



FISH & RICHARDSON P.C.

# **ITFS Becomes EBS New Rules and New Band Plan**

PRESENTED BY

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# Petition for Reconsideration

- Although a Petition for Reconsideration was filed with the FCC, both CTN and NIA support most of the new rules adopted in the Report and Order.
  - “The Report and Order represents a significant step forward in the Commission’s efforts to promote the rapid deployment of broadband services in the 2.5 GHz band, while at the same time, providing spectrum to meet the future needs of the educational community.”

» CTN/NIA Petition for Reconsideration filed January 10, 2005.

# Overview

- Improve Transition Process
- Minimize the Potential for Harmful Technical Interference
- Protect Existing Educational Services to the Greatest Extent Possible
- Minimize the Potential for Disputes

# Transition Process

- **Problem 1:** Markets are to be transitioned by MEAs. CTN and NIA support the use of BTAs.
- **Problem 2:** Licensees may be forced to discontinue operations and lose their licenses. To avoid this, CTN and NIA support the adoption of a self-transition mechanism.

## What is a Self-Transition?

- A licensee could certify its intent to self-transition.
- On the transition deadline, the licensee would cease all operations on LBS/UBS channels.
- Video operations would be permitted to continue on MBS channels, subject to any retuning or digitization that may be necessary.

# Interference Concerns

- **Problem No. 1:** Two-way cellularized systems may be deployed *immediately*, even though channels are still interleaved. Such deployments must be limited or strictly controlled.
  - The objective of new band plan is to provide “a safe haven” so that video programming can continue “without interference from consumer-installed fixed, portable and mobile cellularized operations.”
    - » Coalition White Paper, Appendix B at 1-2, October 7, 2002.

# Interference Concerns

- “By grouping high and low-power spectrum uses into separate portions of the band, this band plan creates opportunities for spectrum-based systems or devices to migrate to compatible bands based on marketplace forces, and reduces the likelihood of interference caused by incompatible uses.”
  - » Report and Order, WT Docket No. 03-66, released July 29, 2004, at paragraph 6.

# Interference Concerns

- **Problem No. 2:** D/U interference protection requirements for high power video operations have been virtually eliminated. This creates interference risks, both before and after transition. D/U protection should be reinstated on a streamlined basis.

# Protecting Educational Services

- **Problem:** The new rules provide that only receive sites within a licensee's *GSA* are eligible for replacement downconverters at transition. To reduce the risk of *actual* interference to such sites, CTN and NIA have asked the FCC to adopt the original Coalition proposal to require the installation of new downconverters at all eligible receive sites within a licensee's former PSA.

# Minimizing Potential for Disputes

- Nine “safe harbors” were proposed by the Coalition. The safe harbors are intended to avoid disputes through “pre-packaged” solutions.
- **Problem:** Only a few of the safe harbors were adopted by the FCC. CTN and NIA have asked that two more of the originally proposed safe harbors be adopted.

# Comments on the Further Notice

- “We now consider what further actions ... may be necessary to achieve potential benefits of the new band plan and service rules. ... Accordingly, in this Further Notice, we seek comment on how best to license EBS and BRS spectrum ...”

» Further Notice of Proposed Rulemaking, WT Docket No. 03-66, released July 29, 2004 at paragraphs 264-265.

# Grandfathered E & F Stations

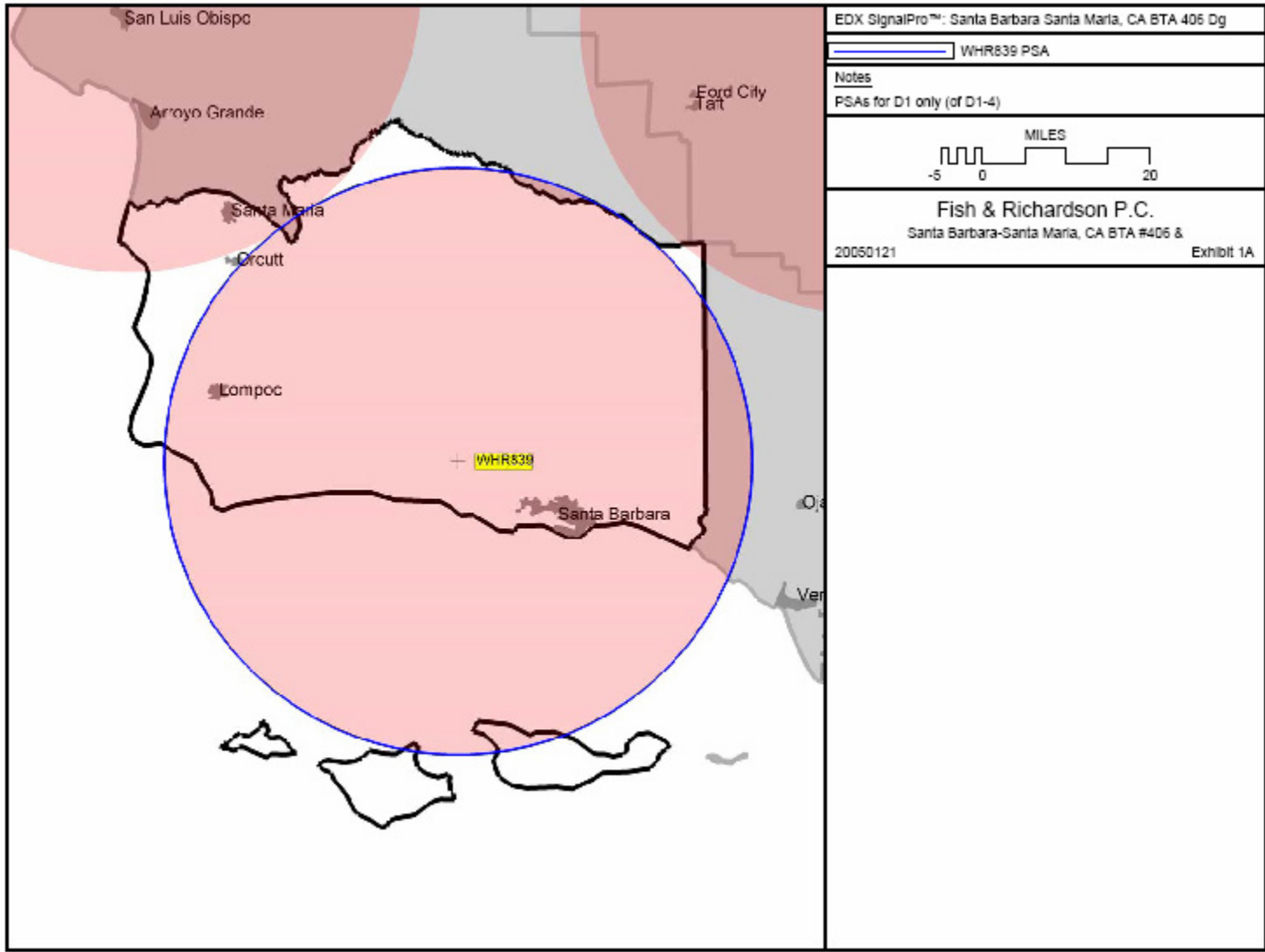
- The Commission needs to clarify the respective rights of grandfathered E & F group licensees and co-channel MDS lottery winners.
- Voluntary settlements should be encouraged.
- If settlements cannot be reached, the FCC should use the same “split-the-football” approach that is used to create GSAs for all other licensees.

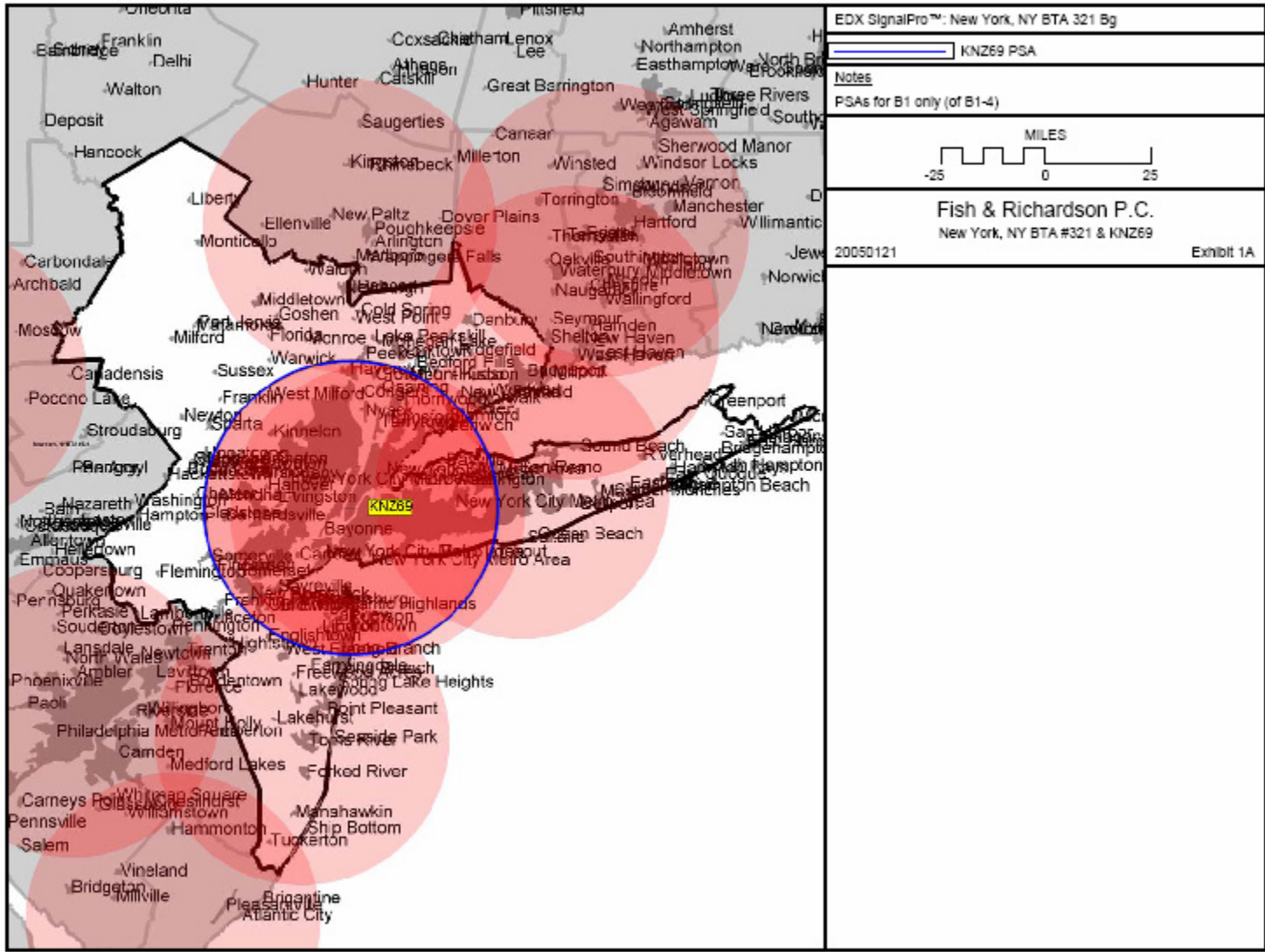
# Performance Requirements

- Refrain from using the substantial service test during the transition process.
- **Safe Harbor No. 1.** EBS licensee is (a) using its spectrum to provide educational services within its GSA, (b) services actually being used for educational purposes; (c) level of service meets or exceeds the minimum standards specified in FCC rules.
- **Safe Harbor No. 2.** If spectrum is leased and is otherwise used for education, FCC should find substantial service if the wireless system is found to be providing substantial service.

# White Space Auctions

- Any educational entity qualifying as an EBS licensee should be eligible.
- Auction should occur by BTA.
- Auction should be on a channel-group-by-channel group basis.
- The LBS/UBS channels should be auctioned separately from MBS channels.





# Concluding Thought

- Most concerns arise from deviations from Coalition Proposal.
  - » “Quite simply, by picking and choosing from some elements of the Coalition Proposal, and rejecting others in favor of alternative proposals, the Commission has wreaked havoc on some of the most basic elements of the transition plan proposed by the Coalition.” CTN NIA Petition for Reconsideration filed January 10, 2005.
- We must work to address these problems. Otherwise, the very essence of what the we want to achieve will be lost to interference disputes and legal challenges.



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