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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