Comments on the BEREC Work Programme for 2010

by VON Europe

1. Preliminary Remarks

The Voice on the Net Coalition Europe ("VON") welcomes the opportunity to comment on the Draft BEREC Work Programme for 2010 (hereafter "the Work Programme").

VON regrets the fact that the comments sent in relation to the ERG Work Programme consultation are not reflected in the BEREC draft, especially as regards the lack of attention given by BEREC to numbering issues, and encourages BEREC to add a specific workstream on this issue.

2. An item to add to the list: NUMBERING

VON believes that it is in the interest of European citizens and the European economy as a whole to focus its attention on putting in place the building blocks of a forward looking framework, focusing on delivering choice and innovation to consumers, rather than sticking to obsolete principles, with the ensuing compliance issues.

The Electronic Communications Framework requires a wider availability of numbers but no adequate enforcement has been put in place so far. BEREC should make the numbering issue a priority in its efforts to improve regulatory consistency and harmonisation within the EU.
The ERG should ensure and enforce the harmonisation of the variable eligibility and usage conditions for allocation of numbering resources and should undertake a profound review of the national numbering plans to truly make it technology neutral.

2.1. Various eligibility and usage conditions

In terms of numbering, the current Regulatory Framework sets a *de minimis* rule whereby numbers should be allocated **at least** to ECS/ERP, without precluding the allocation of numbers to non-ECS/ERP. This is set out under Art. 10 of the Framework Directive (2002/21/EC) which only states that : "*1. (…)Member States shall ensure that adequate numbers and numbering ranges are provided for all publicly available electronic communications services*." Under the reviewed regulatory framework, Article 10.4 of the revised Better Regulation directive stipulates that "*Member States shall support the harmonisation of specific numbers or numbering ranges within the Community where it promotes both the functioning of the internal market and the development of pan-European services. The Commission may take appropriate technical implementing measures on this matter*."

Unfortunately, the current practice shows that eligibility status and conditions vary considerably across the member states with some NRAs requiring service providers to notify as PATS in order to be eligible to apply for numbering resources.

Finally, the flexibility given to NRAs appears even more clearly when analyzing the guidance provided by the European Commission in the Information and Consultation Document of 14 June
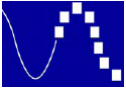
2004 on the treatment of Voice over Internet Protocol (VoIP) under the EU Regulatory Framework, which states in Section 7.1 that:

"*Any undertaking providing **or using** electronic communication networks or services has the right to use numbers*". […]

BEREC should therefore take on board this clear encouragement by the European Commission to adopt a more flexible and open approach to numbering, in the interest of developing offerings with global reach, and provide appropriate guidance to its members to ensure more harmonization in this field and increased consumer benefit.

2.2 Harmonisation of usage conditions

Today's pan-European service providers face the difficulty to assess and comply with 27 different regulations in order to be allocated and use numbering resources.

The ERG studies also show that the type of numbering range open to IP enabled service providers varies substantially (from the regular national or geographical numbering ranges to specific "nomadic", toll free and calling card numbering ranges). In addition, the allocation of the same type of numbering range (eg a regular geographical numbering range) may be associated with multiple variable usage conditions (varying from no usage conditions to supplementary restrictions to install specific equipment in the territory, require to obtain a local address of the user, or to "terminate" calls in the geographical zone).

The profound analysis of the eligibility and usage conditions for the allocation of numbering ranges is not only a highly time consuming effort (resulting in a late time to market), it also requires substantial financial resources.

VON calls upon BEREC to strongly encourage NRAs to ensure that numbering ranges can be used in the same forward-looking way throughout the European Union.

2.3 Discarding location information in numbering ranges when it comes to termination

In addition to that, VON believes that the usage of numbering resources should be rethought on a EU level. Nomadism has become an integral part of today's way of life. In consequence of that, there is an increasing demand for nomadic applications within a harmonised single digital market in the EU.

VON therefore considers that the way forward is discarding location information from any kind of telephony number in Europe, as regards the termination of calls.

Location information of geographic numbers is a legacy from the Plain Old Telephony Services (POTS), where habits were not what they are today. In recent years, people have become more flexible, ready to move and travel at any time. Mobile phones have long overtaken fixed phones in Europe and calling your plumber happens more often than not on his mobile phone.
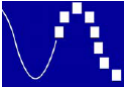
These important changes in the general way of life, and the evolution of technology, have an impact on the features customers are demanding. Both business and residential customers request innovative possibilities including nomadicity. Today, the relevance of geographic numbers is fading, services are no longer linked to the location information, rather to personal information and service and application features.

This is confirmed in practice by the increasing switch to mobile phones. Mobile Internet devices will only enhance that trend. It also seems in contradiction with the fact that many consumers increasingly want to be connected all the time and everywhere, which usually implies increased mobility.

Moreover, in reality geographic numbers are increasingly not representative of the location of a called party: for example, with call forwarding, a call to a number supposedly located in a specific geographic region, could very well be forwarded to an entirely different place. This link to geographic locations disappears even more when thinking of an NGN environment, characterised by the switch to an all IP world.

The preserving of location information when terminating to geographic numbers would keep an additional barrier for new entrants, especially those providing innovative applications and services and including use of geographic numbers, because users demand geographic numbers.

In terms of numbering, it has long been considered that the primary distinguishing feature of geographic numbering is that is has geographic significance. This was linked to the fact that a geographic number was in the past associated to a tariff range, an expected call quality and a specific location of the recipient of the call.

In an IP world, many of these features are totally irrelevant. Currently, many providers of VoIP-enabled offerings provide the possibility to call for free or at very low flat fee tariffs that are the same regardless of location. In parallel, people divert their fixed phones, or even abandon them to exclusively use mobile phones.

It is therefore becoming increasingly obvious that consumers are no longer truly concerned with location information, but rather with the cost of calling. Consequently, the reason why geographic numbers are used by residential and business customers is because of the retail price transparency. VON therefore strongly believes that geographic numbers are most suitable to open up VoIP opportunities to the mass market, given that 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).

Moreover, from a technical point of view, non-geographic numbers such as specific "nomadic" numbers are not always reachable from all networks, and are in many cases not reachable or only reachable against higher tariffs for the calling party from another country.
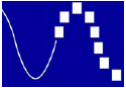
Therefore, VON strongly believes that:

(i)   BEREC should avoid creating additional obligations on usage of certain numbers, in particular to remove the link between location information and termination to geographic numbers; and

(ii) national numbering resources (both geographical and non-geographical) could be used across the EU, without limitation to one single area or one single member state.

2.4. Conclusion

In conclusion, VON believes that in order to set in place the appropriate rules in terms of numbering that are adapted to the evolution of technologies and respond to user demand (be it companies, public authorities or consumers), the following principles need to be rolled out across Europe:
- the assignment of numbering resources should not be restricted to PATS providers only
- all usage restrictions should be removed; and
- all numbers, including geographic numbers, should be allocated and used outside of the traditional telephone zones or other boundaries, including on a trans-national basis, hence creating a true digital single market in Europe.

3.   **Specific Comments on the Listed Deliverables**

VON would like to add the following specific comments to the Key issues and corresponding deliverables identified by BEREC:

1.1. International Roaming

BEREC should not only monitor the application of the Regulation and analyse alternatives to price regulation as regards roaming, but actively support the Commission in the task it has been asked to conduct under the Roaming Regulation, namely:

- Pay particular attention to recital 49 which asks the Commission to "consider the availability and quality of services which are an alternative to roaming (such as VoIP)" and
- Take appropriate action in relation to recital 40 *which recommends that there should be no obstacles to the emergence of applications or technologies which can be a substitute for, or alternative to, roaming services, such as WiFi, Voice over Internet Protocol (VoIP) and Instant Messaging services.*

VON considers this proactive analysis by BEREC should be conducted as soon as possible in 2010 and be open to Consultation.

2.2. Convergence

It is important that BEREC does not fall into the trap of analyzing new, innovative services and simply choose to classify them all as ECS. It could put a massive brake on innovation and on the fulfillment of consumer needs and demand, whilst not serving actual and urgent public policy needs.

This complexity has been recognized explicitly by the European Parliament and Member States in the revision of the Electronic Communications Framework, where the definition of a Publicly
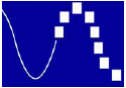
Available Telephone Service has been specifically left unchanged. (Indeed, PATS regulation should be reserved for those offering a close replacement to traditional retail telephone services where there is a risk of consumer confusion and a high level of protection is justified.)

To take the example of Voice on the Net applications, we would quote VON Coalition Europe's response to the post-i2010 :

*"i2020 IS ABOUT CREATING A GENERATION OF INFORMED USERS RATHER THAN STICKING TO OLD MODELS.*

Voice over Internet protocol, referred to as "VoIP," applications and services have truly revolutionised the way people and businesses communicate: talking to each other is cheaper if not free, families can see each other through video-conferencing even when separated by thousands of kilometers, games become more interactive and Web 2.0 social networks switch from the virtual arena to real life. Many of these VoIP applications and services use software in combination with a user's Internet access to enable a wide variety of innovative new ways to communicate. This innovation has been rendered possible by a light touch regulatory approach that considered that VoIP applications and services were not to be treated as traditional telephony and should therefore not be burdened by regulatory requirements - put in place to address public concerns that were only relevant decades ago, for older, different technologies - such as emergency access, localization of callers, etc. as long as users were clearly made aware that access to 112 was not offered.

But instead of focusing on raising awareness, some policy-makers prefer to burden these innovative VoIP applications and services with traditional telephony obligations for which they are often not technically suited. By creating blanket obligations, there is a danger that consumers will depend on these new innovative services for emergency calling when their reliability cannot be guaranteed because they depend on an underlying network that is normally not managed or controlled by the Internet voice provider.

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- *Old telephony regulation should be reserved for those VoIP services offering a close replacement to traditional retail telephone services and where there is a risk of consumer confusion.*

- *The Commission should focus on ensuring VoIP users are informed when communicating over the Internet of any limitations such as lack of emergency calling and should not burden innovative services and applications with obsolete obligations!"*

One of the implications of convergence is the changing and complex competitive landscape, whereby the definition of a 'Market' should be challenged (such as when network operators bundle offerings and therefore operate across several markets, creating new competitive pressures), and new or consolidating bottlenecks to monitor, such as on retail broadband access where there are clear risks for those operators also active on the services layer, for instance, to abuse their control at the infrastructure layer to favour their own commercial interests at the services layer.
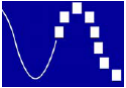
2.3. Cross-border enforcement

Some of the work proposed here is unclear, as service providers regulated by BEREC members are ECS, who are obliged to be notified (or at least complying with regulation) at national level. Generally, BEREC should work on and contribute to the European regulatory framework enabling cross-border, whole-of-Europe provision of ECS without the need for complying with 27 different sets of regulations. It should be possible for ECS to be provided from one Member State to another without increasing the regulatory burden, as currently already applies for e-commerce and audiovisual services.

2.6. Accessibility Services for disabled end-users

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. Any such mandates also should be harmonized with international standards organizations focusing on these issues in the EU and elsewhere and support industry's current developed process for self-declaration of accessibility features included in such products and services. Providers must have the flexibility to offer innovative solutions even if they do not have the 'look and feel' of conventional access tools.

2.7 Net Neutrality

The concept of Net Neutrality requires to be properly defined and this should be the first step in such work.

Moreover, the Net Neutrality debate will be a fundamental debate, and VON urges BEREC to submit any work they deliver on this issue to public consultation, to ensure **all** relevant stakeholders are heard, i.e. not only the telecommunications providers, but also the information society providers, users, etc.

It will be important for BEREC to rely on input from information society stakeholders (and not only telecommunications network operators) if it is to produce an informed, balanced and robust Report or an Opinion on the question.

We thank you in advance for taking consideration of these views. Feel free to contact Caroline De Cock, Executive Director VON Europe, by phone (+ 32 (0)474 840515) or email (cdc@voneurope.eu) should you need further information.

ABOUT the VON Coalition Europe

The Voice on the Net (VON) Coalition Europe was launched in December 2007 by seven leading Internet communications and technology companies, on the cutting edge – iBasis, Google, Microsoft, Rebtel, Skype and Voxbone – to create an authoritative voice for the Internet-enabled communications industry.
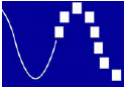
The VON Coalition Europe notably focuses on educating and informing policymakers in the European Union in order to promote responsible government policies that enable innovation and the many benefits that Internet voice innovations can deliver.