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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