

§ 27.15

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§ 27.15 Geographic partitioning and spectrum disaggregation.

(a) *Eligibility.* (1) Parties seeking approval for partitioning and disaggregation shall request from the Commission an authorization for partial assignment of a license pursuant to § 1.948.

(2) AWS and WCS licensees may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

(b) *Technical Standards*—(1) *Partitioning.* In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to section 1.948 and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83).

(2) *Disaggregation.* Spectrum may be disaggregated in any amount.

(3) *Combined partitioning and disaggregation.* The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(4) *Signal levels.* For purposes of partitioning and disaggregation, part 27 systems must be designed so as not to exceed the signal level specified for the particular spectrum block in § 27.55 at the licensee's service area boundary, unless the affected adjacent service area licensees have agreed to a different signal level.

(c) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 27.13.

(d) *Compliance with construction requirements*—(1) *Partitioning.* (i) Except for WCS licensees holding authorizations for the 600 MHz band, Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, or Blocks C, C1, and C2 in the 746–757 MHz and 776–787 MHz bands; and for licensees holding AWS authoriza-

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tions in the 1915–1920 MHz and 1995–2000 MHz bands, the 2000–2020 MHz and 2180–2200 MHz bands; or the 1695–1710 MHz, 1755–1780 MHz and 2155–2180 MHz bands the following rules apply to WCS and AWS licensees holding authorizations for purposes of implementing the construction requirements set forth in § 27.14. Parties to partitioning agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first option, the partitioner and partitionee each certifies that it will independently satisfy the substantial service requirement for its respective partitioned area. If a licensee subsequently fails to meet its substantial service requirement, its license will be subject to automatic cancellation without further Commission action. Under the second option, the partitioner certifies that it has met or will meet the substantial service requirement for the entire, pre-partitioned geographic service area. If the partitioner subsequently fails to meet its substantial service requirement, only its license will be subject to automatic cancellation without further Commission action.

(ii) For WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, or Blocks C, C1, and C2 in the 746–757 MHz and 776–787 MHz bands, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. Parties to partitioning agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first option, the partitioner and partitionee each certifies that they will collectively share responsibility for meeting the construction requirement for the entire pre-partition geographic license area. If the partitioner and partitionee collectively fail to meet the construction requirement, then both the partitioner and partitionee will be subject to the consequences enumerated in § 27.14(g) and (h) for this failure. Under the second option, the partitioner and partitionee

each certifies that it will independently meet the construction requirement for its respective partitioned license area. If the partitioner or partitionee fails to meet the construction requirement for its respective partitioned license area, then the consequences for this failure shall be those enumerated in § 27.14(g) and (h).

(iii) For licensees holding authorizations for the 600 MHz band, AWS authorizations in the 1915–1920 MHz and 1995–2000 MHz bands, or the 2000–2020 MHz and 2180–2200 MHz bands, or the 1695–1710 MHz, 1755–1780 MHz and 2155–2180 MHz bands, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. Each party to a geographic partitioning must individually meet any service-specific performance requirements (i.e., construction and operation requirements). If a partitioner or partitionee fails to meet any service-specific performance requirements on or before the required date, then the consequences for this failure shall be those enumerated in § 27.14(q) for 2000–2020 MHz and 2180–2200 MHz licenses, those enumerated in § 27.14(r) for 1915–1920 MHz and 1995–2000 MHz licenses, and those enumerated in § 27.14(s) for 1695–1710 MHz, 1755–1780 MHz and 2155–2180 MHz licenses, and those enumerated in § 27.14(t) for 600 MHz band licenses.

(2) *Disaggregation.* (i) Except for WCS licensees holding authorizations for the 600 MHz band, Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, or Blocks C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands; and for licensees holding AWS authorizations in the 1915–1920 MHz and 1995–2000 MHz bands, the 2000–2020 MHz and 2180–2200 MHz bands or the 1695–1710 MHz, 1755–1780 MHz and 2155–2180 MHz bands; the following rules apply to WCS and AWS licensees holding authorizations for purposes of implementing the construction requirements set forth in § 27.14. Parties to disaggregation agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first option, the disaggregator and disaggregatee each certifies that it will share responsi-

bility for meeting the substantial service requirement for the geographic service area. If the parties choose this option and either party subsequently fails to satisfy its substantial service responsibility, both parties' licenses will be subject to forfeiture without further Commission action. Under the second option, both parties certify either that the disaggregator or the disaggregatee will meet the substantial service requirement for the geographic service area. If the parties choose this option, and the party responsible subsequently fails to meet the substantial service requirement, only that party's license will be subject to forfeiture without further Commission action.

(ii) For WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, and Blocks C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. If either the disaggregator or the disaggregatee meets the construction requirements set forth in § 27.14, then these requirements will be considered to be satisfied for both parties. If neither the disaggregator nor the disaggregatee meets the construction requirements, then both parties will be subject to the consequences enumerated in § 27.14(g) and (h) for this failure.

(iii) For licensees holding authorizations for the 600 MHz band, AWS authorizations in the 1915–1920 MHz and 1995–2000 MHz bands, or the 2000–2020 MHz and 2180–2200 MHz bands, or the 1695–1710 MHz, 1755–1780 MHz and 2155–2180 MHz bands, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. Each party to a spectrum disaggregation must individually meet any service-specific performance requirements (i.e., construction and operation requirements). If a disaggregator or a disaggregatee fails to meet any service-specific performance requirements on or before the required date, then the consequences for this failure shall be those enumerated in § 27.14(q) for 2000–2020 MHz and 2180–2200 MHz licenses, those enumerated in § 27.14(r)

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for 1915–1920 MHz and 1995–2000 MHz licenses, those enumerated in § 27.14(s) for 1695–1710 MHz, 1755–1780 MHz and 2155–2180 MHz licenses, and those enumerated in § 27.14(t) for 600 MHz band licenses.

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§ 27.16 Network access requirements for Block C in the 746–757 and 776–787 MHz bands.

(a) *Applicability.* This section shall apply only to the authorizations for Block C in the 746–757 and 776–787 MHz bands assigned and only if the results of the first auction in which licenses for such authorizations are offered satisfied the applicable reserve price.

(b) *Use of devices and applications.* Licensees offering service on spectrum subject to this section shall not deny, limit, or restrict the ability of their customers to use the devices and applications of their choice on the licensee's C Block network, except:

(1) Insofar as such use would not be compliant with published technical standards reasonably necessary for the management or protection of the licensee's network, or

(2) As required to comply with statute or applicable government regulation.

(c) *Technical standards.* For purposes of paragraph (b)(1) of this section:

(1) Standards shall include technical requirements reasonably necessary for third parties to access a licensee's network via devices or applications without causing objectionable interference to other spectrum users or jeopardizing network security. The potential for excessive bandwidth demand alone shall not constitute grounds for denying, limiting or restricting access to the network.

(2) To the extent a licensee relies on standards established by an independent standards-setting body which is open to participation by representatives of service providers, equipment manufacturers, application developers, consumer organizations, and other in-

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terested parties, the standards will carry a presumption of reasonableness.

(3) A licensee shall publish its technical standards, which shall be non-proprietary, no later than the time at which it makes such standards available to any preferred vendors, so that the standards are readily available to customers, equipment manufacturers, application developers, and other parties interested in using or developing products for use on a licensee's networks.

(d) *Access requests.* (1) Licensees shall establish and publish clear and reasonable procedures for parties to seek approval to use devices or applications on the licensee's networks. A licensee must also provide to potential customers notice of the customers' rights to request the attachment of a device or application to the licensee's network, and notice of the licensee's process for customers to make such requests, including the relevant network criteria.

(2) If a licensee determines that a request for access would violate its technical standards or regulatory requirements, the licensee shall expeditiously provide a written response to the requester specifying the basis for denying access and providing an opportunity for the requester to modify its request to satisfy the licensee's concerns.

(e) *Handset locking prohibited.* No licensee may disable features on handsets it provides to customers, to the extent such features are compliant with the licensee's standards pursuant to paragraph (b) of this section, nor configure handsets it provides to prohibit use of such handsets on other providers' networks.

(f) *Burden of proof.* Once a complainant sets forth a prima facie case that the C Block licensee has refused to attach a device or application in violation of the requirements adopted in this section, the licensee shall have the burden of proof to demonstrate that it has adopted reasonable network standards and reasonably applied those standards in the complainant's case. Where the licensee bases its network restrictions on industry-wide consensus standards, such restrictions would be presumed reasonable.

[72 FR 48849, Aug. 24, 2007]