

## § 101.71

Except as provided in paragraph (c) of this section, public safety facilities defined in §101.77 will continue to be co-primary in these bands until three years after the Commission commences acceptance of applications for an emerging technology service (voluntary negotiation period), and until two years after an emerging technology service licensee or an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (mandatory negotiation period). If no agreement is reached during either the voluntary or mandatory negotiation periods, an ET licensee may initiate involuntary relocation procedures. Under involuntary relocation, the incumbent is required to relocate, provided that the ET licensee meets the conditions of §101.75.

(c) Voluntary and mandatory negotiation periods for PCS C, D, E, and F blocks are defined as follows:

(1) Non-public safety incumbents will have a one-year voluntary negotiation period and a one-year mandatory negotiation period; and

(2) Public safety incumbents will have a three-year voluntary negotiation period and a two-year mandatory negotiation period.

(d) Relocation of FMS licensees in the 2110-2150 and 2160-2200 MHz bands will be subject to mandatory negotiations only. Mandatory negotiation periods are defined as follows:

(1) Non-public safety incumbents will have a two-year mandatory negotiation period; and

(2) Public safety incumbents will have a three-year mandatory negotiation period.

[62 FR 12758, Mar. 18, 1997, as amended at 65 FR 48182, Aug. 7, 2000; 68 FR 3464, Jan. 24, 2003]

### § 101.71 Voluntary negotiations.

During the voluntary negotiation period, negotiations are strictly voluntary and are not defined by any parameters. However, if the parties have not reached an agreement within one year after the commencement of the voluntary period for non-public safety entities, or within three years after the commencement of the voluntary period

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for public safety entities, the FMS licensee must allow the ET licensee if it so chooses to gain access to the existing facilities to be relocated so that an independent third party can examine the FMS licensee's 2 GHz system and prepare an estimate of the cost and the time needed to relocate the FMS licensee to comparable facilities. The ET licensee must pay for any such estimate.

[62 FR 12758, Mar. 18, 1997]

### § 101.73 Mandatory negotiations.

(a) If a relocation agreement is not reached during the voluntary period, the ET licensee may initiate a mandatory negotiation period. This mandatory period is triggered at the option of the ET licensee, but ET licensees may not invoke their right to mandatory negotiation until the voluntary negotiation period has expired.

(b) Once mandatory negotiations have begun, an FMS licensee may not refuse to negotiate and all parties are required to negotiate in good faith. Good faith requires each party to provide information to the other that is reasonably necessary to facilitate the relocation process. In evaluating claims that a party has not negotiated in good faith, the FCC will consider, *inter alia*, the following factors:

(1) Whether the ET licensee has made a *bona fide* offer to relocate the FMS licensee to comparable facilities in accordance with Section 101.75(b);

(2) If the FMS licensee has demanded a premium, the type of premium requested (*e.g.*, whether the premium is directly related to relocation, such as system-wide relocations and analog-to-digital conversions, versus other types of premiums), and whether the value of the premium as compared to the cost of providing comparable facilities is disproportionate (*i.e.*, whether there is a lack of proportion or relation between the two);

(3) What steps the parties have taken to determine the actual cost of relocation to comparable facilities;

(4) Whether either party has withheld information requested by the other party that is necessary to estimate relocation costs or to facilitate the relocation process.