

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
FLORIDA ATLANTIC UNIVERSITY)	File No. 19950524DF
)	
Application as Amended for Modification To)	
Existing Educational Broadband Service)	
Station WHR896, Boynton Beach, Florida)	

ORDER ON RECONSIDERATION

Adopted: December 14, 2006

Released: December 15, 2006

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Order on Reconsideration*, we address Florida Atlantic University’s (FAU) Petition for Reconsideration (Petition) of the Wireless Telecommunications Bureau’s dismissal of the above-referenced application¹ to make modifications to Educational Broadband Service (EBS) Station WHR896.² For the reasons stated below, we deny FAU’s Petition.

II. BACKGROUND

2. FAU has been the permittee or licensee of EBS B-group channel Station WHR896 in Palm Beach County, Florida, since February 1, 1988.³ The School Board of Broward County (Broward) is the licensee of EBS Station KLC80 in Ft. Lauderdale, Florida. On May 24, 1995, FAU filed the Modification Application to modify Station WHR896 by increasing its transmitter power from 15 to 50 watts.⁴ FAU states that this application was filed in conjunction with all other Palm Beach EBS and BRS licensees, including the market’s wireless operator Wireless Broadcasting Systems (a subsidiary of Sprint Corporation) as part of a market-wide collocation project.⁵ In an engineering statement accompanying its Modification Application, FAU concluded that five of Station KLC80’s 189 receive stations would experience

¹ File No. 19950524DF (filed May 24, 1995, amended Sep. 14, 1995) (Modification Application).

² See Petition for Reconsideration (Petition), File No. BPLIF-19950524DF (filed Aug. 6, 2004).

³ File No. BPIF-19870617DE. WHR896 was originally licensed in Boca Raton, Florida, but its transmission facilities were relocated pursuant to a modification application that was granted by Commission staff in 1990. See File No. BNPIF-19890814DI.

⁴ Modification Application.

⁵ Petition at 2-3.

harmful interference because of the proposed power increase.⁶ Hence, FAU stated that it would upgrade Broward's affected receiving antennas at its own expense "if necessary" to eliminate such interference.⁷ On September 14, 1995, FAU amended its modification application proposing to reduce the height of the Station WHR896 antenna from 400 feet to 309 feet and to replace the proposed Comwave 50 watt transmitter with a similar 50-watt Emcee transmitter in order to protect the protected service area (PSA) of a co-channel Miami station.⁸

3. On July 12, 2004, the Wireless Telecommunications Bureau dismissed FAU's Modification Application without prejudice.⁹ In so doing, the staff concluded that the proposed facility would cause interference to a number of licensed receive sites associated with Station KLC80.¹⁰ Staff further concluded that the proposed modification would also cause interference to KLC80's PSA.¹¹ Finally, staff found that due to the predicted interference, the application did not comply with Section 74.903 of the Commission's rules and was thus considered defective.¹²

4. In its Petition, FAU argues that Commission staff erred in dismissing its application because it failed to consider FAU's proposal to upgrade Broward's affected KLC80 receive sites.¹³ Additionally, FAU argues that Commission staff further erred in dismissing FAU's Modification Application based on interference to Broward's PSA, because Broward never made the requisite request for a PSA, and was, in any event, not eligible for a PSA.¹⁴ Therefore, FAU seeks reversal of the July 12, 2004 decision and reinstatement of its Modification Application for further processing.¹⁵

III. DISCUSSION

5. Initially, we agree with FAU that it was error to dismiss its modification application based on interference to Broward's PSA because Broward did not have a PSA when the Modification Application was filed.¹⁶ Commission records reflect that Broward never requested nor received a PSA. In 1995, when FAU filed its Modification Application, the Commission's rules only afforded PSA protection to EBS receive sites where the EBS licensee requested such protection, and only during the hours in which such licensees were leasing excess capacity to commercial operators.¹⁷ Because Broward had not requested a PSA, there was, in

⁶ See Modification Application, Engineering Statement of Keith G. Blanton.

⁷ *Id.* at 2.

⁸ See Amendment to File No. BMPLIF-950524DF (Amendment), filed Sept. 14, 1995.

⁹ Notice of Dismissal for File No. 19950524DF, Ref. No. 2908104 (dated Jul. 13, 2004).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Petition at 5-6.

¹⁴ *Id.* at 7-8.

¹⁵ *Id.* at 9.

¹⁶ Petition at 8.

¹⁷ 47 C.F.R. §§ 74.903(d), (e) (1994).

fact, no PSA to protect. Therefore, we agree with FAU that Bureau staff erred in concluding that FAU's application should be dismissed because it would cause interference to Broward's PSA.

6. Notwithstanding that finding, we affirm the dismissal of the Modification Application. FAU contends that it was error to dismiss its Modification Application without considering FAU's proposal to upgrade Broward's affected KLC80 receive sites.¹⁸ In its Modification Application, FAU sought to modify its EBS system pursuant to Section 74.903(a)(4) of the Commission's rules. When FAU filed its Modification Application, Section 74.903(a)(4) of the Commission's Rules provided:

If an application can demonstrate that the installation of a receiving antenna at an existing licensee's site with characteristics superior to those of the standard antenna (or, alternatively, the appropriate existing antenna in use at the site) will permit the applicant to provide service without interference to the existing licensee, the application will be considered grantable with the condition that the applicant bears all costs of upgrading the existing licensee's reception equipment at that site(s). Such a showing should include interference calculations for both the existing or reference antenna and the proposed antenna. The manufacturer, model number(s), co-polar and cross-polar gain patterns of the replacement antenna should be supplied as well as an accurate assessment of the expected reimbursement costs.¹⁹

7. As stated above, in its application, FAU acknowledged that the modification it sought would cause interference to five of Broward's neighboring receive stations, and stated that it would upgrade such stations at its own expense, if necessary. Further, FAU's application included interference calculations for the existing or reference antenna and the antennas proposed for its own operations. However, FAU's application failed to provide the other information outlined in Section 74.903(a)(4) of the Commission's Rules, such as data on the proposed replacement antennas for Broward's affected receive sites and expected reimbursement costs. Because the information requested by Section 74.903(a)(4) is important to an accurate interference evaluation, the Commission has stressed the requirement that applicants provide information on the proposed antenna and replacement costs.²⁰ The Commission has also

¹⁸ Petition at 4-6.

¹⁹ 47 C.F.R. § 74.903(a)(4) (1995). In 2004, the Commission streamlined its rules governing EBS and established geographic service areas (GSAs) for all licensees. See 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 Docket No. 03-66, 19 FCC Rcd 14165 (2004) (*BRS/EBS R&O*). Because the GSA approach was expected to resolve many interference concerns, the Commission eliminated as unnecessary many rules pertaining to interference, including Section 74.903(a)(4). See *BRS/EBS R&O*, 19 FCC Rcd at 14169 ¶ 6. Because FAU filed its Modification Application pursuant to that rule when it was in effect, we will adjudicate this case pursuant to that provision.

²⁰ *Id.* See also In the Matter of Amendment of Part 74 of the Commission's Rules and Regulations In Regard to the Instructional Television Fixed Service, *Memorandum Opinion and Order*, MM Docket No. 83-523, 59 Rad. Reg. 2d 1355, 1383 ¶ 81 (1986) (applicants wishing to take advantage of the policy set forth in Section 74.903(a)(4) will be required to submit interference calculations for both the existing or 2-foot antenna and the proposed antenna, along with an accurate estimate of the reimbursement costs involved for each affected receive site).

affirmed the dismissal of applications that failed to provide all of the information required by that rule.²¹ Indeed, the ability to present information on the manufacturer, model number, co-polar and cross-polar gain patterns of a possible replacement antenna demonstrates that an applicant has studied and contemplated possible replacement equipment and devised a plan for protecting its neighbor's operations in the event that the proposed modification creates interference. Making the effort to develop such a plan in advance increases the possibility that interference issues will be promptly resolved and there will be minimal disruption to existing operations. Furthermore, providing information on expected reimbursement costs demonstrates that an applicant has researched potential upgrade costs and has likely considered whether such expenses are cost efficient and fit within the applicant's budget. Therefore, such information is significant to ensuring that an existing licensee's operations are not disrupted by a proposed modification. Inasmuch as FAU failed to provide the requested information, we conclude that FAU did not make a sufficient showing that it was prepared to protect Broward's receive sites from the anticipated interference. Accordingly, we affirm the dismissal of FAU's Modification Application based on anticipated interference to five of Broward's receive sites.

IV. CONCLUSION AND ORDERING CLAUSES

8. We conclude that Commission staff erred in concluding that FAU's application should be dismissed based on potential interference to Broward's PSA because Broward did not actually have a PSA. However, we also conclude that Commission staff did not err in dismissing FAU's Modification Application because FAU failed to satisfy the requirements of Section 74.903(a)(4) because it did not provide information on the proposed replacement antenna to alleviate the anticipated interference, nor did it provide an estimate of the applicable replacement costs for such equipment.

9. Accordingly IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.106 and 74.903(a)(4) of the Commission's Rules, 47 C.F.R. §§ 1.106, 74.903(a)(4) (1995), the Petition for Reconsideration filed by Florida Atlantic University on August 6, 2004 IS DENIED.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
Deputy Chief, Broadband Division

²¹ See *Hispanic Information and Telecommunications Network, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 814, 817-8 ¶¶ 11-12 (2004) (applicant wishing to receive a conditional grant pursuant to Section 74.903(a)(4) must supply the manufacturer, model number, co-polar and cross-polar gain patterns of the replacement antenna).

Wireless Telecommunications Bureau