



# COLEGIO CATOLICO NOTRE DAME

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Date: June 25, 2015

VIA EMAIL: [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org)

Letter of Appeal  
Schools and Libraries Division - Correspondence Unit  
30 Lanidex Plaza West  
PO Box 685  
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**RE: APPEAL**

This is an appeal by the Consortium Colegio Católico Notre Dame Secundario ("Consortium") on behalf of five member applicants who had their Funding Year 2014 funding commitments for Priority One services rescinded via Notification of Commitment Adjustment Letters ("COMADs") issued by the Universal Service Administrative Company ("USAC") on May 4, 2015.

Below is the name, address, telephone number, fax number, and email address of the person who can most readily discuss this appeal with USAC:

Name: Wilfredo Chiclana Díaz  
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If USAC desires to discuss this appeal, the undersigned respectfully requests that USAC make available a person who speaks Spanish or, if the discussion is to occur via email, that the correspondence be in Spanish.

The COMADs are dated May 4, 2015, thus establishing an appeal deadline of July 3, 2015. The chart below contains the applicant, the billed entity number ("BEN"), the Form 471 application number, the Funding Request Numbers ("FRNs"), and the FCC Registration Number:

| Applicant                              | BEN    | 470 #           | 471 #  | FRNs <sup>1</sup> | FCC Registration # |
|--|--------|-----------------|--------|-------------------|--------------------|
| Colegio Católico Notre Dame Secundario | 201210 | 296310001099228 | 979835 | 2669883           | 0014099246         |
| Colegio Católico Notre Dame Elemental  | 199857 | 296310001099228 | 979879 | 2670047, 2670051  | 0014366694         |

<sup>1</sup> All FRNs are for Internet Access service.

| Applicant                                | BEN    | 470 #           | 471 #  | FRNs <sup>1</sup> | FCC Registration # |
|--|--------|-----------------|--------|-------------------|--------------------|
| Colegio San Carlos Borromeo              | 219595 | 296310001099228 | 987304 | 2693193, 2693220  | 0022525323         |
| Academia Inmaculada Concepción - Sup     | 159940 | 296310001099228 | 972245 | 2647129, 2647142  | 0022502561         |
| Academia Inmaculada Concepción Elemental | 219946 | 296310001099228 | 990843 | 2703796, 2703814  | 0022502561         |

## I. Background

The Consortium represents five private catholic schools in Puerto Rico. Collectively, the Consortium members have a combined enrollment of approximately 2,726 students in grades K through 12.

USAC sent letters to the Consortium's members asking for information as to who prepared the Form 470 and whether any service provider assisted with the completion and/or posting of the Form 470. USAC also alleged that the service descriptions listed on the Form 470 appeared to be "generic" or "encyclopedic" and asked Consortium members for an explanation about how they determined the services that were listed on the Form 470.

The responses by members of the Consortium Escuelas Católicas stated the following: (1) Wilfredo Chiclana Díaz, Associate Principal at Colegio Católico Notre Dame Secundario, was responsible for preparing and filing FCC Form 470 # 296310001099228; (2) no service provider employee assisted with the completion and/or posting of Form 470; and (3) the services listed in the Form 470 were all eligible services, stating that: *"Related to the service descriptions listed on the Form 470 #371410001160074 the information provided, I took it from your Schools and Libraries Universal Service / Support Mechanism / Eligible Services List, that resume listed the requested services."*

USAC's questions were provided only in English. The Form 470 and its Instructions are available only in English. Consortium personnel who prepared the responses are native Spanish speakers and are not fluent in English. Oddly, despite the obvious lack of clarity in the above quoted response, USAC did not attempt to clarify the response by means of any follow up questions in either English or Spanish.

On May 4, 2015, USAC issued COMADs rescinding all of the funding commitments for Priority One services for all member applicants. USAC 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# 296310001099228 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.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx>. 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.

For the reasons discussed below, USAC erroneously rescinded the funding commitments for Priority One services. The Consortium respectfully requests that USAC grant this appeal and that the COMADs be rescinded.

## **II. USAC must rescind the COMADs because the Consortium did not file a generic or encyclopedic Form 470.**

The Consortium *did not* list all of the Priority One (Telecommunications and/or Internet Access) services listed in the Eligible Services List (“ESL”). This is obvious by conducting a comparison of the Consortium’s Form 470 and the ESL for Funding Year 2014. As the Form 470 indicates, the Consortium sought bids for the following Priority One services: distance learning circuits and services; local and long distance telephone service; cellular service; conferencing services; maintenance services; fax machine line; interactive TV; frame relay service; wireless WAN; installation services; T1 or fractional T1 lines; basic telephone service; and metropolitan area network.

In terms of basic conduit access to the Internet, the Consortium limited itself to requesting bids for access using T1/fractional T1 lines or wireless technologies. Either one of these technologies represented a feasible technical solution to our schools. Thus, the Consortium limited its request for bids only two technologies while, at the same time, providing its member schools with flexibility to select the particular solution that best fits their individual needs. The other Priority One services listed in the Form 470 are basic services that one would expect schools to request under the E-rate program. In contrast, listed below are the eligible services that the Consortium *did not* include in its Form 470:

- The Consortium did not seek bids for DSL service.
- The Consortium did not seek bids for fiber/dark fiber.

- The Consortium did not seek bids for broadband over power lines.
- The Consortium did not seek bids for cable modem service.
- The Consortium did not seek bids for satellite-based Internet service.
- The Consortium did not seek bids for telephone dial-up service.
- The Consortium did not seek bids for 800 service.
- The Consortium did not seek bids for Centrex.
- The Consortium did not seek bids for Radio Loop.
- The Consortium did not seek bids for Interconnected Voice Over Internet Protocol.
- The Consortium did not seek bids for Internet access features such as Domain Name Service or Dynamic Host Configuration.
- The Consortium did not seek bids for web hosting service.
- The Consortium did not seek bids for firewall service.
- The Consortium did not seek bids for basic installation instruction training.
- The Consortium did not seek bids for mobile hotspot service.
- The Consortium did not seek bids for paging service.
- The Consortium did not seek bids for video components such as: Master Control Unit, PVBX, Video Amplifier, Video Channel Modulator, Enhanced Multimedia Interface

Neither USAC nor the FCC has indicated that the maximum number of eligible services that may be included in a Form 470, only that an applicant cannot request all or virtually all services in a Form 470. In this case, the Consortium was far from requesting all or virtually eligible Priority One services. Therefore, it was an error for USAC to have categorized the Consortium's Form 470 as encyclopedic or generic and USAC must cancel the COMADs.

**III. The fact that the Consortium's Form 470 had to include a reasonable number of eligible Priority One services that were responsive to the needs of each of its members does not violate the FCC's Ysleta Order.**

USAC says that: "Per the FCC's Ysleta Order, an applicant's 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." However, the Form 470 did not violate the Ysleta Order. In the Form 470, the Consortium sought bids for 5 separate private catholic schools. Each school is different and the technology needs of one member will not necessarily represent the needs of another. A technology solution that might work for one member school might not work for another school member. 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 ESL. As noted in Section II above, the Consortium did not even come close to requesting all or virtually eligible Priority One services. In addition, the FCC's Ysleta Order does not prohibit consortia from requesting services that are responsive to the reasonable technology needs of its members

**USAC should also take into consideration the fact that the Consortium selected the lowest priced bid in compliance with the FCC's rules and at no point has USAC alleged the contrary.**

If the Consortium fails to include in the Form 470 a particular service that may reasonably represent the most cost-effective solution for one school consistent with the technology plan, that school will either be prohibited from seeking support for that service in its Form 471 or the Consortium will be required to amend the Form 470. This careful balancing act is unique to consortia trying to facilitate the application process for a group of applicants with diverse technology needs and student population.

**IV. Rescission of the funding commitments is the result of a misunderstanding, and the reason for such a misunderstanding is a language barrier that applicants from Puerto Rico face when participating in the E-rate program**

The USAC questions sent to the Consortium members asked: "Please explain how you determined the services to request on your FCC Form 470." The Consortium understood that USAC was inquiring as to how the Consortium determined that the requested services were, in fact, *eligible* for E-rate funding. It is for this reason that the Consortium indicated that the services were identified from the Eligible Services List, and responded as follow:

"Related to the service descriptions listed on the Form 470 #371410001160074 the information provided, I took it from your Schools and Libraries Universal Service / Support Mechanism / Eligible Services List, that resume listed the requested services."

It is now apparent to the Consortium that USAC was not questioning the eligibility of the services listed in the Form 470, but instead was asking why, in USAC's opinion, the Form 470 appeared to be generic or overinclusive. This was a misunderstanding, which the Consortium regrets. However, USAC must take into consideration that its questions were provided in English and the Consortium personnel who prepared the responses are native Spanish speakers. The Consortium believes that the rescission of all the applications filed by all of its members is a draconian step that could have been avoided if USAC, cognizant of the fact that most people in Puerto Rico speak Spanish rather than English, had only reached out to the Consortium through a Spanish-speaking USAC reviewer. Furthermore, as previously explained, USAC's allegation that the Form 470 was generic is incorrect because there were many eligible Priority One services in Funding Year 2014 for which the Consortium did not seek bids in the Form 470.

The E-rate program is complex. The various forms and their instructions, the FCC rules and relevant orders, and USAC's guidance on its website are extremely difficult to navigate for people whose first language is not English. More particularly for this case, none of these resources are available in Spanish. Schools and libraries 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 due to the fact that there is a lack of information and resources in the Spanish language. This is not an insignificant consideration for Puerto Rico because its citizens contribute millions of dollars every year to the Universal Service Fund, which funds the E-rate program, and Puerto Rico contains many of the poorest students in the United States. The language barrier for Puerto Rico applicants should be an indication to USAC that Spanish-language resources are critical when posing questions to Puerto Rico applicants that may lead to the denial of E-rate funding.

**V. Conclusion**

The Consortium, on behalf of its members and the students they educate in Puerto Rico, respectfully asks USAC to grant this appeal. The Consortium clearly did not include all of the eligible services in the Form 470. Rescission of the funding commitments is the result of a misunderstanding, and that the reason for such a misunderstanding is a language barrier that applicants from Puerto Rico face when participating in the E-rate program. However, as demonstrated, the Consortium's Form 470 was not an open-ended solicitation for all services. Therefore, USAC should reverse the COMADs. Furthermore, USAC must take into consideration the fact that there has been no intent to deceive USAC or allegation of waste, fraud or abuse in this case.

Respectfully submitted,

**CONSORTIUM COLEGIO CATÓLICO  
NOTRE DAME SECUNDARIO**

By:   
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