

SATELLITE POLICIES



By Raul Magallanes

FCC Jurisdiction for Maritime Communications

If a maritime vessel is in no-man's land, does that equate to being in no-rules land?

With regards to satellite maritime communications, it may appear so, but it's not quite the case. The improvement and commercialization of sub-meter stabilized antennas injected a shot of life into fixed-price maritime communications, but with more antennas proliferating in international waters, solving the riddle of regulatory authority has become increasingly important.

The 2003 World Radio Conference (WRC-03) passed recommendations for governing Earth Stations on Vessels (ESV). The United States, through the Federal Communications Commission (FCC), was one of the first nations to adopt ESV rules. Here, we focus on how far the FCC can extend its reach in regulating fixed satellite maritime communications.

There is a common misconception that as long as a vessel is in international waters (beyond 12 miles from shore), it is outside FCC authority. But the truth is not so simple. As it turns out, geography has little to do with how the FCC determines jurisdiction. The FCC claims jurisdiction in situations involving any of these three scenarios:

1. A U.S. Teleport

The rule: "If a vessel antenna communicates with a U.S. hub, the U.S. hub (be it the teleport operator or satellite service provider) is responsible for FCC compliance, regardless of whether the vessel is in international waters or the vessel is foreign-flagged."

The FCC has jurisdiction only over U.S.-registered vessels. Regulatory responsibility falls on the U.S. hub when

foreign-registered vessels communicate with it. In other words, the antenna on the foreign-registered vessel must operate according to the U.S. hub's ESV license. The FCC has stated clearly that noncompliance can lead to sanctions or forfeiture of the U.S. hub's license. Simply stated, the mere fact of communicating with a U.S. hub is sufficient to be subject to FCC jurisdiction.

2. A U.S.-Registered Vessel

The rule: "An antenna installed on a U.S.-registered vessel is subject to FCC jurisdiction even if the vessel is in international waters or the vessel is communicating with a foreign hub."

The FCC has jurisdiction over U.S.-registered vessels. If the vessel antenna is communicating with a foreign hub, then a U.S. entity connected to the vessel (the vessel owner, vessel operator or antenna owner) is responsible for compliance. If the antenna is communicating with a U.S.-hub, then either the hub or vessel entities are responsible for compliance.

3. U.S. Waters

The rule: "If a vessel antenna operates within 125 miles of the U.S. coast, it must operate under some authority regardless of the vessel's country of registration or the location of the hub."

The FCC has jurisdiction over U.S.-registered vessels and U.S. hubs, but what happens where a foreign-flagged vessel communicates with a foreign teleport, but operates within 125 miles off the U.S. coast? The FCC presents two solutions, either of which allows proper regulatory authority to the vessel. One, the vessel can operate under a bilateral agreement — if there is one — between the United States and the vessel's home country. Two, the vessel can operate under its country's communications license.

What if a vessel with an FCC ESV license navigates beyond international waters and into another country's waters? How much value does the FCC license hold? That would depend on the country. What is certain is that the country's sovereign laws would hold. It is a good idea to check for a bilateral agreement between the FCC and that country's regulatory authority. Otherwise, the vessel needs to get, at a minimum, prior consent to operate.

A vessel in international waters is not in the Wild West when it comes to maritime fixed satellite services. One needs to perform the FCC regulatory analysis in three steps — looking at the hub, the vessel registration and the 125-mile limit from the U.S. coast. This analysis will determine what party needs to get the ESV license. ▀

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