

**PROPOSED GUIDANCE ON PROTECTING ACCESS TO EMERGENCY ORGANISATIONS WHEN THERE IS A POWER CUT AT THE CUSTOMER'S PREMISES: PROPOSALS FOR GUIDANCE ON GENERAL CONDITION A3.2(B)**

**RESPONSE BY SKY**

**EXECUTIVE SUMMARY**

- 1.1 This submission provides Sky's response to Ofcom's consultation entitled "Proposed guidance on protecting access to emergency organisations when there is a power cut at the customer's premises: Proposals for guidance on General Condition A3.2(b)" (the "**Guidance**"), published on 24 May 2018.
- 1.2 The Guidance proposes guidelines on the measures Ofcom considers communications providers ("**CPs**") should have in place to ensure that customers making landline calls over a broadband connection (voice over internet protocol technology ("**VoIP**")) are able to make emergency calls in the event of a power cut at their premises, in light of the General Condition requirement that CPs take "*all necessary measures*" to ensure "*uninterrupted access to Emergency Organisations*".
- 1.3 The Guidance contains four 'principles' that Ofcom considers represent appropriate and proportionate measures that CPs should have in place in order to meet the requirements of General Condition A3.2(b) (the "**Principles**").
- 1.4 Sky agrees that non-binding guidance is a proportionate means for Ofcom to clarify its expectations with regards to how CPs might comply with A3.2(b) and agrees, in general terms, with the four Principles Ofcom has proposed.
- 1.5 However, Sky has a number of concerns regarding the proportionality and practicalities of implementation in relation to some of the more granular aspects of the Guidance, particularly in relation to the third and fourth Principles:
  - (a) Sky considers that the Guidance should be amended to accept that there is a limit on how far a CP is reasonably expected to go in seeking information from third parties and external sources (such as removing or clarifying the obligation to utilise information that "becomes available" to the CP or "be alert to" information provided to the CP by charities or local authorities).
  - (b) Sky considers that the Guidance should make clear that CPs can primarily base their decisions on information provided to them by their customers, whether proactively or when prompted (and that such information should be provided to them in a timely manner).
  - (c) Similarly, Sky considers that the Guidance should be clearer on the obligation to make information available to customers on an "ongoing basis", especially in correspondence with their customers. Sky considers that an annual reminder within a communication to the customer is a sufficient and proportionate means of achieving Ofcom's objective in this regard.

**SECTION 1: INTRODUCTION**

- 1.1 Sky appreciates Ofcom's recognition of changes in the market for voice services and the implications that this could have for how CPs can ensure uninterrupted access to emergency organisations, particularly when providing VoIP services .

- 1.2 Sky notes Ofcom's recognition that it must have regard for ensuring that its interventions are evidence-based, proportionate, consistent, accountable and transparent and that it will seek the least intrusive regulatory mechanisms to achieve its policy objectives. However, whilst Sky agrees in principle with the approach set out in the Guidance, we have concerns about some potentially disproportionate and impractical elements of Ofcom's recommendations.
- 1.3 Sky also notes that section 3(3) of the Communications Act 2003 requires Ofcom to demonstrate that any proposals for new regulation are (among other things) proportionate. The Competition Appeal Tribunal has indicated<sup>1</sup> that the concept of proportionality should be interpreted as meaning that proposed regulation:
- (a) must be effective in achieving the legitimate aim in question;
  - (b) must be no more onerous than required to achieve the aim;
  - (c) must be the least onerous, if there is a choice of equally effective measures; and
  - (d) must not produce adverse effects which are disproportionate to the aim pursued.
- 1.4 Sky believes that when issuing guidance that relates to how CPs might comply with a regulatory requirement, Ofcom should also follow these principles.

## **SECTION 2: GENERAL COMMENTS**

- 2.1 Sky supports Ofcom's recognition that, given the prevalence of cordless fixed line telephones and because it is estimated by Ofcom that there is now indoor mobile coverage by at least one mobile network operator for 99% of premises in the UK,<sup>2</sup> a battery back-up facility is not necessary, nor in all cases the best solution, for a CP to meet its obligations under General Condition A3.2(b).
- 2.2 Sky agrees with Ofcom that it should not be prescriptive as to the type of solution CPs implement so long as it meets the requirements of GC A3.2(b). Sky also agrees that CPs are in the best position to think through the practicalities and assess the most effective ways to gather any further information about their customers that they need to identify those using VoIP-based services who are at risk of needing back-up access to emergency organisations in the event of a power cut.

## **SECTION 3: COMMENTS ON CUSTOMER CHOICES**

*"Some customers who are offered the solution may choose to decline it if they feel they have alternative protection, and they should be able to make this choice." (para. 3.24)*

- 3.1 Sky supports the freedom of customers to choose, or confirm they already have in place, alternative protection (e.g. through mobile services). However, it would provide clarity for all parties if the Guidance made clear that where this is the case the CP is entitled to rely on that positive affirmation by the customer (i.e. without having to take any additional steps to corroborate that information or verify the robustness of such alternative arrangements).

## **SECTION 4: COMMENTS ON INFORMATION AVAILABLE TO SKY GENERALLY**

*"In relation to mobile signal, CPs can utilise information available on Ofcom's mobile checker to support their assessment of whether the customer is likely to be at risk owing to poor mobile*

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<sup>1</sup> Paragraph 137, *Tesco plc v Competition Commission* [2009] CAT 6.

<sup>2</sup> See: [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0021/108516/connected-nations-security-resilience-2017.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0021/108516/connected-nations-security-resilience-2017.pdf)

*signal. CPs are likely also to hold or have access to other relevant information in relation to mobile coverage for their customers in distinct locations e.g. not spots or rural areas.” (para. 3.40)*

- 4.1 “Mobile checkers” are not currently integrated within Sky’s fixed line / broadband sales process and are not something that could be easily incorporated into it without a material cost and resource implication, as well as a material adverse impact on the speed and flow of the sales journey (whilst the call centre agent runs the mobile checker and relays the results to the customer).
- 4.2 Given that Ofcom estimates 94% of UK adults personally own or use a mobile phone<sup>3</sup>, Sky considers it reasonable and proportionate to expect customers to have an understanding of the mobile phone coverage in their home and be able to advise the CP of the suitability of a protection measure that relies on a mobile phone when prompted.
- 4.3 It’s also unclear to Sky whether, in circumstances where the CP has its own mobile offering and publicly available coverage checker, Ofcom’s expectations with regards to a CP checking against the Ofcom mobile coverage checker are *in addition to*, or *instead of* the CP making reference to its own data. Checking against two sources will add additional time and complexity to the sales journey and risks inconsistent outputs.
- 4.4 If Ofcom is minded to require CPs to proactively check mobile coverage against a coverage checker tool, it should make clear in the Guidance that there only needs to be a single point of reference and that this could be either the Ofcom coverage checker or the CPs own.
- 4.5 Furthermore, if Ofcom is minded to insist on reference to its own coverage checker:
  - (a) Sky would request that the Guidance makes clear this is only required where that checker is available to the CP (to cater for instances of downtime); and
  - (b) In order to provide a robust point of reference, Ofcom must ensure its coverage checker provides results for all UK mobile networks, as it is not always the case that a mobile network operator’s coverage is *identical* to that of a mobile virtual network operator using its underlying network.

*“CPs should ensure that on an ongoing basis they are keeping up to date with any information that becomes available which may help identify at risk customers and they are updating their processes.” (para. 3.42)*

- 4.6 Sky believes the Guidance on this point is too broad as it is not clear what is meant by “*becomes available*” and it includes information which “*may help*” identify at risk customers.
- 4.7 This requirement could capture anything from information that is proactively provided to the CP directly by their customer to information generally available from public sources (such as the public internet or public databases e.g. the open electoral roll).
- 4.8 Sky does not consider it proportionate or practical for CPs to be constantly monitoring external data sources for possible material updates regarding their customers, especially when their customer base is large.
- 4.9 Sky therefore considers that the language in the Guidance needs to be made more specific on what is expected in this regard, whilst maintaining the ‘principles-based’ approach

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<sup>3</sup> See: <https://www.ofcom.org.uk/about-ofcom/latest/media/facts>

Ofcom has adopted. In line with the principle of proportionality, Sky considers that the obligation on CPs to identify newly “at risk” customers should be limited to circumstances where customers, or certain third parties acting on their behalf (such as a guardian or power of attorney), provide relevant information to their CP either proactively or when prompted.

*“CPs should also be alert to any information being provided to them about their customers by third parties such as charities and local authorities.” (para. 3.58)*

- 4.10 In addition to the concerns outlined at para’s 4.6 – 4.8 above, it is not clear to Sky what is expected by an obligation to *“be alert to any information provided to [a CP]”*. Furthermore, Sky is not regularly in contact with, nor does it have or intend to put in place information sharing agreements with, charities or local authorities.
- 4.11 Sky considers that Ofcom’s concerns in this regard are adequately addressed by the first sentence of para. 3.58 (*“A customer (or someone acting on behalf of a customer) may inform the CP through various channels that their circumstances have changed in some way”*) and to impose additional obligations would be disproportionate.
- 4.12 Furthermore, Sky is concerned that using information obtained from third parties without the knowledge or consent of the customer could be met with suspicion and damage customer relationships as it could be seen as the CP “snooping” or discussing their circumstances with third parties to identify whether they are “at risk” (customers may be somewhat alarmed when a CP proactively mentions during a phone conversation that they are already aware the customer’s circumstances have changed). This is particularly the case in light of Ofcom’s acknowledgement that some customers who are at risk may not want to declare this to their CP<sup>4</sup>.
- 4.13 Sky therefore stresses that it considers that CPs should only be obliged to act on information provided directly to the CP by the customer themselves or their authorised representatives on their behalf, such as guardians etc.

## **SECTION 5: COMMENTS ON INFORMATION PROVIDED TO SKY BY OUR CUSTOMERS**

*“CPs should also be mindful that some customers who are at risk may not want to declare this to the CP for a variety of reasons.” (para. 3.50)*

- 5.1 Sky believes it would be onerous for CPs to be expected to second-guess the assurances of their customers, it would produce the adverse effect of damaging customer relationships and reduce trust between CPs and customers, and would be disproportionate to the insignificant likelihood that such efforts would reveal additional information. CPs can provide their customers with the pertinent information and give them the opportunity to declare circumstances which may qualify them as “at risk” but it would be disproportionate to expect CPs to go further.

*“The types of changes in circumstances that CPs should be particularly alert to are where they are informed that: (1) the customer is moving to a new house; or (2) the customer now requires priority fault repair or any of the other measures set out in General Condition C5.” (para. 3.60)*

- 5.2 If a customer moves to new premises, they may not know with a sufficient degree of accuracy and confidence whether they will have good mobile coverage in the new premises, so it is difficult to confirm in advance whether such a change in circumstances

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<sup>4</sup> See para. 3.50 of the Guidance.

could render them 'at risk' and require new information to be provided to them to make them aware of the risk of their phone not working in a power cut and that there is a protection solution available.

**SECTION 6: COMMENTS ON CP OBLIGATIONS**

*"[I]f the CP is providing a solution which relies on mobile signal to work, then they should ensure that the customer lives in premises that have mobile coverage." (para. 3.19)*

6.1 Mobile coverage inside premises depends on a large number of factors outside of our control. CPs must be able to rely on any assurances offered by their customers that they have adequate mobile service.

*"[W]e would expect CPs to: (a) make customers aware of the risk and protection solution(s) available on an ongoing basis; and (b) act appropriately when given information about changes in consumers' circumstances." (para. 3.54)*

6.2 Sky accepts that customers who have migrated to or taken up a VoIP service should be made aware of the risks regarding continuous access to emergency services via their landline and protection solution(s) available on an ongoing basis. However, whilst there may be many ways to achieve this, Sky considers that it would be proportionate to proactively remind such customers about this no more than once per annum, for example by including information in appropriate correspondence.

6.3 If Ofcom were to insist on more frequent proactive communication, this would place an undue burden on CPs and dilute the importance of the messaging.

6.4 Furthermore, Sky considers that, where a CP engages in effective communications via other means to ensure all customers understand the risk and eligibility criteria (for example, by publishing information online), it should be the responsibility of the customer to inform the CP of any change in their circumstances.

**Sky**

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