

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

**Consultation Title** <http://www.ofcom.org.uk/consult/condocs/voipregulation/voipregulation.pdf> **Regulation of VoIP Services**

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**Deadline:** **3 May 06**

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### CONFIDENTIALITY

**What do you want Ofcom to keep confidential?** - **Nothing**

### DECLARATION

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## Consultation on the Regulation of VoIP Services

### Response of the Communications Management Association

#### Summary

Apart from Ofcom's proposals to improve consumer awareness at the point of sale and elsewhere, CMA members see little justification for moving from the status quo. Some of the remainder of Ofcom's proposals (possibly the main part) seem to be unduly intrusive, they threaten to act as a drag on investment and innovation, they are inconsistent with light touch regulation, they take little account of the impact on the VoIP market of the entry of telco-VoIP and they propose measures that would have so little positive impact on either business or citizen consumers that the cost and other burdens associated with their introduction call into question their justification.

Having said that, there are some lingering issues that are worthy of regulatory consideration and action. For example, the question of whether the limitation of GC 3 obligation to providers of service at a 'fixed location' is sustainable in the long term is of considerable importance and should not be left to find its own solution. Equally, the range of issues in Section 9 of the condoc are significantly more important to the future health of the non-telco VoIP industry than the issues raised in the main body of the consultation and deserve correspondingly greater attention.

Business consumers typically already have a good grasp of VOIP and what it means for their businesses. This includes what it can and cannot do. Such understanding will increasingly filter down from business "early adopters" to residential users over time. Therefore we feel that if Ofcom wishes to regulate VOIP services more closely, the consumer protection argument alone isn't sufficient to provide it with justification for doing so. Neither is it clear that innovation will be promoted by Ofcom's actions. Ofcom has focused rather too tightly on its duty to protect consumers and has failed to balance this adequately with its duty to remove barriers to entry and encourage innovation. There is a danger of regulating innovation out of the picture and negatively impacting levels of competition in the market - which is not in the business consumers' interest.

We fear that Ofcom's approach will extend its regulatory remit through the device of making the connection between VOIP services and PATS. The rationale for this is not clear. Indeed, in the Commission's FAQ on VOIP, published February 2005 (penultimate paragraph of section on emergency services) [the Commission said](#):

"The Commission considers that any automatic imposition of PATS obligations on ECS providers would impinge impermissibly on the commercial freedom of these undertakings to provide the services of their choice and would not be consistent with the intentions of the Authorisation Directive to encourage undertakings to enter new markets and to invest in innovative services"

We regret that we have found difficulty in grasping the meaning or intent of some other sections of the document and where this is so we have commented on them in the Appendix to this submission.

Our detailed response to Ofcom's questions follows. We are conscious that we have not done full justice to some of the issues and perhaps this can be explained in part by our inability to understand what was being asked of us.

## Response to Questions

Q1	<b><i>Given recent developments, do you agree that Ofcom's focus should be on the following three objectives in developing our policy for VoIP services, namely (in so far as is possible) (i) enabling innovation in a technological neutral way, (ii) ensuring consumers are well informed, and (iii) ensuring maximum availability of 999 services?</i></b>	Yes. (Presumably this will include 101, 112 as well as 999).  The 2000 White Paper, "A New Future for Communications" noted: <i>"New technology, generational change, and shifting consumer preferences are the key underlying drivers of the major changes we are experiencing. However regulation underpins all of those forces, mis-directing and obstructing them at its worst, encouraging them at its best. When it is ineffective or overbearing it can slow down change. When it is intelligent and farsighted it can make sure that change creates new opportunities which enhance people's lives."</i>  Does the linkage between VOIP and PATS go beyond the three objectives stated? Yes... Is this potentially harmful? Yes.
Q2	<b><i>Do respondents agree with this approach for the interaction between network providers and PATS providers?</i></b>	Yes. However, defining providers as PATS providers just because it may provide a legal basis for action is not the ideal approach. If Ofcom's regulatory ambitions really are as limited as set out by its three objectives, then why is there a need to make this link what a lighter-touch would be better? Making it imposes an avoidable regulatory burden.
Q3	<b><i>Do you agree that the limitation of GC 3 obligation to providers of service at a 'fixed location' is not sustainable in the long term? What views do you have on how this may be addressed?</i></b>	Yes – but the Ofcom text strongly suggests a preference for letting the problem find its own solution. This is a serious issue that demands to be addressed along with other significant issues listed in Section 9 of the condoc.
Q4	<b><i>In light of the other measures proposed in this document, are there particular issues in relation to VoIP services that should be addressed in this review?</i></b>	Section 9 of the condoc lists many of the issues that demand attention
Q5	<b><i>Are there particular issues in relation to VoIP services that should be addressed in this review?</i></b>	Access to VoIP is dependent on access to broadband. We note that once again the Commission has set its face against including broadband in the USO. However, we do not believe that there is anything in the Commission's stance that would prevent DTI from pressing ahead with a Universal Access Obligation covering the UK. Indeed, the Commission has made it clear that state-aided extension of broadband to the unserved areas is acceptable. The Prime Minister has set down his aims for Broadband Britain, and they are not being met at this time.  Will extending the control regime further facilitate the Prime Minister's goals? No.
Q6	<b><i>Do you have any comments on Ofcom's proposed modification to the PATS definition in GC 18?</i></b>	No. We have already made observations on PATS.
Q7	<b><i>Do you agree with the proposed application of the code?</i></b>	Yes
Q8	<b><i>Do you agree with the proposed approach for informing consumers that services may cease to function if the broadband</i></b>	Yes

	<b>connection fails or there is a power cut or failure?</b>	
<b>Q9</b>	<b>Do you agree with the proposed approach for informing customers where access to emergency calls is not available?</b>	Yes
<b>Q10</b>	<b>Do you agree with the proposed approach for informing consumers that access to emergency calls may cease to function if the Data Network fails or there is a power cut/ failure?</b>	Yes
<b>Q11</b>	<b>Should the code be extended to point of signature acknowledgement in respect of reliability of access to emergency calls?</b>	Yes
<b>Q12</b>	<b>Do you agree with the proposed approach to location information providers where the service does provide access to emergency calls? In particular, do you believe that subscribers should be required to register their main location prior to activation of the service?</b>	No and No
<b>Q13</b>	<b>Do you agree with the proposed approach to informing consumers where services do not provide emergency location information?</b>	No
<b>Q14</b>	<b>Do you agree with the proposed approach to informing customers where services do not provide number portability?</b>	Yes
<b>Q15</b>	<b>Do you agree with the proposed approach to informing consumers about the types of facilities that might not be available, but which they have come to expect from a telephone service?</b>	Yes
<b>Q16</b>	<b>Do you agree with Ofcom's view that all aspects of the code of practice should be mandatory?</b>	Not unless there is clarity on which providers are to be subject to the code – eg: to both peer to peer VoIP and telco VoIP providers?
<b>Q17</b>	<b>Do you consider that the overall programme of activities is appropriate?</b>	No. Not until Ofcom <i>adequately</i> ensures that it maintains harmony with EC activities such as the 2006 Review and the e-Commerce Directive. We note at para 4.6 9 (page 23) that discussions with the EU were only “informal,” and Ofcom then refers to its own internal review. For regulation in an area of such critical importance to the economy it is not understood why Ofcom should proceed on the basis of “informal” guidance from the Commission. What would be the effect if the EU subsequently adopted a formal position and UK regulation was out-of-step with it? This seems to us to generate, at very least, legal uncertainty. Further, in light of this, it would appear that the claim that this matter has been “discussed” with the Commission services is disingenuous (para 2.35 page 10, first bullet). No such formal discussions, according to para 4.6.9, have actually occurred, yet the inference is left at 2.35 that proper discussion had

		<p>occurred. We are left wondering if Ofcom's VOIP services strategy lacks sound underpinning.</p>
Q18	<b><i>In light of Ofcom's Consumer Policy Review, are there other consumer education measures that Ofcom should consider?</i></b>	<p>No – there is a danger of overkill. Consumers aren't stupid. Caveat emptor still exists, and business consumers are likely to resent excessive "nannying." It would be unfortunate if Ofcom's actions have the unintended economic consequences of causing fewer services and higher prices.</p>
Q19	<b><i>Do you have comments on this proposed enforcement approach?</i></b>	<p>No – the approach seems about right and no doubt will be adjusted in the light of experience.</p> <p>There is, however, an issue of timing. In tough market conditions to cease forbearance from August/September is far too soon – especially since the EU justification appears to be so flimsy.</p>
Q20	<b><i>Are their (sic) other areas of research activity that Ofcom should consider to ensure it understands market developments?</i></b>	<p>There is a growing need to monitor the extension of consumer lock-in and the erosion of the open-network model of the internet.</p>
Q21	<b><i>In relation to ensuring high availability of 999 access, are their (sic) other measures that Ofcom could consider?</i></b>	<p>No – enough is enough!</p>
Q22	<b><i>Do you agree with Ofcom's approach to naked DSL?</i></b>	<p>For the time being.</p>
Q23	<b><i>Do you agree a cross industry meeting would be a useful approach to move this issue forward? What other steps could be taken to provide support for 056 numbers?</i></b>	<p>Yes. We would like to take part.</p>
Q24	<b><i>How can a VoIP call be traced for detection and prevention of malicious and nuisance calls? How could a suitable call screening service work in a VoIP network?</i></b>	<p>If an answer to this is forthcoming then the problem of Spam is resolved!</p>
Q25	<b><i>Do you agree that SPIT could be a potential problem and what techniques can be used to minimise the impact of SPIT on consumers of VoIP services.</i></b>	<p>It is. VoIP providers are in a similar boat to that occupied by ISPs – the provision of heuristic and other filtering techniques – either free to the consumer or paid for as part of some larger package of services – is seen as a market differentiator. While the threat remains at a controllable level the most the regulator should do is to ensure that the small-print on service agreements allows fair comparison of like with like. Above that level the regulator must impose on all ISPs and ITSPs a duty to protect their customers.</p>
Q26	<b><i>Have there been any instances of a VoIP service being compromised or used to deliver malware or a DoS attack?</i></b>	<p>No comment</p>
Q27	<b><i>Are there any other considerations that need to be taken into account when a provider does not have a UK entity?</i></b>	<p>No – country of origin principle rules should apply, otherwise Ofcom is open to allegations of "Extra-territoriality."</p>

<b>Q28</b>	<b><i>Is it reasonable to ask VoIP service providers to participate in schemes designed for e-commerce?</i></b>	Of course it's reasonable to ask. But that doesn't mean it should be enforced.
<b>Q29</b>	<b>Do you have any other comments on the proposed approach to investigating the application of the GCs applicable to providers of PATS in the context of VoIP?</b>	No. Our comment on PATS occurs above.
<b>Q30</b>	<b>Do you have any comments on Ofcom's views on the meaning of above mentioned terms and legal concepts?</b>	We are not satisfied that Ofcom has a sufficient basis on which to take action based on an apparent lack of formal guidance from the EU. If there is no formal guidance, then the fact must be clearly stated before any of the proposals made in this consultation are implemented.
<b>Q31</b>	<b>Are there any other steps that a VoIP service provider could consider in respect of the IP network layer and service application layers to ensure network integrity?</b>	No comment
<b>Q32</b>	<b>Are there any other steps that a VoIP service provider could consider in respect of parts of the underlying network that they do not control?</b>	No comment
<b>Q33</b>	<b>What additional steps could a VoIP service provider take to support nomadic users with regard to maintaining network integrity?</b>	No comment
<b>Q34</b>	<b>Do respondents consider whether (sic) other options to ensure continuity in the case of a power outage are appropriate?</b>	No – not unless some form of UPS is to be mandated for every location.
<b>Q35</b>	<b>What other steps could be taken to provide reliable location to assist the emergency services in their work?</b>	We are not convinced that Ofcom should be deeply involved in this other than to “encourage” suppliers and lay down some guidelines.
<b>Q36</b>	<b>What other steps could be taken to provide reliable location to assist the emergency services in their work in the case of nomadic users?</b>	Within the next 5 years smart phones will probably be de rigeur and most of us could be GPS-enabled. Despite valid fears over privacy and identity protection, we are likely to see rapid growth in RFID, near-field communications and Bluetooth, all of which have some part to play in identifying user location. We suspect that this could be a “non-issue” in the medium term.
<b>Q37</b>	<b>In addition to participating in the NICC working group on providing location in IP networks and the 112 expert group, what other steps should Ofcom take?</b>	Technical steps? Probably none. Ofcom has previously said it seeks to be technically neutral.

## Appendix

### Comment on Specific Extracts from the Condoc

Para	Text	Comment
1.3	Consumers benefit most when new technology can be adopted quickly, when regulatory rules do not prevent new services from being offered, and when competition between old and new services occurs on a level playing field.	What does this mean? Regulatory rules can already prevent new services being offered (e.g. GSM Gateways) and Ofcom did not seem to be clear on what its own regulations actually meant in this case. The playing field will never be level – there is more than one field.
1.7	This document will be of relevance to all providers of VoIP services (whether or not they provide ‘publicly available telephone services’, known simply as “PATs”). It is not primarily aimed at operators deploying next generation networks (NGNs) although some issues may be relevant. As this document discusses regulation that is imposed on providers to protect consumer or end-user interests (including number portability), it may be of interest to consumers using and operators providing public voice services by means of other technologies (such as PSTN).	So who <i>is</i> it “primarily aimed at”? It is still not clear how the document affects Skype, GossipTel and BT (to name three very different players). The document should have plainly stated that it was principally aimed at peer-to-peer service providers (and variations thereof) and sought to offer protection to consumers.
2.5	In dealing with these opportunities and challenges, Ofcom identified its top level aims consistently with its principal statutory duty to promote the interests of citizens and consumers, as: <ul style="list-style-type: none"> <li>• to help create an environment in which new technologies can be developed and deployed successfully in the market, so that consumers can benefit from a wider and more innovative range of services;</li> </ul>	The bullet is the key consideration.
2.14	In respect of the provision of caller location information to support the work of the emergency services (questions 24 and 25), most respondents agreed in the main that it is technically feasible for NVS to provide such information. Many argued, however, that whilst feasible it was though technically complex. A significant minority said that they would	Too much is made of this. In the PSTN environment the “need” for caller location was not evident (especially where the caller’s number had been ported) and there is a danger that what was originally merely a convenient and useful by-product of mobile technology will become a

	like to see Ofcom and industry working groups taking a lead in developing a suitable solution.	mainstream requirement, involving significant investment and product delay.
2.21	Most respondents agreed that more robust and reliable services could be offered by NVS service providers through negotiating service level agreements (“SLAs”) with network/infrastructure providers (questions 21 and 22). One existing VoIP service provider, amongst others, indicated that entering into SLAs would be problematic where a NVS service provider is offering service across multiple networks. An existing network provider responded that they would prefer to have control over any voice service offered over its network.	It is hoped that Ofcom will take a robust approach to any network operator asserting “control over any voice service offered over its network”. The comment raises the spectre of the walled garden and introduces the argument over network neutrality.
2.36	In response to one of the key recommendations in the 2004 consultation, a group of providers have taken the initiative to develop a code of practice for VoIP service providers setting out the information that should be provided to purchasers and users of VoIP services. This code has now been developed and now needs to be formally implemented.	To <b>all</b> VoIP providers?
3.34	Next generation networks (including BT’s 21CN) deliver convergence by using a common access to provide multiple services including voice, data and multimedia with guaranteed quality of service. They have the potential to transform the way telecoms services (including voice services) are delivered and the features they offer. However, they also present a number of challenges. A number of aspects of Ofcom’s policy proposals for NGNs may be relevant to VoIP service providers including interconnection and future evolution of multi service broadband access.	<p>“A number of aspects of Ofcom’s policy proposals for NGNs <b>may</b> be relevant to VoIP service providers including interconnection and future evolution of multi service broadband access.”</p> <p>Since VoIP is critically dependent on the provision of broadband (and the underlying quality of the network), use of the word “may” seems curiously inappropriate.</p>
4.14	In the light of the above, Ofcom hereby withdraws its Essential Requirements Guidelines. Ofcom will instead apply the ‘reasonably practicable’ test set out in GC 3 on a case-by-case basis. In	The statement lacks any long-term commitment on such an important subject. Cybercrime is a steadily increasing threat, whether at the network or at higher levels on the

	<p>Ofcom's view, this approach (in combination with the proposed draft guidelines on the application of PATS obligations to providers of VoIP services at Annex 6 to this document), will provide the best balance between our objectives to promote innovation and competition, on the one hand, and to protect consumers, on the other hand. In particular, we consider that, taking such a case-by-case approach, would allow obligations to reflect the particular circumstances of a particular provider and also to ensure that the measures that providers take improve and adapt as technology evolves.</p>	<p>system. If the adoption of a laissez-faire approach is unavoidable at this time there is a need to set a date for review.</p>
<p>4.15</p>	<p>It is worth noting in relation to the Essential Requirements Guidelines that the Cabinet Office has been working with industry to develop a set of guidelines which are intended to set out best practice for the maintenance of network resilience, particularly in relation to those UK networks which form part of the critical national infrastructure. Such guidelines <b>may</b> be considered useful for consideration by service providers and infrastructure owners. Designers of systems using IP networks predominantly look to standards bodies such as ETSI, ITU, and the IETF for best practice in the design and optimisation of their networks.</p>	<p>“Such guidelines <b>may</b> be considered useful for consideration by service providers and infrastructure owners.”</p> <p>This statement is at best weak. Removing the Essential Requirements Guidelines doesn't reduce regulation - the Directives haven't changed. All it achieves is to increase the regulatory risk for new VOIP entrants who now have no way of knowing how Ofcom would react if someone claims their network should be more robust than it is.</p>

### **Footnote - CMA's Internal Consultation Process on Regulatory Issues**

Any consultation document (condoc) received by or notified to CMA is analysed initially by the appropriate Forum Leader for its relevance to business users based in the UK. (The majority of CMA's members are based in this country, with a third of them having responsibility for their employers' international networks and systems).

If the document is considered to be relevant to CMA, it is passed, with initial comments, to members of both the appropriate Forum and the 20 or so members of CMA's "Regulatory College" – ie: those members who have experience in regulatory issues, either with their current employer, or previously with a supplier. The CMA Chairman and CEO are also members of the College. The detailed comments from the College are collated by the Forum Leader in the form of a draft response to the condoc. Note: if the condoc has significant international import, the views of the international user community are likely to be sought. This is done through the International Telecoms User Group (INTUG).

The draft response may be sent to all user members of the Association, with a request for comment. Comments received are used to modify the initial draft. The final version is cleared with members of the appropriate Forum and Regulatory College (and, if the subject of the consultation is sufficiently weighty, with the CMA Board).

The cleared response is sent by the CMA Secretariat to the originating authority. It might be signed off by the Leader of CMA's Regulatory Forum, and/or by the CMA Chief Executive and Chairman.