

Verizon response to Ofcom’s consultation on “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)”

Introduction

1. Verizon Enterprise Solutions (“Verizon”) welcomes the opportunity to respond to Ofcom’s “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)”¹ (hereinafter “the Consultation”).
2. Verizon is the global IT solutions partner to business and government. As part of Verizon Communications – a company with nearly \$131 billion in annual revenue – Verizon serves 98 per cent of the Fortune 500. Verizon caters to large businesses and government agencies and is connecting systems, machines, ideas and people around the world for altogether better outcomes.
3. Please note the views expressed in this response are specific to the UK market environment and regulatory regime and should not be taken as expressing Verizon’s views in other jurisdictions where the regulatory and market environments could differ from that in the UK.

General comments

4. Verizon recognises the importance of enabling access to emergency calling facilities and agrees with the principle of the Consultation. At the same time Ofcom needs to recognise that the relationship between customer and communications provider is completely different depending on whether the provider is consumer/ SME-facing on the one hand, or large enterprise-facing on the other. This has a clear bearing on how this General Condition should be interpreted and applied, particularly bearing in mind Ofcom’s duty to act proportionately.
5. While we accept the application of the relevant General Condition A3.2(b), we strongly urge Ofcom to take into account the specificities of enterprise customers when interpreting it, and to consider incorporating a carve-out in the guidance for those providers serving them.
6. There are good reasons for a carve-out. Enterprise customers are very different from residential consumers or SMEs in their demands and expectations, and neither want nor need consumer protection rules to be applied to their services. When such rules *are* applied, it quickly becomes disproportionate and makes little sense to the customer. We outline some of the main differences for such customers below:

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0018/114219/consultation-access-emergency-power-cut.pdf

- a. Size and business focus – Enterprise customers are large, highly empowered and very well-resourced. They have strong buyer power, negotiate tailor-made SLAs and conduct detailed reviews of the products they are buying in advance. Typically they have dedicated procurement teams to undertake these reviews. They therefore fully understand the risks related to IP communication products like VoIP (and we ensure we contribute to this in our customer-facing documents such as Terms and Conditions pre-signature and Welcome Kits).
- b. Company-level business continuity plans – such large enterprise customers have their own business continuity plans which will include power and communications, given that these are key to their functioning as a business in the event of an outage. These plans typically extend beyond an hour of emergency calls access. The proposals therefore appear duplicative with little to no benefit for large enterprise customers who have already considered and (where required) implemented solutions for themselves. It is also not clear how the proposed requirement for us to only provide power for an hour of emergency calling would fit in with our customers’ needs and own business planning which may include power for other functions for longer periods.

Clearly these continuity plans will vary from customer to customer, and given the bespoke nature of the services we deliver to each enterprise customer, it would be highly disproportionate and uneconomical for us to have bespoke solutions for all our different customer’s needs and individual equipment. In addition, we consider that the practical implementation of the proposals would mean nonsensical customer visits for each individual customer which would be disruptive for them and achieve little (as set out above). Furthermore, we do not believe that our customers want this service from us. We encourage our customers to consider back-up power for their specific communications systems and equipment and to have such a discussion with their equipment provider. As all our customers and their respective equipment are different, a one-size-fits-all solution is not a possibility for our business. This could significantly increase the complexity and cost to meet the proposals.

- c. End-users connected but unknown – Enterprise customers often have multiple premises and large numbers of employees (several hundred if not thousands) with the vast majority able to access a mobile phone either as part of their employment or their own personal phones. Indeed Ofcom notes the mobile penetration figures in its consultation are very high, with 94% of adults personally owned/used a mobile phone in 2017.² They will typically be working in a shared office space, rather than individuals on their own at home. Enterprise customers are therefore extremely low risk, and applying the principles in the guidance to them would simply not make sense. The idea that we should try to identify “at risk” customers quite clearly does not fit a B2B customer profile. Verizon does not deal with end-users directly and so it is difficult to conduct risk assessments on this basis and such an

² Ofcom’s Communications Market Report 2017, page 6. Available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0017/105074/cmr-2017-uk.pdf

assessment would be reliant on the customer for information (again further adding burden and duplication).

7. Our enterprise customers already ensure back-up power for business continuity, which would cover IP outages. They procure this from third party vendors as we do not supply this. There is a market and choice in such back-up power systems – customers can choose large or small uninterrupted power supply (UPS) with greater or fewer hours guaranteed, or have generators at the premises depending on their needs, budget and priorities. Our customers are therefore fully aware of the options and this will be a normal part of their internal procurement process which we are not involved with. Enterprise customers typically have customer premises equipment, both in the old TDM world and in the new IP world. When there was a power cut in the TDM world, the customer's PABX wouldn't function either and therefore enterprise customers are already used to this situation and have taken action to mitigate any risks. Consumers, on the other hand, are used to just a phone line, which doesn't require power today. We see this is a one of the key differences between our business, and that of consumer- and SME-facing providers, which justifies a special carve-out from the principles of the guidance.
8. Indeed, the European Commission appears to recognise and make allowances for this as it specifies in the Directive recitals amending the Universal Service and Users' Rights Relating to Electronic Communications Networks and Services Directive that, in ensuring uninterrupted access to emergency services in the event of catastrophic network breakdown or in cases of force majeure, Member States should take "into account the priorities of different types of subscriber and technical limitations."³
9. For the reasons above, we consider that a carve-out is necessary in order to make explicit that those providers exclusively serving large enterprise customers are exempted from the principles contained in the guidance. However without prejudice to this view, we also have the following observations on the Consultation.
10. We take several steps to remind customers, both pre and post-sale, about the limitations of the underlying technology and the potential need for back-up for their equipment. Again, however, as explained above, this is typically business as usual for them as it forms part of their business continuity planning. Verizon currently provides Business Continuity options to both TDM Voice and VoIP enterprise customers by rerouting incoming calls to alternative destinations to minimize business impact. Enterprise customers themselves provide alternatives for outbound calling in case of power outage, flooding, fire, service outage or Customer premises Equipment failings.
11. Even under current circumstances where power can be drawn through the Openreach copper line from the exchange, customers are advised to have a standard telephone to plug into an Openreach socket yet the communications provider does not provide the customers with such a phone (i.e. the

³ Directive 2009/136/EC, recital 35, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0136&from=EN>

hardware). The emphasis is placed on providing transparent information about the risk and solution to the customer.

12. We note that Ofcom has made reference to different providers' capabilities depending on which part of the service they are providing e.g. the network, the VoIP service. Such a division is also relevant for providers who are using wholesale products from BT. We would be keen to know what products are being developed by Openreach / BT to replace battery back-up. We intend to make this point in our response to Openreach's consultation on the withdrawal of wholesale line rental (WLR) products, and we consider that subject to its final conclusions, this is something Ofcom should also consider.
13. We also note that the proposals focus on customer or end-user premises, however we note that power cuts could affect larger areas including network equipment further up in the chain e.g. at the cabinet or the exchange. Therefore guaranteeing an hour's access at the end-user side is not reliable. We note that Ofcom is not considering guidance for these elements which risks making the requirements on the end-user premises side redundant.
14. Verizon would encourage Ofcom to seek information from other EU countries which have begun or completed an IP transition to inform its work e.g. Switzerland, Germany, France. For example, we recommend looking at the Swisscom FAQs document⁴ which covers this issue which suggests that a practical solution is redirection to mobile phones, or where mobile coverage is poor, that the customer can purchase battery back-up solutions themselves.⁵
15. Furthermore, Ofcom should consider the implementation of a similar policy in the US as set out in the FCC order FCC15-98.⁶ Of key note, is the requirement to *offer* (but not necessarily provide) a solution to customers, however the Order does not require retro-active fitting, monitoring by the provider, nor the solution to be provided free of charge. As a consumer-facing operator in the US, our solution is priced at around \$40⁷ but we have seen very little take-up despite a larger penetration of non-line powered services such as VoIP. Despite this, the FCC has imposed only relatively light-touch requirements on providers in the US.
16. [✂]

⁴ <https://www.swisscom.ch/content/dam/swisscom/en/about/media/press-release/2016/20160705-MM-FAQ-Privatkunden-EN.pdf.res/20160705-MM-FAQ-Privatkunden-EN.pdf>

⁵ See Pages 3-5 of the Swisscom FAQs document:

<https://www.swisscom.ch/content/dam/swisscom/en/about/media/press-release/2016/20160705-MM-FAQ-Privatkunden-EN.pdf.res/20160705-MM-FAQ-Privatkunden-EN.pdf>

⁶ https://docs.fcc.gov/public/attachments/FCC-15-98A1_Rcd.pdf

⁷ <https://www.verizon.com/home/accessories/powerreserve/?&skuParam=sku190001>

⁸ Wireless Substitution: Early Release of Estimates from the National Health Interview Survey at 1, January – June 2017, HHS, CDC, National Center for Health Statistics (Dec. 2017),

[✂]

Specific Ofcom proposals

17. Despite our concerns as outlined above, we agree that a principles-based approach is the best option for the guidance. We also feel that the focus on risk-assessing the customer base could provide sufficient flexibility for providers with different customer types and product/network models if the changes we suggest below are made.
18. We consider that our enterprise customers are at very low risk in the event of a power interruption. We therefore consider it is proportionate and pragmatic to exempt providers serving such customers from the requirements in the Guidance (but not the General Condition) so as to avoid the unnecessary regulatory burden that it creates for our business. This would mean that we would still be obligated to follow the General Condition but that we would not be required to meet the principles set out in the guidance, which we consider to be disproportionate given the very different customer-base we have.
19. In addition, the order of the four bullets setting out the principles of compliance implies that all communications providers should have a solution available, even if none of the customers are at risk or request such a solution. This is disproportionate and somewhat illogical order which could result in providers developing new products or solutions which will never be used. As a result, we consider that the four bullets setting out the principles of compliance with the guidance¹¹ should be re-ordered as follows:

“1. CPs should i) take steps to identify at risk customers and ii) engage in effective communications to ensure all customers understand the risk and eligibility criteria and can [where appropriate] request [a] protection solution;

2. Where customers are identified or likely to be identified as requiring a protection solution, CPs should have at least one solution available that enables access to emergency organisations for a minimum of one hour in the event of a power outage in the premises available for those customers;

2. The solution should be suitable for customers’ needs and should be offered free of charge to those who are at risk as they are dependent on their landline; and

<https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201712.pdf>

⁹ The Consultation, paragraph 2.17

¹⁰ *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey at 1, January – June 2017, HHS, CDC, National Center for Health Statistics (Dec. 2017), <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201712.pdf> at 3.*

¹¹ As set out at paragraph 1.8 of the Consultation.

3. CPs should i) take steps to identify at risk customers and ii) engage in effective communications to ensure all customers understand the risk and eligibility criteria and can request the protection solution; and [Move to 1]

4. CPs should have a process to ensure that customers who move to a new house or whose circumstances change in some other way are aware of the risk and protection solution available.

20. Furthermore, the relevant General Condition should not just be limited to battery back-up equivalent solutions. There are a number of elements to be considered such as network design and routing and ensuring calls do not get blocked when trying to reach the emergency services.

Other comments

21. We have seen several consultations regarding the new General Conditions and guidance supporting them in a piece-meal fashion over the past year. When the General Conditions were published on 19 September 2017,¹² it was understood that providers would have around 12 months to prepare for their coming into force on 1 October 2018. However, the constant changing and tweaking has made preparing for the new General Conditions highly challenging and has eroded such implementation time.

22. As with this current consultation, closing 4 July 2018, leaving less than three months before the new Conditions come into effect. This is highly unsatisfactory and Ofcom should be clearer on when it expects to fully consider provider compliance after this date, given the delays and moveable feast of compliance that communications providers are expected to implement.

23. Finally, we note that there is an inconsistent use of the terms “consumer”, “customer” and “end-user” throughout this document and others. The terminology used is very important. Providers rely heavily on the term used to assess which if any obligations fall on them (stemming from the definitions used in the EC Framework, Communications Act 2003, and Ofcom’s General Conditions among others). While we appreciate that Ofcom does not want to fetter its discretion, a lack of consistency across and even within documents makes responding to consultation and ultimately compliance more difficult and introduces regulatory uncertainty.

24. For example, on page 14 of the document, Ofcom refers to offering solutions to those who are at risk due to being dependent on their landline – in paragraph 3.29 of the Consultation, Ofcom uses both terms for the same consideration:

*“These **consumers** would be more “at risk” as they are reliant on their landline to contact emergency organisations in the event of a power cut. It is these **customers** who we consider should be offered the solution free of charge.” [Emphasis added]*

25. Ofcom must ensure greater consistency here. Indeed, it may be because there is not a clear view of the differences between the different types of customers of domestic, SMEs, and enterprise

¹² https://www.ofcom.org.uk/_data/assets/pdf_file/0023/106394/Annex-14-Revised-clean-conditions.pdf

customers that leads to this confusion. Clearer identification of the problem and/or harm, and clear, defined impact assessments could help to ensure that regulation is targeted. We note that there appears to be no impact assessment included in this consultation.