

(c) Any party alleging a violation of our good faith requirement must attach an independent estimate of the relocation costs in question to any documentation filed with the Commission in support of its claim. An independent cost estimate must include a specification for the comparable facility and a statement of the costs associated with providing that facility to the incumbent licensee.

(d) Provisions for Relocation of Fixed Microwave Licensees in the 2110-2150 and 2160-2200 MHz bands. Mandatory negotiations will commence when the ET licensee informs the fixed microwave licensee in writing of its desire to negotiate. Mandatory negotiations will be conducted with the goal of providing the fixed microwave licensee with comparable facilities, defined as facilities possessing the following characteristics:

(1) *Throughput.* Communications throughput is the amount of information transferred within a system in a given amount of time. If analog facilities are being replaced with analog, comparable facilities provide an equivalent number of 4 kHz voice channels. If digital facilities are being replaced with digital, comparable facilities provide equivalent data loading bits per second (bps).

(2) *Reliability.* System reliability is the degree to which information is transferred accurately within a system. Comparable facilities provide reliability equal to the overall reliability of the FMS system. For digital systems, reliability is measured by the percent of time the bit error rate (BER) exceeds a desired value, and for analog or digital voice transmission, it is measured by the percent of time that audio signal quality meets an established threshold. If an analog system is replaced with a digital system, only the resulting frequency response, harmonic distortion, signal-to-noise and its reliability will be considered in determining comparable reliability.

(3) *Operating Costs.* Operating costs are the cost to operate and maintain the FMS system. ET licensees would compensate FMS licensees for any increased recurring costs associated with the replacement facilities (e.g., additional rental payments, and increased

utility fees) for five years after relocation. ET licensees could 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 would be equivalent to the 2 GHz system in order for the replacement system to be comparable.

[61 FR 29694, June 12, 1996, as amended at 62 FR 12758, Mar. 18, 1997; 65 FR 48182, Aug. 7, 2000; 68 FR 3464, Jan. 24, 2003]

§ 101.75 Involuntary relocation procedures.

(a) If no agreement is reached during either the voluntary or mandatory negotiation period, an ET licensee may initiate involuntary relocation procedures under the Commission's rules. ET licensees are obligated to pay to relocate only the specific microwave links to which their systems pose an interference problem. Under involuntary relocation, the FMS licensee is required to relocate, provided that the ET licensee:

(1) Guarantees payment of relocation costs, including all engineering, equipment, site and FCC fees, as well as any legitimate and prudent transaction expenses incurred by the FMS licensee that are directly attributable to an involuntary relocation, subject to a cap of two percent of the hard costs involved. Hard costs are defined as the actual costs associated with providing a replacement system, such as equipment and engineering expenses. ET licensees are not required to pay FMS licensees for internal resources devoted to the relocation process. ET licensees are not required to pay for transaction costs incurred by FMS licensees during the voluntary or mandatory periods once the involuntary period is initiated, or for fees that cannot be legitimately tied to the provision of comparable facilities;

(2) Completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination; and

(3) Builds the replacement system and tests it for comparability with the existing 2 GHz system.

(b) *Comparable facilities.* The replacement system provided to an incumbent during an involuntary relocation must be at least equivalent to the existing FMS system with respect to the following three factors:

(1) *Throughput.* Communications throughput is the amount of information transferred within a system in a given amount of time. If analog facilities are being replaced with analog, the ET licensee is required to provide the FMS licensee with an equivalent number of 4 kHz voice channels. If digital facilities are being replaced with digital, the ET licensee must provide the FMS licensee with equivalent data loading bits per second (bps). ET licensees must provide FMS licensees with enough throughput to satisfy the FMS licensee's system use at the time of relocation, not match the total capacity of the FMS system.

(2) *Reliability.* System reliability is the degree to which information is transferred accurately within a system. ET licensees must provide FMS licensees with reliability equal to the overall reliability of their system. For digital data systems, reliability is measured by the percent of time the bit error rate (BER) exceeds a desired value, and for analog or digital voice transmissions, it is measured by the percent of time that audio signal quality meets an established threshold. If an analog voice system is replaced with a digital voice system, only the resulting frequency response, harmonic distortion, signal-to-noise ratio and its reliability will be considered in determining comparable reliability.

(3) *Operating costs.* Operating costs are the cost to operate and maintain the FMS system. ET licensees must 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 sys-

tem 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 2110-2150 and 2160-2200 MHz bands may not be returned to their former 2 GHz channels. All other remedies specified in paragraph (d) are available to FMS licensees relocated from the 2110-2150 MHz and 2160-2200 MHz bands, 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; 68 FR 3464, Jan. 24, 2003]

§ 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