

§ 101.81

safety communications services would be disrupted).

[61 FR 29695, June 12, 1996, as amended at 62 FR 12758, Mar. 18, 1997; 68 FR 68254, Dec. 8, 2003; 71 FR 29842, May 24, 2006; 78 FR 8272, Feb. 5, 2013]

§ 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]

§ 101.82 Reimbursement and relocation expenses in the 2110–2150 MHz and 2160–2200 MHz bands.

(a) Reimbursement and relocation expenses for the 2110–2130 MHz and 2160–2200 MHz bands are addressed in §§ 27.1160–27.1174.

(b) *Cost-sharing obligations between AWS and MSS (space-to-Earth downlink).* Whenever an ET licensee (AWS or Mobile Satellite Service for space-to-Earth downlink in the 2130–2150 or 2180–2200 MHz bands) relocates an incumbent paired microwave link with one

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path in the 2130–2150 MHz band and the paired path in the 2180–2200 MHz band, the relocater is entitled to reimbursement of 50 percent of its relocation costs (see paragraph (e)) of this section from any other AWS licensee or MSS space-to-Earth downlink operator which would have been required to relocate the same fixed microwave link as set forth in paragraphs (c) and (d) of this section.

(c) *Cost-sharing obligations for MSS (space-to-Earth downlinks).* For an MSS space-to-Earth downlink, the cost-sharing obligation is based on the interference criteria for relocation, *i.e.*, 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), cost-sharing obligations are governed by §§ 27.1160 through 27.1174 of this chapter; provided, however, that MSS 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, as amended at 78 FR 8272, Feb. 5, 2013]

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]

§ 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