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Groupings (REAGs) as defined by paragraph (a) of this section.

[62 FR 9658, Mar. 3, 1997, as amended at 64 FR 60726, Nov. 8, 1999; 65 FR 3145, Jan. 20, 2000; 65 FR 17602, Apr. 4, 2000; 65 FR 60113, Oct. 10, 2000; 67 FR 13225, Mar. 21, 2002; 67 FR 5510, Feb. 6, 2002; 67 FR 41854, June 20, 2002; 69 FR 5714, Feb. 6, 2004; 69 FR 77950, Dec. 29, 2004; 70 FR 58065, Oct. 5, 2005; 72 FR 48844, Aug. 24, 2007; 72 FR 67577, Nov. 29, 2007]

Subpart B—Applications and Licenses

§ 27.10 Regulatory status.

The following rules apply concerning the regulatory status in the frequency bands specified in § 27.5.

(a) *Single authorization.* Authorization will be granted to provide any or a combination of the following services in a single license: common carrier, non-common carrier, private internal communications, and broadcast services. A licensee may render any kind of communications service consistent with the regulatory status in its license and with the Commission's rules applicable to that service. An applicant or licensee may submit a petition at any time requesting clarification of the regulatory status for which authorization is required to provide a specific communications service.

(b) *Designation of regulatory status in initial application.* An applicant shall specify in its initial application if it is requesting authorization to provide common carrier, non-common carrier, private internal communications, or broadcast services, or a combination thereof.

(c) *Amendment of pending applications.* The following rules apply to amendments of a pending application.

(1) Any pending application may be amended to:

(i) Change the carrier regulatory status requested, or

(ii) Add to the pending request in order to obtain common carrier, non-common carrier, private internal communications, or broadcast services status, or a combination thereof, in a single license.

(2) Amendments to change, or add to, the carrier regulatory status in a pending application are minor amendments filed under § 1.927 of this chapter.

(d) *Modification of license.* The following rules apply to amendments of a license.

(1) A licensee may modify a license to:

(i) Change the regulatory status authorized, or

(ii) Add to the status authorized in order to obtain a combination of services of different regulatory status in a single license.

(2) Applications to change, or add to, the carrier status in a license are modifications not requiring prior Commission authorization. The licensee must notify the Commission within 30 days of the change. If the change results in the discontinuance, reduction, or impairment of an existing service, the licensee is subject to the provisions of § 27.66.

[65 FR 3146, Jan. 20, 2000, as amended at 65 FR 17602, Apr. 4, 2000; 67 FR 5510, Feb. 6, 2002; 67 FR 41854, June 20, 2002; 68 FR 66286, Nov. 25, 2003; 72 FR 27709, May 16, 2007]

§ 27.11 Initial authorization.

(a) An applicant must file a single application for an initial authorization for all markets won and frequency blocks desired. Initial authorizations shall be granted in accordance with § 27.5. Applications for individual sites are not required and will not be accepted, except where required for environmental assessments, in accordance with §§ 1.1301 through 1.1319 of this chapter.

(b) *2305–2320 MHz and 2345–2360 MHz bands.* Initial authorizations for the 2305–2320 MHz and 2345–2360 MHz bands shall be for 10 megahertz of spectrum in accordance with § 27.5(a).

(1) Authorizations for Blocks A and B will be based on Major Economic Areas (MEAs), as specified in § 27.6(a)(1).

(2) Authorizations for Blocks C and D will be based on Regional Economic Area Groupings (REAGs), as specified in § 27.6(a)(2).

(c) *746–763 MHz, 775–793 MHz, and 805–806 MHz bands.* Initial authorizations for the 746–763 MHz, 775–793 MHz, and 805–806 MHz bands shall be for paired channels of 1, 5, 6, or 11 megahertz of spectrum in accordance with § 27.5(b).

(1) Authorizations for Block A, consisting of two paired channels of 1 megahertz each, will be based on those

geographic areas specified in § 27.6(b)(1).

(2) Authorizations for Block B, consisting of two paired channels of 1 megahertz each, will be based on those geographic areas specified in § 27.6(b)(1).

(3) Authorizations for Block C, consisting of two paired channels of 11 megahertz each, will be based on those geographic areas specified in § 27.6(b)(2). In the event that no licenses granting authorizations for Block C, consisting of two paired channels of 11 megahertz each, are assigned based on the results of the first auction in which such licenses are offered because the auction results do not satisfy the applicable reserve price, then the authorizations for the spectrum in the 746–757 MHz and 776–787 MHz bands will instead be as follows:

(i) Authorizations for Block C1, consisting of two paired channels of 6 megahertz each in the 746–752 MHz and 776–782 MHz bands, will be based on those geographic areas specified in § 27.6(b)(2)(i).

(ii) Authorizations for Block C2, consisting of two paired channels of 5 megahertz each in the 752–757 MHz and 782–787 MHz bands, will be based on those geographic areas specified in § 27.6(b)(2)(ii).

(4) The authorization for Block D, consisting of two paired channels of 5 megahertz each, will be based on the geographic area specified in § 27.6(b)(3).

(d) *698–746 MHz band.* Initial authorizations for the 698–746 MHz band shall be for 6 or 12 megahertz of spectrum in accordance with § 27.5(c).

(1) Authorizations for Block A, consisting of two paired channels of 6 megahertz each, will be based on those geographic areas specified in § 27.6(c)(1).

(2) Authorizations for Block B, consisting of two paired channels of 6 megahertz each, will be based on those geographic areas specified in § 27.6(c)(2).

(3) Authorizations for Block C, consisting of two paired channels of 6 megahertz each, will be based on those geographic areas specified in § 27.6(c)(2).

(4) Authorizations for Block D, consisting of an unpaired channel block of 6 megahertz, will be based on those geographic areas specified in § 27.6(c)(3).

(5) Authorizations for Block E, consisting of an unpaired channel block of 6 megahertz, will be based on those geographic areas specified in § 27.6(c)(1).

(e) *1390–1392 MHz band.* Initial authorizations for the 1390–1392 MHz band shall be for 2 megahertz of spectrum in accordance with § 27.5(d). Authorizations will be based on Major Economic Areas (MEAs), as specified in § 27.6(d).

(f) *The paired 1392–1395 MHz and 1432–1435 MHz bands.* Initial authorizations for the paired 1392–1395 MHz and 1432–1435 MHz bands shall be for 3 megahertz of paired spectrum in accordance with § 27.5(e). Authorization for Blocks A and B will be based on Economic Areas Groupings (EAGs), as specified in § 27.6(e).

(g) *1670–1675 MHz band.* Initial authorizations for the 1670–1675 MHz band shall be for 5 megahertz of spectrum in accordance with § 27.5(f). Authorizations will be on a nationwide basis.

(h) [Reserved]

(i) *1710–1755 MHz and 2110–2155 MHz bands.* Initial authorizations for the 1710–1755 MHz and 2110–2155 MHz bands shall be for 5 or 10 megahertz of spectrum in each band in accordance with § 27.5(h) of this part.

(1) Authorizations for Block A, consisting of two paired channels of 10 megahertz each, will be based on those geographic areas specified in § 27.6(h)(1).

(2) Authorizations for Block B, consisting of two paired channels of 10 megahertz each, will be based on those geographic areas specified in § 27.6(h)(2).

(3) Authorizations for Block C, consisting of two paired channels of 5 megahertz each, will be based on those geographic areas specified in § 27.6(h)(2).

(4) Authorizations for Blocks D, consisting of two paired channels of 5 megahertz each, will be based on those geographic areas specified in § 27.6(h)(3).

(5) Authorizations for Blocks E, consisting of two paired channels of 5 megahertz each, will be based on those geographic areas specified in § 27.6(h)(3).

(6) Authorizations for Block F, consisting of two paired channels of 10 megahertz each, will be based on those

geographic areas specified in § 27.6(h)(3).

[62 FR 9658, Mar. 3, 1997, as amended at 63 FR 68954, Dec. 14, 1998; 65 FR 3146, Jan. 20, 2000; 67 FR 5511, Feb. 6, 2002; 67 FR 41854, June 20, 2002; 69 FR 5715, Feb. 6, 2004; 69 FR 39867, July 1, 2004; 69 FR 77950, Dec. 29, 2004; 70 FR 58065, Oct. 5, 2005; 72 FR 48845, Aug. 24, 2007]

§ 27.12 Eligibility.

Except as provided in §§ 27.604, 27.1201, and 27.1202, any entity other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part.

[69 FR 72033, Dec. 10, 2004]

§ 27.13 License period.

(a) *2305–2320 MHz and 2345–2360 MHz bands.* Initial WCS authorizations for the 2305–2320 MHz and 2345–2360 MHz bands will have a term not to exceed ten years from the date of original issuance or renewal.

(b) *698–763 MHz and 776–793 MHz bands.* Initial authorizations for the 698–763 MHz and 776–793 MHz bands will extend for a term not to exceed ten years from February 17, 2009, except that initial authorizations for a part 27 licensee that provides broadcast services, whether exclusively or in combination with other services, will not exceed eight years. Initial authorizations for the 775–776 MHz and 805–806 MHz bands shall not exceed January 1, 2015. Licensees that initiate the provision of a broadcast service, whether exclusively or in combination with other services, may not provide this service for more than eight years or beyond the end of the license term if no broadcast service had been provided, whichever period is shorter in length.

(c) *1390–1392 MHz band.* Initial authorizations for the 1390–1392 MHz band will have a term not to exceed ten years from the date of initial issuance or renewal.

(d) *The paired 1392–1395 and 1432–1435 MHz bands.* Initial WCS authorizations for the paired 1392–1395 MHz and 1432–1435 MHz bands will have a term not to exceed ten years from the date of initial issuance or renewal.

(e) *1670–1675 MHz band.* Initial authorizations for the 1670–1675 MHz band will have a term not to exceed ten years from the date of initial issuance or renewal.

(f) [Reserved]

(g) *1710–1755 MHz and 2110–2155 MHz bands.* Authorizations for the 1710–1755 MHz and 2110–2155 MHz bands will have a term not to exceed ten years from the date of initial issuance or renewal, except that authorizations issued on or before December 31, 2009, shall have a term of fifteen years.

(h) *BRS and EBS.* BRS and EBS authorizations shall have a term not to exceed ten years from the date of original issuance or renewal. Unless otherwise specified by the Commission, incumbent BRS authorizations shall expire on May 1 in the year of expiration.

[65 FR 3146, Jan. 20, 2000; 65 FR 12483, Mar. 9, 2000, as amended at 65 FR 17602, Apr. 4, 2000; 65 FR 57267, Sept. 21, 2000; 67 FR 5511, Feb. 6, 2002; 67 FR 41855, June 20, 2002; 69 FR 5715, Feb. 6, 2004; 69 FR 77950, Dec. 29, 2004; 72 FR 27709, May 16, 2007; 72 FR 48845, Aug. 24, 2007; 73 FR 26038, May 8, 2008]

§ 27.14 Construction requirements; Criteria for renewal.

(a) AWS and WCS licensees, with the exception of WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Block C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, or Block D in the 758–763 MHz and 788–793 MHz bands, must, as a performance requirement, make a showing of ''substantial service'' in their license area within the prescribed license term set forth in § 27.13. ''Substantial service'' is defined as service which is sound, favorable and substantially above a level of mediocre service which just might minimally warrant renewal. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

(b) A renewal applicant involved in a comparative renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, which is the most important comparative factor to be considered in the proceeding, if its past record for the relevant license period demonstrates that:

(1) The renewal applicant has provided ''substantial'' service during its past license term; and

(2) The renewal applicant has substantially complied with applicable FCC rules, policies and the Communications Act of 1934, as amended.

(c) In order to establish its right to a renewal expectancy, a WCS renewal applicant involved in a comparative renewal proceeding must submit a showing explaining why it should receive a renewal expectancy. At a minimum, this showing must include:

(1) A description of its current service in terms of geographic coverage and population served;

(2) An explanation of its record of expansion, including a timetable of new construction to meet changes in demand for service;

(3) A description of its investments in its WCS system; and

(4) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in this paragraph.

(d) In making its showing of entitlement to a renewal expectancy, a renewal applicant may claim credit for any system modification applications that were pending on the date it filed its renewal application. Such credit will not be allowed if the modification application is dismissed or denied.

(e) Comparative renewal proceedings do not apply to WCS licensees holding authorizations for Block A in the 698–704 MHz, 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block C in the 710–716 MHz and 740–746 MHz bands, Block D in the 716–722 MHz band, Block E in the 722–728 MHz band, Block C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, or Block D in the 758–763 MHz and 788–793 MHz bands. Each of these licensees must file a renewal application in accordance with the provisions set forth in §1.949, and must make a showing of substantial service, independent of its performance requirements, as a condition for renewal at the end of each license term.

(f) Comparative renewal proceedings do not apply to WCS licensees holding authorizations for the 698–746 MHz, 747–762 MHz, and 777–792 MHz bands. These licensees must file a renewal application in accordance with the provisions set forth in §1.949 of this chapter.

(g) WCS licensees holding EA authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, cellular market authorizations for Block B in the 704–710 MHz and 734–740 MHz bands, or EA authorizations for Block E in the 722–728 MHz band, if the results of the first auction in which licenses for such authorizations are offered satisfy the reserve price for the applicable block, shall provide signal coverage and offer service over at least 35 percent of the geographic area of each of their license authorizations no later than February 17, 2013 (or within four years of initial license grant if the initial authorization in a market is granted after February 17, 2009), and shall provide such service over at least 70 percent of the geographic area of each of these authorizations by the end of the license term. In applying these geographic benchmarks, licensees are not required to include land owned or administered by government as a part of the relevant service area. Licensees may count covered government land for purposes of meeting their geographic construction benchmark, but are required to add the covered government land to the total geographic area used for measurement purposes. Licensees are required to include those populated lands held by tribal governments and those held by the Federal Government in trust or for the benefit of a recognized tribe.

(1) If an EA or CMA licensee holding an authorization in these particular blocks fails to provide signal coverage and offer service over at least 35 percent of the geographic area of its license authorization by no later than February 17, 2013 (or within four years of initial license grant, if the initial authorization in a market is granted after February 17, 2009), the term of that license authorization will be reduced by two years and such licensee may be subject to enforcement action, including forfeitures. In addition, an EA or CMA licensee that provides signal coverage and offers service at a level that is below this interim benchmark may lose authority to operate in

part of the remaining unserved areas of the license.

(2) If any such EA or CMA licensee fails to provide signal coverage and offer service to at least 70 percent of the geographic area of its license authorization by the end of the license term, that licensee's authorization will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission. Such licensee may also be subject to enforcement action, including forfeitures. In addition, an EA or CMA licensee that provides signal coverage and offers service at a level that is below this end-of-term benchmark may be subject to license termination. In the event that a licensee's authority to operate in a license area terminates automatically without Commission action, such areas will become available for reassignment pursuant to the procedures in paragraph (j) of this section.

(3) For licenses under paragraph (g) of this section, the geographic service area to be made available for reassignment must include a contiguous area of at least 130 square kilometers (50 square miles), and areas smaller than a contiguous area of at least 130 square kilometers (50 square miles) will not be deemed unserved.

(h) WCS licensees holding REAG authorizations for Block C in the 746–757 MHz and 776–787 MHz bands or REAG authorizations for Block C2 in the 752–757 MHz and 782–787 MHz bands shall provide signal coverage and offer service over at least 40 percent of the population in each EA comprising the REAG license area no later than February 17, 2013 (or within four years of initial license grant, if the initial authorization in a market is granted after February 17, 2009), and shall provide such service over at least 75 percent of the population of each of these EAs by the end of the license term. For purposes of compliance with this requirement, licensees should determine population based on the most recently available U.S. Census Data.

(1) If a licensee holding a Block C authorization fails to provide signal coverage and offer service over at least 40 percent of the population in each EA comprising the REAG license area by no later than February 17, 2013 (or within four years of initial license grant if the initial authorization in a market is granted after February 17, 2009), the term of the license authorization will be reduced by two years and such licensee may be subject to enforcement action, including forfeitures. In addition, a licensee that provides signal coverage and offers service at a level that is below this interim benchmark may lose authority to operate in part of the remaining unserved areas of the license.

(2) If a licensee holding a Block C authorization fails to provide signal coverage and offer service over at least 75 percent of the population in any EA comprising the REAG license area by the end of the license term, for each such EA that licensee's authorization will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service. Such licensee may also be subject to enforcement action, including forfeitures. In the event that a licensee's authority to operate in a license area terminates automatically without Commission action, such areas will become available for reassignment pursuant to the procedures in paragraph (j) of this section. In addition, a REAG licensee that provides signal coverage and offers service at a level that is below this end-of-term benchmark within any EA may be subject to license termination within that EA.

(3) For licenses under paragraph (h), the geographic service area to be made available for reassignment must include a contiguous area of at least 130 square kilometers (50 square miles), and areas smaller than a contiguous area of at least 130 square kilometers (50 square miles) will not be deemed unserved.

(i) WCS licensees holding EA authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, cellular market authorizations for Block B in the 704–710 MHz and 734–740 MHz bands, or EA authorizations for Block E in the 722–728 MHz band, if the results of the first auction in which licenses for such authorizations in Blocks A, B, and E are

offered do not satisfy the reserve price for the applicable block, as well as EA authorizations for Block C1 in the 746–752 MHz and 776–782 MHz bands, are subject to the following:

(1) If a licensee holding a cellular market area or EA authorization subject to this paragraph (i) fails to provide signal coverage and offer service over at least 40 percent of the population in its license area by no later than February 17, 2013 (or within four years of initial license grant, if the initial authorization in a market is granted after February 17, 2009), the term of that license authorization will be reduced by two years and such licensee may be subject to enforcement action, including forfeitures. In addition, such licensee that provides signal coverage and offers service at a level that is below this interim benchmark may lose authority to operate in part of the remaining unserved areas of the license. For purposes of compliance with this requirement, licensees should determine population based on the most recently available U.S. Census Data.

(2) If a licensee holding a cellular market area or EA authorization subject to this paragraph (i) fails to provide signal coverage and offer service over at least 75 percent of the population in its license area by the end of the license term, that licensee's authorization will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission. Such licensee may also be subject to enforcement action, including forfeitures. In the event that a licensee's authority to operate in a license area terminates automatically without Commission action, such areas will become available for reassignment pursuant to the procedures in paragraph (j) of this section. In addition, such a licensee that provides signal coverage and offers service at a level that is below this end-of-term benchmark may be subject to license termination. For purposes of compliance with this requirement, licensees should determine population based on the most recently available U.S. Census Data.

(3) For licenses under paragraph (i), the geographic service area to be made available for reassignment must include a contiguous area of at least 130 square kilometers (50 square miles), and areas smaller than a contiguous area of at least 130 square kilometers (50 square miles) will not be deemed unserved.

(j) In the event that a licensee's authority to operate in a license area terminates automatically under paragraphs (g), (h), or (i) of this section, such areas will become available for reassignment pursuant to the following procedures:

(1) The Wireless Telecommunications Bureau is delegated authority to announce by public notice that these license areas will be made available and establish a 30-day window during which third parties may file license applications to serve these areas. During this 30-day period, licensees that had their authority to operate terminate automatically for unserved areas may not file applications to provide service to these areas. Applications filed by third parties that propose areas overlapping with other applications will be deemed mutually exclusive, and will be resolved through an auction. The Wireless Telecommunications Bureau, by public notice, may specify a limited period before the filing of short-form applications (FCC Form 175) during which applicants may enter into a settlement to resolve their mutual exclusivity, subject to the provisions of §1.935 of this chapter.

(2) Following this 30-day period, the original licensee and third parties can file license applications for remaining unserved areas where licenses have not been issued or for which there are no pending applications. If the original licensee or a third party files an application, that application will be placed on public notice for 30 days. If no mutually exclusive application is filed, the application will be granted, provided that a grant is found to be in the public interest. If a mutually exclusive application is filed, it will be resolved

through an auction. The Wireless Telecommunications Bureau, by public notice, may specify a limited period before the filing of short-form applications (FCC Form 175) during which applicants may enter into a settlement to resolve their mutual exclusivity, subject to the provisions of §1.935 of this chapter.

(3) The licensee will have one year from the date the new license is issued to complete its construction and provide signal coverage and offer service over 100 percent of the geographic area of the new license area. If the licensee fails to meet this construction requirement, its license will automatically terminate without Commission action and it will not be eligible to apply to provide service to this area at any future date.

(k) WCS licensees holding authorizations in the spectrum blocks enumerated in paragraphs (g), (h), or (i), including any licensee that obtained its license pursuant to the procedures set forth in subsection (j), shall demonstrate compliance with performance requirements by filing a construction notification with the Commission, within 15 days of the expiration of the applicable benchmark, in accordance with the provisions set forth in §1.946(d). The licensee must certify whether it has met the applicable performance requirements. The licensee must file a description and certification of the areas for which it is providing service. The construction notifications must include electronic coverage maps, supporting technical documentation and any other information as the Wireless Telecommunications Bureau may prescribe by public notice.

(l) WCS licensees holding authorizations in the spectrum blocks enumerated in paragraphs (g), (h), or (i) of this section, excluding any licensee that obtained its license pursuant to the procedures set forth in subsection (j) of this section, shall file reports with the Commission that provide the Commission, at a minimum, with information concerning the status of their efforts to meet the performance requirements applicable to their authorizations in such spectrum blocks and the manner in which that spectrum is being utilized. The information to be reported will include the date the license term commenced, a description of the steps the licensee has taken toward meeting its construction obligations in a timely manner, including the technology or technologies and service(s) being provided, and the areas within the license area in which those services are available. Each of these licensees shall file its first report with the Commission no later than February 17, 2011 and no sooner than 30 days prior to this date. Each licensee that meets its interim benchmarks shall file a second report with the Commission no later than February 17, 2016 and no sooner than 30 days prior to this date. Each licensee that does not meet its interim benchmark shall file this second report no later than on February 17, 2015 and no sooner than 30 days prior to this date.

(m) The WCS licensee holding the authorization for the D Block in the 758–763 MHz and 788–793 MHz bands (the Upper 700 MHz D Block licensee) shall comply with the following construction requirements.

(1) The Upper 700 MHz D Block licensee shall provide a signal coverage and offer service over at least 75 percent of the population of the nationwide Upper 700 MHz D Block license area within four years from February 17, 2009, 95 percent of the population of the nationwide license area within seven years, and 99.3 percent of the population of the nationwide license area within ten years.

(2) The Upper 700 MHz D Block licensee may modify, to a limited degree, its population-based construction benchmarks with the agreement of the Public Safety Broadband Licensee and the prior approval of the Commission, where such a modification would better serve to meet commercial and public safety needs.

(3) The Upper 700 MHz D Block licensee shall meet the population benchmarks based on a performance schedule specified in the Network Sharing Agreement, taking into account performance pursuant to §27.1327 as appropriate under that rule, and using the most recently available U.S. Census Data. The network and signal levels employed to meet these benchmarks must be adequate for public safety use, as defined in the Network

Sharing Agreement, and the services made available must include those appropriate for public safety entities that operate in those areas. The schedule shall include coverage for major highways and interstates, as well as such additional areas that are necessary to provide coverage for all incorporated communities with a population in excess of 3,000, unless the Public Safety Broadband Licensee and the Upper 700 MHz D Block licensee jointly determine, in consultation with a relevant community, that such additional coverage will not provide significant public benefit.

(4) The Upper 700 MHz D Block licensee shall demonstrate compliance with performance requirements by filing a construction notification with the Commission within 15 days of the expiration of the applicable benchmark, in accordance with the provisions set forth in §1.946(d) of this chapter. The licensee must certify whether it has met the applicable performance requirement and must file a description and certification of the areas for which it is providing service. The construction notifications must include the following:

(i) Certifications of the areas that were scheduled for construction and service by that date under the Network Sharing Agreement for which it is providing service, the type of service it is providing for each area, and the type of technology it is utilizing to provide this service.

(ii) Electronic coverage maps and supporting technical documentation providing the assumptions used by the licensee to create the coverage maps, including the propagation model and the signal strength necessary to provide service.

(n) At the end of its license term, the Upper 700 MHz D Block licensee must, in order to renew its license, make a showing of its success in meeting the material requirements set forth in the Network Sharing Agreement as well as all other license conditions, including the performance benchmark requirements set forth in this section.

(o) BRS and EBS licensees must make a showing of ''substantial service'' no later than May 1, 2011. Incumbent BRS licensees must file their ''substantial service'' showing with their renewal application. ''Substantial service'' is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. Substantial service for BRS and EBS licensees is satisfied if a licensee meets the requirements of paragraph (o)(1) or (o)(2) of this section. If a licensee has not met the requirements of paragraph (o)(1) or (o)(2) of this section, then demonstration of ''substantial service'' shall proceed on a case-by-case basis. All substantial service determinations will be made on a license-by-license basis. Except for BTA licenses, BRS licensees must file their ''substantial service'' showing with their renewal applications. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

(1) A BRS or EBS licensee has provided ''substantial service'' by:

(i) Constructing six permanent links per one million people for licensees providing fixed point-to-point services;

(ii) Providing coverage of at least 30 percent of the population of the licensed area for licensees providing mobile services or fixed point-to-multipoint services;

(iii) Providing service to ''rural areas'' (a county (or equivalent) with a population density of 100 persons per square mile or less, based upon the most recently available Census data) and areas with limited access to telecommunications services:

(A) For mobile service, where coverage is provided to at least 75% of the geographic area of at least 30% of the rural areas within its service area; or

(B) for fixed service, where the BRS or EBS licensee has constructed at least one end of a permanent link in at least 30% of the rural areas within its licensed area.

(iv) Providing specialized or technologically sophisticated service that does not require a high level of coverage to benefit consumers; or

(v) Providing service to niche markets or areas outside the areas served by other licensees.

(2) An EBS licensee has provided ''substantial service'' when:

(i) The EBS licensee is using its spectrum (or spectrum to which the EBS licensee's educational services are shifted) to provide educational services within the EBS licensee's GSA;

(ii) the EBS licensee's license is actually being used to serve the educational mission of one or more accredited public or private schools, colleges or universities providing formal educational and cultural development to enrolled students; or

(iii) the level of service provided by the EBS licensee meets or exceeds the minimum usage requirements specified in § 27.1214.

(3) An EBS or BRS licensee may be deemed to provide substantial service through a leasing arrangement if the lessee is providing substantial service under paragraph (o)(1) of this section. The EBS licensee must also be otherwise in compliance with this Chapter (including the programming requirements in § 27.1203 of this subpart).

(4) If the GSA of a licensee is less than 1924 square miles in size, and there is an overlapping co-channel station licensed or leased by the licensee or its affiliate, substantial service may be demonstrated by meeting the requirements of paragraph (o)(1) or (o)(2) of this section with respect to the combined GSAs of both stations.

(5) If the GSA of a BTA authorization holder, is less than one-half of the area within the BTA for every BRS channel, substantial service may be demonstrated for the licenses in question by meeting the requirements of paragraph (o)(1) or (o)(2) of this section with respect to the combined GSAs of the BTA authorization holder, together with any incumbent authorizations licensed or leased by the licensee or its affiliates.

[62 FR 9658, Mar. 3, 1997, as amended at 65 FR 3146, Jan. 20, 2000; 69 FR 5715, Feb. 6, 2004; 71 FR 35189, June 19, 2006; 72 FR 27709, May 16, 2007; 72 FR 48846, Aug. 24, 2007; 72 FR 67578, Nov. 29, 2007; 73 FR 26038, May 8, 2008]

EFFECTIVE DATE NOTE: At 72 FR 48846, Aug. 24, 2007, § 27.14 was amended by revising (a), removing (f), redesignating (e) as new (f), and adding (e) and (g) through (n). At 72 FR 67578, Nov. 29, 2007 § 27.14 was corrected. This text contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 27.15 Geographic partitioning and spectrum disaggregation.

(a) *Eligibility*. (1) Parties seeking approval for partitioning and disaggregation shall request from the Commission an authorization for partial assignment of a license pursuant to § 1.948.

(2) AWS and WCS licensees may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

(b) *Technical Standards*—(1) *Partitioning*. In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to section 1.948 and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83).

(2) *Disaggregation*. Spectrum may be disaggregated in any amount.

(3) *Combined partitioning and disaggregation*. The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(4) *Signal levels*. For purposes of partitioning and disaggregation, part 27 systems must be designed so as not to exceed the signal level specified for the particular spectrum block in § 27.55 at the licensee's service area boundary, unless the affected adjacent service area licensees have agreed to a different signal level.

(c) *License term*. The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 27.13.

(d) *Compliance with construction requirements*—(1) *Partitioning*. (i) Except for WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Blocks C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, or Block D in the 758–763 MHz and 788–793 MHz bands, the following rules apply to WCS and AWS licensees holding authorizations

for purposes of implementing the construction requirements set forth in § 27.14. Parties to partitioning agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first option, the partitioner and partitionee each certifies that it will independently satisfy the substantial service requirement for its respective partitioned area. If a licensee subsequently fails to meet its substantial service requirement, its license will be subject to automatic cancellation without further Commission action. Under the section option, the partitioner certifies that it has met or will meet the substantial service requirement for the entire, pre-partitioned geographic service area. If the partitioner subsequently fails to meet its substantial service requirement, only its license will be subject to automatic cancellation without further Commission action.

(ii) For WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, or Blocks C, C1, and C2 in the 746–757 MHz and 776–787 MHz bands, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. Parties to partitioning agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first option, the partitioner and partitionee each certifies that they will collectively share responsibility for meeting the construction requirement for the entire pre-partition geographic license area. If the partitioner and partitionee collectively fail to meet the construction requirement, then both the partitioner and partitionee will be subject to the consequences enumerated in § 27.14(g) and (h) for this failure. Under the second option, the partitioner and partitionee each certifies that it will independently meet the construction requirement for its respective partitioned license area. If the partitioner or partitionee fails to meet the construction requirement for its respective partitioned license area, then the consequences for this failure shall be those enumerated in § 27.14(g) and (h).

(2) *Disaggregation.* (i) Except for WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Blocks C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, or Block D in the 758–763 MHz and 788–793 MHz bands, the following rules apply to WCS and AWS licensees holding authorizations for purposes of implementing the construction requirements set forth in § 27.14. Parties to disaggregation agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first option, the disaggregator and disaggregatee each certifies that it will share responsibility for meeting the substantial service requirement for the geographic service area. If the parties choose this option and either party subsequently fails to satisfy its substantial service responsibility, both parties' licenses will be subject to forfeiture without further Commission action. Under the second option, both parties certify either that the disaggregator or the disaggregatee will meet the substantial service requirement for the geographic service area. If the parties choose this option, and the party responsible subsequently fails to meet the substantial service requirement, only that party's license will be subject to forfeiture without further Commission action.

(ii) For WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, and Blocks C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. If either the disaggregator or the disaggregatee meets the construction requirements set forth in § 27.14, then these requirements will be considered to be satisfied for both parties. If neither the disaggregator nor the disaggregatee meets the construction requirements, then both parties will be subject to the

consequences enumerated in §27.14(g) and (h) for this failure.

[62 FR 9658, Mar. 3, 1997, as amended at 63 FR 68954, Dec. 14, 1998; 65 FR 3146, Jan. 20, 2000; 65 FR 57268, Sept. 21, 2000; 67 FR 45373, July 9, 2002; 69 FR 5715, Feb. 6, 2004; 72 FR 48848, Aug. 24, 2007]

EFFECTIVE DATE NOTE: At 72 FR 48848, Aug. 24, 2007, §27.15 was amended by revising (d). At 72 FR 67580, Nov. 29, 2007 §27.15 was corrected. This text contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§27.16 Network access requirements for Block C in the 746–757 and 776–787 MHz bands.

(a) *Applicability*. This section shall apply only to the authorizations for Block C in the 746–757 and 776–787 MHz bands assigned and only if the results of the first auction in which licenses for such authorizations are offered satisfied the applicable reserve price.

(b) *Use of devices and applications*. Licensees offering service on spectrum subject to this section shall not deny, limit, or restrict the ability of their customers to use the devices and applications of their choice on the licensee's C Block network, except:

(1) Insofar as such use would not be compliant with published technical standards reasonably necessary for the management or protection of the licensee's network, or

(2) As required to comply with statute or applicable government regulation.

(c) *Technical standards*. For purposes of paragraph (b)(1) of this section:

(1) Standards shall include technical requirements reasonably necessary for third parties to access a licensee's network via devices or applications without causing objectionable interference to other spectrum users or jeopardizing network security. The potential for excessive bandwidth demand alone shall not constitute grounds for denying, limiting or restricting access to the network.

(2) To the extent a licensee relies on standards established by an independent standards-setting body which is open to participation by representatives of service providers, equipment manufacturers, application developers, consumer organizations, and other interested parties, the standards will carry a presumption of reasonableness.

(3) A licensee shall publish its technical standards, which shall be nonproprietary, no later than the time at which it makes such standards available to any preferred vendors, so that the standards are readily available to customers, equipment manufacturers, application developers, and other parties interested in using or developing products for use on a licensee's networks.

(d) *Access requests*. (1) Licensees shall establish and publish clear and reasonable procedures for parties to seek approval to use devices or applications on the licensees' networks. A licensee must also provide to potential customers notice of the customers' rights to request the attachment of a device or application to the licensee's network, and notice of the licensee's process for customers to make such requests, including the relevant network criteria.

(2) If a licensee determines that a request for access would violate its technical standards or regulatory requirements, the licensee shall expeditiously provide a written response to the requester specifying the basis for denying access and providing an opportunity for the requester to modify its request to satisfy the licensee's concerns.

(e) *Handset locking prohibited*. No licensee may disable features on handsets it provides to customers, to the extent such features are compliant with the licensee's standards pursuant to paragraph (b)of this section, nor configure handsets it provides to prohibit use of such handsets on other providers' networks.

(f) *Burden of proof*. Once a complainant sets forth a prima facie case that the C Block licensee has refused to attach a device or application in violation of the requirements adopted in this section, the licensee shall have the burden of proof to demonstrate that it has adopted reasonable network standards and reasonably applied those standards in the complainant's case. Where the licensee bases its network

restrictions on industry-wide consensus standards, such restrictions would be presumed reasonable.

[72 FR 48849, Aug. 24, 2007]

§ 27.20 Digital television transition education reports.

(a) The requirements of this section shall apply only with regard to WCS license authorizations in Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Block C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, and Block D in the 758–763 MHz and 788–793 MHz bands.

(b) By the tenth day of the first calendar quarter after the initial grant of a WCS license authorization subject to the requirements of this section—and on a quarterly basis thereafter as specified in paragraph (c) of this section—the licensee holding such authorization must file a report with the Commission indicating whether, in the previous quarter, it has taken any outreach efforts to educate consumers about the transition from analog broadcast television service to digital broadcast television service (DTV) and, if so, what specific efforts were undertaken. Thus, for example, if the license authorization is granted during the April-June quarter of 2008, the licensee must file its first report by July 10, 2008. Each quarterly report, either paper or electronic, must be filed with the Commission in Docket Number 07–148. If the quarterly report is a paper filing, the cover sheet must clearly state ''Report,'' whereas if the report is filed electronically using the Commission's Electronic Comment File System (ECFS), the ''Document Type'' on the cover sheet should indicate ''REPORT.''

(c) The reporting requirements under this section cover the remaining period of the DTV transition. Accordingly, once the licensee files its quarterly report covering the first quarter of 2009, the requirements of this section terminate.

[73 FR 15448, Mar. 24, 2008]

Subpart C—Technical Standards

§ 27.50 Power and antenna height limits.

(a) The following power limits apply to the 2305–2320 MHz and 2345–2360 MHz bands:

(1) Fixed, land, and radiolocation land stations transmitting are limited to 2000 watts peak equivalent isotropically radiated power (EIRP).

(2) Mobile and radiolocation mobile stations transmitting are limited to 20 watts EIRP peak power.

(b) The following power and antenna height limits apply to transmitters operating in the 746–763 MHz, 775–793 MHz and 805–806 MHz bands:

(1) Fixed and base stations transmitting a signal in the 757–758 and 775–776 MHz bands must not exceed an effective radiated power (ERP) of 1000 watts and an antenna height of 305 m height above average terrain (HAAT), except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section.

(2) Fixed and base stations transmitting a signal in the 746–757 MHz, 758–763 MHz, 776–787 MHz, and 788–793 MHz bands with an emission bandwidth of 1 MHz or less must not exceed an ERP of 1000 watts and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section.

(3) Fixed and base stations located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal in the 746–757 MHz, 758–763 MHz, 776–787 MHz, and 788–793 MHz bands with an emission bandwidth of 1 MHz or less must not exceed an ERP of 2000 watts and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 2000 watts ERP in accordance with Table 2 of this section.

(4) Fixed and base stations transmitting a signal in the 746–757 MHz, 758–763 MHz, 776–787 MHz, and 788–793 MHz bands with an emission bandwidth