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July 23, 2003

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue N.E., Suite 110
Washington, DC 20002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notice of Ex Parte Presentation in IB Docket No. 02-10

Dear Ms. Dortch:

This letter provides notice that, on July 21, 2003, Robert Hanson, Vice President/Regulatory Affairs of Maritime Telecommunications Network, Inc. ("MTN"), along with Raul Rodriguez and the undersigned of Leventhal, Senter & Lerman P.L.L.C. (attorneys for MTN) met with members of the staffs of the Commission's International Bureau, Office of Engineering and Technology, and Wireless Telecommunications Bureau. MTN presented the material contained in the two attachments to this letter, and discussed the results of the 2003 World Radiocommunication Conference deliberations on the licensing and regulatory status of earth stations on board vessels ("ESV") within the C- and Ku-bands – matters that are under consideration within IB Docket No. 02-10. The timing of the forthcoming notice of proposed rule making in IB Docket No. 02-10 was also discussed.

Pursuant to Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), the original and one copy of this letter, with the attachments, are submitted for inclusion in the file of the above-referenced proceeding.

Please direct any questions you may have to the undersigned.

Respectfully submitted,

Stephen D. Baruch
Attorney for Maritime Telecommunications
Network, Inc.

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Ms. Marlene H. Dortch
July 23, 2003
Page -2-

Attachments

cc (w/ attachments) via e-mail:

James Ball
Claudia Fox
J. Breck Blalock
Paul Locke
Lisa Cacciatore
Steven Spaeth
Bruce A. Romano
Alan J. Scrim
Thomas Derenge
Ron Repasi
Tom Mooring
Thomas Stanley

WRC-03 OUTCOME WITH RESPECT TO AGENDA ITEM 1.26

A Guided Tour of the Results

1. The Radiocommunication Assembly met the week before WRC-03 and it adopted three new technical recommendations (in addition to the two previously adopted) to complete all the study work required to fulfill the agenda item on ESVs.
2. The Conference adopted a regulatory basis for ESVs by adding footnotes to the Table of Allocations that point to a resolution with regulatory, operational and technical requirements. The resolution also encourages administrations to use the guidelines in a new WRC recommendation for bilateral and multi-lateral agreements on ESV operation.
3. The Conference decided not to adopt a definition of an ESV in Article 1, as proposed by the U.S. and CITEL. Thus, there is no definition of an ESV other than it is a satellite earth station on board a vessel. In other words, ESVs are not a defined type of station nor are they new service. They are simply a specific application of the FSS.
4. Footnote 5.AA16 was placed next to the FSS allocations in C- and Ku-band. It permits ESVs to communicate in the FSS on a co-primary basis under the requirements of Res. COM4/20;
5. Footnote 5.AA17 is intended to ensure that ESVs comply with Res. COM4/20 instead of operating under the secondary MSS allocation in Ku-band with no restrictions. There are several problems with this footnote as it is written:
 - a. An ESV is not an SES because it is not communicating in the MMSS nor does it comply with the requirements of Article 51. Therefore, it is doubtful whether the footnote would apply.
 - b. There are no commercial satellites that are coordinated for the MSS in this band and, therefore, there are no services available.
 - c. This footnote should not have been adopted because it imposes restrictions on an allocation that was not covered by the agenda item and it sets a hard limit of 21 dBW e.i.r.p. that has never been studied by the ITU-R. We do not know as yet what effect this limitation may have on the service for which this allocation was intended (OmniTracks).
 - d. It would seem to apply to the ConneXion by Boeing service as well. In other words they could operate under this allocation with the requirements of Res. Com4/20 either in lieu of or in addition to the requirements of their own footnotes and resolution.
6. Footnote 5.AA18 is a country footnote, which names those countries that do not require prior agreement for operation of ESVs in the band 14-14.5 GHz. At WRC-03 only Greece, Cyprus and Malta signed the footnote. It is highly probable that other countries will sign the footnote at the next WRC as it will significantly reduce the administrative burden when there is no FS in the band.
7. Footnote ESVXXX was added on the last working day of the Conference by the Arab Group. It attempts to limit ESV operation in the countries named to secondary MMSS. In addition it requires ESVs to operate in compliance with Res. COM4/20. However, this footnote says the ESVs "may operate" under the secondary MMSS. Therefore, it does not preclude operation under the FSS and it will become an additional allocation to the allocation given in 5.AA16. This footnote will be very difficult for the BR and the RRB to interpret for the following reasons:

- a. There is no MMSS or MSS allocation in C-Band. Therefore, the status of this footnote in this band is questionable.
- b. If ESVs were truly operating in the MMSS, they would have to comply with article 51 of the Radio Regulations, which is not possible.
- c. Res. Com4/20 specifically says that ESVs are operating in the FSS and the technical limitations imposed in the annexes are for an FSS terminal operating on co-primary basis with terminals in the FS.

This footnote will almost certainly require a rule of procedure, which may not achieve the results desired by the proponents but it will certainly lead to some confusion as to which of two allocations the ESV is operating under.

- 8. Resolution COM4/20 contains all of the mandatory technical, operational and regulatory requirements. These requirements are for the most part a restatement of the parameters used to characterize ESVs in the sharing studies conducted by the ITU-R. Their primary purpose is to ensure that ESVs do not cause unacceptable interference to other services and that if such interference should occur; there will be the means to force compliance with the restrictions or terminate the emissions.

The principle regulatory requirement is that there will be a prior agreement with concerned administrations before the ESV operates within the minimum distances specified in Item 4 of Annex 1. In this way, the ESV emissions can be limited to frequencies and other technical requirements can be imposed that minimize the potential for interference.

Res. COM4/20 states in *noting a)* that administrations may also authorize ESV operation under the provisions of **No. 4.4**. Operation under **No. 4.4** clearly does not provide for the protection of the FS as would be accomplished with a prior agreement. However, operation on a non-interference basis will continue to be a the primary mode of operation for ESVs until the frequency-use agreements can be negotiated with concerned administrations and may be the only mode for certain countries who will not enter into negotiations.

The technical and operational parameters required for ESV operation are very similar to those proposed by the U.S. and in the CITELE Inter-American Proposal (IAP), which the U.S. supported. A few additional restrictions have been imposed, such as the requirement the e.i.r.p. limits shall be compliant with the FSS intersystem coordination agreements that may agree to more stringent e.i.r.p. levels than those stated in Annex 1. One very important difference from the U.S. and CITELE proposals is that Res. COM4/20 allows administrations to authorize ESVs with antennas as small as 0.6 m for Ku-band operation provided that the interference to the terrestrial services is no greater than that which would be caused with an antenna size of 1.2 m, which is the minimum size in the IAP and the U.S. proposal. There will be very few areas of the world where FSS coordination agreements would allow such small antennas; but apparently antennas as small as 0.75 m have been deployed in this band.

- 9. Recommendation COM4/B provides non-mandatory guidelines for administrations in structuring agreements with other administrations for ESV operation within the minimum distances. The Conference felt that it was important to include these guidelines because the regulatory authorities in many countries would otherwise be aware of the important issues to consider in authorizing a frequency-use agreement

Footnotes 5.AA16, 5.AA17 and 5.AA18 were specifically mentioned in Res. COM4/25 for provisional application starting on July 5, 2003. ESXXXX was not mentioned and, therefore, will most likely come into force on January 1, 2005.

OUTCOME OF WRC-03 WITH RESPECT TO ESVS

Domestic Regulatory Implications

1. All technical recommendations have been completed providing the methods and procedures for assessing and mitigating the potential for interference from ESVs into the FS.
2. The international regulatory basis has been established and is now in effect in the Radio Regulations.
3. There are many countries that are anxious to adopt domestic regulations and to enter into prior agreements for ESV operation within U.S. territorial sea and U.S. Exclusive Economic Zones (e.g. Gulf of Mexico oil fields). They are looking to the FCC for an example of regulations and agreements.
4. Protection of the FSS is assured through the operating agreements with the space segment providers. Since the conditions for earth stations communicating with space stations are given in the satellite operator's agreement with the FCC and assured through the current regulations for satellite earth station performance, no specific regulations are required for ESVs to protect the FSS.
5. Protection of the FS will be assured through prior frequency clearance of the ESV operating areas including ports and coastal areas where ESVs could potentially cause interference. Until ESV operating areas can be cleared for the use of specific frequencies, ESVs will continue to operate on a 'non-interfering basis.'
6. Licensing ESVs as a VSAT network provides protection for the FS in port and coastal areas and it provides a single point of contact for all of the stations controlled by a single ESV operator. Moreover, the VSAT network model facilitates compliance with the terms of licensure and frequency-use agreements by providing a single point of control entirely within the jurisdiction of the FCC. This single point of control would be responsible for compliance with the terms of licensure for the operations of an entire commercial fleet, even though the fleet may be comprised of ships that are flagged in many different nations and the routes and ports served by specific ships change frequently with seasonal demand and business requirements.
7. To ensure protection of the FS and to comply with the requirements of the new international regulations, the FCC should issue the NPRM and move towards the adoption of U.S. regulations for ESVs.