

Linda M. Hodge



First Selectman

**Board of Selectmen Special Meeting Minutes
Monday, February 9, 2009
Colchester Town Hall
Suite 201 at 11:00 a.m.**

RECEIVED
COLCHESTER, CT
2009 FEB - 9 PM 4: 27
Nancy A. Bray
NANCY A. BRAY
TOWN CLERK

MEMBERS PRESENT: Rosemary Coyle, John Malsbenden, Stan Soby (via phone conference), and Greg Cordova (via phone conference)

MEMBERS ABSENT: First Selectman Linda Hodge

OTHERS PRESENT: Mike Caplet and Marc Tate

1. **Call to Order:** Acting First Selectman R. Coyle called the meeting to order at 11:00 a.m.
2. **Citizen's Comments:** None
3. **Discussion and Possible Action on Approval of Point-To-Point Access.com Internet Services Agreement:** Marc Tate presented on the Point-To-Point Access.com internet services agreement. J. Malsbenden moved to approve the Point-To-Point Access.com internet services agreement as presented, and to authorize the First Selectman to sign all necessary documents, seconded by S. Soby. Following discussion, all members present voted in favor. MOTION CARRIED.
4. **Adjourn:** J. Malsbenden moved to adjourn at 11:10 a.m., seconded by S. Soby. Unanimously approved. MOTION CARRIED.

Attachments

1. Memorandum dated February 6, 2009, from Marc Tate to the Board of Selectmen regarding "T1 Contract"
2. Point-To-Point Access.com High Speed Frame Relay Proposal for Town of Colchester

Respectfully submitted,

Michael J. Caplet
Executive Assistant to the First Selectman

Memo

To: Board of Selectmen
From: Marc Tate – IT Coordinator
Date: 2/6/2009
Re: T1 Contract

I would like to propose changing the vendor for the Town Hall internet service provider from our current provider AT&T to the company Point to Point Access. In my experience Point to Point Access has provided exceptional support and service to the towns of Stonington and North Stonington.

Currently the Town of Colchester has a contract that expires with AT&T on 2/9/2009. In speaking with the AT&T sales representative I was told that our monthly price is going to increase from \$550 to \$580 per month. The price increase coupled with the lack of support from AT&T and the outside vendor who maintains the communication equipment lead me to conclude that these vendors are not providing a cost effective solution for the town. Also the lack of support has had a negative effect on the productivity of my department and has caused technical issues in the past.

The quotes received cover equipment, communications and hosting DNS (DNS is needed for information hosted on the internet.) Support is more costly with Point To Point Access but the quick response time and no minimum call time will avoid the town from getting billed for a full hour when the request only take 10 minutes.

Vender	AT&T	Point To Point Access	Verizon
Monthly Cost (for new 3 year contract)	\$580.00	\$500.00	\$757.70
Support Cost Per Hour	\$150.00	\$165.00	\$150.00
Equipment Cost	\$0.00	\$0.00	\$460.00

POINT-TO-POINT ACCESS.COM

HIGH SPEED FRAME RELAY

PROPOSAL FOR

TOWN OF COLCHESTER

Internet access service has three components. The Frame Relay charges which are set by the telephone company, the Internet Access charges for the services provided by Point-to-Point, and the cost of the equipment which connects the Frame Relay to a port on your Local Area Network (LAN). If additional bandwidth is needed, we can increase it effortlessly. The concurrent user figures are estimates.

TOTAL SOLUTION

*****All charges are monthly*****

<u>Port Speed</u> <u>(Kbps)</u>	<u>3 Years</u>	<u>Start-Up</u> <u>One Time</u>
T-1 circuit/access CIR of 1.5mg	\$ 500.00/mo	\$ 300.00/WAIVED

ADTRAN ROUTER – NETVANTA 3200 - @ NO COST FOR LENGTH OF CONTRACT

\$165.00 PER HOUR TO PROGRAM THE FIREWALL IN THE ADTRAN ROUTER.

PRICING VALID FOR 45 DAYS

(1/13/09)

(FCC, USF AND TELCO INSIDE WIRING CHARGES NOT INCLUDED)

POINT TO POINT ACCESS.COM, INC.

Internet Services Agreement

Point to Point Access.Com, Inc. (the "Provider" or "we" or "us") agrees to provide to:

Company Name: TOWN OF COLCHESTER
 Contact MARC TATE
 Address: 127 NORWICH AVENUE
 City: COLCHESTER State: CT Zip Code 06415
 Telephone: 860 537 7200 Fax: _____
 E-mail Address: _____

(the "Subscriber" or "you") the following services (the "Services") and equipment (the "Equipment"), as applicable, at the prices (the "Fee") indicated below (exclusive of taxes) for a period of (3) years (the "Term"): *(please check all appropriate boxes)*

<input type="checkbox"/> Set-up Fees	WAIVED		
TOTAL ONE-TIME CHARGES			\$WAIVED
<input type="checkbox"/> Bandwidth Bundled	\$ 500.00/mo	KBPS: T-1	\$ 500.00
<input type="checkbox"/> Bandwidth UnBundled	\$ /mo	KBPS:	
<input type="checkbox"/> Monitoring	\$ /mo		
<input type="checkbox"/> E-Mail Boxes	\$ /mo		
<input type="checkbox"/> Web Hosting	\$ / mo		
<input type="checkbox"/> Adtran Router		Netvanta 3200 @ no cost for length of contract	X
<input type="checkbox"/> Firewall programming		\$ 165.00 per hour to program firewall in the Adtran Router	X
<input type="checkbox"/> FCC, USF AND TELCO INSIDE WIRING CHARGES NOT INCLUDED			
TOTAL RECURRING MONTHLY FEE PLUS SALES TAX			\$ 500.00

PLEASE READ THIS ENTIRE AGREEMENT CAREFULLY BEFORE YOU ACCESS THE SERVICES. BY SUBMITTING THIS AGREEMENT AND SIGNING BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND EACH OF THE TERMS AND CONDITIONS STATED IN THIS AGREEMENT AND AGREE TO BE BOUND BY THEM. IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS AND CONDITIONS, YOU MAY NOT ACCESS OR USE THE SERVICES.

Term: This Agreement shall commence on the date of execution of this Agreement by you and shall initially extend for the Term (as set forth above). Thereafter, the term of this Agreement shall be automatically renewed with the same Term and at the rates then currently in effect, unless written notice is provided thirty (30) days prior to Term end. In the event of termination by you without cause prior to the expiration of the applicable Term, an early termination charge of 50% of the Total Recurring Monthly Fee multiplied by the number of months remaining under the Term shall apply.

Acceptance:

TOWN OF COLCHESTER Date: _____
 Subscriber Name (Printed)

 Provider, Authorized Signature Date

By: _____
 Authorized Signature
 Print Name and Title: _____

 Provider, Authorized Agent (Printed)

1. **Payment Terms:** Payment for all non-recurring fees due under this Agreement (including any early termination charge) shall be due in full within ten (10) days of the date on our invoice for such non-recurring fees. Payment for monthly fees due under this Agreement are due in full within ten (10) days of the date on the respective monthly invoices. In addition, you will pay all applicable taxes associated with the Services and Equipment, including but not limited to taxes on sales, use, and property, unless you provide us with a tax exemption certificate. Delinquent payments on any undisputed balance are subject to a late payment charge of the lower of one and one half percent (1.5%) per month or portion thereof, or the maximum amount allowed by law. If you dispute any of the charges on the invoice, you must notify us immediately but in no event more than thirty (30) days of the date on our invoice. We may terminate any or all Services, without additional notice, if payment is not received when due.
2. **Acceptable Use Policy Statement:** As an ongoing condition of our providing you with the Services, you agree to use the Services for lawful purposes only and to abide by the Point to Point Access.Com, Inc. Acceptable Use Policy (the "Policy") attached to this Agreement, which Policy may be modified at our sole and absolute discretion, for any reason, from time to time. Any such modification and the Policy in effect from time to time may be found on the Point to Point Access.Com, Inc. web site located at <pointtopointaccess.com> and any modifications set forth on such web site are incorporated by reference herein. It is a breach of the Agreement to use the Services in any manner that violates this provision or the Policy. WE RESERVE THE RIGHT TO SUSPEND OR CANCEL SERVICE TO YOU (IN WHOLE OR IN PART) OR TO TAKE OTHER APPROPRIATE ACTION AT OUR SOLE DISCRETION, WITHOUT NOTICE, FOR VIOLATIONS OR SUSPECTED VIOLATIONS OF THIS AGREEMENT OR THE POLICY. REFUNDS OR CREDITS WILL NOT BE ISSUED IN CONNECTION WITH ANY SUCH SUSPENSION OR CANCELLATION (EVEN IF NO VIOLATION IS ULTIMATELY FOUND).
3. **Monitoring of System; Privacy:** In connection with the provision of Services by us to you hereunder you may request that we monitor the Internet activity and usage patterns of your employees and other authorized users of your computer systems. You hereby acknowledge and agree that you are solely responsible for ensuring compliance with all applicable laws, regulations and policies in connection with such activity and for notifying and informing your employees and other users of your computer systems that (a) you reserve the right, either through you or any third party (e.g., Point to Point Access.Com), to monitor the computer systems, including without limitation E-Mail applications and Internet access, and to review, monitor, analyze, record, use and disclose the Internet activity and usage patterns (such as each World Wide Web site visit and each file transfer into and out of your internal network) of such employees and other users; and (b) such employees and other users do not have a personal privacy right in the use, transmittal, receipt or storage of information in the computer systems, including E-Mail applications and Internet access.
4. **Equipment:** We agree to install the Equipment as soon as reasonably practicable after the execution of this Agreement by you, provided that you cooperate in good faith in connection with such installation including, but not limited to, obtaining any right, license, permit, easement or right-of-way necessary and reasonable to install the Equipment and any associated wiring or equipment. You shall not repair or tamper with the Equipment or remove the Equipment from the premises where it is installed, or permit any third party from doing any of the foregoing without our prior written consent. You will be responsible for and will pay to repair or replace the Equipment resulting from any loss, theft or damage (excluding normal wear and tear) while in your possession or installed at your premises. Unless otherwise agreed to in writing, title and ownership of the Equipment shall at all times reside with Provider.
5. **No Warranty:** THE SERVICES AND EQUIPMENT ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS, WITHOUT WARRANTIES OF ANY KIND. FURTHER, WE HEREBY DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING AND USAGE OF TRADE. NO ADVICE OR INFORMATION GIVEN BY US OR ANY OF OUR EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL CREATE A WARRANTY OF ANY KIND. WE DO NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ANY INFORMATION OR MATERIAL ACCESSIBLE ON THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL CONTENTS OR COMPONENTS. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT USE OF THE SERVICES AND EQUIPMENT ARE AT SUBSCRIBER'S SOLE RISK.

6. **Limitation of Liability:** OUR LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED PER CLAIM (OR IN THE AGGREGATE DURING ANY TWELVE (12) MONTH PERIOD) AN AMOUNT EQUAL TO THE TOTAL PAYMENTS MADE BY SUBSCRIBER FOR THE SERVICE UNDER THIS AGREEMENT DURING THE THREE (3) MONTHS PRECEDING THE MONTH IN WHICH THE DAMAGE OCCURRED OR, IF APPLICABLE, TO THE PERFORMANCE STANDARD REMEDIES SET FORTH IN OUR ATTACHED SYSTEM PERFORMANCE STANDARDS. THIS PROVISION SHALL NOT LIMIT SUBSCRIBER'S RESPONSIBILITY FOR THE PAYMENT OF ALL PROPERLY DUE CHARGES UNDER THIS AGREEMENT. UNDER NO CIRCUMSTANCES SHALL WE BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL PUNITIVE OR CONSEQUENTIAL DAMAGES THAT RESULT IN ANY WAY FROM SUBSCRIBER'S USE OF OR INABILITY TO USE THE SERVICES OR EQUIPMENT OR TO ACCESS THE INTERNET OR E-MAIL SERVICES OR ANY PART THEREOF, OR SUBSCRIBER'S RELIANCE ON OR USE OF INFORMATION, SERVICES, OR MERCHANDISE PROVIDED ON OR THROUGH THE SERVICES OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATIONS OR TRANSMISSION, ANY FAILURE OF PERFORMANCE, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT, DESTRUCTION, OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF SUBSCRIBER'S ACCOUNT, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, COST OF SUBSTITUTE EQUIPMENT OR SERVICES, OR LOSS OF PROFITS OR GOODWILL, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION APPLIES TO ANY AND ALL CLAIMS MADE IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR BY ANY OTHER FORM OF ACTION.
7. **Indemnification:** You agree to indemnify, defend, and hold harmless Point to Point Access.Com, Inc. and its officers, directors, stockholders, employees, agents, and representatives from and against any claim, liability, penalty, judgment, damage, action, loss or expense, including, without limitation, reasonable attorneys fees and costs of litigation, arising out of or in connection with any actual or threatened claim, suit, action or proceeding arising out of the (a) breach or alleged breach of any of your obligations under this Agreement or the Policy (b) any use or misuse of the Services by you, whether or not authorized; and (c) the performance by Point to Point Access.Com, Inc. of its obligations under Section 3 including, but not limited to, the monitoring of the Internet activity and usage patterns of your employees and other users of our computer systems and such other activity engaged in by us and/or you in connection therewith.
8. **Cost of Collection:** Without limiting the generality of the above, you agree to reimburse us for reasonable attorney's fees and any other reasonable costs associated with collecting delinquent payments.
9. **Repossession:** You agree that upon its failure to pay any sum hereunder or within forty-five (45) thereof, Point to Point Access.Com, Inc. shall have the complete right to enter your premises at any reasonable time for purposes of repossessing the Equipment. Customer agrees to cooperate fully with Point to Point Access.Com, Inc. in such repossession. Point to Point Access.Com, Inc. shall use reasonable care in removing the Equipment but shall not be liable to restore your premises after the Equipment is so removed. Other than the obligation to use due care in removing the Equipment, Point to Point Access.Com, Inc. shall have no liability to, and Customer shall have no recourse against Point to Point Access.Com, Inc. whatsoever for, any damages resulting from such repossession, whether actual, special or consequential, including without limitation, any damages for lost business.
10. **Commercial Transaction:** YOU ACKNOWLEDGE THAT THE TRANSACTION OF WHICH THIS AGREEMENT IS A PART IS A COMMERCIAL TRANSACTION, AND HEREBY WAIVES YOUR RIGHT TO NOTICE AND HEARING UNDER CHAPTER 903a OF THE CONNECTICUT GENERALS STATUTES, OR AS OTHERWISE ALLOWED BY ANY STATE OR FEDERAL LAW, WITH RESPECT TO ANY PREJUDGEMENT REMEDY WHICH POINT TO POINT ACCESS.COM, INC., ITS SUCCESSORS OR ASSIGNS MAY DESIRE TO USE.
11. **Jury Waiver:** You hereby waive trial by jury in any court in any suit, action or proceeding on any matter arising in connection with or in any way related to the transactions of which this agreement is a part and/or the enforcement of any of rights and remedies. You acknowledge that you make this waiver, and all other waivers set forth in this agreement knowingly, willingly and voluntarily and only after extensive review of these waivers with your attorney.

12. **Force Majeure:** We shall not be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of service resulting directly or indirectly from any act of God, civil or military authority, acts of public enemy, acts of government, war, riots, civil disturbances, insurrections, accidents, fire, explosions, floods, earthquakes, lightening, the elements, natural disaster, pest damage, strikes, labor disputes, shortages of materials or supplies, magnetic interference, power surges or failures, interruptions of electrical power or other utility service, fuel or energy shortages, failure of transportation or communication, unavailability of any telecommunications service or connection to any telecommunications service, third party nonperformance (including, without limitation, the failure of performance of common carriers, interexchange carriers, local exchange carriers, suppliers, and subcontractors), unauthorized use of the equipment or services, or any other cause beyond our reasonable control whether or not similar to the foregoing.
13. **General:** The Subscriber, having carefully read all provisions of this Agreement, acknowledges receipt of a copy of this Agreement and the exhibits made a part hereof which are the final expression of the agreement of the parties with respect to the subject matter hereof, and supercede any prior agreement or discussion between them. If any provision of this Agreement is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable, and this Agreement shall remain in full force and effect subject to such reformation. No modification or amendment of this Agreement will be binding on Provider unless in writing and signed by its authorized representative. This Agreement and all the rights of the parties hereunder shall be governed in all respects by the laws of the State of Connecticut, except for its conflict of law provisions. Subscriber agrees that the Superior Court for the Judicial District of Hartford or the United States District Court for the District of Connecticut shall have jurisdiction to hear and determine any claims or disputes pertaining to any matter arising or in any way related to this Agreement and expressly submits and consents in advance to such jurisdiction in any such action or proceeding.