

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: **New Voice Services – Consultation and Interim Guidance**

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Representing (self or organisation/s): **Viatel**

Address (if not received by email):

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Whole response

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No

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Name

Louise Lancaster

Signed (if hard copy)



VIATEL'S RESPONSE TO OFCOM'S CONSULTATION AND INTERIM GUIDANCE ON NEW VOICE SERVICES

About Viatel

Viatel provides business communications services to companies of all sizes across Europe. Our customers range from small and medium companies to large corporates where we offer a range of both managed and unmanaged services. We also provide raw bandwidth services for carriers and service providers who want European-wide network capacity.

Viatel was founded in 1991 and has over 10,000 business customers. Our assets include a pan-European network and data centres in cities throughout Europe.

In the UK Viatel has approximately 450 km of fibre, the majority of which is on a "ring" which lands at Lowestoft in Suffolk, travels through our POPs in London and Egham, across to a second beach landing station at Polegate in Sussex.

Introduction

Recent technological advancements have meant that communications providers are now able to provide consumers with good quality, economically viable voice over IP services. If a vibrant market place for these services is to develop and flourish, it is essential that no unnecessary regulatory barriers are imposed and that the existing regulatory framework is adapted to cater for new services and technologies.

In particular, Viatel would advocate the following:

- New voice services should not be regulated in the same way as traditional voice services.
- Providers of new voice services should not be required to offer access to emergency services.
- Operators who do choose to offer access to emergency services should not have to comply with PATS obligations.
- Operators who choose to comply with PATS obligations (in order to get the benefits of PATS) should only be required to provide location information at *fixed locations*, but not for nomadic users.

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?

A lot of the functionality that VoIP provides, such as "click to dial" and "follow me" telephone numbers, is available already with advanced PBX systems. VoIP should

also be able to convert voicemail to email, be it as an audio file, or even by converting voice to text.

The most notable difference is the ability of the customer to "roam" from their normal location when making outbound calls. Future innovations may come in developing handsets to facilitate roaming, increasing the locations from which nomadic users can make calls and developing the technologies for accessing the networks, such as WiFi and Bluetooth. These technologies may become more attractive for the business traveller if increasing numbers of hotels block GSM reception in their establishments.

Aside from functionality, the major advantage of VoIP, at least for business customers, is likely to be cheap or, in some cases, free calls and the ability to source all electronic communications services from a single supplier.

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

To some extent, consumers who subscribe to this type of service are likely to possess a degree of sophistication and savoir-faire. Consumers have adapted very quickly to the advantages and limitations of mobile phone services and are able to appreciate the distinct characteristics. Increasing numbers of users are cancelling their fixed line subscriptions and relying solely on their mobile phone when at home (7% according to Ofcom), despite the fact that mobile services do not always offer the same levels of service and reliability as fixed lines.

That said, we believe that consumers should be fully informed, as they should be about any aspect of the service they purchase. Probably the biggest challenge for consumer protection is the confusion amongst consumers about the distinction in some instances between the network provider and the service provider and the respective responsibilities of each ("rogue dialers" being a case in point).

The main challenge in terms of regulation is to enable providers of new voice services to compete on a level playing field with providers of traditional voice services. Ofcom and the European Commission need to adapt the definition of "PATS", and the regulatory requirements which flow from it, since technological developments will continue to throw up services, terminal equipment and technologies which do not fit with this long standing terminology.

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

Subject to our answer to Question 2, Yes.

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

As well as creating an environment for technological innovation, Ofcom should also seek to ensure ease of market entry. Only with minimal regulatory barriers will users enjoy a vibrant and competitive market that will foster the introduction of a broad range of services to suit all customer requirements.

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

To the extent permissible by the Directives, Ofcom should consider removing some of the general conditions imposed on, and the features required of, *all* traditional voice services, thus removing the need to make the distinction from new voice services.

For example, Article 2 of the Universal Service Directive only requires that a PATS service "may, where relevant, include one or more of the following services: the provision of operator assistance, directory enquiry services, directories...." Article 5.1.(b) requires that at least one comprehensive directory enquiry service is available to end users. The UK's General Condition 8, (with which PATS providers are obliged to comply), requires providers to ensure that "any End User can access: a) operator assistance services; and b) a Directory Enquiry Facility...". This general condition seems to have gone further than the directive.

At a time when we have a competitive market for the provision of DQ services (by telephone and on the internet), and provided that operators are required to route all calls to numbers in the national numbering plan, such a requirement seems anachronistic.

Similarly, the requirement in General Condition 4 to make caller location information available "to the extent technically feasible" should be refined to make clear that this is from fixed locations only (as described in the USD) to cover nomadic users of VoIP services.

As Ofcom admits in paragraph 3.2, "the basic analogue telephone connection to a typical home has not changed in nearly a century" and "the basic characteristics of these services have been very well established over many years". At the moment we are trying to fit 21st century technology into 20th century regulation. The EU framework is, after all, designed to be technologically neutral and to avoid discriminating against the use of particular technologies.

The aim of protecting users of traditional telephony services could instead be achieved by imposing some of the PATS conditions on universal service providers only. This would avoid the need to distinguish between PATS and PECS.

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?

Yes. Consumers should be able to choose from a variety of new players and new services. There is no obligation on consumers to have a fixed line to their home. They should therefore be allowed to choose the nature of the service to which they subscribe. An industry code of practice should require information about the nature of the service to be provided at the time of customer sign-up (see question 27 below).

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. Providers of new voice services are likely to provide a variety of equipment, products and services to their customers, some of which might "look like" traditional

services and some of which might not. It would be impossible to apply different regulation to essentially the same services.

Regulation of all new voice services should be "light touch", otherwise regulation acts as a barrier to entry and to innovation. Regulation of services that look like traditional services poses problems of definition. Consumers should be provided with enough information to make informed choices.

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?

Yes, since consumers would be able to cancel their "primary" line at any time.

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

No. This could inhibit the evolution and improvement of service offerings.

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

Viatal cannot speak for most providers. However, Viatal itself would prefer to offer access to 999 as we believe this service would provide added value to our customers.

Note our comments elsewhere in this response that we believe it is extremely problematic for VoIP providers to offer location information for nomadic users, but that they should be able to qualify as PATS provided they offer location information from fixed locations.

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?

We do not believe that this is necessarily true of all consumers. Some consumers may prefer a cheaper fixed line service and might rely on their mobile phone for access to 999.

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?

Yes. If consumers are properly informed, then they should be able to select from a range of services targeted at different levels of the market.

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?

Yes. It is not entirely clear from General Condition 8 whether a provider of PATS would merely need to route a call to a DQ or OA service of the user's choice, or whether it would have to provide its own service (by outsourcing or otherwise). Providing an outsourced service is a non-trivial expense.

However, from Viatel's point of view, benefits such as number portability outweigh the costs.

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

Ofcom believes that the Directives imply that if a service provider chooses to offer any access to 999 *at a fixed location*, it is offering PATS and must therefore comply with the other PATS obligations. We agree that this is the strict interpretation.

Paragraph 5.4 of the Commission's working document of 14 June, 2004 states: "In the Directives, the provision of location information is made dependant on the technical feasibility" (Articles 23 and 26 of the USD). EC would like NRAs to encourage all undertakings offering PATS at fixed locations to provide location information. We agree with this approach.

However, the ability to provide location information from *all* locations should not be a condition of providing PATS, since it is not in the definition in Art 2 of the Universal Service Directive. If location information can be provided at a *fixed* location, then the provider should receive the status and the benefits of PATS.

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

Ofcom agrees with the Commission's implied view that providers should be able to *choose* whether to be PATS. Operators can only qualify as PATS if they provide reliable access to 999 from fixed location, but if they do offer 999 access, they can choose to be a provider of PECS if they prefer.

We agree with this approach – we agree that most operators would choose to be PATS firstly to be able to offer customers 999 access and secondly in order to get benefits such as number portability.

It is most important, though, that Ofcom should not require the provision of location information for nomadic users to be a pre-requisite for qualifying as PATS. This is beyond the ability of most, if not all, providers of new voice services and the failure to qualify as PATS for this reason would severely limit the ability of many providers to enter and compete in the market.

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

None that Viatel is aware of at this stage.

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.

Viatel agrees with Ofcom's interim position as this is likely to enable market entry for innovative services.

However, to re-iterate the comments above, the converse should be true: operators who provide location information for access to emergency services to users at fixed locations should be able to qualify as PATS, even if they cannot provide such location information for nomadic users.

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 agree with Ofcom and the Commission's interpretation of the Directives that when a VoB service is used nomadically, it is no longer provided at a "fixed location" and therefore the network integrity requirements would no longer apply. We agree that consumers should be informed that the service provider would not have control over the network connection if the consumer uses the service away from his "home" location. (See further comments below.)

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**

Viatel prefers Option 2. We do not believe the current guidelines can be retained in their current form if providers of new voice services are going to choose to be PATS operators. However, we feel that retaining the guidelines in some form would provide more clarity for the industry as a whole and ultimately more protection for consumers. We do not, therefore, advocate that they should be withdrawn altogether.

As an example, we believe that the following paragraphs of the Essential Requirements Guidelines should be modified:

Para 14: Smaller operators inevitably tend to concentrate essential equipment in a single building. The guidelines could perhaps require that, in such instances, the use of careful equipment design should ensure that overall network security is not jeopardized.

Para 34 (b): As above – operators may have equipment in a single building to deal with emergency traffic. Also, it may be difficult to apply prioritization techniques for lifeline traffic in the VoIP domain.

Para 68: This should be reworded to take account of the different topology of the VoIP domain as compared with a conventional switched network.

Para 73 (b): Again, it may be difficult to prioritise emergency traffic in the VoIP domain.

Annex A. We query whether the requirements for terminal equipment would apply at all to VoIP operators who do not have a conventional Network Terminating Point.

Annex B.3. As for 73(b).

Annex B.8. This paragraph could be reworded to explicitly include in the definition of "multiline" telephony all broadband delivery systems that are capable of delivering more than one voice grade equivalent.

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. Careful choice of the access product(s) used to reach the customer premises, in terms of topology, bandwidth and associated service level agreements, will be a fundamental determinant of the quality of service delivered.

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?

Viatal would have a contractual relationship with any network provider over whose network we provided new voice services. Even though the network provider would not control the services we provided, there would no longer be a relationship between the network provider and Viatal's customer, so the network provider would not, in our case, need to be concerned about the customer seeking redress from it.

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. (Viatal typically operates in a multi-line environment, to which the line powering requirement does not apply.)

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

We agree that it is difficult currently to provide location information for nomadic users and is likely to remain so for the foreseeable future.

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 agree that the provision of location information should not be required for nomadic users. Instead consumers, including, perhaps, corporate users, should be informed of the technical limitations of the service at the outset. For corporate users, this would only need to be included in the instruction manual for the service. We do not think VoB providers should be required, at this stage, to offer their users the ability to update their location information when on the move. We believe that market forces will encourage service variants for different market segments.

Viatel would choose to provide location information for users at the fixed location. It is worth remembering that a nomadic service is already added value – enabling communications on the move. It is inappropriate to place high regulatory hurdles on a service that is already an “extra”. Such a requirement would really be “PATS Plus”.

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)?

No. There is already a blurring of the boundaries between PCs and telephones, and development of more “gadgets” in the future is likely to compound this. Consumer information should be provided in all instances.

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?

No. We believe that information need only be provided by the communications service provider at the point of purchase. There are two scenarios to consider. The first is a residential user: requiring the service provider to ensure that all potential users are aware of the limitations of the service is too onerous and smacks too much of a “nanny state”. There are many objects within a person’s home that, if used incorrectly, could cause harm.

The second is where a company buys a service to be used by its employees and visitors. Clearly the users of the service should be informed of its characteristic and limitations, if any. However, that responsibility should remain with the corporate customer. The application of stickers to handset or other equipment would be inappropriate, firstly as it might degrade an otherwise “high end” product and secondly as they could easily be removed. It is also worth noting that a new voice service sold to a corporate customer is likely to provide access to 999 in any case.

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

We believe that a self-regulatory approach is the most appropriate and would welcome the creation of a new code of practice.

We do not agree with Ofcom’s suggestion to introduce a new General Condition to require providers of PECS to comply with the code of practice, since this would not be sufficiently flexible and adaptable in the event of technological developments.

We believe it should be possible for the diverse operators (including providers of PECS) to agree on a common code of practice if it is within the framework of the sort of light-touch regulatory regime we have advocated in this document.

We understand that Ofcom is using the same definition of "consumer" as that contained in the Communications Act, i.e. residential users, or businesses with fewer than ten employees. Ofcom should consider whether or not service providers should provide the same information about the limitations of the service to business users since, when it comes to access to emergency services, they are, after all, individual users who might not have the same level of awareness of the technology as the procurer of the service within the company.