

Federal Communications Commission

§ 101.73

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 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.

(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.* Except as otherwise provided in § 101.69(e) pertaining to FMS relocations by MSS/ATC operators, a separate mandatory negotiation period will commence for each FMS licensee when an ET licensee informs that FMS licensee in writing of its desire to negotiate. Mandatory negotiations will be conducted with the goal of providing the FMS 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