

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

In re Applications of

DANVILLE HIGH SCHOOL  
Holly Springs, Alabama

File No. BPLIF-920603DC

JACKSONVILLE STATE UNIVERSITY  
Gadsden, Alabama

File No. BPLIF-921216DA

For Construction Permit and License  
in the Instructional Television Fixed  
Service on Channels B1-B4

BOARD OF TRUSTEES, UNIVERSITY OF ALABAMA  
Birmingham, Alabama

File No. BMPLIF-931230HZ

For Modification of the Facilities  
of ITFS Station WBN-31 on Channels B1-B2

**MEMORANDUM OPINION AND ORDER**

Adopted: April 18, 1996;

Released: April 25, 1996

1. The Mass Media Bureau, acting pursuant to delegated authority, has before it for consideration the above-captioned mutually exclusive applications of Danville High School (Danville) and Jacksonville State University (JSU), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on Channels B1-B4 in the areas of Holly Springs, and Gadsden, Alabama, respectively. Also under consideration is the mutually exclusive application of Board of Trustees, University of Alabama (UAB) seeking to modify the facilities of ITFS station WBN-391, which is authorized to operate on Channels B1-B2 in Birmingham, Alabama.

**BASIC ELIGIBILITY**

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of the applicants. Educational institutions and governmental organizations that propose to serve either

their own enrolled students or students at accredited schools within their respective jurisdictions establish their eligibility by accreditation from the appropriate state department of education or a recognized regional or national accrediting organization. Other ITFS applicants that propose to serve students at accredited schools outside of their respective jurisdictions must, to be eligible, submit letters of intended use from those schools and establish local program committees in those communities. See 47 C.F.R. Section 74.932(a)(1)-(5). All of the applicants are eligible to be ITFS licensees. Both JSU and UAB are accredited by the Southern Association of Colleges and Schools and are proposing to provide formal educational programming to their enrolled students at on-campus and off-campus sites. Danville is an accredited school that is located more than 50 miles from the area it proposes to serve. It proposes to provide formal educational programming to accredited schools in the Holly Springs area and has submitted the requisite letters of intended use from those schools. In addition, Danville has demonstrated the establishment of a local program committee in the community it proposes to serve.

**MUTUALLY EXCLUSIVE SELECTION PROCEDURE**

3. In cases of mutually exclusive applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which the ITFS spectrum has been allocated. *Instructional Television Fixed Service - Second Report and Order in MM Docket No. 83-523, (Second Report and Order)*, 101 FCC 2d 49, 65-72 (1985); 47 C.F.R. Section 74.913. First, four points are awarded to local applicants.<sup>1</sup> Second, three points are awarded to applicants which are accredited schools, educational institutions, or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for specified levels of proposed ITFS programming.<sup>2</sup> Fifth, one point is awarded to applicants which are existing E or F channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, the applicants are awarded points based on the following criteria:

<sup>1</sup> A "local" applicant is an institution or organization that is physically located in the community or metropolitan area where service is proposed. *Second Report and Order*, 101 FCC 2d at 59; 47 C.F.R. Section 74.932, Note 1.

<sup>2</sup> One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of other ITFS programming. Two points are awarded for a proposed

weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. Section 74.913(b)(4).

**Localism.** JSU and UAB are entitled to four points because each proposes to offer formal educational programming to its own students. Danville does not propose to serve its own students and it is not located within the immediate vicinity of schools that intend to use the ITFS service Danville will provide. Therefore, Danville is not entitled to any points for being a local applicant. See *Aragona Unified School District #359*, 8 FCC Rcd 4286 (1993).

**Accreditation.** JSU and UAB are entitled to three points because each is accredited by the Southern Association of Colleges and Schools. Although Danville proposes to serve accredited schools, a factor which satisfies its basic eligibility, the applicant is not an accredited entity in its own right in the area it proposes to serve, the factor necessary to earning merit points under the accreditation criterion. Therefore, Danville is not entitled to any points by this measure. See *Broken Arrow Public School District #3*, 9 FCC Rcd 5783 (1994).

**Four-Channel Limitation.** JSU and UAB are neither the licensees of, nor have they filed applications for, additional ITFS channels in their proposed service areas. Therefore, JSU and UAB are each entitled to two points for remaining within the four-channel limitation. In contrast, UAB is not entitled to any merit points under this criterion. UAB proposes to modify the authorized facilities of station WBN-31 by expanding, in accordance with 47 C.F.R. Section 74.903(e), the protected service area afforded its excess channel capacity lessee. However, the Commission has stated that "existing permittees and licensees which seek modification of their facilities for reasons other than the addition of channels [within the four-channel limitation] will not be entitled to [the] two-point preference." *Instructional Television Fixed Service- Second Report and Order/Recon. Reconsidered*, 1 FCC Rcd 24, 25 (1986). See also 47 C.F.R. Section 74.913, Note 3.

**Instructional Programming.** ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a programming "grid." However, in the case before us, we are confronted with UAB's application for modification of WBN-31, which incorporates by reference the original application for that facility, BPIF-224, including its proposed programming and other legal matters.<sup>3</sup> In 1969, when UAB applied for its current authorization, the ITFS application form employed by the Commission, Form 330-P, required an illustrative schedule only, and no programming grid. In contrast, JSU and Danville's applications, submitted on current FCC Form 330, include both an illustrative schedule and a programming grid. In such cases, in order to preserve basic fairness and equity to all competing applicants, we will look only to the applicants' illustrative schedules. See *The Trustees of Indiana University*, 8 FCC Rcd 5555, 5556 (1993).

Danville's schedule proposes an average of 42 hours of formal educational programming per channel per week. Thus, Danville is entitled to two programming merit points. In contrast, JSU's illustrative schedule proposes an average of 15 hours of formal educational programming per channel per week. Because the amount of program-

ming specified in the applicant's schedule fails to reach the threshold amount at which merit points are awarded, JSU is not entitled to any programming merit points. UAB's schedule proposes 21 hours of ITFS programming per channel per week, of which only seven hours will be formal educational programming. Again, the amount of programming specified does not reach the threshold amount at which merit points are awarded. Therefore, UAB is entitled to no programming merit points.

**E- and F- Channel Group Relocation.** None of the applicants is the current licensee of an E or F channel seeking to relocate to other channels. Therefore, no applicant is entitled to the one point for such applicants.

**Total.** Danville is entitled to two points for observing the four-channel limitation and two points for proposing at least 41 hours of formal educational programming per channel per week, for a total of four points. JSU is entitled to four points for being local, three points for being accredited and two points for observing the four-channel limitation, for a total of nine points. UAB is entitled to four points for being local and three points for being accredited, for a total of seven points. The applications of Danville and JSU are directly mutually exclusive. Because JSU has the greatest number of points, JSU is the tentative selectee and the application of Danville will be denied. With the denial of Danville's application, there is no longer any mutual exclusivity with respect to the JSU and UAB applications. Accordingly, the UAB application can also be granted.

#### OTHER MATTERS

5. UAB and JSU propose to lease their excess capacity for non-ITFS use, as permitted by 47 C.F.R. Section 74.931. UAB has previously submitted a copy of its lease, which has been found to conform to the Commission's requirements. JSU has submitted a copy of its lease with Volunteer Management, Inc. That lease, however, does not entirely conform to the Commission's requirements. Specifically, it does not provide for the licensee's right to purchase the ITFS equipment at its fair market value in the event the lease is terminated. We have consistently maintained that the licensee be permitted to purchase the ITFS equipment necessary to maintain its operation in the event of any action on the lessee's part which would terminate the lease arrangement. See *Turner Independent School District*, 8 FCC Rcd 3153, 3155 (1993). Although inconsistent with our requirements for excess capacity leases, the lack of such a provision in JSU's lease neither reflects on the applicant's basic or comparative qualifications, nor precludes a grant of an authorization. See *Highland Independent School District*, 10 FCC Rcd 13646, 13647 (1995). Nevertheless, the authorization of JSU will be conditioned upon conformity of the lease to Commission requirements. See *Henry County Board of Education*, 10 FCC Rcd 8066, 8067 (1995).

<sup>3</sup> According to Instruction K of Form 330, in lieu of resubmitting the entire ITFS application form, applicants for modification of their existing authorizations are permitted to file with the Commission only the sections pertaining to the

proposed changes. The remaining sections, if unchanged since the submission date, may be incorporated by reference to applications already on file at the Commission.

6. No petitions to deny or informal objections have been filed against the applications of JSU and UAB, and we find JSU and UAB fully qualified to be ITFS licensees. We also conclude that grant of their applications would serve the public interest, convenience and necessity.

7. Accordingly, IT IS ORDERED, That the application of Danville High School (BPLIF-920603DC) IS DENIED, the application of Board of Trustees, University of Alabama (BMPLIF-931230HZ) IS GRANTED, and the application of Jacksonville State University (BPLIF-921216DA) IS GRANTED, subject to the condition that within 30 days of the release of this Order, Jacksonville State University shall submit to the Chief, Distribution Services Branch for approval, information demonstrating compliance with the Commission's requirements, including, if appropriate, an amended excess capacity lease agreement conforming in the manner discussed herein.

FEDERAL COMMUNICATIONS COMMISSION

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