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Via email: VHCN_Guidelines@bereg.europa.eu

BEREC

FNE Working-Group, Co-Chairs:

Wilhelm Schramm, RTR,

Björn Jonassen, BNetzA

BREKO Bundesverband
Breitbandkommunikation e.V.
Menuhinstraße 6
53113 Bonn

28.04.2020

Contribution to the Public consultation on draft BEREC Guidelines on very high capacity networks

Dear Mr. Schramm,

Dear Mr. Jonassen,

Dear Sir/Madam,

BREKO is the leading German fiber association and represents the competitors. It has more than 350 members, networks operators and providers, municipal utilities, and private companies. BREKO's members are responsible for 60% of new fiber deployment in the German market and carry the lion share in the achievement of the German 2025 connectivity targets. Moreover, with annual investments of more than € 2 billion BREKO members make a significant contribution to the European market economy.

We would like to thank BEREC for the opportunity to comment on the draft guidelines on very high capacity networks.

Article 82 of the Electronic Communications Code (EECC) requires BEREC to issue guidelines on the criteria that a network has to fulfil in order to be considered a very high capacity network, in particular in terms of down- and uplink bandwidth, resilience, error-related parameters, and latency

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and its variation. These guidelines shall be taken into utmost account by the respective national regulatory authorities (NRA). Moreover, one of the general objectives under Article 3 of the EECC is to promote connectivity and access to and take-up of, very high capacity networks.

Taking into consideration the scheduled review of the guidelines by December 2025, the guidelines must reflect the forward-thinking approach of the European legislator, in order to fulfill the general objectives of the EECC. Consequently, we commend BEREC's FTTB oriented approach regarding so-called "fixed very high capacity networks" (fixed-VHCN), which adequately reflects Article 2 (2) and Recital 13 of the EECC. Throughout the drafting of the EECC as well as the drafting of these guidelines on criteria for very high capacity networks BREKO has advocated for a clear-cut focus on fiber roll out up to the multi-dwelling building. Therefore, BREKO agrees with BEREC's approach to consider fiber roll out up to the multi-dwelling building the baseline scenario, upon which the performance thresholds for equivalent network performance are based.

In the following sections, we would like to take this opportunity to further comment on the current draft of the guidelines.

1. "Fixed- & wireless very high capacity networks"

BEREC has adopted an approach which differentiates between fixed- and wireless-VHCN. While we commend BEREC's approach regarding fixed-VHCN, we did not consider the EECC to recommend or mandate two types of VHCN in the EECC. Thus, we question whether this distinction was necessary at all and whether it can contribute to the achievement of the general objectives of the EECC. In general, the distinction of two separate "types" of VHCN with such significant differences regarding their achievable performance creates a degree of uncertainty regarding the term of VHCN. Moreover, we consider the performance thresholds for networks equivalent to wireless-VHCN, especially with regards to mobile networks to be rather low, considering the presumed performance standards of 5G. We are very much convinced that primarily fiber roll out up to the multi-dwelling building will be able to contribute to the fulfillment of the general objectives of the EECC and will subsequently further the long-term benefits to the end-users.

In order to promote the long-term end-user benefits and to fulfill the objectives of the EECC, NRAs should therefore be encouraged to primarily focus on the promotion of fixed-VHCN. Wireless-VHCN can only be considered supplementary to fixed-VHCN, given their performance and the performance thresholds defined by BEREC. Due to the significant discrepancies regarding achievable

performance and performance thresholds between fixed- and wireless-VHCN, BEREC should further emphasize the significant role of fixed-VHCN and specifically of FTTB networks.

2. Application to Fixed Wireless Access (FWA)

BEREC's differentiated approach raises more specific questions as well, especially with regards to whether FWA can be considered equivalent to a fixed-VHCN.

In our opinion, FWA-networks must fulfill the QoS thresholds of criterion 3, in order to be considered equivalent to a fixed-VHCN. This is very much based on BEREC's clear focus on fiber roll out up to the multi-dwelling building and the baseline scenario for the determination of equivalent network performance, which is based on the best achievable performance through FTTB. Therefore, FWA just like any other non-FTTB/H network, cannot generally be considered equivalent to a fixed-VHCN. NRAs should determine on a case by case basis whether an FWA-network fulfills the requisite criteria to be considered equivalent to a fixed-VHCN. This should be clearly stated in the final version of the guidelines, in order to ensure that the criteria for VHCN and equivalent networks are not diluted.

3. Application to other policy instruments

In the workshop on the current draft guidelines, the Chairmen of the BEREC Working Group explained that the guidelines should not be interpreted as a view on the appropriateness or as a criterion for any other policy instruments, including public funding.

BREKO fully agrees with BEREC on the fact that the guidelines must not be misused to determine the appropriateness of public funding or other policy instruments. While national legislators may be inclined interpret these guidelines to legitimize proposed policy instruments, it should be clear that these guidelines are addressed to the respective NRA and therefore constitute no legal basis for policy instruments. In order to provide sufficient clarity for NRAs and stakeholders alike, we propose the inclusion of a section addressing this issue in the final guidelines.

4. Concluding remarks

BREKO very much supports BEREC's focus on fiber roll out up to the multi-dwelling building and general approach regarding fixed-VHCN. The criteria of the current draft guidelines must be maintained in order to adequately reflect the EECC. Moreover, only fiber roll out up to the multi-dwelling building can provide a reliable foundation to achieve the general objectives of the EECC and to

maximize the long-term benefits to the end-users.

With regards to wireless-VHCN, we would welcome some clarifications from BEREC, as mentioned above.

Should you have any further questions, please do not hesitate to contact us at any time.

Best regards,

A handwritten signature in black ink, reading "Jan-Niklas Steinhauer". The script is cursive and fluid, with the first name and last name clearly distinguishable.

Jan-Niklas Steinhauer

Counsel, Regulatory Affairs & European Law