

SES ASTRA S.A. COMMENTS ON THE COMMUNITY GUIDELINES FOR THE APPLICATION OF STATE AID RULES IN RELATION TO RAPID DEPLOYMENT OF BROADBAND NETWORKS

SES ASTRA S.A. (“SES ASTRA”) welcomes the opportunity to comment on the Community Guidelines for the application of State Aid rules in relation to the rapid deployment of broadband networks (“Guidelines”). We commend the Commission’s efforts to engage and seek input from interested parties on this topic and encourage the Commission to continue an open dialogue with stakeholders as it evaluates potential changes and clarifications of the current State Aid rules for the provision of broadband to rural areas throughout Europe. Our comments and observations are provided in accordance with the structure of the Guidelines. Rather than providing an overall evaluation of the document, we have provided specific comments on those sections that we consider to be of particular importance.

This submission is designated as non-confidential and reflects the view of SES ASTRA.

I. Introduction

SES ASTRA concurs with the Commission’s emphasis on the importance of broadband¹ for Europe’s social and economic development. As Europe progresses towards the fulfilment of the goals established in the Lisbon Agenda and the European Economic Recovery Plan (“EERP”), SES ASTRA envisages a vibrant broadband sector in which multiple platforms compete on a market basis to provide universal broadband access throughout Europe. SES ASTRA considers that the Guidelines need to emphasise the importance of cross-platform competition and that the introduction should clearly establish the viable role played by alternative technologies such as satellite and mobile broadband.

SES ASTRA suggests that the introduction be amended to include language that explains the benefits of new alternative platforms such as satellite and mobile broadband and the opportunities that these platforms present to citizens, in particular, in rural areas. In doing so, SES ASTRA respectfully suggests that the Guidelines state that the time it takes to provide broadband service to un-served citizens ought to be one of the factors taken into account when considering the “best economic offer.” This criterion is of particular relevance when one considers the money and time required to roll out fiber networks (e.g. the deployment of an ubiquitous Fiber To The Home coverage can only be a (very) long term objective) in most, if not all EU Member States and the obvious associated economic penalties borne by citizens who are effectively unable to participate in the digital economy.

1 For clarity purposes, SES ASTRA understands the term “Traditional Broadband” as defined by the Commission to be as follows: “always-on access allowing transmission of large volumes of data, reducing waiting time and improving efficiency”; *See* “State Aid Rules and public funding for Broadband,” Monika Hencsey, Olivia Raymond, Alexander Riedl, Sandro Santamato and Jan Gerrit Westerhof, DG Competition, Unit H-3.

Consequently, SES ASTRA respectfully submits that Member States should not provide State Aid to broadband systems without due consideration of the considerable “waiting times” for citizens who remain un-served, especially when technologies such as satellite broadband enable connectivity “here and now.”

With respect to paragraph 3, where the Commission states that the primary objective is “*to achieve 100% high speed internet coverage for all citizens by 2010,*” SES ASTRA submits that the Commission’s Guidelines should underline the significance of the digital divide as the Commission did in its recent Communication to the Council and the European Parliament.² This “market failure” clearly justifies the granting of State Aid to platforms that can be rolled out immediately to European citizens, thus complying with the objective of the EERP to bring connectivity to all by 2010. SES ASTRA wishes to stress that the satellite technology is in a unique position to fulfil the immediate requirements of the EERP and contribute to reducing the existing digital divide. In that context, SES ASTRA further submits that in order to match the objective of the EERP, the Commission should consistently refer to “broadband” as defined by the Council rather than to “high speed internet.”³

Later, where the Commission states that “*a number of Member States have already announced plans to support investment not only in high-speed broadband infrastructure for rural and underserved areas, but also to accelerate the deployment of very high or super fast, next generation access networks (“NGA”) in large areas of their territories, including urban areas or areas already served by basic broadband infrastructures,*” SES ASTRA wishes to point out that cable based broadband is not the only broadband platform and that the Commission and Member States should be aware of the technical capabilities of alternative platforms including satellite broadband. Furthermore, SES ASTRA considers that the Commission should require that, before providing market-distorting subsidies to NGA providers, Member States consider the latest technical developments in the satellite segment of the market. Indeed, SES ASTRA respectfully submits that the Guidelines should clearly state that Member States must engage in a rigorous, transparent, and thorough examination of all broadband platforms before applying to the Commission for authorisation to provide State Aid to particular operators. The burden of proof must be on Member States to show that they have properly considered all up-to-date technical alternatives.

With respect to paragraph 5, where the Commission states that “*it must be ensured that State Aid does not crowd out market initiative in the broadband sector,*” SES ASTRA strongly agrees with this statement and adds that State Aid should not exclusively support the DSL technology but should rather be used to support multiple platforms including satellite broadband as satellite is already the most established and cost effective route to create the

2 Communication from the Commission to the Council and the European Parliament – Better access for rural areas to modern ICT, March 3, 2009. Available at: http://ec.europa.eu/agriculture/rurdev/employment/ict/com2009_103_en.pdf

3 See the Explanatory Memorandum of COUNCIL REGULATION amending Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), COM(2009) 38 final, which makes reference to “developing broadband internet in rural areas.”

required hybrid networks to deliver multiple concurrent services (i.e. triple/quadruple play, etc.) to a large part of the market.

In that respect, and as already stated in the introduction, SES ASTRA submits that the Commission should ensure that broadband access technologies are evaluated equally for their “average deployment speed” and “time-to-market” characteristics as both these factors are key in defining a successful broadband strategy. This is all the more relevant when one takes into account the fact that satellite already effectively deals with both characteristics, as it today delivers at least 2Mb/s to all users regardless of geographic location and existing communication infrastructure. The satellite systems that will be deployed in the next few years will even deliver very high speeds directly to the home with, for instance, internet access at speeds up to 16 Mbps and multiple Gbps of TV/HDTV content. This increased performance is also coming with decreasing consumer equipment pricing, thereby significantly increasing competitiveness.

In light of the above, satellite must already today be considered as the most cost effective route to bridging this digital divide. In fact, satellite broadband is a mature technology already serving several hundreds of thousands of consumers in the U.S. as well as many businesses relying on VSAT for time and business critical applications. In Europe, SES ASTRA already today has more than 50,000 end-users connected to its satellite broadband services in particular in “white spot” areas. This results from the fact that SES ASTRA has for years made considerable investments in the satellite infrastructure in order to offer a competitive broadband solution across the European Union.

This demonstrates that, when compared to other technologies, the satellite technology is a cost effective solution for connecting a large number of users over large geographic areas immediately. Granting State Aid to more costly technologies such as cable that can only come on stream with significant lead times would result in the violation of the principle of proportionality and lead to a distortion of effective competition with its acknowledged associated effects such as the crowding out of otherwise more effective investments.

With respect to paragraph 7, where the Commission summarizes the scope of the guidelines in two different sections, SES ASTRA would encourage the Commission to ensure that Section 3 does not “cannibalize” Section 2. Indeed, SES ASTRA is concerned that by already setting-up the scope for NGA, the Commission might end up encouraging Member-States to invest first and foremost in NGA networks while leaving aside the “Traditional Broadband.” While SES ASTRA welcomes the Commission’s commitment to new generations of broadband access, it is important that the Commission does not jeopardise the immediate roll-out of broadband by awarding State Aid to technologies that will not be made available for some time. SES ASTRA thus considers that there is a danger that the immediate political objective of reaching 100% of the population with traditional broadband by the end of 2010 could be jeopardized if the Commission continues to authorise State Aid exclusively for DSL and new DSL generation networks despite the fact that the satellite infrastructure is already in place and can be used to immediately deliver broadband solutions in “white-spots” areas. This ability of satellite to provide a “time gap” filler solution should not be underestimated as it does not in anyway prevent NGAs from being developed in the more distant future.

II. The Commission Policy On State Aid For Broadband Projects

With respect to paragraph 13, where the Commission states that “*State measures supporting broadband deployment projects usually address the exercise of an economic activity (i.e., building, operating and/or managing a broadband infrastructure),*” SES ASTRA suggests that the Commission re-define “economic activity” to include not only “broadband infrastructure” but also the equipment required by each platform (i.e. mobile masts, satellite dishes etc.) to access the network.

In particular, SES ASTRA would like to draw the Commission’s attention to the fact that, in the case of satellite broadband, the purchase and installation of satellite dishes and terminals are a necessary “economic activity” for the roll out of the network. Indeed, in the specific case of satellite broadband, the necessary ground and customer equipment is typically not provided by the infrastructure provider/operators.

Consequently, and with the view to preserve the principle of technological neutrality, the Commission should take the above into account and make sure that the Guidelines reflect the fact that public financing should not be exclusively limited to infrastructure but should also include the related ground equipment and customer premise equipment (“CPE”) necessary to access broadband as is the case for broadband via satellite.

Accordingly, SES ASTRA respectfully submits that the Guidelines’ wording be amended to include “*building, operating and/or managing a broadband infrastructure and the purchase and installation of satellite dishes and equipment required to access it.*” Such a modification would clearly acknowledge that satellite broadband provided through existing or already procured satellite systems is eligible for State Aid and would bring the wording of the Guidelines in line with the interpretation of broadband “infrastructure” adopted by DG Information Society & Media and DG Agriculture & Rural Development. In that respect, SES ASTRA suggests that in order to facilitate roll-out and remove hardware cost barriers for the end users, subsidy schemes for the purchase and installation of the equipment (e.g. receivers, antennas, etc.) should be considered.

With respect to paragraph 15, where the Commission states that “*state support to broadband might reduce profitability and crowd out investment by market players that would otherwise be willing to invest*”, SES ASTRA again agrees with this statement and stresses that, before approving State Aid, the Commission must consider the broadband choices that already exist under free market conditions. Indeed, while ubiquitous terrestrial coverage is at least 10 years away in most EU Member States, providing State Aid to terrestrial broadband undermines and prevents investments in satellite and mobile infrastructures and thus impedes the immediate commercial roll-out of satellite and mobile broadband to rural areas. Satellite and mobile broadband are currently the best market solutions to the continuing digital divide while State Aid to DSL broadband providers will only reinforce the dominance of DSL and further prevent the expansion of broadband to rural areas. Should the case for satellite become weaker because of inappropriate State Aid, the opportunity for immediate roll-out will disappear as the necessary investments will no longer be undertaken. The Commission

should consequently underline the need for Member States always to consider the alternatives such as existing satellite services when they can actually fulfill the requirements very promptly and effectively.

In paragraph 32, the Commission states that *“the economics of broadband provision are such that the market will not always find it profitable to invest in it. Due to the economics of density, broadband networks are generally more profitable to roll-out where potential demand is higher and concentrated, i.e. in densely populated areas. Because of high fixed costs of investment, unit costs increase strongly as population densities drop.”* SES ASTRA respectfully submits that, contrary to what the Guidelines suggest, the ability to rollout satellite broadband commercially does not depend on the density of a specific area but rather on the total number of users, irrespective of their location. Consequently, SES ASTRA suggests that, when assessing broadband State Aids from a cost/benefit perspective, the Commission takes into account the fact that the satellite technology can connect isolated users quickly, efficiently, and in a cost effective way. Contrary to what the Guidelines suggest, un-served or low-density areas should consequently not be de facto considered as a disincentive for service provisioning. SES ASTRA respectfully suggests that, when assessing the overall cost of a broadband scheme and the commercial price of alternatives, the Commission acknowledge that satellite broadband can connect isolated users quickly, efficiently, and in a cost effective way.

With respect to paragraph 45(d), where the Commission 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,”* SES ASTRA strongly agrees with this statement and submits that the pace of technology advancements negates the need for any exceptions to this rule. SES ASTRA further submits that the Commission should take this opportunity to explain the benefits of alternative platforms (satellite, mobile, etc.) and should prevent any Member State bias against any particular technology.

Historically, satellite broadband has suffered from the perception that transmission was “slow” compared to terrestrial broadband. However, recent technical reports have confirmed that this assumption is no longer correct. Indeed, satellite broadband is the only solution that can guarantee speed of 2Mb/s to all users while ~20% of xDSL users get less than 1Mb/s. Furthermore, there is also a perception that “latency” severely affects satellite broadband performance. However, even if in the past a very small subset of applications (mainly in the gaming space) were affected by satellite latency, independent research by IDATE⁴ has confirmed that new satellite technology has removed this problem.

4 See, IDATE, “Broadband outlook in Europe and North Africa,” March 2009, Maxime Baudry and Stephanie Villaret, which states that “latency is not a major obstacle.” IDATE further states that “this drawback appears to be a non-issue as most of the popular applications on the web are not real time ones.”

SES ASTRA indeed believes that satellite broadband is today a viable alternative capable of relatively high speeds and subject to very low latency. When conducting its future assessments, Member States and the Commission should therefore seek independent benchmarking of the technical capabilities of the various alternative platforms. The Commission should in any event ensure that Member States have thoroughly researched and studied all technical alternatives, including satellite and mobile broadband.

In that respect, SES ASTRA wishes to underline that it is and must remain in all cases incumbent on the Commission to ensure that technological neutrality is indeed preserved under all circumstances. In particular, SES ASTRA wishes to underline that the Commission must make sure that the broadband State Aids that are considered by Member-States always take into account the immediate and short-term benefits for the end users and in particular those who remain excluded from the digital revolution. In other words, when reviewing proposed State Aids, SES ASTRA strongly suggests that the Commission always makes sure that citizens' access to broadband is not delayed to suit a particular technology's future. SES ASTRA indeed believes that the pace of today's technology advancements negates the need for any exception to this rule. The Commission should consequently support connectivity "now" and urge Member-States to use State Aid primarily and in priority for traditional broadband so as to ensure that EU citizens are not precluded from participating in defining and creating the wealth that broadband will no doubt facilitate.

In that respect, SES ASTRA wishes to suggest to the Commission that the Guidelines remind all stakeholders that today satellite can deliver a solution for the all citizens here and now and can consequently enable them to participate in the increasingly vital digital economy. With respect to paragraph 45(g), where the Commission states that benchmarking exercises must be conducted to ensure that excessive wholesale prices for broadband are avoided, SES ASTRA wishes to submit that such benchmarking exercises must take all platforms into consideration when considering the average wholesale price.

III. State Aid For NGA Networks

With respect to paragraph 48, where the Commission states that “*NGA network is further defined as involving: (i) laying fibre to existing street cabinets offering the prospects of downstream bandwidths of a minimum of 40 Mbps and 15 Mbps upstream (compared with today's downstream speeds of a maximum of 8 and 24Mbps for ADSL and ADSL2+ access technologies, respectively); (ii) upgrading current cable networks to deliver speeds up to and beyond 50 Mbps against the previous maximum speed of 20 Mbps, using the new 'DOCSIS 3.0' cable modem standard, or (iii) connecting newly built homes and offices with fibre connections offering services up to 100 Mbps and beyond*”, SES ASTRA wishes to suggest that speed should not be the only factor taken into consideration by the Commission when considering if viable alternatives exist on the market and that the Commission should always consider the marginal benefits of additional speed against the significant costs required to install NGAs. Consideration should also be given to consumer preferences and to the fact that the most likely bandwidth hungry applications served by NGA, which are likely to be IPTV/iplayer/other video-based applications, are, and will be, perfectly served by satellite infrastructure.

Furthermore, SES ASTRA submits that in order to respect the principle of technological neutrality, the Commission should extend its definition of NGA to include satellite broadband. SES ASTRA respectfully submits that the Commission must recognize that, today, satellite offers the best opportunity to create the hybrid networks that will be critical in the converging ICT space to roll out large scale triple play offerings in a sustainable way.

In that respect, SES ASTRA would like to refer the Commission to the opinion of the International Telecommunications Union (“ITU”) 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) and which details the role of all technological platforms. Specifically, the report noted 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” (emphasis added).

The ITU further stated 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” (emphasis added).

The ITU then called upon Member States to consider, inter alia, the following measures:

- 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.
- Encourage and facilitate the use of multiple approaches for NGN deployment, including use of satellite networks.

Finally, SES ASTRA suggests that the Commission should always consider the significant costs required to install NGAs and requests full transparency in the proposed Aid measures, in particular with respect to the applicable investments (e.g. Capital Expenditures proposed per household), so as to make sure that the proposed Aid is indeed capable of efficiently and cost effectively target remote areas citizens and thereby bridging the digital divide.

SES ASTRA remains at the Commission’s disposal to clarify and/or expand any aspects of the present submissions.