

## ETNO Reflection Document on universal service principles in e-communications



May 2010

### Executive summary

ETNO welcomes this consultation on the universal service regime, as established by Chapter II of the 'Universal Service Directive' ("the Directive")<sup>1</sup>, a vestige of the early days of liberalisation of the sector that we believe requires radical reform.

ETNO believes that investment, innovation and rapid technological progress in the telecommunications sector deliver unrivalled choice, quality and value for money for the consumer of electronic communications services almost everywhere in the European Union (EU). For example, for basic telephony service, there is a strong trend of substitution of fixed by mobile voice communications, which have very wide coverage and affordability. Another example is the development of the commercial directories market. Against this background, the necessity for the continuation of a universal service obligation (USO) should be critically assessed.

We thus call upon the Commission to conduct a thorough, systematic review of the universal service regime in Chapter II of the Directive on par with the review of the directives of the regulatory framework for electronic communications networks and services ("the Framework") completed in 2009 ("the Telecoms Review").

This 'root-and-branch' review of Chapter II should be based on a quantitative analysis of the costs and benefits of the existing scope of the USO and any possible expansion thereof. This should include a rigorous, quantitative impact assessment of all policy options, including removing the provision of universal service completely.

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<sup>1</sup> European Parliament and Council Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services.

In most member states, the USO is funded by an indirect tax on the customers and shareholders of the universal service provider (USP), a single industry player. Any industry funding mechanism simply shares the tax across the larger sector. Given that the USO is intended to benefit society and the general economy, ETNO calls for a stronger or exclusive role of public funds for its financing.

Without prejudice to the view that the provision of universal service could be withdrawn completely, ETNO believes that radical revision of the Directive is required to improve the regime's financing mechanism and make it 'fit for purpose' for effective and efficient delivery of any USO.

We do not believe that the universal service regime should play a role in meeting the "broadband for all" objective which is a widely-stated public policy objective at both national and European levels. Where broadband coverage cannot be achieved on a commercial basis, EU and national policy instruments and public financing, as listed in Annex 3 of the consultation document, should be utilised.

## General remarks

Before responding to the questions raised in the consultation, we begin by making some general comments about the review process.

### Industry expectations for review

When proposing amendments to the Framework in the Telecoms Review, the Commission took the view that any adjustment to the fundamental principles in the Directive should be contemplated as part of a separate exercise. With this exercise now underway, we expect the Commission to follow the same systematic review conducted for the other four directives. Procedurally, this would include:

- public call for input (which this current public consultation could be deemed to be);
- Commission Communication reporting on the functioning of the Directive, as required by the Framework,
  - including an "Impact Assessment" Commission Staff Working Document and a "Proposed Changes" Commission Staff Working Document; and
  - launching a second public consultation;
- Commission Proposal for a directive amending the Universal Service Directive.

As with the broader Telecoms Review, in keeping with the principles of better regulation, the Commission must take the opportunity to

repeal of outdated measures and to propose reductions in administrative burdens.

In the Telecoms Review, the Commission's public call for input, held in early-2006, already suggested a need for a "fundamental reflection on the role and concept of universal service in the 21st century." In its June 2006 Communication<sup>2</sup>, the Commission noted:

*"The options range from removing the provision of universal service completely, and relying instead on horizontal consumer protection legislation to protect users, or going in the opposite direction and expanding the scope of universal service and use it to meet social goals other than those for which it is currently designed. Closely associated with the question of the scope of universal service is the question of finance – should the cost of universal service be borne by the state or by the sector players?"*

*In view of the fundamental nature of these questions, the Commission considers that a broad consultation is necessary, one that needs more time than is available in the current review of the Directives."*

It would thus be inconsistent if the Commission and the co-legislators did not devote the necessary time and resources to conduct this fundamental reflection and review at this time.

## **Broadband for all vs. universal service**

Given the considerable attention given to broadband in the current consultation, it would appear that this important review risks being confounded with the establishment of "broadband for all" economic and social development policies, such as the EU 2020 Strategy, issued in March 2010, and the "Digital Agenda" (including the EU Broadband Strategy), expected before summer 2010<sup>3</sup>.

This inappropriate focus on the possible inclusion of broadband in the scope of the USO is exacerbated by the regulatory uncertainty which has been created when, contrary to the agreed policy process, partial reform of the Directive was allowed in the Telecoms Review. In advance of this separate review exercise, a recital was introduced in the Citizens' Rights Directive, Recital 5, which is deemed by some to complement the current Recital 8 of the Directive concerning the universal service requirement for offering functional internet access.

In discussing this issue, we are reminded that the flexible requirement for the functionality of internet access in Recital 8 of the Directive was formulated at the time (c. 2001) to allow the accession countries to exploit mobile/wireless technologies to deliver universal service. It

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<sup>2</sup> Commission Staff Working Document – Impact Assessment support Commission Communication on the Review of the EU Regulatory Framework for electronic communications networks and services, SEC(2006) 817, 28 June 2006.

<sup>3</sup> Commission Communication, "Commission Work Programme 2010: Time to act," COM(2010)135final, 31 March 2010.

was not intended, as suggested by some in the Telecoms Review and now, to allow member states to equate functional internet access with broadband.

Stakeholders, who believe that expanding the scope of USO to include broadband is the narrow objective of this review exercise, could argue that the review exercise is moot, relying on member states exercising discretion in the context of Recital 8, such as, for example, is being pursued by the Spanish Government. Other similarly-minded stakeholders may argue that the lack of harmonisation, which could result from member states availing of Recital 8, makes it imperative to explicitly broaden the scope of USO to include broadband.

We regret the inclusion of Recital 5 in Citizen's Rights Directive which appears to open up the possibility for an extension of USO to broadband via the concept of functional internet access. We call upon the Commission to provide guidance on whether and according to which criteria member states could implement this. It should also specify that for any possible extension member states would have to comply at least with the criteria laid out in Annex V of the Directive for an extension of USO scope. Without such clarity, this could give rise to varying interpretations and result in regulatory uncertainty.

In addition, ETNO calls upon the Commission to ensure that the above-mentioned broadband issues will be considered subsidiary to the more prescient issue of the reform of the broader universal service regime.

## Outdated universal service concept and policy

[Question 1: In today's competitive environment, can the market be relied on to meet demand for basic e-communications services from all sections of society, thereby ensuring social inclusiveness?

Question 2: If not, what is the best policy to allow disabled consumers, those on low incomes and those living in geographically remote or isolated areas to access and use basic e-communications services?]

### Universality being achieved via market forces

ETNO members are fully committed to the goal of an inclusive information society for all EU citizens. We do not believe, however, that the continuation of the existing universal service regime is necessary and thus warranted to meet this objective.

As the Commission recognises in its own consultation paper, *"competitive markets in the EU have brought significant progress in service provision in terms of availability (through increased penetration of communications services), affordability (through lower prices, in overall*

*terms, and in particular through mobile) and accessibility (improved through voluntary as well as regulatory schemes)."*<sup>4</sup>

The positive impact of competition and technological development is also demonstrated in the 2009 Commission Communication "Europe's Digital Competitiveness Report"<sup>5</sup>. Within the Commission reported that the market for mobile phones has exceeded 100% penetration — increasing from 84% of the EU population in 2004 to 119% in 2009<sup>6</sup>. It also noted that consumers spend more time talking and texting at prices at least 34.5% lower than in 2004<sup>7</sup>.

The market forces unleashed with the successful liberalisation of the sector since the 1990s are making the competitive provision of services ubiquitous and affordable for the vast majority of the population, and likely contributing to universality and adoption more than the formal universal service regime. Under the current regime, member states are required to find the most efficient means of guaranteeing the universal service obligation as currently defined. If – and only if -- the market fails to deliver these services can obligations be imposed on undertakings to provide them:

- Germany, Luxembourg and Sweden do not impose a universal service obligation (USO) on the grounds that the universal service is already provided by the market;
- The ubiquity and ever lower costs of mobile services have led to mobile phones replacing landlines, especially among lower income citizens and countries. In countries, such as the Czech Republic, this phenomenon has become so widespread that the national regulatory authority (NRA) has taken a formal decision to exclude the obligation to provide the access and connection service from a fixed location to the switched telephone network from the current scope of the universal service.

We believe that if the European Commission were to rigorously assess whether the market is failing to deliver these services across the EU member states, it would find that there is no longer justification for the continuation of the universal service regime and the imposition of a USO. Such an assessment is acutely important given the flawed financing – if any – are available to USPs. [For a detailed discussion of financing issues, see the "Financing mechanisms" section below.]

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<sup>4</sup> Point 3.1, European Commission, Questionnaire for the Public Consultation on Universal Service Principles in e-Communications," 2 March 2010.

<sup>5</sup> European Commission Communication "Europe's Digital Competitiveness Report: Main achievements of the i2010 strategy 2005-2009," COM(2009) 390 final, 4 August 2009.

<sup>6</sup> *Ibid*, p. 4.

<sup>7</sup> *Ibid*.

## **Preventing social exclusion better achieved by other policy measures**

Universal service pursues two separate social policy objectives:

- ensuring that the 'basic services' are available in all parts of the territory;
- preventing social exclusion of low income users who cannot afford basic services at commercial prices.

As mentioned above, the need for protection against social exclusion for these 'minority' groups is ever reducing. Where one or both objectives remain relevant, ETNO maintains that it would be more efficient and less costly for society to align them with the mechanisms for achieving social and regional cohesion policy goals in other domains.

ETNO believes that the best way to achieve that goal is to use a mix of public initiatives. Firstly, it is necessary to undertake a careful assessment of the specific problems of the users or areas affected. This can help to better direct policies and resources. Secondly, it is necessary to make targeted support actions by public authorities in order to fill any gaps in service in the most efficient way.

For example, some member states have implemented social tariffs or low usage schemes which target specific user groups who cannot afford to pay a connection to the telephone service. Such schemes are clearly eligible to be funded, as with other social welfare policies, via general taxation. Payments to beneficiaries can be made, for example, in the form of a voucher that end users can spend in paying for the access to the operator of their choice.

As for geographic areas which risk being underserved, these are clearly eligible to be aligned with regional cohesion funding policies or public funding in general. Using this method would imply that these areas are delineated, assessed and subject to an independent and open tendering procedure. This would allow companies to bid for the provision of the service and to deploy the most cost effective technology.

### **Social policies to be funded by general taxation**

Continuing the current universal regime, which requires the telecommunications industry to bear the cost for social policy objectives, is unfair and inappropriate because:

- Preventing social exclusion is an objective for economic and social development policies. Such policies, which benefit the entire society and all sectors of activity, should be funded via general taxation;
- It is not economically efficient. The current system implies that public authorities define an obligation that has to be funded by the industry. This risks resulting in a 'bidding up' whereby

public authorities are incentivised to maintain and/or increase obligations beyond what is reasonable and efficient, as they do not have to bear the costs. A system whereby the body that defines the obligations has to bear the costs is much more likely to provide proportionate and efficient solutions that seek to maximise social benefits at the minimum cost;

- It creates market and competitive distortions. Given that no or few member states have equitably instituted an industry funding mechanism, the USO is funded by an indirect tax on the customers and shareholders of the USP, almost always a single market player. This represents an unfair financial penalty on one player which, it could be argued, is the equivalent of state aid to other market players. Any expansion of the scope of USO would only compound this market distortion.

[For a detailed discussion of financing issues, see the “Financing mechanisms” section below.]

## **‘Broadband for all’: a policy objective outside of the universal service regime**

[Question 3: Broadband for all is a widely-stated policy objective at national and European level. What role if any should universal service play in meeting this objective?

Question 4: What impacts could an extension of the role of universal service to advance broadband development have in relation to other EU and national policies and measures to achieve full broadband coverage in the EU? What other impacts would be likely to arise regarding competition, the single market, competitiveness, investment, innovation, employment and the environment?

Question 5: If universal service obligations should prove necessary to achieve the policy objective of broadband for all, at what level (EU or national) should such obligations be defined, taking into account the different levels of market development across the current Union of 27 Member States?

Question 6: If a common harmonised universal service needs to be defined at EU level, should a mechanism be put in place to balance the need for national flexibility and a coherent and coordinated approach in the EU?]

The first consideration that ETNO would like to highlight relates to the policy rationale which led the Commission and the co-legislator to provide for a universal service regime in the Framework. Universal service provisions were meant to constitute a ‘safety net’ to ensure that in a liberalised market no EU citizens would be excluded from the provision of a basic set of electronic communications services, thus avoiding social exclusion. With this aim, the regime provided that any reasonable request of access to a predefined set of services should be met at an affordable price. The “minimum set of services” was defined based on the services which were available under the pre-liberalisation monopoly provision of service.

A redirection of the universal service regime to provide a means for achieving 'broadband for all' objectives would change the nature of this policy instrument: universal service would shift from being a policy to prevent exclusion from services already available to the majority to being a policy to ensure the inclusion of new services deemed desirable by policy-makers in terms of achieving competitiveness or other socio-economic objectives.

ETNO welcomes the deployment and take-up targets for standard and high-speed broadband that are being set at EU and national levels. Such objectives, though, represent economic development and social policies which should be funded via general taxation, if required -- and should not be linked to the outdated universal service regime. Other public funding approaches and instruments exist to tackle the lack of broadband in remote and rural areas.

ETNO shares the objective of achieving 'broadband for all' stated in the EU 2020 Strategy, and its member companies are strongly committed to contribute to this goal. Such objectives, though, represent economic development and social policies which should be funded via general taxation, if required -- and should not be linked to the outdated universal service regime.

Market players are already making huge investments to develop the broadband market and competition is today a reality in the EU market. An extension of the USO to cover broadband provision would impede the competitive market forces that ensure technological development and competitive prices to customers. The possible expansion of the scope of USO to include broadband under current industry financing would put a massive financial burden on a sector which has been singled out as "enabling" sector for EU growth/competitiveness by EU politicians. Such a financial burden would suppress investment, increase prices and distort competition.

Instead, 'broadband for all' in the EU can be achieved by making effective use of other instruments and policies.

There are already a number of available instruments both at EU and at national level directly aimed at granting broadband coverage in those regions not yet covered. Such instruments (e.g., public funding, public-private partnership and fiscal incentives) already provide options for the deployment of broadband in cases where investment is not profitable. Indeed, to accelerate the deployment of broadband in member states, the Commission has already recognised the importance of public funding and has, accordingly, adopted the 2009 state aid guidelines applicable to the use of public funding in the development of broadband over both traditional and next generation networks<sup>8</sup>.

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<sup>8</sup> European Commission, Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks, 17 September 2009.

In addition, the use of public funding is best suited and targeted to meet national and/or local specificities than a mandatory obligation defined at EU level because infrastructures development may vary significantly within and across member states. A commonly defined and mandatory universal regime to include broadband services could not only result in making void the scope of existing instruments but could also result in a non efficient allocation of resources to the detriment of citizens' welfare.

Furthermore, an appropriate, holistic policy framework would further stimulate private sector investment in broadband – current and next generation access networks (NGA) – and thereby help to expand the area covered by market-driven investment, reducing the number of 'white spots' without broadband coverage. The two main drivers of such an approach would be:

- Reducing the cost of investment: Harmonised allocation of spectrum stemming from the 'digital dividend' has the potential to significantly reduce the cost of the provision of mobile broadband in rural areas. Network sharing agreements between mobile network operators would also help to reduce the cost for extending networks. Deployment of privately funded broadband networks could also be facilitated by simplifying administrative procedures, such as securing rights of way;
- Creating investment incentives, or not creating disincentives, for major investors: A more targeted and proportionate approach to sector-specific access regulation, by limiting regulatory obligations to true 'bottleneck' facilities and taking into account varying competitive situations in different geographies. If price regulation is warranted, a degree of price flexibility for the investor and fair distribution of risk should be established in access pricing for newly built high-speed networks<sup>9</sup>.

It is not apparent that including broadband within the scope of universal service would actually contribute to increased penetration and usage of broadband by EU citizens. The Commission has made ample work in identifying the reasons for low take up of internet and broadband access in the context of i-2010 public consultations and regular surveys. For example, in the forthcoming "Eurobarometer E-communications Household Survey" previewed at the European Commission's public workshop, 58% of non-internet users cited "not interested in using the internet" as the main reason for not having internet access. Demand-side factors appear to be as important – or more important – than supply-side factors. Accordingly, any national or EU wide objective for the development and adoption of broadband

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<sup>9</sup> For a more detailed discussion of these issues, see ETNO RD 307, "ETNO Reflection Document in response to the Commission Recommendation on regulated access to Next Generation Access Networks (NGA)," July 2009.

should formulate and implement policies which address demand-side barriers.

Finally, regarding the possible establishment of some sort of mechanism to balance the need for national flexibility and a coordinated approach in the EU, ETNO believes that the EU, while not mandating any obligation as regards broadband, could define common targets of broadband development outside the universal service regime and accordingly ask member states to find the appropriate instruments within their national broadband plans. This would appear to be the approach advocated in the EU 2020 Strategy with its broadband targets.

## **Financing mechanism: radical reform required**

[Question 7: Irrespective of the scope of universal service, are mechanisms whereby funding is provided by the sector appropriate in the context of a regulatory environment that seeks to eliminate distortions of competition and promote market entry?

Question 8: In the context of the roll-out of broadband in Europe, is it still appropriate to limit the financial arrangements of universal service to market players in the e-communications sector, while this provision would have wide-ranging benefits outside the sector, for instance, the delivery of information society services and digital content? Are other means of financing more appropriate?]

Without prejudice to our view that the provision of universal service could be withdrawn completely from the Framework, we comment here on the need for reform of the financing mechanisms for universal service should the regime be continued.

ETNO believes that radical revision of the Directive is required in order to improve the regime's financing mechanism and to make it 'fit for purpose' for effective and efficient delivery of any USO.

The Commission's brief treatment of the financing of universal service in this consultation does not give adequate attention to the difficulties that a USP experiences to obtain adequate compensation for the costs incurred in the provision of services under regulated conditions.

## **Designation: best practice tendering to be instituted**

Article 8 should be amended to require member states to conduct an explicit tendering process for the designation of a USP. And such tendering should conform to 'best practice' for public procurement contracts – in particular, pre-tendering or -bidding estimation of the cost of service provision.

As suggested above, ETNO members support the division of the USO into multiple lots and across multiple geographies, where appropriate

and efficient in a member state. Such a targeted approach would allow for the designation of a set of best-qualified and cost-effective USPs.

Costing and financing: ill-conceived, dysfunctional processes  
As evident by the long delays in compensation and/or legal disputes, the implementation and operation of the financing mechanisms in a number of member states are dysfunctional. We believe that many of these problems stem from conceptual flaws in the Directive, in particular: the complexity of the decision making related to financing (articles 12 and 13); the provisions related to cost calculation methods; and the required assessment of an unfair burden.

ETNO believes that this uncertainty, structurally embedded in the current Directive should urgently be removed.

### **Complexity of decision making process related to financing**

Articles 12 and 13 require that resource-intensive, time-consuming steps to be taken before a decision on the entitlement for compensation can be made. The multitude of steps and the wide discretion allowed NRAs make the likelihood of a USP actually receiving compensation and in a timely manner very small. For example, only in end-2007 did the Spanish NRA determine the annual net costs of USO incurred by Telefónica in 2003, 2004 and 2005. And it was only in September 2008 that the regulator decided upon the sharing mechanism and established a national fund to manage the industry contributions and compensation. This is representative of the delays experienced in other countries, such as Italy and Belgium.

Articles 12 and 13 seem to allow – and even encourage -- member states to postpone cost considerations until long after the decisions related to scope. Especially where public authorities prefer sector financing above state financing, a thorough reflexion should be required in order to estimate the impact on the general price level of the contributing markets and to guarantee a fair balance of the need for public intervention in the market and the cost of it.

The *ratio legis* of this complexity is unclear -- especially since there is an obvious link between the willingness of the market players to bid to be the USP (assuming explicit tenders take place; see above) and their need to be sure of a timely compensation before expressing such willingness.

ETNO believes that a simplification of the decision making process is necessary in order to preserve the rights of the USP, as well as potential contributors, who both face a long period of uncertainty regarding the often heavy financial impact of the USO.

## Costing of universal service obligations

The present provisions related to cost calculation of USPs as set out in Annex IV are unclear and give rise to different interpretations. For example, the reference in Part A to “services which can only be provided at a loss” is interpreted by some NRAs as meaning that only an explicit loss can be subject to compensation. Not only does this create disincentives for potential USP bidders (assuming explicit tenders take place; see above), it also conflicts with the nature of open tender procedures where candidates set their price offer. ETNO thus believes that amendment is needed to specify that compensation should cover the difference between universal service provision and provision under normal commercial conditions, whether at loss or not.

## Requirement for an unfair burden assessment

The requirement to demonstrate an “unfair burden” in addition to net costs leads to distortion of competition.

The Directive supports practices where an NRA can establish the existence of high cost for universal service and still refuse compensation for the provider of this service. The concept of unfair burden brings in uncertainty as to compensation for universal service even if cost-calculations demonstrate the existence of a cost for the provision of the service. The *ratio legis* for this requirement has never been clearly explained. Imposing an obligation on an operator to provide a service under conditions that other operators do not have to respect leads to distortion of competition unless the corresponding cost is compensated.

As previously mentioned, uncertainty as to the right of compensation undermines the willingness of the market to participate in universal service provision

Since the liberalisation of the market, universal service has generally been imposed on former incumbent operators. There have been very few signals that other operators would be interested in being USPs. Obviously, when undertakings are unsure whether they will be compensated for the costs incurred in universal service provision, it should not be expected that market players would be candidates in an open procedure for designation or that they would even insist on the organisation of an open procedure. The uncertainty as regards the right to compensation and the extent of that compensation implies that no rational undertaking would take such a risk.

ETNO insists on a reassessment of the fairness of maintaining such a concept in the Directive and the amendment of Article 12 accordingly.

## Public funding vs. industry sharing mechanism

As mentioned above, a system whereby the entity that defines the obligations has to bear the corresponding costs is much more likely to provide proportionate and efficient solutions that seek to maximise social benefits at the minimum cost.

Imposing a USO on a single USP in the absence of compensation for its net costs represents an indirect tax on the customers and shareholders of that undertaking. It could be argued that such a situation is the equivalent of state aid to other market players. Any expansion of the scope of USO would only compound this market distortion.

ETNO calls for a stronger or exclusive role of public funds in the financing of the provision of USO.

## Additional comments: rationalisation of current scope

In this section, we provide comment on issues not addressed by the consultation questions.

Without prejudice to our view that the provision of universal service could be withdrawn completely from the Framework, we comment here on the need to rationalise the scope of USO should the regime be continued.

### (Re-)Assessment of scope required

The current Directive does not oblige – or even incentivise -- member states to regularly assess the need to maintain the existing scope of USO, i.e., whether there is continued ‘universal’ demand for a service and the failure of the market to deliver the desired level of services . Nor are they required to regularly assess the cost of provision relative to the societal benefit. This has led to costly over-estimations of universal service needs.

A striking example of this is the obligation for public payphones. Since the late-1990s, member states have required the installation and maintenance of large parks of public payphones at a time when mobile voice telephony was in full expansion and was resulting in a significant decline in the use of public payphones. A few years later, member states are starting to allow for reductions in the parks, leaving USPs with the high sunk investments as well as removal costs.

Maintaining the USO for a service where the usage is in sharp decline is an important cost-generating factor. While the payphones obligation is a clear illustration of this, this is also the case for the obligation to make, print and distribute paper directories. In the context of environmental concerns, the distribution of paper

directories has become problematic in some countries. With member states aiming at reducing waste, the discussion is gaining attention. However policy makers find it hard to reduce the scope of universal service, especially when the cost of this service has no implications on the state budget. Accordingly, we believe that regular assessments should be imposed with the particular objective to assess whether it is still justified to maintain particular obligations.

As mentioned above, proposals for broadband to be included in the scope of USO demonstrates the risk of 'bidding up' services by policy makers where there is no cap, or upper limit, on the scope. Where advanced fixed, wireless or mobile solutions may over time become ubiquitous, member states may want to speed up such coverage by means of existing infrastructure, pushing the cost for universal service to unjustified heights.

## **Reduction of current scope warranted**

### **Public payphones**

The public payphone business is in decline, increasingly expensive to maintain and of diminishing utility. Upgrade and maintenance of these public payphones is extremely costly as less and less of the payphones are commercially viable and operators have to cope with vandalism and ensure maintenance in remote areas. The current obligation to provide public payphones is placing a considerable burden on the sector. We thus believe that this service should be removed from the scope of USO.

Since the public payphones were included in the scope of universal service in the 1990s, mobile phones have revolutionised the way consumers communicate. The internet is now providing the second 'revolution' in voice telephony, as VoIP service providers enable nomadic access to voice calls from devices providing internet access. For users who do not have a fixed or mobile subscription, internet cafés or phone shops offer a viable and cheap alternative to public payphones. These developments have led to a decline in the use and importance of public payphones and will continue to do so.

The Commission should no longer foresee an according universal service obligation. This would not exclude regional or local solutions for maintaining public payphones by way of agreement between authorities and operators where this is still necessary.

### **Facsimile communications**

Facsimile communications, or 'fax' functionality is also an outdated service with insignificant demand. There are numerous offers on the market that can substitute this service and which increasingly do so. Figures also show a continuous decline in the use of faxing.

Equally important, maintaining this service in the scope of universal service could also hinder the deployment of wireless and cellular technologies which require costly modifications or 'work around' solutions to integrate fax functionality.

We thus believe that facsimile communications should be removed from the scope of USO. . In fact, maintaining the obligation could also hinder the roll-out of certain new technologies which require significant extra spending to provide fax functionality. The Commission should no longer keep it in the scope of universal service obligation.

### **Paper directories**

With the development of a commercial directory market sector, there is no need for the provision of paper directories and directory services to be an element of the USO, given that all providers, including mobile operators, are under an obligation to make relevant information available.

Some member states, however, appear to be waiting for paper directories to be removed from the scope of USO at the level of the Directive rather than reducing the scope at the national level. It is indeed expected that the Directive might, given the declining use of paper directories, the environmental concerns related to huge paper waste and the ever-growing availability and functionality of electronic directories, remove the obligation of paper directories from the scope of the USO. To facilitate member states making the political decision to remove the often heavily regulated paper directories from their respective national scopes, we insist on the recognition at European level of the very limited role of paper directories in the access to information related to telephone subscribers and the growing use and possibilities of electronic alternatives.

### **Special measures for disabled users**

As the Directive points out in Recital 5, in a competitive market, certain obligations should be instituted as horizontal measures, applying to all undertakings providing publicly available services. We believe that special measures for disabled users are an example of an obligation which concerns all.

The needs of disabled users are best met through general legislation requiring all players in the sector – and across all industry sectors -- to make provision for their needs. We note that member states will have additional powers in this regard by the addition of Article 23a, "Ensuring equivalence in access and choice for disabled end-users," in Chapter IV, "End-user Interests and Rights," in the Amending

Directive to be transposed by June 2011<sup>10</sup>. Some member states have already begun introducing such measures, e.g., UK legislation for text relay services.

If, in spite of reform, special measure for disabled users remain an element of the USO, member states could be encouraged to conduct a separate public tender for the provision of these services and to use public funding (where industry funding still foreseen for other elements). This would allow companies with specific knowledge and experience in meeting the needs of disabled individuals to be identified and designated as universal service providers.

### **Quality of service obligations**

We believe that consumer protection and quality of service obligations should also be instituted as horizontal measures which apply to all industry players and not strictly USPs.

### **Obligation for connection and access to telephone services to be lifted in context of publicly-funded broadband deployment**

ETNO notes the inefficiency and market distortion of situations where public funding is granted to an entity for the provision of universal broadband in rural or other regions, which usually implies the provision of voice telephony (PSTN or IP), the basic USO for connection at a fixed location and access to publicly available telephone services would remain. In such a case, there could be a paradox: the USP which bears the cost of the USO retains on one hand the obligation to provide service in this area while at the same time is facing a subsidised competitor able to offer a broader retail portfolio.

This same conundrum would exist if broadband were included in the scope of USO.

The European Commission should assist in establishing this practice and ending this potential market distortion. A reform of the universal service regime should foresee that the obligation on the USP for providing access at a fixed location and telephony services is lifted once a publicly supported broadband network - under the "Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks." or - if some form of broadband US obligation were introduced - under the universal service regime.

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<sup>10</sup> In fact, the addition of Article 23a makes the requirements within the universal service regime - namely, Article 7 -- redundant. When amended, Article 7 will lead with the phrase "Unless requirements have been specified under Chapter IV which achieve the equivalent effect . . ."

## Technology neutrality to be respected

As per Recital 8 of the Directive, *“there should be no constraints on the technical means by which the connection is provided, allowing for wired or wireless technologies, nor any constraints on which operators provide part or all of universal service obligations.”* ETNO observes, however, that many NRAs are failing to apply the principle of technology neutrality when implementing the obligations for a connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location.

While the use of mobile technology to deliver such might have previously given rise to concerns regarding quality of service, advances in mobile technologies (e.g., 2.5G, EDGE, GPRS, and 3G) now permit mobile services to satisfactorily support USO. Mobile access technology is being used for the provision of USO in several member states, such as Finland, Hungary, Ireland, Italy and Spain.

We thus call for explicit reference to technology neutrality in an article of the Directive (e.g., Article 4). Such an amendment would also underpin Article 8(2) which requires that member states should not a priori exclude any undertaking from being designated as the USP. This would ensure that mobile and wireless network operators are considered among the candidates for USP in all or part of the territory of a member state.