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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

an entity not serving its own enrolled students for credit should be in letter form, written and signed by an administrator or authority who is responsible for the receive site's curriculum planning. No receive site more than 35 miles from the proposed station's central reference point, or outside the applicants' proposed GSA, shall be used to establish basic eligibility. Where broadband or data services are proposed, the letter should indicate that the data services will be used in furtherance of the institution's educational mission and will be provided to enrolled students, faculty and staff in a manner and in a setting conducive to educational usage. Where traditional educational or instructional video services are proposed, the letter should indicate that the applicant's program offerings have been viewed and that such programming will be incorporated in the site's curriculum. Where educational or instructional video services are proposed, the letter should discuss the types of programming and hours per week of formal and informal programming expected to be used and the site's involvement in the planning, scheduling and production of programming. If other levels of authority must be obtained before a firm commitment to utilize the service can be made, the nature and extent of such additional authorization(s) must be provided.

(4) Nonlocal applicants, in addition to submitting letters from proposed receive sites, must demonstrate the establishment of a local program committee in each community where they apply. Letters submitted on behalf of a nonlocal entity must confirm that a member of the receive site's staff will serve on the local program committee and demonstrate a recognition of the composition and power of the committee. The letter should show that the staff member will aid in the selection, scheduling and production of the programming received over the system.

(b) No numerical limit is placed on the number of stations which may be licensed to a single licensee. A single license may be issued for more than one transmitter if they are to be located at a common site and operated by the same licensee. Applicants are expected to accomplish the proposed operation by the use of the smallest number of channels required to provide the needed service.

(c) [Reserved]

(d) This paragraph applies to EBS licensees and applications licensed or filed pursuant to the provisions of §27.1201(c) contained in the edition of 47 CFR parts 20 through 39, revised as of October 1, 2005, or §§74.990 through 74.992 contained in the edition of 47 CFR parts 70 through 79, revised as of October 1, 2004, and that do not meet the eligibility requirements of paragraph (a) of this section. Such licensees may continue to operate pursuant to the terms of their existing licenses, and their licenses may be renewed, assigned, or transferred, so long as the licensee is otherwise in compliance with this chapter. Applications filed pursuant to the provisions of §27.1201(c) contained in the edition of 47 CFR parts 20 through 39, revised as of October 1, 2005 or §§74.990 through 74.992 contained in the edition of 47 CFR parts 70 through 79, revised as of October 1, 2004 may be processed and granted, so long as such applications were filed prior to July 19, 2006. The provisions of §§27.1203(b) through (d) and 27.1214 of this subpart do not apply to licenses governed by this paragraph.

[69 FR 72034, Dec. 10, 2004, as amended at 71 FR 35190, June 19, 2006; 73 FR 26040, May 8, 2008]

§27.1202 Cable/BRS cross-ownership.

(a) Initial or modified authorizations for BRS stations may not be granted to a cable operator if a portion of the BRS station's protected services area is within the portion of the franchise area actually served by the cable operator's cable system and the cable operator will be using the BRS station as a multichannel video programming distributor (as defined in §76.64(d) of this chapter). No cable operator may acquire such authorization either directly, or indirectly through an affiliate owned, operated, or controlled by or under common control with a cable operator if the cable operator will use the BRS station as a multichannel video programming distributor.

(b) No licensee of a station in this service may lease transmission time or

capacity to a cable operator either directly, or indirectly through an affiliate owned, operated, controlled by, or under common control with a cable operator, if a portion of the BRS station's protected services area is within the portion of the franchise area actually served by the cable operator's cable system the cable operator will use the BRS station as a multichannel video programming distributor.

(c) Applications for new stations, station modifications, assignments or transfers of control by cable operators of BRS stations shall include a showing that no portion of the GSA of the BRS station is within the portion of the franchise area actually served by the cable operator's cable system, or of any entity indirectly affiliated, owned, operated, controlled by, or under common control with the cable operator. Alternatively, the cable operator may certify that it will not use the BRS station to distribute multichannel video programming.

(d) In applying the provisions of this section, ownership and other interests in BRS licensees or cable television systems will be attributed to their holders and deemed cognizable pursuant to the following criteria:

(1) Except as otherwise provided herein, partnership and direct ownership interests and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate BRS licensee or cable television system will be cognizable;

(2) Investment companies, as defined in 15 U.S.C. 80a–3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 20% or more of the outstanding voting stock of a corporate BRS licensee or cable television system, or if any of the officers or directors of the BRS licensee or cable television system are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

(3) Attribution of ownership interests in a BRS licensee or cable television system that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. For purposes of paragraph (d)(9) of this section, attribution of ownership interests in a BRS licensee or cable television system that are held indirectly by any party through one or more intervening organizations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, and the ownership percentage for any link in the chain that exceeds 50% shall be included for purposes of this multiplication. For example, except for purposes of paragraph (d)(9) of this section, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of ''Licensee,'' then X's interest in ''Licensee'' would be 25% (the same as Y's interest because X's interest in Y exceeds 50%), and A's interest in ''Licensee'' would be 2.5% (0.1×0.25). Under the 5% attribution benchmark, X's interest in ''Licensee'' would be cognizable, while A's interest would not be cognizable. For purposes of paragraph (d)(9) of this section, X's interest in ''Licensee'' would be 15% (0.6×0.25) and A's interest in ''Licensee'' would be 1.5% ($0.1 \times 0.6 \times 0.25$). Neither interest would be attributed under paragraph (d)(9) of this section.

(4) Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the

stock interests held in trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant BRS licensee or cable television system are subject to said trust.

(5) Subject to paragraph (d)(9) of this section, holders of non-voting stock shall not be attributed an interest in the issuing entity. Subject to paragraph (d)(9) of this section, holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(6)(i) A limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the BRS or cable television activities of the partnership and the licensee or system so certifies. An interest in a Limited Liability Company (''LLC'') or Registered Limited Liability Partnership (''RLLP'') shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the BRS or cable television activities of the partnership and the licensee or system so certifies.

(ii) For a licensee or system that is a limited partnership to make the certification set forth in paragraph (d)(6)(i) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the BRS or cable television activities of the partnership. For a licensee or system that is an LLC or RLLP to make the certification set forth in paragraph (d)(6)(i) of this section, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the BRS or cable television activities of the LLC or RLLP. Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other organizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the management or operation of the BRS or cable television businesses of the partnership or LLC or RLLP.

(iii) In the case of an LLC or RLLP, the licensee or system seeking installation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

(7) Officers and directors of a BRS licensee or cable television system are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary business of BRS or cable television service, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of a BRS licensee or cable television system, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the BRS licensee or cable television system subsidiary, and a statement properly documenting this fact is submitted to the Commission. The officers and directors of a sister corporation of a BRS licensee or cable television system shall not be attributed with ownership of these entities by virtue of such status.

(8) Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(i) The sum of the interests held by or through ''passive investors'' is equal to or exceeds 20 percent; or

(ii) The sum of the interests other than those held by or through ''passive investors'' is equal to or exceeds 5 percent; or

(iii) The sum of the interests computed under paragraph (d)(8)(i) of this section plus the sum of the interests computed under paragraph (d)(8)(ii) of this section equal to or exceeds 20 percent.

(9) Notwithstanding paragraphs (d)(5) and (d)(6) of this section, the holder of an equity or debt interest or interests in a BRS licensee or cable television system subject to the BRS/cable cross-ownership rule (''interest holder'') shall have that interest attributed if:

(i) The equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (all equity plus all debt) of that BRS licensee or cable television system; and

(ii) The interest holder also holds an interest in a BRS licensee or cable television system that is attributable under this section (other than this paragraph) and which operates in any portion of the franchise area served by that cable operator's cable system.

(10) The term ''area served by a cable system'' means any area actually passed by the cable operator's cable system and which can be connected for a standard connection fee.

(11) As used in this section ''cable operator'' shall have the same definition as in §76.5 of this chapter.

(e) The Commission will entertain requests to waive the restrictions in paragraph (a) of this section where necessary to ensure that all significant portions of the franchise area are able to obtain multichannel video service.

(f) The provisions of paragraphs (a) through (e) of this section will not apply to one BRS channel used to provide locally-produced programming to cable headends. Locally-produced programming is programming produced in or near the cable operator's franchise area and not broadcast on a television station available within that franchise area. A cable operator will be permitted one BRS channel for this purpose, and no more than one BRS channel may be used by a cable television company or its affiliate or lessor pursuant to this paragraph. The licensee for a cable operator providing local programming pursuant to a lease must include in a notice filed with the Wireless Telecommunications Bureau a cover letter explicitly identifying itself or its lessees as a local cable operator and stating that the lease was executed to facilitate the provision of local programming. The first application or the first lease notification in an area filed with the Commission will be entitled to the exemption. The limitations on one BRS channel per party and per area include any cable/BRS operations or cable/EBS operations. The cable operator must demonstrate in its BRS application that the proposed local programming will be provided within one year from the date its application is granted. Local programming service pursuant to a lease must be provided within one year of the date of the lease or one year of grant of the licensee's application for the leased channel, whichever is later. If a BRS license for these purposes is granted and the programming is subsequently discontinued, the license will be automatically forfeited the day after local programming service is discontinued.

(g) Applications filed by cable television companies, or affiliates, for BRS channels prior to February 8, 1990, will not be subject to the prohibitions of this section. Applications filed on February 8, 1990, or thereafter will be returned. Lease arrangements between cable and BRS entities for which a lease or a firm agreement was signed prior to February 8, 1990, will also not be subject to the prohibitions of this section. Leases between cable television companies, or affiliates, and BRS station licensees, conditional licensees, or applicants executed on February 8, 1990, or thereafter, are invalid.

(1) Applications filed by cable operators, or affiliates, for BRS channels prior to February 8, 1990, will not be subject to the prohibitions of this section. Except as provided in paragraph (g)(2)of this section, applications filed on February 8, 1990, or thereafter will be returned. Lease arrangements between cable and BRS entities for which a lease or a firm agreement was signed prior to February 8, 1990, will also not be subject to the prohibitions of this

section. Except as provided in paragraph (g)(2) of this section, leases between cable operators, or affiliates, and BRS/EBS station licensees, conditional licensees, or applicants executed on or before February 8, 1990, or thereafter are invalid.

(2) Applications filed by cable operators, or affiliates for BRS channels after February 8, 1990, and prior to October 5, 1992, will not be subject to the prohibition of this section, if, pursuant to the then existing overbuild or rural exceptions, the applications were allowed under the then existing cable/BRS cross-ownership prohibitions. Lease arrangements between cable operators and BRS entities for which a lease or firm agreement was signed after February 8, 1990, and prior to October 5, 1992, will not be subject to the prohibitions of this section, if, pursuant to the then existing rural and overbuild exceptions, the lease arrangements were allowed.

(3) The limitations on cable television ownership in this section do not apply to any cable operator in any franchise area in which a cable operator is subject to effective competition as determined under section 623(l) of the Communications Act.

[69 FR 72034, Dec. 10, 2004, as amended at 71 FR 35190, June 19, 2006]

§ 27.1203 EBS programming requirements.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, BRS and EBS licensees are authorized to provide fixed or mobile service, except aeronautical mobile service, subject to the technical requirements of subparts C and M of this part.

(b) Educational Broadband Service stations are intended primarily through video, data, or voice transmissions to further the educational mission of accredited public and private schools, colleges and universities providing a formal educational and cultural development to enrolled students. Authorized educational broadband channels must be used to further the educational mission of accredited schools offering formal educational courses to enrolled students.

(c) In furtherance of the educational mission of accredited schools, Educational Broadband Service stations may be used for:

(1) In-service training and instruction in special skills and safety programs, extension of professional training, informing persons and groups engaged in professional and technical activities of current developments in their particular fields, and other similar endeavors;

(2) Transmission of material directly related to the administrative activities of the licensee, such as the holding of conferences with personnel, distribution of reports and assignments, exchange of data and statistics, and other similar uses.

(d) Stations, including high-power EBS signal booster stations, may be licensed in the EBS as originating or relay stations to interconnect educational broadband fixed stations in adjacent areas, to deliver instructional and cultural material to, and obtain such material from, commercial and noncommercial educational television broadcast stations for use on the educational broadband system, and to deliver instructional and cultural material to, and obtain such material from, nearby terminals or connection points of closed circuit educational television systems employing wired distribution systems or radio facilities authorized under other parts of this chapter, or to deliver instructional and cultural material to any cable television system serving a receiving site or sites which would be eligible for direct reception of EBS signals under the provisions of § 27.1201.

[69 FR 72034, Dec. 10, 2004, as amended at 71 FR 35190, June 19, 2006]

§ 27.1206 Geographic Service Area.

(a) The Geographic Service Area (GSA) is either:

(1) The area for incumbent site-based licensees that is bounded by a circle having a 35 mile radius and centered at the station's reference coordinates, which was the previous PSA entitled to incumbent licensees prior to January 10, 2005, and is bounded by the chord(s) drawn between intersection points of the licensee's previous 35 mile PSA and those of respective adjacent market, co-channel licensees; or:

(2) The BTA that is licensed to the respective BRS BTA authorization holder subject to the exclusion of overlapping, co-channel incumbent GSAs as described in paragraph (a)(1) of this section.

(b) If the license for an incumbent BRS station cancels or is forfeited, the GSA area of the incumbent station shall dissolve and the right to operate in that area automatically reverts to the GSA licensee that held the corresponding BTA.

§ 27.1207 BTA license authorization.

(a) Winning bidders must file an application (FCC Form 601) for an initial authorization.

(b) Initial authorizations for BRS granted after January 1, 2008, shall be blanket licenses for all BRS frequencies identified in §27.5(i)(2) and based on the geographic areas identified in §27.1208. Blanket licenses cover all mobile and response stations.

(1) A station would be required to be individually licensed if

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under §1.1307 of this chapter;

(iii) The station would affect the radio quiet zones under §1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under §17.4 of this chapter.

[69 FR 72034, Dec. 10, 2004, as amended at 73 FR 26040, May 8, 2008]

§ 27.1208 BTA service areas.

Except for incumbent BRS licenses, BRS service areas are Basic Trading Areas (BTAs) or additional service areas similar to BTAs adopted by the Commission. BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39. The following are additional BRS service areas in places where Rand McNally has not defined BTAs: American Samoa; Guam; Gulf of Mexico Zone A; Gulf of Mexico Zone B; Gulf of Mexico Zone C; Northern Mariana Islands; Mayaguez/Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The boundaries of Gulf of Mexico Zone A are from an area twelve nautical miles from the shoreline at mean high tide on the north and east, to the limit of the Outer Continental Shelf to the south, and to longitude 91°00′ to the west. The boundaries of Gulf of Mexico Zone B are from an area twelve nautical miles from the shoreline at mean high tide on the north, to the limit of the Outer Continental Shelf to the south, to longitude 91°00′ to the east, and to longitude 94°00′ to the west. The boundaries of Gulf of Mexico Zone C are from an area twelve nautical miles from the shoreline at mean high tide on the north and west, to longitude 94°00′ to the east, and to a line 281 kilometers from the reference point at Linares, N.L., Mexico on the southwest. The Mayaguez/Aguadilla-Ponce, PR, service area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Maricao, Maunabo, Mayaguez, Moca, Patillas, Penuelas, Ponce, Quebradillas, Rincón, Sabana Grande, Salinas, San German, Santa Isabel, Villalba and Yauco. The San Juan service area consists of all other municipios in Puerto Rico.

[69 FR 72034, Dec. 10, 2004, as amended at 73 FR 26040, May 8, 2008]

§ 27.1209 Conversion of incumbent EBS and BRS stations to geographic area licensing.

(a) Any EBS or BRS station licensed by the Commission, other than BTA authorizations and facilities authorized pursuant to BTA authorizations, shall be considered an incumbent station.

(b) As of January 10, 2005, all incumbent EBS and BRS licenses shall be converted to a geographic area license. Pursuant to that geographic area license, such incumbent licensees may modify their systems provided the modified system complies with the applicable rules. The blanket license covers all fixed stations anywhere within the authorized service area, except as follows:

(1) A station would be required to be individually licensed if

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under §1.1307 of this chapter;

(iii) The station would affect the radio quiet zones under §1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under §17.4 of this chapter.

(c) The frequencies associated with incumbent authorizations that have been cancelled automatically or otherwise been recovered by the Commission will automatically revert to the applicable BTA licensee.

§ 27.1210 Remote control operation.

Licensed BRS/EBS stations may be operated by remote control without further authority.

§ 27.1211 Unattended operation.

Unattended operation of licensed BRS/EBS stations is permitted without further authority. An unattended relay station may be employed to receive and retransmit signals of another station provided that the transmitter is equipped with circuits which permit it to radiate only when the signal intended to be retransmitted is present at the receiver input terminals.

§ 27.1212 License term.

(a) BRS/EBS licenses shall be issued for a period of 10 years beginning with the date of grant.

(b) An initial BTA authorization shall be issued for a period of ten years from the date the Commission declared bidding closed in the MDS auction.

§ 27.1213 Designated entity provisions for BRS in Commission auctions commencing prior to January 1, 2004.

(a) *Eligibility for small business provisions.* For purposes of Commission auctions commencing prior to January 1, 2004 for BRS licenses, a small business is an entity that together with its affiliates has average annual gross revenues that are not more than $40 million for the preceding three calendar years.

(b) *Designated entities.* As specified in this section, designated entities that are winning bidders in Commission auctions commencing prior to January 1, 2004 for BTA service areas are eligible for special incentives in the auction process. See 47 CFR 1.2110.

(c) *Installment payments.* Small businesses and small business consortia may elect to pay the full amount of their winning bids in Commission auctions commencing prior to January 1, 2004 for BTA service areas in installments over a ten (10) year period running from the date that their BTA authorizations are issued.

(1) Upon issuance of a BTA authorization to a winning bidder in a Commission auction commencing prior to January 1, 2004 that is eligible for installment payments, the Commission will notify such eligible BTA authorization holder of the terms of its installment payment plan. For BRS, such installment payment plans will:

(i) Impose interest based on the rate of ten (10) year U.S. Treasury obligations at the time of issuance of the BTA authorization, plus two and one half (2.5) percent;

(ii) Allow installment payments for a ten (10) year period running from the date that the BTA authorization is issued;

(iii) Begin with interest-only payments for the first two (2) years; and

(iv) Amortize principal and interest over the remaining years of the ten (10) year period running from the date that the BTA authorization is issued.

(2) *Conditions and obligations.* See §1.2110(g)(4) of this chapter.

(3) *Unjust enrichment.* If an eligible BTA authorization holder that utilizes installment financing under this subsection seeks to partition, pursuant to applicable rules, a portion of its BTA containing one-third or more of the population of the area within its control in the licensed BTA to an entity not meeting the eligibility standards for installment payments, the holder must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of partition as a condition of approval.

(d) *Reduced upfront payments.* For purposes of Commission auctions commencing prior to January 1, 2004 for BRS licenses, a prospective bidder that qualifies as a small business, or as a small business consortia, is eligible for a twenty-five (25) percent reduction in the amount of the upfront payment otherwise required. To be eligible to bid on a particular BTA, a small business will be required to submit an upfront payment equal to seventy-five (75) percent of the upfront payment amount specified for that BTA in the public notice listing the upfront payment amounts corresponding to each BTA service area being auctioned.

(e) *Bidding credits.* For purposes of Commission auctions commencing prior to January 1, 2004 for BRS licenses, a winning bidder that qualifies as a small business, or as a small business consortia, may use a bidding credit of fifteen (15) percent to lower the cost of its winning bid on any of the BTA authorizations awarded in the Commission BRS auctions commencing prior to January 1, 2004.

(f) Short-form application certification; Long-form application or statement of intention disclosure. A BRS applicant in a Commission auction commencing prior to January 1, 2004 claiming designated entity status shall certify on its short-form application that it is eligible for the incentives claimed. A designated entity that is a winning bidder for a BTA service area(s) shall, in addition to information otherwise required, file an exhibit to either its initial long-form application for a BRS station license, or to its statement of intention with regard to the BTA, which discloses the gross revenues for each of the past three years of the winning bidder and its affiliates. This exhibit shall describe how the winning bidder claiming status as a designated entity satisfies the designated entity eligibility requirements, and must list and summarize all agreements that affect designated entity status, such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, which establish that the designated entity will have both de facto and de jure control of the entity. See 47 CFR 1.2110(i).

(g) *Records maintenance.* All holders of BTA authorizations acquired in a Commission auction commencing prior to January 1, 2004 that claim designated entity status shall maintain, at their principal place of business or with their designated agent, an updated documentary file of ownership and revenue information necessary to establish their status. Holders of BTA authorizations or their successors in interest shall maintain such files for a ten (10) year period running from the date that their BTA authorizations are issued. The files must be made available to the Commission upon request.

[69 FR 72034, Dec. 10, 2004, as amended at 71 FR 35190, June 19, 2006]

§ 27.1214 EBS spectrum leasing arrangements and grandfathered leases.

(a) A licensee in the EBS that is solely utilizing analog transmissions may enter into a spectrum leasing arrangement to transmit material other than the educational programming defined in § 27.1203(b) and (c) subject to the following conditions:

(1) Before entering into a spectrum leasing arrangement involving material other than educational programming on any one channel, the licensee must provide at least 20 hours per week of EBS educational programming (as defined in § 27.1203(b) and (c)) on that channel, except as provided in paragraphs (a)(2) and (a)(3) of this section. An additional 20 hours per week per channel must be strictly reserved for EBS use and not used for non-EBS purposes, or reserved for recapture by the EBS licensee for its EBS educational usage, subject to one year's advance, written notification by the EBS licensee to its lessee and accounting for all recapture already exercised, with no economic or operational detriment to the licensee. These hours of recapture are not restricted as to time of day or day of the week, but may be established by negotiations between the EBS licensee and the lessee. The 20 hours per channel per week EBS educational usage requirement and the recapture and/or reservation requirement of an additional 20 hours per channel

per week shall apply spectrally over the licensee's whole actual service area.

(2) For the first two years of operation, an EBS entity may enter into a spectrum leasing arrangement involving material other than educational programming if it provides EBS educational usage for at least 12 hours per channel per week, provided that the entity does not employ channel loading technology.

(3) The licensee may shift its requisite EBS educational usage onto fewer than its authorized number of channels, via channel mapping or channel loading technology, so that it can enter into a spectrum leasing arrangement involving full-time channel capacity on its EBS station and/or associated EBS booster stations, subject to the condition that it provide a total average of at least 20 hours per channel per week of EBS educational usage on its authorized channels. The use of channel mapping or channel loading consistent with the Rules shall not be considered adversely to the EBS licensee in seeking a license renewal. The licensee also retains the unabridgeable right to recapture, subject to six months' advance written notification by the EBS licensee to the spectrum lessee, an average of an additional 20 hours per channel per week, accounting for all recapture already exercised. Regardless of whether the licensee has educational receive sites within its GSA, the licensee may lease booster stations in the entire GSA, provided that the licensee maintains the unabridgeable right to ready recapture at least 40 hours per channel per week for EBS educational usage. The licensee may agree to the transmission of this recapture time on channels not authorized to it, but which are included in the wireless system of which it is a part. A licensee under this paragraph which enters into a spectrum leasing arrangement on any one of its channels to an operator may ''channel shift'' pursuant to and under the conditions of paragraph (d)(2) of this section.

(b) A licensee utilizing digital transmissions on any of its licensed channels may enter into a spectrum leasing arrangement to transmit material other than the educational programming defined in §27.1203(b) and (c), subject to the following conditions:

(1) The licensee must reserve a minimum of 5% of the capacity of its channels for educational uses consistent with §27.1203 paragraphs (b) and (c), and may not enter into a spectrum leasing arrangement involving this reserved capacity. In addition, before leasing excess capacity, the licensee must provide at least 20 hours per licensed channel per week of EBS educational usage. This 5% reservation and this 20 hours per licensed channel per week EBS educational usage requirement shall apply spectrally over the licensee's whole actual service area. However, regardless of whether the licensee has an educational receive site within its GSA served by a booster, the licensee may lease excess capacity without making at least 20 hours per licensed channel per week of EBS educational usage, provided that the licensee maintains the unabridgeable right to recapture on one months' advance notice such capacity as it requires over and above the 5% reservation to make at least 20 hours per channel per week of EBS educational usage.

(2) The licensee may shift its requisite EBS educational usage onto fewer than its authorized number of channels, via channel mapping or channel loading technology, and may shift its requisite EBS educational usage onto channels not authorized to it, but which are included in the wireless system of which it is a part (''channel shifting''), so that it can enter into a spectrum leasing arrangement involving full-time channel capacity on its EBS station, associated EBS booster stations, and/or EBS response stations and associated response station hubs, subject to the condition that it provide a total average of at least 20 hours per licensed channel per week of EBS educational usage. The use of channel mapping, channel loading, and/or channel shifting consistent with the Rules shall not be considered adversely to the EBS licensee in seeking a license renewal. In addition, an EBS entity receiving interference protection will continue to receive such protection if it elects to swap channels with another EBS or BRS station.

(c) All spectrum leasing arrangements involving EBS spectrum must afford the EBS licensee an opportunity to purchase or to lease the dedicated or common EBS equipment used for educational purposes, or comparable equipment in the event that the spectrum leasing arrangement is terminated.

(d) All leases of current EBS spectrum entered into prior to January 10, 2005 and in compliance with leasing rules formerly contained in part 74 of this chapter may continue in force and effect, notwithstanding any inconsistency between such leases and the rules applicable to spectrum leasing arrangements set forth in this chapter. Such leases entered into pursuant to the former part 74 rules of this chapter may be renewed and assigned in accordance with the terms of such lease. All spectrum leasing arrangements leases entered into after January 10, 2005, pursuant to the rules set forth in part 1 and part 27 of this chapter, must comply with the rules in those parts.

(e) The maximum permissible term of an EBS spectrum leasing arrangement entered into on or after July 19, 2006 (including the initial term and all renewal terms that commence automatically or at the sole option of the lessee) shall be 30 years. In furtherance of the educational purposes for which EBS spectrum is primarily allocated, any spectrum leasing arrangement in excess of 15 years that is entered into on or after July 19, 2006 must include terms which provide the EBS licensee on the 15th year and every 5 years thereafter, with an opportunity to review its educational use requirements in light of changes in educational needs, technology, and other relevant factors and to obtain access to such additional services, capacity, support, and/or equipment as the parties shall agree upon in the spectrum leasing arrangement to advance the EBS licensee's educational mission.

[69 FR 72034, Dec. 10, 2004, as amended at 71 FR 35190, June 19, 2006; 73 FR 26041, May 8, 2008]

§ 27.1215 BRS grandfathered leases.

(a) All leases of current BRS spectrum entered into prior to January 10, 2005 and in compliance with rules formerly contained in part 21 of this chapter may continue in force and effect, notwithstanding any inconsistency between such leases and the rules applicable to spectrum leasing arrangements set forth in this chapter. Such leases entered into pursuant to the former part 21 of this chapter may be renewed and assigned in accordance with the terms of such lease. All spectrum leasing arrangements leases entered into after January 10, 2005, pursuant to the rules set forth in part 1 and part 27 of this chapter must comply with the rules in those parts.

§ 27.1216 Grandfathered E and F group EBS licenses.

(a) Except as noted in paragraph (b) of this section, grandfathered EBS licensees authorized to operate E and F group co-channel licenses are granted a geographic service area (GSA) on July 19, 2006. The GSA is the area bounded by a circle having a 35 mile radius and centered at the station's reference coordinates, and is bounded by the chord(s) drawn between intersection points of that circle and those of respective adjacent market, co-channel licensees.

(b) If there is more than 50 percent overlap between the calculated GSA of a grandfathered EBS license and the protected service area of a co-channel BRS license, the licensees shall not be immediately granted a geographic service area. Instead, the grandfathered EBS license and the co-channel BRS licensee must negotiate in good faith to reach a solution that accommodates the communication needs of both licensees. If the co-channel licensees reach a mutually agreeable solution on or before October 17, 2006, then the GSA of each co-channel license shall be as determined pursuant to the agreement of the parties. If a mutually agreeable solution between co-channel licensees is not reached on or before October 17, 2006, then each co-channel licensee shall receive a GSA determined pursuant to paragraph (a) of this section and § 27.1206(a).

[71 FR 35191, June 16, 2006]

§ 27.1217 Competitive bidding procedures for the Broadband Radio Service.

Mutually exclusive initial applications for BRS licenses in the 2500–2690 MHz band are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

[73 FR 26041, May 8, 2008]

§ 27.1218 Designated entities.

(a) *Eligibility for small business provisions.* (1) A small business is an entity that, together with all attributed parties, has average gross revenues that are not more than $40 million for the preceding three years.

(2) A very small business is an entity that, together with all attributed parties, has average gross revenues that are not more than $15 million for the preceding three years.

(3) An entrepreneur is an entity that, together with all attributed parties, has average gross revenues that are not more than $3 million for the preceding three years.

(b) *Bidding credits.* (1) A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses, may use a bidding credit of 15 percent, as specified in § 1.2110(f)(2)(iii) of this chapter, to lower the cost of its winning bid on any of the licenses in this subpart.

(2) A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses, may use a bidding credit of 25 percent, as specified in § 1.2110(f)(2)(ii) of this chapter, to lower the cost of its winning bid on any of the licenses in this subpart.

(3) A winning bidder that qualifies as an entrepreneur, as defined in this section, or a consortium of entrepreneurs, may use a bidding credit of 15 percent, as specified in § 1.2110(f)(2)(i) of this chapter, to lower the cost of its winning bid on any of the licenses in this subpart.

[73 FR 26041, May 8, 2008]

TECHNICAL STANDARDS

§ 27.1220 Transmission standards.

The width of a channel in the LBS and UBS is 5.5 MHz, with the exception of BRS channels 1 and 2 which are 6.0 MHz. The width of all channels in the MBS is 6 MHz. However, the licensee may subchannelize its authorized bandwidth, provided that digital modulation is employed and the aggregate power does not exceed the authorized power for the channel. The licensee may also, jointly with other licensees, transmit utilizing bandwidth in excess of its authorized bandwidth, provided that digital modulation is employed, all power spectral density requirements set forth in this part are met and the out-of-band emissions restrictions set forth in § 27.53 are met at the edges of the channels employed.

§ 27.1221 Interference protection.

(a) Interference protection will be afforded to BRS and EBS on a station-by-station basis based on the heights of the stations in the LBS and UBS and also on height benchmarking, although the heights of antennas utilized are not restricted.

(b) *Height Benchmarking.* Height benchmarking is defined for pairs of base stations, one in each of two proximate geographic service areas (GSAs). The height benchmark, which is defined in meters (hb_m) for a particular base station relative to a base station in another GSA, is equal to the distance, in kilometers, from the base station along a radial to the nearest point on the GSA boundary of the other base station squared (D_{km}^2) and then divided by 17. That is, $hb_{(m)} = D_{km}^2/17$. A base station antenna will be considered to be within its applicable height benchmark relative to another base station if the height in meters of its centerline of radiation above average elevation (HAAE) calculated along the straight line between the two base stations in accordance with §§ 24.53(b) and (c) of this chapter does not exceed the height benchmark (hb_m). A base station antenna will be considered to exceed its applicable height benchmark relative to another base station if the HAAE of its centerline of radiation calculated along the straight line between the two

base stations in accordance with §§ 24.53(b) and (c) of this chapter exceeds the height benchmark (hb_m).

(c) *Protection for Receiving Antennas not Exceeding the Height Benchmark.* Absent agreement between the two licensees to the contrary, if a transmitting antenna of one BRS/EBS licensee's base station exceeds its applicable height benchmark and such licensee is notified by another BRS/EBS licensee that it is generating an undesired signal level in excess of −107 dBm/5.5 megahertz at the receiver of a co-channel base station that is within its applicable height benchmark, then the licensee of the base station that exceeds its applicable height benchmark shall either limit the undesired signal at the receiver of the protected base station to −107dBm/5.5 megahertz or less or reduce the height of its transmission antenna to no more than the height benchmark. If the interfering base station has been modified to increase the EIRP transmitted in the direction of the protected base station, it shall be deemed to have commenced operations on the date of such modification. Such corrective action shall be completed no later than:

(i) 24 hours after receiving such notification, if the base station that exceeds its height benchmark commenced operations after the station that is within its applicable height benchmark; or

(ii) 90 days after receiving such notification, if the base station that exceeds its height commenced operations prior to the station that is within its applicable height benchmark. For purposes of this section, if the interfering base station has been modified to increase the EIRP transmitted in the direction of the victim base station, it shall be deemed to have commenced operations on the date of such modification.

(d) *No Protection from a Transmitting Antenna not Exceeding the Height Benchmark.* The licensee of a base station transmitting antenna less than or equal to its applicable height benchmark shall not be required pursuant to paragraph (c) of this section to limit that antennas undesired signal level to −107dBm/5.5 megahertz or less at the receiver of any co-channel base station.

(e) *No Protection for a Receiving-Antenna Exceeding the Height Benchmark.* The licensee of a base station receive antenna that exceeds its applicable height benchmark shall not be entitled pursuant to paragraph (c) of this section to insist that any co-channel base station limit its undesired signal level to −107dBm/5.5 megahertz or less at the receiver.

(f) *Information Exchange.* A BRS/EBS licensee shall provide the geographic coordinates, the height above ground level of the center of radiation for each transmit and receive antenna, and the date transmissions commenced for each of the base stations in its GSA within 30 days of receipt of a request from a co-channel BRS/EBS licensee with an operational base station located in a proximate GSA. Information shared pursuant to this section shall not be disclosed to other parties except as required to ensure compliance with this section.

[69 FR 72034, Dec. 10, 2004, as amended at 70 FR 1190, Jan. 6, 2005; 71 FR 35191, June 19, 2006; 73 FR 26041, May 8, 2008]

§ 27.1222 Operations in the 2568–2572 and 2614–2618 bands.

All operations in the 2568–2572 and 2614–2618 MHz bands shall be secondary to adjacent-channel operations. Stations operating in the 2568–2572 and 2614–2618 MHz must not cause interference to licensees in operation in the LBS, MBS, and UBS and must accept any interference from any station operating in the LBS, MBS, and UBS in compliance with the rules established in this subpart. Stations operating in the 2568–2572 and 2614–2618 bands may cause interference to stations in operation in the LBS, MBS, and UBS if the affected licensees consent to such interference.

POLICIES GOVERNING THE TRANSITION OF THE 2500–2690 MHZ BAND FOR BRS AND EBS

§ 27.1230 Conversion of the 2500–2690 MHz band.

BRS and EBS licensees in the 2500–2690 MHz band on the pre-transition A-I Channels will be transitioned from the frequencies assigned to them under § 27.5(i)(1) to the frequencies assigned to

them under § 27.5(i)(2). The transition, which will be undertaken by one or more proponent(s), will occur in the following five phases: initiating the transition process (see § 27.1231), planning the transition (see § 27.1232), reimbursing transition costs (see §§ 27.1233 and 27.1237–1239), terminating existing operations in transitioned markets that do not comport with § 27.5(i)(2) (see § 27.1234), and filing the post-transition notification (see § 27.1235). Licensees may also self-transition (see § 27.1236).

[71 FR 35191, June 19, 2006]

§ 27.1231 Initiating the transition.

(a) *Transition areas.* Unless paragraph (b) of this section applies, the transition will occur by Basic Trading Area (BTA). BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39, that identifies 487 BTAs based on the 50 States; it also includes the following additional BTA-like areas: American Samoa; Guam; Northern Mariana Islands; Mayaguez/Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands, for a total of 493 BTAs. The Mayaguez/Aguadilla-Ponce BTA-like area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Maricao, Maunabo, Mayaguez, Moca, Patillas, Penuelas, Ponce, Quebradillas, Rincon, Sabana Grande, Salinas, San German, Santa Isabel, Villalba, and Yauco. The San Juan BTA-like area consists of all other municipios in Puerto Rico. The BTA associated with the Gulf of Mexico will not be transitioned.

(b) *Overlapping GSAs.* When a Geographic Service Area (GSA) overlaps two or more BTAs:

(1) The proponents of the adjacent BTAs may agree on how to transition a GSA that overlaps their respective BTAs.

(2) If an agreement has not been reached between or among the proponents of the adjacent BTAs:

(i) Each proponent must transition all of the facilities associated with the GSA that are inside the GSA and inside the proponent's BTA if all of the adjacent BTAs are transitioning; or

(ii) The proponent of the BTA that is transitioning must transition all of the facilities associated with the GSA that are within the GSA but outside the BTA, if the adjacent BTA is not transitioning.

(c)(1) *Proponent(s).* The proponent or co-proponent must:

(i) Be a BRS or EBS licensee or BRS or EBS lessee;

(ii) Send a Pre-Transition Data Request (see paragraph (d) of this section) and a Transition Notice (see paragraph (e) of this section) to every BRS and EBS licensee in the BTA, using the contact information in the Commission's Universal Licensing System; and

(iii) Be first to file an Initiation Plan (see paragraph (f) of this section) with the Secretary of the Commission.

(2) Before filing an Initiation Plan, BRS or EBS licensees or BRS or EBS lessees may agree to be co-proponents. After the Initiation Plan is filed the proponent may accept a co-proponent at its sole discretion.

(d) *Pre-Transition Data Request.* The Pre-Transition Data Request must include the potential proponent's full name, postal mailing address, contact person, e-mail address, and phone and fax numbers.

(1) BRS and EBS licensees that receive a Pre-Transition Data Request must provide the following information to the potential proponent within 45 days of receiving the Pre-Transition Data Request:

(i) The BRS or EBS licensee's full name, postal mailing address, contact person, e-mail address, and phone and fax number.

(ii) The location (by street address and by geographic coordinates) of every constructed EBS receive site that, as of the date of receipt of the Pre-Transition Data Request, is entitled to a replacement downconverter (see § 27.1233(a)). The response must:

(A) Specify whether the downconverting antenna is mounted on a structure attached to the building or on a free-standing structure;

(B) Specify the approximate height above ground level of the downconverting antenna; and

(C) Specify, if known, the adjacent channel D/U ratio that can be tolerated by any receiver(s) at the receive site.

(iii) The location (street address and geographic coordinates) of the main station or booster serving each EBS receive site entitled to protection, including:

(A) The make and model of the antenna for that main station or booster, along with the radiation pattern if it is not included within the Commission's database;

(B) The ground elevation, above mean sea level (AMSL), of the building or antenna supporting structure on which the main station or booster transmission antenna is installed;

(C) The height above ground level (AGL) of the center of radiation of the transmission antenna;

(D) The orientation of the main lobe of the transmission antenna;

(E) Any mechanical beamtilt or electrical beamtilt not reflected in the radiation pattern provided or included within the Commission's database;

(F) The bandwidth of each channel or subchannel, the emission type for each channel or subchannel, and the EIRP measured in the main lobe for each channel or subchannel; and

(G) The make and model of the receive antenna installed at that site, along with the radiation pattern if it is not included within the Commission's database.

(iv) The number and identification of EBS video programming or data transmission tracks the EBS licensee is entitled to receive in the MBS and whether the EBS licensee will accept fewer tracks in the MBS (see § 27.1233(b)).

(v) Whether it will seek or has sought a waiver from the Commission as a Multichannel Video Programming Distributor (MVPD).

(2) BRS and EBS licensees that do not respond to the Pre-Transition Data Request within 45 days of its receipt may not object to the Transition Plan.

(e) *The Transition Notice.* The potential proponent(s) must send a Transition Notice to all BRS and EBS licensees in the BTA(s) being transitioned. The potential proponent(s) must include the following information in the Transition Notice:

(1) The potential proponent(s)'s full name; postal mailing address, contact person, e-mail address, and phone and fax numbers;

(2) The identification of the BRS and EBS licensees that will be transitioned;

(3) Copies of the most recent response to the Pre-Transition Data Request for each participant in the process; and

(4) A certification that the potential proponent(s) has the funds available to pay the reasonably expected costs of the transition based on the information in the Pre-Transition Data Request.

(f) *Initiation Plan.* To initiate a transition, a potential proponent(s) must submit an Initiation Plan to the Commission at the Office of the Secretary in Washington, DC on or before January 21, 2009.

(1) An Initiation Plan must contain the following information:

(i) A list of the BTA(s) that the proponent(s) is transitioning;

(ii) A list by call sign of all of the BRS and EBS licensees in the BTA(s) that are being transitioned;

(iii) A ''best estimate'' of when the transition will be completed;

(iv) A statement indicating that an agreement has been concluded with the proponent(s) of the adjoining or adjacent BTA(s) when a licensee or licensees in an adjacent or adjoining BTA must be transitioned to avoid interference to licensees in the BTA being transitioned, or in lieu of an agreement, the proponent(s) may provide an alternative means of transitioning the licensees in an adjacent or adjoining BTA;

(v) A statement indicating that an agreement has been concluded with another proponent(s) on how a BTA will be transitioned when there are two or more proponents seeking to transition the same BTA and they agree to be co-proponents before the Initiation Plan is filed, and a statement that identifies the specific portion of the BTA each proponent will be responsible for transitioning; and

(vi) A certification that the proponent or joint proponents have the funds available to pay the reasonable expected costs of the transition based on the information contained in the

Pre-Transition Data Request (see paragraph (d) of this section).

(2) A proponent, at its own discretion, may withdraw from transitioning a BTA by notifying the Commission and all affected BRS and EBS licensees in the BTA that it is withdrawing the Initiation Plan.

(3) A proponent may amend an Initiation Plan after it has been filed with the Commission to correct minor or inadvertent errors.

(g) *MVPD waiver requests.* MVPD licensees that seek to opt-out of the transition must seek a waiver within 60 days after the proponent files the Initiation Plan or on or before April 30, 2007, whichever occurs first.

[71 FR 35191, June 19, 2006, as amended at 73 FR 26041, May 8, 2008]

§ 27.1232 Planning the transition.

(a) *The Transition Planning Period.* The Transition Planning Period is a 90-day period that commences on the day after the proponent(s) files the Initiation Plan with the Commission.

(b) *The Transition plan.* The proponent(s) must provide to each BRS and EBS licensee within a BTA, a Transition Plan no later than 30 days prior to the conclusion of the Transition Planning Period.

(1) The Transition Plan must:

(i) Identify the call signs of the stations that are transitioning;

(ii) Identify the specific channels that each licensee will receive following the transition;

(iii) Identify the receive sites at which replacement downconverters will be installed (see § 27.1233(a));

(iv) Identify the video programming and data transmission tracks that will be migrated to the MBS and provide for the MBS channels to be authorized to operate with transmission parameters that are substantially similar to those of the licensee's operation prior to transition (see § 27.1233(b));

(v) Identify the technical configuration of the MBS facilities;

(vi) Identify the approximate time line for effectuating the transition, which, unless dispute resolution procedures are used, may not exceed 18 months from the conclusion of the Transition Planning Period;

(vii) Provide for the establishment of an escrow or other appropriate mechanism for ensuring completion of the transition in accordance with the Transition Plan.

(2) The Transition Plan may provide for interruptions of EBS transmissions, so long as those interruptions are limited to a period of less than seven days at any reception site. The proponent(s) must coordinate with each EBS licensee to minimize the extent of any disruption.

(3) The Transition Plan may provide for the shifting of an EBS licensee's program to alternative channels. Such shifting may not be considered an interruption, if the EBS licensee's receive sites are equipped to receive and internally distribute the channel to which the programming is shifted.

(4) The Transition Plan may provide for the installation of an appropriate filter on an MBS transmitter if the proponent(s) determines that the installation of a filter will mitigate interference from transmissions in the MBS to operations outside the MBS.

(c) *Counterproposals.* No later than 10 days before the conclusion of the Transition Planning Period, affected BRS and EBS licensees may submit a counterproposal to the proponent(s) if they believe that the Transition Plan is unreasonable. The proponent(s) may:

(1) Accept the counterproposal, modify the Transition Plan accordingly, and send the modified Transition Plan to all EBS and BRS licensees in the BTA;

(2) Invoke dispute resolution procedures for a determination of whether the Transition Plan is reasonable and take no action until a determination of reasonableness is made; or

(3) Invoke dispute resolution procedures for a determination of whether the Transition Plan is reasonable, but may implement the transition immediately.

(d) *Safe harbors.* An offer by a proponent(s) shall be reasonable if it meets one of the following safe harbors:

(1) *Safe harbor No. 1.* This safe harbor applies when the default high-power channel assigned to each channel group

is authorized to operate after the transition with the same transmission parameters (coordinates, antenna pattern, height of center radiation, EIRP) as the downstream facilities before the transition. If the proponent(s) does not propose a change in the geographic coordinates of the facilities (other than as necessary to conform the actual location with the Commission's Antenna Survey Branch database), the proponent may also propose the following to the extent consistent with this subpart:

(i) An increase in the height of the center of radiation of the transmission antenna or a decrease in such height of no more than 8 meters (provided that such change does not result in an increase in antenna support structure lease costs to the EBS licensee and the consent of the owner of the antenna support structure is obtained).

(ii) A change in the EIRP of the transmission system of up to 1.5 dB in any direction.

(iii) Digitization, precision frequency offset, or other upgrades to the EBS transmission or reception systems that allow the proponent(s) to invoke more advantageous interference protection requirements applicable to upgraded systems.

(2) *Safe harbor No. 2.* This safe harbor applies when an EBS licensee has channel-shifted its single video programming or data transmission track to spectrum licensed to another licensee. Under §27.5(i)(2), that track must be on the high-power channel licensed to the EBS licensee upon completion of the transition. For example, before the transition, an A Group licensee might have shifted its EBS video programming to channel C1. If one of the pre-transition A Group channels is licensed with technical parameters substantially similar to those of pre-transition channel C1, the Transition Plan may provide for high-power channel A4 to be licensed with the same technical parameters as the pre-transition channel C1. However, if the pre-transition A Group channels are licensed to operate with technical parameters materially different from those of pre-transition channel C1, the proponent(s) may:

(i) Arrange a channel swap with the licensee of the C Group so that the A Group licensee will receive high-power channel C4 (which will automatically be licensed with the same transmission parameters as the pre-transition channel C1) in exchange for channel A4.

(ii) Arrange for high-power channel A4 to operate with transmission parameters substantially similar to those of the pre-transition channel C1 (*see* paragraph (d)(1) of this section).

(3) *Safe harbor No. 3.* This safe harbor applies when a four-channel group is shared among multiple licensees in a given geographic area. Absent an agreement otherwise, a proponent may:

(i) Secure a 6 MHz MBS channel for each licensee in exchange for the non-MBS channels assigned to the group. Following the channel swap(s) necessary to secure those additional MBS channels, the Transition Plan can provide for the licensing of the remaining channels in the LBS, UBS, and Guard Bands on a pro rata basis (with channel(s) in each segment being disaggregated when and if necessary to provide each with its pro rata share of the spectrum in each segment);

(ii) Provide for pro rata segmentation of the default MBS channel for the group, provided that the proponent commits to provide each of the licensees with the technology necessary for its EBS video programming or data transmissions to be digitized, transmitted and received utilizing the provided bandwidth. The non-MBS channels would be divided among the sharing licensees on a pro rata basis (with channel(s) in each segment being disaggregated when and if necessary to provide each with its pro rata share of the spectrum in each segment); or

(iii) Assign the default MBS channel assigned to the channel group to one of the licensees, if that licensee is the only one that elects to migrate video programming or data transmission tracks to the MBS. The remaining spectrum assigned to the group may be allocated among the licensees on a pro rata basis, with the 6 MHz in the MBS counting against that licensee's portion. To the extent necessary, the non-MBS spectrum can be disaggregated when and if necessary to provide each with its pro rata share of the spectrum in each segment. If the proponent chooses to effectuate a channel swap to

provide more than one channel in the MBS, the remaining channels assigned to the group (after considering that one or more LBS/UBS channels and associated Transition Band channels will have been swapped away to provide the additional MBS channel) can be allocated among the licensees on a pro rata basis (with channel(s) in each segment being disaggregated when and if necessary to provide each with its pro rata share of the spectrum in each segment).

(4) *Safe harbor No. 4.* This safe harbor applies when an EBS licensee uses one or more of its channels for studio-to-transmitter links. The proponent may provide for one of the following options:

(i) The use of the LBS and/or UBS band for the point-to-point transmission of the EBS video or data (through superchannelization of the licensee's contiguous LBS or UBS channels), provided the proponent commits to retune the existing point-to-point equipment to operate on those channels or to replace the existing equipment with new equipment tuned to operate on those channels and the proposal complies with the LBS/UBS technical and interference protection rules;

(ii) The migration of the EBS programming to the MBS by retuning the existing point-to-point equipment to operate in the MBS or replacing it with equipment tuned to operate in the MBS; or

(iii) The replacement of the point-to-point link with point-to-point equipment licensed to the EBS licensee in alternative spectrum, so long as the replacement facilities meet the definition of ''comparable facilities'' set out in § 101.75(b) of this chapter.

[69 FR 72034, Dec. 10, 2004, as amended at 71 FR 35192, June 19, 2006]

§ 27.1233 Reimbursement costs of transitioning.

(a) *Replacement downconverters.* The proponent(s) must install at every eligible EBS receive site a downconverter designed to minimize the reception of signals from outside the MBS.

(1) An EBS receive site is eligible to be replaced if:

(i) A reception system was installed at that site on or before the date the EBS licensee receives its Pre-Transition Data Request (see § 27.1231(d));

(ii) The reception system was installed by or at the direction of the EBS licensee;

(iii) The reception system receives EBS programming under § 27.1203(b) and (c) or is located at a cable television system headend and the cable system relays educational or instructional programming for an EBS licensee; and

(iv) It is within the licensee's 35-mile radius GSA.

(2) Replacement downconverters must meet the following minimum technical requirements:

(i) The downconverter's input frequency range (the ''in-band frequencies'') must be 2572 MHz to 2614 MHz and output frequency range must be 294 MHz to 336 MHz;

(ii) The downconversion process must not invert frequencies;

(iii) The nominal gain of the downconverter must be 32 dB, or greater;

(iv) The downconverter must include filtering prior to the first amplifier that attenuates frequencies below 2500 MHz and above 2705 MHz by at least 25 dB;

(v) The downconverter must have an out-of-band input 3rd order intercept point (input IP3) of at least +9 dBm, where out-of-band is defined as all frequencies below 2566 MHz and all frequencies above 2620 MHz;

(vi) The downconverter must have a typical noise figure of no greater than 3.5 dB and a worst case noise figure of no greater than 4.5 dB across all in-band frequencies and across its entire intended operating temperature range;

(vii) The downconverter must not introduce a delta group delay of more than 20 nanoseconds for digital operations or 100 nanoseconds for analog operations over any individual six megahertz MBS channel.

(b) *Migration of Video Programming and Data Transmission Track.* (1) The proponent(s) must provide, at its cost, to each EBS licensee that intends to continue downstream high-power, high-site educational video programming or data transmission services, with one

programming track on the MBS channels for each EBS video or data transmission track the licensee is transmitting on a simultaneous basis before the transition.

(i) To be eligible for migration, a program track must contain EBS programming that complies with § 27.1203 (b) and (c).

(ii) The proponent(s) must pay only the costs of migrating programming tracks being transmitted on December 31, 2002 or within six months prior thereto.

(2) The proponent(s) must migrate each eligible programming track to spectrum in the MBS that will be licensed to the affected licensee at the conclusion of the transition.

(3) After the transition, the desired-to-undesired signal level ratio at each of the receive sites securing a replacement downconverter must satisfy the following criteria:

(i) *Cochannel D/U Ratio*. (A) When the post-transition desired signal is transmitted using analog modulation, the actual cochannel D/U ratio measured at the output of the reception antenna must be at least the lesser of 45 dB or the actual pre-transmission D/U ratio less 1.5 dB.

(B) When the post-transition desired signal will be transmitted using digital modulation, the actual cochannel D/U ratio measured at the output of the reception antenna must be at least the lesser of 32 dB or the pre-transition D/U ratio less 1.5 dB.

(C) Where in implementing the Transition Plan, the proponent(s) deploys precise frequency offset in an analog system, the minimum cochannel D/U ratio is reduced to 38 dB, provided that the transmitters have or are upgraded pursuant to the Transition Plan to have the appropriate ''plus,'' ''zero,'' or ''minus'' 10,010 Hertz precision frequency offset with a ±3 Hertz (or better) stability.

(ii) *Adjacent Channel D/U Ratio*. The actual adjacent channel D/U must equal or exceed the lesser of 0 dB or the actual pre-transmission D/U ratio. However, in the event that the receive site uses receivers or is upgraded by the proponent(s) as part of the Transition Plan to use receivers that can tolerate negative adjacent channel D/U ratios, the actual adjacent channel D/U ratio at such receive site must equal or exceed –10 dB. Provided that the receive site receiver is not upgraded and cannot tolerate –10 dB, the adjacent channel D/U ratio would be 0dB.

[69 FR 72034, Dec. 10, 2004, as amended at 71 FR 35193, June 19, 2006]

§ 27.1234 Terminating existing operations in transitioned markets.

Licensees may discontinue operations during the transition.

§ 27.1235 Post-transition notification.

The proponent(s) must certify to the Commission at the Office of the Secretary, Washington, DC, that the Transition Plan has been fully implemented.

(a) The notification must provide the identification of the licensees that have transitioned to the band plan in § 27.5(i)(2) and the specific frequencies on which each licensee is operating.

(b) For each station in the MBS, the notification must provide the following information:

(1) The station coordinates,

(2) The make and model of each antenna,

(3) The horizontal and vertical pattern of the antenna;

(4) EIRP of the main lobe;

(5) Orientation;

(6) Height of antenna center of radiation;

(7) Transmitter output power;

(8) All line and combiner losses.

(c) The proponent(s) must provide copies of the post-transition notice to all parties of the transition.

(d) A BRS or EBS licensee must file any objection to the post-transition notification within 30 days from the date the post-transition notification is placed on Public Notice.

[69 FR 72034, Dec. 10, 2004, as amended at 71 FR 35193, June 19, 2006]

§ 27.1236 Self-transitions.

(a) If an Initiation Plan is not filed on or before January 21, 2009 for a BTA, BRS and EBS licensees in that BTA may self-transition by relocating to their default channel locations specified in § 27.5(i)(2) and complying with §§ 27.50(h), 27.53, 27.55 and 27.1221.

(b) To self-transition, a BRS or EBS licensee must:

(1) Notify the Secretary of the Commission on or before April 21, 2009 that it will self-transition (see paragraph (a) of this section);

(2) Send a Self-Transition Notification (see paragraph (c) of this section) to other BRS and EBS licensees in the BTA where the self-transitioning licensee's GSA geographic center point is located that it is self-transitioning;

(3) Notify other licensees whose GSAs overlap with the self-transitioning licensee that it is self-transitioning.

(4) Address interference concerns with other BRS and EBS licensees in the BTA that are also self-transitioning;

(5) File a modification application with the Commission, and

(6) Complete the self-transition on or before October 20, 2010.

(c) *Self-Transition Notification.* The Self-Transition Notification must include the EBS licensee's full name, postal mailing address, contact person, e-mail address, and phone and fax numbers. A self-transitioning EBS licensee must provide the following information to all BRS and EBS licensees located in the BTA where the self-transitioning licensees GSA geographic center point is located:

(1) The location (by street address and by geographic coordinates) of every constructed EBS receive site that, as of the date the Self-Transition Notification is sent, is entitled to a replacement downconverter (see § 27.1233(a)). The response must:

(i) Specify whether the downconverting antenna is mounted on a structure attached to the building or on a free-standing structure;

(ii) Specify the approximate height above ground level of the downconverting antenna; and

(iii) Specify, if known, the adjacent channel D/U ratio that can be tolerated by any receiver(s) at the receive site.

(2) The location (street address and geographic coordinates) of the main station or booster serving each EBS receive site entitled to protection, including:

(i) The make and model of the antenna for that main station or booster, along with the radiation pattern if it is not included within the Commission's database;

(ii) The ground elevation, above mean sea level (AMSL), of the building or antenna supporting structure on which the main station or booster transmission antenna is installed;

(iii) The height above ground level (AGL) of the center of radiation of the transmission antenna;

(iv) The orientation of the main lobe of the transmission antenna;

(v) Any mechanical beamtilt or electrical beamtilt not reflected in the radiation pattern provided or included within the Commission's database;

(vi) The bandwidth of each channel or subchannel, the emission type for each channel or subchannel, and the EIRP measured in the main lobe for each channel or subchannel; and

(vii) The make and model of the receive antenna installed at that site, along with the radiation pattern if it is not included within the Commission's database.

(3) The number and identification of EBS video programming or data transmission tracks the EBS licensee is entitled to receive in the MBS (see § 27.1233(b)).

[71 FR 35193, June 19, 2006, as amended at 73 FR 26042, May 8, 2008]

§ 27.1237 Pro rata allocation of transition costs.

(a) *Self-transitions.* EBS licensees that self-transition may seek reimbursement for their costs to replace eligible downconverters (see § 27.1233(a)) and to migrate video programming and data transmission tracks (see § 27.1233(b)) from BRS licensees and lessees, EBS lessees, and commercial EBS licensees in the BTA where the center point of the EBS licensee's GSA is located. In addition, BRS licensees and lessees, EBS lessees, and commercial EBS licensees in the LBS or UBS must reimburse the self-transitioning EBS licensee a pro rata share of the eligible costs of transitioning EBS licensees, based on the formula in paragraph (c) of this section. Eligible costs are listed in § 27.1238.

(b) *Proponent-driven transitions.* BRS licensees and lessees, entities that lease EBS spectrum for a commercial purpose, and commercial EBS licensees

must pay their own transition costs. In addition, except for MVPD operators that opt-out of the transition, BRS licensees and lessees, EBS lessees, and commercial EBS licensees in the LBS or UBS must reimburse the proponent a pro rata share of the eligible costs of transitioning EBS licensees, based on the formula in paragraph (c) of this section. Eligible costs are listed in § 27.1238.

(c) *Formula.* The pro rata share shall be based on the following formula:

$$R = \frac{L \times LP}{T \times TP}$$

(1) R equals the pro rata share;

(2) L equals the amount of spectrum used by a BRS licensee or lessee or commercial EBS licensee or lessee to provide a commercial service, either directly or through a lease agreement with an EBS or BRS licensee;

(3) T equals the total amount of spectrum licensed or leased for commercial purposes in the BTA;

(4) LP equals the population of the geographic service area or BTA served by the BRS licensee or lessee or commercial EBS licensee or lessee based on the data in the 2000 United States Census; and

(5) TP equals the population of the BTA based on the data in the 2000 United States Census.

[71 FR 35193, June 19, 2006]

§ 27.1238 Eligible costs.

(a) The costs listed in paragraphs (b) through (f) of this section are eligible costs.

(b) *Pre-transition costs:*

(1) Engineering/Consulting

(i) Evaluation of equipment;

(ii) RX site identification;

(iii) EBS Programming plan covering the BTA;

(iv) Market Analysis (MHz per POP Study);

(v) RF study (interference analysis); and

(vi) Transition Plan creation and support;

(2) Project management (may be sourced external);

(3) Filing fees;

(4) Legal fees;

(5) Site acquisition fees-contractor; and

(6) Arbitrator fee;

(c) *Transmission facility—analog conversion costs:*

(1) Transmitter upgrading or retuning;

(2) Combiner re-tuning or new;

(3) Power divider/circulator adjacent channel combiner hardware;

(4) STL/fiber relocation;

(5) Miscellaneous material costs (including cabling and connectors);

(6) Contract labor:

(i) Tower;

(ii) Building modifications;

(iii) Electrical/HVAC; and

(iv) Mechanical

(7) Engineering:

(i) Structural; and

(ii) Pathway Interference Analysis.

(8) Equipment disposal/shipping

(9) Program Management (third party or internal costs to manage the BTA conversion); and

(10) Travel and Per Diem Cost.

(d) *Transmission facility-digital conversion costs:*

(1) New transmitter or retuning;

(2) Digital compression equipment-TX site (including encoders, controller, and software);

(3) Combiners-new or retune;

(4) Power divider/circulator adjacent channel combiner hardware;

(5) Cabinets, cabling, feedline and connectors;

(6) STL—fiber digital upgrade;

(7) Installation cost due to adding additional broadcast antenna (4 or more digital channels required);

(8) Contract labor:

(i) Tower;

(ii) Building modifications;

(iii) Electrical/HVAC; and

(iv) Mechanical.

(9) Proof of performance testing (may be contracted);

(10) Engineering:

(i) Structural; and

(ii) Path engineering analysis.

(11) Equipment disposal/shipping;

(12) Training;

(13) Program management (third party or internal costs to manage BTA conversion);

(14) Travel and per diem costs.

(e) *Qualified receive-sites only-modifications (analog and digital):*

(1) Digital set top boxes;

(2) Downconverters (with filtering)/antennas (replacement downconverters);

(3) Contract labor:

(i) Antenna change/DC install (antenna change may be necessary); and

(ii) Electrical; and mechanical

(4) Project management (third party or internal costs to manage the BTA conversion);

(5) Proof of performance testing (may be contracted);

(6) Mini headend (cost effective distribution method):

(i) Modulators, combiners;

(ii) Equipment racks; and

(iii) Amplifiers

(7) Cable, connectors; and

(8) Training.

(f) *Miscellaneous transition fees.* (1) Filing fees;

(2) Arbitrator fee; and

(3) Legal fees.

[71 FR 35193, June 19, 2006]

§ 27.1239 Reimbursement obligation.

(a) A proponent may request reimbursement from BRS licensees and lessees, EBS lessees, and commercial EBS licensees in a BTA after the Transition Notification has been filed with the Secretary of the Commission and the proponent has accumulated the documentation to substantiate the full and accurate cost of the transition. A self-transitioning licensee may request reimbursement from BRS licensees and lessees, EBS lessees, and commercial EBS licensees in a BTA where its GSA geographic center point is located after it has completed the self-transition and has filed a modification application with the Commission and has accumulated the documentation to substantiate the full and accurate cost of the transition.

(b) If a license is assigned, transferred, partitioned, or disaggregated, all parties to the assignment, transfer, disaggregation, or partition are jointly and severally liable for paying the reimbursement obligation until that obligation is paid.

[71 FR 35193, June 19, 2006]

RELOCATION PROCEDURES FOR THE 2150–2160/62 MHZ BAND

SOURCE: Sections 27.1250 through 27.1255 appear at 71 FR 29840, May 24, 2006, unless otherwise noted.

§ 27.1250 Transition of the 2150–2160/62 MHz band from the Broadband Radio Service to the Advanced Wireless Service.

The 2150–2160/62 MHz band has been allocated for use by the Advanced Wireless Service (AWS). The rules in this section provide for a transition period during which AWS licensees may relocate existing Broadband Radio Service (BRS) licensees using these frequencies to their assigned frequencies in the 2496–2690 MHz band or other media.

(a) AWS licensees and BRS licensees shall engage in mandatory negotiations for the purpose of agreeing to terms under which the BRS licensees would:

(1) Relocate their operations to other frequency bands or other media; or alternatively

(2) Accept a sharing arrangement with the AWS licensee that may result in an otherwise impermissible level of interference to the BRS operations.

(b) If no agreement is reached during the mandatory negotiation period, an AWS licensee may initiate involuntary relocation procedures. Under involuntary relocation, the incumbent is required to relocate, provided that the AWS licensee meets the conditions of § 27.1252.

(c) Relocation of BRS licensees by AWS licensees will be subject to a three-year mandatory negotiation period. BRS licensees may suspend the running of the three-year negotiation period for up to one year if the BRS licensee cannot be relocated to comparable facilities at the time the AWS licensee seeks entry into the band.

§ 27.1251 Mandatory Negotiations.

(a) Once mandatory negotiations have begun, a BRS licensee may not refuse to negotiate and all parties are required to negotiate in good faith. Good faith requires each party to provide information to the other that is reasonably necessary to facilitate the relocation process. The BRS licensee is

required to cooperate with an AWS licensee's request to provide access to the facilities to be relocated, other than the BRS customer location, so that an independent third party can examine the BRS system and prepare an appraisal of the costs to relocate the incumbent. In evaluating claims that a party has not negotiated in good faith, the FCC will consider, *inter alia*, the following factors:

(1) Whether the AWS licensee has made a bona fide offer to relocate the BRS licensee to comparable facilities in accordance with §27.1252(b);

(2) If the BRS licensee has demanded a premium, the type of premium requested (*e.g.*, whether the premium is directly related to relocation, such as analog-to-digital conversions, versus other types of premiums), and whether the value of the premium as compared to the cost of providing comparable facilities is disproportionate (*i.e.*, whether there is a lack of proportion or relation between the two);

(3) What steps the parties have taken to determine the actual cost of relocation to comparable facilities;

(4) Whether either party has withheld information requested by the other party that is necessary to estimate relocation costs or to facilitate the relocation process.

(b) Any party alleging a violation of our good faith requirement must attach an independent estimate of the relocation costs in question to any documentation filed with the Commission in support of its claim. An independent cost estimate must include a specification for the comparable facility and a statement of the costs associated with providing that facility to the incumbent licensee.

(c) Mandatory negotiations will commence for each BRS licensee when the AWS licensee informs the BRS licensee in writing of its desire to negotiate. Mandatory negotiations will be conducted with the goal of providing the BRS licensee with comparable facilities, defined as facilities possessing the following characteristics:

(1) *Throughput.* Communications throughput is the amount of information transferred within a system in a given amount of time. System is defined as a base station and all end user units served by that base station. If analog facilities are being replaced with analog, comparable facilities may provide a comparable number of channels. If digital facilities are being replaced with digital, comparable facilities provide equivalent data loading bits per second (bps).

(2) *Reliability.* System reliability is the degree to which information is transferred accurately within a system. Comparable facilities provide reliability equal to the overall reliability of the BRS system. For digital systems, reliability is measured by the percent of time the bit error rate (BER) exceeds a desired value, and for analog or digital video transmission, it is measured by whether the end-to-end transmission delay is within the required delay bound. If an analog system is replaced with a digital system, only the resulting frequency response, harmonic distortion, signal-to-noise ratio and its reliability will be considered in determining comparable reliability.

(3) *Operating Costs.* Operating costs are the cost to operate and maintain the BRS system. AWS licensees would compensate BRS licensees for any increased recurring costs associated with the replacement facilities (*e.g.*, additional rental payments, and increased utility fees) for five years after relocation. AWS licensees could satisfy this obligation by making a lump-sum payment based on present value using current interest rates. Additionally, the maintenance costs to the BRS licensee would be equivalent to the replaced system in order for the replacement system to be comparable.

(d) AWS licensees are responsible for the relocation costs of end user units served by the BRS base station that is being relocated. If a lessee is operating under a BRS license, the BRS licensee may rely on the throughput, reliability, and operating costs of facilities in use by a lessee in negotiating comparable facilities and may include the lessee in negotiations.

§27.1252 Involuntary Relocation Procedures.

(a) If no agreement is reached during the mandatory negotiation period, an AWS licensee may initiate involuntary

relocation procedures under the Commission's rules. AWS licensees are obligated to pay to relocate BRS systems to which the AWS system poses an interference problem. Under involuntary relocation, the BRS licensee is required to relocate, provided that the AWS licensee:

(1) Guarantees payment of relocation costs, including all engineering, equipment, site and FCC fees, as well as any legitimate and prudent transaction expenses incurred by the BRS licensee that are directly attributable to an involuntary 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. AWS licensees are not required to pay BRS licensees for internal resources devoted to the relocation process. AWS licensees are not required to pay for transaction costs incurred by BRS licensees during the mandatory period once the involuntary period is initiated, or for fees that cannot be legitimately tied to the provision of comparable facilities; and

(2) Completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination.

(b) *Comparable facilities.* The replacement system provided to an incumbent during an involuntary relocation must be at least equivalent to the existing BRS system with respect to the following three factors:

(1) *Throughput.* Communications throughput is the amount of information transferred within a system in a given amount of time. System is defined as a base station and all end user units served by that base station. If analog facilities are being replaced with analog, the AWS licensee is required to provide the BRS licensee with a comparable number of channels. If digital facilities are being replaced with digital, the AWS licensee must provide the BRS licensee with equivalent data loading bits per second (bps). AWS licensees must provide BRS licensees with enough throughput to satisfy the BRS licensee's system use at the time of relocation, not match the total capacity of the BRS system.

(2) *Reliability.* System reliability is the degree to which information is transferred accurately within a system. AWS licensees must provide BRS licensees with reliability equal to the overall reliability of their system. For digital data systems, reliability is measured by the percent of time the bit error rate (BER) exceeds a desired value, and for analog or digital video transmissions, it is measured by whether the end-to-end transmission delay is within the required delay bound.

(3) *Operating costs.* Operating costs are the cost to operate and maintain the BRS system. AWS licensees must compensate BRS licensees for any increased recurring costs associated with the replacement facilities (*e.g.*, additional rental payments, increased utility fees) for five years after relocation. AWS licensees may satisfy this obligation by making a lump-sum payment based on present value using current interest rates. Additionally, the maintenance costs to the BRS licensee must be equivalent to the replaced system in order for the replacement system to be considered comparable.

(c) AWS licensees are responsible for the relocation costs of end user units served by the BRS base station that is being relocated. If a lessee is operating under a BRS license, the AWS licensee shall on the throughput, reliability, and operating costs of facilities in use by a lessee at the time of relocation in determining comparable facilities for involuntary relocation purposes.

(d) *Twelve-month trial period.* If, within one year after the relocation to new facilities, the BRS licensee demonstrates that the new facilities are not comparable to the former facilities, the AWS licensee must remedy the defects or pay to relocate the BRS licensee to one of the following: Its former or equivalent 2 GHz channels, another comparable frequency band, a land-line system, or any other facility that satisfies the requirements specified in paragraph (b) of this section. This trial period commences on the

date that the BRS licensee begins full operation of the replacement system. If the BRS licensee has retained its 2 GHz authorization during the trial period, it must return the license to the Commission at the end of the twelve months.

§ 27.1253 Sunset Provisions.

(a) BRS licensees will maintain primary status in the 2150–2160/62 MHz band unless and until an AWS licensee requires use of the spectrum. AWS licensees are not required to pay relocation costs after the relocation rules sunset (*i.e.* fifteen years from the date the first AWS license is issued in the band). Once the relocation rules sunset, an AWS licensee may require the incumbent to cease operations, provided that the AWS licensee intends to turn on a system within interference range of the incumbent, as determined by § 27.1255. AWS licensee notification to the affected BRS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the BRS licensee must turn its license back into the Commission, unless the parties have entered into an agreement which allows the BRS licensee to continue to operate on a mutually agreed upon basis.

(b) If the parties cannot agree on a schedule or an alternative arrangement, requests for extension will be accepted and reviewed on a case-by-case basis. The Commission will grant such extensions only if the incumbent can demonstrate that:

(1) It cannot relocate within the six-month period (*e.g.*, because no alternative spectrum or other reasonable option is available); and

(2) The public interest would be harmed if the incumbent is forced to terminate operations.

§ 27.1254 Eligibility.

(a) BRS licensees with primary status in the 2150–2162 MHz band as of June 23, 2006, will be eligible for relocation insofar as they have facilities that are constructed and in use as of this date.

(b) *Future Licensing and Modifications.* After June 23, 2006, all major modifications to existing BRS systems in use in the 2150–2160/62 MHz band will be authorized on a secondary basis to AWS systems, unless the incumbent affirmatively justifies primary status and the incumbent BRS licensee establishes that the modification would not add to the relocation costs of AWS licensees. Major modifications include the following:

(1) Additions of new transmit sites or base stations made after June 23, 2006;

(2) Changes to existing facilities made after June 23, 2006, that would increase the size or coverage of the service area, or interference potential, and that would also increase the throughput of an existing system (*e.g.*, sector splits in the antenna system). Modifications to fully utilize the existing throughput of existing facilities (*e.g.*, to add customers) will not be considered major modifications even if such changes increase the size or coverage of the service area, or interference potential.

§ 27.1255 Relocation Criteria for Broadband Radio Service Licensees in the 2150–2160/62 MHz band.

(a) An AWS licensee in the 2150–2160/62 MHz band, prior to initiating operations from any base or fixed station that is co-channel to the 2150–2160/62 MHz band, must relocate any incumbent BRS system that is within the line of sight of the AWS licensee's base or fixed station. For purposes of this section, a determination of whether an AWS facility is within the line of sight of a BRS system will be made as follows:

(1) For a BRS system using the 2150–2160/62 MHz band exclusively to provide one-way transmissions to subscribers, the AWS licensee 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.

(2) For all other BRS systems using the 2150–2160/62 MHz band, the AWS licensee 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 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) Any AWS licensee in the 2110–2180 MHz band that causes actual and demonstrable interference to a BRS licensee in the 2150–2160/62 MHz band must take steps to eliminate the harmful interference, up to and including relocation of the BRS licensee, regardless of whether it would be required to do so under paragraph (a), of this section.

Subpart N—700 MHz Public/ Private Partnership

SOURCE: 72 FR 48854, Aug. 24, 2007, unless otherwise noted.

§ 27.1301 Purpose and scope.

The purpose of this subpart, in conjunction with subpart AA of part 90, is to establish rules and procedures relating to the 700 MHz Public/Private Partnership entered between the winning bidder for the Upper 700 MHz D Block license, the Upper 700 MHz D Block licensee, the Network Assets Holder, the Operating Company, the Public Safety Broadband Licensee, and other related entities as the Commission may require or allow. Pursuant to this partnership, the Upper 700 MHz D Block licensee and the Operating Company will be responsible for constructing and operating a nationwide, shared interoperable wireless broadband network used to provide a commercial service and a broadband network service for public safety entities. The shared network assets will be held by the Network Assets Holder and the Shared Wireless Broadband Network will operate on both the commercial spectrum licensed to the Upper 700 MHz D Block licensee and the public safety broadband spectrum licensed to the Public Safety Broadband Licensee. This subpart of the part 27 rules sets forth specific provisions relating to the Upper 700 MHz D Block license, the Upper 700 MHz D Block licensee, and other related entities as the Commission may require or allow with respect to the 700 MHz Public/Private Partnership. Subpart AA of the part 90 rules sets forth related provisions applicable to the Public Safety Broadband License and the Public Safety Broadband Licensee with respect to the 700 MHz Public/Private Partnership.

§ 27.1303 Upper 700 MHz D Block license conditions.

(a) The winning bidder at auction of the license for Block D in the 758–763 MHz and 788–793 MHz bands will be granted the Upper 700 MHz D Block license only after this winning bidder has entered, with the Public Safety Broadband Licensee and other related entities as the Commission may require or allow, into the Network Sharing Agreement (NSA) that has been approved by the Commission, has executed such other agreements as the Commission may require or allow, and has met all other necessary conditions pertaining to the award of this license.

(b) The Upper 700 MHz D Block licensee shall comply with all of the applicable requirements set forth in this part and subpart, including the construction requirements set forth in § 27.14, and shall comply with the terms of the NSA and such other agreements as the Commission may require or allow.

(c) The Upper 700 MHz D Block licensee shall have the exclusive right to build and operate the shared wireless broadband network, except as set forth in §§ 20.1330 and 90.1430 of this chapter.

(d) The Upper 700 MHz D Block licensee must not discontinue, reduce, or impair service to public safety users