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DLM Response to the EC Consultation document

'Transforming the digital dividend opportunity into social benefits and economic growth in Europe'

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The Director's Conference of the German Regulatory Authorities for Private Broadcasting (DLM) is grateful for the opportunity to present its response to the Commission's consultation Document of 10 July 2009.

A. Priority Issues

Before commenting in detail on the proposals put forward by the Commission under Sections 4 and 5 of the Consultation document, DLM would like to raise three issues upfront which are of particular importance.

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I. Interference issues and associated costs

DLM agrees with the Commission that the digital dividend offers huge opportunities to develop new wireless services in the 800 MHz band as well as to enable the continuous development of terrestrial broadcasting to the benefit of both consumer's and industry. However, the provision of adequate measures to exclude interferences between respectively digital broadcasting services and mobile services and the question who will bear the costs for these measures remain, according to our view, crucial for a successful Digital Dividend Policy. Both should be dealt with prior to the implementation of new services in the UHF band.

DLM does not share the Commission's assumption on page 4 that, on the basis of the CEPT reports, all interference problems resulting from the coexistence of mobile and broadcasting services can be properly dealt with. This is not true for mobile and portable reception of DTT which is particularly frequent in Germany in populated areas and which has not been covered by the CEPT studies. Neither is it true for the uses analysed in the CEPT reports. CEPT Report 30 states that *'block edge masks (BEM) do not always provide full protection of victim services and in order to resolve the remaining cases of interference additional mitigation techniques would need to be applied'*. Furthermore, the CEPT reports are still open to comments so that no final results are available yet. It results from national compatibility studies between broadcasting and mobile services that interference will occur with the currently discussed channelling arrangement and BEM (Block Edge Mask) and that additional measures will be needed to protect the broadcast services (guard bands of 10 MHz and filters, among others). Even cable network reception will face severe interference problems through LTE-applications in the UHF-spectrum. It should also be noted that LTE- equipment is not available yet so that interference solutions are based on theoretical assumptions which have not been tested in real life yet.

A future European roadmap, endorsed by the Parliament and the Council, should address the complexity of interference management issues in more detail and with more precision. It should, according to DLM's view, at the same time outline the responsibilities of the providers of new services for interference management and associated costs in order to ensure equal market conditions in the internal market.

II. Broadband access in rural areas

The Commission underlines (page 1) the necessity to give early access to the digital dividend in order to – also – ensure broadband coverage in rural areas. The consultation paper however does not take this issue further nor does it propose any specific actions in this respect.

DLM strongly favours an approach to use part of the 800 MHz spectrum in order to bring broadband to rural areas and to areas without sufficient high speed internet connections . A strategy to close the digital gap should include either wireless fixed or mobile broadband. Pilot projects in Germany have shown that a rapid deployment of – fixed - broadband may serve people in rural areas better than a more costly mobile reception. DLM therefore proposes a specific priority for the deployment of fixed or mobile broadband internet via wireless infrastructures in rural areas to be included in the European roadmap which should be completely independent from any conditions which may be established for the use of the 800 MHz spectrum for next generation mobile services.

III. Technical harmonisation of the 790-862 band via comitology procedure

The revised telecom package which is expected to be adopted in autumn 2009 will constitute the legal framework which determines the procedures as well the scope and limits of a future European spectrum strategy. According to the proposed rules, EU-policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum will have to be decided by the European legislator. An EU-wide obligation of Member States to open up the 800 MHz band to low/medium power electronic communications constitutes such a strategic decision in spectrum policy. Consequently, it will need the endorsement of the European Parliament and the Council.

In this context, the Commission proposes an immediate action by proposing to adopt a decision on harmonised technical conditions of the use of the 790-862 MHz band. It seems to DLM however, that a legal precondition to any technical implementing measures concerning the 800 MHz band would be a strategic decision taken by the European Parliament and the

Council to open the use of the 800 MHz band to new electronic services and not the other way round.

B. Responses to Section 4

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

4.1.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.

DLM is in favour of the proposal to foster improved coding systems in future DTT receivers if, as the Commission proposes, backward compatibility with older standards is ensured. The availability of efficient compression standards in new DTT receivers may facilitate a future switchover to more efficient compression technologies.

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

DLM supports the Commission's proposal to promote standards in DTT equipment to reduce interference risks. The advantages of a coordinated approach on equipment standardisation, however, will only materialize in the long run. In the short and medium term, measures have to be taken to protect transmissions to existing receivers from harmful interference.

4.2. Increasing the size of the digital dividend through further spectrum efficiency gains

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

DVB-T2 is a new standard. It seems far too early to consider an assessment, left alone guidelines on the possibility and conditions of a EU-wide deployment of DVB-T 2. Also, a new switchover to DVB-T2 and MPEG-4 would imply that all existing DVB-T/MPEG-2 receivers would need to be replaced. This could be beneficial to the equipment industry but would imply heavy consumer costs and raise environmental concerns.

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.*

1. As explained above (A.III.), the obligation of an EU-wide opening of the frequency band 790-862 MHz to low/medium power electronic communications networks, including Member States' adhesion to footnote 5.316 of the ITU Regulation, constitutes a major change in spectrum policy that needs the endorsement of the European Parliament and the Council. Equally, the definitions of service and technology neutrality as laid down in the revised telecom package should be respected accordingly.

2. The presumption of additional created value of a range between 3 bn and 97 bn € mentioned by the Commission in the first paragraph of point 4.3. casts a slight doubt on the precise nature of such forecast.

3. The question who should bear the costs of clearing out existing and currently planned users of the 800 MHz band will be a major issue in making the band available for new networks and services. After having significantly invested in the transition from analogue to digital TV, broadcasters will face additional costs in this "efficiency" process due to the need to re-engineer their antennas and transmitters, ensure safeguards to avoid additional interference risks from the neighbouring mobile services, undertake marketing campaigns to inform the consumer about the changes etc. Complex reorganisation of the lower UHF band will become necessary particularly in those countries who have introduced DVB-T. The Roadmap should therefore address the cost issue and include possible solutions for Member States how to fund the necessary adaptations in the broadcasting network and how to ensure that additional risks of interference for broadcasting services, which might arise through introduction of new services in the 800 MHz band, can be excluded.

4.4. *Adopting a common position on the potential use of the "white spaces" as part of a possible extension of the digital dividend.*

4.5. *Ensuring the continuity and further development of wireless microphone applications and other secondary uses of the UHF spectrum*

White spaces are used for microphone services and other services that are needed for the production of broadcasting programs. Before examining the possibility to open up white spaces, migration of secondary users of UHF spectrum must be ensured. In Germany, these users enjoy a specific protection in the 790-862 band till 2015. After migration of these applications below 790 MHz and the migration of broadcasting services due to the clearing of the 800 MHz band, the amount of the interleaved spectrum in the UHF band will be considerably reduced. Consequently the continuity and further development of wireless microphone applications and other secondary uses must be settled first.

White spaces also serve as a buffer to avoid harmful interference. DLM is against any mandatory harmonisation measures on the potential use of white spaces. This could significantly reduce the flexibility for national authorities and the users to ensure the performance and development of DTT and to find a sufficient amount of spectrum for wireless microphones.

4. 6. More effective cross-border coordination with non-EU countries

Coordination with Non-EU-Member States is currently handled through ITU and CEPT. DLM would support the idea of an EU-platform allowing an active exchange of stakeholders and administrations.

4.7. Addressing future challenges

DLM supports a monitoring of the developments in technology, services, market demand and societal requirements of all relevant communications services and spectrum users. These results can feed into future multiannual spectrum programs.

C Responses to Section 5 (see also above A.III.)

It is DLM's understanding - de lege lata and de lege ferenda - that strategic decisions in spectrum management need a legal endorsement by the European Parliament and the Council before technical implementing measures can be adopted via comitology procedure.

Once this legal requirement being satisfied, it seems reasonable to take action in order to avoid any fragmentation of the internal market.