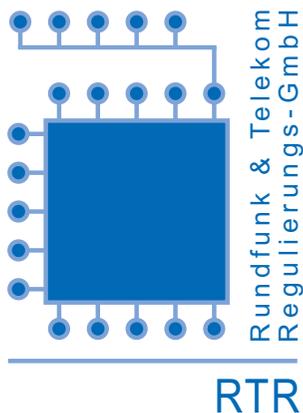


# annual report

austrian regulatory authority for  
broadcasting and telecommunications (rtr gmbh)



2001



# **annual report**

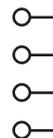
**austrian regulatory authority for  
broadcasting and telecommunications (rtr gmbh)**

**2001**

# Table of contents

<b>1.</b>	<b>Preface</b>	<b>5</b>
<b>2.</b>	<b>RTR GmbH</b>	<b>7</b>
<b>3.</b>	<b>RTR's regulatory activities</b>	<b>14</b>
3.1.	Regulatory activities in broadcasting	14
3.1.1.	Introduction	14
3.1.2.	Regulatory framework and central issues	14
3.1.3.	Regulatory activities in radio broadcasting	16
3.1.4.	Regulatory activities in television broadcasting	23
3.1.5.	Broadcasting frequency management and coordination	28
3.1.6.	"digital platform austria" work group	34
3.2.	Regulatory activities in telecommunications	36
3.2.1.	Introduction	36
3.2.2.	Regulatory framework and central issues	38
3.2.2.1.	Liberalization and regulatory authorities	38
3.2.2.2.	Companies with significant market power (SMP operators)	39
3.2.2.3.	Market deregulation and license awards	41
3.2.2.3.1.	Fixed-link licenses	42
3.2.2.3.2.	Mobile communications licenses	42
3.2.2.4.	Interconnection and network access	44
3.2.2.5.	Regulation of competition	56
3.2.2.6.	Sharing of infrastructure	59
3.2.2.7.	Number administration	60
3.2.2.8.	Universal services	63
3.2.2.9.	Arbitration in end-consumer disputes	64
3.2.2.10.	Proceedings before public courts of law	64
3.2.2.11.	National work groups and international activities	65
3.3.	Supervisory authority for electronic signatures	68

<b>4.</b>	<b>The company</b>	<b>71</b>
4.1.	Structure of RTR and the authorities	71
4.2.	Telekom-Control Commission (TKK) members	74
4.3.	Austrian Communications Authority (KommAustria) members	74
4.4.	Broadcasting Advisory Board members	75
4.5.	Company information	75
4.5.1.	RTR's development in 2001	75
4.5.2.	Personnel structure	76
4.6.	RTR Supervisory Board	77
4.7.	RTR 2001 financial statements	78
4.8.	Public information	82
<b>5.</b>	<b>Calendar of decisions</b>	<b>84</b>
5.1.	Calendar of KommAustria decisions, April 1 to December 31, 2001 - 31.12.2001	84
5.2.	Calendar of Telekom-Control Commission decisions, April 1 to December 31, 2001 - 31.12.2001	87
<b>6.</b>	<b>Index of illustrations</b>	<b>90</b>
<b>7.</b>	<b>Selected abbreviations</b>	<b>91</b>
<b>8.</b>	<b>Management summary of regulatory activities</b>	<b>94</b>
8.1.	Broadcasting Division	94
8.2.	Telecommunications Division	96



# 1. Preface

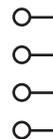
In accordance with the provisions laid down in the KommAustria Act of 2001 (KOG), this document contains the annual report of the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) for the (short) business year 2001, covering the period from April 1 to December 31, 2001. A full business year at RTR is the same as the calendar year.

RTR makes every effort to ensure transparency with regard to its activities as the Austrian regulatory authority. In addition to publishing this report, we also attempt to maintain this transparency in all of our work in regulation and the public sphere, such as the creation and maintenance of the (new) RTR web site (<http://www.rtr.at>). Our presence on the web gives the interested public access to comprehensive information on our activities, including completed procedures. This report can thus also be downloaded in PDF format on our web site (Portfolio / Publications / Reports / Annual Reports). This makes it possible for the interested public – provided they have Internet access –

to find up-to-date information on decisions made by the Telekom-Control Commission, the Austrian Communications Authority (KommAustria) and RTR, and to obtain summarized information on our regulatory activities in these annual reports. In addition, RTR plans to continue publishing comprehensive documentation on the markets for which it is responsible. For example, toward the end of the reporting period, the Telecommunications Report 1998-1999 was continued in the Telecommunications Report 2000 (including the first quarter of 2001), a publication which documents the development of the Austrian telecommunications sector, especially in its comprehensive description and international comparison of the Austrian market. At the same time, the Telecommunications Report can also be seen as the conclusion of regulatory activities at RTR's predecessor company, Telekom-Control GmbH, describing the company's activities in the year 2000 as well as the months of January, February and March 2001. The Telecommunications Report 2000 has

been available since February 2002 and can be obtained for review from RTR / Info Management (Mariahilferstrasse 77-79, A-1060 Vienna, Austria) and from the RTR web site (<http://www.rtr.at>), under Portfolio / Publications / Reports / Telecommunications Report (download or HTML document).

As the first annual report published under the name of RTR, this document is structured as follows: Before describing our regulatory work in the fields of broadcasting and telecommunications in detail, this document first gives an overview of the regulatory institutions founded in 2001 for the broadcasting and telecommunications markets in Austria. The section dealing with these institutions gives a general description of the structure, objectives and relationships among these new institutions. The rest of the annual report for the short business year 2001 is divided into three parts, with Chapter 3 describing the regulatory authorities' work in the broadcasting and telecommunications markets from April to December 2001. Chapter 4 descri-



bes the company, in particular the funds used and human resources development. In order to meet the need for information on the part of the National Council (one of the houses of the Austrian legislature) and the interest public regarding RTR's use of funds, Chapter 4 is de-

voted to RTR as a company and to its structure, budget and staff – the most valuable resource at the new convergence regulatory authority. Part III contains Chapter 5, which includes a calendar of decisions made by the Telekom-Control Commission and the Austrian

Communications Authority as well as the report's indices (Chapters 6 and 7). The report is concluded by Chapter 8, which provides a management summary of RTR's regulatory activities as a service for readers who do not have time to read the entire report.



Dr. Alfred Grinschgl  
Managing Director, Broadcasting Division



Univ.Prof. Dr. Heinrich Otruba  
Managing Director, Telecommunications Division



## 2. RTR-GmbH

The idea of setting up a convergence regulator for the fields of broadcasting (media) and telecommunications was already proposed in the coalition program of the current federal government in Austria, which has been in office since February 4, 2000. Once the necessary political discussions had been concluded, the KommAustria Act (KOG) was passed as a legal basis describing the organization of three institutions to be founded – the Austrian Communications Authority (KommAustria), the Federal Communications Board (BKS) and the Austrian Regulatory Authority for Broadcasting and Telecommunications (Rundfunk und Telekom Regulierungs-GmbH, or RTR) – in realization of the new government's plans.

The KommAustria Act, which was announced in BGBl. I No. 32/2001 and took effect on April 1, 2001, created the legal basis for these new institutions. The duties of RTR are summarized in brief below.

RTR's core function is to support the decision-making bodies of the Broadcasting and Telecom-

munications Divisions (the Austrian Communications Authority [KommAustria] and the Telekom-Control Commission [TKK]) in carrying out their duties. As the operative arm of these authorities, RTR provides administrative support for these two bodies. §5 KOG requires that two divisions be set up in this non-profit organization, with each division headed by one managing director. After announcing the position, the Austrian Federal Chancellor appointed Dr. Alfred Grinschgl as managing director of the Broadcasting Division on June 1, 2001. On the same date, the former managing director of Telekom-Control GmbH, Univ.Prof. Dr. Heinrich Otruba, was appointed managing director of the Telecommunications Division by the Austrian Federal Minister of Transport, Innovation and Technology, again after duly announcing the position. In the period from April 1, 2001 until the appointment of both managing directors, RTR was headed by Dr. Hans Peter Lehofer (Broadcasting) and Univ.Prof. Dr. Heinrich Otruba (Telecommunications). The two managing direc-

tors are in charge of overseeing the specific affairs of their respective division and jointly managing the company.

The operative arm of the Austrian Communications Authority and the Telekom-Control Commission thus consists of two divisions:

Broadcasting and Telecommunications. The Broadcasting Division had to be created as a completely new entity; the Telecommunications Division, on the other hand, was created on the basis of the structures of Telekom-Control GmbH, which was absorbed by RTR-GmbH under §5 Par. 2 KOG. §5 Par. 3 KOG assigns the duties listed in Focus 1 to the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR).

According to §5 Par. 4 KOG RTR-GmbH has to take all necessary steps in order to accomplish its responsibilities as well as supporting KommAustria and Telekom-Control-Commission in fulfilling their respective duties and responsibilities.

At the beginning of RTR's operations the central challenge was to handle simultaneously the intense regulatory work (keyword: licensing award procedures for private broadcasting operators), and the process of bringing together the newly established broadcasting division with the telecommunications division. It was and still is the objective to assure an optimal integration of the already settled telecommunications division and the broadcasting division. Approved structures had to be secured, new responsibilities had to be embedded successfully. It was the shared objective of both general managers to establish the structures of RTR in such a way that best assured an optimal collaboration RTR-internally but also vis-à-vis both authorities, KommAustria and Telecom-Control-Commission. Life had to be brought to the concept of "internal convergence" in entrepreneurial and organizational respect. Which concrete measures were taken with regard to this can be read in Chapter 4, "The Company". Regulation – at no point in time – ought to be an end in itself. Under the heading "Tasks and

Objectives" the legislator therefore drafted the following objectives in §2 Par. 2 KOG, which due to the function of RTR as the managerial body for KommAustria, are directly applicable for the broadcasting division (see Focus 2).

#### FOKUS 1: RTR'S DUTIES

- Performance of duties assigned to RTR (formerly TKK) in the Austrian Telecommunications Act (TKG), BGBl. I No. 100/1997,
- Activities under the Signatures Act (SigG), BGBl. I No. 190/1999,
- Operations supporting the Austrian Communications Authority
- Arbitration procedures (in accordance with §8 KOG),
- Setup and management of a competence center, especially for media and telecommunications convergence issues

**The managerial body for  
KommAustria and TKK consists  
of two divisions, the broadcast-  
ing division and the telecom-  
munications division**

§1 TKG sets general objectives for the deregulation of Austrian telecommunications markets for the Telecommunications Division.

According to this section, the purpose of the Telecommunications Act is to ensure that the population and Austrian businesses are provided with reliable, reasonably priced, high-quality and innovative telecommunication services by promoting competition in the telecommunications sector.

In addition, §32 TKG also provides orientation by specifying objectives for competition regulation as direct instructions for the activities of the regulatory authority. These objectives guide all of the Telecommunications Division's activities and were taken as a point of departure (in effect as a mission statement) for our vision and culture statements, both of which were created in 2000. The vision and culture statements (see Focus 3 and 4) are part of RTR's Organizational Handbook and serve as the essential foundation for the actions of the regulatory authorities and their employees.

The instructions set forth in the relevant laws create the framework within which our employees carry out the duties assigned to the regu-

latory authority. The way in which RTR regards itself as an organization is defined in our Culture Statement (Focus 4).

RTR sees itself as an active and transparent authority which cultiva-

tes relationships with Austrian broadcasting and telecommunications market participants and performs its duties using a broad basis of information and with full attention to its regulatory objectives.

## FOKUS 2: DUTIES AND OBJECTIVES OF THE AUSTRIAN COMMUNICATIONS AUTHORITY

**The activities of the Austrian Communications Authority are intended to achieve the following objectives (§ 2 Par. 2 KOG):**

1. Encourage market entry for new providers
2. Secure a diversity of opinions and encourage quality in broadcasting programs, including the technical prerequisites for their distribution
3. Develop technical and economic plans for a dual broadcasting market in Austria
4. Ensure that content providers adhere to European minimum standards, especially in the interest of child, youth and consumer protection
5. Optimize the utilization of Austria's broadcasting frequency range
6. Provide specialized knowledge on the field of convergence between audiovisual media and telecommunications, and encourage the development of markets in the audiovisual media and telecommunications sectors
7. Create and maintain modern, high-quality communications infrastructure in order to encourage the high quality of Austria as a broadcasting location.

For this reason, the decisions of the regulatory authority are also published on the RTR web site (<http://www.rtr.at>), with due observation of European law and data protection legislation, in order to provide the interested public with detailed information on the activities of the Austrian Communications Authority, the Telekom-Control Commission and RTR itself.

Formal procedures are an essential component of the regulatory authorities' work. However, even before formal procedures become necessary, RTR also makes efforts to develop strategies aimed at finding compromises between market participants with conflicting interests on the basis of applicable law. Such activities may come in the form of mediation or in assuming the role of a moderator in various forums. RTR emphasizes both of these areas consciously in order to reduce formal regulation to the minimum necessary for effective competition. RTR's activities beyond the scope of formal regulation also include public consultations.

### FOKUS 3: TELECOMMUNICATIONS DIVISION OBJECTIVES

**On the basis of §1 and § 32 TKG, the objectives of the Telecommunications Division were defined in the RTR (previously TKC) Vision Statement as follows:**

#### **1. Austria at the top**

Our organization is dedicated to the Austrian telecommunications markets. The goal of our activities is to enable Austria's telecommunications markets to occupy one of the top places in the European information society.

#### **2. Maintaining competition**

In order to promote the development of high-quality services, we are obliged to create the necessary conditions for increasingly self-driven, fair and transparent competition.

#### **3. Information, acceleration, regulation**

No output can be created without input. In order to make competent, practical, rapid and effective decisions, our organization conducts fundamental research on an ongoing basis. Ongoing market observation and analysis are therefore among our main tasks. This is the only way to develop forward-looking strategies, to take proactive measures and ensure the high quality of our work. Through additional efforts in mediation and consultation, we also do everything in our power to promote self-regulation.

#### **4. Competent, transparent and consistent**

We will make every effort to act as a service-oriented competence center for our customers. This also requires the highest possible degree of transparency on the inside and the outside, as well as the appropriate speed and consistency in making and enforcing our decisions.

#### **5. Dedicated to independence**

We make our telecommunications policy decisions independently of any and all network operators or political intervention.

#### **6. The law is our benchmark**

In the course of fulfilling our legal duties, we ensure that all of our decisions can be reviewed and justified according to the law.

In addition to carrying out consultation procedures, RTR also makes effort to cultivate direct contact with market participants. This can be in the form of individual discussions as well as forums and platforms set up for this specific purpose. For example, in the Telecommunications Division's regularly scheduled network operator meetings, representatives of licensed companies are frequently invited to presentations and discussions. Held on RTR's premises at approximately two-month intervals, this forum gives network operators an opportunity to discuss relevant issues or to comment on significant decisions, thus ensuring that the network operators are informed as thoroughly as possible. Similarly, the Broadcasting Division also makes efforts to encourage regular bilateral communication and organize specialized events in order to maintain close contact with broadcasting organizations.

Press conferences on the decisions made by the Telekom-Control Commission and Austrian Communications Authority, press information sessions, personal interviews with media representatives and active participation in telecom-

related events all served to round off the regulatory authority's information offerings in the year 2001. Since February 1999 (including the reporting period), meetings of the Technical Coordination Work Group (AK-TK) have been taking place at regular intervals. During the reporting period, the Broadcasting Division continued to support this platform for discussion and coordination, which was established upon the initiative of Telekom-Control GmbH and helps meet the continuously high need for coordination among network operators on the Austrian market. Founded as a self-governing body, the Work Group serves as an information hub and performs valuable services in coordination among network operators without imposing any procedural or official requirements. RTR has no voting rights in the Technical Coordination Work Group but acts as a moderator whenever necessary.

In the Broadcasting Division, comprehensive preparations were made for the launch of our "digital platform austria" work group, which was planned for early 2002. This report also includes a detailed description of the content and organization of these activities.

Listing these activities is intended to demonstrate the manner in which RTR intends to fulfill its duties. Naturally, this report can only depict these initiatives in rough form, as it is the sum total of all activities and actions of the organization that makes RTR's work palpable for the broadcasting and telecommunications markets as well as customers in Austria. In order to give the public more insight into the values underlying the activities of RTR and the each employee within the organization, our Culture Statement (Our Values) is also included in this document.

The establishment of the convergence regulator also included the initial legal basis for RTR's duty of setting up and running a competence center specifically for media and telecommunications convergence issues. In fulfilling this duty, which is laid down in §9 KOG, RTR is taking a wholistic view of its activities. In the short business year 2001, we began considering how to fulfill our duty of establishing suitable communication with the interested public, with due attention to the priorities of economy, thrift and expedience.

In order to enhance the reader's understanding of the regulatory system for (private) broadcasting and telecommunications in Austria, RTR's role in the Austrian regulatory environment is described here. The regulatory system is depicted schematically in the diagram above, which also provides information on the chains of command as well as legal means of redress and the authorities responsible for appeals.

As the operative arm of these authorities, RTR's Broadcasting and Telecommunications Divisions carry out all preparations for regulatory decisions made by the Austrian Communications Authority and the Telekom-Control Commission.

In cases of dispute, recourse against the decisions of the Telekom-Control Commission can only be taken by filing a complaint with the Austrian supreme courts of public law. Appeals against decisions made by the Austrian Communications Authority, which was set up as a first-instance authority, can be submitted to the Federal Communications Board (the second-instance authority). Beyond the Communications Board, parties filing complaints and appeals also have recourse to the Austrian supreme courts.

#### FOKUS 4: OUR VALUES (RTR CULTURE STATEMENT)

##### 1. Equal rights for all customers

It is our duty to deal with all market participants in an unbureaucratic way and without bias or prejudice. We will act quickly and efficiently, while strictly adhering to the principles of objectivity and independence.

##### 2. Team spirit

Our organization is a team in which well-educated and highly motivated employees cooperate in an interdisciplinary context to fulfill our duties efficiently and responsibly.

##### 3. Responsibility and trust

Our flat hierarchy, with its rapid decision-making processes and clear responsibilities, guarantees an expedient internal flow of information and cultivates a sense of responsibility supported by mutual trust.

##### 4. A respectful culture

In carrying out our duties, we communicate and interact with each other openly and respectfully, as well as delivering constructive criticism and acknowledging each other's achievements.

##### 5. Developing strengths

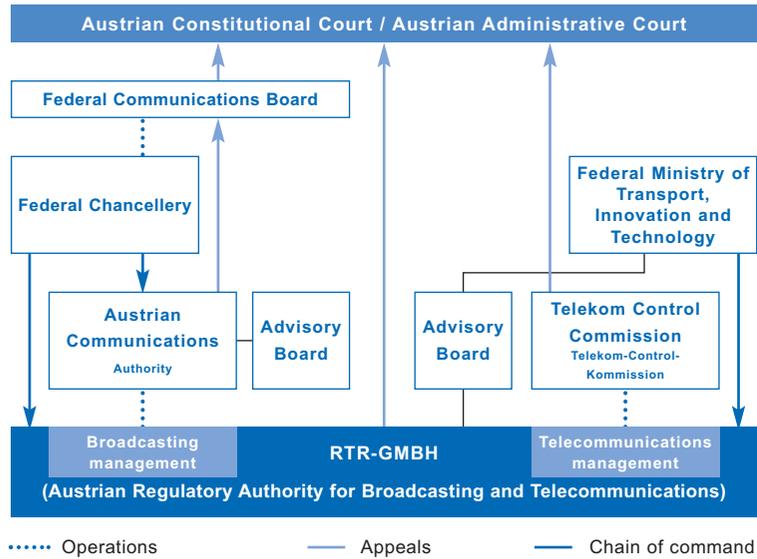
Recognizing and promoting the strengths of each individual in the organization is our philosophy in practice. We will do everything in our power to ensure the personal and professional development of all our team members.

##### 6. Improvement is essential

The constant willingness to explore and learn about new subjects is a basic principle of our behavior. We will leave no stone unturned in finding new ways to fulfill our duties better and more competently, and we will be prepared at all times to support each other in this process.

**RTR as a competence center  
especially for media and  
telecommunications  
convergence issues.**

## Fokus 5: The regulatory environment



The Austrian Communications Authority is subject to the instructions of the Federal Chancellor; this also applies to the management of the Broadcasting Division. The Telekom-Control Commission was established as an independent panel authority with the powers of a court (Art. 133 No. 4 B-VG). The Telecommunications Division is only subject to the instructions of

the managing director in charge of telecommunications affairs, who is responsible for carrying out the written instructions of the Austrian Federal Minister of Transport, Innovation and Technology. These instructions also have to be published.

The law also provides for advisory boards in both divisions, Broad-

casting and Telecommunications. The Broadcasting Advisory Board was set up for the purpose of counseling the Austrian Communications Board and is to be given an opportunity to submit comments and statements before licenses are issued (§6 KOG). The Telecommunications Advisory Board was set up for the purpose of counseling the Federal Minister of Transport, Innovation and Technology and the regulatory authority, especially in fundamental telecommunications issues (§123 TKG).

## 3. RTR's regulatory activities

### 3.1. Regulatory activities in broadcasting

#### 3.1.1. Introduction

The founding of the Austrian Regulatory Authority for Telecommunications and Broadcasting on April 1, 2001 marked both the commencement and takeover of regulatory work toward the establishment of a dual broadcasting system in Austria. Within the company, it also marked the start of activities related to establishing the Broadcasting Division at RTR. This development was even more crucial in light of the fact that 2001 was the first year of private broadcasting in Austria. With the enactment of several media laws such as the Private Radio Act (PrR-G), Private Television Act (PrTV-G) and not least the ORF Act, the legal bases for our activities in broadcasting were created. The organizational framework for these activities was defined in the KommAustria Act (KOG). This dynamic pace was definitely necessary in order to meet new requirements in European law and in order not to

fall behind in setting up a dual broadcasting system in the common market.

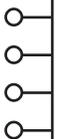
From the very outset, the special challenge in the field of broadcasting was that – at the same time that RTR and the Austrian Communications Authorities' organizational structures were being created – there was a tremendous need for regulatory action, especially as 23 private radio stations' 6-month provisional licenses were set to expire. These activities are described below.

The goal of this report is to describe the Austrian Communications Authority's regulatory activities in the short business year 2001. As described above, the activities of the Broadcasting Division at RTR included in particular its work as the operative arm of the Austrian Communications Authority (including activities in frequency administration and frequency management for private and public broadcasting), procedures in accordance with §8 KOG (arbitration procedures) as well as leadership in intro-

ducing digital broadcasting in Austria (see the corresponding sections below). All other duties were performed either by RTR as a company or by the Telecommunications Division.

#### 3.1.2. Regulatory framework and central issues

The role of KommAustria and RTR's Broadcasting Division in the process of establishing a dual broadcasting system in Austria is best understood on the basis of the fundamental problems involved in deregulating media markets in which programming has been dominated by a public broadcasting institution. Until the year 1995, the Austrian Broadcasting Corporation (ORF) was not exposed to any Austrian competition in the fields of radio and television. It was not until September 1995 that private radio broadcasting organizations established themselves in two Austrian provinces; numerous private radio stations then also began broadcasting almost throughout Austria in April 1998.



Those developments marked the opening of competition in the field of radio broadcasting, but the establishment of a dual broadcasting system in Austria was far from completed. The legal basis for nationwide and regional private television was not created until the Private Television Act went into effect on August 1, 2001. In the 2001 reporting period, an invitation to tender was carried out and the procedure for awarding nationwide private television broadcasting licenses was initiated.

Deregulating a media market based on monopoly structures requires an institution which can ensure that broadcasting licenses are issued in such a way that new organizations can operate without disturbances in the broadcasting region and which is also perceived as a legal supervisory institution for all (private) broadcasting organizations. The issuing of permits for the operation of technical equipment and facilities required for broadcasting also plays a major role in this context.

KommAustria and RTR's Broadcasting Division have been assigned the duty of promoting market access for new broadca-

sting organizations and ensuring that this market access enables orderly broadcasting operations in terms of technical infrastructure. Under § 2 (2) KOG, the primary duties of KommAustria include issuing broadcasting licenses and permits for operating the technical infrastructure necessary for broadcasting, and carrying out legal supervisory activities for private broadcasting organizations.

In the reporting period, our main areas of concentration included the issuing of licenses for private radio broadcasting as well as preparations (invitation to tender, initiation of procedures) for licensing nationwide and regional private television. In the process of issuing radio broadcasting licenses as well as private television broadcasting licenses, the applicants' qualifications in terms of specialized knowledge, organization and financial viability are first reviewed, after which decisions are to be made according to the selection criteria set forth in the applicable laws ("beauty contest," §6 PrR-G and §7 PrTV-G). The question of which applicant will make a greater contribution to the diversity of opinions in the coverage area is especially important in this context. In addition, the portion of

program content produced in-house and its relationship to Austria and the covered area are taken into account.

The KommAustria Act also takes into account that the issuing of broadcasting licenses for private radio and television can never be considered separately from the corresponding transmission capacity (frequencies): In the legal landscape before April 1, 2001, two different authorities were responsible for issuing broadcasting licenses on the one hand and for assigning the necessary frequencies on the other. The new law fulfilled the requirement of "one-stop shopping," and the required official licenses/permits can be acquired from a single source. Now that KommAustria and the Broadcasting Division have taken over responsibility for frequency management for the entire broadcasting sector from the Frequency Office, one essential component of KommAustria and RTR's duties lies in the efficient allocation and utilization of frequencies reserved for Austrian broadcasting organizations on the basis of international conferences and agreements. Broadcasting frequencies, especially those for analog

operation, are still considered scarce resources.

Finally, this report describes our activities in the "digital platform austria" work group during the reporting period as well as the general activities of the work group itself.

### **3.1.3. Regulatory activities in radio broadcasting**

In the field of radio broadcasting, one of our main areas of concentration between April and June 2001 lay in handling 23 licensing procedures for radio broadcasting, for which the invitation to tender had been published by the Private Radio Authority on December 19, 2000.

In early 1995, the Regional Radio Authority (later renamed Private Radio Authority) issued the first licenses to 10 applicants for private radio broadcasting. However, only 2 of the 10 licensees were able to begin broadcasting operations due to the Austrian Constitutional Court's decision to acknowledge the suspensory effect of complaints filed by the opponents to the licenses issued (which made it impossi-

ble for these new radio stations to start broadcasting) as well as the court's findings on September 27, 1995, which deemed significant parts of the Regional Radio Act to be insufficiently defined and thus unconstitutional, especially with regard to frequency planning.

In its findings, the Constitutional Court eliminated the legal basis for private radio and the issuing of further licenses. At that point, the legislation had been in place for only two years. In 1997, an amendment to the Regional Radio Act was passed (BGBl. No. 41/1997, effective May 1, 1997) which made it possible for the remaining private radio stations to go on the air in early 1998.

In its findings of June 29, 2000 (G-175-266/99), the Constitutional Court decided that §13 of the Regional Radio Act, which provided for the establishment of the Private Radio Authority (an independent panel authority responsible for licensing), was unconstitutional. In order to prevent the licenses issued by the Private Radio Authority from being revoked (which would have affected 23 licensees), the Austrian legislature supplemented the provisions governing licensing in §17 in

such a way that the licensees could apply for provisional permits. However, these permits were only valid for a period of 6 months, which meant that a new legal basis for private radio licensing had to be passed before the licenses expired (June 19, 2001).

On January 31, 2001, the new Private Radio Act (PrR-G: BGBl. I No. 20/2001, released on March 6, 2001) was passed by the National Council, and the new legislation went into effect on April 1, 2001.

Along with the Private Radio Act, the KommAustria Act (BGBl. I No. 32/2001) also went into effect and created a uniform regulatory authority (the Austrian Communications Authority, or KommAustria). The new authority assumed the duties of the former Private Broadcasting Authority and the Regional Radio Act Commission (set up for legal supervision), as well as taking over frequency administration duties and frequency allocation monitoring, both of which were formerly the responsibility of the Telecommunications Authorities.

Under §3 Par. 1 PrR-G, the regulatory authority is to issue radio broadcasting licenses for a period of

ten years; this includes the approval of programming category, scheme and duration as well as the definition of the coverage area and the assignment of frequencies.

KommAustria's issuing of provisional licenses is governed by §3 Par. 7 and 8 of the Private Radio Act.

In addition, radio broadcasting licenses for frequencies not assigned to a broadcasting organization or the Austrian Broadcasting Corporation (ORF) can be issued for a maximum of three months to permit broadcasts in the local area of an independent public event ("event radio).

Licenses can also be offered for up to one year to permit local broadcasts by training and education facilities, as long as the broadcasts are functionally related to the duties to be performed by these facilities ("training radio").

## **Licenses**

After the Private Radio Authority's invitation to tender on December 19, 2000, KommAustria had received 154 applications from 48 applicants as of April 20, 2001, for four

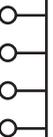
previously regional licenses (Burgenland, Vienna 88.6 MHz, Vienna 102.5 MHz and Vorarlberg) and 19 previously local licenses (Vienna 92.9 MHz, Vienna 94.0 MHz, Vienna 104.2 MHz, Vienna 107.3 MHz, Villach town and the southern part of Villach district, the Slovenian minority settlement, Graz, Bruck an der Mur/Mur-Mürztal, Waldviertel, Linz 105.0 MHz, Innviertel, Salzburg 94.0 MHz, Salzburg 106.2 MHz, Tiroler Oberland, Tiroler Unterland/Zillertal, Außerfern/Reutte, Innsbruck 105.1 MHz, Innsbruck 106.5 MHz and Bregenz), to be processed within a period of two months.

In the course of the procedure, the respective provincial governments and the Broadcasting Advisory Board were assigned the applications, and all applicants were interviewed in 23 verbal negotiations held separately for each coverage area between May 22 and 30, 2001.

On June 18, 2001, once all procedures has been concluded, KommAustria issued official decisions to grant 23 radio broadcasting licenses, effective June 20, 2001, for the period of ten years. In the

course of the legal evaluation of applicants, the criteria listed in Focus 6 were given special attention.

Licenses were issued to the applicants listed in Focus 7.



## FOKUS 6: RADIO BROADCASTING CRITERIA

- Timeliness and permissibility of applications
- Prerequisites and grounds for exclusion under §5 Par. 2 in conjunction with §§7-9 of the Private Radio Act (PrG-G), for example: exclusion of persons from outside the EEA, impermissible multiple coverage within a media association, etc.
- Specialized knowledge, financial and organizational capabilities of applicants
- Adherence to programming principles
- Selection criteria according to §6 PrR-G, in which the law pays special attention to "more effectively ensuring a greater diversity of opinions" in the coverage area, to "independent programming which takes interests in the coverage area into account," to "a greater quantity of programs created in-house" as well as the question of "whether one of the applicants has already legally exercised the license to be granted."

### Criteria for legal evaluations of radio licenses



## FOKUS 7: LICENSES GRANTED TO APPLICANTS

Coverage area	Licensee	Name of station
• Vienna, 88.6 MHz	Radio 1 Privatrado GmbH	88,6 Der Musiksender
• Vienna, 102.5 MHz	Antenne Wien Privatrado BetriebsgmbH	Antenne Wien
• Vienna, 92.9 MHz	Donauradio Wien GmbH	Radio Arabella 92,9
• Vienna, 94.0 MHz	Verein zur Förderung und Unterstützung von Freien Lokalen Nichtkommerziellen Radioprojekten	Radio orange
• Vienna, 107.3 MHz	Kirchliche Stiftung Radio Stephansdom	Radio Stephansdom
• Vienna, 104.2 MHz	N & C Privatrado Betriebs GmbH	Energy 104,2
• Waldviertel	Teleport Waldviertel - Information und Kommunikation GmbH	w 4 Radio Waldviertel (now Hit FM)
• Burgenland	Privatrado Burgenland 1 GmbH & Co KG	Burgenland 1 Das Musikradio (now Krone Hitr@dio)
• Graz	Grazer Stadtradio GmbH	107,5 Das Grazer Stadtradio (now Krone Hitr@dio)
• Bruck an der Mur/Mur-Mürztal	Mur-Mürztal Radiobetriebs GmbH	89,6 Das Musikradio
• Slovenian minority settlement in Carinthia	Agora Korotan AKO Lokalradio GmbH	Radio Korotan (now radio dva)
• Villach town and southern part of Villach district	Radio Villach Privatrado GmbH	Radio Villach (now Krone Hitr@dio)
• Innviertel	Antenne Innviertel Rundfunk GmbH	Antenne Innviertel (now Krone Hitr@dio)
• Linz, 105.0 MHz	Freier Rundfunk Oberösterreich GmbH	Radio FRO
• Salzburg town 94.0 MHz	Radio Arabella GmbH	Radio Arabella (now Krone Hitr@dio)
• Salzburg town 106.2 MHz	Welle Salzburg GmbH	Welle Salzburg
• Außerfern/Reutte	Außerferner Medien GmbH	Radio Arabella Außerfern
• Tiroler Oberland	Radio Oberland GmbH	Radio Arabella Oberland
• Tiroler Unterland/Zillertal	Unterländer Lokalradio GmbH	U 1
• Innsbruck, 105.1 MHz	Stadtradio Innsbruck GmbH	Welle 1
• Innsbruck, 106.5 MHz	Lokalradio Innsbruck GmbH	Radio Arabella Innsbruck
• Vorarlberg	Vorarlberger Regionalradio GmbH	Antenne Vorarlberg
• Bregenz	Bregenzer Lokalradio GmbH	Radio Arabella

No appeals were filed against the decisions regarding licenses in Linz, Waldviertel and the Slovenian settlement area in Carinthia. Therefore, those decisions took legal effect in July 2001, once the appeals period had passed.

Unsuccessful applicants filed appeals against 20 decisions with the Federal Communications Board.

By December 31, 2001, the Federal Communications Board had issued legally enforceable decisions on 13 procedures (the licenses in Burgenland, Vorarlberg, Villach town, Bruck and der Mur/Mur-Mürztal, Tiroler Unterland, Tiroler Oberland, Außerfern/Reutte, Innsbruck 105.1 MHz, Innsbruck 106.5 MHz, Bregenz, Vienna 107.3 MHz, Vienna 94 MHz, Vienna 92.9 MHz).

The licensing procedure for Innsbruck, 105.9MHz, which had already been underway before the Private Broadcasting Authority was established, was not completed by April 1, 2001, thus it was continued by KommAustria in accordance with §32 Par. 3 in conjunction with §32 Par. 6 of the Private Radio Act. On September 5, 2001, once the

Broadcasting Advisory Board had examined the applications received and verbal negotiations had been conducted (July 20, 2001), KommAustria issued an official decision to grant the Verein zur Förderung der Medienvielfalt und der Freiheit der Meinungsäußerung sowie für ein glückliches Radio auch in Innsbruck; Freies Radio Innsbruck - FREIRAD a radio broadcasting license for the period of ten years. An appeal received from one party to the procedure was presented to the Federal Communications Board, which rejected the appeal on November 13, 2001, thus allowing the license to take legal effect.

On July 23, 2001, KommAustria issued an invitation to tender for the "Völkermarkt and Wolfsberg districts" and the "Oberes Ennstal" coverage areas.

On December 17, 2001, once the Carinthian provincial government and the Broadcasting Advisory Board had reviewed the applications and verbal negotiations had been conducted (November 12, 2001), KommAustria issued an official decision to grant Privatrado Unterkrnten GmbH (Krone

Hitr@dio) a radio broadcasting license for the Völkermarkt and Wolfsberg Districts for the period of ten years.

A provisional license (pursuant to §3 Par. 7 and 8 PrR-G) was issued to Privatrado Unterkrnten GmbH in accordance to its application. The application for a provisional license submitted by Radio Megahertz Ennstal GmbH was rejected. An application for a provisional license submitted by 92,9 Hit FM Radio GmbH was rejected, after which an appeal was filed. As of the end of the reporting period, the Federal Communications Board had not decided on this appeal against KommAustria's decision.

The procedures listed in Focus 8 for licensing under §3 Par. 5 No. 1 PrR-G (event radio) for a maximum period of three months were handled by KommAustria during the reporting period. In a licensing procedure under §3 Par. 5 No. 2 PrR-G (training radio), a license was issued on May 16, 2001 to the Steyr Academy of Commerce until May 18, 2002.

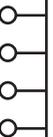
### Legal supervision of radio broadcasting organizations

On July 19, 2001, all 22 licensees were audited for May/June 2001 (with the exception of Radio Arabella 92.9, which did not go on the air until December) to verify that recordings of all radio broadcasts were being made and retained for the period of ten weeks in accordance with §22 PrR-G. As a result of this audit, two legal violation procedures were initiated under §25 PrR-G against Außerferner Medien GmbH and Radio Oberland GmbH due to failure to maintain these recordings; both procedures were concluded with legally enforceable official decisions.

In addition to this case, a number of other procedures were initiated by KommAustria in accordance with §25 PrR-G (Focus 9).

- Formula One Management Ltd.: The application for a broadcasting license in connection with the Formula 1 Grand Prix in Spielberg was rejected.
- Radio Event GmbH (3 applications + 2 extensions): This organization covers FC Tirol football games in its radio broadcasts.
- Town of Gutenstein: Broadcasts in connection with the Raimund Festival
- Linzer VeranstaltungsgesmbH: Coverage of the "Linzer Klangwolke" music festival in Linz's Donaupark
- Municipality of Zwettl: Broadcasting in connection with Zwettl's Slovenian Advent festival
- Centrum für Gegenwartskunst: An exhibit at the OK Center in Linz was accompanied a radio show
- Verein Festival der Regionen: 3 months of various broadcasts in connection with the Festival of Regions (Upper Austria).

### List of licensing procedures for a maximum period of 3 months.



#### FOKUS 9: ADDITIONAL PROCEDURES CARRIED OUT UNDER §25 PRR-G

In July/August 2001, an administrative penalty procedure was carried out against the managing director of Radio Event GmbH due to a violation of §1 Par. 2 PrR-G (unlicensed radio broadcasting) and concluded with a punitive decision.

In addition, legal supervisory activities included a procedure to revoke a license under §28 Par. 1 PrR-G due to failure to report under §7 Par. 6 PrR-G on the part of Pinzgau/Pongau/Lungau Radio GmbH, which was concluded by KommAustria's official decision on October 11, 2001 instructing the defendant to remedy the violation.

An additional area of activity was the issuing of assessment decisions under §7 Par. 6 PrR-G, whereby radio broadcasting organizations are required to report all transfers of more than 50% of shares in existence at the time of licensing to third parties in advance. The regulatory authority is to determine whether the changed ownership structure complies with the provisions under §5 Par. 2 and §§7 to 9

(regarding radio broadcasting organizations, grounds for exclusion and stakes held by media owners) within a period of eight weeks. In the reporting period, eight procedures of this type were carried out in connection with the following broadcasting organizations:

- Project Medien GmbH: This procedure verified a violation of §17 PrR-G due to the impermissible use of broadcasts from another radio broadcasting organization to an extent of more than 60% of daily broadcasting time (in this case 100% was used), and a legally enforceable decision was issued.
- Außerferner Medien GmbH: This procedure verified violations of §17 PrR-G and 22 PrR-G due to failure to maintain required recordings and the use of broadcasts from another radio broadcasting organization to an extent of more than 60% of daily broadcasting time, for which a legally enforceable decision was issued.
- Radio Oberland GmbH: In this case, the regulatory authority verified a violation of §22 PrR-G due to failure to record radio broadcasts, for which a legally enforceable decision was issued.
- Radio Gute Laune: Again, in this case the regulatory authority verified a violation of §22 PrR-G due to failure to record radio broadcasts, for which a legally enforceable decision was issued.
- Medienprojektverein Steiermark: KommAustria verified a violation of §3 Par. 5 PrR-G, which prohibits advertising in programs licensed under §3 Par. 5 No. 2 PrR-G (training radio); the resulting decision included two legally enforceable points.

- Donauwelle Radio Privat NÖ GmbH
- Radio Eins Privatrado GmbH
- Privatrado Wörthersee GmbH
- Grizzly Radio & TV GmbH
- Kitzbühler Lokalradio GmbH
- PL1-Lokalradio GmbH
- Privatrado Unterkärnten GmbH
- Radio Arabella GmbH

During the reporting period, KommAustria carried out the following invitations to tender in accordance with §13 PrR-G:

- Völkermarkt and Wolfsberg districts: These procedures were concluded with an official decision on December 17, 2001 to grant a license to Privatrado Unter-kärnten GmbH (Krone Hitr@dio).
- Oberes Ennstal: This procedure was carried over into the next business year.
- Graz, 92.6 MHz: This procedure was carried over into the next business year.
- Graz, 97.9 MHz: This procedure was carried over into the next business year.

#### **3.1.4. Regulatory activities in television broadcasting**

In order to give the reader a better understanding of our regulatory activities in the field of television, it appears useful to give a brief history of television regulation before describing these activities. The specific activities carried out by the regulatory authority in the reporting period are then described in detail.

#### **Short historical description**

The year 2001 saw dramatic changes in media policy in that – in addition to a number of other media-related laws (e.g., Private Radio Act, KommAustria Act, ORF Act) – Austria's first law on private television was passed, thus creating the legal basis for broadcasting private analog terrestrial television. From 1997 onward, the Cable and Satellite Broadcasting Act (KSRG, BGBl. I No. 42/1997) had already made it possible to broadcast private television in cable networks.

The enactment of the Private Television Act (PrTV-G, BGBl. I No. 84/2000), which went into effect on August 1, 2001, cleared the way for the creation of a dual broadcasting system in the field of television as well.

The Private Television Act forms the legal basis for granting nationwide and regional licenses for terrestrial analog private television. In certain city regions (Vienna, Linz and Salzburg), non-nationwide private television is made possible by what is referred to as frequency splitting for frequencies that were previously reserved for the Austrian Broad-

casting Corporation (ORF). In addition, the Private Television Act assigns the Austrian Communications Authority (KommAustria) the responsibility for introducing digital terrestrial television in Austria in the coming years. The Private Television Act also assigns KommAustria the responsibility for frequency administration and allocation for wireless transmissions of private broadcasting organizations as well as ORF and the future multiplex operators (digital broadcasting), with due attention to topographic and technical considerations as well as Austria's duties under international telecommunications law.

The cable and satellite broadcasting provisions previously set forth in the Cable and Satellite Broadcasting Act (KSRG) were also included in the Private Television Act. Under this Act, satellite radio and television broadcasting also requires licensing by KommAustria, whereas cable radio and television broadcasting only needs to be reported to KommAustria.

**Procedure for nationwide licensing of analog terrestrial television in Austria**

The Private Television Act assigns KommAustria the duty of publishing an invitation to tender for nationwide licensing in the Official Gazette of the Wiener Zeitung as well as other Austrian daily newspapers and in other appropriate ways within four weeks of the time the law goes into effect, with due indication of the available frequencies (Annex 1, Private Television Act). In addition, §16 Par 1 PrTV-G stipulates that KommAustria is to define a period of at least three months for the submission of license applications in the invitation to tender.

According to §16 par. 2 PrTV-G, the invitation to tender, which is to be carried out in accordance with Par. 1, should also mention the possibility of applying for licenses for non-nationwide analog terrestrial television using the frequencies listed in Annex 1 or those of the Austrian Broadcasting Corporation (under § 13 PrTV-G).

In accordance with these legal regulations, KommAustria published an invitation to tender for

nationwide and non-nationwide licensing for analog terrestrial private television (Code: GZ KOA 3.001/01-2) on August 6, 2001. The invitation to tender was published on August 6, 2001, in the Official Gazette of the Wiener Zeitung as well as the nationwide daily newspapers Der Standard and Die Presse. At the same time, the invitation to tender was published on RTR's web site. According to §16 Par. 2 PrTV-G, the invitation to tender also mentioned the possibility of applying for licenses for non-nationwide analog terrestrial television using the frequencies listed in Annex 1 of the Private Television Act or those of the Austrian Broadcasting Corporation (under § 13 PrTV-G). In addition, the invitation to tender stated that applications for nationwide or non-nationwide licenses were to be received by KommAustria by Wednesday, November 7, 2001 at 1:00 pm.

**Nationwide licensing procedure**

Within the required three-month period, KommAustria received a total of 7 applications:

1. ATV Privatfernseh-GmbH
2. KANAL 1 Fernsehbetriebs-gesellschaft m.b.H.

3. Ganymedia Network GmbH
4. Andreas Sattler
5. Stream S.p.A.
6. Mr. Franz Josef Glasl
7. Mainstream Media GmbH & Co KG

For reasons related to procedural regulations, the applications submitted by Mr. Glasl and Stream S.p.A. were not processed further. Mainstream Media & Co KG later withdrew its application.

KommAustria then gave official experts the assignment of compiling the following evaluation reports: The first evaluation report assigned to the experts was to review the technical feasibility of the terrestrial broadcasting plans submitted by the applicants, with special emphasis on judging whether it would be feasible to achieve a coverage level of 70 % of the population using the requested frequencies in distribution via cable networks. In addition, KommAustria commissioned an evaluation report to judge whether applicants fulfilled the financial and organizational requirements for broadcasting terrestrial television nationwide. This evaluation was commissioned on the basis of §4 Par. 3 of the Private

Radio Act, which states that the applicant is to supply credible evidence to verify that they fulfill the requirements for creating and broadcasting the planned content regularly in terms of specialized knowledge, financial resources, and organization.

On December 17, 2001, verbal negotiations were held with the parties to the procedure as part of the examination process and in accordance with §40 of the Act on General Administrative Procedures (AVG). The official decisions to grant licenses for nationwide analog terrestrial television were issued after the end of the reporting period.

#### **Licensing procedure for non-nationwide analog terrestrial television broadcasting**

Along with the applications for the nationwide licensing of analog terrestrial television, 20 applications for non-nationwide licenses were submitted to KommAustria.

#### **The following organizations submitted applications for the Vienna city region:**

1. N-TV Nachrichtenfernsehen GmbH & Co KG, together with Karl Ulrich Kuhlo, Helmut Brandstätter and Michael Grabner
2. Global Video Bernhard Graf
3. KANAL 1 Fernsehbetriebsgesellschaft m.b.H.
4. Puls City TV Rundfunkveranstaltungs GmbH
5. Ganymedia Network GmbH
6. Smart.city.TV Fernseh - u. Rundfunk GmbH (incorporation in progress)

#### **The following organizations submitted applications for the Linz city region and the province of Upper Austria:**

1. N-TV Nachrichtenfernsehen GmbH & Co KG, together with Karl Ulrich Kuhlo, Helmut Brandstätter and Michael Grabner
2. Christian Parzer and Andreas Niederauer, for Bad Ischl
3. RTV Regionalfernsehen GmbH, for Steyr
4. Ganymedia Network GmbH

5. Privatfernsehen GmbH, for Linz
6. Lokal TV Austria GmbH (Saar TV, incorporation in progress)
7. Info TV Medien GmbH

#### **The following organizations submitted applications for Salzburg city region and the province of Salzburg:**

1. Salzburg TV Fernsehgesellschaft mbH
2. Verein Freier Rundfunk Salzburg
3. Ganymedia Network GmbH
4. Lokal TV Austria GmbH (Saar TV, incorporation in progress)

#### **The following organizations submitted applications for the Graz city region and the province of Styria:**

1. Steiermark 1 TV Programmgesellschaft m.b.H.
2. WKK Lokal-TV d. Weststeir. Kabel-TV GmbH & Co KEG, for Köflach and surrounding area
3. Harald Milchberger, for Graz and the Murtal / Mürztal area
4. Ganymedia Network GmbH
5. RS Privatrado GmbH

**The following organizations submitted applications for the province of Carinthia:**

1. Bad Kleinkirchheim SAT-Kabelfernsehen GmbH
2. Ganymedia Network GmbH
3. KT 1 Privatfernseh GmbH, for central Carinthia

**The following organizations submitted applications for the province of Tyrol:**

1. Ganymedia Network GmbH
2. LFT Lokalfernsehen Tirol GmbH & Co KG

Ganymedia Network GmbH also applied for all frequencies listed in Annex 1 of the Private Television Act.

In accordance with §4 of the KommAustria Act, the Broadcasting Advisory Board reviewed the applications for analog terrestrial television broadcasting licenses.

On November 13, 2001, KommAustria forwarded the applications for non-nationwide analog terrestrial television broadcasting licenses to the respective provincial governments for their comments in accordance with §4 Par. 7 of the Private Television Act.

On the basis of the possibility (expressly stipulated in §16 Par. 2 PrTV-G) of applying for non-nationwide licenses using the frequencies listed in Annex 1 of the Private Television Act or those of the Austrian Broadcasting Corporation (under § 13 PrTV-G), the remaining frequencies in Annex 1 available for non-nationwide broadcasting can not be determined until licenses for nationwide television broadcasting are issued and legally enforceable and the frequencies actually used for nationwide television broadcasting are known. The license award procedure for non-nationwide television broadcasting will thus be continued in 2002 and is scheduled for completion in summer 2002.

**Must-carry procedures**

In the year 2001, the Austrian Communications Authority (Komm Austria) only reviewed one application for a must-carry requirement for cable networks under §20 of the Private Television Act (PrTV-G).

The legal basis for must-carry procedures is found in §20 PrTV-G, in which Par. 1 legally requires cable network operators to broadcast Austrian Broadcasting Corporation

(ORF) radio and television programs if it is possible without unreasonable expense and effort. Under Par. 2 leg. cit., cable network operators are to broadcast the programs of nationwide licensees for a reasonable fee if the appropriate application is submitted. In addition, §20 Par. 3 PrTV-G includes must-carry regulations for cable network operators and local radio and television programs. KommAustria is to decide on the duration of any must-carry requirements as well as the reasonable fee to be charged for broadcasting such programs as long as the prerequisites for a must-carry procedures are fulfilled under § 20 Par. 3 and 4.

In the must-carry procedure carried out before KommAustria, a local cable television broadcasting organization (Vienna) applied for broadcasting in the Vienna cable network. The applicant was TIV Kabelfernsehgesellschaft m.b.H., and the opponent to the application was Telekabel Wien GmbH, the operator of the Vienna cable network.

- On September 17, 2001, the application for a must-carry requirement was received by KommAustria.

- On October 11, 2001, KommAustria conducted verbal negotiations in an attempt to mediate between the two parties. The prerequisites for a must-carry procedure were fulfilled, specifically the submission of an application for a must-carry requirement along with a six-week period for agreement efforts, the inability of the parties to reach an agreement and an unsuccessful attempt at mediation by KommAustria. The examination procedure further revealed that a only one channel of the applicant's type was broadcast in the relevant cable network, that the applicant's channel mainly served the purpose of local news reporting, contained more than 120 minutes of content produced in-house per day and was not broadcast in any other province of Austria. Thus the legal prerequisites for imposing a must-carry requirement were fulfilled as specified under § 20 Par. 3 and 4 PrTV-G. In this process, KommAustria was confronted with the following core issues:

- Credible evidence that the applicant has the financial means to produce cable television programs regularly for the duration of the must-carry requirement.

- Broadcasting mode: In order to ensure that all households connected to the application opponent's network (the general public) were reached, it was necessary to review whether an analog and/or a digital broadcasting requirement was to be imposed. In this context, KommAustria was required to weigh the legitimate interests of the applicant against those of the application's opponent with a view to minimizing restrictions on the latter's contractual flexibility.

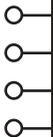
- The amount of a "reasonable fee": If the cable network operator already has general terms of service, these are to be taken into account accordingly, otherwise §20 Par. 6 PrTV-G requires that similar terms of service be applied. The application's opponent did not submit generally applied terms of service, meaning that KommAustria had to refer to comparable terms.

- Duration of must-carry requirement: max. 2 years.

In its official decision of November 23, 2001, KommAustria issued a must-carry order for the applicatio-

n's opponent to broadcast the applicant's programs to the extent applied for, starting 2 months after the official decision became legally enforceable but no earlier than May 1, 2002. The application's opponent was also required to make these broadcasts possible by such technical means that ensure that they reach all consumers connected to the network, that is, in both the analog and digital basic packages. In exchange, the applicant was required to pay reasonable remuneration by granting advertising time at standard rates.

KommAustria's decision became legally enforceable, and the parties to the procedure reached a private legal agreement on broadcasting in the cable network.



### **3.1.5. Broadcasting frequency management and coordination**

#### **The working basis for frequency management**

As explained above, frequency management and frequency coordination constitute an integral part of KommAustria and RTR's work.

The following broadcasting services are to be handled in the field of broadcasting frequency management: MW (medium wave), SW (short wave), VHF radio, television broadcasting, digital terrestrial audio broadcasting (T-DAB), digital terrestrial video broadcasting (DVB-T).

Broadcasting services as well as other radio services are operated in the internationally coordinated frequency ranges for the above-mentioned broadcasting services. KommAustria is the media authority responsible for approving radio systems for broadcasting services in the allocated ranges under telecommunications law. Other radio services in broadcasting ranges (e.g., cordless microphones) are

the responsibility of the Telecommunications Authorities at the Federal Ministry of Transport, Innovation and Technology (after due consultation with Komm Austria).

In order to ensure the efficient use of the frequency spectrum and to avoid interference between individual radio services and stations, domestic coordination as well as international coordination with neighboring countries is necessary.

The fundamental rules for coordination are laid down in the International Telecommunications Union (ITU) Radio Regulations and other documents. In general, the international telecommunications agreement dictates that broadcasting stations can not be put into operation unless they have been coordinated internationally.

Additional coordination rules can be found in international agreements set up either within the framework of the ITU's Regional Radio Conferences or signed in the Conférence des Administrations Européennes des Postes et Télécommunications (CEPT). Specifically, the following treaties

are applied to frequency management in Austria: Television broadcasting (analog and digital) is coordinated under the Stockholm 61 regional agreement (ITU Conference) and the Chester 97 agreement (CEPT), VHF broadcasting stations are coordinated under the Geneva 84 agreement (ITU Conference), and digital radio broadcasting (T-DAB) is coordinated under the Special Agreement of Wiesbaden 95. Short-wave is coordinated on the basis of ITU Radio Regulations and the international High Frequency Coordination Conference (HFCC). The Geneva 75 agreement (ITU Conference) is applied to medium-wave broadcasting.

New frequencies can only be used after the appropriate coordination procedures have been completed successfully. Another possibility is that of concluding special agreements within the framework of multilateral frequency negotiations or international conferences, which usually deal with re-allocating frequencies in overall frequency sub-ranges.

2001 marked the beginning of preparations for a Regional Radio

Conference (RRC) in 2005/2006 which is to replace the Stockholm 61 agreement. The planning area will include the European Broadcasting Zone and probably also the African Broadcasting Zone.

2001 also saw continued preparations for the Maastricht Conference in 2002, in which CEPT intends to plan comprehensive T-DAB (terrestrial digital audio broadcasting) coverage in the L band on the basis of 7 additional frequency blocks of 1.5 MHz for all member states (currently 44 European countries). Austria has submitted its requirements in the form of 43 allotments on schedule to the European Radiocommunication Office (ERO).

### **Frequency management activities**

In television broadcasting, Austria took part in bilateral frequency negotiations with the Czech Republic in September 2001 to discuss the general feasibility of using the television channels 61 to 69 in both countries. In addition, a number of other coordination issues were concluded in the field of television.

Our main activities in international coordination in 2001 involved applying coordination procedures in accordance with the international treaties mentioned above.

The number of coordination procedures initiated on Austria's part in 2001 involved a total of 80 broadcasting stations, including 41 radio and 39 television stations. The total number of international coordination inquiries handled by RTR-GmbH in 2001 was 503, including 118 in the field of radio and 385 in the field of television.

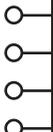
The number of countries to be included in the coordination process essentially depends on the altitude of the broadcasting loca-

tion, the mean altitude of terrain within 3 to 15km around the station and the sectoral radiated power, thus this number varies depending on the frequencies to be coordinated. Each agreement includes an agreed set of rules as to how coordination distances are calculated. In general, the number of countries actually affected is lower than that calculated on the basis of the applied coordination guidelines.

The duration of coordination processes for individual frequencies/transmission capacities is generally 3 to 6 months; however, some coordination procedures can even last years. When coordination inquiries are evaluated, we review not only whether the new frequencies will cause interference for broadcasting stations currently in operation but also whether they will impinge on existing rights in the form of entries in the appropriate frequency plans.

The most important coordination treaties also include frequency plan administration, which is handled by the ITU's Radiocommunication Bureau in Geneva.

Each coordination procedure is



divided into two parts: The first stage involves bilateral coordination with neighboring countries. The results are then reported to the ITU. The ITU then publishes all reports in a circular every 14 days, naming a period within which each country's relevant institutions can submit an objection. If no objection is raised, the relevant frequencies are published again, signifying their inclusion in the corresponding frequency plan. This entry in the frequency plan means that the frequency is given international protection rights.

### **Frequency studies**

In 2001, the Austrian Federal Ministry of Transport, Innovation and Technology commissioned a study by Deutsche Telekom to investigate existing broadcasting coverage by the Austrian Broadcasting Corporation (ORF) as well as the private broadcasting organizations in Austria. In addition, ORF's broadcasting networks were checked for redundant coverage. The objective of this part of the investigation was to identify frequencies which could be transferred from ORF to private broadcasting organizations without hindering ORF from fulfilling its

complete coverage requirement. In addition, the study investigated whether new frequencies could be deployed in densely populated areas and other areas in which organizations had expressed additional interest in operating private radio stations. The results of this study were clear: Approximately 30 new VHF frequencies with a coordination probability of 50% or greater were identified. These frequencies were then prepared appropriately and submitted for international coordination procedures.

In October 2001, RTR commissioned a study by the company LS Telcom to calculate and define broadcasting locations for digital terrestrial television in Austria. The objective of this study was to locate additional frequencies for possible DVB-T use in Austria's city regions.

RTR defined standard procedures for identifying locations and the fundamental procedure for the required calculations. The information in the broadcasting station database was made available to LS Telcom for the purposes of the study.

### **Cooperation in licensing procedures**

Another one of our duties in broadcasting frequency management is to review the feasibility and coordination probability of all applications for the approval of new broadcasting stations. The result is an evaluation report made available to KommAustria.

The following comprehensive evaluation reports were written by RTR's employees in 2001: One evaluation report on new frequencies in Vienna, one report for the Waldviertel region and the St. Pölten district as well as additional reports on Graz, Lunz am See and the upper Murtal area.

RTR also began larger-scale evaluation reports on expansion in the Waldviertel region, Steyr, the lower Inntal area and St. Pölten in 2001. These reports had not yet been completed at the end of the reporting period.

In this type of report, the coverage capabilities of new frequencies, double and multiple coverage, active and passive disturbance possibilities, inter-frequency disturbances,

coordination probabilities and not least the compatibility of broadcasting stations with aircraft radio navigation systems.

Another activity to be carried out on the basis of the Private Radio Act is the maintenance of the Frequency List. All approved VHF broadcasting stations are to be entered in the Frequency List. Current data is available on the RTR web site (<http://www.rtr.at>).

In invitations to tender for analog television broadcasting frequencies (under PrTV-G), the applications were reviewed for technical feasibility with regard to frequencies, for the plausibility of the coverage plan, and for the number of inhabitants to be covered. For nationwide broadcasting licenses, a minimum coverage of 70% of the population is required by law.

### **International activities**

KommAustria is a member of the European Platform of Regulatory Authorities (EPRA, [www.epra.org](http://www.epra.org)). During the reporting period, a KommAustria representative took part in the EPRA's plenary meeting in September 2001, where representatives from approximately 40

European broadcasting regulatory authorities discussed issues such as convergence regulation, youth protection in electronic media and must-carry regulations.

In 2001, our international activities in broadcasting frequency management included the following:

### **CEPT**

Participation in CEPT work groups FM PT 32 and FM PT 24. The latter is concerned with the introduction of DVB-T in Europe as well as preparations for the revision of the Stockholm Agreement in 2005/2006. All technical fundamentals and regulatory necessities are to be compiled in an overall report by the end of 2003. The ITU is in charge of preparations for this conference. CEPT is focusing its efforts on FM PT 24.

FM PT 32 is concerned with the above-mentioned preparations for the Maastricht Conference in 2003, the goal of which is to achieve T-DAB coverage throughout Europe with 7 frequency blocks in the L band. Requirements and radio services to be protected are being submitted by the individual coun-

tries involved, including Austria. A trial run for planning was carried out in late 2001. The results of this trial run were then analyzed with a view to identifying its weaknesses and shortcomings. Initial draft versions of the text for the treaty have already been drawn up. In this process, the Wiesbaden 95 agreement will play an essential role as a point of reference. However, it may also be the case that the Maastricht agreement will replace parts of the Wiesbaden agreement. Preparations are proceeding on schedule, and the remaining problems can certainly be solved by the time the conference begins.

### **ITU**

In the year 2001, the employees in our frequency management department employees did not actively participate in any ITU activities. We did, however, follow the activities and results of ITU Study Commissions using the available documentation. Furthermore, we coordinated our participation and results in CEPT work groups with the Austrian Federal Ministry of Transport, Innovation and Technology (Section IV, Department TD) on an ongoing

basis. As many of these groups work in an interdisciplinary context, it is not always possible for our frequency management employees to be present in all groups when broadcasting topics are discussed.

### **DBEG**

The Digital Broadcasting Expert Group was founded by the O.N.P. Committee (Open Telecommunications Network Provision, Directive 90/387/EC) in October 2000. The group is a forum in which EU member states can exchange practical experience in implementing Directive 95/47/EC (TV standards) and in which technical, market policy-related and regulatory support is provided for the introduction of digital broadcasting. The group's work is intended to encourage the introduction of these new broadcasting technologies in EU member states and thus plays an important role in connection with the "digital platform austria" work group. The Austrian Federal Chancellery has assigned a representative from the Constitutional Law Service and KommAustria's technical expert for regular participation. Four meetings took place in 2001.

### **Cooperation between the Telecommunications Offices / Broadcasting Supervisory Offices and KommAustria / RTR**

Another core activity at the Austrian Communications Authority (KommAustria) is the approval of broadcasting systems intended for terrestrial broadcasting, as defined in the Federal Constitutional Act on Broadcasting. This responsibility is derived from §78 Par. 2 of the Telecommunications Act (TKG) and was created by the TKG amendment in BGBl. I No. 32 /2001 (the KommAustria Act, or KOG). Therefore, KommAustria is responsible for deciding on applications for permits to construct and operate broadcasting systems and for later changes to these permits under §81 TKG for private broadcasting organizations as well as the Austrian Broadcasting Corporation (ORF).

Under § 32 Par. 4 of the Private Radio Act (PrR-G), however, KommAustria is not only responsible for such applications filed after the Private Radio Act went into effect on April 1, 2001, but also for procedures for licenses under telecommunications law which were

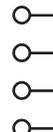
pending at the time the law went into effect, if these were related to the issuing of a legally enforceable license. That means that the responsibility for procedures for telecommunications permits which were still pending at the Telecommunications Offices before April 1, 2001 was transferred to KommAustria. In accordance with this transfer of responsibility, Komm Austria assumed responsibility for approximately 50 open applications, the majority of which had been submitted by the Austrian Broadcasting Corporation (ORF).

However, the supervision of broadcasting systems is the responsibility of the Telecommunications Authorities. The first authorities responsible are the Telecommunications Offices in Vienna, Linz, Innsbruck and Graz, and the second level of authority is the Highest Post and Telecommunications Authority in the Austrian Federal Ministry of Transport, Innovation and Technology. Komm Austria and the Telecommunications Authorities cooperate closely in their respective areas of activity in order to ensure the efficient use of frequencies and the smooth operation of licensed broadcasting systems.

The Federal Chancellery and the Federal Ministry of Transport, Innovation and Technology have drawn up an administrative agreement to govern cooperation between the Telecommunications Authorities and KommAustria in their respective areas of activity.

The main points of this administrative agreement are:

- Mutual exchange of information
- Cooperation in enforcing the Telecommunications Act
- Cooperation in the field of frequency administration



### **3.1.6. "digital platform austria" work group**

Digitization is one of the main focuses of activities at KommAustria and RTR. The legal basis for this development is found specifically in the Private Television Act (PrTV-G).

Digital technologies have revolutionized many fields, with examples such as CDs or the GSM standard in wireless mobile communications. In broadcasting, this development began years ago and has progressed to various degrees in different areas. In particular, production has been digitized to a great extent, with digital image recording and editing as well as digital image generation (e.g., computer animation). Transmission is now a vastly different situation, and analog broadcasting is the last missing link in the digital chain of distribution: Digitization already takes place in cable and satellite systems, thus ORF channels can be received digitally via satellite in Austria. If issues also remain to be solved in these two transmission modes, then the transition from analog to digital (DVB-T) technology in terrestrial broadcasting can not be driven by the market. The decision as to

whether and when this third transmission mode should be digitized is thus a crucial area in the Digitization Plan which KommAustria is responsible for creating under § 21 Par. 1 PrTV-G. The (potential) introduction of DVB-T can not be seen as a process isolated from international standards and experience in other countries. Austria is certainly in a special situation in this respect, on the one hand because of its geographical location and the resulting frequency considerations, and on the other hand due to its close links to the media markets in other German-speaking countries. The next steps taken in Austria will thus have to be coordinated with Germany and with European developments and standards. Berlin is especially significant in terms of practical experience in transition, as the city has decided to switch over to digital terrestrial broadcasting as early as 2003. Other European countries and regions have already begun their transition to DVB-T, including Great Britain (1998), Scandinavia (2000) and France (2002).

In accordance with §21 Par. 5 PrTV-G, the regulatory authority is to be supported by the "digital platform austria" work group in desi-

gning the Digitization Plan; this work group was set up by the Federal Chancellor in 2001 under §21 PrTV-G. This plan is being drawn up in cooperation with the Federal Chancellery, with due attention to European developments and with the predominant objective of introducing digital terrestrial television broadcasting. These activities are being carried out in close cooperation with the Austrian Broadcasting Corporation (ORF), as this organization is the main market participant in Austria. In addition to the Digitization Plan, which will be a work in progress for the next one to two years, a Digitization Report will be compiled in accordance with §21 Par. 6 PrTV-G. With the support of the work group and in cooperation with the Federal Chancellor, this report to the Austrian National Council will document the work's progress and include recommendations for further activities. The first report (for 2002) will be presented in early 2003. During the reporting period, the Federal Chancellery published a public invitation to tender for participation in the "digital platform austria" work group on October 31, 2001, in accordance with §21 Par. 3 PrTV-G. Under §21 Par. 2 PrTV-G,

the Federal Chancellor invited representatives with the required know-how on aspects of digitization in the following fields: broadcasting organizations (ORF and private organizations), network operators, communication service providers, terminal device producers, retailers, consumer associations, scientists/academics and representatives of the Austrian provinces. The invitation was published in the following newspapers: Wiener Zeitung, Die Presse and Der Standard.

**Key objectives of the "digital platform austria" work group**

- To support the regulatory authority in developing a Digitization Plan with due attention to economic feasibility as well as technical and especially consumer-oriented general conditions and in creating a schedule for the transition from analog to digital broadcasting
- To support RTR in compiling the Digitization Report
- To promote Austria as a media location in the interest of the domestic communications industry and to promote added value

in a technologically relevant field of the future

- To compile suggestions for future regulatory conditions, especially with a view to ensuring non-discriminatory access to these new broadcasting channels on reasonable and fair terms, with due attention to equal opportunities.

Two studies were commissioned in 2001: First, the company TELEBiLD was awarded the contract for a study on the "Current DVB-T situation and a description of international examples." Second, LS Telcom began calculating and determining broadcasting locations for digital terrestrial television in Austria. Both studies will be completed in early 2002. The regulatory authority has been assigned a crucial role in introducing digital broadcasting in Austria. Our understanding of this role is that digitization can not be carried out "against the market," thus it is important to involve market participants both on the supply and demand sides. One main focus of this work will be to enable expert dialogs and the professional preparation of all necessary general conditions.

The next steps will include a launch event on January 29, 2002 in the ARES Tower in Vienna, where the work group will have its founding meeting. The bulk of the preparations for this event were carried out in 2001, including a brochure describing the topics of the event.



## **3.2. Regulatory activities in telecommunications**

### **3.2.1. Introduction**

The founding of RTR and the establishment of its Telecommunications Division created a new organizational structure for the implementation of telecommunications policy in Austria. Under §5 Par. 2 KOG, Telekom-Control GmbH, which was set up under the Telecommunications Act (TKG, BGBl. No. 100/1997), was absorbed by RTR (as the absorbing company under §96 Par. 1 No. 1, Limited Liability Companies Act).

On November 1, 1997, Telekom-Control GmbH – now the Telecommunications Division of RTR – began its activities as regulatory authority under the Austrian Telecommunications Act of 1997 (TKG). The Telekom-Control Commission, which was not affected by this organizational transition, was founded at approximately the same time (November 24, 1997) and is no longer established within Telekom-Control GmbH; since April 1, 2001, it has been supported by RTR's Telecommunications Division, the

commission's operative arm. In accordance with legal obligations, this annual report is to summarize the (short) business year 2001.

The stated objective of this report is to describe the regulatory authorities' extensive activities in the 2001 business year. As in the past, the activities of RTR's Telecommunications Division fall into two different areas:

First, on the basis of its general competence in telecommunications regulatory issues (§ 109 TKG), the Telecommunications Division is responsible for carrying out all duties defined in the relevant legal regulations unless these duties are assigned to the Telekom-Control Commission. In addition, RTR's Telecommunications Division administers Austrian telephone number ranges and acts as an arbitration center in disputes between network operators and (final) consumers. Since the Austrian Electronic Signatures Act (SigG, or Signatures Act) went into effect, the Telekom-Control Commission has also been the decision-making body responsible for supervisory activities related to this act. In this field, the Telecommunications Division acts

as the Telekom-Control Commission's operative arm.

RTR's Telecommunications Division also acts as agent to the Telekom-Control Commission in procedures carried out before the Commission. Under § 110 Par. 2 TKG, the Telecommunications Division is responsible for carrying out the Telekom-Control Commission's operative activities. In this capacity, RTR's employees are bound by the instructions of the Telekom-Control Commission's chairman. In addition to administrative support, these activities also include providing the Telekom-Control Commission with the information necessary for decision-making. A list of the Telekom-Control Commission's responsibilities can be found under §111 of the Telecommunications Act; these responsibilities now also include procedures carried out in relation to sector-specific competition law. This report is intended to present these activities as a whole; due to their considerable significance, the decisions of the Telekom-Control Commission are given additional attention.

In enforcement of the Austrian Telecommunications Act of 1997

#### FOKUS 10: TELEKOM-CONTROL COMMISSION AND RTR (FORMERLY TELEKOM-CONTROL GMBH)

(TKG, BGBl I 100/1997), two regulatory authorities were established in Austria: The Telekom-Control Commission and Telekom-Control GmbH. As of April 1, 2001, Telekom-Control GmbH was transformed into the Telecommunications Division at RTR, the new convergence regulatory authority. The separation of responsibilities between the Telecommunications Division and the Telekom-Control Commission is clearly defined.

§ 109 of the Telecommunications Act assigns the Telecommunications Division general competence in all duties assigned to the regulatory authorities unless these duties are reserved for the Telekom-Control Commission.

Under §111 TKG, the duties listed in Focus 10 are reserved for the Telekom-Control Commission.

In accordance with its responsibilities, the Telekom-Control Commission was established as a panel authority with the powers of a court (Art. 133 No. 4 B-VG) and makes its decisions independently and unanimously. Since the Telecommunications Act was amended in June 2000 (BGBl. I No. 26/2000; June 1, 2000), the

Austrian Administrative Court (VwGH) has been an accessible extraordinary legal means of redress against decisions made by the Telekom-Control Commission. The Telekom-Control Commission was established within RTR, which is also responsible for carrying out operations for the Commission. In

this context, the employees of Telekom-Control GmbH (now RTR's Telecommunications Division) are bound by the instructions of the Telekom-Control Commission's Chairman (or the Telekom-Control Commission member designated in the Rules of Procedure).

- Issuing, withdrawal and revocation of licenses, as well as consent for license transfers and changes
- Approval of terms of service and fees, as well as the right to raise objections under §18
- Calculation of the financial compensation to be paid from the Universal Service Fund under §29
- Calculation of the contributions to be paid into the Universal Service Fund under §30
- Identification of service providers with significant market power (SMP operators) under §33
- Definition of terms of interconnection in cases of dispute, under §§37 to 41
- Decisions regarding non-adherence to the provision prohibiting cross-subsidies (§44)
- Definition of the terms of infrastructure sharing in cases of dispute under §7 Par. 2 to 8
- Allocation of frequencies intended for the provision of public mobile communication services under §49 Par. 4 in conjunction with §49a
- Proscription or imposition of certain activities as well as declaring contracts partly or completely invalid under §34 Par. 3 and §35 Par. 2.

### **3.2.2. Regulatory framework and central issues**

#### **3.2.2.1. Liberalization and regulatory authorities**

The role of the regulatory authorities in the process of liberalizing the Austrian telecommunications markets can be best understood in light of the fundamental problems involved in deregulating these markets. In many EU member countries, the provision of telecommunications services and the operation of telecommunications networks were reserved for state-owned post, telegraph and telecommunications organizations (PTTs). In 1987, the Green Paper on the Development of the Common Market for Telecommunications Services and Equipment (COM(87) 290; June 30, 1987) began the European Union's highly ambitious program with the stated objectives of completely deregulating the telecommunications sectors in all member countries and of creating a common European telecommunications market. January 1, 1998 was set as the deadline by which the predominantly state-owned telecommunications

monopolies were to be dismantled. Certain areas, such as the terminal device market (late 1980s) and the mobile telecommunications market (mid-1990s) were opened up to competition even earlier. The last step was to deregulate the fixed-link telecommunications networks and fixed-link voice telephony, which – until recently – were dominated by the state monopolies as "reserved services." The theoretical background to the opening of markets and the promotion of competition is grounded in the extremely rapid development of digital communications technology and transmission technology (optical conductors), as well as the resulting belief that fixed-link telephony is no longer suited for a monopoly situation. The positive practical experiences seen in the deregulation of the US and UK telecommunications sectors were also significant factors in this process. Finally, practical experience in state-owned monopolies and other areas as well as their obvious deficiencies in innovation and customer service – as well as the resulting inefficiencies – played an essential role in these decisions. Furthermore, the belief arose that telecommunications, being a multi-level technology, will

play a decisive strategic role in the long-term development of economies in the European Union.

The EU's decision for complete deregulation, which has had widespread effects on the duties of the previously dominant monopolies, was (and still is) a radical step requiring a comprehensive rethinking in the institutions assigned to open up the telecommunications markets. This process has manifested itself in the complete rejection of traditional monopoly supervision authorities, typically seated in postal ministries, to embrace the creation of new telecommunications regulatory authorities which are independent of all influences from network operators and service providers. This independence is also to be ensured vis-à-vis the (former) monopoly and to its owner. The basic concept does not provide for classic competition authorities in these regulatory bodies, but institutions which actively promote the process of market deregulation. Only later, once a sufficient degree of competitive intensity has been reached, will the role of these authorities as a competition regulator for the sector enter the foreground. In many EU member coun-

tries, the establishment of an independent regulatory authority with the explicit duty of opening up markets and promoting competition in order to improve service ranges, enhance quality and (not least) reduce prices in the interest of consumers and the economy as a whole was a completely new concept as well as a formidable challenge for the legislature.

The European body of legislation, under which regulatory authorities are to promote and further the deregulation of markets, also adheres to this new quality standard for regulatory authorities. This framework was established in a number of EU directives (including the Interconnection Directive, Voice Telephony Directive as well as the Approval Directive) to be incorporated in the member countries' domestic legislation. In addition to the directives, there are numerous Commission recommendations and several important documents published by the ONP Committee which describe the contents of the directives without being part of the legislative requirements. In Austria, this European body of legislation was implemented in the Telecommunications Act of 1997.

### **3.2.2.2. Companies with significant market power (SMP operators)**

European legislation is essentially based on the idea that enterprises with significant market power (SMP operators, having significant market power in accordance with the Telecommunications Act of 1997) are subject to certain restrictions and obligations ex ante, and (in contrast to general competition laws) that it is not necessary to abuse this market power to avoid these restrictions and obligations. Pursuant to §33 Par. 1 No. 1 TKG, a company is considered to have significant market power if it is not exposed to any (considerable) competition on the objectively or spatially relevant market, or if the criteria listed under §33 Par 1 No. 2 TKG are met. In accordance with Art. 4 Par. 3 of EU Directive 97/33/EC (commonly referred to as the Interconnection Directive), §33 Par. 2 of the Austrian Telecommunications Act (TKG) defines potentially significant market power in cases where an enterprise commands a market share of more than 25% of the objectively and spatially relevant market. In cases where a company's market share is far

below or far above the 25% limit, a review of the criteria listed under §33 Par. 1 of the Telecommunications Act is not performed unless the regulatory authority sees indications which could potentially contradict the probable assessment of the company's market power. If a company's market share is 25%, the company's market power is reviewed using the criteria listed in §33 Par. 1 No. 2.

The identification of enterprises with significant market power is especially important in the initial phase of liberalization, in which the position of the former monopoly generally remains unchallenged. In many cases, it is only through this process of identifying significant market power and the related legal consequences that new service providers are able to commence business activities. Accordingly, the regulatory consequences linked to identifying significant market power are asymmetrical and designed to support the process of deregulation and the development of competition.

The goal of the provisions under § 33 TKG is to identify those enterpri-

In its session on December 20, 2000, the Telekom-Control Commission resolved to initiate a new procedure to identify enterprises with significant market power under §33 Par. 4 TKG on all four telecommunications markets (mobile communications, fixed-link telephony, leased lines and interconnection) in line with its official duties. After comprehensive fact-finding investigations as well as several hearings, this procedure was concluded with an official decision (M 1/01) on June 18, 2001.

In the year 2001, only Telekom Austria AG was identified as an SMP operator on the markets for public voice telephony services and public leased-line services (both by means of self-operated networks) as well as the national market for interconnection services under the Austrian Telecommunications Act (Decision M 1/01-112 of June 18, 2001).

No company was identified as an SMP operator on the market for public voice telephony services using self-operated mobile communications networks, as the Telekom-Control Commission concluded that a sufficient degree of competition is currently found on this market.

On the national interconnection market, only one more company (in addition to Telekom Austria AG) attained the relevant market share threshold of 25%; however, over the course of the year this company's share of revenue on this market dropped below the threshold several times and demonstrated a downward tendency. As a result, the Telekom-Control Commission only identified Telekom Austria AG as an SMP operator on the national interconnection market.

ses which have a considerable degree of power on the market (cf. Art. 4 Par. 3 of EU Directive 97/33/EC). As specified in § 33 Par. 2 TKG, control of the market in the general sense used in competition legislation is not required in this context.

Cost-related pricing, which is required in the end-consumer rates of SMP operators in leased-line and fixed-link services, is especially relevant to end consumers in this context. Operators with significant market power are subject to the fundamental requirement of cost-related pricing in interconnection fees as well as those of non-discrimination and transparency on the following four markets: Fixed-link telephony, mobile telephony, leased lines and interconnection.

Numerous regulatory criteria are used to determine whether an enterprise is identified as having significant market power in accordance with the Austrian Telecommunications Act. It is thus necessary to perform a legally binding assessment to determine which of the enterprises are currently affected by these regulations on the objectively and spatially relevant sub-markets.

### **3.2.2.3. Market deregulation and license awards**

In comparison to 1997, 1998 and 1999, the year 2001 continued the trend witnessed in 2000, which saw a marked decrease in the number of license applications for fixed-link services. This is due to the fact that the majority of telecommunications companies already have licenses, and that interest is waning among companies that have not entered the field. The year 2001 also saw the start of a consolidation phase in the field of licensing. For example, a number of previously granted licenses were relinquished and a number of license applications were withdrawn in the course of the year. During the reporting period, a total of 23 licenses expired, some of them due to the passing of the (extended) deadline for the launch of services.

In general, it should be noted that under §14 TKG a license is only required for rendering public voice telephone services and for the public provision of leased lines using self-operated fixed-link telecommunications networks. In addition, licenses are required for providing mobile voice telephone servi-

ces and other public mobile communications services using self-operated mobile communications networks. Due to the limited availability of frequencies required for mobile communication services and the operational necessity of a certain minimum frequency range, a limited number of mobile network operators can be allowed in Austria. Accordingly, the regulatory authority was instructed to put the frequencies assigned to it by the Federal Ministry of Science and Transport (now the Federal Ministry of Transport, Innovation and Technology) out to tender and to allocate them to the applicant(s) who will ensure the most efficient use of the frequencies; this is determined by the license fee offered under § 21 TKG (see also §49a TKG). In contrast to mobile licenses, the number of fixed-link licenses to be granted is not limited, nor do these licenses have to be put out to public tender; licensing only requires the review procedures stipulated for all license awards under § 15 Par. 2 TKG. Fixed-link and leased-line licenses are subject to a uniform fee of EUR 5,087.10 (ATS 70,000.00). These license fees, which are very low by international comparison, represent a conscious

effort to lower the barriers to market entry, thereby signaling easy access to the market for new providers.

The decisions made by the Telekom-Control Commission in the period from April to December 2001 are described and commented on below.

#### **3.2.2.3.1. Fixed-link licenses**

In the reporting period, 21 license applications were submitted, two of which were later withdrawn by the applicants. As of December 31, 2001, a total of 81 voice telecommunications licenses and 85 leased-line licenses had been awarded to 114 companies since market deregulation began in Austria. By the end of 2001, 23 of the awarded licenses had expired (by relinquishment or revocation), thus reducing the total number of licensees to 98 companies. At the end of the year 2001, 67 of those companies were operating on the fixed-link market. In comparison to the early years of deregulation, the year 2001 saw a marked decrease in the number of license applications for fixed-link services.

The process of market consolidation, which had begun in 2000, also continued in the year 2001. For example, a number of previously granted licenses were relinquished and a number of license applications were withdrawn in the course of the year. In addition, a number of telecommunications companies filed for bankruptcy in the reporting period.

#### **3.2.2.3.2. Mobile communications licenses**

##### **UMTS/IMT-2000**

After UMTS/IMT-2000 licenses were granted in late autumn 2000, no further frequencies in this range were allocated during the reporting period. No further regulatory activities were carried out in connection with licensing issues in this field between April and December 2001.

##### **TETRA**

After licenses were issued in early 2000, no further activities were carried out in connection with licensing issues in this field between April and December 2001.

##### **WLL-Wireless Local Loop**

No activities were carried out in connection with licensing issues in this field between April and December 2001.

##### **Frequency allocations under § 125 Par. 3 TKG**

Once the decisions issued by the Telekom-Control Commission on September 25, 2000 had removed regional restrictions on frequency use in this range for Mobilkom Austria AG as well as max.mobil Telekommunikation Service GmbH, no further frequency allocations were carried out under this heading.

##### **GSM-1800**

In May 2000, 8 frequency packages from the range dedicated to public digital GSM-1800 cellular mobile communications systems were auctioned off. The tender submission period ended on March 26, 2001. The telecommunications companies Connect Austria Gesellschaft für Telekommunikation GmbH, max.mobil. and Mobilkom submitted applications for participation in the auction. The auction was car-

ried out in an open, ascending, simultaneous, multiple-round format.

In the first stage, 8 frequency packages of varying sizes (2x1.2MHz to 2x8MHz) were auctioned off. The maximum number of frequency packages that could be acquired by a bidder was based on the bidding rights each bidder applied for; those bidders who already had a license to operate 2nd-generation mobile telecommunications services were not allowed to apply for more than half of the total available bidding rights. The auction ended after two rounds. The final results of the auction are shown in the table below (Focus 12).

**FOKUS 12: FINAL RESULTS OF THE GSM-1800 AUCTION**

Applicant	Frequency packages	Allocated spectrum	Amount in ATS	Amount in EUR
Connect	3	2 x 6MHz	301.000.000	21.874.523
max.mobil.	2	2 x 3,2 MHz	160.000.000	11.627.653
Mobilkom	2	2 x 10 MHz	501.000.000	36.409.090
<b>Total</b>			<b>962.000.000</b>	<b>69.911.266</b>

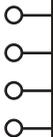


#### **3.2.2.4. Interconnection and network access**

The second major area of activity in the context of deregulation involves creating the conditions necessary for new market participants to offer their services on the market. This is only possible using asymmetrical regulation based on the identification of SMP operators in cases where the point of departure was in effect a monopoly consisting of a single telecommunications enterprise before the opening of the markets. Open network provision (ONP) is of crucial importance in this context. In order to enable competition between new providers and the former monopoly (generally a partly or wholly state-owned enterprise), access to telecommunications networks has to be secured for new providers, essentially by the interconnection of networks. Interconnection (IC) is a highly complex issue which covers the following elements and regulatory topics:

- Technical interconnection aspects
- Services to be enabled by interconnection
- Fees for interconnection services

European legislation imposes a comprehensive obligation upon SMP operators to enable interconnection; the precise definition of this obligation is left to each member state's legislature. One especially important regulation dictates that interconnection services are to be priced in relation to their cost. The FL-LRAIC (forward-looking, long-run, average incremental costs) pricing concept has emerged as a guiding principle in this context. This concept dictates that new service providers do not have to pay the full distributed costs incurred by the SMP operator based on their historical acquisition prices, but only for the services that can be attributed directly to interconnection at its cost to an efficient network operator.



### **IC decisions made by the regulatory authority**

Between April 1, 2001 and December 31, 2001, 18 procedures related to interconnection issues were initiated (after 19 in the year 2000). In 1999, the number of procedures of this kind totaled 33. Between April and December 2001, a total of 17 procedures were completed in the year 2001 (after 36 procedures in the year 2000). 14 procedures remained open at the end of the reporting period, the majority of which were submitted in the final days and weeks of 2001. For further information on this regulatory issue, please refer to the long version of this decision on the RTR web site (<http://www.rtr.at>; all company and trade secrets have been removed from this version of the document). Another similarly important decision taken by the Telekom-Control Commission in 2001 was its order regarding termination fees for calls to mobile networks.

In contrast to the corresponding decision taken in 2000, this decision was not preceded by heated discussions or comments in the Austrian daily press. Apparently the idea that a factual discussion of this

topic is preferable to emotional (press) statements has prevailed in this context.

### **IC procedure topics, 2001**

- Fixed-link interconnection 2001
- Interconnection / termination in mobile networks (Z 5, 7, 8, 14, 15/01)
- Local loop unbundling (Z 12, 14, 15, 4/01)
- Number portability Z 13/01
- Access to online service in all networks (Z 10/00)

### **Fixed-link interconnection 2001 New traffic-linked fees for fixed-link interconnection (Z 6/01, Z 9/01, Z 10/01, Z 11/01 and Z 12/01)**

The general sections of the Telekom-Control Commission's IC 2000 decisions, which were mainly concluded by official Commission decisions on March 27, 2000 (Z 30/99ff), are valid for an indefinite period; the section dealing with traffic-linked interconnection fees (Appendix 6) remained valid until March 31, 2001.

In this context, a provision was added in Section 11.2. of the general section of these ordinances in which the parties were given until December 31, 2000 to convey to each other any justified change requests with regard to traffic-linked interconnection fees for the period starting April 1, 2001 and to begin negotiations on these fees without delay. In cases where no agreement was reached within six weeks after the receipt of such reasoned change requests, each party was free to appeal to the regulatory authority to decide on a successor regulation for the period from April 1, 2001. In cases where the regula-

tory authority was called upon by March 31, 2001, the parties were to continue using the previous interconnection fees until a legally enforceable decision was made by the regulatory authority; this new regulation would then take retroactive effect from April 1, 2001. In accordance with this regulation, negotiations were conducted between various alternative network operators and Telekom Austria AG on new traffic-linked interconnection fees for the period after April 1, 2001; however, these negotiations did not yield private agreements. By the stated deadline on March 31, 2001, five alternative network operators had appealed to the Telekom-Control Commission for decisions on traffic-linked interconnection fees. In Procedures Z 6/01 (Tele2 Telecommunication Services GmbH), Z 9/01 (tele.ring Telekom Service GmbH), Z 10/01 (Telekabel Wien GmbH), Z 11/01 (UTA Telekom AG) and Z 12/01 (European Telecom International AG), official business administration experts were called in to write business evaluation reports to determine the costs of interconnection services to Telekom Austria AG using a top-down approach.

As was the case in the earlier decisions (Z 30/99ff), the two previously known cost-accounting methods were used to calculate the cost-related interconnection fees for Telekom Austria: The official experts calculated Telekom Austria's costs of interconnection services by means of the top-down approach.

In addition, Telekom Austria's costs were also calculated using the bottom-up model applied in Procedures Z 30/99ff. The bottom-up model was adapted to account for new parameters regarding the average cost of capital and traffic volumes. The mean of the results of the bottom-up model and the top-down approach was taken as the basis for the new traffic-linked interconnection fees (assuming a potential improvement of 5%).

In designing its systematic approach to this order, the Telekom-Control Commission adhered to its goal of creating a clear, flexible and easily understandable definition of interconnection terms. The Commission came to the conclusion that maintaining the "modular system" used in existing interconnection orders would be an appro-

priate means to that end. The corresponding regulations can be found on the RTR web site (<http://www.rtr.at>).

The resulting cost reductions at Telekom Austria (in comparison to those determining the interconnection fees valid until March 31, 2001) affected the new interconnection fees in such a way that local as well as regional termination and origination fees were reduced for peak traffic hours. National and off-peak interconnection fees remained virtually unchanged.

Focus 13 on page 54 gives an overview of the interconnection fees set in this decision. Interconnection traffic types (fixed-link) This overview indicates the average changes in interconnection fees as compared to those applied until March 31, 2001. The traffic-linked interconnection fees shown in the table were applicable as of April 1, 2001.

The Telekom-Control Commission's decision on June 22, 2001 confirmed the fundamental structure of these interconnection fees: Fees are differentiated according to time slots, and a setup charge (as requested by Telekom Austria) was not granted. In addition, these fees

are based on charges for actual connections measured by the second.

In order to account for the circumstances determining interconnection fee amounts, these traffic-linked interconnection fees were set for a limited period ending on June 30, 2002.

The decisions in the above-mentioned procedures regarding Telekom Austria were made in procedures between individual parties. However, as an SMP operator (as defined in §33 TKG) which is obliged not to discriminate under §34 TKG, Telekom Austria is required to adhere to the imposed regulations (especially the fees) in its services to all other operators of public telecommunications networks.

The central issue in the order was its regulation of the fees charged for interconnection. In general, the principle of cost-related pricing (pursuant to § 41 Par. 3 TKG, in conjunction with § 9 Par. 3 of the Interconnection Ordinance) applied in this decision is to be understood as an unequivocal measure to ensure that FL-LRAIC is implemented over time.

After a comprehensive analysis of existing and developing pricing models for the procedures in question, the Telekom-Control Commission came to the conclusion that the best approach to the FL-LRAIC of an efficient operator can be obtained by using two methods (top-down as well as bottom-up). In the opinion of the Telekom-Control Commission, this arithmetic means delivers the most reliable value for interconnection fee amounts in accordance with the principle of cost-related pricing. These mean values were taken as the basis for determining traffic-related interconnection fees for termination as well as local and regional origination.

In its order, the Telekom-Control Commission assumed that the top-down model (assuming a 20% potential improvement) as well as the bottom-up model would return accurate, independent values. A value based on the results of the top-down calculation (without efficiency reductions) was assumed as the fee for national origination as well as national and regional transit.

Toward the end of the reporting period, an additional regulation

regarding the provisions stipulated in the appendix to Z 30/99 was related to the issue of charging for what is referred to as "indirect traffic" ("cascaded accounting"). For this reason, this problem area is discussed in more detail below.

#### **Direct charges for indirect traffic (Appendix 26):**

In Procedure Z 17/01, the Telekom-Control Commission passed a partial interconnection order regarding transit and direct charges for indirect traffic, in response to an application submitted by Telekom Austria AG. The application's opponent was UTA Telekom AG.

The background to this procedure was that in early 2001 Telekom Austria AG announced to its interconnection partners its intention to deviate from the policy of "cascaded charging" practiced in cases of indirect interconnections. The cascaded manner of charging involved Telekom Austria paying the interconnection fees incurred by indirect traffic (for termination and origination over its network) and then charging the fees to the source network (for termination) or the target network (for origination).

Telekom Austria AG's intention was to switch from the cascaded charging arrangement to direct charging between the indirectly interconnected operators. Because this transition met considerable resistance from alternative network operators, RTR attempted to mediate efforts to negotiate a solution that was acceptable to both sides in what was referred to as the "Cascaded Charges Task Force." These negotiations did bring about some compromises in the parties' positions, but a final solution could not be reached.

On October 25, 2001, Telekom Austria AG submitted an application to the Telekom-Control Commission for a partial interconnection order regarding "Transit and Direct Charges for Indirect Traffic." The new regulations were applied for as Appendix 26 to the applicable interconnection order (Z 30/99) or a successor regulation. The official decision issued on December 17, 2001 especially mandated regulations concerning the provision and the costs of the data necessary for direct charging by Telekom Austria AG and its setup of an "overlay network" which enables target networks to implement selective blok-

king mechanisms to protect them from undesired traffic from certain source networks.

In cases where a network operator sends traffic to target networks without having concluded an agreement with the target network, a "self-obligation" was ordered on the part of the interconnection partner to pay the interconnection fees (along with a premium) to the target network on the basis of a contract in favor of third parties as defined under §881 ABGB. The addition of Appendix 26 will serve as a solution for the entire sector to enable the transition to direct charging from January 2002. On December 17, 2001 the Telekom-Control Commission also decided in the same way on Procedure Z 19/01 on Tele2 Telecommunications Services GmbH's application of November 21, 2001, which also requested the addition of Appendix 26 for "Transit and Direct Charges for Indirect Traffic."

**Mobile network interconnection (Z 2/01, Z 3/01, Z 5/01, Z 7/01, Z 8/01, Z 14/01, Z 15/01)**

In the first quarter of 2001, Tele2 Telecommunication Services GmbH (Tele2) appealed to the Telekom-Control Commission for the interconnection of its fixed-link telecommunication network with Mobilkom's mobile network in the form of direct and indirect interconnection (Z 2/01) and with Connect's mobile network by means of Telekom Austria's transit network (Z 3/01). In its decision on April 23, 2001, the Telekom-Control Commission ordered comprehensive conditions in Procedure Z 3/01 for indirect interconnection between Tele2 and Connect; in its session on May 7, 2001, the Commission decided in favor of direct interconnection between the Tele2 and Mobilkom telecommunications networks (Procedure Z 2/01). Because a valid written agreement on indirect interconnection was in force between Tele2 and Mobilkom, Tele2's application for a decision requiring indirect interconnection was rejected because the cumulative prerequisites for the application were not fulfilled. In its decisions,

the Telekom-Control Commission essentially continued its regulatory practice as demonstrated in its decisions in the year 2000: In particular, the interconnection fees to be paid to mobile network operators were confirmed at the time of the decision. Mobilkom and (since January 1, 2001) Connect receive(d) a mobile termination fee in the amount of ATS 1.90 (EUR 0.1380) per minute.

On November 5, 2001, the Telekom-Control Commission made significant decisions regarding interconnection fees from fixed-link networks to mobile networks. In the related Procedures Z 5/01 and Z 7/01, the applicant UTA Telekom AG stood in opposition to Mobilkom Austria AG & Co KG, and in Procedure Z 8/01 MCI WorldCom Telecommunication Services Austria GmbH also submitted an application against Mobilkom. The related Procedures Z 14/01 and Z 15/01 involved UTA and max.mobil. Telekommunikation Service GmbH. The primary aim of the applications for interconnection (under §41 TKG) submitted by fixed-link network operators was a considerable reduction of the interconnection

fees to be paid to Mobilkom and max.mobil. for termination and origination services. On the other side, the mobile network operators were interested in maintaining the interconnection fees to be paid to them at the same levels.

As neither Mobilkom nor max.mobil. enjoyed a position of significant market power as defined under §33 TKG, these companies were not obliged to charge cost-related interconnection fees under §41 Par. 3 TKG in conjunction with §8 of the Interconnection Ordinance (ZVO). In measuring the interconnection fees of non-SMP operators, the Telekom-Control-Kommission uses the principle derived from §1152 ABGB which states that if no agreement exists between parties, a reasonable fee is to be considered agreed upon. In order to calculate a reasonable interconnection fee, the regulatory authority used the following criteria: international practice, national benchmarking, "retail minus" (a method in which non-interconnection related costs are subtracted from the end consumer prices to calculate the interconnection fee) as well as the calculation of interconnection fees in relation to company size and

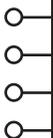
attained market position. In connection with international practice, the Telekom-Control Commission examined the decision made by the British Office of Telecommunications (OfTel) on September 26, 2001 "Review of the charge control on calls to mobiles."

The interconnection fees for Mobilkom (in relation to UTA and MCI) and max.mobil. (in relation to UTA) are valid until the end of 2002. A list of these fees can be found in Focus 14, Interconnection traffic types (mobile networks), including a gradual reduction in the case of Mobilkom.

### **Number portability**

#### **Z 13/01**

In general, no new decisions were made in this field of regulatory activity. During the reporting period, however, an application was submitted for the passing of a successor regulation to the ordinance valid to date. The application was withdrawn by the applicant in early May 2001.



**Local loop unbundling  
New regulation from March 12,  
2001 (Z 12,14,15/00)**

Upon the expiration of the aforementioned unbundling decisions (for voice telephony operators, ISPs and leased-line operators) on September 30, 2000, several alternative network operators applied for a new ordinance. After comprehensive evaluation reports on technical and business aspects of unbundling were written by official and non-official experts, the Telekom-Control Commission passed new unbundling decisions on March 12, 2001 on the basis of the regulation passed by the European Parliament and Commission on unbundled access to the local loop in December 2000 (EC Reg. 2887/2000). The official decisions issued by the Telekom-Control Commission (Z 12/00, Z 14/00 and Z 15/00) are based on the previous orders and contain numerous additions and amendments. The official decisions will remain valid indefinitely, but the fees only remain valid until September 30, 2002.

The new decisions have created a uniform regime for all users (voice telephony and leased-line opera-

tors as well as ISPs as "unbundling partners") to access the local loop in Telekom Austria's public telecommunications network.

The monthly fee for access to an entire local loop ("full unbundling") was reduced to EUR 11.60 (ATS 160.00) [or from January 1, 2001: EUR 10.90 (ATS 150.00)], based on its costs and independent of the bandwidth used or the transmission systems deployed. At the same time, the possibility of accessing parts of the local loop ("partial unbundling") at relevant switching points (cable distributing sleeves, cable branch boxes, building distributor cabinets) was provided for at correspondingly reduced fees for the first time (even throughout Europe); because it is already covered by the subscriber's hookup charge, a monthly fee of EUR 0 was set for access to building cables.

Due to a lack of available collocation space, Telekom Austria's unbundling partners were allowed the option of connecting shared local loops to their networks using the collocation infrastructure of another unbundling partner located at the same main distribution frame. A surface area limit was also introduced for collocation areas; in addi-

tion, it was decided that collocation areas that later become available at a main distribution frame are to be allocated in the order in which they are originally requested. Because Telekom Austria repeatedly missed deadlines for the provision of collocation space, various penalty regulations were also created.

In addition, in cases where unbundling partners had no possibility of connecting to the relevant switching points or main distribution frames, various procedures were introduced to deal with scarce resources, such as the freeing up of unused connection capacities and – as a final consequence – the obligation of Telekom Austria to expand the main distribution frame.

**Telekom Austria AG's standard  
unbundling offer  
(Z 4/01)**

Since January 2, 2001, SMP operators have been required to present a standard unbundling package offer under EC Reg. 2887/2000. Several essential components of Telekom Austria's standard unbundling offer, however, did not meet the requirements laid down in

the EC regulation or the applicable unbundling decisions (Z 12, 14, 15/00).

Therefore, in the process of reviewing Telekom Austria's standard unbundling offer, the Telekom-Control Commission requested that the company adapt this offer to the provisions of EG Reg. 2887/2000 in multiple respects starting on February 14, 2001, especially with regard to including shared use regulations in the standard offer. Because Telekom Austria failed to respond to this request, the company was ordered in the official decision of June 18, 2001 to fulfill the Telekom-Control Commission's request before the stated deadline. On July 10, 2001, before the deadline had passed, Telekom Austria presented Appendix 12, which contained regulations regarding shared use. RTR was then instructed by the Telekom-Control Commission to review the content of Appendix 12. In its letter of September 13, 2001 RTR informed Telekom Austria on behalf of the Telekom-Control Commission that the fees listed in Appendix 12 did not conform to the principle of cost-related pricing and thus required a corresponding adaptation, and that excluding

voice telephony services in the frequency band above 100 kHz was not acceptable, thus Telekom Austria was requested to make clarifications and changes to the version of Appendix 12 presented to the Telekom-Control Commission.

Because the revised versions of Appendix 12 submitted by Telekom Austria only fulfilled some of the Commission's requests, and especially as Telekom Austria insisted on restrictive provisions regarding the provision of voice telephony services in the frequency band above 100 kHz, the Telekom-Control Commission announced and issued an official decision instructing Telekom Austria to amend Appendix 12 of its standard unbundling offer in the following three respects by December 28, 01: 1) Removal of restrictive provisions on the services which can be provided in the frequency band above 100 kHz, 2) Inclusion of an obligation to inform the unbundling partner immediately after local loops are cancelled by end consumers, and 3) Adaptation of a change provision in Telekom Austria's offer to allow changes on the basis of procedures other than official Telekom-Control Commission decisions.

### **Access to online services in all networks (Z 10/00)**

In procedure Z 10/00 (which was already started in 2000 but parts of which could not be completed until 2001), the Telekom-Control Commission had decided to issue an interconnection order in response to an application submitted by an alternative network operator (MCI Worldcom) with regard to mutual access to toll-free online services in the form of a partial official decision. The Telekom-Control Commission's decision pursued three main goals:

1.) To establish regulations not only for cases in which the customers of alternative network operators dial into online services in the Telekom Austria network but also in cases where Telekom Austria customer dial into online services in alternative networks

2.) To create general conditions for interconnection using the assigned access number range (0)80400, with due preservation of network integrity

3.) To increase the ISPs' flexibility by enabling them to offer flat rates, including connection fees.

This decision encountered considerable criticism from Telekom Austria, which justified its arguments by claiming that network integrity would be sacrificed. After its initial refusal, Telekom Austria began to set up online service numbers in its switching stations for Internet service providers in alternative networks in the (0)80400 number range in early 2001.

In parallel, the parties to the procedure began negotiations on the technical implementation of the partial interconnection order. These negotiations eventually led to a contractual agreement between the alternative network operator and Telekom Austria to replace the previously issued partial interconnection order. The agreement provided for the transfer of online traffic exclusively at lower levels in the network hierarchy, which is why the procedure regarding the still-outstanding regulation of overflow traffic at transit-exchange level applied for by the alternative network operator was discontinued in May 2001.

In this procedure, the Telekom-Control Commission ruled that Telekom Austria and MCI Worldcom were to enable mutual access to

toll-free online services using toll-free numbers in the (0)80400xx range within two weeks of the decision. When subscribers call an online service number in the (0)80400xx range, the network operator does not charge them a fee for the connection. The charges for overall access and the Internet service are collected by the Internet service provider from the end consumer on the basis of a separate agreement between the consumer and the ISP. The fee agreement between the network operator connected to the ISP and the ISP itself is not officially regulated, it is governed by individual contracts under private law.

In order to avoid overloading the voice telephone network with the longer connection times involved in online services, the order calls for online traffic to be handled primarily through interconnection points at lower levels in the network hierarchy. The order also called for Telekom Austria to provide the alternative network operators with a list with a maximum of 23 interconnection points for the transfer of online traffic at lower levels in the network hierarchy, making access to online services in the (0)80400xx number range possible from all

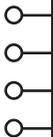
local networks in Austria. With the exception of Vienna, a clearly defined interconnection point is to be offered for the transfer of online traffic in every local network in Austria. The conditions applying to alternative network operators are analogous to those used for ISPs.

The interconnection fees are to be charged among the network operators in the same way as in voice

telephony carrier network traffic. This means that a network operator that transfers network traffic from a subscriber in its network to an ISP connected to a different network receives a fee of ATS 0.14/min. (EUR 0.0102/min) during peak times and ATS 0.07/min. (EUR 0.0051) during off-peak times for transfers at lower levels in the network hierarchy and a fee of ATS 0.21/min. (EUR 0.0153) during

peak times and ATS 0.10/min. (EUR 0.0073) during off-peak times for transfers at the level of the transit exchanges.

If online traffic is transferred to an ISP connected to another operator's network using a transit network, the transit network operator receives a fee of ATS 0.04/min. (EUR 0.0029) during peak times or ATS 0.02/min. (EUR 0.0015) during off-peak times.



The Telekom-Control Commission's decision pursues two main goals: On the one hand, it creates clear general conditions for managing online service interconnection using the defined (0)80400xx number range, an area which has been characterized by a lack of clarity but has been growing constantly due to the Internet boom; on the other hand, the decision pays due atten-

tion to preserving network integrity. On the other hand, ISPs are allowed more leeway, with the possibility of billing their customers directly for the overall service; ISPs can now offer a variety of attractive services, even flat rates, without having the customer receive an additional bill for online connection services from his/her network operator.

Toward the end of the reporting period, the following fixed-link traffic types and fees were to be offered to interconnection partners by Telekom Austria in interconnection negotiations:

FOKUS 13: INTERCONNECTION TRAFFIC TYPES (FIXED-LINK)						
		Fees as of 03/31/2001 (in euro cents)		Telekom-Control Commission decision of June 22, 2001 (Z 6/01ff.)		Percentage change (Peak)
		Peak (weekdays 8am-6pm)  (in euro cents)	Off-peak (weekdays 6pm-8am, Sat, Sun, and holidays) (in euro cents)	Peak (weekdays 8am-6pm)  (in euro cents)	Off-peak (weekdays 6pm-8am, Sat, Sun, and holidays) (in euro cents)	
Termination	local	1,02	0,51	0,91	0,51	-11 %
	regional	1,53	0,73	1,39	0,73	-9 %
	national	2,25	0,87	2,25	0,87	0 %
Transit	regional	0,29	0,15	0,29	0,15	0 %
	national	0,51	0,29	0,62	0,32	22 %
Origination	local	1,02	0,51	0,91	0,51	-11 %
	regional	1,53	0,73	1,39	0,73	-9 %
	national	2,91	1,09	2,90	1,10	0 %

As in 1999, the decisions mentioned above from the business year 2000 regarding interconnection created the regulatory basis for allowing new network operators to continue their activities on the Austrian telecommunications markets and to compete with Telekom Austria. This competitive situation led to an additional reduction of rates for calls in the Austrian fixed-link network.

In addition to ordering interconnection fees in fixed-link communications (see above), the Telekom-Control Commission also issued regulatory decisions for interconnection services in mobile networks in the business year 2001, in particular Z 24/99 and the ensuing procedures. Toward the end of the reporting period (starting January 1, 2002), the Telekom-Control Com-

mission's decisions called for the following interconnection fees to be offered by the mobile network operators Mobilkom and max.mobil. for call termination in mobile networks after a gradual reduction (agreed upon in the interconnection negotiations):

FOKUS 14: INTERCONNECTION TRAFFIC TYPES (MOBILE NETWORKS)						
Mobilkom	Jan. 1, 2001 – July 31, 01		Aug. 1, 2001 – March 31, 02		April 1, 2002 – Dec. 31, 02	
Termination	EUR/100	13,81	EUR/100	12,40	EUR/100	11,25
	ATS	1,90	ATS	1,71	ATS	1,55
Origination	EUR/100	13,15	EUR/100	11,90	EUR/100	10,75
	ATS	1,81	ATS	1,64	ATS	1,48
<b>max.mobil</b>	<b>01.07.2001 - 31.12.2002</b>					
Termination	EUR/100	13,80				
	ATS	1,90				
Origination	EUR/100	13,20				
	ATS	1,81				

At the end of the reporting period, the mobile network operators Connect and tele.ring were required to offer the following fees for call termination in mobile networks in the interconnection negotiations: Connect: EUR 0.1381 (ATS 1.90); tele.ring: EUR 0.1962 (ATS 2.70). In 2001, the marked reduction of interconnection fees for termination services in mobile networks also led to a decrease in charges for calls to mobile networks. In light of the growing number of subscribers in the mobile networks, this development can be regarded as another significant step toward the objectives named in the Austrian Telecommunications Act (§ 1 TKG).

### **3.2.2.5. Regulation of competition**

The development of competition in Austria, for which the regulatory basis was created by the decisions mentioned earlier, is intended to offer all competitors – especially those who are new to the market – equal opportunities and thus protection from the abuse of market power; this means that the regulation of competition is becoming a necessity in Austria. In this context, the concept of an SMP operator is

also used in assessing market participants. Fixed-link network operators with significant market power are especially affected by a number of regulations, in particular the obligation to apply cost-related pricing to end-consumer rates. This is intended to protect the end consumer from the abuse of monopoly power by SMP operators on the one hand and to protect competitors from practices which frustrate free competition on the other. It is especially intended to prevent predatory pricing (price dumping). In addition, SMP operators are required to have their general terms of service approved by the Telekom-Control Commission; they are also required to adhere to a regulation prohibiting cross-subsidies and to meet special obligations in cost accounting.

#### **General terms of service and fees**

SMP operators of fixed-link voice telephone service networks as well as SMP operators of leased-line services are required to have their general terms of service and their fees approved by the Telekom-Control Commission in accordance with §18 in conjunction with §111

TKG, while SMP operators of mobile voice communications networks need only have their general terms of service approved by the Commission.

Non-SMP operators only have to report their general terms of service and fees to the regulatory authority. Therefore, these operators do not have to wait for approval; they can initiate their services immediately after reporting their terms and fees. However, the Telekom-Control Commission reserves the right to raise an objection to these terms of service within a period of eight weeks in cases where they contravene the Austrian Telecommunications Act, the ordinances passed on the basis of the Telecommunications Act or the relevant regulations passed by the European Communities. This right applies to the terms of service in voice telecommunications services using fixed-link or mobile networks, but not to the terms of service of leased-line service providers.

## Anti-discrimination regulations

The monitoring of adherence to the provision prohibiting discrimination is also part of the regulation of competition. SMP operators (as specified in the relevant EU Directives) are required to operate in a non-discriminating manner, i.e., they are to treat all market participants equally. This obligation also applies to services which they render for themselves or for their affiliates. If

### FOKUS 15: GENERAL TERMS OF SERVICE AND FEES: APPROVAL REQUIREMENTS

Between April 1 and December 31, 2001, the Telekom-Control Commission completed six approval procedures.

#### **Rate approval applications by Telekom Austria AG (G 07/01, G 12/01, G 15/01, G 19/01 and G 20/01)**

In Procedures G 07/01, G 12/01, G 15/01, G 19/01 and G 20/01, the Telekom-Control Commission approved Telekom Austria's application for the approval of additional rate options with second-based charging. In Decision G 07/01, for example, the "TikTak 4" rate package was approved; it is now offered by Telekom Austria AG under the name "TikTak Privat." In Decision G 19/01, the Commission approved Telekom Austria's first flat-rate package, with which it is possible to make calls without additional connection charges during certain times.

#### **Telekom Austria AG application for approval of general terms of service, and fees for national leased lines (G 10/01)**

With Decision G 10/01 of June 1, 2001) the Telekom-Control Commission approved Telekom Austria's general terms of service as well as its fees for national leased lines. Telekom Austria AG did not submit its international leased-line rates for approval.

### FOKUS 16: GENERAL TERMS OF SERVICE AND FEES: REPORTING REQUIREMENTS

A total of 11 procedures were initiated by the regulatory authority with regard to terms of service for voice telecommunications, 8 of which were completed in the year 2001. No formal objection was raised in any of the procedures. In practice, the regulatory authority first informs providers as to any doubts or questionable points in their terms of service and gives them the opportunity to introduce the necessary changes after receiving the regulatory authority's decision.

Generally, the network operators eliminate these doubts and questionable items by changing their terms of service before a formal legal objection is raised by the regulatory authority.

an SMP operator makes a service available internally at a certain internal transfer price (which should be cost-related), then the operator will be required to offer the service to all competitors on the same terms. In order to enforce these obligations, SMP operators are

required to submit regular reports to the regulatory authority, as well as allowing the authority to review their accounts. The most important instrument of regulation the regulatory authority possesses in pursuing this objective is § 34 TKG, a provision which grants the regulatory authority special supervisory powers regarding the abuse of power.

Under §34 TKG, services offered by an SMP operator on the market or provided for its own services or those of affiliated companies have to be offered to competitors without discrimination (i.e., on the same terms). In cases where an SMP operator violates this principle and thus abuses its market power, the regulatory authority can impose or prohibit actions on the part of the operator and declare contracts partially or entirely null and void.

#### FOKUS 17: NON-DISCRIMINATION, NETWORK ACCESS, ABUSE OF SIGNIFICANT MARKET POWER

In the year 2000, responsibility for procedures in the field of competition regulation was shifted by an amendment to the relevant law. Since the KommAustria Act (KOG) took effect on April 1, 2001, responsibility for procedures under §34 TKG has been in the hands of the Telekom-Control Commission. In the reporting period, seven procedures were carried out in this field by the Telekom-Control Commission.

The subject of several procedures was the treatment of customers whose carrier network operators had filed for bankruptcy. First of all, it was necessary to ensure that the customers' telephone connections were maintained; second, it was necessary to ensure continued transparency for the customers with regard to their choice of operators. An additional case handled in the field of carrier network operation was resolved by means of an arbitration procedure in accordance with §66 TKG. In this case, RTR was able to propose a clear decision for handling the ordering procedure in carrier preselection which enjoyed widespread acceptance in the sector. Several procedures were related to the regulation prohibiting cross-subsidies. Other procedures dealt with the disconnection of alternative network operators from Telekom Austria AG's network due to the suspected abuse of significant market power, failure to set up a rate option for established carrier preselection and failure to grant access to the unbundled local loop.

### **3.2.2.6. Sharing of infrastructure (§44 TKG)**

Reviews of infrastructure sharing are based on regulations regarding structural separation and separate accounting as provided for in the Telecommunications Act (§43 Par. 1 TKG in conjunction with the provisions on sharing infrastructure in § 44 TKG).

The basic prerequisite for subjecting a company to the regulation prohibiting cross-subsidization is that the company enjoys a special/exclusive right or a position of significant market power. The provisions in the Telecommunications Act (TKG) are based on two basic situations:

- The company which has special/exclusive rights or a position of significant market power provides telecommunications services itself (§43 TKG)
- The company with special/exclusive rights or a position of significant market power allows another company to share parts of its telecommunications infrastructure (§44 TKG)

In concrete terms, one or more telecommunications companies are

allowed to use certain parts of the infrastructure for a fee. §44 TKG prohibits these companies from cross-subsidizing companies which provide licensed telecommunications services by allowing them to share telecommunications infrastructure. This regulation applies to all companies that enjoy a "protected territory" or a coverage/supply monopoly. As a rule, these include provincial power suppliers, city utilities, the Austrian Federal Railway and similar companies. These companies operate in a field which has been protected up to now and generally have well-developed (telecommunications) infrastructure at their disposal. Shared infrastructure usually refers to transmission lines. However, it may also be the case that maintenance staff or space for communications equipment would be classified as shared infrastructure.

Reporting and inspection obligations, however, are based on the sharing of telecommunications infrastructure (especially line equipment, transmission and switching equipment). In the course of such a review, all services provided by both sides under the infrastructure sharing agreement – credit, sharing

of staff, vehicles, etc. – are to be examined (overall check of the agreement for customary market practice). The company with special/exclusive rights or a position of significant market power is to report infrastructure sharing before the infrastructure is used to provide a telecommunications service which is subject to licensing requirements. Once this report has been filed, the infrastructure can be used to provide the service.

The report is generally submitted using a data form (provided by RTR) in which the company is to give all information necessary for the decision. The most important point in this context is the fee charged for infrastructure sharing. However, geographical data such as the beginning and end of lines also plays an important role. The regulatory authority can raise an objection to infrastructure sharing due to cross-subsidies within 8 weeks of the start of infrastructure sharing.

In practice, there are considerable differences in the scope of infrastructure sharing, which can range from sharing individual line sections of just a few kilometers to entire networks comprising several hund-

red kilometers of fiber optic cable. The range of shared infrastructure ranges from fiber optic cables alone to the sharing of staff, spaces, maintenance equipment and vehicle fleets.

### 3.2.2.7. Number administration

In accordance with § 57 TKG, RTR is responsible for the efficient administration of Austrian number ranges on the basis of the Numbering Ordinance (BGBl II No. 416/1997 in its current version, or NVO) handed down by the Federal Ministry of Transport, Innovation and Technology, formerly the Federal Ministry of Science and Transport.

According to these regulations, numbers are to be allocated in an objective, non-discriminatory and justifiable manner, with special attention to equal opportunities among operators.

The Numbering Ordinance (NVO), which went into effect on January 1,

1998, defined a new numbering plan for Austria. The new plan was specifically designed to bring about a clear separation of the ranges reserved for geographical numbers from the ranges reserved for non-geographical numbers (public-interest numbers, mobile networks, personal services, toll-free services, services with regulated maximum fees and value-added services which are not subject to price regulations). The conversion has already been carried out for all non-geographical numbers except for a few ranges (such as (0)711..., 17..., (0)71891..., 194..., 120, 123, etc.). However, geographical number conversion in accordance with the Numbering Ordinance has not yet begun. Thus the current local network dialing codes will remain in

use until further notice. In administrative practice, this means that RTR will still have to assign geographical numbers using the "old" local network numbering scheme. In contrast, however, service numbers have been allocated according to the currently applicable numbering plan since January 1, 1998.

Focus 19: "Number ranges according to the NVO and current use for geographical numbers" shows the overlaps between the ranges currently still in use for geographical numbers and the ranges specified for various services in the Numbering Ordinance.

Due attention was paid to the requirements of objectivity, transparency and non-discrimination in number

#### FOKUS 18: SHARING OF INFRASTRUCTURE (CROSS-SUBSIDIZATION)

During the reporting period, only one procedure was carried out to investigate possible cross-subsidies in the sharing of telecommunications infrastructure. No cross-subsidies were identified in the procedure.

As many companies had already agreed on infrastructure sharing with telecom operators at the beginning of telecoms liberalization, the continued decrease in these reports (cf. 2000, in which five cross-subsidization procedures were carried out) is not surprising.

allocation, in addition to adherence to the appropriate assignment rules, by publishing information on the RTR web site (<http://www.rtr.at/web.nsf/english/Telekommunikation~Nummerierung>). For each number range, detailed information sheets and application forms are available on the web site. The allocation procedure for each number range and the terms of use are described in detail on the information sheets.

Number allocation in the toll-free number range already began in December 2000 with the allocation of the (0)80400xx number range to ISPs for dialup Internet access (online service numbers). However, these numbers could not be used until Telekom-Control Commission Procedure Z 10/00 was concluded in early 2001. The (0)80400 number range allows Internet service providers a maximum of flexibility in pricing their services, as all of the costs of Internet access (including the costs of access via the voice telephone network) can be charged directly to the customer by the Internet service provider.

**FOKUS 19: NUMBER RANGES UNDER THE NUMBERING ORDINANCE AND THEIR CURRENT USE FOR GEOGRAPHICAL NUMBERS**

Number range	Use according to Numbering Plan	Individual number sections in range also used by geographical numbers
1	Public-interest numbers	No
(0)2 (0)3 (0)4	Geographical numbers	–
(0)5	Private networks	Yes
(0)65-(0)69	Mobile networks	Yes
(0)71-(0)74	Personal services	Yes
(0)800-(0)804	Toll-free services	No
(0)810-(0)830	Services with regulated maximum prices	No
(0)90-(0)93	Value-added services without price regulations	No

The allocation of numbers has also begun in the number range for recorded information services (15...); the plan takes existing local networks as well as the division into 23 geographical regions into consideration.

Especially in regard to the migration of online service numbers not conforming with the NVO in the (0)79181 range and after intensive discussions in the AK-TK work group, the regulatory authority proposed the (0)81400 range for source-network priced online access. In this context, source-network priced means that each subscriber network sets the rates for its final customers. In order for allocation to be started effectively, a supplement to the Fee Ordinance (EVO) by the Highest Telecommunications Authority in Austria for the maximum rate limits to be applied in the (0)81400 range; this supplement had not been added by the end of the reporting period.

The topic of "network-internal" numbers was handled by carrying out a public consultation and other measures. Network-internal numbers are those which are only accessible to subscribers in their

own networks. At present, such numbers are not covered by the Numbering Ordinance. The comments received in our public consultation were highly varied; further procedures, especially with regard to the situation in mobile networks, will be decided on in 2002.

The dramatic increase in text message services (SMS) required a fast response in order to meet these new demands. In particular, the provisions of the Fee Ordinance with regard to the transparency of rates needed to be assessed against the technical background of SMS services. After intensive preliminary discussions, a public consultation was also prepared for the planned SMS-specific regulations toward the end of the reporting period.

Another topic which saw increasing attention in 2001 was that of ENUM, which above all presents a means of connecting the conventional telecom world with the Internet. A great deal of information on this topic – including a summary of our public consultation – can be found on the RTR web site. The establishment of an ENUM forum for Austria is planned for early 2002 in order to

give all interested parties the opportunity to discuss the required general conditions from their own standpoints.

In the field of infrastructure for numbering administration at RTR, a database solution was put into operation for evaluating number use reports in the geographical number range during the reporting period (the use of service numbers had already been entered previously). Data is queried from network operators on a semi-annual basis. On the basis of this data, the regulatory authority can now perform ongoing objective evaluations of the numbers in use and those available in individual local networks. The migration of number allocation to an Oracle database and the simultaneous launch of a new front end (Lotus Notes and Access) were very close to completion at the end of 2001. The possibility of applying for numbers via the RTR web site is planned for a later release in 2003. The decisions made by Telekom-Control GmbH concerning number allocation in the (short) business year 01 can be found in Focus 20.

#### FOKUS 20: NUMBER ALLOCATION: RTR DECISIONS

During the reporting period, over 500 number allocation decisions were handed down, with approximately 2% rejections. The average duration of the allocation process was reduced significantly, from 10 days in 2000 to 6 days in 2001. 50% of all decisions were issued within 4 days, and 90% were completed within 8 days. In 2000, the first duration (for 50%) was 5 days.

#### 3.2.2.8. Universal services

Universal service is a special problem area in regulation. Under European legislation, universal service is characterized by a defined catalog of services which are to be made accessible to all consumers in a country's territory at a reasonable price and in conformity with certain quality standards, regardless of their place of residence or business. At present, universal service is to be rendered by the former monopoly. The regulatory authorities are required to ensure the provision of universal service but also to compensate the operator in question for any additional financial burdens in exchange for rendering this service.

In terms of content, the following focuses were established for regulatory activity during the reporting period:

The work carried out in recent years on subscriber directories and information services, which are regarded as essential elements of universal service, was continued during the reporting period. In this context, the focus was on setting up and designing a uniform, multi-operator subscriber directory for the year 2002/2003 as well as establishing a directory assistance service covering all networks. Telekom Austria's introduction of a paid directory assistance service in September 2000 led to an increase in competitors entering the market in 2001.

In summer 2001, Telekom Austria submitted to RTR its quality statistics on the provision of universal services in the year 2000. These statistical reports are part of Telekom Austria's duties in relation to the quality of universal service and are required once annually under §25 UDV. These quality statistics have been published on the RTR web site (<http://www.rtr.at>) in accordance with §25 Par. 2 TKG.

### **3.2.2.9. Arbitration in endconsumer disputes**

In 2001, a total of 1,418 complaints were submitted to the regulatory authority's arbitration center, which marks a disproportionately high increase in comparison to previous years. While only 412 complaints were handled in 1998 and 756 of these procedures were initiated in 1999, the number of arbitration cases had risen to 894 by 2000.

One reason for this continuous increase in complaints submitted to the regulatory authority could be that the arbitration center is becoming increasingly well known, which can be attributed in part to reports in the media. Typically, complaints are lodged regarding the amount of individual telephone bills, which can be attributed to the use of (expensive) value-added services. In the reporting period, a drastic increase in the number of complaints related to data connections to domestic value-added numbers using PC modems was recorded. In the arbitration procedures, it turned out that these connections were generally established by dialer programs.

These programs include a huge number of various software programs which are offered for download from the Internet and which – when executed – establish a new connection to a value-added service number. Because several network operators are generally involved in arbitration cases related to dialer programs, the operators worked with the arbitration center to develop an appropriate cooperation process for these cases.

In summary, it can be said that the trend which has emerged in recent years, moving away from "classic" complaints about telephone bills and toward procedures related to modern communication media such as Internet and SMS services, also continued in the year 2001. More detailed information on the regulatory authority's arbitration activities can be found in the arbitration center's report for the year 2001. In addition to comprehensive statistics, this report also includes frequently asked questions and frequently encountered problems from these procedures. The report is also available to the interested public on the regulatory authority's web site (<http://www.rtr.at>).

### **3.2.2.10. Proceedings before public courts of law**

#### **Proceedings before the Austrian Constitutional Court**

A total of five complaints were filed with the Austrian Constitutional Court against decisions made by the Telekom-Control Commission. These complaints concerned interconnection procedures and procedures identifying SMP operators, among other issues. In this context, the regulatory authority's activities consisted in composing written statements in response to the applications filed for suspensory effect and of composing rebuttal statements.

#### **Proceedings before the Austrian Administrative Court**

A total of 16 complaints were filed with the Austrian Administrative Court against decisions made by the Telekom-Control Commission. These complaints essentially concerned interconnection procedures and procedures identifying SMP operators. In this context, the regulatory authority's activities consisted in composing written statements in response to the applica-

tions filed for suspensory effect and of composing rebuttal statements.

On September 6, 2001, the Administrative Court issued a decision regarding a complaint about a Telekom-Control Commission decision on number portability (Decision Z 26/99). The decision was declared unlawful and overturned by the Administrative Court as a result of procedural violations. However, the content of the regulatory authority's work was largely confirmed in the Court's findings. For example, the approach applied to cost calculations was deemed permissible, and number portability was confirmed to be an interconnection service. The procedure was discontinued because the applicant withdrew the application after the court had issued these findings.

### **3.2.2.11. National work groups and international activities**

#### **National work groups**

In a deregulated voice telecommunications market with many network operators, the coordination of

(especially technical) procedures among the individual networks is indispensable for the many functions that involve multiple operators, such as value-added services or number portability. In this context, the agreement of terms and conditions for interconnection through formal procedures carried out before the Telekom-Control Commission should be regarded as a last resort. After holding preliminary talks on the subject in 1998, RTR (then TKC) therefore established a discussion forum at the beginning of 1999 for network operators as well as their suppliers and subcontractors, called the Technical Coordination Work Group (AK-TK).

In addition to allowing a general exchange of information, the essential goal of the Technical Coordination Work Group is to develop recommendations for technical and administrative processes among the network operators. These recommendations are accepted by unanimous decision only. However, although unanimously accepted recommendations are not legally enforceable, they provide important facts which can be taken into consideration in disputes before the Telekom-

Control Commission, which focuses on negotiating solutions among the network operators and regards the Work Group as an effective means of reaching this goal.

In the plenary meetings of the Technical Coordination Work Group, task groups are formed and assigned to defined areas, results are discussed and draft recommendations are voted on. As a non-voting member of this forum, RTR assumes the role of a "catalyst" in reconciling opposing standpoints among operators.

The Work Group has developed steadily since its establishment and has already produced substantial technical results (e.g., a technical concept for number portability in geographical numbers, consensus on the size of collocation areas, etc.) as well as "atmospheric" results. RTR plans to continue promoting the Technical Coordination Work Group as an essential forum for the Austrian telecommunications market in the future and invites all network operators to participate actively.

The following subgroups were convened in the year 2001 (some in joint meetings of several subgroups):

- Work Group for Technical Coordination in Telecommunications (plenary assembly)
- AK-TK Accounting Scenarios subgroup
- AK-TK Carrier Pre-Selection subgroup
- AK-TK Value-Added Services subgroup
- AK-TK Number Portability subgroup
- AK TK POI Links Planning subgroup
- AK-TK Quality of Service subgroup

The work of the individual subgroups was highly successful in the year 2001.

### **International Activities**

As in previous years, RTR was involved in international work on essential regulation-related topics in 2001. The goal of these activities was the further exchange of experience and participation in international harmonization of regulatory

activities in the field of telecommunications. In this process, it has become clear that the information gathered through these activities has a positive impact on the quality of Telekom-Control's regulatory work.

In order to meet the increasing need for international coordination and harmonization, which was also triggered by the European Commission's Communications Review 1999, RTR actively participated in the harmonization of principles for the uniform interpretation of provisions at the European level in the year 2001. The objective was to use international comparisons in an effort to identify best practices in regulatory activities and to define them in the form of implementation principles in the IRG (Independent Regulators Group). Several examples of important initiatives and results from the year 2001 are listed below:

- Chair of the "Significant Market Power (SMP)" work group This work group is primarily concerned with issues arising from the implementation of the Communications Review 1999 with regard to defining markets and identifying significant market power.

The following concrete results were attained by this work group during the reporting period:

- Principles of implementation for the identification of SMP operators RTR's work was especially prominent in defining relevant markets, developing indicators for the identification of effective competition and in creating of a list of markets relevant to regulatory activity.
- Draft Principles of Implementation on candidate market
- Draft Principles of Implementation on market definition
- Draft Principles of Implementation on effective competition
- Draft Guidelines on market analysis and the calculation of SMP
- Working paper on definition of markets in the new regulatory framework for IRG

In addition, RTR cooperated in a number of other initiatives related to the IRG:

- Participation in the development of principles of implementation (PIB) for unbundling in the "IRG Unbundling" work group
- Participation in the development of principles of implementation for the calculation of interconnection

costs (FL-LRAIC) in the "Cost Allocation" work group

- RTR contributed a great deal of input to the IRG's implementation of the European Regulators Group for Electronic Communications mentioned in the Communications Review 1999, with a view to finding an efficient and effective structure for this group
- Independent Regulators Group with the Significant Market Power, Unbundling, Cost Allocation, Confidentiality, Mobile Access, Market Analysis and Contact Network work groups
- Compilation of international comparisons with regard to various regulatory topics in cooperation with other European regulators.

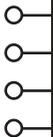
In addition to these concrete duties, RTR also promoted international exchanges of experience with other authorities by participating in the following work groups and organizations:

- ONP Committee and Licensing Committee of the European Commission
- European Commission High-Level Regulators Meeting (NARA)
- In connection with the Communications Review 1999, RTR sustained its role as advisor to the Federal Ministry of Transport, Innovation and Technology for negotiations in the European Commission work groups with regard to new directives.
- ETSI: Observation/participation in

the areas TM6 (especially with regard to xDSL services), Project Tiphon (regarding Voice over IP) and the Speech Transmission Quality group (STQ, regarding quality of service)

- ECTRA (ECC): Participation in the PT Numbering, TRIS () and APRII () work groups
- International expert bodies in the OECD and ITU
- Workshops with international experts
- Workshops with EU candidate countries (e.g., Slovenia)

In the reporting period, RTR employees took part in a total of 60 international events.



### **3.3. Supervisory authority for electronic signatures**

On January 1, 2000, the Electronic Signatures Act (BGBl I 1999/190) went into effect, assigning to the Telekom-Control Commission the responsibilities of the supervisory authority for electronic signatures in addition to its existing responsibilities as a regulatory authority for telecommunications. Similar to the provisions of the Austrian Telecommunications Act, the Signatures Act also named RTR as agent to the supervisory authority. RTR's main duty in this context is to maintain secure electronic directories of the certification service providers. RTR's duties under the Signatures Act are carried out separately and independently with regard to the company's organization and finances (especially cost accounting).

In the year 2001, nine procedures were carried out in accordance with the Signatures Act by the Telekom-Control Commission. Eight procedures were concluded in 2001, and

one was still pending at the end of the reporting period. Most procedures concerned reports of new certification services and changes in existing services; two procedures involved applications for accreditation under §17 SigG.

Fortunately, the year 2001 saw a marked improvement in the security standards of the certification services offered in Austria. In this context, it is worth noting the a-sign Strong Plus and trust|mark|token certification services launched in May and October 2001 and in which smart cards are used. However, there are also two services in which qualified certificates are issued and in which evaluated and certified smart cards are used:

On December 15, 2001, the certification service provider A-Trust Gesellschaft für Sicherheitssysteme im elektronischen Datenverkehr GmbH launched its trust|sign certification service, and on December 17, 2001, Datakom Austria GmbH was the first Austrian certification service provider to be accredited with its a-sign Premium certification service (qualified certificates for secure electronic signatures).

In January 2001, the Institute for Applied Information Processing and Communications (IAIK) at the Technical University in Graz reported the provision of certification services. IAIK only issues a small number of certificates and does not offer this service commercially; however, it does not offer the service for testing purposes only, thus it is subject to the Signatures Act. After several correction instructions and a rejection of the reported service in March 2001, IAIK submitted an error-free report in June 2001, which was then acknowledged by the Telekom-Control Commission.

In early May 2001, Datakom Austria GmbH supplemented its existing certification services with the a-sign Strong and a-sign Strong Plus services. In these services, the issuing of a certificate is preceded by an identity check on the basis of an official photo identification. In a-sign Strong, private keys are generally encrypted on the customer's hard drive; a-sign Strong Plus customers are issued smart cards.

Likewise in May 2001, the Telekom-Control Commission dealt with the question of whether its responsibilities also apply to server certificates.

This was confirmed, and the certification service provider Arge Daten (Österreichische Gesellschaft für Datenschutz) then reported its A-CERT/GLOBALTRUST certification service.

At the beginning of June 2001, the certification service provider A-Trust (A-Trust Gesellschaft für Sicherheitssysteme im elektronischen Datenverkehr GmbH) launched services and began offering its "trust|mark|vsc" certification service. This certification service offers simple certificates, and no official photo identification check is performed – only the e-mail address check and a returned telephone call – before certificates are issued. In October 2001, A-Trust added the trust|mark|token certification service to its service range. In this service, the customer's official photo identification is checked at a registration office. The customer's private key is stored on a smart card. Finally, in December 15, 2001, A-Trust was the first Austrian provider to begin issuing qualified certificates: With its trust|sign certification service, A-Trust claims to meet all the requirements of providers of qualified certificates set forth in the Signatures Act and the Signatures

Ordinance. In this service, the customer's official photo identification is also checked. The customer's private key is stored on a smart card, which is evaluated and certified by a confirmation center. The supervisory authority's review procedure in response to A-Trust's report of the trust|sign service launch had not been completed at the end of 2001; however, the supervisory authority did carry out an initial review before the service was launched and found no occasion for supervisory measures.

In order to fulfill its legal obligation of maintaining secure electronic directories of certification service providers, Telekom-Control GmbH (now the Telecommunications Division of RTR-GmbH) put its public key infrastructure out to tender throughout Europe once the required financing was ensured by an amendment to the Signatures Act in December 2000 (BGBl I 2000/137). Because neither of the offers submitted in response to this invitation to tender met the requirements described in the tender documentation, negotiations were conducted with five candidates. In April 2001, RTR awarded the contract to IBM Austria.

### **Accreditation of providers of secure electronic signatures**

The accreditation of Datakom Austria GmbH on December 17, 2001 was the first time an application for accreditation was approved by the Telekom-Control Commission. In the procedure, RTR was instructed by the Telekom-Control Commission to perform a detailed review of the requirements for accreditation, and the Commission assigned the A-SIT confirmation center to write a technical evaluation report on the security of the technical components used by Datakom Austria GmbH.

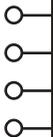
A significant fundamental decision in the accreditation procedure was related to the treatment of requirements set forth in §7 SigV for what are called "Secure Viewers," which ensure that the signed document is displayed in a clear and accurate state before the signature is created. Although the Signatures Ordinance had already been in effect for almost two years at the end of 2001, there was still no product for which the SigV requirements had been evaluated and certified by a confirmation center.

However, Datakom Austria GmbH was able to present a product which was able to fulfill these requirements upon initial inspection. A German confirmation center had been commissioned to perform an evaluation and confirmation of the product, and they had already issued a declaration stating that they had obtained the product and could see nothing to contradict an affirmative evaluation at the time. The Telekom-Control Commission therefore decided to accredit Datakom Austria on the condition

that a certification from the confirmation center be submitted within twelve months of the service's launch. This fundamental decision can also be applied to other viewers and other certification service providers who wish to provide secure electronic signature services. Applicable law dictates that a viewer which has been certified by a confirmation center has to be used in order to create secure electronic signatures. However, the viewer can be launched on the market and used for secure electronic signatu-

res up to twelve months before certification is issued if it is available in a deliverable state, an evaluation and certification have been commissioned and a declaration from the confirmation center or evaluator can be presented.

The supervisory authority also reviewed another application for accreditation, but the procedure ended with the withdrawal of the application in December 2001.



## 4. The company

### 4.1. Structure of RTR and the authorities

The main challenge facing RTR's management (founded on April 1, 2001) was to create an organization based on the proven structures of Telekom-Control GmbH and then to make it a living organization in which both the Broadcasting and Telecommunications Divisions could attain the objective of developing a convergence regulator for Austria in the form of "organizational convergence."

As flat a hierarchical structure as possible was chosen for RTR (or rather retained from Telekom-Control GmbH) in order to meet the high content-related demands of interdisciplinary regulatory work in daily operations (Focus 21: RTR organizational chart). In addition to the departments of Finance, Human Resources and IT, which are responsible for providing infrastructure, RTR has five expert groups in the Engineering, Law, Broadcasting Frequency Management, Business Administration and

Economics departments. The Info Management staff department set up in early 2000 was also retained and now carries out its duties for both divisions. The objective of this department is to bundle the tasks of public relations and internal information management with the tasks of accountability management and the company's web presence.

In everyday practice, these should be no strict assignment of individual employees to certain fields within RTR. Inefficient and thus expensive structures along the lines of a "Cost accounting expert group for broadcasting" and "Cost accounting expert group for telecommunications" were intentionally omitted from RTR's structure. Rather, it should be possible to assign employees to tasks flexibly and for broadcasting as well as telecommunications regulatory duties. We have only deviated from this basic principle in those areas in which heavy specialization stands in the way of this more universal deployment of staff. Specifically, an department for broadcasting frequency management was set up

after a short observation period to deal exclusively with the tasks of national and international frequency coordination as well as the allocation of broadcasting frequencies and the approval of broadcasting systems. In all other areas, separation in cost accounting was effected by means of precise work classifications in each division, working time and the corresponding cost rates. The work of the service departments is attributed to RTR's specialized divisions by means of a specific overhead cost allocation.

RTR's organizational structure is designed according to the principles of lean management. Two hierarchical levels are embedded in its flat structure. The top level (management) is supplemented by that of the division heads. The division heads lead groups of specialists in the fields listed above and perform the functions of specialized knowledge managers.

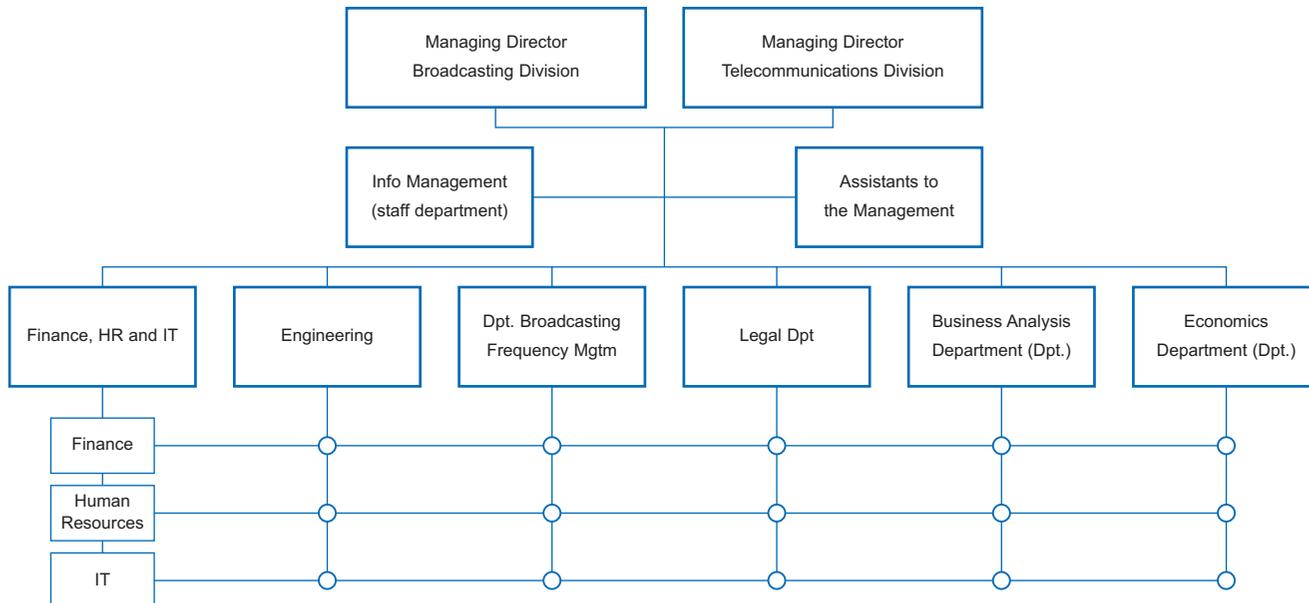
**The Telekom-Control Commission (TKK)**

The Telekom-Control Commission was founded in late November 1997 as a panel authority with the powers of a court; it consists of three members and three substitutes and decides independently, without being bound by instructions. The Telekom-Control Commission is established within

RTR and makes decisions by unanimous vote.

Under §111 TKG – which also gives an exhaustive list of the Commission's duties – RTR's Telecommunications Division serves as the operative arm of the Commission in regulatory procedures and makes its resources available to the Commission. In this capacity, the Telecommunications Division supports the Commission

Fokus 21: RTR organizational chart



in procedural and content-related matters. For certain issues, the Commission will call in (official) experts to prepare evaluation reports as the bases for Commission decisions.

In carrying out its duties, the Telekom-Control Commission enforces the Telecommunications Act (TKG) and the Signatures Act (SigG) as well as all ordinances based on these laws.

In proceedings before the Commission, the chairman of the Telekom-Control Commission hands down assignments to the Telecommunications Division's managing director. The managing director of the Telecommunications Division acts as a spokesperson for the Telekom-Control Commission in public relations when instructed to do so by the chairman of the Commission.

### **The Austrian Communications Authority (KommAustria)**

KommAustria was founded on April 1, 2001, and consists of a director and the required number of additional employees (currently two). Under §3 (3) KOG, KommAustria is

an authority immediately subordinate to the Austrian Federal Chancellor. However, in terms of operations, it is an independent authority supported by RTR in carrying out its tasks. In contrast to the members of the Telekom-Control Commission, the director and employees of KommAustria are full-time civil servants who work in RTR's offices and are generally bound by the instructions of the Federal Chancellor in their decisions. In the reporting period, no instructions were issued to KommAustria or the Broadcasting Division at RTR.

KommAustria is the first instance in official activities. The second instance is found in the Federal Communications Board, a panel authority with the powers of a court which was also set up under the KommAustria Act (KOG). The Federal Communications Board consists of five members (three of which are judges); it makes its decisions independently (without being bound by instructions) and is established within the Federal Chancellery. Furthermore, the Federal Communications Board makes first-instance decisions on disputes related to the ORF Act

(previously handled by the Broadcasting Act Commission). The Federal Communications Board makes decisions with a two-thirds majority with all members present.

Under §13 KOG, it is also possible to abstain from voting in the Federal Communications Board.

KommAustria performs its duties in particular within the framework of the following laws:

- Private Radio Act (PrR-G)
- Private Television Act (PrTV-G)
- Telecommunications Act (TKG)
- KommAustria Act (KOG)
- Access Control Act (ZuKG).

#### **4.2. Telekom-Control Commission (TKK) members**

Under § 112 Par. 1 TKG, the three members of the Telekom-Control Commission are appointed by the Austrian federal government for a term of five years. The head of the Austrian Supreme Court (OGH) has the right to nominate three candidates to be chosen by the federal government for the post of Chairman, who has the powers equal to a judge. The other two members of the Commission, who contribute economic, legal and technical expertise, are also appointed by the federal government for a term of five years after being nominated by the Federal Minister of Transport, Innovation and Technology. The Federal Minister of Transport, Innovation and Technology also designates substitutes for all members of the Telekom-Control Commission; each substitute is assigned to a specific member of the Commission in accordance with his/her speciality. In the short business year 2001, the Telekom-Control Commission consisted of the following members:

- Dr. Eckhard Hermann (Chairman)  
Dr. Wolfgang Schramm (Substitute)
- Dr. Oskar Grünwald  
Dkfm. Alfred Reiter (Substitute)
- Univ.Prof. DI Dr. Gottfried Magerl  
DI Peter Knezu (Substitute)

A total of 21 sessions were held in the reporting period, approximately the same as in the previous year. Compared to the year 2000, approximately the same number of hours were served in these sessions by the Commission's members, who are employed part-time in their official duties. The most important decisions made by the Telekom-Control Commission in these sessions are listed in the Calendar of Decisions from April 1, 2001 to December 31, 2001 (see page XX).

#### **4.3. Austrian Communications Authority (KommAustria) members**

The director of KommAustria and his deputy were appointed by the

Federal Chancellor under § 3 (2) KOG as of June 1, 2001, after due announcement of the position for general applications pursuant to §3 of the Tenders Act of 1989.

In the short business year 2001, KommAustria consisted of the following members:

- HR Dr. Hans Peter Lehofer (Director)
- HR Dipl.Ing. Franz Prull (Deputy Director)
- Mag. Michael Ogris

In contrast to the members of the Telekom-Control Commission, the director and employees of KommAustria are full-time civil servants who work in RTR's offices. The most important decisions made by KommAustria are listed in the Calendar of Decisions from April 1, 2001 to December 31, 2001 (see page XX).

#### **4.4. Broadcasting Advisory Board members**

The Broadcasting Advisory Board consists of six members, each of whom is appointed by the Austrian federal government under §4 Par. 2 KOG for a term of six years. The Broadcasting Advisory Board consists of the following members:

- Dr. Eduard Pesendorfer
- Kurt Lukasek
- Mag. Harald Pfannhauser
- Dkfm. Milan Frühbauer
- Mag. Daniel Witzani
- Dr. Michael Rami

In the founding meeting of the Broadcasting Advisory Board on May 21, 2001, Dr. Eduard Pesendorfer was elected Chairman and Kurt Lukasek was elected Deputy Chairman. In the year 2001, the Broadcasting Advisory Board met five times. Before licenses are issued, the Broadcasting Advisory Board is to be given the opportunity to submit comments. In the reporting period, the Board submitted comments in more than 30 licensing procedures in the field of radio and one statement on the nationwide licensing procedure for terrestrial private television.

#### **4.5. Company information**

##### **4.5.1. RTR development in 2001**

The (short) business year 2001 was a phase of new structures and pioneering at RTR, similar to 1997 and 1998 at Telekom-Control GmbH. Due to the relatively late creation of the legal basis for RTR's establishment, lead times for adaptation were extremely short.

At very short notice, provisional offices with the accompanying IT infrastructure had to be set up in the same building complex that housed Telekom-Control GmbH. This process was facilitated by the fact that in the fields of IT and project management we were able to rely on the extensive experience of those employees who had already seen and contributed to the "birth" of a new regulatory authority.

Once key figures had been appointed in the company, in particular the managing directors of the Broadcasting and Telecommunications Divisions, we were able to begin our preparatory work, inclu-

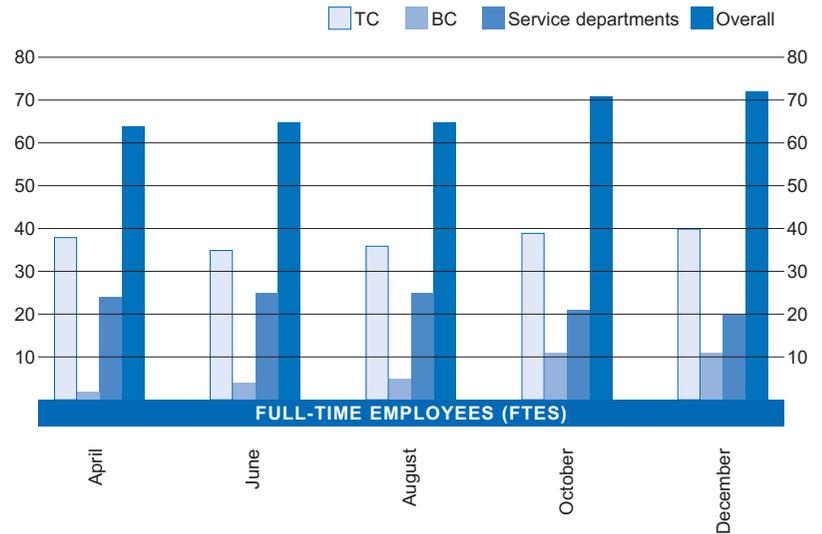
ding a "kick-off meeting" at the end of June 2001. The managing directors decided to make efforts to move the regulatory authority's offices from Building A to Building B in the Generali Center building complex by the end of the year if possible. Against (almost) all expectations, this more than ambitious schedule met with success, especially considering that an entirely new IT system was procured and installed at the same time. On November 4, 2001, we were able to move into our new offices, which are spread out over five floors of the building. On November 29, 2001, we held an "office-warming party" which was attended by approximately 250 people.

The move to new and larger offices was mainly motivated and carried out due to concerns about having sufficient space for our operations. In addition to the employees of what is now the Telecommunications Division (approx. 60 full-time employees [FTEs]), the new employees in the Broadcasting Division had to be equipped with modern workstations in order to enable and support smooth operations in flexible (process and project-oriented) structures in the

Broadcasting Division as well. We have also ensured that additional space is available for future expansion. In the reporting period, RTR grew by a total of almost 10 FTEs.

In summary, this difficult expansion (in terms of personnel and space) and the challenge of integrating existing and new structures in a new regulatory authority for broadcasting and telecommunications were both handled with professionalism and great success.

Fokus 22: Staff size development, April to December 2001



#### 4.5.2. Personnel structure

As a young organization, RTR has embraced the goal of establishing contemporary principles for operational processes. This is manifested in RTR's high degree of flexibility in process organization, in which our employees' actions are guided by processes and projects, not by "department-based" thinking. However, teamwork-oriented processes require an organization's staff to have a firm command of the fundamental principles involved in

working within flexible structures. Recruiting the appropriate personnel, especially in the new regulatory authority's start-up phase, also proved to be a great challenge for RTR.

Due to our new combination of duties (regulatory work in broadcasting and telecommunications as well as supervisory work for electronic signatures), it was necessary to draw up a human resources development plan once our managing directors had been appointed; this plan had to strike a balance bet-

ween functional necessities and usefulness on the one hand and between efficiency and economy on the other.

In order to be able to carry out the duties assigned to RTR under KOG and TKG, the target number of employees for the short business year 2001 (April to December) was established at 76 FTEs. Due to employee turnover and problems with recruiting the appropriate expert staff, we were only able to bring the total up to 72 employees by December 2001. After additional recruiting measures, the remaining positions are likely to be filled in January and February 2002.

By December, the Telecommunications Division had reached a staff size of 42 FTEs (with two FTEs in the Electronic Signatures subdivision); the Broadcasting Division had 12 FTEs. As of December 31, 2001, 18 people were employed in the service departments.

Focus 22 shows the development of RTR's staff size between April and December 2001. The chart depicts the development of staff size (in full-time employees, or FTEs) separately for the

Broadcasting and Telecommunications Divisions as well as the service divisions. In addition, RTR's overall staff size is shown for the reporting period.

#### **4.6. RTR Supervisory Board**

Under §6 of the Declaration on the establishment of RTR-GmbH, a Supervisory Board is to be appointed for the company, and § 5 (7) KOG states that one representative of the Federal Chancellery and one representative of the Federal Ministry of Transport, Innovation and Technology are to belong to this board. Unfortunately, the appointment of Supervisory Board members was delayed considerably, which meant that the Board could not hold its founding meeting until December 2001.

The members of RTR's Supervisory Board were appointed by a decision of the company's ownership on November 22, 2001; the decision took effect immediately. The members were appointed for a term ending with the General Assembly in which the discharging of the management is resolved for the

fourth year (not including the year in which the vote took place).

The Supervisory Board formed in 2001 consists of the following members:

- Dr. Wilfried Stadler  
(Chairman, Investkredit Bank AG)  
Chairman of the Supervisory Board
- Dr. Franz Semmernegg  
(Managing Director, Kapsch AG)  
Deputy Chairman of the Supervisory Board
- Dr. Matthias Traimer (Dept. Head, V/4 Media, Federal Chancellery)  
Supervisory Board member
- Werner Weidlinger (Telecoms Advisor, Cabinet of the Federal Minister of Transport, Innovation and Technology)  
Supervisory Board member

Supervisory Board members representing RTR's Workers' Council:

- Dr. Dieter Staudacher  
Shop steward, RTR
- Mag. Martin Pahs  
Shop steward, RTR

In the year 2001, the Supervisory Board was only able to meet once. In the year 2002, four meetings (one per quarter) of the Supervisory

Board are planned, in accordance with normal procedure. Core tasks of the Supervisory Board include approving RTR's business plan as well as the budget and the company's targeted staff size. When deciding whether to approve the company's annual accounts, the Supervisory Board also decides on the discharging of the management. In addition, the Supervisory Board decides on any and all legal acts of the company which require the Board's approval.

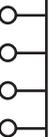
The Supervisory Board appoints an external auditor to review RTR's financial statements once per year. The results of this audit are then

submitted to the Supervisory Board.

#### **4.7. RTR 2001 financial statements**

RTR's annual accounts for the short business year 2001 (April 1 to December 31, 2001) have been given an unrestricted confirmation seal by the external auditor Deloitte & Touche. RTR's Profit & Loss Statement and Balance Sheet from the 2001 annual accounts are presented below; as 2001 was a short business year, it is only possible to compare these figures to those of 2000 to a limited extent.

RTR's 2001 revenues predominantly consisted of the financing contributions stipulated in §10 KOG (EUR 5.73 million / ATS 78.8 million). The accumulated loss in the amount of ATS 11.1 million (EUR 808,270) essentially resulted from expenses incurred in order to fulfill the supervisory authority's duties under the Austrian Signatures Act. The operating result arising from the regulatory duties under the KommAustria Act is balanced, while the result arising from the supervisory duties under the Signatures Act has been covered by the capital increase in the amount of ATS 29 million (EUR 2.11 million) undertaken in the year 2000.



	April 1 – Dec. 31, 2001		Jan. 1 – March 31, 2001	
	ATS x 1,000	ATS x 1,000	ATS x 1,000	ATS x 1,000
1. Net sales		78.788		20.479
2. Other operational revenues				
a) Income from the reversal of accruals	607		22	
b) Miscellaneous	909	1.516	777	799
3. Personnel expenses				
a) Salaries	-40.874		-8.809	
b) Severance payment expenses	-694		-476	
c) Expenses for social security and payroll-related taxes and contributions				
d) Voluntary benefit expenses	-7.488	-49.312	-3.336	-12.660
	-256		-39	
4. Depreciation of intangible fixed assets and property, plant and equipment		-7.866		-2.971
5. Miscellaneous operating expenses				
a) Taxes not included in Line 12	-29		0	
b) Miscellaneous	-29.666	-29.695	-7.326	-7.326
6. Subtotal of Lines 1 to 5 Operating result		-6.569		-1.679
7. Income from other financial investment securities		1.768		161
8. Miscellaneous interest and similar income		1.329		608
9. Miscellaneous interest and similar expenses		-22		0
10. Subtotal of Lines 7 to 9 Financial result		3.075		769
11. Result from ordinary business activities		-3.494		-910
12. Taxes on income		0		-5
13. Annual surplus / deficit		-3.494		-915
14. Reversal of untaxed reserves				0
Investment tax allowance under § 10 EStG	7			
Education & training tax allowance under § Par. 4 No. 8 EstG	243	250		0
15. Appropriation to untaxed reserves				
Education & training tax allowance under § Par. 4 No. 8 EstG		0		-108
16. Loss carried forward		-7.878		-6.855
17. Accumulated loss		-11.122		-7.878

**FOKUS 23: RTR PROFIT AND LOSS STATEMENT FOR THE SHORT BUSINESS YEAR 2001**

**Sector-specific expenses for the Broadcasting and Telecommunications Divisions**

RTR presents its profit and loss statement and balance sheet for the overall company, without classifying the allocation of resources by sector. For this reason, the table below shows a (Focus 24) breakdown of

the items in the profit and loss statement by sector for the Telecommunications (TC) and Broadcasting (BC) Divisions in order to ensure the transparency of sector-specific expenses for those who make financial contributions to support the company. This breakdown of expenses was as follows in the short business year 2001:

FOKUS 24: RTR EXPENSES BY DIVISION			
ATS x 1000	TC	BC	Total
Net sales	59.033	19.755	78.788
Other operating income	1.427	89	1.516
Personnel expenses	-39.593	-9.719	-49.312
Depreciation	-5.739	-2.127	-7.866
Other operating expenses	-21.148	-8.547	-29.695
Operating result	-6.020	-549	-6.569
Financial result	2.485	590	3.075
Result from ordinary activities	-3.535	41	-3.494
Taxes on income	0	0	0
Annual deficit / surplus	-3.535	41	-3.494
Reversal of untaxed reserves	182	68	250
Loss carried forward	-7.878	0	-7.878
Accumulated loss	-11.231	109	-11.122

**ASSETS**
**LIABILITIES**

	01.04.-31.12.2001	01.01.-31.03.2001		01.04.-31.12.2001	01.01.-31.03.2001
	in 1.000 ATS	in 1.000 ATS		in 1.000 ATS	in 1.000 ATS
<b>A. Fixed assets</b>			<b>A. Equity capital</b>		
<b>I. Intangible assets</b>			<b>I. Capital stock</b>	79.000	79.000
1. Industrial property rights, licenses and similar rights	6.426	3.404			
	6.426	3.404	<b>II. Accumulated loss</b> (7,878 TATS carried forward from previous year, 2000: 6,855)	-11.122	-7.878
<b>II. Property, plant and equipment</b>				67.878	71.122
1. 1. Fixtures in rented buildings	7.356	3.183	<b>B. Untaxed reserves</b>		
2. 2. Other fixed assets, furniture, fixtures and fittings	3.010	3.012	<b>I. Miscellaneous untaxed reserves</b>		
	10.366	6.195	-Investment tax	1.175	1.183
<b>III. Financial assets</b>			-Education & training tax allowance under § Par. 4 No. 8 EstG	0	242
1. Investment securities	39.289	39.289		1.175	1.425
	56.081	48.888	<b>C. Accruals</b>		
<b>B. Current assets</b>			1. Severance payment accruals	2.229	1.833
<b>I. Receivables and miscellaneous assets</b>			2. Miscellaneous accruals	15.628	5.554
1. Trade accounts receivable	14.267	18.154		17.857	7.387
2. Miscellaneous receivables and assets	257	534	<b>D. Liabilities</b>		
	14.524	18.688	1. Trade accounts payable	6.603	2.323
<b>II. Cash on hand and at bank</b>			2. Miscellaneous accounts payable (Taxes: 5,240 TATS, 2000: 5,683 TATS; Social security: 1,053 TATS, 2000: 2,488 TATS)	36.013	51.688
	72.718	85.043		42.616	54.011
<b>C. Prepaid expenses and deferred charges</b>					
	727	14			
	129.526	133.945		129.526	133.945

**FOKUS 25: RTR BALANCE SHEET FOR THE SHORT BUSINESS YEAR 2001**

#### **4.8. Public information**

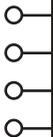
In their first year of joint operations, the regulatory activities of KommAustria, the Telekom-Control Commission and RTR were often visible to the public. The focal points of public relations lay in the areas of media, publications (including direct mailing), events, presentations and our web site.

As was the case in the previous years, the topic of telecommunications was also important in the media's coverage of business news in 2001. The topic of deregulating broadcasting markets was covered by the media even more than telecommunications. Due to the dynamics of media policy, topics related directly or indirectly to broadcasting regulatory activities were of great interest to the Austrian media.

The regulatory authority's media relations work concentrated on objective information regarding complicated regulatory topics such as licensing procedures or interconnection issues. In the short business year 2001, two press conferences as well as three press information sessions were held,

and 27 press releases were sent out. In addition, a number of personal interviews were given to media representatives.

Another central topic in public relations was our preparatory work for the regulatory authority's new publications. The "Austrian Telecommunications Report 1998-1999," published in German and in English by Telekom-Control in the year 2000, gives a broad overview of the deregulation process that has been taking place on the Austrian telecommunications markets since 1997. The report will also be continued in the year 2002. Volume 2 of the Telecommunications Report will cover the deregulation of markets in 2000 and the first quarter of 2001. This period was selected in order to ensure a transition without overlaps from the documentation of telecommunications regulatory activities by Telekom-Control GmbH to that of RTR. The annual "Arbitration Report" documents RTR's activities as an arbitrator and presents statistical information as well as the most common issues and questions raised in the arbitration proceedings. All reports are available as downloads on the RTR web site (<http://www.rtr.at>).



In the year 2001, presentation activities on the part of the management and selected employees were also promoted in order to convey the intentions and results of RTR's regulatory work in the appropriate forums. RTR, the Academy of Law and the Department of Constitutional and Administrative Law at Salzburg University jointly organized a law symposium on "Competition in the new legal framework." In addition, preparations for the start of activities in the "digital platform austria" work group were intensified toward the end of the reporting period.

The key tool in RTR's public relations work is the regulatory authority's web site (<http://www.rtr.at>). The constantly updated content of the RTR web site allows the interested public to follow the activities of our regulatory activities continuously. All regulation-related decisions as well as documents intended for publication are made available on the Internet. In the reporting period, intensive preparations began in order to implement a uniform and well-structured web presence in line with the idea of convergence at the beginning of 2002. For this purpose, it will be necessary to migra-

te this large quantity of material from previous web site (<http://www.tkc.at>) into the new structures. The Internet channel is our most effective media instrument for disseminating information to the public and provides the best means of meeting the demands of today's information society.



## 5. Calendar of decisions

### 5.1. Calendar of KommAustria decisions, April 1 to December 31, 2001

- 20.04.2001 End of tender submission period for 23 invitations to tender under the Private Radio Act; 154 applications received.
22. - 30.05.2001 Verbal negotiations in the licensing procedures for the coverage areas of Burgenland, Vorarlberg, Vienna 88.6 MHz, Vienna 102.5 MHz, Villach, Slovenian minority settlement in Carinthia, Waldviertel, Innviertel, Linz, Salzburg 94 MHz, Salzburg 106.2 MHz, Graz, Bruck Mur-/Mürztal, Tiroler Oberland, Tiroler Unterland, Außerfern/Reutte, Bregenz, Innsbruck 105.1 MHz, Innsbruck 106.5 MHz, Vienna 92.9 MHz, Vienna 107.3 MHz, Wien 94 MHz, Vienna 104.2 MHz

18.06.2001 Issuing of licenses under the Private Radio Act:

<b>Coverage area</b>	<b>License issued to:</b>
Wien 88,6 MHz ○	Radio 1 Privatrado GmbH
Wien 102,5 MHz ○	Antenne Wien Privatrado BetriebsgmbH
Wien 92,9 MHz ○	Donauradio Wien GmbH
Wien 94,0 MHz ○	Verein z. Förd. u Unterst. von Freien Lokalen Nichtkomm. Radioprojekten
Wien 107,3 MHz ○	Kirchliche Stiftung Radio Stephansdom
Wien 104,2 MHz ○	N & C Privatrado Betriebs GmbH
Waldviertel ○	Teleport Waldviertel – Information und Kommunikation GmbH
Burgenland ○	Privatrado Burgenland 1 GmbH & Co KG
Graz ○	Grazer Stadtradio GmbH
Bruck ad Mur/Mur-Mürztal ○	Mur-Mürztal Radiobetriebs GmbH
Siedl. slow. Volksgruppe ○	Agora Korotan AKO Lokalradio GmbH
Villach ○	Radio Villach Privatrado GmbH
Innviertel ○	Antenne Innviertel Rundfunk GmbH
Linz 105,0 MHz ○	Freier Rundfunk Oberösterreich GmbH
Stadt-Salzburg 94,0 MHz ○	Radio Arabella GmbH
Stadt-Salzburg 106,2 MHz ○	Welle Salzburg GmbH
Außerfern/Reutte ○	Außerferner Medien GmbH
Tiroler Oberland ○	Radio Oberland GmbH
Tiroler Unterland ○	Unterländer Lokalradio GmbH
Innsbruck 105,1 MHz ○	Stadtradio Innsbruck GmbH
Innsbruck 106,5 MHz ○	Lokalradio Innsbruck GmbH
Vorarlberg ○	Vorarlberger Regionalradio GmbH
Bregenz ○	Bregenzer Lokalradio GmbH

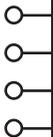
- 12.07.2001 Decision on 92,9 Hit FM Radio GmbH's application for a provisional license under the Private Radio Act
- 16.07.2001 Punitive order (violation of §1 Par. 2, Private Radio Act)
- 19.07.2001 Decision on applications submitted by Privatrado Unterkrnten GmbH and Radio Megahertz Ennstal GmbH for provisional licenses under the Private Radio Act
- 20.07.2001 Verbal negotiations in the licensing procedure for the Innsbruck 105.9 MHz coverage area
- 23.07.2001 Invitation to tender under the Private Radio Act for the "Oberes Ennstal" and "Völkermarkt and Wolfsberg districts" coverage areas
- 06.08.2001 Invitation to tender under the Private Radio Act for analog terrestrial private television
- 10.08.2001 Punitive decision (violation of §1 Par. 2 Private Radio Act)
- 05.09.2001 License issued to FREIES RADIO INNSBRUCK - FREIRAD Verein zur Förderung der Medienvielfalt und der Freiheit der Meinungsäußerung sowie für ein glückliches Radio auch für Innsbruck for the "Innsbruck, 105.9 MHz" coverage area
- 28.09.2001 Initiation of revocation procedure for Radio Starlet Programm- und WerbegesmbH
- 11.10.2001 Verbal negotiations in the revocation procedure under the Private Radio Act for Pinzgau/Pongau/Lungau Radio GmbH; Verbal negotiations in the must-carry procedure between TIV Kabelfernsehen GmbH and Telekabel Wien GmbH
- 25.10.2001 Conclusion of procedure regarding Projekt Medien GmbH under §25 PrR-G (legal supervision)
- 31.10.2001 Invitation to tender for "Digital Television in Austria" by the Federal Chancellery

- 07.11.2001 Decisions under §25 PrR-G (legal supervision) regarding Außerferner Medien GmbH, Radio Oberland GmbH and Lokalradio Gute Laune GmbH
- 07.11.2001 End of the tender submission period for analog terrestrial television; 7 applications for nationwide and 20 licenses for non-nationwide private television licenses received.
- 13.11.2001 Official decision issued regarding ORF's financing contribution
- 19.11.2001 Decision in the revocation procedure under the Private Radio Act regarding Pinzgau/Pongau/Lungau Radio GmbH
- 23.11.2001 Decision in the must-carry procedure between TIV Kabelfernsehen GmbH and Telekabel Wien GmbH
- 29.11.2001 Invitations to tender under the Private Radio Act for the "Graz 92.6 MHz" and "Graz 97.9 MHz" coverage areas.
- 17.12.2001 Verbal negotiations in the licensing procedure under the Private Television Act for analog terrestrial private television
- 17.12.2001 Issuing of license under the Private Radio Act to Privatrado Unterkrnten GmbH for the "Vlkermarkt and Wolfsberg districts" coverage area
- 21.12.2001 Decision on Grazer Stadtradio GmbH's complaint under §25 PrR-G (legal supervision) against Medienprojektverein Steiermark

**5.2. Calendar of Telekom-Control Commission decisions,  
April 1 to December 31, 2001**

- 09.04.2001 K 30/00 - GSM 1800 allocation procedure – decision on admission to auction  
Z 6, 9, 10/01, Z 11/01, Z 12/01:  
Fixed-link interconnection; appointment of evaluators
- 23.04.2001 Discussion of results of evidence submitted in Procedure M 01/01
- 07.05.2001 K 30/00 - GSM 1800 allocation procedure – auction
- 18.05.2001 K 30/00 - GSM 1800 allocation procedure – decision on frequency allocation  
M 1/01 – Market power – Hearing for mobile network operators max.mobil.,  
Mobilkom and tele.ring  
Z 6, 9, 10, 11 and 12/01: Fixed-link interconnection – discussion of evaluation reports
- 01.06.2001 Hearing for Connect Austria in Procedure M 1/01  
Hearing in Procedures Z 6, 9, 10, 11 and 12/01  
(Fixed-link interconnection)
- 18.06.2001 K 39/98 – Decision on application submitted by tele.ring Telekom Service GmbH for  
approval of changes in ownership structure Resolution in Procedure M 1/01 on the  
significant market power position of Telekom Austria AG in the markets for the  
provision of public voice telephony services, public leased-line services and the  
national market for interconnection services
- 22.06.2001 Decision on Procedures Z 6, 9, 11 and 12/01 (fixed-link interconnection), discussion  
of mobile network operators' significant market power on the interconnection market  
and mobile communications market

- 02.07.2001 Further discussion of mobile network operators' significant market power on the interconnection market and mobile communications market
- 13.07.2001 A 6/2001 – Application for accreditation submitted by TÜV-AT-Trust Center Gmb (incorporation in progress) A 7/2001 - Application for accreditation submitted by Datakom Austria GmbH Discontinuation of Procedure M 1/01, justified as follows: No further SMP operators could be identified on the interconnection market. It was not necessary to identify an SMP operator on the mobile communications market as this market demonstrates sufficient competition. Z 5, 7, 8, 14 and 15/01: Appointment of evaluators
- 30.07.2001 Partial official decision in Procedures Z 5, 7/01 (mobile interconnection) with the exception of fees  
Discussion of applications submitted by Telekom Austria for the approval of new rate models, appointment of evaluator
- 10.09.2001 Discussion of evaluation reports in Procedures Z 5, 7, 8, 14 and 15/01 (mobile interconnection)  
Discussion of further procedures regarding applications for accreditation
- 24.09.2001 Decision on applications submitted by Telekom Austria for the approval of new rate models Z 5, 7, 8, 14, and 15/01 (mobile interconnection): Hearing of parties to the procedure
- 08.10.2001 Discussion of Procedures Z 5, 7, 8, 14, and 15/01 (mobile interconnection)
- 15.10.2001 Further discussion of Procedures Z 5, 7, 8, 14, and 15/01 (mobile interconnection)
- 22.10.2001 Discussion of draft official decisions reports in Procedures Z 5, 7, 8, 14 and 15/01 (mobile interconnection)
- 05.11.2001 Decision on Procedures Z 5, 7, 8, 14, and 15/01 (mobile interconnection)



- 12.11.2001 Discussion of applications for accreditation
- 26.11.2001 Discussion of applications with regard to charging arrangements between operators, Discussion of 3G Mobile's application as MVNO for interconnection with Priority Telecom GmbH
- 10.12.2001 Further discussion of 3G Mobile's application as MVNO for interconnection with Priority  
Discussion of applications for accreditation
- 17.12.2001 Decision on Procedures Z 17, 19/01 on charging arrangements between operators  
Initial discussion of IC 2002 procedures

## 6. Index of illustrations

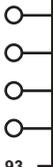
<b>Fokus</b>	<b>Titel</b>	<b>Page</b>
1	RTR's duties	8
2	Duties and objectives of the Austrian Communications Authority	9
3	Telecommunications Division objectives	10
4	RTR values	12
5	The regulatory environment	13
6	Radio broadcasting criteria	18
7	Licenses granted to applicants	19
8	Licensing procedures / 3 months	21
9	Additional procedures carried out under §25 PrR-G	22
10	Telekom-Control Commission and RTR	37
11	SMP operators: Regulatory authority decisions	40
12	Final results of GSM-1800 auction	43
13	Interconnection traffic types (fixed-link)	54
14	Interconnection traffic types (mobile networks)	55
15	General terms of service and fees: Approval requirements	57
16	General terms of service and fees: Reporting requirements	57
17	Non-discrimination, network access, abuse of significant market power	58
18	Sharing of infrastructure (cross-subsidization)	60
19	Number ranges under the Numbering Ordinance and their current use for geographical numbers	61
20	Number allocation: RTR decisions	63
21	RTR organizational chart	72
22	Staff size development, April to December 2001	76
23	RTR profit and loss statement for the short business year 2001	79
24	RTR expenses by division	80
25	RTR balance sheet for the short business year 2001	81

## 7. Selected abbreviations

ADSL	Asymmetric Digital Subscriber Line
AIM	Austrian Internet Monitor
APRII	Accounting Principals and Regulatory Interconnection Issues
Art.	Article
ATS	Austrian schillings
BC	RTR Broadcasting Division
BGBI.	Federal Official Journal (Bundesgesetzblatt)
BKS	Federal Communications Board (Bundeskommunikationssenat)
B-VG	Federal Constitutional Law (Bundesverfassungsgesetz)
CEPT	Conférence des Administrations Européennes des Postes et Télécommunications
DBEG	Digital Broadcasting Expert Group
DVB-T	Digital Video Broadcasting - Terrestrial
EC	European Communities
ECTRA	European Committee for Telecommunications Regulatory Affairs
EPRA	European Platform of Regulatory Authorities
ERO	European Radiocommunication Office
ETO	European Telecommunications Office
EU	European Union
EVO	Fee Ordinance (Entgeltverordnung)
FL-LRAIC	Forward-Looking, Long-Run Average Incremental Cost
G / /	Procedures for the approval of general terms of service
GPRS	General Packet Radio System
GSM (2G)	Global System for Mobile Communications, 2nd generation
HDSL	High-Data-Rate Digital Subscriber Line
HFCC	High Frequency Co-ordination Conference
HTML	Hypertext Markup Language
IC	Interconnection
IP	Internet Protocol
ISP	Internet Service Provider
ISPA	Internet Service Provider Association

ITU	International Telecommunications Union
KOG	KommAustria Act
KommAustria	Austrian Communications Authority
M_/_/_	Procedures for the identification of significant market power
MVNO	Mobile Virtual Network Operator
NVO	Numbering ordinance (Numerierungsverordnung)
OECD	Organization for Economic Cooperation and Development
Oftel	Office of Telecommunications (GB)
ONP	Open Telecommunications Network Provision
ÖWA	Austrian Web Analysis (Österreichische Web-Analyse)
Par.	Paragraph
PDF	Portable Document Format
PrR-G	Private Radio Act
PrTV-G	Private Television Act
PT	Project Team
PTT	Post, Telegraph and Telephone Administration
Q	Quarter
RRG	Regional Radio Act
RTR	Austrian Regulatory Authority for Telecommunications and Broadcasting
SDSL	Symmetric Digital Subscriber Line
SigG	Signatures Act (Signaturgesetz)
SigV	Signatures Ordinance (Signaturverordnung)
SMP	Significant market power
SMS	Short Message Service
STQ	Speech Transmission Quality
TC	RTR Telecommunications Division
T-DAB	Terrestrial Digital Analog Broadcasting
TKC	Telekom-Control GmbH
TKG	Austrian Telecommunications Act (Telekommunikationsgesetz)
TKK	Telekom-Control Commission
TRIS	Technical Regulation and Interconnection Standard Requirements
UDV	Universal Service Ordinance (Universaldienstverordnung)
UMTS/IMT (3G)	Universal Mobile Communications Standard, 3rd-generation mobile communications system

VDSL	Very High Speed Digital Subscriber Line
VfGH	Austrian Constitutional Court
VwGH	Austrian Administrative Court
WWW	World Wide Web
Z_/_	Procedures regarding interconnection issues
ZVO	Interconnection Ordinance (Zusammenschaltungsverordnung)



## 8. Management summary of regulatory activities

### 8.1. Broadcasting Division

#### Market deregulation and licensing

- Radio Broadcasting**
- On June 18, 2001, KommAustria issued official decisions to grant 23 radio broadcasting licenses, effective June 20, 2001, for the period of ten years. This made it possible to clarify the situation for the license applicants before their six-month provisional licenses expired on June 19, 2001.
  - Handling of 7 licensing procedures for event radio for a maximum broadcasting duration of 3 months.
  - Transfers of ownership of radio broadcasting organizations: 8 procedures were carried out.
  - 4 invitations to tender under §13 PrR-G.

- Television Broadcasting**
- The procedure for nationwide licensing of analog terrestrial television was initiated. KommAustria received 7 applications within the three-month period ending November 7, 2001. Verbal negotiations in the investigative procedure on December 17, 2001. A decision can be expected in the first quarter of 2002.
  - The procedure for non-nationwide licensing of analog terrestrial television was initiated. A full list of applicants is included in this report.

#### Legal supervision and must-carry procedures (arbitration)

- Radio Broadcasting**
- Legal supervision: On the basis of our review of new licensees, 5 additional procedures were initiated (§25 PrR-G).
- Television Broadcasting**
- Completion of a must-carry procedure under §20 PrTV-G. An official decision imposing a must-carry requirement was issued to a cable network operator. Duration of must-carry requirement: max. 2 years.

### **Broadcasting frequency management and coordination**

- Coordination: Number of actively initiated coordination procedures in 2001:  
80 broadcasting systems (41 radio and 39 television stations).  
Number of passively initiated coordination procedures (international inquiries) in 2001:  
503 (118 radio and 385 television).
- Frequency studies: 2 large-scale studies were carried out and evaluated:  
Large-scale broadcasting coverage study for Austria  
(Assigned to: Deutsche Telekom AG)
- Broadcasting location study for digital terrestrial television (Assigned to: LS Telcom)

### **Cooperation in licensing procedures**

- Completion of several evaluation reports  
(including Vienna, Waldviertel region)
- 4 additional evaluation reports initiated  
(not completed during reporting period)
- Public invitation to participate in the "digitization initiative" for private and public broadcasting in Austria (October 31, 2001).
- 2 studies commissioned: TELEBiLD study to review the current situation and to identify international reference projects, and LS Telcom's broadcasting location study.
- Preparations for launch meeting on January 29, 2002.

## 8.2. Telecommunications Division

### Market deregulation and licensing

#### Fixed-link Networks

- In the year 2001, 21 license applications were submitted, four of which were later withdrawn. As of December 31, 2001, a total of 81 fixed-link voice telecommunications licenses and 85 leased-line licenses had been awarded to 114 companies. By the end of 2001, 23 of the licenses awarded were relinquished, thus reducing the total number of licensees to 98 companies. At the end of the year 2001, 67 of those companies were operating on the fixed-link market. In general, the number of new licensees on the Austrian fixed-link market is decreasing markedly. A large number of new operators can no longer be expected on these markets.

#### Mobile Communications Networks

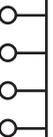
- No licenses were issued to new mobile network operators. In the course of an auction, 7 of 8 GSM-1800 frequency packages were allocated to existing mobile network operators. Specifically, Connect was allocated 3 of these packages, while max.mobil. and Mobilkom received 2 each. Total revenues were EUR 69.9 million.

- In the fourth year of complete market deregulation, the fixed-link market appears to be continuing its phase of consolidation. Growth on the mobile communications market (in terms of new mobile network operators) slowed down during the reporting period.

### SMP operators

- Telekom Austria was identified as an SMP operator in the fixed-link, leased line and interconnection markets in 2001. Beyond that, no further SMP operators were identified in 2001.

- The identification of SMP operators serves as a point of departure for the most important regulatory measures in the Austrian telecommunications markets. These decisions form the basis for the most essential regulatory intervention in the telecommunications markets.



## **Interconnection and network access**

- A total of 18 procedures (after a total of 19 in 2000) regarding interconnection issues were initiated in the year 2001. A total of 17 procedures were completed in the reporting period. The following specific issues had to be dealt with in these procedures:

- Fixed-link interconnection 2001
- Interconnection / termination in mobile networks
- Local loop unbundling
- Number portability
- Access to online services in all networks

In the year 2001, another comprehensive interconnection decision was made (Z 6/01ff in conjunction with Z 30/99) with a view to developing our reference document to govern the central issues and aspects of interconnection in fixed-link communications. In the field of mobile communications, the key decisions in the reporting period were Procedure Z 5/01 and the ensuing procedures. The focus of these decisions was a further reduction of termination fees by Mobilkom (gradually) and max.mobil.

The setting of competitive interconnection fees is a decisive factor in the successful liberalization and promotion of competition, as interconnection fees can account for 40-60% of total costs to alternative network operators.

At the end of the reporting period, the following traffic types and fees were to be offered by Telekom Austria in connection with fixed-link interconnection negotiations:



At the end of the reporting period, the following termination fees were applicable to calls to mobile networks (after the mobile network interconnection negotiations):

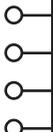
INTERCONNECTION TRAFFIC TYPES (FIXED-LINK)						
		Fees as of 03/31/2001 (in euro cents)		Telekom-Control Commission decision of June 22, 2001 (Z 6/01ff.)		Percentage change (Peak)
		Peak (weekdays 8am-6pm)  (in euro cents)	Off-peak (weekdays 6pm-8am, Sat, Sun, and holidays) (in euro cents)	Peak (weekdays 8am-6pm)  (in euro cents)	Off-peak (weekdays 6pm-8am, Sat, Sun, and holidays) (in euro cents)	
Termination	local	1,02	0,51	0,91	0,51	-11 %
	regional	1,53	0,73	1,39	0,73	-9 %
	national	2,25	0,87	2,25	0,87	0 %
Transit	regional	0,29	0,15	0,29	0,15	0 %
	national	0,51	0,29	0,62	0,32	22 %
Origination	local	1,02	0,51	0,91	0,51	-11 %
	regional	1,53	0,73	1,39	0,73	-9 %
	national	2,91	1,09	2,90	1,10	0 %

The mobile network operators Connect and tele.ring were required to offer operators the following fees for call termination in mobile networks in the interconnection negotiations:

INTERCONNECTION TRAFFIC TYPES (MOBILE NETWORKS)						
Mobilkom	Jan. 1, 2001 – July 31, 01		Aug. 1, 2001 – March 31, 02		April 1, 2002 – Dec. 31, 02	
Termination	EUR/100	13,81	EUR/100	12,40	EUR/100	11,25
	ATS	1,90	ATS	1,71	ATS	1,55
Origination	EUR/100	13,15	EUR/100	11,90	EUR/100	10,75
	ATS	1,81	ATS	1,64	ATS	1,48
<b>max.mobil</b>	<b>01.07.2001 - 31.12.2002</b>					
Termination	EUR/100	13,80				
	ATS	1,90				
Origination	EUR/100	13,20				
	ATS	1,81				

- Connect: EUR 0.1381 (ATS 1.90)
- tele.ring: EUR 0.1962 (ATS 2.70)

- In 2001, the marked reduction of interconnection fees for termination services in mobile networks also led to a decrease in charges for calls to mobile networks. In light of the growing number of subscribers in the mobile networks, this development can be regarded as another significant step toward the objectives named in the Austrian Telecommunications Act (§ 1 TKG).



### **Regulation of competition I (non-discrimination, network access issues, abuse of significant market power)**

- In the reporting period, Telekom-Control GmbH carried out a total of 7 procedures in the field of competition regulation. It is worth noting that the number of procedures in this field of regulation dropped from ten cases in 2000 to seven in 2001. This can be attributed to the further stabilization of the regulatory framework due to continuity in regulation.

### **Regulation of competition II (General Terms of Service)**

- The general terms of service stipulated by SMP operators are subject to approval requirements. In the year 2001, the Telekom-Control Commission completed six approval procedures.
- The general terms of service of all other telecommunications service providers are subject to reporting requirements. A total of 11 procedures were initiated by the regulatory authority with regard to terms of service for voice telecommunications, 8 of which were completed in the year 2001. No formal objection was raised by the regulatory authority in any of these procedures.

### **Sharing of infrastructure**

- In 2001, only one procedure was carried out to investigate possible cross-subsidies in the sharing of telecommunications infrastructure. No cross-subsidies were identified in the procedure.

### **Number administration**

- In the year 2001, more than 500 number assignment decisions were handed down (rejection rate: 2%). This figure shows a decrease of 250 decisions in comparison to 2000.
- The average duration of the allocation process was reduced significantly, from 10 days in 2001 to 6 days in 2000. 50% of all decisions in 2001 were issued within 4 days, and 90% were completed within 8 days. In 2000, the first duration (for 50%) was 5 days.

### **Universal service**

- Continuation of preliminary work on subscriber directories and information services.
- Monitoring of the developing market for information services during the reporting period.

### **Arbitration in end-consumer disputes**

- A total of 1,418 complaints were filed by telecommunications customers for arbitration by RTR in the year 2001. This represents an increase of almost 59% in comparison to the previous year. Comprehensive documentation of these activities will be included in the separate report on arbitration activities in 2001, which should be published at the beginning of the second quarter of 2002.

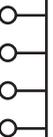
### **Establishment of work groups and international activities**

- Continuation of activities in the Technical Coordination Work Group. This group, which was founded as a forum for communication and information among operators and manufacturers, handles selected issues such as number portability, carrier pre-selection and accounting scenarios. As planned, RTR confined its activities in this group to the role of an observer and moderator.
- Internationalization of regulatory activities through participation in European initiatives, such as events organized by the European Commission or by the Independent Regulators Group (IRG). In the reporting period, RTR employees took part in 60 international events.



### **Supervisory authority for electronic signatures**

- In the year 2001, nine procedures were carried out in accordance with the Signatures Act by the Telekom-Control Commission. Eight procedures were concluded in 2001, and one was still pending at the end of the reporting period. Most procedures concerned reports of new certification services and changes in existing services; two procedures involved applications for accreditation under §17 SigG.
- Fortunately, the year 2001 saw a marked improvement in the security standards of the certification services offered in Austria.
- On December 17, 2001, Datakom Austria GmbH was the first Austrian certification service provider to be accredited for its a-sign Premium certification service (qualified certificates for secure electronic signatures).
- The Telekom-Control Commission also regards itself as responsible for server certificates.



## **PUBLISHING INFORMATION**

### **Owner and publisher:**

Austrian Regulatory Authority for Telecommunications and Broadcasting  
Mariahilferstrasse 77-79, A-1060 Vienna, Austria  
Telephone: (+43-1) 58058-0, Fax: (+43-1) 58058-9191  
E-Mail: [rtr@rtr.at](mailto:rtr@rtr.at)  
[http: www.rtr.at](http://www.rtr.at)

### **Responsible for content:**

Dr. Alfred Grinschgl  
Univ.Prof. Dr. Heinrich Otruba

### **Conceptual design and text:**

Austrian Regulatory Authority for Telecommunications and Broadcasting

### **Photos and illustrations:**

Austrian Regulatory Authority for Telecommunications and Broadcasting

This publication is protected by copyright. All rights reserved, especially to translations, presentations, the reproduction of illustrations and tables, broadcasting, microfilms or any other reproductions of this document, as well as storage in computer systems, even in cases where excerpts are used.

Copyright © RTR-GmbH 2002

Vienna, April 2002