AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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