Joint ANEC - EDF Position on the Revision of Scope of Universal Services in Electronic Communications Networks and Services

ANEC - EDF November 2009

“ln the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.”

Article 4, paragraph 3 of the Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities

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Executive summary

Universal service in electronic communications is defined as “ensuring that all who so request are provided with those services essential for participation in society and already available to the great majority of citizens, and either by the market or in case of market failure by public intervention”\(^2\).

At present, it consists of access at fixed location for telephone, fax and low band Internet networks and services, availability of directory and directory enquiry services and of public payphones as well as measures ensuring equal access and affordability of publicly available telephone services to people with disabilities.

In this day and age of technical convergence, ANEC and EDF questions how mobile communications and broadband connections can be excluded from the basic set of services which all consumers are entitled to expect and therefore urge the European Commission (EC) and Member States to revise the scope of the Universal Service Directive. The definition of Universal Service is an inherited one. It was defined when mobile communications and broadband were not around. There is no doubt that if Universal Service was defined today, it would include mobile communications and broadband access.

Whilst recognising that a significant majority of consumers are using mobile communications services, ANEC and EDF would like to highlight the fact that many consumers, older people and people with disabilities in particular, rely only on the provision of universal service (connection to the public telephone network at a fixed location). A minority of consumers are indeed excluded from society by not being able to use specific services as enjoyed by the majority.

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Introduction

On 25 September 2008, the EC adopted the Communication on the second review of the scope of universal services in electronic communications networks and services in accordance with Article 15 of Directive 2002/22/EC. This Communication studied the appropriateness of adding mobile communications and broadband within the scope of the Universal Service Directive, as well as discussed the meaning of universal service amidst social, commercial and technological developments.

The EC has to regularly review the scope of the Universal Service Directive to adapt it to the “evolving social, commercial and technological conditions”. To be incorporated, electronic communications technologies have to fulfil two strict conditions:

- “A minority of consumers would be excluded from society by the lack of availability or non-use of specific services that are both available to and used by the majority, and
- Inclusion of these services within the scope would convey a general net benefice to all consumers in cases where they are not provided to the public under normal commercial circumstances.”

The previous review of the scope was undertaken in 2005-06 and ANEC and EDF submitted comment to it. Both organisations supported the inclusion of mobile communication and broadband in the scope of universal service in order to foster

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accessibility of electronic communications for people with disabilities and older consumers.

At that time, the EC did not conclude that mobile communication and broadband should be included in the scope of universal service as it did not believe the criteria for including mobile communication and broadband in the scope of the Universal Service Directive were met. The same conclusions were reached in 2008.

However, the EC announced the intention to launch a public debate on the future role of the universal service with all concerned stakeholders and institutions. It is the aim of this joint ANEC/EDF position to contribute to this public debate.
Review of the Scope of Universal Service

1. Mobile communication

Many consumers with disabilities continue to face severe problems in accessing and using mobile communications on equal terms with the vast majority of users.

As stated by the study Measuring Progress of e-accessibility in Europe (MeAC study)\(^8\), except for Austria, the United-Kingdom and Spain, no countries have given attention to accessibility and affordability of mobile communications services. None has addressed accessibility of mobile communications equipment.\(^9\) For instance, mobile operators provide dedicated information for consumers with disabilities on their websites in only seven Member States; Text relay services -essential for deaf and speech impaired people- are only available in half of the Member States; And emergency services are directly accessible by text telephone in only seven Member States.

If mobile services were considered as part of the universal service provision, then they would need to support the introduction of character-by-character based interactive texting solutions that work across various networks, platforms and relay services and easy, cheap access to the handsets and equipment that supports interactive texting. This would give deaf and speech impaired people fully equivalent functionality to hearing people using voice telephony. Affordability of end-to-end mobile communications is also a key issue for people with disabilities, including blind and partially sighted persons. They need to purchase expensive ‘smartphones’ as basic affordable mobile phones do not have embedded operating systems and therefore cannot support assistive technology software such as text-to-speech or screen magnification. The total cost of accessible equipment, including software, can average €500 for a middle of range product.

Thus, there is a clear need to provide better access to mobile communications. This should include availability and affordability of mobile communications equipment and services, availability of text and video relay services and adequate equipment


supporting these services, interoperability of existing systems to deliver end-to-end connectivity, and accessible emergency services.

It is apparent that the needs of mobile telephony users with disabilities have not been addressed by the market. To convey the benefit of mobile communications to ALL consumers, public intervention is needed, all the more that its use is increasingly taking over telephony communications at a fixed location. Moreover, in a near future third-generation mobile telephones and smartphones would be used not only as a communication tool but as a device used to pay your bus or train ticket, exchange information via bluetooth connection, having constant access to the Internet, etc. It will be a crucial product to support independent and community living of users with disabilities. It is therefore essential to ensure that accessibility features are mainstreamed when mobile equipment is designed.

Therefore, ANEC and EDF call for an extension of the scope of the Universal Service Directive to cover mobile communications because many users with disabilities are facing severe problems to access and use mobile communications. In this respect, we argue that both conditions, as defined by the Universal Service Directive, are respected. On one hand, mobile communications are available to and used by a vast majority of consumers but the ones with disabilities cannot access and use them, which results in their exclusion of society. On the other hand, delivering accessible mainstream mobile equipment and services would not only provide access to mobile communications to persons with disabilities and older people, but all consumers. The study “The Demographic Change — Impacts of New Technologies and Information Society” explains that 3 out of every 5 consumers would benefit from accessibility features\textsuperscript{10}.

2. Broadband

ANEC and EDF reiterate their calls for an extension of the scope of the Universal Service Directive to cover broadband access to Internet services because many people with disabilities are facing severe problems in accessing and using the Internet on equal terms with the vast majority of the other customers. In this respect, we argue that both criteria, as defined by the Universal Service Directive, are respected.

\textsuperscript{10} The Demographic Change — Impacts of New Technologies and Information Society.
Internet is a pervasive technology and is useful for everyday life as a source of information, as a communication tool, to access and deliver services, including public services and services of general interest, to benefit from education, training, jobs and leisure activities. It plays an increasing essential role in consumers’ everyday lives, from shopping on-line to listening to music. In brief, Internet is becoming a crucial instrument to be fully integrated in society. The digital divide is a reality, and the gap between persons who have access to advanced Internet and those who have not is widening. Lots of consumers at risks, including persons with disabilities, are excluded from benefiting from the Internet services provided via broadband technology. With 114 million subscribers, the European Union (EU) is the largest world market for fixed internet broadband access. However, even if broadband is available to more than 90% of EU population, only 50% of households effectively use it because it is too expensive or complicated to use. Yet there is evidence that online services often provide access to cheaper products and services (e.g. cheaper air/rail fares, better savings rates for online banking, etc.) so people who cannot access broadband services are clearly disadvantaged.

Besides, people with disabilities are excluded from accessing the Internet because of inaccessible and unaffordable technologies. The vast majority of websites, hardware and software technologies cannot be used by users with disabilities. The cost of accessing the Internet should not be underestimated. For example, a blind person will have to purchase screen reader software such as JAWS, which costs around €1000, and also pay for regular upgrades in order to maintain functional access to those websites that are accessible.

We also consider that the Universal service Directive should be more service-focused rather than focused primarily on the technology. As more and more Internet services are accessible via broadband technology, integrating broadband Internet access into the scope of the Universal service Directive will not only provide benefits to users with disabilities but to all consumers. Thus, there will be a general net benefit to all.

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12 For more information, please refer to the MeAC study, and especially to chapter 4 on the World Wide Web and chapter 5 on computing, pp. 56-83.
Universal Service in a changing environment

In this final section, we reply to the specific consultation questions on the longer term issues to stimulate the debate on universal services obligations (USO).

**Question 1:** “To what extend can today’s competitive e-communications markets be considered sufficient to provide universal access, taking into account:

- that the trend towards a substitution of fixed telephony by mobile voice communications, which have very wide coverage and high affordability, could indicate that a USO limited to access at a fixed location is becoming less relevant; and
- that broadband is being delivered to a rapidly rising proportion of the population through market forces, indicating that broadband, including mobile broadband, might well follow the same track as mobile telephony in becoming near-universal through market forces over the medium term?”

ANEC and EDF call for applying the set of universal service obligations (USO) to all publicly available communications services as the access to communication infrastructure is linked to service provision elements. We do express some concerns on the current status of the access to electronic communications services, as a large number of consumers, and especially the most vulnerable, have failed to reap the benefits.

Geographical coverage and reduced costs do not mean accessibility as such. The criteria according to which “a minority of consumers would be excluded from society by not being able to afford specific services that are both available to and used by the majority”\(^\text{13}\) should always be taken into account. Universal Service should ensure accessibility of both the network and the service in order to limit the digital divide as much as possible.

Taking into account the United Nation Conventions on the Rights of Persons with disabilities\textsuperscript{14}, we would like to remind that accessing the Information Society through various e-communications is a Human Right issue. Moreover, according to a recent French Constitutional Court ruling, “Internet is a fundamental element of the freedom of speech and of being a consumer”\textsuperscript{15}. This was also reassessed by the vote of the European Parliament on the review of the Telecoms Package on 6 May 2009. It is important to proactively act against discriminatory situation and ensure that consumers with disabilities have access to e-communications on an equal level as their non-disabled peers.

\textbf{Question 2:} “Current trends suggest that satisfactory access to the internet is seen progressively as meaning, for increasing numbers of subscribers, access beyond a narrowband connection. Under these circumstances, the question arises as to whether the interpretation of the existing USO (in particular, Recital 8 in conjunction with Article 4(2) of the Directive) needs to be reconsidered, in particular, concerning the meaning given to data communications at data rates sufficient to permit functional internet access? It would also need to be considered whether a more dynamic and technologically neutral interpretation of this wording should require an amendment to the existing legislation.”

In ANEC’s and EDF’s opinions, the scope of universal service should be extended to access at any location. It is our understanding that universal service represents the basic set of services which all consumers are entitled to expect. As such, it is inevitable that it evolves with time as technological and social conditions change.

ANEC and EDF reiterate that the scope of the Universal Service Directive should cover broadband Internet access as this Directive should be more service-focused rather than focused primarily on the technology. Moreover, given that the next review of the scope of the universal service will not be implemented in Member States until 2012 and that any further review of the Universal Service Directive would not be implemented in Member States until 2013, the EC should give further thought to


\textsuperscript{15} Décision n° 2009-580 DC du 10 juin 2009.
including access to broadband in the universal service provision as it could encourage a higher take up by consumers.

**Question 3: “If broadband is seen increasingly as a universal service, would it be more appropriate to formally amend the scope of the USO to include a reference to broadband as such? Is the concept of functional internet access still a valid one?”**

If the decision of integrating broadband Internet access into the scope of the Universal Service Directive is favourably taken, ANEC and EDF think that the article 4.2. of the Universal Service Directive should be amended because the actual wording is restraining the scope to narrowband Internet access only.

However, we consider that the concept of functional internet access is still valid. With the current technological development, it cannot be considered that a narrowband Internet access deliver a “functional” internet access. The need for higher data communications and date rates is clear to access and use the Internet. It is inevitable that the scope of universal service evolves with time as technological and social conditions change otherwise consumers who are reliant upon the application of USO will find that they are left with a service model which most consumers are not using anymore.

**Question 4: “Is the current definition of the USO sufficiently flexible or, conversely, too prescriptive, taking into account different levels of market development across the EU-27?”**

ANEC and EDF think that the current definition of the USO is sufficiently flexible. On one hand, the Universal Service Directive clearly mentions the importance of taking into account the national conditions (Article 7.2. for instance); and Member States are also able to redefine the approach depending on national situation during the transposition process of the Directive into national legislation. On the other hand, defining a minimum set of USO applicable European wide will contribute to the development of uniform single market for e-communications. If European consumers use e-communications networks and services, European manufacturers and services providers will be able to accordingly answer the demand.
“The following questions need to be seen against the background of the following more detailed questions, including about the role and implementation of the USO in an overall ‘broadband for all’ policy.”

Question 5 (a): “How might an extended USO fit into an overall policy to ensure that “broadband for all” becomes a reality, including a regulatory framework stimulating the competitive provision of widely available services, the application of structural funds, regional open access fibre network schemes and demand stimulation measures such as subsidies for purchase of subscriber equipment, training or awareness raising? What are the advantages and disadvantages of using the universal service mechanism as opposed to other policy instruments for implementing a “broadband for all” policy? What would be the likely impact on stakeholders, social and territorial inclusion, employment, competition, investment, innovation and competitiveness?”

ANEC and EDF consider that USO is a complementary but necessary tool to ensure that “broadband for all” becomes a reality. Whereas the development of a regulatory framework stimulating the competitive provision of widely available services, the application of structural funds, regional open access fibre network schemes and demand stimulation measures such as subsidies for purchase of subscriber equipment, training or awareness raising will create the grounds for a “broadband for all”, the USO mechanism will ensure that no one is left behind because of its income, age or disability.

Question 5 (b): “How would the possible extension of the scope of the USO to broadband, a more dynamic interpretation of functional internet access or a move to a less uniform concept of USO be accommodated alongside the need to ensure a coherent approach within the internal market, avoiding distortions of competition?”

As stated in the previous question, we consider that the USO and a competitive approach of the e-communications market are two complementary tools. A competitive environment creates the ground for a viable e-communications market whereas the USO ensures that no one is left behind and excluded from society.
Question 5 (c): “Is it appropriate to indicate a particular speed or range of speeds that would be taken to represent “broadband” or an updated notion of functional internet access? To ensure quality of service and for today’s active participation in society, should such a speed be set at between 1 and 2 Mb/s?”

As stated in the previous questions, ANEC and EDF believe that universal service represents the basic set of services which all consumers are entitled to expect. As such, it is inevitable that it evolves with time as technological and social conditions change. Therefore, the Universal Service Directive should be more service-focused rather than focused primarily on the technology and/or technical specifications. We consider that, instead of indicating a particular speed or range of speeds, the Universal Service Directive should be referring to a “functional and effective Internet access”. Such an approach will undoubtedly avoid causing problems related to evolution of technology in the future.

Question 5 (d): “Common European criteria and implementing arrangements to minimise distortions of competition, such as level of “majority” take-up would be needed before a USO can be invoked, Mechanism for defining, in appropriate circumstances, which groups of consumers or geographic zones would be considered for coverage by a USO, public phones and directories (...)”

ANEC and EDF consider that, as soon as a small minority of consumers do not benefit from e-communications although a majority of consumers is, as well as discriminative situation towards people with disabilities exist, USO shall be invoked.

Recalling the fact that the market is still failing in delivering satisfactory access to e-communications to consumers with disabilities, ANEC and EDF think that public intervention - e.g. legislative action- is needed to ensure access to and usability of e-communications for users with disabilities to an equivalent level enjoyed by the majority of users. It is our belief that special provisions are needed as long as the risks exist, that the deployment of Information Society service will follow the same

17 For complete information, please refer to EDF-ANEC Joint Position on Web- and E-Accessibility, August 2008.
path of the fragmented present PSTN\textsuperscript{18} market. Overcoming the risks would be possible if, instead of special measures, accessibility features were built in mainstream services with effect from the design phase, according to the Design for All principles. As a consequence, it is absolutely imperative to continue to maintain access to directories and directory enquiry services within the scope of the Universal Service Directive in order to safeguard the provision of an accessible service and a free service for persons with disabilities. Blind and partially sighted persons and deaf blind persons in particular have no alternative source of directory information available to them. Thus, ANEC and EDF rejects the possibility that directories and directory enquiry services are taken out of the scope as it is the only way to ensure that provisions on accessible directory enquiry services are protected.

As far as payphones are concerned, two aspects of universal service should be highlighted. Mobile phones are still not accessible for many consumers with disabilities; mobile phones can fail or be stolen, batteries can die, so there is a fundamental need for basic network of public payphones. And public payphones must be accessible to all. This requirement includes physical access, access via text-phone facilities, with accessible information on location and basic facilities, such as large print and voice via help line number. Having said that, it would be advisable to transform public payphones into “multimodal kiosks” (voice, text and video communications) to keep up with the market offer and demand. These “multimodal kiosks” should be fully accessible to all users with disabilities, including people with visual, hearing, dexterity and intellectual disabilities. We would also like to add that, from a practical point of view, universal service providers should be encouraged to promote “cashless” multimodal kiosks, and payphones, in order to reduce the incidence of vandalism. It is in fact the vulnerable consumers depending on their use, who would be most affected by the unavailability of public payphones.

In our comments on the revision of the EU electronic communications regulatory framework\textsuperscript{19}, ANEC and EDF suggested the creation of a Community mechanism, supervising the compliance of Member States and stakeholders with their obligations on accessibility of electronic communications. ANEC and EDF are convinced that, in order for any regulatory measures or standards to have a real practical impact,

\textsuperscript{18} Public Switched Telephone Network (PSTN).

strong market surveillance mechanisms should be put in place. Such a mechanism should be accountable to the European Parliament and the proposed Body of European Regulators for Electronic Communications (BEREC)\(^{20}\) would be responsible for suggesting European policies on e-accessibility, including provision of universal service, under the supervision of a committee composed of regulators, consumers and industry representatives.

Finally, ANEC and EDF would like to remind that, while implementing USO, European and national institutions, including the regulators, should consult and support the participation of consumers with disabilities and of organisations representing them because they know and have the expertise on the needs of disabled users who need and want to access the Information Society.

ANEC is the European consumer voice in standardisation, representing and defending consumer interests in the development of technical standards, in the application of certification schemes to standards, and in the creation or revision of legislation on products and services. ANEC brings together national consumer organisations from the EU Member States and EFTA countries in order to define European positions on matters affecting consumer protection and welfare. ANEC receives funding from the European Commission’s DG SANCO and the EFTA Secretariat. In the EU context, consumers ensure that the public interest is represented in the standardisation work that complements European legislation and broader public policy initiative.

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The European Disability Forum (EDF) is the European umbrella organisation representing the interests of 65 million disabled citizens in Europe. EDF membership includes national umbrella organisations of persons with disabilities from all EU/Economic European Area countries, accession countries and other European countries, as well as European NGOs representing the different types of disabilities. The mission of EDF is to ensure people with disabilities full access to fundamental and human rights through their active involvement in policy development and implementation in Europe.

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