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Via Electronic Filing

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

Re: *Ex Parte* Communication in Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands (WT Dkt. No. 03-66)

Dear Ms. Dortch:

Hispanic Information and Telecommunications Network, Inc. ("HITN"), a licensee of 2.5 GHz in the Educational Broadband Service ("EBS"), is filing this letter in response to two *ex parte* filings made by the Wireless Communications Association International, Inc. ("WCA") in the above-referenced proceeding.[1]

HITN is a non-profit entity which among other charitable missions to educate, enrich, and empower Hispanic Americans through telecommunications technology, operates a Spanish-language public-interest educational television network carried on direct broadcast satellites, cable systems, and emerging IPTV platforms. HITN also holds more than 70 EBS authorizations for facilities throughout the United States and Puerto Rico and is one of the largest holders of EBS authorizations in the United States. HITN's EBS facilities are presently used to provide educational programming and services, and through a partnership with Clearwire Corporation ("Clearwire") and other operators, advanced wireless broadband services in several markets.

[1] *See Notice of Oral Ex Parte Communications* of the WCA in Dkt. No. 03-66 (Feb. 15, 2008); *see also Notice of Oral Ex Parte Communications* of the WCA in Dkt. No. 03-66 (Feb. 12, 2008).

In its filings, WCA reiterates its opposition to HITN's request that the Federal Communications Commission ("Commission") reinstate certain site-based applications that the Commission had previously dismissed.[2] As HITN noted in its previous filings, no rule or Commission policy has ever required the parties to resolve mutually exclusive applications through settlement, whereas the Telecommunications Act of 1996 and the Commission's rules specifically made it the responsibility of the Commission to resolve such conflicts in accordance with its rules.[3] HITN's applications should have been processed as required under Section 309(j) of the Communications Act of 1934, as amended. WCA's argument that reinstatement of HITN's applications would be unfair to the other applicants is without merit as HITN alone has preserved its rights regarding the dismissed applications.

Furthermore, reinstatement of HITN's applications is in the public interest as it encourages development of the EBS by making the service more ubiquitous throughout the nation, allowing for roaming or other carriage arrangements, and a greater distribution of educational programming. One of the Commission's primary purposes for adopting the *BRS/EBS Order* was to encourage the growth and rapid deployment of innovative and efficient communications technologies and services and advance the goal of providing Americans with access to ubiquitous wireless broadband connections, regardless of their location.[4] WCA's suggested policy that the licenses be allowed to lie fallow until auction was expressly rejected in a recent Memorandum Opinion & Order ("*MO&O*").[5] In the *MO&O*, the Wireless Telecommunications Bureau granted the 41 licenses at issue to encourage rapid deployment of the EBS while noting that a denial would cause the spectrum to lie fallow for many years until it is re-auctioned which may discourage potential proponents from transitioning the markets.[6] Accordingly, the Bureau found that grant of the licenses was in the public interest and would lead to deployment of new and innovative wireless services for the benefit of all Americans.[7] The Commission should follow this precedent and remain true to its policy to encourage deployment of the EBS and grant reinstatement of the licenses at issue here.

To clarify a misconception that may arise from WCA's ex parte presentations, HITN wishes to make clear that WCA's position is not that of the BRS/EBS industry. For example, Clearwire, a

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[2] The Commission dismissed the applications in Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Dkt. No. 03-66, FCC 014-235, at para. 263 and Appendix E (rel. July 29, 2005) ("*BRS/EBS Order*"). HITN applications dismissed by the order included: Alamosa, Colorado (G-Group) (File No. BPLIF-19951020WP); Billings, Montana (G-Group) (File No. BPLIF-19951020GG); Bloomingdale, Georgia (B-Group) (File No. BPLIF-19951016AV); Boise, Idaho (B-Group) (File No. BPLIF-19951020ET); Salinas, California (B-Group) (File No. BPLIF-19951020GI); and Santa Rosa California (C-Group) (File No. BPLIF-19951016BJ).

[3] *See Petition for Further Reconsideration and Request for Clarification* of HITN, WT Dkt. No. 03-66, at 4-5 & n. 9 (Jan. 10, 2005); *see also Consolidated Reply to Oppositions* of HITN, WT Dkt. No. 03-66, at 5 (Aug. 28, 2006).

[4] *BRS/EBS Order*, para. 1.

[5] In the Matter of Forty-one Late-Filed Applications for Renewal of Educational Broadband Service Stations, *Memorandum Opinion and Order*, DA 07-205, 22 FCC Rcd 879 (rel. Jan. 25, 2007).

[6] *MO&O*, para. 8.

[7] *Id*. para. 9.

BRS licensee, an EBS lessee, and a prominent operator of 2.5 GHz spectrum, has given clear support of reinstatement of these applications as it was the most expeditious means to get this spectrum into the hands of providers that value this spectrum the most, without the unnecessary delay attributable to the adoption and scheduling of a future auction process.[8] Clearwire reiterated its support in a separate filing, stating, "reinstatement would facilitate the provision of wireless broadband service to the markets covered by the applications sooner than would otherwise occur were this spectrum to only become available through a future auction."[9]

HITN respectfully requests that the Commission reconsider its earlier decision regarding HITN's applications and reinstate and process such applications in furtherance of the public interest, convenience, and necessity in accordance with its obligations under its rules, policies, and the Communications Act. If you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

Rudolph J. Geist, Esq.

cc (via e-mail):
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[8] *See Consolidated Opposition to and Comments on Petitions for Reconsideration* of Clearwire, WT Dkt. No. 03-66, at 5-6 (Aug. 18, 2006).

[9] *See Notice of Ex Parte Presentation* of Clearwire, WT Dkt. No. 03-66 (Nov. 7, 2006).