

Pt. 216, App.

(1) Identify HF stations under their control for participation in the SHARES Program.

(2) Maintain the operational readiness of their SHARES HF stations.

(3) Provide updated information as necessary for inclusion in a SHARES HF Radio Program Directory. Use of Federal frequencies for SHARES traffic shall be in accordance with National Telecommunications and Information Administration (NTIA) "Manual of Regulations and Procedures for Federal Radio Frequency Management."

(4) Ensure participation of available stations in scheduled exercises.

(5) Provide representation, as required, at meetings, briefings, conferences, and other official SHARES HF Radio Program activities.

b. The Manager, NCS, will administer the SHARES HF Radio Program and perform the management functions defined below:

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(1) Publish and periodically update, as NCS issuances, a User Manual, giving detailed procedures for using SHARES HF Radio Program capabilities, and HF Directory of participating Federally controlled HF radio stations.

(2) Develop, schedule, and administer periodic exercises of the SHARES HF Radio Program capabilities.

(3) Perform other functions, as necessary, to improve SHARES capabilities.

8. *Authorizing Provision.* NCS manuals implementing this directive are authorized.

9. *Effective Date.* This directive is effective immediately.

10. *Expiration.* This directive is in effect until superseded or cancelled.

[55 FR 51063, Dec. 11, 1990]

CHAPTER III—NATIONAL
TELECOMMUNICATIONS
AND INFORMATION ADMINISTRATION,
DEPARTMENT OF COMMERCE

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PART 300—MANUAL OF REGULATIONS AND PROCEDURES FOR FEDERAL RADIO FREQUENCY MANAGEMENT

AUTHORITY: 47 U.S.C. 901 *et seq.*, Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp., p. 158.

§ 300.1 Incorporation by reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management.

(a) The Manual of Regulations and Procedures for Federal Radio Frequency Management (hereinafter referred to as the NTIA Manual) is issued by the Assistant Secretary of Commerce for Communications and Information, and is specifically designed to cover the Assistant Secretary's frequency management responsibilities pursuant to delegated authority under 47 U.S.C. 901 *et seq.* and Executive Order 12046 (March 27, 1978).

(b) The Federal agencies shall comply with the requirements set forth in the May 1992 edition of the NTIA Manual, as revised through June 1993, which is incorporated by reference with approval of the Director, Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(c) The NTIA Manual is scheduled for revision in January, May, and September of each year and notices of these changes are printed in the FEDERAL REGISTER. The complete NTIA Manual can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, by referring to Catalog Number 903-008-00000-8. A reference copy of the NTIA Manual, including all revisions in effect, is available for use in the office of the Program Manager, Spectrum Openness Program, Room 4092, 14th St. and Pennsylvania Ave., Washington, DC 20230. The NTIA Manual is on file in the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20002.

[58 FR 44136, Aug. 19, 1993]

PART 301—MANDATORY REIMBURSEMENT FOR FREQUENCY BAND OR GEOGRAPHIC RELOCATION OF SPECTRUM-DEPENDENT SYSTEMS

Subpart A—General Information

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- 301.1 Purpose.
- 301.10 Applicability.
- 301.20 Definitions.

Subpart B—Procedure for Reimbursement for Relocations and Dispute Resolution

- 301.100 Costs to relocate.
- 301.110 Notification of marginal costs.
- 301.120 Negotiations and mediation.
- 301.130 Non-binding arbitration.
- 301.140 Petition for relocation.
- 301.150 Request for withdrawal.

AUTHORITY: 47 U.S.C. 921, *et seq.*; Pub. L. 105-261, 112 Stat. 1920.

SOURCE: 67 FR 41193, July 17, 2002, unless otherwise noted.

Subpart A—General Information

§ 301.1 Purpose.

Pursuant to Public Law 105-261 (112 Stat. 1920), private sector entities are required to reimburse Federal users for relocation of Federal Government stations from one or more frequencies due to reallocation. Reimbursement costs are in addition to funds paid by the non-Government licensee in connection with grant of the license by the Federal Communications Commission.

§ 301.10 Applicability.

(a) *Affected bands.* (1) These provisions apply to Government assignments in the following bands of frequencies located below 3 GHz:

- (i) 216 to 220 MHz.
- (ii) 1432 to 1435 MHz.
- (iii) 1710 to 1755 MHz.
- (iv) 2385 to 2390 MHz.

(2) NTIA will identify additional bands that may become subject to this part in a public notice and request for comments published in the FEDERAL REGISTER.

(b) *Availability of comparable facility.* The Federal entity will not be required

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to relocate until a comparable facility, or modification to an existing facility, is available in enough time to determine comparability, make adjustments, and ensure a seamless handoff. The factors to be considered in determining comparability include at least communications throughput, system reliability, operating costs, and operational capability as defined in this part. These factors may not be appropriate to determine comparable facility for certain Federal Government stations required to relocate, such as radar systems.

(c) *Frequency assignments eligible for reimbursement.* (1) *Equipment modification/Retuning.* To the extent that a Federal entity that is required to relocate is able to modify/retune its equipment with the result that the modified equipment provides operational capabilities comparable with the original system, reimbursement will be limited to the marginal costs associated with modification/retuning.

(2) *Old assignments/new assignments.* Old assignments are those that were authorized prior to October 17, 1998 (i.e., 216–220 MHz, 1432–1435 MHz, 1710–1755 MHz, 2385–2390 MHz). New assignments are those assignments in the affected bands that were authorized after October 17, 1998. New assignments in the affected bands are not eligible for reimbursement under these rules.

(3) *Exempted Federal power agencies and other exempted assignment.* Frequency assignments in the 1710–1755 MHz band that are exempt from reallocation requirements are not required to relocate and therefore are not entitled to reimbursement under these rules. Federal agencies may accept reimbursement for relocation costs of exempted assignments in cases of voluntary relocation.

(4) *Experimental stations.* Frequency assignments for experimental stations or experimental testing stations are not entitled to reimbursement under this part. Reimbursement shall apply to experimental stations that have been certified for spectrum support prior to October 17, 1998 by NTIA for stage 3 developmental tests under section 10.3.1. of the NTIA Manual of Federal Regulations and Procedures for Federal Radio Frequency Management.

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This manual is available on NTIA's website at <http://www.ntia.doc.gov/osmhome/redbook/redbook.html>. The manual is also available from the U.S. Government Printing Office (S/N: 903-008-0025-3).

(5) *Certain other government stations.* Other exempted stations identified under the 1995 Spectrum Reallocation Final Report and the 1998 Spectrum Reallocation Report are not required to relocate and therefore are not entitled to reimbursement under these rules. These agencies may, however, accept reimbursement for relocation costs in cases of voluntary relocation.

(d) *Sunset of reimbursement rights.* There is no sunset of reimbursement rights for affected agencies.

(e) *Authority.* The rules set forth in this subpart in no way affect what authority, if any, has been delegated to the Federal entity to negotiate or contract on behalf of the United States.

§ 301.20 Definitions.

As used in this part:

(a) The term *allocation* means an entry in the National Table of Frequency Allocations (47 CFR 2.105) of a given frequency band for the purpose of its use by one or more radiocommunication services, or the radio astronomy service under specified conditions.

(b) The term *assignment* means authorization for a Government radio station to use a radio frequency or frequencies or radio frequency channel or channels under specified conditions.

(c) The term *auction* means the competitive bidding process that Congress authorized the Federal Communication Commission to use in Title VI of the Omnibus Budget Reconciliation Act of 1993 and the Balanced Budget Act of 1997 for the reassignment and licensing of spectrum identified in § 301.10(a) for certain commercial radio-based services.

(d) The term *classified assignment* means a frequency assignment and information related to a frequency assignment that has been determined pursuant to Executive Order 12958 or any predecessor order or successor executive order to require protection against unauthorized disclosure and that is marked as “confidential.”

“secret,” or “top secret” to indicate its classified status when in documentary form.

(e) The term *Commission or FCC* means the Federal Communications Commission.

(f) The term *communications throughput* means the amount of information transferred within the system for a given amount of time. For digital systems, the communications throughput is measured in bits per second (bps); for analog systems, the communications throughput is measured by the number of voice, video or data channels.

(g) The term *comparable facility* means that the replacement facility restores the operational capabilities of the original facility to an equal or superior level taking into account at least four factors: Communications throughput, system reliability, operating costs, and operational capability.

(h) The term *experimental station* means a station utilizing radio waves in experiments with a view to the development of science or technique.

(i) The term *experimental testing station* refers to an experimental station used for the evaluating or testing of electronics equipment or systems, including site selection and transmission path surveys.

(j) The term *Federal entity* means any department, agency or other instrumentality of the Federal Government that utilizes a Government station authorization obtained under section 305 of the Communications Act of 1934 (47 U.S.C. 305).

(k) The term *in-kind* means the value of non-cash contributions provided by non-Federal private parties. In-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefitting and specifically identifiable to the project or program.

(l) The term *licensee* refers to a person awarded a license by the Federal Communications Commission for use of the bands identified in §301.10. The transfer or assignment of a license does not change the time periods established in these rules.

(m) The term *marginal costs* means the costs that will be incurred by a Federal entity to achieve comparable

capability of systems relocated to a new frequency assignment or band or otherwise modified. Specifically, marginal costs would include all engineering, equipment, software, site acquisition and construction costs, as well as any legitimate and prudent transaction expenses, including outside consultants, and reasonable additional costs incurred by the Federal entity that are attributable to relocation, including increased recurring costs associated with the replacement facilities. Marginal costs would include costs related to the need to achieve comparable capability when replacing, modifying or reissuing equipment in order to relocate when the systems that must be procured or developed have increased functionality due to technological growth. Marginal costs do not include costs related to optional increased functionality that is independent of the need to achieve comparable capability. To the extent that a Federal entity needs to accelerate the introduction of systems and equipment to allow for relocation earlier than the Federal entity had planned, replacement costs of the accelerated systems and equipment shall be included in marginal costs. Marginal costs would also include the costs of any modification or replacement of equipment, software, facilities, operating manuals, training costs, or regulations that are attributable to relocation. Marginal costs would not include costs related to routine upgrades and operating costs and lifecycle replacements that would have occurred absent the need to relocate pursuant to these rules.

(n) The term *mediation* means a flexible and voluntary dispute resolution procedure in which a specially trained mediator facilitates negotiations to reach a mutually agreeable resolution. The mediator may not dictate a settlement. The mediation process involves one or more sessions in which counsel, parties and the mediator participates, and may continue over the period of time specified in this part. The mediator can help the parties improve communication, clarify interests, and probe the strengths and weaknesses of positions. The mediator can also identify areas of agreement and help generate options that lead to a settlement.

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(o) The term *NTIA* means the National Telecommunications and Information Administration.

(p) The term *operational costs* means the cost to operate and maintain the Federal entity's replacement facility. New licensees would compensate Federal entities for any increased recurring costs associated with the replacement facilities for five years after relocation. Such costs shall include, but not be limited to, additional rental payments and increased utility fees.

(q) The term *operational capability* means the measure of a system's ability to perform its validated functions within doctrinal requirements, including service, joint service, and allied interoperability requirements with related systems.

(r) The term *relocation* refers to the process of moving a system that is displaced as a result of reallocation.

(s) The term *sensitive assignment* refers to those assignments whose operations or technical parameters are not releasable to the public under the Freedom of Information Act.

(t) The term *system reliability* means the percentage of time information is accurately transmitted within a system. The reliability of a system is a function of equipment failures (e.g., transmitters, feed lines, antennas, receivers and battery back-up power), the availability of the frequency channel given the propagation characteristics (e.g., frequency, terrain, atmospheric condition and noise), and equipment sensitivity. System reliability also includes the ability of a radio-communications station to perform a required function under stated conditions for a stated period of time. System reliability may involve three concepts: Attaining a specified level of performance; the probability of achieving that level; and maintaining that level for a specified time. For digital systems, system reliability shall be measured by the percentage of time the bit error rate (BER) exceeds a desired value; and for analog transmissions, this would be measured by the percentage of time that the received carrier-to-noise ratio exceeds the receiver threshold.

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Subpart B—Procedure for Reimbursement for Relocations and Dispute Resolution

§ 301.100 Costs to relocate.

(a) Relocation costs. The licensee is required to reimburse the Federal entity for all costs incurred as a result of modification, retuning and/or relocation.

(b) Method of reimbursement. Reimbursement payments shall be made in advance of relocation and may be in cash or in-kind as agreed to by the affected Federal entity. Any such payment in cash shall be deposited in the account of such Federal entity in the Treasury of the United States or in a separate account as authorized by law. If actual costs are less than the payments made, the Federal entity shall refund the difference.

§ 301.110 Notification of marginal costs.

(a) NTIA shall provide the Federal entity's estimated marginal cost information to the FCC at least 180 days prior to the date on which the FCC schedules an auction to commence. Marginal costs, as defined in § 301.20(1), are the costs that will be incurred by a Federal entity to achieve comparable capability of systems relocated to a new frequency assignment or band or otherwise modified. Any Federal entity that proposes to relocate, modify or retune shall notify NTIA at least 240 days before the auction of the marginal costs anticipated to be associated with relocation or with modifications necessary to accommodate prospective licensees. The information provided to NTIA must also include the name and telephone number of a person within the Federal entity that can be contacted by the auction winner or licensee.

(b) *Unclassified assignments.* NTIA will provide the following information to the FCC prior to the date on which the FCC scheduled the auction to commence with respect to unclassified Government facilities:

- (1) List of Government facilities.
- (2) Government agency operating each facility.
- (3) Location of each facility.

(4) General type of operation and equipment.

(5) Whether the facility can be retuned, modified, or must be relocated.

(6) Estimated marginal cost of retuning, modification, or relocation.

(7) Total estimated costs for all assignments.

(c) *Classified assignments.* Prior to the date on which the FCC has scheduled an auction to commence, Federal entities located on the spectrum to be auctioned will provide a single, consolidated and unclassified figure to NTIA for the cost of relocating, retuning, or modifying all such classified systems. NTIA will provide this information to the FCC which in turn will provide the figure to bidders with the following conditions: To the extent it is consistent with national security considerations, the figure may be broken down by geographical location and spectrum block to give those bidding on a geographic basis the best indication possible of the cost they may have to pay to relocate, retune or modify the systems at issue. Following the auction, the winner may apply for a facility clearance pursuant to the National Industrial Security Program Operating Manual and related individual security clearances. If those clearances and accesses are granted, classified information may be made available with regard to certain Government systems in accordance with the terms and conditions prescribed in the clearances and accesses provided, and subject to the overall rules and authorities found in Executive Order 12958, Executive Order 12968, and related Federal laws, rules and regulations.

(d) *Sensitive assignments.* Prior to the date on which the FCC has scheduled an auction to commence, Federal entities will provide a single, consolidated and unclassified figure to NTIA for the cost of relocating, retuning, or modifying all such sensitive systems. NTIA will provide this information to the FCC which in turn will provide the figure to bidders with the following conditions: To the extent it is consistent with the sensitive nature of the assignment, the figure may be broken down by geographical location and spectrum block to give those bidding on a geo-

graphic basis the best indication possible of the cost they may have to pay to relocate, retune or modify the systems at issue. Following the auction, the Government agency shall release the sensitive information to the winning licensee pursuant to a non-disclosure agreement, if required.

§ 301.120 Negotiations and mediation.

(a) Within 30 days after public notice of the grant of a license for use of the bands identified in § 301.10, the licensee is required to provide the Federal entity that occupies the band with written notification of such event. Public notice of the grant commences the 135-day period for negotiation or mediation. During this period, parties are encouraged to resolve any differences with respect to relocation or modification costs or any other related issues, either through party-to-party negotiations and/or a third party mediator. Each party shall pay its own costs for negotiation and mediation. If, at the end of the 135-day period, the parties have not reached an agreement with respect to relocation, the parties may agree to extend the negotiation period.

(b) *Good faith obligation.* The parties are required to negotiate in good faith. Good faith means that:

(1) Neither party may refuse to negotiate; and

(2) Each party must behave in a manner necessary to facilitate the relocation process in a timely manner. Classified or sensitive information will be treated in accordance with § 301.110.

§ 301.130 Non-binding arbitration.

If the parties have not reached agreement to extend the negotiation/mediation period, or if a previously extended negotiation/mediation period expires, the parties shall enter into non-binding arbitration. The parties shall agree on an arbitrator, and the arbitrator may not be the same person as the mediator if mediation has been used by the parties and failed. The parties may design such rules for arbitration as deemed appropriate. The arbitrator's non-binding written decision may be requested by NTIA as part of the record in its determination on a petition for relocation under § 301.140. The decision may be a factor, among other

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things, in the NTIA determination on a petition for relocation. Each party shall pay its own costs for arbitration and share equally the cost of the arbitrator.

§ 301.140 Petition for relocation.

(a) *In general.* A licensee seeking to relocate a Federal Government station must submit a petition for relocation to NTIA. A copy of the petition must also be simultaneously provided to the FCC. NTIA's determination shall be set forth in writing within six months after the petition for relocation has been filed, and be provided to the auction winner and the Federal entity. NTIA shall limit or terminate the Federal entity's operating license within six months after receiving the petition if the following requirements are met:

(1) The person seeking relocation of the Federal Government station has guaranteed to pay all modification and relocation costs incurred by the Federal entity, including all engineering, equipment, site acquisition and construction, and regulatory fees;

(2) All activities necessary for implementing the relocation or modification have been completed, including construction of replacement facilities (if necessary and appropriate) and identifying and obtaining new frequencies for use by the relocated Federal Government station (where such station is not relocating to spectrum reserved exclusively for Federal use);

(3) Any necessary replacement facilities, equipment modifications, or other changes have been implemented and tested to ensure that the Federal Government station is able to accomplish its purposes; and

(4)(i) NTIA has determined that the proposed use of the spectrum frequency band to which the Federal entity will relocate its operations is

(A) Consistent with obligations undertaken by the United States in international agreements and with United States national security and public safety interests; and

(B) Suitable for the technical characteristics of the system band and consistent with other uses of the band.

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(ii) In exercising its authority, NTIA shall consult with the Secretary of Defense, the Secretary of State, or other appropriate officers of the Federal Government.

(5) If these requirements are not met, NTIA shall notify the petitioner that the request is declined and the reasons for denial.

(6) If NTIA does not issue a determination under this section within 6 months of the filing of a Petition for Relocation, the Petition for Relocation is deemed to be denied.

(7) In making its determination under this section, NTIA shall consult with the affected Federal entity and the Office of Management and Budget and other executive branch agencies.

(b) *Petition after agreement between the parties.* The licensee may file a petition for relocation pursuant to § 301.140 at anytime after the parties have reached agreement on relocation in negotiations or mediation as provided in § 301.120 and submit the agreement as evidence of having met the requirements of the Petition for Relocation.

(c) *Petition after failure to reach an agreement.* If the parties fail to reach an agreement as provided in § 301.120 and non-binding arbitration has occurred pursuant to § 301.130, the licensee may file a petition for relocation with NTIA after a decision has been rendered by the arbitrator. Any recommended decision by the arbitrator may be requested by NTIA as part of the record in a petition for relocation under § 301.140. The recommended decision may be a factor, among others, in the NTIA determination on the Petition for Relocation.

§ 301.150 Request for withdrawal.

As an alternative to a Petition for Relocation, if the parties reach an agreement in negotiations or mediation or agree with the decision of the arbitrator, the Federal entity may seek voluntary withdrawal of the assignments that are the subject of the relocation.