

## **Verizon response to the Ofcom's consultation on the Review of the General Conditions of Entitlement relating to Consumer Protection Conditions consultation**

### **Introduction**

1. Verizon Enterprise Solutions ("Verizon") welcomes the opportunity to respond to Ofcom's consultation on the Review of the General Conditions of Entitlement relating to Consumer Protection Conditions<sup>1</sup>.
2. Verizon is the global IT solutions partner to business and government. As part of Verizon Communications – a company with nearly \$131 billion in annual revenue – Verizon serves 98 per cent of the Fortune 500. Verizon caters to large and medium business and government agencies and is connecting systems, machines, ideas and people around the world for altogether better outcomes.
3. Please note the views expressed in this response are specific to the UK market environment and regulatory regime and should not be taken as expressing Verizon's views in other jurisdictions where the regulatory and market environments could differ from that in the UK.
4. This response is structured as follows:
  - General comments;
  - Comments on specific conditions and proposals; and
  - Comments on the appropriateness of the General Conditions ("Conditions") for Internet of Things ("IoT").

### **Response to consultation**

#### **General comments**

5. Verizon welcomes any attempt to improve the clarity and readability of the Conditions. The addition of the "scope" section at the beginning of each Condition and the consolidated list of definitions at the end are welcomed. However both of these sections still suffer from a lack of clarity as regards who exactly is the focus of each condition – the terms "end-user", "consumer", "communications provider" are often used as a shortcut but do not offer a clear understanding.

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<sup>1</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions-relating-to-consumer-protection>

6. This is particularly true when thinking about consumer protection Conditions. Clearly, the focus of these Conditions should be on domestic and small business communications providers, rather than large business-to-business (B2B) communications providers. However this is not clear from the drafting. We strongly urge Ofcom to 1) explicitly exclude B2B providers from the scope of the consumer protection Conditions as such providers do not deal with domestic and small business customers who are in need of protection, and 2) make this clear in the drafting of definitions and scope of these Conditions (e.g. through a specific carve out).
7. Similarly, Ofcom has proposed to move much of the current guidance on the Conditions into the Conditions themselves, to make them binding obligations. While arguably obligations add certainty for communication providers, they also mean that the conditions are more onerous and less flexible depending on the size and segment of the provider.

### **Specific comments**

#### Contract requirements (GC9 / proposed C1) – Section 4 of the consultation

8. Ofcom's thinking appears confused as to the applicability of the contract requirements Condition to large businesses. For example, Ofcom says that the guidance related to price rises of "material detriment" should apply to large businesses, yet in the same paragraph, Ofcom says that large businesses are able to negotiate their contracts and can absorb any changes (see paragraph 4.9).
9. We believe that large B2B providers should not be covered by these consumer protection Conditions, for the simple reason that large businesses are not in need of contractual protection. Unlike individual, residential consumers who take standard contracts from their CPs (which is clearly meant to be the focus of these consumer protection Conditions as demonstrated by their referral to consumers and small businesses throughout the consultation), business customers often have bespoke, negotiated contracts. They have strong buyer power, and are able to demand strong SLAs with respect to the services they purchase.
10. We strongly urge Ofcom to ensure that this Condition only applies to providers who serve domestic and small business (less than 10 people) customers, and to add a specific exclusion for providers of business customers.

#### Metering and Billing – Section 6 of the consultation

11. We strongly disagree with the proposal to expand the metering and billing requirements to data, as currently drafted.

12. Firstly, the metering and billing requirements, which currently apply to voice, are designed to help consumers better understand their usage and have confidence in the figures they are provided with, as they cannot verify this themselves. This makes sense as calls are paid on an individual, itemised basis. However, Ofcom has suggested that the scope be expanded to cover data services, which although undefined in the draft Conditions, is noted to include fixed broadband in the consultation (see paragraphs 6.3 and 6.16). We cannot understand this as fixed broadband is not charged by usage, but rather a flat fee. Therefore, there is no reason for consumers to need to verify the individual usage charges as they do for voice.
13. There may be an argument to include “mobile data” services in scope as these are often sold with a package of megabytes/gigabytes of data, and therefore consumers need to have confidence that their recorded usage (especially if above their data allowance) is accurate. This is not true of fixed broadband / data services.
14. Ofcom itself notes that voice and data services such as broadband are often sold in bundles, and therefore the metering and billing requirements of voice will spill over onto the data services (paragraph 6.56). As such, we do not see a justification for expanding the requirements to “data” services, especially fixed “data” such as broadband.
15. Furthermore, this is another example of where we do not agree that B2B communications providers should fall within scope. Business customers do not need to know how many megabytes of data they have used. Such providers typically consume vast amounts of data, and will have no use for this. Ofcom would therefore be applying a very onerous requirement for little consumer benefit.
16. Ofcom explains that its justification for expanding to “data” services is because it has seen an increase in consumer complaints relating to data service (citing 40% of its billing complaints relating to data services in footnote 48). We would like to request the breakdown of this figure split out by complaints about mobile vs fixed data, and domestic and small business consumer vs large business consumer, so as to better understand Ofcom’s proposal. We suspect that there are few complaints from large business customers, which would support our argument above regarding excluding business providers. As things stand Ofcom has not provided any evidence of the need to extend this Condition to large B2B providers. Such a move would be highly disproportionate and, as highlighted above, of little value.

17. While it is difficult for us to gauge the scale of the impact of this proposal, given that Ofcom has not properly defined the scope of “data” services, we imagine that this would increase our costs through, as a minimum:

- an increased cost of engaging with the approval body, who is likely to want to increase its costs for approving a larger range of billing systems;
- an increased cost of resource to carry out control processes and support audits of the systems; and
- a very significant cost to carry out system modifications which would cover both capital budget and the cost of development time [3<].

18. These increases in cost are not justified when considering that there is no benefit for consumers, especially large business consumers.

19. In summary therefore, we strongly request that Ofcom does not expand the metering and billing requirements to cover “data” services, or if it does, then it ensures that it defines “data” to only cover mobile data which arguably, has more need to be itemised like voice calls for consumers to have trust in them. At the least, if Ofcom is to continue with its proposed expansion to data services, then we request that Ofcom ensures that B2B providers are excluded from the scope as large business customers do not want or need this information, and it would imply increase costs which may ultimately have to be passed on to customers.

#### VoIP – Section 8 of the consultation

20. We support Ofcom’s proposed removal of notification requirements around VoIP set out in paragraphs 8.19 to 8.22 of the consultation document.

#### CLI facilities (GC10 / proposed C7) – Section 10 of the consultation

21. Again, the intended scope of this Condition is unclear. In its discussion, Ofcom mentions a number of different types of CP (originating, transiting, terminating, etc.) and it’s unclear who is subject to what requirements (see for example paragraphs 10.28 to 10.30). While Ofcom says that the onus would mostly be on originating and terminating CPs, recognising the difficulties for transit CPs, it is unclear where accountability lies for issues with CLI provision, and or the blocking of calls with invalid CLI.

22. As a result, this Condition lacks clarity on who it applies to, and as such, CPs will find it difficult to ensure that they are compliant. This raises the risk of breaches, rather than being an effective tool in the combat of nuisance calls.

## General Conditions and IOT

### Introduction

23. Verizon is disappointed that Ofcom, in its review of the Conditions, has apparently given no consideration to the current and ongoing surge in machine-to-machine (“M2M”) and IoT technology and how the regulatory regime for communications in the UK might apply to those types of technologies and services. Indeed, there is not a single mention of either of these terms in the consultation document, which we find surprising.
24. For the sake of expediency, this document uses the term “IoT” to refer to this type of the technology generally and is based, broadly, on the following definition<sup>2</sup>:
- “Internet of Things” means: “A global infrastructure for the information society, enabling advanced services by interconnecting (physical and virtual) things based on existing and evolving interoperable information and communication technologies”;
  - “Thing” means: “an object of the physical world (physical things) or the information world (virtual things), which is capable of being identified and integrated into communication networks”.
25. Much of the industry and legal debate around the regulation of IoT has focused on the data protection and privacy implications of these services. Verizon believes that while this is an important area needing careful consideration, proper debate and consultation and, where it is found to be necessary, an appropriate regulatory response, an equally important consideration is how the application of the regulatory regime for communications will apply.
26. Verizon recognises that (for the moment at least) many key regulatory changes or shifts in policy must come from Europe. Indeed we strongly favour a harmonised pan-EU approach to such issues. Nevertheless, in light of the burgeoning uptake in IoT services throughout the UK – the rate of which is only expected to increase – there is greater scope for Ofcom to consider how the Conditions might apply to IoT services, together with high level thoughts about the appropriateness of the regime and changes that might need to be made.
27. The inappropriate application of Conditions to IoT services is unhelpful by engendering regulatory uncertainty and excessive regulatory risk for CPs and other market operators. It creates a significant (perhaps, in some cases,

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<sup>2</sup> See the ITU-T Recommendation Y.2060, Overview of the Internet of Things (06/2012), at 3.2.2 and 3.2.3 (<https://www.itu.int/rec/T-REC-Y.2060-201206-l>)

insurmountable) hurdle to businesses developing and launching innovative IoT services which could have otherwise had a significantly beneficial impact on the lives of end-users and citizens more generally. It embeds regulatory stasis and discourages innovation.

#### The problem with the current regulatory regime in the context of IoT

28. The central problem that industry faces is that some forms of IoT services arguably fall under the Common Regulatory Framework<sup>3</sup> (“CRF”) and the relevant UK law which transposes it, despite the fact the types of services envisaged by the CRF were very different. In the early 2000s, the communications services that were available were restricted largely to conventional voice and low-bandwidth data services. These have little in common with the multitude of IoT services available today. Verizon has argued previously that IoT services “should not be seen as just another telecommunications service”.<sup>4</sup>
29. The inappropriateness of the current regulatory regime to IoT devices must be seen in the context of today’s other technology and consumer trends such as the ubiquity of smartphones and other devices. In practice, this means that IoT devices are unlikely to be seen as replacements for conventional smartphones which have associated with them certain consumer expectations in terms of call functionality. To take an example, it is largely inconceivable that a user would regard an IoT bracelet with inbuilt fitness tracking and GPS location functionality as a device with which they could replace their smartphone or other phone and from which they could make, for instance, emergency calls.
30. Another feature of the rapidly-developing IoT market is the more complex value chain associated with the production and supply of IoT devices. There are often multiple businesses in the chain above the end-user, rather than a more conventional CP-consumer relationship seen in the supply and sale of mobile phone services and broadband services.<sup>5</sup> IoT also presents those in the value chain with greater opportunities for add-on services and interoperability through ecosystems such as ‘app stores’, and greater scope for cross marketing in which, for example, an embedded IoT device in a car offers providers of ancillary automobile services with opportunities for collaboration. These factors combine to

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<sup>3</sup> Comprised of the Framework Directive and four specific EU directives, which seek to establish and implement an internal market in electronic communications networks and services through the harmonisation and simplification of authorisation rules and conditions in order to facilitate their provision throughout the EU.

<sup>4</sup> See paragraph 36 of the Verizon response to Ofcom’s “Promoting investment and innovation in the Internet of Things” call for input in 2015.

<sup>5</sup> See section 3 of the article by Guido Noto La Diega and Ian Walden, “Contracting for the ‘Internet of Things’: Looking into the Nest”, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2725913](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2725913).

make many IoT services look very different to conventional electronic communications services provided by traditional communications providers.

31. Where IoT services are caught under the definitions of an Electronic Communications Service (“ECS”), a Public Electronic Communications Services (“PECS”) and a Publicly Available Telephone Services (“PATS”), a number of Conditions may apply to the different IoT devices which could produce absurd results. These are surely unintended consequences – far beyond what the European and national legislatures had in mind when the relevant legislation was drafted.
32. Such results would create a high and disproportionate regulatory burden on CPs and other entities in the value chain, and distort both the range of products that are developed and come to market, and the functionality of those products. Put simply, device manufacturers are burdened by having to design into these devices nonsensical functionality that is of no interest to end-users, the absence of which would present no risk of consumer or broader social harm, and makes such devices less desirable and compelling. CPs and other entities in the value chain incur high regulatory costs for complying with regulations which, in the context of IoT, are outmoded and out-of-place - while the regulatory risks associated with non-compliance may, in some instances, be high. Taken in the round, these are not circumstances in which competition in IoT devices and services can be expected to flourish. Indeed the likely outcome of bringing IoT services within the bounds of ECS regulation is that investment and innovation is chilled and producers will look beyond the EU for development and growth.

#### Possible solutions

33. Verizon believes the applicability of the General Condition regime to IoT technology needs to be considered afresh and at a fundamental level. IoT technology is developing quickly, and this merely serves to underline the importance for measures to be taken to allow the regulatory regime to keep in step with the IoT services of today and tomorrow. This must be done in a harmonised and consistent manner, and at a pan-European level as a minimum.
34. As an important first step, a definition of IoT is needed to define the scope of the regulations to IoT services. Verizon recognises that achieving this will not be easy and there is currently no single widely-accepted definition of IoT. Nevertheless, various definitions already exist and reformulating a suitable definition for use in a regulatory context is by no means insurmountable.

35. For the purposes of engaging the sectoral regulations, Verizon believes it will be important for the definition to consider and/or incorporate the following factors:

- a. The levels of human interaction with the device/service. Broadly speaking, the more autonomous it is, the lower the justification for categorising it as an ECS. It is possible that the definition may need to draw a distinction between a 'pure' IoT service that is almost entirely autonomous with no meaningful human interaction (such as a printer which can order replacement toner automatically shortly before it is depleted), and 'hybrid' IoT devices which are designed to have a significant degree of human interaction (such as a smartwatch with various functions which are activated by the end-user - e.g. video calling);
- b. The importance of data transfer to the functionality offered by the device (i.e. is the central to it or ancillary);
- c. The likely end-user expectation; and
- d. Regulations that today apply to PATS are engaged only if the IoT service is truly intended to give the end-user with access to all numbers in the NTNP – not a very limited subset.

36. Verizon recognises much work is needed to consider revising the sectoral regulatory regime to make it fit for purpose in the context of IoT and we are anxious that this work starts in earnest. A pan-European definition for IoT incorporating the factors listed above would be an important first step. Even more important, however, is a redrafting of the regulations which adopt a risk-based approach so that regulation is reserved for, and focused on, specific issues where there is evidence of actual, or strong potential for, consumer and societal harm. If this can be achieved, Verizon firmly believes that this will allow innovation and the adoption of IoT services to prosper, delivering with it the huge lifestyle benefits that IoT promises.

Verizon Enterprise Solutions

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