

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: “New Voice Services”

To (Ofcom contact): Justin Moore

Name of respondent: Billy Hayes

Representing (self or organisation/s): Communication Workers Union

The Communication Workers’ Union’s submission to Ofcom’s consultation on new voice services in large part mirrors the submission made by our colleague trade union Connect and will reflect a common view.

However, in some instances our submission is a little different and these differences have been marked with an asterisk and typed in italics.

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OFCOM CONSULTATION DOCUMENT ON NEW VOICE SERVICES: SUBMISSION BY CWU

INTRODUCTION

The Communication Workers' Union (CWU) has over 70,000 members working in the UK telecommunications sector. Around three quarters are employed in the incumbent operator BT, with the remainder spread over 30 telecommunications companies.

We welcome the Ofcom consultation on "New Voice Services" and forward this submission on the questions contained in the consultation document of 6 September 2004.

Our submission in large part mirrors the submission made by our colleague trade union Connect and will reflect a common view. However, in some instances our submission is a little different and these differences have been marked with an asterisk and typed in italics.

Our basic position is as follows. VoIP services will provide many benefits to consumers in terms of more choice of voice provider and tariff package, cheaper calls, and enhanced services. Therefore there is a need to strike a balance between creating a climate in which the development of such services is not hampered by excessive regulation and between protecting consumers who might otherwise expect VoIP to be, or treat VoIP services as being, equivalent to Publicly Available Telephone Service (PATS) services in areas such as the ability to contact emergency services. Another general point to make is that, while we do not expect that all VoIP providers will meet all PATS standards in the immediate future, we would expect them to make 'best endeavours' to approach such standards and progressively to approach those standards as technology and market conditions develop,

We set out in this submission our responses to the questions posed in the consultation document but, in our view, these questions do not adequately cover two issues that we feel are of critical importance.

First, the role of investment. New voice services depend on new communications networks. Many companies will be providing such services; many fewer will be investing in such networks. We wish to see a regulatory framework that encourages and incentivizes the large-scale investments that are necessary to create Internet Protocol (IP) networks of the kind that BT is building with its 21st Century Network (21CN) and other companies, such as the cable and mobile operators, are developing. This requires a close coordination by Ofcom of this review on new voice services with the on-going strategic review of telecommunications. The regulatory framework must provide clarity and stability to encourage such investments and an adequate return on those investments to ensure fair competition.

Second, the role of citizens. The Communications Act 2003 requires Ofcom to further the interests of both citizens and consumers, but the consultation document on new voice services appears to focus almost exclusively on consumers. For some time, it will be a small minority of consumers who will avail themselves of VoIP-type services and, in the main, these will be consumers who are already relatively advantaged (by, for instance, already having a broadband connection). The priority for citizens is to create for the UK a world-class communications infrastructure that reaches all homes and businesses and provides both international competitive advantage and enhanced access to a wide range of services including local and national e-government.

These two points are linked. For competition between network and service providers to be fair and for all citizens to share in the benefits of such new networks and services, we need a policy framework for regulation that makes infrastructure investments both likely and worthwhile.

Question 1: What types of new voice services do you envisage becoming available in the future and what characteristics will they have that distinguish them from traditional voice services?

We expect that initially VoIP services will be marketed on the basis of cheaper calls or 'free' calls (with calls bundled into the cost of a broadband rental agreement). In the absence of regulatory safeguards, initially too much consideration may not be given to quality of service and – more seriously - access to 999 services may be problematic.

As the market becomes more mature, quality of service is likely to approximate that of the PSTN and access to 999 services may become quite good. New features will then become part of the offerings with conferencing and integrated messaging likely to be among the more popular services.

Unlike voice over the PSTN, new voice services are likely to be offered by unfamiliar players (as well as well-known companies like BT) and be subject to much more rapid development and change. The increasing deployment of the Session Initiation Protocol (SIP) will enable third parties to write their own software applications in order to enhance voice functionality and by-pass existing operator networks.

Question 2: What are the main policy challenges raised by the introduction of new voice services for consumer protection and regulation?

Basic voice telephony has been with us for a century. For much of that time, there was a monopoly provider; more latterly with competition, there have been strong regulatory standards exemplified by the European Commission's Publicly Available Telephone Service (PATS) requirements. Therefore consumers have very clear expectations of their voice services. If these expectations are to be changed in relation to certain new voice services, then this process will need to be carefully and sensitively managed. In some respects, there is a precedent for this: when mobile services were introduced, users had to learn that coverage was not universal and quality of service was inferior to that of PSTN.

In the case of new voice services, there are two particular problems. First, for the initial few years, users of such services will be very much in the minority and the services will probably be used by the more technologically-aware consumer. Second, there will be services which – unlike a mobile service - 'look and feel' like a PSTN service; this will be especially the case where an adapter is used with a conventional telephone or where an IP phone is used.

Question 3: Do you agree with the initial top level aims identified by Ofcom?

We believe that the top level aims are the correct ones, but that the second needs to be strengthened by the addition of the words "*particularly in relation to access to emergency services*". It is important that consumers know about any problems in relation to connectivity and call quality in relation to new voice services, but it is vital that they know about any limitations in relation to reliability of 999 access since this could be literally an issue of life and death.

Question 4: Are there other aims and criteria that Ofcom should consider?

The three top level aims identified by Ofcom are stated in static terms; we feel that there is a need to take a dynamic view in what will be a fast-changing market. This point could best be captured by the addition of an aim phrased in the following terms:

“to encourage providers of new voice services to make best endeavours to achieve PATS-like standards and to move progressively towards PATS-like standards”.

Question 5: Are there other key policy questions that Ofcom should be considering?

We believe that access to 999 should be the key regulatory issue and that this should be addressed by a variety of devices:

- encouragement to provide the most reliable access currently possible
- encouragement to improve such access as soon as possible
- information at the point of sale
- information at the point of use
- information at the time of use

We expand on these points later in our submission.

** Other policy questions that we believe Ofcom should be considering focus around interconnection charges, technical standards, security risks and the potential political and social impact of the possibility of a reduction in the level of access to emergency services.*

*** Interconnection Charges**

An important issue to resolve is, if PSTN traffic falls (as a result of voice call origination moving to IP), how should the interconnect prices change to reflect the incremental costs of providing interconnect? We would argue that those companies, such as BT, that invest to develop Next Generation Networks (NGN), should be allowed to set their interconnect prices to reflect the cost of that investment and make continued investment worthwhile.

When regulating interconnection and of retail and wholesale prices, Ofcom should properly understand and take into account the impact of reduced PSTN, but increased ATM and IP traffic volumes, on the efficient costs of supply for the incumbent operators. We believe that as competition increases, cost-based interconnection and wholesale charges should be allowed to increase to compensate for any reduction in economies of scale experienced by the incumbent.

It is important that Ofcom takes into account the impact of VoIP on voice revenues of the incumbents when setting the regulatory framework for network competition, because it is these major network providers that the industry will rely upon to put in the massive investment required for network modernisation.

*** Technical Standards**

VoIP service interconnection is an area within which standards are lacking. There is currently no industry consensus of how to achieve a level of service quality sufficiently equivalent to the circuit switched PSTN over an IP network. There is also an array of standards available (e.g. DiffServ, Multi Protocol Label Switching (MPLS) and a variety of opinions concerning how these scale and how best to deploy them. The service providers, network operators, equipment manufacturers, standards organisations, and regulators will need to collaborate to ensure that suitable technical solutions for carrier-scale VoIP to VoIP interconnect exist, on a timescale which matches carrier deployments of VoIP to replace their existing circuit switched PSTN. We believe that Ofcom should initiate and encourage this collaboration to make the adoption of standards a priority, with the ultimate aim of improving quality of service.

*** Security**

IP telephony involves a collision between the traditional IT/ Internet model and the telephony world. Both IT and telephony can be insecure, mainly through viruses or loss of data in IT, and through financial loss in telephony, for example by incurring call charges on unwilling parties. We believe that subscribers of IP services should be informed by their service provider of security risks, and of measures they can take to protect the security of their communications. We believe that Ofcom should regulate to ensure that service providers make this information available.

*** Political and Social Impact over 999 Services**

The highly charged and emotional debate that will occur with regard to the absence or a less reliable 999 service has the potential to impact badly on the industry. The fear is that consumers will not be certain as to what are their own circumstances or can it change without prior consent. One aspect which requires careful consideration is how vulnerable children may be in the case of reduced or an absence of 999 provision. Children have become aware of 999 services and how to use them through the medium of television drama and through primary school education and have become programmed or accustomed as to what to do in the event of an emergency. This will cause real problems in the future if access to emergency services is not treated as a "public good" and translated as part of a PATS

Question 6: Do you agree with Ofcom's initial view that it is not necessary for all voice services to provide the same standard features as traditional telephone services, and that we should instead focus on enabling consumers to make informed decisions?

Essentially, yes. The exception to this is access to 999 services which we believe should be at the same level of reliability as for traditional voice services. While this approach might present some problems for consumers, the benefits for consumers are more choice of provider and service and more likelihood of innovations and improvements. However, the problems will need to be addressed in ways that we describe later in this submission.

Question 7: Do you agree with Ofcom's initial view that it is not desirable to draw a distinction between the regulation of services that look like traditional services and those that do not?

Yes. Such a distinction would be very hard to define and enforce and, could one be determined, it would probably be rendered invalid by technological and market developments. Also it could stifle consumer choice and market innovation. However, again we make the point that this underlines the need for appropriate consumer protection measures.

*** Question 8: Do you agree with Ofcom's initial view that a distinction should not be drawn between the regulation of 'second line' services and 'primary' services?**

We disagree with this view and believe that whilst new voice services are in the process of development, and until all IP technology platforms and services allows reliable access to emergency services, new voice services that cannot provide the general conditions of PATS should be labelled as 'second line' services, and clearly distinct from 'primary' services. As Ofcom points out, this would prevent the risk of existing primary line services reducing the features they currently offer.

We recognise that it would be impossible to ensure that users actually have access to a primary line. However, we think that if there is a distinction made in the regulation, citizen-consumers will find it easier to make the decision that they should use a 'primary' service because it will give them the confidence of having reliable access to PATS services. They will also be perfectly aware that if they opt for a second line service as their only line they are at risk of not being able to access basic services like emergency and operator services.

Eventually we hope developments in IP technology will enable all telecoms services to offer reliable access to 999 and operator services, and then it will be realistic not to make a distinction in regulation. However, at the present time, the limitations of some IP technology and services make it impossible for some new voice services to offer access to emergency services, and therefore it would be unrealistic to regulate them on the same level as traditional services.

Question 9: Do you think that a threshold should be set at which new voice services should be required offer the same features as traditional voice services? If so, how should the threshold be set?

The enforcement of any threshold – such as the number of subscribers or the level of revenues, as suggested by the consultation document – would rely on the cooperation of providers of new voice services who would have no incentive to comply and would see such a threshold as a penalty for success. Therefore we do not believe this approach would be practical.

** Furthermore, the desirability of any threshold would have to be judged against what it would mean for citizen-consumers. There is a danger that the use of a threshold would mean a minority of users would suffer from using a service that lacked features. This would tend to be low income users who opted for that service because it was cheap, and they may therefore be the kinds of users who economise by taking the risk of not having a primary line (which gives access to the same features as traditional voice services). As pointed out by Ofcom, customers could also be left stranded if a provider exited the market at the point that a higher level of regulation was introduced.*

Question 10: Do you agree that most providers would want to offer at least a basic form of access to 999?

A colleague of ours attended the Ofcom meeting on Voice over IP held at Riverside House on 25 February 2004. From this meeting and other contacts, we believe that most providers would, for commercial reasons, wish to provide some sort of 999 service. Some have even indicated that it could be quite a reliable service. Indeed some have suggested that VoIP services could meet the PATS level of reliability. ** However, there is a danger that through their wish to compete, some providers will be tempted to offer access to 999 that is very basic and very unreliable.*

Question 11: Do you agree with Ofcom's initial view that consumers sufficiently value having access to 999 in order for them to wish to retain at least one means of 'high quality' (very reliable) access to 999 at home?

In our view, this cannot be assumed. Initially it will probably be the case that the VoIP service will be regarded as a second line service and that the first line will be retained (if for no other reason) for a totally reliable 999 service. However, as familiarity with and confidence in new voice services develop (and perhaps as the reliability of 999 access on such a service improves), consumers may well feel that it is a waste of money to retain the original line simply for the possibility – regarded as remote – that a 999 call will need to be made and therefore abandon the original line and depend totally on the new service.

If this analysis proves correct, it means that Ofcom cannot make 999 access on new voice services an option but must insist that it is a requirement (even if the provider cannot initially guarantee the same level of reliability as a PSTN line).

Question 12: Do you agree with Ofcom's initial view that not all voice services should be required to offer access to 999 but that decisions about subscribing to and using such services must be properly informed?

We believe that *all* voice services should be required to provide access to 999 and that such access that is as reliable as that from current PATS providers.

The consultation document states that Ofcom has requested information from providers on the cost of providing a 'high quality' 999 service but that costs were not available. In our view, Ofcom policy on this matter should not be settled until such costings are available and have been independently evaluated.

Whether Ofcom's initial view – that not all voice services should have a 999 requirement – or our view – that all should have such a requirement – prevails, it may be that not all new voice services will have the 'five nines' (99.999%) level of reliability that is currently available on the PSTN and therefore a programme of consumer information will be vital. We will return to the nature of such information later in this submission.

Question 13: Do you agree with Ofcom's initial view that given some new services may not be able to offer the same degree of reliability for emergency calls as traditional voice services, it is better that these services are able to provide less reliable access to 999 rather than preventing them from offering any access at all?

We believe that the availability of 999 access at current levels of reliability should be the first and dominant concern of the regulator. * *We do not accept that services used and regulated as a primary line service should be allowed to provide a less reliable 999 service.*

In the case of services that are used and regulated as a secondary line service, we would argue that it is questionable whether it is in the best interests of consumers to be offered access to emergency services that are potentially unreliable. We believe that it would be better not to allow a provider to give access to emergency services at all if the potential for it to fail is high. On the other hand it would be better to allow a provider to give access to emergency services if its failure potential is low, as long as the user is clearly informed about the reliability of the service.

We believe that Ofcom should set a legal requirement for an acceptable level of reliability of access to 999 before access can be allowed to be provided, and that this legal standard should be set to ensure a high level of reliability. It is also important that this level of reliability should be clearly stated by new voice services to all users and potential users.

Question 14: Do you agree with Ofcom's assessment of the costs and incentives for providers offering PATS?

It is difficult to agree with Ofcom's assessment of costs when no cost figures are given in the consultation document. All we are told is that: "*.. the cost of complying with the PATS conditions are in most cases small*". If the cost is so small and the disincentive so low, it is not unreasonable or anti-competitive to expect all new voice services to comply with something at least approaching PATS conditions.

Question 15: Do you agree with Ofcom's understanding of the implications of the definition of PATS contained in the Directives?

We are not sure that the Directives imply an all or nothing approach to the provision of a 999 service. It seems to us that such an interpretation depends on the meaning of “reliable” (para 4.68) and of “all reasonably practical steps” (Annex 5).

Current customer expectations – based on historical circumstances – can be expressed as a level of reliability of 99.999%. However, it is not self-evident that a degree of reliability of 99.9% or 99.99% would necessarily fall foul of the Directives. Clearly further legal advice and further discussion with the Commission are desirable.

Question 16: Do you agree with Ofcom’s understanding of the implications of this alternative approach?

We would want to await the “further clarification” which we are told is likely from the Commission later this year.

Question 17: Are there policy initiatives in other areas related to new voice services that Ofcom should be considering?

Ofcom’s proposed approach – in the words of the consultation document – “relies on consumers to make informed choices”. Two key issues in Ofcom’s strategic review of telecommunications are the need for consumers to have clear, accurate and trusted information in order to make decisions in the marketplace and the extent to which Ofcom itself should provide such information or at least ensure that it is provided by trusted third parties.

If Ofcom’s suggested approach on new voice services prevails, this will put a stronger need on Ofcom to ensure that the right information is available at the right time and in the right form in relation to new voice services and indeed more established services. Therefore the current consultation needs to be related closely to the strategic review.

Question 18: Although Ofcom is not consulting on its interim position, it would welcome your views on its interim policy to forbear from enforcing PATS obligations against new voice services which offer access to 999.

We are not convinced that enforcing PATS obligations on new voice services which offer access to 999 is an unreasonable position. Essentially it depends on the legal interpretation of the level of reliability required of a PATS provider and on a fair assessment of the costs of providing a fully reliable 999 service.

In this section of the consultation document, it is stated: “Ofcom will also be looking at the way these services are marketed and sold to test whether adequate consumer information is being provided to continue to justify this forbearance”. Clearly the effectiveness of any regime is important in determining its acceptability and therefore we would want much more information on the monitoring process in the Ofcom consultation on the appropriate framework for a consumer information policy.

Question 19: Is it reasonable to have different network integrity requirements for nomadic services compared to services at a fixed location, and how should consumers be made aware of this difference?

Yes – consumers would not expect the same level of network integrity from nomadic services. But consumers need to be made aware of this difference. Promotional and contractual material should make clear this difference. Also consideration should be given to the provision of relevant information as the user logs on to the service from the remote location.

Question 20: Do you think that it is better for Ofcom to:

1. **Retain the Essential Requirements Guidelines in their current form;**
2. **Re-issue the Essential Requirements Guidelines, incorporating additional guidance in relation to Voice over Broadband and Next Generation Networks; or**
3. **Withdraw the Essential Requirements Guidelines, and apply the 'reasonably practical' test set out in General Condition 3**

Option 3 could be burdensome for Ofcom and introduce a level of uncertainty and ambiguity for service providers. Therefore our inclination is to support Option 2.

Question 21: Do you think that there are reasonably practical measures that providers at a fixed location can take even if they do not directly control the underlying network?

Yes – and such measures should be taken. * *This may include negotiating service level agreements on quality or reliability with the network provider.*

Question 22: What in practice should the roles of the network provider versus the service provider be for network integrity when the network provider has no control over the services offered over their network?

The service provider should include appropriate network integrity requirements in its contract with the network provider. The responsibility is then clearly on the network provider.

Question 23: Do you agree that it is likely to be reasonably practical for analogue telephone and ISDN2 services to provide line powering but not other services?

Yes – but this needs to be made clear to consumers and users.

Question 24: What are your views on the technical feasibility of providing location information for nomadic services, both now and in the future?

** We recognise that at the present time there are technical limitations to providing caller location information for nomadic services in an IP environment. However, we believe that solutions to passing on location information from the provider to emergency organisations are possible, and that they are likely to appear as VoB technology develops. We think that Ofcom can encourage the development of such solutions by creating a regulatory framework that encourages investment in this area, by offering nomadic services incentives to provide caller location information.*

Question 25: What approach for emergency location would take account of current technical limitations, whilst ensuring that technical advances bring benefits to emergency organisations in the long run?

We support Ofcom's view that providers of new voice services be strongly encouraged to develop the technology and processes that will enable them to support the wider provision of location information.

Question 26: Do you agree that consumer information is required where services look and feel like a traditional telephone service but not where services are clearly different (e.g. PC based services)?

Earlier in the consultation document (paragraphs 4.31-4.32), Ofcom argued that it is not desirable to draw a distinction between services that look like traditional services and those that do not for the purposes of regulation, in large part because such a distinction would be hard to define or enforce and is unlikely to be future proof. The same argument could be made in relation to consumer information.

Even when a visible distinction between services is apparent, we cannot assume – especially in the early stages of this new market – that all consumers of all new services will be clear about what services are and what are not available on their new service.

Therefore we would propose that, at the point of purchase but not at the point of use, all providers of new voice services supply the customer with a clear and simple checklist of services which are provided and those that are not. So that this information is not selective and so that comparisons can readily be made between different competing services, we suggest that the standard checklist is either drawn up by Ofcom itself or agreed with Ofcom by the appropriate organisation(s) representative of actual and potential providers.

Question 27: Do you agree with a two stage approach to consumer information, first to ensure the purchaser is aware of the nature of the service at the point of purchase, and second to ensure all potential users are aware the service does not provide access to 999 at the point of use?

We agree that, if the service does not provide 999 access or provides such access at a level of reliability less than the PSTN, then – as well as information at the point of sale – there should be appropriate information at the point of use.

As indicated in the illustrative solution described in the consultation document, there should be two elements to this. First, there should be labelling of handsets in a form which is clearly visible (not underneath where it cannot be seen) and permanent (not a sticker which can be unpeeled or fall off). Second, there should be a clear and calm recorded message which is activated if the 999 call does not connect with the emergency services for any reason and this message should explain that the service in use cannot make the connection and recommend use of a normal land line or mobile phone.

Question 28: If consumer information is required to ensure that consumer interests are protected, which of the above frameworks regulatory framework, if any, is appropriate to ensure it is successful?

** The CWU believes that a formal regulatory approach to protecting consumer interests is the most appropriate option.*

We believe that the task of adequately informing citizen-consumers of the limitations of new voice services is extremely important, especially given the potential for new voice services to leave users without access to emergency services.

We therefore feel that in order to protect consumers interests effectively, Ofcom should take control and impose specific consumer information requirements on new voice services. We believe that formal regulation is the only way that Ofcom will be able to introduce a requirement to make consumers fully aware of the limitations of new voice services in giving access to emergency services, and to issue recommendations and warnings about relying on the use of new voice services as a primary line. It is best that Ofcom takes a peremptory position from the on-set in order to avoid sharp and mis-leading and anti-competitive practices, popularly know as slamming.

It would not be in the best interests of the service providers from a financial or a marketing point of view to introduce a requirement upon themselves to make detailed information available on the limitations of their product. Therefore the danger with choosing a self-regulatory option, and to a certain extent a co-regulatory option, is that industry will choose not to inform consumers as thoroughly as Ofcom has suggested is necessary to protect them.

We do not agree with Ofcom's view that a formal regulatory approach may not put Ofcom in the best position to decide the most effective measures to achieve adequate consumer awareness. Having the power to impose legislation in this area does not prevent Ofcom from consulting the views of stakeholders both from industry and consumer groups as much as it feels is necessary to reach a position that is in the best interests of the citizen-consumer.

* *Italics* indicates where the CWU submission differs from our colleague trade union Connect's submission to this consultation

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November 2004