

Comms Council UK's response to Ofcom's net neutrality review call for evidence

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

At a high level, Ofcom has summarised net neutrality well at §2.5 of the Consultation when it says;

'Net neutrality', sometimes referred to as the 'open internet', is the principle of ensuring that users of the internet can control what they see and do online – not the internet service provider (ISP) that connects them to the internet. Its purpose is to protect the freedom of citizens and consumers to access all lawful internet content equally, without ISPs discriminating against particular services or websites. It is this latter aspect that seeks to ensure innovative products and services over the internet can develop and succeed.

This goes to the very core principle of an open internet, and one that has been working in the UK since the inception of the Open Internet Regulation. It is of course correct that Ofcom is reviewing the efficacy of the arrangement, as any effective policy maker should, but in the opinion of our members, there is nothing fundamentally wrong with the Regulation or its implementation in the UK.

We see no reason why the Regulation would curtain or impede innovation; quite the opposite. The very existence of the Regulation protects innovation. Ofcom may recall the questions posed to then Ofcom Chief Executive Officer Ed Richards by Philip Davies MP in a Department for Digital, Culture, Media and Sport Select Committee hearing, which went to the very core of the issue. Internet service providers (ISPs) experience a moral hazard, one which they have historically succumbed to, when providing a service over which others compete. In addition, Ofcom may recall many of the substantial submissions Comms Council UK (then ITSPA) made on the subject around the same time.

Given that the Regulation permits the co-existence of 'specialised services' alongside internet access services, we fail to see how there can be any case in which the principle of net neutrality impinges upon innovation.

The resounding view of our membership (barring one ongoing area we consider needs a watching brief from Ofcom, backed by its powers as necessary which we discuss below) is that the Regulation has been a success and it should be left alone.

Device Neutrality

At §3.2(iii) of the Consultation, Ofcom state that it *“do[es] not intend to look at ‘device neutrality’ in the context of any restrictions on internet access determined by the device manufacturers and/or operating systems”*.

This, in the opinion of Comms Council UK, could be viewed as ill-advised, as it risks today's expectations of ubiquitous service reliability and will likely necessitate subsequent regulation, further disrupting the industry and its consumers.

In terms of the competition policy aspects of vendors with significant market power (and we note a number of cases before the Competition Appeal Tribunal where monopolistic behaviour by the likes of Apple and Google is alleged) we agree that is perhaps the territory of another Competition Act authority.

However, in circumstances where devices are provided as an integral part of the Internet Access Service (e.g. a bundled router or handset), then we consider that the subject of device neutrality cannot simply be ignored.

Had Comms Council UK not lobbied hard for a decade on the subject, had NICC¹ not issued a standard on SIP ALG, had the existence of the Regulation not forced EE to change its terms (such as those referenced by Philip Davies MP in the aforementioned select committee hearing), and other things, it is very possible that the experience of the UK during COVID-19 lockdowns could have been very different.

Historically, routers provided by Sky to its residential customers could not be replaced without the involvement of a customer services agent (as their DSLAM authenticated based on the router's MAC address) and interfered with over-the-top voice services. Similar historical accounts can be given for several other major internet service providers, and EE had an outright ban on its customers using competing services.

We have no doubt that the existence of the Regulation (and some of its knock-on effects) is a fundamental reason why the UK was able to pivot so easily into lockdown working scenarios.

With the closure of the PSTN in 2025, the existence of the moral hazard for ISPs to favour their own services comes again to the fore. Routers are likely to have to be replaced with those with inbuilt Analogue Terminal Adapters (ATAs), enabling a traditional telephone to be connected. There is also a trend for a 'single box solution' whereby the optical termination unit, modem, ATA and WiFi router are a single ISP provided box.

Comms Council UK fears that without some focus or guidance on the subject of 'device neutrality' from the regulator, that history may repeat itself. It should be clear the harm that could be caused if consumers, who currently enjoy an over-the-top service are suddenly cut off as a result of BT forcing their ISP to migrate the customer to fibre-based access and the new 'box' doesn't work, and find themselves tied into a 2-year contract for both the internet access service and the over-the-top service.

¹ <https://niccstandards.org.uk/wp-content/uploads/2019/03/ND1440V1.1.1.pdf>

While this may seem like a hypothetical scenario, during the passage of the Regulation we made many submissions to the European Union that it is the mere existence of the possibility of interference in the principle of an open internet by an ISP that has a deleterious effect on investment and innovation into over-the-top services.

Comms Council UK considers that the majority of suggestions Ofcom receive regarding the open internet regime in the UK are likely too regressive; however, there are some areas where the principle of an open internet can be reinforced with guidance (such as 'device neutrality').

The adage of 'if it ain't broke, don't fix it!' would seem to have been coined with this very situation in mind.

As ever, Comms Council UK is at Ofcom's disposal to discuss matters arising.