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EVAN D. CARB, ESQ.

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September 9, 2004

VIA COURIER

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

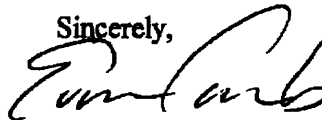
Re: Hispanic Information and Telecommunications Network, Inc.
FRN: 0006-6203-48
Experimental Application of Educational Broadcasting Corporation
File No. ~~0090~~ EX-PL-2004 (Call Sign WD2XJG)
Joint Request for Withdrawal of All Pleadings

Dear Ms. Dortch:

On behalf of Hispanic Information and Telecommunications Network, Inc. ("HITN") there is enclosed herewith an original and three copies of a joint request by HITN and Educational Broadcasting Corporation ("EBC") for the withdrawal of all adversarial pleadings regarding the above-referenced EBC experimental application. Therein, the parties also urge the Commission to expeditiously grant the above referenced application.

Please return a date stamped copy to the courier delivering this filing. Please direct all questions regarding this matter to the undersigned counsel.

Sincerely,



Evan D. Carb

Enclosures

cc: Anthony Serafini (via Email)
James Burtle (via Email)
Barbara K. Gardner (via US Mail)

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554**

In the Matter of:)
)
EDUCATIONAL BROADCASTING)
CORPORATION) File No. 0090-EX-PL-2004
) Call Sign WD2XJG
Request for Part 5 Experimental Authority)
Regarding the Operation of ITFS Station WHR828)
on the C4 Channel at New York, NY)

To: Chief, Experimental Licensing Branch, Office of Engineering and Technology

JOINT REQUEST FOR WITHDRAWAL OF ALL PLEADINGS

Educational Broadcasting Corporation ("EBC") and Hispanic Information and Telecommunications Network, Inc. ("HITN"), by their attorneys, hereby inform the Commission that they have reached a private contractual resolution to their dispute regarding the operation and coordination of their respective ITFS facilities and therefore are jointly requesting the withdrawal of all adversarial pleadings filed regarding EBC's above-referenced request for experimental authority in conjunction with its operation of its C4 Channel ITFS station WHR828 at New York, New York.

EBC's request for experimental authority was filed on May 4, 2004. Thereafter, on June 10, 2004, HITN filed a Limited Objection and Request for Conditions On the Requested Experimental Authorization. EBC filed an Opposition to HITN Limited Objection and Request for Conditions on June 16, 2004. In its limited objection, HITN had voiced concern that certain of EBC's proposed experimental operations might cause interference to its recently granted C-Group station WQAB902 at Central Islip, New York (a grant which had been opposed by EBC).

The parties have been working cooperatively to address their concerns regarding coordination of operations of the two neighboring stations on the C4 Channel. The parties have agreed, in light of the new rule changes in the FCC's Report and Order in WT Docket 03-66 regarding a migration of this service to

low power mobile operations, to various operating parameters and coordination procedures contained in the attached Settlement and Cooperation Agreement.

Accordingly, the parties, having reached a satisfactory resolution of their differences, respectfully withdraw their adversarial pleadings regarding EBC's request for experimental authority, and jointly urge the Commission to expeditiously grant EBC its requested experimental authorization. The parties represent that no consideration has been promised or provided in exchange for entering into the attached settlement agreement or for the withdrawal of pleadings in association with that settlement.

Respectfully submitted,

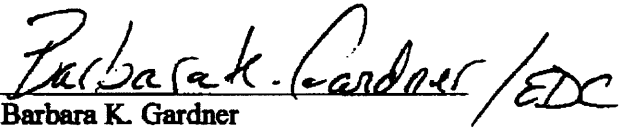
**HISPANIC INFORMATION AND
TELECOMMUNICATIONS NETWORK, INC.**

By: 

Evan D. Carb

RJGLaw LLC
8401 Ramsey Avenue
Silver Spring, MD 20910
(301) 589-2999
Its Attorneys

**EDUCATIONAL BROADCASTING
CORPORATION**

By: 

Barbara K. Gardner

Leventhal Senter & Lerman PLLC
2000 K Street, NW
Suite 600
Washington, DC 20006
(202) 429-8970
Its Attorneys

September 9, 2004

SETTLEMENT AND COOPERATION AGREEMENT

This Settlement and Cooperation Agreement ("Agreement") is entered into as of the 9th day of September, 2004, by and between Educational Broadcasting Corporation ("EBC") and the Hispanic Information and Telecommunications Network, Inc. ("HITN") (EBC and HITN are hereinafter collectively referred to as the "Parties," or individually as "Party").

RECITALS

EBC is the licensee of an Instructional Television Fixed Service ("ITFS") Channel C4 station, call sign WHR828, at New York, New York, and is also the applicant for a new experimental license on the same channel, call sign WD2XJG, at New York, New York. HITN has opposed EBC's experimental application.

HITN has been granted an FCC authorization for a new ITFS station, call sign WQAB902, on Channels C1, C2, C3 and C4 at Central Islip, New York. EBC has asked the FCC to rescind the grant.

Each Party wishes to provide interference-free video and to implement facilities that will allow it to provide two-way cellularized Internet, data, telephony and other communication services over its facilities within its FCC authorized service area.

The Parties desire to resolve their differences and to set forth mutual interference and operating parameters between them that will govern their future operations and FCC applications.

Now, therefore, HITN and EBC agree as follows:

AGREEMENT

1. Withdrawal of Objections.

a. **HITN Consent to EBC Experimental Application.** HITN shall, simultaneous with the execution of this Agreement, file a letter with the FCC withdrawing its June 10, 2004 Limited Objection and Request for Conditions with respect to EBC's experimental application (File No. 0090-EX-PL-2004, call sign WD2XJG), and affirmatively supporting immediate grant of that application. HITN shall fully cooperate and comply with any further request by EBC or the FCC in connection with the prosecution of this application.

b. **EBC Consent to HITN's Central Islip Application.** EBC shall, simultaneous with the execution of this Agreement, file a letter with the FCC withdrawing its May 4, 2004 Informal Objection and its May 10, 2004 Motion to Rescind Grant regarding HITN's application for a new ITFS station on the C-Group Channels at Central Islip, New York (File No. BPIF-19951016BL), and affirmatively supporting the grant of that application. EBC shall fully cooperate and comply with any further request by HITN or the FCC in connection with the prosecution of this application.

2. **EBC License Correction.** HITN acknowledges that EBC applied for, and operates WHR828 with, a dual-cardioid directional antenna system (Andrew Model HMD12VC, vertically polarized and oriented at 116° True, and Andrew Model HMD12HC, horizontally polarized and oriented at 296° True). However, EBC's license for WHR828 reflects a single horizontally polarized antenna. HITN will not oppose EBC's efforts to have the FCC correct the WHR828 license, and at EBC's request will affirmatively support such efforts.

3. **Mutual Consents to Future High Power Modifications.**

a. In cases where modifications to the WHR828 high power facilities would result in signal levels at the WQAB902 Geographic Service Area ("GSA") border or base station antenna heights in excess of the limits allowed for LBS and UBS facilities by the Commission's rules adopted in the Report and Order released July 29, 2004 in WT Docket No. 03-66 *et al.* (FCC 04-135), as they may be modified from time to time in the future (the "Commission's Rules"), HITN shall provide EBC with any requested consent or support for such modification that does not increase WHR828 signal levels at the WQAB902 GSA boundary or at any points within the WQAB902 GSA above their current levels (i.e., utilizing the dual cardioid antennas referenced in Section 2 above).

b. In cases where modifications to the WQAB902 Channel C4 high power facilities would result in signal levels at the WHR828 GSA border or base station antenna heights in excess of the limits allowed for LBS and UBS facilities by the Commission's Rules, EBC shall provide HITN with any requested consent or support for such modification that does not increase WQAB902 signal levels at the WHR828 GSA boundary or at any points within the WHR828 GSA above the levels predicted to occur from the currently authorized WQAB902 facilities.

c. The Parties acknowledge that the design and operation of systems using their channels must be done in a coordinated manner and may require mutually sharing system operating configurations along with the provision of mutual consents. The Parties hereby agree to share system data for the mutually efficient coordination of the stations and to comply with the requirements of the Commission's Rules in the preparation for any modifications to their stations.

4. **Mutual Consents to Future Low Power Operations.** The Parties desire to implement facilities that will allow them to provide Internet, data, telephony and other one- and two-way low-power cellularized digital communications services in their respective markets using their channels. As a result, either Party may propose deployment of boosters, repeaters, response station hubs, cellularization and sectorization of transmission sites, activation of response stations, and/or any other modifications necessary to provide such services using their channels. The Parties acknowledge that the design and operation of such systems using their channels must be done in a coordinated manner and may require mutually sharing system operating configurations along with the provision of mutual consents. The Parties hereby agree to share system data for the mutually efficient coordination of the stations as described in Section 3 above. Each Party agrees to provide the other with any requested consent to, or support for, a proposed application for low power operations that conforms to the Commission's rules for LBS and UBS facilities in effect at the time. In addition, in cases where signal levels or antenna heights in excess of those allowed for LBS and UBS by the Commission's rules in effect at the

time may result from either Party's proposed low power operations, the other Party's consent or support shall be provided if the proposal does not create predicted signal levels at any location within the consenting Party's GSA that exceed current levels at that particular location. The term "current levels" means, in the case of EBC, actual levels resulting from WHR828's transmissions using its current dual cardioid antennas, and in the case of HITN, levels predicted to result from the currently authorized WQAB902 facilities.

5. Authority; Absence of Conflicting Agreements. Each Party is duly organized in the jurisdiction of its organization or incorporation, has full power and authority to enter into this Agreement and to carry out all of the transactions contemplated hereby, and has taken all action necessary on its part to authorize the execution, delivery and performance of this Agreement. Each Party represents that its execution, delivery and performance of this Agreement do not and will not require the consent of any third party (including any lessee of that Party's excess spectrum capacity), and do not and will not conflict with any agreement to which that Party is subject, including any excess capacity lease. Each Party further represents that the person signing on behalf of the Party has been authorized to do so, and that upon execution and delivery, this Agreement will constitute a valid and binding agreement of that Party, enforceable in accordance with its terms.

6. Remedies. Each Party acknowledges that the other would be irreparably harmed by a breach hereof and that it would be difficult to estimate damages resulting from such a breach. Consequently, the non-breaching Party shall provide notice of breach in writing and afford the breaching party a period of thirty days in which to cure such breach. If the breaching Party fails to cure the breach within the thirty-day period, the non-breaching party shall be entitled to seek injunctive or other equitable relief to prevent a breach or continued breach of this Agreement and to secure the enforcement of this Agreement, without foregoing any legal relief which the non-breaching Party may be entitled to pursue. Furthermore, if either Party breaches its obligations under this Agreement, then the non-breaching Party's consent to any application filed by the other Party shall be rendered null and void. The non-breaching Party (or its designee) also shall be able to object to the applications of the breaching Party that interfere with the non-breaching Party's ITFS channel[s]. If a Party experiences interference to its GSA that is not in accordance with this Agreement, or that is inconsistent with this Agreement, from the other Party's station, then the interfering Party shall reduce the interference to levels that are consistent with this Agreement.

7. Compliance with Laws. Each Party shall observe and comply with all present and future laws, ordinances, orders, rules, and regulations of all governmental or other agencies, departments, authorities, boards, or commissions having jurisdiction over or related to this Agreement.

8. Notices. Any notice required to be given by any Party to the other Party shall be in writing and shall be considered to have been duly given when personally delivered, sent by facsimile with a confirmation of receipt, or sent by certified mail or a reputable overnight delivery firm and actually delivered or delivery is refused, and addressed as follows:

If to EBC:

Joshua C. Nathan, Esq.
Thirteen/WNET New York
450 West 33rd Street
New York, NY 10001-2605
with a copy to:

Barbara K. Gardner, Esq.
Leventhal, Senter & Lerman PLLC
2000 K Street, NW
Suite 600
Washington, DC 20006

If to HITN:

Jose Luis Rodriguez, President
Hispanic Information and Telecommunications Network, Inc.
449 Broadway, 3rd Floor
New York, NY 10013

with a copy to:

Rudolph J. Geist, Esq.
RJGLaw LLC
8401 Ramsey Avenue
Silver Spring, MD 20910

9. Miscellaneous.

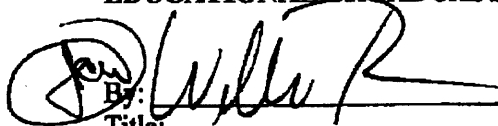
- A. Further Action.** From time to time after the date of execution hereof, the Parties shall take such further action and execute such further documents, assurances and certificates as either Party may reasonably request of the other in order to effectuate the purposes hereof. In addition, each Party agrees that it will not take any action that would adversely affect the rights granted by it to the other Party hereunder.
- B. Benefit and Assignment.** This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective legal representatives, successors and permitted assigns. If a Party sells, assigns, transfers, conveys or relinquishes control of a station that is subject to this Agreement, such Party shall obligate the successor to assume the rights and obligations of the Party and the successor shall be deemed a Party hereto, in which event notice of such assignment or transfer shall be provided to the other Party. This Agreement shall not (1) confer on any person other than the Parties hereto or their respective legal representatives, successors or assigns, any rights, remedies, obligations or

liabilities under or by reason of this Agreement; or (2) constitute the Parties hereto as partners or participants in a joint venture.

- C. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York, without regard to the principles of conflict of laws.
- D. **Entire Agreement.** This Agreement represents the entire Agreement between the Parties with respect to the subject matter hereof, superseding all previous oral or written communications, representations or agreements. This Agreement may be modified only by a duly authorized and executed writing signed by both Parties.
- E. **Payment of Expenses.** Each Party shall pay its own expenses incident to the preparation and carrying out of this Agreement, including all counsel fees and expenses.
- F. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same Agreement.
- G. **Invalid Provisions.** If any provision of this Agreement shall be held illegal, invalid, or unenforceable under any present or future laws, such provision shall be fully severable and this Agreement shall, to the extent possible and without destroying its intent, be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision.

In witness whereof, the Parties have executed this Agreement effective as of September 9, 2004.

EDUCATIONAL BROADCASTING CORPORATION

By: 
Title: _____
William F. Baker
President

HISPANIC INFORMATION AND TELECOMMUNICATIONS NETWORK, INC.

By: _____
Title: _____

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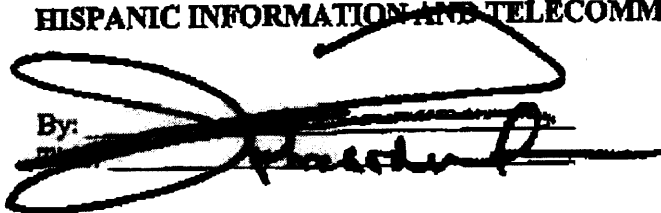
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EDUCATIONAL BROADCASTING CORPORATION

By: _____
Title: _____

HISPANIC INFORMATION AND TELECOMMUNICATIONS NETWORK, INC.

By:  _____