



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.11.2000
COM(2000)761 final

2000/0185 (COD)

Amended proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

on unbundled access to the local loop

(presented by the Commission pursuant to Article 250 (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

A) Principles

1. In response to the conclusions of the special European Council of Lisbon of 23-24 March 2000, and building on the Communication on the results of the public consultation on the 1999 Review of the Electronic Communications Sector and the principles and orientations for the new Regulatory Framework (COM(2000)239 final), the Commission proposed on 12 July 2000 a draft Regulation of the European Parliament and of the Council on unbundled access to the local loop (COM(2000)394 final).

The measures included in the proposed Regulation will enforce the provision of full unbundling and shared access of the copper local loop of operators having significant market power, from 31 December 2000.

2. The Economic and Social Committee delivered its opinion on 19 October 2000.
3. On 26 October 2000 the European Parliament adopted 18 amendments on the proposal at first reading. At the same time the Commission stated its position on each amendment indicating that all of them would be acceptable.

Taking account of these developments, the Commission is submitting the present amended proposal that incorporates in full all amendments adopted by the European Parliament.

This should allow the Council, that has had an ongoing informal dialogue with representatives of the European Parliament on the proposed amendments, to consider and finally adopt the amended proposal that fully incorporates all the amendments of the Parliament, thus enabling a completion of the co-decision procedure with only one reading.

B) Explanation of amendments

There is general support by the European parliament and the Economic and Social Committee to the aim and provisions included in the proposal from the Commission.

The European parliament has adopted a block of 18 amendments to ensure that the technical aspects of the proposal are sufficiently detailed to be commensurate with the binding nature of a Regulation, and so guarantee that unbundling is rapidly and effectively implemented. The Commission agrees with the views expressed by the European Parliament and accepts in full the 18 amendments proposed in this regard, amending its proposal accordingly.

Therefore, the amended proposal includes now more precise technical definitions and detailed requirements for notified operators, and the national regulatory authorities, to clarify their respective obligations and responsibilities.

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on unbundled access to the local loop

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

~~Having regard to the opinion of the Committee of the Regions³,~~

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

- (1) The conclusions of the special European Council of Lisbon of 23 and 24 March 2000 note that, for Europe to fully seize the growth and job potential of the digital, knowledge-based economy, businesses and citizens must have access to an inexpensive, world-class communications infrastructure and a wide range of services. The Member States, together with the Commission, are called upon "to work towards introducing greater competition in local access networks before the end of 2000 and unbundling the local loop, in order to help bring about a substantial reduction in the costs of using the Internet". The Feira European Council of 20 June 2000 endorsed the proposed eEurope Action Plan⁵ which identifies unbundled access to the local loop as a short-term priority.

(1a) Local loop unbundling will complement the existing provisions in Community law guaranteeing universal service and affordable access for all citizens in the European Union by enhancing competition, ensuring economic efficiency and bringing maximum benefit to users.

- (2) The "local loop" is the physical ~~copper line~~ **twisted metallic pair** circuit in the local access ~~fixed public telephone~~ **fixed public telephone** network connecting the customer's ~~the network~~ **the network**

¹ OJ C

² OJ C

³ ~~OJ C~~

⁴ OJ C

⁵ COM(2000) 330 final.

~~termination point at the subscriber's premises to the operator's local switch, concentrator~~ main distribution frame or equivalent facility. As noted in the Commission's Fifth Report on the implementation of the telecommunications regulatory package⁶, the local access network remains one of the least competitive segments of the liberalised telecommunications market. New entrants do not have wide-spread alternative network infrastructures and are unable, with traditional technologies to match the economies of scale and scope of operators notified as having significant market power in the fixed public telephone network market (**hereinafter referred to as "notified operators"**). This results from the fact that **these** operators rolled out their old copper metallic local access networks infrastructures over significant periods of time protected by exclusive rights and were able to fund investment costs through monopoly rents.

- (3) The European Parliament Resolution of 13 June 2000 on the Commission communication on the 1999 Communications review⁷ stresses the importance of enabling the sector to develop infrastructures which promote the growth of electronic communications and e-commerce and the importance of regulating in a way that supports this growth. It notes that the unbundling of the local loop is currently mainly relevant to the copper infrastructure of a dominant entity and that investment in alternative infrastructures must have the possibility of ensuring a reasonable rate of return, since that might facilitate the expansion of these infrastructures in areas where their penetration is still low.
- (4) The provision of new loops with high capacity optical fibre directly to major users is a specific market that is developing under competitive conditions with new investments. This Regulation therefore ~~does not address unbundled access to fibre local loops~~ **addresses access to metallic local loops, without prejudice to national obligations regarding other types of access to local infrastructures.**
- (5) It would not be economically viable for new entrants to duplicate the incumbent's copper metallic local loop access infrastructure in its entirety and within a reasonable time. Alternative infrastructures such as cable television, satellite, wireless local loops do not generally offer the same functionality or ubiquity **for the time being, though situations in Member States may differ.**
- (5a) Unbundled access to the local loop allows new entrants to compete with notified operators in offering high bit-rate data transmission services for continuous Internet access and for multimedia applications based on digital subscriber line (DSL) technology as well as voice telephony services. A reasonable request for unbundled access implies that the access is necessary for the provision of the services of the beneficiary, and that refusal of the request would prevent, restrict or distort competition in this sector.**
- (6) It is appropriate to This regulation mandates unbundled access to the copper metallic local loops only of notified those network operators that have been designated. The Commission has already published an initial list of operators of fixed public telephone networks notified by the national regulatory authorities as having significant market**

⁶ COM(1999) 537.

⁷ AS-0145/2000.

power⁸ in the fixed public telephone network supply network under the relevant Community provisions. Member States have already notified to the Commission the names of those fixed public network operators that have significant market power under Annex I Part 1 of Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP), and Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision to voice telephony and on universal service for telecommunications in a competitive environment.

(6a) A notified operator cannot be required to provide types of access which are not within its powers to provide, for example where fulfilment of a request would cause a violation of the legal rights of an independent third party. The obligation to provide unbundled access to the local loop does not imply that notified operators should install entirely new local network infrastructure specifically to meet beneficiaries' requests.

(7) Although commercial negotiation is the preferred method for reaching agreement on technical and pricing issues for local loop access, experience shows that in most cases regulatory intervention is necessary due to imbalance in negotiating power between the new entrant and the notified operator, and lack of other alternatives. Notified operators should provide information and unbundled access to third parties under the same conditions and of the same quality as they provide for their own services or those of their subsidiaries or partners. To this end, the publication by the notified operator of an adequate reference offer for unbundled access to the local loop, within a short time-frame and ideally on Internet, and under the supervisory control of the national regulatory authority, would contribute to creating transparent and non-discriminatory market conditions. In certain circumstances the national regulatory authority may, in accordance with Community law, intervene at its own initiative to impose terms, including pricing rules, designed to ensure interoperability of services, maximise economic efficiency and benefit end-users. **In certain circumstances the national regulatory authority may, in accordance with Community law, intervene at its own initiative in order to ensure fair competition, economic efficiency and maximum benefit for end-users. Failure of the notified operator to meet lead times should entitle the beneficiary to receive compensation.**

(8) Costing and pricing rules for local loops and associated **related** facilities (such as collocation and leased transmission capacity) should be transparent, non-discriminatory and be objective to ensure fairness. Pricing rules should ensure that the local loop provider is able to cover its appropriate costs in this regard plus a reasonable return, **in order to ensure the long term development and upgrade of local access infrastructure.** Pricing rules for local loops should foster fair and sustainable competition, **bearing in mind the need for investment in alternatives infrastructures,** and ensure that there is no distortion of competition, in particular no margin squeeze between prices of wholesale and retail services of the notified operator. In this regard, it is considered important that competition authorities be consulted.

⁸ OJ C 112, 23.4.1999, p. 2.

(8a) Notified operators should provide information and unbundled access to third parties under the same conditions and of the same quality as they provide for their own services or those of their associated companies or partners. To this end, the publication by the notified operator of an adequate reference offer for unbundled access to the local loop, within a short time-frame and ideally on the Internet, and under the supervisory control of the national regulatory authority, would contribute to the creation of transparent and non-discriminatory market conditions.

(9) In Recommendation 2000/417/EC of 25 May 2000 on unbundled access to the local loop: enabling the competitive provision of a full range of electronic communications services including broadband multimedia and high-speed Internet⁹ and the Communication of 26 April 2000¹⁰, the Commission set out detailed guidance to assist national regulatory authorities on the fair regulation of different forms of unbundled access to the local loop ~~and on the application of existing Community law.~~

(10) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objective of achieving a harmonised framework for unbundled access to the local loop in order to enable the competitive provision of an inexpensive, world-class communications infrastructure and a wide range of services for all businesses and citizens in the Community cannot be achieved by the Member States in a secure, harmonised and timely manner and can therefore be better achieved by the Community. **The provisions of this Regulation confine itself themselves** to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose. **They are adopted without prejudice to national provisions complying with this Regulation which set out more detailed measures, for example dealing with virtual collocation.**

(10a) The provisions of this Regulation complement the regulatory framework for telecommunications, in particular Directives 97/33/EC and 98/10/EC; it is envisaged that the new regulatory framework for electronic communications will include appropriate provisions to replace this Regulation.

HAVE ADOPTED THIS REGULATION:

Article 1

Aim and Scope

-1. This Regulation aims at intensifying competition and stimulating technological innovation on the local access market, through the setting of harmonised conditions for unbundled access to the local loop, to foster the competitive provision of a wide range of electronic communications services.

1. This Regulation shall apply to unbundled access to the local loops **and related facilities** of **fixed public telephone** network operators that have been notified to the Commission **designated** by the national regulatory authority as having significant

⁹ OJ L 156, 29.6.2000, p. 44.

¹⁰ COM(2000) 237.

market power in the provision of fixed public telephone networks and services in accordance with the relevant Community provisions (hereinafter referred to as "notified operators") **in relation to Annex I part 1 of Directive 97/33/EC or Directive 98/10/EC.**

2. This Regulation shall apply without prejudice to the obligations ~~under the relevant Community provisions~~ for notified operators to comply with the principle of non-discrimination when using the fixed public telephone network to provide high speed access and transmission services to third parties under the same conditions as to its own services **or to associated companies, in accordance with Community provisions.**

2a. This Regulation is without prejudice to the rights of Member States to maintain or introduce measures in conformity with Community law, that contain more detailed provisions than those set out in this Regulation and/or are outside the scope of this Regulation inter alia with respect to other types of access to local infrastructures.

Article 2

Definitions

For the purposes of this Regulation:

- (-a) **'notified operator' means operators of fixed public telephone networks that have been designated by their national regulatory authority as having significant market power in the provision of fixed public telephone networks and services under Annex I Part 1 of Directive 97/33/EC or Directive 98/10/EC;**
- (-b) **'beneficiary' means a third party duly authorised in accordance with Directive 97/13/EC or entitled to provide communications services under national legislation, and which is eligible for unbundled access to a local loop;**
- (a) "local loop" means the physical copper line **twisted metallic pair** circuit in the local access network connecting the customer's **network termination point at the subscriber's** premises to the fixed public telephone network operator's local switch, concentrator **main distribution frame** or equivalent facility **in the fixed public telephone network;**
- (aa) **"local sub-loop" means a partial local loop connecting the network termination point at the subscriber's premises to a concentration point or a specified intermediate access point in the fixed public telephone network;**
- (b) "unbundled access to the local loop" means full unbundled access to the local loop and shared access to the local loop; it does not entail a change in ownership of the copper local loop;
- (c) "full unbundled access to the local loop" means the provision **to a beneficiary** of access to the copper local loop **or sub-loop** of the incumbent **notified** operator **authorising the use of the full frequency spectrum of the twisted metallic pair;** in such a way that the new entrant has exclusive use of the full frequency spectrum of the copper line and can offer a full range of voice and data services to end users;

- (d) "shared access to the local loop" means the provision **to a beneficiary** of access to the non-voice frequency spectrum of a copper line over which the basic telephone service is being provided to the end-user by the incumbent operator allowing a new entrant to deploy technologies — such as asymmetrical digital subscriber line (ADSL) systems — to provide the end-user with additional services such as high-speed Internet access **the local loop or local sub-loop of the notified operator, authorising the use of the non-voice band frequency spectrum of the twisted metallic pair; the local loop continues to be used by the notified operator to provide the telephone service to the public;**
- (e) "collocation" means the provision of physical space and technical conditioning **facilities** necessary to reasonably accommodate and connect the **relevant** equipment of a new entrant to access the local loop **beneficiary, as mentioned in section B of the Annex;**
- (f) **"related facilities" means the facilities associated with the provision of unbundled access to the local loop, notably collocation, cable connections and relevant information technology systems, access to which is necessary for a beneficiary to provide services on a competitive and fair basis.**

Article 3

Provision of unbundled access

1. Notified operators shall ~~make available to third parties, by 31 December 2000 at the latest, unbundled access to the local loop, under transparent, fair and non-discriminatory conditions. Notified operators shall provide competitors with the same facilities as they provide to themselves or to their associated companies, and with the same conditions and time scales~~ **publish from 31 December 2000, and keep updated, a reference offer for unbundled access to their local loops and related facilities, which shall include at least the items listed in the Annex. The offer shall be sufficiently unbundled so that the beneficiary does not have to pay for network elements or facilities which are not necessary for the supply of its services, and shall contain a description of the component offerings, associated terms and conditions, including charges.**
2. Notified operators shall ~~provide physical access for third parties to any technically feasible point of the copper local loop or sub-loop where the new entrant can collocate and connect its own network equipment and facilities in order to deliver services to its customer, either in the local switch, concentrator or equivalent facility~~ **from 31 December 2000 meet reasonable requests from beneficiaries for unbundled access to their local loops and related facilities, under transparent, fair and non-discriminatory conditions. Requests shall only be refused on the basis of objective criteria, relating to technical feasibility or the need to maintain network integrity. Where access is refused, the aggrieved party may submit the case to the dispute resolution procedure referred to in Article 4(2). Notified operators shall provide beneficiaries with the equivalent facilities as they provide to themselves or to their associated companies, and with the same conditions and time-scales.**
- 2a. Notified operators shall charge prices for unbundled access to the local loop and related facilities set on the basis of cost-orientation. The national regulatory**

authority shall lift the obligation for prices to be set on the basis of cost-orientation in accordance with Article 4(1c).

- ~~3. Notified operators shall publish, by 31 December 2000 at the latest, a reference offer for the unbundled access to the local loops and associated facilities including collocation, sufficiently unbundled, and containing a description of the component offerings and the associated terms and conditions, including prices, taking account of the list in the Annex to Recommendation 2000/417/EC.~~

Article 4

*Regulatory Supervision **by the national regulatory authority***

1. ~~For as long as the level of competition in the local access network is insufficient to prevent excessive pricing, national regulatory authorities shall ensure that the prices for unbundled access to the local loop charged by notified operators follow the principle of cost orientation. National regulatory authorities shall be competent where justified to impose changes in the reference offer for the unbundled access to the local loop, including prices. In adopting pricing rules and price decisions on unbundled access to the local loop, **The** national regulatory authorities shall ensure that **charging for unbundled access to the local loop** they fosters fair and sustainable competition.~~

1a. The national regulatory authority shall have the power to:

a) impose changes on the reference offer for unbundled access to the local loop and related facilities, including prices, where such changes are justified; and

b) require notified operators to supply information relevant for the implementation of this Regulation.

1b. The national regulatory authority may intervene, where justified, on its own initiative in order to ensure non-discrimination, fair competition, economic efficiency and maximum benefit for users.

1c. When the national regulatory authority determines that the local access market is sufficiently competitive, it shall relieve the notified operators of the obligation laid down in Article 3(2a) for prices to be set on the basis of cost-orientation.

2. ~~National regulatory authorities shall be competent to resolve Disputes between undertakings concerning issues included in this Regulation **shall be subject to the national dispute resolution procedures established in conformity with Directive 97/33/EC and shall be handled promptly, fairly and transparently**, in a prompt, fair and transparent manner.~~

Article 5

Entry into force

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

MINIMUM LIST OF ITEMS TO BE INCLUDED IN A REFERENCE OFFER FOR UNBUNDLED ACCESS TO THE LOCAL LOOP TO BE PUBLISHED BY NOTIFIED OPERATORS

A. *Conditions for unbundled access to the local loop*

1. Network elements to which access is offered, covering in particular the following elements:
 - access to local loops,
 - access to non-voice band frequency spectrum of a local loop, in the case of shared access to the local loop;
2. Information concerning the locations of physical access sites (Availability of this information may be restricted to only interested parties to avoid concerns on public security), availability of local loops in specific parts of the access network;
3. Technical conditions related to access and use of local loops, including the technical characteristics of the twisted metallic pair in the local loop;
4. Ordering and provisioning procedures, usage restrictions.

B. *Collocation services*

5. Information on the notified operator's relevant sites (Availability of this information may be restricted to only interested parties to avoid concerns on public security);
6. Collocation options at the sites indicated under point B5 (including physical collocation and, as appropriate, distant collocation and virtual collocation);
7. Equipment characteristics: restrictions, if any, on equipment that can be collocated;
8. Security issues: measures put in place by notified operators to ensure the security of their locations;
9. Access conditions for staff of competitive operators;
10. Safety Standards;
11. Rules for the allocation of space where collocation space is limited;
12. Conditions for beneficiaries to inspect the locations at which physical collocation is available, or sites where collocation has been refused on grounds of lack of capacity.

C. Information systems

13. Conditions for access to notified operator's operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing.

D. Supply conditions

14. Lead time for responding to requests for supply of services and facilities; service level agreements, fault resolution, escalation procedures and quality of service parameters;

15. Standard contract terms, including, where appropriate, compensation provided for failure to meet lead times;

16. Prices or pricing formulae for each feature, function and facility listed above.