

**Fletcher, Heald & Hildreth, P.L.C.**  
**1300 North 17<sup>th</sup> Street 11<sup>th</sup> floor**  
**Arlington VA 22209**  
**703-812-0400 (voice)**  
**703-812-0486 (fax)**

MITCHELL LAZARUS  
703-812-0440  
LAZARUS@FHHLAW.COM

July 8, 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This letter concerns an *ex parte* submission filed by Telenor Satellite Services, Inc. on June 21, 2005, and withdrawn on or about June 25.

**A. The Commission Must Enforce its ESV Coordination Requirements.**

Telenor objects to the rule requiring prior frequency coordination for ESVs.<sup>1</sup> It raises two related grounds. First, Telenor says, coordinating U.S. ports is so expensive as to render ESV service unprofitable.<sup>2</sup> Second, Telenor asserts that the Commission mistakenly assumed that ESVs would need coordination only for routes approaching port, where in fact many ships follow the coastline inside the 200 km boundary, thus requiring coordination of large portions of the

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<sup>1</sup> 47 C.F.R. Sec. 25.221(e). Prior coordination is required for ESVs operating within 200 km of the United States coastline or within 200 km of a fixed service offshore installation.

<sup>2</sup> Letter from Keith H. Fagan to Marlene H. Dortch, Secretary, FCC (filed June 21, 2005), Attachment, unnumbered slide "The Problem."

coastline. According to Telenor, this would be "prohibitively expensive and . . . totally impractical."<sup>3</sup> Telenor seeks unspecified relief from the coordination requirement.

Telenor's request is unreasonable on its face. The prior coordination requirement is the main protection that Fixed Service receivers have against interference from passing ESVs. Telenor seeks to abolish that protection without proposing any alternatives. For all practical purposes, Telenor is asking Fixed Service stations to accept uncontrolled interference just so it can quote low prices to its customers. This is little short of outrageous.

Telenor complains further that operating within the constraints of a coordination would require continuous frequency hopping.<sup>4</sup> Certainly ESVs have the capability of changing frequency. To *not* operate in accordance with the coordination is, by definition, to threaten interference to pre-existing Fixed Service facilities.

The Commission has granted ESVs the unprecedented right to offer a mobile service under (essentially) fixed rules, co-frequency with critical fixed public safety and infrastructure services. Telenor now seeks to avoid taking responsibility for contributing to the necessary business of interference management.

ESV operators have been on notice of a possible coordination requirement for more than three years, ever since release of the Notice of Inquiry in February 2002.<sup>5</sup> Telenor in particular *supported* coordinated ESV operation, on the condition that ESVs be made co-primary with the Fixed Service.<sup>6</sup> The Commission adopted that approach. Now, belatedly, Telenor has apparently discovered that the cost of coordination is higher than it previously supposed. In order to protect its business plan, Telenor seeks unilaterally to overturn the outcome of this long and contentious proceeding. The Commission should disregard the request.

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<sup>3</sup> *Id.*, unnumbered slide "The Bigger Problem (cont.)"

<sup>4</sup> *Id.*

<sup>5</sup> *Earth Stations on Board Vessels*, 17 FCC Rcd 2646 at para. 25 (2002) (Notice of Inquiry).

<sup>6</sup> Reply Comments of Telenor Satellite Services, Inc. at 8 (filed March 24, 2004). Telenor favored non-coordinated operation primarily for vessels that spend most of their time at sea and put into port only on rare occasions. *Id.* In the present filing, it seeks non-coordinated operation for the opposite case: vessels that spend most of their time near the coast.

Telenor's plea based on unexpected costs is singularly unpersuasive. The Commission's mandate does not include an obligation to ensure Telenor's profitability. If Telenor underestimated its expenses, that is a problem for Telenor to solve, not the Commission (and certainly not the Fixed Service). Moreover, inasmuch as the coordination requirement applies to all ESV operators uniformly, it does not create competitive disadvantages for Telenor or any other provider.

In any event, Telenor brings its request too late. It effectively seeks reconsideration of the coordination requirement. Petitions for reconsideration were due on February 2, 2005, thirty days after Federal Register publication of the ESV Report and Order.<sup>7</sup> The 30-day deadline is statutory,<sup>8</sup> so the Commission lacks jurisdiction to waive it.<sup>9</sup> If Telenor believes it has new information that calls the rules into question, it should file a petition for rulemaking. Otherwise, the rules must stand.

Finally, we note the coordination requirement took effect on March 2, 2005.<sup>10</sup> The fact of Telenor's request prompts the FWCC to request confirmation that Telenor is in fact complying with the requirement while it explores possible routes to relief.

**B. Telenor must Immediately Refile its *Ex Parte* Notice.**

On June 21, Telenor filed an *ex parte* notice reporting a June 20 meeting with Commission staff. It attached a copy of its written materials from the meeting, as the Commission's Rules require.<sup>11</sup>

On or about June 25, Telenor's June 21 notice disappeared from the Commission's Electronic Comment Filing System, presumably at Telenor's request.

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<sup>7</sup> *Satellite Earth Stations on Board Vessels*, 70 Fed. Reg. 4775 (Jan. 31, 2005).

<sup>8</sup> 47 U.S.C. Sec. 405(a).

<sup>9</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).

<sup>10</sup> *Satellite Earth Stations on Board Vessels*, 70 Fed. Reg. 4775 (Jan. 31, 2005).

<sup>11</sup> 47 C.F.R. Sec. 1.1206(b)(1). "Any written material shown to Commission personnel during the course of a meeting, even if the materials are not left with the staff, are deemed written presentations and must be filed in accordance with the rule governing written presentations." *General Counsel Emphasizes the Public's Responsibilities in Permit-but-Disclose Proceedings*, Public Notice, 19 FCC Rcd 18686 (2004).

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Fully five days later, on June 30, Telenor filed a letter requesting confidential treatment for its June 21 notice, on the ground that it had inadvertently disclosed a supplier's proprietary pricing information. Telenor offered to submit a redacted version "if the Commission deems that appropriate."<sup>12</sup>

The FWCC does not object to Telenor's withdrawal of confidential information. But there is no reason why the *non*-confidential portions of Telenor's presentation should remain unavailable. Telenor could have complied with the spirit of the rules, if not the letter, by filing a redacted version of its written materials immediately upon withdrawing the full version. Having failed to do so then, it should file a redacted version now.

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>12</sup> Letter from Robert W. Swanson to Marlene H. Dortch, Secretary, FCC (filed June 30, 2005).

## COURTESY SERVICE LIST

Chairman Kevin J. Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Commissioner Kathleen Q. Abernathy  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Commissioner Michael J. Copps  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Commissioner Jonathan S. Adelstein  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Donald Abelson, Chief  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Anna M. Gomez  
Deputy Bureau Chief  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Roderick Porter, Deputy Chief  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Jackie Ruff, Associate Bureau Chief  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Linda L. Haller, Associate Bureau Chief  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Jacqueline M. Ponti, Associate Bureau Chief  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

John Giusti, Associate Bureau Chief  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Richard Engelman, Chief Engineer  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Steven Spaeth, Legal Advisor  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

David Strickland, Legal Advisor  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Jim Ball, Chief  
Policy Division  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

JoAnn Ekblad, Assistant Division Chief  
Policy Division  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Alexandra Field, Assistant Division Chief  
Policy Division  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Howard Griboff, Assistant Division Chief  
Policy Division  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Breck Blalock, Deputy Chief  
Policy Division  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Claudia Fox, Deputy Chief  
Policy Division  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

George Li, Deputy Chief, Operations  
Policy Division  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Lisa Choi, Senior Legal Advisor  
Policy Division  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

David Krech, Senior Legal Advisor  
Policy Division  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Belinda Nixon, Attorney  
Policy Division  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Scott D. Delacourt, Deputy Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Uzoma Onyeije, Legal Advisor  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Joel Taubenblatt, Chief  
Broadband Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Peter Daronco, Assistant Chief  
Broadband Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Tom Stanley, Chief Engineer  
Broadband Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Mike Pollak, Electronics Engineer  
Broadband Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Keith H. Fagan  
Senior Counsel  
Telenor Satellite Services, Inc.  
1101 Wootton Parkway  
Rockville MD 20852