

**Federal Communications Commission
Office of Engineering and Technology**

June 5, 2001

Helen E. Disenhaus, Esquire
Eliot J. Greenwald, Esquire
Nancy Killien Spooner, Esquire
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116

Julian L. Shepard, Esquire
Verner, Liipfert, Bernhard,
McPherson and Hand, Chartered
901 – 15th Street, N.W., Suite 700
Washington, D.C. 20005-2301

Thomas J. Keller, Esquire
Verner, Liipfert, Bernhard,
McPherson and Hand, Chartered
901 – 15th Street, N.W., Suite 700
Washington, D.C. 20005-2301

Wayne V. Black, Esquire
Peter A. Saari, Esquire
Keller and Heckman, LLP
1001 G Street, N.W., Suite 500 West
Washington, D.C. 20001

Jeffrey L. Sheldon, Esquire
Thomas Goode, Esquire
UTC
1140 Connecticut Avenue, N.W., Suite 1140
Washington, D.C. 20036

Leonard R. Raish, Esquire
Mitchell Lazarus, Esquire
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209

Robert M. Gurss, Esquire
Shook, Hardy and Bacon, L.L.P.
600 14th Street, N.W., Suite 800
Washington, D.C. 20005

Re: File No. 0100-EX-RR-1999
Application of Maritime Telecommunications
Network, Inc. ("MTN") for Renewal of Experimental
Radio License for Station KI2XEE
and related Petitions and Motion

File No. 5633-EX-MR-1997 for Station KI2XEE
MTN Petition for Partial Recon. of partial grant

Dear Counsel:

On November 21, 1997, we granted in part the application (File No. 5633-EX-MR-1997) of MTN to modify the experimental radio license for Station KI2XEE. By that action, we rejected MTN's request for experimental authority to operate up to 250 earth stations on vessels (ESVs) but authorized MTN to operate up to 45 ESVs for communicating with space stations in the C-band (*i.e.*, using the 3700-4200 MHz band for downlinks and the 5925-6425 MHz band for uplinks).¹ On December 19, 1997, MTN filed a petition for partial reconsideration of our action, renewing its request that its authorized number of earth stations be increased to 250.

On January 22, 1999, MTN filed an application to renew the experimental radio license of Station KI2XEE.² Informal objections were filed by various Fixed Service interests against the MTN renewal application.³

In addition to its experimental radio license for Station KI2XEE, MTN also has Special Temporary Authority, granted by the Commission's International Bureau, to operate ESVs on the same frequencies assigned to KI2XEE. Of decisional importance here, on September 29, 2000, the Chief, International Bureau (IB), after reviewing applications filed by MTN with that Bureau, ruled that, pursuant to Section 306 of the Communications Act, the Commission does not have authority to license ESVs on ships of foreign registry. *Maritime Telecommunications Network, Inc.*, 15 FCC Rcd. 23210 (IB and OET), *modified*, 15 FCC Rcd. 19572 (IB, 2000) (collectively "*Order*"). Today, the Bureau reaffirmed that ruling and denied reconsideration of its *Order*. *Order on Reconsideration and Memorandum Opinion and Order*, DA 01-1283, released June 5, 2001 (IB) ("*Reconsideration Order and MO&O*"). The *Order* and the *Reconsideration Order and MO&O* granted MTN's requests for extensions of Special Temporary Authority (STA),⁴ with respect to six ESVs on U.S. naval vessels, and otherwise denied the requests because all other MTN ESVs were aboard ships of foreign registry. In addition, the *Order* dismissed MTN's request for expansion of STA from 45 to 150 ESVs⁵ and denied its applications (and related amendments) for Fixed Earth Station licenses.⁶

¹ The C-band is allocated to the Fixed Satellite Service and the terrestrial Fixed Service. 47 C.F.R. § 2.106 (Table of Frequency Allocations). MTN (successor-in-interest to Crescomm Transmission Services, Inc.) was granted a waiver of the Table of Frequency Allocations to permit its non-conforming use of the spectrum. *See Crescomm*, 11 FCC Rcd 10944 (IB and OET, 1996); *Maritime Telecommunications Network, Inc.*, 15 FCC Rcd. 23210 at ¶¶ 2-3 (IB and OET, 2000).

² The expiration date of the KI2XEE license was February 1, 1999.

³ "Petition to Deny," filed March 24, 1999, jointly by Association of American Railroads ("AAR") and Consortium Digital Microwave System ("CDMS"); "Informal Petition to Deny," filed April 27, 1999, by American Petroleum Institute ("API"); and "Petition for Expedited Action," filed May 10, 2000, jointly by Fixed Wireless Communications Coalition ("FWCC"), AAR, API, Association of Public-Safety Communications Officers International ("APCO"), and United Telecom Council ("UTC"). *See also* Motion to Strike, filed May 24, 2000, by MTN; Motion to Accept "Response to Reply to Opposition," filed July 18, 2000, by MTN; and the opposition and reply pleadings filed with respect to the various foregoing petitions and motions. As will be discussed below, we need not reach the issues raised in these various pleadings, which largely concern questions of electromagnetic interference, and therefore are dismissing all of these pleadings as moot. *See note 9, infra.*

⁴ File Nos. SES-STA-20000128-00108 and SES-STA-20000817-01448 (granted by the *Order*); and SES-STA-20010319-00588 (granted by the *Reconsideration Order and MO&O*).

⁵ *Id.*

⁶ File Nos. SES-LIC-19980911-01272 *et al.* and SES-AMD-19981204-01992 *et al.* *See Order*, App. A & B.

OET staff was informed of IB's focus on the Section 306 jurisdictional issue. Therefore, on June 30, the staff informally contacted counsel for MTN in order to ascertain whether its experimental radio ESVs were aboard ships of domestic or foreign registry. The staff also sought information on whether the Station KI2XEE experimental radio ESVs are the same physical facilities as those addressed in IB's *Order*. In response, on July 12, MTN submitted a letter that states it currently operates 33 experimental earth stations, 27 of which are aboard commercial ships of foreign registry and 6 of which are aboard U.S. naval ships. MTN stated that the shipboard earth stations licensed to KI2XEE differ from those authorized by the International Bureau STA insofar as the former are aboard ships that only on occasion visit U.S. ports whereas the latter are aboard "ships that regularly visit the 17 U.S. ports where operations are authorized by the STA."

We find, first, that Section 306 of the Communications Act⁷ controls. Section 306 deprives the Commission of any authority to issue a license for any ESV on any non-U.S. vessel. *Reconsideration Order and MO&O* at ¶ 13. We find that this jurisdictional bar applies with equal force to OET's experimental licensing authority as it does to IB's licensing authority. Accordingly, we deny MTN's application for renewal of experimental radio station license KI2XEE with respect to its experimental radio ESVs aboard commercial ships of foreign registry. We also dismiss as moot MTN's request for partial reconsideration⁸ of our decision to limit to 45 the number of ESVs authorized under the KI2XEE license. MTN has not demonstrated that the U.S.-registered ships it intends to serve require more than 45 ESVs. Finally, we dismiss as moot the host of other pleadings filed with respect to the KI2XEE license renewal application.⁹

Second, we must consider MTN's license renewal application with respect to the KI2XEE earth stations aboard U.S. naval ships. These ESVs comply with the jurisdictional requirements of Section 306. But we find that MTN does not need experimental authority to operate these stations. Section 5.51(a) of the rules states that experimental radio authorizations "will be issued only to persons qualified to conduct experimentation utilizing radio waves for scientific or technical operation data *directly related to a use of radio not provided by existing rules*; or for communications in connection with research projects when existing communications facilities are inadequate."¹⁰ Also, Section 5.71 states that an experimental license may be granted upon an adequate showing of need and that a license will not be granted for a period longer than that which is required for completion of the experimental project.¹¹ The record, however, does not show that MTN needs experimental radio authority, because all of its Commission-licensable operations – its ESVs aboard six U.S. naval ships – appear to fall within the scope of the STA extensions granted by the International Bureau's *Order and Reconsideration Order and MO&O*. Though the record is not absolutely clear on this point, we believe that the six U.S. naval ships on which MTN operates the KI2XEE ESVs are the same six U.S. naval vessels on which it operates ESVs authorized by

⁷ 47 U.S.C. § 306.

⁸ MTN Petition for Partial Reconsideration, filed December 19, 1997, addressed to grant in part (November 21, 1997) of File No. 5633-EX-MR-97 for Station KI2XEE.

⁹ See note 3, *supra*. The decisive issues in this case – the effective subsumption of MTN's operational authority within the authority granted by the International Bureau and the concomitant elimination of MTN's need for experimental authority – were not addressed in these pleadings.

¹⁰ 47 C.F.R. § 5.51(a) (emphasis added).

¹¹ 47 C.F.R. § 5.71.

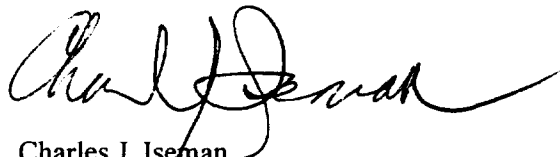
IB.¹² If this is correct, then denial of license renewal for KI2XEE will not impact the ESV operations aboard these ships, because existing authority granted by IB will cover them. Otherwise, if this is incorrect, MTN must so notify us immediately in writing and, as soon as practicable, file an appropriate application for authority with IB. We believe that a period of forty-five (45) days running from the date of this letter will provide sufficient time for IB to act on such an application if promptly filed by MTN. Therefore, we find that the public interest will be served by a short-term partial renewal of the experimental radio license for Station KI2XEE as it pertains to ESVs aboard the six U.S. naval ships, and by denial of license renewal for Station KI2XEE as it pertains to ESVs aboard all other ships.

Accordingly, pursuant to Sections 301 *et seq.* of the Communications Act of 1934, as amended, 47 U.S.C. § 301 *et seq.* and the authority granted by Sections 0.241(c), 5.51, and 5.71 of the rules, 47 C.F.R. §§ 0.241(c), 5.51, and 5.71, IT IS ORDERED, that the application for renewal of experimental radio license for Station KI2XEE (File No. 0100-EX-RR-1999) IS GRANTED IN PART with respect to earth station operations aboard the six U.S. naval ships and for a license term that will expire in forty-five (45) days from the date of this letter. IT IS FURTHER ORDERED, that, in all other respects, the application for license renewal of Station KI2XEE IS DENIED.

IT IS FURTHER ORDERED that the following petitions and motions ARE DISMISSED:

- (a) with respect to File No. 5633-EX-MR-97, the Petition for Partial Reconsideration, filed December 19, 1997, by MTN; and
- (b) with respect to File No. 0100-EX-RR-1999: (i) Petition to Deny, filed March 24, 1999, jointly by AAR and CDMS; (ii) Informal Petition to Deny, filed April 27, 1999, by API; (iii) Petition for Expedited Action, filed May 10, 2000, jointly by FWCC, AAR, API, APCO, and UTC; (iv) Motion to Strike, filed May 24, 2000, by MTN; and (v) Motion to Accept "Response to Reply to Opposition," filed July 18, 2000, by MTN.

Sincerely,



Charles J. Iseman
Deputy Chief
Electromagnetic Compatibility Division
Office of Engineering and Technology

¹² MTN's attempt to distinguish its IB-authorized ESVs from those of KI2XEE as serving ships that regularly visit specified U.S. ports appears to be vague and inconsequential. This is especially so with regard to U.S. naval ships, which are subject to the exigent and emergent needs of the national defense. Moreover, nothing in the IB orders cited above in text suggests that such a distinction is relevant to the scope of IB's licensing authority.