



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04.11.1996

COM(96) 419 final

96/ 0226(COD)

Proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on the application of open network provision (ONP) to voice telephony and on
universal service for telecommunications in a competitive environment

(replacing European Parliament and Council Directive 95/62/EC)

(presented by the Commission)

List of Contents

Summary

Explanatory memorandum

Introduction

Background

Universal telecommunications Service in the European Union

Aims of the Revision of Directive 95/62/EC

The entities covered

Major areas of change with respect to Directive 95/62/EC

Consultation process

Conclusion

Proposal for a European Parliament and Council Directive on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment (replacing European Parliament and Council Directive 95/62/EC)

Chapter I - Scope, aims and definitions

Article 1 Scope and aim

Article 2 Definitions

Chapter II - Provision of a defined set of telecommunications services

Article 3 Availability of telecommunications services

Article 4 Affordability

Article 5 Provision of network connections and access to telephone services

Article 6 Directory services

Article 7 Public pay-telephones

Article 8 Specific measures for disabled users and users with special needs

Chapter III - General Provisions concerning public telephone

networks and publicly available telephone services

Article 9 Connection of terminal equipment and use of the network

Article 10 Contracts

Article 11 Publication of and access to information

Article 12 Quality of service

Article 13 Conditions of access and use and essential requirements

Chapter IV - Specific Provisions concerning fixed public telephone networks and publicly available telephone services

Article 14 Itemized billing tone dialling and selective call barring

Article 15 Provision of additional facilities

Article 16 Special network access

Article 17 Tariff principles

Article 18 Cost accounting principles

Article 19 Discounts and other special tariff provisions

Article 20 Specifications for network access, including the socket

Article 21 Non-payment of bills

Article 22 Conditions for the termination of offerings

Article 23 Variation of published conditions

Chapter V - Procedural provisions

Article 24 Consultation

Article 25 Notification and reporting

Article 26 Conciliation and national dispute resolution

Article 27 Deferment of certain obligations

Article 28 Technical adjustment

Article 29 Advisory Committee procedure

Article 30 Review

Article 31 Transposition

Article 32 Repeal of Directive 95/62/EC

Article 33 Entry into force

Article 34 Addressees

Annexes

Annex I Description of facilities referred to in articles 14 and 15

Annex II Headings for information to be published in accordance with article 11

Annex III Supply-time and quality-of-service indicators, definitions and measurement methods

Annex IV Timescale referred to in Article 33

Annex V Comparative Table

Evaluation of the Impact

SUMMARY

The purpose of this Directive is to revise and replace the existing Directive 95/62/EC on the application of Open Network Provision (ONP) to voice telephony, to take account of the forthcoming liberalisation of the telecommunications market by 1st January 1998, and to guarantee the provision of a defined universal service for telecommunications in the European Union.

The European Parliament and the Council have committed themselves to decide before 1 January 1998, on the basis of a proposal submitted in good time by the Commission, on the revision of the existing Directive - see Article 32(1).

This proposal for a revised Directive describes the scope of the universal service for telecommunications which must be available to all users in the EU, and requires Member States to ensure that this service is affordable, taking into account national situations. The Directive also sets out harmonised conditions for the provision of fixed public telephone networks and publicly available telephone services in the European Union.

The revised Directive forms part of the regulatory framework for the telecommunications sector being put in place for the post-1998 environment of open and competitive markets.

EXPLANATORY MEMORANDUM

1. Introduction

In the emerging information society more and more people - in private life and at work - depend on modern communications. To be able to communicate and interact whether by telephone, fax, e-mail or electronic media is a crucial and decisive factor for every citizen and business.

The telecommunications sector is an area of startling innovation and rapid technological evolution. It is critical for the overall competitiveness of Europe's economy.

Alongside the growing importance of data and facsimile services in the business sector, and the spectacular growth of the Internet, and the potential of new information society services, telephone services remain the most important telecommunications services today from both an economic and a social stand-point.

The liberalisation of public telephone networks and services from 1 January 1998¹ makes it vital that beyond that date both business and residential users are guaranteed choice, quality and the best possible prices for telephone services.

2. Background

¹ See Commission Directive 96/19/EC amending Commission Directive 90/388/EEC regarding the implementation of full competition in telecommunications markets. OJ L 74, 22.03.1996, p.13.

In the telecommunications sector the European Union (EU) is following a balanced policy of liberalization and harmonization, building on the 1990 Commission Directive on telecommunications services² and the Council Directive on open network provision³, adopted simultaneously.

Council Resolution of 22 July 1993⁴, which set the date of 1st January 1998 for liberalisation of telecommunications services (with transitional periods for certain Member States), identified as major policy goals for the Community's telecommunications policy:

- i) the adoption of legislative proposals in the field of ONP
[ie the then draft ONP Voice Telephony Directive]
- ii) the adaptation in the light of further liberalisation, of ONP principles in respect of the entities covered, and of such issues as universal service, interconnection and access charges

Institutional problems associated with the entry-into-force of the current Treaty of European Union in November 1993 led to delay in the adoption of the ONP Voice Telephony Directive, with the result that final adoption by the EP and the Council did not occur until December 1995⁵.

In keeping with paragraph ii) above, the Directive is now being adapted in the light of the date of 1st January 1998 for full liberalisation of public telecommunications networks and voice telephony services. At the same time, ongoing discussion on universal service has

² Commission Directive 90/388/EEC, OJ L 192, 24.7.1990, p. 10

³ Council Directive 90/387/EEC, OJ L 192, 24.7.1990, p. 1

⁴ OJ C 213, 06.08.1993, p.1

⁵ Directive 95/62/EC on the application of Open network provision (ONP) to voice telephony ("the Voice Telephony Directive"), OJ L321, 30.12.1995, p.6.

emphasised the need to strengthen some of the provisions of this Directive to safeguard users' interests.

The European Parliament and the Council have committed themselves to review the present Directive 'on the basis of a proposal which the Commission will submit to them in good time', as stated in Article 32(1) of Directive 95/62/EC.

3. Universal telecommunications Service in the European Union

Universal service in the telecommunication sector has been the subject of continuous consultation and debate since the Commission first put forward its proposals for complete liberalisation of the telecommunications sector in October 1992.

In the light of the political agreements of 1993 and 1994 resulting from the Commission's 1992 Telecommunications Review⁶ in favour of the full liberalisation in the sector, the Council⁷, the European Parliament⁸, the Economic and Social Committee⁹ and the Committee of the Regions¹⁰ have all recognised that liberalisation goes hand in hand with parallel action to create a harmonised regulatory framework which secures the delivery of universal service.

⁶ Commission Communication on the consultation on the Review of the situation in the Telecommunications Services Sector, COM(93) 159.

⁷ Council Resolution 94/C48 of 8 February 1994 on Universal Service principles in the telecommunications sector, OJ C48, 16.2.1994 and Council Resolution 95/C258 of 18 September 1995 on the implementation of the future regulatory framework for telecommunications, OJ C258, 3.10.1995.

⁸ European Parliament Resolution of 19 May 1995 on the Green Paper on the liberalisation of telecommunications infrastructure and cable television networks - Part II A4-0111/95; OJ C151, 19.6.1995.

⁹ Opinion of the Economic and Social Committee of 13 September 1995 on the Green Paper on the liberalisation of telecommunications infrastructure and cable television networks - Part II, OJ C301, 13.11.1995.

¹⁰ Opinion of the Committee of the Regions on the Commission Communication: Europe's way to the information society. An action plan (COM((94) 347 final). CdR 21/95 ESP/ET/AG/ym and CdR 21/95 Appendix D/BAN/JKB/NF/as.

The European Parliament emphasised: "*the central importance of universal service principles, in order to ensure the complementarity between economic and social goals ... and the balance between liberalisation and the need to maintain basic, affordable services for all consumers*", whilst Council identified universal service as permitting "*access to a defined minimum service of specified quality to all users everywhere and, in the light of specific national conditions, at an affordable price*".

Public consultation during 1995 on the Commission's Green Paper on the liberalisation of telecommunications infrastructure¹¹ focused the universal service discussion on the issues of scope, costing and financing, and in the light of this discussion the Commission addressed these specific issues in its proposal for an EP and Council Directive on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP)¹²

The Commission Communication on universal service for telecommunications¹³ reports on the results of a survey of the level and quality of service found in the Member States and of a public consultation on universal service issues during Autumn 1995. The Communication notes that the current concept of universal service, found in the ONP Voice Telephony Directive, corresponds to the obligation to provide access to the fixed public telephone network and to deliver an affordable telephone service to all users reasonably requesting it. It goes on to identify areas where the Voice Telephony Directive can be strengthened to better reflect the needs of universal service in a liberalised environment.

¹¹ Commission Green Paper on the liberalisation of telecommunications infrastructure and cable television networks, part II. COM(94) 682, 25.01.1995

¹² COM(95) 379, OJ C 313, 24.11.1995, p.7

¹³ COM(96) 73, 13 March 1996.

The proposed revision of the ONP Voice Telephony Directive includes these changes.

The Directive does not apply to mobile telephone networks or services.

Universal service and market forces

The telephone service is considered to be so important to the social and economic life of the Community that it is appropriate to maintain a regulatory 'safety net' to guarantee that all users can continue to have access to a good basic telephone service at affordable prices. Market failure is recognised as a significant problem, which cannot be allowed to occur in view of the serious consequences it would have for users of basic telephone services.

The regulatory safety net that this Directive puts in place therefore requires Member States to ensure that all reasonable requests for access to the fixed public telephone network and provision of telephone service at a fixed location are met. In accordance with the proposed European Parliament and Council Directive on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP)¹⁴, where this universal service obligation represents a demonstrable net cost to an operator, this cost can be shared at the national level with other organizations operating public telecommunications networks and/or publicly available voice telephony services. There is no requirement to provide mobile telephone services as part of universal service.

4. Aims of the Revision of Directive 95/62/EC

¹⁴ OJ C220, 29.07.1996, p 13. Common Position (EC) No.34/96 adopted by the Council on 18 June 1996

The aim of the revised Directive is to adapt the existing voice telephony Directive to a competitive market with multiple players, and to guarantee the provision of a defined universal telephone service in the European Union.

The revised Directive identifies the telephone services and associated facilities to be publicly available to all users; it ensures that all users can on request gain access to the fixed public telephone network¹⁵, at a fixed location, for communication by voice, data or facsimile, and have access to a basic range of facilities including itemised billing¹⁶ and tone dialling.

It sets out a mechanism whereby quality of service can be monitored using a common set of parameters and measurement methods. Where necessary, quality targets can be set by the national regulatory authorities at the national level, and the results published. In a liberalised market, quality is one of the differentiating factors for competing market players, and therefore it is not considered appropriate to lay down standard levels of quality for all at this stage. Nevertheless a procedure is envisaged whereby minimum quality targets could be set at the EU level.

The revised Directive introduces a new requirement for Member States to ensure that telephone service is affordable, taking into account national circumstances. This principle exists alongside the principle of cost-orientation, which is leading to the current process of tariff re-balancing. The principle of affordability ensures that tariff rebalancing proceeds at a pace which is consistent with the introduction of competition, but which at the same

¹⁵ In a liberalised environment, the 'public telephone network' in a Member State will be made up of many separately owned and operated telecommunications networks, interconnected together.

¹⁶ The proposed European Parliament and Council Directive 96/.../EC of [to be adopted] concerning the processing of personal data and protection of privacy in the telecommunications sector, in particular in the Integrated Services Digital Network (ISDN) and in digital mobile networks, will safeguard the privacy of users with regard to itemised billing;

time does not result in unacceptably steep price rises for users. The Directive emphasises the place of targetted tariff schemes as a better option than uniformly low tariff as a means of securing affordable service for all.

The revised Directive calls upon Member States to set up consultative mechanisms with users, consumers, suppliers and manufacturers at the national level on issues related to the level, quality and affordability of universal service. The Commission may also set up consultative mechanisms at the European level.

In those Member States which have transition periods for the liberalisation of public telecommunications networks and publicly available voice telephony services, in accordance with Community law, the revised Directive maintains the relevant provisions of Directive 95/62/EC.

5. The entities covered

In its revised form, the Directive contains three types of provisions:

Chapter II contains provisions that apply to organisations designated by Member States as having specific universal service obligations.

Chapter III contains provisions that apply to all organisations providing fixed public telephone networks and/or publicly available telephone services.

Chapter IV contains provisions that apply to specific categories of organisations, including:

- organisations providing telephone services over the fixed public telephone network
- organisations providing telephone services over the fixed public telephone network designated by Member States as having significant market power
- organisations which, for a transition period, retain special or exclusive rights of the provision of fixed public telecommunications networks or publicly available voice telephony services, in accordance with Community law..

Provisions relating to universal service obligations

These provisions cover three areas:

- the provision of a connection to the fixed public telephone network as described above
- the provision of directories and directory enquiry services
- the provision of public pay telephones.

Member States must ensure the availability of these services for all, and in accordance with the principle of subsidiarity, can decide how to achieve that objective at a national level.

Where such an obligation results in a justified net cost to an organisation, Member States may allow that net cost to be shared with other organizations operating public

telecommunications networks and/or publicly available voice telephony services, under a universal service funding scheme. However universal service obligations must not be imposed in a way which leads to duplication of universal service costs, i.e. only one organisation should receive support from a universal service financing scheme for provision of a particular element in a particular area. The proposed EP and Council Directive on interconnection requires that the calculation of costs must be independently audited, and that the rules for calculating the contributions from other market players must be in accordance with the principles of non-discrimination, proportionality and transparency.

Provisions affecting all providers of fixed public telephone networks and publicly available telephone services

Provisions affecting all providers of fixed public telephone networks and publicly available telephone services concern access to emergency numbers, subscriber contracts, the publication of information relating to their service offering including tariffs and technical interfaces, and keeping available statistics on quality of service.

Provisions for specific types of organisations

Provisions in the existing Directive concerning cost orientation of tariffs, implementation of specific cost accounting systems, and discount schemes are carried over into the revised Directive, but with the possibility for the national regulatory authority to relax these requirements once competition is sufficiently developed to allow market-driven pricing to take over as the best means of keeping down prices for users. The provision on special network access is consistent with the obligation in Article 4(2) of the proposed

Directive on interconnection, and is retained in this Directive because it offers additional safeguards for the user which are not provided in the Interconnection Directive.

Provisions concerning certain facilities (itemised billing, selective call barring and tone dialling), and non-payment of bills apply to all organisations providing voice telephony services over fixed public telephone networks.

Mobile telephone services

The existing Directive does not apply to mobile telephone services, and the proposed adaptation does not change that situation.

At present the mobile market can be considered as a separate market to the fixed telephone market, but in view of the forecast convergence of fixed and mobile telephone services, the applicability of the Directive with respect to mobile services will be re-examined when the Directive is reviewed by 31 December 1999. Individual Member States may take steps to improve protection of the consumer at the national level by, for example, ensuring that mobile telephone users have access to inexpensive and easily accessible dispute resolution procedures similar to those described in this Directive.

6. Summary of contents of the proposed Directive

The articles of Directive 95/62/EC have been re-grouped into the following chapters:

Chapter I - Scope, aims and definitions

Chapter II - Provision of a defined set of telecommunications services

Chapter III - General Provisions concerning public telephone
networks and publicly available telephone services

Chapter IV - Specific Provisions concerning *fixed public telephone networks* and
publicly available telephone services

Chapter V - Procedural provisions

Certain provisions in Directive 95/62/EC are relaxed or removed:

- provisions on interconnection (former Article 11), and numbering (former Article 21), which will be superseded by the proposed Directive on Interconnection
- provisions on technical standards (former article 24) which will be covered by Council Directive 90/387/EC, once this is amended as proposed in EP and Council Directive 96/ .. /EC [*to be adopted*]
- provisions on telephone pre-payment cards (the former article 18)

Certain specific provisions are strengthened in response to user demand in relation to universal service:

- firm dates are given for the provision of the facilities of tone dialling, itemised billing and selective call barring;
- the procedures in the event of non-payment of bills have been further defined

- a requirement is introduced for directory enquiry services to be available.

7. Consultation process

As indicated in section 3 above, there has been widespread public consultation on the issues of universal service, and the results are summarised in the Commission Communication on Universal Service for Telecommunications published in March 1996. The proposed revisions to the Directive take into account the positions expressed in that Communication.

On the question of to whom ONP obligations should apply in a competitive environment, this issue was addressed in the Green Paper on Infrastructure published in January 1995, and the subsequent public hearings. The application of specific obligations to organisations with significant market power allows the regulatory framework to be applied in a way that takes account of the degree of competition in a particular market, and has been accepted by the EP and the Council in other ONP Directives.

Revision of the voice telephony Directive was the subject of two discussions involving the Commission and Member States and other representative bodies at meetings of the ONP Committee on 15 May and 4 June 1996.

8. Conclusion

The proposed revision of the ONP voice telephony Directive 95/62/EC has been requested by the EP and the Council, and takes account of the liberalisation of public voice telephony services in 1998. It will guarantee the provision of universal telephone service to all EU users. The proposal is part of the package of legislative measures being

put in place for the post-1998 liberalised telecommunications market in the European Union.

Proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on the application of open network provision (ONP) to voice telephony and on universal

service for telecommunications in a competitive environment

(replacing European Parliament and Council Directive 95/62/EC)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN
UNION,

Having regard to the Treaty establishing the European Community, and in particular
Article 100a thereof,

Having regard to the proposal from the Commission¹,

1

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

Acting in accordance with the procedure laid down in Article 189b of the Treaty³,

1. Whereas from 1 January 1998, with transition periods for certain Member States, the provision of telecommunications services and infrastructure in the Community will be liberalized; whereas the Council⁴, the European Parliament⁵, the Economic and Social Committee⁶ and the Committee of the Regions⁷ have all recognised that liberalisation goes hand in hand with parallel action to create a harmonised regulatory framework which secures the delivery of universal service; whereas the concept of universal service must evolve to keep pace with advances in technology, market developments and changes in user demand; whereas progress has been made in the Community towards defining the scope of universal service and laying down rules for

2

3

4 Council Resolution 94/C48 of 7 February 1994 on Universal Service principles in the telecommunications sector, OJ C48, 16.2.1994, p.1, and Council Resolution 95/C258 of 18 September 1995 on the implementation of the future regulatory framework for telecommunications, OJ C258, 3.10.1995, p.1.

5 European Parliament Resolution of 19 May 1995 on the Green Paper on the liberalisation of telecommunications infrastructure and cable television networks - Part II A4-0111/95; OJ C151, 19.6.1995

6 Opinion of the Economic and Social Committee of 13 September 1995 on the Green Paper on the liberalisation of telecommunications infrastructure and cable television networks - Part II, OJ C301, 13.11.1995

7 Opinion of the Committee of the Regions on the Commission Communication: Europe's way to the information society. An action plan (COM((94) 347 final). CdR 21/95 ESP/ET/AG/ym and CdR 21/95 Appendix D/BAN/JKB/NF/as.

its costing and financing⁸; whereas the Commission has undertaken to publish a report on the monitoring of the scope, level, quality and affordability of the universal telephone service in the Community before 1 January 1998, and at regular intervals thereafter;⁹

2. Whereas Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision,¹⁰ provides a general framework for the application of ONP principles in specific areas;
3. Whereas Article 32(1) of European Parliament and Council Directive 95/62/EC of 13 December 1995 on the application of open network provision (ONP) to voice telephony¹¹ calls for the European Parliament and the Council to decide by 1 January 1998, on the basis of a proposal submitted by the Commission, on the revision of the Directive to adapt it to the requirements of market liberalisation; whereas Directive 95/62/EC does not apply to mobile telephony services; whereas in moving to a competitive market, there are certain obligations that should apply to all organisations providing telephone services over fixed networks, and others that should be retained only for as long as certain organisations continue to enjoy significant market power and thus have the ability to influence market conditions independently of their competitors; whereas full account has been taken of the user

⁸ Common Position (EC) No 34/96 adopted by the Council on 18 June 1996 with a view to adopting Directive 96/.../EC of the European Parliament and the Council on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (ONP). OJ C220, 29.07.1996, p 13

⁹ See Commission Communication on Universal service for telecommunications in the perspective of a fully liberalised environment, COM(96) 73, 13 March 1996.

¹⁰ OJ L192, 28.06.1990, p.1.

¹¹ OJ L321, 30.12.1995, p.6

and consumer requirements for affordability, cost control and user facilities as expressed in the public consultation on universal service for telecommunications¹²; whereas, since the modifications required to Directive 95/62/EC are substantial, it is convenient for the sake of clarity to reformulate the said Directive; whereas the present Directive does not affect the timescales for Member States' implementation of Directive 95/62/EC as set out in Annex IV;

4. Whereas the basic universal service requirement is to provide users on request with a connection to the fixed public telephone network at a fixed location, at an affordable price; whereas there should be no constraints on the technical means by which the connection is provided, allowing for wire or wireless technologies; whereas affordability is a matter to be determined at national level in the light of specific national conditions, including town and country planning aspects; whereas the affordability of telephone service is related to the information users receive about telephone usage expenses as well as the relative cost of telephone usage compared to other services;

Whereas tariff rebalancing is leading to a move away from uniformly low and non cost-oriented tariffs; whereas until competition is effectively established safeguards may be necessary to ensure that price increases in remote or rural areas are not used to compensate for losses in revenue resulting from price decreases elsewhere; whereas price caps and similar schemes may be used to ensure that the necessary rebalancing does not affect users adversely, and that the differences between prices in high cost areas and prices in low cost areas do not endanger the affordability of telephone services;

¹² See COM(96) 73, 13 March 1996

5. Whereas the importance of the telephone network and service is such that it should be available to anyone reasonably requesting it; whereas in accordance with the principle of subsidiarity, it for Member States to decide which organisations have the responsibility for providing the various elements of the universal service for telecommunications as defined in this Directive; whereas corresponding obligations could be included as conditions in authorisations to provide voice telephony services; whereas only the net cost of obligations covered in this Directive should be shared under a universal service financing scheme;
6. Whereas provision of directory services is a competitive activity; whereas European Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data regulates the processing of personal data¹³; whereas progress has been made in the Community on a proposal for a Directive on the protection of personal data and privacy in the telecommunications sector which will give subscribers the right to be omitted, or to have certain data omitted, from a printed or electronic directory at his or her request¹⁴; whereas users and consumers desire comprehensive directories and directory enquiry service covering all listed telephone subscribers and their numbers (including fixed, mobile and personal telephone numbers); whereas the situation whereby certain telephone directories and directory services are provided in a manner that is perceived to be free of charge to the user is not affected by this Directive;

¹³ OJ L281, 23.11.1995, p.31.

¹⁴ Common Position (EC) No /96 adopted by the Council on [date] with a view to adopting Directive 96/ .. /EC of the European Parliament and the Council concerning the processing of personal data and protection of privacy in the telecommunications sector, in particular in the Integrated Services Digital Network (ISDN) and in digital mobile networks

7. Whereas Council Decision of 29 July 1991 on the introduction of a single European emergency call number¹⁵ called for Member States to ensure that no later than 31 December 1996 the number <112> is introduced in public telephone networks as the single European emergency call number; whereas it is important that users are able to call emergency telephone numbers, and in particular the single European emergency call number <112>, free of charge from any telephone, including public pay-telephones, without the use of coins or cards;
8. Whereas quality and price are key factors in a competitive market, and national regulatory authorities should be able to monitor achieved quality of service and take appropriate corrective measures where necessary; whereas these powers are without prejudice to the application of competition law by national and Community authorities;
9. Whereas conditions on the access to and use of fixed public telephone networks or publicly available telephone services may be imposed exceptionally by a Member States on the grounds of essential requirements; whereas national regulatory authorities may authorise procedures whereby an organisation can act immediately to restrict access, in particular in the case of fraud; whereas, except in cases of persistent late payment or non payment of bills, consumers should be protected from immediate disconnection from the network on the grounds of an unpaid bill, and in particular in the case of disputes over high bills for premium rate services, should continue to have access to essential telephone services pending resolution of the dispute;

¹⁵ OJ L 217, 06.08.1991, p.31.

10. Whereas the facilities of tone dialling and itemised billing are normally available on modern telephone exchanges and can therefore be provided inexpensively once old exchanges are modernised or new exchanges installed; whereas tone dialling is increasingly being used for interaction with special services and facilities, including value added services, and lack of this facility can prevent users accessing certain services; whereas itemised billing and selective call barring are valuable means for users to control and monitor their usage of telephone networks; whereas progress has been made in the Community on a proposal for a Directive on the protection of personal data and privacy in the telecommunications sector which will safeguard the privacy of users with regard to itemised billing; whereas harmonised technical interface standards have been drawn up by the European standardisation organisations for access to the Integrated Services Digital Network (ISDN) at what is known as the S/T reference point;
11. Whereas certain prior obligations concerning tariffs and cost accounting systems will no longer be appropriate once competition is introduced, and others can be relaxed by the competent national regulatory authority as soon as competition achieves the desired objectives; whereas in all cases the non-discrimination requirements of the competition rules of the Treaty apply;
12. Whereas issues related to the level of affordability, the quality of service and the future scope of the universal service should be the subject of consultation at national level and at the European level with all interested parties; whereas such consultation requires that adequate information about the level, quality and affordability of universal service is available; whereas disabled users should wherever possible

receive a broadly similar level of services compared to other users in terms of their access to or use of telephone services;

13. Whereas the Commission has to be able to monitor effectively the application of this Directive, and European users need to know where to find published information about telephone services in other Member States;

14. Whereas in view of the forecast convergence of fixed and mobile telephone services, the applicability of the Directive with respect to mobile services should be re-examined when the Directive is reviewed; whereas the review date of 31 December 1999 will allow for a coordinated review of all the ONP Directives in the light of experience with the liberalisation of public telecommunications networks and voice telephony services;

15. Whereas the essential goals of ensuring universal service for telecommunications for all European users and of harmonising conditions for access to and use of fixed public telephone networks and publicly available telephone services, cannot be realised satisfactorily at Member State level;

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1. SCOPE, AIM AND DEFINITIONS

Article 1

Scope and aim

1. This Directive concerns the harmonisation of conditions for open and efficient access to and use of fixed public telephone networks and publicly available telephone services in an environment of open and competitive markets, in accordance with the principles of open network provision (ONP).

The aims are to ensure the availability throughout the Community of good quality telephone services, and to ensure that all users, including consumers, have access to a defined set of telephone services at affordable prices.

2. This Directive replaces Directive 95/62/EC.

Article 2

Definitions

1. The definitions given in Directive 90/387/EEC shall apply, where relevant, to this Directive.

2. For the purposes of this Directive:

- "users" means individuals, including consumers, or organisations using or requesting publicly available telecommunications services

- "consumer" means any natural person who uses a *fixed public telephone network* or publicly available telephone service for purposes which are outside his or her trade, business or profession.
- "fixed public telephone network" means those elements of the public switched telecommunications network which are used, in all or in part, for the provision of voice telephony service between network termination points which are at fixed locations;
- "public pay-telephone" means a telephone available to the general public, for the use of which the means of payment are coins, credit/debit cards and/or pre-payment cards.
- "publicly available telephone service" means a service made available to telephone users over a connection to the fixed public telephone network, which includes the availability of the facilities specified in this Directive
- "universal service" means a defined minimum set of services of specified quality which is available to all users independent* of their geographical location and, in the light of specific national conditions, at an affordable price.
- "national regulatory authority" means the body or bodies in each Member State, entrusted by that Member State, *inter alia*, with the regulatory functions addressed in this Directive;
- "ONP Committee" means the Committee created by Article 9(1) of Directive 90/387/EEC;

– "organisation with significant market power" means an organisation providing fixed public telephone networks and/or publicly available telephone services in a Member State which has been designated by the national regulatory authority in that Member State as having significant market power and notified to the Commission.

An organisation shall be presumed to have significant market power when it has a share of 25% or more of the relevant voice telephony market in a Member State.

National regulatory authorities may determine that an organisation with a market share of less than 25% in the relevant voice telephony market has significant market power. They may also determine that an organisation with a market share of more than 25% in the relevant voice telephony market does not have significant market power. In either case, the determination shall take into account the organisation's ability to influence market conditions, its turnover relative to the size of the market, its control of the means of access to end-users, its access to financial resources, its experience providing products and services in the market.

CHAPTER II. PROVISION OF A DEFINED SET OF TELECOMMUNICATIONS SERVICES

Article 3

Availability of telecommunications services

1. Member States shall ensure throughout their territory the availability of the services set out in this Chapter

Where these services cannot be commercially provided on the basis of conditions laid down by the Member State, Member States may set up universal service schemes for the shared financing of these services, in conformity with Community law.

Article 4

Affordability

1. Member States shall ensure, in the light of their national conditions, the affordability of the services specified in this Chapter.

Taking into account the progressive adjustment of tariffs towards costs, Member States shall in particular maintain the affordability of the specified services for users in rural or high cost areas, where necessary by taking measures to ensure that price increases in rural areas are not used to compensate losses in revenue resulting from price decreases elsewhere, and for vulnerable groups of users such as the elderly, those with disabilities, those who do not use the telephone very much.

To this end, Member States shall remove obligations which prevent or restrict the use of special or targeted tariff schemes for the provision of the services specified in this Directive and may, in accordance with Community law, implement price caps or other similar schemes for some or all of the specified services, for a appropriate period of time.

Member States shall publish the rules and criteria for ensuring affordability at the national level, taking into account the consultation called for in Article 24.

2. Member States shall publish regular reports on the evolution of tariffs.

Article 5

Provision of network connections and access to telephone services

1. Member States shall ensure that all reasonable requests for connection to the fixed public telephone network and access to publicly available telephone services, at a fixed location, are met.

The connection provided shall allow users to make and receive national and international calls, supporting speech, facsimile and/or data communications.

2. Where, taking into account the revenues generated as a result of that connection, the network provider states that the user concerned can only be served at a loss or under cost conditions falling outside normal commercial standards, the net cost of serving that user may be shared with other organisations under a universal service financing scheme.

Article 6

Directory services

1. Subject to the requirements of relevant legislation on the protection of personal data and privacy, such as Directive 95/46/EC, Member States shall ensure that:
 - (a) subscribers have the right to have an entry in publicly available directories, and to verify and if necessary correct or request removal of that entry;
 - (b) directories of all subscribers who consent to be listed, including fixed and personal numbers, are available to users in printed and where appropriate, electronic form, and updated on a regular basis;
 - (c) directory enquiry services covering all listed subscribers numbers are available to all users, including users of public pay-telephones.
2. In order to ensure provision of the services in paragraph 2, Member States shall ensure that all organizations who assign telephone numbers to subscribers make available on request the relevant information in an agreed format on terms which are fair, reasonable and non-discriminatory.
3. Member States shall ensure that organisations providing the service in paragraph 2 follow the principle of non discrimination in their treatment and presentation of information provided to them.
4. Where a Member State finds that no organisation is willing to make telephone directories publicly available, or to provide directory enquiry services to all telephone users including users of public pay telephones, the net cost of providing these services may be shared amongst all organisations providing publicly available voice telephony services under a universal service financing scheme, in accordance with Community law.

Article 7

Public pay-telephones

1. Member States shall ensure that public pay telephones are provided to meet the reasonable needs of users, in terms of both numbers and geographical coverage.
2. Member States shall ensure that it is possible to make emergency calls from public pay-telephones using the single European emergency call number '112' referred to in Decision 91/396/EEC, and other national emergency numbers, all free of charge.
3. Where a Member State finds that certain public pay telephones can only be served at a loss or under cost conditions falling outside normal commercial standards, the net cost of providing those public pay telephones may be shared amongst all organisations providing public telecommunications networks and/or publicly available voice telephony services under a universal service financing scheme, in accordance with Community law.

Article 8

Specific measures for disabled users and users with special needs

Member States shall, where appropriate, take specific measures to ensure access to and affordability of telephone services for disabled users *and users with special needs*.

CHAPTER III. GENERAL PROVISIONS CONCERNING FIXED PUBLIC TELEPHONE NETWORKS AND PUBLICLY AVAILABLE TELEPHONE SERVICES

Article 9

Connection of terminal equipment and use of the network

Member States shall ensure that all users provided with a connection to the fixed public telephone network can:

- (a) connect and use terminal equipment suitable for the connection provided, in accordance with national and Community law;
- (b) access operator assistance services, and directory enquiry services in accordance with Article 6;
- (c) access Emergency Services at no charge, using the dialling code '112' and any other dialling codes specified by national regulatory authorities for use at a national level.

All connections to the fixed public telephone network installed after 1st January 1998 should be of a quality that supports, in addition to speech, data communications at rates suitable for access to online information services, ie 14400 bit/s or more.

Article 10

Contracts

1. National regulatory authorities shall ensure that organisations providing access to fixed public telephone networks provide a contract which specifies the service and service quality levels to be provided, and the compensation and/or refund arrangements for users that apply if the contracted service quality levels are not met. Contracts shall contain a summary of the method of initiating procedures for the settlement of disputes in accordance with Article 26.
2. Without prejudice to other rights of appeal provided for by national law, Member States shall ensure that users, and where national law so provides, organizations representing user and/or consumer interests, can bring before the national regulatory authority cases where compensation and/or refund arrangements are deemed to be unsatisfactory for users.

National regulatory authorities shall be able to require the alteration of the conditions of contracts referred to in paragraph 1, and the conditions of any compensation and/or refund schemes used.

Article 11

Publication of and access to information

1. Member States shall ensure that all organisations providing fixed public telephone networks or publicly available telephone services publish adequate and up-to-date information on access to and use of the fixed public telephone networks and/or publicly available telephone services. In particular, national regulatory authorities shall ensure that tariffs are presented clearly and accurately.

2. National regulatory authorities shall ensure that organisations providing fixed public telephone networks provide them with details of technical interface specifications for network access, as identified in Annex II, part 1, to be made available in accordance with paragraph 4. Changes in existing network interface specifications and information on new network interface specifications shall be communicated to the national regulatory authority in advance of implementation. The national regulatory authority may lay down a suitable period of notice.
3. Where and for as long as the provision of public telecommunications networks and publicly available voice telephony services are subject to special or exclusive rights in a Member State, national regulatory authorities shall ensure that adequate and up-to-date information on access to and use of the fixed public telephone networks and publicly available telephone services is published according to the list of headings given in Annex II, part 2 in the manner laid down in paragraph 4.
4. National regulatory authorities shall ensure that the information is made available in an appropriate manner in order to provide easy access to that information for interested parties. Reference shall be made in the national Official Gazette of the Member State concerned to the manner in which this information is published.
5. National regulatory authorities shall notify to the Commission no later than 1 July 1997 the manner in which the information referred to in paragraph 2 and 3 is made available. The Commission shall regularly publish a reference to such notifications in the Official Journal of the European Communities. Any changes shall be immediately notified.

Article 12

Quality of service

1. Member States shall take the necessary steps to ensure quality of the services identified in this Directive. In particular, they may set performance targets in the authorisations that apply to organisations providing fixed public telephone networks and/or publicly available telephone services.

In the case of organisations who retain special or exclusive rights for the provision of fixed public telecommunications networks and/or voice telephony services, Member States shall ensure that targets are set and published for the relevant parameters laid down in Annex III, in accordance with Article 11(4).

2. National regulatory authorities shall ensure that organisations who have been providing fixed public telephone networks and/or publicly available telephone services for more than 18 months start to keep up-to-date information concerning their performance based on the parameters, definitions and measurement methods laid down in Annex III. This information shall be provided to the national regulatory authority on request.
3. Where appropriate, and in particular as a result of consultation with interested parties in accordance with the provisions of Article 24, national regulatory authorities shall ensure publication of the performance data referred to in paragraph 1, and may set performance targets for organisations providing fixed public telephone networks and/or publicly available telephone services where these do not exist already, in accordance with Article 11(4).

Persistent failure of an organisation to meet performance targets may result in specific measures being taken in accordance with conditions set out in the relevant authorisation for that organisation.

4. National regulatory authorities shall have the right to call for independent audits of the performance data in order to ensure the accuracy and comparability of the data made available by the organisations referred to in paragraph 1.

Article 13

Conditions of access and use and essential requirements

1. National regulatory authorities shall have procedures in order to decide, on a case-by-case basis and in the shortest possible time period, whether or not to allow organizations providing fixed public telephone networks and/or publicly available telephone services to take measures such as the refusal to provide access to the fixed public telephone network or the interruption or reduction in availability of service, for reasons of a user's alleged failure to comply with the conditions of use. These procedures may also provide for the possibility of the national regulatory authority authorizing *a priori* specified measures in the event of defined infringements of the conditions of use, in particular fraudulent use.

The national regulatory authority shall ensure that these procedures provide for a transparent decision-making process in which due respect is given to the rights of the parties. The decision shall be taken after both parties have been given the opportunity to state their case. The decision shall be duly substantiated and notified to the parties within one week of its adoption.

A summary of these procedures shall be published in the manner laid down in Article 11(4).

This provision shall not prejudice the rights of the parties concerned to apply to the courts.

2. Member States shall ensure that, when access to or use of fixed public telephone networks and/or publicly available telephone services is restricted on the basis of essential requirements, the relevant national provisions identify which of the essential requirements set out in (a) to (e) below are the basis of such restrictions.

These restrictions shall be imposed through regulatory means which can be challenged in court, and shall be published in the manner laid down in Article 11(4).

Without prejudice to action which may be taken in accordance with Articles 3(5) and 5(3) of Directive 90/387/EEC, the following essential requirements shall apply to the fixed public telephone network and publicly available telephone services in the following manner:

(a) *Security of network operations*

Member States shall take all necessary steps to ensure that the availability of fixed public telephone networks and publicly available telephone services is maintained in the event of catastrophic network breakdown or in cases of *force majeure*, such as extreme weather, earthquakes, flood, lightning or fire.

In the event of the circumstances referred to in the first subparagraph, the bodies concerned shall make every endeavour to maintain the highest level of service to meet any priorities laid down by the competent authorities.

National regulatory authorities shall ensure that any restrictions on access to and use of the fixed public telephone network on the grounds of the security of networks are proportionate and non-discriminatory, and are based on objective criteria identified in advance.

(b) *Maintenance of network integrity*

Member States shall take all necessary steps to ensure that the integrity of fixed public telephone networks is maintained. National regulatory authorities shall ensure that restrictions on access to and use of the fixed public telephone network on the grounds of maintenance of network integrity, in order to protect *inter alia* network equipment, software or stored data, are kept to the minimum necessary to provide for normal operation of the network. Such restrictions shall be non-discriminatory, and be based on objective criteria identified in advance.

(c) *Interoperability of services*

When terminal equipment is operating in compliance with Directive 91/263/EEC, no further restrictions on use shall be imposed on the grounds of interoperability of services.

(d) *Protection of data*

Conditions on access to and use of fixed public telephone networks and/or publicly available telephone services based on the grounds of protection of data may be imposed only in accordance with relevant legislation on the protection of personal data and privacy, such as Directive 95/46/EC.

(e) *Effective use of the frequency spectrum*

Member States shall take all necessary steps to ensure the effective use of the frequency spectrum and the avoidance of harmful interference between radio-based systems that could restrict or limit access to or use of fixed public telephone networks and publicly available telephone services.

3. Where and for as long as Member States maintain special or exclusive rights for the provision of public telecommunications networks and voice telephony services, conditions imposed on users on the basis of such special or exclusive rights shall be imposed through regulatory means and with the agreement of the national regulatory authority.

CHAPTER IV. SPECIFIC PROVISIONS CONCERNING PUBLIC TELEPHONE NETWORKS AND PUBLICLY AVAILABLE TELEPHONE SERVICES

Article 14

Itemized billing, tone dialling and selective call barring

1. Member States shall ensure that all organisations providing publicly available telephone services over fixed public telephone networks make available, as early as possible, the facilities of:

- tone dialling
- itemized billing and selective call barring as facilities available on request.

Tone dialling and selective call barring are specified in Annex I, part 1.

National regulatory authorities shall ensure that these facilities are offered to most telephone users before 31 December 1998, and are generally available before 31 December 2002.

2. Subject to the requirements of relevant legislation on the protection of personal data and privacy, such as Directive 95/46/EC, itemized bills shall show a sufficient level of detail to allow verification and control of the charges incurred in using the fixed public telephone network and/or publicly available telephone services.

A basic level of itemised billing shall be available at no extra charge to the user.

Where appropriate, additional levels of detail may be offered to users at reasonable tariffs. National regulatory authorities may lay down the basic level of itemised bill.

Calls to helplines which are free of charge to the caller shall not be identified in the caller's itemized bill.

Article 15

Provision of additional facilities

1. National regulatory authorities shall ensure that organisations with significant market power in the provision of telephone services over fixed public telephone networks provide, subject to technical feasibility and economic viability, the facilities listed in Annex I, part 2.
2. National regulatory authorities shall facilitate and encourage provision of the services and facilities listed in Annex I part 3, in compliance with the competition rules of the Treaty.
3. National regulatory authorities shall ensure that dates for the introduction of the facilities listed in Annex I part 2 are set, taking into account the state of network development, market demand and progress with standardization, and are published in the manner laid down in Article 11(4).

Article 16

Special network access

1. National regulatory authorities shall ensure that the organisations with significant market power in the provision of fixed public telephone networks deal with reasonable requests from organisations providing telecommunications services for access to the fixed public telephone network at network termination points other than the commonly provided network termination points referred to in Annex II, part 1.

2. The organisation making such a request shall be granted the opportunity to put its case to the national regulatory authority before a final decision is taken to restrict or deny access in response to a particular request.

Where a request for special network access is denied, the organisation making the request should be given a prompt and justified explanation as to why the request has been refused.

3. Technical and commercial arrangements for special network access shall be a matter for agreement between the parties involved, subject to intervention by the national regulatory authority as laid down in paragraphs 2, 4 and 5. The agreement may include reimbursement to the organization of its costs incurred *inter alia* in providing the network access requested; these charges shall fully respect the principles of cost orientation set out in Annex II to Directive 90/387/EC.

4. National regulatory authorities may intervene on their own initiative at any time, and shall do so if requested by either party, in order to set conditions that are non discriminatory, are fair and reasonable for both parties and offer the greatest benefit to all users.

5. National regulatory authorities shall also have the right, in the interest of all users, to ensure that the agreements include conditions that meet the criteria set out in paragraph 4, are entered into and implemented in an efficient and timely manner and include conditions on conformity with relevant standards, compliance with essential requirements and/or the maintenance of end-to-end quality.

6. Conditions set by national regulatory authorities in accordance with paragraph 5 shall be published in the manner laid down in Article 11(4).
7. National regulatory authorities shall ensure that organizations with significant market power referred to in paragraph 1 adhere to the principle of non-discrimination when they make use of the fixed public telephone network, and in particular use any form of special network access, for providing publicly available telecommunications services.
8. Where appropriate, the Commission shall, in consultation with the ONP Committee, acting in accordance with the procedure laid down in Article 29, request ETSI to draw up standards for new types of network access. Reference to such standards shall be published in the Official Journal of the European Communities in accordance with Article 5 of Directive 90/387/EEC.
9. Details of agreements for special network access shall be made available to the national regulatory authority upon its request.

Article 17

Tariff principles

1. Without prejudice to the specific provisions of Article 4 in relation to affordability, national regulatory authorities shall ensure that organisations with significant market power for the provision of voice telephony services over fixed public telephone networks comply with the provisions of this Article.
2. Tariffs for use of the fixed public telephone network and publicly available telephone services shall follow the basic principles of cost orientation set out in

Annex II to Directive 90/387/EC. In particular, the facilities referred to in Article 14 of this Directive shall be provided at affordable prices.

3. Tariffs for access to and use of the fixed public telephone network shall be independent of the type of application which the users implement, except to the extent that they require different services or facilities.
4. Tariffs for facilities additional to the provision of connection to the fixed public telephone network and publicly available telephone services shall, in accordance with Community law, be sufficiently unbundled, so that the user is not required to pay for facilities which are not necessary for the service requested.
5. Tariff changes shall be implemented only after an appropriate public notice period, set by the national regulatory authority, has been observed.
6. A Member State may authorise its national regulatory authority not to apply the requirements of paragraphs 2, 3, 4 or 5 in a specific geographical area where it is satisfied that there is effective competition in the relevant telephone services market.

Article 18

Cost accounting principles

1. Member States shall ensure that, where an organisation has an obligation for its tariffs to follow the principle of cost orientation in accordance with Article 17, the cost accounting systems operated by such organizations are suitable

for the implementation of Article 17 and that compliance with such systems are verified by a competent body which is independent of those organizations. National regulatory authorities shall ensure that a statement concerning compliance is published annually.

2. National regulatory authorities shall ensure that a description of the cost accounting system referred to in paragraph 1, showing the main categories under which costs are gathered and the rules used for the allocation of costs to the voice telephone service, is made available to it on request. National regulatory authorities shall submit to the Commission on request information on the cost accounting systems applied by the organizations concerned.
3. Where and as long as the provision of public telecommunications networks and voice telephony services are subject to special or exclusive rights in a Member State, the system referred to in paragraph 1 shall, without prejudice to the last subparagraph of this paragraph, include the following elements:
 - (a) the costs of the voice telephony service shall in particular include the direct costs incurred by the telecommunications organizations in setting up, operating and maintaining the voice telephony service and in marketing and billing the service.
 - (b) common costs, that is costs which cannot be directly assigned to either the voice telephony service or other activities, shall be allocated as follows:
 - (i) whenever possible, common cost categories shall be allocated on the basis of direct analysis of the origin of the costs themselves;

(ii) when direct analysis is not possible, common cost categories shall be allocated on the basis of an indirect linkage to another cost category or group of cost categories for which a direct assignment or allocation is possible; the indirect linkage shall be based on comparable cost structures;

(iii) when neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated on the basis of a general allocator computed by using the ratio of all expenses directly or indirectly assigned or allocated, on the one hand, to the voice telephony service and, on the other hand, to other services.

Other cost accounting systems may be applied if they are suitable for the implementation of Article 17 and have been approved as such by the national regulatory authority for application by the telecommunications organizations, subject to the Commission being informed prior to their application.

4. Member States shall ensure that the financial accounts of all organisations providing fixed public telephone networks and/or publicly available telephone services are drawn up, submitted to audit and published in accordance with the provisions of national and Community legislation applying to commercial undertakings. Detailed accounting information shall be made available to the national regulatory authority on its request and in confidence.

Article 19

Discounts and other special tariff provisions

Member States shall ensure that, where an organisation has an obligation for its tariffs to follow the principle of cost orientation in accordance with Article 17, discount schemes for end users (including consumers) are fully transparent and published and applied in accordance with the principle of non-discrimination.

National regulatory authorities may require such discount schemes to be modified or withdrawn.

Article 20

Specifications for network access, including the socket

1. Standards suitable for access to fixed public telephone networks shall be published in the ONP List of Standards referred to in Article 5 of Directive 90/387/EC.
2. Where telephone services are supplied to users over the ISDN network at the S/T reference point, national regulatory authorities shall ensure that the ISDN network termination points comply with the relevant physical interface specifications, in particular those for the socket, referenced in the ONP List of Standards.

Article 21

Non-payment of bills

Member States shall authorize specified measures, which shall be proportionate, non-discriminatory and published in the manner laid down in

Article 11(4), to cover non-payment of telephone bills for use of the fixed public telephone network. These measures shall ensure that due warning is given to the subscriber beforehand of any consequent service interruption or disconnection.

Except in cases of persistent late or non payment, these measures shall ensure, as far as is technically feasible, that any service interruption is confined to the service concerned, and that complete disconnection takes place only after a stated period during which calls are permitted that do not incur a charge to that subscriber.

Article 22

Conditions for the termination of offerings

1. The provisions of this article shall apply where and for as long as the provision of public telecommunications networks and publicly available voice telephony services are subject to special or exclusive rights in a Member State.
2. National regulatory authorities shall ensure that service offerings of organisations with such special or exclusive rights continue for a reasonable period of time and that termination of an offering, or a change that materially alters the use that can be made of it, can be done only after consultation with users affected and an appropriate public notice period set by the national regulatory authority.
3. Without prejudice to other rights of appeal provided for by national law, Member States shall ensure that users, and where national law so provides, organizations representing user and/or consumer interests, can bring before the national regulatory authority cases where the users affected do not agree with the termination date as envisaged by the organization concerned.

Article 23

Variation of published conditions

1. The provisions of this article shall apply where and for as long as the provision of public telecommunications networks and publicly available voice telephony services are subject to special or exclusive rights in a Member State.

2. Where in response to a particular request an organisation with such special or exclusive rights considers it unreasonable to provide a connection to the fixed public telephone network under its published tariffs and supply conditions, it must seek the agreement of the national regulatory authority to vary those conditions in that case.

CHAPTER V. PROCEDURAL PROVISIONS

Article 24

Consultation

Member States shall ensure consultation, in accordance with national procedures, with the representatives of organisations providing public telecommunications networks, of users, consumers, manufacturers and service providers on issues related to the scope, affordability and quality of telephone services. Where appropriate, the Commission shall ensure additional consultation at the European level on these issues.

Article 25

Notification and reporting

1. Member States shall notify to the Commission any changes in the information which had to be published under Directive 95/62/EC. The Commission shall publish this information in the Official Journal of the European Communities.
2. Member States shall also notify to the Commission:
 - organisations with significant market power for the purposes of this Directive
 - details of situations where organizations providing fixed public telephone networks and/or publicly available telephone services no longer have to

follow the principle of cost orientation of tariffs, in accordance with Article 17(6)

The Commission may request national regulatory authorities to provide their reasons for classifying or not classifying organisations in these two categories.

3. Where a Member State maintains special or exclusive rights for the provision of public telecommunications networks and publicly available telephone services, national regulatory authorities shall keep available and submit to the Commission on request details of individual cases brought before them, other than those covered by Article 21, where access to or use of the fixed public telephone network or voice telephony service has been restricted or denied, including the measures taken and their justification.

Article 26

Conciliation and national dispute resolution

Without prejudice to:

- (a) any action that the Commission or any Member State may take pursuant to the Treaty;
- (b) the rights of the person invoking the procedure in paragraphs 3 and 4, of the organizations concerned or of any other person under applicable national law, except insofar as they enter into an agreement for the resolution of disputes between them;

- (c) the provisions of Article 10(2) which allow the national regulatory authorities to alter the conditions of subscriber contracts,

the following procedures shall be available:

- (1) Member States shall ensure that any party, including for example users, service providers, consumers, or other organizations having an unresolved dispute with an organization providing fixed public telephone networks and/or publicly available telephone services concerning an alleged infringement of the provisions of this Directive, shall have a right of appeal to the national regulatory authority or another independent body. Easily accessible and in principle inexpensive procedures shall be available at a national level to resolve such disputes in a fair, transparent and timely manner. These procedures shall in particular apply in cases where users are in dispute with an organization about their telephone bills, or the terms and conditions under which telephone service is provided.
- (2) A user or an organization may, where the dispute involves organizations in more than one Member State, invoke the conciliation procedure provided for in paragraphs 3 and 4 by means of a written notification to the national regulatory authority and to the Commission. Member States may also allow their national regulatory authority to invoke the conciliation procedure.
- (3) Where the national regulatory authority or the Commission finds that there is a case for further examination, following a notification based on paragraph 2, it can refer the matter to the Chairman of the ONP Committee.

- (4) In the circumstances referred to in paragraph 3, the Chairman of the ONP Committee shall initiate the procedure described below if satisfied that all reasonable steps have been taken at national level:
- (a) the Chairman of the ONP Committee shall convene as soon as possible a working group including at least two members of the ONP Committee and one representative of the national regulatory authorities concerned, and the Chairman of the ONP Committee or another official of the Commission appointed by him. The working group shall be chaired by the representative of the Commission and shall normally meet within ten days of having been convened. The Chairman of the working group may decide, upon proposal by any of the members of the working group, to invite a maximum of two other persons as experts to advise it;
 - (b) the working group shall give the party invoking this procedure, the national regulatory authorities of the Member States involved and the organizations involved the opportunity to present their opinions in oral or written form;
 - (c) the working group shall endeavour to reach agreement between the parties involved within three months of the date of receipt of the notification referred to in paragraph 2. The Chairman of the ONP Committee shall inform that Committee of the results of the procedure so that it may express its views.
- (5) The party invoking the procedure shall bear its own costs of participating in this procedure.

Article 27

Deferment of certain obligations

1. The dates laid down in any deferments granted in relation to Article 12 and 13 of Directive 95/62/EC shall remain unchanged.

Article 28

Technical adjustment

Modifications necessary to adapt Annexes I, II and III to this Directive to technological developments or to changes in market demand shall be determined in accordance with the procedure laid down in Article 29.

Article 29

Advisory Committee procedure

1. The Commission shall be assisted by the ONP Committee.

The Committee shall, in particular, consult the representatives of the organizations providing fixed public telephone networks, publicly available telephone services, users, consumers and manufacturers.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 30

Review

The Commission shall examine and report to the European Parliament and to the Council on the functioning of this Directive, on the first occasion not later than 31 December 1999, taking into account the Report on Universal service to be published by the Commission before 1 January 1998. The review shall be based *inter alia* on the information provided by the Member States to the Commission, and shall in particular examine:

- the scope of the Directive, and in particular whether some of its provisions should apply to mobile telephony
- the provisions in chapter II in the light of changes in market conditions, users demand and technological progress
- the maintenance of the obligations imposed under Articles 17, 18 and 19 in the light of the emergence of competition.

Where necessary, further periodic reviews may be proposed in the report.

Article 31

Transposition

1. Member States shall take the measures necessary to comply with this Directive before 31 December 1997. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of

their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall inform the Commission of the main provisions of national law which they adopt in the field governed by this Directive.

Article 32

Repeal of Directive 95/62/EC

Directive 95/62/EC is hereby repealed with effect from 31 December 1997, without prejudice to Member States' obligations for implementation of that Directive according to the timescales laid down in Annex IV.

References made to the repealed Directive shall be construed as being made to this Directive.

Annex V provides a table showing the relationship between the Articles of Directive 95/62/EC and the Articles of this Directive.

Article 33

Entry into force

This Directive shall enter into force on the twentieth day following that of its publications in the Official Journal of the European Communities.

Article 34

Addressees

This Directive is addressed to the Member States.

Done at Brussels, [date]

For the European Parliament

The President

For the Council

The President

ANNEX I

DESCRIPTION OF FACILITIES REFERRED TO IN ARTICLES 14 AND 15

Part 1. Facilities referred to in Article 14(1)

(a) *Tone dialling or DTMF (dual-tone multifrequency operation)*

i.e. the fixed public telephone network supports the use of DTMF telephones for signalling to the exchange, using tones as defined in ITU-T Recommendation Q.23, and supports the same tones for end-to-end signalling through the network, both within a Member State and between Member States.

(b) *Selective call barring for outgoing calls*

i.e. the facility whereby the subscriber can, on request to the telephone service provider, bar outgoing calls of defined types or to defined types of numbers.

Part 2 List of facilities referred to in Article 15(1):

(a) *Calling-line identification*

i.e. the calling party's number is presented to the called party prior to the call being established.

This facility should be provided in accordance with relevant legislation on protection of personal data and privacy, such as Directive 95/46/EC.

(b) *Direct dialling-in (or facilities offering equivalent functionality)*

i.e. users on a private branch exchange (PBX) or similar private system can be called directly from the fixed public telephone network, without intervention of the PBX attendant.

(c) *Call forwarding*

i.e. incoming calls sent to another destination in the same or another Member State (e.g. on no reply, on busy, or unconditionally).

This facility should be provided in accordance with relevant legislation on protection of personal data and privacy, such as Directive 95/46/EC.

Part 3 . . . List of services and facilities referred to in Article 15(2):

(a) *Community-wide access to green/freephone services*

These services, variously known as green numbers, freephone services, 0800 numbers etc. cover dial-up services where the caller pays nothing for the call to the number dialled.

(b) *Shared cost services*

These services cover dial-up services where the caller pays only part of the cost of the call to the number dialled.

(c) *Community-wide premium rate services / shared revenue services*

Premium rate service is a facility whereby charges for the use of a service accessed through a telecommunications network are combined with the network call charges.

(d) *Community-wide calling-line identification*

i.e. the calling party's number is presented to the called party prior to the call being established.

This facility should be provided in accordance with relevant legislation on protection of personal data and privacy, such as Directive 95/46/EC.

(e) *Access to operator services in other Member States*

i.e. users in one Member State can call the operator/assistance service in another Member State.

(f) *Access to directory enquiry services in other Member States*

i.e. users in one Member State can call the directory enquiry service in another Member State.

This facility should be provided in accordance with relevant legislation on protection of personal data and privacy, such as Directive 95/46/EC.

ANNEX II

HEADINGS FOR INFORMATION TO BE PUBLISHED

IN ACCORDANCE WITH ARTICLE 11

PART 1 - INFORMATION TO BE SUPPLIED TO THE NATIONAL REGULATORY AUTHORITY IN ACCORDANCE WITH ARTICLE 11(2)

TECHNICAL CHARACTERISTICS OF NETWORK INTERFACES

Technical characteristics of interfaces at commonly provided network termination points are required, including where applicable reference to relevant national and/or international standards or recommendations:

– for analogue and/or digitally presented networks:

(a) single line interface;

(b) multiline interface;

(c) direct dialling-in (DDI) interface;

(d) other interfaces commonly provided;

– for ISDN: (where provided)

(a) specification of basic and primary rate interfaces at the S/T reference points, including the signalling protocol;

(b) details of bearer services able to carry voice telephony services;

(c) other interfaces commonly provided;

– and any other interfaces commonly provided.

In addition to the above information to be submitted to the National regulatory authority on a regular basis in the manner laid down in Article 11(2), all organizations providing fixed public telephone networks must inform their National regulatory authority, without undue delay, of any particular network characteristics which are found to affect the correct operation of terminal equipment. The national regulatory authority shall make this information available on request to terminal equipment suppliers.

PART 2 - INFORMATION TO BE PUBLISHED IN ACCORDANCE WITH ARTICLE 11(3)

Note. The national regulatory authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article 11(3). It is for the national regulatory authority to decide which information is to be published by the organisations providing telecommunications networks and/or publicly available telephone services, and which by the national regulatory authority itself.

1. Name(s) and address(es) of organisation(s)

i.e. names and head office addresses of organizations providing fixed public telephone networks and/or publicly available telephone services.

2. Telephone services offered

2.1 Scope of the basic service

Description of the basic telephone services offered, indicating what is included in the subscription charge and the periodic rental charge (e.g. operator services, directories, directory services, selective call barring, itemised billing, maintenance etc).

Description of optional facilities and features of the telephone service which are tarified separately from the basic offering, including where applicable reference to the relevant technical standards or specifications to which they conform.

2.2 Tariffs

covering access, all types of call charges, maintenance, and including details of discounts applied and special and targetted tariff schemes.

2.3 Compensation/refund policy

including specific details of any compensation/refund schemes offered.

2.4. Types of maintenance service offered

2.5. *Standard contract conditions*

including any minimum contractual period, if relevant.

3. Conditions for attachment of terminal equipment

This shall include a complete overview of requirements for terminal equipment in line with the provisions of Directives 91/263/EEC or 93/97/EEC, including, where appropriate, conditions concerning customer premises wiring and location of the network termination point.

4. Restrictions on access and use

This shall include any restrictions on access and use imposed in accordance with the requirements of Article 13

ANNEX III

SUPPLY-TIME AND QUALITY-OF-SERVICE

INDICATORS, DEFINITIONS AND MEASUREMENT METHODS

IN ACCORDANCE WITH THE REQUIREMENTS OF ARTICLE 12

INDICATOR (NOTE 1)	DEFINITION	MEASUREMENT METHOD
supply time for initial connection	ETSI ETR 138	ETSI ETR 138
fault rate per access line	ETSI ETR 138	ETSI ETR 138
fault repair time	ETSI ETR 138	ETSI ETR 138
unsuccessful call ratio	ETSI ETR 138	ETSI ETR 138
call set up time	ETSI ETR 138	ETSI ETR 138
response times for operator services	ETSI ETR 138	ETSI ETR 138
response times for directory enquiry services	as for operator services	as for operator services
proportion of coin and card operated public pay-telephones in working order	ETSI ETR 138	ETSI ETR 138

billing accuracy	see note 2	see note 2
------------------	------------	------------

Note 1.

Indicators should allow for performance to be analysed at a regional level (ie no less than level 2 in the Nomenclature of Territorial Units for Statistics (NUTS) established by Eurostat.)

Note 2

Billing accuracy. National definitions and measurement methods should be used until such time as a common definition and measurement method are agreed at the European level.

ANNEX IV

TIMESCALE REFERRED TO IN ARTICLE 33

Date by which Member States must take the necessary measures

to comply with Directive 95/62/EC

13 December 1996

ANNEX V

COMPARATIVE TABLE

<i>Article No. in Directive 95/62/EC</i>	<i>Title of Article</i>	<i>Article Number in this Directive</i>
1	<i>Scope and aim</i>	1
2	<i>Definitions</i>	2
	<i>Availability of telecommunications services</i>	3
	<i>Affordability</i>	4
3	<i>Provision of service, connection of terminal equipment and use of the network</i>	5,9
4	<i>Publication of and access to information</i>	11
5	<i>Quality of service</i>	12
6	<i>Conditions for the termination of offerings</i>	22
7	<i>User Contracts</i>	10
8	<i>Variation of published conditions</i>	23
9	<i>Provision of additional facilities</i>	15
10	<i>Special network access</i>	16
11	<i>Interconnection</i>	-
12	<i>Tariff principles</i>	17
13	<i>Cost accounting principles</i>	18
14	<i>Discounts and other special tariff provisions</i>	19
15	<i>Itemized billing and other facilities</i>	14
16	<i>Directory services</i>	6
17	<i>Public pay-telephones</i>	7
18	<i>Telephone pre-payment cards</i>	-
19	<i>Specific measures for disabled users</i>	8
20	<i>Specifications for network access, including the socket</i>	20

21	<i>Numbering</i>	-
22	<i>Conditions of access and use and essential requirements</i>	13
23	<i>Non-payment of bills</i>	21
24	<i>Technical standards</i>	-
25	<i>Provisions for Community wide convergence</i>	-
	<i>Consultation</i>	24
26	<i>Notification and reporting</i>	25
27	<i>Conciliation and national dispute resolution</i>	26
28	<i>Deferment</i>	27
29	<i>Technical adjustment</i>	28
30	<i>Advisory Committee procedure</i>	29
31	<i>Regulatory committee procedure</i>	
32	<i>Review</i>	30
33	<i>Implementation</i>	31
	<i>Repeal of directive 95/62/EC</i>	32
34	<i>Entry into force</i>	33
35	<i>Addressees</i>	34
<i>Annex I</i>	<i>Headings for information to be published</i>	<i>Annex II</i>
<i>Annex II</i>	<i>Supply-time and quality-of-service indicators,</i>	<i>Annex III</i>
<i>Annex III</i>	<i>Description of facilities</i>	<i>Annex I</i>

EVALUATION OF THE IMPACT

Impact of the proposal on the enterprises and, in particular, on the small and medium enterprises (SMEs)

Title of the Proposal: Proposal for a European Parliament and Council Directive amending Council Directive 95/62/EC on the application of open network provision (ONP) to voice telephony, for the purpose of adaptation to a competitive environment and to ensure universal service for telecommunications

Document reference number:

The proposition

1. The need of the legislative measure

The full liberalization of telecommunications services and infrastructures in 1998 lifts the remaining restrictions for organizations to enter into the telecommunications market,

allowing more competition in the sector with the consequential benefit for the telecommunications enterprises, the users and the whole economy of Europe.

The existing ONP voice telephony Directive 95/62/EC was adopted in 1995 at a time when most Member States retained special and exclusive rights for the provision of public telecommunications networks and voice telephony services. Article 32(1) of Directive notes that the European Parliament and the Council will review the said Directive by 1st January 1998 'on the basis of a proposal which the Commission will submit to them in good time'.

The purpose of the revision is to adopt Directive 95/62/EC to a liberalised market. At the same time, the Commission has indicated in its Communication on universal service for telecommunications in the perspective of a fully liberalised environment¹ that it intends to strengthen certain provisions of the Directive in response to user demand.

The revised Directive will form part of the post-1998 legislative framework designed to ensure that all organizations competing in the European telecommunications market have a stable and predictable regulatory environment complementing the competition rules of the Treaty.

The open and competitive markets in telecommunications will improve the social and economic well-being of European users and the competitiveness of the European enterprises.

The impact on enterprises

¹ COM(96) 73, 13.03.1996

2. Who will be affected by the proposal

The existing Directive affects telecommunications organisations, and the revised version will affect the same types of organisation ie the suppliers of fixed public telephone networks and publicly available telephone services.

A number of requirements placed on telecommunications organisations in the existing Directive are no longer appropriate in a competitive environment and these have been removed. Others will be phased out as competition develops.

New entrants who seek to provide public telephone networks and publicly available telephone services will be subject to some form of authorisation within each Member States. The Commission has proposed a separate Directive on a common framework for general authorisations and individual licences in the field of telecommunications services², which provides straightforward, harmonised procedures for granting authorisations or licences. The revised ONP Voice Telephony Directive will lead to a common set of requirements in national authorisations for the provision of telephone services thus avoiding the burden of having different authorisation requirements in different Member States.

The provisions affecting new entrants (some of which may start out as small and medium enterprises) concern the offering of certain facilities to users, user contracts, the publication of information about technical interfaces, and the keeping of statistics on quality of service. These requirements are justified by the need to protect consumers, and

² COM(95) 545, 14 November 1995

to ensure a competitive market for telecommunications terminal equipment. These requirements are not such as to create additional market entry barriers.

Users stand to benefit in terms of more choice, better services and facilities, and lower prices. Lower communications costs have a positive impact all the way up the value chain, for commercial enterprises of all sizes and all types. Experience in liberalised markets reveals how new and cheaper telecommunications services stimulate enterprises to develop new products and services in many other sectors.

At the same time, new markets are opening within the telecommunications sector itself. Liberalisation will bring significant new investment to the telecommunications industry over the coming years. New network operators will be seeking technologically advanced products which reduce costs and offer competitive advantage, including both telecommunications specific products and also more general administrative and productivity tools. Opportunities exist here for innovative small and medium enterprises to sell into the telecommunications sector.

Different rules for market entry in different Member States would slow down this investment. This Directive will have a positive impact by providing a harmonised regulatory framework for telephone networks and services throughout the European Union.

3. Conformance with the proposal

The national regulatory authorities in the Member States will be responsible for ensuring that the organizations concerned comply with the provisions of the Directive. In addition,

the national regulatory authorities must notify to the Commission the names of certain organizations in their territory to whom the Directive will apply.

4. Economic effects

New investment in the telecommunications sector will be stimulated by a stable and predictable regulatory environment. The harmonized framework to be established throughout the Union by this Directive will foster investment and create job opportunities in new enterprises in the sector - particularly SMEs - and stimulate growth. The proposed framework is designed to promote productivity and to encourage efficient and sustainable market entry, and at the same time to guarantee the provision of universal service for telecommunications throughout the European Union.

In the absence of such a Directive, the fragmented national markets that would result would be less attractive to new market entrants than a single European market, and the goal of strengthening economic and social cohesion set out in the Treaty would be undermined.

5. Specific provisions for SMEs

There are no specific measures in the proposal addressing SMEs. However, SMEs will find new business opportunities in the services and facilities called for in this revised Directive.

6. Consultation

The Commission's Green Paper on the liberalisation of telecommunications infrastructure (part II)³ outlined the general direction in which the existing ONP Directives would be adapted to take account of full liberalisation in 1998. More specific proposals for adaptation of the ONP voice telephony Directive 95/62/EC were proposed in the Commission' Communication on Universal service for Telecommunications, based on a survey of Member States and extensive public consultation, including a public hearing on universal service held in Brussels in October 1995 and attended by a number of MEPs.

Following this public hearing some 60 organisations submitted written comments to the Commission - see Appendix 1.

One of the greatest concerns of potential new entrants (such as Bell South, Compagnie Generale des Eaux, MFS Communications) is that universal service obligations could become excessive and thus result in a significant market entry barrier. Such enterprises stress the need for EU legislation to specify exactly what can be included in universal service costs.

Existing network operators (eg BT, Deutsche Telekom, PTT Telecom) emphasise that they should not carry unfair obligations with respect to new market entrants, and are looking to EU legislation to minimise differences in the rules and regulations between different Member States.

³ COM(94) 682, 25.01.1995

The proposed adaptation to Directive 95/62/EC fulfils these requirements, while at the same time ensuring that all users have access to an affordable basic telephone service.

The principles of the Directive have been discussed in detail in the ONP Committee, which brings together the representatives of national regulatory authorities for telecommunications in the Union and the EEA, under the Chairmanship of the Commission, and which is also attended by people from user groups, manufacturers, service providers and operators.

**APPENDIX 1 : LIST OF ORGANISATIONS PROVIDING WRITTEN RESPONSES ON UNIVERSAL
SERVICE**

	COST 219 The Mike Martin Consultancy
	CRID
	CURDS - University of Newcastle
	Dansk Industri (DI)
ANGA	Department of Trade and Industry (UK)
Antelope Consulting	Deutsche Postgewerkschaft
APEC - Association of Private European	Deutsche Telekom
Cable Operators	Direction Générale des Postes et
ARD - Radio + TV	Télécommunications (FR)
ASIMILEC	ETNO
AT & T	EU Committee of the American chamber of
ATC Finland	Commerce in Belgium
Austrian Ministry of economy and transport	European Conference of Data Protection
Belgacom	Commissioners
BellSouth	Forschungsinstitut für anwendungsorientierte
British Telecom	Wissensverarbeitung
Bureau Européen des Unions des	France Telecom
Consumateurs	Fundesco
Conseil National du Patronat Français	GEF - Global Electronic Finance
Compagnie General des Eaux	Management
COST 219 - National Research &	
Development Centre for Welfare & Health	

INESC

Ingenieria y Gestion de Redes

INTEL

International Council of Aircraft Owner and
Pilot Associations

IPTT

Kooperativa Institutet

Erika Mann M.E.P.

Mercury Communications Ltd

MFS Communications

Ministerie Van Verkeer en Waterstaat (NL)

Ministry of Transport & Communications
(FIN)

Ministry of Transport & Communications
(SWED)

OFTEL

Omnitel Pronto Italia

Portugal Telecom

PTT Force Ouvrière

PTT Telecom

STET

TAG - Telecommunications Action Group

TELECEL S.A.

Telecom Eireann

Telefonica de Espana

Telenor

TELIA AB

The Finnish Consumers Association

Thyssen Telecom A.G.

The Telecommunications Managers
Association

United States Council for International
Business

Universidad de Valencia

Universität Potsdam

VEBACOM

ISSN 0254-1475

COM(96) 419 final

DOCUMENTS

EN

15 08

Catalogue number : CB-CO-96-458-EN-C

ISBN 92-78-08837-4

Office for Official Publications of the European Communities

L-2985 Luxembourg