

World Radiocommunication Conference 2012: Results Affecting Intergovernmental Satellite Organizations

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The Radiocommunication Sector of the International Telecommunication Union (“ITU”) plays a vital role in the global management of the radio frequency spectrum and satellite orbits as limited natural resources, which are increasingly in demand by a large and growing number of satellite services¹. The Radiocommunication Sector works through a number of its bodies, with world and regional radiocommunication conferences being at the highest level. As set forth in the ITU Constitution², World Radiocommunication Conferences (“WRC”) are convened every three to four years to consider issues of worldwide nature within its competence and related to its agenda. Under the ITU Convention³ WRCs are mandated not only to revise the Radio Regulations, but also review the activities of the Radio Regulations Board (“Board”) and the Radiocommunication Bureau (“Bureau”), and give them certain instructions. In this sense, the last WRC held in Geneva, Switzerland on 23 January – 17 February 2012 (“WRC-12”) was no exception. Under item 8.1 of its agenda, the Director of the Bureau presented a report⁴ on the activities of the Radiocommunication Sector for the period after the previous WRC 2007 (“WRC-07”). This Report included a section dedicated to the Rules of Procedure used by the Board during the reporting period. One of the Rules of

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1 ITU web-site: <www.itu.int/ITU-R/index.asp?category=information&rlink=itur-welcome&lang=en>.

2 Nos. 89, 90, Article 13, Chapter II - Radiocommunication Sector, Constitution of the ITU.

3 Nos. 113-117, 124-127, Article 7 - World Radiocommunication Conference, Section 5 – Radiocommunication Sector, Convention of the ITU.

4 Report of the Director on the activities of the Radiocommunication Sector submitted to WRC-12 (Document 4-E dated 15 September 2011).

Procedure was a recently approved addition related to the treatment of change of a notifying administration, which acts as the notifying administration for certain satellite networks on behalf of a group of named administrations of the member states of the ITU (“administration”). Earlier it was only possible to change an administration if all members of a group, including both notifying administrations – the initial and the new one – fully agreed to such change. Thus, the implementation of a decision made by a group of administrations could be blocked by the standpoint of only one of these administrations. Until recently the Bureau and Board had no appropriate tools, and similar occurrences were dealt with on a case by case basis. This had to be changed. The new Rule of Procedure drafted by the Bureau and approved by the Board was intended to fill in legal vacuum and enable a group of administrations to exercise their natural right both to appoint and replace a notifying administration acting on their behalf. As requested by one of the administrations, WRC-12 additionally reviewed the recently approved Rule of Procedure and decided to keep the Rule of Procedure unamended.

I Concept of the Notifying Administration

Certain provisions of the Radio Regulations⁵ allow an administration to act on behalf of a group of named administrations for the purpose of notifying the Radiocommunication Bureau of frequency assignments to satellite networks. In such cases, the administration acting on behalf of the group is designated as the notifying administration for the group within the meaning of the Radio Regulations. The above-mentioned provisions are also used for the benefit of intergovernmental satellite telecommunication organizations, which in each case are groups of sovereign states established under an international treaty and having their own common governing bodies. And there are examples proving this: the administration of the Kingdom of Saudi Arabia acting as the notifying administration on behalf of ARABSAT, the administration of France acting as the notifying administration on behalf of the European Space Agency, Eutelsat and Galileo, and some others⁶.

Role of the Notifying Administration

The role of an administration identified as the notifying administration⁷ is to act on behalf of all members of a group of administrations. The notifying

5 Nos. 9.1, 9.6.1, 11.15.1, Appendix 30 (4.1.25, 4.1.3, 4.2.6, 5.1.1), Appendix 30A (4.2.6, 4.1.25, 4.1.3, 5.1.2), Appendix 30B (2.6, 6.1), Radio Regulations.

6 Section IV – Table 2: Intergovernmental satellite organizations, Preface to the BR International Frequency Information Circular BR IFIC (Space Services) (August 2012).

7 More in: Role of the Notifying Administration in the case of an Administration notifying on behalf of a named group of Administrations, Note by the Secretary-General (Document 94-E dated 7 April 2000) (attached is a report by the Director of the Radiocommunication Bureau pursuant to Resolution 87 (Minneapolis, 1998)).

administration is responsible for communicating any information from that group to the Bureau. In the case of intergovernmental organizations, the notifying administration is requested to inform the Bureau of collective decisions of the intergovernmental organization.

However, the role of the notifying administration does not boil down to being a “mailbox” receiving and sending relevant correspondence. It is the due, timely and efficient performance of the functions of a notifying administration that helps satellite networks operate normally and that supports the operation of spacecraft using the frequency assignments to such networks, operation of telecommunications and broadcasting channels and use of the associated ground systems and telecommunications services.

Undue performance by the notifying administration of its tasks may not only infringe on the lawful interests of the group because all administrations of that group have equal rights with respect to the satellite networks in question, but it may also affect the interests of third administrations and satellite operators, which use adjacent satellite networks and their satellites or services provided on satellites using satellite networks of a group of administrations.

Appointment and Change of the Notifying Administration

The procedure of appointing a notifying administration acting on behalf of a group of administrations for certain satellite networks is clearly defined in the Radio Regulations: for this purpose a notifying administration only needs to specify in the new filing that the satellite networks concerned are filed on behalf of the group. All future requests concerning registration of the filing should be treated by the Bureau as if they are sent by the whole group unless there exists any information to the contrary⁸.

However, as the notifying administration is performing its functions, the group that appointed it may wish or may feel it necessary to terminate the performance of these functions by the notifying administration and appoint a new notifying administration. Neither the basic texts of the ITU⁹ nor the Radio Regulations rule out that a notifying administration acting on behalf of other administrations can be replaced, but do not specify how such replacement should be handled. At the same time, inasmuch as the notifying administration represents the interests of the entire group of administrations, it is beyond any doubt that the termination of the functions of the earlier appointed notifying administration acting on behalf of a group of administrations must be the prerogative of this group.

8 No. 11.15.1, Radio Regulations.

9 The basic texts of ITU adopted by the Plenipotentiary Conference establish a binding global framework for international telecommunications and set forth the structure of the ITU as well as its diverse and far-reaching activities promoting telecommunications. In addition to the Constitution and Convention, the consolidated basic texts include the Optional Protocol on the settlement of disputes, the Decisions, Resolutions and Recommendations in force, as well as the General Rules of Conferences, Assemblies and Meetings of the ITU (ITU web-site: <www.itu.int/net/about/basic-texts/index.aspx>).

II Earlier Practice

For the first time, the issue of the procedure of the replacement of a notifying administration came up at the ITU Plenipotentiary Conference in November 2006 with the proposed suppression of Resolution 87 (Minneapolis, 1998) – Role of the notifying administration in the case of an administration notifying on behalf of a named group of administrations. When that suppression was dealt with at the 13th Plenary Meeting of the Plenipotentiary Conference (16 November 2006), a note was incorporated in the Minutes of the Meeting¹⁰ listing several stages involved in a change of the notifying administration on behalf of a named group of administrations, and recalling the need for both – the initial and new notifying administrations – to formally inform the Bureau of the change¹¹.

This explanation regarding a change of the notifying administration simply formed a section of the minutes of that Plenipotentiary Conference and has for many years been applied by the Bureau and supported by the Board. On several occasions, intergovernmental organizations have requested the Bureau to change their notifying administration¹². According to the established practice, the Bureau was required to receive two official notices in order to modify the ITU databases to replace the notifying administration, namely, one notice from the administration which stops performing the functions of the notifying administration and the other one from the new administration confirming its preparedness to perform such functions.

It is obvious that such practice could only be used by the Bureau when a notifying administration was replaced by mutual agreement of both administrations.

ASA Case (2006 – 2007)

The issue of the replacement of the notifying administration acting on behalf of a group of named administrations in the absence of any agreement of the initial notifying administration was for the first time raised before the Board in December 2006.

At its 42nd and 43rd meetings (11 – 15 December 2006, 12 – 16 February 2007), the Board reviewed a submission from the administration of Colombia relating to the change of the notifying administration for the Simón Bolívar 2 satellite network. The network had originally been registered with the ITU for ASETA – an international intergovernmental organization with Bolivia, Colombia,

10 Annex A, Minutes of the 13th Plenary Meeting of Plenipotentiary Conference (16 November 2006) (Document 123-E dated 22 November 2006).

11 No. 10.2, Minutes of the 42nd Meeting of the Radio Regulations Board (11 – 15 December 2006) (Document RRB06-3/11(Rev.1)-E dated 12 February 2007); No. 9.3, Minutes of the 43rd Meeting of the Radio Regulations Board (12 – 16 February 2007) (Document RRB07-1/7(Rev.1)-E dated 4 June 2007).

12 Publications relating to change of notifying administration (ITU web-site: <www.itu.int/ITU-R/go/space-publication-change-of-administration/en>).

Ecuador, Peru and Venezuela as its members, and with the administration of Venezuela as the notifying administration. The administration of Colombia had been appointed by the member states to replace the administration of Venezuela as the notifying administration of the Association of Andean Satellites (“ASA”), which superseded ASETA as the organization responsible for the Simón Bolívar 2 satellite network and no longer listed Venezuela as its member.

The administration of Colombia and later all the other administrations of the ASA group asked the Bureau to accept the change of the notifying administration. The Bureau requested Venezuela’s formal confirmation of its agreement to the replacement of the notifying administration for ASA. No such confirmation was received from Venezuela, and neither the note attached to the minutes of the 13th Plenary Meeting of the Plenipotentiary Conference nor any other ITU document set a deadline for two administrations to inform the Bureau of the change. However, the Board noted that it could not simply wait in the expectation of receiving a reply from Venezuela¹³.

The Board also noted that it must avoid a situation in which all actions by the other four administrations were blocked because Venezuela failed to respond, this actually giving that one administration the right of veto over the four other administrations¹⁴. Still, in the absence of formal confirmation from Venezuela, the Bureau was not in a position to effect the change of the notifying administration as requested by Colombia on behalf of the group of four administrations.

That was the first time that the Board acknowledged that there existed legal vacuum and discussed a draft Rule of Procedure to cover the change of the notifying administration, the new rule being supposed to be reviewed at WRC-07¹⁵. However, the issue of the replacement of the notifying administration for the Simón Bolívar 2 satellite network was resolved based on consensus on the part of the administrations concerned, *i.e.* the administration of Venezuela confirmed its consent to transfer the functions of the notifying administration¹⁶. Despite the fact that certain members of the Board noted that the Board should consider the general problem of the change of the notifying administration regardless of the solution of the ASA case¹⁷, and considering the provisions the Radio Regulations¹⁸ which called for Rules of Procedure to be produced

13 No. 9.5, Minutes of the 43rd Meeting of the Radio Regulations Board (12 – 16 February 2007) (Document RRB07-1/7(Rev.1)-E dated 4 June 2007).

14 Nos. 9.48, 9.62, Minutes of the 43rd Meeting of the Radio Regulations Board (12 – 16 February 2007) (Document RRB07-1/7(Rev.1)-E dated 4 June 2007).

15 Nos. 9.42, 9.45, 9.52, 9.53, 9.63, 9.87, Minutes of the 43rd Meeting of the Radio Regulations Board (12 – 16 February 2007) (Document RRB07-1/7(Rev.1)-E dated 4 June 2007).

16 Special Section of the Radiocommunication Bureau International Frequency Information Circular No. 2592 dated 17 April 2007.

17 Nos. 9.31, 9.32, Minutes of the 43rd Meeting of the Radio Regulations Board (12 – 16 February 2007) (Document RRB07-1/7(Rev.1)-E dated 4 June 2007).

18 No. 13.0.1, Radio Regulations.

only when really necessary, a new rule was neither drafted nor submitted to the Board and WRC-07 review nor ever approved.

Intersputnik Case (2009-2011)

However, already in 2009 the issue of the replacement of the notifying administration acting on behalf of a group of named administrations in the absence of any agreement of the initial notifying administration was again raised before the ITU: first before the Bureau, then before the Board, being finally reviewed only at the recent WRC-12. That was related to the Intersputnik case.

Intersputnik is an international intergovernmental organization of space communications established in 1971 and uniting twenty six member states¹⁹. Within the framework of its technological policy and in accordance with the Radio Regulations, Intersputnik member states appointed in 1993 its notifying administration which filed a number of satellite networks in the interests of Intersputnik. With its own orbit and frequency resource, Intersputnik is able to participate in international and domestic satellite projects together with its member states and third parties for the purpose of manufacturing, launching and operating telecommunication satellites.

Replacement of the Notifying Administration Agreed to by Both Administrations

In mid-2009, Intersputnik's notifying administration formally notified the Bureau of its decision to stop performing the functions of the notifying administration with respect to the overwhelming majority of satellite networks filed earlier in Intersputnik's interests except for three satellite networks. Simultaneously, the Bureau was notified by another administration of one of Intersputnik's member countries of its preparedness to perform the functions of Intersputnik's notifying administration with respect to said satellite networks except for three satellite networks. Upon receipt of the above two notices, the Bureau made the required changes in the ITU databases²⁰.

The reason for such partial abandonment of the functions of the notifying administration was that the initial notifying administration and Intersputnik

19 As of September 2012 the following twenty six states are members of Intersputnik: Republic of Azerbaijan, Islamic Republic of Afghanistan, Republic of Belarus, Republic of Bulgaria, Hungary, Socialist Republic of Viet Nam, Federal Republic of Germany, Georgia, Republic of India, Republic of Yemen, Republic of Kazakhstan, Kyrgyz Republic, Democratic People's Republic of Korea, Republic of Cuba, Lao People's Democratic Republic, Mongolia, Republic of Nicaragua, Republic of Poland, Romania, Russian Federation, Somali Republic, Syrian Arab Republic, Republic of Tajikistan, Turkmenistan, Ukraine, Czech Republic.

20 Special Section of the Radiocommunication Bureau International Frequency Information Circular No. 2649 dated 28 July 2009.

had started disputing the status of three satellite networks²¹. In the opinion of the initial notifying administration, the networks had national status while Intersputnik maintained that they had been filed in the interests of all administrations of Intersputnik's member states and hence had multinational status. The multinational status of said satellite networks was later confirmed by the Bureau²² and by the Board at its 54th meeting (5 – 13 July 2010)²³.

Replacement of the Notifying Administration as Decided by the Intergovernmental Organization

Responding to repeated attempts to disrupt normal operation of the three satellite networks, the Intersputnik Board, being the superior governing body of that intergovernmental organization, resolved²⁴ to terminate the performance by the initial notifying administration of its functions in respect of three satellite networks and assign such functions to the administration, which had been already acting as Intersputnik's notifying administration with respect to the overwhelming majority of Intersputnik's satellite networks – to the new notifying administration.

After making a decision, which was binding on all members of the intergovernmental organization²⁵ including both notifying administrations, Intersputnik presented an official letter informing the Bureau about the change of the notifying administration for the three networks concerned. The new notifying administration confirmed the same information. The initial notifying administration had been twice asked by the Bureau to confirm the change, but had not done so. Moreover, later the initial notifying administration rejected the change and confirmed its intention to continue fulfilling the functions of the notifying administration for the three networks. This was done despite the decision of the Intersputnik's highest governing body and in defiance of the will of the overwhelming majority of Intersputnik's member countries.

As far as no notice was received from the administration performing the functions of the notifying administration to the effect that it was giving up its functions the Bureau did not modify the ITU databases. In this situation the administrations that are members of the Intersputnik group were actually unable to implement their legal and valid decision to replace their notifying administration.

21 Later the initial notifying administration claimed sole rights in respect of the frequency assignments to the one satellite network.

22 No. 5, Letter Ref: 11S(SSD)/0.1466/09 dated 15 May 2009 by the Director of the Radiocommunication Bureau.

23 Item No. 7 (1, 4), Summary of Decisions of the 54th Meeting of the Radio Regulations Board (5 – 13 July 2010) (Document RRB10-2/5-E dated 13 July 2010).

24 Item No. 9, Protocol of the joint XXXVIII session of the Board and 11th meeting of the Operations Committee of the Intersputnik International Organization of Space Communications dated 28 April 2010.

25 Section 7, Article 12, Agreement of 15 November 1971 on the Establishment of the Intersputnik International System and Organization of Space Communications.

III **Need to Update the Regulatory Framework**

As the cases of the ASA and Intersputnik showed, the Bureau had no appropriate tools to duly take into account the opinion of a group of administrations, this making the Bureau unintentionally keep the situation affecting the lawful interests of a group of administrations and ultimately impeding efficient use of the orbit and frequency resource by the administrations on whose behalf the satellite networks were filed.

As similar situations could arise in the future and could affect any administration because satellite network coordination and related matters required the involvement of the notifying administration, the Board might have considered ways to improve the regulatory framework.

Rule-Making Initiative of the Board

At its 56th meeting (28 March – 1 April 2011), the Board reviewed a request by the Bureau for advice with regard to changing the notifying administration for three Intersputnik satellite networks replacing the initial notifying administration with a new notifying administration acting on behalf of Intersputnik.

The Board confirmed that the designation or change of the notifying administration acting on behalf of a group of named administrations was an internal affair within the group of administrations pertaining to the organization²⁶. The Board also concluded that in the case of divergence between the notifying administration and the member states of the organization no provisions of the ITU Constitution, Convention, Radio Regulations or Rules of Procedure dealt with this situation²⁷. Therefore, the Board instructed the Bureau to prepare a Rule of Procedure for circulation to all ITU administrations, with a view to considering its approval at the Board's next meeting.

Drafting the Rule of Procedure

The Bureau circulated to the administrations of the member states of the ITU a proposal to insert an addition to the Rules of Procedure (Edition 2009) related to the treatment of change of the notifying administration, which acts as the notifying administration for certain satellite networks on behalf of a group of named administrations²⁸.

The draft addition to the Rules of Procedure stipulated that subject to certain conditions a notifying administration may be replaced by the Bureau in ITU

26 Item No. 8(1), Summary of Decisions of the 56th Meeting of the Radio Regulations Board (28 March – 1 April 2011) (Document RRB11-1/8-E dated 1 April 2011).

27 Item No. 8(2), Summary of Decisions of the 56th Meeting of the Radio Regulations Board (28 March – 1 April 2011) (Document RRB11-1/8-E dated 1 April 2011).

28 Circular Letter CCCR/42 dated 4 April 2011 by the Director of the Radiocommunication Bureau.

documents with a new notifying administration without the consent of the initial notifying administration.

This draft addition read as follows:

“When an intergovernmental satellite telecommunications organization wishes to designate a new notifying administration vis-à-vis ITU for its satellite networks, the Bureau shall effect the corresponding modifications upon receipt of due written notification to that effect by the legal representative of the intergovernmental organization in question under the terms of its constitutive Act. This notification shall include the evidence of agreement from the newly named Administration to act as the notifying administration on behalf of the intergovernmental organization”.

Six administrations²⁹, five of them being the administrations of Intersputnik’s member states, supported the proposed addition to the Rules of Procedure in a timely manner³⁰.

The initial notifying administration of Intersputnik presented to the Bureau its version of the new Rule of Procedure saying that it was necessary to receive written agreement from two notifying administrations, *i.e.* the initial and the newly appointed administrations. Essentially, that suggestion repeated the then existing practice of the ITU and did not settle the issue raised by the Board to update the ITU regulatory basis. That version of the addition of Rules of Procedure was supported by two more administrations³¹, both from non-Intersputnik member countries.

Approval of the Addition to the Rules of Procedure

At its 57th meeting (13-21 June 2011), the Board considered comments received from administrations on the draft addition to the Rules of Procedure concerning the treatment of change of the notifying administration acting on behalf of a group of named administrations.

The Board noted that accepting the alternative wording proposed by the initial notifying administration of Intersputnik would resolve nothing, but imply a return to the dilemma faced previously, in which the initial notifying administration could block the transfer of rights to another notifying administration if it so wished³².

Therefore the Board opposed the alternative wording and approved the addition of Rules of Procedure drafted by the Bureau without any modifications³³.

29 Administrations of the Republic of Bulgaria, Czech Republic, Federal Republic of Germany, Kyrgyz Republic, Republic of Moldova, Tajikistan.

30 Later, the proposed addition to the Rules of Procedure was upheld by a large number of administrations.

31 Administrations of the Kingdom of Saudi Arabia and Slovak Republic.

32 Nos. 5.4, 5.9, 5.18, Minutes of the 57th Meeting of the Radio Regulations Board (13 – 21 June 2011) (Revision 1 to Document RRB11-2/8-E dated 31 October 2011).

33 Item No. 5.1, Summary of Decisions of the 57th Meeting of the Radio Regulations Board (13 – 21 June 2011) (Document RRB11-2/7-E dated 21 June 2011).

The new Rule of Procedure took effect immediately and was included in the replacement page for the recently published volume (the 2009 edition of the Rules of Procedure)³⁴.

This new Rule of Procedure was applied by the Bureau to three Intersputnik satellite network filings and, considering that Intersputnik met all the conditions, the name of the notifying administration acting on behalf of Intersputnik with respect to all the satellite networks, including those three networks being earlier the subject of dispute, was changed in the ITU databases³⁵.

Review of the New Rules of Procedure at WRC-12

At the 58th meeting of the Board (31 October – 4 November 2011), the initial notifying administration of Intersputnik requested the Board to reconsider the decision of the 57th meeting and revise the Rule of Procedure by incorporating its proposals submitted to the Board. The Board noted that the Rule of Procedure had been approved in proper and due form³⁶ and decided that it could not comply with the request of the initial notifying administration of Intersputnik³⁷.

In accordance with the Rules of Procedure³⁸, if there was continuing disagreement concerning a Rule of Procedure, the matter should be submitted to the next WRC. On this basis and taking into account the request of the initial notifying administration of Intersputnik, the Board instructed the Director of the Bureau to include this matter in its Report to WRC-12.

As the new Rule of Procedure affected the interests of all ITU member administrations, this issue was studied at various working levels of WRC-12 extremely thoroughly: first by subworking Group 5B4, later by working group 5B, after that by Committee 5 and finally by the WRC-12 Plenary Meeting.

While the proposal of the initial notifying administration of Intersputnik to review the Rule of Procedure was being considered, several administrations indicated support of the new Rule of Procedure as approved by the Board, including one which acts as the notifying administration for three intergovernmental organizations³⁹.

34 Circular Letter CR/326 dated 17 August 2011 by the Director of the Radiocommunication Bureau.

35 Special Section of the Radiocommunication Bureau International Frequency Information Circular No. 2699 dated 26 July 2011.

36 Nos. 9.6, 9.12, Minutes of the 58th Meeting of the Radio Regulations Board (31 October – 4 November 2011) (Revision 1 to Document RRB11-3/14-E dated 15 May 2012).

30 Later, the proposed addition to the Rules of Procedure was upheld by a large number of administrations.

38 CS 95, RR No. 13.14, paragraph 2.3.2, Part C, Rules of Procedure.

39 Administration of France acts as the notifying administration of the European Space Agency, Eutelsat and Galileo.

The Chairman of Committee 5, introducing the Committee's conclusion to the Plenary Meeting, noted that the new Rule of Procedure had been circulated to all administrations and had been approved by all members of the Board. Committee 5 had therefore concluded that the Rule of Procedure should not be modified⁴⁰. The Plenary Meeting approved that conclusion⁴¹ and the Rule of Procedure was to remain as is.

IV Significance of the Approval of the New Rule of Procedure

Although the new Rule of Procedure had to be drafted due to the conflict situation that occurred in connection with the replacement of Intersputnik's notifying administration, it has universal nature and is aimed at resolving an important problem affecting the interests of all ITU member administrations. The approved rule enables a group of administrations within an intergovernmental satellite telecommunications organization to exercise their natural right both to appoint a notifying administration acting on their behalf and in the interests of this group and to replace the current notifying administration. To register the replacement of a notifying administration representing an international organization, the Bureau only has to be given written notice by the lawful representative of the organization appointed under its regulations, and such notice has to be supported by the agreement of the new notifying administration to assume the functions. Thus, the Bureau is informed of the decision made by the group of administrations (without the need to go deep into the internal decision-making procedure of the group) and receives explicit confirmation that all obligations with respect to the satellite networks in question will be met after the functions of the notifying administration are assigned. This new Rule of Procedure fully corresponds to the up-to-date requirements of the ITU Radiocommunication Sector and will help secure the lawful rights of groups of administrations and protect their interests from being infringed upon by denying a single administration the right of veto over the other administrations.

40 5th Report from Committee 5 to the Plenary Meeting (Document 484-E dated 13 February 2012).

41 No. 1.8, Minutes of the 9th Plenary Meeting of the World Radiocommunication Conference (23 January – 17 February 2012) (Document 550-E dated 8 March 2012).