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STRAIGHT-TALKING, FORWARD-THINKING, TELECOMS

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By e-mail

Dear Sirs

Reference: Emergency Video Relay: Further Consultation (the “Consultation”)

NON-CONFIDENTIAL VERSION

Introduction

Established in 1996, Simwood eSMS Limited is an alternative carrier offering managed services, voice and data exclusively to a channel of other Public Electronic Communication Networks (“PECNs”) and Services (“PECS”) in the UK. We provide services to several hundred PECS/PECNs of all sizes. We are interconnected with British Telecommunications plc (“BT”) over SS7 under the Network Charge Control Standard Interconnect Agreement (“SIA”) and have recently agreed to connect over IP (Type B). We are also interconnected with all the major fixed networks, generally on bilaterally equivalent terms. Simwood is a net importer of telephone numbers by a substantial margin.

Simwood Inc is a licensed Competitive Local Exchange Carrier (CLEC) and Interexchange Carrier (IXC) in 23 (at the time of writing) States of the USA .

Sipcentric Limited is a provider of hosted PBX and SIP Trunking services both to resellers and direct to market, including via its reseller Birchills Telecom Limited. Both were acquired in October 2019.

All four companies are wholly owned subsidiaries of Simwood Group PLC and collectively referred to herein as “Simwood”, “we” or “us”. Whilst there will be engagement from trade associations that Simwood companies are members of, and we may well agree with them in part, the Office of Communications (“Ofcom”) should treat this response, and only this response, as being definitive of our views.



We welcome the opportunity to respond to the Consultation published by the Office of Communications (“Ofcom”) on 16th February 2021.

I am sure many respondents will emphasise the importance of the emergency services in their submissions. Of course, we do too and have no reason to doubt their sentiment[~~⌘~~]. Together, this means our comments come from a place of genuine sincerity in wanting to make the UK’s system the best.

Our response to the Consultation perhaps touches on material that could have been submitted in the December 2019 Consultation¹ (the “**EECC Consultation**”). However, while we recognise that more attention could have been paid to the inclusion of video relay in the European Electronic Communications Code project, we would also respectfully ask that Ofcom keep the decision in *British Oxygen Company Limited v Minister of Technology*[1970] HL 4 in mind when reviewing the below.

Video Relay for the Hearing Impaired

At a very high level, we welcome a review of any measure to ensure parity of access for all in society to the emergency services. However, there are several issues we wish to discuss in turn. We stress that we are in support of a video relay service and hope to see one created – our comments are designed to assist Ofcom in more robust policy making and we are not seeking to convince the regulator to abandon the plans.

Proportionality

Ofcom has a legal requirement to establish that a proposed change to the General Conditions of Entitlement (“**GCs**”) is proportionate².

The two examples given at §10.18 of the EECC Consultation are disturbing; however, they are far more supportive of the need for initiatives to raise awareness of *existing* means to contact the emergency services and we do not see how they justify offering yet another means of contacting the emergency services. We therefore agree with the comments of various charities cited at §7.25 of the Consultation (and would go further to cover all alternative

¹ “*Fair treatment and easier switching for broadband and mobile customers. Proposals to implement the new European Electronic Communications Code*” published by Ofcom on 17th December 2019

² Section 47 of the Communications Act 2003



means of access) and are surprised Ofcom can rely so heavily on the two examples we refer to in this paragraph, while being so readily dismissive of the need to raise awareness.

Of course, the justification at §10.15 of the EECC Consultation is a far more compelling argument and we trust Ofcom have accounted for the stress of an emergency being common across using BSL and written English.

To that end, we would suggest Ofcom recast the proportionality test and include an option for an awareness campaign for existing means to access the emergency services both instead of, and in addition to, the current proposals.

The inclusion of number-based interpersonal communications (“NBICs”)

Video relay services can only run over an Internet Access Service (“**IAS**”). They cannot, in any way, be operated over *traditional* number-based interpersonal communications service.

We emphasize tradition in this sense, because products like Apple Facetime can be construed as being a NBICs; they facilitate text, voice and video communication using numbers from a national telephone numbering plan, but bypassing the PSTN. However, a plain reading of the EECC’s definition of a NBICs does not require connectivity over the PSTN for a service which uses publicly assigned numbering resources to facilitate interpersonal communication.

If the intention is to include the likes of Apple and Google in the requirement for provision (i.e. essentially create an obligation on handset manufacturers), then we believe there may be merit in previously stated positions concerning Ofcom’s error regarding over-the-top providers like WhatsApp. Exclusions of over-the-top providers such as WhatsApp from emergency services obligations but allowing their presence to be evidence to deregulate SMS remains contradictory. Of course, such applications require the IAS to operate so in another sense, even their inclusion is likely to be unwarranted.

However, if that is not the case, then we are therefore unable to comprehend why Ofcom is proposing to include NBICs in the obligation to offer emergency video relay services.

In cases where an end user takes a bundled service, this is academic. If they take voice and data from different providers - a scenario we consider will grow with the closure of the PSTN - are Ofcom saying that the end user can require the NBICs to procure it an emergency video relay service which they can then *only* use over their chosen Internet Access Service?

Later in this document, we discuss the issue of battery back-ups for deaf-BSL users and this makes the preceding comment more acute; are Ofcom suggesting that the NBICs may be



required to procure a battery backup solution for the IAS at its own cost as well? At the very least, Ofcom should be wary of perpetuating the 'state of limbo' it created between IAS and NBICs in the work on battery back-up to another set of end users.

There are serious issues relating to potential competitive distortions arising from this which we do not believe Ofcom have considered. Given that a video relay service can only be operated over an IAS and not a traditional NBICs, then it should be clear that the obligation should fall on the IAS to procure and provide; and that providers of NBICs should be exempt.

That would mean reference to NBICs in proposed GC C5.11 should be struck.

If Ofcom is to consider that providers of NBICs (who do not provide an IAS) are to be included, then the legal tests in §8.11 are inadequate – Ofcom must recast the tests of proportionality and undue discrimination³ with evidence of why NBICs must carry such an obligation (and, crucially, how they can discharge it) in order for the objectives to be achieved.

Funding

A basic economic thought experiment would suggest that the market will develop an efficient video relay service. We note some respondents to the EECC Consultation questioned why this was being left to private industry rather than central government; we believe that the market is best placed to deliver it.

1. The existing call handling authority is operated by British Telecommunications plc and funded by the industry;
2. While it could (and perhaps should) be funded by central government, the near ubiquitous nature of telecommunications is such that we arrive at the same place; whether the cost flows down through telephone bills or through general taxation it is likely to have a very similar per capita impact.
3. Communications Providers are already providing private services for those with disabilities, such as Virgin Media's BSL customer services access, and the mandated forms of large print and Braille communications. There is likely to be economies of scale, given this.
4. It is almost certain that the market will be more efficient in providing the service than Central Government.

³ Section 47 of the Communications Act 2003



However, unlike a voice call to 999, video relay services present challenges in their funding. A voice 999 call has a distinct point of origin and the Originating Communications Provider can be readily identified and charged. A video relay application has significant charging issues; how do you identify the originating network of the caller, especially when Ofcom wish to preclude any form of registration for the caller?

The use of an IP address is flawed, due to Network Address Translation and Virtual Private Networks; and in any event, a call could handover between different WiFi networks and the GSM for the duration of the call.

Dividing the total evenly across all participants is likely to raise a disproportionate barrier to new entrants, who would be required to offer the facility for potentially zero affected stakeholders for many years.

If it is merely recovered from the cost of traditional voice 999 calls, it places an unfair burden on voice operators who have a very small number of emergency video relay calls (e.g. business providers). This would equally be the issue if it were recovered through the Ofcom Administrative Charges; however, both options have the benefit of being proportionate to the provider's size and scale.

We raise these points now and suggest Ofcom opine on them in any Statement implementing the proposals – the alternative will be delays in the implementation of such a service while industry invariably descends into a drawn-out argument over the funding relationship.

Suspension for non-payment

We note the discussion at §5.10 of the Consultation and question why Ofcom would remove the obligation for access to emergency video relay in the event of *suspension* non-payment. We emphasis *suspension* because termination is a different legal matter.

A review of GC A3 supports our position.

Regulated Providers (in this case those End Users with an Electronic Communications Service (“ECS”) which functions by way of telephone numbers) are required to provide access to 999.

Suspension of service for non-payment is the withdrawal by the provider of certain aspects of the ECS in accordance with contractual provisions relating to the payment of the services. A requirement like GC A3 cannot be contracted out of. The ECS still exists, it is just suspended; therefore, for voice 999 at least, it is our understanding that blocking access to the emergency services for non-payment would be unlawful.



We are also unaware of any credible voice provider that blocks 999/112 in such suspension scenarios.

Finally, a position which suggests that a contract suspended for non-payment is not an ECS is incompatible with Ofcom's existing position at 9.109 of the October 2020 Statement⁴.

To that end, we believe that providers should (and we believe that they are likely *required* to) offer access to emergency video relay in the event of suspension for non-payment.

Zero-rating

We are surprised that the discussion in §5 of the Consultation does not include reference to a recent judgment of the European Court of Justice⁵ on zero-rating practices with respect to net neutrality legislation. In accordance with the terms of the Withdrawal Act 2018, this judgment carries significant weight on the UK.

Without restating the entirety of the judgement, broadly, it upheld the legal basis by which zero-rating practices are outlawed in the Union, which, by extension, would include the exemptions.

The relevant exemption is at Article 3(3)(a)⁶ of the regulation and states;

[...] comply with Union legislative acts, or national legislation that complies with Union law, to which the provider of internet access services is subject, or with measures that comply with Union law giving effect to such Union legislative acts or national legislation, including with orders by courts or public authorities vested with relevant powers;

We do not consider that proposed GC C5.12 is sufficient to comply fully with the Regulation as written and instead, to be fully compatible with the legislative regime, should read;

"where technically feasible, apply an incremental price of zero to any data traffic associated with the use of the Emergency Video Relay Service including where any

⁴ "Fair treatment and easier switching for broadband and mobile customers Implementation of the new European Electronic Communications Code" published by Ofcom on 27th October 2020

⁵ ECLI:EU:C:2020:708 – Judgment of the Court (Grand Chamber) 15th September 2020.

⁶ Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union as amended by Regulation (EU) No 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (the "**Regulation**")



inclusive data allowance has been exhausted by the End User (underline to show addition)

We note that Ofcom make reference to the document, “*Ofcom’s approach to assessing compliance with net neutrality rules*” and are in agreement with Ofcom that Emergency Video Relay should be zero-rated; however, that document itself does not appear to be of sufficient legal standing to meet the threshold in Article (3)(3)(a) of the Regulation alone.

Registration

We support the principle of relevant users of the service not being required to register (*per-se*) for an Emergency Video Relay service. However, the prospect of a free-to-download app that could be hijacked by those with nefarious intent and potentially deny access in times of need is highly concerning.

It is right that there should be no passwords required for the reasons stated at §6.3 of the Consultation; *however*, the security and integrity of the system on which people will demonstrably be reliant upon in risk-to-life situations is also critical.

We consider that the *prima facie* risk of a service-affecting denial of service attack to Emergency Video Relay to be considerably higher than to traditional voice 999 services.

This is clearly a difficult contradiction and one that will require the regulator to consider the opposing benefits and risks; however, we consider that the Approval Criteria at Annex A6 of the Consultation, as cited at §6.4 of the Consultation, require the following added;

“except for the minimum that may be required to assure the integrity and resilience of the Emergency Video Relay service”

Uninterrupted Access to Data Networks

The advent of Voice over LTE in 4G and newer technologies means, that while the internet access component of mobile networks is strictly not covered by GC A3.2(b) in addition to GCA3.2(a), the technical reality is that the convergence of voice and data services means they are effectively the same thing.

For fixed broadband networks, we consider that the prior work by Ofcom on emergency services access in the event of a power outage is unfinished business. To this day, there is no cohesive solution available for an “over-the-top” provider to secure end-to-end connectivity in the event of a power outage – they are dependent entirely on the Internet Access Service provider.



The reality is that the vulnerable (in this case, as defined by Ofcom as those with a greater than average reliance on the emergency services) are limited in their choice of services to integrated communications providers offering a bundled voice and data package. This does cater for their reliance on the emergency services; however, it is also an outcome contrary to Ofcom's statutory objectives of promoting competition and choice.

We consider that the language of §7.50 of the Consultation is inadequate. The effect of the guidance⁷ in question is to *mandate* providers of number-dependent communications services to offer a battery backup for vulnerable persons to access 999.

A deaf-BSL end user may themselves not meet the definition of vulnerable in the guidance. On the other hand, the Consultation's *raison d'être* is to provide equivalence for a deaf-BSL user with an non-deaf person's access to the emergency services.

If a given deaf-BSL end user also meets the definition of vulnerable in the guidance then we are unclear as to why Ofcom would merely "*encourage*" their Internet Access Service provider to provide resilient access to Emergency Video Relay and not mandate it as they would to traditional voice 999 for a vulnerable user.

We consider that the Guidance needs to be updated to remove this contradiction and make it clear that an Internet Access Service provider is required to provide the requisite resilient solution to a vulnerable deaf BSL end user.

Lack of Ambition

Video Services

It should be clear that there are benefits in a video connection between the Call Handling Authority or the Emergency Services and the calling party in the event of *any* emergency situation.

Providing a real-time view in advance of first-responders' arrival at the scene is something that we believe that Ofcom (or, as appropriate, the emergency services) should consider in detail.

We note that Ofcom stresses it does not have power over the UK emergency services at §7.9 of the Consultation, however, by the same token, those organisations have no power to

⁷ "*Protecting access to emergency organisations when there is a power cut at the customer's premises Guidance on General Condition A3.2(b)*" published by Ofcom on 10th October 2018.



mandate communications providers or Ofcom to do anything either. This would appear to be a Catch.22 that will perpetuate the lack of ambition and progress.

If a suitable video connection can be established between a deaf-BSL user to the Call Handling Authority (via a BSL interpreter), we struggle to see why such a connection cannot be made between a non-deaf caller and the Call Handling Authority.

We do not want improvements in access to the emergency services for deaf-BSL users to be hindered by 'scope-creep'; however, there seems to be a discrepancy in the ambition of the proposal. Therefore, we suggest that Ofcom incorporate a review and consultation on the potential for video-based emergency calling in the next annual plan.

Existing Services

We do not understand there to be a reliable standard for SIP for the leg between the Call Handling Authority and the Emergency Services receiving centre, which will become acute in the imminent switch-off of the PSTN.

Additionally, BT has not made significant investment in the systems it uses in the CHA – Calypso is outdated and increasingly unfit for its purpose.

While BT is squeezing the industry⁸ to fund its acquisition of TV rights, countries such as the USA have made significant improvements in emergency services call handling and are on a trajectory to make even more.

It appears also that BT is preoccupied in handling providers with respect to compliance with GC C6 and overlooking what, to us, should be a priority in GC A3.4; diverting resources away from potentially upgrading systems and processes which are decades old or more.

In the last decade, the work performed by Ofcom on access to the emergency services has been limited to peripheral issues (such as relay services, battery back-up for the vulnerable etc.) or enforcement actions.

We are not aware of Ofcom having conducted thorough review of emergency services for at least that long and consider, not only due to the lack of consideration with respect to video, but the other factors above, that Ofcom should fully engage as a matter of priority with the subject.

⁸ For example, the cost of capital embedded in its charge controls reflects its near-junk credit rating and beta of equity which has departed from those expected of a utility monopolist as a result of its diversification into content.



We would counsel that if doing so, Ofcom should focus on the solution first and funding it second. The existing regime is arguably impaired by the need to pay BT, and a daisy chain of providers is necessary to collect payment. Instead, for example, direct end-to-end communication with no middle-man may be more desirable absent such constraints - and we are heading to technological point where that is increasingly possible.

As ever, my team is at your disposal to discuss this Consultation or for technical input on solutions.

Yours faithfully,

Simon Woodhead.