

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 182 final - SYN 437

Brussels, 7 May 1993

Amended proposal for a

## COUNCIL DIRECTIVE

on the application of open network provision (ONP)

to voice telephony

(presented by the Commission pursuant to Article 149(3)  
of the EEC-Treaty)

## EXPLANATORY MEMORANDUM

1. This Communication concerns a modified proposal for a Council Directive on the application of open network provision (ONP) to voice telephony.  
The original proposal was submitted in accordance with the priorities laid down in Directive 90/387/EEC.

2. The Commission submitted its proposal to the Council on 27 August 1992 [COM(92)247 final - SYN 437].  
The Economic and Social Committee gave its favourable opinion on 25 November 1992. The European Parliament adopted a favourable Resolution on 10 March 1993, including thirty seven amendments to the proposal of the Commission.

Of the thirty seven amendments, the Commission accepted sixteen in full: Amendments 1, 2, 3, 11, 13, 14, 15, 16, 17, 18, 20, 26, 27, 29, 31, 38. The Commission accepted amendments 4, 7, 22, 24 and 32 in principle and has provided alternative text for these. Three amendments were accepted in part:

Amendment 12 (addition of text in Article 12(1))

Amendment 28 (addition of text in Article 23(3)b)

Amendment 34 (change of title and addition of text in Article 27(1)).

The reasons for rejecting parts of these amendments are given below.

3. Thirteen of the amendments adopted by Parliament were rejected by the Commission.

One group of amendments (5, 6, part 28, part 34, 35, 36) concerned additional consultation and reporting to Parliament and Council; the effect of these would have been to open too wide the scope of the consultation process, and could have led to very detailed technical reports being submitted to Parliament.

A second group (10, 21, 23) addressed problems experienced by small and medium telecommunications organisations when interconnected to large telecommunications organisations; the directive already makes provision for settling disputes of this nature at a national level, in keeping with the principle of subsidiarity.

Other amendments were unacceptable because they were incompatible with other related telecommunications directives or with the basic aims of the proposal (8, 9, part 12, 19, 25, 30, 33).

4. In accordance with Article 149(3) of the Treaty, the Commission amends its initial proposal.

MODIFICATION NO. 1 (based on EP Amendment 4)

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Recital 9

Whereas in conformity with the principle of separation of regulatory and operational functions, national regulatory authorities have been created in Member States; whereas in application of the principle of subsidiarity, the national regulatory authority of each Member state should play an important role in the implementation of this Directive, particularly in matters relating to the publication of targets and performance statistics, dates for the implementation of new service features, adequate consultation with users/consumers and user/consumer organizations, the control of numbering plans, the surveillance of usage conditions, and the resolution of disputes;

Whereas in conformity with the principle of separation of regulatory and operational functions, national regulatory authorities have been created in Member States; whereas in application of the principle of subsidiarity, the national regulatory authority of each Member state should play an important role in the implementation of this Directive, particularly in matters relating to the publication of targets and performance statistics, dates for the implementation of new service features, adequate consultation with users/consumers and user/consumer organizations, the control of numbering plans, the surveillance of usage conditions, the resolution of disputes as well as in ensuring that users are given fair treatment throughout the Community;

MODIFICATION NO. 2 (based on EP Amendment 1)

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Recital 13

13. Whereas the provision of other voice telephony service features, provided in response to market demand in addition to the harmonized minimum set of voice telephony service features described herein, should not impede the provision of the basic voice telephony service features;

13. Whereas the provision of other voice telephony service features, provided in response to market demand in addition to the harmonized minimum set of voice telephony service features described herein, should not impede the provision of the basic voice telephony service features and should not lead to unreasonable increases in the prices for the latter;

MODIFICATION NO. 3 (based on EP Amendment 2)

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Recital 16

16. Whereas, in order to provide efficient and effective telecommunications services, and to offer new applications, telecommunications service providers and others may, in accordance with the principles of Community law, require access to the public telephone network at points other than the network termination points offered to the majority of telephone users; whereas it is essential that in making full and efficient use of the public telephone network via such special network access, the integrity of the public network is maintained;

16. Whereas, in order to provide efficient and effective telecommunications services, and to offer new applications, telecommunications service providers and others may, in accordance with the principles of Community law, require access to the public telephone network at points other than the network termination points offered to the majority of telephone users; whereas such requests must be reasonable ones in terms of economic and technical viability; whereas procedures must be introduced to provide a balance between the rights of users and the justified concerns of telecommunications organizations; whereas it is essential that in making full and efficient use of the public telephone network via such special network access, the integrity of the public network is maintained;

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Recital 22

22. Whereas national regulatory authorities have a responsibility for overseeing of tariffs; whereas tariffs structures should evolve in response to technological development and user demand; whereas the requirement for cost-orientated tariffs means that telecommunications organizations should implement cost accounting systems by which costs can be allocated to services in a transparent manner; whereas notwithstanding further obligations which might be set out in particular to ensure transparency of financial transfers between activities within undertakings to which special or exclusive rights have been granted by the Member States, a minimum set of requirements should be established; whereas such requirements can be fulfilled for example by the implementation of the principle of fully distributed costing;

22. Whereas national regulatory authorities have a responsibility for overseeing of tariffs; whereas tariffs structures should evolve in response to technological development and user demand; whereas the requirement for cost-orientated tariffs means that telecommunications organizations should implement cost accounting systems by which costs can be allocated to services in a transparent manner; whereas notwithstanding further obligations which might be set out in particular to ensure transparency of financial transfers between activities within undertakings to which special or exclusive rights have been granted by the Member States, a minimum set of requirements should be established; whereas such requirements can be fulfilled for example by the implementation within a reasonable time limit of the principle of fully distributed costing;

MODIFICATION NO. 5 (based on EP Amendment 7)

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 2

- 'fixed public telephone network' means the public telecommunications network which provides switched telephony capacity connections between network termination points at fixed locations, and which is used, inter alia, for the provision of voice telephony service;

- (definition unchanged)

The term "public telephone network" to be changed to "fixed public telephone network" in Articles 3-26, Annexes and Recitals

MODIFICATION NO. 6 (based on EP Amendment 11)

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 3

Member States shall ensure that users have the right to:

- (a) be supplied with a connection to the public telephone network;
- (b) connect and use approved terminal equipment situated on the user's premises, in accordance with national and Community law;
- (c) use the public telephone network for voice telephony and other applications, including those which require a transparent telephony circuit, to the full extent allowed under Community law.

in accordance with the relevant targets for supply and quality of service set out in Article 5.

Member States shall ensure that the respective telecommunications organizations separately or jointly provide a public telephone network and a voice telephony service in accordance with the provisions of this Directive, in order to guarantee a harmonized offering throughout the Community.

In particular Member States shall ensure that users can:

- (a) obtain on request a connection to the public telephone network;
- (b) connect and use approved terminal equipment situated on the user's premises, in accordance with national and Community law.

Member States shall ensure that no restrictions are placed on the use made of the connection provided, other than those referred to in Article 21.

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 4  
Publication of an access to information

1. ....

Changes in existing offerings shall be published as soon as possible and, unless the national regulatory authority agrees otherwise, no later than two months before their implementation.

2. The information referred to in paragraph 1 shall be published in an appropriate manner so as to provide easy access for users to that information.

1. ....

Changes in existing offerings and information on new offerings shall be published as soon as possible and, unless the national regulatory authority agrees otherwise, no later than two months before their implementation.

2. The information referred to in paragraph 1 shall be made publicly available and readily accessible by users.

MODIFICATION NO. 8 (based on EP Amendment 13)

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 5(1)

1. National regulatory authorities shall ensure that targets are set and published for supply time and quality of service indicators based on the list set out in Annex II, and that the performance of national telecommunications organizations in relation to those targets is published periodically. Definitions, measurement methods, and targets shall be reviewed periodically by the national regulatory authority, taking into account Community-wide convergence of quality of service criteria.

1. National regulatory authorities shall ensure that targets are set and published for supply time and quality of service indicators based on the list set out in Annex II, and that the performance of national telecommunications organizations in relation to those targets is published annually. Definitions, measurement methods, and targets shall be reviewed at least every 3 years by the national regulatory authority, taking into account Community-wide convergence of quality of service criteria.

MODIFICATION NO. 9 (based on EP Amendment 14)

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 6

1. National regulatory authorities shall ensure that existing service offerings continue for a reasonable period of time, and that termination of an offering can be done only after consultation with users and organizations representing user and/or consumer interests.

2. Without prejudice to other rights of appeal provided for by national laws, Member States shall ensure that users and organizations representing user and/or consumer interests can bring before the national regulatory authority cases where the users do not agree with the termination date as envisaged by the telecommunications organization.

1. National regulatory authorities shall ensure that existing service offerings continue for a reasonable period of time, and that termination of an offering or a change that materially alters the use that can be made of it can be done only after consultation with affected users and an appropriate public notice period set by the national regulatory authority.

2. Without prejudice to other rights of appeal provided for by national laws, Member States shall ensure that users and organizations representing user and/or consumer interests can bring before the national regulatory authority cases where the affected users do not agree with the termination date as envisaged by the telecommunications organization.

MODIFICATION NO. 10 (based on EP Amendment 15)

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 7(1) and (2)

1. National regulatory authorities shall ensure that users have a contract which specifies the service to be provided by a telecommunications organization and the compensation arrangements if the contracted service quality levels are not met.

2. Standard contract conditions and compensation schemes used by telecommunications organizations shall be agreed by the national regulatory authority. Users' contracts with telecommunications organizations shall contain a summary of the procedure for settlement of disputes.

1. National regulatory authorities shall ensure that users have a contract which specifies the service to be provided by a telecommunications organization. National regulatory authorities shall require compensation and/or refund arrangements to be provided if the contracted service quality levels are not met.

Telecommunications organizations shall respond to a request for connection to the public telephone network without delay and shall give the user an estimated target date for the provision of service.

2. National regulatory authorities shall be able to require the alteration of the conditions of contracts and of any compensation and/or refund schemes used by telecommunications organizations. Users' contracts with telecommunications organizations shall contain a summary of the method of initiating procedures for settlement of disputes.

MODIFICATION NO. 11 (based on EP Amendment 16)

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 7a (new)

Where, in response to a particular request, a telecommunications organization considers it unreasonable to provide a connection to the fixed public telephone network under its published tariffs and supply conditions, it must seek the agreement of the national regulatory authority to vary those conditions in that case.

MODIFICATION NO. 12 (based on EP Amendment 17)

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 9(1)

1. National regulatory authorities shall ensure that telecommunications organizations respond to requests from users, including service providers, for access to the public telephone network at network termination points other than the network termination points referred to in Annex I.

Such requests may be referred to the national regulatory authority where the telecommunications organization considers that granting the access requested would adversely affect the normal operation of the public telephone network, or would impinge upon any special or exclusive rights granted to the telecommunications organization in accordance with Community law. Access shall be restricted or denied only on the ground given in Article 2i.

1. National regulatory authorities shall ensure that telecommunications organizations respond to reasonable requests from users, including service providers, for access to the public telephone network at network termination points other than the network termination points referred to in Annex I.

Where in response to a particular request the telecommunications organization considers it unreasonable to provide the special network access requested, it must seek the agreement of the national regulatory authority to restrict or deny that access. Where the affected users so request they must be granted a hearing to argue their case before the national regulatory authority, and must, in all cases, be given a prompt and justified explanation as to why their request has been refused.

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 9(2)

2. National regulatory authorities shall ensure that telecommunications organizations adhere to the principle of non-discrimination when they make use of the public telephone network for providing services which are or may be provided also by other service providers.

2. National regulatory authorities shall ensure that telecommunications organizations adhere to the principle of non-discrimination when they make use of the public telephone network for providing services which are or may be provided also by other service providers, including open interfaces at all levels sufficient to ensure that the telecommunications organization cannot exercise control over such interfaces in a manner that is calculated to favour a telecommunications services business carried on by it.

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 10(1a) (new)

1a. National regulatory authorities shall ensure that telecommunications organizations respect the principle of non-discrimination in using the public telephone network to provide services which are or may also be provided by other service providers in the categories of common services, including conditions of interconnection which do not favour the provision of their own services.

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 11(b)

(b) tariffs for service features additional to the provision of connection to the public telephone network and provision of voice telephone service shall, in accordance with Community law, be sufficiently unbundled, so that the user is not required to pay for features which are not requested;

(b) tariffs for service features additional to the provision of connection to the public telephone network and provision of voice telephone service shall, in accordance with Community law, be sufficiently unbundled, so that the user is not required to pay for features which are not required for the service demanded;

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 12 (1)

1. Member State's shall, without prejudice to further specific obligations to be established in pursuance of the competition rules of the Treaty, ensure that their telecommunications organizations formulate and put into practice a cost accounting system suitable for the implementation of Article 11, and which as such has been approved by the national regulatory authority for application by the telecommunications organizations.

1. Member States shall without prejudice to further specific obligations to be established in pursuance of the competition rules of the Treaty, ensure that their telecommunications organizations formulate and put into practice by 31 December 1994 at the latest a cost accounting system suitable for the implementation of Article 11, and which as such has been approved by the national regulatory authority for application by the telecommunications organizations.

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 14

National regulatory authorities shall ensure that targets are set and published for the provision of itemized billing in order to allow users to check their bills, taking into account the states of network development and market demand.

Itemized billing shall be available to users on request, subject to the level of detail permitted under relevant legislation on the protection of personal data and privacy, itemized bills shall be able to show the composition of the charges incurred.

Within the framework, different levels of detail may be offered to users at reasonable tariffs.

National regulatory authorities shall ensure that targets are set and published for the provision of itemized billing, taking into account the state of network development and market demand.

Itemized billing shall be made available to users unless the user expressly requests not to have such a facility. Subject to paragraph 3 below, and to the level of detail permitted under relevant legislation on the protection of personal data and privacy, itemized bills shall show the composition of the charges incurred.

Calls to helplines which are free of charge to the caller shall not be identified in itemised bills.

Within this framework, different levels of detail may be offered to users at reasonable prices.

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 21(6)

6. Non-payment of bills

National regulatory authorities shall authorize, a priori, specified measures, which shall be published in the manner laid down in Article 4, to cover non-payment of bills. These measures shall ensure that any service interruption is confined to the service concerned, and that due warning is given to the user beforehand.

6. Non-payment of bills

National regulatory authorities shall authorize, a priori, specified measures, which shall be published in the manner laid down in Article 4, to cover non-payment of bills. Where the level of development of the network so permits, these measures shall ensure that any service interruption is confined to the service concerned, and that due warning is given to the user beforehand.

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 22(2)

2. Member States shall ensure that standards or specifications for use by telecommunications organizations are subject to the requirements of Directive 83/189/EEC.

2. National regulatory authorities shall ensure that telecommunications organizations inform users on request of the standards or specifications, including any European and/or international standards which are implemented according to national standards, according to which the services and facilities in this Directive are provided.

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 23, paragraphs 1, 2 and 3

1. ....

1. ....

2. ....

2. ....

3. In particular, with regard to those features requiring Europe-wide cooperation described in Article 8(2), where commercial agreements between telecommunications organizations cannot be reached, conditions of interconnection and access may be determined in accordance with the procedure set out in Article 29, in order to achieve the provision of harmonized features and facilities to users.

The procedure initiated by the Commission shall take due account of the state of network development and market demand in the Community.

3. In particular, with regard to those features requiring Europe-wide cooperation described in Article 8(2), where commercial agreements between telecommunications organizations cannot be reached, conditions of interconnection and access may be determined in accordance with the procedure set out in Article 29 in order to achieve the provision of harmonized features and facilities to users.

The procedure initiated by the Commission shall take due account of the state of network development, the various architectures and market demand in the Community.

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 24(4)

4. National regulatory authorities shall keep available and submit to the Commission on request details of individual cases including the measures taken and their justification.

4. National regulatory authorities shall keep available and submit to the Commission on request details of individual cases where access to or use of the public telephone network or voice telephony service has been restricted or denied, including the measures taken and their justification.

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 25(1)

1. Member States shall ensure that, in the event of an unresolved dispute with a telecommunications organization, users, including service providers, consumers, or other telecommunications organizations shall have a right of appeal to the national regulatory authority or another independent body, and that easily accessible procedures are created at a national level to settle disputes in a fair, timely and transparent manner.

1. Member States shall ensure that, in the event of an unresolved dispute with a telecommunication's organization, users, including service providers, consumers, or other telecommunications organizations and any party who can show that he has an obvious interest in the matter shall have a right of appeal to the national regulatory authority or another independent body, and that easily accessible and inexpensive procedures are created at a national level to settle disputes in a fair, timely and transparent manner.

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 25(4)(a)

(a) the Chairman of the ONP Committee shall convene as soon as possible a working group including at least two members of the ONP Committee and one representative of the national regulatory authorities concerned, and the Chairman of the ONP Committee or another official of the Commission appointed by him. The working group shall be chaired by the representative of the Commission, and shall normally meet within 10 days. The Chairman of the working group may decide, upon proposal of any of the members of the working group, to invite a maximum of two other persons as experts to advise it;

(a) the Chairman of the ONP Committee shall convene as soon as possible a working group including at least two members of the ONP Committee and one representative of the national regulatory authorities concerned, and the Chairman of the ONP Committee or another official of the Commission appointed by him. The working group shall be chaired by the representative of the Commission, and shall normally meet within 10 days of the meeting date having been notified to members of the Working Group by the Chairman of the ONP Committee. The Chairman of the working group may decide, upon proposal of any of the members of the working group, to invite a maximum of two other persons as experts to advise it;

ORIGINAL COMMISSION PROPOSAL

MODIFIED PROPOSAL

Article 27

Technical adjustment

Modifications necessary to adapt the technical provisions of this Directive to new technological developments or to changes in market demand shall be determined in accordance with the procedure set out in Article 29.

Procedures for making technical and other adjustments

1. Modifications necessary to adapt the technical provisions of this Directive to new technological developments or to changes in market demand shall be determined in accordance with the procedures set out in Articles 28 and 29 of the present Directive.

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