

costs and are not parties to the alternative agreement. In addition, parties to a private cost-sharing agreement may seek reimbursement through the clearinghouse (as discussed in §27.1178) from AWS entities that are not parties to the agreement. The cost-sharing plan is in effect during all phases of BRS relocation until the end of the period specified in §27.1190. If an AWS licensee enters into a spectrum leasing arrangement and the spectrum lessee triggers a cost-sharing obligation, the licensee is the AWS entity responsible for satisfying cost-sharing obligations under these rules.

§27.1178 Administration of the Cost-Sharing Plan.

The Wireless Telecommunications Bureau, under delegated authority, will select one or more entities to operate as a neutral, not-for-profit clearinghouse(s). This clearinghouse(s) will administer the cost-sharing plan by, *inter alia*, determining the cost-sharing obligations of AWS entities for the relocation of BRS incumbents from the 2150–2162 MHz band. The clearinghouse filing requirements (*see* §§27.1182(a), 27.1186) will not take effect until an administrator is selected.

§27.1180 The cost-sharing formula.

(a) An AWS licensee that relocates a BRS system with which it interferes is entitled to *pro rata* reimbursement based on the cost-sharing formula specified in §27.1164, except that the depreciation factor shall be $[180 - T_m]/180$, and the variable *C* shall be applied as set forth in paragraph (b) of this section.

(b) *C* is the actual cost of relocating the system, and includes, but is not limited to, such items as: Radio terminal equipment (TX and/or RX—antenna, necessary feed lines, MUX/Modems); towers and/or modifications; back-up power equipment; monitoring or control equipment; engineering costs (design/path survey); installation; systems testing; FCC filing costs; site acquisition and civil works; zoning costs; training; disposal of old equipment; test equipment (vendor required); spare equipment; project management; site lease renegotiation; required antenna upgrades for inter-

ference control; power plant upgrade (if required); electrical grounding systems; Heating Ventilation and Air Conditioning (HVAC) (if required); alternate transport equipment; leased facilities; and end user units served by the base station that is being relocated. In addition to actual costs, *C* may include the cost of an independent third party appraisal conducted pursuant to §27.1182(a)(3) and incumbent transaction expenses that are directly attributable to the 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.

(c) An AWS system shall be considered an interfering system for purposes of this rule if the AWS system is in all or part of the BRS frequency band and operates within line of sight to BRS operations under the applicable test specified in §27.1184. An AWS relocater that relocates a BRS system with which it does not interfere is entitled to full reimbursement, as specified in §27.1182(c).

§27.1182 Reimbursement under the Cost-Sharing Plan.

(a) *Registration of reimbursement rights.* (1) To obtain reimbursement, an AWS relocater must submit documentation of the relocation agreement to the clearinghouse within 30 calendar days of the date a relocation agreement is signed with an incumbent. In the case of involuntary relocation, an AWS relocater must submit documentation of the relocated system within 30 calendar days after the end of the one-year trial period.

(2) Registration of any BRS system shall include:

- (i) A description of the system’s frequency use;
- (ii) If the system exclusively provides one-way transmissions to subscribers, the Geographic Service Area of the system; and
- (iii) If the system does not exclusively provide one-way transmission to subscribers, the system hub antenna’s geographic location and the above

ground level height of the system's receiving antenna centerline.

(3) The AWS relocater must also include with its system registration an independent third party appraisal of the compensable relocation costs. The appraisal should be based on the actual cost of replacing the incumbent's system with comparable facilities and should exclude the cost of any equipment upgrades that are not necessary to the provision of comparable facilities. An AWS relocater may submit registration without a third party appraisal if it consents to binding resolution by the clearinghouse of any good faith cost disputes regarding the reimbursement claim, under the following standard: The relocater shall bear the burden of proof, and be required to demonstrate by clear and convincing evidence that its request does not exceed the actual cost of relocating the relevant BRS system or systems to comparable facilities. Failure to satisfy this burden of proof will result in loss of rights to subsequent reimbursement of the disputed costs from any AWS licensee.

(b) *Documentation of expenses.* Once relocation occurs, the AWS relocater must submit documentation itemizing the amount spent for items specifically listed in § 27.1180(b), as well as any reimbursable items not specifically listed in § 27.1180(b) that are directly attributable to actual relocation costs. Specifically, the AWS relocater must submit, in the first instance, only the uniform cost data requested by the clearinghouse along with copies, without redaction, of the relocation agreement, if any, and the third party appraisal described in (a)(3), of this section, if prepared. The AWS relocater must identify the particular system associated with appropriate expenses (*i.e.*, costs may not be averaged over numerous systems). If an AWS relocater pays a BRS incumbent a monetary sum to relocate its own facilities in whole or in part, the AWS relocater must itemize the actual costs to the extent determinable, and otherwise must estimate the actual costs associated with relocating the incumbent and itemize these costs. If the sum paid to the incumbent cannot be accounted for, the remaining amount is not eligible for reimburse-

ment. 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 relocater 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 relocater 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 relocater 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.