

§ 27.1168 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, MSS relocater, or a voluntarily relocating microwave incumbent in accordance with the formula detailed in § 27.1164:

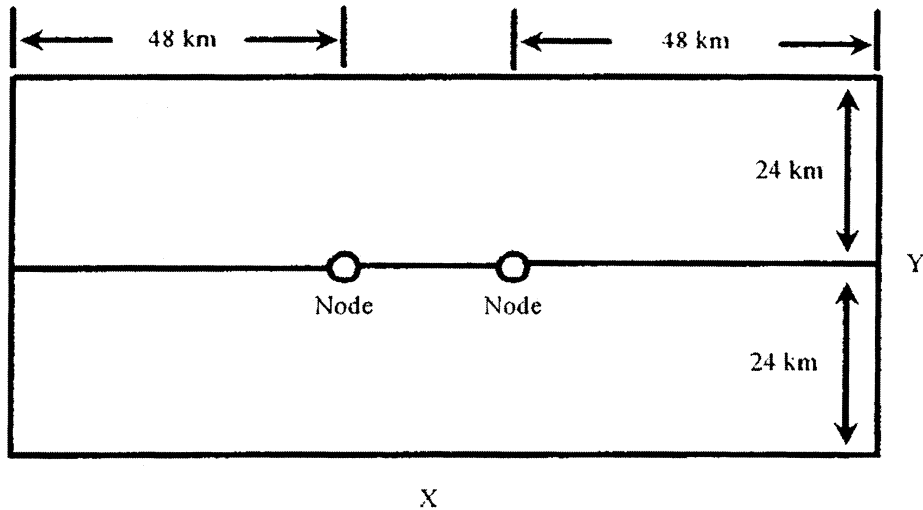
(1) All or part of the relocated microwave link was initially co-channel with the licensed AWS band(s) of the AWS entity or the selected assignment of the MSS operator that seeks and obtains ATC authority (see § 25.149(a)(2)(i) of this chapter);

(2) An AWS relocater, MSS relocater or a voluntarily relocating microwave

incumbent has paid the relocation costs of the microwave incumbent; and

(3) The AWS or MSS entity is operating or preparing to turn on a fixed base station at commercial power and the fixed base station is located within a rectangle (Proximity Threshold) described as follows:

(i) The length of the rectangle shall be x where x is a line extending through both nodes of the microwave link to a distance of 48 kilometers (30 miles) beyond each node. The width of the rectangle shall be y where y is a line perpendicular to x and extending for a distance of 24 kilometers (15 miles) on both sides of x . Thus, the rectangle is represented as follows:



(ii) If the application of the Proximity Threshold Test indicates that a reimbursement obligation exists, the clearinghouse will calculate the reimbursement amount in accordance with the cost-sharing formula and notify the AWS entity of the total amount of its reimbursement obligation.

(b) Once a reimbursement obligation is triggered, the AWS entity may not avoid paying its cost-sharing obliga-

tion by deconstructing or modifying its facilities.

[71 FR 29835, May 24, 2006, as amended at 78 FR 8271, Jan. 5, 2013]

§ 27.1170 Payment issues.

Prior to initiating operations for a newly constructed site or modified existing site, an AWS entity is required to file a notice containing site-specific data with the clearinghouse. The notice regarding the new or modified site must provide a detailed description of

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the proposed site's spectral frequency use and geographic location, including but not limited to the applicant's name and address, the name of the transmitting base station, the geographic coordinates corresponding to that base station, the frequencies and polarizations to be added, changed or deleted, and the emission designator. If a prior coordination notice (PCN) under § 101.103(d) of this chapter is prepared, AWS entities can satisfy the site-data filing requirement by submitting a copy of their PCN to the clearinghouse. AWS entities that file either a notice or a PCN have a continuing duty to maintain the accuracy of the site-specific data on file with the clearinghouse. Utilizing the site-specific data, the clearinghouse will determine if any reimbursement obligation exists and notify the AWS entity in writing of its repayment obligation, if any. When the AWS entity receives a written copy of such obligation, it must pay directly to the relocater the amount owed within 30 calendar days.

[78 FR 8271, Jan. 5, 2013]

§ 27.1172 Dispute Resolution Under the Cost-Sharing Plan.

(a) Disputes arising out of the cost-sharing plan, such as disputes over the amount of reimbursement required, must be brought, in the first instance, to the clearinghouse for resolution. To the extent that disputes cannot be resolved by the clearinghouse, parties are encouraged to use expedited Alternative Dispute Resolution (ADR) procedures, such as binding arbitration, mediation, or other ADR techniques.

(b) *Evidentiary requirement.* Parties of interest contesting the clearinghouse's determination of specific cost-sharing obligations must provide evidentiary support to demonstrate that their calculation is reasonable and made in good faith. Specifically, these parties are expected to exercise due diligence to obtain the information necessary to prepare an independent estimate of the relocation costs in question and to file the independent estimate and supporting documentation with the clearinghouse.

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§ 27.1174 Termination of cost-sharing obligations.

The cost-sharing plan will sunset for all AWS and MSS entities on the same date on which the relocation obligation for the subject AWS band (*i.e.*, 2110–2150 MHz, 2160–2175 MHz, 2175–2180 MHz, 2180–2200 MHz) in which the relocated FMS link was located terminates. AWS or MSS entrants that trigger a cost-sharing obligation prior to the sunset date must satisfy their payment obligation in full.

[78 FR 8271, Feb. 5, 2013]

COST-SHARING POLICIES GOVERNING BROADBAND RADIO SERVICE RELOCATION FROM THE 2150–2160/62 MHz BAND

SOURCE: Sections 27.1176 through 27.1190 appear at 71 FR 29835, May 24, 2006, unless otherwise noted.

§ 27.1176 Cost-sharing requirements for AWS in the 2150–2160/62 MHz band.

(a) Frequencies in the 2150–2160/62 MHz band have been reallocated from the Broadband Radio Service (BRS) to AWS. All AWS entities who benefit from another AWS entity's clearance of BRS incumbents from this spectrum, including BRS incumbents occupying the 2150–2162 MHz band on a primary basis, must contribute to such relocation costs. Only AWS entrants that relocate BRS incumbents are entitled to such reimbursement.

(b) AWS entities may satisfy their reimbursement requirement by entering into private cost-sharing agreements or agreeing to terms other than those specified in § 27.1180. However, AWS entities are required to reimburse other AWS entities that incur relocation 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