

June 1, 2005

direct dial 202 508 5835  
direct fax 202 585 0070  
LMow@KilpatrickStockton.com

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
The Portals  
445 12th Street, S.W.  
Washington, D.C. 20554

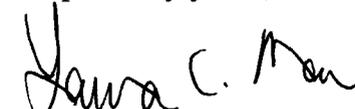
Re: Consolidated Petition for Reconsideration  
and Petitions for Reconsideration  
Dismissed Modification Applications  
KZB28 (File No. 19950524DL)  
KHU90 (File No. 19950524DN)  
KZB29 (File No. 19950524 DM)  
WT Dkt. 03-66

Dear Ms. Dortch:

Pursuant to Section 1.106 of the Commission's Rules, The School Board of Miami-Dade County, Florida (FRN 0004998118) and the Southern Florida Instructional Television, Inc. (FRN 0008094104) hereby file an original and four (4) copies of their "Partial Opposition to Petitions for Reconsideration" in the above-referenced matter.

Please date stamp the enclosed "S&R" copy of this filing and return it to the courier delivering this package. Should any questions arise with regard to this filing, please contact the undersigned.

Respectfully yours,

  
Laura C. Mow

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|  |   |                            |
|--|---|----------------------------|
| In the Matter of                       | ) |                            |
|  | ) |                            |
| Dismissed Applications of              | ) |                            |
|  | ) |                            |
| SCHOOL BOARD OF PALM                   | ) | File No. BMPLIF-19950524DL |
| BEACH COUNTY, FLORIDA                  | ) | File No. BMPLIF-19950524DN |
|  | ) | File No. BMPLIF-19950524DM |
| For Authorization to Modify Facilities | ) |                            |
| of EBS Station KZB-28, KHU-90 and      | ) |                            |
| KZB29                                  | ) |                            |
|  | ) |                            |
| Boynton Beach, Florida                 | ) |                            |

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To: The Wireless Telecommunications Bureau

**PARTIAL OPPOSITION TO  
PETITIONS FOR RECONSIDERATION**

**THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA**

**SOUTHERN FLORIDA INSTRUCTIONAL TELEVISION, INC.**

Thomas J. Dougherty  
Laura C. Mow

Kilpatrick Stockton, LLP  
Suite 900  
607 14<sup>th</sup> Street, NW  
Washington, D.C. 20005-2018  
(202) 508-5800

June 1, 2005

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## SUMMARY

The School Board of Miami-Dade County, Florida (the “Miami School Board”) and Southern Florida Instructional Television, Inc. (“SFITV”) (collectively, the “Miami Educators”), oppose in partial respects the Consolidated Petition for Reconsideration filed by Sprint Corporation and Wireless Broadcasting Systems of West Palm, Inc. (collectively, “Sprint/WBS) and the two Petitions for Reconsideration of the School Board of Palm Beach County, Florida (“Palm Beach School Board”). These Petitions urge the Federal Communications Commission (“Commission” or “FCC”) to reconsider the dismissal of certain modification applications proposed by the Palm Beach School Board for the A Group Channels, the G Group Channels and the D Group Channels in West Palm Beach (Boynton Beach) (collectively, the “Modification Applications”).

The Petitions make two primary arguments with respect to the Modification Applications. First, because the Modification Applications were submitted pursuant to a self-styled “Market Settlement Agreement,” Sprint/WBS and the Palm Beach School Board assert that they fall under an “exception” set out in paragraph 263 of the FCC’s Broadband Services Order available to applicants resolving outstanding mutual exclusive applications pursuant to a compliant settlement agreement filed by a given time. What Sprint/WBS and the Palm Beach School Board fail to reveal, however, is the continued existence of mutually exclusive applications in Miami which are not included in the so-called “market-wide” settlement agreement. Without resolution of these mutually exclusive Miami applications, there is no basis under Paragraph 263 for reinstatement of the Modification Applications.

Sprint/WBS and the Palm Beach School Board attempt to disavow the existence of the mutually exclusive Miami applications by relying on Footnote 47 to the Commission's Memorandum Opinion and Order in MM Docket 83-523 -- a provision supporting waiver of the cut-off rules pertaining to major change proposals in situations where the proposals are filed to accommodate settlement agreements between applicant that have achieved cut-off status and the settlement resolves mutually exclusive proposals. Even Sprint/WBS and the Palm Beach School Board admit, however, that other than the D Channel Group, not one of the remaining major applications and major amendments comprising the settlement, including the A Group Modification and the G Group Modification, resolves mutually exclusive applications that have achieved cut-off status. And with respect to the D Channel Group, the D Group Modification also fails to achieve cut-off status, as it is based on an involuntary Petition for Displacement that is defective under the Commission's rules -- thus leaving the Miami D group modification still mutually exclusive with the D Group Modification for West Palm Beach (Boynton Beach).

While the Miami Educators do not object to the reinstatement of the A Group Modification and the G Group Modification, they strongly disagree with the basis for reinstatement urged by the Petitions and believe that any FCC action must clearly state the proper basis for reinstatement. The arguments advanced by the Petitions relied on various "exceptions" in certain FCC orders and rules -- none of which are available to modifications which are mutually exclusive with other applications. And while there is no doubt that the A Group Modification and the G Group Modification were at one time mutually exclusive with the modifications in Miami, the intervening change in the FCC's

rules concerning the manner in which mutual exclusivity is determined -- and specifically, the GSA splitting rule -- has now eliminated the mutual exclusivity between the A and the G Group Modifications and the Miami modifications, respectively. It is this new GSA splitting rule applied to co-channel stations in Boca Raton and Fort Lauderdale, which supports the reinstatement of the A Group and G Group Modifications -- and not the arguments set out in the Petitions.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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| KZB29                                  | ) |                            |
|  | ) |                            |
| Boynton Beach, Florida                 | ) |                            |

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To: The Wireless Telecommunications Bureau

**PARTIAL OPPOSITION TO PETITIONS FOR RECONSIDERATION**

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA (the "Miami School Board")<sup>1</sup> and SOUTHERN FLORIDA INSTRUCTIONAL TELEVISION, INC. ("SFITV")<sup>2</sup> (with the Miami School Board and SFITV hereinafter referred to collectively as the "Miami Educators"), through counsel and pursuant to Section 1.106 of the Commission's Rules,<sup>3</sup> hereby oppose (i) the Consolidated Petition for Reconsideration

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<sup>1</sup> The Miami School Board holds licenses to operate EBS Stations WHA-956 on the A Group, WHG-230 on the C-Group, and KTB-84 and KTB-85 on the F Group in Miami, Florida. On September 15, 1995, the Miami School Board filed an application to change the authorized location of KTB-85 transmitting facilities (and, as a result, its protected service area) and change the station's channels from F-Group to G-Group (grant of which would eliminate one of the few "grandfathered" EBS stations operating on BRS E- or F-Group channels).

<sup>2</sup> SFITV is the licensee of EBS Station WHR-790 for the D Channel Group in Miami, Florida (with a pending modification application BMPLIF-930616DV).

<sup>3</sup> 47 C.F.R. §1.106.

(the “Consolidated Petition”) filed on October 22, 2004, by Sprint Corporation (“Sprint”) and Wireless Broadcasting Systems of West Palm, Inc. (“WBS”) (with Sprint and WBS hereinafter referred to collectively as “Sprint/WBS”),<sup>4</sup> and (ii) two Petitions for Reconsideration (the “Petitions”) filed on October 22, 2004, by the School Board of Palm Beach County, Florida (“Palm Beach School Board”)<sup>5</sup> in the captioned matter. The Consolidated Petition and the Petitions seek reconsideration of dismissals by the Wireless Telecommunications Bureau (“Bureau”) of the captioned West Palm Beach (Boynton Beach) modification applications for the A Group Educational Broadband Service (“EBS”) channels (KZB28),<sup>6</sup> the D1 and D2 EBS channels (KHU90),<sup>7</sup> and the G Group EBS channels (KZB29)<sup>8</sup> (individually, the “A Group Modification,” the “D Group Modification” and the “G Group Modification,” and collectively, the “Modification Applications”).<sup>9</sup>

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<sup>4</sup> Supplements to the Consolidated Petition, regarding the KHU90 and KZB29 dismissals, were filed on November 23, 2004. The Consolidated Petition and the supplements shall be referred to collectively as the “Consolidated Petition.” Sprint/WBS is the excess capacity lessee of the Palm Beach School Board on these channels.

<sup>5</sup> The Palm Beach School Board is the licensee of the captioned stations.

<sup>6</sup> See Public Notice, *Wireless Telecommunications Bureau Site-By-Site Actions*, Rpt. No. 1941 (September 22, 2004). The A Group Modification Application sought to relocate the A-Group station and to reduce the Station’s antenna height.

<sup>7</sup> Id. The D Group Modification Application sought to migrate the Palm Beach School Board off grandfathered E Group channels, and onto channels D1 and D2.

<sup>8</sup> This dismissal letter was sent by the FCC on October 1, 2004. The G Group Modification Application sought to relocate the G Group station.

<sup>9</sup> This Opposition is being filed in accordance with the Motion for Extension for Time filed by the Miami Educators on April 29, 2004, requesting until June 2, 2005 to file the instant Opposition. No action was taken by the FCC on this Motion. Previously, a series of Motions for Extension for Time had been filed either with the consent of, or without objection from, Sprint/WBS and the School Board, pending ongoing settlement discussions.

The captioned Modification Applications are part of a long history of ongoing disputes involving EBS/BRS applications and licenses in West Palm Beach (Boynton Beach) and Miami. At the crux of the controversy involving the Modification Applications is the apparent attempt by Sprint/WBS and the Palm Beach School Board to present their case for reinstatement without regard to the licensed and application interests in Miami -- interests which, according to FCC rules and policies, must be taken into account in any disposition of the Modification Applications. Thus, Sprint/WBS and the Palm Beach School Board argue that reinstatement is justified by a “market-wide settlement” when, in fact, that settlement does not include mutually exclusive applications in Miami. Similarly, Sprint/WBS and the Palm Beach School Board assert that certain of the Modification Applications should be granted because they fall under a so-called “exception” for applications seeking only to change a protected service area (PSA), when in fact, that exception is unavailable to these mutually exclusive applications.

Any disposition of the Modification Applications must begin with a consideration of whether there are any pending applications or licenses that are mutually exclusive with the Modification Applications. The “exceptions” relied upon by Sprint/WBS and the Palm Beach School Board misstate FCC rules and policies by suggesting that such consideration is irrelevant.

**I.  
DISCUSSION**

**A. Sprint/WBS's and the Palm Beach School Board's Reliance Upon a Marketwide Settlement Exception Is Misplaced.**

**1. The Paragraph 263 Settlement Exception Does Not Apply Unless It Resolves All Applicable Mutually Exclusive Applications.**

Each of Sprint/WBS and the Palm Beach School Board argue that the Modification Applications -- and in particular, the D Group Modification -- should be reinstated because they fall within an apparent "exception" set forth in paragraph 263 of the FCC's *Report and Order and Further Notice of Proposed Rulemaking*, released on July 29, 2004.<sup>10</sup> Specifically, Sprint/WBS and the Palm Beach School Board point to the Commission's determination to --

dismiss all applications for ITFS stations that were filed prior to adoption of the NPRM where: the applications are mutually exclusive, and the applicants filed settlement agreements subsequent to the release of the NPRM, and/or applicants filed settlement agreements prior to the release of the NPRM, but the settlement agreement did not comply with our rules.<sup>11</sup>

Because the Modification Applications were filed pursuant to a self-styled "Market Settlement Agreement" filed before the release of the Notice of Proposed Rulemaking on April 2, 2003,<sup>12</sup> which purportedly complied with the FCC rules and involved the various

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<sup>10</sup> 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 2500-1690 MHz Bands, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) ("Broadband Services Order").

<sup>11</sup> Broadband Services Order, 19 FCC Rcd 14165, at para. 263.

<sup>12</sup> 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, Notice of Proposed Rulemaking, 18 FCC Rcd 6722 (2003) ("Broadband Services NPRM").

applicants and licensees in West Palm Beach (Boynton Beach), Sprint/WBS and the Palm Beach School Board assert that *all* of the Modification Applications were improperly dismissed and should be reinstated.<sup>13</sup>

What should be obvious from a simple reading of the cited passage, however, is the Commission's understanding that the settlement at issue would resolve *all* of the mutually exclusive applications at issue. The Commission confirmed this threshold requirement in paragraph 261, when it described its "tentative conclusion" -- subsequently adopted in paragraph 263 -- that it would process pending applications filed prior to release of the NPRM *provided that they were not mutually exclusive with other applications . . . .*". A settlement involving some but not all applications that are mutually exclusive can in no way be portrayed as a "market settlement." Nor would the Commission have anything to gain by excepting from dismissals only some mutually exclusive applications if others remain pending for consideration. At the time the Broadband Services Order was issued, it was clear that Section 309(j) of the Communications Act required that pending mutually exclusive applications must be resolved by auction. As a result, the Commission limited grants to applications that were *not* mutually exclusive, and then only when such applications were deemed "necessary" - - such as applications proposing to change their protected service areas.

The settlement exception contemplated by paragraph 263 was intended to apply only when the settlement resolved *all* of the conflicts created by mutually exclusive

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<sup>13</sup> The Palm Beach School Board also argues that the dismissals by the Bureau were premature because -- as of the date of the dismissals -- the Broadband Services Order had not yet been published in the Federal Register, and so was not yet effective. This argument is moot since the Broadband Services Order has long since appeared in the Federal Register and become effective. See 70 Fed Reg. 6440, February 7, 2005.

applications such that the Commission would not have to engage the resources necessary to resolve the mutual exclusivity. The “market settlement” touted by Sprint/WBS and the Palm Beach School Board merely presented to the FCC their vision of how the West Palm Beach (Boynton Beach) market should be configured. Sprint/WBS and the Palm Beach School Board failed, however, to acknowledge the mutually exclusive applications pending in Miami. Without the participation of the Miami applications, the settlement exception referred to in paragraph 263 cannot justify a reinstatement of the Modification Applications.

**2. The Miami D Channel Major Modification Is Mutually Exclusive With the D Group Modification.**

There can be no doubt that certain Miami applications are mutually exclusive with the Modification Applications. Specifically, despite the efforts of Sprint/WBS and the Palm Beach School Board to ensure that applications of the Miami Educators were “cut off,” the D Group Modification is mutually exclusive with the WHR-790 D Channel Group modification application BMPLIF-930616DV. This mutual exclusivity is clearly established by a review of the factual circumstances leading up to and surrounding the preparation and filing of the so-called “market settlement” on May 24, 1995, in which applicants and licensees in West Palm Beach (Boynton Beach) sought to configure this market to accommodate their plans for a wireless cable system in the area.

As an initial matter, Sprint/WBS and the Palm Beach School Board have heretofore asserted that footnote 47 to the Commission’s Memorandum Opinion and

Order in MM Docket 83-523 (“Footnote 47”)<sup>14</sup> supported the proposition that with the filing of the Modification Applications on May 24, 1995, the Commission could and should have waived its EBS cut-off rules with respect to the Modification Applications, thereby ensuring that no further applications would be filed and deemed “mutually exclusive” thereto. This reliance on Footnote 47, however, is misplaced.

Footnote 47 provides that “[t]he cut-off rules pertaining to major change proposals may be waived in situations where the proposals are filed to accommodate settlement agreements between applicants that have achieved cut-off status and the settlement resolves mutually exclusive proposals.” As the Palm Beach School Board and Sprint/WBS have conceded, however, with the exception of the D Channel Group (which will be addressed below), *not one of the remaining major applications and major amendments comprising the settlement, including the A Group Modification or the G Group Modification, resolves mutually exclusive applications that have achieved cut-off status.*<sup>15</sup> Thus, by their own acknowledgment, Footnote 47 is inapplicable to all but the D Group Modification.

Moreover, upon closer examination, it is clear that the D Group Modification also fails to resolve mutually exclusive applications that have achieved cut-off status, *as it is*

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<sup>14</sup> Memorandum Opinion and Order (Instructional Television Fixed Service Reconsideration), 59 Rad. Reg. 2d 1355, 1381, n. 47 (1986).

<sup>15</sup> See Joint Motion for Approval of Settlement and Request for Waiver of Cut-Off Rules, filed by the Palm Beach School Board, People’s Choice TV, Inc. (“PCTV”) Wireless Broadcasting Systems of West Palm Beach (“WBS-WP”)(PCTV and WBS-WP predecessors in interest of Spring/WBS), and the Board of Regent, a Public Corporation of the State of Florida, on behalf of Florida Atlantic University (“FAU”) on May 24, 1995 (“Although mutually exclusive applications exist only for the D group, the parties request waiver of the cut-off rules as to all applications described in the [settlement] Agreement.”)

*based on a filing that is defective under the Commission's rules.* As a result, Footnote 47 would not support a waiver of the cut-off rules even as to the D Group Modification. The history leading up to the D Group Modification supports this conclusion.

First, with respect to the Miami D Channels, SFITV holds the authorization for the D Group at Metro Dade Center in Miami, Florida under WHR790. On June 16, 1993, well before the filing of the D Group Modification, SFITV filed a major change application to WHR790 ("Miami D Group Modification").<sup>16</sup> This application subsequently appeared on the "A" cut-off list released April 26, 1995, with a cut-off date of July 7, 1995. On May 17, 1995, SFITV filed a minor amendment to relocate its facilities by 0.5 miles to collocate with other area licensees, which did not affect the cut-off status of the SFITV's June 16 Miami D Group Modification.

Turning to the D Channels in West Palm Beach (Boynton Beach), the Palm Beach School Board originally held the license for KHU90, a grandfathered E-Group station. A predecessor to Sprint/WBS acquired the construction permit for WMI841, a commercial E-Group station at West Palm Beach, Florida, which grant was initially conditioned upon that predecessor's ability to protect the School Board's existing operations on KHU90. On December 29, 1993, the predecessor to Sprint/WBS -- not the licensee -- filed a "Petition for Displacement" and an accompanying application proposing the involuntary migration of the Palm Beach School Board's grandfathered E Group station KHU90 to the D Group stations. *That application was defective and had no basis in the Commission's rules.* Indeed, the *only* circumstances in which the Commission has

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<sup>16</sup> This major change application was accompanied by a Request for Special Temporary Authority as the filing was made during the EBS filing freeze. The FCC staff determined to process the combined filings as a major change application.

authorized BRS tentative selectees to propose the involuntary migration of grandfathered EBS stations is where the EBS station in question is a point-to-point facility. *See* 47 C.F.R. §74.902(h). Since KHU90 is not a point-to-point station, there was then, and is now, *no* basis in the Commission's Rules for any entity to unilaterally apply on the Palm Beach School Board's behalf to migrate KHU90 to the D Group.

Also with respect to the D Channels in West Palm Beach (Boynton Beach), on August 14, 1992, Florida Atlantic University ("FAU") filed an application for a new EBS relay station operating on the D Channel Group at 15 watts transmitter output power at Boynton Beach, Florida.<sup>17</sup> To the extent that the displacement application was legitimate it would have been mutually exclusive with the FAU application. And as will be seen below, both the Palm Beach School Board and FAU apparently treated the two applications as mutually exclusive based on the actions taken during the next few years, although neither application acknowledged the mutual exclusivity of the Miami D Group Modification.

In 1995, the Palm Beach School Board and a predecessor to Sprint/WBS entered into a lease agreement, pursuant to which the Palm Beach School Board agreed to lease its excess capacity to that predecessor and additionally, to cooperate with such predecessor and FAU regarding the displacement of its E-Group station. Ultimately, the parties agreed to split the D-group between the Palm Beach School Board and FAU, and as part of the May 24, 1995 Market Settlement Agreement, filed applications to collocate their facilities and to apportion the D Channels between the Palm Beach School Board and FAU. The FAU major amendment increased transmitter output power from 15 to 50

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<sup>17</sup> File No. BPLIF-920814DA.

watts, cut its channel request to D3 and D4, and requested a protected service area. This rendered its modification application “newly filed.”<sup>18</sup> The May 24, 1995 D Group Modification filed by Palm Beach School Board (which was based upon the defective displacement application) was a new application implementing the apportionment of the D1 and D2 channels to the Palm Beach School Board.

Although both filings purportedly were made pursuant to Footnote 47, neither one affected the status of the SFITV Miami D Group Modification. The FAU modification was not eligible for immediate cut-off because it did not terminate all mutual exclusivity, leaving the SFITV proposal still mutually exclusive with it. Because the D Group Modification was premised upon a defective filing, it could not be used to bootstrap that defective filing into a waiver of the cut-off rules for the D Group. It was a new application when it was filed on May 24, 1995 and thus, could not have achieved the cut-off status required for its inclusion in a Footnote 47 settlement. Indeed, the FAU major amendment of May 24, 1995 cannot avoid rendering its application “newly filed,” as there is no settlement partner with a cut-off application (as is required for Footnote 47 to operate to insulate that amended application from “newly filed” status). Failing any waiver of the cut-off rules, the D Group Modification filed on May 24, 1995 was (and is) mutually exclusive with SFITV’s June 16, 1993 Miami D Group Modification, as amended May 17, 1995. Because the May 24, 1995 “market settlement” did not include the Miami D Group Modification, it did not resolve *all* mutually exclusive applications.

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<sup>18</sup> Under Rule 74.911(a)(1) as then in effect, any increase in transmitter output power was a “major change.”

Accordingly, paragraph 263 of the Broadband Services Order does not apply and the D Group Modification was properly dismissed.

**B. Reinstatement of the A and G Group Modifications Is Not Warranted Based On the Grounds Argued By Sprint/WBS and the Palm Beach School Board.**

In addition to the paragraph 263 settlement exception, Sprint/WBS and the Palm Beach School Board also argue that the A Group Modification and the G Group Modification should not have been dismissed because they sought changes to their protected service areas, and modifications proposing such changes were excepted from dismissal under paragraph 58 of the Broadband Services Order.<sup>19</sup> The Miami Educators do not oppose the reinstatement of the A Group Modification and the G Group Modification, but disagree with the grounds for reinstatement urged by Sprint/WBS and the Palm Beach School Board and believe that the basis for reinstating these Modification Applications must be clarified.

As earlier argued, contrary to the assertions of Sprint/WBS and the Palm Beach School Board, the disposition of the A Group and G Group Modifications is *not* governed by the settlement exception in paragraph 263 of the Broadband Services Order, because - - as even Sprint/WBS and the Palm Beach School Board have acknowledged -- that settlement did not involve other applications that were mutually exclusive with either the A Group Modification or the G Group Modification. Similarly, the Paragraph 58 exception was never intended to provide a loophole for modification applications that are mutually exclusive with other applications. The analysis first must examine whether the

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<sup>19</sup> Broadband Services Order, 19 FCC Rcd 14165, para. 58. In particular, Section 58 directs the Bureau to dismiss all pending applications to modify BRS or EBS stations, “except for modifications that could change an applicant’s PSA . . . .”. *Id.*

modification applications are mutually exclusive with any other applications and only *after* it is established that there is no mutual exclusivity, should the analysis proceed to whether the modification applications propose “necessary” changes, such as changes to the protected service area.<sup>20</sup>

Applying these principles to the A and G Group Modifications, it is clear that neither of the exceptions argued by Sprint/WBS and the Palm Beach School Board apply. First, as to the A Group, the Miami School Board filed a modification application on May 15, 1995 under WHA956 (the “Miami A Group Modification”). The Palm Beach (Boynton Beach) A Group Modification filed on May 24, 1995 was mutually exclusive with the Miami A Group Modification. Because the Palm Beach (Boynton Beach) A Group Modification did not terminate all mutual exclusivity under Footnote 47, it was not eligible for cut-off and the Miami A Group Modification remained mutually exclusive with it. And because the West Palm (Boynton Beach) A Group Modification was mutually exclusive with another application, its proposal to change its protected service area had no effect on its status.

Regarding the G Group, the Palm Beach School Board filed the G Group Modification on May 24, 1995. Because this application was newly filed, it could not have achieved cut-off status under Footnote 47. Accordingly, when the Miami School Board filed an application on September 15, 1995 to modify KTB85 by changing the authorized location of the station of KTB-85 and transmitting facilities (and, as a result, its protected service area) and changing the station’s channels from the F-Group to the G-

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<sup>20</sup> See Broadband Services Order, at para. 58 (“In light of the fact that we are instituting geographic area licensing immediately, we see no public interest in processing modification applications that are no longer necessary.”)

Group, that modification application (the “Miami G Group Modification”) became mutually exclusive with the Palm Beach (Boynton Beach) G Group Modification.

If the analysis ended at this point, neither the A Group Modification nor the G Group modification would be eligible for reinstatement under any of the theories urged by Sprint/WBS and the Palm Beach School Board because they would be mutually exclusive with other applications, and this mutual exclusivity is a threshold inquiry before any exceptions can be applied. In fact, however, reinstatement of these Modification Applications is now warranted on entirely different grounds -- the change in the rules effected by the Broadband Services Order regarding the manner by which mutual exclusivity is determined.

Under the old rules, mutual exclusivity was deemed to exist when the grant of one application would result in facilities causing electrical interference to the other proposed station. That definition, however, no longer applies following the adoption of the Broadband Services Order. With the change in the rules, pending applications will be granted Geographic Service Areas (“GSAs”) not the PSAs that may have been requested.<sup>21</sup> And while as a general matter, applications with overlapping GSAs would be deemed mutually exclusive because the grant of one application would be the de facto denial of another, the adoption of another rule -- the GSA splitting rule<sup>22</sup> -- works in the case of the A and G Groups in West Palm Beach (Boynton Beach) and Miami to ensure that the modifications in each market are *no longer mutually exclusive*.

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<sup>21</sup> Broadband Services Order, at para. 54.

<sup>22</sup> Broadband Services Order, at paras. 60-65.

With respect to the A Group, the Miami A Group Modification and the West Palm Beach (Boynton Beach) A Group Modification are for different geographic areas on either side of existing cochannel stations under WHR877, WHR894 and WHR 895, all licensed to FAU at Boca Raton and Fort Lauderdale, Florida. The need for each of the Miami School Board and the Palm Beach School Board to split GSAs means that the Palm Beach A Group Modification does not present any limitation on the GSA available to the Miami School Board's A Group station, and the Miami A Group Modification does not present any limitation on the GSA available to the Palm Beach School Board A Group station. Each of the Miami School Board and the Palm Beach School Board receives the same GSA regardless of whether the other's proposal is licensed.

Regarding the G Channel Group, the Miami G Group Modification and the West Palm Beach (Boynton Beach) G Group Modification are for different geographic areas on either side of an existing cochannel station under KTZ22, licensed to Broward County School Board at Fort Lauderdale, Florida. As with the A Group, the need for each of the Miami School Board and the Palm Beach School Board to split GSAs with KTZ22 means that the Palm Beach G Group Modification does not present any limitation on the GSA available to the Miami School Board's G Group station, and the Miami G Group Modification does not present any limitation on the GSA available to the Palm Beach School Board G Group station. Again, as with the A Group, each of the Miami School Board and the Palm Beach School Board receives the same GSA for their G Channel Group stations regardless of whether the other's proposal is licensed.

In sum, the Palm Beach School Board's A Group and G Group Modifications can be reinstated at this time only because of the intervening change in the rules and the

existence of the Boca Raton and Fort Lauderdale co-channel stations. So long as it is clearly understood that this is the basis for the reinstatement, and not the arguments advanced by Sprint/WBS and the Palm Beach School Board (which have other ramifications for the Miami Educators), then the Miami Educators have no objection to reinstatement of the A Group Modification and the G Group Modification.

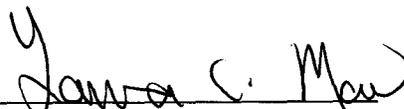
## II. CONCLUSION

WHEREFORE, the foregoing premises considered, the Miami School Board and SFITV respectfully request that the Commission (i) deny certain portions of the Consolidated Petition and the Petitions relating to the D Channel Group Modification, and (ii) clarify the basis for any reinstatement of the A Group Modification and the Group Modification, each in accordance with the arguments made herein.

Respectfully submitted,

THE SCHOOL BOARD OF MIAMI-  
DADE COUNTY, FLORIDA

SOUTHERN FLORIDA  
INSTRUCTIONAL TELEVISION, INC.

By: 

Thomas J. Dougherty, Jr.  
Laura C. Mow  
Kilpatrick Stockton, LLP  
607 14<sup>th</sup> Street, N.W.  
Suite 900  
Washington, D.C. 20005  
(202) 508-5800

June 1, 2005

## CERTIFICATE OF SERVICE

I, Cynthia Johnson of Kilpatrick Stockton, LLP, hereby certify that I have, on this 1st day of June of 2005, had copies of the foregoing "Partial Opposition to Petitions for Reconsideration" delivered to the following via electronic mail, overnight delivery or by United States first class mail, postage prepaid, as indicated:

**Catherine W. Seidel, Acting Bureau Chief**  
**Wireless Telecommunications Bureau**  
**Federal Communications Commission**  
**445 12<sup>th</sup> Street, S.W.**  
**Washington, DC 20554**  
**Via Electronic Mail: Cathy.Seidel@fcc.gov**

**Joel Taubenblatt, Division Chief**  
**Broadband Division**  
**Wireless Telecommunications Bureau**  
**Federal Communications Commission**  
**445 12<sup>th</sup> Street, S.W.**  
**Washington, DC 20554**  
**Via Electronic Mail: Joel.Taubenblatt@fcc.gov**

**John Schauble**  
**Broadband Division**  
**Wireless Telecommunications Bureau**  
**Federal Communications Commission**  
**445 12<sup>th</sup> Street, S.W.**  
**Washington, DC 20554**  
**Via Electronic Mail: John.Schauble@fcc.gov**

**Nancy Zaczek**  
**Broadband Division**  
**Wireless Telecommunications Bureau**  
**Federal Communications Commission**  
**445 12<sup>th</sup> Street, S.W., Room 3-C124**  
**Washington, DC 20554**  
**Via Electronic Mail: nzaczek@fcc.gov**

**Edwin N. Lavergne**  
**Fish & Richardson P.C.**  
**1425 K Street, N.W.**  
**Suite 1100**  
**Washington, DC 20005**  
**Via Electronic Mail: lavergne@fr.com**  
**(served electronically and by mail)**

**Judy Garcia**  
**School Board of Palm Beach County**  
**505 S. Congress Avenue**  
**West Palm Beach, FL 33427**  
**Via Electronic Mail: garciaj@palmbeach.k12.fl.us**

**Jennifer Richter, Esq.**  
**Morrison & Foerster, LLP**  
**2000 Pennsylvania Avenue, N.W. Suite 5500**  
**Washington, D.C. 20006**  
**Via Electronic Mail: jrichter@mfo.com**  
**(served electronically and by mail)**

**Rudolph F. Crew**  
**Superintendent**  
**School Board of Dade County**  
**1450 NE 2<sup>nd</sup> Ave.**  
**Miami, FL 33132**  
**By Overnight Delivery**

**Peter Tracy**  
**Bell South Wireless Cable Inc.**  
**754 Peachtree Street, 14<sup>th</sup> Floor**  
**Atlanta, GA 30308**  
**Via Electronic Mail: peter.tracy@bellsouth.com**

**John Labonia**  
**South Florida Instructional TV, Inc.**  
**172 N.E. 15<sup>th</sup> Street**  
**Miami, FL 33132**  
**Via Electronic Mail: jlabonia@wlrn.org**

**Best Copying and Printing, Inc.**  
**Portals II**  
**445 12<sup>th</sup> Street, SW, Room CY-B402**  
**Washington, DC 20554**  
**Via Electronic Mail: FCC@BCPIWEB.COM**

**Evan D. Carb, Esq.**  
**RJGLaw LLC**  
**8401 Ramsey Avenue**  
**Silver Spring, MD 20910**

  
Cynthia Johnson