

ORCUTT UNION SCHOOL DISTRICT  
Special Curriculum Meeting of the Board of Trustees  
Wednesday, February 29, 2012  
District Office Board Room  
500 Dyer Street, Orcutt, CA 93455  
Public Session – 6:00P.M.  
Closed Session Immediately Following

**CALL TO ORDER** 6:00 P.M.

**PUBLIC COMMENT ANNOUNCEMENT**

The Board of Trustees welcomes comments about items appearing or not appearing on tonight's agenda. The audience members wishing to address the Board during the Public Comment segment of the agenda are reminded to fill out a Public Comment Form from the Superintendent's secretary and submit it prior to the time the presiding officer calls for Public Comment.

A maximum of thirty (30) minutes is set aside for Public Comment; speakers are allowed a maximum of three (3) minutes to address the board on any items within the Board's jurisdiction in accordance with the Brown Act. The Board will limit any response to public comments to brief statements, referral to staff, or referral to a future board meeting.

- A. Pledge of Allegiance
- B. Superintendent's Report  
An opportunity for the Superintendent to share matters of special interest or importance which are not on the board agenda and/or special presentations of district programs or activities such as curriculum/instructional updates, timely events/information, and district activities.
  - 1. GATE Program
- C. Public Comment  
An opportunity for the public to provide input to the Board of Trustees. Those wishing to speak about a specific agenda item may do so during the Public Comment segment or when the item is being considered. Any request to speak must be submitted on a **Request for Public Comment Form** which can be obtained from the Superintendent's secretary and submitted prior to the presiding officer addressing the item. If you choose to speak when an item is before the Board, your name will be called prior to board consideration. An item not on the agenda must be addressed during the Public Comment segment of the agenda.
- D. Written Communication  
Documents addressed to or by board members as communications during a Board of Education meeting are defined as letters from parents or community members regarding issues within the jurisdiction of authority of the Board of Education; information or reports from professional organizations, i.e., CSBA, SBCSBA, etc.; letters or reports from other public agencies; letters or reports from legislators; or letters or reports from district schools or staff.
- E. Public Hearing – None

**ITEMS SCHEDULED FOR ACTION**

A. GENERAL

1. Lakeview Jr. High 8<sup>th</sup> Grade Honors Trip to Los Angeles

Staff requests that the Board of Trustees approve the Lakeview Jr. High 8<sup>th</sup> Grade Honors Trip to Los Angeles, California March 14-16, 2012.

Moved \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

B. CURRICULUM

1. Title III Plan

It is recommended that the Board of Trustees approve the revisions to the Title III, Program Improvement Action Plan, as submitted. A copy of the Title III Plan is available for review at the District Office, 500 Dyer Street, Orcutt, CA. M-F between the hours of 7:30 a.m. to 4:30 p.m.

Moved \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

2. Safe School Plans

It is recommended that the Board of Trustees approve the Safe School Plans for Ralph Dunlap, Pine Grove, Patterson Road, Joe Nightingale, Alice Shaw, Lakeview Jr. High, Orcutt Jr. High, and Olga Reed, as submitted. The Safe School Plans are available for review at the District Office, 500 Dyer Street, Orcutt, CA. M-F between the hours of 7:30 a.m. to 4:30 p.m.

Moved \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

3. Board Policy 6170.1, Transitional Kindergarten

It is recommended that the Board of Trustees adopt Board Policy 6170.1, Transitional Kindergarten for first reading and that it be placed on the next Consent Agenda for second reading.

Moved \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

4. Board Policy 5111, Admission

It is recommended that the Board of Trustees adopt Board Policy 5111, Admission, for first reading and that it be placed on the next Consent Agenda for second reading.

Moved \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

C. BUSINESS

1. Comcast Contract

It is recommended that the Board of Trustees approve the five year Comcast Contract as presented.

Moved \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

2. 2011/2012 Resolution No. 26, Statewide School Bus Retrofit Program

Staff recommends that the Board of Trustees approve 2011/2012 Resolution No. 26 authorizing the Assistant Superintendent to move forward and apply for grant funds with the San Joaquin Valley Air Pollution Control District to retrofit additional buses.

Moved \_\_\_\_\_

Second \_\_\_\_\_

Vote \_\_\_\_\_

**ITEMS SCHEDULED FOR INFORMATION/DISCUSSION**

1. Administrative Regulation 5111, Admission
2. Items from the Board

**GENERAL ANNOUNCEMENTS**

Unless otherwise noticed, the next regular board meeting is scheduled for Wednesday, March 14, 2012 beginning with Closed Session beginning at 6:45 p.m., Public Session at 7:15 p.m. in the District Office Board Room, 500 Dyer Street, Orcutt, CA.

**ADJOURN TO CLOSED SESSION**

Adjourn to Closed Session for the purpose of discussing matters expressly authorized by Government Code Section 3549.1, 54956.95, 54957, and 54957.6.

1. Public Employment per Personnel Report.
2. Public Employee Employment/Discipline/Dismissal/Release.
3. Conference with labor negotiator Robert Bush, Superintendent and/or Don Nicholson.
  - a. OEA
  - b. CSEA
4. Conference with labor negotiators for unrepresented employees:
  - a. Certificated and Classified Management, and Confidential.  
Agency representative – Superintendent.
  - b. Superintendent. Agency representative – Board of Trustees
5. Student disciplinary/expulsion matters.

**RECONVENE IN PUBLIC SESSION**

- A. Report on Action in Closed Session

**ADJOURN**

*In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Superintendent's Office at (805) 938-8907. Notification 48 hours prior to the meeting will enable the district to make reasonable arrangements to ensure accessibility to this meeting.*

*All documents related to the open session agenda are available for review 72 hours prior to the meeting at the Orcutt Union School District Office, 500 Dyer Street, Orcutt, CA.*

# LAKEVIEW JUNIOR HIGH SCHOOL

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3700 Orcutt Road, Santa Maria, California 93455 • (805) 938-8600 FAX (805) 938-8649  
Alan Majewski, Principal • Gene Rickman, Vice Principal • www.LakeviewJHS.net



January 30, 2012

Bob Bush, Superintendent  
Orcutt Union School District  
Pinal and Dyer Streets  
Orcutt, California 93455

Re: 2012 8<sup>th</sup> Grade Honor Trip to Los Angeles, California

Dear Mr. Bush:

With the permission of the Orcutt Union School District Board of Trustees, Lakeview Junior High School will be sponsoring our 10<sup>th</sup> annual 8<sup>th</sup> Grade Honors Trip to Los Angeles, California. This year's trip will include the top 40 students from the 20011/2012 8<sup>th</sup> Grade Lakeview class.

As part of the planning for the 2012 8<sup>th</sup> Grade Honor Trip, we have tried to incorporate all the learning disciplines in our itinerary. Students will be visiting the Griffith Observatory and Planetarium (Science), attending a session at the Tolerance Museum (History/English), and taking a tour of Fashion Institute of Merchandise and Design. In addition there will be a tour of the UCLA Campus and a visit to Universal Studios. Many fun- filled educational activities have been planned on this three-day field trip.

Students will depart from Lakeview Junior High School at 9:30 a.m. on Wednesday, March 14<sup>th</sup> and will return by 7:00 p.m. on Friday, March 16. We will be utilizing a bus from Silverado Stages, Inc. There will be four staff members from Lakeview Junior High who will serve as chaperones. This year's chaperones are Beth Baldwin, Keri Kirkland, Paul Cleveland and William VanAllen.

On behalf of all of the chaperones this year, I would like to say thank you for your continued support of our academic programs at Lakeview Junior High.

Sincerely,

William VanAllen  
Teacher  
Lakeview Junior High



## Educational Services

Holly Edds, Ed. D., Assistant Superintendent  
hedds@orcutt-schools.net

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**TO:** Bob Bush, Superintendent

**FROM:** Holly Edds  
Assistant Superintendent, Educational Services

**BOARD MEETING DATE:** February 29, 2012

**BOARD AGENDA ITEM:** Title III, Program Improvement Action Plan

**BACKGROUND:** Orcutt Union School District was found to be in Program Improvement, Year 4 for Title III in one of the Annual Measurable Achievement Objectives (AMAO) for the 2011 testing cycle. OUSD met all AMAO's with the exception of student achievement levels on the California Standards Test in the area of Mathematics. This two-year plan is a required under the No Child Left Behind (NCLB) Accountability Requirements and includes steps to be taken at the Site and District to support the achievement of our English Learner students in the areas of English Language Arts, Mathematics, and Professional Development.

**RECOMMENDATION:** It is recommended that the Board of Trustees approve the revisions to the Title III, Program Improvement Action Plan.

<b>FUNDING:</b>	General Fund	\$12,000
	Title II	\$50,000
	Title III	\$43,000



## Educational Services

Holly Edds - Assistant Superintendent, Educational Services  
hedds@orcutt-schools.net

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To: Bob Bush, Superintendent

From: Holly Edds, Assistant Superintendent, Educational Services

Board Meeting Date: February 29, 2012

Board Agenda Item: Safe Schools Plans for Ralph Dunlap, Pine Grove, Patterson Road, Joe Nightingale, Alice Shaw, Lakeview, Orcutt Junior High and Olga Reed.

Background: California public schools are required to comply with California Education Code, Section 35294, dealing with the preparation of "safe school plans". These plans address violence prevention, emergency preparedness, traffic safety, and crisis intervention.

Recommendation: This evening the School Safety Plans for each of the schools in the Orcutt Union School District are submitted for board approval as required in California statute. Staff recommends these be approved as submitted.



## Educational Services

Holly Edds, Assistant Superintendent  
hedds@orcutt-schools.net

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**TO:** Bob Bush, Superintendent

**FROM:** Holly Edds  
Assistant Superintendent, Educational Services

**BOARD MEETING DATE:** February 29, 2012

**BOARD AGENDA ITEM:** Board Policy 6170.1  
TRANSITIONAL KINDERGARTEN

**BACKGROUND:** New policy reflects new law (SB 1381, 2010) which requires districts to establish “transitional Kindergarten” programs beginning in the 2012-13 school year for children whose admission to kindergarten is delayed due to changes in law affecting the age criterion for admission to kindergarten. Policy addresses student eligibility for the program, curriculum and instruction, staffing, and students’ continuation to kindergarten at the completion of the transitional kindergarten program.

**RECOMMENDATION:** It is recommended that the Board of Trustees approve the revision to BP 6170.1.

**FUNDING:** No funding implications.

**Instruction**

**TRANSITIONAL KINDERGARTEN**

The Board of Trustees desires to offer a high-quality transitional kindergarten program for eligible children who do not yet meet the minimum age criterion for kindergarten. The program shall assist children in developing the academic, social, and emotional skills they need to succeed in kindergarten and beyond.

The district's transitional kindergarten shall be the first year of a two-year kindergarten program. (Education Code 48000)

The Board encourages ongoing collaboration among district preschool staff, other preschool providers, elementary teachers, administrators, and parents/guardians in program development, implementation, and evaluation.

(cf. 0420 – School Plans/Site Councils)  
(cf. 1220 – Citizen Advisory Committees)  
(cf. 6020 – Parent Involvement)

**Eligibility**

The district's transitional kindergarten program shall admit children whose fifth birthday lies between: (Education Code 48000)

1. November 2 and December 2 in the 2012-13 school year
2. October 2 and December 2 in the 2013-14 school year
3. September 2 and December 2 in the 2014-15 school year and each school year thereafter

Parents/guardians of eligible children shall be notified of the availability of this program and the age, residency, and any other enrollment requirements. Enrollment in the transitional kindergarten program shall be voluntary.

(cf. 5111 – Admission)  
(cf. 5111.1 – District Residency)  
(cf. 5111.12 – Residency Based on Parent/Guardian Employment)  
(cf. 5111.13 – Residency for Homeless Children)  
(cf. 5141.22 – Infectious Diseases)  
(cf. 5141.31 – Immunizations)  
(cf. 5141.32 – Health Screening for School Entry)

**Curriculum and Instruction**



The district's transitional kindergarten program shall be based on a modified kindergarten curriculum that is age and developmentally appropriate. (Education Code 48000)

(cf. 6141 – Curriculum Development and Evaluation)  
(cf. 6161.1 – Selection and Evaluation of Instructional Materials)

Upon recommendation by the Superintendent or designee, the Board shall approve academic standards for transitional kindergarten that bridge preschool learning foundations and kindergarten standards. Such standards shall be designed to facilitate students' development in essential skills which may include, as appropriate, language and literacy, mathematics, physical development, the arts, science, social sciences, English language development, and social-emotional development.

(cf. 5148.3 – Preschool/Early Childhood Education)  
(cf. 6011 – Academic Standards)  
(cf. 6174 – Education for English Language Learners)

#### Staffing

Teachers assigned to teach in transitional kindergarten classes shall possess a teaching credential or permit that authorizes instruction at the kindergarten grade level.

(cf. 4112.2 – Certification)

The Superintendent or designee may provide professional development as needed to ensure that transitional kindergarten teachers are knowledgeable about district standards and effective instructional methods for teaching young children.

(cf. 4131 – Staff Development)

#### Continuation to Kindergarten

A student shall not attend more than two years in a combination of transitional kindergarten and kindergarten. (Education Code 46300)

(cf. 5123 – Promotion/Acceleration/Retention)

#### Program Evaluation

The Superintendent or designee shall develop or identify appropriate assessments of transitional kindergarten students' development and progress. He/she shall monitor and regularly report to the Board regarding program implementation and the progress of students in meeting related academic standards.

(cf. 0500 – Accountability)

(cf. 6162.5 – Student Assessment)

Legal Reference:

EDUCATION CODE

8973	Extended-day kindergarten
44258	Assignment monitoring by County Office of Education
46111	Kindergarten, hours of attendance
46114-46119	Minimum school day, kindergarten
46300	Computation of average daily attendance, inclusion of kindergarten and transitional kindergarten
48000	Minimum age of admission (kindergarten)
48002	Evidence of minimum age required to enter kindergarten or first grade
48200	Compulsory education, starting at age six
60605.8	Academic Content Standards Commission, development of Common Core Standards

Management Resources:

CSBA PUBLICATIONS

Transitional Kindergarten, Issue Brief, July 2011

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Transitional Kindergarten FAQs

California Preschool Curriculum Framework, Vol. 1, 2010

California Preschool Learning Foundations, Vol. 1, 2008

Prekindergarten Learning Development Guidelines, 2000

First Class: A Guide for Early Primary Education, 1999

COMMISSION ON TEACHER CREDENTIALING PUBLICATIONS

11-08 Transitional Kindergarten Assignments, Credential Information Alert, August 254, 2011

WEB SITES

CSBA: <http://www.csba.org>

California Department of Education: <http://www.cde.ca.gov>

California Kindergarten Association: <http://www.ckanet.org>

Commission on Teacher Credentialing: <http://www.ctc.ca.gov>

Transitional Kindergarten California: <http://www.tkcalifornia.org>

Policy Adopted: 02-29/2012

ORCUTT UNION SCHOOL DISTRICT  
Orcutt, California



## Educational Services

Holly Edds, Assistant Superintendent  
hedds@orcutt-schools.net

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**TO:** Bob Bush, Superintendent

**FROM:** Holly Edds  
Assistant Superintendent, Educational Services

**BOARD MEETING DATE:** March 14, 2012

**BOARD AGENDA ITEM:** Board Policy 5111  
Administrative Regulation 5111  
ADMISSION

**BACKGROUND:** Regulation updated to reflect new law (SB 381) which extends districts' authority to grant residence based on parent/guardian employment within district boundaries, as detailed in AR 5111.12 – Residency Based on Parent/Guardian Employment. Regulation reflects new law (AB 207) which (1) requires districts to accept a wide range of documents as reasonable evidence of residency, (2) authorizes districts to make reasonable efforts to verify a student's unreliable evidence of residency, and (3) deletes detailed appeals procedure for denial or revocation of enrollment. Regulation also reflects new federal guidance clarifying that districts may not inquire about a student's citizenship or immigration status when verifying residency. Material added re: documentation of residency for foster youth and homeless students and the requirement to immediately enroll such youth even if documentation is not available.

**RECOMMENDATION:** It is recommended that the Board of Trustees approve the revision to BP 5111.

**FUNDING:** No funding implications.

## Students

### ADMISSION

The Board of Trustees ~~believes that all children should have the opportunity to receive educational services~~ **encourages the enrollment and appropriate placement of all school-aged children in school.** ~~Staff shall encourage parents/guardians to enroll all school-aged children in school.~~ **The Superintendent or designee, shall inform parents/guardians of students entering a district school at any grade level about admission requirements and shall assist them with enrollment procedures.**

The Superintendent or designee shall ~~maintain procedures which provide for the verification of all entrance requirements~~ **verify the student's age, residency, and any other admission criteria** specified in law and in Board policies and regulations.

(cf. 0410 – Nondiscrimination in District Programs and Activities)

(cf. 5111.1 - District Residency)

(cf. 5111.12 - Residency Based on Parent/Guardian Employment)

(cf. 5111.13 – Residency for Homeless Children)

(cf. 5119 - Students Expelled from Other Districts)

(cf. 5125 – Student Records)

(cf. 5141.22 – Infectious Diseases)

(cf. 5141.3 - Health Examinations)

(cf. 5141.31 - Immunizations)

(cf. 5141.32 – Health Screening for School Entry)

(cf. 6173 – Education for Homeless Children)

(cf. 6173.1 – Education for Foster Youth)

(cf. 6173.2 – Education of Children of Military Families)

The Superintendent or designee may admit to the ninth grade only those students who have graduated from eighth grade or who are recommended in writing by their eighth grade principal as capable of profiting from high school instruction.

(cf. 5123 – Promotion/Acceleration/Retention)

#### *Legal Reference:*

##### EDUCATION CODE

**46300 Computation of average daily attendance, inclusion of kindergarten and transitional kindergarten**

46600 Agreements for admission of pupils desiring interdistrict attendance

48000 Minimum age of admission (kindergarten)

48002 Evidence of minimum age required to enter kindergarten or first grade

48010 Minimum age of admission (first grade)

48011 Admission from kindergarten or other school; minimum age

48050-48053 Nonresidents

48200 Children between ages of 6 and 18 years (compulsory full-time education)

**48350-48631 Open Enrollment Act**

**48850-48859 Educational placement of foster youth**

49076 Access to records by persons without written consent or under judicial order

49408 Information of use in emergencies

**49700-49704 Education of children of military families**

##### HEALTH AND SAFETY CODE

120325-120380 ~~Immunization against communicable disease~~ **Education and child care facility**

**immunization requirements**

121475-121520 Tuberculosis tests for pupils  
CODE OF REGULATIONS, TITLE 5  
200 Promotion from kindergarten to first grade  
201 Admission to high school  
CODE OF REGULATIONS, TITLE 17  
6000-6075 School attendance immunization requirements  
UNITED STATES CODE, TITLE 42  
11431-11435 McKinney Homeless Assistance Act

*Management Resources:*

**CSBA PUBLICATIONS**

Transitional Kindergarten, Issue Brief, July 2011

OFFICE FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION PUBLICATIONS

Dear Colleague Letter, May 6, 2011

**WEB SITES**

CSBA: <http://www.csba.org>

California Department of Education: <http://www.cde.ca.gov>

Office for Civil Rights, U.S. Department of Education: <http://www2.ed.gov/about/offices/list/ocr>

**CDE MANAGEMENT ADVISORIES**

~~0900.09 Changes in law concerning eligibility for admission to kindergarten~~

Policy Adopted: ~~3/11/09~~ **02/29/2012**

ORCUTT UNION SCHOOL DISTRICT  
Orcutt, California



## BUSINESS SERVICES MEMORANDUM

TO: Board of Trustees  
Bob Bush, Superintendent

FROM: *MO* Marysia Ochej  
Assistant Superintendent, Business Services

BOARD MEETING DATE: February 29, 2012

BOARD AGENDA ITEM: Comcast Contract

BACKGROUND: Each year the federal government provides districts with funding for some basic services under the umbrella of ERate. We have gone through the process of selecting our vendors for the 2012-2013 funding year

**Comcast (Internet Service Provider):** We are at the end of a five year contract with Comcast to be our Internet Service Provider. Janet Bertoldi, Director of Technology, is recommending that we renew that contract for another five year contract at a cost of \$3,564.00 monthly charge for a total amount of \$42,768 per year. There is also a non-recurring charge of \$1,000.00 to do initial system maintenance. The actual cost would be approximately 40% of the contract as we receive a 60% ERate discount. The contract amount is \$9,371 less than the previous year and we are increasing our bandwidth to the Internet from 45 Mbs to 100Mbs

RECOMMENDATION: It is recommended that the Board of Trustees approve the five year Comcast contract as presented.

FUNDING: General Fund

## Comcast Phone, LLC Network Services Agreement

This Agreement ("Agreement") is made on the 10th day of February, 2012 ("Effective Date") by and between Comcast Phone, LLC, a Delaware limited liability company, with offices located at One Comcast Center, Philadelphia, PA 19103 and Orcutt Union School District ("Customer"), with offices located at 500 Dyer Street Orcutt, CA 93455. Herein, the above shall be collectively referred to as the "Parties" and individually as "Party".

Description of Services to be provided by Company to Customer: 100 Mbps Ethernet Dedicated Internet ("EDI") Services at the Customer site set forth in Schedules A and B attached hereto.	
Term of Agreement (months): Sixty (60)	Agreement Number: CA-10051-021012-01
Non-Recurring Charges ("NRC"): \$1,000.00	Monthly Recurring Charges ("MRC"): \$3,564.00
Any Additional Charges/Explanation:	
Number of Sites: One (1)	Estimated Service Date: On or after July 1, 2012
Notes / Comments: 1. E-Rate funding, if applicable, to be sought solely by Customer; the Comcast Phone, LLC SPIN No. is 143034516. 2. Customer is CTF eligible under Application No. 150 (approved April 6, 1997).	
Sales Person: Derek Allman	Telephone Number: (925) 424.0130
General Manager: Trace Williams	Telephone Number: (925) 424-0225
Customer Contact: Janet Bertoldi	Telephone Number: (805) 938-8945

This Network Services Agreement sets forth the terms and conditions under which Comcast, through its wholly owned affiliates and subsidiaries (collectively "Company" or "Comcast") will provide the Services identified above to Customer. This Network Services Agreement consists of this document ("Cover Page"), the standard Comcast Phone of California, LLC General Terms and Conditions ("General Terms and Conditions"), and Schedules A and B ("Schedules"), and any jointly executed amendments ("Amendments"), collectively referred to as the "Agreement". In the event of any inconsistency among these documents, precedence will be as follows: (1) Amendments, (2) General Terms and Conditions, (3) this Cover Page, and (4) Schedules. This Agreement shall commence and become a legally binding agreement upon mutual execution by both Parties of this Cover Page. The Agreement shall terminate as set forth in the General Terms and Conditions. All capitalized terms not defined on this Cover Page shall have the definitions given to them in the General Terms and Conditions.

All modifications to the Agreement, if any, must be captured in a written Amendment, executed by an authorized Comcast Vice President and the Customer. All other attempts to modify the Agreement shall be void and non-binding on Comcast.

Customer, by signing below, agrees and accepts the terms and conditions of this Agreement.

### Orcutt Union School District

### Comcast Phone, LLC

Signature:		Signature:	
Printed Name:	Marysia Ochei	Printed Name:	
Title:	Assistant Superintendent	Title:	
Date:		Date:	

# COMCAST PHONE, LLC GENERAL TERMS AND CONDITIONS

## SECTION 1 - SCOPE OF SERVICE

1.1 Company will provide to Customer the Service at the prices set forth in the attached Schedule A, and to the location(s) set forth in Schedule B, both attached hereto ("Buildings"). The Service is provisioned by utilizing fiber optic cable, associated with electronics and other equipment ("Network"), which transports and distributes digital signals in a standards based Internet Protocol (IP) format for standards based IP applications to Customer's Buildings identified in the attached Schedule B and at the transmission level designated in Schedule A attached hereto. The Network is provisioned into Customer's Building at the point of interconnection between the Network and Customer's provided equipment located at Customer's Building ("Demarcation Point").

1.2 The Service does not include connection to the public switched network, building wire, any Local Area Networks ("LANs"), Customer Premise Equipment ("CPE"), IP addressing capability, firewalls or any other equipment, electronics, or wiring required on the Customer's side of the Demarcation Point.

1.3 Upon the request of Customer, Company will consider providing other services to Customer at terms, conditions, and prices to be mutually agreed upon in writing between the Parties.

## SECTION 2 - INSTALLATION OF NETWORK

2.1 Customer, at no cost to Company, shall secure throughout the term of Service any easements, leases or other agreements necessary to allow Company to use existing pathways into and in each Building to the Demarcation Point for the Service.

2.2 Subject to the terms of this Agreement, and at no cost to Company, Customer shall provide adequate environmentally controlled space and electricity required for installation, operation, and maintenance of the Network used to provision the Service within each Building.

2.3 Company and its employees, agents, lessees, officers and its authorized vendors will require free ingress and egress into and out of the Buildings in connection with the provision of Services. Upon reasonable notice from Company, Customer shall assist Company in accessing each Building.

2.4 If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify Company to install the applicable portion of the Network in areas of any such Building not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.

2.5 Company shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.

2.6 Customer shall be responsible for providing maintenance, repair, operation and replacement of all wire, cable facilities on the Customer's side of the Demarcation Point. Any CPE and wiring that Customer uses in connection with the Service shall be compatible with the Network.

2.7 Customer shall use reasonable efforts to maintain its property and Buildings in a manner that preserves the integrity of the Service and shall promptly notify Company of any event that affects such integrity including but not limited to damage to the Network.

2.8 At such time as Company completes installation and connection of the necessary facilities and equipment to provide the Service, Company shall then notify Customer in writing that the Service is available for use and the date of such notice shall be the "Service Date". The current notice form is called the "Customer Site Service Acceptance Document" ("Acceptance Form"). Company may update, modify or replace the service notification form from time to time without notice to Customer.

2.9 Any other failure on the part of Customer to be ready to receive Service, or any refusal on the part of Customer to receive Service, shall not relieve Customer of its obligation to pay charges for any Service that would otherwise be available for use.

2.10 **Customer-Provided Equipment (CPE).** Company shall have no obligation to install, operate, or maintain CPE. Customer alone shall be responsible for providing maintenance, repair, operation and replacement of all inside telephone wiring and equipment and facilities on the Customer's side of the Demarcation Point. All CPE and wiring that Customer uses in connection with the Services must be fully compatible with the Services. Customer shall be responsible for the payment of all charges for troubleshooting, maintenance or repairs attempted or performed by Company's employees or authorized contractors when the difficulty or trouble report results from CPE.

## SECTION 3 - OWNERSHIP, IMPAIRMENT, AND REMOVAL OF THE NETWORK

3.1 The Network is and shall remain the property of Company regardless of whether installed between, within or upon the Buildings and whether installed overhead, above, or underground and shall not be considered a fixture or an addition to the land or the Buildings located thereon. Customer agrees that it shall take no action that directly or indirectly impairs Company's title to the Network, or exposes Company to any claim, lien, encumbrance, or legal process, except as otherwise agreed in writing by the Parties. Nothing in this Agreement shall preclude the Company from using the Network for services provided to other Company customers.

3.2 For a period of twelve (12) months following Company's discontinuance of Service to the Buildings, Company retains the right to remove the Network including, but not limited to, that portion of the Network that is located in the Buildings. To the extent Company removes such portion of the Network, it shall be responsible for returning the Buildings to their prior condition, reasonable wear and tear excepted.

## SECTION 4 - COMPENSATION; PAYMENT

4.1 The Non-Recurring Charges ("Non-Recurring Charges" or "NRC") and Monthly Recurring Charges ("Monthly Recurring Charges" or "MRC") for the Service is set forth in the attached Schedule A and on the first page of the Agreement. Upon installation of Services, Company shall immediately invoice Customer for the NRC and Customer shall pay Company one hundred percent (100%) of the NRC. Unless otherwise stated in this Agreement, Company will invoice Customer in advance on a monthly basis for all Monthly Recurring Charges arising under the Agreement. Payment will be considered timely made to Company if received within thirty (30) days after the invoice date set forth in the invoice. Any charges not paid to Company within such period will be considered past due. In the event the Service Date is not the first day of the billing period, the first Recurring Charge shall also include the *pro rated* in arrears charges for Services from date of installation to the date of first billing.



4.2 Any payment not made when due will be subject to a late charge of 1.5% per month or the highest rate allowed by law on the unpaid invoice, whichever is lower.

4.3(A) Company makes no representations or warranties with respect to the eligibility or ineligibility of the Services or any Service component for federal e-rate support or for other governmental and quasi-governmental telecommunications/internet discounts or entitlements (collectively, "E-Rate Funding"). Customer expressly understands and agrees that it shall pay Company one hundred percent (100%) of all Non-Recurring Charges, Recurring Charges and other amounts required under this Agreement in accordance with the payment intervals specified therein. Customer may not withhold or offset any such amounts on the basis of its actual or anticipated receipt of E-Rate Funding, except as otherwise set forth below. In the event that the Customer has received, or has been designated as a recipient of, E-Rate Funding for the Services, Customer will utilize the applicable customer-initiated reimbursement process relative to such E-Rate Funding. Company shall have no obligation to discount or pro-rate its invoices or to take other action to process such E-Rate Funding, except to the extent specifically required by law and regulation, or except as otherwise set forth above or below. Notwithstanding this, Company will reasonably assist Customer in the completion of those portions of the FCC Form 472 which, as a matter of law or regulation, are required to be completed by the service provider. In the event that the Parties have expressly amended this Agreement in writing to permit E-Rate Funding to be applied in the form of discounts to, or a pro-ration of, Customer's invoices, Company shall have no obligations under this Agreement until Customer provides Company the copy of the Notification and Acceptance of Form(s) 486 from the Universal Services Administrative Company, Schools and Libraries Division ("SLD"), approving Customer's eligibility for E-Rate Funding. If during the term of this Agreement Customer fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of the Agreement succeeding the first fiscal period, Customer may elect to (i) continue to receive Services under this Agreement, in which Customer shall remain bound by the terms and conditions set forth hereunder and remain responsible for all NRC and MRC, as set forth in Schedule A attached hereto, for the remaining term of the Agreement, irrespective of E-Rate Funding status, or, (ii) terminate this Agreement upon written notice as of the beginning of the fiscal year for which funds are not appropriated or otherwise made available. The effect of termination of the Agreement hereunder will be to discharge both Company and the Customer from future performance of the Agreement. However, Company shall be reimbursed for any and all unpaid non-recurring charges, any unpaid past due balance(s), and any additional costs already incurred by Company in conjunction with this Agreement. Customer shall notify Company in writing within 30 days of fiscal budget denial indicating funds may not be available for the continuation of the Agreement for each succeeding fiscal period beyond the first year. In no event shall Company initiate construction of the Network until proof of funding has been received, in whole or in part, based on 100% Customer-furnished funds or partially reimbursed funds by the SLD.

4.3(B) FOR CALIFORNIA CUSTOMERS ONLY. The following provision applies in lieu of Section 4.3(A). Company makes no representations or warranties with respect to the eligibility or ineligibility of the Services or any Service component for federal e-rate support or for other governmental and quasi-governmental telecommunications/internet discounts or entitlements (collectively, "E-Rate Funding" and/or "California Teleconnect Fund"). Customer expressly understands and agrees that it shall pay Company one hundred percent (100%) of all Non-Recurring Charges, Recurring Charges and other amounts required under this Agreement in

accordance with the payment intervals specified therein. Customer may not withhold or offset any such amounts on the basis of its actual or anticipated receipt of E-Rate Funding, except as otherwise set forth below. In the event that the Customer has received, or has been designated as a recipient of, E-Rate Funding for the Services, Customer will utilize the applicable customer-initiated reimbursement process relative to such E-Rate Funding. Company shall have no obligation to discount or pro-rate its invoices or to take other action to process such E-Rate Funding, except to the extent specifically required by law and regulation, or except as otherwise set forth above or below. In accordance with the "CTF/Senate Bill 1102", Company shall apply the CTF, (California Teleconnect Fund) discount after applying the Federal E-rate discount. Notwithstanding this, Company will complete and process the FCC Form 474, which, as a matter of law or regulation, is required to be completed by the service provider. In the event that the Parties have expressly amended this Agreement in writing to permit E-Rate Funding to be applied in the form of discounts to, or a pro-ration of, Customer's invoices, Company shall have no obligations under this Agreement until Customer provides Company the copy of the Notification and Acceptance of Form(s) 486 from the Universal Services Administrative Company, Schools and Libraries Division ("SLD"), approving Customer's eligibility for E-Rate Funding. If during the term of this Agreement Customer fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of the Agreement succeeding the first fiscal period, Customer may elect to (i) continue to receive Services under this Agreement, in which Customer shall remain bound by the terms and conditions set forth hereunder and remain responsible for all NRC and MRC, as set forth in Schedule A attached hereto, for the remaining term of the Agreement, irrespective of E-Rate Funding status, or, (ii) terminate this Agreement upon written notice as of the beginning of the fiscal year for which funds are not appropriated or otherwise made available. The effect of termination of the Agreement hereunder will be to discharge both Company and the Customer from future performance of the Agreement. However, Company shall be reimbursed for any and all unpaid non-recurring charges, any unpaid past due balance(s), and any additional costs already incurred by Company in conjunction with this Agreement. Customer shall notify Company in writing within thirty (30) days of fiscal budget denial indicating funds may not be available for the continuation of the Agreement for each succeeding fiscal period beyond the first year. In no event shall Company initiate construction of the Network until proof of funding has been received, in whole or in part, based on 100% Customer-furnished funds or partially reimbursed funds by the SLD.

4.4 Except for taxes based on Company's net income, and except to the extent Customer provides a valid tax exemption certificate prior to the delivery of Service, Customer shall be responsible for the payment of any and all applicable local, state, and federal taxes (however designated) levied upon the sale, installation, use or provision of Service. Further, Company reserves the right to invoice Customer for the costs of any fees or payment obligations stemming from an order, rule, or regulation of the FCC, a public service commission or a court of competent jurisdiction with respect to the Services, including, without limitation, universal service fund charges, or as otherwise needed to recover amounts that Company is required by government or quasi-governmental authorities to collect from or to pay to others in support of statutory or regulatory programs, including, without limitation, franchise fees and right-of-way fees. It will be the responsibility of Customer to pay any such taxes and fees that subsequently become applicable retroactively.

4.5 In the event that any newly adopted law, rule, regulation, or judgment increases Company's costs of providing Services,