



PUBLIC NOTICE

Federal Communications Commission
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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST BY THE GEORGE MASON UNIVERSITY INSTRUCTIONAL FOUNDATION, INC. FOR WAIVER OF THE REQUIREMENT TO PAY COSTS TO TRANSITION TO THE NEW BRS/EBS BAND PLAN

Comment Date: February 13, 2007

Reply Date: February 23, 2007

The George Mason University Instructional Foundation, Inc. (GMU Foundation) -- a provider of multichannel video, audio, wireless broadband, and voice services over licensed Broadband Radio Service (BRS) and licensed Educational Broadband Service (EBS) spectrum in Arlington, Virginia, and the surrounding area -- has filed a request for waiver of the requirement that all BRS licensees transitioning to the new BRS/EBS band plan adopted in the Commission's *Report and Order* in WT Docket No. 03-66 pay the cost of the transition.¹ This band plan is set forth in Section 27.5(i)(2) of the Commission's Rules.²

In the *BRS/EBS R&O* and *FNPRM*, the Commission adopted a new band plan in an effort to modernize and enhance our rules and policies governing the licensing of EBS and BRS in the 2495-2690 MHz band.³ A critical element of the *BRS/EBS R&O* and *FNPRM* is the adoption of a market-oriented, transition mechanism that enables incumbent licensees to develop regional plans for moving to new spectrum assignments in the restructured band plan. Under the transition rules for BRS and EBS, BRS licensees must pay their own transition costs, but a proponent has certain obligations with respect to EBS licensees within the Basic Trading Area (BTA) that it proposes to transition.⁴ On July 19, 2006, Sprint Nextel Corporation (Sprint Nextel) filed a Transition Initiation Plan to transition the 2.5 GHz band in the Washington, DC BTA.⁵

¹ 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* and *FNPRM*), affirmed in pertinent part by *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order*, 21 FCC Rcd 5606 (2006).

² 47 C.F.R. § 27.5(i)(2).

³ *BRS/EBS R&O* and *FNPRM*.

⁴ 47 C.F.R. § 27.1233.

⁵ Letter from Robert H. McNamara to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-136 (filed Jul. 19, 2006).

GMU Foundation is the licensee of EBS Stations WHB652, WLX235 and WLX728. GMU Foundation is also the sole stockholder of F Corp., which is the licensee of BRS Station WHT659. GMU Foundation represents that F Corp. was founded to take assignment of Station WHT659 because its attorney advised it that a for-profit corporation, as opposed to the non-profit GMU Foundation, should hold the license.⁶ The programming on F Corp.'s station WHT652 has "basically always duplicated" the programming on GMU Foundation's Station WHB652.⁷ As of January 5, 2005, the stations provide service to over 1,700 offices in the Washington, DC area.⁸ F Corp. has also entered into a long-term *de facto* control lease with a subsidiary of Sprint Nextel.⁹

On January 5, 2005, GMU Foundation and F Corp. filed a request for waiver to allow Station WHT659 to be treated as an EBS station for purposes of the transition.¹⁰ They argue that Station WHT659 has operated not as a commercial carrier but as an EBS station operated by a wholly owned subsidiary of the GMU Foundation, which exists to benefit the outreach mission of George Mason University.¹¹ GMU Foundation argues that it would be an unduly burdensome financial obligation on the GMU Foundation to require it or F Corp. to pay the cost of transitioning F Corp.'s facilities.¹² Accordingly, GMU Foundation and F Corp. ask that Section 27.1233 of the Commission's Rules be waived and that F Corp. have its transition costs be paid by the proponent in the Washington, DC BTA (*i.e.*, Sprint Nextel).

Interested parties may file comments on the waiver request on or before February 13, 2007. Parties interested in submitting reply comments must do so on or before February 23, 2007.

All comments should reference the subject waiver request including the DA number of this Public Notice, and should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street SW, TW-A325, Washington DC 20554. This address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only by the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue NE, Suite 110, Washington DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering 236 Massachusetts Avenue NE. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) should be addressed for delivery to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

The waiver request can be accessed electronically via the Commission's Electronic Filing Comment System in WT Docket No. 03-66. The full text of the waiver request, comments, and reply comments will be available for inspection and duplication during regular business hours in the FCC

⁶ Waiver Request at 1.

⁷ Waiver Request at 2.

⁸ Waiver Request at 2.

⁹ File No. 0002358035.

¹⁰ Waiver Request at 2.

¹¹ Waiver Request at 2.

¹² Waiver Request at 2-3.

Reference Information Center (RIC) of the Consumer and Government Affairs Bureau, Federal Communications Commission, 445 12th Street SW, Room CY-A257, Washington DC 20554. Copies also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW, Room CY-B402, Washington DC 20554. Customers may contact BCPI through its web site, <http://www.bcpired.com>, by e-mail at fcc@bcpired.com, by phone at (202) 488-5300 or (800) 378-3160, or by facsimile at (202) 488-5563. For further information regarding the public reference file for this waiver request, contact Maria Ringold, Chief, Wireless Branch, RIC, (202) 418-1355.

Unless otherwise provided, requests for waiver of the Commission's Rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under Section 1.1208 of the Commission's Rules, 47 C.F.R. § 1.1208. Because of the policy implications and potential impact of this proceeding on persons not parties to the waiver request, we believe it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. See Sections 1.1200(a), 1.1206 of the Commission's Rules, 47 C.F.R. §§ 1.1200(a), 1.1206. Therefore, subsequent to the release of this Public Notice, *ex parte* presentations that are made with respect to the issues involved in the subject waiver request will be allowed but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b).

For further information, contact Nancy M. Zaczek, Broadband Division, Wireless Telecommunications Bureau at (202) 418-7590, or by e-mail at Nancy.Zaczek@fcc.gov.

By the Chief, Broadband Division, Wireless Telecommunications Bureau.

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