

STATE BOARD OF EDUCATION

Action Item

June 24, 2015

SUBJECT: Consideration of WXEL's Request to Transfer Assets

PROPOSED BOARD ACTION

The State Board of Education is being requested to approve the transfer of WXEL's interest in the building located at 3401 S. Congress Avenue in Boynton Beach, Florida to Community Television Foundation of South Florida, Inc. ("WPBT"). The transfer will occur as a result of the merger of WXEL with and into WPBT, at which time the surviving entity intends to change its name to South Florida PBS ("SFPBS"). If approved, the Board is also requested to authorize the Commissioner of Education to negotiate, draft and execute any documents necessary to complete the transfer.

AUTHORITY FOR STATE BOARD ACTION

Sections 1001.02(2)(f) and 1001.26, Florida Statutes

EXECUTIVE SUMMARY

In 1989 the Florida legislature provided \$5,000,000, through the State Board of Education, to construct a broadcasting station for a local public broadcaster in Palm Beach County (South Florida Public Telecommunications, Inc. or "SFPT"). The building was constructed on land owned by SFPT, which operated WXEL public radio and TV. The building was leased to SFPT for \$1 a year. With renewals the lease would last for 40 years after which SFPT would acquire the building.

In 1997, SFPT could not afford to run WXEL. Barry University, through a subsidiary (Barry Telecommunications, Inc.), agreed to operate the stations, and acquired ownership of the land. The State Board of Education agreed to transfer the leasehold interest to Barry Telecommunications, Inc. SFPT was merged into Barry Telecommunications, Inc., which then owned and operated the radio and TV licenses.

On December 17, 2010 the Board approved the sale of the radio license from Barry Telecommunications, Inc. to Classical South Florida, Inc. ("CSF"), with the condition that a majority of the Board of Directors of CSF must be permanent residents of the WXEL viewing area. On July 20, 2012 the WXEL TV license was acquired by WXEL Public Broadcasting, a not for profit 501(c)(3) corporation from Barry Telecommunications, Inc. WXEL Public Broadcasting continues to operate the public broadcasting TV station, and owns the land on which the station is built. WXEL Public Broadcasting is presently controlled by a local board of permanent residents within WXEL's viewing area and is independent of any institution. Following the merger of WXEL and WPBT, SFPBS will be controlled by a board of directors consisting of individuals residing in the viewing area of both WXEL and WPBT and will be independent of any institution. The Board approved the TV station transfer at the March 27, 2012 Board meeting, making WXEL Public Broadcasting the lessee under the 1989 Lease Agreement.

On February 18, 2013, the Board also allowed WXEL to rent space in the building to private companies and use any rental income in furtherance of the public broadcasting and educational functions of WXEL, or to replace capital items.

As part of a planned merger with WPBT, , WXEL seeks approval to transfer its interest in the building to WPBT, in circumstances where the surviving entity (SFPBS) will be controlled by a board of directors consisting of individuals residing in the viewing area of both WXEL and WPBT.

Supporting Documentation Included: Lease Agreement between the State Board of Education and WXEL, Letter dated June 8, 2015 from WXEL to State Board of Education, and Summary of Transaction from WXEL

Facilitator/Presenter: Bernie Henneberg, CEO and General Manager, WXEL

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AGREEMENT

This Agreement, made this 10th day of February, 1989, between the Board of Education of the State of Florida (hereinafter called "Board"), and South Florida Public Telecommunications, Inc. (hereinafter called "WXEL"), a Florida not-for-profit corporation, sets forth the terms under which Board will direct the expenditure in behalf of WXEL of \$300,000 in Section 1(N) Chapter 84-542, \$3,200,000 Section 35(1)(g) Chapter 86-2, and \$1,500,000 Section 04 Item 1947A Chapter 86-167 Laws of Florida. In consideration of the sum of Ten Dollars (\$10.00), the mutual promises and benefits contained herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. AMOUNT OF GRANT. Board agrees to purchase the equipment and construct the building described in Paragraph 2 below ("Capital Items") for use by and lease to WXEL, up to the total grant amount of \$5,000,000. WXEL shall have the right to eliminate any part of the Capital Items to be purchased, and may elect to expend any proportion of the grant on any part or parts of the foregoing items to be purchased. All purchases of Equipment will be in Accordance with State Purchasing Procedures and will each be approved by the Board's Representative. While the foregoing items to be purchased shall include all accessories and ancillary outlays for installation, including but not limited to shipping, taxes, fees, architects' and surveyors fees, no purchases under this Agreement shall be made other than the items described above.

2. CAPITAL ITEMS TO BE PURCHASED.

(a) Building. Board shall cause a studio facility to be constructed on that certain parcel of land owned by WXEL, situate, lying and being in the City of Boynton Beach, County of Palm Beach, Florida and more particularly described as follows:

A PARCEL OF LAND IN SECTION 6, TOWNSHIP 46 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 6; THENCE WITH A BEARING OF SOUTH, ALONG THE EAST LINE OF SAID SECTION 6, A DISTANCE OF 1783.92 FEET TO A POINT; THENCE WITH A BEARING OF WEST, A DISTANCE OF 53.00 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF CONGRESS AVENUE, SAID POINT BEING THE POINT BEGINNING; THENCE CONTINUE WITH A BEARING OF SOUTH, ALONG THE WEST RIGHT OF WAY LINE OF CONGRESS AVENUE, SAID LINE LYING 53.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SECTION 5, A DISTANCE OF 480.00 FEET TO A POINT, THENCE WITH A BEARING OF WEST, A DISTANCE OF 370.00 FEET, THENCE WITH A BEARING OF SOUTH, A DISTANCE OF 111.28 FEET, THENCE WITH A BEARING OF WEST, A DISTANCE OF 380.00 FEET TO A POINT ON THE EAST LINE OF THE SUBDIVISION SUMMIT PLAT NO. 1, AS RECORDED IN PLAT BOOK 36, PAGE 48-51 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE WITH A BEARING OF NORTH, ALONG THE EAST LINE OF THE SUMMIT PLAT NO. 1, A DISTANCE OF 229.26 FEET; THENCE WITH A BEARING OF EAST, A DISTANCE 380.00 FEET, THENCE WITH A BEARING OF NORTH, A DISTANCE OF 391.09 FEET; THENCE WITH A BEARING SOUTH 85 30' 30" EAST, A DISTANCE OF 371.14 FEET MORE OR LESS TO THE POINT OF BEGINNING; LESS THE EAST 7.00 FEET THEREOF (the "LAND").

Said studio facility shall be constructed in substantial conformity with the plans and specifications approved by WXEL, the Board's Representative and the Department of General Services. Board and WXEL hereby agree that the studio facility and all components thereof (the "Building") shall retain their character as chattels and shall not become fixtures upon attachment to the Land and further, that Board shall retain title and ownership of the Building, except as provided for herein.

(b) Production and Broadcast Equipment. Board shall cause to be purchased television production and broadcast equipment, according to specifications provided by WXEL to ensure the suitability of the Equipment and its compatibility with other units of the same types of equipment currently in use by WXEL for its public broadcasting purposes. The list of equipment and specifications must be approved by the Board's Representative.

3. LEASE OF CAPITAL ITEMS. Board agrees, upon acquisition of and/or completion of the Capital Items, and subject to WXEL's

continuing compliance with all terms of this Agreement, to lease the Capital Items to WXEL for an initial term of twenty (20) years, at the lease rate of One Dollar (\$1.00) per year.

(a) Option to Renew. Upon expiration of the initial twenty (20) year term of this lease, WXEL shall have four (4) successive renewal options of five (5) years each for a total of twenty (20) additional years at the same lease rate and under the same terms and conditions as the initial lease term. Not later than sixty (60) days prior to the expiration of the then current lease term, WXEL shall notify Board in writing of its intention ~~not~~ to renew this lease for an additional five (5) year term. In the event WXEL does not so notify Board, WXEL shall be deemed to have automatically exercised the renewal option.

(b) Conveyance of Fee Title. At the end of the fortieth (40th) year following the commencement of this lease, and providing that there has been no uncured default on WXEL's part, Board shall convey to WXEL fee simple title to the Capital Items. If Board or its successors in interest shall at that time lack authority to make such conveyance, then this lease shall be renewed, at WXEL's option, for successive terms of five (5) years each or until either it is earlier terminated under other provisions hereof, or Board earlier acquires the authority to make conveyance. Consideration to Board for such conveyance shall be limited solely to WXEL's performance under this Agreement.

(c) Disposition of Capital Items. If at any time while this Agreement is in effect, WXEL wishes to dispose of any of the production and broadcast equipment, it shall notify Board of its intent to do so, specifying details of the contemplated disposition, such as trade-in, abandonment, or demolition. Board shall advise WXEL if disposition in the requested manner is authorized, and if it is not, then what manner of disposition would be acceptable to Board. Board shall have the right to require WXEL to pay over to it all cash proceeds, net of necessary and reasonable costs of disposition, from disposition of production and broadcast equipment. If costs of disposition of

any item exceed proceeds realized from disposition, WXEL agrees to bear all such costs. Notwithstanding the foregoing, WXEL may convey its interest in the Capital Items so long as the transferee is another educational or non-commercial broadcasting entity authorized by the State of Florida; provided, however, the said transferee shall be bound by all of the terms and conditions of this Agreement.

(d) Use of Capital Items. WXEL agrees to use the Capital Items in support of the operation of the educational and/or public broadcasting and/or communication system or systems for which it now holds or in the future may hold, a license from the Federal Communications Commission.

(e) Default. If WXEL shall, at any time during the lease term, become insolvent, or shall make any assignment for the benefit of creditors, call a general meeting of creditors or attempt any informal arrangement or composition with creditors, or if a receiver or any officer of a court be appointed or have control of any of the property or assets of WXEL, be declared bankrupt by voluntary or involuntary proceedings, or voluntarily relinquish its broadcast license, or terminate and cease its operation as an educational and/or public broadcasting and/or communications system or systems, or be found by a court of competent jurisdiction to be in default under one or more of the terms of this Agreement, then this lease shall terminate thirty days after Board's notice to WXEL to elect termination under the terms hereof, but in no event less than 45 days after the event of default, unless WXEL shall have cured such default during the 45-day period, and Board shall without further consideration to WXEL acquire all rights of ownership to the Capital Items, which WXEL agrees to deliver to Board at the Place(s) where they are in use, in good operable condition, reasonable wear and tear of use excepted. However, if the termination or interruption of WXEL's operations is caused by some natural catastrophe, mechanical failure, or any other cause not resulting from any willful or negligent act or omission attributable to WXEL, then this lease

shall not terminate so long as WXEL shall make diligent efforts to resume its operation within a reasonable time and does in fact resume its operation within a reasonable time thereafter.

(f) Liens. WXEL agrees to keep the Capital Items free from mechanic's, tax, or any other lien, including mortgage, and if any lien should be filed against the Capital Items by reason of or arising out of any labor or material furnished or alleged to have been furnished to or for WXEL at the property or for or by reason of any change, alteration or addition or the cost or expense thereof or any contract relating thereto, or against WXEL or Board as owner thereof, WXEL at its expense shall within 45 days cause the same to be cancelled and discharged of record, or transferred to security, and shall defend on behalf of Board at WXEL's expense any action, suit or proceeding which may be brought thereon.

4. OPERATING COSTS AND CONTROL OF CAPITAL ITEMS. During the term of this Agreement, WXEL shall have sole and exclusive control over the uses of the Capital Items, subject to Board's rights of inspection described below. All matters relating to programming, operation and administration of WXEL shall be reserved exclusively to its Board of Directors. WXEL agrees to bear all costs of using or operating the Capital Items, including, but not limited to: taxes on the items, insurance premiums to insure the items, any utilities used in or for the Capital Items, maintenance and upkeep required to keep the equipment and the Building in good and usable condition, materials used in or with the Capital Items, and the salaries, fringe benefits, and costs of recruitment and training of personnel who use, or work in, the Capital Items.

5. INSTALLATION OF EQUIPMENT AND ALTERATIONS. WXEL may at any time during the term of this Agreement make alterations, changes or improvements to the Capital Items, so long as WXEL bears all expense and liability associated with the making of such changes, alterations or improvements and the changes, alterations or improvements do not render the items less suitable for the uses described above in paragraph 3.d. and for which they were

acquired. Any alterations, changes or improvements which require the approval of the Department of General Services shall first be approved by the Board, which approval shall not be unreasonably withheld. WXEL may from time to time install or place equipment, supplies, materials, or other property belonging to it in the building included among the Capital Items. Board shall at no time during the term of the Agreement, or after its termination, have any rights of ownership in such equipment, supplies, materials or other property.

6. HOLD HARMLESS AND INSURANCE. WXEL shall hold Board harmless from any and all liabilities, claims, actions or causes of actions arising from or pertaining in any way to the use and/or operation of the Capital Items after such time as WXEL shall take possession or occupancy of them. Also from such time and throughout the term of this Agreement, WXEL shall maintain fire, windstorm, and extended coverage insurance on the Capital Items in at least the actual cash value of the Capital Items. As such actual cash value may from time to time be reasonably determined. WXEL shall also maintain, with respect to the Building, comprehensive personal liability insurance in at least the amount of \$1,000,000 (One Million Dollars) per occurrence, together with such other insurance as is or may be required by law. The amount of liability insurance shall be increased on each fifth (5th) anniversary date of this Agreement to reflect any increase in the cost of living in an amount to be reasonably agreed upon between the parties hereto.

7. INSPECTION OF CONDITION AND USE. Upon reasonable notice, Board or its designated representative shall have the right at any time during WXEL's normal business hours to inspect the Capital items in order to determine their presence in WXEL's control, their condition and fitness for use, and the uses to which they may at such time be, or have been, put. WXEL agrees to make available to Board any and all of its records pertaining to the Capital Items and their use, to assist in any such inspection by Board. WXEL further agrees to render to Board, within a

reasonable time after receipt of the Board's request, an inventory, report and affidavit attesting to the presence of the Capital Items in WXEL's control, their condition and fitness for use at such time, and the uses to which they may at such time be, or have been put, noting any exceptions which may at such time exist.

8. FINANCIAL REPORTING. WXEL shall, during the lease term, upon request of the Commissioner of Education, furnish copies of its latest annual report and its latest annual financial statement. Upon request of the Commissioner of Education, WXEL shall permit the Auditor General or his designee to inspect financial books and records of WXEL.

9. NOTICE. Any notice to Board under this Agreement shall be deemed to be duly given only if in writing and mailed by registered or certified mail to Office of the Commissioner, Department of Education, State of Florida, Tallahassee, Florida 32399. Any notice to WXEL under this Agreement shall be deemed to be duly given only if in writing and mailed by registered or certified mail to South Florida Public Telecommunications, Inc., P.O. Drawer 6607, West Palm Beach, Florida 33405. Unless the address is changed by the parties by like notice given to the other party, all notices shall be deemed delivered four (4) days after being mailed to the address indicated.

10. RECORDING. At the request of either party, both parties agree to execute and deliver in recordable form a memorandum of this agreement containing such provisions hereof as either party may desire. In the event that the lease of the Capital Items to WXEL hereunder is terminated for any reason, the parties will deliver an instrument in recordable form sufficient to show such termination.

11. TIME OF THE ESSENCE. Time is of the essence in this Agreement.

IN WITNESS OF THIS AGREEMENT, Board and WXEL, respectively, have caused this Agreement to be duly executed by an officer hereunto duly authorized on the day and year first above written.

SOUTH FLORIDA PUBLIC TELECOMMUNICATIONS, INC.

Patricia L. Kelley
Witness
David Johnson
Witness

By: Sam Barber
President

STATE BOARD OF EDUCATION
STATE OF FLORIDA

Sharon Lenco
Witness
Paul H. Roberts
Witness

By: Betty Carter
Commissioner of Education

Approved as to form but legality subject to execution by all parties. OFFICE OF THE GENERAL COUNSEL, FLORIDA BOARD OF EDUCATION.

By: Cal J. Zehner



3401 S Congress Ave
Boynton Beach, FL 33426
561-737-8000
wxel.org

June 8, 2015

Florida State Board of Education
Turlington Building
325 W. Gaines Street, Suite 1520
Tallahassee, FL 32399-0400

Re: Approval for Transfer of Capital Item per February 10, 1989 Agreement

Dear Board of Education Members:

WXEL Public Broadcasting Corporation (“WXEL”) is seeking Board of Education consent and approval at its June 24, 2015 meeting in order to transfer WXEL’s interest in the building located at 3401 S. Congress Avenue in Boynton Beach, Florida to Community Television Foundation of South Florida, Inc. (“WPBT”). This approval will precede our application to the Federal Communication Commission (“FCC”) for approval of WXEL’s merger with and into WPBT (the “Merger”) in order to form a regional public broadcasting entity for South Florida which will continue to operate both television stations and serve all of Southeastern Florida.

The Merger requires FCC approval to close, which we anticipate may be achieved within the next six months, at which time WXEL and WPBT will finalize the transfer of WXEL’s interest in the building.

After the Merger, both stations will continue to provide and in fact increase service to their respective local communities with the programming and other services which currently qualify them to receive separate grants. Enclosed please find further background information on the WXEL building lease and the proposed Merger.

Very truly yours,

Bernard E. Henneberg
Chief Executive Officer

Enclosure

Cc: Dolores Sukhdeo, Community Television Foundation, Inc.

June 8, 2015

Action Item
brought before the
State of Florida Board of Education
June 24, 2015

SUBJECT

The State Board of Education (“BOE”) is asked to approve the transfer of those certain agreements between WXEL Public Broadcasting Corporation (“WXEL”), as successor in interest to Barry Telecommunications, Inc. (“BarryTel”), and South Florida Public Telecommunications, Inc. (“SFPT”), entered into with the BOE dated February 10, 1989 and August 12, 1997, respectively, in furtherance of the proposed merger between WXEL and Community Television Foundation of South Florida, Inc. (“WPBT”), which operates a Miami-based public television station WPBT/Ch. 2.

BACKGROUND

WXEL operates a public television station pursuant to a license granted by the Federal Communications Commission (“FCC”) to serve an approximate five county area of southeast Florida which includes the West Palm Beach and Ft. Pierce designated market areas. WXEL leases its television broadcast studio building located at 3401 S. Congress Avenue, Boynton Beach, Florida, from the Board of Education of the State of Florida for \$1 a year pursuant to agreement entered into on February 10, 1989 (the “Building Lease”). The building was constructed pursuant to a Public Education Capital Outlay grant. The Building Lease’s initial twenty (20) year term automatically renewed for a five-year period in 2009, and will automatically renew for additional five-year terms through 2029. The Building Lease provides for the conveyance of fee simple title to WXEL in and to the WXEL TV building on February 10, 2029. WXEL is fee simple owner of the real property underlying the WXEL TV broadcast studio site.

In 1997, SFPT merged with and into BarryTel and transferred the license for public television station WXEL-TV to BarryTel and transferred the Building Lease to BarryTel. The transfer of the Lease Agreement to BarryTel was approved by the BOE by execution of that certain Three Party Agreement dated August 12, 1997 between BOE, SFPT and BarryTel, in the form of an amendment to the Building Lease.

In 2012, BarryTel merged with and into WXEL and transferred the license for public television station WXEL-TV to WXEL and transferred the Building Lease to WXEL. The transfer of the Lease Agreement to BarryTel was approved by the BOE on March 27, 2012.

PROPOSAL

WXEL now proposes to merge with and into Miami-based public television station WPBT which pursuant to a license by the FCC serves an approximate four county area of southeast Florida which includes the Miami and Ft. Lauderdale designated market areas. WXEL and

June 8, 2015

WPBT share an over-lap in their broadcast areas. The new merged entity, with the proposed name of South Florida PBS, would virtually eliminate duplicate programming on the stations while enabling the regional broadcaster to produce and acquire new programs and reach out to the cultural, ethnic and racial communities they serve.

WXEL and WPBT each believe the Department of Education's interest in protecting the state's investment in its facility is only strengthened by the proposed merger. The merger has no detrimental impact on either WXEL's or WPBT's ability to serve their respective communities and the state, rather it enables the new entity to further its mission by, among other things, blending outstanding programming from PBS with new and original programming on a scale beyond what is available today to either station acting alone. By re-branding each of WXEL and WPBT as a joint public media organization, the new South Florida PBS will offer the opportunity to improve and increase the depth and breadth of educational programming. Both WXEL and WPBT share a desire to effectively expand their impact on communities served while retaining the unique histories and qualities which reflect their combined 90-plus years of service to southeastern Florida from Key West to Sebastian.