

February 7, 2008

SUBMITTED ELECTRONICALLY

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

Re: WT Docket 04-344, Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems; NOTICE OF ORAL EX PARTE COMMUNICATIONS OF MARITEL, INC.

Dear Ms. Dortch:

Pursuant to the provisions of Section 1.1206 of the rules of the Federal Communications Commission ("FCC" or "Commission"), I hereby submit a notification of *ex parte* communication between the FCC's staff and counsel for MariTEL, Inc. ("MariTEL").

In particular, on February 6, 2008, I met with Bruce Gottlieb, Legal Advisor to Commissioner Michael Copps regarding the above referenced proceeding. Attached is a summary of the points covered at that meeting.

If there are questions regarding the foregoing or the attached, please contact the undersigned.

Very truly yours,

/s/ Russell H. Fox

Russell H. Fox

Attachment

cc: (electronically)
Bruce L. Gottlieb

MARITEL, INC.
MARITIME AUTOMATIC IDENTIFICATION SYSTEMS (“AIS”)
DOCKET 04-344

Background

- When the FCC decided to create a geographic area licensing scheme for maritime frequencies (157/161 MHz), it obligated the auction winners to make available spectrum to the U.S. Coast Guard (“USCG”) for the Ports and Waterways Safety System (“PAWSS”), a terrestrially based vessel monitoring service.
- MarITEL entered into a Memorandum of Understanding (“MOU”) with the Coast Guard in satisfaction of its obligation to make spectrum available.
- Because of, among other things, the termination of the MOU, the FCC reallocated channel 87B for AIS operations in maritime areas in the Report and Order in this proceeding.
- The Further Notice of Proposed Rule Making (“FNPRM”) asks, among other questions, whether the FCC should reallocate channel 87B on a nationwide basis for AIS.

Discussion

- The FNPRM goes far beyond the pre-auction rules and is contrary to public policy.
 - The pre-auction rules made it clear that maritime licensees would be required to make spectrum available for USCG use in maritime areas – and not beyond.
 - An element of MarITEL’s negotiation with the USCG was MarITEL’s use of channel 87B outside of maritime areas.
 - While MarITEL opposed the reallocation of channel 87B in maritime areas for interference reasons, it recognized it was obligated to make spectrum available in maritime areas as a condition of its licenses.
 - However, the USCG’s currently proposed need for channel 87B – to monitor inland AIS traffic by satellite – is dramatically different from the anticipated use of the spectrum.
 - There is, therefore, no preexisting obligation to make spectrum available to the USCG outside maritime areas.
 - While MarITEL understands that the FCC has consistently stated that there are no “ownership rights” in spectrum, it is bad public policy for it to auction spectrum and soon after, recapture or devalue it.
 - If 700 MHz applicants thought that the FCC could routinely later capture or impose adverse conditions on spectrum they purchase, they would stop bidding now.
 - Licensees would be unable to make any long term spectrum use plans.
 - Recapture of spectrum takes spectrum out of service to the public.
- The USCG ignores US spectrum policy – it will continue to make international proposals and domestic plans with no regard to whether the FCC has licensed the spectrum it has targeted for use or interference.

- The USCG's late filed reply comments demonstrate that it envisioned and promoted satellite use of AIS spectrum – and therefore nationwide reallocation of channel 87B – well before the FCC even considered this issue.
- FCC acquiescence is a signal to the USCG that it can raid MariTEL spectrum at will.
- Evidence of harm to satellite AIS monitoring is speculative, at best.
 - The Commission must discount evidence presented by the USCG, which appears to be engineered to produce desired regulatory results.
 - In the initial phase of the AIS proceeding, the USCG argued vigorously that there would be no interference to MariTEL's adjacent channels. The Commission accepted that evidence. Now, the USCG recognizes in its request for proposal ("RFP") for a national AIS system that such interference will occur and solicits responses on how the interference may be addressed.
 - The USCG should not request that the FCC provide regulatory relief for a problem (if it exists) that its contractor – Orbcomm – should resolve through sound engineering practices.
 - To do otherwise would be ironic – the FCC required MariTEL to adapt to what is now acknowledged to be harmful adjacent channel interference.

Solutions

- If the FCC decides to reallocate channel 87B now or in the future, it should, as a matter of public policy, provide replacement spectrum.
 - Such action would be consistent with the Commission's action in the 18/24 GHz DEMS decision.
 - Such action would provide assurance to auction winners in general that spectrum used to provide service to the public cannot be recaptured at any time without the provision of replacement spectrum.
 - In inland VHF Public Coast Station ("VPC") areas, licensees can be allocated the public safety spectrum not included in the auction.
 - The public safety spectrum is lightly used.
 - Channel 87B would be used for public safety purposes in any case.
 - However, in maritime VPCs beyond navigable waterways (where channel 87B was never intended to be used by the USCG), public safety spectrum is not available. While the FCC may be able to identify replacement spectrum that is available in these maritime VPCs, a better solution would be for the NTIA to identify replacement spectrum available on a nationwide basis.
 - If NTIA is unable to identify and clear replacement spectrum today, it may be provided the opportunity to do so before Orbcomm begins to provide service.
 - The FCC may reallocate channel 87B on a nationwide basis today, providing the USCG with certainty, but condition the use of the spectrum on a nationwide basis (and incumbent obligation to vacate the spectrum) on the identification of replacement spectrum acceptable to the FCC.