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*****II**

RECOMMENDATION FOR SECOND READING

on the Common Position adopted by the Council with a view to the adoption of a Directive of the European Parliament and the Council on universal service and users' rights relating to electronic communications networks and services (10421/1/2001 – C5-0418/2001 – 2000/0183(COD))

Committee on Legal Affairs and the Internal Market

Rapporteur: Malcolm Harbour

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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)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

At the sitting of 13 June 2001 Parliament adopted its position at first reading 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 - 2000/0183 (COD)).

At the sitting of 19 September 2001 the President of Parliament announced that the common position had been received and referred to the Committee on Legal Affairs and the Internal Market (10421/1/2001 - C5-0418/2001).

The committee had appointed Malcolm Harbour rapporteur at its meeting of 13 September 2000.

It considered the common position and draft recommendation for second reading at its meetings of 11 October 2001, 6 November 2001, 22 November 2001 and 27 November 2001.

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

The following were present for the vote: Ward Beysen, acting chairman; Willi Rothley, vice-chairman; Malcolm Harbour, rapporteur; Paolo Bartolozzi, Maria Berger, Willy C.E.H. De Clercq, Raina A. Mercedes Echerer, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Gerhard Hager, Heidi Anneli Hautala, The Lord Inglewood, Ioannis Koukiadis, Kurt Lechner, Klaus-Heiner Lehne, Neil MacCormick, Luís Marinho, Hans-Peter Mayer, Arlene McCarthy, Manuel Medina Ortega, Bill Miller, Astrid Thors, Diana Wallis and Stefano Zappalà, (Francesco Fiori (for Antonio Tajani), Ruth Hieronymi (for Joachim Wuermeling), and Fiorella Ghilardotti for Enrico Boselli, pursuant to Rule 153(2)).

The recommendation for second reading was tabled on 29 November 2001.

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

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DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the Common Position adopted by the Council with a view to the adoption of a Directive of the European Parliament and the Council on universal service and users' rights relating to electronic communications networks and services (10421/1/2001 – C5-0418/2001 – 2000/0183(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (10421/1/2001 – C5-0418/2001),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2000) 392²),
 - having regard to the Commission's amended proposal (COM(2001) 503³),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 80 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Legal Affairs and the Internal Market (A5-0438/2001),
1. Amends the common position as follows;
 2. Instructs its President to forward its position to the Council and Commission.

¹ OJ C Not yet published.

² OJ C 365, 19.12.2000, p. 238.

³ OJ C Not yet published.

Amendment 1
Recital 13

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 social 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 could include, as appropriate, making available ***accessible public telephones***, 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 social needs to access emergency services "112" and to give them a similar possibility to choose between different operators or service providers as other consumers. ***Currently, quality of service standards have been developed in relation to a range of parameters to assess the quality of services received by subscribers and how well undertakings designated with universal service obligations perform in achieving these standards. Quality of service standards do not yet exist in respect of disabled users. Performance standards and relevant parameters should be developed for disabled users and are foreseen in Article 11 of this Directive; moreover, national regulatory authorities should be enabled to require publication of quality of service performance data if and when such standards and parameters are developed.***

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.

Justification

Self-explanatory. This amendment should be read in conjunction with Amendment 13.

Amendment 2
Recital 30a (new)

Article 21 requires, inter alia, that transparent and up-to-date information on prices and tariffs be made available to the public. The information required for the purposes of this article relates to prices and tariffs for both end-users and consumers. The expression "to the public" should be understood as covering both end-users and consumers as those terms are defined in Directive 2001/.../EC (Framework Directive).

Justification

To be read in conjunction with Amendment 21.

Amendment 3
Recital 33

It is desirable to enable consumers to achieve the fullest connectivity possible to digital television sets. Interoperability is an evolving concept in dynamic markets. Standards bodies should do their utmost to ensure that appropriate standards evolve along with the technologies concerned. It is likewise important to ensure that connectors are available on television sets that are capable of passing all the necessary elements of a digital signal, including the audio and video streams, conditional access information, service information, application program interface (API) information and copy protection information. This Directive therefore ensures that the functionality of the open interface for digital television sets is not limited by network operators, service providers or equipment manufacturers and continues to evolve in line with technological developments.

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Justification

Self-explanatory.

Amendment 4
Recital 36

(36) It is important that users should be able to call the single European emergency number "112", and any other national emergency telephone numbers, free of charge, from any telephone, including public pay telephones, without the use of any means of payment. Member States should have already made the necessary organisational arrangements best suited to the national organisation of the emergency systems, in order to ensure that calls to this number are adequately answered and handled. Caller location information, to be made available to the emergency services, will improve the level of protection and the security of users of "112" services and assist the emergency services in the discharge of their duties, provided that the transfer of calls and associated data to the emergency services concerned is guaranteed. Steady information technology improvements will progressively support the simultaneous handling of several languages over the networks at a reasonable cost. This in turn will ensure additional safety for European citizens using the "112" emergency call number.

(36) It is important that users should be able to call the single European emergency number "112", and any other national emergency telephone numbers, free of charge, from any telephone, including public pay telephones, without the use of any means of payment. Member States should have already made the necessary organisational arrangements best suited to the national organisation of the emergency systems, in order to ensure that calls to this number are adequately answered and handled. Caller location information, to be made available to the emergency services *to the extent technically feasible*, will improve the level of protection and the security of users of "112" services and assist the emergency services in the discharge of their duties, provided that the transfer of calls and associated data to the emergency services concerned is guaranteed. *The reception and use of such information must comply with Article 9 of Directive 2001/.../EC on the processing of personal data and the protection of privacy in the electronic communications sector.* Steady information technology improvements will progressively support the simultaneous handling of several languages over the networks at a reasonable cost. This in turn will ensure additional safety for European citizens using the "112" emergency call number.

Justification

Reinstates Parliament's position at first reading. This amendment is to be read in conjunction with Amendment 25.

Amendment 5
Recital 40

(40) Number portability is a key facilitator of consumer choice and effective competition in a competitive telecommunications environment such that end-users who so request should be able to retain their number(s) on the public telephone network independently of the organisation providing service. The provision of this facility between connections to the public telephone network at fixed and non-fixed locations is not covered by this Directive. **However, Member States may apply provisions for porting numbers between networks providing services at a fixed location and mobile networks.**

(40) Number portability is a key facilitator of consumer choice and effective competition in a competitive telecommunications environment such that end-users who so request should be able to retain their number(s) on the public telephone network independently of the organisation providing service. The provision of this facility between connections to the public telephone network at fixed and non-fixed locations is not covered by this Directive.

Justification

As the recital itself establishes, the facility of number portability between connections to the public telephone network at fixed and non-fixed locations is not covered by the Directive. Therefore the last sentence should be deleted. If the objective of a directive is an obligation of result for Member States, we cannot understand this open door for Member States to establish new obligations outside the scope of the Directive. Moreover, the last sentence could jeopardise the harmonisation process, which should lead to the achievement of the telecommunications single market.

Amendment 6
Recital 43

(43) Currently, Member States impose certain "must carry" obligations on networks 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 general interest objectives clearly defined by Member States in conformity with Community law and

(43) Currently, Member States impose certain "must carry" obligations on networks 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 general interest objectives clearly defined by Member States in conformity with Community law and

should be proportionate, transparent and subject to periodical review. "Must carry" obligations imposed by Member States should be reasonable, that is they should be proportionate and transparent in the light of clearly defined general interest objectives, and could, where appropriate, entail a provision for proportionate remuneration.

should be proportionate, transparent and subject to periodical review. "Must carry" obligations imposed by Member States should be reasonable, that is they should be proportionate and transparent in the light of clearly defined general interest objectives, and could, where appropriate, entail a provision for proportionate remuneration.

Such 'must carry' obligations may include the transmission of services specifically designed to enable appropriate access by the disabled.

Justification

Self-explanatory.

Amendment 7 Recital 47

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 end-users' rights. Effective procedures should be available to deal with disputes between **at least** 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 ¹.

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 end-users' rights. Effective procedures should be available to deal with disputes between 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.¹

Justification

The concern is to make it possible for small and medium-sized businesses to be covered by obligations applying in respect of consumers. This amendment is to be read in conjunction with Amendments 9, 17, 19, 20, 21 and 29.

¹ OJ L 115, 17.4.1998, p. 31.

Amendment 8
Recital 47a (new)

(47a) Co-regulation could be an appropriate way of stimulating enhanced quality standards and improved service performance. Co-regulation must be guided by the same principles as formal regulation, i.e. it should be objective, justified, proportional, non-discriminatory and transparent.

Justification

Reinstates Parliament's position at first reading. Commissioner Liikanen has described self-regulation as a flexible, efficient, cost-effective alternative to regulation in many areas, achieving the same results but without the time-consuming delays of the law-making process, provided that it is in conformity with and backed by law, enforceable and verifiable. He has described co-regulation as taking self-regulation one step further: it implies the sharing of responsibilities through agreements between public and private partners. Such mechanisms can benefit all parties, since the consumer may gain adequate protection without the heavier costs of formal regulation and informal regulatory actions can encourage new market entrants and the continued existence of efficient suppliers. Under co-regulation, the regulator and stakeholders work together with, typically, the regulator setting the framework for stakeholders to work within. Enforcement powers exist but are rarely used in practice. Under self-regulation, stakeholders (industry, consumer groups and others) take the initiative to cooperate for the benefit of consumers. In this case, the regulator's role, if any, is that of an observer. A example of such mechanisms in legislation adopted by Parliament and Council is to be found in Directive 2000/31/EC of 8 June 2000 on certain aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17 July 2000, p. 1), especially Articles 16 and 17.

Amendment 9
Recital 47b (new)

(b) This Directive mandates elements of consumer protection, including clear contract terms and dispute resolution, and tariff transparency for consumers. It also encourages the extension of such benefits to other categories of end-users, especially small and medium-sized enterprises.

Justification

Self-explanatory. This amendment is to be read in conjunction with Amendments 7, 17, 19, 20, 21 and 29.

Amendment 10
Article 6, paragraph 1

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 end-users in terms of the geographical coverage, the number of telephones and the quality of services.

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 end-users in terms of the geographical coverage, the number of telephones, ***the accessibility of such telephones to people with disabilities*** and the quality of services.

Justification

The present level of mobile telephony is rarely able to support the needs of users with sensory impairments. It is therefore especially important to ensure that any reduction in the distribution of public pay telephones as a response to increases in the penetration rate of mobile telephony does not affect adversely the accessibility of telephony services for people with such disabilities.

Amendment 11
Article 9, paragraph 1

1. National regulatory authorities shall monitor the evolution of retail tariffs of the services identified in Articles 4, 5, 6 and 7 as falling under the universal service obligations and provided by designated undertakings, in particular in relation to national consumer prices and income.

1. National regulatory authorities shall monitor the evolution of ***the level and structure*** of retail tariffs of the services identified in Articles 4, 5, 6 and 7 as falling under the universal service obligations and provided by designated undertakings, in particular in relation to national consumer prices and income.

Justification

Reinstates original Commission proposal.

Amendment 12
Article 9, paragraph 2

2. Member States may, in the light of national conditions, require that designated undertakings 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 special social needs **are not prevented from accessing or using** the publicly available telephone service.

2. Member States may, in the light of national conditions, require that designated undertakings 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 special social needs **can have access to and use** the publicly available telephone service.

Justification

Clearer drafting and consistent with Parliament's position in first reading.

Amendment 13
Article 11, paragraphs 1, 2 and 3

1. National regulatory authorities shall ensure that all designated undertakings with obligations under Articles 4, 5, 6, 7 and 9(2) publish adequate and up-to-date information concerning their performance in the provision of universal service, based on the quality of service 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 may specify, inter alia, **the quality of service parameters to be measured, and** the content, form and manner of information to be published, in order to ensure that end-users have access to comprehensive, comparable and user-friendly information.

1. National regulatory authorities shall ensure that all designated undertakings with obligations under Articles 4, 5, 6, 7 and 9(2) publish adequate and up-to-date information concerning their performance in the provision of universal service, based on the quality of service parameters, definitions and measurement methods set out in Annex III. The published information shall also be supplied to the national regulatory authority.

2. National regulatory authorities may specify, inter alia, **additional** quality of service **standards, where relevant parameters have been developed, to assess**

the performance of undertakings in the provision of services to disabled end-users and consumers. National regulatory authorities shall ensure that information concerning the performance of undertakings in relation to these parameters is also published and made available to the national regulatory authority.

3. National regulatory authorities may, in addition, specify the content, form and manner of information to be published, in order to ensure that end-users **and consumers** have access to comprehensive, comparable and user-friendly information.

Justification

Self-explanatory. This amendment should be read in conjunction with Amendment 1.

Amendment 14
Article 16, paragraph 4 (new)

4. Once a retail market has been found to be effectively competitive as a result of a market analysis carried out under Article 15 of Directive 2001.../EC (Framework Directive) and so long as it remains so, it shall fall outside the scope of Articles 16, 17 and 18 of this Directive and be subject to general competition law only.

Justification

Regulation of both wholesale and retail markets leads to disproportionate "double regulation". Generally, where a wholesale market is either competitive or subject to regulation, fair competition on the retail market is ensured. For this reason, Article 16 should in principle mandate to revoke all existing obligations relating to retail tariff regulation. Instead, in its form as proposed in the Common Position, Article 16 allows for a comprehensive regulation of all retail communications markets. Such intervention can be justified only as a transitory measure until a retail market is found to be effectively competitive for the first time. From then on, it should fall outside the scope of sector-specific regulation unless it then becomes uncompetitive again. A sunset clause of the type proposed in this amendment clearly defines the transition from sector-specific regulation to general competition law, thereby guaranteeing legal certainty and preventing over-regulation.

Amendment 15
Article 17, paragraph 1

1. Member States shall ensure that, where:

(a) as a result of a market analysis carried out in accordance with Article 16(3) a national regulatory authority determines that a given retail market identified in accordance with Article 14 of Directive 2001/.../EC (Framework Directive) is not effectively competitive, and

(b) the national regulatory authority **considers** that obligations imposed under Directive 2001/.../EC (Access Directive), or Article 19 of this Directive would not result in the achievement of the objectives set out in Article 7 of Directive 2001/.../EC (Framework Directive),

national regulatory authorities shall impose appropriate regulatory obligations on undertakings identified as having significant market power on a given retail market in accordance with Article 13 of Directive 2001/.../EC (Framework Directive).

1. Member States shall ensure that, where:

(a) as a result of a market analysis carried out in accordance with Article 16(3) a national regulatory authority determines that a given retail market identified in accordance with Article 14 of Directive 2001/.../EC (Framework Directive) is not effectively competitive and

(b) the national regulatory authority **based on a reasoned opinion concludes** that obligations imposed under Directive 2001/.../EC (Access Directive), or Article 19 of this Directive would not result in the achievement of the objectives set out in Article 7 of Directive 2001/.../EC (Framework Directive),

national regulatory authorities shall impose appropriate regulatory obligations on undertakings identified as having significant market power on a given retail market in accordance with Article 13 of Directive 2001/.../EC (Framework Directive).

Justification

Provides a stronger and more transparent framework for NRA intervention.

Amendment 16
Article 17, paragraph 4

4. National regulatory authorities shall ensure that, where an undertaking is subject to retail **tariff regulation**, the necessary and appropriate cost accounting systems are implemented. National regulatory authorities may specify the format and accounting methodology to be used. Compliance with the cost accounting system shall be verified by a qualified independent body. National regulatory authorities shall ensure that a statement concerning compliance is published annually.

4. National regulatory authorities shall ensure that, where an undertaking is subject to retail **tariff regulation or other relevant retail controls**, the necessary and appropriate cost accounting systems are implemented. National regulatory authorities may specify the format and accounting methodology to be used. Compliance with the cost accounting system shall be verified by a qualified independent body. National regulatory authorities shall ensure that a statement concerning compliance is published annually.

Justification

Self-explanatory.

Amendment 17
Article 20, paragraph 2

2. Member States shall ensure that **at least consumers** where subscribing to services providing connection and/or access to the public telephone network, shall have a right to a contract with an undertaking or undertakings providing such services. The contract shall specify at least:

2. Member States shall ensure that, where subscribing to services providing connection and/or access to the public telephone network, **consumers** shall have a right to a contract with an undertaking or undertakings providing such services. The contract shall specify at least:

Justification

Self-explanatory. The concern is to make it possible for small and medium-sized businesses to be covered by obligations applying in respect of consumers.

This amendment is to be read in conjunction with Amendments 7, 9, 17, 20, 21 and 29.

Amendment 18
Article 20, paragraph 2, point d

(d) the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

(d) **particulars of prices and tariffs and** the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

Justification

Self-explanatory.

Amendment 19

Article 20, paragraph 2, new subparagraph after point (g)

Member States may extend these obligations to cover other end-users.

Justification

Self-explanatory. The concern is to make it possible for small and medium-sized businesses to be covered by obligations applying in respect of consumers. This amendment is to be read in conjunction with Amendments 7, 9, 17, 20, 21 and 29.

Amendment 20

Article 20, paragraph 3

3. Where contracts are concluded between **at least** consumers and electronic communications services providers other than those providing connection and/or access to the public telephone network, the information in paragraph 2 shall also be included in such contracts.

3. Where contracts are concluded between consumers and electronic communications services providers other than those providing connection and/or access to the public telephone network, the information in paragraph 2 shall also be included in such contracts. ***Member States may extend this obligation to cover other end-users.***

Justification

Self-explanatory. The concern is to make it possible for small and medium-sized businesses to be covered by obligations applying in respect of consumers. This amendment is to be read in

conjunction with Amendments 7, 9, 17, 19, 21 and 29.

Amendment 21
Article 21, paragraph 1

Member States shall ensure that transparent 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 consumers**, in accordance with the provisions of Annex II.

I. Member States shall ensure that transparent 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 **end-users and consumers** in accordance with the provisions of Annex II.

Justification

The words replaced might be construed restrictively. This amendment is to be read in conjunction with Amendments 7, 9, 17, 19, 21 and 29.

Amendment 22
Article 21, paragraph 2 (new)

2. National regulatory authorities shall encourage the provision of information to enable end-users as far as appropriate and consumers to make an independent evaluation of the cost of alternative usage patterns, through, for instance, interactive guides.

Justification

Self-explanatory. In the spirit of the amendments presented at first reading.

Amendment 23
Article 25, paragraph 3

3. Member States shall ensure that all end-users provided with a connection to the public telephone network can access operator assistance services and directory enquiry services in accordance with **Article 5(1)(b)**.

3. Member States shall ensure that all end-users provided with a connection to the public telephone network can access operator assistance services and directory enquiry services in accordance with **Articles 5(1)(b) and 7(1)**.

Justification

The special needs of disabled people in accessing operator assistance and directory enquiry services is taken explicitly into account by this amendment.

Amendment 24
Article 25, paragraph 4

4. Member States shall not maintain any regulatory restrictions which prevent end-user's in one Member State from accessing directly the directory enquiry service in another Member State.

4. Member States shall not maintain any regulatory restrictions which prevent end-user's in one Member State from accessing directly the directory enquiry service in another Member State. ***This provision shall apply equally to directory enquiry services for disabled users.***

Justification

The amendment to paragraph 4 is to ensure full access by disabled citizens of one Member State to the directory enquiry services of another.

Amendment 25

Article 26, paragraph 3, first subparagraph and second subparagraph (new)

3. Member States shall ensure that undertakings which operate public telephone networks make caller location information available to authorities handling emergencies, to the extent technically feasible, for all calls to the single European emergency call number "112".

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

Justification

This amendment is to be read in conjunction with Amendment 4.

Amendment 26

Article 31, paragraph 1

1. Member States may impose reasonable "must carry" obligations, for the transmission of specified radio and television broadcast channels and services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television broadcasts to the public where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcasts. Such obligations shall only be imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate and transparent. The obligations shall be subject to periodical review.

1. Member States may impose reasonable "must carry" obligations, for the transmission of specified radio and television broadcast channels and services, on undertakings under their jurisdiction providing **either (a)** electronic communications networks used for the distribution of radio or television broadcasts to the public, where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcasts, **or (b) conditional access systems and other associated facilities**. Such obligations shall only be imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate and transparent. The obligations shall be subject to periodical review.

"Must carry" may also include services designed to enable access by disabled users.

Justification

It is necessary to ensure that 'must carry' obligations also apply in respect of satellite, conditional access systems and undertakings providing access to digital television platforms.

Amendment 27
Article 33, paragraph 1

Member States shall ensure as far as appropriate that national regulatory authorities take account of the views of end-users, manufacturers, undertakings that provide electronic communications networks and/or services on issues ***which have a significant impact on the market*** related to all end-user rights concerning publicly available electronic communications services.

1. Member States shall ensure as far as appropriate that national regulatory authorities take account of the views of end-users and consumers (including, in particular, disabled users), manufacturers, undertakings that provide electronic communications networks and/or services on issues related to all end-user and consumer rights concerning publicly available electronic communications services, in particular where they have a significant impact on the market. Furthermore, Member States shall hold appropriate public consultations, before laying down the definition of users with special social needs within the meaning of Article 9.

Justification

Reinstates the position adopted by Parliament at first reading. See also Amendment 8.

Amendment 28
Article 33, paragraph 2 (new)

2. Where appropriate, interested parties may develop, with the guidance of national regulatory authorities, mechanisms involving consumers, user groups and service providers with a view to enhancing the general quality of service provision by, inter alia, developing and monitoring codes of conduct and operating standards.

Justification

Reinstates the position adopted by Parliament at first reading. See also Amendment 8.

Amendment 29
Article 34, paragraph 1

1. Member States shall ensure that transparent, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes, involving **at least** consumers, relating to issues covered by this Directive. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly and may, where warranted, adopt a system of reimbursement and/or compensation.

1. Member States shall ensure that transparent, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes, involving consumers, relating to issues covered by this Directive. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly and may, where warranted, adopt a system of reimbursement and/or compensation. ***Member States may extend these obligations to cover disputes involving other end-users. They should follow, wherever possible, the principles set out in Recommendation 98/257/EC.***

Justification

Self-explanatory. In the spirit of the amendments presented at first reading. This amendment is to be read in conjunction with Amendments 7, 9, 17, 19, 20 and 21.

Amendment 30
Article 34, paragraph 1a (new)

Member States shall ensure that their legislation does not hamper the provision of complaints offices and on-line services at the appropriate territorial level to facilitate access to dispute resolution by consumers and end-users.

Justification

Self-explanatory.

Amendment 31
Annex I, Part B, paragraph after point (b) (new)

To the extent technically feasible, operators should provide data and signals to facilitate the offering of calling-line identity and tone dialling across Member State boundaries.

Justification

Self-explanatory. In the spirit of the amendments presented at first reading.

Amendment 32
Annex II, opening paragraph

The national regulatory authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article 21. 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

Self-explanatory. In the spirit of the amendments presented at first reading.

Amendment 33
Annex II, point 4(new)

(4) Information about rights as regards

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

Justification

Self-explanatory.

EXPLANATORY STATEMENT

The Directive in context

The Universal Service and Users' Rights Directive is one of four Directives that will reshape the competitive environment for electronic communications across the European Union. The objectives of the package are to:

- Create an open and competitive market for all electronic communications.
- Provide a regulatory framework with minimum intervention.
- Encourage new entrants to the sector.
- Ensure that investment and innovation is encouraged.
- Provide maximum consumer benefits.

The Common Position and Parliament's first reading

A detailed analysis of the Common Position and the impact of Parliament's first reading is given in the Commission's Communication. A large number of the amendments Parliament adopted at first reading were accepted both by the Commission in its revised proposal and by the Council in its Common Position. It is, therefore, not considered necessary to table a large number of amendments at the second reading stage.

The Directive has also been substantially restructured by the Commission, at Parliament's request, to make it more logical, and to give proper prominence to the article applying to organisations with significant market power.

Scope of universal service and its review

The Common Position text includes a requirement for "functional" Internet access, which is an acceptable compromise with the first reading proposal of "effective". Other provisions proposed by Parliament concerning the designation, organisation and review of Universal Service provision have been accepted. Many of Parliament's amendments strengthening the provision for disabled users and users with special needs are reflected in the final text. Some further detailed clarification is proposed by the rapporteur.

Consultation with users

The first reading proposal contained provisions for consultation, and the encouragement of co-regulation, that are not fully reflected in the Common Position. Your rapporteur has therefore restructured the Directive further and has incorporated into the new Article 33 all references to consultation by the national regulatory authorities of all the parties involved in electronic communications services. This will ensure that the national regulatory authorities consult with the members of the general public who use the electronic communications networks on issues effecting users' rights, the designation of undertakings subject to universal

service obligations and the definition of users with special social needs.

Consumers' and users' rights

Parliament's first reading included detailed changes to reinforce consumers' rights, particularly on tariff transparency and contract terms. The Common Position has taken over many of these proposals but your rapporteur has reintroduced and reformulated the text in a number of areas. In particular, the requirements for tariff transparency are extended to all users, a change particularly focused on SMEs.

Additional facilities

Your rapporteur has reintroduced the requirement for cross-border availability of calling line identity and tone dialling systems. In response to concerns over the European Telephone Numbering Space, the rapporteur's research has revealed that a European Telephony Numbering Space field trial was conducted from June 1998 to January 2000 to test the technical feasibility of a European single access code '3883'. It was facilitated by the European Commission and its customers included the Financial Times and the BBC. It was successful and no new network capabilities are needed to deploy ETNS. The Common Position acknowledges the need for network operators to cover costs of handling caller location, reflecting Parliament's concerns about commercial feasibility.

Regulatory Controls

The restructured text greatly meets Parliament's wishes to limit retail intervention as a last resort in response to demonstrated market failure. Your rapporteur has made some detailed amendments to restructure these provisions.

Caller location

Your rapporteur remains concerned about the provision of this service in an effective and balanced way. Parliament's first reading amendment has been retabled as its provisions were not included in the Common Position.

"Must carry"

The Directive contains important "must carry" obligations for digital television services, which will safeguard the role of public broadcasters. Parliament's addition of a new paragraph encompassing access to conditional access services was judged to be superfluous in view of conditional access provisions in the Access Directive. Parliament limited the scope of "must carry" to broadcasts in pursuit of a public service broadcasting remit but the Common Position is broader, reflecting the desire of some Member States to include a wider range of channels in this obligation. The remuneration clause reflects Parliament's amendments (not the Commission's or the rapporteur's proposals). Your rapporteur has decided at this stage not

to propose further amendments to these two articles.

Digital television standards

The Common Position has rejected Parliament's proposals to mandate MHP standards. The Commission agrees with this approach. Your rapporteur does not propose to reintroduce the relevant amendments, but has introduced a recital to clarify the benefits of future standardisation in order to indicate that this is an area for market encouragement.