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April 10, 2003

Bryan Tramont, Office of Chairman Powell
Jennifer Manner, Office Commissioner Abernathy
Paul Margie, Office of Commissioner Copps
Sam Feder, Office of Commissioner Martin
Barry Ohlson, Office Commissioner Adelstein
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

***Re: IB Docket No. 02-10, Procedures to Govern the Use of Satellite Earth Stations
on Board Vessels in Bands Shared With Terrestrial Fixed Service***

EX PARTE COMMUNICATION

Dear Ms. Manner and Messrs. Tramont, Margie, Feder, and Ohlson:

On behalf of the Fixed Wireless Communications Coalition (FWCC), I am attaching an *ex parte* statement we filed with the Commission on April 4.

This statement sets out the FWCC's concern about the very substantial potential for harmful interference that earth station vessels (ESVs) pose to terrestrial Fixed Service microwave systems, and explains why the Commission should defer initiating any domestic rulemaking proceeding on ESVs until after the outcome of WRC-03.

Please do not hesitate to call with any questions about this submission.

Respectfully submitted,

Mitchell Lazarus
Counsel for the Fixed Wireless
Communications Coalition

cc: Office of the Secretary (by electronic filing)

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MITCHELL LAZARUS
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April 4, 2003

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: IB Docket No. 02-10, *Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in Bands Shared With Terrestrial Fixed Service*

***EX PARTE* COMMUNICATION**

Dear Ms. Dortch:

Pursuant to Section 1.1206(a)(1) of the Commission's Rules, on behalf of the Fixed Wireless Communications Coalition (FWCC), I am electronically filing this written *ex parte* communication in the above-referenced proceeding.¹

The FWCC's strong interest in this matter prompted it to file Comments and Reply Comments in response to the Commission's Notice of Inquiry. The FWCC is concerned about the very substantial potential for harmful interference that ESVs pose to terrestrial Fixed Service microwave systems, especially along coastal areas. These Fixed Service operations provide the backbone for essential communications systems used by state and local government public safety

¹ The FWCC is a coalition of equipment manufacturers and users interested in terrestrial fixed microwave communications. Its membership includes manufacturers of microwave equipment, licensees of terrestrial fixed microwave systems and their associations, and communications service providers and their associations. Its membership also includes railroads, public utilities, petroleum and pipeline entities, public safety agencies, and/or their respective associations, telecommunications carriers, landline and wireless, local, and interexchange carriers, and others.

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agencies, railroads, utilities, petroleum pipelines, telecommunications carriers, and other critical infrastructure industries.

In an *ex parte* presentation on March 26, 2003, Maritime Telecommunications Network, Inc. ("MTN"), an ESV proponent, urged the Commission to "adopt, prior to the start of WRC-03, an NPRM that complements and helps advance the U.S. ESV proposals at WRC-03."

The FWCC vigorously opposes that request. We urge the Commission to await the outcome of the WRC before initiating any domestic rulemaking proceeding.

To follow MTN's suggestion would put the cart before the horse. As the FWCC noted in its Comments and Reply Comments, ESV operations are not permissible under the current international Table of Allocations (except under the non-interference provisions of Radio Regulation 4.4). The reason for placing the ESV item on the WRC-03 agenda was to normalize and legitimize ESVs under the international regulations. It follows that any rule the Commission might adopt (or even propose) with respect to ESVs should be patterned after the outcome of WRC-03.

And it is impossible to predict the outcome of WRC-03 at this time. Indeed, similar proposals to legitimize ESVs by means of a footnote in the Table of Allocations were submitted to previous WRCs, but to no avail. WRC-03 may or may not adopt a footnote to the Allocation Table regarding ESVs, and even if it does, we cannot know in advance what operating conditions might accompany the footnote. Accordingly, prudence dictates that the Commission await the outcome of WRC-03 so that any rules it proposes for U.S. domestic ESV operation can be consistent with the international regulatory scheme.

In light of MTN's advocacy of a premature NPRM, we take note of another MTN *ex parte* letter filed on January 31, 2003. There, MTN states that the contents of the CITELE and CEPT proposals regarding ESVs "are already factored into the proposed draft licensing rules for ESVs" that MTN suggested in its *ex parte* filing of August 30, 2002.

That statement is not true. Numerous provisions in both the CITELE and CEPT proposals are intended to protect Fixed Service links from ESV interference, and must be incorporated into any U.S. domestic rules governing ESV operations -- but those are not included in MTN's proposed rule. For example, MTN's proposal omits a provision in both the CITELE and CEPT proposals calling for a means to automatically terminate transmissions from an ESV whenever it attempts to operate outside its pre-determined geographic areas or operational limits. The FWCC has long insisted that any ESV rules adopted by the Commission include such a requirement to

protect Fixed Service receivers,² as well as a requirement that ESV equipment be subject to certification under Part 2 of the Commission's Rules.

Another glaring deficiency in MTN's proposed rule is its call for "blanket operating authority" for ESVs, without distinguishing between stations within the FCC's jurisdiction (vessels of U.S. registry) and those outside it (foreign-flagged vessels). ESVs installed on foreign vessels are not subject to the Commission's licensing jurisdiction. They can be brought within U.S. domestic regulatory purview only through bilateral agreements between the U.S. and the nation whose licensing authority extends to the ESV-bearing vessel. Indeed, that is the procedure recommended by the CITELE proposal, a copy of which was attached to MTN's March 26 *ex parte* filing.

Numerous other provisions in the CITELE and CEPT proposals intended to protect Fixed Service stations are omitted from MTN's proposed rule, including special coordination procedures, technical constraints, and operational restrictions. Again, any rules proposed by the Commission for ESV operations must include these protective provisions.

In summary, the Commission's prudent course is to await the outcome of WRC-03 before proceeding with a rulemaking notice concerning ESVs. If WRC-03 results in a change to the international Table of Allocations legitimizing ESV use, then FWCC and its members will offer a proposed rule that incorporates the provisions adopted by the Conference for protection of the

² This proposal is similar to Section 15.307(e), requiring a coordinated, unlicensed PCS device to "incorporate an automatic mechanism for disabling operation in the event it is moved outside the geographic area where its operation has been coordinated"

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Fixed Service. But unless and until WRC-03 acts on ESVs, it is speculative and premature to propose any such rule.

Respectfully submitted,

Mitchell Lazarus
Counsel for the Fixed Wireless
Communications Coalition

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