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30 May 2001

*****I** **REPORT**

on the proposal for a European Parliament and Council directive on universal service and users' rights relating to electronic communications networks and services
(COM(2000) 392 – C5-0429/2000 – 2000/0183(COD))

Committee on Legal Affairs and the Internal Market

Rapporteur: Malcolm Harbour

Draftsman (*): Gérard Caudron, Committee on Industry, External Trade, Research and Energy

(*): Enhanced Hughes Procedure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

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(*) Enhanced Hughes Procedure

PROCEDURAL PAGE

By letter of 28 August 2000 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 95 of the EC Treaty, the proposal for a European Parliament and Council directive on universal service and users' rights relating to electronic communications networks and services (COM(2000) 392 - 2000/0183 (COD)).

At the sitting of 8 September 2000 the President of Parliament announced that she had referred this proposal to the Committee on Legal Affairs and the Internal Market as the committee responsible and the Committee on Budgets, the Committee on Economic and Monetary Affairs, the Committee on the Environment, Public Health and Consumer Policy and the Committee on Industry, External Trade, Research and Energy for their opinions (C5-0429/2000).

At its sitting of 6 October 2000 the President of Parliament announced that she had also referred this proposal to the Committee on Culture, Youth, Education, the Media and Sport for its opinion.

The Committee on Legal Affairs and the Internal Market appointed Malcolm Harbour rapporteur at its meeting of 13 September 2000.

At the sitting of 6 October 2000 the President of Parliament announced that the Committee on Industry, External Trade, Research and Energy, which had been asked for its opinion, would be involved in drawing up the report, under the Hughes Procedure.

At its meeting on 16 November 2000 the Conference of Presidents decided that the enhanced "Hughes" procedure should be applied.

The committee considered the Commission proposal and draft report at its meetings of 27 November 2000, 19 March 2001, 24 April 2001 and 29 May 2001.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Willi Rothley, vice-chairman; Malcolm Harbour, rapporteur; Luis Berenguer Fuster, Jean-Maurice Dehousse, Bert Doorn, Francesco Fiori (for Antonio Tajani pursuant to Rule 153(2)), Janelly Fourtou, Françoise Grossetête, Gerhard Hager, Heidi Anneli Hautala, The Lord Inglewood, Kurt Lechner, Klaus-Heiner Lehne, Toine Manders, Hans-Peter Mayer, Manuel Medina Ortega, Bill Miller, Angelika Niebler, Elena Ornella Paciotti, Astrid Thors, Gary Titley, Feleknas Uca, Diana Wallis, Joachim Wuermeling and Stefano Zappalà.

The opinions of the Committee on Culture, Youth, Education, the Media and Sport, the Committee on the Environment, Public Health and Consumer Policy and the Committee on Industry, External Trade, Research and Energy are attached (On 14 September 2000 and 2 October 2000 respectively, the Committee on Budgets and the Committee on Economic and Monetary Affairs decided not to deliver opinions).

The report was tabled on 30 May 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council directive on universal service and users' rights relating to electronic communications networks and services (COM(2000) 392 – C5-0429/2000 – 2000/0183(COD))

The proposal is amended as follows:

Text proposed by the Commission ¹

Amendments by Parliament

Amendment 1
Recital 5 a (new)

Service providers should take appropriate measures to safeguard the security of their services, if necessary in conjunction with the provider of the network, and inform subscribers of any special risks of a breach of the security of the network. Such risks may especially occur for electronic communications services over an open network such as the Internet. It is particularly important for subscribers and users of such services to be fully informed by their service provider of the existing security risks which are outside the scope of possible remedies by the service provider. Service providers who offer publicly available electronic communications services over the Internet should inform users and subscribers of measures they can take to protect the security of their communications for instance by using specific types of software or encryption technologies. Security is appraised in the light of Article 17 of Directive 95/46/EC.

Justification

At present, there are proposals for two separate directives on data confidentiality and the protection of privacy (COM(2000) 385 and COM(2000) 392), which cannot be regarded as an ideal solution. To facilitate a merger of the two, those parts which relate to users' rights

¹ OJ C 365, 19.12.2000, p.238.

specifically in communications networks are to be transferred from the directive on the processing of personal data and the protection of privacy in the electronic communications sector (COM(2000) 385), which is currently being considered.

Amendment 2
Recital 19

More effective competition across all access and service markets will give greater choice for users. The extent of effective competition and choice varies across the Community and varies within Member States between geographical areas and between access and service markets. Nevertheless ***an undertaking that previously had exclusive rights may retain significant market power in access markets and in some service markets.***

Some users may be entirely dependent on the provision of access and services by an undertaking with significant market power. In general for reasons of efficiency and to encourage effective competition, it is important that the services provided by an undertaking with significant market power reflect costs. For reasons of efficiency and social reasons, end user tariffs should reflect demand conditions as well as cost conditions, provided that this does not result in distortions of competition. There is a risk that an undertaking with significant market power may act in various ways to inhibit entry or distort competition, for example by charging excessive prices, setting predatory prices, compulsory bundling of retail services or showing undue preference to certain customers. Universal service obligations and the public interest imply that for some consumers, tariffs and tariff structures may need to depart from normal commercial conditions. Nevertheless, undertakings which have been found to have significant market power should be free of unnecessary regulation in markets where effective competition exists. Therefore, national regulatory authorities should have

More effective competition across all access and service markets will give greater choice for users. The extent of effective competition and choice varies across the Community and varies within Member States between geographical areas and between access and service markets. Nevertheless, some users may be entirely dependent on the provision of access and services by an undertaking with significant market power. In general for reasons of efficiency and to encourage effective competition, it is important that the services provided by an undertaking with significant market power reflect costs. For reasons of efficiency and social reasons, end user tariffs should reflect demand conditions as well as cost conditions, provided that this does not result in distortions of competition. There is a risk that an undertaking with significant market power may act in various ways to inhibit entry or distort competition, for example by charging excessive prices, setting predatory prices, compulsory bundling of retail services or showing undue preference to certain customers. Universal service obligations and the public interest imply that for some consumers, tariffs and tariff structures may need to depart from normal commercial conditions. Nevertheless, undertakings which have been found to have significant market power should be free of unnecessary regulation in markets where effective competition exists. Therefore, national regulatory authorities should have powers to establish, maintain and withdraw retail tariff regulations on an undertaking with significant market power. Price cap regulation, geographical

powers to establish, maintain and withdraw retail tariff regulations on an undertaking with significant market power. Price cap regulation, geographical averaging or similar instruments may be used to achieve the twin objectives of promoting effective competition whilst pursuing public interest needs, such as maintaining the affordability of publicly available telephone services for some consumers. Access to appropriate cost accounting information is necessary, in order for national regulatory authorities to fulfil their regulatory duties in this area, including the imposition of any tariff controls.

averaging or similar instruments may be used to achieve the twin objectives of promoting effective competition whilst pursuing public interest needs, such as maintaining the affordability of publicly available telephone services for some consumers. Access to appropriate cost accounting information is necessary, in order for national regulatory authorities to fulfil their regulatory duties in this area, including the imposition of any tariff controls. ***However, retail market intervention must only be permitted after action under the Framework and Access and Telecommunication Directives has been shown to fail. Regulatory forbearance in emerging new markets must also be encouraged.***

Justification:

The reference to previous ownership of exclusive rights is irrelevant. It cannot be excluded that, in some cases in the future, non-incumbent operators may occupy a position of significant market power.

Amendment 3
Recital 26

Easy access to international telephone services is vital for European citizens and European businesses. '00' has already been established as the standard international telephone access code for the Community. Special arrangements for making calls between adjacent locations across borders between Member States may be established or continued. All operators should be obliged to complete calls that use ***not only*** the European regional code '3883' ***but also*** any other regional codes that may be used in Europe.

Easy access to international telephone services is vital for European citizens and European businesses. '00' has already been established as the standard international telephone access code for the Community. Special arrangements for making calls between adjacent locations across borders between Member States may be established or continued. ***A new European regional code '3883' has been proposed and, subject to the publication of an evaluation study by the Commission, all operators should be obliged to complete calls that use the European regional code '3883' alongside any other regional codes that may be used in Europe.***

Justification

Self-explanatory and see Amendment 43.

Amendment 4
Recital 27

Tone dialling and calling line identification facilities are normally available on modern telephone exchanges and can therefore increasingly be provided at little or no expense. Tone dialling is increasingly being used for user interaction with special services and facilities, including value added services, and the absence of this facility can prevent the user from making use of these services. Member States are not required to impose obligations to provide these facilities when they are already available. Directive [on the protection of personal data and privacy in the electronic communications sector] safeguards the privacy of users with regard to itemised billing, by giving them the means to protect their right to privacy when calling line identification is implemented.

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Justification

Self-explanatory.

Amendment 5
Recital 32

In the context of a competitive environment, the views of interested parties, including users and consumers, should be taken into account by national regulatory authorities when dealing with issues related to users' and consumers' rights. Effective procedures should be available to deal with disputes between users and consumers, on the one hand, and undertakings providing publicly available communications services, on the other.

In the context of a competitive environment, the views of interested parties, including users and consumers, should be taken into account by national regulatory authorities when dealing with issues related to users' and consumers' rights. ***Co-regulation is an appropriate way of stimulating enhanced quality standards and improved service performance and is encouraged by the provisions of this Directive.*** Effective

Member States should take full account of Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes.

procedures should be available to deal with disputes between users and consumers, on the one hand, and undertakings providing publicly available communications services, on the other. Member States should take full account of Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes.

Where co-regulation is introduced, any corresponding formal regulation - for example provisions in general authorisations - should be removed or amended in order to prevent an accretion of rules and multiple jeopardy for companies. Co-regulatory mechanisms must be guided by the same principles as formal regulation, i.e. they must be objective, justified, proportional, non-discriminatory and transparent.

Justification

Introduces the idea of co-regulation in the line with the new Article 29(3) (Amendment 54). Provides guidelines for the regulatory framework when co-regulation is introduced.

Amendment 6 Article 1

1. Within the framework of Directive [on a common regulatory framework for electronic communications networks and services], this Directive concerns the provision of electronic communications networks and services to users and consumers.

2. The aim ***of this Directive*** is to ensure the availability throughout the Community of good quality ***electronic communications services at an affordable price by means of*** effective competition and choice and to deal with circumstances in which users' and consumers' needs are not satisfactorily met by commercial means. It also aims to ensure interoperability of consumer digital

1. Within the framework of Directive [on a common regulatory framework for electronic communications networks and services], this Directive concerns the provision of electronic communications networks and services to users and consumers.

2. The aim is to ensure the availability throughout the Community of good quality services ***through*** effective competition and choice and to deal with circumstances in which users' and consumers' needs are not satisfactorily met by commercial means.

television equipment.

3. This Directive establishes the rights of users and consumers and the corresponding obligations of undertakings providing electronic communications networks and services. With regard to ensuring provision of universal service within an environment of open and competitive markets, it defines a minimum set of services of specified quality to which all users and consumers should have access in the light of specific national conditions, at an affordable price, without distorting competition. This Directive also sets out objectives with regard to the provision of certain mandatory services, such as the provision of leased lines. It also aims to ensure interoperability of consumer digital television equipment.

Justification:

Provides a clearer and more comprehensive description of the regulatory objectives.

Amendment 7
Article 2

The definitions given in Directive [on a common regulatory framework for electronic communications networks and services] shall apply.

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The following definitions shall also apply:

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(a) "direct public telephone service provider" means an undertaking that provides publicly available telephone services and that also provides a subscriber with a connection to the public telephone network;

(a) "direct public telephone service provider" means an undertaking that provides publicly available telephone services and that also provides a subscriber with a connection to the public telephone network;

(b) "subscriber" means any natural or legal person that is party to a contract with undertakings providing publicly available communications services for the supply of

(b) "subscriber" means any natural or legal person that is party to a contract with undertakings providing publicly available communications services for the supply of

such services;

(c) "public pay telephone" means a telephone available to the general public, for the use of which the means of payment include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes;

(d) "public telephone network" means **transmission systems and switching or routing equipment and other resources** which **are** used to provide publicly available telephone services; it supports the transfer between network termination points of speech communications, and also other forms of communication, such as fax and data; connection to the public telephone network at a fixed location may take place via **wireless as well as wire-line means**;

(e) "publicly available telephone service" means a service available to the public for originating and receiving national and international calls, and access to emergency services using the code 112 through a number or numbers in a national or international telephone numbering plan; it may include the provision of operator assistance, directory services, provision of public pay phones, provision of service under special terms and/or provision of special facilities for customers with disabilities or with special social needs;

(f) "network termination point" (NTP) means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to a subscriber number or name; it represents a boundary for regulatory purposes between different systems; defining the location of NTP is the responsibility of the national regulatory authority;

such services;

(c) "public pay telephone" means a telephone available to the general public, for the use of which the means of payment include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes;

(d) "public telephone network" means **an electronic communications network** which **is** used to provide publicly available telephone services; it supports the transfer between network termination points of speech communications, and also other forms of communication, such as fax and data; connection to the public telephone network at a fixed location may take place via **any means, including fixed lines**;

(e) "publicly available telephone service" means a service available to the public for originating and receiving national and international calls, and access to emergency services using the code 112 through a number or numbers in a national or international telephone numbering plan; it may include the provision of operator assistance, directory services, provision of public pay phones, provision of service under special terms and/or provision of special facilities for customers with disabilities or with special social needs;

(f) "network termination point" (NTP) means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to a subscriber number or name; it represents a boundary for regulatory purposes between different systems; defining the location of NTP is the responsibility of the national regulatory authority;

(g) "geographic number" means a number from the national numbering plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the NTP of the subscriber to whom the number has been assigned.

(g) "geographic number" means a number from the national numbering plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the NTP of the subscriber to whom the number has been assigned.

(h) "associated service" means a service, including operator assistance, directory services and the presentational element of electronic programme guides, which is associated with an electronic communications network or service and which facilitates the use of that network or service.

Justification:

Referring to an "electronic communications network" simplifies the text by making use of the corresponding definition from the Framework Directive. Referring to "any means, including fixed lines", rather than to "wireless" and "wire-line means", renders the text more technologically neutral. Finally, it is useful to include a definition of "associated services".

Amendment 8
Article 3(2)

2. Member States shall determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of transparency, objectivity and non-discrimination. They shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.

2. Member States shall determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of transparency, objectivity, ***competitive neutrality*** and non-discrimination. They shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.

Justification:

Reinforces the stated aims of the Directive.

Amendment 9
Article 4(2)

2. The connection provided shall be capable of allowing users and consumers to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that are sufficient to permit Internet access.

2. The connection provided shall be capable of allowing users and consumers to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that are sufficient to permit *effective* Internet access. *Member States shall take account of prevailing technologies in determining such data rates. They shall not determine rates that are in excess of those available to the general public.*

Justification

Self-explanatory.

Amendment 10
Article 6(2)

2. A Member State may decide not to *apply* paragraph 1 in all or part of its territory on the basis of a consultation of interested parties as referred to in Article 29.

2. A Member State may decide not to *impose obligations under* paragraph 1 in all or part of its territory on the basis of a consultation of interested parties as referred to in Article 29.

Justification:

This amendment provides a more accurate description of the operation of the system.

Amendment 11
Article 7(2) becomes new Article 21 a, with Article 7 (2) deleted)

2. Member States may take specific measures, in the light of national conditions, to ensure that disabled users and users with special needs can also take advantage of the choice of undertakings and service providers available to the majority of users.

Member States may take specific measures, in the light of national conditions, to ensure that disabled users and users with special needs can also take advantage of the choice of undertakings and service providers available to the majority of users. *The Member States shall lay down the definition of users with special needs after public consultation.*

Justification

Article 7(1) retained in Universal Service Provision.-

Amendment 12
Article 8(1)

1. Member States may designate one or more undertakings to guarantee the provision of universal service as identified in Articles 4 to 7, ***so that the whole of the national territory is covered***. Member States may designate different undertakings or sets of undertakings to provide different elements of universal service.

1. Member States may, ***following a proposal of the national regulatory authority***, designate one or more undertakings to guarantee the provision of universal service as identified in Articles 4 to 7 Member States may designate different undertakings or sets of undertakings to provide different elements of universal service ***and/or to cover different parts of the national territory***.

Justification

The recognition that different universal service providers may be designated for different parts of the national territory is welcome. However, it is also possible that universal service providers may not be required for the whole of the national territory if the national regulatory authority believes that the market is meeting end-users' needs.

Amendment 13
Article 8, paragraph 3

3. When Member States designate undertakings in part or all of the national territory as having universal service obligations, they shall do so using an efficient, objective and transparent allocation mechanism. Such designation methods may include public tenders and public auctions, in order to ensure that universal service is provided in a cost-effective manner and as a means of determining the net cost of the universal service obligation.

3. When Member States designate undertakings in part or all of the national territory as having universal service obligations, they shall do so using an efficient, objective and transparent allocation mechanism. ***That mechanism shall be subject to an appropriate period of public consultation during which all interested parties must be given an opportunity to express their views.*** Such designation methods may include public tenders and public auctions, in order to ensure that universal service is provided in a cost-effective manner and as a means of

determining the net cost of the universal service obligation. ***At all events, the integrity of the network and the continuity and quality of the service must be upheld.***

Justification:

Opening up to competition must not result in a fall in the quality or reliability of services. Furthermore there should be consultation on the allocation mechanism. The wording employed is in line with Article 6(1) of the Framework Directive

Amendment 14
Article 9(1)

Level and Structure of Tariffs

1. National regulatory authorities shall monitor the evolution of the level and structure of retail tariffs of the publicly available telephone service provided at fixed locations by designated undertakings, in particular in relation to ***national consumer prices and income***. They may, in the light of national conditions, require the designated undertakings to provide tariff options or packages to consumers which depart from those provided under normal commercial conditions, in particular to ensure that those on low incomes or with specific social needs ***are not prevented from accessing or using the publicly*** telephone service.

Affordability of Tariffs

1. National regulatory authorities shall monitor the evolution of the level and structure ***(including connection charges, deposits and other fixed payments)*** of retail tariffs of the publicly available telephone service provided at fixed locations by designated undertakings, in particular in relation to ***cost of living measures (taking into account prices, incomes and the needs of people on low incomes and with special social needs)***. ***In the course of these activities, the national regulatory authorities shall work in conjunction with consumer associations and other parties involved (associations working in the social field, NGOs, etc.)***. They may, in the light of national conditions, require the designated undertakings to provide tariff options or packages to consumers which depart from those provided under normal commercial conditions, in particular to ensure that ***all sections of the population, including*** those on low incomes or with specific social needs, ***have access to and can use*** the telephone service.

Justification

To clarify the provisions for ensuring service access to users with special needs.

Amendment 15
Article 9(3)

3. Member States may, as an alternative to the requirement for designated undertakings to provide special tariff options or for undertakings to apply common tariffs, provide support to consumers **identified as having specific economic or** social needs, in particular by granting entitlement to the public telephone service at a specified tariff.

3. Member States may, as an alternative to the requirement for designated undertakings to provide special tariff options or for undertakings to apply common tariffs, provide support to consumers **with low incomes or with special** social needs, in particular by granting entitlement to the public telephone service at a specified tariff.

Justification:

To ensure consistency.

Amendment 16
Article 10(1)

1. Member States shall ensure that designated undertakings, in providing facilities and services additional **to the provision of a connection to the public telephone network and publicly available telephone services**, establish tariffs in such a way that the **user** is not obliged to pay for facilities or services which are not necessary or not required for the service requested.

1. Member States shall ensure that designated undertakings, in providing facilities and services additional to **universal service as identified in Articles 4 to 7**, establish tariffs in such a way that the **subscriber** is not obliged to pay for facilities or services which are not necessary or not required for the service requested.

Justification:

Clarifies the text and ensures consistency.

Amendment 17
Article 10(2)

2. Member States shall ensure that designated undertakings provide the specific facilities and services set out in Annex I in order that consumers can monitor and control expenditure and avoid unwarranted disconnection of service.

2. Member States shall ensure that designated undertakings provide the specific facilities and services set out in Annex I, **Part A**, in order that consumers can monitor and control expenditure and avoid unwarranted disconnection of service.

Justification:

More precise.

Amendment 18
Article 11(1)

National regulatory authorities shall ensure that all undertakings with obligations as referred to in Article 4 publish adequate and up-to-date information concerning their performance in the provision of access and services, based on parameters, definitions and measurement methods set out in Annex III. The published information shall also be supplied to the national regulatory authority.

National regulatory authorities shall ensure that all undertakings with obligations as referred to in Article 4 publish adequate and up-to-date information concerning their performance in the provision of access and services, based on parameters, definitions and measurement methods set out in Annex III **and other measures designed to assess the effectiveness of specific measures for disabled users**. The published information shall also be supplied to the national regulatory authority.

Justification:

The concept of Quality of Service should not be limited to clear lines and rapid connections, but also to speed of directory enquiry response, quality of accessible format bill, and other areas of service to disabled users.

Amendment 19
Article 12, paragraph 1, first subparagraph

1. **Where necessary**, national regulatory authorities **may assess** whether the provision of universal service represents an unfair burden on undertakings designated to provide universal service.

1. National regulatory authorities **shall ascertain** whether **and to what extent** the provision of universal service represents an unfair burden on undertakings designated to provide universal service.

Justification

Supplying the universal service does cost something, but it also brings benefits to the undertaking(s) concerned. A reliable assessment of the actual net cost of supplying it, together with opening to competition, would allow the universal service to be fully incorporated into the market dynamics of a product and avoid the pressures tending to restrict it to a minimum and confined core of services.

Amendment 20
Article 12(2)

2. The calculation of the net cost of universal service obligations under paragraph 1(a) **shall be audited by an independent body or organisation. The results of the cost calculation and the conclusions of the audit shall be open to the public.**

2. **National regulatory authorities shall ensure that the basis and results of the calculation of the net cost of universal service obligations under paragraph 1(a) are transparent and publicly available, with any key inputs provided by the designated undertaking being subject to independent verification.**

Justification:

It is impossible to obtain an independent "audit" of a calculation which may include non-financial costs and benefits. It is also unclear why the "audit" has to be undertaken by a body other than the national regulatory authority. The amendment ensures that the inputs are properly verified.

Amendment 21
Article 13(1)

1. Where, on the basis of the net cost calculation referred to in Article 12, and taking into account any market benefit which accrues to an undertaking designated to provide universal service, national regulatory authorities find that an undertaking is subject to an unfair burden, Member States **may** decide:

(a) to introduce a mechanism to compensate that undertaking for the determined net costs **from the general government budget**; or

(b) to share the net cost of universal service obligations.

1. Where, on the basis of the net cost calculation referred to in Article 12, and taking into account any market benefit which accrues to an undertaking designated to provide universal service, national regulatory authorities find that an undertaking is subject to an unfair burden, Member States **shall** decide:

(a) to introduce a mechanism to compensate that undertaking **themselves from the general government budget or other specific funding sources (such as lotteries or spectrum auctions)** for the determined net costs; **and/or**

(b) to share the net cost of universal service obligations.

Justification:

Where there is a net cost, the designated undertaking must receive appropriate compensation. This amendment widens the scope of Member State funding (to include other public funds,

such as the proceeds or lotteries or spectrum auctions). The use of "and/or" makes it clear that the two methods may be used in combination.

Amendment 22

Article 13(2)

2. Where the net cost is shared under paragraph 1(b), Member States shall establish a sharing mechanism administered by a body independent from the beneficiaries under the **control** of the national regulatory authority. Only the net cost, as determined in Article 12, of the obligations laid down in Articles 3 to 10 may be financed.

2. Where the net cost is shared under paragraph 1(b), Member States shall establish a sharing mechanism administered by a body independent from the beneficiaries under the **supervision** of the national regulatory authority. Only the net cost, as determined in **accordance with** Article 12, of the obligations laid down in Articles 3 to 10 may be financed.

Justification:

"Control" suggests active management, which may not always be appropriate. Article 12 sets out how the cost will be determined, not what that cost is.

Amendment 23

Article 15, paragraph 2

2. This review shall be undertaken in the light of social, commercial and technological developments. The review process shall be undertaken in accordance with Annex V.

2. This review shall be undertaken in the light of social, commercial and technological developments, **with particular regard to mobility and high output**. The review process shall be undertaken in accordance with Annex V. **The review should be organised with the utmost transparency with consultation of all the parties concerned. Following the review, the Commission shall forward a report to Parliament and the Council.**

Justification

The European Parliament insists on transparency in the way the telecommunications package is implemented and updated. A report from the Commission is a useful tool to this end.

Amendment 24

Article 16, paragraph 2

2. Member States shall ensure that, on the entry into force of this Directive, and **periodically** thereafter, national regulatory authorities undertake a market analysis, in accordance with the procedure set out in Article 14(3) of Directive [on a common regulatory framework for electronic communications networks and services] to determine whether to maintain, amend or withdraw the obligations referred to in paragraph 1 of this Article. Measures taken shall be subject to the procedure set out in Article 6(2) to (5) of Directive [on a common regulatory framework for electronic communications networks and services].

2. Member States shall ensure that, on the entry into force of this Directive, and **at least annually** thereafter, national regulatory authorities undertake a market analysis, in accordance with the procedure set out in Article 14(3) of Directive [on a common regulatory framework for electronic communications networks and services] to determine whether to maintain, amend or withdraw the obligations referred to in paragraph 1 of this Article. **The national regulatory authorities shall consult the public on all matters relating to the regulation of retail tariffs, including the introduction of such regulation, its amendment or possible withdrawal.** Measures taken shall be subject to the procedure set out in Article 6(2) to (5) of Directive [on a common regulatory framework for electronic communications networks and services].

Justification:

The tariff policy of a powerful undertaking can have destabilising effects out of proportion to a mere commercial strategy. Any regulation of this matter should be subjected to full advance investigation hearing both sides. Furthermore, in order to determine the degree of effective competition, a market analysis will need to be undertaken at least every year, as the telecommunications sector is evolving very quickly.

Amendment 25
Article 16(3)

3. Where as a result of a market analysis carried out in accordance with Article 14(3) of the Directive [on a common regulatory framework for electronic communications networks and services], national regulatory authorities determine that a market is not effectively competitive, they shall ensure that undertakings **with** significant market power in **that** market **orient their tariffs towards costs, so as not to** charge excessive prices **or** inhibit market entry, or restrict competition by setting predatory prices, showing undue preference to specific users or unreasonably bundling services. National

3. Where as a result of a market analysis carried out in accordance with Article 14(3) of the Directive [on a common regulatory framework for electronic communications networks and services], national regulatory authorities determine - that a market **for the provision of retail services, including the minimum set of leased lines identified in this Directive,** is not effectively competitive **or prospectively competitive,** - **that such market failure is durable, and** - **that obligations imposed under Directive [on access to, and interconnection of, electronic communications networks and**

regulatory authorities may apply appropriate retail price cap measures to such undertakings in order to protect user and consumer interests whilst promoting effective competition.

associated facilities] would not result in users' and consumers' needs being met, they shall ensure that undertakings notified as having significant market power in the relevant market provide such services under reasonable, transparent and non-discriminatory conditions and, in particular, do not charge excessive prices, inhibit market entry or restrict competition, inter alia, by setting predatory prices, showing undue preference to specific users or unreasonably bundling services.

Justification:

This amendment makes it clear that retail control provisions apply only as a last resort after access and interconnection measures are deemed to have failed. It also sets out a range of measures that can be applied, rather than exclusive reliance on price controls.

Amendment 26
Article 16, paragraph 3a (new)

3a. Notwithstanding the provisions of Article 14 of Directive [on a common regulatory framework for electronic communications networks and services], where the requirements of users and/or of consumers in a national or trans-national market are not being met on a persistent basis, inter alia where pricing is excessive or where there is a bottleneck, as can be shown in a justified complaint to the relevant regulatory authorities, the relevant regulatory authorities shall, within 3 months, impose such measures in terms of Articles 9 to 13 of the Directive [on access to, and interconnection of, electronic communications networks and associated facilities] upon operators with significant market power in the relevant market as are necessary to ensure that the causes of the complaint are removed and that the markets affected are opened to competitive forces. Such measures shall, where this is appropriate, be taken in preference to, but may be used in conjunction with, retail

price controls.

Justification

The principle of regulating at the level of access and interconnection in preference to retail regulation should be upheld, and where a market failure exists and it is damaging the interests of users and consumers (e.g. international roaming), the NRAs shall act to ensure that sufficient alternative technical means are enabled to ensure that users have full choice as to how and by whom their required services are delivered, and that as a direct consequence the bottleneck is removed. Whilst the effects of the full competition take time to take their effect on the retail market, some form of retail regulation may also be necessary, but as an interim measure only.

Amendment 27
Article 16(4)

4. National regulatory authorities shall notify to the Commission the names of undertakings subject to retail **tariff** controls and, on request, submit information concerning the retail **tariff** controls applied and the cost accounting systems used by the undertakings concerned.

4. National regulatory authorities shall notify to the Commission the names of undertakings subject to retail controls and, on request, submit information concerning the retail controls applied and, **where appropriate**, the cost accounting systems used by the undertakings concerned.

Justification:

Controls may not relate to tariffs directly but rather to undue discrimination, a prohibition on cross-subsidy or unreasonable unbundling, etc.

Amendment 28
Article 16(5)

5. Member States shall ensure that, where an undertaking is subject to retail **tariff regulation**, the necessary and appropriate cost accounting systems are implemented **and that the suitability of such systems is verified by a competent body which is independent of the organisation. National regulatory authorities shall ensure that a statement concerning compliance is published annually.**

5. Member States shall ensure that, where an undertaking is subject to retail **controls within the meaning of this Directive**, the necessary and appropriate cost accounting systems are implemented **following policies, principles and methodologies laid down by the national regulatory authority. Statements of costs prepared by the undertaking shall be subject to audit by an independent competent body.**

Justification:

Verifying the suitability of systems is not enough. There also needs to be a full independent audit. National regulatory authorities also need the explicit power to stipulate the format and methodologies used.

Amendment 29

Article 16(6)

6. Without prejudice to Article 9(1) and Article 10, national regulatory authorities shall not apply retail **tariff** control mechanisms under paragraph 1 of this Article to geographical or user markets where they are satisfied that there is effective competition.

6. Without prejudice to Article 9(1) and Article 10, national regulatory authorities shall not apply retail control mechanisms under paragraph 1 of this Article to geographical or user markets where they are satisfied that there is effective competition.

Justification:

Promotes consistency.

Amendment 30

Article 16, paragraph 7 (new)

7. Member States shall ensure that the discount schemes of organisations that have an obligation for their tariffs to follow the principle of cost orientation are fully transparent and are published and applied in accordance with the principle of non-discrimination.

Justification

Self-explanatory.

Amendment 31

Article 17, paragraph 1

1. Member States shall ensure that users and consumers have a right to a contract with their direct public telephone service provider(s) that specifies:

1. Member States shall ensure that users and consumers have a right to a contract with their direct public telephone service provider(s) that specifies ***before the***

- (a) the identity and address of the supplier;
- (b) services provided, the service quality levels offered, as well as the time for the initial connection;
- (c) the types of maintenance service offered;
- (d) the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;
- (e) the duration of the contract, the conditions for renewal and termination of services and of the contract;
- (f) any compensation and the refund arrangements which apply if contracted service quality levels are not met; and
- (g) the method of initiating procedures for settlement of disputes in accordance with Article 30.

contract is concluded:

- (a) the identity and address of the supplier;
- (b) services provided, the service quality levels offered, as well as the time for the initial connection;
- (c) the types of maintenance service offered;
- (d) ***the prices and tariffs prevailing and*** the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;
- (e) the duration of the contract, the conditions for renewal and termination of services and of the contract;
- (f) any compensation and the refund arrangements which apply if contracted service quality levels are not met; and
- (g) the method of initiating procedures for settlement of disputes in accordance with Article 30.

Justification:

These requirements simply apply the ordinary law of contract, from which their individual nature should not exclude telecommunications services.

Amendment 32
Article 17, paragraph 2

2. Where contracts are concluded between ***users or consumers*** and communications services providers other than direct public telephone service providers, the information in paragraph 1 shall also be included in such contracts.

2. Where contracts are concluded between ***subscribers*** and providers ***of electronic*** communications services other than direct public telephone service providers, ***or via intermediaries***, the information in paragraph 1 shall also be included in such contracts.

Justification:

Reselling telephone services with or without the distributor's brand name should offer the same guarantees as direct subscription to a telephone undertaking. Also promotes consistency.

Amendment 33
Article 17, paragraph 3

3. **Users and consumers** shall be given adequate notice of any intention to modify contractual conditions and shall be free to withdraw from contracts if they do not accept the new conditions.

3. **Subscribers** shall be given adequate notice of any intention to modify contractual conditions and shall be free to withdraw from contracts if they do not accept the new conditions. **Consumers must be informed of their right to withdraw when the information is given to them.**

Justification:

These requirements are no more than the application of ordinary law of contract, from which telecommunications services should not be excluded by reason of their specific nature. Also promotes consistency.

Amendment 34
Article 17, paragraph 4

4. Paragraphs 1, 2 and 3 apply without prejudice to Community rules on consumer protection, in particular Directives 97/7/EC and 93/13/EC.

4. **The terms and general clauses of contracts must be fair and transparent to consumers. Their wording must be clear and comprehensible.** Paragraphs 1, 2 and 3 apply without prejudice to Community rules on consumer protection, in particular Directives 97/7/EC and 93/13/EC.

Justification:

Self-explanatory.

Amendment 35
Article 18

Member States shall ensure that transparent information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of publicly available telephone services is available to the public, and particularly to all users and consumers, in accordance with the provisions of Annex II.

Member States shall ensure that transparent, **accurate and up-to-date** information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of publicly available telephone services is available to the public, and particularly to all users and consumers, in accordance with the provisions of Annex II. **National regulatory authorities shall publish regular reports on trends in tariffs. They shall encourage the development, through their own operations or using external contractors, of interactive guides that enable**

consumers to evaluate alternative tariff plans in relation to their individual usage patterns.

Justification

Revised formulation strengthening tariff transparency without reducing the incentive for competitive innovation in tariff packages.

Amendment 36
Article 19(2)

2. An obligation to publish quality of service information shall be imposed after taking account of the views of interested parties, including users and consumers, as referred to in Article 29, and after a period of public consultation on the measures proposed.

2. An obligation to publish quality of service information shall be imposed ***only*** after taking account of the views of interested parties, including users and consumers, as referred to in Article 29, and after a period of public consultation on the measures proposed.

Justification:

Clarifies the text.

Amendment 37
Article 19a (new)

1. Member States shall take all necessary steps to ensure that the integrity of the public telephone network at fixed locations is maintained and that availability of the public telephone network and publicly available telephone services at fixed locations is assured in the event of catastrophic network breakdown or in cases of force majeure. Member States shall ensure that undertakings providing publicly available telephone services at fixed locations take reasonable steps to ensure uninterrupted access to emergency services.

2. The provider of a publicly available electronic communications service must take appropriate technical and organisational measures to safeguard the security of its services, if necessary in

conjunction with the provider of the public electronic communications network with respect to network security. Having regard to the state of the art and the cost of their implementation, these measures shall ensure a level of security appropriate to the risk presented.

3. In case of a particular risk of a breach of the security of the network, the provider of a publicly available electronic communications service must inform the subscribers concerning such risk and any possible remedies, including the costs involved.

Justification:

It is fundamental to the protection of consumer interests that services are available in times of need and that the integrity of networks supplying fundamental services is not compromised. A certain level of service also needs to be guaranteed for access to emergency services.

At present, there are proposals for two separate directives on data confidentiality and the protection of privacy (COM(2000) 385 and COM(2000) 392), which cannot be regarded as an ideal solution. To facilitate a merger of the two, those parts which relate to users' rights specifically in communications networks are to be transferred from the directive on the processing of personal data and the protection of privacy in the electronic communications sector (COM(2000) 385), which is currently being considered.

Amendment 38
Article 20(2)

2. The Commission may amend Annex VI in the light of market and technological developments in accordance with the procedure referred to in Article 33(2). ***Delete.***

Justification:

Unnecessary in the light of Article 31.

Amendment 39
Article 21, paragraph 1

1. Member States shall ensure that

1. Member States shall ensure that

subscribers to publicly available telephone services have the right to have an entry in publicly available directories.

subscribers to publicly available telephone services have the right to have an entry **free of charge** in publicly available directories.

Justification

Self-explanatory.

Amendment 40
Article 21, paragraph 3

3. Member States shall ensure that all users provided with a connection to the public telephone network can access operator assistance services and directory enquiry services in accordance with Article 5(b).

3. Member States shall ensure that all users provided with a connection to the public telephone network can, **free of charge or for a minimal charge**, access operator assistance services and directory enquiry services in accordance with Article 5(b).

Justification

Self-explanatory.

Amendment 41
Article 22(1)

Member States shall ensure that, in addition to any other national emergency call numbers specified by the national regulatory authorities, all users of publicly available telephone services, including users of public pay telephones, are able to call the emergency services free of charge, by using the single European emergency call number '112'.

Member States shall ensure that, in addition to any other national emergency call numbers specified by the national regulatory authorities, all users of publicly available telephone services, including users of public pay telephones **and textphones**, are able to call the emergency services free of charge, by using the single European emergency call number '112'.

Justification

Self-explanatory.

Amendment 42
Article 22, paragraph 3

3. Member States shall ensure that undertakings which operate public telephone networks make caller location information available to authorities handling emergencies for all calls to the European emergency number '112'.

3. Member States shall ensure that undertakings which operate public telephone networks make caller location information available, ***where technically feasible and where it does not require disproportionate economic effort***, to authorities handling emergencies for all calls to the European emergency number '112'.

The operation of this provision shall be coordinated with the development of infrastructure provisions by the relevant national emergency service to receive and utilise the location information where the reception and use of such information does not compromise data protection or civil liberties concerns. The information should comply with European standards (when adopted) for the precision and technical format of location data. The reception and use of such information must comply with Article 9 of the Directive on the processing of personal data and the protection of privacy in the electronic communications sector).

Justification

Data protection reference added. Infrastructure provision clarified.

Amendment 43
Article 23(2)

2. Member States shall ensure that all undertakings that operate public telephone networks handle all calls to and from the European telephone numbering space identified by the regional code '3883' or any other European regional codes that may be used.

2. Subject to the prior delivery of a study by the European Commission demonstrating the economic and commercial benefits and the technical feasibility, Member States shall ensure that all undertakings that operate public telephone networks handle all calls to and

from the European telephone numbering space identified by the regional code '3883' or any other European regional codes that may be used.

Justification:

The proposed wording would require all operators to deliver calls to +3883 but only after its feasibility has been demonstrated.

Amendment 44
Article 24

1. Member States shall ensure that national regulatory authorities are able to require all undertakings that operate public telephone networks to make available to users the facilities listed in Annex I, Part B, subject to technical feasibility and economic viability.

Subject to technical feasibility and economic viability, Member States shall ensure that undertakings both provide the facilities listed in Annex I, Part B, and, by provision of data and signals to other operators, facilitate their availability across Member State boundaries.

2. A Member State may decide not to apply paragraph 1 in all or part of its territory on the basis of a consultation as referred to in Article 29.

Justification:

Self-explanatory.

Amendment 45
Article 25, paragraph 3

3. National regulatory authorities shall ensure that pricing for interconnection related to the provision of number portability under paragraph 1, and the use of the facility in paragraph 2, are cost oriented.

3. National regulatory authorities shall ensure that pricing for interconnection related to the provision of number portability under paragraph 1, and the use of the facility in paragraph 2, are cost oriented ***and that, where applicable, the costs charged to consumers do not discourage them from using this facility.***

Justification

It is essential for operators not to set costs at such a high level that consumers are discouraged from changing operator.

Amendment 46
Article 25, paragraph 4a (new)

4a. Member States shall ensure that users are clearly and regularly kept informed of the possibilities open to them by virtue of this Article.

Justification:

Ignorance of the scope for portability or (pre-)selection, or mistaken perceptions of the risks involved are likely to put a brake on their use.

Amendment 47
Article 26(1)

1. Member States may impose 'must carry' obligations, for the transmission of specified radio and television broadcasts, on undertakings under their jurisdiction providing electronic communications networks established for the distribution of radio or television broadcasts to the public. ***Such obligations shall only be imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate, transparent and limited in time.***

1. Member States may impose 'must carry' obligations, for the transmission of specified radio and television broadcasts ***in pursuit of a public service broadcasting remit***, on undertakings under their jurisdiction providing electronic communications networks established ***or subsequently developed*** for the distribution of radio or television broadcasts to the public. ***In accordance with Article 21a, 'must carry' obligations may include the transmission of services provided by these broadcasters to enable access for disabled users and users with special needs.***

Justification

Self-explanatory

Amendment 48
Article 26, paragraph 2 (new)

2. Member States may also require those undertakings and other undertakings providing conditional access services and associated facilities to grant those broadcasters access to associated facilities and services necessary for the public reception of the specified broadcasts and to ensure that those broadcasts are easily accessible and prominently displayed on navigators or guides.

Justification

Self-explanatory.

Amendment 49

Article 26, paragraph 3 (new but based on old 26(1) second part)

Such obligations shall only be imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate, transparent and **limited in time**.

3. Such obligations shall only be imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate, transparent and **subject to periodic review**.

Justification

Self-explanatory.

Amendment 50

Article 26, paragraph 2 (renumbered)

2. Member States shall ensure that the undertakings subject to '**must carry**' obligations receive appropriate compensation in reasonable, transparent and non-discriminatory terms taking into account the network capacity required.

4. Member States shall ensure that the undertakings subject to **the obligations referred to in paragraphs 1 and 2** receive reasonable remuneration. Where reasonable remuneration is to be received, Member States shall determine it on transparent and non-discriminatory terms, and take into account the network capacity and services required, the public policy objectives of public service broadcasting

and the value of those broadcast channels to operators. Member States may in certain justified cases, in order to satisfy public policy objectives, apply a zero rate.

Justification

Self-explanatory.

Amendment 51
Article 27, paragraph 2

2. Within one year after the entry into force of this Directive, and ***every two years*** thereafter, national regulatory authorities shall conduct a market analysis, in accordance with the procedure set out in Article 14(3) of Directive [on a common regulatory framework for electronic communications networks and services], to determine whether the provision of part or all of the minimum set of leased lines services in their territory is subject to effective competition and to determine whether to maintain, amend or withdraw obligations referred to in paragraph 1 of this Article. Measures taken shall be subject to the procedure set out in Article 6(2) to (5) of Directive [on a common regulatory framework for electronic communications networks and services].

2. Within one year after the entry into force of this Directive, and ***annually*** thereafter, national regulatory authorities shall conduct a market analysis, in accordance with the procedure set out in Article 14(3) of Directive [on a common regulatory framework for electronic communications networks and services], to determine whether the provision of part or all of the minimum set of leased lines services in their territory is subject to effective competition and to determine whether to maintain, amend or withdraw obligations referred to in paragraph 1 of this Article. Measures taken shall be subject to the procedure set out in Article 6(2) to (5) of Directive [on a common regulatory framework for electronic communications networks and services].

Justification

In a market that is evolving as quickly as the telecommunications market, a period of two years for undertaking the market analysis referred to seems too long.

Amendment 52
Article 28

Member States may decide to make

Member States may decide to make

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additional services, apart from universal service obligations as defined in Chapter II, publicly available in its own territory but, in such circumstances, no compensation mechanism involving specific undertakings, operators or service providers may be imposed.

additional services, apart from universal service obligations as defined in Chapter II, publicly available in its own territory but, in such circumstances, no compensation mechanism involving specific undertakings, operators or service providers may be imposed. ***Undertakings, operators and service providers required to meet such obligations should be fully compensated by the Member States for the cost of conveying these services.***

Justification

As it stands, this article seems to give Member States the opportunity to impose any obligation without compensation mechanisms for the specific undertakings, operators or service providers involved. This could potentially undermine the rest of the Directive, as it would allow significant divergence in application and practice between Member States.

Amendment 53 Article 29(1)

Member States shall ensure that national regulatory authorities take into account the views of users, consumers, manufacturers, undertakings providing communications networks and service providers on issues related to all user and consumer rights concerning publicly available communications services.

Member States shall ensure that national regulatory authorities take into account the views of ***all*** users (***including disabled users***), consumers, manufacturers, undertakings providing communications networks and service providers on issues related to all user and consumer rights concerning publicly available communications services.

Justification:

The views of disabled consumers of electronic communications service must not be overlooked.

Amendment 54 Article 29(3) (new)

Member States shall encourage the

establishment of co-regulatory mechanisms, involving consumers, user groups and service providers, with a view to developing codes of practice and monitoring service performance. This provision should particularly apply to Articles 5, 7, 9, 10, 11, 14, 17, 18, 19, 21, 24, 25, 29 and 30 of the Directive.

Justification

This amendment, which is linked to Amendment 5, is inspired by Article 16(2) of the Directive on electronic commerce in the Information Society and encourages the establishment of co-regulatory frameworks.

Amendment 55
Article 30, paragraph 1

1. Member States shall ensure ***that*** transparent, simple and inexpensive procedures ***are available*** for dealing with users' and consumers' complaints. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation. They should follow, wherever possible, the principles set out in Recommendation 98/257/EC.

1. Member States shall ***create a national complaints office and*** transparent, simple, ***approachable*** and in-expensive procedures for dealing with users' and consumers' complaints. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation. They should follow, wherever possible, the principles set out in Recommendation 98/257/EC.

Justification

Undertakings can complain to the NRA. At present there is virtually nowhere for consumers to go with their complaints. Hence the need to set up national complaints offices.

Amendment 56
Annex I, part A, paragraph e

(e) Member States shall authorise specified measures, which shall be proportionate, non-discriminatory and published, to cover non-payment of telephone bills for use of the public telephone network at fixed locations. These measures shall ensure that due warning of any consequent service interruption or

(e) Member States shall authorise specified measures, which shall be proportionate, non-discriminatory and published, to cover non-payment of telephone bills for use of the public telephone network at fixed locations. These measures shall ensure that due warning of any consequent service interruption or

disconnection is given to the subscriber beforehand. Except in cases of fraud, persistent late payment or non-payment, these measures shall ensure, as far as is technically feasible, that any service interruption is confined to the service concerned. Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States *may* allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the subscriber (e.g. '112' calls) are permitted.

disconnection is given to the subscriber beforehand. Except in cases of fraud, persistent late payment or non-payment, these measures shall ensure, as far as is technically feasible, that any service interruption is confined to the service concerned. Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States *shall* allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the subscriber (***connection to receive incoming calls and to make emergency calls***, e.g. '112' calls) are permitted.

Justification:

Social and public safety grounds.

Amendment 57
Annex II, introduction

The national regulatory authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article 18. It is for the national regulatory authority to decide which information is to be published by the undertakings providing public telephone networks and/or publicly available telephone services and which information is to be published by the national regulatory authority itself.

The national regulatory authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article 18. It is for the national regulatory authority to decide which information is to be published by the undertakings providing public telephone networks and/or publicly available telephone services and which information is to be published by the national regulatory authority itself, ***so as to make sure that consumers are able to make an informed choice before signing the contract.***

Justification:

Implied by Articles 17 and 19 of this directive.

Amendment 58
Annex II, paragraph 2.5a (new)

(2.5a) Member States shall ensure that consumers are informed of their rights as

regards the universal service, including the facilities and services mentioned in Annex I.

Justification:

Self-explanatory.

Amendment 59
Annex IV, Part B

Part B - Recovery of any net costs of Universal Service Obligations

The recovery or financing of any net costs of universal service obligations requires undertakings with universal service obligations to be compensated for the services they provide under non-commercial conditions. Because such a compensation involves financial transfers, Member States shall ensure that these are undertaken in a transparent, objective, non-discriminatory and proportional manner. This means that the transfers result in the least distortion to competition and to user demand. Member States should give due consideration to recovering any net costs via general government budgets.

A sharing mechanism based on a Fund may also be used. A sharing mechanism based on a Fund should respect the principles of transparency, least market distortion, non-discrimination and proportionality. Least market distortion means that the contribution burden should be spread as wide as possible, subject to proportionality. Proportionality means that NRAs may choose not to require contributions from undertakings whose national turnover is less than a set limit.

Member States undertaking cost recovery via a Fund should give due consideration to collecting contributions via a VAT mechanism on operators and service

Part B - Recovery of any net costs of Universal Service Obligations

The recovery or financing of any net costs of universal service obligations requires undertakings with universal service obligations to be compensated for the services they provide under non-commercial conditions. Because such compensation involves financial transfers, Member States shall ensure that these are undertaken in a transparent, objective, non-discriminatory and proportional manner. This means that the transfers result in the least distortion to competition and to user demand. Member States should give due consideration to recovering any net costs via general government budgets.

A sharing mechanism based on a Fund may also be used. A sharing mechanism based on a Fund should respect the principles of transparency, least market distortion, non-discrimination and proportionality. Least market distortion means that the contribution burden should be spread as wide as possible, subject to proportionality. Proportionality means that NRAs may choose not to require contributions from undertakings whose national turnover is less than a set limit.

Delete.

providers so as to provide a transparent and consistent mechanism (to avoid the danger of double imposition of contributions on both outputs and inputs of operators and service providers) for collecting contributions.

The independent body administering the fund shall be responsible for collecting contributions from operators or service providers who are assessed as liable to contribute to the net cost of universal service obligations in the Member State and shall oversee the transfer of sums due and/or administrative out-payments to the persons and/or undertakings entitled to receive payments from the Fund.

The independent body administering the fund shall be responsible for collecting contributions from operators or service providers who are assessed as liable to contribute to the net cost of universal service obligations in the Member State and shall oversee the transfer of sums due and/or administrative out-payments to the persons and/or undertakings entitled to receive payments from the Fund.

Justification

This is a matter of subsidiarity.

Amendment 60
Annex V, paragraph 3

In proposing any change or re-definition of the scope of universal service obligations, the Commission may consider the following options:

- propose a change or re-definition of the scope of universal service obligations but require that any net costs are financed only via general government budgets; or***
- propose a change or re-definition of the scope of universal service obligations and permit any net costs to be financed by mechanisms in conformity with this Directive.***

Deleted

Justification

The choice of ways of financing the new services should be left to the Member States.

Amendment 61
Annex VI, point 1, first indent

* to display signals that have been transmitted in clear provided that, in the event that such equipment is rented, the rentee is in compliance with the relevant rental agreement.

* to display signals that have been transmitted in clear provided that, in the event that such equipment is rented, the rentee is in compliance with the relevant rental agreement.

All decoders or televisions with an integrated decoder (receivers) put on the market for sale or rent in the Community must have a common interface enabling consumers to operate the set with varying, interchangeable access authorisation modules (CA modules).

Justification

The aim is to guarantee that consumers do not need to acquire several different decoders to be able to receive coded programmes using different coding systems. If an (integrated) decoder can only read one particular coding system, because it does not have a common interface, the consumer can only receive uncoded programmes and programmes using this system. With a common interface the consumer can swap between different access entitlement modules without having to buy a new decoder.

The amendment also seeks to make clear that the decoding systems are actually offered as interchangeable modules. This is absolutely essential to prevent programme suppliers forcing consumers to buy a specific coder to receive a specific programme since no CA module is offered for the programme supplier's coding system. Only if all decoding systems are freely available and interchangeable via CA module technology can there be competition between manufacturers of televisions.

Amendment 62
Annex VI, point 2, second paragraph

Any digital television set with an integral screen of visible diagonal greater than 30cm, which **is** put on the market for sale or rent in the Community shall be fitted with at least one open interface socket (either standardised by a recognised European standardisation body or conforming to an industry-wide specification) permitting simple connection of peripherals, and able to

Any digital television set with an integral screen of visible diagonal greater than 30cm, **decoders, or digital TV recording devices** which **are** put on the market for sale or rent in the Community shall be fitted with at least one open interface socket (either standardised by a recognised European standardisation body or conforming to an industry-wide specification) permitting

pass all the elements of a digital television signal. Apart from video and audio streams, this includes conditional access information, the full application programme interface (API) command set of the connected devices, service information and copy protection information.

simple connection of peripherals, and able to pass all the elements of a digital television signal. Apart from video and audio streams, this includes conditional access information, the full application programme interface (API) command set of the connected devices, service information and copy protection information.

Justification

The current approach does not address the continuing importance of interoperability for set top boxes and decoders, personal video recorder type devices as well as digital TVs.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council directive on universal service and users' rights relating to electronic communications networks and services (COM(2000) 392 – C5-0429/2000 – 2000/0183(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2000) 392¹)
 - having regard to Article 251(2) of the EC Treaty and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0429/2000),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinions of the Committee on Culture, Youth, Education, the Media and Sport, the Committee on the Environment, Public Health and Consumer Policy, and the Committee on Industry, External Trade, Research and Energy (A5-0202/2001),
1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

¹ O J C 365, 19.12.2000, p.238

EXPLANATORY STATEMENT

THE DIRECTIVE IN CONTEXT

The Universal Service and Users' Rights Directive is part of a suite of directives that, together, will reshape the competitive environment for electronic communications across the European Union. The contexts in which the Directive must be considered are the overall objectives to:

- Create an open and competitive market for all electronic communication services - including fixed line, mobile, cable and digital television.
- Provide a regulatory framework governed by competition law, with minimum intervention.
- Encourage new entrants to the sector by establishing more open licensing arrangements and removing entry barriers.
- Ensure that investment and innovation is encouraged, and that technological developments are not constrained.
- Provide maximum consumer benefits by allowing the market to stimulate lower prices, wider service availability and more choice.

In order to achieve these objectives, the regulatory package comprises:

- standardised rules for the regulation of the market through National Regulatory Authorities (NRAs) in Member States, with policy co-ordination at EU level.
- regulations for the operation of an open market, through an obligation for operators to provide access and interconnection to each other's networks under specified conditions, and to deliver a universal service.
- a core set of consumer protection standards to ensure that market behaviour respects consumer interests. These include new data protection requirements.
- an open licensing arrangement for new operators.

Alongside these core measures, the regulations allow significant levels of market intervention by NRAs, which may be applied to operators holding dominant positions (defined in the Framework Directive as operators possessing Significant Market Power, or SMP). These SMP obligations are transitory measures and are to be found in all the directives making up the package. In particular, the universal service directive carries over significant intervention possibilities in the areas of retail prices and leased line operations.

THE NEED TO RE-EVALUATE UNIVERSAL SERVICE PROVISION

Within an open market environment, a new legal framework needs to be set in place to reflect a market in which there will be no one dominant operator. In past market conditions, with a dominant, state-dominated operator, universal service could be defined and funded by direct government intervention. In a future market, provision needs to be made to:

- Ensure an appropriate level of minimum service at non-discriminatory prices to all consumers, wherever they live. In a competitive market, network infrastructure and service could be provided by separate organisations.
- Provide for open and transparent mechanisms to designate the operators of universal service and to identify their "unrecovered costs" over and above those justified by normal commercial operations.
- To allow for these "unrecovered" costs to be freely shared among all operators in a market, or to be absorbed by central government funding.
- To enable Member States to offer special programmes to disadvantaged users, to provide effective emergency access and public communication points.

Universal service provision in 2001 also needs to be considered in the light of the dramatic market restructuring being brought about by new access technologies. The revenue generation of each phone connection, even a basic fixed line phone point, is being multiplied dramatically by Internet and other on-line services. Mobile phones - particularly pre-pay services - have seen explosive market growth with high penetration among new user groups, such as those under 20 years old. New services, such as e-mail and short message text services (SMS) are substituting or augmenting voice connections.

The Commission proposal, in the view of your rapporteur, takes the right approach in retaining a simple, basic connection as the appropriate level for mandatory universal service, but with clearly defined review points. It also contains important measures for transparent costing, cost recovery mechanisms and the ability of Member States to provide special services. Your rapporteur has made a number of suggestions to clarify those obligations and also to focus the proposal on future market conditions.

USERS' RIGHTS

The safeguarding of consumers' rights is particularly important in the provision of core services, particularly where new operators and new products are moving into a previously regulated market. Markets will only operate effectively if consumers are well informed and free to change service providers without unacceptable obstacles or costs. Consumers also expect price transparency and a clear view of their future obligations so that they do not accumulate unforeseen liabilities.

The proposed directive carries forwards a large number of proposed users' rights, which it proposes to make mandatory at an EU level. In your rapporteur's view, this package needs to be closely scrutinised to ensure that:

- The EU imposed package focuses on those areas that require public intervention, and will

not be market delivered.

- Proper provisions are made to encourage Member States to set up co-regulatory measures involving consumer groups, users and regulators. Your rapporteur feels that many detailed measures could be dealt with better and more comprehensively by co-regulation at Member State level.
- Measures anticipate technological change.
- Requirements for price transparency and quality reporting do not reduce competition by discouraging innovation - the ability to offer new pricing or marketing plans, for example.

Changes are proposed to reflect these perspectives.

MARKET INTERVENTION MEASURES

Your rapporteur notes that the Directive contains a number of very significant market intervention measures that can be applied by Member States only to operators with Significant Market Power. In his view, these should be:

- Carefully examined to see whether they remain appropriate, particularly in the case of retail price control;
- Be clearly identified within the Directive as an area of transitory regulation, and placed in a separate section.

These perspectives are reflected in proposed changes. Your rapporteur also recommends a restructuring of the text to group all market intervention measures together in one chapter. In view of the complexity of this exercise, however, this has not been included in the proposed amendments. The Commission's attention has, however, been drawn to this issue and there is a willingness to consider this restructuring before second reading.

DIGITAL TELEVISION

The Directive contains important measures on the technical standards, interoperability and "must carry" obligations for digital television services. These are supported by your rapporteur, who has proposed some additional clarification of "must carry" obligations to safeguard and develop the role of public broadcasters.

CONCLUSION

Your rapporteur considers that this text forms a very important element of the electronic communications package. However, it is his view that it needs some improvement to reflect the need to become more forward-looking, clearer in identifying its key provisions and more focused on the key issues. He hopes that his proposed amendments will find favour with the Parliament, the Commission and the Council.

6 March 2001

OPINION OF THE COMMITTEE ON CULTURE, YOUTH, EDUCATION, THE MEDIA AND SPORT

for the Committee on Legal Affairs and the Internal Market

on the proposal for a Council directive on universal service and users' rights relating to electronic communications networks and services
(COM(2000) 392 – C5-0429/2000 – 2000/0183(COD))

Draftsman: Pedro Aparicio Sánchez

PROCEDURE

The Committee on Culture, Youth, Education, the Media and Sport appointed Pedro Aparicio Sánchez draftsman at its meeting of 23 January 2001.

It considered the draft opinion at its meetings of 5 and 6 February 2001 and 5 and 6 March 2001.

At the latter meeting it adopted the following amendments unopposed, with 1 abstention.

The following were present for the vote: Giuseppe Gargani, chairman; Ulpu Iivari, vice-chairman; Vasco Graça Moura, vice-chairman; Pedro Aparicio Sánchez, draftsman; Alexandros Alavanos, Konstantinos Alyssandrakis (for Geneviève Fraisse), Ole Andreasen, Robert J.E. Evans (for Martine Roure), Lissy Gröner, Cristina Gutiérrez Cortines (for Mónica Ridruejo), Christopher Heaton-Harris, Magdalene Hoff (for Valter Veltroni), Karin Junker (for Phillip Whitehead), Elizabeth Lynne (for Marco Formentini), Barbara O'Toole, Mario Mauro, Doris Pack, Roy Perry, Christa Prets, Marieke Sanders-ten Holte, Kathleen Van Brempt, Luckas Vander Taelen, Eurig Wyn, Theresa Zabell and Sabine Zissener.

SHORT JUSTIFICATION

AMENDMENTS

The Committee on Culture, Youth, Education, the Media and Sport calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

(Amendment 1) Recital 9

Member States should take suitable measures in order to guarantee access to and affordability of all publicly available telephone services at a fixed location for disabled users and users with special social needs. Specific measures for disabled users *could* include, *as appropriate*, making available *public* text telephones or equivalent measures for deaf or speech impaired people, providing services such as directory enquiry services or equivalent measures free of charge for *blind or partially sighted people*, and providing itemised bills in alternative format on request for blind or partially sighted people. Specific measures may also need to be taken to enable disabled users and users with special needs to access emergency services (112) and to give them a similar possibility to choose between different operators or service providers as other consumers. The provider of universal service should not take measures to prevent users from benefiting fully from services offered by different operators or service providers, in combination with its own services offered as part of universal service.

Member States should take suitable measures in order to guarantee access to and affordability of all publicly available telephone services at a fixed location for disabled users and users with special social needs. Specific measures for disabled users *should* include *text relay services*, making available text telephones or equivalent measures for deaf or speech impaired people, providing services such as directory enquiry services or equivalent measures free of charge for *people with a reading-related disability*, providing itemised bills in alternative format on request for blind or partially sighted people *and offering a priority fault repair service*. Specific measures may also need to be taken to enable disabled users and users with special needs to access emergency services (112) and to give them a similar possibility to choose between different operators or service providers as other consumers. The provider of universal service should not take measures to prevent users from benefiting fully from services offered by different operators or service providers, in combination with its own services offered as part of universal service.

¹ OJ C .

Justification:

While welcoming the proposals in Recital 9 regarding the needs of disabled people the proposal must be an obligatory rather than an optional requirement in order to guarantee access for disabled people to services. Also, a non-exhaustive list of measures should be extended to include reference to text telephones and priority repair service.

(Amendment 2)
Recital 29

Currently, Member States impose certain 'must-carry' obligations on networks established for the distribution of radio or television broadcasts to the public. Member States should be able to lay down proportionate obligations on undertakings under their jurisdiction, in the interest of legitimate public policy considerations, but such obligations should only be imposed where they are necessary to meet clearly defined general interest objectives and should be proportionate, transparent and **limited in time. It would not be proportionate to extend such obligations to new networks such as the Internet.** The undertakings on which such obligations fall should be appropriately compensated for the use of their network capacity on reasonable, transparent and non-discriminatory terms.

Currently, Member States impose certain 'must-carry' obligations on networks established for the distribution of radio or television broadcasts to the public. Member States should be able to lay down proportionate obligations on undertakings under their jurisdiction, in the interest of legitimate public policy considerations, but such obligations should only be imposed where they are necessary to meet clearly defined general interest objectives and should be proportionate, transparent and **subject to periodic review. These obligations may include the transmission of services intended to enable access to the relevant broadcasts for disabled users and users with special needs. Those undertakings upon which such obligations fall may also be placed under an obligation to ensure that the relevant broadcast services are easily accessible by consumers on navigators and electronic programme guides. In the pursuit of general interest objectives, it may be proportionate for Member States to extend those obligations to networks which, although not established for the distribution of radio or television broadcasts to the public, are nonetheless used for that activity. However, it would not be proportionate to extend such obligations to new networks such as the internet where the distribution of radio or television broadcasts to the public was not a major activity. Where deemed appropriate by Member States,** the undertakings on which such obligations fall should be appropriately compensated for the

use of their network capacity on reasonable, transparent and non-discriminatory terms.

Member States must make sure that the 'must carry' obligations provided for in this Directive are consistent with the other, similar obligations concerning audiovisual and multimedia content which are established at Community and national level.

Justification:

All rules on audiovisual content must be part of a coherent framework established and updated by the Member States in order to comply with the principle of separation of infrastructure and content.

(Amendment 3)
Article 6(1)

Member States shall ensure that national regulatory authorities can impose obligations on undertakings in order to ensure that public pay telephones are provided to meet the reasonable needs of users in terms of the geographical coverage, the number of telephones and the quality of services.

Member States shall ensure that national regulatory authorities can impose obligations on undertakings in order to ensure that public pay telephones are provided to meet the reasonable needs of users in terms of the geographical coverage, the number of telephones and the quality of services.
Member States shall ensure that public pay telephones are accessible to disabled users, including the hearing-impaired.

Justification:

All public pay phones should be accessible to all users.

(Amendment 4)
Article 7(1)

Member States shall, where appropriate, take specific measures to ensure equivalent access to and affordability of publicly available ***telephone services***, including

Member States shall, where appropriate, take specific measures to ensure equivalent access to and affordability of publicly available ***electronic communications***,

access to emergency and directory services, for disabled users and users with special social needs.

including access to emergency and directory services, for disabled users and users with special social needs.

Justification:

It is unfortunate that the Article refers only to telephone services rather than all electronic communication services. It is far too limited a definition.

(Amendment 5)
Article 7(2)

Member States **may** take specific measures, in the light of national conditions, to ensure that disabled users and users with special needs can **also** take advantage of the choice of undertakings and service providers available to the majority of users.

Member States **shall** take specific measures, in the light of national conditions, to ensure that disabled users and users with special needs can, **on an equitable basis with all other users**, take advantage of the choice of undertakings and service providers available to the majority of users.

Justification:

Member States should be required to guarantee that disabled users of electronic communications services will be able to access all electronic communications services available on an equitable basis with non-disabled users.

(Amendment 6)
Article 9(2) (new)

Member States shall also ensure that arrangements exist to ensure against the obligation of the users of text telephones and/or relay services to pay for the supplementary costs incurred resulting from the extended time required to communicate by text telephone and/or text relay service as compared to means of a

conventional telephone.

Justification:

Users of text relay services are required to stay on the telephone line for a longer period than conventional telephone users due to the way in which the text relay service operates. Disabled people required to use the text phone and/or text relay service to communicate should not be penalised for using this service by being obliged to meet the supplementary costs the use of this service incurs.

(Amendment 7)
Article 11(1)

National regulatory authorities shall ensure that all undertakings with obligations as referred to in Article 4 publish adequate and up-to-date information concerning their performance in the provision of access and services, based on parameters, definitions and measurement methods set out in Annex III. The published information shall also be supplied to the national regulatory authority.

National regulatory authorities shall ensure that all undertakings with obligations as referred to in Article 4 publish adequate and up-to-date information concerning their performance in the provision of access and services, based on parameters, definitions and measurement methods set out in Annex III ***and other measures designed to assess the effectiveness of specific measures for disabled users.*** The published information shall also be supplied to the national regulatory authority.

Justification:

The concept of Quality of Service should not be limited to clear lines and rapid connections, but also to speed of directory enquiry response, quality of accessible format bill, and other areas of service to disabled users.

(Amendment 8)
Article 18

Member States shall ensure that transparent information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of publicly

Member States shall ensure that transparent, ***easily accessible*** information ***which can be received in a form that is clear and comprehensible to everyone*** on applicable

available telephone services is available to the public, and particularly to all users and consumers, in accordance with the provisions of Annex II.

prices and tariffs, and on standard terms and conditions, in respect of access to and use of publicly available telephone services is available to the public, and particularly to all users and consumers, in accordance with the provisions of Annex II.

Justification:

Transparency must be ensured through the provision of information which is easily accessible to the public, clear, and able to be understood by everyone.

(Amendment 9)
Article 22(1)

Member States shall ensure that, in addition to any other national emergency call numbers specified by the national regulatory authorities, all users of publicly available telephone services, including users of public pay telephones, are able to call the emergency services free of charge, by using the single European emergency call number '112'.

Member States shall ensure that, in addition to any other national emergency call numbers specified by the national regulatory authorities, all users of publicly available telephone services, including users of public pay telephones, are able to call the emergency services free of charge, by using the single European emergency call number '112'. ***Member States shall ensure that access to emergency call numbers to disabled persons, in particular persons with hearing or speech impairments, is recognised and accommodated.***

Justification:

Emergency numbers must be accessible to disabled people, and appropriate action must be taken to secure this.

(Amendment 10)
Article 26

I. Member States may impose 'must carry' obligations, for the transmission of

I. Member States may impose 'must carry' obligations, for the transmission of

specified radio and television broadcasts, on undertakings under their jurisdiction providing electronic communications networks **established** for the distribution of radio or television broadcasts to the public. Such obligations shall only be imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate, transparent and **limited in time**.

specified radio and television broadcasts, on undertakings under their jurisdiction providing electronic communications networks **used** for the distribution of radio or television broadcasts to the public. **In accordance with Article 7(2), 'must carry' obligations may include the transmission of services provided by these broadcasters to enable access for disabled users and users with special needs.**

Member States may require electronic communications networks and, if appropriate, other undertakings to grant those broadcasters access to associated facilities and services necessary for the public reception of the specified broadcasts and to ensure that those broadcasts are easily accessible and prominently displayed on navigators or guides.

Such obligations shall only be imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate, transparent and **subject to periodic review**.

Justification:

Technological neutrality requires that Member States must be free to apply 'must carry' obligations to any other electronic communications networks under their jurisdiction which may be used for the distribution of radio or television broadcasts to the public. Use of 'must carry' obligations, whether applied to electronic communications networks which were not established for the distribution of radio or television broadcasts to the public, must be subject to the proportionality tests already included in Article 26.

Where deemed appropriate by Member States, 'must carry' obligations may include services to ensure that disabled people can have equal access to broadcasting.

If Member States seek universal access, then cable operators must also carry these channels, and use a corresponding approach in electronic guides and navigators.

(Amendment 11)
Article 26(2)

Member States ***shall ensure that the*** undertakings subject to ‘must carry’ obligations receive ***appropriate*** compensation on reasonable, transparent and non-discriminatory terms ***taking into account the network capacity required.***

Member States ***may decide to set up a compensation mechanism for*** undertakings subject to ‘must carry’ obligations ***so that they*** receive compensation on reasonable, transparent and non-discriminatory terms. ***The calculation should be based on the net cost of the network capacity required, resulting from the 'must carry' obligation, plus the value of the services distributed by broadcasting providers and other content providers.***

Justification:

It should be for Member States to decide to make arrangements to compensate network operators for the possible cost of transmitting 'must carry' services. Any compensation arrangements ought to be confined to the net costs resulting from the 'must carry' obligation. For this, not only necessary capacity but also the distribution value of programmes or services to the operator must be taken into consideration.

(Amendment 12)
Article 26(2a)(new)

Member States shall undertake to establish and update a coherent regulatory framework comprising the 'must carry' obligations provided for in this article and the other, similar obligations concerning audiovisual and multimedia content which are established at Community and national level.

Justification:

The Council, Parliament and the Commission have consistently maintained that it is desirable to separate infrastructure and audiovisual content. 'Must carry' obligations are content-related with no direct bearing on infrastructure. It is therefore essential to establish and update a coherent framework accommodating this specific, isolated article of the Directive and the other rules on audiovisual content at Community and national level.

(Amendment 13)

Article 29(1)

Member States shall ensure that national regulatory authorities take into account the views of users, consumers, manufacturers, undertakings providing communications networks and service providers on issues related to all user and consumer rights concerning publicly available communications services.

Member States shall ensure that national regulatory authorities take into account the views of **all** users (***including disabled users***), consumers, manufacturers, undertakings providing communications networks and service providers on issues related to all user and consumer rights concerning publicly available communications services.

Justification:

The views of disabled consumers of electronic communications service must not be overlooked.

(Amendment 14)

Annex VI(1), second indent a (new)

- ***Terminals equipped for the presentation and implementation of digital interactive offerings shall ensure that additional services transmitted in clear are available with full functionality to the consumer. To that extent, they shall comply with the open MHP standard.***

Justification:

Clearer regulation is necessary on consumer protection grounds.

(Amendment 15)

Annex VI(2)

2. Interoperability for analogue and digital television sets

Any analogue television set with an integral

2. Interoperability for analogue and digital television sets

Any analogue television set with an integral

screen of visible diagonal greater than 42 cm which is put on the market for sale or rent in the Community shall be fitted with at least one open interface socket (as standardised by a recognised European standardisation body) permitting simple connection of peripherals, especially additional decoders and digital receivers.

Any digital television set with an integral screen ***of visible diagonal greater than 30 cm*** which is put on the market for sale or rent in the Community shall be fitted with at least one open interface socket (either standardised by a recognised European standardisation body or conforming to an industry-wide specification) permitting simple connection of peripherals, and able to pass all the elements of a digital television signal. Apart from video and audio streams, this includes conditional access information, the full application programme interface (API) command set of the connected devices, service information and copy protection information.

The above functionality may be updated from time to time under the procedure referred to in Article 20(2).

screen of visible diagonal greater than 42 cm which is put on the market for sale or rent in the Community shall be fitted with at least one open interface socket (as standardised by a recognised European standardisation body) permitting simple connection of peripherals, especially additional decoders and digital receivers.

Any digital television set with an integral screen which is put on the market for sale or rent in the Community shall be fitted with at least one open interface socket (either standardised by a recognised European standardisation body or conforming to an industry-wide specification) permitting simple connection of peripherals, ***in particular additional descramblers, and decoders from independent third providers***, and able to pass all the elements of a digital television signal. Apart from video and audio streams, this includes conditional access information, the full application programme interface (API) command set of the connected devices, service information and copy protection information.

Television sets intended for the presentation of interactive services shall comply with the open MHP standard.

The above functionality may be updated from time to time under the procedure referred to in Article 20(2).

Justification:

The planned distinction on the basis of screen diagonal is not appropriate, since interface costs are unaffected by screen diagonal.

It must be possible to use additional descramblers and decoders from independent third providers.

28 February 2001

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND CONSUMER POLICY

for the Committee on Legal Affairs and the Internal Market

on the proposal for a directive of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services

(COM(2000) 392 – C5-0429/2000 – 2000/0183(COD))

Draftsman: Mihail Papayannakis

PROCEDURE

The Committee on the Environment, Public Health and Consumer Policy appointed Mihail Papayannakis draftsman at its meeting of 10 October 2000.

It considered the draft opinion at its meetings of 8 January 2001 and 27 February 2001.

At the last meeting it adopted the following amendments by unanimously.

The following were present for the vote: Guido Sacconi, acting chairman; Alexander de Roo, vice-chairman; Mihail Papayannakis, draftsman; Per-Arne Arvidsson, John Bowis, Martin Callanan, Chris Davies, Avril Doyle, Karl-Heinz Florenz, Cristina García-Orcoyen Tormo, Laura González Álvarez, Robert Goodwill, Anneli Hulthén, Christa Klaß, Eija-Riitta Anneli Korhola, Bernd Lange, Paul A.A.J.G. Lannoye (for Marie Anne Isler Béguin), Minerva Melpomeni Malliori, Patricia McKenna, Karl Erik Olsson, Dagmar Roth-Behrendt, Karin Scheele, María Sornosa Martínez, and Kathleen Van Brempt (for Dorette Corbey).

AMENDMENTS

The Committee on the Environment, Public Health and Consumer Policy calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

(Amendment 1)
Article 4, Paragraph 2

The connection provided shall be capable of allowing users to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that are sufficient to permit Internet access.

The connection provided shall be capable of allowing users to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that are sufficient to permit Internet access ***at a satisfactory speed at all times (including peak and off-peak hours)***.

Justification:

Taking into consideration the continuous technological progress, the speed has to be satisfactory to ensure proper access to the Internet. It should be made clear that, beyond access to e-mail and surfing basic web sites, the technological evolution has already started to demand higher speed applications to be accessible through the Internet.

(Amendment 2)
Article 8, Paragraph 3

When Member States designate undertakings in part or all of the national territory as having universal service obligations, they shall do so using an efficient, objective and transparent allocation mechanism. Such designation methods may include public tenders and public auctions, in order to ensure that universal service is provided in a cost-effective manner and as a means of determining the net cost of the universal service obligation.

When Member States designate undertakings in part or all of the national territory as having universal service obligations, they shall do so using an efficient, objective and transparent allocation mechanism. Such designation methods may include public tenders and public auctions, in order to ensure that universal service is provided in a cost-effective manner and as a means of determining the net cost of the universal service obligation. ***Under any circumstances it must be ensured that network integrity, continuity and quality of service are maintained.***

¹ OJ C 365, 19.12.2000, p. 238.

Justification:

It is important in all the geographical regions of state quality services to be provided and maintained at the same level. Areas with few users and as a result less profitable for the undertakings, should be treated as areas with thousands of users, e.g. areas of the capital of the state.

(Amendment 3)
Article 9

1. National regulatory authorities shall monitor the evolution of the level and structure of retail tariffs of the publicly available telephone service provided at fixed locations by designated undertakings, in particular in relation to national consumer prices **and** income. They may, in the light of national conditions, require the designated undertakings to provide tariff options or packages to consumers which depart from those provided under normal commercial conditions, in particular to ensure that those on low incomes or with specific social needs are not prevented from accessing or using the publicly available telephone service.

2. Member States **may** require undertakings with obligations under Article 4 to apply common tariffs throughout the territory, in the light of national conditions.

3. Member States **may**, as an alternative to the requirement for designated undertakings to provide special tariff options or for undertakings to apply common tariffs, provide support to consumers identified as having specific economic or social needs, in particular by granting entitlement to the public telephone service at a specified tariff.

4. National regulatory authorities shall ensure that, where an undertaking has an obligation to provide special tariff options

1. National regulatory authorities shall monitor the evolution of the level and structure of retail tariffs of the publicly available telephone service provided at fixed locations by designated undertakings, in particular in relation to national consumer prices, income **and the cost of living. Costs of connection fees or deposits, ongoing costs of staying connected shall be considered.** They may, in the light of national conditions, require the designated undertakings to provide tariff options or packages to consumers which depart from those provided under normal commercial conditions, in particular to ensure that those on low incomes or with specific social needs are not prevented from accessing or using the publicly available telephone service.

2. Member States **shall** require undertakings with obligations under Article 4 to apply common tariffs throughout the territory, in the light of national conditions, **so that consumers are not disadvantaged by reason of their location. Full choice of payment methods shall be available free of charge.**

3. Member States **shall**, as an alternative to the requirement for designated undertakings to provide special tariff options **under paragraph 1** or for undertakings to apply common tariffs **under paragraph 2**, provide support to consumers identified as having specific

1 or common tariffs, the conditions are fully transparent and are published and applied in accordance with the principle of non-discrimination. National regulatory authorities may require that specific schemes be modified or withdrawn.

economic or social needs, in particular by granting entitlement to the public telephone service at a specified tariff.

4. National regulatory authorities shall ensure that, where an undertaking has an obligation to provide special tariff options 1 or common tariffs, the conditions are fully transparent and are published and applied in accordance with the principle of non-discrimination. National regulatory authorities may require that specific schemes be modified or withdrawn.

5. Member States shall ensure that the designated operator(s) comply with the specific provisions of Article 11 (on Quality of Service of designated undertakings).

Justification:

Everybody should have access to the internet, so the issue of affordability should be greatly considered and defined. Affordability has to include costs of connection fees or deposits, as well as ongoing costs of staying connected. The cost of living is a term clearly related to affordability and it should not be ignored.

(Amendment 4)
Article 15, Paragraph 2

This review shall be undertaken in the light of social, commercial and technological developments. The review process shall be undertaken in conformity with Annex V.

This review shall be undertaken in the light of social, commercial and technological developments. The review process shall be undertaken in conformity with Annex V. ***In particular, proper consultation of consumer associations and other relevant undertakings shall be conducted in that matter.***

Justification:

Consumer associations should be consulted in the process of the periodic review of the scope of USO.

The choice between different mechanisms to compensate, if need be, for the (net cost of) provision of universal service shall be based only on the cost-efficiency of these mechanisms..

(Amendment 5)

Article 16, Paragraph 2

Member States shall ensure that, on the entry into force of this Directive, and periodically thereafter, national regulatory authorities undertake a market analysis, in accordance with the procedure set out in Article 14(3) of Directive [on a common regulatory framework for electronic communications networks and services] to determine whether to maintain, amend or withdraw the obligations referred to in paragraph 1 of this Article. Measures taken shall be subject to the procedure set out in Article 6(2) to (5) of Directive [on a common regulatory framework for electronic communications networks and services].

Member States shall ensure that, on the entry into force of this Directive, and periodically thereafter, national regulatory authorities undertake a market analysis, in accordance with the procedure set out in Article 14(3) of Directive [on a common regulatory framework for electronic communications networks and services] to determine whether to maintain, amend or withdraw the obligations referred to in paragraph 1 of this Article. **National regulatory authorities shall consult publicly on all matters relating to retail price regulation, including the introduction of, amendments to, or possible withdrawal of such regulation.** Measures taken shall be subject to the procedure set out in Article 6(2) to (5) of Directive [on a common regulatory framework for electronic communications networks and services].

Justification:

It is very important to be made clear that consumer protection is the main aim of this article. In particular, national regulatory authorities should be required to consult publicly on all matters relating to retail price regulation, including the introduction of, amendments to, or possible withdrawal of such regulation.

(Amendment 6) Article 17

1. Member States shall ensure that users and consumers have a right to a contract with their direct public telephone service provider(s) that specifies:

- (a) the identity and address of the supplier,
- (b) services provided, the service quality levels offered, as well as the time for the initial connection,
- (c) the types of maintenance service offered,
- (d) the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained,
- (e) the duration of the contract, the conditions for renewal and termination of services and of the contract,

1. Member States shall ensure that users and consumers **shall** have a right to a contract with their direct public telephone service provider(s) that specifies **prior to the conclusion of the contract:**

- (a) the identity and address of the supplier,
- (b) services provided, the service quality levels offered, as well as the time for the initial connection,
- (c) the types of maintenance service offered,
- (d) the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained,
- (e) the duration of the contract, the

(f) any compensation and the refund arrangements which apply if contracted service quality levels are not met, and
(g) the method of initiating procedures for settlement of disputes in accordance with Article 30.

2. Where contracts are concluded between users or consumers and communications services providers other than direct public telephone service providers, the information in paragraph 1 shall also be ***included in such contracts.***

3. Users and consumers shall be given adequate notice of any intention to modify contractual conditions and shall be free to withdraw from contracts if they do not accept the new conditions.

4. Paragraphs 1, 2 and 3 apply without prejudice to Community rules on consumer protection, in particular Directives 97/7/EC and 93/13/EC.

conditions for renewal and termination of services and of the contract,

(f) any compensation and the refund arrangements which apply if contracted service quality levels are not met, and
(g) the method of initiating procedures for settlement of disputes in accordance with Article 30.2. Where contracts are concluded between users or consumers and communications services providers other than direct public telephone service providers ***or through intermediaries***, the information in paragraph 1 shall also be ***provided prior to the conclusion of the contract.***

3. Users and consumers shall be given adequate notice of any intention to modify contractual conditions and shall be free to withdraw from contracts if they do not accept the new conditions. ***Consumers shall be informed about their right of withdrawal when the notice is given. National regulatory authorities shall require service providers to notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect.***

4. General terms and conditions of contracts shall be fair and transparent for the consumer. They shall be given in clear and comprehensible language. Paragraphs 1, 2 and 3 apply without prejudice to Community rules on consumer protection, in particular Directives 97/7/EC and 93/13/EC. Limits on certain contractual conditions (upper limit on the minimum cancellation period) and the definition of a "cooling off period" shall be established. Consumers shall also be protected against unfair or misleading selling methods.

5. Appropriate mechanisms for simple, inexpensive and independent complaint handling and clear and effective redress mechanisms, including cross-border cases, shall be devised. National

regulatory authorities shall have reserve powers to change conditions of contract with telephone service providers in the user's favour if they find it appropriate.

Justification:

Consumers have a right to a contract in which conditions must be fair and well known in advance. The legal obligations of both parties - including the minimum length of the contract (if any), the conditions and costs imposed for the initiation and termination of the contract, the burden of proof in case of disputes, etc. - should be clearly and fairly established.

Consumers should be promptly informed when relevant contractual conditions are modified. Full implementation and/or modifications of directive 93/13/EC on Unfair Terms (a 'black' list of prohibited terms for instance) might fail to address the issue of unfair terms and specific legislative provisions could prove necessary in that respect. These could include limits on important conditions (for example, an upper limit on the minimum cancellation period) and the definition by the network operator and/or service provider of a trial period, or a "cooling off period", during which the consumer can cancel subscription without additional costs.

Consumers must be protected against unfair or misleading selling methods. Future legislation should cover these aspects.

Consumers must have access to simple, inexpensive and independent complaint handling and clear and effective redress mechanisms. Due attention has to be paid to cross-border complaint handling and dispute settlement: an ombudsman scheme could be an appropriate mechanism for effective redress.

(Amendment 7)
Article 18

Member States shall ensure that transparent information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of publicly available telephone services is available to the public, and particularly to all users and consumers, in accordance with the provisions of Annex II.

Member States shall ensure that ***easily and clearly comparable*** transparent information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of publicly available telephone services is available to the public, and particularly to all users and consumers, in accordance with the provisions of Annex II. ***Member States and the Commission shall publish regular reports on the evolution of tariffs.***

Justification:

Consumers have a right to information on the service they are buying. This should include a number of elements. Consumers must have easy access to accurate and transparent information about the price of individual outgoing or incoming calls. A system should be put in place, which allows the consumer to check the consumption of the service. For consumers to benefit from increased competition, prices need to be comparable. In order to enhance price comparison, prices should be expressed in a way such as price of call per second.

Regulatory supervision might be necessary in that respect. Information on the results of studies on health risks linked to the use of mobiles handsets and related devices should be publicly available. Finally, consumers shall be informed on their rights as regards universal services.

(Amendment 8)
Article 19, Paragraph 1

Member States shall ensure that national regulatory authorities are able to require undertakings that provide publicly available electronic communications services to publish comparable, adequate and up-to-date information for consumers on the quality of their services. The published information shall also be supplied to the national regulatory authority.

Member States shall ensure that national regulatory authorities are able to require undertakings that provide publicly available electronic communications services to publish comparable, adequate and up-to-date information for consumers on the quality of their services, ***including geographic coverage maps, technical characteristics, quality of speech voice transmission.*** The published information shall also be supplied to the national regulatory authority.

Justification:

Consumers have a right to information on the quality of the service delivered by the suppliers. Elements such as geographic coverage maps, technical characteristics, quality of speech voice transmission are especially relevant in that respect.

(Amendment 9)
Article 25

1. Member States shall ensure that all subscribers of publicly available telephone services, including mobile services, who so request can retain their telephone number(s) independently of the undertaking providing the service:

- (a) in the case of geographic numbers, at a specific location, and
- (b) in the case of numbers other than geographic numbers, at any location.

2. National regulatory authorities shall require undertakings notified as having significant market power for the provision

1. Member States shall ensure that all subscribers of publicly available telephone services, including mobile services, who so request can, ***free of charge,*** retain their telephone number(s) independently of the undertaking providing the service:

- (a) in the case of geographic numbers, at a specific location, and
- (b) in the case of numbers other than geographic numbers, at any location.

2. National regulatory authorities shall require undertakings notified as having significant market power for the provision

of connection to and use of the public telephone network at fixed locations to enable their subscribers to access the services of any interconnected provider of publicly available telephone services:

- (a) on a call-by-call basis by dialling a short prefix, and
- (b) by means of pre-selection, with a facility to override any pre-selected choice on a call-by-call basis by dialling a short prefix.

User requirements for these facilities to be implemented on other networks or in other ways shall be assessed in accordance with the market analysis procedure laid down in Article 14 of Directive [on a common regulatory framework for electronic communications networks and services].

3. National regulatory authorities shall ensure that pricing for interconnection related to the provision of number portability under paragraph 1, and the use of the facility in paragraph 2, are cost-oriented.

4. National regulatory authorities shall not impose tariffs for the porting of numbers in a manner that would distort competition, such as by imposing a common tariff across all undertakings.

of connection to and use of the public telephone network at fixed locations to enable their subscribers to access the services of any interconnected provider of publicly available telephone services:

- (a) on a call-by-call basis by dialling a short prefix, and
- (b) by means of pre-selection, with a facility to override any pre-selected choice on a call-by-call basis by dialling a short prefix.

User requirements for these facilities to be implemented on other networks or in other ways shall be assessed in accordance with the market analysis procedure laid down in Article 14 of Directive [on a common regulatory framework for electronic communications networks and services].

3. National regulatory authorities shall ensure that pricing for interconnection related to the provision of number portability under paragraph 1, and the use of the facility in paragraph 2, are cost-oriented **and that charges to consumers, if any, do not act as a disincentive for the use of these facilities.**

4. **As far as possible, national regulatory authorities shall not impose tariffs for the porting of numbers in a manner that would distort competition, such as by imposing a common tariff across all undertakings, unless the market fails to deliver tariffs which are cost-oriented.**

Justification:

Number portability is essential to competition. The lack of number portability acts as a significant deterrent to switching supplier for many people. Consumers are reluctant to turn away from unsatisfactory suppliers because so many friends and relatives know their existing number. Without number portability, the change of operator induces considerable disruption and expense.

Consumers shall not be charged for getting number portability, which constitutes a consumer's right.

In that respect, it is doubtful whether competition in respect of tariffs for the porting of numbers would be fierce, as it would be logical that operators set those tariffs at a level such that consumers would have few incentives to change providers. Regulatory intervention by

NRAs might well be necessary for those tariffs to be truly cost-oriented.

(Amendment 10)
Annex I, Part A(e)

Non payment of bills

Member States shall authorise specified measures, which shall be proportionate, non-discriminatory and published, to cover non-payment of telephone bills for use of the public telephone network at fixed locations. These measures shall ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. Except in cases of fraud, persistent late payment or non-payment, these measures shall ensure, as far as is technically feasible, that any service interruption is confined to the service concerned. Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States *may* allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the subscriber (e.g. "112" calls) are permitted.

Non payment of bills

Member States shall authorise specified measures, which shall be proportionate, non-discriminatory and published, to cover non-payment of telephone bills for use of the public telephone network at fixed locations. These measures shall ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. Except in cases of fraud, persistent late payment or non-payment, these measures shall ensure, as far as is technically feasible, that any service interruption is confined to the service concerned. Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States *shall* allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the subscriber (***connected to receive incoming calls and able to make emergency calls*** e.g. '112' calls) are permitted.

Justification:

Annex I should be extended as regards non-payment of bills. Consumers should benefit free of charge from a full choice of payment methods and 'lifeline' services (connected to receive incoming calls and able to make emergency calls).

(Amendment 11)
Annex I, Part B, letter (b)(a) (new)

Advice of Duration and Charge services

Consumers must have easy access to accurate and transparent information about the price of individual outgoing or incoming calls. A system should be put in place, which allows the consumer to

check the consumption of the service (in real time).

Justification:

Additional facilities shall be introduced, especially in the mobile sector, to provide the consumer with transparent information on the service they are buying. Consumers must have easy access to accurate and transparent information about the price of individual outgoing or incoming calls. A system should be put in place, which allows the consumer to check the consumption of the service (in real time).

(Amendment 12)
Annex II

The national regulatory authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article 18. It is for the national regulatory authority to decide which information is to be published by the undertakings providing public telephone networks and/or publicly available telephone services which information is to be published by the national regulatory authority itself.

1. Name(s) and address(es) of undertaking(s)
i.e. names and head office addresses of undertakings providing public telephone networks and/or publicly available telephone services.
2. Publicly available telephone services offered
 - 2.1. Scope of the publicly available telephone service
Description of the publicly available telephone services offered, indicating what is included in the subscription charge and the periodic rental charge (e.g. operator services, directories, directory services, selective call barring, itemised billing, maintenance, etc).
 - 2.2. Standard Tariffs covering access, all types of usage charges, maintenance, and including details of standard discounts applied and special and targeted tariff schemes.

The national regulatory authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article 18. It is for the national regulatory authority to decide which information is to be published by the undertakings providing public telephone networks and/or publicly available telephone services which information is to be published by the national regulatory authority itself. ***However, it has to be taken into account that the information should preferably be published by the undertakings and before the contract has been signed, for consumers to be able to make an informed choice.***

1. Name(s) and address(es) of undertaking(s)
i.e. names and head office addresses of undertakings providing public telephone networks and/or publicly available telephone services.
2. Publicly available telephone services offered
 - 2.1. Scope of the publicly available telephone service
Description of the publicly available telephone services offered, indicating what is included in the subscription charge and the periodic rental charge (e.g. operator services, directories, directory services, selective call barring, itemised billing, maintenance, etc).

2.3. Compensation/refund policy including specific details of any compensation/refund schemes offered.

2.4. Types of maintenance service offered

2.5. Standard contract conditions including any minimum contractual period, if relevant.

3. Dispute settlement mechanisms including those developed by the undertaking.

2.2. Standard Tariffs covering access, all types of usage charges, maintenance, and including details of standard discounts applied and special and targeted tariff schemes. ***Prices shall be expressed in a way such as price of call per second.***

2.3. Compensation/refund policy including specific details of any compensation/refund schemes offered.

2.4. Types of maintenance service offered

2.5. Standard contract conditions including any minimum contractual period, if relevant.

2.6. Information on the results of studies on health risks linked to the use of mobiles handsets and related devices.

2.7. Quality of the service offered, including geographic coverage maps, technical characteristics, quality of speech voice transmission.

2.8. Consumers shall be informed of their rights as regards universal services.

3. Dispute settlement mechanisms including those developed by the undertaking.

Details of the availability of and tariffs for the facilities and services listed in Annex I (provisions for affordability and control of expenditure, and additional facilities) shall be provided.

Justification:

Consumers have a right to information on the service they are buying. This should include a number of elements. Consumers must have easy access to accurate and transparent information about the price of individual outgoing or incoming calls. A system should be put in place, which allows the consumer to check the consumption of the service (in real time, which has been feasible under the GSM standard for some years). For consumers to benefit from increased competition, prices need to be comparable. In order to enhance price comparison, prices should be expressed in a way such as price of call per second. Regulatory supervision might be necessary in that respect. Information on the results of studies on health risks linked to the use of mobiles handsets and related devices should be publicly available. Finally, consumers shall be informed on their rights as regards universal services.

(Amendment 13)
Annex V, Paragraph 3

In proposing any change or re-definition of the scope of universal service obligations, the Commission *may consider the following options:*

- *propose a change or re-definition of the scope of universal service obligations but require* that any net costs are financed *only* via general government budgets; or
- *propose a change or re-definition of the scope of universal service obligations and permit* any net costs *to* be financed by mechanisms in conformity with this Directive.

Alternatively, the Commission may propose that specific services should become mandatory services to be provided under cost oriented obligations in line with Chapter IV, and not be included in the scope of universal service obligations as specified in Chapter II.

In proposing any change or re-definition of the scope of universal service obligations, the Commission *shall take into account the cost-efficiency of the financing of universal service obligations to propose to Member States:*

- that any net costs are financed via general government budgets, or *that* any net costs be financed by mechanisms in conformity with this Directive.

Alternatively, the Commission may propose that specific services should become mandatory services to be provided under cost oriented obligations in line with Chapter IV, and not be included in the scope of universal service obligations as specified in Chapter II.

Justification:

The choice between different mechanisms to compensate for the (net cost of) provision of universal service shall be based only on the cost-efficiency of these mechanisms.

18 April 2001

OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY

for the Committee on Legal Affairs and the Internal Market

on the proposal for a European Parliament and Council directive on universal service and users' rights relating to electronic communications networks and services
(COM(2000) 392 – C5-0429/2000 – 2000/0183 (COD))

Draftsman: Gérard Caudron

PROCEDURE

The Committee on Industry, External Trade, Research and Energy appointed Gérard Caudron draftsman at its meeting of 5 December 2000.

It considered the draft opinion at its meetings of 13 September 2000, 25 and 30 January 2001, 5 February 2001, 21 March 2001 and 11 April 2001.

At the latter/last meeting it adopted the following amendments by 28 votes to 0, with 25 abstentions.

The following were present for the vote: Carlos Westendorp y Cabeza (chairman), Nuala Ahern and Peter Michael Mombaur (vice-chairmen), Gérard Caudron (draftsman), Konstantinos Alyssandrakis, Maria del Pilar Ayuso González (for Marjo Matikainen-Kallström), David Robert Bowe (for Massimo Carraro), Yves Butel, Giles Bryan Chichester, Nicholas Clegg, Dorette Corbey (for Norbert Glante), Elisa Maria Damião (for Erika Mann), Willy C.E.H. De Clercq, Harlem Désir, Concepció Ferrer, Colette Flesch, Christos Folias, Glyn Ford, Jacqueline Foster (for Guido Bodrato), Fiorella Ghilardotti (for Elena Valenciano Martínez-Orozco), Neena Gill (for François Zimeray), Alfred Gomolka (for Konrad K. Schwaiger), Michel Hansenne, Malcolm Harbour (for Renato Brunetta), Roger Helmer, Hans Karlsson, Albert Dimitrios Koulourianos (for Fausto Bertinotti), Wolfgang Kreissl-Dörfler (for Myrsini Zorba), Peter Liese (for Werner Langen), Rolf Linkohr, Caroline Lucas, Jan Maat (for Christian Foldberg Rovsing), Eryl Margaret McNally, Nelly Maes, Hans-Peter Martin (substitute), Elizabeth Montfort, Luisa Morgantini, Angelika Niebler, Hervé Novelli (for Umberto Scapagnini), Reino Paasilinna, Elly Plooij-van Gorsel, John Purvis, Godelieve Quisthoudt-Rowohl, Imelda Mary Read, Mechtild Rothe, Paul Rübig, Esko Olavi Seppänen, Astrid Thors, Claude Turmes (for Ilka Schröder), Jaime Valdivielso de Cué, W.G. van Velzen, Alejo Vidal-Quadras Roca, Dominique Vlasto and Anders Wijkman.

SHORT JUSTIFICATION

The Commission proposal is an important document. It encompasses the present situation in a rapidly developing telecommunications market where traditional fixed voice telephony is now, even for individual users, only one component.

It gives a full picture of the various fields constituting universal service: its scope, how it is provided and funded, how it is developing over time and adapting to new social practices.

The proposal does however have the major drawback of mixing universal service with users' rights relating to all electronic communications services.

While universal service may include in the definition of the services which constitute it criteria of the same nature of those generally used to assess services rendered to users (affordability, availability, time for connection and quality of service), it also, and in some cases primarily, owes its existence to other and different objectives: regional policy (providing coverage in rural or remote regions), social policy (not excluding the poorest sections of the population from what society regards as normal means of communication) or public safety (emergency calls).

With the progressive opening up of the market to competition there will perforce be a shift in the pattern of charges at the expense of the more traditional use of the telephone. By contrast, new, more innovative or cost-saving services (ADSL for example) are often geographically restricted to the most densely populated or wealthy urban areas. One of the aims of the universal service is to make sure that liberalisation provides benefits for all, a promise which increasing competition cannot meet on its own, but an essential if the EU is to achieve the Lisbon European Council's aim of becoming the most competitive and dynamic knowledge-based economy in the world.

AMENDMENTS

The Committee on Industry, External Trade, Research and Energy calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

(Amendment 1) Article 8, paragraph 3

3. When Member States designate undertakings in part or all of the national territory as having universal service obligations, they shall do so using an efficient, objective and transparent allocation mechanism. Such designation methods may include public tenders and public auctions, in order to ensure that universal service is provided in a cost-effective manner and as a means of determining the net cost of the universal service obligation.

3. When Member States designate undertakings in part or all of the national territory as having universal service obligations, they shall do so using an efficient, objective and transparent allocation mechanism. Such designation methods may include public tenders and public auctions, in order to ensure that universal service is provided in a cost-effective manner and as a means of determining the net cost of the universal service obligation. ***At all events, the integrity of the network and the continuity and quality of the service must be upheld.***

Justification:

Opening up to competition must not result in a fall in the quality or reliability of services.

(Amendment 2) Article 9, paragraph 1

1. National regulatory authorities shall monitor the evolution of the level and structure of retail tariffs of the publicly available telephone service provided at fixed locations by designated undertakings, in particular in relation to national consumer prices and income. They may, in the light of national conditions, require the designated undertakings to provide tariff options or packages to consumers which depart from those provided under normal commercial conditions, in particular to ensure that those

1. National regulatory authorities shall monitor the evolution of the level and structure (***particularly costs generated by connection charges or guarantees which are required***) of retail tariffs of the publicly available telephone service provided at fixed locations by designated undertakings, in particular in relation to national consumer prices and income ***and the cost of living for individuals and in particular persons on low incomes or with special social needs. In the course of these activities, the national***

¹ OJ C 365, 19.12.2000, p. 238.

on low incomes or with specific social needs **are not prevented from accessing or using** the **publicly available** telephone service.

regulatory authorities shall work in conjunction with consumer associations and the parties involved (associations working in the social field, NGOs etc). They shall take into account the costs generated by connection charges or guarantees, and current costs depending on the time of connection. They may, in the light of national conditions, require the designated undertakings to provide tariff options or packages to consumers which depart from those provided under normal commercial conditions, in particular to ensure that **all sections of the population, including** those on low incomes or with specific social needs, **have access to and can use** the telephone service.

Justification

Changes in what are affordable prices and the nature or content of the needs of the most disadvantaged users must be based on on-the-spot experience and not simply on abstract statistical or econometric indicators.

(Amendment 3)

Article 12, paragraph 1, first subparagraph

1. **Where necessary, national regulatory authorities may assess** whether the provision of universal service represents an unfair burden on undertakings designated to provide universal service.

1. National regulatory authorities **shall ascertain** whether **and to what extent** the provision of universal service represents an unfair burden on undertakings designated to provide universal service.

Justification

Supplying the universal service does cost something, but it also brings benefits to the undertaking(s) concerned. A reliable assessment of the actual net cost of supplying it, together with opening to competition, would allow the universal service to be fully incorporated into the market dynamics of a product and avoid the pressures tending to restrict it to a minimum and confined core of services.

(Amendment 4)

Article 15, paragraph 2

2. This review shall be undertaken in the

2. This review shall be undertaken in the

light of social, commercial and technological developments. The review process shall be undertaken in accordance with Annex V.

light of social, commercial and technological developments, ***with particular regard to mobility and high output***. The review process shall be undertaken in accordance with Annex V. ***The review should be organised with the utmost transparency with consultation of all the parties concerned. Following the review, the Commission shall forward a report to Parliament and the Council.***

Justification

The European Parliament insists on transparency in the way the telecommunications package is implemented and updated. A report from the Commission is a useful tool to this end.

(Amendment 5)

Article 16, paragraph 2

2. Member States shall ensure that, on the entry into force of this Directive, and periodically thereafter, national regulatory authorities undertake a market analysis, in accordance with the procedure set out in Article 14(3) of Directive [on a common regulatory framework for electronic communications networks and services] to determine whether to maintain, amend or withdraw the obligations referred to in paragraph 1 of this Article. Measures taken shall be subject to the procedure set out in Article 6(2) to (5) of Directive [on a common regulatory framework for electronic communications networks and services].

2. Member States shall ensure that, on the entry into force of this Directive, and periodically thereafter, national regulatory authorities undertake a market analysis, in accordance with the procedure set out in Article 14(3) of Directive [on a common regulatory framework for electronic communications networks and services] to determine whether to maintain, amend or withdraw the obligations referred to in paragraph 1 of this Article. ***The national regulatory authorities shall consult the public on all matters relating to the regulation of retail tariffs, including the introduction of such regulation, its amendment or possible withdrawal.*** Measures taken shall be subject to the procedure set out in Article 6(2) to (5) of Directive [on a common regulatory framework for electronic communications networks and services].

Justification:

The tariff policy of a powerful undertaking can have destabilising effects out of proportion to a mere commercial strategy. Any regulation of this matter should be subjected to full advance investigation hearing both sides.

(Amendment 6)
Article 17, paragraph 1

1. Member States shall ensure that users and consumers have a right to a contract with their direct public telephone service provider(s) that specifies:

- (a) the identity and address of the supplier;
- (b) services provided, the service quality levels offered, as well as the time for the initial connection;
- (c) the types of maintenance service offered;
- (d) the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;
- (e) the duration of the contract, the conditions for renewal and termination of services and of the contract;
- (f) any compensation and the refund arrangements which apply if contracted service quality levels are not met; and
- (g) the method of initiating procedures for settlement of disputes in accordance with Article 30.

1. Member States shall ensure that users and consumers have a right to a contract with their direct public telephone service provider(s) that specifies ***before the contract is concluded:***

- (a) the identity and address of the supplier;
- (b) services provided, the service quality levels offered, as well as the time for the initial connection;
- (c) the types of maintenance service offered;
- (d) ***the prices and tariffs prevailing and*** the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;
- (e) the duration of the contract, the conditions for renewal and termination of services and of the contract;
- (f) any compensation and the refund arrangements which apply if contracted service quality levels are not met; and
- (g) the method of initiating procedures for settlement of disputes in accordance with Article 30.

Justification:

These requirements simply apply the ordinary law of contract, from which their individual nature should not exclude telecommunications services.

(Amendment 7)
Article 17, paragraph 2

2. Where contracts are concluded between users or consumers and communications services providers other than direct public telephone service providers, the information in paragraph 1 shall also be included in such contracts.

2. Where contracts are concluded between users or consumers and communications services providers other than direct public telephone service providers, ***or via intermediaries***, the information in paragraph 1 shall also be included in such contracts.

Justification:

Reselling telephone services with or without the distributor's brand name should offer the

same guarantees as direct subscription to a telephone undertaking.

(Amendment 8)
Article 17, paragraph 3

3. Users and consumers shall be given adequate notice of any intention to modify contractual conditions and shall be free to withdraw from contracts if they do not accept the new conditions.

3. Users and consumers shall be given adequate notice of any intention to modify contractual conditions and shall be free to withdraw from contracts if they do not accept the new conditions. ***Consumers must be informed of their right to withdraw when the information is given to them.***

Justification:

These requirements are no more than the application of ordinary law of contract, from which telecommunications services should not be excluded by reason of their specific nature.

(Amendment 9)
Article 17, paragraph 4

4. Paragraphs 1, 2 and 3 apply without prejudice to Community rules on consumer protection, in particular Directives 97/7/EC and 93/13/EC.

4. ***The terms and general clauses of contracts must be fair and transparent to consumers. Their wording must be clear and comprehensible.*** Paragraphs 1, 2 and 3 apply without prejudice to Community rules on consumer protection, in particular Directives 97/7/EC and 93/13/EC.

Justification:

Self-explanatory.

(Amendment 10)
Article 25, paragraph 3

3. National regulatory authorities shall ensure that pricing for interconnection related to the provision of number portability under paragraph 1, and the use of the facility in paragraph 2, are cost oriented.

3. National regulatory authorities shall ensure that pricing for interconnection related to the provision of number portability under paragraph 1, and the use of the facility in paragraph 2, are cost oriented ***and that, where applicable, the costs charged to consumers do not discourage them from using this facility.***

Justification

It is essential for operators not to set costs at such a high level that consumers are discouraged from changing operator.

(Amendment 11)
Article 25, paragraph 4a (new)

4a. Member States shall ensure that users are clearly and regularly kept informed of the possibilities open to them by virtue of this Article.

Justification:

Ignorance of the scope for portability or (pre-)selection, or mistaken perceptions of the risks involved are likely to put a brake on their use.

(Amendment 12)
Article 30, paragraph 1

1. Member States shall ensure ***that*** transparent, simple and inexpensive procedures ***are available*** for dealing with users' and consumers' complaints. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation. They should follow, wherever possible, the principles set out in Recommendation 98/257/EC.

1. Member States shall ***create a national complaints office and*** transparent, simple, ***approachable*** and in-expensive procedures for dealing with users' and consumers' complaints. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation. They should follow, wherever possible, the principles set out in Recommendation 98/257/EC.

Justification

Undertakings can complain to the NRA. At present there is virtually nowhere for consumers to go with their complaints. Hence the need to set up national complaints offices.

(Amendment 13)
Annex I, part A, paragraph e

(e) Member States shall authorise specified measures, which shall be proportionate, non-discriminatory and

(e) Member States shall authorise specified measures, which shall be proportionate, non-discriminatory and

published, to cover non-payment of telephone bills for use of the public telephone network at fixed locations. These measures shall ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. Except in cases of fraud, persistent late payment or non-payment, these measures shall ensure, as far as is technically feasible, that any service interruption is confined to the service concerned. Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States *may* allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the subscriber (e.g. '112' calls) are permitted.

published, to cover non-payment of telephone bills for use of the public telephone network at fixed locations. These measures shall ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. Except in cases of fraud, persistent late payment or non-payment, these measures shall ensure, as far as is technically feasible, that any service interruption is confined to the service concerned. Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States *shall* allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the subscriber (***connection to receive incoming calls and to make emergency calls***, e.g. '112' calls) are permitted.

Justification:

Social and public safety grounds.

(Amendment 14)
Annex II, introduction

The national regulatory authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article 18. It is for the national regulatory authority to decide which information is to be published by the undertakings providing public telephone networks and/or publicly available telephone services and which information is to be published by the national regulatory authority itself.

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Justification:

Implied by Articles 17 and 19 of this directive.

(Amendment 15)
Annex II, paragraph 2.5a (new)

(2.5a) Member States shall ensure that consumers are informed of their rights as regards the universal service, including the facilities and services mentioned in Annex I.

Justification:

Self-explanatory.

(Amendment 16)
Annex V, paragraph 3

In proposing any change or re-definition of the scope of universal service obligations, the Commission may consider the following options:

Deleted

***- propose a change or re-definition of the scope of universal service obligations but require that any net costs are financed only via general government budgets; or
- propose a change or re-definition of the scope of universal service obligations and permit any net costs to be financed by mechanisms in conformity with this Directive.***

Justification

The choice of ways of financing the new services should be left to the Member States.

(Amendment 17)
Annex VI, point 1, first indent

* to display signals that have been transmitted in clear provided that, in the event that such equipment is rented, the rentee is in compliance with the relevant rental agreement.

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All decoders or televisions with an integrated decoder (receivers) put on the market for sale or rent in the Community must have a common interface enabling consumers to operate the set with varying, interchangeable access authorisation modules (CA modules).

Justification

The aim is to guarantee that consumers do not need to acquire several different decoders to be able to receive coded programmes using different coding systems. If an (integrated) decoder can only read one particular coding system, because it does not have a common interface, the consumer can only receive uncoded programmes and programmes using this system. With a common interface the consumer can swap between different access entitlement modules without having to buy a new decoder.

The amendment also seeks to make clear that the decoding systems are actually offered as interchangeable modules. This is absolutely essential to prevent programme suppliers forcing consumers to buy a specific coder to receive a specific programme since no CA module is offered for the programme supplier's coding system. Only if all decoding systems are freely available and interchangeable via CA module technology can there be competition between manufacturers of televisions.

(Amendment 18)

Annex VI, point 2, second paragraph

Any digital television set with an integral screen of visible diagonal greater than 30cm, which *is* put on the market for sale or rent in the Community shall be fitted with at least one open interface socket (either standardised by a recognised European standardisation body or conforming to an industry-wide specification) permitting simple connection of peripherals, and able to pass all the elements of a digital television signal. Apart from video and audio streams, this includes conditional access information, the full application programme interface (API) command set of the connected devices, service information and copy protection information.

Any digital television set with an integral screen of visible diagonal greater than 30cm, ***decoders, or digital TV recording devices*** which *are* put on the market for sale or rent in the Community shall be fitted with at least one open interface socket (either standardised by a recognised European standardisation body or conforming to an industry-wide specification) permitting simple connection of peripherals, and able to pass all the elements of a digital television signal. Apart from video and audio streams, this includes conditional access information, the full application programme interface (API) command set of the connected devices, service information and copy protection information.

Justification

The current approach does not address the continuing importance of interoperability for set top boxes and decoders, personal video recorder type devices as well as digital TVs.