



By Gerry Oberst

## Spectrum Harmonization

**The contrast between U.S. and European** spectrum allocation responsibilities reveals a central difference in management. The European structure, however, may change in the next couple of years, with possibly a large impact on satellite operators.

When the U.S. Federal Communications Commission manages spectrum allocations, it does not have to consider whether the states would do a better job of allocating and assigning the frequencies. The situation in Europe is a mix of national and centralized management, and in recent years, a mild tug of war has occurred between the European Conference of Postal and Telecommunications Administrations (CEPT) and actions by the European Commission, which represents the European Union (EU).

The CEPT is an inter-governmental body representing 48 countries covering most of geographical Europe, while the EU is a governmental entity representing 27 countries — all members of the CEPT. CEPT measures are not legally binding, as national regulators have the choice whether or not to adopt them. If the European Commission adopts a decision based on the CEPT measures, however, the measure can become binding law on all EU member states.

Today, the scope of when the European Commission steps in is guided by the principle of “subsidiarity,” which means that the EU should act only when the member states themselves cannot take effective action themselves — the loose equivalent of states’ rights in the United States.

In the proposals issued in late 2007 by the European Commission to reform the overall telecommunications regulatory structure, the existing balance in Europe would shift strongly towards the EU side. This could help the satellite industry by creating true EU licensing conditions and allocations, but it could hurt if the influence of the satellite sector in certain EU capitals is swamped by the larger terrestrial lobbying power on the EU level.

We described in January’s column how the big issue for 2008 will be debate over these Commission proposals and noted the proposed creation of a European Electronic Communications Market Authority (ECMA) that is one of the more controversial topics.

An overarching theme in the proposals is how this ECMA and the European Commission working together could hold increased author-

ity to allocate and manage radio spectrum use. How far this expanded centralization might go is unclear in the proposals. Although the satellite industry is named several times as one sector likely to benefit from European-wide allocations and regulations, the words used in the proposals could add up to a much broader scope.

The key word officially defined in the proposals is “transnational.” The ECMA and European Commission are supposed to identify “transnational markets,” which are those that cover the EU or a substantial part of it located in more than one member state.

That is clear so far, but the proposals also refer to services with “cross-border potential,” and the ECMA is supposed to provide opinions on frequencies and services to be harmonized with “cross-community potential.” Further, in the European Commission’s impact assessment of the proposals, it uses the word “pan-European,” unofficially defined as services deployed across the entire EU or at least across several member states.

The choice to which term to use makes a difference. If the new EU structure applies to services that cross national borders, then the sky is the limit — most radio frequency uses cross some borders in Europe. But if the standard is whether service is deployed across the entire EU or most of it, then the services may be only in the sky — that is, services offered from satellites that cover an entire European footprint.

It is more than likely that the more expansive definition will hold. The term “transnational” in other European legal contexts implies services crossing a single national boundary. This interpretation has been applied to European concepts of free movement of services, right of establishment and the free movement of capital across EU boundaries.

This approach also is consistent with other parts of the European Commission proposals, which would permit the ECMA and the Commission to harmonize spectrum use and conditions for licensing in just about any band, not only for transnational services.

Today, Europe is in transition on spectrum allocations and licensing, moving from a system where almost all decisions are taken at the national level towards a more centralized system, similar to the FCC model. The satellite industry is carefully reflecting on the eventual impact the new structure will have on its “transnational” activities. ▣

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