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(Acts whose publication is not obligatory)

COMMISSION

COMMISSION RECOMMENDATION

of 20 March 2003

on the harmonisation of the provision of public R-LAN access to public electronic communications networks and services in the Community

(Text with EEA relevance)

(2003/203/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) ⁽¹⁾, hereinafter referred to as 'the Framework Directive', and in particular Article 19 thereof,

Whereas:

- (1) The European Council on 15 and 16 March 2002 in Barcelona advocated fostering multiple broadband access platforms to the Information Society and stressed the need to complete the internal market for electronic communications services.
- (2) In accordance with Article 19(1) of the Framework Directive, the Communications Committee delivered its favourable opinion on 24 January 2003.
- (3) As the least onerous authorisation system possible should be used to allow the provision of electronic communications networks and services, pursuant to Article 3(2) of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) ⁽²⁾, hereinafter referred to as 'the Authorisation Directive', the provision of electronic communications networks or services may, without prejudice to specific obligations referred to in Article 6(2) or rights of use referred to in Article 5 of that Directive, only be subject to a general authorisation.

- (4) Pursuant to Article 5(1) of the Authorisation Directive, Member States are required, where possible, and in particular where the risk of harmful interference is negligible, not to make the use of radio frequencies subject to the grant of individual rights of use; furthermore, pursuant to Article 2(1) and Article 4 of Directive 2002/77/EC ⁽³⁾ of the Commission, Member States shall not adopt or maintain measures limiting the number of undertakings authorised to provide services or to use radio frequencies unless they are objective, proportional and non-discriminatory.

- (5) Pursuant to policy objectives and regulatory principles defined by Article 8 of the Framework Directive, the national regulatory authorities should take all reasonable measures to promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services by promoting innovation and by encouraging efficient use and ensuring the effective management of radio frequencies; national regulatory authorities should also remove obstacles to the provision of electronic communications networks, associated facilities and services and electronic communications services at European level.

- (6) Radio Local Area Networks (R-LAN) are an innovative means for the provision of broadband wireless access to the Internet and to corporate intranet networks not only for private uses but also for the public in general in areas such as airports, train stations and shopping malls.

⁽¹⁾ OJ L 108, 24.4.2002, p. 33.

⁽²⁾ OJ L 108, 24.4.2002, p. 21.

⁽³⁾ Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (OJ L 249, 17.9.2002, p. 21).

- (7) A majority of Member States already allow R-LAN access to public electronic communications networks and services on a commercial or non-commercial basis; considering the importance of R-LAN as an alternative platform for broadband access to Information Society services, it is now desirable to promote a harmonised approach for the provision of such public R-LAN access throughout the Community; a distinction is to be drawn between the provision of services and the use of radio spectrum; the provision of R-LAN access to public electronic communications networks and services on a commercial basis should be allowed under the least onerous system, i.e. to the extent possible without any sector specific conditions.
- (8) R-LAN may use all or part of either the 2400,0 — 2483,5 MHz (hereinafter the 2,4 GHz band) or the 5150-5350 MHz or 5470-5725 MHz bands (hereinafter the 5 GHz bands); part of these bands may currently not be available to R-LAN in certain Member States; further harmonisation of these bands may therefore be necessary in the framework of Decision 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) ⁽¹⁾.
- (9) The risk of interference between the various different users who may share the 2,4 GHz band and between coexisting R-LAN systems is accepted by the parties involved; as long as R-LAN users do not create harmful interference to possible protected users in the same bands, the use of the 2,4 and 5 GHz bands should not be subject to individual rights nor, to the extent possible, to general authorisation conditions other than as allowed under point 17 of the Annex to the Authorisation Directive; opening the 5 GHz band to public R-LAN access services would also reduce the pressure on the 2,4 GHz band.
- (10) In order to minimise the risk of harmful interference, general authorisation conditions might be imposed where justified and in a proportionate manner; such general authorisation may refer to appropriate requirements, in conformity with Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (R&TTE Directive) ⁽²⁾, the harmonisation of which may be achieved pursuant to the Radio Spectrum Decision and the R&TTE Directive.
- (11) In line with Community competition rules, Article 8(1) of the Framework Directive lays down the principle of technologically neutral regulation, so that there should

be no discrimination between the various R-LAN and other technologies giving access to communications networks and services.

- (12) The terms on which access may be allowed to public and private property for providers of public R-LAN access services are subject to competition rules of the Treaty, as well as, where relevant, to the Framework Directive.
- (13) Security and confidentiality are regulated at present by Articles 4 and 5 of Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector ⁽³⁾; on the forthcoming repeal of that Directive, those provisions will be replaced by Articles 4 and 5 of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector ⁽⁴⁾ as from 1 November 2003,

HEREBY RECOMMENDS:

1. That, in applying the measures necessary to comply with Directives 2002/20/EC and 2002/21/EC, Member States should allow the provision of public R-LAN access to public electronic communications networks and services in the available 2,4 GHz and 5 GHz bands to the extent possible without sector specific conditions and in any case subject only to general authorisation.
2. That Member States should not make the use of the available 2,4 GHz or 5 GHz bands for the operation of R-LAN systems subject to the grant of any individual right.
3. That Member States should not restrict the choice of R-LAN equipment to be used by service providers where these meet the requirements laid down under Directive 1999/5/EC.
4. That Member States should pay special attention to the requirements of Articles 4 and 5 of Directive 97/66/EC and the equivalent provisions in Directive 2002/58/EC, which regulate security and confidentiality of public communications networks and services.

Done at Brussels, 20 March 2003.

For the Commission

Erkki LIIKANEN

Member of the Commission

⁽¹⁾ OJ L 108, 24.4.2002, p. 1.

⁽²⁾ OJ L 91, 7.4.1999, p. 10.

⁽³⁾ OJ L 24, 30.1.1998, p. 1.

⁽⁴⁾ OJ L 201, 31.7.2002, p. 37.