

Business Operations
Joe Arriola, Chief Business Officer

**SUBJECT: PROPOSED PROMULGATION OF NEW SCHOOL BOARD RULE:
INITIAL READING 6Gx13- 2C-1.121, SUBMISSION OF PROPOSALS
FOR TELECOMMUNICATIONS FACILITIES ON BOARD-OWNED
SITES**

Purpose

The purpose of the proposed Board Rule is to establish a formal process for submission of proposals for telecommunications facilities on Board-owned sites. In the past, the School Board (Board) approved lease agreements for wireless telecommunications towers (towers) and granted easements for controlled environment vaults (CEVs) and fiber optic cabinets (FOCs) with various telecommunications service providers (service providers), on an as requested basis. The process to be authorized by this Board Rule and developed by the Fact-Finding Telecommunications Committee (TC) will include citizen participation and foster competition among the telecommunications service providers.

Background: Wireless Telecommunications Towers

Since 1996, the Board has executed five (5) lease agreements for the siting of towers at school sites with service providers and co-locators. To facilitate proposals for said agreements, the TC was established and adopted an internal process that required the school principal to consult with the chairperson of their respective Parent, Teacher and Student Association (PTSA) and the Educational Excellence School Advisory Council (EESAC). Additionally, the process required parental notification and a recommendation by the principal, based on the response from the notification, as to whether to proceed with the proposed tower.

At the July 11, 2001 meeting, the Board directed the Superintendent to revise and improve the process for reviewing such proposals. The Board's directive stemmed from concern that the latest tower being constructed at Miami Killian Senior High School (Killian) did not provide a vehicle for input from adjacent property owners. Further, several neighbors attended the Board meeting and asked that the tower be relocated to an alternate location. Following the Board meeting, Miami-Dade County (County) claimed zoning and building jurisdiction over the facility at Killian and issued two (2) Warning – Notice of Code Violations (W-NOCVs) for failure to obtain County zoning and building permit approval. As a result of the W-NOCVs issued by the County, the County's assertion of zoning and building jurisdiction, and neighborhood objection to the tower's location, District staff has been involved in a number of efforts to resolve the pending matters.

Additional Information

In an effort to clarify the extent, if any, of the County's jurisdiction relative to permitting and zoning of towers on Board-owned sites, a legal opinion was requested from the School Board Attorney's (Board Attorney's) Office on August 8, 2001. On August 9, 2001, District staff and a representative from the Board Attorney's office met with County officials concerning the W-NOCVs. The Board Attorney's legal opinion was received on November 1, 2001 and concluded that towers on Board-owned sites that are solely educational or jointly used (commercial and educational) are exempt from local zoning and permitting; and that towers on Board-owned sites that are solely commercial are subject to local zoning and permitting. At the present time, the tower at Killian falls under the latter category.

Formulation of a Process to Consider Proposals for Wireless Telecommunications Towers on Board-Owned Sites

Based on the legal opinion rendered by the Board Attorney and concerns raised by County staff and neighbors of Killian, the Division met with community representatives, service providers and County staff to formulate a new process for considering proposals for wireless telecommunications towers on Board-owned sites (process). For ease of reference, a draft of the process recommended by the TC on April 11, 2002, will be submitted to the Board separately as supplemental information. On April 11, 2002, the Division presented the process to the Dade County Council PTA/PTSA (PTA/PTSA) for comment and requested participation on the TC as a voting member. While there were concerns raised, the PTA/PTSA ultimately voted to have a voting member/representative on the TC. During a subsequent phone conversation with the president of the Citizen Advisory Council (CAC) on April 16, 2002, the president agreed to have a voting member/representative on the TC. The Division forwarded the process to the service providers at various stages of development for comment and held several meetings with the most recent meeting occurring on March 15, 2002. The process was forwarded to County staff for review and input on December 21, 2001, January 14, 2002 and April 23, 2002. Several meetings were also held with County staff during which they indicated a preference for development of an inter-local agreement to address review and coordination of proposed towers on Board-owned sites; to date, the proposed inter-local agreement has not been forwarded to the District for review. Additionally, the District Court of Appeals of Florida, Third District, ruled on March 6, 2002 that parts of the County's zoning code relative to siting wireless telecommunications towers was subjective and unconstitutional. In providing an analysis of the appellate court's ruling, the Board Attorney advised on March 29, 2002 that the decision would not have any significant impact on the review and processing of joint-use proposals.

The process to be authorized by this Board Rule and developed by the TC would apply to pending and future towers where a joint-use is proposed, as well as, co-location on existing joint-use towers. The process will not apply to towers used solely for commercial or educational purposes on Board-owned sites. Towers used solely for commercial purposes will be referred to the local government for zoning and permitting.

Towers used solely for educational purposes are exempt from external review and will be processed accordingly. Further, the process is based on the legal opinion rendered by the Board Attorney and includes member/representatives from the Citizen Advisory Council (CAC) and Dade County Council PTA/PTSA.

Background: Controlled Environment Vaults and Fiber Optic Cabinets

Since 1998, the Board has granted seven (7) easements to BellSouth for the installation of controlled environment vaults (CEVs) and fiber optic cabinets (FOCs). The easements have allowed BellSouth to up-grade its telecommunications network. To facilitate the easement requests, a "BellSouth Easement Track" Sheet was developed. The track sheet entails BellSouth submitting a signed appraisal for the proposed easement area and compensation being negotiated based on a mutable of the appraised value for the easement area. Historically, District staff in the Division negotiated compensation with BellSouth and submitted said compensation to the Board for consideration. In reviewing past easement proposals, the TC recommended that lease agreements be consummated with annual revenue as opposed to perpetual easements with one-time contributions.

Formulation of a Process to Consider Proposals for Controlled Environment Vaults , Fiber Optic Cabinets and Other telecommunications equipment

The process to be authorized by this Board Rule and developed by the TC would apply to pending and future proposals for CEVs, FOCs and other telecommunications equipment.

Attached are the Notice of Intended and the proposed new rule.

Authorization of the Board is requested for the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act for the promulgation of new School Board Rule 6Gx13- 2C-1.121, Submission of Proposals for Telecommunications Facilities on Board-owned Sites.

RECOMMENDED:

That The School Board of Miami-Dade County, Florida, authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedures Act to promulgate new School Board Rule 6Gx13- 2C-1.121, Submission of Proposals for Telecommunications Facilities on Board-owned sites.

KC:lh

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on June 19, 2002, its intention to promulgate new Board Rule, 6Gx13- 2C-1.121, Submission of Proposals for Telecommunications Facilities on Board-Owned Sites, at its meeting of August 21, 2002.

PURPOSE AND EFFECT: The purpose of the proposed rule is to establish a process for submission of proposals for telecommunications facilities on Board-owned sites that will include citizen participation and foster competition among the telecommunications service providers.

SUMMARY: The intent of the proposed rule is to facilitate proposals for telecommunications facilities on Board-owned sites and, when appropriate, provide appropriate community notification and participation in the decision process.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 230.22(2); 230.23(22) F.S.

LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: 73.015; 112.3143; 235.05; 235.054(1)(a)(b); 235.054(6); 235.15; 235.18; 235.185(2)(3); 235.19; 235.193; 253.025(6)(b); 286.011, F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING OF August 21, 2002, which begins at 1:00 p.m., in the School Board Auditorium, 1450 N.E. Second Avenue, Miami, Florida 33132. Persons requesting such a hearing or wish to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by Section 120.541(1), F.S., must do so in writing by July 15, 2002, to the Superintendent of Schools, Room 912, at the same address.

ANY PERSON WHO WISHES TO APPEAL THE DECISION made by The School Board of Miami-Dade County, Florida, with respect to this action will need to ensure the preparation of a verbatim record of the proceedings, including the testimony and evidence upon which the appeal is to be based (Section 286.0105, F.S.).

A COPY OF THE PROPOSED NEW RULE is available for public inspection and copying by the public in the Citizen Information Center, Room 158, 1450 N.E. Second Avenue, Miami, Florida 33132.

Originator: Mr. Joe Arriola
Supervisor: Mr. Merrett R. Stierheim
Date: June 7, 2002

Administrative Operations

**SUBMISSION OF PROPOSALS FOR TELECOMMUNICATIONS FACILITIES
ON BOARD-OWNED SITES**

- I. Intent --The intent of the School Board is:
 - A. To establish a process for considering proposals for telecommunications facilities (facilities) on Board-owned sites.
 - B. To foster competition among telecommunications service providers (service providers).
 - C. To provide community notification, if appropriate, for proposed facilities.
 - D. To include community participation in the review and recommendation process.

- II. Fact-Finding Telecommunications Committee
 - A. Establishment -- The School Board shall establish a telecommunications committee, to be called the Fact-Finding Telecommunications (TC) Committee, which shall include District staff and community representatives.
 - B. Purpose -- The purpose of the TC Committee shall be as follows:
 1. To establish processes for considering proposals for telecommunications facilities on Board-owned sites;
 2. To ensure facilities comply with all applicable regulations, health and safety standards; and
 3. To make recommendations to the School Board and Superintendent of Schools.
 - C. Responsibilities -- The responsibilities of the TC Committee shall be as follows:
 1. Develop and approve processes for considering proposals for telecommunications facilities on Board-owned sites;

2. Review proposals for adherence to approved process;
3. When appropriate, convene community meetings at Board-owned sites to discuss proposed facilities;
4. Provide input in the development of lease agreements and any other appropriate documentation relative to facilities on Board-owned sites;
5. Provide such other advice or input as may become necessary that may include, but not be limited to, ensuring compliance with applicable federal, state and local laws; and
6. Make recommendations to the School Board and to the Superintendent of Schools, which promote internal accountability and equitable distribution of any and all monetary and non-monetary compensation received from proposals.

D. Membership – The TC Committee shall be composed of the following voting members, or their designee:

Associate Superintendent for Procurement and Materials Management;

Chief Facilities Officer (Construction);

General Manager of WLRN;

President of the Citizen's Advisory Council;

President of the Dade County Council PTA/PTSA.

Notwithstanding the aforementioned, the Superintendent of Schools, or designee, may add or delete staff members.

E. Operation – The TC Committee shall operate as follows:

1. Quorum and Committee Chair: A quorum shall consist of a majority of the membership. The TC Committee shall elect a Chair and Vice Chair every year;
2. Meetings: Meetings shall be held regularly on a

monthly basis, unless there is no business to be conducted. Meetings shall be conducted as prescribed in Section 286.011, F.S., and shall be advertised at least five working days prior to the regularly scheduled meeting date. A notice of the meeting shall be posted at the Citizen Information Center. The meetings shall be recorded and summary minutes distributed with the subsequent meeting's agenda packet;

3. Staff Support: The Division of Governmental Affairs and Land Use Policy and Acquisition shall provide primary staff support to the TC Committee, including preparation of the agenda, meeting minutes and supporting documentation. The Office of the School Board Attorney shall provide legal support to the TC Committee. The TC Committee may from time to time, as required, request support from other District personnel;
4. Conflict of Interest: No member of the TC Committee shall participate in any manner which would inure to the member's special private gain or loss, the special gain or loss of any principal by whom he or she is retained, of the parent organization or subsidiary of the corporate principal by which he or she is retained, of a relative or a business associate, without first disclosing the nature of his or her interest in the matter. The memorandum of the voting conflict must be filed with the meeting's recording officer, be provided to the other members of the TC Committee, and be read publicly at the next meeting. If the conflict is unknown or not disclosed prior to the meeting, the member must orally disclose the conflict at the meeting when the conflict becomes known. Also, a written memorandum of voting conflict must be filed with the meeting's recording officer within 15 days of the disclosure being made and must be provided to the other members of the agency with the disclosure being read publicly at the next scheduled meeting, all pursuant to Section 112.3143, F.S.
5. Lobbyists: Any and all lobbyists, as defined in School Board Rule 6Gx13- 8C-1.21, present at the TC Committee meeting, who wish to speak on an item

being considered by the TC Committee, shall first execute and file the required form with the School Board Clerk's Office at least two business days prior to said meeting. A copy of the executed form shall be made part of the official record for the TC Committee meeting at which the lobbyists are present, and shall be attached to the minutes of the meeting.

6. Lobbying: In the event that a TC Committee member is contacted directly by a lobbyist in connection with any matter that may foreseeably come before the Committee for action, the TC Committee member shall orally disclose such contact at the meeting in which the matter is up for consideration, and file a memorandum of voting conflict, if applicable, as may be required by in the State Code of Ethics for Public Officers and Employees.

III. Telecommunications Technical Review Committee

- A. Establishment -- The School Board shall establish the Telecommunications Technical Review (TTRC) Committee, which shall be comprised of District staff members and which shall serve in an advisory capacity to the TC Committee.
- B. Purpose -- The purpose of the TTRC Committee shall be to provide oversight in the implementation of processes approved by the TC Committee and recommend acceptable compensation to the TC Committee for each proposal.
- C. Responsibilities -- The responsibilities of the TTRC shall be as follows:
 1. To review proposals for adherence to processes approved by the TC Committee; and
 2. To formulate and recommend to the TC Committee acceptable compensation for each proposal.
- D. Membership -- The TTRC Committee shall be composed of the following voting members, or their designee:

Chief Business Officer, Chair;

Associate Superintendent for School Operations;

Chief Auditor.

- E. Operation – A quorum of the TC Committee shall consist of a majority of the membership. Meetings shall be held as called by the Chair.

Specific Authority: 230.22(2); 230.23(22) F.S.
Law Implemented, Interpreted, or Made Specific 73.015; 112.3143; 235.05;
235.054(1)(a)(b); 235.054(6); 235.15; 235.18; 235.185(2)(3); 235.19; 235.193;
253.025(6)(b); 286.011, F.S.

History
New:

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA