



CEPT/ECTRA

ECTRA/REC(98)05 - E

**CEPT - European Conference of Postal and Telecommunications Administrations
ECTRA - European Committee for Telecommunications Regulatory Affairs**

CEPT / ECTRA Recommendation of 10 December 1998

**on guidelines for licensing conditions pursuant to
Essential Requirements
in the field of telecommunications networks and services in Europe**

(ECTRA/REC(98)05)



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As Chairman of the European Committee for Telecommunications Regulatory Affairs (ECTRA), I hereby confirm that this recommendation was approved in Berlin on 10 December 1998 at the XXVIIth ECTRA Plenary Meeting.

Frédéric Riehl
ECTRA Chairman
10.12.1998

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**on guidelines for licensing conditions pursuant to
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This Recommendation shall not prejudice the obligation of the EEA member states to act in accordance with applicable Community law or CEPT members to act in accordance with their national legislation.

The European Conference of Postal and Telecommunications Administrations,

FOLLOWING

- The ETO study concerning harmonisation of Essential Requirements adopted by ECTRA on 4 December 1997.
- The ECTRA Recommendation on a set of guidelines on responsibilities for ensuring network integrity adopted by ECTRA on 12 March 1998 (ECTRA/REC(98)01).
- The results of the consultation with the telecommunications industry by means of a questionnaire in May 1997 and a workshop in October 1997 that showed that application of national licensing conditions related to essential requirements were not felt to be particularly burdensome or restrictive to competition.

CONSIDERING

- a) that the concept of Essential Requirements originates from the rule of reason of the European Court of Justice and results in conditions on telecommunications services and networks, justified by goals superior to the principle of free trade. As a consequence, in a fully competitive market, where fair competition has been achieved, measures to ensure Essential Requirements might still be necessary because they serve goals superior to competition.
- b) that Essential Requirements (involved in interoperators relations) and imposed by an operator on another are not dealt with in the present Recommendation which focuses on conditions defined by CEPT administrations.
- c) that the Licensing Directive 97/13/EC has defined a common framework for general authorisations and individual licences in the field of telecommunications and services and, as such, references in this Recommendation to Essential Requirements refer only to telecommunications networks and services.
- d) that the list of Essential Requirements mentioned in European legislation has evolved over time and consists at this moment of the following eight requirements:
 - security of network operations
 - maintenance of network integrity
 - interoperability of services
 - data protection
 - efficient use of frequencies
 - avoidance of harmful interference
 - protection of the environment
 - town and country planning objectives

TAKING INTO ACCOUNT

- i. that harmonised descriptions of Essential Requirements are useful for the purpose of clarification and for obtaining a coherent approach across CEPT member countries.
- ii. that it appeared not to be feasible to establish a maximum list of licensing conditions which could be imposed on operators of telecommunications networks and service providers so as to ensure the observation of Essential Requirements because of the wide variety of detailed measures found in the different member states and the fact that the implementation of Essential Requirements is closely linked to national political goals, especially concerning security of network operations, data protection, protection of the environment and town and country planning.
- iii. that industry could benefit from a harmonised approach towards the way in which detailed measures pursuant to Essential Requirements are implemented.
- iv. that a distinction should be made between, firstly, the concept of Essential Requirements, secondly the list of specific telecoms related Essential Requirements and thirdly licensing conditions imposed on operators and service providers pursuant to the goals.

RECOMMENDS

1. Regarding the concept of Essential Requirements

that all CEPT Administrations define the general concept in the context of telecoms regulation as the non-economic reasons in the public interest which may cause a member state to impose conditions on the establishment and/or operation of telecommunications networks or the provision of telecommunications services.

2. Regarding the specific telecommunications related Essential Requirements

that all CEPT Administrations are guided by the following descriptions of Essential Requirements for the purposes of clarification and for obtaining a coherent approach in CEPT member countries:

2.1 Security of network operations

Measures to safeguard the security of the network during emergency situations related to protection against external events such as extreme weather, earthquakes, floods, lightning, fire and catastrophic network breakdown which could compromise network operations. This protection has the goal of maintaining at least a minimum guaranteed functioning during such civil emergency situations.

2.2 Maintenance of network integrity

The protection of the physical and functional operation of a network against, and its resistance to, breakdown or degradation caused by electrical conditions, signalling protocols or traffic loads (which can be induced via interfaces between terminals and networks or between networks).

2.3 Interoperability of services

The ability of two terminals to communicate with each other through one or several fixed public telephone networks, leased line services and public mobile telephone networks. In that context interoperability considerations may include requirements both on the terminal and on the network.

2.4 Data protection

Covers protection of personal data, confidentiality of information transmitted and stored and protection of user privacy:

- protection of personal data covers the protection of data stored about individual users of the network such as call data or call location
- confidentiality of information being transmitted across the network relates to the content of the calls while confidentiality of information stored relates to the data about the network and related systems
- protection of user privacy is related principally to provisions against the receipt of unwanted calls and can also relate to level of detail in itemised bills, presentation/restriction of CIT and release of subscriber directory information

2.5 Efficient use of frequencies

Usage of the spectrum resource in the most efficient and least wasteful manner so that as many users as possible can make use of the frequency spectrum whilst avoiding mutual interference.

2.6 Avoidance of harmful interference

Relates to coordination of frequency assignments in order not to endanger or degrade radio-based telecommunications systems and other space-based or terrestrial technical systems operating in accordance with the Radio Regulations.

2.7 Protection of the environment

The protection of air, water, animals, plants and other natural resources from pollution or its effects and may include conditions related to facility sharing.

2.8 Town and country planning

The determining of the future physical arrangements and conditions of a community or country, comprising, for example, building regulations and legal conditions and may include conditions related to facility sharing.

3. Regarding specific licensing conditions pursuant to Essential Requirements

- 3.1 that only efficient use of frequencies and avoidance of harmful interference can be reasons for conditions prior to market entry or for a restriction of the number of operators in the market. All licensing conditions imposed on behalf of the other Essential Requirements should be operating conditions, which are conditions to be respected whilst running the service or the network.
- 3.2 that in the context of interconnection detailed regulation concerning Essential Requirements be avoided as far as possible provided the sector achieves a satisfactory level of self-regulation (e.g through collaboration in the European Telecommunications Platform).
- 3.3 that the future work of the ITU concerning international emergency preference schemes should be closely observed.
- 3.4 that the responsibility to ensure interoperability remains with the party responsible for putting terminal equipment on the market and that it should be referred to in the licensing of service providers or operators only as an operating condition for the services stipulated in the Interconnection Directive.
- 3.5 that industry should be encouraged to develop voluntary guidelines in order to facilitate the use of CLI as an interconnection service in accordance with the directives on Voice Telephony and Data Protection.
- 3.6 that ETO should stay in contact with new entrants after the full liberalisation of telecommunications services and networks in order to observe whether or not the application of Essential Requirements (in particular network integrity, security of network operations, interoperability and efficient use of frequencies) continues to be regarded as neither burdensome nor restrictive to competition.