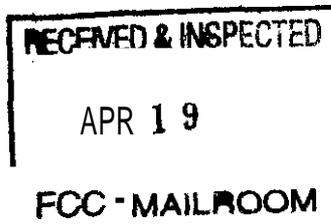


DOCKET FILE COPY ORIGINAL

LINDA SCHRECKINGER SADLER

Attorney At Law



26010 Hendon Road
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April 13, 2007

Office of the Secretary
Federal Communications Commission
445 -12th Street, S.W.
Washington, D.C. 20554

RE: Appeal to the Federal Communications Commission by
Berkeley County School District, Billed Entity No. 126681

To Whom It May Concern:

Enclosed please find an original and five copies of an Appeal and Request For Waiver from a decision by the Schools and Libraries Division of the USAC relative to the school noted above.

Please file the original and four of the copies and return one time-stamped copy to me in the enclosed self addressed-stamped envelope.

Please direct all communication regarding this appeal to my attention at the address noted above. Thank you for your assistance in this matter.

Yours truly,

A handwritten signature in cursive script that reads "Linda Schreckinger Sadler".

Linda Schreckinger Sadler

Encl.

No. of Copies rec'd 015
List ABCDE

**Before the
Federal Communications Commission
Washington, D.C. 20554**



In the Matter of:)
)
) **CC Docket No. 02-6**
)
) **Appeal of Decision of the**)
) **Universal Service Administrator by**)
)
) **Berkeley County School District**) **APPEAL AND REQUEST FOR WAIVER**
) **Martinsburg, WV**)

TO: Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

This Appeal and Request For Waiver is made to the Federal Communications Commission (“FCC”) by Berkeley County School District (“Berkeley”) by and through its duly authorized attorney, pursuant to 47 C.F.R. §§ 54.719(c) and 54.721. Pursuant to the Commission’s authority as stated in 47 C.F.R. §1.3, Berkeley seeks relief and/or a waiver of 47 C.F.R. § 54.504(c) of the Commission’s rules relative to:

Funding Year: 2006-2007
Form 471 Application Number: 495587
Funding Request Numbers: 1393282 and 1393286
Billed Entity Number: 126681
FCC Registration No.: 0012733317
Date of Administrator’s Decision on Appeal: February 15, 2007

Contact Information

- (1) To discuss this appeal: Linda Schreckinger Sadler Esq.
26010 Hendon Road
Beachwood, OH 44122
Tel. 216-288-1122
Fax: 216-464-7315
Email: Ischrecks@yahoo.com
- (2) For all other SLD purposes: Cathy Crytzer
Berkeley County School District
25801 Richmond Road
Cleveland, OH 44146
Tel. (216) 831-2626
Fax. (216) 831-2822

SLD's Reason for Funding Denial:

The Funding Commitment Decision Letter issued by SLD gave the same explanation for the denying telecommunications funding for both above-referenced FRNs: "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. This requirement was not met." The Administrator's decision on appeal affirmed the SLD's initial decision, again finding that a signed and dated contract was not in place with the Service Provider prior to Berkeley submitting its FCC Form 471 for Funding Year 2006-2007.

Summary

Berkeley County School District ("Berkeley") seeks review by the Federal Communications Commission ("FCC") of a decision by the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") relative to the funding denials issued on the two (2) Funding Requests ("FRN") referenced above. The funding commitment decision and Administrator's Decision on Appeal issued by the SLD denied telecommunications funding to Berkeley for the 2006-2007 E-rate Funding Year stating that at the time its FCC Form 471 was

submitted Berkeley did not have a contract with the selected Service Provider that was signed and dated by both parties.

In fact, Berkeley complied with the requirements of Section 54.504(c) of the Commission's rules which requires that an applicant for schools and libraries funding must have a legally binding agreement in place before filing its FCC Form **471**. A valid contract was in place at the time the FCC Form 471 certifications were filed, however, although signed by both parties during the allowable contract period, the copy of the contract Berkeley provided to the SLD during the Selective Review process was lacking a date next to the Service Provider's signature.

The issue subject of this appeal arose because the SLD deemed the copy of the contract submitted by Berkeley not to be in compliance with the FCC's E-rate program rule which, by the SLD's interpretation, meant that two signatures and two dates were required on each contract. The SLD never even addressed the validity of the contract; it only looked at the missing date and issued funding denials.

Background

In compliance with E-rate program rules, Berkeley completed its competitive bidding process and selected FiberNet LLC to provide its telecommunications services. On February **7,2005** a contract and Service Level Agreement ("SLA") were entered into and signed and dated by both Berkeley and FiberNet. The contract entered into between the parties was for a term of **three (3)** years, pursuant to the multi-year bid sought on Berkeley's Form **470**. This agreement was signed on February **7,2005** and established a legally binding relationship between the parties. FiberNet, LLC obligated itself to provide Berkeley with telecommunications services and Berkeley obligated itself to

pay a sum certain for the services. Prevailing West Virginia contract law recognizes the validity of this Agreement'. A copy of the contract is attached hereto as Exhibit A.

The only document in Berkeley's possession was the copy of the contract that was sent to the SLD in response to the Selective Review inquiry. This copy had two signatures but had only one date (next to Berkeley's signature). Berkeley had no reason to scrutinize the contract in its files since it knew it had a valid agreement with FiberNet and had been receiving services under that contract for more than a year. Berkeley looked at the contract only after the SLD issued funding denials in its Funding Commitment Decision Letter ("FCDL") dated October 17, 2006 – more than a year and a half after the contract had been executed.

Berkeley and its selected vendor each recognized the agreement entered into on February 7, 2005 to establish a legally binding contractual relationship between them. The issue subject of this appeal arose because the execution of the agreement was not in compliance with the SLD's interpretation of FCC E-rate program rules. In twice denying these funding requests (under the original Funding Decision Commitment Letter and on appeal), the SLD failed to recognize the validity of the contracts between Berkeley and FiberNet. Instead, it narrowly focused on the manner in which the contract was executed. It then denied funding because although signed by both parties, one signature was lacking a date next to the signature. This reason for denial was affirmed in the Administrator's Decision on Appeal which stated: "...the applicant submitted a contract that was dated by only the applicant. FCC rules state that a contract must be signed and dated by both parties on or after the Allowable Contract Date..."

The appeal decision of the SLD affirming its funding denial resulted in this request for review and/or waiver being filed with the FCC.

¹ See *Wellington Power Corp. v. CNA Surety Corp., etc.*, 217 W.Va.33; 614 S.E.2d 680 (2005); §III. Discussion

Argument

On February 7, 2005 the FiberNet representative, Tiffany Licot, took a contract she had prepared to Berkeley to be signed, which it was, by the authorized Berkeley signatory, Treasurer Ken Marsteller. Ms. Licot also signed the contract at that time but failed to date her signature. Back at her office she added the date to her copy but never sent another copy to Berkeley. Regardless, as of that date, both Berkeley and FiberNet recognized a binding legal obligation to exist between them. The multi-year agreement was signed more than a year prior to the submission of Berkeley's FCC Form 471 for FY 2006-2007. During that time both parties performed their respective obligations under the Agreement. Knowing a legally binding agreement was in place and having received services from FiberNet for many months without issue, Berkeley acted in good faith when it sent to the SLD the only copy it had. Berkeley gave the matter no further thought until it received the FCDL in October 2006 alleging a contract violation.

It is clear that on February 7, 2005 the intent of Berkeley and FiberNet was to enter into a legally binding three-year agreement for telecommunications services. If the contract had not been valid FiberNet would not have commenced service to Berkeley County Schools. It is also clear that both parties intended to be in full compliance with the rules and regulations of the E-rate program. Even if the copy of the contract provided by Berkeley failed to meet the technical requirements of E-rate contract rules, the contract satisfied the FCC's policy requirements behind the rule. In *Adams County School District 14*, FCC 07-35, the Commission just last month addressed and granted waivers for schools whose contracts had the same 'defect' as that of Berkeley's, reiterating that the Commission does not impose a "two signatures-two dates" rule where state contract law has no such requirement. Since under the State of West Virginia's liberal construction of contracts (as demonstrated in the court's decision in *Wellington Power Corp*, supra) the Berkeley-FiberNet

contract is valid, it was an error for the SLD to impose the “two signatures-two dates” requirement on Berkeley and deny funding on that basis.

The contract was executed within *the* allowable contract period, is legally binding upon the parties and was in effect before the certification of Berkeley’s FY 2006-2007 FCC Form 471. It should be recognized by the SLD and the FCC as a bona fide contract. Berkeley’s compliance with Section 54.504(c) of the Commission’s rules should be recognized and funding should be awarded.

Conclusion

Having demonstrated its compliance with the rules and regulations of the E-rate program, and the existence of a contract recognized by the parties and by West Virginia state law to be valid, the omission of one date should not be a fatal flaw upon which E-rate funding to Berkeley County School District is denied. The Berkeley-FiberNet contract executed February 7, 2005 clearly satisfied the requirements of Section 54.504(c) of the Commission’s rules. Further, in *Adams County School District*, supra, the Commission recognized that the omission of a date next to an otherwise authorized signature does not negate the validity of a contract.

47 C.F.R. §1.3 gives the Commission authority to waive any provision of its own rules on its own motion and for good cause shown. Berkeley avers that it will suffer significant hardship if denied funding for the eligible discounted services it receives from FiberNet and should be awarded full funding for these services as applied for. Since the facts addressed in *Adams* are substantially similar to those herein, Berkeley, requests the FCC overturn the decision of the SLD and/or grant it a waiver of Section 54.504(c). For good cause shown, and in the spirit of the recent FCC orders: *Adams County Schools District 14, Gayville-Volin School District* and *Richmond County School District*, Berkeley should be awarded full funding for the FRNs at issue herein.

Berkeley hereby requests:

1. That this matter be acted upon within 90 days or less of the filing date of this appeal;
2. That the FCC order funding for **the** FRNs set forth herein.
3. That funds be set aside to totally fund Berkeley County School District's funding requests.

Respectfully submitted,

A handwritten signature in black ink that reads "Linda Schreckinger Sadler". The signature is written in a cursive, flowing style.

Linda Schreckinger Sadler
Attorney at Law
Ohio Bar No. 0000827
26010 Hendon Road
Beachwood, OH 44122
Phone: 216-288-1122
Fax: 216-464-7315
Email: [lschrecks\(ii,vahoo.com\)](mailto:lschrecks(ii,vahoo.com))

Exhibit A

IBEW

Ken Marsteller
 Contact Name (please list two contacts) Title
 Berkeley County BOE + Schools
 Company Name

DBA
 Address 401 - S Queen Street Suite/Floor#
 Machsburge, WV 26401
 City, State, Zip
 Telephone # 304-267-3800 Fax # 263-3636

Email Address

Contact Name Title
 Company Name
 Address Suite/Floor#
 City, State, Zip
 Contact Telephone #
 EFN Primary # FID #

* Multiple Locations
 Address Suite/Floor#
 City, State, Zip
 Telephone # of Service Location
 Customer DEMARC (location must include floor/ra Telco DEMARC)
 Technical Contact Technical Contact #
 PBX Vendor PBX Vendor Tel #

	QUANTITY	INSTALL	MRC	SUBTOTAL
<input type="checkbox"/> Meas. BBL		\$	\$	\$
<input type="checkbox"/> Flat BBL		\$	\$	\$
<input type="checkbox"/> BLVP		\$	\$	\$
<input type="checkbox"/> BLSP		\$	\$	\$
* <input checked="" type="checkbox"/> Centrex	282	\$	\$ 21.00	\$ 3922.00
<input type="checkbox"/> Value		\$	\$	\$
<input type="checkbox"/> Premium		\$	\$	\$
<input type="checkbox"/> Int. T-1		\$	\$	\$
		# of Voice Channels	Data Speed	
<input type="checkbox"/> NetFlex T-1		\$	\$	\$
<input type="checkbox"/> Voice PRI		\$	\$	\$
<input type="checkbox"/> Voice BRI		\$	\$	\$
<input type="checkbox"/> DID Trunks		\$	\$	\$
Block of No.		\$	\$	\$
<input type="checkbox"/> RCF		\$	\$	\$
<input type="checkbox"/> Account codes		\$	\$	\$
Verified <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5				
<input type="checkbox"/> Calling Cards				# of Cards
<input type="checkbox"/> ISDN PRI		\$	\$	\$
<input type="checkbox"/> ISDN BRI		\$	\$	\$
<input type="checkbox"/> DSL		\$	\$	\$
<input type="checkbox"/> Data		\$	\$	\$

No LD FiberNet Other

Local \$ _____ Per Minute
 LD \$ _____ Per Minute

Toll Free \$ _____ Per Minute

\$ _____ \$ _____ \$ _____ \$ _____

ACTION **SERVICE TERM** **OTHER** **SAP**

New Add 1 Year 5 Year Promotion Accept
 Move Renew 3 Year MTM Tax Exempt Decline
 Change Other Attached Form Attached

Sales Rep T-Licot Order Number

VOICE FEATURES

Features	A.L. Code	BLVP	BLSP	Centrex Standard	CTX	Value Plan	CTX Premium Plan	MRC	Total Monthly
Call Forward Variable	1	0	0	C	V	P	\$	\$	
Call Forward Busy	1	0	0	C	V	P	\$	\$	
Call Forward Don't Answer	1	0	0	C	V	P	\$	\$	
Call Waiting	1	0	0	C	V	P	\$	\$	
3-Way Calling	1	0	0	C	V	P	\$	\$	
Call Trace	0	0	0	V	P	\$	\$		
Priority Call	0	0	0	V	P	\$	\$		
Call Block	0	0	0	V	P	\$	\$		
Ultra Forward	0	0	0	V	P	\$	\$		
Caller ID	0	0	0	V	P	\$	\$		
Caller ID Deluxe	0	0	0	V	P	\$	\$		
Auto Recall	0	0	0	V	P	\$	\$		
Call Trace	0	0	0	V	P	\$	\$		
Auto Call Back	0	0	0	V	P	\$	\$		
Select Call Acceptance	0	0	0	V	P	\$	\$		
Select Call Rejection	0	0	0	V	P	\$	\$		
Select Call Forward	0	0	0	V	P	\$	\$		
Speed Call 1	1	0	0	C	V	P	\$	\$	
Speed Call 2	1	0	0	C	V	P	\$	\$	
Identis Ring	0	0	0	V	P	\$	\$		
Wide Area CTX	0	0	0	V	P	\$	\$		
Call Transfer	0	0	0	V	P	\$	\$		
Call Hold	0	0	0	V	P	\$	\$		
Call Pickup	0	0	0	V	P	\$	\$		
Totals	0	0	0	0	0	0	\$	0	

VOICE MAIL

QUANTITY	MRC	SUBTOTAL	QUANTITY	MRC	SUBTOTAL
<input type="checkbox"/> NetMail Gold			<input type="checkbox"/> Response		
<input type="checkbox"/> NetMail Platinum			<input type="checkbox"/> Pager Notify		
<input type="checkbox"/> Multi-Mail Gold			<input type="checkbox"/> Auto Abandon		
<input type="checkbox"/> Multi-Mail Plat.			<input type="checkbox"/> Custom VM		
Total Voice Mail MRC		\$			

TOTAL PRICING

Voice Services MRC TOTAL \$ 3922.00
 Features MRC TOTAL \$ 114.00
 Voice Mail MRC TOTAL \$
 BAP Plan \$
 Non-Recuring TOTAL \$
 Data TOTAL \$
 TOTAL MRC \$ 6036
 (Excluding Taxes and Fees) -AS PER TARIFF-

FiberNet service cannot be used to originate calls to other paid information services (e.g., 800, 876 etc. numbers). Calls to those numbers used for customer information services will be blocked by FiberNet unless a written request to remove blocking is attached to this Telecommunications Service Agreement. This agreement is subject to the general terms and conditions set forth on the reverse side of this page. Activation of Service shall constitute FiberNet acceptance of this agreement. Customer acknowledges that FiberNet is under no duty, implied or constructive, to activate service. An authorized agent of customer I agree to the terms and conditions herein.

* *Ken Marsteller* 2/7/05
 Customer Signature Date
 Ken Marsteller Treasurer
 Name (please print) Title

FOR INTERNAL USE ONLY

T-Licot Sales Rep Signature Sales Engineer Signature
 SP Signature NBS Signature

Agent Name

TELECOMMUNICATIONS SERVICE AGREEMENT—TERMS AND CONDITIONS

Pursuant to this Agreement ("Agreement") between FiberNet, LLC or its subsidiary in the State of the Customer's premises ("FiberNet") and the customer identified on the reverse hereof ("Customer"), FiberNet agrees to provide and Customer agrees to purchase the services ("Services") described on the reverse side hereof or in addenda attached hereto (each a "Service Description"), at the prices and on the terms and conditions stated in such Service Description and below, and as provided in relevant Tariffs. Each Service Description may describe (i) the agreed duration of Customer's purchase ("Term") and (ii) the recurring charge, usage charges, nonrecurring charges and any other charges (collectively, "Charges").

1. **INITIATION; TERM OF SERVICE.** With respect to each Service Description, unless otherwise agreed to by FiberNet and the Customer in writing, the Term of this Agreement shall begin on the date that FiberNet installs and initiates service to the Customer ("Service Commencement Date"). Except as otherwise required by applicable law or regulation, or by applicable Tariff, at the end of the initial term set forth on the reverse side hereof or at the end of any renewal term, this Agreement shall be renewed automatically for additional terms equal to the length of the initial term, unless either party provides written notice of its intent not to renew this Agreement at least thirty (30) days prior to expiration of the initial or any additional term.

2. **TARIFF.** Customer understands that except for domestic interstate long distance, Internet services (Internet service includes access to the Internet, web hosting, e-mail, DNS and related services), and certain other services, the services provided hereunder are governed by certain Federal, State and Local regulatory authorities and by certain terms and conditions of service contained in applicable FiberNet tariffs on file with such authorities. Interstate domestic long distance service is provided at the rates set forth on the reverse hereof and on the terms and conditions described on FiberNet's web site (www.wvfiber.net). Other non-tariffed services are provided at the rates set forth on the reverse side hereof and on the terms and conditions set forth herein. In the event of any conflict between the terms and conditions set forth herein and those provided under any government regulations or FiberNet tariffs, the terms and conditions set forth in regulation or FiberNet tariff(s) shall prevail; provided that the rates set forth on the reverse side hereof shall remain in effect during the initial term of this agreement notwithstanding any increase or decrease in FiberNet's tariffed rates, and during any renewal term the rates shall be the higher of the rate during the initial term or the rates then charged by FiberNet for the applicable Service under then-applicable tariffs or otherwise published by FiberNet.

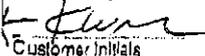
3. **PAYMENT:** Customer agrees to pay FiberNet for all services and facilities furnished to Customer, including nonrecurring charges or service charges associated with the services and facilities furnished. FiberNet shall present monthly invoices to the Customer for recurring charges, as well as usage charges. Recurring charges shall be billed in advance of the month in which service is provided. For a new Customer, any charges incurred for a fraction of a month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have thirty (30) days. Payment of all Charges shall be due at the address shown on the invoice no later than thirty (30) days after the invoice date ("Due Date"). The Customer shall promptly notify FiberNet in writing of any items or charges being disputed on a bill. Notwithstanding the foregoing, the Customer shall pay all undisputed items and charges by the Due Date on bills rendered by FiberNet. If objection to any item or charge on a bill is not received in writing by FiberNet within thirty (30) days after a bill's invoice date, such bill shall be deemed to be correct and binding upon the Customer. Past due amounts will be assessed a late charge in accordance with applicable law, tariff and published terms and conditions. Unless otherwise provided in an applicable tariff, the late charge will be the lesser of (i) the maximum amount permitted by law and (ii) 1.5% per month. Any applicable federal, state, municipal or local use tax, excise tax, franchise fee, sales tax, surcharge or fee imposed or permitted by a regulatory agency, or similar levy, including without limitation end user common line charges, primary interexchange carrier charge, state or Federal universal service fund charges, enhanced 9-1-1 charges, telecommunications relay service charge, and any other fee, charge or surcharge contained in applicable FiberNet tariff(s) or imposed or allowed to go into effect by the FCC or any State Commission or regulatory agency, applicable to or levied on services provided to Customer, shall be charged to and paid by Customer in addition to the service charges referred to in this agreement and in applicable tariff(s) (or, in the case of domestic interstate long distance service, on FiberNet's web page), unless Customer provides FiberNet satisfactory evidence of exemption from such imposition.

4. **LIMITATION OF LIABILITY; EXCLUSIVE REMEDIES:** FiberNet's maximum and sole liability, and Customer's sole and exclusive remedy for damages arising out of mistakes, omissions, interruptions, errors, delays or defects in services provided hereunder or under Tariff, or otherwise arising out of this Agreement, or for any other acts or omissions of FiberNet or its employees or agents, including acts or omissions occurring before, during or after the period that FiberNet provides service to Customer (and also including without limitation any errors, mistakes, delays or omissions in white page or yellow page directory listings and any loss of service), shall in no event exceed a credit equal to the service charge to Customer for the period during which Service is interrupted or unavailable (with no credit given under any circumstance for delay in commencement of service or directory listing errors or omissions occurring either in the white pages or the yellow pages). Such credit is only available if Customer notifies FiberNet of the defect or outage in writing within 20 days after the occurrence. FiberNet is not liable, and no credit will be made, for service interruptions, delays, outages, defects or failures resulting from the acts or omissions of other persons or carriers, or from Acts of God, governmental actions, fire, war or riot, or other causes beyond FiberNet's control. **WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL FIBERNET BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, OR ANY LOST PROFITS OR LOST REVENUES OF ANY KIND, UNDER ANY CIRCUMSTANCES, ARISING OUT OF MISTAKES, ACCIDENTS, ERRORS, OMISSIONS, INTERRUPTIONS, DELAYS, OUTAGES, OR DEFECTS IN SERVICE, OR ARISING FROM ANY OTHER CAUSE WHATSOEVER, EVEN IF FIBERNET HAD REASON TO KNOW OF THE POSSIBILITY OF SUCH LOSSES.**

5. **TERMINATION OF SERVICE:** FiberNet may discontinue the provision of Service to Customer in accordance with applicable tariff or, in the case of services not covered by tariff, upon the occurrence of any of the following: (i) Customer's violation of any of FiberNet's policies applicable to the Service, (ii) Customer's breach of the terms of this Agreement or any other agreement between FiberNet and Customer, or (iii) Customer's failure to make any payment to FiberNet when due. If Customer cancels all or any portion of any Service (including cancellation of any voice or data circuit even if other circuits remain active), or if FiberNet terminates any Service as provided herein, then the cancelled Service is governed by a tariff and the tariff expressly permits the cancellation, Customer shall pay to FiberNet, in addition to all Charges then due, a cancellation charge in an amount equal to Customer's monthly fixed charges and average monthly usage charges, multiplied by the number of months remaining in the Initial Term or renewal term, as the case may be, plus any charges included in the Service Description waived by FiberNet, plus any expenses incurred by FiberNet to discontinue any third party services or circuits used in providing the Service, and all costs incurred by FiberNet (including but not limited to attorneys fees) in collecting payment. Without limiting the foregoing, **UNLESS FIBERNET IN ITS DISCRETION AFFIRMATIVELY ELECTS OTHERWISE, NO ATTEMPT BY CUSTOMER TO TERMINATE SERVICE SHALL BE EFFECTIVE UNLESS DELIVERED IN WRITING TO FIBERNET EITHER BY FAX TO 304-720-5291 OR BY U.S. MAIL TO 211 LEON SULLIVAN WAY, CHARLESTON, WV 25301; ATTENTION: DISCONNECT—CUSTOMER CARE; SUCH NOTICE MUST IDENTIFY THE SERVICES TO BE TERMINATED. IN ALL CASES, WITHOUT LIMITING THE TERMINATION LIABILITY SET FORTH ABOVE, CUSTOMER SHALL BE OBLIGATED TO PAY FOR ALL SERVICES THROUGH THE DATE THAT IS 30 DAYS AFTER FIBERNET RECEIVES FROM CUSTOMER WRITTEN NOTICE OF TERMINATION BY FAX OR MAIL PURSUANT TO THE PRECEDING SENTENCE.**

6. **ADDITIONAL PROVISIONS:** (A) **Entire Agreement.** Addenda executed from time to time shall become part of this Agreement by reference hereto. This Agreement, including Addenda and matters incorporated herein by reference, contains the entire understanding of the parties, and supersedes any prior quotations, proposals, arrangements, or understandings relating to the subject matter hereof. No subsequent agreement between the parties concerning Service shall be effective unless contained in writing signed by both parties. (B) **Assignment.** Customer may not assign or transfer its rights or obligations under this Agreement without the prior written consent of FiberNet. Such transfer or assignment shall only apply where there is no interruption of the use or location of service. Any such assignment or transfer by Customer without FiberNet's prior written consent shall result in the continuation of the Customer's liability for any and all payments due and owing pursuant to this Agreement, even those that may occur after the Customer's intended assignment or transfer of his rights and obligations hereunder. (C) **Notice.** Required or permitted notices shall be in writing and delivered by registered or certified mail return receipt requested, postage paid, if to Customer, to a person identified as a "Service Contact" and if to FiberNet, to Customer Care 211 Leon Sullivan Way, Charleston, WV 25301 or as otherwise provided by proper notice hereunder; any notice under this Agreement that references a particular Service shall not affect any other Service. (D) **Additional Services.** If Customer orders additional services orally or in writing from FiberNet, this Agreement and the accompanying LOA shall apply to all such additional services upon FiberNet commencing delivery thereof, unless otherwise agreed in writing by Customer and FiberNet. (E) **Internet Services.** To the extent Customer obtains Internet services from FiberNet, Customer agrees to abide by FiberNet's acceptable use policy, which is available at www.wvfiber.net. Customer acknowledges that FiberNet makes no warranty concerning network security on any Internet, private network, VPN or other service. (F) **CPE.** Customer premises equipment provided by FiberNet shall be and remain the property of FiberNet and shall be returned to FiberNet upon termination of service or if earlier upon request of FiberNet. If any customer premises equipment provided by FiberNet is not returned to FiberNet, Customer shall be liable to FiberNet for the replacement cost thereof. Furthermore, Customer is not entitled to configure, reconfigure, program or reprogram any such equipment unless specifically authorized to do so in writing by FiberNet and FiberNet shall have no obligation to provide any passwords, codes or other information regarding customer premises equipment provided by FiberNet. Customer shall be liable for any impairment to such equipment resulting from any activities of customer or its agents or employees, including an attempt by Customer, its agents or employees to reprogram, reconfigure or otherwise modify such equipment. (G) **Customer Equipment and Charges.** FiberNet's voice services are designed primarily for the transmission of voice-grade telephonic signals. FiberNet does not warrant or guarantee that its voice services will be suitable for purposes other than voice-grade telephonic communications. Additionally, the Customer is responsible for ensuring that Customer-provided equipment that is connected to FiberNet equipment and facilities is compatible with such equipment and facilities. FiberNet assumes no responsibility or liability whatsoever if Customer-provided equipment or facilities are not compatible with FiberNet's equipment and facilities. (H) **Facility Availability.** The furnishing of service under this Agreement is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of FiberNet's facilities as well as the facilities FiberNet may obtain from other carriers to furnish service from time to time as may be required at the sole discretion of FiberNet. Notwithstanding the foregoing, FiberNet reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by FiberNet, when necessary because of the lack of available facilities, or due to some other cause beyond FiberNet's control. (I). **Application Cancellation.** When a Customer cancels an application for service prior to the start of service, but where prior to cancellation of service by the Customer, FiberNet incurred expenses in installing the service or preparing to install the service, including but not limited to special construction or where special arrangements of facilities and/or equipment have begun, the Customer will be assessed a charge equal to the costs incurred by FiberNet. In such cases, the charge will be based on such elements as the cost of the equipment, facilities and material, the cost of installation preparation, engineering, labor and supervision, general and administrative expense, and any other costs associated with said service installation, special construction or arrangements.

I acknowledge that I have read and understand the Telecommunications Service Agreement - Terms and Conditions and agree to be legally bound by the same.

 2/7/05
Customer Initials Date