

## § 101.77

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 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 require-

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ments 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 2160–2200 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 (including MSS/ATC) 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; or, in the case of the 2180–2200 MHz band, ten years after the mandatory negotiation period begins for MSS/ATC 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 (for terrestrial-to-terrestrial situations) or TIA Bulletin TSB-86 (for MSS satellite-to-terrestrial situations) or any standard successor. ET licensee notification to the affected FMS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the FMS licensee must turn its license back into the Commission, unless the parties have entered into an agreement which allows the FMS licensee to continue to

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operate on a mutually agreed upon basis.

(b) If the parties cannot agree on a schedule or an alternative arrangement, requests for extension will be accepted and reviewed on a case-by-case basis. The Commission will grant such extensions only if the incumbent can demonstrate that:

(1) It cannot relocate within the six-month period (*e.g.*, because no alternative spectrum or other reasonable option is available), and;

(2) The public interest would be harmed if the incumbent is forced to terminate operations (*e.g.*, if public safety communications services would be disrupted).

[61 FR 29695, June 12, 1996, as amended at 62 FR 12758, Mar. 18, 1997; 68 FR 68254, Dec. 8, 2003]

### § 101.81 Future licensing in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.

After April 25, 1996, all major modifications and extensions to existing FMS systems in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands will be authorized on a secondary basis to ET systems. All other modifications will render the modified FMS license secondary to ET operations, unless the incumbent affirmatively justifies primary status and the incumbent FMS licensee establishes that the modification would not add to the relocation costs of ET licensees. Incumbent FMS licensees will maintain primary status for the following technical changes:

- (a) Decreases in power;
- (b) Minor changes (increases or decreases) in antenna height;
- (c) Minor location changes (up to two seconds);
- (d) Any data correction which does not involve a change in the location of an existing facility;
- (e) Reductions in authorized bandwidth;
- (f) Minor changes (increases or decreases) in structure height;
- (g) Changes (increases or decreases) in ground elevation that do not affect centerline height;
- (h) Minor equipment changes.

[61 FR 29695, June 12, 1996, as amended at 62 FR 12759, Mar. 18, 1997; 65 FR 38327, June 20, 2000]

### § 101.82 Reimbursement and relocation expenses in the 2110–2150 MHz and 2160–2200 MHz bands.

(a) Whenever an ET licensee (including Mobile-Satellite Service licensees) in the 2110–2150 or 2160–2200 MHz bands relocates an incumbent paired microwave link with one path in the 2110–2150 MHz band and the paired path in the 2160–2200 MHz band, the ET licensee is entitled to reimbursement of 50% of its relocation costs from any subsequently entering ET licensee which would have been required to relocate the same fixed microwave link.

(b) The subsequently entering ET licensee must reimburse the relocating ET licensee before the subsequently entering licensee may begin operations in these bands, unless the subsequently entering ET licensee can demonstrate that, according to established interference criteria, it would not have interfered with the microwave link in question.

(c) The total costs of which 50% is to be reimbursed will not exceed \$250,000 per paired fixed microwave link relocated, nor \$150,000 if a new or modified tower is required.

[65 FR 48183, Aug. 7, 2000; 65 FR 60382, Oct. 11, 2000, as amended at 68 FR 3463, Jan. 24, 2003. Redesignated at 68 FR 68255, Dec. 8, 2003]

### POLICIES GOVERNING FIXED SERVICE RELOCATION FROM THE 18.58–19.30 GHz BAND

SOURCE: 65 FR 54173, Sept. 7, 2000, unless otherwise noted.

### § 101.83 Modification of station license.

Permissible changes in equipment operating in the band 18.3–19.3 GHz: Notwithstanding other provisions of this section, stations that remain coprietary under the provisions of § 101.147(r) may not make modifications to their systems that increase interference to satellite earth stations, or result in a facility that would be more costly to relocate.

[68 FR 16968, Apr. 8, 2003]