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Committee of the Regions

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DRAFT OPINION

of the Commission for Culture, Education and Research

"TELECOMMUNICATIONS REFORM PACKAGE"

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This document will be discussed at the meeting of the **Commission for Culture, Education and Research** to be held **from 10 a.m. to 1.30 p.m. on 29 April 2008**. To allow time for translation, any amendments must be submitted by email to the commission secretariat **no later than 22 April 2008** (email address: educ@cor.europa.eu)

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Reference document

"Better Regulation Directive"

Proposal for a Directive of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and services, and 2002/20/EC on the authorisation of electronic communications networks and services
COM(2007) 697 final - 2007/0247 (COD)

"Citizens' Directive"

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 - 2007/0248(COD)

Proposal for a Regulation of the European Parliament and of the Council establishing the European Electronic Communications Market Authority
COM(2007) 699 final - 2007/0249 (COD)

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Reaping the full benefits of the digital dividend in Europe: A common approach to the use of the spectrum released by the digital switchover
COM(2007) 700 final

I. POLITICAL RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS,

1. welcomes the Commission's aim of opening up the telecommunications markets to competition and of boosting investment in high-speed networks (all technologies, including fixed, mobile and satellite), as well as its aim of ensuring optimised spectrum management in the internal market in the context of audiovisual service digitisation;
2. must ensure that the new regulatory framework does not contain any measures which could risk having a negative impact on the objectives of the Member States' cultural and media policies;
3. must also ensure that the interests of cultural or ethnic minorities as well as the needs of the regions are taken into account when establishing new regulatory mechanisms (particularly with regard to spectrum management);
4. would like the proposed regulatory framework to include mechanisms promoting the development of broadband internet access in rural areas or regions with low population density;
5. appreciates the Commission's efforts to improve consumer protection, particularly with regard to data protection, security and the provision of broader access to electronic communications services and emergency services for all users, including the disabled; nonetheless, voices concern about the possible economic and financial impact of these proposals, especially for local and regional service operators;
6. appreciates the Commission's efforts to develop pan-European services, provided that such services are developed by taking into account national and regional differences and the technological and economic needs of economically weaker market players;
7. draws the Commission's attention to the geographical diversity of the national, regional and local markets which may necessitate a certain degree of variety and diversity in the regulatory mechanisms and procedures e.g. geographical segmentation;
8. is sceptical regarding the potential added value of some of the planned new measures, as they will affect all Member States, regardless of their specific circumstances or progress achieved at national or regional level. Indeed, in the context of the regulation of the telecommunications markets and spectrum management, the idea of transferring more powers to EU level raises serious concerns for the CoR;

9. believes that the Commission's proposals open the way forward to the more consistent application of the EU's rules in order to complete the single market for electronic communications;

Better Regulation Directive

10. welcomes the Commission's recommendation¹ to substantially reduce the number of markets susceptible to ex-ante regulation; as a result, where regulation remains necessary, it will become more efficient and simpler both for operators and for national regulatory authorities;
11. appreciates the Commission's proposals to set up more effective mechanisms for coordinating and harmonising the regulatory frameworks of the individual Member States as well as procedures for coordination, negotiation and consultation between the different national regulatory authorities;
12. shares the Commission's view that the efficient management of spectrum is important for facilitating access for operators and for fostering innovation and cultural diversity;
13. shares the Commission's opinion regarding the need to ensure co-location and facility sharing for providers of electronic communications networks provided that such sharing is technically possible and that the costs of such an operation may be allocated in a fair manner;
14. endorses the Commission's view on the importance of harmonisation of numbering within the Community where this promotes the functioning of the internal market or supports the development of pan-European services. However, the CoR believes that the Member States are more competent to take the necessary measures to carry out such harmonisation, which may be conducted within the framework of the "European Regulators' Group";
15. believes that the Member States should remain solely competent for defining spectrum allocation in the case of services that enable linguistic and cultural diversity and ensure media pluralism;
16. believe that there is no need to impose functional separation as an additional measure supporting market liberalisation and is of the opinion that the most effective method of competition is that based on infrastructure; moreover, it believes that the existing regulatory framework already allows separation measures including, inter alia, functional separation;
17. believes that the document should retain all references to procedures provided for by international agreements pertaining to radio frequency spectrum management as these agreements are already in place and constitute a regulatory framework which is broader than that of the European Union;

¹ Commission recommendation (2007) No 5406, OJ L 344, 28.12.2007, p. 65.

Citizens' Directive

18. endorses the Commission's efforts to strengthen and improve consumer protection and user rights in the electronic communication sector, in particular, by giving consumers more information about prices and supply conditions, and facilitating access to and use of e-communications, including emergency services, for disabled users;
19. appreciates the proposals which seek to enhance the protection of individuals' privacy and personal data in the electronic communications sector, in particular through strengthened security-related provisions and improved enforcement mechanisms;
20. draws the Commission's attention to the needs of consumers in economically disadvantaged or rural areas, or in regions where access is difficult in geographical terms or which have a low population density;
21. draws the Commission's attention to the fact that certain measures for ensuring network security and consumer protection require coordination and implementation at international rather than EU level;
22. draws the Commission's attention to the fact that a number of the measures proposed in the Directive in question will require considerable investment in technical infrastructure (e.g. for access to a single emergency telephone number, or identifying caller location); it would appear that such investments will be beyond the means of small-scale service operators such as local or regional operators;
23. appreciates the Commission's efforts to promote the portability of numbers between fixed and mobile networks;
24. wishes to draw the Commission's attention to the specific needs of rural areas which often have a very limited infrastructure based on the network of the traditional operator alone, and would like to see the formulation of specific measures e.g. via structural funds drawn up for these regions;
25. believes that the "must-carry" rules for broadcasting services must be extended to all additional services and be the subject of regular reviews;

European Electronic Communications Market Authority

26. believes that the creation of a European Electronic Communications Market Authority would effectively represent an addition to the current institutional arrangement for the regulation of electronic communications markets, would not be compatible with the principles of

subsidiarity and proportionality and would risk adding another level of complexity rather than simplifying the process which is the subject of this package of proposals.

II. RECOMMENDATIONS FOR AMENDMENTS

Amendment I

"Better Regulation Directive", Article I Amendments made to Directive 2002/21/EC (framework directive), Point 2 (e), Article 2, addition to point s)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
(s) "harmful interference" means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with the applicable Community or national regulations;	(s) "harmful interference" means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with the applicable Community or national regulations, <u>and in accordance with international frequency plans;</u>

Reason

Radio frequency spectrum management is widely regulated by the international agreements and frequency plans established by the European Conference of Postal and Telecommunications Administrations (CEPT) and the International Telecommunications Union (UIT). This is particularly important in the case of broadcast services (e.g. GE-06). The definition of "harmful interference" should, therefore, be amended accordingly.

Amendment 2

"Better Regulation Directive", Article I Amendments made to Directive 2002/21/EC (framework directive), Point 8, amendment of Article 8

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
(a) In paragraph 1, the second subparagraph is replaced by the following: "Unless otherwise provided in Article 9 regarding radio frequencies, Member States shall take the utmost account of the desirability of making regulations technologically neutral and shall ensure that, in carrying out the regulatory tasks specified in this Directive and the Specific Directives, in particular those	(a) In paragraph 1, the second subparagraph is replaced by the following: "Unless otherwise provided in Article 9 regarding radio frequencies, Member States shall take the utmost account of the desirability of making regulations technologically neutral and shall ensure that, in carrying out the regulatory tasks specified in this Directive and the Specific Directives, in particular those

<p>designed to ensure effective competition, national regulatory authorities do likewise."</p> <p>(b) In paragraph 2, points (a) and (b) are replaced by the following: "(a) ensuring that users, including disabled users, elderly users, and users with special social needs derive maximum benefit in terms of choice, price, and quality; (b) ensuring that there is no distortion or restriction of competition in the electronic communications sector, in particular for the delivery of content;"</p> <p>(c) In paragraph 3, point (d) is replaced by the following: "(d) working with the Commission and the Authority so as to ensure the development of consistent regulatory practice and the consistent application of this Directive and the Specific Directives."</p> <p>(d) In paragraph 4, point (e) is replaced by the following: "(e) addressing the needs of specific social groups, in particular disabled users, elderly users and users with special social needs;"</p> <p>(...)</p>	<p>designed to ensure effective competition, national regulatory authorities do likewise, <u>whilst ensuring media and cultural pluralism.</u>"</p> <p>(b) In paragraph 2, points (a) and (b) are replaced by the following: "(a) ensuring that users, including disabled users, elderly users, and users with special social needs derive maximum benefit in terms of choice, price, and quality; (b) ensuring that there is no distortion or restriction of competition in the electronic communications sector, in particular for the delivery of content;"</p> <p>(c) In paragraph 3, point (d) is replaced by the following: "(d) working with the Commission and the Authority so as to ensure the development of consistent regulatory practice and the consistent application of this Directive and the Specific Directives."</p> <p>(d) In paragraph 4, point (e) is replaced by the following: "(e) addressing the needs of specific social groups, in particular disabled users, elderly users and users with special social needs, <u>as well as ethnic, cultural or social minorities in rural areas or areas with a low population density;</u>"</p> <p>(...)</p>
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Reason

Cultural and media pluralism should also be considered alongside the needs of linguistic, ethnic, social or regional minorities.

With regard to the deletion of the reference to the authority proposed by the Commission in its proposal for a regulation COM (2007) 699 final - 2007/0249 (COD), see Amendment 20 below.

Amendment 3

"Better Regulation Directive", Article I Amendments made to Directive 2002/21/EC (framework directive), Point 9, amendment of Article 9

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p data-bbox="201 439 770 544" style="text-align: center;"><i>Article 9</i> <i>Management of radio frequencies for electronic communications services</i></p> <ol data-bbox="193 600 786 1715" style="list-style-type: none"><li data-bbox="193 600 786 949">1. Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with Article 8. They shall ensure that the allocation and assignment of such radio frequencies by national regulatory authorities are based on objective, transparent, non-discriminatory and proportionate criteria.<li data-bbox="193 1003 786 1272">2. Member States shall promote the harmonisation of use of radio frequencies across the Community, consistent with the need to ensure effective and efficient use thereof and in accordance with Decision No 676/2002/EC (Radio Spectrum Decision).<li data-bbox="193 1442 786 1715">3. Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to Article 9c, Member States shall ensure that all types of radio network or wireless access technology may be used in the radio frequency bands open to electronic communications services. <p data-bbox="248 1928 786 1951">Member States may, however, provide for</p>	<p data-bbox="823 439 1386 544" style="text-align: center;"><i>Article 9</i> <i>Management of radio frequencies for electronic communications services</i></p> <ol data-bbox="815 600 1409 1839" style="list-style-type: none"><li data-bbox="815 600 1409 949">1. Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with Article 8. They shall ensure that the allocation and assignment of such radio frequencies by national regulatory authorities are based on objective, transparent, non-discriminatory and proportionate criteria.<li data-bbox="815 1003 1409 1391">2. Member States shall promote the harmonisation of use of radio frequencies across the Community, <u>which could help achieve economies of scale and simplify the interoperability of services to the benefit of the</u> consumer, consistent with the need to ensure effective and efficient use thereof and in accordance with Decision No 676/2002/EC (Radio Spectrum Decision).<li data-bbox="815 1442 1409 1839">3. Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to <u>the Radio Spectrum Decision (676/2002/EU)</u>Article 9e, Member States shall, <u>where possible</u>, ensure that all types of radio network or wireless access technology may be used in the radio frequency bands open to electronic communications services, <u>in accordance with National Frequency Allocation Tables and UIT regulations</u>. <p data-bbox="871 1928 1409 1951">Member States may, however, provide for</p>

<p>proportionate and non-discriminatory restrictions to the types of radio network or wireless access technology used where this is necessary to:</p> <ul style="list-style-type: none">(a) avoid harmful interference,(b) protect public health against electromagnetic fields,(c) ensure maximisation of radio frequencies sharing where the use of frequencies is subject to a general authorisation, or(d) comply with a restriction in accordance with paragraph 4 below. <p>4. Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to Article 9c, Member States shall ensure that all types of electronic communications services may be provided in the radio frequency bands open to electronic communications. The Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided.</p> <p>Restrictions that require a service to be provided in a specific band shall be justified in order to ensure the fulfilment of a general interest objective in conformity with Community law, such as safety of life, the promotion of social, regional or territorial cohesion, the avoidance of inefficient use of radio frequencies, or, as defined in national legislation in conformity with Community law, the promotion of cultural and linguistic diversity and media pluralism.</p>	<p>proportionate and non-discriminatory restrictions to the types of radio network or wireless access technology used where this is necessary to:</p> <ul style="list-style-type: none">(a) avoid harmful interference,(b) protect public health against electromagnetic fields,(c) ensure maximisation of radio frequencies sharing where during their use of frequencies is subject to a general authorisation, or(d) comply with a restriction in accordance with paragraph 4 below. <p>4. Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to Article 9c <u>the Radio Spectrum Decision (676/2002/EU)</u>, Member States shall ensure, <u>where possible, facilitate the provision of</u> that all types of electronic communications services may be provided in the radio frequency bands open to electronic communications <u>in accordance with National Frequency Allocation Tables and UIT regulations</u>. The Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided.</p> <p>Restrictions that require a service to be provided in a specific band shall be justified in order to ensure the fulfilment of a general interest objective in conformity with Community law, such as safety of life, the promotion of social, regional or territorial cohesion, the avoidance of inefficient use of radio frequencies, or, as defined in national legislation in conformity with Community law, the promotion of cultural and linguistic diversity and media pluralism.</p>
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<p>A restriction which prohibits the provision of any other service in a specific band may only be provided for where justified by the need to protect safety of life services.</p> <p>5. Member States shall regularly review the necessity of the restrictions referred to in paragraphs 3 and 4.</p> <p>6. Paragraphs 3 and 4 shall apply to allocation and assignment of radio frequencies after 31 December 2009.</p>	<p>A restriction which prohibits the provision of any other service in a specific band may only be provided for where justified by the need to protect safety of life services <u>or the provision of a service of general interest, as defined by national legislation and in accordance with Community regulations, such as the promotion of cultural and linguistic diversity and media pluralism.</u></p> <p>5. Member States shall regularly review the necessity of the restrictions referred to in paragraphs 3 and 4 <u>and are solely competent for establishing any exceptions thereto.</u></p> <p>6. Paragraphs 3 and 4 shall apply to allocation and assignment of radio frequencies after 31 December 2009 <u>the date of the entry into force of the current directive in the Member States.</u></p>
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Reason

The measures and procedures for spectrum management as defined in the **Radio Spectrum Decision (676/2002/EU)** already enable realistic and fair spectrum management which ensures both technology and service neutrality.

The agreements drawn up at CEPT and UIT level must be respected. These agreements already currently allow the efficient use of radio spectrum.

Measures should be envisaged to protect and promote services allowing the development of cultural and linguistic diversity as well as media pluralism. This will, inter alia, mean ensuring that local and regional level broadcasting and electronic communications services have access to the spectrum.

The Member States must remain in charge of spectrum management at national level; this will involve ensuring that broadcasters have a spectrum band which is sufficiently wide to allow them to broadcast their mission content.

Amendment 4

"Better Regulation Directive", Article I Amendments made to Directive 2002/21/EC (framework directive), Point 10, amendment of Article 9 (a)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p data-bbox="252 479 721 555" style="text-align: center;"><i>Article 9a</i> <i>Review of restrictions to existing rights</i></p> <p data-bbox="193 595 785 909">1. For a period of five years starting on [1 January 2010], Member States shall ensure that holders of rights to use radio frequencies which were granted before that date may submit an application to the competent national regulatory authority for a reassessment of the restrictions to their rights in accordance with Article 9(3) and (4).</p> <p data-bbox="236 949 785 1223">Before adopting its decision the competent national regulatory authority shall notify the right holder of its reassessment of the restrictions, indicating the extent of the right after reassessment, and allow him a reasonable time limit to withdraw his application.</p> <p data-bbox="236 1263 785 1415">If the right holder withdraws his application, the right shall remain unchanged until its expiry or till the end of the 5 year period, whichever is the earlier date.</p> <p data-bbox="193 1456 785 1975">2. Where the right holder mentioned in paragraph 1 is a provider of radio or television broadcast content services, and the right to use radio frequencies has been granted for the fulfilment of a specific general interest objective, an application for reassessment can only be made in respect of the part of the radio frequencies which is necessary for the fulfilment of such objective. The part of the radio frequencies which becomes unnecessary for the fulfilment of that objective as a result of application of Article 9(3) and (4) shall be subject to a new</p>	<p data-bbox="810 474 1015 506">Delete Article 9a</p>

<p>assignment procedure in conformity with Article 7(2) of the Authorisation Directive.</p> <p>3. After the five-year period referred to in paragraph 1, Member States shall take all appropriate measures to ensure that Article 9(3) and (4) apply to all remaining assignments and allocations of radio frequencies which existed at the date of entry into force of this Directive.</p> <p>4. In applying this Article, Member States shall take appropriate measures to guarantee fair competition.</p>	
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Reason

This article is not compatible with the subsidiarity principle. Holders of rights to services which are restricted to a single Member State or region should not be subject to spectrum management decisions taken at Community level.

Amendment 5

"Better Regulation Directive", Article I Amendments made to Directive 2002/21/EC (framework directive), Point 10, addition of Article 9 b

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p style="text-align: center;">Article 9b</p> <p style="text-align: center;">Transfer of Individual Rights to use radio frequencies</p> <p>1. Member States shall ensure that undertakings may transfer or lease to other undertakings individual rights to use radio frequencies in the bands for which this is provided in the implementing measures adopted pursuant to Article 9c without the prior consent of the national regulatory authority.</p> <p>In other bands, Member States may also make provision for undertakings to transfer or lease individual rights to use radio</p>	<p>Delete Article 9b</p>

<p>frequencies to other undertakings.</p> <p>2. Member States shall ensure that an undertaking's intention to transfer rights to use radio frequencies is notified to the national regulatory authority responsible for spectrum assignment and is made public. Where radio frequency use has been harmonised through the application of the Radio Spectrum Decision or other Community measures, any such transfer shall comply with such harmonised use.</p>	
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Reason

This article brings no real added value as the current system already makes provision for the voluntary transfer or sub-letting of individual rights to use radio spectrum.

Amendment 6

"Better Regulation Directive", Article I Amendments made to Directive 2002/21/EC (framework directive), Point 10, addition of Article 9c

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p style="text-align: center;"><i>Article 9c</i> <i>Radio Frequency Management Harmonisation Measures</i></p> <p>In order to contribute to the development of the internal market, for the achievement of the principles of this Article, the Commission may adopt appropriate implementing measures to:</p> <p>(a) harmonise the identification of the bands for which usage rights may be transferred or leased between undertakings;</p> <p>(b) harmonise the conditions attached to such rights and the conditions, procedures, limits, restrictions, withdrawals and transitional rules applicable to such transfers or leases;</p>	<p>Delete Article 9c</p>

<p>(c) harmonise the specific measures to ensure fair competition where individual rights are transferred;</p> <p>(d) create an exception to the principle of services or technology neutrality, as well as to harmonise the scope and nature of any exceptions to these principles in accordance with Article 9(3) and (4) other than those aimed at ensuring the promotion of cultural and linguistic diversity and media pluralism.</p> <p>These measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4). In the implementation of the provisions of this paragraph, the Commission may be assisted by the Authority in accordance with Article 10 Regulation [.../EC].'</p>	
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Reason

The CoR believes that it is crucial to involve the European Conference of Postal and Telecommunications Administrations (CEPT), the International Telecommunications Union (UIT) and the ECC in all spectrum management harmonisation measures, as is currently the case.

Amendment 7

"Better Regulation Directive", Article I Amendments made to Directive 2002/21/EC (framework directive), Point 11 b), article 10, new version of Paragraph 4

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
Member States shall support harmonisation in numbering within the Community where that promotes the functioning of the internal market or supports the development of pan-European services. The Commission may take appropriate technical implementing measures on this matter,	Member States shall support harmonisation in numbering within the Community where that promotes the functioning of the internal market or supports the development of pan-European services. The Commission may take appropriate technical implementing measures on this matter,

<p>which may include establishing tariff principles for specific numbers or number ranges. The implementing measures may grant the Authority specific responsibilities in the application of those measures.</p> <p>The measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).'</p>	<p>which may include establishing tariff principles for specific numbers or number ranges. The implementing measures may grant the Authority specific responsibilities in the application of those measures.</p> <p>The measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).'</p>
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Reason

The Member States are best qualified and informed to take the necessary technical measures.

Amendment 8

"Better Regulation Directive", Article I Amendments made to Directive 2002/21/EC (framework directive), Point 13, new version of Article 12

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p style="text-align: center;"><i>Article 12</i></p> <p style="text-align: center;"><i>Co-location and facility sharing for providers of electronic communications networks</i></p> <p>1. Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall be able to impose the sharing of such facilities or property, including entries to buildings, masts, antennae, ducts, manholes and street cabinets.</p> <p>2. Member States may require that the holders of the rights referred to in paragraph 1 share</p>	<p style="text-align: center;"><i>Article 12</i></p> <p style="text-align: center;"><i>Co-location and facility sharing for providers of electronic communications networks</i></p> <p>1. Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall be able to impose the sharing of such facilities or property, including entries to buildings, masts, antennae, ducts, manholes and street cabinets, <u>provided that such measures are technically feasible</u>.</p> <p>2. Member States may require that the holders of the rights referred to in paragraph 1 share</p>

<p>facilities or property (including physical co-location) or take measures to facilitate the coordination of public works in order to protect the environment, public health, public security or to meet town and country planning objectives only after an appropriate period of public consultation, during which all interested parties shall be given an opportunity to express their views. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing.</p> <p>3. Measures taken by a national regulatory authority in accordance with paragraph 1 shall be objective, transparent, and proportionate.</p>	<p>facilities or property (including physical co-location) or take measures to facilitate the coordination of public works in order to protect the environment, public health, public security or to meet town and country planning objectives only after an appropriate period of public consultation, during which all interested parties shall be given an opportunity to express their views. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing.</p> <p>3. Measures taken by a national regulatory authority in accordance with paragraph 1 shall be objective, transparent, and proportionate <u>and must enable costs to be shared fairly.</u></p>
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Reason

The costs of such measures must be shared fairly. In addition, such measures must be technically feasible and offer consumers a real benefit. For example, when a cable distribution cable is shared by a number of users, the variety of services available to consumers is considerably reduced.

Amendment 9

"Better Regulation Directive", Article I Amendments made to Directive 2002/21/EC (framework directive), Point 16 (c), Article 15, new version of paragraph 3

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p>3. National regulatory authorities shall, taking the utmost account of the Recommendation and the Guidelines, define relevant markets appropriate to national circumstances, in particular relevant geographic markets within their territory, in accordance with the principles of competition law. National regulatory authorities shall follow the procedures referred to in Articles 6 and 7 before defining the markets that differ from those identified in the Recommendation.</p>	<p>3. National regulatory authorities shall, taking the utmost account of the Recommendation and the Guidelines, define relevant markets appropriate to national <u>or regional</u> circumstances, in particular relevant geographic markets within their territory, in accordance with the principles of competition law. National regulatory authorities shall follow the procedures referred to in Articles 6 and 7 before defining the markets that differ from those identified in the Recommendation.</p>

Reason

Regional rather than just national variations should also be provided for.

Amendment 10

"Better Regulation Directive", Article I Amendments made to Directive 2002/21/EC (framework directive), Point 17 (a), Article 16, new version of paragraph 1

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
1. National regulatory authorities shall carry out an analysis of the relevant markets listed in the Recommendation, taking the utmost account of the Guidelines. Member States shall ensure that this analysis is carried out, where appropriate, in collaboration with the national competition authorities.	1. National regulatory authorities shall carry out an analysis of the relevant markets listed in the Recommendation, taking the utmost account of the Guidelines. Member States shall ensure that this analysis is carried out, where appropriate, in collaboration with the national competition authorities. <u>Such studies must take account of local or regional cultural or linguistic differences.</u>

Reason

Local and regional studies must be possible and provided for accordingly.

Amendment 11

"Better Regulation Directive", Article 1 Amendments made to Directive 2002/21/EC (framework directive), Point 20, new version of Article 19

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
1. Without prejudice to Article 9 of this Directive and to Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive), where the Commission finds that divergences in the implementation by national regulatory authorities of the regulatory tasks specified in this Directive and the Specific Directives may create a barrier to the internal market, the Commission may, taking the utmost account of the opinion of the Authority, if any, issue a recommendation or a decision on the harmonised application of the provisions in this Directive and the Specific Directives in order to further the achievement of the objectives set out in Article 8. (...)	Delete the new version of Article 19.

Reason

Should be completely deleted or at the very least substantially modified as the CoR believes that the authority referred to several times in this paragraph is contrary to the principles of subsidiarity and proportionality.

Amendment 12

"Better Regulation Directive", Article 2 Amendments made to Directive 2002/19/EC
(Access directive), Point 9, addition of Article 13 a)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p><i>Article 13a</i> <i>Functional separation</i></p> <p>1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of access products in an independently operating business unit.</p>	<p>Delete Article 13a</p>

Reason

The CoR believes that the most effective form of competition is that based on infrastructure and the market. Functional separation should, therefore, only be imposed as a last resort measure in cases where all other measures or trade agreements have no effect. The current regulatory framework already allows national regulatory authorities to impose this type of measure.

Amendment 13

"Better Regulation Directive", Article 3 Amendments made to Directive 2002/20/EC (Authorisation directive), Point 3, new version of Article 5

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p style="text-align: center;"><i>Article 5</i></p> <p><i>Rights of use for radio frequencies and numbers</i></p> <p>1. Member States shall not make the use of radio frequencies subject to the granting of individual rights of use but shall include the conditions for usage of such radio frequencies in the general authorisation, unless it is justified to grant individual rights in order to:</p> <p style="padding-left: 40px;">(a) avoid a serious risk of harmful interference; or</p> <p style="padding-left: 40px;">(b) fulfil other objectives of general interest.</p> <p>2. Where it is necessary to grant individual rights of use for radio frequencies and numbers, Member States shall grant such rights, upon request, to any undertaking providing or using networks or services under the general authorisation, subject to the provisions of Articles 6, 6a, 7 and 11(1)(c) of this Directive and any other rules ensuring the efficient use of those resources in accordance with Directive 2002/21/EC (Framework Directive).</p> <p>Without prejudice to specific criteria defined in advance by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, such rights of use shall be granted through objective, transparent, non-discriminatory and proportionate</p>	<p style="text-align: center;"><i>Article 5</i></p> <p><i>Rights of use for radio frequencies and numbers</i></p> <p>1. Member States shall not make the use of radio frequencies subject to the granting of individual rights of use but shall include the conditions for usage of such radio frequencies in the general authorisation, unless it is justified to grant individual rights in order to:</p> <p style="padding-left: 40px;">(a) avoid a serious risk of harmful interference; or</p> <p style="padding-left: 40px;">(b) fulfil other objectives of general interest.</p> <p>2. Where it is necessary to grant individual rights of use for radio frequencies and numbers, Member States shall grant such rights, upon request, to any undertaking providing or using networks or services under the general authorisation, subject to the provisions of Articles 6, 6a, 7 and 11(1)(c) of this Directive and any other rules ensuring the efficient use of those resources in accordance with Directive 2002/21/EC (Framework Directive).</p> <p>Without prejudice to specific criteria defined in advance by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, such rights of use shall be granted through objective, transparent, non-discriminatory and proportionate</p>

<p>procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). The procedures shall also be open, except in cases where the granting of individual rights of use for radio frequencies to the providers of radio or television broadcast content services can be shown to be essential to meet a particular obligation defined in advance by the Member State which is necessary to achieve a general interest objective in conformity with Community law.</p> <p>When granting rights of use, Member States shall specify whether those rights can be transferred by the holder of the rights, and under which conditions. In the case of radio frequencies, such provisions shall be in accordance with Article 9b of Directive 2002/21/EC (Framework Directive).</p> <p>Where Member States grant rights of use for a limited period of time, the duration shall be appropriate for the service concerned in view of the objective pursued and defined in advance.</p> <p>Any individual right to use radio frequencies that is granted for ten years or more and that may not be transferred or leased between undertakings as allowed by Article 9b of the Framework Directive shall, every five years and for the first time five years after its issuance, be subject to a review in the light of the criteria in paragraph 1. If the criteria to grant individual rights of use are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice of not more than five years from the conclusion of</p>	<p>procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). The procedures shall also be open, except in cases where the granting of individual rights of use for radio frequencies to the providers of radio or television broadcast content services can be shown to be essential to meet a particular obligation defined in advance by the Member State which is necessary to achieve a general interest objective in conformity with Community law.</p> <p>When granting rights of use, Member States shall specify whether those rights can be transferred by the holder of the rights, and under which conditions. In the case of radio frequencies, such provisions shall be in accordance with Article 9b of Directive 2002/21/EC (Framework Directive).</p> <p>Where Member States grant rights of use for a limited period of time, the duration shall be appropriate for the service concerned in view of the objective pursued and defined in advance.</p> <p>Any individual right to use radio frequencies that is granted for ten years or more and that may not be transferred or leased between undertakings as allowed by Article 9b of the Framework Directive shall, every five years and for the first time five years after its issuance, be subject to a review in the light of the criteria in paragraph 1. If the criteria to grant individual rights of use are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice of not more than five years from the conclusion of</p>
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<p>the review, or shall be made freely transferable or leaseable between undertakings.</p> <p>3. Decisions on rights of use shall be taken, communicated and made public as soon as possible after receipt of the complete application by the national regulatory authority, within three weeks in the case of numbers that have been allocated for specific purposes within the national numbering plan and within six weeks in the case of radio frequencies that have been allocated for electronic communications within the national frequency plan. The latter time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or of orbital positions.</p> <p>4. Where it has been decided, after consultation with interested parties in accordance with Article 6 of Directive 2002/21/EC (Framework Directive), that rights for use of numbers of exceptional economic value are to be granted through competitive or comparative selection procedures, Member States may extend the maximum period of three weeks by up to three weeks.</p> <p>With regard to competitive or comparative selection procedures for radiofrequencies, Article 7 shall apply.</p> <p>5. Member States shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Article 7.</p> <p>6. National regulatory authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with Article</p>	<p>the review, or shall be made freely transferable or leaseable between undertakings.</p> <p>3. Decisions on rights of use shall be taken, communicated and made public as soon as possible after receipt of the complete application by the national regulatory authority, within three weeks in the case of numbers that have been allocated for specific purposes within the national numbering plan and within six weeks in the case of radio frequencies that have been allocated for electronic communications within the national frequency plan. The latter time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or of orbital positions.</p> <p>4. Where it has been decided, after consultation with interested parties in accordance with Article 6 of Directive 2002/21/EC (Framework Directive), that rights for use of numbers of exceptional economic value are to be granted through competitive or comparative selection procedures, Member States may extend the maximum period of three weeks by up to three weeks.</p> <p>With regard to competitive or comparative selection procedures for radiofrequencies, Article 7 shall apply.</p> <p>5. Member States shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Article 7.</p> <p>6. National regulatory authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with Article</p>
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<p>9(2) of Directive 2002/21/EC (Framework Directive). They shall also ensure competition is not distorted as a result of any transfer or accumulation of radio frequencies usage rights. For such purposes, Member States may take appropriate measures such as reducing, withdrawing or forcing the sale of a right to use radio frequencies.</p>	<p>9(2) of Directive 2002/21/EC (Framework Directive). They shall also ensure competition is not distorted as a result of any transfer or accumulation of radio frequencies usage rights. For such purposes, Member States may take appropriate measures such as reducing, withdrawing or forcing the sale of a right to use radio frequencies.</p>
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Reason

The current system, which defines the rules with general authorisations and by attaching requirements to individual licenses appears to function well. The new proposals appear to be relatively complex, if not confusing.

Amendment 14

"Better Regulation Directive", Article 3 Amendments made to Directive 2002/20/EC (Authorisation directive), Point 5, addition of Article 6 b

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p style="text-align: center;"><i>Article 6b</i></p> <p style="text-align: center;"><i>Common selection procedure for issuing rights</i></p> <p>1. The technical implementing measure referred to in paragraph 6a(1)(f) may provide for the Authority to make proposals for the selection of undertaking(s) to which individual rights of use for radio frequencies or numbers are to be granted, in accordance with Article 12 of Regulation [...].</p> <p>In such cases, the measure shall specify the period within which the Authority shall</p>	<p style="text-align: center;"><i>Article 6b</i></p> <p style="text-align: center;"><i>Common selection procedure for issuing rights</i></p> <p>1. <u>Without prejudice to the Member States' competences regarding the promotion of cultural and media policies, cultural and linguistic diversity and media pluralism,</u> The technical implementing measure referred to in paragraph 6a(1)(f) may provide for the <u>European Regulators' Group Authority</u> to make proposals for the selection of undertaking(s) <u>which provide pan-European services or electronic communications services</u> to which individual rights of use for radio frequencies or numbers are to be granted, in accordance with Article 12 of Regulation [...].</p> <p>In such cases, the measure shall specify the period within which the <u>Authority European</u></p>

<p>complete the selection, the procedure, rules and conditions applicable to the selection, and details of any charges and fees to be imposed on the holders of rights for use of radio frequencies and/or numbers, in order to ensure the optimal use of spectrum or numbering resources. The selection procedure shall be open, transparent, non-discriminatory and objective.</p> <p>2. Taking the utmost account of the opinion of the Authority, the Commission shall adopt a measure selecting the undertaking(s) to which individual rights of use for radio frequencies or numbers shall be issued. The measure shall specify the time within which such rights of use shall be issued by the national regulatory authorities. In so doing, the Commission shall act in accordance with the procedure referred to in Article 14a(2).</p>	<p><u>Regulators' Group</u> shall complete the selection, the procedure, rules and conditions applicable to the selection, and details of any charges and fees to be imposed on the holders of rights for use of radio frequencies and/or numbers, in order to ensure the optimal use of spectrum or numbering resources. The selection procedure shall be open, transparent, non-discriminatory and objective.</p> <p>2. Taking the utmost account of the opinion of the Authority, <u>The</u> Commission shall adopt a measure selecting the undertaking(s) <u>which provide pan-European services or electronic communications services</u> to which individual rights of use for radio frequencies or numbers shall be issued. The measure shall specify the time within which such rights of use shall be issued by the national regulatory authorities. In so doing, the Commission shall act in accordance with the procedure referred to in Article 14a(2).</p>
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Reason

It is vital that the Member States have sole responsibility for cultural and media policy and in particular for defining the frequency spectrum allocated to broadcast services and for individual licenses issued to operators of such services.

With regard to the deletion of the reference to the authority proposed by the Commission in its proposal for a regulation COM (2007) 699 final - 2007/0249 (COD), see Amendment 20 below.

Amendment 15

"Better Regulation Directive", Article 3 Amendments made to Directive 2002/20/EC (Authorisation directive), Point 7, deletion of Article 8

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
(7) Article 8 is deleted.	(7) Article 8 is deleted.

Reason

Article 8 of the existing directive, which refers to international agreements currently in force, must not be removed but be kept in its entirety.

Amendment 16

"Better Regulation Directive", Annex II, addition of Annex II to Directive 2002/20/EC
(Authorisation directive)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p>Conditions which may be harmonised in accordance with point (d) of Article 6a, paragraph 1</p> <p>(1) Conditions attached to rights of use for radio frequencies</p> <ul style="list-style-type: none">(a) the duration of the rights of use of the radio frequencies;(b) the territorial scope of the rights;(c) the possibility to transfer the right to other radio frequencies users, as well as the conditions and procedures relating thereto;(d) the method of determining usage fees for the right of use of the radio frequencies;(e) the number of rights of use to be granted to each undertaking;(f) conditions listed in Part B of Annex I. <p>(...)</p>	<p>Delete Annex II</p>

Reason

This annex considerably limits the Member States' powers in the area of spectrum management and ignores the existing legal framework at international level (International Telecommunications Union, UIT) which is currently in force.

Amendment 17

"Citizens' Directive", Article I, Amendments made to Directive 2002/22/EC (Universal Services directive), point 7, article 9, new version of paragraphs 2 and 3

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p>2. Member States may, in the light of national conditions, require that designated undertakings provide tariff options or packages to consumers which depart from those provided under normal commercial conditions, in particular to ensure that those on low incomes or with special social needs are not prevented from accessing or using the network access referred to in Article 4(1), or the services identified in Articles 4(3), 5, 6 and 7 as falling under the universal service obligations and provided by designated undertakings.</p> <p>3. Member States may, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes, disability or special social needs.</p>	<p>2. Member States may, in the light of national <u>regional or local</u> conditions, require that designated undertakings provide tariff options or packages to consumers which depart from those provided under normal commercial conditions, in particular to ensure that those on low incomes or with special social needs are not prevented from accessing or using the network access referred to in Article 4(1), or the services identified in Articles 4(3), 5, 6 and 7 as falling under the universal service obligations and provided by designated undertakings.</p> <p>3. Member States may, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes, disability or special social needs <u>in geographical regions where access is difficult</u>.</p>

Reason

The CoR would like to draw attention to the needs of consumers in rural areas or regions with low population density.

Amendment 18

"Citizens' Directive", Article I, Amendments made to Directive 2002/22/EC (Universal Services directive), point 16, new version of Article 26

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p><i>Article 26</i> <i>Emergency services and the single European emergency call number</i></p> <p>1. Member States shall ensure that, in addition</p>	<p><i>Article 26</i> <i>Emergency services and the single European emergency call number</i></p> <p>1. Member States shall ensure that, in addition</p>

<p>to any other national emergency call numbers specified by the national regulatory authorities, all end-users of services referred to in paragraph 2, including users of public pay telephones, are able to call the emergency services free of charge and without having to use any means of payment, by using the single European emergency call number “112”.</p> <p>2. Member States shall ensure that undertakings providing a service for originating national and/or international calls through a number or numbers in a national or international telephone numbering plan provide access to emergency services.</p>	<p>to any other national emergency call numbers specified by the national regulatory authorities, all end-users of services referred to in paragraph 2, including users of public pay telephones, are able to call the emergency services free of charge and without having to use any means of payment, by using the single European emergency call number “112”.</p> <p>2. Member States shall ensure that <u>national or pan-European</u> undertakings providing a service for originating national and/or international calls through a number or numbers in a national or international telephone numbering plan provide access to emergency services.</p>
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Reason

This paragraph imposes a number of important technical obligations involving substantial investments which will be beyond the means of local or regional operators.

Amendment 19

"Citizens' Directive", Article I, Amendments made to Directive 2002/22/EC (Universal Services directive), point 19, article 31, new version of paragraph 1

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p>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 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</p>	<p>1. Member States may impose reasonable “must carry” obligations, for the transmission of specified radio and television broadcast channels and <u>audiovisual media services as well as all complementary services and</u> accessibility services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television broadcasts to the public 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</p>

<p>objectives as clearly and specifically defined by each Member State in its national law and shall be proportionate and transparent.</p> <p>The obligations referred to in the first subparagraph shall be reviewed by the Member States at the latest within one year of <time-limit for implementation of the amending act>, except where Member States have carried out such a review within the previous 2 years.</p> <p>Member States shall review “must carry” obligations at least every three years.</p>	<p>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.</p> <p>The obligations referred to in the first subparagraph shall be reviewed by the Member States at the latest within one year of <time limit for implementation of the amending act>, except where Member States have carried out such a review within the previous 2 years.</p> <p>Member States shall review “must carry” obligations at least every three years <u>on a regular basis</u>.</p>
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Reason

The "must-carry" rules must be extended to cover additional broadcasting-related services such as programme guides, Radio Data System services and road traffic information.

Amendment 20

Proposal for a Regulation of the European Parliament and of the Council establishing the European Electronic Communications Market Authority

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
COM (2007) 699 final – 2007/0249 (COD)	<p>The CoR does not support this proposal. The Committee believes that the creation of a European Electronic Communications Market Authority would effectively represent an addition to the current institutional arrangement for the regulation of electronic communications markets, would not be compatible with the principles of subsidiarity and proportionality and would risk adding another level of complexity rather than simplifying the process which is the subject of this package of proposals</p>

Reason

The Commission text provides for the replacement of the current European Regulators' Group by a new authority, termed an "agency" by the European Commission, which will have full legal personality. The mission of this body will, inter alia, consist of assisting the European Commission and national regulators in carrying out their missions by providing expert opinions and establishing guidelines, principally by determining and analysing national markets and identifying ex ante solutions to be applied. This authority will also play an important supporting role for the Commission by drawing up and implementing EU spectrum management policy. Decisions would be taken within this authority by a simple majority. This institutional reform will go hand in hand with a substantial transfer of market regulation powers from Member State level to the European Commission and lead to a clear imbalance in the distribution of powers between national and European regulatory authorities. This model will thus seek to establish the idea of a "single European regulator" for the telecommunications sector following the example of the U.S. Federal Communications Commission.

The "Better Regulation" directive COM(2007) 697 final - 2007/0247 (COD)) and the "Citizens directive" (COM(2007) 698 final - 2007/0248 (COD)) should also be amended in order to remove all references to this authority proposed by the Commission.

Brussels,

The President
of the
Committee of the Regions

The Secretary-General
of the
Committee of the Regions

III. PROCEDURE

Title	<p>Telecommunications Reform Package:</p> <ul style="list-style-type: none"> - Proposal for a Directive of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and services, and 2002/20/EC on the authorisation of electronic communications networks and services - 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 - Proposal for a Regulation of the European Parliament and of the Council establishing the European Electronic Communications Market Authority - Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Reaping the full benefits of the digital dividend in Europe: A common approach to the use of the spectrum released by the digital switchover
References	<p>COM(2007) 697 final - 2007/0247 (COD) COM(2007) 698 final - 2007/0248 (COD) COM(2007) 699 final - 2007/0249 (COD) COM(2007) 700 final</p>
Legal basis	<p>Article 265 (1) TEC</p>
Procedural basis	
Date of Council referral / Date of Commission letter	<p>12 December 2007/ 13 November 2007</p>
Date of President's decision	<p>23 January 2008</p>
Commission responsible	<p>Commission for Culture, Education and Research (EDUC)</p>

Rapporteur	Mr Marc Schaefer (LU/PES) Member of Vianden municipal council
Analysis	15 January 2008
Discussed in commission	29 April 2008
Date adopted by commission	
Result of the vote in commission	
