



VON Coalition Europe

Comments on

Electronic Communications Reform Proposals

7 April 2008

The Voice on the Net (VON) Coalition Europe was launched in December 2007 by six leading Internet communications and technology companies – iBasis, Intel, Google, Microsoft, Rebtel, Skype and Voxbone – to create an authoritative voice for the Internet-enabled communications industry.

VON Coalition Europe welcomes the current review of the EU Electronic Communications Regulatory Framework as an important opportunity to advance policies that will enable consumers and businesses to enjoy the full promise and potential of Internet communications. Given the appropriate regulatory environment, Internet-enabled communications using Voice over Internet Protocol (VoIP) technologies can increase competition, provide a platform for innovation, drive broadband deployment and enable economic growth.

Key Messages

VON Europe urges that the following points be taken into account in the consideration of the Communications Reform proposals:

PATS definition

The proposed definition of ‘publicly available telephone services’ (PATS) is too broad and includes too many innovative services that are dissimilar from traditional telephone services. PATS regulation should be reserved for those offering a close replacement to traditional retail telephone services where there is a risk of consumer confusion and a high level of protection is justified.

Emergency services

Emergency calling obligations should not be imposed on non-replacement telephony services simply because they allow calls to PSTN telephone numbers. There appears to be no consumer expectation that these types of services will permit emergency calling. There is also a danger that consumers will depend on these services for emergency calling when their reliability cannot be guaranteed because they depend on an underlying network that may not be managed by the Internet voice provider.

Access to numbering resources

VON Europe supports increased harmonisation with regard to access to numbering resources. Numbers, including geographic numbers, should be eligible to be allocated to service providers and be used by end users outside of the traditional telephone zones or other boundaries, including on a trans-national basis within the EU. VON Europe supports the view that geographical numbers are most suitable to open up VoIP services to the mass consumers as consumers are highly familiar with those types of numbers and end user tariffs are transparent (or at least not less transparent than other types of numbers).

Accessibility

VON Europe agrees that Member States should take measures to ensure that PATS services are accessible by disabled end users. However, any such measures must be technology-neutral and non-voluntary measures must only apply to PATS services. In particular, ***any mandates regarding emergency services access for disabled users must not require the use of particular technologies.*** Providers must have the flexibility to offer innovative solutions even if they do not have the ‘look and feel’ of conventional access tools.

General Comments on the Reform Package

Internet-based communications are increasingly significant for Europe. More European consumers and businesses are beginning to make use of Internet voice applications, and voice features are being integrated more widely in software products connected to the Internet and in services available on the Web.

Maintain a light-touch, technology-neutral approach to regulation

VON Europe welcomes the Commission's initiative to update the Communications Regulatory Framework for 2010 and beyond. A key strength of the Framework has been its light-touch regulatory approach, which pays particular attention to preventing the use of network bottlenecks to impede competition in services. This regulatory environment has been an important factor in encouraging the launch of many innovative Internet-based applications in Europe.

We strongly support the proposals to remove unnecessary regulation, encourage more harmonisation in regulatory requirements and promote the principles of technology & service neutrality. We also welcome the retention of the competition-based fundamentals of the Framework.

However, VON Europe is very concerned that several of the Commission's proposals – particularly the new PATS definition and new emergency calling requirements – will lead to an unnecessary extension of regulation to Internet voice communications, which are still at an early stage of development and widespread deployment.

Recognise Internet voice communications as enabling a different genre of products

As the Parliament and the Council of Ministers consider the Commission's far-reaching Communications Reform proposals, changes in the regulatory framework must be guided by the following principles:

- Because Internet-enabled communications are typically different from existing voice communications products and services, the automatic extension of legacy telephone regulation over them will decrease end-user choice, reduce competition and slow the innovative use of voice features in a variety of new products and applications.
- Many Internet-based voice services are already taking measures to promote important social goals; nevertheless, new regulatory mandates in this area, such as requirements on access to emergency services, privacy and data security, should be kept to a minimum at this early stage and these services should be left with as much flexibility as possible in determining how to promote these goals.
- Any regulatory mandates must be focused on those services in which consumers are most likely to need or expect the protections imposed by regulation and must recognise the limitations in the technology available for implementation.
- Harmonization in regulation is particularly important for Internet-enabled voice services and applications, which are often nomadic services and rely on pan-European availability for a successful business model.

Create a single market for 'network-independent' services

VON Europe agrees strongly with the Commission's desire to create a single market for electronic communications services in the European Union. It is important that the successes of the eCommerce Directive and Audiovisual Media Services Directive be built upon in the communications policy space, using a similar approach to the law applicable: namely, the 'principle of mutual recognition' or the 'internal market principle'.

In particular, ***'network-independent' services*** – communications applications and services that use the open Internet but are not tied to a particular telecoms provider or ISP – should be viewed as a distinct category within the regulatory framework. EU policy should champion the creation of an internal market for network-independent communications services based on the same legal underpinnings as the eCommerce and AVMS/TVWF Directives. The aim should be to liberalise the provision of these services as far as possible.

Comments on the Specific Proposals

VON Europe has the following specific comments on the Communications Reform proposals that are of most importance to Internet-enabled communications products and services.

A. *Citizens Directive*

1. Definition of PATS

VON Coalition Europe is concerned that the proposed revised definition of a ‘*publicly available telephone service*’ (PATS) is too broad and includes too many innovative services that are dissimilar from traditional telephone services. PATS regulation should be reserved for those offering a close replacement to traditional retail telephone services where there is a risk of consumer confusion and a high level of protection is justified.

The Commission has proposed including within the definition of PATS any voice communication service that allows calls to and from national or international telephone numbers on the PSTN, regardless of whether such a service offers emergency services access. The proposed definition extends some of the most significant telecommunications obligations to a broad range of new services. Many of these services are not perceived as substitutes or replacements for traditional telecommunications services for which users expect certain features to be available. Many legacy PATS regulations – such as tariff publication requirements – do not make sense in a competitive marketplace with many providers offering similar services.

VON Europe disagrees with the proposed removal of “access to the emergency services” as a condition of being a PATS as this condition provides a safeguard to an undue extension of regulation to all services. Removing this requirement is acceptable only if it is made explicit that services that are not close substitutes are excluded from the definition of PATS.

If the definition of PATS must be changed, the Framework must ensure that PATS regulation remains focused on traditional telephone services and those new services with characteristics that cause them to be viewed as replacements for legacy PSTN telephone services. If the PATS definition remains centred on services for making and receiving calls from telephone numbers on the PSTN, the definition must be further limited to services that are equivalent to or close functional substitutes for PSTN telephone services.

National regulators should be given the authority to waive or temporarily refrain from applying to new classes of PATS services certain retail service obligations under the Universal Service Directive where a regulator determines that such legacy regulations – such as detailed tariff publication and contract disclosure requirements – are no longer needed due to competition in the marketplace or voluntary efforts by groups of providers. Such a procedure would be initiated by service providers and decided upon by the relevant regulator within a certain time frame. This authority would give additional flexibility for lighter-touch regulation where it is justified, particularly in response to the adoption by service providers of codes of conduct and standards of best practice.

2. Access to Emergency Services

2.1 Required Emergency Calling for Outbound PSTN Calling

VON Europe is also concerned about the proposed extension of emergency calling obligations to non-replacement voice communications services. The Commission has proposed requiring ***all voice services that allow calls to be made to PSTN telephone numbers*** to provide access to the emergency services through “112”:

- The proposal would require that all **'2-way PSTN'** services, including VoIP services that allow calls to be both made to and received from a national or international telephone number on the PSTN, provide an emergency calling feature.
- The proposal would also require **'Outbound Only PSTN'** services to permit emergency calls. This would mean that a VoIP service that does not provide a telephone number on the PSTN or otherwise accept calls from a telephone number on the PSTN would still have to permit emergency calls if it allows any calls to be made to a telephone number on the PSTN.

There appears to be no consumer expectation that these types of VoIP services will permit emergency calling. In particular, Outbound Only PSTN or Inbound Only PSTN services are not substitutes for traditional telephone services and there is no risk that consumers will expect emergency services access using these services, which are only supplements to telephone services. For example, the Commission's proposal would appear to impose emergency calling obligations on a range of voice services with limited features, such as products that are only used to call international telephone numbers and a 'click to call' feature on a website or in an email address book. These limited-feature services could not be considered the same as traditional telephone services.

There is also a danger that consumers will depend on these services for emergency calling although the reliability of the service cannot be guaranteed. Internet voice services depend on an underlying network and a user's Internet connection, which may not be managed by the service provider. Emergency calls using these services may not get through due to the failure of the network or temporary congestion on ISP networks and Internet backbones. In addition, the failure of a user's computer hardware or software will affect emergency services access using such a service, but the service provider has very little ability to prevent such failures. For the foreseeable future, it seems unwise to require the provision of access to emergency services in cases where it is not technically feasible to provide a high expectation of successful delivery of a request for emergency assistance. It risks giving a false sense of security and creating unrealistic expectations among consumers and travellers.

In addition, VON Europe has concerns that the technology is not yet sufficiently developed to allow all VoIP services to comply with the emergency access obligations, particularly with regard to providing location information. This is another reason why an emergency calling obligation should not be imposed too widely. The Commission's proposals provide no details about how to provide location information, nor any details as to the steps to be taken by the emergency services to adapt their infrastructure in order to enable this new requirement to take full effect, in view of the technological challenges implied. Further it is at the discretion of the Member States to decide whether to implement provisions obliging the automatic provision of caller location information as soon as the emergency call reaches the emergency dispatch authority.

VON Europe agrees that it is important for all citizens to have access to emergency services. However, the Commission's proposal to impose emergency calling requirements on such a broad range of voice services is not required. Users do not view most of the VoIP services that would be covered by the Commission's proposal as replacements for their PSTN lines. ***VON Europe, however, would support a requirement that all voice services sold or marketed as full replacements for 2-way PSTN services provide access to emergency services.*** Outbound Only PSTN or Inbound Only PSTN services would not be subject to the requirement on the basis that they are not substitutes for legacy telephone services. Limited feature products, such as click-to-call and international-only services, should also be exempt.

2.2 Disclosure of Emergency Calling Features

The Commission proposes that all services that allow voice communication must inform their subscribers whether access to emergency services is provided. The disclosure obligation is too broad in scope. It covers not only services that allow calls to telephone numbers on the PSTN but also purely PC-to-PC services and innovative applications such as real-time video

communications. As written, it also appears to cover private electronic communications services, such as internal corporate networks.

VON acknowledges that proper disclosure is important but argues that the requirement will apply to too many services. If adopted, ***this requirement should only be narrowly applied to a clearly defined category of publicly available electronic communications services, such as VoIP services that enable users to make and receive calls from national PSTN telephone numbers.*** Outbound Only PSTN or Inbound Only PSTN services should not be subject to this requirement.

The disclosure obligation is burdensome as disclosures have to be made before a contract is concluded and then “regularly thereafter”. There is no information about how this disclosure should be made – such as whether interface screens must also contain warnings or devices must be marked. As well as being exposed to potentially burdensome disclosure obligations, it seems likely that providers will have to comply with different obligations across the EU. It is likely to lead to divergent requirements across Member States. Moreover, covered providers should have flexibility in notifying customers of such limitations, for example in written contracts, at time of registration, or on websites.

2.3 Availability Requirements for Nomadic Services

The Commission has proposed that network integrity requirements for PATS (and the networks used to provide such services) would be replaced by ***requirements for availability and uninterrupted access to emergency services from both fixed and nomadic locations.*** Currently, PATS providers are only obligated to take all reasonable steps to ensure access to emergency services at fixed locations.

VON Europe opposes the proposed extension of emergency access reliability obligations to nomadic services. The technology is not available to ensure uninterrupted access to emergency services using nomadic services. Therefore it is unclear what reasonable steps may be required, nor what improvements to their technological infrastructure public authorities and emergency services are prepared to undertake in order to ensure that this new requirement can take full effect (i.e. that they will take all reasonable steps to ensure uninterrupted access to emergency services).

3. Accessibility for Disabled Users

VON Europe supports the Commission’s proposal that Member States should take specific measures to ensure that PATS services are accessible by disabled end users. However, we are concerned that Member States may impose technological mandates that could stifle innovative solutions and be inconsistent with work undertaken based on the Commission’s eAccessibility Communication.

In particular, ***any mandates regarding emergency services access for disabled users must not require the use of particular technologies.*** Providers must have the flexibility to offer innovative solutions even if they do not have the ‘look and feel’ of conventional access tools. Of course, any non-voluntary measures must only apply to PATS services.

We support the standardisation efforts that are underway in Europe to harmonise accessibility requirements for all ICT. These standards will offer a consistent, technology-neutral approach to implementing accessibility. We agree with the Commission’s proposal to include a specific reference to ensuring that national measures regarding emergency services access comply with these standards.

4. Contract Disclosures regarding Copyright Infringement

The Commission proposes requiring that all providers of electronic communications services and networks ensure that their subscribers ***are clearly informed in advance of the conclusion of the contract and regularly thereafter of their obligations to respect copyright and related***

rights. In particular, communications providers would be required to inform their subscribers of the most common acts of infringements and their legal consequences.

VON Europe believes that it is inappropriate to include such a specific copyright infringement measure in the Communications Reform Package. Online piracy is currently being discussed in the context of the Commission's Communication on Online Content and related initiatives, and any specific anti-piracy measures are better suited for inclusion in legislation related to copyright enforcement and online content. As alluded to in the Commission's proposal itself, the disclosure requirement may have linkages with the policies underlying the Electronic Commerce Directive and should be carefully considered in that context. The proposed measure seems largely related to content and Information Society Services, which are outside the scope of the Communications Framework.

The proposal would apply to a very broad range of providers – not just ISPs and other Internet access providers, which appear to be the intended focus of the requirement. All electronic communications service and network providers would seem to be covered, including some advertiser-funded services, as online terms of use could be viewed as a 'contract' for these purposes. It would certainly apply to voice communication services -- even if they do not provide any access to content -- including many Internet voice services. It is also unclear how the required disclosures would be provided, particularly 'regularly thereafter' as the Commission's proposal would require.

B. Better Regulation Directive

1. Equal Treatment of Telephone Numbers

The Commission has proposed strengthening protections that numbering plans and procedures are applied in a manner that gives equal treatment to all providers of publicly available electronic communications services. Specifically, member states would ensure that a provider assigned a range of numbers does not discriminate against other providers of electronic communications services as regards the number sequences used to give access to their services.

VON Europe strongly supports the Commission's proposal to ensure equal treatment of communications services that use numbering resources. Communications providers should not be able to discriminate against other communications providers based on the number sequences that they use. The Commission's proposal will help a range of alternative providers of voice services, including many Internet-based providers, in offering competitive products with innovative features.

2. Harmonization of Number Assignments

The Commission's proposals also include measures to improve the harmonisation of number assignments. The proposals would give the Commission the ability to coordinate and harmonise the selection procedures and conditions for the assignment of numbers, including to encourage allocations for cross-European services.

VON Europe strongly supports better coordination across Europe in the assignment of numbers. We welcome the Commission's proposals for more harmonisation in the procedures and conditions for number allocation. Although the proposals do not describe specific measures to be taken, the proposals should provide further support for increased harmonisation. As a principle it does not make sense to require different obligations across Europe with regard to numbering resources for the same type of service. Only increased harmonisation in both the licensing and numbering requirements may lead to increased competition and benefit for European citizens.

We would urge the Commission and national regulators to use the new provisions to provide more coordinated access to telephone numbers. In particular, ***numbers – including geographic numbers – should be eligible to be allocated to service providers and be used by end-users***

outside of the traditional telephone zones or other boundaries, including on a trans-national basis within the EU. VON Europe supports the view that geographical numbers are most suitable to open up VoIP services to the consumer mass market as consumers are highly familiar with those types of numbers and end-user tariffs are transparent (or at least not less transparent than other types of numbers).

C. EECMA Directive

Regarding the creation of the European Electronic Communications Market Authority, VON Europe cautiously welcomes the Commission's plans. Currently there is a lack of regulatory harmonization across the EU and amongst NRAs, which the EECMA could address and which the ERG has arguably failed to address. However, the proposed structure and composition of EECMA should be refined to ensure its independence and effectiveness. We would support the use of EECMA as an entry point for firms seeking to acquire rights of use for spectrum and numbers to provide cross-border services in the EU.

Contacts

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