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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

\_\_\_\_\_  
In the matter of: )  
)  
Request for Review by )  
Nassau County BOCES of )  
Decision of Universal Service Administrator )  
\_\_\_\_\_ )

Docket Nos. 97-21 and 96-45

The Board of Cooperative Educational Services for Nassau County ("Nassau County BOCES" or "BOCES") hereby requests a review of an Administrator's appeal decision regarding a consortium funding request made by BOCES (Entity No. 123875) on behalf of Rockville Centre Union Free School District (Entity No. 123857).

In a letter dated March 28, 2000, the Universal Service Administrative Company denied in full BOCES' appeal of an earlier Administrator funding decision for the second program year.

History:

In its original Form 471 application (Application Number 139083), BOCES requested a discount on the installation and monthly service fees for an extensive optical fiber-based telephone service to be provided by Cablevision Lightpath (SPIN 143000072) to Rockville Centre UFSD. Since Rockville Centre's local and long distance telephone service was a part of a broader project being coordinated and billed by BOCES, E-rate discounts were requested via a consortium application filed by BOCES.

The contract for this service (Exhibit A) was executed on October 21, 1998, based on a Form 470 request initially filed for program year one. As originally conceived, this service was to be installed during the 1998-1999 school year.

As a result of project delays, it subsequently became clear that the service could not, at best, be provided until late in the 1998-1999 school year. On March 31, 1999, BOCES, Rockville Centre, and Cablevision agreed to delay the initiation of service until July 1999, the beginning of the 1999-2000 school year (Exhibit B). A major reason for the change was to ensure that the significant service installation charge would be incurred in the 1999-2000 year and would be eligible for an E-rate discount. To apply for the E-

rate discount, BOCES filed a consortium Form 470 request for service for program year two, restating the service request and agreeing to the delayed installation only after that Form 470's Allowable Contract Date. BOCES then filed a program year two Form 471 for the Rockville Centre service requesting a discount (Funding Request Number 214341) on both the installation charge and the ongoing monthly service.

No questions regarding the delayed installation were raised with BOCES during Administrator's Program Integrity Assurance review, but the Funding Commitment Decisions Letter of November 2, 1999, indicated that the pre-discount request had been reduced by the SLD by the installation amount of \$159, 626.

In a timely letter dated November 23, 1999, BOCES appealed this reduction explaining the contract history (discussed above), highlighting the contract modification letter, and enclosing a copy of the Cablevision bill showing the service installation date of 07/01/99 (Exhibit C). In denying this appeal, the Administrator referenced the language of the contract modification letter regarding completion of construction "on or about" July 1, 1999, as an indication that the installation service was delivered "outside the current funding year."

#### Discussion:

The question before the Commission in this appeal is: At what point is an installation service deemed to be received for E-rate purposes if the physical installation process occurs over an extended period?

For the purpose of this discussion, it may be useful to distinguish between the installation of telecommunications carrier services (in which the carrier is upgrading its own facilities in order to provide tariffed services to an E-rate applicant) and the installation of internal connection services (in which work is being done on applicant-owned equipment).

The key points in this case are as follows:

1. Cablevision Lightpath, the telecommunications service provider, is a Competitive Local Exchange Carrier ("CLEC"). Unlike a more established local exchange carrier, a CLEC often does not have entry facilities in place to immediately serve new customers. The actual installation, therefore, may require weeks of construction. From a customer's standpoint, however, installation is seen to occur when the service first becomes available.
2. BOCES, Rockville Centre, and Cablevision all explicitly agreed to delay the installation and initiation of telecommunications service until July 1, 1999. This new

service date was reflected in the BOCES Form 471 for program year two (and was supported by a properly filed Form 470).

3. Although Cablevision began work on its own facilities in advance of providing customer service, the formal completion of installation and initiation of monthly service was carefully scheduled for July 1, 1999. (Initial monthly service bills for the period 7/1/99 to 7/31/99 are shown as Exhibit D.)

In this specific case, and for E-rate purposes, we ask that the Commission find that customer installation occurred as scheduled and billed on July 1, 1999, and that the associated installation charge is eligible for discount in program year two.

Respectfully submitted,

By: \_\_\_\_\_  
Winston E. Himsworth  
E-Rate Central, Nassau County BOCES  
1196 Prospect Avenue  
Westbury, NY 11590

Dated: March 31, 2000  
Exhibits

THIS AGREEMENT entered into the 21 day of October 1998 by BOARD OF COOPERATIVE EDUCATIONAL SERVICES OF NASSAU COUNTY, SALISBURY CENTER, VALENTINES ROAD AND THE PLAIN ROAD, WESTBURY, NEW YORK, 11590 hereinafter called BOCES, as party of the first part, and CABLEVISION LIGHTPATH INC., a corporation organized and existing under the laws of the State of Delaware, of 111 New South Road, Hicksville, NY 11801, hereinafter called the "Contractor", party.

WITNESSETH

1. The Contractor shall furnish at it's own cost, and expense; all labor, materials, equipment, supplies and other facilities and shall perform all work necessary or proper for or incidental to:

Construction of Optical Fiber Cable System, as described in EXHIBITS "A" and "B", provide local, regional and long distance telephone service facilities to Administration Headquarters, South Side High School, South Side Middle School, William S. Covert School, Jennie E. Hewitt School, Riverside School, Floyd B. Watson School, and Francis S. Wilson School; installation and maintenance of all associated electronics (collectively, the "Work"), without any further Work charges to BOCES, and without any further expense of any nature whatsoever to BOCES other than the consideration specified in this Agreement.

Optical Fiber Cable System is the property of the Contractor. BOCES, under conditions further specified in this Agreement, is leasing the Fiber Optical Cable System.

Contractor guarantees that all Optical Fiber Cable System installed meets or exceeds specifications of Exhibit "B".

2. The Contractor represents and warrants that Contractor has visited and knows the site or premises upon which the Work is to be performed hereunder and that Contractor has informed itself of all existing conditions affecting the Work and as to the work of others coming in conjunction with his Work. Failure of the Contractor to thoroughly acquaint itself with the site and local conditions shall not relieve Contractor of its responsibilities, shall not entitle Contractor to any claim for extras.

3. It is further agreed that any material to be furnished or work necessary to be done in addition to or other than specified in this Agreement, shall be covered by a supplemental written contract, and that no claim will be made by the Contractor for any such work performed or material furnished before such supplemental contract shall have been duly made and approved and executed by BOCES.

The Agreement price for Work performed; labor, equipment, materials and supplies provided by Contractor are as follows:

- a. One time service initiation fee of One Hundred Fifty-Nine Thousand, Six Hundred Twenty-Six Dollars (\$159,626.00), which such amount shall be paid within 30 days of BOCES acceptance; and
- b. For the term period of this Agreement a monthly charge in the total sum of Seven Thousand Two Hundred Forty-three Dollars and Seventy-five Cents (\$7,243.75) attributable as follows:

<u>Products</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Monthly Price</u>
1. Maintenance Optical Fiber	1	\$1,000.00	\$1,000.00
2. Switched T1, (ISDN PRI)	2	\$ 750.00	\$1,500.00
3. 300 DID numbers (3 Blocks of 100)	3	\$ 11.25	\$ 33.75
4. Point to Point T1s	5	\$ 268.00	\$ 1340.00
5. Point to Point T1	1	\$ 370.00	\$ 370.00
6. Internet T1s, 1.544MB @ (Access and Loop)	2	\$1,500.00	\$3,000.00

c. Notwithstanding the foregoing, BOCES shall receive the allowances for interruptions of service as set forth in section 5.6 of the Schedule of Intrastate Charges Applying to End-User Communications Services between Fixed Points In the State of New York, issued February 24, 1995 and effective May 13, 1995.

4. Contractor shall submit an invoice to the BOCES on or before the third business day of each month for services performed in the previous month. The aforesaid invoice shall be in a form acceptable to BOCES and include Contractor's Federal employer identification number or Federal social security number. Unless disputed by BOCES, each invoice submitted shall be paid by the BOCES within thirty (30) days. All said invoices will make reference to the benefactor of the services provided: Rockville Centre Union Free School District and further reference will be made to specific service covered in invoice charges.

5. This Agreement shall have a term of five (5) years commencing on the date service is turned up. BOCES has the option of ordering additional facilities described in items: 3.b.2 through 3.b.7 at same listed, monthly recurring cost. Service initiation (non-recurring) fees for said items is as follows:

- 3.b.2..... \$ 250.00 Each Unit
- 3.b.3.....No Installation Charge for DID Numbers
- 3.b.4.....\$ 200.00 Each Unit
- 3.b.5.....\$ 200.00 Each Unit
- 3.b.6.....\$1,000.00 Each Unit

Item 3.b.2.: 'Lightlink T1' may be upgraded to an ISDN PRI T1 for an installation charge, (non-recurring), of \$250.00 and a monthly recurring charge of \$785.50.

Usage prices for Local, Regional, and Local Distance Calling, as described in attachment entitled 'Usage Pricing' are guaranteed not to increase during term of Agreement.

BOCES has the option, (at the end of 60 month Agreement term), to extend its rental of the Optical Fiber Cable System (described in item 1), an additional 60 months for a total cost of \$118,800.00 provided that the services described in items 3.b.2 through 3.b.7 are also concurrently renewed for the same term period, (60 months). This sum will be charged as 'Maintenance Optical Fiber' and may be paid in 60 monthly installments of \$1,980.00 per month. This amount represents an increase of \$980.00 per month over maintenance cost of original 5 year term. Monthly recurring costs for services described in 3.b.2 through 3.b.7 will remain the same. Service initiation fees for 3.b.2 through 3.b.7 are explained in item 5 and are not recurring for the optional 2<sup>nd</sup> 60 month term except in the case of ordering additional services.

6. The Contractor agrees to commence construction and installation Work upon execution of the Agreement. The Work shall be prosecuted continuously and with diligence. The Contractor shall, until acceptance of the Work, be solely responsible for the loss of tools, materials, equipment, necessary to complete the Work, whether the loss be by theft or by any other cause, and the Contractor's shall replace them at his own expense. All Work is at Contractor's risk until it is satisfactorily completed, tested and accepted by BOCES in writing. The Contractor will deliver service on or within 60 days from Agreement signing except for factors beyond Contractor's control, demonstrated lack of cooperation from BOCES or Rockville Centre Union Free School District, or 'Acts of God', (meaning but not limited to unusually, unseasonable weather patterns or natural catastrophes). Acceptance of services and the Fiber Optic Cabling System by BOCES will occur within 10 business days of final delivery in order to allow testing by selected third party vendor(s). Aforementioned vendor(s) will perform attenuation testing and possibly other types of testing as requested by BOCES.

7. All materials of which the Work is composed shall be of the best of their respective kinds and shall be subject to approval and acceptance by BOCES.

8. The Contractor shall promptly remove all rubbish and waste materials, and shall keep the premises at all times clean, neat, and in perfect condition.

9. This Agreement shall be, at BOCES discretion, deemed void and of no effect unless the Contractor shall secure Workers' Compensation Insurance for the benefit of and keep insured during the life of this Agreement, such employees as are required to be insured by the Workers' Compensation Law of the State of New York.

10. In consideration of the due fulfillment of the conditions of this, and within a reasonable time after the work is satisfactorily completed and accepted by BOCES, BOCES hereby agrees to pay the Contractor the sums specified herein provided the Contractor has duly filled in, executed and filed with BOCES it's affidavits on forms which may be obtained from BOCES, that all labor used in the work has been paid in full and in accordance with all the applicable provisions of the Labor Law, and that all liens, claims and demands of any sub-contractors, laborers, and material men arising out of such work are fully satisfied.

11. The Contractor shall furnish at his own expense in accordance with the terms of this Agreement, Contractor's Public Liability Insurance with BOCES named as an additional insured for Two Million (\$2,000,000) Dollars limit per location for General Insurance and One Million (\$1,000,000) Dollars property damage per occurrence covering all hazards and operations under this Agreement. Certificates showing the Contractor's individual policies, insurance carriers, limits and the effective dates are attached to and made part of this Agreement. The Contractor will maintain all the insurance referred to hereinabove throughout the duration of this Agreement.

12. In the event of default by Contractor, BOCES shall in addition to the rights and remedies contained in this Agreement, have any rights and remedies which are provided by law, including but not limited to an action for breach of contract, and right to seek damages, including consequential damages therefor.

13. This Agreement shall be governed by and interpreted in accordance with the Laws of the State of New York and shall bind the successors and assigns of the respective parties.

14. All oral agreements are merged in this Agreement and all amendments hereto shall be in writing, subscribed by the party to be charged.

15. Notwithstanding any provision contained in this Agreement to the contrary, the contract prices, terms, and conditions are subject to Cablevision Lightpath's tariffs on file with the New York State Public Service Commission and the Federal Communications Commission, which prices, terms, and conditions shall supersede any conflicting term contained herein.

16. Delivery and maintenance of the Optical Fiber System and aforementioned switched and dedicated Telecommunications services, (3.b.2 through 3.b.7); are the sole responsibility of the Contractor. If as a result of a requested service call, fault is demonstrated to be with other than Contractor's products and services, BOCES may be liable for time and material charges incurred by Contractor.

17. It should be understood and accepted by Contractor and BOCES that this Agreement is voidable by either party for any reason for a period of 15 business days after signing.

18. The services provided in this Agreement were specifically designed by Contractor for exclusive use of the Rockville Centre Union Free School District and cannot be resold or extended beyond the configurations specified in Exhibit A.

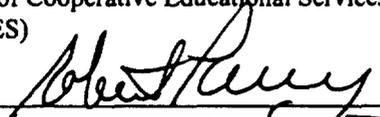
19. This Agreement shall incorporate 'Additional Provisions to be included in the Cablevision Lightpath Agreement'. In the case of default by BOCES under the conditions described in detail by paragraph 4 of aforementioned addendum, the Rockville Centre Union Free School District, 128 Shepard Street, Rockville Centre, NY 11570 shall replace 'BOCES' in all items of this Agreement and therefore assume all monetary obligations previously held by 'BOCES'. The Rockville Centre Union Free School District shall be required to endorse this Agreement and attached 'Additional Provisions to be included in the Cablevision Lightpath Agreement'.

20. The provisions contained in this Agreement are highly confidential and shall not be released or made available pursuant to the Freedom of Information Act by any person without the approval of all other parties hereto.

21. Contractor shall not assign this Agreement without the written consent of BOCES, which will not be unreasonably withheld or delayed.

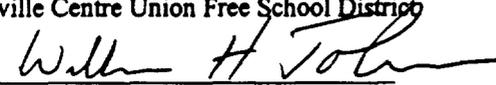
IN WITNESS WHEREOF, the parties have executed this contract the day of the year first above written.

Board of Cooperative Educational Services of Nassau County  
(BOCES)

By: 

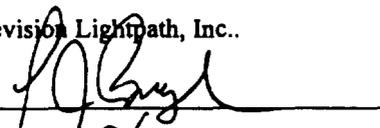
Title: Deputy Supt

Rockville Centre Union Free School District

By: 

Title: \_\_\_\_\_

Cablevision Lightpath, Inc..

By: 

Title: VP/GM

Form Approved: \_\_\_\_\_

**Additional Provisions to be included  
in the Cablevision Lightpath Agreement**

1. **Performance of Work**

- (a) Contractor shall perform the installation of the Optical Fiber Cable System (the "Installation") in a workmanlike manner in conformity with standard professional practices, using qualified workers, and in strict accordance with this Agreement or any modifications thereto as approved pursuant to this Agreement and as required to conform to any applicable orders or regulations of any lawful body having the right to require that said work should be performed in the manner specified by such body.
  - (b) Contractor shall furnish sufficient force, construction plan and equipment and shall work such hours, including overtime, night shifts, Saturdays, Sundays and holidays if and as required to complete the installation, within the time specified in the Agreement.
  - (c) All machinery and equipment owned or controlled by Contractor which is proposed to be employed by it shall be of a type and of sufficient size, quality and condition to produce a satisfactory quality of work within the time provided for the completion of installation.
  - (d) If the Work is to be performed by Contractor pursuant to this Agreement is defective or otherwise fails to comply with this Agreement, BOCES may, after written notice to Contractor, require Contractor to remedy such defect or failure at no expense to BOCES. If Contractor fails to promptly remedy such defect or failure, BOCES may do so and deduct the cost thereof from any amount due or to become due to Contractor, and recover any such excess costs from Contractor and exercise any other remedies BOCES may have at law or in equity. Costs to remedy a defect or failure shall include repairs to other work damaged by such defect or failure or damaged by the repairing of same.
2. Contractor shall indemnify and hold harmless BOCES from and against any and all losses, damages or expenses (including reasonable attorneys' fees) which BOCES may sustain by reason of, or arising out of, any breach by Contractor of any of its obligations under this Agreement.
  3. All notices, requests, demands and other communications (collectively "Notices") given or made pursuant to this Agreement shall be made in writing and shall be deemed to have been duly given if sent to by certified or registered mail, return receipt requested, to the parties at the addresses first above written.
  4. BOCES is organized under the Education Law of the State of New York. BOCES' agreement under this Agreement are subject to the provision of funding by the New York State Education Department and by various school districts. BOCES is limited to act in cooperative school district ventures by requests for services from its component districts. Contracts entered into by BOCES are subject to the annual appropriation of funds. In the event of failure by school district(s) to appropriate funds for this Agreement or the disapproval of the new York State Education Department, this Agreement may be canceled by BOCES and terminated in whole or in part without penalty to BOCES.
  5. In the event that BOCES must invoke the privileges stated in aforementioned Paragraph 4 and Additional Provision 4, and thereby cancel the Agreement with Cablevision Lightpath; the Rockville

Centre Union Free School District shall replace BOCES as the party responsible for monetary obligation previously incurred by BOCES in the attached Agreement.

Rockville Centre Union Free School District

By: William H. Toth

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Date)

Cablevision Lightpath, Inc.

By: [Signature]

Lawrence J. Borden  
(Printed Name)

10/20/98  
(Date)

Board of Cooperative Educational Services  
of Nassau County (BOCES)

By: [Signature]  
ROBERT PARRY  
(Printed Name)

10/19/98  
(Date)



Exhibit B

Board of Cooperative Educational Services  
of Nassau County  
Salisbury Center  
Valentines Road and The Plain Road  
Westbury, NY 11590

March 31, 1999

Dear Sir:

Regarding the contract between Cablevision Lightpath, Inc. and Board of Cooperative Educational Services of Nassau County providing service to Rockville Centre School District; Payment for the one-time initiation fee of One Hundred Fifty Nine Thousand, Six Hundred Twenty-Six Dollars (\$159,626.00) will be payable after the completion of construction on or about July 1, 1999

For the term of this Agreement a monthly recurring charge in the total sum of Seven Thousand Two Hundred Forty-three Dollars and Seventy Cents (\$7243.75) will commence after July 1, 1999.

Sincerely,

Phil DeCabia  
VP, Long Island Business Telecommunications Services

## Exhibit C

**LOCATION SUMMARY**  
**Charge Analysis Report**

 ACCOUNT NAME: Board of Educational Services  
 ACCOUNT NUMBER: 00006517

 PAGE # 2 of 2  
 USAGE FROM: 6/01/99 to 6/30/99

**PRIOR PERIOD:**

PRIOR BALANCE \$ .00

BALANCE BEFORE NEW CHARGES: \$ .00

**CURRENT PERIOD:**
**SERVICE CHARGES:**

<u>DESCRIPTION</u>	<u>FR DATE</u>	<u>TO DATE</u>	<u>QUANTITY</u>	<u>NON-RECUR</u>	<u>RECURRING</u>	<u>TOTAL</u>
Fiber Lease	07/01/99	07/31/99	1	.00	.00	\$ .00
Installation Charges	07/01/99	07/01/99	1	159626.00	.00	\$159,626.00
<b>TOTAL SERVICE CHARGES</b>			<b>2</b>	<b>159,626.00</b>	<b>\$ .00</b>	<b>\$159,626.00</b>

**TAXES:**

<u>DESCRIPTION</u>	<u>TOTAL</u>
State Gross Receipts Tax	\$6,568.61
MTA Surcharge on Services	\$1,165.27
Local Utility Gross Receipts	\$1,776.64
<b>TOTAL TAXES:</b>	<b>\$9,510.52</b>

**TOTAL CURRENT CHARGES: \$ 169,136.52**
**TOTAL AMOUNT DUE: \$ 169,136.52**

ACCOUNT NAME: **BOCES DIV OF BUSINESS/SVC-RVC**  
 ACCOUNT NUMBER: **0008055**

 PAGE # **3** OF **10**  
 USAGE FROM: **07/01/99** TO **07/31/99**
**PRIOR PERIOD:**
**PRIOR BALANCE** **\$0.00**
**BALANCE BEFORE NEW CHARGES:** **\$0.00**
**CURRENT PERIOD:**
**USAGE CHARGES:**

<u>DESCRIPTION</u>	<u>FR DATE</u>	<u>TO DATE</u>	<u>QUANTITY</u>	<u>NON-RECUR</u>	<u>RECURRING</u>	<u>TOTAL</u>
DID - Reserve 100 Numbers	7/01/99	7/31/99	1	.00	11.25	\$11.25
Fibre Lease	7/01/99	7/31/99	1	.00	.00	\$0.00
Maintenance Fee	7/01/99	7/31/99	1	.00	1000.00	\$1,000.00
Primary Rate Interface - ISDN	7/01/99	7/31/99	2	.00	1500.00	\$1,500.00
Primary Rate Interface - ISDN	7/01/99	7/31/99	100	.00	.00	\$0.00
<b>TOTAL SERVICE CHARGES</b>			<b>105</b>	<b>\$0.00</b>	<b>\$2,511.25</b>	<b>\$2,511.25</b>

**TAXES:**

<u>DESCRIPTION</u>	<u>TOTAL</u>
State Gross Receipts Tax	\$103.34
MTA Surcharge on Services	\$18.33
<b>TOTAL TAXES:</b>	<b>\$121.67</b>

**TOTAL CURRENT CHARGES:** **\$2,632.92**
**TOTAL AMOUNT DUE:** **\$2,632.92**

ACCOUNT NAME: BOCES DIV OF BUSINESS/SVC-RVC  
 ACCOUNT NUMBER: 0009709

 PAGE # 3 OF 10  
 USAGE FROM: 07/01/99 TO 07/31/99

PRIOR PERIOD:

 PRIOR BALANCE \$0.00

 BALANCE BEFORE NEW CHARGES: \$0.00

CURRENT PERIOD:

## SERVICE CHARGES:

DESCRIPTION	FR DATE	TO DATE	QUANTITY	NON-RECUR	RECURRING	TOTAL
DS-1 Service	7/01/99	7/31/99	PRORATE	4710.00	.00	\$4,710.00
DS-1 Service	8/01/99	8/31/99	8	.00	4710.00	\$4,710.00
<b>TOTAL SERVICE CHARGES</b>			<b>8</b>	<b>\$4,710.00</b>	<b>\$4,710.00</b>	<b>\$9,420.00</b>

## TAXES:

DESCRIPTION	TOTAL
State Gross Receipts Tax	\$387.63
MTA Surcharge on Services	\$68.77
<b>TOTAL TAXES:</b>	<b>\$456.40</b>
<b>TOTAL CURRENT CHARGES:</b>	<b>\$9,876.40</b>

**TOTAL AMOUNT DUE: ★ \$9,876.40**

*OK to pay  
 10/16/99*

*July / August DS-1 Service*