Regulatory Review

Satellite Spectrum Trading—Falling Into The Right Hands?

by Gerry Oberst

Policymakers in Brussels and elsewhere in Europe are focusing on spectrum trading as a way to make more efficient and flexible use of radio frequencies. European satellite companies are getting nervous and asking what is in it for them except more fragmentation and more market barriers across the many national borders.

The relatively new rules for telecommunications regulation in Europe, called the electronic communications framework, provide that European Union (EU) member states can, if they wish, permit trading of rights to use radio spectrum. Relatively few limits are set—member states must define at the outset whether rights to use spectrum can be traded, keep public records and not permit trades to change the use of spectrum that has been harmonized across Europe.

What the rules do not require is that member states permit trading in the first place—that is up to them. Further, the rules speak in terms of permitting trading, which by comparison to traditional U.S. regulatory terms could include only the selling of licenses to use spectrum rather than changing the use of spectrum that was assigned for one purpose to another.

Examples of the latter type of trading could lead, for example, to broadcasters selling their assigned rights to use spectrum to a mobile telephone operator, or a taxi cab private radio spectrum operation selling rights to a wireless radio local area network. It also could lead to the user of satellite spectrum leasing or selling spectrum rights to terrestrial users, and that has the satellite operators worried.

Several consultations are under way on how spectrum trading might work. The European Commission is sponsoring a substantial study on whether and how rules might be harmonized in the EU. The study is expected to run until May. As part of that project, a workshop held in Brussels late in December last year permitted industry to express its views. And the satellite industry did just that, submitting several statements on its concerns.

Among the points raised was that the stability of spectrum resources is an essential element for satellite companies, as each satellite is an extremely expensive investment that will remain in operation at its orbital position for up to 15 years, if not more. Trading mechanisms could upset the certainty that the industry is built upon, and thus discourage new operators and huge new upfront investments. A background message was that no single member state should "go it alone" and introduce national level changes that could upset the international apple cart.

The new U.K. Office of Communications (Ofcom) that now regulates spectrum, telecommunications and media started its own consultation on spectrum trading in late 2003. U.K. regulators enjoy being at the forefront of new approaches toward charging fees for spectrum use, and took comments in mid-February this year. Satellite interests again warned, however, that the prospects of any single member state taking unilateral action on frequency allocations could undermine collaborative efforts on spectrum at the International Telecommunication Union. The satellite argument was that application of secondary trading is not appropriate for frequency bands with international allocations or harmonized designations on a primary or shared basis for satellite networks. Of course, this covers all satellite bands, with the possible exception of some allocations that serve large single country land masses (with the United States given as the example).

A major argument in that consultation again was that the confidence of sectors such as the satellite industry could be severely eroded by inconsistent national approaches. Further, it was said, changes in use of spectrum in an adjacent band could lead to new sources of interference to satellite operations coordinated with the initial use of that band.

Yet a third consultation was started in mid-February by another EU institution, the Radio Spectrum Policy Group (RSPG). This group advises the Commission on high-level policy matters and it asked for comments by mid-April of this year. The terms of reference for this latest effort are to review the potential benefits and drawbacks of secondary trading of spectrum for EU policies and in particular the internal market; on the procedures and conditions to be addressed when introducing spectrum trading; and on the potential need for coordination among member states regarding introduction of spectrum trading in order to avoid a fragmentation of the market for spectrum and wireless technologies. Presumably the satellite sector will say the same things to the RSPG that it already has submitted to the Commission study and the U.K. Ofcom.

These consultations are taken against a backdrop of numerous studies, reports and theories on the value (or cost) of spectrum trading. Few European countries seem ready to implement spectrum trading in the sense of permitting liberal changes to the use of that spectrum. Changes of such substantial nature could take years and years in the current structure of European spectrum planning. Nevertheless, the current trends are starting to worry the satellite sector—much room for argument remains. ❖

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