

compensate FMS licensees for any increased recurring costs associated with the replacement facilities (*e.g.*, additional rental payments, increased utility fees) for five years after relocation. ET licensees may satisfy this obligation by making a lump-sum payment based on present value using current interest rates. Additionally, the maintenance costs to the FMS licensee must be equivalent to the 2 GHz system in order for the replacement system to be considered comparable.

(c) The FMS licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(d) *Twelve-month trial period.* If, within one year after the relocation to new facilities, the FMS licensee demonstrates that the new facilities are not comparable to the former facilities, the ET licensee must remedy the defects or pay to relocate the microwave licensee to one of the following: its former or equivalent 2 GHz channels, another comparable frequency band, a land-line system, or any other facility that satisfies the requirements specified in paragraph (b) of this section. This trial period commences on the date that the FMS licensee begins full operation of the replacement link. If the FMS licensee has retained its 2 GHz authorization during the trial period, it must return the license to the Commission at the end of the twelve months. FMS licensees relocated from the 2165–2200 MHz band may not be returned to their former 2 GHz channels. All other remedies specified in this paragraph (d) are available to FMS licensees relocated from the 2165–2200 MHz band, and may be invoked whenever the FMS licensee demonstrates that its replacement facility is not comparable, subject to no time limit.

[61 FR 29694, June 12, 1996, as amended at 65 FR 48183, Aug. 7, 2000]

§ 101.77 Public safety licensees in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.

(a) Public safety facilities are subject to the three-year voluntary and two-year mandatory negotiation period, except as otherwise defined in paragraph

101.69(c). In order for public safety licensees to qualify for extended negotiation periods, the department head responsible for system oversight must certify to the ET licensee requesting relocation that:

(1) The agency is a Police licensee, a Fire Licensee, or an Emergency Medical Licensee as defined in § 90.7 of this chapter, or meets the eligibility requirements of § 90.20(a)(2) of this chapter, except for § 90.20(a)(2)(ii) of this chapter, or that it is a licensee of other part 101 facilities licensed on a primary basis under the eligibility requirements of part 90, subpart B of this chapter; and

(2) The majority of communications carried on the facilities at issue involve safety of life and property.

(b) A public safety licensee must provide certification within thirty (30) days of a request from a ET licensee, or the ET licensee may presume that special treatment is inapplicable. If a public safety licensee falsely certifies to an ET licensee that it qualifies for the extended time periods, this licensee will be in violation of the Commission's rules and will subject to appropriate penalties, as well as immediately subject to the non-public safety time periods.

[61 FR 29695, June 12, 1996, as amended at 62 FR 12758, Mar. 18, 1997; 62 FR 18936, Apr. 17, 1997]

§ 101.79 Sunset provisions for licensees in the 1850–1990 MHz, 2110–2150 MHz, and 2150–2160 MHz bands.

(a) FMS licensees will maintain primary status in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands unless and until an ET licensee requires use of the spectrum. ET licensees are not required to pay relocation costs after the relocation rules sunset (*i.e.* ten years after the voluntary period begins for the first ET licensees in the service). Once the relocation rules sunset, an ET licensee may require the incumbent to cease operations, provided that the ET licensee intends to turn on a system within interference range of the incumbent, as determined by TIA Bulletin 10-F of any standard successor. ET licensee notification to the affected FMS licensee must be in writing and must provide the incumbent