



**OFCOM REVIEW OF THE GENERAL CONDITIONS OF ENTITLEMENT**

**PHASE 1: CONSULTATION ON THE GENERAL CONDITIONS RELATING TO NETWORK  
FUNCTIONING, PUBLIC PAYPHONES, DIRECTORY INFORMATION AND NUMBERING**

**BT RESPONSE**

**11<sup>th</sup> October 2016**

## **Section 1: Summary**

BT is grateful for the opportunity to comment on Phase 1 of Ofcom's review of the General Conditions of Entitlement ("GCs"). Ofcom's review is both necessary and timely although BT believes the Phase 1 consultation process could have been improved if there had been engagement and discussions with stakeholders about the proposed changes before publication of the consultation. All parties would have benefited from early dialogue and BT encourages Ofcom to initiate such dialogue before publishing its consultation on Phase 2 of the review.

As for Phase 2, BT would highlight the various EU legislative proposals such as the Digital Single Market, Sale of Goods and Accessibility Acts and the European Electronic Communications Code. These already provide horizontal measures for consumer protection and remove the need for sector specific rules. BT favours industry co-operation and initiatives where best practice principles can be shared to the benefit of consumers. The work being undertaken to address the issue of nuisance calls is a good example of this.

Part of the context surrounding Ofcom's review is the pace of technological change. BT seeks a regime that supports and encourages investment and innovation, and where regulation is fair and proportionate. Ofcom has an important role to play in supporting the transition from traditional PSTN and circuit-switched voice technologies to an IP-based world where providers of regulated services are often separate from infrastructure providers and Communications Providers ("CPs"), and where competition is increasingly at the application layer from services such as Skype, iMessage and WhatsApp. The GCs need to be future-proofed to support new developments and novel consumer propositions, such as Voice over LTE and WiFi calling. For this reason, it is fundamental that the GCs should be technology neutral and reflect market developments<sup>1</sup>. It follows that, for instance, as far as voice is concerned, there should be no regulatory discrimination between PSTN, VoIP, mobile and other voice services. Ofcom should remove regulation based on the underlying technology – this includes the separation of voice services from the network. Moreover, Ofcom should move towards technology neutral de-regulation, consistent with the aims of the EU electronic communications regulatory framework, as opposed to more regulation.

The remainder of BT's comments is divided into three sections. Section 2 sets out the proposals that BT welcomes and why, and Section 3 details those proposals that BT does not support and why. In Section 4 BT provides changes to the text that we consider beneficial to all operators and service providers.

## **Section 2: Proposed changes that BT supports**

### Definitions

- BT supports the view that each GC should be capable of being understood without references to other materials. An explanation of the relevant GC in the form of the

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<sup>1</sup> In this connection, BT would refer Ofcom to its proposals on VoIP calls services and location information. BT comments on these proposals under Section 3 below.

proposed recitals and reference to other relevant documentation will also be helpful to CPs.

- BT also supports Ofcom's proposal to:
  - define and use the term 'Regulated Provider' at the outset of each GC;
  - use single definitions across the GCs as a whole; and
  - transfer the definitions to a separate annex.
- Whilst ultimately, establishing if a CP has complied with a condition must be determined by considering the wording of the specific condition itself, BT supports the proposal to add recitals to the GCs setting out the aims and purpose of each GC. We also welcome further guidance (with signposting via footnotes in the GCs).

### Network functioning (GC1 to GC5)

General access and interconnect obligations (GC1) and Standardisation and Specified Interfaces (GC2)

- BT supports the simplification and shortening of GC1 and GC2. Under GC2.3 Ofcom may also wish to consider including NICC within the list of standards bodies.

Emergency Planning (GC5)

- We agree with Ofcom that GC5 is an important backstop to ensure that all of industry has emergency arrangements in place, and that all CPs can deal effectively with major incidents. We support Ofcom's recommendation that GC5 is retained.
- We would like to clarify that where BT is required to carry out activities after a major incident, we will react accordingly but the safety of BT's employees and members of the public will always be the primary consideration, followed by service restoration. Furthermore, such events usually mean that emergency services are involved (i.e. 'Blue Light') and that BT can only react when allowed to do so by those organisations.

### Public Pay telephones (GC6)

- We agree with Ofcom's proposed revisions to GC6.
- We support the decision to remove the requirement for access to an Operator Assistance service as this reflects the removal of the associated obligation within GC8. Operator Assistance has never been defined in regulation and as such, the services that may or may not have been offered to end users calling it could have been changed or withdrawn at any time prior to this proposed regulatory amendment.
- Ofcom asks whether CPs agree with its proposals to remove the requirement to display the means by which charges must be paid on or around PCBs. We assume that Ofcom's use of 'PCB' in the context of this question is an error as GC6.2

relates to the requirement for Public Pay Telephones to display a notice specifying the information listed within the condition. We have therefore responded below on that basis, as the proposal to remove the requirement to display the means by which charges must be paid will affect all Public Pay Telephone providers rather than just BT and KCOM as providers of PCBs.

- There are many forms of payment that are entirely independent of the Pay Telephone provider that an end-user may choose to use when visiting a Public Pay Telephone, (examples are credit or debit cards or pre-paid cards that might be purchased in the UK or another country, for use in the UK). Unless the Pay Telephone provider has made specific provision otherwise (such as the availability of BT's Charge Card service), it may also be reasonable to assume that the provider of the payphone will control the pricing only for calls paid in cash. Therefore, providing very specific information relating to how payment can be paid in cash, may confuse end-users or even impact their decision of whether or not to make a call at all. We agree therefore that the removal of this requirement is helpful, both to pay telephone providers and to people who use them.
- However, the publication of a telephone number associated with the payphone encourages incoming calls for which no payment can be recovered. Unlike other telephony services that are provided to a single individual allowing the costs to be directly recovered from that individual via the charges raised for that service, payphone providers must recover their costs by sharing them with all of their individual paying customers. While there are likely to be a handful of regular users, the majority of these will be transient visitors using the payphone for a single call. The cost of providing some types of free-to-caller calls can be recovered from the business providing the called service (a mechanism called the Payphone Access Charge); however, this is not possible for incoming calls where the only option is to recover the cost via the charges made to paying callers and therefore increasing the price that they must pay.
- Removing both the requirement to publish a telephone number and the provision of information relating to whether or not the payphone can receive an incoming call would enable payphone providers to inhibit non-chargeable incoming calls by withholding the calling line identity from the called party, while still enabling emergency organisations to contact a caller in an emergency situation by using the network calling line identity still available on 999 and 112.
- Customers with no means of paying for their call will continue to have the option of a reverse charge call from BT Public Pay Telephones for as long as there are commercially viable services (0800Reverse, 0800mumdad etc.) operating in the UK.
- We agree that the removal of specific accessibility obligations for PCBs has no detrimental impact to end-users. BT K6 payphones (red kiosks) are not accessible to wheelchair users and many have been listed by English Heritage and cannot now be removed. Newer kiosks are accessible and will continue to be so. Therefore removal of this requirement will help to preserve the legacy red telephone boxes in heritage sites without negative impact to regulatory obligations.
- We believe Ofcom's proposals are sensible and help simplify and clarify the regulatory obligations for payphone providers who do not have obligations under Universal Service.

## Directory information (GC8 and GC19)

### Operator assistance, directories and directory enquiry services (GC8)

- BT supports the proposal to combine GC8 and GC19 and has the following comments to make in relation to the proposed review of GC8 and GC19:
- First, BT supports Ofcom's proposal to withdraw the requirement to provide Operator Assistance services, given the revocation of this requirement from the EU Framework in 2009. However, BT believes that 100 and 155 telephone numbers need to remain defined and available as currently within the National Telephone Numbering Plan ("NTNP") to enable any operator to provide an Operator Assistance service(s) at any point in time.
- Second, BT would encourage Ofcom to assess whether there is a need to review the definition of a 'Directory Enquiry Facility', which in the current draft remains as: *"Directory Enquiry Facility" means Directory Information provided by means of a Public Communications Network* to reduce the risk of misuse and abuse of the 118 numbers. BT notes that this risk may have increased due to the fact that, under the current regulatory regime, 118 non-geographic telephone numbers can be charged at a higher price than other non-geographic telephone numbers, which could make the 118 numbers more attractive to service providers offering restricted services under another non-geographic number. Ofcom should therefore monitor any potential for consumer harm which might arise from any misuse or abuse of these telephone numbers and assess whether there is a need to redefine Directory Enquiry Facility to ensure consumer protection.

### **Section 3: proposed changes that BT does not support.**

#### 'VoIP call service'

- Ofcom's proposed definition of 'VoIP call service', as well as the existing definition of 'Publicly Available Telephone Services' (which is relevant to proposed new GC3.2(b)), in the definitions Annex 1 refer to a national or international numbering plan. However in the context of providing access to the emergency services, Article 26(2) of the USD (as amended in 2009) refers only to national numbers:

*"Member States, in consultation with national regulatory authorities, emergency services and providers, shall ensure that undertakings providing end-users with an electronic communications service for originating national calls to a number or numbers in a national telephone numbering plan provide access to emergency services."*

As a consequence, there is an apparent conflict between the USD and Ofcom's proposed new GC3 which should be addressed.

- BT notes that Ofcom has focused on VoIP services but would point out that the USD does not differentiate between technologies used or the fact that the service is provided at a fixed, mobile or nomadic location.

Recital 23 of the USD states:

*“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)”.*

BT considers Ofcom should align its wording with the USD and take a technologically neutral approach by referring to “network-independent undertakings” rather than refer to specific protocols and services used in either the fixed or mobile context.

### Network functioning (GCs 1 to 5)

#### Overall

- BT considers that, consistent with the EU regulatory framework for electronic communications and in order to avoid discriminatory treatment of certain technologies, there should be more de-regulation of all voice services as opposed to more regulation of all voice services.

#### VoIP provisions

- The obligations on VoIP providers in Annex 3 to GC14 only apply to CPs providing services to Domestic and Small Business customers while the new GC3.3 and GC3.7 apply to customers. This appears to widen the obligations on VoIP providers. BT would welcome Ofcom’s confirmation that new GC3.3 and GC3.7 only apply to CPs providing services to Consumers and Small Businesses.
- Finally, in relation to the provision of a VoIP overlay that interfaces with a PBX, there does not appear to be a provision similar to that in par. 4.185<sup>2</sup> of the Statement ‘Regulation of VoIP services: Access to emergency services’ dated 5<sup>th</sup> December 2007. It is unclear whether this statement will remain in force or will be repealed following the publication of the new version of the GCs. If repealed then, for the sake of clarity, we would recommend Ofcom should replicate the same provision in the new version of the GCs.

#### Clarification of GC3 provisions in the context of USD

- Ofcom proposes to amend GC3.1(c) (now 3.2(b)) to read: *“Regulated Providers must take all necessary measures to ensure uninterrupted access to Emergency Organisations to the greatest extent possible as part of any Publicly Available Telephone Services offered”.*
- BT considers that the words “to the greatest extent possible” should be removed or explained as they are not present in Article 23 of the USD from which GC3.1(c) is derived. Article 23 merely requires Member States to ensure that undertakings

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<sup>2</sup> Par 4.185 For clarity, in respect of corporate products consisting of a VoIP overlay that interface with a PBX and provide 999/112 access over the PSTN, the modification to GC4 does not have the effect of requiring providers to provide 999 / 112 access over the VoIP overlay as well. GC4 requires communications providers to ensure end users have 999/112 access – it does not require them to provide 999/112 access over every component of a communications solution. So in this case, providing 999/112 access over the PSTN component of the product meets the GC4 requirement.

providing publicly available telephony services take all necessary measures to ensure uninterrupted access to emergency services. The Directive does not impose any additional obligation to maintain uninterrupted access "to the greatest extent possible". It follows that these words are inconsistent with the USD. The removal of these words would also be consistent with the necessary shift towards less rather than more regulation.

- Moreover, in the context of Article 23 and GC3.1(c), Article 8(1) of the Framework Directive imposes a duty on Ofcom only to take "reasonable measures" and to act proportionately. Article 8(5) of the Framework Directive also requires Ofcom to "apply objective, transparent, non-discriminatory and proportionate regulatory principles" in pursuing the policy objectives in the USD. An obligation to act in a particular way "to the greatest extent possible" appears incompatible with these principles.
- In this context, it is important too that Ofcom should behave proportionately and in a non-discriminatory way in considering the technical solutions that operators propose for ensuring uninterrupted access to emergency services. It is disproportionate and discriminatory to impose battery back-up for PSTN in the absence of an appropriate obligation for VoIP and voice services using other technologies. BT would refer Ofcom to earlier comments on the 'access to emergency organisations' being solely for the purposes of 'emergency calls'.
- Furthermore, in the case of over the top ("OTT") players, VoIP is not a network; it is an overlay service on top of a separate broadband access internet-based "network". It is necessary to separate catastrophic failure of the underlying network from the provision of the OTT service. This reflects Ofcom's view that CPs already have commercial incentives in place to ensure that the level of availability maintained is in line with customer expectations and that no further regulation is required. However, it leaves some uncertainty if no guidance is provided on what measures are required to ensure the "fullest possible availability of the Public Electronic Communications Network", "the fullest possible availability of Publicly Available Telephone Services" as well as "uninterrupted access to Emergency Organisations as part of any Publicly Available Telephone Services offered". Any guidance provided by Ofcom should consider the steps already taken by CPs to ensure their networks and services are robust and the burden that any additional requirement could place on industry if further extended. Ofcom should move towards proportionate and non-discriminatory de-regulation for all irrespective of technology.
- GC3 should be expressed in a form that does not presuppose that the CPs have end to end control over the network, or that network providers have control of applications. It is not always clear exactly where the responsibility lies for ensuring availability of the network. For example, in the case of a WLR3-based service, would it rest with the CP serving the end-user (who would have to ensure back to back contractual responsibility with their suppliers), or with the provider of the line, or with the provider of the calls service? We would welcome further guidance from Ofcom on this. In general, one cannot make an app responsible for the underlying network or the WiFi network. Indeed, many apps will have access to multiple networks. As this is becoming the norm, Ofcom should consider what obligations apply to the availability of the underlying application rather than the network. Equally, specific obligations on the reliability of the underlying network for emergency services are called into question and should be revisited – given

that networks are becoming service neutral, and most customers have access to multiple networks, the question is whether it makes any sense to retain an uptime requirement.

- It is also the case that the network provider may be utilising new technology to deliver the network service and it may be impossible to assume that new and different technologies can function in exactly the same way and with the same degree of resilience as older technology. Hence, the test of what constitutes 'all necessary measures' in GC3.2 and 'to the greatest extent possible' must be interpreted within the context of the technology employed at the network layer. For example, there is a significant difference between maintaining the service of a copper line powered from the local exchange and a cabinet based fibre broadband service where the latter depends on all the broadband elements remaining live.

#### Caller location information

- BT considers the question of caller location information and the provisions relating to it need to be revisited in light of the fact that ever greater numbers of calls are made on mobile phones, and in light of the increasing prevalence of connected devices that are not capable of making voice calls.
- Technology specific guidance on application and enforcement is inadvisable because of the risk of false carve outs and unfulfillable obligations. While it is generally not technically feasible to provide location information in the case of nomadic VoIP services, WiFi calling services (which Ofcom is already aware of from past discussions with EE) or Signal boxes where they are moved from their original location, this may not always be the case. The obligation to provide location information should be technology neutral and apply uniformly to the extent that it is technically feasible, consistent with the meaning of the underlying obligation - it should not be distorted and fixed by a regulatory statement of what industry can and cannot technically achieve, particularly where this and the services provided are evolving rapidly.
- The proposal to require providers of nomadic VoIP services to recommend customers register and update their own location information whenever the service is moved is seriously flawed. If a customer is travelling and using WiFi on a train it would be impossible for the customer to pinpoint location as in transit. We believe end-users are unlikely to make the necessary amendments to ensure an acceptable level of data accuracy for these types of service and consider such failure represents a real risk to life. Even were customers 'required' to update their own location data, it is unlikely that the necessary technology could be put in place to reasonably manage these updates. A system would be required that:
  - is independent of the VoIP Service Provider,
  - could be accessed directly by end-users who in many circumstances would not be the contracted responsible subscriber of the service,
  - is sufficiently resilient and responsive to handle multiple, instantaneous updates in a verifiable way that would then be useful to the Call Handling Agent ("CHA") in the event of an emergency call.

We do not believe that such a system is reasonable, practicable or could be set up with sufficient security to avoid misuse. Instead, we would recommend that nomadic VoIP service providers use the VoIP flag to indicate it is a default location

only. This will prevent the CHA from relying upon information that is inaccurate or incorrect and instead will prompt the CHA to verbally request the caller's location. Even in instances where the caller is unable to speak, this option would enable the Police to attend or contact the billing address where it is probable they will be able to gain information as to the caller's likely location.

#### eCall

- We are very concerned that Ofcom has chosen to include eCalls within the new GC3, especially given that BT, the mobile CPs, Ofcom and the DCMS have only recently commenced discussions about the implementation of eCall in the UK. We also understand that eCall can be offered as a third party value-added service, where customers may subscribe to a separate system. This may add complexity to the handling of the calls. If Ofcom is minded to proceed with this amendment it is unlikely that providers will be sufficiently advanced in any conversations with the vehicle manufacturers and any subsequent conversations with BT as the UK CHA for 112 calls, so as to be in a position to meet the implementation date of 1<sup>st</sup> October 2017.
- EU legislation places the obligation to provide the eCall facility on motor vehicle manufacturers rather than the underlying CP or network underpinning the technology. However, we do recognise that calls will be delivered to the 112 number and as such, qualify as an emergency call, albeit one that may often be triggered automatically rather than by the driver of the vehicle. We anticipate some development will be necessary to accommodate this change as well as the means to identify eCalls when they are received. The EU legislation mandates eCall functionality such that after 31 March 2018 new types of vehicle must have eCall fitted in order to apply for type approval. We anticipate that as this specific requirement will not impact all vehicle types but only those that are filing for new type approval, there will be a very gradual build-up of demand for use of this service.
- Therefore, should Ofcom be minded to continue with this revision, we believe Ofcom could extend the implementation date significantly beyond October 2017 with minimal risk to end-users. We also believe additional clarity of eCalls can be provided by inserting the additional text "from an in-vehicle system" within GC3.4.

#### Emergency Planning (GC5)

- While we support the continuation of GC5, we question why provisions under GC5.2 where they relate to "*any incident of contamination involving radioactive substances or other toxic materials incident*" are still necessary. This text has been taken from Oftel's original text and is unclear. We would welcome clarification on what exactly this obligation entails and the rationale for including it.

#### Numbering conditions (GC17 and GC20)

##### Allocation, adoption and use of telephone numbers (GC17)

- BT has concerns with the proposed additions to GC17.8 allowing Ofcom to withdraw numbers that are not used or have not been in used for the past twelve

months. BT believes that Ofcom needs to consider a number of issues and practical difficulties the current proposal could raise.

- In particular, the proposal does not take into account part-number block utilisation. In its current form the implication of the proposal is for blocks containing working numbers to be split at the individual number level such that numbers within a block considered as unused for 12 months could be returned whilst those that are working are retained by the CP/MNO.
- Ofcom needs to consider the impact of withdrawing particular numbers. Number resource is typically allocated and configured in blocks of 1K or 10K on the fixed PSTN network and 1M on mobile networks. Withdrawal of part ranges will result in these blocks (or blocks of other size configurations) having to be split, placing additional pressures, which in some cases might be unsustainable, on scarce network numbering databuild and decode resources. It is therefore recommended that assessments of resource utilisation take into account physical network build considerations and the rate at which resource is consumed when determining whether or not it should be withdrawn.
- Another consideration to bear in mind is that certain product demand profiles require spare number resource to be available for extended periods of time – often well in excess of 12 months. This is common with large business customers where ranges of contiguous numbers may be required to fulfil the future expected demands of clients.
- Moreover, the proposal to withdraw previously allocated blocks of numbers if not in use by end users in the preceding 12 months will pose a timing issue for CPs that sub-allocate numbers to other providers. Delays can be created by the third party, for example, delays in activating number ranges in their routing tables. The net effect will be that CPs do not have sufficient time between allocation and utilisation.
- BT notes that Ofcom is planning to consult on the outcome of the pilot scheme for charging geographic numbers, which may lead to a review of the existing par. GC17.13 to 17.18. BT would encourage Ofcom to conduct this review urgently.

#### **Section 4: BT's suggested amendments to the text**

Further to our comments above, we propose some amendments to the text of the GCs where we believe they will be helpful to CPs and Ofcom.

##### Network functioning (GC1 to GC5)

- Developments within the UK in recent years for the introduction of services allowing non-emergency calls to organisations that also handle emergency calls carry a risk that the obligations within GC3 could be misinterpreted or challenged. We believe it is therefore appropriate for Ofcom to provide additional clarity ensuring there is no regulatory creep from what is intended under GC3 into calls provided in non-emergency situations. Given this ambiguity could extend to several of the revised clauses, we suggest the simplest solution is for Ofcom to define 'Emergency Calls' and then add this clarification wherever it is required to

remove the risk of misinterpretation. We have set out a possible definition as follows:

*“Emergency Calls means: a communication by an End-User with an Emergency Organisation to request an immediate response from that Emergency Organisation. The communication may take the form of a voice call; a text call made via a Relay Service; a Mobile SMS Access; or an eCall made via a Mobile Service using an in-vehicle system.”*

- Once defined, the words “Emergency Calls to” could be combined with “Emergency Organisations” within the potentially ambiguous proposed new clauses at GC3.2 (b) and GC3.4; and placed before “to the emergency call numbers” in GC3.5.
- Ofcom has referred to “emergency call numbers “112” and “999”” in proposed new GC3.4 and GC3.5. We consider:
  - There should be a recognition that many voice services do not always use numbering and, taking due account of the principles of non-discrimination and proportionality, all voice services should be subject to the same obligations;
  - The notion of “emergency call numbers” is better expressed by the term “dialling codes” and suggest Ofcom use this instead; and
  - There is an oversight in that the emergency dialling code for text relay, 18000, is not included within either clause. This devalues the service offered via this number which may place an over-reliance by end-users on the alternative Emergency SMS service.
- We believe that End Users will benefit if Ofcom removes the ambiguity concerning when reliable Caller Location Information is made available for Emergency Calls. Moving the text “at the time the call is answered by those organisations” within GC3.5 from the end to earlier in the sentence will give CPs some additional clarity in respect of this obligation.
- Taking all these comments into account (including eCall provisions), we suggest that Ofcom amend the clauses as follows:

*“3.4 The Regulated Providers must ensure that all End-Users can make Emergency Calls to access Emergency Organisations by using the dialling codes “112” and “999” and “18000” or an emergency service address at no charge and, in the case of a Pay Telephone, without having to use coins or cards. From 1 April 2018, in the case of Regulated Providers providing Mobile Services, this obligation shall also apply to access to Emergency Organisations by using eCalls from an in-vehicle system.*

*Caller location information*

*3.5 The Regulated Providers shall, to the extent technically feasible, make accurate and reliable Caller Location Information available for Emergency calls to dialling codes “112” and “999” and “18000” and to emergency service addresses, at no charge and at the time the call is answered by the Emergency Organisations handling those calls.”*

- As the provider of Emergency Call Handling services to the communications industry in the UK, we believe that further modifications to Ofcom's text at GC3.6(b) are required in order to add necessary clarity to remove potential ambiguity and provide understanding across industry for provision of accurate location information. We therefore propose the following amendment to GC3.6:

*"(b) which is a Mobile Service on an End-User's home network, the Caller Location Information must include, at least, the Cell Coverage information of the cell from which the call is being made."*

- We question why Ofcom deems it necessary to separate VoIP from other types of emergency calls in the proposed GC3.7. This implies that regulation is not technology neutral and suggests VoIP calls have a different status from those emergency calls made using alternative technologies. We would also suggest that Ofcom revises its numbering of GC3.7 such that the provisions made in this section are included as additional items within GC3.6.

#### Directory information (GC8 and GC19)

##### Operator assistance, directories and directory enquiry services (GC8)

- To ensure that subscribers are provided the most up to date version of the Phone Book we suggest that GC8.4 should be modified as follows. This ensures that regulated providers, who do not produce their own directory, are obliged to obtain the current version of the book for their subscribers.

*"Regulated Providers must ensure that any Directories they produce and/or supply are updated and provided at least once a year."*