



SIMWOOD
STRAIGHT-TALKING, FORWARD-THINKING, TELECOMS

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Telephony USO Review Team
Office of Communications
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11th January 2022

By e-mail

Dear Sirs,

**Reference: Review of the telephony universal service obligation (“USO”) -
Proposals on public call boxes and other changes (the
“Consultation”)**

Non-Confidential

Introduction

Established in 1996, Simwood eSMS Limited is an alternative carrier offering managed services, voice and data exclusively to a channel of other Public Electronic Communication Networks (“**PECNs**”) and Services (“**PECS**”) in the UK. We provide services to several hundred PECS/PECNs of all sizes. We are interconnected with British Telecommunications plc (“**BT**”) over SS7 under the Network Charge Control Standard Interconnect Agreement (“**SIA**”) and have recently agreed to connect over IP (Type B). We are also interconnected with all the major fixed networks, generally on bilaterally equivalent terms. Simwood is a net importer of telephone numbers by a substantial margin. Simwood Inc is a licensed Competitive Local Exchange Carrier (CLEC) and Interexchange Carrier (IXC) in 25 States of the USA . Sipcentric Limited is a provider of hosted PBX and SIP Trunking services both to resellers and direct to market, including via its reseller Birchills Telecom Limited. Both were acquired in October 2019. All four companies are wholly owned subsidiaries of Simwood Group PLC and collectively



referred to herein as “Simwood”, “we” or “us”. Whilst there will be engagement from trade associations that Simwood companies are members of, and we may well agree with them in part, the Office of Communications (“Ofcom”) should treat this response, and only this response, as being definitive of our views.

USO Response

While Simwood is disappointed that Ofcom has chosen to prioritise work in relation to Phone Call Boxes (“PCBs”) over the wider-reaching implications of the PSTN closure, the subject matter of the Consultation remains important and we trust what follows will assist Ofcom in effective decision making.

Breach of International Law Obligations

Simwood notes that Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the “EECC”) remains part of the UK’s statute books by way of the Withdrawal Act 2018.

Article 97(1) of the EECC states;

Member States shall ensure that, where economically feasible, except where a called end-user has chosen for commercial reasons to limit access by calling parties located in specific geographical areas, national regulatory or other competent authorities take all necessary steps to ensure that end-users are able to:

(a) access and use services using non-geographic numbers within the Union; and

(b) access all numbers provided in the Union, regardless of the technology and devices used by the operator, including those in the national numbering plans of Member States and Universal International Freephone Numbers (UIFN).

This leads us to question how Ofcom can say what it does at §3.50 of the Consultation, which reads as if Ofcom is giving the PCB operators *permission* to disregard the UK’s international law obligations.



It is entirely acceptable for Ofcom to remove the requirement to originate calls from PCBs to international or premium rate destinations from the USO, given that it is virtually duplicated in General Condition of Entitlement (“GC”) B4.2 (the condition enacting the aforementioned EECC Article). However, it would be entirely inappropriate for Ofcom to fetter its discretion in this way in relation to outcomes the UK is required to procure due to the EECC and GC B4.2.

Even the most cursory analysis of an international rate card shows that there are many destinations with termination rates commensurate with UK fixed and mobile; we also note there is at least one Non-Geographic Service charge band (other than 080x and other free-to-caller ranges) with a termination rate of zero. Additionally, the ability in the Consultation for PCB operators to have cashless units also changes the dynamic of ‘economically feasible’ in the context of Article 97 and GC B4.2.

To conclude, replicating the requirements (or going further than) GC B4.2 in the USO is one matter which Ofcom can address, and indeed, for simplicity, perhaps should. However, fettering its discretion and giving permission to PCBs to ignore the UK’s international law obligations without demonstrating they have met an ‘economic feasibility threshold’ (which we say they cannot in many cases), would be unlawful in our view.

Facsimile (“Fax”)

Bluntly, we’ve addressed the issue of fax over IP from the day we started with IP RTC, approaching 20 years ago. BT and KCOM are orders of magnitude bigger and better resourced. In the former’s case, they also have Adastral Park and all the great engineering minds therein.

If Simwood can do it; if Simwood’s customers can do it; if we can do it when there were more IP islands and media conversions and interworking issues than BT and KCOM will experience when the PSTN is closed, then, we struggle to understand the rationale behind the argument against the requirement.

All that said, we note with interest that BT’s IP platform purports to support T.38 fax as will, we suspect, most operators’ SBC choices. It is within Ofcom’s gift of course to fetter the requirement to the interop scenarios in which T.38 is expected to function to minimise disruption to end-users, instead of removing it completely.

Simwood is also gravely concerned that the removal from the USO of a Voice Band Data (“VBD”) obligation (like fax) will have serious consequences for the vulnerable who rely on VBD applications like



telecare - the potential for read across into the PSTN closure and the further marginalization of the vulnerable is a risk we hope the regulator will address in any final statement on the USO.

We sadly feel that there remains a plethora of edge cases of critical importance which rely on the ubiquity of POTS and which will cease to function on PSTN closure. Removing the USO because they won't work under IP could be said to be the tail wagging the dog, whereas a consultation on sustaining affected services may have concluded that a USO, possibly for an alternatively purposed and named product, should persist for such life-critical edge-cases over and above any evolution to IP. In saying this, we have regard for Article 81(2) of the EECC which requires the UK to require a PSTN replacement of 'comparable quality' to its predecessor - a legislative requirement we fear is not given sufficient weight.

Evidence

Simwood was unaware that 'rough checks' (for example as cited at footnote 58 of the Consultation), which we assume was in response to a formal information request pursuant to Section 135 of the Act, was an acceptable way to meet the requirements of such notices.

Simwood considers that this is a troublesome precedent for Ofcom to set; the adoption of a laissez-faire approach by other subjects of such information requests risks a chilling effect on policy making by depriving the regulator access to accurate information to make its decisions.

There is, of course, an argument about the *proportionality* of the information request, however, the time for that, assuming they were issued in the manner we are accustomed to, would be for BT to have objected to the question during the draft notice stage. A dialogue could have resulted in the question being reframed and thus negating the need for 'rough checks'. We also note that BT (itself and its group companies) have previously been investigated a number of times in relation to a failure to comply with Section 135 of the Act - a data point that makes the acceptance by Ofcom of 'rough checks' even more surprising.

We would respectfully suggest that Ofcom conduct and publish a sensitivity analysis in relation to its findings based on BT's answers and test whether or not any possible errors resulting from the 'rough checks' are material enough to warrant a proper analysis.



Simwood is also disappointed that the magnitude of hoax emergency calls was not discussed (as a result of the information allegedly not being available) at length in the Consultation. We are adamant that BT will have sufficient information at its disposal (for example, by comparing its PCB lists to its Call Handling Authority records) to readily ascertain whether a particular PCB is a 'hoax call hot spot'. In the interests of robust decision making, we would not consider it disproportionate for Ofcom to issue a Section 135 request to BT to avail itself of this information.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Simon Woodhead', written in a cursive style.

Simon Woodhead