

Finally, we grant MTN's petition for extension of its current special temporary authority (STA) with respect to six earth stations on U.S. vessels, and deny it with respect to its earth stations on foreign vessels.

II. BACKGROUND

A. Table of Allocations Waiver and Subsequent History

2. In 1996, the Bureau and the Office of Engineering and Technology (OET) adopted a joint Order granting MTN's predecessor in interest, Crescomm Transmission Services, Inc. (Crescomm), was granted a waiver of Section 2.106 of the Commission's Rules,⁵ the Table of Frequency Allocations, to provide non-conforming mobile satellite services in the 6 GHz portion of the C-band.⁶ In particular, Crescomm asked for authority to operate ESVs in this frequency band.⁷ This frequency band is allocated to fixed satellite service (FSS) and terrestrial fixed services (FS).⁸ In allowing non-conforming ESV use in this band, however, the *Crescomm Order* imposed certain conditions on Crescomm's operations to ensure that ESV operations would not interfere with conforming FSS and FS operations in the band. One of these conditions prohibited Crescomm from operating its ESVs closer than 100 km from land.⁹

3. Subsequently, MTN filed a request for Special Temporary Authority to operate earth stations on 45 ships for six months, under the conditions specified in the *Crescomm Order*.¹⁰ MTN represented that it would place its earth stations on U.S.-flagged vessels.¹¹ We granted the STA on January 30, 1997, and extended this grant several times subsequently.¹² In addition, in February 1997, MTN was granted an STA to operate its ESVs on a non-harmful interference basis when the ships were in or near one of four U.S. seaports.¹³ MTN's operating authority was later expanded to

⁵ 47 C.F.R. § 2.106.

⁶ Mobile Satellite-Based Communications Services by Crescomm Transmission Services, Inc. and Qualcomm Incorporated, Order, RM-7912, 11 FCC Rcd 10944, 10948 (para. 9) (Int'l Bur. and OET, 1996) (*Crescomm Order*). For purposes of this Order, "C-band" denotes the 3700-4200 MHz and 5925-6425 MHz frequency bands. The "6 GHz band" denotes the 5925-6425 MHz frequency band.

⁷ *Crescomm Order*, 11 FCC Rcd at 10945 (para. 3).

⁸ See Mobile Satellite-Based Communications Services by Crescomm Transmission Services, Inc. and Qualcomm Incorporated, Order, RM-7912, 11 FCC Rcd 10944, 10948 (para. 9) (Int'l Bur. and OET, 1996) (*Crescomm Order*). At the time of this Order, MTN had purchased Crescomm, but the Order referred to "Crescomm" for historical consistency. *Crescomm Order*, 11 FCC Rcd at 10944 n.2.

⁹ *Crescomm Order*, 11 FCC Rcd at 10950 (para. 13).

¹⁰ See *MTN Order*, 15 FCC Rcd at 23212 (para. 4); Letter from Robert G. Allen, Counsel for MTN, to Donald H. Gips, Chief, International Bureau (dated June 28, 1996) (*June 28, 1996 Letter*).

¹¹ *MTN Order*, 15 FCC Rcd at 23212 (para. 4); *June 28, 1996 Letter* at 2.

¹² *MTN Order*, 15 FCC Rcd at 23212 (para. 4).

¹³ *MTN Order*, 15 FCC Rcd at 23212 (para. 4); Letter from Steve Sharkey, Chief, Satellite Engineering Branch, Satellite and Radiocommunication Division, International Bureau, to Robert G. Allen, Counsel for MTN (dated Feb. 13, 1997) (*February 13, 1997 Letter*).

17 U.S. seaports.¹⁴ Thus, at the time of the *MTN Order*, MTN's STAs authorized it to provide satellite service on a non-harmful interference basis for up to 45 ships while those ships are (1) more than 100 km from land, (2) in motion to or from one of 17 U.S. seaports, or (3) moored in one of those 17 U.S. seaports.¹⁵

B. *MTN Order*

4. In January and August 2000, MTN filed requests to extend its STA for an additional 180 days. The *MTN Order* extended the STA only with respect to ESVs on U.S. ships, and denied MTN's STA extension request with respect to ESVs on foreign vessels. In addition, MTN filed applications to operate its ESVs as fixed earth stations while the ships are moored in one of the 17 authorized seaports.¹⁶ MTN contended that these ESVs should receive interference protection from FS facilities also operating in the band while they are docked and stationary. We denied those applications. We discuss these actions in more detail below.¹⁷

1. In-Motion Applications

5. In the process of supporting its requests to renew the STA originally granted in 1997,¹⁸ MTN reported to the Bureau's staff that it was operating earth stations on 40 vessels.¹⁹ It also reported that, while six of these vessels are U.S. registered (or "flagged"), 34 of these ships are not.²⁰ Rather, those ships are registered in the Bahamas, Liberia, the Netherlands, Norway, and Panama.²¹ In the *MTN Order*, the Bureau granted MTN's STA extension request with respect to the six U.S.-flagged vessels,²² and denied it with respect to the 34 foreign-registered ships.²³ We noted that, pursuant to Section 306 of the Communications Act, the Commission does not have

¹⁴ *MTN Order*, 15 FCC Rcd at 23212 (para. 4); Letter from Eliot J. Greenwald, Counsel for MTN, to Steve Sharkey, Chief, Satellite Engineering Branch, Satellite and Radiocommunication Division, International Bureau (dated Aug. 5, 1997). These 17 ports are listed in Appendix A of the *MTN Order*, 15 FCC Rcd at 23224.

¹⁵ *MTN Order*, 15 FCC Rcd at 23212 (para. 4).

¹⁶ MTN filed 32 FSS earth station applications, each specifying a particular dockside location in one of the 17 authorized seaports.

¹⁷ The *MTN Order* also addressed other MTN applications affecting the in-motion portion of its service. We do not discuss them in detail here because they are not relevant to MTN's reconsideration petition. See *MTN Order*, 15 FCC Rcd at 23216-17 (paras. 13-15).

¹⁸ On January 28, 2000, MTN requested to extend its STA to July 30, 2000. On August 17, 2000, MTN requested to extend its STA to January 30, 2001. *MTN Order*, 15 FCC Rcd at 23213 (para. 5).

¹⁹ *MTN Order*, 15 FCC Rcd at 23214 (para. 9); *June 6, 2000 Letter* at 5.

²⁰ *MTN Order*, 15 FCC Rcd at 23214 (para. 9); *June 6, 2000 Letter* at 5.

²¹ *MTN Order*, 15 FCC Rcd at 23214 (para. 9); *June 6, 2000 Letter* at 5.

²² *MTN Order*, 15 FCC Rcd at 23215-16 (para. 12).

²³ *MTN Order*, 15 FCC Rcd at 23214-15 (para. 9).

jurisdiction to license earth stations on board foreign vessels.²⁴ The *MTN Order* required MTN to terminate satellite service to the 34 foreign ships as soon as practicable, but no later than five days after the release date of this Order.²⁵ The *MTN Order* also noted, however, that MTN could seek operating authority from the Administrations in which the ships are registered, and resume operation.²⁶

6. Shortly after the *MTN Order* was released, the Bureau adopted an Order setting aside the five-day deadline established in the *MTN Order*.²⁷ The *Set-Aside Order* was expressly limited to the five-day deadline, and did not affect any other aspect of in the *MTN Order*.²⁸

2. Dockside Applications

7. In addition to its STA extension request, MTN filed 32 earth station applications to operate its ESVs as fixed earth stations while the vessels carrying its ESVs are docked and stationary at one of 32 locations.²⁹ By characterizing this service as FSS, that is, providing satellite service to fixed points, MTN submits that its proposed operations conform to the Table of Frequency Allocations and could be provided on a primary basis.³⁰ MTN later clarified that ten of its applications were for locations in U.S. Navy ports, and 22 for locations in commercial ports.³¹

8. While we agreed with MTN that its proposed dockside service was FSS,³² we concluded that it would be more appropriate to classify this service as a temporary-fixed satellite service rather than a regular fixed satellite service as MTN had requested.³³ Temporary-fixed satellite services are those that are provided from fixed points on a short-term basis. Temporary-fixed satellite licensees are required to coordinate their operations with those of nearby terrestrial

²⁴ *MTN Order*, 15 FCC Rcd at 23214-15 (para. 9). Section 306 of the Communications Act states that the Commission does not have authority to license earth stations on ships of foreign registry. 47 U.S.C. § 306.

²⁵ *MTN Order*, 15 FCC Rcd at 23214-15 (para. 9).

²⁶ *MTN Order*, 15 FCC Rcd at 23215 (para. 11).

²⁷ *Set-Aside Order*, 15 FCC Rcd 19572.

²⁸ *Set-Aside Order*, 15 FCC Rcd at 19572 (para. 1).

²⁹ *See MTN Order*, 15 FCC Rcd at 23213 (para. 6).

³⁰ *See MTN Order*, 15 FCC Rcd at 23213 (para. 6). "Primary" services can claim protection from harmful interference from secondary services. *See* 47 C.F.R. § 2.105. Further, once coordinated, primary services can also claim protection from harmful interference from any new primary services.

³¹ *See MTN Order*, 15 FCC Rcd at 23213 (para. 6).

³² *MTN Order*, 15 FCC Rcd at 23218 (para. 20).

³³ *MTN Order*, 15 FCC Rcd at 23220 (para. 24), *citing* Section 25.277(a) of the Commission's rules, 47 C.F.R. § 25.277(a). Section 25.277(a) states that a temporary fixed earth station license is appropriate if the earth station "is to remain at a single location for fewer than 6 months" MTN did not show that any ship carrying one of its ESVs would remain at a single location for more than six months.

stations operating in the same frequency band each time they begin transmissions.³⁴ In contrast, "regular" fixed satellite earth station operators need to coordinate with terrestrial operators only once -- at the time they file the earth station application.

9. In MTN's case, we concluded that, because the ESVs would be operating only intermittently, perhaps as little as a few days a year in one location, the service would be better classified as a temporary-fixed service.³⁵ Further, because MTN admittedly requested authority to operate using more spectrum than it actually needed, we concluded that it would be inefficient to give MTN authority to operate on a regular basis because, once coordinated, terrestrial operators would not be able to operate on MTN's unused spectrum.³⁶ Accordingly, we denied MTN's applications for regular fixed authority, without prejudice to any applications for temporary fixed authority MTN might file in the future.³⁷ We noted that MTN was already authorized to provide service from the dockside locations in its applications pursuant to its STA, although only on a non-interference basis to terrestrial operations and FSS operations in the band.³⁸

C. Pending Petitions

10. On October 30, 2000, MTN filed a petition for reconsideration of the *MTN Order*. MTN claims that the Bureau misinterpreted Section 306 and ITU Radio Regulations in concluding that MTN should be required to obtain operating authority for its ESVs on foreign vessels from the administrations in which those vessels are registered. MTN also maintains that the Bureau should have granted its applications for regular FSS dockside authority. Five parties filed a Joint Opposition to MTN's petition for reconsideration,³⁹ and MTN filed a reply. For the reasons discussed below, we deny MTN's petition for reconsideration.

11. On October 3, 2000, MTN filed a petition for stay of the *MTN Order*, claiming in part that the Bureau misinterpreted Section 306 of the Act. No pleadings were filed in response to that petition. As discussed below, we dismiss MTN's petition for stay as moot in light of the *Set-Aside Order*.⁴⁰

12. In addition, on March 19, 2001, MTN filed a petition for extension of its STA. In this request, MTN interprets its current STA as authorizing it to operate 45 ESVs, as it was authorized to operate in its original 1997 STA, rather than the six ESVs it was authorized to

³⁴ 47 C.F.R. §§ 25.277(c), (d).

³⁵ *MTN Order*, 15 FCC Rcd at 23220 (para. 25). One of the parties opposing MTN's applications, FWCC, claimed that MTN would need spectrum only for a few days per year in Juneau, Alaska. MTN did not respond to FWCC's claim in the proceeding below. *See MTN Order*, 15 FCC Rcd at 23219 (para. 23).

³⁶ *MTN Order*, 15 FCC Rcd at 23220 (para. 25).

³⁷ *MTN Order*, 15 FCC Rcd at 23220 (para. 26).

³⁸ *MTN Order*, 15 FCC Rcd at 23220 (para. 27).

³⁹ These five parties are listed in Appendix A.

⁴⁰ *Set-Aside Order*, 15 FCC Rcd at 19572 (para. 1).

operate in the *MTN Order*.⁴¹ Based on this interpretation, MTN petitions for renewal of authority to operate 45 ESVs, and also seeks authority to operate an additional 105 ESVs, for a total of 150.⁴² The Joint Opponents filed an opposition to MTN's STA extension request, incorporating by reference the arguments they raised in their opposition to MTN's petition for reconsideration. MTN responded to that opposition. We grant MTN's STA extension request with respect to the six ESVs on U.S. vessels, and otherwise deny that request, based on our denial of MTN's petition for reconsideration.

III. DISCUSSION

A. Jurisdictional Issues

13. Section 306 of the Communications Act states:

Section 301 of this Act shall not apply to any person sending radio communications or signals on a foreign ship while the same is within the jurisdiction of the United States, but such communications or signals shall be transmitted only in accordance with such regulations designed to prevent interference as may be promulgated under the authority of this chapter.

Section 301 of the Communications Act requires anyone transmitting radio signals to, from, or within the United States to obtain a license from the Commission for authority to transmit those signals.⁴³ Thus, by stating that "Section 301 of this Act *shall not apply*" to radio stations on foreign ships, Section 306 deprives the Commission of any authority to issue a license for any ESV on any non-U.S. vessel.

14. In light of Section 306, we found that issuing a license for an ESV on a non-U.S. ship is outside the scope of the Commission's jurisdiction, and that the administrations in which the ships carrying its ESVs were registered had licensing jurisdiction for these ESVs.⁴⁴ We observed that MTN was free to obtain licenses from those foreign administrations, and that at such time, we would like to begin negotiations with those non-U.S. administrations governing the operation of MTN's ESVs on non-U.S. ships in or near U.S. waters, pursuant to a resolution last year's World Radio Conference (WRC-2000 Resolution 82).⁴⁵

15. Once we found that we did not have authority to license ESVs on foreign vessels, it appeared that MTN had no valid operating authority for the 34 ESVs on foreign vessels unless and until MTN obtained operating authority from the administrations with jurisdiction to issue licenses for those ESVs.⁴⁶ Accordingly, we gave MTN five days from the release date of the *MTN Order* to

⁴¹ Letter from Helen E. Disenhaus, Counsel for Maritime Telecommunications Network, Inc., to Magalie Roman Salas, Secretary, FCC (dated March 19, 2001) (*March 19 Letter*) at 1-2.

⁴² *March 19, 2001 Letter* at 2.

⁴³ 47 U.S.C. § 301.

⁴⁴ *MTN Order*, 15 FCC Rcd at 23214-15 (paras. 9-10).

⁴⁵ *MTN Order*, 15 FCC Rcd at 23215 (para. 11).

⁴⁶ In its *June 6, 2000 Letter*, MTN asserted that the jurisdiction issue with respect to the dockside segment of its service is separable from the jurisdiction issue with respect to the in-motion

either cease operation of its unauthorized ESVs, or obtain proper authorization from the administration with jurisdiction to issue such authorization.⁴⁷ Later, the *Set-Aside Order* eliminated the deadline for coming into compliance with the *MTN Order*.⁴⁸

16. MTN now claims that we should reconsider these actions for four reasons. First, MTN asserts that the Commission has authority to issue licenses for ESVs on foreign vessels if the operator of those ESVs voluntarily requests the Commission for a license. Second, MTN maintains that the *MTN Order* prohibits MTN from operating any ESV on a non-U.S. ship under any circumstances, and that such a prohibition exceeds the Commission's authority under Section 306. Third, MTN claims that the *MTN Order* should not require bilateral agreements pursuant to Resolution 82 with countries that do not regulate ESVs. It notes that many of the ships carrying its ESVs are registered in countries that do not issue licenses for ESVs, and that we should permit it to operate these ESVs in U.S. waters without unnecessary delay. Finally, MTN criticizes the Bureau because it did not adopt a "safe harbor" procedure in the *MTN Order*. None of MTN's arguments persuade us that we have the authority to license ESVs on board foreign-flagged vessels.

1. Voluntary Licensing

17. MTN maintains in its petition for stay that, although Section 306 precludes the Commission from requiring a license for an ESV on a foreign vessel, the Commission is permitted to issue a license to an operator that voluntarily requests it.⁴⁹ MTN asserts that we should consider its ESVs under U.S. jurisdiction because they are under the control of MTN's remote control center in New Jersey.⁵⁰ MTN claims further that we should have concluded that the ESVs on foreign ships comply with the Commission's rules, and permitted them to continue operation on the same basis as the ESVs on U.S. vessels, regardless of whether those ESVs have been licensed by any other country.⁵¹ MTN does not raise this argument directly in its petition for reconsideration, but seems to rely on it indirectly. Specifically, while MTN recognizes the need for comity with foreign administrations, it claims that there is no need for comity in cases where a foreign administration has not asserted its jurisdiction over ESVs on ships registered in

segment of its service. "If the Commission ultimately concludes that fleet licensing base on each ship's flagging nation is needed for high seas operations, ... MTN would also obtain licenses for use of the radio equipment from the flag nations of the ships for high seas operations. But fleet licenses by the flagging nations for high seas operations is not mutually exclusive with Commission for fixed dockside operations." *June 6, 2000 Letter* at 5. We disagree. Section 306 states that we do not have licensing authority over transmitters on their ships, and does not make any exception for foreign ships while they are in U.S. ports. We note, however, that MTN implied that it had not obtained any licenses from any administration other than the United States.

⁴⁷ See *MTN Order*, 15 FCC Rcd at 23214-15 (paras. 9, 11).

⁴⁸ The *Set-Aside Order* set aside "that portion of the International Bureau's *MTN Order* that requires [MTN] to terminate service on 34 ships by October 6, 2000." *Set-Aside Order*, 15 FCC Rcd at 19572 (para. 1).

⁴⁹ MTN Petition for Stay at 7-8. MTN does not discuss whether it believes we could issue a license for an ESV already licensed by another Administration, nor does it suggest that it has obtained a license for any of its ESVs from any other Administration. Therefore, we need not address this issue here.

⁵⁰ MTN Petition for Stay at 8.

⁵¹ MTN Petition for Stay at 8-10.

that administration.⁵² The Joint Opponents argue that the Commission's jurisdiction is set forth in Sections 2, 3(22) and 301 of the Communications Act of 1934, and observe that foreign locations and foreign ships are not included.⁵³

18. We agree with the Joint Opponents. Nothing in the jurisdiction provisions of the Communications Act explicitly gives the Commission authority to issue licenses for radio operations on foreign territory and on foreign ships, regardless of whether the operators of those radio stations voluntarily request a license from the Commission. The Supreme Court has recognized that there is a presumption against extraterritorial application of statutes in the canons of legislative interpretation,⁵⁴ and MTN has not provided any basis for rebutting that presumption.

19. Furthermore, if MTN's interpretation of Section 306 were correct, then at most the Act would give the Commission discretion to issue a license to operators of ESVs on foreign vessels who request them. Declining to license ESVs on foreign vessels in this case is not an abuse of discretion that would require reconsideration. With respect to administrations that have adopted ESV licensing requirements, it is not an abuse of discretion to preclude MTN from avoiding those requirements by applying for a U.S. license. With respect to administrations that have not adopted ESV licensing requirements, as MTN claims is the case in Liberia and Panama,⁵⁵ MTN in effect requests us to assume that those administrations have abandoned any claim to jurisdiction merely because they have not asserted their jurisdiction as of this time. It is not an abuse of discretion to refuse to do so, without any indication from the governments of Liberia or Panama regarding whether they intended to abandon their jurisdiction.

2. Commission Authority to Require ESVs to Terminate Operations

20. MTN argues that, under Section 306, the Commission may not preclude MTN from transmitting from foreign vessels unless MTN causes harmful interference, regardless of the ESVs' license status.⁵⁶ In the *MTN Order*, we gave MTN five days to obtain those authorizations or shut down its ESVs. Later, however, the Bureau eliminated the five-day deadline.⁵⁷ We agree that, to the extent that the *MTN Order* in effect sought to enforce the licensing provisions of other countries, we exceeded our authority. Accordingly, we reconsider the five-day deadline. We disagree, however, that it was inappropriate to direct MTN to comply with the applicable licensing provisions of other countries. Of course, MTN must comply with the applicable licensing provisions of other countries.⁵⁸

⁵² MTN Petition at 6.

⁵³ Joint Opposition at 3 n.4, *citing* 47 U.S.C. §§ 152, 153(22), 301.

⁵⁴ *See* EEOC v. Arabian American Oil Co., 499 U.S. 244, 248 (1991); *Foley Brothers v. Filardo*, 336 U.S. 281, 285 (1949).

⁵⁵ MTN Petition at 7.

⁵⁶ MTN Petition at 3-5; MTN Reply at 3-4.

⁵⁷ *MTN Order*, 15 FCC Rcd at 23214-15 (para. 9); *Set-Aside Order*, 15 FCC Rcd at 19572 (para. 1).

⁵⁸ Article S18 of the International Telecommunication Union's (ITU's) Radio Regulations states that, "[n]o transmitting station may be established or operated by a private person or by any enterprise without a license issued in an appropriate form and in conformance with the provisions of these

21. MTN further claims that it has "complied with" Section 306 because it does not cause harmful interference to other operations.⁵⁹ The Joint Opponents argue that they cannot prove that MTN is the source of any interference because the ships carrying its ESVs move out of range before the source of interference can be identified.⁶⁰ MTN misinterprets Section 306 as placing requirements on operators to "comply" with. Section 306 limits the Commission's licensing authority, but gives it power to prevent harmful interference caused by foreign-licensed transmitters on foreign ships in U.S. waters. Thus, MTN's argument is not relevant to the issue of whether the *MTN Order* was correct in concluding that we have authority to issue licenses for ESVs on foreign vessels.⁶¹ We find again that we do not have such licensing authority, regardless of whether they are or are not causing harmful interference.⁶²

3. Resolution 82

22. WRC-2000 Resolution 82 resolves "that, until a decision is adopted for ESVs by WRC-03, agreement between the administrations licensing ESVs and affected administrations should be reached on a bilateral or multilateral basis, in accordance with the guidelines in Annexes 1 and 2."⁶³ Based on Resolution 82, the *MTN Order* states that "the Administrations licensing MTN's ESVs on foreign ships should reach an agreement with the United States before MTN may provide any satellite service to one or more of those ships in U.S. coastal regions."⁶⁴ MTN argues generally that we should not seek bilateral agreements with administrations that do not license ESVs, because those administrations have not adopted regulations specifically governing ESV operations.⁶⁵

Regulations by or on behalf of the government of the country to which the station in question is subject." Articles S18.1 and S18.8 make clear that the country in which a ship is registered is the proper licensing authority for ESVs on those ships, with one limited exception that does not apply in MTN's case. MTN asserts without further explanation that Article S18.1 does not apply to ESVs. MTN Reply at 2. We find it more reasonable to interpret Article S18 to apply to ESVs, given that Resolution 82, Annex 1, item 9, refers to Article S18.⁵⁸ We see no way to reconcile MTN's contention with the plain language of Article S18.1 and the reference to Article S18 in Resolution 82, Annex 1, item 9. "ESVs should be equipped so as to enable the licensing administration under the provisions of Article S18 to verify earth station performance and to terminate ESV transmissions immediately upon request by an administration whose services may be affected." Resolution 82, Annex 1, item 9.

⁵⁹ MTN Petition at 4-5; MTN Reply at 3-4.

⁶⁰ Joint Opposition at 2 n.3.

⁶¹ *MTN Order*, 15 FCC Rcd at 23214 n.26.

⁶² Although the Joint Opponents allege they have received harmful interference, they have not provided any data to support their claim. Although the Joint Opponents may not be able to "prove" that MTN is causing harmful interference, any data on interference that they receive will be helpful. If there is some evidence in the record to support a conclusion that MTN is causing harmful interference, we can require MTN to shut down its ESVs, regardless of whether they are licensed by another country.

⁶³ Resolution 82, *resolves* 4.

⁶⁴ *MTN Order*, 15 FCC Rcd at 23215 (para. 11).

⁶⁵ MTN Petition at 5-8. MTN has placed eight ESVs on Liberian ships and seven on Panamanian ships. *June 6 Letter* at 5. MTN does not address any of its 19 ESVs on ships of Bahamian,

23. Initially, we clarify that MTN is not required to obtain ESV licenses from nations that do not issue such licenses. Rather, MTN is subject to the jurisdiction of the nations in which the ships carrying its ESVs are registered, and must comply with all the applicable requirements those nations have adopted.⁶⁶

24. Further, MTN has provided no reason why we should not seek bilateral agreements with countries that do not license ESVs. As MTN recognizes, "nothing prevents the FCC from contacting the foreign administrations to encourage some degree of cooperation in the regulation of ESVs and the development of bilateral agreements."⁶⁷ Indeed, these bilateral agreements may be more important where we have no assurance that the foreign country has evaluated the interference potential of the ESVs. Accordingly, we will not reverse the *MTN Order* on this basis.

4. Safe Harbor

25. MTN asserts that the Commission could avoid the need for bilateral agreements by creating a "safe harbor" procedure for ESVs on foreign vessels that would allow for such operations. For example, according to MTN, the Commission could allow operations upon a demonstration that the ESVs meet Commission licensing standards.⁶⁸ Assuming for the sake of argument that such a "safe harbor" procedure would not exceed the Commission's jurisdiction, we point out that the Commission has not adopted such a procedure. Indeed, MTN did not even propose such a procedure until it filed its petition for reconsideration. Failing to consider applying a procedure that had not been adopted or contemplated at the time of the *MTN Order* cannot provide a basis for overturning that Order.

B. Dockside Operations

26. In addition to its request regarding in-motion operations, MTN filed 32 earth station applications to operate its ESVs as fixed earth stations while the vessels carrying its ESVs are docked and stationary at one of 32 locations.⁶⁹ By characterizing this service as FSS, that is, providing satellite service to fixed points, MTN submitted that its proposed operations conform to the Table of Frequency Allocations and could be provided on a primary basis.⁷⁰ In addition, MTN

Dutch, or Norwegian registry, and so there is no basis for reconsidering our reliance on WRC-2000 Resolution 82 with respect to those 19 ESVs.

⁶⁶ We offer no opinion on whether MTN has correctly interpreted Panamanian and Liberian law, or whether MTN in fact has complied with Panamanian and Liberian law.

⁶⁷ MTN Petition at 7 n.18.

⁶⁸ MTN Petition at 7-8.

⁶⁹ The locations at which MTN applied for fixed earth station authority are listed in Appendix A of the *MTN Order*, 15 FCC Rcd at 23224.

⁷⁰ See *MTN Order*, 15 FCC Rcd at 23213 (para. 6). "Primary" services can claim protection from harmful interference from secondary services. See 47 C.F.R. § 2.105. Further, once coordinated, primary services can also claim protection from harmful interference from any new primary services. Non-conforming services cannot claim protection from either primary or secondary services. MTN's service is a non-conforming service.

argued that its FSS service should be considered a regular fixed satellite service rather than a temporary-fixed service. A regular fixed earth station is one that is designed to remain in one place. A temporary-fixed earth station is one that is intended to remain at a single location six months or less.⁷¹ A regular fixed earth station operator is required to coordinate only once, at the beginning of its license term, while a temporary-fixed earth station operator in the C-band is required to coordinate each transmission with potentially affected terrestrial wireless operators.⁷²

27. We concluded that MTN was correct in asserting that its ESVs operate as fixed earth stations while at fixed dockside locations.⁷³ We denied MTN's applications, however, concluding that it would be more appropriate to treat MTN's ESVs as temporary fixed earth stations.⁷⁴ This is because MTN planned to use the spectrum only intermittently while the ships carrying its earth stations are at port, thereby excluding terrestrial operators from instituting service in the geographic area around the MTN dockside locations, even when MTN's ESVs are not at those locations.⁷⁵ Furthermore, we noted that MTN had requested a license for substantial amounts of bandwidth in each transmission direction, even though it planned to use significantly less than this when transmitting.⁷⁶ MTN now seeks reconsideration of our denial of its dockside FSS applications. We conclude, for the reasons given below, that MTN has not provided a sufficient basis for reconsidering our decision.

1. Characterization of Service as Temporary-Fixed

28. MTN asserts that we erred in classifying MTN's service as temporary-fixed FSS rather than "regular" FSS. MTN asserts further that the Commission's rules do not preclude us from granting MTN regular fixed authority for its dockside service, just because the rules have established a separate temporary fixed satellite service classification.⁷⁷ According to the Joint Opponents, while the Commission may have discretion to grant regular fixed authority to an earth station intended to remain in place for less than six months, it has never done so.⁷⁸

⁷¹ See 47 C.F.R. § 25.277.

⁷² See 47 C.F.R. § 25.277.

⁷³ *MTN Order*, 15 FCC Rcd at 23218 (para. 20).

⁷⁴ *MTN Order*, 15 FCC Rcd at 23219 (para. 22).

⁷⁵ *MTN Order*, 15 FCC Rcd at 23220 (para. 25).

⁷⁶ *MTN Order*, 15 FCC Rcd at 23220 (para. 25).

⁷⁷ MTN Petition at 12-13; MTN Reply at 4-5. To support its contention that the temporary-fixed earth station rules do not preclude the Commission from granting permanent fixed authority, MTN claims that, in at least two cases in the early 1970s, the Commission allowed ESVs to operate in the C-band. MTN asserts further that, even though specific spectrum for maritime services was allocated later, maritime services were still permitted in the C-band. MTN does not cite those cases directly, but rather refers to a document it calls a "memoir self-published by Comsat" in 1978. MTN Petition at 11-12. We find that these Orders are not relevant here because they do not address the issue of whether MTN's fixed dockside service should be licensed as a regular or a temporary-fixed service.

⁷⁸ Joint Opposition at 7-8.

29. Both MTN and the Joint Opponents contend that Section 25.277 does not necessarily prohibit the Commission from granting MTN's applications for regular fixed authority. We agree. The *MTN Order* did not conclude that Section 25.277 compelled us to deny MTN's requests for regular fixed dockside authority. Rather, we denied MTN's requests for regular fixed authority because it is an inefficient use of spectrum, because such an authorization would enable MTN to preclude others from operating in spectrum that it would use only intermittently. We then observed that this concern might be assuaged if MTN sought temporary-fixed authority, because MTN would be required to recoordinate its operations before each use.⁷⁹

2. Continuity of Operations

30. In its opposition to MTN's applications for dockside authority, FWCC claimed that, for example, MTN may need spectrum only for a few days per year for its dockside locations in Juneau, Alaska. FWCC claim therefore that MTN's proposed service was inefficient.⁸⁰ MTN did not respond to this argument. If we had granted MTN's request for regular authority, we would have, in effect, precluded all other operators from using certain frequency bands at any time, even though MTN would use those bands intermittently, and potentially very rarely at some locations. Accordingly, we determined that granting MTN regular earth station licenses would be inefficient use of the spectrum.

31. MTN maintains that most ports are used year-round, and that other earth stations operating under regular authority are not required to use their frequencies continuously.⁸¹ According to MTN, some utilities have a microwave path used only as a back-up in cases where there is an outage.⁸² Thus, MTN asserts that we should have awarded it regular licenses for its dockside service.

32. MTN is correct that regular fixed earth station licensees are not required to operate continuously. The *MTN Order*, however, does not hold MTN to such a high standard. Rather, the *MTN Order* concludes that granting it regular fixed earth station authority would be inefficient because operations will be scheduled intermittently, and for only a "few days a year" in at least one case.⁸³ MTN asserts that it will operate more than a few days a year, but does not provide any indication of how often its ESVs will be used, and notes that "the degree of use varies according to season."⁸⁴ Section 25.162(c) of the Commission's rules states that we can terminate interference protection for earth stations used less than 50 percent of the time in any 12-month period.⁸⁵ MTN's vague assertions cannot support a conclusion that it will use any earth station at any dockside location for more than 50 percent of a given 12-month period. In the absence of any data regarding MTN's usage, it would be unreasonable to grant MTN continuous

⁷⁹ *MTN Order*, 15 FCC Rcd at 23220 (paras. 24-25).

⁸⁰ *See MTN Order*, 15 FCC Rcd at 23219 (para. 23).

⁸¹ MTN Petition at 19.

⁸² MTN Petition at 19; MTN Reply at 5.

⁸³ *See MTN Order*, 15 FCC Rcd at 23219 (para. 23).

⁸⁴ MTN Petition at 19 n.42.

⁸⁵ 47 C.F.R. § 25.162(c).

protection from harmful interference. Consequently, we reaffirm our denial of MTN's applications for regular fixed dockside licenses. MTN may continue to operate at these dockside locations on a non-harmful interference basis under its STA.

33. None of MTN's other arguments persuade us to adopt a different conclusion. MTN is correct that some operators have licenses to use spectrum as a back-up, and may never actually transmit.⁸⁶ However, back-up facilities must be available at all times because it is usually not possible to predict in advance when an outage will occur. On the other hand, MTN should be able to predict fairly accurately when the ships carrying its ESVs will be in port, and so has no need for 24-hour availability for its fixed dockside operations.⁸⁷ MTN also emphasizes that its operations will continue at the same location for "many years to come."⁸⁸ Nevertheless, MTN still plans to operate intermittently during those years. We considered and rejected this argument in the *MTN Order*,⁸⁹ and MTN provides no reason to revisit this issue.

3. Amount of Spectrum Requested

34. In addition to the intermittent use issue we discussed above, we denied MTN's dockside applications because MTN sought authority to use more spectrum than it actually planned to use.⁹⁰ As a result, we concluded that granting MTN's applications for regular fixed earth station authority would foreclose others from using those frequencies while MTN develops its plans for its future mobile satellite service.⁹¹

35. In its petition for reconsideration, MTN maintains that it cannot select specific spectrum for the dockside segment of its service until a coordination procedure and coordination criteria for its in-motion segment of its operations are developed.⁹² MTN blames the National Spectrum Managers Association (NSMA) for failure to reach agreement on a coordination procedure and coordination criteria.⁹³

36. This is precisely the same argument that MTN made in support of its original dockside applications,⁹⁴ and this is precisely why we concluded that granting its dockside applications would be an inefficient use of spectrum. "By requesting authority to hold spectrum to the exclusion of others that may be ready to proceed with their business plans, MTN forecloses

⁸⁶ MTN Petition at 19.

⁸⁷ Many of the foreign ships carrying MTN's ESVs appear to be cruise ships. *See* MTN Petition for Stay at 3-4. Because cruise ships generally run on fixed schedules, it should be easy to predict when they will be in port.

⁸⁸ MTN Petition at 19.

⁸⁹ *MTN Order*, 15 FCC Rcd at 23219-20 (paras. 23-24).

⁹⁰ *MTN Order*, 15 FCC Rcd at 23220 (para. 25).

⁹¹ *MTN Order*, 15 FCC Rcd at 23220 (para. 25).

⁹² MTN Petition at 17, 21. *See also* MTN Reply at 6-7.

⁹³ MTN Petition at 17-18; MTN Reply at 7.

⁹⁴ *See MTN Order*, 15 FCC Rcd at 23219 (para. 23).

others from using those frequencies in the 6 GHz band while MTN develops its plans for its future mobile satellite service."⁹⁵ It is not relevant whether MTN or NSMA is at fault for failing to reach agreement on a coordination procedure and coordination criteria. Even if MTN were to provide evidence supporting its allegations, we would still conclude that its request to hold spectrum to the exclusion of others is inefficient. Thus, MTN fails to address our concerns on this issue.⁹⁶

4. Other Issues

37. MTN raises other arguments in support of its fixed dockside applications, in both its petition for reconsideration and in its reply to the Joint Opposition. We find that MTN has not provided us with any basis for reconsidering our decision.

38. MTN argues that we should grant it regular fixed earth station authority because it will operate with lower power than the typical earth station, and therefore it is less likely to cause interference than other earth stations to terrestrial microwave operators.⁹⁷ We denied MTN's dockside applications because they were more appropriately considered temporary-fixed-satellite operations. We did not base our decisions on the interference potential of MTN's terminals. MTN's proposed power levels do not give us a reason to reconsider our decision.

39. MTN further asserts that there are over 10,000 earth stations and 13,000 point-to-point microwave stations using the 6 GHz band, and that "many" of those operators are located in the areas coordinated by MTN. MTN therefore denies that it has foreclosed terrestrial wireless operators' entry into the market.⁹⁸ We do not see how this is relevant to any decision on MTN's petition for reconsideration. In effect, MTN argues that there has been enough market entry, and we should permit MTN to foreclose additional market entry while it develops its plans for its future mobile satellite service. We prefer to allow market forces and the laws of physics, rather than government fiat, to determine the number of market participants. Thus, MTN has not provided a good reason for reconsidering our decision to deny its dockside applications.

40. Last, MTN says that we should give it regular fixed authority for its dockside operations because it might have to use different frequencies for the fixed and in-motion portions of its service when and if it obtains a regular license for the in-motion portion of its service. MTN asserts that this would require MTN to use more spectrum than it would otherwise.⁹⁹ This does not change the fact that MTN plans only intermittent use of its dockside locations.

⁹⁵ *MTN Order*, 15 FCC Rcd at 23220 (para. 25).

⁹⁶ *See WWIZ, Inc., Memorandum Opinion and Order*, 37 FCC 685, 686 (para. 2) (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965); *Fresno FM Limited Partnership, Memorandum Opinion and Order*, 7 FCC Rcd 4339, 4339 (para. 2) (1992) (reconsideration will not be granted merely for the purpose of reviewing matters on which the Commission has once deliberated and spoken).

⁹⁷ MTN Petition at 19-20. Some power reduction was necessary because MTN uses antennas that are 2.4 meters in diameter, rather than 4.5-meter antennas used by routine earth stations. *See June 6, 2000 Letter* at Exh. H; MTN Petition at 4-5. Smaller antennas increase the potential for interference.

⁹⁸ MTN Petition at 20.

⁹⁹ MTN Reply at 6.

5. Delaying Action on Dockside Applications

41. MTN argues that, if we cannot grant its applications for regular fixed earth station authority, we should hold them in abeyance. MTN argues that it is unduly burdensome to require it to spend thousands of dollars to undergo new frequency coordination and file new applications.¹⁰⁰ MTN also argues that it would be more efficient for the Bureau to allow the applications to remain pending rather than to go through the process of accepting and processing new applications.¹⁰¹

42. We denied MTN's applications for regular fixed earth station authority because its proposed service is better classified as a temporary-fixed service. Allowing MTN's dockside applications to remain pending for some unspecified period of time would not change that. Therefore, we see no reason to delay action on MTN's dockside applications.

6. Conclusion

43. MTN's proposed dockside service is a temporary-fixed earth station service rather than a regular fixed earth station service. Granting MTN's dockside applications would allow MTN to hold scarce spectrum resources to the exclusion of others even though it intends to use that spectrum intermittently. We emphasized in the *MTN Order*, and we re-emphasize here, that denying MTN's dockside application does not in any way limit its ability to provide service as it has done in the past.¹⁰² MTN's STA still gives it authority to operate its ESVs while in port on a non-interference basis.¹⁰³

C. Petition for Stay

44. MTN filed a petition for stay of the *MTN Order* on October 3, 2000, requesting us to stay the five-day deadline for coming into compliance with all the applicable requirements adopted by the Administrations in which the ships carrying its ESVs are registered. On October 4, 2000, the Bureau set aside the portion of the *MTN Order* that requires MTN to terminate service on 34 ships within 5 days, pending the foreign Administrations' grants of operating authority to MTN.¹⁰⁴ As a result of the *Set-Aside Order*, we granted MTN the relief it sought, and we do not need to consider the merits of its stay request here.

D. STA Extension Request

45. In light of our conclusion above that we lack jurisdiction to issue licenses for ESVs on non-U.S. ships, we grant MTN's STA renewal request only for its six ESVs on U.S. vessels. We deny its STA request for ESVs on foreign vessels. We also dismiss without prejudice its

¹⁰⁰ MTN Petition at 21.

¹⁰¹ MTN Petition at 21.

¹⁰² *MTN Order*, 15 FCC Rcd at 23220 (para. 27).

¹⁰³ *MTN Order*, 15 FCC Rcd at 23217 (para. 16), 23220 (para. 28).

¹⁰⁴ *Set-Aside Order*, 15 FCC Rcd at 19572 (para. 1).

request to increase its authority to up to 150 ships. As we explained in the *MTN Order*, MTN is permitted to request the Commission for STA for ESVs on additional ships to the extent that it can show that they will be placed on U.S. ships.¹⁰⁵

E. Conclusion

46. We reaffirm our conclusion that, under Section 306 of the Act, the Commission does not have authority to issue licenses for transmitters on non-U.S. vessels.¹⁰⁶ We reverse our finding, however, that MTN must receive a license from the appropriate foreign administration before it may operate an ESV in U.S. waters. Consequently, we will not prohibit MTN from operating those ESVs on board foreign ships on a non-interference basis to primary services. If any of the MTN terminals cause interference to primary services, we will require MTN to terminate operations. As with all other satellite companies operated by U.S. companies in foreign territories, MTN must comply with all regulation applicable to ESVs adopted by the countries in which the ships carrying its ESVs are registered.¹⁰⁷ We defer to those countries' determinations of whether MTN is in compliance with their laws, and what penalty to impose on MTN, if not, what action is warranted.

47. Further, we deny MTN's request to reconsider our denial of its fixed dockside applications. We concluded in the *MTN Order* that the dockside service is a temporary-fixed service, and that it would be an inefficient use of the spectrum to grant regular fixed earth station licenses to MTN. None of MTN's contentions in its petition for reconsideration persuade us otherwise. In addition, in light of our elimination of the deadline for coming into compliance with the regulations of the administrations in which the ships carrying MTN's ESVs are registered, we dismiss MTN's petition for stay of the *MTN Order* as moot. Finally, based on our decision to reaffirm the *MTN Order*, we grant MTN's STA extension request only with respect to its six ESVs on U.S. vessels.

IV. ORDERING CLAUSES

48. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 301, 302, 303(e), 303(f), 303(r), 304, 307, and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by Maritime Telecommunications Network Inc. on October 30, 2000, IS DENIED.

¹⁰⁵ *MTN Order*, 15 FCC Rcd at 23216 (para. 13).

¹⁰⁶ *MTN Order*, 15 FCC Rcd at 23214 (para. 9). MTN raises one issue in its STA extension request that we did not address in the context of its petition for reconsideration. MTN argues that it does not need a license from any administration to operate ESVs on a non-interference basis. MTN Opposition to Objection to STA Request, filed Apr. 12, 2001, at 2-3. We disagree. Resolution 82, Annex 1, item 9 states that "ESVs should be equipped so as to enable the licensing administration under the provisions of Article S18 to verify earth station performance and to terminate ESV transmissions immediately upon request by an administration whose services may be affected." Thus, under Resolution 82, ESVs are subject to the licensing requirements of Article S18, and MTN is incorrect to assume otherwise.

¹⁰⁷ *MTN Order*, 15 FCC Rcd at 23215 (para. 11). *See also* Article S18 of the ITU Radio Regulations.

49. IT IS FURTHER ORDERED that the petition for stay filed by Maritime Telecommunications Network Inc. on October 3, 2000, IS DISMISSED AS MOOT.

50. IT IS FURTHER ORDERED that the Request for Extension of Special Temporary Authority filed by Maritime Telecommunications Network, Inc. on March 19, 2001, IS GRANTED, with respect to six earth stations on U.S. Naval Vessels operating in the 6 GHz band, and otherwise IS DENIED. These authorizations SHALL EXPIRE 180 days from the release date of this Order. This authorization is subject to the conditions set forth in paragraph 29 of the *MTN Order*.

51. IT IS FURTHER ORDERED that the Request for Expansion of Special Temporary Authority from 45 to 150 earth stations on board vessels, filed by Maritime Telecommunications Network, Inc. on March 19, 2001, IS DISMISSED without prejudice.

52. IT IS FURTHER ORDERED that Maritime Telecommunications Network, Inc. is afforded 30 days from the date of release of this Order and Authorization to decline any authorization granted in this Order as conditioned. Failure to respond within this period will constitute formal acceptance of the authorization as conditioned.

53. This Order is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective upon release. Applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, may be filed within 30 days of the date of the release of this Order. (*See* 47 C.F.R. § 1.4(b)(2).)

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau

APPENDIX A

Pleadings

I. Petition for Reconsideration

1. Petition for Partial Reconsideration, filed by Maritime Telecommunications Network, Inc (MTN) on October 30, 2000 (MTN Petition)
2. Joint Opposition to Petition for Partial Reconsideration, filed by the Fixed Wireless Communications Coalition (FWCC), the Association of American Railroads (AAR), the American Petroleum Institute (API), the Association of Public Safety Communications Officials-International (APCO), and the United Telecom Council (formerly the Utilities Telecommunications Council, or UTC) (together, "Joint Opponents") on November 14, 2000 (Joint Opposition).
3. MTN Reply to Joint Opposition to Petition for Partial Reconsideration, filed by MTN on November 21, 2000 (MTN Reply).

II. Petition for Stay

MTN Emergency Petition for Stay, filed October 3, 2000.

III. Request for Extension of Special Temporary Authority

1. MTN Request for Extension of Special Temporary Authority, Request for Expansion of Special Temporary Authority, SES-STA-20010319-00588, filed March 19, 2001.
2. Joint Objection to STA Request, filed by FWCC, AAR, API, APCO, and the United Telecom Council on March 30, 2001.
3. MTN Opposition to Objection to STA Request, filed April 12, 2001.