

***New VoIP regulations came into force on 8<sup>th</sup> September and Ofcom has already announced that it will be conducting an ongoing investigation into compliance. The regulations are detailed and specific and Michael Eagle, General Manager of FCS provides a summary of a complex set of obligations to help communications providers stay on the right side of the law.***

As VoIP began to emerge as a new technology at the beginning of the decade Ofcom operated an interim policy of “forbearance”; effectively relaxing the regulations which normally apply to voice services to enable the developing technology to establish itself in the market. This policy was formalised following consultation with industry in 2004.

Since then Ofcom has carried out a succession of consultations on how to regulate VoIP services and a legally binding code of practice was introduced with effect from May 2007, which placed an obligation on communications providers to provide specified information about the capabilities of VoIP services where these differ from mainstream services.

The main focus of successive consultations has been on the provision of access to the emergency services and as VoIP services have become more popular Ofcom has become increasingly concerned about the confusion among end-users about whether their service provides access to 999 and 112 and the risks arising. Its research indicates that a significant percentage of customers believe that their service provides access to emergency calls when this is not the case.

The latest regulations, which were published in a statement issued in December 2007, require mandatory access to 999 and 112 emergency calls for any VoIP services which enable their users to make calls to the public telephone network and come into force this month. Communications providers must also provide caller location information for such calls “to the extent that it is technically feasible”.

Ofcom has immediately announced that it has opened an “own-initiative” investigation to ensure compliance with the new requirements. It indicated in the December 2007 statement that its enforcement activity would cover VoIP providers that are based outside the UK and has also stated that investigations would include proactive activity including, for example, mystery shops.

It should be clear, however, that the new obligations do not negate requirements under the existing 2007 code of practice, which require communications providers to provide information on VoIP services which do not provide features which are normally part of mainstream fixed-line services, known in regulatory parlance as Publicly Available Telephone Services “PATs”. The current situation is therefore complex as the requirements and responsibilities on communications providers delivering VoIP services are detailed and specific and require a degree of interpretation depending on the type of service provided.

Previously, the regulations had been linked to services which qualified as PATs services but Ofcom has now widened the scope of this requirement to cover what it calls “Type 2” and “Type 4” VoIP services. Essentially, these classes of VoIP are services that enable customers to make voice calls out to the PSTN (which types 1 and 3 do not):

Ofcom defines the various types of VoIP services as follows:

- **Type 1: Peer-to-peer services** to make and receive voice calls over the internet only, usually within the same application community
- **Type 2: VoIP Out services** to make calls over the Internet to the PSTN (Public Switched Telephony Network, the standard public phone network), but not to receive calls from the PSTN
- **Type 3: VoIP In services** to receive voice calls over the Internet from the PSTN, but not to make calls to the PSTN. Customers can be allocated an ordinary geographic number or a VoIP number (056)
- **Type 4: VoIP In and Out services** to receive voice calls over the Internet from the PSTN and to make voice calls over the Internet to the PSTN. Customers can be allocated an ordinary geographic number or a VoIP number

There is an important exemption for “click to call” services which Ofcom defines as “a form of VoIP service that may be selected on a website or other application by a user and connect the user only to a number or a limited set of numbers pre-selected by the provider or user”. The logic here is that the user would not have any expectation of using this service to connect to the emergency services.

In connection with the obligation to provide location information, Ofcom has stated in announcing its investigation that “to the extent technically feasible” should be taken to mean that location information need only be provided where the VoIP service is being used at a predominantly fixed location. However, communications providers do have a duty to keep this information up to date.

The new obligations have been implemented via a change to General Condition 4 which, since the General Conditions of Entitlement are part of the 2003 Communications Act give the new regulations the force of law and enabling Ofcom to levy fines for non-compliance.

As noted above, communications providers must also continue to provide information on other ways that the VoIP services which they provide may differ from a full PATS service and this applies to all the types of VoIP:

In addition to confirming where the service does not provide access to the emergency services (i.e. for service types 1 and 3), it is still necessary to confirm whether the service will cease to function if either the power or broadband connection over which the voice service runs fails, whether access to the emergency services will also be lost if such a failure occurs and limitations on availability of location information. It is also required to make clear where other features of PATS services such as number portability, access to directory information, itemised billing etc. are not available

The pre-existing May 2007 Code of practice sets out in each case how the information is to be communicated to the customer, which may be as part of the sales process, in any terms and conditions provided to the customer in user guides and via labels and on-screen messages

The means by which this information is to be communicated will depend on the importance of the feature and the perceived level of risk (access to emergency services obviously being the most critical) and for the most important features it may be

necessary to obtain written acknowledgement from the customers that they understand that this facility is not available.

The FCS VoIP Group will be considering in detail the issues around the regulations and their implementation and developing best practice guidelines for sharing with members of the group. The updated guidelines will be posted on the FCS website at [www.fcs.org.uk](http://www.fcs.org.uk).

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