



TECHNOLOGY • INNOVATION • INTERNATIONAL

Rudolph J. Geist, Esq.

Ext. 105

1010 Wayne Avenue, Suite 950

Silver Spring, MD 20910

Tel: (301) 589-2999

Fax: (301) 589-2644

[www.rjglawllc.com](http://www.rjglawllc.com)

E-mail

[rgeist@rjglawllc.com](mailto:rgeist@rjglawllc.com)

October 24, 2006

**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 the Wireline Competition Bureau,  
Telecommunications Access Policy Division  
WCB Docket Nos. 96-45, 97-21, and 02-6**

Dear Ms. Dortch:

On October 19, 2006, Mr. Gregory Rohde, principal of E-Copernicus, Mr. Jose Luis Rodriguez, President of Hispanic Information and Telecommunications Network, Inc. (“HITN”), and the undersigned, representing HITN, met with Gina Spade, Anita Cheng, and James Bachtell of the Wireline Competition Bureau, Telecommunications Access Policy Division, to discuss matters related to HITN’s continuing issues with the E-Rate program.

HITN is a 501(c)(3) non-profit educational foundation 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. HITN’s customers have numerous appeals pending at the FCC and the Schools and Libraries Division (“SLD”) of the Universal Service Administrative Company (“USAC”), stemming from denied funding applications from Funding Years 2001 through 2005, and have worked diligently for several years to provide the SLD and the FCC answers and documentation to every question raised.

### **Background of 2001 Appeal**

HITN's customers have made several arguments to the Commission over the years regarding their 2001 service denials that resulted in the May 2006 *Bishop Perry Order* that reinstated the denied applications.<sup>1</sup> Generally, these cases argued that the SLD made a significant, material program change in altering the filing procedures for E-Rate applications without proper notice or Office of Management and Budget ("OMB") review. Petitioners claimed the SLD violated the Paperwork Reduction and Administrative Procedures Acts.

Customers filed their documentation in a manner that was consistent with the rules and practice for the three prior years. Under those rules and practice, applicants were permitted to file their electronic documents by the filing deadline and post their paper copies a reasonable time after the deadline.

The SLD changed that procedure by requiring that both the electronic and postmark date for the paper documents be by the deadline. Notice of this change was given in English on the SLD website, but it was not cleared through the OMB. The SLD has claimed that English language postcard notices were sent to prospective applicants, but neither SLD nor HITN have been able to document the delivery or receipt of such postcards. Importantly, these were admittedly not in Spanish notwithstanding they were supposed to be sent to Spanish speaking applicants.

In addition to all the procedural claims made by HITN's customers (the former Consorcio members) and HITN related to the Paperwork Reduction Act, the Administrative Procedures Act and other statutes and regulations, HITN customers also argued that, due to the fact that the Commonwealth of Puerto Rico is the only jurisdiction of the United States to have Spanish as its official language, the SLD violated these customers' rights by not accommodating Spanish-speaking Americans and did not provide crucial deadline and changed application filing information to Puerto Rican applicants in Spanish. By no test of fairness does changing an English language web page constitute fair notice to the Spanish-speaking citizens of Puerto Rico.

### **After the Bishop Perry Order**

In the *Bishop Perry Order*, the Commission gave relief to most of the applicants HITN dealt with for services in 2001, directing the SLD to reconsider Form 471 applications that were filed outside the filing window.

However, shortly after the applications were reinstated by the Commission five years after they were filed, the SLD immediately denied the same applications on yet another improper ground in two negative Funding Commitment Decision Letters ("FCDL") on June 26, 2006, and August 2, 2006. These entities therefore filed the present appeals to the FCC on August 25, 2006 and October 2, 2006.

---

<sup>1</sup> *In the Matter of Request for Review of the Decision by the Universal Service Administrator by Bishop Perry Middle School New Orleans, LA*, et al WCB Docket No. 02-6, Order, FCC 06-54 (2006) (Bishop Perry Order).

In the latest rejection of these applications, the SLD improperly alleged competitive bidding violations stemming from the Consorcio's clearly harmless and mistaken inclusion of their service provider liaison as an alternative technical contact person in the Form 470, Block 1. Given the language barrier discussed above, and the applicants' lack of full understanding of the SLD rules quagmire and bureaucracy, the applicants gave a completely logical answer to the question at the time.

The SLD did not carefully reconsider these applications in the spirit the Commission intended, denying them on a harmless error with no evidence to back up SLD's completely unfounded assumption that the mistake tainted or in any way interfered with the competitive bidding process for these applicants during the 2001 Funding Year. The SLD did not provide any details of any requisite investigation it is required to do, based on the *San Antonio Order*<sup>2</sup>, issued May 19, 2006, before drawing conclusions based on pure conjecture and assumptions about the potential affect that a Spanish speaking applicant's accidental voluntary use of a current service provider's contact's name may have on the applicant's competitive bidding process. This is notwithstanding that SLD rules and policies at the time *encouraged* service providers to assist applicants in understanding the SLD quagmire and application process – which HITN did at great cost to the non-profit organization.

Since there was no affect on the competitive bidding process here – as there were no other bidders for the services or complaints filed by any prospective bidders – there could not possibly be, nor was there, any violation in any event. Commission or SLD precedent that suggests the simple (and inadvertent) listing of a service provider contact's name on an application is a competitive bidding violation, as SLD cites, is fundamentally unfair and does not accord the applicant any ability to actually substantiate that a violation had not occurred where there is no evidence of any violation. This type of automatic rejection without investigation is also inconsistent with Commission precedent that requires the SLD investigate and have evidence that a competitive bidding violation has actually occurred in fact prior to rejecting any application.

The Commission reiterated its stand that the SLD must refrain from inventing alleged competitive bidding violations, taking into consideration the different circumstances of applicants, in its *August 15, 2006 Order*.<sup>3</sup> The Order instructed the SLD to look at the whole situation, not just specific rules and fragments of the facts, and make decisions that

---

<sup>2</sup> *In the Matter of Request for Review of the Decision by the Universal Service Administrator by Academy of Careers and Technologies, San Antonio, TX et al* WCB Docket No. 02-6, Order, FCC 06-55 (2006) (San Antonio Order). Prior to this Order, the SLD assumed that since similar language was used in multiple applications, a competitive bidding violation had occurred. The Commission specifically directed the SLD to revisit these applications, stating that “when USAC suspects that a service provider has improperly participated in an applicant's bidding process due to the results of its “pattern analysis procedure,” it is incumbent on USAC to conduct further investigation and analysis prior to denying funding...if an entity is able to demonstrate that it fully complied with all program rules...then USAC should not deny funding on the basis of the pattern analysis procedure.” (para 7).

<sup>3</sup> *In the Matter of Requests for Review of the Decisions of the Universal Service Administrator by Academia Discipulos de Cristo Bayamon, Puerto Rico, et al* WCB Docket No. 02-6, DA 06-1642 (August 15, 2006).

reflect the public interest, not just whether or not a reviewer can check off a requirement in a box. Based on this Order, the SLD must produce an actual finding that a competitive bidding violation has, in fact, occurred based on a careful review of all the circumstances.

HITN serves some of the poorest, most digitally disconnected and most rural citizens of the Commonwealth of Puerto Rico and hence of the United States. HITN has always acted in good faith in its participation as a service provider in this program. HITN has and is providing excellent service to its customers. HITN has always been a service provider that is providing services and not getting paid, versus one that is getting paid and not providing services. HITN respectfully requests the Commission promptly consider these arguments in the public interest and interests of fair play and justice and act on these latest appeals.

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,



---

Rudolph J. Geist, Esq.

cc (via e-mail): Gina Spade  
Anita Cheng  
James Bachtell  
Jose Luis Rodriguez  
Christopher McLean  
Gregory Rohde