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**Note by the Secretary-General**

**REPORT BY THE RADIO REGULATIONS BOARD TO WRC-19**  
**RESOLUTION 80 (REV.WRC-07)**

I have the honour to bring to the attention of the conference, at the request of the Director, Radiocommunication Bureau, the Report by the Radio Regulations Board to WRC-19, Resolution **80 (Rev.WRC-07)**.

Houlin ZHAO  
Secretary-General

**Annex: 1**

ANNEX

**Report by the Radio Regulations Board to WRC-19 on  
Resolution 80 (Rev.WRC-07)**

## **Executive summary**

The Board has addressed Resolution **80 (Rev.WRC-07)**, *Due Diligence in Applying the Principles Embodied in the Constitution*, at five world radiocommunication conferences since its adoption at WRC-97. In this report to WRC-19, the Board provides an update to the report to WRC-15 focusing on its efforts to address issues the Board and the Bureau have faced since WRC-15 affecting fulfilment of the principles contained in Article **44** of the Constitution and No. **0.3** of the Preamble to the Radio Regulations. Chief among these issues are the considerations involving the application of RR No. **13.6**, CS Article 48 and the treatment of requests for extensions of regulatory time limits to bring into use or bring back into use frequency assignments. To the extent possible, the Board provides recommendations regarding provisions of the Radio Regulations for enhancing the linkage between the notification, coordination and registration procedures, and the basic principles concerning the use of the radio frequency spectrum and satellite orbits. It is hoped that the administrations find this work useful in addressing the various issues at WRC-19, particularly those involving satellite networks.

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## RESOLUTION 80 (REV.WRC-07)

### Report by the Radio Regulations Board to WRC-19

#### 1 Introduction

Resolution 80, *Due Diligence in Applying the Principles Embodied in the Constitution*, was first adopted by WRC-97 and subsequently revised by WRC-2000 and WRC-07. Each version of Resolution **80** has instructed the Radio Regulations Board (RRB) either to develop Rules of Procedure (RoPs), conduct studies, or consider and review possible draft recommendations related to linking the principles contained in No. **0.3** of the Preamble to the Radio Regulations to the notification, coordination and registration procedures in the Radio Regulations, and to report to a subsequent World Radiocommunication Conference (WRC). In the case of Resolution **80 (Rev.WRC-07)**, these linkages were extended to include the principles contained in Article 44 of the Constitution.

The Board reported the results of its studies to WRC-2000, WRC-03, WRC-12 and WRC-15 in Documents 29 (<http://www.itu.int/itudocr/itu-r/archives/wrc/wrc-2000/docs/1-99/29.pdf>), 4 Addendum 5 (<http://www.itu.int/md/R03-WRC03-C-0004/en>), (<http://www.itu.int/md/R12-WRC12-C-0011/en>), and (<https://www.itu.int/md/R15-WRC15-C-0014/en>) respectively. WRC-2000 and WRC-03 noted these reports, but took no related action. The annexes to Resolution **80 (Rev.WRC-07)** now contain some of the concepts reflected in the Board's reports to these two conferences. The Board was not instructed to report to WRC-07 on this matter, but WRC-07 modified Resolution **80**. On the other hand, both WRC-12 and WRC-15 addressed the issues of the application of No. **13.6** of the Radio Regulations, No. **11.44B** on bringing into use, No. **11.49** on suspension of use, and harmful interference and other issues identified in the Board's reports to WRC-12 and WRC-15.

Throughout its existence, Resolution **80** has related to the use of the radio-frequency spectrum and satellite orbits. Resolution **80 (Rev.WRC-07)** applies to space and terrestrial services, with the exception of those aspects specifically addressing orbits, satellites or satellite networks that apply exclusively to space services.

#### 2 Approach

The Board continued the working group on Resolution **80 (Rev.WRC-07)** under the chairmanship of Ms. WILSON, and subsequently of Ms. BEAUMIER who was elected at the 80th meeting of the RRB. At its 80th meeting, the Board instructed the Director of the Radiocommunication Bureau to issue a circular letter calling the attention of administrations to the draft Report by the Radio Regulations Board to WRC-19 on Resolution **80 (Rev. WRC-07)** and inviting administrations to contribute to these studies in time for the 81st meeting. The draft Report was published in Circular Letter CR/[443](#), dated 15 April 2019 and comments were received from seven administrations.

The Board decided to focus its efforts on issues that the Board and the Bureau have faced since WRC-15, which in some cases were also considered in previous reports by the Board or are options under discussion elsewhere in the ITU-R. Chief among these issues are the application of No. **13.6** of the Radio Regulations, Article 48 of the Constitution and the treatment of requests for extensions of regulatory time limits to bring into use or bring back into use frequency assignments.

### **3 The Board's mandate under *resolves 2* of Resolution 80 (Rev.WRC-07)**

*Resolves 2* of Resolution **80 (Rev.WRC-07)** includes the following instruction to the RRB:

*2 to instruct the RRB to consider and review possible draft recommendations and draft provisions linking the formal notification, coordination and registration procedures with the principles contained in Article 44 of the Constitution and No. 0.3 of the Preamble to the Radio Regulations, and to report to each future World Radiocommunication Conference with regard to this Resolution;*

The Board concluded that the formal notification, coordination and registration procedures referred to in *resolves 2* of Resolution **80 (Rev.WRC-07)** primarily involve Articles **9** and **11** and Appendices **4, 5, 30, 30A** and **30B** of the Radio Regulations and Resolution **49 (Rev.WRC-12)** and that all of the principles contained in Article 44 of the Constitution and No. **0.3** of the Preamble to the Radio Regulations were to be considered.

Article 44 of the Constitution, Use of the Radio-Frequency Spectrum and of the Geostationary-Satellite and Other Satellite Orbits, contains the following two provisions:

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**PP-02**

1 Member States shall endeavour to limit the number of frequencies and the spectrum used to the minimum essential to provide in a satisfactory manner the necessary services. To that end, they shall endeavour to apply the latest technical advances as soon as possible.

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2 In using frequency bands for radio services, Member States shall bear in mind that radio frequencies and any associated orbits, including the geostationary-satellite orbit, are limited natural resources and that they must be used rationally, efficiently and economically, in conformity with the provisions of the Radio Regulations, so that countries or groups of countries may have equitable access to those orbits and frequencies, taking into account the special needs of the developing countries and the geographical situation of particular countries.

No. **0.3** of the Preamble to the Radio Regulations states the following:

In using frequency bands for radio services, Members shall bear in mind that radio frequencies and the geostationary-satellite orbit are limited natural resources and that they must be used rationally, efficiently and economically, in conformity with the provisions of these Regulations, so that countries or groups of countries may have equitable access to both, taking into account the special needs of the developing countries and the geographical situation of particular countries (No. 196 of the Constitution).

According to CS 78, the functions of the Radiocommunication Sector include “ensuring the rational, equitable, efficient and economical use of the radio-frequency spectrum by all radiocommunication services, including those using the geostationary-satellite or other satellite orbits, subject to the provisions of Article 44 of this Constitution.” These functions are accomplished through the World and Regional Radiocommunication Conferences, ITU-R Study Groups, and the work of the Radiocommunication Bureau and RRB. While *resolves 2* of Resolution **80 (Rev.WRC-07)** addresses specific instructions to the Board, the entire Radiocommunication Sector is involved in fulfilling the principles contained in Article 44 of the Constitution and No. **0.3** of the Preamble to the Radio Regulations.

All countries are charged with these principles and all countries benefit when this charge is met by having equitable access to spectrum and orbit resources. The Board strove to abide by these principles in considering the following issues and formulating possible draft recommendations and draft provisions linking the formal notification, coordination and registration procedures with the principles contained in Article 44 of the Constitution and No. **0.3** of the Preamble to the Radio Regulations.

## **4 Issues and draft recommendations**

### **4.1 Suspending the use of a recorded assignment to a space station**

Based on modifications by WRC-12, No. **11.49** of the Radio Regulations allowed for the use of a recorded assignment to a space station to be suspended for up to three years and required administrations to inform the Bureau as soon as possible but not later than six months from the date on which the use was suspended. If the suspension is for a period less than six months, the notifying administration is not required to inform the Bureau.

Section 4.2 of the Resolution **80** report to WRC-15 included, “*The Board recommends WRC-15 consider clarifying RR No. **11.49** with respect to the action to be taken by the BR if the administration notifies a suspension later than six months from the date on which the use was suspended.*” The WRC-15 took into account the Board’s observations when it revised RR No. **11.49** to impose a penalty for notifications received more than six months after the date of suspension. The regulatory provision is now as follows:

**11.49** Wherever the use of a recorded frequency assignment to a space station is suspended for a period exceeding six months, the notifying administration shall inform the Bureau of the date on which such use was suspended. When the recorded assignment is brought back into use, the notifying administration shall, subject to the provisions of No. **11.49.1** when applicable, so inform the Bureau, as soon as possible. On receipt of the information sent under this provision, the Bureau shall make that information available as soon as possible on the ITU website and shall publish it in the BR IFIC. The date on which the recorded assignment is brought back into use<sup>28</sup> shall be not later than three years from the date on which the use of the frequency assignment was suspended, provided that the notifying administration informs the Bureau of the suspension within six months from the date on which the use was suspended. If the notifying administration informs the Bureau of the suspension more than six months after the date on which the use of the frequency assignment was suspended, this three-year time period shall be reduced. In this case, the amount by which the three-year period shall be reduced shall be equal to the amount of time that has elapsed between the end of the six-month period and the date that the Bureau is informed of the suspension. If the notifying administration informs the Bureau of the suspension more than 21 months after the date on which the use of the frequency assignment was suspended, the frequency assignment shall be cancelled. (WRC-15)

Subsequently, the Board adopted a consequential modification to the RoP for RR No. **11.49**, which includes a note reflecting a decision by the WRC-15 Plenary that encouraged the Board to consider circumstances that might lead to an administration notifying the suspension of a frequency assignment after the six-month time limit and encouraging the Bureau to inform administrations of their possible need to suspend a frequency assignment that they believe may not be in use.

The Board did not consider any cases under RR No. **11.49** since January 1, 2017 when the revised regulation entered into force.

## 4.2 Linkage between Bringing into Use and Notification for Recording in the MIFR

RR No. **11.44B** is considered one of the most important provisions of the Radio Regulations in terms of clarifying the definition of Bringing into Use (BIU) of a frequency assignment to a space station in the geostationary-satellite orbit. When WRC-12 adopted this addition to the Radio Regulations, it was not foreseen that some linkages could be introduced between the timing of BIU and the timing of notification for recording in the MIFR. This topic was addressed in section 4.5.1 of the Resolution **80** report to WRC-15. In that report the Board said, “*WRC-15 may wish to state the consequences when an administration does not inform the BR within 30 days after the completion of Bringing into Use and to examine the possible linkage between BIU and Notification for Recording in the MIFR in the application of RR No. 11.44B.*” This concern was similar to the issue described in section 4.1 above where the regulation established a requirement, but not a consequence in the case of its infringement. The WRC-15 modified RR No. **11.44B** to add footnote **11.44B.2** and apply new Resolution **40 (WRC-15)**, “*Use of one space station to bring frequency assignments to geostationary-satellite networks at different orbital locations into use within a short period of time,*” which addresses the issue commonly referred to as ‘satellite-hopping’. RR Nos. **11.44B** and **11.44B.2** now state:

**11.44B** A frequency assignment to a space station in the geostationary-satellite orbit shall be considered as having been brought into use when a space station in the geostationary-satellite orbit with the capability of transmitting or receiving that frequency assignment has been deployed and maintained at the notified orbital position for a continuous period of 90 days. The notifying administration shall so inform the Bureau within 30 days from the end of the 90-day period<sup>26, 27</sup>. On receipt of the information sent under this provision, the Bureau shall make that information available on the ITU website as soon as possible and shall publish it in the BR IFIC. Resolution **40 (WRC-15)** shall apply. (WRC-15)

and

**11.44B.2** A frequency assignment to a space station in the geostationary-satellite orbit with a notified date of bringing into use more than 120 days prior to the date of receipt of the notification information shall also be considered as having been brought into use if the notifying administration confirms, when submitting the notification information for this assignment, that a space station in the geostationary-satellite orbit with the capability of transmitting or receiving that frequency assignment has been deployed and maintained for a continuous period of time from the notified date of bringing into use until the date of receipt of the notification information for this frequency assignment. (WRC-15)

At its 73rd meeting, the Board adopted consequential modifications to the RoP for RR No. **11.44B** to reflect the WRC-15 decision on this provision, including in relation to the adoption of RR No. **11.44B.2**.

The Board is of the view that there does not appear to be any remaining ambiguities about how the Bureau or the Board should treat cases related to unplanned services when the notified date of BIU is more than 120 days prior to the date of receipt of the notification information. However, the Bureau and the Board noted that the specificities of the procedures of Appendix **30B** may not have been considered by WRC-15. In preparing for WRC-15, the issue of bringing into use a satellite network with a satellite that was located at the notified orbital location, but was then moved before the submission of the notification, was specifically studied and WRC-15 decided not to accept such a practice by adopting RR No. **11.44B.2**. It was assumed that a submitted notification may always be concluded by a recording in the MIFR, notably because of the existence of RR No. **11.41** or of similar procedures in Appendices **30**, **30A** and **30B**. The fact that § 6.25 of Article 6 of Appendix **30B** does not apply to allotments in the Plan, which creates a specific relationship between the entry



into the List under § 6.17 of Article 6 of Appendix 30B, the notification under Article 8 of this Appendix and the bringing into use, was not discussed during WRC-15.

**WRC-19 is invited to consider whether the bringing into use of frequency assignments in Appendices 30, 30A and 30B with a satellite that is subsequently relocated prior to the notification submission should be permitted, noting (1) that §4.1.18 of Appendices 30 and 30A does not apply with respect to an assignment in the Regions 1 and 3 Plan, or in the Region 2 Plan, or for which the procedure of § 4.2 of Appendices 30 and 30A has been initiated, (2) that §4.2.21A of Appendices 30 and 30A does not apply with respect to an assignment in the Region 2 Plan, or in the Regions 1 and 3 Plan or List, or for which the procedure of § 4.1 or 4.2 has been initiated, and (3) that § 6.25 of Article 6 of Appendix 30B does not apply with respect to allotments in the Plan and therefore, a notification submitted within the 120-day period of the bringing into use may not always result in a recording in the MIFR but instead may be returned to the administration and resubmitted with a new date of receipt while the satellite used for the bringing into use has already been relocated.**

### **4.3 Issues related to the extension of time-limits for bringing into use or bringing back into use a frequency assignment**

The WRC-15 reaffirmed the Board's authority to address requests for extensions to the time-limit for bringing into use or bringing back into use frequency assignment in cases of either *force majeure* or co-passenger delay (Minutes of the seventh plenary meeting of WRC-15). This section is intended to identify any issues and difficulties with acceding to the requests the Board has received since that time.

#### **4.3.1 Situations of *force majeure***

The Board frequently receives requests from administrations to extend the regulatory deadline for bringing the frequency assignments associated with a satellite networks into use because of *force majeure*.

The Board may address requests for a time-limited extension based on either a co-passenger issue or *force majeure* so long as any extension is both "limited and qualified". As a general matter, the Board has received several requests for extensions of regulatory time limits due to cases of *force majeure*. The requests typically address the four criteria that are used in determining whether a situation should be considered to be a case of *force majeure*, and which are presented in Document [RRB12-2/INFO/2\(Rev.1\)](#). The Board thoroughly examines each request based on the specific information provided and makes its decision on a case-by-case basis. There is a high threshold for a case to be considered as *force majeure*, as described in the above-mentioned document.

The Board is of the view that this practice has been effective and the Member States are making requests that are deserving of examination, even in the relatively small number of cases where the Board could not accede to their requests.

#### **4.3.2 Consideration of a satellite failure during the ninety-day bringing into use period**

In the period since the WRC-15, the Board received a request for an extension of a regulatory timeframe due to failure of a recently launched satellite during the 90-day period of BIU. The Board's experience in this case showed that it can and should treat these cases in the same manner as a launch failure, which entails determining whether the facts of the case met the criteria for a situation of *force majeure*.

#### **4.3.3 Extension of the regulatory time limit to bring back into use suspended frequency assignments in the case of *force majeure***

An administration may request that its frequency assignment be suspended for a period of up to three years from the date of suspension, in accordance with RR No. 11.49. In the case of a satellite failure where the need for a replacement satellite was not anticipated, it may be extremely difficult to bring back into use the suspended frequency assignments within this three-year period. In such cases, administrations are likely to request that the Board to extend the period of suspension beyond three years. In light of the infrequency of such cases, the Board finds that, if analysis of the situation regarding the satellite failure shows that the request for an extension satisfies the conditions for *force majeure*, it is capable of thoroughly examining the details of the situation and determining whether to extend the suspension period for such a frequency assignment beyond three years, taking into account the evidence provided by an administration.

**The Board recommends no modification to the suspension period in No. 11.49 to address an unexpected satellite failure recognizing that it can consider a request to extend this period if the case satisfies all the conditions for *force majeure*.**

#### **4.3.4 Situations of co-passenger delay**

The Board notes that while the Board is able to apply specific and well-established criteria for determining whether a specific situation should be considered a case of *force majeure*, the same is not true for cases of launch delays due to co-passenger issues. The Board considers co-passengers cases based on the information provided and benefits from being provided substantiating evidence that supports the request. By its nature, requests on the basis of co-passenger delay are typically for only a few months. In light of the Board's ability to thoroughly examine the facts of a case and that such requests are for a relatively modest extension, the Board is of the view that the guidance provided by previous WRCs is adequate and appropriate in light of the Board's experience to date.

However, while the Board has been able to easily conclude that the requests qualified to be considered as a case of co-passenger delay, and as such, should be granted an extension, determining an appropriate time-limited extension has been difficult in the absence of a detailed rationale for the length of the period requested.

**The Board is inviting administrations to provide sufficient detail to justify the length of the requested extension period in order to avoid a request for further clarifications and delaying the treatment of the case.**

#### **4.3.5 Compliance with the regulatory time limits for space stations using electric propulsion**

The Board received a submission requesting an extension of the bringing into use of frequency assignments to a satellite network that used a satellite with electric propulsion for orbit-raising. Electric propulsion is 10 to 15 times more energy efficient than chemical propulsion systems, but such systems require a much longer time period to perform orbit raising, typically 4 to 10 months. The Board noted that the RR do not take into account the type of technology being used for orbit raising. While these energy-efficient, all-electric propulsion systems have important benefits (e.g., lower costs), their use for orbit-raising can increase the time required and potentially jeopardize meeting the regulatory deadline for bringing into use the frequency assignments on-board. The Board does not have the authority to relax a requirement in the Radio Regulations for any reason, including to allow for the use of more energy-efficient technology. However, this is a topic that

could be studied by the ITU-R and a future competent WRC could consider whether the use of this type of satellite technology should be taken into account in the Radio Regulations.

**The Board encourages administrations when using satellite energy-efficient propulsion systems to take into account the extra time needed for orbit raising to ensure compliance with the regulatory deadlines for bringing into use, or back into use, frequency assignments. WRC-19 may wish to invite the ITU-R to study whether the use of this type of satellite technology should be taken into account in the Radio Regulations for consideration at a future competent WRC.**

#### **4.3.6 Requests from developing countries that do not qualify as *force majeure* or co-passenger delay**

The Board received requests from a developing country to extend the regulatory deadline for bringing into use the frequency assignments associated with its satellite networks. The administration had made extensive efforts to comply with the regulatory time limit to bring into use the frequency assignments but experienced a number of difficulties that delayed their progress. The Board also noted CS No. 196 with regard to the special needs of developing countries and the geographical situation of particular countries. Unfortunately, the situations presented did not meet the conditions required to be considered as a case of *force majeure* or did not qualify as a case of co-passenger delay and the requests could not be granted by the Board.

When dealing with requests for extension that were not within the authority of the Board, the Board usually instructed the Bureau to continue to take into account the frequency assignments to the satellite network until the last day of the upcoming WRC, noting that resolution of such situations is within the terms of reference of a WRC. This approach works well to address the needs of developing countries when the next WRC is in the near future. However, it creates uncertainty for both the requesting administration and other administrations interested in the same frequencies and orbital resources when the request is received just following a WRC. Developing countries facing such uncertainty would likely be unable to move forward with their satellite project until confirmation is received from the WRC. For this reason, it would be consistent with Resolution 80 for WRC-19 to consider giving the Board the authority to address requests, on a case-by-case basis, for time-limited extensions from developing countries in particular those that have a reliance on satellite services to ensure connectivity over its entire territory.

The Board recognizes that previous WRCs deliberately decided that only a WRC could consider these requests if they did not fall within the authority of the Board in order to limit the potential of abuse. However, WRC-19 could specify conditions that would need to be satisfied to grant a time-limited extension on an exceptional basis to an individual developing country. For example, there could be limits on the service area, on the number of satellite networks that could be granted an extension or the WRC could also instruct the Board to take into account the particular situation of the notifying administration.

**WRC-19 may wish to consider giving authority to the Board to grant requests for time-limited extensions of the regulatory time limit for bringing into use or back into use frequency assignments to satellite networks from developing countries under specific conditions.**

#### **4.4 Requests for a transfer or change of the “notifying administration” from one to the other**

The Board considered requests to transfer the function of notifying administration for a satellite network from one administration to another. These requests were related to:

- 1) the change of a notifying administration acting on behalf of an intergovernmental satellite telecommunication organization for the satellite networks of that organization to another administration within that intergovernmental satellite organization to act on behalf of that intergovernmental organization;
- 2) the change of notifying administration acting on behalf of an intergovernmental satellite telecommunication organization for a satellite network of that intergovernmental organization, to an administration acting on its own behalf not representing the intergovernmental organization; and
- 3) the transfer for a satellite system from a notifying administration acting on its own behalf to another administration also acting on its own behalf.

The existing RoP concerning the treatment of change of notifying administration which acts as the notifying administration of an intergovernmental satellite telecommunication organization addresses case 1 above. Although the existing RoP does not include case 2, the Board took account of certain principles of this RoP when addressing the cases presented, noting that each individual case was to be considered on its own merit.

For case 3, however, the Radio Regulations and the existing RoPs are silent on the possibility of changing the notifying administration between two administrations acting on their own behalf and the Board agreed that such a request could only be considered by a competent conference.

Although no such case was so far submitted, the Board reflected upon the possibility of a change of notifying administration from an administration acting on behalf of a group of named administrations which are not members of an intergovernmental satellite telecommunication organization to another administration of that group, for which the Radio Regulations and the existing RoPs are also silent.

**WRC-19 may wish (1) to confirm the approach so far used by the Board or provide guidance for treating the change of notifying administration acting on behalf of an intergovernmental satellite telecommunication organization for a satellite network of that intergovernmental organization, to an administration acting on its own behalf; (2) to provide guidance on the circumstances, if any, whereby it would be acceptable to change the notifying administration, acting on its own behalf, of a satellite network or system to another notifying administration acting on its own behalf; (3) or to change the notifying administration acting on behalf of a group of named administrations which are not members of an intergovernmental satellite telecommunication organization to another administration of that group.**

#### **4.5 Interpretation of the definition of “satellite network” in RR No. 1.112 and RoP No. 1.112.**

The Board, based on the draft RoPs presented in [CCRR/58](#), adopted a modification to the RoP on No. 1.112, which contains the definition of “satellite network”. The Board expended a considerable amount of time deliberating on the revision to this RoP because of the implications that it could have on the processing of notifications under Appendix 4. The difficulties arose due to

inconsistencies in the Radio Regulations between RR No. **1.112** and Appendix **4**. The problem was that the definition of "satellite network" in RR No. **1.112**, states:

*1.112 satellite network: A satellite system or a part of a satellite system, consisting of only one satellite and the cooperating earth stations.*

RR No. **1.112** is clear that a satellite network contains only one satellite. Appendix **4** of the Radio Regulations presents tables of characteristics for use in the application procedures of Chapter III (RR Articles **7-14**) on coordination, notification and recording of frequency assignments and Plan modifications. Table A in Annex 2 of Appendix **4** provides the general characteristics of the satellite network, earth station or radio astronomy stations, wherein Section A.4.b provides the list of characteristics for space station(s) on-board non-geostationary orbit (non-GSO) satellite(s). However, Table A indicates that in filing a notice for a non-GSO network, the information to be provided includes the number of orbital planes, the number of satellites per orbital plane, *etc.* This is inconsistent with RR No. **1.112**, which says that a satellite network consists of only one satellite and its cooperating earth stations.

The newly revised RoP on RR No. **1.112** takes into account the definition in RR No. **1.112** and the provisions of Appendix **4** in a manner that would allow the Bureau to continue to accept single notices for non-GSO systems that contain multiple satellites. It would nevertheless be desirable for a future WRC to study this matter with a view to resolving the inconsistencies noted.

**WRC-19 or a future WRC may wish to consider how to resolve the inherent inconsistencies between RR No. 1.112 on the definition of “satellite network” and related provisions of Appendix 4 of the Radio Regulations.**

#### **4.6 Receivability of requests for coordination or notification of satellite networks prior to the entry into force of WRC decisions**

WRC-15 instructed the Board to undertake a detailed study of the question of the receivability of coordination requests for the new FSS allocation in the band 13.4-13.65 GHz prior to the date when the allocation enters into force. In the Bureau's submission to the Board, they noted that this issue was not unique to the new FSS allocation and that there were numerous new allocations that would be affected by a decision to depart from the current practice, which would be for the Bureau to grant “qualified favourable” findings to coordination requests (CR/Cs) that are received prior to the entry into force of the new allocation.

After significant analysis, the Board found that the current practice was fully consistent with the Radio Regulations and should be both retained and codified. As such, the Board decided to establish a RoP based on current practice, which would then provide guidance to administrations on how future notices for the use of new allocations would be handled by the BR.

The Bureau developed and circulated this draft RoP in CCRR/[55](#) for comment by administrations. Having considered all of the comments received, the Board adopted the draft rule of procedure as distributed in Circular Letter CCRR/55 as a new RoP. The Board deliberated at length about whether the “Effective date of application of this Rule of Procedure” should be 28 November 2015, the day after the conclusion of the WRC-15 or 21 May 2016, the day after the conclusion of the Board meeting when it was adopted. The Board requested and received a legal opinion stating that, while this was generally avoided in international law, it was appropriate for cases that had origins at an earlier time but which persisted beyond the date at which the decision was adopted. As this being precisely the case under consideration, and to avoid the regulatory uncertainty that would result from adopting any later date, the Board decided that this RoP would have an effective date of application of 28 November 2015.

#### 4.7 The application of RR No. 13.6

RR No. 13.6 is the provision of the Radio Regulations that guides the Bureau on how it verifies that the assignments recorded in the MIFR have been brought into use and continue to be in use in accordance with their notified characteristics. After the conclusion of an investigation under RR No. 13.6, the Bureau may submit to the Board a request for a decision for the cancellation of the frequency assignments to a satellite network under RR No. 13.6 of the Radio Regulations.

Investigations under RR No. 13.6 are currently triggered in three alternative situations:

- Following a request from an administration to the Bureau: an administration may submit information to the Bureau about the absence of use of frequency assignments and request the Bureau to investigate this matter according to RR No. 13.6. In such cases, the Bureau will analyze the information provided and verify whether it has already carried out a similar investigation on its own initiative. If no prior investigation under RR No. 13.6 has been carried out or if the submitted information brings additional elements that were not taken into account when conducting such prior investigation, and under the condition that the information provided is deemed reliable, the Bureau then initiates an investigation following the steps prescribed in RR No. 13.6. Otherwise, the Bureau informs the requesting administration of its conclusions or of the outcome of previous investigations.
- Following a decision of the Radio Regulations Board: during the consideration of a specific case, the Board may decide to instruct the Bureau to carry out an investigation according to RR No. 13.6.
- On the own initiative of the Bureau: when the Bureau receives from a notifying administration a declaration of bringing into use, a request for suspension, a resumption of use after suspension or a request for extension of the period of validity, it checks the conformity of the regulatory status of frequency assignments with the actual in-orbit usage (meant as the usage of all frequency assignments notified by the notifying administration at the same orbital location), based on reliable sources of information. If this verification leads the Bureau to conclude that an investigation under RR No. 13.6 should be carried out, it then initiates such action following the steps prescribed in this provision.

The use of this provision is an important tool that makes it possible for the Bureau to validate that the frequency assignments recorded in the MIFR reflect reality and were recorded legitimately.

When the Bureau initiates an investigation on its own initiative, it looks at the consistency of the conformity between the regulatory status of frequency assignments and their actual usage. For example, when it receives a request for suspension, the Bureau also checks that actual usage can be demonstrated before the date of suspension so that the regulatory date of suspension corresponds to the date where usage has ceased.

RR No 13.6 has no statute of limitation, and as a result, the application of RR No. 13.6 is not subject to any time limitation. Consequently, in accordance with the principle of international law *ex injuria jus non oritur*<sup>1</sup>, situations that would not be in conformity with the Radio Regulations cannot be the source of international rights in the MIFR. Nevertheless, and taking into account resource availability, the current practice of the Bureau is to limit investigations carried out on its

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<sup>1</sup> *ex injuria jus non oritur*: principle of international law according to which acts contrary to international law cannot become a source of legal rights for a wrongdoer; from the Latin: law does not arise from injustice.

own initiative to a period of around three years in the past (the length of the suspension period). However, the scope of an investigation following the request of an administration or the Board is defined by the initial request and therefore can sometimes relate to a period of time that predates the request by several years.

Following the publication of CR/[301](#) in May 2009, the Bureau began to proactively launch investigations under RR No. **13.6**. In view of the available resources of the Bureau, it initially focused its priorities on geostationary satellite networks in C, Ku and Ka bands. At the time, it only verified whether a satellite was operating in the recorded frequency band ranges at the given orbital position without confirming that every frequency band was on the satellite payload. The Bureau has started in 2014 to verify the exact frequency bands on board satellites. For this reason, there can still be discrepancies between what is recorded in the MIFR and what has been brought into use or is in actual use. Such discrepancies have been discovered in the last few years by the Bureau or have been alleged by administrations *vis-à-vis* frequency assignments of other administrations in their requests to the Board.

In relation with these discrepancies, the Board has received requests from administrations or the Bureau to cancel frequency assignments to satellite networks on the basis of non-compliance with the Radio Regulations at a specific time in the past, even though these assignments were found to be compliant at the time of the inquiry. For example, an administration might have notified several years ago frequency assignments that were never brought into use at the time of the recording, or may not have been in use for more than the suspension period of three years. However, these assignments were subsequently brought into use and continued to be in use at the time of the inquiry under RR No. **13.6**.

In dealing with such requests, the Board was concerned with both maintaining the credibility of the MIFR as the instrument containing the rights and obligations of administrations to use spectrum and orbital resources and ensuring operational satellites are duly coordinated. Following an investigation under RR No. **13.6** where there was non-compliance with the Radio Regulations, there would be no regulatory basis for the Board to maintain the assignments in the MIFR under the associated satellite network filing even if there was an actual satellite in operation and no outstanding coordination issues. In this case, the only recourse available to the administration would be to bring their case to a WRC or to submit a new filing.

In addition, the Board faced situations where RR No. **13.6** was triggered by administrations in the context of a coordination dispute. In those cases, the Board deferred its decision under RR No. **13.6** and instead encouraged the parties to coordinate in good faith and instructed the Bureau to convene a meeting to facilitate discussions.

Finally, the Board noted that the further in the past an investigation is conducted, the more difficult it is to verify the information. While the Board has dealt with few cases older than three years, it also noted the challenges to the Bureau for ensuring compliance with respect to the regulatory requirements that were in force at the time of the event that is the subject of the investigation when dealing with older cases. Administrations may also have difficulty with providing evidence that they have brought into use frequency assignments if the original satellite used to do so was replaced a number of years prior to the time of the investigation.

**While RR No. 13.6 is quite clear about how it is to be implemented, and may not require further modification, WRC-19 is invited to consider whether guidance should be provided to the Board for its consideration in addressing the issues and concerns noted above.**

#### 4.8 Application of CS Article 48

Regarding frequency assignments used in space services with a direct or indirect reference to the provisions of Article 48 of the Constitution<sup>2</sup>, WRC-15 decided that the Bureau should not infer that an administration refers to installations used for national defence in its answer to an inquiry under RR No. **13.6**, unless this administration has explicitly invoked CS Article 48.

- Administrations have to explicitly invoke CS Article 48, if it applies. In all other cases RR No. **13.6** should continue to be applied;
- The Board understood that this decision applies as of 28 November 2015.

The Board considered concerns raised by some administrations regarding the appropriateness of other administrations' application of Article 48 of the ITU Constitution. The alleged cases of non-compliance with CS Article 48 that were presented to the Board can be summarized as follows:

- Administrations invoking CS Article 48 after the Bureau has launched an investigation under RR No. **13.6** as a means to prevent its application and retain rights in the MIFR.
- Administrations invoking CS Article 48 for frequency assignments that are not used for military purposes.

The Board has recognized that WRC-12 and WRC 15 made decisions on the application of Article 48 of the ITU Constitution, as well as provision 3 (CS204) of Article 48, which states:

*CS204 3 Moreover, when these installations take part in the service of public correspondence or other services governed by the Administrative Regulations, they must, in general, comply with the regulatory provisions for the conduct of such services.*

Considering the legitimate sensitivity of matters related to national defence, the Board recognizes that once administrations have invoked CS Article 48 explicitly, information to confirm as to whether the assignment was brought into use or brought back into use in accordance with the notified characteristics or continues to be in use in accordance with the notified characteristics of an entry in the MIFR can no longer be requested by the Bureau. In addressing the cases mentioned above, the Board considered that it was not within its mandate to make decisions on cases where CS Article 48 was invoked. However, in one instance where there appeared to be contradictory information made publicly available by an administration suggesting that its satellite network was not used for military purposes, the Board decided to instruct the Bureau to invite that administration to provide additional information.

While it does not have a position on the merit of the cases that administrations submitted on CS Article 48, the Board is however very concerned with the potential for misuse of the Article and how such abuse would seriously compromise the integrity of the regulatory framework. The Board also considers that invoking CS Article 48 for the sole purpose of preventing the Bureau from investigating the status of satellite networks under RR No. **13.6** is incompatible with the ITU Constitution and the Radio Regulations.

For these reasons, the Board considers that it is necessary to provide clarity on the application of CS Article 48 to administrations and further, that it is essential to avoid abuse of its application. The Board seeks further clarifications from WRC-19 or guidance that could be used to address cases under CS Article 48, taking into account Resolution **119** (Rev. Antalya, 2006).

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<sup>2</sup> CS Art. 48 is entitled "Installations for National Defence Services." It states that, "*Member States retain their entire freedom with regard to military radio installations.*"



**WRC-19 is invited to provide further guidance or clarifications to the Board that could be used to address cases under CS Article 48, taking into account Resolution 119 (Rev.Antalya, 2006).**

## **5 Conclusions**

In its reports to WRC-12 and WRC-15, the Board focused its efforts on new concepts to address issues the Board and the Bureau had faced since WRC-07 affecting fulfilment of the principles contained in Article 44 of the Constitution and No. **0.3** of the Preamble to the Radio Regulations. The use of the radio-frequency spectrum and of the geostationary-satellite and other satellite orbits in a manner consistent with the principles set forth in the Constitution and the Radio Regulations is vitally important for the future of these limited natural resources.

In this report to WRC-19, the Board examined in some detail the application of No. **13.6** of the Radio Regulations and CS Article 48, and the extension of regulatory deadlines to bring into use or bring back into use frequency assignments. All these topics were related directly and, in some cases, indirectly to items on the Board's agenda in the period between WRC-15 and WRC-19. To the extent possible, the Board provided recommendations for enhancing the linkage between the notification, coordination, and registration procedures and the basic principles concerning the use of the radiofrequency spectrum and satellite orbits. It is hoped that administrations find this work useful in addressing the various issues at WRC-19, particularly those involving satellite networks.

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