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

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

(1) Wholly outside its frequency band; or

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

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

§ 27.1184 Triggering a reimbursement obligation.

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

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

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

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

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

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

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

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

§ 27.1186 Payment issues.

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

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

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

§ 27.1188 Dispute resolution under the Cost-Sharing Plan.

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

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

§ 27.1190 Termination of cost-sharing obligations.

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

Subpart M—Broadband Radio Service and Educational Broadband Service

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

§ 27.1200 Change to BRS and EBS.

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

§ 27.1201 EBS eligibility.

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

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

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

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