

Comms Council UK's response to Ofcom's review of the telephony universal service obligation

About Comms Council UK

Founded in 2004 (and formerly known as ITSPA) Comms Council UK is a UK, membership-led organisation that represents companies who provide or resell business and residential customers voice services over data networks (VoIP) as well as other "over the top" applications including instant messaging and video. The membership is a mixture of network operators, service providers, resellers, suppliers and consultants involved in a sector that is diversifying rapidly from just voice services to other innovative IP applications.

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Summary

With 15 years since the last review of the Universal Service Obligation ("**USO**") with respect to Public Call Boxes ("**PCBs**"), CCUK members welcome Ofcom's review to provide surety for (notably) vulnerable consumers.

CCUK welcomes consideration of access to key resources, such as the Samaritans, in the same breath as 999/112 in the Consultation.

Unfortunately, while Ofcom's intentions (re PCBs) are admirable, the Consultation suffers from several non-sequiturs with other work and statements from the regulator, two incompatibilities with the United Kingdom's international law obligations, as well as what we would consider to be a reasonable standard of evidence for effective policy making. CCUK believes that these need to be addressed prior to any final statement.

We are also concerned that the proposals with respect to facsimile ("**fax**") are also not wholly compatible with the United Kingdom's international law obligations, are not appropriately evidenced and in any event are based on the unwillingness (not the inability) of the Universal Service Providers to implement the technology over IP, a problem that has been solved by our membership for 15 years or more. There is also a fear that, given its similarities with Voice Band Data ("**VBD**") generally, this move will have a negative effect on efforts to assure services for the vulnerable, such as telecare.

CCUK feels frustrated that Ofcom is not investing more time into other significant aspects of the PSTN switch off that will have a far greater impact on vulnerable users. Whilst PCBs remain important, Ofcom's focus appears to be ill-directed.

The removal of the veto

CCUK has no doubt that PCB operators will welcome a defined framework, set by an independent and expert regulator, to determine whether a PCB can be removed, which in turn removes the vagaries of local politics (such as that quoted at §3.60 of the Consultation) from the equation.

Any environment which creates certainty is almost always a welcome one in telecommunications, and provided that the required consultation with local authorities is not 'token,' this is a positive approach to the subject matter.

Incompatibility with the European Electronic Communications Code

Article 97(1) of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the "EECC") states:

Member States shall ensure that, where economically feasible, except where a called end-user has chosen for commercial reasons to limit access by calling parties located in specific geographical areas, national regulatory or other competent authorities take all necessary steps to ensure that end-users are able to:

(a) access and use services using non-geographic numbers within the Union; and

(b) access all numbers provided in the Union, regardless of the technology and devices used by the operator, including those in the national numbering plans of Member States and Universal International Freephone Numbers (UIFN).

This is given effect by way of General Condition of Entitlement ("GC") B4.2.

The EECC remains in force in the United Kingdom by way of the Withdrawal Act 2018, therefore Article 97 remains a requirement for the United Kingdom to implement.

As a matter of regulatory policy making, it may be that it is inefficient for the requirement to be incorporated in the USO as well as transposed into the GCs, however, §3.50 of the Consultation is able to be interpreted as Ofcom effectively granting permission for PCBs to not meet this requirement at all. That would be *ultra-vires* in this context. Absent the requirement in the USO, it then becomes incumbent upon the operators of PCBs to demonstrate it is not economically viable to allow calls to international numbers. With the wholesale rate to call many international destinations being equivalent to, or lower than, the rate for equivalent calls within UK, this is *prima facie* a high threshold for the operators of PCBs to meet.

The same logic also applies to non-geographic numbers (the Consultation refers to Premium Rate services) as they are covered by the same Article in the EECC.

To that end, in any final statement, while the requirement for access to international calls and non-geographic numbers can be removed from the USO, Ofcom cannot fetter its discretion in relation to GC B4.2 absent further consultation to amend the GC in question. Any inference that the PCB operators can rely on the removal of the requirements in the USO must also be clarified that GC B4.2 remains enforceable on the merits of any case brought before Ofcom.

Inconsistency with Ofcom's other public statements

Firstly, Ofcom is quoted by the BBC¹ as saying:

The regulator says its research shows 100% of households should be able to receive at least a 2G signal (the minimum needed to call 999) from at least one operator. An emergency call will go through whichever network has reception, it says.

Yet at §3.12 of the Consultation, Ofcom refer to areas with 'no mobile coverage'.

There are, we assume, areas of the UK land mass which have no mobile coverage, but also do not contain any households – and in such scenarios, PCBs are potentially more important. However, the nuances between 'no mobile coverage,' 'full mobile coverage,' and households or otherwise should be noted. We note that the BBC article referred to above conflated postcodes with households when criticising Ofcom's comments.

We also note that households in mobile 'not spots' can, under the existing USO, request a broadband service capable of supporting a residential voice service. This substitute for mobile does not appear to have been considered by Ofcom in such scenarios.

Secondly, after lengthy consultation, and submissions by various stakeholders (such as blue light services), Ofcom considered that 1 hour was the appropriate minimum amount of time for a battery back-up solution to operate in a power cut².

The Consultation suggests that 3 hours is an appropriate amount of time in the context of PCBs. CCUK notes Ofcom's reasoning at §3.131 appears to be that an end user may have to travel to the PCB from their abode. That suggests Ofcom considers 2 hours of travel time to be the minimum required, which, with respect, suffers from a lack of an evidential basis to support the requirement – unlike the previous work that Ofcom did in this area to arrive at 1 hour.

It is possible that the PCB operators would deploy the same (or materially similar) battery solution for either 1-hour or 3-hour power requirement and incur broadly the same costs, but that is beside the point with respect to policy making and the test at section 47 of the Communications Act 2003.

Thirdly, it is unclear from the Consultation Ofcom's intentions in relation to the Payphone Access Charge ("PAC") (i.e., the fee levied by BT for originating calls from PCBs to free-to-caller numbers), currently at approximately 70 pence per minute, is. This was part of the previous review conducted by Ofcom into PCBs and, in the opinion of CCUK members, must also be considered here.

Previously, Ofcom accepted BT's 'undertakings' which we understand (following a CCUK member's complaint to the Competition and Markets Authority) not to be undertakings as defined in the Enterprise Act 2002, but instead, an empty promise upon which BT has significantly reneged.

¹ <https://www.bbc.co.uk/news/uk-england-cumbria-59564480> [accessed 20th December 2021]

² "Guidance: Protecting access to emergency organisations when there is a power cut at the customer's premises" published by Ofcom 10th October 2018.

If BT can afford to give calls away for free from a PCB, as envisaged in the Consultation (at \$1.8 for example), and incur and absorb the payment wholesale termination rates (c 0.03ppm fixed, 0.40ppm mobile), then it can afford to receive the wholesale origination charge for free-to-caller (c0.6ppm) in lieu of the orders of magnitude higher PAC.

It is unacceptable for Ofcom to effectively endorse the cross-subsidy of BT's advertising business (i.e., PCBs converted into advertising hoardings) and free calls, from a PAC which its competitors have no choice to pay, courtesy of the aforementioned GC B4.2. We understand, from correspondence cited by a CCUK member with BT, that BT do not consider advertising revenue as an offset to the costs of running PCBs when calculating the PAC – a PAC, which, absent an old and opaque promise by BT's Corporate Responsibility Fund, could be levied again upon helplines such as Childline or Samaritans at any time. CCUK firmly believes that the PAC should not exceed the cost of a call to a geographic number from the PCB in question.

Itemised Billing, Quality of Service and Directories

For the reasons Ofcom have given, CCUK does not object to any of these proposals.

Full mobile coverage versus ability to make a 999 call

CCUK members note that had the United Kingdom implemented a framework to require national roaming, situations where an individual mobile network had no coverage would not require other policy interventions (such as with respect to PCBs) to secure access to services. We would suggest that Ofcom review its policy in that regard given that the USO (and by extension the costs incurred because of the absence of national roaming in this case) is underwritten by the industry and the taxpayer.

Quality of Evidence

We note that footnote 58 of the Consultation refers to data derived from BT doing 'rough checks' and that KCOM, per §3.5 of the Consultation, does not hold data about 'last-at-a-site.' From footnote 56, we assume that in BT's case, responses to a 'formal information request dated 28 May 2021' were to a request under Section 135 of the Communications Act 2003. We are surprised that 'rough checks' can satisfy such a request and that they can be given weight in policy making decisions.

CCUK members would feel more comfortable if Ofcom were to test its findings to the sensitivity of material errors in BT's 'rough checks' in any final Statement.

CCUK is concerned that the Consultation does not address, to its members satisfaction, the potential materiality of hoax calls from PCBs. We know, anecdotally, that hoax 999 calls are an issue. It is disappointing that, from our understanding of the Consultation (and a Freedom of Information Act response), that neither the regulator, KCOM or BT, appear to understand the scale of the problem.

Given BT bill the PAC based on the CLI of a payphone for calls to free-to-caller numbers, and run the 999 Call Handling Authority ("CHA") that processes the CLI of inbound calls, this should not be a difficult task if the CHA operator records a call as a hoax. In other words, CCUK members would be surprised if BT could not readily calculate the number of hoax 999 calls if so requested by Ofcom. In the interests

of effective and robust policy making, we consider the issue should be investigated to see if it would affect Ofcom's findings.

Fax

CCUK is concerned at BT's position (as relayed by Ofcom in the Consultation) regarding Fax. As Ofcom rightly say, Fax transmission is a form of VBD, the same technology that is used in monitoring systems, telecare, alarms, ATMs, PDQ machines and a wealth of other services integral to society.

The handling of VBD over an IP network was addressed by many of our members over 15 years ago. If anything, BT's transition to an all-IP network makes this easier on account of a lower chance of media conversions interfering with the VBD transmission. We very much consider this a "won't" not a "can't" from BT (and to the extent relevant, KCOM).

Our concern is that BT (and KCOM) will consider this license to forego any work required to make their all-IP voice services capable of carrying VBD. We already know that the PSTN switch off is a contentious subject amongst more elderly and vulnerable demographics, compounded with a lack of understanding of the implications to them of BT's project, and the potential for the removal of references to Fax to be interpreted as we fear would not assist that situation.

We also draw Ofcom's attention to the EECC's provisions with respect to legacy migrations at Article 81(2) which says:

The national regulatory authority shall ensure that the decommissioning or replacement process includes a transparent timetable and conditions, including an appropriate notice period for transition, and establishes the availability of alternative products of at least comparable quality providing access to the upgraded network infrastructure substituting the replaced elements if necessary to safeguard competition and the rights of end-users.

It is our interpretation of the EECC that it is not open to the United Kingdom to procure an outcome where the PSTN closure results in a backward step for consumers (such as the removal of Fax support, or VBD, or, for the removal of 48 volts on the line for that matter). To that end, it is not open to the Secretary of State to vary the Order in the manner being consulted upon.

We do have sympathy with the position that interworking Fax (and to the extent relevant, VBD) with mobile technologies such as Voice Over LTE is more difficult— however, the solution to that issue (which we understand to be key to BT's argument per §4.8 of the Consultation) is to fetter the requirement with respect to Mobile Services, not remove it entirely.

CCUK members also note that the analysis of the prevalence of the use of Fax is based on assertion (e.g., at §4.13 of the Consultation) and no direct tangible evidence. It is our members' experience that while there are obvious substitutes and overall volume may not be significant, the technology remains disproportionately concentrated and relatively common in the legal, medical and travel professions.