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December 23, 2004

Via Electronic Filing
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S. W.
Washington DC 20554

Re: Notice of Ex Parte Presentation, In re Requests for Review by Consorcio de Bibliotecas y Escuelas de Puerto Rico ("Consorcio") of Decisions of Universal Service Administrator ("Requests for Review"); CC Docket Nos. 96-45, 97-21, and 02-6

Dear Ms. Dortch:

On December 15, 2004, Mr. Christopher McLean, principal of E-Copernicus, and Adrianne E. Arnold, representing Hispanic Information and Telecommunications Network, Inc. ("HITN"), met with Vickie Robinson, Jennifer Scheider, and Mark Nadel of the FCC Wireline Competition Bureau to discuss matters related to the above-referenced Requests for Review and issues related to HITN's participation in the E-Rate program. The discussions specifically related to the summary outlined below.

HITN is a non-profit educational organization dedicated to improving the lives of Hispanic Americans by using advanced telecommunications technologies to bring educational programming, Internet access and wireless communications to underserved communities. HITN has been a participant in the E-rate program since its inception. HITN was a service provider to Consorcio members and individual schools and libraries in the Commonwealth of Puerto Rico. Consorcio members were primarily private schools and municipal libraries located in some of the poorest and most rural areas of the Commonwealth. During the first three years of the program, HITN and the Consorcio encountered few problems with the E-rate program. Since Year 4 of the program, the Consorcio and HITN have encountered difficulties with the E-rate program.

There are several factors that distinguish the Consorcio/HITN case from other E-Rate cases previously and currently before the Commission:

- The Commonwealth of Puerto Rico is the only part of the United States to have Spanish as its official language. The United States has historic, legal and public interest obligations to the people of Puerto Rico (some dating back to the Treaty ending the Spanish American War), to respect Spanish language and culture on the island of Puerto Rico. Unlike the FCC, the SLD did not accommodate Spanish-speaking Americans and did not provide crucial deadline and changed application filing information to Puerto Rican applicants in Spanish. (See Ex Parte presentation, November 17, 2003).
- HITN has never interrupted the E-Rate services of the Consortio or to members of the Consortio during the difficulties of the past few years.
- Over a period of months, HITN has been working closely with the Schools and Libraries division ("SLD") of the Universal Service Administrative Company ("USAC") and staff to resolve outstanding issues related to reimbursement for services HITN properly provided to its customers.
- HITN has only collected the local share for these services while working with the SLD and FCC to resolve outstanding issues.
- HITN has demonstrated its eligibility to receive E-Rate services. HITN and the Consortio have shown that there have been serious substantive and procedural difficulties with SLD rejections of applications related to HITN's E-Rate services. The details are discussed below.
- Continued delay in approving E-Rate applications related to HITN service is imposing a serious hardship on a non-profit organization that has repeatedly demonstrated that it is providing high quality E-Rate services and serving the educational needs of many of Puerto Rico's poorest, most remote and rural communities.

1.) Year 4 Issues

The Corsorcio's Year 4 Appeal, filed in 2001, should be granted. The Consorcio and HITN, in numerous filings, have established a record that demonstrates profound and serious errors in procedures used to announce a significant change in the E-Rate program. In addition, HITN has specifically asked the FCC to take into consideration the fact that up until this month, SLD made virtually no effort to communicate in the language of the Commonwealth of Puerto Rico. At a minimum, a waiver should be granted to accommodate the language barrier that has existed between the SLD and HITN's customers.

In Year 4, the SLD changed the procedures or rules for filing E-Rate applications. The Office of Management and Budget made that significant program change without proper notice or review; the SLD violated the Paperwork Reduction and Administrative Procedures Acts. The Consorcio and HITN have demonstrated that some Year 4 rule changes were cleared by the Office of Management and Budget, but the crucial, significant and material deadline change was not.

An English language website change does not provide sufficient notice to applicants in a Spanish speaking Commonwealth of the United States. The record establishes that the

electronic deadline was met; the procedure followed by the Consorcio would have complied with the rules, as they existed in the previous years; and an insignificant amount of time elapsed between the actual postmark date and the improperly noticed postmark date for Year 4.

At a minimum, the FCC should, out of respect for the language and culture of the people of Puerto Rico, waive the requirement in this case given the fact that the Puerto Rico is a Spanish speaking Commonwealth of the United States. The Consorcio and HITN serve some of the poorest, most digitally disconnected and most rural citizens of the Commonwealth. The SLD English language website simply does not provide fair notice to members of the Consorcio.

There is no record establishing that a letter advising of the rule change ever reached the Consorcio or its members. Even if a letter had been delivered, it would have been in English and insufficient to fairly notice Spanish speaking Puerto Rican applicants of such a significant change of procedure. Further, even if a letter were received *and understood* by some Consorcio members, the SLD and Commission cannot assume that all Consorcio members knew about the change.

On August 11, 2000, President William Jefferson Clinton signed Executive Order 13166, which stated, "Each Federal Agency shall examine the services it provides and develop and implement a system by which LEP (limited English proficiency) persons can meaningfully access those services consistent with, and without unduly burdening the fundamental mission of the agency." The Department of Justice ("DOJ") simultaneously issued guidelines, which set forth compliance standards. While this executive order did not grant a private cause of action to LEP persons, it does highlight the problems experienced by individuals who do not speak English as a first language, as is the case in Puerto Rico. For a breakdown of how various agencies have approached this problem, please see Attachment B.

2.) Year 5 Issues

HITN spent a large portion of the meeting discussing the right of first refusal ("ROFR") issue from Year 5. In its denial, the SLD indicated that the ROFR provisions in the 1998 Master Services Agreement between HITN and the Consorcio were invalid and illegal. A Request for Review is currently on file with the FCC regarding this issue, asking for a reversal of the SLD's denial of funding based on SLD gross errors in processing applications and interpreting its own rules and policies (filed January 23, 2004).

The ROFR in no way could have constituted a competitive bidding violation by the Consorcio member institutions applying for Year 5 funding – the principal reason cited by SLD in its denial of the applications – for several reasons in addition to those already cited by the Consorcio in its Request for Review of the SLD decision.

First, there is no evidence that the ROFR provision in the underlying Master Services Agreement was even known to any bidder or prospective bidder. Without knowledge, the term can have no effect on the bidding by other interested bidders. A disappointed, unsuccessful or discouraged bidder never raised the ROFR issue. It was raised for the first time in the Year 5 rejection letter by SLD dated November 24, 2003.

Second, nothing in the Telecommunications Act of 1996, the FCC Rules, the SLD and E-Rate rules, guidelines or precedents that expressly prohibits or discourages ROFR provisions. If the FCC or SLD are to institute a policy on this matter, it must provide applicants, bidders and vendors sufficient notice to conform existing and future contracts and not operate as a "surprise" disqualification of properly prepared and highly audited applications.

Third, there is nothing in a ROFR term that undermines competitive bidding. A right of first refusal provision only serves to allow a losing bidder holding the ROFR to match the lowest bid accepted by the applicant, guaranteeing that the entity seeking bids receives the lowest possible price from all bidders. It also ensures that the applicant has an opportunity to select the highest quality service at the lowest possible price.

Fourth, virtually no entities demonstrated an interest in servicing Consorcio members in the first five years of the program. The Consorcio competitively bid its request for services each of the first 5 years of the E-Rate program in Puerto Rico and received virtually no competing bids, as there was seemingly no other service provider(s) that could (or desired) to provide services to the Consorcio institutions, which are located in some of the most remote and mountainous regions of Puerto Rico – so even if this provision could have been construed by the Consorcio in some way that would effect its decision to select another bidder, that was not the case here since there were no other bidders.

Fifth, in Year 6 an alternative provider entered the bidding process for the first time in the case of the Consorcio's participation in the E-Rate program. Year 6 (for which there is an appeal pending at SLD for Consorcio applications denied by SLD) was the first year a bona-fide alternative bidder made a proposal to the Consorcio to provide Internet access services. The fact that the alternative bidder entered the bidding competition after five years demonstrates that the ROFR did not serve as a short-term or long-term impediment to competitive bidding.

Sixth, the ROFR has never been exercised. In Year 6, the Consorcio selected the alternative bidder and HITN did not exercise its right of first refusal – thus demonstrating that the SLD rationale in this case regarding Year 5 is wrong from the standpoint of both whether the Consorcio would be disincentivized to select another bidder or that another bidder would be disincentivized from bidding where an incumbent service provider holds a right to match a competing offer.

Finally, the ROFR was valid under Maryland Law, where the Master Services Agreement was executed in 1998 (Attachment A, Master Services Agreement, paragraph 18).

Additionally, the Second Restatement of Contracts and most states recognize that a ROFR is a valid clause in contracts. The ROFR was present in every services agreement approved by the FCC and the SLD from Years 1-5, and neither agency questioned its presence. HITN relied on this previous acceptance by the Commission, and had no warning that a ROFR could be considered disabling until this denial.

Even if the Commission determines that a right of first refusal provision in an agreement between an applicant and its service providers under the E-Rate program may serve to "dampen competition" and "compromise selection of the vendor", in this case the provision had no such effect, and was in fact proven both to not have been a factor in the Consorcio's decision to select a service provider other than HITN in Year 6, and to not affect HITN to exercise its the right of first refusal. HITN has no complaint if the ROFR were prohibited prospectively. To apply it retroactively, especially under the factual circumstances discussed herein, would be a grave injustice.

3.) Year 7 Issues

The Year 7 appeals of Colegio San Antonio and Colegio Notre Dame before the FCC (filed in August of 2004) and the SLD respectively involve applications that attached the library worksheet rather than the school worksheet. HITN reiterated that because of the significant Spanish barrier between SLD and Puerto Rican applicants, it was reasonable for a school to accidentally attach the library worksheet to its school application, because most schools in Puerto Rico have libraries and computers and equipment are often used or stored in the schools' libraries. This understandable and minor error should not deprive Puerto Rican children the benefits of E-Rate.

4.) Year 3 Issues

HITN mentioned that the Bibliotheca Residencial Aguadilla appeal to the FCC was filed on December 13, 2004. A courtesy copy will be emailed to Vickie Robinson. The essence of that appeal is that the investigator could not locate E-Rate related equipment because the investigator went to the wrong place.

5.) Year 6 Issues

HITN assured the FCC that they are working closely with Cynthia Schultz of the SLD to resolve the common carrier issue arising out of Year 6. HITN is a non-profit common carrier. HITN plans to submit the required information to the SLD shortly. The appeal at the SLD should be resolved without coming to the FCC.

6) New Spanish Outreach Efforts

HITN was pleased to participate in a December workshop sponsored by the SLD at the ASPIRA Technology Tools Conference in San Juan, Puerto Rico. Cynthia Schultz and Mel Blackwell of the SLD and USAC attended the conference and conducted the outreach. At the conference the SLD released its first significant Spanish Language training materials.

HITN enthusiastically supports this effort and hopes that it is only a first step in improving communications in Spanish with Puerto Rico. HITN was pleased to use its

distance learning satellite network to broadcast the training to eight remote municipal library sites around the island to provide an opportunity for all interested parties to view the E-rate training for free.

HITN was also pleased that Cynthia Shultz and Mel Blackwell visited two of HITN's customers. They saw fast Internet service delivered over HITN's satellite network, the enthusiasm of children who were using the system, and the difficult economic and geographic challenges of rural Puerto Rico.

This new outreach is welcome and needed and illustrative of the very unique problems faced by Puerto Rican applicants. In considering the series of cases related to HITN service, we urge the FCC to take into full account the language, cultural and economic challenges of Puerto Rico. The welcome contemporaneous recognition by the SLD that more needs to be done to make information available in Spanish highlights the severe shortcomings of the SLD's prior approach to Puerto Rico. HITN is committed to doing everything possible to assist the SLD's much needed Puerto Rican outreach initiative.

Conclusion

Granting the HITN-related appeals at the FCC and SLD combined with a cooperative effort between the FCC, SLD, HITN and other service providers, and applicants to improve communications would represent a much-needed "fresh start" for the E-rate program in Puerto Rico.

We urge the FCC and SLD not to lose sight of the purpose of the E-rate program, which delivers services and the Internet even to the most remote and poorest areas of our nation. In Puerto Rico, HITN is doing just that. HITN has acted in good faith and provides high quality service its customers in Puerto Rico. For all the reasons stated above and in the numerous filings before the FCC and SLD, and in the public interest and interests of fair play and justice, funding for HITN-related cases should be released and HITN should be reimbursed for services that have been delivered to the people of Puerto Rico.
As a non-profit entity providing distance learning, public interest television and educational services to the Hispanic community, HITN is committed to do everything it can to serve the children of Puerto Rico. The barriers to funding that have been placed before the Consorcio and HITN are imposing heavy financial burdens on HITN.

We urge the FCC and SLD to act in the public interest to release E-rate funds to the Consorcio and former Consorcio members so that HITN can be fairly compensated for the quality services that have been provided under very difficult circumstances.

This letter is being filed electronically for inclusion in the above-referenced dockets pursuant to Section 1.1208 of the Commission's rules, 47 C.F.R. §1.1208. To the extent this Notice is not considered timely filed, we hereby request a waiver of the requirement and further request that the Commission accepts this Notice for filing, as this matter has not been contested by any party.

Very truly yours,

Adrianne E. Arnold

cc (via e-mail):

Vickie Robinson
Jennifer Schneider
Cynthia Schultz

Attachment

ATTACHMENT A

MASTER SERVICES AGREEMENT

This **MASTER SERVICES AGREEMENT** (the "**Agreement**") is made and entered into as of January 29, 1998, by and between the Puerto Rico Consortium of Schools and Libraries ("**PRCSL**"), on behalf of schools and libraries who have or will elect to obtain services under this Agreement (the "**Schools and Libraries**"), and the Hispanic Information and Telecommunications Network, Inc. ("**HITN**"), a New York Non-Profit Corporation, and Distance Learning Services, Inc. ("**DLS**"), a Delaware Corporation (collectively referred as "**HITN/DLS**").

WHEREAS, PRCSL and the Schools and Libraries wish to enter into this Agreement for the purchase of telecommunications equipment and connectivity services from HITN/DLS.

WHEREAS, the services under this Agreement are being procured by PRCSL on behalf of its member schools and libraries and other schools and libraries who have or will agree to participate in the Consortium ("**Consortium**") established for the purpose of obtaining discounted bulk telecommunications equipment and connectivity services from HITN/DLS, including but not limited to, Internet and data connectivity, videoconferencing, video programming, and distance learning connectivity as listed in **Schedule A** ("**HITNET Services**" or the "**Services**").

WHEREAS, Universal Service Fund ("**USF**") refers to the Federal Communications Commission's Universal Service Fund Program which makes available discounts on telecommunications services and related equipment to schools and libraries, including many of the Services defined under this Agreement.

NOW, THEREFORE, in consideration of the premises hereof and the provisions contained herein and intending to be legally bound hereby, PRCSL, the Schools and Libraries, and HITN/DLS agree to the following Terms and Conditions:

1. PRCSL will use its best efforts to secure participation by all Puerto Rico schools and libraries in the Consortium and will not undertake to set up any other consortium to secure similar Services from a different service provider.

2. The equipment and the Services available for purchase by PRCSL and the Schools and Libraries are listed in Schedule A. HITN/DLS will make these services and equipment available for a term of five (5) years ("**Term**"), beginning on the date of execution of this Agreement, during which HITN/DLS will be the exclusive supplier of the Services.

3. In the event that USF competitive bidding requirements necessitate at any time during the Term of this Agreement it is subject to competitive bidding, PRCSL and the Schools and Libraries agree that if the Agreement does not result in the lowest price bid for Services similar to those provided for under this Agreement, HITN/DLS has a right of first refusal to offer a bid lower than the lowest price bid, which PRCSL and the Schools and Libraries agree they will accept.

4. Should a School or Library under this Agreement not qualify for USF funding in any year(s), the School or Library may elect to cancel the taking of Services under this Agreement for that year(s). PRCSL agrees it will make reasonable efforts to assist all participating Schools and Libraries in obtaining funding and to obtain such funding on behalf of the Consortium.

5. HITN/DLS will make reasonable efforts to assist PRCSL and the Schools and Libraries in the Consortium in applying for and obtaining Universal Service Fund discounts for the Services.

6. HITN/DLS may withdraw, without penalty, from the Terms and Conditions of this Agreement after June 30, 1998 in the event that 100 Schools and Libraries (each of which HITN/DLS finds to be technically feasible for receiving HITN/DLS Services based on the Site Survey as described in Schedule A) do not agree to join the Consortium and participate under this Agreement by that time.

7. HITN/DLS makes no warranties of any kind, whether expressed or implied, for the Services it is providing. HITN/DLS also disclaims any warranty of merchantability or fitness for a particular purpose. HITN/DLS will not be responsible for any damages suffered by PRPAE or the Schools and Libraries. This includes loss of data resulting from delays, nondeliveries, misdeliveries or Service interruptions caused by PRCSL, the Schools and Libraries or HITN/DLS's negligence, errors or omissions, or due to inadvertent releases or

disclosures of information sent by PRCSL or the Schools and Libraries.

8. HITN/DLS's Services may only be used for lawful purposes. Unauthorized transmission or storage of information, data or material in violation of any Federal or state law or regulation is prohibited. This includes, but it no limited to: copyrighted material, material that is obscene or material protected by trade secret. In this respect, PRCSL and the Schools and Libraries agree to indemnify and hold harmless HITN/DLS from any liability for any injury, harm or damages (including payment of reasonable attorneys fees) caused to any person by use of the Services provided under this Agreement.

9. PRCSL and the Schools and Libraries agree that HITN/DLS network access is for network Services at PRCSL and the Schools premises only. Remote network access from PRCSL and the Schools and Libraries premises can be arranged and is permitted only with prior written approval from HITN/DLS.

10. Without HITN/DLS's prior written consent, PRCSL and the Schools and Libraries shall not either (i) assign, transfer, or otherwise dispose of this Agreement or any interest in this Agreement or the Service, or (ii) sublet the Service or permit it to be used by anyone other than PRCSL and the Schools and Libraries and their students, employees and patrons (in the case of a Library).

11. Notwithstanding Paragraph 5 above, after June 30, 1998, Services may be canceled by a participating School or Library prior to the completion of the Term by giving HITN/DLS 90 days prior written notice. If Services are canceled by a School or Library (the "**Party Canceling**") prior to the completion of Term, the Party Canceling shall remain obligated to pay HITN/DLS Monthly Recurring Fees as listed in Schedule A (i) through the completion of the Term, (ii) through the effective termination date requested by the Party Canceling, or (iii) through the completion of the 90 day period following HITN/DLS's receipt of written notice from the Party Canceling of its intent to terminate this Agreement, whichever is later. The Party Canceling shall be responsible for all Telephone Company or other Telecommunications Company pass-through fees necessary in the provision of the Services to the Party Canceling (i) through the effective termination date requested by the Party Canceling, or (ii) though the completion of the 90 day period

following HITN/DLS's receipt of written notice from the Party Canceling of its intent to terminate this Agreement, whichever is later. The Party Canceling shall be responsible for any penalties or retroactive billing fees incurred by HITN/DLS for services provided by Telephone Companies or other telecommunications companies caused by early termination of this Agreement.

12. Following completion of the Term, this Agreement will continue in effect on a month-to-month basis until such time as either party provides the other party with advance written notice of intent to terminate this Agreement. Such notice shall be provided at least 90 days prior to the effective termination date.

13. Payment is due upon receipt of invoice. Accounts are in default if payment is not received within 30 days after date of invoice. If payment is returned to HITN/DLS unpaid, PRCSL or the School or Library is immediately in default and subject to a returned check charge of $30.00 from HITN/DLS. Accounts unpaid 60 days after date of invoice my have their service interrupted. Such interruption does not relieve PRCSL or the School or Library from the obligation to pay the monthly account charge. Only a written request to terminate Services relieves PRCSL or the School or Library from the obligation to pay subsequent monthly account charges subject to notice requirements contained in the Paragraph 11 of the Terms and Conditions. Accounts in default are subject to an interest charge of 1.5% per month or the legal maximum allowable rate in Puerto Rico, whichever is less. If PRCSL or the School or Library is in default, they agree to pay HITN/DLS its reasonable expenses, including attorney and collection agency fees incurred in enforcing its rights under these terms and conditions.

14. The nonrecurring and recurring fees for the Services and Equipment provided under this Agreement are contained in Schedule A.

15. At any time prior to the execution of this Agreement, HITN/DLS at its sole discretion and expense, reserves the right to have a credit check performed on PRCSL or any of the Schools of Libraries to determine financial status. Should HITN/DLS determine that the financial status of PRCSL or any of the Schools or Libraries does not comply with those requirements then in effect by HITN/DLS relative to the financial acceptability of a potential customer, HITN/DLS reserves the right to

terminate this Agreement immediately and it shall be as though this Agreement was never entered into by the parties.

16. This Agreement may be modified or changed only by written Amendment signed by both parties.

17. This Agreement shall be effective upon execution of the Agreement by PRCSL and HITN/DLS.

18. This Agreement shall be governed and construed in accordance with the laws of the State of Maryland, but not including the choice of law rules thereof.

19. PRCSL and the Schools and Libraries hereby irrevocably consent to the Jurisdiction of the courts located in Montgomery County, Maryland, for any suit brought or action commenced in connection with this Agreement, and agrees not to contest venue or jurisdiction in any such courts.

20. All notices, requests, demands, and other communications required under the provisions of this Agreement shall be in writing (including facsimile transmissions) and shall be sent by hand, registered or certified mail return receipt requested, by overnight courier service maintaining records of receipt, or by facsimile transmission with confirmation in writing mailed first-class, in all cases with charges pre-paid. All notices shall be addressed as follows:

If to PRCSL or the Schools and Libraries:

Puerto Rico Consortium of Schools and Libraries
Attention: Dr. Moises Velazquez
P.O. Box 1629
Mayaguez, PR 00681
Telecopy: (787) 265-4044

If to HITN/DLS:

HITN
Attention: Jose Rodriguez
449 Broadway, 3rd Floor
New York, NY 10013
Telecopy: (212) 966-5725

21. The Schedules attached to this Agreement are an integral part hereof, and are hereby made a part of this Agreement.

22. This Agreement, the Schedules attached hereto and other documents, agreements, and amendments executed by the parties contemporaneously herewith or subsequent hereto constitute the entire agreement of the parties and supersede all prior understandings and agreements, written or oral, between the parties relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this **MASTER SERVICES AGREEMENT** by their duly authorized representatives:

ACCEPTED BY:

HITN/DLS

Jose Luis Rodriguez,
President, HITN

DATED: January 29, 1998

PUERTO RICO CONSORTIUM OF SCHOOLS AND LIBRARIES

Dr. Moises Velazquez,
Representative of the Consortium

DATED: _____

Robert Kelly,
DLS

DATED: _____

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HITN/DLS

PUERTO RICO CONSORTIUM OF SCHOOLS AND LIBRARIES

Jose Luis Rodriguez,
President, HITN

Dr. Moises Velazquez,
Representative of the Consortium

DATED: _____

DATED: _____

Robert Kelly

Robert Kelly,
DLS

DATED: 1/29/98

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ACCEPTED BY:

HITN/DLS

Jose Luis Rodriguez,
President, HITN

DATED: _____

Robert Kelly,
DLS

DATED: _____

PUERTO RICO CONSORTIUM OF SCHOOLS AND LIBRARIES

Moisés Velázquez

Dr. Moises Velazquez,
Representative of the Consortium

DATED: 1/29/98

ATTACHMENT B

Accommodation of Spanish Language by Federal Agencies

Former President Bill Clinton signed into law Executive Order 13166, published at 65 Fed. Reg. 50,121-22 (Aug. 16, 2000). The Executive Order can be accessed at: www.usdoj.gov/crt/cor/pubs/eolep.htm. Executive Order 13166 requires federal agencies that provide financial assistance to develop guidance to be followed by federal funds recipients in providing meaningful access to persons with limited English proficiency. The Order also requires federal agencies to examine their own activities and to develop internal plans for providing meaningful access to persons with LEP.

This Order intends to ensure that persons with limited English proficiency (LEP) have meaningful access to federally funded programs and services. This purpose is consistent with the requirements of Title VI of the Civil Rights Act, which prohibits discrimination based on national origin.

Each federal agency is required to develop a plan for LEP programs and to submit it to the Department of Justice ("DOJ"). The Office of Civil Rights within DOJ is reviewing agency plans to ensure that they satisfy Title VI obligations.

The DOJ issued guidance to recipients of funding through DOJ programs, primarily state and local law enforcement agencies and departments of correction. DOJ guidance was published concurrently with the Executive Order, 65 Fed. Reg. 50, 123 (Aug. 16, 2000).

In addition to the DOJ, several agencies have issued policy statements or guidance for funding programs under the auspices of the respective agencies. For example, the Equal Employment Opportunities Commission has issued a Five Point Plan under which it examines access to EEOC services and programs by members of the LEP community; has filed federal civil court actions on behalf of members of the LEP community and continues to do so; and offers mediation and alternative dispute resolution without regard to whether a person is proficient in English and has provided translation services as necessary. As the agency in charge of enforcing several civil rights laws, including Title VI, the EEOC has LEP efforts that predate Executive Order 13166. For more information, see the EEOC website at: www.eeoc.gov/abouteeoc/plan/lep/lep.html.

The Environmental Protection Agency ("EPA") adopted two proposals to comply with Executive Order 13166: (1) a Draft Translation and Interpretation Plan for Promoting Access to EPA Programs, Services and Information by Persons with Limited English Proficiency; and (2) a Preliminary Draft Title VI Guidance for EPA Assistance Recipients – National Origin Discrimination Against Persons with Limited English Proficiency. The Draft Translation Plan seeks to assist the EPA in communicating with, and providing services to, persons with limited English proficiency. The Preliminary LEP Guidance sets forth a general framework for recipients of EPA financial assistance to provide meaningful access to persons with limited English proficiency who participate in their EPA programs and activities. This latter document also explains how the EPA

may assess a recipient's procedures to provide meaningful access to LEP persons. For more information, please see: www.epa.gov/aapi/documents/LEP-factsheet.htm.

The US Department of Health and Human Services issued a Policy Guidance document to assist federally funded health and social service providers give language assistance to the millions of persons in the US who have limited English proficiency. Department of Health and Human Services, Office for Civil Rights, "Title VI of the Civil Rights Act of 1964Policy Guidance on the Prohibition Against National Origin Discrimination as it Affects Persons with Limited English Proficiency," 65 Fed. Reg. 52,762 (Aug. 30, 2000). The HHS Guidance applies to hospitals, managed care organizations, state and local welfare agencies, physicians and research programs. For more information on the HHS Guidance, see www.nilc.org/immspbs/bu/ebupdate009.htm.

The US Nuclear Regulatory Commission also has adopted a policy to assist persons with limited English proficiency. The NRC's Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, can be accessed at www.nrc.gov/who-we-are/civil-rights/limited-english.html.