

**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

**CONSOLIDATED REPLY TO OPPOSITIONS 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 Consolidated Reply to Oppositions regarding its requested clarification of the Commission's Order on Reconsideration in the above referenced matter.<sup>1</sup>

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<sup>1</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*, 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*

## Introduction

SBBC is the licensee of two four-channel; 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 eight channels of video programming. As part of any transition, SBBC will be required to migrate all of its channels of video programming onto its two 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. Accordingly SBBC has a vested interest in retaining a great deal of control over the timing of certain transition related activities.

In response to the *Order on Reconsideration*, SBBC had requested clarification from the Commission that certain specific midband migration activities, currently permissible under FCC rules for EBS licensees prior to formal transition, be deemed “reimbursable transition-related activities” if undertaken by EBS licensees at any time following the effective date of the modified rules.<sup>2</sup> SBBC noted that EBS licensees under existing Rules may now shift and compress educational programming onto their existing channels (such as C4 and D4) which will remain in place and be part of the midband

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*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). Petitions for Further Reconsideration were filed by nine parties on July 19, 2006. Notice of these reconsiderations was issued by FCC Public Notice (Report No. 2783), released on July 27, 2006 and in the Federal Register on August 3, 2006, see 71 Fed Reg 44029 (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 summary of the *Broadband Services Order* was published in the Federal Register on December 10, 2004, 69 Fed. Reg. 72,020.

<sup>2</sup> Request for Clarification of The School Board of Broward County Florida, filed July 19, 2006, at pp. 5. (“Request for Clarification”).

following the transition.<sup>3</sup> While permitting such pre-transition activities to be deemed reimbursable might lead to discussions over the reasonableness of related costs, they are clearly activities for which commercial licensees are required to pay during either a proponent driven transition or an EBS self-transition.<sup>4</sup> Thus, with such activities being ones for which commercial licensees would be expected to pay, one would only need focus on whether such expenditures were reasonable.<sup>5</sup> SBBC contended that such financial discussions were not materially different from those that will occur in every EBS self-transition and proponent driven transition.<sup>6</sup>

SBBC maintained that because such early permissible self-migration or compression of video programming onto midband channels will relieve potential proponents of the need to catalog, order and install needed transmitters, compression equipment and receive site downconverters for such EBS stations and thereby would dramatically simplify and speed up the transition process.<sup>7</sup> Therefore, SBBC requested that the FCC clarify that these permissible pre-transition facilities modifications are reimbursable transition related activities, subject only to challenges for reasonableness.

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<sup>3</sup> Id. at p. 3-5

<sup>4</sup> Id. The commercial licensee reimbursement of self-transition costs is required. See *Broadband Services Reconsideration Order* at ¶ 176. Similarly, commercial licensee pro rata reimbursement and cost sharing of EBS transition costs from a proponent driven transition is required. Id. ¶ 158. Essentially these migration activities are already ones for which commercial licensees are reasonably expected to pay in conjunction with any transition, regardless of whether they act as a proponent in the market.

<sup>5</sup> Request for Clarification, at p. 3 & n. 4.

<sup>6</sup> Id.

<sup>7</sup> Id. at p. 3.

## The Oppositions Mistake the Issue

Several parties filed Oppositions addressing, but misconstruing, SBBC's request.<sup>8</sup> Invariably, Opposing parties argued that the Commission should not authorize these activities pre-transition.<sup>9</sup> However, such activities are now fully permissible under the Commission's Rules and SBBC does not believe it needs to seek new authority to make such equipment replacements.<sup>10</sup> This conclusion is essentially conceded by WiMAX, which stated in its opposition, "if Broward desires to digitize its facilities now, it is free to do so at its own cost ...."<sup>11</sup> Therefore, the only question raised by SBBC on Reconsideration is whether these activities, which would also be carried out by proponents as part of a transition, and which would relieve the proponent of a transition related burden, should be deemed reimbursable.

All parties opposing SBBC's requested clarification argue that a reimbursement requirement would be unfair to commercial licensees and ultimately consumers where SBBC could unilaterally determine what it desires, and then spend without oversight, especially when a less expensive alternative might have been available.<sup>12</sup> Sprint Nextel

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<sup>8</sup> See Consolidated Opposition and Comments of The Wireless Communications Association International, Inc. filed August 18, 2006, at pp. 41-43 ("WCA Opposition"); Comments and Consolidated Opposition of Sprint Nextel Corporation to Petitions for Reconsideration, filed August 18, 2006, at pp. 16-17 ("Sprint Nextel Opposition"); and WiMAX Forum Comments on Petitions for Reconsideration, filed August 18, 2006, at pp. 11-14 ("WiMAX Opposition").

<sup>9</sup> See Sprint Nextel Opposition at p. 16 and WCA Opposition at p. 42.

<sup>10</sup> See WiMAX Opposition at p.13-14.

<sup>11</sup> *Id.*

<sup>12</sup> See Sprint Nextel Opposition at p. 17; WCA Opposition at p. 42-43; and WiMAX Opposition at p.13. All the opposing parties contend that SBBC's decision to digitally compress its video would constitute a gold plated solution which would be unfair where a more cost effective method such as providing multiple analog midband channels might suffice. In this regard it is important to note that in a market like Broward, where only four EBS groups, and no BRS groups are licensed, a proponent would be hard pressed to find a solution to provide SBBC with eight tracks of video in the midband that would not include digital compression.

adds that such unsupervised spending might invite fraud and abuse.<sup>13</sup> However, even the proponent driven process will not be free from the possibility of the potential for fraud and abuse.<sup>14</sup> As a commercial entity, a proponent would be expected to configure a transition (including activities performed and equipment installed and replaced), in such a manner as will best suit its own business needs. In such situations other smaller commercial entities, that will later be called upon to pay their pro rata shares, invariably would have made different less costly decisions.

What is very clear, is that a Commission pronouncement that an activity may be deemed reimbursable, is not the same thing as the issuance of a blank check by the Commission. As noted by SBBC in its Clarification Request, the issue of whether expenditures are reasonable will be an issue in both proponent driven transitions and self transitions - without exception. The Commission has put in place no oversight authority with regard to transition expenditures, and commercial licensees called upon to contribute a pro rata share will naturally seek an analysis of activities and expenditures. SBBC anticipates that there will be a need to create a mechanism to address and streamline the resolution of such disputes. SBBC maintains that if a permissible modification of its facilities, performed after the effective date of the new modified rules, relieves a proponent

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<sup>13</sup> See Sprint Nextel Opposition at p. 17.

<sup>14</sup> WiMAX points out that the proponent driven process has a built in requirement for service of the transition plan on an effected EBS licensee and an opportunity for an objection. WiMAX Opposition at p. 13. The reality of school operations renders that opportunity less than meaningful. While proponents may take months, or even a year to research and create a transition plan, they are only required to serve such plan on affected EBS licensees thirty days before the close of the planning stage, and such licensees are only given twenty days from such service to respond with a counterproposal. *Broadband Services Order* at ¶ 88. This twenty day response period includes the time for internally allocating funds and resources, securing any outside consultants needed, analysis of the proponents plan, discussions and analysis of possible preferential alternatives, adoption and internal approval of a preferred solution, the drafting of a counterproposal, and the service of such counterproposal on the proponent. Clearly, few educational institutions can be expected to successfully exercise this so-called opportunity.

or other commercial entity of a burden or expense for which such entity would otherwise have had to pay as part of a transition, then such modification should be deemed reimbursable. The expenditures that will ultimately be subject to actual reimbursement could be challenged on the basis that such commercial entities might have obtained better pricing on equipment or undertaken less costly alternatives. SBBC anticipates that even in the proponent driven transition, the proponent expenditures that will ultimately be subject to actual reimbursement will be determined based on resolution of challenges by smaller operators and commercial licensees called upon for pro rata contribution, that they would have obtained different pricing or undertaken less “gold plated” alternatives.

**Conclusion**

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

Respectfully submitted,

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August 28, 2006

## CERTIFICATE OF SERVICE

I, Norman Liu, hereby certify that copies of the foregoing *Consolidated Reply to Oppositions of The School Board of Broward County Florida* were served this 28<sup>th</sup> day of August, 2006 on the following parties via electronic mail, unless otherwise noted, at the following addresses:

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

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