

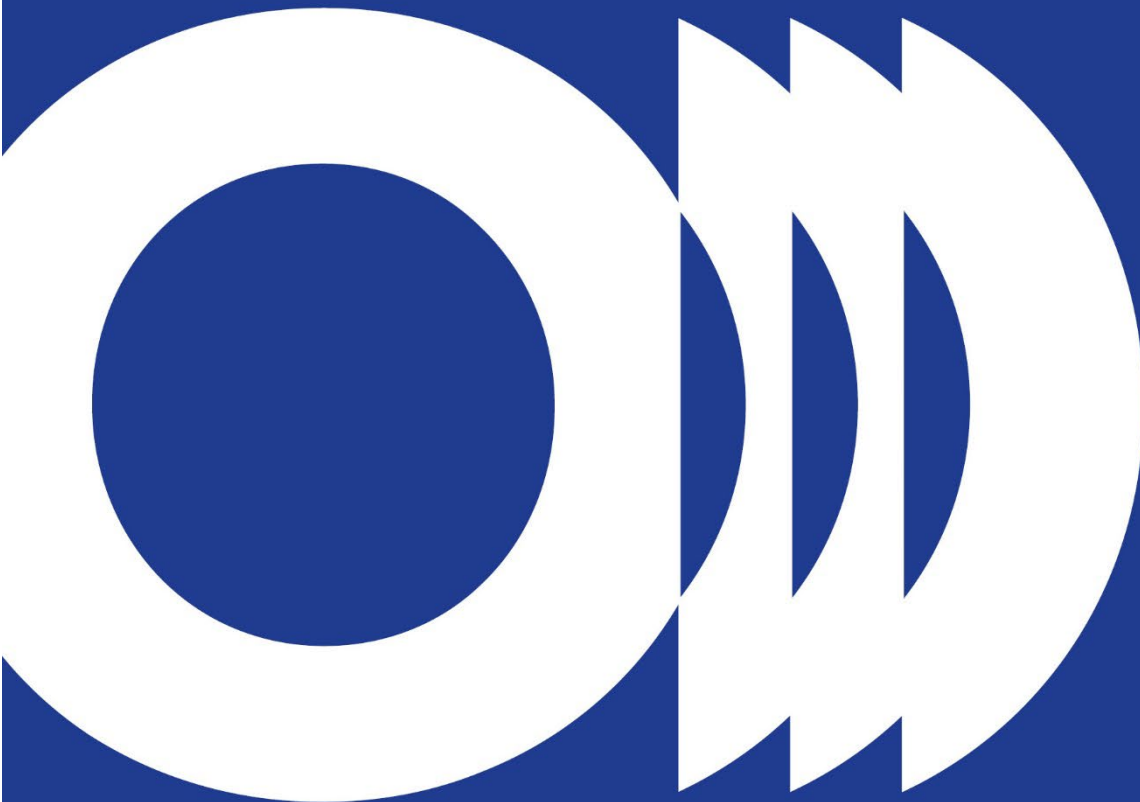
EBU

OPERATING EUROVISION AND EURORADIO

POSITION PAPER

EBU's reply to the consultation
on the future of the electronic
communications sector and its
infrastructure

22 MAY 2023



EBU Position Paper

European Commission's Exploratory Consultation on the future of the electronic communications sector and its infrastructure

- For providers of audiovisual and audio media services like Public Service Media in Europe, excellent connectivity and digital technology is of key importance. Connectivity creates ample opportunities for the development of new services, formats and technologies. Audiences can enjoy great content from public media of their choice when they want and whenever they want. It is in Public Service Media's remit to reach all the people in each Member State with premium content – connectivity is a means to reach this end. The high level of investment by Public Service Media alongside other audiovisual and audio media service providers in attractive content and innovative formats actively drive the success of Europe's electronic communications sector, including the demand and take-up of network connectivity. In pursuing this effort, the sector also contributes to the goals and aims set out in the European Declaration on Digital Rights and Principles for the Digital Decade, especially its Chapter II on solidarity and inclusion¹. **Any policy debate on the future of the electronic communications sector and its infrastructure will thus have a significant impact on the audiovisual and audio media sector in Europe and on its citizens.** We expect that the European Commission's conclusions from this exploratory consultation will take due account of it.
- **Broadband Internet delivery is key for media distribution in Europe and is expected to grow further.** Most on-demand offers² will continue to be distributed over the open Internet and thus provide a necessary complement to other digital technology and infrastructure that remain efficient, resilient and trusted for the distribution and consumption of live content: i.e. cable and satellite and especially digital terrestrial broadcasting. Given its crucial role for distribution of live content, it is key to reiterate at EU level ahead of this year's World Radio Conference that UHF spectrum below 700 MHz will need to remain available for digital terrestrial broadcasting³.

¹ See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC_2023_023_R_0001

² And, increasingly, live content

³ More on the current discussions on the important upcoming WRC-23 and the need to preserve broadcasters' access to the lower UHF band [here](#)

- **The current Internet delivery model works well and remains key for securing access to a diverse and plural content offer.** We concur with BEREC's view that *"[t]he Internet's ability to self-adapt has been and still is essential for its success and innovative capability."*⁴ Interconnection is an essential aspect of Internet connectivity and current arrangements directly enable the Internet's contribution to innovation and end-users' ability to reach content, services and applications from all destinations on the Internet. We agree with BEREC's conclusion that the costs of increasing interconnection capacity are very low compared to the total network costs.

- Some telecom operators argue that content and application providers consuming a high degree of bandwidth should contribute to the costs of supporting the data traffic they generate over telecom networks, i.e. should pay network access fees. This reiterates the concept of a "sending party network pays" principle for Internet traffic already suggested by the telecom industry and rejected by the regulators over a decade ago.⁵ **We are seriously concerned that audiovisual service providers would be obliged to pay additional fees for the delivery of their content to the audiences, i.e. in addition to the already existing contractual payments.** This would be a radical departure from the current interconnection arrangements, many of which involve settlement-free peering. Such obligation would directly undermine the investment in content by audiovisual operators like Public Service Media. For Public Service Media in particular, this would also greatly affect the ability of public media offerings to continue to reach virtually all citizens - as required by their national remits. Overall, any such rules would have negative effects on cultural and linguistic diversity as well as media pluralism in Europe.

- **Pursuing the idea to impose network access fees or contributions based on new criteria and definitions of data traffic would also undermine the principles enshrined in the 2015 EU Open Internet Regulation⁶.** The current 2015 EU Regulation guards end-users against discrimination when accessing content via their Internet access and offers all content and application providers, including audiovisual operators, guarantees that traffic management by Internet Service Providers (ISPs) is strictly limited to the extent technically necessary and must not be based on economic / business considerations. "*Specialised services*" can operate dynamically next to

⁴ BEREC preliminary assessment, 7 October 2022

⁵ See EBU declaration in 2012: <https://www.ebu.ch/news/2012/11/ebu-urges-caution-as-wcit-2012-o>

⁶ See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2015.310.01.0001.01.ENG

Internet access as long as the former do not act as replacement or negatively impact the availability and quality of the latter. Creating a new regulatory definition of data traffic transmission and imposing a system of contributions on that basis will inevitably put these rules at risk. The aim of open Internet rules and their enforcement is and should remain to avoid the creation of Internet 'slow lanes' alongside internet toll roads that offer 'fast lanes' but are prohibitively expensive or restrictive, based on strategic industry interests. Additional network access fees and contributions would also be contrary to the measures to support connectivity in Europe.

- We support BEREC's stance that **there is no evidence of "free-riding" along the Internet value chain**. The original request for data traffic online comes from the Internet access subscriber and not the content provider. ISPs derive revenues from users through Internet access subscriptions. **The availability of audiovisual and audio content from public service and commercial media providers increases the demand for broadband access**. In other words, ISPs revenues are increased because of the content provided by, amongst others, Public Service Media. Overall, European public media invest 18 billion euros annually in content and are key contributors to the European Gigabit Society. In addition, Public Service Media organisations also pay for hosting, connectivity and content delivery networks (CDNs) and engage in peering arrangements for enhanced network architecture for high capacity best efforts.
- Public Service Media across Europe are committed to **continue to engage in a constructive dialogue with ISPs and telecom operators to assist with alleviating congestions and improving end-to-end network performance**. We look forward to continuing that dialogue. In this respect, we advocate the further use of technical solutions such as multicast/broadcast mode and smart caching which enable an optimised use of the available network resources, in particular at the times of peak demand.
- While the current Internet delivery model works, we share the Commission's view that the Internet value chain has become increasingly complex and that the market of connected devices and applications is evolving fast.⁷ **Developments in telecommunications markets are of utmost importance for media in Europe: the enhanced role of device markets and related software platforms (operating**

⁷ Commission Consultation, page 4.

systems and app stores), market concentration and, more particularly, vertical integration and control over gateways which can severely affect citizens' access or their ability to discover or find media services and content.

- We believe that there is a strong case for regulators and decision-makers in Europe to closely monitor the trends, to **create more synergies between telecom policies and media/content policies and to promote the implementation of telecom policies in ways that contribute to audiovisual policy objectives**. While the EU regulatory framework for electronic communications regulates the transmission of content and not the content itself, it recognises that the separation between transmission regulation and content regulation "*does not prejudice the taking into account of the links existing between them, in particular in order to guarantee media pluralism, cultural diversity and consumer protection*". Market and technological developments can only be expected to further reinforce the need to explore such synergies in the coming years. Robust enforcement of the new EU Digital Markets Act and Digital Services Act alongside the introduction of ambitious provisions in the proposed EU Media Freedom Act to address arbitrary and unfair behaviour by global platforms towards media content and to ensure that citizens can easily discover and find media services of general interest in the digital world will also play a key role to tackle the increasing complexity mentioned above.

Addendum to questionnaire:

For the sake of clarity, EBU would like to indicate that it hasn't responded to the following questions: 1, 9, 11, 13, 14, 15, 16 and 44.

As for question 40 and 41, it has only used the tables and the "please explain your answer" boxes.