

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: *Changes to General Conditions and Universal Service Conditions - Implementing the revised EU Framework*

To (Ofcom contact): Selina Chadha

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Representing (self or organisation/s): Skype

Address (if not received by email):

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Nothing	<input checked="" type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
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Name

Jean-Jacques Sahel

Signed (if hard copy)

Ofcom
For the attention of Selina Chadha

E-mail: GCUSC.condoc@ofcom.org.uk

Luxembourg, 7 April 2011

Response of Skype Communications S.à.r.l. to Ofcom's consultation: "Changes to General Conditions and Universal Service Conditions - Implementing the revised EU Framework".

Skype Communications S.à.r.l. (hereafter 'Skype' www.skype.com) is a Luxembourg-based provider of peer-to-peer software applications which enable Skype users to communicate with other Skype users, and enabling, optionally and where possible, certain forms of communication with the subscribers of electronic communications networks and services.

Please find hereby Skype's brief response to Ofcom's consultation.

A. General Remarks


Skype welcomes the opportunity to comment on Ofcom's proposals relating to the implementation of Directives 2009/136/EC and 2009/140/EC in the UK.

Given that most of the proposed amendments to the General Conditions and Universal Service Conditions are directly lifted from the EC Directives, our comments are focused on areas where we believe that Ofcom may not be fully reflecting the letter and/or intent of the EC Directives, or where we believe that Ofcom's proposals are not sufficiently forward-looking.

In particular, our comments focus on the fact that:

- a) Ofcom is proposing to extend requirements which are linked to the concept of PATS beyond the scope of application intended by the EC Directives, and
- b) Ofcom appears to be missing an opportunity to adopt more forward-looking approaches to numbering (UK numbering and ETNS) and to standardisation.

Technology is beginning to enable everyone (including small organisations and individuals) to benefit from entirely new communications possibilities which are not intrinsically constrained by geography, and which can be self-provided, software



applications, services, embedded on hardware, etc. Enabling the extension of these benefits, including through revised numbering arrangements, is very important for overall economic and social development and would address not only latent demand, but also existing and explicit demand of businesses of all sizes, and of individual citizens, because it enables new forms of citizen organisation, productive organisation, public administration, etc. and enhances collective and individual welfare.

We also wish to highlight that several countries have already fully recognised the obsolescence of geographic boundaries in numbering and the obsolescence of differentiated numbering arrangements between fixed and mobile is imminent (the United States and to some extent Denmark¹ have already recognised this obsolescence; the full implementation of the European Commission's Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU², and Ofcom's recent implementation thereof as regards mobile call termination, should accelerate this process).


Experience (of a much wider community of interests than the Skype user community) demonstrates unequivocally that there is not only latent, but quite manifest, demand from end-users (individual citizens, non-profit organisations, public administrations, businesses small and large) for:

- the assignment of national numbers outside of the traditional telephone zones or other boundaries, including trans-nationally.
- the assignment of global or pan-European numbers.
- the assignment of numbers without reference to traditional telephone services, which can be used for any purpose using any technology.
- the assignment of all types of numbers directly to end-users and directly to entities that are not providers of electronic communications networks or services.

Given these developments, Skype is fundamentally of the opinion that the right to use E.164 numbers, including geographic numbers, and the approach to sub-allocation of numbers, should not be restricted to particular geographic areas, to particular technical solutions, to particular business models, to particular usage cases, or to a particular status that are predetermined.

¹ See pages 21, 22 and 30 of the Guide to the Danish numbering plan:
<http://en.itst.dk/telecom-internet-regulation/filarkiv-numbering-issues/Nummervejledning%20dec%202009EN.pdf>

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:124:0067:0074:EN:PDF>




On the basis of the above, we advocate that Ofcom should trigger a far more profound evolution of numbering in the UK.

With number location and service losing their significance in users' eyes, both because numbers are increasingly used as mere identifiers and because of increased mobility, Ofcom, and the EU more generally, should move towards a system that truly serves the needs of the European population and its economy and achieves the Single Market, enabling EU-wide or global use of numbers, irrespective of borders, with numbers attached to and identifying end-users themselves if they so wish, or their devices if they so wish, or attached to a provider if the end-user so wishes.

Finally, the revised Directives aim to protect 'net freedoms and net neutrality', according to the European Commission's statement welcoming their adoption. Indeed, in the UK the vast majority of mobile consumers are prohibited or over-charged in order to access and use the services and applications of their choice on the Internet. Skype therefore urges Ofcom to address this problem specifically in the General Conditions. In line with Article 8.4(g) of the Better Regulation Directive which mandates NRAs to promote "*the ability of end-users to access and distribute information or run applications and services of their choice*", Ofcom should apply a prohibition on harmful discrimination against specific content, application, source, origin, destination or protocol, stating explicitly – in sections 10.16-10.17 on switching and/or sections 11.12-11.13 on GC20 and 'access to numbers and services' - that:

- it is not acceptable for network access providers to block, degrade or surcharge the use and distribution of particular content, applications or services on the Internet;
- traffic management practices can be deemed 'acceptable' or 'reasonable' if they can be explained as being relevant, proportionate, necessary, and non-discriminatory;
- the extraction of payment for traffic delivery on the best efforts, global public Internet runs counter to overarching policy objectives, including the well-established objective of furthering the development of the open Internet.
- traffic management techniques should also not be substitutes for an increase in capacity whenever possible: the authorities should protect the best efforts Internet from becoming a low speed, low capacity 'dirt road'.

Further, current dispute resolution procedures currently do not allow for either consumers or for online content, service and application providers to raise complaints with Ofcom about these matters – which would explain why Ofcom has declared it had received no complaint about these issues so far. It is also unclear whether and



how Ofcom would be able to take own-initiative action on such key Internet-related issues other than perhaps relating to end-users' minimum Quality of Service.

It is worth noting that other authorities around Europe, such as in France and Spain, have already specified their contrary understanding, whereby the new rules would enable them to both give Internet users the ability to initiate complaints, and for the NRA to take own-initiative action to remedy abuses. The lack of complaints about the issue of 'net neutrality' in the UK stems precisely from the fact that no complaint can actually currently be initiated in this field. We would therefore encourage Ofcom to also clarify in the General Conditions that Internet users or Ofcom can initiate action on these key Internet-related issues.

B. Response to Ofcom's Questions

Please find below Skype's short-form responses to Ofcom's questions, with reference to the overall position we advocated in Section A. above.

Q1. Do you agree with our proposed approach to definitions?

Answer to Q1:


In Paragraphs 3.12 and 3.13, Ofcom proposes to delete the definition of Public Telephone Network (PTN) and update references throughout the GCs and USCs such that they refer to Public Electronic Communications Network (PECS), defined by reference to the Act. This proposal affects GCs 3, 4, 5, 9, 12, 14, 16, 17, 18, and 24, and well as USCs (not discussed here).

Skype believes that this has the effect of extending requirements which are linked to the concept of PATS beyond the scope of application intended by the EC Directives, including the placing of onerous requirements on providers of PECS, even where these providers of PECS do not themselves provide PATS or do not support the provision of PATS by third parties on their networks.

On the basis of what is stated above, we urge Ofcom to revisit its proposal to systematically substitute PTS by PECS throughout the GCs, and to reassess, in each case, whether or not this is suitable and proportionate.

For example, in GC 3.3, we do not believe that it is suitable and proportionate to substitute PTN by PECS, and we suggest re-formulation as follows:

*3.3 For the purposes of this Condition, "Communications Provider" means a person who provides a Public Telephone Electronic Communications Network **supporting Publicly Available Telephone Services** and/or provides Publicly Available Telephone Services.*



We also believe that, for the foreseeable future, CG5.4a (emergency planning), GC 12.1 (itemised billing), GC16 (DTMF and CLI) should remain related to the provision of PATS, and that it is inappropriate or at least very premature to aim to impose these types of requirements on providers of new forms of communications, and on the networks underlying such new forms of communications. In this context, we refer to Ofcom's own recognition of network-independent nature of certain offerings, and to the use of applications and services across multiple underlying networks. We also add that users of new forms of communications do not expect these to replicate all features of traditional publicly available telephone services.

In addition, we observe that the UK's definition of "electronic communications service" (ECS) contained in Article 23(2) of the Communication Act 2003 (as amended) is not in line with the definition of ECS contained in the Framework Directive 2002/21/EC, and is not proposed by the BIS consultation document or by Ofcom to be brought in line.

An important element of the definition of ECS is that it should capture services which are "[...]normally provided for remuneration [...]". We strongly suggest that this element be included in the definition, if not in the Act then certainly in the GCs. Making this change is clearly in line with Ofcom's duties to promote competition and societal and citizen interests, and fits well with the Government's drive to promote entrepreneurship and social enterprise.

Q2. Do you agree with our proposal to add CEPT to the list of standardisation bodies?

Answer to Q2:

We have no specific comment about the addition of CEPT to the list of standardisation bodies; we have, however, another and crucial comment to make.

Art. 17.2 FD states that "[...] Member States shall encourage the implementation of international standards or recommendations [...]". Ofcom's GC2 includes wording as follows: "[...] the Communications Provider shall take full account of international standards or recommendations adopted [...]". (our emphasis)

It appears to us that the wording of GC2 is considerably more 'dirigiste', and entails risks, if applied restrictively, of stifling innovation in new forms of communications. It is no secret that participation in the standardisation bodies listed is onerous (and in some cases restrictive), which leads to a situation in which the largest established interests have considerable influence over standard-setting. There are therefore risks that the interests of a wider community of companies, and of users, may not be well-catered for.

On the basis of the above, Skype recommends that Ofcom adopt a wording in which it refers to encouragement, as opposed to any form of requirement.

Q3. *Do you agree with our proposals to extend the requirements of GC3 beyond ‘fixed locations’ and to require CPs to ‘take all necessary measures’ to maintain their networks and services and access to emergency services?*

In Paragraphs 5.6 and 5.7, Ofcom proposes to modify the GC3 requirements relating to emergency services from “*take all reasonably practicable steps*” to “*take all necessary measures*” and also add the words “*fullest possible*”.

Skype recognises that this wording is analogous to the wording of Art 23 of the revised Universal Service Directive, but we are concerned that the meaning of “*take all necessary measures*” and “*fullest possible*” is not proposed to be defined by Ofcom.

Furthermore, although Ofcom correctly points out in sections 6.11-6.14 of the consultation document (but not in the proposed amendments to the GCs) that “*the provision needing to be technically feasible*” is implicit in the revised Directive, Ofcom should make clearer reference to recitals 23, 35 and 40 of Directive 2009/136/EC, which each contain important elements. Indeed, these recitals recognise that certain networks (e.g. IP networks) and certain services (e.g. network-independent services, whether they are provided at a fixed location, nomadically or on mobile) may not, at present and for the foreseeable future, be able to deliver reliable access to emergency services (reliability being a matter separate from location information), and that considerable standardisation efforts are needed before reliability equivalent to that of traditional networks and services will become achievable.

We therefore urge Ofcom to explicitly reflect the caveats contained in recitals 23, 35 and 40 of the directive within the relevant GCs, so as to avoid imposing obligations with which new networks and new services and communication solutions will not be able to comply, and so as to avoid interpretation difficulties.

We also reiterate Skype’s long-standing position that Skype users do not expect to be able to make emergency calls through Skype. For the foreseeable future, Skype believes that it would be most unwise for legislators, governments or regulatory authorities to mandate the provision of access to emergency services on entities that are not technically able to provide a high expectation of flawless call initiation, call completion and call routing. Giving users a false sense of security, whilst knowing that some calls will inevitably not reach the expected destination would, in Skype’s opinion, be far worse than taking the risk of endangering citizens’ safety.

Ofcom should instead encourage software application providers, like Skype, to continue to fully inform our users and extinguish any expectation that they can provide access to emergency services.

Q4. *Do you agree with our proposals for emergency call numbers - which includes amending the definition of CP and requiring that location information is provided free of charge, as soon as the call reaches the emergency organisations and is accurate and reliable (in line with our proposed high level criteria)?*

GC4 concerns location information associated with emergency services.

As opposed to its proposals relating to GC3, Ofcom has, in the case of its proposals relating to GC4, reflected a key recital of Directive 2009/136/EC, i.e. recital 40. We welcome this reference, and we welcome the approach taken by Ofcom to maintain a caveat relating to technical feasibility, based on recital 40.

Recital 40 refers not only to location information (the subject-matter of GC4), but also to reliability and availability (a subject matter affecting GC3 and GC4). As per our response to Q3, we suggest that Ofcom should make explicit reference to this recital, as well as to other key recitals, in the final GCs.

The last sentence of Paragraph 6.13 of Ofcom's consultation document indicates that where VoIP services are provided '*at a principally fixed location*', exemptions from the requirement to provide location information would not apply, on account of technical feasibility. Skype agrees that where Voice over Broadband is provided by the broadband access provider, reliable location information is available, because consumers can genuinely expect to be able to make emergency calls because their experience is essentially the same as with traditional telephony (same handset, same provider, etc.). However, in the case of network-independent providers, many of which are Internet-based and never visit the customer premises, it is not possible for those network-independent providers to verify the accuracy of the location information provided by end-users. We would therefore ask Ofcom to exercise caution, and avoid making assumptions on expected reliability of location information, where there is no physical link between the network termination point and the delivery of VoIP. Ofcom would therefore be well-advised to remove the last sentence of Paragraph 6.13.

We welcome Ofcom's statements in paragraph 6.30 relating to standardisation work on location information for nomadic VoIP. However, also with reference to our response to Q2, and our general remarks in Section A. above, it is important that any standardisation work reflects the innovative communications solutions that are emerging and being developed, and it is important to ensure that standardisation work involves not only the incumbent interests, but also the (usually much smaller) innovators and users. It is also crucial for any UK approach to standards to be linked

and consistent with standards work done internationally; we would wish to point Ofcom here in particular to the work done by the IETF ECRIT working group, as well as the 'NG112' standardisation work which has been carried out for over a year by the European Emergency Numbers' Association (EENA), in which several UK stakeholders are involved. In the era of the global public Internet, only a solution that works across several jurisdictions and can be implemented easily and efficiently by the largest number of stakeholders makes sense.

Q5. Do you agree with our proposed approach to contract related requirements relating to the provision of additional information, the length of contracts and the conditions for termination?

Q6. Do you agree with our proposals to ensure equivalent access to the emergency services for disabled users and to mandate the provision of Emergency SMS?

Q7. Do you agree that given the existing measures that are in place to help disabled users to access 116XXX services, it is not necessary to make further changes to GC15 in this respect?

No comments.

Q8. Do you agree with our proposals on conditions for transferring the rights of use of telephone numbers and also for granting their use for a limited period of time?

Skype welcomes Ofcom's proposed confirmation and rendering explicit of the possibilities for sub-allocation of numbers. This is clearly conducive to promoting both competition and efficiency in the use of number blocks. However, we are not sure that sub-allocation of numbers represents a transfer of a right of use over numbers, as per the amended Authorisation Directive 2002/20/EC, Annex C6, although we welcome in general the possibility for full block transfer and partial block transfer to occur.

More fundamentally, and as set out in Section A. above, Skype is of the opinion that the right to use E.164 numbers, including geographic numbers, and the approach to sub-allocation of numbers, should not be restricted to particular geographic areas, to particular technical solutions, to particular business models, to particular usage cases, or to a particular status that are predetermined, etc.

Indeed, any citizen, end-user, other user, provider of Information Society Service, provider of Electronic Communications Service, etc. should be entitled to be allocated (given a right of use over) numbers, for self-provision, service provision, and indeed for whichever purpose (insofar as it is in not in breach of laws).

On the basis of the above, we advocate that Ofcom should trigger a far more profound evolution of numbering in the UK.

Q9. Do you agree with our proposals on the one working day requirement in relation to bulk mobile ports and in relation to fixed porting? If not, please explain why?

Q10. Do you agree with our proposed approach to the porting compensation scheme requirement?


No comments.

Q11. Do you agree with our proposed approach on requirements relating to ensuring access to all numbers within the Community, the charging of ETNS numbers and calling the hotline for missing children on 116000?

We understand that Article 27.3 of the amended Universal Service Directive 2002/22/EC stipulates that undertakings providing PATS and allowing international calls must be required to handle calls to and from the ETNS “*at rates similar to those applied for calls to and from other Member States*” and that it is difficult for Ofcom to deviate from this EU law requirement.

However, practical experience, with the failure of ETNS over the past decade, and with the very poor track record of ‘nomadic number ranges’ over the past 5+ years in a wide range of EU Member States, and with the global number ranges in almost all countries, has taught us that operators will deliberately apply high retail prices to certain number ranges, will deliberately exclude numbers from their flat-rate bundles, etc. in order to hurt what they perceive as potential competition. Given this experience, we believe that there is strong evidence pointing to the need for a retail pricing rule which requires ETNS numbers to be treated at the retail level in the exact same manner as domestic geographic numbers (as opposed to ‘calls to and from other Member States’ as is provided for by the directive).

In sections 11.4 and 11.9, Ofcom proposes to maintain that any requirements relating to calls to other EU Member State non-geographic numbers and to ETNS numbers would continue to be subject to technical and economic feasibility and that called subscribers may continue to limit access by calling parties located in specific geographic areas. We fully understand that, under the prevailing arrangements, called subscribers choose to limit access by calling parties abroad, given that those called parties may well incur very substantial costs in doing so. However, keeping ETNS numbers (we do understand that these no longer exist, but that the EC has consulted about their revival), subject to the criterion of technical and economic viability, will only stimulate (especially incumbent and mobile) network operators in keeping in place the practices which prevented the ETNS from emerging in the first place.



On the basis of the above, we advocate that Ofcom should ensure that the practices which held-back ETNS are not repeated going forward.

Q12. Do you agree with the proposed obligation on universal service providers to notify us when they are disposing of part or all their local access network assets?

No comments.

Should you require any additional information with regard to the contents of this response, please do not hesitate to contact us. We would be happy to engage with you to discuss in more depth the points raised here.

Yours faithfully,

Jean-Jacques Sahel | Skype

Director, Government and Regulatory Affairs | Europe

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