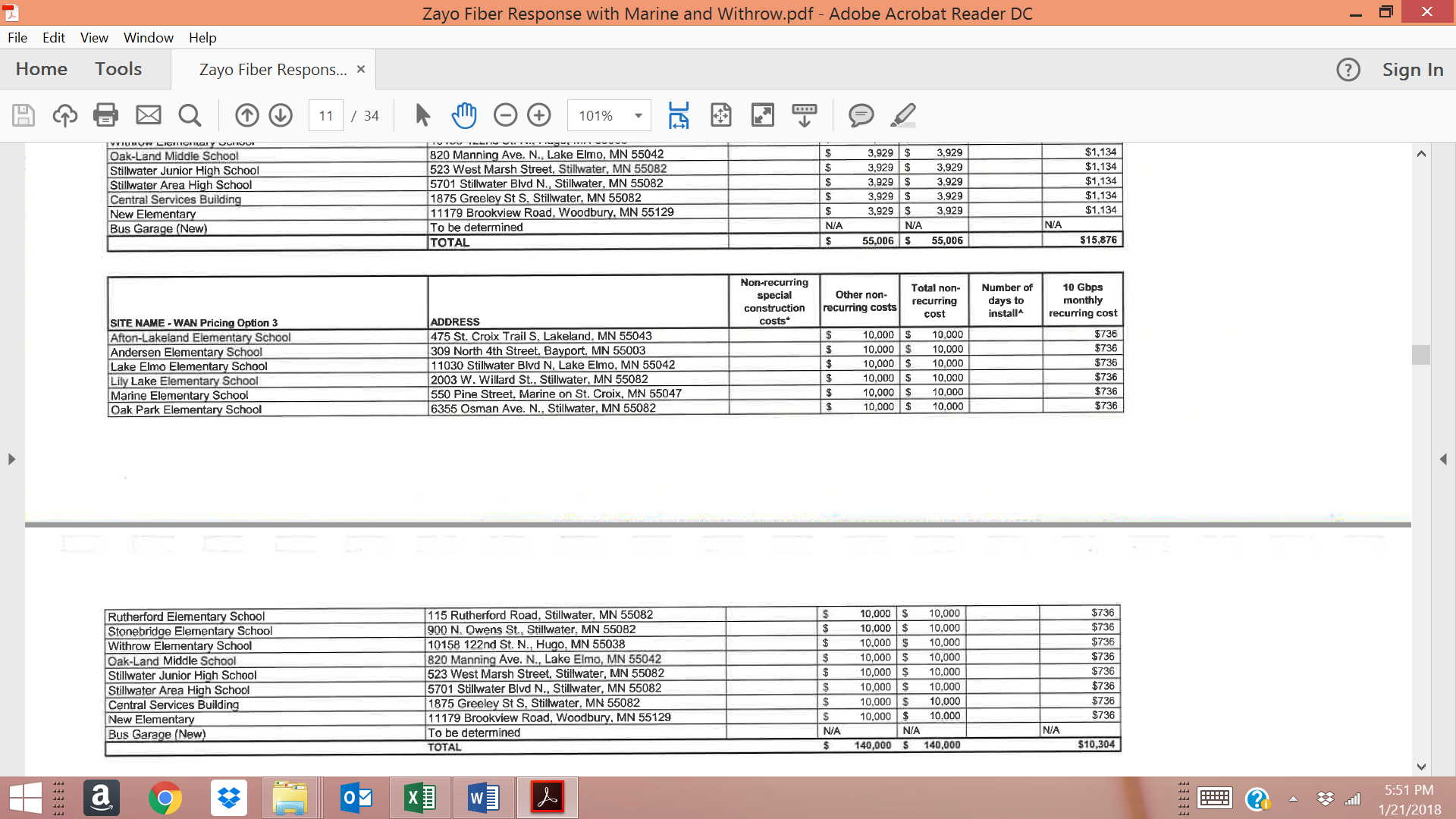
Column D of *Exhibit* *5 Dark – Lit Fiber Cost Comparison – original, Exhibit 6 Dark – Lit Fiber Cost Comparison - edit*

Annual Cost: $123,648

One-Time NRC:$140,000

5 Year Cost: $758,240

10 Year Cost: $1,376,480



Zayo DF WAN Pricing Option 1

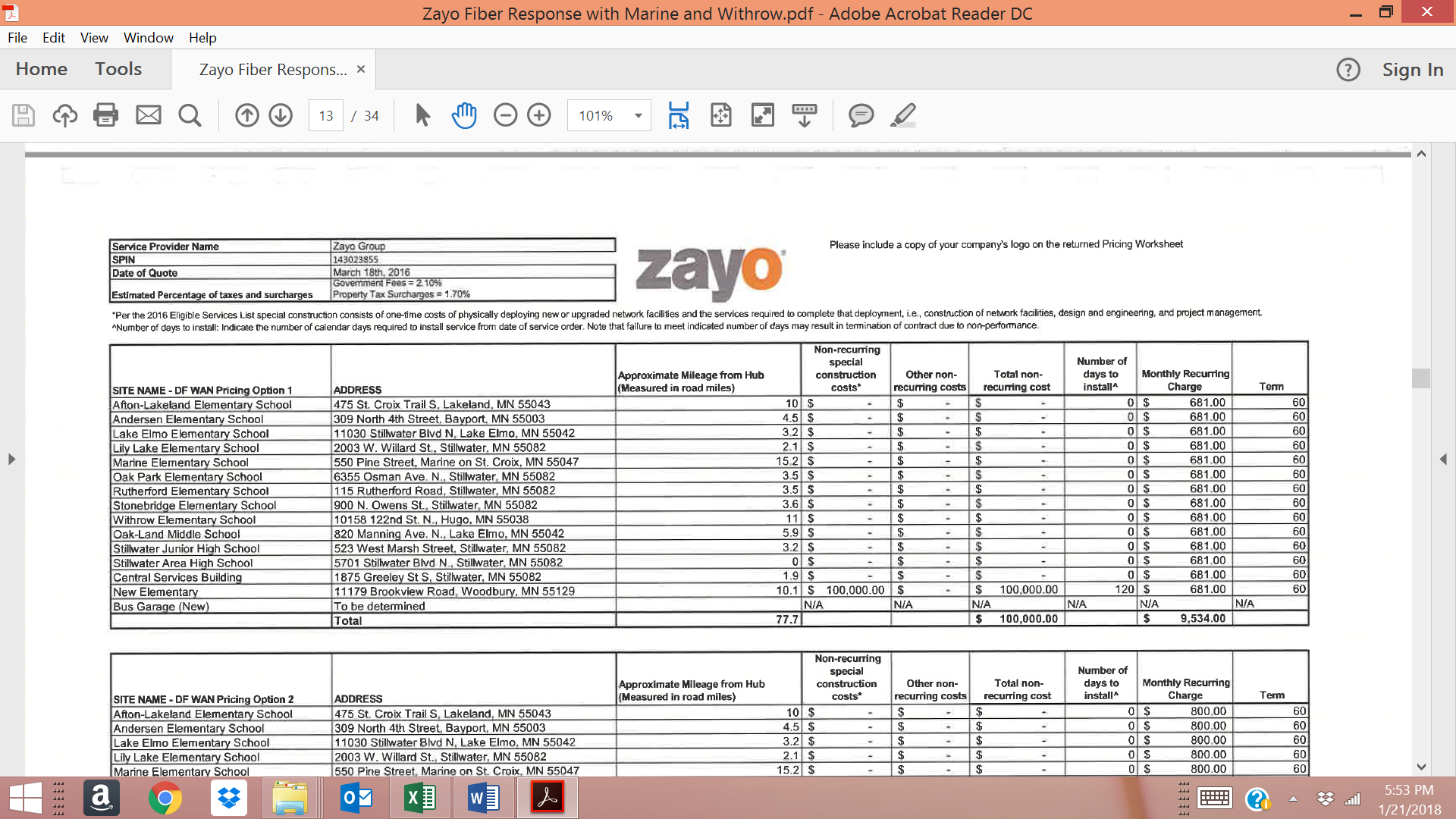
Column E of *Exhibit* 5 *Dark – Lit Fiber Cost Comparison – original, Exhibit 6 Dark – Lit Fiber Cost Comparison - edit*

Annual Cost: $114,408

One-Time NRC:$100,000

5 Year Cost: $672,040

10 Year Cost: $1,244,080



Zayo DF WAN Pricing Option 2

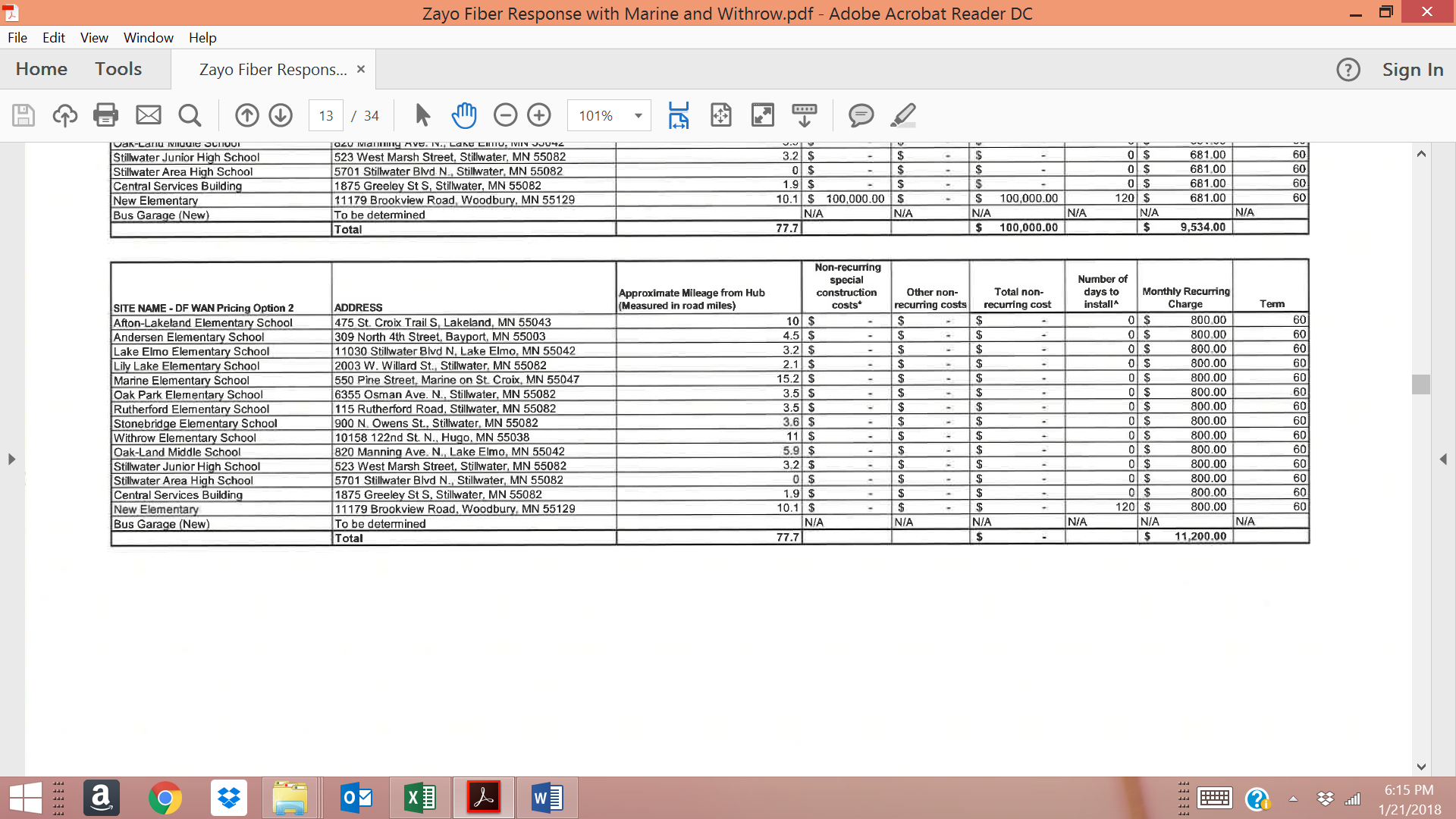
Column F of *Exhibit* 5 *Dark – Lit Fiber Cost Comparison – original, Exhibit 6 Dark – Lit Fiber Cost Comparison - edit*

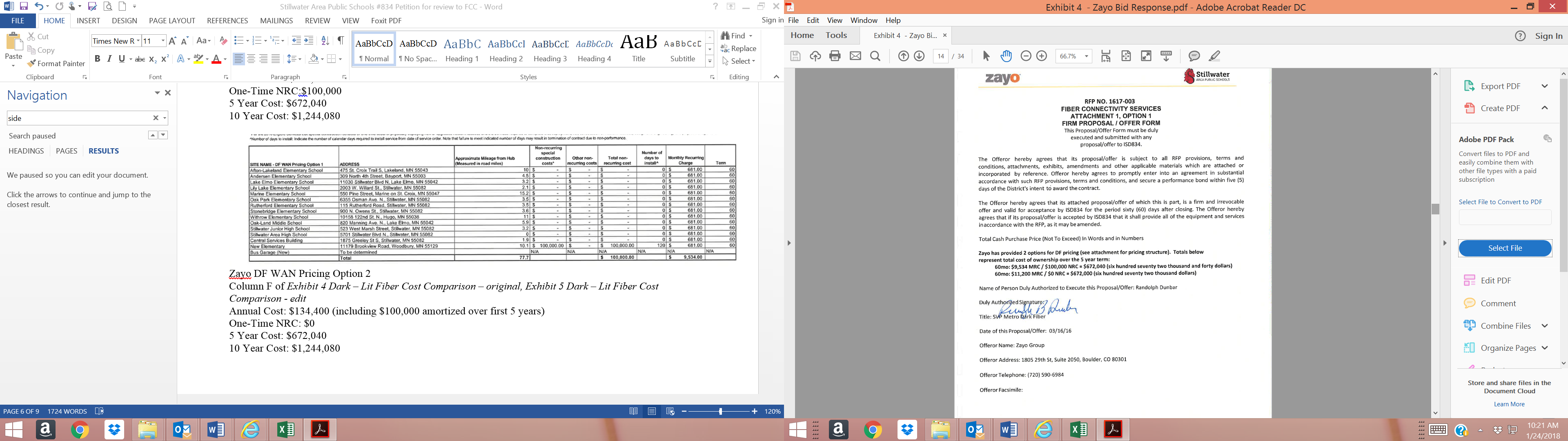
Annual Cost: $134,400 (including $100,000 amortized over first 5 years)

One-Time NRC: $0

5 Year Cost: $672,040

10 Year Cost: $1,244,080





Arvig - Lit Fiber

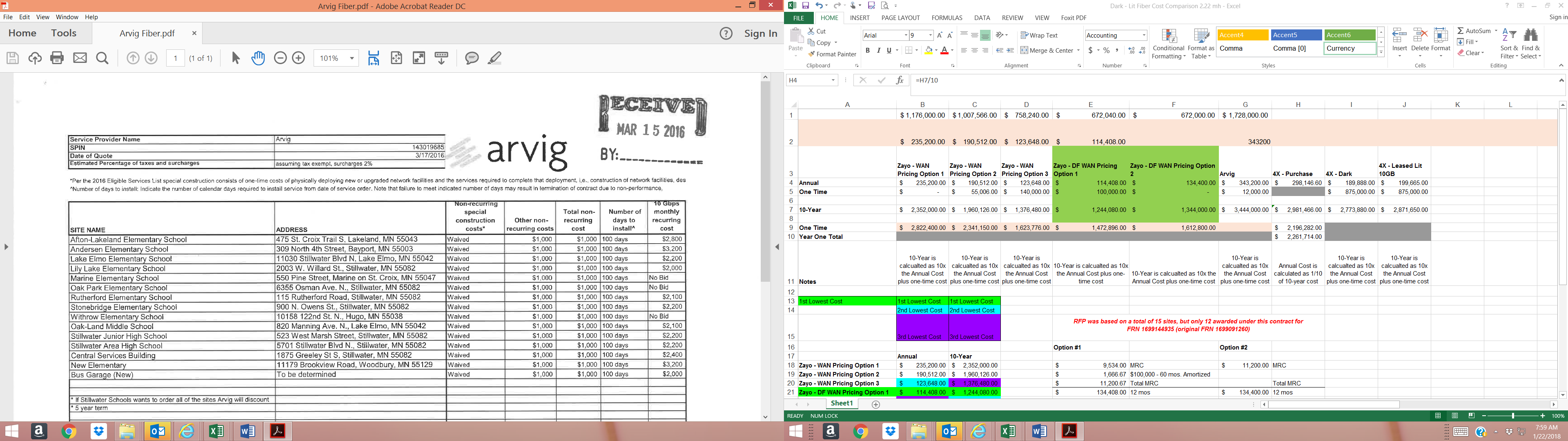
Column G of *Exhibit* 5 *Dark – Lit Fiber Cost Comparison – original, Exhibit 6 Dark – Lit Fiber Cost Comparison - edit*

Annual Cost: $343,200

One-Time NRC: $12,000

5 Year Cost: $1,728,000

10 Year Cost: $3,444,000



4X - Self Provisioned

Column H of *Exhibit* *5 Dark – Lit Fiber Cost Comparison – original, Exhibit 6 Dark – Lit Fiber Cost Comparison - edit*

Annual Cost: $298,146.60

One-Time NRC:$2,196,282

5 Year Cost: $1,490,733

10 Year Cost: $2,981,466

4X - Leased Dark

Column I of *Exhibit* 5 *Dark – Lit Fiber Cost Comparison – original, Exhibit 6 Dark – Lit Fiber Cost Comparison - edit*

Annual Cost: $189,888

One-Time NRC:$875,000

5 Year Cost: $1,824,440

10 Year Cost: $2,773,880

4X - 10 gbps Leased Lit

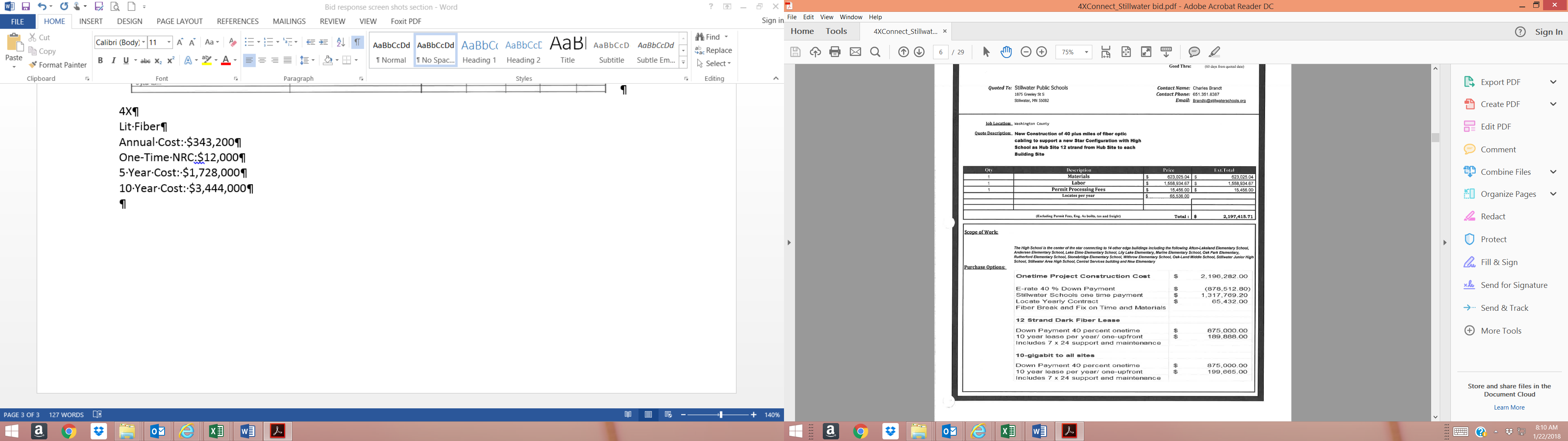
Column J of *Exhibit* 5 *Dark – Lit Fiber Cost Comparison – original, Exhibit 6 Dark – Lit Fiber Cost Comparison - edit*

Annual Cost: $199,665

One-Time NRC:$875,000

5 Year Cost: $1,873,325

10 Year Cost: $2,871,650



**Conclusion**

Stillwater Area Public Schools 834 respectfully requests review of the FCC’s program rules pertaining to USAC’s determination that the district violated competitive bidding rules by not selecting the most cost effective solution. Stillwater Area Public Schools #834 was complicit in following all of the FCC’s competitive bidding rules and have justified their decision to award Option 2 of Zayo’s proposal.

Respectfully Submitted,

/S/

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1 Stillwater Area Public Schools 834’s Billed Entity Number (BEN) is 133553

2 This Request for Review is timely filed in accordance with Sections 54.720 and 1.4 of the Commission’s Rules within 60 days of the denial of the USAC appeal – Dated November 27, 2017

3 District information available at <https://stillwaterschools.org/district>