|  |  |
| --- | --- |
| **World Radiocommunication Conference (WRC-19) Sharm el-Sheikh, Egypt, 28 October – 22 November 2019** |  |
|  |  |
|  |  |
| PLENARY MEETING | **Addendum 23 to Document 14-E** |
|  | **11 October 2019** |
|  | **Original: English** |
|  | |
| Canada | |
| Proposals for the work of the conference | |
|  | |
| Agenda item 9.3 | |

9 to consider and approve the Report of the Director of the Radiocommunication Bureau, in accordance with Article 7 of the Convention:

9.3 on action in response to Resolution **80 (Rev.WRC-07)**;

Introduction

In response to the Report by the Radio Regulations Board (RRB) to WRC-19, Resolution **80** **(Rev.WRC-07)** in (Doc. [WRC-19/15](https://www.itu.int/md/R16-WRC19-C-0015/en)), Canada is providing the following comments and proposals with respect to three issues covered in that Report. These comments and proposals are related to:

• the request for extension of the regulatory period for the bringing into use of frequency (BiU) assignments to GSO satellite networks from developing countries;

• the application of RR No. **13.6**, and

• the application of CS Article 48.

# 1 Request for extension of the regulatory period for the BiU of frequency assignments to GSO satellite networks from developing countries

## 1.1 Background and discussion

In 2015, the Conference reaffirmed the RRB’s authority to address requests for extensions of the seven-year regulatory period and the three-year suspension period for bringing into use and bringing back into use, respectively, in cases of *force majeure* or co-passenger delay. In order to qualify under *force majeure*, an administration must be able to demonstrate that they meet the criteria outlined in [Document RRB12-2/INFO/2(Rev.1](https://www.itu.int/md/R12-RRB.12.2-INF-0002/en)). As a result, the determination of *force majeure* is difficult as it requires the requesting administration to demonstrate that all criteria have been met. Requests for extension of the regulatory deadline from developing countries that experience delays due to technical, manufacturing or financial difficulties, despite extensive efforts to comply with the deadline, often do not qualify under *force majeure*.

## 1.2 Comments and proposals

Canada acknowledges the difficulties experienced by developing countries in these scenarios. As a result, and in accordance with CS No. 196, Canada supports granting the RRB the authority to consider requests for extensions of the regulatory deadline from developing countries under specific criteria or conditions to be developed by ITU-R. Canada is of the view that in developing such criteria or conditions the following aspects should be addressed:

• clear approach in identifying developing countries for which these criteria or conditions would apply (e.g. United Nations classification at the time of receipt of the request);

• what constitutes an extensive effort;

• limit to the number of requests per each developing country;

• approach for determining the length of the extension;

• timeline for submission of the request for extension of the regulatory deadline.

More specifically, Canada is also of the view that:

• assignments for which the regulatory extension is sought should be primarily used for the provision of service within the territories of the requesting administration;

• coordination of these assignments should be completed or well advanced;

• operating administration or agency, as referred to in Item A.3 in RR Appendix **4**, should not be associated with any established or experienced satellite operators;

• a clear rationale should be provided to justify not only the extension, but also its duration.

CAN/14A23/1

Canada therefore proposes that the Conference instruct ITU-R to study the matter to develop the specific criteria and conditions upon which the RRB could consider granting an extension of the regulatory deadline to a developing country.

**Reasons:** Criteria and conditions that could be used to grant an extension to a developing country need to be specified to assist the RRB in its deliberations. However, such criteria and conditions have not been studied or discussed in the preparations leading to WRC-19.

# 2 Application of RR No. 13.6

## 2.1 Background and Discussion

RR No. **13.6** is an important tool that makes it possible for the Radiocommunication Bureau (Bureau) to validate that the frequency assignments recorded in the MIFR have been brought into use within the applicable regulatory deadline and continue to be used in accordance with their notified characteristics. This validation is essential to establish and maintain the right for protection and international recognition of these frequency assignments. Discussions have occurred in the RRB surrounding the applicability of this provision, in particular the existence of a statute of limitation.

## 2.2 Comments and proposals

Canada is in agreement with the RRB interpretation that 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. Canada also recognizes and accepts that due to limited resources, the Bureau typically limits investigations carried out on its own initiative to a period of around three years in the past. However, the Bureau should not extend this practice to requests by administrations or the Board in accordance with RR No. **13.6** and should conduct investigations outside of this time-frame. Any attempt to limit the applicability of RR No. **13.6** beyond what is clearly stated in the provision will undermine the capability of the Bureau to maintain “*the credibility of the MIFR as the instrument containing the rights and obligations of administrations to use the spectrum and orbital resources*” and more fundamentally, be contrary with the ongoing obligation for administrations to comply with the Radio Regulations. It would also negatively impact the ability for administrations to challenge an illegitimate recording that may prevent their rightful access to spectrum and orbital resources.

Canada further believes that having a satellite in orbit with all the recorded assignments in use at the time of the No. **13.6** inquiry should not exempt an administration from the consequences of not having complied with regulatory obligations in the past. Failing to ensure that consequences continue to be applied not only contradicts one of the most fundamental principle in international law, *ex injuria jus non oritur,* but also could encourage administrations to continue to grant themselves extensions to regulatory deadlines by providing inaccurate declarations of bringing into use or bringing back into use. In such cases where the frequency assignments are in use at the time of the inquiry, and instead of cancelling the frequency assignments from the MIFR in application of RR No. **13.6**, the consequence could be to change the date of protection that is recorded in the MIFR to a later date (e.g. the date the inquiry was initiated) and have the Bureau perform an examination under RR No. **11.32** if there is no other filing that can be associated with the frequency assignments.

Finally, considering that since 2014, the Bureau systematically verifies the frequency bands on board the satellites, the number of investigations requested outside the three-year time-frame referred to above is expected to decrease with time to the point that it may not be required anymore.

Canada supports providing guidance to the Board based on this principle.

CAN/14A23/2

Canada therefore proposes that the Conference confirms that there is no time limit for the application of RR No. **13.6** and provides guidance to the RRB based on the above.

**Reasons:** To confirm the legitimate right of administrations to challenge situations that would not be, or were not in the past, in conformity with the Radio Regulations. To also provide an alternative to the cancellation of frequency assignments if the assignments are in use at the time of the inquiry.

# 3 Application of CS Article 48

## 3.1 Background and discussion

In recent years, administrations have invoked Article 48 of the ITU Constitution entitled “Installations for National Defence Services” (hereafter referred to as CS Article 48) in response to an inquiry from the Bureau under RR No. **13.6** with respect to frequency assignments for stations in a space service, recorded in the Master International Frequency Register (MIFR).

On one hand, the ITU Constitution fully recognizes in its Preamble “*the sovereign right of each state to regulate its telecommunication*” while CS Article 48further recognizes that “*Member States retain their entire freedom with regard to military radio installations*”*.* However, this recognition as stated in CS Article 48 does not provide a complete and definitive derogation to the provisions of the Administrative Regulations (See also the provisions of CS Article 48 provided in the Annex of this document and more specifically CS No. 203and CS No. 204)

On the other hand, Section II of RR Article **13** confers to the Bureau the sole responsibility for the maintenance of the MIFR containing among others, the characteristics of frequency assignments for satellites networks and systems. Furthermore, RR No. **13.6** allows the Bureau to make inquiries to administrations to seek clarification on whether the recorded frequency assignments were brought into use, or continue to be in use, in accordance with the notified characteristics and as such can be maintained in the MIFR. RR Article **8** (RR No. **8.1**) stipulates that the international rights and obligations associated with frequency assignments, without any exceptions specified, are derived from the recording of these frequency assignments in the MIFR. This recording is the result of the completion of the relevant procedures of RR Articles **9** and **11**. The suppression of any recording in the MIFR results in the loss of the international recognition and rights for protection for the associated frequency assignments.

In regards to these two basic instruments of the ITU and the respective provisions referred to in this document, neither the Bureau nor the RRB are in a position to assess or comment on the legitimacy of invoking CS Article 48 as a response to an inquiry under RR No. **13.6**.This is in part due to the absence of any specific procedures in the RR regarding the implementation of CS Article 48.It should be noted that this void does not alter the relevance nor the applicability of CS Article 48 as the provisions of the Radio Regulations are meant to complement those of both the ITU Constitution and the ITU Convention. However, the lack of established procedures for invoking or applying CS Article 48have created some difficulties.

In its Report to WRC-19 on Resolution **80** **(Rev. WRC-07)**, the RRB identifies some concerns having been raised by some administrations regarding the appropriateness of other administrations’ use of CS Article 48. These concerns are mainly of two types:

– the timing for invoking CS Article 48, following an inquiry from the Bureau under RR. No. **13.6** with the perceived objective to maintain the recording for frequency assignments in the MIFR and keep the associated rights without providing the clarification sought by the Bureau, and

– the reference to CS Article 48for frequency assignments that are not used for military purposes.

Canada is of the view that these concerns could be addressed by WRC-19 through the adoption of some procedures and other arrangements for invoking CS Article 48 without infringing on the rights of administrations. It is worth mentioning that currently, the RR do not contain any mechanism by which an administration can declare frequency assignments to stations that are part of installations for national defence services. Most, if not all, instances where CS Article 48 have been invoked followed inquiries from the Bureau pursuant to RR. No. **13.6**. Furthermore, the absence of any definition of “national defence services” makes any examination by the Bureau of the legitimacy of invoking CS Article 48 for frequencies assignments to stations impossible.

## 3.2 Proposals

In order to remedy the perceived opportunistic use of CS Article 48by some administrations to avoid responding to inquiries by the Bureau under RR No. **13.6**, the Conference could require *a priori* identification of frequency assignments to be used pursuant to CS Article 48. This identification could be done by means of a new RR Appendix **4** data item (e.g. new data item C.2.d in Appendix **4**, if the frequency assignment is to be operated pursuant to CS Article 48, an indication to that effect). Furthermore, the Conference could instruct the Bureau:

• to create a common code for all the administrations to be added in Table 12A/12B of the Preface to the BR International Frequency Information Circular (e.g. 999 National Defence Services) to be used in Appendix **4** data item A.3.a (operating administration or agency). Under this proposal, the invocation of CS Article 48 by any administration would require the notification information to contain both an indication that the frequency assignments are to be operated pursuant to CS Article 48 using the new data item C.2.d and the proper code in data item A.3.a; and

• to publish on the ITU website, the frequency assignments for which CS Article 48has been invoked.

Starting on 1 January 2021, such identification, to be receivable, would have to be made in the first notice submitted under RR No. **11.2.** For all the other notices received prior to that date, administrations, including those having already invoked CS Article 48, would also have until 1 January 2021 to proceed with the identification of frequency assignments to be operated or operated pursuant to CS Article 48by making the proper modifications to their notification information or recordings in the MIFR.

Notices containing overlapping frequency assignments subject and not subject to CS Article 48 would not be receivable by the Bureau.

Furthermore after 1 January 2021, the invocation of CS Article 48 would not be receivable by the Bureau after the submission of the first notice under RR. No. **11.2** and definitely not receivable following a request for clarification under RR. No. **13.6.**

Finally, invoking CS Article 48 should not prevent the Bureau to seek clarification on the basis of reliable information regarding the actual use of frequency assignments for purposes other than national defense services on military installations. Whenever it appears from available reliable information that a recorded frequency assignment, for which CS Article 48 has been invoked, is actually used to operate satellites that are not military installations, the consultation procedures and subsequent applicable course of action prescribed in No. **13.6** shall apply as appropriate.

CAN/14A23/3

Canada instructs the Bureau to develop a Rule of Procedure based on the above for the application of CS Art 48.

**Reasons:** To provide clarification for administrations, the Bureau and the RRB on the application of CS Article 48.

APPENDIX 4 (REV.WRC‑15)

Consolidated list and tables of characteristics for use in the  
application of the procedures of Chapter III

ANNEX 2

Characteristics of satellite networks, earth stations  
or radio astronomy stations[[1]](#footnote-1)2    (Rev.WRC‑12)

Footnotes to Tables A, B, C and D

MOD CAN/14A23/4

**TABLE C**

CHARACTERISTICS TO BE PROVIDED FOR EACH GROUP OF FREQUENCY ASSIGNMENTS   
FOR A SATELLITE ANTENNA BEAM OR AN EARTH STATION OR   
RADIO ASTRONOMY ANTENNA      (Rev.WRC‑15)

| **Items in Appendix** | ***C \_ CHARACTERISTICS TO BE PROVIDED FOR EACH GROUP OF FREQUENCY  ASSIGNMENTS FOR A SATELLITE ANTENNA BEAM OR  AN EARTH STATION OR RADIO ASTRONOMY ANTENNA*** | **Advance publication of a geostationary- satellite network** | **Advance publication of a non-geostationary-satellite network subject to coordination under Section II  of Article 9** | **Advance publication of a non-geostationary-satellite network not subject to coordination under Section II  of Article 9** | **Notification or coordination of a geostationary-satellite network (including space operation functions under Article 2A of Appendices 30 or 30A)** | **Notification or coordination of a non-geostationary-satellite network** | **Notification or coordination of an earth station (including notification under  Appendices 30A or 30B)** | **Notice for a satellite network in the broadcasting-satellite service under Appendix 30 (Articles 4 and 5)** | **Notice for a satellite network  (feeder-link) under Appendix 30A  (Articles 4 and 5)** | **Notice for a satellite network in the fixed- satellite service under Appendix 30B  (Articles 6 and 8)** | **Items in Appendix** | **Radio astronomy** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| ... | ... | ... | | | | | | | | | ... | ... |
| **C.2** | **ASSIGNED FREQUENCY (FREQUENCIES)** |  | | | | | | | | | **C.2** |  |
| C.2.a.1 | the assigned frequency (frequencies), as defined in No. **1.148**  – in kHz up to 28 000 kHz inclusive  – in MHz above 28 000 kHz to 10 500 MHz inclusive  – in GHz above 10 500 MHz  If the basic characteristics are identical, with the exception of the assigned frequency, a list of frequency assignments may be provided  In the case of advance publication, required only for active sensors  In the case of geostationary and non geo-stationary satellite networks, required for all space applications except passive sensors  In the case of Appendix **30B**, required only for notification under Article 8 |  |  | **+** | **+** | **+** | **X** | **X** | **X** | **+** | C.2.a.1 |  |
| C.2.a.2 | the channel number |  |  |  |  |  |  | **X** | **X** |  | C.2.a.2 |  |
| C.2.b | the centre of the frequency band observed  – in kHz up to 28 000 kHz inclusive  – in MHz above 28 000 kHz to 10 500 MHz inclusive  – in GHz above 10 500 MHz  In the case of satellite networks, required only for passive sensors |  |  | **+** | **+** | **+** |  |  |  |  | C.2.b | **X** |
| C.2.c | if the frequency assignment is to be filed under No. **4.4**, an indication to that effect |  |  | **+** | **+** | **+** | **+** |  |  |  | C.2.c | **+** |
| C.2.d | if the frequency assignment is to be filed under Article 48 of the ITU Constitution, an indication to that effect  required only at Notification, in the case of Appendices **30** and **30A**, also for simultaneous submissions for modifications to the Region 2 Plan or the entry into the Regions 1 and 3 List under Article 4 and the notification under Article 5 and in the case of Appendix **30B** , also for simultaneous submissions for entry into the List under § 6.17 and notification under § 8.1 |  |  |  | **+** | **+** |  |  | **+** | **+** |  |  |
| **C.3** | **ASSIGNED FREQUENCY BAND** |  | | | | | | | | | **C.3** |  |
| ... | ... | ... | | | | | | | | | | ... |

**Reasons:** To implement the requirement to identify assignments for which CS Article 48 are invoked at the notification stage.

ANNEX

ARTICLE 48

Installations for National Defence Services

|  |  |
| --- | --- |
| **202**  **PP-98** | 1 Member States retain their entire freedom with regard to military radio installations. |
| **203** | 2 Nevertheless, these installations must, so far as possible, observe statutory provisions relative to giving assistance in case of distress and to the measures to be taken to prevent harmful interference, and the provisions of the Administrative Regulations concerning the types of emission and the frequencies to be used, according to the nature of the service performed by such installations. |
| **204** | 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. |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. 2 The Radiocommunication Bureau shall develop and keep up-to-date forms of notice to meet fully the statutory provisions of this Appendix and related decisions of future conferences. Additional information on the items listed in this Annex together with an explanation of the symbols is to be found in the Preface to the BR IFIC (Space Services).    (WRC‑12) [↑](#footnote-ref-1)