

**WOODFORD COUNTY BOARD OF EDUCATION
AGENDA ITEM**

ITEM #: *XF* **DATE:** January 4, 2019

TOPIC/TITLE: Approval-Awarding WAN Network Contract to MetroNet

PRESENTER: Bob Gibson

ORIGIN:

- ☐ TOPIC PRESENTED FOR INFORMATION ONLY (No board action required.)
☒ ACTION REQUESTED AT THIS MEETING
☐ ITEM IS ON THE CONSENT AGENDA FOR APPROVAL
☐ ACTION REQUESTED AT FUTURE MEETING: (DATE)
☐ BOARD REVIEW REQUIRED BY

- ☒ STATE OR FEDERAL LAW OR REGULATION
☒ BOARD OF EDUCATION POLICY
☐ OTHER:

PREVIOUS REVIEW, DISCUSSION OR ACTION:

- ☒ NO PREVIOUS BOARD REVIEW, DISCUSSION OR ACTION
☐ PREVIOUS REVIEW OR ACTION

- ☐ DATE:
☐ ACTION:

BACKGROUND INFORMATION:

Current 5 year 10 GB WAN Network contract ends June 30th, 2019.

SUMMARY OF MAJOR ELEMENTS:

Approve the proposal and contract from MetroNet to provide our district with a 10 GB WAN network. The new contract end date will be June 30th, 2024.

IMPACT ON RESOURCES: The service addition will result is monthly cost decrease compared to our current contract.

TIMETABLE FOR FURTHER REVIEW OR ACTION: N/A *PT*

SUPERINTENDENT'S RECOMMENDATION: ☒ Recommended ☐ Not Recommended

[Signature]

Evaluation of E-rate Proposals

School/Library Name: Woodford County Schools

Form 470 Responses for: WAN RFP

Funding Year: FY19

	Possible Points	Vendor: WANRack \$42,621.00 Date Proposal received: 12-13-2018	Vendor: MetroNet \$7,450.00 Date Proposal received: 12-14-2018	Vendor: Windstream \$10,016.00 Date Proposal received: 12-14-2018	Vendor: Spectrum \$7,094.00 Date Proposal received: 12-14-2018	Vendor: Sherpa Fiber \$21,976.00 Date Proposal received: 12-15-2018 Past Deadline
1. Price*	35	2	33	22	35	0
2. Compliance with specification or RFP document	20	20	20	20	10	0
3. The level of service/support/maintenance provided in the proposed service without additional cost	25	25	25	20	20	0
4. Satisfactory previous business/working relationship with the provider	10	0	0	5	5	0
5. References from other schools/libraries supporting satisfactory performance of the service from the vendor	10	10	9	8	10	0
Total	100	57	87	75	80	0
Notes/Rationale		Expensive	Competitive Price, Quality References, No additional costs for construction.	Call system for support is poor	Additional customer costs for construction or acts of God. Cable TV support issues.	Expensive

*Price

Price MUST be given more weight than any other single factor. Price must also be cost-effective. If the price is 2-3 times more than the lowest bidder, it will not be considered cost-effective and therefore denied E-rate funding. If the price is 1.5 times more than the lowest bidder, it will raise concerns with the E-rate program and will be difficult to get funding. If the service/equipment being evaluated has ineligible features, deduct the ineligible features out of the total price and only evaluate the eligible portion of the price.

No Bids Received?

If you do not receive any bids in response to a FCC Form 470/RFP, we suggest that you memorialize this fact with a memo to the file or email to yourself and/or consultant. Various review processes, including audits, may occur after your competitive bidding process has ended, and this email or memo may be the only documentation of what happened.

One Bid Received?

If you receive only one bid, we suggest that you memorialize this fact with a memo to the file or email to yourself and/or consultant. This will help to document that you did not just keep only the winning bid.

Customer Name	Woodford County School District		Date	1/9/2019	
Sub I.D.			Sales Rep	Mike Preston	
Physical Address	10 locations - see below				
Billing Address	330 Pisgah Road, Versailles, KY 40383				
Contract Person	Bob Gibson, Chief Information Officer		Contact Number	(859) 879-4600, ext. 2120	
Email Address	bob.gibson@woodford.kyschools.org				
Fiber Wide Area Network/Data Circuits	Speed	Term	Non-Recurring	Recurring	
Woodford County Central Office (Headend) - 330 Pisgah Road, Versailles, KY 40383	69 Gbps	60 months	\$0.00	\$850.00	
Huntertown Elementary School - 120 Woodburn Drive, Midway, KY 40347	10 Gbps	60 months	\$0.00	\$850.00	
Northside Elementary School - 500 Northside Drive, Versailles, KY 40383	10 Gbps	60 months	\$0.00	\$850.00	
Simmons Elementary School - 830 Tyrone Pike, Versailles, KY 40383	10 Gbps	60 months	\$0.00	\$850.00	
Southside Elementary School - 1300 Troy Pike, Versailles, KY 40383	10 Gbps	60 months	\$0.00	\$850.00	
Woodford County Middle School - 100 School House Road, Versailles, KY 40383	10 Gbps	60 months	\$0.00	\$850.00	
Woodford County High School - 180 Frankfort Street, Versailles, KY 40383	10 Gbps	60 months	\$0.00	\$850.00	
Safe Harbor Academy - 207 Simmons Street, Versailles, KY 40383	3 Gbps	60 months	\$0.00	\$750.00	
Woodford County Bus Garage - 330 Pisgah Road, Versailles, KY 40383	3 Gbps	60 months	\$0.00	\$750.00	
Community Education Services - 209 N. Main Street, Versailles, KY 40383	3 Gbps	36 months	\$0.00	\$750.00	
			Total		
Monthly Service Costs (plus applicable taxes and fees)				\$8,200.00	
Non-Recurring				\$0.00	
Installation Cost				\$0.00	
<p>By signing below, Customer makes the following representations and warranties to MetroNet: (i) the undersigned is authorized to sign this Advanced Services Agreement and otherwise bind the Customer; (ii) the undersigned has had an opportunity to read and review the Agreement, as that term is defined in the terms and conditions attached to this Advanced Services Agreement, and agrees to abide by all of the terms and conditions contained in the Agreement. This Advanced Services Agreement is hereby incorporated by reference into the Agreement.</p>					
Customer Name (Printed):			Signature:		
Title:			Date:		

Business Name:	Woodford County School District
Physical Address:	330 Pisgah Road, Versailles, KY 40383
<p>Explanation of work to be done (NOTE: If you are submitting an order for Symmetrical Internet Circuits, HPBX, WAN, Wi-Fi etc., it's critical to follow the process for Complex Orders and first engage Sales Engineering.</p> <p>This is a Complex Order <input type="checkbox"/> YES <input type="checkbox"/> NO If Complex, was Sales Engineering engaged: <input type="checkbox"/> YES</p>	
<p>MetroNet will run fiber to 10 Woodford County School District locations and install Wide Area Network service. At the headend location (Woodford County Central Office) MetroNet will provide a Telco Systems T-Metro 8100 demarcation device with nine (9) 10 Gbps fiber optic handoffs. Three (3) of the handoffs will be rate limited to 3 Gbps. At the nine (9) edge locations, MetroNet will provide a Telco Systems 3348S Ethernet demarcation device with a fiber optic handoff of 10 Gbps. At edge location 7 (Safe Harbor Academy), Edge location 8 (Bus Garage), and Edge location 9 (Community Education Services) MetroNet will rate limited handoff speed to 3 Gbps.</p>	
<p>Day of Service Installation</p> <p>MetroNet will assign an installation date for your Fiber Services. On the Installation Date you will experience service down time due to factors outside of our control. In some cases this may mean you may not have phone or computer service for several hours. Such downtime is unavoidable but, we will use commercially reasonable efforts to minimize the inconvenience you.</p>	
<p>DMARC (ONT)</p> <p>When an ONT/fiber drop is installed MetroNet is responsible for service up to the DMARC (ONT). Anything beyond the DMARC is the customer's internal network and the business owner's financial responsibility to contact an IT vendor for support and/or repairs.</p>	
<p>Customer Phone Vendor / Cut Sheet</p> <p>Customer designates <u>Not Applicable</u> ("Phone Vendor") to be responsible for maintaining the internal phone systems on behalf of Customer. Phone Vendor will be responsible for locating all lines prior to the Installation Date provided by MetroNet and will be responsible for connecting Customer's internal phone system to MetroNet's demarcation point. Phone Vendor must be present on the Installation Date at the designated time. Customer will be responsible for scheduling the Phone Vendor on the Installation Date and shall pay all expenses associated with the Phone Vendor. MetroNet will provide Customer with a document detailing the lines/circuits to be installed for the benefit of the Phone Vendor ("Cut Sheet").</p>	
<p>Changes</p> <p>Customer understands that any changes made to the SOW or Fiber Services, including but not limited to database information, after execution of this SOW may result in the assignment of a new Installation Date by Company at its standard intervals or otherwise delay the provisioning of the Fiber Services to you.</p>	
<p>This SOW is hereby incorporated by reference into the Agreement between Customer and MetroNet, as that term is defined in the terms and conditions to the Business Order Form. Any capitalized terms not defined herein shall have the same meanings as ascribed to them in the Agreement.</p>	
Customer Name (Printed):	Signature:
Title:	Date:

Terms and Conditions

Metro Fibernet, LLC d/b/a "Metronet" (hereafter "Metronet", "we" or "us") and the customer identified on the Business Services Agreement Order Form and/or Advanced Services Agreement (hereafter "Customer", "you" or "your") enter into this agreement whereby we will provide you those services listed on the Business Services Agreement and/or Advanced Services Agreement ("Fiber Services").

1. Agreement. These terms and conditions, together with our tariff, our AUPP, the Business Service Agreement and/or Advanced Services Agreement, our Additional Terms of Service Addendum and, any Statement of Work or Letters of Authorization that are related to the Fiber Services, form the entire agreement between Metronet and Customer regarding the Fiber Services (the "Agreement").

2. Documents Available On Line. These terms and conditions, our Acceptable Use and Privacy Policy ("AUPP"), our tariff, and our Additional Terms of Service Addendum may be found on our website at www.metronetinc.com. These documents may also be obtained through our customer service department. By signing the Business Services Agreement, you acknowledge that you have had an opportunity to read and review, and agree to abide by, all of the terms and conditions of the Agreement including those posted on our website.

3. Term. This Agreement will be binding on Customer upon Customer's execution of the Business Services Agreement and/or Advanced Services Agreement. The initial term of the Agreement will be five (5) years commencing on the date the Fiber Services are first available to Customer (the "Effective Date"), except with respect to the Community Education Services location at 209 North Main, Versailles, Kentucky, the initial term for which location will be three (3) years. Upon the expiration of the initial term, the Agreement will automatically renew for additional month to month terms unless either party provides written notice of its intention not to renew the Agreement at least thirty (30) days prior to the expiration of the then current term.

4. Early Termination. Except for a permitted termination pursuant to Section 10 of these terms and conditions, in the event you terminate this Agreement or any Fiber Service prior to the expiration of the then current term, we reserve the right to charge you, as liquidated damages and not as a penalty, an amount equal to: (i) sixty percent (60%) of the average monthly recurring fees for the terminated Fiber Services, including usage based fees, multiplied by the number of months remaining on the then current term; and (ii) any unpaid non-recurring fees associated with the terminated Fiber Services. Notwithstanding the foregoing, if either sufficient funds are not appropriated to make contracted payments or any other amounts due under this Agreement or (to the extent required by applicable law) this Agreement is not renewed, this Agreement shall terminate and you shall not be obligated to make contracted payments under the Agreement beyond the then-current fiscal year for which funds have been appropriated. You shall notify us in writing within seven days after your failure to appropriate funds sufficient for the payment of the contracted payments or (to the extent required by applicable law) this Agreement is not renewed, but failure to provide such notice shall not operate to extend the Agreement term or result in any liability to you.

5. Payment & Billing. All non-recurring fees will be due within thirty (30) days of invoice. With the exception of non-recurring fees and usage based charges, you will be billed monthly in advance for the Fiber Services. Tax-like charges and other local, state or federally charged, imposed or authorized fees and surcharges are not built into our rates, and therefore, will be included separately on your monthly bill. You agree to pay all applicable charges stated in your bill including any taxes and surcharges no later than thirty (30) days following the invoice date without offset or demand. If you do not pay your bill in full by the due date, you may incur a late payment fee equal to twenty-five dollars (\$25.00) or the highest late payment fee allowed by law. We may also discontinue some or all of your Fiber Services until payment is received. In the event that we disconnect your Fiber Services for nonpayment, you may be required to pay a reconnection fee. If we incur expenses collecting any past amount due from you, you agree to pay our collection expenses including, but not limited to, court costs, service fees, collection fees, and attorneys fees.

6. Equipment. We may install equipment in and around your place of business. This equipment may include, but is not limited to, a Network Interface Device ("NID"), phones, switches, routers set top boxes and cabling (collectively the "Equipment"). Unless you purchase the Equipment from us, the Equipment is our property. You agree that you will not move any of the Equipment to another location outside your place of business either temporarily or permanently. You are responsible for the care and maintenance of the Equipment located at your place of business. You agree not to modify the Equipment in any way. If any of the Equipment is damaged, modified, lost, destroyed, tampered with, or stolen while in your possession, you will be responsible for the reasonable cost of repair or replacement of the affected Equipment. When you cease being a customer or move from your current location, you are responsible for returning the Equipment to us, with the exclusion of any wiring or equipment located outside your place of business, and obtaining a signed return receipt from us.

7. Installation. You hereby authorize us and/or our contractors to enter your place of business during normal business hours, or by appointment, to install, inspect, maintain, replace, or remove the Equipment. You also grant us the right to enter onto property owned or controlled by you at all reasonable times, even if you are not present, to install, inspect, maintain, replace or remove any of the Equipment located outside your place of business. Unless we are negligent or intentionally harm any persons or property, we will not be responsible or liable for any damages caused by us while performing work on your property or in your place of business. We are not responsible for the operation, maintenance and repair of your television, computer or any other device owned by you to which we establish a connection. You may not install any device or equipment to our inside wiring or Equipment that will impair the integrity of our Equipment or network. You agree that we will have no liability for any damages and expenses you may incur as a result of any appointment regarding present or future work to be performed by us.

Customer Initials _____

Terms and Conditions (continued)

8. Collocation Space. To the extent that we need space in and around your place of business to provide you Fiber Services, including, but not limited to, any necessary easements, licenses, permits and building entrance rights required to connect our Equipment from the public right of way to your place of business ("Collocation Space"), you agree to provide us such Collocation Space and hereby grant us an irrevocable license to use, occupy and maintain the Collocation Space until the Agreement is terminated. You also agree to provide us with power, not to exceed 30 amps of DC power, for our Equipment. With the exception of any power usage that exceeds 30 amps of DC power a month, you will not charge us for the Collocation Space or the power usage of our Equipment. Additionally, you hereby grant us a license to access the Collocation Space on a 24 hour/7 day per week basis, subject to any reasonable rules and regulations promulgated by you for the use and maintenance of the Collocation Space. We are not responsible for any delays in provisioning the Fiber Services or interruptions to the Fiber Services caused by your inability to secure or maintain the Collocation Space.

9. Limitation of Liability and Indemnification. EXCEPT FOR METRONET'S OBLIGATION TO ISSUE SERVICE OUTAGE CREDITS UNDER EXHIBIT A ATTACHED HERETO, CUSTOMER AGREES THAT ALL FIBER SERVICES ARE PROVIDED BY METRONET ON "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF TITLE, NONINFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT SUCH SERVICES WILL BE ERROR-FREE. METRONET MAKES NO WARRANTY THAT THE FIBER SERVICES WILL BE UNINTERRUPTED, OR WILL SECURE CUSTOMER'S COMPUTER FROM THIRD-PARTY UNAUTHORIZED ACCESS OR MONITORING. CUSTOMER AGREES THAT ALL USE OF THE FIBER SERVICES ARE AT CUSTOMERS SOLE RISK AND CUSTOMER EXPRESSLY ACKNOWLEDGES AND ACCEPTS THE FIBER SERVICES KNOWING THAT SUCH SERVICES ARE SUBJECT TO INTERRUPTION FROM POWER OUTAGES AND EQUIPMENT FAILURES. IN NO EVENT WILL METRONET, ITS AFFILIATES OR PARENT CORPORATION, BE LIABLE FOR DAMAGES OF ANY KIND, INCLUDING ANY DIRECT, INDIRECT INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER OR NOT THERE IS NEGLIGENCE ON THE PART OF METRONET AND WHETHER OR NOT METRONET HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH THE INSTALLATION, REPAIR, REPLACEMENT, OR REMOVAL OF METRONET'S EQUIPMENT, THE USE OR INABILITY TO USE THE FIBER SERVICES, OR THE USE OR INABILITY TO USE ANY THIRD-PARTY SERVICES INCLUDING, BUT NOT LIMITED TO, E911 SERVICE AND SECURITY MONITORING, IN NO EVENT WILL METRONET'S LIABILITY EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE FIBER SERVICES.

NOTWITHSTANDING THE FOREGOING, THE WOODFORD CO. BOARD OF EDUCATION IS AN AGENCY OF THE COMMONWEALTH OF KENTUCKY AND IS VESTED WITH GOVERNMENTAL IMMUNITY, SUBJECT TO THE PROVISIONS OF THE KENTUCKY BOARD OF CLAIMS, KRS 49.040, *ET SEQ.*, FOR THE RECOVERY OF TORT OR CONTRACT CLAIMS MADE AGAINST THE BOARD, ITS AGENTS, OFFICERS, OR EMPLOYEES. NOTHING IN THE AGREEMENT SHALL BE CONSTRUED AS INDEMNIFICATION BY ONE PARTY OF THE OTHER FOR LIABILITIES OF A PARTY OR THIRD PERSONS FOR PROPERTY LOSS OR DAMAGE OR PERSONAL INJURY OR DEATH ARISING OUT OF AND DURING THE PERFORMANCE OR OTHERWISE ASSOCIATED IN ANY MANNER OF THIS AGREEMENT. IT IS AGREED THAT NEITHER OF THE PARTIES SHALL BE DEEMED TO HAVE ACCEPTED THE OBLIGATION OF THE OTHER, WHETHER BY REASON OF LOSS HEREUNDER OR OTHERWISE. THE BOARD OF EDUCATION ACCEPTS RESPONSIBILITY FOR ITS SOLE NEGLIGENCE SUBJECT TO AVAILABLE DEFENSES. IT IS FURTHER UNDERSTOOD AND AGREED THAT NEITHER OF THE PARTIES HERETO WAIVE BY ENTERING INTO THIS AGREEMENT ANY RIGHT THAT MAY EXIST TO USE ANY IMMUNITY OR OTHER DEFENSE TO ANY CLAIM WHICH MAY BE ASSERTED AGAINST ANY PARTY HERETO. THE AGREEMENT IS NOT INTENDED TO GRANT RIGHTS TO ANY INDIVIDUAL NOT A PARTY HERETO, AND IS NOT INTENDED BY EITHER PARTY TO WORK TO THE BENEFIT OF ANY THIRD PARTY.

10. Adjustments. For regulatory reasons or vendor cost increases which adversely affect the cost of providing the Fiber Services, we may increase the rates charged to you, delete or modify the Fiber Services provided hereunder, change the terms of the Agreement or pass through to you all or a portion of any charge or surcharge directly or indirectly related to such regulatory activity or vendor cost increases. We will notify you in advance if we initiate any of the foregoing changes. If the proposed changes considerably increase the price of the Fiber Services or your duties and obligations under the Agreement, you may terminate this Agreement with no further liability by delivering written notice to us no later than thirty (30) day following the date we notify you of the change. Your continued use of the Fiber Services after the expiration of such thirty (30) day period will be deemed consent to any such changes.

11. End User Authorizations. To ensure compliance with certain legal and regulatory requirements, if you are purchasing the Fiber Services on a bulk basis for use by your tenants or residents (the "End Users"), we may require you to obtain a "Letter of Authorization" with special terms and conditions ("LOA") from your End Users. The execution of an LOA shall not relieve your duties or obligations under the Agreement or act as a limitation on our rights or remedies under the Agreement. If you fail to obtain an LOA from any End User, you shall indemnify us for any loss, cost or damage we may incur as a result of not having the LOA in place. You agree to promptly forward all LOAs to us throughout the term of this Agreement.

12. Jurisdiction and Venue. This agreement will be governed by and construed in accordance with the laws of the state of Kentucky.

Customer Initials _____

Terms and Conditions (*continued*)

13. **General.** This Agreement represents the entire understanding and agreement between Metronet and Customer and supersedes all prior agreements, whether written or oral. No alternations or changes may be made to the Agreement, pricing schedules or any other document regarding any services provided by us except with the written approval of an officer of Metronet. Except for the limitation set forth in Section 12 of these terms and conditions, no failure on the part of either party to exercise, and no delay in exercising, any right or remedy hereunder will operate as a waiver thereof; nor will any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right of remedy granted hereby or by law. The Agreement, a legally binding contract between Metronet and Customer, binds and insures to the benefits of their respective principals, successors and assigns. The format, words and phrases used in this Agreement will have the meaning generally understood in the Telecommunications Industry. This Agreement will be construed in accordance with its fair meaning and not against the drafting party. The following Sections will survive the expiration or termination of the Agreement: Sections 4, 5, 6, 7, 9, 12 and 13 of these terms and conditions.

Customer Initials _____

EXHIBIT A
SERVICE LEVEL AGREEMENT

1) NETWORK OPERATIONS DEFINITIONS:

- (a) Active-NET Diverse Fiber Service. An Active-Net Diverse Fiber Service is a private, dedicated point to point Fiber Service that is entirely On Net and is provisioned to have no single point of failure, i.e. has physically diverse fiber routes, with dual entrance facilities, and dual optonics/electronics. A Fiber Service will be deemed an "Active-Net Diverse Fiber Service" only if the Agreement specifically provides that the Fiber Service is an "Active-Net Diverse Fiber Service" or a "Service with no single point of failure".
- (b) Active-NET Fiber Service. An Active-Net Fiber Service is a private, dedicated point to point Fiber Service that is entirely On Net but is not provisioned to have no single point of failure.
- (c) Force Majeure. Force Majeure events are causes beyond MetroNet's reasonable control, including but not limited to acts of God, fire, explosion, vandalism, cable cuts, storms or other similar catastrophes; failures, shortages or unavailability or other delay in delivery by a third party supplying services, equipment, fiber, network or access rights to MetroNet; any law, order, regulation, direction, action or request of the United States government, or of any other government, including state and local governments having jurisdiction over either of the parties, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more of said governments, or of any civil or military authority; national emergencies; insurrections, riots, wars, or strikes, lockouts, work stoppages or other labor disputes or difficulties.
- (d) Emergency Maintenance or Repair. Emergency Maintenance or Repair is work which, if not accomplished immediately by MetroNet or third party provider, could result in a serious degradation or loss of Fiber Service to the Customer. Emergency Maintenance or Repair includes emergency maintenance or repair of network, equipment and power facilities.
- (e) Excluded Outages. Excluded Outages are outages: (i) arising out of or related to the acts or omissions of Customer or others authorized by Customer; (ii) during any period of Force Majeure; (iii) arising out of or related to a breach by Customer of its obligations under the Agreement or outages during any period of Customer default; (iv) a result of Planned Maintenance or Repair or other scheduled maintenance, alteration or implementation; (v) arising out of or related to Customer's or third party's network or equipment failure; (vi) due to failure of power; (vii) during any period in which MetroNet is not given access to the Customer or Customer's end-user's premise if necessary to resolve an outage; (viii) when a Fiber Service, in whole or in part, is Off Net to MetroNet; and (ix) with respect to Active-Net Diverse Fiber Service that results from a dual event, i.e. an event on each redundant or diverse portion of the network over which the Fiber Service is delivered.
- (f) Off Net. "Off Net" means a service which is licensed by MetroNet from a third party to provide Fiber Service to a specific Customer or end-user premise or location.
- (g) On Net. "On Net" means a Fiber Service provisioned entirely on MetroNet's network. Notwithstanding any other provision of this Agreement, no Fiber Service shall be considered "On Net" if a circuit associated with the Fiber Service is licensed from a third party to serve a specific Customer or end user premises or location.

- (h) Outage. “Outage” shall be defined as a measure of the time that there is (i) a total loss or interruption of transmission or signal (an “Availability Outage”), or (ii) the Service Elements of a Fiber Service do not perform equal to or better than the Performance Objectives stated below (a “Performance Outage”).
- (i) Planned Maintenance or Repair. Planned Maintenance or Repair includes network upgrades and repairs, equipment upgrades and repairs, power upgrades and repairs.
- (j) PON-NET Fiber Service. PON-NET Fiber Service is a Fiber Service entirely On Net and delivered utilizing a Passive Optical Network.

2) **SERVICE OUTAGE CREDITS:**

- (a) Availability Outage Credits. Customer shall be eligible to receive the following credits when there is an Availability Outage:

Table 1: Outage Credits for Fiber Services provided on Active-NET Diverse Fiber (99.999% Availability)	
Cumulative Outage (in hrs:mins:secs)	Outage Credit (% of MRC)
0:00:04 - 4:00:00	10%
4:00:01 - 8:00:00	15%
8:00:01 - 12:00:00	20%
12:00:01 - 16:00:00	25%
16:00:01 - 20:00:00	30%
20:00:01 - 24:00:00	35%
24:00:01 or greater	50%

Table 2: Availability SLA for Fiber Services provided on Active-NET Fiber (99.995% Availability)	
Cumulative Outage (in hrs:mins:secs)	Outage Credit (% of MRC)
0:00:00 – 0:02:00	None
0:02:01 - 4:00:00	5%
4:00:01 - 8:00:00	8%
8:00:01 – 12:00:00	10%
12:00:01 - 16:00:00	15%
16:00:01 - 20:00:00	20%
20:00:01 - 24:00:00	30%
24:00:01 or greater	50%

Table 3: Availability SLA for Fiber Services provided on PON-NET Fiber (99.99% Availability)	
Cumulative Outage (in hrs:mins:secs)	Outage Credit (% of MRC)
0:00:00 – 0:04:00	None

0:04:01 - 8:00:00	5%
8:00:01 - 12:00:00	8%
12:00:01 - 16:00:00	10%
16:00:01 - 20:00:00	15%
20:00:01 - 24:00:00	20%
24:00:01 or greater	30%

- (b) Performance Outage Credits. Customer shall be eligible to receive the following credits when there is a Performance Outage:

Service Element	Performance Standard
Latency (ms) (one way)	< 10ms POP to POP
Jitter (ms)	< 2ms POP to POP
RTD (ms)	< 20 ms POP to POP
Packet / Frame Loss (%)	< 1% POP to POP

Packet Loss/Latency Service Outage Credits			
	Service Outage Credit - % of MRC for Affected Service(s)		
Cumulative Duration of Service Level Failure(s)	PON - Net	Active - Net	Active Diverse - Net
>2 hrs to 4 hrs.	None	5%	10%
>4 hrs. to 8 hrs.	5%	8%	15%
>8 hrs. to 12 hrs.	8%	10%	20%
>12 hrs. to 16 hrs.	10%	15%	25%
>16 hrs. to 20 hrs.	15%	20%	30%
>20 hrs. to 24 hrs.	20%	30%	35%
>24 hrs.	30%	50%	50%

A Service Outage shall be measured from the time Customer reports to MetroNet that an Outage has occurred (regardless of when the Outage actually commenced) and shall be deemed to terminate upon restoration of the affected Fiber Service as evidenced by appropriate network test by MetroNet. In addition, Performance Outages shall be measured from POP to POP (i.e. a MetroNet point of presence where MetroNet has active network equipment).

- (c) Customer shall, within thirty (30) days of such Outage, provide MetroNet with a written demand for the credit set forth in this Section. If Customer fails to provide such notice, the credit shall be deemed waived. An Outage will not be deemed to have occurred in the event that it arises from or relates to an Excluded Outage. The maximum credit that may be earned for a particular Fiber Service in a calendar month shall not exceed one hundred percent (100%) of the monthly rate charged by MetroNet for that particular Fiber Service in that month irrespective of the number or length of periods of Outage of that Fiber Service in that month. Service Outage Credits shall be

Customer's sole and exclusive remedy with respect to Fiber Service outages, interruptions, delays, failures, or other defects in Fiber Service. A Service Outage shall not be deemed a default by MetroNet. Under no circumstance shall Customer be entitled to an Availability Service Outage Credit and a Performance Outage Credit for the same Outage or during the same Outage period.

- (d) Notwithstanding any other provision of the Agreement, this Service Level Agreement shall not apply to asymmetrical Fiber Services, which are offered on a best efforts basis.

3) **RESPONSE AND RESTORATION OBJECTIVES:**

- (a) Objective measured as an average over one (1) month.

Category	Objective
Mean Time to Respond (verbal response)	30 Minutes
Mean Time to Respond On Site (if needed)	2 Hours
Mean Time to Restore Active-Net MetroNet Equipment	4 Hours
Mean Time to Restore Active-Net Services	6 Hours
Mean Time to Restore PON-Net MetroNet Equipment	6 Hours
Mean Time to Restore PON-Net Services	8 Hours

MetroNet will use commercially reasonable efforts to respond and restore Fiber Service in accordance with the above objectives, subject to events of Force Majeure. Failure to meet any such objective will not result in eligibility for a Service Outage Credit. In the event MetroNet fails to meet any such objective, Customer should contact the next tier on MetroNet's Escalation List. Objectives shall be measured from the time Customer reports to MetroNet that an Outage has occurred (regardless of when the Outage actually commenced).

4) **CUSTOMER REPAIR ESCALATION LIST:**

If you experience a network outage or service interruption at any time please call the MetroNet at 833.393.6857. The following is MetroNet's escalation list:

Escalation Tier	Contact Name	Title	Office Phone #	Mobile #	Email
1st	Repair NOC	Network Operations Center	833.393.6857		mfn-noc@metronetinc.com
2nd	Sean Melvin	Repair Supervisor	812.213.1385	812-431-3075	Sean.Melvin@metronetinc.com
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