

**REQUEST FOR WAIVER  
OF HOOKS (TEXAS) INDEPENDENT SCHOOL DISTRICT**

June 18, 2018

Ms. Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Docket No. 02-6  
Request for Waiver of Hooks Independent School District, BEN: 140646  
FY2018, Form 471 #181037211

Dear Ms. Dortch:

On behalf of Hooks Independent School District (Hooks ISD), a public school district, I am respectfully requesting a waiver of section 54.504(a) of the Commission's rules.

The applicant is respectfully requesting a waiver in order to change the One-Time Cost of \$3,200 to a Monthly Cost. This will result in a corrected pre-discount annual cost of \$38,400.

As the Commission noted in its *Bishop Perry Order*, the Commission has allowed applicants to correct ministerial and clerical errors made on their FCC forms.<sup>1</sup> Here, this error was of the type that USAC could have corrected had the applicant noted the error before the funding commitment decision letter was issued.<sup>2</sup> Unfortunately, however, Hooks ISD did not notice the error until after the FCDL was issued on April 21, 2018, and so USAC no longer has the authority to make the correction.<sup>3</sup>

Hooks ISD submitted FCC Form 471 #181037211 for E-rate FY2018 on March 21, 2018. Funding request number 1899071940 was submitted for Internet access.<sup>4</sup> Its contract was

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<sup>1</sup> See *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, FCC 06-54, 21 FCC Rcd 5316, 5326-27 ¶¶ 22-23 (2006) (directing USAC to provide applicants with an opportunity to cure ministerial and clerical errors on the FCC Forms that they submit to USAC).

<sup>2</sup> <http://www.usac.org/sl/applicants/step01/clerical-errors.aspx>; see *Request for Review of the Decision of the Universal Service Administrator by Ann Arbor Public Schools, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 10-2354, ¶ 2 n.12 (WCB 2010).

<sup>3</sup> This appeal is being filed within 60 days of the issuance of the FCDL, per Commission rules at 47 C.F.R. § 54.720.

<sup>4</sup> See Exhibit 1, page 4.

properly uploaded into the USAC portal.<sup>5</sup> The contract shows a charge of \$3,200 per month for a total annual charge of \$38,400.<sup>6</sup>

The applicant correctly described the services in the narrative for FRN 1899071940 as “internet access service that includes a connection from any applicant site directly to the Internet Service Provider.”<sup>7</sup> However, the monthly recurring charge of \$3,200 was erroneously entered into the One-Time Cost category, rather than the Monthly Cost category.<sup>8</sup> This ministerial error might have been identified if the PIA reviewer had compared the uploaded contract to the FRN.

Any of the Commission’s rules may be waived if good cause is shown.<sup>9</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>10</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>11</sup>

We note that the Bureau has granted numerous waiver requests of this type, allowing applicants to correct their ministerial and clerical errors,<sup>12</sup> and we respectfully request that the Bureau grant this waiver request as well.

/s/ Russell Neal  
\_\_\_\_\_  
Russell Neal, CEMP  
VST Services, LP  
905 Trophy Club Drive # 202  
Trophy Club, TX 76262  
682-237-7670  
rneal@vstservices.com

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<sup>5</sup> See Exhibit 2.

<sup>6</sup> *Id.*

<sup>7</sup> Exhibit 1, page 4.

<sup>8</sup> Exhibit 1, page 4.

<sup>9</sup> 47 C.F.R. § 1.3.

<sup>10</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

<sup>11</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>12</sup> *Requests for Review of Decisions of the Universal Service Administrator by Archer Public Library et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15518 (Wireline Comp. Bur. 2008); *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 17319 (Wireline Comp. Bur. 2010); *Request for Waiver and Review of Decisions of the Universal Service Administrator by Erie I BOCES et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 13381 (Wireline Comp. Bur. 2013) (Erie I BOCES Order) (granting appeals and petitions for reconsideration from petitioners seeking a waiver of the Commission’s E-rate rules in order to correct ministerial or clerical errors on petitioners’ E-rate applications or associated forms).

## **Exhibit 1**



## Description of Services Ordered and Certification Form 471

### FCC Form 471

#### Application Information

<b>Nickname</b>	Hooks ISD 2018 Internet Access	<b>Application Number</b>	181037211
<b>Funding Year</b>	2018	<b>Category of Service</b>	Category 1

#### Billed Entity

HOOKS INDEP SCHOOL DISTRICT  
100 EAST 5TH. STREET HOOKS TX 75561  
903-547-6077

#### Contact Information

Russell Neal  
682-237-7670  
rneal@vstservices.com

<b>Billed Entity Number</b>	140646
<b>FCC Registration Number</b>	0011957016
<b>Applicant Type</b>	School District

<b>Holiday/Summer Contact Information</b>	Russell Neal / 682-237-7670
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#### Consulting Firms

Name	Consultant Registration Number	City	State	Zip Code	Phone Number	Email
COLLECT-ED LLC	16062522	Mustang	OK	73064	405-830-2200	collect-ed@hotmail.com
VST Services LP	16043688	Trophy Club	TX	76262	682-237-7670	RNeal@vstservices.com

#### Entity Information

##### School District Entity - Details

BEN	Name	Urban/ Rural	State LEA ID	State School ID	NCES Code	School District Attributes	Endowment
140646	HOOKS INDEP SCHOOL DISTRICT	Rural		019902		Public School District	None

#### Related Entity Information

##### Related Child School Entity - Details

BEN	Name	Urban/ Rural	State LEA ID	State School ID	NCES Code	Alternative Discount	School Attributes	Endowment
86627	HOOKS ELEMENTARY SCHOOL	Rural	019902	019902102	48 - 23490-2381	None	Pre-K; Public School	None
86628	HOOKS HIGH SCHOOL	Rural	019902	019902002	48 - 23490-2382	None	Public School	None

<b>BEN</b>	<b>Name</b>	<b>Urban/ Rural</b>	<b>State LEA ID</b>	<b>State School ID</b>	<b>NCES Code</b>	<b>Alternative Discount</b>	<b>School Attributes</b>	<b>Endowment</b>
86629	HOOKS JUNIOR HIGH SCHOOL	Rural	019902	019902041	48 - 23490-2383	None	Public School	None

### Related Child School Entity - Discount Rate Calculation Details

<b>BEN</b>	<b>Name</b>	<b>Urban/ Rural</b>	<b>Number of Students</b>	<b>Students Count Based on Estimate</b>	<b>CEP Percentage</b>
86627	HOOKS ELEMENTARY SCHOOL	Rural	329	N/A	
86628	HOOKS HIGH SCHOOL	Rural	352	N/A	
86629	HOOKS JUNIOR HIGH SCHOOL	Rural	261	N/A	

### Related School District NIFs

<b>School District BEN</b>	<b>School District Name</b>	<b>NIF BEN</b>	<b>NIF Name</b>
140646	HOOKS INDEP SCHOOL DISTRICT	16083340	HOOKS INDEP SCHOOL DISTRICT - ADMIN

### Discount Rate

<b>School District Enrollment</b>	<b>School District NSLP Count</b>	<b>School District NSLP Percentage</b>	<b>School District Urban/ Rural Status</b>	<b>Category One Discount Rate</b>	<b>Category Two Discount Rate</b>	<b>Voice Discount Rate</b>
942	506	54.0%	Rural	80%	80%	0%

## Funding Request for FRN #1899071940

**Funding Request Nickname:** Network USA Internet Access 1 Gbps

**Service Type:** Data Transmission and/or Internet Access

### Agreement Information - Contract

<b>Contract Number</b>	Network USA IA	<b>Account Number</b>	Network USA
<b>Establishing FCC Form 470</b>	180024909	<b>Service Provider</b>	Network USA LLC (SPN: 143035892)
<b>Was an FCC Form 470 posted for the product and/or services you are requesting?</b>	Yes	<b>Based on State Master Contract?</b>	No
<b>Award Date</b>	March 21, 2018	<b>Based on a multiple award schedule?</b>	No
<b>How many bids were received for this contract?</b>	4	<b>Includes Voluntary Extensions?</b>	Yes
<b>What is the service start date?</b>	July 01, 2018	<b>Remaining Voluntary Extensions</b>	2
		<b>Total Remaining Contract Length</b>	60
		<b>What is the date your contract expires for the current term of the contract?</b>	June 30, 2021

Document Name	Document Description
Hooks ISD 1G internet countersigned.pdf	Contract with Network USA for 1 Gbps Internet Access, 36 months + 2 One year Extensions.

### Pricing Confidentiality

**Is there a statute, rule, or other restriction which prohibits publication of the specific pricing information for this contract?** No

**Narrative** 1 Gbps Internet Access Provided by Network USA LLC

Line Item # 1899071940.001

Product and Service Details

**Purpose** Internet access service that includes a connection from any applicant site directly to the Internet Service Provider

**Function** Fiber

**Type of Connection** Ethernet

Bandwidth Speed

**Upload Speed** 1.0 Gbps **Download Speed** 1.0 Gbps

Connection Information

**Does this include firewall services?** No **Is this a connection between eligible schools, libraries and NIFs (i.e., a connection that provides a “Wide area network”)?** No

**Is this a direct connection to a single school, library or a NIF for Internet access?** Yes

Cost Calculation for FRN Line Item # 1899071940.001

Monthly Cost	
Monthly Recurring Unit Cost	\$0.00
Monthly Recurring Unit Ineligible Costs	- \$0.00
Monthly Recurring Unit Eligible Costs	= \$0.00
Monthly Quantity	x 0
Total Monthly Eligible Recurring Costs	= \$0.00
Months of Service	x 12
Total Eligible Recurring Costs	= \$0.00

One-Time Cost	
One-time Unit Cost	\$3,200.00
One-time Ineligible Unit Costs	- \$0.00
One-time Eligible Unit Cost	= \$3,200.00
One-time Quantity	x 1
Total Eligible One-time Costs	= \$3,200.00
Summary	
Total Eligible Recurring Costs	\$0.00
Total Eligible One-time Costs	+ \$3,200.00
Pre-Discout Extended Eligible Line Item Cost	= \$3,200.00

Recipients of Services

BEN	Name
86627	HOOKS ELEMENTARY SCHOOL
86628	HOOKS HIGH SCHOOL
86629	HOOKS JUNIOR HIGH SCHOOL
16083340	HOOKS INDEP SCHOOL DISTRICT - ADMIN



FRN Calculation for FRN #1899071940

Monthly Charges	
Total Monthly Recurring Charges	\$0.00
Total Monthly Ineligible Charges	- \$0.00
Total Monthly Eligible Charges	= \$0.00
Total Number of Months of Service	x 12
Total Eligible Pre-Discount Recurring Charges	= \$0.00

One-Time Charges	
Total One-Time Charges	\$3,200.00
Total Ineligible One-Time Charges	- \$0.00
Total Eligible Pre-Discount One-Time Charges	= \$3,200.00

Total Requested Amount	
Total Eligible Pre-Discount Recurring Charges	\$0.00
Total Eligible Pre-Discount One-Time Charges	+ \$3,200.00
Total Pre-Discount Charges	= \$3,200.00
Discount Rate	80%
Funding Commitment Request	= \$2,560.00

Connectivity Questions

District/System-wide Internet Access Questions

Does your school district currently aggregate Internet access for the entire district(as opposed to buying Internet access on a building-by-building basis)? Yes

Download Speed 1.00 Download Speed Units Gbps  
Upload Speed 1.00 Upload Speed Units Gbps

Per Entity Basis Questions

Entity Name HOOKS INDEP SCHOOL DISTRICT Entity Number 140646

BEN	Entity Name	Download	Units	Upload	Units	Connection	Wifi Sufficient	Barriers to Robust Network
86627	HOOKS ELEMENTARY SCHOOL	10.00	Gbps	10.00	Gbps	Fiber	Completely	Equipment too costly
86628	HOOKS HIGH SCHOOL	10.00	Gbps	10.00	Gbps	Fiber	Completely	Equipment too costly
86629	HOOKS JUNIOR HIGH SCHOOL	10.00	Gbps	10.00	Gbps	Fiber	Completely	Equipment too costly

Certifications

I certify that the entities listed in this application are eligible for support because they are schools under the statutory definitions of elementary and secondary schools found in the No Child Left Behind Act of 2001, 20 U.S.C. §§ 7801(18) and (38), that do not operate as for-profit businesses and do not have endowments exceeding \$50 million.

I certify that the entity I represent or the entities listed on this application have secured access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity, necessary to use the services purchased effectively. I recognize that some of the aforementioned resources are not eligible for support. I certify that the entities I represent or the entities listed on this application have secured access to all of the resources to pay the discounted charges for eligible services from funds to which access has been secured in the current funding year. I certify that the Billed Entity will pay the non-discount portion of the cost of the goods and services to the service provider(s).

Total Funding Summary

Below is a summary of the total line item costs on this FCC Form 471:

Summary	
Total funding year pre-discount eligible amount on this FCC Form 471	\$3,200.00
Total funding commitment request amount on this FCC Form 471	\$2,560.00
Total applicant non-discount share of the eligible amount	\$640.00
Total budgeted amount allocated to resources not eligible for E-rate support	\$104,696.00
Total amount necessary for the applicant to pay the non-discount share of eligible and any ineligible amounts	\$105,336.00
Are you receiving any of the funds directly from a service provider listed on any of the FCC Forms 471 filed by this Billed Entity for this funding year?	No
Has a service provider listed on any of the FCC Forms 471 filed by this Billed Entity for this funding year assisted you in locating funds needed to pay your non-discounted share?	No

I certify an FCC Form 470 was posted and that any related RFP was made available for at least 28 days before considering all bids received and selecting a service provider. I certify that all bids submitted were carefully considered and the most cost-effective service offering was selected, with price being the primary factor considered, and is the most cost-effective means of meeting educational needs and technology goals.  
I certify that the entity responsible for selecting the service provider(s) has reviewed all applicable FCC, state, and local procurement/competitive bidding requirements and that the entity or entities listed on this application have complied with them.  
I certify that the services the applicant purchases at discounts provided by 47 U.S.C. § 254 will be used primarily for educational purposes, see 47 C.F.R. § 54.500 and will not be sold, resold or transferred in consideration for money or any other thing of value, except as permitted by the Commission's rules at 47 C.F.R. § 54.513. Additionally, I certify that the entity or entities listed on this application have not received anything of value or a promise of anything of value, as prohibited by

the Commission's rules at 47 C.F.R. § 54.503(d), other than services and equipment sought by means of this form, from the service provider, or any representative or agent thereof or any consultant in connection with this request for services.

I certify that I and the entity(ies) I represent have complied with all program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments. There are signed contracts or other legally binding agreements covering all of the services listed on this FCC Form 471 except for those services provided under non-contracted tariffed or month-to-month arrangements. I acknowledge that failure to comply with program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities.

I acknowledge that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of benefits from those services.

I certify that I will retain required documents for a period of at least 10 years (or whatever retention period is required by the rules in effect at the time of this certification) after the later of the last day of the applicable funding year or the service delivery deadline for the associated funding request. I acknowledge that I may be audited pursuant to participation in the schools and libraries program. I certify that I will retain all documents necessary to demonstrate compliance with the statute and Commission rules regarding the application for, receipt of, and delivery of services receiving schools and libraries discounts, and that if audited, I will make such records available to USAC.

I certify that I am authorized to order telecommunications and other supported services for the eligible entity(ies) listed on this application. I certify that I am authorized to submit this request on behalf of the eligible entity(ies) listed on this application, that I have examined this request, that all of the information on this form is true and correct to the best of my knowledge, that the entities that are receiving discounts pursuant to this application have complied with the terms, conditions and purposes of the program, that no kickbacks were paid to anyone and that false statements on this form can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001 and civil violations of the False Claims Act.

I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I will institute reasonable measures to be informed, and will notify USAC should I be informed or become aware that I or any of the entities listed on this application, or any person associated in any way with my entity and/or the entities listed on this application, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the schools and libraries support mechanism.

I certify that if any of the Funding Requests on this FCC Form 471 are for discounts for products or services that contain both eligible and ineligible components, that I have allocated the eligible and ineligible components as required by the Commission's rules at 47 C.F.R. § 54.504.

Notice

Section 54.504 of the Federal Communications Commission's rules requires all schools and libraries ordering services that are eligible for and seeking universal service discounts to submit an application for such discounts by filing this Services Ordered and Certification Form (FCC Form 471) with the Universal Service Administrator. 47 C.F.R. § 54.504. The collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended. 47 U.S.C. § 254. The data in the report will be used to ensure that schools and libraries comply with the application requirements for universal service discounts contained in 47 C.F.R. § 54.504. Schools and libraries must file this form themselves or as part of a consortium. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The FCC is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information you provide to determine whether approving your application for universal service discounts is in the public interest. If we believe there may be a violation or a potential violation of any applicable statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation or order. In certain cases, the information in your application for universal service discounts may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party of a proceeding before the body or has an interest in the proceeding. In addition, consistent with the Communications Act of 1934, FCC regulations and orders, the Freedom of Information Act, 5 U.S.C. § 552, or other applicable law, information provided in or submitted with this form or in response to subsequent inquiries may be disclosed to the public. If you owe a past due debt to the Federal government, the information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide the information to these agencies through the matching of computer records when authorized. If you do not provide the information we request on the form, the FCC or the Universal Service Administrator may delay processing of your application for universal service discounts or may return your application without action. The foregoing Notice is required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. § 3501, et seq. Public reporting burden for this collection of information is estimated to average 4.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Performance Evaluation and Records Management, Washington, DC 20554. We also will accept your comments via the email if you send them to PRA@FCC.gov. DO NOT SEND COMPLETED WORKSHEETS TO THESE ADDRESSES.

Authorized Person

Title:	CEMP	Name:	Russell Neal
Phone:	682-237-7670	Email:	rneal_old@vstservices.com
Address:	100 N. UNIVERSITY DRIVE FORT WORTH TX 76107 - 1360	Employer:	Russell Neal

Certified Timestamp

21-Mar-2018 21:55:49 EDT

## **Exhibit 2**



## SERVICE AGREEMENT

This Agreement is entered into on March 20, 2018, by and between **NETWORK USA**, a Louisiana corporation (hereinafter "NETWORK USA") and Hooks Independent School District (hereinafter "Customer").

Whereas, Customer desires to receive the services described in the Service Description below (hereinafter the "Service") from **NETWORK USA**, and whereas **NETWORK USA** is willing to provide the Service pursuant to the terms and conditions set forth herein.

Now, therefore, Customer and **NETWORK USA** hereby mutually agree as follows:

**SERVICE, TERM AND RATES:** **NETWORK USA** agrees to provide and Customer agrees to accept the Service beginning on or about the "Start of Service" specified herein at the rates contained below and subject to the terms and conditions contained herein including on the reverse side hereof.

### \*SERVICE DESCRIPTION\*

Service	A Location Address	Z Location Address	MRC	NRC	SCC	Term in Months
1000M Ethernet - DIA	100 East 5th Street, Hooks, TX 75561	, ,	\$3,200.00	\$0.00	\$0.00	36

### \*Billing Information\*

Request Start of Service Date:		Service Type:	IP
Customer Contact:	<u>Keith Minter</u>	Billing Account Name:	<u>Hooks Independent School District</u>
Contact Phone:	<u>(903) 547-6077</u>	Billing Address:	<u>Attn: Accounts Payable</u> <u>100 East 5th Street</u> <u>Hooks, TX 75561</u>
Contact Email:		Billing Contact:	<u>Keith Minter</u>
		Billing Email:	

**SPECIAL INSTRUCTIONS:** Services can be extended upon completion of original term for up to two one-year voluntary extensions.

Network USA  
By: James R. Davis  
Name: James R. Davis  
Title: President  
Business Address:  
3501 NW Evangeline Thwy  
Carencro, LA 70520  
Date Signed: 3/21/2018

Hooks Independent School District  
By: Keith Minter  
Name: Keith Minter  
Title: Technology Director  
Business Address:  
Attn: Accounts Payable  
100 East 5th Street  
Hooks, TX 75561  
Date Signed: 3/21/18



## ADDITIONAL TERMS AND CONDITIONS

**NETWORK USA** will provide the Service specified in the Service Description to Customer upon condition that the Service shall not be used for any unlawful purpose. The provision of service will not create a partnership or joint venture between **NETWORK USA** and Customer or result in a joint communications offering to any third party.

**START OF SERVICE:** The term of this agreement stated in the service description shall begin on or about the "Requested Service Date" noted therein or at the time the service first becomes available, whichever is later ("Start of Service").

**PAYMENT:** Customer agrees to pay **NETWORK USA** monthly in advance (commencing after the start of service), a monthly charge equal to the rate set forth in the service description or equal to the monthly charges as adjusted under the terms hereof, provided, however, that first such payment shall be for the period at the start of service through the end of the next full month and shall be due after the start of service and ten (10) days following the receipt of an invoice by customer. The installation charges contained in the service description are due with such first payment. In the event customer fails to pay any **NETWORK USA** invoice in full on or before thirty (30) days after the due date, customer shall pay a late fee in the amount of the lesser of one and one-half (1 1/2%) of the unpaid balance per month or the maximum lawful rate under applicable state law.

**ADDITIONAL CHARGES:** Any applicable Federal, State, or Local use, excise, sales or privilege taxes, duties, or similar liabilities, charged to or against **NETWORK USA** or customer because of the service furnished by **NETWORK USA**, shall be paid by the customer in addition to the regular charges under this agreement.

**GENERAL LIMITATION OF LIABILITY OF NETWORK USA:** This section shall be a general limitation of **NETWORK USA** liability under this agreement, applying in all events and any other term or provision in this agreement of the contrary notwithstanding. **NETWORK USA** shall not be liable to the customer or to any other person, form or entity in any respect whatsoever (including, without limitation, for damages) arising out of mistakes, accidents, errors, omissions, interruptions or defects in transmission, or delays, including those which may be caused by regulatory or judicial authorities, occurring in the course of furnishing the service. Any mistakes, accidents, omissions, interruptions, errors or defects in transmission of service which are caused or contributed to, directly or indirectly, by an act or omission of the customer or its agents, representatives, invitees, successors or assigns (hereinafter "customer or others") or which arise from or are caused by the use of customer provided facilities or equipment or arise from or caused by the use of facilities or equipment furnished by any person using customer's facilities are connected to **NETWORK USA** facilities, shall not result in the imposition of any liability whatsoever upon **NETWORK USA** and customer shall pay to **NETWORK USA** any cost damages or penalties incurred by **NETWORK USA** as a result thereof, including costs of local exchange company labor and materials.

**IN THE EVENT SERVICE IS INTERRUPTED FOR ANY REASON WHATSOEVER, NETWORK USA SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER. NETWORK USA SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL ACTUAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR LOST PROFITS AND/OR REVENUES OF ANY KIND OR NATURE WHATSOEVER. NETWORK USA's** sole obligation in the event service is interrupted, for whatever reason, is to use its best efforts to repair the service if such service remains out of order for 2 hours or longer after being reported.

**ALL OTHER LIABILITY OF CUSTOMER:** **NETWORK USA** shall have no liability of any kind whatsoever to any person, form or entity for any act or omission of itself or its agents or any representatives.

**LIABILITY OF CUSTOMER:** In the event any claim, demand, lawsuit or liability is made or asserted against **NETWORK USA** by any third party and the same arises out of, is directly or indirectly related to, or is caused by any act or omission of the customer or others, then, and in such event, customer agrees to indemnify, defend and hold harmless **NETWORK USA**. Such indemnity shall include the payment of reasonable attorney fees.

**SUSPENSION OF SERVICE:** In the event payment in full is not received from customer by **NETWORK USA** on or before the date due, **NETWORK USA** shall have the right after giving customer ten (10) days notice to suspend all service to customer until such time as customer has paid in full all arrearages, including any late or reconnect fees.

**CONTINUATION OF SERVICE:** After the expiration of the initial term provided herein, this agreement shall continue in effect until cancelled by either of the parties' giving 60 days written notice of termination. During the extended term, the monthly rate for the services provided shall be the then current **NETWORK USA** monthly rate for such services.

**EARLY TERMINATION:** The customer may terminate the service during the initial term upon 60 days written notice to **NETWORK USA**. Customer agrees to pay as liquidated damages an early termination charge of 100% of the charges for any remaining months in the first 12 months of the initial term, plus 50% of the monthly charges provided for the remainder of the initial term.

**FORCE MAJEURE:** Any other terms in this agreement to the contrary notwithstanding, **NETWORK USA** shall not be liable to customer or any other person, form, or entity for any failure of performance hereunder if such failure is due to any cause or causes beyond the control of **NETWORK USA**. Such causes shall include, without limitation, acts of God, fire, explosion, vandalism, cable cut, storm, microwave failure, microwave fade, or other similar occurrences, any law, order, regulation, direction, action or request of the United States government or of any government (including State and Local governments of any department, agency, commission, court, bureau,

or other instrumentality of anyone or more said governments) or of any civil or military authority national emergencies, insurrections, riots, wars, strikes, lockouts or work stoppages or other labor difficulties, supplier failures, shortages, breaches or delays. If **NETWORK USA's** failure of performance, by reason of force majeure specified above, shall be for (90) days or less, then this agreement shall remain in effect, but an appropriate percentage of charges shall be abated in discretion and determination of **NETWORK USA**; if for more than ninety (90) days, then this agreement may be cancelled by either party without any liability whatsoever.

**ADDITIONAL PROVISIONS:** (A) The provision of the Service will not create a partnership or joint venture between the parties nor result in a joint communication service offering to the customer of either **NETWORK USA** or the Customer; (B) in the event suit is brought or any attorney is retained by **NETWORK USA** to enforce the terms of this Agreement or to collect any moneys due hereunder or to collect money damages for breach hereof, it shall be entitled to recover, in addition to any other remedy, reimbursement for attorney's fees, court costs, costs of investigation and other related expenses incurred in connection therewith; (C) the Service provided by **NETWORK USA** is subject to the condition that it will not be used for any unlawful purpose; (D) no subsequent agreement between Customer and **NETWORK USA** concerning the Service shall be effective or binding unless it is made in writing by authorized representatives of the parties hereto and not representation, promise, inducement or statement of intention has been made by either party which is not embodied herein; (E) this Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective successors or assigns, provided, however, that Customer shall not assign or transfer its rights or obligations under this Agreement without the prior written consent of **NETWORK USA**; (F) this Agreement shall be a contract under and governed by the laws of the State of Louisiana; (G) this Agreement sets forth the entire understanding of the parties; (H) if any part of any provision of this Agreement or any other agreement, document, or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such inability only, without in any affecting the remaining parts of said provisions of the Agreement, and the parties hereby agree to negotiate with respect to any such invalid or unenforceable part to the extent necessary to render such part valid and enforceable; (I) descriptive headings if the Agreement are for convenience only and shall not affect the construction of this Agreement. Customer acknowledges that all or a portion of **NETWORK USA's** System is or may be located within systems or facilities owned by third parties, and that (with respect to any such portion of the **NETWORK USA** system) the grant of rights to Customer by **NETWORK USA** is a sublease, sublicense or subsidiary IRU. Customer agrees to comply fully with all obligations imposed by **NETWORK USA's** agreement with such third party in addition to the obligations imposed by this agreement.