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obligations must provide evidentiary support to demonstrate that their calculation is reasonable and made in good faith. Specifically, these parties are expected to exercise due diligence to obtain the information necessary to prepare an independent estimate of the relocation costs in question and to file the independent estimate and supporting documentation with the clearinghouse.

§ 27.1174 Termination of Cost-Sharing Obligations.

The cost-sharing plan will sunset for all AWS and MSS (including MSS/ATC) entities on the same date on which the relocation obligation for the subject AWS band (*i.e.*, 2110–2150 MHz, 2160–2175 MHz, or 2175–2180 MHz) in which the relocated FMS link was located terminates. AWS or MSS (including MSS/ATC) entrants that trigger a cost-sharing obligation prior to the sunset date must satisfy their payment obligation in full.

COST-SHARING POLICIES GOVERNING BROADBAND RADIO SERVICE RELOCATION FROM THE 2150–2160/62 MHZ BAND

SOURCE: Sections 27.1176 through 27.1190 appear at 71 FR 29835, May 24, 2006, unless otherwise noted.

§ 27.1176 Cost-sharing requirements for AWS in the 2150–2160/62 MHz band.

(a) Frequencies in the 2150–2160/62 MHz band have been reallocated from the Broadband Radio Service (BRS) to AWS. All AWS entities who benefit from another AWS entity's clearance of BRS incumbents from this spectrum, including BRS incumbents occupying the 2150–2162 MHz band on a primary basis, must contribute to such relocation costs. Only AWS entrants that relocate BRS incumbents are entitled to such reimbursement.

(b) AWS entities may satisfy their reimbursement requirement by entering into private cost-sharing agreements or agreeing to terms other than those specified in § 27.1180. However, AWS entities are required to reimburse other AWS entities that incur relocation costs and are not parties to the alternative agreement. In addition, parties to a private cost-sharing agreement may seek reimbursement through the clearinghouse (as discussed in § 27.1178) from AWS entities that are not parties to the agreement. The cost-sharing plan is in effect during all phases of BRS relocation until the end of the period specified in § 27.1190. If an AWS licensee enters into a spectrum leasing arrangement and the spectrum lessee triggers a cost-sharing obligation, the licensee is the AWS entity responsible for satisfying cost-sharing obligations under these rules.

§ 27.1178 Administration of the Cost-Sharing Plan.

The Wireless Telecommunications Bureau, under delegated authority, will select one or more entities to operate as a neutral, not-for-profit clearinghouse(s). This clearinghouse(s) will administer the cost-sharing plan by, *inter alia*, determining the cost-sharing obligations of AWS entities for the relocation of BRS incumbents from the 2150–2162 MHz band. The clearinghouse filing requirements (*see* §§ 27.1182(a), 27.1186) will not take effect until an administrator is selected.

§ 27.1180 The cost-sharing formula.

(a) An AWS licensee that relocates a BRS system with which it interferes is entitled to *pro rata* reimbursement based on the cost-sharing formula specified in § 27.1164, except that the depreciation factor shall be $[180 - T_m]/180$, and the variable C shall be applied as set forth in paragraph (b) of this section.

(b) C is the actual cost of relocating the system, and includes, but is not limited to, such items as: Radio terminal equipment (TX and/or RX—antenna, necessary feed lines, MUX/Modems); towers and/or modifications; back-up power equipment; monitoring or control equipment; engineering costs (design/path survey); installation; systems testing; FCC filing costs; site acquisition and civil works; zoning costs; training; disposal of old equipment; test equipment (vendor required); spare equipment; project management; site lease renegotiation; required antenna upgrades for interference control; power plant upgrade (if

required); electrical grounding systems; Heating Ventilation and Air Conditioning (HVAC) (if required); alternate transport equipment; leased facilities; and end user units served by the base station that is being relocated. In addition to actual costs, *C* may include the cost of an independent third party appraisal conducted pursuant to §27.1182(a)(3) and incumbent transaction expenses that are directly attributable to the relocation, subject to a cap of two percent of the ''hard'' costs involved. Hard costs are defined as the actual costs associated with providing a replacement system, such as equipment and engineering expenses. There is no cap on the actual costs of relocation.

(c) An AWS system shall be considered an interfering system for purposes of this rule if the AWS system is in all or part of the BRS frequency band and operates within line of sight to BRS operations under the applicable test specified in §27.1184. An AWS relocator that relocates a BRS system with which it does not interfere is entitled to full reimbursement, as specified in §27.1182(c).

§27.1182 Reimbursement under the Cost-Sharing Plan.

(a) *Registration of reimbursement rights.* (1) To obtain reimbursement, an AWS relocator must submit documentation of the relocation agreement to the clearinghouse within 30 calendar days of the date a relocation agreement is signed with an incumbent. In the case of involuntary relocation, an AWS relocator must submit documentation of the relocated system within 30 calendar days after the end of the one-year trial period.

(2) Registration of any BRS system shall include:

(i) A description of the system's frequency use;

(ii) If the system exclusively provides one-way transmissions to subscribers, the Geographic Service Area of the system; and

(iii) If the system does not exclusively provide one-way transmission to subscribers, the system hub antenna's geographic location and the above ground level height of the system's receiving antenna centerline.

(3) The AWS relocator must also include with its system registration an independent third party appraisal of the compensable relocation costs. The appraisal should be based on the actual cost of replacing the incumbent's system with comparable facilities and should exclude the cost of any equipment upgrades that are not necessary to the provision of comparable facilities. An AWS relocator may submit registration without a third party appraisal if it consents to binding resolution by the clearinghouse of any good faith cost disputes regarding the reimbursement claim, under the following standard: The relocator shall bear the burden of proof, and be required to demonstrate by clear and convincing evidence that its request does not exceed the actual cost of relocating the relevant BRS system or systems to comparable facilities. Failure to satisfy this burden of proof will result in loss of rights to subsequent reimbursement of the disputed costs from any AWS licensee.

(b) *Documentation of expenses.* Once relocation occurs, the AWS relocator must submit documentation itemizing the amount spent for items specifically listed in §27.1180(b), as well as any reimbursable items not specifically listed in §27.1180(b) that are directly attributable to actual relocation costs. Specifically, the AWS relocator must submit, in the first instance, only the uniform cost data requested by the clearinghouse along with copies, without redaction, of the relocation agreement, if any, and the third party appraisal described in (a)(3), of this section, if prepared. The AWS relocator must identify the particular system associated with appropriate expenses (*i.e.*, costs may not be averaged over numerous systems). If an AWS relocator pays a BRS incumbent a monetary sum to relocate its own facilities in whole or in part, the AWS relocator must itemize the actual costs to the extent determinable, and otherwise must estimate the actual costs associated with relocating the incumbent and itemize these costs. If the sum paid to the incumbent cannot be accounted for, the remaining

amount is not eligible for reimbursement. All AWS relocators seeking reimbursement through the clearinghouse have an ongoing duty to maintain all relevant records of BRS relocation-related expenses until the sunset of cost-sharing obligations, and to provide, upon request, such documentation, including a copy of the independent appraisal if one was conducted, to the clearinghouse, the Commission, or AWS entrants that trigger a cost-sharing obligation.

(c) *Full reimbursement.* An AWS relocator who relocates a BRS system that is either:

(1) Wholly outside its frequency band; or

(2) Not within line of sight of the relocator's transmitting base station may seek full reimbursement through the clearinghouse of compensable costs. Such reimbursement will not be subject to depreciation under the cost-sharing formula.

(d) *Good Faith Requirement.* New entrants and incumbent licensees are expected to act in good faith in satisfying the cost-sharing obligations under §§ 27.1176 through 27.1190. The requirement to act in good faith extends to, but is not limited to, the preparation and submission of the documentation required in paragraph (b) of this section.

§ 27.1184 Triggering a reimbursement obligation.

(a) The clearinghouse will apply the following test to determine when an AWS entity has triggered a cost-sharing obligation and therefore must pay an AWS relocator of a BRS system in accordance with the formula detailed in § 27.1180:

(1) All or part of the relocated BRS system was initially co-channel with the licensed AWS band(s) of the AWS entity;

(2) An AWS relocator has paid the relocation costs of the BRS incumbent; and

(3) The other AWS entity has turned on or is preparing to turn on a fixed base station at commercial power and the incumbent BRS system would have been within the line of sight of the AWS entity's fixed base station, defined as follows.

(i) For a BRS system using the 2150–2160/62 MHz band exclusively to provide one-way transmissions to subscribers, the clearinghouse will determine whether there is an unobstructed signal path (line of sight) to the incumbent licensee's geographic service area (GSA), based on the following criteria: use of 9.1 meters (30 feet) for the receiving antenna height, use of the actual transmitting antenna height and terrain elevation, and assumption of 4/3 Earth radius propagation conditions. Terrain elevation data must be obtained from the U.S. Geological Survey (USGS) 3-second database. All coordinates used in carrying out the required analysis shall be based upon use of NAD–83.

(ii) For all other BRS systems using the 2150–2160/62 MHz band, the clearinghouse will determine whether there is an unobstructed signal path (line of sight) to the incumbent licensee's receive station hub using the method prescribed in ''Methods for Predicting Interference from Response Station Transmitters and to Response Station Hubs and for Supplying Data on Response Station Systems. MM Docket 97–217,'' in Amendment of 47 CFR parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, MM Docket No. 97–217, *Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking,* 15 FCC Rcd 14566 at 14610, Appendix D.

(b) If the application of the trigger test described in paragraphs (a)(3)(i) and (ii) of this section, indicates that a reimbursement obligation exists, the clearinghouse will calculate the reimbursement amount in accordance with the cost-sharing formula and notify the subsequent AWS entity of the total amount of its reimbursement obligation.

(c) Once a reimbursement obligation is triggered, the AWS entity may not avoid paying its cost-sharing obligation by deconstructing or modifying its facilities.

§ 27.1186 Payment issues.

Payment of cost-sharing obligations for the relocation of BRS systems in

the 2150–60/62 MHz band is subject to the rules set forth in § 27.1170. If an AWS licensee is initiating operations for a newly constructed site or modified existing site in licensed bands overlapping the 2150–2160/62 MHz band, the AWS licensee must file with the clearinghouse, in addition to the site-specific data required by § 27.1170, the above ground level height of the transmitting antenna centerline. AWS entities have a continuing duty to maintain the accuracy of the site-specific data on file with the clearinghouse.

[At 71 FR 29835, May 24, 2006, as amended at 72 FR 41939, Aug. 1, 2007]

§ 27.1188 Dispute resolution under the Cost-Sharing Plan.

(a) Disputes arising out of the cost-sharing plan, such as disputes over the amount of reimbursement required, must be brought, in the first instance, to the clearinghouse for resolution. To the extent that disputes cannot be resolved by the clearinghouse, parties are encouraged to use expedited Alternative Dispute Resolution (ADR) procedures, such as binding arbitration, mediation, or other ADR techniques.

(b) *Evidentiary requirement.* Parties of interest contesting the clearinghouse's determination of specific cost-sharing obligations must provide evidentiary support to demonstrate that their calculation is reasonable and made in good faith. Specifically, these parties are expected to exercise due diligence to obtain the information necessary to prepare an independent estimate of the relocation costs in question and to file the independent estimate and supporting documentation with the clearinghouse.

§ 27.1190 Termination of cost-sharing obligations.

The plan for cost-sharing in connection with BRS relocation will sunset for all AWS entities fifteen years after the relocation sunset period for BRS relocation commences, *i.e.*, fifteen years after the first AWS licenses are issued in any part of the 2150–2162 MHz band. AWS entrants that trigger a cost-sharing obligation prior to the sunset date must satisfy their payment obligation in full.

Subpart M—Broadband Radio Service and Educational Broadband Service

SOURCE: 69 FR 72034, Dec. 10, 2004, unless otherwise noted.

§ 27.1200 Change to BRS and EBS.

(a) As of January 10, 2005, licensees assigned to the Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS) shall be reassigned to the Broadband Radio Service (BRS) and licensees in the Instructional Television Fixed Service (ITFS) shall be reassigned to the Educational Broadband Service (EBS).

§ 27.1201 EBS eligibility.

(a) A license for an Educational Broadband Service station will be issued only to an accredited institution or to a governmental organization engaged in the formal education of enrolled students or to a nonprofit organization whose purposes are educational and include providing educational and instructional television material to such accredited institutions and governmental organizations, and which is otherwise qualified under the statutory provisions of the Communications Act of 1934, as amended.

(1) A publicly supported educational institution must be accredited by the appropriate State department of education.

(2) A privately controlled educational institution must be accredited by the appropriate State department of education or the recognized regional and national accrediting organizations.

(3) Those applicant organizations whose eligibility is established by service to accredited institutional or governmental organizations must submit documentation from proposed receive sites demonstrating that they will receive and use the applicant's educational usage. In place of this documentation, a State educational television (ETV) commission may demonstrate that the public schools it proposes to serve are required to use its proposed educational usage. Documentation from proposed receive sites which are to establish the eligibility of