

Federal Communications Commission

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ten years after the voluntary period begins for the first ET licensees in the service). Once the relocation rules sunset, an ET licensee may require the incumbent to cease operations, provided that the ET licensee intends to turn on a system within interference range of the incumbent, as determined by TIA Bulletin 10-F of any standard successor. ET licensee notification to the affected FMS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the FMS licensee must turn its license back into the Commission, unless the parties have entered into an agreement which allows the FMS licensee to continue to operate on a mutually agreed upon basis.

(b) If the parties cannot agree on a schedule or an alternative arrangement, requests for extension will be accepted and reviewed on a case-by-case basis. The Commission will grant such extensions only if the incumbent can demonstrate that:

(1) It cannot relocate within the six-month period (*e.g.*, because no alternative spectrum or other reasonable option is available), and;

(2) The public interest would be harmed if the incumbent is forced to terminate operations (*e.g.*, if public safety communications services would be disrupted).

[61 FR 29695, June 12, 1996, as amended at 62 FR 12758, Mar. 18, 1997]

§ 101.81 Future licensing in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.

After April 25, 1996, all major modifications and extensions to existing FMS systems in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands will be authorized on a secondary basis to ET systems. All other modifications will render the modified FMS license secondary to ET operations, unless the incumbent affirmatively justifies primary status and the incumbent FMS licensee establishes that the modification would not add to the relocation costs of ET licensees. Incumbent FMS licensees will maintain primary status for the following technical changes:

(a) Decreases in power;

(b) Minor changes (increases or decreases) in antenna height;

(c) Minor location changes (up to two seconds);

(d) Any data correction which does not involve a change in the location of an existing facility;

(e) Reductions in authorized bandwidth;

(f) Minor changes (increases or decreases) in structure height;

(g) Changes (increases or decreases) in ground elevation that do not affect centerline height;

(h) Minor equipment changes.

[61 FR 29695, June 12, 1996, as amended at 62 FR 12759, Mar. 18, 1997; 65 FR 38327, June 20, 2000]

POLICIES GOVERNING FIXED SERVICE RELOCATION FROM THE 18.58–19.30 GHZ BAND

SOURCE: 65 FR 54173, Sept. 7, 2000, unless otherwise noted.

EFFECTIVE DATE NOTE: At 65 FR 54173, Sept. 7, 2000, §§101.83 through 101.97 and an undesignated center heading were added, effective Oct. 10, 2000.

§ 101.83 Modification of station license.

Permissible changes in equipment operating in the band 18.58–19.3 GHz: Notwithstanding other provisions of this section, stations that remain coprimary under the provisions of §101.147(r) may not make modifications to their systems that increase interference to satellite earth stations, or result in a facility that would be more costly to relocate.

§ 101.85 Transition of the 18.58–19.3 GHz band from the terrestrial fixed services to the fixed-satellite service (FSS).

Fixed services (FS) frequencies in the 18.58–19.3 GHz bands listed in §§21.901(e), 74.502(c), 74.602(g), and 78.18(a)(4) of this chapter, and §101.147(a) and (r) have been allocated for use by the fixed-satellite service (FSS). The rules in this section provide for a transition period during which FSS licensees may relocate existing FS

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licensees using these frequencies to other microwave bands.

(a) FSS licensees may negotiate with FS licensees authorized to use frequencies in the 18.58–19.30 GHz band for the purpose of agreeing to terms under which the FS licensees would:

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

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

(b) FS operations in the 18.58–19.30 GHz band that remain co-primary under the provisions of §§21.901(e), 74.502(c), 74.602(d), and 78.18(a)(4) of this chapter, and §101.147(r) will continue to be co-primary with the FSS users of this spectrum until June 8, 2010 or until the relocation of the fixed service operations, whichever occurs sooner. After June 8, 2010, only FS operations in the band 19.26–19.3 GHz will continue to be co-primary with the FSS users. Notwithstanding this continued co-primary status, FS users in the 19.26–19.3 GHz band remain subject to the relocation procedures of §§101.85 through 101.95. If no agreement is reached during the negotiations, an FSS licensee may initiate relocation procedures. Under the relocation procedures, the incumbent is required to relocate, provided that the FSS licensee meets the conditions of §101.91.

(c) Negotiation periods are defined as follows:

(1) Non-public safety incumbents will have a two-year negotiation period.

(2) Public safety incumbents will have a three-year negotiation period.

§ 101.89 Negotiations.

(a) The negotiation is triggered by the fixed-satellite service (FSS) licensee, who must contact the fixed services (FS) licensee and request that negotiations begin.

(b) Once negotiations have begun, an FS 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 FSS licensee has made a bona fide offer to relocate the FS licensee to comparable facilities in accordance with § 101.91(b);

(2) If the FS 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) Negotiations will commence when the FSS licensee informs the FS licensee in writing of its desire to negotiate. Negotiations will be conducted with the goal of providing the FS 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, the FSS licensee is required to provide the FS licensee with an equivalent number of 4 kHz voice channels. If digital facilities are being replaced with digital, the FSS licensee must provide the FS licensee with equivalent data loading bits per second (bps). FSS licensees must provide FS licensees with enough throughput to satisfy the FS licensee's