

the matter will be set for an evidentiary hearing before an Administrative Law Judge. Any disputes submitted to the Transition Administrator after the conclusion of the mandatory negotiation period as described in §90.677(c) shall be resolved as described in §90.677(d)(2).

(2) If no agreement is reached during either the voluntary or mandatory negotiating periods, all disputed issues shall be referred to the Transition Administrator, or other mediator, who shall attempt to resolve them. If disputed issues remain thirty working days after the end of the mandatory negotiation period, the Transition Administrator shall forward the record to the Chief, Public Safety and Homeland Security Bureau, together with advice on how the matter(s) may be resolved. The Chief, Public Safety and Homeland Security Bureau is hereby delegated the authority to rule on disputed issues, de novo. If the Chief, Public Safety and Homeland Security Bureau decides an issue, any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for de novo review; whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge.

(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, 2004, as amended at 70 FR 76711, Dec. 28, 2005; 71 FR 52751, Sept. 7, 2006; 71 FR 69038, Nov. 29, 2006; 75 FR 35318, June 22, 2010; 76 FR 11683, Mar. 3, 2011]

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 stations that are not associated with another EA license;

(2) The EA licensee complies with any rules and international agreements that restrict use of frequencies identified in their spectrum block, including the provisions of §90.619 relating to U.S./Canadian and U.S./Mexican border areas;

(3) The EA licensee limits the field strength of its base stations at any location on the border of the EA service area in accordance with §90.689;

(4) Upon request by an incumbent licensee or the Commission, the EA licensee shall furnish the technical parameters, location and coordinates of the completion of the addition, removal, relocation or modification of any of its facilities within the EA. The EA licensee must provide such information within ten (10) days of receiving a written request.

(5) For any construction or alteration that would exceed the requirements of §17.7 of this chapter, licensees must notify the appropriate Regional