

§ 27.1214

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ten (10) year period running from the date that their BTA authorizations are issued. The files must be made available to the Commission upon request.

[69 FR 72034, Dec. 10, 2004, as amended at 71 FR 35190, June 19, 2006]

§ 27.1214 EBS spectrum leasing arrangements and grandfathered leases.

(a) A licensee in the EBS that is solely utilizing analog transmissions may enter into a spectrum leasing arrangement to transmit material other than the educational programming defined in § 27.1203(b) and (c) subject to the following conditions:

(1) Before entering into a spectrum leasing arrangement involving material other than educational programming on any one channel, the licensee must provide at least 20 hours per week of EBS educational programming (as defined in § 27.1203(b) and (c)) on that channel, except as provided in paragraphs (a)(2) and (a)(3) of this section. An additional 20 hours per week per channel must be strictly reserved for EBS use and not used for non-EBS purposes, or reserved for recapture by the EBS licensee for its EBS educational usage, subject to one year's advance, written notification by the EBS licensee to its lessee and accounting for all recapture already exercised, with no economic or operational detriment to the licensee. These hours of recapture are not restricted as to time of day or day of the week, but may be established by negotiations between the EBS licensee and the lessee. The 20 hours per channel per week EBS educational usage requirement and the recapture and/or reservation requirement of an additional 20 hours per channel per week shall apply spectrally over the licensee's whole actual service area.

(2) For the first two years of operation, an EBS entity may enter into a spectrum leasing arrangement involving material other than educational programming if it provides EBS educational usage for at least 12 hours per channel per week, provided that the entity does not employ channel loading technology.

(3) The licensee may shift its requisite EBS educational usage onto

fewer than its authorized number of channels, via channel mapping or channel loading technology, so that it can enter into a spectrum leasing arrangement involving full-time channel capacity on its EBS station and/or associated EBS booster stations, subject to the condition that it provide a total average of at least 20 hours per channel per week of EBS educational usage on its authorized channels. The use of channel mapping or channel loading consistent with the Rules shall not be considered adversely to the EBS licensee in seeking a license renewal. The licensee also retains the unbridgeable right to recapture, subject to six months' advance written notification by the EBS licensee to the spectrum lessee, an average of an additional 20 hours per channel per week, accounting for all recapture already exercised. Regardless of whether the licensee has educational receive sites within its GSA, the licensee may lease booster stations in the entire GSA, provided that the licensee maintains the unbridgeable right to recapture at least 40 hours per channel per week for EBS educational usage. The licensee may agree to the transmission of this recapture time on channels not authorized to it, but which are included in the wireless system of which it is a part. A licensee under this paragraph which enters into a spectrum leasing arrangement on any one of its channels to an operator may "channel shift" pursuant to and under the conditions of paragraph (d)(2) of this section.

(b) A licensee utilizing digital transmissions on any of its licensed channels may enter into a spectrum leasing arrangement to transmit material other than the educational programming defined in § 27.1203(b) and (c), subject to the following conditions:

(1) The licensee must reserve a minimum of 5% of the capacity of its channels for educational uses consistent with § 27.1203 paragraphs (b) and (c), and may not enter into a spectrum leasing arrangement involving this reserved capacity. In addition, before leasing excess capacity, the licensee must provide at least 20 hours per licensed channel per week of EBS educational usage. This 5% reservation and this 20 hours per licensed channel

per week EBS educational usage requirement shall apply spectrally over the licensee's whole actual service area. However, regardless of whether the licensee has an educational receive site within its GSA served by a booster, the licensee may lease excess capacity without making at least 20 hours per licensed channel per week of EBS educational usage, provided that the licensee maintains the unabridgeable right to recapture on one month's advance notice such capacity as it requires over and above the 5% reservation to make at least 20 hours per channel per week of EBS educational usage.

(2) The licensee may shift its requisite EBS educational usage onto fewer than its authorized number of channels, via channel mapping or channel loading technology, and may shift its requisite EBS educational usage onto channels not authorized to it, but which are included in the wireless system of which it is a part ("channel shifting"), so that it can enter into a spectrum leasing arrangement involving full-time channel capacity on its EBS station, associated EBS booster stations, and/or EBS response stations and associated response station hubs, subject to the condition that it provide a total average of at least 20 hours per licensed channel per week of EBS educational usage. The use of channel mapping, channel loading, and/or channel shifting consistent with the Rules shall not be considered adversely to the EBS licensee in seeking a license renewal. In addition, an EBS entity receiving interference protection will continue to receive such protection if it elects to swap channels with another EBS or BRS station.

(c) All spectrum leasing arrangements involving EBS spectrum must afford the EBS licensee an opportunity to purchase or to lease the dedicated or common EBS equipment used for educational purposes, or comparable equipment in the event that the spectrum leasing arrangement is terminated.

(d) All leases of current EBS spectrum entered into prior to January 10, 2005 and in compliance with leasing rules formerly contained in part 74 of this chapter may continue in force and

effect, notwithstanding any inconsistency between such leases and the rules applicable to spectrum leasing arrangements set forth in this chapter. Such leases entered into pursuant to the former part 74 rules of this chapter may be renewed and assigned in accordance with the terms of such lease. All spectrum leasing arrangements leases entered into after January 10, 2005, pursuant to the rules set forth in part 1 and part 27 of this chapter, must comply with the rules in those parts.

(e) The maximum permissible term of an EBS spectrum leasing arrangement entered into on or after July 19, 2006 (including the initial term and all renewal terms that commence automatically or at the sole option of the lessee) shall be 30 years. In furtherance of the educational purposes for which EBS spectrum is primarily allocated, any spectrum leasing arrangement in excess of 15 years that is entered into on or after July 19, 2006 must include terms which provide the EBS licensee on the 15th year and every 5 years thereafter, with an opportunity to review its educational use requirements in light of changes in educational needs, technology, and other relevant factors and to obtain access to such additional services, capacity, support, and/or equipment as the parties shall agree upon in the spectrum leasing arrangement to advance the EBS licensee's educational mission.

[69 FR 72034, Dec. 10, 2004, as amended at 71 FR 35190, June 19, 2006; 73 FR 26041, May 8, 2008]

§ 27.1215 BRS grandfathered leases.

(a) All leases of current BRS spectrum entered into prior to January 10, 2005 and in compliance with rules formerly contained in part 21 of this chapter may continue in force and effect, notwithstanding any inconsistency between such leases and the rules applicable to spectrum leasing arrangements set forth in this chapter. Such leases entered into pursuant to the former part 21 of this chapter may be renewed and assigned in accordance with the terms of such lease. All spectrum leasing arrangements leases entered into after January 10, 2005, pursuant to the rules set forth in part 1 and