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The Position of the Association of Commercial Television in Europe on the Draft RSPG Opinion on the Radio Policy Spectrum Programme

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The ACT would like to submit for consideration the position paper presented to the European Commission in response to the recent public consultation on the Radio Spectrum Policy Programme where we highlight issues which are relevant to the current consultation.

We welcome the contribution of the RSPG to shaping the future RSPP as certain elements of the Draft Opinion are oriented towards an approach based on:

- the need to continuously monitor and assess the Commission RSPP including through public consultations and workshops,
- the enhancement of the quality of life of European citizens by promoting enabling technologies and applications such as digital broadcasting,
- the acknowledgement that spectrum is a national resource,
- the principles that regulation should be limited to the necessary minimum and that all stakeholders should be consulted in a transparent way on the elaboration of spectrum allocation solutions,
- the recognition that avoiding and controlling interference is key to effective spectrum management, and
- the assertion that national authorities should be encouraged to share experiences and best practices.

(i.e. paragraphs 6, 8, 17, 20, 21, 23, and 31 bullet point 4).

In addition to the attached contribution, commercial broadcasters would like to draw attention on the potential pitfalls in pushing the process of looking further than the 800 MHz band too early and without enough evidence of the real demand.

In this respect, we welcome the RSPG's point that all policy orientations should take into consideration current and as well as future demand and follow thorough analysis.

However, we would strongly caution against extensive EU intervention as 2012 “soft deadlines” notwithstanding, significant European markets have yet to adopt a deliverable switchover policy. As such, local operators will not yet have been able to assess their spectrum needs or plan their business strategies against the lack of detailed planning in their national markets in relation to the 800 MHz band.

The progressive shaping of a coordination between Member States’ policies on spectrum at European level has to be “fact-based” in order to deliver its full potential, rather than founded on a “view” on the release of ‘new’ spectrum, which would not respect the effective situations and needs of each market, following thorough impact analysis. The interests of operators, still dealing with hypothetical scenarios as to take-up of DTT and of future spectrum needs, argue very strongly against even considering policy at a pan-European level until such time as all European markets are able to assess such policy against actual and potential spectrum requirements.

The release of spectrum below the 800 MHz band is likely to have very significant impact on broadcast businesses in a number of EU countries. Given the specificity of the national markets, as well as the prerogative of Member States to decide on spectrum allocation and use, it is not justified that the RSPG urges the Commission to proceed with identifying future uses of the spectrum across EU 27. It is very clear that use of spectrum will vary from one country to another depending on a number of factors and national characteristics which cannot be treated with a “one size fits all” solution.

We invite you to take into consideration the ACT submission in the Annex and we stay at your disposal for further comments.

ANNEX

Response of the Association of Commercial Television in Europe to the Public Consultation /Call for Input in preparation for the Radio Spectrum Policy Programme

Commercial broadcasters welcome the possibility to submit their views on the forthcoming legislative proposal for a Radio Spectrum Policy Programme as foreseen in the newly adopted Framework Directive.

The ACT would like to underline the vital role that commercial broadcasters play in Europe today. We invest billions of Euros every year in digital content, generating growth and jobs for the European economy and delivering attractive programming in all genres (news, current affairs, entertainment, sport, series, films, etc.) to European citizens. Above all, thanks to our relentless investment in content and innovative services, European consumers have come to enjoy more choice than ever before, to the level of excellence that they expect, and with no evidence of significant unmet demand for cross-border audiovisual services. Notwithstanding the proliferation of platforms and devices through which audiovisual content can be consumed, viewing hours of scheduled broadcast television continue to grow in Europe, as highlighted by Médiamétrie in its recent report¹. Through their investments in innovative services and technologies, notably HD and 3D television, commercial broadcasters contribute to the growth of other segments of the value chain, from independent content producers to mobile phone and television equipment manufacturers. We are also key contributors to media pluralism through the provision of a wealth of news and current affairs services to European citizens. Finally, we play a positive role in strengthening Europe's linguistic and cultural diversity by investing in and distributing local programming.

Our response will take a horizontal approach outlining several key principles and safeguards that we urge not only the European Commission but also the RSPG to take into account in the context of the RSPP:

1. Need for proper and timely consultation

First of all, the Commission should ensure thorough consultation and avoid the temptation of adopting a legislative proposal on the RSPP in haste, inter alia for the following reasons:

- (i) The recently adopted Telecoms Package represents a modern and up to date legal framework, which Member States have yet to implement;
- (ii) The new Telecoms Package respects Member States' competence with respect to spectrum and outlines the need for Member States to *coordinate* their policies, rather than compelling unnecessary harmonisation at European level;

¹ Eurodata TV Worldwide "One Television Year in the World – 2010 edition"

(iii) The majority of Member States have yet to complete digital switchover by ending analogue terrestrial transmission, and are doing so according to different timelines;

(iv) Commercial broadcasters' investments in infrastructure and innovative services are the result of long term strategic planning and rely on legal certainty.

2. Subsidiarity, switchover and the 800 MHz sub-band

As the Commission will be aware market conditions differ from country to country and therefore each Member State should be able to implement switchover by ending analogue terrestrial transmission in the way that takes full account of its economic and social conditions. These include factors such as size of population, topography, market and license (e.g. obligations to invest in programming, where applicable) conditions, etc.

Accordingly, Member States should be able to decide for themselves how to manage the 800 MHz band in the light of national circumstances, of the rules laid down in the Telecom Package and of relevant international agreements. Following the ITU WRC-07 Radiocommunications Conference, Denmark, Finland, France, Spain, Sweden, and the UK, for instance, have already announced plans to release the 800 MHz band and other Member States are consulting on digital dividend plans of their own. Where licences to provide analogue and/or digital broadcasting services have already been awarded, these licences should be respected.

The Commission should take into consideration that «*DTT can be efficiently delivered only in the UHF band 470-862 MHz*»² and thereby Member States ought to take into consideration the opportunity cost of making spectrum available for services whose demand is not yet driven by a significant number of users.

Moreover, we recognise that the Council Conclusions of 2005 encourage Member States to complete digital switchover by ending analogue terrestrial transmissions by end-2012, but ultimately Member States will achieve this aim consistent with a timetable which will suit their specific economic and social conditions.

3. Spectrum efficiency

Broadcasters will continue to have spectrum requirements to support their current and future broadcast services. They will continue to assist Member States in achieving a smooth transition towards enhanced broadcast technologies (such as between MPEG-2 and MPEG-4), according to national circumstances, including market conditions and the legitimate expectations of consumers who need to invest in new equipment.

² http://www.ebu.ch/CMSimages/fr/___A5_digital-dividend_EN_tcm7-65144.pdf

While flexibility and in particular fairness and transparency in spectrum allocation mechanisms are necessary, service continuity as well as fair and balanced access to spectrum for commercial broadcasters must be considered.

4. Protection from risk of harmful interference

Adequate safeguards in relation to protection from risk of harmful interference must be provided for, when considering plans to release the 800 MHz band. Robust technical studies should be conducted to demonstrate that these safeguards are effective on all existing TV products and on applications using adjacent spectrum bands for broadcast and related purposes.

5. Costs of spectrum re-planning

As summarised by Analysys Mason, Econ and Hogart & Hartson in their “Report to the European Commission on “Exploiting the digital dividend – a European approach – Summary of the Stakeholders’ Hearings”³, there was broad consensus between most of the stakeholders from the broadcasting sector participating in the hearings that “broadcasters should not have to pay for any additional costs that are incurred in freeing up spectrum in the 790/862 MHz sub band”.

This view appears to be shared by the RSPG. Indeed, in its Opinion on the Digital Dividend of September 2009⁴ the RSPG confirmed the validity of its conclusions on cost recovery mechanisms as set out in Opinion -161⁵: *“Modifying the frequencies of existing or planned broadcasting networks could cause significant cost or disruption to the provision of broadcasting services, which may make such modifications extremely difficult if not impossible. Any coordination/re-planning activities should therefore aim at minimizing such effects. Member States wishing to implement fixed/mobile services may therefore consider setting up mechanisms which would ensure that the costs of the measures necessary to overcome such effects are borne by those who will benefit from those modifications (e.g., fixed/mobile operators)”*. We would urge the Commission to take due account of these conclusions when defining its Radio Spectrum Policy Programme and to also encourage NRAs to introduce cost recovery mechanisms, where applicable.

6. Commission mandate and ITU RRC-06 agreement

The “Plan for digital terrestrial broadcasting” agreed at the ITU’s Regional Radiocommunication Conference in Geneva in 2006 (RRC-06) needs to be preserved in order to ensure the level of certainty industry requires for its investments.

³http://rspg.groups.eu.int/documents/documents/meeting/rspg19/rspg09_282_summaryreport_commissionhearings_digitaldividend.pdf

⁴http://rspg.groups.eu.int/documents/documents/opinions/rspg09_291_digitaldividend.pdf - see point 13 of Annex A thereof

⁵ RSPG OPINION ON EU SPECTRUM POLICY IMPLICATIONS OF THE DIGITAL DIVIDEND, 14 February 2007 http://rspg.groups.eu.int/documents/documents/opinions/rspg07_161_final_op_digdiv.pdf

In addition, where the Commission proposes a new Community policy initiative depending on radio spectrum, we would expect such a proposal to meet the requirements of the 2002 Radio Spectrum Decision⁶, as well as the newly adopted Telecoms Package.

Brussels, 9 April 2010

⁶ Decision No 676/2002/EC