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COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE
EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Report regarding the outcome of the Review of the Scope of Universal Service in
accordance with Article 15(2) of Directive 2002/22/EC**

(Text with EEA relevance)

1. BACKGROUND AND PURPOSE OF THE COMMUNICATION

On 25 May 2005, the Commission published a Communication *On the Review of the Scope of Universal Service*, accompanied by a Commission Staff Working Paper.¹ This first periodic review under Article 15 of the Universal Service Directive² examined whether the scope of universal service should be maintained or changed in particular to include mobile or broadband communications. The Commission invited public comment on its analysis and preliminary conclusions, as well as on a number of longer-term questions designed to encourage a forward-looking policy discussion that can feed into the general review of the regulatory framework for electronic communications in 2006.

In accordance with Article 15(2) of the Universal Service Directive, this Communication provides a report to the European Parliament and the Council on the Commission's review, taking into account the results of the public consultation.

2. SUMMARY OF THE COMMISSION'S ANALYSIS AND INITIAL POSITION

The Communication of May 2005 recalled the scope of universal service as currently defined³, and the criteria for its review as set out in the Universal Service Directive⁴. In particular, it recalled that, in *eCommunications*, universal service is a safety net for those whose financial resources or geographical location do not allow them to access the basic services that are already available to the great majority of citizens.

The Communication concluded that:

- The competitive provision of mobile communications had resulted in consumers already having widespread affordable access to mobile communications, such that the conditions for including mobile communications within the scope of universal service were not fulfilled.
- In the case of broadband internet access, current level of take-up does not meet the criterion of use of the service by a “majority of consumers” and so the conditions for including broadband services within the scope of universal service were not fulfilled.

The Communication also raised a number of long term issues:

- Should universal service separate access from services and address only access to the communications infrastructure and not to the telephone service?

¹ COM (2005) 203 and SEC (2005) 660 respectively. See: http://europa.eu.int/information_society/policy/ecomms/info_centre/documentation/public_consult/index_en.htm

² EP and Council Directive 2002/22/EC on universal service and users rights relating to electronic communications networks and services, OJ L108, 24.4.2002, p. 51-77.

³ The current scope consists of: (1) a connection to the public telephone network at a fixed location supporting voice and functional access to the Internet, and (2) access to publicly available telephone services.

⁴ See Recital 25 and Annex V. The review must examine social, economic and technological developments in order to identify and analyse services available to and used by the majority of consumers, with a consequent risk of social exclusion for those who cannot afford them.

- Should universal service address access at any location?
- Is it still appropriate to include provisions on public payphones within the scope of universal service?
- For how long will there be a need to keep directories and directory enquiry services within the scope of universal service?
- Should special measures for users with disabilities be further harmonised at EU level in the context of universal service provision?
- Should universal service funding from general taxation be an objective?

3. CONSULTATION OF INTERESTED PARTIES

3.1. Overview of responses received

The public consultation was launched by posting the Communication and the associated Commission Staff Working Paper on the Commission's websites, with a deadline of 15 July 2005 for contributions to be sent by e-mail.

76 contributions were received from a wide range of stakeholders in e-communications including governments, regulatory authorities, non-governmental organisations (in particular representing consumer and user interests as well as people with special needs), private citizens, operators, service providers, manufacturers and other businesses and organisations. Geographically the contributions represented 16 out of 25 Member States while over 40% of them came from three major countries.⁵ Several comments focused solely on the long-term questions.

There was a broad consensus in favour of the Communication's assessment and conclusions whilst views on the long-term issues were differing. The majority of the contributors emphasised that the ever increasing use of mobile and broadband communications owes both to the competitive policies in the EU and the business models and technological strategies of the industry. Mandating certain technologies in the changing technological landscape was often regarded as troublesome. Many were concerned that any extension of the scope of universal service and its financing would deter competition, hinder investments and stifle innovation.

On the other hand, several consumer as well as other organisations considered that the review criteria or the Commission's assessment were too restrictive or lacking ambition, and called for extending the scope to mobile and/or broadband services. However, consumer organisations specialised in e-communications supported the Communication's conclusions.

A few contributors brought up aspects that are not addressed in this review such as concerns on quality of service, differential implementation in the EU and international roaming. Some

⁵ UK 16, Germany 9, France 8, Spain, 5, Portugal 4, Austria 3, Belgium 3; Czech Republic, Greece, Finland, Italy, Ireland, Lithuania, the Netherlands, Norway, Romania, Slovakia and Slovenia - 1 or 2 each; European or international associations – 14, available at: http://europa.eu.int/information_society/policy/ecomms/info_centre/documentation/public_consult/universal_service/index_en.htm.

comments also related to other user rights and interests in communications such as access to emergency services (that is covered by a specific provision in the Directive). These issues are outside the current review but the contributions will provide input for the policy debate in the context of the general regulatory review in 2006.

3.2. Mobile Communications

The Commission's preliminary conclusion on mobile communications was that *the conditions for including mobile communications within the scope of universal service were not fulfilled*.

There was a general agreement on the Communication's assessment and conclusion: over 70% of the contributors were in support including all the national governments and authorities and the industry. Some of these respondents were of the opinion that inclusion of mobile services within the scope would be premature but that the development should be re-examined in the forthcoming general review.

Several contributors pointed out that although the second generation (2G) mobile networks cover from 98 to 100% of the population in most Member States, geographic coverage can be still an issue in some remote areas. By the same token, the regulatory authorities saw that it would be disproportionately expensive to require 100% coverage from the operators and noted that there is a range of initiatives to achieve full coverage such as financial support (outside the universal service regime) to roll out of infrastructure or the encouragement of infrastructure sharing.

The country-specific data and socio-economic analysis by the national regulatory authorities supported the view that consumers have affordable access to 2G mobile services. The mobile operators emphasised that they provide services to all consumer segments through a wide range of service packages that offer both post-paid and pre-paid tariff options. The latter was regarded as having successfully extended the provision of telephony services in Europe especially to the lower income groups. The highly competitive retail market was seen as ensuring that the mobile coverage continues to progress further as well as to lower the prices.

Many consumer and other organisations criticised the review criteria and the Commission's approach for being restrictive and called for extending the scope to mobile services. Some called for deeper analysis of the social elements and affordability issues. It was argued that pre-paid cards tend to be more expensive than post-paid subscriptions and that in general, the cost of mobile communications is not affordable for lower income consumers.⁶ The organisations representing disabled users argued that extension would be necessary because many disabled persons have serious problems in the access and use of mobile services.

3.3. Broadband Internet Access

The Commission's preliminary conclusion on broadband internet access was that only a small, although rapidly growing, minority of European consumers currently make use of these services and that the actual take-up per head of population does not meet the criterion of use of the service by a "majority of consumers".⁷ Therefore, the conditions for including

⁶ See Section 5.2 of the Impact Assessment Report

⁷ 11.5% of the EU population had a fixed broadband connection in October 2005. The increase from 6.5% in mid-2004 (as reported in the Communication in May 2005) does not justify change in the Commission's analysis.

broadband services within the scope of universal service were not fulfilled. The Commission will continue close monitoring of this issue in preparation for the next review of the universal service Directive. This does not prevent Member States from supporting the rollout of broadband infrastructures in conformity with the applicable state aid rules.

The public consultation resulted in broad support for the Commission's assessment and conclusion on broadband as 80% of the respondents including all national governments and authorities as well as the industry were in agreement. Some regulatory authorities reported on recently-conducted national regulatory reviews which supported the analysis.

It was noted that satellite broadband services are available and that there is a range of local, regional and national initiatives which are extending broadband coverage, sometimes using fixed wireless technologies. Some called for support for provision of broadband service in areas where commercial provision could not be relied upon for the time being.

The industry and users emphasised that broadband is at a relatively early phase of adoption in the market, in which competition is driving penetration and lowering prices for consumers. At this stage it would be difficult to assess whether market failures will persist. Mandating broadband access would entail an unreasonable level of cost or cross-subsidies between different customer groups or services and would risk being overtaken by technological advances, not least in data rates. In addition, charges for access are increasingly bundled with content, making market interventions more problematic. Some considered that the costs of universal service for broadband would create a significant burden to several new Member States where fixed broadband infrastructure is less advanced.

Several contributions from consumer associations considered that broadband had become necessary for normal participation to the society and should be included within universal service. Some thought that low penetration rates were not a reason to exclude regulatory intervention if the potential benefits outweighed potential costs to consumers. A few respondents argued that because it takes some years for regulatory changes to be nationally implemented, this review should be proactive by extending the scope as it could encourage a higher broadband take up. A regional public authority saw that inclusion of broadband would be necessary to guarantee equal access to all and help to meet the region's Lisbon objectives.

3.4. Longer-term questions

3.4.1. Overview

Stakeholders agreed broadly that the issues raised warrant policy debate on how the universal service provision should evolve in the converging and competitive communications environment, whilst the views on the future direction ranged from "universal service should be abolished" to "universal service provision must be strengthened". The emphases were also varied in different Member States depending on the legal traditions and market realities. Some responses called for increased regulatory flexibility to better reflect national or local/regional conditions in the enlarged Union. Many underlined that the discussion has limitations at this stage, as the implications of technological developments, especially internet protocol (IP) based communications, are not known. A few contributors argued that the review is premature given the limited experience with the implementation of the current rules.

3.4.2. Should universal service address only access to the communications infrastructure and not access to the telephone service

Several stakeholders, such as regulators and industry representatives, considered that there may be a case for separating the access to infrastructure from the service provision especially given the move towards next generation networks and services environment, in which the consumer can choose between different suppliers for both access and services (that is already the case in voice telephony over IP). Effective competition should ensure availability and affordability while public intervention should ensure technologically neutral regulation fostering competition.

Most consumer and user representatives did not see that access to infrastructure alone would be sufficient to secure essential services to more vulnerable consumers. However, consumer groups also argued that universal service should guarantee all citizens a technologically neutral “real equality of access” to communications network as broadband would potentially deliver flexible services (voice, text, video and relay services) that could also help to meet the requirements of those with special needs.

It was also argued that in the short-term, separating access from services might be not be practical whilst the access regimes are still in the process of being established in the EU and incumbents often retain market power at retail level. There was also some concern amongst universal service providers about creating complex regulatory and contractual arrangements if the access and service provisions were to be separated.

3.4.3. Should universal service address access at any location

The responses indicate that this question was interpreted in different ways. Some saw that this requirement is already being partly met, given the current flexibility of the Directive allowing universal service to be supplied by mobile/wireless service provider (“at a fixed location”). A few respondents considered that only mobile technology could deliver “access at any location” and saw a contradiction with the position taken on mobile communications. However, it was commonly pointed out that there are many existing (and expected) access technologies that can deliver “access at any location” in varying prices. Many stakeholders therefore considered that it would be worth exploring possibilities to allow a flexible delivery of universal service by any means (that could be cheaper than a fixed terminal at fixed location). However, a number of issues should be considered in this context such as quality of service and access to emergency services.

The industry argued in general that the market already provides ‘mobility’ or ‘internet mobility’/nomadic communications services and that it should not be an area for which universal service obligations are needed. It would require considerable investments in networks to ensure quality of service “at any location”.

3.4.4. Is it still appropriate to include provisions on public payphones within the scope of universal service

Given the near ubiquity of mobile phones, several contributors considered that a reduction in the number of payphones would be reasonable and they could be removed from the scope. However, many saw that that demand for payphones may persist in certain areas or circumstances, and that they were valued by the most vulnerable members of society in particular.

Several contributors argued that there could be a case to improve or upgrade the payphone for example as an internet access point or adding multi-functional facilities that could provide for the disabled, too. It was also suggested that in areas where payphones are removed, alternatives could be examined such as emergency contact points that would be under the responsibility of public authorities.

3.4.5. For how long will there be a need to keep directories and directory enquiry services within the scope of universal service

Many responses pointed out the fact that the Directive makes a distinction between the requirements to collect and pass on directory data (at wholesale level) and the obligations to provide access to directory services (at retail level). The contributions from the Member States where liberalisation has advanced in this sector saw that directory enquiry services could be removed from the scope. Comments from the other countries were more cautious deeming it often necessary to maintain the existing requirements. The directory services industry saw universal service obligation in the retail market as unnecessary or harmful to competition while calling for the effective enforcement of access requirements at wholesale level.

3.4.6. Should special measures for users with disabilities be further harmonised at EU level in the context of universal service provision

Most authorities saw that given the pace and nature of the transition to Next Generation Networks (NGNs) it would be premature to introduce further harmonisation beyond the existing provisions in the Directive (Article 7), which would also go against the principles of subsidiarity and proportionality. The industry response was mixed, but in general further harmonisation was deemed unnecessary and costly especially given the variety of products and services that take into account specific user needs. However, it was also noted that there can be potential problems that - besides being dealt with under the *eAccessibility*⁸ initiative – could be further examined such as compatibility of (legacy) equipment in the IP environment.

Several organisations representing disabled users argued for further harmonisation of the range of measures that could include, for instance, access to emergency services when using IP networks. On the other hand, some of these organisations and consumers considered that further harmonisation could become too prescriptive and preferred other initiatives such as designing inclusive mainstream services.

3.4.7. Should universal service funding from general taxation be an objective

The views on this issue differed considerably between public authorities and industry. In general, the former did not see reasons to change the current system of funding (that allows a choice between the use of public funds or by setting up a sector-specific fund). Some governments, however, did not exclude the possibility to examine further tax-based funding in the longer-term, while others wished further studies to be conducted on alternative funding methods.

Some responses argued that the debate on universal service is confused with the much broader question of affordable access for all to the ‘information society’, which is a wider social issue

⁸ See the Commission Communication on *eAccessibility* COM(2005) 425: http://europa.eu.int/information_society/policy/accessibility/com_ea_2005/index_en.htm

and should not be limited to the communications sector. Most of the industry saw that sector-specific financing creates market distortions and cross-subsidisation between consumers thereby raising overall communications costs.

Consumers' main concerns related to the lack of transparency of accounts or cross-subsidisation that can lead to a situation in which the consumers pay too much. Users also warned against creating an unrealistically high burden of universal service on operators and their customers as witnessed in some countries.

4. COMMISSION POSITION

The Commission considers that the public consultation has provided widespread support for the preliminary position taken in the Communication of May 2005, and that no new rationale has emerged to change the conclusion that neither mobile nor broadband communications fulfils the conditions of the Universal Service Directive for inclusion in the scope of universal service. The Commission recognises that the review was limited in scope, as commented on by some respondents. However, the Commission is bound in this respect by the criteria for this review laid down in the Universal Service Directive. Nevertheless, given technological and market developments, the Commission will revisit shortly the whole *e*Communications regulatory framework in order to ensure that the overall objectives continue to reflect the Lisbon goals, as indicated in the Communication on “i2010 – A European Information Society for growth and employment”⁹.

5. CONCLUSION

The Commission has undertaken a review of the scope of universal service in accordance with Article 15(1) of the Universal Service Directive. The result of this review is that the Commission will not propose any change in the scope of universal service at the present time. However, the contributions received by the Commission on the longer-term issues provide a good basis to continue a forward-looking policy discussion on the universal service provision in the context of the general regulatory review of *e*Communications starting in 2006. This review will give the opportunity to address the necessity of securing technology neutral provision of universal service.

In accordance with Article 15(2) of the Universal Service Directive, the Commission presents this report on its review to the European Parliament and the Council.

⁹ COM(2005)229.