



Virgin Media's response to Ofcom's proposed guidance on protecting access to emergency organisations when there is a power cut at the customer's premises

31 July 2018



Introduction

1. Virgin Media welcomes Ofcom's overall approach to its proposals for Guidance in relation to compliance with General Condition 3, (and A3 from October) for IP Voice services.
2. IP Voice is the basis for future telephony services. In the long term, it will allow the provision of more sophisticated and converged services, however in the medium term traditional TDM based technology will become unsustainable and obsolete. The change from TDM to IP is therefore driven to a significant extent by necessity rather than choice. As such, it is vital that Ofcom adopts an appropriate approach to regulation of these new services that encourages and facilitates migration while at the same time ensures appropriate levels of protection for consumers. The underlying technology in providing a voice service over IP differs from the provision of TDM voice, and there are significant differences not only in the manner in which the services are delivered, but also in the features and characteristics of those services.
3. Virgin Media has been actively engaged with Ofcom over the future of voice services and IP delivery for some time. In addition to participating at industry working groups we discussed our plans in detail with Ofcom prior to the delivery of our first consumer facing IP voice proposition, which launched earlier this year. We have been transparent in how we intended to deliver this service in order to take a lead on this vital issue, and to ensure that Ofcom, as the regulator, was aware of the practical challenges facing any operator seeking to launch IP voice at scale. We welcome Ofcom's collaborative approach to this issue, and consider that this needs to continue not only in setting this Guidance, but beyond in order to provide regulatory clarity through the transition away from traditional telephony to an all IP voice world.

Ofcom's Four Principles

4. Ofcom has proposed four principles that would apply to PATS providers of IP voice services:
 - CPs should have at least one solution available that enables access to emergency organisations for a minimum of one hour in the event of a power outage in the premises;
 - The solution should be suitable for customers' needs and should be offered free of charge to those who are at risk as they are dependent upon their landline;
 - CPs should (i) take steps to identify at risk customers and (ii) engage in effective communications to ensure all customers understand the risk and eligibility criteria and can request the protection solution; and
 - CPs should have a process to ensure that customers who move to a new house or whose circumstances change in some other way are aware of the risk and protection solution available.
5. We comment on each of the proposed principles in turn.



CPs should have at least one solution available that enables access to emergency organisations for a minimum of one hour in the event of a power outage in the premises

6. There is important background and context to this requirement. As noted by Ofcom¹ the concern about access to emergency organisations during power outages stems from the Universal Service Directive (USD) in the European Common Regulatory Framework. Article 23 of the USD requires Member States to “ensure that undertakings ...take all necessary measures to ensure uninterrupted access to emergency services”. It is therefore instructive to consider the approach taken by other NRAs in interpreting the requirement imposed under the Directive. This is especially the case as other Member States are more advanced in their roll out of IP Voice services; for example in Germany, Deutsche Telecom is proposing to migrate all customers to IP Voice before the end of this decade.
7. None of the other member States in which Virgin Media’s parent company, Liberty Global, operates has a battery back-up requirement for voice services.
8. On this evidence, it is notable that Ofcom’s approach to requiring a back-up solution goes far beyond other NRAs’ approaches. Specifically, there is no similar requirement imposed elsewhere in the EU.
9. While we understand the reasons behind Ofcom’s overall approach that underpins the draft Guidance (and indeed its approach to GC3 / A3 compliance), we wish to emphasise the point that any regulation in this area must remain proportionate and justifiable.
10. Specifically, we consider that the requirement to have a back-up unit should not mean that it should be made available to all customers. As noted in the second requirement, the focus of this consumer protection measure is on customers who have a particular reliance on their landline. To impose any requirement on supply to customers outside of this subset would in Virgin Media’s view be disproportionate. The near ubiquity of mobile phones, and the existence of national roaming for emergency calls, means that the vast majority of consumers in the UK will have alternative means by which they can contact the emergency services in the event of a power outage – and they will, to all intents and purposes, have uninterrupted access to emergency services.
11. We consider that it is appropriate to have a targeted back-up solution available and have designed our IP Voice proposition so that access to emergency services can be provided on a seamless basis to customers who are reliant on their landline over a cellular network if the fixed network is unavailable². We consider that the one hour minimum access requirement (standby time) is also appropriate in the circumstances.

¹ Consultation paragraph 2.14

² Virgin Media’s Emergency Back Up solution is designed to provide access in the event of a local power outage or other fixed network outage.

12. It is important to consider the setting of any minimum time in the wider context of such solutions having to be designed to potentially cope with, for example, multiple devices connected and battery lifetime (and performance deterioration during that lifetime) - which can substantially affect the performance of the back-up device. Therefore, in prescribing a one hour minimum, this is likely to result in devices that far exceed that period in normal operation. It would be inappropriate to set too high a limit on minimum access time as this would require devices to be configured to support an even longer access time in practice. Currently, battery technology is such that significant access times require higher capacity batteries, which in turn take up more room in any back-up device, making the unit less usable and practical for deployment. In trialling our IP Voice service, we found a number of customers who did not want an “extra box” as part of their CPE, despite knowing and understand what it was designed to do. We consider a requirement that creates a large piece of kit will further lessen consumer acceptance of that kit.
13. We also believe that a clear standard is important in respect of the minimum period supported for access to emergency organisations. Ofcom has suggested that the one hour standard would apply in general but there may be a need to consider “individual consumers” who require protection for greater than one hour³. It is disproportionate and practically impossible to develop a separate bespoke back-up unit for individually affected customers, and it is essential that there is a clear single standard to adhere to. This will ensure that customers are clear about the functionality of their telephone service.

The solution should be suitable for customers’ needs and should be offered free of charge to those who are at risk as they are dependent upon their landline;

14. Virgin Media agrees with the proposal that the back-up system should be focused on those customers who really need it. As noted by Ofcom the majority of customers rely on their mobile telephones as the primary way to make calls, including calls to Emergency Services. Therefore, where a customer has a preferred route to Emergency Services that does not rely on their landline, a requirement to back-up their landline would, in practice, be redundant: this cannot be proportionate. This is also reflective of the Universal Service Directive from where Ofcom derive its authority for General Condition 3. The USD, in recital 35, is clear that NRAs should, when considering the appropriate steps to ensure uninterrupted access to emergency services (under Article 23), take into account the priorities of different types of subscriber and technical limitations.
15. The definition of “dependent upon their landline” is also one that needs careful thought. Virgin Media considers that Ofcom has approached this correctly in its explanation of Principle two⁴.
16. Ofcom identifies two key groups :
- Customers who have a disability or accessibility requirements that mean they are more dependent upon their landline; and
 - Customers who do not have an alternate method of calling the Emergency Services.

³ Consultation Paragraph 3.10

⁴ Consultation Paragraphs 3.26 et seq



17. In relation to the first group, Ofcom states that not all customers with a disability or accessibility need will be more reliant on their landline, acknowledging the difficulty in defining precisely the group of customers to whom a back-up device should be offered.
18. Virgin Media's approach to date has been to adopt a reasonably broad approach to ensure relevant customers are captured at the point of sale, by explaining to the customer the nature of the IP service and seeking information as to whether they have any accessibility needs.
19. This has been successful in our trials of IP Voice, with more customers "self-declaring" at the point of sale than expected (based on current GC15 service take up). This has also identified a key issue that Ofcom needs to incorporate in the guidance. Where a customer declares their eligibility for a back-up device, our experience is that they may subsequently consider that it is not necessary (for example, at point of install). It is vital that this Guidance does not lead to the situation where a device is forced upon a customer who really (a) does not want it and (b) has no need for it.
20. This is consistent with the statement at paragraph 3.31 that not all customers with disabilities or accessibility needs will be more reliant upon their landlines.
21. This means that any requirement to provide a back-up service has to respect customer choice, and that any individual customer who would otherwise have qualified for a back-up device can opt out, provided they do so on an informed basis. This should be acknowledged within the Guidance. Any opt out would have to be contingent on the customer fully understanding the service limitation of IP Voice in a power outage, and accepting the associated risk of not having a back-up device.
22. An example of this would be a customer with a DECT landline and mobile phone, who understood the power limitation of their existing DECT phone (not operating in a power cut), but accepted that risk and relied on their mobile device for emergency calling. Such a customer would not be worse off once they switched to IP Voice, and may not want the additional back-up unit and corded phone on the basis that they already understood and accepted a known risk.
23. We also consider that arbitrary over-extension of qualifying groups would not be appropriate. Ofcom suggests at paragraphs 3.32 and 3.33 that certain indicators should be used to determine a customer's potential vulnerability. One example is that a customer has barred calls to high cost ranges (eg 118). This could simply be an indication that the customer has teenage children in the home and wants to control their bill; it is not an indicator, in isolation, of vulnerability. Of course information in relation to customers may help to signpost whether a customer is vulnerable, but it should not be the case that all customers within a very specific group would automatically be categorised as vulnerable.
24. Virgin Media agrees that for the most vulnerable customers it would be inappropriate to make an additional charge for a back-up device. However, these devices and systems will come at a cost to the industry, and therefore this provides another strong reason to ensure that the group



of customers who actually get a device is correctly defined in order to achieve the policy objective. Over-expanding the group would result in a significant increase in cost to providers and represent a disproportionate burden to the industry. It would also introduce the unwelcome prospect of costs being passed through to end users in higher subscription fees.

25. Ofcom has also identified customers (the second group) who do not have alternative means by which they can make Emergency Calls as being eligible for back-up protection. Essentially, this would be the group of customers without access to a mobile phone, or those in a coverage “not spot” with no access to mobile services. We have approached our IP voice proposition on the basis of including customers without access to a mobile phone in the category of those eligible for a back-up device (where mobile signal is available). Where a mobile signal is unavailable, we do not currently sell a customer an IP voice service. In respect of the latter this emphasises the importance of universal mobile coverage, and we would suggest that the move to IP Voice adds a further public policy reason to ensure that coverage obligations provided by MNOs continue to be expanded to ensure that “not spot” customers shrink over time. Our current approach does have the effect of limiting our serviceable base of customers. Previous guidance from Ofcom under Annex 3 to GC14 suggested that VoIP services could be provided to customers provided that any service limitation in relation to calling Emergency Services in a power outage was explicitly stated⁵. We would welcome Ofcom’s further guidance on whether services can be provided without back-up if this is marketed as an explicit proposition, with appropriate informed acceptance by the customer. Although this is not the basis of our current proposition, we consider that this remains a relevant issue given the current availability of “pure” OTT VoIP services that do not have any back up abilities, and the need to ensure that regulations do not unintentionally inhibit competition within an area by differentiating on the grounds of delivery technology.

26. In respect of the former “no access to a mobile” group, we consider that these customers are, by definition, not vulnerable nor do they have relevant accessibility requirements as they would have qualified for a back-up device under the relevant assessment criteria (which may include dexterity issues that would prevent routine mobile use). While we are currently providing this cohort of customers with our full, integrated back-up solution, we believe that an equivalent level of protection could be provided via the provision of a free of charge “standard” mobile device, which is likely to be cheaper and potentially more functional than a back-up system. We would welcome Ofcom’s view on this.

CPs should (i) take steps to identify at risk customers and (ii) engage in effective communications to ensure all customers understand the risk and eligibility criteria and can request the protection solution.

27. Virgin Media considers that customer education of what IP Voice is and, in particular its power resilience limitations, is vital, not only in the context of the provision of services to customers,

⁵ Also reflected in the GC9.2 requirement to explicitly state if access to Emergency Services is provided.



but of the customer base as a whole. This comes in part through CPs having effective procedures to identify at-risk customers and providing generic information to all customers as to service limitations, but also through industry as a whole, and through Ofcom as the industry regulator, to ensure that there is appropriate awareness of IP Voice.

28. We agree that identification of customers is key, via both information already held on a customer (for example those customers flagged as taking a GC15 service), and also information gathered as a result of appropriate questions in the sales (or migration) process.
29. We also agree that it is vital that all customers understand the risk in relation to local power resilience. We consider that should this be achieved, customers will be better informed about the risk to telephony services in a power cut than they are today. Ofcom notes DECT phone users will not be able to use their devices during a local power cut irrespective of whether they are using TDM or IP lines, as local power is required to power the handset base station; many users are not currently aware of this consequence. Once users are so informed of the risk, this is mitigated by having a mobile phone to hand and charged if the user is in a mobile served area.
30. In Virgin Media's view, this adds weight to the inappropriateness and disproportionality of requiring a CP to provide a non-qualifying customer with a back-up device. Whilst this could be made available as a part of a commercial offering, it would add little, if anything, to public safety. Taking the example of Virgin Media's back-up device, it is designed to allow the caller to make a call to Emergency Services via an available cellular network. Customers who are vulnerable, or have no access to a mobile will automatically be provided with the device free of charge. Non-vulnerable Customers with a mobile will potentially have greater functionality of use from their existing mobile devices. To mandate that these customers must have a device if they choose (even if the device was charged for) would run counter to the rationale that they do not qualify for a device in the first place.

CPs should have a process to ensure that customers who move to a new house or whose circumstances change in some other way are aware of the risk and protection solution available.

31. We agree with Ofcom that any customer whose circumstances change to make them eligible for a back-up device should be provided with one. The challenge is to ensure that the change of need of such customers is captured so that a back-up device can be provided. Ofcom has not sought to prescribe a process. We agree with this approach, given the likely variation in the types of back-up device offered across the industry, means that it will be appropriate for the implementation of appropriate processes to be left to individual providers.
32. Ofcom does, however, propose guidance on how customers may be informed of the on-going risk of having a non-power resilient telephone line. In particular, Ofcom suggests that scripts and announcements could be modified to include an appropriate warning on each instance of contact with the customer (whether in relation to voice services or not)⁶.

⁶ Consultation Paragraph 3.56



33. Virgin Media considers that such an approach would be disproportionate and could be intrusive if required to be made within other customer conversations. For example, if a customer called in about their PayTV package or mobile service, a mandatory script about their IP phone service would be out of place, and potentially confusing, in an unrelated conversation. Further, agents have a number of other statements that have to be read to customers in various situations. To overload any customer conversation with too much information will have the opposite of the intended effect, with the customer “turning off” and not listening to any announcement with the required level of attention. We appreciate that this suggestion was presented as an indicative example, and therefore is not prescriptive, however, we do not consider that this is an appropriate way in which to educate customers.
34. We therefore consider that whilst the underlying intent is to make customers aware of the lack of power resilience and the availability of a back-up solution for vulnerable users, the examples provided are not helpful.
35. We agree, however, that it is appropriate to react to changes in circumstances reported that result in a customer becoming eligible for a back-up device. We agree that a review when a customer moves home, or when a request for a service under GC15/C5 is received, would be an appropriate step to ensure a back-up device was correctly provided to qualifying customers. We are concerned, however, with Ofcom’s suggestions that information provided by third parties should trigger an action on a customer’s account. Ofcom suggests information from a charity or local authority may require action, or that the CP should act directly following a call from a person purporting to act on behalf of the customer. We consider that whilst interactions with third parties can be relevant to the manner in which a customer’s account is managed, there will often be limits as to what can be done without the consent of the customer; this is especially so following the introduction of the GDPR.

Conclusion

36. Virgin Media welcomes the guidance to confirm that the obligation to provide uninterrupted access to emergency services can be discharged by the targeted provision of a power resilient solution to customers who genuinely need it. The four principles that Ofcom has proposed are sensible and appropriate and we support their introduction.
37. We do consider that some of the detailed guidance, even if intended to be examples of helpful best or suggested practice, is not appropriate. We therefore urge Ofcom to review these details to ensure that the overarching principles themselves do not get undermined.
38. We also note that Ofcom has undertaken considerable work already in relation to what is acceptable in terms of IP Voice resilience, and this has facilitated Virgin Media’s launch of an IP Voice service this year (having undertaken pilot deployment last year). We also note that BT has plans to launch a commercial IP Voice service later this year, and will have undertaken considerable development to get to a launch position. It is vital that any guidance does not undermine the work undertaken so far, provided of course that the services remain compliant with the overarching General Condition. We look forward to working with Ofcom going forward as part of its role as industry transitions from TDM to IP voice, and taking forward a positive and



collaborative approach to a technology driven change that the industry and with wider public needs to embrace.

Virgin Media
9 July 2018