

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Regulation of VoIP Services

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Vonage Limited (“Vonage”) Response to Ofcom’s Regulation of VoIP Services Consultation 22nd February 2006

Vonage welcomes the opportunity to respond to Ofcom’s Consultation on the Regulation of VoIP Services (“Consultation”). In our response we have concentrated on the following areas:

1. The consumer interest
2. Consequences of consumer choice
3. Access to emergency services
4. Number portability and PATS
5. Network integrity
6. Naked dsl
7. Off-shore service providers

1. The Consumer Interest

Vonage is firmly of the view that the consumer interest is best served by promoting effective competition amongst all communications providers. We believe that consumer interest and choice will benefit from the uptake of new services such as VoIP.

The availability of consumer information is a key tenet to consumer empowerment. Without access to information consumers cannot be expected to make informed choices about the products and services available to them. We appreciate and support fully the need for consumers to be given information about VoIP services and how VoIP services might differ from traditional PSTN telephony.

The wide range of products, services and technologies available to consumers can in the absence of adequate information lead to confusion in the market place. To avoid this level of confusion, all communications providers should be required to provide sufficient information to consumers for them to make informed decisions when choosing between providers, products and services. We are, however, concerned that in its Consultation Ofcom is proposing a consumer code of practice that imposes a disproportionate burden on VoIP service providers. We recommend strongly that all communications providers be required to follow a single code of practice prescribing the features (including any limitations) of their services. Consumer regulation must be technology neutral and must be targeted proportionately at all communications providers whether they are VoIP, ECS or PATS providers.

We would contrast the regulatory treatment that Ofcom is recommending for VoIP with the regulatory position of mobile operators who are not required to warn users about service restrictions and non-availability of access to 999/112 emergency services in areas where there is no or limited coverage. Publication of information and adherence to a code of practice by all communications providers will help ensure that consumers are better informed and will help protect consumers from harm caused by dishonest sales and marketing practices.

A balance needs to be struck between the degree of regulatory intervention required to ensure the availability of competitive new services and the need for consumers to be protected against harm.

Regulatory intervention should be technology neutral in its application without imposing an undue burden on legitimate providers. We believe that the current regulatory regime coupled with consumer legislation is sufficient to protect consumer interests. For example, communications providers are required to publish an Ofcom approved code of practice under General Condition 14. A pre-condition for approval of the General Condition 14 code is that the communications provider is also a member of an alternative dispute resolution scheme approved by Ofcom (i.e., OtelO or CISAS) and that the provider complies with the requirements of the dispute resolution scheme. In addition to the Ofcom mandated General Condition 14 code, as members of ITSPA, Vonage's VoIP activities are also governed by the ITSPA code of practice which governs the activities of all ITSPA members on a self-regulatory basis.

It is our view that consumer protection measures and legislation already in place serve to protect consumer interests. The burden of further untargeted regulatory intervention can stifle legitimate suppliers' activities and impede the growth of new competitive services such as VoIP. We believe that new regulation should be targeted specifically against unscrupulous suppliers with no incentive to reform and should not penalise legitimate providers. For legitimate suppliers there is every incentive to comply with current regulatory and statutory requirements without the need for imposing yet more mandatory regulation. We would therefore urge Ofcom to work with the VoIP industry to develop a self-regulatory approach to VoIP services and consumer protection and we would further urge Ofcom to apply its proposals in the Consultation proportionately to all communications providers.

We agree fully that consumers should be informed about the consequences of data network failures and power cuts. However, it is in the interest of consumers that any mandatory requirements apply to all service providers regardless of the technology involved (PSTN and mobile). PSTN and mobile providers, for example, should also be required to inform their customers about the consequences of power failures and loss of service (for example, powering issues with DECT phones/mobile handsets) and, in the case of mobile operators, loss of service and inability to make 999/112 calls in areas where there is no network coverage (which, of course, can include usage within buildings – a very important consideration for those consumers who use mobile services exclusively in the home to the exclusion of other fixed line services).

In the case of hardware purchased by consumers for use with VoIP services it has to be recognised that separate suppliers will invariably sell the service and the hardware. Handset suppliers will generally have no knowledge of the particular type of service that the handset will be connected to (VoIP or PSTN). For example, Vonage customers can use any telephone handset (DECT or otherwise) with the service – our customers can purchase a handset from any electrical retail outlet and simply “plug and go”. Hardware has multiple uses – handsets can be used with traditional PSTN services and VoIP services. Because service providers have limited visibility over the choice of handset used with the service there is an argument that it should be the responsibility of handset suppliers (not the service supplier) to inform their consumers

of hardware limitations such as powering issues with DECT phones and mobile handsets.

With regard to the draft code, greater clarity is needed regarding the point at which consumer information needs to be imparted. The current proposal is that certain information must be given as part of the “Sales Process”. However, the proposed definition of “Sales Process” is broad and potentially ambiguous. The definition should expressly exclude a service provider’s advertising and marketing activities. Save where no access to 999/112 emergency services is provided at all, it should be sufficient that service information is readily available from user guides, terms of service and service information available from providers’ web sites or customer service centres.

Consumer awareness and uptake of VoIP in the UK is increasing and we believe that Ofcom should regularly monitor consumer expectations of VoIP. When monitoring consumer expectations and awareness it is also important to poll consumers about their perceptions and understanding of other communications products and services (for example, limitations in DECT products and consequences in relation to access to 999 services; limitations in mobile services in relation to access to emergency services in areas where there is no network coverage, particularly given that some homes rely solely on mobile communications rather than fixed line services). We would also urge Ofcom to poll VoIP providers for information about their own customers’ perceptions of the service and understanding of service features. As consumer awareness of VoIP grows the need for mandatory regulation should be reviewed and removed where it is shown that the consumer interest is adequately safeguarded.

Regular monitoring by Ofcom of consumer awareness is necessary due to the fact that the uptake of VoIP is growing so rapidly. Consumers will quickly become aware of the features of VoIP (and any service limitations). It is therefore important that there is no scope for “regulatory lag” between the point of time that consumers become sufficiently educated about the use of VoIP and the point of time at which the consumer interest will not be harmed by the removal of mandatory regulation.

2. Consequences of Consumer Choice

We have already said in section 1 that information provided by communications providers to consumers must ensure that consumers are made fully aware of the range of services on offer. However, it is also fundamental that consumers are made aware of the consequences of exercising choice. The consequences of certain choices can, without the benefit of advance information, result in significant consumer detriment and harm.

The availability of new services such as VoIP means that consumers are facing a greater range of choices when looking at the best deals available to them. Consumers must consider a wide range of alternatives when choosing their providers, products and services. Choices include bundling voice (PSTN or VoIP) with broadband products and splitting services between different providers. This complexity of choice coupled with a lack of information can lead to loss of connections and an increase in the potential for mis-selling.

Loss of DSL connection on porting of a number from a traditional PSTN telephony service to a VoIP service is a consequence that consumers are unlikely to be aware of at the time they put in a request for number portability. The DSL connection supplied by a PSTN provider will be lost when the number has been ported across to the recipient VoIP provider and this will inevitably lead to consumer frustration and harm. This is a problem associated with current number portability processes - a consequence which must be made known to consumers before any decision is taken.

We therefore advocate that all communications service and network providers make available to consumers clear information about the consequences of the exercise of choice.

3. Access to Emergency Services

The widespread availability of access to emergency services is paramount to the interests and protection of consumers as well as the national interest.

VoIP extends the availability of access to emergency services, as was demonstrated by events in London last July and in the aftermath of hurricane Katrina in the US. Following these disasters, in cases when other PSTN and mobile services failed the only network that continued to work was the Internet. VoIP technology was successful in maintaining operations because of the redundancy and resilience inherent in the Internet.

VoIP services rely on high-speed Internet connections running over networks offering broadband access. Broadband is available through many different means such as cable, DSL, wireless broadband, even satellite. This flexibility allows VoIP services to work over any high-speed Internet connection anywhere and at anytime. Despite the network failures and the lack of power which affected traditional voice services following the July bombings and hurricane Katrina, VoIP customers were nonetheless able to continue to use the Internet to make calls.

When looking at access to emergency services and network redundancy we would urge Ofcom to recognise the role and benefit of all service and infrastructure providers. With this in mind, it is fundamental that regulation is not introduced that would favour one network or provider over another. Instead, we would encourage Ofcom to encourage a regulatory climate that fosters deployment of all types of network. A robust communications infrastructure includes traditional PSTN networks, mobile networks and the Internet over which services can operate. In times of national disasters, the availability of different types of network improves the chances of maintaining communications and ensuring connectivity and access to emergency services.

As mentioned above, events in London in July and in the US show that VoIP is an increasingly vital means of communication and we would advocate that Ofcom's regulatory policy towards VoIP and access to emergency services should encourage the deployment of emergency services via VoIP. We would argue that it is in the consumer and national interests that Ofcom's VoIP regulatory policy should

encourage that some form of emergency access is offered over VoIP rather than none at all.

We therefore recommend that providers continue to be allowed to offer emergency access on a “best efforts” basis subject of course to consumers being properly informed of any limitation in service when compared to more traditional PSTN 999/112 services. Current proposals in the Consultation (e.g., Ofcom’s proposed GC3 guidelines which place a strong emphasis on the negotiation of SLAs) will deter some VoIP providers from offering any form of emergency services access on the basis that to do so will force them to comply with the full range of PATS responsibilities and obligations – a disincentive for smaller providers to offer 999/112 access services at all.

Ofcom’s stated intention behind proposals in the Consultation is to encourage more robust emergency access services. However, as stated above, we believe proposals requiring VoIP providers of emergency service to be PATS will have a deterrent effect on some VoIP providers providing emergency access at all. In addition, the requirement that VoIP providers must comply with additional obligations (as proposed by Ofcom in the draft code of practice) is disproportionate to requirements placed on other traditional PSTN telephony providers and mobile operators. The outcome will be to disincentivise the availability of emergency access by some VoIP providers.

As regards the draft code of practice, we agree that consumers should be informed if the service does not provide access to emergency 999/112 calls at all.

Where the service does provide access to 999/112 we would be in favour of consumers being encouraged to register location details if the services are intended to be used primarily at a fixed location. However, we do not believe that this should be a mandatory requirement in view of the fact that it is implicit in VoIP services that the services are capable of being used from any location where there is broadband access. It will not always be practical to put the onus on providers to require consumers to update location information every time the service is being used from a new location (for example, in the case of temporary short term nomadic use from a wireless hotspot where BT’s emergency services data base is itself incapable of being updated in real time).

We are encouraged by Ofcom’s flexible yet focused approach to the provision of emergency location information and Ofcom’s policy of not mandating the supply of location information where it is not currently possible to do so. We support the cross industry approach of the NICC VoIP emergency location information task group where industry is working together to reach a workable solution. VoIP is still in its early years of development but the potential for the provision of location information will doubtless be more reliable and accurate over time.

4. Number Portability and PATS

Number portability is a consumer right. Ofcom’s principal duty in carrying out its functions as prescribed by the Communications Act is to further the interests of citizens in relation to communications matters and to further the interests of

consumers by promoting competition. We view the availability of number portability to all consumers as central to citizen and consumer interests. Number portability promotes effective competition by encouraging consumers to switch services. We believe that regulation should be developed in such a way to ensure there is no discrimination in portability rights and obligations between different network platforms and that consumer choice is not restricted by denying the right of all consumers to retain their telephone numbers when switching providers.

The regulatory framework should encourage consumers to port their numbers to any service (whether PATS or not) so long as consumers are given all the information they require to understand any differences in features between their current service and new services. Number portability should be available to consumers as a matter of consumer right regardless of whether or not the services in question are PATS or non-PATS. Whilst we do not disagree with the four “gating criteria” qualification for PATS, we see no logic in the link between the provision of emergency services (one of the qualifying gating criteria) and the requirement of being PATS for number portability purposes. The coupling of emergency services as a PATS requirement and being PATS as a prerequisite for number portability does not operate in the consumer’s interest at all.

Availability of number portability across all platforms will minimise the need for consumers to change their geographic numbers and achieve Ofcom’s goal of ensuring availability of telephone numbers – restricting number portability to PATS will be counter to Ofcom’s responsibilities of ensuring consumer choice and also ensuring conservation of telephone numbers.

It would seem implicit in Ofcom’s proposed policy that a PATS provider should not provide number portability to non-PATS providers and there is an implication that number portability should not be provided between non-PATS providers. We take this view in light of the statement in paragraph 5.12 of the Consultation that eligibility for number portability (and consequently, a communications provider being required on request to provide portability to another communications provider) will depend on 999 access being offered. To add weight to this view, paragraph 5.13 goes on to state that “if the publicly available service in question would not provide such 999 access, it would not constitute PATS in relation to a service to be used with a geographic number for the purposes of GC 18...As a result GC 18 would not apply...and therefore no rights (or obligations) in respect of number portability would be present.” Ofcom’s proposals would therefore restrict number portability to intra-PATS providers – a policy which is counter to the principle of consumer choice. This being the case, where is it mandated that PATS providers must inform their customers that they will not offer portability to non-PATS providers (a requirement on service providers under paragraph A8.13 of the draft Code which states that where a service provider does not offer number portability, the service provider shall provide clear and readily accessible information to this effect)? We believe it is in the consumer’s interest that number portability should be available regardless of a communications provider being PATS or non-PATS. We are seeing increasing demands from consumers to port their telephone numbers between different platforms. It is paramount to the development of number portability solutions that the interests of consumers are given the utmost priority. It is the interests of the consumer that must take precedence over the technical, operational and regulatory impediments implicit

in current PSTN routed regulation. Consumers do not, and cannot be expected to, understand the artificial distinctions and complexities between PATS and non-PATS services – we would urge Ofcom to simplify this entire area of regulation so that consumers have the right to number portability regardless of whether their chosen service is PATS or not. On the basis of technology neutrality, we believe strongly that rights and obligations relating to number portability must be consumer driven and not restricted by the type of service offered by communications providers.

5. Network Integrity

Ofcom's proposals in relation to network integrity need to be considered in light of what is reasonably practicable in the circumstances. Because VOIP providers will not usually control the underlying network, it is impracticable for VoIP providers to negotiate service level agreements ("SLAs") with network providers. Even where a service is one that is offered at a fixed location, it will not necessarily be clear who the network operator is.

VoIP providers are no longer operating in a traditional vertical network supply chain. VoIP, as is the case with almost all other Internet-based applications, has decoupled the notion that a service is tied or restricted to a particular network infrastructure. When considering any requirement to put in place SLAs it must be recognised that it is the customer who determines the means of broadband access and in many instances a VoIP provider will not know the identity of the access provider at all. Service providers therefore have very limited visibility over how the customer obtains access to the service. Any requirement to negotiate SLAs at the network provider level is both impracticable and unenforceable.

Whilst VoIP providers can readily accept responsibility for those parts of the network over which they have control, it will not be reasonably practicable to put in place SLAs with any network operator. There are very real practical difficulties in negotiating SLAs with network providers especially given the rapid growth of broadband access systems. A requirement to negotiate SLAs will require a huge amount of effort and resource (technical, operational and legal). This level of resource may not be available at all in-house and the cost of bringing in the necessary expertise can be prohibitive. The position is further complicated due to the fact that there is no obligation on network operators to negotiate and conclude SLAs with VoIP providers on reasonable commercial terms and within reasonable timescales.

ISPs do not provide availability or bandwidth guarantees to their own consumers. No guarantee is made as to the amount of capacity that will actually be available at any given time. ISPs advise their customers of bandwidth availability on an "up to" basis, e.g., "up to 1 MB" etc. Given that ISPs will not provide SLAs to their own customers there is no likelihood of VoIP providers being able to secure meaningful SLAs with ISPs. Indeed, from a competition point of view larger ISPs are highly unlikely to provide SLAs at all on the basis that to do so would encourage their customers to contract elsewhere for services in competition with services offered by a particular ISP. Given that no ISP has SMP, it will be impossible to force any ISP to provide SLAs.

With the growing uptake of broadband supplies, broadband must be viewed increasingly as a utility. As broadband becomes a utility service there will be yet more drivers in regulatory terms to decouple service provision from network/infrastructure provision. Mandatory requirements that service providers put in place SLAs with network providers have no place in a market where the broadband supply is a utility service. Requiring VoIP providers to put in place SLAs would be akin to requiring that suppliers of electrical consumer products and services have in place SLAs with the electricity utilities - an unworkable and impracticable concept.

In view of the difficulties with negotiating SLAs, we believe that it is the provision of consumer information which is central to ensuring that consumers understand the characteristics of those services they choose to buy. It is fair and right that consumers are provided with information about any limitations associated with the service. However, given that VoIP services are not tied or restricted to a particular network infrastructure and also that ISPs have no incentive to offer SLAs to service providers, any proposal for VoIP providers to negotiate SLAs is simply not practicable.

6. Naked DSL

We are pleased that Ofcom has made reference to naked DSL in its Consultation. Consumers must be given the right to choose their broadband and telephone providers independently without being forced to pay for a telephone line they may never use. A naked DSL product must be technology neutral and offered so that it best serves the principle of consumer choice through the separation of a customer's broadband access provider and voice provider.

We believe the consumer interest is best served by promoting effective competition and that the availability of a naked dsl product will accelerate the growth of a fully competitive communications environment. Naked DSL will ensure that consumers are not locked into arrangements for access services. The presence of a naked DSL product would promote competition and innovation in a technological neutral way by ensuring customer choice and effective movement between services and providers.

As already mentioned in section 2, Naked DSL will also benefit consumers by removing an artificial barrier to number portability (loss of a consumer's DSL connection on porting). Naked DSL would ensure that there is no loss of the DSL connection. There are distinct consumer advantages associated with Naked DSL: (i) it is to the benefit of consumers in that continuity of service is ensured through no loss of the DSL connection; (ii) consumers would not be required to continue to pay retail line rental charges for a service they no longer wish to subscribe to; and (iii) consumers would have the benefit of real choice between their broadband access provider and their voice provider.

Given that the PSTN line would no longer be supplied with naked DSL, we recognise the importance to consumers of ensuring that emergency access to 999/112 is made available when VoIP services are offered across naked DSL.

7. Off-shore Service Providers

Off-shore service providers: Compliant UK based VoIP service providers could be disadvantaged by overseas providers offering services to UK consumers not in compliance with UK regulation. Taking enforcement action against non-UK based service providers is very difficult and largely ineffective. One approach we would encourage Ofcom to consider is the withdrawal of geographic numbers allocated to any off-shore service provider not complying with UK regulation and the refusal to allocate geographic numbers to providers with a previous history of mis-use. Where numbers have been sub-allocated to a service provider by a network operator, one approach would be for Ofcom to direct that the allocating network operator withdraw and bar access to all numbers sub-allocated to offending providers.

Conclusion

The consumer interest is best served by promoting competition and by ensuring that a wide range of communications services is available for consumer consumption. We believe that regulation should be technology neutral and targeted proportionately at all communications providers whether they are VoIP, ECS or PATS providers. Most consumers are unaware of, and cannot be expected to comprehend, the distinctions between VoIP, ECS and PATS services. We believe the role of Ofcom should be to create an environment that ensures all these services are available to consumers as of right regardless of the technology and the platform over which they are delivered.

Vonage Limited
May 10th, 2006