



"IN SERVICE TO OUR STUDENTS"

# DENISON INDEPENDENT SCHOOL DISTRICT

1201 SOUTH RUSK AVENUE

DENISON, TEXAS 75020-6340

(903) 415-0048

Fax (903) 465-1129

DICKIE DEEL, PH.D.  
DIRECTOR OF TECHNOLOGY

**RECEIVED** June 25, 1999

JUN 28 1999

**FCC MAIL ROOM**

Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

In the matter of: Request for Review by Denison Independent School District of Decision of Universal Service Administrator, see FCC Docket Nos. 97-21 and 96-45.

RE:	Billed Entity Number:	140452
	Billed Entity:	Denison Independent School District
	Contact Name:	Dr. Dickie L. Deel
	Title:	Director of Technology
	Address:	1201 South Rusk Avenue Denison, TX 75020
	Phone:	903-415-0048
	FAX:	903-465-6636
	Application Number:	38072
	Funding Request Number:	38631
	Service Provider Name:	TU Communications, SPIN 1430090048 TXU Communications, SPIN 143001267

The Denison Independent School District contracted with TXU Communications Telecom Services Company, formerly known as TU Communications, to provide telecommunications service in the form of fiber optic links between all Denison ISD sites (see enclosed contract). The agreement is a long-term lease of fiber optic cables used to provide the high speed backbone for the District's telecommunications services including a WAN and phone system.

Our application and appeal was denied by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company on the basis that Texas Utilities Communications Inc., is not a licensed telecommunications provider in the state of Texas. See attached Administrator's Decision on Appeal, dated May 26, 1999. A copy of our Letter of Appeal to the SLD is also enclosed.

When Denison ISD entered into the contract with TU Communications we believed that they were a licensed telecommunications provider. Beginning November 1997 TU Communications owned LCT Long Distance, Inc. which is a licensed

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telecommunications provider in the state of Texas (VID# 1-75-168-6387-900, SPIN 143004707). Since that time TU Communications and LCT Long Distance have merged to form TXU Communications Telecom Service Company, a Texas corporation. TXU Communications Company is a licensed telecommunications provider (SPIN 143001267). See attached page titled "DRAFT RESPONSE..."

In addition, TU communications informed Denison ISD that other school districts who have contracts with TUC received funding commitments from the SLD. We have reviewed the contract with Everman Independent School District (see enclosed contract) and found it to be almost identical to our contract with TUC. The major difference is the number of feet of cable needed to complete the wide-area network.

We are asking the FCC reconsider the denial of Denison ISD's application and appeal based on the fact the company which we have contracted with is a licensed telecommunications provider. Although there was some confusion regarding TU Communications' license, those problems have been resolved and the new company, TXU Communications, is a licensed telecommunications provider. In addition, other school districts funding requests with TU Communications were granted by the SLD.

Please contact me at 903-415-0048 or Stephen Hearrell at 903-415-0037 if you have any questions.

Best regards,

A handwritten signature in black ink that reads "Dickie Deel". The signature is written in a cursive, flowing style.

Dr. Dickie L. Deel  
Director of Technology  
Attachments (5)



## DENISON INDEPENDENT SCHOOL DISTRICT

1201 SOUTH RUSK AVENUE  
(903) 415-0048

DENISON, TEXAS 75020-6340  
Fax (903) 465-1129

DICKIE DEEL, PH.D.  
DIRECTOR OF TECHNOLOGY

RECEIVED

March 2, 1999

JUN 28 1999

FCC MAIL ROOM

Letter of Appeal  
Schools and Libraries Division  
Box 125-Correspondence Unit  
100 South Jefferson Road  
Whippany, NJ 07981

RE: Billed Entity: Denison Independent School District  
Contact Name: Dr. Dickie L. Deel  
Title: Director of Technology  
Address: 1201 South Rusk Avenue  
Denison, TX 75020  
Phone: 903-415-0048  
FAX: 903-465-6636  
Application Number: 00038072  
Billed Entity Number: 140452  
FRN: 00038631  
SPIN: 143009048  
Service Provider Name: TU Communications

Denison Independent School District received your letter dated February 18, 1999 stating that the funding status for the application referenced above is "unfunded or denied." The funding commitment decision explanation was "A significant portion of this FRN included a request for Telecommunications Service from a provider – Texas Utilities Communications – which is not eligible to." The explanation ended in mid-sentence. (A copy of the Page 5 of 5 is attached.)

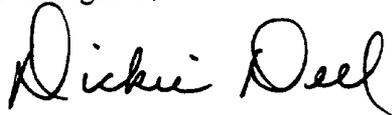
TU Communications informed DISD that other school districts who have contracts with TUC received funding commitments from the SLD. We have reviewed the contract with Everman Independent School District and found it to be almost identical to our contract with TUC. The major difference is the number of feet of cable needed to complete the wide-area network.

We had numerous discussions with SLD personnel regarding our application and we provided a copy of our contract with TUC to the SLD. At no time in these discussions was TUC declared a non-qualifying vendor.

We trust since one school district with basically the same project and contract was approved by the SLD that the rejection of DISD's application was a mistake.

Please contact me at 903-415-0048 if you have any questions.

Best regards,

A handwritten signature in cursive script that reads "Dickie Deel". The signature is written in black ink and is positioned above the typed name.

Dr. Dickie L. Deel  
Attachment (1)

SLC Funding Notification Synopsis for Application Number: 00038072

Funding Request Number:00038631 Funding Status: Unfunded or Denied

SPIN: 143009048 Service Provider Name: TU Communications

Provider Contract Number: C

Services Ordered: Telecommunications Services

Effective Date of Discount: 06/01/1998 Contract Expiration Date: 12/31/1998

Estimated Total Annual Pre-discount Cost: \$451,595.00

Discount Percentage Approved by SLC: N/A

Funding Commitment Decision: \$0.00 - Incl. svcs./ or product(s)

Funding Commitment Decision Explanation: A significant portion of this FRN includes a request for Telecommunications Service from a provider - Texas Utilities Communications - which is not eligible to

**DRAFT RESPONSE (Denison ISD - USAC Administrator's Decision on Appeal)**

TXU Communications Telecom Services Company, a Texas corporation, formerly known as LCT Long Distance, Inc. ("TXU Communications") will be assuming responsibility for providing the subject services (including leasing fiber optic cable to the District) from its affiliate, TXU Communications Holdings Company, formerly known as Texas Utilities Communications Inc. TXU Communications is a licensed telecommunications carrier within the State of Texas (having been licensed under its former name of LCT Long Distance, Inc.). TXU Communications has also been assigned Service Provider Identification Number (SPIN) 143001267 by USAC.



UNIVERSAL SERVICE  
ADMINISTRATIVE CO.

Box 125 – Correspondence Unit  
100 South Jefferson Road  
Whippany, New Jersey 07981

SCHOOLS AND LIBRARIES DIVISION

### Administrator's Decision on Appeal

May 26, 1999

Dr. Dickie Deel  
Denison Independent School District  
1201 South Rusk Avenue  
Denison, TX 75020-6340

RECEIVED

JUN 28 1999

FCC MAIL ROOM

Re: Billed Entity Number: 140452  
Application Number: 38072  
Funding Request Number(s): 38631  
Your Correspondence Dated: March 2, 1999

After thorough review and investigation of your appeal, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company has resolved your appeal which seeks approval of additional discounts for the first program year. This letter addresses our decision concerning each Funding Request Number that was included in your letter of appeal for the above referenced Application Number. If your letter of appeal addressed more than one Application Number, a separate letter will be issued to inform you of our decision on the appeal of each Application Number included in your appeal.

Funding Request Number: 38631  
Decision on Appeal: Denied in full.

The following explanation is provided to inform you of the reason for our decision on appeal of this Funding Request Number, for those appeals that are denied in full.

Denial Reason(s):

- This funding request is for the lease of a fiber optic cable to be used for transmitting voice, data, image and video signals, for internal, school-related use, among and between district facilities. This constitutes telecommunications service provided by Texas Utilities Communications Inc., which is not a licensed telecommunications provider in the state of Texas.
- Although we make every effort to be consistent in applying program rules, each application is reviewed and evaluated on its own merit. We cannot consider what funding decisions were made on other applications.

If you feel further examination of your application is in order, you may file an appeal with the Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street SW, Room TW-A325,

Washington, DC 20554. Before preparing and submitting your appeal, please be sure to review the FCC rules concerning the filing of an appeal of an Administrator's Decision, which are posted to the SLD Web Site at [www.sl.universalservice.org](http://www.sl.universalservice.org). You must file your appeal with the FCC no later than 30 days from the date of the issuance of this letter, in order for your appeal to be timely filed.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company



# Everman Independent School District

DAN POWELL, ED.D.  
Superintendent of Schools

RECEIVED

JUN 28 1999

FCC MAIL ROOM

TO: Steven Harrell  
FROM: Ted Kretchner  
DATE: 3/3/99 FAX # 903-465-1129  
RE: E-RATE Application

NUMBER OF PAGES, INCLUDING THIS COVER 19

FOR YOUR INFORMATION

PLEASE REPLY

MESSAGE / SPECIAL INSTRUCTIONS:

I hope this helps.

Ted J Kretchner

IF YOU DO NOT RECEIVE ALL PAGES OF TRANSMITTAL

CALL: 817-568-3500

Contact Person's Name **Ted Kretchmar**

and Phone Number: **(817) 568-3500**

Control # **7412**

**Block 5: Services Ordered**

15. "Shared" services: All EXCEPT site-specific, internal connections and dedicated ("private line") connections from only one school or library to an ISP or other end-user.

(1)	(2)	CONTRACT			(6)	(7)	Amount		(10)	(11)
		(3)	(4)	(5)			(8)	(9)		
SLC Service Provider Number or Full Legal Name of Service Provider	Universal Service Control Number for Form 470 on which this is based	Contract Number (if applicable)	Award Date	Expiration Date	Services or Products	Service Start Date	Estimated One Time Pre-discount Cost	Estimated Monthly Pre-discount Cost	Estimated Total Annual Prediscount Cost	Percentage Discount (from Item 14)
143 009 048	15149 00000 78394	S 0256 566 C	04/14/ 98	04/14/ 08	Telecommunication Services	09/01/98	279,350	504	281,366	83%
					Internet Access					
					Internal Connections (Shared)					
143 004 393	15149 00000 78394				Telecommunication Services					
					Internet Access					
		040885	04/14/ 98	06/01 98	Internal Connections (Shared)	06/01/98	146,188	2,920	149,108	83%
143 001 197	15149 00000 78394				Telecommunication Services					
		9072 5461	04/09 98	04/09 01	Internet Access	06/01/98	0	2,418	16,926	83%
					Internal Connections (Shared)					

3 - 2-99:10:06PM

15683508

# 2 / 19

**FIBER OPTIC LICENSE AGREEMENT**

**BY AND BETWEEN**

**TEXAS UTILITIES COMMUNICATIONS INC.**

**AND**

**EVERMAN INDEPENDENT SCHOOL DISTRICT**

**DATED: , 1998**

**NO. S 0256566 C**

**Agreement No. S 0256566 C**

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Agreement No. S 0256566 C

## FIBER OPTIC LICENSE AGREEMENT

THIS AGREEMENT is made as of the \_\_\_ day of \_\_\_\_\_, 1998, by and between Texas Utilities Communications Inc. (hereinafter referred to as "TUC"), a Delaware corporation, and the Everman Independent School District, an independent school district organized under the laws of and existing within the State of Texas (hereinafter referred to as "District").

WHEREAS, TUC's affiliate, Texas Utilities Electric Company (hereinafter referred to as "TU Electric") maintains and uses distribution poles and other facilities in furtherance of its activities as a public utility company; and

WHEREAS, District desires that TUC install fiber optic cable on certain of TU Electric's distribution poles and other facilities, and District further desires to license portions of such fiber optic cable from TUC, solely for the purpose of engaging in the Permitted Uses, as defined herein; and

WHEREAS, TUC is willing to grant District such a license, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the covenants, agreements and undertakings set forth below, the parties agree as follows:

**1. Installation and Attachments of Fiber Optic Cable.** TUC shall provide, and attach or otherwise install, fiber optic cable, onto and between designated TU Electric distribution poles and other facilities, in accordance with the requirements of Attachment A, which is incorporated into this Agreement for all purposes. Such fiber optic cable will consist of approximately 51,360 feet of single-mode fiber optic cable, with a fiber count varying from twenty-four (24) to eighty-four (84) fibers (hereinafter collectively referred to as the "TUC Cable") as specified in Attachment A. TUC shall install or otherwise attach the TUC Cable in accordance with a schedule to be hereafter agreed to by the parties; provided, however, that TUC shall use its best efforts to complete its installation or attachment of the TUC Cable within ninety (90) days after the District is determined to be eligible for E-Rate Funding in accordance with Section 1A. In furtherance of TUC's provision and installation of the TUC Cable, District shall provide TUC with reasonable, prompt access to District facilities, and otherwise assist TUC in implementing and administering reasonable workplace control and safety practices at such District facilities. TUC shall own all TUC Cable, and all other appurtenances installed pursuant to this Agreement.

**1A. Qualification for E-Rate Funding.** The parties acknowledge and agree that they are entering into this Agreement in anticipation of the District being determined eligible, with respect to the Permitted Uses (as such term is hereafter defined), for so-called "E-Rate" funding

**Agreement No. S 0256566 C**

or other discounts for telecommunications services, provided by the Schools and Libraries Corporation ("SLC") in furtherance of the Universal Service Order issued by the Federal Communications Commission (collectively, "E-Rate Funding"). If within ~~forty-five (45)~~ sixty (60) days following execution of this Agreement, the District has not been determined to be eligible for E-Rate Funding with respect to the Permitted Uses, then this Agreement shall terminate, with neither party having any liability or other obligation to the other party. Further, TUC shall have no obligation to undertake any actions pursuant to or in furtherance of this Agreement (including, without limitation, obtaining, installing, or attaching any fiber optic cable), and the District shall have no rights or privileges under the terms of this Agreement, until such time as the District is determined by the SLC to be eligible for E-Rate Funding. The District shall be solely responsible for undertaking any activities necessary to apply for and obtain E-Rate Funding.

**2. License Granted to District.** Upon completing the installation of TUC Cable as described in Section 1 above, TUC shall grant District a license to use from twelve (12) to seventy-two (72) designated single-mode fibers within the TUC Cable (such designated fiber, in which TUC shall grant District a license, being hereinafter collectively referred to as the "Licensed Cable"). The Licensed Cable shall be maintained in a common sheath with the TUC Cable. District shall only use the Licensed Cable for transmitting voice, data, image and video signals, for internal, school-related use, among and between District facilities (such permitted uses and activities are hereafter collectively referred to as the "Permitted Uses"). District shall have no rights of access to or otherwise use any portion of the TUC Cable in any way, without the prior, express written consent of TUC. No use, however extended, of any of the Licensed Cable shall create or vest in District any ownership or property right in the TUC Cable, or in any other equipment or facilities of TUC or TU Electric, but District's rights in such equipment or facilities shall be and remain a mere license, terminable as provided for in this Agreement.

The Licensed Cable, as provided and installed by TUC, shall be "dark fiber", and District shall be solely responsible for installing its own fiber optic cable, from the interface termination points at each District Facility (as specified on Attachment "A") to other points within the building, and its own connections and electronic components to such cable, necessary for or convenient to the Permitted Uses. District shall not lease or otherwise use any fiber optic cable used or owned by any third party, whether affiliated or unaffiliated with District, which is attached to or situated on any distribution poles or other equipment or facilities of TUC or TU Electric. Further, District shall not lease or sublet to any third party any of its rights or obligations under this Agreement, including the use of fiber optic cable installed hereunder.

**3. Fees and Costs.** In consideration of TUC providing and installing the TUC Cable as described in Section 1 above, District will pay TUC all costs incurred by TUC in furtherance of its provision, installation, and preparation for use of the TUC Cable, including, without limitation, all construction and "make-ready" costs, together with the first year license fee for the license granted hereunder, and the District's related use of TU Electric's poles and other facilities, as specified in Attachment A. District shall pay such costs and fees in the manner and as provided for in Attachment B, which is incorporated into this Agreement for all purposes.

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Further, in the month of January of each year during the term of this Agreement, TUC will submit an invoice to District for payment of the annual license fee due for that year. District shall be obligated to and shall promptly pay that annual license fee, calculated at the rate of twelve cents (\$0.12) per linear foot of Licensed Cable installed for District. In each calendar year beginning with 1999, the amount of such payment will be adjusted by the amount of any increase in the Consumer Price Index (published by the Bureau of Labor Statistics of the U.S. Department of Labor), for the twelve month period ending September 30 of the year immediately preceding the year with respect to which the rate adjustment is made.

In addition, District shall, at no cost or expense to TUC or its affiliates, furnish such easements, rights of way, and other authorizations as may be reasonably necessary, including, where appropriate, within or pertaining to any District facilities, to allow TUC to make full use of and maintain the TUC Cable, for or in connection with any telecommunications services or purposes for TUC, or its affiliates or its third party lessees, for so long as the District continues to use the Licensed Cable.

**4. Maintenance, Repair, and Replacement of Licensed Cable**

(a) TUC shall, at the request of the District, maintain, repair, or replace portions of the Licensed Cable, as designated by the District, in accordance with the requirements of this Section 4 (collectively, the "Licensed Cable Work").

(b) The District shall identify an authorized representative, who shall notify TUC of any Licensed Cable Work desired or proposed by the District. TUC shall promptly perform and complete such Licensed Cable Work within a reasonable time.

(c) TUC shall provide the District with the address and telephone number of the Telecommunications Operations Center of its affiliate, Texas Utilities Services Inc., to contact in the event that the District desires to request Licensed Cable Work. A Contact/Authorized Representative List, for use in connection with the performance of Licensed Cable Work, is included as Attachment C, and may be revised by either party from time to time, by written notice to the other party, provided in accordance with Section 20.

(d) In the event that, at the same time that certain Licensed Cable Work is requested to be performed, there is also a need for work to be performed on TU Electric's electrical system facilities at the same location, the parties acknowledge and agree that the work to be performed on TU Electric's electrical system facilities will take precedence over such Licensed Cable Work.

(e) TUC will provide all tools, materials, test equipment, and fiber cable required to perform the Licensed Cable Work. The District will reimburse TUC for any and all costs that TUC may incur in performing the Licensed Cable Work.

**Agreement No. S 0256566 C**

(f) The District shall pay TUC for its performance of the Licensed Cable Work, including within thirty (30) days following the District's receipt of an invoice from TUC for such Licensed Cable Work.

**5. Testing of TUC Cable/Disclaimer of Warranties.** After completing its installation of the TUC Cable, TUC shall, in consultation with the District, confirm, through testing or in another agreed manner, that the TUC Cable is capable of transmitting data among and between District facilities, consistent with Attachment "A" and District's planned and intended use of the Licensed Cable. **TUC MAKES NO WARRANTIES CONCERNING THE MERCHANTABILITY OR CONDITION OF ITS FACILITIES OR EQUIPMENT, INCLUDING, WITHOUT LIMITATION, THE TUC CABLE, OR OF TU ELECTRIC'S POLES OR OTHER FACILITIES, OR OF THEIR FITNESS FOR ANY PARTICULAR PURPOSE OR USE. FURTHER, DISTRICT CONFIRMS THAT IT HAS NOT IN THE PAST RELIED, IS NOT PRESENTLY RELYING, AND WILL NOT IN THE FUTURE RELY, ON ANY REPRESENTATION OR WARRANTY OF TUC CONCERNING THE CONDITION OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF ANY OF TU ELECTRIC'S POLES OR OTHER FACILITIES.**

**6. Confidential Information.** If, in furtherance of this Agreement, either party provides confidential information to the other in writing and identified as such, the receiving party shall protect the confidential information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, except that neither party shall be required to hold confidential any information which becomes publicly available other than through the recipient, which is required to be disclosed by a governmental or judicial order, which is independently developed by the receiving party, or which independently becomes available to the receiving party without restriction from a third party. These obligations shall survive expiration or termination of this Agreement for a period of three (3) years.

**7. Indemnity.**

(a) District agrees to and shall protect, indemnify, and hold harmless TUC, its officers, directors, shareholders, agents, servants, and employees, as well as other Texas Utilities Company System companies and their respective officers, directors, shareholders, agents, servants, and employees (hereinafter collectively referred to as "Texas Utilities Parties"), and, at TUC's option, and as and to the extent TUC determines to be appropriate, shall defend Texas Utilities Parties, from and against all claims, losses, expenses, attorneys' fees, damages, demands, judgments, causes of action, suits, and liability in tort, contract, or any other basis and of every kind and character whatsoever, including, without limitation, for personal injury, death, property damage, or the interruption or loss of any data or information transmitted, or other Permitted Use undertaken, by the use of or in connection with the TUC Cable, including, without limitation, the Licensed Cable, or TU Electric's poles or other facilities, connections, or equipment (hereinafter

**Agreement No. S 0256566 C**

collectively referred to as "CLAIMS") arising out of or incident to or related in any way to, directly or indirectly, this Agreement or activities undertaken pursuant to this Agreement, including, without limitation, the installation, maintenance, presence, use, alteration, replacement, relocation or removal of fiber optic cable. It is the express intent of the parties that, for the purposes of this Indemnity provision, CLAIMS shall include, but not be limited to, CLAIMS arising out of or resulting from Texas Utilities Parties' sole or concurrent (1) negligence, (2) strict liability, or (3) other fault of any nature; provided, however, that, in the event that a finding as to the comparative fault or responsibility of Texas Utilities Parties and District is made or entered by a Court, District shall only be obligated to indemnify Texas Utilities Parties as to that percentage or portion of fault or responsibility attributable to District.

(b) To the extent necessary to permit Texas Utilities Parties to enforce this Indemnity provision, District agrees that, with respect to any CLAIMS, it shall and does, to the fullest extent legally permissible, hereby waive as to Texas Utilities Parties any and all defenses, limitations of liability, or other protections it may have or claim pursuant to the laws of the State of Texas, including, without limitation, the Texas Tort Claims Act (Chapter 101 of the Texas Civil Practice and Remedies Code), and the Texas Workers' Compensation Act (Chapter 401 of the Texas Labor Code). ~~Nevertheless, the total liability of the District to Texas Utilities Parties pursuant to its obligations of indemnity (as provided for in this Section 7), for and with respect to any particular occurrence resulting in a claim, shall be limited to two million dollars (\$2,000,000) for each such occurrence.~~

(c) The parties acknowledge and agree that, within their lawful and reasonable contemplation, all payments which may be made by District, pursuant to its indemnity obligations or other potential liabilities under this Agreement, can and will reasonably be paid and satisfied from some fund in the immediate control of District, readily available for the purpose of satisfying and paying such indemnity obligations and other potential liabilities. Nevertheless, in the event any such indemnity obligation or potential liability accrues and becomes ascertainable in amount and, further, if the amount of such indemnity obligation or liability exceeds the funds then available to District to satisfy such indemnity obligation or liability, District agrees that, in each year during which such indemnity obligation or liability ascertainable in amount exists, arising from or relating to a CLAIM, it will, promptly and as soon as permissible under applicable law, levy a tax, with full allowances being made for tax delinquencies and costs of tax collection, which will be sufficient to raise and produce the money required to ensure that all indemnity obligations or liabilities ascertainable in amount, arising from or relating to a CLAIM, have been satisfied and discharged.

(d) If, for whatever reason, any provision of this Agreement is held by a Court to be in conflict with or contradictory to District's duty to indemnify Texas Utilities Parties, as provided for in this Agreement, such conflicting or contradictory provision shall be subjugated to,

**Agreement No. S 0256566 C**

and shall not impair, affect, or invalidate, District's duty to indemnify Texas Utilities Parties, and such duty shall remain in full force and effect.

(e) With regard to District's obligations of indemnification and other potential liabilities as provided for in this Agreement, the parties acknowledge and agree that District has entered into this Agreement in furtherance of public purposes, and that no payment made or obligation incurred by District hereunder shall constitute or be construed as an application or lending of District's credit, or an application of public funds for private use.

**8. Insurance.**

(a) District shall maintain in force and effect, throughout the term of this Agreement, insurance which, at a minimum, provides coverage of the types and in the amounts specified below.

Type of Insurance	Limit of Liability
(i) General Liability (including personal injury and employer's liability)	\$1,000,000 per occurrence
(ii) Automobile Liability (including bodily injury and property damage)	\$1,000,000 per occurrence

(b) If District enters into a contract with a third party to construct, replace, relocate, repair, modify, remove, monitor, operate, or maintain any fiber optic cable, equipment, or facilities subject to this Agreement, and if such contract requires the third party to provide insurance coverage for the purpose of protecting District against liability in connection with the activities of that party, District agrees to require that party to provide the same insurance coverage to Texas Utilities Parties, in the same amounts and under the same terms and conditions.

(c) Nothing in this Section, nor the provision of any insurance required by this Section 8, shall affect, limit, or otherwise impair District's indemnity obligations, as provided for in this Agreement. Further, it is District's intent that the insurance required by this Section 8 be available for and applied to satisfy District's indemnity obligations, as provided for in this Agreement.

**Agreement No. S 0256566 C****9. Consequential Damages.**

(a) Under no circumstances whatsoever shall any Texas Utilities Party be liable to District in contract, in tort (INCLUDING SOLE OR CONCURRENT, ACTUAL OR IMPUTED, NEGLIGENCE, OR STRICT LIABILITY), under any warranty, or otherwise for any special, indirect, incidental, or consequential loss or damage or loss of any nature, including, without limitation, the cost of capital, loss of profits or revenues or the loss of use thereof, or the cost of purchased or replacement services, or claims of District's students, employees (including faculty members), customers, advertisers, users, clients, licensees, concessionaires, or any other person, firm or entity in such regard, and District agrees to indemnify and hold Texas Utilities Parties harmless in such regard, in accordance with and to the fullest extent permitted pursuant to this Agreement.

(b) No Texas Utilities Party shall have any liability to District for any expense, damage or loss caused, in whole or in part, by the action of any Texas Utilities Party that damages or injures any fiber optic cable, equipment, or facilities subject to this Agreement, or that terminates, disrupts or interrupts any Permitted Use. Notwithstanding the foregoing, TUC shall be responsible for the lesser of the cost of repairing or replacing any fiber optic cable, facilities, or other equipment, subject to this Agreement, intentionally damaged by any Texas Utilities Party, unless such damage occurred in such cable, equipment, or facilities in connection with such person's or entity's removal, replacement, relocation or modification of such cable, facilities, or other equipment pursuant to this Agreement.

(c) TO THE EXTENT THAT THE TEXAS DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, TEXAS BUSINESS & COMMERCE CODE §17.41, ET SEQ., MAY BE APPLICABLE TO ANY CLAIM THAT DISTRICT MAY HAVE AGAINST ANY TEXAS UTILITIES PARTY, IN ANY WAY ARISING OUT OF, RELATED TO, CAUSED BY OR INCIDENT TO THIS AGREEMENT, DISTRICT WAIVES THE APPLICABILITY OF SUCH ACT TO THE MAXIMUM EXTENT THAT IT CAN NOW OR IN THE FUTURE BE WAIVED. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS AN ADMISSION BY ANY PARTY THAT DISTRICT IS A "CONSUMER" AS DEFINED IN SUCH ACT OR THAT SUCH ACT IS OTHERWISE APPLICABLE TO ANY TEXAS UTILITIES PARTY OR THIS AGREEMENT.

**10. District's Warranties and Representations.**

(a) District represents and warrants that (i) it has obtained or will obtain, prior to commencing construction, all legally required franchises, licenses, waivers, consents, approvals, easements, rights-of-way, and permits needed to use and maintain the Licensed Cable and engage in the Permitted Uses in, over, under, along and across the present and future streets, highways, alleys and public ways of the City of Everman; (ii) it shall use its best efforts to maintain such

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franchises, licenses, waivers, consents, approvals, easements, rights-of-way and permits in full force and effect throughout the term of this Agreement; (iii) it shall comply with such franchises, licenses, waivers, consents, approvals, easements, rights-of-way and permits in connection with engaging in the Permitted Uses; and (iv) it shall promptly notify TUC in writing of any change in the status of such franchises, licenses, waivers, consents, approvals, easements, rights-of-way and permits. Upon TUC's request, District shall promptly deliver to TUC documentation satisfactory to TUC evidencing that all such franchises, licenses, waivers, consents, approvals, easements, rights-of-way and permits have been obtained. Neither TUC nor TU Electric shall be required to obtain any license, waiver, consent, easement, right-of-way, or permit in connection with the performance of this Agreement.

(b) District represents that its Board of Trustees has formally acknowledged, agreed to, and ratified District's execution of this Agreement, together with its acceptance of all obligations provided for under this Agreement.

**11. No Third Party Beneficiaries.** This Agreement is solely for the benefit of District and TUC and, where permitted, their respective successors and assigns. Nothing in this Agreement shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity.

**12. Relocation of TU Electric Poles or Other Facilities.** District acknowledges and agrees that TU Electric may, in its sole discretion, relocate any of its poles or other facilities to which fiber optic cable has been installed pursuant to this Agreement. In the event TU Electric relocates any such poles or other facilities, such fiber optic cable or equipment shall be reattached to such relocated poles or other facilities in accordance with TU Electric's Distribution Standards, in effect at the time of such relocation, and District shall retain the same rights and privileges, with respect to such relocated fiber optic cable or equipment, as it had prior to such relocation. Prior to relocating such poles or other facilities, however, TU Electric or, on its behalf, TUC, will notify District reasonably in advance of such relocation, and, at District's request, use its reasonable efforts to find an alternative pole or other TU Electric facility, on which, by mutual agreement of the parties, fiber optic cable may be installed, pursuant to this Agreement or in furtherance of the Permitted Uses. To the extent that TU Electric is reimbursed by a third party for the costs of relocating such poles or other facilities, District shall not be obligated to reimburse TUC for the costs of relocating fiber optic cable, attached to such poles or facilities pursuant to this Agreement. District shall, however, be otherwise obligated to and shall reimburse TUC for the costs incurred by TU Electric in relocating any such fiber optic cable.

**13. Liens and Other Encumbrances.** District agrees that it will not, directly or indirectly, create, incur, assume or suffer to exist any liens, whether mechanic, materialman or other, resulting from any work performed pursuant to this Agreement or any act or claim against

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it, and will, at its sole expense, promptly take any action as may be necessary to discharge any such liens.

**14. Compliance With Laws.** District shall, at its own cost, utilize TU Electric's poles and other facilities, as well as all TUC facilities: (a) in accordance with such requirements and specifications as TUC may prescribe in writing, consistent with or in furtherance of this Agreement; (b) in compliance with all applicable constitutions, statutes, ordinances, rules, regulations, codes, orders, decisions, ordinances and decrees of all governmental bodies with jurisdiction over such performance including, without limitation, the Occupational Safety and Health Act, and all regulations promulgated pursuant thereto, and Chapter 752 of the Texas Health and Safety Code; and (c) in accordance with the requirements of the National Electrical Code and the National Electrical Safety Code, as they now exist or may be amended, modified or supplemented in the future. Where a difference in any of the foregoing specifications may exist, the more stringent shall apply.

**15. Term.** Subject to Section 1A, this Agreement, if not terminated earlier in accordance with Section 16, will continue in effect until the earliest of either: (a) the termination of the District's use of the Licensed Cable for the Permitted Uses; or (b) ten (10) years from the date when this Agreement is executed; provided, however, that if, at the end of such ten (10) year period, this Agreement is not, or has not been, terminated, then this Agreement shall continue in force, upon the same terms and conditions, for a period of one year, and so on from year to year until terminated by either party, as expressly provided for in this Agreement, by either party giving written notice to the other party of its intention to so terminate, at least thirty (30) days prior to the end of such term. Upon termination of this Agreement, all obligations of the parties hereunder shall terminate, except for those which, by their sense and context, are intended to survive such termination, including, without limitation, obligations pertaining to indemnification and confidential information. TUC shall have no obligation, however, to reimburse or otherwise return to District any payments previously made by District to TUC, for whatever reason, pursuant to this Agreement.

**16. Default and Termination.** If either party fails to substantially comply with any material, term, condition, or covenant of this Agreement, and such failure remains uncured for a period of thirty (30) days following such party's receipt of written notice as to the kind, character, and nature of the failure, or if such non-compliance cannot be reasonably cured within thirty (30) days of such notice, such party shall not have commenced to cure and satisfy the failure with thirty (30) days, and does not thereafter proceed to cure such failure with reasonable diligence and good faith, then, the other party may cancel and terminate this Agreement in its entirety. Alternatively, in the event that District is the defaulting party, TUC may revoke District's license and permission to use any Licensed Cable, poles or other TU Electric facilities involved in such default or non-compliance. The non-defaulting's pursuit of any such remedies

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in this Section 16 shall not preclude that party from pursuing any other remedies provided for in this Agreement, or as may be otherwise provided for by law.

**17. Assignments.** District shall not, without the prior written consent of TUC, transfer, assign, or delegate any of its rights or obligations under this Agreement. No permitted transfer, assignment, or delegation by District shall release or relieve District of any of its obligations under this Agreement, and District shall remain fully obligated and liable to TUC under this Agreement, notwithstanding any such permitted transfer, assignment, or delegation.

TUC may transfer, assign, or delegate any of its rights or obligations under this Agreement at any time without the consent of District. TUC shall notify District of any such transfer, assignment, or delegation with thirty (30) days thereof.

This Agreement shall be binding upon and inure to the benefit of the parties, and their respective successors and assigns, where assignment is permitted by this Agreement.

**18. Application of Texas Law.** This Agreement shall be governed by and interpreted and construed in accordance with the laws of the State of Texas.

**19. Complete Agreement.** This Agreement, including all attachments hereto, shall constitute the entire, complete, and final agreement of the parties with respect to the subject matter hereof, and all prior negotiations, undertakings, understandings, representations, statements, and agreements between the parties, with respect to the subject matter hereof, are merged into this Agreement.

**20. Notices.** Any notice required to be given or made in connection with this Agreement shall be in writing and shall be deemed properly or sufficiently given or made if (a) delivered in person, with receipt acknowledged in writing by the person specified below; or (b) upon delivery, after being sent by registered or certified mail, return receipt requested, or by confirmed telephonic document transfer, to the person, address, and/or telecopier number specified below:

(a) if to TUC:

Texas Utilities Communications Inc.  
Energy Plaza  
1601 Bryan Street, 29th Floor  
Dallas, Texas 75201

Attention: Contracts Manager

(b) if to District:

Everman Independent School District  
608 Townley Drive

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Everman, Texas 76140

Attention: Superintendent

Notices given or made pursuant to or in connection with this Agreement shall be effective as of the time of delivery to or receipt of the party to whom such notice is addressed.