Electronic communications: universal service, users' rights relating to networks and services

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This Communication concerns the second periodic review of the scope of universal service as required by Article 15 of the European Parliament and Council Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services. It sets out some reflections for the **future role of universal service** in the provision of e-communications services. It raises the question whether the concept and scope of universal service at EU level should be changed and if so, whether universal service is an appropriate tool to advance broadband development, or whether this should be left to other EU policy instruments or to national measures.

In the EU, universal service in electronic communications (e-communications), as currently defined, means ensuring that all who so request are provided with those services essential for participation in society and already available to the great majority of citizens, either by the market or in the case of market failure by public intervention.

The Directive defines universal service as a minimum set of e-communications services available to all end-users upon reasonable request at an affordable price and specified quality, independently of geographical location within a Member State.

The Directiveestablishes certain considerations (in Annex V) to be weighed by the Commission in deciding whether a service should be included in the scope, namely:

- a minority of consumers would be excluded from society by the lack of availability or non-use of specific services that are both available to and used by the majority;

- inclusion of these services within the scope would convey a general net benefit to all consumers in cases where they are not provided to the public under normal commercial circumstances.

The Commission is required to review the scope of the universal service every three years in the light of technological, social and economic developments. The first review of the scope of universal service in 2005-2006 concluded that there was no need to change the scope of the USO, in particular with regard to broadband and mobile services. This review highlights the following issues:

Mobile communications: mobile usage has been growing strongly during the last few years: while an average of 81% of the EU-25 population was using mobile services in early 2004, the penetration reached 112% of the EU-27 population in October 2007. Users are increasingly switching from fixed to mobile phones, with around 24% of EU-27 households only using mobile. The proportion is significantly higher in the new Member States (39%) than in the EU-15 (20%), with the exception of Finland (61%) and Portugal (48%). The European consumer can now, on average, buy a low usage basket of mobile services more cheaply (€13.69 monthly) than the cost of a monthly rental of a fixed line (€14.90).

Conclusion: this analysis reaffirms the conclusion in the first review that the competitive provision of mobile communications in the EU has resulted in consumers already having widespread affordable access to mobile communications. The considerations for including mobile communications within the scope of universal service (as set out in Annex V of the Directive) are therefore not fulfilled.

2) Broadband: the first review found that in mid-2004, fixed broadband access networks covered around 85% of the EU-15 population. In October 2005, broadband take-up was 11.5% of the EU population. In late 2007, coverage of broadband networks is now very high in most Member States, being available, on average, to 90% of the EU population. Use of the internet is now approaching the level of a service used by the majority, with 49% of EU households using the internet, 36% of which are on broadband.

Conclusion: although broadband is not yet used by the majority of consumers (the first of two considerations identified in Annex V of the Directive) and is therefore not encompassed by the USO as laid down and described by the present wording, take-up is approaching the threshold of use by a majority of consumers. Furthermore, it is reasonable to anticipate that, in a relatively short horizon of time, narrowband will no longer answer the requirement of being "sufficient to permit functional internet access". Thus the situation does need to be kept under review.

Reflections for the future: while, on the existing interpretation of the Directive, neither mobile nor broadband fall within its scope, it seems clear that the substitution of mobile for fixed voice telephony as well as the increased levels of take-up and importance of broadband in daily life raise questions about the universality of access to e-communications services for the future.

Broadband enhances active participation in society: e-health, e-learning, e-government and ebusiness services are increasingly being used by citizens. This has resulted in more active economic and social participation in society, providing better possibilities to find employment, do business and study, irrespective of location.

The main question is therefore **whether universal service at EU level is an appropriate tool to advance broadband development** and, if so, when and how it should be invoked, or whether other EU policy instruments - and, in such case, which ones - would be more efficient. This question goes beyond the issue of the scope of the universal service.

The Commission considers it of the greatest importance that, within the EU, key services such

as e-communications are widely available to citizens and businesses, independently of their geographical location, and at an affordable price and specified quality

This communication provides the basis for a **discussion on the range of relevant issues** in order to open a substantial European debate that would allow all stakeholders to express their views and discuss alternative approaches, in the course of 2009. On the basis of this debate, the Commission will issue a Communication in the second half of 2009, summarising the debate. It could follow this up in 2010 with concrete proposals if they are needed to update the Universal Service Directive.