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Before the  
Federal Communications Commission  
Washington D.C. 20554

In the Matter of

|                                       |   |                               |
|---------------------------------------|---|-------------------------------|
| Request for Review of Decision        | ) |                               |
| By the Schools and Libraries Division | ) |                               |
| For Russell County, Virginia          | ) | E-Rate Funding Request Number |
| Public Schools                        | ) | 1262262                       |
|                                       | ) |                               |
| Federal-State Joint Board on          | ) |                               |
| Universal Service                     | ) | CC Docket No. 02-6            |
|                                       | ) |                               |
|                                       | ) |                               |

Request for Review

Russell County Public Schools  
Billed Entity Number: 126599  
Form 471 Number: 459434  
Funding Request Number: 1262262

Pursuant to Section 54.719(c) of the rules of the Federal Communications Commission (Commission), Russell County Public Schools (Russell), hereby submits this Request for Review of the decision by the Universal Service Administrator, Schools and Libraries Division ("SLD") that denied Russell's request for funding for Internet Access services for Funding Year 2005. The stated basis for the SLD's denial was that "No contract or legally binding agreement was in place when the Form 471 certification was filed." A contract was in place when the Form 471 certification was filed.

Russell filed an appeal with the SLD in correspondence dated December 13, 2005, contending a contract was in place when the form 471 was filed. A copy of the original contract, dated June 20, 2004, was provided with the appeal. The SLD refused to accept the original contract as clarifying information citing "Program rules do not permit the SLD to accept new information on appeal except where the applicant was not given an opportunity to provide information during the initial review or an error was made by the SLD." Explained in our original appeal, and provided here as Attachment A, Russell was not given the opportunity to provide clarifying information to prevent funding denial, rather program reviewer, Mr. Mark Skaleski, simply denied the funding request with no further contact. The appeal to SLD was the first opportunity to prove a contract was indeed in place when the Form 471 here under review was filed.

While the March 3, 2005 document originally provided to SLD was characterized as a "Service Agreement - Renewal," we ask the Commission to treat this document as an

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addendum to the existing contract, which was in force through June 30, 2005, and continuing on a Month-to-Month basis during the Year 2005 fund year. We note the Commission, in the Decision in Pasadena, DA 06-486, released March 1, 2006, the Commission stated: "While we have previously noted that the burden of timely and accurately filing rests with the applicant, we are compelled to remind USAC that it retains an obligation to conduct a reasonable inquiry into the filings and materials that USAC itself has in its possession." Alternatively, in the public interest, and in consideration of the goals of the E-Rate program, we ask the Commission to waive the contract award date requirement.

## **Background**

Russell County Public Schools includes 15 schools and 4,291 students. Russell County is situated in a remote, rural portion of the commonwealth of Virginia. Discounts of 72 percent on telecommunications service and Internet access are vital to ensure students and teachers have access to educational resources, online assessments, and distance learning. Each year of the program, we have attempted to comply with all E-Rate program rules, while procuring the best most cost beneficial service for the school system.

Charter Communications, parent of Interlink Partners, has provided data service to Russell County Schools at rates far below those of all competitors, including the most popular state-wide master contract, Network Virginia. Each year, we post a Form 470 and welcome proposals from competing vendors. Each year Charter Communications is either the only respondent or the lowest price offering. Consequently, we have received service from Charter for 6 years.

Under the current contract, Russell County Schools receives 3MB/s service to 13 locations and T1 service to three more for \$7700 per month, including cable modem lease. Under terms of the Network Virginia state master contract, utilized by many E-Rate filers, the cost for similar service would be approximately double the amount charged by Charter. Clearly, the level of service to each location is "reasonable" under E-Rate evaluation and the cost of service rivals that of the most connected urban school systems. However, even with such reasonable rates for service, we rely on the crucial E-Rate discount of 72 percent to pay the non-discounted share of the \$93,000 charge for service.

## **Discussion**

In the original denial, the SLD contended categorically that the contract was signed after the Form 471 filing. During review, the SLD did not initiate follow-up communication indicating the funding request would be denied, given the documentation provided. On appeal we provided the SLD with clarifying information to show that a contract for requested services did indeed exist.

Subsequent to the denial, the appeal was our first opportunity to provide clarifying

information to the SLD, as the reviewer failed to indicate his intention to deny the funding request based on information provided. The SLD improperly rejected this clarifying information on appeal. The Commission has ruled on several occasions that the SLD must accept clarifying information on appeal when the applicant was not provided an opportunity to provide additional information.

Russell County did have a contract in place when filing the Form 471. Subsequent to filing the Form 471, we added additional locations to be served by Charter. It was determined that because new locations were added and bandwidth increased, the contract should be "renewed" as opposed to amending the original contract. While the number of locations and bandwidth increased, the monthly charges of \$7700 would be unchanged. When entering into the contract "renewal," specific E-Rate regulations were overlooked.

In terms of E-Rate regulations, a contract "renewal" must be exercised within the Form 471 filing window, with or without a Form 470 posting depending on the circumstances of the renewal. However, a contract "amendment" is allowed at any time, so long as the amendment is in accord with terms and conditions of the original contract. Had we amended the June 20, 2004 contract on March 3, 2005, there would have been no question of the ongoing eligibility of the service.

Indeed, the June 20, 2004 contract included provisions for conversion from a contractual relationship to a Month-to-Month billing relationship upon the expiration of the contract. Under terms of the original contract, we should have posted a Form 470, received service offers and select a service provider at least 28 days after the Form 470 posting.

Russell County Schools did file a Form 470 for Funding Year 2005, number 842130000521684, describing the broadband service we desired and additional location. Because Charter was the most cost effective response to the Form 470 filing, we should have either renewed the contract during the filing window, or selected Charter as our provider on a Month-to-Month basis for Funding Year 2005, requesting a service change from the SLD.

The March 3, 2005, contract renewal did not change the cost of the overall contract, rather, it increased bandwidth and number of locations. Again, had this document been an amendment to the June 20, 2004 contract, it would have been completely eligible for E-Rate funding.

We apologize for failing to follow precisely the letter of E-Rate regulations with this application but note that all contracts were entered into with the benefit of a Form 470 filing and open to competition. The selected vendor provided the most cost effective solution to our needs at rates far below those charged under the most popular statewide master contract. We also note that the Commission, in recent decisions, has acknowledged the E-Rate program is exceedingly complex from an applicant standpoint. There was absolutely no attempt to defraud the program, waste program resources, or abuse program rules.

We ask the Commission to allow the March 3, 2005 contract renewal to be considered an "amendment" for the purpose of E-Rate regulations. Alternatively, considering the long track record of excellent very cost effective service from Charter and Russell County's annual Form 470 filing, we ask the Commission to waive the contract signing deadline in this case.

Submitted this 6th day of March, 2006,

A handwritten signature in cursive script that reads "Tim Lovelace".

Tim Lovelace  
Russell County Public Schools  
One School Board drive  
Lebanon, VA 24266

# **Attachment A**

FUNDING COMMITMENT REPORT

Billed Entity Name: RUSSELL COUNTY PUBLIC SCHOOLS  
BEN: 126599  
Funding Year: 2005

Form 471 Application Number: 459434  
Funding Request Number: 1262262

Category of Service: Internet Access  
Form 470 Application Number: 842130000

SPIN: 143007422

Service Provider Name: Interlink Communications Partners, LLC  
Contract Number: N/A

Billing Account Number: 8351320350001228

Service Start Date: 07/01/2005

Contract Expiration Date: 06/30/2006

Number of Months Recurring Service Provided in Funding Year: 12

Annual Pre-discount Amount for Eligible Recurring Charges: \$93,000.00

Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00

Pre-discount Amount: \$93,000.00

Discount Percentage Approved by the SLD: N/A

Funding Commitment Decision: \$0.00 - Contract Violation

Funding Commitment Decision Explanation: No contract or legally binding agreement was in place when the Form 471 certification was filed.

FCDL Date: 12/02/2005

Wave Number: 023

December 13, 2005

Schools and Libraries Division  
Box 125 – Correspondence Unit  
80 South Jefferson Road  
Whippany, New Jersey 07981

Dear SLD,

**THIS IS A LETTER OF APPEAL.**

The appeal is being made by Tim Lovelace on behalf of Russell County Public Schools (Billed Entity # 126599).

On December 2, 2005, 471 Application # 459434 was **DENIED** by a Funding Commitment Decision Letter for funding year 2005, and the explanation given was “No contract or legally binding agreement was in place when the Form 471 certification was filed.” The service provider listed on this application was Interlink Communication Partners, LLC (SPIN # 143007422).

A contract was in place during the filing of this form 471. The contract is dated June 20, 2004 and a copy is provided with this letter of appeal. During program review, a copy of our current contract was requested and I sent an updated copy dated March 3, 2005. This contract reflected only some enhancements to our service and I was fully aware that these new enhancements would not be eligible for funding this year since they came about after filing the 471 form on February 7, 2005. I just assumed it would be best to send the latest agreement between Russell County Public Schools and Interlink Communication Partners for review and never imagined this would be looked upon as the **ONLY** agreement between us.

During program review, had there been a question of eligibility of this contract, we would have provided the original contract; however, upon receipt of the contract Mr. Mark Skaleski of SLD did not initiate any follow-up communication. Seeing a discrepancy in contract award dates, Mr. Skaleski should have brought to our attention this discrepancy and given us the opportunity to explain and/or submit the proper contract for review.

The facts in this case are that Russell County Public Schools had renewed a previously bid contract on June 20, 2004 as a result of filing Form 470 # 842130000. The enhanced contract provided to Mr. Skaleski upon his request, should be treated by SLD as a service change only, and be treated as such for program compliance review.

These services were determined by competitive bid to be the most cost effective to Russell County Public Schools, and are vital to our school system. Russell County Public Schools has never abused funds provided by the Schools and Libraries Division and depends upon these funds to provide Internet access as well as other services to our

students and teachers. Without these funds we simply could not afford to offer these services to everyone.

Thank you for considering my appeal,

A handwritten signature in cursive script that reads "Tim Lovelace".

Tim Lovelace  
Technology Director  
Russell County Public Schools  
1 School Board Drive  
Lebanon, VA 24266

▶ Customer Federal Tax ID#: 54-6001591



**DATA COMMERCIAL SERVICE AGREEMENT - RENEWAL**

This Commercial Service Agreement ("Agreement") is made on June 20, 2004, by and between Charter Communications VI, LLC/Interlink Partners ("CHARTER") and Russell County-Virginia Public Schools ("CUSTOMER").

Site Address: Multiple Sites (SEE PAGE 2)

Billing Address: P.O. Box 8, Lebanon VA 24266

Special Billing Instructions: \_\_\_\_\_

Site Contact/Phone: Tim Lovelace/276-889-6568 Fax: 276-889-6508

Technical Contact/Phone: same

▶ Primary Email Address: lovelace@russell.k12.va.us

Service Add/Change: new

**VIDEO SERVICE (NON APPLICABLE)**

**All Digital Video Packages include:**

All rates noted in this agreement are a package monthly rate for one outlet. (Digital where available.)

- Digital Receiver Service: 1 Digital Terminal Remote Control and Integrated Interactive Service, which includes: Interactive On-Screen Guide, and 45 Channels of CD Quality Music.
- All local television channels including local weather, local news and sports with no additional Equipment required.

**DATA SERVICE**

**All Business Internet Packages include:** Monthly rental of 1 cable modem and 22 STATIC IP Addresses

- Non-custom package includes: 10 Non-Vanity emails with 20MB storage each. Web Package includes 1 FTP user name; 20 MB web storage; 3GB monthly web transfer and Web data logs.
- Custom package includes: DNS hosting for 1 Domain Name, 20 e-mail accounts with 20MB storage each. Web package includes 1 FTP user name, 100MB storage, 6GB monthly web transfer, Microsoft® FrontPage® server extensions; Web data logs; CGI web enhancement tools.

\* Restrictions contained in the AUP are amended to the extent and only to the extent indicated herein.

**TERM**

The initial term of this Agreement shall begin on the date installation is complete and payment arrangements have been completed and shall continue for a period of 12 months. Upon expiration of the initial term, this Agreement shall automatically renew at the then current rates for successive one-month terms until such time as either party shall deliver thirty (30) days written notice of termination prior to the expiration date of the then current term.

**PRIMARY SERVICES PROVIDED**

Video: NONE  
Data: SBI (Speed: VARIOUS Down/Up) SEE PAGE 2

TOTAL Monthly Fees: \$7700.00  
TOTAL One-Time Fees: \$0

RUSSELL COUNTY-Virginia Public Schools

▶ Authorized By: Tim Lovelace

▶ Signature: Jim Farlow

▶ Date: 6-20-04

Title: Technology Director

Print Name: Tim Lovelace

|   |  |           |
|---|--|-----------|
| <b>Monthly Video Services</b>   |  |           |
| Video Service: NONE   |  | \$0       |
| Total Number of Video Boxes: 0  |  |           |
| Additional Monthly Outlet Fee:  |  |           |
| <b>Monthly Data Services</b>  |  |           |
| Base Service INTERNET see below   |  | \$7700.00 |
| Speed: Down/Up SEE BELOW (INCLUDES MODEM) / Filtering                             |  |           |
| <b>Custom</b>   |  |           |
| DNS Hosting: N/A  |  |           |
| Domain Name:  |  | \$0.00    |
| Web Storage Upgrades:   |  | \$0.00    |
| Domain Aliases:   |  | \$0.00    |
| Additional Email Accounts:  |  | \$0.00    |
| <b>IP Options</b>   |  | \$0.00    |
| Additional Dynamic IP: (Max of 12 for total of 15)                                |  |           |
| Dynamic Perm Lease: (Up to total number of Dynamic IPs)                           |  | \$0.00    |
| Static IP Package: 22   |  | \$0.00    |
| Static IP Addresses:  |  |           |
| Other Services Provided:  |  | \$0.00    |
| Equipment Rental Detail:  |  | \$0.00    |
| Monthly Construction Fee:   |  | \$0.00    |
| <b>One-Time Services</b>  |  |           |
| Additional Outlets to Install:  |  | \$0.00    |
| Wall Fishes:  |  | \$0.00    |
| Other Services Provided:  |  | \$0.00    |
| One-Time Construction Fee:  |  | \$0.00    |
| <i>(subject to revision based upon governmental and/or third party approvals)</i> |  |           |
| One-Time Standard Installation Fee  |  | \$0.00    |

TECH SUPPORT 888-254-3534

TOTAL MONTHLY \$7700.00

TOTAL ONE-TIME 0

1. Russell Co Career/Tech 1 Vocational School Rd, Lebanon VA 24266 (276-889-6568) 2 MB / 512 SPEED
2. Castlewood HS Rt 3, Highway 58, Castlewood VA 24224 (276-762-9449) 2 MB / 512 SPEED
3. Honaker HS POB 764, A P Baldwin Dr, Honaker VA 24260 (276-873-6363) 1.5 / 1.5 SPEED
4. Lebanon HS POB 217, One Pioneer Dr, Lebanon VA 24266 (276-889-6539) 2 MB / 512 SPEED
5. Honaker Elem. POB 744 Hwy 67, Honaker VA 24260 (276-873-6301) 768 Kbps / 256 SPEED
6. Lebanon Elem. POB 668, Main St, Lebanon VA 24266 (276-889-6531) 768 Kbps / 256 SPEED
7. Castlewood Elem. Rt 3, Highway 58, Castlewood VA 24244 (276-762-2315) 768 Kbps / 256 SPEED
8. Lebanon Middle POB 577, 131 W Main St, Lebanon VA 24266 (276-889-6548) 1.5 / 1.5 SPEED
9. Copper Creek Elem. Rt 2 Box 33 Hwy 58, Castlewood VA 24244 (276-794-9306) 768 Kbps / 768 SPEED
10. Swords Creek Elem. POB 129 Hwy 67, Swords Creek VA 24649 (276-991-0016) 768 Kbps / 256 SPEED
11. Elk Garden Elem. Hayters Gap Rd, Rosedale VA 24280 (276-880-1062) 768 Kbps / 768 SPEED

Customer Initial: TL

**GENERAL TERMS AND CONDITIONS**

**THE PARTIES AGREE AS FOLLOWS:**

**1.SERVICES.** This Agreement states the terms and conditions under which CHARTER shall provide CUSTOMER with the services ("Services") and associated equipment ("Equipment") indicated herein. This is a Service Agreement and does not and should not be construed to provide the CUSTOMER with any ownership right or rights in any of the Service, Equipment or peripherals associated with the provision of the Service. By using the Service, CUSTOMER agrees to be bound by the terms of this Agreement.

**2.PAYMENT TERMS.** CUSTOMER agrees to pay one-time and monthly recurring charges for the Services, as set forth in this Agreement. One-time charges are due on or before the time of installation. CUSTOMER shall pay monthly charges in advance.

a) **Taxes, Fees and Government Charges.** CUSTOMER shall also pay CHARTER any sales, use, property, excise or other taxes, franchise fees, and governmental charges (except income taxes) arising under this Agreement. A copy of the CUSTOMER'S tax exemption document must be provided to CHARTER to certify tax-exempt status. Tax-exempt status shall not waive the franchise fee.

b) **CUSTOMER Change Requests.** Any charges associated with Service and Equipment installations, additions, modifications, substitutions, upgrades, reconfigurations, rebuilds or relocations requested by CUSTOMER subsequent to the initial installation, are the sole financial responsibility of CUSTOMER and shall be reflected on the CUSTOMER'S billing statement after the requested Service and/or Equipment has been installed, added, modified, substituted, upgraded, reconfigured, rebuilt or relocated and CUSTOMER'S payment of the bill which includes those added charges will be deemed CUSTOMER'S acceptance of those charges. Subsequent to the initial term CHARTER may increase the recurring charge from time to time on thirty (30) days' prior written notice to CUSTOMER.

c) **Non-Payment and Penalties.** Failure to pay all bills within thirty (30) days of issuance shall constitute a breach of this Agreement and be grounds for disconnection and/or imposition of a late fee of not more than five percent (5%) on any outstanding balance at CHARTER'S discretion. CHARTER may charge a reasonable service fee for all returned checks and bankcard or charge card charge-backs. If Service is disconnected because CUSTOMER does not pay the bill, CHARTER may require that CUSTOMER pay all past due charges, a reconnect fee, and a minimum of one month's advance charges before CHARTER will reconnect Service. CUSTOMER shall be responsible for all expenses (including reasonable attorney's fees) incurred by CHARTER in collecting any unpaid amounts in accordance with this Agreement.

d) **Billing Errors.** CUSTOMER must bring any billing errors or requests for credit to CHARTER'S attention within thirty (30) days of the date CUSTOMER receives the bill for which correction of a billing error or credit is sought.

e) **Site Visits and Repairs.** If the CUSTOMER'S use or modification of the Equipment or software supplied by CHARTER requires a visit to the CUSTOMER'S facilities for correction or repair, CHARTER reserves the right to charge the CUSTOMER for such site visit and repair costs.

**3.INSTALLATION AND ACCESS.** CUSTOMER hereby grants to CHARTER (subject to any necessary governmental or third-party approvals) reasonable access to the premise(s) to review, install, inspect, maintain and repair all necessary Equipment (as well as permission to enter the premise(s) for the exercise of such right) to receive the Service. Such access shall include landlord permission, when applicable. CHARTER reserves the right to perform an engineering review of the premise(s) prior to installation. The CUSTOMER shall be responsible, at its own expense, for all site preparation activities necessary for installation of the Service, as set forth herein, including the relocation of the CUSTOMER'S equipment, as necessary, to access the Service. To ensure proper installation of the Service, CUSTOMER may be required to provide CHARTER with accurate physical network diagrams and/or maps. CHARTER may schedule installation visits with the CUSTOMER as necessary. The CUSTOMER'S authorized representative must be present during site visits.

**4.SERVICES AND EQUIPMENT.** CUSTOMER UNDERSTANDS AND AGREES THAT NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN ALL EQUIPMENT AND MATERIAL INSTALLED OR PROVIDED BY CHARTER, INCLUDING BUT NOT LIMITED TO MODEM(S), ROUTER(S), E-MAIL ADDRESS(ES), E-MAIL NAME(S), AND IP ADDRESS(ES), IS AND SHALL REMAIN THE PROPERTY OF CHARTER AND MUST BE RETURNED TO CHARTER AT ANY TIME SERVICE IS DISCONNECTED, OR ANY REASONABLE TIME THE CUSTOMER IS DESIROUS OF MAKING AN EXCHANGE OF SUCH EQUIPMENT. CUSTOMER will use reasonable care to avoid damaging any Equipment and will not move, relocate, alter, sell, lease, assign, encumber or otherwise tamper with the Equipment. Immediately upon termination of Service, the Equipment supplied by CHARTER must be returned to CHARTER in good condition. Failure to return Equipment within ten (10) days after Service is disconnected will result in a charge being made to CUSTOMER'S account. CUSTOMER agrees to pay the full retail cost for the repair or replacement of any lost, stolen, or damaged Equipment, together with any costs incurred by CHARTER in obtaining or attempting to regain possession of such Equipment, including, but not limited to, reasonable attorney's fees. CUSTOMER further agrees to pay for any repairs or replacement of the Equipment whether or not caused by CUSTOMER'S negligent act, except such repairs or replacements as may be necessary by reason of normal and ordinary wear or by reason of defects of material or workmanship therein.

**5.DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY.**

a) **Limited Warranty.** CHARTER hereby represents and warrants to the CUSTOMER that all Services shall be performed in a workmanlike manner and in accordance with the terms and conditions set forth in this Agreement. CUSTOMER agrees that CUSTOMER uses the Service and any software and Equipment supplied by CHARTER at its sole risk. The Service and CHARTER Equipment are provided on an "as is basis" without warranties of any kind. CHARTER does not warrant uninterrupted use of Service. Any warranty claim by the CUSTOMER must be made within thirty (30) days after the applicable Service has been performed. CHARTER'S sole obligation and the CUSTOMER'S sole remedy, with respect to any breach of the limited warranty set forth in this Section, shall be a prorated refund of the fees paid by the CUSTOMER based on the period of time when the Service is out of compliance with this Limited Warranty provision.

b) **Disclaimer.** The warranties in this section are in lieu of all other warranties, express or implied, including any warranty of merchantability, fitness for a particular purpose or non-infringement.

c) **Limitation of Liability.** CHARTER shall not be liable to CUSTOMER for indirect, special, incidental, consequential, punitive, or exemplary damages arising out of or in connection with this Agreement or any acts or omissions associated therewith, including any acts or omissions by subcontractors of CHARTER, or relating to any Services furnished, whether such claim is based on breach of warranty, contract, tort or any other legal theory and regardless of the causes of such loss or damages or whether any other remedy provided herein fails. Any claim made under this paragraph or this Agreement shall be made in writing and forwarded to the CHARTER address that appears hereon. In no event shall CHARTER'S liability hereunder exceed the total fees paid hereunder during the preceding thirty (30) day period.

**6.FORCE MAJEURE.** The CUSTOMER agrees that CHARTER shall not be liable for any inconvenience, loss, liability or damage resulting from any failure or interruption of Service, directly or indirectly caused by circumstances beyond CHARTER'S control, including but not limited to denial of use of poles or other facilities of a utility company, labor disputes, acts of war or terrorism, criminal, illegal or unlawful acts, natural causes, mechanical or power failures, or any order, law or ordinance in any way restricting the operation of the Service.

**7.INDEMNIFICATION.** The CUSTOMER agrees to indemnify CHARTER against any and all claims, lawsuits, damages, judgments, costs, fees or expenses (including reasonable attorney's fees and costs incurred by CHARTER in enforcing its rights under this Agreement) incurred by CHARTER which arise out of or are in any way related to the installation, maintenance or repair of any Equipment or Services provided by CHARTER to CUSTOMER under the terms of this Agreement.

**8.MISCELLANEOUS.**

Customer Initial: TL

a) **Entire Agreement.** This Agreement and any related schedules constitute the entire Agreement with respect to the Service. A facsimile of a duly executed Agreement signed by both authorized parties shall be considered evidence of a valid agreement, and CHARTER may rely on such facsimile copy of the Agreement as if it were the original signed copy of the Agreement. This Agreement supercedes and nullifies all prior understandings, promises and undertakings, if any, made orally or in writing by or on behalf of the parties with respect to the subject matter of this Agreement.

b) **Authorized Party.** The CUSTOMER represents to CHARTER that the CUSTOMER has the authority to execute, deliver and carry out the terms of the Agreement.

c) **No Rights or Remedies for Third Parties.** This Agreement is not intended to give and does not give any rights or remedies to any person other than CHARTER and the CUSTOMER.

d) **Governing Law.** This Agreement and all matters arising out of or related to this Agreement shall be governed by the laws of the State of VIRGINIA, without regard to conflicts of law provisions. The CUSTOMER agrees that the federal and state courts of VIRGINIA alone have jurisdiction over all disputes arising under this Agreement and the CUSTOMER consents to personal jurisdiction of those courts with respect to any disputes arising under this Agreement.

e) **Severability.** If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

f) **No Assignment or Transfer.** The CUSTOMER may not assign this Agreement or its rights or obligations under this Agreement without CHARTER'S prior written consent. The Service shall be provided to CUSTOMER at the specified premise address(es). The CUSTOMER may not transfer the CUSTOMER'S subscription or the CUSTOMER'S rights and obligations under the Agreement to any other person or to any other address without CHARTER'S prior written consent.

g) **Waiver.** Except as otherwise provided herein, the failure of CHARTER to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

#### **ADDITIONAL TERMS AND CONDITIONS — VIDEO**

9. **PROVISION OF SERVICE.** CHARTER may, from time to time, rearrange, delete, add or otherwise change packaging and programming of Services contained in CHARTER'S basic cable, Digital Music or other Services.

10. **ADDITIONAL SETS.** CUSTOMER agrees (i) not to add additional sets or disturb, alter or remove any portion of CHARTER'S Equipment or material, (ii) to adequately safeguard such Equipment against others, (iii) not to hire or permit any one other than personnel authorized by CHARTER acting in their official capacity to perform any work on such Equipment. CUSTOMER is prohibited from moving Equipment to another location or using it at an address other than the premise(s) without prior written authorization from CHARTER. Any unauthorized connection or other tampering with the system or its components (including converters) shall be cause for disconnection of Service or legal action, and CHARTER shall be entitled to recover damages, including, but not limited to, the value of any Services illegally obtained plus reasonable collection costs including reasonable attorney's fees.

11. **MUSIC RIGHTS FEES.** CHARTER has obtained all necessary music rights fees required by the American Society of Composers, Authors & Publishers ("ASCAP"), Broadcast Music Inc. ("BMI") and SESAC, Inc. ("SESAC") or their respective successors and any other entity, person or governmental authority from which a license is (or which CHARTER may designate as being) necessary or appropriate in connection with the provision of the Service. So long as CUSTOMER is not in default of this Agreement, and except as listed in (i) - (iii) herein: CUSTOMER shall not, and shall not authorize or permit any other person to (i) charge a cover charge or admission fee to the premise(s) at the time the Service (or any part thereof) is being performed or is to be performed therein; (ii) permit dancing, skating or other similar forms of entertainment or physical activity in conjunction with the performance of the Service (or any part thereof) unless CUSTOMER can demonstrate to the reasonable satisfaction of CHARTER that CUSTOMER or a third-party has obtained a then current music license permitting such activity; and (iii) insert any commercial announcements into the Service or interrupt any performance of the Service for the making of any commercial announcements, except that public address commercial announcements may be made concerning goods or services sold or offered to the public at the premise(s) provided that no compensation (whether in money or in any other form) is paid by any person or entity, directly or indirectly, for such announcements unless pursuant to a separate written Agreement which permits storecasting or adcasting. Any increase in music rights fees which CHARTER becomes obligated to pay on behalf of CUSTOMER after the acceptance of this Agreement may be paid by CHARTER and the Recurring Charge will be adjusted to reflect the increase. Notwithstanding the foregoing, CUSTOMER shall be responsible for any additional music licensing or copyright fees payable to copyright owners by virtue of CUSTOMER status as a Commercial Establishment or for music performed in Video Services unless such Services are shown on a single receiving apparatus of a kind commonly used in private homes.

12. **RESTRICTIONS.** CUSTOMER shall not and shall not authorize or permit any other person to (i) copy, record, dub, duplicate, alter, make or manufacture any recordings or other reproductions of the Service (or any part thereof); (ii) transmit the Service (or any part thereof) by any television or radio broadcast or by any other means or use the Service (or any part thereof) outside the premise(s). CUSTOMER acknowledges that such duplication or reproduction may subject CUSTOMER to criminal penalties under applicable copyright and/or trademark laws. CUSTOMER agrees to indemnify and hold CHARTER harmless from any loss, liability, or expense, including reasonable attorney's fees, arising from a breach of this provision.

a) **Premium and Pay-Per-View.** CUSTOMER may not exhibit any premium Service such as HBO or Showtime in any public or common viewing area. CUSTOMER may not order or request Pay-Per-View (PPV) programming for receipt, exhibition or taping in a commercial establishment. CUSTOMER may not exhibit nor assist in the exhibition of PPV programming in a commercial establishment unless explicitly authorized to do so by agreement with an authorized program provider. If CUSTOMER fails to abide by this restriction, CUSTOMER accepts liability for any and all claims made against CUSTOMER or CHARTER on account of any unauthorized commercial exhibition.

b) **Programming.** CUSTOMER acknowledges that CHARTER has the right at any time to preempt without notice specific advertised programming and to substitute programming, which CHARTER deems to be comparable.

#### **ADDITIONAL TERMS AND CONDITIONS — SMALL BUSINESS INTERNET**

13. **EQUIPMENT AND SOFTWARE REQUIREMENTS.** CUSTOMER shall maintain certain minimum Equipment and software to receive the Service. Please refer to [www.charter.com](http://www.charter.com) (or the applicable successor URL) for the current specifications.

14. **CUSTOMER'S RESPONSIBILITIES.** CUSTOMER agrees that any person who accesses the Service through the CUSTOMER'S computer(s), under the CUSTOMER'S account or through the cable outlets in the CUSTOMER'S facility shall be subject to this Agreement. The CUSTOMER assumes all liability and responsibility to ensure that all such other users understand this Agreement and comply with its terms. The CUSTOMER shall be responsible for all access to (including access via the CUSTOMER'S wired or wireless Local Area Network) and use of the Service by means of the CUSTOMER'S Equipment, whether or not the CUSTOMER has knowledge of or authorizes such access or use. The CUSTOMER shall be liable and responsible for all charges incurred and all conduct through either authorized or unauthorized use of the CUSTOMER'S account, until the CUSTOMER informs CHARTER of any breach of security.

a) **Connecting Customer Equipment.** Upon Installation, CHARTER shall test to confirm that the Service can be accessed from the CUSTOMER'S premise(s). It shall be the CUSTOMER'S responsibility to connect their equipment to the modem or router for network access. The Service is intended for use by a single small business or small office-home office (SOHO) at the premise(s) specified herein. By connecting to the network and/or accessing the Service, CUSTOMER agrees to be bound by the terms of the CHARTER Acceptable Use Policy which can be found at [www.CharterBusinessNetworks.com](http://www.CharterBusinessNetworks.com) (or the applicable successor URL). Except as expressly permitted in the Premium SBI Package, CUSTOMER will

Customer Initial: TL

not, and will not allow others to, resell or redistribute access to the Service in any manner, including but not limited to hosting applications such as the provision of e-mail, FTP and Telnet access.

b) **No Third-Party Support or Liability.** CHARTER does not support CUSTOMER-supplied third-party hardware or software, including but not limited to modems or routers, network interface cards or local area networks, browsers and their plug-ins, TCP/IP or other communications or networking software, or e-mail client software. Any questions concerning third-party hardware or software should be directed to the manufacturer of that hardware or software product. CHARTER assumes no liability or responsibility for the installation, maintenance, compatibility or performance of any equipment or software not provided by CHARTER. If such third-party equipment or software impairs the Service, the CUSTOMER shall remain liable for payments as agreed without recourse for credit or prorated refund for the period of impairment. If the CUSTOMER requests CHARTER to attempt to resolve difficulties caused by such third-party equipment or software, such efforts shall be performed at CHARTER'S discretion and at then-current rates and terms. CHARTER makes no warranty that it will resolve the difficulties caused by such third-party equipment or software.

c) **Security.** The CUSTOMER shall be responsible for the implementation of reasonable security procedures and standards with respect to its own demarcation point that interfaces with the Service. CHARTER may communicate security issues to the CUSTOMER from time to time when abuse or misuse is observed or reported by others.

d) **Blocking and Filtering.** While the computer industry may provide blocking and filtering software that empowers CUSTOMER to monitor and restrict access to CUSTOMER'S computer and its data, CHARTER is not the publisher of this software. CHARTER strongly recommends that the CUSTOMER employ a "firewall" or other security software. The CUSTOMER assumes all responsibility for providing and configuring any "firewall" or security measures for use with the Service at its location. CHARTER shall not be responsible in any manner for the effectiveness of these blocking and filtering technologies. CHARTER does not warrant that other users will be unable to gain access to CUSTOMER'S computer.

**15.SERVICE PERFORMANCE.** CHARTER shall use its best efforts to achieve the Service speed selected by the CUSTOMER herein, but such speed may vary based on factors beyond CHARTER'S control. CHARTER shall use commercially reasonable efforts to assure that the Service is available to the CUSTOMER 24 hours per day, seven days per week. It is possible, however, that there will be interruption of the Service. If an outage condition is known sufficiently far in advance, CHARTER shall attempt to provide the CUSTOMER with electronic mail notification. The CUSTOMER understands and agrees that the Service may be unavailable from time to time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond CHARTER'S control. The temporary unavailability of the Service shall not constitute a breach of contract or a failure by CHARTER to perform its obligations under the Agreement.

a) **Damage, Loss or Destruction of Software Files and/or Data.** CHARTER assumes no liability or responsibility whatsoever for any damage to or loss or destruction of any of the CUSTOMER'S property, including but not limited to hardware, software, files, data or peripherals, which may result from the CUSTOMER'S use of the Service, or from the installation, maintenance or removal of the Service, Equipment or software. CHARTER does not warrant that any data or files sent by or to the CUSTOMER will be transmitted in uncorrupted form within a reasonable period of time. b) **No Liability for Risks of Internet Use.** The cable network is a shared network and CHARTER does not warrant that Service will be error-free. The Service, CHARTER'S network and the Internet are not secure, and others may access or monitor the CUSTOMER'S traffic. CHARTER does not warrant that any data or files sent or received by the CUSTOMER over the network will not be subject to unauthorized access by others, that other users will not gain access to the CUSTOMER'S data, nor that the data or files will be free from computer viruses or other harmful components. The CUSTOMER may run applications that permit others to gain access to the CUSTOMER'S data. CHARTER has no responsibility and assumes no liability for such acts or occurrences.

c) **No Liability for Purchases.** Through use of the Service, the CUSTOMER may access certain information, products and services of others, for which there is a charge. The CUSTOMER shall be solely liable and responsible for all fees or charges for these online services, products or information. CHARTER shall have no responsibility to resolve disputes with other vendors.

d) **No Liability for Changes of Address.** Due to growth, acquisitions and changes in technology, CHARTER reserves the right to change addressing schemes, including e-mail and IP addresses. CHARTER may provide the Service in partnership with other companies ("Partners"). The CUSTOMER agrees to abide by the terms and conditions of the Partners' Services.

**16.PRIVACY AND MONITORING THE SERVICES.** CHARTER treats private communications on or through its network as strictly confidential and does not access, use or disclose the contents of private communications, except as required or permitted by law or by the Charter Communications Privacy Policy. CHARTER has no obligation to monitor traffic on the CHARTER network. However, the CUSTOMER understands and agrees that CHARTER has the right to monitor traffic on the CHARTER network from time to time in accordance with its Privacy Policy and with applicable law. A copy of the Privacy Policy can be found on CHARTER'S website at [www.CharterBusinessNetworks.com](http://www.CharterBusinessNetworks.com) (or the applicable successor URL).

**17.ACCEPTABLE USE POLICY.** CHARTER'S Acceptable Use Policy, found at [www.CharterBusinessNetworks.com](http://www.CharterBusinessNetworks.com) (or the applicable successor URL) and incorporated herein by reference, applies to the Service. The CUSTOMER expressly warrants that the CUSTOMER has read and agrees to be bound by CHARTER'S Acceptable Use Policy. The CUSTOMER expressly understands and agrees that the Acceptable Use Policy may be updated or modified from time to time by CHARTER, with or without notice to the CUSTOMER. Any such update or modification to the Acceptable Use Policy shall be posted to the above-listed website. Payment for Service subsequent to a change of policy will be deemed CUSTOMER'S acknowledgement and acceptance of said change. The CUSTOMER should consult the Acceptable Use Policy on a regular basis to ensure compliance. CHARTER may terminate the CUSTOMER from the Service immediately for violation of its policies.

**18.CHARTER'S RIGHT TO TERMINATE.** If the CUSTOMER fails to comply with this Agreement, CHARTER may declare CUSTOMER to be in default of this Agreement, and at its option and in addition to any other remedies provided herein, may immediately terminate the Agreement or provide written notice of action of termination. CHARTER may terminate the Service immediately without notice in order to prevent a breach of network security or other violation of CHARTER'S Acceptable Use Policy. No express or implied waiver by CHARTER of any event of default shall in any way be, or be construed to be, a waiver of any further subsequent event of default.

**19.CUSTOMER'S RIGHT TO TERMINATE.** If the CUSTOMER terminates the Service, CHARTER requires thirty (30) days prior written notice and CUSTOMER shall be liable for all applicable early termination charges.

**20.EARLY TERMINATION CHARGES.** If the CUSTOMER'S Service is terminated or disconnected prior to the end of the committed Term and the termination or disconnect is due to any reason other than a breach of the Agreement by CHARTER, the CUSTOMER shall pay an early termination charge equal to fifty percent (50%) of monthly Service and Equipment charges multiplied by the number of months remaining in the Term, plus one hundred percent (100%) of the balance of Installation/Construction charges.

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Customer Initial: TL

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Customer Federal Tax ID#: 54-6001591



**DATA COMMERCIAL SERVICE AGREEMENT - RENEWAL**

This Commercial Service Agreement ("Agreement") is made on **March 3, 2005**, by and between **Charter Communications VI, LLC** ("CHARTER") and **RUSSELL COUNTY PUBLIC SCHOOLS**("CUSTOMER").

Site Address: MULTIPLE SITES (SEE PAGE 2)

Billing Address: P.O. Box 8, Lebanon VA 24266

Special Billing Instructions: \_\_\_\_\_

Site Contact/Phone: Tim Lovelace/276-889-6568 Fax: 276-889-6508

Technical Contact/Phone: same

Primary Email Address: lovelace@russell.k12.va.us

Service Add/Change: RENEWAL

**VIDEO SERVICE (NON APPLICABLE)**

**All Digital Video Packages Include:**

All rates noted in this agreement are a package monthly rate for one outlet. (Digital where available.)

- Digital Receiver Service: 1 Digital Terminal Remote Control and Integrated Interactive Service, which includes: Interactive On-Screen Guide, and 45 Channels of CD Quality Music.
- All local television channels including local weather, local news and sports with no additional Equipment required.

**DATA SERVICE**

All Business Internet Packages Include: Monthly rental of 1 cable modem and **30 STATIC IP** Addresses

- Non-custom package includes: 10 Non-Vanity emails with 20MB storage each. Web Package includes 1 FTP user name; 20 MB web storage; 3GB monthly web transfer and Web data logs.
- Custom package includes: DNS hosting for 1 Domain Name, 20 e-mail accounts with 20MB storage each. Web package includes 1 FTP user name, 100MB storage, 6GB monthly web transfer, Microsoft® FrontPage® server extensions; Web data logs; CGI web enhancement tools.

\* Restrictions contained in the AUP are amended to the extent and only to the extent indicated herein.

**TERM**

The initial term of this Agreement shall begin on the date installation is complete and payment arrangements have been completed and shall continue for a period of **15 months with extended 2 One Year Options for this service at this cost. (The 1<sup>st</sup> 15 months is to run with Russell Co Schools Fiscal Year-June to June)** Upon expiration of the initial term, this Agreement shall automatically renew at the then current rates for successive one-month terms until such time as either party shall deliver thirty (30) days written notice of termination prior to the expiration date of the then current term.

**PRIMARY SERVICES PROVIDED**

Video: **NONE**  
Data: **SBI (Speed: VARIOUS Down/Up) SEE PAGE 2**

**TOTAL Monthly Fees: \$7700.00**  
**TOTAL One-Time Fees: \$0**

RUSSELL COUNTY PUBLIC SCHOOLS

Charter Communications VI, LLC

Authorized By: Tim Lovelace  
Printed Name

Authorized By: BRUCE KESLER  
Printed Name

Signature: Tim Lovelace

Signature: Bruce Kesler

Date: 3-3-05

Date: 3/3/05

|  |   |           |
|--|---|-----------|
| <b>Monthly Video Services</b>  |   |           |
| Video Service: NONE .....  |   | \$0       |
| Total Number of Video Boxes: 0   |   |           |
| Additional Monthly Outlet Fee:   |   |           |
| <b>Monthly Data Services</b>   |   |           |
| Base Service INTERNET/GUARDNET (FIREWALL, ANTIVIRUS, CONTENT FILTERING, INTRUSION DET) |   | \$7700.00 |
| Speed: .....   | Down/Up SEE BELOW (INCLUDES MODEM AND GUARDNET EQUIPMENT) |           |
| <b>Custom</b>  |   |           |
| DNS Hosting: .....   | N/A   |           |
| Domain Name: .....   |   | \$0.00    |
| Web Storage Upgrades: .....  |   | \$0.00    |
| Domain Aliases: .....  |   | \$0.00    |
| Additional Email Accounts: .....   |   | \$0.00    |
| <b>IP Options</b>  |   | \$0.00    |
| Additional Dynamic IP: .....   | (Max of 12 for total of 15)                               |           |
| Dynamic Perm Lease: .....  | (Up to total number of Dynamic IPs)                       | \$0.00    |
| Static IP Package: .....   |   | \$0.00    |
| Static IP Addresses: .....   |   |           |
| Other Services Provided: .....   |   | \$0.00    |
| Equipment Rental Detail: .....   |   | \$0.00    |
| Monthly Construction Fee: .....  |   | \$0.00    |
| <b>One-Time Services</b>   |   |           |
| Additional Outlets to Install: .....   |   | \$0.00    |
| Wall Fishes: .....   |   | \$0.00    |
| Other Services Provided: .....   |   | \$0.00    |
| One-Time Construction Fee: .....   |   | \$0.00    |
| <i>(subject to revision based upon governmental and/or third party approvals)</i>      |   |           |
| One-Time Standard Installation Fee   |   | \$0.00    |

TECH SUPPORT 888-254-3534

TOTAL MONTHLY \$7700.00

TOTAL ONE-TIME 0

- |   |                          |
|---|--------------------------|
| 1. Russell Co Career/Tech 1 Vocational School Rd, Lebanon VA 24266 (276-889-6568)     | 3 MB / 1 MB SPEED        |
| 2. Castlewood HS Rt 3, Highway 58, Castlewood VA 24224 (276-762-9449)                 | 3 MB / 1 MB SPEED        |
| 3. Honaker HS POB 764, A P Baldwin Dr, Honaker VA 24260 (276-873-6363)                | 3 MB / 1 MB SPEED        |
| 4. Lebanon HS POB 217, One Pioneer Dr, Lebanon VA 24266 (276-889-6539)                | 3 MB / 1 MB SPEED        |
| 5. Honaker Elem. POB 744 Hwy 67, Honaker VA 24260 (276-873-6301)                      | 3 MB / 1 MB SPEED        |
| 6. Lebanon Elem. POB 668, Main St, Lebanon VA 24266 (276-889-6531)                    | 3 MB / 1 MB SPEED        |
| 7. Castlewood Elem. Rt 3, Highway 58, Castlewood VA 24244 (276-762-2315)              | 3 MB / 1 MB SPEED        |
| 8. Lebanon Middle POB 577, 131 W Main St, Lebanon VA 24266 (276-889-6548)             | 3 MB / 384 Kbps SPEED    |
| 9. Copper Creek Elem. Rt 2 Box 33 Hwy 58, Castlewood VA 24244 (276-794-9306)          | 3 MB / 384 Kbps SPEED    |
| 10. Swords Creek Elem. POB 129 Hwy 67, Swords Creek VA 24649 (276-991-0016)           | 3 MB / 384 Kbps SPEED    |
| 11. Elk Garden Elem. Hayters Gap Rd, Rosedale VA 24280 (276-880-1062)                 | 3 MB / 384 Kbps SPEED    |
| 12. Lebanon Primary (under construction) Lebanon VA 24266 (276-889-6568)              | 3 MB / 384 Kbps SPEED    |
| 13. Russell Co Bus Garage Rt 657, Lebanon VA 24266 (276-889-6568) Wireless connection | 3 MB / 384 Kbps          |
| 14. Belfast Elem. Rt 19, Rosedale VA 24280 (276-880-2283)                             | DATA T 1 1.5 MB / 1.5 MB |
| 15. Cleveland Elem. Rt 2 Box 221, Cleveland VA 24225 (276-889-6534)                   | DATA T 1 1.5 MB / 1.5 MB |
| 16. Givens Elem. POB 219 Hwy 67, Swords Creek VA 24649 (276-991-0001)                 | DATA T 1 1.5 MB / 1.5 MB |

Customer Initial: TC

**CHARTER Sales Representative:**

Sales Code: 15300

Name: Glen Clark

Signature: \_\_\_\_\_

Telephone: 304-228-9538

Fax: 304-760-2009

Address: 4038 Teays Valley Road Scott Depot WV 25560

**GENERAL TERMS AND CONDITIONS**

**THE PARTIES AGREE AS FOLLOWS:**

**1.SERVICES.** This Agreement states the terms and conditions under which CHARTER shall provide CUSTOMER with the services ("Services") and associated equipment ("Equipment") indicated herein. This is a Service Agreement and does not and should not be construed to provide the CUSTOMER with any ownership right or rights in any of the Service, Equipment or peripherals associated with the provision of the Service. By using the Service, CUSTOMER agrees to be bound by the terms of this Agreement.

**2.PAYMENT TERMS.** CUSTOMER agrees to pay one-time and monthly recurring charges for the Services, as set forth in this Agreement. One-time charges are due on or before the time of installation. CUSTOMER shall pay monthly charges in advance.

a) **Taxes, Fees and Government Charges.** CUSTOMER shall also pay CHARTER any sales, use, property, excise or other taxes, franchise fees, and governmental charges (except income taxes) arising under this Agreement. A copy of the CUSTOMER'S tax exemption document must be provided to CHARTER to certify tax-exempt status. Tax-exempt status shall not waive the franchise fee.

b) **CUSTOMER Change Requests.** Any charges associated with Service and Equipment installations, additions, modifications, substitutions, upgrades, reconfigurations, rebuilds or relocations requested by CUSTOMER subsequent to the initial installation, are the sole financial responsibility of CUSTOMER and shall be reflected on the CUSTOMER'S billing statement after the requested Service and/or Equipment has been installed, added, modified, substituted, upgraded, reconfigured, rebuilt or relocated and CUSTOMER'S payment of the bill which includes those added charges will be deemed CUSTOMER'S acceptance of those charges. Subsequent to the initial term CHARTER may increase the recurring charge from time to time on thirty (30) days' prior written notice to CUSTOMER.

c) **Non-Payment and Penalties.** Failure to pay all bills within thirty (30) days of issuance shall constitute a breach of this Agreement and be grounds for disconnection and/or imposition of a late fee of not more than five percent (5%) on any outstanding balance at CHARTER'S discretion. CHARTER may charge a reasonable service fee for all returned checks and bankcard or charge card charge-backs. If Service is disconnected because CUSTOMER does not pay the bill, CHARTER may require that CUSTOMER pay all past due charges, a reconnect fee, and a minimum of one month's advance charges before CHARTER will reconnect Service. CUSTOMER shall be responsible for all expenses (including reasonable attorney's fees) incurred by CHARTER in collecting any unpaid amounts in accordance with this Agreement.

d) **Billing Errors.** CUSTOMER must bring any billing errors or requests for credit to CHARTER'S attention within thirty (30) days of the date CUSTOMER receives the bill for which correction of a billing error or credit is sought.

e) **Site Visits and Repairs.** If the CUSTOMER'S use or modification of the Equipment or software supplied by CHARTER requires a visit to the CUSTOMER'S facilities for correction or repair, CHARTER reserves the right to charge the CUSTOMER for such site visit and repair costs.

**3.INSTALLATION AND ACCESS.** CUSTOMER hereby grants to CHARTER (subject to any necessary governmental or third-party approvals) reasonable access to the premise(s) to review, install, inspect, maintain and repair all necessary Equipment (as well as permission to enter the premise(s) for the exercise of such right) to receive the Service. Such access shall include landlord permission, when applicable. CHARTER reserves the right to perform an engineering review of the premise(s) prior to installation. The CUSTOMER shall be responsible, at its own expense, for all site preparation activities necessary for installation of the Service, as set forth herein, including the relocation of the CUSTOMER'S equipment, as necessary, to access the Service. To ensure proper installation of the Service, CUSTOMER may be required to provide CHARTER with accurate physical network diagrams and/or maps. CHARTER may schedule installation visits with the CUSTOMER as necessary. The CUSTOMER'S authorized representative must be present during site visits.

**4.SERVICES AND EQUIPMENT.** CUSTOMER UNDERSTANDS AND AGREES THAT NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN ALL EQUIPMENT AND MATERIAL INSTALLED OR PROVIDED BY CHARTER, INCLUDING BUT NOT LIMITED TO MODEM(S), ROUTER(S), E-MAIL ADDRESS(ES), E-MAIL NAME(S), AND IP ADDRESS(ES), IS AND SHALL REMAIN THE PROPERTY OF CHARTER AND MUST BE RETURNED TO CHARTER AT ANY TIME SERVICE IS DISCONNECTED, OR ANY REASONABLE TIME THE CUSTOMER IS DESIROUS OF MAKING AN EXCHANGE OF SUCH EQUIPMENT. CUSTOMER will use reasonable care to avoid damaging any Equipment and will not move, relocate, alter, sell, lease, assign, encumber or otherwise tamper with the Equipment. Immediately upon termination of Service, the Equipment supplied by CHARTER must be returned to CHARTER in good condition. Failure to return Equipment within ten (10) days after Service is disconnected will result in a charge being made to CUSTOMER'S account. CUSTOMER agrees to pay the full retail cost for the repair or replacement of any lost, stolen, or damaged Equipment, together with any costs incurred by CHARTER in obtaining or attempting to regain possession of such Equipment, including, but not limited to, reasonable attorney's fees. CUSTOMER further agrees to pay for any repairs or replacement of the Equipment whether or not caused by CUSTOMER'S negligent act, except such repairs or replacements as may be necessary by reason of normal and ordinary wear or by reason of defects of material or workmanship therein.

**5.DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY.**

a) **Limited Warranty.** CHARTER hereby represents and warrants to the CUSTOMER that all Services shall be performed in a workmanlike manner and in accordance with the terms and conditions set forth in this Agreement. CUSTOMER agrees that CUSTOMER uses the Service and any software and Equipment supplied by CHARTER at its sole risk. The Service and CHARTER Equipment are provided on an "as is basis" without warranties of any kind. CHARTER does not warrant uninterrupted use of Service. Any warranty claim by the CUSTOMER must be made within thirty (30) days after the applicable Service has been performed. CHARTER'S sole obligation and the CUSTOMER'S sole remedy, with respect to any breach of the limited warranty set forth in this Section, shall be a prorated refund of the fees paid by the CUSTOMER based on the period of time when the Service is out of compliance with this Limited Warranty provision.

b) **Disclaimer.** The warranties in this section are in lieu of all other warranties, express or implied, including any warranty of merchantability, fitness for a particular purpose or non-infringement.

c) **Limitation of Liability.** CHARTER shall not be liable to CUSTOMER for indirect, special, incidental, consequential, punitive, or exemplary damages arising out of or in connection with this Agreement or any acts or omissions associated therewith, including any acts or omissions by subcontractors of CHARTER, or relating to any Services furnished, whether such claim is based on breach of warranty, contract, tort or any other legal theory and regardless of the causes of such loss or damages or whether any other remedy provided herein fails. Any claim made under this paragraph or this Agreement shall be made in writing and forwarded to the CHARTER address that appears hereon. In no event shall CHARTER'S liability hereunder exceed the total fees paid hereunder during the preceding thirty (30) day period.

**6.FORCE MAJEURE.** The CUSTOMER agrees that CHARTER shall not be liable for any inconvenience, loss, liability or damage resulting from any failure or interruption of Service, directly or indirectly caused by circumstances beyond CHARTER'S control, including but not limited to denial of use of poles or other facilities of a utility company, labor disputes, acts of war or terrorism, criminal, illegal or unlawful acts, natural causes, mechanical or power failures, or any order, law or ordinance in any way restricting the operation of the Service.

Customer Initial: TC

**7. INDEMNIFICATION.** The CUSTOMER agrees to indemnify CHARTER against any and all claims, lawsuits, damages, judgments, costs, fees or expenses (including reasonable attorney's fees and costs incurred by CHARTER in enforcing its rights under this Agreement) incurred by CHARTER which arise out of or are in any way related to the installation, maintenance or repair of any Equipment or Services provided by CHARTER to CUSTOMER under the terms of this Agreement.

**8. MISCELLANEOUS.**

a) **Entire Agreement.** This Agreement and any related schedules constitute the entire Agreement with respect to the Service. A facsimile of a duly executed Agreement signed by both authorized parties shall be considered evidence of a valid agreement, and CHARTER may rely on such facsimile copy of the Agreement as if it were the original signed copy of the Agreement. This Agreement supercedes and nullifies all prior understandings, promises and undertakings, if any, made orally or in writing by or on behalf of the parties with respect to the subject matter of this Agreement.

b) **Authorized Party.** The CUSTOMER represents to CHARTER that the CUSTOMER has the authority to execute, deliver and carry out the terms of the Agreement.

c) **No Rights or Remedies for Third Parties.** This Agreement is not intended to give and does not give any rights or remedies to any person other than CHARTER and the CUSTOMER.

d) **Governing Law.** This Agreement and all matters arising out of or related to this Agreement shall be governed by the laws of the State of VIRGINIA, without regard to conflicts of law provisions. The CUSTOMER agrees that the federal and state courts of VIRGINIA alone have jurisdiction over all disputes arising under this Agreement and the CUSTOMER consents to personal jurisdiction of those courts with respect to any disputes arising under this Agreement.

e) **Severability.** If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

f) **No Assignment or Transfer.** The CUSTOMER may not assign this Agreement or its rights or obligations under this Agreement without CHARTER'S prior written consent. The Service shall be provided to CUSTOMER at the specified premise address(es). The CUSTOMER may not transfer the CUSTOMER'S subscription or the CUSTOMER'S rights and obligations under the Agreement to any other person or to any other address without CHARTER'S prior written consent.

g) **Waiver.** Except as otherwise provided herein, the failure of CHARTER to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

**ADDITIONAL TERMS AND CONDITIONS — VIDEO**

**9. PROVISION OF SERVICE.** CHARTER may, from time to time, rearrange, delete, add or otherwise change packaging and programming of Services contained in CHARTER'S basic cable, Digital Music or other Services.

**10. ADDITIONAL SETS.** CUSTOMER agrees (i) not to add additional sets or disturb, alter or remove any portion of CHARTER'S Equipment or material, (ii) to adequately safeguard such Equipment against others, (iii) not to hire or permit any one other than personnel authorized by CHARTER acting in their official capacity to perform any work on such Equipment. CUSTOMER is prohibited from moving Equipment to another location or using it at an address other than the premise(s) without prior written authorization from CHARTER. Any unauthorized connection or other tampering with the system or its components (including converters) shall be cause for disconnection of Service or legal action, and CHARTER shall be entitled to recover damages, including, but not limited to, the value of any Services illegally obtained plus reasonable collection costs including reasonable attorney's fees.

**11. MUSIC RIGHTS FEES.** CHARTER has obtained all necessary music rights fees required by the American Society of Composers, Authors & Publishers ("ASCAP"), Broadcast Music Inc. ("BMI") and SESAC, Inc. ("SESAC") or their respective successors and any other entity, person or governmental authority from which a license is (or which CHARTER may designate as being) necessary or appropriate in connection with the provision of the Service. So long as CUSTOMER is not in default of this Agreement, and except as listed in (i) - (iii) herein: CUSTOMER shall not, and shall not authorize or permit any other person to (i) charge a cover charge or admission fee to the premise(s) at the time the Service (or any part thereof) is being performed or is to be performed therein; (ii) permit dancing, skating or other similar forms of entertainment or physical activity in conjunction with the performance of the Service (or any part thereof) unless CUSTOMER can demonstrate to the reasonable satisfaction of CHARTER that CUSTOMER or a third-party has obtained a then current music license permitting such activity; and (iii) insert any commercial announcements into the Service or interrupt any performance of the Service for the making of any commercial announcements, except that public address commercial announcements may be made concerning goods or services sold or offered to the public at the premise(s) provided that no compensation (whether in money or in any other form) is paid by any person or entity, directly or indirectly, for such announcements unless pursuant to a separate written Agreement which permits storecasting or adcasting. Any increase in music rights fees which CHARTER becomes obligated to pay on behalf of CUSTOMER after the acceptance of this Agreement may be paid by CHARTER and the Recurring Charge will be adjusted to reflect the increase. Notwithstanding the foregoing, CUSTOMER shall be responsible for any additional music licensing or copyright fees payable to copyright owners by virtue of CUSTOMER status as a Commercial Establishment or for music performed in Video Services unless such Services are shown on a single receiving apparatus of a kind commonly used in private homes.

**12. RESTRICTIONS.** CUSTOMER shall not and shall not authorize or permit any other person to (i) copy, record, dub, duplicate, alter, make or manufacture any recordings or other reproductions of the Service (or any part thereof); (ii) transmit the Service (or any part thereof) by any television or radio broadcast or by any other means or use the Service (or any part thereof) outside the premise(s). CUSTOMER acknowledges that such duplication or reproduction may subject CUSTOMER to criminal penalties under applicable copyright and/or trademark laws. CUSTOMER agrees to indemnify and hold CHARTER harmless from any loss, liability, or expense, including reasonable attorney's fees, arising from a breach of this provision.

a) **Premium and Pay-Per-View.** CUSTOMER may not exhibit any premium Service such as HBO or Showtime in any public or common viewing area. CUSTOMER may not order or request Pay-Per-View (PPV) programming for receipt, exhibition or taping in a commercial establishment. CUSTOMER may not exhibit nor assist in the exhibition of PPV programming in a commercial establishment unless explicitly authorized to do so by agreement with an authorized program provider. If CUSTOMER fails to abide by this restriction, CUSTOMER accepts liability for any and all claims made against CUSTOMER or CHARTER on account of any unauthorized commercial exhibition.

b) **Programming.** CUSTOMER acknowledges that CHARTER has the right at any time to preempt without notice specific advertised programming and to substitute programming, which CHARTER deems to be comparable.

**ADDITIONAL TERMS AND CONDITIONS — SMALL BUSINESS INTERNET**

**13. EQUIPMENT AND SOFTWARE REQUIREMENTS.** CUSTOMER shall maintain certain minimum Equipment and software to receive the Service. Please refer to [www.charter.com](http://www.charter.com) (or the applicable successor URL) for the current specifications.

**14. CUSTOMER'S RESPONSIBILITIES.** CUSTOMER agrees that any person who accesses the Service through the CUSTOMER'S computer(s), under the CUSTOMER'S account or through the cable outlets in the CUSTOMER'S facility shall be subject to this Agreement. The CUSTOMER assumes all liability and responsibility to ensure that all such other users understand this Agreement and comply with its terms. The CUSTOMER shall be responsible for all access to (including access via the CUSTOMER'S wired or wireless Local Area Network) and use of the Service by means of the CUSTOMER'S Equipment, whether or not the CUSTOMER has knowledge of or authorizes such access or use. The CUSTOMER shall be liable and responsible for all charges incurred and all conduct through either authorized or unauthorized use of the CUSTOMER'S account, until the CUSTOMER informs CHARTER of any breach of security.

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a) **Connecting Customer Equipment.** Upon installation, CHARTER shall test to confirm that the Service can be accessed from the CUSTOMER'S premise(s). It shall be the CUSTOMER'S responsibility to connect their equipment to the modem or router for network access. The Service is intended for use by a single small business or small office-home office (SOHO) at the premise(s) specified herein. By connecting to the network and/or accessing the Service, CUSTOMER agrees to be bound by the terms of the CHARTER Acceptable Use Policy which can be found at [www.CharterBusinessNetworks.com](http://www.CharterBusinessNetworks.com) (or the applicable successor URL). Except as expressly permitted in the Premium SBI Package, CUSTOMER will not, and will not allow others to, resell or redistribute access to the Service in any manner, including but not limited to hosting applications such as the provision of e-mail, FTP and Telnet access.

b) **No Third-Party Support or Liability.** CHARTER does not support CUSTOMER-supplied third-party hardware or software, including but not limited to modems or routers, network interface cards or local area networks, browsers and their plug-ins, TCP/IP or other communications or networking software, or e-mail client software. Any questions concerning third-party hardware or software should be directed to the manufacturer of that hardware or software product. CHARTER assumes no liability or responsibility for the installation, maintenance, compatibility or performance of any equipment or software not provided by CHARTER. If such third-party equipment or software impairs the Service, the CUSTOMER shall remain liable for payments as agreed without recourse for credit or prorated refund for the period of impairment. If the CUSTOMER requests CHARTER to attempt to resolve difficulties caused by such third-party equipment or software, such efforts shall be performed at CHARTER'S discretion and at then-current rates and terms. CHARTER makes no warranty that it will resolve the difficulties caused by such third-party equipment or software.

c) **Security.** The CUSTOMER shall be responsible for the implementation of reasonable security procedures and standards with respect to its own demarcation point that interfaces with the Service. CHARTER may communicate security issues to the CUSTOMER from time to time when abuse or misuse is observed or reported by others.

d) **Blocking and Filtering.** While the computer industry may provide blocking and filtering software that empowers CUSTOMER to monitor and restrict access to CUSTOMER'S computer and its data, CHARTER is not the publisher of this software. CHARTER strongly recommends that the CUSTOMER employ a "firewall" or other security software. The CUSTOMER assumes all responsibility for providing and configuring any "firewall" or security measures for use with the Service at its location. CHARTER shall not be responsible in any manner for the effectiveness of these blocking and filtering technologies. CHARTER does not warrant that other users will be unable to gain access to CUSTOMER'S computer.

**15.SERVICE PERFORMANCE.** CHARTER shall use its best efforts to achieve the Service speed selected by the CUSTOMER herein, but such speed may vary based on factors beyond CHARTER'S control. CHARTER shall use commercially reasonable efforts to assure that the Service is available to the CUSTOMER 24 hours per day, seven days per week. It is possible, however, that there will be interruption of the Service. If an outage condition is known sufficiently far in advance, CHARTER shall attempt to provide the CUSTOMER with electronic mail notification. The CUSTOMER understands and agrees that the Service may be unavailable from time to time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond CHARTER'S control. The temporary unavailability of the Service shall not constitute a breach of contract or a failure by CHARTER to perform its obligations under the Agreement.

a) **Damage, Loss or Destruction of Software Files and/or Data.** CHARTER assumes no liability or responsibility whatsoever for any damage to or loss or destruction of any of the CUSTOMER'S property, including but not limited to hardware, software, files, data or peripherals, which may result from the CUSTOMER'S use of the Service, or from the installation, maintenance or removal of the Service, Equipment or software. CHARTER does not warrant that any data or files sent by or to the CUSTOMER will be transmitted in uncorrupted form within a reasonable period of time.

b) **No Liability for Risks of Internet Use.** The cable network is a shared network and CHARTER does not warrant that Service will be error-free. The Service, CHARTER'S network and the Internet are not secure, and others may access or monitor the CUSTOMER'S traffic. CHARTER does not warrant that any data or files sent or received by the CUSTOMER over the network will not be subject to unauthorized access by others, that other users will not gain access to the CUSTOMER'S data, nor that the data or files will be free from computer viruses or other harmful components. The CUSTOMER may run applications that permit others to gain access to the CUSTOMER'S data. CHARTER has no responsibility and assumes no liability for such acts or occurrences.

c) **No Liability for Purchases.** Through use of the Service, the CUSTOMER may access certain information, products and services of others, for which there is a charge. The CUSTOMER shall be solely liable and responsible for all fees or charges for these online services, products or information. CHARTER shall have no responsibility to resolve disputes with other vendors.

d) **No Liability for Changes of Address.** Due to growth, acquisitions and changes in technology, CHARTER reserves the right to change addressing schemes, including e-mail and IP addresses. CHARTER may provide the Service in partnership with other companies ("Partners"). The CUSTOMER agrees to abide by the terms and conditions of the Partners' Services.

**16.PRIVACY AND MONITORING THE SERVICES.** CHARTER treats private communications on or through its network as strictly confidential and does not access, use or disclose the contents of private communications, except as required or permitted by law or by the Charter Communications Privacy Policy. CHARTER has no obligation to monitor traffic on the CHARTER network. However, the CUSTOMER understands and agrees that CHARTER has the right to monitor traffic on the CHARTER network from time to time in accordance with its Privacy Policy and with applicable law. A copy of the Privacy Policy can be found on CHARTER'S website at [www.CharterBusinessNetworks.com](http://www.CharterBusinessNetworks.com) (or the applicable successor URL).

**17.ACCEPTABLE USE POLICY.** CHARTER'S Acceptable Use Policy, found at [www.CharterBusinessNetworks.com](http://www.CharterBusinessNetworks.com) (or the applicable successor URL) and incorporated herein by reference, applies to the Service. The CUSTOMER expressly warrants that the CUSTOMER has read and agrees to be bound by CHARTER'S Acceptable Use Policy. The CUSTOMER expressly understands and agrees that the Acceptable Use Policy may be updated or modified from time to time by CHARTER, with or without notice to the CUSTOMER. Any such update or modification to the Acceptable Use Policy shall be posted to the above-listed website. Payment for Service subsequent to a change of policy will be deemed CUSTOMER'S acknowledgement and acceptance of said change. The CUSTOMER should consult the Acceptable Use Policy on a regular basis to ensure compliance. CHARTER may terminate the CUSTOMER from the Service immediately for violation of its policies.

**18.CHARTER'S RIGHT TO TERMINATE.** If the CUSTOMER fails to comply with this Agreement, CHARTER may declare CUSTOMER to be in default of this Agreement, and at its option and in addition to any other remedies provided herein, may immediately terminate the Agreement or provide written notice of action of termination. CHARTER may terminate the Service immediately without notice in order to prevent a breach of network security or other violation of CHARTER'S Acceptable Use Policy. No express or implied waiver by CHARTER of any event of default shall in any way be, or be construed to be, a waiver of any further subsequent event of default.

**19.CUSTOMER'S RIGHT TO TERMINATE.** If the CUSTOMER terminates the Service, CHARTER requires thirty (30) days prior written notice and CUSTOMER shall be liable for all applicable early termination charges.

**20.EARLY TERMINATION CHARGES.** If the CUSTOMER'S Service is terminated or disconnected prior to the end of the committed Term and the termination or disconnect is due to any reason other than a breach of the Agreement by CHARTER, the CUSTOMER shall pay an early termination charge equal to fifty percent (50%) of monthly Service and Equipment charges multiplied by the number of months remaining in the Term, plus one hundred percent (100%) of the balance of Installation/Construction charges.

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and dated by both parties. In the response provided to the SLD on October 12, 2005, the full contract provided has signature dates of March 3, 2005. FCC Rules state that a contract must be signed and dated on or after the Allowable Contract Date as calculated by the Form 470 posting date, but prior to the submission of the Form 471. Program rules do not permit the SLD to accept new information on appeal except where an applicant was not given an opportunity to provide information during the initial review or an error was made by the SLD. You have failed to provide evidence that SLD has erred in its decision.

- SLD has determined that, at the time you submitted your Form 471 application, you did not have a signed contract for services in place with your service provider(s) for services other than tariffed or month-to-month services. FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." 47 C.F.R. § 54.504(c). The FCC has consistently upheld SLD's denial of Funding Request Number(s) when there is no contract in place for the funding requested.<sup>1</sup> The FCC Form 471 instructions under Block 5 clearly state that you MUST sign a contract for all services that you order on your Form 471 except tariffed services and month-to-month services.<sup>2</sup> You did not provide evidence with your appeal that, at the time you signed your Form 471, you had signed a contract for eligible services. Consequently, SLD denies your appeal.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

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

Schools and Libraries Division  
Universal Service Administrative Company

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<sup>1</sup> *Request for Review by Waldwick School District, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-256981, CC Docket Nos. 02-6, Order, 18 FCC Rcd. 22,994, DA 03-3526 (2003).

<sup>2</sup> *See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (October 2004) at page 20.



**Universal Service Administrative Company**  
Schools & Libraries Division

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**Administrator's Decision on Appeal – Funding Year 2005-2006**

January 31, 2006

Tim Lovelace  
Russell County Public Schools  
1 School Board Drive  
Lebanon, VA 24266

Re: Applicant Name: RUSSELL COUNTY PUBLIC SCHOOLS  
Billed Entity Number: 126599  
Form 471 Application Number: 459434  
Funding Request Number(s): 1262262  
Your Correspondence Dated: December 13, 2005

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1262262  
Decision on Appeal: **Denied**  
Explanation:

- On appeal, you seek reversal of the SLD's decision to deny this application because no contract or legally binding agreement was in place when the Form 471's certification was filed. You state that you had assumed that you should provide the current updated copy of the contract, but assert that you had an original contract in place. You conclude that SLD should have contacted you again about any discrepancies and request that the current contract be treated only as a service change.
- Upon thorough review of the appeal letter and relevant documents, the SLD has determined that, at the time you submitted the Form 471 application, you did not have a signed contract in place for the applied-for funding year. During the application review, you were asked to provide a copy of the full contract, signed