



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.5.2005
COM(2005) 203 final

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE
EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**On the Review of the Scope of Universal Service in accordance with Article 15 of
Directive 2002/22/EC**

[SEC(2005)660]

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

On the Review of the Scope of Universal Service in accordance with Article 15 of Directive 2002/22/EC

(Text with EEA relevance)

1. PURPOSE OF THE COMMUNICATION

The purpose of this Communication is twofold. The primary purpose is to examine and assess, as required by Article 15 of the Universal Service Directive¹, whether the current scope of universal service should be changed or redefined in the light of technological, social and economic developments, taking into account in particular mobility and data rates. The associated Commission Staff Working Document SEC(2005)660 provides supporting analysis and information including also internet links.

The second purpose is to launch a broader policy debate on universal service provision, particularly in view the overall assessment of the EU regulatory package for electronic communications scheduled for 2006, when the Universal Service Directive will be also reviewed in its entirety.

The Commission invites comments on the conclusions and longer-term issues presented in this Communication and on the Staff Working Paper that are available on the internet at:

<http://europa.eu.int/yourvoice> and
http://europa.eu.int/information_society/topics/ecom/index_en.htm

Comments should be sent to info-b1@cec.eu.int by 30 June 2005.

The Commission will publish a second Communication at a later stage that includes the results of the public consultation and the final Commission assessment and position.

2. INTRODUCTION

Promoting the internal market and innovation in information services and supporting an inclusive knowledge society are the main elements of the Commission's new i2010 initiative. It will play an important part in the renewed Lisbon strategy², which is built around two principal tasks – delivering stronger, lasting growth and creating more and better jobs. Services of general interest are also part of this approach, as they contribute to social cohesion and economic activity³.

¹ EP and Council Directive 2002/22/EC on universal service and user's rights relating to electronic communications networks and services.

² 'Working together for growth and jobs. A new start for the Lisbon Strategy', COM(2005) 24.

³ See The Commission's White Paper on services of general interest, (COM(2004) 374).

In the area of electronic communications (e-communications), the main policy tool to create an inclusive knowledge society is the creation of competitive markets, coupled with the safety net of universal service for those whose financial resources or geographical location do not allow them to access the basic services that are already available to and used by the great majority of citizens and which are considered essential for participation in society.

The Universal Service Directive lays down the basic principles on universal service and addresses other specific user and consumer rights, with corresponding obligations on undertakings. The Directive defines universal service as the *"minimum set of services, of specified quality to which all end-users have access, at an affordable price in the light of national conditions, without distorting competition"* (Art. 1.2).

The current scope of universal service includes:

- **Connection to the public telephone network at a fixed location**

"All reasonable requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location must be met by at least one undertaking." (Art. 4.1)

The connection to the network is limited to a single narrowband connection to the end-user's primary location/residence. There is no requirement for a specific data or bit rate but the connection must be capable of supplying *"functional Internet access, taking into account prevailing technologies used by majority of subscribers and technological feasibility"* (Art 4.2). The principle of technological neutrality allows universal service providers to use any technology, whether wired or wireless, which is capable of delivering that service at fixed location (Rec. 8).

- **Access to publicly available telephone services**

According to Article 4.2, end-users must be able to make and receive local, national and international telephone calls, facsimile communications and data communications.

In addition, the Directive incorporates a number of services that are closely associated with basic telephony, as they are necessary for users to be able to make full use of the publicly available telephone services. These are: the provision of directories and directory enquiry services (Art. 5), public pay telephones (Art. 6) and special measures for disabled users (Art. 7).

Member States must ensure that the defined set of services is made available to all users in their territory, independently of geographical location, upon reasonable request. They are also required to find the most efficient means of guaranteeing universal service obligations, including giving all undertakings an opportunity to fulfil them. Only if the market fails to deliver the defined services may obligations be imposed on undertakings to provide services at specified conditions. (Arts. 3, 4 and 8)

In recognition that universal service will evolve over time, Article 15 of the Directive requires the Commission to review the scope of universal service in 2005 (and every 3 years thereafter):

“The review shall be undertaken in the light of social, economic and technological developments, taking into account, inter alia, mobility and data rates in the light of the prevailing technologies used by the majority of subscribers. The review process shall be undertaken in accordance with Annex V.”

According to Annex V and Recital 25, any change of scope is subject to the following criteria, in short:

- a) A minority of consumers would be excluded from society by not being able to afford specific services that are both available to and used by the majority; and
- b) Inclusion of these services within the scope would convey a general net benefit to all consumers in case they are not provided to the public under normal commercial circumstances.

The principle of technological neutrality means that the review must not artificially promote certain technological choices above others. Care must be also taken that *“a disproportionate financial burden is not imposed on sector undertakings - thereby endangering market developments and innovation - and that any financing burden does not fall unfairly on consumers with lower incomes”* (Rec. 25). Universal service is not a mechanism whereby the roll-out of new technologies and services is financed by increasing the costs for all existing (telephone) users. Rather, it is the safety net that allows a minority of consumers to catch up with the majority who already enjoy basic services.

For the purpose of the review, it is not necessary to quantify the affordability of access at EU level (the affordability component being a part of the definition of universal service, not of its scope), because affordability must be seen in the light of specific national conditions (Art. 3.1, Rec. 10), e.g. the average income of households, and therefore varies from one Member States to another⁴.

In the light of the rapidly changing communications environment, in which the Internet Protocol (IP) is increasingly becoming the common technological transmission platform, the Commission feels that it is also timely to provoke a forward-looking policy debate on universal service provision that allows input from all interested stakeholders and can contribute to the general regulatory review in 2006.

⁴ See the associated Working Document, Annex on measurement issues.

3. ANALYSIS OF MAIN DEVELOPMENTS IN E-COMMUNICATIONS AND ASSESSMENT OF THEIR IMPLICATIONS FOR THE SCOPE OF UNIVERSAL SERVICE

3.1. Overview

The combined effects of competition and technological progress have brought more choice, lower prices and innovation for consumers, as recently evidenced by the 10th Report on European Electronic Communications Regulation and Markets⁵.

97% of the households in the 15 pre-accession Member States (hereinafter “EU 15”) have fixed or mobile telephone. At least 95% of the total EU population is covered by mobile networks, and in most countries, including several new Member States, mobile penetration has exceeded fixed line penetration.

At the same time several competing broadband technologies, such as digital subscriber line (DSL), cable and mobile and wireless technologies, have been rolled out offering high-speed network access that supports delivery of digital content and communications. Households have been rapidly taking up broadband especially in the EU 15, where around 85% of the population is covered by the fixed broadband networks. However, in the new Member States this coverage varies widely.

The associated working document examines these trends in more detail.

3.2. Mobile Communications

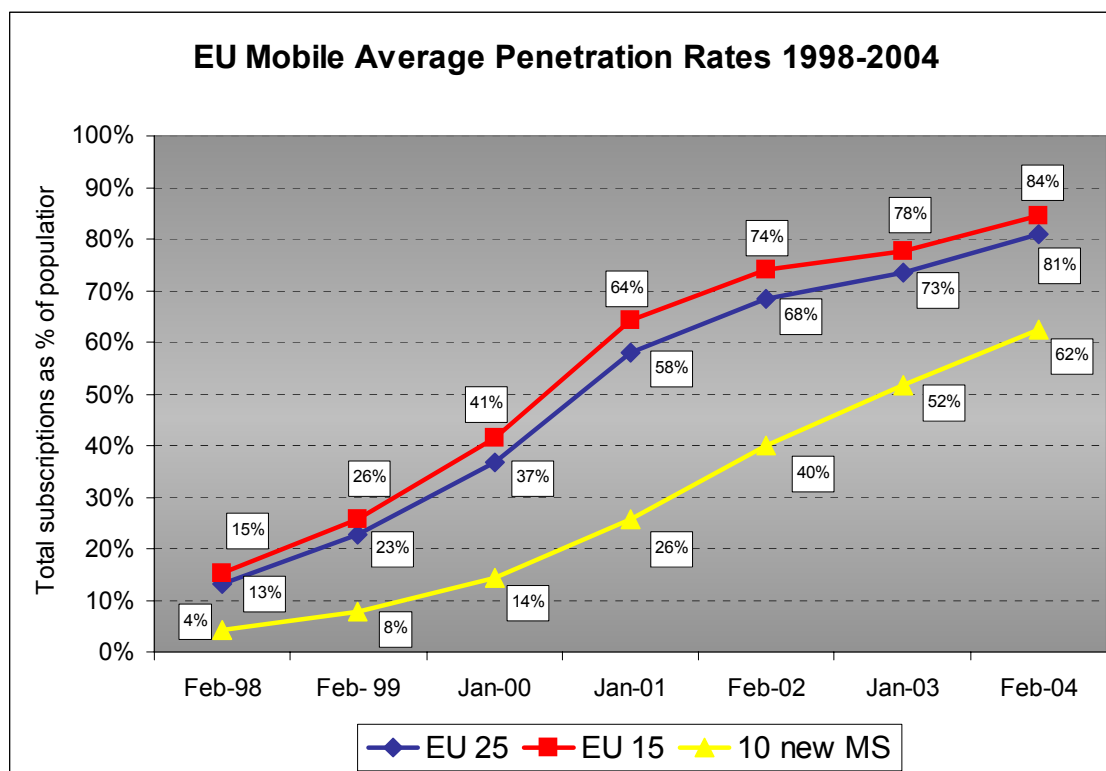
3.2.1. Analysis

National licences for mobile operators generally impose targets for geographic and/or population coverage so that at least 95% of the population is covered. In the case of the second generation networks, these targets have been met in all Member States. In addition, the presence of several mobile operators increases the quality of national coverage.

Mobile communications services have rapidly become a mass market: in early 2004 over 80% of the EU population were using these services as shown in the graph below.

⁵ COM(2004) 759 final.

Graph 1



Source: European Mobile Communications Reports

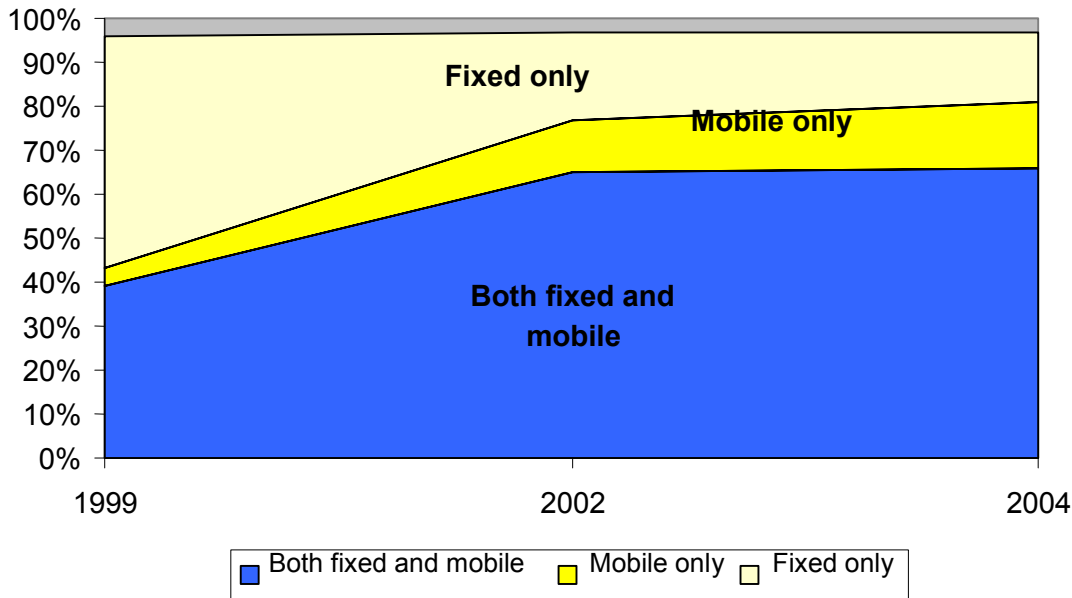
While the average mobile penetration rate in the 10 new Member States (hereinafter “EU 10”) is over 20 percentage points lower than in the EU 15, some new Member States exceed the EU 25 average⁶.

Fixed telephone lines remain the main delivery mode of universal service, although operators are free to use any technology that can fulfil the requirements, as noted above. Nevertheless, the most notable trend in telephony in the recent years has been the fixed-to-mobile substitution, as illustrated by Graph 2. Since 1999, the level of fixed telephony in the EU 15 has fallen by 10 percentage points with 82% penetration in early 2004, on a par with mobile telephony at 81%.

⁶ The Czech Republic (99%) and Slovenia (92%).

Graph 2

**Overall telephone access in EU 15 households:
Contribution of fixed and mobile subscriptions
(proportion of households in %)**



Some 72% of the households in the EU 10 have a fixed line. The evidence suggests that the trend in fixed to mobile substitution is even greater in most of these countries – with the exception of Poland - owing to the fact that their fixed network is generally less developed and fixed line penetration is lower than in the EU 15.

3.2.2. Assessment

The success of mobile communications is largely due to the fact that it has the character of being a personal communications tool that corresponds to consumers' life-style choices and need for increased mobility.

National mobile licence conditions, that oblige geographical and/or population coverage, have made mobile communications ubiquitously available. Mobile usage has reached over 80% of the EU 25 population which equals the average household penetration of fixed lines. In nine out of the 15 pre-accession Member States, there are more households owning a mobile subscription than those having a fixed line. In the EU 10 the overall mobile penetration is below the EU 15 average but the variations are considerable: in some countries the market has already reached saturation while in others it is still growing at a fast pace.

Mobile communications have already reached the stage where they provide services to mass markets at costs that consumers are able and willing to pay. The costs of handsets have also been brought down by economies of scale and technological progress. In several countries, mobile handsets are provided for free or at a subsidised price by mobile retailers. The increasing competition by new entrants has further reduced costs for the consumer.

The cost advantage of mobile telephony networks results from low marginal cost of adding a new subscriber because the access radio network is shared between subscribers, whereas a fixed line connecting a subscriber offers less possibility for shared access costs, especially if the subscriber is located in a rural area. As the mobile networks are already in place, this means that a subscriber can be added to the mobile network at a marginal cost, irrespective of whether he or she is located in an urban or rural area.

Mobile operators have translated the low cost base into affordable pre-paid packages allowing low income consumers a basic connection to the network. Pre-paid services mean low entry price for consumers and a greater possibility to control their expenditure than post-paid subscriptions, which increases their attractiveness to low income users. The attractiveness of such services is reflected in the fact that the vast majority of EU households use pre-paid services to buy mobile subscriptions and units of air time.

As a result, an initially high cost service of mobile communications has become a service that offers potentially for all consumers the lowest cost method of providing basic connection to publicly available telephone services.

In conclusion, the evidence demonstrates that the competitive provision of mobile communications has resulted in consumers already having widespread affordable access to mobile communications. The conditions for including mobile communications within the scope of universal service (as set out in the Directive) are therefore not fulfilled.

3.3. Broadband Internet Access

3.3.1. Analysis

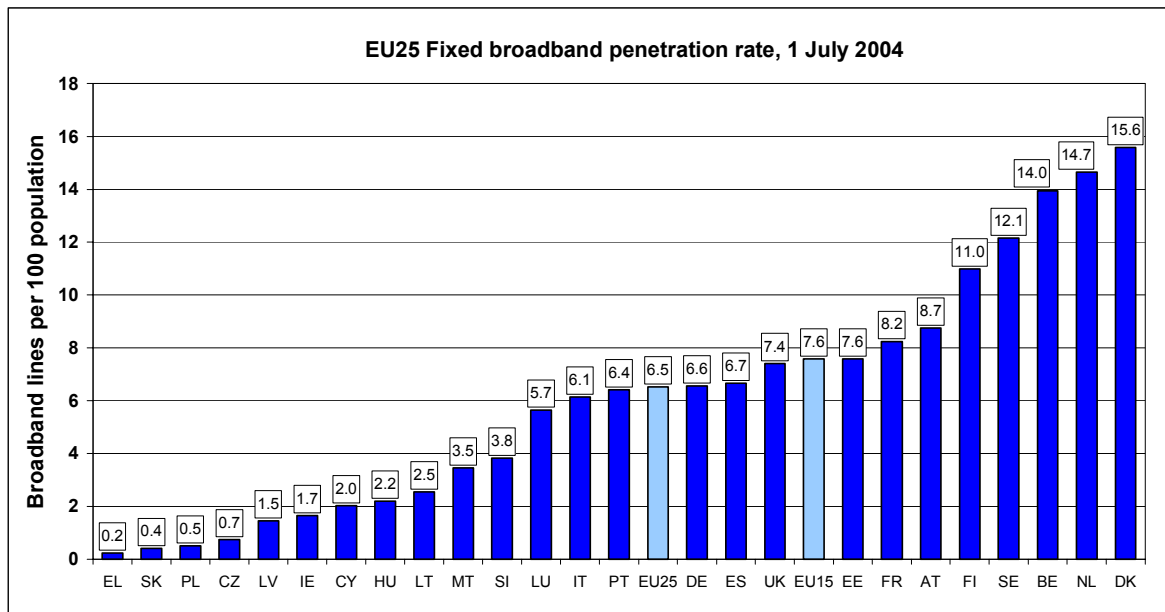
In mid-2004, broadband⁷ access networks covered about 85% of the population in the EU 15. As for the new Member States, the lower penetration level of fixed lines also indicates that broadband access infrastructures are available to a considerably smaller proportion of their population.

The total number of broadband access lines provided has increased by more than 72% at the EU 25 level in one year. Line deployment was at 29.6 million as of July 2004, which represents 6.5% of the EU population who actually use broadband services, as shown in Graph 3⁸. For purposes of comparison, the figure for the EU 15 is 7.6%. The dramatic growth in broadband deployment is being driven largely by intensifying competitive pressure and by the desire of fixed operators to offset eroding voice telephony revenues.

⁷ On broadband and its definition see footnote 10 in the associated Working Document.

⁸ This figure is 2-3 times higher when access is measured at the household level where several members of household would normally share a connection. See, *ibid*, the Annex on measurement issues.

Graph 3



Source: Commission services based on COCOM data

As the graph also illustrates, the take-up rates vary considerably, from under 1% to almost 16%. The highest penetration rates are observed in the countries that have the strongest competition between DSL and cable-based broadband infrastructures.

More detailed data is provided in the associated Commission Staff Working Paper.

3.3.2. Assessment

There is a general concern over the creation of a "digital divide", between those with access to advanced e-communications services and those without. The Commission has stressed the importance of broadband to realise the potential of a knowledge society. Implementing the eEurope Action Plan, Member States have put comprehensive national broadband strategies in place⁹. This process now extends to all 25 EU countries. As the territorial coverage of broadband widens, attention is turning to remote and rural regions where the population is dispersed and market push is weak. Member States may support the roll-out of broadband services through alternative mechanisms of public funding including the use of structural funds in the eligible regions conditional upon certain criteria¹⁰.

In conclusion, the regulatory data complemented by market-based analyses show that only a small, although rapidly growing, minority of European consumers currently make use of broadband services. As the figure of 6.5% actual take-up per head of population shows, the EU as a whole does not meet the criterion of use of the service by a "majority of consumers". Broadband has not yet become necessary for normal participation in society, such that lack of access implies social exclusion. At the present time, therefore, the conditions for including broadband services within the scope of universal service (as set out in the Directive) are not fulfilled.

⁹ See 'Connecting Europe at High Speed: National Broadband Strategies', COM(2004) 369.

¹⁰ Guidelines on criteria and modalities of use of Structural Funds for e-communications, SEC(2003) 895.

4. LONGER-TERM ISSUES

4.1. Scope

Technological convergence between telecommunications, media and information technology services continues, while the internet protocol (IP) continues to develop towards a common transmission platform for communications. Services that were previously carried over a limited number of networks can now be carried over common IP networks. This is blurring the boundaries between the internet and the traditional telecom worlds, which is further enhanced by new generations of hybrid terminals that combine communications functions with other functionalities, such as computing, gaming, and viewing audio-visual material. This promotes the creation of a personal service and information environment as opposed to standard mass market services.

For consumers, the convergent and global internet-based environment brings the possibility for innovation, new products and value for money as well as ever-increasing choice and complexity in terminals and services. Furthermore, the combined effects of convergence, networking and digitalisation are leading to growing use of the peer-to-peer communications model, which increasingly demands a high speed network connection when using new data applications.

The growth of IP-based services challenges the current provision of universal service, which is based on the model that consumers use network access from a fixed location for voice-related and basic internet services which are provided over the public switched telephone network. This paradigm is, in turn, based on a vertically integrated service provision model whereby the main infrastructure provider is also the telephone services provider.

If voice telephony service moves increasingly to an IP environment, this would create an internet-like model, whereby anyone with a broadband connection could choose between a range of competing voice service providers. In such a scenario, the provision of telephone service as an access service would become ubiquitous, and the focus of universal service could evolve towards the provision of an affordable broadband access link.

Comments are invited on, *inter alia*, the following longer-term issues:

- (a) Taking into account existing and expected technological developments, should universal service at some point in future separate the access to infrastructure element from the service provision element and address only access to the communications infrastructure, on the grounds that competitive provision of services, (e.g., telephone service provided using Voice over IP) will ensure their availability and affordability?
- (b) In as much as consumers are increasingly mobile while using communications services, should universal service continue to address access at a fixed location, or should it address access at any location (including access while on the move)?
- (c) With widespread affordable access to mobile communications, the demand for public payphones is declining. Is it still appropriate to include provisions on public payphones, and as they are currently conceived, within the scope of universal service?

- (d) In view of the competitive provision of directory enquiry services in many countries, for how long will there be a need to keep directories and directory enquiry services within the scope of universal service?
- (e) Taking into account the complexity of the ever evolving communications environment as described above, and noting the challenges presented to date for existing universal service provision, it is likely that advanced services will bring both benefits and new difficulties for users with disabilities. Should special measures for such users in the context of universal service provision be further harmonised at EU level?

4.2. Financing

The second longer term consideration in this context concerns the financing of universal service. Currently, universal service financing schemes imply a financial cross-subsidy from one group of customers to another. Member States are allowed to finance any net costs of universal service obligations either by using public funds under transparent conditions or by setting up a sector-specific fund to which all undertakings active in the market would have to contribute.

When operators enjoyed special or exclusive rights to provide services, these benefits were balanced by a requirement to fulfil certain social obligations. The concept of a sector-specific universal service fund, whereby market players are required to bear social costs, prolongs this thinking. It is questionable if this model is appropriate for a liberalised and generally competitive market. Normally, social costs are borne by general taxation and not by market players.

Therefore, longer-term questions on financing are:

- (a) Is a universal service funding scheme an appropriate means to address the objective of social inclusion in a competitive communications environment?
- (b) Is funding from general taxation a viable alternative?

5. SUMMARY

Having examined the technological, market and social developments affecting consumers of e-communications services, having analysed the mobile and broadband markets, and having applied the criteria for determining the scope of universal service set out in the Universal Service Directive, the Commission concludes that neither of these services fulfils the condition for inclusion in the scope at this time. Therefore the scope of universal service should remain unchanged. The Commission invites comments on this conclusion and it will consider any data which might be relevant to this assessment.

The Commission also considers that it is appropriate to encourage a forward-looking policy debate on universal service provision by putting forward a number of longer-term questions, to which contributions are invited as well