COMMISSION RECOMMENDATION
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 Internet

(notified under document number C(2000) 1259)

(Text with EEA relevance)

(2000/417/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 211,

Whereas:

(1) The conclusions of the special European Council of Lisbon on 23 and 24 March 2000 note that for Europe to fully seize the growth and job potential of the digital, knowledge-based economy, it is required that businesses and citizens have access to an inexpensive, world-class communications infrastructure and a wide range of services, and to provide this calls on the Member States, together with the Commission, 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.

(2) The 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) (1) as amended by Directive 98/61/EC (2) and in particular Articles 4(2), 7, 9 and 11, lays down principles on access to networks including collocation, and gives national regulatory authorities powers to exercise their responsibility in this regard.

(3) The 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 (3), and in particular Article 16, establish conditions on special network access in order to stimulate the development of new types of telecommunications services.


(5) The Commission Directive 90/388/EEC (7) as last amended by Directive 99/64/EC (8) and in particular Article 4(c) lays down requirements for the rebalancing of tariffs in a fully liberalised market.

(6) The 'local loop' refers to the physical copper line circuit in the local access network connecting the customer's premises to the operator's local switch, concentrator or equivalent facility. As noted in the Commission fifth report on the implementation of the telecommunications regulatory package (9), the local access network remains one of the least competitive segments of the liberalised telecommunications market, because 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 network (hereinafter referred to as 'notified operators'). This results from the fact that operators rolled out their old copper local access networks over significant periods of time protected by exclusive rights and were able to fund its investment costs through monopoly rents.

(7) 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 and therefore this recommendation does not address unbundled access to fibre local loops.

(8) It would not be economically viable to new entrants to duplicate the incumbent's copper local loop access infrastructure in its entirety and in a reasonable time period, and alternative infrastructures (e.g. cable television, satellite, wireless local loops) do not generally offer the same functionality or ubiquity.

(9) COM(1999)537
(9) Notified operators are already rolling out their own broadband high speed bit stream services for Internet access in their copper loops, but may delay the introduction of some types of digital subscriber loop (DSL) technologies and services in the local loop, where these could substitute for their current offerings. Any such delays would be at the expense of users. Therefore it is appropriate to allow third parties to have unbundled access to the local loop of the notified operator, in particular, as noted in point 5 of Commission Recommendation on leased lines interconnection pricing (10), to meet users’ needs for the competitive provision of leased lines and highspeed Internet access.

(10) In accordance with Article 4(2) of Directive 97/33/EC and Article 16 of Directive 98/10/EC, notified operators shall deal with reasonable requests for network access from new entrants, in particular for shared access (11) to the copper line, and should seek to agree commercial and technical conditions. However, the availability of only shared access to the local loop does not meet all market demands and therefore, it is considered appropriate that the notified operator provides also full local loop unbundling (12), in parallel to shared access, to reinforce competition and improve choice for all types of users, by allowing the market to decide which unbundled access offerings best meet the customers’ needs.

(11) 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, and to this end, the publication by the notified operator of a 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 (NRA), would contribute, to create transparent and non-discriminatory market conditions.

(12) Although commercial negotiation is the preferred method for reaching agreement on technical and pricing issues for local loop access, experience shows that in most of the cases regulatory intervention is necessary due to imbalance in the negotiation power between the new entrant and the notified operator, and lack of other alternatives. The national regulatory authority, in accordance with Article 9 of Directive 97/33/EC and Article 16(4) of Directive 98/10/EC, may intervene at its own initiative to specify issues, including pricing, designed to ensure interoperability of services, maximise economic efficiency and benefit end users.

(13) Costing and pricing rules for local loops and associated 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. Pricing rules for local loops should 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 are consulted.

(14) The Directive 98/10/EC requires Member States to ensure that all reasonable requests for connection to the fixed public telephone network at a fixed location and access to fixed public telephone services are met by at least one operator. Where a customer decides to enter into a contractual agreement with a new entrant for exclusive provision of services by means of full unbundled local loop, then it is considered that the notified operator has fulfilled its obligation under Article 5 of Directive 98/10/EC. Users should be fully informed of such conditions in their contracts in accordance with Article 10 of Directive 98/10/EC and this without prejudice to the application of Community law regarding consumer protection.
(15) The Licensing Directive 97/13/EC foresees the use of general authorisations for telecommunications services, except under certain conditions as set out in Article 7 thereof. Companies using DSL technology on unbundled local loops to provide services to customers should be authorised in accordance with the Directive 97/13/EC on the basis of the activities they undertake and, in line with the principle of technological neutrality, no specific regulatory restrictions should be placed on services provided in this way. Authorised data network operators or voice telephony network operators should be entitled to operate shared access and/or full unbundled local loops from notified operators without additional authorisations or being subject to additional restrictions.

(16) It is appropriate that the Commission reviews this recommendation periodically on the basis of market developments and the experience acquired, in particular as regards pricing issues and the content of the reference offer included in the Annex.

(17) The Community competition rules apply beside the present recommendation,
7. In accordance with the principle of non-discrimination, where notified operators are already providing their own high speed digital subscriber loop (DSL) services using unbundled access to the local loop, national regulatory authorities may require that competitors are given access to the local loops at the same price which the notified operator imputes to its own DSL services. This 'non-discrimination' pricing rule would also apply to the access by new entrants of associated facilities such as collocation and leased transmission capacity in the core network as used by the notified operator to support its own DSL services or those of a subsidiary or associated company.

8. To provide confidence in the fair pricing of facilities, and to demonstrate compliance with the obligations for non-discrimination, it is recommended that appropriate and detailed cost accounting information, including internal transfer pricing consistent with the guidelines in Commission Recommendation 98/322 (16), is made available to the national regulatory authority who may make it available to interested parties under a non-disclosure agreement, while taking account of considerations of commercial confidentiality.

9. It is recommended that national regulatory authorities conduct periodic reviews of the market conditions on local access, adjusting pricing principles and obligations as necessary or removing price regulation once the market offers sufficient competition and choice of alternative offerings. The review period should be announced in advance in order to provide predictability to market players.

10. Physical access should be provided to any feasible termination point of the copper local loop where the new entrant can collocate and connect its own network equipment and facilities to deliver services to its customer, either in the local switch, concentrator or equivalent facility. In principle collocating companies should be allowed to place any equipment necessary to access the unbundled local loop using available collocation space, and, to deploy or rent transmission links from there up to the point of presence of the new entrant. It is recommended that national regulatory authorities ensure that collocation space is offered to competitors in a way that is transparent, fair, and non-discriminatory.

11. With regard to technologies and services used with unbundled local loops, it is recommended that national regulatory authorities ensure that any restrictions designed to protect network integrity, and in the case of shared access to the local loop to protect the voice telephony channel, are non-discriminatory and based on objective criteria identified in advance, in accordance with Article 13(2)(b) of Directive 98/10/EC. In line with the principle of technological neutrality for the access to copper local loops, no additional or specific regulatory restrictions should be placed on companies that use new DSL technologies on the local loop as a means to provide customer services.

Transparency and coordination

12. So as to minimise the time for deployment of competitive DSL services by new entrants, it is recommended that national regulatory authorities ensure that notified operators make available as soon as possible, and ideally on Internet, a reference offer for full unbundled access and shared access to the local loop, containing a description of the offerings and the associated terms and conditions, including prices.

The Annex provides an indicative list of items to be included in the reference offer for unbundled access to the local loop.

13. In addition, it is recommended that national regulatory authorities ensure easy availability of the following information concerning communications services over unbundled local loops:

— licensing conditions for operators,

— information for users who take service from operators using unbundled local loop access, including all contractual conditions, specially tariffs, users' rights, minimum rental periods and universal service aspects, termination of service, complaints and redress procedures.

14. National regulatory authorities are recommended to set up national coordination groups of interested parties, including user representatives, to refine the requirements under points 12 and 13, and to advise on an ongoing basis on the degree of detail in the information to be published in the reference offer. Notified operators should report regularly to their NRA on their implementation of local loop unbundling, including statistical information for the items identified in the reference offer.

15. It is recommended that Member States ensure that national coordination groups take note of similar activities being undertaken in other Member States and relevant international organisations. In order to facilitate coordination, it is recommended that national regulatory authorities report periodically to the ONP committee on issues associated with implementation of unbundled access to the local loop.

**Review**

16. This recommendation, and in particular the Annex, will be reviewed by the Commission in the light of market development, and updated where necessary.

**Article 2**

This Recommendation is addressed to Member States.


*For the Commission*

Erkki LIIKANEN and Mario MONTI

*Members of the Commission*
ANNEX

INDICATIVE LIST OF ITEMS TO BE INCLUDED A REFERENCE OFFER (1) 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 raw copper local loops (copper terminating at the local switch) and subloops (copper terminating at the remote concentrator or equivalent facility), in the case of full unbundling,
— access to non-voice frequencies of a local loop, in the case of shared access to the local loop,
— access to space within a main distribution frame (MDF) site of the notified operator for attachment of DSL access multiplexors (DSLAMs) and similar types of equipment to the local loop of the notified operator.

2. Availability: all relevant detail regarding local network architecture, information concerning the locations of physical access sites, availability of copper pairs in specific parts of the access network;

3. Technical conditions: technical characteristics of copper pairs in the local loop; lengths, wire diameters, loading coils and bridged taps; line testing and conditioning procedures. Specifications for DSL equipment, splitters etc, with reference to relevant international standards or recommendations; spectrum limitations and electromagnetic compatibility requirements designed to prevent interference with other systems;

4. Provisioning procedures: line investigations for specific DSL technologies, ordering and provisioning procedures, usage restrictions,

B. Collocation services

5. Information on collocation sites: in particular the precise locations (2) of the notified operator's relevant sites; including switches, main distribution frame (MDF), concentrators, and remote distribution points such as street cabinets, pedestals and vaults; specification of the Website(s) where the updated list of locations is published; availability of alternatives when physical collocation is not available.

6. Collocation options at the sites indicated under point 5: the types of collocation available e.g. shared, caged/cage-less, physical, or virtual; availability of power and air-conditioning facilities at these sites; rules for subleasing of collocation space.

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; conditions for access by the staff of competitive operators in order to identify and repair service problems.

9. Safety Standards: (In principle safety standards used by the incumbent and its affiliates should be deemed adequate for competitive operators' equipment).

10. Inspections: conditions for competitive operators and NRAs to inspect the locations at which physical collocation is available, or sites where collocation has been refused on grounds of lack of capacity.

C. Operational support systems

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

12. In principle the operational support system (OSS) elements listed should cover access to all loop qualification information, including information on whether a particular loop is capable of supporting advanced services.

(1) A reference offer for unbundled local loop access includes the basic set of technical facilities, including terms and conditions, and prices, offered to market players.

(2) Availability of this information may be restricted to only interested parties to avoid concerns on public security.
D. Supply conditions

13. Timeframes: lead time for responding to requests for supply of services and facilities, as well as contractual compensation provided in case of failure to meet those time frames, service level agreements, fault resolution and escalation procedures.

14. Prices for each feature, function and facility listed above, shown separately, including on time payments and recurring rental payments.