

LETTER OF APPEAL
Federal Communications Commission

RECEIVED & INSPECTED
DEC 15 2006
FCC - MAILROOM

December 15, 2006

DOCKET FILE COPY ORIGINAL

CC Docket No. 96-45

CC Docket No. 02-6

Company Name	Bethlehem Area School District
Billed Entity Name	BETHLEHEM AREA SCHOOL DISTRICT
Application Number	532117
Billed Entity Number	125903
Funding Request Number	1469604
Contact Name	Robin L. Lutcher
Address	3149 Chester Ave, Bethlehem, PA 18020
Telephone Number	610-807-5571 (ext. 35972)
Fax Number	610-807-5526
e-Mail Address	rlutcher@bethsd.org

This letter is to appeal the recent decision of the SLD to deny funding on the above application. Attached is the letter from the SLD and the paperwork sent to the SLD when that appeal was processed.

The denial from the SLD states that information was not sent in within the required time frame. Please note the following facts:

- 1) We acknowledged receipt of the information via telephone on April 24, 2006.
- 2) On May 22, 2006 we requested an extension via telephone. This request was granted verbally at that time. The extension was requested due to the following reasons:
 - a. The final budget for the 2006-2007 school year would not be available until June 30, 2006
 - b. The technology office had been under construction and we were in temporary offices. We were scheduled to move back into our offices in late May/early June and some of the documents were stored in boxes.

During the application process for FORM 470 and FORM 471, all deadlines were met and regulations adhered to. The request for an extension was made in good faith and with the intent of complying with the request of the SLD. The documents were not submitted to the SLD because I had received an affirmative response to my verbal request.

The attached documents support the above application. I request that the FCC please approve funding for this application and thank you in advance for your consideration of this request.

Sincerely,



Robin L. Lutcher

Director of Information Technologies

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List A B C D E



Administrator's Decision on Appeal – Funding Year 2006-2007

October 25, 2006

Robin L. Lutchter
Bethlehem Area School District
3149 Chester Avenue
Bethlehem, PA 18020

Re: Applicant Name: BETHLEHEM AREA SCHOOL DIST
Billed Entity Number: 125903
Form 471 Application Number: 532117
Funding Request Number(s): 1469604
Your Correspondence Dated: August 08, 2006

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 USAC's Funding Year 2006 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC'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): 1469604
Decision on Appeal: **Denied**
Explanation:

- USAC thoroughly assessed the facts presented in the appeal letter, the relevant documentation on file, and the FCC Rules and Procedures before making its determination on your appeal. During the Selective Review, you were sent the Selective Review Information Request (SRIR) on April 24, 2006 requesting information pertaining to budget, vendor selection, bids, and contract documentation. On April 24, 2006, you confirmed receipt of the request for information via telephone correspondence with SLD. Since no response was received, SLD sent the SRIR again on May 18, 2006 with a copy to the State E-Rate Coordinator. As of June 13, 2006, you failed to respond to SLD's inquiries. Consequently, the appeal was processed with the information on file. In absence of the requested information USAC was unable to determine whether the district met program requirements for competitive bidding and the Item 25 certification.

You submitted supporting documentation in response to the initial Selective Review fax request with your appeal. Program rules do not permit USAC 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 SLD. Therefore, USAC supports the initial Selective Review decision.

- USAC reviews Form 471 applications and makes funding commitment decisions in compliance with FCC rules. See 47 C.F.R. sec. 54.500 et. seq. To conduct these reviews, USAC has put in place administrative measures to ensure the prompt resolution of applications. If applicants do not respond within the designated time period, USAC reviews the application based on the information before it. See Request for Review by Marshall County School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket Nos. 96-45 and 97-21, 18 FCC Rcd. 4520, 4522, Order, DA 03-764 para. 6 (rel. Mar. 13, 2003). (Marshall County) Typically applicants are required to respond to USAC's requests for additional information necessary to complete their application within 15 days of being contacted. See Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, CC Docket No. 02-6, Order, FCC 06-54 para. 23 (rel. May 19, 2006). Id.; SLD section of the USAC website, Reference Area, "Deadline for Information Requests," www.usac.org/sl. This procedure is necessary to prevent undue delays during the application review process.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC 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 section of the USAC website 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

Robin L. Lutchter
Bethlehem Area School District
3149 Chester Avenue
Bethlehem, PA 18020

Billed Entity Number: 125903
Form 471 Application Number: 532117
Form 486 Application Number:



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Appeal Acknowledgement Letter

August 15, 2006

RECEIVED

Robin L. Lutcher
Bethlehem Area School District
3149 Chester Avenue
Bethlehem, PA 18020

AUG 23 2006
Bethlehem Area School Dist.
Information & Communication Technologies

Subject: Bethlehem Area School District

Robin L. Lutcher,

The Schools and Libraries Division of the Universal Service Administrative Company has received your correspondence dated August 8, 2006, on **August 11, 2006**, regarding the **FY2006** funding decision of your Form 471 Application Number(s) **532117 - FRN(s) 1469604**.

These are the steps that will now follow:

1. We will review your correspondence carefully to identify the specific issue(s) it raises.
2. We will consult the Program Integrity Assurance records and all supporting documentation for the application. Our goal is to determine whether the program rules were administered appropriately in processing your application.
3. Once the review process is completed we will respond in writing and state whether your appeal is approved, denied or approved in part. A Revised Funding Commitment Decision Letter will follow for any approved appeal resulting in additional discounts for your application. Funds have been set aside to implement funding decisions for appeals approved by the SLD and/or the Federal Communications Commission.

We will perform an in-depth review of your appeal. Our goal is to respond to you as promptly as possible. We thank you in advance for your patience as we handle your appeal with the care and attention it deserves.

Schools and Libraries Division
Universal Service Administrative Company



Department of Information Technologies

FAX MEMO

TO: Schools and Libraries Division –
Correspondence Unit
FAX: 1-973-599-6542

FROM: Robin L. Lutcher, Dir. of IT
PH: 610-807-5571 ext. 51
FAX: 610-807-5526
rlutcher@bethsd.org

RE: APPEAL – 2006/2007 School Year

Attached please find a LETTER of APPEAL and supporting documents for

BEN: 125903

FORM 471 Application #: 532117

FORM 471 Identifier: basd 67 phn 471

FRN: 1469604

16 pages including cover sheet



Information Technologies Department

Letter of Appeal

Form 471 Application Number: 532117
Funding Year: 7/1/2006-6/30/2007
Application Form Identifier: Basd67phn471
Billed Entity Number: 125903
FRN: 1469604
Amount: \$67,350.96
Date: August 8, 2006

Denial was based on the lack of receipt of information for an audit. This information was sent to the SLD in response to the audit on July 31, 2006. Additional time had been requested for the following reasons:

- 1) Completion and approval of 2006-2007 school budget
- 2) IT department relocation to newly renovated area and information was packed in boxes for transport.

The SLD had confirmed that additional time was available via a phone call on May 22, 2006.

Attached please find the information supplied as part of the audit to support this application.

- 1) RFP to support the Form 470 bid
- 2) List of interested vendors who responded to the RFP
- 3) Description of how the vendor was selected
- 4) District Technology Plan
- 5) Approved district budget for 2006-2007 with adequate funding to support this request.
- 6) Copy of Item #21 attachment submitted online.

I respectfully ask that this request be funded.

Thank you.

Robin L. Lutcher

Robin L. Lutcher
3149 Chester Ave.
Bethlehem, PA 18020

rlutcher@bethsd.org

610-807-5571 (5,1)

610-807-5526 (cell)



Bethlehem Area School District

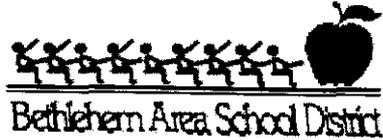
Information Technologies Department

Robin L. Lutcher, Director

#1

RFP – ERATE 2006-2007 School Year

129980000569735	Pagers for BASD personnel Two year contract for pagers and paging service for 50 BASD personnel
465300000569723	Basic Maintenance on Cisco Router, Basic Maintenance on district Executone Phone Service
392560000569708	Phone Service – Local and Long Distance Service for all BASD buildings. Service to include POTS, analog and digital service.
367560000569690	Cell Phone Service: 1) 45 regular cell phones, 2) 30 cell phones with 2- way radios. Phones and service. Two to three year contract.
507470000570122	Marvine ES – Internal Connections for wireless connectivity Poe Switches, Access points for classrooms
153810000570119	Lincoln ES – Internal Connections for wireless connectivity POE switches, Access Points for classrooms
757250000570111	Freemansburg ES – Internal Connections for wireless connectivity POE Switches, Access Points for Classrooms
394660000579552	LHS – Internal network connections for data and voice. POE Switches and associated hardware, 1MDF and 17 IDF's
987070000579560	FHS – Internal network connections for data and voice. POE Switches and associated hardware, 1MDF and 12 IDF's
837060000579566	Internal connections for phone system. Replacement of current Executone phone system with option to re-use existing phone sets. System will need to accommodate analog, digital and VoIP phone options.



Information Technologies Department

Letter of Appeal

Form 471 Application Number: 532117
Funding Year: 7/1/2006-6/30/2007
Application Form Identifier: Basd67phn471
Billed Entity Number: 125903
FRN: 1469604
Amount: \$67,350.96
Date: August 8, 2006

#2. List of interested vendors who responded to the RFP

1. TelCove
2. CT Communications
3. Eastern Telephone and Communications

#3. Description of how the vendor was selected.

TelCove was selected because they met the needs of the RFP and were the lowest price.

District Information

AUN: 120481002
District: Bethlehem Area School District
Address: 1516 Sycamore Street, Bethlehem, PA 18017-6099
Superintendent: Joseph Lewis
Contact Name: Robin Lutcher
Contact Title: District Technology Director
Contact Email: rlutcher@beth.k12.pa.us
Contact Phone: 610-807-5571

Prior Plan Narrative

The Bethlehem Area School District has achieved many of the goals from the prior technology plans. Wireless technology is installed in all schools, students use technology each day as part of the curriculum and staff rely on technology for internal and external communication.

Mission and Vision Statement

It is the mission of Bethlehem Area School District to provide students with a comprehensive and challenging educational program that integrates technology with all aspects of the curriculum.

It is the vision of the Bethlehem Area School District to provide all students with the opportunity to utilize technology for academic achievement and to prepare for the success in the 21st century.

Goals & Strategies

This technology plan spans the fiscal years: July 1, 2005 - June 30, 2008

Goal - All students will use technology to help them achieve curriculum objectives in all subjects, but particularly to meet or exceed core academic standards and to prepare for post high school education.

Strategy - Students will use content specific software and Internet resources.

Technology/Service - Classroom Hardware

Budget: 400000.0000

Funding Source: District

Funding Source: Grants

Technology/Service - Infrastructure

Budget: 250000.0000

Funding Source: District

Funding Source: Grants

Technology/Service - Software

Budget: 500000.0000

Funding Source: District

Funding Source: Grants

Technology/Service -

Budget:

Funding Source:

Funding Source:

#4

Professional Development

Teachers will receive training in the use of hardware and software
Professional development will provide teachers with the opportunity to create classroom activities and/or lessons.

Monitoring/Evaluation

Evaluation of classroom activities and lessons.

Goal - The District will provide appropriate electronic access to up-to-date student and district data.

Strategy - Purchase of a new student information system. Purchase of an assessment tracking system.

Technology/Service - Student management system

Budget: 600000.0000

Funding Source: District

Funding Source: Grants

Technology/Service - Assessment tracking application

Budget: 50000.0000

Funding Source: District

Funding Source: Grants

Technology/Service -

Budget:

Funding Source:

Funding Source:

Professional Development

Provide admin, teachers, and clerical staff with training in the student management system. Provide admin and teachers with training in the assessment tracking system.

Monitoring/Evaluation

Utilize new management system to track attendance, grades, and demographic information. Utilize the assessment system to plan for student individual needs.

Goal - The district will provide appropriate technology and communications services to support its mission and operation.

Strategy - Promote community interaction with email and the district webpage.

Technology/Service - Software for webpage development.

Budget: 45000.0000

Funding Source: District

Funding Source: Grants

Technology/Service -

Budget:

Funding Source:

Funding Source:

Professional Development

Train webmasters in the use of webpage development applications. Train

#4

teachers to create their own webpages using Teacherweb.

Monitoring/Evaluation

Survey parents and members of the community for the effectiveness of communication.

Goal - The district will provide an appropriate technology and communications infrastructure to support its mission and operation.

Strategy - Increase district infrastructure to support applications and hardware.

Technology/Service - Increase network components

Budget: 500000.0000

Funding Source: District

Funding Source: Grants

Technology/Service - Increase network support personnel

Budget: 200000.0000

Funding Source: District

Funding Source: Grants

Professional Development

Train network support personnel to stay current with technologies and services.

Monitoring/Evaluation

Monitor use and reliability of the district infrastructure.

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STATEMENT OF EXPENDITURES - DETAIL BY OBJECT CODE

PROGRAM/EXPENSE DESCRIPTION	A	B	F	G	H
	2004-2005	2005-2006	2006-2007		
	Actual Expenditures	Amended Budget FY 2006	Proposed Budget	Difference \$ (F - B = G)	Difference % (G / B = H)
TL- INFORMATION TECHNOLOGIES					
110 Salaries - Official/Administrative	5,977	82,049	85,330		
120 Salaries - Professional - Educational	42,346	63,115	63,117		
140 Salaries - Technical	382,827	370,239	461,664		
150 Salaries - Office/Clerical	68,731	67,762	71,566		
340 Technical Services	2,323	450	750		
430 Repairs and Maintenance Services	495	26,732	21,000		
440 Rentals/Lease	1,543	91,125	631,500		
530 Postage, Telephone, Other Communications	88	2,218	2,150		
580 Conferences, Travel	422	4,000	5,000		
610 Supplies - General/Software	128,170	88,925	98,200		
640 Books and Periodicals/Admin. Software	791	35,806	51,150		
750 Equipment-Original	-	45,289	84,200		
760 Equipment - Replacement	87,180	200,981	199,000		
780 Technology Infrastructure	605	25,474	107,420		
810 Dues and Fees	8,402	13,000	12,700		
TOTALS - INFORMATION TECHNOLOGIES	729,900	1,117,165	1,894,747	777,582	69.60

1,694,747

#5

STATEMENT OF EXPENDITURES - DETAIL BY OBJECT CODE

PROGRAM/EXPENSE DESCRIPTION	A	B	F	G	H
	2004-2005	2005-2006	2006-2007		
	Actual Expenditures	Amended Budget FY 2006	Proposed Budget	Difference \$ (F - B = G)	Difference % (G / B = H)
TN - DATA PROCESSING DEPARTMENT					
110 Salaries - Official/Administrative	85,858	68,303	71,064		
140 Salaries - Technical	198,072	247,534	247,732		
150 Salaries - Office/Clerical	33,047	34,763	35,412		
340 Technical Services	3,867	22,518	30,000		
430 Repairs and Maintenance Services	165,312	200,000	207,000		
440 Rentals	27,192	30,000	30,000		
580 Conferences, Travel	1,927	6,000	6,000		
610 Supplies - General	51,098	51,818	66,650		
640 Books and Periodicals	-	100	-		
760 Equipment - Replacement	2,593	9,552	9,500		
TOTALS - DATA PROCESSING DEPARTMENT	568,968	670,588	703,358	32,770	4.89

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STATEMENT OF EXPENDITURES - DETAIL BY OBJECT CODE

PROGRAM/EXPENSE DESCRIPTION	A	B	F	G	H
	2004-2005	2005-2006	2006-2007		
	Actual Expenditures	Amended Budget FY 2006	Proposed Budget	Difference \$ (F - B = G)	Difference % (G / B = H)
TK - TECHNICAL SERVICES					
140 Salaries - Technical	27,765	-	-		
160 Salaries - Crafts & Trades - Mntc.	201,853	247,008	264,130		
410 Cleaning/Disposal/Grounds Services	-	-	2,500		
430 Repairs and Maintenance Services	4,750	1,000	1,300		
530 Postage, Telephone, Other Communications	311,812	260,000	248,800		
610 Supplies - General/Software	10,800	120,000	100,250		
640 Books and Periodicals	-	550	550		
760 Equipment - Replacement	-	8,000	8,000		
810 Dues and Fees	700	700	700		
TOTALS - TECHNICAL SERVICES	557,680	637,258	626,230	(11,028)	(1.73)



#6
Contract also included

Item 21 Attachment
Telecommunications - Funding Year 2006

Applicant Name BETHLEHEM AREA SCHOOL DIST
Billed Entity Number 125903
Form 471 Application Number 532117
Funding Request Number 1469604
Service Provider Telecove of Eastern Pennsylvania
Attachment Number 674
Narrative description of this Funding Request Telecommunications services for all 22 school buildings in the district.

Service Type	Service Description	Elig Pre-Discount Cost
1 Centrex	429 Centrex lines for the 22 school buildings.	\$49,935.60
2 Digital Transmission Service (ISDN)	ISDN BRI	\$552.00
3 Other	DID Block	\$240.00
4 Other	Analog combo lines	\$14,895.36
5 Other	POTS lines	\$1,848.00
Total:		\$67,470.96
Funding Requested on 471:		\$67,350.96

Further information **Telecommunications service for all school buildings. Contract available for review if necessary.**

Date Submitted 7/16/2006 9:34:02 PM

#6

Service Type	Service Description	Elig Pre-Discount Cost	
1 Centrex	429 Centrex lines for the 22 school buildings.		\$49,935.60
		Number of Telecom Lines (if applicable)	429
		Recurring Charges	Non Recurring Charges
		Monthly Recurring Charges	One-time non-recurring charges
		Less Ineligible Amount (if any)	Less Ineligible Amount (if any)
		Number of Months	
		Eligible recurring charges	Eligible non-recurring charges
			Line item TOTAL
2 Digital Transmission Service (ISDN)	ISDN BRI		\$552.00
		Number of Telecom Lines (if applicable)	2
		Recurring Charges	Non Recurring Charges
		Monthly Recurring Charges	One-time non-recurring charges
		Less Ineligible Amount (if any)	Less Ineligible Amount (if any)
		Number of Months	
		Eligible recurring charges	Eligible non-recurring charges
			Line item TOTAL
3 Other	DID Block		\$240.00
		Number of Telecom Lines (if applicable)	2
		Recurring Charges	Non Recurring Charges
		Monthly Recurring Charges	One-time non-recurring charges
		Less Ineligible Amount (if any)	Less Ineligible Amount (if any)
		Number of Months	
		Eligible recurring charges	Eligible non-recurring charges
			Line item TOTAL
4 Other	Analog combo lines		\$14,895.36
		Number of Telecom Lines (if applicable)	48
		Recurring Charges	Non Recurring Charges
		Monthly Recurring Charges	One-time non-recurring charges
		Less Ineligible Amount (if any)	Less Ineligible Amount (if any)
		Number of Months	
		Eligible recurring charges	Eligible non-recurring charges
			Line item TOTAL
5 Other	POTS lines		\$1,848.00

#6

Recurring Charges		Non Recurring Charges	
Monthly Recurring Charges	\$154.00	One-time non-recurring charges	\$0.00
<i>Less Ineligible Amount (if any)</i>	<i>\$0.00</i>	<i>Less Ineligible Amount (if any)</i>	<i>\$0.00</i>
Number of Months	12		
Eligible recurring charges	\$1,848.00	Eligible non-recurring charges	\$0.00
		Line item TOTAL	\$1848

Total: \$67,470.96

Funding Requested on 471: \$67,350.96

Further information

Telecommunications service for all school buildings. Contract available for review if necessary.

Date Submitted

7/16/2006 9:34:02 PM

Voice Service Agreement

This Service Agreement ("Service Agreement") between Bethlehem Area School District ("Customer") and TelCove of Eastern Pennsylvania G.P. ("TelCove") (collectively the "Parties") is for the provision of telecommunications service(s) ("Service(s)"). This Service Agreement shall not be effective and binding on TelCove until it has been executed by both authorized TelCove representatives. In consideration of the mutual promises and covenants contained herein, the Parties agree that Customer will purchase from TelCove Service(s) at the cost(s) and for the term(s) as set forth in the following table.

Quantity if Applicable	Description of Services	Term	Installation Cost	Total Installation Cost	Monthly Recurring Cost	Total Monthly Recurring Cost
11	POTS Lines	3 Year	Waived	Waived	\$14.00	\$154.00
429	Centrex Lines	3 Year	Waived	Waived	\$9.70	\$4,161.30
2	ISDN BRI	3 Year	Waived	Waived	\$23.00	\$46.00
2	DID Block 20	3 Year	Waived	Waived	\$5.00	\$10.00
48	Analog Combo Lines	3 Year	Waived	Waived	\$25.86	\$1,241.28
	Intralata at .06 per minute					
	Interlata at .06 per minute					
	Interstate at .05 per minute					
	Total*			\$		\$5,612.58

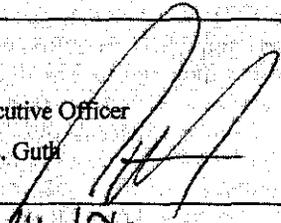
* Local, State, Federal and/or international taxes, fees, assessments and/or surcharges are not included, and will be charged in accordance with TelCove's tariffs and/or international, federal, state or local laws.

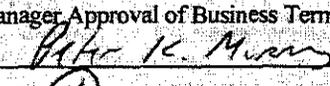
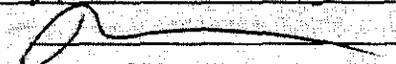
Customer Information & Approval:

In executing this Service Agreement, I acknowledge my understanding and acceptance that the Service(s) selected above will be provided in accordance with, and governed by, the terms, conditions and rates in this Service Agreement, including the "Additional Terms and Conditions," which are attached hereto and incorporated herein. In addition, I hereby authorize TelCove to review the customer service record for the Customer listed below. Customer certifies and acknowledges that it is not a carrier and is not using the service as a substitute for carrier switched access service. By signing this Service Agreement, I further acknowledge that I have read and understand each of the Terms and Conditions of this Service Agreement, agree on behalf of Customer to be bound by them and that I am duly authorized to order and/or modify Service(s) on behalf of Customer.

Customer's Legal Name: Bethlehem Area School District
 State of Organization/Incorporation: Pennsylvania
 Customer Address: 1516 Sycamore Street
 Customer Billing Telephone Numbers: 610-861-0500

Signature: 
 Name: Stanley J. Majewski, Jr.
 Title: Assist. to the Superintendent/Business/Admn
 Date: February 15, 2006

President & Chief Executive Officer
 Name: Robert E. Guth
 Signature: 
 Date: 2/16/06

TelCove Approval:
 General Manager Approval of Business Terms
 Name: 
 Signature: 
 Date: February 16, 2006

AE Sonny Hunt

TelCove
 121 Champion Way
 Canonsburg, PA 15317
 ATTN: Vice President & General Counsel

11. **Termination Liability.** If Customer terminates Service for its own convenience, or TelCove terminates for cause as set forth above, prior to the fulfillment of the term set forth herein, then a termination liability will be due from Customer to TelCove; which Customer acknowledges is a reasonable approximation of damages and does not represent a penalty. The termination liability will include: (a) any previously waived charges for the Service(s); plus (b) a one-time charge calculated as follows:

(i) for Service(s) disconnected in the first year of service of the Initial Term or any Renewal Term, all remaining recurring charges for such first year, plus 50% of all recurring charges for the remainder of the Initial Term or Renewal Term; or

(ii) for Service(s) disconnected after the first year of service, 50% of all recurring charges for the remainder of the Initial Term or Renewal Term.

12. **Indemnification and Limitations on Liability.** Customer will defend, indemnify and hold TelCove, its affiliates and each of their respective owners, directors, officers, employees and agents, harmless from and against all claims, suits, expenses, losses, demands, actions, causes of action, judgments, costs and reasonable attorney's fees and expenses of any kind or nature for any and all damages of any kind arising from or related to any use of the Service(s) or otherwise arising under this Service Agreement. **IN NO EVENT WILL TELCOVE BE LIABLE FOR ANY LOSS OF PROFITS OR FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT, ARISING OUT OF ITS PROVISION OF SERVICES OR FAILURE TO PROVIDE SERVICES UNDER THIS AGREEMENT, WHETHER ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR NOT. TELCOVE'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS SERVICE AGREEMENT WILL NOT EXCEED THE TOTAL CHARGES FOR THE SERVICE(S) PROVIDED UNDER THIS SERVICE AGREEMENT DURING THE MONTH IN WHICH SUCH LIABILITY ARISES.**

13. **Force Majeure.** Neither Party shall be liable for failure to perform its obligations hereunder where such nonperformance is caused, in whole or in part, by force majeure, including but not limited to acts of God or government, war, national emergencies, riot, insurrection, acts of terrorism, vandalism, criminal action taken against a Party or its affiliates, disturbance, strike, lockout, work stoppage or other labor dispute, failure of usual sources of supply, unavailability, failure or malfunction of equipment or facilities provided by third parties, pole hits, storm, fire, flood, earthquake, accident, or any other cause not within TelCove's reasonable control, including, but not limited to local or foreign telephone company action and any law, order, regulation or other action of any governmental entity. In addition, TelCove will not be liable for claims or damages resulting from or caused by: a) Customer's fault, negligence or failure to perform Customer's responsibilities; b) claims against Customer by a third party; c) any act or omission of any other party; or d) equipment or services furnished by a third party. This section will survive termination or expiration of the Agreement and will continue to apply after the Agreement ends.

14. **Credit Allowances.** Service interruption credit allowances will be granted pursuant to the terms of the applicable TelCove tariff(s). Credit allowances will not apply to interruptions: a) caused by Customer and/or its employees, contractors, subcontractors, vendors or agents; b) due to failure of power or equipment provided by others; c) during any period in which TelCove is not allowed access to the premises; d) due to maintenance and repair operations scheduled in advance with Customer; e) caused by fiber or wire cuts or other equipment damage on Customer premises; f) caused by an outage in Customer's internal network, inside wiring, Private Branch Exchange or multiplexers; g) due to circumstances or causes beyond the control of TelCove; or h) that was not reported to TelCove within thirty (30) days of the date that Service was affected.

15. **Assignment.** TelCove may assign the rights, privileges or obligations conveyed under this Service Agreement. Customer may not assign the rights, privileges, or obligations conveyed under this Service Agreement without first obtaining the written consent of TelCove, which consent will not be unreasonably withheld, provided, however, that the party to whom this Agreement is being assigned by Customer expressly assumes, in writing, the obligations of the Customer.

16. **Warranties. EXCEPT AS OTHERWISE PROVIDED HEREIN, THERE ARE NO AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORILY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE SERVICE(S). TELCOVE ALSO MAKES NO WARRANTY THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED AND DISCLAIMED.**

17. **No Agency.** This Service Agreement does not create any agency, joint venture, or partnership between TelCove and Customer, each of which are independent business entities. Neither party will have the right, power or authority to act for the other in any manner, except as expressly provided herein.

18. **Miscellaneous.** This Service Agreement, is binding upon the Parties' respective successors and assigns, and together with any applicable tariff(s), constitutes, the entire agreement between TelCove and Customer. No prior agreements, understandings, statements, proposals or representations, either oral or written apply. This Service Agreement can be modified only in writing by the Parties. If any provision of this Service Agreement is held to be illegal or unenforceable, this Service Agreement's unaffected provisions will remain in effect. No customer purchase orders or similar documents will vary or add to the terms of this Agreement. If either party fails to enforce any right or remedy under this Service Agreement, that does not waive the right or remedy. This Service Agreement may be signed in counterparts with the same effect as if the signature on each counterpart were upon the same instrument. The rights and remedies of the Parties shall be cumulative and in addition to any other rights or remedies provided by law or equity and will be governed by and construed in accordance with the laws of the state in which the Services are provided without giving effect to its conflict of laws provisions.

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Additional Terms and Conditions

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1. **General.** The following Additional Terms and Conditions apply to and are a part of the Service Agreement between TelCove and the Customer to which these Additional Terms and Conditions are attached or referenced (collectively "Service Agreement").

2. **Installation.** TelCove will use reasonable efforts to provide Service(s) by the applicable Customer installation date. Scheduled installation dates are estimates only. TelCove will not be liable for any damages whatsoever related to delays in meeting any installation or service dates due to delays resulting from normal construction procedures or reasons beyond TelCove's control. TelCove will notify Customer when Service(s) is operational ("Service Start Date"). Unless Customer notifies TelCove within ten (10) business days that the Service(s) is not operational, Service(s) will be deemed accepted by Customer as of the Service Start Date and Customer will pay for such Service(s) as of such date. To facilitate the installation and maintenance of the Service(s), Customer will: a) prepare its premises (including the disconnection and removal of existing service) as necessary; b) provide any inside wiring, equipment and/or software necessary to connect Service(s); and c) provide TelCove all required access and security as necessary. Title to all equipment and software provided by TelCove will remain exclusively with TelCove. Customer further agrees not to create or permit to be created any lien or other encumbrances on TelCove's equipment and software relating to Customer's use of, or TelCove's placement of, such equipment or software.

3. **Term.** The term of the Service Agreement will commence on the Service Start Date and expire upon fulfillment of the term commitment set forth in the Service Agreement (the "Initial Term") unless earlier terminated as provided for in this Agreement. Upon expiration of the Initial Term, this Service Agreement shall automatically renew on a month-to-month basis (the "Renewal Term") unless either party gives the other written notice of its intent to terminate at least thirty (30) days before expiration of the Initial Term or Renewal Term as applicable.

4. **Use of Service.** Customer may use the Service(s) for any lawful purpose provided that such use does not: a) interfere with or impair service over any of the facilities and associated equipment constituting TelCove's network; or b) impair the privacy of any communications over the facilities and equipment of TelCove. Customer will use the Service(s) in accordance with all laws and regulations, and the terms and conditions contained in this Service Agreement and TelCove's applicable tariff. TelCove may make changes to the Service(s) provided that any such change will not materially adversely affect the performance of the Service(s).

5. **Maintenance/Return of Equipment.** Maintenance of TelCove owned equipment and software, if any, provided as part of the Service(s) will be at no additional charge unless such charges are: a) specifically set forth in this Service Agreement; or b) for maintenance that is necessitated by unauthorized modifications or other acts or omissions of Customer or others. Customer will surrender any TelCove owned equipment or software promptly upon the discontinuance of the Service(s) for which same is being used, in the same condition as delivered subject only to reasonable wear and tear. If TelCove owned equipment or software is surrendered in damaged condition, Customer will pay TelCove any additional charges necessary to repair or replace the damaged equipment. Should Customer fail to surrender TelCove equipment or software within thirty (30) days after TelCove's request, Customer will be liable for TelCove's reasonable attorneys fees and expenses, as liquidated damages and not a penalty, in the amount of ten thousand dollars (\$10,000), representing the reasonable value of the TelCove equipment or software. Customer's obligations pursuant to this Section 5 will survive termination of this

Agreement.

6. **Charges and Payment.** The installation and monthly recurring charges for Service(s) stated herein will be as specified in this Service Agreement. The charges stated do not include any international, federal, state or local taxes, assessments, fees or surcharges. Unless Customer provides a valid exemption certificate, Customer will pay such applicable taxes, fees or surcharges upon receipt of the invoice. Customer will notify TelCove if Customer's tax-exempt status changes during the term of this Service Agreement. Payment for Service(s), including applicable international, federal, state, and local taxes, assessments, fees or surcharges, will be due upon receipt of invoice. Customer may in good faith withhold payment of any disputed charges; provided, however, that a charge is not disputed unless Customer provides TelCove with a written explanation of the disputed charge within sixty (60) days from the date of the invoice. If TelCove determines the disputed charges are valid, TelCove will notify Customer and Customer must pay all such charges within ten (10) days. Beginning forty five (45) days after the date of invoice, interest on late payments will accrue at the rate of 1.5% per month or the maximum rate allowed by law, whichever is more, on the unpaid balance. Customer will be liable to TelCove for any costs and/or expenses incurred directly or indirectly, including reasonable attorney's fees and expenses, in collection of any amounts due and owing to TelCove.

7. **Additional Charges.** Customer is subject to the applicable charges for moves, adds, changes, and upgrades for those items covered by this Service Agreement. All Service(s) other than those stated herein will be provided at the prevailing charges set forth in the applicable TelCove tariff. Service records will constitute full proof of the content and nature of Customer's Service(s).

8. **Tariffs.** Additional terms and conditions of this Service Agreement are set forth in TelCove's tariff(s) which are on file with the applicable state and/or federal regulatory authorities. In the event of any express conflict between this Service Agreement and the language in the applicable TelCove tariff(s), this Service Agreement will control.

9. **Termination of Service(s).** In addition to any other remedy available, TelCove may immediately terminate this Service Agreement, in whole or in part, in the event of a breach by Customer which includes, but is not limited to the following: a) non-payment of amounts due and owing to TelCove; b) Customer's unlawful or fraudulent use of Service(s); c) Customer provides false or misleading information; d) any material default of this Service Agreement; e) a violation of any law, rule or regulation of any governing authority having jurisdiction over the service; f) a violation giving rise to a right of termination as set forth in TelCove's applicable federal or state tariffs; or g) the Service(s) being provided to Customer are no longer economically or technically feasible. Upon such termination, Customer will immediately: i) cease utilizing the Service(s); ii) pay TelCove for all charges incurred by Customer, including taxes and surcharges, through the date such Service(s) is discontinued; and iii) except for (g) above, pay any applicable termination liability as outlined below.

10. **Notice of Termination of Service Agreement.** In the event Customer intends to terminate a particular Service or all Service(s) governed by this Service Agreement prior to expiration of the term set forth herein, if longer than a month to month term, Customer will provide TelCove three (3) months written notice. In the event that Customer does not so notify TelCove, Customer will owe TelCove an additional three (3) months of charges in addition to the termination liability outlined below.

TRANSMISSION VERIFICATION REPORT

TIME : 08/11/2006 12:18
NAME : BASD TECHNOLOGY DEPT
FAX : 610-8075526
TEL : 610-8075571

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

08/11 12:11
919735996542
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OK
STANDARD
ECM



Part 1

FedEx

PRIORITY OVER

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Deliver By:
15DEC06

TRK# 8580 3101 0052
RECEIVED & INSPECTION
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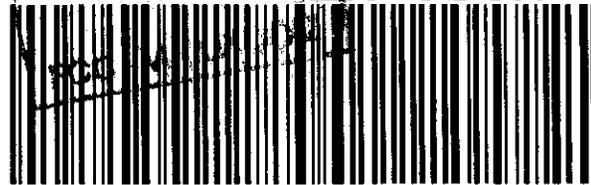
FORM 0200

BWI

ZM GBOA

Route
Tina
Delivery Point
TW-B204

OMD 12/15/06
PO# 14:02:01
Sdr BETHLEHEM AREA SCHOOL
858031010052



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W102004YJR

FedEx Express USA

Insert
airbill
here

fedex.com 1800.GoFedEx 1800.463.3339

1 From

Date: *12/15/06*

Sender's Name: *...*

Address: *...*

City: *Bethlehem* State: *PA* ZIP: *18018*

2 Your Internal Billing Reference

3 To

Recipient's Name: *...*

Address: *...*

City: *Bethlehem* State: *PA* ZIP: *18018*

4a Express Package Service

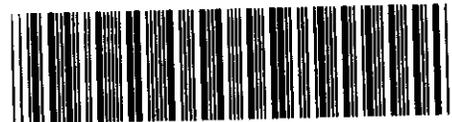
4b Express Freight Service

5 Packaging

6 Special Handling

7 Payment/Bill to

8 Residential Delivery Signature Options



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fedex.com 1800.GoFedEx 1800.463.3339

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