



EUROPEAN COMMISSION
DIRECTORATE-GENERAL IV - COMPETITION
Information, Communication and Multimedia
Telecommunications, Posts
Information Society Coordination

PUBLIC COMMENTS ON

DRAFT COMMISSION NOTICE
CONCERNING THE STATUS OF VOICE ON THE
INTERNET
PURSUANT TO DIRECTIVE 90/388/EEC

Supplement to the Commission Communication to the
European Parliament and the Council on the
status and implementation of Directive 90/388/EEC on
competition in the markets for
telecommunications services

(97/C 140/06, 7.5.1997)

SEPTEMBER 1997



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SEPTEMBER 1997

**PUBLIC COMMENTS ON
DRAFT INTERNET NOTICE**

INTRODUCTION

This volume provides a record of thirty written comments received during the consultation on draft Commission Notice concerning the status of voice on the Internet pursuant to Directive 90/388/EEC (97/C 140/06, published in OJ No C 140, 7.5.1997, p. 8)

It does not include comments where there was a specific request for confidentiality from the parties involved.



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July 7, 1997

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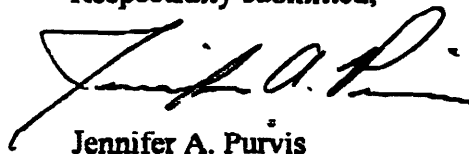
RE: Commission notice concerning the status of voice on the Internet pursuant to Directive 90/388/EEC; Supplement to the communication by the Commission to the European Parliament and the Council on the status and implementation of Directive 90/388/EEC on competition in the markets for telecommunications services; 97/C 140/06

Dear Directorate-General for Competition:

Please find enclosed the Observations of America Online, Inc. in the above-referenced proceeding. These Observations are being filed today via facsimile pursuant to the instructions set forth in the Commission's Notice. A hard copy of these Observations is also being sent under separate cover.

If you have any questions regarding these Observations, please contact the undersigned.

Respectfully submitted,



Jennifer A. Purvis

Enclosure

**Before the
EUROPEAN COMMISSION
Directorate-General for Competition (DGIV)
Brussels, Belgium**

In the Matter of)	
)	
Commission notice concerning)	
the status of voice on the Internet)	
pursuant to Directive 90/388/EEC)	97/C 140/06
)	
Supplement to the communication by)	
the Commission to the European)	
Parliament and the Council on the status)	
and implementation of Directive)	
90/388/EEC on competition in the markets)	
for telecommunications services)	

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Observations of America Online, Inc.
July 7, 1997

Before the
EUROPEAN COMMISSION
Directorate-General for Competition (DGIV)
Brussels, Belgium

In the Matter of)	
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Parliament and the Council on the status)	
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for telecommunications services)	

OBSERVATIONS OF AMERICA ONLINE, INC.

America Online, Inc. ("AOL"), by its attorneys and pursuant to the "Notice Concerning the Status of Voice on the Internet Pursuant to Directive 90/388/EEC, Supplement to the Communication by the Commission to the European Parliament and the Council on the Status and Implementation of Directive 90/388/EEC on Competition in the Markets for Telecommunications Services," published May 7, 1997, hereby submits these observations to the European Commission ("EC" or "Commission").

INTRODUCTION AND SUMMARY

Since its founding in 1985, AOL has played a leading role in the development of the Internet online services medium to deliver information, entertainment and communications for consumers around the globe.¹⁷ AOL's Internet online service presently has approximately

¹⁷ Headquartered in Dulles, Virginia, United States of America, AOL currently operates in the United States, Canada, the United Kingdom, France, Germany and Japan.

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eight million members with local dial-up access in roughly 700 cities worldwide, providing original programming and informative content, electronic mail ("E-mail") capabilities, access to the World Wide Web and informational databases, electronic magazines and newspapers, and opportunities to participate in online "chat" conferences. The vast majority of AOL's members are residential, and use the service for recreation and personal information and entertainment. Today, AOL members are spending more than five million total hours online in the average day, with an average of 15 million E-mails and 300 million web hits each day. As technology and demand develops, AOL expects to deploy upgrades to its service, including voice capabilities where feasible. AOL currently has plans to release an application to permit voice communication, which will be available within its network worldwide. However, there remain significant technical barriers to voice communications over the Internet with today's technology.

By way of background, AOL, Inc. is currently divided into three divisions: AOL Networks, AOL Studios, and ANS Access. AOL Networks, which includes the flagship AOL Internet online service and AOL International Services, creates the "AOL experience" with its variety of interactive features such as news, sports, weather, financial information and transactions, and electronic shopping. AOL Studios, the company's programming arm, develops interactive programming for broad distribution. For example, AOL Studios runs innovative programming properties such as AOL innovative chat (iChatco), games (INN), local information (AOL Digital Cities), and independent (AOL Studios Greenhouse) programming. These programming services are for distribution both on AOL's Internet online service and through other media channels.

Finally, ANS Access, which operates one of the world's largest and most reliable data communications networks, provides network services to a variety of businesses and to the

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AOLnet network, on which the majority of AOL traffic travels. Significantly, it was the ANS technical team that actually designed and developed the hardware and software for the Internet backbone and managed that backbone in the United States for nine years. ANS Access also designs, installs, manages, and maintains nationwide corporate data networks over ANSnet, one of the fastest and largest TCP/IP networks in the world.

As the world's largest provider of Internet online services, AOL strives to offer its members the benefits of new technologies and advanced services as efficiently and expeditiously as possible. To this end, AOL has an interest in ensuring that the regulatory framework in any market where it competes encourages innovation and new investment. Accordingly, AOL strongly endorses the European Commission's conclusion that "voice on the Internet" should receive liberalized treatment and not be classified as "voice telephony."

The Commission's draft conclusion is fully consistent with the definition of "voice telephony" set forth in Directive 90/388/EEC. The Internet voice offerings available today lack several key features of traditional voice telephony offerings, including transparency, ubiquity, full reliability, and real-time capability. Voice transmissions over the packet-switched networks operated by Internet service providers ("ISPs") represent a niche component of the array of services being offered by ISPs and others and are not made available to the public at large. In many instances, ISPs themselves may be unaware that their subscribers are engaged in voice transmissions, since Internet voice applications often rely upon customer premises software and hardware obtained and installed by end users. Moreover, voice applications are often sub-elements of multi-function environments that combine voice, data, and graphics, such as telemedicine or data conferencing applications, rather than discrete service offerings. In short,

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the nascent Internet voice services available today are by no means substitutable, from either a technical or consumer perspective, for traditional voice telephony.

According liberalized treatment to Internet voice offerings is also consistent with European Commission policies designed to encourage technological innovation and the deployment of new services. The Commission already has concluded that such objectives can best be met by minimizing government restrictions on the development and provision of advanced telecommunications and information services. Internet voice applications can be utilized for a broad range of services, including educational, medical, social and multimedia offerings that incorporate voice, video and data. Subjecting Internet voice offerings to regulatory structures and constraints developed for basic voice telephony would contravene the Commission's policies by hampering the development and deployment of new services.

Finally, allowing Internet voice services to develop free from Member State telecommunications regulation is consistent with deregulatory policies maintained in the United States -- and reflected in the recent telecommunications accord adopted by the World Trade Organization. These policies have helped to spawn not only the explosive increases in Internet usage witnessed in recent years, but also the vast array of innovative new services offered by ISPs. As United States President Bill Clinton emphasized less than a week ago, "Government officials should respect the unique nature of the medium and recognize that widespread competition and increased consumer choice should be the defining features of the new digital marketplace."^{2/} In the United States, both the Congress and the Federal Communications Commission have also steadfastly sought to minimize government regulation of information and

^{2/} Text of the President's Message to Internet users, The White House, Office of the Press Secretary, July 1, 1997.

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Internet services, by resisting efforts to subject such "enhanced" services to regulatory regimes imposed upon traditional common carriers and telecommunications providers. This approach has fueled new investment and economic growth and stimulated higher quality services by ISPs and others at lower prices for consumers. The European Commission should likewise seek to prevent unnecessary government interference in the growth and development of the Internet, by ensuring that innovative new services such as voice on the Internet are not subject to Member State telecommunications and basic telephony regulation.

I. INTERNET VOICE SERVICES SHOULD NOT BE CLASSIFIED AS VOICE TELEPHONY WITHIN THE MEANING OF DIRECTIVE 90/388/EEC

A. The Draft Position Correctly Concludes that Internet Voice Applications Do Not Meet the 90/388/EEC Definition of "Voice Telephony"

AOL concurs with the Commission's draft position^{3/} that Internet voice applications do not meet the definition of "voice telephony" under the 90/388/EEC Directive.^{4/} The legal definition of voice telephony, the policies underlying that definition, and the uncertainty over the developing role of Internet voice applications support the Commission's draft conclusion. Indeed, subjecting Internet voice applications to the voice telephony regulatory regime of Member States would jeopardize the development of promising technologies that will lower costs, enhance consumer choice, and allow advanced applications to the benefit of the European

^{3/} Notice by the Commission concerning the state of voice on the Internet under Directive 90/388/EEC, 1997 O.J. (C 140) 8 ("Notice on Internet Voice").

^{4/} Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services, 1992 O.J. (L 192) 10 ("Directive on Telecommunications Competition").

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Communities. As the United States' recently released report "A Framework for Global Electronic Commerce" states, "Unnecessary regulation of commercial activities will distort development of the electronic marketplace by decreasing the supply and raising the cost of products and services for consumers the world over."⁵¹

**1. Internet Voice Services Are Not Substitutes For Or
Equivalents To Basic Voice Telephony Services**

First, packet-based Internet voice service currently is neither substitutable for, nor equivalent to, traditional voice telephony. At present, there are significant distinctions between Internet voice applications -- sometimes referred to as Voice on the Net ("VON") -- and voice telephony, particularly with respect to quality, ease of use, and widespread availability to the public. Dropped packets, time lags, echoes and unwanted distortion can affect both the quality and reliability of Internet voice communications.⁶¹

For instance, the voice communications service that AOL plans to launch in the near future still faces technical and operational barriers, including a subscriber base that largely does not possess the requisite full duplex sound cards and/or modems with sufficient speed to accommodate voice. In addition, voice compression technology has not evolved to the point

⁵¹ See "A Framework for Global Electronic Commerce," The White House, July 1, 1997, at 2 ("Global Framework").

⁶¹ See, e.g., Gautam Naik, "Internet Threat is Seen to Telephone Companies," Wall Street Journal Interactive Edition, May 7, 1997 ("[T]he Internet has a long way to go before it can match the superior quality of voice calls placed over traditional phone networks. Internet-based calls tend to suffer from lags. Transmission quality can also be scratchy."); "Embracing Internet Telephony," Telephony, December 9, 1996 at 32-34 ("[S]ound quality problems -- including dropouts, echoes and unwanted distortion -- make conversations using the Internet as a transport medium frustrating and unreliable, especially for business users.").

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where it is efficient and reliable to transmit voice on the decentralized Internet.⁷ Simply put, these nascent Internet-based voice services and the networks they operate on are not equivalent to voice telephony services operating on the public switched network. Indeed, in contrast to E-mail, which can be transmitted with relative ease to most Internet users despite the different system and technical parameters of individual users, Internet voice services underscore the significant differences between the public switched network and the Internet for the efficient and reliable delivery of voice communications.

There are also critical technical distinctions between Internet voice services and traditional voice telephony. Unlike basic voice telephone services, virtually all of the emerging packet-based voice communications services that will be or are provided over the Internet involve protocol processing at both ends of the connection that act upon the format of the transmission. In this regard, voice transmissions over the Internet are more analogous to "information services" rather than "basic transmission" or "conduit" services.⁸ Further, Internet voice services also rely upon customer-premises based software and hardware for most, if not all, of their functionality, much of which is not widely in use by today's Internet users. For example, to use AOL's planned service, subscribers will require AOL-specific software, full duplex sound cards and adequate speed modems. Today, subscriber penetration of the necessary hardware however, is quite low. Moreover, just as with the proposed AOL service, most Internet-based

⁷ In fact, Internet voice applications do not constitute a sufficiently stable set of technologies and usages to enable Member States to adopt regulatory measures. See Guido Reinke, Report on the Market Development of Internet and the Implications on the Telecommunications Sector, DG XIII (September 1996) ("Report on the Market Development of Internet").

⁸ See infra, at 17-23 (discussing distinction between such "basic" and "enhanced" services in United States regulation).

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voice service offerings often require users at both ends of the connection to employ the same software, and presently, there are several incompatible competing packages.⁹

In addition, AOL and other ISPs are in the process of developing Internet voice applications. At this time, these offerings permit voice communications only between subscribers to the same ISP.¹⁰ For instance, with AOL's planned service, while AOL's members could send voice transmissions to other AOL members, they could not send the same transmissions to subscribers of a different ISP or other Internet users. Clearly, these voice service offerings lack both the seamless transparency and public ubiquity of conventional voice telephony and thus cannot be deemed substitutes for -- or functionally equivalent to -- basic voice telephone services.

Moreover, many of the developing Internet applications, including important capabilities such as telemedicine and education applications, may incorporate voice transmissions as one element of the service. These applications, however, are not suitable for -- and thus will not

⁹ See "Ops Study Voice Over Modems," Broadband Week, February 3, 1997, at 47 ("[s]o far, Internet-based telephony requir[es] all parties to a call to be using the same proprietary software").

¹⁰ See, e.g., "Prodigy to allow voice chat," CNET, February 4, 1997 (noting Prodigy voice offering "will allow only Prodigy Internet subscribers to talk to each other, not to members of other online services or Internet service providers").

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displace traffic on -- the traditional public switched telephone network.^{11/} As such, these multi-function offerings are not basic voice telephony equivalents or substitutes.^{12/}

**2. Internet Voice Services Do Not Fall Within the Definition of
Basic Voice Telephony Services**

In the Notice on Internet Voice, the Commission correctly recognizes that Internet voice applications do not fit into the definition of "voice telephony."^{13/} The Commission analyzes several key attributes of voice telephony, including the provision of the services on a commercial basis; the availability of the services "to the public;" the termination of Internet voice on the public network; and the technical characteristics that distinguish these new services from voice telephony.^{14/} Given the substantial technical operational, and practical differences between basic voice telephone services and the new Internet voice transmission applications, the Commission should affirm this conclusion.

Unlike voice telephony services, which are provided on a "commercial basis" and offered generally "to the public,"^{15/} Internet-voice services are not so offered. Internet voice-based applications, including the service planned by AOL, will not be a generally available voice transmission service offering. Rather, the AOL voice services will be an application available as

^{11/} See generally, Andrew Sears, The Effect of Internet Telephony on the Long Distance Voice Market, Internet Telephony Consortium (September 4, 1996) <<http://itel.mit.edu/ldabstract.html>>.

^{12/} Further, it would be infeasible to segregate, for regulatory purposes, the voice components of such services.

^{13/} Notice on Internet Voice at 8.

^{14/} Id.

^{15/} See Directive on Telecommunications Competition, art. 1, 1990 O.J. (L 192) 10.

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an additional service option for those consumers that have already purchased the basic Internet online services package offered by AOL, which includes E-mail, original content and information, web-browsing, discussion groups, and other services.^{16/}

Further, as the Commission has indicated, services such as these that are provided to "closed user groups," such as AOL-only members, should not be considered a public offering.^{17/}

As stated above, not only must parties' applications on both ends of the voice transmission have the same software and compatible hardware to communicate.^{18/} Even more significant is that users cannot transmit voice messages to the public at large or even to all Internet users. Instead, the technology dictates that only members of a specific and closed group – such as AOL members with compatible software and hardware – can take advantage of Internet voice technology.

To constitute a general public offering within the definitions of basic telephony offerings, Internet voice services would need the same kind of ubiquity, interconnectivity and technical feasibility as exists with circuit-switched voice telephony. Such is far from the case today. Indeed, despite its growth and potential, Internet penetration is far from "universal" or

^{16/} Significantly, for other Internet-based voice transmission services, including some that may be utilized today by AOL members, transmissions can occur without the assistance, or even knowledge, of the Internet service provider. As with all digital services, Internet packets carrying voice are technically indistinguishable from packets carrying other types of data.

^{17/} Communication by the Commission to the European Parliament and the Council on the status and implementation of Directive 90/388/EEC on competition in the markets for telecommunication service, 1995 O.J. (C 275) 2 ("Communication on Telecommunications Competition").

^{18/} In fact, for some of the infant voice applications, users must pre-arrange such communication.

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comparable to voice telephone penetration.^{19/} Notably, this aspect of Internet voice service highlights the limitations of the Internet and the core differences between it and the ubiquitous, generally available public switched telephone network.

It is for these reasons that Internet voice transmission services cannot be considered to be offered "to and from public switched network termination points on the fixed telephony network."^{20/} While the technical and operational barriers that impede general public distribution may one day evolve, for today and the foreseeable future, Internet-based voice services will not extend generally to the public switched network. Significantly, today, there are no operating commercial "gateways" that could allow Internet users to send voice transmissions to from public switched network termination points on the fixed telephony network.

In addition, the emerging rudimentary Internet voice transmission applications do not involve "direct transport and switching of speech in real time"^{21/} as does basic voice telephone traffic. As the Notice on Internet Voice notes, the encoding and compression of speech into packets introduces delays such that the service cannot be considered a "real-time" service.^{22/} This requirement must be interpreted with a measure of common sense. While even traditional telephone service is encoded and compressed, the Commission apparently correctly recognizes the basic differences between voice telephony and Internet voice service applications. Internet voice services today suffer from lengthy delays, asynchronous channels, and poor sound quality

^{19/} See Reinke, Report on the Market Development of Internet.

^{20/} Directive on Telecommunications Competition.

^{21/} Id.

^{22/} Notice on Internet Voice at 3.

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that distinguish them sharply from traditional telephony.^{23/} While improvements can be hoped for and anticipated, these services are still far closer to "citizen's band" radio services or other hobbyist applications than reliable, technically advanced voice telephony services.

Finally, the Commission should also recognize that the voice transmissions that may be routed on packet networks may consist of more than simple voice communications traffic between two users, but may instead consist of voice carried as an adjunct to other data-based services. For example, doctors using telemedicine applications to display remotely and manipulate real-time medical images can also discuss the images with each other via packetized voice. Packetized voice can also be used by engineers in CAD systems, by businessmen for data-conferencing, by teachers for collaborative learning, and consumers for online gaming.^{24/} Consequently, artificially segmenting the voice aspect of the service makes little sense from a regulatory and policy perspective and could impede the development and deployment of these innovative and beneficial new applications.

Accordingly, for these reasons, the Commission should adopt the draft position's proposed conclusion that voice on the Internet falls outside the definition of "voice telephony" set forth in Directive 90/388/EC.

^{23/} See Chris Johnson, "Internet Phones Cheap But Dirty, Experts Say," Reuters, June 13, 1997 ("Internet voice technology is still in its infancy and the very high quality sound most customers expect from telephone calls is still not available").

^{24/} Computer researchers have developed many variations on the theme of a collaborative computing environment enhanced by the presence of real-time voice. See Peter G. Neumann, Collaborative Efforts, 34 Communications of the ACM 88 n. 12 (Dec. 1991); Andee Rubin, Video Laboratories: Tools for Scientific Investigation, 36 Communications of the ACM 64 n. 5 (May 1993); Mark R. Cutkosky, et. al., Madefast: Collaborative Engineering Over the Internet, 39 Communications of the ACM 78 n. 9 (Sep. 1996); Eliot Soloway, Technology in Education, 36 Communications of the ACM 28 n. 5 (May 1993).

B. Granting Liberalized Treatment to Internet Voice Service is Consistent with European Commission Policies Favoring Competition and Innovation

Directive 90/388/EEC was designed to advance the Commission's policy of "progressively introducing competition in to the telecommunications market."^{25/} Recognizing that "technological advances . . . allow an increasingly varied range of services to be provided, notably data transmission services," the Commission sought to liberalize government restrictions on the provision of competitive telecommunications services.^{26/} The Commission explicitly found that the effect of State-imposed "usage restrictions and . . . excessive charges in relation to net costs" hinder the provision of a wide range of advanced telecommunications and information services.^{27/} Thus, according liberalized treatment to Internet voice services is fully consistent with the Commission's ongoing efforts to minimize government restrictions on the provision of advanced telecommunications and information services.

By contrast, imposing regulation on Internet voice applications while they are still in their infancy threatens to forestall their development altogether and hamper the development of other Internet service offerings -- particularly multimedia applications -- that incorporate voice communications. Clearly, such a restrictive regulatory approach is inconsistent with the growth and development of advanced information services.^{28/}

^{25/} Directive on Telecommunications Competition at 1.

^{26/} Id.

^{27/} Id.

^{28/} Indeed, such regulation could also have the effect of forcing network providers to try to distinguish between voice and data packets, imposing additional, and perhaps insurmountable, technical burdens and unnecessary costs on network providers.

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Liberalized treatment also is consistent with the rationale underlying the creation of the special "reserved" exception for voice telephony, which established a more gradual liberalization period for voice telephony due to the fact that "the financial resources for the development of the [public switched] network still derived mainly from the operation of the telephony service and the opening-up of that service could, at that time, threaten the financial stability of the telecommunications organizations."^{29/} The Commission emphasized, however, that since "the reservation of voice services is an exception to the general rule of competition it must be interpreted narrowly."^{30/} The narrow interpretation serves to ensure that new services for consumers will "not be delayed by restrictions aimed at preserving the traditional voice telephony market."^{31/}

Critically, treating voice on the Internet as "voice telephony" could subject packetized voice services to anomalous regulatory structures and classifications developed for circuit-switched networks. The regulatory framework developed for circuit-switched architectures reflect the fact that such networks rely upon the establishment and maintenance of a dedicated, open circuit between two parties for the duration of a voice transmission, even at points when neither party is talking or sending communications in other forms. By contrast, packet-switched networks do not require the maintenance of a dedicated, open path between two parties for the

^{29/} Commission Directive 96/19/EC of 13 March 1996 amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets, preamble Sect. 4, 1996 O.J. (L 074) ("Directive Amending 90/388/EEC").

^{30/} Communication on Telecommunications Competition at 2.

^{31/} Id. Notably, the exception for voice telephony is shrinking. The Commission's Directive 96/19/EC requires that all special or exclusive rights with respect to voice telephony be withdrawn by 1 January 1998 in order to achieve a fully liberalized competitive environment.^{31/} Directive Amending 90/388/ at 13.

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duration of a particular voice or data transmission. Instead, packet-based voice communication services -- and any other data -- is broken up into discrete digital "packets" which are transmitted separately over the network and reassembled at their destination. While a circuit-switched telephone conversation uses a constant amount of network capacity for the duration of the call, "connectionless" packet-switched communications take up capacity only when information is actually being transmitted.³² Thus, to the extent regulation is premised in usage-sensitive tariffs, it is clearly inappropriate for packet-based services.

Significantly, as set forth below, the United States Government, including the Administration, Congress and the Federal Communications Commission ("FCC"), the governmental entity responsible for regulating interstate communications in the United States, has repeatedly declined to apply the regulatory structures governing circuit-switched telephony to Internet online and other information services in order to foster technological innovation, new services, and new investment.³³ As the Global Framework report released by the White House last week stressed, "[G]overnments should refrain from imposing new and unnecessary regulations, bureaucratic procedures, or taxes and tariffs on commercial activities that take place via the Internet."³⁴ Likewise, the FCC has recognized that rules "designed for traditional circuit-switched voice networks . . . may hinder the development of emerging packet-switched data

³² See Lee L. Selwyn and Joseph W. Laszlo, "The Effect of Internet Use on the Nation's Telephone Network," Economics and Technology, Inc. (January 22, 1997) at 1.

³³ See infra pp.16-24.

³⁴ See Global Framework at 2.

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networks."³⁵ The Commission's draft position is consistent with the approach taken by the United States, since it properly segregates packetized voice services from regulatory restrictions developed for services and networks with significantly different constraints and characteristics.

II. THE COMMISSION SHOULD ENSURE THAT MEMBER STATES CONTINUE TO PERMIT INTERNET SERVICES TO DEVELOP FREE FROM THE CONSTRAINTS OF VOICE TELEPHONE REGULATION

A. Regulatory Forbearance Has Nourished the Explosive Growth of the Internet in the United States and Spurred the Development of New Offerings

The exponential growth of Internet usage in the United States and the proliferation of new Internet applications and advanced information service offerings are the by-products of a policy of regulatory forbearance toward "information services" and "enhanced services" maintained in the United States for nearly two decades.³⁶ Just last week, the White House released its Global Framework report that sets forth basic operating principles to ensure that the Global Information Infrastructure emerges to the benefit of all people worldwide. That report stresses the need for

³⁵ In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, FCC No. 96-488 at ¶ 313 (U.S. Federal Communications Commission, released December 24, 1996) ("Access Charge Reform NPRM"); see also In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, First Report and Order, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, FCC 97-158 at ¶ 347 (U.S. Federal Communications Commission, released May 16, 1997) ("Access Charge Reform Order") ("The access charge system was designed for . . . a circuit-switched network, and even when stripped of its current inefficiencies it may not be the most appropriate pricing structure for Internet access and other information services.")

³⁶ In 1996, the number of United States households with Internet access more than doubled to 14.7 million, and approximately 38.7 million Americans over the age of 18 have accessed the Internet at least once. Jared Sandberg, "U.S. Households with Internet access Doubled to 14.7 Million in Past Year," Wall Street Journal, October 21, 1996, at B11.

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governments to recognize the unique qualities of the Internet, emphasizing that "[t]he genius and explosive success of the Internet can be attributed in part to its decentralized nature and to its tradition of bottom-up governance."^{37/} The report also cautions against an over-regulatory approach to new multimedia services, including Internet voice, stating:

Officials of some nations claim that "real time" services provided over the Internet are "like services" to traditionally regulated voice telephony and broadcasting, and therefore should be subject to the same regulatory restrictions that apply to those traditional services. In some countries, these providers must be licensed, as a way to control both the carriage and content offered. Such an approach could hinder the development of new technologies and new services.^{38/}

These conclusions, reached after long and serious consideration of the vast potential benefits, both economic and cultural, that Internet-based services offer, underscore the need for cautious government regulatory intervention in this area, a policy that the Commission should heed.

Similarly, the FCC recently released a detailed study undertaken by its Office of Plans and Policy (OPP) examining the telecommunications policy issues raised by the growth of the Internet.^{39/} The OPP study found that:

[T]he federal government has consistently acted to keep the Internet free of unnecessary regulation and government influence. As the Internet has matured and has grown to support a wide variety of commercial activity, the federal government has transitioned important technical and management functions to the private sector. In the area of telecommunications policy, the [FCC] has explicitly refused to regulate most online information services under the rules that apply to telephone companies.

Limited government intervention is a major reason why the Internet has grown so rapidly in the United States. The federal government's efforts to avoid burdening the Internet with regulation should be looked upon as a major success.^{40/}

^{37/} See Global Framework at 2.

^{38/} Id. at 13 (emphasis added).

^{39/} Kevin Werbach, Digital Tornado: The Internet and Telecommunications Policy, OPP Working Paper No. 29, March 1997 ("Digital Tornado").

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The successful policy of limited government regulatory intervention adopted in the United States was founded upon the FCC's decision to treat "information services" and "enhanced services" that utilize the facilities of common carriers -- such as Internet access and Internet voice services -- as separate and distinct from basic telephony or basic telecommunications services.^{41/} Consistent with the FCC's policy "to avoid unnecessary regulation of information services,"^{42/} enhanced voice and data services have not been regulated under the laws governing telecommunications in the United States, even though underlying telecommunications and common carrier facilities used to furnish such services continue to be subject to regulation.^{43/}

Under this regime, the FCC defines "enhanced services" as "services, offered over common carrier transmission facilities used in interstate communications, which

- (1) employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information;

^{40/} Id. at 1 (emphasis added).

^{41/} In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Final Decision, 77 FCC 2d 384, 417-418 (U.S. Federal Communications Commission, 1980) ("Computer II") modified as to other conclusions, 84 FCC 2d 50, 61 (U.S. Federal Communications Commission, 1980) and 3 FCC Rcd 22 (U.S. Federal Communications Commission, 1987); In the Matter of MTS and WATS Market Structure, Memorandum Opinion and Order, 97 FCC 2d 682, 715 (U.S. Federal Communications Commission, 1983) ("MTS and WATS Market Structure Order"); In the Matter of Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, Order, 3 FCC Rcd 2631, 2633 (U.S. Federal Communications Commission, 1988) ("ESP Order"); see also Access Charge Reform Order at ¶ 348 (concluding that ISPs should continue to be classified as end users rather than carriers for access charge purposes); Access Charge Reform NPRM at ¶¶ 282, 284-288.

^{42/} Access Charge Reform NPRM at ¶ 282.

^{43/} Compare 47 C.F.R. § 64.702(a) with 47 U.S.C. § 1 et seq.

- (2) provide the subscriber additional, different, or restructured information; or
- (3) involve subscriber interaction with stored information.^{44/}

This definition includes enhanced voice, as well as enhanced data services.^{45/}

A key difference between "basic" and "enhanced" services lies in whether the form or content of the information being transmitted is altered, stored or supplemented. A "basic transmission service," such as voice telephony furnished over circuit-switched networks, is a service "that is limited to the common carrier offering of transmission capacity for the movement of information."^{46/} Simply put, basic telecommunications services do not involve a "change in the form content of the [user's] information as sent or received."^{47/} On the other hand, the FCC has described an "enhanced" service as:

any offering over the telecommunications network which is more than a basic transmission service. In an enhanced service, for example, computer processing applications are used to act on the content code, protocol, and other aspects of the subscriber's information. In these services additional, different, or restructured information may be provided the subscriber through various processing applications performed on the transmitted information, or other actions can be taken by either the vendor or the subscriber based on the content of the information transmitted through editing, formatting, etc. Moreover, in an enhanced service, the content of the information need not be changed and may simply

^{44/} 47 C.F.R. § 64.702(a).

^{45/} Computer II, 77 FCC 2d at 420-422, 423-428.

^{46/} Id. at 420.

^{47/} In the Matter of Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, FCC 97-157 (U.S. Federal Communications Commission, released May 8, 1997), at ¶ 789 n.2023 ("Universal Service Order") (quoting 47 U.S.C. § 153(43)).

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involve subscriber interaction with stored information.^{48/}

A basic transmission service, by contrast, is a service "that is limited to the common carrier offering of transmission capacity for the movement of information."^{49/}

Notably, voice applications transmitted over the Internet are usually provided over a combination of the Internet and the public switched telephone network and may or may not be provided by Internet or information service providers.^{50/} These services typically involve at least

^{48/} Computer II, 77 FCC 2d at 420-422, 423-428 (footnotes omitted). In setting forth this distinction, the FCC noted that in this context, "'code' means the binary representation of alphanumeric and control characters." "'Protocols' govern the methods used for packaging the transmitted data in quanta, the rules for controlling the flow of information, and the format of headers and trailers surrounding the transmitted information and of separate control messages." Id. at 420 n.33.

Regulatory and judicial bodies in the United States have classified as information or enhanced services both services in which a provider controls the content, and "services which would involve no control [by the provider] over the content of the information other than for transmission purposes." U.S. v. Western Electric Co., Inc., 552 F. Supp. 131, 179 (D.D.C. 1982) (subsequent history omitted). Contained in this latter category are data processing services, as well as storage and retrieval services and electronic mail. These services have been considered information services because voice or data storage in this context is a "feature of the service offering," U.S. Department of Justice, Response to Public Comments on Proposed Modification of Final Judgment, 47 Fed. Reg. 23320, 23334 (May 27, 1982), rather than simply an "inherent aspect of the technology used in transmission or switching." U.S. Department of Justice, Competitive Impact Statement in Connection with Proposed Modification of Final Judgment, 47 Fed. Reg. 7170, 7176 (February 17, 1982).

Most importantly, the fact that these services involve, at some level, the transmission of information of the user's choosing has not rendered them telecommunications because the service being offered was the "capability for generating, acquiring . . . [and] retrieving . . . information . . . via telecommunications" – the hallmark of an information service as opposed to a basic telecommunications service. See 47 U.S.C. § 153(2).

^{49/} Computer II, 77 FCC 2d at 419.

^{50/} As stated above, voice transmissions may also be made by users without knowledge of or participation of the ISP, such as by users who acquire particular software and hardware and use these to send voice transmissions to other users with compatible equipment.

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one, and often several, of the functions contained within the definition of "enhanced services."

For example, such services generally require the conversion of transmission protocols or "protocol processing," the compression and decompression of information transmitted, and the retrieval and use by end users of information stored by the ISP. ISPs may also time and date "stamp" these messages and add other information to the transmissions. In addition, Internet voice services, including the proposed service by AOL, often require the utilization by end users of specially equipped personal computers, particular software, and other customer premises equipment.

Just as the Administration concluded that regulation could "hinder" the growth of the Internet, the FCC has repeatedly avoided regulation of enhanced services on the ground that regulation would impede the development of "the still-evolving information services industry" and stifle the growth of competition in the market for such services.^{51/} When it first adopted the regulatory distinction between basic and enhanced services in 1980, the FCC reasoned that "regulation of enhanced communications services would limit the kinds of services an unregulated vendor could offer, restricting this fast-moving, competitive market" and thereby "disserve the interest of consumers."^{52/} In 1987, the FCC retained the classification of protocol processing as an enhanced service in order to prevent the "possible reregulation of enhanced service providers. . ."^{53/} The FCC justified this action in part on the ground that enhanced service

^{51/} Access Charge Reform Order at ¶¶ 344.

^{52/} Computer II, 77 FCC 2d at 434.

^{53/} Policy and Rules Concerning Rates for Competitive Common Phase II Carrier Service and Facilities Authorizations Thereof and Communications Protocols under Sections 64.702 of the Commission's Rules and Regulations, Report and Order, 2 FCC Rcd 3072, 3080 (U.S.

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providers had been operating on an unregulated, non-carrier basis for some time "with considerable benefits for the public."^{54/}

In 1983, the FCC likewise rejected the imposition of access charges on providers of enhanced services because such charges would have caused "huge increases in [such entities'] costs of operation which could affect their viability."^{55/} The FCC reaffirmed that decision in 1988 and again this year, concluding that the imposition of such burdens on the still-evolving information services industry would hamper its development, and thus harm the public interest.^{56/}

Critically, the landmark Telecommunications Act of 1996 ("1996 Act"), enacted into law on February 8, 1996, codified the distinction established by the FCC between "information" or "enhanced" services and "basic telecommunications" services.^{57/} Thus, both the United States Congress and the FCC have drawn a distinction between the provision of a telecommunications

Federal Communications Commission, 1987) ("Amendment of Section 64.702") vacated as to other conclusions, 905 F.2d 1217 (U.S. Federal Communications Commission, 1990).

^{54/} Id.

^{55/} MTS and WATS Market Structure Order, 97 FCC 2d at 715.

^{56/} ESP Order, 3 FCC Rcd at 2633; Access Charge Reform Order at ¶¶ 344, 349.

^{57/} Congress defined "telecommunications services" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46). "Telecommunications" are defined as "the transmission, between or among points specified by the user, of information of the user's choosing, *without change in the form or content of the information as sent and received.*" Id. § 153(43) (emphasis added).

Congress defined "information service," on the other hand, as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications." 47 U.S.C. § 153(20). The FCC has determined that this definition encompasses all services classified by the FCC as "enhanced services." Universal Service Order at ¶ 788.

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conduit and the provision of services that add value to the conduit (that "enhance" the conduit) through the change in, or addition of, content or capabilities for "generating, acquiring, storing, transforming, processing, retrieving, or making available" content via telecommunications.

Likewise, the United States Congress also explicitly reaffirmed the deregulatory approach to the Internet maintained by the FCC, by including as a goal of the 1996 Act the "[preservation of] the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."^{58/}

In response to the 1996 Act's codification of the distinction between information/enhanced services and telecommunications services, the FCC has issued orders exempting ISPs from regulatory obligations imposed upon providers of conventional telecommunications services, such as voice telephony. For example, the FCC recently concluded that ISPs are not required to contribute to funding for universal service support in the United States because Internet access services are not "telecommunications services," and ISPs are not "telecommunications carriers" under the 1996 Act.^{59/} The FCC also recently concluded that ISPs are not required to pay access charges in the United States because ISPs constitute end users rather than telecommunications carriers.^{60/} The Commission should emulate this approach, as it

^{58/} 47 U.S.C. § 230(b)(2).

^{59/} Universal Service Order at ¶¶ 787-789. The 1996 Act requires "every telecommunications carrier that provides interstate telecommunications services" to contribute to the support for universal service in the United States. ISPs are not "telecommunications carriers," and are thus free from this contribution requirement, because they "alter the format of information through computer processing applications such as protocol conversion and interaction with stored data, while the statutory definition of telecommunications only includes transmissions that do not alter the form or content of the information sent." Id. at ¶ 789.

^{60/} Access Charge Reform Order at ¶¶ 344-345, 348. Under FCC regulations, telecommunications carriers that provide long distance, or "interexchange" services, must pay

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has proposed, and ensure that Internet services, including voice applications, are not subject to universal service and other telecommunications obligations.^{61/}

The decision by the FCC to exempt ISPs from access charges, the statutory language of the Telecommunications Act of 1996 and the Global Framework report issued by the Administration all reflect the continuing view of the United States government that minimizing government regulation over the Internet most effectively promotes both service innovation and the public interest. The consensus is clear that the still-evolving and highly competitive information service industry remains extremely vulnerable to regulation and the burdens it imposes and the Commission should recognize these basic propositions in its approach to regulation. Regulation of developing Internet voice services will constrain the benefits these applications can bring to the European public and the global economy. Consequently, the Commission should keep these services free from regulation until they have realized their full potential to stimulate the European and global economies, spur technological development, promote the sharing of information, and enhance communication throughout the world.

**B. Liberalized Treatment of Internet Voice Service is Consistent with the
Competitive and Deregulatory Thrust of the WTO
Telecommunications Agreement**

A consensus is emerging among developing and industrialized nations that the surest and quickest way to bring advanced telecommunications services to consumers at affordable prices is

“access charges,” fees for originating and terminating interexchange calls placed by or to end users on the networks of local exchange carriers. The FCC concluded that ISPs constitute end users, and thus should not be subject to access charges because ISPs do not use the public switched telephone network in a manner analogous to interexchange carriers. Id. at ¶ 345. Rather, ISP traffic is more analogous to the traffic of large business end users. Id.

^{61/} Notice on Internet Voice at 3.

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to minimize regulatory interference and allow market forces to work. The unprecedented agreement reached by the World Trade Organization's ("WTO") Negotiating Group on Basic Telecommunications ("NGBT") on February 18, 1997 reflects this growing recognition, and mirrors the approach of the United States Telecommunications Act of 1996 in establishing deregulatory, pro-competitive rules for the telecommunications sector.⁶²

The WTO NGBT agreement sets forth guarantees of fair and economic interconnection between competing carriers, prohibitions on anticompetitive practices, and tenets of transparent and independent regulatory oversight of the telecommunications industry.⁶³ As part of the WTO's NGBT deal, 65 countries have made commitments to a specific set of pro-competitive regulatory principles for telecommunications services, and 53 have guaranteed that they will provide market access to international telecommunications services and facilities no later than January 1, 1998.⁶⁴ Promoting global competition in the provision of basic telecommunications

⁶² Compare Fourth Protocol to the General Agreement on Trade in Services, WTO Doc. S/L/20 (April 30, 1996) ("Fourth Protocol"), Annexed Schedules of Specific Commitments and Lists of Exemption from Article II, European Communities and their Member States, Schedule of Specific Commitments, supp. 3 at 8-10, WTO Doc. GATS/SC/31/Suppl.3 (April 11, 1997) (incorporating Reference Paper, 36 I.L.M. 367 (1997)) ("Specific Commitments") (providing competitive safeguards including right of interconnection, transparency of interconnection agreements, and procedures for arbitration of interconnection arrangements by independent body) with United States Telecommunications Act of 1996, Pub. L. No. 104-104, §§ 251 and 252, 110 Stat. 56 (codified at 47 U.S.C. §§ 251 and 252) (providing the same competitive safeguards); see also In the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket No. 97-142, Order and Notice of Proposed Rulemaking, FCC 97-195 at ¶ 2 (U.S. Federal Communications Commission, released June 4, 1997) ("Foreign Participation NPRM").

⁶³ Foreign Participation NPRM at ¶ 2.

⁶⁴ Group on Basic Telecommunications, "Report of the Group on Basic Telecommunications," Attachment: Schedules of Commitments and Lists of Article II Exemptions to be Annexed to the Fourth Protocol of the General Agreement on Trade in Services, (February 15, 1997) <http://www.wto.org/wto/Whats_new/finalrep.htm>.

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services was designed to allow new and innovative services, such as innovative Internet-based applications to flourish.⁶⁵

By some estimates, the European Community stands to gain \$288 billion from cost reductions and quality improvements resulting from the adoption of this deregulatory, pro-competitive approach in the period from 1997 through 2010.⁶⁶ The Commission's draft position on Internet voice fully accords with the pro-competitive, deregulatory thrust of the WTO telecommunications agreement, by ensuring that emerging services will not be unnecessarily regulated and continue to flourish in a robustly competitive market. Indeed, a contrary approach is arguably fundamentally inconsistent with this landmark accord.⁶⁷

In addition, the Commission should acknowledge that the nature of the Internet makes regulation of Internet service offerings by individual Member States' regulatory authorities inadvisable, if not impossible, as a practical matter. Indeed, a major reason for the explosion of Internet usage is that consumers value quick, convenient, and economical access to sources of information located all over the world, and this demand has fueled the rapid development of new services, including voice applications. Any effort to regulate usage of the Internet for voice

⁶⁵ As the White House notes, "During [the WTO] negotiations, the U.S. succeeded in ensuring that new regulatory burdens would not be imposed upon online service providers that would stifle the deployment of new technologies and services." See Global Framework at 13.

⁶⁶ Ben Petrazzini, Global Telecom Talks: A Trillion Dollar Deal 3 (1996) (estimates from chart prepared by Gary Hufbauer, Institute for International Economics).

⁶⁷ Indeed, while a number of EC States reserved the right to retain some temporary restrictions on voice telephone services, none of these States excepted any form of packet switched data transmission from the market access commitments annexed to the Fourth Protocol. See Specific Commitments at 5. More importantly, the pro-competitive principles adopted in the Reference Paper, and incorporated into the EC's Specific Commitments would be compromised by imposing regulatory burdens on new communications technologies.

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services is likely to result in widespread circumvention of restrictions imposed by national or regional regulators or, worse, a "chilling effect" on the development of Internet services in other countries.

Moreover, Member States' attempts to stop consumers from using their computers to transmit voice-based applications over the Internet are likely to be futile, because ISPs can do little to detect and prevent the transmission of voice traffic on their networks into or out of particular States even if required to do so. Internet voice traffic -- like any other information transmitted over the Internet -- is broken down into digitized packets that may take widely divergent routes through any number of countries before being reassembled at a point-of-presence on a local exchange circuit-switched network for delivery to the intended recipient. As indicated, ISPs cannot distinguish between packets that contain "voice" data from packets that carry text, graphics, or other forms of information, so they are not in a position to block these packets from reaching their destination or to meter such transmissions in order to facilitate regulation. The problem of control is compounded by the fact that consumers can obtain needed software from numerous software retailers so as to transmit computer-to-computer Internet voice information, rendering ISPs virtually powerless to prevent their subscribers from engaging in voice-based applications.^{68/}

^{68/} Indeed, a practice similar to "call-back" services, see Petrazzini, Global Telecom Talks: A Trillion Dollar Deal, could well emerge if Internet voice services were subject to markedly different regulatory regimes in various countries both within and outside Europe. Consumers in countries that restrict VON transmissions could potentially circumvent such restrictions by developing methods to initiate and route such transmissions from countries with more liberal policies. If a consumer in a country that chooses not to regulate Internet voice services sought to use an ISP's network for a voice transmission to a computer located in another country that restricted or regulated Internet voice services, the ISP could not realistically exercise control over

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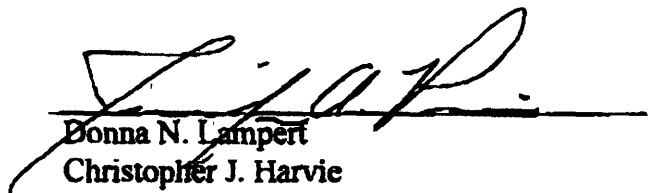
In short, the EC should prevent Member States from regulating Internet voice transmissions as "basic telephony" and discourage the imposition of other individual Member State restrictions on voice transmissions because such efforts would not only be counterproductive and inconsistent with the pro-competitive, deregulatory approach of the WTO agreement, such regulations would be difficult, if not impossible, to administer.

the transmission or alter the way it provides service according to the regulatory directives of a particular country.

CONCLUSION

Internet-based services, including the emerging voice applications hold vast potential for all people. As the United States Administration recently stated, these advances "will affect almost every aspect of daily life – education, health care, work and leisure activities" and offer a great opportunity.^{69/} The Commission should allow these services of tomorrow to flourish to the public's benefit rather than saddle them with yesterday's regulation.

Respectfully submitted,



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DCDOCS: 112121.1 (2#Sh01!.doc)

^{69/} See Global Framework at 1.

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Frau/Herr/Att: Karel van Miert

Fax no: +32 2 269 98 19

Von/From: Henrik Backlund

Datum/Date: 5 June 1997

Seiten/Pages (mit dieser/Incl.this): 1

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CH/LM/T
7/1

Re Internet telephone....

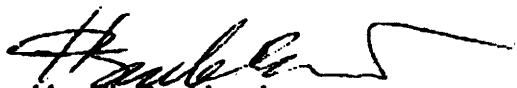
The purpose of the European Union must be to work for the interest of the individuals and to provide us with less costly and better and safer products.

With the new techniques provided by internet operators, the cost for international long distance calls are not higher than local calls. To put restrictions on internet telephoning, is to prevent effective competition between different products, and to slow down the technical development. The old fashioned telephone companies maybe not are the best providers of communication in the future from the customer's point of view.

What would have happened if restrictions were put on faxes to protect the teleprinters from competition, and if the fax market should be protected from the e-mails? Would we have had a better world?

I suggest that we let the market itself find the future ways of communication.

Best regards



Henrik Backlund
Citizen of Sweden
Fax no. +46 8 750 97 20

sent by fax to Cabinet



BELGACOM

∇

Public & Legal Affairs
File followed-up by :
Simon Hampton

∇

European Commission
DG IV
Directorate C
Office 3/48
Kortenberglaan 150
1040 Brussels

∇

Brussels, 11 July 1997

∇

Re: Commission notice concerning the status of voice on the Internet pursuant to Directive 90/388/EEC

Dear Sir/Madam,

Belgacom welcomes the opportunity to comment on the Commission's provisional analysis of the status of voice on the Internet. The emergence of Internet technologies to rival traditional telephony is now gathering pace and deserves review by the competition authorities.

Narrow approach to Internet telephony technologies and services

Belgacom's main concern is that the notice limits its analysis to only Internet telephony based on voice communications between two computer users, and discusses only whether Internet access providers could thus be considered as voice telephony providers.

Belgacom accepts the Commission's conclusion that, under this narrow set of assumptions, Internet access providers do not offer voice telephony services. However, Belgacom would invite the Commission to extend its analysis to the new types of market player which will shortly be present on the telephony market.

A number of operators are currently looking to use IP to transport long distance transport calls. Switches and gateway servers are coming on to the market that can switch voice traffic from the PSTN on to the Internet for international transport and then back onto the PSTN for final delivery. Services based on this technology will inevitably compete directly with traditional long distance telephony products, and should therefore be treated as such from a regulatory point of view, particularly where there exists the capability to originate and terminate traffic at conventional network termination points.

The related technology which offer solutions whereby customers connect their computer to the Internet with a modem, and then run software enabling them to dial any network termination point is discussed in the Notice, but only in passing. It concludes that this service could be rather closer to fulfilling the definition of voice telephony. Yet such products already exist (see www.net2phone.com & www.quintillion.com), and are being marketed over the Internet by service providers and are priced on a conventional usage time basis.

RTI

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Belgacom believes that an assessment of these other categories of service providers could well conclude that, as their call quality constantly improves, they fall within the 'voice telephony' definition.

Consequences for the definition of 'voice telephony'

However, if the re-assessment proposed above concluded that these services were nonetheless not voice telephony, Belgacom believes that the definition of 'voice telephony' itself might need to be reviewed.

Internet telephony services will increasingly compete with the profitable parts of traditional voice telephony and therefore jeopardise the revenue streams required to subsidise universal service obligations. While the Commission leaves open the possibility that, as the technology develops, certain offerings might be considered as voice telephony, it already excludes certain others from ever falling within the definition and thus that these elements could not contribute to universal service, and nor be subject to the consumer protecting provisions of individual licences.

Review

In view of the very rapid developments in the Internet, Belgacom fully endorses the Commission's decision to keep the situation under constant review. Indeed, Belgacom suggests that the final Communication already treat the wider set of Internet telephony providers which are currently entering the market.

Belgacom trusts that these comments will be given full consideration in the preparation of the draft position to supplement the 1995 Communication on the Services Directive.

Yours faithfully,

Franky De Coninck
Director

Bertelsmann

AKTIENGESELLSCHAFT

FAX TRANSMISSION

Verbindungsbüro Brüssel / Liaison Office Brussels

An / To: Mr. Christian Hocepied

Fax No.: 2969819

Von / From: Maria Mattioli

Datum / Date: 18.8.1997

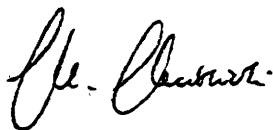
Seiten incl. Deckblatt / Pages incl. cover: 5

Internet-Telephony

Dear Mr. Hocepied,

Please find attached our position on the Commission's announcement on the status of Internet-Telephony with regard to the Directive 90/388/EEC.

Sincerely,



Maria Mattioli

43

Tel.: 0032 / 2 230 44 17
Fax: 0032 / 2 230 37 54

Chaussée d' Etterbeek, 166
B-1040 Brüssel

**Stellungnahme der Bertelsmann AG
zur Bekanntmachung der Europäischen Kommission v. 7.5.1997
über den Status der Sprachübermittlung im Internet
in bezug auf die Richtlinie 90/388/EWG**

Die Bertelsmann AG betreibt mit ihrer Tochtergesellschaft mediaWays, ein Gemeinschaftsunternehmen mit der debis Systemhaus GmbH, durch Anmietung von Übertragungswegen ein Telekommunikations-Netzwerk in Deutschland. Dieses Netzwerk wird auch für den Bertelsmann Online-Dienst AOL genutzt.

A. Einordnung von Internet-Telefonie

Wir begrüßen die in der Bekanntmachung zum Ausdruck kommende Absicht der Kommission, die Internet-Telefonie nicht als Sprach-Telefondienst i.S.d. Richtlinie des Rates 90/388/EWG über den Wettbewerb auf dem Markt für Telekommunikationsdienste vom 28.6.1990 ("die Richtlinie") anzusehen.

Nach der Kommissionsmitteilung über den Stand der Umsetzung der Richtlinie 90/388/EWG über den Wettbewerb auf dem Markt für Telekommunikationsdienste vom 20.10.1995 ("die Mitteilung") ist ein Sprach-Telefondienst nach einzelstaatlichem Recht nur dann gegeben, wenn sämtliche Elemente der Gemeinschaftsdefinition in Art. 1 der Richtlinie erfüllt sind. Danach ist ein Sprach-Telefondienst:

"die kommerzielle Bereitstellung für die Öffentlichkeit des direkten Transports und der Vermittlung von Sprache in Echtzeit von und zu den Netzabschlußpunkten des öffentlichen vermittelten Netzes, wobei jeder Benutzer das an solch einem Netzabschlußpunkt angeschlossene Endgerät zur Kommunikation mit einem anderen Netzabschlußpunkt verwenden kann".

Für die Einordnung von Internet-Telefonie halten wir folgende Bestandteile dieser Definition für noch erörterungsbedürftig:

1. Bereitstellung des Dienstes für die Öffentlichkeit

Der Begriff "Dienst für die Öffentlichkeit" ist in der Richtlinie nicht definiert, ist aber laut Kommissionsmitteilung als

"ein allen Mitgliedern der Öffentlichkeit auf der gleichen Grundlage zugänglicher Dienst"

zu verstehen.

Als Beispiele für Dienste, die nicht unter den Begriff "Dienste für die Öffentlichkeit" fallen, werden Firmennetze und geschlossene Benutzergruppen angeführt. Geschlossene Benutzergruppen werden so definiert, daß sie nicht notwendigerweise auf wirtschaftlichen Verflechtungen beruhen, sondern als Teil einer Gruppe angesehen werden können, die untereinander dauerhafte gemeinsame Geschäftsinteressen hat und deren interne Kommunikation aus dem dieser Beziehung zugrundeliegenden gemeinsamen Interesse resultiert.

Hinsichtlich der Internet-Telefonie ist bereits fraglich, in welchem Verhältnis das Öffentlichkeitskriterium gelten soll: zwischen den jeweiligen Nutzern der Netzabschlußpunkte oder zwischen dem Anbieter von Internet-Telefonie und den jeweiligen Nutzern. Jedenfalls bei denjenigen Systemen, die eine Sprachverbindung zwischen einem PC und einem Telefon schaffen, wird der Dienst nicht allen Mitgliedern der Öffentlichkeit "auf der gleichen Grundlage" zugänglich gemacht, da der PC-Nutzer erst bestimmte Zugangsvoraussetzungen erfüllen muß, die den Kreis der Öffentlichkeit beschränken:

- Hardware:
leistungsfähiger PC mit Soundkarte
- Software:
spezielle betriebssystem-kompatible Internet-Telefonie-Software
- Internet-Zugang:
über Modem/ISDN und service provider

Beispiele wie Firmennetze und geschlossene Benutzergruppen sind lediglich eine nicht erschöpfende Aufzählung von Fällen, bei denen nicht alle Teile der Öffentlichkeit in das Angebot einbezogen werden, sondern nur solche, die bestimmte Bedingungen erfüllen.

Schließlich ist anerkannt, daß das Öffentlichkeitskriterium nur bei Beziehungen zwischen Teilnehmern erfüllt ist, die ausschließlich oder überwiegend dem Zweck dienen, über ein Netz miteinander zu kommunizieren. Dies ist jedoch bei entsprechender PC-Ausstattung gerade nicht der Fall: Obwohl Online-Dienste auch als wichtiges Kommunikationsmittel angesehen werden, so muß man deutlich zwischen der schriftlichen Kommunikation auf dem Bildschirm und der akustischen Sprach-Telefonie über das Internet unterscheiden. Im übrigen machen auch die rein visuellen Informations- und Unterhaltungsangebote einen großen Anteil der Online-Nutzung aus.

2. Direkter Transport und Vermittlung von Sprache

Die Bekanntmachung der Kommission läßt das Kriterium des direkten Transports von Sprache bzw. deren Vermittlung völlig außer acht. Dies ist jedoch für die Beurteilung der Internet-Telefonie von entscheidender Bedeutung:

Die Sprachvermittlung erfolgt hier auf der Basis des Internet-Protokolls TCP/IP durch Paketübertragung. D.h zwischen den Kommunikationsteilnehmern besteht keine durchgehende Verbindung, sondern die Daten gelangen je nach jeweiliger Sprachaktivität und Netzauslastung über beliebige Wege innerhalb des Internets zum Empfänger. Durch diese paketvermittelnde Datenübertragung können im Gegensatz zu der traditionellen direkten leitungsvermittelnden Sprach-Telefonie gleichzeitig mehrere Gespräche durch simultane Nutzung nur eines Übertragungsweges transportiert werden. Im Wege einer variablen Netzauslastung kann die Netzkapazität optimal ausgeschöpft werden. Diese Technologie stellt keine direkte Übertragung i.S.d. Richtlinie dar.

Darüber hinaus ist die in der Mitteilung der Kommission geforderte funktionale Substituierbarkeit zur herkömmlichen Sprach-Telefonie jedenfalls dann nicht gegeben, wenn die Bezahlung von Internet-Telefonie über Telefon-, Kredit- oder Abbuchkarte erfolgt. Dementsprechend sieht die Kommission in ihrer Mitteilung etwa den Telefonkartenmarkt als gesonderten Markt gegenüber dem herkömmlichen Sprach-Telefonie-Markt an.

Wir teilen im übrigen auch die in der Mitteilung zum Ausdruck kommende Auffassung der Kommission, daß auch eine Benutzung von bloßen Mietleitungen gegen eine Einordnung von alternativen Formen der Sprachübertragung als Sprach-Telefonie i.S.d. Richtlinie spricht.

3. Bereitstellung des Dienstes von und zu den Netzabschlußpunkten des öffentlichen vermittelten Netzes

Laut Kommissionsmitteilung ist das öffentliche vermittelte Netz

"die Gesamtheit der von der Fernmeldeorganisation für die Erbringung des normalen Fernsprechdienstes verwendeten Vermittlungs- und Übertragungseinrichtungen".

Zwei Netzabschlußpunkte des so definierten Netzes müssen gleichzeitig miteinander verbunden sein.

Dabei muß jeder Benutzer das an einem Netzabschluß des öffentlichen vermittelten Netzes angeschlossene Endgerät zur Kommunikation mit einem anderen Netzabschlußpunkt desselben Netzes verwenden können.

Daher stimmen wir mit der Kommission darin überein, daß kein Sprach-Telefondienst vorliegt, wenn der Zugang zum Internet über Mietleitungen erfolgt, selbst wenn der Dienst am öffentlich vermittelten Netz abschließt.

B. Regulatorische Konsequenzen

Die Bekanntmachung geht davon aus, daß die einzelnen Begriffsmerkmale des Sprach-Telefondienstes in der Richtlinie einen geeigneten Anhaltspunkt für die Frage bieten, ob Sprachübermittlung im Internet im Vorfeld der Liberalisierung reguliert werden sollte. Diese Prämisse muß jedoch überprüft werden. Wie die Mitteilung der Kommission klarstellt, ist die Definition des Fernsprechvorbehalts als Ausnahme von der allgemeinen Wettbewerbsregel eng auszulegen. Aus den unter A. dargelegten Gründen ist die Internet-Telefonie nach unserer Auffassung nicht als Sprach-Telefonie anzusehen, sondern als von vornherein liberalisierter Dienst. Daher darf die Internet-Telefonie keiner individuellen Genehmigungspflicht unterworfen werden.

BSA Comments on Commission Notice on Internet Telephony

July 1997

Introduction

The BSA would like to support the Commission's notice concerning the status of voice on the Internet under Directive 90/388/EEC. The BSA welcomes the Commission's pragmatic and forward-thinking analyses, clarifying that the current use of voice transmission on the Internet does not meet the definition of voice telephony as set out in Directive 90/388/EEC.

The Internet is an international computer network capable of carrying various combinations of data, audio and video transmissions. As such, it constitutes a major social and economic phenomenon in Europe and worldwide. The Internet is directly fostering a new and fast-growing Internet economy, creating new categories of businesses and jobs (e.g. Internet infrastructure and software, Internet access providers, consumer and business content creation and distribution, online retail and financial services). The Internet economy will have a significant multiplier effect on economic and job growth as well as competitiveness. It will

spawn new ideas, new markets and new businesses.

Recent software developments allow Internet subscribers to conduct voice conversations over the Internet at a local-call tariff. The BSA believes that consumers are exercising their well-established right to use unregulated software in conjunction with the switched network. In so doing, consumers take advantage of the incipient developments of a new communication era, developments through which businesses, governments and individuals will foster the Information Society in Europe.

1. Internet Voice Communications Are Not Telecommunications Services

We fully agree with the Commission that Internet voice communications do not fit the definition of "voice telephony" under EU law. In addition to the points raised in the Notice supporting this conclusion, we believe it is important to bear in mind that voice communications presently constitute an incidental use of the Internet, and hence are not a "service" separate from general Internet services.

Rather, so-called "Internet telephony" is a software-based product. Use of the Internet for voice communications generally involves a one-time purchase of software and hardware (for the users on both ends of the communication). Internet access providers are not made aware of which of their customers are using their general Internet service for voice communication, nor of when they might be doing so.

2. Regulation of Internet Voice Communications Is Not Technically Feasible

An additional reason why the Commission should avoid attempting to treat Internet voice communications as "voice telephony" is that it is not feasible to regulate these distinct activities in the same manner. In particular, it is not practicable to separate voice communications over the Internet from other Internet traffic in order to treat those transmissions differently. Consequently, neither Internet access providers nor regulators are in a position to monitor the various ways in which end-users may be using the Internet in order to treat a small subset of

Internet communications as voice telephony.

More specifically, because the Internet is generally a packet switched data network, "bits" are all treated alike, regardless of their application. The software at both ends of a communication interprets the instructions accompanying or within the bits in order to reassemble the packets into a complete and coherent communication. The whole system operates in the same way irrespective of whether data, video, or audio communications are being transmitted. Because this technology differs entirely from voice telephony services, it is not realistic for regulators to attempt to apply regulations to this technology developed specifically for voice telephony.

3. The Technology Should be Permitted to Develop

Furthermore, we believe that it is extremely important to allow the embryonic technology enabling voice communication on the Internet to develop before any efforts are made to regulate its provision and use. Experience in the information technology industry has shown time and again that innovation and consumer-driven product development flourishes in an unregulated environment. In particular, development of products and services for the Internet has thrived in the absence of regulation, and consumers have benefited greatly from the results. Any Commission action leading to the regulation of Internet voice communications would be exceedingly premature at this early stage of development of the technology.

Conclusion

Internet voice communication poses one of the first concrete examples of a new "convergence" technology that in some respects resembles an older, highly regulated technology, but which cannot realistically be treated in the same manner. In this situation, the Commission should refrain from even considering how to regulate Internet voice communications not only until the technology matures and the market for it develops, but also until the Commission has formed a comprehensive and coherent policy approach to the full range of "convergence" technologies.

The BSA would like to remind the Commission that Europe is still at an early stage with the Information Society, and asks the Commission not to impose any unnecessary regulation which would have a negative impact on the growth of the Internet. Clearly, this would hinder industry innovation, the use of many Internet features, and Europe's progress into the Information Society. Unregulated, the Internet is proving a worldwide success. The complexity of the Internet and the profusion of creative multimedia businesses the Internet has spawned guarantees that hasty attempts to formulate regulatory rules and distinctions will in all probability: (i) retard growth of the Internet and the European economy; (ii) cause distortions and dislocations as businesses will be driven to respond to regulatory disincentives; and (iii) not be manageable or implementable.

The BSA welcomes the Commission's approach in its paper, fully in line with the objective of liberalising the telecommunication sector--an imperative for European growth and global competitiveness. We believe that Internet telephony will help to maximise the opportunities for Internet-based services to increase the overall degree of competition in the telecommunications marketplace.

The Business Software Alliance promotes the continued growth of the software industry through its international public policy, education and enforcement programs in 65 countries throughout Europe, North America, Asia, and Latin America. BSA worldwide members include the leading publishers of software for personal computers including Adobe, Apple Computer, Autodesk, Bentley Systems, Lotus Development, Microsoft, Novell, Symantec Corporation, and The Santa Cruz Operation. BSA's Policy Council consists of these publishers and other leading computer technology companies including Compaq, Digital Equipment Corp., IBM, Intel, and Sybase. For further information, please contact Allen Dixon at the BSA address listed above, e-mail: Adixon@cov.com.



Internet Voice Telephony

- Comments on Draft Notice 97/C 140/06 -

by BT (British Telecommunications) PLC

Classification

The 1990 Services Directive classified voice telephony service as remaining outside the liberalised area. The Communication of 20/10/1995 sought to clarify the definition of voice telephony, providing examples of types of voice service which did not comply with the definition and which were therefore within the liberalised area.

The analysis of the definition of voice telephony service put forward in the draft Notice (97/C 140/06) appears to be consistent with the aims of the Communication of 20/10/95. BT agrees with the overall conclusion that Internet voice telephony (I-Voice) should not, under current circumstances, be classified as public voice telephony.

Definitions:

- "subject of a commercial offer": I-Voice is not currently marketed as a commercial service by service or access providers. The only commercial element is in the marketing of the enabling software or equipment.
- "for the public": the service is theoretically available to all, but under current market and technological conditions Internet access itself remains restricted and is certainly not available to the public to any extent where it could seriously substitute for voice telephony service.
- "between public switched network termination points": Internet access will increasingly be made via PSTN connections, though alternative networks, particularly cable TV networks, may undermine this trend to some extent.

- "enabling any user": under current access restrictions it is unlikely that "any-to-any" service can be provided, however, future evolution will make this more practical.

- "real time": I-Voice cannot currently be considered to offer a reliable real-time alternative to PSTN, but technological change is liable to change this situation.

BT therefore agrees with the main conclusion that I-Voice does not currently warrant classification as voice telephony, but that technological and market evolution may necessitate future reconsideration.

Consequences

- Licensing

BT agrees with the analysis by which the Commission asserts that Internet Service and Access Providers would not *currently* be subject to a licensing requirement, and that such voice traffic as is currently carried is only a minor part of the business, and often undetected.

As such the voice element is indeed subsumed within the broader licence/authorisation, but only under *current* circumstances. A parallel exists with existing value-added licensing, where Member States tolerate inclusion of elements of other services, but require separate licences/authorisations when it is clear that an element of the overall service offering is incompatible with the scope of the licence.

Therefore BT does not agree that "even in future" service providers might not be subject to licensing: as outlined in the first part of the draft Notice, I-Voice could in future evolve to take on the characteristics voice telephony

- Universal Service

Under current conditions Internet service and access providers should not be subject to Universal Service obligations.

- Regulatory consequences of technical evolution.

BT agrees with the Commission analysis of the likely technical, and market evolution which could lead to a re-classification of I-Voice. It is clear that I-

Voice should not be exploited as a means to avoid obligations otherwise pertaining to voice telephony service providers, on the other hand it is important not to hold back innovative developments by inappropriate application of outdated regulatory definitions.

Under the technical and market evolution described, service providers would indeed be subject to licensing requirements and universal service obligations or contributions.

In addition, the draft Interconnection Directive places obligations on providers of voice telephony regarding interconnect. Most importantly these include the obligation to provide interconnection, and under terms which are non-discriminatory, transparent and proportional. Such obligations could therefore also be applied to I-Voice service providers.

Conclusion

BT supports the overall analysis of the Commission. Internet Voice Telephony should not currently be classified as "public voice" and should clearly be in the liberalised area. If future market and technological changes lead to an increased penetration of I-Voice it may become necessary to reclassify it. In such a case its provision should be subject to the same regulatory regime, including associated rights and obligations, that is applied to public voice telephony. Such developments however would have to be considered in the wider context of the converging regulatory environment.

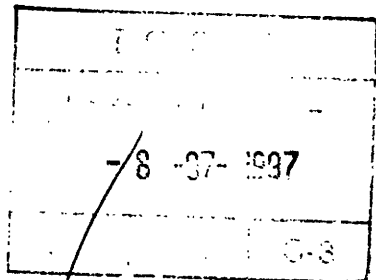
BT

2nd July 1997





centre coopératif
de la consommation



(C1)

A/EGIS

18040
Commission européenne
00.07.97 18040
Direction générale de la
Concurrence DG V C
Direction C
Bureau 3/48 - Monsieur
Christian HOCEPIED
Avenue de Cortenberg 150
B-1040 BRUXELLES

Bruxelles, le 1er juillet 1997
Réf. : CB/ic

Monsieur,

La communication de la Commission concernant le statut des communications vocales sur Internet publiée dans le J.O. du 7 juillet 1997 nous a vivement intéressés, notre organisation défendant les intérêts des consommateurs notamment en matière de télécommunication.

Vous trouverez ci-joint l'avis du Centre coopératif de la consommation sur la communication sus-mentionnée.

En espérant de vos nouvelles, nous vous prions d'agréer, Monsieur, nos sentiments distingués.


P.O. Pierre DEJEMEPPE
Administrateur délégué

Centre coopératif de la consommation asbl
Codep: 870-0000591-72

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Tél: ##.32.2/500 52 12
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Avis du Centre coopératif de la consommation sur la communication de la Commission concernant le statut des communications vocales sur Internet conformément à la directive 90/388/CE

Le Centre coopératif de la consommation a pris connaissance avec grand intérêt de la communication de la Commission concernant le statut des communications vocales sur Internet conformément à la directive 90/388/CE.

Si le Centre coopératif de la consommation souscrit globalement à l'analyse de la Commission, il émet cependant des réserves quant à certains points particuliers de la communication.

1. De l'exploitation commerciale à la nécessité de définir les fonctions.

La Commission émet son analyse par rapport aux **fournisseurs d'accès et aux prestataires de services**.

Le Centre coopératif de la consommation relève à cet égard que la Commission use tantôt de l'appellation "**prestataire de services**" tantôt "**fournisseur de services**" sans préciser s'il s'agit de la même fonction ou profession. Il serait opportun de définir un lexique des termes utilisés.

A titre d'exemple, rappelons que le CSA (Conseil Supérieur de l'Audiovisuel) de la Communauté française de Belgique définit différentes fonctions dans la chaîne numérique :

- Fournisseur de contenu
- Producteur de services
- Fournisseurs de services
- Intégrateur de services
- Opérateur de réseau
- Fournisseur d'infrastructure
- Fournisseur de systèmes d'accès aux services
- Détenteur de terminaux

Le Centre coopératif de la consommation est conscient qu'il s'agit d'une problématique différente de la question de la téléphonie vocale sur Internet, mais cet exemple est l'illustration qu'on ne peut faire l'économie d'une typologie claire et précise des fonctions visées et de définitions précises des métiers et professions concernées, surtout pour déterminer les fonctions susceptibles de contribuer au financement du Service Universel.

Concernant l'exploitation commerciale, le Centre coopératif de la consommation ne peut accepter que "la motivation principale des abonnés

d'Internet" détermine si la téléphonie vocale fait l'objet d'une exploitation commerciale ou non.

En effet on pourrait alors considérer par l'absurde que si le télé-achat ou le télé-commerce n'étaient pas la motivation principale des abonnés d'Internet, ils ne feraient pas l'objet d'une exploitation commerciale! Si le logiciel est téléchargeable sur le réseau, la communication vocale en elle-même est un service proposé qui fait l'objet d'un abonnement et représente un coût. La communication vocale sur Internet fait l'objet d'une activité commerciale, on constate par ailleurs que nombre de consommateurs se rendent dans les "cyber cafés" dans le but exclusif de se servir d'Internet pour téléphoner à l'étranger..

2. Téléphonie vocale - communication vocale

Le Centre coopératif de la consommation peut rejoindre la Commission quant à son raisonnement n'associant pas à l'heure actuelle la communication vocale par Internet à la téléphonie vocale proprement dite, et peut accepter le principe que l'on réévalue la question dès lors que des fournisseurs locaux permettront d'appeler un correspondant local sur son téléphone à l'aide de son numéro de téléphone depuis un ordinateur branché sur le réseau (ou bientôt via satellite).

Toutefois quant à savoir si les fournisseurs de services et/ou d'accès doivent contribuer au fonds de financement du Service Universel, le Centre coopératif de la consommation est moins catégorique que la Commission.

En effet le critère de détention d'une "part importante du marché géographique" ne semble pas pertinent.

Le problème ne se pose pas en termes de partage de "parcelles de terrain géographique" mais plutôt en poids économique, ou part de marché. La question consiste à savoir à partir de quand on peut considérer que la communication vocale sur Internet est concurrente de la téléphonie vocale?

- Si la communication vocale par ordinateur se développe entre les entreprises.
- Si le prix des communications internationales de téléphonie vocale classique subit la concurrence des tarifs des communications vocales par réseau.
- Si les opérateurs de téléphonie vocale sont amenés à rééquilibrer leurs tarifs entre international et local.
- Si le prix des communications locales ne suit pas la même évolution que l'international.
- Si les frais fixes comme l'abonnement au téléphone ne diminuent pas.

Alors on peut considérer qu'il y a concurrence entre communication vocale sur Internet et téléphonie vocale.

Le raisonnement à suivre dans le cadre du financement du Service Universel devrait être le même que celui qui a mené à considérer que les opérateurs de téléphonie mobile étaient tenus de contribuer au financement du fonds du Service Universel car ils étaient directement concurrents de la téléphonie vocale fixe et qu'ils en prélèveraient les clients les plus rentables.

Dans le cas de la communication vocale par Internet on peut tenir le même raisonnement, en ce sens que ce sont d'abord les entreprises et ensuite les consommateurs résidentiels qui possèdent un ordinateur qui useront d'Internet pour communiquer vocalement, c'est-à-dire ceux qui disposent à la fois :

- **des moyens financiers**
- **des capacités**
- **de la formation**

Dès lors il faut éviter que ceux qui auront les moyens de "téléphoner" via le réseau bénéficient d'avantages notamment financiers qui contribueront à accentuer le fossé d'avec les consommateurs qui disposent d'un téléphone conventionnel.

C'est pourquoi le Centre coopératif de la consommation estime que s'il est effectivement trop tôt pour que la communication vocale par Internet contribue au financement du Service Universel, il ne faut certainement pas exclure cette possibilité dans un avenir proche non pas en tenant compte de critères géographiques mais bien de quantité d'abonnés, d'utilisateurs, de la qualité de l'utilisateur (professionnel, résidentiel) du volume de communications, de l'évolution des coûts comparatifs entre communication vocale et téléphonie vocale et de l'impact sur le rééquilibrage tarifaire.

Le Centre coopératif de la consommation rappelle par ailleurs que l'on retrouve des opérateurs de téléphonie vocale parmi les fournisseurs d'accès (ex. : Skynet - Belgacom).

Le Centre coopératif de la consommation encourage la Commission à la plus grande vigilance et souhaite que celle-ci mette en oeuvre les moyens nécessaires afin d'évaluer la situation de façon continue, celle-ci pouvant évoluer extrêmement rapidement (cf. explosion de l'utilisation du G.S.M.).

Pour le Centre coopératif de la consommation, il serait inacceptable que les consommateurs les moins nantis et/ou les moins formés à l'utilisation des ordinateurs soient lésés en ayant à acquitter des montants de factures toujours plus élevés pour des services de téléphonie vocale de base, alors que les consommateurs ayant opté pour la communication vocale sur Internet retireraient des avantages financiers et qualitatifs de la concurrence.

Le Centre coopératif de la consommation encourage la Commission à observer et analyser les évolutions mais aussi à initier des programmes d'information et de formation à destination du grand public et en particulier les moins formés aux technologies nouvelles et les plus âgés.

Globalement, il serait profondément injuste de pouvoir téléphoner "gratuitement" dans le monde entier parce que l'on utilise un ordinateur et de devoir payer parce que l'on utilise un téléphone pour appeler son petit-fils dans la ville voisine.

Le Centre coopératif de la consommation invite dès lors la Commission à :

- définir les fonctions et professions concernées
- réexaminer les critères déterminant l'exploitation commerciale
- observer de façon continue l'évolution du marché
- considérer des critères plus adéquats que la répartition géographique pour déterminer la participation au financement du Service Universel.

Contact : Christian BONTINCKX
Conseiller
Rue Haute, 28
1000 BRUXELLES
Tél. : 02/500 52 66
Fax : 02/502 71 61

P.S.: Des déclarations de hauts dirigeants d'entreprises de télécommunications et d'informatique publiées récemment dans la presse (Libération 19/06/1997, cf annexe) confortent les hypothèses émises dans le présent avis





FAX

18.08.97 -A/19995
 C

CHI/Lan/HI/H

To: European Commission
 Directorate General for Competition
 (DG IV)
 Directorate C
 Office 3/48

M.L.
 → *(C)*

Tel:
Fax: 00 32 2 296 98 19

From: Pedro Ramalho de Almeida
 (legal advisor)

COMNEXO
Tel: +351 1 3 500 600
Fax: +351 1 3 524 887
Ref.

COMNEXO		
18 -08- 1997		
C-1	C-2	C-3

Date: 97.08.14

Pages: 2

Subject: Notice by the Commission concerning the Status of Voice in the Internet under Directive 90/388/EEC

Dear Sirs,

We are writing to you in response to your intent to adopt the draft position regarding Internet voice services as a Supplement to the Communication by the Commission to the European Parliament and the Council on the status and implementation of Directive 90/388/EEC on competition in the markets for telecommunications services (95/C 275/02 OJ No C 275 p.2).

As a private Portuguese data network operator, and Internet service provider- **COMNEXO - Redes de Comunicação, SA**, has always struggled toward a strict interpretation of all legal definitions susceptible of creating restrictions on the development of the telecommunications market throughout Europe and, particularly, in Portugal. Therefore, we would like to express our total agreement not only to the intention of adopting the draft position as a Supplement to the above referred Communication, but also to the clear content of the Notice itself.

We would also like to be informed on future initiatives taken by DG IV in respect of the liberalisation of the telecommunications market (you may contact us by fax +351 1 352 48 87, to our head office at Avenida da Republica, 24, 4, 1050 Lisboa Portugal or by email to pasr@ceeint.comnexo.pt)

Yours Sincerely,



Pedro Ramalho de Almeida, LL.M

JFL

To ask for election awarding

MARCONI
PORTUGAL
TELECOMUNICAÇÕES INTERNACIONAIS

A/213

BOARD OF DIRECTORS

Para/To	DG IV - C	Fax:	32.2.2969819
	At.: Mr. C. Hocepied		
C/C			
De/From	Filipe Faria GCA	Fax:	351 1 7907946
		Tel.:	351 1 7207420
		E-mail:	
Data	1997-07-08	Referência	Páginas 6
Date		Reference	Pages

Assunto Commission notice concerning the status of voice on the Internet
Subject

Dear Sir,

Please find attached our comments concerning the above mentioned notice

Yours sincerely,

With my best regards

F. Faria
FILIPE FARIA
Director do GCA

15.07.97	-A/18402
ATF	
DG IV/C	
INCOMING MAIL	
15-07-1997	
C-1	C-2 C-3

63



**Commission notice concerning the status of voice on the Internet
pursuant to Directive 90/388/EEC**

Comments from C.P.R. MARCONI, S.A., Portugal Telecom Group

Concerning the Notice above mentioned (pub. OJ 97/C 140/06), Companhia Portuguesa Rádio Marconi, S.A. presents the following English synthesis of its comments:

1. We find extremely useful the publication of a Commission Communication stating its position regarding the regulatory qualification of a telecommunications service with inevitable increasing importance in the forthcoming years as an alternative to actual voice services.
2. Notwithstanding, the effort to conciliate new technological realities with "old" regulation produces negative consequences.
3. To support its position, the Commission relates either to the occurrence of facts only subjectively justifiable or to objectively doubtful justifications, lacking therefore the necessary transparency and certainty in the interpretation, and not transmitting the necessary legal certainty needed by business and Regulators.
4. The main purpose of Directive 90/388/EEC, i.e., liberalisation, is not affected by the interpretation we support, which advocates unequivocally and immediately the possibility of considering voice on the Internet as a «voice telephony service».
5. To elect the Commission interpretation as the correct one would mean that, when the conditions referred in the Project are "officially" met, all ISPs will be offering voice on the Internet without any rules which would be necessary to put them on the same competitive ground as other telecommunication operators offering the same or a similar service giving satisfaction to the same consumer need - voice communication.
6. An *a posteriori* regulation would possibly violate legitimate expectations from ISP; and, therefore, encounter resistance, perhaps even legitimate.
7. In fact, the *Project of Position* published by the Commission is based:
 - on the occurrence of facts only subjectively justifiable, when supporting that «*decisive drives for Internet subscribers*» modify the legal consequences of the Directive and
 - on objectively doubtful justifications, when applying to the case the conditions «*to and from public switched network termination points*» and «*direct transport and switching of speech in real time*».
8. It is not the use of a *modem* that modifies the nature and legal treatment of a terminal equipment, according to the definition stated in the European Law - cf. Directive 88/301/EEC (an indirect connection is also admissible) - and we cannot see how «*the evolution of the available software and bandwidth*» could also modify the nature of the «*real time*» transmissions.

9. Should we use a scientific meaning of the "real time" ? What is it ? Does it exist ? Is it then the contrary to "differed time" or the same as the "present time" which, by the way, becomes immediately the "past" ?
10. Satellite communications are not transmitted "instantaneously" already today. Therefore, scientifically, they should not be considered «*voice telephony*». But they are considered as so within the meaning of Directive 90/388.
11. On the other side, the "classical" voice telephony service can, and is in fact, already rendered in our days by digitalized means, with compression techniques and transmission ones identical to the ones applied by Internet.
12. The real issue, in our view, is how qualify the service in the perspective of the users and taking account of the level of satisfaction of their needs. Regulation must neutral whatever technology and distribution systems are chosen by operators.

Therefore, we conclude,

- 1º. That it is not reasonable for Member States to wait for Commission interpretations of reality in each Member State to be able to apply similar regulation to competing services in the perspective of users;
- 2º. That Member States should apply the referred regulation in an *a priori* and non discriminatory way, namely in what concerns licensing, universal service contributions and consumer protection rules.

Lisbon, 7 July 1997.

**Projecto de Posição da Comissão Europeia relativa ao
estatuto da comunicação vocal na Internet****Comentários da MARCONI**

Relativamente ao Projecto de Posição supra referido publicado no JOCE C140/8 de 7.5.97, a Companhia Portuguesa Radio Marconi, S.A. apresenta os seguintes comentários:

1. Consideramos positiva a publicação de uma Comunicação que esclareça a posição da Comissão Europeia sobre a qualificação a dar, para efeitos regulamentares, a um serviço de telecomunicações que ganhará certamente importância crescente nos próximos anos enquanto alternativa aos restantes serviços de voz.
2. Parece no entanto não se ter tido em conta que a evolução tecnológica no sector tomou por vezes obsoletas definições formais contidas em actos regulamentares com quase dez anos de existência, pelo que se procede neste texto a interpretações actualistas algo forçadas, na tentativa de "encaixar" uma nova realidade em normas "velhas". E isto tem consequências negativas.
3. Por exemplo, a fundamentação julgada necessária para que o serviço de voz via Internet possa qualificar-se como "serviço de tele-união vocal" baseia-se ora na ocorrência de factos só subjectivamente verificáveis ou em justificações objectivamente duvidosas, carecendo portanto da necessária clareza interpretativa e não transmitindo a certeza jurídica necessária aos agentes e reguladores do mercado.
4. A nosso ver, a liberalização dos mercados de telecomunicações, a partir de 1 de Janeiro de 1998 ou do ano 2000, não é posta em causa se a interpretação for a que defendemos, e que vai no sentido de se considerar desde já e inequivocamente estes serviços como serviços de voz para efeitos regulamentares.
5. Mas se a Comissão mantiver inalterado o teor deste *Projecto*, tal conduzirá a que, quando se vierem a dar "oficialmente" como verificados os pressupostos de que a Comissão faz depender a aplicação da regulamentação aplicável aos serviços de voz à transmissão via Internet, já todos os fornecedores de acesso esta rede estejam firmemente implantados no mercado sem nunca terem obedecido a qualquer enquadramento regulamentar que os coloque em condições de concorrência equilibrada com outros prestadores de serviços efectivamente comparáveis.

6. E a regulamentação a posteriori da sua actividade poderá então demonstrar-se problemática e encontrar resistências, porventura razoáveis, baseadas na possível violação de expectativas legítimas e alteração unilateral por parte da Comissão Europeia e dos Estados do enquadramento regulamentar do negócio.
7. A nosso ver, com efeito, o texto do projecto baseia-se,
 - em factos subjectivamente verificáveis, quando se fundamenta em motivações de assinantes para a qualificação do serviço em causa, e
 - em justificações objectivamente duvidosas, quando faz a aplicação ao caso de condições previstas na Directiva para o serviço "clássico" de telefonia vocal, tais como as exigências de que o serviço permita ligar dois pontos terminais da rede comutada («na origem e no destino dos pontos terminais da rede pública comutada») e assegurar o «transporte directo e comutação da voz em tempo real».
8. Na verdade, fazer depender o preenchimento da primeira das condições referidas no segundo item do facto de as comunicações vocais através da Internet se poderem fazer computador a telefone e não somente de computador a computador, é interpretação que nos parece ir para além da letra e do espírito da Directiva.
9. Utilizar um computador e um microfone a ele ligado e fazer a ligação à Rede pública comutada através de um *modem* não parece alterar o conceito de «aparelho terminal» utilizado no ordenamento comunitário e designadamente constante da Directiva 88/301/CEE - «qualquer aparelho ligado directa ou indirectamente ao ponto terminal de uma rede pública de telecomunicações para transmitir, tratar e receber informações.»
10. Por outro lado, quanto à segunda condição, como é que «a evolução dos suportes lógicos disponíveis e da largura de banda» poderão fazer com que o transporte directo da voz através da Internet passe a ser em "tempo real" ? Será que se utiliza um conceito científico de "tempo real" ? Qual é ? E o "tempo real" existe efectivamente ? Então o "tempo real" contrapõe-se ao tempo diferido ou é sinónimo de "tempo presente", que por acaso é logo passado ? Ou será antes a percepção que os utilizadores fazem do "tempo real" o que deve valer ?
11. As comunicações vocais via satélite actualmente prestadas, para só referir estas, também não são instantâneas, logo, parece não poderem ser consideradas cientificamente comunicações em "tempo real", mas diferido, e no entanto são abrangidas pelo conceito de «telefonia vocal» constante da Directiva 90/388/CEE.
12. É verdade que o serviço fixo de telefone foi, até há pouco tempo, prestado com reserva de utilização temporária de circuitos de telecomunicações às pessoas em comunicação, diferentemente da digitalização, compressão da voz e transmissão como qualquer outro dado, como acontece com as comunicações vocais através da Internet.

13. Não nos podemos esquecer é que, presentemente, o serviço de telefonia vocal abrangido pela Directiva interpretanda é já prestado frequentemente através de meios digitais e utilizando técnicas de compressão e transmissão da voz em tudo semelhantes às utilizadas para comunicações através da Internet.
14. O que interessa, a nosso ver, é qualificar o tipo de serviço que é prestado na perspectiva dos utilizadores e da satisfação das suas necessidades. A regulamentação tem de ser independente da tecnologia que lhe serve de suporte e dos meios através dos quais os prestadores prestam os serviços.

Assim, em conclusão,

- 1º Não entendemos razoável, pelas razões atrás enunciadas, dever esperar-se que a Comissão verifique o preenchimento dos requisitos enunciados de ordem técnica e relativos a características do mercado, para que os Estados Membros possam aplicar aos fornecedores deste serviço de comunicação vocal o essencial da regulamentação incidindo sobre outros prestadores de serviços de voz;
- 2º Essa regulamentação deve ser aplicada a priori e não a posteriori por razões de certeza jurídica e transparência das condições do mercado, e não ser discriminatória relativamente a outros fornecedores de serviços de voz, designadamente no que respeita a:
- procedimentos de autorização ou licenciamento;
 - contribuições para o financiamento do serviço universal;
 - respeito de normas de protecção dos consumidores.

Lisboa, 2 de Julho de 1997

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COMPANHIA PORTUGUESA RÁDIO MARCONI, SA

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Telex Central 35 679 000 (03300) Pessoa Colectiva 500 0e9 131 - Matriculada no Conservatório do Registo Comercial de Lisboa sob o n.º 10844

TOTAL PAG. 06

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DEUTSCHER INDUSTRIE- UND HANDELSTAG

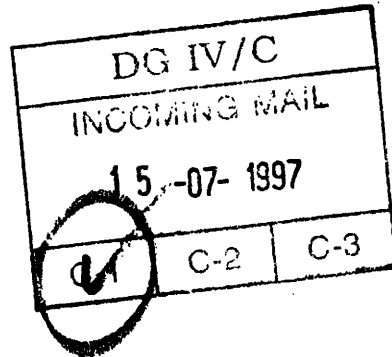
JR

ADENAUERALLEE 148 . 53113 BONN
POSTFACH 1446 . 53004 BONN
TELEFON 0228/104-0
TELEFAX 0228/104158



AN: Christian Hocepied Europäische Kommission, GD IV	VON: Dr. Stephan Pesch
FAX-Nr: 0032 2 296 98 19	FAX-Nr: 0228 - 104 250 Tel-Nr: 0228 - 104 248
Seiten: 3 (einschl. Titelseite)	Datum: 09. Juli 1997

Internet telephony, document 97/C 140/06

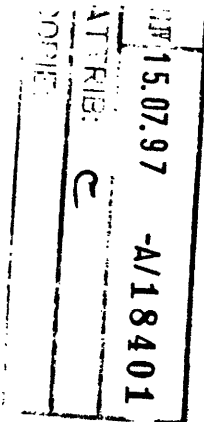


Dear Mr. Hocepied,

enclosed you will find our statement on internet telephony. I have sent our position to you also by e-mail. I am sorry that the document is only in german language.

Yours sincerely
DEUTSCHER INDUSTRIE- UND HANDELSTAG
i.A.

Dr Stephan Pesch





DEUTSCHER INDUSTRIE- UND HANDELSTAG

Stellungnahme zum Entwurf des Standpunkts zum Status der Sprachübermittlung im Internet in bezug auf die Richtlinie 90/388/EWG

Die wirtschaftliche Bedeutung des Internet ist unumstritten. Es revolutioniert die Informations- und Kommunikationsprozesse, ermöglicht eine weltweite Informationsbeschaffung und -vermittlung zu niedrigsten Kosten, bringt Anbieter und Nachfrager näher zusammen und schafft die Voraussetzung für neue Formen der Arbeitsorganisation in der Wirtschaft (Arbeitsteilung, Kooperation, Vertriebs- und Unternehmensstrukturen). Dies wird zu einem erheblichen Qualitäts- und Produktivitätsschub führen.

Vorteil und grundlegende Eigenschaft des Internet ist, daß es über keine übergeordnete Verwaltung verfügt. Es gibt keine zentralen Kontrollmechanismen. Es ist ein "Netzwerk von Netzwerken". Das Internet ist damit eine eigenständige, neuartige Dienstplattform. US-Präsident Clinton weist in seinem kürzlich veröffentlichten "Framework for Global Electronic Commerce" zu Recht darauf hin: "Government officials should respect the unique nature of the medium".

Aus diesem Grund hält der DIHT bereits den Ansatz für verfehlt, das Internet mit Regelungen aus dem Bereich der Telekommunikation in Verbindung zu bringen - auch dann, wenn es um Internet-Anwendungen geht, die denen der klassischen Telekommunikation (Sprachtelefondienst) ähneln.

Die Diskussion um die Kriterien, ab welchem Zeitpunkt Internet-Telefonie als "Sprachtelefondienst" zu bezeichnen ist, führt in die falsche Richtung. Das Internet ist nicht für die Übermittlung von Sprache konstruiert worden. Auch wenn ab einem bestimmten Zeitpunkt die Kriterien erfüllt werden, dürfen nicht die Regelungen aus dem Telekommunikationsbereich 1:1 übertragen werden. Ein solcher Automatismus hätte fatale Auswirkungen. Eine auf das Internet übertragene Politik für die Sprachtelefonie wäre "Sand im Getriebe" und würde die Entwicklungschancen des Internet entscheidend einengen.

Regulierung muß immer die begründete Ausnahme bleiben. Wenn also Lizenzierungsvorschriften und die Finanzierung des Universaldienst auch für die Anbieter von Internet-Telefonie angedacht werden, dann müssen die Gründe für derartige Eingriffe plausibel dargelegt und Alternativen diskutiert werden. Eine einfache "Analogie" zum klassischen Telefondienst reicht hierfür keinesfalls aus.

Es muß anerkannt werden, daß jedes unreflektierte "Hineinregieren" in das Internet seine Basis zerstört. Weiteren Regulierungen, die zum Teil schon für den klassischen Telekommunikationsbereich überzogen sind, wird damit Tür und Tor geöffnet. Als eines der wenigen noch übrig gebliebenen nicht-regulierten Bereiche steht das Internet außerdem für die Funktionsfähigkeit und Überlebensfähigkeit selbstregulierter Systeme.

Bisherige Fragestellungen lauten meist: Wie groß ist die Bedrohung des traditionellen Telekommunikationsmarktes durch die Internet-Telefonie? Diese Sichtweise greift zu kurz. Die Frage müßte lauten: Welche zusätzlichen Möglichkeiten ergeben sich aus der vollständigen Verschmelzung von Sprache und Daten und aus der kostengünstigen Übermittlung? Welche zusätzlichen Anwendungen/Mehrwertdienste können sich hierdurch entwickeln? Abgesehen davon: Wenn eine Technik oder eine Dienstleistung besser (kostengünstiger) ist als eine andere, so soll sie sich frei entwickeln dürfen.

Der Nutzen einer nicht-regulierten, preisgünstigen Internet-Telefonie sollte auch darin gesehen werden, daß Druck auf die Preise im klassischen Telefonbereich ausgeübt wird. Dies ist gerade für die Länder wichtig, in den aufgrund der vorherrschenden Marktstruktur noch relativ hohe Preise für den Sprachtelefondienst zu zahlen sind.

ETNO

EUROPEAN PUBLIC
TELECOMMUNICATIONS
NETWORK
OPERATORS' ASSOCIATION

23.07.97 -A/19019

C

Brussels, 23 July 1997

Office 3/48
DG IV/C
European Commission
Av de Cortenberg 150
B-1040 Brussels

DG IV/C		
INCOMING MAIL		
23-07-1997		
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~~He~~
~~SD~~
CH

Dear Sirs,

Draft Commission Notice concerning the status of voice on the Internet pursuant to Directive 30/388/EEC

I am pleased to enclose, for your consideration, an ETNO Reflection Document outlining the Association's comments on the above-mentioned draft Notice. This paper is unanimously supported by the Association's 37 Members.

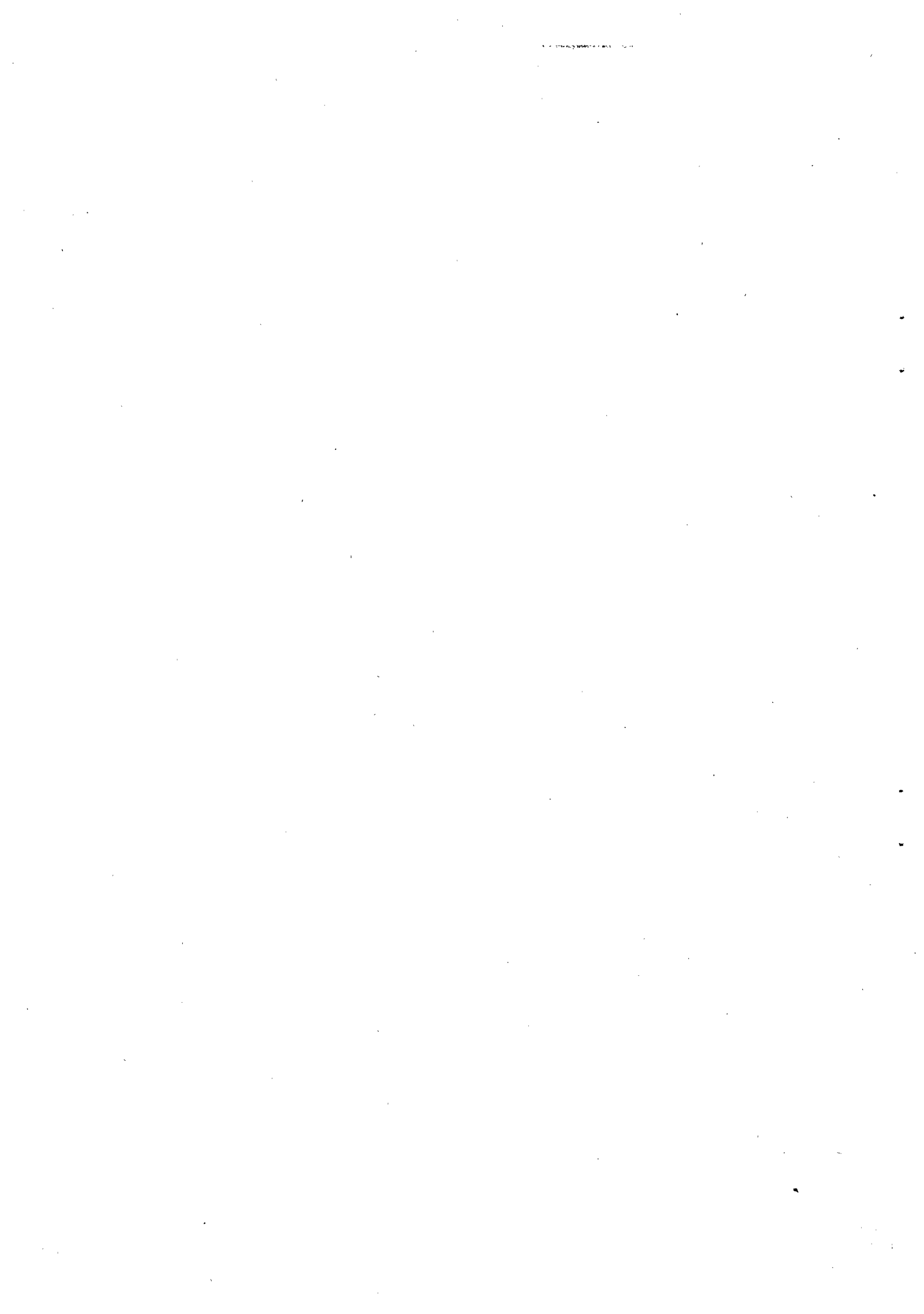
I must apologise for the late submission of our paper, but I understand that it is not too late for ETNO's comments to be taken into consideration.

Yours faithfully,

Handwritten signature: J. Torngren

Jerker Torngren
Director

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ETNO Reflection Document on the European Commission Notice concerning the status of voice on the Internet pursuant to Directive 90/388/EEC

ETNO welcomes the draft "Commission Notice concerning the status of voice on the Internet pursuant to Directive 90/388/EEC (97C 140/06)" and is pleased to note the Commission's effort to remedy some of the uncertainties which inevitably follow the application of sector-specific regulation in a dynamic sector.

ETNO acknowledges the status of the draft Notice as a supplement to the "Communication to the European Parliament and the Council on the status and implementation of Directive 90/388/EEC (95/C 275/02)", clarifying the Commission's interpretation of Voice Telephony in relation to Voice over the Internet. ETNO also notes that the conclusions of the draft Notice are based on an analysis of the present situation and that changes in the market might lead NRAs to a different interpretation.

Taking this into account, ETNO agrees with the overall conclusion that, for the moment, in the light of normal present usage of Voice over the Internet:

"voice on the Internet cannot be considered as 'Voice Telephony' in the sense of this Directive [90/388] and therefore falls within the liberalised area....a priori authorisation may therefore not be imposed on Internet Access/Service Providers"

ETNO also agrees with the understanding of the criteria presented in the draft Notice as well as with the consequences described for licensing and Universal Service contributions.

Regarding the criteria, ETNO wishes to underline that the relation between Internet and Voice Telephony can be considered from a regulatory as well as a technical viewpoint. It is important to maintain that any regulatory changes in the status of the Voice over the Internet should not be based on technicalities in the interpretation of Directives due, for example, to development of new protocols, but on an overall assessment of the financial and regulatory consequences a given development might have.

It is also important not promptly to extend the scope of regulation to services/technologies which at present are developing in accordance with user requirements.

However, although Voice over Internet does not so far fulfil the criteria set by the definition of Voice Telephony in Directive 90/388/EEC, this service could nevertheless substitute Voice Telephony. This fact should be taken into account when assessing the impact of Voice over the Internet on telecommunications organisations.

Two different applications of Internet Telephony can be identified:

1. The case where both end users have Internet access using software installed at the users' PCs enabling the conversion of audio in general and speech into datapackets. In this case, voice (spoken dialogue) over Internet is primarily an offshoot of the Internet access/use and not a dedicated service offered by the Internet Service Provider.
2. The case where end users do not need any specific equipment and where the Service Provider offers conversion from PSTN to packet based transmission/switching at servers accessible via the PSTN. In this case, Internet is used for transmission between servers and the end-users might even not need to have a PC or software. Internet is then simply used by a Service Provider as a transportation mechanism.

While the second scenario may not be a realistic possibility today due to a lack of standardised protocols and low quality which few customers might be ready to accept, it may soon become a likely offering.

In this case, the Service Provider might - depending on the individual conditions in the Member States - claim a right to interconnect or to obtain Special Network Access to the PSTN mapping IP addresses to E.164 numbers. The Service Provider would therefore be able to offer a general PSTN-like service.

In such a scenario it is important that service providers, or operators, should not be able to exploit Internet Voice merely as a means of avoiding licence obligations otherwise pertaining to voice telephony service providers. At the same time, care must be taken not to hold back innovative developments by inappropriate application of regulatory definitions which may become outmoded.

In this case, the understanding of Voice Telephony as the platform for USO financing and for defining Quality of Service will need to be revised so that it may be applied independently of underlying technologies - fixed/mobile, circuit/packet switched etc. - and to ensure that all significant actors are regulated on an equal footing ■



THE EU COMMITTEE

OF THE AMERICAN CHAMBER OF COMMERCE IN BELGIUM

Position Statement

July 11, 1997

Mr. Christian Hocepied
DG IV/C/1
EUROPEAN COMMISSION
rue de la Loi 200
1049 Brussels
BELGIUM

Re: EU Committee letter responding to the Commission's notice concerning the status of voice on the Internet under Directive 90/388/EEC¹

Dear Mr. Hocepied,

The EU Committee of the American Chamber of Commerce writes to support the Commission's notice concerning the status of voice on the Internet under Directive 90/388/EEC.

The EU Committee welcomes the Commission's pragmatic analyses, clarifying that the current use of voice transmission on Internet does not meet the criteria to be classified as voice telephony as set out in Directive 90/388/EEC.

The Internet is an international computer network capable of carrying various combinations of data, audio and video transmissions. As such, it constitutes a major social and economic phenomenon in Europe and world-wide. The Internet is directly fostering a new and fast-growing Internet economy, creating new categories of businesses and jobs (e.g. Internet infrastructure and software, Internet access providers, consumer and business content creation and distribution, online retail and financial services). The successful Internet economy will have a significant multiplier effect on economic and job growth as well as competitiveness. It will spawn new ideas, new markets and new businesses. The Internet will help determine the competitive advantage of trading regions for decades to come.

Recent software developments can allow Internet subscribers using the same or interoperable solutions software to conduct voice conversations over the Internet. In

¹ Supplement to the Communication by the Commission to the European Parliament and the Council on the status and implementation of Directive 90/388/EEC on competition in the markets for telecommunications services.



THE EU COMMITTEE

accessing the Internet consumers take advantage of the incipient developments of a new communication era, developments from which businesses, governments and individuals will benefit. This new dimension of communication for both individuals and businesses will foster the Information Society in Europe.

The EU Committee believes that the Internet in general should not be subject to specific regulation or authorization schemes different from the ones already applicable or other data transmissions. We urge the Commission to enforce coordination amongst the Member States and to ensure a non-discriminatory, proportionate and transparent framework within this area.

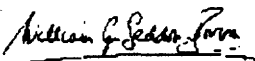
We fully support the Commission's policy that Internet communications should not be regulated. More specifically, because the Internet is generally a packet switched data network, 'bits' are all treated alike, regardless of their application and it is not practicable to separate voice communications over the Internet from other Internet traffic in order to treat those transmissions differently. It would be inappropriate to require network operators or access providers to monitor end-users using the Internet for voice telephony.

The EU Committee reminds the Commission that Europe is still at an early stage with the Information Society and asks the Commission not to impose any unnecessary regulation. Clearly, this would hinder industry innovation, the use of the many features of Internet solutions and would slow Europe down in the international arena. Unregulated, the Internet is proving to be an unmitigated success. It is likely that any attempt to regulate the Internet will: (i) retard growth of the Internet and the national economy; (ii) cause distortions and dislocations as businesses will be driven to respond to regulatory disincentives; and (iii) not be manageable or implementable.

The EU Committee welcomes the Commission's approach in its paper, fully in line with the objective of liberalising the telecommunication sector, an imperative for European growth and global competitiveness. We also believe that Internet telephony will help to maximise the opportunities for Internet-based services to increase the overall degree of competition in the telecommunications marketplace.

In conclusion the EU Committee looks forward to maintaining an open dialogue with the Commission on the developing area of Information society services.

Yours sincerely,



William Seddon-Brown
Chair

eurobit

A/A10

European Association of Manufacturers of Business Machines and Information Technology Industry	15-07-97	-A/18399
Association Européenne de l'Industrie de la Bureautique et de l'Informatique		
Europäischer Verband der büro- und informationstechnischen Industrie		
Associazione Europea Costruttori Macchine per Ufficio e Tecnologie dell'Informazione		

JR

Mr.
 Christian Hocepiéd
 European Commission

Fax: 00322 296 9819

DG IV/C		
INCOMING MAIL		
15-07-1997		
01	02	03

Frankfurt, July 10, 1997

EUROBIT statement on the Commissions (DG IV) notice concerning the status of voice on the Internet under Directive 90/ 388 /EEC*

Dear Mr Hocepiéd,

EUROBIT writes to support the Commission's notice concerning the status of voice on the Internet under Directive 90/388/EEC.

EUROBIT welcomes the Commission's pragmatic analyses, clarifying that the current use of voice transmission on Internet does not meet the criteria to be classified as voice telephony as set out in Directive 90/388/EEC.

It is well known that the Internet is an international computer network capable of carrying various combinations of data, audio and video transmissions. It constitutes a major social and economic phenomenon in Europe and worldwide.

The Internet is directly fostering a new and fast-growing Internet economy, creating new categories of businesses and jobs (e.g. Internet infrastructure and software, Internet access providers, consumer and business content creation and distribution, online retail and financial services). The successful Internet economy will have a significant multiplier effect on economic and job growth as well as competitiveness. It will spawn new ideas, new markets and certainly new businesses. The successful Internet will help determine the competitive advantage of trading regions for decades to come.

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In particular, recent developments of specific software can allow Internet subscribers using the same or interoperable software to conduct voice conversations over the Internet at a local call tariff. In so doing consumers take advantage of the incipient developments of a new communication era, developments from which businesses, governments and individuals will benefit. This new dimension of communication for both individuals and businesses will foster the Information Society in Europe.

Accordingly, EUROBIT applauds the Commission's conclusions on the basic framework as regards the extent of authorisation procedures amongst the Member States.

Internet voice transmission should only be subject to a general authorization or a declaration procedure, i.e. not imposing specific authorization schemes different from the ones already applicable on other data transmissions.

EUROBIT urges the Commission to enforce co-ordination amongst the Member States and to ensure a non-discriminatory, proportionate and transparent procedure within this area.

In particular, it is not practicable to separate voice communications over the Internet from other Internet traffic in order to treat those transmissions differently.

Consequently, neither Internet access providers nor regulators are in a position to monitor the various ways in which end-users may be using the Internet in order to treat a small sub-set of Internet communications like voice telephony.

More specifically, because the Internet is generally a packet switched data network, 'bits' are all treated alike, regardless of their application. The software at both ends of a communication interprets the instructions accompanying or within the bits in order to reassemble the packets into a complete and coherent communication.

The whole system operates in the same way irrespective of whether data, video, or audio communications are being transmitted. Because this technology differs entirely from voice telephony services, it is not realistic or practical for regulators to attempt to apply regulations to this technology developed specifically for voice telephony.

EUROBIT agrees with the Commission's analysis on the Internet voice service's non-compliance with the criteria set up in the Directive, which therefore does not require contribution to universal service.

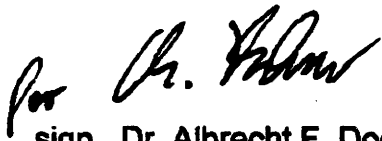
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EUROBIT reminds the Commission that Europe is still at an early stage with the Information Society and not to impose any unnecessary regulation. Clearly, this would hinder industry innovation, the use of the many features of Internet solutions and would slow Europe down in the international arena.

EUROBIT welcomes the Commission's approach in its paper, fully in line with the objective of liberalising the telecommunication sector, an imperative for European growth and global competitiveness. We also believe that Internet telephony will help to maximise the opportunities for Internet-based services in the aim to increase the overall degree of competition in the telecommunications marketplace, and believe the Commission should look on this development favourably.

In conclusion EUROBIT is looking forward to maintaining an open dialogue with the Commission on the developing area of Information society services.

Sincerely yours,



sign. Dr. Albrecht F. Doehler
Chairman EUROBIT
Information Society Policy Group

* Supplement to the Communication by the Commission to the European Parliament and the Council on the status and implementation of Directive 90/388/EEC on competition in the markets for telecommunications services

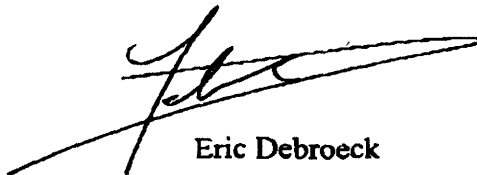
**France Telecom****Direction des Relations Extérieures**Paris, le **10 JUN. 1997**

Monsieur,

Je vous prie de bien vouloir trouver ci-joint les commentaires de France Télécom sur le projet de notice de la Commission relative au statut réglementaire de la voix sur internet.

Je vous prie d'agréer, Monsieur, l'expression de mes salutations distinguées.

Le responsable du Département Régulation Nationale et Européenne



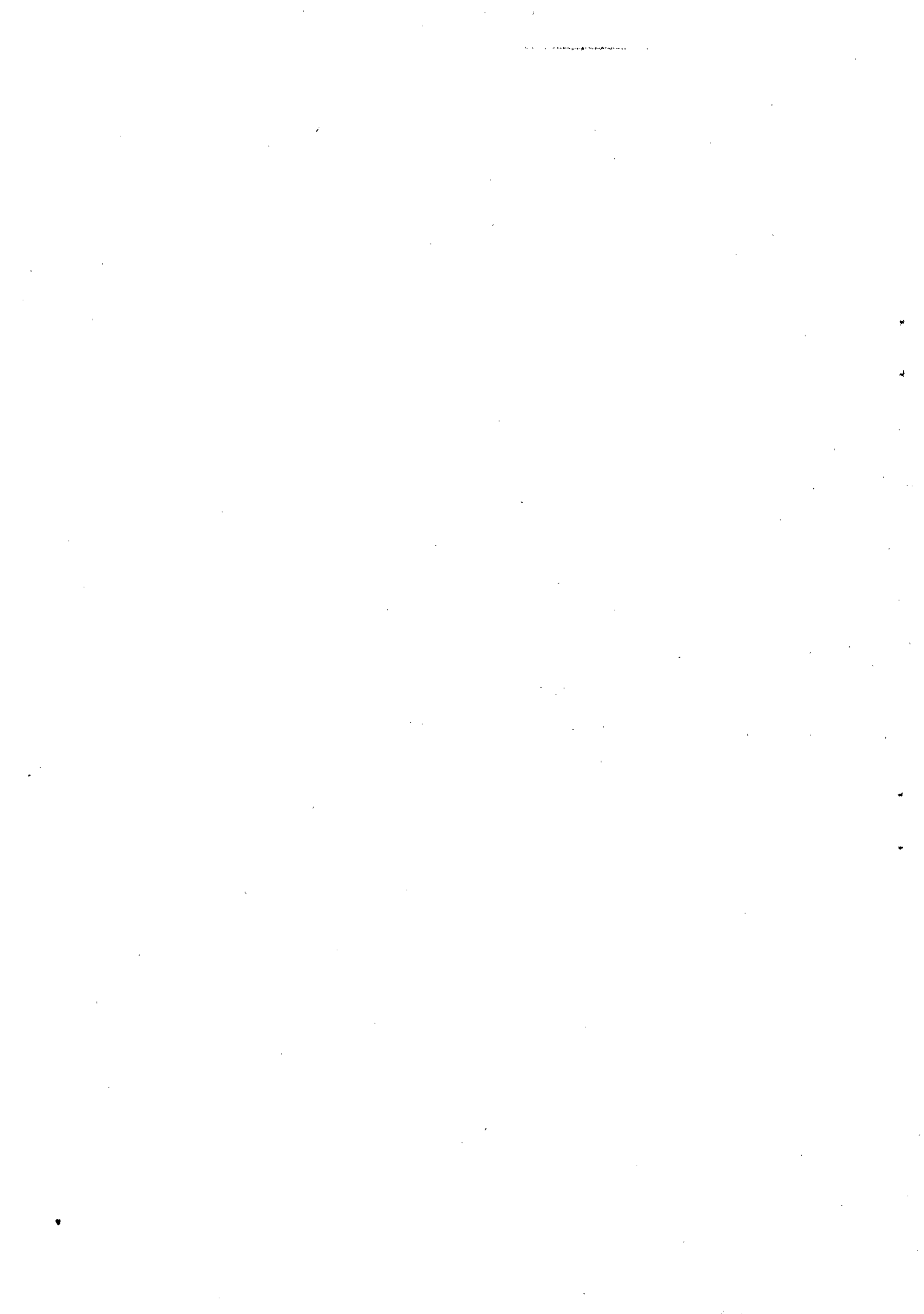
Eric Debroeck

M. Christian Hocepied
Commission des Communautés Européennes
Direction Générale de la Concurrence (DG IV)
Direction C - Bureau 3/48
Avenue de Cortenberg, 150
B - 1040 Bruxelles

France Télécom - Direction des Relations Extérieures
6 place d'Alleray - 75505 Paris Cedex 15
Téléphone : 01 44 44 22 27

SA au capital de 26 000 000 000 F - RCS PARIS B 380 129 866

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France Telecom

Position de France Télécom sur le projet de communication de la Commission concernant le statut réglementaire de la voix sur Internet

France Télécom accueille avec intérêt le projet de communication de la Commission visant à préciser le statut réglementaire des services de voix sur Internet au regard de la définition que donne la directive 90/388/CE de la téléphonie vocale et se félicite d'avoir l'occasion d'apporter sa contribution aux réflexions de la Commission.

En effet, la qualification des services de voix sur Internet détermine l'application du régime réglementaire applicable. Les avantages et contraintes attachés à chacun de ces régimes étant déterminantes pour les acteurs du marché lorsqu'ils définissent leur stratégie, il est essentiel qu'ils soient à même de se déterminer en pleine connaissance de cause.

D'une façon générale, France Télécom partage l'analyse proposée par la Communication et en particulier considère également que tant que les services de voix sur Internet ne remplissent pas les conditions posées par la définition de la téléphonie vocale et tant que la possibilité de passer des communications vocales via Internet n'est pas la motivation principale des utilisateurs pour souscrire un abonnement Internet, la voix sur Internet ne doit pas être assimilée à de la téléphonie vocale.

Toutefois France Télécom estime que la rédaction du dernier paragraphe de l'analyse du troisième critère de la définition de la téléphonie vocale, reprise également au troisième paragraphe de la section c) in fine n'est pas appropriée. En effet, il est dit que le paiement du service se ferait par divers moyens, au tarif de l'interconnexion locale majoré d'une marge.

D'une part, France Télécom tient à souligner que l'emploi du terme « interconnexion » est inapproprié dans la mesure où les prestataires de services Internet ne détiennent en principe pas de licence individuelle leur permettant d'accéder au tarif d'interconnexion.

D'autre part, dire que la prestation de terminaison d'appel va être facturée sur la base d'un tarif local présuppose que le prestataire de services Internet ait développé des points de présence suffisamment nombreux pour accéder à n'importe quel abonné au tarif local. Le plus souvent, ce ne sera pas le cas et la prestation de terminaison que le prestataire de service Internet demandera pourra tout aussi bien être une communication longue distance.

De plus, on ne voit pas bien en quoi le mode de paiement du service est à prendre en compte dans l'appréciation des critères. Le texte gagnerait à ce que cette précision soit supprimée.

Les phrases en question devraient en conséquence se lire : « au tarif d'une communication téléphonique majorée d'une marge. »



To whom it may concern,

The following is a comment on the draft position concerning voice telephony on the Internet.

The issue of voice telephony on the Internet is not one because voice services through this medium makes this issue a necessity, but mainly because telecom operators are afraid of losing traditional markets. Yet there is nothing for these operators to be afraid of. Voice services over the Internet will not cut sharply into traditional voice telephony markets and its use will likewise be limited.

This can be seen in two areas. Firstly, the increased use of ISDN means traditional means of voice telephony will facilitate and become an integral part of online activity, for a resource is freed that can be used for running other, more important, applications. In other words, it would be an indispensable tool within a true multi-tasking environment. At present, voice services over the Internet is more of a passing fad than a serious application.

Secondly, voice services over the Internet is limited in its impact, and hence should not fall within the scope of a voice telephony directive on competition in telecommunication markets, because traditional voice telephony will still retain its convenience and flexibility. For casual computer users, traditional voice telephony will always be more convenient and cost effective. They don't have to worry about the lengthy process of starting up a machine and accessing the Internet, or wasting energy in order to merely use voice services over the Internet. Furthermore, mobile telephony (i.e., cellular phones like GSM) will always make traditional voice telephony more flexible than computer-based voice services.

Apart from the unfounded fears of telecom operators losing a substantial amount of their market share, there are some logical problems with allowing voice services over the Internet to fall within the scope of voice telephony. First of all, it must be remembered that the Internet is not the only such medium for voice interchange. Amateur radio (i.e., HAM radio) at present is in the exact same situation as Internet voice services. In both cases, a license has to be procured (either purchased, as in the case of using certain software over the Internet, or issued by a competent authority after meeting certain criteria, as in the case of HAM radio) on the one hand, and special equipment (a computer or HAM radio) on the other. If Internet voice services will fall under Directive 90/338/EEC, wouldn't then other means of voice communication, such as HAM radio, likewise have to fall under the scope of the same directive?

A more general problem has to do with opening a Pandora's box related to not only voice services over the Internet, but others as well. This, in the end, could very well stifle the development of the European Information Society and, in turn, Europe's competitiveness in the global marketplace. For instance, if voice services over the Internet do fall under the aforementioned directive, then does this mean that e-mail can fall under the scope of a postal service? Going a step further, how would voice mail be classified? Would this be considered voice telephony or a postal service, or both?

Finally, it must be noted that telecoms are already in a position to recoup perceived losses of traditional voice telephony revenue through the use of traffic based charges. Indeed, it must be highlighted that this poses a real danger to the expansion of the Internet. Through such a pricing scheme, telecom operators would be able to charge access providers (ISPs) for the volume of traffic they send and receive. These charges will undoubtedly be passed on, in one way or another, to the end

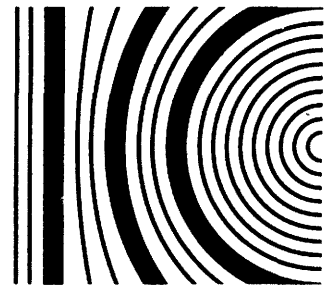
user. As a result, Internet applications that use a lot of bandwidth, such as voice and teleconferencing services, will more than likely raise the cost of access. Thus, Internet voice services would not work out to be all that much cheaper vis-a-vis traditional voice telephony. What is more, there is the risk that content production and online connectivity will drop as Internet use becomes more expensive.

Concern is now being raised over this exact situation in Hungary, for the state telecom, MATAV, which is in control of digital infrastructure, has introduced such a pricing scheme of traffic based charges for ISPs. Access providers, content producers, and general users have already expressed their concern, for the charges introduced are clearly too high for the local market, an estimated three times what the market can reasonably bear. This poses a serious threat to the dissemination of Internet services, not to mention content development.

In closing, it has to be concluded that not only do voice services over the Internet not logically nor practically fall within the scope of an EC directive governing voice telephony competition in telecommunication markets, but any attempts to do so in any manner whatsoever can only have a negative impact on the future development of the European Information Society.

John Horvath
Budapest, Hungary

CA ASM
HO
CH
CM
Cd



European Commission
DG IV, Directorate C
Office 3/48
Avenue de Cortenberg 150
B-1040 Brussels
Belgium

INTERCONNECT COMMUNICATIONS
Improving Business Performance

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<http://www.icc-uk.com/>

Ref.: Lt41794/G940/JW

16 May, 1997

Dear Sirs

**RE: COMMISSION NOTICE CONCERNING THE STATUS OF VOICE ON THE
INTERNET PURSUANT TO DIRECTIVE 90/388/EEC**

Thank you for the opportunity to comment on this important issue.

We have reviewed the draft position and commend the Commission staff for appreciating the many complex technical, business and regulatory issues involved with Internet telephony. As we are in general agreement, we have only a few comments.

Our engineers are confident that Internet telephony, in time, will be of similar quality as the public telephone network is today. How long this will take is unclear, but it will come eventually. The march of technology does not stop. Breakthroughs in voice coding and compression may make it sooner than expected.

Our regulatory, business and economic telecommunications consultants believe that competition from computer to computer Internet telephony is healthy. Such competition will assist in removing the distinction between the telephone and the computer. In the future, we will likely see more portable computers that look and are used, at least partially, like telephones.

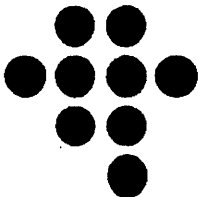
Again, we commend the Commission staff for the thoroughness of their work on this complex issue.

Yours sincerely

John T Watkinson



(C1) A/697



MIT Research Program on Communications Policy

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Massachusetts Institute of Technology

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DG IV/C		
INCOMING MAIL		
- 9 - 07 - 1997		
C-1	C-2	C-3

Fax Cover Page

Date: 7 JULY 1997

109.07.97 -A/18110
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To: European Commission - DG IV
Directorate C

Company: _____

Fax: 011 - (32 2) 296 98 19

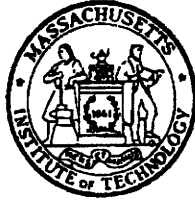
Telephone: _____

Number of Pages (Including cover): 4

Sent by: Kristin Short

Comments:





INTERNET TELEPHONY INTEROPERABILITY CONSORTIUM
Massachusetts Institute of Technology

**Comment to the European Commission Concerning the Status of Voice on the Internet
under Directive 90/388/EEC**

Submitted by the Internet Telephony Consortium European Regulatory Task Force¹

Summary

The Internet Telephony Consortium European Regulatory Task Force submits this comment in support of the European Commission and its position not to regulate Internet telephony at this time. The Task Force believes that Internet telephony over the public Internet cannot provide real-time voice communication at this time and subsequently falls into the liberalised area. Internet telephony can be seen as a technology that can promote interoperability between the Internet and public telecommunications networks. Furthermore, the applications of Internet telephony that may satisfy the Commission's criteria for voice telephony should be viewed as insignificant threats compared to the benefits. Benefits can arise from the utilization of this technology to develop complementary technologies required to support effective and useful real-time multimedia services over the Internet. Premature regulation of Internet telephony would hinder innovation in this field as well as hinder innovation for the Internet and the public telecommunications network.

The Internet Telephony Consortium²

The Internet Telephony Consortium (ITC) is a group that examines the technical, economic, strategic, and policy issues that arise from the convergence of telecommunications and the Internet. The ITC is comprised of Member Companies and academic researchers who represent the various interests associated with the Internet, Internet telephony and the telecommunications industries. The ITC seeks to be a neutral forum for members to discuss these issues and to benefit from cross-industry communication. The long term goal of the ITC is to enable the growth of new forms of mediated, integrated multimedia communication spanning the Internet and the telecommunications infrastructures.

¹ The Internet Telephony Consortium European Regulatory Task Force is a group formed specifically to respond to the Notice by the Commission concerning the status of voice on the Internet under Directive 90/388/EEC. The views expressed in this comment represent the views of the members of this Task Force and should not be construed as representing the position of the ITC, member companies or individuals not participating on the Task Force, or the Massachusetts Institute of Technology. Member companies participating on this Task Force include Hewlett-Packard, Mediatrix Peripherals, Inc., Natural Microsystems, NetSpeak Corp., Nokia, Telecom Italia and Telia.

² More information about the ITC and its goals can be found at its web site <http://itel.mit.edu/>.

A core concept of the ITC is the collaboration with member companies to explore the opportunities to increase the interoperability between the Internet and the public telecommunications network. The ITC sees Internet telephony as a technology that can enable applications and services to work between the Internet and the public telecommunications network. The interoperability provided by Internet telephony is seen as a means of complementing and enhancing the currently available public voice telephony services.

Internet Telephony

Internet telephony was developed originally to provide a functionally viable methodology for enabling useful interactive voice communications over the existing IP based Internet. The process generally requires the use of personal computers (PCs) with the same application software running on the originating and receiving terminals. Both PCs need to be connected to an Internet Service Provider (ISP), and be equipped with a sound card (multimedia enabled), a microphone and speakers. This form of connectivity using PCs has been a primary focus for the development of Internet telephony technology. This extended PC connectivity represents the transport mode that gains the greatest advantage from the single bandwidth-managed, multimedia, distributed network fabric made possible through the application of Internet telephony technology.

The development of voice communication capabilities using the Internet protocol (IP) over the Internet has progressed to where these capabilities are more accurately viewed as IP telephony than as Internet telephony. The IP telephony capabilities, which are only now becoming widespread, have shown considerable potential for addressing the various challenges of modern telephony requirements that are difficult to meet using only the circuit-switching techniques of conventional telephony. The areas IP telephony addresses relate to such things as: delivery of incoming calls from the Internet to existing call centers; providing virtual office capabilities for at-home workers (telecommuters); providing mobile desk-top capabilities for traveling employees; multimedia enabling of enterprise Wide Area Networks; and the provisioning of cost efficient and functionally effective disaster recovery plans.

A key element in making effective use of the emerging IP telephony technology is the development and use of gateways that bridge the IP environment of the Internet and the circuit-switched environment of the public telecommunications network. Such gateways are devices that make it possible to construct application specific network structures that provide for real-time two-way communication between circuit-switching and packet-switching technologies to create an integrated networking fabric. Enabling interoperability between the public telecommunications network and the Internet, as can be done with gateways, is one of the original objectives in the formation of the ITC.

The public Internet is not a controlled network environment. IP technology used on the Internet uses non-deterministic switching (datagrams) which offers little potential for approximating real-time voice connectivity in that environment. As a consequence, Internet telephony over the public Internet is not at this time a serious candidate for direct competition in the field of voice telephony. By the definition of "voice telephony" used by this commission, due to its lack of real-time capabilities over the public Internet, IP telephony would fall into the liberalised area.

Internet Telephony and Regulation

While Internet telephony has been influential technology, its market niche in the telecommunications industry has been as a consumer related "Chat" product, with an appeal

similar to that of amateur (HAM) radio. While Internet telephony software is generally available to anyone who wishes to purchase and use it, the deployment of gateways has been relatively limited. The most immediate potential for gateways lies in expanding commerce by providing direct and immediate access from the World Wide Web to existing businesses that operate in the PSTN environment. The number of visitors to the WWW is growing dramatically, and represents an enormous potential market that is independent of geography.

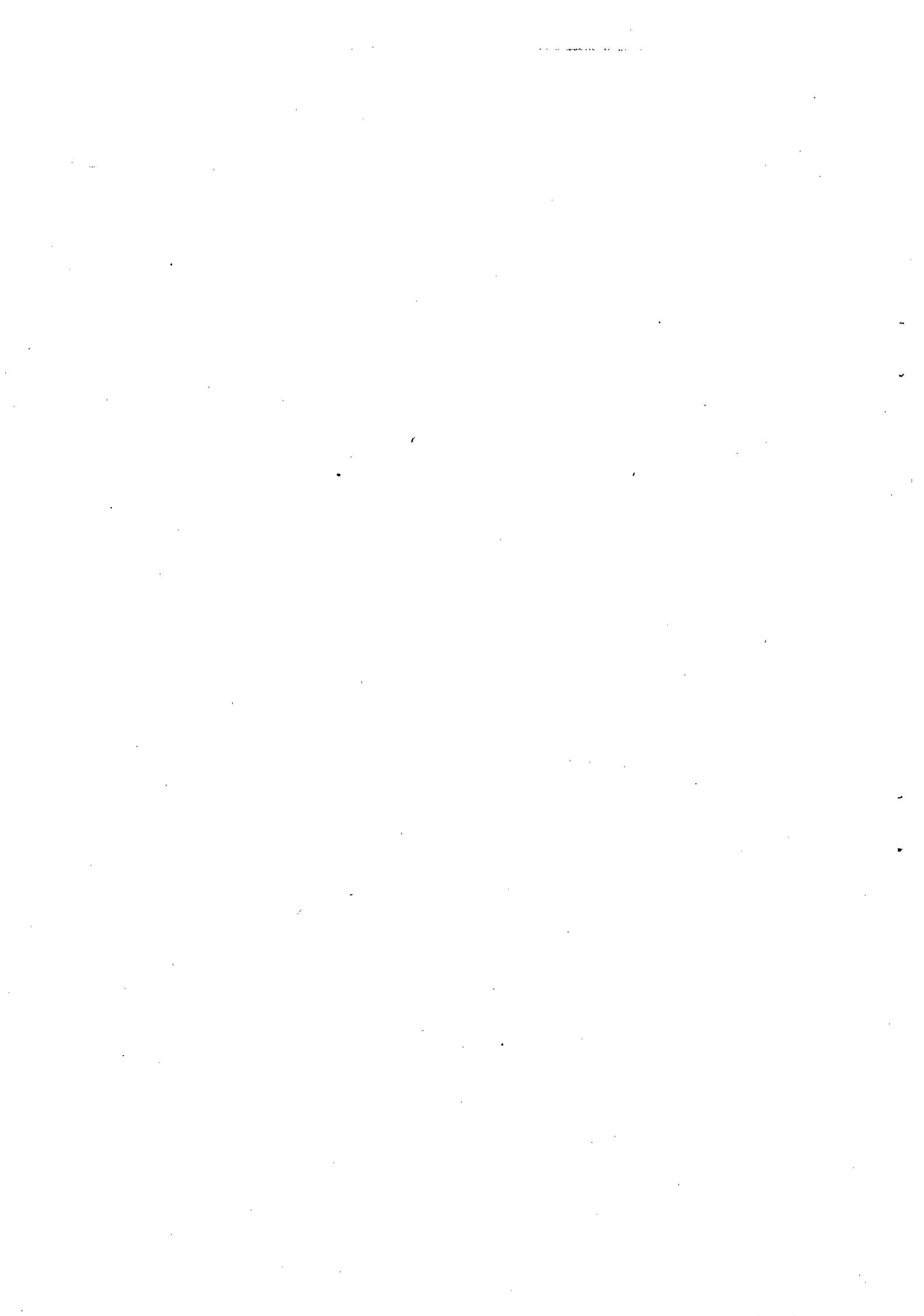
The near term potential of Internet telephony lies in closed, private networks and in the provision of substantial value-added capabilities to conventional circuit-switched networks. Any regulation limiting the use of gateways in applications where the non-real-time characteristics of Internet telephony are adequate can severely limit the availability of working development platforms. Premature regulations could significantly hamper the process of introducing IP-based enhancements to public network-based systems. Regulation will also slow the development of new networks to support a full range of multimedia communications on a single network fabric.

Internet telephony is at a point where it can be favorably compared to traditional voice telephony for serving potential customers on the Web. Both the technology and the market for Internet telephony are still immature and need to continue to be developed to reach their potential. Regulation of Internet telephony by the entire European Union could significantly hinder the innovation that is currently taking place. Regulation by individual Member States would only cause the domestic telecommunications industry to suffer as the industry in other States embraces and develops Internet telephony. Additionally, even if Internet telephony is regulated by either the entire Union or a few Member States, voice over the Internet may still be in use by some alternative technological method. Regulation of Internet telephony at this time would be an ineffective and inappropriate response to this developing technology and market.

The further development of Internet telephony also has the potential to affect another industry—the telecommunications industry. Internet telephony is an emerging technology with a great potential to be a positive influence on traditional telephony. Internet telephony could be a competitive alternative to the traditional voice telephony market. In such a competitive state, both industries would have to innovate and improve to remain competitive. Moreover, it can be seen as an additional opportunity to accelerate the move toward cost-based tariffs especially in countries where tariff rebalancing is still under way. If the desire is to have a competitive telecommunications industry, introduction of an alternative method of voice transport would be wise to allow to occur. Also, with the trend of deregulation and the opening of telecommunication markets to competition, it would seem inappropriate to advocate increased regulation. By allowing the continued innovation and development of Internet telephony, a true alternative and a more competitive market are a little bit closer to realisation. Creating constraints on the development of Internet telephony at this time will only stifle innovation in Internet telephony technology and applications but also has the potential to stifle innovation in traditional telephony as well.

Conclusion

Internet telephony is an emerging and dynamic technology that has great potential to change the way people communicate. It is a technology that promotes innovation and not only in the Internet but in complementary technologies and neighboring sectors, mainly in the telecommunications sector. To regulate Internet telephony at this time, would harm its development, as well as the development of other areas of communication like traditional telephony. If in the future, the Union does choose to regulate Internet telephony, it must keep in mind that the Internet is a dynamic field and that traditional regulatory models based on voice telephony are likely to be inappropriate.



Christian HOCEPIED
DG4
Telephone: 60427

Item posted: Tue 20 May 97 20:08
+ delivered: Tue 20 May 97 20:10

To: Marcel HAAG
DG4

Herbert UNGERER
DG4

LMH
M.C.

Subject: Copy of: Don't punish the Internet for being a better idea
First comment on the notice..

- - - Forwarded Message - - -

Internet: muiomni@cris.com
Freeform name: Micah Seymour

To: EUROPA
DG10

Subject: Don't punish the Internet for being a better idea

I hear that your looking at regulating Internet telephony. Please don't punish the Internet for giving us a better way to make a long distance phone call.

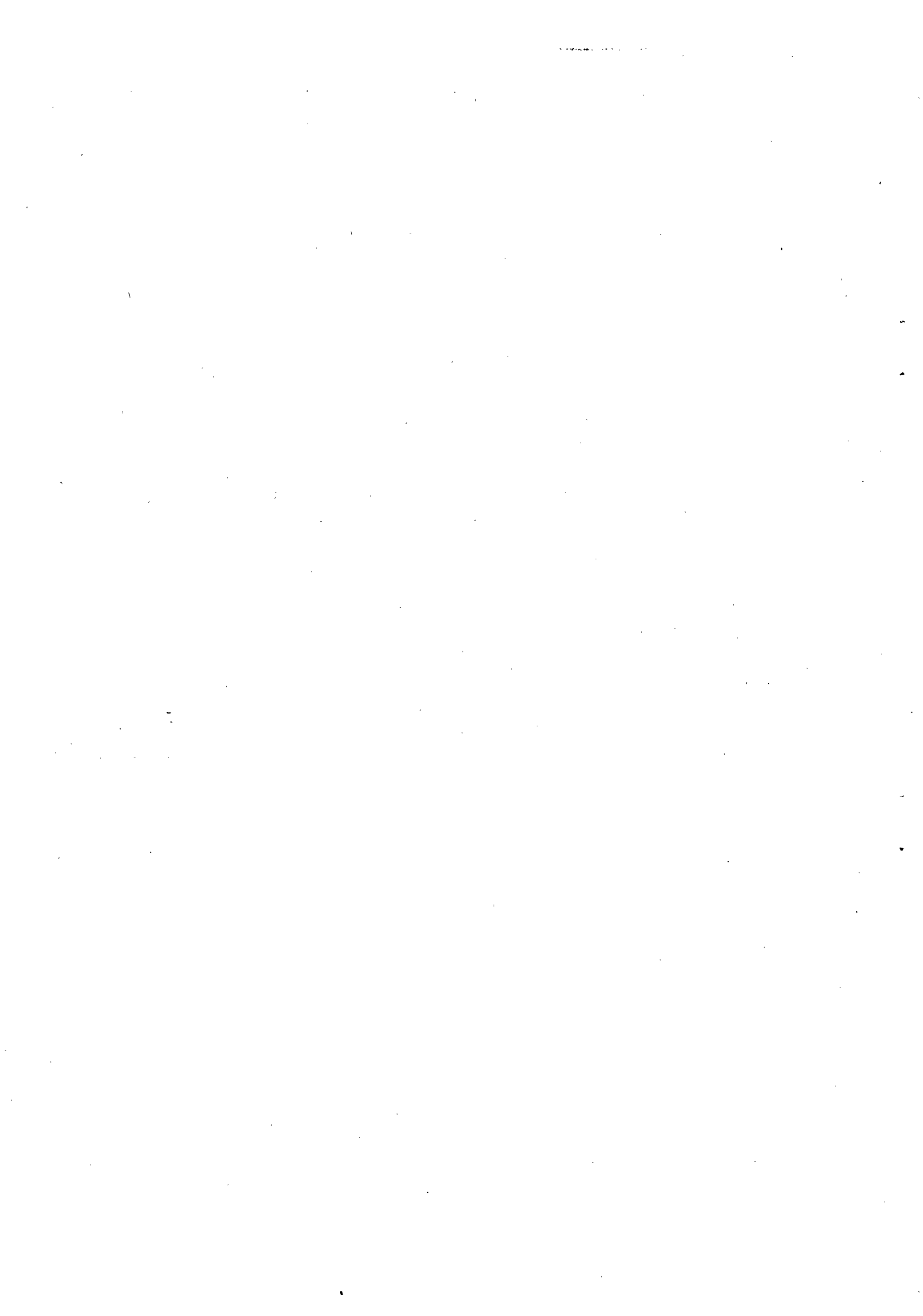
The onus of this fight should be on the AT&T's of the world to come up with a better way to do business. No one raised the price on steel to allow the horse to compete with the car. Paying for communications is a thing of the past. Let's keep it that way.

Thanks,
Micah Seymour
IS Manager
Muir Omni Graphics
Peoria, IL, USA

--
"The value of a network increases in direct proportion to the number of people connected to it."

--Ethernet inventor Bob Metcalfe

- - - End of Forwarded Message - - -





ΟΡΓΑΝΙΣΜΟΣ ΤΗΛΕΠΙΚΟΙΝΩΝΙΩΝ ΤΗΣ ΕΛΛΑΔΟΣ Α.Ε.
HELLENIC TELECOMMUNICATIONS ORGANIZATION S.A.

Α. ΚΗΦΙΣΙΑΣ 99, 151 81 ΜΑΡΟΥΣΙ
THA: 882 7015 • TELEX: 21 5488 YP GR • FAX: 681 0899
99, KIFISSIAS AVE., GR-151 81 MAROUSI
ATHENS, GREECE
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08.07.97	-A/18039	Athens 7-7-97
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(ci)

A/694

To
European Commission
Directorate-General for Competition (DG IV),
Directorate C,
Office 3/48,
Avenue de Cortenberg/Kortenberglaan 150,
B-1040 Brussels
Fax: +322-2969819

DG IV C		
INCOMING MAIL		
8 -07- 1997		
C-1	C-2	C-3

Subject: OTE's comments on the Commission notice regarding the status of voice on the Internet pursuant to Directive 90/388/EEC (Off. J. C140/8/7-5-97)

1. Introduction

According to Article 1 of Directive 90/388/ECC "voice telephony" means "the commercial provision to the public of the direct transport and switching of speech in real-time between public switched network termination points, enabling any user to use equipment connected to such a network termination point in order to communicate with another termination point".

Due to the development of new software and hardware that enables the coding, compression and transmission of voice via the Internet, at local call tariffs and in real time the Commission published a communication to the European Parliament and the Council, expressing the Commission's approach to the implementation of Article 1.

The Commission has approved a draft position on the status of voice on the Internet, which intends to adopt as a supplement to the communication by the Commission to the European Parliament and the Council on the status and implementation of Directive 90/388/EEC on competition in the markets for telecommunications services.

In the notice, an analysis of the Commission's view on internet telephony is presented. The Commission, finally reaches the conclusion that voice on the Internet cannot be considered as "voice telephony" in the sense of this Directive and therefore falls within the liberalized area. The situation will, however, have to be kept under review in the light of technological and market developments.

In addition the Commission reaches the conclusion that Internet service providers would, even in the future, when voice telephony applications improve, not require voice telephony licenses, thereby avoiding the need to apply for individual licences and the requirements to contribute to the funding of universal service.

However, it is mentioned that the current position of voice on Internet under Community law may change because of new technological developments and new services offered by ISPs, such as offering dial out connections to any other.

2. Voice on the Internet vs. Voice Telephony Provision

In the Commission's notice there is not a clear distinction between Voice on the Internet and Voice Telephony Provision. Clearly, Voice on the Internet is a technological achievement and is totally different to Voice Telephony Provision that is a commercial service and can be offered to the public.

Recent developments in software and hardware make possible the transmission of voice over IP, but in addition enable Internet Service Providers (ISPs) to be Voice Telephony Providers. We would like to bring to the Commission's knowledge the following three classification schemes of Internet telephony and some recent developments regarding the transmission of voice via the Internet.

a. Computer-to-Computer Internet Telephony

This case is fully covered in the Commission's notice and has to do only with the technological achievement of transmitting voice via the Internet on the user's side.

b. Computer-to-Phone Internet Telephony

It is mentioned in the Commission's notice that Internet service providers (ISPs) start providing a computer-to-phone Internet telephony service, whereby an Internet user can connect to a local Internet service, log on with his PC or other terminal equipment, input the destination telephone number, have the call routed over the Internet to any telephone number. In this case the service provider offers dial out connections and in this way acts as a voice telephony provider.

This service has already been commercialized and its use is increasing. Various services have appeared in the market. Most of the companies offering this service are based in the U.S.A., resulting in the routing of the telephone traffic through U.S.A. switches and escaping V.A.T. payment.

c. Phone-to-Phone Internet Telephony

Phone-to-phone Internet telephony is a new service. This service can be offered by ISPs with the use of special access servers. Calls from ordinary phones are routed to the service provider's access server with a local call. Then the analogue telephone signal is digitized and

transmitted via the Internet or data lines to the service provider's computer server in the destination. There the signal is transformed into analogue and is dialed-out to the destination telephone number with a local call. With this technology, service providers – including local and inter-exchange carriers, Internet service providers (ISPs), cable companies or alternative access providers – can offer an alternative to long-distance or international calling. It is clear that this service is pure Voice Telephony Provision.

Various commercial examples of phone-to-phone Internet telephony have appeared in the market. Major telecommunication manufacturing companies are offering Internet telephony servers to ISPs that enable phone-to-phone and fax-to-fax communication via the Internet. These servers can work in any public switched network to route telephone calls over data networks. Further, these servers offer real time communication. A major's telecommunication manufacturer's server is mentioned to support common standards such as H.323, and G.723.1 for voice transmission with ~10-30msec delay, so it can be, clearly, considered real time.

3. OTE's View - Comments

The presented computer-to-phone and phone-to-phone Internet telephony schemes conform fully to the definition of voice telephony of Article 1 of Directive 90/388/EEC. The evolution of the hardware and software as well as specialized computers that act as switching servers has increased performance, reduced dramatically latency time offering real time communication.

The presented Internet Telephony schemes have been fully commercialized and are offered to the public. Service providers that provide phone-to-phone or computer-to-phone Internet telephony) are fully aware and conscious of what they are doing, since they provide a commercial service for a fee, with the use of specialized equipment.

The providers of this service tend to escape the imposition of V.A.T. (Value Added Tax), resulting thus in significant losses for the European public revenue system and, in our opinion, not fair competition with respect to the European telecommunication service providers.

The Commission should recognize that computer-to-phone and phone-to-phone Internet telephony is voice telephony provision and the providers of these services are voice telephony service providers and should be subject to voice telephony licensing, general authorization, contribution to universal service and all essential requirements.

Finally the phrase on the title of the notice "Voice on the Internet" should be changed to "Voice Telephony Provision on the Internet".



V. Maglaras

Director General for International Affairs

33



A/709



TELECÓPIA FAX

Portugal Telecom, S.A. - Av. Fontes Pereira de Melo, 46 - 1088 Lisboa Cedex - N.º Pessoa Colectiva 503215096 - Capital Social 1800000000000000 - MAT 03802/948706 CRCL

De telecópia n.º (From fax n.º) 351.1314 25 01	N.º telefone contactos (Contact fono n.º)	Para telecópia n.º (To fax n.º) 32.2 296 98 19	Data (Date) 97/07/11	N.º de páginas (N.º of pages) 1 +
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De (From) AD.ENG.º FRANCISCO PADINHA	Para (To) COMISSÃO EUROPEIA - DG IV - Direcção C A/c Mr. CHRISTIAN HOCEPIED Gabinete 3/48
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Nossa ref. (Our ref.)	Data (Date) //	Sua ref. (Your ref.)	Data (Date)
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Comunicação da Comissão relativa ao estatuto da comunicação vocal na Internet em conformidade com a Directiva 90/388/CEE
(subject)

JTL

Em resposta à consulta publicada no JOCE de 7.5.97 sobre o assunto acima referenciado, juntam-se em anexo os Comentários suscitados relativamente aos aspectos essenciais da Comunicação.

Com os melhores cumprimentos

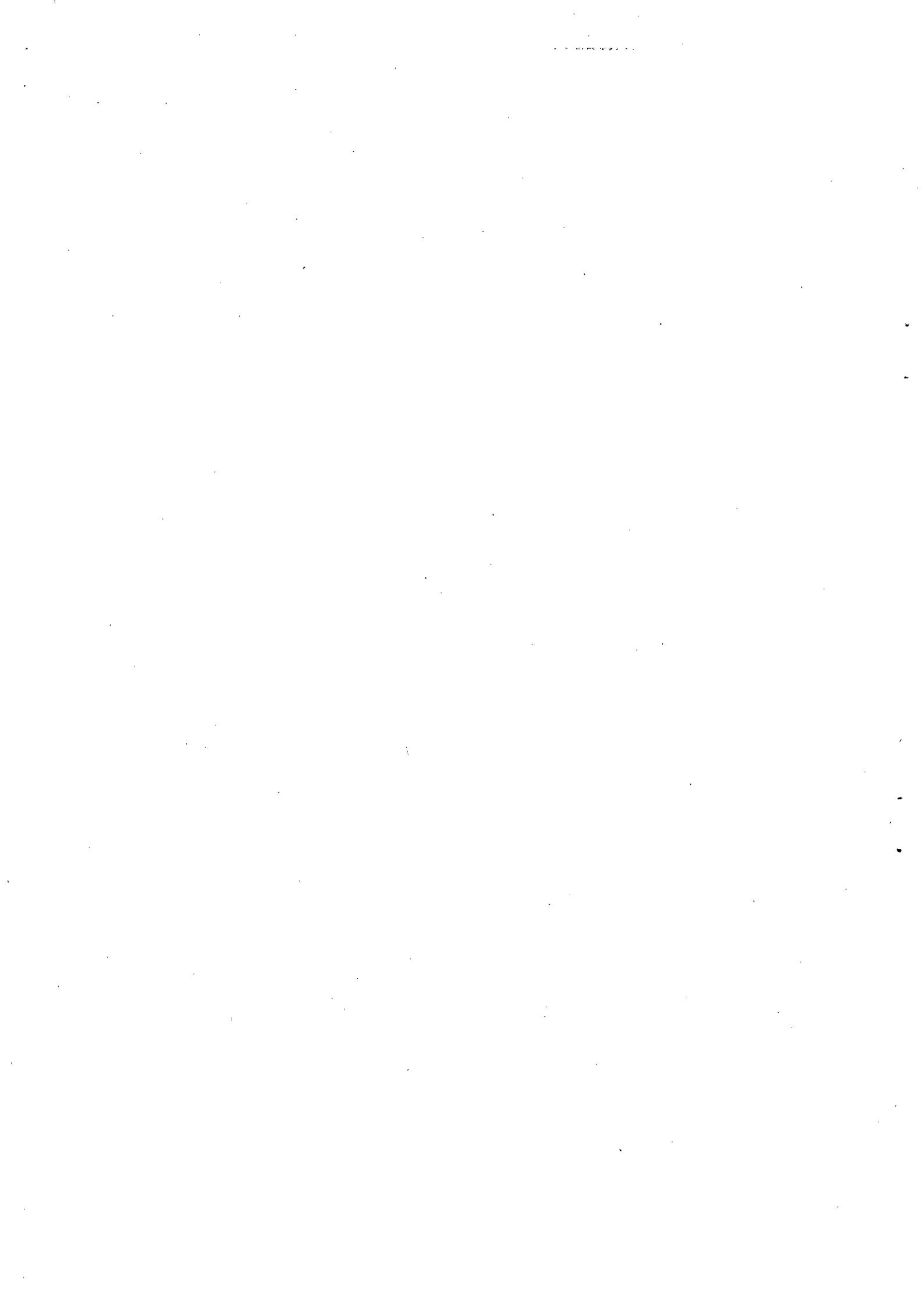
FRANCISCO J. AZEVEDO PADINHA
Administrador

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ATT:RIB: C

15.07.97 -A/18398

DG IV/C		
INCO		
✓	C-2	C-3



**TELECOM**

**Comunicação da Comissão Europeia relativa ao estatuto da
comunicação vocal na Internet em conformidade com a
Directiva 90/388/CEE**

Comentários do Grupo Portugal Telecom

1. Consideramos positiva a publicação de uma Comunicação que esclareça a posição da Comissão Europeia sobre a qualificação a dar, para efeitos regulamentares, a um serviço de telecomunicações que ganhará, certamente, uma importância crescente nos próximos anos enquanto alternativa aos restantes serviços de voz.

A qualificação e inerentes implicações na actividade do sector, não obstante se tratarem de matérias complexas e em aberto, parecem configurar três perspectivas diferentes que poderão conduzir a posições de certa forma antagónicas:

- numa abordagem estrita da definição de serviço de telefonia vocal conforme a Directiva 90/388/CEE, a inexistência cumulativa das condições nela expressas, conduz à não classificação do serviço voz sobre a Internet como serviço de telefonia vocal. Por outro lado, não estando a Internet no âmbito do Serviço Universal, o serviço voz na Internet ficaria fora da sua abrangência.
- numa óptica de prestação de serviço ao utilizador que, tendencialmente, deve ser neutral face à tecnologia de suporte, o serviço voz sobre a Internet disponibiliza funcionalidades próximas das do serviço de telefonia vocal, reunindo-as a curto prazo na sua totalidade. Nesse sentido, deveria ser considerado como um serviço de telefonia vocal e como tal, reservado até à sua liberalização.
- o serviço de voz sobre Internet poderá ainda ser considerado um serviço de telefonia com funcionalidades acrescidas - voice plus - e como tal não reservado.

2. Parece no entanto não se ter tido em conta que a evolução tecnológica no sector tornou por vezes obsoletas definições formais contidas em actos regulamentares com quase dez anos de existência, pelo que se procede neste texto a interpretações actualistas algo forçadas, na tentativa de "encaixar" uma nova realidade em normas "velhas". E isto tem consequências negativas.
3. Por exemplo, a fundamentação julgada necessária para que o serviço de voz via Internet possa qualificar-se como "serviço de telefonia vocal" baseia-se ora na ocorrência de factos só subjectivamente verificáveis ou em justificações objectivamente duvidosas, carecendo portanto da necessária clareza interpretativa e não transmitindo a certeza jurídica necessária aos agentes e reguladores do mercado.
4. A nosso ver, a liberalização dos mercados de telecomunicações, a partir de 1 de Janeiro de 1998 ou do ano 2000, não é posta em causa se a interpretação for a que defendemos, e que vai no sentido de se considerar desde já e inequivocamente estes serviços como serviços de voz para efeitos regulamentares.
5. Mas se a Comissão mantiver inalterado o teor deste *Projecto*, tal conduzirá a que, quando se vierem a dar "oficialmente" como verificados os pressupostos de que a Comissão faz depender a aplicação da regulamentação aplicável aos serviços de voz à transmissão via Internet, já todos os fornecedores de acesso esta rede estejam firmemente implantados no mercado sem nunca terem obedecido a qualquer enquadramento regulamentar que os coloque em condições de concorrência equilibrada com outros prestadores de serviços efectivamente comparáveis.
6. E a regulamentação a posteriori da sua actividade poderá então demonstrar-se problemática e encontrar resistências, porventura razoáveis, baseadas na possível violação de expectativas legítimas e alteração unilateral por parte da Comissão Europeia e dos Estados do enquadramento regulamentar do negócio.
7. A nosso ver, com efeito, o texto do projecto baseia-se,
 - em factos subjectivamente verificáveis, quando se fundamenta em motivações de assinantes para a qualificação do serviço em causa, e
 - em justificações objectivamente duvidosas, quando faz a aplicação ao caso de condições previstas na Directiva para o serviço "clássico" de telefonia vocal, tais

como as exigências de que o serviço permita ligar dois pontos terminais da rede comutada («na origem e no destino dos pontos terminais da rede pública comutada») e assegurar o «transporte directo e comutação da voz em tempo real».

8. Na verdade, fazer depender o preenchimento da primeira das condições referidas no segundo item do facto de as comunicações vocais através da Internet se poderem fazer computador a telefone e não somente de computador a computador, é interpretação que nos parece ir para além da letra e do espírito da Directiva.
9. Utilizar um computador e um microfone a ele ligado e fazer a ligação à Rede pública comutada através de um *modem* não parece alterar o conceito de «aparelho terminal» utilizado no ordenamento comunitário e designadamente constante da Directiva 88/301/CEE - «qualquer aparelho ligado directa ou indirectamente ao ponto terminal de uma rede pública de telecomunicações para transmitir, tratar e receber informações.»
10. Por outro lado, quanto à segunda condição, como é que «a evolução dos suportes lógicos disponíveis e da largura de banda» poderão fazer com que o transporte directo da voz através da Internet passe a ser em «tempo real»? Será que se utiliza um conceito científico de «tempo real»? Qual é? E o «tempo real» existe efectivamente? Então o «tempo real» contrapõe-se ao tempo diferido ou é sinónimo de «tempo presente», que por acaso é logo passado? Ou será antes a percepção que os utilizadores fazem do «tempo real» o que deve valer?
11. As comunicações vocais via satélite actualmente prestadas, por só referir estas, também não são instantâneas, logo, parece não poderem ser consideradas cientificamente comunicações em «tempo real», mas diferido, e no entanto são abrangidas pelo conceito de «telefonía vocal» constante da Directiva 90/388/CEE.
12. É verdade que o serviço fixo de telefone foi, até há pouco tempo, prestado com reserva de utilização temporária de circuitos de telecomunicações às pessoas em comunicação, diferentemente da digitalização, compressão da voz e transmissão como qualquer outro dado, como acontece com as comunicações vocais através da Internet.
13. Não nos podemos esquecer é que, presentemente, o serviço de telefonía vocal abrangido pela Directiva interpretanda é já prestado frequentemente através de

meios digitais e utilizando técnicas de compressão e transmissão da voz em tudo semelhantes às utilizadas para comunicações através da Internet.

14. O que interessa, a nosso ver, é qualificar o tipo de serviço que é prestado na perspectiva dos utilizadores e da satisfação das suas necessidades. A regulamentação tem de ser independente da tecnologia que lhe serve de suporte e dos meios através dos quais os prestadores prestam os serviços.

Assim, em conclusão,

- 1ª Não entendemos razoável, pelas razões atrás enunciadas, dever esperar-se que a Comissão verifique o preenchimento dos requisitos enunciados de ordem técnica e relativos a características do mercado, para que os Estados Membros possam aplicar aos fornecedores deste serviço de comunicação vocal o essencial da regulamentação incidindo sobre outros prestadores de serviços de voz;
- 2ª Essa regulamentação deve ser aplicada a priori e não a posteriori por razões de certeza jurídica e transparência das condições do mercado, e não ser discriminatória relativamente a outros fornecedores de serviços de voz, designadamente no que respeita a:
- procedimentos de autorização ou licenciamento;
 - contribuições para o financiamento do serviço universal;
 - respeito de normas de protecção dos consumidores.

-*-

int'l co' inc

ciaran
sysnet
Domain: NRN, Eirmail400, ie
Freeform name: Ciaran Mulloy

To: Christian Hocepiet
dc4

Reply to: ciaran
sysnet
Domain: NRN, Eirmail400, ie

Subject: Response to invitation for Comments on Internet Telephony.

I believe that the setback on Telecoms deregulation by two years resulting in the continued outrageous charges to industry will create an unstoppable shift to the use of internet telephony within and out of Ireland.

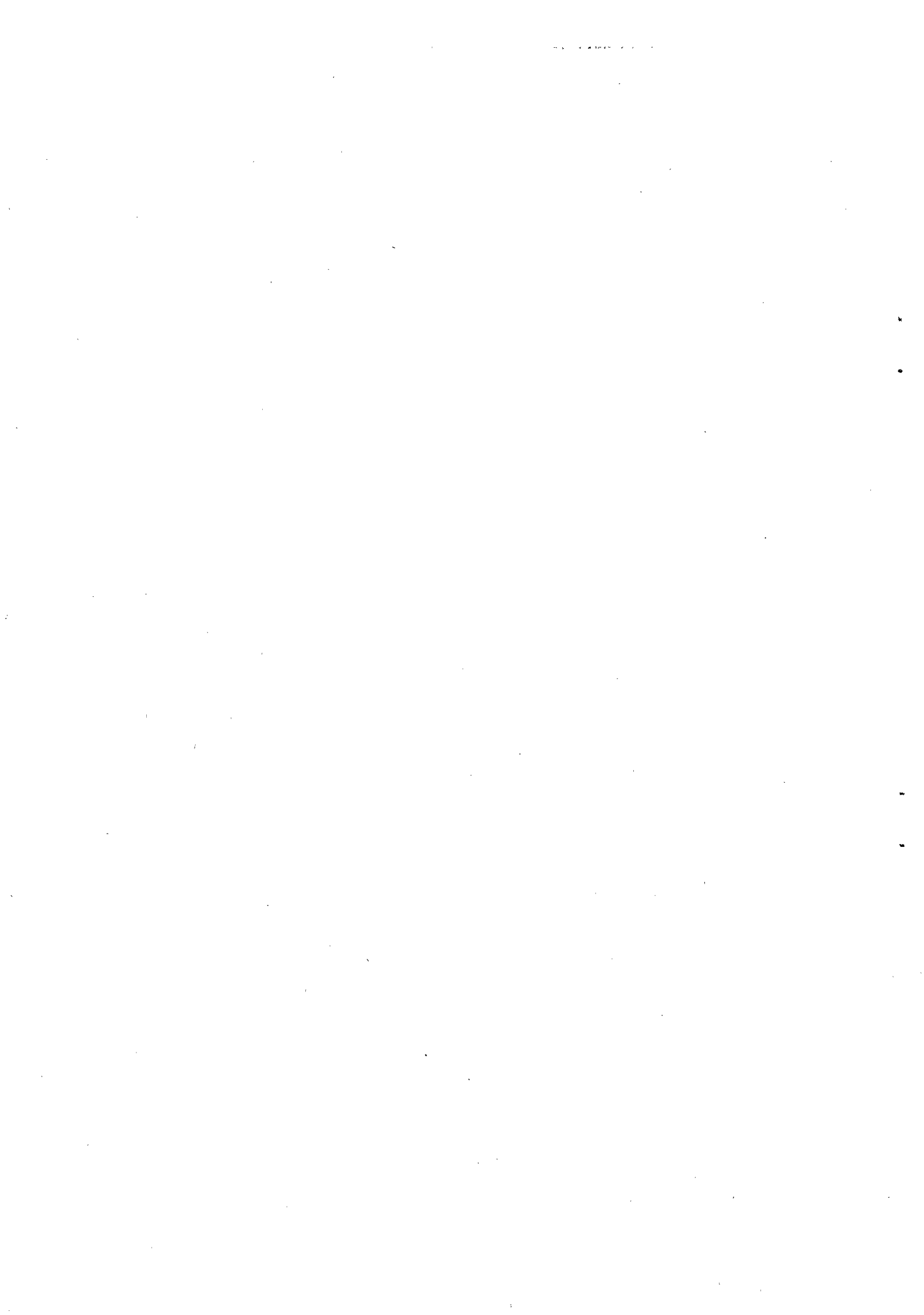
In so many cases Irish companies are attempting to compete directly with American companies whose data links cost on seventieth the price currently charged by a monopoly in Ireland.

The role of regulatory bodies be they national or transnational, such as the EU, should be to create the right environment for wealth creation not protect politically sacred cows of yester-year.

It is as impossible to stop internet telephony as it is to police every bit of data carried by the ISP. Take a positive step, support the growth of internet telephony and beat the americans. If internet telephony was left to the telecom companies to implement they would give it the kiss of death and do the same to it that they did with ISDN.

Ciaran Mulloy,
Business Development Director.
Sysnet Ltd. Dublin, Ireland
--

Ciaran Mulloy, Sales and Marketing Executive, Sysnet Ltd,
Supplier of Leading Edge Computing Solutions in Ireland,
3/4 Churchtown Business Park, Beaumont Avenue, Churchtown, Dublin 14.
Tel: +353 1 298 3000, Fax. +353 1 296 0499, email: ciaran@sysnet.ie



Telefónica

Gran Vía, 28

Francisco de Bergia

Director General

Tel.: (91) 584 07 35

Fax: (91) 522 48 44

28013 Madrid

07.07.97

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CH

DG JFP

Mr Alexander SCHAUB
Comisión Europea
Director General DG IV
Rue de la Loi 200 (C150, 04/116)
B-1049 Bruselas
Bélgica

DG IV/C		
C-1	C-2	C-3

Madrid, 4 July 1997

Subject: Voice on the Internet service

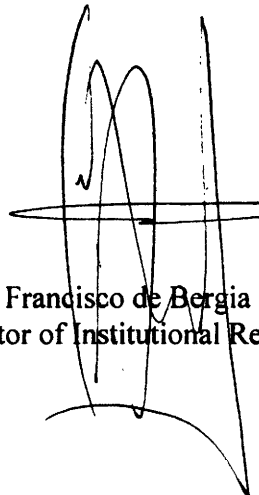
Dear Mr Schaub,

I have the pleasure to send you Telefónica's comments to the draft Commission's position concerning the status of Voice on the Internet service with respect to Directive 90/388/EEC.

Telefónica welcomes this opportunity to express its opinion on such a relevant subject and in a moment when the potential regulation of Voice on the Internet is under discussion in most parts of the world.

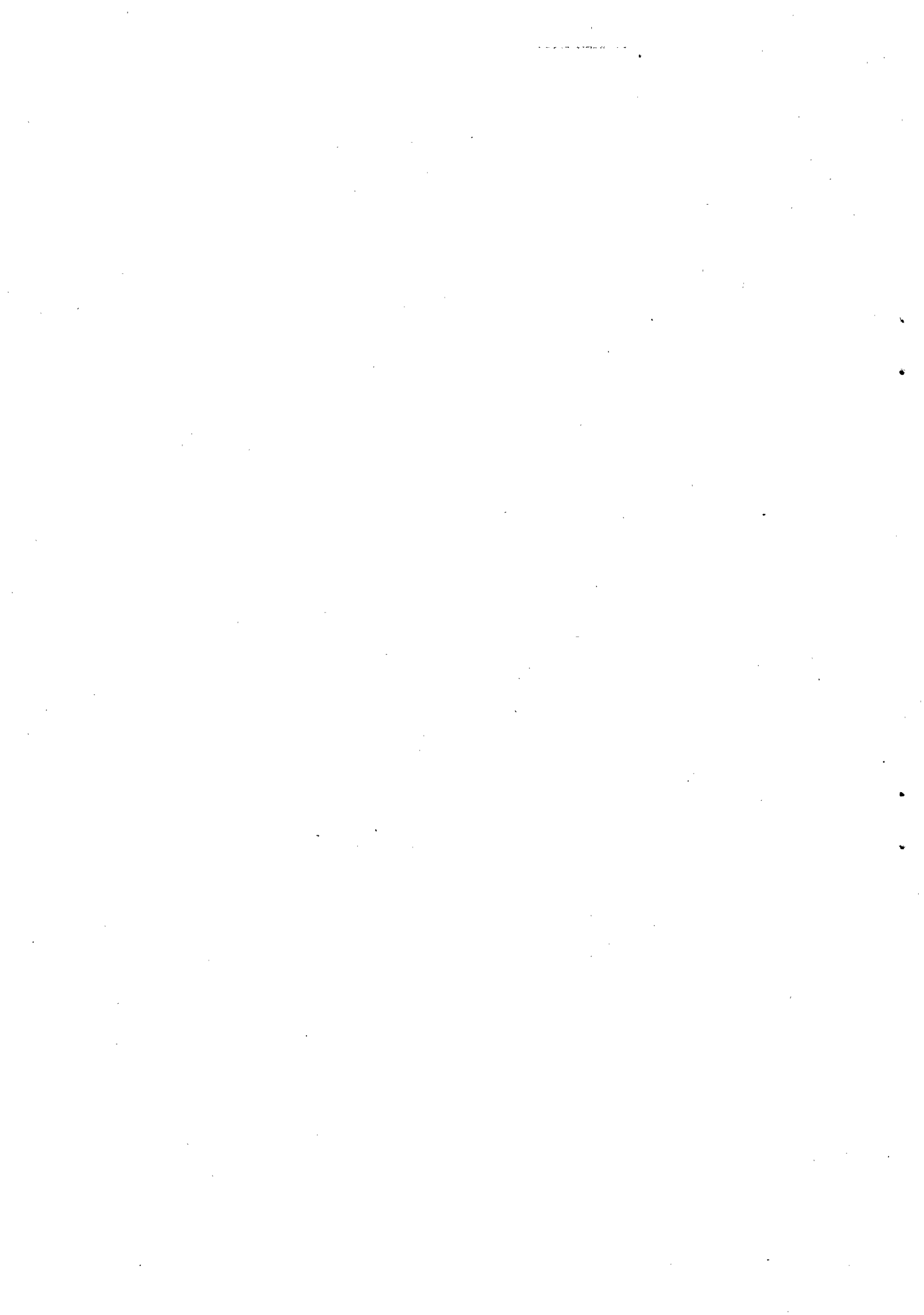
Please do not hesitate to contact with Telefónica for any clarification or additional information you may need with regard to our comments.

Yours sincerely,



Francisco de Bergia
Director of Institutional Relations

Enclosed as above



European Commission
Directorate-General for Competition (DG IV)
Directorate C
Office 3/48
Avenue de Cortenberg/Kortenbergglaan 150
B-1040 Brussels
Belgium

**Telefónica's RESPONSE TO
THE COMMISSION'S POSITION CONCERNING THE STATUS OF VOICE ON THE INTERNET
WITH RESPECT TO DIRECTIVE 90/388/EEC**

The Commission published on 7 May 1997 a draft position on the status of voice on the Internet pursuant to directive 90/388/EEC¹, and invited to submit possible observations on that position.

Telefónica de España S.A. welcomes the opportunity to express its opinion concerning the regulatory position of voice on Internet. It also applauds the Commission for having issued this public consultation in a crucial moment, when the potential of that service and the need to cover it by regulation is under discussion in Europe and other parts of the world².

The Commission's position

Following the same reasoning as in the original communication³ on the status and implementation of Directive 90/388/EEC, the so-called "voice on Internet" has been compared against the "voice telephony" service, which Member States may continue to reserve to certain organisations under special or exclusive rights, until the market is fully liberalised⁴.

The elements in the definition of voice telephony in Directive 90/388/EEC (commercial provision; for the public; between switched fixed network termination points; and direct transport and switching of speech in real time) have been used to highlight the differences and similarities between both services.

Telefónica goes along with a great number of the considerations made by the Commission when assessing each of the four voice telephony elements against the "conception of the voice on the Internet" employed in the notice. Furthermore we share the Commission's conclusion that it would be premature to consider such a service at this stage as matching today the definition of voice telephony.

¹ OJ No C 140, 7.5.1997, p. 8.

² For instance: in the UK, US or Canada.

³ COM(95) 113.

⁴ The Spanish telecoms market will be fully liberalised on 1 December 1998.

In particular we fully agree with the Commission that technological and market developments will catalyse the convergence of the voice on Internet towards forms falling within the definition of voice telephony.

Discrepancies over the future scenario

While we agree with the reasoning employed by the Commission and the subsequent conclusion, we nevertheless deem that more advanced forms of voice on Internet service are already possible today and that the foreseeable future scenario outlined in the notice is closer than the Commission seems to envisage.

The current Internet telephony technology, in addition to the *PC-to-PC* voice telephony service, makes already possible the *PC-to-telephone* Internet telephony with automatic dial-out to telephone users without a modem. Even more advanced, the current Internet technology supports forms of *telephone-to-telephone* service allowing speech communication between users connected to public telephone networks (using the Internet for the long distance and international parts).

Commercial offerings of *PC-to-telephone* and *telephone-to-telephone* already exist in the market (eg. in the USA or Canada) and great investments are being made both on technology and products enhancements and on the forms to provide and manage the voice over the Internet-supported services.

The rapid evolution of the voice over Internet is being driven by several factors. They include the very fast growing Internet market and number of users, the extensive Internet backbones being built which will relieve the capacity problems and allow better quality for real time Internet-supported services, and the inherent low cost of the IP packet mode.

But is perhaps the last of these factors, the very low cost of the long distance and international transport on the Internet, which makes the voice on Internet service so attractive. In particular in those Member States, such as Spain, where the pace towards reducing tariff imbalances is being slowed down by political and social constraints.

Observations to the notice

Therefore, in our opinion, the technology and the market is moving so fast, that the voice on the Internet service outlined in the notice is already outdated and the potential of the service and the future scenario envisaged by the Commission is in fact almost here today.

Moreover, taking into account the proximity of the full liberalisation for most Member States in the EU on 1 January 1998, and eleven months later for Spain, the need for a revision of the situation with respect to the voice on Internet service is not well understood.

Leaving the reconsideration of the status of voice over Internet to a future revision seems inappropriate due to at least two reasons. On one hand, the revision would arrive late for those countries which will liberalise in 1998. On the other hand, it might introduce uncertainty in the interim, as forms of voice on the Internet will be covered by the definition of voice telephony while the official Commission's position would still be that voice on the Internet is a different value added service.

We share with the Commission the view that Internet service providers offering a dial out service to any telephone number (or more advanced forms of voice on Internet provision such as *telephone-to-telephone*), with a sufficient degree of quality, could be considered as 'voice telephony providers' under Community law.

With this situation, Telefónica do not see the need for a revision of the Commission's position once the conditions under which the service can be considered as voice telephony are clearly set out (as basically are already established in the consulted notice). It is responsibility of the National Regulatory Authorities at a Member State level, and on the basis of the Commission's regulatory assessment, who should take the decision whether a particular form of voice over Internet provision is voice telephony or not.

In case a particular form of voice on the Internet in a Member State is considered voice telephony in the future under Community and national legislation then, the national regulation applicable to the provision of that service should be applied. This regulation may require an individual licence or authorisation and the imposition of certain obligations associated to the provision of that service, including the contribution to the financing of the universal service.

Conclusions

Telefónica welcomes the opportunity offered to express its opinion regarding the Commission's position on the status of voice on the Internet and sees this public consultation very important, in a moment when the possibility to regulate the voice on the Internet is also under discussion in other parts of the world.

Telefónica agrees with the Commission on the assessment of the voice on the Internet against the definition of voice telephony in Directive 90/388/EEC and, in particular, with the Commission assumption that technology enhancements and market developments might approach the voice on the Internet to forms matching the definition of voice telephony.

However, given the rapid evolution of voice on the Internet in this extremely fast-moving market, it seems clear that the future scenario envisaged by the Commission in the notice is much closer than expected.

Therefore, **Telefónica do not see appropriate the revision of the Commission's position in the future and advocates for the fixation of the conditions under which a voice on the Internet service can be considered as voice telephony.** Those conditions (to a great extent already set out in the consulted notice) should address the whole potential to provide voice on the Internet, as far as possible in a technology-independent way, and with no foreseen time scenarios.

Such a Commission's position would then be future-proof, eliminating regulatory uncertainties.

Once the conditions under which the service can be considered as voice telephony are clearly set out, National Regulatory Authorities will apply those conditions in the context of the national legislation and regulation.



Stellungnahme der Thyssen Telecom AG zum Entwurf einer Positionsbestimmung der EU Kommission zu „Voice on the Internet under Directive 90/388/EEC“

Die Thyssen Telecom AG begrüßt die Möglichkeit, eine Stellungnahme zum Standpunkt der Kommission über den Status der Sprachübermittlung im Internet in bezug auf die Richtlinie 90/388/EWG abgeben zu können.

Die Thyssen Telecom AG teilt prinzipiell die in dem Entwurf getroffenen Aussagen und möchte an dieser Stelle gerne noch einmal die Gelegenheit nutzen, einige Aspekte aufzugreifen und etwas ausführlicher darzustellen.

Die regulatorischen Vorgaben und die damit verbundenen Rechte und Pflichten für Sprachtelefondienst-Lizenzen und Datenübertragungs- und Mehrwertdienste-Lizenzen unterscheiden sich, insbesondere in Deutschland, wesentlich. Eine Einordnung der Internet-Telefonie als Sprachtelefondienst würde gänzlich andere Anforderungen an einen Internet-Diensteanbieter stellen als bei einer Einordnung als Datenübertragungs- bzw. Mehrwertdiensteanbieter.

Diese Unsicherheit der bestehenden regulatorischen Situation - und wahrscheinlich auch der zukünftigen regulatorischen Entwicklung - sollte zumindest soweit wie möglich durch frühzeitige, eindeutige Regelungen eingeschränkt werden.

Die in dem Standpunkt bereits identifizierten äußerst dynamischen technischen Entwicklungen des Internet und der Internet-Telefonie erfordern ein hohes Maß an regulatorischer Flexibilität und Weitsicht um einerseits die notwendigen transparenten und abschätzbaren Rahmenbedingungen zu schaffen, andererseits aber den jeweiligen technischen Entwicklungen und damit der Einführung neuer Dienstphilosophien den notwendigen gestalterischen Freiraum zu bieten.

Wir sehen in dem sich sehr dynamisch entwickelnden Internet Markt eine Chance für innovative und dynamische Diensteanbieter, gegenüber der in den nächsten Jahren erwartungsgemäß noch weiterhin bestehenden marktbeherrschenden Stellung der ehemaligen Telekommunikations Monopol-Unternehmen (als Anbieter von Sprachtelefondienst und Teilnehmeranschlüssen) durch innovative Techniken im Markt- und Kundeninteresse Alternativen zum Sprachtelefondienst durch neue Internet-Dienste zu schaffen.

Dies sollte durch einheitliche, europaweit gültige regulatorische Rahmenbedingungen gestützt und gefördert werden, um in den Mitgliedsstaaten der EU den Wettbewerb zu stärken. Dabei sollte aus unserer Sicht aber weiterhin das Prinzip der minimalen regulatorischen Eingriffe berücksichtigt werden. Vor allen Dingen möchten wir noch einmal herausstellen, daß wir der Auffassung sind, daß Internet-Telefonie Anbieter, unabhängig von der zukünftigen Entwicklung, keinen Sprachtelefondienstlizenzaufgaben oder vergleichbaren regulatorischen Pflichten unterworfen werden sollten.

e-mail 7



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09.07.97 -A/18107

- 9 -07- 1997

Your reference
97/ c 140/06
Subject
Internet - Voice

Your letter of

Our reference
970054
Enclosure(s)
1

Telephone
32 2 6631460
Date
7 July 1997

Dear Sirs,

Please find enclosed our comments on your notice concerning the status of voice on the Internet pursuant to Directive 90/388/EEC.

Yours sincerely,

Bert de Rooter
Vice-president Strategy, Government and Intercompany Relations

Comments on the draft Commission notice concerning the status of voice on the Internet pursuant to Directive 90/388/EEC.¹

Unisource welcomes this well timed notice. It will help to take away uncertainty which surrounds the question of applicability of existing regulation on the Internet and prevent member states taking unharmonised action.

Unisource agrees that, at present, Internet telephony cannot be considered voice telephony as defined in Directive 90/388/EEC since this phenomenon does not meet this Directive's definition of voice services.

This is important because Internet telephony services, especially during the initial phases of development and testing in a commercial environment, should not be hindered by existing or new regulation.

We believe that rapid technological changes will lead to the offering of Internet voice services which could be considered voice services as defined in this Directive and which for the customer appear identical to traditional telephony services. This would warrant a new assessment.

The Commission should take a role in preventing non-EU countries from imposing regulation on Internet telephony.

¹ O.J. C 140/8, 7 May 1997.

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50 North Third Street
Fairfield, Iowa 52556 USA
Tel: 1-515-472-1550
Fax: 1-515-472-2642
Web site: www.usagl.com

Fax Cover Sheet

TO: Mr. Herbert Ungerer
FAX: 011 32 2 296 9819
FROM: Mark Paul Petrick
DATE: July 6, 1997
TRANSMIT: (9) PAGE, INCLUDING COVER SHEET

DG IV/C		
INCOMING DATE		
- 8 -07- 1997		
C-1	C-2	C-3

Dear Mr. Ungerer,

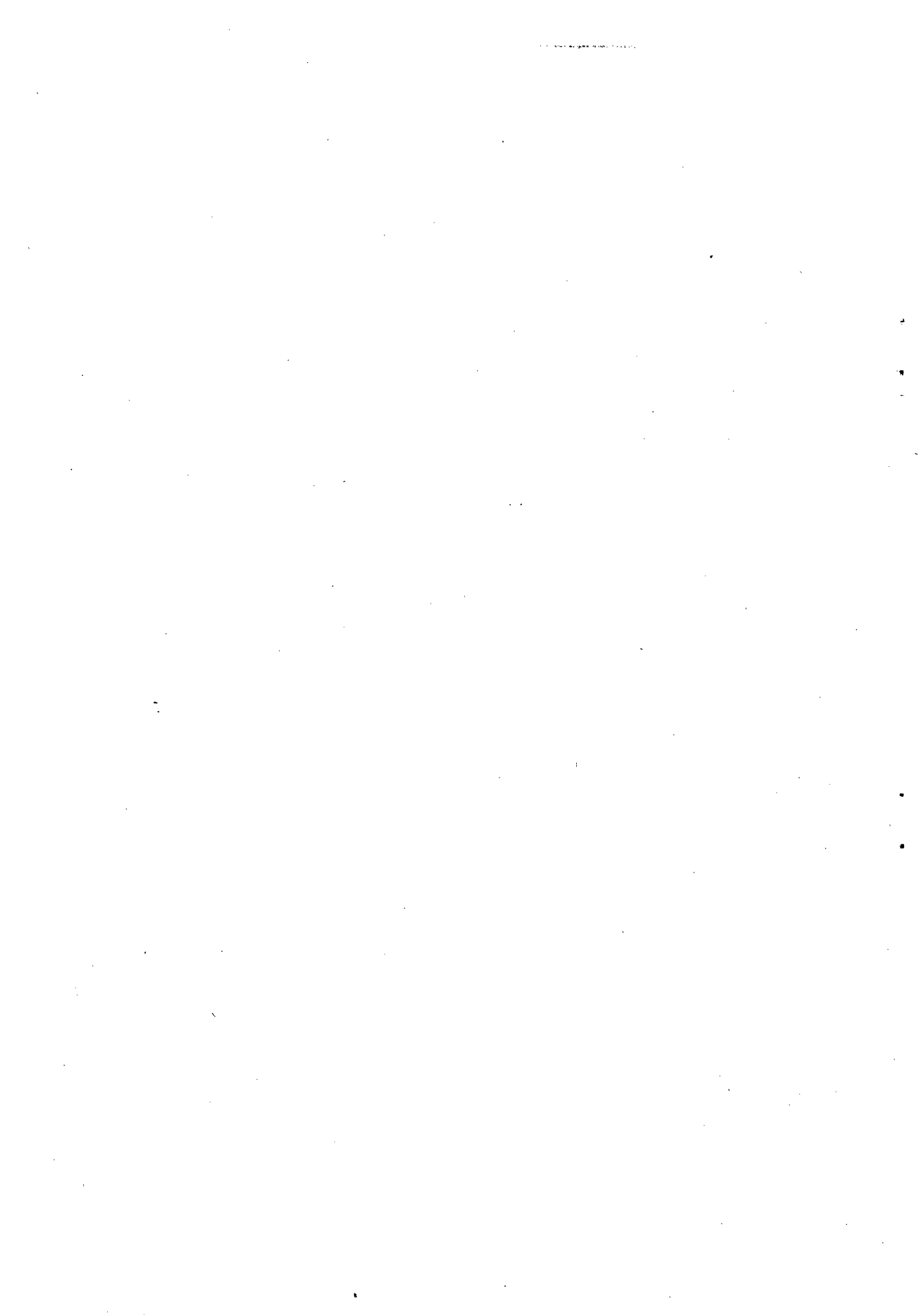
Mr. C. Holland Taylor, CEO of USA Global Link, asked me to forward a copy of our *Comment to the European Commission's Notice on the Status of Voice on the Internet Under Directive 90/388/EEC* to you. I believe that Mr. Taylor spoke with you about this document when you met in Singapore last month. I have also forwarded a copy to Mr. Hoceped, which I assume will stand as our submitted comment.

Sincerely,

Mark Paul Petrick,
Corporate Relations Liaison
Phone: +1-515-472-1550, ext. 6403
Fax: +1-515-472-2642
Email: mpetrick@usagl.com

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**A Comment on the European Commission's
*Notice Concerning the Status of Voice on the Internet Under Directive 90/388/EEC***

Respectfully Submitted by USA Global Link, Inc.

USA Global Link has examined with great interest the *Notice by the Commission Concerning the Status of Voice on the Internet Under Directive 90/388/EEC (the Notice)*. It is clear that the European Commission is working vigorously to usher in a new paradigm of telecommunications practice energized by competition and unrestricted by burdensome regulation. We applaud the European Commission's efforts to establish a rich information infrastructure for a united Europe. This will require thinking anew many issues of telecommunications provision in the light of rapidly evolving technologies and their convergence. Certainly, past definitions of service and models of regulatory practice are proving to be inadequate for the emerging telecommunications landscape of the 21st century.

The Notice by the Commission attempts to clarify whether several emerging models of Internet telephony can be classified as voice telephony under the definition put forth in Article I of Directive 90/388/EEC. While the definition put forth, and the conclusions that the Notice offers may be reasonable taken in isolation, *it is the entire concept of classifying Internet telephony as voice telephony that USA Global Link must call into question as being irrelevant, and ultimately detrimental to Europe's forward progress in the dawning era of global telecommunications.*

Voice Telephony and Convergence

Voice telephony—as a classification distinct from data transmission or television broadcast—is a remnant of the analog era of communications. The separate regulatory classification of voice telephony is also a vestige of the era of highly regulated telecommunications, in which monopolistic operators, untroubled by competition, were able to price voice services without any meaningful relationship to the underlying cost of providing such services to their end users.

Today, we are moving decisively into the digital era: a highly deregulated and competitive period in which all modes of communication—data, fax, voice, broadband video, and multi-media—are converging upon digital encoding, transmitting, and decoding solutions. The convergence of communications technologies makes distinctions between voice and data increasingly arbitrary and irrelevant. We believe that it is counterproductive to apply old definitions of voice telephony to new forms of transmission, such as the Internet. As stated by Kevin Werbach, Counsel for New Technology Policy at the FCC, “*government policy approaches towards the Internet should therefore start from two basic principles: avoid unnecessary regulation, and question the applicability of traditional rules.*”¹

Clearly the technological trend is towards unification of communications infrastructures via digitalization, and away from the old paradigm of distinct carrier platforms. Definitions of voice telephony were originally created, and continue to exist today, primarily to protect incumbent operators from the encroachments of alternative service providers, and to stifle competition in the one area of telecommunications which has historically been most profitable to the incumbent operator. The development of emerging digital service paradigms should not, however, be stifled or restricted by the now-outmoded distinctions of telecommunications’ *ancien regime*.

To reiterate: the issue of technological convergence has a deep significance that bears directly upon the issues of this comment. To paraphrase Kevin Werbach, the three types of networks—voice, video, and data—have historically relied on different physical and economic infrastructures. Convergence has been understood superficially to mean that information providers could cross over into different kinds of content, or to deploy different delivery systems. The profound meaning of convergence is that digitalization, the technological basis of convergence, reduces the former differences of content to a common stream of binary bits and bytes, which can be transmitted through common delivery platforms. “In practical terms, this means not only that specific boundaries—between a telephone network and a cable system, for example—are blurred, but also that the very exercise of drawing any such boundaries must be fundamentally reconsidered or abandoned.—Kevin Werbach²”

Does the European Commission really want to uphold and enforce an artificial barrier to the development of new communications technologies?

¹ Werbach, Kevin, *Digital Tornado: The Internet and Telecommunications Policy*, March 1997, FCC Office of Plans

The Threat of Internet Telephony to the *Ancien Regime*

Forward-thinking companies are now in the process of establishing international long-distance "telephone-to-telephone via Internet" services. This Internet telephony model has not been explored in the Notice, but is implied as a possible future development, which might fall under the utilized definition of voice telephony, and hence to European Community law and regulation.

Internet telephony clearly falls under a service classification that is blurred by technological convergence. The consumer initiates the service via the traditional telephone system (most likely linked to the PSTN) which connects to an Internet gateway. Here, the transmission is encoded for IP packet transmission. At this point the transmission can no longer be identified as voice, but is part of a common global data stream. Near its destination the transmission is reconverted to a traditional voice format, passed back onto a local connection, and received via the recipient's telephone. The differentiation of the message as voice, data, or video is only pertinent to the sender and receiver; in-between it is only bits. The means of transmission—in this case IP—is irrelevant with respect to type of message. In fact, it is an anomalous vestige of telecommunication's old order that any part of this messaging system has to pass over an analog circuit.

The technological convergence underlying the new paradigm in telecommunications is evolving rapidly, and is clearly irreversible. It promises substantial gains in communications power and efficiency to end users and society as a whole in those nations which allow it to flourish. It will fundamentally change the way that information is created, transmitted, and consumed, and dramatically expand the scope of those who will participate in the global exchange of information. This new paradigm, in which a growing array of valuable information services is converging upon unified transmission protocols, is integral to any scenario of healthy regional and/or global economic development.

On the other hand, these developments may be viewed as quite threatening by the existing purveyors of communications services, particularly by incumbent operators that are reluctant to adapt to change. *USA Today* recently reported on a study which estimated that AT&T alone stands to lose US\$350 million a year worth of international calls to Internet telephony by 2001³. In an internal memorandum published by Germany's *Der Spiegel* magazine, Deutsche Telecom executives

and Policy, Washington, DC.

² *ibid.*

³ *USA Today*, June 26, 1997.

conjecture that Internet telephony "may soon develop into a strategic nuclear weapon in the global telecommunications marketplace."⁴ Given these circumstances, it is to be expected that incumbent operators will seek to persuade national regulators to restrict the expansion of Internet telephony services, either directly or indirectly, despite the enormous societal benefits conferred by the proliferation of low-cost telephony services.

A New Regulatory Mission

Traditional service providers have enjoyed the luxury of a highly regulated monopolistic environment for the majority of their institutional lives. In some cases, the technological "writing on the wall" has not shaken them from a complacency towards innovation bred deep in their bureaucratic bones. They seek to maintain regulatory structures that perpetuate their hegemony, hobble their rivals, and fuel the distorted flow of capital and resources to sustain their bloated bureaucracies.

USA Global Link fears that the current exercise by the European Commission in the Notice on Voice over the Internet may be exploited by recalcitrant national regulators and incumbent operators to impede the Commission's overarching objective of creating a free and open telecommunications marketplace. The European Commission today is in a unique position to create an environment in which innovative communications strategies may flourish, and thus dramatically improve the European Union's economic and technological standing in a highly competitive global information economy. In order to achieve this objective, however, given today's rapidly converging technological environment, the Commission must approach service issues from a *new* and comprehensive perspective. Fundamental to this new perspective is the recognition that an unrestricted and competitive telecommunications market will be vital to secure European economic and technological leadership in the next century—which, in turn, is essential for the creation of new jobs and the generation of higher standards of living for all Europeans.

Is there any reason why the European Commission should seek to install speed bumps on the Information Autobahn? And will anyone benefit from such speed bumps, other than the traditional telcos with their lumbering fleet of antiquated vehicles, who will certainly applaud any regulatory decision which slows down the new competition?

A European Union unhindered by excessive regulation will benefit from the tremendous commercial activity, and creativity, that competition has historically spurred in the marketplace.

This issue demands special attention now that the United States is taking bold steps to free the Internet of regulatory interference and unleash its full commercial potential. President Clinton is clearing the way for the Internet to become a tax-free commercial zone, and is encouraging government officials to "recognize the unique qualities of the Internet including its decentralized nature and its tradition of bottom-up governance. Existing laws and regulations that may hinder electronic commerce should be revised or eliminated consistent with the unique nature of the Internet."⁵

The call for deregulation is a clarion call being heard around the world now, as it becomes clear that competition is the key to telecom progress. Alex Arena, outgoing director general of the Hong Kong Office of the Telecommunications Authority, has warned against establishing cumbersome regulatory structures in the Asia-Pacific region, the world's fastest developing economic market. He states, "There is a danger of too much regulation. It is time for government to get out of the way and keep out of the way."⁶

In fact, technology is advancing at such a rate that it is extremely difficult for regulators to keep up with these developments on a case by case basis. Applying old rules to new situations threatens to reinforce the *ancien regime*, and inhibit the innovation required to spur economic growth in the years ahead. Recognizing the significance of these developments, the European Commission may choose to continue its historic efforts to recast the regulator as the guardian of telecommunications' general interoperability, convergence, and competition. The present Notice offers a perfect opportunity for the Commission to do precisely that.

Universal Service

The Notice makes reference to future technological developments, the classification of those developments as voice telephony, and their potential exposure to universal service obligations and licensing/regulation. While the European Commission has tentatively established an enlightened position regarding universal service obligations—affirming the ability of a competitive marketplace to provide essential services to a wide audience at affordable prices—the trend among European states is far less clear. In some cases, such as France, recently instituted universal service directives will force new operators interconnecting with the PTT into an inflated universal service tariffing scheme. The political forces at work behind such schemes are clearly antithetical to the development of

⁵ President Bill Clinton, Memorandum for the Heads of Executive Departments and Agencies, July 1, 1997.

unfettered competition in the European telecoms market, and require the firm hand of the European Commission itself to keep the process of market liberalization on track.

Internet Service Providers (ISPs) offer customers access to a worldwide network of information stores, applications, products and services, all founded upon a common digital protocol. Through one's personal connection to the Internet—generally a PSTN connection—one can receive streaming video images, real-time Internet radio, news photos, real-time stock quotes, and all manner of commercially, educationally, or recreationally valuable data services. Internet telephony offered through an ISP would be only one of many enhanced data services falling within the Internet provider's authorized purview. Again, the convergence of voice, data, video and multi-media onto IP warrants redefinition of each of those formerly distinct systems in light of their digital unification.

This convergence—as well as learning to think about developing communications systems from this unifying perspective—is critical to navigating the future of advanced information infrastructures. The attempt to define Internet telephony as voice telephony, for the purpose of dragging it under the umbrella of universal service schemes, denies the unique and important technological basis of IP services. This impedes progress towards a regulatory and economic environment in which greater unification and synergy of information services can develop.

Creating a Regulation-Free Internet Zone

In the past decade the European Commission has taken numerous bold steps in the fields of competition and telecommunications to secure a vital and progressive future for the European Union. In 1990 the Commission developed Directive 90/388/EEC with regards to existing service conditions. In the light of current technological advances, and their implications for future developments, however, Directive 90/388/EEC may have limited application. This may prove to be a momentous opportunity for the European Commission: an opportunity to take a giant stride into the future by remodeling telecommunications policy to encourage the blossoming of innumerable advanced communications possibilities.

We encourage the Commission to set the European Union on a course of world leadership in communications policy by establishing Europe as the world's first regulation-free Internet zone. As a bastion of democracy and wide-spread civil liberties, it is fitting that a unified Europe should take the lead in establishing the framework for an unfettered communications marketplace. The new

⁶ *Asia Telecom 97 Daily*, June 13, 1997.

communications paradigm, exemplified by the fledgling Internet, will long be remembered as the technological foundation of civilization's advance into the 21st century. Today, it is within the Commission's power to set the necessary processes into motion. History will remember those who chose to unleash the Internet's enormous potential to revolutionize the previously elitist and restricted field of telecommunications from dominance by monopoly providers.

A Landmark Decision

Internet telephony is a watershed issue. It calls into question accepted definitions of fundamental services, such as voice telephony. Clearly, there are powerful forces whose short-term interests would be better served by limiting our scope of discussion to the language and concepts of the past. Yet technological convergence of diverse fields onto a common digital platform is fundamentally changing the way we create, transmit, and consume information, and offers the potential to catapult European society to the forefront of the telecommunications industry. For this reason, there are enormous implications to the seemingly isolated decisions that must be made on issues such as the definition of Internet telephony. These decisions will either help to ensure a dynamic and prosperous future for Europe, or inhibit the development of new technologies and competition, thus causing Europe to trail the relentless technological advance of Asia and North America.

Ubiquitous, inexpensive and features-rich communications services are the universal lubricant for the emerging global information society—which is precipitating unprecedented economic growth worldwide.

With this in mind, we encourage the European Commission to redraft the *Notice by the Commission concerning the status of voice on the Internet under Directive 90/388/EEC* to unambiguously state that Directive 90/388/EEC is not applicable to new Internet services, including "telephone-to-telephone via the Internet" service. We also encourage the European Commission to draft a new Directive that will establish the European Union as a regulation-free Internet zone.

This comment has been prepared by the Office of the Chairman
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HELLENIC REPUBLIC
MINISTRY OF TRANSPORT AND COMMUNICATIONS
GENERAL SECRETARY OF POSTS AND TELECOMMUNICATIONS
49 SYNGROU AVENUE
GR - 117 80 ATHENS
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Athens, 2 July 97
Αρ.Πρ 67316

To
Euroean Commission
Directorate-General for Competition (DG IV),
Directorate
Office 3/48,
Avenue de Cortenberg/Kortenberglaan 150,
B-1040 Brussels
Fax: + 322-2969819

Subject: Commission notice regarding the status of voice on the Internet pursuant to Directive 90/388/EEC (Off.J.C140/8/7-5-95).

Dear Sirs,

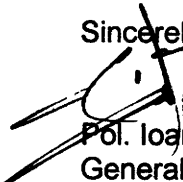
Concerning the Commission's notice on the status of voice on the Internet our opinion is that it comprises a positive step towards the clarification of the status of voice (telephony) on the Internet. However, we feel that more emphasis should be given to the clarification of the "provision" of voice telephony, and especially the commercial availability of these services to the public, rather than on the technical aspects of transmitting voice via the Internet.

There should be a clear distinction between voice telephony provision and the transmission of voice via the Internet. Recent technological developments make possible the provision of voice telephony to users with ordinary telephone equipment by service providers with specific equipment (telephony servers) accessible via the PSTN, that convert analog voice to data packets that are transmitted via the Internet or data lines. In this way service providers offer voice telephony services and act as voice telephony providers. Therefore the commercial provision of voice telephony by transmitting voice via the Internet or data lines should be taken under account and further clarification is needed.

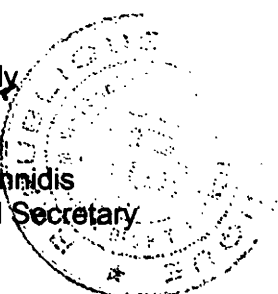
Futher, most of these service providers are based outside Europe they escape the imposition of V.A.T resulting thus in significant losses for the European public revenue system and unfair competition with respect to the European telecommunication service providers.

Our opinion is that the Commission's notice is a positive step, but further clarification is needed, regarding the provision of voice telephony via the Internet, setting a proper regulatory status for providers of voice telephony so that they are subject to the ONP requirements, licensing and general authorization.

Sincerely,



Pol. Ioannidis
General Secretary



C1

A/687

Ministerio de Fomento

Dirección General de Telecomunicaciones



Subdirección General Coordinación, Reglamentación y Asuntos Generales

En caso de recepción defectuosa,
llamar al teléfono (91) 346 15 53

If there are problems with transmission, please
contact +(341) 346 15 53

1.) No. páginas, incluyendo ésta / Number of pages.	1+	2.) Fecha / Date 7-7-1997	
3.1) De / From: ALBERTO MARTÍN GARCÍA JEFE DEL AREA DE RR. INTERNACIONALES -		3.2) N° FAX/ FAX NO. 341-346-15-20	
4.1) A / To: COMISION EUROPEA DIRECCIÓN GENERAL DE LA COMPETENCIA DG IV		4.2) N° FAX/ FAX NO. 32 2 296 98 19	

ASUNTO : COMUNICACIÓN DE LA COMISIÓN RELATIVA A LA NATURALEZA DE LOS SERVICIOS DE VOZ EN INTERNET CON ARREGLO A LA DIRECTIVA 90/388/CEE

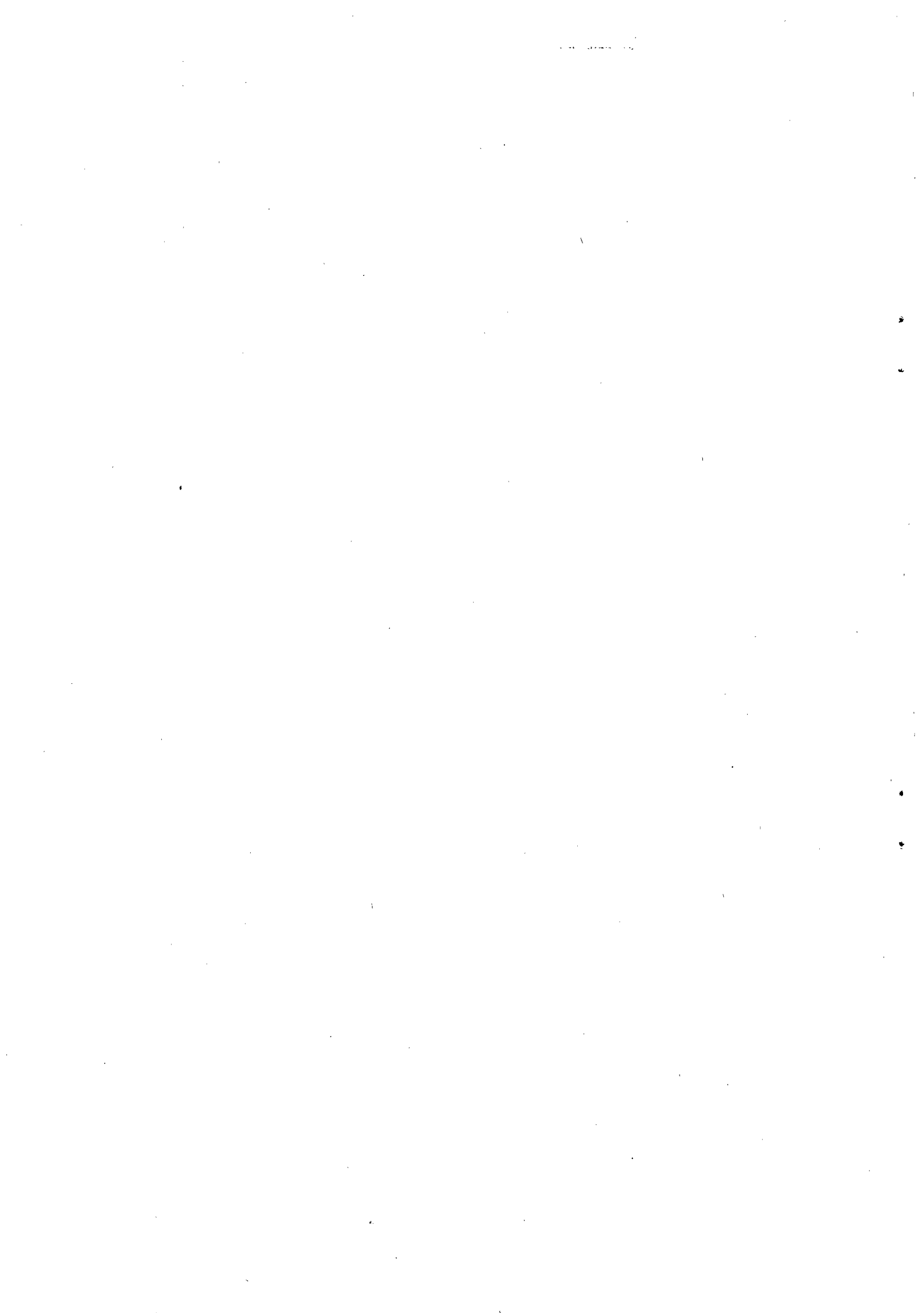
Adjunto nos complace remitirle los comentarios de la Dirección General de Telecomunicaciones sobre el documento relativo a los servicios de voz en Internet. Asimismo, le enviamos dichas observaciones por correo.

Atentamente,

Alberto Martín García

DG IV/C
INTERNET MAIL
8 -07- 1997
C-1

08.07.97
-A/18024





Ministerio de Fomento
Secretaría General de Comunicaciones

Dirección General de Telecomunicaciones

COMENTARIOS A LA COMUNICACIÓN DE LA COMISIÓN

Reconociendo la necesidad y oportunidad de reflexionar sobre la situación, desde el punto de vista regulatorio, de los servicios de voz sobre Internet, y su futura consideración con relación a los servicios de telefonía básica convencional, exponemos a continuación una serie de reflexiones sobre el análisis que se realiza en la Comunicación que, a nuestro juicio, requeriría una reconsideración por parte de la Comisión.

1.- COSTE DE LLAMADA LOCAL DE LAS COMUNICACIONES A TRAVÉS DE INTERNET

En el texto introductorio se presenta como justificación del creciente uso de Internet para servicios de voz la ventaja económica que supone frente a la telefonía convencional, puesto que en el caso de Internet son aplicadas "tarifas de llamada local".

Sobre el particular hay que señalar que la afirmación, a nuestro entender, no es del todo exacta, ya que lo que normalmente se proporciona a "tarifas de llamada local" es el acceso a los proveedores de Internet. A este coste habría que añadir la cuota de abono y/o utilización que dicho proveedor cargue a sus usuarios que, si bien responde a esquemas de tarificación distintos de los tradicionalmente empleados en telefonía (siendo frecuente la aplicación de tarifas planas), que pueden ser ventajosos sobre las tarifas telefónicas para llamadas de larga distancia, pueden llegar a ser apreciables (en España oscilan entre las 10.000 y las 20.000 pts anuales).

Adicionalmente a esto, hay que considerar que la conexión al proveedor de acceso a Internet únicamente se realiza con tarifa de llamada local cuando éste dispone de un punto de presencia en la misma zona de tarificación en la que se ubica el usuario generador de la llamada, por lo que la afirmación recogida en la Comunicación, a la que nos estamos refiriendo, tampoco sería aplicable en todos los casos, independientemente o no de que se conozcan las tarifas que establecía el proveedor de acceso a Internet.

La facturación que éstos aplican a sus usuarios, aparte de la fracción dedicada al lógico y legítimo beneficio comercial, se destina a cubrir los costes de las líneas alquiladas, conexiones "semipermanentes" y conexiones bajo demanda de las redes públicas en las que se basa la transmisión de larga distancia de Internet, además de a sufragar los costes de interconexión que les son repercutidos por otros operadores de Internet con los que tengan relación directa. Por otra parte, en otros casos, deben cofinanciarse "puntos neutros" compartidos entre varios proveedores cuando éste es el procedimiento empleado para la interconexión.



Debe resaltarse el hecho de que la infraestructura de transmisión de Internet es la misma que se emplea por parte de las redes públicas de telecomunicaciones, por lo que, lógicamente, su coste nunca puede ser inferior al aplicado a los operadores de telefonía. Por tanto, la ventaja económica de las comunicaciones vocales en Internet sólo podría derivarse del mejor aprovechamiento que se haga de la capacidad de estas líneas.

Aunque es cierto que, como todo procedimiento de conmutación de paquetes, el protocolo IP es capaz de un buen aprovechamiento de los circuitos gracias a la "ganancia estadística", habría que considerar, también, que en las redes telefónicas se pueden aplicar técnicas similares para optimizar el uso de circuitos (como son la compresión de voz en las comunicaciones telefónicas a través de RDSI o el uso de equipos multiplicadores de circuitos basados en "paquetización" de voz en redes telefónicas analógicas), lo que reduciría considerablemente el margen de los proveedores de Internet para obtener costes de transmisión comparativamente inferiores. Por tanto, la ventaja de un coste inferior no sólo hay que buscarla en la mejor utilización los medios de transmisión, sino, además, en la existencia, todavía, de las subvenciones cruzadas entre las llamadas locales y las de larga distancia (interprovinciales e internacionales).

Con la aparición de los servicios de voz en Internet estas subvenciones cruzadas tienen el doble efecto de permitir el acceso al proveedor de Internet a un coste inferior al real y de ofrecer las llamadas de larga distancia a un coste superior al real, con lo que se aumenta la competitividad de las comunicaciones de voz por Internet si éstas se ajustan a los costes reales en los tramos de larga distancia.

De todo ello se desprende que las comunicaciones vocales sobre Internet son tanto más atractivas cuanto mayor sea el desequilibrio tarifario entre las llamadas telefónicas locales y las de larga distancia en el país origen de la llamada. Este efecto es precisamente el mismo que provocó el auge de las comunicaciones telefónicas por intermediario ("Call-Back") que tan densos debates están motivando en el seno de la Unión Internacional de Telecomunicaciones en las que Estados, Administraciones de telecomunicaciones y proveedores de servicios han manifestado posiciones de difícil conciliación.

Por otra parte, la calidad de las comunicaciones vocales a través de Internet es generalmente inferior a la que se obtiene de la red telefónica pública, por lo que si bien la ventaja económica de establecer comunicaciones vocales a través de Internet puede ser patente para cualquier llamada que no sea local, la diferencia de calidad puede no hacer atractiva esta opción para el usuario. Cuando la diferencia económica sea muy significativa, situación ésta que se produce normalmente cuando se trata de llamadas internacionales, el factor económico tendría un valor decisivo en la elección, por parte del usuario, de estos servicios.

Esta circunstancia hace especialmente importante que las disposiciones regulatorias que se establezcan en relación a los servicios de voz en Internet deban ser elaboradas con el máximo cuidado, tomando en consideración los posibles escenarios de su prestación y sus repercusiones, ya que afectarán, principalmente, a las relaciones entre los operadores de telefonía internacional que, normalmente, son los depositarios



del mandato de sus respectivas autoridades nacionales de reglamentación de prestación del servicio universal de telecomunicaciones.

2.- SUPUESTOS DE PRESTACIÓN DE SERVICIO DE TRANSPORTE DE VOZ POR PARTE DE LOS PROVEEDORES DE INTERNET

En la Comunicación se reflexiona sobre la adecuación de las características de los servicios de voz en Internet a los diferentes aspectos de la definición de telefonía vocal (tal como figura en la Directiva 90/388) afirmándose que: "en el caso de Internet, la prestación comercial del servicio de transporte de voz no es, por el momento, el objetivo de los proveedores de acceso"; para argumentar que, en general, no puede considerarse que se esté "prestando comercialmente el servicio de transporte de voz".

Sobre esta primera afirmación resulta apropiado hacer matizaciones en tres sentidos: las diferentes posibilidades de prestación de servicios de voz, las motivaciones de los proveedores de acceso en la prestación de dichos servicios y el papel de proveedores de Internet distintos de los de acceso.

Respecto al uso de Internet para servicios de voz, sería conveniente indicar que éste puede hacerse de acuerdo con múltiples posibilidades desde el punto de vista de los proveedores. Éstas, pueden ir desde el mero transporte de los paquetes de voz, pasando por la provisión de facilidades para acceso a puntos de terminación de la Red Telefónica Pública Conmutada (RTPC), servicios "dial-out", hasta la inclusión de funciones específicas para el tratamiento de voz, con las que se podría llegar a un total interfuncionamiento con cualquier terminal convencional conectado a la RTPC.

En el primero de los supuestos, cuando sólo se ofrece el transporte de los paquetes de voz, el proveedor dará igual trato a toda comunicación y a todo paquete de datos que curse, sin distinguir cuales son empleados para la transmisión de voz ni cuales contienen otro tipo de datos. En consecuencia, nunca se podrá considerar que el servicio ofrecido es de transporte de voz puesto que su red no incorpora ninguna capacidad específica para tal fin. Pese a todo, el transporte de voz muy bien puede ser uno de sus objetivos para operar comercialmente (por ser un mercado creciente) e incluso puede llegar a estimularlo entre sus usuarios sin incluir elementos específicos en la red (por ejemplo, mediante la subvención o cualquier otro medio de promoción de programas informáticos que proporcionen las capacidades necesarias).

Si el proveedor incorpora capacidades para generar llamadas hacia puntos de terminación de la RTPC, servicios "dial-out", es claro que aumenta el nivel de interacción con las redes públicas y las posibilidades de comunicaciones entre sus usuarios en relación al supuesto de que sólo permita llamadas entrantes desde esta red, servicios "dial-in". Sin embargo, desde el punto de vista del prestador del servicio, el contenido de los paquetes de voz que el proveedor transmite le es igualmente "opaco" respecto a cualquier otro paquete de voz que pudiera transmitir en un escenario en el que no ofreciera ninguna interacción con la RTPC. En la práctica, se da igual tratamiento a todos ya que las facilidades de "dial-in"



y "dial-out" pueden emplearse tanto para comunicaciones vocales como para cualquier otro uso del servicio de transporte de datos (transferencia de ficheros, comercio electrónico o entretenimiento multimedios, etc.).

Por todo ello, no parece del todo justificado establecer el tipo de consideración que se dé los servicios basados en Internet en función de la "motivación" de los usuarios de los mismos, tal como se hace en la Comunicación al indicarse que cuando "la utilización de la red para servicios de voz se convierta en la motivación decisiva para los usuarios de Internet" existiría la posibilidad de considerar la oferta de determinados proveedores como de "explotación comercial del servicio de transporte de voz". Más importancia que a esta "motivación" habría que darle, a nuestro entender, a las propias características del servicio ofertado y a sus capacidades de interfuncionamiento con otros servicios de telecomunicaciones.

Únicamente, en nuestra opinión, cuando la oferta de servicios ofrezca capacidades específicas para el transporte y/o procesado de datos que contengan voz podría considerarse que el servicio ofrecido es el de transporte de voz (o, más bien, que parte de la oferta consiste en el transporte de voz). Bajo esta consideración no habría de tenerse en cuenta ni la motivación de los usuarios para acceder a estas capacidades (aunque no tengan éxito comercial forman parte de la oferta), ni el hecho de que el proveedor ofrezca capacidades de "dial-in" y/o "dial-out", ya que su presencia o ausencia únicamente significarían que el servicio de transporte de voz tiene o no interfuncionamiento con la red telefónica pública conmutada.

El último de los aspectos señalados al inicio de este comentario es el papel que pueden jugar proveedores de Internet distintos de los que proporcionan el acceso a la red. Si bien son estos últimos los que forzosamente han de proporcionar las capacidades de "dial-in" y "dial-out" (sin las cuales no puede cumplirse la condición de que la comunicación se establezca "desde y con destino a las terminales de la red pública conmutada") no es menos cierto que puede haber proveedores intermedios que ofrezcan capacidades específicas para el transporte de voz a través de Internet, siendo estos proveedores, cuando menos, igualmente responsables de que el servicio agregado percibido por el usuario sea asimilable a la telefonía vocal en los términos de la directiva 90/388 que los que proporcionan el acceso.

3.- ESTABLECIMIENTO DE COMUNICACIÓN ENTRE TERMINALES DE LA RED TELEFÓNICA FIJA

El primer párrafo de esta sección del texto de la Comunicación debería, según nuestra opinión, revisarse para evitar interpretaciones contradictorias que podrían llegar a extraerse de su redacción actual al comparar la definición de telefonía vocal de la Directiva 90/388 con las características del uso de Internet para servicios de voz, con el objeto de encuadrar reglamentariamente estos servicios.



En concreto, se indica que una comunicación vocal por Internet entre un usuario con acceso mediante línea alquilada y terminación en un terminal de la RTPC "jamás podrá calificarse de telefonía vocal al ser uno de los terminales ajeno a la red telefónica". Sin embargo, más adelante, se considera un escenario de utilización de Internet a través de redes de TV por cable que "permitiría un uso generalizado de la telefonía vocal via Internet, de tal modo que los datos nunca pasaría por la red telefónica pública conmutada".

El origen de esta posible confusión provendría del hecho de que la definición de telefonía vocal de la Directiva, únicamente considera los servicios telefónicos prestados en redes públicas de telecomunicaciones, dejando de lado los servicios de voz en redes privadas, los servicios de voz entre redes privadas (conectadas directamente o a través de la red pública) y escenarios mixtos de interfuncionamiento de telefonía entre redes públicas y privadas.

El empleo de Internet para la prestación de servicios de voz sería asimilable, en la mayoría de los casos, a alguno de los supuestos anteriormente enumerados de telefonía en redes privadas, pudiendo ser encuadrado en la definición de telefonía vocal de la directiva 90/388 únicamente en el caso de que ambos extremos de la comunicación sean terminales de la RTPC, ésto es, cuando el proveedor de Internet proporcione, simultáneamente, facilidades de "dial-in" y "dial-out" y éstas sean empleadas para acceder directamente al terminal del usuario.

Sin embargo, las posibilidades de "dial-in" y "dial-out" pueden ofertarse independientemente por parte de dos proveedores distintos de Internet involucrados en una misma comunicación, de modo que el servicio final resultante que el usuario disfruta sería el mismo que si un mismo proveedor le ofreciera ambas posibilidades. En tal caso resultará difícil estimar si es el proveedor que ofrece capacidades de "dial-in" o el que ofrece las de "dial-out", el que está ofreciendo servicios de telefonía vocal de acuerdo con la definición de la directiva.

Puesto que ambas capacidades son igualmente necesarias para el establecimiento de la comunicación entre puntos de terminación de la red telefónica pública sería lógica, según nuestra interpretación, la aplicación de igual consideración reglamentaria a los proveedores de servicios Internet que ofrezcan "dial-in", que a los que ofrezcan "dial-out".

Por último, sobre el aspecto de la accesibilidad a terminales de la RTPC, o desde los mismos, habría que señalar que todas las consideraciones anteriores son aplicables a cualquier sistema de comunicaciones privadas, vocales o no, en interacción con la red pública. Por tanto, el hecho de que se utilicen los protocolos de Internet en estos sistemas no ha de constituir un motivo para que sean objeto de una regulación específica. En concreto, aquellos sistemas privados de comunicaciones vocales con capacidades específicas para voz incluidas en la oferta de servicio en interfuncionamiento con la red telefónica pública son objeto en España de una reglamentación específica (telefonía en grupo cerrado de usuarios), que les impone ciertas condiciones y restricciones para operar y que podrían ser plenamente aplicables a los que utilicen protocolos de Internet.



Respecto a la posible "evolución tecnológica" que permitiría la comunicación desde ordenadores personales a usuarios de la RTPC que no estén equipados con "módems" y que "podría alterar a la interpretación actual" del servicio en cuestión, según se señala en la Comunicación, debería tenerse en cuenta que, técnicamente, tal posibilidad es una realidad hoy en día, y que una de las razones principales para que aún no sea una realidad comercial de amplia extensión es precisamente la ausencia de un marco regulatorio claro donde encuadrarla. Dicho marco bien podría derivarse de la aplicación y desarrollo de las consideraciones que se realizan en la Comunicación, por lo que es conveniente que éstas sean válidas para posibilidades tecnológicas plausibles a corto y medio plazo.

Por ello, no parece conveniente la aplicación de una interpretación "interina" demasiado prolongada en el tiempo sobre la naturaleza de estos servicios como la que se desprende del texto de la Comunicación, pues podría tener como consecuencia el despliegue de sistemas de telefonía sobre IP con interfuncionamiento con la RTPC (incluyendo sus terminales convencionales) que habría que regular a posteriori, cuando se decidiera "alterar la interpretación" de estos escenarios.

4.- COMUNICACIONES DE VOZ EN TIEMPO REAL A TRAVÉS DE INTERNET

En esta sección, el texto de la Comunicación pone de manifiesto que la evolución técnica de los equipos encargados del procesado y transmisión de las señales de voz que se envían a través de Internet nos acerca cada vez más al momento en que esta transmisión pueda llegar a ofrecer: "en tiempo real", apuntándose que, cuando ésto sea posible, habrá que "revisar la consideración" actual de este servicio que según lo afirmado en la Comunicación no se prestan, en estos momentos, en tiempo real.

Sobre este particular, habría que señalar que, técnicamente, es posible prestar servicios de voz en tiempo real sobre Internet y que si ésto puede no ser cierto para toda posible comunicación a través de la red sería más bien por consideraciones de tipo económico, que de tipo técnico. Son razones de este cariz las que están conduciendo a los proveedores de Internet a potenciar sus equipos y medios de transmisión para posibilitar las comunicaciones en tiempo real a través de sus redes.

En este sentido, sí es cierto que la evolución tecnológica tiene cierta importancia sobre la evolución en la prestación de estos servicios, en la medida en que posibilita el abaratamiento de equipos y medios de transmisión. Por otro lado, se podrían aprovechar, además de las consecuencias económicas derivadas de una reglamentación ventajosa de los servicios de voz sobre Internet (sujetos, por ejemplo, a un régimen de autorización general, sin obligación de contribuir al servicio universal, o sin requisitos de niveles de calidad prefijados, etc...) que les permitiera, ampliar y consolidar su campo de negocios.

Por tanto, y al igual que se sugería en el apartado anterior, en este caso se recomendaría considerar, desde un principio, la que los servicios de voz a través de Internet son acreedores a la calificación de comunicaciones en tiempo real, ya que la acción combinada del abaratamiento de costes y las nuevas posibilidades de mercado a



la vista de una regulación favorable, conducirán, sin duda, a que esta posibilidad sea una realidad comercial en breve plazo.

5.- CONCLUSIONES

De todos los razonamientos expuestos en los apartados anteriores se desprende que, en nuestra opinión, la propuesta de la Comunicación debe ser reconsiderada y madurada a la vista de la complejidad de la realidad actual de Internet y, en particular, de sus posibilidades de utilización e interfuncionamiento con la RTPC para la provisión de servicios, tanto de voz como de otro tipo.

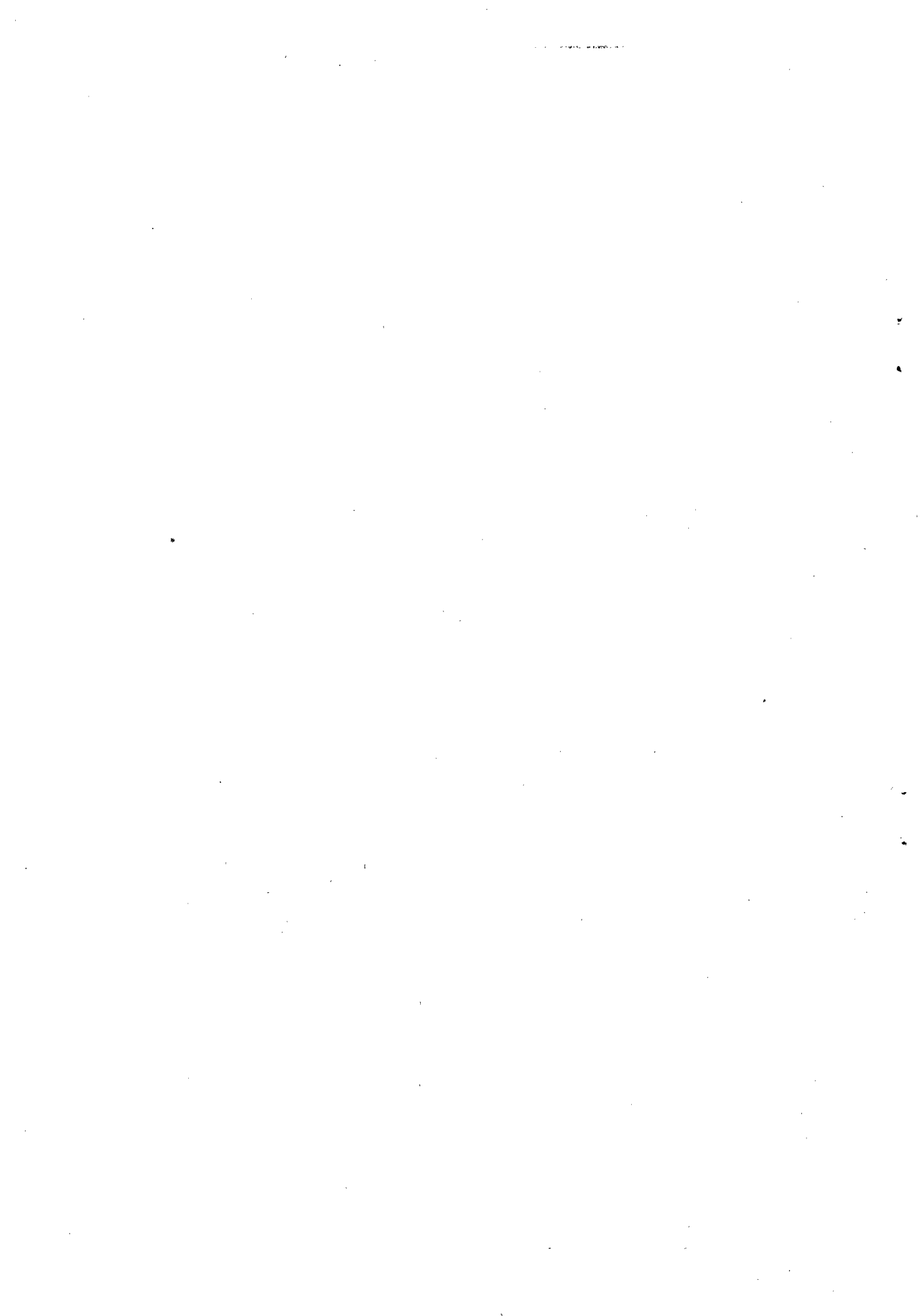
De la lectura de la Comunicación, en su redacción actual, puede derivarse lo que pensamos que es una subestimación de las posibilidades de desarrollo de los servicios de voz sobre Internet en la RTPC, y de su impacto sobre los servicios convencionales. No debería considerarse que, por estar estos servicios en una fase embrionaria (tecnológica y comercialmente hablando), su regulación debe ser distinta de la de los servicios de telefonía de voz, replanteándose su situación legal únicamente a la vista de la evolución comercial de dichos servicios.

A lo largo de este documento se ha puesto de manifiesto que tal conclusión no sería, según nuestro análisis, del todo acertada, puesto que la viabilidad tecnológica y comercial de los servicios de voz sobre IP son una realidad y el nivel de penetración de un determinado servicio en el mercado no deberían constituir, en general, la razón decisiva para establecer o modificar el tipo de regulación que le sea aplicable.

También se ha puesto de manifiesto que Internet no presenta, en principio, ninguna especificidad respecto a otras redes de datos o sistemas de comunicaciones análogos que la hagan merecedora de una consideración reglamentaria específica.

Si así se hiciera, se entraría en el camino peligroso de regular los servicios de telecomunicaciones concediendo mayor importancia a la tecnología sobre la que se presta y a su éxito comercial que a la funcionalidad ofertada. El riesgo de esta vía sería, a nuestro entender, que la regulación se convierta en un elemento favorecedor o discriminador de determinadas tecnologías que se usan para la prestación de servicios análogos e incluso interoperables, en detrimento de otros.

Madrid, 3 de julio de 1997



**REPRESENTATION PERMANENTE
DE LA FRANCE
AUPRES DE L'UNION EUROPEENNE**

Bruxelles, le 9 septembre 1997

BDC/JN N°1476

12.09.97 -A/20953

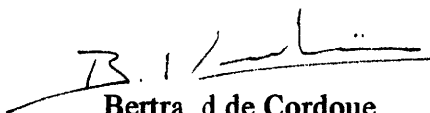
Objet : Statut des communications vocales sur INTERNET.

P.J. : 1

Monsieur le Directeur Général,

J'ai l'honneur de vous faire parvenir, sous ce pli, une note des Autorités françaises.

Je vous prie d'agréer, Monsieur le Directeur Général, l'assurance de ma considération la plus distinguée.


Bertrand de Cordoue

Monsieur le Directeur Général

D.G. IV

- A l'attention de Monsieur Hocepiéd -

COMMISSION EUROPEENNE

158, av. de Cortenberg

BRUXELLES

Communication de la Commission concernant le statut des communications vocales sur Internet conformément à la directive 90/388/CE

Commentaires des autorités françaises

A. Remarques générales

A.1 Sur l'opportunité

1. Les autorités françaises saluent l'initiative de la Commission visant à préciser le statut des communications vocales sur Internet au regard de la définition de la téléphonie vocale exposée à l'article 1er de la directive 90/388/CE. Elles reconnaissent la nécessité et l'importance de ce projet de communication, qui complète utilement sur ce sujet la Communication de la Commission du 20 octobre 1995 sur le rôle central et l'état de la transposition de cette directive. Convaincues de la nécessité de s'assurer d'une compréhension commune du cadre réglementaire applicable par les diverses autorités nationales et communautaires chargées de sa mise en oeuvre, elles se réjouissent de l'adoption de ce document et de la consultation publique lancée par la Commission.

2. De façon liminaire, les autorités françaises souhaitent souligner qu'il convient de distinguer deux cas extrêmes en matière de communications vocales sur Internet :

- les communications vocales de "première génération", sur lesquelles se concentre le projet de communication : certains utilisateurs, qui se sont dotés par eux-mêmes d'un logiciel transformant la voix en données, sont en mesure, à partir de leur ordinateur, à l'insu du fournisseur d'accès, d'échanger une conversation avec un autre utilisateur d'Internet connecté au même moment et qui dispose d'équipements et logiciels de conversion compatibles ;

- celles de "seconde génération" : le prestataire met en place, sur son propre serveur, les logiciels permettant la transformation de la voix en données et vice versa, ainsi que les passerelles permettant de joindre n'importe quel numéro de téléphone du réseau public commuté. L'utilisateur peut alors, à partir de son ordinateur ou de son poste téléphonique, selon le service proposé, appeler son fournisseur d'accès à Internet, qui achemine la communication via Internet.

3. Les autorités françaises sont d'avis que l'apparition de services toujours plus performants, la volonté des fournisseurs d'accès à Internet de commercialiser des offres de services vocaux et l'attrait financier des utilisateurs pour ces offres laissent présager d'importantes perspectives de développement pour ce type de services. Il importe par conséquent de réfléchir dès aujourd'hui au cadre réglementaire applicable à ces nouveaux services, en tenant compte de l'intérêt des utilisateurs, de la nécessité de maintenir un cadre réglementaire cohérent, équilibré et non discriminatoire, de la nécessité d'assurer des conditions de concurrence loyale entre les différents acteurs, ainsi que de la nécessité d'assurer la fourniture du service universel et un financement pérenne de celui-ci, tout en encourageant l'innovation.

4. Les services de "seconde génération", qui ne sont pas encore disponibles en France, le sont déjà, à titre expérimental, en Finlande, et sont une réalité aux Etats-Unis. Ils sont susceptibles de poser à court terme un problème de concurrence réel : la saisine sur ce sujet de la FCC par les opérateurs longue distance américains en témoigne. A cet égard, le souci de la Commission d'harmoniser le traitement qui sera réservé à ces services dans les différents Etats Membres est légitime.

5. Dans ce cadre, une compréhension et une interprétation communes de la définition de la téléphonie vocale constituent une première étape importante. La qualification juridique des communications vocales sur Internet au regard de la définition de la téléphonie vocale est essentielle, en raison des enjeux économiques sous-jacents et de la nécessité de maintenir l'équilibre réglementaire actuel, lequel repose sur des catégories d'acteurs ayant des droits et obligations proportionnés. De la qualification de ces services dépend en effet le cadre réglementaire qui leur est applicable. Elle détermine s'ils entrent dans le champ des services réservés ou libéralisés, leur régime d'autorisation (celui des transmissions de données, de la téléphonie vocale, ou un autre), les droits et obligations attachés, notamment en termes d'interconnexion et de contribution au financement du service universel.

6. En tout état de cause, la législation communautaire fournit le cadre réglementaire nécessaire et les outils juridiques suffisants au traitement à court terme de ces services, législation dont il importe de maintenir l'équilibre, la cohérence et l'équité dans l'attente du réexamen, fin 1999, de l'ensemble du cadre réglementaire des télécommunications au niveau communautaire, et d'une réflexion globale à mener dans le cadre de la convergence télécommunications / audiovisuel.

A.2 Sur le fond

7. Dans le présent projet de Communication, la Commission rappelle qu'un service, pour être qualifié de téléphonie vocale, doit remplir l'ensemble des critères énumérés dans la définition de la téléphonie vocale exposée à l'article 1er de la directive 90/388/CE. Elle conclut, après une analyse point par point des caractéristiques des communications vocales sur Internet de "première génération", que celles-ci ne sauraient être considérées comme de la téléphonie vocale, ce qui implique notamment que leur fourniture est libéralisée, et qu'elles ne peuvent faire l'objet ni d'une licence individuelle ni d'une contribution au financement du service universel. La Commission précise toutefois que l'évolution des technologies et du marché pourrait remettre en cause cette conclusion, à terme plus ou moins rapproché.

8. Les autorités françaises peuvent souscrire aux conclusions de la Commission en ce qui concerne le statut des communications vocales de "première génération" : comme la Commission, elles considèrent qu'elles ne relèvent pas de la définition du service de téléphonie vocale, et partagent son analyse en ce qui concerne les conséquences réglementaires, sous réserve d'un certain nombre de remarques portant sur l'analyse détaillée et l'interprétation des différentes caractéristiques du service de téléphonie vocale, exposées ci-après.

9. Les autorités françaises regrettent toutefois que le projet de communication soumis à consultation publique sous-estime le développement des communications vocales de "seconde génération". Les autorités françaises estiment qu'une offre commerciale de ce type, que les techniques actuelles rendent déjà possible à un coût raisonnable, sera rapidement proposée au public sur le marché européen. Il serait par conséquent souhaitable que la Commission analyse, dans sa communication finale, le statut juridique de ces services, en tenant compte des présentes remarques.

10. En tout état de cause, selon l'analyse menée par les autorités françaises, certaines offres de communications vocales sur Internet de "seconde génération" peuvent remplir l'ensemble des critères permettant de les caractériser de "services de téléphonie vocale". Aux termes de la Loi française de Régulation des télécommunications du 26 juillet 1996, la fourniture de ces services en France devrait par conséquent être assujettie à l'obtention d'une licence individuelle (L.34-1), et ses prestataires, à une contribution au financement du service universel, en contrepartie de droits à l'interconnexion aux tarifs du catalogue de France Telecom.

B. Remarques détaillées portant sur l'interprétation de la définition de la téléphonie vocale

11. Aux termes de l'article 1er de la directive 90/388/CE, on entend par "service de téléphonie vocale", "l'exploitation commerciale pour le public du transport direct et de la commutation de la voix en temps réel au départ et à destination des points de terminaison du réseau public commuté, permettant à tout utilisateur d'utiliser l'équipement connecté à un tel point de terminaison pour communiquer avec un autre point de terminaison".

12. Bien que les autorités françaises partagent les conclusions de la Commission en ce qui concerne le statut et le cadre réglementaire applicable aux communications vocales sur Internet de "première génération", l'analyse détaillée et l'interprétation par la Commission des différents critères du service de téléphone vocale appelle de leur part un certain nombre de commentaires, développés sur la base des réflexions menées au niveau national et de l'expérience acquise en France sur ce sujet.

"Exploitation commerciale pour le public"

13. La Commission comprend ce critère au sens "*d'activité commerciale visant à réaliser un bénéfice*". Les autorités françaises estiment toutefois que la vente, même à marge nulle, constitue bien une exploitation commerciale : le service ainsi commercialisé pourrait notamment servir de produit d'appel. Le critère pertinent serait plutôt celui de la vente d'un service faisant l'objet d'une publicité. La Commission conclut, dans le cas d'Internet, que "*pour l'heure, l'objectif des fournisseurs d'accès n'est pas d'assurer à titre commercial la transmission des communications vocales*". Les autorités françaises peuvent s'associer à cette conclusion en ce qui concerne les communications vocales de "première génération" qui sont établies par des utilisateurs munis du matériel requis sans intervention du fournisseur d'accès. Elles considèrent toutefois que cette affirmation devrait par ailleurs être nuancée au regard de l'émergence d'une offre de services de "seconde génération".

14. A cet égard, les autorités françaises contestent la théorie de la Commission selon laquelle si "*la téléphonie vocale est une composante supplémentaire d'un service que le client choisit pour d'autres raisons [...] et se trouve englobée dans le champ d'une licence plus vaste [...], les prestataires de services sur Internet n'auraient pas besoin à l'avenir, alors même que les applications en matière de téléphonie vocale se perfectionneraient, d'obtenir des licences d'exploitation des services de téléphonie vocale et, ce faisant, échapperaient à la nécessité de solliciter des licences individuelles et à l'obligation de contribuer au service universel*".

Les autorités françaises considèrent que le service de téléphonie vocale est rarement "*une composante supplémentaire d'un service que le client choisit pour d'autres raisons*". Les tarifs attractifs et la qualité des offres de communications vocales de "seconde génération" devraient au contraire attirer de nouveaux utilisateurs d'Internet, et par là même, contribuer à son développement. Dans la mesure où ces services répondraient à l'ensemble des critères de la définition de la téléphonie vocale, ils devraient faire l'objet d'une licence individuelle de téléphonie vocale et d'une obligation de contribuer au financement du coût net du service universel, sur un pied d'égalité avec les opérateurs qui offrent un service téléphonique au public "traditionnel". En tout état de cause, la comparaison avec les cartes téléphoniques est contestable.

15. Les autorités françaises s'interrogent enfin sur l'interprétation qu'il convient de donner à la mention du mode de paiement et du tarif de tels services, "*le paiement s'effectuant par carte de crédit, carte prépayée ou monnaie électronique, au tarif de l'interconnexion locale majoré d'une marge*". Mode de paiement et tarif n'entrent pas dans l'appréciation des critères permettant de qualifier un service de téléphonie vocale. Le texte gagnerait en clarté si ces considérations en étaient ôtées.

"Transport direct et de la commutation de la voix en temps réel"

16. La conception du temps réel retenue par la Commission diffère de celle des autorités françaises. Le document précise que *"le délai nécessaire au traitement et à la transmission d'un point de terminaison à l'autre était tel qu'on ne pouvait parler d'un service à temps réel, cela reste d'ailleurs valable aujourd'hui"*. La Commission estime que la commutation par paquets induit un temps différé dans la restitution des données sous forme vocale. Les autorités françaises considèrent toutefois que seul le recours au stockage permanent des informations jusqu'à consultation, comme dans les services de messagerie, s'oppose à la notion de temps réel. Elles estiment notamment que les communications où se produisent des décalages de quelques millisecondes sont en temps réel (cas des communications par satellite par exemple). Elles invitent par conséquent la Commission à nuancer l'affirmation précédente en tenant compte des développements technologiques les plus récents, qui induisent des décalages temporels inférieurs à ceux induits par certaines communications par satellite.

"Au départ et à destination des points de terminaison du réseau public commuté"

17. La Commission estime que si *"l'accès à Internet est obtenu par le biais de circuits loués, ce service ne pourra jamais être considéré comme un service de téléphonie vocale, même si la communication se termine sur le réseau public commuté"*, tout en concédant qu'*"étant donné cependant qu'un grand nombre d'utilisateurs ont accès à Internet par le biais du réseau téléphonique public commuté (RTPC), cette utilisation relèverait de la définition"*. Elle ajoute toutefois que *"l'apparition d'un équipement permettant l'accès à Internet par le biais des réseaux câblés de télédistribution serait de nature à modifier cette appréciation"*, niant implicitement que ceux-ci puissent être considérés comme l'une des composantes du réseau public commuté.

Les autorités françaises contestent l'interprétation restrictive que donne la Commission de la notion de "réseau public commuté" qui figure dans la définition de la téléphonie vocale. Il importe d'interpréter cette notion au regard du contexte libéralisé post-98, et non au regard de l'environnement monopolistique qui prévalait en 1990, en tenant compte de l'évolution technologique. Cette notion ne doit pas être réduite au seul réseau téléphonique public commuté (RTPC) au sens de réseau public de l'opérateur historique. Les autorités françaises estiment notamment que les réseaux câblés de télédistribution utilisés pour la fourniture de services de télécommunications au public sont couverts par cette notion. En effet, les éléments de routage des réseaux câblés qui permettent les connexions et l'acheminement nécessaires au service téléphonique assurent bien une fonction assimilable à la commutation. Les autorités françaises estiment que cette approche fonctionnelle de la commutation serait plus adaptée qu'une approche purement technique.

"Permettant à tout utilisateur d'utiliser l'équipement connecté à un tel point de terminaison pour communiquer avec un autre point de terminaison"

18. Enfin, la Commission considère que *"si l'utilisateur d'Internet ne peut appeler que d'autres abonnés d'Internet dont les ordinateurs sont raccordés par l'intermédiaire d'un modem et qui utilisent les mêmes logiciels, il ne s'agit pas non plus d'un service de téléphonie vocale puisque le système de permet pas à tout utilisateur d'utiliser l'équipement pour communiquer avec un autre point de terminaison"*. Elle précise ailleurs qu'il importe que le service offre *"la possibilité de joindre automatiquement n'importe quel abonné au téléphone"* pour pouvoir être qualifié de téléphonie vocale. Les autorités françaises contestent cette interprétation restrictive de la définition, qui ne mentionne que des communications avec "un autre point de terminaison". Elles estiment qu'il n'est pas nécessaire que tous les points de terminaison du réseau public commuté puissent être joints pour que le service soit qualifié de service téléphonique au public. Les services restreints et les opérateurs qui n'offrent que des services de communications internationales ressortent bien du régime de la téléphonie vocale.



11 July 1997

Christian Hoceped Esq
European Commission,
Directorate General for Competition
(DGIV)
Directorate C
Office 3/48
Avenue de Cortenberg/Kortenberglaan
150
B-1040 Brussels

already sent
(by email)

United Kingdom
Permanent Representation
To the European Union

Avenue d'Auderghem 10
1040 Brussels
Telephone: (0032)(2) 287 8211
Telex: 24312
Facsimile: (0032)(2) 287 8395
Direct Line: (0032)(2) 287 8368

Dear Mr Hoceped,

NOTICE 97/C 140/06: VOICE ON THE INTERNET

My authorities have asked me to convey their observations on the Commission's draft position on the status of voice on the Internet as set out in the Notice 97/C 140/06. They would also like to apologise for having just missed the deadline for receipt of such comments.

The UK welcomes the approach adopted by the Commission which seeks to avoid regulation of voice on the Internet where possible. This accords with the UK's approach to regulation of the telecommunications sector more generally. Where regulation has been introduced for reasons of promoting the interests of consumers and/or promoting competition, it has only been to an extent that is proportionate and not unnecessarily burdensome. Moreover, as competition has developed, the UK Office of Telecommunications has been able to progressively roll back regulation to allow market forces to take its place.

The UK regards the Internet as a new and exciting field which is breaking new ground in exploring innovative applications. Internet Service Providers in the UK operate under a general authorisation, the Telecommunications Services class Licence, which does not require registration. This licence authorises the provision of international data services which includes voice on the Internet since this service is not regarded at present as including two-way live speech. My authorities believe this licensing arrangement is consistent with the position set out in the Commission's Notice in relation to licensing voice on the Internet.



As the Notice discusses, however, technological development in the market is rapid. Indeed, in the UK market, the provision of voice telephony is already being advertised as part of some Service providers' packages. Moreover, the industry in the UK is also offering the possibility of dialling out to any telephone number, not just to another Internet user currently on line. With regard to the final criteria listed in the Notice, my authorities would agree with the Commission that voice over the Internet cannot yet be regarded as a consistently real-time service, thereby preventing it being considered as voice telephony. Nevertheless, the UK believes that it will not be long before it becomes a real-time service, in view of which it is important to consider the implications of this as the Commission's Notice discusses.

With regard to the regulatory consequences of voice on the Internet becoming equivalent to voice telephony, the UK is keen to ensure that regulation would continue to be kept at the minimum level consistent with maintaining the abilities of National Regulatory Authorities to act against anti-competitive practices. Unnecessary levels of regulation, or uneven levels of regulation across Member States, could stifle or distort the development of competition among Internet Service Providers throughout Europe and thereby slow the pace of innovation that has made the Internet such a dynamic market. Any conditions imposed by the UK authorities in relation to licensing voice on the Internet would of course be objective, non-discriminatory, proportionate and transparent in line with the terms of the relevant Article 90 and 100A Directives.

Yours,

A handwritten signature in black ink, appearing to read 'Andy May'.

Andy May
Second Secretary (Telecoms)

A/211

**MISSION OF NORWAY TO THE EUROPEAN UNION,
BRUSSELS**

17, rue Archimède
1000 Brussels

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DG IV/C		
INCOMING MAIL		
15 -07- 1997		
<input checked="" type="checkbox"/>	C-2	C-3

PRIORITY:

DATE: 8 July 97

TO: European Commission
Directorate General for Competition (DG IV)
Directorate C, Office 3/48
Fax 296 98 19

COPY TO: EFTA Surveillance Authority,
Competition and State Aid Directorate, fax 286 18 02

OUR REF.: Competition Counsellor Gudbrand Guthus

YOUR REF.:

**SUBJECT: COMMISSION NOTICE CONCERNING THE STATUS OF VOICE
ON THE INTERNET PURSUANT TO DIRECTIVE 90/388/EEC**

Dear Mr. Temple Lang

With reference to the publication in the Official Journal No C 140 of 7.5.97 of the draft Commission notice, please find attached a letter of 27 June 1997 from the Norwegian Ministry of Transport and Communications.

Yours sincerely
Gudbrand Guthus
Gudbrand Guthus


ROYAL MINISTRY OF TRANSPORT AND COMMUNICATIONS

Date
27.06.1997
Your date

Our reference
97/1225-872,5c
Your reference

Handled by:

Birgitte Araldsen, (+47) 22 24 82 34

European Commission
Directorate-General for Competition (DG IV)
Directorate C
Office 3/48
Avenue de Cortenberg/Kortenberglaan 150
B-1040 Brussels

COMMISSION NOTICE CONCERNING THE STATUS OF VOICE ON THE INTERNET PURSUANT TO DIRECTIVE 90/388/EEC

Referring to the Commission's notice concerning the status of voice on the Internet pursuant to Directive 90/388/EEC The Norwegian Ministry of Transport and Communications would hereby like to submit some comments on the Commission's draft position.

We welcome the Notice and the willingness to supplement the earlier Communication. Voice over the Internet is a result of integration of data transmission and voice telephony, an integration which contributes to development of new communication services.

In general, we agree with the Commission's interpretation of the definition on voice telephony in Directive 90/388 as concerns voice over the Internet.

However, we find the concept of "real-time" to be interpreted too narrowly. In our opinion the "real-time"-criteria is fulfilled when the service is generally accepted by the users as capable of transmitting a conversation to be "real-time". We understand the current technology to be able to fulfil such a criteria in the opinion of the users. We would also like to point out that it is possible to deliver a voice service via Internet with less delay on average, than over a satellite connection.

We think it is technically possible for service providers already today to offer a dial out service via Internet (to any telephone number) that could be considered

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as voice telephony according to the definition given in Directive 90/388, even though such services will be more common in the future.

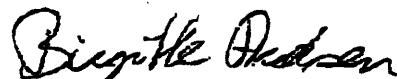
We would like to question why a (future) voice service over Internet must be "a decisive drive for Internet subscription" in order to be considered as voice telephony in respect of Directive 90/388. In our opinion the criteria of "commercial offer" will be fulfilled if the transport of voice is provided as a commercial activity with the intention of making a profit, even if it is provided together with other typical Internet services as browsing, downloading etc.

The Norwegian Ministry of Transport and Communication is of the opinion that possible voice services over Internet should not be considered outside the definition of voice telephony in Directive 90/388 because of the lack of "real-time" in such services today, but should be assessed according to the other criteria of the definition in line with what is done in the Notice.

Yours sincerely



Jørn Ringlind
Deputy Director General



Birgitte Araldsen
Permanent Adviser

Copy:

1. EFTA Surveillance Authority
2. Norwegian Ministry of National Planning and Coordination