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Part

CHAPITRE 6

Consumers

A. Taking consumer interests into account

The “Chatel Act”

The “Chatel Act” was adopted on 3 January and came into force on 1 June 2008. It reinforces the consumer code, notably to provide a better framework for contractual relations between electronic communications service providers and their customers.

With the support of the government, Parliament limited set contract lengths to 24 months and, in cases where the contract includes a clause stipulating a commitment of more than 12 months, the operator must also offer the same service with a maximum 12-month contract at an affordable (“non disqualifying”) price. Moreover, customers must have the option of cancelling their contract at the end of a year (13th month) in exchange for payment of a sum equal, at most, to four remaining monthly payments.

And, finally, mobile operators must bill their customers’ calls to directory assistance services directly, at the same price as a “regular” national call (i.e. included in the flat rate), to which will be added the sum paid to the directory assistance service provider. Furthermore, in cases where the service provider offers to connect the customer to the number they were looking for, it is obligated to inform the consumer of the price of this service and obtain their express agreement before providing it.

The Authority has no direct power to address the issues encountered by users of telecommunications services in the areas of consumer rights or contracts. It is essentially through the development of competition that the sectoral regulatory framework aims to increase consumer satisfaction levels.

ARCEP is responsible, by law, for ensuring “*effective and loyal competition which is beneficial to consumers*”¹. To this end, ARCEP continues to implement asymmetrical regulation, in other words regulation that imposes obligations only on SMP operators in a bid to scale back dominant positions in telecommunications markets, particularly that of the incumbent carrier.

¹ - Cf. CPCE Article L.32-1.

2 - Cf. ARCEP 2006 annual report, pp. 449-453.

The benefits created by the regulator's efforts to open telecommunications markets up to competition have been considerable. Estimates indicate that between 1998 and 2005, consumer prices have decreased, on average, by just over 30% while consumption levels have risen by close to 2.5 times, which translates into consumer gains of more than €10 billion during that period².

The remarkable broadband penetration rate is a perfect illustration of the positive effect that competition from new entrants has on innovation and prices. Unbundling made great strides between 2000 and 2008, and helped spur the Internet's growing ubiquity. Subscriptions are currently priced at around 30 euros a month, on average, for ever-higher connection speeds, and the array of available services has been expanding steadily – with subscriptions now including Internet access, calling and television services. The market took another step forward in 2008 thanks to full unbundling (4.9 million lines at the end of the year).

As concerns new generation networks, the leading operators in France (France Telecom, Free, Numericable and SFR) have begun rolling out ultra-fast broadband optical fibre networks, starting with the most densely populated cities. As of 31 December 2008, more than 3 million households were located in buildings near where fibre had been deployed, and roughly 20% of them lived in buildings equipped with fibre.

To avoid local monopolies from forming in each building, the legal framework established in 2008 aims to enable the largest possible number of operators to deploy fibre, first by providing them with access to civil engineering infrastructure and, second, by imposing a system for sharing the section of the network closest to subscribers, particularly the portion located on private property.

At the same time, the legislator was careful to ensure that all consumers might benefit from a universal service offer. This mechanism guarantees access to the fixed telephone service at a price that is not affected by the user's geographical location, and provides for reduced subscription prices for categories of consumers that meet certain socio-economic criteria. Universal service represents a cost of around €30 million for its provider, namely France Telecom, and is financed by a contribution of roughly 1% of the sector's turnover.

The legal framework ensures greater protection for consumers via specific measures, which include:

- 3 - See below, C. ♦ a ceiling tariff for European roaming calls³ ;
- 4 - See below, B. ♦ monitoring the quality of the service provided by operators and telecommunications service providers⁴ ;
- 5 - See below, E. ♦ number portability to make it easier for consumers to switch operators⁵ ;
- 6 - See below, F. ♦ a universal directory⁶.

These various measures require the implementation of actions within the regulator's purview, which are juxtaposed with more specific and more direct involvement from ARCEP on the issues that concern consumers.

1. ARCEP actions

1.1 Assisting consumers on a daily basis

Disputes involving consumers and the telecommunications sector are monitored by the general directorate for fair trade, consumer affairs and fraud control, DGCCRF (*Direction générale de la concurrence, de la consommation et de la répression des fraudes*) or the electronic communications mediator, before being ruled on by courts of First Instance (Court of First Instance and Commercial Court).

Although the Authority has no specific power to manage disputes that involve consumers, it does hold talks on a regular basis with consumer protection associations, and contributes to informing users of telecommunications and postal sector issues.

Since its inception, the Authority has, however, provided consumers with support through its Consumer Division. The goal has been to provide a direct response when consumers request clarification on offers resulting from regulatory decisions, and to back a consumer's request for dispute settlement with their operator – in which case the Authority forwards the file to the operator.

The Consumer relations division handles queries from the consumers of electronic services that it receives through three channels:

- ◆ phone (4 000, or 50% of requests);
- ◆ the post (2 800, or 35%);
- ◆ e-mail (1 200, or 15%).

For a total 8,000 queries in 2008, which, although being below the number of queries received in 2007, nevertheless remains substantial.

In this, we can see signs that some operators are taking better account of customer complaints, with the majority of the queries received by ARCEP being from consumers who were unable to be served properly by their operator, or unable to receive the proper information from them.

	By post	By phone
Contractual dispute (billing/cancellation)	56 %	46 %
Slamming	14 %	20 %

The issue of slamming, which is now subject to new procedures as a result of measures taken by the French telecommunications federation, FFT (*Fédération française des télécommunications*), represents a relatively small percentage of complaints, although naturally constitutes a major inconvenience for the customers who are victims of it.

Generally speaking, it is always rather difficult to list overall statistics that do not factor in the gravity of the problem encountered, or even the inconvenience it causes.

It should be pointed out that most complaints concerning slamming are made by phone, with consumers seeking an immediate solution or advice. This is one

criterion that allows for the most accurate measurement of these new provisions.

The vast majority of enquiries concern a conflict that falls under the heading of consumer rights. ARCEP has no legal power to intervene in these cases, but does its utmost to provide consumers with assistance in solving their problem.

1.2 Consumer committee

Formed in late 2007, the goal of the Consumer committee is to act as a forum for discussions between consumer associations and ARCEP, on matters relating to electronic communications, in accordance with the Authority's responsibilities and its regulatory activities.

It aims to improve the flow of information in both directions between ARCEP and the associations, to identify problems whose resolution will be facilitated by discussions.

The Consumer committee is not meant to replace other entities (the national consumer agency, CNC (*Conseil national de la consommation*), the committee devoted to abusive contractual clauses or the courts, or to resolve disputes. Although the electronic communications mediator and the general directorate for fair trade, consumer affairs and fraud control, DGCCRF (*Direction générale de la concurrence, de la consommation et de la répression des fraudes*) are part of the committee, it is not a place for settling disputes. It also operates separately from the dedicated "telecoms" roundtables organised by the Secretary of State for consumer affairs (*secrétariat d'Etat à la consommation*).

The Committee has met on seven occasions thus far: four meetings devoted to the electronic communications sector, two to the postal sector and one plenary meeting for setting the committee's roadmap for the following period.

Subjects addressed by the "postal" and "telecom" committees

◆ Subjects addressed by the "telecom" committee

- European agenda;
- current issues being treated by ARCEP;
- quality of the fixed service;
- quality of broadband services;
- call termination;
- the digital dividend;
- optical fibre;
- quality of the access services.

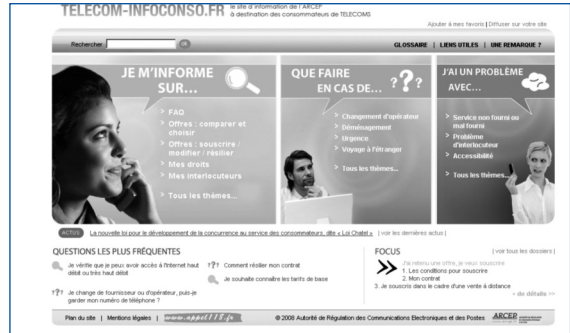
◆ Subjects addressed by the "postal" committee

- La Poste's overall terms of sale;
- recipient's rights (it was accepted that the recipient lodge the complaint; La Poste now requires that it be the sender who files the complaint);
- quality issues with the mail forwarding service and lost packages;
- sending small items at the "letter" rate;
- gaining access to mailboxes installed in buildings equipped with access control systems;
- monitoring the quality of the universal service: introduction of a universal service scorecard.

1.3 Launch of a dedicated website

The goal of the website, www.telecom-infoconso.fr is to inform consumers of the different features of the electronic communications sector, providing a complement to the Authority's institutional site, www.arcep.fr.

Launched on January 2009, the site receives over 450 hits a day. It will evolve on an ongoing basis and will be updated as needed, notably as a result of the queries received from Internet users and consumer associations. Links embedded in all of the files allow users to post a comment or to ask additional questions.



2. ARCEP actions undertaken as part of its regulatory mandate

In accordance with the European regulatory framework, ARCEP is devoted to enabling the development of facilities-based competition on those portions of the network where it is economically viable. By allowing alternative operators to become increasingly independent of the incumbent carrier's services, facilities-based competition brings about lasting competition, which, in time, leads to lighter regulation and possibly no regulation at all. It also enables differentiation between the operators' services and provides an incentive to innovate which, in turn, stimulates the market in a manner that benefits consumers – as revealed by the way in which the electronic communications sector, and the broadband market in particular, has evolved over the past ten years.

To stimulate this competition, through the coordinated regulation of wholesale markets at different levels, the Authority will provide incentives for alternative carriers to invest progressively in their own networks apace with the expansion of their subscriber base. The efficiency of this “ladder of investment” model also relies on the interoperability and interconnection obligation imposed on all operators.

The dynamic implementation of this process requires France Telecom to provide suitable wholesale offerings (e.g. local loop unbundling, wholesale line rental) that enable its competitors to replicate its retail offers as they are introduced into the marketplace⁷.

7 - Cf. Part 4, Chapter 4, B.

But one of the Authority's roles has a more direct impact on consumers, namely its monitoring of retail markets.

2.1 Retail prices

ARCEP regulates retail prices in exceptional cases only, as most of its actions concern wholesale markets. The decreases that the Authority has ordered in the tariffs that operators bill one another (wholesale tariffs) can thus be carried over

8 - Cf. Part 4, Chapter 4, D.

9 - EC Regulation no.

717/2007 concerning
roaming on public mobile
telephone networks within
the Community, OJEC
of 29 June 2007.

10 - The price of voice calls
made by a French consumer
in a roaming situation inside
Europe, had a ceiling of
€ 0.59 including VAT per
minute, starting on
30 August 2007, which was
lowered to € 0.55 a minute
on 30 August 2008. The
ceiling price, including VAT,
for received calls was set at
€ 0.29 a minute the first
year, then brought down
to € 0.26 a minute as
of 30 August 2008.

11 - Law no. 2007-1774 of
17 December 2007 adding
several provisions for
adapting to EU economic and
financial laws,
JO of 18 December 2007.

12 - Proposal dated
23 September 2008 of the
European Parliament and
Council regulation,
amending EC regulation
no. 717/2007 concerning
roaming on public mobile
telephony networks inside
the European Community,
and Directive 2002/21/EC
concerning a common
regulatory framework for
electronic communications
networks and services.
[http://ec.europa.eu/informati
on_society/activities/roaming
/docs/regulation/reg_fr.pdf](http://ec.europa.eu/informati
on_society/activities/roaming
/docs/regulation/reg_fr.pdf)

13 - See below, E.

14 - See below, G.

15 - See below, B.

16 - See below, B 5.

17 - See below, B 4.

directly to retail prices, e.g. the tariffs that mobile operators charge fixed operators for transmitting their calls⁸, or those that mobile operators charge one another for routing text messages.

In 2006, ARCEP also initiated European discussions on the excessive price of international roaming – suggesting a decrease in wholesale prices and supervision of retail tariffs. The European Commission finally adopted a regulation⁹ in summer 2007 that imposed a considerable decrease in the price of mobile calls made or received by a French consumer in a roaming situation inside Europe¹⁰. Application of this regulation was extended to the specific situation of mobile roaming between Metropolitan France and the French overseas territories¹¹. Based on the elements provided by national regulatory authorities in particular, on 23 September 2008, the European Commission submitted a proposed regulation¹² that prolongs and extends the initial regulation.

The Authority also created a framework for universal service calling prices, for two tariff baskets in 2006: one which is representative of a subscriber in Metropolitan France, the other of a subscriber in the overseas territories¹³. As a result, a portion of the sector's productivity gains is passed on directly to these subscribers, and not only to the heaviest consumers. This framework was in effect until 2008, and allowed a close to 20% decrease in an average consumer's average calling invoice.

Moreover, ARCEP has given particular attention to value-added services by taking measures aimed at correcting market malfunctions of which it is aware¹⁴. It continued its efforts in 2008, particularly in the area of improving consumer information with respect to pricing (the transparency and clarity of tariffs).

2.2 Quality of service

Because monitoring only prices is not enough, ARCEP also takes an interest in the quality of the service on offer, which must not decline as competition increases but, quite the contrary, should improve¹⁵.

Among other things, the Authority has included minimum QoS thresholds in mobile operators' licences, and has required them to publish service coverage maps, to be verified by the regulator. For several years now, ARCEP has also performed surveys on the services offered by mobile operators, whose results it publishes on its website.

It has also been monitoring the quality of wholesale services since June 2005. Every month, France Telecom publishes parameters of the quality of the wholesale services it provides to alternative operators and to Orange.

ARCEP has also worked on establishing the method used for monitoring the quality of the fixed telephone service and of ISP retail offers. These new QoS parameters were published in 2008¹⁶.

The Authority also performed new surveys on the quality of directory services in 2008 – the last one having been in 2006 – to ensure, among other things, that universal directory lists can indeed be accessed via 118 numbers¹⁷.

2.3 Number portability

Since 21 May 2007, consumers in Metropolitan France have had the option of switching mobile operators without having to change their number, within a maximum 10 days. Users now address themselves directly and solely to their new operator of choice which will process all the necessary steps on the customer's behalf (single-step process), including the *de facto* cancellation of their subscription contract with their old operator and the associated cancellation notice. This system has also been in place in the Antilles Guyana region since 1 April 2006 and in the Reunion-Mayotte region since 1 July 2007.

These legislative changes have made it possible to update the mobile number retention mechanisms such that consumers can benefit from a faster, simpler and better quality service. As of 31 December 2008, more than 3 million numbers had been ported since the implementation of the mobile number portability process (1 July 2003), of which half since the implementation of the one-step process¹⁸.

18 - See below, D.

As concerns fixed portability, for which the one-step process and a maximum porting time of 10 days has been in effect since 2003, the work being done by ARCEP and operators is focused on optimising the porting process (automation, harmonisation, direct routing) and improving the quality of service, particularly for number retention operations between France Telecom and alternative operators whose porting process has not yet been automated. This is the conclusion reached by ARCEP following the audit performed in 2008 on the status of the inter-operator fixed number portability process. The Authority used this opportunity to remind fixed operators of their obligations with respect to the right of subscribers to keep their number, regardless of operator and regardless of number.

2.4 Universal service obligations

ARCEP is responsible for ensuring that France Telecom fulfils its universal service obligations, which include the provision of a quality telephone service nationwide at an affordable price¹⁹. It enforces universal service tariffs either through a multi-year schedule, or by opposing their implementation through a justified decision or approving it through a favourable opinion. The Authority also issues an opinion on the level of the social tariff, which provides a reduction in eligible customers' telephone bills.

19 - See below, E.

In 2008, ARCEP underscored the importance of guaranteeing that social tariff levels be maintained.

In 2007, France Telecom was designated by ministerial order as the provider responsible for the universal directory and universal directory services components for a duration of two years. A call for candidates in 2009 will make it possible to designate provider(s) of the universal telephone and public payphone services. With the application of the Law of 3 January 2008²⁰, the methods for designating universal service providers will be relaxed and will include the possibility of designating several operators as the providers of the same component²¹, if necessary.

20 - Law no. 2008-3 of 3 January 2008 concerning the development of competition for the benefit of consumers, JO of 4 January 2008.

21 - See below, E.

3. Actions in supported of disabled persons

Existing regulatory provisions require the Minister responsible for electronic communications to ensure that the interests of the regions and the users, notably disabled users, are taken into account when providing access to services and to equipment²².

22 - Cf. CPCE Article L.32-1, II, Para. 7.

Disabilities concern 5.5 million people in France, or one out of every five families. As mobile telephony has become one of the major tools for enabling disabled persons to be more autonomous, operators have made commitments to facilitate access through the application of an accessibility charter²³ – the first of its kind to be produced by an entire sector of activity, achieved under the aegis of the French mobile operators association, AFOM (*Association française des opérateurs mobiles*). In late 2007, the leading mobile phone manufacturers – Alcatel (TCT Mobile), Motorola, Nokia, Sagem, Samsung, Sony Ericsson – joined the operators in this citizen-centric initiative.

23 - Available online at: www.afom.fr.

The GARI database: core project for 2008

Among the outstanding events of this past year was the launch on 15 December 2008 of the GARI (Global Accessibility Reporting Initiative) international database, which is the fruit of close collaboration between mobile phone manufacturers and operators.

GARI inventories those handsets that are best adapted to people with disabilities (*screen size, size of the keys, relief, slide or flip-open mechanism, etc.*). Anyone can access this free database online at: www.mobileaccessibility.info.

From a practical perspective, it provides users with information that allows them to find a phone adapted to their needs and their disability. The site also offers “how-to guides” for activating and executing the different functions on their phone. The database will gradually incorporate more recent models introduced since 1 October 2008.

Its launch was international. GARI was created on the initiative of the *Mobile Manufacturers Forum* (MMF), an international association whose members account for roughly 80% of global mobile phone sales: Alcatel (TCT Mobile), Motorola, Nokia, Samsung, Sony Ericsson...

GARI will be updated by manufacturers on an ongoing basis.

In the fixed telephony market, the law stipulates that the universal service provider must ensure that disabled persons have access to the universal service, provided that the enabling technologies are available and can be deployed at a reasonable cost.

Several commitments were made to facilitate access for disabled persons to fixed telephony services:

- ◆ access to information on pricing, and contractual and billing documents adapted to the different types of disability (large print for the visually impaired and Braille translations for the blind);
- ◆ a service for exchanging written messages (mini-messages) over fixed phone sets for the hard of hearing and the deaf;
- ◆ free access to directory services for persons incapable of consulting the directory due to visual impairment;

- ◆ access to public payphones for persons with a physical or visual disability.

This approach is part of a system aimed at providing everyone across the country with access to information and communications technologies, which is one of the priorities of the *France Numérique 2012* (Digital France 2012) plan. On 15 December 2008, a joint press conference held by the Inter-ministerial delegation of people with disabilities, DIPH (*Délégation interministérielle aux personnes handicapées*), AFOM and ARCEP announced the concrete steps that had been taken in 2008 and laid out the development paths for 2009, in the presence of representative associations.

Commitments made in 2008 and development paths for 2009

Commitment 1: offer mobile phones adapted to people with disabilities

Significant progress was made in 2008, including:

- ◆ the organisation of new test panels to provide regular updates of the lists of phones adapted to each disability;
- ◆ the supply of 15 to 25 handsets per operator;
- ◆ improved ergonomics for mobile phones: new “mobile magnifier” software for the visually impaired, which magnifies what is displayed on-screen, upgrades to the voice assistant software for the blind and the visually impaired, new touch-screen phone offers, large-screen PDAs and the ability for people with agility problems to use a stylus, as well as phones with location-based services.

Commitment 2: develop a service offer that will help people with disabilities to be more autonomous

Following through on the introduction of special rates and free services in 2006, operators went one step further in 2008 with new dedicated service offerings such as:

- ◆ telephones equipped with more advanced voice assistant software;
- ◆ integrated offers including more SMS and MMS for the deaf or hard of hearing;
- ◆ trial launch of an e-commerce site that uses text and sign language in French. Customers are connected with a sales assistant with whom they interact via live web conference and chats;
- ◆ ubiquity of direct access to offers on operators’ websites for people with disabilities;
- ◆ extension to Lille and Grenoble of the “Hand-Cité” guide: a listing of 4,700 sites accessible to people with reduced mobility;
- ◆ production and distribution of more than 12,000 invoices adapted to the needs of the disabled.

Commitment 3: inform the public of offers aimed at people with disabilities

Communication efforts were stepped up in 2008, which translated into:

- ◆ the launch of a hotline for people with disabilities, to process their complaints (phone and mail) to improve the quality of the responses;
- ◆ broader dissemination of information on all available channels, including the production of an audio CD detailing the mobile offers available for the visually impaired, and the publication of a section on using the mobile to prepare for a trip in the “Petit Futé” collection’s “Handitourisme” travel guide for people with disabilities.

Commitment 4: maintain progress on an ongoing basis

Since 2005, the signatories of the charter have been working to help people with disabilities to benefit from technological developments:

- ◆ by providing keys for accessing the Web over a mobile network via PC, which makes it possible to assist disabled persons on a daily basis (booking a train ticket, checking the weather, searching for information, online banking, etc.);
- ◆ through the development of contactless technology for payment, machine-to-machine applications, notably in the healthcare sector, and new software dedicated to people with mental disabilities, allowing them to benefit from a PDA equipped with audio alerts.

Priorities for 2009

- ◆ improve the services provided to people with disabilities;
- ◆ provide vendors with more information on existing services;
- ◆ ongoing training for sales people;
- ◆ enable people with disabilities to benefit from the latest technological innovations that can improve their access to mobile telephony (contactless, location-based services, etc.);
- ◆ increase new operators’ (MVNOs) awareness of the accessibility issue and expand the initiative to other players, notably the “ICT and accessibility” working group, operating under the aegis of the inter-ministerial delegate to people with disabilities;
- ◆ follow through on actions initiated at the European level, notably monitoring the efforts of the European Commission “e-Inclusion” working group.

Operators continue to work on improving the conditions for serving people with disabilities, both in existing points of sale and through the creation of dedicated shops (271 new or renovated points of sale in 2008).

3.1 ARCEP website accessible to the visually impaired

To make its site accessible to the greatest possible number of users, on 15 December 2008, the Authority introduced dedicated access for the visually impaired on its website, www.arcep.fr.

Thanks to the use of a robot that automatically transcribes text to speech, the latest news from ARCEP, i.e. press releases and some of the speeches by and interviews with members of the Executive Board are now available in MP3 format, and can be listened to by the visually impaired.



3.2 Decree on emergency calls from people with hearing impairments

A decree²⁴ on receiving and routing emergency calls from people with hearing impairments inserts six articles (D. 98-8-1 to D. 98-8-6) after Article D. 98-8 of the code governing postal and electronic communications affairs in France, CPCE – creating a national relay centre which is responsible for receiving and routing calls from the hearing impaired, thus allowing them to have permanent access to public service emergency numbers.

24 - Decree no. 2008-346 of 14 April 2008 on the reception and routing of emergency calls from people with hearing impairments, JO of 16 April 2008.

Installations in the national call relay centre make it possible to process any request coming from a person with a hearing impairment, regardless of the type of phone or computer communication used.

The national call relay centre is equipped with the means to perform simultaneous translation of all written, audio or visual information concerning the person making the request, notably written transcription or use of a French sign language interpreter or a cued speech encoder.

B. Monitoring quality of service

The quality of the service rendered shapes the relationship between an operator and its customers, and is one of the keys to successfully opening the market up to competition.

In its bid to inform consumers as well as possible²⁵, ARCEP performs quality of service surveys on a regular basis.

25 - Cf. CPCE Article L32-1, Para. 12.

A decree²⁶ specified the rules concerning the conditions of permanence, quality and availability of the network and the service. Of particular note: an operator must take the necessary measures to ensure the permanent and ongoing operation of the electronic communications network and services, along with the measures needed to remedy, as quickly as possible, the effects of network failures that cause the quality of the service to deteriorate for all or a portion of customers.

26 - Decree no. 2005-862 of 26 July 2005, JO of 29 July 2005.

Article D.98-4 of the CPCE also specifies that all operators are obligated to report on the quality of their service, based on parameters defined by ARCEP.

1. Mobile telephony

In 2008, for the eleventh year in a row ARCEP conducted a quality assessment survey on 2G and 3G mobile telephony networks in Metropolitan France. In accordance with the terms of their licences, the operators contribute financially to the performance of this survey.

These surveys are part of the Authority's broader efforts to improve the quality of consumer information in the area of electronic communications.

These surveys revealed two points of interest:

◆ **Speeds on mobile networks in France doubled in a year.**

File transfer tests were conducted in the 12 largest cities in Metropolitan France using USB keys and PCMCIA cards connected to laptop computers.

The results of these tests reveal average bitrates one and a half times higher than those obtained in 2007, and peak bitrates that were up to two times faster than the year before: an average downstream speed of 1 450 kbps and peak bitrates of over 4 Mbps and, for file transfers, an average 400 kbps and a peak rate of 740 kbps. These speeds were achieved with the most high-end offers marketed by each operator.

These bitrates are comparable to the speeds offered by entry-level ADSL services.

◆ **Quality of other services still very satisfactory**

The quality of voice services was also tested on 30 000 two-minute calls – a duration that corresponds to the average length of a call over mobile networks.

The telephone service was tested first in 52 towns and cities with a population of over 20 000 – indoors and outdoors, and as a passenger inside a vehicle. The results of these tests revealed that the quality of service remains to be high (98%).

The quality of the phone service was also tested on the main TGV (high-speed train) lines, on the most heavily travelled motorways (in the passenger seat), and on commuter trains for the largest cities. Although they could still be improved, the results reveal a 4% increase in the quality of service on these transportation routes since last year.

And, finally, measurements of the quality of SMS, MMS, WAP and videophony services, performed in the country's 12 largest cities, reveal a highly satisfactory level of quality.

The Authority plans on expanding the next QoS survey by testing longer calls, in part in towns with a population of less than 20 000.

The full report on the survey, containing a detailed description of the testing protocol and detailed results for each operator, has been available on the ARCEP website since 3 February 2009²⁷.

27 - http://www.arcep.fr/uploads/tx_gspublication/enqt-qsmobile-fev2009.pdf.

2. Fixed telephony

ARCEP has been involved in work devoted to publication by operators of the QoS parameters for fixed calling services since 2006. The goal of this work is to supplement the efforts that have been devoted to the quality of mobile services for several years now.

A public consultation on the quality of the fixed service was held in 2008. The summary, along with the responses received, were published on 23 October 2008. The purpose of this consultation was to gather feedback from the players on a draft decision concerning publication of quality of service assessment indicators by operators.

Based on the results of this public consultation, ARCEP issued a Decision on 4 December 2008²⁸, which was approved by the Order dated 30 January 2009²⁹. The aim of this decision is to define the methods to be used by operators for measuring and publishing their quality of service indicators. It is part of a quality of service framework defined at the European and national level, whose provisions are stipulated in CPCE Article D.98-4.

28 - ARCEP Decision no. 08-1362 of 4 December 2008 concerning operators' publication of QoS indicators for the fixed service.

29 - Order of 30 January 2009 approving ARCEP Decision no. 2008-1362, JO of 19 February 2009.

Decision-making parameters

These indicators are an expression of service operation or interruption, as well as the delivery times for fixed service access, the assistance provided to customers in resolving their problems, including the quality of the response from their operator's technical support department – which has a substantial impact on consumer satisfaction levels.

These parameters are broken down into two categories:

- ◆ parameters associated with access;
- ◆ parameters associated with phone calls.

Parameters associated with access:

- ◆ supply time for initial connection;
- ◆ fault rate per access line;
- ◆ fault repair time;
- ◆ response time for operator services;
- ◆ billing complaints;
- ◆ rate of complaint resolution by customer service in a single call.

Parameters associated with phone calls:

- ◆ unsuccessful call ratio;
- ◆ call set-up time;
- ◆ speech quality.

To establish the list of parameters, the Authority drew on the indicators assessed by the operator in charge of providing the universal service components, and on the definitions and methods suggested in the ETSI guidelines. It also relied on the work resulting from meetings of the Internet Access Providers (ISP) committee devoted to the issue of QoS indicators for broadband retail offers in 2007 and 2008.

Working within the French telecommunications federation, FFT (*Fédération française des télécommunications*), operators worked to establish a common frame of reference whose purpose is to provide greater detail on the definitions and

methods defined by ETSI which, when applicable, would be useful when performing assessments. The Authority will pay close attention to the progress of these efforts.

The operators required to perform QoS assessments are those that provide access to fixed electronic communications services and to those that provide access to the fixed telephone service.

When drafting this decision, ARCEP was nevertheless careful to ensure that the system was reasonable and proportionate to the objectives, as stipulated in CPCE Article L32-1. This is why it introduced a subscriber number threshold such that only operators with a significant customer base, i.e. more than 10 000 subscribers, would be required to implement an assessment mechanism.

The remaining operators must be capable of providing any party that so requests, with a summary of their access parameters, along with a description of their measurement system.

Some operators market services using different access configurations (e.g. PSTN phone service or a triple play bundle over a broadband connection).

It is because of this multiplication and diversity of configurations for accessing operators' electronic communication services that quality of service monitoring is a necessary exercise. QoS performances differ depending on the network access configuration. This is why separate assessments are performed and published for each access configuration, rather than a single assessment of all configurations taken together.

The decision applies to residential market offers to reflect the quality of the electronic communications services from the perspective of users and the public at large.

Access indicators are measured by operators using real data on existing connections. Measuring indicators for phone calls relies on external sample measurements using test calls.

Operators must provide:

- ◆ detailed documentation of the measurement system used;
- ◆ statement of certification, established by an independent party.

Access parameters are published each quarter whereas indicators for phone calls will be published on an annual basis. The first publication will be on 30 June 2010.

3. Broadband

On the Authority's initiative, operators ran trials from March to September 2008 aimed at improving the service repair procedures for unbundled access. The goal was to gain a better understanding of the state of the affected connections, to shorten service restoration times and to take account of intermittent interruptions of service and insufficient bitrates as well.

These trials revealed a decrease in improper reports of service outages, in other words repair requests sent to France Telecom but which were not its responsibility, and which created potentially significant delays in repair times. Moreover, there was a sizeable reduction in the time it took to resolve the lengthiest cases. These positive results made it possible to extend the tested processes to the entire country in late September 2008, and to all wholesale offers in early 2009.

Continual improvements are being brought to wholesale access delivery processes as well. The average delivery time in 2008 was under 2.5 days for unbundling, and the number of connections delivered in over 30 days was reduced by a factor of 10 in one year.

Parallel to these efforts, operators accepted the implementation of financial penalties: these are imposed on France Telecom when the incumbent carrier does not comply with the contractual access delivery and repair times. France Telecom and alternative operators are also subject to penalties for improperly reporting service failures. The Authority will pay very close attention to developments in the QoS indicators for access that France Telecom publishes each month, in addition to ensuring that these penalties are enforced and that they constitute strong enough incentives.

Definition

Slamming is the term used to refer to a situation when a customer's service is "slammed" (i.e. cut off) without the customer having subscribed to a new subscription with another service provider.

This can occur, for instance, when a customer orders a new ADSL connection and by mistake gives their service provider a phone number that is not theirs, e.g. the number of the previous tenant who chose to retain their number when they moved.

4. Directory assistance services (118)

Directory services quality survey

ARCEP has been assessing the quality of directory assistance services on a regular basis since 2005 to measure the effect of replacing the former numbers ("12", "712", "612", "222", etc.) with "118" numbers.

The goal of the first survey, which was performed in October 2005 on the old directory service numbers, prior to the introduction of "118" numbers, was to create a quality benchmark based on the performance of these old numbers.

In March 2006 and October 2006, two additional surveys were conducted on open 118 numbers – the purpose being to assess and track the evolution of the quality of "118" numbers after the old numbers were shut down definitively and use of the new numbers increased. It emerged that the quality of "118" numbers was equal to that of the old numbers.

A fourth survey was performed in October-November 2008.

30 - The survey on the quality of directory services that can be accessed by 118 numbers (November 2008) is available online on the ARCEP website: http://www.arcep.fr/upload/s/tx_gspublication/enq-ts118-260209.pdf.

The Authority carried out its fourth quality of service survey on “118” directory service numbers in October-November 2008³⁰. This publication is part of ARCEP’s efforts to improve market transparency and consumer information.

The survey assesses the same indicators that were measured during the three previous surveys: speed of directory services, their availability and the accuracy of the information provided.

It was conducted at a time of decreased use of directory services. The annual volume of calls to these services is around 120 million, compared to 130 million calls one year earlier. Directory services are now competing directly with electronic directories, as Internet access is so widely available. In addition, close to three years after the introduction of “118” numbers, the directory services market remains largely concentrated around four numbers.

◆ Quality of “118” services relatively stable

This fourth survey involved ten “118” directory assistance service numbers which had declared a significant volume of calls (over 10 000 a month) to the Authority. It covers virtually all of the calls made to directory assistance services.

It appears that the availability level for directory assistance services is still excellent: totalling 99%, compared to the 98% measured in October 2006.

As to the accuracy of the information provided, the average rate in 2008 was 84%, compared to 87% in October 2006. The decline in the QoS indicator is more or less sizeable depending on the service tested, and can be attributed in part to a change in the scope of the survey.

The indicator on the speed of response is back to the level reported in 2005: according to this indicator – which is obtained by calculating the average of median response times for an operator – the information is delivered in one minute. This return to the 2005 level comes on the heels of an improvement in turnaround time in 2006.

Results on the accuracy and speed of the performances reveal disparities in the different “118” services. In particular, services that provide information using automated solutions are reporting longer response times and lower levels of accuracy.

◆ Comprehensiveness of directories contending with the low rate of registration among mobile subscribers

The survey also made it possible to measure the comprehensiveness of databases for “118” services. It revealed that the main directory assistance services worked actively to gather the subscriber listings compiled by operators, but that mobile operators’ listings contain only a tiny percentage of their subscribers (less than 3%).

With the creation of the universal directory, the comprehensiveness of each “118” service’s directory database could well become an additional element of differentiation as it contributes to the quality of the service delivered, affecting the degree of accuracy of the responses it provides on subscribers, regardless of which operator they subscribe to.

To increase the quality of service provided to the users of “118” services, the Authority will continue to monitor the development of the universal directory as well as acquisition of universal directory listings by “118” services.

5. Quality of the service provided by the universal service provider

In its capacity of universal service provider, France Telecom must comply with a minimum set of quality of service parameters and obligations.

These parameters were specified by Orders dated 3 March 2005 which designate France Telecom as the provider of each the three universal service components (the telephone service, directories and directory assistance services and public payphones), and correspond to eight of the nine parameters listed³¹ in the European Universal Service Directive³² which also determines the levels of quality to be achieved.

Among other things, these orders stipulate that France Telecom must publish the definitions, measurement methods and their results, by “all appropriate means”. As concerns the universal directory and directory services component, the order specifies that the appropriate means is “on-screen display in the electronic directory”.

All components combined, these parameters are distinguished in particular by their measurement of:

- ◆ the intrinsic quality of the network. This corresponds to the unsuccessful call ratio (expressed as a percentage) and the call set-up time (expressed in seconds) for the “telephone service” component;
- ◆ installation and maintenance calls, which depend to a large extent on the processes in place and the number of persons assigned to the proper execution of the processes. It pertains to the supply time for initial connection (expressed in days), the fault repair time, measured by the rate of non-repair of telephone line disruptions the same day or the following working day (expressed as a percentage) for the telephone service component, and to the more than < 24-hour fault rate for the “public payphone” component;
- ◆ other quality of service elements, such as invoice accuracy, which is measured by the number of billing complaints (expressed as a percentage) and the response time in under 20 seconds for the “directory assistance services” component (expressed as a percentage).

31 - See inset above.

32 - European Parliament and Council Directive 2002/22/EC of 7 March 2002 concerning the universal service and user rights with respect to electronic communication services networks (Universal Service Directive).

France Telecom publishes its quality of service parameters on its website³³.

Parameter	Target	2005	2006	2007
1. Supply time for initial connection	8 days	7.94 days	8.3 days	8.31 days
2. Fault rate per access line	7.50 %	7.94 %	5.85 %	4.71 %
3. Fault repair time measured by the rate of unresolved faults	15 %	23.7 %	29.7 %	24.42 %
4. Unsuccessful call ratio	0.70 %	0.28 %	0.27 %	0.21 %
5. Call set-up time	2.90 sec.	1.22 sec.	1.30 sec.	1.34 sec.
6. Billing complaints	0.08 %	0.07 %	0.07 %	0.08 %
7. Response time for directory enquiry services	75 %	88.19 %	87.07 %	78.7 %
8. Proportion of pay-telephones that are out of order	0.60 %	0.55 %	0.72 %	0.61 %

33 - Available at:
http://www.orange.com/fr_FR/groupe/reseau/documen-tation/.

C. European Commission actions concerning international roaming

International roaming consists of giving consumers the ability to continue using their mobile phone when travelling abroad.

Although the service is a useful one for consumers, the rates applied to roaming calls inside the European Union have been a source of concern for users, national regulatory authorities, including ARCEP, and European institutions for several years now.

Having noted that the high price charged for these services had resulted in a structural lack of competition, and because of the impossibility of having national regulatory authorities intervene effectively in what are by nature international markets, in June 2007 the European Union adopted a regulation³⁴ that imposed an automatic substantial decrease in the price of mobile calls made or received while roaming in Europe.

34 - EC Regulation no. 717/2007 concerning roaming on public mobile telephone networks inside the Community, ECOJ of 29 June 2007.

Pursuant to this regulation, operators are required to offer their customers a “Eurotariff” service which, for a French consumer in a roaming situation inside Europe, was capped at € 0.59 including VAT per minute, starting on 30 August 2007, then lowered once again to € 0.55 a minute on 30 August 2008. The ceiling price, including VAT, for received calls was set at € 0.29 a minute the first year, then brought down to € 0.26 a minute as of 30 August 2008³⁵.

35 - The Eurotariff concerns only calls originating in or going to a European Union country. Prices excluding VAT are € 0.49 and € 0.46 per minute for outbound calls and € 0.24 and € 0.22 per minute for incoming calls.

These caps on retail market prices are made possible by similar regulation on underlying wholesale tariffs, billed between operators in the different EU Member States³⁶, which are expected to continue to drop steadily over the coming years, in accordance with the regulation.

36 - Maximum wholesale tariffs set at € 0.30 euro a minute starting on 30 August 2007, down to € 0.28 a minute as of 30 August 2008.

This new text also reinforces the obligations imposed on operators that must now inform their customers of roaming tariffs within the European Union. By virtue of the regulation, operators are required to send customers a text message informing them of the three main prices of roaming calls – i.e. the price of an inbound call, the price of a local call in the country where they are travelling and the price of a call to France – upon their arrival in another European Union Member State. Operators

are also required, upon request by the customer and for free, to provide more detailed information on calling rates to other destinations (via mobile voice mail or text message), and on the price of SMS, MMS and mobile data services.

1. Assessment of Eurotariffs for voice calls

The direct regulation of retail prices, as well as the wholesale prices that operators charge one another, in a uniform fashion across the entire European Union is something entirely new in the electronic communications market. Because the implementation of a Eurotariff for voice calls did not become mandatory until 30 September 2007, it is still too early to make any definitive assessment, although several observations can be made based on the monitoring of roaming markets as provided for in Article 7 of the regulation, and performed by ARCEP on a quarterly basis.

As of 30 September 2008³⁷, 80% of mobile customers in France were benefiting from Eurotariffs. Looking only at customers with access to roaming services, the Eurotariff is applied to all prepaid customers, and to 92% of subscribing customers. These figures clearly indicate that the Eurotariff has become the default rate charged for roaming, and the only one charged in the case of prepaid accounts.

³⁷ - Latest quarterly data available.

Average price, excl. VAT, for calls sent and received by French customers in a roaming situation in Europe, and the average wholesale price that French operators charge other European operators



Figure: Average price, excl. VAT, for calls sent and received by French customers in a roaming situation in Europe, and the average wholesale price that French operators charge other European operators.

The goal of limiting the price of roaming calls has clearly been achieved. A 30% decrease in wholesale prices, a 37% drop in the average price of outbound calls and a 17% drop in the price of inbound calls was recorded between Q2 2007 (the only quarter for which figures are available prior to the regulation's entry into force) and Q2 2008 (after it came into force).

It should nevertheless be noted that virtually all operators have aligned their affected retail prices with the ceiling tariff set by the regulation, even though the European legislator designed these caps merely as safeguards, in no way seeking to influence the price that could be reached as a result of competition. The current situation

does therefore indicate a lack of competition in this market segment, with prices being set by the regulation and thus apparently unlikely to change except as a result of regulatory pressure.

This is not a satisfactory situation as it forces the prolonged application of regulation that was initially intended to be only temporary.

Moreover, the available data do not appear to reveal a clear increase in the volume of calls following the enforcement of the regulation, and the ensuing decrease in calling prices – with an only 11% increase in outbound calls and a 16% rise in inbound calls between Q2 2007 and Q2 2008.

Other factors that have not been taken into account, such as variations in holiday and business travel activity between 2007 and 2008 could explain the slightness of this increase. Should this prove to be the case, it would mean a relatively low assessment of the overall gains obtained through application of the regulation, whether it be for consumers, which were doubtless not that restrained by the price of roaming calls, or for operators, for which the imposed decrease was only partially offset by the increase in calling volumes.

Lastly, the data collection exercise helped reveal a gap between the call length that is billed for and the actual length of the call, due to a price-setting method that, in some cases, includes an indivisible first tier of one minute. Even if operators comply with the per-minute tariffs set by the regulation, the rounded-off prices charged for calls that last less than a minute, which penalise consumers, translate into an average price per *actually consumed* calling minute (volume measured by the second, starting with the first second) which is 20% higher for wholesale tariffs, 19% higher for outbound calls and 15% higher for incoming Eurotariff calls in Q3 2008.

2. A shift to Eurotariffs for data exchange?

Drawing on elements provided by national regulatory authorities, among other things, on 23 September 2008 the Commission submitted a proposed regulation³⁸ prolonging and expanding the initial regulation, following its analysis of market development, in accordance with Article 11 of the regulation.

Because of an observed lack of competition in roaming voice call markets, the Commission proposed that the existing regulation be prolonged, along with an annual decrease of € 0.03, excluding VAT, in both wholesale and retail market tariffs – to be applied starting on 1 July 2009 and until 2013. The wholesale tariff will decrease from € 0.28 to € 0.17 by 2013, the price of outbound calls will go from € 0.46 to € 0.34 and the price of inbound calls from € 0.19 to € 0.10.

On the matter of voice calls, the Commission also proposed a limit on the use of tiered billing which is not beneficial to consumers, by specifying that the volumes employed when calculating ceiling tariffs must be by the second, starting with the first second. In the case of calls made while roaming, a first indivisible period of 30 seconds will be tolerated, to allow operators to recover possible set connection costs, and to give them the ability to differentiate themselves if they so desire by employing a lower tier, but also to take account of the diversity of situations across European Union Member States.

³⁸ - Proposal of 23 September 2008 of the European Parliament and Council regulation amending the EC regulation no. 717/2007 concerning roaming on public mobile telephone networks inside the Community, and Directive 2002/21/EC concerning the common regulatory framework for electronic communications networks and services. http://ec.europa.eu/information_society/activities/roaming/docs/regulation/reg_fr.pdf

The initial regulation did not provide for regulation of SMS tariffs and data roaming solutions, but imposed the implementation of price monitoring for these services. Based on available data, the Commission noted a broad stability in both wholesale and retail prices for SMS, which would appear to indicate that the state of competition in the roaming SMS market is similar to the earlier situation with voice calls. On the other hand, mobile data prices have decreased in recent times, by an average 28% in the wholesale market and by 30% in the retail market in France between Q3 2007 and Q3 2008.

In light of these elements, the European Commission proposed that the regulation be extended to SMS, based on a similar system to the Eurotariff, namely a “euro-SMS” whose price would be based on a regulated wholesale tariff of € 0.04, and a retail tariff with a ceiling of € 0.11. It should be pointed out that this would mean a very sharp drop in the retail price of a text message, as the average price in France for a roaming SMS was € 0.24 as of Q3 2008.

The data roaming market is still too nascent for retail tariff regulation to be legitimate, as indicated by recent changes in observed prices. Nevertheless, factoring in the possible difficulties that some operators have in obtaining reasonable wholesale tariffs, the European Commission does want to implement a system of safeguards for wholesale tariffs that consists of applying an average maximum price of one euro per megabyte, designed as being a tariff that would prevent distortions in the state of competition between independent operators and operators which are part of large corporations or pan-European alliances.

This tariff does indeed appear capable of fulfilling this role as it corresponds approximately to the average tariff observed in the latest quarterly figures available.

Alongside this wholesale market regulation, the Commission wanted to improve pricing transparency and to battle against the excessive invoices that some consumers found themselves faced with when travelling abroad.

To achieve this, in addition to an obligation for increased information on pricing, delivered via SMS when customers enter another European Union country, the Commission proposed that operators be required to provide their customers, free of charge, with a mechanism that would allow them to automatically set a cap on their roaming data spending, along with an alert for when they had nearly reached that limit. Such a system, which consumers could deactivate, would allow users to control their spending on roaming services.

The Commission's draft proposal is currently being examined by the European Parliament and Council, and is expected to be adopted, no doubt in an amended form, in June 2009.

D. Number portability

1. Mobile number portability (MNP)

1.1 In Metropolitan France

The new so-called one-step number portability process for Metropolitan France came into effect on 21 May 2007.

◆ Financial terms of interconnection agreements

When the one-step process was launched it emerged that, despite the Authority's intervention, mobile operators were not always able to establish the financial terms of portability interconnection agreements. In particular, operators were unable to agree on the services to be taken into account when setting the tariff that the recipient operator must pay the donor operator under the new portability process.

The Authority thus decided that it was necessary to provide a framework for the method used for setting collectable costs under the new portability process, by issuing a decision. After receiving the requested opinions of the Radiocommunications Consultative Committee, CCR, and the Consultative Committee for Electronic Communication Networks and Services, CCRSCE, the Authority adopted a decision on the matter on 27 May 2008³⁹, which was approved by the Minister responsible for electronic communications on 10 July 2008⁴⁰. In accordance with existing regulation⁴¹, the price-setting and cost accounting methods stipulated in this decision promote economic efficiency, favour lasting competition, optimise the advantages for consumers and ensure a reasonable rate of return on capital employed.

39 - Decision no. 08-0513 of 27 May 2008 specifying the accounting, recovery and price-setting methods for the costs tied to mobile number portability requests in Metropolitan France.

40 - Order of 10 July 2008 approving ARCEP Decision no. 08-0513 of 27 May 2008 specifying the accounting, recovery and price-setting methods for the costs tied to mobile number portability requests in Metropolitan France, JO of 18 July 2008.

41 - CPCE Article D. 406-19 IV.

As to enterprise subscribers, the information needed for porting their number is made available to them either electronically, in the form of a customer area on the Internet, or indicated on their invoice.

Mobile number portability: a user's guide

Concomitant request for a new subscription:

Subscribers address themselves directly and solely to their new operator of choice (recipient operator) to request retention of their mobile number and cancellation of their subscription contract with their old operator (donor operator).

The new operator is thus mandated by the customer to perform all of the necessary steps, namely:

- ◆ subscription to a new contract;
- ◆ portage of the affected mobile number;
- ◆ cancellation of the corresponding agreement with the old operator (donor operator).

Streamlined identification process:

To make an MNP request, customers need to be able to prove that they are the holder of the mobile number to be ported, and must thus supply an operator identity statement or RIO (*relevé d'identité opérateur*). The RIO is a unique identifier assigned to a line and a customer contract, which provides proper identification for portability requests.

To obtain their operator identity statement, customers make a free call from their mobile to an interactive voice server dedicated to MNP, provided by their current operator, and in response will receive a text message containing the information needed to complete their porting request and, if applicable, information about the months remaining in their contractual commitment to their existing operator⁴².

For businesses and public entities' multi-line service contracts, operators will need to implement a system for overall management of RIO access, either:

- ◆ electronically (online customer service area, where available);
- ◆ or via the billing system employed for the particular mobile line.

Portability within a maximum 10 days

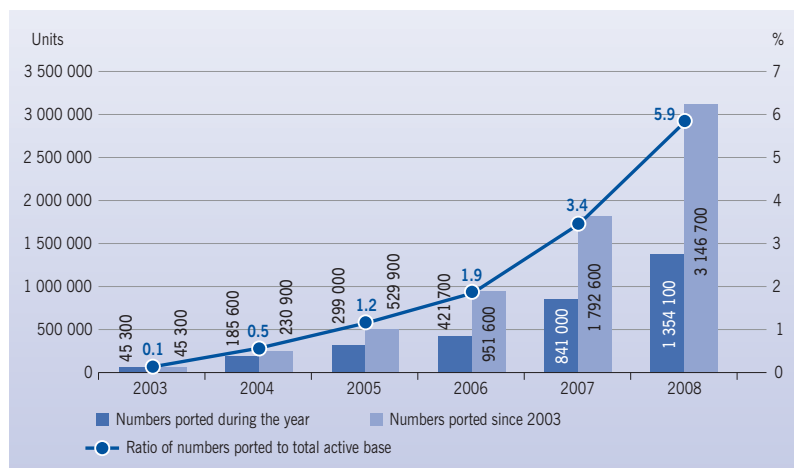
The nominal time to port is seven calendar days and may not exceed 10 days unless the customer expressly requests a later date.

The day that the number is actually ported is the day that the line with the new operator is opened and the line with the old operator is shut down: after having changed SIM cards, the subscriber can place and receive calls on the new operator's network, using the same number. Service interruption for these purposes may not exceed 4 hours.

◆ Quantitative data for 2008

Since the implementation of the mobile number portability process on 1 July 2003, some 3 150 000 mobile numbers have been ported (or close to 6% of the total base of active mobile customers).

Number of mobile numbers ported annually in Metropolitan France



Source: ARCEP, mobile indicator monitoring.

42 - In cases where subscribers still have contractual commitments (i.e. minimum contract period) with the operator they want to leave, this operator can invoice them for the sums due, e.g. payment of subscription fees up to the end of their contract's lifespan.

1.2 In overseas markets

1.2.1 Antilles-Guyana region

◆ Methods for applying mobile number portability in the region

43 - The Antilles-Guyana region includes the overseas départements of Martinique, Guadeloupe and Guyana, as well as the collectivities of Saint Martin and Saint Barthélemy. The operators that are active in the zone are Dauphin Telecom, Digicel, Outremer Telecom, Orange Caraïbe and UTS Caraïbe.

44 - ARCEP Decision no. 07-0193 of 5 April 2007, specifying the terms of application for mobile number portability in the départements of Guadeloupe, Martinique and Guyana and in the overseas collectivities of Saint Martin and Saint Barthélemy.

45 - Group comprising the operators Dauphin Télécom, Digicel, Outremer Télécom, Orange Caraïbe and UTS Caraïbes.

One-step portability has been in effect in the Antilles-Guyana⁴³ zone since 1 April 2006.

As in Metropolitan France, the portability process implemented in the overseas territories is characterised by the fact that customers address themselves directly and solely to their new operator of choice which, in turn, processes the new subscription, the porting request and notifies their existing operator of the cancellation of their contract – within a period that has been shortened to a maximum 10 days.

Unlike in Metropolitan France, however, operators in the Antilles-Guyana region have not yet implemented the operator identity statement (RIO), a code whose goal is to protect them against risks of error concerning the number to be ported. Since 1 September 2007, however, customers been able to access information via an SMS server regarding the end date of their contract, if they have one and it still has time remaining.

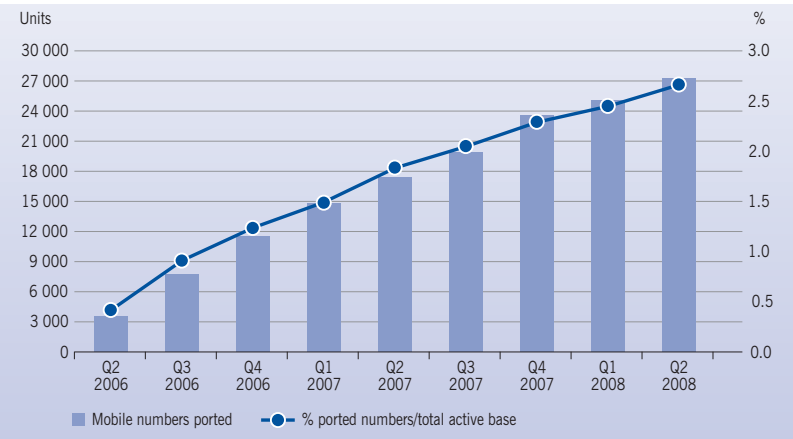
Moreover, as it has already done in Metropolitan France, the Authority adopted a decision that provides a framework for the portability process in the Antilles-Guyana region⁴⁴.

The goal of this decision is to consolidate existing mobile number portability practices in these overseas départements by providing operators with a sound legal framework which is consistent with the work performed by the Antilles-Guyana mobile number portability group, GPMAG (*Groupe portabilité mobile Antilles-Guyane*)⁴⁵ and the rules applied in Metropolitan France.

◆ Quantitative data for 2008

As of 31 December 2008, around 30 000 mobile numbers had been ported (or more than 2.5% of all customers) since the introduction of the one-step process on 1 April 2006. The success of the streamlined process therefore appears to be substantiated.

Number of mobile numbers ported in the Antilles-Guyana region



Source: ARCEP.

1.2.2 The Reunion-Mayotte region

◆ Methods for applying mobile number portability in the region

One-step portability has been in effect in the Reunion and Mayotte zone since 1 July 2007.

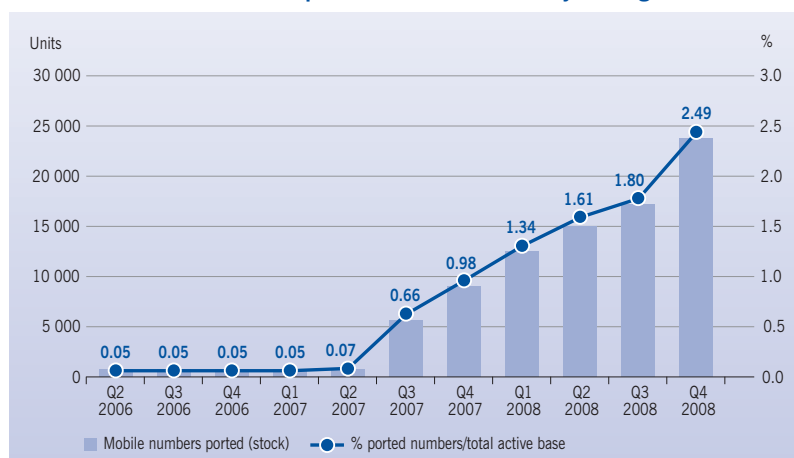
The operators concerned⁴⁶ have developed specifications that are similar to those adopted by operators in Metropolitan France, particularly with respect to RIO.

As it has done in Metropolitan France and in the Antilles-Guyana region, the Authority provides a framework, through a regulatory decision, for the mobile number portability process in the *département* of Reunion and the territorial collectivity of Mayotte, to provide the regions with a sound legal footing. After having received the requested opinions of the CCR⁴⁷ and the CCRSCE⁴⁸, the ARCEP Board adopted the Decision of 19 March 2009 which must now be approved by the Minister responsible for electronic communications⁴⁹.

◆ Quantitative data for 2008

Around 25 000 mobile numbers were ported between 31 March 2005 (when two-step MNP was introduced in Reunion) and 31 December 2008.

Number of mobile numbers ported in the Reunion-Mayotte region



Source: ARCEP.

2. Fixed number portability

Numbers affected by fixed portability

Fixed portability applies to:

- ◆ fixed geographic numbers (starting with 01, 02, 03, 04 or 05);
- ◆ and fixed non-geographic numbers including freephone value-added service numbers and VAS numbers carrying intermediate or high calling rates (numbers starting with 08) and person-to-person numbers (starting with 09).

⁴⁶ - The operators concerned by the process are Orange Réunion, Outremer Telecom and SRR.

⁴⁷ - Radiocommunications Consultative Committee.

⁴⁸ - Consultative Committee for Electronic Communication Networks and Services.

⁴⁹ - In accordance with CPCE Article L.36-6.

2.1 Number retention is a subscriber's right

50 - Art. L.44, D.406-18
and D. 406-19.

Fixed number portability, or number retention, is an important part of market competition, in addition to being a subscriber right. All those who subscribe to a fixed telephony service have the option of keeping their (geographic or non-geographic) phone number when they switch operators. This right is stipulated in the code governing French postal and electronic communications markets, CPCE⁵⁰, and is an obligation imposed on operators.

Since its implementation, fixed portability has been a one-stop process: customers address themselves directly to their new operator when subscribing to a new contract, stating that they want to keep their old number. The new operator is responsible for taking all the necessary steps with the customer's old operator.

Number retention involves the automatic cancellation of the contract with the old operator, which occurs as soon as the number has been effectively ported, albeit without exonerating the subscriber from paying any outstanding cancellation penalties stipulated in their contract.

Customers must satisfy certain criteria to be eligible for number portability. An operator cannot refuse a subscriber's request to retain their number except in a few, very limited cases, due to technical or administrative considerations, notably:

- ◆ a porting request must be submitted by the contract-holder, or by his or her legal representative;
- ◆ the number must still be active: the contract with the donor operator cannot have already been cancelled when the porting request is made;
- ◆ a geographic number (starting with 01, 02, 03, 04 or 05) cannot be retained when moving outside the geographical area attached to that number. This restriction does not exist for non-geographic numbers starting with 08 or 09.

2.2 Initiatives launched with operators to improve the fixed number portability processes

Fixed number portability plays a significant part in the development of competition, especially with the introduction of unbundling offers from alternative operators. These operators have had to make a priority of developing information systems for processing number retention requests coming from customers who were switching from the incumbent carrier.

Since late 2006, operators have been meeting on a regular basis in sub-working groups, organised by ARCEP, to examine and resolve a number of issues:

- ◆ improving France Telecom outbound portability in the short term, particularly for enterprise markets;
- ◆ harmonising and automating symmetrical inter-operator portability processes, regardless of the numbers and operators involved;
- ◆ call routing to ported fixed numbers, and particularly the methods for implementing direct routing.

These efforts take account of the inherent complexity of fixed number retention that stems from being so closely bound up with the delivery of access to the telephone service and the diversity of players, in terms of both their variety and target market.

◆ **Work of the sub-working group in charge of improving the France Telecom outbound portability process**

This work resulted in the implementation by France Telecom of a new inter-operator information exchange process in late 2007 which takes account of the specifications established between France Telecom and the leading operators, under the aegis of ARCEP. The operators affected by these changes performed the necessary upgrades to their information systems which allowed them to take advantage of the new features of their exchanges with France Telecom. The Authority will continue to ensure that alternative operators upgrade their information systems to enable symmetrical and automated portability between operators.

As a result, the inter-operator mechanisms for processing a request to port a number that was originally assigned to France Telecom have now been largely automated. The fixed telephony market is, however, currently in a state of churn, which has led to a change in the type of fixed number retention requests being made: more and more number portability requests concern numbers assigned directly to alternative operators, which have not yet automated their portability processes.

This was the conclusion reached by the Authority following the audit performed in 2008 on the status of inter-operator fixed number portability processes. The Authority used this opportunity to remind fixed operators of their obligation to satisfy subscribers' right to keep their number, regardless of the operator and the number involved. It also informed operators of the existence of multilateral efforts taking place under its supervision, and the need to implement portability requests between operators – the lack of a prior agreement being no pretext for not doing so. The lack of automation for the system used for inter-operator portability can lead to denied requests, increased implementation delays and poor coordination between operators, and the risk of consumers being double billed or losing their number.

These issues are impediments to respecting the right of subscribers to keep their number when changing operators, and a potential impediment to the development of ultra-fast broadband offers if they do not include a number retention process from the outset.

◆ **Work of the “inter-operator processes” sub-group**

These efforts helped to establish the fundamental principles of fixed portability, both on the subscriber side of the equation and with respect to relations between the operators involved in the porting operation. This work is to result in the adoption of a decision in 2009, based on Article L.36-6, specifying the terms of fixed number portability.

Parallel to the introduction of a global framework common to all operators, the Authority focused on the initiatives aimed at developing the direct routing of calls to ported fixed numbers. Fixed number retention originally involved calls to the ported number being routed by the operators that had originally been assigned

these numbers. This system, referred to as indirect routing, has a number of drawbacks given that the quality of the routing is tied to the customer's old operator and so creating risks of network inefficiencies, added costs for operators and the fact of having the quality and future of the service depend on the original operator's network.

The alternative solution consists of implementing direct routing between the calling operator and the recipient operator of the ported number. This solution makes it possible to guarantee better control over the quality of the call routing service and to optimise inter-operator transit costs.

Over the course of 2008, operators met within the French association of telecommunications network operators and service providers, AFORST (*Association des opérateurs de réseaux et services de télécommunications*) and then as part of the French Telecoms Federation, FFT (*Fédération française des Télécoms*) to define the specification for this type of solution. ARCEP provided the operators with support throughout the process, accompanying their efforts closely and offering clarifications on the terms applying to the routing of calls to ported numbers. These terms are to be included in a decision which is currently in the consulting phase with the Radiocommunications Consultative Committee, CCR and the Consultative Committee for Electronic Communication Networks and Services, CCRSCE.

The Authority, which is in favour of direct routing of calls to ported numbers, congratulates fixed operators on the creation of the Fixed number portability association, APNF (*Association de la portabilité des numéros fixes*) on 20 January 2009. Aimed at telephone service operators, this association must now create a central database of ported fixed numbers, which is to become operational in 2010. The Authority will closely monitor the upcoming work to provide operators with support they need to complete their project.

E. Universal service

1. Universal service and the universal service operator

The work performed in 2008, as in 2007, was once again devoted to applying the regulatory framework set in 2004⁵¹.

1.1 Universal service components

The universal telecommunications service is made up of three public telecommunications service components, which include the provision of mandatory electronic communications services and general interest missions. It is the only component to be financed by a sectoral fund.

Public electronic communications service

51 - 2004 was marked by the publication in the Journal Officiel of 1 January 2004, of Law no. 2003-1365 of 31 December 2003 concerning public telecommunications service obligations and

Universal service	Mandatory services	General interest missions
Three components: fixed telephony service (tariff balancing and social tariffs), directories and directory assistance, public payphones	ISDN, leased lines, packet switching service, advanced call forwarding service, calling signal...	Involvement in national defence and national security Development of research and training
Designated provider: France Telecom Financed by the sectoral fund to which all operators contribute	Shouldered by the operator designated to provide the "telephone service" component	Included in operators' terms

Universal service must be provided nationwide, and includes three distinct components:

- ◆ the telephone service, which covers the installation and operation of a fixed connection to the public network for all persons who request it, and provision of a quality telephone service over this connection, at an affordable price. It also includes the provision of an offer of a reduced telephone bill for certain subscriber categories (social tariffs);
- ◆ Universal Directory and Universal Directory Information Service covers the provision of a directory enquiry service (118 711) and an electronic directory service at a reasonable price (www.118711.fr), and the free distribution of a printed directory to all public telephone service subscribers;
- ◆ Public Payphone Service covers the installation of public payphones in the public thoroughfare, and the provision of a quality and reasonably priced telephone service over these payphones.

France Telecom, transposing the European "Universal Service" Directive of 7 March 2002. As with the telecommunications regulation law of 1996, the legislator has reaffirmed the significance it gives to the public electronic communications service defined in CPCE Article L. 35, and to the universal service in particular.

Each of these three components includes provisions for disabled persons, guaranteeing that their access to services is equivalent to that enjoyed by all other users, provided that the enabling technologies are available and can be deployed at a reasonable cost.

1.2 Designation of the universal service operator(s)

Designation of the operator(s) in charge of universal service is performed by the Minister responsible for electronic communications, following calls for candidates (one per component) relating to the technical and tariff conditions and, if necessary, to the net cost of providing these services.

This procedure allows for competition over each of the universal service components, and limits the cost of universal service since the net costs factored in for assessing the cost of universal service cannot exceed the commitments made in the responses to the call for candidates.

France Telecom was designated⁵² by the minister as the operator in charge of universal service for all three components in March 2005: until March 2009 (for four years) for the telephone and public payphone services and until March 2007 (for two years) for the third component (Universal Directory and Universal Directory Information Service). Following a new call for candidates⁵³, France Telecom was designated by ministerial order as the provider responsible for the Universal Directory and Universal Directory Information Service component on 29 March 2007, for a period of two years.

The new universal service provider(s) will be designated in 2009, which meant that in 2008 efforts were devoted to preparing for changes that were likely to occur in the obligations imposed on the universal service operator(s), as part of the calls for candidates.

52 - Three orders designating the universal service operator (one per component) were issued by the Minister in charge of electronic communications, dated 3 March 2005.

53 - Published in the Journal Officiel of 25 January 2007.

Principal stages	Date
Ministry	
1 st public consultation on the calls for candidates (geographical area corresponding, by default, to entire country)	From 31 July to 15 September 2008
2 nd public consultation on the calls for candidates (With no predetermined geographical zone)	From 5 to 22 December 2008
Publication of the calls for candidates in the <i>Journal officiel</i>	14 January 2009
End of the previous devolution period	
Telephone and public payphone components	3 March 2009
Directory and Directory services components	29 March 2009
Operators	
Deadline for candidate submissions	3 February 2009

The results of this call for candidates were still unknown at the time of publication of this report.

1.3 Universal service operator obligations

The operator(s) responsible for providing one or more of these components must:

- ◆ comply with quality of service obligations, and publish the value of the QoS parameters⁵⁴ set by their specifications;
- ◆ establish a tariff catalogue for the universal service and the mandatory services;
- ◆ communicate their tariffs to the ministry and to ARCEP at least eight days prior to their implementation;

54 - These parameters include those contained in the European "Universal Service" Directive.

- ◆ inform⁵⁵ users of their universal service offer, of the corresponding tariffs and of any future modifications, suspensions or cancellations;
- ◆ not alter the material terms of use of a universal service before having informed users⁵⁶;
- ◆ separate universal service items from other services in all material related to the service offering, on customer invoices and in the subscriber contract.

The tariffs charged for offers which fall under the heading of provision of a universal service component are set by the operator, which is required to adhere to the principles of transparency, non-discrimination and cost-oriented pricing.

They do not depend on the way that subscribers utilise the service, as long as it does not affect the conditions for providing the service. These tariffs are set in such a way as to avoid discrimination based on a user's geographical location.

ARCEP is responsible for approving universal service tariffs and any changes proposed by service providers, or setting a multi-year rate schedule⁵⁷.

1.4 Social tariffs and "pay or play"

The universal service is "*supplied [by its designated provider(s)] under technical and pricing conditions that take account of certain categories of persons' specific difficulties in accessing the telephone service, due notably to their income level or their disability*"⁵⁸.

These social tariffs must translate into a reduced phone bill for eligible customers⁵⁹.

1.4.1 Who is eligible for a tariff reduction?

An eligible customer is any person who earns the social integration minimum income, a specific solidarity allowance or the disabled adult allowance. They receive a certificate from the social organisation on which they depend (family allowances fund, *Caisse Nationale Allocations Familiales* [CNAF], the national union for employment in industry and commerce, *Union Nationale pour l'Emploi dans Industrie et le Commerce* [UNEDIC] or the agricultural social insurance mutual benefit fund, *Caisse Centrale de Mutualité Sociale Agricole* [CCMSA]) which they must fill in to obtain a social tariff reduction from certain operators. If they do not receive the certificate directly, customers must request it from their social organisation. The reduction in their phone bill is put into effect within one or two months following the return of the completed certificate.

The reduction and the associated compensation are increased by an additional €4, excl. VAT (€5 incl. VAT) a month⁶⁰ for certain disabled ex-servicemen.

1.4.2 Who can offer social tariffs?

The universal service provider must offer a reduced tariff⁶¹, but other operators are also able to offer their customers a social tariff reduction for their telephony access service⁶². To do so, the operator must take the initiative to submit a request to the ministry⁶³. After having received the minister's approval, the operator is eligible for compensation from the universal service fund for the expenses incurred by offering social tariff reductions, up to a set threshold⁶⁴.

55 - Operators update this information on a regular basis in all of their sales outlets and points of contact with customers, and through an electronic means that can be accessed in real time at a reasonable price, and ensure disabled users access to this information in a manner adapted to their disability.

56 - They are bound to provide 6 months' advance notice of the conditions and periods applying to cancellations and changes, 18 months' advance notice of technical modifications requiring the replacement or significant adaptation of equipment connected to the network, and one week's advance notice both for new service offerings related to universal service and for changes (other than tariff changes) to existing service offerings.

57 - See below.

58 - CPCE Article L.35-1.

59 - CPCE Article R.20-34 I.

60 - According to the strict interpretation made by the Directorate-General for Enterprise (Direction Générale des Entreprises).

61 - CPCE Article L.35-3.

62 - Provided that the service is similar to the one defined in the first universal service component, and so able to be qualified as a "universal service".

63 - CPCE Article R.20-34.

64 - The social tariff reduction ceiling is set annually by the minister.

65 - Opinion no. 2008-0514 of 13 May 2008.

66 - Order of the Minister of the Economy, Industry and Employment, of 17 June 2008.

In 2008, the Authority received one request from the firm TLIC to offer its customers a social tariff reduction. The Authority issued a favourable opinion⁶⁵ of this request and the minister issued an order⁶⁶ authorising TLIC to allow its customers to benefit from a social tariff reduction. This authorisation thus allows the firm TLIC to receive compensation from the universal service fund.

As TLIC has not begun operations, France Telecom is still the only operator currently offering a social tariff reduction.

In accordance with the commitments attached to its designation in 2005, France Telecom has a set social tariff subscription of € 6.49, incl. VAT, a month (compared to € 16, incl. VAT, a month for a “standard” subscription, since 4 July 2007). The social tariff subscription has been reduced to as little as € 1.71, incl. VAT, a month for certain disabled ex-servicemen.

For 2008, the reductions agreed to by France Telecom are thus compensated by the universal service fund to the amount of € 5.04 including VAT a month (€ 9.82 including VAT a month for certain disabled ex-servicemen), with France Telecom shouldering the balance of the reduction.

Change in the social tariff for a France Telecom subscription since 2000

	Up to 14/10/00	14/10/00 to 20/07/02	20/07/02 to 03/03/05	Starting on 03/03/05	Starting on 04/07/06	Starting on 04/07/07
Price of the basic subscription (in euros, incl. VAT/month)	11.79	12.55	13	13.99	15.00	16.00
Price of the social subscription, for eligible customers (in euros, incl. VAT/month)	6.76	6.76	7.00	6.49	6.49	6.49
Difference (in euros, incl. VAT/month)	5.04	5.79	6.00	7.50	8.51	9.51
Compensation paid to France Telecom by the universal universal service fund (social tariff reduction in euros, incl. VAT/month)	5.04*	5.04*	5.04*	5.04*	5.04*	5.04*
Portion of the subscription shouldered by France Telecom (in euros, incl. VAT/month)	0.00	0.75	0.97	2.46	3.74	4.47

* or €4.21 excluding VAT.

1.5 Financing the universal service

1.5.1 Universal service fund contributors

By law, it is operators that finance the net cost of the universal service⁶⁷. In addition to fixed and mobile operators, entities that contribute to the universal service fund are Internet access providers, data transport providers, providers of directory information services⁶⁸, providers of telephone cards, MVNOs⁶⁹, VoIP service providers⁷⁰, VPN (virtual private network) access service providers, SMS aggregators and local authorities engaged in electronic communications operator activities.

67 - CPCE Article L.35-3.

68 - Notably "118" services.

69 - Debitel, NRJ mobile, etc.

70 - Wengo, etc.

1.5.2 Contribution based on turnover

Calculation of each operator's contribution to universal service funding is "based on a prorata share of the turnover generated by electronic communications services", except under certain conditions⁷¹. Exempt from this contribution are operators whose turnover is below € 5 million⁷². The *Caisse des dépôts et consignations* (Deposit and consignment office) is responsible for the accounting and financial management of the fund.

71 - CPCE Article L.35-3-II

72 - CPCE Article R.20-39 (Para. 2).

1.5.3 The electronic communications services involved

The following table lists the services factored into the scope of relevant turnover, which is used as the basis for calculating an operator's contribution to the universal service fund.

Electronic communications services	Included in the scope
Fixed telephony services	
- Originating from a fixed line	Yes
- Originating from a public payphone	Yes
- Calling cards	Yes
Mobile services	
- Terrestrial mobile telephony (access and call origination)	No
- Roaming in	Yes
- Roaming out	Yes
- Calls from mobiles	Yes
Other mobile services	
- Satellite mobile services	Yes
- Paging services	Yes
- Professional mobile networks	Yes
Interconnection and access for fixed and mobile telephony, including inbound international traffic	No
Internet (including wireless)	
- Narrowband	Yes
- Broadband	Yes
- Other services related to Internet access provision (advertising, e-commerce, website hosting other than for access, firewall, antivirus...)	No
Advanced services (fixed and mobile telephony)	
- Toll-free services	Yes
- Shared cost numbers	Yes
- Shared revenue numbers (regardless of the number's owner)	Yes
- Special routing services	No

Leased line and other capacity and data transport services (fixed and mobile network)	
- Analogue and digital lines, regardless of bitrate	Yes
- Other capacity services (LAN interconnection, etc.)	Yes
- Data transport	Yes
Directory services and related income (fixed and mobile telephony)	
- Telephone directory services	Yes
- Electronic directory search	Yes
Related income	
- Directory sales (print, CD-ROM, ...)	No
- Advertising: other income	No
- Sale of databases	No
Terminal sales, rental and maintenance	No
Other services related to electronic communications (computer applications and hosting services)	No

2. ARCEP’s role

73 - CPCE Article L.36-7. The Authority is responsible for setting the contributions for funding universal service obligations, and for monitoring the funding mechanisms⁷³.

2.1 Determining the cost of universal service

In 2009, ARCEP performed the net cost assessment for 2007; in 2008 it performed the assessment for net costs in 2006.

The annual assessment of net cost takes into account not only the costs, but also the revenue and intangible benefits accruing to the operators that provide each of the universal service components.

The rate of return on capital employed, which is used by the universal service provider to calculate the underlying costs, was adopted in autumn 2008.

The rules for calculating the final cost of universal service are adopted by ARCEP after public consultation, and are published before the assessment is made.

Supervised annual accounting

74 - In its Decision no. 2008-0294 of 13 March 2008, ARCEP published the certificates of conformity for the costs, by product, that France Telecom posted to its operating accounts, relating to the net cost of the universal service and the carrier’s individualised accounts, established by France Telecom as part of its regulatory obligations.

ARCEP requires providers of the various component services to supply the information needed to determine the cost of the component parts of universal service. The portion of the providers’ accounts used to calculate the net cost of universal service obligations is audited by an independent body named by ARCEP. The audit covers the cost and income data for services used to determine the cost of universal service obligations, as well as the methods used to gather the data on network and traffic characteristics produced by the providers’ information systems. This then allows the independent auditor to issue a certificate of conformity, which ARCEP publishes in the annex to its decision⁷⁴, along with the declaration of costs posted to France Telecom’s individualised accounts.

2.1.1 Geographical balancing

The net cost of the geographical component is equal to the sum of the relevant net costs in unprofitable zones, which would not be served by an operator under normal market conditions⁷⁵.

75 - CPCE Article R20-33.

For 2007, ARCEP used the same geographical balancing model as in 2006 – segmenting local distribution into zones which represented France Telecom's network from an economic point of view, made up of 35 classes of local distribution zones, characterised by their geographic density.

76 - In accordance with CPCE Article R20-34.

The model reflects the behaviour of an operator which is developing a network starting with the most profitable zones, supposedly those that are the most densely populated. For each class of local zone, a net cost appears when the added cost to the operator for serving this category of local zone is higher than the direct and indirect revenues generated by providing services in this class of local zone.

77 - Whose ceiling is set by ministerial decree, and has remained at €4.21 a month, excl. VAT, per subscriber, since 2000.

In 2007, geographical balancing decreased compared to 2006 due to a reduction reported by France Telecom of the costs that fall within the scope of costs factored into the calculation of the net cost of the universal service.

78 - ARCEP Opinion no. 08-0192 of 26 February 2008.

79 - In accordance with CPCE Article R. 20-36.

2.1.2 Social tariffs⁷⁶

The net cost of social tariffs is equal to the funded portion⁷⁷ of the reduction agreed to by the operator providing the service to disadvantaged persons (notably due to low income levels), plus the social organisation's management costs and those incurred by the companies providing the social tariff reduction.

80 - In accordance with the commitments made in its response to the call for candidates for the selection of the provider of the corresponding universal service component.

In an opinion⁷⁸ issued in early 2008, ARCEP underscored the importance of guaranteeing the stability of the price of the social subscription through compensation from the universal service fund for the beneficiaries of the social tariff reduction.

81 - In accordance with CPCE Article R. 20-35.

2.1.3 Directories and directory services⁷⁹

Given that, in its response to the call for candidates to the "directories and directory assistance services" component for the period running from 2005 to 2007, France Telecom estimated that the net annual cost of the universal directory service (profit making) and the directory assistance service (operating at a loss) offset one another, after taking account of the complementary revenue, ARCEP estimated that the net cost of the "directories and directory assistance services" component was nil⁸⁰.

82 - According to Article R20-30-3: "the operator in charge [...] of providing the [public payphone] component of the universal service [...] will make public payphones [...] available to the public in public areas. This operator will make at least one payphone available to the public in all municipalities. In municipalities where the population exceeds 1 000 inhabitants, the operator will install at least a second payphone."

2.1.4 Public payphones⁸¹

The net cost of installing public payphones corresponds to the deficit reported in the municipalities where France Telecom meets the exact number of required payphones to be installed⁸².

The definitive net cost of this component for 2007 was lower than in 2006. The drop in traffic between those two years was offset by a decrease in the fixed and variable costs of operating public payphones, which translated into a smaller number of public payphones operating at a loss.

83 - In accordance with
CPCE Article R. 20-37-1.

2.1.5 Intangible benefits⁸³

To assess the intangible benefits enjoyed by universal service operators, ARCEP incorporates the advantages derived from brand image, ubiquity, lifecycle and access to data⁸⁴.

84 - European Commission
Communiqué
of 27 November 1996.

◆ Brand image

An operator that provides a telephone service to all persons requesting it, even in sparsely populated zones, automatically improves its brand image with the public. Assessing this advantage is tied to the additional cost that the subscriber is willing to pay, which is evaluated through a statistical study.

To calculate the net cost of the universal service for 2007, ARCEP kept the methodology developed in 1999, which was based on a survey in late 2000 and updated in 2006. The decrease in the benefits associated with brand image between 2006 and 2007 is correlated with the decline of France Telecom's residential analogue fixed telephony revenue.

◆ Ubiquity

Ubiquity corresponds to the technical and commercial advantage that results from having a high-density network when connecting a new subscriber, compared to an operator under normal market conditions. For the universal service operator, the fact of having "*universal coverage in a ubiquitous operating zone*" naturally generates comparatively lower costs than those generated by the competition when extending its network to new customers.

◆ Lifecycle

This is the advantage derived from the improvement over time of the economic status of subscribers benefiting from universal service. Some subscribers who are not profitable when they first connect to the phone service can become profitable later on (e.g. as the children in the household grow up), thereby creating new revenues for the operator.

◆ Access to telephone usage data

This is the advantage derived from the use of subscriber data to improve market knowledge. Because of the service it provides, a universal service operator has access to market data (regarding usage) which it can use for its marketing needs or to assess network upgrade requirements.

2.1.6 The notion of excessive prices

The existence of a net cost leads to the possibility of compensation only in cases where it constitutes an unfair burden on an operator⁸⁵.

85 - CPCE
Article L.35-3 (III).

2.2. Determining the net cost of providing the universal service for 2007

Based on the method detailed above, after deduction of intangible benefits, ARCEP valued the net cost of universal service obligations in 2007 at € 22.9 million. The Authority considers this sum an excessive cost and thus eligible for compensation.

To compare: the maximum contribution for a universal service operator in 2006 was 0.08% of relevant turnover; for 2007, it totalled 0.06% of its relevant turnover.

Net cost of providing universal service, 2003 to 2009

€ million ⁸⁶	2003 Final	2004 Final	2005 Final	2006 Final	2007 Final	2008p ⁸⁷ Estimated	2009p ⁸⁸ Estimated
Geographical balancing	76.885	57.465	3.225	1.368	0.881	3.225	1.368
Public payphones	23.549	18.598	13.906	14.239	12.418	13.906	14.239
Social tariffs	36.814	39.198	37.236	36.257	30.642	37.236	36.257
Directories and directory services	0	0	0	0	0	0	0
Intangible benefits	- 84.007 ⁸⁹	- 81.978 ⁹⁰	- 23.457 ⁹¹	- 22.217 ⁹²	- 21.082 ⁹³	- 23.457	- 22.217
Total	53.242	33.284	30.910	29.647	22.859	30.910	29.647

Management of the universal service fund

ARCEP is responsible for the universal service fund, FSU (Fonds de service universel), which is managed by the *Caisse des dépôts et consignations* (Deposit and consignment office).

The universal service fund was created in 1997. It is a sectoral fund sustained by electronic communications operators. In concert with the *Caisse des dépôts et consignations*, the Authority defined the technical system for managing the fund, and an agreement was signed between ARCEP and the *Caisse des dépôts et consignations*. It was approved by the minister on 19 December 1997, and is renewed by tacit agreement, unless notice to terminate is given within six months.

Payment of operators' estimated contributions to the universal service fund are made during the year in question, in two instalments – on 15 January and 15 September of each year – the amount of each instalment is equal to half of the estimated balance. Once the final cost has been assessed, contributions are adjusted, at the latest, on 20 September of the second year following the year in question.

As with the contributions to the universal service fund, the fees for its management are shared between the operators.

⁸⁶ - All figures rounded off to the closest 1 000 euros.

⁸⁷ - Estimated contributions for 2008 are calculated based on the net final cost for 2005. The decision concerning estimates made for 2008 is ARCEP Decision no. 08-0994 of 15 November 2007.

⁸⁸ - Provisional contributions for 2009 are calculated based on the final costs for 2006. The decisions concerning the provisional assessments for 2009 are ARCEP Decision no. 08-1229 of 13 November 2008 and Decision no. 09-0008 of 15 January 2009.

⁸⁹ - Details of intangible benefits for 2003: 83.535 M€ for brand image, 0.123 M€ for ubiquity, 0.000 M€ for lifecycle and 0.349 M€ for access to telephone usage data.

⁹⁰ - Details of intangible benefits for 2004: 81.664 M€ for brand image, 0.112 M€ for ubiquity, 0.000 M€ for lifecycle and 0.202 M€ for access to telephone usage data.

⁹¹ - Details of intangible benefits for 2005: 23.316 M€ for brand image, 0.076 M€ for ubiquity, 0.000 M€ for lifecycle and 0.065 M€ for access to telephone usage data.

⁹² - Details of intangible benefits for 2006: 22.141 M€ for brand image, 0.010 M€ for ubiquity, 0.000 M€ for lifecycle and 0.066 M€ for access to telephone usage data.

⁹³ - Details of intangible benefits 2007: 21.052 M€ for brand image, 0.006 M€ for ubiquity, 0.000 M€ for lifecycle and 0.024 M€ for access to telephone usage data.

3. Regulatory changes in 2008

3.1 The law introduces greater flexibility in the designation of the universal service provider

94 - Act no. 2008-3 of 3 January 2008 on the development of competition for consumers' benefit, JO of 4 January 2008.

95 - Cf. Article 15 of Act no. 2008-3 of 3 January 2008 amending CPCE Articles L.35-2 and L. 35-3 concerning the universal service.

The Law of 3 January 2008 on developing competition for the consumer's benefit⁹⁴ introduced greater flexibility in the method used for designating universal service providers⁹⁵.

It makes it possible to designate several operators as the providers of a given component, at the outcome of the calls for candidates, and so opening the provision of the universal service to entities that operate on a regional scale, i.e. not necessarily on the national scale. From a concrete standpoint, the application of these provisions creates the possibility of designating two distinct operators for the provision of the directories component, on the one hand, and for provision of directory assistance services component on the other. Moreover, the ministry can elect not to designate an operator as the universal service provider should it conclude that the state of the market is capable of meeting consumer needs.

This law echoes the views of the Commission which, in a reasoned Opinion issued on 10 April 2006, reproached French authorities for the method used to designate the enterprise responsible for fulfilling universal service obligations. It was the Commission's view that the fact of requiring the enterprise to provide the service nationwide made the incumbent carrier the only eligible candidate in France.

3.2 Decree specifying the changes brought to the CPCE

96 - Decree no. 2008-792 of 20 August 2008.

97 - Opinion no. 2008-0503 of 22 April 2008.

The Decree⁹⁶ of 20 August 2008 concerning the universal electronic communications service was adopted following the Opinion⁹⁷ issued by the Authority. It follows through on the Law of 3 January 2008 and provides details on the new provisions.

In addition to instilling a consistency between the regulatory portion of the French postal and electronic communications code, regulatory articles and changes to the legislative portion mentioned above, the principal changes introduced by the decree concern:

- ◆ *the interest rates applied to operators in the case of deferred payment of their contribution to the universal service fund*: the rate that was applied previously (Euribor 12-month rate) has been replaced by a new rate which is the Euribor 12-month rate plus four points;
- ◆ *removal of annual setting of the amount of the social tariff reduction*: as the amount of the social tariff reduction has not changed since the start of the current designation period (2005 to 2009), the decree provides for an order to be issued only when the amount of the social tariff reduction changes;
- ◆ *changes to the terms applying to the timeline for response to a "pay or play" application to provide social tariffs*: the one-month period within which the Authority must issue a decision starts upon receipt of the completed request.

4. Pending disputes

In 2008, the *Conseil d'Etat* ruled on disputes that concerned events from previous years. It rejected the appeal filed by Bouygues Telecom and Télé2 pertaining to the decree⁹⁸ on the method used to assess compensation and sharing of the final net cost of the universal service for the years 1997, 1998, 1999 and 2000.

No operators filed appeals with the *Conseil d'Etat* on ARCEP decisions concerning the estimated assessments of operators' contributions to the cost of universal service for 2007 or the final assessment for 2005.

Through requests filed with the Paris courts, 14 operators⁹⁹ filed an appeal with the administrative courts of Paris or Versailles. The administrative court of Paris ruled on seven of them¹⁰⁰ which concerned requests for the restitution of sums paid to the universal service fund for 1998 to 2000.

The Paris courts ordered the State to reimburse seven operators the sums that corresponded to their final contributions for the years 1998 to 2000, given that the disputed contributions were without legal basis – the orders issued by the Minister of the Economy¹⁰¹ having been voided by the *Conseil d'Etat*. It acceded either partially (by rejecting requests concerning the contributions made for 2001 and 2002) or fully to some requests by ruling that, “*the State must reimburse [the operators concerned] the sums corresponding to their final contributions to the financing of the universal telecommunications service made for the years 1998, 1999 and 2000*”.

In early 2008, the Ministry of Industry, Finance and Employment, appealed the administrative court's ruling for seven of the operators¹⁰² to the Administrative Court of Appeal of Paris. It requested that the ruling that ordered the State to reimburse the sums paid for the years 1998, 1999 and 2000 be overturned.

Through five orders issued on 24 November 2008, the Administrative Court of Appeal of Paris rejected the appeal filed by the Ministry of Industry, Finance and Employment, requesting the partial suspension of the ruling of the administrative court of Paris.

5. Control of universal service tariffs in 2008

5.1 Introduction of a multi-year control mechanism

The Authority has formalised the commitments made by France Telecom when applying to be designated as the universal service operator¹⁰³. France Telecom had proposed offering universal service customers with a regular decrease in calling tariffs.

ARCEP took this opportunity to replace the procedure of individual prior determination of universal tariffs with a control measure providing for a multi-year price cap on calling tariff baskets. This new system, provided for by legislative and regulatory texts, is in accordance with France Telecom's proposals and the recommendations expressed by the Authority in its opinion in early 2005.

This form of tariff control applies to calls made by two representative subscribers, one located in Metropolitan France, the other overseas, who have chosen France Telecom's universal service offer and who constitute two distinct tariff baskets: one

98 - Decree no. 2007-563 of 16 April 2007.

99 - Neuf Telecom, Neuf Telecom Entreprises, Neuf Telecom Réseau, MCI WorldCom, SIRIS, LDCOM Networks, Kaptech and Bouygues Telecom, Cegetel, Télé2, Viatel, SFR, SRR and Viatel Opérations.

100 - Cegetel, MCI WorldCom, SFR, SRR, Tele2, Viatel Opérations and Viatel.

101 - 11 July 2002 for 1997 to 1999 and 2 August 2002 for 2000, respectively.

102 - Cegetel, Tele2, Viatel, MCI WorldCom, SFR, SRR and Viatel Opérations.

103 - ARCEP Decision no. 06-0725 of 25 July 2006.

for Metropolitan France (which includes calls originating in Metropolitan France to fixed and mobile numbers in Metropolitan France and in the overseas territories and *départements*) and one for the overseas territories and *départements* (which includes calls originating in the overseas territories and *départements* to fixed and mobile numbers in the overseas territories and *départements* and in Metropolitan France).

The average annual price of each tariff basket will evolve every year at most at the rate of the consumer price index, minus 3%¹⁰⁴ and minus the decrease in external interconnection and access costs (notably mobile voice call termination).

5.2 The purpose of multi-year tariff controls

A multi-year system of controls guarantees that the end users of the universal service – in this case the service offered by France Telecom – will benefit from a regular decrease in their calling tariffs, and notably that decreases in mobile call termination tariffs (fixed to mobile calls) ordered by the Authority will be passed onto them. This will also allow them to benefit from a share of the incumbent carrier's productivity gains which are not reserved only for heavy users.

For France Telecom, a multi-year system based on defining objectives for the tariff basket provides the operator with a certain room to manoeuvre, within which it can exercise its pricing choices.

6. The social tariff: a necessary development

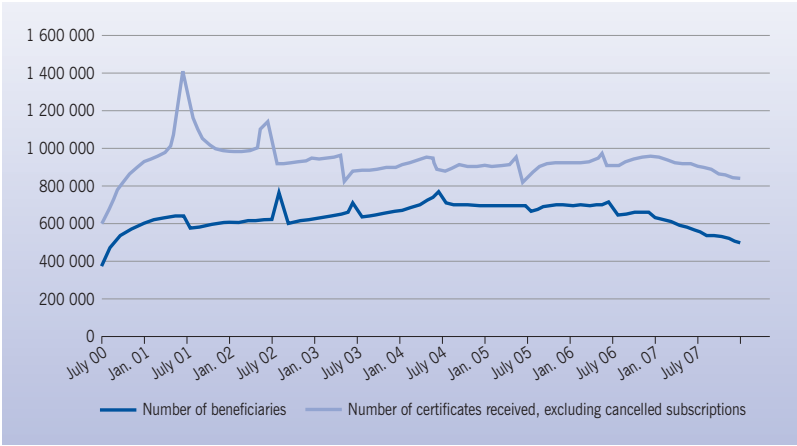
In December 2008, the Authority drew up an assessment of the previous period during which France Telecom had been designated as the universal service provider (2005 - 2009), and provided an outlook for the period covering the upcoming designation. One of the central points to emerge from the report is the growing dichotomy between the current social tariff system and electronic communications subscribers' actual consumption of these services.

6.1 Assessment

Component 1 of the universal service (telephone service) is suffering the effects of the development of fixed IP telephony offers and new models for marketing fixed telephony services (flat rates, bundled subscription and calling offers, etc.): the universal service offer is having to contend with stiff competition, even if it still accounts for around 7 million fixed lines. The system of multi-annual tariff supervision made it possible to ensure stable average monthly spending for a consumer of this offer, but its appeal appears to be fading.

Component 1 includes social tariffs in particular. Although all operators can offer the social tariff via the "pay or play" mechanism, only the universal service provider currently markets such an offer. Around 550 000 households benefited from it in 2007 – which represents fewer than 30% of the households that are eligible to do so. We are seeing an increased decline in the number of beneficiaries, both in absolute terms and in the proportion of eligible people. A growing percentage of requests are being rejected by the body responsible for processing the applications, citing ineligibility for the tariff reduction based on the social criteria applying to the requested offers.

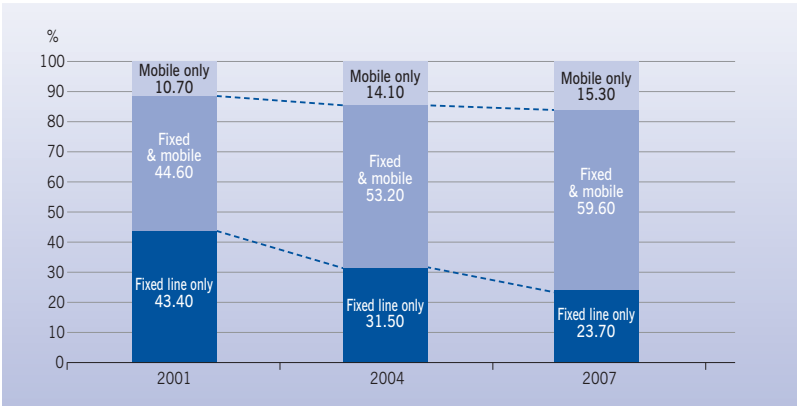
¹⁰⁴ - These 3% represent the portion of savings generated by the operator in charge of providing universal service passed on to universal service subscribers.



Source: France Télécom.

In addition, a sizeable number of consumers appear to be making the shift to having only a mobile line, i.e. no fixed line at all, while the percentage of people in France who have only a fixed line is shrinking at a considerable rate:

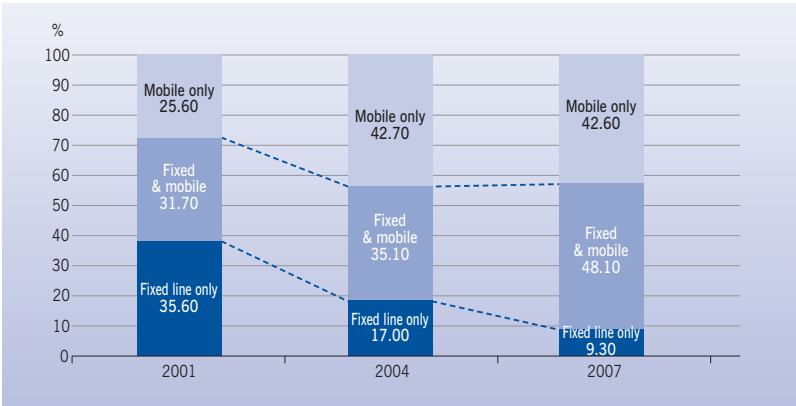
Breakdown of telephone subscriptions in France



Source: "La diffusion des TIC dans la société française" (ICT take-up in French society), Credoc 2008.

This trend, which is already significant when looking at the entire population, is particularly marked amongst low-income consumers. While the percentage of users in the population as a whole who have a mobile line but no fixed line rose from 10.7% to 15.3% between 2001 and 2007, among those in the workforce whose monthly income is below €900, this figure reached 42.6% in 2007.

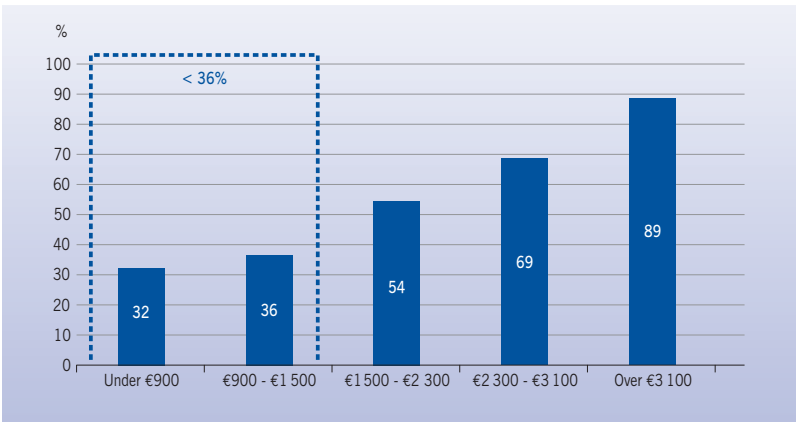
Breakdown of telephone subscriptions amongst people in the workforce earning less than €900/month



Source: “La diffusion des TIC dans la société française” (ICT take-up in French society), Credoc 2008.

Furthermore, although universal access to broadband is making steady progress, there is still a real danger of a social divide. The most underprivileged members of society still lag far behind when it comes to broadband equipment rates (an average equipment rate of 36% among those earning less than €1,500 a month), and take far less advantage of the opportunities to avail themselves of broadband Internet access than the wealthier members of the population, despite the quality of national coverage.

Broadband equipment rate according to monthly household income (2008)



Source: “La diffusion des TIC dans la société française” (ICT take-up in French society), Credoc 2008.

From a social perspective, the current universal service system is therefore increasingly less in tune with current electronic communications consumption practices.

6.2 Outlook

The Authority is in favour of extending the social dimension of universal service. It holds the view that all fixed telephony subscribers who satisfy the criteria for being eligible for the social tariff should be able to benefit from a reduction in their telephone bill, regardless of the technology used or the underlying commercial offer. In particular, it must be possible to apply the social tariff to fixed telephony-over-broadband offers, including those bundled with other services as part of a flat rate offer. Moreover, there must be no decrease in the tariff reduction (of around €8) offered to the most underprivileged, and which is currently only partially compensated. This position was expressed in the opinion¹⁰⁵ that the Authority issued in May on the social tariff reduction eligible for compensation. Increasing the amount of the compensation could help maintain the tariff reduction at its current level, and make it possible for all operators to offer this level of reduction under the “pay or play” system.

Other, more deep-seated changes could be justified but would require prior amendment of the Universal Service Directive – adding a social dimension to mobile telephony and broadband access.

The Law on modernising the economy instils the principle of having mobile operators sign an agreement with the State and committing to providing a social tariff-based mobile telephony service which would be separate from the universal service system. ARCEP will monitor the implementation of this measure very closely, as well as the concrete manner in which it ensures that the most underprivileged members of society have access to telephone services.

105 - ARCEP Opinion no. 08-0192 of 26 February 2008, JO of 27 May 2008.

7. Provisional universal service calendar for 2009

For information purposes, ARCEP provides a provisional calendar of its universal service activities in 2009:

Principal stages	Date
ARCEP	
Decision on the final cost of universal service for 2007	Q1 2009
Public consultation on the notice on turnover for 2008	Q2 2009
Adoption of the notice for 2008	Q2 2009
Questionnaire sent to operators	Q2 2009
Deadline for operators' response	Before 30 June 2009
External audit	September 2009
Consultation on the calculation methods for universal service in 2008	Q3 2009
Adoption of the calculation methods for universal service in 2008	Q3 2009
Decision on the final cost of universal service for 2008	Q1 2010
Decision on provisional contributions to universal service for 2010	Q4 2009
Ministry	
Adoption of the decree following the coming into force of the social welfare programme, <i>Revenu de Solidarité Active</i>	Q2 2009

F. Universal directory

What is the universal directory?

The universal directory is the compilation of directory listings produced by all fixed and mobile telephony operators. The system for producing the universal directory is defined by the French postal and electronic communications code, CPCE (code des postes et des communications électroniques). It is specified by an ARCEP decision¹⁰⁶.

According to the regulation, all telephone service operators must compile listings of all of their customers and users who expressed a choice to be included in the directory, and to make these listings available to any universal directory publisher or universal directory assistance service provider that so requests. The regulation does not order the introduction of a centralised compilation system for the universal directory.

For their part, 118 services are required to provide a universal directory assistance service in that they are obliged to acquire lists of subscribers who have chosen to be included in the directory from all telephone service operators.

A different regulatory framework applies to fixed and mobile telephony operators – the rule for fixed telephony being automatic listing in the directory, i.e. unless otherwise requested by the subscribers, whereas the listings for mobile numbers only contain those subscribers who have explicitly requested to be included in the directory

1. Legislative and regulatory framework

The principles of implementing universal directory services (printed directories, online directories, directory assistance services...) are defined by law¹⁰⁷: all subscribers have the right to be included, free of charge, in the lists compiled by the operators and destined to be published in the directories or which can be consulted through a directory service.

The mechanism for their implementation was specified by a decree¹⁰⁸, on which the Authority issued an opinion¹⁰⁹.

The task of creating a universal directory is a complex one, however, and involves a number of challenges:

- ◆ the multiplicity of operators that assign numbers – the universal directory being a compilation of all operators' subscriber lists – as well as the multiplicity of players wanting to or having to supply a universal directory;
- ◆ the juxtaposition of two listing registration systems, depending on whether the subscription is with a fixed or a mobile operator.

As a result, it became necessary to provide clarification and more precise information to make it easier to supply the public with a good quality public universal directory and universal directory assistance services. This is why, in 2006, following work

106 - Decision

no. 06-0639 adopted on 30 November 2006 and approved by order of the Minister responsible for electronic communications, published in the Journal Officiel of 24 March 2007.

107 - Cf. CPCE Article L.34.

108 - Decree no. 2005-606 of 27 May 2005 concerning directories and directory services, JO of 29 May 2005.

109 - ART Opinion no. 04-1039 of 7 December 2004.

performed with the various players involved, the Authority published a decision¹¹⁰ that reiterated the importance of:

- ◆ the protection of users' and subscribers' rights and the privacy of their personal information;
- ◆ consistent and relevant content in the directories;
- ◆ an efficient and reliable operational process for sharing subscriber and user lists between operators and publishers.

2. Subscriber rights

By virtue of the universal directory provisions, all fixed and mobile¹¹¹ telephone subscribers, whether physical persons or legal entities, have the option to appear, free of charge, in the directory compiled by their operator¹¹². They can also decline inclusion in the list.

To appear in the universal directory lists, the minimum information that an individual (service subscriber or user) must provide their operator when subscribing to a service is: their last name, first name, address and phone number. Subscribers may, however, request that certain optional information be included (email address, profession, etc.) and impose¹¹³ a certain number of restrictions on their operator with respect to the publication of information of a personal nature¹¹⁴. Subscribers can exercise this right at any time¹¹⁵.

They may request that their operator:

- ◆ include only their town of residence (and postcode), and not their complete address¹¹⁶;
- ◆ publish only the initial of their first name¹¹⁷;
- ◆ forbid personal information from being used for commercial purposes;
- ◆ forbid personal information from being used for reverse searches based on the telephone number.

Subscribers may also choose to have information on other users of the line included in the listing, provided they have the users' consent¹¹⁸.

110 - ARCEP Decision no. 06-0639 of 30 November 2006, approved by Ministerial Order of 9 March 2007 and published in the JO of 24 March 2007.

111 - In particular, these rights extend to numbers associated with prepaid cards or assigned temporarily, as well as to IP or Internet telephony services.

112 - Cf. CPCE Article L. 34.

113 - Operators are required to give users and subscribers the option of these restrictions, and to communicate all of the requested restrictions to all of the publishers that have access to its subscriber and user list. Publishers are, in turn, obligated to incorporate these requests into their published listings. By addressing themselves to their operator, subscribers and users are thus guaranteed that their choice of restrictions will be communicated to all publishers.

114 - In cases where a user other than the subscriber is included in these lists, these rights apply to the user's data as well.

115 - Cf. CPCE Article R. 10.

116 - To respect other subscribers' rights, the request for non-publication of the address will be satisfied only on condition that it does not create confusion with subscribers who have the same name.

117 - To respect other subscribers' rights, the request for non-publication of the first name will be satisfied only on condition that it does not create confusion with subscribers who have the same name.

118 - Cf. CPCE Article R. 10-3.

Although all subscribers enjoy identical rights, the registration system used for mobile subscribers is different from that used for fixed subscribers. Mobile operators must obtain the prior consent from their subscribers before including them in their directory listing, whereas fixed telephone subscribers are included automatically unless they explicitly express their opposition to having certain information of a personal nature included in the directory¹¹⁹.

3. Operator obligations

Operators are responsible for informing subscribers of their rights, especially their right to a restricted listing, and for obtaining subscribers' publishing preferences. This obligation to inform subscribers is essential for mobile operators given that a mobile directory listing requires explicit subscriber consent. The quality of the information mechanism is therefore critical to allowing subscribers to exercise their rights¹²⁰.

In addition, all operators must ensure that information contained in directory listings is accurate¹²¹ and up to date. Here again, the quality of the mechanism is crucial to the overall quality of the directory services made available to consumers, and to protecting their rights.

In the same vein, directory publishers and information services that use directory listings transmitted by operators must respect subscriber and user choices and process all data contained in such lists in a uniform and non-discriminatory way. In particular, in printed and online directories each user's data must be published using a common format and neutral sort orders (for example, alphabetically). Likewise, the information provided by directory services must be of the same nature and should not favour certain subscribers. If the option of a preferential listing (in a customised format, including advertising, etc.) is given to subscribers, it must be offered to all subscribers on the same terms.

4. Access to universal directory data

Consumers can access universal directory data via the various products offered by the different publishers. If these publishers wish to do so, they can offer services such as reverse lookup, assisted search, call filtering, advertising inserts, text messaging, etc. provided subscribers' listing preferences are respected.

Other services, such as international directory information, can be offered either on the same platform as the universal directory (by dialling numbers starting with "118" for example) or on another one (e.g. using 3BPQ short numbers).

There is no restriction on the fees charged for these various services, but the operator responsible for providing the universal directory and the universal directory service must distribute a free printed, local directory (or covering the *département* if

119 - Automatic listing
occurs after the subscriber
has been informed of these
provisions, and if he or she
has not indicated an
objection.

120 - Electronic
communications operators'
obligation to inform
consumers regarding
inclusion in subscriber
listings is specified in CPCE
Article R. 10.

121 - CPCE Article R. 10-3
requires that all operators,
to the extent they are
involved in this activity,
take the necessary
precautions to ensure the
accuracy of the information
appearing in their listings
and the quality – especially
from a technical point of
view – of these lists, except
when the data concerns
business-related
references that the operator
includes but for which the
requesting party is
responsible.

requested by the subscriber) to all telephone subscribers, and make universal directory data available for a reasonable fee through an electronic service and a telephone directory assistance service.

The various universal directory products must be edited and published in a non-discriminatory fashion, which is to say that subscribers appear in them in a uniform way. In particular, the data pertaining to each user must be published using the same format and according to neutral sorting orders (e.g. alphabetically) in both the print and online versions. In the same vein, information provided by directory assistance services must be equally neutral, and not give preferential treatment to certain subscribers. As a result, when consulting a directory, it must not be possible to identify the operator(s) associated with any subscriber, and the same degree of information must be supplied on all subscribers – unless otherwise requested by the latter.

These universal directory products, which are made available to consumers, are the result of the compilation of the subscriber and user lists of all fixed and mobile telephone service operators. Each universal directory publisher or provider of universal directory assistance services acquires the directory listings from each of the operators under bilateral agreements. No central database exists.

The Authority remains, and will continue to remain vigilant in ensuring that fixed and mobile operators satisfy their obligations for consumers' benefit.

ARCEP decision upheld by the *Conseil d'Etat*

In May 2007, the French association of telecommunications network operators and service providers, AFORST (*Association française des opérateurs de réseau et services de télécommunication*) filed an appeal with the Conseil d'Etat against the ARCEP Decision of 30 November 2006.

The Association was disputing the Authority's regulatory power to stipulate and clarify the contents of the universal directory listings that operators sell to universal directory publishers and universal directory assistance service providers, and the definition of the pricing model to be used.

According to AFORST, the Authority does not have the right to expand the fields that make up the universal directory listings, even if these fields allow subscribers to record personal information.

As to the pricing model presented, AFORST regretted that the Authority was seeking to impose and dictate a tariff when the reference model only indicates the costing principles and definitions to be taken into account, in order to facilitate agreements and the signature of contracts between operators and those entities that benefit from the supply of universal directory listings.

The *Conseil d'Etat* Order dated 19 May 2008 rejects the AFORST appeal against the ARCEP Decision of 30 November 2006 and, pending approval from the Minister responsible for electronic communications, upholds the Authority's regulatory powers, as stipulated in CPCE Article L 36-6.

G. Value-added services

1. The value-added services market

Value-added services (VAS) are services that are accessed via 10-digit numbers beginning with 08 and four-digit numbers starting with 3 or 1 – also referred to as 10XY and 3BPQ numbers, as well as 118 directory services numbers. These numbers allow customers to access different types of service over their fixed or mobile phone: pre-recorded (e.g. weather forecasts, astrology, classified ads) or personalised (information, ticket sales, government services, etc.) information.

The analysis of the way the VAS value chain works, performed by ARCEP in 2006, revealed the natural complexity of VAS (variety of dialling schemes, range of associated services) and of the relationships between the different players along the value chain (multiple roles, disparate billing and contract models), from the local loop operator to the content provider by way of intermediate operators (collectors, transit and service providers).

The Authority also noted a growing consumer dissatisfaction with the use of VAS, and the difficulties encountered by some content publishers in establishing contracts for access to their service offer originating on certain local loops, and in receiving payment of a portion of the sums billed to consumers.

As a result, the Authority undertook an approach consisting of three major steps:

122 - ARCEP Decision
no. 07-0213
of 16 April 2007.

- ◆ the implementation of symmetrical regulation¹²² in 2007 which will make it possible to clarify the legal framework applicable to all operators for end-to-end access to VAS, and to inter-operator relationships;

123 - ARCEP Decision
no. 07-0667
of 6 September 2007.

- ◆ adaptation of the asymmetrical regulation¹²³ applied to France Telecom;
- ◆ expansion in 2008 to consultation and joint regulation efforts to improve tariff transparency and clarity, both of which are needed to regain consumers' trust in the use of VAS, and in restoring control over the code of conduct governing the services accessed via these numbers.

2. Measures taken by ARCEP

124 - ARCEP Decision
no. 07-0213
of 16 April 2007.

Following a broad public consultation, ARCEP adopted a decision¹²⁴ in April 2007 aimed at implementing symmetrical regulation, (i.e. which applies equally to all operators) to be able to provide a framework for the methods used to route and bill calls to value-added service numbers.

This decision imposes an obligation of VAS number accessibility on operators present at either end of the value chain and controlling access to called and calling end users. It also adds an obligation for originating operators (real and virtual local loop operators, fixed and mobile operators) to share a portion of the amount billed to consumers with the content provider.

In accordance with this decision, France Telecom updated its VAS sales offer for operators, which now systematically includes details on billing, collection, recovery, management of outstanding balances and the payments of a portion of the monies billed for all value-added services originating on its local loop, regardless of the associated tariffs involved. Meanwhile, the Authority decided to impose additional

obligations on France Telecom – given the competitive edge it enjoys – and to specify the correlation between its specific obligations and those imposed by the Decision of 16 April 2007¹²⁵.

In its Decision of 6 September 2007¹²⁶, ARCEP imposes several obligations on the incumbent carrier: non-discrimination, transparency, cost accounting, accounting separation and non-excessive pricing. This decision also lifted France Telecom's earlier obligation to provide a third-party billing offer (*facturation pour compte de tiers, or FCT*) once its repayment offer was operational and complied with the obligations imposed by the regulator.

The switchover from the FCT offer to the new repayment offer was performed successfully on 3 December 2007.

This change in system helped streamline relations between France Telecom and other operators in the area of value-added services, and to improve the clarity of France Telecom's subscriber invoices by removing the "3rd section" of the invoices which had previously broken down calls to VAS according to the operator called and the pricing tier.

3. Consultation and joint regulation

Over the course of 2007, ARCEP was also involved in the work done on providing remote access to administrations' information services, and the draft bill on the development of competition for consumers' benefit, particularly on the issue of the rates charged by hotlines and the terms governing the cancellation of electronic communication service contracts.

On 6 May 2008, in application of the Law of 3 January 2008 for the development of competition for consumers' benefit (the "Chatel Act") – which requires that, as of 1 June 2008, ISPs' customer service hotlines use a fixed non-geographic and non-surcharged number – ARCEP adopted a decision¹²⁷ in which it defines the blocks of numbers that can be surcharged.

On that occasion, the Authority also indicated the guidelines used to assess the notion of "surcharged", and concluded that non-geographic, non-surcharged numbers are ten-digit numbers starting with 09 and 080, along with four-digit numbers starting with 3 and 1 in cases where freephone tariffs are applied.

Furthermore, the Law on modernising the economy, dated 4 August 2008, extended the ban on the use of surcharged value-added service (VAS) numbers to all after-sales services that can be accessed by phone, as of 1 January 2009. The new provisions introduced by the Law of 3 January 2008 and the Law on modernising the economy modify the consumer code, whose terms of application are stipulated by the general directorate for fair trade, consumer affairs and fraud control, DGCCRF (*Direction générale de la concurrence, de la consommation et de la répression des fraudes*).

Following through on this work, ARCEP pursued its efforts by assigning the Committee for information technologies, CGTI (*Conseil général des technologies de l'information*) the task of drafting recommendations for improving the clarity and transparency of price-setting methods, for consumers' benefit, and revived oversight of the professional code of conduct for content, as part of an overhaul of

125 - ARCEP Decision no. 07-0213 of 16 April 2007 concerning the obligations imposed on operators that control access to end users for routing calls to value-added services.

126 - ARCEP Decision no. 07-0667 of 6 September 2007 amending Decision no. 05-0571 of 27 September 2005 on the definition of relevant fixed telephony markets, the designation of SMP operators in these markets and the obligations imposed on them as a result.

127 - ARCEP Decision no. 08-0512 amending Decision no. 05-1085 of 15 December 2005 setting the terms of use for the number categories contained in the national numbering plan.

joint regulation of the sector. The goal of these recommendations is to propose an overall update of the VAS value chain, which must begin in 2009.

In addition, the Authority continues to call for the reinstatement of a professional code of conduct applying to the content of VAS, which was previously enforced by the French Authority for Telematic Services and its Committee for Anonymous Telematics, CST-CTA (*Conseil supérieur de la télématique* and its *comité de la télématique anonyme*) and which, according to inter-ministerial work that is currently underway, are due to be replaced by newly-formed entities.

128 - Law no. 2008-3 of 3 January 2008 for the development of competition for consumers' benefit, JO of 4 January 2008.

Surcharged numbers and the "Chatel Act"¹²⁸

The "Chatel Act" 3 January 2008 reinforces the consumer code, with the particular goal of providing a better framework for contractual relations between electronic communications service providers and their customers – and having calls to customer support lines provided free of charge.

ARCEP was assigned the task of defining the list of surcharged numbers – all other numbers therefore being, by definition, non-surcharged.

129 - ARCEP Decision no. 08-0512 of 6 May 2008.

The Authority defined the blocks of numbers that could be surcharged in its Decision of 6 May 2008¹²⁹. On that occasion, the Authority also indicated the guidelines used to assess the notion of "surcharged", and concluded that non-geographic, non-surcharged numbers are ten-digit numbers starting with 09 and 080, along with four-digit numbers starting with 3 and 1 in cases where freephone tariffs are applied.