

The following letter was sent via e-mail on August 30, 2004 today to Mssrs. Muleta and Onyeije by Michael R. Kelley, President of the GMU Instructional Foundation.

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August 30, 2004

John B. Muleta, Esq.
Chief
The Wireless Telecommunications Bureau
The FCC
Washington, D.C.

VIA E-MAIL

Dear Chief Muleta: **In Re: WT Docket 03-66, R & O 04-135**

In October 2002, when the WCA-NIA-CTN Coalition submitted its "White Paper" proposal to reband the ITFS and MMDS Spectrum, footnote 10 on page 5 in Appendix B of that proposal read:

"There is at least one case in which an ITFS licensee simulcasts programming transmitted on its ITFS channels over an MDS station licensed at a different location to a wholly-owned subsidiary of the ITFS licensee. Under such circumstances, the MDS station should be considered to be an ITFS station for purposes of the transition rules (and for that purpose only). For the sake of simplicity, where ITFS stations are referred to in this Appendix, that reference should be read to include such an MDS station. In addition, for purposes of this Appendix commercial ITFS stations licensed pursuant to Sections 74.990-74-991 of the Rules should be considered to be MDS stations."

George Mason University's ITFS system is the one referred to in this footnote, and during the public comment period, no comments were made for or against this suggestion. Yet in dealing with the transition in the FCC's Report and Order WT 04-135, the Commission at paragraph 99 on page 43 states:

"To prevent a proponent(s) from incurring all of the costs associated with transitioning an MEA, we conclude that former MDS licensees must pay the costs of their own transition. We believe that the cost-sharing rules we adopt are not only equitable but will promote the rapid transition of the 2500-2690 MHz band.

Page 2

The costs of transitioning our ITFS/MMDS system will be a heavy burden on the George Mason University Instructional Foundation, and we ask that the following language, highlighted here in bold type for your convenience, be inserted into Paragraph 99: "To prevent a proponent(s) from incurring all of the costs associated with transitioning an MEA, we conclude that former MDS licensees, **except any directly affiliated with and wholly owned by an ITFS licensee and simulcasting its ITFS programming** must pay the costs of their own transition. . . ."

In addition, Paragraph 27.1233 of the Rules, subparagraph (a) on page C39 should include the additional words that I have highlighted in bold for your convenience: "*Replacement Downconverters*. The proponent(s) must install at every eligible EBS **and wholly owned subsidiary's simulcasting BRS** receive site a downconverter designed to minimize the reception of signals from outside the MBS."

Finally, Paragraph 27.1233 of the Rules subparagraph (b) (1) on page C 40 should include the additional words that I have highlighted in bold for your convenience: "(1) The proponent(s) must provide, at its cost, to each EBS licensee, **and to any BRS licensee that is a wholly owned subsidiary simulcasting EBS programming**, that intends to continue downstream high-power, high-site video programming or data transmission services with one programming track on the MBS channels for each EBS **or simulcast BRS** video or data transmission track the licensee is transmitting on a simultaneous basis before the transition.

I emphasize that during the drafting of the White Paper and the comment period thereafter, none of the commercial interests involved objected to this concept. I assumed that it would be incorporated into the final Report & Order (FCC 04-135), and was frankly surprised that some language of this sort was possibly omitted inadvertently.

Hence, I am requesting that this language, or similar language accomplishing the same end be added to the final Report and Order as an Erratum.

Respectfully submitted,

Michael R. Kelley, Ph.D.
President

cc. Uzoma C. Onyeije

