

*Phone***Ability**

Review of EU Electronic Communications Framework Directives: Comments on Commission Proposals of November 2007

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1. Summary

PhoneAbility's primary interest in EU Electronic Communications legislation is in the effect which it is likely to have upon accessibility for disabled and elderly people. With this in mind, the main features of the proposals put forward by the European Commission on 13th November, for a revised set of Directives, are:

- A revised definition of a Publicly Available Telephone Service
- Inclusion of Accessibility in the Quality of Service data-set
- Emphasis upon access to 112 emergency services
- Obligatory provision of facilities for disabled users
- Extension of scope to include some aspects of terminal equipment
- Establishing a European Regulatory Authority

In parallel, there is a reduction in the number of regulated market sectors from 18 to 7, by decision of the Commission following a review in 2007.

PhoneAbility has considered these proposals and offers comments as follows.

The revised definition of a Publicly Available Telephone Service (PATS) is important in that it removes an anomaly whereby a service that does not offer access to the emergency services cannot be considered as a PATS and is therefore exempt from the obligations applied to such services. It will therefore become possible for Regulators to demand such access as well as other facilities from services which in all other respects would be regarded now as PATS.

While the obligations upon Member States to provide access to emergency services through the 112 number appear to be strengthened, this would seem to be simply an increased emphasis upon existing requirements rather than the introduction of any new ones. In particular, in the absence of a definition of 'access to emergency services' coupled with a re-statement of the existing definition of a network (to exclude the terminal equipment), it is clear that the obstacles faced by disabled users in communicating with the emergency services are not being addressed.

Making Article 7 of the Universal Service Directive (USD) into an obligation, rather than an enabling power, is meaningless by itself. Permitting Member States to introduce various unspecified facilities for disabled users has been a very valuable component of the existing Directives, but to make it an obligation without setting out the nature of the expected facilities adds nothing whatsoever. In similar vein, extending the scope of the Framework Directives to cover some aspects of terminals without being more specific, and without adjusting the definition of a network in like fashion, leaves the situation exactly

as at present. These two amendments only begin to have meaning in the context of a European Regulatory Authority – which might be established under a revised Directive.

Apart from some responsibilities for radio spectrum management, the proposed European Authority is intended to play a role in improving accessibility. It could therefore have a role to play in defining the facilities which would become obligatory under the revised Article 7 of the USD, and in dealing with accessibility issues related to terminals. The amendments to the Directive covering these two topics can be seen as necessary to confer important powers upon the new Authority. It is unfortunate that this aspect of the proposals is not set out in more detail, as these powers already exist and are simply transferred to the proposed new structure. It is not at all clear how the proposed Authority could help matters if the present holders of those powers – which, in the case of terminal equipment, include the Commission – have not been able to exercise them.

The reduction in the number of regulated markets comes about through eliminating some and combining others, in an approach which underlines the emphatic de-regulatory strategy adopted overall in the proposals for revised Directives. This is not an area in which PhoneAbility feels equipped to comment, save to note firstly that the European Regulators Group (ERG) has expressed a degree of disquiet over some aspects of the reduction and, secondly, that this de-regulatory stance contrasts oddly with the proposal for a further tier of statutory regulatory intervention. PhoneAbility is satisfied that the withdrawal of regulated market status means only that national regulators would no longer have to apply rigorous surveillance and enforcement measures; it does not mean that market sectors are removed from scope (of the Framework Directives), which would have resulted in other, non-economic, measures ceasing to apply.

2. Definition of PATS

PhoneAbility strongly welcomes the revised definition of a Publicly Available Telephone (Telecommunications) Service. By including the provision of emergency access in the definition of a PATS, what should have been an obligation upon any telephone service offered to the public became an exclusion which allowed various types of alternative public services to escape this – and other – obligations. PhoneAbility has argued that it is vital for users of telephone services to be able to make emergency calls in the modality that they use every day for, in the stress of an emergency situation, it would be potentially confusing to have to select a different service and, possibly, a

different terminal. Such confusion could be life-threatening and it is not a sufficient remedy to point to a facility provided by the network that supplies the connection. PhoneAbility believes that providers of other telephone services that are carried over that connection (including those on broadband) should either offer access to emergency services themselves or ensure that emergency calls automatically default to the network of the basic service provider. The revised definition of a PATS should enable Regulators to insist upon this level of service.

The current definition of a PATS is “a service available to the public for originating and receiving national and international calls and access to emergency services through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance, directory enquiry services, directories, provision of public pay phones, provision of service under special terms, provision of special facilities for customers with disabilities or with special social needs and/or the provision of non-geographic services”.

While this definition certainly described the common understanding of what a public telephone service should be, the inclusion of the reference to ‘access to emergency services’ as an integral part had the effect that any service which did not offer this access could not be regarded as a PATS. Many of the obligations in these Directives, and the powers which are given to NRAs in consequence, are applicable only to operators of PATS, so some types of service which might seem to the user to be PATS in fact are not and NRAs cannot insist upon provision of facilities of the kind described. Users who select carriers other than their contracted service provider may find that some expected facilities are not available. In the case of emergency calls this could be very serious, unless there is a default mechanism to route the call through the network of the basic provider.

The proposed revision to the definition is that “publicly available telephone service means a service available to the public for originating and receiving, directly or indirectly via carrier selection or pre-selection or resale, national and/or international calls through a number or numbers in a national or international telephone numbering plan”.

3. Quality of Service Data-set: Inclusion of ‘Accessibility’

PhoneAbility welcomes the addition of data on equivalence of access (for disabled people) to the list of ‘quality of service’ outcomes which service providers can be obliged to publish. With equivalent levels of service for

disabled people being a legal obligation under the UK Disability Discrimination Act (DDA), this will be a valuable reinforcing measure which will enable ready performance comparisons to be made between service providers. It may also encourage some greater linkage between the measures (such as Codes of Practice) promoted by the National Regulatory Authority (NRA) and the civil law obligations which arise from the DDA. OFCOM, as the UK's NRA, has no remit in relation to the DDA, but it has become very evident that the behaviour of many service providers in the sector is strongly influenced by that Act and a merging of surveillance activity can only prove helpful.

4. Access to 112 Emergency Services

Access to emergency services through the 112 number, and equivalent national numbers, is a basic safety provision that ought to be available to all users of public telephone services. In addition to this major objective, 112 access can also be a very good indicator of the integrity of any network and its ability to handle exceptional traffic. For these reasons, PhoneAbility welcomes the continued emphasis in EU legislation upon the importance of this 112 facility. However, although the proposed revisions to the Framework Directives give a much greater emphasis to the obligations, there do not appear to be any new measures and our concerns about present short-comings do not seem to be addressed in any way whatsoever.

PhoneAbility argues that users of the public telephone services should be able to contact the emergency services in whatever modality they normally use for telephone contact, whether that is voice, text telephony, Short Message Service (SMS) or some other. The obligation to provide access (eg on 112) to emergency services is, and will be, met in practice if the bureau answers the call, and if the available caller identification is then forwarded. There is no obligation to have the call answered in any specific modality (or language), as these matters are left to national consideration under the principle of subsidiarity. PhoneAbility does not seek any detailed EU involvement in the way in which Member States are to manage their emergency services, but we do see a need for a voluntary harmonisation of emergency call procedures - coupled with an end to the assumption that all emergency calls will be handled in voice mode. We understand that the Communications Committee (COCOM) is looking at these issues in collaboration with the ERG. We believe that this is the correct approach which will be more likely to achieve the desired outcomes than the further emphasis on inadequate procedures which is suggested by the proposed revisions to the Directive.

5. Obligatory Provision of Facilities for Disabled Users

Article 7 of the USD currently permits Member States to take specific measures for disabled end-users. Measures to ensure access to, and affordability of, basic services are obligatory, 'where appropriate'. Measures to ensure that disabled users have a choice of undertakings are permitted. The revision proposals delete the 'where appropriate' qualification and make the permissive actions obligatory.

The effect of the proposed changes is far from clear. Currently it is a matter for Member States to decide what is appropriate in their own territories, and so is the exercise of permissive powers. Removal of the ability of Member States to exercise discretion in these matters without a clearer statement of the objectives, or a definition of the obligatory measures to be taken, would be an empty gesture that it is hard to see the Member States accepting. Therefore it has to be assumed that the proposed new European Regulatory Authority will define the substance of the intended measures. Whether such a move is in the best interests of disabled end-users is perhaps debateable. The advantage of the present situation is that Member States can set their own priorities in the light of consultations with user groups. Comparisons of 'best practice' are facilitated, but outside the regulatory mechanism. The rider 'in the light of national conditions' is retained in the proposed Article 7.2, so the European Regulator would have to consider 27 sets of national conditions before making its recommendations. Clearly, 'national conditions' must be held to include other forms of legislation bearing upon accessibility, such as the DDA and its near-equivalents. Can the Regulator then adjust its recommendations so that they differ State by State, without interfering to an unacceptable extent in the internal affairs of each one? The fear must be that this mechanism would simply set a threshold for a minimum level of service across the EU without raising the expectations for the optimum. This has been the major criticism of the universal service package to date.

6. Inclusion in Scope of 'Terminal Equipment'

It is proposed to extend the scope of the USD by the addition in Article 1 of the wording 'This Directive also includes provisions concerning consumer premises terminal equipment'. While accepting this change as a positive step, PhoneAbility takes the view that it does not go far enough.

PhoneAbility has repeatedly pointed to the disadvantage caused to many users, and especially to those who are disabled or elderly, by the functional separation of the networks and the terminals. The many advantages of a competitive

single market in terminals are recognised but this has come about at the expense of those users who require particular features in their terminal equipment, coupled with advice and assistance in obtaining them. End-to-end operability has ceased to be a network responsibility - as a by-product of liberalisation.

The proposed revisions do not alter this situation. The definition of a network remains unchanged, in that it stops at the socket or at the air interface. The user has acquired by default the responsibilities for selecting, obtaining and maintaining terminal equipment of an appropriate kind, and the users whose needs are the most critical are also the least able to undertake these tasks. PhoneAbility's view is that NRAs should be empowered and encouraged to develop remedies; the proposed revision will help but only to a limited extent.

Article 33 (on consultation with consumer interests) is to be amended so as to incorporate the main provision. This is that Member States shall report annually to the Commission and to the new Regulatory Authority on measures and progress 'towards improving interoperability and use of, and access to, electronic communications services and terminal equipment by disabled end-users'. The Commission, aided by the Authority, may then proceed to consult over appropriate technical measures to address the issues raised in these reports. As Member States are not likely to report on unsuccessful measures and lack of progress, there may be few issues for the Commission to act upon. However, the need to make a report will serve to concentrate attention by Member States, and their NRAs, on accessibility issues. Inclusion of terminal equipment in this will provide a useful clarification to NRAs that they do have some responsibilities in relation to terminals that go beyond radio spectrum management matters. Availability and affordability of terminal equipment types suited to the very varied needs of users with disabilities are still crucial matters, and the preferred solutions are as likely to lie in economic measures as in technical ones. As with some forms of specialised support service provision, the lack of supply reflects the absence of a funding mechanism and it is not to be expected that the Commission or the new Authority could deliver that. PhoneAbility continues to believe that more will be achieved through greater activity by NRAs, in consultation with their national consumer representatives, but working within a European framework. The ability to develop, and to share, examples of good practice would be a key factor in this.

7. The Terminals Directive

The Single Market Directive governing access to the European market for makers of telecommunications terminals is the Radio and Telecommunications

Terminal Equipment (RTTE) Directive – 1995(5)EC. This Directive swept away most of the pre-market restrictions that remained from the days of the earlier State PTT monopolies and treated all fixed-line terminals and many types of mobile terminal as ordinary consumer goods. The requirement for a pre-market assessment by an independent body was retained only for terminal equipment for radio networks, and then only if its performance characteristics were not fully covered by harmonised standards. The RTTE Directive has its own administrative committee, TCAM, and it does not form part of the so-called Framework Package which governs most other aspects of electronic communications services. A review of this Directive commenced about a year earlier than that of the Framework Package, and remained quite separate, but it has yet to be concluded.

It must be noted that domestic radio and television receivers are excluded from the scope of the RTTE Directive.

From the outset there were concerns that de-regulation to the extent intended would cause problems for disabled users, whose needs had generally been well heeded by the monopoly PTTs. These State-owned enterprises had made special terminals available and had subsidised the supply of equipment and services. In an attempt to answer these concerns the European Parliament called for the insertion of an additional clause in the RTTE Directive, by extending Article 3.3 which empowered the Commission to initiate specific requirements for terminals. The new clause – Article 3.3(f) –allowed for the introduction of requirements that would improve accessibility for disabled users.

Even before the RTTE Directive was formally adopted, TCAM's predecessor – ACTE, with its technical sub-committee TRAC - was consulting on how the new light touch regulatory regime would operate. A series of working groups studied the clauses of Article 3.3 and examined the possible circumstances in which specific requirements might be applied. Although the working group looking at requirements for disabled users included representatives of disability bodies, it was unable to produce a single instance where regulatory action would resolve an accessibility problem. Frequently this was on account of technicalities; for example requirements on access to public payphones were ruled out because such payphones were generally part of a network and therefore not within the definition of RTTE (and nor was the situation in which the payphone was located). A requirement for a tactile marker on the '5' key of the keypad would have been accepted but for the fact that most suppliers already provided this - and it is a basic principle of EU regulation that it should be introduced only where it is needed. The working group came very close to a successful proposal over a requirement that text telephones should signal their presence to the network, so that the network and the called subscriber could register that this

was not a voice call. If adopted, this would have led to standardisation of voice-band text traffic handling within the networks and common text telephone protocols. However, consideration was deferred because only the network operators could define the form of 'handshake' signal that would be recognised, and ACTE (or TCAM) could do no more than look at terminals issues.

Discussions over the use of Article 3.3(f) have continued in various groups associated with TCAM for several years, and have included the possibility of linking access issues for disabled people to the 'citizen's right' of contacting the emergency services using the 112 number. No advance has been made and it must be concluded that the underlying problem preventing a regulatory solution lies in the shape of the Directives themselves, and the RTTE Directive in particular. In order to make use of Article 3.3(f) effectively, it is necessary to set out a requirement that must apply to all terminals of a definable type; 'consumer premises terminal equipment' is not an equipment class within the RTTE Directive, so each type of terminal must be defined specifically. Further, it must be evident to the enforcement bodies (who will usually be Trading Standards or Consumer Protection Agencies) when a terminal is non-compliant. The avenue of pre-market testing and acceptance is no longer available. Even when the equipment type and the technical requirement can be defined clearly and objectively, there is the fundamental difficulty that the range of sensory and motor disabilities is so large that it is impossible to cover all requirements in a single design of instrument, even allowing for plug-in adaptations and software customising. What is needed is a range of terminal types to select from and no-one has found a way within the European Single Market to compel manufacturers to produce a range of products. A labelling requirement would be helpful, and Article 3.3(f) could be used to initiate this, so that disabled users would know what accessibility features were included in any type of terminal. While it would not make any such features mandatory, it would cause manufacturers to examine the accessibility of their products and perhaps take steps to improve their standing in product comparisons.

The proposed extension of the Framework Directives to include some aspects of terminals will make it easier to achieve seamless regulation covering both networks and terminals, but only within the structure allowed by the RTTE Directive. It would have made resolution of the text telephone issues much easier had it been in force in 1995, but technology has moved on, voice-band text telephony is almost obsolete, and there are other network-based solutions which now address the needs. PhoneAbility sees a wider continuing requirement for end-to-end operability, which will not be met for everyone through the operation of market forces and for which the regulatory tools are insufficient. Horizontal legislation covering equality or equivalence of access to services looks to be a far more effective measure, whether this is just across

electronic communications provision or wider. The criticism is often made that this approach is too slow but practical experience suggests that for most cases it is likely to prove quicker than the alternatives.

PhoneAbility does see, and has for some time advocated, a role for NRAs which goes beyond simple regulation and extends into pro-active management of aspects of universal service. This would entail NRAs entering into procurement contracts for terminals having important accessibility features but not considered by the industry to be commercially viable, and then making them available to users at discounted prices as appropriate. Use of universal service funding mechanisms for this purpose would have to be sanctioned; the service could be delivered directly by the NRA or through an agency and the principle could be readily extended to network service facilities such as relay provision for disabled users. In our view, intervention of this kind would be far more effective in promoting effective end-to-end service provision for the widest range of users than the present approach of seeking legal powers to designate commercial operators to provide loss-making services.

8. A European Regulatory Authority

A third legislative reform proposal contained in the package of proposed revisions to the Framework would create a new European Regulatory Authority – the European Electronic Communications Market Authority (EECMA). This is surprising in a package which sets out to be determinedly de-regulatory and it is therefore crucial to examine what added value this extra tier of regulation might bring. It is claimed to be in line with the Better Regulation programme, strengthening consumers' and users' rights, and delivering a more consistent set of regulatory decisions and interpretations. The EECMA would have limited powers itself, but would act as adviser to the Commission, which would itself implement decisions through the use of existing procedures. Two areas of activity have received specific mention – the management of radio spectrum in the EU and the fostering of inclusivity.

Radio spectrum allocations in Europe are determined by the CEPT and managed in each Member State by the NRAs. There are some inconsistencies in the use made of available spectrum in each territory but it is difficult to see why these could not be resolved through a CEPT mechanism. Furthermore, there are inconsistencies which can only be resolved at a global level, because they relate to the use of radio equipment which is inherently personal – such as cochlear implants and programmable heart stimulators, whose users may travel around the globe. The need for a further European spectrum management body is not clear.

The Commission has done much to foster inclusivity in the 'Information Society' but not through regulatory processes. Creation of awareness, development of accessibility tools and repeated exhortations aimed across a wide section of science, commerce and industry have had a significant impact. The Commission has had some regulatory powers, for example under article 3.3(f) of the RTTE Directive, for over 10 years and has failed to make use of them in spite of determined efforts by various groups. There is a growing view, especially in industry, that such regulatory powers are valueless because of the difficulty in defining any regulations that could address the diversity of access problems, and then in enforcing them in a de-regulated environment. As a result, even the threat of regulation has little effect and a more positive way forward should be through a collaboration with the relevant parts of industry. This is an approach that PhoneAbility would strongly support and we are in fact working towards this end. It is also an approach which does not require a further regulatory body, as the less formal and more cost-efficient ERG is well constituted to act in this way, in concert with the Commission and COCOM. Although PhoneAbility does see a need for device regulation in respect of labelling, to indicate which accessibility features are present, it is clear that this could be brought about within the present structure.

As the information provided about the EECMA is very limited, PhoneAbility takes the view that the case for a new Authority has not yet been made. A particular concern must be that a cross-EU Regulatory body would be constrained to run at the speed of the slowest Member States, whereas the scope for improved accessibility and inclusivity in equipment and services should be defined by the most innovative. We believe that this scope is greatest when full information about best practice solutions and initiatives can be shared and discussed freely, and introduced 'in the light of national conditions' without waiting upon EU-wide regulation.

9. The European Regulators Group

The NRAs are national bodies appointed by Member States in compliance with the existing Electronic Communications Directives; their very specific powers and duties derive from those Directives. Additionally, each NRA may have further powers and duties as defined by a Member State in the legal instrument setting up its NRA. The NRAs liaise with one another and with the Commission through the Communications Committee (COCOM) which is also established by the Directives. Further to this the NRAs take part in a less formal liaison grouping – the European Regulators Group – which was created to act as an advisory group to help develop the internal market (in electronic

communications), to ensure the consistent application of the regulatory framework and to promote the interests of EU citizens. These objectives mirror those given to NRAs in Article 8 of the present Framework Directive. Advice is offered to the Commission, which is not itself a member of the ERG.

Although the ERG cannot speak on behalf of the European Member States (official views are communicated through other mechanisms), it can and does provide a sounding board through which the practicalities of regulation can be explored. The question arises of whether the ERG could have a more formal role in discussions with the Commission, and the ERG's Chairman is on record as having written to the Commissioner – Viviane Reding – with such a proposal. This question is particularly significant in view of the proposal to set up a European market regulatory Authority – the EECMA.

10. EECMA or ERG?

It would seem that the EECMA is not intended to have regulatory powers of its own, but would provide advice to the Commission on the need for specific actions which the Commission could then decide to initiate using its existing powers. If this is so, then the overlap between the EECMA and the ERG is so great that the case for the new body must be diminished. While the ERG might prove unwilling to urge the Commission to bring infringement proceedings against the Member State of one of its own members, the use of such proceedings is not common and the evidence of any infringement is usually clear cut. In practice, such issues tend to be resolved by negotiation and the ERG might be better placed than the new Authority to assist in this, as it has already demonstrated its ability to do so. In other cases where resort to formal sanctions is not in prospect, it must be questioned whether the ERG would be any less effective than the new body. If it comes to a question of where the loyalties of the ERG may lie, in simple terms 'who is the poacher and who is the gamekeeper?', only practice can provide an answer and the principles of 'better regulation' ought to favour the simpler approach.

In terms of costs, the ERG is a leaner and fitter body. It has a staff of 10, with plans for an increase to 15, whereas the EECMA would have around 140 employees or secondees. Without more specific information about its role, it is impossible to form a view on whether the EECMA will offer value for money. It may possibly be able to manage the European Numbering Space and the Radio Spectrum allocations better than the CEPT does at present, although the practical benefits will need to be demonstrated, but both of these areas will increasingly be affected by the globalisation of communications and it seems likely that a radically different administration structure will soon be needed.

The Commission claims that a centralised regulatory structure is necessary because there is a growing divergence between NRAs in their interpretation of the law and in the consequent casework decisions. Others have complained that market access for providers of pan-European services is hampered by the fragmentation associated with national decision-making. Recent views put forward by particular NRAs appear to challenge these statements. It is said that national interpretations of EU law in communications regulation are in fact converging and not diverging, due in large part to the harmonising influence of the ERG. The necessity for common procedures for access to European markets for some forms of service offering has been acknowledged. For example, providers of Voice over Internet Protocol (VoIP) services are seen to be disadvantaged by the lack of a common regulatory position. The ERG has acted in response to this, and in a Press Release in December 2007 it has announced that its members have given approval in plenary session to a document setting out a Common Position on VoIP regulation.

Other pan-European markets which have been identified as benefiting from common rules on regulation are associated with personal satellite communications, referred to as 'phones on boats' and 'phones on planes'. These must be issues for resolution globally for, as far as the users are concerned, the level of service offered should not be dependent upon location. At the same time, it has to be recognised that national cultures and consumer preferences play a significant part; "consumers prefer to buy from locally-based suppliers". In the interplay between protecting the consumer and giving the widest possible freedom to purchase innovative and valuable services, the attention given to consumer concerns must reflect these national and regional viewpoints. A system which assembles these viewpoints through local consultation and then aggregates them, in a search for commonality, is likely to come closest to obtaining public approval.

PhoneAbility has a specific interest in the task, as proposed for the EECMA, of acting as a central point for consideration of accessibility issues affecting disabled users. We have adopted the viewpoint that centralised consideration is potentially very valuable as it keeps the issues high on the agenda. That is not the same as looking for centralised solutions, however. Having a central focal point does not inhibit more local consideration – if anything, it should enhance it. On the other hand, application of centralised solutions risks discouraging more peripheral initiatives and, perhaps more importantly, it brings an implication that uniformity is the overall objective, as in 'one size fits all'. We believe that there could be dangers in associating considerations of accessibility with a highly centralised regulatory body, especially as such a regulator would

be constrained to move in tune with the slowest of the 27 European Member States.

Our preference then would be for a model where the best practice of those in the lead can be shared and championed across the EU, without all the Member States being under an obligation to adopt it immediately. Since it will not be the same Member State that takes the lead in every aspect of disability access, this sharing of best practice should result in a developing synergy that is self-sustaining. We have commented in previous papers that greater independence for NRAs will be essential if evolution of services for disabled users is not to be held back by the lowest common factor; the ability to 'go it alone' is vital if these services are to be able to be developed in response to user demand. The methods of funding for unprofitable services, in particular, are so varied across the EU that national patterns must be allowed full freedom – unless there are plans for EU subsidy, and even that might come at too great a price. So we welcome the emphasis given to the independence of NRAs in the revision proposals, while noting that independence from national Governments is equally important as independence from the Commission. The NRAs are better placed than any European central organisation to determine users' needs within their own constituencies, and then to share the information with each other. If the ERG can persuade each of its members to become the centre of expertise upon some designated aspect of communications regulation, and if one or more will take up the accessibility portfolio in its varied aspects, then we shall arrive at a structure which links proximity to the user base with the ability to influence the whole of the European Community – based upon practical demonstration in very many cases. Possibly the EECMA could do this work more effectively than the ERG, but PhoneAbility believes that the case for this has not yet been made.

11. The Future of Universal Service

In announcing the arrangements for review of the Framework Directives, the Commission had promised a Green Paper on the future of universal service in 2008, to allow a full and considered discussion of the topic. This has not yet appeared and it may be that it will become a White Paper instead; in other words, much of the discussion may be pre-empted in further Commission proposals. While such a change of plan may be dictated by the timescales for negotiating the revised Directives, the loss of an opportunity to debate the basic principles of universal service in electronic communications would be a matter for concern. As the next section shows, the timelines for completing the actions arising from the 2006 review are tight and the desire not to lose the chance of dealing with important topics, because of the impending EU elections, is understandable. However, the NRAs (or the ERG) could be given the task of

pursuing national consultations on this matter, and reporting back, without losing any urgency.

12. Timelines

Following the presentation of the Commission's proposals on 13th November 2007, the Member States will have had an initial exchange of views by the time of the Telecoms Council in December. Negotiations in the Council Working Groups will commence in January, under the Slovenian Presidency, so as to present a progress report at the June Telecoms Council. Meanwhile the European Parliament's Committees will be considering the proposals and many Member States will be continuing their public consultations with stakeholders. Negotiations will become critical under the French Presidency in the second half of 2008, as it is vital to gain agreement on a 'Common Position' at the Telecoms Council at the end of the year. The first formal reading of the proposals in the European Parliament will probably take place in that period, in readiness for a second reading once the Council's Common Position has been declared. At the second reading, if the Parliament accepts the Common Position, the new Directives can be adopted but if the Position is rejected then further negotiation is necessary. If the differences between the Council and the Parliament are significant, formal 'conciliation procedures' are brought into play and these can be lengthy. In this instance, there is very little time for further negotiation as the elections for the European Parliament are due in the Spring of 2009 and all business will then stop until the new forum is elected. The Czech Republic, which assumes the Presidency in January 2009, will be faced with a difficult task if the Council and Parliament do not agree over the Common Position. In such circumstances concessions will be made in order to save the new Directives and, although there is no Member State veto (as qualified majority voting applies), a grouping of States that has rooted objections to any part of the proposals will have a powerful negotiating position.

If the new Directives can be adopted before March 2009, Member States will have an obligation to transpose them into national laws and apply the measures within a set time – typically 15 months. The new Directives would therefore be activated by July 2010 unless a different time-scale is applied. As it usually takes a little time for new measures to become widely understood and enforced, it is likely to be well into 2011 before the effects of these proposals are appreciated by stakeholders. In 2013 the working of the new Directives could be due for review.

*Phone***Ability**

PhoneAbility is the independent UK focal point for telecommunications and the needs of disabled and elderly people. It has acted as the UK Reference Group for the European Action COST 219 during the three stages of that project – each with the objective of achieving improved accessibility to electronic communications services and equipment for these users.

The group acts as a catalyst in this area by organising conferences and seminars on telecommunications and disability. Further information can be obtained at www.tiresias.org/phoneability

Tony Shipley (adcshipley@aol.com) is vice-chairman of PhoneAbility and has written a number of commentaries on the regulatory scene for the group and for COST 219, drawing upon his experience as a former UK Government servant in implementing EU Single Market Directives.