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SUBJECT: PUBLIC CONSULTATION ON UNIVERSAL SERVICE PRINCIPLES IN E-COMMUNICATIONS

Dear Sir or Madam,

ISPA, the Austrian Association of Internet Service Providers, appreciates the invitation to comment on the public consultation on Universal Service Principles in E-Communication and the definition of Universal Service in particular.

From our point of view, the issue of universal service is closely related with the challenges arising by public funding of broadband networks. The existing Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks very diligently deal with competition issues and thus have to be carefully taken into account.

State intervention in the broadband field is definitely a solid contribution to reduce the digital gap between rural and urban areas or regions, as well as between different social levels of society. A vertical impulse may be helpful where the market fails to provide all customers with high quality services at an affordable price. Nevertheless, we want to highlight that every state impulse could have possible negative implications for the market and private initiatives. It is important to closely monitor the market and react to failures with proper measures. Therefore, we believe that an implementation of broadband as a universal service should only not be applied.

Please find our answers to the Questionnaire below:

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?*

The liberalisation of the telecommunication sector led to a colourful mix of telecommunication service providers offering a broad range of user specific services and providing effective access to basic e-communications for all members of society.

Taking Austria as an example in general almost everybody would have access to basic broadband services at a reasonable price with different offers that allows underprivileged and low-income members of our society to take part in the digital world. Furthermore there exist a huge number of public internet points, including schools, libraries, public buildings etc which guarantee the possibility for Internet access for all sections of society.

Supporting geographically isolated areas is a special business case for rural providers in competition with the incumbent (offering nationwide prices) and increasingly with mobile operators. Nevertheless, the deployment of next generation networks - which is essential for high speed internet – in rural areas could lag behind due to commercial concerns. In these cases targeted staid aid could help overcoming this obstacle and to ensure affordable high-speed internet in remote rural areas under the regime of the Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks.

In Austria, consumers with special needs are safeguarded by different laws, especially the Austrian “Bundes-Behindertengleichstellungsgesetz”, a federal Law against discrimination of disabled people that (amongst others) obliges public providers of goods and services not to directly or indirectly discriminate against disabled people. Indirect discrimination is eg defined if apparently neutral criteria put people with special needs at a disadvantage compared to other people specifically without good reason.

To conclude, we think that competition supported with targeted state intervention is the key factor providing access to broadband even for remote areas.

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?*

See answer to Question 1: In general, access to e-communications – considering geographic availability of basic services, accessibility and affordability – is ensured. Due to this fact further regulation concerning broadband internet access as well as a stricter policy can be neglected. Furthermore the regulatory framework 2009 already guarantees special rights for disabled users, which now has to be implemented by the member states. In this context an anticipation of the new regulation and parallel provisions need to be avoided.

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?*

The current technological and social developments make broadband access indispensable for society. According to the latest figures of the Austrian national regulation authority RTR (Rundfunk und Telekom Regulierungs GmbH)¹ broadband internet penetration in Austria’s households is about 84% (including mobile internet access; it is about 51% regarding fixed networks only). Due to this wide national coverage of broadband access, we do not see need for broadening the scope of the universal service definition.

¹ See RTR Telekom Monitor 1/2010, p 33; available http://www.rtr.at/de/komp/TKMonitor_1_2010

Quite to the contrary, the concept of Universal Service was useful in times of uprising competition with a market dominated by voice-based services and the ex-monopolist as the far ahead infrastructure provider, the need for payphones, printed directories and information services. However, the concept of Universal Service cannot be applied to recent needs. Of course, the fundamental objectives of universal service, accessibility, affordability and geographic availability of basic services, especially for low-income users, disabled people and other specially disadvantaged groups, are still valid but in the light of the developments of the digital age and competition, we see the necessity of a significant method change.

As with other regulatory instruments, universal service has to consider the restriction of proportionality and especially necessity. Obligations like payphones and printed directories do not meet modern requirements and have been substituted by (prepaid) mobile phones and digital (often online) alternatives. The current market situation provides access to broadband services and offers affordable basic services for everybody. Therefore we currently do not see a role of Universal Services in achieving the objective of broadband for all.

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?*

The outcome of an extension of the role of universal service to advance broadband development depends on several aspects, eg the given range for implementation in national law and the understanding of what “to advance broadband” actually means.

In the best case the deployment of next generation networks and the proceeding provisioning with high quality services will continue undisturbed and driven by market forces. However, negative impacts on investment in networks and innovative technologies are much more likely and go hand in hand with negative impacts on competitiveness and employment: The deployment of next generation access networks takes high initial costs for the providers, who plan to earn back their investments in the long turn starting by supplying densely populated areas and consumers willing to pay a first mover price. This way, continuous innovation and inexpensive basic services, step by step, are provided for everybody. An extension of broadband to universal service would affect this concept negatively, because competition would no longer drive down prices for basic internet services.

The providers eager to deploy their networks would have to take the additional costs for supplying remote or isolated areas at an average price into account, where the costs of broadband access would be disproportionally higher with regard to the actual need and usage of the population connected. With this cost-benefit analysis, deployment of new technology networks would not be viable and disrupt the circle of competition driving innovation with its accompanying benefits.

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?*

In general, we believe that broadening the universal service directive is not required. However, should the commission decide otherwise it is essential for achieving a common EU standard and promoting the internal market in telecommunication services to agree on a harmonised definition at EU level. Only an EU-wide framework with precise guidelines and specifications can offer cross-border legal certainty and helps to avoid market obstacles which could arise through different national regulation.

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?*

As mentioned above, only a clear definition and regulation at EU level offers cross-border legal certainty and avoids a fragmentation across national borders. The EU legal framework for the telecommunication market, as a market without borders, is already in place and necessary for the internal market. High quality and innovative services at fair affordable prices for all EU citizens is the target to achieve by ensuring effective competition. If a common harmonised universal service is defined at EU level it should be left to the discretion of the Member States whether to apply this.

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?*

Sector-specific funding mechanisms bear the risk of negative effects on competition. In practice, it is very difficult to calculate the net cost and find a fair balance between the universal service provider and the rest of the sector. Regularly, significant market power operators are in charge of universal service. They already have a well deployed network which can be expanded without high initial costs to supply potential users. The obligation to provide universal service therefore can be a “lucrative duty” since the set-up costs of the acquisition can be regularly balanced with the advantage of locking in new customers (who have no alternative choice). Thus, we see negative effects on the competitive market and the market entry in general by funding universal service by the sector. In a well developed competition situation, the funding of universal service should play a subsidiary role as it is not needed; in case of market failure that makes universal service essential, it is even more important not to burden the load of financing universal service to the struggling sector. Functional broadband access is the cornerstone to the digital world and supports downstream businesses (music industry, trade etc.) as well as the State with modern ways of interaction to potential consumers or citizens.

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?*

As stated above, it is not appropriate to limit the financial arrangements of universal service to market players in the e-communications sector. Sufficient broadband access is a boost for all branches of economy and the entry to the digital world for all citizens. Public funding could take place where the provision of high-speed internet access is economically not viable. However this funding must be in line with existing "Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks" in order to achieve nationwide access to high-speed internet access without distorting the market.

Sincerely,

ISPA Internet Service Providers Austria



Dr. Andreas Wildberger
Secretary General

About ISPA: ISPA is the Austrian association of Internet Service Providers, representing approximately 200 ISPs. ISPA is a major voice of the Austrian Internet industry. Our goal is to shape the economic and legal framework supporting an optimal growth of the Internet and Internet services. We regard the use of the Internet as an important cultural skill and acknowledge the resulting socio-political responsibilities.