



Response to BEREC Consultation

BoR (22) 55

BEREC Guidelines on the application of Article 3 of
Regulation (EU) 2022/612 of 6 April 2022
on roaming on public communications networks
within the Union
(Wholesale Roaming Guidelines)

24 June 2022

I. Introduction

1. MVNO Europe welcomes the opportunity to provide its comments on BoR (22) 55, the draft BEREC Guidelines on the application of Article 3 of Regulation (EU) 2022/612 of 6 April 2022 on roaming on public communications networks within the Union (wholesale roaming guidelines).
2. Given that these draft guidelines constitute an explanation of adopted legislation, are explicitly not of an interpretative nature, and update the BEREC Guidelines of 2017 (BoR (17) 114), MVNO Europe limits itself to commenting on selected parts of the draft where BEREC appears to propose new or revised guidance, or where draft guidance is problematic from MVNO Europe's perspective.
3. MVNO Europe's contribution includes suggestions for additions and modification to the draft BEREC Guidelines.

II. Comments on the draft BEREC wholesale roaming guidelines

Draft Guideline 4. Identity of access seekers

4. MVNO Europe thanks BEREC for reconfirming that the identity of access seekers includes MNOs, full and light MVNOs and resellers. In addition, we welcome that BEREC reconfirms that operators of hub aggregation services are entitled to negotiate access 'sufficient for and limited to the purpose of serving Union providers of regulated retail roaming services'.
5. It would be most welcome if BEREC could add, by analogy, that providers such MVNEs/MVNAs, and providers and aggregators of wholesale M2M/IoT solutions, qualify as beneficiaries of access in application of Article 3 of the Roaming Regulation, insofar as their services ultimately enable providers of regulated retail roaming services. This could be worded as an addition to Guideline 4, paragraph 2, as follows: **"BEREC also considers that operators of wholesale services, such as Mobile Virtual Network Enablers and Aggregators (MVNE/MVNA), and providers and aggregators of wholesale Machine-to-Machine and Internet of Things (M2M/IoT) solutions, which ultimately enable serving Union providers of regulated retail roaming services, are entitled to negotiate access sufficient for and limited to the purpose of serving Union providers of regulated retail roaming services."**

6. MVNO Europe also thanks BEREC for reconfirming, in the last paragraph of draft Guideline 4, the reference to ITU-T Recommendations E.164 and E.212. We understand that BEREC thereby confirms that roaming customers can legitimately be identified by numbering resources from Union Member States which are in accordance with numbering plans for international networks, such as the 14-digit 901 range, etc.¹ This is consistent with BEREC Opinion BoR (18) 98² issued on request of the German regulatory authority BNetzA.

In addition, MVNO Europe explicitly asks BEREC to reject any potential requests from other stakeholders aimed at restricting the use of international network codes by Union operators.

Draft Guideline 5. Refusal of requests

7. MVNO Europe welcomes BEREC's more precise text compared to the text in BoR (17) 114, emphasizing that commercial considerations shall not be grounds to refuse wholesale roaming access. Given some of our members' experience, especially those active in M2M/IoT, this is an absolutely necessary addition, which is consistent with Recital 15 of the Roaming Regulation. MVNO Europe explicitly asks BEREC to add the examples of M2M and IoT in Guideline 5, paragraph 1, sentence 2, as follows:

*"BEREC considers examples for commercial considerations to be the cases where visited network operators and access seekers compete in the provision of the same services, **and where the access seeker wishes to bring innovations to market, including relating to M2M/IoT or other data-only and specialized services**, committed volumes, number **and type** of roaming subscribers etc."*

In addition, MVNO Europe asks BEREC to reject any potential requests from other stakeholders aimed at removing or weakening the text of draft Guideline 5 where it concerns refusals of requests on commercial grounds.

8. As regards the indicative list that would constitute legitimate reasons for refusal of a request, MVNO Europe considers that this remains highly problematic, and asks BEREC to reconsider each element in the list and to add text qualifying any elements that would remain after reconsideration. Most of the points listed cannot reasonably be considered as justifying a denial that is indefinite in time and would in any case have to be proactively reassessed on a rolling basis every 3 months as a minimum. Refusal on the basis of the size of the access seeker or

¹ https://www.itu.int/net/itu-t/inrdb/e164_intlsharedcc.aspx?cc=-1

² https://berec.europa.eu/eng/document_register/subject_matter/berec/opinions/8133-berec-opinion-on-bnetza-request-on-providing-wholesale-roaming-access

of its customer base could illegitimately be invoked to shut out small innovative providers, and should most definitely be deleted from the list. In any case, the inability for the wholesale access provider to recover its costs is already addressed separately. The necessity to make significant investments should be assessed in light of whether relevant/related investments are made in any case to support the MNO's own activities, and/or to support other access takers/seekers. Precedents for this exist in the context of wholesale access on fixed markets (e.g. CS/CPS, number portability and directory databases, wholesale access to xDSL/HFC and FttH networks, etc.). Examination is needed on whether the investments concerned can be spread, to meet internal demand of the access provider and the demand of one or multiple access seekers. It is also necessary to ensure that investments made to enable wholesale access are not paid over and over by multiple access takers.

Draft Guideline 6. Prioritisation of requests

9. MVNO Europe broadly agrees that, at this time, it is reasonable to prioritize 4G and VoLTE access requests over access requests to other technology generations, if wholesale roaming is not yet available for these 4G technologies. This is therefore a useful addition compared to BoR (17) 114. However, we see a severe risk that the wording could be invoked by operators to de-prioritize or (continue to) refuse 5G access, which cannot be the intention, given that one of the key goals of the new Roaming Regulation is precisely to enable matching QoS for retail users when roaming.
10. The importance of ensuring continued 2G wholesale roaming has recently been underscored in the context of emergency calling, given the many problems in enabling VoLTE across networks and on all handsets. This issue has manifested itself in the scenario of Europeans roaming in the USA. MVNO Europe expects similar problems to arise in Europe, especially if 2G networks are to be shut down before VoLTE interworking is fully implemented and functions on all devices. eCall could also be affected. We encourage BEREC to reach out to MVNO Europe for further detail on these issues.

Draft Guideline 12. Machine-to-machine communications

11. MVNO Europe welcomes that BEREC emphasizes that all the relevant wholesale access obligations contained in the Roaming Regulation also apply for M2M communication services, except for the transparency measures which are detailed in Article 14(2) and (4). This emphasis is important, because restrictions and deny/delay/degrade practices remain very real in the context of M2M and IoT.

12. MVNO Europe particularly welcomes Guideline 12, paragraphs 4 and 5, including the expression by BEREC of the expectation that visited network operators will have a clear motivation to offer access to their roaming partners. An adjustment to that text is, however, justified, to replace the word 'partners', which may be interpreted as only covering bilateral voluntary arrangements between MNOs. An adjustment is also justified to extend the scope of relevant technologies. The Roaming Regulation is precisely necessary to ensure that access seekers' requests for wholesale roaming access/resale access are met, also by those that would not otherwise enter voluntarily into agreements, and to ensure that wholesale roaming access/resale access covers all relevant technologies. MVNO Europe proposes that the text be modified to read as follows:

*"BEREC expects that visited network operators will have a clear motivation to ~~offer access to~~ **meet all relevant requests for dedicated M2M communication technologies to their roaming partners, enabling the Internet of Things, such as LTE-M, NB-IoT, and the 5G IoT standards, etc.***

In addition, MVNO Europe asks BEREC to reject any potential requests from other stakeholders aimed at removing or weakening the text of draft Guideline 12 where it concerns the enablement of IoT. BEREC should also firmly reject any potential requests from other stakeholders where these are aimed at the removal of the reference in paragraph 5 to the potential need for future regulation.

13. These comments are made in the knowledge that selected interest groups have been strongly lobbying the EU institutions hard to remove M2M/IoT entirely from the scope of the Roaming Regulation prior to its adoption but have not succeeded. They will likely again oppose regulation when the Roaming Regulation comes up for review. It should be noted in this context that the first planned review, which is scheduled for 30 June 2025, will precisely be aimed, among others, at addressing M2M, IoT and 5G and future technology standards, as is specified in Article 21(1) of the Roaming Regulation.

Draft Guideline 18. Fair and reasonable charges for resale of termination

14. MVNO Europe simply wishes to ask BEREC to delete the last sentence of paragraph 1, which reads: 'BEREC considers prices for these services to be fair and reasonable'. This seems neither necessary nor appropriate, especially in light of the following paragraph and footnote 13 which refer appropriately to the maximum regulated wholesale call termination rates as the correct levels.

Draft Guideline 21. QoS obligations for wholesale roaming access seekers and Draft Guideline 24 (reference offer contents on QoS)

15. MVNO Europe considers that BEREC must make an important addition to the Guidelines, to ensure that wholesale access/resale access providers do not impose downstream/upstream speed limitations on wholesale access seekers compared to their own self-supply. Speed limitations would amount to discriminating between self-supply and supply to third parties, or potentially even discriminating between third parties. We believe that specifying a prohibition on such speed restrictions would be consistent with the new Roaming Regulation.

Draft Guideline 25. Phasing out of previous mobile generations

16. MVNO Europe agrees that, in order to avoid problems relating to lack of interoperability, visited networks should inform access seekers/takers on their plans for phasing out technologies. Including this in the Reference Offer, as proposed by BEREC, makes perfect sense.

17. However, a proactive notification requirement covering the entire chain of parties involved in all use cases may also need to be recommended by BEREC, to avoid any negative surprises. This may be especially relevant to ensure that the information reaches not only those that can engage in bilateral negotiations, but also those that rely on their Host MNO (such as many light MVNOs) for resale access, and those that use hubs (such as many full MVNOs), and potentially other intermediaries.

18. The importance of ensuring continued 2G wholesale roaming has recently been underscored in the context of emergency calling, given the many problems in enabling VoLTE across networks and on all handsets. Please refer to paragraph 10 above for brief further elements. Needless to say, not only emergency calls are affected by lack of VoLTE interoperability, but all calls.

Draft Guideline 34. Information about permanent roaming and anomalous or abusive use

19. MVNO Europe welcomes the added sentence compared to BoR (17) 144. Placing the burden of proof explicitly on the visited network will help to avoid situations in which access seekers are asked to meet extreme up-front and recurring information requirements on the traveling patterns and behaviour of their users. Such requirements exist today, and have the effect of slowing down or hampering or even scuppering wholesale access negotiations, or resulting in threats of subsequent suspension or cessation of wholesale roaming provision for legitimate innovative M2M/IoT use cases.

Draft Guideline 35. Measures to prevent permanent roaming or anomalous or abusive use

20. MVNO Europe considers, in light of experience gained (see also our comments on draft Guideline 34 above), that innovative M2M/IoT services and applications are being unduly held back by extreme information requirements imposed on access seekers.
21. Reference Offers are intended to regulate the behaviour of (often unwilling) access providers; they should not be an instrument to regulate and constrain the activities of access seekers, or to prevent wholesale roaming access for legitimate and innovative M2M/IoT use cases. Yet this is exactly what is happening.
22. On the basis of the above, MVNO Europe recommends deleting the first and last paragraphs of draft Guideline 35.

III. About MVNO Europe

23. MVNO Europe represents various types of Mobile Virtual Network Operators (MVNOs), with different business models, addressing consumers, business users (including start-ups/scale-ups)/medium/large businesses, the public sector, ICT service/systems integrators, and IoT markets, etc. <http://www.mvnoeurope.eu/members>
24. MVNOs currently represent +/- 10% of SIM cards in the European Union.
25. The term "virtual" refers to the fact that MVNOs do not control radio frequencies and related mobile physical infrastructure (antennas, base stations etc.). However, MVNOs do control the necessary hardware/software/resources to provide wireless/mobile services and may own other telecom infrastructures depending on the extent of their business model.
26. Our members provide mobile-only offers, fixed-mobile convergent offers and offers incorporating audio-visual media content, financial services, machine-to-machine communications, embedded data SIMs for tablets, laptops and other devices, connected mobility for vehicles, IoT in a broad sense, etc. Some of our members are also active on wholesale markets as MVNE (E=Enabler) / MVNA (A=Aggregator) supporting other companies and brands that provide wireless/mobile services. MVNO Europe does not represent branded resellers.
27. MVNOs contribute strongly to innovation and competition and provide clear Business to Consumer (B2C) and Business to Business (B2B) end-user benefits. MVNOs also contribute to

financing mobile network infrastructure through payment of wholesale charges which assure revenues to Mobile Network Operators, whilst avoiding costly duplication of network assets.

IV. MVNO Europe Contact Details

Should you require any clarifications or further information on the elements and positions set out by MVNO Europe in this document, please contact:

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