

notified by an MSS licensee of its desire to negotiate. Such a scheme would result in a large number of unrelated mandatory negotiation periods that would tend to further delay the overall relocation process in the band. We believe that such discontinuity would be likely to create considerable confusion and lack of finality as compared with a single uniform negotiation period for all FS incumbents.

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33. *Ten-year sunset period.* We do not believe it would be in the public interest to delay further the start of the mandatory negotiation period for a further uncertain period of time (*i.e.*, until whenever the first MSS licensee seeks to negotiate relocation of an FS incumbent). Therefore, we are specifying that the date of publication of this Report and Order and Memorandum Opinion and Order in the **Federal Register** will be the starting date of the mandatory negotiation period between MSS licensees and FS incumbents, as well as the starting date of the related ten-year sunset period for relocation of FS licensees by MSS licensees in the 2180–2200 MHz band. Similarly, we believe that the duration of the mandatory negotiation period should be modified—from two years for non-public safety and three years for public safety—to one year and two years, respectively. Given the amount of time that has already passed since adoption of the MSS Second Report and Order and the upcoming MSS milestone requirements, we believe that this modification is appropriate to maintain the balance of equities between MSS licensees and FS incumbents.

34. We decline to adopt the Joint Petitioner's request that MSS licensees be required to notify FS incumbents of their intention to relocate incumbents within 90 days of the start of the mandatory negotiation period. Under the relocation plan adopted in *MSS Second Report and Order*, we have placed substantial relocation burdens on MSS licensees with respect to FS—in addition to BAS—incumbents in the 2 GHz band. In order to help balance these substantial burdens, we believe that MSS licensees should be afforded maximum flexibility in choosing the timing of negotiations during the mandatory negotiation period. At the same time, we find that the negotiation starting date that we have adopted herein will provide sufficient notice for all FS incumbents to factor such relocation into their business plans. Therefore, we affirm that MSS licensees may elect to notify FS incumbents of

their desire to enter into relocation negotiations at any time during the mandatory negotiation period and will not be required to provide anticipatory notice prior to doing so. Taken together, we believe that these actions balance the public interests in providing the opportunity for early entry of new MSS operations while maintaining the integrity of incumbent FS services in the 2 GHz band.

35. *Assignment or transfer of control.* We agree with the Joint Petitioners' analysis that our policy on assignment or transfer of control of incumbent FS licensees needs to be clarified. Therefore, consistent with our finding in the 18 GHz Relocation Proceeding, we clarify that an assignment or transfer of control will not disqualify an FS incumbent in the 2180–2200 MHz band from relocation eligibility so long as the facility is not rendered, as a result, more expensive to relocate. On the other hand, FS stations newly authorized after the date of publication of the *MSS Second Report and Order* (*i.e.*, September 6, 2000) will not be eligible for relocation. In addition, FS stations making changes that are otherwise classified as major modifications under § 1.929(a) will not be eligible for relocation.

36. *Interference to MSS Operations.* Joint Petitioners and Enron urge that MSS licensees be obligated to relocate incumbents prior to the ten-year sunset whenever the MSS licensee would receive interference from incumbent FS operations in addition to whenever interference is caused to FS incumbents. Enron further asserts that the current provisions ignore half of the interference picture prior to the sunset and would allow MSS licensees to engage in “cherry picking” where they commence operations in order to minimize initial relocation expenses during their start-up phase. Petitioners correctly observe that, prior to the ten-year sunset for FS relocation in the 2 GHz band, we require MSS licensees to relocate FS incumbent licensees after coordination and a determination according to TIA TSB-86 that interference would be caused to an FS incumbent. Subsequent to the sunset, FS microwave licensees will be required to relocate at their own expense within six months of presentation of a written demand by a MSS licensee that determines it “will receive harmful interference according to TIA TSB-86, or that has received actual harmful interference from the FS licensee.”

37. We decline to require MSS licensees to relocate FS incumbents from which they receive—but do not cause—interference prior to the end of

the sunset period. As a practical matter, we believe that MSS licensees will act in their own best interests to maximize the marketability of their service when dealing with any interference that might be received from FS incumbents. In that regard, nothing in the *MSS Second Report and Order* or our finding herein prohibits an MSS licensee from making an individual business decision to resolve instances of interference received from an FS incumbent prior to the sunset date through a voluntary arrangement with the FS licensee. Such an arrangement could include terms for relocating the incumbent FS operation. Consequently, rather than making such relocation mandatory, we believe that it is better for each MSS licensee to make its own business case decision whether to relocate FS incumbents from which it may receive interference in light of the quality of service the MSS licensee seeks to provide.

38. Furthermore, as the Commission stated in the *MSS Second Report and Order* with regard to balancing the relocation burdens on each service, MSS licensees in the 2 GHz band will face unusually high costs in gaining early access to spectrum because of the nationwide nature of their service. Requiring MSS licensees to relocate only those FS incumbents to which interference is caused prior to the sunset period is but one step the Commission has taken to minimize the relocation expense for MSS licensees and, thereby, provide their early access to the 2 GHz band. Indeed, the Commission found in the *MSS Second Report and Order* that many of the adopted measures will work hardships upon the incumbents in order to minimize relocation costs to MSS licensees. At the same time, requiring MSS licensees to relocate FS incumbents who are caused interference by MSS operations prior to the sunset will ensure the integrity and continuity of the services provided to the public by incumbent FS licensees during the ten-year sunset period. Furthermore, the sunset date for FS relocation serves the public interest by providing certainty to the relocation process, prevents MSS licensees from being obliged to pay relocation expenses indefinitely, and provides incumbents with ample time to either negotiate relocation or plan for relocation themselves. Therefore, we affirm that MSS licensees are not required to relocate FS incumbents from which they receive, but do not cause, interference prior to the sunset date. After the sunset date, FS incumbents will be required to relocate at their own expense upon demand by a MSS licensee that determines it will receive