

of services to the end user. If the EA licensee provides facilities that entail higher operating cost than the incumbent's previous system, and the cost increase is a direct result of the relocation, the EA licensee must compensate the incumbent for the difference. Costs associated with the relocation process can fall into several categories. First, the incumbent must be compensated for any increased recurring costs associated with the replacement facilities (*e.g.*, additional rental payments, increased utility fees). Second, increased maintenance costs must be taken into consideration when determining whether operating costs are comparable. For example, maintenance costs associated with analog systems may be higher than the costs of digital equipment because manufacturers are producing mostly digital equipment and analog replacement parts can be difficult to find. An EA licensee's obligation to pay increased operating costs will end five years after relocation has occurred.

(e)-(f) [Reserved]

[62 FR 41217, July 31, 1997, as amended at 77 FR 28798, May 16, 2012]

### Subpart T—Regulations Governing Licensing and Use of Frequencies in the 220–222 MHz Band

SOURCE: 56 FR 19603, Apr. 29, 1991, unless otherwise noted.

#### § 90.701 Scope.

(a) Frequencies in the 220–222 MHz band are available for land mobile and fixed use for both Government and non-Government operations. This subpart supplements part 1, subpart F of this chapter which establishes the requirements and conditions under which commercial and private radio stations may be licensed in the Wireless Telecommunications Services. The provisions of this subpart contain additional pertinent information for current and prospective licensees specific to the 220–222 MHz band.

(b)(1) Licensees granted initial authorizations for operations in the 220–222 MHz band from among applications filed on or before May 24, 1991 are re-

ferred to in this subpart as “Phase I” licensees;

(2) Applicants that filed initial applications for operations in the 220–222 MHz band on or before May 24, 1991 are referred to in this subpart as “Phase I” applicants; and

(3) All assignments, operations, stations, and systems of licensees granted authorizations from among applications filed for operations in the 220–222 MHz band on or before May 24, 1991 are referred to in this subpart as “Phase I” assignments, operations, stations, and systems, respectively.

(c)(1) Licensees granted initial authorizations for operations in the 220–222 MHz band from among applications filed after May 24, 1991 are referred to in this subpart as “Phase II” licensees;

(2) Applicants that filed initial applications for operations in the 220–222 MHz band after May 24, 1991 are referred to in this subpart as “Phase II” applicants; and

(3) All assignments, operations, stations, and systems of licensees granted authorizations from among applications filed for operations in the 220–222 MHz band after May 24, 1991 are referred to in this subpart as “Phase II” assignments, operations, stations, and systems, respectively.

(d) The rules in this subpart apply to both Phase I and Phase II licensees, applicants, assignments, operations, stations, and systems, unless otherwise specified.

[62 FR 15993, Apr. 3, 1997, as amended at 63 FR 68971, Dec. 14, 1998]

#### § 90.703 Eligibility.

The following persons are eligible for licensing in the 220–222 MHz band.

(a) Any person eligible for licensing under subparts B or C of this part.

(b) Any person proposing to provide communications service to any person eligible for licensing under subparts B or C of this part, on a not-for-profit, cost-shared basis.

(c) Any person eligible under this part proposing to provide on a commercial basis, station and ancillary facilities for the use of individuals, federal

## § 90.705

government agencies and persons eligible for licensing under subparts B or C of this part.

[56 FR 19603, Apr. 29, 1991, as amended at 60 FR 15495, Mar. 24, 1995; 62 FR 18935, Apr. 17, 1997]

### § 90.705 Forms to be used.

Phase II applications for EA, Regional, or Nationwide radio facilities under this subpart must be prepared in accordance with §§ 1.2105 and 1.2107 of this chapter. Phase II applications for radio facilities operating on public safety/mutual aid channels (Channels 161 through 170) or emergency medical channels (Channels 181 through 185) under this subpart must be prepared on FCC Form 601 and submitted or filed in accordance with § 1.913 of this chapter.

[63 FR 68971, Dec. 14, 1998, as amended at 67 FR 45375, July 9, 2002]

### § 90.709 Special limitations on amendment of applications and on assignment or transfer of authorizations licensed under this subpart.

(a) Except as indicated in paragraph (b) of this section, the Commission will not consent to the following:

(1) Any request to amend an application so as to substitute a new entity as the applicant;

(2) Any application to assign or transfer a license for a Phase I, non-nationwide system prior to the completion of construction of facilities; or

(3) Any application to transfer or assign a license for a Phase I nationwide system before the licensee has constructed at least 40 percent of the proposed system pursuant to the provisions of § 90.725(a) or § 90.725(h), as applicable.

(b) The Commission will grant the applications described in paragraph (a) of this section if:

(1) the request to amend an application or to transfer or assign a license does not involve a substantial change in the ownership or control of the applicant; or

(2) The changes in the ownership or control of the applicant are involuntary due to the original applicant's insolvency, bankruptcy, incapacity, or death.

(c) The assignee or transferee of a Phase I nationwide system is subject to

## 47 CFR Ch. I (10–1–16 Edition)

the construction benchmarks and reporting requirements of § 90.725. The assignee or transferee of a Phase I nationwide system is not subject to the entry criteria described in § 90.713.

(d) A licensee may partially assign any authorization in accordance with § 90.1019.

(e) The assignee or transferee of a Phase II system is subject to the provisions of §§ 90.1017 and 1.2111(a) of this chapter.

[56 FR 19603, Apr. 29, 1991, as amended at 57 FR 32449, July 22, 1992; 62 FR 15993, Apr. 3, 1997; 63 FR 49295, Sept. 15, 1998]

### § 90.711 Processing of Phase II applications.

(a) Phase II applications for authorizations on Channels 166 through 170 and Channels 181 through 185 will be processed on a first-come, first-served basis. When multiple applications are filed on the same day for these frequencies in the same geographic area, and insufficient frequencies are available to grant all applications (i.e., if all applications were granted, violation of the station separation provisions of § 90.723(k) of this part would result), these applications will be considered mutually exclusive.

(1) All applications will first be considered to determine whether they are substantially complete and acceptable for filing. If so, they will be assigned a file number and put in pending status. If not, they will be dismissed.

(2) Except as otherwise provided in this section, all applications in pending status will be processed in the order in which they are received, determined by the date on which the application was received by the Commission in its Gettysburg, Pennsylvania office (or the address set forth at § 1.1102 of this chapter for applications requiring the fees established by part 1, subpart G of this chapter).

(3) Each application that is accepted for filing will then be reviewed to determine whether it can be granted. Frequencies will be assigned by the Commission pursuant to the provisions of § 90.723.

(4) An application which is dismissed will lose its place in the processing line.