

# RJGLAW LLC

1010 WAYNE AVENUE, SUITE 950  
SILVER SPRING, MD 20910

TEL. (301) 589-2999

FAX: (301) 589-2644

RUDOLPH J. GEIST, Esq.

EXT. 105

E-MAIL

rgeist@rjglawllc.com

March 14, 2005

**Via Electronic Filing**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S. W.  
Washington DC 20554

**Re: Ex Parte Meeting with Commissioner Kathleen Abernathy,  
March 11, 2005  
CC Docket Nos. 96-45, 97-21, and 02-6**

Dear Ms. Dortch:

On March 11, 2005, Mr. Christopher McLean and Mr. Greg Rhode, principals of E-Copernicus, and Rudolph J. Geist and Adrienne E. Arnold, representing Hispanic Information and Telecommunications Network, Inc. ("HITN"), met with Commissioner Kathleen Abernathy and Mathew Brill to discuss matters related to a set of cases known as the "Paperwork Reduction Act" cases currently being considered by the Commissioners, and issues related to HITN's participation in the E-Rate program.

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, and has provided uninterrupted services to clients even while seeking reimbursement and funding from the E-Rate program, to no avail.

It is understood that there are several cases being considered by the Commissioners dealing with the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") and its change of the procedures or rules for filing E-Rate applications. Generally, the cases argue that the Office of Management and Budget made a significant, material program change in changing the deadline for E-Rate applications without proper notice or review. Protesters claim the SLD violated the Paperwork Reduction and Administrative Procedures Acts.

However, there is one major factor that distinguishes the Consorcio case<sup>1</sup> 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.

In 2000-2001 E-Rate 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 in previous filings that, while some Year 4 rule changes were approved by the Office of Management and Budget, the crucial, significant and material deadline change was not.

The information was posted on the SLD website. However, an English language website change does not provide sufficient notice to applicants in a Spanish-speaking Commonwealth of the United States. The SLD English language website simply does not provide fair notice to Spanish-speaking clients. The record establishes that the electronic deadline was met; the procedure followed by clients 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.

A letter postcard, in English, was also sent to Puerto Rico to notify clients of the change. There is no record establishing that a letter advising of the rule change ever reached the Consorcio or its members. 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. 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.

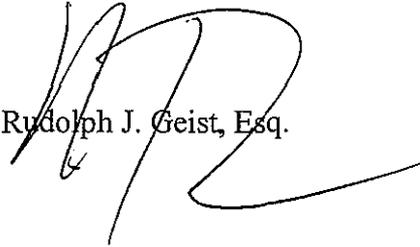
At a minimum, the FCC should, out of respect for the language and culture of the people of Puerto Rico, and in the public interest, waive the requirement in this case that all original Forms 471 that were filed electronically be postmarked by the filing date, given the fact that the Puerto Rico is a Spanish-speaking Commonwealth of the United States and the notice of the rule change was in English. HITN serves some of the poorest, most digitally disconnected and most rural citizens of the Commonwealth. HITN has always acted in good faith in its participation as a service provider in this program, and provides high quality service to its customers. In the public interest and interests of fair play and justice, HITN respectfully requests a waiver be granted to accommodate the language barrier that has existed between the SLD and HITN's customers.

---

<sup>1</sup> Once such case has been brought by the Consortium for Schools and Libraries of Puerto Rico ("Consorcio"), of which many HITN customers were previously members.

This letter is being filed electronically for inclusion in the above-referenced docket pursuant to Section 1.1208 of the Commission's rules, 47 C.F.R. §1.1208.

Sincerely,

A handwritten signature in black ink, appearing to be 'RJG', with a long horizontal flourish extending to the right.

Rudolph J. Geist, Esq.

cc (via e-mail):  
Cynthia Schultz