

(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.

(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.