

§ 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