Three's Consultation response – Emergency Video Relay

Three welcomes the opportunity to comment on Ofcom's Further Consultation on Emergency Video Relay published on 16 February 2021 (the "Consultation").

Proposals for Emergency Video Relay

Three has the following specific comments on Ofcom's proposals:

Question 1: Do you agree with our proposal that regulated providers should be required to either provide emergency video relay or contract for it to be provided?

Three has concerns with Ofcom's proposal that regulated providers should be required to provide this service if a wholesale or video relay supplier provider does not come forward to provide this. This type of service is not consistent with that conventionally provided by mobile operators, so to develop this expertise in-house would be a costly and timely exercise for providers. In Three's view, adding this type of obligation to Ofcom's General Conditions for regulated providers would be disproportionate to the consumer need involved. Three currently has approximately [**CONFIDENTIAL**] customers registered as deaf. To help with Ofcom's analysis of likely demand in this area, Three has investigated usage of our Interpreters Live video relay service for deaf customers. On average Three has observed customers using our Interpreters Live service between **[CONFIDENTIAL]** minutes in total per month. In Three's view, an alternative solution should therefore be considered by Ofcom limited to an obligation on providers to contract with a third party for provision of the service.

If a video relay provider cannot be found, Three would ask that Ofcom re-consider alternative options for this service, albeit that they may not offer the optimum solution. On this, Three notes at paragraph 7.6 of the Consultation that *"BT suggested that Ofcom consider whether TapSOS could be a viable alternative to emergency video relay. TapSOS is a smartphone app that gives access to emergency SMS and allows users to tap on symbols rather than type. Users register their number with the emergency SMS service from within the app, and additionally set up a profile with information including name, gender (optional) and email address The app has been accredited by British APCO."* Ofcom notes at paragraph 7.10 that *"while TapSOS offers benefits to some users, it has limitations in that it does not offer two-way communications in BSL users' first language. In our consultation we evaluated the benefits of BSL users receiving potentially life-saving instructions in their first language. We consider that access in BSL is consistent with the principle of equivalent access for disabled end-users."* This may however be a more proportionate measure for industry if the alternative for providers each introducing emergency video relay technology in-house is costly. It would also be an improved position for BSL users when compared to the current position.

Question 2: Do you agree that the Approval Criteria should contain a requirement obliging suppliers of approved emergency video relay services to include a clause about fair, reasonable and non-discriminatory terms in any contract with any Regulated Provider or wholesaler?

Three welcomes this Ofcom proposal. Three shares BT's concerns (mentioned at paragraph 4.5 of the Consultation) that *"if there was not competition in the video relay market, regulated*

providers would be reliant on just one supplier and this could lead to pricing not being on fair and reasonable terms."

Question 3: Do you agree with our proposal that data used for emergency video relay should be zero-rated?

Three welcomes Ofcom's clarification at paragraph 5.8 of the Consultation that, having applied Ofcom's framework for assessing zero-rated offers for compliance with net neutrality rules, Ofcom's view is that *"the emergency video relay framework [Ofcom] are proposing should be introduced, [Ofcom] are satisfied that zero-rating the data used to access the service will not materially affect end-users' rights under the Open Internet Access Regulation."*

Three also notes that at paragraph 5.9 Ofcom refers to Hyperoptic's concern as to whether it would be possible for end-users to use emergency video relay via data connection that had been suspended for non-payment. Three shares this concern as this also raises the question of what happens when a customer has run out of their mobile data allowance. Three therefore welcomes Ofcom clarification at paragraph 5.10 of the Consultation that Ofcom *"are not proposing that regulated providers should be required to give access to emergency video relay where a data connection has been suspended for non-payment."* In Three's view, it would be helpful if Ofcom could also clarify if regulated providers should also not be required to give access to emergency video relay where a mobile data allowance has expired. This would be in line with regulated provider net neutrality obligations applying before Brexit, where paragraph 55 of the June 2020 BEREC Guidelines on the Open Internet Regulation[1] prohibits this practice – by stating that a zero-rating offer where all applications are blocked (or slowed down) once the data cap is reached except for the zero-rated application(s) would infringe Article 3(3) (on equal treatment of traffic). Three notes this wording is also referred to in paragraph 3.11 of Ofcom's May 2019 Guidance on approach to assessing compliance with net neutrality rules.[2] Please could Ofcom therefore clarify to what extent this requirement still applies post-Brexit for providers.

On prioritisation of traffic, Mobile UK and O2 have also noted that voice call traffic to the emergency services is prioritised by mobile networks over other calls. Three welcome Ofcom's clarification in this area that Ofcom is not "*suggesting that data traffic for the emergency video relay should be prioritised over other forms of internet data traffic*" as "*the net neutrality principles set out in the Open Internet Access Regulation prevent internet access service providers from discriminating between different categories of data traffic by blocking access to some data traffic while allowing access to other content, or by prioritising one category of data traffic over another, unless limited exceptions apply, including where required to do so by law.*"

Question 4: Do you agree with our proposal that end-users should not be required to register to access or use emergency video relay?

Three understands Ofcom's objective of avoiding the need for registration as it could lead to harm in time-critical emergency situations. Three's concern with this approach is that Ofcom should consider how best to protect this service from being misused and to support users of the service where possible. In Three's view, appropriate security controls will need to be built by the emergency video relay service provider to avoid the possibility of a security attack whereby someone might attempt to use the app to access other services (e.g., international services) for free. Having a registered service can help avoid this as it would give providers more visibility of the users, which can help with tracking and minimising any misuse of the app.

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[1] BoR (20) 112 - 11 June 2020 - BEREC Guidelines on the Implementation of the Open Internet Regulation.
[2] Ofcom's approach to assessing compliance with net neutrality rules Frameworks for assessing zero rating offers and traffic management measures for compliance with the Open Internet Regulation (May 2019).

One further area Ofcom might consider on this is to introduce a requirement for the emergency video relay provider to ask users to provide details of which home network they are on. It would also be helpful if network providers could be made aware of which of their users are using the service, as this would help providers assist with any issues arising with the service and communicate with the customers concerned. This would help guard against issues which similarly arise for SMS emergency services today – where users are only asked to register with the SMS emergency service provider and network providers lack visibility of which customers are using the service.

Other Comments from Three on Ofcom's proposals

Three had the following additional comments on Ofcom's proposals:

- **Customer journey expectations** – Three is concerned that use of this service may be confusing for consumers as they will need to understand the limitations of the service – e.g., if they run out of the mobile allowance, have their account suspended, experience a power cut at home, incompatible browsers, unsuitable device etc. It will be critical that end-users' expectations are managed by Ofcom and relevant providers regarding the availability of video relay in all emergency situations. Any video relay supplier would therefore need to clearly call out to users the limits of the service they are using upfront. On this point, Three also welcomes clarification at paragraph 7.24 of the Consultation that Ofcom is not proposing that regulated providers would be required to provide training for customers on the service and would not be required to do anything in relation to matters beyond their control, such as a customer not having a compatible browser.

- **Timing** - Three is also concerned that the providers already have a large number of costly and time-consuming end-user protections to implement in 2021 and 2022. Three would ask that any changes proposed for this be considered for implementation after 2022 to give providers adequate time and space needed to prepare. Three would recommend Ofcom consult with industry on what timing would be appropriate for this change.

- **Location information** – At paragraph 7.66 of the Consultation, Ofcom mention that the "*draft Approval Criteria require, where technically feasible, that the incident location information be automatically obtained from the device being used by the End-User. Ofcom has not specified the mechanism by which this is derived, but handset-derived location is well-established for a range of applications from satellite navigation to emergency calling from smartphones ('Advanced Mobile Location' or 'AML').*" In Three's view, Ofcom may wish to reconsider removing this requirement. From a technical perspective, Three agrees that any location information that could be provided will need to be device-based and not network-based. Three understands that AML would not work in this scenario so an alternative device solution would need to be found by the video relay app provider. Ofcom's proposal at paragraph 7.68 of the Consultation that deaf BSL users should be asked to confirm their location in BSL will also help with identifying the location of the customer.

Three would be happy to discuss any of Three's comments in this Consultation further, should this be helpful to Ofcom.