By Gerry Oberst

Landing Rights Resurfacing In Europe

European satellite operators are complaining that new regulatory structures being establish in the old country are recreating the "landing rights" system that supposedly has been abolished.

Landing rights are permissions that operators must obtain for their satellite to be used in a particular country. Traditionally, the system applied to commercial satellite systems created to compete with old intergovernmental satellite systems such as Intelsat. By treaty, governments had to grant landing rights for the new satellite systems to compete.

With the privatization of the intergovernmental systems, landing rights have taken on a new purpose, allowing countries to regulate which foreign satellites serve their territory. The United States maintains a permitted space station list which effectively serves as a landing rights list, because earth stations that seek to access satellites not on the list must obtain additional individual license authority. Operators from at least 10 foreign countries have satellites on the list.

The U.S. approach of allowing foreign satellites stems from trade commitments. The U.S. Federal Communications Commission established a rebuttable presumption that entry by non-U.S. satellites licensed by the World Trade Organization (WTO) to provide services covered by the U.S. commitments under the WTO Basic Telecom Agreement contribute to competition in the United States.

The European approach stems more from internal European Union (EU) market and competition rules rather than from purely trade considerations. In principle, landing rights were eliminated in Europe as far back as 1994, when legislation eliminated national restrictions on the offer of space segment to any authorized satellite earth station operator. The language of the EU directive left some ambiguities, but essentially it seemed to bar landing right restrictions.

The same language has been carried forward in subsequent directives, and the current EU Liberalization Directive adopted in 2002 still provides that an authorized satellite earth station network operator is free to choose "any space segment supplier" without restriction as to where that supplier might be authorized or licensed.

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This seemingly sweet arrangement has worked best for Fixed Satellite Service networks, in particular for direct-to-home broadcast transmissions. (It is precisely that service which operators on the U.S. permitted space station list are not authorized automatically to provide.) Some operators mutter, however, that some EU member states have created barriers similar to landing rights, and that recent practices seem to be raising new barriers.

For instance, some countries where no physical satellite infrastructure such as gateway or hub stations are located increasingly insist on issuing "network licenses" for the whole system. This condition effectively duplicates the license the satellite operator already holds from its home country. Nevertheless, the satellite operator becomes the usual target for these network licenses and in effect landing rights are reintroduced as a condition to use the terminals and provide service. This situation particularly has affected mobile satellite and VSAT services.

Another example concerns licensing exemptions for satellite terminals. It is accepted practice in Europe that many classes of consumer satellite antennas are exempt from licensing. Nevertheless, countries such as Spain insist that national legislation requires a network license for any use of radio spectrum, which again places a burden on the satellite operator.

"The distinction between network license and landing rights is very blurred," one operator says. "Countries increasingly exempt terminals and service from licenses, but due to spectrum pricing policies, the operator of the satellite is targeted even if no physical part of the network is located in the country."

The spectrum pricing point is also important. Regulators increasingly seek ways to squeeze every available pound or centime from spectrum users and will not be forestalled even if the satellite operator is licensed in another country.

Another recent issue that has led to a form of landing rights arises from concerns over network security and data integrity. Some countries insist that satellite networks must locate facilities in their national territory in order to apply to national rules on data protection or legal interception. This requirement means that in addition to the pure nuisance of additional rules and licensing, superfluous hardware costs are incurred.

The elimination of landing rights in Europe, premised on liberalization of the European internal market, has a long pedigree. Operators correctly oppose any new or secondary conditions that seem to interfere with this approach.