

Special Meeting Agenda
PUD Board of Commissioners

Tues, May 25, 2021 10:00 AM

Zoom

Port Townsend, WA 98368



To join online go to: <https://zoom.us/my/jeffcopud>. Follow the instructions to login. Meetings will open 5 minutes before they begin. TOLL FREE CALL IN #: 833-548-0282, Meeting ID# 4359992575#. Use *6 to mute or unmute. *9 to raise a hand to request to begin speaking.

1. Call to Order

Per the Governor's Extended Proclamation 20-28 and in response to the COVID-19 Pandemic, Jefferson County PUD is no longer providing an in-person room for meetings of the BOC. All meetings will be held remotely via Zoom until otherwise informed by the Governor. Participant audio will be muted upon entry. Please unmute at the appropriate time to speak. If you are calling in, use **6 to mute and unmute and *9 to raise a hand to request to speak.*

2. Agenda Review

3. Presentation & Discussion: Broadband Policies, Rates, Contracts, and Plans

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[Proposed Policies and Rates - Broadband](#) 

[Jefferson PUD Wholesale Telecom Service Agreement .003.docx](#) 

[Generic Tasks for a New Retail ISP From Doug Dawson](#) 

4. Adjourn

BROADBAND CUSTOMER SERVICE POLICIES OF PUBLIC UTILITY DISTRICT NO.1 OF JEFFERSON COUNTY, WASHINGTON

Adopted: April xx, 2021

1.0 APPLICABILITY OF POLICIES

These Broadband Customer Service Policies are subject to revision by the Commission of Public Utility District No. 1 of Jefferson County, Washington (the “District”) from time to time as determined to be in the District's best interests.

The District provides Broadband services and facilities in accordance with the provisions of RCW 54.16. The District reserves the right to discontinue any service at any time and in the event that any Customer shall fail to comply with these Policies. Service also may be disconnected by the District at any time to prevent fraudulent use or to protect its property.

Contracts between the District and Customers for specialized services such as Broadband transport services or dark fiber may contain different terms and conditions from those set forth in these Broadband Customer Service Policies provided such contracts are approved by the District's Commission and further provided that such contracts shall comply with RCW 54.16.

1.1 DEFINITION OF TERMS

TERM	DEFINITION
<u>Commission</u>	The Board of Commissioners of Public Utility District No. 1 of Jefferson County, Washington.
<u>Customer</u>	A person or entity purchasing wholesale Broadband Services from the District. A Customer may not be a retail user of Broadband Services.
<u>Due Date</u>	The date by which the Customer's payment for Broadband Services must be received by the District as specified on the District's Billing Statement. The Due Date will be 30 days after the billing date specified on the bill, or the next business day if the 30 th day is a weekend or a holiday.
<u>Pre-pay</u>	An agreement by the District and the Customer obligating the Customer to make advance payment for Broadband Services or Facilities.
<u>Special Fiber Construction</u>	Special Fiber Construction may be charged if the Customer requests a connection for a User to anywhere other than the normal Fiber Demarcation Point. The District may require the Customer to pre-pay the cost of construction needed to add a User to the network before the Customer or User is connected. Special Fiber Construction may also be assessed for Users where high costs of connection are required to connect to the network.
<u>Broadband Services</u>	All Broadband services and facilities provided to Customers as set forth in an applicable District rate schedule.
<u>Broadband Facilities</u>	Those facilities required to provide Broadband Services. This includes, but is not limited to, fiber, vaults, switches, routers, and gateways.
<u>Tier 1 Technical Support</u>	Support provided by the District during normal business hours of 8am to 4:30pm Monday through Friday. This support is for District owned material and equipment only.

Fiber Demarcation Point The designated connection point at which the District's facilities end. The final location of the Fiber Demarcation Point shall be determined by the District. The District's devices will, to the extent feasible, be installed only in locations that allow free and safe access for installing, removing, and testing.

User A person or entity that is receiving access to Broadband Services and Broadband Facilities from a Customer.

2.0 BROADBAND GENERAL POLICIES

2.1 RATE SCHEDULE

A Rate Schedule has been adopted by the Commission to establish rates and charges for Broadband Services. The Commission may revise the rate schedule from time to time and at any time as they determine necessary or advisable. Copies of the current rate schedules are available upon request.

2.2 LIMITATIONS OF DISTRICT OBLIGATIONS

The District will attempt to provide, but does not guarantee, a regular and uninterrupted supply of Broadband Services. The District may suspend the delivery of Broadband Services for the purpose of making repairs or improvements to its Broadband Facilities. Repairs or improvements that can be scheduled will be scheduled, when feasible, at such time as to minimize impact to Customers and Users. Broadband Services/Facilities are inherently subject to interruption, suspension, curtailment and fluctuation. In no event, however, shall the District be liable to its Customers or any other persons for any damages to person or property arising out of, or related to, any interruption, suspension, curtailment, or fluctuation in service if such interruption, suspension, curtailment, or fluctuation results in whole or part from any of the following:

- A. Causes beyond the District's reasonable control including, but not limited to, accident or casualty, fire, flood, drought, wind, acts of the elements, court orders, insurrections or riots, breakdowns of or damage to equipment/facilities of the District or of third parties, acts of God or public enemy, pandemics, strikes or other labor disputes, civil, military, or governmental authority; or

- B. Repair, maintenance, improvement, renewal, or replacement work on District's Broadband Facilities, which work, in the sole exclusive judgment of the District, is necessary or prudent; or
- C. C. Automatic or manual actions taken by the District, which in its sole judgement are necessary or prudent to protect the performance, integrity, reliability or stability of the District's Broadband system or any Broadband system with which it is interconnected.

2.3 LIMITATIONS OF DAMAGES

In no event shall the District have any obligation or liability for any lost profits, consequential, incidental, indirect, special, or punitive damages of any type arising out of, or in any way connected to, the District's Broadband Services/Facilities or any interruption, suspension, curtailment, or fluctuation of the District's Broadband Services regardless of the cause thereof. The District is expressly not responsible or liable for the content of any transmission across its network.

2.4 CUSTOMER OBLIGATIONS

It shall be the responsibility of the Customer to abide by all applicable rate schedules and policies relating to service as the same currently exist or are hereafter amended. By continuing to utilize the District's Broadband Services, the Customer shall be deemed to have accepted all of the terms and conditions contained in the District's rate schedules and policies as the same currently exist or are amended from time to time.

2.5 APPLICATION FOR SERVICE

A new Customer must apply to the District for approval before being allowed to use the District's fiber network. Customer must provide the following to be approved to use the network:

- Customer must provide a current valid business license and UBI number or local business license as required that provide proof that the Customer is legally allowed to resell services.
- Customer must be current and have paid all previously accrued and outstanding amounts owed the District for Broadband Services.
- Customer shall procure and maintain for the time in which Customer is providing services using the District fiber network, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Customer, its

agents, representatives, employees, or subcontractors. Any payment of deductible or self-insured retention shall be the sole responsibility of the Customer. Customer shall provide a Certificate of Insurance which shall include the following:

- Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage.
 - Commercial General Liability insurance written on an occurrence basis with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for personal injury, bodily injury, and property damage. Coverage shall include but not be limited to blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability; and
 - Worker's Compensation insurance at the limits established by the State Washington.
- The PUD shall be named as an Additional Insured on the insurance policies, as respects to work performed by or on behalf of the Customer, and a copy of the policy naming the PUD as additional insured shall be attached to the Certificate of Insurance. The Customer's insurance shall be primary insurance as respects the PUD and the PUD shall be given thirty (30) days prior written notice of any cancellation, suspension or material change in coverage.

2.6 PRE-PAYMENT FOR USER CONNECTION TO THE NETWORK

The Customer shall be required to prepay any Connection Fees as defined in the Rate Schedule as well as any Special Fiber Construction Charges assessed to a specific customer before the District will initiate the construction to add the User to the network.

3.0 BILLING AND COLLECTION

3.1 BILLING PERIODS

Customers will be billed monthly for Broadband Services or as otherwise provided in the applicable District rate schedules. Charges shall be prorated when Broadband Services are provided for more than or less than the actual billing period.

3.2 ADJUSTMENT OF BILLING ERRORS

The District reserves the right to adjust any billing when it determines that an error in billing has been made and a correction is in order. The District may revise such bill on the basis of best evidence available.

3.3 PAYMENT

The District requires receipt of payment for Broadband Services/Facilities on or before the earlier of the Due Date specified on the billing statement or the date specified in the Prepayment Agreement if the Customer has executed a Prepayment Agreement for Connection Fees or Special Fiber Construction.

3.4 LATE PAYMENT CHARGES

If payment has not been received by the District on or before the required Due Date, a late charge shall be assessed on the unpaid balance. The late payment charge shall be calculated at 1.5% per month. In no event shall the minimum monthly late payment charge amount be less than \$50.00. Late payment charges shall continue to accrue until such time as the bill and all accumulated charges have been paid in full.

3.5 RETURNED CHECK CHARGES

If Customer payment fails, due to any reason, the District will charge a return check fee in accordance with Washington law.

3.6 PAYMENT OPTIONS

Customers may make payment to the District by any District-approved means.

4.0 CUSTOMER AND USER REQUIREMENTS

To protect the District's Broadband Services and Broadband Facilities, all Customers and Users shall strictly comply with the following requirements:

4.1 Illegal Use

The District's Broadband Services may only be used for lawful purposes. Any transmission, distribution, retrieval, or storage of material that violates any applicable law is prohibited. Customers of Broadband Services are required to have and enforce policies governing their Users which prohibit the following activities involving District Broadband Services or Broadband Facilities, without limitation:

1. Compliance with all Intellectual property rights and laws - No Customer or User shall violate any intellectual property rights including those protected by patent, copyright, trade secret, or other intellectual property right.
2. Inappropriate content - No Customer or User shall transmit, broadcast, or receive any material that is legally obscene or constitutes child pornography, or any material that is libelous, defamatory, or that otherwise violates any and all applicable laws.
3. Export control - No Customer or User shall transmit, broadcast, or receive any material that violates export control laws or other applicable regulations.
4. Forging of Headers - No Customer or User shall misrepresent or forge any message header to mask the originator of a transmitted communication.

4.2 System and Network Security

The District makes no guarantee regarding, and assumes no liability for, the security and integrity of any data or information transmitted by the Customer or a User over the District's Broadband Facilities or Broadband Services. Any attempt to breach system and network security measures is expressly prohibited and may result in criminal and civil liability. Customers of Broadband Services are required to have policies governing their Users which prohibit the following, without limitation:

1. Unauthorized Access - Customers and Users may not attempt to gain unauthorized access to or attempt to interfere with the normal functioning and security of the Broadband Services or any other District system. Illegally

accessing or accessing without proper authorization computers, accounts, networks or purposely breaching firewalls or security measures of another company's or individual's system (hacking) is also a violation.

2. Unauthorized Monitoring - Customers and Users may not attempt to monitor any information on any network or system without authorization of the owner of that network.
3. Interference - Customers and Users may not attempt to intercept, redirect, or otherwise interfere with communications intended for other parties.
4. Fraud/Forgery - Customers and Users are expressly prohibited from impersonating another party by altering IP addresses or forging TCP-IP packet header information within an email or newsgroup posting. Misrepresenting or forging message headers to mask the originator of a message is a violation of these policies.
5. "Denial of Service Attacks" - Customers and Users may not flood, deliberately attempt to overload a system, or broadcast attacks.
6. Virus Transmission - Customers and Users may not intentionally or negligently transmit files containing a computer virus, Trojan Horse, Worms, corrupted data, or other destructive activities.
7. Re-transmission - Transmission of District network services beyond the premises which is directly connected to the District's network, except as specifically allowed under Rate Schedule 100.

4.3 Email

Although the District makes no promises to police any activities on the Broadband Facilities, it is required that Customers of Broadband Services have and enforce policies for Users requiring compliance with certain conduct in connection with e-mail. Compliance shall include, without limitation:

1. Unsolicited Email - Users may not use any Services to transmit or collect the responses from excessive volumes of unsolicited commercial e-mail messages. The use of another provider's service to send unsolicited commercial or bulk e-mails, SPAM, or mass mailings to promote a site associated with the District's network or any of its customers is similarly prohibited.

2. E-mail Relay - The use of another party's e-mail server to relay e-mail without express permission from such party is prohibited.

5.0 Rights of the District

The District will cooperate with legally authorized law enforcement and government agencies or other parties involved in investigating claims of illegal or inappropriate activity. Taking any services on the District's network constitute consent to all the use policies and providing access to legally authorized law enforcement and government agencies or other parties involved in investigating claims of illegal or inappropriate activity.

Violation of this policy may result in temporary suspension or termination of service, at the District's sole discretion. The District's right to discontinue Broadband Service may be exercised whenever:

- A. Customer is not current on payments due to District. District invoices are due and payable within 30 calendar days. Customer will be disconnected if at least 75% of any past due billing has not been paid within 30 calendar days past the date of the invoice. Disconnection of Broadband Services may occur as often as delinquency shall occur and neither delay nor omission on the part of the District to enforce this rule at any one or more times shall be deemed as a waiver of its rights to enforce the same at any time, so long as the delinquency continues; or
- B. Violation of these Broadband Customer Service Policies, special contracts or the signed Broadband Service Provider Application and Agreement, if any.

6.0 SERVICE OBLIGATIONS

6.1 Request for New Service

Customer shall make a formal request to connect a new User to the network by sending an email to broadband@jeffpud.org. That email should contain the following minimum information:

- Name of the User
- Address of the User
- The specific product being requested from the Rate Schedule

Within 12 calendar days of a formal request for Service, the District shall provide Customer with a quote for Service which would include any additional prepaid fees required for to cover the cost of construction or installation.

Customer can then place a valid order for Service by pre-paying the District for any Connection Fees as described in the Broadband Rate Schedules and pre-paying any specific construction charges that the District is requiring for Special Fiber Construction, if any, for a specific customer.

Before the District will proceed with construction, Customer must provide evidence that the real property owner is granting any necessary easement or access agreement to the District for crossing and locating its facilities on the Customer's property or premises.

Customer must also notify the User about any planned site visit by the District and provide evidence of such notification to the District.

6.2 Installation Goals

The District and the Customer shall cooperate to try to connect a new residential User to the network within 30 days of the date of a valid order.

The District and the Customer will work jointly to set an installation date goal for each new business customer at the point where there is a valid order.

6.3 Demarcation

The physical demarcation point between the District network and Customer network shall be at the point where the District places the electronics at a User location that converts light signal into electrical signal.

The District's policy for a residential User is to place the demarcation on the outside of a User location close to the electric meter, but the District retains the right to locate the demarcation point indoors or at some different outdoor location.

The District's policy for a business User is to place the demarcation indoors at the customer location. The District expects Customer to be familiar with the customer location and to define the location of a business User demarcation.

In all cases, Customer may request an alternate demarcation point from that suggested by the District. The District will try to accommodate the Customer request, but there may be additional fees.

The District's responsibility ends at the demarcation point and all wiring and other facilities past the demarcation are the responsibility of Customer. District might agree to do additional work past the demarcation point but is not obligated to do so. Any District work past the demarcation will be performed at the District's hourly rate identified on the Rate Schedule. Such District work does not change the demarcation point and Customer's obligations.

When the installation to the demarcation is complete the District will notify the Customer and will include any information pertinent to the installation.

6.4 Responsibility for Maintenance and Repairs

The District is responsible for all network obligations on the District side of the demarcation, including the electronics at the demarcation point. Customer is responsible for all network at the User location that is past the demarcation point.

Each party will be responsible for all maintenance and repair costs on its side of the demarcation point.

Both parties will cooperate to reduce unneeded truck rolls. Should the District be requested to make a truck roll by a Customer but finds that the problem was on the Customer side of the demarcation, the District will bill the Customer for time and materials as defined in Broadband Rate Schedule. There will no fees for a truck roll where the problem was on the District side of the demarcation point.

6.5 Network Monitoring / Escalation

Customer must provide the District with an escalation list that identifies the contact at the Customer who should be notified of network problems or outages. This list shall identify the specific and best ways to reach the Customer contact, including telephone number and email address. Customer should also provide a back-up contact in case the primary contact cannot be reached. Customer is free to provide different contacts for different kinds of network problems. Customer shall keep the contact list current at all times.

District will monitor the fiber network 24/7. The District will notify the appropriate Customer contact about identified network problems that have a material impact on User performance.

Jefferson County PUD

RATE SCHEDULE

Wholesale Broadband Services

Effective XX/XX/2021

- A. The rates listed on this schedule are available to qualified Internet Service Providers (ISPs) desiring to use the PUD's wholesale fiber optic network. The PUD reserves the right, at its sole option, to discontinue services listed in this rate schedule at any time.
- B. All wholesale fiber optic and wireless network services provided by the PUD are subject to the terms and conditions in the PUD's Broadband Policies, as may be amended from time-to-time.
- C. The amount of any tax levied by any governmental entity, in accordance with the laws of the State of Washington, will be added to the charges shown in this rate schedule.
- D. Rates listed in all tables below are monthly recurring charges unless otherwise noted.
- E. The products delivered with Residential Ethernet Services and Business Ethernet Services are intended to serve a single User location. It is prohibited to use the bandwidth from these products to connect to or sell services to additional customer locations.
- F. The District's fiber optic network is able to provide other features such as dark fiber, point-to-multipoint VLANs, and other backhaul solutions at the District's sole and exclusive discretion. The District will offer to sell such services under contractual arrangements. To discuss your needs, please contact the District by email at: **broadband@jeffpud.org**.

Set-up of New Service Provider	\$250 non-recurring
Residential Ethernet Services:	
100/100 Mbps Basic Access (per unique premises) Tier 1 technical support provided 24/7, higher tiers of support available only during PUD's normal business hours. Includes data and/or Ethernet voice ports	\$35
250/250 Mbps Basic Access (per unique premises) Tier 1 technical support provided 24/7, higher tiers of support available only during PUD's normal business hours. Includes data and/or Ethernet voice ports	\$40
1 Gbps/l Gbps Basic Access (per unique premises) Tier 1 technical support provided 24/7, higher tiers of support available only during PUD's normal business hours. Includes data and/or Ethernet voice ports	\$45
Premium Support (per unique premises) Added to any of the above products. Provides priority restoration following network outages.	\$10

Business Ethernet Services:	
100/100 Mbps Basic Access (per unique premises) Tier 1 technical support provided 24/7, higher tiers of support available only during PUD's normal business hours. Includes data and/or Ethernet voice ports	\$40
250/250 Mbps Basic Access (per unique premises) Tier 1 technical support provided 24/7, higher tiers of support available only during PUD's normal business hours. Includes data and/or Ethernet voice ports	\$45
1 Gbps/l Gbps Basic Access (per unique premises) Tier 1 technical support provided 24/7, higher tiers of support available only during PUD's normal business hours. Includes data and/or Ethernet voice ports	\$50

Premium Support (per unique premises) Added to any of the above products. Provides priority restoration following network outages.	\$15
Customer VLAN Off-Network Services: (Includes Premium Support)	
100 Mbps port - Month-to-Month billing	\$500
100 Mbps port -3-Year Contract	\$300
100 Mbps port -5-Year Contract	\$200
250 Mbps port - Month-to-Month billing	\$700
250 Mbps port -3-Year Contract	\$500
250 Mbps port- 5-Year Contract	\$300
1 Gbps port - Month-to-Month billing	\$1,100
1 Gbps port-3-Year Contract	\$900
1 Gbps port-5-Year Contract	\$650

Collocation: The following are monthly recurring charges for collocating equipment in District Facilities. The rates include cabinet or rack space, access to 20-amp AC power, and 27/7 escorted access for Customer.	
Full Rack Space	\$500
Half Rack Space	\$250
One-Third Rack Space	\$170
One-Fourth Rack Space	\$125
DC Power- per each 5 amps of total installed breaker capacity	\$18

Labor Charges. To be applied per hour to any work requested by Customer that is not included in a standard installation. Minimum charge is for 1/2 hour of time.	
Standard Labor Charge	\$80.00 per hour
Overtime Labor Charge	\$120.00 per hour
Electrician Labor Charge	\$150.00 per hour
Overtime Electrician Labor Charge	\$200.00 per hour
Engineering Labor Charge	\$120.00 per hour

PUBLIC UTILITY DISTRICT OF JEFFERSON COUNTY

WHOLESALE TELECOMMUNICATIONS SERVICES AGREEMENT

In accordance with Washington State RCW 54.16.330, the Parties named herein hereby enter into this Agreement for Wholesale Residential Telecommunications Services (the “Agreement”) made this _____ day of __, __, between Public Utility District No. 1 of Jefferson County, a municipal corporation under the laws of the State of Washington and having its principal place of business in Port Townsend, Washington and _____, a telecommunications and/or Internet access company that want to provide services in Jefferson County, Washington.

A. DEFINITIONS

“Network” means the District’s telecommunication facilities used to provide open access broadband services to the District and its customers. The Network provides wholesale telecommunication services as authorized by the laws of Washington State.

“District” means Public Utility District No. 1 of Jefferson County, Washington.

“Open Access” is defined in Section G of this Agreement

“Party or Parties” means the District, Retail Service Provider, or both.

“Retail Customer” means the person or business purchasing telecommunication services from the RSP.

“Retail Service Provider (RSP)” means the signatory to this Agreement with the District, which entity represents it is authorized to provide retail telecommunication services and to which the District is authorized to provide wholesale telecommunication services.

B. ELIGIBILITY

The District will provide available wholesale telecommunication services to qualified Retail Service Providers (RSPs) under an open access arrangement. To qualify as eligible to provide services on the District’s Network, the RSP represents to the District the following:

1. The RSP will provide to the District a local telephone number for technical customer support.
2. The RSP represents that it has the ability to install and provision consumer services including, but not limited to, compliance with all applicable laws and regulations, such as certified telecommunications administrator or low voltage licenses, or as otherwise required by local, state or federal laws and regulations.
3. The RSP represents that it can currently provide or will provide prior to its use of the Network, a statement of intent to operate as a telecommunications provider or Internet Service Provider (ISP) and will meet the requirements of the District to resell District telecommunication services.
4. The RSP agrees to comply with the terms and conditions specified in the *Telecommunications Customer Service Policies of the Public Utility District of Jefferson County, Washington*, as they currently exist or as amended in the future..
5. The RSP further warrants to the District that it has the authority to enter into this Agreement. RSP further warrants that it is duly licensed, has secured all necessary permits and licenses, and is fully qualified to provide telecommunications services in compliance with all terms and conditions of this Agreement and all laws of the state of Washington.
6. The RSP warrants that it is purchasing wholesale products from the District and that the RSP will satisfy any State or Federal Universal Service Fund obligations and pay any applicable sales or other taxes that might be applied to its retail service.
7. RSP represents that in providing services it acts as an independent contractor.
8. In all activities contemplated by the Agreement, the RSP shall perform in a good and competent manner, consistent with sound and generally accepted business practice.

C. TERM

The Agreement will continue in full force until such time either Party provides thirty (30) days written notice of termination, or default occurs by either Party.

Upon termination of this Agreement, all rights of RSP and their Retail Customers for services or broadband capacity cease and the District has no further obligations to furnish such service or capacity to the RSP. Subject to Section G constraints, the District has the absolute right to cease to provide wholesale telecommunications services to the RSP and/or disconnect any existing services and/or refuse to provide any future services or reconnection.

The Parties agree that continued service to the Retail Customer is highly desirable. In the event of termination of this Agreement, for any reason, the RSP shall

immediately notify all affected Retail Customers of the final service date and any options available to the Retail Customer for continued service. The District shall also have a right, but not obligation, to notify any affected Retail Customers similarly.

D. LEASING OF FIBER LOOPS

The District hereby agrees to provide RSP access to the District's fiber network, through the lease of local fiber loops to provide any broadband circuits requested by RSP, whether intended for internal use of the RSP or with the intent to resell to retail customers, provided such capacity is then reasonably available on the District's network, in the District's discretion. The District has no obligation to provide dark fiber to the RSP, or any other party.

The RSP's right to access and use District network does not authorize and shall not be construed to authorize the RSP to have exclusive use of the District's network capacity.

Terms related the installation of customers are set forth in Exhibit A to the Agreement.

E. FINANCES

Current charges and fees are as set forth in the District's Broadband Rate Schedule. Such pricing shall change at the District's discretion.

Should RSP be required to quote a set fee for a certain contractual term to a Retail Customer, the RSP may request, and District shall provide, in written form, a fixed fee which the District shall honor for the projected duration of that circuit or product offering, subject to default termination provisions.

Each Party shall be responsible for its own federal, state, and local taxes, assessments, fees, surcharges, and other financial impositions. Notwithstanding the foregoing, RSP agrees that if there is any tax payable by it, but which is to be collected by the District which the District does not collect for any reason, upon assessment thereof by the applicable taxing agency, and demand by the District, the RSP shall immediately remit the same to the District, even if such assessment arises after the termination of the Agreement.

F. FACILITIES AND OWNERSHIP

The District will provide access to network infrastructure at various locations within Jefferson Counties.

Ownership of preexisting lines and telecommunications infrastructure shall not change as a result of this Agreement.

G. OPEN ACCESS SYSTEM

The District agrees to maintain an open access system. Rates, terms, and conditions for wholesale broadband services shall not be unduly or unreasonably discriminatory or preferential. The District shall establish rates and policies for access to the District's wholesale broadband infrastructure and shall apply those fees, terms, and conditions to all authorized RSPs as well as itself. If the District obtains authority and decides to provide retail broadband services, such decision shall not terminate its wholesale broadband services or this Agreement. However, nothing in this section shall limit the District's ability to terminate this Agreement for any other reason, including but not limited to, termination rights as provided in Sections C and L.

H. SERVICE

The District and the RSP shall act professionally in all aspects of this business relationship. Neither shall make statements damaging to the credibility of the other party. Both shall strive to deliver high quality and professional service to the retail customer.

The District shall be responsible for all circuit operation over the District network. The RSP shall be responsible for all circuit operation outside the District network. The RSP agrees it shall not directly or indirectly interfere in any manner with District operations or facilities and that it shall not alter, maintain, or repair the District's broadband infrastructure without the written consent of the District.

The RSP shall be responsible for all customer service activities, including communications with Retail Customer on outages, service quality issues, and all technical needs or concerns of the retail customer.

Because the RSP is responsible for its retail customers, the District wishes to avoid direct correspondence, verbal or written, from the retail customer regarding the services provided by the RSP through this Agreement. Any such contact will be immediately passed on to the RSP. On request of the District, the RSP will notify the retail customer of the parties' desired flow of communication.

The RSP shall accept credit risk of the retail customer and shall not pass that risk onto the District. The District shall accept RSP credit risk and shall not look to the retail customer for satisfaction of any amounts owed by the RSP.

The District does not guarantee uninterrupted availability. The District shall not be liable to the RSP or any other person, for any failure, whether temporary or

permanent, to provide uninterrupted telecommunications services.

In the event it is necessary (in the sole discretion of the District) to temporarily suspend the availability of bandwidth capacity for the purpose of preventive maintenance, repairs, or improvements to the District communication system, the District shall have the right to do so, but shall use best efforts to give appropriate advance notice.

Following unscheduled failures in the District's communications infrastructure, the District will make needed repairs to restore capacity with diligence and complete such repairs as soon as is reasonable and practical.

In the event of an emergency, the District may immediately discontinue service to avoid harm to or interference with its wholesale telecommunications operations or facilities, or the operations or facilities of third parties, and the District shall notify RSP of such disconnection as soon as reasonably practical.

I. COORDINATION OF ACTIVITIES

Both Parties to this Agreement shall keep each other apprised of activities that may affect the other's communication system. Prior to commencement of any work hereunder, the Parties will confer to schedule and coordinate the work to be performed.

J. LIMITATION OF LIABILITY, INDEMNITY, AND INSURANCE

As noted in Section G herein, the District does not guarantee uninterrupted availability. The District is not liable or responsible for content, errors in transmission, security and integrity of data or information, virus transmission, broadcast hacker attacks, or failure to establish connection. No liability shall attach to the District for failure of communication facilities, failure to have bandwidth capacity available or fiber cuts. No liability shall attach to the District for complying with federal and state law enforcement investigative efforts or discontinuing service as a result of unlawful or fraudulent activity.

Notwithstanding any other provision within this Agreement, or elsewhere, neither Party shall be liable to the other, nor shall the District be liable to the RSP's retail customers or affiliates, for any consequential, incidental, special, punitive, or indirect damages, including without limitation lost revenue, profits or other benefit, whether by tort, contract, or otherwise arising out of or in any way related to this Agreement or the District's performance, faulty performance or non-performance, of any provision of this Agreement. Both Parties specifically and expressly agree, on behalf of itself and all its customers and affiliates, that the sole liability for any claim or demand arising out of this Agreement or the District's

provision, faulty provision, or non-provision of services under this Agreement shall not exceed the monthly rate paid for such service under this Agreement, to the District by the RSP, within the 30-day period immediately preceding the event that gives rise to the claim or demand. Neither Party shall be responsible for force majeure events such as (but not limited to) acts of god; acts of nature; strikes; fire; war; riot; pandemics, acts of terrorism; and government actions.

The RSP shall indemnify, defend, and hold harmless the District from any physical injuries to people by the RSP, any damage to property by the RSP or any third-party claims, demands, actions, damages, liability, judgments, expenses, and costs (including attorneys' fees) arising from the RSP's use of service(s), or by reason of any breach or nonperformance of any covenant or obligation of the RSP herein, or the violation of any law or regulation by the RSP. The RSP's obligation to assume, protect, defend, indemnify, and save the district harmless shall extend to the District's, affiliates, subsidiaries, officers, directors, agents, and employees and shall continue for so long as any of the named indemnitees may be subjected to claims or suits calling for such obligations provided. The RSP may not enter into a settlement that imposes any obligation on the District or requires any admission by the district without the written approval of the district.

The district shall indemnify, defend, and hold harmless the RSP from any physical injuries to people by the District, damage to property by the district or any third-party claims, demands, actions, damages, liability, judgments, expenses, and costs (including attorneys' fees) arising from the district's provision of service(s), or by reason of any breach or nonperformance of any covenant or obligation of the district herein, or the violation of any law or regulation by the district. The District's obligation to assume, protect, defend, indemnify, and save the RSP harmless shall extend to the RSP's affiliates, subsidiaries, officers, directors, agents, and employees and shall continue for so long as any of the named indemnitees may be subjected to claims or suits calling for such obligations provided. The District may not enter into a settlement that imposes any obligation on the RSP or requires any admission by the RSP without the written approval of the RSP.

The District requires the RSP assert similar rights, protections, and limitations of liability for both the District and RSP in its internal policies and agreements with Retail Customers.

K. COMPLIANCE WITH LAW

Both the District and the RSP shall comply with all applicable federal, state, and local laws, codes, rules, regulations, and all other obligations under law.

The District will cooperate with appropriate law enforcement and government

agencies or other parties involved in investigating claims of illegal or inappropriate activity. The District's broadband services may only be used for lawful purposes. RSP service may be disconnected to prevent fraudulent use by RSP or its retail customer, including lack of compliance with intellectual property rights and laws, or inappropriate content such as child pornography.

The RSP shall terminate retail customer's circuit service in the event RSP becomes aware of failure on the part of the retail customer to follow all applicable laws and regulations including, but not limited to, copyrights, trademarks, and material that is obscene, defamatory, or constitutes an illegal threat.

L DEFAULT

The following shall constitute an event of default: (a) the RSP fails to pay any fee per the terms specified in the *Telecommunications Customer Service Policies of the Public Utility District of Jefferson County, Washington*. (b) a proceeding under bankruptcy, reorganization, arrangement of debts, insolvency or receivership law or assignment of benefit of creditors made by or against the RSP; (c) the RSP becomes insolvent or fails to generally pay its debts as they become due; (d) the RSP voluntarily or involuntarily dissolves or is dissolved or terminates or is terminated; or (e) the District fails to observe or perform any of its representations, warranties, and/or obligations with the RSP and fails to cure such breach within ten (10) days after written notice.

In the event of default by either Party, the non-defaulting Party shall have the right to exercise any or all of the following remedies: (a) terminate this Agreement by written notice; (b) proceed by court action to enforce performance of this Agreement; (c) exercise any other right or remedy available at law or in equity; and/or (d) disconnect broadband services and render any related communication equipment or infrastructure unusable and inoperable.

M. RIGHT OF ASSIGNMENT

The District rights and responsibilities under this Agreement may be assigned to another District owned system or any successor organization to the District at the sole discretion of the District. The District may assign rights under this Agreement to any other entity with approval of the RSP, which shall not be unreasonably withheld.

No assignment by RSP of this Agreement or any rights under this Agreement may be done without the written approval of the District, whose approval will not unreasonably be withheld.

N. MODIFICATION OF AGREEMENT

This Agreement may only be modified or amended by the Parties in writing; provided however, this section shall not be construed as limiting the ability of the District to change policies, fees, or charges in any manner.

O. DISPUTE RESOLUTION AND ATTORNEYS' FEES

The Parties shall execute their rights and discharge their duties as set forth in this Agreement in good faith. In the event of a dispute, the Parties shall consult and exercise reasonable efforts to arrive at an amicable resolution. Failing that, if any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the substantially prevailing Party shall be entitled to reasonable attorneys' fees, costs, necessary disbursements, and reasonable expert witness fees, in addition to any other relief granted. If there is no substantially prevailing party, the Parties shall each bear their own attorneys' fees and costs.

P. JURISDICTION; VENUE

This Agreement shall be governed and interpreted under the laws of the State of Washington. Venue of any legal action shall be in Jefferson County, Washington.

Q. ENTIRE AGREEMENT AND SEVERABILITY

This instrument embodies the entire Agreement of the District and the RSP. There are no promises, terms, conditions, or obligations other than those contained herein. This Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between District and the RSP regarding the services described herein.

If a provision of this Agreement is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained in this Agreement.

IN WITNESS WHEREOF, EXECUTED THIS _____ day of _____, _____.

By: _____
Kevin Streett, General Manager
Public Utility District of Jefferson County

IN WITNESS WHEREOF, EXECUTED THIS _____ day of _____, _____.

By: _____
Retail Service Provider

Exhibit A

CIRCUIT OPERATION AND SERVICE CONDITIONS

1. General Provisions for Installation

All work performed by the RSP, its contractors, or assignees, shall be done in accordance with applicable federal, state, and local codes. The RSP shall comply with all laws, rules, and regulations relating to fire prevention, control, and suppression, and all safety rules and regulations.

Any modification by the RSP to the District or NoaNet connection, communication infrastructure, or interface equipment shall be performed only with the prior knowledge and written consent of the District.

All work by the District or the RSP shall be done in a workmanlike manner and shall be maintained so as not to be hazardous to life or property. Damage to District facilities shall be repaired promptly without cost to the damaged party. The District shall be immediately notified of any such damage, and repairs shall be performed by the District under strict District supervision.

2. Equipment to be Installed

All equipment to be installed by the RSP shall be FCC type approved, where applicable. However, any such FCC approval shall not relieve the RSP of responsibility to correct incompatibility or interference problems.

3. System Integrity

The RSP agrees to exercise care and caution to preserve the integrity and security of all operation systems, equipment, and facilities located on District or the RSP's business premises covered by this Agreement. The District has the right to limit the manner in which any portion of its network and facilities is used to protect the technical integrity of the network. .

4. Facility Access Conditions

The RSP shall have no right of access to District property, equipment, or communications infrastructure other than as may be located on RSP's business premises. RSP personnel shall be granted access to District-owned equipment only as authorized by the District's technical contact as set forth in Exhibit B. When access shall be granted, RSP's employees shall utilize and retain possession of any keys to District-owned sites and shall not allow duplication or use by contractors or

others who are not direct employees of the RSP. The RSP shall provide an employee to remain with contractors or maintenance personnel engaged by the RSP for activities at District-owned sites.

The RSP shall ensure the District has full and unrestricted access to District-owned communications infrastructure located on the Retail Customer's premises and reasonable access to District-owned communications infrastructure located on RSP's premises.

5. Interconnectivity and Demarcation on Retail Customer Premises

The RSP's local loop access point shall be as mutually agreed for each circuit as specified in the *Telecommunications Customer Service Policies of the Public Utilities District of Jefferson County, Washington*.

The RSP or retail customer shall be responsible for all internal communications infrastructure necessary for their business operation. The point of demarcation on Retail Customer's business premises shall be the retail customer's input port on the terminal equipment installed by the District on such business premises. The RSP shall own the cable connecting into the port; the District shall own the terminal equipment and all communications infrastructure leading from the business premises site.

6. Trouble Reports

The District will be responsible for maintaining signal from the point signal is received by the District to the point that signal is returned to the RSP. Any testing beyond the District's equipment will be the responsibility of the RSP.

Exhibit B

CONTACTS

The RSP and the District shall keep each other informed, in writing, of technical, business, and mailing contacts as required in the below listed table.

<u>Technical Contact</u>	<u>District</u>	<u>RSP</u>
Name	Lori Rae	
Location	Jefferson PUD	
Address	210 Four Corner Rd	
City, State & Zip	Port Townsend	
Daytime Phone	(360) 385-8358	
Fax Number	(360)	
Emergency Phone Number	(360) 316-1214	
E-mail	broadband@jeffpud.org	
<u>Notice Contact</u>		
Name	Jefferson PUD	
Attention	Lori Rae - Broadband Supervisor	
Address	210 Four Corners Rd	
City, State & Zip	Port Townsend WA 98368	
Daytime Phone	360-385-8358	
Fax Number		
Emergency Phone Number	360-316-1214	
<u>Billing Address</u>		
Name	Jefferson PUD Billing	
Address	310 Four Corners Rd	
City, State & Zip	Port Townsend, WA 98368	
SPIN#	N/A	
UBI#	N/A	
TIN#	N/A	
24 X 7 Technical Contact Phone # (District Ability to Contact Provider)	N/A	
24 X 7 Customer Contact Phone #(Customer Ability to Contact Provider)	NoaNet Network Operations Center (NOC) - 866.662.6380	N/A
Liability Insurance Carrier	Public Utility Risk Management Systems (800) 562-5226	

Implementation Major Tasks New Retail ISP

The following is a description of the high-level groups of tasks that must be undertaken by a newly formed retail ISP. Some of the tasks below can also have a significant number of subtasks.

Raise the Funding. In your case this means winning the needed grant funding.

Define the Construction Process. Will the project be turnkey with a design/builder that designs and builds the network? Will there be separate engineers, contractors, and inspectors?

Identify the Project Team. This is likely to be a combination of existing staff, staff yet to be hired, consultants, external engineers, construction vendor(s), material vendors, etc. If some of the external team members haven't already been identified, this step might include issuing RFPs or otherwise interviewing candidates.

Choose Technology. If that hasn't already been done, an early step is to finalize the choice of technology, which is often followed by identifying the preferred vendors of technology. To the extent that technology cost is an issue, this process might also include getting bids from vendors as a way to make the needed choice.

Preliminary Network Design. While many projects are initially launched based upon high level feasibility engineering, an early step for many projects is to undertake more detailed engineering sufficient enough to receive competitive bids for construction or to begin ordering construction materials.

Organizational Readiness. Organization readiness means getting the business structure in place. It means obtaining business licenses, logos, web sites, the basics. One of the most challenging tasks for a new ISP is to define the public name of the retail business that will be marketed.

Outsourcing Should be Defined. Decisions should be made about what functions will be outsourced instead of performed by staff. This could include a wide variety of areas like building customer drops, network monitoring, providing ISP routing, etc. Outsourced vendors should be identified and integrated into the implementation team as needed.

Hiring Process. If the new business will add employees, the process of creating job descriptions, defining benefits, determining salaries, determining the interview process should be established.

Procurement Readiness. List of needed purchases should be made. Even if construction contractor buys network materials, the company will likely need to purchase vehicles, computers, furniture, office equipment, test equipment, etc. Any needed real estate should be identified and procured. The formal purchasing process should be defined (low costs bids, RFPs, etc.) if it will be used. If the company is going to buy construction materials, then specifications need to be created, quantities determined, and vendors selected.

Regulatory Readiness. A new retail ISP may need to be certified by a State regulatory authority. ISPs need to register with the FCC. Tariffs might need to be filed with the State. There is a list of regulatory steps that must be taken by every ISP such as registering with the Universal Service Fund, registering with the FBI to define processes for assisting with wire taps, etc. There are additional regulatory steps required if the ISP plans to sell voice or cable TV products. There are numerous industry processes that must be put in place to exchange traffic with the outside world.

Contract Readiness. A new ISP often needs several contracts such as interconnection agreements, pole-attachment agreements, franchise and rights-of-way agreements. If the business will have contracts with customers a shell agreement should be created.

Product Readiness. Specific products and prices should be developed. All vendors needed to provide any product should be selected. The ISP needs to define numerous policies such as using credit checks for potential customer, requiring deposits, plus how to react to things like unpaid invoices or partially paid invoices.

Software Readiness. ISPs use software to enable the customer care process from order taking to billing (OSS/BSS system). There are other kinds of software often used such as sales software, mapping software, etc. that should be purchased and training provided for staff.

Sales and Marketing Plan. Possibly the biggest key to success in launching a fiber business is a successful sales and marketing plan. You want two plans – one for selling to residents and another for selling to businesses. If sales involve door-to-door selling, there will be training on the consultative sales process. The sales plan also includes the development of things like product literature that explains your products to customers, a sales-oriented web site, customer documents like price lists

and terms of service. You'll also want to develop an advertising plan and strategy. You'll need a compensation plan if there will be sales commissions.

Building Readiness. There may be buildings to be built or modified. This could include employee office space and a retail public space. There will typically be a network core area to include electronics that must be air-conditioned. You'll likely need to prepare to provide emergency generators for electric outages. Most networks include numerous huts and cabinets that need to be sized, equipped, and placed in service.

Business Office Readiness. The business will have to identify, secure, and prepare the retail business office where the public can interface with the business. Processes need to be established to accept payments and safely accept cash.

Accounting Readiness. The business must be prepared to account for a huge number of invoices and transactions during the construction process. An auditor should be selected. Accounting software should be defined and purchased. A chart of accounts and budgetary process should be established. The process for internal approval of invoices and other payments should be established.

Construct the Network. Define timeline and responsibilities for constructing the network. Be ready to house and store construction materials and to provision daily to crews as needed. Have all processes in place for construction such as permitting, rights-of-ways, traffic control, utility locating, etc. Define who inspects and approves construction. What's the testing process to approve and accept completed segments of the network?

Customer Location Procedures. Define the standard installation process. Do electronics go on inside or outside of premise? Where are you willing to place electronics inside of premise? When do extra fees get invoked for non-standard installation. Determine steps and timeline for building drops, adding electronics, turnup and testing, customer training.

ISP Readiness. The servers, switches and other devices used to provide ISP services should be purchased. IP addresses should be purchased. ISP functions such as email services, DNS routing, and security readiness against malicious software and hacking should be defined and implemented.

Network Security Plan. There should be a plan in place for disaster recovery should the network crash. There should be both physical and electronic barriers created around key electronics, buildings, software, etc.

Customer Process Readiness. Every process for interfacing with customers including sales, order taking, provisioning, installation, taking payments, etc. should be clearly defined and tested. Every person in the customer care chain should know their role and responsibilities and should know what to do if an expected process doesn't work. Processes for screening customers such as credit checks or requiring deposits should be defined.

Billing Readiness. Define bill format. Determine customer payment options – cash, credit card, checks, live payments, bank debits. Determine billing cycles. Determine late payment and disconnection processes. Make sure first bill is correct before sending.

Provisioning Process. Make sure customers get the products they ordered. Connect the services in time for installation. Make sure that needed hardware is given to the installer for each customer. Test each customer's products before hand-off.

Network Monitoring Process. Equipment alarms should be enabled to notify if there are problems with electronics or the network. The process of monitoring the network 24/7 should be defined. There should be an escalation process so that the right people are alerted for various levels of troubles and outages. There should be a process for issuing trouble tickets and of tracking and closing them as troubles are resolved.

Customer Trouble Process. Define how customers can interface with the business (live, telephone, text, through website, etc.) Define who takes customer trouble calls. Define first tier maintenance to try to resolve problems over the phone. Define how to escalate and to dispatch repair technicians to customer premise. Prioritize and track every customer outage to make sure all are handled.

Connect the First Customer. Whew!