



By Gerry Oberst

## European Neutrality Principles

### Reform of the overall electronic communications

regulatory framework remains the main regulatory topic in Europe this year. Twin themes of technology and service neutrality are part of the European Commission's core principles for reforming spectrum regulation, but the satellite industry has mixed views on how these principles might apply.

Technology neutrality already is in the European Union regulatory menu. Existing legislation states that national regulatory authorities must take "the utmost account" to make regulations technologically neutral. What it means to be neutral, however, is not defined.

On the one hand, content regulations are said to be technology neutral because they apply to a service no matter how that service is delivered and no matter on what platform. On the other hand, the term becomes much less precise when regulators seek to apply it to choices of technical standards or allocations of radio frequencies, which both often depend on the type of technology that is being deployed.

It is said that technology neutral spectrum management allocates spectrum flexibly without designating the technology to be used. This approach is fine and dandy, except where the choice of technology is necessary in the first place because different technologies cannot work together in the same spectrum. Being neutral toward technology cannot mean being oblivious to it.

The proposed changes for the framework directive would require regulators to ensure that all types of radio network or wireless access technology may be used in all spectrum bands. A large caveat then provides, however, that regulators could restrict technology in order to avoid interference, protect public health or maximize sharing. In some respects, this exception could swallow the rule. For instance, satellite allocations often are based on technology non-neutrality, where satellite technology is not compatible with terrestrial services in the same band. This leads satellite operators to be ambivalent about how the principle would apply in practice.

The second concept of "service neutrality" is not in the current European rulebook, although it is a principle often invoked by policymakers. Proposals would establish a presumption in favor of service neutrality by requiring that regulators

must justify frequency restrictions on services based on public policy goals or avoiding inefficient use of frequencies. There also is an exception clearly designed to protect broadcasters. These broadly worded exceptions create holes large enough to drive trucks through.

Service neutrality could be a useful concept for the satellite industry by giving satellite operators greater flexibility to modify their service parameters, e.g., fixed satellite service operators providing mobile services; mobile satellite service networks operating with complementary ground components; and broadcasting satellites offering what otherwise would be fixed satellite service. These types of service neutrality have not presented problems in the past, however, which means the flexibility is not a high value for the satellite industry.

A safety valve — or burdensome paper chase depending on how you look at it — is proposed in the framework for the twin neutrality concepts. A new provision in the framework would require national regulators to give interested parties the opportunity to comment on any draft measures that might restrict the neutrality principles. Nothing in the rules would actually require regulators to take those comments into account, but at least the consultation must be held.

Nevertheless, some policymakers are worried that the new emphasis on service neutrality could be disruptive. One special worry is that the proposed framework rules would require regulators to examine all licenses in Europe after five years to make sure licenses comply with the neutrality principles. Satellites are typically authorized for their lifetime, which greatly exceeds the five year phase-in of the new neutrality principles. The prospect of European regulators engaging in a wholesale review of the licenses that satellite service depends upon in a greatly compressed time frame has horrified the industry.

A basic reason for imposing the neutrality principles is to achieve more flexibility in spectrum choices, allowing industry rather than rigid national rules to determine how to use this natural resource. This is a worthy goal that we expect will be adopted into the regulatory framework. How it is done and the precise arrangements, however, could affect the satellite industry in both a positive and negative manner. ▮

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