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ALTERNATIVE DISPUTE RESOLUTION IN THE FIELD OF SATELLITE COMMUNICATIONS

**Abstract**

Apart from technological innovation and capital investments, the satellite industry is hugely dependent on two natural resources – a geostationary position in space for the physical location of the satellite and an interference free spectrum for the transmission of the electromagnetic signal. Geostatic positions and frequency allocations on an international level are done within the legal framework of the International Telecommunications Union and can only be assigned to sovereign member states. At the same time, most satellite communication operators are private commercial entities, licensed and supervised by their respective national administrations. Many of these operators have concluded private agreements between themselves, regulating specific issues concerning orbital positions and harmful interference. This particularity of the sector leads to a situation whereby most disputes relating to frequency allocation and interference combine private and public components.

Adjudication remains an available means for settling frequency and interference related disputes. As such, however, it has rarely been used. This article focuses on alternative means of dispute resolution such as arbitration as a more viable and available possibility and examines the associated advantages – such as speed flexibility and confidentiality. Furthermore, it examines potential fora for the settlement of disagreements. First of all, the ITU Constitution provides for a dispute resolution procedure in its article 56 and some 64 Member States of the Union have also acceded to an Optional Protocol on the Compulsory Settlement of Disputes Relating to ITU regulatory regime. In practice, these provisions, have never been used, however. Secondly, in 2011 the Permanent Court of Arbitration (PCA) promulgated Optional Rules for the Arbitration of Disputes Relating to Outer Space Activities in order to address the specific conflicts of States, international organizations, and private entities arising from their activities in Outer Space. It has been argued, and rightfully so for the application of these for frequency allocation and interference-related disputes. Again, recourse to this forum has not yet happened in this regard. The International Chamber of Commerce's Arbitration Court in Paris, on the other hand has seen an orbital/frequency utilization dispute, arising from a coordination agreement between operators. The article will analyse in detail these three arbitration options with a view to recommend a most practical way forward for frequency/orbital resource related disputes in an increasingly commercialized, but hugely state-oriented international legal environment.