

## **T-Mobile (UK) Limited's Response to Ofcom's consultation on New Voice Services**

T-Mobile (UK) Limited ("T-Mobile") is pleased to have the opportunity to respond to Ofcom's consultation document "New Voice Services - A Consultation and Interim Guidance" dated 6 September 2004 ("the Consultation").

T-Mobile's general comments on the Consultation and our response to some of the relevant questions in the Consultation are set out below.

### **General comments**

#### **European Commission consultation**

As Ofcom highlights in its document, the European Commission is presently conducting a consultation on the subject of VoIP. The results have yet to be published. Accordingly any decision Ofcom makes as a result of the Consultation should be interim. This is not because we oppose Ofcom's deregulatory stance, indeed we strongly support it, but because of the importance that an EU-wide position is adopted, given both the nature of the Internet and the objective of pan-European harmonisation. T-Mobile would expect Ofcom to conduct a further consultation on the issue of new voice services once the results of the EC review are available.

#### **Link to other areas of Ofcom's work**

T-Mobile notes Ofcom's view that the current consultation on new voice services is linked to a number of other areas of Ofcom's work. We believe Ofcom's approach to new voice services should be considered in conjunction with the Strategic Telecoms Review, to which Ofcom refers in the Consultation, and also with the Universal Service Obligation ("USO") consultation as these are in many respects inter-linked.

Whilst the issue of the regulatory approach to new voice services is a pressing one we would urge Ofcom in future to adopt a less piecemeal approach to its consultations, which can only result in piecemeal regulation, and additional burden to both its staff and respondents.

#### **Ofcom's approach to new voice services**

New voice services have already become established in the corporate sector and it is inevitable that they will be introduced to the consumer market and, in time, receive general acceptance. The delay in consumer acceptance gives Ofcom time to consider fully the consumer issues and to encourage industry to seek solutions to the current limitations of new voice services when compared with the requirements imposed on providers of PATS services.

Furthermore, as the market for new voice services is still in its early days of development, with a particularly high degree of technological innovations taking place and shaping it, it may be sensible for Ofcom not to reach a final view on the need for regulation and on the form regulation should take before it is in a position to assess the practical impact such innovations have had on the market.

As regards Ofcom's approach to new voice services, as stated in the Consultation, T-Mobile supports Ofcom's initial top level aims, namely:

- o to help create an environment in which new technologies can develop successfully in the market, so that consumers can benefit from a wider and more innovative range of services;
- o to ensure that consumers are properly informed and protected in relation to the products they are using; and
- o to limit the extent to which regulation creates distortions in the market.

Ofcom should ensure that innovation in services and technologies is stimulated, to the benefit of consumers, industry and the economy as a whole. Provided that consumers are adequately informed (and in this regard please see the further discussion below), we believe consumers will be able to make the best choice according to their particular needs.

#### New voice services should be subject to the same level of regulation

Following on from the above aims, T-Mobile is of the view that regulation should not distort the level of competition in the market and Ofcom should ensure that a level-playing field exists.

Ofcom lists a number of ways in which voice services might be differentiated. These would appear to be largely unworkable solutions. For example, it would not only be difficult to distinguish "old" and "new" voice services based on their look or feel, and it would be even more difficult to monitor, classify and enforce these definitions.

Also, a distinction between first and second telephone lines is irrelevant and impossible to define - based on what criteria would a connection be classified as the first line, and as the second? How would the relevant information be obtained? Furthermore, it would be very difficult for service providers to establish whether their service will be used as first or second line, and how this might change over time. Creating such a distinction could also exclude the consumer choice of having a VoIP connection as their only service if they wish.

### Customers should be able to make informed decisions

We note that one of Ofcom's three initial top-level aims is to ensure that consumers are properly informed and protected in relation to the products they are using. We also note that it is Ofcom's policy aim to ensure that consumers make informed decisions about the products they are buying and how to use them by requiring that information is available to consumers both at the point of sale and at point of use.

We agree with these aims. Indeed, we think it is imperative that consumers are well informed about differences in services especially if these appear to be similar. Specifically, we believe consumers should be educated and informed about the availability and reliability of emergency services. Such information should be generally available as well as provided at the point of sales, as well as at the point of use, as the users of the service are likely to involve a wider group of people, rather than the purchaser alone. Other characteristics such as quality of service and availability of services for people with disabilities will also need to be made available to consumers in order to allow them to make informed choices.

If Ofcom wishes to enable customers to make genuinely informed decisions about the solutions they purchase and use, Ofcom needs to ensure that consumers are more generally educated about available solutions. This could be done for example by way of a media campaign, such as the one carried out in relation to the opening of the directory enquiry services market and various numbering changes.

### Self- and Co- regulation

We note from Ofcom's statement of 4 November 2004 that it currently favours any requirement for providers to ensure that consumers are empowered, informed and protected, to be industry-led and that Ofcom will assist in so far as this is necessary in making this possible.

T-Mobile supports both self-regulation and co-regulation. The provision of new voice services is a new and developing market, and whilst we support the objective of industry deciding on appropriate regulation we would like to see Ofcom involved until it is clear whether the industry is able to agree on regulation in a timely and comprehensive manner. With many new players coming in, such agreement may be difficult. We would not want Ofcom to make the mistake that Oftel made in relation to local loop unbundling; where the agreed framework was ultimately unworkable and Oftel was slow to respond to industry requests for its intervention. This delayed significantly the introduction of local loop unbundling.

In this respect, we also agree with Ofcom's views expressed at the workshop on 4 November that if a co-regulatory framework turns out to be ineffective that Ofcom may need to make a code or guidelines mandatory.

As regard the creation of an industry-led group or groups, we believe that the body established to deal with these matters should be set up for an agreed short term period and then reviewed as new voice services develop. We would not like to see the setting up of a bureaucratic body like ICSTIS. Excessive bureaucracy is very likely to undermine the value of new voice services and a continuing process of innovation.

We would want all the assistance Ofcom could offer as suggested by Ofcom on 4 November, including meeting rooms, Ofcom staff attending, ongoing consumer research and publicity on the Ofcom website. All industry players have a real interest in seeing that new voice services both develop and are regulated with the lightest possible touch.

### Implications of new voice services for the future of the USO

T-Mobile believes that it would be difficult to require providers of new voice services to contribute to any future industry-wide USO fund. We also think that if some providers of voice services are required to contribute to the USO whilst others are not, competition will be distorted. This will particularly be the case if funding for the USO were to be extended beyond BT (and Kingston in Hull) which currently enjoys both benefits from being the USO provider and the financial ability to fund the USO.

To the extent that there is a differential treatment between "new" and "old" services, this can also distort individual providers' investment and commercial decisions as some fixed operators may be providing both PATS and new voice services.

Fundamentally, this questions the rationale behind USO legislation in its current form.

It is important that Ofcom assesses the impact of new voice services on the USO and that it does so ahead of any legislative changes at the European level. We would also suggest that any determination on the issue of USO should only be made after a review of the impact of new voice services have actually had on the industry.

### Issues not covered in the Consultation

We note that the Consultation does not deal in any detail with the issue of interception of communications. Whilst this issue is not specifically within Ofcom's remit, we do not believe it can be ignored as it gives rise to considerations similar to those which are relevant to access to emergency services. We note that interception has emerged as a problem in the US and would seek to deal with the issue here before it becomes a problem.

Ofcom needs to co-ordinate for the industry in this regard so that codes are not agreed which then need to be modified if they do not meet the needs of the police and security services.

## **T-Mobile's answers to the consultation questions**

***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?***

T-Mobile believes that this has been explored by Ofcom in the Consultation.

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

We believe the main policy challenges raised by the introduction of new voice services for consumer protection and regulation are:

- USO - please see our comments in the "general comments" section above;
- The digital divide, i.e. the gap between those who can effectively use new information and communication tools, such as broadband services, and those who cannot;
- Education of consumers - please see our comments in the "general comments" section above.

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

Yes.

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

The potential need for legal interception and the practicability of interception are key policy issues which we think requires careful consideration. Please see our comments on this issue in the "general comments" section above and our response to question 2.

***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?***

We agree that Ofcom should focus on enabling consumers to make informed decisions. Please see further comments on this issue in the "general comments" section above. As to whether it is necessary for all services to provide features required by the new regulatory framework we believe that this is a matter of ensuring a level playing field from a competition viewpoint.

***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. However, we would point out that perhaps in the long term a distinction needs to be drawn between regulation directed at consumer protection and market regulation.

***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 think the distinction between first and second telephone line is irrelevant. Choice means that an individual can choose VoIP for their only service if they wish. Please see our detailed comments on this in the "general comments" section above.

***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?***

Please see our comments under question 6.

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

We believe providers should be encouraged to offer access to 999 services.

***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?***

T-Mobile agrees with Ofcom's initial view.

We note that the majority of 999 calls are made from fixed lines. We believe that this should also be taken into account when Ofcom comes to reconsider its position on USO ahead of legislative reform at the European level.

***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?***

T-Mobile thinks an industry group needs to work towards 999 services being available.

***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?***

Yes.

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

Ofcom here may be over-estimating such incentives and we re-iterate the need to ensure a level playing field.

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

No.

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

Yes.

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

Please see our comments on the USO in the "general comments" section above and in relation to the need for general education as to the capacity and features of new voice services.

***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.***

T-Mobile agrees with Ofcom's interim policy. This is consistent with Ofcom's general de-regulatory 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?***

We believe it reasonable to have different network integrity requirements for nomadic services compared to services at fixed location. We also think there should be different network integrity requirements for mobile services, if such requirements continue. As regards consumer awareness, please see our comments in the "general comments" section above.

***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***

We believe it would be appropriate for Ofcom to re-issue the Essential Requirements Guidelines. We suggest that Ofcom should use the opportunity to reassess the position with regard to inclusion of mobile services in the definition of services from fixed locations.

***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?***

We are not aware of any, but have not investigated the point

***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?***

We believe that it is the service provider who should be responsible for network integrity when the network provider has no control over the services offered. This is in addition to any contractual arrangements which are relevant to a particular case in question.

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

In our opinion it will be difficult for nomadic services to provide location information on the basis of currently available technology. This of course may change and we recommend that Ofcom reassess the position periodically.

***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?***

Yes. Please also see our comments on consumer education in the "general comments" section above.

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

Please see our comments in the "general comments" section above.

**T-Mobile (UK) Limited**  
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