

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

Network Essentials, LTD.  
Complainant,  
vs.  
Grant County Public Utility District 2  
Respondent.

Docket No.: UT-051602

ANSWER OF PUBLIC UTILITY DISTRICT  
NO. 2 OF GRANT COUNTY TO  
COMPLAINT OF NETWORK ESSENTIALS

**I. Introduction**

1. Public Utility District No.2 of Grant County, WA ("District"), PO BOX 878, 30 C St. SW, Ephrata, Wa, 98823 by and through its attorneys, Michael W. Smith and Ray A. Foianini of Foianini Law Offices, PO BOX 908, 120 First Ave. NW, Ephrata Wa, 98823 and pursuant to WAC 480-07-370(c) answers the Complaint of Network Essentials in the above captioned proceeding.

**II. Answer**

2. Unless specifically admitted in this section, the District denies each and every allegation in the complaint.
3. **Paragraph 1.** The District admits the factual assertions relating to Complainant of paragraph 1 based on the verified complaint. To the extent this paragraph requests the Commission to review rates, terms, and conditions of wholesale telecommunications service applied to Network Essentials, Ltd. and its subsidiaries by the District pursuant to RCW 54.16.340 and RCW 80.04.110, the paragraph is generally a conclusion of law to which no response is required. The

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District denies that the Commission has jurisdiction to adjudicate all of the issues raised in Network Essential's complaint as discussed herein.

4. **Paragraph 2.** The District admits the allegation of paragraph 2 that it is authorized pursuant to RCW 54.16.330 to provide wholesale telecommunications services. The District admits that Network Essentials has correctly quoted the section of RCW 54.16.330 and the statute otherwise speaks for itself.
5. **Paragraph 3.** The allegation of paragraph 3 constitutes a legal conclusion to which no response is required. To the extent further response is required RCW 54.16.330 speaks for itself.
6. **Paragraph 4.** The District admits the allegation in paragraph 4 to the degree that Internet Service Providers are customers of the District which provide retail telecommunications service to end users. However, to the extent allegation implies that only Internet Service Providers are customers the District denies the allegation. The District further responds that the District's wholesale telecommunications network (Zipp Network) is available to any business enterprise (Service Provider) which agrees to the terms and conditions set forth by the District's Board of Commissioners. Finally, the District denies the allegation that it has partnered with providers.
7. **Paragraph 5.** The District admits the allegation of paragraph 5 that it furnishes ports (data gateways) for the purpose of connecting its customers to the Zipp network infrastructure and for connecting end-users to the customers. The District admits the allegation that it charges its customers for the provision of these ports. The District further responds that the charges are per the District's Rate Schedule 100. A copy of the Rate Schedule 100 is attached as Exhibit 1.

Again, the District denies that all its customers are Internet Service Providers or ISPs.

8. **Paragraph 6.** The District denies the allegation in paragraph 6 that its wholesale telecommunications system's major function may be characterized as two-fold, additionally, the definitions alleged by Network Essentials in 6(a) and 6(b) are oversimplified and thus inaccurate and to the extent not expressly admitted below are denied.
9. **Paragraph 6(a).** The District admits the allegation in paragraph 6(a) that it provides infrastructure that allows for transport of data packets ("or bandwidth") to move from end-users to the Internet and back by way of a point of demarcation owned and operated by Northwest Open Access Network (NoaNet). The District further responds that it offers an aggregated, managed OSI Layer 3 (routed) Internet service product on Rate Schedule 100 through which the District purchases and resells shared connectivity to the Internet for service providers who desire such service. The District admits the allegation that the point of demarcation referenced is the "Columbia Hut." However, the District denies the allegation that the Columbia Hut is the only point of egress and ingress for data packets to/from the Internet. The District responds further that the Columbia Hut is not the only point of demarcation. The District purchases two points of ingress/egress for the Zipp Network managed Internet product. The primary point is the Columbia Hut, and a back-up route is maintained that provides redundancy for both internal District use and the Zipp Network
10. **Paragraph 6(b).** The District admits the allegation in paragraph 6(b) that it provides interconnection between points inside the Zipp Fiber "cloud" by means

of virtual local area networks (VLANs) which are two (or more) ports connected in such a way as to appear to be one local network. The District denies the allegation that it routes packets between “Zipp Customers” inside the system for all VLANs. The District further responds that the District’s Zipp Network provides OSI Layer 2 (switched) local loop connectivity within Grant County and to the edge of the Network. The Zipp Network offers ports at the edge of the Network to allow connectivity between service providers both inside and outside of Grant County. Products offered on Rate Schedule 100 include port charges for connecting service providers to their customers and service providers to the Network.

11. **Paragraph 7 (a) & (b).** The District admits the allegation in paragraph 7 that the Zipp fiber network offers two means of delivering data known as Layer 2 and Layer 3. However, the District denies the allegation of paragraph 7 to the extent the paragraph implies that the Zipp Network is limited to delivering data to and from the Columbia Hut or that Layer 2 and Layer 3 are the only means of delivering data to/from the Columbia Hut.
12. **Paragraph 8.** The District admits the allegation in paragraph 8 that as of August 31, 2005, end-users for 18 of the 27 “Zipp Customers,” including Network Essentials, typically connect a port at their home or business location to the VLAN which terminates at the port at their ISP. The District admits that the ISP then routes packets destined to other ISPs or to the Internet via another port which connects the ISP’s router with the routers at the District’s facilities in Ephrata.
13. **Paragraph 8(a).** The District admits the allegation in paragraph 8(a). The District further responds that if a service provider uses the District’s managed

Internet product to connect with other service providers, regardless of whether they are in Grant County or elsewhere, they are charged the metered or fixed rates as shown on the District's Rate Schedule 100. The service provider's router must assign a public IP address to packets destined for the Internet to use the District's managed Internet product. Therefore the service provider, not the District, is in control of the service provider's Internet traffic.

14. **Paragraph 8(b).** The District admits the allegation in paragraph 8(b) that the packets destined for the Internet are forwarded to an egress point on the edge of the Zipp Network. The District admits that the Columbia Hut egress point is owned by NoaNet. However, the District denies the allegation to the extent it states or implies that packets destined for the internet are forwarded only to the Columbia Hut and that the Columbia Hut is a point of demarcation for the District's managed Internet product. The District further responds that packets destined for Internet locations outside of Grant County are forwarded to their end destination **through** one of the egress points on the edge of the Zipp Network, primarily at this time the Columbia Hut. There is no hand-off or additional routing at the egress point; it is merely a point of physical connection.
15. **Paragraph 8(c).** The District denies the allegation in paragraph 8(c). The District further responds that only packets with public IP addresses sent to the District's Internet router are counted to create the service provider's managed Internet product bill, currently charged at \$350 per average megabit, not all packets. Destination, as determined by the IP address, is the decisive factor on whether the packets are metered for chargeback.

16. **Paragraph 9 (a)-(i)** The District admits the factual allegations in Paragraph 9 and 9(a) through (i).
17. **Paragraph 10.** The District denies the allegation in paragraph 10 that the two services are substantially similar under the terms of RCW 54.16.330 in that customers and end-users cannot discern any material differences between one and the other. The District further responds that Layer 3 is a routed Internet service. Layer 2 is local loop connectivity within Grant and to the edge of the network. They are not substantially similar service; to get Internet access, a Layer 2 only customer must separately purchase from a third party upstream Internet connectivity. The District's Layer 3 customers' end-users will have Internet access; the District's Layer 2 only customers' end-users will not have Internet access unless the customer purchases upstream Internet connectivity from a third party. The District does not prevent any customer from choosing the rates, terms, and conditions of either service and a customer is free to choose either.
18. **Paragraph 10(a).** The District admits the allegation of paragraph 10(a).
19. **Paragraph 10(b).** The District admits the allegation of paragraph 10(b).
20. **Paragraph 10(c).** The District denies the allegation of Paragraph 10(c). The District further responds that some packets are Layer 2 and some are Layer 3. That is precisely the difference. One class (Layer 3 packets) is sent to the Internet via the shared access. The other class (Layer 2 packets) connects to points within and at the edge of the Zipp network. They are not the same and in order for packets to be sent to the proper destination, they must be uniquely addressed. Arguing that the packets should be priced identically is like saying that local telephone calls and long distance telephone calls should be priced exactly the

same, since they are substantially similar service except for the telephone number (which determines where the call is terminated). The IP address is like the telephone number.

21. **Paragraph 10(d).** The District admits the allegation that the data packets of both Layer-2 and Layer-3 (at least in the context of the Zipp fiber network) contain MAC (the unique identifiers assigned to all network cards) addresses. The District denies the allegation that data packets of both Layer-2 and Layer-3 contain IP (internet protocol) addresses. Layer-2 packets may contain, but do not require an IP address.
22. **Paragraph 10(e).** The District denies the allegation in paragraph 10(e).
23. **Paragraph 11.** The District admits the allegation of paragraph 11 that packets transported Layer-3 are charged \$350 per average megabit regardless of the destination. The District admits that packets transported Layer 2 are not charged per average megabit transported. The District denies the allegation to the extent it implies that there is no charge for Layer 2 packet transport. The District further responds that Layer 2 packets are not metered, the service provider (District customer) pays a fixed rate for the ports used. As the provider of a fixed fiber infrastructure, the District has made the decision to base charges for connecting to this infrastructure on port charges. The managed Internet product (Layer 3) is purchased by the District based on quantity of data traffic and is therefore charged to the customers based on data traffic. The Complaint fails to acknowledge the Layer 3 ISPs are using the shared Internet Access while the Layer 2 customers are not.

24. A service provider choosing to use the managed Internet product (Layer 3) to connect to other service providers within Grant County does indeed pay for traffic on this Layer 3 product. There are options available to use a special VLAN (Layer 2) to connect between specific service providers if they choose, but connecting to each other by way of the Internet is much more common at this time.
25. **Paragraph 11(a).** The District admits the allegation in paragraph 11(a). The District responds further that this is per the current Rate Schedule 100 charge per megabit for the managed Internet product.
26. **Paragraph 11(b).** The District admits the allegation in paragraph 11(b).
27. **Paragraph 11(c).** The District admits the allegation in paragraph 11(c). The District further responds that if public IP addresses are used to route between any two service providers, the service providers will be charged for this by the entity from which they purchase Internet connectivity. If providers purchase the Internet product from the District, the District bills them. If they are Layer 2 only on the Zipp Network, then to connect through the Internet they will need to purchase said Internet connection from a third party.
28. **Paragraph 11(d).** The District admits the allegation in paragraph 11(d). The District responds further that the Layer-3 customer also pays for the traffic on the managed Internet product.
29. **Paragraph 11(e).** The District admits the portion of the allegation in paragraph 11(e) that Layer-2 customers pay for one port at each end-user's location. The District denies that portion of the allegation that Layer 2 customers are charged



for one (and only one) port at the Columbia Hut point of demarcation. The District further responds that several customers purchase multiple ports at the Columbia Hut. A service provider purchasing the Layer 2 product may also only have ports within the Zipp Network cloud, per their choice.

30. **Paragraph 12.** The District denies the allegations in paragraph 12. The District responds further that service providers have many options available under the Rate Schedule 100. A single provider may in fact purchase multiple ports from the District at the Columbia Hut. How the service provider architects their network is their choice. Some purchase one port at the Columbia Hut for interconnection with other networks and purchase many ports within the Zipp cloud on the same VLAN. Others purchase one port at a subscriber's location and one at the Columbia Hut, or some other location within the Zipp cloud, to create a VLAN specific to that subscriber's needs. These options are available to any District customer. A fixed port charge is used as a method of cost recovery for this product option.
31. **Paragraph 13.** The District admits the allegation in paragraph 13 that it pays NoaNet \$20,900 per month for a 100 megabit "pipe" to the Internet. However the District denies that the "pipe" begins at the Columbia Hut. The "pipe" begins at the District router in Ephrata. The District denies the remaining allegations of paragraph 13. The District responds further that the \$20,900 is a flat charge for the District's upstream Internet "pipe". The District maintains adequate capacity for the **peak** demands of the total **aggregated** customer requirements, therefore the cost to the District per megabit fluctuates on a monthly basis with the quantity of Internet traffic, but is always higher than \$20,900 divided by 100.

32. The District further responds that if the Internet router owned and managed by the District determines the best route to an addressee is within the Zipp Network cloud, that particular packet will not transit the Columbia Hut. When the service provider forwards a packet with a public IP address, it does in fact go to the Internet. Once routed there, the rules of the Internet are applied and generally the shortest path to the destination is chosen.
33. **Paragraph 14.** The District admits the allegation of paragraph 14 to the extent that historically the total bandwidth carried by the Zipp system across the Columbia Hut interface is substantially less than 100 megabits. The District further responds that in recent months, however, the District at times has used nearly all the 100 mbps. The District must engineer its network access with more capacity than is required. This is to provide for short term bursts in traffic and any rapid growth in volumes without even temporary degradations in service levels to their customers.
34. **Paragraph 15.** The factual allegation of this paragraph constitutes a sentence fragment that is apparently completed by paragraph 15(a). As such, the District will respond to paragraph 15 and 15(a) as one paragraph.
35. **Paragraph 15(a).** The District admits that it charges \$350 for upstream Internet traffic and that the cost to the District for a 100 megabit managed Internet product is \$20,900 per month. The District also admits that the \$350 per average megabit is charged regardless of destination. The District denies the allegation that the actual costs imposed upon the District are only \$209 per megabit. The District also denies the allegation that the District is receiving \$141 per megabit to offset costs to the District of internal transport of those packets. The District further

responds that the costs to provide upstream Internet access go beyond the simple calculation of the shared megabit costs. The District owns, operates and maintains routers as well as manages assigned blocks of IP addresses to create this product. Additionally, the District provides extra capacity for short term bursts in traffic and any rapid growth in volumes without even temporary degradations in service levels. The District bills based on average traffic, not peak or 95<sup>th</sup> percentile as is common in the industry. This effectively reduces the charges, as the average can never attain the peak and normally runs well below the 95<sup>th</sup> percentile. As documented in Network Essentials' complaint appendix VII page 8, the District is not recovering the full cost of the managed Internet product it purchases; therefore there is nothing to "offset" any other costs.

36. **Paragraph 15 (b)** The District denies the allegation in Paragraph 15(b). The District further responds that the District charges users of the Layer 3 product based on traffic and users of the Layer 2 product based on number of ports. The product purchased distinguishes the basis for the Zipp Network charges, not the name of the service provider. NoaNet purchases services from the same Rate Schedule 100 available to all District customers.
37. **Paragraph 16.** The District admits the allegation in Paragraph 16 that Donobi's customers number approximately 40% of the end-users on the Zipp fiber network. The District admits that Donobi pays port charges and pays one port charge for every end-user connected to that port. The District denies the remaining allegations of paragraph 16 to the extent not expressly admitted above.
38. The District responds further that Donobi does not purchase the managed Internet product from the District. Since their end-users do in fact have Internet

connectivity, Donobi must purchase that connectivity from some other entity to provide their customers with the Internet product. Thus, the services purchased by Donobi from the District are not the same as the services purchased by the Network Essentials. The Zipp Network is an open-access network and service providers are allowed to make such decisions in order to provide the citizens of Grant County the best services available for the most competitive prices.

39. **Paragraph 16(a).** The District admits the allegation in paragraph 16(a) that Donobi has the largest subscriber count of Zipp Network service providers.
40. **Paragraph 16(b).** The District admits the allegation in paragraph 16(b) that Donobi does compete with other Zipp Customers, including Network Essentials, for end-users.
41. **Paragraph 16(c).** The District denies the allegation in paragraph 16(c). The District responds further that Zipp service providers select which products and services they purchase from the District and which services they purchase from; it is an open-access network.
42. **Paragraph 16(d).** The District denies the allegation in paragraph 16(d). The District responds further that Donobi chooses to purchase Layer 2 services from the District. Network Essentials chooses to purchase Layer 2 and Layer 3 services from the District.
43. **Paragraph 16(e).** The District denies the allegation in paragraph 16(e). The District responds further that the product purchased by Donobi is charged per port connections per the District Rate Schedule 100. The products purchased by Network Essentials are charged per port connection (the Layer 2 product) and for

packet transport (the Layer 3 product) per the District Rate Schedule 100. Service providers are free to purchase the services which best suit their business needs.

44. **Paragraph 16(f).** The District denies the allegation in Paragraph 16(f) that the District's rates are not in conformance with state law. To the extent this is a request for Commission review no response is necessary.
45. **Paragraph 17.** The District admits the allegation that NoaNet pays port charges for ports at the Columbia Hut and port charges for every related end-user. The District denies the remainder of the allegations in Paragraph 17. The District responds further that the State awarded Qwest and CenturyTel part of the K-20 statewide network connecting various Washington schools. These two retail providers use NoaNet to package local-loop connectivity from many PUDs around the state. The services purchased by Network Essentials, which include shared Internet access, are not the same services purchased by NoaNet and its customers, which do not include the District's shared Internet access.
46. **Paragraph 18.** The District denies the allegation in Paragraph 18. To the extent the allegation is a claim for an overcharge due to involving the collection of an unreasonable rate, as the event complained of occurred six months before the October 20, 2005, filing date the event is beyond the statute of limitations.
47. **Paragraph 18(a)** The District admits the allegation that at one time much of the traffic was carried across SONET nodes and charged at Ethernet prices and admits that Local Tel leases a SONET circuit. The District denies the remainder of the allegation. The District responds further that at the inception of the network, the only connection available to the edge of the network was through the District's SONET. Even though SONET is definitely a more expensive means of

transport, the District provided Ethernet over SONET at Ethernet pricing as the District's choice of equipment was the driver, not the service provider's request (paragraph 18a). The District has since placed an Ethernet switch at the Columbia Hut and can now distinguish SONET versus Ethernet connectivity to the edge of the network, and charges accordingly.

48. **Paragraph 18(b).** The District admits it made a mistake in its circuit documentation which led the District to believe that Ethernet over SONET circuits had been moved to the IP network when this hadn't occurred. The District denies the remainder of the allegation. The District responds further that as configured by the District, the SONET network does not provide higher quality service for any service provider.
49. **Paragraph 18(c).** The District admits that equipment for SONET is more expensive than for Ethernet. The District denies the remainder of the allegation.
50. **Paragraph 18(d).** The District denies the allegation in Paragraph 18(d). The District responds further that as configured by the District, the SONET network does not provide higher quality service for any service provider.
51. **Paragraph 18(e).** The District denies the allegation in Paragraph 18(e). The District responds further that as stated previously, at one time all traffic into and out of the Zipp cloud transported over SONET. All service providers, Network Essentials included, received this service, while paying for Ethernet. The fact that the District has a SONET system in addition to the Ethernet system allows flexibility in how the District transports traffic and manages the networks. Using IP over native Ethernet or Ethernet over SONET is a District decision. Zipp Network offers SONET services as well, with different prices than the Ethernet

products. This is identified on Rate Schedule 100 and is available to all service providers.

52. **Paragraph 19.** The District denies the allegation in Paragraph 19 that approximately \$141 per average megabit is being charged to the “Zipp Customers” for transport of data packets and the other “Zipp Customers” pay port charges and not an average for bandwidth capacity. However, the District admits the implication of this allegation that the District charges are based on port charges for those service providers purchasing Layer 2 products and on metered traffic for the Layer 3 product.
53. **Paragraph 19(a).** The District admits the allegation in paragraph 19(a), that at one time customers were given SONET connections at Ethernet pricing. The District responds further that all traffic into and out of the Zipp cloud was at one time transported over SONET. All service providers, Network Essentials included, received this service, while paying for Ethernet.
54. **Paragraph 19(b).** The District admits the allegation in paragraph 19(b) that SONET costs are higher than those for Ethernet which reflects the higher costs for equipment. The District denies the remainder of the allegation. The District responds further that as previously mentioned, at the inception of the network, the only connection available to the edge of the network was through the District’s SONET. Even though SONET is definitely a more expensive means of transport, the District provided Ethernet over SONET at Ethernet pricing as the District’s choice of equipment was the driver, not the service provider’s request. Those purchasing Ethernet received Ethernet. Ethernet over SONET does commit bandwidth on the SONET, but does not provide any additional benefit to the

service provider in the form of greater reliability, faster service, or more bandwidth.

55. **Paragraph 20.** To the extent that the event complained of occurred two years before the October 20, 2005, filing date the event is beyond the statute of limitations and no further response is required. To the extent a response is required the District denies the allegations in paragraph 20.
56. **Paragraph 21.** The District denies the allegation that the District has illegally used public money to subsidize the private business interests of NoaNet and the other “Zipp Customers” referenced in the complaint. The District denies that the UTC has jurisdiction to determine whether public funds have been used inappropriately or to base relief thereon.
57. **Paragraph 21(a).** The District denies the allegation in Paragraph 21(a). The District responds further that all Zipp customers are charged for the services they choose to receive per the District’s Rate Schedule 100.
58. **Paragraph 21(b).** The District denies the allegations in Paragraph 21(b). The District responds further that all Zipp customers are free to purchase any service from the same rate schedule.
59. **Paragraph 22.** To the extent that the event complained of occurred two years before the October 20, 2005, filing date the event is beyond the statute of limitations and no further response is required. To the extent a response is required the District admits the allegation in Paragraph 22 that NoaNet is owned by various member PUDs. The District denies the remainder of the allegations not expressly admitted above. The District responds further that NoaNet



purchased and was billed for SONET circuits at the identified locations. The unit of purchase for SONET is a circuit, not a port.

60. **Paragraph 23.** The District admits the allegation in Paragraph 23 that a Rate Schedule 100 was authorized in July 2003 and the “Feet on the Street” contract was executed in August 2003. The District also admits that NoaNet, during this time, began to connect its customers to their Columbia Hut demarcation point inside the Zipp network via Virtual Local Area Networks (VLANs). The District admits that service providers using NoaNet services connected the Ephrata office of the Washington State Department of Fish and Wildlife and the Moses Lake offices of Lukins & Annis to VLANs on the Zipp Network. The District denies the remainder of the allegations to the extent not expressly admitted above.
61. **Paragraph 23(a).** The District denies the allegation in paragraph 23(a). The District responds further that it has never charged a traffic based rate for Layer 2 transport to the Columbia Hut. Until August 2003, there were NoaNet charges passed through to the service providers for use of the NoaNet network, either Internet or intranet. If a Zipp service provider wished to purchase transport on the NoaNet network, they were charged a rate based on NoaNet network traffic, since that is how NoaNet charges for use of their network. In August 2003, the District began offering a specific District packaged Layer 3 product with multiple options from which the service providers could choose. If a Zipp Network service provider wishes to utilize specific NoaNet services, they now deal directly with NoaNet.
62. **Paragraph 23(b).** The District denies the allegations in paragraph 23(b) that transport charges to the Columbia Hut were eliminated, as there were no rates to

eliminate. The District is without sufficient knowledge to admit or deny the allegation that the Rate Schedule 100 changes signed July 2003 gave service providers using NoaNet services the incentive to enter Grant County in search of business customers.

63. **Paragraph 23(c).** The District denies the allegation in paragraph 23(c).
64. **Paragraph 24.** The District admits the allegation in Paragraph 24 that the District Commissioners approved the “Feet on the Street” contract. The District admits that the Feet on the Street agreement took effect in August 2003, and specifies that call-out support will include three hour on-site response time for locations within 45 miles of any assigned District resource, and four hour on-site response time for all others. The District admits that the contract provides that for the first year after the date of the agreement beginning on the date of the agreement the charges assessed to NoaNet shall be deferred for one year without interest. The District denies the remaining allegations to the extent not expressly admitted above. The District responds further that The Feet on the Street contract allows NoaNet to pay the District for costs incurred in the maintenance of NoaNet owned equipment. Most of the equipment is located in NoaNet telecommunications huts to which the District is the closest responder among other NoaNet members. Some of the equipment is at end-user premises within Grant County. This contract is not used for maintaining Zipp Network equipment. Maintenance of Zipp Network equipment is recovered in the rates charged all Zipp Network service providers on Rate Schedule 100.

65. **Paragraph 24(a).** The District admits that NoaNet is a non-profit mutual corporation and responds further that it was formed pursuant to the interlocal cooperation act RCW 39.34.030. The District denies the remaining allegations in paragraph 24(a). The District denies that the Commission has jurisdiction to consider the matter alleged in paragraph 24(a). Per RCW 54.16.340, Commission review is limited to determining whether a district is providing discriminatory or preferential rates, terms, and conditions. Whether an arrangement constitutes a gift of public funds prohibited by the state constitution is beyond the purview of the Commission.
66. **Paragraph 24(b).** The District denies the allegations in paragraph 24(b). The District responds further that NoaNet is not a municipal corporation.
67. **Paragraph 24(c).** The District denies the allegation in paragraph 24(c).
68. **Paragraph 25.** The District denies the allegations in paragraph 25. The District responds further that service providers purchasing Zipp local loop connectivity through NoaNet are continuing to grow their end-user base within Grant County. NoaNet pays the same rates as all other Zipp Network service providers. There is nothing stopping other Zipp Network service providers from using the local loop aggregation capabilities of NoaNet to provide services to end-users all across the region, which is exactly what service providers from outside Grant County are doing here.
69. **Paragraph 25(a)** The District denies the allegation in paragraph 25(a). The District responds further that the rates available to NoaNet pursuant to the

District's Rate Schedule 100 are available to all customers or service providers including Network Essentials.

70. **Paragraph 25(b)** To the extent the allegation in paragraph 25(b) is an allegation of law no response is required. The District responds further that NoaNet is not a public municipality.
71. **Paragraph 25(c)** The District denies the allegation in paragraph 25(c).
72. **Paragraph 25(d)** The District denies the allegation in paragraph 25(d).
73. **Paragraph 26** While the complaint fails to specify the agreement, the District believes that the agreement referenced is the Feet on the Street contract. The District denies the allegations in paragraph 26. The District responds further that the District's telecommunications customer service policies states the District will attempt to provide, but does not guarantee, a regular and uninterrupted supply of service.
74. **Paragraph 26(a)**. The District denies the allegation of paragraph 26(a).
75. **Paragraph 26(b)** The District denies the allegation of paragraph 26(b).
76. **Paragraph 26(c)** The District denies the allegation of paragraph 26(c).
77. **Paragraph 26(d)** The District denies the allegations of paragraph 26(d). The District responds further that the support provided under the Feet on the Street agreement is specifically subject to the District's own priorities being met first.
78. **Paragraph 27** The District denies the allegation in paragraph 27.

79. **Paragraph 28** The District denies the allegations in paragraph 28. The District further responds that it pays an assessment to NoaNet twice a year as part of its original agreement to create NoaNet. The District further responds that the assessment is for repayment of bonds sold at the inception of NoaNet to create operating capital. NoaNet was formed pursuant to the interlocal cooperation act RCW 39.34.030. The act provides that member governmental units may provide funds to the entity so created under the act. RCW 39.34.060. The District pays the assessment pursuant to NoaNet's bylaws and the interlocal cooperation act.
80. **Paragraph 29** The District denies the allegation in paragraph 29 to the degree it infers that past actions show that current rates and billing practices are discriminatory. Additionally, the District denies that the allegations in 29(a) through 29(e) form the basis for any relief as the events occurred more than two years before the October 20, 2005, filing date. Such relief is barred by the applicable statute of limitations in RCW 80.04.240.
81. **Paragraph 29(a)** The District denies the characterization of the State Auditor's findings in paragraph 29(a) and denies the allegation to the extent it states or implies that the event shows that the District's rates and billing practices are discriminatory. To the extent that the event complained of occurred two years before the October 20, 2005, filing date the event is beyond the statute of limitations and no further response is required. To the extent a response is required the District further responds that the Washington State Auditor, in its audit of the District for 2002, found that the District had entered into a contract with BREA with the intent of receiving services other than those outlined in the

agreements. The District responds further that the intent, according to the Schedule of Audit Findings was to set up BREAs as a retail Internet service provider. The District implemented and followed the Auditor's recommendations. The District otherwise denies the allegations.

82. **Paragraph 29(b)** The District denies the characterization of the State Auditor's findings in paragraph 29(b) and denies the allegation to the extent it states or implies that the event shows that the District's rates and billing practices are discriminatory. To the extent that the event complained of occurred two years before the October 20, 2005, filing date the event is beyond the statute of limitations and no further response is required. To the extent a response is required, the District admits that Vib.tv acted as an Internet provider in Grant County until early 2005. The District admits that the Washington State Auditor, in its audit of the District for 2003, determined that District telecommunications staff made credit adjustments to VIB.tv's accounts receivable balance of approximately \$178,397.54 without sufficient supporting documentation. The District responded to the Auditor that further review of the adjustments was warranted. The District denies the remaining allegations of paragraph 29(b) to the extent not expressly admitted above.
83. **Paragraph 29(c)** The District denies the characterization of the State Auditor's findings in paragraph 29(c) and denies the allegation to the extent it states or implies that the event shows that the District's rates and billing practices are discriminatory. To the extent that the event complained of occurred two years before the October 20, 2005, filing date the event is beyond the statute of limitations and no further response is required. To the extent a response is required, the District further responds that the State Auditor found that a \$150,000

purchase agreement for computer software and server was presented to the Commission for approval as professional services contract March 2003. The Auditor felt that the agreement was not solely for professional services. The District addressed the Auditor's concerns and outlined steps to resolve the auditor's concerns. The District denies the remaining allegations of Paragraph 29(c)

84. **Paragraph 29(d)** The District denies the allegation to the extent it states or implies that the event shows that the District's rates and billing practices are discriminatory. To the extent that the event complained of occurred two years before the October 20, 2005, filing date the event is beyond the statute of limitations and no further response is required. To the extent a response is required the District admits the allegation that it entered a payment plan agreement with Vib.TV in April 2003 the terms of which required Vib.TV to make monthly payments towards an unpaid balance which included an interest rate of 2.5% per year. The District denies the remaining allegations.
85. **Paragraph 29(e)** The District denies the allegation to the extent it states or implies that the event shows that the District's rates and billing practices are discriminatory. To the extent that the event complained of occurred two years before the October 20, 2005, filing date the event is beyond the statute of limitations and no further response is required. To the extent a response is required the District admits that Jon Moore was an Engineering Supervisor at the District and that he left the District in March 2004 and that upon leaving took a job with Vib.tv. The District denies the remaining allegations.
86. **Paragraph 29(f)**. To the extent that the events complained of occurred two years before the October 20, 2005, filing date the event is beyond the statute of

limitations and no further response is required. To the extent a further response is required, the District denies the allegations in paragraph 29(f)

87. **Paragraph 30.** The District denies the allegations in paragraph 30.

88. **Paragraph 31** This paragraph is a request for the Commission to examine the rates charged by the District no response is necessary.

### **III. Affirmative Defenses**

1. Network Essentials repeatedly infers and states that the Layer 2 and Layer 3 products offered by the District under the Rate Schedule 100 are identical products. As the District has repeatedly stated, these two products are not identical and are appropriately priced differently.

2. Network Essentials or any other Service Provider is free to purchase any of the services or products purchased by NoaNet, Donobi, or the other entities Network Essentials asserts are being treated favorably.

3. The Commission lacks jurisdiction over matters set forth in the Complaint. Generally, the UTC has no jurisdiction over the District per RCW 54.04.045 and RCW 54.16.040. However, the UTC limited jurisdiction over the District relating to wholesale telecommunications services pursuant to RCW 54.16.340. The Commission review is limited to determining whether a district is providing discriminatory or preferential rates, terms, and conditions. Per RCW 54.16.340 if the Commission determines that rates are discriminatory “it shall issue a final order finding noncompliance with this section and setting forth the specific areas of apparent noncompliance.” The Commission does not have authority to retroactively adjust the District’s rates as requested by Network



Essentials. The District requests that the complaint be dismissed as to those claims requesting relief based upon the Commission retroactively adjusting the District's rates.

4. The Commission review is limited to determining whether a district is providing discriminatory or preferential rates, terms, and conditions. Whether or not an arrangement constitutes a gift of public funds prohibited by the state constitution is beyond the purview of the Commission. The District requests that the complaint be dismissed as to those claims pertaining to allegations asserting the Commission should grant relief based on a finding that the District made an impermissible gift of funds.

5. The complaint seeks relief for overcharges resulting from collection of unreasonable rates including those events that occurred more than six months prior to the October 20, 2005 filing of the complaint. To the extent the complaint states any claim for relief, such relief is barred by the applicable statute of limitations in RCW 80.04.240 for periods more than six months prior to the filing of the complaint. The District requests that the complaint be dismissed as to those claims pertaining to periods prior to October 20, 2005.

5. The complaint seeks to base relief for events including those that occurred more than two years prior to the October 20, 2005 filing of the complaint. To the extent the complaint states any claim for relief such relief is barred by the applicable statute of limitations in RCW 80.04.240 for periods more than two years prior to the filing of the complaint. The District requests that the complaint be dismissed as to those claims pertaining to periods prior to October 20, 2005.

6. The District reserves the right to assert any additional affirmative defenses or special defenses that may become known through discovery or further proceedings in this matter or as may be otherwise appropriate.

#### IV. Relief Requested

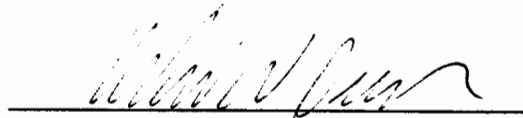
Based upon the foregoing answer and defenses, The District requests the following relief.

- A. An order denying Network Essentials request for review of the District's rates, terms and conditions.
- B. An order dismissing Network Essentials Complaint with prejudice
- C. Such other further relief as may be within the Commission's jurisdiction and to which the Commission deems appropriate.

Submitted this 7<sup>th</sup> day of November 2005.

Public Utility District No. 2 of Grant County

FOIANINI LAW OFFICES



Michael W. Smith WSBA #30022  
Attorney for Public Utility District No. 2 of  
Grant County  
PO BOX 908  
120 First Ave NW  
Ephrata, WA 98823

RESOLUTION NO. 7754


A RESOLUTION ADOPTING A NEW RATE SCHEDULE 100

Recitals:

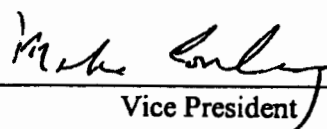
1. On July 6, 2004 the Board of Commission adopted Resolution No. 7715 adopting a revised Rate Schedule 100 - Fiber Optic Network Service.
2. The Manager recommends that Rate Schedule 100 be revised to reflect revised language and rates for wholesale services.

NOW, THEREFORE, BE IT RESOLVED by the Commission of Public Utility District No. 2 of Grant County, Washington, that Rate Schedule 100 is hereby revised and amended as set forth in Exhibit A attached hereto effective January 1, 2005.

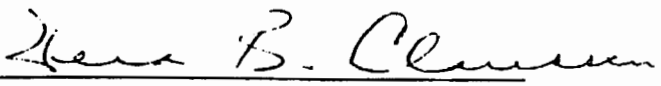
PASSED AND APPROVED by the Commission of Public Utility District No. 2 of Grant County, Washington, this 29th day of November 2004.

  
\_\_\_\_\_  
President

ATTEST:  
  
\_\_\_\_\_  
Secretary

  
\_\_\_\_\_  
Vice President

  
\_\_\_\_\_  
Assistant Secretary

  
\_\_\_\_\_  
Commissioner

**PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON**

**RATE SCHEDULE 100  
FIBER OPTIC NETWORK SERVICE**

**AVAILABLE:** To service providers desiring to use the District's Zipp® fiber optic network. District reserves the right at its sole option to discontinue services listed in this rate schedule at any time.

**EFFECTIVE:** These rates will be effective January 1, 2005 and shall remain in effect until superseded by the adoption of a Commission resolution revising the same.

**BILLING RATES:** Use of the Zipp® Network shall be billed in accordance with the charges listed below.

Service:	Non-Recurring Charge	Monthly Charge
<u>Standard Services:</u>		
Residential Internet Service Per Subscriber*	-	\$22.50
Commercial Internet Service Per Subscriber*	-	\$30.00
Video Service Per Subscriber	-	\$5.00
Phone Service (Per POTS port)	-	\$5.00
*Upstream not included		
<u>Connections For Apartments and Hotels:</u>		
L.E-22 or equivalent equipment	-	\$3.00 per port, minimum of \$25.00 per building
L.E-211 or equivalent equipment	-	\$2.50 per port, minimum of \$28.00 per L.E-211
<u>Special VLANs:</u>		
Set Up Fee Per Port	\$50.00	-
Monthly Fee (10 Mbps) Per Port	-	\$30.00
Monthly Fee (100 Mbps) Per Port	-	\$200.00
Monthly Fee (1,000 Mbps) Per Port	-	\$1,200.00

PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON

**RATE SCHEDULE 100**  
**FIBER OPTIC NETWORK SERVICE**  
**CONTINUED**

Service:	Non Recurring Charge	Monthly Charge
Set Up of New Service Provider	\$500.00	-
Collocation of Customer Equipment in District Facilities (When space and appropriate facilities are available. Prices are for single 19" rack):		
Without UPS or Backup Generation	-	\$200.00
With UPS and Backup Generation	-	\$300.00
Dark Fiber - per strand per mile - (Limited to fiber availability. Capacity planning will reserve fiber for future District use that will not be available for Dark Fiber use.)	-	\$30.00
Special Fiber Construction to any location other than to the electric meter inside a released hub area or all construction required to provide service outside of a released hub area	Prepayment of 100% of estimated District cost	-
Upstream Internet Service (if a service provider desires to purchase upstream Internet transport from the District the following options are available):		
1. Fixed - charge per 1Mbps - (Under this option, the service provider chooses the amount of upstream bandwidth that they wish to purchase to serve their customers and the District will lock down the service provider's port so that no more than the chosen bandwidth will be available.)	-	\$250.00
2. Metered - charge per 1 Mbps of average metered use - (Under this option, the service provider's port will NOT be locked down or capped and the service provider's customers can burst to the total amount of bandwidth available to the PUD. These charges are based on the monthly average megabits per second use and are calculated as follows. (1) District equipment will take readings every five minutes of the bits traveling outward and inward over the customer's connections to the District's equipment. (2) The inward readings shall be averaged to calculate an inward monthly Mbps average, (3) The outward readings shall be averaged to calculate an outward monthly Mbps average, and, (4) The higher of the inward or outward monthly averages will be used for billing.)	-	<7 Mbps avg - \$350.00 7.1-10.0 Mbps avg - \$290.00 10.1-25.0 Mbps avg - \$280.00 25.1-50.0 Mbps avg - \$260.00 50.1-100.0 Mbps avg - \$250.00

**PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON**

**RATE SCHEDULE 100  
FIBER OPTIC NETWORK SERVICE  
CONTINUED**

Service:	Non-Recurring Charge	Monthly Charge
Each STS-1 SONET Pt-Pt Data Path (sold in increments of STS-1, but provisioned using T-1, OC-3, OC-12, OC-48, & OC-192 line rates. Non-Recurring Charges for equipment may apply. The District will determine the demarcation point)	Prepayment of 100% of estimated District cost	\$400.00
<u>Use of District-Owned Video Head End</u> - per video subscriber		\$3.00
<u>Use of Video Encoder for Public Access Programming</u>		\$55.00 per month or \$10.00 per day
<u>Set Top Box Lease</u> - per box		\$5.00
<u>Use of Myrio Middleware</u> - per video subscriber		\$2.00
<u>Use of shared TV Data Contract on Myrio Middleware</u> - per video subscriber		\$0.50

**SERVICE:** Service under this Schedule is subject to the terms and conditions in the District's Telecommunications Policies, as the same may be amended from time to time.

**TAX ADJUSTMENT:** 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 above charges.

**PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON**

**RATE SCHEDULE 100**  
**FIBER OPTIC NETWORK SERVICE**  
**CONTINUED**

**Minimum Bill:**

After a six month initial startup period, service providers will be charged a minimum monthly bill according to the following timeline. Existing providers will go through the same steps starting August 1, 2004.

1-6 Months	No Minimum
7-18 Months	\$500.00 Minimum
18+	\$1,000.00 Minimum

**Late Payment Charges:**

Bills that remain unpaid 25 days after the billing date shall be assessed a late payment charge on the unpaid balance. The late payment charge shall be applied on the 26th day after billing and will be calculated using the US Prime Lending Rate as determined by the Federal Reserve and published in the Wall Street Journal as of the preceding March 15, divided by four (4), rounded to two digits and applied as a monthly percentage interest rate to the accrued outstanding balance. The applicable monthly percentage rate will be adjusted each March 15th based on this same formula. If March 15 falls on a non-business day, the District will use the prime rate published in the Wall Street Journal on the next business day. In no event however 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.