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(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