

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND COMPLIANCE DIVISION
Telecommunications BranchRESOLUTION NO. T-15716
March 16 1995RESOLUTION AUTHORIZING THE DISBURSEMENTS COMMITTEE (DC)
OF THE TELECOMMUNICATIONS EDUCATION TRUST TO AWARD TRUST
FUNDS, RENEW ITS CONTRACT WITH ITS ADMINISTRATOR AND TO
REVISE THE TRUST AGREEMENTBACKGROUND

1. Pursuant to D.87-12-067, the Telecommunications Education Trust (TET) has been established to promote consumer education and understanding of the telecommunications system.
2. The Disbursements Committee (DC) has five members; and was also established by D.87-12-067.
3. The DC of the Trust has met and now recommends that the two organizations listed in Attachment A be granted to specified amounts of funds to accomplish the purposes of the Trust.
4. The agreements have been reviewed by the Trust's legal counsel, Silk, Alder and Colvin. They agree that all of the agreements are in keeping with the legal requirements of the Trust.
5. The DC of the Trust has sent a notice to the 3000 names on its mailing list, advising the recipients that these two grants would be recommended to the Commission for funding. This letter invited comments on these recommendations be sent to the Commission via the Public Advisor's Office.
6. The Public Advisor's Office has compiled these comments and sent them directly to each Commissioner for their consideration.
7. The Commission has issued D.95-01-019 which confirms an earlier decision (D.94-08-030) to grant the TET an additional \$2.1 million, and extends the Trust to December 31, 1996.
8. The DC of the Trust does not plan to recommend the expenditure of the new funds until the California Supreme Court has disposed of all appeals to the decisions.
9. In order to extend the current ending date of the TET and make other changes required by D.94-08-030 and D.95-01-019, the DC is proposing that the CPUC adopt the revisions to the Trust agreement that are contained in Attachment B. The revisions to the Trust agreement have been prepared by the Trust's legal counsel; Silk, Adler and Colvin.
10. The Trust is being administered by Richard Heath and Associates, a minority-owned business.

11. The Trust's current agreement with Heath and Associates expires on April 30, 1995.

12. Because of the uncertainty about whether the California Supreme Court will grant hearing of any of the challenges to the decision, the DC of the Trust is proposing to enter into two separate agreements with Richard Heath and Associates.

One agreement (Attachment C) is a short term contract to have Heath provide limited services to the Trust such as responding to inquiries, and preparing grant guidelines for disbursing the additional \$2.1 million.

The second agreement (Attachment D) is the longer-term contract which would only be invoked by the DC if the legal challenges are rejected by the California Supreme Court.

13. The DC has reviewed the proposed agreements to administer the Trust from Richard Heath and Associates, and recommends that the Commission authorize it to enter into the agreements. Attachments C and D.

14. The cost of the short-term agreement will not exceed \$32,000.

15. The cost of the long-term agreement (until December 31, 1996) will not exceed \$388,249.

16. The long-term agreement also includes funds to pay the Trust's legal counsel, insurance, audit and tax preparation, financial management, and bank fees during the 16 months of the long-term agreement.

FINDINGS

1. The DC has carefully considered possible uses for the remaining Trust funds.

2. We find that it is reasonable to authorize the DC of the Trust to enter into the agreements proposed in Attachment A. The total amount of new funds committed is \$176,500.

3. We find that it is reasonable to authorize the DC to enter into the agreements with Richard Heath and Associates to administer the Trust at a cost not to exceed \$32,000 for the short-term agreement and \$388,249 for the long-term agreement. The proposed agreements are Attachment C and D.

4. We find it is reasonable for the Trust not to expend any of the funds authorized by D.94-08-030 and D.95-01-019 until the California Supreme Court resolves all appeals of these decisions.

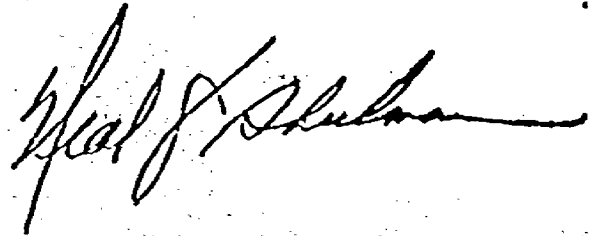
5. We find that it is reasonable to approve the revised Trust Agreement in Attachment B.

THEREFORE IT IS ORDERED THAT:

1. The DC of the Trust is authorized to enter into agreements with the organizations and for the amounts described in Attachment A. The total amount of new funds committed is \$176,500.
2. The DC of the Trust is authorized to enter into the attached agreements with Richard Heath and Associates to administer the Trust at a cost not to exceed \$32,000 for the short-term agreement, and \$388,249 for the long-term agreement.
3. The revised Trust Agreement in Attachment B is adopted. The Executive Director is directed to sign the new agreement on behalf of the CPUC.

March 8, 1995

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on March 8, 1995. The following Commissioners approved it:



NEAL J. SHULMAN
Executive Director

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
Commissioners

- ATTACHMENT A - Organizations recommended for funding.
- ATTACHMENT B - Revised Trust Agreement
- ATTACHMENT C - Proposed short-term agreement with Richard Heath and Associates.
- ATTACHMENT D - Proposed long-term agreement with Richard Heath and Associates

ATTACHMENT A

TELECOMMUNICATIONS EDUCATION TRUST

Established by the California Public Utilities Commission

917 West Grape Street • San Diego, California 92101
(619) 233-5090 • FAX (619) 233-8667

1995

RECOMMENDED GRANTS

Center For Public Interest Law
University of San Diego School of Law
5998 Alcalá Park
San Diego, CA 92110-2492
Beth Givens, Project Director
619) 260-4806

The Center For Public Interest Law (CPIL) operates a Privacy Rights Clearinghouse, developed with previous TET funding, to educate Californians about electronic privacy issues. TET funding will be used to continue to research privacy issues and operate the Privacy Hot-Line (1-800-773-7748), responding to callers' privacy concerns. CPIL will conduct state-wide outreach and distribute privacy Fact Sheets, continuing to bring telecommunications privacy issues before consumers and decision-makers. All of the Privacy Clearinghouse's services are available in English and Spanish.

Recommended Grant: \$91,000

Consumer Action
116 New Montgomery, suite 223
San Francisco, CA 94105
415) 777-9648

Consumer Action (CA), a state-wide consumer advocacy and education agency, received prior TET funds to operate the TET Repository. The Repository houses all of the materials developed by TET grantees, including videos, audio tapes, manuals, curricula, pamphlets, Fact Sheets, research studies and games. CA promotes these materials, which are available in fourteen languages and braille and makes them available to Californians through a Catalog and a reading/viewing room. TET funds will be used to continue to operate the TET Repository, for another year, from 1995 to 1996, promoting the materials and shipping them upon request to schools, libraries, community organizations and individual consumers.

Recommended Grant: \$85,500

TOTAL RECOMMENDED GRANTS: \$176,500

Administered by Richard Heath and Associates, Inc.



AMENDED AND RESTATED
TELECOMMUNICATIONS EDUCATION TRUST AGREEMENT

This Amended and Restated Telecommunications Education Trust Agreement (the "Trust" or "Trust Agreement"), is entered into on this ___ day of _____, 1990~~1994~~, by and between Wesley M. Franklin, Acting Neal Shulman, Executive Director of the California Public Utilities Commission ("CPUC") on behalf of the CPUC and First Bankers Trust Company of California, N.A. ("Bank"), as Trustee. The purpose of this Trust is to promote ratepayer education and understanding of the telecommunications system, by means including, but expressly not limited to, mass media programs, educational forums, community outreach efforts, advocacy on behalf of telecommunications ratepayers (within the limits set forth below), or grants to selected groups; provided, however, that the distribution of the principal or income of the Trust shall not jeopardize the federal or state income tax exemption of the Trust. This Amended and Restated Trust Agreement is a continuation and modification of that certain Trust Agreement (the "Interim Trust"), effective December 31, 1987, between Pacific Bell and Richard N. Rose and Kristina Veaco (the "Interim Trustees") whereby Pacific Bell, pursuant to CPUC Decision 87-12-067, transferred \$16.5 million to the Interim Trustees to be used to further the goal of ratepayer educational efforts. A copy of the Interim Trust is attached hereto as Exhibit "A". This Amended and Restated Trust Agreement is also a continuation and modification of that certain Trust Agreement which was entered into pursuant to CPUC Decision 87-12-067, dated December 22, 1987, in Pacific Bell's general rate case (A.85-01-034). This Amended and Restated Trust Agreement is also a continuation and modification of that certain Amended and Restated Trust Agreement which was entered into on January 4, 1990, pursuant to CPUC Decision 87-12-067.

I. GENERAL

1.1 Trust Assets. The assets of this Trust shall consist of the initial Trust fund of SIXTEEN AND ONE-HALF MILLION DOLLARS (\$16.5 million), plus earnings and less disbursements, and such additional assets as may otherwise be transferred to the Trust by, or at the direction of, the CPUC, including but expressly not limited to assets distributed to the Trust pursuant to CPUC Decision 94-08-030, plus earnings and less disbursements. The Trustee shall hold the Funds in trust for the primary benefit of Pacific Bell ratepayers (provided, however, that disbursement recommendations may be made even if ratepayers of other telephone companies would thereby be provided with educational benefits by such recommendations). and except as provided in Article II of this Trust Agreement, or as otherwise as directed by the CPUC, payments from the Trust shall be made solely for the purpose of promoting "ratepayer education and understanding of the telecommunications system, and to educate ratepayers about their service options in the increasingly competitive telecommunications environment" and for ratepayer advocacy as provided in Section 2.3, in accordance with CPUC Decision 87-12-

067, as supplemented by CPUC Decision 94-08-030, and for reasonable expenses of administering this Trust; provided, however, that no distribution may be made which would jeopardize the federal or state income tax exemption of the Trust.

1.2 Qualifications for Exemption from Federal and State Income Taxes. Pursuant to CPUC Decision 87-12-067, Pacific Bell shall seek exemption of this Trust; this Trust has obtained exemption from federal and state income taxes as a social welfare organization under Internal Revenue Code of 1986 Section 501(c)(4) and California Revenue and Taxation Code Section 23701(f), respectively.

1.3 Acceptance of Trust. The Trustee accepts the Trust subject to all of the terms and conditions of this Trust Agreement.

1.4 Authority of CPUC. All decisions regarding payment of amounts or disbursements of funds by the Trust shall be made by the CPUC, after a review of the recommendations of the Disbursements Committee ("Committee"). In addition to any other power and authority, the CPUC shall have the power to conclusively decide any question involving this Trust, including but not limited to any disagreement between the Disbursements Committee and the Trustee.

II. DISBURSEMENTS COMMITTEE

2.1 General Powers. The Committee shall make recommendations to the CPUC regarding disbursements of Trust funds and, except as provided in Section 1.4, the Committee shall make all decisions regarding investments and the Trustee shall be subject to the direction and control of the CPUC and the Committee.

2.2 Membership. The Committee shall consist of five members: a representative from Pacific Bell, a representative from the Division of Ratepayer Advocates ("DRA") of the CPUC, the CPUC's Public Advisor, a representative of the field of education designated by the CPUC, and two representatives of consumer groups. The Committee shall elect annually a Chairperson, Vice Chairperson and Recording Secretary. Each Committee member shall provide the Trustee, the Public Advisor of the CPUC, and the Chairperson of the Committee with his/her address and telephone number.

The Committee shall act by majority vote. Each Committee member shall be entitled to one vote. Votes of members of the Committee shall be recorded on all matters voted on or decided by the Committee. If the Committee is unable to make a decision on a particular disbursement, or its members are otherwise deadlocked, the Public Advisor shall seek to mediate the dispute.

The members of the Committee, in the performance of their duties under this Trust Agreement, and in the actions taken by the Committee shall at all times be subject to the outstanding orders issued by the CPUC. Any member of the Committee may be removed at any time by the CPUC, by notice, in writing to the Trustee and members of the Committee. Subject to approval by the CPUC, and unless the CPUC directs otherwise, ~~Pacific Bell or its successor and the CPUC and DRA~~ shall each have the right, from time to time, and at any time, to name a successor to or to replace its designee as a Committee member. In the event either consumer representative on the Committee resigns or becomes ineligible to serve on the Committee, the Public Advisor of the CPUC, in consultation with ~~Pacific Bell and DRA~~, shall recommend another consumer representative to fill the vacancy on the Committee. Any changes in the membership of the Committee shall be promptly communicated in writing to the Trustee and the Public Advisor of the CPUC.

2.3 Disbursements. To establish a program of disbursements for each year, the Committee shall meet at least annually. The Committee shall have as a goal the disbursement of ~~at least Three Million Dollars (\$3 million) per year out of the assets of the Trust over a five-year period~~ the assets of this Trust, together with the earnings thereon, in approximately equal amounts per year so that all such assets and earnings shall be distributed in accordance with the purposes of this Trust before the termination of this Trust as set forth in Section 7.4 below.

The Committee shall make recommendations to the CPUC with regard to disbursement of Trust funds to promote ratepayer education and understanding of the telecommunications system, including, but expressly not limited to, mass media programs, educational forums, community outreach efforts or grants to selected groups, or advocacy on behalf of telecommunications ratepayers before the CPUC (provided, however, that no more than 10% of Trust funds may be applied to such advocacy). In recommending distributions, the Committee shall bear in mind the importance, as endorsed by the CPUC in "A Strategy for Telecommunications Infrastructure" (November 1993) and in its past practices, of providing consumer education to ratepayers at all income levels and of promoting access to telecommunications for all segments of California's diverse population. Disbursement recommendations may be made even if ratepayers of other telephone companies would thereby be provided with educational benefits by the proposal. No recommendation shall be made for disbursement of any assets of the Trust which would jeopardize the federal or state income tax exemption of this Trust. Any questions to whether a proposed disbursement may jeopardize the tax exempt status of the Trust shall be determined by ~~the General Counsel of the CPUC or legal counsel to this Trust, the General Counsel of the Public Utilities Commission.~~ Except as provided in Section 2.4, no disbursement recommendation shall be made which would give access to or benefit from Trust funds by a member of the Committee, or any officer, agent, director,

client or person or entity affiliated with any such member.

The CPUC shall consider the Committee's disbursement recommendations and make a final determination. The Trustee, on the written directions from the Committee, shall disburse the funds in accordance with such directions. ~~At the end of five years of disbursements~~ Upon the termination of this Trust as provided in Section 7.4, the Trustee shall disburse ~~the any~~ remaining balance in the Trust ~~in year six~~ on the same basis as provided in this Section ~~2.3~~ Article II.

2.4 Reimbursement of Expenses. The Committee members, except the representatives of ~~Pacific Bell~~, the DRA, and the Public Advisor of the CPUC, shall be entitled to reimbursement or direct payment from the Trust for reasonable expenses incurred by them in the performance of their duties hereunder. The representatives of ~~Pacific Bell~~ and DRA and the Public Advisor of the CPUC shall not be entitled to reimbursement or direct payment from the Trust for any expenses incurred by them in the performance of their duties hereunder. No Committee members shall be entitled to receive a salary or other compensation from the Trust.

2.5 Investments. The Committee shall be responsible for directing the investments of the Trust. It shall carry out that responsibility by giving, directly or through an investment advisor or investment manager, directions to the Trustee of the manner in which the Trust funds are to be invested. In directing the Trustee to make investments, the Committee and any investment advisor or investment manager, appointed by the Committee pursuant to Sections 2.5 and 2.6, is limited to investments which come within this investment list: (1) direct obligations of the United States of America or obligations the timely payment of the principal of and interest on which are fully guaranteed by the United States of America; (2) obligations, debentures, bonds or other evidence of indebtedness issued or guaranteed by any the following: Federal Home Loan Bank System, Federal Farm Credits, Government National Mortgage Association, Federal National Mortgage Association, Federal Home Loan Mortgage Association, Student Loan Marketing Association, or by any agency, department or instrumentality of the United States if such obligations are rated in one of the two highest rating categories of Standard & Poor's Corporation and Moody's Investors Services; (3) repurchase agreements with solvent banking or other financial institutions fully secured by collateral security described in (1) or (2) and continuously having a market value of 102% of the amount invested so long as such underlying obligations or securities are in the possession of the Trustee or third party agent; (4) government money market portfolios (mutual funds) restricted to obligations described in (1) or (2) above; (5) interest bearing Certificates of Deposit in FDIC insured banks, up to \$100,000 per issuer. In directing the Trustee to make investments within this investment list, the Committee is entitled to rely on advice it receives from one or more investment advisors or managers which the Committee believes to be

competent.

2.6 Investment Advisor. The Committee may enter into an agreement to obtain the services of an investment advisor or investment manager, provided that such agreement is approved in advance by the CPUC.

III. TRUSTEE

3.1 Trustee's Standard of Care. The Trustee shall perform such duties and only such duties as are specifically set forth in this Agreement. In carrying out each of its duties under the Trust, the Trustee shall exercise the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the Trust.

3.2 Management. The Trustee shall have the powers necessary to hold in trust and manage the assets of the Trust subject to the provisions of Section 2.5, including, but not by way of limitation, the powers:

3.2.1 To establish bank accounts, including with its own commercial department, and to collect and receive the income of the Trust and any and all property of the Trust, and to act as custodian of any such income or property.

3.2.2 To extend the time of payment of any obligation owing to the Trust, and to deposit any property with and to delegate discretionary powers to any protective, reorganization or similar committee, including the power to pay expenses, compensation, and assessments levied with respect to the deposited property.

3.2.3 To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust, to commence or defend legal proceedings for or against the Trust, and to represent the Trust in all proceedings in any court of law or equity or before any other tribunal, subject to prior approval by the Executive Director of the CPUC.

3.2.4 To sue or defend in connection with any property held at any time by the Trust, the related costs and attorneys' fees to be a charge against the Trust, subject to prior approval by the Executive Director of the CPUC.

3.2.5 To appoint agents, including, without limitation, appraisers, actuaries, accountants, or legal counsel.

3.3 Distribution. The Trustee shall make such distributions of Trust funds as are directed in writing by the CPUC or by the Committee, and the Trustee shall make such reports to the Committee of such distributions as the Committee may reasonably request.

3.4 Investment. The Trustee shall make such investments of the Trust funds as are directed in writing by the Committee or its investment advisor or investment manager, and the Trustee shall make such reports to the Committee of such investments as the Committee shall reasonably request.

3.5 Taxes. The Trustee shall from time to time charge against and pay out of the Trust Fund taxes that are lawfully levied or assessed upon or become payable with respect to the Trust Fund or the income thereof.

3.6 Compensation. The Trustee shall be entitled to reasonable compensation for its services as Trustee under this Trust Agreement at a rate to be agreed upon from time to time between the Trustee and the Committee.

3.7 Expenses. The Trustee shall deduct from and charge against the assets of the Trust reasonable administrative expenses, including but not limited to, bank fees, liability insurance for the Committee members, fees paid to appraisers, actuaries, accountants and legal counsel, if any, and compensation of the Trustee.

3.8 Liability. The Trustee shall incur no liability for any distribution it makes according to the written directions of CPUC, or of the Committee. The Trustee shall incur no liability for any investment it makes according to the written directions of the Committee or its investment advisor or investment manager. Any payment by the Trustee may be made by mailing its check to the address furnished in writing by the Committee or CPUC.

IV. BOOKS, RECORDS AND REPORTS

4.1 Books and Records; Annual Reports. The Trustee shall keep accurate books and records reflecting investments, receipts, disbursements and any other transactions engaged in by the Trust, and the expenditures for each of the separate programs or activities funded by the Trust shall be accounted for separately. The books and records shall be open to inspection at all reasonable times by the CPUC, the Committee or its designated representatives, or any member of the Committee.

As soon as reasonably practicable after the end of each month, the Trustee shall submit a statement to the Executive Director of the CPUC and to each member of

the Committee, setting forth the following information:

- a. Disbursement of funds for the preceding month and the identity of those receiving the disbursements.
- b. Purchase, sale, redemption or exchange of Trust investments.
- c. Receipt of income on invested assets.
- d. Other disbursements.
- e. List of Trust assets showing market values, cost and estimated monthly income of all holdings.

As soon as reasonably practicable after the end of each calendar year, the Trustee shall submit an annual statement to the Executive Director of the CPUC and to each member of the Committee, setting forth the following information:

- a. Disbursement of funds for the preceding year and the identity of those receiving the disbursements.
- b. Purchase, sale, redemption or exchange of Trust investments.
- c. Receipt of income on invested assets.
- d. Other disbursements.
- e. List of Trust assets showing market values, cost and estimated annual income of all holdings.

V. RESIGNATION OR REMOVAL OF TRUSTEE

The Trustee may resign at any time by giving thirty (30) days' prior written notice to the Executive Director of the CPUC; provided however, such resignation shall not become effective until the appointment of a successor trustee. The CPUC may remove the Trustee at any time upon the giving of thirty (30) days' prior written notice to the Trustee and the members of the Disbursements Committee. Upon the removal or resignation of the Trustee, the CPUC may appoint a successor trustee or trustees, which may be a corporation, one or more individuals, or a combination thereof. Any successor trustee shall have the same rights, powers and duties as its predecessor.

VI. AMENDMENT, REVOCATION AND TERMINATION

The Trust may be amended, extended, terminated or revoked at any time pursuant to order of the CPUC. Upon revocation or termination, the assets of the Trust shall be distributed by the Trustee in accordance with this Trust Agreement. Until final distribution of the Trust assets, the Trustee shall continue to have all the powers provided under this Trust Agreement as are necessary and expedient for the orderly liquidation and distribution of the assets of the Trust.

VII. MISCELLANEOUS

7.1 Indemnification. The Trust shall indemnify and hold harmless the members of the Committee and its officers, employees, agents, successors and assigns, against all liabilities, demands, claims, actions, losses, taxes, expenses (including reasonable attorneys' fees) arising out of acts or omissions with respect to this Trust, except in the case of willful misconduct, gross negligence, fraud or criminal acts.

7.2 No Liability. Pacific Bell, Pacific Telesis Group and Pacific Bell's affiliated companies and their respective officers, directors, agents, employees, successors, and assigns, shall have no liability to the CPUC, the Disbursements Committee, Trustee or any other person or entity for any act or omission arising out of or in any way connected to this Trust, the purposes of this Trust, the disbursements or disbursement decisions made by the Committee.

7.3 Reversion of Assets Prohibited. No portion of the assets in the Trust shall revert to Pacific Bell, Pacific Telesis Group, or any entity affiliated with either, or be diverted to purposes other than ratepayer education as set forth in CPUC Decision 87-12-067, CPUC Decision 94-08-030, or subsequent modifications thereof.

7.4 Termination of Trust. Unless earlier or later terminated or extended by the CPUC, this Trust shall terminate by ~~May 30, 1995~~ December 31, 1996.

7.5 Applicable Law; Severability. This Agreement shall be construed in accordance with the laws of the State of California. If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability shall not affect any other provision, and it shall be construed and enforced as if the invalid or unenforceable provision had not been included.

7.6 Notice. Wherever in this Agreement notice is provided or required to be given, such notice shall be transmitted by first class mail, Federal Express or FAX.

~~7.7 Resignation of Interim Trustees. The Interim Trustees shall resign and execute the statement, which is attached hereto, as Exhibit "B" and incorporated by reference herein, upon the approval of the Trust by the CPUC.~~

**CALIFORNIA PUBLIC
UTILITIES COMMISSION**

By: _____

Title: _____

Date Signed: _____

FIRST BANKERS TRUST OF CALIFORNIA, N.A.

By: _____

Title: _____

Date Signed: _____

ATTACHMENT "C"

DATE: February 16, 1995
 TO: Disbursements Committee
 FROM: Lynn Victor
 SUBJECT: Short Term TET Program Costs

Program costs for a short term extension of TET (June 1, 1995 to October 31, 1995) are:

		<u>Maximum</u>
RHA Costs:	May - July	\$16,190
	August - September	<u>\$10,000</u>
	Sub Total:	\$26,190
Other Costs:	Insurance	\$2,500
	Bank Fees	\$500
	Legal Costs	\$2,000
	Contingency	<u>\$810</u>
		\$32,000

Therefore, all costs for the extension period are estimated to be no more than \$32,000.

INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT dated this _____ day of _____, 1995 is by and between the California Public Utilities Commission (Commission), housed at the Public Utilities Commission, 605 Van Ness, San Francisco, California, and Richard Heath and Associates, Inc. (Contractor), to further the purposes of the Telecommunications Education Trust (Trust) created by the Commission in Decision (D.) 87-12-067, as modified by subsequent decisions.

WITNESSETH THAT:

Contractor understands that the Trust was created by the Commission in D.87-12-067 and subsequent decisions specifically for the purposes expressed therein. Contractor represents that it has read and understands the relevant portions of D.87-12-067 (including pp. 85-90 and Ordering Paragraph No. 6, pp. 326-329) and D.95-01-019. In performing its duties under this contract, Contractor agrees to communicate with the Commission through the Disbursements Committee established by D.87-12-067 and subsequent decisions in Ordering Paragraph No. 6. However, Contractor understands that the members of the Disbursements Committee are not trustees but are an advisory committee created by the Commission for the purpose of recommending disbursements of the Trust's funds to further the Commission's aims in establishing it. Contractor further understands that it can not expand its activities beyond those specified in the Commission's decisions and the Trust agreement without express approval and modification of D.87-12-067 and subsequent decisions and the Trust agreement by the Commission.

This Disbursements Committee established by the Commission has need for an organization to undertake a number of administrative tasks charged to it under Ordering Paragraph No. 6 of D.87-12-067 and subsequent decisions.

Contractor is a California corporation with offices in Fresno, Berkeley, Chico, and San Diego, California. Contractor is in the business of providing management, administration, and consulting services to businesses, nonprofit organizations, and governmental entities. Contractor employs its own staff for the purpose of providing these services to its clients.

Contractor represents that Contractor is able and willing to undertake the work.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the Commission and the Contractor agree as follows:

1. Service to Be Performed: Include management and administration of the activities of the Disbursements Committee described in the Ordering Paragraph No. 6 of D.87-12-067 and in any subsequent modification by the Commission of the Decision and/or the Trust agreement.

2. Term: For the period May 1, 1995 through October 31, 1995, renewable at the option of the Commission. This contract may be terminated by the Commission with 30 days notice to Contractor.

3. Price:

a) For the period of May 1st, 1995 through July 28th, 1995

Contractor shall be paid a fixed fee of \$13,190 in monthly installments of \$4,397 based on the following:

Management staff: \$56.68 per hour (\$37 hourly rate plus 21% Benefits and 26.6% overhead) for approximately 15 hours per week.

Clerical staff: \$18.38 per hour (\$12 hourly rate plus 21% Benefits and 26.6% overhead) for approximately 8 hours per week.

Telephone, FAX, Postage: \$75 per month.

Contractor shall summarize staff hours and travel expenses for this period and submit monthly invoices.

RHA costs for the period should not exceed \$16,190 as follows:

Management:	\$56.68 hr x 15 hrs week x 13 weeks	\$11,053
Clerical:	\$18.38 hr x 8 hrs week x 13 weeks	1,912
Phone, FAX etc.:	\$75 month x 3 months	225
Travel (maximum)		<u>3,000</u>
TOTAL		\$16,190

Travel and meeting costs will be billed at actual expense monthly and will not exceed \$3,000.

b) For the period of August 1, 1995 to October 31st, 1995, Contractor shall bill monthly based on the same rates (\$56.68 per hour for management staff and \$18.38 for clerical staff and \$75 per month for telephone, postage and FAX) up to a maximum of \$3,333 per month, including travel at actual expense.

c) Total costs for this contract shall not exceed \$26,190 as summarized below

May - July, 1995	\$16,190
Aug. - October, 1995	<u>\$10,000</u>
TOTAL	\$26,190

4. Independent Contractor. It is agreed and understood that Contractor shall perform services under this agreement as an independent contractor and not as an employee of the Trust.

A. The Trust does not grant Contractor any authority or right, expressed or implied, to assume or create any obligation or responsibility on behalf of the Trust or to bind the Trust in any manner. Contractor will not represent the contrary, either expressly or implicitly, to anyone.

B. Contractor shall be solely liable for any personal injury, either to staff or to others, or for any property damage which may result from the performance of services hereunder. Contractor shall be solely liable for costs of its own legal representation in any litigation or mediation arising under this paragraph.

C. Contractor will assume complete responsibility for the filing of all appropriate Federal or State tax returns indicating that all income Contractor receives as a result of this agreement is income earned as an independent contractor and not as an agent or employee of the Trust or the Commission.

Since Contractor is a corporation, it will not be required to pay federal self-employment taxes upon amounts received by it under this contract. However, Contractor recognizes and understands that it will be required to file a corporate tax return and to pay tax upon its corporate taxable income in accordance with all of the provisions of applicable state and federal law. In addition, Contractor recognizes and understands that it is required to withhold taxes from wages paid to its employees in accordance

withhold taxes from wages paid to its employees in accordance with the provisions of state and federal law. Contractor hereby promises and agrees to indemnify the Commission for any damages or expenses incurred by the Commission as a result of Contractor's failure to make such required payments. Contractor further recognizes and understands that it is required to provide adequate workers' compensation insurance for its employees or to adequately self-insure against such risks in accordance with California law and that it will comply with such law. Contractor further recognizes and understands that it is required by California law to make contributions to the State of California pursuant to the California Unemployment Insurance Code and will comply with said laws.

Contractor agrees to provide the Commission, on a monthly basis, with proof that it has withheld all required amounts from the compensation paid to its employees and paid said amounts along with others required additional amounts, to the state and federal authorities. Contractor will further provide the Commission on a monthly basis with proof that it has in force an adequate workers' compensation policy or is properly self-insured.

- D. Because the Contractor is not an agent or employee of the Trust, the Trust will not withhold monies from Contractor's job price payments for Federal or State income tax purposes or for any other reason other than non-performance, nor will the Trust make any payment or contribution in Contractor's name or on Contractor's behalf for purposes of Social Security, Unemployment Compensation, Worker's Compensation, or for any other similar purpose.
- E. Contractor understands that the Trust provides no benefits, plans, programs, or fringe benefits of any kind to any employee working on this contract.
- F. Contractor shall determine the manner and methods to be used in carrying out its duties under this contract. Contractor shall make this determination in its sole judgement and discretion, but subject to the aims, policies, and procedures set forth in the relevant portions of D.87-12-067 and subsequent decisions. The Commission and the Trust retain no other right to direct or control the manner or method of Contractor's performance except as specified herein, but Contractor is obliged to produce the results, information, and materials called for by this contract in the time

contemplated by this contract and in a form suited to the needs of the Disbursements Committee in fulfilling its duties under Ordering Paragraph No. 6 of D.87-12-067 and subsequent decisions.

- G. The Commission shall retain all property rights, title, and interest in any research, written products, computer analysis or other information or documentation, produced or developed by the Contractor. Contractor agrees to provide documented justification to the Commission, on request, for any and all costs of materials, services, and equipment under this paragraph. Contractor further agrees to indemnify the Commission, and hold them harmless from any liability in any action for waste, to the extent that such action or liability is founded upon the costs of materials, services and equipment under this paragraph.
- H. In the course of performing the contracted services, the Contractor may have access to confidential information of the Trust. Therefore, the Contractor agrees not to use or disclose to third parties any information which the Disbursements Committee designates as confidential.
- I. At any time, either the Commission or the Contractor may, with thirty (30) days' notice to the other party, cancel this agreement.
- J. Contractor will use its own equipment to perform the contracted services; provided, however, that major equipment purchased under this contract (including, but not limited to computers and office furniture) shall be and remain the property of the Commission and shall be returned to the Commission at its direction at the end of the contract period. Expendable or consumable items valued at less than \$500 and purchased under this contract shall not be considered major equipment within the meaning of this paragraph.

5. Assurances:

- A. Allocation of staff time: Section 3a & b of this contract specifies contractor projection of individual time allocated to this project by task.
- B. Changes in Contractor's Personnel: Contractor is the employer of its own staff and has complete discretion over the assignment of its staff to particular projects. Contractor and Commission agree, however, that before Contractor makes any changes in the

Contractor shall first consult with the Disbursements Committee.

C. Meetings of the Disbursements Committee: Contractor understands that the Disbursements Committee may meet more than six (6) times during the year and will staff additional meetings as needed.

D. Development of Policy and Guidelines: Contractor will provide assistance to the Disbursements Committee in the formation of policy and guidelines.

E. Contractor will coordinate and monitor the trustee, legal, accounting and investment subcontractors of the Trust.

6. Incorporated herein by reference is the Disbursements Committee Request for Proposal dated April, 1991.

7. Construction of Agreement: This agreement (including any attachments), which is to be performed and construed under California law, supersedes any and all prior agreements and contains the entire agreement of the parties.

California Public Utilities Commission

By _____

Its _____

Accepted By:

Richard Heath and Associates, Inc.

ATTACHMENT "D"

RICHARD
HEATH AND
ASSOCIATES, INC.

917 W. GRAPE STREET, SAN DIEGO, CA 92101 619 233-5090 FAX 619 233-8687

DATE: February 13, 1995
FROM: Richard Heath
Richard Heath and Associates
TO: Disbursements Committee

RE: Program Costs for 1995 - 1996

Listed below are the projected maximum costs for another year of TET, calculated for sixteen months (September 1, 1995 to December 31st 1996).

1. RICHARD HEATH & ASSOCIATES' (RHA'S) COSTS TO ADMINISTER TET:

GRANT CYCLE: Proposal review, follow-up and recommendations.

R. Breeze-Martin	192 hours
Richard Heath	144 hours
L. Victor	0 hour (See Administration)
TOTAL	336 hours

ADMINISTRATION: Management, monitoring, technical assistance and reporting.

Richard Heath (5% x 16 months)	139 hours
Breeze-Martin/Meister (30%)	835 hours
L. Victor (100%)	<u>2,784 hours</u>
TOTAL	3,758 hours

CLERICAL:
50% X 16 months 1,392 hours

SUMMARY AND COSTS:

Grant Cycle:	336 hrs x \$37 hr	\$12,432
Administration:	3,758 hrs x \$37 hr	139,046
Clerical:	1,392 hrs x \$12 hr	16,704
Employee benefits: (21%)		<u>35,318</u>
		203,500
Operating Overhead (26.6%)		54,131
TOTAL RHA Costs		\$257,831

NOTE: Additional months would add \$14,912 per month to these costs. Likewise, a delay in start-up would reduce RHA's costs by the same amount. Therefore, if a new program year started on August 1, 1995, RHA's costs would be \$272,543.

Disbursement Committee
 1995-1996 Costs
 Page 2

2. OTHER ADMINISTRATIVE COSTS:

TRAVEL: Monitoring, meetings, etc. \$1,094 month x 16 months	\$17,500
PRINTING: Stationary, Annual Report, etc.	\$25,000
MEETINGS: DC Meetings, Conference	\$4,000
TETNet: \$160 month x 16 months	\$2,400
INSURANCE	\$15,000
BANK FEES	\$15,000
LEGAL	\$8,000
AUDIT	\$7,000
CONTINGENCY FOR PRINTING, ETC.	\$15,000
TOTAL OTHER COSTS	\$108,900

NOTE: Additional months, over and above 16 months would add \$6,806.00 per month to these costs. Likewise, a delay in start-up would reduce costs by the same amount per month. If the program started up on August 1, 1995, total program costs would be \$115,706.

In summary, total costs for another year of TET are dependant upon start-up date and are:

	<u>RHA</u>	<u>Other</u>	<u>Total</u>
<u>Sixteen Month Program</u> Sept. 95 - Dec. 96	\$257,631	\$108,900	\$366,531
<u>Seventeen Month Program</u> Aug. 95 - Dec. 96	\$272,543	\$115,706	\$388,249

Therefore, total costs would not exceed \$388,249 for the period of August 1, 1995 to December 31, 1996.

INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT dated this _____ day of _____, 1995 is by and between the California Public Utilities Commission (Commission), housed at the Public Utilities Commission, 505 Van Ness, San Francisco, California, and Richard Heath and Associates, Inc. (Contractor), to further the purposes of the Telecommunications Education Trust (Trust) created by the Commission in Decision (D.) 87-12-067, as modified by subsequent decisions including D.95-01-019.

WITNESSETH THAT:

Contractor understands that the Trust was created by the Commission in D.87-12-067 and subsequent decisions specifically for the purposes expressed therein. Contractor represents that it has read and understands the relevant portions of D.87-12-067 (including pp. 85-90 and Ordering Paragraph No. 6, pp. 326-329) and D.95-01-019. In performing its duties under this contract, Contractor agrees to communicate with the Commission through the Disbursements Committee established by D.87-12-067 and subsequent decisions in Ordering Paragraph No. 6 and D.94-08-30 and D.95-01-019. However, Contractor understands that the members of the Disbursements Committee are not trustees but are an advisory committee created by the Commission for the purpose of recommending disbursements of the Trust's funds to further the Commission's aims in establishing it. Contractor further understands that it can not expand its activities beyond those specified in the Commission's decisions and the Trust agreement without express approval and modification of D.87-12-067 and subsequent decisions and D.95-01-019 and the Trust agreement by the Commission.

This Disbursements Committee established by the Commission has need for an organization to undertake a number of administrative tasks charged to it under Ordering Paragraph No. 6 of D.87-12-067 and subsequent decisions.

Contractor is a California corporation with offices in Fresno, Berkeley, Chico, and San Diego, California. Contractor is in the business of providing management, administration, and consulting services to businesses, nonprofit organizations, and governmental entities. Contractor employs its own staff for the purpose of providing these services to its clients.

Contractor represents that Contractor is able and willing to undertake the work

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the Commission and the Contractor agree as follows:

1. Service to Be Performed: Include management and administration of the activities of the Disbursements Committee described in the Ordering Paragraph No. 6 of D.87-12-067 and in any subsequent modification by the Commission of the Decision and/or the Trust agreement.

More specifically, Contractor will perform the management and administrative activities described in Contractor's "Application to Serve as Administrator of the Telecommunications Education Trust" and Addendum.

2. Term: For the period August 1, 1995 through December 31, 1996 renewable at the option of the Commission.

3. Price:

- A. For the seventeen month period of August 1, 1995 through December 31, 1996. Contractor shall be paid at the following rates, consistent with page one of the Contractor's memorandum to the Disbursements Committee (See Attachment 1)

Management staff: \$56.68 per hour (\$37 hourly rate plus 21% Benefits and 26.6% overheads).

Clerical staff: \$18.38 per hour (\$12 hourly rate plus same benefits and overheads).

- B. For the period of August 1, 1995 through December 31, 1996, Contractor shall be paid a fixed fee not to exceed \$272,543 in seventeen monthly installments of \$16,032.

- C. In the event that this contract does not take effect until September 1, 1996, Contractor shall be paid a fixed fee not to exceed \$257,631 in sixteen monthly installments of \$16,102.

- D. These fees (B & C) include all personnel, general overheads, and telephone expense. Travel shall be billed monthly at actual cost at state approved rates.

Off-site printing will be billed at actual expense. Monthly meeting costs will be billed at actual expense monthly.

The amount billed to the Commission for travel, off-site printing, and meetings will not exceed \$46,500.

4. Independent Contractor. It is agreed and understood that Contractor shall perform services under this agreement as an independent contractor and not as an employee of the Trust.

- A. The Trust does not grant Contractor any authority or right, expressed or implied, to assume or create any obligation or responsibility on behalf of the Trust or to bind the Trust in any manner. Contractor will not represent the contrary, either expressly or implicitly, to anyone.
- B. Contractor shall be solely liable for any personal injury, either to staff or to others, or for any property damage which may result from the performance of services hereunder. Contractor shall be solely liable for costs of its own legal representation in any litigation or mediation arising under this paragraph.
- C. Contractor will assume complete responsibility for the filing of all appropriate Federal or State tax returns indicating that all income Contractor receives as a result of this agreement is income earned as an independent contractor and not as an agent or employee of the Trust or the Commission.

Since Contractor is a corporation, it will not be required to pay federal self-employment taxes upon amounts received by it under this contract. However, Contractor recognizes and understands that it will be required to file a corporate tax return and to pay tax upon its corporate taxable income in accordance with all of the provisions of applicable state and federal law. In addition, Contractor recognizes and understands that it is required to withhold taxes from wages paid to its employees in accordance with the provisions of state and federal law. Contractor hereby promises and agrees to indemnify the Commission for any damages or expenses incurred by the Commission as a result of Contractor's failure to make such required payments. Contractor further recognizes and understands that it is required to provide adequate workers' compensation insurance for its employees or to adequately self-insure against such risks in accordance with California law and that it will comply with such law. Contractor

further recognizes and understands that it is required by California law to make contributions to the State of California pursuant to the California Unemployment Insurance Code and will comply with said laws.

Contractor agrees to provide the Commission, on a monthly basis, with proof that it has withheld all required amounts from the compensation paid to its employees and paid said amounts along with others required additional amounts, to the state and federal authorities. Contractor will further provide the Commission on a monthly basis with proof that it has in force an adequate workers' compensation policy or is properly self-insured.

- D. Because the Contractor is not an agent or employee of the Trust, the Trust will not withhold monies from Contractor's job price payments for Federal or State income tax purposes or for any other reason other than non-performance, nor will the Trust make any payment or contribution in Contractor's name or on Contractor's behalf for purposes of Social Security, Unemployment Compensation, Worker's Compensation, or for any other similar purpose.
- E. Contractor understands that the Trust provides no benefits, plans, programs, or fringe benefits of any kind to any employee working on this contract.
- F. Contractor shall determine the manner and methods to be used in carrying out its duties under this contract. Contractor shall make this determination in its sole judgement and discretion, but subject to the aims, policies, and procedures set forth in the relevant portions of D.87-12-067 and subsequent decisions. The Commission and the Trust retain no other right to direct or control the manner or method of Contractor's performance except as specified herein, but Contractor is obliged to produce the results, information, and materials called for by this contract in the time contemplated by this contract and in a form suited to the needs of the Disbursements Committee in fulfilling its duties under Ordering Paragraph No. 6 of D.87-12-067 and D.95-01-019 and subsequent decisions.
- G. The Commission shall retain all property rights, title, and interest in any research, written products, computer analysis or other information or documentation, produced or developed by the Contractor. Contractor agrees to provide documented justification

to the Commission, on request, for any and all costs of materials, services, and equipment under this paragraph. Contractor further agrees to indemnify the Commission, and hold them harmless from any liability in any action for waste, to the extent that such action or liability is founded upon the costs of materials, services and equipment under this paragraph.

- H. In the course of performing the contracted services, the Contractor may have access to confidential information of the Trust. Therefore, the Contractor agrees not to use or disclose to third parties any information which the Disbursements Committee designates as confidential.
- I. At any time, either the Commission or the Contractor may, with ninety (90) days' notice to the other party, cancel this agreement.
- J. Contractor will use its own equipment to perform the contracted services; provided, however, that major equipment purchased under this contract (including, but not limited to computers and office furniture) shall be and remain the property of the Commission and shall be returned to the Commission at its direction at the end of the contract period. Expendable or consumable items valued at less than \$500 and purchased under this contract shall not be considered major equipment within the meaning of this paragraph.

5. Assurances:

- A. Allocation of staff time: Attachment 1 of this contract specifies contractor projection of individual time allocated to this project by task.
- B. Changes in Contractor's Personnel: Contractor is the employer of its own staff and has complete discretion over the assignment of its staff to particular projects. Contractor and Commission agree, however, that before Contractor makes any changes in the management staff assigned to the performance of this contract, Contractor shall first consult with the Disbursements Committee.
- C. Meetings of the Disbursements Committee: Contractor understands that the Disbursements Committee may meet more than six (6) times during the year and will staff additional meetings as needed.

- D. Development of Policy and Guidelines: Contractor will provide assistance to the Disbursements Committee in the formation of policy and guidelines.
 - E. Contractor will coordinate and monitor the trustee, legal, accounting and investment subcontractors of the Trust.
6. Incorporated herein by reference is the Disbursements Committee Request for Proposal dated April, 1991.
 7. Construction of Agreement: This agreement (including any attachments), which is to be performed and construed under California law, supersedes any and all prior agreements and contains the entire agreement of the parties.

California Public Utilities Commission

By _____

Its _____

Accepted By:

Richard Heath and Associates, Inc.

Attachment 1: Contractor's memo dated February 13, 1995.