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July 28, 2004

FILED ELECTRONICALLY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: RM-10821; Wireless Telecommunications Bureau Seeks Comment On
MariTEL, Inc. Petition for Declaratory Ruling and National Telecommunications
and Information Administration Petition for Rulemaking Regarding the Use of
Maritime VHF Channels 87B and 88B; NOTICE OF EX PARTE
PRESENTATION;**

**PR Docket No. 92-257; Amendment of the Commission's Rules Concerning
Maritime Communications; NOTICE OF EX PARTE PRESENTATION;**

**ET RM-10743; Commission's Rules to Promote the Use of VHF Public Coast
Station Frequencies; NOTICE OF EX PARTE PRESENTATION.**

Dear Ms. Dortch:

Pursuant to the provisions of Section 1.1206 of the rules and regulations of the Federal Communications Commission ("FCC"), MariTEL, Inc. ("MariTEL") hereby submits this letter notifying the FCC of its *ex parte* presentations in the above-referenced proceedings. On July 27 and 28, 2004, Jason Smith, Vice President of MariTEL, Inc., and the undersigned met with Barry Ohlson, Senior Legal Advisor, Office of Commissioner Jonathan Adelstein; Sam Feder, Legal Advisor, Office of Commissioner Kevin Martin; Paul Margie, Spectrum and International Legal Advisor, Office of Commissioner Michael Copps; Sheryl Wilkerson, Legal Advisor, Office of Chairman Michael Powell; and Jennifer Manner, Senior Counsel, Office of Commissioner Kathleen Abernathy to discuss the attached presentation.

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Should there be any questions regarding this matter, please contact the undersigned directly.

Cordially yours,

/s/ Russell H. Fox

Russell H. Fox

cc: C.I. Pearson (via FedEx)
Frederick R. Wentland (via FedEx)
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Barry Ohlson (via email)
Sam Feder (via email)
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Sheryl Wilkerson (via email)
Jennifer Manner (via email)



Pending FCC AIS Decision

*USCG / NTIA Petition is
Both Unfair and Inequitable*

- The USCG spent millions of dollars and several years defining its AIS requirements, securing international acceptance, and asking the FCC to adopt a plan to set aside certain channels for its exclusive use.
- MariTEL spent greater than \$10 million to consolidate the VHF Public Coast (“VPC”) spectrum:
 - Aggregating channel specific FCC site licenses
 - Acquiring the rights for all (9) maritime VPC regions and (5) inland VPC regions through FCC auctions in 1998 and 2000
- Per FCC rule, MariTEL and the USCG entered a contract to satisfy its spectrum obligation to the USCG that, although different from their original plan, was mutually beneficial to both parties.
- USCG breached the contract, refused to negotiate in good faith, and forced MariTEL to both terminate the contract and seek relief from the FCC.
- USCG has petitioned the FCC for a **“bail out”** by stripping MariTEL and many other licensees’ of their rights to channel 87B.

Why the NTIA/USCG Solution Must be Rejected

- USCG/NTIA plan punishes MariTEL for the USCG “dropping the ball”
- USCG had many opportunities (commercial, legislative, regulatory) to secure spectrum it needed without impacting FCC auction winners and other licensees.
- Unfairly unwinds all of MariTEL’s consolidation efforts with no just compensation.
- Undermines the rationale of the investment of greater than \$50 million in the MariNET System’s DSC and frequency agile radio capabilities.
- Contrary to MariTEL’s expectations as auction winner
 - MariTEL unable to participate in AIS industry
 - FCC contemplating the reversal of its pre-auction decision that will “harm VPC licensees’ ability to construct wide area systems”.
 - Strips MariTEL of more spectrum than rules contemplate
 - One wideband simplex channel has significantly more impact than two narrowband duplex off-set channel pairs.
 - Use of AIS technology, which does not conform to U.S. equipment standards, wipes out remainder of MariTEL’s channels.
 - Constitutes an unprecedented taking of auctioned spectrum without just compensation.
- Encourages the USCG to **take** FCC spectrum rights in the future versus responsibly planning for its communications requirements ... “we’re moving ahead and will let others pick-up the pieces”.

- FCC can uphold its prior rules
 1. FCC unilaterally designates “up to two narrowband offset duplex channel pairs”; **OR**,
 2. Encourage the USCG to negotiate a commercial agreement with MariTEL for use of other spectrum.
- Adopt MariTEL’s sharing proposal
 - Gives USCG and vessels access to channel 87B in all maritime areas for non-commercial AIS.
 - Allows MariTEL to use channel 87B on non-interference basis for commercial AIS purposes
- If MariTEL is stripped of channel 87B rights, NTIA, as in past practice, should identify replacement spectrum equivalent to all spectrum encumbered by AIS and AIS interference.

- Resolve these issues before the AIS Notice of Proposed Rule Making (“NPRM”) is released.
- MariTEL cannot proceed in providing services without knowing the channels it can use free of harmful interference.
- Extent of flexibility will enable MariTEL to assess the services it can provide and how it will be required to meet construction requirements.