

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

PRESENT STATUS AND FUTURE APPROACH

FOR

OPEN ACCESS TO TELECOMMUNICATIONS NETWORKS AND SERVICES

(OPEN NETWORK PROVISION)

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SUMMARY

Access to advanced telecommunications and information technology networks and services is at the heart of the future information society, as set forth in the Report on Europe and the Global Information Society endorsed by the European Council meeting in Corfu in June 1994. Open access and interconnection are fundamental issues in moving the European Community to a liberalised telecommunications environment by 1st January 1998 in accordance with the time schedule laid down in Council Resolution 93/C213 of 22 July 1993, and have been made a major priority of the Commission's Action Plan 'Europe's Way to the Information Society', (COM(94)347) as adopted on 19 July 1994.

Basic principles for open and efficient access to public telecommunications networks and services were first established at the European level in Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of Open Network Provision. These principles govern technical interfaces and service features, supply and usage conditions and tariff principles.

Since 1990, the Council has adopted several measures specifying further how the principles of Open Network Provision should apply to core areas of telecommunications. In particular, Council Directive 92/44/EEC specifies open network provision principles for leased lines, Council Recommendation 92/382/EEC specifies open network provision principles for Packet Switched Data Services, and Council Recommendation 92/383/EEC specifies open network provision principles for Integrated Services Digital Networks. In the case of the proposal for a Directive specifying open network provision principles to voice telephony published by the Commission, the European Parliament and the Council were not able to agree on adoption of the Directive and the European Parliament rejected the Council text.

Council Resolution 93/C 213, which sets the date of 1st January 1998 for the liberalisation of public voice telephony service, calls on the Commission to introduce the necessary proposals for legislation by 1st January 1996. In preparing this package of legislation, it is appropriate to consider how to adjust the Open Network Provision framework to the future developments.

Therefore, in addition to completing the current legislative programme, three main future issues must be addressed:

- Applicability

The concept of special and exclusive rights has been used up to the present as the major criteria for applying Open Network Provision conditions. With the future abolition of special and exclusive rights for telecommunications services, the issue of the entities to be covered by Open Network Provision must be revisited.

- Limiting regulation to core issues

The emphasis of Title XII of the Treaty of European Union on interconnection and interoperability, and the central importance of interconnection and interoperability in a competitive environment, require re-focusing of Open Network Provision on these issues.

- Standards

The proliferation of networks and services in the future competitive environment, and the need for interconnection and interoperability between them, requires renewed emphasis on the development of market-led interface standards in order to ensure that markets are open and users' interests are well served.

As regards completion of the current programme in relation to the area of voice telephony, following non-adoption by the European Parliament on 19 July 1994 of the proposed Directive on the application of open network provision to Voice Telephony, the Commission will in the near future submit a revised proposal to the EP and the Council based on the consensus achieved to date during the conciliation procedure.

1. INTRODUCTION

Access to advanced telecommunications and information technology networks and services is at the heart of the future information society, as set forth in the Report on Europe and the Global Information Society endorsed by the European Council meeting in Corfu in June 1994. Open access and interconnection are fundamental issues in moving the European Community to a liberalised telecommunications environment by 1st January 1998 in accordance with the time schedule laid down in Council Resolution 93/C213 of 22 July 1993¹.

Basic principles for open and efficient access to public telecommunications networks and services were first established at the European level in Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of Open Network Provision². These principles govern technical interfaces and service features, supply and usage conditions and tariff principles.

Directive 90/387/EEC also identified key areas for the further specification of Open Network Provision principles, and set out a programme of legislative action. The Commission has undertaken action in all the areas identified, and the initial legislative programme is now almost completed. The main outstanding issue is the subject of voice telephony, following the decision by the European Parliament on 19 July 1994 to reject the Council text of the proposed Directive. Disagreement centred on the horizontal issue of comitology.

Follow-up action is now required to build on the consensus already achieved by the European Parliament and the Council on applying the general principles of Open Network Provision to this very important area of voice telephony.

Preparation also needs to be made for liberalisation of public voice telephony services on 1st January 1998 by refining the present regulatory framework. The time is now right for taking stock of the achievements to date and developing the approach further in order to put in place a comprehensive and stable regulatory framework designed to encourage rapid development of the sector towards a fully competitive market.

2. THE FRAMEWORK IN PLACE FOR OPEN NETWORK PROVISION

The existing regulatory framework for Open Network Provision (ONP) is laid down in Directive 90/387/EEC of 28 June 1990, and in a number of specific Directives and Recommendations as described below.

¹ OJ C213, 06.8.1993, p.1.

² OJ L 192, 24.7.1994, p.1.

2.1 The ONP Framework (Directive 90/387/EEC)

The Directive concerns the harmonisation of conditions for open and efficient access to and use of public telecommunications networks and, where applicable, public telecommunications services.

This Directive sets out the basic principles of Open Network Provision, describes the areas to which ONP applies, and identifies the networks/services for which specific ONP application Directives/Recommendations should be adopted.

Basic Principles of Open Network Provision

ONP conditions must:

- be based on objective criteria
- be transparent and published in an appropriate manner
- guarantee equality of access and be non-discriminatory in accordance with Community law.

ONP conditions must not restrict access to or use of public telecommunications networks or public telecommunications services, except for reasons based on essential requirements within the framework of Community law.

In addition to these general principles, the Directive identifies (in its Annex II) three areas for drawing up ONP conditions:

- harmonised technical interfaces and/or service features
- harmonised supply and usage conditions
- harmonised tariff principles.

Networks and Services for the application of Open Network Provision

The Directive explicitly identifies (in its Annex I) a number of networks/services to which Open Network Provision conditions apply:

1. Leased lines
2. Packet and circuit switched data services
3. ISDN
4. Voice telephony service
5. Telex service
6. Mobile services, as applicable

subject to further study

7. New types of access to the network
8. Access to broadband networks

Specific Directives and Recommendations

Annex III of Directive 90/387/EEC identifies areas for which the application of Open Network Provision should be further specified beyond the general principles outlined above, and sets out priorities and the appropriate type of regulatory measure for each area. These measures are:- a Directive specifying the application of Open Network Provision principles to leased lines, a Directive specifying the application of Open Network Provision to voice telephony, a Council Recommendation specifying the application of Open Network Provision to Packet Switched Data Services (PSDS), and a Council Recommendation specifying the application of Open Network Provision to Integrated Services Digital Networks (ISDN).

Action taken pursuant to the requirements of the ONP framework Directive include:

- adoption by Council, on 5 June 1992, of a Directive 92/44/EEC on the application of Open Network Provision to leased lines³.
- adoption by Council, on 5 June 1992, of a Recommendation on the harmonised provision of a minimum set of packet-switched data services (PSDS) in accordance with Open Network Provision (ONP) principles⁴
- adoption by Council, on 5 June 1992, of a Recommendation on the provision of harmonised Integrated Service Digital Network (ISDN) access arrangements and a minimum set of ISDN offerings in accordance with Open Network Provision (ONP) principles⁵
- submission by the Commission of a proposal for a Directive on the application of ONP to Voice Telephony⁶, and subsequent adoption by the Council of a Common Position⁷.

As regards the latter, issues of comitology prevented the European Parliament and the Council from reaching agreement on the final text of a Directive on the application of ONP to voice telephony (see section 2.3 below).

In addition, in accordance with Directive 90/387/EEC, the Commission has published in the *Official Journal of the European Communities* a List of Standards suitable for Open Network Provision⁸, and has given mandates to the European

³ OJ L 165, 19.6.1994, p.27.

⁴ OJ L 200, 18.7.1992, p.1.

⁵ OJ L 200, 18.7.1992, p.10.

⁶ COM (92) 247, 27.08.92.

⁷ Common Position confirmed by Council on 20 June 1994, in accordance with Article 189b(6) of the Treaty.

⁸ OJ C 219, 13.8.1993, p.2.

Telecommunications Standards Institute (ETSI) to develop European Telecommunications Standards (ETSS) suitable for open network provision in specific areas.

2.2 Application of Open Network Provision principles to leased lines (Council Directive 92/44/EEC)

Directive 92/44/EEC on the application of Open Network Provision to leased lines was adopted by the Council on 5 June 1992.

The Directive specifies the application of Open Network Provision principles to leased line offerings, and in addition identifies in its Annex II a minimum set of leased lines to be made available in all Member States. Annex II of the Directive has recently been amended by a Commission Decision,⁹ in accordance with a regulatory Committee procedure set up by the Directive. The amendment involved the inclusion of European Telecommunications Standards developed under a mandate to the European Telecommunications Standards Institute in accordance with the procedure set out in the ONP framework Directive.

2.3 Application of Open Network Provision principles to Voice Telephony

As already mentioned, Directive 90/387/EEC stipulates that, as for leased lines, the application of Open Network Provision principles to voice telephony should be further specified in a Directive.

The Commission submitted its proposal to the Council and the European Parliament on 27 August 1992, under the Co-operation procedure. The Council adopted a Common position on 30 June 1993. Following the entry into force of the Treaty of European Union on 1 November 1993, the Directive was formally re-submitted under the Co-decision procedure. The EP and the Council were unable to agree a final joint text for this Directive, largely owing to the horizontal issue of comitology¹⁰.

The Commission will in the near future submit a revised proposal to the EP and the Council based on the consensus achieved to date.

⁹ Commission Decision of 15 June 1994 on amendment of Council Directive 92/44/EEC OJ L 181, 15.7.1994, p.40.

¹⁰. The European Parliament passed a Resolution on 19.07.94 to reject the final Council text of an EP and Council Directive on the application of ONP to Voice Telephony. The European Parliament and the Council were unable to agree a joint text during Conciliation meetings held on 29.03.94 and 26.04.94. Lack of agreement centred on the issue of Comitology. The Commission has now proposed a draft inter-institutional agreement on comitology (SEC(94)645).

2.4 The Application of ONP principles to Packet Switched Data Services (PSDS) - Council Recommendation 92/382/EEC

Council Recommendation 92/382/EEC on the harmonised provision of a minimum set of packet-switched data services (PSDS) in accordance with Open Network Provision (ONP) principles was adopted on 5 June 1992.

The Recommendation calls upon Member States to ensure that on their territory a minimum set of packet switched data service with harmonised technical characteristics is provided, taking into account market demand.

The Recommendation also deals with transparency of information, harmonised tariff principles, and quality of service issues

2.5 The Application of ONP principles to Integrated Service Digital Networks (ISDN) - Council Recommendation 92/383/EEC

Council Recommendation 92/383/EEC on the provision of harmonised Integrated Service digital network (ISDN) access arrangements and a minimum set of ISDN offerings in accordance with Open Network Provision (ONP) principles was adopted on 5 June 1992.

The Recommendation calls upon Member States to ensure that on their territory an ISDN with harmonised access arrangements and a minimum set of offerings according to ETSI standards is provided, together with adequate and efficient interoperability between ISDNs in order to allow for Community-wide operation.

As for Packet Switched Data Services, this Recommendation also deals with transparency of information, harmonised tariff principles, quality of service issues and, in addition, numbering..

2.6 The application of Open Network Provision principles to Intelligent Networks / Network management / Access to the Local Loop

The Commission has published for public comment an Analysis Report drawn up in accordance with Article 4 of Directive 90/387/EEC concerning the application of Open Network Provision principles to Intelligent Networks / Network management / Access to the Local Loop.

A notice drawing attention to the availability of this Analysis Report is published in the *Official Journal of the European Communities*¹¹.

¹¹ OJ C 215, 5.8.1994, p.18.

3. FUTURE APPROACH TO OPEN NETWORK PROVISION

With the legislative programme of Directive 90/387/EEC now implemented, or in the process of implementation, attention should now also turn towards adjustment of the regulatory framework for the future competitive market.

3.1 Transition To A Fully Competitive Environment / Changes required

A fully competitive market in telecommunications services will develop in phases. According to Council Resolution 93/C213 and the public consultation on the Review of the situation in the Telecommunications sector, two stages are to be distinguished.

The first stage comprises full implementation of the existing package of regulatory measures. As set out, this includes full application of the ONP framework Directive, the ONP Leased Lines Directive, together with implementation as appropriate of the Council Recommendations on ISDN and PSDS.

It would also cover adoption, in due course, by the European Parliament and the Council of the re-submitted Directive on the application of Open Network Provision to voice telephony.

This phase also covers publication for public comment of the Commission's Analysis Report on the application of Open Network Provision principles to the areas of Intelligent Networks / Network management / Access to the Local Loop.

Full implementation of these measures is vital for providing legal certainty for the period up to 1st January 1998.

The second stage concerns the changes necessary to meet the requirements of the fully competitive market which will be in place from 1st January 1998. In keeping with the timetable laid down in Council Resolution 93/C213, the necessary legislative measures are to be proposed by the Commission by 1st January 1996.

Three main issues must be addressed:

- Applicability

The concept of special and exclusive rights has been used up to the present as the major criteria for applying Open Network Provision conditions. With the future abolition of special and exclusive rights for telecommunications services, the issue of the entities to be covered by Open Network Provision must be revisited.

- Limiting regulation to core issues

The emphasis of Title XII of the Treaty of European Union on interconnection and interoperability, and the central importance of interconnection and

interoperability in a competitive environment, require re-focusing of Open Network Provision on these issues.

- Standards

The proliferation of networks and services in the future competitive environment, and the need for interconnection and interoperability between them, requires renewed emphasis on the development of market-led interface standards in order to ensure that markets are open and users' interests are well served.

The approach should be based on the principles of Council Resolution 93/C213 on the Review of the Situation in the Telecommunications Sector and the need for further developments in that market, and Council Resolution 94/C48 on Universal Service Principles in the Telecommunications Sector. The approach must also take account of the need for a high level of consumer protection in accordance with Article 129a of the Treaty.

3.2 Applicability (ie the entities covered by Open Network Provision)

In the future, exclusive or special rights can no longer serve as the main criterion for the applicability of Open Network Provision conditions. However, this is a horizontal issue which has wider implications than just Open Network Provision measures; it may also concern other areas, in particular Directives 90/531/EEC and 92/13/EEC,¹² and Directive 93/38/EEC¹³ on procurement, and Directive 91/263/EEC on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity¹⁴.

The future orientation of Open Network Provision should be consistent with the principles set forth by Council in Resolution 93/C213.

The starting point for considering the issue has been set out by a number of statements and declarations¹⁵.

¹² Council Directive 90/531/EEC of 17.9.90 on procurement procedures of entities operating in the water, energy, transport and telecommunications sectors. OJ L 297, 29.10.1990, p.1.
Council Directive 92/13/EEC of 25.2.92 co-ordinating the laws regulations and administrative procedures relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors. OJ L 76, 23.03.1992, p.14.

¹³ Council Directive 93/38/EEC of 14.6.93 co-ordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sector. OJ L 199, 09.08.1993, p.84.

¹⁴ OJ L 128, 23.5.1991, p.1.

¹⁵ a) Declaration made by Germany, the Netherlands and the UK in relation to the ONP Voice Telephony Directive.

The statements point to the need to work towards a solution which should:

- be consistent, as far as possible, with the basic orientation to date
- take proper account of the market position of the actors, once exclusive and special rights for telecommunications services have been abolished
- ensure that obligations are reasonably equal and that actors share public service responsibilities to a reasonable extent, where, however, care will have to be taken that the principle of proportionality is safeguarded and market entrants are not loaded disproportionately with regulation¹⁶.
- clarify the relationship between open network provision conditions and trade regulations relating to conditions of permanence, availability and quality of service

The issue will need in-depth discussion taking into account the impact on other Directives. The approach chosen must be clear and unambiguous to apply in practice.

Proposals to amend the existing measures to reflect the approach chosen will be made as part of the package of legislative proposals planned for 1st January 1996.

3.3 The Interconnection Framework

b) Position of the Commission:

"The Commission has indicated in its Communication of April 1993 that Open Network Provision must develop in order to take account of future developments in the market.

This must be done in the context of the timetable laid down by the Council for the liberalisation of telecommunications services and in particular the necessary changes in the European regulatory framework which the Commission must present before 1st January 1996.

The Commission continues to believe that the application of Open Network Provision conditions will in the future depend on the market position of the entities concerned."

c) Recommendations from the High-level Group on the Information Society ('Europe and the Global Information Society', 26.5.94, Chapter 2, pp.12, 13)

"In future, all licensed public operators should assume their share of public service responsibilities (eg universal service obligations and the provision of equal access to networks and services).

The [regulatory] authority will need to address a single regulatory environment valid for all operators, which would imply principles of transparency and non-discrimination, complemented by practical rules for dispute resolution and speedy remedy against abuse dominance."

¹⁶ Council Resolution 94/C/48 of 7 February 1994 on Universal service principles in the telecommunications sector states *inter alia* that due account should be taken "of the principles of transparency, non-discrimination and proportionality, while ensuring compliance with competition rules in order to make a fair contribution to the burden which the provision of universal service represents" (emphasis added).

The main future orientation should be an open interconnected environment. This has been emphasised by the report on 'Europe and the global information society', and by the subsequent Action Plan of the Commission¹⁷.

Three key orientations should be followed:

- commercial negotiation should be the basis for interconnection agreements, with full application of the competition rules of the Treaty,
- the national regulatory authorities must have a role in laying down principles for the negotiation
- there must be common principles for interconnection charges.

As regards interconnection charges, the charge for interconnection should be analysed with regard to three main elements:

- re-imbursement for one-off costs associated with providing the interconnection requested
- conveyance costs related to the volume of traffic carried and the number of interconnection circuits employed
- a contribution to any cost burden associated with the provision of universal service, within the terms of Council Resolution 94/C48. ('Access charges')

The current Open Network Provision framework Directive establishes the principle of cost orientation for the first two items. Some costing principles related to the last item were agreed in general terms by the European Parliament and the Council during the recent negotiations over the application of Open Network Provision principles to Voice Telephony (see section 2.3 above).

The current consultation indicates the need to lay down the general approach for promoting interconnection in a transparent and stable regulatory framework.

The Commission considers that the most appropriate regulatory approach for setting out in clear terms the principles and the framework for promoting interconnection is to fully apply the competition rules of the Treaty and to adopt in parallel an Open Network Provision Interconnection Directive.

Areas to be addressed by such measures would be :

Chapter 1. General principles for interconnection

¹⁷ 'Europe's way to the Information Society, An Action Plan'. Communication from the Commission to the Council the European Parliament, the Economic and Social Committee and the Committee of the Regions. COM (94) 347, 19 July 1994.

These principles relate to the Open Network Provision framework directive and should be:

- based on objective criteria
- transparent and published in an appropriate manner
- guarantee equality of access and must be non-discriminatory, in accordance with EU law.

Chapter 2. Framework for negotiation

A negotiating framework should be set ensuring that commercial negotiations result in a fair and timely agreement. Regulatory authorities should have a responsibility for ensuring a balance between the bargaining power of the parties concerned, the provision of adequate information, cost-oriented structuring of the offering, and for issues such as unbundling and collocation.

Chapter 3. A common approach and ceilings on that part of the interconnection charge which relates to sharing any burden of universal service.

This approach should be based on the current consultations being carried out in the context of Council Resolution 94/C48 on Universal Service principles in the telecommunications sector¹⁸.

It should establish clear, European-wide rules for the setting of access charges, including ceilings on access charges.

Chapter 4. A mechanism for dispute resolution.

A mechanism for dispute resolution between the interconnecting parties must be established, with defined roles for the national regulatory authorities and the Commission.

Two comprehensive studies are currently being carried out for the Commission on accounting and interconnection (by Arthur Andersen¹⁹ and WIK²⁰ respectively). The

¹⁸ The Commission is consulting with Member States on the issues raised by the definition of universal service and its means of financing, on tariff principles, accounting principles and transfers, and on access charge principles, and will report to the European Parliament and the Council by 1 January 1996.

¹⁹ 'Cost allocation and the general accounting principles to be used in the establishment of access charges in the context of telephone liberalisation in the EC' - a study for the EC/DGXIII being undertaken by Arthur Andersen & Co, Turin, Italy.

studies will be submitted to a broad public consultation following their publication in November 1994.

3.4 Standards

In a competitive environment, more attention must be given to the interfaces of networks and services. The approach is to emphasise the role of voluntary standards in Open Network Provision and interconnection, since in general conformance to harmonised interface specifications is in the interest of all parties and should be left as a voluntary process as far as possible. At the same time, safeguards must be provided whereby, according to clear criteria based on user needs, the provision of standardised services could be made compulsory in exceptional circumstances.

Article 5(3) of the Open Network Provision Framework Directive provides an appropriate base for this process, but the procedure needs to be clarified in order to give legal certainty regarding the criteria for its application, and to include the necessary mechanisms of transparency and public consultation.

4. CONCLUSION

The European Union policy of Open Network Provision has substantially contributed to date to the development of an open access environment in the telecommunications sector. Open Network Provision measures are beginning to have their full impact in the European market.

It is now important to reach rapid implementation by Member States of the last outstanding measure concerning voice telephony, by means of adoption of a revised proposal for a European Parliament and Council Directive specifying the application of Open Network Provision principles to Voice Telephony, based on the consensus achieved to date.

As regards future development of the telecommunications regulatory framework, and particularly with a view to full liberalisation of voice telephony services by 1st January 1998 in accordance with Council Resolution 93/C213, it is now also necessary to agree basic principles for further adjusting open network provision principles to a fully competitive environment.

It is with these considerations in mind that the Commission transmits this Communication to the European Parliament and the Council.

²⁰ 'Interconnection in the context of Open Network Provision' - a study for the EC/DGXIII being undertaken by Wissenschaftliches Institut für Kommunikationsdienste GmbH, Bad Honnef, Germany.

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