



EUROPEAN COMMISSION
Information Society and Media Directorate-General
Electronic Communications Policy
The Director

Brussels, **15 SEP. 2011**
INFSO/AW/erD(2011) / A(2011) 741695

Dr Solomon Passy
The Atlantic Club of Bulgaria
President and Founder

Mrs Gergana Passy
Pan-European Movement in
Bulgaria
President

49, Bulgaria Blvd., 5th floor
Sofia 1404, Bulgaria

Dear Dr and Mrs Passy,

I refer to your open letter of 20 June 2011 on "Access to Internet on EU territory – the Fifth Freedom and Fundamental Human Right" addressed to Vice-President Neelie Kroes, Vice-President Viviane Reding and Commissioner John Dalli, which was forwarded to us by the Commission's Permanent Representation in Bulgaria on 6 July 2011, and to which Vice-President Kroes has asked me to respond.

I fully share your appreciation of the importance of Internet access, in the modern digital world, as a tool to enable citizens to exercise their fundamental right to freedom of opinion and expression, as enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as the International Covenant on Civil and Political Rights. This was indeed made clear in the UN Special Rapporteur's Report of 16 May 2011 *On the Promotion and Protection of the Right to Freedom of Opinion and Expression*¹.

I also share the concerns expressed in that report over the actions of some governments in restricting or blocking access to the Internet. In this regard it is worth recalling that the EU regulatory framework for electronic communications explicitly requires that any measures by Member States regarding end-users' access to, or use of, services and applications through electronic communications networks which are liable to restrict fundamental rights or freedoms may only be imposed if they are appropriate, proportionate and necessary within a democratic society. Furthermore, any such measures must be subject to adequate procedural safeguards, including effective judicial protection

¹ I note, however, that the Report does not go as far as recommending that access to the Internet be made a fundamental right in itself.

and due process. We therefore have a sound legal framework for the protection of the freedom of speech of EU citizens when it comes to their use of the Internet and electronic communications more widely.

However, ensuring that the social, cultural and economic advantages of digital technologies can be fully realised to the benefit of all citizens requires a coordinated effort on a wide range of fronts, ranging from facilitating the roll-out of high speed networks through to measures to strengthen confidence in and demand for digital services. I believe that the policy initiatives launched by the Commission in the context of the Digital Agenda for Europe and related instruments, such as the Connecting Europe Facility², are a good basis for progress in this direction.

Nevertheless, I would stress that our initiatives are predicated on the understanding that the best way to achieve our objectives is by promoting vibrant and healthy competition and that public intervention should be limited to cases where there are persistent or structural barriers to delivery by the market. In this way we will avoid unduly distorting market conditions or discouraging private entrepreneurship and innovation.

The provision of Internet access in public places is an area where competition is intense, underpinned by a regulatory framework at EU level that ensures that a range of service providers are available to businesses and private citizens alike. Indeed, in many cases commercial undertakings do indeed offer free Internet access to their customers and in this way can differentiate themselves from their competitors. Prohibiting undertakings by law from charging their customers for Internet access would in my view risk seriously distorting competition in the electronic communications markets and could have significant financial repercussions for businesses and ultimately for consumers.

In this regard I believe that the justification for intervention at EU level does not exist for Internet access in the same way as it does for roaming, where the structure of the market and the cross-border nature of roaming services have prevented competitive forces from working effectively in the interests of consumers. However, we will remain vigilant and redouble our efforts to ensure that all our citizens can benefit from the digital economy.

Yours sincerely,

PD

Gerard de Graaf

Cc: Mrs F. Le Bail, Director General, DG Justice
Mrs P. Testori Coggi, Director General, DG Health and Consumers

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Budget for Europe 2020.