

Dear Mr De Graaf,

Unfortunately, I was not able to participate in the meeting the EBU and some of its members had with you recently on the abovementioned issue. This is why I am sending you this mail.

Regarding **spectrum** we understand that the Commission is not trying to identify specific (new) bands for specific uses. We have, nevertheless, a number of concerns:

- In general, the proposals seems to be rather one-sided. They seem to favour only one particular use of spectrum resources, name for mobile broadband services. This is, however, neither in line e.g. with the outcome of the recent Analysis Mason Study on future spectrum use commissioned by the European Commission, which comes to the conclusion, that there is a growing spectrum demand also for other uses, e.g. Digital Terrestrial Television (DTT), nor with the provisions of the Telecom Package. DTT, in addition, is not even mentioned as one of the applications which makes use of spectrum in order to deliver an essential service to society (Recital 18).

- In recital 21 the European Commission envisages further coordination and consistency in use of spectrum not only used already under EU-harmonised conditions, but also for spectrum the use of which is not yet harmonised, including explicitly the 700MHz band. This would further restrict the Member States' ability to take account of objectives of spectrum use other than for mobile broadband services, such as for DTT given its inherent cultural and social function.

- We understand that the proposed Regulation shall not alter existing rules and regulations, layed out the in the Spectrum Decision, the Telecom Package, and the RSPP regarding the use and authorisation of spectrum, but "only" interpret these rules in order to facilitate the use of spectrum for mobile broadband (articles 8, 9 and 10). We are worried, however, that especially the wording in art. 8 para. 2 ("in application of") could severely limit the safeguards for cultural and linguistic diversity and media pluralism entailed in the above mentioned existing regulation. In the respective provisions of the telecom package, e.g. a balancing act is proposed to reconcile the economic, cultural and social value of spectrum. With the proposed regulation, this fundamental balancing act would however become only one criteria among many others in evaluating the best use of spectrum, which in turn, runs counter to the spirit of existing regulation. We would therefore welcome to complement the proposed text of the regulation with a clear statement that the new rules are without prejudice to existing regulation safeguarding linguistic and cultural diversity as well as media pluralism in the field of spectrum use.

Regarding **net neutrality**, we were as surprised as many other observers about the draft text, which, in our view, aims less at safeguarding net neutrality, but more at promoting new business models, i.e. agreements between content providers and network operators on traffic differentiation, which in turn can endanger the openness of the internet and neutrality in traffic management.

First of all, we miss a clear definition of net neutrality, including, among others, the concept of non-discrimination.

Second, the proposed text does not sufficiently take account of the findings in the different BEREC reports published on this issue. BEREC, amongst others, specifically pointed at the danger of vertically integrated enterprises being tempted to differentiate between their own services and services provided by third parties. We see in the recent proposal by Deutsche Telekom that the

combination of 1) to introduce data caps and to require additional payments in case the consumer wishes additional bandwidth, and 2) the fact that these data caps do not apply to DT's own services, and 3) by offering competing services themselves (vertically integration) could endanger the open internet based on the best-effort-principle.

In addition, the proposed text seems to limit the ability of Member States / National Regulatory Authorities to implement - in accordance with the respective rules in the Telecom Package - specific rules regarding Net Neutrality on the national level. In this regard we share the initial concerns raised by the German Minister of Economy, Phillip Rösler.

Finally, the text does entail the proposal, made several times by the Commissioner herself, that only such offers should be allowed to be advertised as "internet access" that do not restrict the access to the net in any way (e.g. differentiation between services or offers by means of speed, data caps etc.).

We do not oppose managed services. They must, however, not be introduced to the detriment of a viable best-effort-internet with sufficient capacity to access and use the services consumers and citizens want to use. In our view this is not 'only' important for fair competition in the internet-sphere, but also an essential pre-requisite to safeguard freedom of speech and freedom of information in Europe.

I would like to thank you again for your openness to engage in an informal dialogue with us. We are happy to discuss any questions or remarks you might have.

Kind regards,

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