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Public consultation on the evaluation and the review of the regulatory framework for electronic communications networks and services

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Dear Sirs,

With respect to the recent consultation on the telecommunications framework, the Internet Telephony Service Providers' Association ("ITSPA") makes this overarching submission to the European Commission as we feel the questionnaire is too broad to make what we consider the be vital points for the Commission's consideration. Based on a discussion amongst members, it was felt more appropriate to produce a high level response, however we have also responded to some of the individual questions outlined within the questionnaire.

Fundamentally, ITSPA considers the Commission should adopt a different approach to the review of the framework. The first stage in this review, we respectfully submit, should be to **decide the public policy outcomes** desired across the European Union in relation to telecommunications over the time horizon of the effectiveness of the review.

For example, the Commission may decide that all communications services must allow access to emergency services, provide end users the ability to switch provider and retain their number and have certain consumer protection features, such as a ban on auto-renewing contracts.

Once these public policy outcomes have been decided, the second stage of the review is to identify the regulation and appropriate incentives to deliver, from the wholesale levels to the retail levels, those public policy outcomes. For example, if the Commission has decided the citizens of all member states should have no surcharges or premiums for roaming within the European Union, then it follows there should be both regulation to enforce this, but also to ensure that there are no distortions in the wholesale level to jeopardise it; fundamentally the

thinking in making the 2009 Recommendation to use Long Run Incremental Cost as a termination rates model in the European Union.

To illustrate further, the Commission may decide that all citizens of member states should have a minimum of 10 megabits per second data connection (however so delivered) and therefore would consider regulation about peering, interconnectivity and interworking, as well as wayleaves and incentives (including, where appropriate, revising the rules for state aid) for investment to achieve it.

This approach also disposes of the need to consider over-the-top applications any different to traditional narrowband voice services; fundamentally it provides a level playing field for all. The distortions we see cited today are as a result of differing regulation which is incumbent on some, but not on others. To illustrate, in the UK, a mobile network operator has to provide the ability to use SMS to interact with the emergency services, whilst WhatsApp does not. Yet the latter is considered to be a demand side substitution for the former, which is illogical and a market distortion.

Whilst this does, potentially, create issues of territoriality with some over the top applications or means of communicating not, necessarily, being domiciled in an EU member state, we would suggest that legislation and jurisprudence is adapting to the transnational market in telecommunications and is not insurmountable; fundamentally, if you provide a service in an EU Member State, then compliance with the conditions laid down by the Commission is a requirement.

ITSPA has attempted to make these points, where appropriate, in the questionnaire, however, as we trust you appreciate, the structure of it presumes an approach that ITSPA feels is the wrong foundation.

ITSPA would be happy to participate in further discussions around the current review and are at your disposal for ongoing discussion around the issues of concern.

Yours faithfully

Eli Katz, Chair, ITSPA