European Satellite Operators Association

CONSULTATION ON COMMUNITY GUIDELINES FOR THE APPLICATION OF STATE AID RULES IN RELATION TO RAPID DEPLOYMENT OF BROADBAND NETWORKS

INTRODUCTION

The European satellite community welcomes the European Commission's initiative and support for broadband connectivity in the EU, especially with regard to necessary rapid deployment for un-served and underserved areas in the context of the EU Economic Recovery Package (EERP). As a technology sector that can make an important contribution to connecting un-served and under-served citizens, especially in the white spots of Europe for both "Traditional Broadband" services and "Next Generation Access (NGA)" services, we are directly concerned with the guidelines being issued by the Commission and thus, wish to offer the following comments for your consideration.

1. ON THE INTRODUCTION TO THE GUIDELINES

We would like to point out that the Guidelines are very much orientated towards traditional terrestrial fixed (copper/ ADSL, cable and fibre-based) broadband networks or terrestrial wireless (3G, WIMAX etc) broadband networks. We stress at the outset that terrestrial fixed broadband or terrestrial wireless broadband networks are not the only relevant platforms for these guidelines and would invite the Commission to make this point in Paragraph 3 of its Introduction. At this point we would also invite the Commission to point out that Member States should be aware of the technical capabilities of alternative platforms including satellite broadband and should properly consider their latest technical developments before market-distorting subsidies are provided (e.g. to NGA providers).

More specifically, in paragraph 5 of the Introduction (where the Commission states that "it must be ensured that State aid does not crowd out market initiative in the broadband sector"), we believe that the Commission should endorse this statement by adding that State aid should not support the DSL platform exclusively but should be used to support multiple platforms including satellite broadband which often provides a quick and cost-effective alternative to connect white spots. We believe that such a statement may help to remedy existing prejudices against satellite broadband that the Commission has witnessed in the context of earlier cases.

On the same point, in paragraph 45(d) of the Guidelines the Commission specifically raises the issue of technological neutrality and states that "*given that broadband services can be delivered on a host of network infrastructures based on wirelines (xDSL, cable), wireless (Wi-Fi, WiMAX), satellite and mobile technologies Member States should not favour any particular technology or network platform unless they can show that there is an objective justification for this*." This is the only reference to technological neutrality in the whole document and is of great significance to satellite operators. We consider that it would be useful to reinforce this statement and suggest that the Commission devotes some text to

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explaining the technical capabilities of the alternative platforms. In particular, it would be helpful to state that modern satellite broadband is capable of relatively high speeds and is subject to very low latency.

This notion of emphasizing the capabilities of different technological platforms is all the more important to satellite operators who have "lost out" where Member States have opted to use structural funds for broadband without due consideration for a satellite solution where it may well have been the most appropriate solution. The problem is aggravated by the "Regional Aid" principles which do not, we understand, precise the need to be technology neutral at all.

2. MARKET FAILURES IN UNSERVED AREAS

We note the role that State Aid can play in correcting market failures and very much appreciate the favourable view the Commission has taken to measures directed at "white" areas so affected. Indeed these are the very areas that the EERP has intended to address with its "broadband package". We understand that the proposed guidelines refer to such "white" areas as those where there may be a lack of commercial incentive for operators to invest and provide connectivity due to the "economics of density" of a given area.

The first point we would like to make is that the ability to commercially rollout satellite broadband does not depend on the density *of a specific area*, rather it depends the number of users per se, irrespective of their location. Even a sole isolated user can be served at the same cost as a user in a populated area. Consequently, the Commission should not consider un-served areas or low-density areas as disincentives for service provisioning because this statement does not apply to satellite networks. On the contrary, these are precisely the areas where other technologies will not go, but where satellite operators can quickly and efficiently connect isolated users with an initial investment to cover equipment costs.

3. EXISTENCE OF STATE AID

(a) State Aid should address an economic activity and the examples given in Para 13 of the Guidelines of "*building, operating and/or managing a broadband infrastructure*" do not include the activity required to enable roll out of satellite broadband. This is however included in the types of operations for broadband infrastructure in rural areas listed in Annex III of Council Regulation (EC) No 473/2009 of 25 May 2009 amending Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and Regulation (EC) No 1290/2005 on the financing of the common agricultural policy, which refers to ***"Creation of and enabling access to broadband infrastructure including backhaul facilities and ground equipment (e.g. fixed, terrestrial wireless, satellite-based or combination of technologies)"***. Indeed to access the broadband satellite signals offered through satellite broadband infrastructure already in operation or procured for operation over the EU, all that is required is the purchase and installation of satellite dishes and terminals. This activity is a one-off task rather than an ongoing longer-term economic activity like those mentioned.

In accordance with the Council document mentioned before, the Commission should take this into account and make sure that the Guidelines reflect the fact that public financing should not be exclusively limited to creation of broadband infrastructure but should also include enabling access to broadband infrastructure

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with the related ground equipment necessary in the case of broadband via satellite.

Therefore in order to ensure that State Aid for satellite broadband is included we recommend that the Guidelines be elaborated at this point to include not only "building, operating and/or managing a broadband infrastructure" but also "the purchase and installation of satellite dishes and terminals required to access it". This modification would clearly reflect that satellite broadband provided through existing or already procured satellite systems is eligible for State Aid and would also be in line with the interpretation of broadband "infrastructure" given by DG Information Society & Media and DG Agriculture & Rural Development.

(b) Further, according to the Guidelines in order to be considered as State Aid, the measure must confer an economic advantage on undertakings and is usually granted to the investors of the network. Here the following points should be noted in relation to those satellite systems already in operation or presently under procurement:

First, that the satellite network itself should be compared with the cable, wireless or fibre network in the case of other broadband solutions. All such networks require huge initial investment and in the case of a satellite network, these investments have already been made by private undertakings.

Second, each network competes on a similar basis towards the consumer in that they generally all use some form of subscription model.

Third, satellite broadband is different in that accessing the satellite network requires a element of ground infrastructure, where other technological solutions for example terrestrial ADSL networks rely on already laid-down copper pairs. The public investment in satellite ground equipment therefore merely levels the playing field between satellite and other solutions in order to allow satellite to compete with the others on a comparable subscription model.

Fourth, it appears from the draft Guidelines that the public financing of satellite ground equipment is not explicitly covered (either directly or indirectly). The Commission must realize that a major difference with alternative networks such as cable/DSL, etc. is the fact that, in the case of broadband via satellite, the necessary ground equipment is typically not provided by the satellite network operators who rather provide the space infrastructure (and related main ground stations) necessary to operate such a network. Rather the investment in the smaller ground equipment typically needs to be carried out by SMEs (different ones in different locations) who would otherwise not be able to establish or run sustainable businesses based on satellite broadband. The investments therefore do not go to the investors in the network.

4. WHITE SPOTS AND THE "SERVICE OF GENERAL ECONOMIC INTEREST"

The guidelines make reference to the absence of State Aid where in the case of broadband, the provision of the network and its services constitute a service of general interest (SGEI). With the inclusion of broadband connectivity within the EERP, it can be said that the Commission "at large" does consider there to be socio-economic value in public investment

in broadband connectivity. This possibility has been further confirmed[1] in two cases where public service concessions were awarded to deploy basic broadband networks in underserved regions. In un-served or underserved regions, due to the lack of substantial investment required to deliver immediate connectivity, satellite is often the most appropriate and cost-effective solution on the basis of the lowest amount of investment requested: this was one of the main criteria of the two Commission decisions referred to.

While terrestrial fixed (e.g. copper / ADSL, cable and fibre) networks are the most developed networks for delivering broadband in urban areas, similarly satellite - with its total coverage - is the most efficient in delivering immediate broadband connectivity to citizens no matter where they are, but especially to those in areas with given market failures. In light of this, the Commission should make sure that despite the Member States' freedom to define a SGEI, any definition that deliberately included unnecessary and unjustified performance criteria in an area where not even basic connectivity is available should be considered a "manifest error"[2] so as to warrant a review of that definition.

We submit that the Commission should further make clear in its guidelines that given (i) the existing infrastructure (ii) the evident low comparable cost of accessing existing satellite networks compared with any other solution for un-served areas, and (iii) the ability to immediately serve at low cost a given area even with a very sparse population, any failure to consider a satellite solution or invite an offer from a satellite solution in un-served areas could constitute grounds for considering the aid as incompatible.

5. APPLICATION OF THE "MARKET ECONOMY INVESTOR PRINCIPLE"

We note that even though satellite broadband networks can connect more than one million users with broadband capabilities before the end of 2010 using existing and soon-to-be-launched capacity, this is only part of the EU's Digital Divide. Plenty of white spots will still remain. Thus should a Member State choose to itself procure new capacity to address these white spots then this may amount to a Member State choosing to provide a SGEI & also be justified on the basis of this principle. In order to ensure that the criteria of this principle are met, a concession contract where commercial risks are properly allocated to those best suited to bear them, may be worth considering.

6. ASSESSING THE PROPORTIONAL CHARACTER OF NOTIFIED MEASURES

We have already noted clearly the advantage of satellite technology in delivering broadband connectivity to "white" areas. The presence of an ***existing infrastructure*** (satellite network in space) that already covers ALL EU Member States (regardless of their topography) means that minimal - and accordingly extremely cost-effective - ground-based infrastructure enables immediate access, "*promoting regional cohesion and economic development objectives*" and allowing the benefits of broadband connectivity to be reaped instantly by those who have to date been without.

Existing deployments in Europe that have been done on the basis of competitive tender all show that for white areas, satellite broadband networks do deliver the ***best economic offer***. In this regard, it should further be noted that the subsidies provided for satellite-based ground

[1] Comm Decision N381/2004 & Comm Decision N382/2004

[2] Case T-442/03

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equipment in order to enable access to broadband infrastructure serve “real” users (as installations are granted only to interested users) while creation of terrestrial infrastructure enables access to broadband to potential users (those living in the service area, who might not be interested in the service). Any economic or value-for-money assessment of measures should definitely take this into account.

We further note that although a public investment into satellite ground equipment implies a [technologically driven] choice for the services provided using the signals of one satellite operator, many satellite operators exist who provide signals used to deliver broadband connectivity in Europe’s white areas. This is an area of fierce competition, not only between European operators but between European and foreign operators. Further, in paragraph 45(g) the Commission states that ***benchmarking exercises*** must be conducted to ensure that excessive wholesale prices for broadband are avoided. We submit that the benchmarking exercise must take ALL platforms into consideration when considering the average wholesale price.

7. ROLE OF SATELLITE SYSTEMS IN PROVIDING NGA BROADBAND SERVICES

Finally, we would like to highlight that even though the main argument in this document goes to the ability of satellites to address white spots for *traditional broadband* connectivity immediately, satellite systems are inherently capable of providing Next Generation Access (NGA) broadband *services* across Europe and in particular to NGA ‘White Areas’. Due regard should be given to the fact that the recent, spectacular technology leap in performance offered by satellite broadband services provided through existing or already procured satellite systems is evidence of the capability of satellite operators to invest in adapting to always-evolving requirements. By the end of 2010, satellite broadband performance will be able to provide three to five times what it can provide today. Therefore a further such technology leap should not be precluded. The following points are particularly relevant:

(i) The subscription offers available once satellite broadband has been made accessible do in fact not only enable basic connectivity but also support more bandwidth intensive applications as may be required by businesses and local governments;

(ii) A speedy roll out of connectivity via satellite will not only enable this first level of *broadband* connectivity but also will support the ever more bandwidth intensive applications foreseen for NGA’s. Most bandwidth hungry applications under NGA are likely to be IPTV/ iplayer/ other video based applications, which are well suited for delivery via satellite broadcast or multi-cast: satellites are ideally suited for streaming video. Thus not only are the initial public objectives of connecting the un-served (as laid out in the EERP but also stated by Member States) met, but also the threat of a potential Digital Chasm (where some have “basic” connectivity and others have “ultimate” broadband connectivity so that the Divide in fact remains or gets worse) is alleviated.

(iii) We also submit that speed of data should not be the only factor taken into consideration by the Commission when considering if viable alternatives exist on the market. The Commission should consider the marginal benefits of additional data speed against the significant costs required to install NGAs.

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(iv) Satellite operators and their commercial partners may in future wish to seek from EU Governments or regional governments, support for NGA capable satellite systems including the space-segment, given that such NGA capable satellite systems can provide an efficient solution for addressing the aggregation of NGA White Spots across any given (large) EU country or set of EU countries. In this regard, the EC should ensure that the formulation of State Aid guidelines does not de-jure or de-facto preclude the scope for such NGA capable broadband satellite systems to be recipients of State Aid.

(v) Finally for information, we would like to refer the Commission to the recent opinion of the International Telecommunications Union from April 2009, entitled "Opinion 2 on the Implications of the Advent of Next-Generation Networks (NGNs) and Advanced Broadband Access" which was adopted at the fourth World Telecommunication Policy Forum (Lisbon, 2009). This document referred to the role of all technological platforms and noted specifically "That terrestrial and satellite-based broadband wireless technologies could offer leapfrog solutions to expand access significantly in many remote and rural areas, with a unique role for satellite in expanding service delivery and coverage areas".

The effects of the unique feature of satellite - total coverage - was clearly recognized and accepted by the ITU. The ITU then went further in noting: "That broadband access is available through different wireline and wireless technologies and will be provided by different methods in different countries, including an integral role for satellite technologies in extending the deployment of NGNs, particularly in remote and rural areas"

After noting this, the ITU called upon Member States to consider, inter alia, the following measures:

(i) Develop an appropriate regulatory regime that encourages infrastructure-based and service-based competition for broadband access, while also taking into account the special characteristics of satellite technologies;
(ii) Encourage and facilitate the use of multiple approaches for NGN deployment, including use of satellite networks.

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