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LEGAL REGULATION OF RADIO-FREQUENCY SPECTRUM

Abstract

The radio-frequency spectrum of the geostationary orbit (GSO) is a unique limited natural resource, which is about to be exhausted. In this connection it is important to make sure that it is used as set forth in Article I of the 1967 Outer Space Treaty[1], based on equality of all states without exception. At the same time, the radio-frequency spectrum, as an integral part of outer space, is mankind's common asset not to be possessed by, transferred or perpetually assigned to a country. When filing a satellite network with the International Telecommunication Union (ITU) a telecommunications administration (or a group of such administrations) is temporarily entitled to use certain frequencies and technical parameters in the GSO. Such temporary assignment of the right of use of the radio-frequency spectrum does not empower its holder to make any transactions related to the alienation of the radio-frequency spectrum - sell, donate or exchange it. However, one must admit that there exists a secondary market for the radio-frequency spectrum rights, where one can "lease frequency assignments". On the one hand, this phenomenon is in no manner regulated by the ITU Radio Regulations while its existence in practice has led to numerous questions. On the other hand, the lease of frequency assignments does not call in question that the radio-frequency spectrum cannot be alienated and does not lead to classical trade in frequency assignments. One has to admit that leasing of frequency assignments helps to overcome a high degree of GSO monopolization with more users having access to the radio-frequency spectrum on a "secondary basis". The scarcity of the frequency and orbit resource and the existing high demand for such resource will inevitably result in many more mutually beneficial transactions related to the assignment of radio-frequency spectrum usage rights. Establishing the corresponding regulatory basis for such assignment could significantly increase the opportunities for GSO usage and facilitate the development of future satellite systems. It is evident that only a comprehensive approach to regulating all aspects of the use of the radio-frequency spectrum can make such use rational, equitable, efficient, and economical.