

# GLOBAL REGULATIONS



By Gerry Oberst

## EU versus ITU

**What's eating the European Commission** about observing international radio regulations of the International Telecommunication Union (ITU)? And how much authority will the Commission be given in pending legislative changes to select satellite operators for services that cross European boundaries?

Ever since the Commission released proposals in November 2007 to amend the European Union's electronic communications regulatory framework, the satellite industry has complained that these changes do not adequately recognize the role of the ITU. Satellite companies argue that the international radio regulations have the status of treaties that countries have agreed to observe as a matter of international law. The ITU's is one of the oldest of the existing international bodies with a history that dates back 140 years. Its radio regulations were first developed around the beginning of the 20th century in 1906.

The satellite industry insists that the ITU radio regulations today apply especially to the satellite sector and enable satellite operators to coordinate orbital slots and associated frequencies on a global basis. The ITU system for registering these space resources has worked very well throughout the last half a century, argues the industry, and should not be compromised by European regulations that might apply selection procedures or spectrum rights without regard to the international rules.

The European Parliament was persuaded to insert a series of references to the ITU in amendments the Parliament proposed in September. By November, however, the Commission issued a series of counter-proposals that would boot most of the references out again.

The Commission's position is that EU member states must comply with EU law, irrespective of other international obligations they might have agreed. The Commission holds the power to initiate legislation and to guard the EU Treaty, which it says should not defer to international standards. Moreover, the Commission wants more authority to select operators of networks and services that cross EU boundaries.

Thus, the Commission rejected most of the Parliament references to the ITU and even expressed the view that including language about the ITU radio regulations would "create an unfounded expectation."

To seek a satisfactory balance, the Commission said it recognized the importance of ITU agreements, but the language it would insert into the regulatory framework is relatively weak. The proposed language says that spectrum management in Europe should "take into account, to the extent compatible with [EU] law," the work of the ITU. This "taking into account" formulation essentially sets a legal standard that Europe will comply with ITU radio regulations — except when it does not want to.

The Commission does not want to ignore the ITU, however, and in fact it is seeking expanded authority to participate in the making of international radio regulations. One of the other changes it proposes for the regulatory framework is to give it authority to propose negotiation mandates, which would give Brussels-based officials a voice in the international negotiations.

The Parliament had proposed for the member states to coordinate radio spectrum policy, which is what they do today in preparations for ITU world radio conferences. The Commission struck this language, saying it "is for the Commission rather than the member states to ensure the coordination of EU interests."

A major area in which ITU rules are helpful is setting interference standards for services that cross national boundaries. The Commission seeks to create a coordinated structure for such regulation within Europe by defining "pan-European" services and giving itself authority to select operators and harmonize conditions for any such services. The definition offered of "pan-European" would cover any network or service "involving at least three member states." Notably, this definition extends to just about all satellite networks.

This issue of setting and harmonizing selection standards for using pan-European spectrum is one of the controversial issues left in the regulatory framework. The Parliament's September amendments would delete Commission ability to harmonize licensing standards altogether. The Commission rejected this amendment in its November counter-proposal. At the time this article was written, draft proposals from the European Council would delete both the selection and harmonization power altogether.

This showdown will continue, most likely to a further Parliamentary session scheduled for April. How far the ITU will be in the picture by then is the hot topic for the beginning of this year. ▮

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