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April 11, 2005

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

**Re: IB Docket No. 02-10, *Earth Station Vessels*  
*Ex Parte Communication***

On behalf of the Fixed Wireless Communications Coalition (FWCC), and pursuant to Section 1.1206(b)(1) of the Commission's Rules, I am electronically filing this written *ex parte* communication in the above-referenced docket.

This letter responds to the "Comments of Broadband Maritime, Inc. Regarding Paperwork Reduction Act Information Collection" filed on April 1, 2005.

Broadband Maritime states it is in the process of preparing and filing a request for waiver of Section 25.221(e). That provision requires earth station vessel (ESV) operators to complete frequency coordination with Fixed Service (FS) users prior to operation within 200 km of the U.S. coastline or an FS offshore installation. Section 25.221(e) is by far the FS industry's most important source of protection against interference from ESVs.

Broadband Maritime nonetheless contends that the cost of frequency coordination is excessive for a small business, so it should not be subject to the coordination requirement while its request for waiver of that requirement is pending. It asks the Commission to defer the effective date of Section 25.221(e) until after it has taken action on the waiver request.

The FWCC will comment on the substance of Broadband Maritime's waiver request if and when it is filed and placed on public notice. Our response here pertains only to the April 1 submission.

Broadband Maritime's request for deferral of the effective date of Section 25.221(e) has several defects, any one of which is fatal.

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First, the present request for deferral is identical in every respect to a request for stay. Yet it fails to present any information relating to any of the four grounds the Commission requires to support a stay.<sup>1</sup> Its sole justification is a statement of intent to ask for a waiver, the specifics of which are not given, at some indefinite time in the future. This is far too speculative to warrant the action requested.

Second, although the April 1 filing characterizes Broadband Maritime's forthcoming request as one for a waiver, it describes that request as seeking what amounts to a rescission of Section 25.221(e). The proper form for such a request is a Petition for Reconsideration of the rule. Those petitions were due on February 2, 2005, thirty days after Federal Register publication of the ESV Report and Order.<sup>2</sup> The 30-day deadline is statutory,<sup>3</sup> so the Commission lacks jurisdiction to waive it.<sup>4</sup> In sum, then, the April 1 request for deferment rests on a proposed request that is in itself an untimely -- and hence ungrantable -- Petition for Reconsideration.

Finally, deferring the effective date of Section 25.221(e) would expose FS users to the same interference whose avoidance was a central goal of this long and contentious proceeding. It would be a serious breach of due process for the Commission to short-circuit the outcome without, at the very least, giving public notice of Broadband Maritime's deferral request and an opportunity for comment by interested parties.

Please do not hesitate to call with any questions.

Respectfully submitted,

Mitchell Lazarus  
Counsel for the Fixed Wireless  
Communications Coalition

cc: Courtesy service list

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<sup>1</sup> These are: (1) likelihood of prevailing on the merits; (2) irreparable harm to the movant if a stay is not granted; (3) lack of harm to other interested parties if the stay is granted; and (4) public interest favoring a stay. *Public Safety Communications in the 800 MHz Band*, 20 FCC Rcd 1560 (2005), citing *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

<sup>2</sup> *Satellite Earth Stations on Board Vessels*, 70 Fed. Reg. 4775 (Jan. 31, 2005).

<sup>3</sup> 47 U.S.C. Sec. 405(a).

<sup>4</sup> E.g., *Reuters, Ltd. v. FCC*, 781 F.2d 946, 951 (D.C. Cir. 1986); *Pay Telephone Reclassification and Compensation*, 18 FCC Rcd 7615 at para. 3 (2003).

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