

§ 101.83

TIA TSB 86 or any standard successor, relative to the relocated microwave link. Subsequently entering MSS space-to-Earth downlink operators must reimburse AWS or MSS space-to-Earth relocators (see paragraph (e)) of this section before the later entrant may begin operations in these bands, unless the later entrant can demonstrate that it would not have interfered with the microwave link in question.

(d) *Cost-sharing obligations among terrestrial stations.* For terrestrial stations (AWS and MSS Ancillary Terrestrial Component (ATC)), cost-sharing obligations are governed by §§27.1160 through 27.1174 of this chapter; provided, however, that MSS operators (including MSS/ATC operators) are not obligated to reimburse voluntarily relocating FMS incumbents in the 2180–2200 MHz band. (AWS reimbursement and cost-sharing obligations relative to voluntarily relocating FMS incumbents are governed by §27.1166 of this chapter).

(e) The total costs of which 50 percent is to be reimbursed will not exceed \$250,000 per paired fixed microwave link relocated, with an additional \$150,000 permitted if a new or modified tower is required.

[71 FR 29843, May 24, 2006]

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

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

§ 101.83 Modification of station license.

Permissible changes in equipment operating in the band 18.3–19.3 GHz: Notwithstanding other provisions of this section, stations that remain co-primary 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.

[68 FR 16968, Apr. 8, 2003]

47 CFR Ch. I (10–1–11 Edition)

§ 101.85 Transition of the 18.3–19.3 GHz band from the terrestrial fixed services to the fixed-satellite service (FSS).

Fixed services (FS) frequencies in the 18.3–19.3 GHz bands listed in §§21.901(e), 74.502(c), 74.602(g), and 78.18(a)(4) and §101.147(a) and (r) of this chapter 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 licensees using these frequencies to other frequency bands, media or facilities.

(a) FSS licensees may negotiate with FS licensees authorized to use frequencies in the 18.3–19.30 GHz bands for the purpose of agreeing to terms under which the FS licensees would:

(1) Relocate their operations to other frequency bands, media or facilities; 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)(1) FS operations in the 18.3–18.58 GHz band that remain co-primary under the provisions of §§21.901(e), 74.502(c), 74.602(d), 78.18(a)(4) and 101.147(r) of this chapter will continue to be co-primary with the FSS users of this spectrum until November 19, 2012 or until the relocation of the fixed service operations, whichever occurs sooner.

(2) FS operations in the 18.58–19.3 GHz band that remain co-primary under the provisions of §§21.901(e), 74.502(c), 74.602(d), 78.18(a)(4) and 101.147(r) of this chapter 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, except for operations in the band 19.26–19.3 GHz and low power systems operating pursuant to §101.47(r)(10), which shall operate on a co-primary basis until October 31, 2011.

(3) If no agreement is reached during the negotiations pursuant to §101.85(a), 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.

[65 FR 54173, Sept. 7, 2000, as amended at 66 FR 63516, Dec. 7, 2001; 68 FR 16968, Apr. 8, 2003]

§ 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 system use at the time of relocation, not match the total capacity of the FS system.

(2) *Reliability.* System reliability is the degree to which information is transferred accurately within a system. FSS licensees must provide FS licensees with reliability equal to the overall reliability of their system. For digital data systems, reliability is measured by the percent of time the bit error rate (BER) exceeds a desired value, and for analog or digital voice transmissions, it is measured by the percent of time that audio signal quality meets an established threshold. If an analog voice system is replaced with a digital voice system, only the resulting frequency response, harmonic distortion, signal-to-noise ratio and its reliability will be considered in determining comparable reliability.

(3) *Operating costs.* Operating costs are the cost to operate and maintain the FS system. FSS licensees must compensate FS licensees for any increased recurring costs associated with the replacement facilities (e.g., additional rental payments, increased utility fees) for five years after relocation. FSS licensees may satisfy this obligation by making a lump-sum payment based on present value using current