



Federal Communications Commission
Washington, D.C. 20554

April 3, 2013

DA 13-602

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Dear Mr. Carb:

On February 21, 2013, The School Board of Broward County Florida (Broward County), licensee of Educational Broadband Service (EBS) Station KTZ22, requested a ruling that the Geographic Service Area (GSA) of Station KTZ22 be calculated without respect to former co-channel EBS Stations WHR973 and WHR994, licensed to The School Board of Palm Beach County (Palm Beach).¹ For the reasons stated below, we grant the Request to the extent of confirming that Stations WHR973 and WHR994 never had GSAs because they were originally licensed on a secondary point-to-point basis.

In 1989, Palm Beach received licenses for ITFS Stations WHR973 and WHR994.² Both licenses contained the following condition: ““Permittee shall make adjustments or take whatever corrective action may be necessary in the event operation of the facilities herein causes interference to or receives interference from other ITFS stations operating on co-channel or adjacent channel frequencies in the West Palm Beach, Florida area.”³

On September 25, 1998, the Commission released the *Two-Way Order*, which, among other things, granted all Instructional Television Fixed Service (ITFS) licensees a Protected Service Area (PSA) and individual protection to all receive sites registered through the date of the adoption of the *Two-Way Order*.⁴ In the *Two-Way Reconsideration Order*, the Commission affirmed its decision.⁵ In the *Two-Way Second Reconsideration Order*, however, the Commission reversed its decision and concluded that point-to-point ITFS stations authorized on a secondary basis should not receive PSA protection because

¹ Letter from Evan D. Carb, Esq., counsel to The School Board of Broward County, Florida to John J. Schauble, Wireless Telecommunications Bureau, Request for Confirmation (filed Feb. 21, 2013) (Request).

² File Nos. BPLIF-881221DA (granted Apr. 21, 1989) (WHR973) and BPLIF-890214DA (granted July 12, 1989) (WHR994).

³ File No. BPLIF-881221DA (granted Apr. 21, 1989) (WHR973). The condition for Station WHR994 is identical except the word “Florida” is omitted. File No. BPLIF-890214DA (granted July 12, 1989).

⁴ Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, *Report and Order*, MM Docket No. 97-217, 13 FCC Rcd 19112, 19173 ¶ 114 (1998).

⁵ Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, *Order on Reconsideration*, MM Docket No. 97-217, 14 FCC Rcd 12764, 12773-12774 ¶ 20 (1999).

secondary stations, usually studio to transmitter links, have not traditionally been given protection relative to primary stations.⁶

On July 29, 2004, the Commission released the *BRS/EBS R&O*, which granted all ITFS incumbents a GSA based on their existing PSA.⁷ In the case of overlapping GSAs, the Commission adopted a method for dividing overlapping GSAs, which is commonly known as “splitting the football.”⁸ On June 28, 2005, the Wireless Telecommunications Bureau released a Public Notice announcing that the Commission’s Universal Licensing System would implement the adoption of geographic licensing for the Broadband Radio Service and the Educational Broadband Service.⁹ The Public Notice stated that “[a]ny BRS or EBS main station license listed on ULS with a protected service area (PSA) based on a 35 mile radius, will be converted to a geographic license with a P35 geographic service area GSA based on the PSA coordinates listed on the license.”¹⁰ On July 9, 2005, as part of the conversion of BRS and EBS to ULS, the license records for Stations WHR973 and WHR994 were changed to state that the licenses for the Stations were converted to GSAs “in accordance with Rule 27.1206.”¹¹ On August 9, 2011, Palm Beach voluntarily cancelled the licenses for Stations WHR973 and WHR994.¹²

Broward County argues that Stations WHR973 and WHR994 never should have received a GSA because, as secondary point-to-point stations, they never received PSAs.¹³ It points out that the condition placed on the licenses for Stations WHR973 and WHR994 has been recognized as granting a station secondary status.¹⁴ Broward County argues that the only station it should have to split the football with in calculating the northern boundary of the GSA of Station KTZ22 is Palm Beach’s Station KZB29.¹⁵ It believes that the insertion of language into ULS stating that Stations WHR973 and WHR994 had GSAs was a ministerial error that could be corrected at any time.¹⁶ Palm Beach agrees that Stations WHR973

⁶ Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, *Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking*, MM Docket No. 97-217, 15 FCC Rcd 14566, 14572 ¶ 24 (2000) (*Two-Way Second Reconsideration Order*).

⁷ 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, 14190-14191 ¶ 55 (2004).

⁸ *Id.* at 14192-14193 ¶¶ 60-63.

⁹ Wireless Telecommunications Bureau Announces Change to the Universal Licensing System (ULS) to Accommodate the Broadband Radio Service and Educational Broadband Service and Reminds Licensees the Use of ULS Forms and Electronic Filing for These Service Becomes Mandatory on July 11, 2005, *Public Notice*, 20 FCC Rcd 11554 (2005).

¹⁰ *Id.*, 20 FCC Rcd at 11554-11555.

¹¹ 47 C.F.R. § 27.1206.

¹² File Nos. 0004833790, 0004833793 (filed Aug. 9, 2011, granted Aug. 10, 2011).

¹³ Request at 1.

¹⁴ *Id.* at 2, citing Florida Atlantic University, *Order on Reconsideration*, 22 FCC Rcd 12839, 12842 ¶ 9 (WTB BD 2007), *subsequent history omitted*.

¹⁵ Request at 1.

¹⁶ *Id.* at 3.

and WHR994 never had GSAs because they were secondary point-to-point stations, although it disagrees with Broward County that the cancellation of those licenses created white space.¹⁷

Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.2 and 27.1206 of the Commission's Rules, 47 C.F.R. §§ 1.2, 27.1206, that the Request for Confirmation filed by The School Board of Palm Beach County on June 10, 2010 IS GRANTED to the extent indicated.

These actions are 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

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¹⁷ E-mail from Donna A. Balaguer, Esq., counsel for the School Board of Palm Beach County, to John Schauble and Ruth Taylor (Mar. 1, 2013).