

§ 101.69

47 CFR Ch. I (10–1–08 Edition)

POLICIES GOVERNING MICROWAVE RELOCATION FROM THE 1850–1990 AND 2110–2200 MHz BANDS

§ 101.69 Transition of the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.

Fixed Microwave Services (FMS) in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands have been allocated for use by emerging technology (ET) services, including Personal Communications Services (PCS), Advanced Wireless Services (AWS), and Mobile Satellite Services (MSS). The rules in this section provide for a transition period during which ET licensees may relocate existing FMS licensees using these frequencies to other media or other fixed channels, including those in other microwave bands.

(a) ET licensees may negotiate with FMS licensees authorized to use frequencies in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands, for the purpose of agreeing to terms under which the FMS licensees would:

(1) Relocate their operations to other fixed microwave bands or other media; or alternatively

(2) Accept a sharing arrangement with the ET licensee that may result in an otherwise impermissible level of interference to the FMS operations.

(b)–(c) [Reserved]

(d) Relocation of FMS licensees in the 2110–2150 and 2160–2200 MHz band will be subject to mandatory negotiations only. Except as provided in paragraph (e) of this section, 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.

(e) Relocation of FMS licensees by Mobile-Satellite Service (MSS) licensees, including MSS licensees providing Ancillary Terrestrial Component (ATC) service, will be subject to mandatory negotiations only. Mandatory negotiation periods that are triggered in the first instance by MSS/ATC licensees are defined as follows:

(1) The mandatory negotiation period for non-public safety incumbents will end December 8, 2004.

(2) The mandatory negotiation period for public safety incumbents will end December 8, 2005.

(f) AWS licensees operating in the 1910–1920 MHz and 2175–2180 MHz bands will follow the requirements and procedures set forth in ET Docket No. 00–258 and WT Docket No. 04–356.

(g) If no agreement is reached during the mandatory negotiation period, 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.

[62 FR 12758, Mar. 18, 1997, as amended at 65 FR 48182, Aug. 7, 2000; 68 FR 3464, Jan. 24, 2003; 68 FR 68253, Dec. 8, 2003; 69 FR 62622, Oct. 27, 2004; 71 FR 29842, May 24, 2006]

§ 101.71 [Reserved]

§ 101.73 Mandatory negotiations.

(a) A mandatory negotiation period may be initiated at the option of the ET licensee. Relocation of FMS licensees by Mobile Satellite Service (MSS) operators (including MSS operators providing Ancillary Terrestrial Component (ATC) service) and AWS licensees in the 2110–2150 MHz and 2160–2200 MHz bands will be subject to mandatory negotiations only.

(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