

**WORLD RADIOCOMMUNICATION CONFERENCES  
Recommendations for Improvement in the  
United States Preparatory Process**



*special report*

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United States Preparatory Process**

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## Executive Summary

The United States' radiocommunication interests are global. Communications are the backbone of our economic and national security and radiocommunications are a critical component of the United States' overall communications interests. Radio signals traverse borders, oceans and space. The mobility of radio systems leads to services, technologies, and operations that span the global community and economy. The successful development and implementation of radiocommunications depend on international agreements reached at World Radiocommunication Conferences (WRCs). These conferences meet every three to four years under the auspices of the International Telecommunication Union (ITU) to update the international radio regulations on the use of the radio spectrum. The ITU is a specialized agency of the United Nations, and has 189 member states. The outcome of WRCs provides the international regulatory framework for the use of radiocommunication systems vital to U.S. economic growth, U.S. national security, safety of life and property, and scientific investigations. The United States must continue its success at these international conferences in negotiating spectrum allocations and regulations forward-looking and flexible enough to accommodate technologies and operations that the United States will need in the future.

The Government Accountability Office (GAO) in its report, *Telecommunications: Better Coordination and Enhanced Accountability Needed to Improve Spectrum Management* (GAO-02-096), recommended that the Department of State, the Federal Communications Commission (FCC) and the National Telecommunications and Information Administration (NTIA) "jointly review the adequacy of the preparation process following the 2003 World Radiocommunication Conference (WRC) and develop recommendations for improvements."<sup>1</sup> The GAO noted challenges that the United States faces in its WRC preparation.<sup>2</sup> The challenges include development of positions and proposals, appointment of the U.S. WRC Ambassador, formation of the U.S. WRC Delegation (Delegation), maintenance of a cadre of U.S. Government employees to serve as U.S. negotiators, designation of staff and financial resources, and an increasing dependence on regional representation. The GAO suggested that the United States must assess these challenges at the start of the U.S. preparation process for developing U.S. positions to ensure success during the process.

NTIA reviewed the U.S. processes for preparation and participation in WRCs considering input from the private sector<sup>3</sup> and the federal agencies, reports of past WRC Ambassadors, and NTIA staff experience. As a result, NTIA concluded that the United States has been very successful in achieving its objectives at these conferences. For example, the United States successfully promoted, the growth of international satellite services and implementation of multiple and flexible technologies for public mobile communications. The United States has not only met these commercial needs, it has also fulfilled requirements for safety operations, national security and scientific exploration. At the same time, NTIA noted that increasing international

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<sup>1</sup> See U.S. Government Accountability Office, *Telecommunications: Better Coordination and Enhanced Accountability Needed to Improve Spectrum Management* (GAO-02-906), at 35 (September 30, 2002) (GAO Report).

<sup>2</sup> See GAO Report, *supra* note 1, at 3-4.

<sup>3</sup> Request for Comment on Improvements to the U.S. Preparation Process for World Radiocommunication Conferences, NTIA, 68 Fed. Reg. 60646 (October 20, 2003) (NTIA Notice).

competition in radio services and technologies and potentially conflicting requirements for the radio spectrum make finding solutions more challenging.

The United States has improved its preparatory process for WRCs, overcoming many of the concerns raised in the past regarding its activities leading up to WRCs. In preparing for the most recent WRC, WRC-03, NTIA and the FCC developed most positions and proposals far earlier than at previous conferences. Both agencies established new processes for resolving conflicts. The United States also raised its level of participation in preparatory meetings of other regions. The United States built strong relationships and was able to bring together a united front within the Inter-American Telecommunications Commission Permanent Consultative Committee II (CITEL PCCII).<sup>4</sup> As a result of increased U.S. participation in CITEL, the United States was able to positively influence the outcome of Inter-American proposals and positions. This not only served to meet U.S. goals, but also aided in coalescing regional objectives. This is significant because the international negotiating mechanisms continue to evolve toward a greater emphasis on regional positions. The U.S. Ambassador to WRC-03, Ambassador Janice Obuchowski, noted that the United States' success at WRC-2003 "would not have been possible without painstaking and comprehensive preparatory efforts prior to the conference."<sup>5</sup> Ambassador Obuchowski added that "we were the beneficiaries of effective preparatory processes spearheaded by the Federal Communications Commission, the National Telecommunications and Information Administration, and this (State) Department, through the Bureau of Economic and Business Affairs, Office of International Communications and Information Policy."<sup>6</sup> The United States also accomplished its objectives at WRC-2000 in Istanbul, Turkey. However, Ambassador Gail Schoettler asserts that "even though the United States was extremely successful in achieving its political and economic objectives at the World Radiocommunication Conference 2000 (WRC-2000), there is room for improvement."<sup>7</sup> Ambassador Schoettler states that, "as global telecommunications and the International Telecommunications Union (ITU) evolve, we must make sure our methods are still relevant to accomplish our spectrum goals."<sup>8</sup>

NTIA concludes that the United States cannot rest on its past successes. The evolving international political, technological and economic situation demands constant vigilance and a willingness to regularly evaluate and improve the U.S. processes. Based on its review, NTIA recommends further refinements in the U.S. preparatory process through:

1. Increased agency senior level engagement in the preparations;

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<sup>4</sup> CITEL PCCII on Broadcasting and Radiocommunications acts as a technical advisory body within the Inter-American Telecommunication Commission with respect to standards coordination, planning, operation, and technical assistance for the broadcasting service in its different forms. PCCII deals with standards coordination, planning, and full and efficient use of the radio spectrum and satellite orbits, as well as matters pertaining to radiocommunication services in the member states.

<sup>5</sup> United States Delegation Report, World Radiocommunication Conference 2003, Geneva, Switzerland, June 9 - July 4, 2003, Ambassador Janice Obuchowski, United States Head of Delegation, U.S. Department of State, at iii, (March 2004) (WRC 03 Report).

<sup>6</sup> *Id.*

<sup>7</sup> Recommendations to Improve United States Participation in World Radiocommunication Conferences Ambassador Gail S. Schoettler, U.S. Head of Delegation, World Radiocommunication Conference 2000, at 2 (June 27, 2000) (WRC 2000 Recommendations).

<sup>8</sup> *Id.*

2. Improved cooperation and coordination of federal and non-federal preparations; and
3. Early international consultation and communication and preparation and formation of the Delegation.

NTIA also concludes that timely implementation of WRC results is critical to achieving the full benefit of these conferences and recommends that the FCC and NTIA review and act upon the WRC outcomes immediately after the close of each conference. To meet this objective, shortly after WRC-03, the FCC Chairman and the Assistant Secretary of Commerce for Communications and Information agreed to timely implementation of WRC decisions. The FCC has since completed action on WRC-03 outcomes.





## Introduction

Radiocommunication services, operations and technologies have become global in nature, for this reason, World Radiocommunication Conferences (WRCs) have increased in importance to the U.S. economic growth, and the critical functions of federal agencies, particularly those dealing with safety, national security and homeland defense, and scientific exploration. The U.S. economy depends heavily on radiocommunication technology development and services, both for the communities that produce and deploy them, and also for the American public and businesses that use them. Many of the Department of Transportation (DOT) activities for maintaining safe transportation networks as well as many functions of the National Aeronautics and Space Administration (NASA) operate globally and rely on spectrum. The Department of Defense (DOD) must be able to perform its mission at any time, in any place. Without spectrum these agencies and many others could not do their jobs. WRCs provide the lifeblood of allocated spectrum. More and more, they also provide opportunities for harmonization of spectrum for applications, helping to decrease manufacturing costs and ultimately the cost of services.

The National Telecommunications and Information Administration (NTIA) is the executive branch agency principally responsible for domestic telecommunications and information policy issues. NTIA is the President's principal adviser on telecommunications and information policy issues and, in this role, frequently works with other executive branch agencies to develop and present the Administration's position on these issues. NTIA also manages the federal use of the spectrum, performs cutting-edge telecommunications research and engineering, and resolves technical telecommunications issues for the federal government and the private sector. NTIA works to spur innovation, encourage competition, help create jobs and provide consumers with more choices and better quality telecommunications products and services at lower prices. NTIA processes the federal agencies' requests for frequency assignments; coordinates current and future spectrum requirements among the federal agencies; and along with the Federal Communications Commission (FCC) and Department of State (State), develops and promotes the United States' positions on spectrum management issues within international treaty bodies and other fora. Because of its unique role as policy adviser and spectrum manager, NTIA must bring together the spectrum interests of the federal agencies and advance policies that promote the benefits of technological developments in the United States for all users of telecommunications services. As the manager of federal spectrum, NTIA promotes policies to:

- accommodate new technologies that need spectrum;
- improve spectrum efficiency;
- increase private sector access to scarce spectrum resources; and
- plan for future federal spectrum needs, including those critical national defense, public safety and law enforcement needs that require long-range spectrum planning.

To evaluate the processes used by the United States to prepare for and participate in WRCs, NTIA looked to the experience of key U.S. players at past WRCs. NTIA requested the views of the federal agencies through the Radio Conference Subcommittee (RCS) of the

Interdepartment Radio Advisory Committee (IRAC), reviewed reports of past delegations and Ambassadors, conducted internal discussions among NTIA's WRC participants, and sought the public's comments to identify areas for improvement to the United States' WRC preparation process.

NTIA sought the public's comment on a number of areas.<sup>9</sup> In response to the NTIA Notice, NTIA received comments from Winstar Communications, LLC; the National Aeronautics and Space Administration (NASA); the United States International Telecommunication Union Association (USITUA); and the New York Satellite Industries, LLC and Final Analysis Communications Services, Inc. (NYS and FACS).<sup>10</sup> Each respondent's comments are summarized under the various sections in which comments were requested. NYS and FACS commented that they have had success working with NTIA and the FCC on a number of matters and they suggested "the current WRC preparation and interagency process needs only a 'tune-up' not a major overhaul."<sup>11</sup> NASA stated that the United States is consistently very successful at WRCs.<sup>12</sup> According to USITUA, "the United States is generally quite effective at conferences, but often at greater cost than perhaps necessary given some of the hurdles that we create for ourselves, such as; dealing with funding, time of ambassador appointment, etc."<sup>13</sup> NYS and FACS commented that the United States Government deftly managed a large number of agenda items at WRC-03, to unprecedented success, often in the face of broad multinational resistance.<sup>14</sup> NYS and FACS also emphasized that the United States Government team should be applauded for its preparation and achievements at the recent WRC-03.<sup>15</sup>

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<sup>9</sup> See NTIA Notice, *supra* note 3.

<sup>10</sup> See Appendix B.

<sup>11</sup> NY and FACS Comments, Docket No. 031016259-3259-01, at 5, (Nov. 24, 2003), available at <http://www.ntia.doc.gov/ntiahome/frnotices/2003/wrcrfc/comments/NYSFACS.htm>.

<sup>12</sup> National Aeronautics and Space Administration Comments, Docket No. 031016259-3259-01, at 9, (Nov. 26, 2003) (NASA Comments), available at <http://www.ntia.doc.gov/ntiahome/frnotices/2003/wrcrfc/comments/NASA.htm>.

<sup>13</sup> USITUA Comments, Docket No. 031016259-3259-01, at 7 (Nov. 24, 2003) (USITUA Comments), available at <http://www.ntia.doc.gov/ntiahome/frnotices/2003/wrcrfc/comments/USITUA.pdf>.

<sup>14</sup> NYS and FACS Comments, *supra* note 11, at 2.

<sup>15</sup> *Id.*

## Background

World Radiocommunication Conferences (WRCs) set the world stage for future technological development by allocating radio frequency spectrum to radio services, establishing spectrum use coordination methods, setting international rules for radio equipment operation, and identifying spectrum for specific uses such as Third Generation (3G) wireless systems. The International Telecommunication Union (ITU) is an intergovernmental organization within the United Nations that specializes in the field of telecommunications. The ITU brings together governments and private industry to coordinate the establishment and operation of global telecommunication networks and services. Every three to four years, the ITU convenes WRCs to review and revise the ITU Radio Regulations. These Radio Regulations constitute a treaty on radiocommunications covering the use of the radio-frequency spectrum by member nations.

WRCs are an important endeavor for the United States because we are able to bring new and innovative technologies to the world community. NTIA, with the support of the federal agencies, works closely with State and the FCC in preparing for and participating in these conferences. The U.S. preparatory process also facilitates the highly valued involvement of manufacturers, service providers, and non-federal spectrum users. This results in delegations with wide interests and diverse goals.

The U.S. preparatory process for WRCs follows two related paths: technical preparation and proposal/position preparation. The ITU conducts technical preparations through the ITU Radiocommunication Sector (ITU-R) study group and Conference Preparatory Meeting (CPM) processes.<sup>16</sup> The United States participates internationally in these processes through the efforts of federal and non-federal representatives overseen by the Department of State. The United States Delegation prepares technical studies for WRCs under State's International Telecommunication Advisory Committee (ITAC).<sup>17</sup> The National Committee (NC) of the ITAC-R (covering the ITU's Radiocommunication Sector (ITU-R)) assists the United States Government in technical preparations for international meetings. Under this advisory committee, the public and executive branch agencies participate actively in government decision-making activities. With respect to technical preparations for WRCs, the Department of State uses the ITAC-R to develop inputs to the ITU-R study groups and the CPM to form the technical, operational and regulatory basis for WRC decisions, but does not employ the ITAC to develop preliminary views or proposals directly related to WRCs.

The federal and non-federal WRC positions and proposal preparation processes operate independently. The federal preparation process includes NTIA, which represents the views of the Administration. NTIA is the President's principal adviser on telecommunications and

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<sup>16</sup> The Conference Preparatory Meeting (CPM) is the culmination of the ITU-R technical work preparing for WRCs. The CPM occurs in two sessions, CPM-1 held the week following the conclusion of the WRC to plan the work for the period until the next WRC, and CPM-2 held about 6 months prior to the WRC. At CPM-2 administrations approve the studies and conclusions that form the technical basis for the WRC.

<sup>17</sup> The General Services Administration chartered this committee to State as an advisory committee under the Federal Advisory Committee Act (FACA).

information policy and manages the federal government's use of radio spectrum.<sup>18</sup> The RCS meets monthly to discuss, develop and approve federal agency views, positions and proposals on WRC issues to recommend to NTIA.<sup>19</sup> NTIA reviews those recommendations and formulates federal inputs to the process. In some cases after this review, NTIA modifies the positions and proposals developed within the IRAC in keeping with Administration policies. NTIA then provides its positions and proposals to the FCC for consideration and further negotiation. The FCC performs WRC preparations for non-federal interests. The FCC, an independent agency established by the Communications Act of 1934, manages the use of radio spectrum by state and local governments and the private sector. The FCC represents the views of its constituents and receives their input on WRC views, positions, and proposals. The FCC develops non-federal inputs under its WRC Advisory Committee (WAC).

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<sup>18</sup> 47 U.S.C. § 902 (2000).

<sup>19</sup> The IRAC is an advisory committee that provides NTIA with the views of the federal agency spectrum managers. It serves in an advisory capacity to the Assistant Secretary and reports to the Deputy Associate Administrator for Domestic Spectrum Management, Office of Spectrum Management. It also assists the Assistant Secretary in assigning frequencies to U.S. Government radio stations and in developing and executing policies, programs, procedures, and technical criteria pertaining to the allocation, management, and use of the spectrum.

## Analysis and Recommendations

This section of the report focuses on the following areas within the United States preparatory process: federal agency senior management involvement, leadership and WRC goals, federal government preparation process, non-government preparation process, FCC/NTIA coordination process, study group/national committee process related to WRC agenda items, forming the WRC Delegation, staffing and budgeting WRC activities, outreach and consultations with other countries, training, WRC implementation process and other WRC issues. NTIA sought information regarding improvements in these categories in the Request for Comment.

### 1. Federal Agency Senior Management Involvement, Leadership and WRC Goals

#### *Background*

The United States' goal is to ensure that the WRC preparations reflect and further United States' telecommunications policy objectives. Traditionally, WRC preparations have relied heavily on a cadre of career government staff and industry participants. Where conflicts have arisen, these individuals have sometimes been unable to break through them, at times resulting in late formulation of U.S. positions and proposals as noted by the GAO and industry. Prior to WRC-03, State coordinated and led a meeting of U.S. Government Principals to ensure higher level, interagency oversight of WRC preparations. The Principals Group addressed possible nominees to head the U.S. WRC delegation, resources needed for the delegation and the WRC, and resolution of contentious issues.

NTIA requested comments on the improvement in the involvement of senior agency management and early agreements on WRC positions. NTIA requested comments regarding what goals the United States should have for WRCs and how to establish these goals.

#### *Comments*

USITUA encouraged NTIA to engage at senior levels in important regional meetings addressing WRC proposals and stated that it would be extremely beneficial for NTIA's Assistant Secretary to ensure that his/her senior level counterparts in the IRAC agencies have a commensurate understanding of the WRC and the associated issues.<sup>20</sup> With respect to ways to improve communications and coordination between NTIA and the FCC, Winstar commented that the reconciliation process sometimes takes an extraordinarily long period of time and that contentious issues should be raised to higher-level management when necessary, to force all parties to justify and support their positions.<sup>21</sup> The NYS and FACS commented that there would have been insufficient support for a low earth orbiting satellite feeder link allocation in the

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<sup>20</sup> USITUA Comments, *supra* note 13, at 2.

<sup>21</sup> Winstar Communications, LLC Comments, Docket No. 031016259-3259-01, at 4 (Nov. 24, 2003) (Winstar Comments), available at <http://www.ntia.doc.gov/ntiahome/frnotices/2003/wrcrfc/comments/Winstar.pdf>.

1.4 GHz band at WRC-2003 without United States Government advocacy, including senior officials.<sup>22</sup>

NASA commented that an Office of Spectrum Policy within the Executive Office of the President would go a long way toward obtaining more balance in the consideration of government interest vis-à-vis non-government issues, while improving the FCC's response time on pending matters by setting priorities.<sup>23</sup>

The USITUA suggested that the United States' goal for WRCs should be to protect and advance U.S. interests.<sup>24</sup> USITUA added that these interests are established through the existing proposal and agenda setting process.<sup>25</sup> NASA commented that WRC goals should be based upon the requirements of both the federal and non-federal entities.<sup>26</sup> These goals should be established and disseminated by an Office of Spectrum Policy and should be in the best interest of the country as a whole, considering both federal and non-federal requirements.<sup>27</sup> From a private sector perspective, Winstar argued that the United States' goals for WRCs should reflect industry interests, including development and acceptance of new technology and services to promote export of United States goods and services.<sup>28</sup> Also according to Winstar, the United States' goals should reflect minimizing regulatory barriers for deployment and expansion of services, including in border areas.<sup>29</sup>

#### *Conclusions and Recommendations*

The Assistant Secretary for Communications and Information and the FCC Chairman have made coordination and dialog regarding their efforts in radiocommunications policy and regulation an essential goal. Their partnership with the Department of State, through the leadership of the U.S. Coordinator and Deputy Assistant Secretary for International Telecommunications Policies, ensures a well-focused and integrated foreign policy with respect to telecommunications.

Establishing and maintaining high-level WRC oversight in the federal government is fundamental to the success of United States preparation for WRCs. The involvement of senior-level leadership in the WRC preparatory process would help to further United States' telecommunications policy objectives. Senior-level involvement will lessen delays in resolving difficult issues and identification of policy perspectives on agenda items. The oversight of WRC related activities should be at the Assistant Secretary level, or equivalent including the U.S. Coordinator for Communications and Information Policy, in the three lead agencies, State, NTIA and the FCC, thereby assuring availability of resources and a higher level of visibility within the chain of command.<sup>30</sup> This can be accomplished by utilizing the U.S. Government "Principals

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<sup>22</sup> NYS and FACS Comments, *supra* note 11, at 6.

<sup>23</sup> NASA Comments, *supra* note 12, at 1.

<sup>24</sup> USITUA Comments, *supra* note 13, at 7.

<sup>25</sup> *Id.*

<sup>26</sup> NASA Comments, *supra* note 12, at 9.

<sup>27</sup> *Id.* at 8.

<sup>28</sup> Winstar Comments, *supra* note 21, at 8.

<sup>29</sup> *Id.*

<sup>30</sup> WRC 2000 Recommendations, *supra* note 7, at 12, 14.

Group” that State coordinated and led for WRC-2003. The principals, Assistant Secretary level or equivalent including the U.S. Coordinator for Communications and Information Policy, from the three agencies addressed such issues as possible nominees to recommend to the President to head the U.S. WRC Delegations, resources that agencies could commit to the WRC and the preparation process, and resolution of contentious issues. NTIA recommends that State continue leadership of this group and that it expand to meet throughout the WRC cycle. The principals group should continue to be active in WRC preparations and should approve WRC objectives and goals, conduct policy-level discussions, make decisions where required on controversial issues, and establish overarching direction for U.S. preparatory activities.

Within the federal agencies, senior-level familiarity with issues could also facilitate development of executive branch support for WRC preparations. The Assistant Secretary of Commerce for Communications and Information will invite his/her senior level counterparts in the State Department, FCC and other relevant federal agencies to participate in high-level briefings, conducted by executive branch and FCC WRC staff, to facilitate understanding of key WRC issues. Such briefings could occur once preliminary views have been developed in the Radio Conference Subcommittee (RCS), and annually thereafter leading up to the conference.

Furthermore, while senior-level officials may not directly participate in the negotiations of a conference, their presence, even if for short periods, reflects recognition of the importance of WRCs and a respect from the other administrations that attend. Therefore senior-level officials from the agencies should continue to attend the conference for at least a portion of the time.

## **2. Federal Government Preparation Process**

### *Background*

The federal and non-federal WRC positions and proposal preparation processes are independent, but inter-related. The federal preparation process involves NTIA, which represents the views of the Administration. NTIA receives the views of the federal agencies through the RCS of the IRAC, which meets monthly to discuss and approve the federal agencies’ views, positions and proposals on WRC issues. The RCS is closed to participation by the private sector; however, the FCC voices non-federal views as a liaison representative in the RCS. Also, private sector representatives may approach NTIA on an ad hoc basis in order to express their views. NTIA requested public comment on federal preparations for WRCs to include seeking views and inputs from non-federal entities and educating the commercial sector on federal agencies’ radiocommunication requirements and related policies and decisions that effect U.S. conference proposals.

### *Comments*

The commenters generally agreed that there ought to be private sector input into the federal government’s preparation process. For instance, NASA commented that time should be made available for coordination between joint sessions of the NTIA’s RCS and the FCC’s WRC Advisory Committee (WAC). Such joint sessions should be for the purpose of information

exchange to reach mutual understanding of federal and non-federal views.<sup>31</sup> Furthermore, NASA suggested that greater use can be made of IRAC members to meet with non-federal entities to exchange information and provide greater transparency of views.<sup>32</sup> USITUA advocated that the WAC is an appropriate forum for government and the private sector to share information regarding their respective views. Furthermore, USITUA recommended that an approach or format similar to the U.S. Delegation “Training Day” prior to WRC-2003, be considered to brief interested parties on issues under consideration.<sup>33</sup> USITUA also encouraged NTIA to “ensure that there be RCS liaisons to the WAC Industry Working Groups (IWGs) to provide updates on the Government’s preparations.”<sup>34</sup> Winstar agreed that coordinating with the WAC and the IWGs is a good idea, and further recommended that the government routinely issue formal requests for written comments prior to major meetings.<sup>35</sup>

### *Conclusions and Recommendations*

Commenters generally agreed that NTIA should improve coordination and the sharing of views between the government and the commercial sector. One commenter supported NTIA facilitating meetings between federal agency representatives and non-federal entities, to exchange information in order to provide greater transparency of views. NTIA will work to educate the commercial sector on relevant spectrum policies and decisions related to the federal agencies’ needs that affect U.S. WRC proposals. Moreover, NTIA will establish briefings on key issues to interested parties as early in the preparatory process as possible. This could serve several purposes such as an “Exchange of Views” on hot topics and contentious issues, so that both federal and non-federal users can express their views on issues. Such actions will build trust among the participants, so that they can resolve many difficult issues and produce good outcomes for the United States.

As a WRC process improvement, the RCS developed high-level work plans for each WRC-07 agenda item that identify anticipated regulatory or procedural difficulties and identify action agencies in the work program. NTIA will forward these work plans to the FCC in order to provide greater transparency of federal views to the public.

One of the commenters recommended that the federal government’s process could be improved if NTIA would publish the federal agencies’ views for public comment.<sup>36</sup> NTIA will publish its views on key WRC issues on a case-by-case basis for public comment before being adopted by NTIA.

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<sup>31</sup> NASA Comments, *supra* note 12, at 1, 2.

<sup>32</sup> *Id.*

<sup>33</sup> USITUA Comments, *supra* note 13, at 1.

<sup>34</sup> *Id.*

<sup>35</sup> Winstar Comments, *supra* note 21, at 2, 3.

<sup>36</sup> *Id.* at 2.



### 3. Non-Government Preparation Process

#### *Background*

WRC preparations by the private sector and other non-federal entities take place under the jurisdiction of the FCC as it is responsible for managing the radio spectrum used by state and local governments, non-federal public safety agencies, and the private sector pursuant to the Communications Act of 1934, as amended. The FCC receives WRC views and proposal inputs from its constituency through the WAC. The results of the WAC are used to help facilitate discussions between NTIA and the FCC as final WRC views and proposals are developed. Representatives from the federal agencies have participated in the WAC process as observers since the inception of this process. However agencies' participation in the process is inconsistent at times, because newer agency representatives do not know the extent to which they can brief the IWGs of the WAC on the status of RCS views and proposals.

NTIA requested comments regarding federal agencies' participation in the WAC and if there were other ways in which the federal agencies could better participate in the process to prepare for a WRC.

#### *Comments*

The USITUA suggested that the federal agencies can best participate in the WAC by encouraging NTIA to maintain its observer role and to seek a greater role. USITUA also recommended that NTIA designate RCS members to provide updates to the WAC on IRAC decisions regarding WRC proposals under their consideration.<sup>37</sup> According to Winstar, it would be useful to the U.S. Government representatives in the WAC to provide input on government interests and concerns regarding various issues. Winstar also comments that the government should not attempt to influence WAC decisions because the WAC is a forum for the private sector, but rather ensure that government interests are understood and all parties' viewpoints are considered.<sup>38</sup> NASA believes that closer liaison between NTIA and the FCC (through the RCS and WAC) is appropriate so that the views of the respective groups can be better understood.<sup>39</sup>

#### *Conclusions and Recommendations*

Federal agency participation in the FCC's WAC process provides significant value to both private sector and the executive branch, even though the agencies participate only as observers. As proposed by one of the commenters, federal agency participation can be improved and expanded through management controls and clear guidance from NTIA. As recommended by the commenters, the RCS has formalized designation of government liaisons to attend each IWG meeting. NTIA will provide guidance to the RCS on federal agency participation in the FCC WAC process. This approach will allow the RCS liaisons to brief the IWG on the status of the preliminary views and proposal developments in the RCS and IRAC processes.

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<sup>37</sup> USITUA Comments, *supra* note 13, at 1.

<sup>38</sup> Winstar Comments, *supra* note 21, at 3.

<sup>39</sup> NASA Comments, *supra* note 12, at 1, 2.

#### 4. FCC/NTIA Coordination Process

##### *Background*

The Department of State, in consultation with NTIA and the FCC, determines national positions for WRCs. The IRAC provides advice to NTIA based on deliberations within the RCS, while the WAC, working primarily in IWGs, advises the FCC. To avoid isolation between the two advisory processes, which operate concurrently, an FCC liaison attends IRAC and RCS meetings, while NTIA and other federal agency representatives attend WAC and IWG meetings as observers.

In most cases, the FCC provides industry positions and proposals to NTIA as soon as the WAC approves them, without denoting explicit FCC acceptance. NTIA, on the other hand, provides its approved positions and proposals to the FCC. This assures the FCC that the published views are those of NTIA and not merely the recommendations of the IRAC. Once NTIA and the FCC have received each other's positions and proposals on an issue, the reconciliation begins. In this reconciliation process, NTIA and FCC strive to reach a common agreement on U.S. positions and proposals.

In its request for comment, NTIA sought the public's views on whether the federal and non-federal advisory processes should remain independent. NTIA also requested comments on improvements to the communications and coordination processes between the FCC and the executive branch agencies that work with NTIA on spectrum issues. NTIA also asked for comments regarding steps that could be taken to resolve difficult issues and whether timelines were needed to identify difficult issues early in the WRC preparatory process.

Early convergence and agreement on views and positions are vital to the success of U.S. objectives. Participants in the WRC preparatory process should prepare initial technical studies or U.S. views early enough in the process to ensure sufficient time for stakeholder coordination, technical review and further analysis. Therefore, NTIA asked whether it is necessary to energize agenda items and their associated studies if no activity has occurred by a certain point in time in the preparation process.

##### *Comments*

NASA, Winstar and USITUA agreed that federal and non-federal advisory processes should remain independent. USITUA supported its position, by stating "many aspects of deliberations about spectrum requirements and positions are related to potentially sensitive system and equipment procurements that should not be part of the transparency requirements of a FACA process which enables any entity, foreign or domestic, government or non-government, to participate in the WAC process."<sup>40</sup> USITUA also noted that the uniqueness of certain government issues are more appropriately addressed in a separate process, and that the private sector entities, should have the opportunity to develop their views without the government

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<sup>40</sup> USITUA Comments, *supra* note 13, at 2.

having a decisional role in the process.<sup>41</sup> Winstar commented that there is concern that the federal government's interests would dominate in the formulation of proposals if there was not independence between the NTIA and FCC coordination processes.<sup>42</sup> NASA asserted that "joint sessions of the RCS/WAC should be convened to facilitate an understanding of the respective federal and non-federal views."<sup>43</sup>

There are mixed views on the submission of WAC documents directly to NTIA, the IRAC, and the RCS without FCC bureau approval. Winstar commented that the present process works efficiently and that inserting FCC review prior to NTIA consideration would unnecessarily cause delay and concerns in the overall process.<sup>44</sup> USITUA recommended that the current process should be retained.<sup>45</sup> NASA suggested that "the FCC should reconcile and coordinate the views of its bureaus before sending proposals to the NTIA and IRAC."<sup>46</sup>

Winstar suggested that a process be developed to forecast how many contentious issues may arise and to plan ahead for deploying personnel and resources.<sup>47</sup> USITUA believes that the establishment of regular meetings between NTIA and the FCC, as designated under the recent Memorandum of Agreement, is critical and recommends they be used to also discuss progress on the U.S. preliminary views and proposals for the WRCs as they develop.<sup>48</sup>

NTIA sought public comment on how to resolve difficult issues and whether timelines should be developed early in the process to identify them. Winstar argued that contentious issues can usually be identified early and that mutual timelines should be agreed upon to resolve them.<sup>49</sup> NASA commented that an Office of Spectrum Policy should be established in the executive branch to resolve contentious issues.<sup>50</sup> USITUA supported establishment of early timelines for resolving non-consensus issues and believes the Department of State has an important role in that process to bridge any impasse that may occur, as it has in the past.<sup>51</sup> USITUA also recommended an interim step that allows interested private sector parties to meet with federal agency personnel to discuss the difficult issues and to try to reach a mutually satisfactory compromise.<sup>52</sup>

With respect to the final questions regarding the necessity to energize agenda items by a certain point in the preparation process, commenters do not believe that any action is necessary if no studies have occurred. USITUA asserted that if there is not sufficient government or commercial interest in undertaking the relevant studies necessary to advance or impact an agenda

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<sup>41</sup> *Id.*

<sup>42</sup> Winstar Comments, *supra* note 22, at 3.

<sup>43</sup> NASA Comments, *supra* note 12, at 2.

<sup>44</sup> Winstar Comments, *supra* note 21, at 3, 4.

<sup>45</sup> USITUA Comments, *supra* note 13, at 2.

<sup>46</sup> NASA Comments, *supra* note 12, at 2.

<sup>47</sup> Winstar Comments, *supra* note 21, at 4.

<sup>48</sup> USITUA Comments, *supra* note 13, at 2; *see also*, NTIA Manual of Regulations and Procedures for Federal Radio Frequency Management, at ¶ 2.4 (Jan. 2004) (NTIA Manual). The NTIA Manual is *available at* <http://www.ntia.doc.gov/osmhome/redbook/redbook.html>.

<sup>49</sup> Winstar Comments, *supra* note 21, at 4.

<sup>50</sup> NASA Comments, *supra* note 12, at 3.

<sup>51</sup> USITUA Comments, *supra* note 13, at 2.

<sup>52</sup> *Id.*

item, then no action should be taken on the agenda item.<sup>53</sup> Winstar stated that this process is driven by self-interest and that there is no need for additional action on the part of the United States Government.<sup>54</sup> NASA also commented that if no activities have been undertaken in the study group on a particular issue, it is because there was no interest by the participant administrations.<sup>55</sup>

### *Conclusions and Recommendations*

The commenters supported keeping the federal and non-federal WRC preparatory processes independent, and NTIA agrees with this point. Many aspects of deliberations in the RCS involve sensitive national security issues and classified information on frequency use in certain bands. Also, federal agency representatives deliberate advantages and disadvantages when forming WRC views and proposals that relate to the compatibility of government systems that should not be transparent to the public. NTIA believes that it is in the best interest of the nation that the federal agencies formulate their WRC views in closed sessions.

One commenter advocated that the FCC should review and coordinate WAC documents prior to NTIA consideration.<sup>56</sup> Another commenter, however, suggested that the FCC's prior approval would unnecessarily cause delays in the process.<sup>57</sup> NTIA will continue to accept WAC documents into the RCS as the present process works efficiently. However, NTIA prefers the FCC give an indication of its support on WAC-approved documents prior to NTIA approval. For WRC-03, the FCC began providing NTIA with FCC Public Notices which state the FCC's support of WAC proposals. NTIA recommends that the FCC continue this practice.

Commenters suggested that communications and coordination between the executive branch and FCC processes can be improved. Therefore, NTIA will initiate periodic meetings between the WRC coordinators at the NTIA and FCC, including experts for specific issues. The agenda for these meetings should include policy-level determination on how to pursue agenda items, approaches for ITU-R studies to support WRC objectives, preliminary view and proposal reconciliation, and identification of contentious issues needing senior management attention.

To ensure success of U.S. objectives for WRC agenda items, early convergence and agreement on views and positions are vital. In the past, this has not been the case on all issues and NTIA understands that there will always be some agenda items where no domestic interest exists, however, it is important to follow the progress on all agenda items both domestically and regionally. Despite comments received to the contrary on this issue, NTIA believes, from past experience, if work is not progressing on an agenda item(s), it is important to energize that agenda item(s) and its associated studies by a certain point in the preparation process. Where no interest exists and no studies have been undertaken, it is still important to develop preliminary views early in the process. NTIA will follow the progress of all agenda items regionally to

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<sup>53</sup> *Id.* at 3.

<sup>54</sup> Winstar Comments, *supra* note 21, at 6.

<sup>55</sup> NASA Comments, *supra* note 12, at 4.

<sup>56</sup> *Id.* at 2.

<sup>57</sup> Winstar Comments, *supra* note 21, at 3-4.

ascertain the associated impact on U.S. interests and prepare positions and strategies based on other regional or country proposals.

In order to achieve success on all agenda items, NTIA will work with the FCC to determine which, if any, agenda items require the FCC to initiate its consultation processes early.

## **5. Study Group and National Committee Process Related to WRC Agenda Items**

### *Background*

The U.S. preparatory process for WRCs follows two related paths - technical preparation and proposal/position preparation. Administrations and sector members participate in technical preparations in the ITU-R study group process. Federal and non-federal representatives participate in this process. State's ITAC-R serves as the mechanism by which the United States prepares technical studies for WRCs.<sup>58</sup> The ITAC-R National Committee (NC) assists the U.S. Government in technical preparations for international meetings and negotiations. Under this advisory committee, the public and the executive branch are afforded the opportunity to participate actively in government decision-making activities. With respect to technical preparations for WRCs, State uses the ITAC-R to develop technical study inputs to the ITU-R study groups and the Conference Preparatory Meeting (CPM) to form the technical, operational and regulatory basis for WRC decisions. State, however, does not use the ITAC-R to develop preliminary views or proposals directly related to WRCs.

Under current ITAC-R processes, positions most frequently develop via input documents providing technical analysis. The discussion and negotiation of these documents propel the development of positions within ITU-R study group activities. If no one submits inputs, the positions do not develop. Some cases may exist where certain approaches or certain outcomes that the study groups consider may be contrary to U.S. policies. In these cases, established policies could guide U.S. Study Group activity.

The first CPM (CPM-1), which usually occurs immediately after a WRC, establishes which ITU-R study groups, working parties, or task groups will work on specific agenda items. However, most agenda items concern a number of groups. Therefore, the CPM establishes a lead group and interested groups. Coordination of activity within the ITU-R study groups and working parties usually progresses through liaison statements or through appointed liaison representatives. Due to the timing of meetings, the consideration of liaison statements can take significant time. Also, as work accelerates, formal liaison may not allow responses in a timely manner.

NTIA requested comments regarding the National Committee (NC) setting objectives and policy for WRC studies. NTIA wanted to know whether closer coordination among various study groups is required and how this can be accomplished. A question was also asked on whether the U.S. Study Group process should be aligned with U.S. WRC goals and objectives. NTIA also sought public input on whether or not federal and non-federal views on agenda items

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<sup>58</sup> See *supra* note 17. The ITAC-R covers radiocommunication issues.

and supporting documents pursuing U.S. positions should be developed, approved and disseminated.

### *Comments*

With respect to whether the NC should set objectives and policies regarding WRC studies, a majority of the commenters agreed that the NC should not have this authority. NASA argued that the NC “should not be in the business of setting objectives,” but should address technical content and validity of WRC studies.<sup>59</sup> According to NASA, an Office of Spectrum Policy, located in the executive branch, and the IRAC, representing federal agencies, should establish objectives and policy.<sup>60</sup> USITUA advocated that the NC should not have this authority, but encouraged NTIA to facilitate coordination efforts between the RCS and WAC on WRC preparatory activities.<sup>61</sup> Winstar, however, commented that there ought to be discussion in the NC because “it is not clear what objectives and policies might be considered.”<sup>62</sup>

NTIA received mixed views from the commenters on whether closer coordination among study groups is required or not. Winstar commented that closer coordination is desirable because the current process is not efficient or very useful in some cases.<sup>63</sup> USITUA recommended that there be scheduling improvements between the study groups and the WAC meetings to maximize participation in both, and minimize impact on resources given that many participants (government and industry) come from outside of the Washington, D.C. area.<sup>64</sup> NASA commented that closer coordination is not needed and that there ought to be isolation between the study groups to “properly conduct their scientific and engineering studies.”<sup>65</sup> NASA added that only when the necessary expert internal studies have been completed, should studies be shared with all concerned study groups.<sup>66</sup>

NASA and USITUA commented that the U.S. study group process should not be guided to align with United States WRC goals and objectives. NASA asserted that if the study groups’ work is not maintained as “expert work,” then the ITU credibility and technical pre-eminence will crumble.<sup>67</sup> NASA also commented that “within the United States, the objectives and policy for a given WRC, established by an Office of Spectrum Policy in the executive branch, should be promulgated through the NC to each of the United States’ study group chairmen as guidance in overseeing the technical studies.”<sup>68</sup> USITUA suggested that the roles and agendas of the study groups are much broader than for the WRC and therefore does not support aligning the study groups’ process with the WRC goals and objectives.<sup>69</sup> Winstar noted that reaching agreement on WRC goals and objectives is not always easy because of competing interests and information

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<sup>59</sup> NASA Comments, *supra* note 12, at 3.

<sup>60</sup> *Id.*

<sup>61</sup> USITUA Comments, *supra* note 13, at 3.

<sup>62</sup> Winstar Comments, *supra* note 21, at 4.

<sup>63</sup> *Id.*

<sup>64</sup> USITUA Comments, *supra* note 13, at 3.

<sup>65</sup> NASA Comments, *supra* note 12, at 3

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> USITUA Comments, *supra* note 13, at 3.

provided to the various groups to advance their goals. In this regard, Winstar recommended a government process be developed that gives the private sector warning prior to a government decision on a contested issue.<sup>70</sup>

NTIA received mixed comments on whether a federal or non-federal position on agenda items, and supporting information, pursuing an overall U.S. WRC position should be developed, approved, and distributed. NASA recommended that such positions should be developed only subsequent to joint meetings between WAC and the RCS, which would be helpful in solidifying a U.S. position for regional meetings (e.g. CITEL).<sup>71</sup> USITUA argued that such federal/non-federal positions and supporting studies to pursue U.S. positions should be not developed because “self-interest is perhaps the appropriate motivator for action on any agenda item.”<sup>72</sup> Winstar supported this suggestion, but noted that further discussion needs to occur between government and the private sector on developing positions.<sup>73</sup>

### *Conclusions and Recommendations*

Commenters agreed that the NC should not set objectives and policies regarding WRC studies because agreement on WRC goals and objectives is difficult due to competing interests. Commenters also suggested that the U.S. study group process should not be directed to align with U.S. WRC goals and objectives because the ITU-R study groups have much broader responsibilities than just WRC preparations. However, NTIA recognizes that with respect to some agenda items, U.S. policy may already exist. Therefore, on an exceptional basis, where such policies exist, State, the FCC and NTIA in conjunction with their constituents will continue to provide guidance to study group activities.

NTIA believes that broad participation in the ITU-R working parties is essential to the preparations for any WRC since these groups develop the technical bases for conference decisions. NTIA believes that government and private sector interests working together on ITU-R technical studies result in higher quality technical studies. NTIA recommends that U.S. ITU-R working parties develop work programs for WRC agenda item(s). These work programs could include objectives for U.S. studies for the various agenda items, specific timeframes and work assignments. Issues of policy should continue to be resolved within the existing ITAC-R National Committee structure chaired by State, and co-chaired by NTIA and the FCC. This process has proven effective. Issues that cannot be resolved within the existing ITAC-R National Committee should be identified as quickly as possible and referred to the Principals’ Group for their review.

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<sup>70</sup> Winstar Comments, *supra* note 21, at 5.

<sup>71</sup> NASA Comments, *supra* note 12, at 4.

<sup>72</sup> USITUA Comments, *supra* note 13, at 3.

<sup>73</sup> Winstar Comments, *supra* note 21, at 5.

## 6. Outreach and Consultations with Other Countries

### *Background*

Building open lines of communication and goodwill with other countries is crucial in an organization like the ITU, which employs the United Nations' voting system of "one country, one vote." Because the United States has only one vote on WRC issues that affect U.S. commercial and government interests, the United States must actively engage other administrations to seek their support for U.S. positions. To develop the relationships necessary to be successful at a WRC, the United States must prepare appropriately before a WRC begins.

In preparation for WRC-2000 and WRC-03, the Ambassadors to those conferences led small delegations comprised of the U.S. vice-chairmen, technical staff and other members of the U.S. WRC team on a very aggressive bilateral and multilateral consultation effort that covered several countries and regional organization meetings. These various discussions gave the United States a chance not only to present the U.S. positions on key issues, but also to listen closely to other countries' WRC views. These consultations provided the Delegation with vital information that the United States used to explore and understand the reasons behind other administrations' proposals. This in turn helped the United States to develop possible compromises that could be negotiated at the conference.<sup>74</sup> In some cases, the United States negotiated joint proposals with other countries. These bilateral and multilateral meetings were invaluable because the United States was able to go to the WRC better understanding the strengths and weaknesses of other administrations' proposals. The United States also knew which administrations agreed with and would actively support the United States' goals. The Delegation also understood which administrations supported or opposed United States' proposals.

NTIA believes that it is important for the United States to coordinate with other countries in preparation for WRCs. For many years, the United States has implemented country outreach programs at WRCs. This outreach effort consists of delegation assignment of individual U.S. delegates to serve as contacts or liaisons to other country delegations at the conference. The United States continues to build upon and improve the outreach programs from conference to conference. The outreach program enables dissemination of U.S. information to other countries, collection of information from other countries, and promotion of good relations with other countries.

NTIA requested comments on the benefits and costs of regional preparation for WRCs. NTIA also requested comments on the effectiveness of and need for consultations with other administrations and the importance of working with other countries outside of the ITU study groups and the CPM. NTIA also requested comments on the country contact/outreach program

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<sup>74</sup> WRC 03 Report, *supra* note 5, at 78.



and its effectiveness. NTIA was interested to learn whether the WRC outreach efforts should be integrated with other international efforts of State, the FCC, and NTIA. The final question NTIA asked concerned the effectiveness and timeliness of the delegation consultations prior to WRC-03.

### *Comments*

With respect to consultations with other countries, USITUA argued that this is critical and should be conducted in two parts. The first consultations, according to USITUA, occurring very early in the process, should be a listening session where the United States reaches out to different regions to understand their priority areas.<sup>75</sup> USITUA also suggested that once the proposals are developed, the second phase of consultations should take place prior to the CPM if possible.<sup>76</sup> NASA added that consultations depend on specific issues and that the United States should target key countries for early bi-laterals on contentious issues.<sup>77</sup>

NASA also argued that regional preparation is becoming an absolute requirement for ensuring success at the WRC.<sup>78</sup> Regional views are increasingly sought over individual administration views.<sup>79</sup> According to NASA, the cost of such regional preparation is a loss of autonomy and possible compromise of U.S. positions even before the start of the conference.<sup>80</sup>

The benefits of full participation in regional preparations for WRCs (including preparations for the Americas, Europe, Asia/Pacific, the Arab States and Africa) far outweigh the cost of such participation asserted USITUA.<sup>81</sup> USITUA further stated that the WRC is becoming increasingly regionalized with regions coalescing on proposals and positions prior to the WRC.<sup>82</sup> The experience of WRC-03 is quite instructive, according to USITUA, on how timely engagement and leadership in the regional processes can yield successful outcomes on U.S. proposals.<sup>83</sup> The USITUA concluded that the WRC-03 experience should form the baseline for future U.S. WRC preparation activities.<sup>84</sup> As far as regional views are given high visibility at conferences, and given that U.S. positions are traditionally influential in Region 2, Winstar advocated that such preparations are very important.<sup>85</sup> Winstar stated that it is useful to participate in other regional processes.<sup>86</sup>

NTIA requested comments on the importance of working with other countries outside of the ITU study group and the CPM processes. NASA and USITUA commented that it is important to work with other countries outside of this process; specifically NASA stated that this

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<sup>75</sup> USITUA Comments, *supra* note 13, at 6.

<sup>76</sup> *Id.*

<sup>77</sup> NASA Comments, *supra* note 12, at 6.

<sup>78</sup> *Id.* at 9.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> USITUA Comments, *supra* note 13, at 8.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Winstar Comments, *supra* note 21, at 9.

<sup>86</sup> *Id.*

“can be accomplished through CITELE (the Inter-American Telecommunications Commission) and other regional bodies, as well as through targeted bi-laterals.”<sup>87</sup> USITUA stated that regional group meetings offer ideal opportunities for the United States to meet with both leaders as well as working level staff, and to demonstrate the United States’ interest in others views.<sup>88</sup> USITUA noted that working with other countries is an important initial step in building common proposals within and across regions and it allows delegation leaders and their staffs to meet one another. It also provides the United States an opportunity to learn the other countries’ views.<sup>89</sup> The United States’ consistent engagement and leadership in the CITELE process, as well as participation with other regional processes, was a central factor in its many successes at WRC-2003.<sup>90</sup> USITUA specifically encouraged NTIA to engage at senior levels in important regional meetings addressing WRC issues.<sup>91</sup> USITUA also recommended that the private sector should be considered for inclusion in U.S. delegations to regional preparation meetings outside of the CITELE meetings.<sup>92</sup>

NTIA also asked a question concerning the country outreach program and whether it should be maintained between WRCs. NASA and USITUA both answered that this program should not continue between WRCs. USITUA argued that the program is impractical for the private sector. According to NASA, “the value of the outreach program within the WRC itself is debatable and costs the United States at least as much goodwill as it generates.”<sup>93</sup> NASA stated that we need to think more about how to implement some other activity that ensures good relations without excessive complications.<sup>94</sup> As a minimum, some measure of the effectiveness of past outreach efforts should be assessed before undertaking such an endeavor.<sup>95</sup> According to NASA, targeted outreach is likely to be far more productive than the general outreach that has been conducted during WRC-2000 and WRC-03.<sup>96</sup> If the program continues, NASA recommended that the following actions will improve the effectiveness of the process:

- a) Assign delegates country responsibilities in a more thoughtful manner based on working relationships with one or more individuals on a country delegation, and their knowledge of the country;
- b) Several experienced delegates need to exchange ideas and develop a more effective outreach program that could be implemented prior to the CPM and utilized until the conference;
- c) Once someone with country ties has been identified, retain that person as the U.S. Delegation’s contact person for more than just one conference if possible;
- d) Develop a delegation message of the day or a list of issues for which the Delegation should solicit views; and
- e) Develop a list of questions concerning the views of other countries prior to the CPM.<sup>97</sup>

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<sup>87</sup> NASA Comments, *supra* note 12, at 7.

<sup>88</sup> USITUA Comments, *supra* note 13, at 6.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 2.

<sup>92</sup> *Id.* at 6.

<sup>93</sup> NASA Comments, *supra* note 12, at 7.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 6.

Commenters had varying views on the integration of WRC outreach activities with other international activities of State, the FCC and NTIA. NASA emphatically advocated that WRC outreach activities should not be integrated with other international activities.<sup>98</sup> On the other hand, USITUA suggested that the WRC outreach should be integrated with other international activities and be a standing topic for discussion at every bilateral or regional meeting with State, the FCC or NTIA.<sup>99</sup> The commenters agreed that the Delegation's consultations prior to WRC-03 were very effective, but could be improved. NASA stated that the consultations were not started in a timely manner and should be started at the CPM and be continued from there.<sup>100</sup> NASA also noted that the consultations were effective due to the diligence of the Ambassador and the team, but that the consultations were rushed.<sup>101</sup> USITUA agreed that the consultations "were very effective, building good relationships, in part assisted by the fact that the late-appointed Ambassador to WRC-03 was a known and respected figure in the international telecommunications community, and the ITU."<sup>102</sup> USITUA suggested, however, that the Ambassador should be appointed earlier.<sup>103</sup>

### *Conclusions and Recommendations*

NTIA agrees with the commenters on the importance of consulting with other countries and involving federal agency senior leadership in these consultations. In this regard, NTIA believes that State, the FCC and NTIA, should continue to work closely to conduct consultations with other countries throughout the WRC cycle, with more detailed consultations being possible once the United States has developed preliminary views and conference goals/objectives. NTIA further recommends that the three agencies continue to conduct consultations upon completion of the U.S. proposals to obtain support for them as early as possible prior to the WRC.

State plays a key role in ensuring the success of consultations with other administrations and international outreach since the Secretary of State exercises primary authority for the conduct of foreign policy with respect to such telecommunications functions, including the determination of U.S. positions and the conduct of U.S. participation in negotiations with foreign government and international bodies.<sup>104</sup> NTIA is committed to working with State as it coordinates with other agencies on these international issues.

NTIA recommends that State continue to work closely with the FCC and NTIA to identify and meet with key countries, including CITELE countries, on contentious issues early in the process. NTIA recommends conducting detailed WRC consultations with other administrations throughout the preparatory process. While face-to-face meetings with representatives of other administrations in their countries convey a level of respect for those administrations, video conferencing should also be used where possible to expand the opportunities for dialog. We note that video conference facilities are often available at U.S.

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<sup>98</sup> *Id.* at 7.

<sup>99</sup> USITUA Comments, *supra* note 13, at 6.

<sup>100</sup> NASA Comments, *supra* note 12, at 7.

<sup>101</sup> *Id.*

<sup>102</sup> USITUA Comments, *supra* note 13, at 6.

<sup>103</sup> *Id.*

<sup>104</sup> *See* 22 U.S.C. § 2707 (b) (1).

embassies, and that these facilities were successfully employed to conduct a bilateral meeting with Brazil prior to WRC-03. More meetings of this type would be useful and would conserve U.S. resources, as well as resources of other countries.

Regional preparation has become an absolute requirement for ensuring success at the WRC, because conferences increasingly highlight regional proposals and views over individual administrations' views. The United States should use the experience of WRC-03 to form the baseline for future U.S. WRC preparation activities - timely engagement and leadership in the regional processes yielded successful outcomes on U.S. proposals. NTIA will continue to participate actively in regional preparations for WRCs.

NTIA believes that it is also important to work with other countries outside of the ITU study groups and the CPM. NTIA has in the past and will continue to discuss WRC issues with foreign administrations visiting NTIA. Commenters suggested that the country outreach program should not be maintained between WRCs. However, database information on country contacts should be maintained. NTIA agrees with the commenters that the country outreach program that has been used at conferences should not be actively pursued between conferences. The outreach program at conferences relies heavily on private sector delegates. Private sector representatives could not continue to officially represent the United States outside conferences. However, federal employees should continue to promote informal contacts that cultivate relationships that were built during the conference, especially those with individuals who do not participate in ITU-R study groups. NTIA recommends that all U.S. participants continue to collect and share information on foreign delegates among other U.S. players. This approach has proven effective and draws upon the experiences of all. NTIA will create and maintain a formal database for its WRC staff and will invite the federal agencies to contribute to the database via the RCS. Further, NTIA believes improvements can be made in the international outreach program to increase its effectiveness and proposes State consider appointing several experienced delegates to exchange ideas and develop a more effective outreach program that could be put in place prior to the CPM and carried through to the conference. State could also consider holding monthly meetings or otherwise informing participants on country outreach immediately after CPM-2 and designate official coordinators from NTIA and the FCC by country and region. All outreach efforts would continue to be coordinated by State to ensure consistency of message and to make all outreach transparent.

## **7. Forming the WRC Delegation**

### *Background*

The U.S. Delegation, under the leadership of an ambassador, represents the United States at WRCs. The Delegation is comprised of U.S. Government officials and representatives from U.S. industries. The President appoints an ambassador to serve as head of the Delegation.<sup>105</sup> Approximately six months before a WRC, State, including the Ambassador-designate if then known and in consultation with the FCC and NTIA, prepares a list of individuals from the

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<sup>105</sup> See 22 USC §3942 (a)(2)(B)(i).

private sector and government, to serve on the nominated U.S. Delegation.<sup>106</sup> Once the authority to negotiate on behalf of the United States is granted, an Accredited Delegation is created.<sup>107</sup>

Preparation for a WRC begins several years in advance. The U.S. WRC Ambassador (Ambassador or Head of Delegation) cannot be appointed until about five months before the WRC as the Ambassador can serve only about six months including the WRC. The remainder of the U.S. Delegation is not formed until six months or in most cases, less than six months prior to a WRC commencing, although the identity of the delegation is known in large measure as early as CPM-2, which generally occurs six months prior to the WRC. In preparation for WRC-03, State initiated a "core delegation group" to lead the preparatory activities until a U.S. Head of Delegation was appointed. The core delegation group, a subset of the U.S. Delegation, met regularly to discuss issues related to the WRC and is comprised of the U.S. WRC Head of Delegation, the vice-chairs, agency principals and representatives from State, the FCC, NTIA, NASA and DOD. The group assisted in the development and implementation of U.S. goals and objectives, developing U.S. policy positions, resolving conflicts with U.S. proposals, and managing issues associated with forming the Delegation. The core delegation also developed a conference structure for the WRC and list of proposed international committee chairs to lead the work of the conference. This group identified and attempted to reconcile differences in positions and proposals on conference issues and identified areas of divergence with other Regions and countries in the hopes of resolving those differences in negotiations prior to the WRC. The group created a list of U.S. spokespersons and committee chairs so that these groups could begin meeting and carrying out the necessary preparatory work before the delegation was formed.

Over the years, there has been significant debate surrounding the formation of WRC delegations and the affect this process has on the United States' ability to prepare for WRCs. In its Request for Comments, NTIA sought public comment on a number of areas concerning the continuity in leadership between WRC conferences, the formation of the core delegation group, vice-chairs, and principals' groups and how they could be better used to improve the effectiveness and efficiency of the U.S. preparations. NTIA also sought comments on the formation of and associated timelines for the nominated and accredited delegation and how this affects the timely development and approval of final positions, strategy and fallback positions. Comments were also requested regarding the appointment, timeframe and the role of the Ambassador, and how effective U.S. appointed political representatives are in negotiations with other ITU members. NTIA also requested comments on the importance of bringing the Ambassador on board in some capacity prior to the second session to CPM-2, which occurs about six months prior to the start of the WRC, where administrations agree on final reports which are used as the technical basis during WRC discussions.

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<sup>107</sup> A Nominated Delegation is the formal list of recommended individuals to serve on the delegation. Upon instructions from the responsible Department of State office, in the case of WRC this is the Office of International Organizations, State will accredit official U.S. delegations to the government of a country or to the headquarters of an intergovernmental organization. This is then the accredited delegation.

<sup>107</sup> *Id.*

## *Comments*

The commenters generally agreed that there is a lack of continuity in U. S. leadership between WRC conferences at the senior level. According to the USITUA, this lack of continuity creates a hurdle for the United States to achieve its WRC objectives and even though the United States has been able to overcome these discontinuities, it recommended that State have a permanent (Senior Executive Service level) senior vice-chair tasked to ensure continuing relationships in the WRC interims and through the regional groups meetings.<sup>108</sup> Winstar stated that the Ambassador is always a political appointee for a single conference, has no previous knowledge of spectrum related issues, and often does not have opportunities to develop relationships and recognition as many other countries representatives. Winstar recommended instead that the Ambassador be a known United States expert, or that an expanded office of the Ambassador be developed to retain historic knowledge. In both instances, Winstar advocated that the Ambassador or the senior staff should be appointed for multiple conferences.<sup>109</sup> NASA added that designating a senior civil servant as deputy head of the U.S. Delegation from within an Office of Spectrum Policy in the Executive Office of the President would help address the lack of continuity. This person's term should be for as long as he or she serves in that capacity. NASA acknowledged that this person may be a political appointee and therefore, long-term leadership continuity might not be guaranteed.<sup>110</sup>

With respect to when the core delegation, vice-chair and principals groups should be formed, the commenters suggested that it was important for that to be done sooner rather than later. NASA commented that the core delegation group should be formed immediately following the penultimate CITEL PCCII meeting, but no less than three months prior to the CPM-2.<sup>111</sup> NASA also advocated that "nominal vice-chairs" are not needed because each designated delegate (spokesperson, group chair, et al.) should have a defined role or they should not be included in the Delegation.<sup>112</sup> USITUA agreed with early formation (prior to the CPM-2) and asserted that spokespersons should be included in the core delegation in order to provide an opportunity for team building and the development of substantive expertise on assigned agenda items.<sup>113</sup> USITUA supported consideration of a private industry representative liaison to that core delegation - the chair or vice-chair of the WAC.<sup>114</sup> Winstar also agreed with the early formation and noted that the core delegation only represents the United States Government and that the private sector should be brought into this group.<sup>115</sup>

The commenters differed on whether or not the Nominated Delegation is formed early enough in the process to develop and approve final positions in a timely manner. NASA argued that the Delegation nomination is accomplished in good time however; the Delegation

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<sup>108</sup> USITUA Comments, *supra* note 13, at 3.

<sup>109</sup> Winstar Comments, *supra* note 21, at 6.

<sup>110</sup> NASA Comments, *supra* note 12, at 4.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> USITUA Comments, *supra* note 13, at 3.

<sup>114</sup> *Id.* at 3-4.

<sup>115</sup> Winstar Comments, *supra* note 21, at 6.

accreditation process is not timely or transparent.<sup>116</sup> Winstar and USITUA both agreed that the Nominated Delegation is not formed early enough and should be formed prior to CPM-2.<sup>117</sup>

NTIA asked a similar question regarding the formation of the Accredited Delegation and the commenters stated that the Accredited Delegation is not formed early enough to develop and approve United States positions, strategy, and fallback positions. USITUA suggested that the Accredited Delegation be in place no later than approximately four months prior to the conference, to consider the issues that need to be addressed, such as confidentiality.<sup>118</sup> NASA stated that the delegation accreditation process is not transparent or timely, and the lack of accreditation should not be used to prevent interested parties from participating in the development of strategy and fallback positions.<sup>119</sup> Winstar commented that positions and strategies can be more thoughtfully developed if the Accredited Delegation were formed earlier because under the current system those decisions are made at the very end of the process where everything is rushed.<sup>120</sup>

USITUA and Winstar agreed that delegation assignments should be made and spokespersons identified as early as possible. According to USITUA, this is important because early identification of such persons helps with developing, managing and articulating their issues, and allows important team building with interested U.S. parties.<sup>121</sup> NASA was more specific in establishing a timeframe. NASA asserted that spokespersons should be identified about five months prior to the WRC, noting that WRC spokespersons do not need to be the same as CPM-2 spokespersons.<sup>122</sup>

With respect to improving the role of and the process for appointing the Ambassador, NASA commented that the process works, but prior to being appointed, the nominee should be announced at least three months prior to the CPM-2 as Head of Delegation. Such an announcement would allow the Ambassador to work alongside the Coordinator for CIP (State) to gain an understanding of the issues that will be discussed at WRC.<sup>123</sup> USITUA suggested that a one-year term starting four to six months prior to the CPM-2 would enable the individual to be educated on the issues, politics, regional bodies, and institution to be able to meaningfully attend the CPM in part or in whole.<sup>124</sup> USITUA also noted that the Ambassador's role would be enhanced by ensuring adequate funds are available for WRC outreach and travel activities that are critical to obtain support for United States objectives at the WRC.<sup>125</sup> WRC-2000 Ambassador, Gail Schoettler, recommended that the WRC-2003 Head of Delegation attend the preparatory conferences, including the Plenipotentiary Conference, the CPM-2 and regional meetings, since likely fall-out from these meetings would significantly impact the WRC-03

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<sup>116</sup> NASA Comments, *supra* note 12, at 4.

<sup>117</sup> Winstar Comments, *supra* note 21, at 6; USITUA Comments, *supra* note 13, at 4.

<sup>118</sup> USITUA Comments, *supra* note 13, at 4.

<sup>119</sup> NASA Comments, *supra* note 12, at 5.

<sup>120</sup> Winstar Comments, *supra* note 21, at 7.

<sup>121</sup> USITUA Comments, *supra* note 13, at 4; Winstar Comments, *supra* note 22, at 7.

<sup>122</sup> NASA Comments, *supra* note 12, at 4.

<sup>123</sup> *Id.*

<sup>124</sup> USITUA Comments, *supra* note 13, at 4.

<sup>125</sup> *Id.*

deliberations.<sup>126</sup> “Being familiar with the dynamics of these conferences and with the key delegates is a great advantage,” stated Ambassador Schoettler.<sup>127</sup> All this will require having that person on board in some capacity 10 to 12 months in advance of WRC-03.<sup>128</sup> The Center for Strategic and International Studies (CSIS) issued a report in 2003 (CSIS Report) which states that the most important international spectrum negotiations, the WRCs, are conducted for the United States by a temporary ambassador appointed shortly before a WRC begins.<sup>129</sup> This position is temporary and lasts only six months to avoid the need for Senate confirmation.<sup>130</sup> The CSIS Report recommended that the United States reinforce its negotiating effort by placing the preparations of spectrum negotiations under White House purview and by the early appointment and confirmation of the Ambassador.<sup>131</sup>

NTIA also asked a question regarding the United States’ negotiating strength using appointed political representatives working with career spectrum managers and ITU experts from other countries. NASA commented that the “United States’ negotiating strength is enhanced by the appointed political representative. The political clout available to the appointed political representative can prove invaluable in resolving difficult issues.”<sup>132</sup> Winstar asserted that “the United States negotiating strength is most certainly hindered by the use of an appointed political appointee that inherits an office that is not provided with the appropriate staff and resources.”<sup>133</sup> USITUA suggested that the United States’ negotiating strength may be more hindered than improved if there is not adequate time to educate the Ambassador sufficiently for the person to develop a satisfactory comfort level on the controversial issues. However, if the Ambassador has pre-existing knowledge of an issue or has enough time to gain a firm understanding of the issue, then the presence of a political ambassador is useful.<sup>134</sup>

NTIA wanted to know whether it is important to bring the Ambassador on board in some capacity prior to the CPM-2, considering that at the CPM, administrations agree on the technical report for the WRC. NTIA asked when the Ambassador’s appointment should be made effective. The commenters agreed that it is important to bring the Head of Delegation on board in some capacity prior to the CPM-2. NASA advocated that identifying the individual ahead of time as Head of Delegation is essential so that this person can gain a necessary understanding of all of the issues that affect United States interests.<sup>135</sup> Winstar recommended that the Ambassador be identified and appointed at least three months prior to the CPM-2 so the person can become knowledgeable on the issues. Winstar also suggested that the Ambassador be identified, if not appointed, at least one year prior to a WRC.<sup>136</sup> USITUA asserted that the Ambassador should be appointed one year prior to the WRC and that a statutory exemption may

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<sup>126</sup> WRC 2000 Recommendations, *supra* note 7, at 13.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> Spectrum Management in the 21st Century, A Report of the CSIS Commission on Spectrum Management, at 18 (Oct. 2003)(CSIS Report), available at [http://www.csis.org/pubs/2003\\_spectrum.htm](http://www.csis.org/pubs/2003_spectrum.htm).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 18, 19.

<sup>132</sup> NASA Comments, *supra* note 12, at 5.

<sup>133</sup> Winstar Comments, *supra* note 21, at 7.

<sup>134</sup> USITUA Comments, *supra* note 13, at 4.

<sup>135</sup> NASA Comments, *supra* note 12, at 5.

<sup>136</sup> Winstar Comments, *supra* note 21, at 7.



be appropriate for this position. As an alternative, USITUA argued that the Ambassador could be an appointee or consultant in the Department of State so that there is expertise and travel budget available to support the activities of the Ambassador-to-be.<sup>137</sup>

### *Conclusions and Recommendations*

The U.S. approach to leadership of WRC delegations contrasts with most other countries that have the same senior administrators available to negotiate on behalf of their country from one WRC to the next. The consistency in leadership in foreign delegations allows for these individuals to develop personal relationships with their counterparts, which helps in resolving differences or disputes during WRCs. Providing national leadership during the several years of critical preparatory work prior to a WRC is extremely important. The United States' current system does not allow for a continuing leader from one WRC to the next, although it does provide for an ongoing cadre of senior career professional staff drawn from the Department of State, NTIA, the FCC and other agencies to support of the WRC Ambassador. One commenter recommended that the Department of State appoint an interim or a permanent head of delegation for WRCs to undertake oversight of the WRC preparatory process.<sup>138</sup> Yet, given the scope of telecommunications issues involved and the limited organizational steps that can be taken prior to the appointment of the Head of Delegation, NTIA does not believe that this approach would be very useful in practice. Furthermore, the U.S. preparatory process and ultimately the Delegation are built on career government professionals as mentioned above together with private sector participants. These individuals provide tremendous continuity and personal relationships. The present approach to selecting the Head of Delegation does carry some risk that the individual will not be fully prepared to meet the challenges of representing the United States at a WRC. NTIA believes that an appointed Head of Delegation with ambassadorial rank is the right approach for the United States. A well-developed and functioning interagency process and an ambassador that "hits-the-ground-running" have proven to be a successful substitute for a permanent head of delegation. For instance, the last two U.S. Heads of the Delegation worked informally for several months to familiarize themselves with conference issues and other administrations' delegations prior to being formally appointed. This greatly increased their knowledge and effectiveness, familiarizing them with the issues and their foreign counterparts in advance of their appointment.

Some commenters state that the core delegation should be formed early and indicate a desire for private sector involvement in the core delegation. One recommendation was to appoint a private industry representative as a liaison to the core delegation, such as the chair and vice-chair of the FCC WAC.<sup>139</sup> This idea presents legal challenges as the core delegation consists entirely of government employees. NTIA agrees with NASA's comments and encourages State to continue leading the core delegation group, noting that State has begun high-level consultations four months prior to the CPM-2.<sup>140</sup> The work of the core delegation should be done in a more transparent way so that likely WRC participants have input into its functioning. The core delegation should include spokespersons and other federal agencies in

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<sup>137</sup> USITUA Comments, *supra* note 13, at 4, 5.

<sup>138</sup> *Id.* at 3

<sup>139</sup> *Id.*

<sup>140</sup> NASA Comments, *supra* note 12, at 4.

order to provide an opportunity for team building and development of substantive expertise on assigned agenda items.

NTIA notes that the WRC-03 Delegation operated only three months prior to the start of the WRC. This provided insufficient time for many important delegation activities to take place, such as preparing positions and strategies. The Nominated Delegation can be created at any time and it could be used more effectively to bring all relevant points of view to government preparations earlier than waiting for the Nominated Delegation to be accredited. In light of the many activities that must be completed prior to the WRC by the Delegation, along with earlier appointment of the Head of Delegation, NTIA suggests that either the Accredited Delegation be finalized four to six<sup>141</sup> months prior to the WRC or, as an alternative, the Nominated Delegation be granted authority by State to at least start developing U.S. strategies and fallback positions until the Delegation is accredited. Another suggestion from a commenter is to form the Nominated Delegation one month prior to the CPM-2. NTIA agrees with this approach.<sup>142</sup> State however, has indicated that Federal Advisory Committee Act provisions apply to all meetings involving private sector participants prior to the formation of an Accredited Delegation. Documents which must by their nature be private within the delegation - for example, documents spelling out possible fallback positions and strategies - cannot be dealt with in the open. The existing practice of creating factual documents, to which fallbacks and strategies are later added by the Accredited Delegation once foreign views are more fully known, State indicates, has proven effective.

Approving the Accredited Delegation involves a number of steps that typically cannot occur until close to the start of the WRC. In most cases, the accredited delegates have been included in the list of nominated delegates. Therefore, as recommended previously, the Nominated Delegation can begin to accomplish some of the functions of the Accredited Delegation, but not the development of inherently private matters such as fallbacks and strategies. NASA stated that the Delegation accreditation process is not transparent or timely.<sup>143</sup> One comment suggested that the Accredited Delegation be in place no later than approximately four months prior the conference.<sup>144</sup> NTIA agrees with this approach and further suggests four to six months prior to the conference. U.S. WRC delegates have expressed uncertainty about the size, composition and accreditation process of the WRC delegations. State provided guidelines for selecting individuals to serve on WRC delegations and the overall size of the delegation to many potential U.S. delegates prior to WRC-03. NTIA recommends to State that it continue to provide potential WRC delegates a guidance document, including an explanation of the accreditation process, approximately one year before the conference.

The core delegation, under the leadership of State, should continue to identify spokespersons early, so they can develop the technical expertise, public speaking experience, and knowledge-base to effectively manage the issues that the United States is promoting. WRC vice-

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<sup>141</sup> The Ambassador can be appointed at most five months prior to the WRC as the appointment is valid for only about six months.

<sup>142</sup> Winstar Comments, *supra* note 21, at 6.

<sup>143</sup> NASA Comments, *supra* note 12, at 5.

<sup>144</sup> USITUA Comments, *supra* note 13, at 4.

chairs should therefore, make delegation assignments and officially identify spokespersons three months prior to the CPM-2.

Early designation of the Ambassador and the Delegation will provide stability and strong leadership in representing the interests of the United States. The current six-month tenure of the Ambassador does not allow enough time for the Ambassadors to develop sound working relationships with other country representatives or complete the necessary delegation activities for which they are responsible. Further, the effectiveness of the United States Delegation can be enhanced by ensuring that the appointees have a telecommunications background, preferably with ITU experience. These individuals typically already have many contacts and informal relationships that enable them to excel in negotiations with other countries. If possible, a position should be found for the Ambassador even earlier that enables the Ambassador-designate to learn about spectrum management and to establish relationships with the domestic and international spectrum players in government and industry.<sup>145</sup> The CSIS Report examined the appointment of the Ambassador in 2003 and recommended merging the ambassador positions for the WRC and State's Communications and Information Policy (CIP) group into one position, as a political appointee.<sup>146</sup> NTIA believes that it is not feasible for the head of CIP to simultaneously serve as the Head of Delegation due to time constraints and other major responsibilities inherent in this CIP position. The CSIS Report recommended that the President appoint the Ambassador at least one year before the start of the WRC.<sup>147</sup> The early appointment of a long-term ambassador by the President, according to the CSIS Report, would give the United States an effective international presence to achieve its spectrum goals.<sup>148</sup>

The head of the U.S. Delegation with a personal rank of ambassador can be advantageous to the United States. An appointed ambassador carries the necessary prestige and influence to bring the United States Delegation together and represent the United States' interests at the WRC. The United States' negotiating strength is enhanced by the use of an appointed political representative working with career spectrum managers and ITU experts from other countries. The political "clout" available to the appointed political representative can prove invaluable in resolving difficult issues during a WRC.

NTIA believes it is important to have the U.S. WRC Head of Delegation and the Delegation in place earlier than is possible under the current statutory limitation that temporary ambassadors appointed without Senate advice and consent may only serve for six months.<sup>149</sup> NTIA believes that a longer-serving Ambassador and Head of Delegation will ultimately prove to be more effective. This would require the requisite inter-agency coordination, action by the Congress and approval by the President. Based on past experience and the comments received, NTIA believes that it is important to bring the Ambassador on board in some capacity prior to the CPM-2, since administrations meet at the CPM to agree on the technical studies for the WRC. NTIA believes that the Ambassador can use the experience at CPM-2 to gain a necessary

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<sup>145</sup> WRC 2000 Recommendations, *supra* note 7, at 16.

<sup>146</sup> CSIS Report, *supra* note 129, at 21.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> See 22 U.S.C. Section 3942(a)(s)(B)(i).

understanding of all of the issues that affect United States interests, as one commenter suggested.<sup>150</sup>

## **8. Staffing and Budgeting WRC Activities**

### *Background*

The GAO Report noted staffing concerns in NTIA and the federal agencies.<sup>151</sup> In the President's 2006 budget proposals, the Administration has recognized the need for greater resources to maintain the U.S. international spectrum activities. A key part of this package is staffing increases for WRC-related functions. NTIA is planning to provide on-going funding for staff-level outreach activities. The Department of State and NTIA have provided information and communication resources for WRC staff use in Geneva for ITU-R meetings and conferences.

NTIA requested comments regarding the need to provide the Ambassador with an identified operational budget and how to best use representational funds to conduct outreach efforts. NTIA further sought input on what facilities are critical to the functioning of the Delegation and the Ambassador at the conference site.

Recognizing that agencies and companies send representatives to the Delegation to participate in debates, negotiations, and outreach efforts, NTIA requested information on how the U.S. Delegation could support participation in the WRC editorial committee. The editorial committee is a standing committee of the WRC that prepares the final treaty text for the international Radio Regulations. This committee conducts its work in French as the authentic language, together with the other working languages of the Union. The spokespersons and interested government and industry participants should review editorial committee documents and assist the editorial committee representatives in ensuring the correct translations are made based on agreed upon text.

Over the years, there has been concern among WRC participants (federal and non-federal) regarding staffing issues.<sup>152</sup> NTIA sought comments on whether NTIA and the federal agencies have sufficient staff with appropriate expertise to support spectrum management activities in the WRC preparation process.

### *Comments*

Commenters agreed that it is necessary to provide the Ambassador with an operational budget to ensure the Ambassador and the delegation staff can complete their missions. USITUA asserted that an operational budget is necessary and critical for the Ambassador and that the budget should be available immediately upon appointment (if not upon nomination or some other designated capacity) so the Ambassador can effectively perform the duties of the position.<sup>153</sup>

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<sup>150</sup> NASA Comments, *supra* note 12, at 5.

<sup>151</sup> See GAO Report, *supra* note 1, at 25.

<sup>152</sup> *Id.*

<sup>153</sup> USITUA Comments, *supra* note 13, at 5.

USITUA also recommended that Congress earmark monies for WRC accounts for all three agencies (e.g., State, the FCC and NTIA).<sup>154</sup> NASA commented that representational funds should not be the only source of funding for the Ambassador but an operational budget must also be made available within an Office of Spectrum Policy in the Executive Office of the President and/or the Department of State.<sup>155</sup> Winstar agreed that an operational budget is necessary and recommended that representational funds be carefully used in promoting the U.S. position once it has been set however, representational funds should not “exceed the funding provided by the federal government, nor must they be used to place our government officials in a position whereby their independence is open to question.”<sup>156</sup>

In this regard, in order to adequately budget for WRC activities NTIA sought the public’s comment on what facilities are critical to the functioning of the Delegation and Ambassador at the WRC location. According to NASA, meeting rooms (large and small), computer resources and secure facilities are critical resources needed by the Ambassador and the Delegation. For effective coordination during the WRC, NASA also commented that “wireless networks, mobile phones and a delegation website are crucial.”<sup>157</sup> USITUA asserted that facilities comparable to those administered by State at WRC-03 are representative of the requirements of the Delegation and the Ambassador, and should be arranged as far in advance as possible.<sup>158</sup> USITUA also commented that for the United States to be successful at the WRCs, the Ambassador should have a separate meeting area for private meetings. There should also be common delegation facilities to foster better coordination on issues, and government agency staff should be provided with wireless devices (e.g., cell phones and laptops).<sup>159</sup>

Furthermore, USITUA recommended that one government official should be designated and responsible for coordinating the efforts of the United States on the editorial committee. USITUA also added that given the perennial importance of the committee, agencies should seek to hire or train individuals in French and/or Spanish. According to USITUA, “the scarcity of Government employees with linguistic capabilities has been a long-standing weakness of U.S. delegations to ITU treaty conference and should be remedied.”<sup>160</sup> NASA suggested that small interest groups within the U.S. Delegation work closely with “a small number of multi-lingual delegates” to perform the duties of the editorial committee.<sup>161</sup>

WRC participants (federal and non-federal) have expressed concern over staffing issues. USITUA advocated that as a general matter, NTIA and the federal agencies do not have sufficient staff with appropriate expertise to support spectrum management activities in the WRC preparation process.<sup>162</sup> There is not enough training to account for, and replace, retiring expertise, according to USITUA, and because the WRC agenda is diverse and multifaceted, it is

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<sup>154</sup> *Id.*

<sup>155</sup> NASA Comments, *supra* note 12, at 6.

<sup>156</sup> Winstar Comments, *supra* note 21, at 8.

<sup>157</sup> NASA Comments, *supra* note 12, at 6.

<sup>158</sup> USITUA Comments, *supra* note 13, at 5.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 8.

<sup>161</sup> NASA Comments, *supra* note 12, at 5, 6.

<sup>162</sup> USITUA Comments, *supra* note 13, at 8.

difficult to adequately cover some of the issues.<sup>163</sup> NASA suggested that staffing varies from agency to agency and that expertise, more often than numbers, is essential.<sup>164</sup> NASA asserted that NTIA is reasonably staffed, but certainly not to excess.<sup>165</sup> Winstar commented that it would appear the agencies typically have staff with appropriate expertise in the areas in which Winstar is primarily concerned.<sup>166</sup> Winstar recommended an expanded U.S. Government presence when impasses occur or key issues require escalated resources.<sup>167</sup> USITUA commented that “it is critical for the agencies to begin to develop additional staff expertise in the regulatory and procedural aspects of a conference; while there is recognized expertise; it is concentrated in a limited number of staff.”<sup>168</sup> Winstar added that the U.S. Government should consider planning to increase staffing.<sup>169</sup>

### *Conclusions and Recommendations*

To ensure the Ambassador and the delegation staff can complete their missions; it is necessary that the Department of State adequately fund WRC activities. NTIA believes that the federal agencies should budget for and provide representational funds for use in promoting the U.S. positions. NTIA recommends that State should continue to provide adequate resources for WRC activities (staff, office facilities, travel funds for consultations with other administrations, delegation training and representational funds). NTIA recommends that State continue to coordinate with the FCC, NTIA and the federal agencies on developing the budget.

Specific facilities and equipment are critical to the functioning of the Delegation and the Ambassador at the conference site. NTIA agrees with the comments presented above and recommends that State provide the Ambassador and the Delegation with the appropriate facilities and service devices to perform their mission. Facilities similar to those provided at WRCs 2000 and 2003 should serve as the basis for planning. One concern was that the U.S. participants should have the proper communications equipment available to them during these conferences. NTIA will ensure that its spokespersons are provided with cell phones, laptop computers and appropriate hardware (e.g. RLAN card) and software at the WRC and recommends that State, the FCC and other federal agencies fully support their respective WRC delegates.

Representatives from the Delegation should provide support to the editorial committee, as this is one of many obligations of serving on the Delegation. However, NTIA recognizes that delegates with language skills are expected by their sponsors to participate in all activity related to their issues. The hours that the editorial committee works are often long and late, and at times the committee work continues while other work has ceased. Participants in the editorial committee may find themselves, because of their language skills, covering other delegates’ issues while those other delegates are at that time serving in other conference committees. Therefore, the process of coordinating these delegates who have other time commitments becomes very complex. NTIA recommends that State provide a government employee to serve

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<sup>163</sup> *Id.*

<sup>164</sup> NASA Comments, *supra* note 12, at 9.

<sup>165</sup> *Id.*

<sup>166</sup> Winstar Comments, *supra* note 21, at 9.

<sup>167</sup> *Id.*

<sup>168</sup> USITUA Comments, *supra* note 13, at 8.

<sup>169</sup> Winstar Comments, *supra* note 21, at 9.

as both a spokesperson and as the U.S. Delegation coordinator for participation on the editorial committee.

The U.S. Government has a scarcity of employees with linguistic capabilities on U.S. WRC delegations. While complying with all staffing level review processes, NTIA, along with the FCC, State and the federal agencies, should plan for additional staff and hire employees, as appropriate, who are fluent in French, Spanish and other languages used in the editorial committee. The agencies could also train existing employees in conversational French, Spanish and other languages. However, because these delegates need to focus on negotiations and outreach this would not solve the problem of providing U.S. Government personnel with language expertise to assist in the editorial committee. Consistent with all applicable hiring and staffing procedures, the U.S. Government could also hire temporary personnel fluent in one or more of these languages during the period of the CPM and WRC to assist in the editorial committee. Temporary personnel fluent with respect to a conversational language may be of little benefit because ITU technical terminology is unlikely to be known without the person having had previous ITU experience.

The WRC preparation process works best with clearly defined but flexible roles and activities for staff over the duration of the WRC preparation process. With few exceptions full-time government employees must be available for the entire preparatory period in order to effectively serve as issue coordinators and spokespersons. NTIA as well as State, the FCC and other federal agencies should plan to increase staffing, again while complying with all staffing level review processes, in order to commit sufficient resources to the ITU and WRC processes. As one option, NTIA recommends consideration of part-time, limited duration or contract staff for certain functions to supplement full-time government staff. Those functions can include participation in the WRC editorial committee, translation and assistance with bilateral consultations, and direct administrative and technical support to WRC staff.

There is currently only limited government staff with expertise in regulatory and procedural matters which appear in the Radio Regulations and are subject to change by conferences. NTIA recommends that all agencies develop additional staff expertise in the regulatory and procedural aspects of the Radio Regulations as well as the general rules of conferences by identifying qualified individuals and through specific training.

## **9. Training**

### *Background*

The U.S. Delegation to WRC-03 conducted the first delegation training day. This event was designed to bring up to a common threshold of experience for all of the U.S. delegates, many of whom were new to WRCs. The training covered rules of procedure for conduct of WRCs, microphone etiquette, negotiation strategy and customs and courtesies. The training day also served as a “team building” exercise, reviewing all the agenda items and associated U.S. positions, so that all delegates had some level of familiarity. It also provided a first opportunity for the Delegation as a whole to identify itself as a unit.

Prior to WRC-03, NTIA developed preparatory training for federal employees interested in participating in ITU-R or WRC activities. The training provides a fundamental background in the ITU with a focus on the ITU-R as well as regional preparatory bodies and trains individuals to prepare for, and participate in meetings of these groups. NTIA will explore further development and expansion of this program. For many years, NTIA has offered formal spectrum management training for federal government employees and their contractor support. This training includes classes on international aspects of spectrum management and international/United States WRC preparatory processes. State's Foreign Service Institute offers multi-lateral diplomacy and negotiations training, which is open to all U.S. Government employees. NTIA has begun sending their WRC personnel to this training.

NTIA requested comments on the availability of trained and qualified federal government spokespersons and issue coordinators throughout the WRC preparatory process and during the WRC. NTIA requested input on the need for training programs for spokespersons and delegates and preparatory training for general participation in ITU-R study groups. NTIA also requested comments on maintaining a cadre of experienced personnel in the federal government in order for them to assume leadership and spokesperson roles at future WRCs.

### *Comments*

With respect to the question regarding whether trained and qualified government spokespersons are available throughout the WRC preparatory process and during the WRC, NASA noted that they generally are available.<sup>170</sup> However, USITUA asserted that the coordinators and spokespersons are qualified, but are not provided meaningful training to prepare for their responsibilities.<sup>171</sup>

Regarding the need for training programs for U.S. spokesperson, USITUA advocated that training programs, consisting of public speaking and international negotiations, should be mandatory for spokespersons and delegates. USITUA mentioned the usefulness of the U.S. delegation training day exercise and urges its continuance. USITUA also recommended that language training should be available to career WRC staff.<sup>172</sup> NASA commented that orientation and mentorship is helpful for new delegation participants, but experience is the best guide. However, NASA argued that mandatory training for experienced delegates is probably unnecessary.<sup>173</sup>

NASA commented that preparatory training for general participation in ITU-R study groups in support of WRC activities is not necessary because of the difficulties in providing training appropriate to the level of experience of everyone on the Delegation. However, NASA recommended that State publish guidelines/expectations for delegate participation at such meetings and consider publishing web-based training materials for those interested in the process.<sup>174</sup> USITUA noted that preparatory training for general participation in the ITU-R study

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<sup>170</sup> NASA Comments, *supra* note 12, at 7.

<sup>171</sup> USITUA Comments, *supra* note 13, at 6.

<sup>172</sup> *Id.*

<sup>173</sup> NASA Comments, *supra* note 12, at 7.

<sup>174</sup> *Id.*



groups is necessary. USITUA stated that “on the job training is critical to developing the fluency on the issue that many of our foreign counterparts have. Therefore, staff should be sent to study group meetings along with experienced staff to benefit from mentoring and training.”<sup>175</sup>

NTIA also sought public comment on steps that should be taken to maintain experienced government spokespersons and leaders at WRCs. NASA comments that there is a general need for the federal government to retain experienced spectrum management personnel because of the limited number of experienced personnel in this particular field who often switch employers.<sup>176</sup> USITUA commented “that the U.S. Government should find ways to recognize the importance of these WRC roles.”<sup>177</sup>

### *Conclusion and Recommendations*

Retaining a well-trained and educated cadre of WRC spokespersons and issue coordinators is important for the United States to continue to have the success it has had during WRCs. However, training by itself is typically insufficient to account for and replace, retiring expertise. NTIA recommends that federal agencies hire trained and experienced personnel to the maximum extent possible and pursue the available training described above, coupled with on-the-job training in those instances where experienced personnel are not available. On-the-job training is a key component to the success of U.S. preparations for and performance at conferences. NTIA recommends that agencies send new personnel to the ITU, regional and other meetings with experienced personnel to benefit from on-site mentoring and training. This is critical to developing the fluency on issues that many of our foreign counterparts have.

As pointed out in the comments, there are too few experienced spectrum management personnel who can perform the leadership roles necessary to help the U.S. Delegation. Therefore, NTIA recommends agencies consider increasing in-grade levels for WRC staff, quality step increases and other recognition as appropriate. NTIA recognizes the importance of its personnel who are responsible for many technical, operational, procedural and regulatory aspects of ITU-R conference and meeting preparations and will be considering these recommendations.

## **10. WRC Domestic Implementation Process**

### *Background*

The National Table of Frequency Allocations is comprised of the U.S. Government Table of Frequency Allocations and the FCC Table of Frequency Allocations and allows for specific spectrum to be used exclusively by the U.S. Government, exclusively by the private sector only, or on a shared basis.<sup>178</sup> Therefore, any changes adopted by a WRC could directly impact upon spectrum use for the U.S. Government and commercial entities. On behalf of the executive branch agencies, NTIA, through the IRAC process, has overall responsibility to review the WRC

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<sup>175</sup> USITUA Comments, *supra* note 13, at 7.

<sup>176</sup> NASA Comments, *supra* note 12, at 7.

<sup>177</sup> USITUA Comments, *supra* note 13, at 7.

<sup>178</sup> NTIA Manual, *supra* note 48, at ¶ 4.1.2.

Final Acts, determine the effects on the federal agencies, and to decide what provisions should be implemented domestically. NTIA sends its proposals to the FCC recommending revisions to the National Table of Frequency Allocations. The FCC publishes a notice or notices of proposed rulemaking covering the items in the WRC Final Acts. The result of this process is a new national table implementing the agreed government and non-government provisions from the WRC. While either agency can be the first to propose a specific implementation of a WRC outcome, all changes to the allocation table must go through an FCC rulemaking. Therefore, FCC priorities and schedules have served as the process through which all implementation must proceed.

Over the years, the United States has had difficulty implementing domestically, in a timely manner, all WRC decisions. To address this issue effectively, NTIA requested comments on what could be done to improve the implementation process. The GAO Report noted that federal agencies are concerned that WRC allocation decisions of primary interest to the federal government often go without action.<sup>179</sup> NTIA sought comments on how to improve the process to ensure equal treatment of both government and private sector interests. NTIA also requested comments regarding whether the FCC and NTIA should develop a plan and schedule to complete rulemaking for each WRC agenda item.

#### *Comments*

NASA commented that all WRC decisions should be considered by NTIA and the FCC in a timely manner. In the past, WRC decisions that only affected or benefited the federal government were not implemented in a timely manner, NASA stated, sometimes being delayed as long as eight or more years. NASA noted that the process laid out following WRC-2003 will be a major improvement if it is completed as scheduled.<sup>180</sup> According to USITUA, the implementation process has been uneven in the past where implementation of WRC items often languished in the aftermath of the WRCs.<sup>181</sup> However, USITUA commented that significant steps have been taken by NTIA and the FCC to improve this process and commended both agencies for having taken “pro-active steps in establishing a clear and transparent timeline for implementation of WRC-03 decisions and the outstanding ones from prior conferences.”<sup>182</sup>

The GAO Report noted that the federal agencies are concerned that WRC allocation decisions of primary interest to the federal government go without action.<sup>183</sup> NTIA sought the public’s comment on how to improve the process and ensure all interests are treated fairly. NASA commented that the process can be improved by NTIA and FCC working together on the WRC implementation schedule. NASA also noted that Office of Spectrum Policy oversight would ensure timely implementation of results.<sup>184</sup> USITUA stated that there should be no distinction between government and private sector when implementing WRC items are

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<sup>179</sup> See GAO Report, *supra* note 1, at 24.

<sup>180</sup> NASA Comments, *supra* note 12, at 7.

<sup>181</sup> USITUA Comments, *supra* note 13, at 7.

<sup>182</sup> *Id.*

<sup>183</sup> See GAO Report, *supra* note 1, at 24.

<sup>184</sup> NASA Comments, *supra* note 12, at 7.

concerned because industries are dependent on opportunities derived from implementation of both. USITUA also commented that timely implementation of both is critical and that NTIA and the FCC should establish a consensus timeline to eliminate the past problems.<sup>185</sup>

The commenters agreed that the FCC and NTIA should develop a plan and schedule to complete rulemaking for each WRC agenda item. NASA recommended that NTIA and the FCC should jointly develop a plan with a suitable schedule and should complete rulemakings within one year following the conclusion of the WRC for all WRC agenda items.<sup>186</sup> USITUA suggested that a timeline be announced within three to six months of the close of the WRC, with complete implementation within 18-24 months.<sup>187</sup> According to Winstar, the timing for rulemakings depends on the priority given them by NTIA and the FCC and that industry participation at conferences is motivated both by international and domestic considerations with the expectation that domestic rulemaking will take place and will take into account, without being bound by, the results of the conferences.<sup>188</sup> NYS and FACS commented that “the U.S. team should be applauded for its preparation and achievement at the recent WRC-03 and encouraged to advance the public interest by swiftly implementing all of the WRC-03 allocations.”<sup>189</sup> NYS and FACS argued against the FCC promulgating a notice and comment rulemaking for each WRC agenda item because this will further delay WRC implementation and will have “negative consequences for U.S. competitiveness.” However, they added that these rulemakings should be initiated only “where an insufficient record exists or if the allocation impacts an unknown number of potential providers in an undeveloped industry.”<sup>190</sup>

### *Conclusion and Recommendations*

A concerted effort between NTIA and the FCC at senior management levels improved the implementation of the WRC Final Acts. Most items from past conferences have now been completed in FCC rulemakings. NTIA and the FCC have agreed to a joint plan for implementing the WRC-03 Final Acts, in fact, the FCC has already conducted rulemakings on some of the agenda items. With the assistance of the IRAC, NTIA has developed proposals for implementing the WRC-03 Final Acts as they relate to outstanding items, and has forwarded the recommendations for national implementation to the FCC. The FCC, in turn, has adopted and released an omnibus rulemaking implementing the Final Acts of WRC-03.

NTIA will continue to work with the FCC to publish a joint plan and schedule to complete rulemakings for each WRC agenda item within six months of WRC completion. NTIA and the FCC have taken a pro-active step in establishing a clear and transparent timeline for implementation of WRC-03 decisions including outstanding WRC agenda items from prior conferences. NTIA recommends that this approach be formalized.

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<sup>185</sup> USITUA Comments, *supra* note 13, at 7.

<sup>186</sup> NASA Comments, *supra* note 12, at 8.

<sup>187</sup> USITUA Comments, *supra* note 13, at 7.

<sup>188</sup> Winstar Comments, *supra* note 21, at 8.

<sup>189</sup> NYS and FACS Comments, *supra* note 11, at 1.

<sup>190</sup> *Id.* at 5.

## 11. General Areas/Other WRC Issues

### *Background*

NTIA, working with State and the FCC, has already addressed a number of the past deficiencies that could place United States' interests at risk at WRCs. For example, the United States developed positions on key WRC issues in preparation for WRC-03, with no outstanding issues. However, in retrospect, the United States could have benefited further by developing many of these positions earlier in the preparatory process. CITEL supported over 90 percent of United States proposals prior to the WRC. The United States successfully covered the issues at these WRCs with the appropriate experts. NTIA, working with State and the FCC, also identified these experts early in the preparations. NTIA sought comments on the effectiveness of U.S. preparations for WRCs.

Until recently, each WRC has proposed longer and more involved agendas than the preceding WRC. For WRC-03, the agenda contained 48 identified items. These items touched on almost all radio services and frequency bands. Bringing these disparate issues to resolution requires a large number of experienced government experts. For instance, WRC agendas include not only modifications to the regulations, but studies and other items that are unnecessary for treatment by a treaty conference. The cumulative effect has resulted in increased costs to the U.S. Government, the private sector, the ITU, and other member states. The longer agendas have also complicated the U.S. preparatory process and increased the timeframe to implement WRC outcomes.

The proposals for the next conference agenda are often the last to be developed within the U.S. preparatory process. At WRC-2000, the United States did not submit its proposals for future conferences until after the conference started. CITEL also considers future agenda items only at its final preparatory meeting. To better understand how to reduce the number of unnecessary WRC agenda items, NTIA requested comments on the frequency of WRCs and limiting WRC agendas.

The functions of WRCs within the ITU are directed by the ITU's Plenipotentiary Conferences that are held every four years. ITU Plenipotentiary Conferences establish overall ITU policies and funding. Proposals were submitted to the 2002 International Telecommunication Union Plenipotentiary Conference (held in Marrakesh, Morocco) by a number of administrations proposing significant changes in the organizational structure of the ITU, including changes in the ITU treaty development process that could affect the role and functions of WRC's. The decision reached at Marrakesh relative to these proposals was to task the ITU Council to develop specific proposals for consideration at the 2006 ITU Plenipotentiary Conference.

### *Comments*

WRC-03 broke all past precedents in terms of the scope of the agenda. Its 48 separate agenda items represented roughly a doubling of the agenda's size from the WRC-2000. USITUA suggested that the WRCs should occur often enough to meet the needs of both U.S.

Government and industry, while allowing sufficient time to perform the necessary technical work to support the agenda items.<sup>191</sup> Winstar suggested that WRCs should occur at regular intervals with limited agendas and that the duration of the conference should be no more than three weeks.<sup>192</sup> NASA stated that the period between successive WRCs should be no less than three years and no more than five years.<sup>193</sup> NASA argued that “[t]his ensures that there may be sufficient time to perform the necessary technical work to support the agenda items while at the same time keeping the WRCs timely and relevant.”<sup>194</sup> According to NASA, “WRC Agendas should be limited to those items that have a realistic chance of resolution by the next conference.”<sup>195</sup>

### *Conclusions and Recommendations*

NTIA believes that the United States should work in the WRC preparation process to ensure that: a) the period between successive WRCs is between three to four years, allowing sufficient time to perform the necessary technical work to support the agenda items, b) the conference should be no more than four weeks in duration as a goal and c) WRC agendas should be limited to those items that have a realistic chance of resolution by the next conference. The United States will also need to participate actively in policy-making activities of the ITU directed toward improving the ITU treaty development process, especially those activities affecting the role and functions of future WRCs.

The United States should place more emphasis on preparation of proposals and delegation positions regarding future conference agenda items to improve our preparatory process. The three lead agencies in WRC preparations, State, the FCC and NTIA, should develop a more consistent approach regarding United States input for future WRC agenda items and follow-on support during the current WRC cycle. For example, if the United States contributes a proposal for a future agenda item, the three lead agencies should ensure that the United States position supports that agenda item throughout the following WRC cycle. These agencies should institute a policy to ensure that future conference agendas are an integral part of the preparatory process and associated proposals are finalized to the extent possible in the same time frame as other United States proposals, recognizing that proposals for future WRC agendas depend upon what the current WRC accomplishes. That often is not clear until the WRC is well under way, and of course can not be known prior to the WRC’s commencement. Clear guidelines must be set for what kind, number and type of agenda items are to be considered for proposals. Guidelines that the United States has already presented in the ITU are:

- a) an approach other than WRC is the best way to address issues not of a worldwide character;
- b) limit WRC’s scope to allocations, allotments or assignments of a worldwide character and regulatory aspects necessary to implement an allocation, allotment or assignment;

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<sup>191</sup> USITUA Comments, *supra* note 13, at 8.

<sup>192</sup> Winstar Comments, *supra* note 21, at 9.

<sup>193</sup> NASA Comments, *supra* note 12, at 9.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

- c) WRCs should not deal with issues which either have not yet been studied or the studies have not yet reached the maturity of requiring an allocation, allotment or assignment by the time of the WRC; and
- d) agenda items not disposed of during the course of two consecutive WRCs should not be addressed by the following WRC.<sup>196</sup>

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<sup>196</sup> International Telecommunication Union, Council Geneva - 2003 Session - (5 - 16 May), Document C03/38-E, 21 April 2003, United States of America, Draft Resolution [USA-1], Improving the Effectiveness of World Radiocommunication Conferences.

## Summary

NTIA believes that the results of past WRCs reflect that while the United States is able to work quite well in the ITU WRC environment to protect and promote its interests, the U.S. WRC preparatory process should continually be improved to keep up with the changing international environment. The United States was successful at these conferences in a large part due to the involvement of the federal agencies and the private sector and the oversight of the technical and proposal preparation processes by State, the FCC, and NTIA. Before WRC-03, NTIA actively sought the involvement of a number of federal agencies that had never before participated and sought for the first time to identify agency representatives as issue coordinators throughout the preparatory process.

The U.S. Government should regularly review its WRC preparation process to ensure that it remains current with the evolving spectrum requirements and technologies and the international negotiating environment. In learning from past WRCs and by synthesizing best practices, NTIA recommends that improvements be made in several key areas of WRC preparation, including:

**Senior-Level Engagement.** As demonstrated in preparing for WRC-03, the resolution of difficult issues and the ultimate success at the WRC can be better achieved through greater engagement of agency leadership. Senior participation and policy direction at early points could greatly facilitate issue resolution. Earlier resolution means early preparation and an earlier opportunity to convey U.S. views. The Coordinator for Communications and Information Policy at the Department of State, the NTIA Assistant Secretary for Communications and Information and the FCC Chairman have continued to improve their interagency communications, taking a more forward-looking approach to accommodate advances in technology. This engagement will be carried into the WRC preparatory processes for WRC-07.

**Cooperation and Coordination of Federal and Non-Federal Preparations.** NTIA believes that while the federal and non-federal preparatory processes are currently working well, State, NTIA and the FCC should continue to seek opportunities for early and ongoing dialog.

**International Consultations and Communication.** State, the FCC and NTIA have actively been pursuing ways to better coordinate to improve our international consultation efforts as we prepare for international fora such as WRCs. In many instances, European or Asian-Pacific, Arab or African nations come to the WRC with unified positions. The United States' ability to reach consensus early with other countries in the Americas on important issues helps ensure that U.S. policy views will prevail in the WRC.

Consultations with other countries at all levels need to be a constant activity throughout the WRC cycle in order for the United States to be successful in conveying its views to others. We are already well on the way to meeting this goal for the next WRC in 2007.

**Delegation Preparation.** NTIA believes that the United States can take steps to better prepare our delegations through creating delegations, selecting spokespersons and issue coordinators, and appointing a highly qualified Ambassador as early as possible.

**Implementation.** As noted earlier, NTIA and the FCC are working hard to ensure that implementation of the WRC Final Acts are completed in a timely manner. Early implementation of any WRC results provides certainty to industry facilitates planning activities and stimulates investment and job creation. Establishing a clear implementation plan and moving quickly to carry it forward fulfills these goals.

The radio spectrum is vital both to our national and economic security. NTIA looks forward to working in continued partnership with Congress to develop the best possible process for preparing for United States participation in WRCs.



**Appendix A**  
**Federal Register Notice**

NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0700; phone (206)526-6150; fax (206)526-6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907)586-7221; fax (907)586-7249; and,

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; phone (562)980-4001; fax (562)980-4018.

**FOR FURTHER INFORMATION CONTACT:**

Jennifer Jefferies or Ruth Johnson, (301)713-2289.

**SUPPLEMENTARY INFORMATION:** On June 26, 2003, notice was published in the *Federal Register* (68 FR 38011) that a request for a photography permit to take several species of non-listed marine mammals for purposes of commercial/ educational photography had been submitted by the above-named individual. A correction to the first Notice was published on July 9, 2003 (68 FR 40911) in order to correct an erroneous statement as stated in the first Notice. The original Notice stated that NMFS was unable to issue photography permits for depleted marine mammal species but the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) does not prohibit these activities for depleted species. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The purpose of the proposed project is to film several species of non-listed marine mammals for an ongoing project that is tentatively titled "Death of an Ecosystem?". While this project has been ongoing for several years, Mr. McLaughlin desires to film from a closer vantage point, i.e. within 100 yards of an individual animal. The closeness of filming would be considered Level B harassment and therefore would require a permit under the MMPA. The photographers intend to attempt to document marine mammal movement and aggregation under varying conditions including the presence of boat traffic. This will be done using a fusion of passive acoustic recording equipment with different filming equipment, including still and video, as well as different filming platforms, including elevated filming platforms. The action area will include waters off the coasts of California, Oregon, Washington and Alaska. The resulting film footage will be dispensed in part

for print and broadcast media, to researchers as well as for educational purposes. The Permit will expire on October 31, 2005.

Dated: October 17, 2003.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03-26800 Filed 10-22-03; 8:45 am]

BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE**

**National Telecommunications and Information Administration**

[Docket No. 031016259-3259-01]

**Request for Comment on Improvements to the U.S. Preparation Process for World Radiocommunication Conferences**

**AGENCY:** National Telecommunications and Information Administration.

**ACTION:** Notice, Request for Comments.

**SUMMARY:** The General Accounting Office (GAO) in *Telecommunications: Better Coordination and Enhanced Accountability Needed to Improve Spectrum Management* (GAO-02-096), recommends that the State Department, Federal Communications Commission (FCC) and the National Telecommunications and Information Administration (NTIA) "jointly review the adequacy of the preparation process following the 2003 World Radiocommunication Conference (WRC) and develop recommendations for improvements."<sup>1</sup> Since the conclusion of the 2003 WRC, NTIA has held meetings with the FCC and the State Department to discuss GAO's recommendations. NTIA initiated staff review and Federal agency review of its own internal WRC preparatory process, including the Radio Conference Subcommittee (RCS) of the Interdepartment Radio Advisory Committee (IRAC). Similarly, the FCC initiated a review of its internal processes used to prepare for the 2003 WRC and assessed whether the process could be improved.<sup>2</sup> NTIA is currently conducting an overall review of the entire conference preparatory process and how the current process can be

<sup>1</sup> See U.S. General Accounting Office, *Telecommunications—Better Coordination and Enhanced Accountability Needed to Improve Spectrum Management*, GAO-02-906 at pg. 35 (September 30, 2002).

<sup>2</sup> See Public Forum to Assess FCC's Preparatory Process for World Radiocommunication Conferences, *Public Notice*, DA-03-02858 (rel. September 10, 2003).

improved or modified. By this notice and request for comments, NTIA is soliciting the views of the industry and the public on these issues.

**DATES:** Comments must be received no later than November 24, 2003.

**ADDRESSES:** The National Telecommunications and Information Administration invites the public to submit written comments in paper or electronic form. Comments may be mailed to Darlene A. Drazenovich, International Spectrum Plans and Policy Division, National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4076, 1401 Constitution Avenue, NW., Washington, DC 20230 or e-mailed to [ddrazenovich@ntia.doc.gov](mailto:ddrazenovich@ntia.doc.gov). Paper submissions should include an electronic version on diskette in ASCII, WordPerfect (please specify version) or Microsoft Word (please specify version) format.

**FOR FURTHER INFORMATION CONTACT:** Darlene A. Drazenovich, (202) 482-3460, [ddrazenovich@ntia.doc.gov](mailto:ddrazenovich@ntia.doc.gov), or James Vorhies, (202) 482-3590, [jvorhies@ntia.doc.gov](mailto:jvorhies@ntia.doc.gov), International Spectrum Plans and Policy Division, Office of Spectrum Management, NTIA.

**SUPPLEMENTARY INFORMATION:**

**Background**

The International Telecommunication Union (ITU) is an intergovernmental organization within the United Nations that specializes in the field of telecommunications. The ITU brings together international governments and private industries to coordinate the establishment and operation of global telecommunication networks and services. Every three to four years, the ITU convenes World Radiocommunication Conferences (WRCs)—an international forum for world agreement, to review and revise the International Radio Regulations. The Radio Regulations constitute an international treaty on radiocommunications covering the use of the radio-frequency spectrum by radiocommunication services. These conferences set the world stage for future technological development by allocating radio frequency spectrum to radio services, establishing spectrum use coordination methods, setting international rules for radio equipment operation, and identifying spectrum for specific uses such as Third Generation (3G) wireless systems.

The United States is a key player in this important global endeavor because it brings new and innovative technologies to the world community while balancing global security, national

defense, and the public interest. NTIA, with the support of the Federal agencies, is partners with the State Department and the FCC in preparing for and participating in these conferences. Over the last several WRC cycles, the United States has made important strides in preparation for these critical intergovernmental meetings. NTIA believes that various aspects of the United States' preparation process to develop and promote U.S. objectives in upcoming conferences can be further improved upon.

The United States preparatory process for World Radiocommunication Conferences follows two related paths—technical and proposal/position preparation. The technical preparation are conducted in the International Telecommunications Union Radiocommunications Sector (ITU-R) Study Group process and includes Federal and Non-Federal Government participation. The U.S. International Telecommunication Advisory Committee (ITAC) is the mechanism by which the U.S. prepares technical studies for WRCs. The General Services Administration chartered this committee to the U.S. State Department as an advisory committee under the Federal Advisory Committee Act (FACA)<sup>3</sup>. The ITAC-R National Committee (NC) assists the U.S. Government in technical preparations for international meetings and negotiations. Under this advisory committee, the public is afforded the opportunity to participate actively in government decision-making activities. With respect to technical preparations for WRCs, the State Department uses the ITAC to develop technical study inputs to the ITU-R study groups and the CPM to form the technical, operational and regulatory basis for WRC decisions, but does not employ the ITAC to develop preliminary views or proposals directly related to WRCs.

The Federal and non-Federal WRC positions and proposal preparation processes are independent. The Federal preparation process includes NTIA, which represents the views of the administration. NTIA is the President's principal adviser on telecommunications and information policy and manages the Federal Government's use of radio spectrum.<sup>4</sup> The Radio Conference Subcommittee (RCS) of NTIA's Interdepartment Advisory Committee (IRAC) meets monthly to discuss and approve Federal

agency views, positions and proposals, on WRC issues.

The Non-Federal Preparation is performed by the FCC. The FCC, an independent agency established by the Communications Act of 1934, manages the use of radio spectrum by state and local governments and the private sector. The FCC, as an independent agency, represents the views of its constituents and receives their input on WRC views, positions, and proposals.

#### Questions for Public Comment

To assist in the assessment, NTIA seeks public comment on any issue of fact, law, or policy that may inform the agency about improvements needed in the WRC preparatory process. Specific comments are requested on the questions below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comments may be submitted. Please provide copies of any studies, research and other empirical data referenced in the comments.

##### 1. Federal Government Preparation Process

A. How should NTIA as the President's advisor seek the views and inputs of the non-Federal entities?

B. How can NTIA better educate the commercial sector on the Federal agencies' radiocommunication requirements, and related policies and decisions that affect U.S. conference proposals?

##### 2. WRC Advisory Committee (WAC) Preparation Process

A. The WAC is part of the FCC's WRC preparation process. How can the Federal agencies best participate in the WAC?

##### 3. FCC/NTIA Proposal Coordination Process

A. Should the Federal and non-Federal advisory processes remain independent? Why or why not?

B. Federal views and proposals sent to the FCC represent NTIA's review and modification of RCS inputs and thus the Administration's output, while the FCC sends WAC views and proposals directly to NTIA for consideration without bureau review. Would it improve the process to take a similar approach on both sides (circulation of RCS and WAC inputs, or circulation of NTIA and FCC outputs)?

C. Please specify how communications/coordination between the FCC processes and the Executive Branch processes under the purview of NTIA can be improved? Include in your

discussion such topics as involvement of senior agency management, early agreements on WRC positions, NTIA-FCC reconciliation process and timeframes.

D. What steps can be taken to resolve difficult issues? Should timelines be developed in order to identify these issues early in the process?

##### 4. Study Group/National Committee Process Related to WRC Agenda Items

A. Should the U.S. National Committee set objectives and policy regarding WRC studies?

B. Is closer coordination among various study groups required? If so, why and how can this be accomplished?

C. The U.S. Study Group consists of government and non-government participants who prepare for ITU meetings. Should the U.S. Study Group process be guided to align with U.S. WRC goals and objectives? If so why, and by what means?

D. Should a Federal government/non-government position on agenda items and supporting information/studies to pursue U.S. positions be developed, approved and disseminated?

E. To ensure success of U.S. objectives for WRC agenda items, technical studies must begin early in the process. Is it necessary to energize an agenda item and its associated studies by a certain point in the preparation process if no activity has occurred? If so, how can this be accomplished (e.g., what mechanisms and by what point in time)?

##### 5. Forming the WRC Delegation

A. Is there a lack of continuity in leadership between WRC conferences? If so, how can this be better managed?

B. When in the preparation process should the core delegation group, vice-chairs, and principals be formed to begin work? How can these groups be better used to improve the effectiveness and efficiency of the United States' WRC agenda?

C. Agencies, companies, and organizations nominate representatives to be on the U.S. WRC delegation. Is the nominated delegation formed early enough in the process to develop and approve final positions in a timely manner? If not, how can this process be improved?

D. Is the accredited delegation formed early enough to develop and approve U.S. positions, strategy, and fallback positions? If not, how can this be improved?

E. At what point in the preparation process should delegation assignments be made and spokespersons identified?

<sup>3</sup> See 5 U.S.C. app.

<sup>4</sup> 47 U.S.C. § 902 (2000).

F. How could the appointment and role of the U.S. Ambassador be improved?

G. Is the United States' negotiating strength improved or hindered by the use of an appointed political representative working with career spectrum managers and ITU experts from other countries?

H. Assuming the continued appointment of a WRC ambassador, at what point does the Ambassador's appointment need to be effective?

I. During conference preparatory meetings, administrations meet to agree on the final report of studies, which is used as the technical basis at a WRC. Is it important to bring the Ambassador on board in some capacity prior to the conference preparatory meeting? If so, how can this be accomplished?

#### 6. Budgeting WRC Activities

A. Funding for the WRC Ambassador has been an ongoing concern. To ensure the Ambassador and the delegation staff are able to complete their missions, is it necessary to provide the Ambassador with an operational budget? If so, how can representational funds best be used to conduct outreach efforts?

B. What facilities are critical to the functioning of the delegation and the Ambassador at the conference site?

C. Recognizing that agencies and companies send representatives to the delegation to participate in debates, negotiations, and outreach efforts, how should support be provided to cover the Editorial Committee of each WRC?

#### 7. Outreach and Consultations With Other Countries

A. Are consultations with other administrations needed? If so, at what point in the process should they begin?

B. Is it important to work with other countries outside of the ITU study groups and the conference preparatory meeting? If so, why and how can this be improved?

C. Should the Country Contact/Outreach program that is developed and utilized at a conference be maintained between conferences? If so, how can this be accomplished? Who should lead this effort? What role can the private sector play?

D. Should WRC outreach activities be integrated with other international activities of the State Department, NTIA and FCC? If so, how?

E. How effective were the Delegation Consultations prior to WRC-03? Were they started in a timely manner?

#### 8. Training

A. Are trained and qualified Federal Government Spokespersons and issue

coordinators available throughout the WRC preparatory process and especially at the Conference?

B. Are training programs needed for spokespersons and delegates? If so, what should they consist of?

C. Is preparatory training needed for general participation in ITU-R Study Groups in support of WRC activities? If so, what should it consist of?

D. What steps should be taken to maintain a cadre of experienced personnel in the Federal government in order for them to assume leadership and spokesperson roles at future WRCs?

#### 9. WRC Domestic Implementation Process

A. In the past, the United States has been faced with challenges regarding the implementation of WRC decisions. What can be done to improve this process?

B. The GAO report noted that Federal agencies are concerned that WRC allocation decisions of primary interest to the Federal government go without action, how can the process be improved to ensure equal treatment of both government and private sector interests?

C. Should FCC/NTIA develop a plan and schedule to complete rulemaking for each WRC agenda item? If so, within what timeframe of WRC completion should the plan be executed?

#### General Areas

A. In broad terms, what goals should the United States have for WRCs? How should these goals be established?

B. How effective has the United States been in the WRC process?

C. What have been the benefits and costs of regional preparation for WRCs?

D. How often should WRCs occur and what, if any, limitations should the U.S. support regarding WRC agendas.

E. Over the years, there has been concern among WRC participants (government and non-government) regarding staffing issues. Do NTIA and the Federal agencies have sufficient staff with appropriate expertise to support spectrum management activities in the WRC preparation process?

Dated: October 20, 2003.

**Kathy Smith,**

*Chief Counsel,*

[FR Doc. 03-26789 Filed 10-22-03; 8:45 am]

**BILLING CODE 3510-60-P**

## DEPARTMENT OF DEFENSE

### Uniformed Services University of the Health Sciences

#### Sunshine Act Meeting

##### AGENCY HOLDING THE MEETING:

Uniformed Services University of the Health Sciences, DoD.

**TIME AND DATE:** 8 a.m. to 4 p.m., November 4, 2003.

**PLACE:** Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814-4799.

**STATUS:** Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

##### MATTERS TO BE CONSIDERED:

8 a.m. Meeting—Board of Regents

(1) Approval of Minutes—August 4, 2003

(2) Faculty Matters

(3) Departmental Reports

(4) Financial Report

(5) Report—President, USUHS

(6) Report—Dean, School of Medicine

(7) Report—Dean, Graduate School of Nursing

(8) Comments—Chairman, Board of Regents

(9) New Business

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Mannix, Executive Secretary, Board of Regents, (301) 295-3981.

Dated: October 10, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer Department of Defense.*

[FR Doc. 03-26849 Filed 10-21-03; 10:34 am]

**BILLING CODE 5001-08-M**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 24, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington,

## **Appendix B**

### **Comments Received**

Comments were received from:

- National Aeronautics and Space Administration
- New York Satellite Industries, LLC and Final Analysis Communications Services, Inc.
- United States International Telecommunication Union Association
- Winstar Communications, LLC

Copies of the comments are available at

<http://www.ntia.doc.gov/ntiahome/frnotices/2003/wrcrfc/index.html>