

## Comments on the European Commission's Public Consultation on the Revision of the Recommendation on Relevant Markets

by VON Europe, January 2013

### Preliminary Remarks

The Voice on the Net Coalition Europe ('VON') welcomes the opportunity to comment on the European Commission's Public Consultation on the Revision of the Recommendation on Relevant Markets (hereafter 'the Consultation').

### Detailed Responses

**Question 1: What are the technological developments in the electronic communications sector at the EU level as of 2007 that have an influence on how the markets should be defined in the revised Recommendation from an ex ante perspective?**

VON considers that the switchover to next generation networks (NGNs) has not removed Internet access bottlenecks. Too often, regulators' reasoning is based on the Article 7 process of definition of a relevant market, designation of a significant market power (SMP) provider and choice of remedies. By following this reasoning, regulators are likely to conclude that as the relevant market in the context of the Internet is 'competitive' and hence not a 'relevant' market, no single player has dominance and thus there is no incentive to behave in an abusive manner. This is not an acceptable path and it certainly does not reflect reality.

Network operators do have incentives to discriminate between players operating at the application and content layers of the OSI model, *i.e.* application and content providers, in particular when operators are vertically integrated into the application and/or content layers and if operators face limited competition at the infrastructure layer.

In these obvious vertically-integrated scenarios, network operators can act as monopolists by shaping traffic in a way that departs from the content, application and service providers', or users' interests.

But operators also have an incentive to engage in anti-competitive and other harmful behaviour even if they have not been declared as having significant market power at the infrastructure layer, and even if they are not vertically integrated.

Regardless of integration, network operators' control over the physical last-mile infrastructure necessary to access the Internet allows them to effectively determine whether end-users reach the Internet at all. **The problem is therefore centred on the Internet access bottleneck, and is particularly relevant in mobile markets, where only a limited number of operators exist.**

**Looking at market and consumer outcomes, VON strongly believes that the deciding factor in securing widespread adoption of NGNs will come from the availability of Internet content, applications and services that are attractive to users.**

**Question 2: What are the changes in structure and functioning of the relevant markets (e.g. supply and demand side developments, bundles, convergence, geographic scope), which should be reflected in the revised Recommendation from an ex ante perspective?**

**VON would like to point out that network operators are moving, slowly but surely, to more 'sophisticated' abusive practices, such as surcharging.** We have identified the following (non-exhaustive) list of incentives for network operators to engage in harmful discrimination on the Internet that are detrimental to both content, application and services providers as well as users:

- Discrimination by network operators that aims at favouring their own services, those of subsidiaries (in case of vertically-integrated providers) or a preferred partner, on the Internet, or that is intended to block or degrade content, applications, and services that are considered as potential competitors for their own offerings. A recent example of the first, is the cloud service launched by the French network operator Orange. Orange offers its fixed and mobile subscribers 50 to 100 Gb of storage space depending on their subscription and guarantees that the data traffic generated using its own cloud service does not impact their fair use limitation. The latter is not the case when users rely on competing services such as Microsoft SkyDrive or Google Drive.<sup>1</sup>
- A network operator can use its bottleneck power towards Voice over IP (VoIP) or other content, applications, and services to place them at a competitive disadvantage or harm them in different ways. This could result in undesirable outcomes, such as price or quality discrimination (*i.e.* intentional degradation of the quality of service (QoS) to encourage

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<sup>1</sup> See Champeau, G. (2012, November 21). Comment Orange favorise son Cloud sans violer (directement) la neutralité du net. *Numerama*. Retrieved at, <http://www.numerama.com/magazine/24317-comment-orange-favorise-son-cloud-sans-violer-directement-la-neutralite-du-net.html>.

consumers to only use the operators' own services). An illustration of such harmful conduct would consist in an operator reserving part of the Internet bandwidth for their own VoIP, in order to secure a competitive advantage over their perceived rivals, or through requiring VoIP providers to purchase a specific QoS level, or by requiring users to pay a surcharge for the right to use VoIP (this for example arose in the Shaw Cable dispute with Vonage in Canada, where Shaw allegedly charged end-users an extra QoS fee to use non-Shaw VoIP services).<sup>2</sup>

- Discrimination motivated from some network operators' focus, as evidenced in press statements, towards specific companies as *'those that make all the money'* from their investments in the network infrastructure. Such statements obviously forget that the infrastructure is only a means to access content, applications and services, but not a means to an end. This results in a situation where network operators can extort excessive rents out of their controlling position over a bottleneck.
- Important to realise is that part of the discussion behind the net neutrality debate is not only one driven by economic and financial considerations, but also by the issue of control combined with the fear of some network operators to see infrastructure treated as a commodity by content, application and services providers and users.

In Europe findings from the Body of European Regulators for Electronic Communications (BEREC) and the European Commission's joint investigation on traffic management have demonstrated that practices affecting individual applications or protocols such as VoIP and peer-to-peer (P2P) are commonplace.<sup>3</sup>

Many mobile network operators, including all mobile operators in several European Union Member States, have decided to adopt technical and/or contractual conditions preventing users from using VoIP and P2P applications, and certain other forms of utilisation are otherwise impeded or subject to unjustified additional retail tariffs.<sup>4</sup>

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<sup>2</sup> See CBC News. (2006). *Shaw, Vonage engage in war of words over internet phone service*. Retrieved at, <http://www.cbc.ca/news/business/story/2006/03/08/shaw-060308.html>.

<sup>3</sup> See BEREC. (2012). *A View of Traffic Management and Other Practices Resulting in Restrictions to the Open Internet in Europe. Findings from BEREC's and the European Commission's Joint Investigation* (BoR (12) 30). Retrieved at, [http://berec.europa.eu/files/document\\_register/2012/7/BoR12\\_30\\_tm-snapshot.pdf](http://berec.europa.eu/files/document_register/2012/7/BoR12_30_tm-snapshot.pdf).

<sup>4</sup> See VON Europe. (2012, February 23). *Identified Restrictions on Internet Access by Mobile Operators*. Available at, <http://www.scribd.com/doc/98641591/VON-Europe-Non-exhaustive-Indentification-of-Restrictions-on-Internet-Access-by-Mobile-Operators>. Although non exhaustive, this spreadsheet listing contractual and in some cases technical blockings by ISPs in the EU, as well as surcharges required to enable VoIP on mobile networks paints a rather grim picture in terms of VoIP availability in the EU on mobile networks.

VON believes that regulators and policy makers should ensure that network operators are prohibited from creating barriers to entry to over-the-top players, ranging from blocking, throttling or charging for the fact that their content, application or service runs over their network, while there is absolutely no evidence of free riding. In fact, it's quite the contrary, as the BEREC considers that "users at the 'edges' (i.e. subscribers and over-the-top players) of the Internet each pay for their own connections".<sup>5</sup>

More specifically, **from VON's perspective, the fact that some network operators ask subscribers to pay a surcharge to use VoIP applications on mobile phones is a clear abusive practice**, notably when considering that: (1) subscribers and content and application providers have both paid for their use of the network and (2) many of the VoIP applications are actually available for free or at a minimal charge.

**VON therefore considers that the European Commission should ensure that all end-users can continue to use the Internet applications, services and devices of their choice and access the content of their choice, as mandated by Article 8(4) g of the EU Framework Directive (FD) and that the principle of end-to-end connectivity set out under Art. 8(3) g FD is preserved.**<sup>6</sup> The Relevant Markets Recommendation, both in how it is revised and how its interpretation is encouraged by the European Commission, could certainly play in role in that context.

**Question 3: Can you identify any market bottlenecks which in your view cannot be addressed by ex ante regulation via a revision of the Recommendation alone? How in your view can such market bottlenecks be addressed?**

VON identifies the following three forms of bottlenecks whose solution extends beyond the scope of the Relevant Markets Recommendation, namely 1) net neutrality, 2) access to numbers and 3) roaming.

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<sup>5</sup> See BEREC. (2012). *Draft Report on Differentiation Practices and Related Competition Issues in the Scope of Net Neutrality*. p. 17 (Paragraph 61). Retrieved at [http://berec.europa.eu/files/news/bor\\_12\\_31\\_comp\\_issues.pdf](http://berec.europa.eu/files/news/bor_12_31_comp_issues.pdf).

<sup>6</sup> Though VON understands the BEREC's point in its draft QoS Guidelines on p. 10 that these articles should be read as setting goals, not as being tools in themselves, it is important that these goals be proactively pursued by BEREC and its members and that the QoS Guidelines ensure that all available tools are used to achieve these goals in the most effective and immediate manner. Leaving the current status quo certainly seems to contradict these policy objectives. See BEREC. (2012). *Draft BEREC Guidelines for Quality of Service in the Scope of Net Neutrality* (BoR(12) 32). Retrieved at, [http://berec.europa.eu/files/news/bor\\_12\\_32\\_guidelines.pdf](http://berec.europa.eu/files/news/bor_12_32_guidelines.pdf).

## **1) NET NEUTRALITY**

VON considers that, though it could have a role to play, the Relevant Markets Recommendation is not sufficient to guarantee an open Internet and net neutrality, as set-out in our remarks to questions 1 and 2, and would like to stress that in addressing this issue regulators and policy makers should strike a careful balance between:

- the need of network operators to manage their networks;
- the ability of service and application providers to develop and innovate, including the proverbial '2 guys in a garage';
- the position of content providers, regardless of whether they are a citizen, an administration, or a media conglomerate; and,
- the role of national regulatory authorities (NRAs) to address the risk inherent in a network operator's ability to discriminate in the treatment of traffic based upon the operator's control over a bottleneck and its resulting economic or other fundamental interests.

In order to safeguard this virtuous cycle characterising the Internet ecosystem and the ensuing benefits for all stakeholders in the future, four key principles should be adopted by regulators and policy makers going forward, namely:

1. The Internet should remain open so that everyone is able to send and receive the content, run the applications and use the services of their choice, on the device of their choice, within the law.
2. Traffic management should be kept to a minimum, and deployed for purely technical, security or legal reasons. There should be no discrimination in the treatment of Internet traffic, based on device, or the origin and/or destination of the content, application or service.
3. Meaningful information about any traffic management practices must be made available to all stakeholders, users and businesses, who rely on broadband infrastructure to reach their customers.
4. Future investment in network capacity and underlying infrastructure must take place in a way that is consistent with the end-to-end connectivity principle and where new models of Internet access do not compromise openness.

**These principles should be enshrined in specific guidance which covers at least the following elements:**

- A definition of the net neutrality principle and of the term 'Internet' (or 'Internet access');
- A definition of legitimate and harmful traffic management;
- A general prohibition of non-discrimination between Internet traffic streams unless done on legitimate traffic management grounds, and in particular a prohibition to violate the end-to-end connectivity principle, making clear that blocking or otherwise hindering VoIP or other applications or services is not a legitimate practice; and,
- A clear set of obligations on network operators regarding the neutrality and quality of service of the Internet access services on the one hand, and on specialized/managed services on the other, ensuring proper safeguards are in place to avoid a 'dirt road effect'.

The requested guidance would create the type of legal certainty that would allow the entire Internet ecosystem to continue its path of growth and innovation to the benefit of users and businesses across Europe and beyond.

The adoption of the details of these principles should benefit from the involvement of all relevant stakeholders, leveraging on the one hand the expertise of the national regulator, and on the other hand the practical input of network, content, application and service providers, consumer groups, and NGOs.

**Next to this, VON would also encourage regulators and policymakers to reject calls to further regulate IP interconnection, as not to interfere where market dynamics are functioning well.**

The Organisation for Economic Co-operation and Development (OECD) and the Body of European Regulators for Electronic Communications (BEREC) pointed out in a joint Report on peering<sup>7</sup> that this market is efficient and competitive. Moreover, in the 2007 explanatory note to the European

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<sup>7</sup> See OECD. (2011). *Internet Traffic Exchange: Market Developments and Policy Challenges* (OECD DSTI/ICCP/CISP(2011)2). Retrieved at, <http://www.oecd.org>; and Weller, W. (2011, November 2). *IP Traffic Exchange Market Developments and Policy Challenges*. BEREC Expert Workshop on IP-Interconnection in Cooperation with OECD, Brussels, November 2, 2011. Retrieved at, <http://berec.europa.eu/>.

Commission's Relevant Markets Recommendation, the European Commission reached the following conclusions in the area of peering:<sup>8</sup>

*"There are a number of differences between the typical arrangements for terminating calls on the public telephone network and delivering packets to destination addresses on the public Internet. In the latter case, end-users are implicitly paying to both send and receive packets. It is not automatically or typically the case that incoming traffic is charged for and that this charge is passed to the traffic sender via the sender's network. As indicated above, traffic connectivity can be arranged in a number of ways.*

*Entry barriers to this market are low and although there is evidence of economies of scale and that the ability to strike mutual traffic exchange (peering) agreements is helped by scale, this alone cannot be construed as inhibiting competition. Therefore (...) there is no a priori presumption that ex ante market analysis is required. Therefore, no market for wholesale Internet connectivity (or delivery of incoming packets) is identified for the purposes of the Recommendation."*

The BEREC also points out in its draft Report on IP-interconnection<sup>9</sup> that the European Commission has clearly stated in the framework of a notification by the Polish NRA UKE<sup>10</sup> that the IP peering and transit markets did not require *ex ante* regulation as they are competitive. The European Commission also pointed out that there was no reason to create two distinct markets that would differentiate between free peering on the one hand and paid-for IP transit on the other.

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<sup>8</sup> See European Commission. (2007). *Commission Staff Working Document – Explanatory Note – Accompanying document to the Commission Recommendation on Relevant Product and Service Markets* (SEC(2007) 1483 final). p. 37. [http://ec.europa.eu/information\\_society/policy/ecomm/doc/library/proposals/sec2007\\_1483\\_final.pdf](http://ec.europa.eu/information_society/policy/ecomm/doc/library/proposals/sec2007_1483_final.pdf).

<sup>9</sup> See BEREC. (2012). *Draft Report on An assessment of IP-interconnection in the Context of Net Neutrality* (BoR (12) 33). p. 44 (footnote 128). Retrieved at, [http://berec.europa.eu/files/document\\_register/2012/7/bor\\_%2812%29\\_33\\_ip\\_ic\\_assessment\\_nn\\_draft\\_report\\_for\\_publication\\_clean.pdf](http://berec.europa.eu/files/document_register/2012/7/bor_%2812%29_33_ip_ic_assessment_nn_draft_report_for_publication_clean.pdf).

<sup>10</sup> See European Commission. (2010, March 3). Commission Decision of 3 March 2010 pursuant to Article 7(4) of Directive 2002/21/EC (Withdrawal of notified draft measures) – Case PL/2009/1019 : The wholesale national market for IP traffic exchange (IP transit) – Case PL/2009/1020: The wholesale market for IP traffic exchange (IP peering) with the network of Telekomunikacja Polska S.A. Retrieved at, [http://circa.europa.eu/Public/irc/info/ecctf/library?l=/poland/registered\\_notifications/pl20091019-1020/act\\_part1\\_v4pdf/ EN\\_1.0 &a=d](http://circa.europa.eu/Public/irc/info/ecctf/library?l=/poland/registered_notifications/pl20091019-1020/act_part1_v4pdf/ EN_1.0 &a=d).

VON therefore considers that IP interconnection should be left to market forces, seeing that the BEREC concludes in its draft Report on IP-interconnection that:<sup>11</sup>

- *“The Internet ecosystem has managed to adapt IP interconnection arrangements to reflect (inter alia) changes in technology, changes in (relative) market power of players, demand patterns and business models. This happened without a need for regulation.”;*
- *“In the Internet ecosystem speed and flexibility to adapt interconnection arrangements outweigh formal codification of interconnection rules (99 % of interconnection arrangements are concluded on a handshake basis).”; and,*
- *“The market has developed very well so far without any significant regulatory intervention.”*

The OECD also reached similar conclusions in its 2012 Report on ‘Internet Traffic Exchange: Market Developments and Policy Challenges’, which remarks that:<sup>12</sup>

*“Operating in a highly competitive environment, largely without regulation or central organisation, the Internet model of traffic exchange has produced low prices, promoted efficiency and innovation, and attracted the investment necessary to keep pace with demand.”*

## 2) ACCESS TO NUMBERS

The current regulatory framework sets a *de minimis* rule whereby numbers should be allocated **at least** to electronic communications services (ECS), without precluding the allocation of numbers to non-ECS. This is set out under Article 10 of the EU Framework Directive (2002/21/EC) which only states that:

*“1. (...) Member States shall ensure that adequate numbers and numbering ranges are provided for all publicly available electronic communications services.”*

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<sup>11</sup> See BEREC. (2012). *Draft Report on An assessment of IP-interconnection in the Context of Net Neutrality (BoR (12) 33)*. p. 49-50. Retrieved at, [http://berec.europa.eu/files/document\\_register/2012/7/bor\\_%2812%29\\_33\\_ip\\_ic\\_assessment\\_nn\\_draft\\_report\\_for\\_publication\\_clean.pdf](http://berec.europa.eu/files/document_register/2012/7/bor_%2812%29_33_ip_ic_assessment_nn_draft_report_for_publication_clean.pdf).

<sup>12</sup> See Weller, D. & Woodcock, B. (2012). *Internet Traffic Exchange: Market Developments and Policy Challenges* [OECD Digital Economy Papers No. 207]. p. 6. Retrieved at, <http://www.oecd-ilibrary.org/docserver/download/5k918gpt130q.pdf?expires=1354015272&id=id&accname=guest&checksum=F48702F0E6DF87E7C4C5314C59ECA64>.

Under the reviewed regulatory framework, Article 10.4 of the revised EU Better Regulation Directive (2009/140/EC) stipulates that:

*“Member States shall support the harmonisation of specific numbers or numbering ranges within the Community where it promotes both the functioning of the internal market and the development of pan-European services. The Commission may take appropriate technical implementing measures on this matter.”*

The flexibility given to national regulatory authorities (NRAs) appears even more clearly when analysing the guidance provided by the European Commission in its Information and Consultation Document of 14 June 2004 on the treatment of VoIP under the EU Regulatory Framework, which states in Section 7.1 that:<sup>13</sup>

*“Any undertaking providing **or using** electronic communication networks or services has the right to use numbers (...)”* – (emphasis added)

Unfortunately, the current practice shows that eligibility status and conditions vary considerably across the member states with some NRAs requiring service providers to notify as Publicly Available Telephone Service (PATS) in order to be eligible to apply for numbering resources. Though this is not per se a ‘market’ bottleneck, it is certainly encouraged by some market players to the detriment of others.

Past studies by the European Regulators Group (ERG) also show that the type of numbering range open to IP enabled service providers varies substantially (from the regular national or geographical numbering ranges to specific ‘nomadic’, toll free and calling card numbering ranges). In addition, the allocation of the same type of numbering range (*e.g.* a regular geographical numbering range) may be associated with multiple variable usage conditions (varying from no usage conditions to supplementary restrictions to install specific equipment in the territory, require to obtain a local address of the user, or to ‘terminate’ calls in the geographical zone). Moreover, from a technical point of view, non-geographic numbers such as specific ‘nomadic’ numbers are not always reachable from all networks, and are in many cases not reachable or only reachable against higher tariffs for the calling party from another country.

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<sup>13</sup> See European Commission. (2004). *Commission Staff Working Paper Working Document on the treatment of Voice over Internet Protocol (VoIP) under the EU Regulatory Framework. An Information and Consultation Document*. Retrieved at, [http://ec.europa.eu/information\\_society/policy/ecomm/doc/library/working\\_docs/406\\_14\\_voip\\_consult\\_paper\\_v2\\_1.pdf](http://ec.europa.eu/information_society/policy/ecomm/doc/library/working_docs/406_14_voip_consult_paper_v2_1.pdf).

As a result, today's pan-European service providers face the difficulty to assess and comply with 27 different regulations in order to be allocated and use numbering resources. The profound analysis of the eligibility and usage conditions for the allocation of numbering ranges is not only a highly time consuming effort (resulting in a late time to market), it also requires substantial financial resources.

In general, **VON believes that no separate numbering range should be required for new innovative services and applications**, including offerings that make use of Voice over IP (VoIP) to make outbound calls. Experience shows that consumers are reluctant to call to (or call back to) new numbers (as there is uncertainty about the retail price) or switch to new numbers. In addition, established operators have often restricted or substantially delayed (in several cases by many years) the implementation of specific numbering ranges for nomadic VoIP.

VON would also like to point out a bottleneck in accessing mobile numbers for innovative services, as a number of EU Member States are reserving the allocation of mobile numbers to operators controlling mobile spectrum (mobile network operators (MNOs)) and/or to operators or service providers offering mobile services on the basis of a contractual arrangement with an MNO, such as mobile virtual network operators (MVNOs).

Such an approach constitutes a violation of the European regulatory framework, as these restriction are an unjustified discrimination between providers of mobile services depending on the technical configuration they use. This is also inconsistent with the objective that regulation should be technologically neutral, and prevents innovation in mobility-enablement, thereby depriving users of new types of communications solutions. Numbers for mobile services can universally be reached from all national and international networks, and only such numbers enable the problem-free inter-network and billable reception of voice, SMS and MMS.

**VON considers that a forward looking approach would be to treat all numbers in a technology neutral manner to reflect the user demand of being accessible everywhere, all the time, on every device, in the most convenient and ubiquitous manner.**

In terms of numbering, it has long been considered that the primary distinguishing feature of geographic numbering is its geographic significance. This was linked to the fact that a geographic number was in the past associated to a tariff range, an expected call quality and a specific location of the recipient of the call.

The rules for geographical numbers were historically and traditionally designed for legacy circuit-switched networks and the associated exchange architecture. These rules are obsolete, highly prescriptive and limit flexibility for new innovative services. IP networks do not require restrictive numbering rules to switch and route calls.

Location information of geographic numbers is a legacy from the Plain Old Telephony Services. However, in reality geographic numbers are increasingly not representative of the location of a called party: for example, with call forwarding, a call to a number supposedly located in a specific geographic region, could very well be forwarded to an entirely different place. Moreover, in recent years, people have become more flexible, ready to move and travel at any time. Many users increasingly want to be connected all the time, everywhere and on any device. Mobile phones are overtaking fixed phones and calling your plumber happens more often than not on his mobile phone.

It is therefore becoming increasingly obvious that consumers are no longer truly concerned with location information, but rather with the cost of calling. Consequently, the reason why geographic numbers are used by residential and business customers is because of the retail price transparency. VON therefore strongly believes that geographic numbers are most suitable to open up VoIP opportunities to the mass market, given that consumers are highly familiar with those types of numbers and end user tariffs are transparent (or at least not less transparent than other types of numbers).

Currently, many providers of VoIP-enabled offerings provide the possibility to call for free or at very low flat fee tariffs that are the same regardless of location. In parallel, people divert their fixed phones, or even abandon them to exclusively use mobile phones.

**Preserving location information when terminating to geographic numbers would keep an additional barrier for new entrants**, especially those providing innovative applications and services and including use of geographic numbers, because users demand geographic numbers.

**VON calls upon the European Commission to ensure that numbering ranges can be used in the same forward-looking way throughout the European Union.**

**Overall, VON considers that the approach to numbering should not be one of obligations versus rewards.** Nor should it be one that is unable to encompass and embrace the imminent changes brought by convergence of all networks and the switch to an all-IP environment, and the increasing

role of Internet applications on fixed and mobile devices. Regrettably, the Electronic Communications Committee (ECC) remarked in its 2010 Report on the Evolution of Geographic Numbers that:<sup>14</sup>

*“The design of NGNs (Next Generation Networks) implemented today is very much ‘PSTN (Public Switched Telephone Network) on IP based networks’ with the features and restrictions of the PSTN being copied.”*

### 3) ROAMING

VON sees no evidence that the Roaming Regulation has led to a single market for roaming, and little evidence that it has led to enhanced consumer protection, cheaper prices, or competition. Indeed, retail roaming prices remain high and consumer choice, either in mobile voice roaming or perceived alternatives, are not obvious.

VON would like to remind the European Commission that cross-border Voice over IP (VoIP) has been one of the first true examples of a translation of the concept of a single market – one of the key objectives of the European Union and European Commission Vice-President Kroes’ Digital Agenda – into practice. The use of VoIP can hence in theory deliver alternatives to users phoning in an international roaming context. However, the current patchwork of regulations faced by VoIP providers combined with the abusive behaviour of certain access operators – that either block, degrade or charge a subscription fee for third-party VoIP on top of the data package already paid for by the user – creates multiple barriers to entry, hence stifling the advance of alternatives for mobile international roaming, and this to the detriment of all European citizens.

It is the blocking, degradation and/or discrimination by network operators against a number of Internet applications, services, and protocols – such as VoIP or even more broadly peer-to-peer (P2P) – occurring across Europe that broadly affects the potential of VoIP providers to deliver a true alternative for mobile international roaming (and hence the possibility for European citizens to benefit from it).

The EU Roaming Regulation (531/2012) states in Recital 7 that *“the Commission noted in its Communication entitled ‘On the interim report on the state of development of roaming services within the European Union’ that technological developments and/or the alternatives to roaming*

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<sup>14</sup> See ECC. (2010). *Evolution of Geographic Numbers* [ECC REPORT 154]. Luxembourg: CEPT. Retrieved at, <http://www.erodocdb.dk/Docs/doc98/official/pdf/ECCREP154.PDF>. p. 24.

services, such as availability of Voice over Internet Protocol (VoIP) or Wi-Fi, may render the internal market for roaming services in the Union more competitive”, and remarks that “while these alternatives, in particular VoIP services, are increasingly being used at the domestic level, there have been no significant developments in their use when roaming”.

The constraints on popularity of VoIP over mobile networks are the high retail prices for the use of mobile data (including VoIP surcharges in several cases, leading to double payment) and the contractual and technical restrictions on VoIP imposed by mobile network operators. The European Commission remarked in its interim Report that the “average retail prices still present a substantial margin over the (falling) wholesale rates”.<sup>15</sup> It is undeniable that the difference between national retail prices (which are themselves so high as to deter take-up) and international data roaming retail prices is staggering and clearly unjustified, and a major hindrance to consumers’ take-up and use of the Internet while abroad.

VON can therefore only (and sadly) agree with the European Commission’s conclusion in its 2010 public Consultation on the functioning of the Roaming Regulation (544/2009) that there’s “a lack of (or substantial imperfections in) roaming substitutes which means that customers have had no effective means of substituting for the roaming service”.<sup>16</sup>

**VON therefore urges the European Commission to take appropriate measures to guarantee the development and growth of competitive alternatives to mobile international roaming in order to ensure consumer choice.**

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We thank you in advance for taking consideration of these views. Feel free to contact Herman Rucic, VON Europe, by phone (+32 (0)478 966701) or email ([hrucic@voneurope.eu](mailto:hrucic@voneurope.eu)) should you need further information.

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<sup>15</sup> European Commission. (2010). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the interim report on the state of development of roaming services within the European Union* [COM/2010/0356 final]. p. 13. Retrieved at, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0356:FIN:EN:PDF>.

<sup>16</sup> See European Commission. (2010). *Public Consultation on a Review of the Functioning of Regulation (EC) No 544/2009 (the “Roaming Regulation”)*. p. 3. Retrieved at, [http://ec.europa.eu/information\\_society/policy/ecomms/doc/library/public\\_consult/roaming/roaming\\_consultation.pdf](http://ec.europa.eu/information_society/policy/ecomms/doc/library/public_consult/roaming/roaming_consultation.pdf).



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### **About the VON Coalition Europe**

The Voice on the Net (VON) Coalition Europe was launched in December 2007 by leading Internet communications and technology companies, on the cutting edge to create an authoritative voice for the Internet-enabled communications industry. Its current members are Google, Microsoft, Skype, Viber, Vonage, Voxbone and WeePee.

The VON Coalition Europe notably focuses on educating and informing policymakers in the European Union and abroad in order to promote responsible government policies that enable innovation and the many benefits that Internet voice innovations can deliver.