

Vonage Limited (“Vonage”) welcomes the opportunity to respond to Ofcom’s Consultation 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) dated 24th May 2018.

1.1 Vonage is a VoIP telephony service provider of cloud based hosted voice services to small business customers and also a provider of over the top (“OTT”) voice telephony services to consumers across their broadband, 3G and 4G connections. Vonage is not in the access infrastructure network business and does not provide the broadband / 3G / 4G connectivity underlying its voice services. Vonage’s OTT voice service is therefore reliant on its customers having access to third party broadband / 3G / 4G connectivity. Vonage itself has no contractual relationship with these third party underlying network providers.

1.2 We have divided this response into Part A and Part B. In Part A we focus on the provision of adequate disclosures and consumer information as the more practical, proportionate and effective solution to help ensure consumer protection rather than the imposition of mandatory hardware solutions. In Part B we comment specifically on Ofcom’s proposed guidance and Principles as set out in the Consultation.

2. Vonage is committed to compliance with the requirements set out in General Condition (GC) 3.1(c) (from October 2018, GCA3.2(b)) to take all necessary measures to ensure uninterrupted access to Emergency Organisations. Vonage also recognises that with the migration away from the UK’s traditional line powered PSTN copper wire to fibre broadband technology uninterrupted access to Emergency Organisations cannot be guaranteed in a power cut. Currently, limitations in VoIP and access to Emergency Organisations in cases of power cuts and broadband failure are notified to customers at the point of sale, on Vonage’s website, in customer terms of service and through the use of warning stickers when VoIP adaptors/devices are delivered to customers.

3. As broadband-based calls become the norm replacing traditional landline PSTN based call services altogether, Vonage recognises the need for guidance and in particular the disclosure of consumer information to help ensure uninterrupted access to Emergency Organisations.

Part A

4.1 Vonage would draw Ofcom’s attention to the ComReg Requirements regarding Battery Back-up and information for Fixed Voice Services over non Public Switched Telephone Networks Response to Consultation and Decision dated 30/01/2018:

<https://www.comreg.ie/publication/requirements-regarding-battery-back-information-fixed-voice-services-non-public-switched-telephone-networks/>

4.2 Whereas Ofcom in its consultation has focused on mandatory measures requiring hardware requirements and solutions, ComReg focuses on the provision of adequate disclosures and consumer information as the more practical, proportionate and effective solution. In reaching its Decision ComReg as part of its consultation process looked at other jurisdictions and whether other National Regulatory Authorities had imposed battery back up (“BBU”) requirements. In paragraph 35 of the ComReg Decision ComReg states: “The Consultation looked at changes in technology for fixed voice services and referred to a number of independent sources including research carried out by Cullen International. This research looked at whether National Regulatory Authorities (“NRAs”) have imposed requirements regarding BBU for the optical terminating units and VoIP equipment for FTTH access deployments. It found that of the 15 benchmarked NRAs, **with the exception of the**

UK, no NRA has mandated provision of a BBU service [emphasis added].” The UK is therefore the only country in which battery back-up solutions are proposed to be mandated.

4.3 Transparency about back up options is surely a more practicable solution than the position proposed by Ofcom, a position that is counter to NRA decisions made elsewhere. For the reasons set out in the ComReg Decision, Vonage favours ComReg’s approach as the best way forward to adequately inform and protect end user customers. As such Vonage would urge Ofcom to implement a similar disclosure / consumer information approach in the UK rather than adopting a costly and unnecessary regulatory hardware based mandate that will not improve access to communications. We consider ComReg’s approach to be more proportionate whilst also safeguarding the protection of consumers. With the migration away from the UK’s traditional line powered PSTN copper wire to fibre IP broadband technology, ensuring protection through disclosure and consumer information is a natural and logical extension to the current requirements set out in Annex 3 to General Condition 14 (Code on the provision by Service Providers of consumer information to Domestic and Small Business Customers for the provision of Services) pursuant to which service providers must clearly disclose limitations in the event of a power failure to domestic and small business customers at the point of sale, within terms and conditions and on a service provider’s web site. We consider this to be the most effective and transparent approach to protecting end user customers.

5. The ComReg position as set out in its Decision is that clear and effective information regarding any limitation in access or related changes must be provided to customers, both potential and existing, so that they can make informed choices about their telephony services. ComReg’s position is encapsulated in paragraph 11 of its Decision which states “As the prevalence of high speed networks using VoIP technology over time will increase and expand to all geographical areas, ComReg considers that at a minimum clear and effective information regarding any limitation in access or related changes must be provided to all subscribers, both potential and existing, by fixed PATS providers, so that amongst other things subscribers can make informed choices. This may be to choose to consume a VoIP service and how to use it, to elect or not to have a BBU service to address their particular needs and/or to manage expectations about reliability and functionality in their household or at their premises through suitable alternative approaches including a mobile phone.”

6. Also, in contrast to Ofcom’s approach of singling out those vulnerable customers who might be more at risk as they are dependent on their landline, ComReg makes no such vulnerability distinction. ComReg has decided not to mandate any additional obligations in respect of vulnerable users at this time but has said it will continue to monitor the situation and may revisit this aspect as relevant. Respondents to the ComReg Consultation stated that they were not aware of any current concerns with vulnerable customers. ComReg came to the conclusion in paragraph 199 of the Decision that “Measures that increase information available to end-users would empower them to make informed choices. It would also act as a safeguard for high risk vulnerable users, supporting their need for continuity of service and emergency access as well as access to other ancillary services. If adequately informed, consumers would likely be protected against detriment. They would be sufficiently aware of any service limitations, know how to protect themselves from such risks, and have a meaningful opportunity to do so. ComReg believes that increasing information around disclosure of risk and BBU could help reduce the potential for consumer detriment including any (perceived) barriers to taking up a VoIP service.” Again, we would urge Ofcom to follow ComReg’s lead and to adopt this approach.

7. We support fully ComReg’s approach as set out in its Decision, namely the disclosure of information which will clearly inform end users about the new IP/fibre based technology being used to provide voice telephony services with regard to access to emergency services,

details of any limitations in service in the event of a power failure, together with details of availability of BBU equipment and where no BBU equipment is available informing the customer of this. In effect, the provision of this information would complement the information requirements currently set out in Annex 3 to General Condition 14. The disclosure of information should be available to new customers receiving IP/fibre based services and existing subscribers where during their contract term there is a planned migration away from the existing PSTN technology being used. The disclosure of information to customers as proposed in this Part A of our response is in line with, and fulfils, Ofcom's regulatory obligations and duties as set in paragraphs 2.2 to 2.5 of Ofcom's Consultation and will further Ofcom's stated objectives of promoting competition, encouraging investment and innovation in the telecommunications market and enhancing consumer protection and citizens' rights. This approach is also in line with Ofcom's duty to ensure regulatory interventions are proportionate, consistent, accountable, transparent and consist of the least intrusive regulatory mechanisms to achieve Ofcom's policy objectives.

8. Vonage fully supports ComReg's stated view that "it should be possible for an end user to order the non-PSTN service with or without a BBU service" (paragraph 101 of the ComReg Decision). ComReg has also said that it welcomes any industry initiative that results in a standardised information being made available to end users. Again, this is a position that Vonage would support. It is also quite reasonable that end users should be able to contact their service provider to understand solutions available to them to protect themselves in the event of a power failure.

Part B

9. Against the background that we do not agree with the Ofcom approach as set out in its consultation of mandating hardware solutions and that we would urge Ofcom to adopt ComReg guidance, below we nevertheless set out some specific comments and concerns on Ofcom's proposed guidance and principles.

10. The four Principles as currently set out in Ofcom's consultation apply to Publicly Available Telephone Service (PATS) providers and also to Public Electronic Communications Network (PECN) providers, both PATS and PECN providers being Regulated Providers as per GCA3.1(a). Ofcom in its consultation has stated that all CPs (PATS and PECN providers) must take into account the proposed guidance and Principles. Ofcom also states that the Principles have been developed with those providers in mind who will be offering both the underlying network and the VoIP service to the customer. This scenario, however, is not necessarily the case as Ofcom has recognised in paragraph 2.38 of the consultation where Ofcom states: "We note that if a customer is taking the network element and VoIP service from separate CPs, then there may be an opportunity for CPs to work together to ensure that their customer is protected as necessary, and they are both meeting their obligations in GCA3.2(b). This may include sharing responsibilities for assessing which customers are reliant on their landline, as well as sharing information or technology as appropriate."

11. Where there are two providers as recognised by Ofcom in paragraph 2.38, in the case of Vonage where an OTT VoIP service is offered, it will not always be possible for Vonage to share information and responsibilities with the PECN access network infrastructure provider. In the vast majority of cases, Vonage's OTT service is delivered on an access agnostic basis; Vonage will have no direct relationship, contractual or otherwise, with the access network infrastructure provider and will have no control over access network elements. Vonage does not necessarily know who the PECN access network infrastructure provider is and Vonage would not know if a customer changes its PECN access network infrastructure provider. Also, the Vonage service is designed to operate on a nomadic basis which in itself means a customer being capable of using the service in conjunction with different PECN

providers from different locations. Given the access agnostic and nomadic basis of the VoIP service, and that PATS and PECN access network infrastructure providers may not be known to each other, it is not possible for service providers and network providers to share responsibilities and information and to work together on a solution for the customer. Placing the primary obligation to adhere to the Principles on both the PATS and PECN access network infrastructure providers will inevitably lead to inefficiencies and customer confusion. Customers will not know which provider to contact and who is responsible for their solution and providers could end up duplicating solutions, with both PATS and PECN access network infrastructure providers providing solutions (e.g., both providing a SIM free mobile phone to the same customer). Where a customer is taking the network element and VoIP service from separate CPs, we believe the primary obligation for a solution should be with the PECN access network infrastructure provider who will have more information about the customer's requirements than an OTT VoIP service provider. Given the access agnostic and nomadic nature of VoIP, the PECN access network infrastructure provider is more likely to be in possession of the appropriate customer information to take appropriate steps to identify and address the needs of customers. PECN access (unlike VoIP) is tethered to a customer's network termination point at the customer's address/premises and it therefore follows that information about a customer's requirements with regard to an appropriate power cut solution is more likely to be held by the PECN access network infrastructure provider in the first instance. Given the nomadic nature of VoIP users, VoIP service providers are not necessarily as well placed to identify a consumer's landline dependency. Such dependency, if any, may be contingent on the location from where the service is being used. In the first instance, we consider PECN access network infrastructure providers will be better positioned to identify customers' requirements. As an OTT VoIP service provider, Vonage does not install equipment on a customer's premises and therefore site visit interaction does not take place to gather information as to whether a customer is reliant on their landline.

12. In paragraphs 3.12 to 3.14 Ofcom also refers to enabling access to a customer's property to maintain, replace or service equipment. Property address information for the network element will be known at all times by the PECN access network infrastructure provider, whereas this will not necessarily be the case for an OTT VoIP service provider who may be less likely and less able to identify a customer's location and requirements – with VoIP a customer has the flexibility to use the service from any number of different locations at any time.

13. Ofcom has stated that CPs should have at least one solution that enables access to emergency organisations for a minimum of one hour in the event of a power outage in the premises (Principle 1). Ofcom considers a solution would in most cases meet Principle 1 if it offered the customer the ability to access Emergency Organisations for a minimum of one hour following a power cut. However, Ofcom goes on to say that some consumers may require protection beyond one hour (e.g., if they live in households that have a history of long-duration power outages) and that Ofcom considers that CPs should take appropriate steps to identify and address the needs of customers who would benefit from additional protection. Again, for the reasons stated above our position would be that the PECN access network infrastructure provider would be better placed to identify and address customer needs as in many cases the VoIP provider will not be in a position to do so.

14. By placing the primary obligation to adhere to the Principles on both PATS providers and PECN access network infrastructure providers there is a risk of the customer's requirements falling between two stools and not being addressed adequately at all. If the provision of back up equipment is to be mandated (a proposition that Vonage does not agree with), then we believe primary responsibility must be with the PECN access network infrastructure provider not the OTT VoIP service provider. There are a number of reasons for this. Any battery back up hardware solution provided by the OTT VoIP service provider would not enable communications to be made unless the PECN access network infrastructure provider

itself ensures continuity of the underlying broadband connectivity. Vonage will not always know the identity of the PECN access network infrastructure provider; our customers change their broadband provider regularly without our knowledge. If a new PECN access network infrastructure provider failed to provide an adequate battery back up solution we would not know. Ofcom will therefore need to direct that all PECN access network infrastructure providers are responsible for implementing a battery back up solution. In turn, OTT VoIP service providers would instruct their voice customers to plug their VoIP adaptor into the PECN access network infrastructure provider's battery back up equipment and to keep a corded phone plugged in all the time.

15. Regarding CP responsibilities and the technological solutions available, we note Ofcom's technology neutral approach. Our view is that a mobile solution in most circumstances would likely offer the simplest and most efficient solution for consumers. The problem we foresee with battery back up and UPS devices that would provide power back up for a minimum of one hour is that different customer configurations will require different solutions. Customer premise equipment (CPE) and its power consumption is not standard. A customer's configuration will include different CPE components each with different power consumptions (e.g., modem, router, VoIP adapter/device to be connected to router, signal booster(s), DECT base station and DECT phones). Depending on the number of CPE components comprising a customer's configuration, battery back up and UPS requirements will differ from consumer to consumer. It will therefore be difficult on a case by case basis to determine the power consumption and the associated battery back up and UPS requirements needed to provide at a minimum one hour's back up. The preferable solution would therefore be to supply to a consumer a SIM free phone for use to call 999 and 112 with the instruction that the customer keep the phone charged at all times and only use it to call 999 and 112. A requirement could be placed on CPs at the point of sale to ask consumers if they have a mobile phone. If the answer is no and it is determined the consumer is at risk the default position could be to ship a mobile SIM free phone to the consumer. If the consumer is located in a not spot with no mobile signal on any network then an alternative solution could be adopted suitable for the individual consumer's needs. Consumers are least likely to set up a solution which is not installed by their CP. The problem with shipping battery back up or a UPS device is that there is a strong likelihood that a consumer will not know how or where to install it and as likely as not the device will remain unused in its packaging. Also, equipment needs to be maintained. Battery back up has a limited lifespan from installation and will degrade over time to zero. It is not practical for end users to test battery back up and UPS solutions as to do so would require disconnecting the mains power supply. This is certainly not something that a consumer deemed to be at risk should be encouraged to do.

16. As stated above we agree with ComReg's Decision that vulnerable customers should not be singled out. We agree with ComReg's practical considerations for reaching this conclusion. In addition, we do not feel that Ofcom has considered the onerous GDPR obligations placed on businesses in keeping records consisting of personal information covering customers' health, disability and accessibility matters. Sensitive personal data of this type is subject to onerous GDPR considerations concerning its collection, storage and use. There is a greater risk in connection with this type of personal data and greater fines if there are data security issues. Rather than placing the obligation on CPs to keep and maintain this sensitive personal data perhaps it would be more expedient for Ofcom to set up a centralised register so that all CPs would have access to this information on a strict need to know basis in connection with the supply of telephony services to the data subject. Vonage would welcome Ofcom's view on such a regime.

17. Gathering information to determine customers' vulnerability to landline reliance involves a huge administration overhead to implement processes in connection with signing up customers and ongoing customer communications to properly monitor customer

requirements. If Ofcom's hardware solutions are to be adopted in preference to the preferred ComReg approach, Vonage would contend that the cost of supplying hardware solutions should be borne by the PECN access network infrastructure providers. It is these PECN access network infrastructure providers that have decided to make line powered access infrastructure technology redundant. It is disproportionate that OTT service providers should bear the cost of providing a solution arising from PECN access network infrastructure providers migrating away from PSTN technology. If a hardware solution is to be adopted, we consider the PECN access network infrastructure provider should be responsible for providing power back up solutions to all premises they are providing fibre access to. This should be considered part of the overall cost that flows from PECN access network infrastructure providers' decisions to switch over to IP/fibre access networks; this should not be a service provider cost. By making this a PECN access network infrastructure provider responsibility the unit cost of provisioning hardware associated with the volume of network termination points would be reduced.

18. We hope that Ofcom finds this response constructive and of use. Should you require any elaboration on this response please let us know.

Vonage Limited
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