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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	) Colegio Nuestra Señora del Rosario
	) Billed Entity Number 198187
Requests for Review of	) Form 471 Application No. 979223
Decisions of the	) Funding Requests No. 2667961, 2667979
Universal Service Administrator by	)
	) Colegio San José Elemental
Consortium Escuelas Católicas	) Billed Entity Number 199864
	) Form 471 Application No. 978025
	) Funding Requests Nos. 2664464, 2664478
	)
	) Consortium Escuelas Católicas
	) Billed Entity Number 231955
	) Form 471 Application No. 991208
	) Funding Requests Nos. 2704999
	)
	) Colegio San Rafael
	) Billed Entity Number 158943
	) Form 471 Application No. 978939
	) Funding Requests Nos. 2667147, 2667184
	)
	) Colegio San Juan Bosco
	) Billed Entity Number 159199
	) Form 471 Application No. 991149
	) Funding Requests Nos. 2704836, 2704875
	)
	) Colegio Nuestra Señora del Carmen
	) Billed Entity Number 158961
	) Form 471 Application No. 987324
	) Funding Requests Nos. 2693391
	)
	) Academia Santa Teresita
	) Billed Entity Number 200008
	) Form 471 Application No. 987261
	) Funding Requests Nos. 2693595
	)
	) Colegio Sagrada Familia
	) Billed Entity Number 198178
	) Form 471 Application No. 978169
	) Funding Requests Nos. 2664767, 2664810
	)
	)

CATOLICIDAD GENUINA, EXCELENCIA ACADÉMICA: NO HAY VERDADERA SABIDURÍA SIN VERDADERA RELIGIÓN

	)	Colegio Católico La Merced
	)	Billed Entity Number 200051
	)	Form 471 Application No. 983530
	)	Funding Requests Nos. 2681363, 2681375
	)	
	)	Academia Cristo de Los Milagros
	)	Billed Entity Number 157732
	)	Form 471 Application No. 983348
	)	Funding Requests Nos. 2680925
	)	
	)	Academia San Alfonso
	)	Billed Entity Number 199998
	)	Form 471 Application No. 982395
	)	Funding Requests Nos. 2678191
	)	
	)	Colegio San Jose Superior
	)	Billed Entity Number 216679
	)	Form 471 Application No. 979726
	)	Funding Requests Nos. 2669934, 2669947
	)	
	)	Colegio San Juan Bautista
	)	Billed Entity Number 159097
	)	Form 471 Application No. 978093
	)	Funding Requests Nos. 2664808
	)	
	)	Colegio San Felipe
	)	Billed Entity Number 159193
	)	Form 471 Application No. 978146
	)	Funding Requests Nos. 2664769, 2664794
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	

ATT: Telecommunications Access Policy Division, Wireline Competition Bureau

REQUEST FOR REVIEW

Consortium Escuelas Católicas (hereinafter, the "Consortium"), which is located in the Commonwealth of Puerto Rico, pursuant to Sections 54.719(b) and 54.722(a) of the Federal Communications Commission's ("FCC" or "Commission") rules, hereby petitions the Commission's Wireline Competition Bureau for review of adverse decisions by the Universal

Service Administrative Company ("USAC") with respect to the above-referenced Funding Request Numbers ("FRNs") for Priority One services for Funding Year 2014 filed by members of the Consortium. USAC rejected approximately $524,838 in requested E-rate funds for Funding Year 2014, of which $190,128 have been disbursed. USAC is now seeking repayment of the previously disbursed $190,128.

As explained below, Consortium personnel inadvertently gave the impression that Consortium members intended to seek bids on all eligible services. Such an impression was the result of a misunderstanding, and the language barrier that applicants from Puerto Rico face when participating in the E-Rate Program is the root cause of this misunderstanding.

I. BACKGROUND

The Consortium represents thirteen (13) private Catholic schools and one administrative office in the Commonwealth of Puerto Rico, for a total of fourteen (14) members. The schools have a combined enrollment of approximately 6,387 students in grades K through 12.

On February 4, 2014, the Consortium filed FCC Form 470 No. 695880001213885 on behalf of its members soliciting bids for a number of Priority One and Two services. The Form 470 is attached hereto as Exhibit A. After the required 28-day period, Consortium members selected Nevesem, which had the most cost-effective bid.

In July 2014, USAC sent a Special Compliance Review Information Request ("Information Request") to only two of the fourteen Consortium members (Colegio San Rafael and Academia Cristo de Los Milagros).[1] The Information Request asked the following: (a) the name, title and employer of the individual(s) who developed, filled in, completed, certified and/or posted the Form 470 to the USAC website; (b) the specific location from which the Form

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[1] *See* Section IV, *infra*, regarding this issue.

470 was filled in, completed, and/or submitted to USAC; (c) whether a service provider's employee(s) assisted the applicant with the completion and/or posting of the Form 470, and (d) an explanation of how the services on the FCC Form 470 were determined.

On August 12, 2014, the Consortium submitted responses on behalf of the two members that received Information Requests. Copies of the two responses are attached as Exhibit B. In the responses, the Consortium stated that Gilberto Pérez Ortiz, the Consortium's contact person listed on the Form 470, and María M. Agosto de Feliciano, the Superintendent of the Superintendence of Catholic Schools, Diocese of Caguas, Puerto Rico, were responsible for developing, completing, certifying and posting the Form 470 to the USAC website; that the Form 470 was filled in, completed, and submitted to USAC from an office located at the Superintendence of Catholic Schools, Diocese of Caguas, in Caguas, Puerto Rico; and that no service provider employee assisted the Consortium with the completion and posting of the Form 470. In response to the last question about the services included in the Form 470 – which is at the heart of this appeal, the Consortium stated:

> Los servicios listados en la forma 470 se obtienen y se verifican de la "lista de servicios elegibles" que ofrece el SLD en la siguiente dirección: http://www.universalservice.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx. Debido a que la forma 470 se completa para un Consorcio donde participan varias instituciones y los servicios de las escuelas son diferentes y variados es necesario completar una lista con todos los servicios elegibles. Esto se hace con el objetivo de que al momento de completar la forma 471 y 472 las escuelas puedan obtener sus servicios.
>
> The services listed in the 470 form are obtained and verified from the "list of elegible [sic] services" that SLD offers in the following address: http://www.universalservice.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx. Because of [sic], it is necessary to complete a list with the eligible services due to the [sic] 470 form is completed for a Consortium where various institutions participate and the services and necessities are different and individual in each school. This is done with the objective at the moment to complete 471 and 472 forms the schools may be able to select without limits its services.

On May 4, 2015, USAC issued Notification of Commitment Adjustment Letters ("COMADs") rescinding all of the Funding Year 2014 funding commitments for Priority One services for all Consortium members. Copies of the COMADs are attached as Exhibit C. The COMADs stated the following reason for the rescission:

> After multiple requests for documentation and application review, it has been determined that this funding commitment must be rescinded in full. The FCC Form 470# 695880001213885 that established the bidding for this FRN is encyclopedic. Furthermore, a Request for Proposal was not issued to narrow the scope of the desired services to only those that you actually applied for in this funding request. FCC rules require that applicants submit bona fide requests for services by conducting an internal assessment of the components necessary to use effectively the discounted services ordered and submitting a complete description of services requested so that it may be posted for competing providers to evaluate. During our review, you were asked why the service descriptions listed on your FCC Form 470 appeared to be generic or encyclopedic. Specifically you were asked to explain how you determined the services to request on your FCC Form 470. You responded that the services listed in the FCC Form 470 were obtained from the Schools and Libraries Division (SLD)s Eligible Services List available on USACs website at: http://www.universalservice.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx. Furthermore, you indicated that you referenced a complete list of eligible services so that schools may select services without limits. Per the FCCs Ysleta Order, an applicants FCC Form 470 must be based upon its carefully thought-out technology plan and must detail specific services sought in a manner that would allow bidders to understand the specific technologies that the applicant is seeking. An FCC Form 470 should not be a general, open-ended solicitation for all services available on the Eligible Services List, with the hope that bidders will present more concrete proposals. Thus, a FCC Form 470 that sets out virtually all elements that are on the Eligible Services List would not allow a bidder to determine what specific services the applicant was seeking. Because you relied on an encyclopedic FCC Form 470, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

On June 24, 2015, the Consortium filed a timely appeal of the COMADs with USAC. A copy of the Consortium's appeal is attached as Exhibit D. On July 17, 2015, USAC issued decisions using virtually the same language as it did in the COMADs and denied the appeal without any discussion (or even cursory mention) of any of the arguments raised by the Consortium on appeal. Copies of USAC's decisions are attached as Exhibit E. On July 21, 2015, USAC issued Demand Payment Letters to all Consortium members.

For the reasons stated below, USAC erred when it denied the Consortium's appeal. The Consortium respectfully requests that the Commission reverse USAC's decision and remand the applications to USAC for further processing.

II. THE COMADS RESULT FROM A MISUNDERSTANDING AND THE LANGUAGE BARRIER THAT APPLICANTS FROM PUERTO RICO FACE WHEN PARTICIPATING IN THE E-RATE PROGRAM IS THE ROOT CAUSE OF THIS MISUNDERSTANDING.

In denying the Consortium's appeal, USAC ignored the fact that the Consortium obviously misunderstood USAC's question about how the services on the Form 470 were determined. USAC's questions were provided in English. Consortium personnel who prepared the responses are native Spanish speakers. This resulted in a misunderstanding, which is best illustrated by the Consortium's response to USAC's request for an explanation of how the services on the FCC Form 470 were determined. The Consortium stated the following Spanish:

> Los servicios listados en la forma 470 se obtienen y se verifican de la "lista de servicios elegibles" que ofrece el SLD en la siguiente dirección: http://www.universalservice.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx. Debido a que la forma 470 se completa para un Consorcio donde participan varias instituciones y los servicios de las escuelas son diferentes y variados es necesario completar una lista con todos los servicios elegibles. Esto se hace con el objetivo de que al momento de completar la forma 471 y 472 las escuelas puedan obtener sus servicios.

That Consortium personnel felt significantly more comfortable in their native Spanish language is evident from the fact that the response is offered in Spanish. The Consortium then attempted to "communicate" with USAC by translating its response to English, stating:

> The services listed in the 470 form are obtained and verified from the "list of elegible [sic] services" that SLD offers in the following address: http://www.universalservice.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx. Because of [sic], it is necessary to complete a list with the eligible services due [sic] to the 470 form is completed for a Consortium where various institutions participate and the services and necessities are different and individual in each school. This is done with the objective at the moment to [sic] complete 471 and 472 forms the schools may be able to select without limits its services.

Despite the fact that there is something obviously wrong with the English version of the response, USAC did not attempt to clarify the response by asking any follow up questions in either English or Spanish. Instead, it proceeded to rescind the funding commitments through the issuance of COMADs to all members in the Consortium, even those members that did not receive Information Requests from USAC. USAC offered no explanation of why the members who were not sent Information Requests were included in the COMADs. Obviously, these schools have never had an opportunity to respond to USAC's question about how the services were selected.

The main point the Consortium attempted to convey to USAC is that because the Consortium represents multiple applicants – each of which has different technology needs, the Consortium had to include services in the Form 470 that would meet the needs of all members. In the Form 470 at issue, the Consortium sought bids for 13 separate schools and one administrative office. Each school is different and the technology needs of one member will not necessarily meet the needs of another. For instance, Colegio Católico La Merced in the municipality of Caguas has 1,184 students and Academia Santa Teresita in the municipality of Naranjito has 270 students. A technology solution that might work for a school with an enrollment of 270 students might not work for a school with an enrollment of 1,184 students. As is the case with every consortium, it was the Consortium's responsibility to include sufficient eligible services in the Form 470 to meet the needs of all of its member schools while at the same time ensuring that the Form 470 is not a general, open-ended solicitation for all services

available on the Eligible Services List ("ESL"). This is precisely what the Consortium did and nothing in the Commission's *Ysleta Order*[2] prohibits consortia from acting in this manner.

The language barrier is also illustrated by the following sentence in the response to USAC: "Esto se hace con el objetivo de que al momento de completar la forma 471 y 472 *las escuelas puedan obtener sus servicios*" (emphasis added). In English, this means that the goal of selecting services that are responsive to all members' needs is achieved by ensuring that each member can file the forms necessary to obtain the services that will meet their specific technology needs. However, the English version of this sentence that the Consortium provided USAC reads: "This is done with the objective at the moment to complete 471 and 472 forms the schools *may be able to select without limits its services*" (emphasis added). In its COMADs, USAC latched onto this language about selecting services "without limits" to conclude that the Form 470 was generic and encyclopedic ("[y]ou indicated that you referenced a complete list of eligible services so that schools may select services without limits. Per the FCCs Ysleta Order, an applicants FCC Form 470 must be based upon its carefully thought-out technology plan…."). But, as is evident, there is a significant difference between the Spanish and English versions of the response. The English translation's reference to the selection of services "without limits" is almost suggestive of wasteful conduct. This is not the meaning the Consortium intended to convey; this misunderstanding is due solely to the fact that the people who prepared the responses are native Spanish speakers attempting a response in English.

The various E-Rate application forms and their instructions, the FCC rules and relevant orders, and USAC's guidance on its website are difficult to navigate even for people whose first

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2 *See In the Matter of the Request of Review of the Administrator's Decision by Ysleta Ind. Sch. Dist. et al.*, CC Docket Nos. 96-45, 97-21, Order, FCC 03-313, 18 FCC Rcd 26407 (2003) ("*Ysleta Order*"). As noted above, this is the Commission order that USAC relied on in denying the Consortium's appeal.

language is English. This difficulty is compounded for people whose first language is not English. None of these E-Rate Program resources are available in Spanish. Therefore, schools in Puerto Rico are at a serious disadvantage vis-à-vis the vast majority of applicants in the continental United States. Puerto Rico applicants, including the Consortium and its members, struggle to file successful applications while avoiding numerous land mines throughout the E-Rate application process that, unfortunately, are not well understood because there is a lack of information and resources in the Spanish language. This is not an insignificant consideration for Puerto Rico for two reasons: first, because its citizens contribute millions of dollars every year to the Universal Service Fund, which funds the E-rate program; and, second, because many of the poorest students in the United States live in Puerto Rico.[3] Rather than playing "gotcha" with schools with extremely limited financial resources and greatest need for E-Rate support, USAC should be providing applicants such as the Consortium with Spanish language materials and training sessions and making available Spanish-language reviewers who will be able to address USAC's questions and concerns effectively.

III. USAC IGNORED EVIDENCE THAT THE CONSORTIUM'S FORM 470 WAS NOT GENERIC OR ENCYCLOPEDIC, NOR WAS IT AN OPEN-ENDED SOLICITATION FOR ALL SERVICES AVAILABLE ON THE ELIGIBLE SERVICES LIST.

In the *Ysleta Order*, the Commission stated: "We clarify prospectively that requests for service on the FCC Form 470 that list all services eligible for funding under the E-rate program do not comply with the statutory mandate that applicants submit 'bona fide requests for

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[3] *See* American Community Survey Briefs, Child Poverty in the United States 2009 and 2010: Selected Race Groups and Hispanic Origin, Table 1, Number and Percentage of Children in Poverty in the Past 12 Months by State and Puerto Rico: 2009 and 2010 (issued November 2011) (indicating that 56.3% of children aged 0 to 17 in Puerto Rico live below the poverty line in 2010). In addition to these statistics, the Commission should take note that the entire Commonwealth is impoverished such that it is unable to meet its financial obligations as evidenced by the fact that it has been petitioning Congress for the right to declare bankruptcy.

services.'"[4] It is clear that the Consortium did not request bids for all eligible services. This is obvious by comparing the Consortium's Form 470 and the ESL for Funding Year 2014. Therefore, *Ysleta* is inapposite.

The Consortium sought bids for basic conduit access to the Internet through any of these technologies: DSL, fiber/dark fiber, T1/fractional T1 lines, or wireless. Any of these technologies would be feasible technical solutions for the Consortium's schools. Therefore, the Consortium limited its request for bids to a defined set of technologies while, at the same time, providing its member schools with flexibility to select the particular services that best fits their individual needs. Listed below are the eligible services that were excluded from the Form 470:

A. The Consortium did not seek bids for conduit access to the Internet through broadband over power lines (BPL).[5]

B. The Consortium did not seek bids for conduit access to the Internet through cable modem.

C. The Consortium did not seek bids for conduit access to the Internet through satellite service because, to the best of the Consortium's knowledge, currently there are no service providers in Puerto Rico that offer satellite-based Internet service to schools and libraries under the E-rate program.

D. The Consortium did not seek bids for conduit access to the Internet through telephone dial-up service.

E. The Consortium did not seek bids for 800 service (e.g., a toll-free telephone number for students to contact school regarding questions about homework), Centrex, Radio Loop or satellite service.

F. The Consortium did not seek bids for Interconnected Voice Over Internet Protocol (VoIP).

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4 *Ysleta Order*, 18 FCC Rcd 26407 ¶ 36.

5 BPL technology is not even available in Puerto Rico. The only entity that could theoretically offer such service would be the Puerto Rico Electric Power Company, which is currently on the brink of financial collapse. *See Power Problems: Puerto Rico's Electric Utility Faces Crippling Debt*, available at: http://www.npr.org/2015/05/07/403291009/power-problems-puerto-ricos-electric-utility-faces-crippling-debt (May 7, 2015).

G. The Consortium did not seek bids for Internet access features such as Domain Name Service or Dynamic Host Configuration.

H. The Consortium did not seek bids for video components such as: Master Control Unit, PVBX, Video Amplifier, Video Channel Modulator, Enhanced Multimedia Interface.

Based on this evidence, it was an error for USAC to rely on *Ysleta* and characterize the Consortium's Form 470 as "encyclopedic." The information provided by the Consortium to USAC regarding this fact was completely ignored by USAC. Therefore, on this basis alone, the Commission must reverse USAC's decisions.

Furthermore, the services included in the Consortium's Form 470 are linked in a reasonable way to the technology needs of each Consortium member. For example, Colegio San Juan Bautista's technology plan (attached as Exhibit F) identifies several technology needs, including filtered, high-speed Internet access in all classrooms, the library and the computer lab, e-mail service, web hosting, and Internal Connection equipment such as a router, drops, and switches. The school is located in the Municipality of Orocovis in the center of Puerto Rico on the Central Mountain Range ("*Cordillera Central*"), which crosses the island from West to East. Below are aerial pictures of Colegio San Juan Bautista, demonstrating its location in the Central Mountain Range:

Colegio San Juan Bautista's technology needs, as well as its location in a mountanous, rural area of the island (typically best served by wireline connections) were carefully considered when identifying the specific the E-Rate eligible services to include in the Form 470. The same process was conducted for each of the other members pursuant to their technology plans, resulting in a Form 470 that allowed bidders to understand the specific technologies the members were seeking.

IV. MOST OF THE CONSORTIUM'S MEMBERS DID NOT RECEIVE QUESTIONS FROM USAC.

Each of the COMADs indicates that USAC sent "multiple requests for documentation," that each member was asked about the service descriptions on the Form 470, that *each member* was asked to explain how they determined the services to request, and that *each member* provided the same response. However, only two of the fourteen Consortium members received questions from USAC. As noted, those applicants are: Colegio San Rafael (BEN 158943) and Academia Cristo de Los Milagros (BEN 157732).

The Consortium does not know if USAC has attributed the responses submitted by the Consortium on behalf of two members to the rest of the members, or if the failure to send Information Requests to other Consortium members was an oversight. While members of the Consortium relied on the same Form 470, due process dictates that if funds are to be denied every Consortium member, every Consortium member should have been given an opportunity to respond to the Information Requests. The responses provided to those questions were critical to, and the basis for, USAC's decision to rescind the funding commitments and, subsequently, deny the appeal. The Commission should reverse USAC's denials for three reasons: first, because the majority of Consortium members were denied this basic right to respond; second, because the statement USAC makes in rescinding the funding commitments (that each Consortium member

was asked to explain how they determined the services to request) is patently false; and third, because the failure to provide all Consortium members with the opportunity to respond violates USAC process.

V. THE CONSORTIUM WAS IN COMPLIANCE WITH ALL CORE PROGRAM REQUIREMENTS.

The Consortium asks the Commission to take into consideration the fact that it adhered to all core program requirements. The Consortium and its members submitted the required application forms within the requisite deadlines. There was no service provider involvement in the completion and filing of the Form 470. The Consortium and its members conducted a fair and open competitive bidding process and waited the requisite twenty-eight (28) days before selecting a service provider. The Consortium and its members selected the most cost-effective bid in compliance with the Commission's rules and at no point has USAC alleged the contrary. The Consortium and its members complied with all Puerto Rico procurement processes, and did not engage in waste, fraud or abuse, or misuse of funds. The Consortium has never been in violation of any E-Rate Program rules.

VI. CONCLUSION

This matter is before the Commission because of an unfortunate misunderstanding in connection with USAC's question about how the services on the Form 470 were determined. The misunderstanding arose because USAC's questions were in English and the Consortium personnel who responded to USAC's questions – who are native Spanish speakers who do not usually speak, read or write English – were unable to express themselves accurately. Denying E-Rate funding to all Consortium members on the basis of an honest misunderstanding caused by a language barrier is neither required by the Commission's rules nor consistent with the

Commission's values and desires as evidenced in its policy of helping applicants succeed with the E-rate Program.

USAC's decisions must also be reversed because USAC ignored evidence that the Consortium's Form 470 did not include all of the services in the ESL.

USAC's decisions must also be reversed because USAC denied funding to all Consortium members even though only two of the members had an opportunity to respond to USAC's questions. Due process and USAC's own process dictate that each Consortium member should have been given an opportunity to respond to the Information Requests

Rescission of the funding commitments under these circumstances is draconian particularly given the fact that the Consortium and its members adhered to all core program requirements and have never been in violation of E-Rate Program rules.

If left undisturbed by the Commission, USAC's decisions will have a disastrous impact on the Consortium members' ability to continue to bring technology into the classroom for the benefit of students in one of the most impoverished areas of the United States. The Consortium's members have received good and valuable services from their service provider throughout the entire Funding Year 2014, and requiring their members to return funds will impede their ability to continue to participate in the E-Rate Program, particularly given the large amounts that USAC is seeking to recover.

For all these reasons, the Consortium respectfully requests that the Commission reverse the adverse decisions by USAC with respect to the referenced FRNs for Priority One services for Funding Year 2014.

Respectfully submitted,

CONSORTIUM ESCUELAS CATÓLICAS

By: _____

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