

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

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Office of the Federal Aviation Administration (FAA Form 7460-1) and file a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, WTB, Support Services Branch, Gettysburg, PA 17325.

(6) Any additional transmitters placed in operation must not have a significant environmental effect as defined by §§ 1.1301 through 1.1319 of this chapter.

(b) In the event that the authorization for a previously authorized co-channel station within the EA licensee's spectrum block is terminated or revoked, the EA licensee's co-channel obligations to such station will cease upon deletion of the facility from the Commission's official licensing records, and the EA licensee then will be able to construct and operate without regard to that previous authorization.

[61 FR 6158, 6159, Feb. 16, 1996, as amended at 62 FR 41216, July 31, 1997; 63 FR 68970, Dec. 14, 1998; 69 FR 67852, Nov. 22, 2004]

### **§ 90.685 Authorization, construction and implementation of EA licenses.**

(a) EA licenses in the 809-824/854-869 MHz band will be issued for a term not to exceed ten years. Additionally, EA licensees generally will be afforded a renewal expectancy only for those stations put into service after August 10, 1996.

(b) EA licensees in the 809-824/854-869 MHz band must, within three years of the grant of their initial license, construct and place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of its EA-based service area. Further, each EA licensee must provide coverage to at least two-thirds of the population of the EA-based service area within five years of the grant of their initial license. EA-based licensees may, in the alternative, provide substantial service to their markets within five years of the grant of their initial license. Substantial service shall be defined as: "Service which is sound, favorable, and substantially above a level of mediocre service."

(c) *Channel use requirement.* In addition to the population coverage requirements described in this section, we will require EA licensees in Channel

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blocks A, B and C in the 816-821/861-866 MHz band to construct 50 percent of the total channels included in their spectrum block in at least one location in their respective EA-based service area within three years of initial license grant and to retain such channel usage for the remainder of the construction period.

(d) An EA licensee's failure to meet the population coverage requirements of paragraphs (b) and (c) of this section, will result in forfeiture of the entire EA license. Forfeiture of the EA license, however, would not result in the loss of any constructed facilities authorized to the licensee prior to the date of the commencement of the auction for the EA licenses.

(e) EA licensees operating on channels listed in § 90.614(b) and (c) must implement an Enhanced Specialized Mobile Radio (ESMR) system—as defined in § 90.7—on their EA license and any associated site-based licenses prior to the expiration date of the EA license. EA licensees operating on these channels shall follow the construction notification procedures set forth in § 1.946(d) of this chapter. Failure to implement an ESMR system on their EA and site-based licenses before the expiration date of the EA license will result in termination of the EA license and any associated site-based licenses pursuant to § 1.946(c) of this chapter.

[62 FR 41216, July 31, 1997, as amended at 69 FR 67852, Nov. 22, 2004; 70 FR 6760, Feb. 8, 2005; 70 FR 76712, Dec. 28, 2005]

### **§ 90.687 Special provisions regarding assignments and transfers of authorizations for incumbent SMR licensees in the 809-824/854-869 MHz band.**

An SMR license initially authorized on any of the channels listed in Tables 4 and 5 of § 90.617 may transfer or assign its channel(s) to another entity subject to the provisions of § 1.948 of this chapter and § 90.609(b). If the proposed transferee or assignee is the EA licensee for the spectrum block to which the channel is allocated, such transfer or assignment presumptively will be deemed to be in the public interest. However, such presumption will be rebuttable.

[69 FR 67852, Nov. 22, 2004]