

Relevance of Retaining Notions of Universal Service in a Competitive Telecommunications Environment-Case of European Union

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1. Understanding Universal Service

1.1 The term Universal Service reportedly owes its origin to Theodore Vail, president of AT&T who coined it in 1907. Vail's "one system, one policy, universal service" was 'essentially about interconnection' (Young, 2005, p-2). Today this term is generally used as a part of the policy of 'promoting or maintaining "universal" availability of connections by individual households to the public telecommunications networks' (Infodev, (2000) p-6-1). Understood in its widest conception, the notion of US covers the provision or maintenance of services to those who would not ordinarily be served on purely commercial considerations, for e.g. populations residing in high cost areas such as rural and remote regions and low income groups.

1.2 The major objectives for adoption of US policies include inter alia the 'ensuring full participation' of all citizens in information society', promotion of inclusive growth, 'economic development', 'political, social and cultural cohesion,' balanced' regional development etc. (Infodev, (2000), p-6-3). The basic underlying idea is that universal access to telecommunications services is essential for all citizens to benefit equitably from the advantages of connectivity, information and a range of e-services (health, education, government, commerce and entertainment.) The definition and scope of US would tend to depend inter alia upon a country's stage of economic development and the state of development of its telecommunications sector. Thus, in developing countries such as Madagascar, Ethiopia etc the focus has been on provision of public phones (in every village/town/within walking distance) but in developed regions, the scope of US encompasses individual household lines and public phones with 'sophisticated features' such as touch tone dialling (USA, Canada), access to

operator assistance and directory enquiry (USA, Europe), special, text based services for disabled (Australia, Europe) (Infodev p-6-1).

1.3. This paper seeks to analyse the advantages and disadvantages of retaining notions of Universal Service in a mature, *competitive* e-communications environment which obviously is more prevalent in developed countries and regions. Varying geographical, historical and political circumstances of developed nations/regions have however resulted in differences in the evolution and approach to US even amongst them. For better focus, this essay's scope is restricted to the concept of US as it is understood and applied in the EU.

2. US and Competition-Evolution and Raison d'être of US in the EU

2.1 The evolution of explicit US Regulation is itself closely tied to the introduction and growth of competition. Thus in Europe, as in Australia and USA, the original notion of US evolved from the regulation of monopoly fixed line service providers and imposition of an obligation on them to provide below cost access to local telephone services, especially to underserved regions and populations, while allowing them to fund this activity through cross-subsidies by way of the higher charges for urban/long distance services/premium rate services (Hoernig & Valletti, 2002). With the onset of competition, this cross subsidisation was no longer sustainable as competitors would easily undercut the erstwhile monopolist in liberalised markets where the latter was charging higher tariffs. Thus tariff rebalancing became essential. Accordingly, other methods of funding the net cost of US, such as, from public funds or contributions from other service providers were required to be explored.

2.2 This imperative for accommodating competition in access heralded the reassessment and redefinition of US and its funding in the EU. Probably one of the earliest references in this regard is a 1993 European Commission (EC) press release. (IP/93/998) The Council resolution of 7th February 1994 on Universal Service principles in the telecommunications sector acknowledged the contribution of adequately funded US 'for the future development of telecommunications in the Community'; and stated that US should be based on

‘the principles of universality, equality and continuity.’ It highlighted that uniformity in US principles would help ‘achieve a balanced and fair regulatory environment throughout the Community, while taking account of specific national conditions regarding regulatory and market aspects.’ (OJ 94 C 048, p-2). The March 1996, Communication expressed that in view of the commitment to fully liberalise telecommunications market from 1st January 1998, there should now be greater ‘harmonisation’ of the concept and scope of US in the European telecommunications sector. This would strengthen ‘economic and social cohesion’, aid ‘the balanced development’ of the internal market and promote competition. This would also be in keeping with the Maastricht Treaty’s obligation of maintaining a high standard of consumer protection within the Community’s policies. (COM (96) 73, pp2-3). Subsequently in 1998, Directive 98/10/EC reiterated these underlying these principles and laid down the basic framework of US. (OJ L 101 , 1998)

2.3 Thus one can see the genesis of the concept of US as a socio-economic equalizer and a tool in the hands of the State to promote equal access to e-communication services to people in the EU so as to ensure full participation in information society by all. The basic idea is that US needed in a competitive environment to take care of services, regions and sections of society which the market fails to serve adequately. Also apparent, are the underlying aims of balanced and vigorous development of the internal telecommunications market and protection of general and specific consumer interests across EU. Sufficient flexibility is however built in so as to take into account variations in national circumstances, while enforcing US obligations.

3. Is US justified in a Competitive Environment?

3.1 Ordinarily one would presume that with increasing competition and technological progress, e-communication services would continuously grow in range and coverage, tariffs would constantly decline and thus the market itself could be relied upon to adequately serve all types needs, population sections and regions. This raises questions about the requirement for retaining the notion of US. Some authors even argue that in a well developed e-communications market,

left out people are those who voluntarily opt out of inclusion and thrusting e-communication services on them through US is merely a costly political compulsion. (Young, 2005). However, we will see below that US in the EU is a much wider concept than just access to basic e-communications and that even with effective regulation and competition, the market will not cater to certain needs.

3.2 There are also several disadvantages associated traditionally with the operation of US such as that it places an unreasonable financial burden on the economy or the e-communications sector (suppliers and users), it introduces unfair cross-subsidies between different categories of customers and suppliers, regions and services and market distortions; it interferes with technological neutrality, innovation and healthy competition and hence hampers the growth of e-communications. However, most of these demerits arise out of the manner in which US is defined and applied rather than the notion of US and this study finds that that owing to the appropriate regulatory approach adopted towards it, US in the EU does not suffer from these drawbacks.

4. EU's Present Approach to US—Promoting Competition with a Safety-Net

4.1 The EU's New Regulatory Framework (NRF) came into being in 2003¹. In a liberalised and increasingly converging communications sector, the NRF hoped to create the ideal regulatory environment for e-communications 'where fierce and fair competition would yield lower prices, better quality and innovative services' (Eliassen & From,(2009),p-245). Yet, in keeping with the ideological heritage of e-communications regulation in the EU and the established objectives of ensuring US as enumerated in various preceding directives, EU's NRF too contains as an integral component, the Directive 2002/2/EC ("US Directive"). (OJ L 108, 2002, pp. 51–77)

¹ The NRF consists of the Framework Directive(2002/21/EC) and four other Directives including the US Directive

4.2 The US Directive is deliberately and specifically designed to promote US without hindering competition or the healthy growth of the internal e-communications market. This can best be appreciated by going over the constituents and objectives of US, its scope, limitations and inherent review process as defined in the current regulatory environment. It will be seen that the US Directive studiously aims to avoid market distortions which would be discriminatory and harmful to effective competition in the e-communications sector and hence it's healthy development. Restrictions are therefore placed on the choice of activities to be supported ('minimum set'), methods of implementation adopted (regulated tariffs, choice of service providers, transparency, non-discrimination and technological neutrality) and manner of funding (minimising competitive distortions and unfair burdens on any party). The scope of US is relatively modest and can be enlarged only under very specific conditions. (OJ L 108, para 4). The regulatory framework for US in the EU is thus quite stringent compared to other liberalised regimes.² US as defined in the EU complements rather than hampers competition and caters to requirements which markets may fail to deliver.

Constituents of US Regulation

5.1 The US Directive enumerates in detail the aim, scope and methodology for implementation of US in the EU as mentioned below:

5.2 **Aim:** 'To ensure the availability throughout the Community of good quality publicly available [e-communication] services through effective competition and choice and to deal with the circumstances in which the needs of end-users are not satisfactorily met by the market'. (OJ L 108, Article 1(1)).

² For example, in USA under the 1996 Act, US is rather loosely defined to include 'an evolving level of support-in short, as technological possibilities expand, so too, will the nation's US commitment.' It includes inter alia 'providing access to advanced services in all regions' and in particular to 'schools classrooms, libraries and health care providers.' The federal and state support mechanisms are required to be 'predictable, specific and sufficient' apart from ensuring 'competitive neutrality.' (Benjamin, Lichtman, Shelanski and Weiser, 2006, p-864.) In practice, the implementation of US in USA has resulted in a complicated set of programmes often criticised for leakages and raising concerns about their burgeoning financial implications.

5.3 Definition: ‘The [defined] minimum set of services of specified quality to which all end-user have access [independent of their geographic location], at an affordable price in the light of specific national conditions without distorting competition.’ (OJ L 108, Article 1(2)).

5.4 Scope: This includes the following

‘(i) access at a fixed location for making and receiving local, national and international telephone calls and fax communications, and data communications at data rates that are sufficient to permit functional internet access³;

(ii) availability of at least one comprehensive directory and directory enquiry service comprising all fixed and mobile subscribers who wish to be included;’ (COM(2008) 572 final, p-2)

(iii) availability of public payphones or other public voice telephony access points ; [with the possibility of making free emergency calls to the ‘single European emergency call number “112” and other national emergency numbers]’ (Directive 2002/22/EC as amended by Directive 2009/136/EC, Unofficial Consolidation, Article 6)

(iv) specific measures ensuring access and affordability of publicly available telephone services to users with disabilities or special needs, and those with low incomes. (Unofficial Consolidation, Article 7)

5.5 The other important considerations of the US regulation are:

(a) **Affordability:** ‘Member States [“MS”] may in the light of national conditions’ require the charging of non-commercial tariffs especially for socially and economically disadvantaged consumers. This would include geographically averaged tariffs and ‘price cap’ mechanisms. This must however be

³ As facilitated by Recital 5 of Directive 2009/136/EC amending Directive 2002/22/EC, MS can theoretically include broadband in the definition of US, provided that the requirements of Article 15 are satisfied.

accomplished in a manner that is ‘fully transparent’ and non-discriminatory (Article 9). Another aspect of affordability provided for is the ‘control’ over ‘expenditure’ through consumer choice and control over charges (Unofficial Consolidation, Article 10).

(b) **Effective Competition:** The very definition of US prohibits the distortion of competition. Also, as provided in Articles 17 and 18, regulatory controls may be imposed on undertakings identified as having significant market power’ in the retail market.⁴

(c) **Consumer Protection:** There are requirements regarding consumer protection in Articles 20-22. These relate to ‘contracts’, ‘information’ and ‘Quality of Services’ (QoS) respectively. Article 26 imposes the requirement that all users of publically available e-communication services and ‘pay phones’ be provided ‘free’ access to the ‘single European emergency call number “112” in addition to ‘national emergency services call numbers’. Article 30 of the Directive covers economical number portability (Unofficial Consolidation, Article 6).

5.6 **Mode of Implementation and Funding:** The ‘designation’ of US provider must be through an ‘efficient, objective, transparent and non-discriminatory’ mechanism and all undertakings must be given an opportunity to participate in the provision of US (OJ L108, Article 8). The net cost of providing US can be funded either by using ‘public funds’ and/or ‘by levies on undertakings.’ (OJ L108, Recital 21). This must be done efficiently in accordance with principles of ‘transparency’ and ‘proportionality’ (OJ L108, Recital 23) and in a ‘competitively neutral way,’ (OJ L108, Recital 4) with ‘minimum distortion to the market’ ((Unofficial Consolidation, Recital 18).

5.7 **Revision of and Limitations to Scope:** Periodic review of the scope of US is provided for ‘in the light of social, economic and technological developments taking into account inter alia, mobility and data rates in the light of prevailing

⁴ Similar provisions relating to the market for the ‘minimum set of leased lines’ (if these are found not to be effectively competitive) have been removed by the 2009 amendment in the light of these markets having become ‘sufficiently competitive’ (Directive 2009/136/EC, Recital 19).

technologies used by the majority of subscribers’((Unofficial Consolidation, Article 15). The new services to be included must however pass a two-fold test:

(i) The services should be ‘available to and used by the majority’ excluding only a ‘minority of customers’ (Unofficial Consolidation, Annexure V).

(ii) Their inclusion in the scope of US would ‘convey a general net benefit to all consumers such that public intervention is warranted in circumstances where the specific services are not provided to the public under normal commercial circumstances.’ (Unofficial Consolidation, Annexure V)

5.8 Thus it could be said that, ‘addition of a new service would be only be warranted if the market fails to deliver the service that has become necessary for society.’(Memo/08/583) Further, while changing the scope of US obligations, care must be taken to maintain technological neutrality, to avoid undue burden on undertakings (which may adversely impact ‘innovation’ market development and competition) or ‘consumers with lower incomes’. (Unofficial Consolidation, Recital 25) Also, contributions from sector players may be used only to finance US as defined in the US Directive. However, as per Recital 46 and Article 32, MS ‘may undertake additional measures’ (e.g. providing specific services such as internet for schools) in consonance with community law but these must be implemented outside the scope of US. (Unofficial Consolidation).

5.9 Countering advocates of retirement for US, the above examination indicates that US in the EU includes more than mere access to voice and data services and unless it is ascertained that competition alone would ensure universal access to widely used services, the desired level of consumer protection and also cater to special needs of the disabled etc., the retention of US would make sense.

6. Growing Competition, Newer Technologies and the Need for Adjustments

6.1 An opposite viewpoint is that the scope of US in the EU is too minimalistic and it should be expanded to include in its purview promotion of newer services such as broadband (services and content) or Next Generation Network (NGNs). Some commentators have observed that notwithstanding the provisions for review and revision, there has been surprisingly little change in the scope of US in the EU in spite of the tremendous growth of services under competitive conditions and the rapid technological progress in e-communications. (Nenova, 2006).

6.2 However, examination of the successive reviews shows that in fact a fairly comprehensive and in-depth analysis has been carried out to ascertain the need for changes in scope of US in keeping with market trends and technological developments. The reviews have analysed the relevance of US, its funding, the need for additions, deletions or modifications to scope etc. Where needed, adjustments have been envisaged and when changes are not recommended clear-cut reasoning exists. Most of the issues discussed in various reviews/reports are overlapping. Some of these are revisited below in order to substantiate the above contention and to arrive at the necessary conclusions about the utility or otherwise of retaining the current notion of US in the EU.

6.3 The 2005 Review (“first review”) carefully analysed possible modifications to the scope of US but finally concluded that no change was warranted to the scope of US. Noting the trend towards IP based networks which make it possible for consumers to access a variety of services, including voice, from ‘competing service providers’, the report also explored the prospect of US addressing only ‘access to communications infrastructure’ as against access to ‘services’¹ (COM(2005) 203, p-10).

6.4 The response received to this review was reported and analysed in the 2006 Communication. This included the ongoing broadband debate. Its non-inclusion in the scope of US was justified on the grounds that it still does not

pass the test of a service used by a 'majority of consumers'; that it would involve unfair 'cross subsidy between different consumer groups or services' and hence market distortions. Another justification for leaving the market alone was that at this early stage, supported services may soon become obsolete (in terms of underlying technology and 'data rates' etc). (COM 2006(163) final, p-5).The appropriateness of using 'sector-specific' funding versus 'tax-based funding' for addressing the essentially 'social issue' of equal and 'affordable access for all to information society' was also reassessed, recounting previous arguments about 'market distortions' and unfair 'cross subsidisation' mentioned in the 2005 review.(COM (2005) 203), p-8)

6.5 The 2007 proposal to amend the US Directive did not cover the scope of US but proposed changes by way of measures to strengthen 'certain consumer protection and user rights' ('in particular with a view to improving accessibility and strengthening Information Society).'(COM(2007) 698 final,p-4).This includes *inter alia* measures aimed at improving 'the transparency and publication of information for users', 'facilitating the use of and access to e-Communications for disabled users', improving caller location 'obligation related to emergency services', improving cross border services and providing faster number portability. It also proposed dropping of Articles relating to 'minimum set of leased lines', (in view of sufficient competition), operator assistance and other such 'obsolete provisions'. It proposed to make the requirements of US more 'technology neutral' especially in view of the growth of alternatives to landline voice services and in particular of 'Internet Protocol (IP) technology'. Some of these measures are separation of access to networks from services and explicitly informing customers about limitations with respect to 'emergency services' or ability to 'access and distribute lawful content. Taking into account the increasingly 'competitive environment' it proposes to facilitate consumer choice through more favourable contractual terms. (COM (2007) 698 final)

6.6 The 2008 Review squarely deals with the issue of broadening the scope of the US Directive. With respect to 'mobile communications' it 'reaffirms the conclusion of the first review' and concludes that as competition has 'resulted in

consumers already having widespread affordable access to mobile communications' and thus their inclusion in scope of US is not warranted. (COM (2008) 572 final, p-5). This Review points out that 'liberalisation and competition' themselves have brought about 'lower prices' and consumer choice and 'there has been relatively little overall recourse to universal service funding.' It highlights the 'final safety-net' aspect of US whereby it has enabled 'a minority of consumers to catch up with the majority who were already enjoying basic services.' (COM (2008) 572 final, p-9).

6.7 In the case of broadband, the 2008 Review reported that infrastructural competition (DSL, cable, wireless) has caused significant penetration of broadband in EU. (Broadband networks cover '90% of the EU population' and household penetration of fixed broadband is 36%). Thus it concluded that '[a]lthough broadband is not yet used by the majority of consumers' and therefore the 'majority' usage criteria of the US Directive is not satisfied, its 'take-up is approaching the [majority usage] threshold' thereby indicating that quite possibly the US Directive's definition of 'functional internet access' as 'narrowband' would shortly merit a revision. (COM (2008) 572 final,p-9). It acknowledges that even in the wake of self propelled competitive growth of broadband services 'certain geographic' areas may remain digitally excluded and in the near future with the increasing access to broadband and concomitant increase in delivery of 'social and economic transactions over broadband... "info-exclusion" may become a significant issue'. The review draws attention to the increasing role of broadband as a medium that enables access to 'e-health, e-learning, e-government and e-business services' and educational and 'employment' opportunities 'irrespective of location' which makes the availability of 'broadband for all' an important goal. It also raises the important question of whether the desired level of universal broadband access can be successfully met outside the scope of US. (COM (2008) 572 final, pp-10-13).

The 2010 consultation cum review again focussed largely on the issue of inclusion of broadband in the scope of US. It found that 'broadband usage rates vary considerably between MS. Broadband take-up ranges from 23 % of households in Romania and 26 % in Bulgaria to 80 % in the Netherlands and

Denmark and 83 % in Sweden.’ (COM (2011) 795) It was concluded that broadband is still not being used by the majority of the population so as to justify its inclusion in US. Further, given the lower penetration rates, any such inclusion would be unduly costly for MS with below threshold household penetration. However, it was also accepted that it would be worthwhile to lay down a set of ‘coherent criteria’ to guide MS in exercising the option of inclusion of broadband in US. (See footnote 3). This issue was flagged for further discussion. The other issue which was highlighted for monitoring and further review was the specific needs of persons with disabilities. Broadband being the central issue with respect to expansion in scope of US in the EU today, it certainly merits further exploration.

7. US is Not a Universal Panacea

7.1 While acknowledging the importance of broadband as a powerful tool for socio-economic progress, the EU primarily relies on competition and effective regulation to achieving its widespread growth. However in recognition of the possibility of markets failing to adequately address this need, the EU officially encourages MS to adopt ‘national broadband strategies’ which aim to use ‘public policy’ to address demand and supply side constraints. (Memo/06/132 2006, p-3). Other measures to promote broadband in case of market failure include structural funds for broadband infrastructure in underserved areas and projects undertaken through EU’s rural development policy. In keeping with the imperatives of the 2008 economic recovery plan and the importance given to broadband thereof, State Aid Broadband Guidelines were laid down in 2009. The EU’s ‘state aid rules’ allow for public funding of projects ‘as long as the schemes are well-justified and proportionate to remedy a well-defined market failure, as well as to meet cohesion objectives’ and are in compliance with requirements for open access and technological neutrality and with competition, including State aid, rules under certain circumstances. (OJ 2009/C 235/04, p-19). So far 98 projects have been approved unconditionally by the Commission⁵. A

⁵ As per statistics of the EC, Competition Directorate-General web page at http://ec.europa.eu/competition/sectors/telecommunications/broadband_decisions.pdf

well-known instance where state aid was not allowed is the Appingedam case where it was found unwarranted (as there was no market failure).⁶

7.2 It is clear that specific support for broadband promotion, where required, is adequately envisaged within the EUs regulatory framework, though not necessarily under US.

8. Achievements

8.1 Having established that the EU's regulatory framework vis-à-vis e-communications gives primacy to competition even as it provides for necessary intervention in case of market failure and that it is designed to be flexible and responsive to evolving needs and technologies, let us look at its achievements in the realm of universal availability of e-communications.

8.2 The thirteenth progress report on the single European e-communications market indicated healthy growth of voice and broadband services and falling tariffs (with the exception of roaming charges). The report highlighted the world-leader position of Netherlands and Denmark in broadband penetration but also the unequal growth of broadband amongst EU nations. Some findings of this report relevant to the present analysis are highlighted below: (COM (2008)153)

- Uneven progress across MS regarding uptake of mobile number portability (MNP) and hence under utilisation of its potential to boost competition leading to the proposal that the porting time be reduced to one working day.
- Substitution of IP/mobile services for fixed line services and popularity of bundling of services ('where operators offer a mix of fixed voice, broadband, TV and mobile at a flat rate') leading to concerns about adequate competition in access to the underlying network.
- Continued growth of VoIP pointing to the need for a consistent regulatory approach across the EU.

⁶ Given the ambitious targets set by Europe 2020 strategy and the EU Digital Agenda, The State aid Broadband Guidelines are currently under review to further facilitate state aid for broadband deployments inter alai in keeping with competition principles.

- Significant disparities between MS and between urban and rural areas in broadband penetration.
- Competition and effective regulation have benefited consumers but tariff transparency was still a matter of concern.
- Users with disabilities still face difficulties in accessing services
- Provision of caller location to emergency services and response to emergency calls varies across EU and is a matter of concern in a number of MS.

8.3 The fourteenth progress report (COM (2009) 140 final) on the same subject shows further advancement on a number of fronts and points to the fact that:

- Consumers continue to benefit from network competition, effective regulation and lower prices.
- Effective regulation has brought about improvement in roaming prices and in the uptake of mobile and fixed number portability.
- VoIP continues to increase its market share
- Subscription to bundled services is growing
- Both fixed and mobile broadband continues to grow. While top EU countries retain world leadership position, nine EU countries are ahead of USA in broadband penetration. The gap between ‘best and worst performing countries’ has declined. Competition improved due to effective regulation and hence greater access to unbundled local loop and alternative technologies (fibre and wireless).
- Thirty percent of rural EU population still does not have access to DSL networks.
- Aspects that need further improvement include transparency of tariffs for bundled offers and broadband; transparency of information regarding broadband speed and QoS; availability of comprehensive directories and directory enquiry service and their pricing; wide variations in charges and time taken for MNP; caller service location, response to, and awareness about emergency services etc.

8.4 It is stated that the European Court of Justice (ECJ) opened eleven infringement proceedings for non-provision of comprehensive directories and directory enquiry services and delivered a ruling denouncing the French national rule regarding designation of the Universal Service Provider (USP).⁷

8.5 The findings of the fifteenth progress report (COM(2010) 253 final/3) findings are:

- Broadband penetration growing but affected by overall economic slow down. Broadband prices continue to decline while speeds improve. Mobile prices also declining.
- Significant variations in wholesale and retail across MS and need for better regulation by National Regulatory Authorities (“NRAs”) in this regard
- Denmark and Netherland continue to be ‘world leaders’ in broadband penetration
- Fibre (to the premises) based broadband accounts for 5% or less of total connections highlighting importance of policies to promote Next Generation Access (“NGA”). Regulation of competition in NGA is also a concern
- Growing demand for data based mobile usage and increasing convergence Competitive impact of bundling of retail services by incumbents is a matter of concern
- Time taken for MNP and customer charges and awareness about 112 are also areas of concern. Some MS are lagging with regard to provision of caller location information.

9. Are there Drawbacks in the Current Notion of US?

9.1 From the above examination of the rationale, scope, regulatory approach, periodic reviews of US and the reported progress of the e-communications market in the EU, it would appear that the concept of US as it is defined and

⁷ These form the subject matter of the ECJ’s several US related proceedings against member states till date covering inter alia designation of USP, US financing, consumer contracts.

implemented in the EU does not suffer from demerits normally associated with US policies i.e. introduction of market and competitive distortions; instead, it seeks to avoid these at all costs.

9.2 The burden of financing US may also be considered a potential disadvantage especially when it falls specifically on the sector (levies on operators that are passed on to consumers). Arguably in a competitive environment at least theoretically no telecom operator would enjoy particular benefits (for e.g. monopoly over services/platforms) in lieu of which imposition of the financial burden of US may be justified. It is also a fact that many of the objectives being pursued under the current scope of US are largely social. However, in view of the foregoing examination of US regulation, reviews and achievements reported thereof, it is felt that as long as the present notion of US as a minimal safety-net is retained, financial implications are likely to continue to be limited and sector-specific funding is not an unreasonable imposition.

10. Continued Relevance and Benefits

10.1 US as a concept continues to be relevant even in a competitive environment. It is apparent that while effective regulation, competition and technological advancements have progressively made the defined minimum set of services available to an increasingly larger percentage of consumers; there is still a gap between the existing situation and the ideal level of access to commonly available services, across MS and across geographic regions. Further the progress of general consumer protection measures, special facilities for disabled and emergency services, though good, is uneven and needs improvement. This suggests that competition, technological improvements and regulation in other areas of e-communications (apart from US), cannot by themselves, guarantee society's desired level of coverage of uneconomical consumers or areas or qualitative aspects such as transparency in tariffs, full utilisation of benefits of number portability, availability of directories and directory enquiry services, availability and awareness of emergency services or services for the disabled etc. It may be surmised that the need for the concept of US, persists even in the current environment of increasing platform and service competition. As long as the present objectives of US endure, the notion of US

must continue. However obviously there is a need to delete superfluous elements of US which completion has rendered redundant⁸ and this is already being done.

10.2 It is also evident that while technological progress has brought new services and concepts such as VoIP, broadband and bundling leading to greater competition, consumer choice, wider coverage and lower tariffs; it has also created a need to adjust or widen the scope of US and its constituent elements. Thus, for example, with growing usage of VoIP, number portability may now be expected to cover portability between fixed, mobile *and* VoIP; the issue of informing customers about availability of emergency services from VoIP connections arises and possibility of enforcing emergency service provision on VoIP albeit at additional costs must be addressed. In a dynamic sector like telecommunications this will inevitably be an incessant process demanding continuation of intervention by way of US regulation.

10.3 The scope of US in the EU is appropriately restricted and yet flexible. The prevalent rules for regular review of US guarantee adaptability but preclude needless or detrimental widening of its scope. A case in point is the EU's treatment of US vis-à-vis other means of ensuring broadband access. The fact that EU nations which lead in broadband penetration are also those characterized by vigorous (regulation induced) platform/service competition and proactive state action to promote spread of broadband, indicates that the promotion of broadband is best left to competition, supplemented by specific measures outside the scope of US (Memo 06/132). The leading position of MS such as Netherlands, Denmark and Sweden and the steady overall growth of broadband in EU, points to the correctness of this approach rather than that of including broadband in the definition of US prematurely thus risking the competitive distortions through discriminatory cross-subsidies and interference with normal, technology-neutral market growth. Yet, in accordance with the prescribed review provisions, if and when its penetration level so merits, ensuring the availability of a broadband to the geographically and economically excluded or disabled would appropriately fall within the scope of US.

⁸Such as, provisions relating to the minimum set of leased lines

11. Conclusion

11.1 Owing to the unambiguous, functional and relatively minimalistic definition of US and the rigorous regulatory approach adopted towards it, the implementation of US in the EU has not resulted in undue financial burdens. This approach has also ensured that competitive distortions have been avoided and that the implementation of US has not obstructed the effective growth of e-communication services or any segment thereof. The thirteenth, fourteenth and fifteenth reports on the e-communications market and the progress reported therein show that US has been largely successful in achieving its safety-net objectives, including protection of consumers as a group and of vulnerable sections in particular. The fact that there is still scope for improvement and the variations in accomplishments across MS, only point to varying degrees of regulatory rigour and the need for better implementation of the various complementary Directives of the NRF, including the US Directive. This is already being effectively monitored at the EU level, something that has been further strengthened by creation of BEREC.⁹ This would help the EU to achieve the desired level of socio-economic cohesion, uniformity and equality across the internal e-communications market and also its concomitant healthy development. The underlying socio-economic rationale for US whereby regulation and state action guarantee universal access to the minimum basket of widely used, essential e-communication services whenever the market fails to do so, continues to be relevant. US regulation also ensures enforcement of consumer protection measures, which would otherwise be inadequately supplied even in competitive markets. Competition and technological progress would inevitably render some items in the US basket superfluous while necessitating the addition of others. In the ever-evolving communications sector this is likely to be a never-ending process. This fact only underlines the advantages of retaining the concept of US. In conclusion, it is felt that that the notion of US as it is understood and

⁹ Body of Regulators for Electronic Communications established vide Regulation (EC) No 1211/2009 of November 25, 2009 'to improve consistency of the EU regulatory framework.' Details available at http://ec.europa.eu/information_society/policy/ecomms/implementation_enforcement/berec/index_en.htm

implemented in the EU has no apparent drawbacks and continues to be relevant and beneficial even in a competitive environment.

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