

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

In the Matter of)	
)	
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 Docket No. 03-66 RM-10586
)	
Part 1 of the Commission's Rules - Further Competitive Bidding Procedures)	WT Docket No. 03-67
)	
Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service to Engage in Fixed Two-Way Transmissions)	MM Docket No. 97-217
)	
Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico)	WT Docket No. 02-68 RM-9718
)	
Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets)	WT Docket No. 00-230
)	

To: The Commission

**REQUEST FOR CLARIFICATION OF
THE SCHOOL BOARD OF BROWARD COUNTY FLORIDA**

Pursuant to Section 1.429 of the Commission's rules, The School Board of Broward County Florida ("SBBC"), by its attorneys, hereby submits this Request for Clarification of the Commission's Order on Reconsideration in the above referenced matter.¹

¹ *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, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, FCC 06-46, released April 27, 2006 ("Broadband Services Reconsideration Order"). A summary of the Broadband Services Reconsideration Order was published in the Federal Register on June 19, 2006, 71 Fed. Reg. 35,178 (2006) See Also underlying Report and Order ("Broadband Services Order") and Further Notice of Proposed Rulemaking ("FNPRM"), FCC 04-135 (rel. July 29, 2004), 19 FCC Rcd 14165 (2004). A*

Introduction

SBBC is the licensee of EBS stations used to provide instructional programming to schools and homebound students within Broward County, Florida as part of its for credit educational curriculum. SBBC has 260 active receive sites receiving numerous channels of video programming. As part of any transition, SBBC will be required to compress and migrate all of its channels of video programming onto channels that will be located in the new midband segment and replace all of its receive site downconverters without disrupting essential educational programming services transmitted to such receive sites in conjunction with and in support of the school curriculum.

I. EBS Self-Transition.

In the Broadband Services Reconsideration Order, the Commission, at the urging of several parties, decided to allow EBS licensees to self-transition, but allowed for a reimbursable self-transition only after the period for proponent driven transitions has ended. Thus, educational licensees wishing to transition themselves must either await the arrival of a proponent or wait until 30 months after the effective date of the new amended rules (December 19, 2008) to self-transition. EBS licensees such as SBBC have a vested interest in retaining a great deal of control over the timing of certain transition related activities. SBBC presently provides instructional video programming to schools throughout Broward County as an integral part of its for credit educational curriculum. Accordingly, the quick and orderly migration of programming to the midband in a manner that will not interrupt school curricula, programming schedules or universal availability of such programming throughout the County is of paramount importance to SBBC.

summary of the *Broadband Services Order* was published in the Federal Register on December 10, 2004, 69 Fed. Reg. 72,020.

The Commission's Reconsideration Order, citing to the somewhat vague Reply Comments of CTN/NIA, stressed that self-transitions before that date would somehow negatively affect incentives for proponents to transition their BTAs.² While SBBC agrees that coordinated market planning is essential to any successful transition process, the public interest and the Commission's goals are best served by the most rapid transition possible to the new band plan. SBBC believes that certain self-transition related frequency clearing activities could be undertaken by EBS licensees themselves at an earlier point, prior to a full transition process, without risk of interference to others or disincentive for proponents to step forward and transition their BTAs.³ In fact, allowing EBS licensees to undertake certain activities related to self-transitions early, subject only to later reimbursement, would reduce the amount of planning and labor that a proponent would otherwise need to undertake to complete a marketwide transition, and therefore would not deter a commercial licensee from acting as the proponent in its BTAs. While permitting these activities to occur early might lead to discussions over the reasonableness of self-transition related costs, they are clearly activities for which commercial licensees would expect to pay.⁴ Further, the authorization of early reimbursable transition-related activities

² *Broadband Services Reconsideration Order*, at ¶ 135.

³ SBBC nonetheless agrees with the Commission that a full self-transition including the filing of a modification application and a post transition notice so as to allow an EBS licensee to commence low power mobile two-way operations on lower or upper band channels would be most efficiently achieved through the proponent driven process.

⁴ The reimbursement by commercial licensees of the costs of self-transitioning licensees has already been mandated by the FCC. *Broadband Services Reconsideration Order* at ¶ 176. Similarly, in a proponent driven transition such EBS transition related costs are borne by the proponent and reimbursed by other BRS licensees on a pro rata basis. *Id.* ¶ 158. Essentially these transition related activities are already ones for which commercial licensees are reasonably expected to pay, regardless of whether they act as a proponent in the market. The only issue is whether a proponent could achieve a more cost effective transition of a licensee's facilities if they were to control this aspect of the transition process. Thus, the question is not whether a commercial licensee would be expected to pay, but only how much he would reasonably be expected to pay. This type of question is not qualitatively different from the financial discussion that will inevitably occur in every proponent transitioned market, where a BRS licensee is expected to pay a pro-rata share of such proponent's transition expenses, or that discussion that will be expected where an EBS licensee following a thirty month waiting period transitions itself.

would afford EBS licensees with the most control possible regarding the timing of such key transition related activities.

SBBC believes that there are a few situations in which self-transition related frequency clearing activities undertaken by licensees before the close of a thirty month proponent driven transition period, should be permitted and deemed to be reimbursable. These include transition related activities by EBS licensees that cooperatively seek to shift and compress educational programming onto existing channels that will be mid-band channels following the transition. In the case of a C-Group or D-Group licensee, the C4 or D4 channel will remain licensed to the same licensee post transition, and will continue to occupy the same exact frequencies. Therefore, activities undertaken by such a licensee to shift and compress its video operations from its other C or D-Group channels onto its C4 or D4 channel, should be deemed transition related and reimbursable at any time following the effective date of the new amended rules.⁵ Similarly, an EBS licensee with the cooperation of another EBS or BRS licensee in its market may seek to shift or compress its video operations onto a channel belonging to another licensee that will either become its midband channel following the transition, or will be the midband channel of another licensee, but on which the EBS licensee, pursuant an agreement, will be allowed to maintain its programming post-transition. In each of these cases, the Commission should deem the transition related activities to be permissible and reimbursable at any time following the effective date of the new amended rules.

In the above-referenced situations, an EBS licensee could achieve relocation of its high powered video operations to channels that will be in the midband following the completion of the transition. This shifting, and if necessary compression, of its high powered video

⁵ Naturally down-converter replacements and transmitter modifications would need to comply with all technical and protection requirements implemented under the new rules.

programming as well as the replacement of downconverters, represents the bulk of the activities that a proponent would have to undertake to transition an EBS licensee. Additionally, under the present stated policies and rules, the EBS licensee following the completion of such transition related activities could then take its other channels dark in anticipation of the arrival of a proponent and the completion of the transition process. The rapid completion of these essential steps by an EBS licensee would dramatically speed up the transition process and reduce the planning and technical burden of any potential proponent. Thus, allowing these self-transition related activities to be deemed reimbursable and permissible at any time by EBS licensees following the effective date of the modified rules will best serve the Commission's objectives for this band as well as the public interest.

Conclusion

SBBC respectfully request that the Commission clarify its Broadband Services Reconsideration Order and the Rules adopted thereby in accordance with the discussion set forth herein.

Respectfully submitted,

THE SCHOOL BOARD OF
BROWARD COUNTY FLORIDA

By: 

Evan D. Carb
RJGLaw LLC
1010 Wayne Avenue
Suite 950
Silver Spring, MD 20910
(301) 589-2999

Its Attorneys

July 19, 2006

CERTIFICATE OF SERVICE

I, Norman Liu, hereby certify that copies of the foregoing *Request for Clarification of The School Board of Broward County Florida* were served this 19th day of July, 2006 on the following parties via electronic mail at the following addresses:

Daniel Gonzalez
Office of Chairman Kevin J. Martin
Federal Communications Commission
445 12th St., SW
Room 8-B201
Washington, D.C. 20554
Daniel.Gonzalez@fcc.gov

Barry Ohlson
Office of Commissioner Adelstein
Federal Communications Commission
445 12th St., SW
Room 8-C302
Washington, D.C. 20554
Barry.Ohlson@fcc.gov

Aaron Goldberger
Office of Commissioner Deborah T. Tate
Federal Communications Commission
445 12th St., SW
Room 8-B115
Washington, D.C. 20554
Aaron.Goldberger@fcc.gov

Catherine W. Seidel, Acting Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 3-C252
Washington, D.C. 20554
Cathy.Seidel@fcc.gov

Jessica Rosenworcel
Office of Commissioner Michael J. Copps
Federal Communications Commission
445 12th St., SW
Room 8A-302
Washington, D.C. 20554
Jessica.Rosenworcel@fcc.gov

John Schauble
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 4-C336
Washington, D.C. 20554
John.Schauble@fcc.gov

Dana B. Schaffer
Office of Commissioner Robert M.
McDowell
Federal Communications Commission
445 12th St., SW
Room 8-A204
Washington, D.C. 20554
Dana.Schaffer@fcc.gov

D'wana Terry, Associate Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 4-C321
Washington, D.C. 20554
Dwana.Terry@fcc.gov

Charles Oliver
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 3-C124
Washington, D.C. 20554
Charles.Oliver@fcc.gov

Joel Taubenblatt, Division Chief
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 4A260
Washington, D.C. 20554
Joel.Taubenblatt@fcc.gov

Nancy Zaczek
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 3-C124
Washington, D.C. 20554
Nancy.Zacek@fcc.gov

Stephen Zak
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 3-C124
Washington, D.C. 20554
Stephen.Zak@fcc.gov

Andrea Kelly
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 4-A760
Washington, D.C. 20554
Andrea.Kelly@fcc.gov

Gary Michaels
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 4-A760
Washington, D.C. 20554
Gary.Michaels@fcc.gov

A handwritten signature in black ink, appearing to read "JL", is written over a horizontal line.