



# **Wanadoo**

## **Response by Wanadoo to Ofcom's statement and consultation on the regulation of VoIP services**

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# Wanadoo UK plc response to Ofcom's statement and consultation on regulation of VoIP services

## 1 Introduction

Wanadoo UK plc (Wanadoo) is a leading Internet Service Provider (ISP) and part of the France Télécom group. With approximately 13 million internet access customers of which approximately 8 million are broadband customers, Wanadoo is the largest broadband ISP in Europe and the second largest in the world. Wanadoo welcomes the opportunity to respond to Ofcom's statement and consultation on the regulation of Voice over IP (VoIP) services.

Wanadoo currently offers its retail customers in the UK a VoIP service delivered over broadband (sometimes referred to as Voice over Broadband (VoB)), branded Wireless & Talk. This is Wanadoo's first offering in the UK voice marketplace. Wireless and Talk is a basic product, but Wanadoo intends to develop its VoB offerings over the coming months and years. The types of calls which can currently be made via Wireless & Talk (i.e. the number of destinations) are currently limited. Even with its current product range, Wanadoo has over 150,000 active Wireless & Talk customers, making it the largest "paid for" residential VoIP service within the UK market.

Wanadoo is currently undertaking a significant investment in local loop unbundling in the UK and has recently submitted a Statement of Requirements (SoR) to Openreach for the provision of a Basic Copper Access (BCA) product. The combination of these two regulated wholesale access products will enable Wanadoo to offer (on a national basis) a primary line voice service that removes the traditional Public Switch Telephone Network (PSTN) line from the home completely and replaces it with a VoB line (and associated broadband services) provided by Wanadoo.

Wanadoo expects to be a significant stakeholder in the voice market and therefore the proposals of this consultation are of particular interest. Wanadoo looks forward to discussing the issues raised in this response with Ofcom in more detail. Please contact Johanna Pimentel to arrange a meeting.

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## 2 Executive Summary

### 2.1 Overview

Wanadoo supports Ofcom's proposals, which will protect the interests of citizen-consumers, by promoting secure and reliable access to emergency services without stifling innovation.

### 2.2 Wanadoo's main points

Wanadoo welcomes Ofcom's decisions and strongly supports their proposals. Wanadoo believes that they strike the right balance between imposing appropriate and proportionate consumer protection measures and regulating in a technologically neutral way that does not hinder innovation and investment. However, as Wanadoo has noted in response to other consultations, the principle of technologically neutral regulation is a cornerstone of the European regulatory framework for electronic communications, and Ofcom should therefore take utmost account of this principle.

VoIP is a technology, not a service. VoIP enables a very traditional service (voice communication) to be delivered in new ways. Voice communication services delivered over the differing infrastructures of the PSTN and broadband networks differ in their technical characteristics. Wanadoo strongly supports Ofcom's aim to protect consumers. Wanadoo, by participation in the New Voice Services working group, is already in discussion with consumer bodies and representatives about their concerns and is voluntarily complying with the draft code to build consumer confidence.

However, mandatory consumer protection rules need to be technologically neutral and based on an objective and proportionate assessment of what consumer protection measures are required, not based around the technical capabilities of the PSTN to the exclusion of services offered over broadband networks. Mandatory consumer protection rules should be applied to all providers of voice communications services in a non-discriminatory way, and not targeted solely at VoIP providers. Consumers buy the ability to make voice telephone calls and they should be given the same protections regardless of whether they buy from a VoIP provider or a provider using the PSTN.

Wanadoo is very concerned that the UK rules should permit efficient market entry by responsible UK-based VoIP providers such as Wanadoo. It fears that if the rules were to have the effect of excluding or restricting such market entry, consumers would still continue to purchase VoIP services, but from off-shore VoIP providers outside Ofcom's jurisdiction, and whom may not address even the most basic consumer protection issues. This would not build public trust in new services and would be detrimental not only to responsible VoIP providers such as Wanadoo, but to the UK as a whole.

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### 3 Responses to Consultation Questions

**Q1 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?**

Ofcom is subject to a number of statutory duties. These include Ofcom's duties to:

- further the interests of citizen-consumers, where appropriate by promoting competition;<sup>1</sup>
- promote competition, in fulfilling European obligations;<sup>2</sup> and
- regulate in a technologically neutral way, in fulfilling European obligations.<sup>3</sup>

In fulfilling these duties, Ofcom is required to secure the availability throughout the UK of a wide range of electronic communications services<sup>4</sup> and must have regard to the regulatory principles of transparency, accountability, proportionality, consistency and that regulatory activity should be targeted only at cases where action is needed.<sup>5</sup>

To the extent that Ofcom considers it relevant, Ofcom must have regard to the desirability of promoting competition, encouraging investment and innovation and the availability and use of high-speed data transfer services.<sup>6</sup>

Wanadoo agrees that it is entirely consistent with Ofcom's statutory duties for Ofcom's objectives to be to:

- enable innovation in a technological neutral way;
- ensure consumers are well informed; and
- ensure maximum availability of 999 services.

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<sup>1</sup> Section 3(1) of the Communications Act 2003 (the Act).

<sup>2</sup> Section 4(3) of the Act.

<sup>3</sup> Section 4(6) of the Act. Article 8(1) of the Framework Directive sets out the policy objectives for National Regulatory Authorities (NRAs). Article 8(1) it sets an over-arching requirement that NRAs "take the utmost account of the desirability of making regulations technologically neutral" - this was transposed by s4(6) of the Act. Article 8(1) sets out specific objectives which NRAs should take "reasonable measures to achieve" in articles 8(2)-8(4). These are transposed by s4(3)-4(5) and s4(7)-4(10) of the Act. This over-arching requirement for NRAs to take utmost account of technological neutrality is perhaps not given the prominence it has in the Framework Directive in its transposition into UK law. Nevertheless, Wanadoo submits that as a matter of community and UK law, Ofcom should give utmost regard to this requirement and that it should be the starting point for its policy.

<sup>4</sup> Section 3(2)(b) of the Act.

<sup>5</sup> Section 3(3) of the Act.

<sup>6</sup> Section 3(4) of the Act.

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However, as highlighted above (and in Wanadoo's responses to previous Ofcom consultations on this subject), VoIP is not a service – it is an enabling technology.

Wanadoo's view is that Ofcom's is required, by reason of its statutory duties, to ensure that these objectives apply to voice services generally, whether they are delivered over the PSTN or over broadband networks. Competitively neutral regulation requires that regulation is "technologically neutral": to do otherwise would be to discriminate between different groups of market participants in a way that is inconsistent with both Ofcom's policy aims and its statutory duties.

### **Q2 Do respondents agree with [our suggestion that PATS providers should seek to negotiate SLAs with network providers] for the interaction between network providers and PATS providers?**

Wanadoo agrees with Ofcom's approach. A proportionate regulatory response to this issue is to encourage and facilitate, but not mandate these commercial arrangements.

### **Q3 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?**

Whilst the Universal Service Directive is in force, Ofcom clearly must comply with its requirements, and also the requirements of the Authorisation Directive which prohibits the imposition of non-specified regulatory conditions. However, as Ofcom notes, the dichotomy between fixed and mobile services is breaking down and becoming increasingly blurred by convergent and nomadic services. Whilst the 2006 review provides some scope for Ofcom to seek amendment of the Universal Service Directive, any changes are likely to take some time to be implemented (even if agreed). Ofcom therefore needs to address the reality of market changes within the scope of its legal constraints.

Wanadoo agrees that the limitation is unsustainable in the long-term. As a result, subject to permissive changes in the European framework, Wanadoo would support an approach where the restriction of the obligation to fixed services is removed provided that the obligation to comply is subject to a test of reasonable practicability. Although Ofcom, as noted above, is not able to impose requirements on non-fixed (i.e. nomadic) services, Wanadoo would be happy to voluntarily comply with the General Condition 3 obligations in respect of nomadic services to the extent that it is able to do so.

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### **Q4 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?**

Wanadoo would welcome clarification from Ofcom as to the obligations attached to different offerings, and how these differ. In particular Wanadoo believes Ofcom needs to consider how the rules might apply differently to business offerings as the consultation takes consumer broadband as an example and paradigm and does not discuss how rules applicable to business products might differ.

### **Q5 Are there particular issues in relation to VoIP services that should be addressed in [the UK's input into the EU 2006 review]?**

In Wanadoo's view, the following VoIP related issues need to be addressed in the 2006 review:

- the **definition of PATS** should be revisited. The definition should focus on the type of service being provided (available to the public, in- and out-bound national and international calls, and identified by a number in the national numbering plan) but exclude the current access to emergency services requirement. Access to emergency services should be dealt with as a general obligation imposed on those meeting the revised definition of PATS (and not as a gating criteria of PATS); and
- as discussed in the response to Q3, **network integrity obligations being restricted to fixed PATS** should be widened, but the obligation softened so that communications providers are only obliged to take reasonably practicable steps.

### **Q6 Do you have any comments on Ofcom's proposed modification to the PATS definition in GC 18?**

Wanadoo agrees with Ofcom's proposal to link the right to number portability to PATS. However, Wanadoo notes that:

- it is not clear that the benefits of change to the status quo necessarily outweigh the costs of Ofcom's proposed modification;
- voluntary number portability to, from, or between non-PAT Services is not prohibited by the Universal Services Directive. Wanadoo is aware that such arrangements are being put in place commercially. Since these arrangements are pro-consumer, Wanadoo suggests Ofcom ensures that these voluntary arrangements are not prohibited or inhibited by regulatory action; and

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- should the European Framework be changed to encourage inter-platform portability, Ofcom may need to revisit this issue in the future.

### Q7 Do you agree with the proposed application of the [draft consumer protection] code?

Wanadoo supports Ofcom's general approach.

Wanadoo participated in the New Voice Services working group and recognises the constructive approach adopted by all parties. Whilst Wanadoo supports the broad aims of the proposed code, Wanadoo suggests that:

- in order to be **technologically neutral** the code should **apply equally to all providers of voice services** – PSTN and VOIP. This means that its starting point should not be "How does this service differ from a service provided over the PSTN?", but rather "What information do consumers need to know?". The current approach is discriminatory against providers of VoIP services with respect to providers of traditional PSTN voice services and does not meet the requirement for technologically-neutral regulation;
- in order to be **proportionate** to the potential risk it is designed to address, the code should **only be mandatory in relation to access to emergency services**, and that its other provisions should have the status of "recommended best practice", but not constitute legally-enforceable obligations. However, in order to build confidence and transparency it would be proportionate for Communications Providers to publish their own codes; and
- it should be **integrated with existing code requirements** set out in General Condition 14, and should not be a separate code.

This approach is in line both with Ofcom's statutory duties and its policy approach outlined in its 8 February 2006 consultation: "*Ofcom's consumer policy: a consultation*".

### Q8 Do you agree with the proposed approach for informing consumers that services may cease to function if the broadband connection fails or there is a power cut or failure?

As set out in response to Q7, with the exception of access to emergency services, this provision should have the status of "recommended best practice", but not constitute a legally-enforceable obligation.

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### **Q9 Do you agree with the proposed approach for informing customers where access to emergency calls is not available?**

Wanadoo agrees with the proposed approach.

### **Q10 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?**

Wanadoo agrees with the proposed approach. However it should be noted that this should apply equally to all forms of voice services, including those provided over Next Generation Networks, such as BT's 21<sup>st</sup> Century Network (21CN).

Although it is understood that under 21CN, voice traffic will utilise a PSTN connection from a customer premises to an exchange, such voice traffic will thereafter be carried over a similar core data network as would, for example, VoIP traffic be carried and would therefore be subject to the same risks of network failure / power outage.

As mentioned above, the issue of technological neutrality is fundamentally an issue of competitive neutrality. Ofcom must take the utmost account of the desirability of making regulations technologically neutral if it wishes to ensure effectively competitive voice markets.

### **Q11 Should the code be extended to point of signature acknowledgement in respect of reliability of access to emergency calls?**

Wanadoo notes that this issue was not agreed in the industry working group. As set out in the response to Q7, if implemented this proposal should have the status of "recommended best practice", but not constitute a legally-enforceable obligation.

### **Q12 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?**

The code only applies to communications providers, not subscribers, so it is unclear how in practice Ofcom intends to impose or enforce this requirement. Although imposing an obligation to take reasonable steps to obtain this information could be imposed, again as set the response to Q7, such a provision should have the status of "recommended best practice", but not constitute a legally-enforceable obligation.

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### **Q13 Do you agree with the proposed approach to informing consumers where services do not provide emergency location information?**

As set out in the response to Q7, this provision should have the status of "recommended best practice", but not constitute a legally-enforceable obligation.

### **Q14 Do you agree with the proposed approach to informing customers where services do not provide number portability?**

This provision should have the status of "recommended best practice", but not constitute a legally-enforceable obligation (see the response to Q7). In addition, it should apply to providers of all voice services, not just VoIP providers.

### **Q15 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?**

As set out in the response to Q7, this provision should have the status of "recommended best practice", but not constitute a legally-enforceable obligation. To the extent that it is imposed, it should apply equally to all providers of voice services.

### **Q16 Do you agree with Ofcom's view that all aspects of the code of practice should be mandatory?**

In Wanadoo's view the code should be proportionate to the potential risk it is designed to address. Therefore, Wanadoo believes the code should only be mandatory in relation to access to emergency services, and that its other provisions should have the status of "recommended best practice", but not constitute legally-enforceable obligations.

In Ofcom's Consumer Policy Consultation, Ofcom's sets out the view that an effective consumer protection regime needs to have well-designed regulations governing supplier behaviour – establishing the rights required to give consumers an appropriate level of protection without imposing an undue burden on suppliers. In Wanadoo's view this means that the code, apart from those aspects dealing with access to emergency services, should be voluntary. See the response to Q7 above.

### **Q17 Do you consider that the overall programme of activities is appropriate?**

Subject to the caveats set out elsewhere in this Response, Wanadoo agrees that Ofcom's programme of activities is appropriate. Wanadoo would be happy to engage in Ofcom's activities.

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### **Q18 In light of Ofcom's Consumer Policy Review, are there other consumer education measures that Ofcom should consider?**

Wanadoo supports Ofcom's activities, but notes that it would expect the majority of marketing and consumer education to be led by industry, not Ofcom.

### **Q19 Do you have comments on this proposed enforcement approach?**

Wanadoo supports a proactive enforcement approach, as this will help to build consumer confidence. This would also be in line with the policy approach outlined in the Consumer Protection Consultation.

### **Q20 Are there other areas of research activity that Ofcom should consider to ensure it understands market developments?**

Ofcom's current research agenda seem appropriate for its requirements.

### **Q21 In relation to ensuring high availability of 999 access, are there other measures that Ofcom could consider?**

Wanadoo suggests that Ofcom monitors the outcomes delivered by its regulatory proposal and the market before considering any additional measures.

Ofcom should carefully consider the overall impact of its proposals. If, as a result of Ofcom's proposals, providers opt to remain ECS (and therefore are prohibited from offering any access to emergency services), this would be a concerning outcome. However, if as a result of Ofcom's proposals, providers opt to offer a PAT Service (in the knowledge that the PATS obligations are achievable for VoIP services), this would be a welcome outcome. Success of Ofcom's proposals should therefore be measured on the availability of access to emergency services. Should this proposal fail to achieve high availability of access to emergency services, Ofcom should consider changing its position to continue the interim forbearance policy.

### **Q22 Do you agree with Ofcom's approach to naked DSL?**

Wanadoo agrees with Ofcom's analysis that naked DSL will deliver consumer benefits. Wanadoo has submitted a Statement of Requirements to Openreach for the introduction of Basic Copper Access. Wanadoo welcomes Ofcom's indication that it will use its dispute resolution powers to intervene if commercial agreement cannot be reached but has every confidence that Openreach and Wanadoo (together with other signatories to the Statement of Requirements) will use their best endeavours to bring these discussions to a satisfactory conclusion.

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### **Q23 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?**

Wanadoo agrees that a cross-industry meeting would be a useful starting point.

However, Wanadoo suggests that Ofcom should review whether the current regulatory rules are sufficient to deliver end-to-end connectivity for subscribers in a multi-operator environment. Failure to do so is clearly detrimental to the interest of the citizen-consumer and where there is a market failure, Ofcom should move to intervene more decisively than it has to date.

Wanadoo is very concerned that there is not a clear process, backed by robust regulatory action, to ensure end-to-end connectivity. The ability to call any other number is a key consumer requirement and Wanadoo is concerned with the precedent set by the delay in opening up the 056 number ranges and the negative consumer perception of VoIP services this causes.

### **Q24 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?**

This depends on the service configuration, but Wanadoo is working, and will continue to work, with the Home Office on this issue.

### **Q25 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?**

Wanadoo has no experience that this is a problem. Wanadoo suggests that both industry and Ofcom should monitor the situation and, should this become a problem, that would be the appropriate time to address the issue.

### **Q26 Have there been any instances of a VoIP service being compromised or used to deliver malware or a DoS attack?**

Wanadoo has no experience that this is a problem. Wanadoo suggests that both industry and Ofcom should monitor the situation and, should this become a problem, that would be the appropriate time to address the issue.

### **Q27 Are there any other considerations that need to be taken into account when a provider does not have a UK entity**

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In reality, it is very difficult for Ofcom to take enforcement action against entities offering services from outside the jurisdiction. There are significant legal obstacles to Ofcom extending its extra-territorial reach so instead Wanadoo urges Ofcom to ensure that the UK is an attractive environment in which to do business.

If the UK regulatory regime encourages responsible on-shore market participants, that will disincentivise the move off-shore, thus removing the associated problems. However, if responsible on-shore players are excluded from the market through excessive regulation (e.g. maintaining the status quo with respect to network integrity obligations) that will create a market opportunity that is likely to be filled by unregulated off-shore providers, to the detriment of both UK consumers and UK communications providers.

### **Q28 Is it reasonable to ask VoIP service providers to participate in schemes designed for e-commerce?**

This issue would appear to be outside the scope of Ofcom's remit and Wanadoo questions why it has been raised.

### **Q29 Do you have any other comments on the proposed approach to investigating the application of the GCs [3 (Network integrity) and 4 (999 Access)] applicable to providers of PATS in the context of VoIP?**

As highlighted elsewhere in this Response, Wanadoo supports Ofcom's approach on this issue.

### **Q30 Do you have any comments on Ofcom's views on the meaning of abovementioned [e.g. PATS, ECS, signal, conveyance, content service, public availability, originating and receiving calls, numbers in national or international numbering plan, access to emergency organisation, fixed location] terms and legal concepts?**

In general, Ofcom's views are uncontentious. However, Ofcom's discussion of whether a service is "publicly available" or not is not based on statutory interpretation or case law and does not seem to shed any meaningful light on interpretation of the term. Indeed, Ofcom's examples and suggestions, if anything, confuse the situation further.

Wanadoo therefore suggests that Ofcom does not issue guidance and considers this issue as it arises within the particular context of any decision that Ofcom is required to make.

### **Q31 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?**

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Wanadoo believes that the key elements mentioned in A6.65 to A.6.69 are generally the most relevant. However the way in which each network is configured will determine the individual relevance of each measure. Wanadoo therefore supports Ofcom's proposal that a formal risk assessment is a reasonable approach to ensure compliance with General Condition 3.

Please note that the elements mentioned in A6.68 are not directly related to service availability. A more meaningful approach would be for the specific service provider to consider the Mean Time Between Failures of the different network components to provide an overall target for end-to end service availability.

### **Q32 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?**

Ofcom's proposed approach seems reasonable. However, Wanadoo notes that it is reliant on SLAs offered by BT, which in many cases are unsatisfactory. Wanadoo therefore suggests that Ofcom should assess compliance by considering the steps that a VoIP provider has undertaken, as opposed to the underlying SLAs agreement which depends as much on the network provider as the VoIP provider.

### **Q33 What additional steps could a VoIP service provider take to support nomadic users with regard to maintaining network integrity?**

Wanadoo has no additional suggestions on this issue.

### **Q34 Do respondents consider whether other options to ensure continuity in the case of a power outage are appropriate?**

Wanadoo has no additional suggestions on this issue.

### **Q35 What other steps could be taken to provide reliable location to assist the emergency services in their work?**

Wanadoo is working with the NICC, industry and the emergency services to identify what additional steps could feasibly be taken.

### **Q36 What other steps could be taken to provide reliable location to assist the emergency services in their work in the case of nomadic users?**

Wanadoo is working with the NICC, industry and the emergency services to identify what additional steps could feasibly be taken.

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**Q37 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?**

The NICC is dominated by traditional PSTN operators who have a vested interest in maintaining the status quo. Wanadoo suggests that Ofcom should take a more proactive role in encouraging the NICC to speedily address the issues before it.