Achieve

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June 21, 2005

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

"Request for Review"
CC Docket No. 02-6

VIA FEDERAL EXPRESS

Please accept this letter as a Request for Review for the SLD's decision to deny an appeal for District of Columbia Public Schools for Year 2004 funding request. I have enclosed for information a copy of the denial letter dated May 27, 2005.

Applicant Name:	District of Columbia Public Schools
Billed Entity Number:	126340
Form 471 App. Number:	393708
Funding Request Number:	1201520

As the Service Provider, Achieve Telecom Network of MA, LLC SPIN 143026761, we submitted a Letter Appeal dated March 10, 2005 requesting full disclosure regarding the PIA reviewer's, (Mr. John S. Christie) request from Mr. Garnet Person, E-Rate Consultant for DCPS and the claim by Mr. Christie that Mr. Person did not reply to his request. Mr. Person, who worked for more than 3 years for the SLD in the PIA program, adamantly denies that he failed to supply Mr. Christie with the information he requested.

Mr. Person has supplied me with copies of email correspondence as well as documents he supplied Mr. Christie at his request which I have attached for your information. These documents make clear that Mr. Person did comply fully with Mr. Christie's request for information and include an email from Mr. Christie to Mr. Person acknowledging receipt of the information. You will also find a copy of an email to Mr. Vic Gatto who is the Chairman of Achieve Telecom Network of MA, LLC from Mr. Person explaining what he believes was a lack of communication or perhaps misunderstanding between him and Mr. Christie. Please see Attachment 1 for a point by point review of the SLD decision with reference to the specific documents of the case and subsequent attachments that detail the case.

I ask the FCC to overturn the SLD's decision to deny the District of Columbia Public Schools request for funding of Form 471 Application Number 393708; FRN 1201520 for Funding Year

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Attachment 1 Specific Response to SLD Denial of Appeal – Dated May 27, 2005

SLD Explanation:

- Achieve Telecom Network requests full disclosure of documentation of PIA review.

Such documentation is not detailed, particularly as it relates to the specific documentation provided by Mr. Person discussed below.

- SLD contends, "PIA could not determine the discount percentages and eligibility of the entities, McKinley Technical High School, Kelly Miller Middle School, Paul Robeson School, Jackie Robinson Center, Rose School and Hearst School.

Paragraphs 1, 2 and 3 of Mr. Person's letter to and acknowledged receipt of by Mr. Christie (Letter and email receipt acknowledgement attached) specifically address the issues of the discount percentages ("the shared discount of the district in accordance with Schools and Libraries Division guidelines" – Paragraph 2) and eligibility of the entities (website citation – Paragraph 1 and all of Paragraph 3, including a school district representative to be called if needed for clarification – he was never called).

Conclusion – SLD received in a timely manner, acknowledged by PIA, specific information to determine the discount percentages and eligibility of the referenced entities.

Please note the referenced entities are 6 out of the requested 150 entities!

- SLD contends, "PIA could not determine the eligibility of the services/products since the make and model numbers of the routers and server and answers to questions regarding the eligibility of on-premise equipment included in Priority One Service were not submitted by Mr. Person.

Paragraph 5 of Mr. Person's letter to and acknowledged receipt of by Mr. Christie (letter and email receipt acknowledgement attached with referenced documents) specifically addresses the issues of routers and servers and the eligibility of the on-premise equipment included in the Priority One Service ("The file has Appendix A, which describes the services to be rendered and an Appendix B, which outlines the cost of the services. The 'Achieve DiagramCentSatDel01-04' file provides the diagram for the proposed services" – the PIA must not have read these documents).

Conclusion – SLD received in a timely manner, acknowledged by PIA, specific information to determine the eligibility of the on-premise equipment included in the requested Priority One Service.

Please note the same submission was made, received and accepted by PIA in the granting of the requests for the same service for two other school districts!

- SLD contends, "requested information was not provided within 7 days or within any extended timeframe we agreed upon."

2004. In addition, please extend the deadline for the delivery of services under this funding request to allow for the anticipated 12 months of service.

Apart from the "he said – he said" issues that are clearly in dispute in this case, please recognize in the FCC's role as overseer of this program the following two overriding issues:

1. The applicant, DCPS, clearly attempted to provide the requested information through their consultant and the PIA did have the requested information in time to review the eligibility of the requested services;
2. The requested services, distance learning transmission circuits, are new to the program and were approved for the two other school districts who requested them in 2004. These distance learning services are of particular importance to an urban school district, like DCPS, as they attempt to institute academic standards to improve student performance across the large district with a new, progressive Superintendent who is committed to taking the worst performing school district in the United States and bring it into conformity with the important mandates of the No Child Left Behind legislation. Please recognize that the students of DCPS will be the most important beneficiaries of your positive decision to uphold this appeal.

If you should require further information, please do not hesitate to contact me directly via email at joyjackson@achievetelnet.com, office direct dial at 781-737-1891 or via cell phone at 865-414-6624.

Sincerely,

Joy Jackson

Joy Jackson
President and CEO

Administrator's Decision on Appeal – Funding Year 2004-2005

May 27, 2005

Joy Jackson
Achieve Telecom Network of MA, LLC
40 Shawmut Road
Canton, MA 02021

Re:	Applicant Name:	DISTRICT OF COLUMBIA PUB SCHS
	Billed Entity Number:	126340
	Form 471 Application Number:	393708
	Funding Request Number(s):	1201520
	Your Correspondence Dated:	January 13, 2005

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2004 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1201520
Decision on Appeal: **Denied**
Explanation:

- On appeal, the service provider, Achieve Telecom Network requests full disclosure regarding documentation that was withheld during PIA review from the DC Public Schools' E-Rate Consultant, Garnet Person of E-Rate Elite Services, Inc.

- Upon review of this appeal and the relevant documentation, it is determined that PIA contacted Garnet Person, who represents DC Public Schools for E-Rate funding, on October 21, 2004, October 22, 2004 and November 8, 2004. Mr. Person acknowledged these requests and stated that he would send the requested information in telephone conversations with PIA on November 1, 2004, November 18, 2004 and November 22, 2004. However, Mr. Person failed to respond to PIA's requests for documentation to validate the eligibility of

McKinley Technical High School, Kelly Miller Middle School, Paul Robeson School, Jackie Robinson Center, Rose School and Hearst School. PIA also requested the make and model numbers of the routers and server included in this request as well as answers to questions regarding the eligibility of on-premise equipment included in Priority One Service. Since these items were not submitted by Mr. Person, PIA could not determine the discount percentages and eligibility of the entities and services/products in question.

- During the review of your Form 471, SLD sought additional information from the authorized contact person listed on Form 471 and notified them that this information needed to be provided within 7 days. The requested information was not provided within 7 days or within any extended timeframe we agreed upon, or the information provided was insufficient to complete your Form 471 application. Consequently, SLD denies your appeal.

- SLD reviews Form 471 applications and makes funding commitment decisions in compliance with FCC rules. *See* 47 C.F.R. § 54.500 et. seq. To conduct these reviews, SLD has put in place administrative measures to ensure the prompt resolution of applications. *See Request for Review by Marshall County School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd. 4520, DA 03-764, ¶ 6 (rel. Mar. 13, 2003). (*Marshall County*) One such measure is that applicants are required to respond to SLD's requests for the additional information necessary to complete their application within 7 days of being contacted. Id.; SLD section of the USAC web site, Reference Area, "Deadline for Information Requests," www.sl.universalservice.org/reference/deadline.asp This procedure is necessary to prevent undue delays during the application review process. *See Marshall County* ¶ 6. If applicants do not respond within this time period, SLD reviews the application based on the information before it.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the FCC. For appeals that have been denied in full, partially approved, dismissed, or cancelled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

E-Rate Elite Services, Inc.

Funding Technology Made Easier

Garnet E. Person, CFR
Chief Executive Officer

P.O. Box 563
Owings Mills, MD 21117
Toll Free: (866) 372-8337
(410) 902-5800

September 24, 2004

Mr. John Christie
Schools and Libraries Division
80 South Jefferson Rd.
Whippany, NJ 09781

Mr. Christie,

I am in receipt of your facsimile and e-mail request dated September 9, 2004, relative to Application# 429857. Regarding the validation of McKinley Technical High School and Kelly Miller Middle School these are both new schools. The District of Columbia Public Schools (DCPS) has both of these schools listed on their website. They may be found at the http://www.k12.dc.us/dcps/schools/schoolsmain.html by selecting "middle" and "senior high" respectively. This section will provide you the location and principal information on the two entities. The DCPS is essentially a self-validating entity since no State Department of Education to provide governance.

The discount validation of McKinley Technical High School and Kelly Miller Middle School should be treated as new schools without students. This is the reason that no students were listed in their entry of the Block 4. These schools were inserted and assumed the shared discount of the district in accordance with Schools and Libraries Division guidelines.

The Paul Robeson School, Jackie Robinson Center and Rose School are all small facilities that fall under the DCPS for education purposes. These are special education facilities and the numbers listed as eligible were established using those students that are wards of the state. Since these schools only handle special education students, free lunch is provided for all students because of their mental handicaps and state status. If you have additional questions regarding these facilities, please feel free to contact Dr. Al-Tamimi, Program Director at (202) 698-2329. However, Dr. Al-Tamimi is not authorized to make any changes to any applications filed by DCPS. Please contact my office if you believe there to be further action or requests in this matter.

FRN 120454: Attached are two (2) files. The file marked "MNS Agreement Information App#393708 FRN#120454.tif" provides a copy of the contract for services. The "MNS equipment_list" file provides the equipment associated with the services.

FRN 1201520: Attached are two (2) files related to the support of this FRN. The "Achieve Contract-DCPS01-04.doc" reflects the purposed terms and conditions pending E-Rate funding. The file has an Appendix A, which describes the services to be rendered

and an Appendix B, which outlines the cost of services. The "Achieve DiagramCentSatDel01-04.doc" file provides the diagram for the proposed services.

Thank you for your attention and patience in this matter.

Sincerely,

Garnet E. Person

Garnet E. Person
Chief Executive Officer

Garnet,

I have received 5 attachments 10/1/2004

Thanks

John S Christie
Schools & Libraries Div.
Associate Manager PIA
Phone 973-884-8418

>>> <gperson@erateelite.com> 10/01/04 12:07AM >>>
John,
Please see attached supporting documentation in regards to your request.

Garnet E. Person
E-Rate Elite Services, Inc.
Phone: (410)902-5800
Fax: (410)581-1209

SERVICES CONTRACT

THIS SERVICES AGREEMENT (this "**Contract**") is entered into and effective this **twenty second day of January, 2004** (the "**Effective Date**"), by and between **Achieve Telecom Network of MA, LLC.,** 3 Centennial Drive, Peabody, MA 01960 ("**ATN**") and **District of Columbia Public Schools**, 825 North Capital St., N.E., 8th Floor, Washington, D.C. ("**DCPS**") (individually, a "**Party**" and collectively, the "**Parties**").

BACKGROUND

The Schools and Libraries Division (the "**SLD**") of the Universal Service Administrative Company ("**USAC**") administers the federal "**E-rate**" program for telecommunications service, Internet access and internal connections to eligible schools and libraries. DCPS is eligible to receive E-rate discounts for these designated services. ATN is a common carriage telecommunications service provider providing tariffed, digital transmission and distance learning circuits (SPIN 143026761). DCPS has submitted a request for Digital Transmission Service and Distance Learning Transmission Service ("**DLTS**") for all of its school sites in its 2004 E-rate 470, Number 129000000463977.

DCPS desires for ATN to provide the DLTS (hereinafter defined) described in **Exhibits A and B** attached hereto (the "Service" or "**Services**"), and ATN desires to provide the Services, all under the terms of this Contract. ATN shall at all times remain approved as a telecommunications service provider offering services eligible for discounts under the E-rate program and shall use its best efforts to obtain and maintain authorization to perform all Services for DCPS under this Contract. In consideration of this background, the mutual terms and conditions herein, and further consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

Section 1
General

1.1 **Timeliness**. ATN shall use commercially reasonable efforts to perform the Services in a manner that meets the priorities, timetables, and objectives set forth in this Contract.

1.2 **Project Managers.** All requirements of the Parties under this Contract shall be supervised and coordinated by **Victor E. Gatto** as ATN's project manager, and by **Charles T. Thompson** as DCPS' project manager, or by such other person or persons as the foregoing representatives may designate from time to time.

Section 2
The Service

2.1 **The Services.** Subject to the terms and conditions of this Contract, ATN shall provide the following services to DCPS:

2.1.1 DLTS is defined in the attachment to **Exhibit A, entitled** "Scope of Services and E-Rate Compliance" and in the attachment to **Exhibit B** entitled "M.D.T.E. (Massachusetts Department of Telecommunications and Energy) Tariff No. 1 for Intrastate Inter-exchange Access Telecommunications Service" in accordance with the design and functional

specifications for the DLTS (the "**Functional Specifications**") and the performance criteria for the DLTS (the "**Performance Criteria**").

2.2 **Exclusivity**. During the term of this Contract, DCPS shall not engage any party other than ATN to provide DLTS to their school sites.

2.3 **Meetings and Adjustments.** ATN and DCPS shall meet at periodic intervals as needed to discuss the Services.

Section 3
Performance

3.1 **Excusable Delays.** Neither Party shall be responsible for delay or failure in performance resulting from causes beyond the reasonable control of such Party, including without limitation, delays caused by the unavailability, or delays in preparation or shipment, of third-party hardware, software or programming services; provided that the Party responsible for the matter causing the delay shall act diligently to remedy the cause of such delay or failure.

Section 4
Payment

4.1 **Prices, Charges and Reimbursable Items.** ATN shall invoice DCPS and SLD for its Services, and DCPS shall pay ATN in accordance with the provisions set forth in **Exhibit B** attached hereto.

4.2 **Cooperation**. DCPS shall receive contemporaneous copies of all invoices submitted by ATN to the SLD. As necessary, DCPS shall make all reasonable efforts to assist ATN in collecting monies owed by the SLD, and shall pay ATN invoices from a DCPS account for their portion of the service costs as discussed in **Exhibit B**.

4.3 **No Other Payment.** Except as expressly provided in this Contract, ATN and DCPS shall each bear all of its own expenses arising from the performance of its obligations under this Contract, including (without limitation) personnel, facilities, utilities, equipment, supplies, clerical, and the like.

Section 5
Changes

5.1 It is mutually acknowledged that changes in the Services, Functional Specifications, Performance Criteria or pricing and payment structure for all Services may be necessary or desirable, in light of actual experience gained in the course of creation and installation of the Services, or as DCPS redefines its needs or due to changes in regulatory or legal requirements. Accordingly, either Party shall be entitled to propose changes to such terms by written notice at any time delivered to the other Party. The Parties agree to consider such proposed changes in good faith, and to make a reasonable effort to accept equitable adjustments where appropriate to accomplish the mutual objectives of the Parties. If a proposed change is accepted, it shall be reduced to a written amendment signed by both Parties.

Section 6
Obligations of the Parties

6.1 **Cooperation with the Schools.** DCPS shall make all reasonable efforts to facilitate and coordinate the cooperation of all school sites that are the subject of this Contract so that the Services may be completed as set forth in this Contract.

6.2 **Further Instruments.** To the extent applicable, DCPS shall comply with all third-party licenses or related agreements of any third-party vendors or programmers concerning any components of the Services.

6.3 **Access to DCPS Central Facility and schools.** DCPS shall give ATN access to such DCPS facilities as necessary for ATN to provide the Services under this Contract

Section 7
Ownership and Rights

7.1 **Ownership of Equipment.** All equipment procured or obtained by ATN in connection with the provision of the Services shall be the exclusive property of ATN.

7.2 **Indemnity by ATN.** ATN shall defend, indemnify and hold harmless DCPS from and against all damages finally awarded as a result of any claim that the Services hereunder infringe the copyright, patent or trademark right of a third party. ATN shall have no liability under this Section 7.2 unless DCPS (i) promptly notifies ATN of any actual or threatened infringement claim, (ii) at the reasonable request of ATN, provides ATN with information and assistance to aid in the defense of the claim, and (iii) gives ATN sole control of the defense of the claim. If any Services hereunder, or in ATN's view, is likely to become, the subject of an infringement claim by a third party, ATN shall, at its option, (a) procure for DCPS the right to use the Service, or (b) replace or modify the Services to make it non-infringing. DCPS shall not enter into any settlement of claims without obtaining ATN's prior written approval, which approval shall not be unreasonably withheld. Moreover, ATN shall have no indemnity obligation for claims of infringement resulting from (a) any combination, operation, or use of any Services or deliverable hereunder with any other components or any other equipment or software, insofar as the Functional Specifications do not directly require such combination, operation, or use; or (b) the preparation, operation, or use of any other components or any other equipment or programming.

7.3 **Project Materials.** The project manager of ATN shall collect and keep the original versions of the Functional Specifications, and the Performance Criteria, as they become available during the course of the creation, installation and implementation of the Services (the "**Project Materials**"). Except as otherwise provided in this Contract, the Project Materials are and shall be the sole property of ATN; however, DCPS may request a copy of the Project Materials for its records.

Section 8
Freedom of Action; Confidentiality

8.1 **Dealings with Others.** ATN is engaged in the business of providing telecommunications services to a variety of entities, and nothing in this Contract shall prevent or limit ATN from using its and its personnel's general skills in pursuing business of any kind with other customers on any terms, whether or not similar to those provided under this Contract.

ATN shall be free to use and disclose in such business pursuits any data-processing or information-processing techniques, concepts, or ideas used or embodied in the Services or otherwise developed or learned by ATN in the course of rendering the Services.

8.2 **Confidentiality.** For purposes of this 8.2, **"Owner"** means the Party disclosing Proprietary Information, **"Recipient"** is the Party receiving Proprietary Information, and **"Proprietary Information"**, **"Confidential Information"**, and **"Trade Secrets"** shall have the respective meanings below.

8.2.1 DCPS and ATN acknowledge and agree that during the term of this Contract each Party will have access to, and disclose to the other, Proprietary Information. Each Party acknowledges that the loss of competitive advantage due to unauthorized disclosure or unauthorized use of Owner's Proprietary Information will cause great injury and harm to the Owner.

8.2.2 Except as may be otherwise provided for in this Contract, Recipient covenants and agrees that Recipient shall not, without the prior written consent of Owner, or as set forth herein, directly or indirectly:

(i) disclose, divulge, distribute, publish, reproduce, decompile, reverse engineer, transmit, or transfer to others Owner's Proprietary Information, or any portions thereof, by any means or in any form, except (A) to those of Recipient's employees or representatives who require access to Owner's Proprietary Information and have signed an agreement to comply with the use and non-disclosure restrictions stated in this Contract, and (B) pursuant to a subpoena or as required by law, ***provided*** that prior to any such disclosure, Recipient shall notify Owner in writing of the circumstances requiring such a disclosure and shall cooperate with Owner to obtain a protective order to protect the Proprietary Information, ***or***

(ii) make use of the Proprietary Information other than as expressly permitted under this Contract.

8.2.3 The obligations under this Section 8 shall survive the termination of this Contract, (i) in respect of that portion of Owner's Proprietary Information that consists of Trade Secrets for as long as such Owner's Proprietary Information remains a Trade Secret under District of Columbia law ***and*** (ii) in respect of that portion of Owner's Proprietary Information that consists of Confidential Information for a period of three (3) years after the effective date of the termination of this Contract.

8.2.4 For purposes of this Section, the following definitions apply:

(i) **"Confidential Information"** means information, other than Trade Secrets, that the Owner marks as "Confidential" or which by its nature would reasonably be considered of a confidential nature, including, but not limited to, licensing strategies, advertising campaigns, product ideas, future business plans, information regarding executives and employees, the terms and conditions of this Contract and any data or information defined herein as a Trade Secret, but which is determined by a court of competent jurisdiction not to rise to be a trade secret under applicable law. Confidential Information shall not include information which (a) was in the Recipient's lawful possession prior to the disclosure, (b) is or becomes publicly known through publication or otherwise through no wrongful act of the Recipient, (c) was received from a third party

without similar restriction on disclosure and without breach of this Contract, or (d) is approved for release or use by written authorization of the Recipient.

(ii) **"Proprietary Information"** means collectively, Confidential Information and Trade Secrets.

(iii) **"Trade Secrets"** means information in any form which derives economic value, actual or potential, from not being generally known and not being readily ascertainable by proper means and which is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality. Trade Secrets may include: (1) any useful process, machine, chemical formula, composition of matter, or other device which (A) is new or which Recipient has a reasonable basis to believe may be new, (B) is being used or studied by Owner and is not described in a published patent or in any literature already published and distributed externally by the Owner, and (C) is not readily ascertainable from inspection of a product of Owner; (2) any engineering, technical, or product specifications including those of features used in any current product of Owner or to be used, or the use of which is contemplated, in a future product of Owner; (3) any application, operating system, communication system, or other computer software (whether in source or object code) and all flow charts, algorithms, coding sheets, routines, subroutines, applets, libraries, compilers, assemblers, design concepts, test data, documentation, or manuals related thereto, whether or not copyrighted, patented or patentable, related to or used in Owner's business; and (4) information concerning the customers, suppliers, products, pricing strategies of Owner, personnel assignments and policies of Owner, or matters concerning the financial affairs and management of Owner or any parent, subsidiary, or affiliate of Owner.

Section 9
Limited Warranty and Covenant

9.1 **Services**. ATN warrants that it will render the Services in a professional and workmanlike manner.

9.2 **Ongoing operation**. ATN cannot and does not warrant that the Service will operate uninterrupted or error-free and will use commercially reasonable efforts to cure or correct such failure. The liability of ATN to DCPS or any other party for any damage caused by failures, delays, omissions, interruptions in transmission, or for any other damages arising out of the use or provision of the Service shall be limited to an allowance for the time period for which the service was interrupted equal to the pro-rated fee for that time period.

9.3 **Service maintenance.** As described in **Exhibit A,** ATN will maintain all equipment provided by ATN for the term of this Contract, and will replace components, subsystems, and chassis that have failed due to normal wear and tear at no cost to the DCPS.

9.4 **Disclaimer**. EXCEPT AS EXPRESSLY PROVIDED HEREIN, ALL SERVICES AND DELIVERABLES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITH NO WARRANTIES OF ANY KIND. ATN EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

Section 10
Limitation of Liability

10.1 **Exclusion of Damages.** Neither Party shall be liable to the other for incidental, punitive, indirect, special or consequential damages for any reason, including, but not limited to loss of business or profits, whether or not foreseeable or based on termination, breach of warranty, contract or negligence.

10.2 **Maximum Liability**. NOTWITHSTANDING ANY PROVISION CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT SHALL ATN'S LIABILITY HEREUNDER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES, THE DELIVERABLES HEREUNDER, OR THIS AGREEMENT, EXCEED THE AGGREGATE AMOUNT OF FEES ACTUALLY RECEIVED BY ATN FROM DCPS DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE ACT OR OMISSION THAT GAVE RISE TO THE CLAIM. IN NO EVENT SHALL ANY CAUSE OF ACTION BE BROUGHT BY DCPS AFTER ONE (1) YEAR FROM THE DATE DCPS KNEW OR SHOULD HAVE KNOWN OF THE CLAIM.

Section 11
Term and Termination

11.1 **Term**. The term of this Contract shall commence on the date first written above and shall remain in effect through June 30, 2007. The period for Services shall commence on the later of July 1, 2004 or at such time as DCPS receives a Funding Commitment Decision Letter from the SLD and shall end on June 30, 2007.

11.2 **Termination for Cause**. DCPS may terminate this Contract upon thirty (30) days written notice to ATN for any material breach of this Contract, if such material breach remains uncured for a period of one hundred twenty (120) days after receipt of written notice by ATN of such material breach. ATN may terminate this Contract upon thirty (30) days prior written notice. Notwithstanding any provision in this Contract to the contrary, this Contract may be terminated by ATN effective immediately upon delivery to DCPS of a written notice of termination if DCPS shall breach or fail to perform any of its obligations under the confidentiality provisions of this Contract. Any termination of this Contract shall be in addition to, and not in lieu of, any other rights or remedies available to ATN at law or in equity, and all such rights and remedies shall be cumulative. No portion of the fees paid to ATN in connection with the performance of the Services shall be returnable or refundable upon termination of this Contract, whether such termination is by DCPS or by ATN.

11.3 **Termination for Convenience**. DCPS is responsible for properly filing and shall file before the SLD application deadline the Form 471 in each of the years in the term above. If, after properly filing Form 471, the commitment of funds is not approved by the SLD, DCPS may terminate this Contract upon thirty (30) days written notice to ATN.

11.4 **Effect of Termination**. Effective upon termination of this Contract, DCPS shall (i) immediately cease all use of the Services and Proprietary Information, and (ii) at ATN's election, return all equipment in DCPS' possession or control all information and deliverables (including all copies thereof). Effective upon termination of this Contract, DCPS hereby releases and discharges ATN of and from any and all obligations or liability whatsoever, whether arising hereunder or from, in connection with, or in any manner connected to, the subject matter of this Contract. The Parties shall cooperate so as to effect an orderly termination of this Contract.

11.5 **Survival**. In the event of termination or expiration of this Contract, Sections 4.1, 7.1, 7.2, 8, 9.2, 9.4, 10, 11.4, 11.5 and 12 shall survive and continue in effect.

Section 12
Miscellaneous

12.1 **No Agency**. ATN, in rendering the Services, is acting solely as independent contractor and neither party is authorized to bind the other in any way. DCPS does not undertake by this Contract or otherwise perform any obligation of ATN.

12.2 **Exhibits**. All exhibits attached hereto are incorporated into this Contract and made a part hereof.

12.3 **Severability**. In the event that any term, clause, or provision of this Contract shall be construed to be or adjudged invalid, void, or unenforceable, such term, clause, or provision shall be severed from this Contract, and the remaining terms, clauses, and provisions shall remain in effect.

12.4 **Multiple Counterparts**. This Contract may be executed in several counterparts, all of which taken together shall constitute one single agreement between the Parties.

12.5 **Amendments**. No modification or amendment to this Contract or its exhibits shall be effective unless made in writing and signed by both Parties.

12.6 **Section Headings; Exhibits**. The section and subsection headings used herein are for reference and convenience only and shall in no way modify or restrict any of the terms or provisions hereof. The attachments referred to herein and attached hereto are incorporated herein to the same extent as if set forth in full herein.

12.7 **Required Approvals**. Where agreement, approval, acceptance, or consent by either Party is required by any provision of this Contract, such action shall not be unreasonably delayed or withheld.

12.8 **No Waiver**. No delay or omission by either Party hereto to exercise any right or power occurring upon any noncompliance or default by the other Party with respect to any of the terms of this Contract shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained. Unless stated otherwise, all remedies provided for in this Contract shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity, or otherwise.

12.9 **Governing Law and Venue**. This Contract shall be governed by and construed in accordance with the laws of the District of Columbia without regard to its conflict of laws provisions.

12.10 **Prior Agreements**. This Contract represents the entire agreement of the Parties on the subject hereof and shall supersede all prior representations and agreements whether oral or in writing between the Parties with respect to any of the matters mentioned in this Contract.

12.11 **Notices**. Any notice required or permitted under this Contract shall be in writing and sent by express air courier or by United States mail, registered or certified mail, return receipt requested, to the address first stated above for each Party (or to such other address as may be designated by each Party by written notice) and shall be effective upon receipt.

12.12 **Force Majeure**. Neither Party shall be liable for any delay or failure of performance of this Contract occasioned by any cause beyond the reasonable control of such Party, including, but not limited to governmental action, war, riot or civil commotion, fire, floods, labor disputes, restraints affecting shipping or credit, delay of carriers, and/or inadequate supply of suitable materials.

12.13 **Personnel; Subcontracting**. ATN shall have sole responsibility and authority for the assignment of personnel concerning the services provided under this Contract. ATN shall provide the DLTS and shall engage subcontractors at its sole discretion in rendering the services hereunder.

12.14 **Assignment**. The Parties may not assign or transfer this Contract or any of its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. In no event shall either party's rights or obligations hereunder be assigned or assignable by operation of law or by any bankruptcy proceedings, and in no event shall this Contract or any rights or privileges hereunder be an asset of the party under any bankruptcy, insolvency or reorganization proceedings. This Contract and the transactions provided for herein shall be binding upon and inure to the benefit of the Parties, their legal representatives, and permitted transferees, successors and assigns.

IN WITNESS WHEREOF, the Parties have caused this Contract to be signed and delivered by their duly authorized officers, all as of the date first hereinabove written.

Achieve Telecom Network of MA, LLC.	**District of Columbia Public Schools**
By:_____	By:_____
Title:_____	Title:_____
Date:_____	Date:_____

EXHIBIT A

SCOPE OF SERVICES: SERVICE SPECIFICATIONS AND MAINTENANCE SERVICES

A. Scope of Services and E-Rate Compliance

See attachment to this EXHIBIT A entitled "Statement of Compliance By Achieve Telecom Network of MA, LLC," showing the Service and Equipment Applicable to Distance Learning Transmission Services," which highlights ATN's compliance with SLD regulations for Priority One Service. This attachment also contains a system-level block diagram for the service and was submitted by DCPS as the Service Description in Item 21 of the SLD Form 471.

Attachment to EXHIBIT A

Statement of Compliance by Achieve Telecom Network of MA, LLC

Description of Services

The description of the Distance Learning Transmission Service (DLTS) is taken from the tariff for such service on file with the Commonwealth of Massachusetts:

I. **General Description**

1. The Distance Learning Transmission Service, DLTS, is a telecommunications service that provides the circuits for distance learning application by government departments, corporations, medical facilities, educational institutions, or libraries.

2. DLTS is an intra-state service provided within the Commonwealth of Massachusetts and an inter-state service provided across the United States. Circuit connectivity is provided over the Public Switched Telephone Network (PSTN) and, depending on the bandwidth needed for the transmission of digital signals may be augmented by an overlay network.

II. **Customer responsibilities**

1. **Company Furnished On-premise Equipment (OPE)**

a. Ownership and Provision of Service from the Company

Ownership of the equipment remains with the Company and shall not transfer to the Customer in the future, and at no time will the Company provide the equipment for purchase to the Customer.

The Company provides all parts of the DLTS service, including the on-premise equipment.

Please see attached diagram (below) for specifications and locations of the DLTS Wide Area Network (WAN), including the OPE and interconnections with the Customer's Local Area Network (LAN).

b. Use

The Customer shall not use the OPE for any purpose beyond supporting this telecommunications service.

The Company further reserves the right to make the on-premise equipment installed by the Company in support of this service available on a shared basis to other customers.

c. Storage requirements

The Customer shall be responsible for providing adequate storage space for the OPE.

d. Environmental requirements

The Customer shall provide an operational environment that is in compliance with the environmental specifications of the installed equipment.

e. Access security

The Customer must provide a reasonable level of access security to the OPE. This is expected to be in keeping with other installed communication equipment.

f. Access requirements

The Customer shall provide the Company with reasonable access to the Company's equipment for the purposes of maintenance and service changes.

The Customer shall designate a point of contact with which the Company shall arrange such access.

g. CFE Equipment relocation

The Customer may not relocate OPE equipment to a facility other than the one in which it has been installed by the Company. Service must be discontinued at the Site and re-initiated at the new Site.

h. Responsibility for CFE Damage or Loss

The Company is responsible for all maintenance of the OPE. The Company will maintain and service the equipment for the duration of the service agreement, replacing components, subsystems, or chassis that have failed due to normal wear and tear at no cost to the Customer.

The Customer shall be responsible for the placing the OPE in a secure and safe environment. The Customer shall be responsible for equipment loss, as well as damage due to vandalism, fire, storms, inappropriate storage conditions, or other causes.

The Customer shall be liable for damage caused to the equipment by unauthorized personnel attempting to repair or modify the equipment. Only Company personnel or their designees may service the equipment.

The Customer's liability for the OPE shall be equal to the replacement cost plus service labor required to restore the OPE to its initial condition.

i. Customer Equipment Requirements

The Customer is responsible for all equipment and networking beyond the network interfaces on the OPE, including the LAN infrastructure, PCs, set-top boxes and any other devices that are not inclusive with the OPE.

The Customer's LAN must be functional without dependence on the OPE. The OPE is all part of a DLTS WAN.

III. Distance Learning Transmission Service

The Distance Learning Transmission Service provides access to the Company's transmission facilities through circuits as described herein and is capable of supporting high-speed data signals used for such applications as distance learning and interactive television.

EXHIBIT B

PAYMENT AND SCHEDULE

ATN will invoice the SLD and DCPS according to the rates shown below and defined in the tariff attached to this EXHIBIT B. The SLD will be invoiced directly for the amounts covered under the E-Rate discount program, and DCPS will be invoiced for the remainder amount. A detailed schedule for these discounts as provided by the E-Rate program is included in the tariff. Over the term of this Contract, ATN shall commit to provide DCPS with the best rate available for any customer of this service, and shall, in no case, exceed the rate currently published in the attached tariff.

Rate Schedule

The following recurring rates for the Basic DLTS service apply per Customer Site for all customers:

Service	Installation	Monthly charge per Customer Site
DLTS with Satellite Overlay Network	$150	$3,750
DLTS without Satellite Overlay Network	$150	$3,000

Locations and Installation

ATN will install DLTS without a satellite overlay network at the DCPS headquarters, DC 28 and 147 school sites. Other locations may be added at the discretion of DCPS in the first year or in subsequent years of this contract.

ATN will begin installation of the On-premise Equipment within thirty (30) days of DCPS' receipt of a Funding Commitment Letter from the SLD if such letter is received on or after June 30, 2004.

At its own risk and with the approval of a schedule by DCPS, ATN may begin installation at any time after the receipt of a Funding Commitment Letter from the SLD by DCPS, even if the installations occur prior to the start of service, defined as July 1, 2004, or at any time with mutual agreement of the Parties.

Attachment to EXHIBIT B

Achieve Telecom Network Tariff

on file with

the Department of Telecommunications & Energy

Commonwealth of Massachusetts

TARIFF MADE AND FILED BY

Achieve Telecom Network of MA, LLC.

SHOWING THE REGULATIONS AND SCHEDULES OF CHARGES APPLICABLE TO

INTRASTATE INTEREXCHANGE ACCESS TELECOMMUNICATIONS SERVICE

WITHIN THE COMMONWEALTH OF MASSACHUSETTS

CHECK SHEET

This is the first revision filing of this tariff. All pages numbered 1 through 19 contained herein are at the first revision as designated and is effective as of October 22, 2003.

INTRASTATE INTEREXCHANGE ACCESS TELECOMMUNICATIONS SERVICE

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1. APPLICATION OF TARIFF

1.1. Scope

This Tariff contains regulations, rates, and charges applicable to the provision of Inter-exchange Access Services, hereinafter referred to as service(s), provided by Achieve Telecom Network of MA, LLC., hereinafter referred to as the Company, to Intrastate Business Customers, hereinafter referred to as customer(s), between locations within the Commonwealth of Massachusetts.

1.2. Applicability

This Tariff only applies to services offered to business (i.e., non-residential) customers.

2. DISTANCE LEARNING TRANSMISSION SERVICE

2.1. General Description

1. The Distance Learning Transmission Service, DLTS, is a telecommunications service that provides the circuits for distance learning application by government departments, corporations, medical facilities, educational institutions, or libraries.

2. The telecommunications services of DLTS are used to electronically deliver Customer provided or Third-Party instructional materials and other data to Company-provided equipment that is interconnected to the Customer's local area network.

3. DLTS does not provide any of the content that is to be delivered, but rather provides the transmission circuit over which this delivery shall take place. The Company will provide the Customer with the information necessary to format Customer-provided or Third-Party content for use over DLTS.

4. The Customer is responsible to ensure that all content delivered over the Company's DLTS network is appropriately licensed for this use.

5. DLTS provides an integral relay closure capability that can be used to trigger emergency notification.

6. DLTS provides functionality for emergency notification and rapid information transmission and delivers high-speed video, audio and text signals that may be used to

notify users on the network of an emergency, transmit comprehensive instructions and procedures in a distance learning modality.

7. DLTS provides immediate emergency notification to all user devices that are connected to the network without any requirement for a User Interface.

8. DLTS provides security through authentication, identification and encryption protocols built on the network.

9. Three options of DLTS are available: Achieve Alert, AchieveXpress, and AchieveXpress Enhanced.

10. The Achieve Alert option provides access to the Company's transmission facilities and is capable of supporting high-speed data signals used for such applications as emergency alert and emergency management planning.

11. The AchieveXpress option provides access to the Company's transmission facilities and is capable of supporting high-speed data signals used for such applications as distance learning and interactive television.

12. The AchieveXpress Enhanced option provides the AchieveXpress services described above, and additionally provides managed channels for live webcasting of video and audio from one remote facility to any or all of the other subscribers of DLTS.

13. DLTS provides a minimum of 5 Mbps of data bandwidth that is fully burstable to handle any required content size.

14. DLTS is an intra-state service provided within the Commonwealth of Massachusetts. The Network Operations Center (NOC) is located within the Commonwealth with redundant operations back-up outside of the Commonwealth. Circuit connectivity is provided over the Public Switched Telephone Network (PSTN) and, depending on the bandwidth needed for the transmission of digital signals, may be augmented by an overlay network.

2.2. Regulations

2.2.A. Definitions

Authorized User - A person or entity that accesses the Company's services; an authorized user is responsible for compliance with the tariff.

Business Customer - A customer whose service is used for a business, professional, institutional, educational, or occupational purpose.

Customer - The person, partnership, association, joint-stock company, trust corporation, or government entity, or any other entity, that is responsible for payment of charges and compliance with this tariff.

Department - The Commonwealth of Massachusetts' Department of Telecommunications and Energy is referred to as the Department.

Other Common Carrier - A common carrier, other than the Company, that provides telecommunications services to the public.

M.D.T.E - Massachusetts Department of Telecommunications and Energy.

Network Operations Control (NOC) - The site from which the Company manages the network and controls access to network resources.

DLTS On-Premise Equipment (OPE) - The DLTS Equipment that is installed, operated, and maintained by the Company on the customer's premise for the exclusive purpose of provisioning DLTS.

DLTS Telecommunications Equipment – The DLTS equipment, other than on-premise equipment, that is provided by the Company to enable telecommunications services.

Site - A site, designated by the Customer, is the school, office, or other suitable building at which Company-furnished on-premise equipment (OPE) is installed and at which the customer's local area network interfaces with the Company's external network.

Subscriber - Any person, firm, corporation, governmental agency, educational institution, library, consortium or other entity that orders service from the Company on behalf of itself or on behalf of others.

Telecommunications - The transmission of voice, data, signaling, or any other forms of intelligence subject to the transmission capabilities of this service.

USAC - The Universal Service Administrative Company.

2.2.B. General Rules and Regulations

2.2.B.1 Limitations

1. Service is offered subject to the availability of the necessary facilities and equipment, or both facilities and equipment, and subject to the provisions of this tariff.

2. The Company reserves the right to discontinue or limit service when necessitated by conditions beyond its control, or when the Customer is using this service in violation of provisions of this tariff, or in violation of the law.

3. The Company does not undertake to transmit messages, but offers the use of its facilities when available, and will not be liable for errors in transmission or for failure to establish connections.

4. The Company directly or indirectly controls all services and facilities provided under this tariff and the Customer may not transfer or assign the use of service or facilities without the express written consent of the Company. Such transfer or assignment shall only apply where there is no interruption of the use or location of the service or facilities.

5. Prior written permission from the Company is required before any assignment or transfer. All regulations and conditions contained in this tariff shall apply to all such permitted assignees or transferees, as well as all conditions of service

2.2.B.2 Use

Services provided under this tariff may be used for any lawful purpose for which the service is technically suited.

2.2.B.3 Liabilities of Company

1. Except as stated in this section, the Company shall have no liability for damages of any kind arising out of or related to events, acts, rights, or privileges contemplated in this tariff. This tariff does not limit the liability of the Company for willful misconduct.

2. The liability of the Company, if any, for damages resulting in whole or in part from or arising in connection with the furnishing of services under this tariff, including but not limited to mistakes, omissions, interruptions, delays, errors, or other defects in transmission, or failures or defects in facilities furnished by the Company in the course of furnishing service or arising out of any failure to furnish service shall in no event exceed an amount of money equivalent to the proportionate charge to the Customer for the period of service during which such mistakes, omissions, delays, or errors or defects in transmission occur and continue. However, any such mistakes, omissions, interruptions, delays, errors, or defects in transmission or service that are caused by or contributed to by the negligence or willful act of the Customer, or which arise from the use of Customer–provided facilities or equipment shall not result in the imposition of any liability whatsoever upon the Company.

3. The Company shall not be liable for any failure of performance hereunder due to causes beyond its control, including but not limited to Acts of God, fires, flood, or other catastrophes, atmospheric or sun spot conditions or other phenomena of nature, such as radiation, any law, order, regulation, directive, action or request of the United States Government, or any other government, including state and local governments having jurisdiction over the Company or the services provided hereunder, national emergencies, terrorism, civil disorder, insurrection, riots, wars, strikes, lockouts, work stoppages, or other labor problems, or regulations established or actions taken by any court or government agency having jurisdiction over the Company or the acts of any party not directly under the control of the Company.

4. The Company is not liable for any act, omission, or negligence of any Local Exchange Carrier, Internet Access Provider, or other provider whose facilities are used concurrently in furnishing any portion of the services received by the Customer, or for the unavailability of or any delays in the furnishing of any services or facilities that are provided by any such Provider. Should the Company employ the service of Other Common Carrier(s) in furnishing service provided to the customer, the Company's liability shall be limited according to the provisions stated above.

5. The Company shall be indemnified and held harmless by the Customer and Authorized User from and against all loss, liability, damage, and expense, due to claims for libel, slander, or infringement of copyright or trademark in connection with any material transmitted by any person using

the Company's services and any other claim resulting from any act or omission of the Customer or Authorized User relating to the use of the Company's facilities.

6. The Company shall not be liable for any act or omission of any other entity furnishing to the Customer facilities or equipment used with the service furnished hereunder; nor shall the Company be liable for any damages or losses due in whole or in part to the failure of Customer-provided service, equipment, or facilities.

7. UNDER NO CIRCUMSTANCES WHATEVER SHALL THE COMPANY OR ITS OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES.

8. The Company shall not be liable for the accuracy of any information provided to it by outside sources. The Company will make every effort to verify that all information that it provides will be true and accurate. The Company, however, has no control over the information that it receives from its various suppliers and makes no guarantee as such.

2.2.B.4 Billing and Payment for Service

2.2.B.4.(a) Responsibility for Charges

1. Charges for installations, service connections, moves, rearrangements, and all other non-recurring charge are payable upon demand to the Company or its authorized agent. Billing thereafter will include recurring charges as defined in this tariff.

2. The Customer is responsible for payment of all charges for services and equipment furnished to the customer for DLTS circuits. Additionally, and without limitation to the foregoing, the Customer is responsible for any and all cost(s) incurred as the result of any applicable federal, state, and local use, excise, sales or privileges taxes or similar liabilities chargeable to or against the Company s a result of the provision of the Company's service hereunder to the Customer shall be charged to and payable by the Customer in addition to the rates indicated in this tariff.

3. The Customer shall remit payment of all charges to any agency authorized by the Company to receive such payment

4. Payment term is net 30 days, or as mutually agreed in writing between the Customer and the Company. If the bill is not paid within the agreed payment term following the mailing of the bill, the account will be considered delinquent.

5. A delinquent account may subject the Customer's service to temporary disconnection.

6. Failure to receive a bill will not exempt a Customer from prompt payment of any sum or sums due the Company.

7. In the event the Customer is over-billed, an adjustment will be made to the Customer's account and the Customer will be deemed to not owe the over-billed amount. If the Customer is under-billed, the Customer shall pay in lump sum the under-billed amount.

2.2.B.5 Special Provisions for Schools and Libraries

The Schools and Libraries Discount Program permits eligible schools (public and private, grades Kindergarten through 12) and libraries to purchase the Company services offered in this Tariff at a discounted rate, in accordance with the Rules adopted by the FCC in its Universal Service Order 97-157, issued May 8, 1997.

As indicated in the Rules, the discounts will be between 20 and 90 percent of the pre-discount price, which is the price of services to schools and libraries prior to application of a discount. The level of discount will be based on an eligible school's or library's level of economic disadvantage and by its location in either an urban or rural area. A school's level of economic disadvantage will be determined by the percentage of its students eligible for participation in the National School Lunch Program, and a library's level will be calculated on the basis of school lunch eligibility in the public school district in which the library is located. A non-public school may use either eligibility for the national school lunch program or other federally approved alternative measures to determine its level of economic disadvantage. To be eligible for discount, schools and libraries will be required to comply with the terms and conditions set forth in the Rules. Discounts are available only to the extent that they are funded by the federal Universal Service fund. Schools and libraries may aggregate demand with other eligible entities to create a consortium.

2.2.B.5.(a) Schools and Libraries Regulations

2.2.B.5.(a)I Obligations of eligible schools and libraries

Schools and libraries and consortia shall participate in a competitive bidding process for all services eligible for discounts, in accordance with any state and local procurement rules and in accordance with both FCC and USAC Rules.

Schools and libraries and consortia shall submit requests for services to the Schools and Libraries Division, as designated by the FCC, and follow established procedures.

Services requested will be used for educational purposes. Services will not be sold, resold, or transferred in consideration for money or any other thing of value.

Qualifying schools and libraries that have both applied for and received approval for discounts under the FCC's Universal Service Administrative Company (USAC) E-Rate program for this service must file a USAC Form 486 designating the Company as the supplier of this service, prior to initiating service. The discounts supplied by the USAC program shall be credited to the Customer's account and the Customer shall only be invoiced for the non-discounted portion of the service.

2.2.B.5.(a)II Obligations of the Company

The Company will offer discounts to eligible schools and libraries on commercially available telecommunications services contained in this Tariff.

All services contained in this Tariff are eligible for discount and fully comply with the Rules.

The Company will offer services to eligible schools, libraries, and consortia at prices no higher than the lowest price it charges to similarly situated non-residential customers for similar services (lowest corresponding price).

In competitive bidding situations, the Company may offer flexible pricing or rates other than in this Tariff, where specific flexible pricing arrangements are allowed, subject to Massachusetts Department of Telecommunications and Energy approval.

2.2.B.5.(a)III Discounted Rates for Schools and Libraries

Discounts for eligible schools and libraries and consortia shall be set as a percentage from the pre-discount price, which is the price of services to schools and libraries prior to application of a discount.

The discount rate will be applied to eligible intrastate services purchased by eligible schools, libraries or consortia.

The discount rate is based on each school's or library's level of economic disadvantage as determined in accordance with the FCC Order or other federally approved alternative measures, as permitted by the Rules, and by its location in either an urban or rural area.

The Schools and Libraries discount matrix for eligible schools, libraries and consortia is included below for reference:

INCOME Measured by % of students eligible for the National School Lunch Program	URBAN LOCATION E-Rate Discount	RURAL LOCATION E-Rate Discount
If the percentage of students in the school qualifying for the National School Lunch Program is…	…and the school is in an URBAN area, the E-rate discount will be…	…and the school is in a RURAL area, the E-rate discount will be…
Less than 1%	20%	25%
1% to 19%	40%	50%
20% to 34%	50%	60%
35% to 49%	60%	70%
50% to 74%	80%	80%
75% to 100%	90%	90%

2.2.B.6 Deposits

The Company reserves the right to examine the credit record of the Customer. If the Customer's financial condition is unknown or unacceptable to the Company, the Customer may be required to provide the Company with a security deposit of up to two months service charges that the Company may apply against overdue charges. The Company credits interest on deposits annually, or upon termination of the service, or upon return of the deposit. The receipt of a deposit does not

relieve the Customer for their responsibility to pay bills promptly. Interest on any deposits shall be calculated in conformance with 220 CMR 26.09.

2.2.B.7 Advance Payments

For Business Customers for whom the Company determines an advance payment is necessary, the Company reserves the right to collect an amount not to exceed two (2) months estimated charges as an advance payment for this service. This will be applied against the next month's charges and a new advance payment may be collected for the next month, if necessary.

2.2.B.8 Taxes

All federal excise taxes, and state and local sales, use, and similar taxes, are billed as separate line items and are not included in the quoted rates, unless otherwise provided in this tariff.

2.2.B.9 Right to Backbill for Improper Use of the Company's Service

Any person or entity that uses, appropriates, or secures the use of service from the Company, whether directly or indirectly, in any unlawful manner or through the providing of any misleading or false information to the Company and which uses, appropriation, or securing of services is inconsistent with the stated uses, intents, and purposes of this tariff or any restrictions, conditions, and limitations stated herein, shall be liable for an amount equal to the accrued and unpaid charges that would have been applicable to the use of the Company's service actually made by the Customer.

2.2.B.10 Compliance with Regulatory Requirements

The Company reserves the right to discontinue service, limit service, or to impose requirements on Customers as required to meet changing regulatory rules and standards of the M.D.T.E.

2.2.B.11 Interconnection

The Company reserves the right to interconnect its services with those of any Other Common Carrier, Local Exchange Carrier, or alternate access provider of its election, and to utilize such services for the provision of services offered herein. The Company further reserves the right to make the on-premise equipment installed by the Company in support of this service available on a shared basis to other customers.

2.2.B.12 Denial of Access to Service by Company

Service continues to be provided until canceled by the Customer, in writing, or discontinued by the Company as set forth below. The Company may render bills subsequent to the termination of service for charges incurred before termination.

In the event that service is to be discontinued, the Customer will be provided with a written notice of discontinuance of service, with reasons specified. This notice will be sent fifteen (15) days prior to discontinuance, followed by a second written notice five (5) days prior to discontinuance of service. Notices will be sent via First Class U.S. Mail. The Company may refuse or discontinue service under the following conditions:

1. For non-compliance with or violation of any Federal, State, or municipal law, ordinance or regulation pertaining to this service.

2. For non-compliance with or violation of Department regulations or the Company's rules and regulations on file with the Department.

3. Without notice by reason of any order or decision of a court or other government authority having jurisdiction which prohibits the Company from furnishing such services.

4. For improper use by the Customer of the service in applications and uses prohibited by the tariff.

5. Without notice in the event of tampering with the equipment or services owned by the Company or its agents.

6. Without notice in the event of Customer use of equipment or services in such a manner as to adversely affect the Company's equipment or the Company's service to others.

7. For neglect or refusal to provide reasonable access to the Company or its agents for the purpose of inspection and maintenance of equipment owned by the Company or its agents.

8. For non-payment of bills.

9. Without notice in the event of any other unauthorized or fraudulent use of service. Whenever service is discontinued, the Company may, before restoring service, require the Customer to make, at his or her own expense, all changes in facility or equipment necessary to eliminate illegal or improper use and to pay an amount reasonably estimated as the loss in revenues resulting from such fraudulent use.

10. For Customer's breach of contract for service between the Company and the Customer.

2.2.B.13 Customer's Liability in the Event of Denial of Access to Service by the Company

In the event a Customer's service is disconnected by the Company for any of the reasons in section 2.2.B.12, the Customer shall be liable for all unpaid charges due and owing to the Company associated with the service.

2.2.B.14 Reinstitution of Service

1. The Company will reconnect service upon Customer request as soon as the reason for the Customer's termination is removed. If the Customer seeks reinstitution of Service following denial of service by the Company, the Customer shall pay to the Company prior to the time service is reinstituted all accrued and unpaid charges.

2. If the Company has removed the Company Furnished On-premise Equipment (OPE) from the premises of the Customer or disconnected the OPE prior to reinstatement, then the Customer shall be billed or the reinstallation and reactivation services. If the OPE is still connected and operational, the Customer's service will be reinstated without additional fees once outstanding charges are settled.

2.2.B.15 Credit Allowances for Interruption of Service

Credit allowances for interruptions of service are limited to the period of time for which the service was unavailable.

2.2.B.16 Inspection, Testing and Adjustment

Upon reasonable notice, the facilities provided by the Company shall be made available to the Company for tests and adjustments as may be deemed necessary by the Company for maintenance. No interruption allowance will be granted for the time during which such tests and adjustments are made when the interruption is less than twenty-four hours.

2.2.B.17 Subscriber responsibilities

1. The Subscriber is responsible for placing any necessary orders, for complying with tariff regulations, and for ensuring that Authorized Users comply with tariff regulations.

2. The Subscriber is responsible for charges incurred for special

construction and/or special facilities that the Subscriber requests and which are ordered by the Company on the Subscriber's behalf.

3. If required for the provision of the Company's services, the Subscriber must provide any equipment space, supporting structure, conduit, and electrical power without charge to the Company.

4. The Subscriber is responsible for arranging ingress to its premises at times mutually agreeable to it and the Company when required for the Company personnel to install, repair, maintain, program, inspect, or remove equipment associate with the provision of the Company's services.

5. If the Subscriber fails to maintain the equipment and/or the system properly, with resulting imminent harm to the Company's equipment, personnel, or the quality of service to other Subscribers or Customers, the Company may, upon written notice, require the use of protective equipment at the Subscriber's expense. If this fails to produce satisfactory quality and safety, the Company may, upon written notification, terminate the Subscriber's service.

6. The Subscriber must pay the Company for replacement or repair of damage to the equipment or facilities of the Company caused by negligence or willful act of the Subscriber, its Authorized Users, or others, or by improper use of equipment provided by the Subscriber, Authorized Users, or others.

7. The Subscriber must pay for the loss through theft, fire, or flood of any of the Company's equipment installed at Subscriber's premises.

2.2.B.18 Responsibilities of Authorized Users

1. The Authorized User is responsible for compliance with the applicable regulations set forth in this tariff as well as all rules and regulations of the state utility commission and the FCC.

2. The Authorized User is responsible for providing the Company with a valid method of billing for the service. The Company reserves the right to validate the requested billing method through available credit card and credit verification procedures. Where a requested billing method cannot be validated, the user may be required to provide an alternate billing method.

2.2.C. Additional DLTS Regulations

The following regulations supplement the general regulations above. In the event of a conflict between the general regulations and the DLTS regulations, the general regulations take precedence.

2.2.C.1 Customer responsibility

2.2.C.1.(a) Company Furnished On-premiseEquipment (OPE)

2.2.C.1.(a)I Ownership

Ownership of the equipment furnished by the Company on the premise of the Customer remains with the Company and shall not transfer to the Customer in the future, and at no time will the Company provide the equipment for purchase to the Customer.

2.2.C.1.(a)II Use

The Customer shall not use the OPE for any purpose other than supporting this telecommunications service.

2.2.C.1.(a)III Storage requirements

The Customer shall be responsible for providing adequate storage space for the OPE.

2.2.C.1.(a)IV Environmental requirements

The Customer shall provide an operational environment that is in compliance with the environmental specifications of the installed equipment.

2.2.C.1.(a)V Access security

The Customer must to provide a reasonable level of access security to the OPE. This is expected to be in keeping with other installed communication equipment.

2.2.C.1.(a)VI Access requirements

The Customer shall provide the Company with reasonable access to the Company's equipment for the purposes of maintenance and service changes. The Customer shall designate a point of contact with which the Company shall arrange such access.

2.2.C.1.(a)VII OPE Equipment relocation

The Customer may not relocate OPE equipment to a facility other than the one in which it has been installed by the Company. Service must be discontinued at the Site and re-initiated at the new Site.

2.2.C.1.(a)VIII Responsibility for OPE Damage or Loss

The Company will maintain and service the equipment for the duration of the service agreement, replacing components, subsystems, or chassis that have failed due to normal wear and tear at no cost to the Customer.

The Customer shall be responsible for the placing the OPE in a secure and safe environment. The Customer shall be responsible for equipment loss, as well as damage due to vandalism, fire, storms, inappropriate storage conditions, or other causes.

The Customer shall be liable for damage caused to the equipment by unauthorized personnel attempting to repair or modify the equipment. Only Company personnel or their designees may service the equipment.

The Customer's liability for the OPE shall be equal to the replacement cost plus service labor required to restore the OPE to its initial condition.

2.2.C.1.(b) Customer Equipment Requirements

The Customer is responsible for all equipment and networking beyond the network interfaces on the OPE, including the LAN infrastructure, PCs, set-top boxes and any other devices that are not inclusive with the OPE.

2.2.C.1.(b)I Customer PC Requirements

The Customer shall employ PCs or equivalent equipment that have sufficient throughput capabilities to receive and decode the broadband digital signals supplied by DLTS circuit. The PC's access to the DLTS circuit will be via a broadband connection to the Customer's local area network.

2.2.C.1.(b)II Customer Local Area Network (LAN) Requirements

The Customer's Site shall be provisioned by the Customer with a LAN infrastructure. The Customer shall provide connectivity from the DLTS circuit to the LAN and shall locate the switch sufficiently close to the OPE. (The LAN should be provisioned with 100-baseT switched segments to the locations where the PCs or equivalent end-user equipment are located.)

2.2.C.1.(b)III Customer Internet Protocol Address Requirements

The Customer shall provide the Company with static Internet Protocol (IP) addresses for the OPE prior to installation of the equipment. A public IP address shall be provided by which the OPE addressed by the DLTS circuit over the Internet. Additionally, where NAT (Network Address Translation) is employed by the Customer's network, a static private IP address shall also be provided.

2.2.C.1.(c) Liability

The Company shall not be liable for damages arising out of failure or malfunction of any Customer-provided facilities that are interconnected with the Company's facilities.

The liability of the Company to the Customer or any other party for any damage caused by failures, delays, omissions, interruptions in transmission, or for any other damages arising out of the use or provision of the DLTS service shall be limited to an allowance for the time period for which the service was interrupted equal to the pro-rated fee for that time period.

2.2.C.2 Customer Content Responsibilities

The Customer is responsible for providing content, whether it be Customer-owned or Third-Party content, and is responsible for ensuring that all content placed on the network is appropriately licensed for this use.

The Company assumes no liability for the usage, suitability, or appropriateness of the content placed on its network – this is the sole responsibility of the Customer.

2.2.C.3 Minimum Contract Period

There is a 12-month minimum term contract requirement. The term begins when the Company's equipment is installed and the Customer acknowledges that the service is operational. The termination liability is the total amount of the contract, less the amount of payments previously made.

2.2.D. Service Options

2.2.D.1 Basic Distance Learning Transmission Service – Achieve Alert

The Achieve Alert option provides access to the Company's transmission facilities and is capable of supporting high-speed data signals used for such applications as emergency alert and emergency and planning.

2.2.D.2 Training Distance Learning Transmission Service - AchieveXpress

The AchieveXpress option provides access to the Company's transmission facilities and is capable of supporting high-speed data signals used for such applications as distance learning and interactive television. At a minimum, 5 Mbps of data bandwidth shall be provided via the PSTN or a satellite overlay network.

2.2.D.3 Enhanced Distance Learning Transmission Service – AchieveXpress Enhanced

The AchieveXpress Enhanced option provides the AchieveXpress services described above, and additionally provides managed channels for live webcasting of video and audio from one remote facility to any or all of the other subscribers of DLTS. At a minimum, 5 Mbps of data bandwidth shall be provided.

2.2.E. Rate Treatment

2.2.E.1 Prepayment option

The customer may elect to prepay any portion of the service for a fixed period. The one-time payment is calculated by converting the future stream of monthly payments for the period to be prepaid to a present worth, using the prevailing cost of money rate. At the end of the prepayment period, the normal monthly rate would apply. Interest on any deposits shall be calculated in conformance with 220 CMR 26.09.

2.2.E.2 Rate Schedule

The following rates for provisioning the DLTS service apply per Customer Site for all customers:

Service	Installation Fee	Monthly charge per Customer Site
Achieve Alert	$ 150	$175
AchieveXpress without Satellite Overlay	$ 150	$3,000
AchieveXpress with Satellite Overlay	$ 150	$3,750
AchieveXpress Enhanced	$ 150	$4,125

Eligible schools and libraries participating in this service may qualify for discounts through the FCC's Universal Service Administrative Company (USAC) under the E-Rate program. Please see section 2.2.B.5 for the rules specifying how E-Rate discounts may be applied to this tariff.

The Company may offer a discount of up 60% of the tariff price to a Customer who wants to try the DLTS on a pilot program basis before signing a contract at the tariff price. Such a pilot project shall be limited in scope (a subset of customer locations) and in duration (no longer than 10 months) and is offered at the sole discretion of the Company.

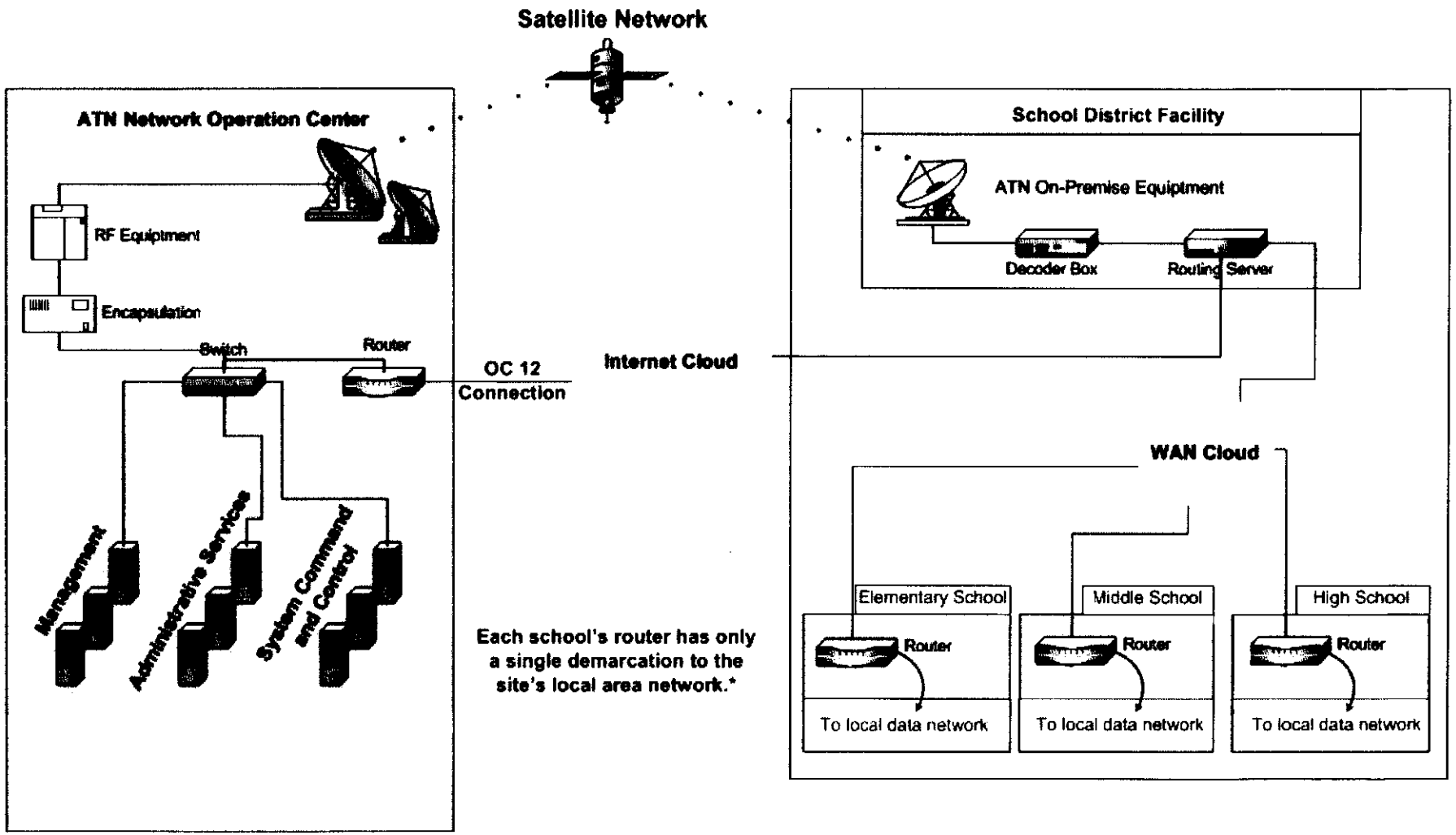
3. TECHNICAL TERMS AND ABBREVIATIONS

EIA	Electronic Industries Association
IP	Internet Protocol

LAN	Local Area Network. Network on Customer's premises that is provisioned and maintained by Customer.
NAT	Network Address Translation. NAT is used by firewalls to convert private Internet addresses to public addresses, and vice versa
DLTS	Distance Learning Transmission Service
NOC	Network Operations Center
PC	Personal Computer
PSTN	Public Switched Telephone Network
Set Top Box	Device for converting video input to TV output
100BaseT	100 Mbps Ethernet connection

Achieve

Central Satellite Delivery



*LAN can function completely independent of the Satellite Delivery Network.

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Vic,
Just for clarification purposes. The SLD letter indicated that we did not respond to their questions on McKinley and other schools as well as providing them the information on the services for Achieve Telecom. I have attached a copy of the e-mail that was sent to John Christie on October 1, 2004, regarding these matters. The subsequent requests that they made on the later dates mentioned within the letter had already been addressed in the attached correspondence and John Christie confirmed receipt (attached). We informed the SLD when they made these requests that they were already in receipt of this information. They indicated that they would review the file; obviously they had challenges with their own recordkeeping.

I assure you that all of the information that was available and that they requested was provided. I felt that it was necessary to address the SLD alleged basis within their decision letter.

Garnet E. Person

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