

VPRT Comments
on the Consultation of the European Commission
on
"Transforming the digital dividend opportunity into
social benefits and economic growth in Europe"

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Preliminary Remarks

The Verband Privater Rundfunk und Telemedien e. V. (VPRT), Association of Commercial Broadcasters and Audiovisual Services in Germany is registered in the EU-Com Registry (ID number is 27085111347-65) and represents the interests of some 160 companies in the fields of commercial television, radio and telemedia. The development of a competitive broadcasting and audiovisual media services landscape calls for both legal and planning certainty, especially in terms of the necessary broadcasting infrastructure, receivers and the relevant standards.

The VPRT therefore welcomes the European Commission's recognition of the Digital Dividend as a „unique opportunity“ for the development of terrestrial broadcasting as well as for mobile broadband services. Effective spectrum management offers room for new broadcasting services such as high definition TV (HD-TV), Electronic Programme Guides (EPGs) and mobile broadcasting services. In the consultation document the European Commission raises important questions that have to be solved in order to develop a future-proof telecommunication market.

Numerous studies demonstrate that there are still many unsolved questions regarding the vision of a interference-free, satisfying and economically viable co-existence of mobile electronic communications services and the established DVB-T structure for the transmission of broadcasting signals.

The VPRT would like to assure to contribute our technical expertise in order to find a satisfying solution for all parties involved. At the same time, the VPRT would like to call on the Commission to wait for the results of the ongoing legislative procedure on the review of the framework on electronic communications services, the so called Telecom Package Review and to come up with concrete proposals after the adoption of the multi-annual radio spectrum programme foreseen in the Framework directive by the European Parliament and the Council. An anticipation of the Telecom Package Review would unduly interfere with the rights of the European Parliament and the Council.

Executive Summary

The Prerequisite to the admission of mobile broadband services in the UHF band is that broadcasting reception, wireless microphone applications and other secondary uses of the UHF spectrum **do not face interferences** reducing their quality of service.

Operators of new telecommunication services will also share this concern as they have a great interest in satisfying their customers with interference-free high quality services. Regarding the European Commission's key objective to supply rural areas with mobile broadband services, the VPRT member companies have constructively in the recent months contributed in achieving this as it is essential for them too.. VPRT members **accept to free the spectrum of 790-862 MHz** in line with the **results of WRC07** and under certain conditions in order to allow the deployment of mobile broadband services via UHF spectrum and to help closing the "digital divide" in rural areas. The VPRT would **oppose any further opening of the UHF band beyond channels 61 to 69** at this stage.

The VPRT welcomes that the EU Commission proposes a **Roadmap for an improved coordination** for the use of the Digital Dividend in Europe. Especially when discussing the "White Spaces" and "Low-Power-Networks" the roadmap must take into utmost account the need for an interference-free broadcasting reception and for further developments of broadcasting in order to fulfill the expectations of millions of viewers and listeners. The VPRT therefore opposes the EU Commission reflections in the consultations document.

The VPRT supports the EU Commission to promote **improved receiver and transmission standards**.

The decision on the allocation of the Digital Dividend should **not only follow economic criteria**. On the contrary, the broadcasters' obligations to serve the general interests for society have to be fully taken into account. A purely economic approach on the use of the Digital Dividend would destroy the sensible balance between the restrictive and burdensome broadcasting regulation and the privileged access to transmission capacities.

The VPRT calls on the European Commission to set as a condition for the allocation of spectrum to telecom operators the effective supply to rural areas of mobile broadband and to ensure broadcasting and the secondary services mentioned above do not suffer interferences. The **principle of service neutrality** which has constantly been criticised by the VPRT has therefore to be restricted in order to serve the public's interest.

The VPRT **opposes** the European Commission's plans for a **European-wide harmonisation** concerning e.g. the **opening of the UHF band by means of urgent measures** or the obligation of Member States to set a **mandatory switch-off date for the analogue TV transmission**.

Regarding the proposed „**urgent measures**“ the VPRT calls on the European Commission to wait for the final adoption of the new Telecom Package, to respect the legislative will of the European Parliament and the Council and therefore not to propose or even adopt a premature radio spectrum decision. **The VPRT clearly opposes the proposed urgent measures.**

Number 3: Towards an EU Roadmap

Economic benefits of the Digital Dividend

On the basis of a study the European Commission expects an economic benefit of 20 to 50 bn Euros and additional 30 bn Euros through continued EU coordination. Although the consultation document states the recognition of the fact that the roadmap must respect national specificities, the economic estimations of this document show the contrary. When evaluating the value and the benefits of the Digital Dividend other studies take into account non-economic criteria such as the contribution of broadcasting and audiovisual services to media pluralism.

EU roadmap as a practical way forward

The consultation document assumes that by means of a European roadmap strategic decisions such as the definition of procedures or deadlines are better taken on European level than by Member States individually.

The VPRT supports a **European wide coordination** of Member States on spectrum issues in order to avoid cross border harmful interferences. However, the VPRT would like to stress that this should not result in a harmonised decision on spectrum of the European Commission beyond a purely technical harmonization. The VPRT therefore welcomes the fact that the RSPG proposed in its draft opinion of May 2009 a „coordinated non-mandatory EU approach“, especially as national specificities have to be taken fully into account.

A **European coordination** should mainly serve the coordination of the timing of certain measures of Member States in order to free the Digital Dividend spectrum in a narrow time frame and in order to reduce the risk of harmful interferences. The migration of services should only take place if a timely use of the spectrum is expected. Any premature freeing of the spectrum must be avoided.

Equally the VPRT calls on the European Commission to ensure that **only the frequencies in the range of 790-862 MHz** are opened for the use of mobile broadband services. The remaining frequencies in the UHF band must remain “untouched” and continue to be allocated to broadcasting services in order to ensure the further development of broadcasting services and to satisfy the consumers’ expectations.

Number 4: Proposed Elements of the Roadmap

4.1. Improving consumers' experience by ensuring high quality standards for terrestrial digital television receivers in Europe

Regarding the increased expectations of consumers concerning the quality of broadcasting services and the number of channels and programmes available the European Commission proposes to promote and coordinate improved standards such as H264/MPEG-4 AVC as well as new standards for receivers that will be sold after 1 January 2012 to ensure the avoidance of harmful interferences.

a. Ensuring the availability of a compression standard on all DTT receivers sold after 1 January 2012 that is at least as efficient as the H264/MPEG-4 AVC standard.¹

In general the migration from one standard to another takes an enormous amount of time as consumers have to replace their old receivers by new ones. If, after 2012, only receivers containing additionally MPEG-4 are offered the switch over period can be much shorter. The VPRT welcomes the establishment of improved standards. It is important that new receivers are downward compatible so that receivers in place can still be used. At the same time, future receivers should be “intelligent”, meaning that they are addressable (“adressierbar”) and contain decryption systems or that they can be upgraded. It has to be recalled that much of the discussion is about increasing the efficiency of broadcasting transmission. As a consequence, these efficiency improvements must primarily create room for the further development of broadcasting services. It should not be a means to initiate a discussion to free up further frequencies.

b. Setting standards for the ability of digital TV receivers to resist interference.

The setting of new standards that ensure that TV receivers resist interferences is urgently needed. The VPRT **supports fully the establishment of interference resisting receiver standards.**

4.2. Increasing the size of the Digital Dividend through spectrum efficiency gains

The consultation document describes channels 61 to 69 as the Digital Dividend that shall be used on a technological and service neutral basis by mobile broadband services.

The VPRT supports the increase of the use of spectrum in these channels, but **opposes any further opening of the UHF band beyond the sub-band formed by channels 61 to 69.**

a. Promoting collaboration between Member States to share future broadcasting network deployment plans (e.g. migration to MPEG-4 or DVB-T2)

At the moment there are over 16 mio. DVB-T-receivers in the market in Germany. The switch over to the follow-up standard DVB-T2 or MPEG-4 can only take place if the receivers still support the standard MPEG-2, meaning that these are downward compatible. Without this precaution the consumer would be forced to exchange his/her TV equipment since the latter would only support the reception of „DVB-T old“ and this would only be feasible if the consumer sees a clear added value in exchanging the equipment.

For broadcasters, such a situation would mean a complete loss of audience reach and therefore as well a complete loss in income. Any kind of decrease in audience reach whether due to a change of transmission channel to the benefit of mobile broadband services or as a result of the change of receiver or transmission standards due to lacking downward compatibility is a serious risk for commercial broadcasters – up to the cessation of business.

Before deciding on such measures one has to make sure that the audience reach is not at risk and, if so, what kind of remedies can be taken in order to prevent damages.

¹ TV receivers, set-top-boxes and other receivers

New receivers have to be downward compatible, meaning they must receive DVB-T2/MPEG-4 as well as DVB-T (old). If so, the VPRT fully supports the measures to migrate to DVB-T2/MPEG-4.

b. SFNs over Multiple Frequency Networks (MFNs)

In the future broadcasting will continue to be transmitted via SFNs according to the High-Power/High Tower principle over wide areas and wide reach. Other network topologies cannot be discussed as they are neither technologically nor economically viable.

c. Supporting research into "frequency agile" mobile communications systems

See comments under 4.5.

4.3. Making the 800 MHz band available for low/medium power electronic communications networks, under harmonised technical conditions, following the principle of technology and service neutrality

The VPRT agrees with the European Commission on the need to provide broadband services to all areas in all Member States. VPRT members invest in new content, services and technologies that can also be transmitted via broadband and that need a certain bandwidth. A / **The Prerequisite for the opening of the UHF band for mobile broadband services is that the broadcasting reception does not suffer from harmful interferences.**

In Germany, VPRT members have constructively found an agreement with the National Network Authority (Bundesnetzagentur), the Federal Ministry of Economy and the Länder to free channels 61 to 69 to the benefit of mobile broadband services. Despite clear commitments, it is not ensured that the terrestrial and cable transmission will be free of harmful interferences. Recent studies of HHI, ANGA/IRT give evidence² that in the case of a nationwide deployment of the new mobile broadband technology over 16 mio DVB-T-households and over 18,5 mio cable households might face important harmful interferences. Furthermore, it is unclear if the technical and marketing costs for the migration to other channels will be compensated – despite corresponding commitments.

Service neutrality versus objective of broadband for rural areas

Following the RSPG Draft Opinion, the European Commission proposes a service neutral use of the Digital Dividend. The VPRT calls on the Commission to wait for the final adoption of the Telecom Package Review as its **framework directive restricts the principle of service neutrality in Articles 9 following**. The consultation document does not reflect this issue. Therefore the European Commission risks that any measure or decision taken before the adoption of the Telecom Package-review will not be in line with the directives adopted and would deliberately contradict the declared political will of the European Parliament and the Council.

Moreover the European Commission originally declared that the spectrum freed by the switch over from analogue to digital TV transmission, the Digital Dividend, shall primarily be used for “bridging the digital divide” and for closing the broadband gap in rural areas. This objective is not contained in the consultation document. On the con-

² Fraunhofer / HHI-Studie: Aspekte der optimalen Nutzung der Digitalen Dividende in Deutschland; ANGA/IRT-Studie: Beeinflussung der Dienste auf TV-Kabel-Infrastrukturen durch bidirektionale terrestrische Anwendungen LTE (Long Term Evolution) im UHF-Bereich

trary, the VPRT fears that by following the principle of service neutrality a bundle of different purely commercial services might take place on spectrum freed by broadcasters for the deployment of broadband in rural areas.

The VPRT calls on the European Commission to set as a condition for the allocation of spectrum to telecom operators the effective supply to rural areas of mobile broadband and to ensure broadcasting and the secondary services mentioned above do not suffer interferences. The principle of service neutrality which has been constantly criticised by the VPRT has therefore to be restricted in order to serve the public's interest.

Opening the UHF band is not a purely technical measure

The opening of the upper part of the UHF band, and the switchover from analogue to digital TV transmission (from MPEG-2 to MPEG-4 or DVB-T to DVB-T2) might have enormous consequences on the reach of programmes, on investments of broadcasters in DVB-T and especially on consumers that might have just purchased new TV equipment and who trust in interference free broadcasting reception. Consequently, decisions or measures related to these issues need a democratic legitimisation. **The VPRT strongly opposes the consultation document's qualification of the opening of the upper UHF band as a purely "technical measure" that might be taken by the European Commission alone or, even, in the case it this measure is classified as an "implementing measure", in a comitology procedure.**

Different approach for purely technical parameters

Regarding purely technical parameters, the VPRT agrees with the RSPG advice to define technical conditions for the freeing up of spectrum on the basis of the CEPT results. This definition must take into account the different levels of interference regarding the downlink and uplink. The VPRT therefore argues for a uniform coordination of downlink and uplink. In order to avoid harmful interferences the VPRT welcomes the definition of minimal requirements, meaning also to respect the rights of secondary users.

Deadlines for implementing the measures and to free the upper UHF band

The VPRT does not see a need for the Commission to act speedily and present its proposals on 31 October 2009 the latest so that stakeholder can plan investments and adapt to the technical changes until 2012. Again, the VPRT calls on the Commission to wait for the adoption of the Telecom Package Review in order to base its decisions on a future-proof legal framework.

The VPRT is negotiating with the Ministry of Economy the parameters for the migration of broadcasting to channels under 61, especially the cost issue. Negotiations are not expected to be terminated before the end of 2010.

Moreover the coordination of electronic communications networks and services can only start after the all the Member States have freed the 800 MHz band completely. When trying to coordinate, the European Commission has to respect the rights of use of PMSE until 2015 as well as the schedule of „slower“ Member States and control any premature deployment of mobile broadband services in other Member States.

If Member States start mobile broadband services in the UHF band while neighbouring Member States still use these frequencies for broadcasting, the broadcasting reception risks suffering considerable harmful interferences. This must be avoided.

Spectrum planning is still part of the original competences of the Member States. The WRC07 results leave it up to the Member States to use the upper UHF band for mobile broadband services or to continue using it for broadcasting services only.

The VPRT opposes the reflections of the European Commission to impose on Member States mandatory deadlines for technical implementing measures or to open the upper UHF band for mobile broadband services (by associating with footnote 5.316 of the ITU Regulations).

The VPRT also sees the proposed urgent measures very critical (see comments on number 5.).

4.4. White Spaces and 4.5. Microphone services as well as frequency agile services

The VPRT welcomes the fact that the European Commission encourages Member States to cooperate and to identify unused spectrum in order to use these for new services such as cognitive radio. "White Spaces" are used for microphone services and other services that are needed for producing broadcasting programmes. They also serve as buffer in order to avoid harmful interferences. White Spaces constitute a local or regional phenomenon so that solutions for the latter should be taken at local or regional levels.

As receivers shall be able to receive as well as to send/transmit, to be used as mobile or as portable service, they have a high potential for **interfering harmfully with DVB-T, microphone services and other secondary services as well as with cable networks.**

The same arguments should be taken into account when discussing "frequency agile" services.

Besides the risk of harmful interferences in the reception of the broadcasting signal due to a possible use of these white spaces for broadband services there are further issues at stake raising our concern:

If White Spaces are used for new services the **possibilities for further broadcasting developments are at risk.** Even if the priority of broadcasting is formally provided, the national regulator (Bundesnetzagentur) might actually not be able to localize users of unlicensed spectrum and to force them to cease their activities and their investments. This risks blocking the structure of DVB-T forever.

Additionally alternative technical services exist to bring broadband to rural areas (e.g.: via Satellite, „Broadband Wireless Access“ (BWA) or WIMAX).

The use of White Spaces and of frequency agile services must be preceded by studies proving that the planned usage will not interfere with and damage broadcasting services. Further development of broadcasting services must not be hampered.

4.6. Efficient coordination with Non-EU-Member States

From the point of view of the VPRT the coordination with Non-EU-Member States is sufficiently granted within the ITU and CEPT. Nevertheless, the VPRT supports a EU-plattform which involves all stakeholders.

4.7. Future Challenges

The VPRT welcomes the European Commission proposal to publish regular reports on technical, market and societal developments in order to adapt the roadmap.

5. Urgent Actions

The VPRT would like to oppose the proposed urgent measures proposed in para. 5.

5.1. Accelerating analogue switch-off by 2012

The EU Commission plans to request Member States to accelerate the switch off of the analogue TV transmission by a **mandatory switch off date setting 2012 as the latest possible moment to do so**. The VPRT opposes a European obligation to set such a mandatory switch off date as frequency management still is an original competence of each Member State.

5.2. Taking steps towards the opening of the 800 MHz band for electronic communications services by adopting harmonised technical conditions of use in Europe

Taking the need to avoid the fragmentation of the market and the efforts for economic recovery as a justification, the European Commission proposes to open the upper UHF band by adopting harmonised technical conditions of use in Europe by means of a spectrum decision. At the same time, Member States shall refrain from any regulatory action regarding the use of the 800 MHz band that would contradict, or complicate the application of, the technical harmonisation measure being planned at EU level.

The decision to open the UHF band and the decision on how to use it lays in the original competence of the Member States. As already pointed out above, Germany is preparing the opening of its UHF band. Broadcasters and consumers will face important changes. The opening of the UHF band is therefore a highly political decision that is not to be taken by the European Commission. Such a decision is not covered by the still valid radio spectrum decision.

On the contrary, the Telecom Package-Review provides in Article 9c that non-technical implementing measures must be taken in a legislative process by the European Parliament and the Council. The VPRT does not see any need for harmonization measures at this stage.

Berlin, 31 August 2009
