

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Changes to General Conditions and Universal Service Conditions

To (Ofcom contact): Selina Chadha

Name of respondent: Herman Rucic

Representing (self or organisation/s): Voice on the Net Coalition (VON) Europe

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

| | | | |
|----------------------|-------------------------------------|---------------------------------------------|--------------------------|
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| Part of the response | <input type="checkbox"/> | If there is no separate annex, which parts? | |

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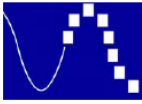
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Comments on Ofcom’s Consultation on Changes to General Conditions and Universal Service Conditions

by VON Europe, April 2011

The Voice on the Net Coalition Europe (“VON”) welcomes the opportunity to comment on Ofcom’s **Consultation on the Changes to General Conditions and Universal Service Conditions** (hereafter “the Consultation”).

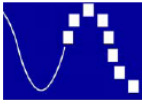
Preliminary Remark

As a preliminary remark, VON is concerned by the fact that Art. 22 par. 3 of the Revised Universal Service Directive (hereafter ‘USD’) does not seem to be reflected in the proposed changes set out in this Consultation.

VON considers that there is a need to safeguard the quality of Internet access in order to avoid a “dirt road” effect, in parallel to the possibility for ISPs to offer managed services.

Art. 22 par. 3 of the Revised USD stipulates that *“in order to prevent the degradation of service and the hindering or slowing down of traffic over networks, Member States shall ensure that national regulatory authorities are able to set minimum quality of service requirements on an undertaking or undertakings providing public communications networks”*. The use of “prevent” does seem to suggest that any action undertaken by Ofcom should occur ex ante rather than ex post.

In setting such minimum quality of service requirements, Ofcom will have to take into account the fact that the online ecosystem is complex and multi-dimensional. Enforcement of open Internet policies and regulations will therefore require leveraging the deep technical expertise within Ofcom and creating a process for gathering input and data from outside experts. Ofcom should convene a technical advisory group – with industry participants (service/content/application providers and ISPs) operating across the EU – as a means of receiving expert input to help inform reasoned decision-making about what forms of discrimination may be anticompetitive or harm end users and consumers, create barriers to innovation, and what “best practices” should be put forward. Industry experts can provide Ofcom with valuable information on network management practices and developments in network infrastructure and technology, and what constitutes minimum quality of service and/or a ‘functional Internet access’, as provided for by EU legislation.



Detailed Responses

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

VON agrees with the definition put forward for PATS but would like to draw to Ofcom’s attention that in interpreting this definition, Ofcom will need to take into consideration Recital 13 of the Citizens’ Rights Directive 2009/136/EC, which states:

*“Definitions need to be adjusted so as to conform to the principle of technology neutrality and to keep pace with technological development. In particular, conditions for the provision of a service should be separated from the actual definitional elements of a publicly available telephone service, i.e. an electronic communications service made available to the public for **originating and receiving**, directly or indirectly, national or national and international calls **through a number or numbers** in a national or international telephone numbering plan, whether such a service is based on circuit switching or packet switching technology. It is the nature of such a service that it is **bidirectional**, enabling both the parties to communicate. **A service which does not fulfil all these conditions, such as for example a ‘click-through’ application on a customer service website, is not a publicly available telephone service.** (...)”*

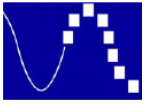
[our emphasis added]

VON is pleased to see this point being highlighted in sections 6.4 to 6.6 and footnote 22 of the Consultation. This should however not be limited to ‘click-through’ applications, as it would seem more in line with the principle of technology neutrality to also be device-agnostic, thus for example also exempt devices such as tablets, iPod touch, etc.

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)?

VON Europe supports the approach to emergency service access proposed by Ofcom. We also agree that the current framework in place in the UK does not need to be changed in this matter *prima facie*.

Moreover, VON Europe fully supports Ofcom’s assessment that “technical feasibility” should remain a criteria in terms of the provision of location information, in light of Recital 40 of the Citizens’ Rights Directive 2009/136/EC which stipulates that “*network-independent undertakings may not have*



control over networks and may not be able to ensure that emergency calls made through their service are routed with the same reliability, as they may not be able to guarantee service availability, given that problems related to infrastructure are not under their control. For network-independent undertakings, caller location information may not always be technically feasible”.

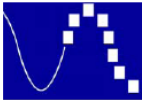
VON is however slightly confused by Ofcom’s statement that *“for the avoidance of doubt, although many VoIP services may rely on the network infrastructure of other CPs, where the service is being provided at a principally fixed location it is technically feasible for location information to be provided and therefore this recital does not imply providers of such services are exempt from the obligations of Article 26”* (par. 6.13 of the Consultation). This seems to imply that Ofcom is interpreting the notion of “network independent” as only applying to mobile or nomadic VoIP, an interpretation that is much narrower than the concept of “network independent undertaking”, which does not differentiate between fixed and mobile in this context.

Further in the Consultation, Ofcom again inaccurately points out that *‘the provision of location information for nomadic VoIP services presents a particular set of technical challenges, largely due to the fact that users of such services are able to use a variety of networks to connect to the VoIP service. Mechanisms for providing location information in relation to such services are currently being considered by ESO (European Standards Organisation)/ETSI (European Telecommunications Standards Institute). We feel it is premature to set criteria for these services in the absence of internationally-recognised standards. In line with Recital 40 to the USD, we will revisit this issue when ESO/ETSI have completed their work”* (par. 6.30 of the Consultation – our emphasis added).

This is in contrast with the Universal Service Directive which states in Recital 23 that *“providers of electronic communications services that allow calls should ensure that their customers are adequately informed as to whether or not access to emergency services is provided and of any limitation on service (such as a limitation on the provision of caller location information or the routing of emergency calls)”*, without differentiating between technologies used or the fact that the service is provided at a fixed, mobile or nomadic location.

VON Europe would therefore request that Ofcom align its wording with the Universal Service Directive and take a technologically neutral approach¹ by referring to “network-independent undertakings” rather than refer to specific protocols and services used in either fixed or mobile context.

¹ As required by Recital 12 of the Citizens’ Rights Directive which states: ‘Definitions need to be adjusted so as to conform to the principle of technology neutrality and to keep pace with technological development’ and specifically points out that definitions should not focus on ‘whether such a service is based on circuit switching or packet switching technology’.



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?

VON broadly agrees with Ofcom’s proposed approach and we consider that improving and facilitating switching by subscribers is important to promote a competitive market, although clearly insufficient in its own right to preserve the open Internet, especially given that all ISPs could adopt similar restrictions (which experience around Europe demonstrates is a real threat rather than conjecture).

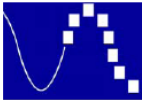
VON also supports Ofcom’s broad view of transparency as it concerns traffic shaping, as set out under footnote 35 of the Consultation, even though we consider that the list could already be made more substantive in light of current practices (e.g. tethering, throttling, port blocking, protocol blocking, etc.).

VON does however consider that crucial language set out under Recital 28 of the Universal Service Directive should be better reflected in Ofcom’s changes. According to Recital 28, *“end-users should be able to decide what content they want to send and receive, and which services, applications, hardware and software they want to use for such purposes, without prejudice to the need to preserve the integrity and security of networks and services. A competitive market will provide users with a wide choice of content, applications and services. National regulatory authorities should promote users’ ability to access and distribute information and to run applications and services of their choice, as provided for in Article 8 of Directive 2002/21/EC (Framework Directive). Given the increasing importance of electronic communications for consumers and businesses, users should in any case be fully informed of any limiting conditions imposed on the use of electronic communications services by the service and/or network provider. Such information should, at the option of the provider, specify the type of content, application or service concerned, individual applications or services, or both. Depending on the technology used and the type of limitation, such limitations may require user consent under Directive 2002/58/EC (Directive on privacy and electronic communications)”*.

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?

As regards access for disabled people, VON agrees with Ofcom’s view as set out in par. 8.31: *“The revised Directive and associated recitals clarify that the aim should be to deliver functional*



equivalence, or as close to it as can be achieved. The concept of equivalence is broad and not tied to any specific service. Provision for disabled end-users can be re-examined in the light of, for example, technological developments”.

Although equivalence in access to emergency services for disabled users is clearly important, mandating Emergency SMS must be looked at in the context of technical feasibility, to ensure that this possibility can be offered to users in a reliable manner and with the appropriate technical framework.

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?

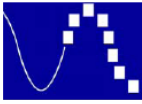
VON agrees with Ofcom’s proposal to formalize sub-allocation and the conditions under which it should occur. VON urges Ofcom to ensure that potential anticompetitive behaviour would be reduced to a minimum. From our perspective protection mechanisms need to be set in place to safeguard smaller CPs from possible abusive practices of larger CPs.

As such, it is important to note that sub-allocation is not a solution ‘per-se’, as it places the sub-allocatee in a greater dependence towards the CPs that has a complete power over the numbers and the network. In case of problem, the only solution the sub-allocatee has is to transfer the numbers to another CP provided that the CP allow it. Porting would also be possible but then would need to involve the end users – which is not the preferred solution for solving an issue between CPs or CPs and Information Society Service providers. Such issues should also be considered by Ofcom when setting out sub-allocation conditions.

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?

VON considers that Ofcom is right in facilitating switching of providers, porting being one element to tackle. Ofcom should however be conscious that with increased bundling of service offers by providers (e.g. triple or quadruple play bundling voice, broadband Internet, TV and mobile access), facilitating porting will only address the tip of the iceberg. VON encourages Ofcom to continue its Switching Review in that context.



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?

VON welcomes the fact that Ofcom is proposing to actively “*set out the requirement to handle calls to and from the ETNS and that rates applied [be] similar to those for calls to and from other Member States*” (par. 11.21).

VON however believes that the reasons behind the lack of uptake of ETNS numbers so far are dual:

- On the one hand, a lack of interest or lack of mandatory obligation for access operators to implement the numbering ranges in their networks.
- On the other hand, the complexity to enter into specific interconnection agreement with each network operator, and the associated uncertainty about the wholesale charges applicable between interconnected operators and, as a result, the retail tariffs to the calling party.

Ofcom’s proposal is therefore a good starting point and we encourage Ofcom to discuss this matter with other NRAs and BEREC, as only a coherent approach in all Member States would be likely to ‘revive’ the ETNS project. However, if the solution is to apply a tariff that results in calls to ETNS costing the same as other international calls, this would be very detrimental to users and the ETNS system as a whole, as it could lead to overcharging users.

We thank you in advance for taking consideration of these views. Feel free to contact Herman Rucic, VON Europe, by phone (+ 32 (0)478 966701) or email (hrucic@voneurope.eu) should you need further information.

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ABOUT the VON Coalition Europe

The Voice on the Net (VON) Coalition Europe was launched in December 2007 by leading Internet communications and technology companies, on the cutting edge to create an authoritative voice for the Internet-enabled communications industry. Its current members are iBasis, Google, Microsoft, Skype, Viber and Voxbone.

The VON Coalition Europe notably focuses on educating and informing policymakers in the European Union and abroad in order to promote responsible government policies that enable innovation and the many benefits that Internet voice innovations can deliver.