



Response to BoR (22) 143

Draft BEREC Work Programme 2023

7 November 2022

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## I. Introduction

1. MVNO Europe welcomes the opportunity to provide its brief comments on the draft BEREC Work Programme 2023 - BoR (22) 143 (hereafter 'draft BEREC WP2023'). These comments should be read in conjunction with MVNO Europe's detailed specific suggestions, filed on 15 April 2022, relating to the Outline BEREC Work Programme for 2023.
2. MVNO Europe expresses its support for most of the contents of the draft WP2023.
3. **MVNO Europe hereby explicitly thanks BEREC for meeting its requests, expressed in response to the Call for Input on the Outline BEREC Work Programme for 2023, to:**
  - a) **Prepare a dedicated Report on 2G/3G shutdown (Section 1.3).**
  - b) **Launch two proposed BEREC workstreams, covering M2M and permanent roaming (Section 2.5) and perspectives and regulatory/competition challenges of Internet of Things (Section 2.11).**

## II. Strategic Priority 1: Promoting full connectivity

### Section 1.1: BEREC Report on the regulatory treatment of business services

4. This BEREC workstream, as described in the draft BEREC WP2023, appears to be focused on business services delivered *at fixed locations*.
5. MVNO Europe wishes to highlight that retail business-to-business communications services are increasingly commercialized as part of *fixed-mobile convergence bundles*. Specialized providers, including MVNOs, aim specifically to address business customers' full spectrum of needs, including *the mobility dimension*, because a large proportion of business and public administration employees are frequently working outside the traditional workplace environment, and need to be able to do so efficiently and securely. This applies to enterprises and public administrations of any size, ranging from a small local company or municipality, to a national or multinational business having multiple sites, including in multiple countries.
6. MVNO Europe therefore **advocates that the external study commissioned by BEREC** on the evolution of business services **should explicitly cover the integration of fixed and mobile** communications (Unified Communications as a Service - UCaaS). **Internet of Things (IoT)** is of increasing relevance to many businesses, and therefore **should be covered in this BEREC workstream on business services as well.**

### Section 1.3: Report on practices and challenges of the phasing out of 2G and 3G

7. As stated above, **MVNO Europe explicitly thanks BEREC for including this workstream** in its draft WP2023. It of genuine importance for (full) MVNOs.
8. The **wholesale roaming dimension of 2G/3G shutdown definitely needs to be addressed as a matter of priority, given that it can potentially lead to lack of availability of emergency calling.**
9. MVNO Europe wishes to emphasize that the potential lack of availability of emergency calling is a **symptom of deeper problems**, at the network/service level, and at the OEM/handset level.
10. At the **network/service level**, there is the lack of VoLTE provision by some MNOs to MVNOs (domestic and while roaming), and/or the lack of VoLTE compatibility in some cases (due to different interpretations of standards in the course of implementation). Indeed, there are cases in which VoLTE is not technically supported for MVNOs (by Host MNOs and/or by OEM/handset manufacturers), cases in which wholesale roaming and domestic MVNO access to 4G and 5G networks is denied, etc.
11. The **OEM/handset** level is of crucial importance. MVNO Europe has answered the European Commission's 'Have Your Say' consultation on the draft Commission Delegated Regulation (EU) supplementing Directive (EU) 2018/1972 of the European Parliament and of the Council with measures to ensure effective access to emergency services through emergency communications to the single European emergency number '112'. MVNO Europe essentially stated in its response that there is a **need for the European institutions to encourage or mandate that OEM vendors make sure that all VoLTE capable handsets offer VoLTE/packet-based voice services under all circumstances** and will make sure that all capable handsets (during their reasonable economic lifespan) will be updated to use the SOS emergency APN. This MVNO Europe response is provided as Annex I to this response.
12. Overall, BEREC needs to be aware that many of the critical problems associated with the lack of VoLTE compatibility are attributable to: (i) business decisions by mobile network operators, and, (ii) business decisions of mobile device Operating System providers. These decisions affect (full) MVNOs, and ultimately affect end-users, through the ways in which the value chain is structured.

13. Going beyond the VoLTE compatibility issues addressed above, MVNO Europe welcomes that BEREC intends to look into "*potential issues in the field of wholesale access, given the differences in pricing relative to each technology*"(page 10, para 1).
14. MVNO Europe is available to work closely with BEREC experts on the practices and challenges of the phasing out of 2G and 3G, and will certainly respond to the forthcoming BEREC public consultation.

Section 1.11: BEREC Report on NRAs' annual reporting on the implementation of Article 75 of the EECC.

15. **MVNO Europe strongly supports this BEREC work item.** It will constitute a good source of reference for assessing the functioning (and possible dysfunctions) of all aspects of Article 75 EECC, including the provisions of the European Commission's Delegated Regulation (EU) 2021/645 and NRA decisions on the regulatory treatment of wholesale call termination markets.
16. MVNO Europe emphasizes that BEREC's report should not be a merely administrative compilation of NRA reports, or be focused solely on the Mobile Termination Rates (MTRs) and Fixed Termination Rates (FTRs), but **should address all quantitative and qualitative aspects of wholesale call termination, as it is operates post-Article 75 EECC.** The mere existence of a new regime also does not justify NRAs or BEREC ceasing or reducing monitoring activity. On the contrary, the functioning of the new regime should be studied and assessed.
17. Indeed, NRA decisions taken on wholesale call termination markets vary strongly among one-another, ranging from full deregulation of wholesale call termination, to maintaining in place safeguards that are deemed essential for competition, such as non-discrimination obligations, explicit rules on the treatment of interconnection links, cost-orientation in certain cases (e.g. co-location), rules on the treatment of specific Value Added Service call types, etc. There are also various concerns about differentiated practices around the treatment of calls originating outside the EU/EEA, and even for EU-originated international calls, depending on how the CLI is formatted. With rising energy costs, particular attention may be needed to the prices charged for co-location and related services.
18. It is also of interest for BEREC to collect which may reveal whether some large operators or operator groups trade below the MTR and FTR 'Eurorates' internally and/or with each-other, while applying the regulated wholesale caps to others. Monitoring SMS TRs has proven its

usefulness in the past, and has revealed widely differing wholesale pricing. It should not be abandoned.

19. Given the points raised above, **MVNO Europe would welcome BEREC putting a draft Report to public consultation.**

### III. Strategic Priority 2: Thriving sustainable and open digital markets

#### Section 2.2: BEREC's role in supporting sustainable and open digital markets

20. MVNO Europe welcomes that "*BEREC will keep monitoring and analysing the developments of digital markets and the impacts and effects of the practices implemented by large digital platforms*" (page 20, para 3). The form this will take, as presented by BEREC, is, however, quite abstract, aside from referring to BEREC's participation in the High-Level Group that will operate in the context of the implementation of the Digital Markets Act (DMA), and references to potential opinions, workshops, etc. In MVNO Europe's opinion, **BEREC should not only actively prepare to exercise its duties as a member of the High-Level Group, but should from now on actively focus on documenting practices that infringe the DMA, or can be reformed on the basis of specific provisions of the DMA.**
21. As previously highlighted, MVNO Europe's main concern with digital markets are the **practices by companies controlling Operating Systems, that can prevent or distort competition on (mobile) electronic communications markets.** MVNO Europe is available to provide technical details on the acute issues that several of its members face (for example restrictions at operating system level on activating Voice over Wi-Fi and 5G, even where the MVNO supports these technologies).
22. Electronic communications operators, including all types of MVNOs, should not be restricted from enabling their users to benefit from all features of devices/operating systems.
23. We refer in this regard to Article 6(6) of the Digital Markets Act, as published in the EU Official Journal of 12 October 2022: "*The gatekeeper shall not restrict technically or otherwise the ability of end users to switch between, and subscribe to, different software applications and services that are accessed using the core platform services of the gatekeeper, including as regards the choice of Internet access services for end users*".

24. **MVNO Europe therefore asks BEREC to follow up on the BEREC Report on the ex-ante regulation of digital gatekeepers<sup>1</sup> with a set of focused reports. A first such report could elaborate** on BEREC's statement in BoR (21) 131 (page 15, para 2): *"In this line, BEREC considers that device manufacturers and providers of operating systems which hold a gatekeeper position should not be able to impose restrictions on mobile operators/service providers, on app developers, and on end-users, which limit access to key device functionalities (e.g. the generation of mobile technology, mobile Internet, Voice over LTE or Wi-Fi, GPS, voice commands, etc.) for purely commercial reasons."*

Section 2.5: BEREC's Report on M2M and permanent roaming and Section 2.11: BEREC workshop on the perspectives and regulatory/competition challenges of Internet of Things

25. **MVNO Europe expresses its great satisfaction with these two proposed BEREC workstreams, which meet MVNO Europe's explicit requests in our response to the call for input on the Outline BEREC Work Programme for 2023.** MVNO Europe is especially satisfied with the statements that:

- a) *"BEREC will investigate potential obstacles for operators to negotiate (permanent) roaming agreements, whether they allow permanent roaming in their network for the provision of such services, and what pricing schemes are applied"* and that BEREC will launch a call for input (Section 2.5, page 24, para 4).
- b) *"In 2023, BEREC will organize a workshop with the twofold purpose of reviewing the state of play of IoT services and discussing emerging regulatory/competition challenges for IoT in view of 5G and 6G"* (Section 2.11, page 29, para 5).

26. MVNOs are among the most apt and agile market participants to serve pan-EU and IoT needs, as is demonstrated by the considerable success of MVNOs specialized in IoT, notably in the automotive sector. That being said, **MVNOs do face obstacles**, in particular circumstances and in particular Member States, in negotiating suitable wholesale access to support IoT business cases, be it domestic (full) MVNO access, wholesale roaming access, or both. Flat-out refusals, constructive refusal to supply, discrimination, problematic contractual obligations and inadequate wholesale pricing structures are among the problems encountered.

27. **In case other stakeholders call on BEREC to remove these work items from its WP2023, or to remove the BEREC Report foreseen under Section 2.5 (leaving only**

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<sup>1</sup> BoR (21) 131: [https://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/reports/10043-berec-report-on-the-ex-ante-regulation-of-digital-gatekeepers](https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/10043-berec-report-on-the-ex-ante-regulation-of-digital-gatekeepers)

**a workshop**), which may be a possibility, given comments cited and discussed in the BEREC Report on the outcome of the public consultation on the BEREC Guidelines on the Wholesale Roaming Guidelines<sup>2</sup>, **MVNO Europe asks BEREC to stand firm, and vigorously pursue both of these workstreams. MVNO Europe will certainly provide detailed input.**

28. An additional justification for BEREC pursuing both of these workstreams is that the 2022 EU Roaming Regulation is coming up for a first review in 2025, and that BEREC needs to stand ready with the relevant information to assist the EU institutions on this dossier.

Section 2.7: Assessment of the IP interconnection ecosystem and impact of the potential sending party network pays principle on Internet ecosystem and on end-users (carry-over)

29. MVNO Europe has issued a public expression of concerns on this topic on 30 August 2022<sup>3</sup>, and is **deeply grateful to BEREC for referring to MVNO Europe’s statement in its preliminary assessment of the underlying assumptions of payments from large CAPs to ISPs**, dated 7 October 2022<sup>4</sup>. **MVNO Europe wishes to explicitly congratulate BEREC for its concise and solid assessment.**

30. MVNO Europe trusts that BEREC will continue to provide fact-based assessments of this type, both in terms of the substance and in terms of the form adopted for the first preliminary assessment. It is key for BEREC to be concise and crystal clear, to ensure that EU institutional stakeholders are in no doubt about BEREC’s assessment.

31. Whilst MVNO Europe is unequivocally positive about BEREC’s output for this workstream so far, the same cannot be said about the process. Apparently there have been up to 2 to 5 BEREC workshops with stakeholders (BEREC refers to ‘several’), which have not been publicly announced, have not been open to all interested stakeholders, which did not enable debate between stakeholders with differing positions, and on which no reports were published. MVNO Europe was not invited to any of these workshops. We believe that a **more open approach is justified, also to enable stakeholders with limited resources to be heard properly** (e.g. those who are not in the position to hire consultants to prepare reports that are published and presented at events).

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<sup>2</sup> BoR (22) 146: <https://www.berec.europa.eu/en/document-categories/berec/reports/berec-report-on-the-outcome-of-the-public-consultation-on-the-berec-guidelines-on-the-wholesale-roaming-guidelines>

<sup>3</sup> <http://mvnoeurope.eu/mvno-europe-position-paper-on-network-investment-contributions/>

<sup>4</sup> BoR (22) 137: <https://www.berec.europa.eu/en/document-categories/berec/opinions/berec-preliminary-assessment-of-the-underlying-assumptions-of-payments-from-large-caps-to-isps>



## IV. Strategic Priority 3: Empowering end-users

### Section 3.4: BEREC Guidelines detailing Quality of Service (QoS) parameters

32. MVNO Europe understands that BEREC takes a keen interest in promoting measurement and transparency of QoS in relation to IAS and ICS, and with a specific focus now on 5G.
33. That being stated, MVNO Europe wishes to highlight that Article 104 (1) of the EECC is optional for NRAs, and contains a specific carve-out for those operators that do not have control (technical or contractual) over QoS, and also a reference to external factors. Article 104 (1) EECC reads as follows, with our emphasis added:

*National regulatory authorities in coordination with other competent authorities may require providers of internet access services and of publicly available interpersonal communications services to publish comprehensive, comparable, reliable, user-friendly and up-to-date information for end-users on the quality of their services, to the extent that they control at least some elements of the network either directly or by virtue of a service level agreement to that effect, and on measures taken to ensure equivalence in access for end-users with disabilities. National regulatory authorities in coordination with other competent authorities may also require providers of publicly available interpersonal communication services to inform consumers if the quality of the services they provide depends on any external factors, such as control of signal transmission or network connectivity.*

[...]

34. On the basis of the above, MVNO Europe simply wishes to ask BEREC and NRAs, when developing Guidelines on QoS, not to lose sight of the limitations that some operators, notably (light and full) MVNOs, face in terms of their ability to control QoS, and to report and inform consumers adequately on QoS, given their dependencies on third party underlying network providers.

## V. BEREC's other tasks (Chapter 5)

### Section 5.1.2: Peer review process

35. As in every response to a draft BEREC Work Programme consultation, MVNO Europe feels compelled to make the observation that the Peer Review process remains a black box, and that it is impossible for MVNO Europe to know whether BEREC participates in a manner that

MVNO Europe would support or may disagree with. In MVNO Europe's opinion, **BEREC needs to bring not only the *contribution to the objective of full connectivity* to the Peer Review table (page 36, para 4), but also the promotion of competition and end-user interests.**

36. It is essential for stakeholders to understand BEREC's role and attitude in peer review processes. The outcome of peer reviews should also be published.
37. We highlight in this context the contents of Article 5 of the Radio Spectrum Policy Programme (RSPP), which enables pro-competitive conditions (e.g. wholesale access including Light and Full MVNO access) to be included in spectrum assignment proceedings. The European Commission's Work Programme for 2023 includes a Review of the RSPP. MVNO Europe expects BEREC to ensure that its possible Opinion, and information and support to EU co-legislators, will include a stance that goes beyond promoting connectivity, and will extend explicitly to promoting competition and safeguarding end-user interests.

#### Section 5.2.1: BEREC participation in the High-Level Group envisaged by the DMA Regulation

38. MVNO Europe considers that **BEREC should not only prepare to exercise its duties as a member of the High-Level Group in terms of the development of rules of procedure, but should also work on the substance**, notably:
- a) Focus actively, from now on, on documenting practices that infringe the DMA, or can be reformed on the basis of specific provisions of the DMA.
  - b) Follow up on the BEREC Report on the ex-ante regulation of digital gatekeepers with a set of focused reports. A first such report could focus on the gatekeeper functions of device manufacturers and providers of operating systems (see also paragraph 22 above) affecting competition for (mobile) electronic communications services.

#### Section 5.2.3: International roaming benchmark data and monitoring report

39. As in every response to a draft BEREC Work Programme consultation, MVNO Europe highlights the essential importance that BEREC continues its detailed monitoring and reporting on wholesale international roaming (voice/sms/data). This must include in particular the levels at which different types of operators trade roaming with one-another (with specific attention to multi-country operator groups and other partnerships/alliances), and comparisons among groups, including differences between MNOs and MVNOs. Granular data gathering and reporting is essential, including in the light of the upcoming first review of the 2022 Roaming

Regulation in 2025. For reference, MVNO Europe considers that the large gap that has been documented as existing between the level at which some MNOs trade roaming, and the wholesale charges they impose on MVNOs (directly or through their groups/hubs, etc.) is highly problematic and constitutes a threat to competition and end-user interests.

#### Section 5.2.4: BEREC input to the Commission on the Review of the Intra-EU Communications Regulation

40. MVNO Europe is pleased to see that BEREC is preparing to contribute to an assessment of the effects of the regulatory intervention on retail charges for intra-EU communications, which is a measure that was inserted by means of Article 50 of Regulation (EU) 2018/1971 into Regulation (EU) 2015/2120.

41. **MVNO Europe considers that several factors justify a critical examination of this regulatory instrument**, including the existence of various competitive offers (notably from generalist and from specialist MVNOs that target customers making many international calls), the inclusion of unlimited intra-EU calls in unlimited calling bundles, and the wide take-up by users of free of charge Internet-based services. More generally, it is widely understood that that this regulatory instrument lacks coherence with the EU regulatory framework for electronic communications (which has a determined focus on addressing pricing issues where necessary at the wholesale level, rather than direct intervention on retail prices).

42. MVNO Europe is of the opinion that this regulatory instrument **should be repealed**, and certainly wishes to caution against any suggestion that a reduction of the retail price caps determined by regulation could be given serious consideration.

#### Section 5.2.5: BEREC input to the Commission on the Review of the Commission Implementing Regulation on the Fair Use Policy and Sustainability of the Roaming Regulation

43. MVNO Europe urges BEREC to be **extremely cautious** in preparing and formulating its Opinion on the Review of Commission Implementing Regulation (EU) 2016/2286<sup>5</sup>.

44. **Any changes, notably to Article 4 on Fair use, entail major risks of debasing the already precarious roaming economics for MVNOs**, which typically make wholesale roaming outpayments at or near the level of the wholesale caps for data contained in Article 11 of Regulation (EU) 2022/612.

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<sup>5</sup> Commission Implementing Regulation (EU) 2016/2286 of 15 December 2016 laying down detailed rules on the application of fair use policy and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R2286>

45. The objective reality that MVNOs are facing is that the rate of increase of monthly mobile data volume consumption is greater than the rate of reduction of the wholesale charges they effectively pay for wholesale data roaming services. As time advances, the economics for MVNOs therefore become increasingly problematic, and may in more and more cases over time, become unsustainable.
46. Therefore, the **manner in which a request for a sustainability derogation is assessed, must certainly be such as to remain achievable for operators in the real world.**
47. Overall, any suggestions to the effect that fair use limits and/or sustainability derogations would be less justified than before, or could be reduced or even phased out, should be considered with the utmost caution.
- 48. MVNO Europe asks BEREC to certainly consult with affected stakeholders prior to preparing an Opinion on these matters. Given that BEREC's draft WP2023 does not foresee a public consultation, MVNO Europe urges BEREC to engage in intensive bilateral exchanges on this topic, and preferably to organize a public consultation.**

#### Section 5.3.4: Article 32/33 Phase II process

49. MVNO Europe asks BEREC to be more proactive in preparing, together with its constituent NRAs, for the types of notification for which the European Commission may be expected to escalate a case to Phase II. This would help BEREC collectively in anticipating on the issues and arguments likely requiring a BEREC Opinion, and avoid situations in which BEREC's ad-hoc project group has to rush the delivery of a draft Opinion, and the Board of Regulators having barely any time to assess it, under extreme deadline pressure.
50. In early 2022, MVNO Europe has been **particularly frustrated with the BEREC Opinion on Case CZ/2021/2351**: Wholesale access and call origination on public mobile telephone networks in the Czech Republic<sup>6</sup>. MVNO Europe provided Observations on the European Commission's second phase letter, in support of the Czech NRA's notification, and substantially rebutting the European Commission's arguments. We have no indication that MVNO Europe's Observations have been given consideration by BEREC. Given that the Czech NRA may make a new notification relating to this market, MVNO Europe would expect BEREC to set out the lines well in advance, and lend its support to the Czech NRA in good time, to avoid another

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<sup>6</sup> BoR (22) 06: <https://www.berec.europa.eu/en/document-categories/berec/opinions/berec-opinion-on-phase-ii-investigation-pursuant-to-article-32-of-directive-eu-20181972-case-cz20212351-wholesale-access-and-call-origination-on-public-mobile-telephone-networks-in-the-czech-republic>

case in which the way in which the BEREC Opinion is formulated leads to a guaranteed European Commission veto.

## VI. Stakeholder engagement (Chapter 6)

51. MVNO Europe would like to close this response on the draft BEREC WP2023 with an expression of thanks to BEREC for conducting, in many cases, positive and profound exchanges with stakeholders. MVNO Europe will certainly continue to respond to relevant BEREC publications, participate in stakeholder fora and workshops, and – where possible – seek to engage directly with BEREC’s working groups. That being said, there are a number of areas where stakeholder involvement is sub-optimal or non-existent, which MVNO Europe considers problematic. These have been highlighted in this response, at paragraphs 31, 35-36 and 50.

## VII. About MVNO Europe

52. 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>
53. MVNOs currently represent +/- 10% of SIM cards in the European Union.
54. 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.
55. 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.
56. 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.

## VIII. 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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### Annex I: MVNO Europe Response to EC “Have Your Say” on Delegated Regulation on Emergency Communications

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Response to European Commission

“Have your Say”

on

Emergency communications – improving access through the single  
European emergency number ‘112’

12 September 2022

## I. Introduction

1. MVNO Europe welcomes the opportunity to provide its brief comments in response to the European Commission's "Have Your Say" consultation entitled *Emergency communications – improving access through the single European emergency number '112'* and the related draft Commission Delegated Regulation (EU) supplementing Directive (EU) 2018/1972 of the European Parliament and of the Council with measures to ensure effective access to emergency services through emergency communications to the single European emergency number '112'.
2. 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 Internet of Things markets, etc. <http://www.mvnoeurope.eu/members>. 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.

## II. MVNOs are not in charge of generating and providing location information

3. Please allow us to emphasize that, given that MVNOs do not operate their own Radio Access Network (RAN), they are not in charge of generating and providing network-based location information. This function is handled by their Host operator (a mobile network operator with whom they have concluded a wholesale access agreement).
4. That being said, MVNO Europe considers that major improvements are possible and necessary to handset-derived emergency caller location. We address this point, as well as 2G/3G sunset and related issues with emergency calling, in the remainder of this response.

## III. Improvements needed to handset-derived caller location information

5. MVNO Europe believes that handset-derived information (including, but not exclusively, on caller location) will gain importance going forward, as it will enable the most rich forms of emergency communication and contextual information.
6. MVNO Europe agrees with, and supports, the definitions put forward by the European Commission for 'effective emergency communication' and 'contextual information' in draft Article 2. The reference made in the same article to 'information derived and transmitted

automatically from the device of the end-user' is also very relevant. MVNO Europe also considers it most welcome that national PSAPs will be put on a path towards upgrades to packet-switched technologies, as provided for in draft Article 7(2).

7. In this context, and in the interests of improving reliability of mobile caller location, and well as the quality of interaction with PSAPs, MVNO Europe considers that the European Commission should take the opportunity of this Delegated Regulation to promote (in the text itself or at least in the accompanying Explanatory Memorandum) an important extension to Advanced Mobile Location (AML).
8. The current AML standard (ETSI TS 103 625 V1.2.1) only enables transmission via SMS or HTTPs, thus requiring a functioning SMS Switching Centre (SMSc) or a working data connection with the end-users' device, also while the end-user is roaming. This is not always the case: an SMSc may fail, or fail to be reachable, and a data connection may not be available, e.g. if there is no working SIM card, if the user has turned off data while roaming, if prepaid credit has expired or if the user has been cut off for whatever reason, etc. If the AML standard were (mandatorily) extended to organize signalling via SIP/IMS, this would have major advantages (provided that modernized PSAPs are able to receive and process it), enabling AML to function even when no SIM card/active eSIM is in the handset, in case no data connection is available with the end-users' device, and removing a potential point of failure, which is the provider's SMSc or the roaming provider's SMSc. If AML relying on signalling via SIP/IMS would be (mandatorily) implemented, the information will always be relayed over the local SOS emergency APN of the VPLMN, which is able to deliver messages to the local PSAPs.
9. In sum, introducing/mandating AML signalling via SIP/IMS would significantly boost the reliability of mobile caller location, removing failure scenarios that are widespread in the current AML implementations.

#### IV. 2G and 3G shut-down – insufficiently addressed risks – action needed

10. The Explanatory Memorandum makes reference to issues relating to 2G/3G sunset (page 2, paragraph 2) and to VoLTE, VoNR and VoWi-Fi, including the fact that these solutions cannot be supported by the legacy circuit-switched networks, such as 2G and 3G (Recital 2). Also, the draft text (Recitals 12, 17 and Article 7(2)) lays down proposals driving Member States towards migration of PSAPs to packet-switched technologies. All of this is welcome, and is supported by MVNO Europe.
11. However, the text of the draft Delegated Regulation itself does not provide any direct impetus to address the increasingly acute issue that some handsets do not support VoLTE, or the



implementation of VoLTE in and between networks and in handsets is not consistent, in some cases to the impossibility for end-users to make emergency calls. This issue has occurred for European end-users, notably while roaming in the United States, and it is very likely to occur in Europe as 2G and 3G networks are progressively shut down (many operators have announced shut-downs, some as early as 2023-2025).

12. The inability for end-users to make emergency calls is an issue that has been flagged by EENA<sup>7</sup> the European Emergency Number Association, and by various stakeholders, as requiring rapid action to avoid problems going forward. Indeed, there is currently doubt whether the industry is able to guarantee continued access to 112 considering the current status of VoLTE deployments combined with the fact that OEM handset vendors are not mandated by any legislation to make VoLTE available as a service in their handsets nor they are mandated to enable VoLTE and configure VoLTE emergency calling (enabling VoLTE is one step, but making sure the handset no longer attempts CSFB is a second step) on any network with any SIM.
13. The Ministry in The Netherlands will hold an industry meeting on the topic at the end of September 2022. An MVNO Europe member company will participate. We encourage the European Commission to participate as well.
14. MVNO Europe believes that the European Commission should take the opportunity of the Delegated Regulation, or at least the final text of its Explanatory Memorandum, to encourage or mandate that OEM vendors make sure that all VoLTE capable handsets shall offer VoLTE/packet-based voice services under all circumstances and will make sure all capable handsets (during their reasonable economic lifespan) will be updated to use the SOS emergency APN.

## V. 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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<sup>7</sup> <https://eena.org/knowledge-hub/press-releases/many-europeans-cannot-call-911-when-traveling-to-the-us/>