



November 15, 2004

VIA ELECTRONIC MAIL

Justin Moore
Competition and Markets, Floor 4
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

**Re: Consultation on New Voice Services, A Consultation and Interim Guidance
Comments of CompTel/ASCENT**

Dear Mr. Moore,

CompTel/ASCENT appreciates the opportunity to present its views in this proceeding. With 350 members, CompTel/ASCENT is the largest and oldest association in the U.S. representing competitive facilities-based carriers, providers using unbundled network elements, global integrated communications companies, and their supplier partners. CompTel/ASCENT, which is based in Washington, D.C., includes companies of all sizes and profiles that provide voice, data and video services in the U.S. and around the world. CompTel/ASCENT members share a common objective: to create and sustain true competition in the telecommunications industry, both domestically and internationally. With the development of liberalized regulatory regimes and competitive market conditions in a growing number of countries, many CompTel/ASCENT members have made significant investments in telecommunications facilities and services in Europe.

CompTel/ASCENT is pleased that Ofcom is engaged in further efforts to clarify the regulatory framework applicable to new voice services, in particular Voice over Broadband ("VoB"). CompTel/ASCENT supports Ofcom in adopting a reasonable and uniform regulatory framework for VoB that does not discourage the deployment or adoption of these innovative services. Inappropriate regulation will act as an impediment to the continued innovation of VoB services and the development of new applications that will entice subscribers who currently have access to broadband Internet access facilities but do not see the benefit in purchasing such services. Attractive VoB services will enhance broadband penetration and adoption in the U.K. significantly.

CompTel/ASCENT believes that VoB is a global issue that requires close coordination between the European and U.S. regulators, in particular between the Federal Communications Commission ("FCC") and Ofcom. To this end, CompTel/ASCENT has already filed comments

with the European Commission in its current Voice over Internet Protocol (VoIP) proceeding. In the United States, CompTel/ASCENT's approach vis-à-vis VoB is based on its Voice over Internet Protocol Policy Principles of March 31, 2004 ("Principles" – see attached); in particular:

- Decisions regarding VoB issues should be clearly articulated and easily applied to all network configurations which carry VoB traffic. While the main goal of regulation should be to foster, and not constrain, adoption of innovative applications such as VoB, an equally important secondary goal must be that those regulations deemed necessary are clearly understood by network service providers, capable of implementation by service providers across all network architectures, and objectively enforceable by regulators or co-carriers.
- A "pure" VoB provider that does not own, operate or control customers' access to the Internet or the PSTN should not be subject to traditional telecommunications regulation. (The FCC recognized the interstate/international nature of VoB services in its recent unanimous decision of November 9, 2004, concerning a petition filed by Vonage Holdings Corp.)
- Access to European incumbents' last-mile bottleneck facilities must remain available to competitive carriers providing VoB at TELRIC rates. A system should be established with incentives to ensure that traffic is routed and terminated in the most efficient manner, consistent with the performance that would be expected in a competitive wholesale market.
- To the extent that VoB services are used as a substitute for traditional telecommunications service, issues such as emergency access should be resolved through industry cooperation with state and federal regulators.
- The need for and the interests of national security, such as interception/eavesdropping, should be addressed through separate and targeted proceedings which can be addressed separate from the economic issues without relying on a regulatory classification of VoB services.

CompTel /ASCENT is pleased to note that these Principles are also of concern to Ofcom. However, while CompTel/ASCENT agrees with many of Ofcom's proposals in the Consultation Document, it is concerned that the "carrot and stick" approach that Ofcom proposes in its Consultation Document regarding PATS [Publicly Available Telephone Services] will stifle competition and seriously hinder the emergence of innovative VoIP services (*Questions 14 and 15* of the Consultation Document). In Section 5.9 of its Consultation Document, Ofcom suggests that "communications providers who choose not to provide PATS should have neither the obligations nor the benefit which, crucially, includes the ability to attract subscribers by being able to port-in customers." CompTel/ASCENT doubts that the EU's New Regulatory Framework bars a National Regulator, such as Ofcom, from allowing geographic or non-geographic number portability to Non-PATS providers. There is no need to wait for the European Commission to determine whether number portability can be provided to Non-PATS providers. Ofcom should act once more as a trailblazer in Europe and allow it for a number of reasons.

The distinction between PATS and “Non-PATS” that Ofcom relies on implies that VoB services that are provided without fulfilling the definition of PATS are of lower quality or lower value to the consumer (Ofcom states that it is concerned that PATS providers will “downgrade” to Non-PATS – Section 7.6 Consultation Document). This concern is unfounded. The U.S. experience clearly demonstrates that those VoB providers that do not qualify as PATS under EU law offer a variety of innovative services that go far beyond what traditional carriers are offering, such as integrating telephony with other computer or video applications. The line distinguishing between services constituting PATS and Non-PATS is already very blurry (for instance, operator and directory inquiry services that PATS offer can be efficiently provided via e-mail or via the World Wide Web). It will disappear in the near future so that this distinction will no longer make sense.

More specifically, excluding Non-PATS from geographic number portability constitutes a significant market obstacle for new entrants because customers, in particular small businesses and residential customers, will be very reluctant to migrate to those providers if they cannot keep their telephone numbers. CompTel/ASCENT fully agrees with Ofcom that new voice services offer different features and that customers are willing to trade-off the facilities offered by traditional [PATS] services for new benefits (Section 7.5 Consultation Document). Consequently, the U.K. customers also should be allowed to make an informed decision to take their telephone number with them to benefit from Non-PATS services if they wish to do so. The experience in the United States with new voice services demonstrates that access to geographic numbers does not lead to an exhaustion of the numbering resources.

CompTel/ASCENT hopes that these comments are helpful and would be pleased to continue the dialogue with Ofcom on the distinction between PATS/Non-PATS and other issues raised in the Consultation Document.

Regards,



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Attachment



VoIP Policy Principles

- Decisions regarding VoIP issues should be clearly articulated and easily applied to all network configurations which carry VoIP traffic. While the main goal of regulation should be to foster, and not constrain, adoption of innovative applications such as VoIP, an equally important secondary goal must be that those regulations deemed necessary are clearly understood by network service providers, capable of implementation by service providers across all network architectures, and objectively enforceable by regulators or co-carriers.
- VoIP is an IP-based application and as such is an information service, not a telecommunications service.
- VoIP services are interstate services that fall under exclusive federal jurisdiction and are exempt from state regulatory oversight.
- Access to ILEC last-mile bottleneck facilities must remain available to competitive carriers at TELRIC rates.
- Inter-carrier compensation must be corrected in order to provide a fair and equitable methodology for actual cost recovery. A system should be established with incentives to ensure that traffic is routed and terminated in the most efficient manner, consistent with the performance that would be expected in a competitive wholesale market
- To the extent that VoIP services are used as a substitute for traditional telecommunications service, issues such as E911 should be resolved through industry cooperation with state and federal regulators.
- The need for and the interests of national security, as addressed under CALEA, should be addressed through separate and targeted proceedings which can be addressed separate from the economic issues without relying on a regulatory reclassification of VoIP services.
- The existing Universal Service contribution methodology must be fixed before VoIP service providers should be considered for inclusion. A flat rate, technology neutral approach to assessment triggers should be considered.