

Administration

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Greetings,

This notice is to appeal the denial of the following item:

CC-Docket No. 02-6

Appellant Name: Robert T. Gulick, EdD / Parma City School District

Entity Name: Parma City School District

BEN: 129502

Service Provider: Northeast Ohio Network for Education Technology

SPIN: 143022719

Form 471: 534544

Funding Request Number: 1478947

Funding Commitment Decision Letter for Funding Year 2006

Reason for Initial Denial: "FCC rules require that a contract for the products/services be signed and dated by both parties prior to the filing of the Form 471."

Reason for Denial of Appeal: "FCC rules require that a contract for the products/services be signed and dated by both parties prior to the filing of the Form 471." Combined with "Program rules do not permit USAC to accept new information on appeal..."

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I have discovered the wrong copy of the contract was submitted during the July applicant review process. The one that was submitted (which only contained the district treasurer's signature) was not the final one returned to us by NEONET. It is my hope that the FCC can consider the corrected information caused by a simple clerical error even if the USAC is not permitted to do so. Attached please find a PDF of the contract which was signed by both parties on 01/03/2006 prior to the filing of Form 471 on 02/16/2006.

Robert T. Gulick, EdD  
Instructional Technology Integration Group - Manager  
Department of Information Systems  
Parma City School District  
Gulickb@parmacityschools.org

**NORTHEAST OHIO NETWORK FOR EDUCATIONAL TECHNOLOGY  
SERVICE PROVIDER CONTRACT  
INTERNET SERVICE  
Contract Number: 44636-0607**

This agreement for the provision of Internet access service ("Agreement") is entered into on this 3<sup>rd</sup> day of January 2006, between the Northeast Ohio Network for Educational Technology ("Provider") and Parma City Schools ("Customer"), as verified by the signatures on the signature page below.

WHEREAS, Provider is a regional educational center organized by the State of Ohio to provide communications and other technology services, and;

WHEREAS, the Customer is a School District or School certified for instruction by the State of Ohio, and;

WHEREAS, the Provider through its technology center desires to provide to Customer and Customer desires to secure from Providers the services detailed in this Agreement;

NOW THEREFORE, in consideration of the mutual agreements hereinafter set forth and for other good and valuable consideration, the parties hereto, intending to be legally bound, agrees as follows:

**I. DEFINITIONS:**

As used in this Agreement the following terms shall be defined as follows:

*"Customer"* shall mean a public or private school or school district that has agreed to the terms and conditions of this Agreement.

*"Provider"* shall mean the regional educational center.

*"Parties"* shall mean the Customer and Provider collectively.

*"Services"* shall mean all of the duties and ministrations affirmatively checked in Article III Performance of this Agreement.

*"User"* shall mean a school or person authorized by a school to make use of the data services or equipment secured by Customer from Provider by this Agreement.

**II. TERM**

A. This Agreement shall be for the period beginning July 1, 2006, and ending June 30, 2007.

B. The price of this service shall be the annual contract price for the service as prescribed in Exhibit A.

C. Upon a termination of the Agreement by the Customer, the Customer agrees to pay Provider for contractual obligations incurred by the Provider on behalf of Customer for the original one (1) year contract period.

### **III. PERFORMANCE**

A. Provider shall furnish Customer unbundled internet access services on a 24-hour-per-day, 7 day-per-week basis, and as further described in attached Exhibit A.

B. Provider shall be responsible for the maintenance of the Service and Service Equipment. Provider and its agents shall have the right at any time during normal business hours to enter the Customer's premises (complying with the customer's visitors policy) for the purpose of maintaining, inspecting, and testing the Provider's Service Equipment. Provider shall have the right to charge the customer for its cost and expenses to identify and correct any failure by facilities and equipment not furnished by the Provider and to repair damage, interruptions or replace Provider's Service Equipment caused by the Customer or Customer's equipment.

### **IV. CHARGES AND PAYMENT**

A. Customer agrees to be solely responsible to Provider for all charges billed by Provider for Services provided to customer under this Agreement. Charges for the Services provided under this Agreement will be billed to Customer on an annual basis.

B. The Parties obligations hereunder are subject to annual appropriations of their respective governing boards.

C. Payment of all invoices sent shall be due within thirty (30) days of the send out date on the Customer's receipt invoice. Late payments shall be subject to a service charge of one and one half percent (1 1/2%) of any and all unpaid balance per month unless expressly waived by the Provider in writing. Provider may at its sole discretion terminate or suspend the Services to any Customer whose payments are in arrears by more than sixty (60) days. Such suspension shall not be deemed a waiver of other legal or equitable rights the Provider may have for fully payment. If the Customer is suspended, there may be a reconnection fee to cover the administrative cost of reconnection. The reconnection charge shall be in addition to amounts due for unpaid balances and/or the above described service charges.

## V. WARRANTIES AND LIMITATIONS ON LIABILITY AND INDEMNIFICATION

A. Provider shall be liable to Customer for failure to provide Services, but only if such failure(s) is due to the negligence of Provider and not excused by either of the following: 1) Provider shall not be liable for any damages incurred as a result of the errors, omissions or negligence of Customer, its personnel, employees, agents or users; 2) Provider shall not be liable for failure to perform if such failure is caused by acts of God, winds, fires, landslide, floods, droughts, famines, acts of public enemies, insurrection, military action, sabotage, riots, or civil disturbances, failure of a utility or utility type service which is essential to the Provider's Service or other event(s) not reasonably within the control of the Provider.

B. Customer may utilize the Services provided for educational and educational administrative related activities only. Where the Services provided include access to the internet networks, Provider does not warrant that the functions of the internet network will meet any specific Customer or user requirements, or that Services provided will be error free or uninterrupted; nor shall Provider be liable for any actual damages or any indirect, incidental, special or consequential damages (including as a result of loss of data or misinformation) sustained in connection with the use, operation, or inability to use the Provider Services by Customer or its users. Further, Customer understands and agrees that Provider will exercise no control over the information that Customer and users may transmit and access as a result of the provision of Services by Provider and that, therefore, Customer will make no claim against Provider for the internet service uses, including transmission, downloading or uploading of information that is offensive, a violation of the law, or the actionable violation of others' rights. Unless special arrangements are made and appended to this Agreement, Provider will not routinely monitor Customer's activities or pupil access to any of the interconnected systems. Any filters or screening devices are limited to those in existence at the date of this Agreement or for which Provider subsequently installs. Provider is not under any duty to install or modify filters or screening programs. Provider does not warrant the accuracy or appropriateness of any information contained in the interconnected systems. Some material contained in the interconnected systems may be inappropriate for school aged pupils.

C. Customer, directly or through its agents, permitting pupil access to the interconnected computer system(s) of the Internet through Provider assumes full responsibility for any and all access to and usage of information contained on the interconnected computer system(s) of the Internet.

D. CUSTOMER AGREES TO INDEMNIFY AND HOLD PROVIDER, ITS GOVERNING BOARD MEMBERS, OFFICERS, MEMBERS, EMPLOYEES AND/OR AGENTS HARMLESS FROM ANY CLAIMS, SUITS, LIABILITY, LOSS, EXPENSES AND/OR DAMAGES, INCLUDING ALLEGED COPYRIGHT AND OTHER INTELLECTUAL PROPERTY CLAIMS, SUSTAINED BY ANY PERSON BY REASON OF ANY ACT OF CUSTOMER OR ITS USERS IN THEIR ACTIVITIES INVOLVING USE OF PROVIDER'S NETWORK.

E. Provider reserves the right to discontinue Customer's access to the Provider's network and/or seek other legal or equitable relief for use of the Services that Provider deems to be in violation of the rules and regulations of the State Board of Education or any other state or federal agency; or in violation of this Agreement; or violate state and federal law; or are uncivil. For purposes of this Agreement, uncivil conduct includes, but is not limited to: 1) transmitting offensive or harassing statements; 2) developing and/or transmitting offensive or unlawful graphics; 3) transmitting sexual or ethnic slurs explicitly or as part of a joke; 4) soliciting or encouraging others to engage in sexual, offensive or unlawful acts; or 5) permitting or encouraging unauthorized access to the Provider's network and public networks including unauthorized access to the Internet.

F. Customer understands and agrees that Provider shall have no responsibility for Customer's or its users' accessing or transmitting offensive or unlawful information, interference or unlawful access to others' information or networks, or other offensive or unlawful activity in which Provider's Service is used.

G. Although Provider does not have a duty to monitor Customer or its Users' transmissions, it shall not be prohibited from so monitoring.

## **VI. TITLE AND OWNERSHIP**

A. Title to the Service Equipment shall irrevocably and under all circumstances remain with the Provider and its designees, and the Customer will protect Provider's rights, title and interest therein against all persons. The Customer's interest in the Services and Service Equipment is limited to possession and non-exclusive use thereof on the premises.

B. All written procedures and similar items utilized or developed in connection with this Agreement, residing with Providers, are not to be considered the property of Customer.

## **VII. CONFIDENTIALITY OF INFORMATION**

A. Provider shall exercise reasonable ordinary care in preserving and protecting the confidentiality of information and materials furnished by Customer.

B. Except as required by law, Provider agrees not to disclose any materials, information, or other data relating to Customer's operations, to other individuals, corporate entities, districts, or governmental agencies, without prior written consent from Customer.

C. Except as required by law, Customer agrees not to disclose any information or documentation obtained from Provider.

## VIII. NOTICES

- A. All notices permitted or required to be given to either of the parties to this Agreement shall be in writing and shall be deemed given or delivered when: (a) delivered by hand or (b) mailed, if sent by regular mail or other express delivery service (receipt requested), in each case to the appropriate addresses set forth below (or to such other addresses as the party may designate by notice to the other party hereto):

1. If to Provider:

Name: Matthew Gdovin  
Address: 420 Washington Avenue  
City/State/Zip: Cuyahoga Falls / Ohio / 44221  
Phone: 330-926-3900 x1100  
Facsimile: 330-926-3901  
E-mail: [Gdovin@neonetda.org](mailto:Gdovin@neonetda.org)

2. If to Customer:

Name: Robert Gulick  
Address: 6726 Ridge Road  
City/State/Zip: Parma / Ohio / 44129  
Phone: 440-842-5300

## B. GENERAL PROVISIONS

- a. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.
- b. **Waiver, Discharge, etc.** This Agreement may not be released, discharged, changed or modified in any manner, except by an instrument in writing signed by both parties. The failure of either party to enforce at any time any of the provision(s) of this Agreement shall in not be construed to be a waiver of any provision(s), nor in any way to affect the validity of this Agreement or any part hereof or the right of either party hereto to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Furthermore, the term of any purchase order, invoice or like document issued in conjunction with the Service to be provided herein shall not serve to add to or modify the terms of this Agreement.
- c. **Captions.** The captions in this Agreement are inserted only as a matter of convenience and as a reference, and in no way define, limit or describe the scope or intent of this Agreement or any of the provisions hereof.

- d. **Rights of Persons Not Parties.** Nothing contained in this Agreement shall be deemed to create rights in persons not parties hereto.
- e. **Severability.** If any provision of this Agreement or the application thereof to any persons or circumstances shall, for any reason or to any extent, be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to such other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
- f. **Entire Agreement.** This Agreement, together with the documents referred to herein, shall constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writing with respect to such subject matter.
- g. **Counterparts.** This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties hereto.
- h. **Construction.** This Agreement and its validity, interpretation and effect shall be construed in accordance with and governed by the laws of the State of Ohio. The parties have participated jointly in the negotiation and drafting of this Agreement. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring any party by virtue of authorship of any specific provisions of the Agreement. When used in this Agreement, the word "including" shall mean including without limitation. Unless the context requires otherwise, any reference to the masculine, feminine and neuter genders include one another.
- i. **Compliance with Law.** Each party agrees to comply with all governmental laws and regulations applicable to the Services contemplated by this Agreement. Customer agrees to provide such written evidence of the approval of this Agreement as may be required by law.
- j. **Fully Understand and Freely Enter.** The undersigned hereby acknowledge that they have read and understand the foregoing. The parties to this Agreement also acknowledge that the execution of this Agreement is a free and voluntary act, done in belief that the Agreement is fair and reasonable. Finally, the parties acknowledge that they have had the right and opportunity to consult with and obtain the advice of independent legal counsel of the parties' own choosing in the negotiation and execution of this Agreement.

By signing below, Signatory of Customer ("Signatory") certifies authorization to sign on behalf of Customer and certifies having read, understood and agreed to the terms of this Agreement, including the provisions of the attached exhibits which are hereby incorporated herein by reference. Signatory certifies that all information provided by Customer in connection with this Agreement is true and accurate. If Customer is a Board of Education of a school district (a political subdivision of the State of Ohio), Signatory certifies that this Agreement has been approved by formal resolution of its Board of Education; if Customer is another educational entity, Signatory certifies that the Agreement has been approved by formal action of its Board.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date first set forth above.

CUSTOMER:

Parma City Schools

Printed name of Customer



Signature of Authorized Customer Representative

01-03-2006

Date

Bruce Basalla

Printed name of Authorized Customer Representative

01-03-2006

Signature of Authorized Customer Representative

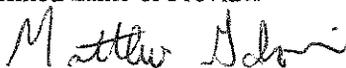
Date

Printed name of Authorized Customer Representative

PROVIDER:

Northeast Ohio Network for Educational Technology

Printed name of Provider



Signature of Officer or Manager for the Provider

1-3-06

Date

Matthew Gdovin

Printed name of Officer or Manager for the Provider

## EXHIBIT A

### INTERNET ACCESS SERVICES

This exhibit is hereby made part of the Internet Access Services Agreement (the "Agreement") entered between Provider and Customer, as these terms are defined in the Agreement. The following additional terms and conditions apply to the Agreement.

Charges will be incurred for only those Services for which a charge is shown below. Services will be rendered for the period of the Agreement, unless otherwise stated below.

#### 1. Services

Provide 9 mbps of unbundled Internet access. Components of Internet access are limited to data transmission, address translation, protocol conversion, and billing management.

#### 2. Annual Charge for the period July 1, 2006 to June 30, 2007

\$79,704

#### 3. Provider's Obligations

- a) Provider will plan and coordinate all activities incidental to the implementation of the Internet access.
- b) Provider will assume all responsibilities for Internet access including the Internet router located in the instructional building.

#### 4. Customer's Obligations

- a) Customer will assume all responsibilities for all local area networks (LAN) up to the building router specified in section 3 item b) above. These responsibilities include, but are not limited to, Customer-owned communications equipment/cabling, LAN software, and LAN hardware.
- b) Customer agrees to comply with equipment specifications defined by the provider for all components integral to the Internet access.
- c) Customer will supply Provider with appropriate and sufficient space and electrical power to facilitate the Internet access.

d) Customer agrees not to connect any of its local area networks to alternative network providers without Provider approval.

e) Customer agrees not to resell any network services provided by Provider.

CUSTOMER:

  
\_\_\_\_\_  
Signature

Bruce Basalla - CFO  
\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

Provider:

  
\_\_\_\_\_  
Signature of Director

Matthew Gdovin  
\_\_\_\_\_  
Print Name