



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.10.1997
COM(97) 531 final

96/ 0226 (COD)

OPINION OF THE COMMISSION

pursuant to Article 189 b (2) (d) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the

proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on the application of open network provision (ONP) to voice telephony
and on universal service for telecommunications in a competitive environment
(replacing European Parliament and Council Directive 95/62/EC)

AMENDING THE PROPOSAL OF THE COMMISSION

pursuant to Article 189 a (2) of the EC Treaty

EXPLANATORY MEMORANDUM

Article 189b(2)(d) requests the Commission to express its opinion on the amendments proposed by the European Parliament in its second reading.

The Commission hereby presents its opinion on these amendments to the Council's Common Position regarding the proposal for a European Parliament and Council Directive on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment (replacing European Parliament and Council Directive 95/62/EC).

The amended proposal incorporates those amendments proposed by the European Parliament at Second Reading which were accepted by the Commission.

1. Introduction

a) Background

The Commission adopted its proposal on 11.9.1996¹, and it was formally transmitted to the EP and the Council on 5.11.1996.

The Economic and Social Committee gave a favourable Opinion on 15 January 1997².

The European Parliament adopted a favourable Resolution at its First Reading on 20.2.1997, and proposed 34 amendments to the Commission proposal³.

The Council adopted its Common Position⁴ on 9 June 1997,

The European Parliament adopted a Decision⁵ at its Second Reading on 17.9.1997, putting forward 17 amendments to the Council Common Position.

b) Purpose of the Directive

The aim of the Commission proposal is to replace the existing European Parliament and Council Directive 95/62/EC on the application of open network provision (ONP) to voice telephony⁶.

The adaptation is being made in view of the liberalisation of public voice telephony services by 1st January 1998 (with transition periods for certain Member States), in accordance with Commission Directive 96/19/EC⁷.

The purpose of the adaptation is two-fold: firstly it is necessary to adapt the Directive to a competitive environment and, in particular, to be more specific as to whom the provisions of the Directive will apply in a market with many players; secondly the Directive is being

¹ COM(96) 419, OJ C 371, 9.12.1996, p. 22

² .COM(96) 73 final, CdR 371/96 fin E-PES/jg

³ A4-0049/97, PV 20.2.1997

⁴ OJ C 234, 1.8.97, p.87

⁵ A4 0263/97 PV 17.9.1997

⁶ OJ L 321, 30.12.1995, p. 6

⁷ OJ L 74, 22.3.1996, p.13

strengthened in the area of universal service, in line with the position expressed in the Commission Communication on universal service for telecommunications⁸.

The adaptation is consistent with the European Parliament and Council Directive 97/33/EC on interconnection in telecommunication⁹, which lays down that only the provision of a fixed public telephone network and fixed public telephone service can be financed by a universal service financing scheme.

2. EP amendments accepted by the Commission

Of the 17 amendments adopted by the European Parliament at Second Reading, the Commission accepted 14 in full, in part or in principle (i.e. with some reformulation of the text).

Amendments accepted in full, in part or in principle:

2, 3, 5, 6, 7, 10, 11, 15, 17, 19, 20, 21, 22, 26

The Commission accepted as drafted those amendments which:

- *improve consumer protection provided they were in line with other directive [accepted in full amendment 5, and in part amendments 15: first and last parts, 17: two last parts and 26 first part],*
- *improve the clarity of the text on rules on the provision, costing and financing of universal service [first and last part of amendment 2],*
- *are in line with Commission position on Comitology [accepted in full 21, 22],*
- *clarify special network access [accepted in full 20].*

In addition, the Commission agreed with the EP on the principles underlying the following amendments:

- *Amendment 2 (second part): concerns operators who may provide universal service,*
- *Amendment 3 (Last part): which improves disabled users access to telecommunication services,*
- *Amendment 19: transition measure to be provided until number portability is introduced,*
- *Amendment 7: includes text-telephones in the definition of public pay-phone,*
- *Amendment 17: itemised billing to be provided in alternative format for blind and partially sighted users,*
- *Amendment 11: Allows Member States to requires additional services to be provided, if they are not financed through contributions from market players.*

In its modified proposal, the Commission has taken over amendments 7, 17 in the relevant recitals rather than as changes to the Articles. In addition, amendments 2 (second part), 3 (last part), 19 and 11 have been taken over with some textual changes.

⁸ COM(96) 73, 13.3.1996

⁹ OJ L199/32, 26.7.97,

3. Amendments not accepted by the Commission

The reasons which led the Commission not to accept a number of the amendments (or parts of them) proposed by the European Parliament are given below, grouped into 3 categories.

Users' and consumers' rights

In amendment 3 to recital 8 the term "does include" instead of "could include" is too binding for a recital.

In the second part of amendment 15, the Commission believes that requests by users for alteration of contracts can be handled under the procedure in Article 26 (1).

In the third part of amendment 15 concerning the basis for alteration of contracts the common position already limits alteration by stating: "insofar as they concern the provisions of this directive order to protect the rights of users". The Commission prefers the text of the Common Position.

The second part of amendment 26 which requests the Commission to review the quality of services biannually is not necessary since the Commission is already doing this, and will be producing a report on universal service at the end of 1997 as foreseen in the Commission Communication of 13 March 1996 on Universal Service for telecommunications in the perspective of a fully liberalised environment, COM(96) 73.

Rules on the provision, costing and financing of universal service [Amendments 8, 10]

Amendment 8 proposes a change to the existing definition of universal service (in the Directive 97/33/EC on interconnection]. This change is not accepted.

Amendment 10 to Article 3 deletes reference to "in the light of specific national conditions". As the agreed definition of universal service include this reference, this deletion cannot be accepted.

European guidelines for affordability [amendments 1, 9]

This Directive does not seek to change the existing situation, whereby Member States are free to have or not to have uniform prices throughout their territory. Therefore the first part of amendment 1 is not accepted.

In accordance with the principle of subsidiarity, the criteria to calculate affordability are to be determined at a national level. Considering the very different national or regional conditions throughout the Union, it does not seem appropriate to aim at guidelines on affordability (amendment 1 and 9).

4. Conclusion

The Commission has accepted 14 of the 17 amendments proposed by the European Parliament at Second Reading either in whole, in part or in principle.

In accordance with Article 189a paragraph 2 of the EC Treaty, the Commission's modified proposal incorporates these amendments.

**AMENDED PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL
DIRECTIVE ON THE APPLICATION OF OPEN NETWORK PROVISION (ONP)
TO VOICE TELEPHONY AND ON UNIVERSAL SERVICE FOR
TELECOMMUNICATIONS IN A COMPETITIVE ENVIRONMENT
(REPLACING EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 95/62/EC)**

Recital 6
(based on EP amendment 2)

Whereas the importance of the fixed public telephone network and service is such that the latter should be available to anyone reasonably requesting it; whereas, in accordance with the principle of subsidiarity, it is for Member States to decide which organizations have the responsibility for providing the universal service for telecommunications as defined in this Directive, taking into account the ability of organizations to provide it; whereas corresponding obligations could be included as conditions in authorizations to provide publicly available telephone services; whereas, in accordance with Article 5(1) of Directive 97/.../EC of the European Parliament and of the Council on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP), Member States may establish mechanisms for sharing the net cost of the universal service obligations with other organizations operating public telecommunications networks and/or publicly available voice telephony services; whereas public telecommunications networks include both public fixed networks and public mobile networks; whereas national regulatory authorities should satisfy themselves that those organizations benefiting from universal service funding provide sufficient level of detail of the specific elements requiring such funding in order to justify their request; whereas the Commission has adopted guidelines on the costing and financing of universal service indicating the level of detail to be provided in such declarations by operators;

Whereas the importance of the fixed public telephone network and service is such that the latter should be available to anyone reasonably requesting it; whereas, in accordance with the principle of subsidiarity, it is for Member States to decide on the basis of objective and non-discriminatory criteria which organizations have the responsibility for providing the universal service for telecommunications as defined in this Directive, taking into account the ability and, where appropriate the willingness of organizations to provide all or part of its element; whereas corresponding obligations could be included as conditions in authorizations to provide publicly available telephone services; whereas, in accordance with Article 5(1) of Directive 97/33/EC of the European Parliament and of the Council on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP), Member States may establish mechanisms for sharing the net cost of the universal service obligations with other organizations operating public telecommunications networks and/or publicly available voice telephony services; whereas public telecommunications networks include both public fixed networks and public mobile networks; whereas national regulatory authorities should satisfy themselves that those organizations benefiting from universal service funding provide sufficient level of detail of the specific elements requiring such funding in order to justify their request; whereas the accounting methods and the level of detail to be used for the costing and financing of the universal service shall be monitored by the Commission in conformity with the applicable competition law and sector specific directives.

Recital 8
(based on EP amendments 3, 7 and 17)

Whereas Member States shall, where appropriate, take suitable measures in order to guarantee the access to and affordability of fixed public telephone services for disabled users and users with special social needs; whereas this could include, where appropriate, specific measures for blind, partially sighted, deaf or hearing-impaired people;

Whereas Member States shall, where appropriate, take suitable measures in order to guarantee the access to and affordability of all fixed public telephone services for disabled users and users with special social needs; whereas this could include, where appropriate, specific measures for blind, partially sighted, deaf or hearing-impaired people; Whereas public pay telephone may include public pay text telephones for deaf or speech-impaired people, whereas free access to directory enquiry services for disabled users, especially blind or partially sighted, is essential to guarantee their equal access to information available to the general public; whereas itemised billing in alternative format should be available on request for blind and partially sighted people.

Recital 14
(based on EP amendment 5)

Whereas price transparency should ensure that residential subscribers do not subsidize discounts to business customers; whereas certain obligations concerning tariffs and cost accounting systems will no longer be appropriate once competition is introduced and whereas others can be relaxed by the competent national regulatory authority as soon as competition achieves the desired objectives; whereas in all cases the non-discrimination requirements of the competition rules of Community law apply; whereas the requirement for unbundling does not prevent facilities from being combined in a tariff package;

Whereas price transparency should ensure that residential subscribers do not subsidize discounts to business customers; whereas certain obligations concerning tariffs and cost accounting systems will no longer be appropriate once competition is introduced and whereas others can be relaxed by the competent national regulatory authority as soon as competition achieves the desired objectives; whereas in all cases the non-discrimination requirements of the competition rules of Community law apply; whereas the requirement for unbundling does not prevent facilities from being combined in a tariff package, provided this practice is not used to unduly restrict the users' freedom of choosing their suppliers for the different services they may wish to use;

**Article 1(1) second subparagraph
(based on EP amendment 6)**

The aims are to ensure the availability throughout the Community of good quality fixed public telephone services and to define the set of services to which all users, including consumers, should have access in the context of universal service in the light of specific national conditions, at an affordable price.

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**Article 3(1), first subparagraph
(based on EP amendment 10)**

Member States shall ensure that the services set out in this Chapter are made available to all users in their territory, independent of geographical location, and, in light of specific national conditions, at an affordable price as determined by them.

Member States shall ensure that the services set out in this Chapter are made available to all users in their territory, independent of the geographical location, and, in light of specific national conditions, and at an affordable price.

**Article 4, second paragraph a (new)
(based on EP amendment 11)**

2a. Member States may impose additional requirements concerning the provision of telecommunication services in accordance with Community law. Such additional requirements may not, under any circumstances whatever, have an impact on the costing of universal service provision as laid down at EU level and may not be financed from a mandatory contribution by market players.

Article 10
(based on EP amendment 15)

National regulatory authorities shall ensure that organizations providing access to fixed public telephone networks and mobile public telephone networks provide a contract. The contract shall specify the service to be provided or shall make reference to publicly available terms and conditions. The contract or the publicly available terms and conditions shall at least specify the supply time for initial connection and the types of maintenance service offered, the compensation and/or refund arrangements for subscribers which apply if the contracted service is not met and a summary of the method of initiating procedures for the settlement of disputes in accordance with Article 26.

National regulatory authorities or other competent bodies according to national legislation shall be able to require the alteration of the conditions of contracts referred to in paragraph 1 and the conditions of any compensation and/or refund schemes used insofar as they concern the provisions of this Directive in order to protect the rights of users and/or subscribers.

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National regulatory authorities or other competent bodies according to national legislation shall be able to require the alteration of the conditions of contracts referred to in paragraph 1 and the conditions of any compensation and/or refund schemes used insofar as they concern the provisions of this Directive in order to protect the rights of users and/or subscribers.

The Commission shall ensure that the alterations called for do not interfere with fair competition on the market.

Article 12(1), first subparagraph
(based on EP amendment 26)

1. Member States shall be able, where they deem it necessary, to set the quality of services identified in this Directive for organizations providing fixed public telephone networks and/or fixed public telephone services.

1. Member States shall take the necessary steps to ensure the quality of services identified in this Directive for organizations providing fixed public telephone networks and/or fixed public telephone services.

**Article 14(1) first subparagraph
(based on EP amendment 17)**

1. In order to ensure that users have access over fixed public telephone networks as early as possible to the facilities of:

- tone dialling
- itemized billing and selective call barring as facilities available on request,

Member States may designate one or more operators to provide these facilities to most telephone users before 31 December 1998 and to ensure that they are generally available before 31 December 2002.

1. In order to ensure that users have access over fixed public telephone networks as early as possible to the facilities of:

- tone dialling
- itemized billing and selective call barring as facilities available on request,

national regulatory authorities may designate one or more operators to provide these facilities to most telephone users before 31 December 1998 and to ensure that they are generally available before 31 December 2001.

**Article 15(4)
(based on EP amendment 19)**

Where the facility of number portability, as referred to in Article 12(5) of Directive 97/ /EC on Interconnection, is not yet in use, national regulatory authorities shall ensure that, for a reasonable period after a subscriber has changed supplier, either a telephone call to his old number can be re-routed to his new number or callers are given an indication of the new number.

National regulatory authorities shall ensure that any fees for the above facilities are reasonable.

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National regulatory authorities shall ensure that any fees for the above facilities are reasonable.

Article 16(1)
(based on EP amendment 20)

Special network access

1. National regulatory authorities shall ensure that the organizations with significant market power in the provision of fixed public telephone networks deal with reasonable requests from organizations providing telecommunications services for access to the fixed public telephone network at network termination points other than the commonly provided network termination points referred to in Annex II, part 1.

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1. National regulatory authorities shall ensure that the organizations with significant market power in the provision of fixed public telephone networks deal with reasonable requests from organizations providing telecommunications services for access to the fixed public telephone network at network termination points other than the commonly provided network termination points referred to in Annex II, part 1. This obligation may only be limited if there are technically and commercially viable alternatives to the special access requested, and that the requested access is inappropriate in relation to the resources available to meet the request.

Article 28
(based on EP amendment 21)

Modifications necessary to adapt Annexes I, II and III to this Directive to technological developments or to changes in market demand shall be determined in accordance with the procedure laid down in Article 30.

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Article 30
(based on EP amendment 22)

Deleted

Notwithstanding the provisions of Article 29, the following procedure shall apply in respect of the matters covered by Article 28.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The Chairman shall not vote.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

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