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Via Electronic Filing

Ms. Marlene H. Dortch

Secretary

Federal Communications Commission

445 12th Street, S.W.

Washington DC 20554

Re: Ex Parte Meeting with John Schauble, Peter Corea, and Nancy Zaczek
Wireless Telecommunications Bureau (“WTB”), Broadband Division,
WT Docket No. 03-66: In re Amendment of parts 1, 21, 73, 74 and 101 of
the Commission’s Rules (“*Report and Order*”)

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission’s Rules, on behalf of Hispanic Information and Telecommunications Network, Inc. (“HITN”), this is to notify you that on October 19, 2006, the undersigned, Mr. Gregory Rohde, principal of E-Copernicus, and Mr. Jose Luis Rodriguez, President of HITN, met with John Schauble, Peter Corea, and Nancy Zaczek, of the WTB, to discuss matters related to the above-referenced docket. Specifically, HITN discussed its request that the Commission reinstate six of its Educational Broadband Service (“EBS,” formerly Instructional Television Fixed Service, “ITFS”) applications pending before the Commission.

HITN discussed its position that the Commission’s decision in the *Report and Order* in Docket 03-66 to dismiss all pending mutually exclusive applications in the EBS was not well reasoned for, among other reasons described in HITN’s filings in this proceeding, that it was primarily based on an underlying Commission decision in re Amendment of the Commission's Rules Concerning Maritime Communications, Second Report and Order, PR Docket No. 92-257, released June 26, 1997 (“*Maritime Services Order*”), that was not consistent with earlier precedent cited in the *Maritime Services Order*, nor was it applicable to the Commission’s action in dismissing the EBS applications at issue. In the *Maritime Services Order*, the Commission, relying on *Kessler v. FCC*, 326 F2d. 673, D.C. Cir 1963 (“*Kessler*”), claimed it had procedural authority under the Administrative Procedures Act (“APA”) to determine that application freezes may be imposed in the name of administrative efficiency and it may discontinue processing substantive applications that have been accepted for filing where the Commission changes service rules from site based licensing to geographic licensing. *Id.* In that case, the

Commission determined to hold in abeyance the processing of certain applications in the VHF public coast services, pending its determination whether they should be further processed. See *Maritime Services Order* at §§134-135.

Notwithstanding the Commission's reliance on *Kessler* in the *Maritime Services Order* (and subsequent reliance on the *Maritime Services Order* in the *Report and Order* in re WT Docket 03-66), *Kessler v. FCC* stands for the proposition that while the Commission does have procedural rights under the APA to institute application filing freezes in the name of administrative efficiency and convenience, it may not take away substantive rights of which parties are entitled to have applications processed that have been accepted for filing. See *Kessler*. In *Kessler*, the Court stated:

The substantial effect of a contrary view would be not only to freeze the acceptance for filing of a timely filed application but to freeze new applicants permanently out of a right of substance *Id.*

Further, in *Kessler*, the Commission had actually determined to process all applications that were accepted for filing and mutually exclusive, notwithstanding a filing freeze imposed on any new applications. *Id.* This is completely inconsistent with the Commission's actions in the *Report and Order* in (incorrect) reliance on *Kessler* to dismiss EBS mutually exclusive applications that are entitled to a substantive right to be processed. Thus, the Commission wrongly applied this precedent in both the *Maritime Services Order* and the *Report and Order* in re WT Docket 03-66 in dismissing timely filed ***and accepted*** applications.

Therefore, HITN has the right to have all of its long pending mutually exclusive applications immediately reinstated and processed to finality, and promptly have any of them granted that satisfy all requirements for new stations and that are no longer mutually exclusive for any reason.

Please contact the undersigned with any questions regarding this notice.

Very truly yours,



Rudolph J. Geist, Esq.

cc (via e-mail): Gregory Rohde
Jose Luis Rodriguez