To: Body of European Regulators for Electronic Communications (BEREC)

Subject: ASOTEM Comments on BEREC Guidelines on Access to In-Building Physical Infrastructure under Article 11(6) of the Gigabit Infrastructure Act

Madrid, 10 - 07 - 2025

I. The *Asociación de Operadores de Telecomunicaciones Empresariales* (ASOTEM), registered as an association on 22 May 2015 in the National Register of Associations of Spain, Section 1, number 607,771, aims to represent, manage, and defend the rights and interests of its members—operators of telecommunications or electronic communications services—with the goal of achieving common objectives, including:

"Participation in regulatory and competition matters: to promote a regulatory framework open to competition through concrete actions and proposals, particularly by acting against activities or behaviors that may restrict, hinder, or prevent effective competition in the markets in which the members operate, whether directly or indirectly."

II. Article 11 of the Gigabit Infrastructure Act establishes the general framework for access to in-building physical infrastructure by providers of public electronic communications networks. It defines the conditions under which networks may be deployed up to the access point, regulates access to existing infrastructure where duplication is not feasible, and outlines the principles governing such access requests, including technical, economic, and administrative aspects—all without prejudice to property rights.

III. Under paragraph 6 of the same article, the Body of European Regulators for Electronic Communications (BEREC) must publish, by 12 November 2025, guidelines on the conditions for access to in-building physical infrastructure, as well as the criteria to be applied by national dispute settlement bodies. These guidelines are to be developed following consultation with relevant stakeholders.

In this context, the *Asociación de Operadores de Telecomunicaciones Empresariales* (ASOTEM) respectfully submits the following comments:

3.1 Economic Conditions for Access to In-Building Physical Infrastructure

ASOTEM positively values the fact that the draft BEREC guidelines distinguish between two relevant scenarios concerning the ownership of physical infrastructure located within buildings: on the one hand, when such infrastructure is owned by the property owners, in which case free access is recommended—except in duly justified exceptional circumstances; and, on the other hand, when the infrastructure is owned by an electronic communications operator, in which case cost recovery is allowed. This distinction is consistent with the principles of proportionality and the promotion of competition underpinning the Gigabit Infrastructure Act.

Nevertheless, ASOTEM considers it necessary to reinforce the clarity and technical rigor of this second scenario. In particular, there is concern that allowing cost recovery by the infrastructure-owning operator could, in the absence of stricter criteria, result in the imposition of economic conditions that act de facto as entry barriers for new operators. Although the guidelines state that prices must be reasonable, proportionate, and non-discriminatory, this general wording requires greater technical precision to ensure uniform application across Member States and to prevent restrictive practices contrary to the principle of fair access.

In this context, it is essential that the BEREC guidelines enhance methodological clarity regarding cost recovery criteria when the infrastructure is owned by an electronic communications operator. The mere requirement that tariffs be "reasonable" and "proportionate" may lead to divergent interpretations if not supported by clear, verifiable accounting parameters aligned with best practices in regulated cost allocation within the sector. This regulatory ambiguity poses a particular risk in contexts where the infrastructure-owning operator also acts as a competing service provider, which may result in exclusionary practices through the imposition of dissuasive or artificially inflated prices.

To this end, ASOTEM proposes that the guidelines include an indicative cost calculation methodology based on the principle of economic causality, under which only those costs that are directly attributable and measurably linked to the specific use of the infrastructure by the requesting operator should be recoverable. These may include: recurring operational costs (operation, preventive and corrective maintenance), expenses related to the upkeep of the physical environment (access control, technical lighting, cleaning), and, where applicable, proportional replacement or restoration costs justified on the basis of accounting lifespan and prior technical documentation. Additionally, explicit limits should be established to prevent the inclusion of cumulative amortizations not aligned with the actual depreciation of the infrastructure, commercial mark-ups, generic administrative surcharges, or untraceable indirect costs.

In the interest of transparency and regulatory oversight, it is also considered appropriate to recommend that infrastructure-owning operators be required, in the event of a dispute, to present a breakdown of costs accompanied by verifiable documentary justification, based on auditable accounting records or methodologies recognized by the competent national authorities. This would strengthen informational symmetry between parties, reduce unnecessary litigation, and facilitate the work of the dispute resolution bodies provided for in Article 11(6) of the GIA.

3.2 Management of Space under Limited Capacity Conditions

Access to in-building physical infrastructure—such as ducts, manholes, or technical enclosures—poses significant challenges when there is limited or insufficient capacity to accommodate multiple electronic communications networks. This situation is common in older buildings that were not designed for a multi-operator environment or for the deployment of Very High Capacity Networks (VHCNs). In such cases, the effective access of new operators may be constrained by space availability, introducing a risk of market foreclosure if clear and equitable sharing mechanisms are not established.

The draft guidelines published by BEREC acknowledge this underlying issue and generally allow for installed operators to reserve capacity for future needs, provided there is a technical justification. However, this provision is incomplete if not accompanied by measures aimed at maintaining the building’s openness to new entrants. The mere

reservation of capacity, without a framework ensuring the gradual access of operators with no prior presence, could lead to speculative occupation of shared spaces, effectively blocking the entry of competitors.

From ASOTEM's perspective, it is essential that the guidelines include an explicit provision stating that, in cases of limited infrastructure capacity, priority should be given to requests from operators that do not yet have active installations in the building. This clause should apply whenever the request is technically feasible, complies with the compatibility requirements defined by the infrastructure owner, and is submitted in accordance with the established procedures. The aim is not to restrict the rights of existing operators, but rather to establish objective and non-discriminatory criteria that enable a more equitable and functional use of the available space.

The lack of specific regulation in this area has, in numerous contexts, allowed dominant operators to preemptively reserve or monopolize physical resources even in the absence of a real operational need. This practice—already observed in several environments, especially urban areas—creates a structural entry barrier that directly affects free competition. In this regard, regulation must take on a preventive role against exclusionary practices through deliberate saturation or unjustified exclusive use.

Additionally, it is recommended that the guidelines encourage mechanisms to verify the actual use of reserved space and establish time limits for unexecuted reservations. This would ensure that the use of shared infrastructure responds to real service provision needs and not to defensive strategies contrary to the principle of effective competition. Furthermore, it could be required that, in cases where access is denied due to lack of capacity, the current occupancy and the technical justification for the denial be properly documented.

3.3 Access Procedures: Deadlines, Phases, and Mechanisms in Case of Lack of Response

The draft BEREC guidelines establish a structured proposal for processing access requests to physical infrastructure located within buildings. Specifically, they recommend dividing the procedure into several phases: initial request by the interested operator,

availability review by the infrastructure owner, possible joint technical inspection, and finally, a technical agreement between the parties. The guidelines also indicate that this process should be completed within a maximum of one month, provided there are no elements that justify a reasonable extension.

While this sequence is operationally reasonable, the guidelines do not clearly or bindingly define the legal consequences of the infrastructure owner's inaction in response to a properly submitted request. This omission may lead to undesirable effects, particularly when the lack of response results in indefinite delays that directly affect the legal certainty of the requesting operator and slow down the deployment of Very High Capacity Networks (VHCNs).

For this reason, ASOTEM considers it necessary for the BEREC guidelines to explicitly include a resolution mechanism in the event of administrative silence. Specifically, it is proposed that a "positive silence" rule be established, applicable when the following conditions are met:

- The access request has been submitted in full, including all technical documentation required by national regulations or by the rules of the infrastructure owner.
- The installation project is technically feasible and compatible with the existing infrastructure.
- A maximum period of 30 calendar days has passed since the formal receipt of the request without the infrastructure owner having issued a reasoned response.

Under this framework, if no express response is provided within the established period, the operator would be authorized to proceed in accordance with the submitted technical project. This approach is grounded in the principles of good faith, procedural efficiency, and legal certainty—all of which are recognized under the European regulatory framework.

It is important to emphasize that this proposal does not eliminate the rights of infrastructure owners, who retain the ability to oppose access. However, such opposition must be exercised expressly, with proper justification, and within the prescribed

deadlines, thereby preventing the strategic use of inaction as a tool to block competition or delay legitimate activities.

3.4 Minimum Technical Requirements and Infrastructure Documentation

The draft guidelines published by BEREC acknowledge the need for in-building physical infrastructure to be supported by up-to-date technical documentation. Such documentation should include essential information on available capacity, current occupancy levels, holders of usage rights, and the layout of ductwork. However, it is noted that the text does not establish a common framework of minimum technical requirements that could serve as a harmonized reference for the design, sizing, and preparation of such infrastructure—particularly in new constructions or buildings undergoing major renovation.

From a European regulatory perspective, this omission represents a pending opportunity for development. The current fragmentation among Member States—even within national regulatory frameworks—hinders the creation of a consistent and predictable environment for the deployment of Very High Capacity Networks (VHCNs). This regulatory heterogeneity creates significant operational and economic burdens, particularly for operators with smaller structures or limited territorial coverage, who must adapt to disparate technical conditions, often subject to non-standardized criteria or local interpretations.

In this regard, it is proposed that the BEREC guidelines include a non-binding, indicative list of common minimum technical requirements, which Member States could incorporate into their respective regulations or use as a reference standard for new developments and renovations. While not legally enforceable, such a list would carry harmonizing normative value, useful for fostering interoperability of technical solutions, reducing disputes between parties, and ensuring technically reasonable access conditions for all operators, regardless of their size or market presence.

Among the technical elements that could be included in this indicative list are the following:

- Minimum dimensions for ducts between the building access point and functional units (dwellings, commercial premises, offices), ensuring sufficient capacity to allow the coexistence of several operators without the need for subsequent replacement or modification works.
- Basic conditions for the shared use of common technical spaces, such as the lower telecommunications room (RITI) and upper telecommunications room (RITS), including guidelines on safety, access traceability, physical organization, and coexistence among multiple operators.
- Structured internal cabling planning, covering defined routes, functional separation between operators, identification and labeling systems, and commonly accepted mechanisms for maintenance or supervision.

The inclusion of these minimum technical standards would not only facilitate cooperation between operators and property owners but also contribute to a significant reduction in regulatory and coordination costs, in line with the goals of efficiency, competition, and interoperability pursued by the Gigabit Infrastructure Act across the European Union. Moreover, the establishment of predictable technical criteria would promote the early integration of connectivity needs into architectural and urban planning, optimizing space usage and anticipating the future evolution of digital demand.

3.5 Access to In-Building Infrastructure: Need for Predictability in Relations with Property Owners' Associations

One of the most significant challenges in the deployment of Very High Capacity Networks (VHCNs) in residential or mixed-use environments lies in managing the relationship between operators and property owners' associations or entities responsible for building administration. In many cases, decisions regarding access to existing physical infrastructure—such as ducts, technical entry points, or common enclosures—are dependent on collective management bodies that lack defined procedures or clear technical criteria for processing installation requests. This can result in significant delays, unjustified refusals, or a total lack of response.

Such situations, even if not constituting a formal denial, may produce effects equivalent to access restrictions, thereby negatively impacting the deployment of electronic networks and the ability to offer diverse and high-quality connectivity to end users.

In this context, it would be advisable for the BEREC guidelines to recommend that Member States establish a clear and structured procedure for processing access requests addressed to property owners' associations, building managers, or other building representatives. This procedure should include, at a minimum, an obligation to issue a formal response within a reasonable timeframe—for example, 30 calendar days—from the receipt of a complete and properly documented request by the operator. The absence of a response within the defined timeframe should trigger a fast-track review mechanism by the competent authority or national dispute resolution body, which would assess the request on a priority basis and within reduced deadlines.

Therefore,

WE REQUEST that the Body of European Regulators for Electronic Communications (BEREC) accept this submission, take it into consideration, and consider the present comments as formally submitted in the context of the public consultation procedure regarding the draft Guidelines on access to in-building infrastructure under Article 11(6) of the Gigabit Infrastructure Act (GIA).

Firmado por ***8072** JUAN ARBERAS (R: ****1448*) el día 11/07/2025 con un certificado emitido por AC Representación

Jon Arberas
President of ASOTEM