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2007 EU Telecoms Reform

EBU proposal for Amendments to the draft Amending Directive regarding the Universal Service and e-Privacy Directives ('Citizen's Rights') COM(2007) 698 final

Must-carry rules should strengthen consumers' and users' rights and should be future-proof

Must-carry rules seek to ensure that consumers have access to a wide, varied range of radio and television channels and services. The rules are thus an essential instrument whereby Member States can guarantee media pluralism, cultural diversity and consumer protection.

Article 31 of the current Universal Service Directive and the recent judgment from the European Court of Justice¹ confirm that Member States must continue to have the possibility of applying must-carry rules when the rules are proportionate to the objectives they seek to achieve.

However, the scope of must-carry rules in the reform proposal is too narrow and goes against the declared aim of the telecom package, i.e. the strengthening of consumers' and users' rights.

- **Member States must remain able to apply must carry obligations for accessibility services *and* other complementary services**

Compared to the current Article 31 of the Universal Service Directive, the Commission is limiting the possibility of applying must-carry obligations to *accessibility* services which are defined as "services to improve accessibility for users with disabilities, such as a videotext service, subtitling service, an audio description or sign language". This excludes from must-carry status any special services aimed at other groups within society, such as a subtitling service for linguistic minorities, as well as complementary services which are aimed at the public as a whole, such as radiotext, teletext and programme information. It should be possible for Member States to guarantee that consumers have access to all these services (*see EBU amendments 1 and 2*).

¹ Case C-250/06 of 13 December 2007, United Pan-Europe Communications Belgium SA and others v. Etat Belge.

- **The scope of must-carry rules must be future-proof and consistent with the Audiovisual Media Services Directive**

To make Article 31 future-proof, in view of new platforms and services, and to allow Member States to ensure access by viewers and listeners to linear and non-linear services alike where appropriate, the potential scope of this provision needs to be extended to audiovisual media services, in line with the new Audiovisual Media Services Directive (*see EBU amendments 1 and 2*).

Overview of Amendments proposed by the EBU

Amendment	Recital/Article	Directive	EBU amendment
1	Recital 24	Directive COM(2007) 698 Universal Service/ e-privacy	Must-carry: extension of scope to non-linear services, no limitation of complementary services to accessibility services, no rigid requirements regarding justification and review
2	Art. 31(1) sub-p.1	Universal Service Directive	Must-carry: extension of scope to non-linear services, no limitation of complementary services to accessibility services, no new requirements regarding justification
3	Art. 31(1) sub-p. 3	Universal Service Directive	Must-carry: no rigid requirements regarding review

EBU proposal for Amendments

to the
Commission proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation

COM(2007) 698 final

Text proposed by the Commission	Proposed Amendments
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Amendment 1

Recital 24 (Amending Directive COM(2007) 698)

(24) *A television broadcast is a linear audiovisual media service as defined in the Audiovisual Media Services Directive of the European Parliament and of the Council of [...] 2007, which is provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule; a media service provider may provide a number of audio or audio visual programme schedules (channels). Legal "must-carry" obligations may be applied, **but only** to specified **broadcast channels** supplied by a specified media service provider. Member States should provide a clear justification for the "must carry" obligations **in their national law** so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, "must carry" rules should be*

(24) Legal "must-carry" obligations may be applied, to specified **radio and audiovisual media services and complementary services** supplied by a specified media service provider. **Audiovisual media services are defined in the Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007.** Member States should provide a clear justification for the "must carry" obligations so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, "must carry" rules should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. "Must carry" rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution in order to ensure that they continue to be

designed in a way which provides sufficient incentives for efficient investment in infrastructure. "Must carry" rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution in order to ensure that they continue to be proportionate to the objectives to be achieved. *Given the rapid change in technology and market conditions such a full review would need to be carried out at least every three years and would require a public consultation of all stakeholders. One or more broadcast channels may be complemented by* services to improve accessibility for users with disabilities, such as a videotext service, subtitling service, an audio description or sign language.

proportionate to the objectives to be achieved. *Complementary services include, but are not limited to,* services to improve accessibility for users with disabilities, such as a videotext service, subtitling service, an audio description or sign language.

Justification:

See amendment 2 below.

Amendment 2

ARTICLE 1, POINT 19

Article 31, paragraph 1, sub-paragraph 1 (Directive 2002/22/EC-Universal Service Directive)

1. Member States may impose reasonable "must carry" obligations, for the transmission of specified radio and *television broadcast channels* and *accessibility* services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or *television broadcasts* to the public

1. Member States may impose reasonable "must carry" obligations, for the transmission of specified radio and *audiovisual media services* and *complementary* services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or *audiovisual media services* to the

where a significant number of end-users of such networks use them as their principal means to receive radio **and television broadcasts**. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly and specifically defined by each Member State **in its national law** and shall be proportionate and transparent.

public where a significant number of end-users of such networks use them as their principal means to receive radio **or audiovisual media services**. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly and specifically defined by each Member State and shall be proportionate and transparent.

Justification:

To make Article 31 future-proof, in view of new platforms and services, and to allow Member States to ensure access by viewers and listeners to linear and non-linear services alike where appropriate, the potential scope of this provision needs to be extended to audiovisual media services, in line with the new Audiovisual Media Services Directive. This must also be reflected in Recital 24.

Accessibility services should also be covered by "must-carry" rules, and the EBU supports the Commission in clarifying this in Recital 24.

On the other hand, adding "accessibility" before "services" in Article 31(1) would be a step backwards from the current Article 31, and would go against the declared aim of the reform, i.e. the strengthening of consumers' and users' rights. It would, in fact, exclude from must-carry status any special services aimed at other specific groups within society, such as a subtitling service for linguistic minorities, as well as complementary services which are aimed at the public as a whole, such as radiotext, teletext, and programme information.

Moreover, the addition of "in its national law" would be contrary to legal traditions in certain Member States (where the objectives pursued by legal provisions are not included in the legal text itself) and/or incompatible with federal structures (where the competence for adopting "must-carry" rules lies at the sub-national level).

Amendment 3

ARTICLE 1, POINT 19

Article 31, paragraph 1, sub-paragraph 3 (Directive 2002/22/EC-Universal Service Directive)

Member States shall review "must carry" obligations *at least every three years*.

Member States shall *hereafter* review "must carry" obligations *on a regular basis*.

Justification:

In view of the different legal instruments chosen by Member States, a rigid requirement that "must carry" rules must be reviewed "at least every three years" would not be appropriate.
