

that region may be moved up in priority. Any party disputing such a change in priority may refer the matter to the Chief of the Public Safety and Critical Infrastructure Division, who hereby is delegated the authority to resolve such disputes. The Transition Administrator may direct that adjoining regions be reconfigured simultaneously when conditions so require.

(5) The Transition Administrator will coordinate relocation of a NPSPAC Region's NPSPAC channels with the relevant Regional Planning Committee(s) prior to commencing band reconfiguration in a NPSPAC Region.

(b) Once band reconfiguration commences in a given NPSPAC Region, the Transition Administrator will:

(1) Monitor the retuning schedule and resolve any schedule delays or refer same to the Public Safety and Critical Infrastructure Division for resolution;

(2) Coordinate with adjoining NPSPAC Regions to ensure that interference is not being caused to their existing facilities from relocated stations;

(3) Provide quarterly progress reports to the Commission in such detail as the Commission may require and include, with such reports, certifications by Nextel and the relevant licensees that relocation has been completed and that both parties agree on the amount received from the letter of credit proceeds in connection with relocation of the licensees' facilities. The report shall include description of any disputes that have arisen and the manner in which they were resolved. These quarterly reports need not be audited;

(4) Provide to the Public Safety and Critical Infrastructure Division, on the anniversary of January 21, 2005, an audited statement of relocation funds expended to date, including salaries and expenses of Transition Administrator;

(5) Facilitate resolution of disputes by mediation; or referral of the parties to alternative dispute resolution services;

(6) Notify the Commission when band reconfiguration is complete in each 800 MHz NPSPAC Region and identify which vacant channels are exclusively available to eligible applicants in the Public Safety or Critical Infrastruc-

ture Industry Categories as set forth in § 90.615(a), (b) and § 90.617(g), (h).

(c) The Transition Administrator may not serve as the repository of funds used in band reconfiguration, excepting such sums as Nextel may pay for the Transition Administrator's services. Moreover, the Transition Administrator will not be certified by the Commission as a frequency coordinator.

[69 FR 67849, Nov. 22, 2005, as amended at 70 FR 6760, Feb. 8, 2005]

**§ 90.677 Reconfiguration of the 806-824/851-869 MHz band in order to separate cellular systems from non-cellular systems.**

In order to facilitate reconfiguration of the 806-824/851-869 MHz band ("800 MHz band") to separate cellular systems from non-cellular systems, Nextel Communications, Inc. (Nextel) may relocate incumbents within the 800 MHz band by providing "comparable facilities." For the limited purpose of band reconfiguration, the provisions of § 90.157 shall not apply and inter-category sharing will be permitted under all circumstances. Such relocation is subject to the following provisions:

(a) Within thirty days of Commission approval of the Transition Administrator, the Transition Administrator described in § 90.676 will provide the Commission with a schedule detailing when band reconfiguration shall commence for each NPSPAC Region. The plan should also detail—by NPSPAC Region—which relocation option each non-Nextel ESMR licensee has chosen. The Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau will finalize and approve such a plan. The schedule shall provide for completion of band reconfiguration in no more than thirty-six months following release of a public notice announcing the start date of reconfiguration in the first NPSPAC region. Relocation will commence according to the schedule set by the Transition Administrator but all systems must have commenced reconfiguration within thirty months of release of a public notice announcing the start date of reconfiguration in the first NPSPAC region.

(b) *Voluntary negotiations.* Thirty days before the start date for each NPSPAC region, the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau will issue a public notice initiating a three-month voluntary negotiation period. During this voluntary negotiation period, Nextel and all incumbents may negotiate any mutually agreeable relocation agreement. Nextel and relocating incumbents may agree to conduct face-to-face negotiations or either party may elect to communicate with the other party through the Transition Administrator.

(c) *Mandatory negotiations.* If no agreement is reached by the end of the voluntary period, a three-month mandatory negotiation period will begin during which both Nextel and the incumbents must negotiate in “good faith.” Nextel and relocating incumbents may agree to conduct face-to-face negotiations or either party may elect to communicate with the other party through the Transition Administrator. All parties are charged with the obligation of utmost “good faith” in the negotiation process. Among the factors relevant to a “good-faith” determination are:

(1) Whether the party responsible for paying the cost of band reconfiguration has made a *bona fide* offer to relocate the incumbent to comparable facilities;

(2) The steps the parties have taken to determine the actual cost of relocation to comparable facilities; and

(3) Whether either party has unreasonably withheld information, essential to the accurate estimation of relocation costs and procedures, requested by the other party. The Transition Administrator may schedule mandatory settlement negotiations and mediation sessions and the parties must conform to such schedules.

(d) *Transition Administrator.* If no agreement is reached during either the voluntary or mandatory negotiating periods, all disputed issues shall be referred to the Transition Administrator who shall mediate and attempt to resolve them within thirty working days. If disputed issues remain thirty days after the end of the mandatory negotiation period; the Transition Administrator shall forward the record to the

Chief of the Public Safety and Critical Infrastructure Division, together with advice on how the matter(s) may be resolved. The Chief of the Public Safety and Critical Infrastructure Division is hereby delegated the authority to rule on disputed issues, *de novo*.

(e) *Waiver Requests.* Incumbents who wish not to relocate according to the schedule may petition the Commission for a waiver of the relocation obligation. Such a waiver would only be granted on a strict non-interference basis.

(f) *Comparable Facilities.* The replacement system provided to an incumbent must be at least equivalent to the existing 800 MHz system with respect to the four factors described in § 90.699(d) part.

(g) *Information Exchange.* Absent agreement between parties, the Transition Administrator will be responsible for determining the information that relocating incumbents must supply in support of a relocation agreement.

(h) The relevant Regional Planning Committee shall be informed of any proposed changes to any NPSPAC channel.

[69 FR 67849, Nov. 22, 2005]

POLICIES GOVERNING THE LICENSING AND USE OF EA-BASED SMR SYSTEMS IN THE 809–824/851–869 MHz BAND

**§ 90.681 EA-based SMR service areas.**

EA licenses in for channels 711 through 830 and Spectrum Blocks A through V listed in Tables 4 and 5 of § 90.617 are available in 175 Economic Areas (EAs) as defined in § 90.7.

[69 FR 67852, Nov. 22, 2004]

**§ 90.683 EA-based SMR system operations.**

(a) EA-based licensees authorized in the 809–824/854–869 MHz band pursuant to § 90.681 of this part may construct and operate base stations using any of the base station frequencies identified in their spectrum block anywhere within their authorized EA, provided that:

(1) The EA licensee affords protection, in accordance with § 90.621(b), to all previously authorized co-channel