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Committee on Culture and Education

2007/0174(COD)

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OPINION

of the Committee on Culture and Education

for the Committee on Industry, Research and Energy

on the proposal for a decision of the European Parliament and of the Council
on the selection and authorisation of systems providing mobile satellite
services (MSS)
(COM(2007)0480 – C6-0257/2007 – 2007/0174(COD))

Draftswoman: Ruth Hieronymi

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SHORT JUSTIFICATION

The aim of the Commission proposal for a Council-Parliament decision on the selection and authorisation of systems providing mobile satellite services (MSS) is to establish a common EU-wide internal market for those services as quickly as possible. MSS should help realise the Lisbon objectives, promote innovation and flexibility and thus improve EU-wide broadband access and service choice for consumers.

The draftsman supports the aim of the Commission proposal in principle, but finds the timing of the procedure problematic in that specific arrangements are being determined for MSS before the revision of the telecoms package and spectrum policy has taken place.

The MSS decision should therefore be adopted as a strictly exceptional arrangement and not create a precedent. This exception can be justified only if it is restricted to the Commission-led procedure for MSS system operators with a view to EU-wide broadband coverage. Under current provisions, Member States remain competent for decisions on spectrum allocation for individual services on the basis of a uniform framework, including the audiovisual media services directive. As regards spectrum allocation, in addition, the draftsman points to the importance of different licensing models for the various types of mobile service and to their importance for cultural diversity and media pluralism. She calls for spectrum allocation for terrestrial components to be in line with national media law and for a report on the further development of MSS.

AMENDMENTS

The Committee on Culture and Education calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Recital 2

(2) The European Parliament, in its Resolution 2006/2212 "Towards a European Policy on the Radio Spectrum" of 14 February 2007, emphasised the importance of communications for rural and less developed regions, for which the diffusion of broadband, of lower frequency mobile communications and of new wireless technologies could provide efficient

(2) The European Parliament, in its Resolution 2006/2212 "Towards a European Policy on the Radio Spectrum" of 14 February 2007, emphasised the importance of communications for rural and less developed regions, for which the diffusion of broadband, of lower frequency mobile communications and of new wireless technologies could provide efficient

solutions to achieving universal coverage of the 27 EU Member States with a view to the sustainable development of all areas. The European Parliament *also noted that Member States' regimes* for spectrum allocation *and exploitation differ widely* and *that these differences represent serious obstacles to the achievement of a well-functioning single market*

solutions to achieving universal coverage of the 27 EU Member States with a view to the sustainable development of all areas. The European Parliament *rejects a one-sided market model* for spectrum allocation, *however*, and *calls for a system permitting various licensing models, with the guiding principle being the broadest possible coverage as many people as possible.*

Amendment 2
Recital 3 a (new)

(3a) From a regulatory perspective, legislation for MSS before the telecommunications package is revised is problematic and should therefore be adopted only as a strictly exceptional arrangement. However, its adoption as an exceptional arrangement does not mean lowering the requirements for selection and licensing.

Amendment 3
Recital 5

The introduction of new systems providing mobile satellite services (MSS) would contribute to the development of the internal market and enhance competition by increasing the availability of pan-European services and end-to-end connectivity as well as encouraging efficient investment. MSS constitute an innovative alternative platform for various types of pan-European telecommunications and broadcasting/multicasting services, regardless of the location of end users, such as high-speed internet/intranet access, mobile multimedia and public protection and disaster relief. These services could in particular improve coverage of rural areas in the Community, thus bridging the digital divide in terms of geography, simultaneously contributing to the

The introduction of new systems providing mobile satellite services (MSS) would contribute to the development of the internal market and enhance competition by increasing the availability of pan-European services and end-to-end connectivity as well as encouraging efficient investment. MSS constitute an innovative *enabling* platform for *a wide range* of telecommunications and broadcasting/multicasting services *in Europe*, regardless of the location of end users, such as high-speed internet/intranet access, mobile multimedia *and mobile audiovisual media services*, and public protection and disaster relief. These services could in particular improve coverage of rural areas in the Community, thus bridging the digital divide in terms of geography, *strengthening cultural diversity and media*

competitiveness of European information and communication technology industries in line with the objectives of the renewed Lisbon strategy.

pluralism, which are major EU objectives, and simultaneously contributing to the competitiveness of European information and communication technology industries in line with the objectives of the renewed Lisbon strategy.

Justification

Mobile television services and promoting cultural diversity and media pluralism can make a significant contribution towards realising the Lisbon objectives. It is important to establish the proper framework, however, which includes promoting them in an MSS context.

MSS can enable various types of services and business models, not all of which will necessarily be the same everywhere in Europe. For instance, it is likely that content will vary across Europe. The complete set of EU and Lisbon strategy objectives should be included rather than just a subset. It should also be clarified that the applicability of these objectives is not limited to rural areas. Indeed, the combination of MSS with Complementary Ground Component could provide very attractive service offerings in urban and suburban areas.

Amendment 4 Recital 5 a (new)

(5a) However, the success of MSS and their contribution towards realising the Lisbon objectives is very much dependent on the availability of content and service offerings which are attractive to the mass market and diverse. Such culturally diverse offerings can appeal to a wide variety of audiences and markets in Europe.

Justification

The mass-market aspect is indeed the most attractive opportunity for MSS, but it should be clarified that it is not limited to broadcasting content alone. Furthermore, different services may appeal to different markets in Europe, and there should be no “one size fits all” solution.

Amendment 5 Recital 8

(8) Radio spectrum technical management, as organised by Decision 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European

(8) To ensure compliance with EU law, it is essential, in particular, that satellite spectrum be allocated in accordance with the general principles of spectrum management under Directive 2002/21/EC

Community (Radio Spectrum Decision) in general and Commission Decision 2007/98/EC in particular, does not cover procedures for assignment of spectrum and granting rights of use for radio frequencies.

and national legislation, even if radio spectrum technical management, as organised by Decision 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) in general and Commission Decision 2007/98/EC in particular, does not cover procedures for assignment of spectrum and granting rights of use for radio frequencies.

Amendment 6
Recital 11

In order to prevent Member States from taking decisions that might lead to fragmentation of the internal market and undermine the objectives identified in Article 8 of the Framework Directive, selection criteria for mobile satellite systems **should** be harmonised so that the selection process results in availability of the same set of mobile satellite services throughout Europe. High up-front investment required for the development of mobile satellite systems and the associated high technological and financial risks necessitate an economy of scale for such systems in the form of wide pan-European geographic coverage, so that they remain economically viable.

In order to prevent Member States from taking decisions that might lead to fragmentation of the internal market **for MSS** and undermine the objectives identified in Article 8 of the Framework Directive, selection criteria for mobile satellite systems **are to** be harmonised, **as a strictly exceptional arrangement allowed by the European Parliament and the Council**, so that the selection process results in availability of the same set of mobile satellite services throughout Europe. High up-front investment required for the development of mobile satellite systems and the associated high technological and financial risks necessitate an economy of scale for such systems in the form of wide pan-European geographic coverage, so that they remain economically viable.

Amendment 7
Recital 12

Moreover, the successful launch of such services requires coordination of regulatory action by Member States. Differences in national selection procedures could still create fragmentation of the internal market due to the divergent implementation of selection criteria, including the weighting of

Moreover, the successful launch of such services requires coordination of regulatory action by Member States. Differences in national selection procedures could still create fragmentation of the internal market due to the divergent implementation of selection criteria, including the weighting of

the criteria, or different timescales of the selection procedures. This would result in a patchwork of successful applicants selected in contradiction with the pan-European nature of these mobile satellite services. Selection of different mobile satellite operators by different Member States could imply complex harmful interference situations or could even mean that a selected operator is prevented from providing a pan-European service, for instance where different radio frequencies are assigned to the operator in different Member States. Therefore, harmonisation of the selection criteria should be supplemented by the establishment of a common selection mechanism that would provide a coordinated selection outcome for all Member States.

the criteria, or different timescales of the selection procedures. This would result in a patchwork of successful applicants selected in contradiction with the pan-European nature of these mobile satellite services. Selection of different mobile satellite operators by different Member States could imply complex harmful interference situations or could even mean that a selected operator is prevented from providing a pan-European service, for instance where different radio frequencies are assigned to the operator in different Member States. Therefore, harmonisation of the selection criteria should be supplemented by the establishment of a common selection mechanism that would provide a coordinated selection outcome for all Member States, ***which, however, would not cover spectrum assignment and the granting of rights of use for radio frequencies. Moreover, due to the Member States' competence to ensure cultural and linguistic diversity and media pluralism in broadcasting, this coordinated selection is without prejudice to the application, by Member States, of their media law and media concentration law.***

Justification

This makes it clear that legislation on specific aspects, before the overall framework has been determined, is problematic from a regulatory perspective.

It lies within the competence of the Member States to ensure cultural and linguistic diversity and media pluralism for broadcasting. It is also important to ensure a level playing field in respect to other broadcasting services offered through other platforms (DVB-H).

Amendment 8 Recital 16

(16) The limited amount of radio spectrum available implies that the number of undertakings that may be selected and authorised ***is*** also ***necessarily*** limited. However, if the selection process leads to a finding that there is no radio spectrum scarcity, a simplified selection procedure

(16) The limited amount of radio spectrum available implies that the number of undertakings that may be selected and authorised ***may*** also ***be*** limited. ***At the same time, due to the high up-front investment required for the development of mobile satellite systems and due to the associated***

should apply with a number of minimum requirements imposed on the selected mobile satellite operators as conditions attached to authorisations.

high technological and financial risks the number of companies participating in the selection process may also be limited. Therefore, the selection and authorisation procedure must be transparent, include the right of third parties to be heard and should not run contrary to competition law principles. However, if the selection process leads to a finding that there is no radio spectrum scarcity ***and no competition issues***, a simplified selection procedure should apply with a number of minimum requirements imposed on the selected mobile satellite operators as conditions attached to authorisations.

Amendment 9
Article 1, paragraph 1

1. The purpose of this Decision is to create a Community procedure for the common selection of operators of mobile satellite systems as well as to lay down provisions for the coordinated authorisation by Member States of the selected operators to use radio spectrum for the operation of mobile satellite systems, in order to facilitate the development of a competitive internal market for mobile satellite services in the Community.

1. The purpose of this Decision is to create a Community procedure ***solely*** for the common selection of operators of mobile satellite systems as well as to lay down provisions for the coordinated authorisation by Member States of the selected operators to use radio spectrum for the operation of mobile satellite systems, in order to facilitate the development of a competitive internal market for mobile satellite services in the Community.

Justification

It is very important to state that this is an exceptional regulatory arrangement which does not create a precedent.

Amendment 10
Article 1, paragraph 5

5. This Decision applies to the 2 GHz frequency band, comprising radio spectrum from 1980 to 2010 MHz for Earth to space communications, and from 2170 to 2200 MHz for space to Earth communications,

5. This Decision applies to the 2 GHz frequency band, comprising radio spectrum from 1980 to 2010 MHz for Earth to space communications, and from 2170 to 2200 MHz for space to Earth communications, according to Decision 2007/98/EC, ***in***

according to Decision 2007/98/EC.

compliance with the spectrum assignment provisions under Directive 2002/21/EC, in particular Article 9 of that Directive.

Justification

It is essential that the new procedures for satellite spectrum assignment not be carried out until the political decisions have been taken on the basic regulatory framework for the individual categories of electronic communications services. At all events, they must be in line with the new provisions.

Amendment 11
Article 2, paragraph 1

1. The definitions laid down in Directive 2002/21/EC and Directive 2002/20/EC shall apply for the purposes of this Decision.

1. The definitions laid down in Directive 2002/21/EC, Directive 2002/20/EC, ***Directive 2002/22/EC and Directive 2007/65/EC (the Audiovisual Media Services Directive)*** shall apply for the purposes of this Decision.

Justification

Content services are regulated by the audiovisual media services directive and will account for a significant proportion of MSS offerings. At the same time, some provisions of the existing Regulatory Framework make clear the conditions under which obligations (e.g. for Must carry in the Universal Directive) have to apply.

Amendment 12
Article 3, paragraph 2

2. The procedure shall aim to bring the 2 GHz frequency band into use without undue delay while allowing applicants a fair and non-discriminatory opportunity to participate in the comparative selection procedure.

2. The procedure shall aim ***solely*** to bring the 2 GHz frequency band into use ***for MSS*** without undue delay while ***being transparent for interested third parties*** allowing applicants a fair and non-discriminatory opportunity to participate in the comparative selection procedure.

Amendment 13
Article 4, paragraph 1, point (b)

(b) applications shall identify the amount of radio spectrum requested and shall include statements and evidence concerning the

(b) applications shall identify the amount of radio spectrum requested and shall include statements and evidence concerning the

required milestones and the selection criteria as well as any other particulars and documents.

required milestones and the selection criteria as well as any other particulars and documents. ***It shall also include statements and evidence that the foreseen business model does not raise competition concerns.***

Amendment 14
Article 5, paragraph 1

1. Within 40 working days following publication of the list of admissible applicants, the Commission shall assess whether applicants have demonstrated the required level of technical and commercial development of their respective mobile satellite systems. Such assessment shall rely on the completion of ***a number of*** the milestones listed in the Annex to this Decision. These milestones will be further defined by the Commission in accordance with the procedure referred to in Article 10(2). Credibility and viability of the proposed mobile satellite systems shall be taken into account throughout this selection phase.

1. Within 40 working days following publication of the list of admissible applicants, the Commission shall assess whether applicants have demonstrated the required level of technical and commercial development of their respective mobile satellite systems ***and the absence of competition concerns***. Such assessment shall ***take into consideration the results of the hearing of interested parties as well as*** rely on the ***satisfactory*** completion of milestones ***1 to 5*** listed in the Annex to this Decision. ***The target date for the completion of milestones 1 to 3 shall be no later than 1 October 2008.*** These milestones will be further defined by the Commission in accordance with the procedure referred to in Article 10(2), ***taking due regard of satellite industry practice***. Credibility and viability of the proposed mobile satellite systems shall be taken into account throughout this selection phase

Justification

The Proposed Decision lists nine Milestones, but does not establish which ones form part of the first selection phase. The Consultation Document recognized Milestones 1 – 5 as highly relevant for the assessment of applicants. The Critical Design Review (CDR) is the well-established stage in a satellite program, representing a major commitment to service deployment. The CDR must form part of the spectrum scarcity test. As the objective is to “bring the (..) band into use without undue delay”, to grant national authorizations in early 2009, CDR should be completed by 1 October 2008.

Amendment 15
Article 5, paragraph 3

3. The Commission shall forthwith inform

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the applicants whether their applications have been considered as eligible for the second selection phase or have been selected according to paragraph 2. **The** Commission shall publish the list of eligible or selected applicants.

the applicants whether their applications have been considered as eligible for the second selection phase or have been selected according to paragraph 2. **The** Commission shall at the same time publish the list of eligible applicants **and its assessment under paragraph 1 or its decision in accordance with paragraph 2.**

Amendment 16
Article 6, paragraph 1

1. If the combined demand for radio spectrum requested by eligible applicants identified in the first selection phase exceeds the amount of radio spectrum available, identified pursuant to Article 3(3), the Commission shall select eligible applicants **according to** the following further criteria:

1. If the combined demand for radio spectrum requested by eligible applicants identified in the first selection phase exceeds the amount of radio spectrum available, identified pursuant to Article 3(3), the Commission shall **rank** eligible applicants **who, by guaranteeing wide-ranging pan-European geographic coverage, meet** the following further criteria in line **with the following priorities:**

Justification

Without wide-ranging pan-European geographic coverage, it is impossible to ensure spectrum efficiency to the benefit of consumers.

For democratic reasons, the selection criteria should be more precise to clearly define the scope of discretion which the Commission can use in the selection and authorisation process.

It is essential that applicants comply with the filing and coordination process under the rules and regulations of the ITU in order to ensure that a network or system can be successfully coordinated and, therefore, brought into use. No legally sound selection can be undertaken otherwise. During the second selection phase, the Commission should rank eligible applicants according to the four criteria stated. Such ranking would then be followed by a decision of the Commission, taking into account the rules and procedures of the ITU.

Amendment 17
Article 6, paragraph 1, point (a)

(a) consumer and competitive benefits;

(a) consumer and competitive benefits **through pan-EU geographic coverage, such as infrastructure competition and equal and open access to platforms;**

Justification

For democratic reasons, the selection criteria should be more precise to clearly define the scope of discretion which the Commission can use in the selection and authorisation process.

Amendment 18

Article 6, paragraph 1, point (a a) (new)

(aa) public policy objectives including the promotion of linguistic and cultural diversity and media pluralism;

Justification

For democratic reasons, the selection criteria should be more precise to clearly define the scope of discretion which the Commission can use in the selection and authorisation process.

Amendment 19

Article 6, paragraph 1, point (a b) (new)

(ab) spectrum efficiency;

Justification

For democratic reasons, the selection criteria should be more precise to clearly define the scope of discretion which the Commission can use in the selection and authorisation process.

Amendment 20

Article 6, paragraph 1, point (b)

(b) spectrum efficiency;

deleted

Amendment 21

Article 6, paragraph 1, point (c)

(c) pan-EU geographic coverage;

deleted

Amendment 22

Article 6, paragraph 1, point (d)

(d) public policy objectives.

deleted

Amendment 23
Article 6, paragraph 3 a (new)

(3a) The Commission will publish its decision in the Official Journal of the European Union within one month.

Amendment 24
Article 8, paragraph -1 (new)

-1. To ensure compliance with EU law, spectrum assignment for terrestrial components shall take place in coordination with the national institutions responsible for media law.

Justification

Frequency assignment is fundamentally a Member State competence.

Amendment 25
Article 8, paragraph 1

1. Member States shall ensure that, upon request, their competent authorities grant to the applicants selected in accordance with Title II and authorised to use the spectrum pursuant to Article 7 any authorisations necessary for the provision of complementary ground components of mobile satellite systems on their territories.

1. Without prejudice to national media law and media concentration law, Member States shall ensure that, upon request, their competent authorities grant to the applicants selected in accordance with Title II and authorised to use the spectrum pursuant to Article 7 any authorisations necessary for the provision of complementary ground components of mobile satellite systems on their territories.

Justification

The economic potential for MSS services lies in big cities and populated areas, where terrestrial frequencies will be needed to reach the customers. Member States must be involved in the decision on how to use these frequencies and to ensure that the offer complies with media law and media concentration law.

Amendment 26
Article 8, paragraph 3

3. ***Any*** national authorisations issued for the

3. Without prejudice to paragraph (1) of

operation of complementary ground components of mobile satellite systems in the 2 GHz frequency band shall be subject to the following common conditions:

this Article any national authorisations issued for the operation of complementary ground components of mobile satellite systems in the 2 GHz frequency band shall be subject to the following common conditions:

Justification

The economic potential for MSS services lies in big cities and populated areas, where terrestrial frequencies will be needed to reach the customers. Member States must be involved in the decision on how to use these frequencies and to ensure that the offer complies with media law and media concentration law.

Amendment 27

Article 8, paragraph 3, point (b)

(b) complementary ground components **shall constitute an integral part of a** mobile satellite **system and shall** be controlled by the satellite resource and network management mechanism; they **shall** use the same direction of transmission and the same portions of frequency bands as the associated satellite components and **shall** not increase the spectrum requirement of the associated mobile satellite system;

(b) complementary ground components **for** mobile satellite **systems should** be controlled by the satellite resource and network management mechanism; they **should** use the same direction of transmission and the same portions of frequency bands as the associated satellite components and **should** not increase the spectrum requirement of the associated mobile satellite system;

Amendment 28

Article 8, paragraph 3, point (d)

(d) rights of use and authorisations shall be granted for a duration defined by the Commission in accordance with the procedure referred to in Article 10(2).

(d) rights of use and authorisations shall be granted for a **reasonable** duration defined by the Commission in accordance with the procedure referred to in Article 10(2).

Amendment 29

Article 9, paragraph 3 a (new)

3a. No later than one year following the entry into force of this Decision, and every three years thereafter, the Commission shall forward a report on actual offerings for MSS in Member States to the European

*Parliament, the Council and the European
Economic and Social Committee.*

PROCEDURE

Title	Selection and authorisation of systems providing mobile satellite services
References	COM(2007)0480 – C6-0257/2007 – 2007/0174(COD)
Committee responsible	ITRE
Opinion by Date announced in plenary	CULT 3.9.2007
Drafts(wo)man Date appointed	Ruth Hieronymi 22.10.2007
Discussed in committee	18.12.2007
Date adopted	27.2.2008
Result of final vote	+ : 28 - : 1 0 : 0
Members present for the final vote	Katerina Batzeli, Ivo Belet, Marie-Hélène Descamps, Jolanta Dičkutė, Věra Flasarová, Milan Gaľa, Vasco Graça Moura, Luis Herrero-Tejedor, Ruth Hieronymi, Ramona Nicole Mănescu, Manolis Mavrommatis, Marianne Mikko, Ljudmila Novak, Dumitru Oprea, Zdzisław Zbigniew Podkański, Mihaela Popa, Karin Resetarits, Pál Schmitt, Salvatore Tatarella, Helga Trüpel, Thomas Wise, Tomáš Zatloukal
Substitute(s) present for the final vote	Emine Bozkurt, Erna Hennicot-Schoepges, Mary Honeyball, Christel Schaldemose, Grażyna Staniszevska, Cornelis Visser
Substitute(s) under Rule 178(2) present for the final vote	Wolfgang Bulfon