**Internet Telephony Services Providers' Association**

# Regulation of VoIP Services

## Introduction

ITSPA welcomes the opportunity to comment in detail on Ofcom's consultation on the regulation of VoIP services in the UK. Our introductory statement sets out our general remarks on the VoIP consultation, with the remainder of our response considering each question posed by Ofcom in turn.

ITSPA was established formally 18 months ago to promote the development of a responsible and innovative VoIP industry in the UK. One of our founding objectives has been to ensure that consumers and businesses alike are equipped with sufficient information to understand and benefit from the next generation of voice services. Therefore, ITSPA fully agrees that the consumer must be the focus of the current consultation.

ITSPA supports Ofcom's aim to clarify the regulatory framework for VoIP in the UK to ensure the rights and obligations of consumers and industry alike are better delineated and we welcome this consultation as a first step in this regard. However, we hope that due consideration will also be given to the self-regulatory initiatives already in place, and "sponsored" in part by Ofcom. For example, those measures implemented by ITSPA to ensure consumers are properly and appropriately informed about VoIP services.

ITSPA understands that consumers need to have information at the ready in order to exploit fully the potential of these new services. Indeed, one of ITSPA's first deliverables was our Code of Practice which seeks not only to give consumers the confidence to use the new breed of VoIP services, but also to foster trust in the way in which an ITSPA member will do business with them.

In view of the importance of consumer protection and information – especially the delivery of clear and unbiased information – in the increasingly competitive communications sector, ITSPA strongly believes that **the principles and rules set out in this consultation should, as appropriate, apply equally to all electronic communications services providers**, as defined under the Communications Act. The ability to ensure compliance with UK rules by **extraterritorial service providers** is a key issue of concern for ITSPA, yet it is considered only briefly in Ofcom's consultation document (9.23-9.25). Lack of enforcement could mean that UK-based VoIP providers would be subject to an additional layer of regulation. In an increasingly networked world, where the significance of geographic borders in the provision of services is being eroded, ITSPA believes that this would be worryingly detrimental to the growth of the UK

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Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

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communications industry as a whole. Non-UK based service providers, who chose not to abide by UK regulations, would be placed at a significant competitive advantage driving responsible UK-based service providers, who duly complied with all the relevant regulations, out of the market. Importantly, this would also risk limiting the widespread availability of emergency access services. ITSPA recommends that the only means to ensure a significant degree of control over service providers based outside Ofcom's jurisdiction as well as a level-playing field for all VoIP service providers is to require that any service provider allocated or sub-allocated UK numbers be subject to UK regulations and that any contraventions of the regulations would result in the numbers being withdrawn.

ITSPA has some concerns that the scope of applicability of the document is not clear. Some of the proposed rules (for example the discussions about SLAs between voice providers and network operators) seem to be more relevant to Voice over Broadband services than VoIP in general. This consultation does not, according to paragraph 2.41, aim to address the use of VoIP in core networks. ITSPA, however, believes that VoIP does and should include NGN voice services and that Ofcom's proposals should encompass NGN services. ITSPA is concerned that Ofcom's approach is not technology neutral and we ask Ofcom to provide more transparency with regards the applicability of the provisions in the document to NGNs.

ITSPA agrees with **the importance of ensuring the widespread availability of 999/112 access** in the UK and believes that VoIP offers the opportunity to broaden the reach of emergency services. For instance, after the terrible events in London on 7th July 2005, many citizens found that the only means of communicating with friends and relatives was via VoIP, as mobile networks were overwhelmed by the number of calls being made. This illustrates that VoIP is increasingly becoming a vital third means of communication and ITSPA is keen to ensure that this public benefit can be further extended.

However, ITSPA is concerned that while the proposals set out in the current consultation document aim to ensure more robust emergency access, in fact they are likely to discourage the provision of emergency access by VoIP providers. ITSPA believes that the UK General Conditions as currently drafted go further than strictly required by the EU Universal Service Directive and that Ofcom should remove the link between the provision of PATS and the provision of a PTN. Providers of VoIP services accessed from networks over which the VoIP service provider has no control or knowledge should have no obligations in respect of network integrity.

Another aspect of the proposals which causes concern for ITSPA members is the link Ofcom makes between the provision of emergency access services and **number portability**. Ofcom said in a recent statement[1]: "*A well functioning market should make switching supplier as straightforward as possible. The ability for subscribers to retain their telephone number*

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[1] Number Portability & Technical Neutrality, 30 March, 2006

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Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

*regardless of service provider can significantly enhance the attractiveness of switching between providers. Number portability can therefore promote effective competition and consumer choice.*"

ITSPA believes that it is in the best interests of consumers to be able to port their numbers across service types, since the legal classification of services is not transparent to consumers. The General Conditions were drafted in order to transpose the requirements of the Universal Service Directive, which gives a right to number portability to subscribers of PATS. We believe that Ofcom would best serve the interests of consumers by amending the General Conditions so as to extend this right to subscribers of all electronic communications services. As we explain below, we do not believe that Ofcom would be acting *ultra vires* were it to do so. Amending the General Conditions would also enable Ofcom to enforce compliance against all service providers, each of which would carry the same "rights" and "obligations" in respect of portability and be subject to the same General Conditions, including those based overseas.

We discuss these and other concerns in more detail in the body of this consultation response.

**Question 1: Given recent developments, do you agree that Ofcom's focus should be on the following three objectives in developing our policy for VoIP services, namely (in so far as is possible) (i) enabling innovation in a technological neutral way, (ii) ensuring consumers are well informed, and (iii) ensuring maximum availability of 999 services?**

ITSPA broadly agrees with Ofcom's three objectives for the development of VoIP services policy, although we would like to highlight the following:

i)      ITSPA believes that Ofcom's role is not simply to "*enable innovation*" through its VoIP policy, but to play a more active role in "helping to deliver" innovation.

ii)     ITSPA fully agrees that it is of paramount importance that consumers are well-informed about VoIP services and how they differ from PSTN-based services in order that they can maximise the benefits of this new technology. We also wholly concur that consumer information is particularly important with regards information on access to emergency services. For these reasons, ITSPA already has a Code of Practice in force that seeks to ensure consumers are well informed about the differences between traditional PSTN and VoIP services.

iii)    ITSPA agrees that access to emergency services is an important feature of existing telephone services and is a service that citizens continue to value. Therefore, we have some concerns that Ofcom's new guidelines on the application of GC3 may not serve to facilitate the provision of emergency access as Ofcom intends. ITSPA would contend that Ofcom's interim VoIP policy – that it is in the interests of the public that

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Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

emergency access is offered rather than none at all[2] – is more conducive to the widespread provision of emergency access. The continued provision of "best efforts" emergency access would of course be coupled with clear consumer information (as is currently required by the ITSPA Code of Practice).

We do not disagree that meeting the four "gating criteria" requires a finding of PATS, but we do think that the UK's General Conditions go further in terms of network integrity requirements than is strictly required by the EU Universal Service Directive.

Moreover, ITSPA is concerned that the regulatory consequences of offering access to emergency services affect providers of VoIP to businesses as well as consumers. We believe that there is no public policy justification for this.

**Question 2: Do respondents agree with this approach for the interaction between network providers and PATS providers?**

ITSPA has some concerns with regard to the distinction drawn between ECN and PTN and believes that this is no longer merited in an environment where access and services are not always provided by the same company.

A PTN is defined in the Universal Service Directive as an ECN that is used to provide PATS. Ofcom explains in paragraphs 4.23 and 4.24 that network providers have expressed concern that they could be subject to additional General Conditions, even though they thought they were operating an ECN and were unaware that it was being used to provide PATS. An example would be a cable company that offers a DSL only service, with no PSTN service included. Ofcom therefore recommends in paragraph 4.27 that PATS providers and network providers should develop SLAs if they see the need to address concerns about network reliability.

ITSPA believes that the definition in the USD, which ties the provision of PATS to the provision of a PTN, is no longer applicable in the next generation world, where the provision of networks is divorced from the provision of the applications that run over those networks. We appreciate that Ofcom's hands are somewhat tied by the fact that European legislation may not yet have caught up with the reality of NGNs.

We believe that the eventual public policy solution should be as follows:

- The distinction between ECN and PTN should be removed.
- All providers of communications networks should have to:

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[2] http://www.ofcom.org.uk/consult/condocs/new_voice/anew_voice/nvs.pdf see 6.2

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sip:info@itspa.org.uk

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- o Comply with a minimum set of standards to ensure a reasonable degree of "network integrity"; and
- o Make "emergency planning" arrangements such as are reasonable practicable.
- Obligations regarding location information should apply to PATS and PTN providers only to the extent that is technically feasible and within the control of the relevant provider.

ITSPA will also be making representations to this effect as part of the 2006 eCommunications Framework review.

In the meantime, we note that Ofcom recommends that providers of PATS "*take reasonable steps*" to develop an appropriate SLA with "*the relevant network provider*". ITSPA members would be happy to do so where they have prior knowledge that their service is to be accessed over a particular network or where there is a prior relationship with the access provider, but we believe that in the majority of cases (i.e. where the VoIP service is provided independently of the access provider), VoIP providers will not have visibility of the networks used to access the service, particularly considering the rapid growth of access methods. For instance, the Remote Area Broadband Inclusion Trial website alone lists over 100 wireless access providers[3]. There would be practical difficulties with negotiating SLAs with multiple providers and there are likely to be differences in bargaining strengths between providers which may impact on negotiations.

Finally, ITSPA would like to point out that SLAs are negotiated to ensure that service providers are compensated if their service fails; SLAs do not primarily aim to ensure that failures are minimised in the first place and are hence not necessarily the right tool to further network integrity.

In view of the difficulties with concluding comprehensive SLAs, ITSPA maintains that consumer information is still the key to ensuring service reliability.

**Question 3: Do you agree that the limitation of GC 3 obligation to providers of service at a 'fixed location' is not sustainable in the long term? What views do you have on how this may be addressed?**

ITSPA shares Ofcom's view that the limitation of GC3 to providers of services at a "*fixed location*" is not sustainable in the long term in view of increasing convergence and the growth of nomadic services.

However, as Ofcom suggests, it is not simply a matter of extending the application of GC3 obligations to nomadic and mobile users in future, as the issue of "control" of the underlying network is a key consideration. As discussed above (question 2), ITSPA members will seek to

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[3] http://www.rabbit-broadband.org.uk/solutions/supplier-list.asp

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sip:info@itspa.org.uk

conclude SLAs as part of their network integrity risk assessments: where there is a strong relationship with the network provider, there is clearly scope for ensuring more robust network integrity through SLAs; however, the same cannot be expected for all network providers (e.g. WiFi providers), as you can only guarantee the integrity of the infrastructure you "control".

Therefore, ITSPA believes that in the long term, GC3 conditions should only apply to mobile, nomadic and fixed services where it is reasonably practicable i.e. where you have direct *control* over the signal path. It is also worth emphasising the distinction between control and ownership of network elements: through SLAs, it is possible to have direct control without actually owning the infrastructure.

**Question 4:** **In light of the other measures proposed in this document, are there particular issues in relation to VOIP services that should be addressed in this review?**

No.

**Question 5:** **Are there particular issues in relation to VoIP services that should be addressed in this review?**

There are five issues that ITSPA would like to see addressed in more detail in the European Commission's review.

- **Universal Service Directive:**
  - o Key definitions within the regulatory framework need to be reviewed in light of changes in consumer expectations and the technological landscape. For example, we believe that the classifications of PATS, ECS, PTN and ECN need to be reviewed.
  - o Certain aspects of the Universal Service Directive do not accommodate a multi-service, multi-application, converged environment. For example, Article 23 (integrity of the network) implies that the provider of PATS at a "fixed location" is also the owner or controller of the line access to that location, or at least the controller of the network over which PATS is provided. With VoIP, this is not necessarily the case. Arguably, the concept of a "public telephone network" is, in itself, anachronistic.
  - o Article 26 (single European emergency call number) should be redrafted to reflect technical and commercial developments (current and expected) in relation to location information.
  - o Article 30 (number portability) of the USD is not drafted widely enough to maximise consumer choice by facilitating migration between service providers.

**ITSPA Secretariat**
Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

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- **Extraterritorial service providers**: In the case of the UK, ITSPA is concerned that while UK VoIP providers will be obligated to comply with an additional set of rules for VoIP, non-UK based players will not be thus obliged (although they will still be offering services to UK consumers). We are concerned that this will make UK VoIP providers less competitive and could have a knock-on effect on the availability of emergency access provision in the UK. Furthermore, ITSPA has concerns about how Ofcom would be able to enforce compliance with UK requirements, particularly when offending service providers are based outside the EU. ICSTIS for instance has experienced significant difficulties in the past vis-à-vis ensuring non-UK based service providers comply with their directions.

- **Open Access**: Given the ability of broadband service providers to block access to VoIP services, or degrade the quality of those services, ITSPA believes that consumers should be informed during the sales process and in the terms and conditions of the broadband provision if the provider intends to do so.

- **Interconnection**: the need for an international, standards-based approach to interconnection.

On a general level, ITSPA is concerned that VoIP is currently being squeezed into a regulatory framework that was designed to accommodate the traditional PSTN environment.


**Question 6: Do you have any comments on Ofcom's proposed modification to the PATS definition in GC 18?**

We understand that Ofcom has been advised that the Universal Service Directive (USD) gives the "right" to number portability only to subscribers of PATS (and ITSPA's interpretation concurs with Ofcom's); however, we do not believe that in extending the right to subscribers of ECS, Ofcom would necessarily be acting *ultra vires*.

In light of the current regulatory framework, in respect of both number portability and emergency access, we recognise the constraints within which Ofcom is operating and understand Ofcom's policy of enabling number portability between PATS defined services. ITSPA agrees that, certainly in the short-term, number portability "rights" and "obligations" would continue to reside with PATS defined services.

However, in creating an obvious link between the provision of access to emergency services and the right to Portability, we are concerned that Ofcom gives the impression that providers are not free to negotiate Portability between ECS and ECS, PATS and ECS, and *vice versa* if they choose to do so. We would welcome confirmation from Ofcom that this right remains with all providers.

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sip:info@itspa.org.uk

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ITSPA seeks the extension of number portability "rights" and "obligations" to the provision of all services, subject to the condition that no asymmetry exists in regulatory obligations and/or requirements between service providers. With the extension of number portability "rights" there should of course be no distinction – in regulatory terms – between the different types of service offered, and all providers should be subject to the same obligations and General Conditions. This would ensure there are no market distortions, and provide for the wider availability of number portability, thereby further improving consumer choice and the competitive process.

We also recognise that any so-called extension of number portability "rights" (and/or the removal of the distinction between PATS and non-PATS services), must be accompanied by an appropriate and readily useable enforcement mechanism(s). That is, service providers seeking to exercise any right and/or take work forward to meet an obligation with respect to wholesale number portability agreements, and operating either within the UK or extra-territorially, would be subject to the same "rights" and "obligations"; these "rights" and "obligations" must be easily enforceable and effective.

The Universal Service Directive determines a "right" of number portability for *subscribers* of PATS; the directive does not (as such) give a right of Portability to *providers* of PATS – this is a transposition mechanism adopted by the General Conditions. However, the key objective of number portability is to enable users to exploit the benefits of a competitive market with minimum inconvenience. Therefore, in the interests of the consumer, and from the point of view of a consumer, the regulatory status of the service provider should be irrelevant.

In terms of Ofcom's discussion regarding the definition of portability, we note that PATS is currently so narrowly defined that it precludes non-geographic services. While Oftel believed that it was not the intention of the Universal Service Directive to exclude users of non-geographic numbers, neither was it their intention, we would argue, to exclude users of VoIP services.

Relating to PATS definitions, there appear to be some discrepancies between the proposed new GC 18 definition of PATS (5.10) and the explanation of Ofcom's proposals (5.31-32). Further clarification is required on which numbers (i.e. *all* non-geographic and receive only geographic numbers?) have a right to number portability without offering emergency access. This is a key issue and we are concerned to ensure that any ambiguity in drafting and/or definition is removed in order to ensure it does not result in any distortions in the market. For example, would the current definition allow providers to use distinct and separate number blocks for inbound and outbound services, choosing not to meet the PATS obligations in respect of any outbound service, but nonetheless able to "qualify" for portability by virtue of using a non-geographic number to terminate inbound services?

Furthermore, we are concerned that the current proposal as it stands lends itself to arbitrage by established service providers, and in particular by those providers that offer both a PATS and a non-PATS service. It has long been recognised that there may be a perverse incentive for those

service providers more likely to lose customers. It is therefore crucial that safeguards are put in place to ensure that a PATS provider cannot choose to allow number portability to its own non-PATS service whilst systematically refusing number portability to other non-PATS services. This would not only be discriminatory, but would lead to consumer confusion with regards their number portability rights (see question 14).

We would also point out that any distinction between PATS and ECS made by Donor providers would need to be applied on a _service-by-service_ rather than provider-by-provider basis as service providers are increasingly offering a basket of services, some but not all of which may be PATS.

In summary, we understand that Ofcom is keen to provide an incentive to VoIP providers to offer access to emergency services. However, we believe that taking a pragmatic approach to the application of GC 3 and other conditions applying to PATS would itself provide VoIP operators with the confidence to provide access to 999/112.

We urge Ofcom to consider how it might regulate for the wider provision of number portability, and consider how it might de-couple this from the question of access to emergency services. Clarity should be sought during the 2006 e-communications framework review in respect of both inter-platform portability (between nomadic and non-nomadic services) and portability between PATS and non- PATS services, in terms of agreeing whether, in order to have a competitive market, the conditions concerning number portability should be mandated across all services on a reciprocal basis.

### Question 7: Do you agree with the proposed application of the code?

ITSPA members were active participants in the New Voice Services Consumer Information Working Group (NVS working group), which drafted these guidelines (now called Code of Practice). ITSPA thus broadly supports the proposed code and the consumer information requirements set out therein.

With regards the proposed application of the code, however, ITSPA is very concerned that a disproportionate burden is being placed on UK VoIP providers. In the interests of consumer information and empowerment, we believe that any mandatory rules should apply to ALL electronic communications services providers. For instance, requirements to label some services (including those which bear little resemblance to traditional PSTN services i.e. PC-based VoIP services) but not all services could lead to consumer confusion and dissuade consumers from taking-up new services, which could offer more value and greater functionality.

Furthermore, it is fundamentally important that Ofcom ensures that the code is enforceable on all providers – including those that are not based in the UK but are offering services to UK

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Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

consumers. Without the ability to enforce the General Conditions upon extraterritorial providers, Ofcom's proposals will have a limited effect on the delivery of maximum access to emergency services and a high level of consumer protection and information. Furthermore, non-compliant extraterritorial service providers will have a significant competitive advantage compared with UK VoIP providers, many of which are ITSPA members that already abide by the ITSPA Code of Practice. ITSPA understands that initial discussions with some of the larger extraterritorial players have been positive, with these providers stating their intention to adhere to the General Conditions. However, to ensure compliance with the UK General Conditions, Ofcom must have the power to terminate UK DDI access to a service that is in contravention of the General Conditions.

We comment further on the application of specific sections of the code in the following questions.

### Question 8: Do you agree with the proposed approach for informing consumers that services may cease to function if the broadband connection fails or there is a power cut or failure?

In principle, ITSPA agrees with the proposed approach for informing consumers about service reliability. However, we believe that it is important for these rules to apply to ALL electronic communications service providers in order to promote consumer information and to ensure a technology neutral approach.

ITSPA also firmly believes that it is imperative that Ofcom begins its monitoring programme on consumer expectations and use of VoIP services immediately, and that the situation is reviewed at regular intervals in view of rapidly evolving consumer attitudes. VoIP services have only recently been launched on the market and although take-up levels are currently low, consumer awareness and interest is growing quickly. The monitoring of changing consumer expectations is therefore crucial to ensure that unnecessary rules are efficiently removed for the benefit of the consumer as well as industry. As discussed later in our response (question 17 and 20), ITSPA welcomes Ofcom's initial market research into VoIP and we hope this will be reinforced and expanded in the near-term.

### Question 9: Do you agree with the proposed approach for informing customers where access to emergency calls is not available?

ITSPA agrees with the proposed approach for informing customers where access to emergency calls is not available insofar as this was discussed and agreed by the New Voice Services Consumer Information Working Group, of which ITSPA and its members were participants.

**ITSPA Secretariat**
Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

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However, the insertion of requirements relating to the permanent onscreen labelling of softphones is cause for concern to ITSPA members.

The issue of labelling was discussed at length within the NVS working group and it was agreed that this would only be necessary to prevent consumer confusion where a VoIP handset resembled a traditional PSTN hand set. For example, where the communication is PC-based and, for example, a headset and microphone are used, consumers can clearly see that there is a difference when compared with a traditional PSTN phone service. However, the code as currently drafted suggests that all VoIP services, regardless of the terminal used, must offer labelling.

As in the traditional telephony world, the provider of the VoIP service and of the softphone is not necessarily one and the same. Indeed, many VoIP service providers allow their customers to choose their softphone independently from their VoIP service. Therefore, unless a VoIP service provider owns the software used in the softphone, it is technically impossible for the VoIP provider to make the necessary adjustments to ensure onscreen labelling.

Even where softphone labelling is possible, ITSPA believes that requiring an onscreen graphic, statement or legend to indicate – permanently – that there is no access to emergency services provided is impractical and disproportionate. Any requirement for onscreen labelling for the consumer should be offered as an OPTION i.e. consumers should be able to opt to turn this on. This would also bring the requirement in line with that for equipment stickers (which are provided as an option for consumers).

Furthermore, there is a need for further clarification of what Ofcom means by "*where an on screen display is used with the service*". Many handsets have screens without looking any different from a traditional PSTN handset and it would be disproportionate for these devices to have to be labelled twice (once via sticker and another onscreen).

It was also discussed in the NVS Working Group that, where consumers have the right to request labels, it should be at the discretion of the provider as to whether that label should be provided in paper / "hard" form, or whether the label could be emailed or downloadable in "soft" form. It is important that the provider retains this discretion in view of the many different types of services now on the market, some of which include provision of hardware, and some of which do not.

ITSPA is more generally concerned that the proposed application of the requirements will place an unfair burden on responsible VoIP providers. ITSPA members already abide by a Code of Practice that clearly sets out consumer information requirements. ITSPA also has the mechanisms in place to enforce our Code of Practice should it come to light that a member has contravened the code. As stated in our response to Ofcom's consultation on Consumer Policy[4], ITSPA agrees with Ofcom's aim to "*target[ing] regulation more directly at offenders, and lighten[ing] the load*

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[4] http://www.ofcom.org.uk/consult/condocs/ocp/

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Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

*on compliant service providers*" (1.22 of Ofcom's Consumer Policy consultation) and would urge Ofcom to consider whether this objective is met through the proposed application of the VoIP Code.

**Question 10: Do you agree with the proposed approach for informing consumers that access to emergency calls may cease to function if the Data Network fails or there is a power cut/ failure?**

As discussed at the NVS Working Group, ITSPA agrees with the proposed approach for informing consumers with regards data network failures and power cuts. ITSPA concurs that industry has a key role to play in ensuring consumers are informed about access to emergency calls.

However, we do wish to highlight our concerns with regards the current definition of "sales process" as set out in the consultation document (annex 8, definitions, pg 112). We believe that this is too broad, leaving room for ambiguity with regards marketing and advertising. It is important for any definition to explicitly exclude advertising/marketing from its scope. The NVS Working Group's definition of "Sales Process" included context based examples to make this exclusion clear.

As stated previously, ITSPA believes that, in the interest of the consumer, any mandatory rules in this area should apply to all service providers (i.e. including mobile and PSTN).

**Question 11: Should the code be extended to point of signature acknowledgement in respect of reliability of access to emergency calls?**

The NVS Working Group agreed that it would not be reasonable or practical to extend point of signature acknowledgement to the reliability of access to emergency calls.

ITSPA's view is that point of signature acknowledgement in respect of reliability of access to emergency services should only be extended if the code is to be applied on a technology neutral basis so that all electronic communications services providers must also abide by these rules. Otherwise, ITSPA is concerned that, not only would the requirement be imbalanced, but also, as Ofcom also points out (6.50), this could be a significant disincentive for VoIP providers to offer emergency access services.

**Question 12: Do you agree with the proposed approach to location information providers where the service does provide access to emergency calls? In particular, do you believe that subscribers should be required to register their main location prior to activation of the service?**

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sip:info@itspa.org.uk

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Where the VoIP service does provide access to emergency calls, ITSPA does not believe that it should be a *requirement* for subscribers to register their main location, as it cannot be guaranteed that the service will always be used at that fixed location and hence the requirement could conversely lead to consumer detriment. Rather, consumers should be *encouraged* to register their details if they are to use the service *primarily at a fixed location*.

In other words, customers should retain the right to choose not to register their location information, for instance because they plan to use the service nomadically.

Ofcom has asked for comment on whether, when, and how frequently consumers should be prompted to update their location information (6.56). From a consumer's as well as a technical perspective, it is not practical to require location information to be updated whenever the service is being used from a new location for a number of reasons:

- From a convenience point of view, it cannot be expected that consumers will update their details whenever they change location. It is unclear whether Ofcom is suggesting in 6.55 that consumers be prompted to update their data even if they have left their "normal" location for a short, fixed amount of time, for example to do some work on a weekend at a café with WiFi access.
- BT's Emergency Centre Database, which stores location information data, is not updated in real time. Moreover, it cannot be updated directly by the consumer: this would have to be done by the provider who would have to employ sufficient human resources to perform the task.

It should be noted that solutions have already been rolled out for the provision of location information for fixed VoIP services. ITSPA is confident that the provision of nomadic location information over VoIP will improve in the future with new location information mechanisms currently being developed (e.g. in the NICC task group on Location Information over IP Networks). ITSPA also believes that as VoIP develops, usage will become increasingly nomadic. Consequently, VoIP emergency service provision will be more in line with that available for mobile users.

In order to improve the provision of location information in the short-term, ITSPA would recommend the following:

- BT's system for updating the Emergency Centre Database should be more automated to reduce the time lag between location information being amended and the Database being updated;
- Non-BT interconnect VoIP providers should be able to update their customer data directly to BT rather than only through their interconnect partner to improve the speed of Database updates.

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sip:info@itspa.org.uk

**Question 13:** Do you agree with the proposed approach to informing consumers where services do not provide emergency location information?

So long as the definition of "Sales Process" (annex 8, definitions, pg 112) is amended to exclude advertising/marketing material from its scope, ITSPA agrees with the approach to informing consumers where the service does not provide access to emergency calls. We would also like to point out that this approach should only apply where the sales process leads to a payment being made and not to free/trial-based services.

**Question 14:** Do you agree with the proposed approach to informing customers where services do not provide number portability?

ITSPA agrees with Ofcom's statement that "*it is important for consumers to be informed of their number portability rights before signing up to a service*" (6.62). If providers are to be encouraged not to provide portability to non-PATS services, then ITSPA believes that it is equally important for donor providers (PATS and otherwise) to inform customers of possible future porting limitations i.e. that they may not be able to port their number to a non-PATS provider. We believe that consumers would find such a distinction somewhat mystifying.

ITSPA does have serious concerns about Ofcom's linking of number portability to the provision of emergency access (5.90). Recital 40 of the Universal Service Directive states that the key policy behind number portability is that it is "*a key facilitator of consumer choice and effective competition in a competitive telecommunications environment*". Consumers should be able to port their number to any communications service they choose. While ITSPA accepts that consumers should be informed about any limitations on access to emergency services (indeed, ITSPA's Code of Practice was drafted to ensure this), maintaining the link between number portability and emergency access is unnecessary and disempowering for the consumer and limits the range of services on offer to them. Furthermore, this policy penalises those VoIP providers who are seeking to abide by the highest consumer information standards.

As discussed above, the Universal Service Directive determines a "right" of number portability of subscribers not of Service Providers, albeit strictly in respect of PATS defined services. However, the key objective of number portability is to enable users to exploit the benefits of a competitive market with minimum inconvenience. Therefore, in the interests of the consumer, and from the point of view of a consumer, the regulatory status of the service provider is largely irrelevant and confusing. As explained in response to Question 6, we believe the definition of "Subscriber" in General Condition 18 needs to be altered to include subscribers to ECS so that these consumers can exercise the right to port their number between non-PATS services as well as out from PATS services.

**ITSPA Secretariat**
Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

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ITSPA believes that there is no objective justification to mandate service providers to inform their consumers where they do not provide number portability. This has not been required of traditional voice services providers and the public policy argument for making this information compulsory is not on the same level as that for access to emergency services. On the other hand, the provision of such information to consumers should be encouraged as best practice (see question 16).

**Question 15:** <span style="color:orange">**Do you agree with the proposed approach to informing consumers about the types of facilities that might not be available, but which they have come to expect from a telephone service?**</span>

As per our response to the previous questions, ITSPA agrees with the proposed approach with the caveat that marketing and advertising materials are clearly excluded from the definition of "sales process".

Furthermore, it is important that the proposed approach applies equally to all communications providers. For example, 6.67 (relating to a requirement to make known any restriction on Number Ranges/Country Codes that can be called) is not currently applicable to all service providers. For instance, in the case of 056 numbers, consumers are not being made aware that this range is not being routed by all service providers.

We also wish to highlight that the requirement to offer operator assistance services is not relevant to the VoIP environment. Operator assistance requirements were introduced in the era of British Telecommunication's monopoly and it seems anachronistic in the new, competitive communications environment to still require service providers to offer access to BT's 100 service. Nevertheless, ITSPA notes that "operator assistance" is not defined in the General Conditions and would welcome clarification as to its meaning. For example, would this be referring to a service provider's customer service hotline?

As discussed in our response to Question 14, ITSPA believes that there is no objective justification to mandate service providers to inform their consumers where they do not provide legacy facilities, such as access to 100. On the other hand, we believe that it should be encouraged as best practice to do so (see question 16).

**Question 16:** <span style="color:orange">**Do you agree with Ofcom's view that all aspects of the code of practice should be mandatory?**</span>

ITSPA is confident that the VoIP industry, through ITSPA and its Code of Practice, is already ensuring a high level of consumer information with regards the differences between VoIP services

**ITSPA Secretariat**
Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

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and traditional PSTN services. ITSPA believes that self-regulation is the best means of ensuring a balance between encouraging innovation, choice and consumer protection.

Consumer awareness is at the heart of ITSPA's Code of Practice, which seeks to ensure that sufficient clarity is provided to the consumer with regards the availability of emergency access. Moreover, the Code of Practice is sufficiently flexible to be adapted to changing consumer expectations, requirements and technologies. Indeed, the key objective of ITSPA's Consumer Regulation Working Group is the maintenance of this Code of Practice.

However, as we put forward to Stephen Carter (letter sent on 17th September 2005, please see annex A), ITSPA understands Ofcom's concerns about the access to emergency services issue and that a co-regulatory framework – subject to regular review in view of changing consumer expectations – for emergency access aspects may be required at this stage. However, ITSPA does not agree that it would be proportionate to extend mandatory status to the other aspects of the code (e.g. relating to number portability), which are already covered by the ITSPA Code of Practice.

### Question 17: Do you consider that the overall programme of activities is appropriate?

ITSPA welcomes Ofcom's programme of activities to keep up to date with market developments in the VoIP industry. Understanding the needs of the consumer is essential, especially as requirements and perceptions are always changing in the communications market. However, ITSPA is concerned with the negative tone of the programme of activities and the inherent suggestion that market research and analysis will reveal an insufficient growth in the level of consumer understanding, rather than concentrating on areas that warrant de-regulation in view of rising awareness. The concern amongst ITSPA members is that Ofcom is tending towards a full regulatory approach from the outset with the intention of adding further layers of regulation in the future.

We would also like to suggest a further key area for market research: analysis of the demand for number portability. This research would not only be useful because of the consumer benefits of number portability, but also because it is increasingly becoming an important aspect of number conservation. Therefore, ITSPA believes this research would help inform Ofcom's approach to number portability (e.g. the level of demand for number portability, the obstacles to number portability identified etc).

With regards the enforcement programme, ITSPA would again highlight its commitment to effective and efficient self-regulation and desire to help ensure widespread access to emergency services. ITSPA remains concerned that Ofcom is seeking further regulatory action from the outset rather than allowing the VoIP industry – which has thus far proven to be responsible and proactive in its approach – to self-regulate. We would again refer to Ofcom's commitment, as

**ITSPA Secretariat**                                                                                      - 16 -
Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

stated in the Consumer Policy consultation, to targeting regulation at non-complaint service providers to lessen the regulatory burden for those who are meeting the requirements.

**Question 18:** In light of Ofcom's Consumer Policy Review, are there other consumer education measures that Ofcom should consider?

ITSPA fully supports Ofcom's proposed consumer education measures. ITSPA members have been working hard to promote high levels of consumer awareness and agree that it is primarily the duty of the VoIP industry to educate the consumer. Significant effort has already been made by ITSPA and its members to increase awareness of VoIP. For example, as the ITSPA Code of Practice aims to enable consumers to choose a product which best meets their needs and which comply with high industry standards, the ITSPA logo can increasingly be seen as a trustmark. ITSPA will continue its work to promote the ITSPA logo (e.g. in the media, trade shows, member websites) as a trustmark and to ensure our Code of Practice remains robust and relevant.

**Question 19:** Do you have comments on this proposed enforcement approach?

ITSPA is concerned about the ability of Ofcom to enforce compliance of the Code on extraterritorial service providers. Without effective enforcement powers, Ofcom's proposed code will have a limited effect in practice: UK-based service providers would be rendered at a significant competitive disadvantage and consumers will potentially be exposed to misinformation and a reduction in the availability of access to emergency services. ITSPA would be keen to hear Ofcom's plan for ensuring extraterritorial service providers comply with the code. ITSPA believes that the key to enforcing the code on non-UK based providers would be to require that any service provider allocated/sub-allocated UK numbers be subject to UK regulations – and to withdraw these numbers should the service provider in question be found to be in contravention of the code.

ITSPA is fundamentally concerned that Ofcom is proposing to enforce detailed regulation on a new sector that has already proven that it is responsible in proactively putting in place a robust Code of Practice. In particular, we do not believe there is a case for regulation of consumer information issues outside the emergency access sphere, especially since the industry has worked effectively and responsibly under current self-regulatory principles. ITSPA is somewhat disappointed that its efforts have not been fully acknowledged by Ofcom and that an additional layer of regulation is being proposed specifically for the VoIP industry.

ITSPA is nevertheless committed to continue working with Ofcom to ensure a high level of consumer information is delivered to consumers.

**ITSPA Secretariat**                                                                                          - 17 -
Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

**Question 20:** Are there other areas of research activity that Ofcom should consider to ensure it understands market developments?

As discussed in response to question 17, ITSPA encourages Ofcom to cover the positive market developments (particularly regarding consumer understanding and behaviour) and the negative aspects in equal measure. The suggestion thus far is that Ofcom is seeking to analyse only the negative trends. Furthermore, the research undertaken, such as that which is presented in annex 9, needs to be conducted on a rolling basis in order for Ofcom to assess behavioural trends. ITSPA also believes that in order to gain an accurate insight into consumer use of communications technologies, their perception of other services and devices, such as DECT phones, must also be assessed. This will also ensure the comparability of data.

Furthermore, we would recommend that these statistics, which should also include the number of VoIP lines in use, should be incorporated into Ofcom's Communications Markets Reports in order to offer a more comprehensive view of communications market developments as well as quantifiable evidence upon which Ofcom can base its policy decisions.

With regards the research methodology, ITSPA would welcome the opportunity to discuss the questions and questionnaires used in the market research with Ofcom and other stakeholders in order to share our expertise and help ensure the questions posed can accurately capture market developments.

ITSPA would also welcome further detail on Ofcom's trigger points for action. We understand there is no formal timetable for review of the VoIP regulation, therefore, it would be useful to understand what evidence Ofcom would require before launching a review of its VoIP policy.

**Question 21:** In relation to ensuring high availability of 999 access, are there other measures that Ofcom could consider?

ITSPA recognises Ofcom's concerns with regard to 999-112 access and we fully agree that there is a need to ensure a high availability of access to emergency services. ITSPA believes that a key means of guaranteeing high availability is to ensure the appropriate framework is in place to encourage service providers to offer access to emergency services. From a social perspective, therefore, ITSPA believes *any* 999 service is a benefit to the citizen-consumer. VoIP has already proven its value as the "third access network" during public emergencies. For example, VoIP services provided a crucial alternative form of communication during the 7/7 terrorist attacks in London when the mobile network was overloaded. Furthermore, VoIP played a role in helping many stranded residents call for help after hurricane Katrina struck New Orleans, USA.

ITSPA believes that there are other measures that could be taken in the short-medium term to improve the availability of emergency access:

**ITSPA Secretariat**
Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

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- The proposed GC3 guidelines must allow for the wide deployment of 999-112 access. ITSPA has concerns that current guidance relating to GC3 acts to the contrary and does not significantly facilitate the provision of emergency access services, with the emphasis being placed heavily on the negotiation of SLAs (see question 2 with regards our concerns). We do not believe, for example, that a Voice over Broadband provider is in a position to maintain the functioning of "the Public Telephone Network". The assumption in GC 3 is that the PATS services are provided over a network belonging to the PATS provider. For a VoB provider this is clearly not the case. Paragraph 3.3 of GC 3 should be re-written to the effect that the condition only applies to providers of PTNs and not PATS.

    ITSPA notes with interest that in France and Italy, network integrity provisions, such as those set out in GC 3 in the UK (and which ITSPA believes goes further than the Directives intended), are not imposed upon PATS providers.

- Similarly, the application of General Conditions 5, 12 and 13 to certain VoIP providers (just because they choose to offer 999 access) may be inappropriate.
- ITSPA also suggests modifying the procedure of interconnection with 999 services. At present non-BT interconnect VoIP providers have to go through their BT interconnect partner when passing on information to the emergency services. This leads to an unnecessary and easily rectifiable delay.
- Although ITSPA understands there is a need to ensure the integrity of the information being updated in the Emergency Centre Database by BT, we recommend that there is scope for further automation of this process.

VoIP is still in its infancy. Hence, it is unrealistic to compare access to emergency services via VoIP with that via the PSTN at this early stage. The mobile sector, for example, took several years to implement an effective 999 service within the various networks and VoIP should not be considered any differently. Indeed, VoIP has the potential to be more reliable than the PSTN in the long-term.

**Question 22: Do you agree with Ofcom's approach to naked DSL?**

ITSPA believes naked-DSL is essential to levelling the playing field for VoIP providers and is pleased that Ofcom recognises its potential in the consultation.

The provision of naked-DSL is the only means of ensuring that the citizen-consumer has a real choice in both their broadband and voice provider. ITSPA believes that without naked-DSL, voice provision will always be skewed in favour of the incumbent PSTN provider, in effect limiting provider and service choice for the consumer.

**ITSPA Secretariat**
Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

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A comparison can be drawn with the situation prior to 1981 when the GPO had a monopoly on all telephone services in the UK (except Hull) and all handsets had to be rented from the GPO. The telephones all looked the same and had the same functionality; the monopoly meant there was a real lack of incentive to innovate. This situation is considered an anachronism today and ITSPA believes the current limitations on choice of voice provider, due to the non-existence of naked-DSL, will be viewed in a similar light in the future.

Nevertheless, ITSPA's members recognise Ofcom's concerns with regards emergency access in a naked-DSL environment and wholly agree that when naked-DSL is implemented, this must only be requested and provisioned by PATS compliant providers.

**Question 23:** **Do you agree a cross industry meeting would be a useful approach to move this issue forward? What other steps could be taken to provide support for 056 numbers?**

ITSPA agrees a cross industry meeting would be useful. We have already taken steps to set up an initial meeting in order to accelerate the process since consumers have been affected by the non-routeing of 056 numbers for over a year.

We believe Ofcom has a duty to ensure end-to-end connectivity and we are concerned with the precedent that this experience may set for the future, where customers using numbers in a number range created at Ofcom's suggestion are not guaranteed end-to-end connectivity. This would not only decrease consumer trust in the numbering plan and services using new numbering ranges but would allow some service providers to act as *de facto* regulators, deciding whether a specific policy is or is not convenient.

ITSPA strongly recommends that Ofcom takes stock of why take-up of 056 numbers has been so much slower than anticipated and intervene if necessary before further, new number ranges (such as the 03 range) are rolled out in the future. ITSPA believes the non-routeing of the 056 number range has had a serious effect on consumer expectations and experiences with regards new ranges and that a possible solution going forward would be to require all PATS service providers to carry all subscriber numbers (as is the case in other EU Member States, such as Ireland[5]).

**Question 24:** **How can a VoIP call be traced for detection and prevention of malicious and nuisance calls? How could a suitable call screening service work in a VoIP network?**

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[5] Please see: http://www.comreg.ie/_fileupload/publications/ComReg0523.pdf pg 2

**ITSPA Secretariat**
Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk
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ITSPA's members have been liaising with the Home Office and Law Enforcement Agencies over the past year to discuss and explain the use of VoIP and the potential benefits and challenges of this technology. ITSPA will continue to work closely with the Home Office and LEAs in the future.

Contrary to the statement made in 9.19, in the VoIP world, it is also possible to trace calls to the originating point (e.g. through IP addresses). It is also possible to create SPIT blacklists to help filter and block nuisance calls and messages; such a system is not possible in a PSTN environment. ITSPA is currently working to create such blacklists internally.

With regards TPS type services, these can be provided by VoIP providers and it would also be possible to create a similar SIP URI list.

**Question 25: Do you agree that SPIT could be a potential problem and what techniques can be used to minimise the impact of SPIT on consumers of VoIP services.**

Although there may be more scope for SPAM/SPIT calls in the VoIP world, this must be viewed in the context of there also being more solutions and safeguards available in the VoIP environment against unsolicited voice calls. As Ofcom notes, lessons learnt and technologies deployed in the email environment can also be ported to the VoIP world. Moreover, these anti-SPAM/SPIT mechanisms are becoming increasingly sophisticated.

ITSPA members are not currently aware of SPIT being a consumer issue at present.

**Question 26: Have there been any instances of a VoIP service being compromised or used to deliver malware or a DoS attack?**

ITSPA does not believe this is currently an issue. ITSPA members nevertheless remain vigilant and ITSPA members regularly meet to discuss how to further protect consumers. For instance, ITSPA has a technical working group where such issues would be discussed.

**Question 27: Are there any other considerations that need to be taken into account when a provider does not have a UK entity?**

ITSPA shares the concerns of consumer groups with regards the difficulties in enforcing compliance on non-UK based entities. We are particularly concerned about the effects this could have on the competitiveness of UK-based companies.

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Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

ITSPA recommends that the only means to ensure a significant degree of control over service providers based outside Ofcom's jurisdiction is to require that any service provider allocated/sub-allocated UK numbers be subject to UK regulations. This would be an important step in ensuring a level playing field for all service providers. Without this safeguard in place, responsible UK VoIP providers will be at a competitive disadvantage, innovation will suffer, and ultimately, consumers will be faced with less choice. Moreover, the less scrupulous providers who take advantage of this situation are unlikely to be providing emergency access services, or sufficient information about the level of access provided, if at all.

ITSPA also believes it would be prudent for Ofcom to formalise its position vis-à-vis foreign service providers offering services in the UK so that all market players are aware of the rules and consequences of not abiding by them.

**Question 28: Is it reasonable to ask VoIP service providers to participate in schemes designed for e-commerce?**

ITSPA believes that it would be more appropriate for VoIP providers to participate in schemes designed for email rather than ecommerce.

End-to-end encryption for VoIP will be widely rolled out in the future. However, just as in the email world, those customers who only require a standard service will not necessarily have end-to-end encryption. In other words, different levels of privacy protection and encryption will always be available if a consumer wishes to pay more for these services. In view of this similarity, there is no requirement for labels to highlight whether a service is encrypted or not.

That said, encryption is more relevant to the PC-PC world as SIP is inherently more secure. Moreover, standards for SIP security will eventually be used and rolled out, with services for those with special requirements also provided.

**Question 29: Do you have any other comments on the proposed approach to investigating the application of the GCs applicable to providers of PATS in the context of VoIP?**

ITSPA would reiterate the need to ensure that these Guidelines apply to all electronic communications services providers equally (i.e. PSTN PATS providers as well as VoIP PATS providers) in order to ensure a level playing field. In light of the comment in 4.14, ITSPA understands that the "*reasonably practicable*" test in GC3 applies to all PATS providers and not only VoIP PATS providers. However, the title of the Guidelines refers to these being applicable to VoIP only.

**ITSPA Secretariat**
Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

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ITSPA is generally concerned that the proposals in the Guidelines are not practical as they represent a simple transferral of old PSTN solutions to a new technology. There appears to be no account taken of the fact that VoIP has the potential to deliver greater network integrity than the PSTN because of the routeing design.

We are also concerned that a much harder approach has been taken towards VoIP providers than was taken with mobile services, notably in relation to access to emergency services.

**Question 30: Do you have any comments on Ofcom's views on the meaning of abovementioned terms and legal concepts?**

There is scope for further clarity on the meaning of "reasonably practicable" (A6.51) to avoid misinterpretations. This is partly in view of the range of different VoIP services on the market.

More generally, ITSPA believes it has a role to play in helping Ofcom further develop and elucidate these Guidelines for VoIP providers, as ITSPA has a good overview of the myriad services on offer.

**Question 31: Are there any other steps that a VoIP service provider could consider in respect of the IP network layer and service application layers to ensure network integrity?**

In view of the range of elements involved, ITSPA would like to stress that no VoIP service provider is able to control all aspects of a network from end-to-end, except in the case of an on-net call (A6.67). A VoIP provider can therefore only reasonably be expected to deliver network integrity over the elements that it controls (e.g. through SLAs).

The issue of blocking (which Ofcom touches upon in 9.14-9.16) is also an issue here. A key means of improving network integrity would be to ensure that the underlying network operator does not actively degrade a service without ensuring consumers are made aware of this. ITSPA is currently advancing discussions with ISPA on this issue.

**Question 32: Are there any other steps that a VoIP service provider could consider in respect of parts of the underlying network that they do not control?**
**Question 33: What additional steps could a VoIP service provider take to support nomadic users with regard to maintaining network integrity?**

ITSPA has taken questions 32 and 33 together as our comments here apply to providing network integrity for both fixed and nomadic VoIP users.

**ITSPA Secretariat**                                                                                           - 23 -
Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

Network integrity can only be guaranteed over those network elements which a VoIP provider has control (or where an SLA is in place). However, it is not possible for VoIP providers – whether they provide fixed and/or nomadic services – to ascertain at any given time which access provider a customer is using. As Ofcom explains in paragraphs A6.52 to A6.59, the provider of a nomadic service has "*no visibility or control over the infrastructure*" over which the service is accessed. Ofcom goes on to state that the adjective "fixed" means "*fastened securely in position or predetermined or inflexibly held*". We believe that some "voice over broadband" services will answer the same description.

We do not think that obtaining SLAs from the underlying network operator is reasonable, necessary or appropriate. The SLAs that were referred to in Ofcom's 2004 consultation were (in the case where the voice and the broadband were from the *same* provider) between the DSL provider and the infrastructure owner (for example BT), i.e. where there was already a contractual relationship in place. Where VoIP services are separate from broadband provision, the VoIP provider cannot know who the broadband provider is.

ITSPA does not believe that it is appropriate for a VoIP service provider who does not provide the broadband service to be responsible for network integrity (whether nomadic or otherwise). The General Conditions should be redrafted so that operators of PTNs – not PATS providers – are responsible for network integrity. Article 23 of the USD requires providers of PATS at fixed locations to take reasonable steps to ensure uninterrupted access to 999. It does *not* require providers of PATS to ensure the integrity of the "public telephone network".

**Question 34:** **Do respondents consider whether other options to ensure continuity in the case of a power outage are appropriate?**

ITSPA is pleased that Ofcom has concluded that line powering to the VoIP CPE is not required.

However, ITSPA does not consider the options set out to ensure continuity in case of a power outage to be appropriate or proportionate, as similar requirements are not compulsory for PBXs and DECT phones. If such requirements were to be made of VoIP providers, similar obligations should also be mandated for DECT phones (e.g. battery back-up) and PBXs (UPS services).

**Question 35:** **What other steps could be taken to provide reliable location to assist the emergency services in their work?**

As Ofcom notes, work is already underway in various fora to provide reliable location information. ITSPA members are active in the NICC task group on location information over IP networks, which is working on practical solutions.

**ITSPA Secretariat**
Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

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The provision of reliable information at fixed locations is already fully supported in the UK and we are confident that solutions for nomadic services will also be found and implemented in the near future. For one, the emergency call handling system in the UK is far more sophisticated than in other countries, including the US. Indeed, due to industry efforts, discussions at the NICC are already far more advanced than those taking place in many other EU countries and much best practice can be shared with other EU Member States.

As also mentioned in response to question 12, there are actions that can be undertaken in order to achieve short-term improvements:

- Automating the process of updating BT's Emergency Centre Database;
- Enabling non-BT interconnect partners to update subscriber information directly.

**Question 36: What other steps could be taken to provide reliable location to assist the emergency services in their work in the case of nomadic users?**

In reference to Ofcom's suggestion in A6.86, ITSPA would reiterate its reservations about the practicability of requiring the user to input location information at each new location visited. Furthermore, there are relatively few consumers who are genuinely taking advantage of nomadic services at present, and those that do are unlikely to use the service as a means to call 999. It therefore seems disproportionate to legislate at this early stage.

ITSPA fully supports Ofcom's recommendation that emergency operators request location information when a flag is shown to indicate that it is a nomadic call.

As mentioned above, and in Ofcom's consultation, work is progressing to resolve the issue of providing reliable location information to assist the emergency services in the case of nomadic users.

**Question 37: In addition to participating in the NICC working group on providing location in IP networks and the 112 expert group, what other steps should Ofcom take?**

ITSPA considers that Ofcom's current level of involvement in the issue of location information in IP networks is appropriate. It is useful that Ofcom is a participant of both the aforementioned groups because this enables Ofcom to share UK best practice with other EU regulators.

**ITSPA Secretariat**                                                                                                   - 25 -
Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

**Internet Telephony Services Providers' Association**

<u>**About ITSPA**</u>

The Internet Telephony Services Providers' Association was established in 2004 to represent the VoIP sector. ITSPA aims not only to encourage the innovation and development of the VoIP industry through the promotion of self-regulation and competition, but also to promote the benefits of the technology to consumers. ITSPA has the objective of ensuring consumers receive a first-class service and to reassure them that any product or service bought from a company displaying the ITSPA logo comes with a high standard of consumer protection, which is properly enforced and includes a dispute resolution procedure. Further information on ITSPA and its members, can be found on our website here: http://www.itspa.org.uk

**ITSPA Secretariat**                                                                                      - 26 -
Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

# ITSPA

**Internet Telephony Services Providers' Association**

**Annex A: Letter from ITSPA to Stephen Carter on the Regulation of VoIP Services**

# ITSPA

**Internet Telephony Services
Providers' Association Ltd**
23 Palace Street
London SW1E 5HW

Tel: 020 7233 7377
020 7043 7770
Email: secretariat@itspa.org.uk
Sip:info@itspa.org.uk
URL: www.itspa.org.uk

Stephen Carter
Chief Executive
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

17<sup>th</sup> September 2005

## Regulation of New Voice Services

Dear Mr. Carter,

ITSPA, the Internet Telephony Services Providers' Association, was formally incorporated in December 2004. We have quickly grown to over 30 members, representing more than 80% of the UK VoIP market. Although still a relatively young association, ITSPA has already adopted a Code of Practice that includes effective and credible sanctions and forms the core of ITSPA's self-regulatory framework.

ITSPA has sought to build an informative and cooperative relationship with Ofcom since it was informally established in Spring 2004. We have been pleased with the open dialogue we have had with Ofcom thus far and thank Ofcom for its support. ITSPA remains committed to its goal of ensuring an effective and efficient self-regulatory VoIP regime develops in the UK, which embraces new VoIP technology and enables the roll out of innovative, value-added services to consumers. We hope Ofcom will continue to support our self-regulatory aims in the customer protection arena, whilst also promoting a competitive communications landscape.

Ofcom recently sent a letter to ITSPA on self-regulation. This letter sets out Ofcom's criteria for self-regulation (e.g. universality; effective and credible sanctions; adequate funding and staff). Ofcom is positive in its assessment of ITSPA's fulfilment of these criteria and recognises ITSPA's success as a self-regulatory body thus far. ITSPA is delighted with Ofcom's enthusiasm, although we note Ofcom's concerns over the issue of access to emergency services over VoIP. This letter aims to reiterate our position on self-regulation against this backdrop and sets out our views on the possible way ahead.

**ITSPA Secretariat**
Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

# ITSPA

**Internet Telephony Services Providers' Association**

*ITSPA's achievements in ensuring consumer information*

ITSPA has ensured the provision of clear consumer information is at the heart of the ITSPA Code of Practice. Moreover, ITSPA members have played an active role in Ofcom's New Voice Services Working Group, which was tasked with elaborating a set of minimum consumer information requirements for service providers. ITSPA's Consumer Regulation Working group will continue to work to ensure our Code of Practice duly reflects and builds upon the foundations laid by the Guidelines.

Our efforts also continue apace on a technical level; for example, ITSPA members form a core part of the NICC task group, which is working to resolve the present difficulties with the provision of location information for nomadic VoIP users. For fixed VoIP services, the technology already exists to provide location information and implementation should begin shortly, as an alternative to the current manual input to the 999 database.

In view of this ongoing work, ITSPA remains convinced that a self-regulatory approach to consumer information requirements is the most effective and enforceable, and one which at the same time fosters a dynamic market. This is mainly because VoIP comes in many different forms and flavours and a flexible approach is the best means of encompassing the myriad service offerings. For instance, not all VoIP providers offer a replacement service for traditional telephony; rather some offer a second line service.

## Access to emergency services

ITSPA understands that there is one area of consumer information regulation that is particularly sensitive: that of access to emergency services. ITSPA notes that Ofcom is still considering the best means of regulating VoIP at present and that it will be launching a consultation on the implementation and enforcement of the NVS working group's Guidelines in the Autumn.

ITSPA would therefore like to take this opportunity to call upon Ofcom to assess the scope for the provisions relating to access to emergency services in the New Voice Services Guidelines (i.e. section 3) to be subject to co/full regulation, whilst allowing the other consumer information elements (such as number portability) to continue to be regulated at a self-regulatory level. Moreover, should Ofcom decide co/full regulation is necessary for provisions relating to access to emergency services, ITSPA believes Ofcom should implement a "sunset clause" to ensure the framework is in place for regulatory withdrawal as and when the technology and awareness is at a sufficient level. ITSPA remains committed to working with Ofcom to ensure it is fully up to date with market and technical developments and is pleased that, as outlined in Ofcom's letter, Ofcom will also be monitoring the consumer VoIP market to assess any changes in expectations and awareness.

**ITSPA Secretariat**
Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk

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# ITSPA

**Internet Telephony Services Providers' Association**

## Other elements of consumer regulation

Although ITSPA understands Ofcom's concerns about access to emergency services requirements, ITSPA does not believe it is appropriate or proportionate to apply co-regulatory measures to other areas of consumer protection already covered by ITSPA's Code of Practice and the NVS Working Group's Guidelines (for example the ability to port numbers). ITSPA members are already bound by the highest industry standards in consumer information and the ITSPA Code of Practice is designed to firmly deal with any member that fails to comply with these. Moreover, as Ofcom notes in its letter to ITSPA, self-regulation has already been functioning effectively thus far in the UK

The introduction of technology specific, PSTN consumer protection rules to an embryonic VoIP market, without proper assessment of their need and impact, could have a negative impact on the market's development. Furthermore, it would be wholly inappropriate, in view of technology neutrality, to impose additional regulatory burdens on a nascent market, in part in reaction to calls to protect existing market players. Technical feasibility and developments must also be taken into account.

A continued light touch approach to regulation of the other consumer areas covered in the ITSPA Code of Practice and the NVS working group Guidelines would allow an innovative market to take root and encourage even more businesses to set up in the UK, thus further extending consumer choice. Although a nascent industry, VoIP providers have already proved they have the foresight and maturity to come together to proactively draw up an enforceable self-regulatory framework in consultation with Ofcom.

## Conclusion

As we have sought to highlight in this letter, although ITSPA believes consumer information requirements are best met through a self-regulatory framework, ITSPA understands Ofcom's current concerns about the access to emergency services issue and the possibility that this sensitive issue will have to be regulated via co/full regulatory means. However, we urge you not to extend co/full regulation to *all* areas of consumer protection when ITSPA is demonstrating that a self-regulatory approach is an appropriate means of maintaining the balance between consumer interests and the fostering of a vibrant VoIP market.

Yours sincerely,

Eli Katz, ITSPA Chair

eli@itspa.org.uk
(0) 870 794 1100

**ITSPA Secretariat**                                                                           - 29 -
Email: secretariat@itspa.org.uk
sip:info@itspa.org.uk