Andrews & Arnold Ltd
Enterprise Court
Downmill Road
BRACKNELL
RG12 1QS

Matt Hall
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

(By email only to EECCenduserrights@ofcom.org.uk and emergencyBSL@ofcom.org.uk)

Response of Andrews & Arnold to Ofcom's consultation "Fair treatment and easier switching for broadband and mobile customers - Proposals to implement the new European Electronic Communications Code"

1. Confidentiality

Nothing in this response is confidential.

2. Introduction

Andrews & Arnold Ltd (AAISP) is a small Internet access provider, with fewer than 10,000 customers. We offer high quality broadband services to business and more technical consumers using ADSL, VDSL and FTTP connectivity. We aim not to be the bottleneck for Internet access to our customers and so we do not see service slow down at peak times.

In addition to our Internet access services, we offer number-based interpersonal communications services, in the form of SIP-based VoIP. We also sell "SIP2SIM" SIM cards which customers can use to terminate our, or any other SIP providers', service on mobile devices via the cellular network.

We value all our customers, and go to considerable lengths to make our services available and accessible to customers with disabilities. In particular, we offer:

- customer service, including both sales and technical support, through web-based text chat on website and Internet relay chat

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- SMS to text both support and sales
- video support by request
- control over many aspects of the service through our online control portal, for users who prefer not to interact with us in person
- non-contractual out of hours support, for people who many not be able to interact with us during normal office hours
- control over the font used in our electronic invoices and our web control panel, to help readability, including fonts specially designed for readers with dyslexia.

We emphasise these here because we want all our customers, irrespective of ability, to have a best-in-class experience.

We are concerned that Ofcom's proposal in respect of video chat amounts not to equivalence with customers without disabilities, but rather an utterly sub-optimal experience.

3. Video relay

We have limited our response to two specific questions: questions 14 and 15, relating to emergency video relay.

Question 14: Do you agree with our proposal to mandate emergency video relay for emergency communications to be accessed by end-users who use BSL?

Question 15: Do you agree with our proposal that the obligation to provide emergency video relay free to end-users should be imposed on regulated firms that provide internet access services or number-based interpersonal communications services?

Summary

We do not agree with the approach proposed by Ofcom.

We consider that Ofcom's approach:

- misses a fundamental point, that ensuring the safety of people with disabilities should be part of the obligations of the state, through properly-funded emergency services, and not left as an obligation imposed on, and funded by, private companies
- is disproportionate, since it lacks a sufficiently robust proportionality assessment;
- exceeds the requirements of Article 109 EEC;
- is unclear, in terms of why Ofcom intends to impose this obligation on some VoIP providers but not others;
- would, as currently proposed, impose an unrealistic obligation on communications providers; and
- if, despite our objections, is imposed on communications providers, must ensure that the cost / funding model takes into account the limited resources of smaller providers.

We close this response by proposing a better solution for offering equivalent access to emergency services.

Ensuring that people with disabilities have access to emergency services is a role of the state, and should be implemented and funded accordingly

Effective access to the emergency services is fundamental. Quite literally, it may be the difference between life and death.

People without disabilities enjoy access to the state-funded emergency services, through the operation of the existing 999/112 voice service infrastructure.

It is unclear why Ofcom considers that extending equivalent access to people with disabilities should be left to private companies, rather than deserving the same state-based approach and funding.

It is one thing to impose an obligation of communications providers to enable free of charge routing of communications to state-funded end points, and we would not object to an obligation to do this (for example, by zero-rating traffic to state-funded video relay endpoints, acting as part of the PSAPs).

An obligation on the state to provide an appropriate endpoint would also make sense in the context of Ofcom's draft GC C5.12(b), since the endpoint could impose approach security (for example, in the form of forcing https / TLS on an IP-based connection), and C5.12(c) in terms of maintaining an appropriate service uptime, consistent with existing 999/112 handling arrangements.

We make a proposal at the end of this response as to what, in our view, a good solution would look like.

It is, however, a fundamentally different thing to impose an obligation on communications providers —especially those who merely provide an Internet connection — to implement and fund what should be seen as an essential part of the emergency services.

In this regard, it is worth noting that Article 109 EECC imposes an obligation on member states to achieve an outcome. It does not specify how that outcome must be achieved, and it is not limited in scope to the imposition of obligations on communications service providers. For example, Article 109(3) — the requirements for handling 112 as opposed to 999 calls – will entail responsibility by the state, as well as routing obligations imposed on communications providers.

Ofcom's consultation does not properly explore the scope of providing equivalent access for people with disabilities. For example, it gives no consideration to the imposition of obligations on UK emergency services to operate a suitable call relay service, available via IP endpoints, to which communications providers could be obliged to route their users' traffic free of charge.

Similarly, it does not consider whether it is appropriate to require PSAPs to expose interfaces to other very popular communications services, which work over the top of IP networks, and so which

would be available for use by customers with disabilities in, for example, a venue with free Wi-Fi but poor cellular service.

It is our view that, far from affording equivalence, Ofcom's proposed approach would lead to a considerably inferior, limited, service.

We appreciate that imposing obligations on the emergency services may fall outside Ofcom's competence. It is, however, for the government as a whole, not just one specific body, to ensure that the rights of people with disabilities are respected. If doing so requires broader governmental intervention and support, that should be the way to go, rather than acting solely within the confines of Ofcom's own powers.

Ofcom has not carried out a robust proportionality assessment

Ofcom is proposing to impose its new obligation on providers of Internet access services, as well as providers of number-based interpersonal communications services.

Ofcom recognises — paragraph 10.38 — that it does not know the cost of what it is proposing. It references the cost of providing a service in Scotland, and then explains why that cost is not representative because the service in question is not comparable in terms of either scope or resiliency. It footnotes a reference to NHS England, but notes explicitly that this too is not a good comparator.

There is no reference in the consultation document to any efforts by Ofcom to obtain realistic costings for the service underpinning the actual obligation it intends to impose.

Ofcom then goes on to say that, even if the actual cost of its proposed obligation was 10 times higher than the cost of this non-comparable service, that that would be proportionate, on the basis of "estimated benefits" described in Annex 10.

Ofcom cannot claim that it has robustly assessed the proportionality of its proposal when it can reliably quantify the cost.

Moreover, as set out above, Ofcom has not considered properly the full range of options: even if Ofcom considers that it has given due regard to the assessment of this particular proposal, it cannot determine that this proposal is necessary, in the sense that no lesser intervention would achieve the objective, if it has not given appropriate consideration to the range of options (including proposals which might requirement action by bodies, or indeed the government, aside from Ofcom).

Ofcom's proposal over-extends Article 109 EECC in attempting to impose obligations on Internet access providers

Article 109(1) EECC establishes an obligation on member states to ensure that "all end-users of the services referred to in paragraph 2" can access emergency services free of charge.

Article 109(2) limits the scope of the obligation to "providers of publicly available number-based interpersonal communications services".

Article 109(5) requires equivalent access for users with disabilities.

The plain English reading of this requirement is that, where an end user with a disability is a customer of a provider of publicly available number-based interpersonal communications service, they must have the same access to emergency services as any other customer of that service.

If Ofcom considers video relay to be a proportionate imposition on providers of telephony services, then imposing that obligation on them would be consistent with Article 109.

However, in proposing that Internet access providers must also provide video relay services, Ofcom steps outside the requirement of Article 109, and establishes an unexpected standalone obligation, that Internet access providers must offer emergency calling support to some of its users, despite not offering a telephony service.

Ofcom offers no reasoning for the imposition of the obligation on providers of Internet access services, who currently are not subject to emergency calling obligations. While we consider that a customer of an Internet access service would reasonably expect to be able to connect to a state's IP-based PSAP (although perhaps not think about it in those terms) if such a thing were to exist, we do not agree that they would expect their Internet access provider to be operating, or buying a licence to, an emergency service.

We understand the technical challenge in imposing an obligation to offer video relay services on the providers of telephony services, which may have no accompanying data facility to carry video traffic. However, as far as we can tell, it is not Ofcom's intention to require voice telephony providers to provide, free of charge, smartphone handsets and accompanying data services to customers to enable them to make emergency video relay calls. For the avoidance of doubt, as the provider of a low-margin VoIP service, which does not include hardware and relies on the user's own choice of connectivity, this would be an unrealistic burden.

Similarly, it is not made clear in Ofcom's consultation that it is Ofcom's intention to require all payphones to be upgraded to include video calling capability. If that is Ofcom's intention, we would have expected this to be much clearer.

If we are right, and this is not Ofcom's intention, it is unclear why Ofcom would impose obligations on Internet access providers to implement and fund a video relay service, and thus incur an undefined cost in meeting them.

Fundamentally though, we consider that Ofcom is approaching this in the wrong way, and should instead be focussing on ensuring that the state provides suitably-accessible, disability-friendly, emergency call handling services, to which communications providers could be obliged to route customers' traffic without charge.

It is unclear why Ofcom intends to impose this obligation on some VoIP providers but not others

Aside from imposing the obligation on providers of Internet access services, Ofcom also intends to impose the obligation on some — but not all — providers of VoIP services. Ofcom proposes limiting the obligation to providers of number-based interpersonal communications services.

Ofcom gives no substantive reasoning for this, other than saying, at paragraph 10.28, that " it is not necessary to include these OTT providers in scope for now, so long as the main connectivity provider is in scope".

This logic makes little sense. Whether or not the VoIP service is number-based or not, a video relay service is unlikely to connect or transmit over that VoIP service. Instead, the connection to the video relay service will be carried over whatever IP connectivity is available to the user, just as the VoIP service does.

Since the video relay service is not being carried over the VoIP service, it does not make sense to distinguish between number-based VoIP services and number-independent VoIP services. and results in the imposition of a funding obligation on some VoIP providers and not others.

If, as we propose above and below, the obligation to operate a relay service rested with the emergency services, there would be no need to make these artificial distinctions.

Even if Ofcom insists in imposing obligations on communications providers, its draft general condition imposes an unrealistic burden

Ofcom's proposed general condition C5.11 imposes an unrealistic burden on communications providers. The proposed obligation is to ensure that end users with disabilities "can access and use" an approved video relay service.

We provide connectivity service and, separately, telephony services. We do not dictate or control what equipment an end user connects to that service. We do not determine whether they have a webcam, or any particular browser (or, indeed, whether they have a browser installed).

Against this backdrop, we could not ensure that any end user could "access" any particular service, beyond ensuring that that traffic was routable on our network. If a user has an incompatible browser (or no browser), then that is outside our control

By the same token, nor do we provide training on how to use their devices. We provide a means of getting their packets from their router to the egress points on our network, and back again. We cannot ensure that any given customer can "use" a third party's service, if it is poorly designed, or if the user requires particular equipment or facilities (such as a screen reader or a special human-computer interaction device).

These are not, in our view, realistic obligations to place on a communications provider.

If Ofcom insists on imposing obligations on communications providers, it must ensure that the cost / funding model takes into account the limited resources of smaller providers

The costs associated with Ofcom's proposed are not properly quantified, and so we are limited in what we can say in response to them.

We are, however, mindful that, whatever they are, they are costs which we have not had to bear to date.

New costs are never welcome, particularly since we are one of the few (perhaps only?) communications providers to pass on cost savings to our customers in the form of reductions in their prices, even to the extent of offering reductions to those who are within a fixed commitment period.

However, if costs are to be imposed on, or borne by, industry, the metric for doing so much be appropriate, to ensure that they do not amount to an undue burden on small providers, operating on slim margins.

We note Ofcom's proposal — paragraph 10.49 — that costs could be shared among industry based on the share of voice 999 calls. We would support this, since we have zero calls from our Internet access customers, and the volume of calls from our VoIP customers must amount to a rounding error when considered in the context of the overall volume of 999 calls originated across all UK CSPs.

If there were costs on any other basis — for example, a minimum payment requirement, or a need to pay a subscription to a commercial provider of emergency video relay services — it is likely that these costs would amount to an undue burden, when considered in the context of the overall costs of our services.

A better solution for offering equivalent access to emergency services:

We fully support the principle that people with disabilities should have the same access to emergency services as anyone else. We think that Ofcom's proposals stop short of this.

We instead recommend work on industry and international standards for IP-based PSAP access, allowing for devices like smart phones to have access as standard, irrespective of the underlying connectivity. This standard could be implemented in numerous different client devices, rather than entailing the use of, and reliance on, any specific app or service.

We would see this as being a natural extension of the facilities afforded by the state's emergency services today, and it should be the state, and not private companies, making sure that people with disabilities have equivalent access.

While we consider that this facility is a role of the state and not private companies, we would be very happy to contribute our expertise and experience to finding a suitable solution.

While Ofcom has apparently ruled out the imposition of obligations on common over the top communications services, we would support an integration of those services to allow in-platform calls to terminate with the emergency services. We doubt that this would be amount to a significant burden, and would open up video access to users across a wide variety of devices and platforms.

We do, as we have said above, see a role to play for communications providers, and this is limited to routing traffic, without charge, to the state-defined endpoints.