



## **Response of the Mobile Broadband Group to the Consultation on the Draft Civil Contingencies Bill Consultation**

The Mobile Broadband Group (“MBG”, consisting of O2, Orange, T-Mobile, Vodafone and 3) welcomes the opportunity to comment on the Cabinet Office’s consultation on the draft Civil Contingencies Bill.

The MBG broadly welcomes the draft Civil Contingencies Bill that seeks to improve the UK’s resilience to disruptive challenges. It is recognised that following the September 11<sup>th</sup> terrorist attacks in the US there is a heightened need to ensure that sufficient safeguards are in position both to reduce the risk of such disruption occurring in the UK and to respond effectively should a similar event take place here.

### **Summary**

- When the Bill is being implemented it should be recognised that Category 2 Responders like the Mobile Network Operators (MNOs) operate nationwide and each has one set of business continuity plans which apply throughout the UK in the event of disasters. MBG members do not have business continuity plans that are related to the geographic boundaries of councils or for example fire authorities.
- It will therefore be more effective and provide better value for money for the public authorities and the MNOs if interaction between them to achieve the Bill’s aims takes place at a national level only.
- Interaction between the MNOs and local and regional representatives of the public authorities under a future Civil Contingencies Act seems highly unlikely to add value and will probably waste the resources of all parties.
- Subject to a change of focus towards national approaches for national providers the MBG would support the Option 1 proposals and also support Option 2.

### **Main Response**

#### ***Communications and Co-ordination between Public and Private Bodies***

The MBG believes that civil contingencies plans that are coherent, effective and which provide value for money can be implemented. However, currently the proposals appear to suggest applying predominantly locally led approaches to all Category 2 Responders (C2Rs) irrespective of the different C2Rs involved.

Mobile Network Operators (MNOs) are by their nature nationally based. The MNOs apply the same business continuity plans nationwide. Thus the same wealth of resources and established procedures are brought to bear under national HQ control by each MNO wherever network disruption may occur geographically within the UK. Consequently, a locally led approach for co-operation between MNOs and the public authorities is likely to be sub-optimal in terms of effectiveness and costs for all parties. It seems likely only to result in significant duplication of effort and possible conflict.

Based on the draft Civil Contingencies Bill many local and regional authorities might seek detailed involvement with MNOs. Assuming that there are at least 200 discrete public bodies

involved, including all the geographic sub-divisions of the emergency authorities, there would appear to be around 1,000 possible points of contact with the MNOs. We do not see how that level of contact can be effective. We see no reason why Local Resilience Forums and regional representatives cannot feed any concerns with respect to mobile services into central government for discussion with the MNOs. MNOs want the norm to be a national approach for companies which necessarily have national business continuity plans.

Under the Communications Act, the MNOs are already under a duty to respond, if approached, by a range of public bodies about plans for business continuity in the event of disasters. But neither public authorities nor MNOs engage in debate unless the effort is likely to be justified by the value added to emergency planning. Engagement between public bodies and the MNOs therefore takes place at the national level. This is unlike what is being proposed under the Civil Contingencies Bill which risks forcing local and regional public bodies to become involved in detailed debate with national companies.

Furthermore, it should be noted that since the 2001 terrorist attacks in the US, telecommunications companies in conjunction with Oftel, the Department of Trade and Industry and the Office of the E-Envoy have been working together to develop a National Emergency Plan for the Telecommunications Sector. This co-regulatory plan seeks to set out in a more formal manner how Communications Providers will work together to respond to emergency situations. As such, to some extent the draft Civil Contingencies Bill duplicates the positive steps that have already been taken within the communications sector in the formulation with Oftel of a National Emergency Plan for the Telecommunications Sector. It should also be remembered that in past emergency situations such as the Foot and Mouth crisis and the fuel crisis the MNOs have always been able to co-operate fully with government on both a local and national level by applying nationally formulated plans.

## **Options Proposed**

We have considered the possible costs of the options which have been proposed. In the event of multiple approaches by councils and emergency authorities, costs to both sides could spiral rapidly. At the local level alone there would appear to be about 200 public bodies which could approach an individual MNO. We hope that under the current proposals there would be a substantial degree of co-ordination so that the number of approaches to C2Rs would be rationalised. However there appears to be nothing to stop every local public body from making individual approaches.

We doubt therefore that the total costs to C2Rs have been accurately assessed. These costs include not only the time of attending meetings (potentially each public body could request several meetings) and training for staff, but also the costs of preparation and, most significantly of all, the costs of considering and implementing any proposals made by public bodies and attempting to deal with conflicts between what each of those public bodies says. Under the current proposals for Option 2 for example we can envisage a theoretical maximum annual cost which is far higher than that indicated. Possibly running to hundreds of thousands of pounds per annum per MNO. These costs could be higher still under Option 3. It would reassure MNOs if communication between MNOs and the authorities occurred at the national level only in order to ensure that a disjointed, costly and ineffective process is not instigated.

The consultation document suggests that any work carried out under the new arrangements will replace the work that goes on currently. We hope that this is true. However, in our experience this is unlikely to happen unless national, regional and local public bodies adopt a significantly more co-ordinated approach to emergency planning. Requiring communication between the authorities and nationally operating C2Rs like MNOs at a national level only would promote a more co-ordinated approach.

We believe that the government should scrutinise the costs for national companies more carefully before deciding what the impact of any particular proposal will be.

### **Legislative References**

It should be noted that while telecommunications providers are included as C2Rs within Schedule 1 Part 2 of the draft Bill, the draft Bill incorrectly makes reference to the Telecommunications Act 1984 which has now been almost totally superseded by the Communications Act 2003. As such, licensing obligations that existed under the old regulatory regime have now been replaced by a general authorisation to operate a communications service. It should further be noted that under Section 151 of the Communications Act the term 'telecommunications operator' is not used and as such the draft Civil Contingencies Bill should use the term 'Public Communications Providers.'

*Q1. Is the definition of emergency the right one? If not, in what ways should it be tightened or expanded to exclude certain classes of event or situation?*

Events which cause mere “disruption” to the environment, government and banks are being classed as emergencies. Disruption could involve a relatively minor event. Therefore the term to be used should be “significant disruption”.

*Q3. Do you agree that the membership of Categories 1 and 2 is right? If not, which organisations should be added, moved, or removed?*

As explained previously, the MBG is keen that the government recognises that different kinds of C2Rs can be engaged most productively in different ways depending on the national extent and nature of their businesses. Hence the MBG would strongly prefer to play its part in ensuring that the aims of the Bill are fulfilled by engaging at the national level as opposed to the regional or local. With this approach in mind the C1R category would need to incorporate the necessary central government departments. Enabling a nationally led approach in the appropriate circumstances will mean that there should not be a duty on all C1Rs to engage with all C2Rs. We suggest that guidelines should be adopted which indicate that where a C2R is national in nature and has a clear central point of co-ordination, that public authorities should normally only engage with them at a national level.

*Q6. Do you agree that the partial Regulatory Impact Assessment accurately reflects the costs and benefits of the Bill proposals? If not, how should it be changed?*

We believe that the proposals mean that, theoretically at least, the costs could be significantly higher for nationally operating companies. This stems from uncertainty about the number of approaches that C2Rs will receive from public sector bodies. MNOs, for example, would prefer to communicate with the authorities at the national level only to maximise effectiveness and efficiency for all parties.

*Q13. Do you agree that the circumstances in which special legislative measures may be taken should be widened from limited threats to public welfare to include threats to the environment, to the political, administrative and economic stability of the UK and to threats to its security resulting from war or terrorism? If not, how would you like to see the circumstances narrowed or extended?*

See answer to question 1.

*Q18. Q19. Q20. Scotland, Wales and Northern Ireland*

*and*

*Q23. Do you agree that London should have different arrangements for co-operation, and that the proposals set out are the right way to deliver this? If not, what arrangements should be in put in place?*

Given the national nature of MBG members business presence and their business continuity plans we believe that MNOs should apply the same plans for, Scotland, Wales, Northern Ireland and London as for the main extent of England.