

§ 301.100

positions. The mediator can also identify areas of agreement and help generate options that lead to a settlement.

(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.

47 CFR Ch. III (10-1-03 Edition)

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(l), 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